

Rights, Needs and Responsibility:  
Challenges to Rights-Based Advocacy for Non-Palestinian  
Refugees' Health and Education  
in Lebanon

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## 1. INTRODUCTION

This chapter highlights challenges to rights-based strategies to improve non-Palestinian refugees' social and economic welfare in Lebanon. By using the specific case study of Lebanon, we argue that social and economic rights must be seen in connection with two other inter-related factors. First, though in theory social and economic rights do not necessarily depend on formal recognition of refugee status, their realization is likely to be impeded where (as in Lebanon) a government fails to recognize refugees' basic civil status. Second, it is difficult to implement a theoretical right without a clear understanding about who is responsible for realizing and implementing the right.

In order to highlight these challenges, this study assesses the prevalence of rights-based versus needs-based approaches to the health and education of non-Palestinian refugees in Lebanon. Health and education are useful issues to focus on for this study because in international law they are rights that do not necessarily depend on a foreigner's legal status, and both require active institutional involvement to move from paper to becoming a reality. A child need not be recognized formally as a refugee to be entitled to educational or health services. Yet some institution must actually provide schools and medical care; when refugees are entitled to such things it is essential to pinpoint who is responsible to do so. As we will argue, Lebanon exemplifies the problems in addressing refugees' social and economic rights in an environment where most non-Palestinian refugees lack recognition of a basic legal status and where the country lacks a legal structure by which to recognize and regulate refugee policy. Lack of domestically-recognized civil status for refugees has the effect of deflecting responsibility from a host government. To some extent, the United Nations and non-government organizations step in to fill the void, but their actual capacities fall short of both refugees' expectations and the standards of human rights law. Diffusion of responsibility produces a situation where it is difficult to actually implement theoretical rights.

Based on interviews with government and UN officials, a sample of refugees, and non-government organizations, we find that many constituency groups use the language of rights and embrace refugee participation in policy formation in theory. Yet actual refugee participation appears to be quite limited and rights left largely unrealized. The reason for this gap between talk and practice is that international law places responsibility for health and education on the government, but many key actors in the system – including most refugees – believe that responsibility lies with the UN. We use the concept of illegality to describe the situation in which a person, often a refugee, is in a country but the sovereign government does not formally acknowledge that he or she is legally permitted to be there. The government's refusal to recognize a refugee's right to even be present acts to deny other rights as well. For government officials, the fact that refugees' presence in the country is defined as illegal operates as an excuse for not taking responsibility for their social and economic welfare. As a result, refugees and NGOs alike easily use the language of rights but see relatively little hope in rights-based advocacy, and are resigned to a

situation in which refugee policy is determined mainly by resources and donor priorities.

A final challenge to rights-based strategies for refugees in the social and economic spheres concerns the issue of who decides how to structure policy. In this study we use the concept of a rights-based approach to refugee policy to refer to policies, advocacy and decision-making methods that are based on human rights law. For us, internationally guaranteed rights supplemented by rights protected in domestic law are the foundation of any rights-based approach to policy. The idea of rights envisions that people who might otherwise be powerless are entitled to certain privileges and protections from more powerful institutions. This distinguishes rights from needs-based approaches, in which the perceptions and interests of aid agencies determine the shape of refugee policy. But human rights law does not necessarily always vindicate the powerless. Human rights law provides a structure for analysis to determine which claims are legitimate, and which are not.

Mehta and Gupte (2003) have proposed that the main difference between rights-based and needs-based approaches to refugee policy is the degree to which the beneficiaries are involved in decision-making. In theory, a rights-based policy should be less top-down, and should involve refugees in more influential roles. But the way in which rights increase refugee agency in policy-making is complex. We argue that human rights as a set of norms rooted in law can be a very top-down means of decision-making, and does not always reflect the desires of refugees.

If international law assigns responsibility to a government but refugees expect the United Nations or NGOs to play a greater role, then human rights and beneficiary preferences may conflict. The government's resistance to recognizing the status of refugees in turn leads the UN High Commissioner for Refugees to attempt to fill gaps. Yet, limited resources lead the UN to decline full responsibilities for the hardships that refugees face in the country. This leaves refugees marginalized and frustrated; the fact that the UN has a mandate to assist them raises their expectations, but the limits of actual services fail to meet these expectations. Moreover, refugees complain that the UN fails to communicate with them, much less involve them in setting policy. We found that refugees do not share the UN officials' perceptions that UN resources are limited, which contributes to their feeling of having been abandoned by the UN.

As authors of this study, we are very much part of the world that we are researching. We are not and were not neutral researchers. The lead author of this study, Trad, is the director of Frontiers (Ruwad) Association), a Lebanese NGO devoted to advocating refugee rights through research and legal counselling. She has been a leading refugee rights activist in Lebanon since 1999. The co-author, Kagan, is an American lawyer who has been a consultant with Frontiers since 2003. At the time of writing Frontiers is completing its own study of the social and economic livelihoods of refugees in Lebanon. As we will explain below, Trad's advocacy of refugee rights has at times been repressed by Lebanese and United Nations authorities. Trad, who conducted field interviews and led the research, came into the project already known to most of the interview subjects as an outspoken advocate of refugee rights. The

NGO Frontiers Association would normally have been a subject of this research; instead we write about it from personal experience. Indeed, we began the research already committed to improving refugee welfare through advocacy of refugee rights, and to reducing the prevalence of needs-based approaches in refugee policy.

While we are hardly neutral, our purpose in this research is not to advocate a particular viewpoint. Instead, we want to promote refugee rights advocacy by taking a critical look at the challenges facing anyone who wants to take a rights-based approach to refugee policy in Lebanon. We wanted to problematize the rights-based approach in order to help us and other advocates refine our own work. Indeed, one of the reasons we focused on health and education is that our own work as refugee rights advocates has tended to deal instead with other subjects, chiefly status recognition, arbitrary detention and deportation. In the end, we argue in this study that these were reasonable priorities because it is difficult to pursue social and economic rights when refugee status and basic security are lacking. Yet our purpose in this study was to question our own assumptions, rather than to reaffirm our past decisions. Our view is that refugee rights advocates, beginning with ourselves, are often not conscious enough of weaknesses in their own approach, and this reduces their capacity to overcome challenges.

We also note that this study is limited in time and scope. We hope that it would encourage further in-depth research and studies in the future. The interviews were conducted in 2005, but many of the problems in protection of refugee rights that we mention occurred over the previous years.

## 2. METHODOLOGY

This study is intended to focus on the right to education and access to health care. We focused on health and education rights because they are essential to basic livelihoods, and because they are in theory guaranteed as fundamental human rights even in countries like Lebanon where most forced migrants lack a recognized legal status. We obtained data about the formation and effects of refugee policy in Lebanon through a review of existing literature on the subject, interviews with officials in key institutions, and refugees, and based on personal knowledge of the refugee situation in Lebanon.

In this study, we use the term 'refugee' somewhat loosely to refer to foreigners in Lebanon who believe at least subjectively that they cannot go back to their countries of origin. This is a broader definition than the legal criteria for refugee status. However, because the social and economic rights which we were addressing are guaranteed in international law independent of refugee status, we wanted to address the situation of migrants in Lebanon beyond formally recognized refugees. We focused our research on migrants who either are recognized as refugees by the UN High Commissioner for Refugees (UNHCR), have pending applications with UNHCR, or who were previously registered refugees or asylum-seekers with UNHCR. We also interviewed a small number of people who never applied to UNHCR.

A detailed summary of our interview methodologies is included at the end of this chapter. To complement the field research, 25 refugees were also interviewed. The refugee questionnaires were structured but allowed in-depth encounter to document their perception of the policies and the execution of policies regarding the right to education and to health care. The refugee group was pre-selected to cover the broader spectrum/profile of the existing population. The refugee sample included four who were community leaders, two Sudanese and two Iraqis. The others were recognized refugees, asylum seekers, those who had never applied, closed cases, and cancelled cases. Fifteen of them were Iraqis, and eight were Sudanese. Four of them were female.

The literature review provides an overview of current knowledge about the conditions and legal status of non-Palestinian refugees in Lebanon, with a particular view towards how the current legal and policy context impact their access to education and healthcare. From the literature review we developed a theoretical framework for understanding and analyzing challenges to a rights-based approach to the study of forced migration.

Our theoretical framework aimed at highlighting the importance of assigning responsibility in order to realize human rights, and problematizing the assumption made by Mehta and Gupte (2003) that rights-based policies are distinctively consultative (bottom up) rather than imposed on refugees from above. The field interviews tested the relevance and appropriateness of this approach in analyzing and improving policies.

However, external factors affected the course of the research. The generally unstable political situation in Lebanon was exacerbated by the murder of former Prime Minister Rafiq Hariri. This was followed by a withdrawal of Syrian troops from Lebanon, and a change of governments, as well as occasional outbursts of violence. These events delayed the field research and affected our ability to carry out most official interviews.

Requests for interviews were sent to major governmental and international actors and decision-makers as well as NGOs providing assistance and working on the rights of refugees. We interviewed staff at six NGOs: Middle East Council of Churches (MECC); Adel and Rahme (AJEM) (provides socio-medical assistance in Rumieh prison); Danish Refugee Council (carried a field survey of Iraqi refugee needs in 2005); Medecin du Monde (MDM), AJEM's partner in Rumieh prison; National Evangelical Church (assists Sudanese refugees); and CARITAS (assists migrants and has a special programme for Iraqi refugees). MECC and MDM both implement UNHCR-funded assistance programs for refugees. The interviews focused on examining the approaches used by stakeholders in creating and implementing forced migration policies, and to assess their perceptions of the role of rights and needs in refugee policy in Lebanon. We interviewed two UNHCR staff members responsible for health and education issues. We sought interviews with the Ministry of Education, but were unable to obtain an appointment. We interviewed the Director General of the

Ministry of Health. Our data is also derived from our direct experience with refugees in Lebanon.

### 3. LEGAL AND SOCIAL CONTEXT

Publicly available knowledge about refugees and asylum-seekers in Lebanon comes from two main sources. First, the human rights-based reports, such as those by Frontiers Association (and its predecessors ACSRA and Frontiers Center) and international sources such as the US Committee for Refugees and Immigrants, the US State Department, Amnesty International and the International Federation for Human Rights (FIDH). The second source consists of a very limited number of academic studies, principally Kagan's study of policy challenges posed by the UNHCR's refugee status determination (2006) and a short study by Bashir, Kagan and Trad on problems in the refugee resettlement system for Iraqis in Lebanon (2003). However, as we noted, both of the authors of this study have first hand experience of refugee protection in Lebanon and the challenge of refugee rights advocacy. Because published reports are often limited, some of what we report in this study comes from our personal knowledge.

In Lebanon, the vast majority of refugees are Palestinians who are in exile since being forced from their homes in 1948. There are 12 official refugee camps for Palestinians in Lebanon, as well as other unofficial settlements and a large population who live outside the camps. Social, economic and civil rights are a major challenge for Palestinians, but for different reasons than non-Palestinians. Most Palestinians are formally registered and recognized as refugees with both the Lebanese Ministry of Interior and with the UN Relief and Works Agency. Their ability to access legal employment, improve their housing and access health and education has been limited by specific legislation and regulations, although these restrictions are at the time of writing under re-negotiation. Most Palestinians in Lebanon do not fall under the mandate of the UN High Commissioner for Refugees, although there are thousands who actually lack government or UNRWA registration (Frontiers Association 2005b). This contrasts with non-Palestinians because they fall under a different UN agency, and, perhaps more importantly, their status is not regulated by Lebanese law.

The available information paints a fairly dire picture of non-Palestinian refugee protection in Lebanon. Refugees and asylum-seekers have been vulnerable to frequent arrest and in many cases deportation. Detention conditions are reported to be poor, according to refugees interviewed by human rights organizations. As Kagan summarized the situation:

...the country had no refugee legislation and UNHCR carried out RSD and referred many or most refugees for resettlement. Yet, until 2003, the government of Lebanon never committed itself to even temporary residence for asylum-seekers and refugees. Lebanon has not ratified the Refugee Convention, and refugee protection depended on a 'Gentlemen's Agreement' with the General Security Department,

which in theory reduced arrests and prevented deportations. Yet, beginning in 2000, the Lebanese government launched a widespread crackdown on undocumented migrants, without distinction for refugees and asylum-seekers. Hundreds of refugees and asylum-seekers were reportedly deported over the following years, especially to Iraq. From late 1999 until October 2001, UNHCR was often denied access to detained asylum-seekers and refugees (Kagan 2006: 5-6).

The non-Palestinian refugee protection system depends entirely on the availability of third country resettlement, which created a serious crisis when resettlement opportunities declined after the 11 September 2001 attacks in the United States. In terms of health and education, refugees are dependent on UNHCR assistance, which is often limited. Kagan explains this problem as follows:

UNHCR's capacity to use RSD as a gateway to resettlement is fraught with limits. Resettlement quotas are small relative to the global refugee population, and processing is slow. Refugees hence need to be able to spend a significant time — in many cases, years — in their first country of asylum. In Lebanon, where the government did not recognize even a temporary right of residence for refugees, refugees faced a serious protection crisis when resettlement opportunities dwindled. After September 11, 2001, the US government temporarily suspended its refugee resettlement program while it devised new security screening measures. Since the threat of refoulement was higher in Lebanon than in Egypt, the normal priority-setting criteria set out in UNHCR's Resettlement Handbook would have called for resettlement from Lebanon to be a higher priority. Yet, processing for US resettlement from Egypt resumed in March 2002, but by the end of 2003, US resettlement had not resumed in Lebanon, and many who had been 'tentatively approved' by the US before September 11 were still in limbo nearly two years later (Kagan 2006: 6-7).

In procedural terms, the legal mechanisms for protecting refugees and asylum-seekers in Lebanon are identical to many other Arab countries: the country is not a signatory to the Refugee Convention and has no refugee legislation or refugee status determination procedure of its own. UNHCR carries out refugee status determination (RSD), provides some minimal material assistance to refugees, and refers many or most refugees for resettlement to the US, Canada, or Australia, and some Scandinavian countries such as Sweden and Finland. Countries such as Egypt also follow this pattern, but because Egypt is a party to the 1951 Refugee Convention there is a stronger legal basis for the state to recognize UNHCR's decisions on refugee status and to thus avoid detention and deportation of refugees. This foundation does not exist in Lebanon. Whereas Egypt signed a written memorandum of understanding with UNHCR in the 1950s, Lebanon's protection of refugees was based on an unwritten 1963 oral 'Gentlemen's Agreement' allowing UNHCR to operate, which broke down after 1999 and was essentially ignored until 2003. This oral agreement stipulated similar provisions as the Memorandum of Understanding signed in 2003, providing that refugees recognized by UNHCR had no social and economic rights in Lebanon and had to be resettled in a third country within a very limited period of time.

In international law, Lebanon is bound by the customary principle of *non-refoulement*, which it has violated frequently and by other human rights law such as the International Covenant on Economic, Social, and Cultural Rights, the International



Convention on Civil and Political Rights and the Convention against Torture. These international law instruments are given substantial weight in both the Lebanese Constitution and legislation, which allow international law to trump domestic law whenever they are in conflict.<sup>1</sup>

Security is a major concern for refugees in Lebanon. Non-Palestinian refugees reportedly enjoyed relative security from the end of the Lebanese Civil War in 1990 until approximately 1999. The reasons for a change in policy in 1999 are the subject of speculation at best. It should be noted, however, that refugee conditions were not consistently monitored until the late 1990s. This raises the question as to whether the government actually became harsher or whether harsh measure simply had not been noticed before. Asylum-seekers and refugees have been in serious danger of detention. Lebanese authorities at least until late 2003 did not officially recognize the right of any refugee or asylum-seeker to remain in the country.

To date, Lebanon has never formally embraced the principle of *non-refoulement*, although Lebanese courts have cited it on occasion in reference to the Convention against Torture. However, Lebanese courts have confirmed that the decision to remove a foreigner from Lebanon cannot be executed where this would expose him to the risk of torture, as provided for in Article 3 of the Torture Convention. In the case of a recognized Sudanese refugee, Makir am din Nutout whose entry into Lebanon was illegal, the court of first instance refused to expel him since returning him to his country would place him at risk of torture, based on his belief in a particular religion, relying on the Torture Convention. The court sentenced him to one month imprisonment on grounds of illegal entry but did not order his expulsion. In doing so, the court regularized his legal status in Lebanon until a permanent solution, in the form of third country resettlement, could be found by UNHCR. The case is significant since the court explicitly relied on an international covenant to challenge the deportation order. However, Nutout stayed in detention for over one year after the expiry of his sentence since the silence of the court on the issue of detention after the expiry of the sentence effectively gave a green light to the authorities.

In another decision, the Beirut Court of Appeal overturned a deportation order for an Iraqi recognized refugee, Sajid Ilia, based on the credible threat of torture upon his return to Iraq. Judge Tanius al Khoury confirmed imprisonment for illegal entry, overturning Ilia's deportation as a result of his illegal entry, and authorized his stay in

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<sup>1</sup> International treaties ratified by Lebanon become an integral part of domestic law upon exchange of or deposit of instruments of ratification or accession. They are automatically incorporated in domestic legislation by their publication in the Official Gazette, through a Parliamentary law. In cases of a conflict between national and international law, judges are directed to accord priority to international law over domestic legislation. See Article 52 of the Lebanese Constitution: '[Negotiation of International Treaties] The President of the Republic negotiates international treaties in coordination with the Prime Minister. These treaties are not considered ratified except after agreement of the Council of Ministers. They are to be made known to the Chamber whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year are not considered ratified until they have been approved by the Chamber.' See also Assaf 1997.

Lebanon until a durable solution could be found whereby Ilia could be resettled in another country with the assistance of UNHCR Beirut. Neither case, however, mentioned the prolonged detention of the defendants.

An apparent watershed in Lebanese refugee policy occurred in 2003, as described in the refugee rights group Frontiers Center's 2003 Activity Report (Frontiers Center 2003). The Iraq war stemmed, at least temporarily, the influx of new asylum-seekers. Then, in September 2003, the Directorate General of General Security signed a Memorandum of Understanding with UNHCR, the first such written agreement in Lebanon's history. The MOU's main contribution to refugee rights was an acknowledgement by the Lebanese government that asylum-seekers and refugees could remain in the country temporarily. Though a breakthrough in Lebanon, this commitment stopped well short of the principle of non-*refoulement*, and provided no guarantees against detention. As Frontiers Center 2003 noted:

*Non-refoulement* is not even mentioned in the text. It guarantees refugees only the right to stay for 12 months, and does not protect them from deportation or detention after this time. It involves General Security in UNHCR refugee status determination. It imposes on UNHCR unrealistic expectations of fast resettlement for all refugees, and pressures UNHCR to take unspecified measures to prevent refugees from remaining in Lebanon more than one year.

In 2001-2003, resettlement opportunities for refugees in Lebanon declined. The United States, previously the largest resettlement destination, placed a hold on cases from Lebanon after September 11, 2001, putting several hundred 'tentatively approved' refugees in limbo (Osmat, Kagan and Trad 2003). This also drastically reduced the resettlement opportunities for new refugees in Lebanon. Scandinavian countries such as Sweden and Finland subsequently filled some of the resettlement gap. However, UNHCR's acceptance rate also declined substantially at the same time, preventing the number of recognized refugees from outstripping resettlement spaces.

### **What Rights do Refugees Have?**

Discussion of refugee rights usually begins with international refugee law. Yet for social and economic rights, refugee law is just one of several sources of law. Since Lebanon has not ratified the 1951 Convention related to the status of refugees, it is especially important to look at the rights refugees and other foreigners may have in Lebanon by virtue of other bodies of human rights law, especially other human rights treaties ratified by Lebanon.

The International Covenant on Economic, Social and Cultural Rights (CESCR) can be a source of rights for unrecognized foreigners, but it contains significant ambiguity. In most of its key articles, it guarantees rights to 'everyone', as we will detail shortly. Yet its Article 2(3) provides that developing states 'with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.' Critically, this

permission to exclude foreigners applies only to economic rights; if a right can be defined as social or cultural, foreigners should be included. But if the right is economic, they can be legally excluded. But the Covenant does not define the difference between economic and other types of rights.

Although health and education impose monetary costs on a state, they should be considered primarily social rights, not economic rights. Education is dealt with in Article 13, which provides: 'The States Parties to the present Covenant recognize the right of everyone to education.' It justifies this right as a means of fulfilling 'full development of the human personality', and as essential for the enjoyment of other human rights. The CDESCR provides for health rights in Article 12: 'The States Parties ... recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' In his recent comprehensive treatise on refugee rights, Prof James C. Hathaway found that healthcare is clearly established as a non-economic right, making refugees clearly entitled (Hathaway 2005: 512-513). But he reports that there is ambiguity about whether education can be considered an economic right, because it has economic, social and cultural aspects (ibid.: 601). We argue that the ambiguity about education rights is very slight, and that there is no rational reason to distinguish health and education for these purposes. Were education to be considered an economic right, nearly any social or cultural program that a government may offer would also be economic, substantially weakening a wide body of human rights law.

Health and education rights are guaranteed to children in terms identical to the CDESCR. The Convention on the Rights of the Child, which guarantees children's rights regardless of their parents' legal status (Article 2(1)), guarantees children 'enjoyment of the highest attainable standard of health' (Article 24). It also mirrors the CDESCR in guaranteeing compulsory education at the primary level, and higher education as allowed by a country's resources (Article 28). The inclusion of identical rights in the CRC is important because children are not usually economic actors in the sense of being threats to the national economy. The Fourth Geneva Convention related to the Protection of Civilian Persons in Time of War also contains ample provisions for healthcare and medicine (Articles 3, 14, 16, 18, 19, 20, 23). Since this is a purely humanitarian convention it adds weight to the argument that healthcare is a mainly social right.

Like the CDESCR, the Convention on the Elimination of All Forms of Racial Discrimination allows states to make 'distinctions, exclusions, restrictions, or preferences ... between citizens and non-citizens'. Yet, as the Committee against Racial Discrimination advised in 2004, this does not permit wholesale marginalization of non-citizens. The Committee called on states to 'remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health' (CERD 2004: Para 29). While permitting restrictions on the right to work (Para 35), human rights law requires removal of limits on non-citizens' access to education (Para 30) and healthcare (Para 36).

The Lebanese Constitution also provides many rights regardless of citizenship, although its terms are somewhat ambiguous. The Constitution's Chapter 2 is entitled 'The Rights and Duties of the Citizen', which suggests an exclusion of foreigners. The Preamble declares that Lebanon 'abides by [UN] covenant and by the Universal Declaration of Human Rights.' Its provision for equality (Article 7) is limited to citizens, because it states that 'All *Lebanese* are equal before the law'. But its protection against arbitrary arrest and detention (Article 8) makes no such limitation, stating that '*no one* may be arrested... except according to the provisions of the law'. The Constitution guarantees free education, and this is not restricted only to the Lebanese (Article 10). (The Constitution does not deal with health issues.) Hence, the Constitution's text is inclusive of all people in its general provisions, but restricted to Lebanese nationals in its more specific ones.

International law permits states to control immigration and to control their borders. This implies the authority to restrict entry to foreigners and to deport illegal migrants so long as deportation would not put their life or freedom in danger (CERD 2004: Para 27). States may also restrict the economic rights of foreigners, especially their rights to employment, property and other forms of trade and professional life. Yet the authority to control migration does not mean that states may ignore the social rights of foreigners so long as they remain present. One of our findings is that Lebanon's refusal to sign the Refugee Convention has produced a widespread belief that the country has opted out of providing any rights to refugees and forced migrants. Legally, this is not so.

For present purposes, what is important about this analysis is that education and health rights should be guaranteed to foreigners independent of whether they are formally recognized as refugees or not. Yet these theoretical provisions of international and Lebanese constitutional law are poorly implemented by the Lebanese constitution, and they remain essentially abstract principles only.

### **Social and Economic Protections for Non-Palestinian Refugees in Lebanon**

Human rights reports on refugees in Lebanon discuss social and economic rights rather inconsistently. Even with our personal familiarity with refugee policy in Lebanon, it is somewhat difficult for us to paint a coherent picture of what services are available in the educational and health fields. This lack of data is indicative of the degree to which health and education for refugees are dealt with by a diffuse group of individuals and organizations. There is no systematic strategy for delivering on refugees' rights, and although many actors are involved, no one takes meaningful responsibility for coordinating the work.

Pre-2002 reports by the Ad Hoc Committee for the Support of Refugees and Asylum-Seekers (ACSRA) frequently noted the low level of material assistance provided by UNHCR to refugees. UNHCR provided \$50 per person to recognized refugees, and up to \$250 per month to families with children, and nothing to unmarried refugees. Single persons without families received no stipends. UNHCR paid 85 percent of most routine medical bills, and some school fees (though not books and supplies), but did

not always pay for serious operations or more expensive treatment. This assistance was available only to recognized refugees, not to asylum-seekers with pending cases<sup>2</sup>.

The most recent publications on the state of non-Palestinian refugees in Lebanon essential rely on the same data as the Frontiers Center 2003 Activity Report. In March 2004, Frontiers and FIDH jointly submitted a report to the UN Committee on the Elimination of Racial Discrimination (CERD) in conjunction with Lebanon's periodic CERD report. This report repeated, nearly verbatim, the content of the Frontiers Activity Report, critiquing the limits of the 2003 memorandum of understanding and noting that 'there is reason for concern that we may be seeing a shift in Lebanon from *de jure refoulement* to *de facto refoulement*, coupled with systematic arbitrary detention'. Both ACSRA and Frontiers focused their work on security from arbitrary arrest and deportation, which was reflected in the lack of detail about social and economic rights.

The only major recent report to address social and economic rights of non-Palestinian is the US Committee for Refugees' *World Refugee Survey 2005*. According to this report, refugees in Lebanon have no right to work, which shifted the burden to UNHCR:

The MOU required UNHCR to provide assistance to refugees if their need constitutes a public burden. UNHCR covered 85 percent of the health fees for recognized refugees, and the non-governmental organization (NGO) Caritas subsidized insurance to non-recognized refugees. Lebanon's work permit requirement prevented refugees and asylum-seekers from receiving social security. The 1963 social security law<sup>3</sup> excluded foreign workers from its benefit unless there was reciprocity.

A report prepared by Frontiers Association provides additional information about the legal framework governing access to health and education for refugees. According to this report, children can be registered for Lebanese schools regardless of their status in Lebanon (Frontiers Association 2005a). However, as the report goes on to explain: 'Refugees without UNHCR identity cards cannot register because the state requires some proof of legal residency.' The report included the following information from investigative interviews:

The MECC Director explained that many refugee children drop out of school between the ages of thirteen to fourteen. Very few make it to high school or sit for their baccalaureate exams. Refugee parents are often in unstable situations where they need their child to work and generate income. Often, they consider their stay temporary and do not want to settle their children in school only to uproot them again.<sup>4</sup> Also, tuition fees increase with higher educational levels, and many families

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<sup>2</sup> UNHCR interview, 21 October 2005.

<sup>3</sup> Social Security Law, Decree No. 13955, 26 September 1963.

<sup>4</sup> Interview with the MECC, Life and Service Center, 2 February 2005

do not want to pay the higher fees.<sup>5</sup> There are no statistics as to the total number of refugees in schools.

The Chairperson of the Sudanese Congregation in Lebanon said that many children do not go to school but work instead. In his opinion, refugee children cannot be viewed as equal to nationals since there is a portion of them that have to work to pay for their education and even to support their families.<sup>6</sup>

According to refugee testimony, MECC, who assists recognized refugees with educational costs, increased the amount they give for tuition two years ago from 325 000LL to 500 000LL per child.<sup>7</sup> Father Martin of the St. Joseph Catholic Church said that further educational assistance is extended to recognized refugee adults, such as vocational training and language classes. His church offers English classes to Sudanese.<sup>8</sup> MECC also provides skill development training at a community development center that MECC and UNHCR opened in 2004. This center conducts informative workshops and skill development for the refugees, in English, computers and sewing.<sup>9</sup> However, such initiatives do not appear to meet the needs of all refugee population in Lebanon.

Regarding healthcare, the Frontiers report notes that Lebanese law makes explicit provision to transfer responsibility to international agencies:

In general, all needy foreigners legally resident in Lebanon have the right to access public health care including hospitalization on condition of reciprocity. However, this condition does not apply when a foreigner suffers from contagious illnesses, and for vaccination.<sup>10</sup> However, the law excludes foreigners that are under the mandate of international organizations.<sup>11</sup>

Several private organizations (some of these based in refugee communities) seek to compensate for this gap through a range of inexpensive insurance plans and other services.

These reports constitute the available knowledge and literature on the social and economic rights of non-Palestinian refugees in Lebanon. As noted, human rights groups did little to document the human rights protection of non-Palestinian refugees before 1999. Most of the reports after this point focused on issues of detention and deportation. Part of the context of this study is that knowledge about the social and economic rights of non-Palestinian refugees in Lebanon is limited and incomplete.

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<sup>5</sup> Interview with Pastor Van Saane, National Evangelical Church, 4 February 2005

<sup>6</sup> Interview with William Awor, Sudanese Congregation in Lebanon, 1 February 2005

<sup>7</sup> Interview with a female refugee, 10 February 2005

<sup>8</sup> Interview with Father Martin, St Joseph Catholic church, 1 February 2005.

<sup>9</sup> Interview with the MECC, Life and Service center, 2 February 2005

<sup>10</sup> Legislative Decree No. 16662, 'Determining persons who have the right to be treated in public hospitals', 18 June 1964, Arts. 1, 5, 6.

<sup>11</sup> *Ibid*, Art 7

#### 4. WHO DECIDES/ WHO PROVIDES: THE QUESTION OF RESPONSIBILITY

Mehta and Gupte (2003) argue that the decisive difference between a needs-based approach to refugees and a rights-based approach is that in a rights-based framework refugees are conceived as having entitlements guaranteed by law. Because they are guaranteed rights by law, they have greater agency by which they can make major decisions that affect their lives. By contrast, in a needs-based approach, the service providers define refugees' needs and how to meet them, making the refugee an essentially passive recipient. As a result, the interests of donors and humanitarian agencies are often determinative.

Humanitarian agencies often portray refugees as passive and helpless, rather than as active agents who can assert their own interests (Rajaram 2002). This may be true of both UN and private organizations, but for present purposes UNHCR is especially important because of its dominance in the refugee field in terms of the aid budget and agenda setting. A study of UNHCR operations in Guinea argues that UNHCR has, at least until recently, not consistently involved refugees in evaluating programs aimed at serving them (Kaiser 2004). In part, this resulted from a tendency to see refugees as groups rather than individuals, with a corresponding concern that groups could not be sampled in a representative manner (*ibid.*). Yet, beyond questions of methodology, UNHCR staff often do not perceive refugees to have a substantive role in programming decisions (*ibid.*: 198).

The needs-rights dichotomy is just the first of two key variables that must be examined to understand challenges to refugee rights in the formulation of policy. It is equally essential to examine whether responsibility for forming refugee policy is assigned (or perceived to be assigned) to a host government, to the international community, or to private organizations. As Mehta and Gupte (2003) argue, one of the challenges to the notion of universal refugee rights is that rights are often connected to membership in a political community, and to the concept of citizenship. This reflects the general assumption that the authority responsible for guaranteeing rights must be a government of a sovereign state.

One of the important facets of human rights law is that it assigns responsibility for protecting rights, rather than limiting itself to defining rights. Like most rights, responsibility for guaranteeing education and healthcare is assigned to states. The relevant articles of human rights conventions are directed at state parties. While states have flexibility in how they involve other institutions in delivering certain services, the ultimate responsibility is assigned to the government. Human rights organizations have generally been institutionally organized to monitor the policies and practices of states.

Yet, assignment of responsibility to sovereign states is often challenged in the case of refugees and other migrants. In academic literature, the prominent role of UNHCR and other humanitarian agencies is seen as a hallmark of the needs-based approach to refugee policy (Mehta and Gupte 2003, citing Harrell-Bond *et al*). But refugee law

is constructed as much to serve state interests as those of refugees. Prof. James C. Hathaway (1990: 133) observes:

Current refugee law can be thought of as a compromise between the sovereign prerogative of states to control immigration and the reality of coerced movements of persons at risk. Its purpose is not specifically to meet the needs of the refugees themselves (as both the humanitarian and human rights paradigms would suggest), but rather is to govern disruptions of regulated international migration in accordance with the interests of states.

One of the ways a state may use refugee law for their own interests is to shift the responsibility for refugees from themselves to the international community. In the global south, responsibility for guaranteeing refugee rights is often assigned, *de facto* and in some cases *de jure*, to the United Nations (Verdirame 1999). One of the defining features of refugee policy in much of the Middle East and Africa is the prominent role played by UNHCR. UNHCR is often directly responsible for refugee status determination and for providing financial and social assistance to refugees. UNHCR is also often the *de facto* government of refugee camps, even though in theory the camps are on the territory of a sovereign state. (Verdirame and Harrell-Bond 2005). In some situations, UNHCR wields more real power over refugee policy than nominally responsible governments (*ibid.*). In other situations, UNHCR is hindered by a lack of political weight *vis-à-vis* governments, especially given that UNHCR is dependent on governments for money and access (Loescher 2001).

States who see refugees as a political, economic or social burden may use the legal label 'refugee' in order to argue that the people in question should fall under the mandate of international agencies, in particular UNHCR. They may then ask UNHCR to take the lead in providing essential services to refugees, and in some cases may allow UNHCR to take on quasi-governmental roles in administering refugee camps. By so doing, a state can transform the legal category into a means of constraining refugees rather than protecting their rights. In a study of the evolution of refugee policy in Sudan, Gaim Kibreab (1996) explains that Sudan developed a legal regime for determining refugee status in order to marginalize refugees from the rest of society. African governments often have an interest in expanding the refugee category because it leads UNHCR to take responsibility for people who would otherwise be burdens on the state (Kagan forthcoming). In this arrangement, host governments and UNHCR share an interest in confining refugees to camps and in placing heavy restrictions on urban refugees (*ibid.*). UNHCR and other humanitarian agencies in some situations favour confining refugees to camps because it serves the aid agencies' interests; confined and isolated camps keep the population under control and make aid delivery more efficient. As Zachary Lomo (2000) reports concerning refugee policy in Uganda and Kenya, 'Generally, the UNHCR and international and local NGOs condition their intervention on governments agreeing to settle refugees in camps and settlements.'



In this way, the legal construct of refugee status supports transfer of responsibility to the UNHCR and feeds a needs-based system of refugee assistance that often impairs refugee rights.

The assumption that the United Nations rather than the host government bears primary responsibility for anyone bearing the label refugee has been formalized in Lebanon. For Palestinians, UN responsibility is a long-standing feature of a policy in which UNRWA provides most essential services to refugees. For non-Palestinians, the 2003 MOU between Lebanon and UNHCR imposes on UNHCR full responsibility for the socio-economic livelihoods of refugees. Forced migrants often arrive or remain in a country with no legal status. Because they are often present 'illegally', states are more resistant to the idea that they should be able to claim rights of any kind. This is particularly the case in central Middle East (defined here as the Eastern Mediterranean region, Arabian Peninsula and the Persian Gulf) where few states have ratified the 1951 Refugee Convention, and fewer still have enacted domestic refugee legislation. The fact that refugee rights derive more from international law than domestic law creates confusion about responsibility. In the context of refugee rights, the concept of state sovereignty and responsibility is often replaced by the notion of international responsibility. In this context, international responsibility usually means the United Nations, and might fall under the often used but rarely defined concept of 'burden sharing' between states.

The Lebanese Ministry of Health takes the position that refugees, and for that matter any illegal foreigners, have no rights to healthcare<sup>12</sup>. The deputy director general of the ministry appeared not to be interested in whether they had needs. From his perspective, the Ministry of Health should treat refugees for illnesses only when they pose a danger to the Lebanese public. As such, the Deputy-Director General of the Ministry of Health appeared to take neither a rights nor a needs-based approach. He did not see the exclusion of refugees as a means of enforcing immigration law; he said, 'We are not the General Security here.' But he believed that people who enter the country illegally should fall under the responsibility of humanitarian organizations rather than the government. He said he was not aware of any legal obligation by Lebanon to serve refugees, and that any such agreement would need to include the allocation of additional funds for the services.

In our interviews in Lebanon, UNHCR viewed its policies on health and education as based on the principle that refugees have rights to healthcare and education, and that the State (as opposed to UNHCR) should primarily be responsible for realizing these rights. UNHCR staff noted that refugee rights are not limited to the 1951 Refugee Convention, as we also argue in this paper. Yet they also noted that Lebanon believes that social and economic rights are contingent on state resources, and that Lebanese officials say in addition to the fact they lack resources to service refugees, they are not responsible for these refugees as they are illegal migrants. UNHCR operates on the assumption that Lebanese authorities will serve refugees only if the UN pays the costs of the services. In other words, UNHCR bears *de facto*

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<sup>12</sup> Interview with the Director-General of the Ministry of Health, 7 October 2005.

responsibility for serving the refugees, although UNHCR believes that the government bears *de jure* responsibility for their welfare<sup>13</sup>. There are therefore two major challenges to human rights as a foundation for refugee policy. The first is the competition between needs-based and rights-based approaches. UNHCR vividly embodies the tension between the two models. On the one hand it is mandated to promote refugee law, and has been the main promoter of refugee rights for five decades. On the other hand, UNHCR is the consummate humanitarian aid agency, operating massive logistical operations to deliver relief supplies to refugees. To a great extent, these two roles are geographically defined. In the global north, UNHCR is primarily an advocate of refugee rights. In the global south, UNHCR is mainly a humanitarian aid agency; while it also works to protect refugees and promote refugee law, its most visible and well-funded role is to administer services and manage refugee camps. But its mandate everywhere is in theory the same. In the Middle East, UNHCR often plays both roles: urging governments to respect the principle of *non-refoulement*, applying a legal definition through the process of refugee status determination, and providing subsistence allowances, medical and educational services to refugees.

The second major challenge is the question of who is responsible for guaranteeing rights. Our thesis in this paper is that many governments in the south have deferred responsibility for refugee policy to the international community (embodied by the UN), and that Lebanon represents a particularly extreme example of this phenomenon. This shift of responsibility does not necessarily contradict a rights-based approach to refugee policy; one can imagine a world where UN protection would be the ideal. Indeed, one of the reasons that this phenomenon occurs in the first place is that UN agencies have a mandate to protect human rights. However, in the world as it exists, this transfer of responsibility to the UN runs up against some major obstacles. To start with, human rights law (including the Refugee Convention's Article 35) considers UN agencies only supervisory bodies for human rights protection. Where the UN wields significant direct power over vulnerable individuals, it lacks reliable accountability mechanisms (Chimni 2005, Pallis 2005, Kagan 2006). Shifting responsibility to the UN can result in a diffusion of responsibility, leaving refugees effectively unprotected. In other words, rights-based approaches to refugee policy can be misused if there is no clearly responsible and accountable authority that has the actual power to guarantee refugee rights.

International responsibility for refugee policy can challenge the practical implementation of refugee rights in two main ways. First, a state could allow UNHCR to effectively wield government-like power over refugees, by deferring to UNHCR on policy judgments, refugee status determination, management of refugee camps, etc. This is what Lebanon has done by agreeing to have UNHCR conduct refugee status determination and provide health and educational assistance to refugees. UNHCR has issued numerous guidelines and advice papers that are ostensibly rights-based guidelines on how to wield such power. UNHCR's guidelines on fair RSD procedures

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<sup>13</sup> UNHCR Interview on 21 October 2005

are especially important in the Lebanese context. But since UNHCR cannot be taken to domestic court and has not set up any alternative system of administrative justice, a refugee actually has no mechanism by which to assert his or her rights. It is therefore not surprising that there are gaps between what UNHCR says on paper about RSD fairness, and what its offices actually do (Kagan 2006: 9).

Second, a state could declare that it is relying on UNHCR to form refugee policy, but then in practice disregard or undermine UNHCR's actual power. Lebanon does this by continuing to detain refugees and asylum-seekers. In this arrangement, deferral of responsibility to the UNHCR allows the government to avoid accountability for refugee suffering, even as UNHCR lacks sufficient power to actually improve the situation.

Another prime example of the problems with shifting responsibilities is evident with Palestinian refugees in Lebanon. Since the 1950s, Lebanon's policy has been that Palestinians are an international responsibility. The UN has mandated the Relief and Works Agency (UNRWA) to provide humanitarian assistance to them, but did not give UNRWA a mandate to provide any rights protection. In theory, the UN Conciliation Commission for Palestine (UNCCP) was charged with resolving the refugee situation, but it has been effectively defunct since the 1950s. As a result, responsibility for Palestinian refugees has been transferred to the international community in a manner that provides no protection of refugee rights.

UNHCR has an explicit mandate for protection of human rights, while UNRWA only has a mandate for assistance. Whereas UNHCR sometimes criticizes governments and often asserts protection over migrants who states want to deport, UNRWA's approach tends to be highly deferential to governments. It operates only in states that have given it permission to do so, and considers itself bound to obtain host government approval for policy changes. UNRWA has only two years ago declared its intention to end gender discrimination in the registration of refugee children. UNRWA has followed the standard practice in Arab states of registering children solely on the basis of their father's status, so that mothers married to unregistered men cannot pass UNRWA registration on to their children. UNRWA has been promising to change its policy for several years, but the new policy has not yet been fully implemented because of host state resistance. Its deferential approach to government policy indicates the way incomplete transfer of responsibility from the government to the UN can complicate rights-based approaches to policy making.

In the Middle East, where most non-Palestinian refugees are in urban areas, the hallmarks of this transfer of authority are the dual systems of refugee status determination and resettlement, both operated by UNHCR. UNHCR handles the case-by-case application of refugee definition, and then refers many or most recognized refugees to third countries for resettlement. By this process, effective responsibility for refugee protection has been nearly completely transferred from a host state to UNHCR. At most, under the Lebanese MOU, the host government only allows refugees to remain for a maximum of 12 months while they wait for their cases to be processed. The process is in many ways highly legalized and, at least in

form, rights-based in the sense that it assigns specific entitlements to people who meet the refugee definition. Both UNHCR and resettlement governments apply the Convention refugee definition to determine eligibility. However, as Kagan has observed, this shift in responsibility is highly problematic because the UN actually lacks the authority and resources to reliably deliver on refugee rights (Kagan 2006: 12-13):

Of the three main benefits of UNHCR RSD identified in [this study], the two that are most important — *non-refoulement* and resettlement — depend heavily on government action. They are not fully, or even primarily, within the control of UNHCR.... In reality, governments, not UNHCR, determine the quality of refugee protection. When government commitments to refugees falter, so does UNHCR protection capacity.

Despite these problems, refugees generally shared the Ministry of Health's perceptions of responsibility. The majority of the refugees we interviewed believed that the Lebanese government is not directly responsible for them because it lacks resources or because it has not signed the Refugee Convention, or because they have entered the country illegally. Some refugees did mention government responsibilities in different ways, at least for those recognized by UNHCR. Most said that the government does have a role in facilitating the work of UNHCR and NGOs, and to allow children into schools when necessary. A few said Lebanon should develop an official structure to deal with refugees, yet others said there is no need for Lebanon to have a refugee policy. For them, government involvement was primarily a negative influence that produced fear of arrest, detention and deportation. All said that the main thing they wanted from the government was simply to be left alone. Despite the fact that refugees repeatedly mentioned lack of legal status and security as the source of their difficulties, when asked for solutions, none mentioned any efforts to advocate their rights to Lebanese government authorities.

It is striking that refugees seemed to accept rather easily the government's 'incapacity', while simultaneously expecting UNHCR and NGOs to have extensive resources and potential power. In part, this observation parallels Kibreab's (2004) findings that refugees perceive humanitarian agencies to be both unaccountable and possessing limitless resources. This was reflected in refugee comments that they believe UNHCR and NGOs to be essentially corrupt. Several said that UNHCR and NGOs receive vast amounts of money, and some said that making money is the main driver of NGO policy. Refugees from Iraq believed that UNHCR had benefited from the Oil-for-Food Program without passing on the resources to Iraqi refugees.<sup>14</sup>

Because they see UNHCR as potentially capable of resolving their problems, the refugees saw malevolent motives behind failures to meet expectations. It was not our purpose to assess the scope of refugee cheating, which was the subject of Kibreab's study. However, we did hear reports of UNHCR-recognized refugees using their refugee ID card to obtain medicine for unrecognized friends. Because UNHCR is not

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<sup>14</sup> In fact, UNHCR was not a part of the Oil-for-Food Program.

able to meet all the needs of the refugees, many believed UNHCR wanted to make refugees fed up and give up asking for their rights; most believed that UNHCR deliberately left refugees waiting for long periods in order to pursue a policy of eventually disregarding them.

Although refugee frustration was highly connected to their perception that UNHCR and NGOs have vast resources and are possibly corrupt, there was another important factor that appeared important in leading refugees to be more frustrated with humanitarian agencies than with the government. For the refugees, it was extremely important that UNHCR and NGOs exist to assist refugees. The fact that they claim to act for the benefit of refugees appears to generate a greater sense of expectation and corresponding disappointment; the government by contrast does not claim to have a refugee policy. Refugees repeatedly stressed that UNHCR speaks in their name, and therefore has a responsibility to assist them. They also said that NGOs are responsible to serve them simply because they exist. As we will see in the next section, refugees' expectations for UNHCR and humanitarian agencies contrast with their perception of their own incapacity.

## **5. CHALLENGES TO REFUGEE MOBILIZATION AND INVOLVEMENT IN SETTING POLICY**

In Mehta and Gupte's (2003) approach, the rights/needs dichotomy correlates to a dichotomy between top-down versus bottom-up decision-making processes. The assumption is that needs-based policy is imposed from the top-down based on the interests of aid agencies, while a rights-based approach would involve refugees setting refugee policy. We would like to raise some questions about these assumptions. The rights-based approach would certainly embrace refugee autonomy, since personal autonomy is fundamental to human rights, and this would open doors to refugees who want to speak out on their own behalf. But it would not necessarily lead to greater refugee involvement in decision-making. One reason for this is simple practicalities; refugee involvement is more easily talked about than implemented. But more fundamentally, rights-based policies can also lead to top-down decision-making, but of a different kind.

A number of studies have suggested that involving refugees in policy making is a difficult ideal to achieve. The Report of the 2005 International Association for the Study of Forced Migration noted: 'One of the significant problems of the rights-based approach and the focus on refugee-led solutions arises when refugees do not have the resources to adequately defend their rights themselves' (Collyer 2005: 251-252). In our interviews with refugees, two dominant themes emerged. First, they viewed UNHCR as a powerful agency capable of solving their problems. Second, they viewed themselves as not capable of doing a great deal to assert their own rights. Instead, to a great degree they transferred to UNHCR and to some extent NGOs the responsibility to speak for them.

As Tania Kaiser (2004) has noted, the problem with refugee involvement in setting policy in Guinea was not limited to UNHCR's willingness to listen. Refugees are often hesitant to criticize UNHCR because of 'social expectations that they should be polite, and to some extent grateful, for the help that they had received' (Kaiser 2004: 200). When refugees do not feel secure, they are unlikely to mobilize to voice their concerns. When they are denied the right to work, their ability to support themselves and each other is reduced. Thus, while in theory rights-based refugee advocacy would be based on refugee participation, refugees who are denied fundamental rights may nevertheless depend on others to advocate for them. Denial of rights can render refugees to see themselves as helpless and voiceless, which reinforces the way humanitarian agencies tend to portray them.

The refugees we interviewed universally reported that they were not involved in policy-making by UNHCR or NGOs. They reported that lack of consultation went beyond a rights-based/needs-based dichotomy; they are not even asked what their needs are. From the refugees' point of view, the organizations decide what to do based on what suits the *organizations'* needs. They complained that UNHCR is essentially inaccessible to them, with basically no one to talk to; they said that their calls or mail are not answered, that UNHCR does little to explain its policies and less to actually involve refugees in setting policy.

Refugees reported a widespread sense of pessimism about the potential for them to advocate their own rights or interests in Lebanon. They attributed this to two factors. First, they said that they live under such stress in their effort to meet their daily needs and avoid arrest that it was difficult to devote energy to any joint advocacy efforts, although refugees did sometimes assist each other during times of personal emergency (i.e. health crises and arrests). They also said that previous efforts to form refugee committees had not been effective, sometimes because the refugees themselves did not use the committees effectively. Second, refugees repeatedly stated that they felt that advocating their rights to UNHCR could backfire because UNHCR did not welcome their voices. For the refugees, the vast power that they perceived in UNHCR put them in a vulnerable position and made them afraid to be open with UNHCR. One refugee said he dared not raise his voice because he is illegally in the country, and UNHCR could silence him if it wanted to. Others said that when refugees set up community organizations, UNHCR allowed them to function only so long as they did not raise criticisms or serious issues.

But helplessness and dependency are not the only challenges to refugee advocacy. Rights-based approaches are by their nature founded on a set of rules that govern not just a person's substantive rights but also define legitimate means of realizing them. Usually, refugee rights advocates use international law as their primary set of rules. But this approach faces a substantial challenge when refugees' own conceptions of their rights differ from international law. As Paul W. Kahn has explained, law is by its nature a top-down institution, in which 'authority flows from a hierarchical point, directing the behaviour of political institutions as well as ordinary citizens' (Kahn 1999: 128). Indeed, human rights often calls for a court or human

rights enforcement body to cancel decisions by democratically-elected governments, a process that is nothing if not top-down.

Since refugees were not involved directly in drafting human rights treaties, it is somewhat peculiar to assume that basing refugee policy on human rights law would necessarily allow refugees to be more involved in decision-making. In fact, there is no guarantee that human rights law actually represents the wishes of refugees; a rights-based approach could therefore actually lead to policies that refugees will oppose. UNHCR staff in Beirut highlighted the fact that refugees sometimes want things that are contrary to human rights principles. UNHCR has sponsored a new community centre for refugees that is open daily and offers vocational and computer courses as well as a meeting space. The centre organizes occasional workshops for refugees to discuss their difficulties, and puts a special focus on programs aimed at empowering women. Though they highlighted the role of the new community centre in increasing UNHCR contact with refugees, UNHCR noted that in the area of promoting education for all refugee children and in paying close attention to the needs of women they were protecting rights while ignoring objections from other refugees. In our interviews, male refugees often objected to the focus on women, and some told us they would prefer to send their children to work rather than school. For UNHCR, the fact that refugees complained about pro-women and pro-children policies seemed to operate as a justification for excluding refugees from policy-making.

Literature critiquing needs-based aid to refugees has long observed that refugees often adapt behaviours that are reactive to the aid systems that exist (Harrell-Bond 1987). Gaim Kibreab (2004) explored this problem in an insightful analysis of the reasons why refugees 'cheat' humanitarian agencies by, for instance, misrepresenting facts or withholding information to gain more food rations or other services. He observed that refugees are often much more willing to cheat large humanitarian agencies than they are willing to cheat each other. He noted that refugees have the same material interest to cheat each other as the agencies, but that they tend not to do so. The reason, he concluded, was that refugees had a different perception of both the circumstances and the legitimacy of aid agency policies. Refugees perceived each other as potentially hurt by cheating, and feared loss of social standing if they betrayed trust. As Kibreab explains:

Firstly, to the refugees UNHCR, governments and NGOs are faceless entities which unlike human beings cannot be subject to harm, suffering or injustice.... Secondly, the rules and norms that regulate the agencies' activities incorporate none of the elements of the informal institutional rules which generally regulate access to, control over and use of resources among the refugees.... Thirdly, most of the agencies are managed or in the refugees' view 'owned' by people who share little or nothing with them in terms of ethnicity and in most cases religion.... Fourthly, nearly all the refugees I worked with during the last two decades did not know how the agencies that assisted them raised the money or the commodities they distributed to refugees. The majority of people I talked to believed that the resources of the agencies were inexhaustible (2004: 24).

These findings are echoed in our own interviews with refugees in Lebanon, who often believed that the UN and other organizations could do more if they wanted to. The refugee cheating that Kibreab observed was mainly directed at hindering agency efforts to accurately assess their needs, and was encouraged by the fact that the aid agency policies were not set with refugee consultation. But the refugees responded to this situation through fraud, which a rights advocate could not support.

For UNHCR in Beirut, a rights-based approach did not necessarily preclude having policies defined by resources and imposed from the top down. UNHCR said clearly that most policies are set by UNHCR headquarters in Geneva and that one of the reasons that UNHCR cannot take a needs-based approach is that 'refugee needs are beyond our resources'.<sup>15</sup>

UNHCR noted that donor resistance was the primary obstacle to providing services to Iraqi refugees. After the 2003 US/UK invasion of Iraq, UNHCR suspended individual refugee status determination (RSD) for Iraqis, instead calling on governments to provide Iraqis protection on a temporary basis. UNHCR's policy was based on the presumption that instability and violence in Iraq made return there hazardous, while the random nature of violence and the end of the Ba'athist regime meant that many Iraqis would be rejected if they were subjected to individual RSD. But UNHCR told us that donors were resistant to funding services to Iraqis who received temporary UNHCR protection without individual assessments. Although UNHCR was officially advocating temporary protection, it felt compelled to oblige the donors' resistance.

UNHCR also noted that the agency's normal policy is to reimburse refugees for only 85 percent of healthcare costs because that is the limit for Lebanese national insurance. Mental health treatment is excluded in most cases for a similar reason<sup>16</sup>.

We do not doubt the desirability of increasing the role of refugees in setting refugee policy. But we do wish to question whether a rights-based approach is the way to do this, at least if rights are to be defined by law. Needs-based and rights-based policies can both be set through top-down decision-making. The difference between them is that needs-based policies tend to be set by the interests and priorities of an institution, while rights-based policies are supposed to be set in compliance with an independent set of guiding rules and principles. The only bridge that might exist to allowing refugees some say in policy would be the capacity to enforce theoretical rights in courts or other means of independent enforcement.

## **6. INCLUSION OF RIGHTS TALK IN ORGANIZATIONAL THINKING**

Our field study was limited to a small number of interviews with officials. We did not observe actual decision-making or organizational functions. We therefore can only report on the degree to which key institutions talk about rights; we cannot assess directly how much rights-based thinking influences actual policy. However, before

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<sup>15</sup> UNHCR interview, 21 October 2005

<sup>16</sup> UNHCR interview, 21 October 2005



addressing the degree to which the institutions endorse rights as a basis for refugee policy, it is useful to explore the recent background of human rights talk in assessing Lebanese refugee policy.

### Refugees in Prominent Human Rights Reporting on Lebanon

One of the earliest and most prominent forms of refugee rights advocacy has been aimed at the international human rights movement itself on a global level, pushing for the inclusion of refugees within the larger movement for greater protection of human rights. Another related trend has been the growth of specialized international human rights organizations devoted specifically or primarily to refugees. Such organizations include the US Committee for Refugees, Refugee International, and Human Rights First (formerly the Lawyers' Committee for Human Rights). Advocacy by explicitly rights-based organizations should be expected to use the language of human rights.

However, there is less consistency about several more subtle variations of refugee rights talk. First, the degree to which refugees are included in general human rights reporting about a country is likely to influence the degree to which people see refugees as a human rights issue rather than merely a matter of general humanitarian concern. Second, human rights organizations may talk about refugee rights, but not about all refugees' rights. Social and economic issues have long been ignored in a human rights movement focused on civil and political rights. This could encourage the perception that arrest, detention and deportation are human rights issues for refugees, but not health and education. Finally, human rights organizations can talk about refugee rights without addressing with clarity the question of who is responsible for realizing refugee rights.

In order to assess the impact of this effort to include refugee rights within the gambit of human rights in Lebanon, we look here at two major general human rights reporting bodies – Amnesty International and the US State Department – to examine where non-Palestinian refugee rights fit in the overall understandings of human rights issues in Lebanon. We follow this by examining the evolution of the US Committee for Refugees' annual *World Refugee Survey's* treatment of Lebanese refugee policy. We have selected these three reports for several reasons. First, our purpose here is to look at widely read human rights reports as an indicator of how refugee rights are understood within the Lebanese context. The Amnesty and State Department reports are likely to be the two most widely read and cited international human rights monitoring documents that cover Lebanon.<sup>17</sup> The *World Refugee Survey* is a similarly widely read and cited report focusing exclusively on refugee issues. All three reports have dealt with refugee rights in Lebanon since the late 1990s.

#### *Amnesty International Reports*

Since the mid 1990s, Amnesty International has sought to include refugee issues in their overall research and campaign programs. In its 1997 report, *Rights Have No*

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<sup>17</sup> Human Rights Watch's World Reports have not consistently included Lebanon.

*Borders*, Amnesty International articulated the rationale for mainstreaming refugee rights:

The rights of refugees and basic human rights are inextricably linked. First, today's human rights abuses are tomorrow's refugee movements. Second, refugees are entitled to the same fundamental human rights as every other human being. The right to protection from *refoulement* that refugees have under international refugee law is simply another means by which basic human rights are safeguarded.

For historical reasons, people working on behalf of refugees and human rights groups have often appeared to pursue separate agendas. Yet the struggle for the rights of refugees is an integral part of the broader campaign for human rights, and international human rights standards provide authoritative tools and powerful mechanisms to support the protection of refugees.

Amnesty has generally addressed non-Palestinian refugees in Lebanon only in times of crisis, when refugees' basic security has been in jeopardy. Unlike its reports on Palestinians in Lebanon, and asylum in Europe, Amnesty has not addressed the social and economic rights of non-Palestinians in Lebanon. In addition, whereas its report on Palestinians called on the Lebanese Government to change policy, its reports on non-Palestinians effectively accepted the premise that the UNHCR should bear the main responsibility, with Lebanon obligated only to facilitate UNHCR's work. Essentially, Amnesty's reports tend to hold Lebanon accountable for just two refugee rights: freedom from arbitrary detention and the principle of *non-refoulement*. Social and economic rights were ignored.

Amnesty International's annual reports for Lebanon from 1998 to 2000 did not contain a single mention of non-Palestinian refugee protection. This is likely a reflection of the fact that Amnesty generally depends on local human rights organizations to highlight major issues of concern. Until the creation of the Ad Hoc Committee for the Support of Refugees and Asylum-Seekers (ACSRA), no such organization existed dealing with non-Palestinian refugees in Lebanon. Amnesty mentioned the issue for the first time in its annual report published in 2001 (covering events in 2000). It described specific cases of arbitrary arrests and deportations of refugees. The 2002, 2003 and 2004 annual reports contained similar information. Amnesty also issued three press releases in 2001-2002 about the treatment of non-Palestinian refugees and asylum-seekers, covering roughly the same ground as in the annual reports. Yet, in 2005, non-Palestinian refugees disappeared from Amnesty's annual report.

#### *US State Department Reports*

The US State Department is not a human rights organization in a conventional sense, and it represents a government that is itself blamed for many rights violations. However, its annual Country Reports on Human Rights Practices is one of the most read and most comprehensive global human rights reports, and thus an important index of where refugee issues stand in the US Government's understanding of the human rights discourse. Like Amnesty reports, recent State Department human rights

reports have documented problems in the treatment of asylum-seekers in Europe and Australia, and have focused on violations of the social and economic rights of Palestinians in Lebanon.

The State Department included references to non-Palestinian refugees in Lebanon earlier than Amnesty, though its discussion of the issue was initially formulaic and of questionable accuracy. For instance, its Country Report published in 1998 says:

The Government seeks to prevent the entry of asylum seekers and undocumented refugees. There have been no known asylum requests since 1975. There are legal provisions for granting asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates with the office of the United Nations High Commissioner for Refugees (UNHCR) and the UNRWA.

This statement was highly incomplete and inaccurate based on our knowledge of Lebanese treatment of refugees at this time. There were in fact asylum-seekers arriving in Lebanon at the time, and there were in fact no legal provisions for granting asylum in accordance with the 1951 Convention.

In 1999, the State Department updated its information to be more informative and accurate:

There are no legal provisions for granting asylum or refugee status in accordance with the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. The Government does not grant first asylum; however, in practice the Government grants admission and temporary (6 months) refuge to asylum seekers, but not permanent asylum. There are nearly 3,600 non-Palestinian refugees (mostly Iraqi Shiâa and Kurds) residing in Lebanon according to the United Nations High Commissioner for Refugees (UNHCR). There have been no known requests for asylum since 1975. The Government cooperates with the offices of the UNHCR and the UNRWA. There were no reports of the forced return of persons to a country where they feared persecution.

In 2000, the State Department report (covering the year 1999) included exactly the same text, but added two additional sentences indicating a breakdown of refugee protection:

There were credible reports of the forced deportation of Iraqi refugees. The Surete Generale turned over the refugees to the Syrian authorities, who returned them to northern Iraq.

In these entries, the State Department's phrase 'there have been no known requests for asylum since 1975' appears to be a reference to the fact that the government does not grant asylum. Focus is therefore placed on UNHCR's activities. The 2001 report expanded on this by criticizing the government for impeding UNHCR's work. But the amount of concrete information in subsequent Country Reports about Lebanon then declined again in 2003 and 2004.

### *US Committee for Refugees World Refugee Survey*

The US Committee for Refugees (USCR) publishes the only global country-by-country survey of refugee policy. It is similar to Amnesty annual reports, except that it is devoted entirely to refugee issues. As we will illustrate below, the *World Refugee Survey* often contained a more textured description of refugee protection in Lebanon, and was more likely to include a reference to social and economic rights.

USCR's 1997 report contained a set of interesting individual cases, but provided little in the way of an overview of non-Palestinian refugee protection. The 1998 *Survey* limited itself to a statistical breakdown of nationalities, and added the following sentence: 'No instances of *refoulement* were reported during 1997.' The 1999 report was similar, but after stating there was no *refoulement* it reported: 'Sometime in the past, however, Syrian intelligence services operating in Lebanon reportedly arrested some Iraqi refugees and transferred them to Syria, where they were detained.' The 1999 report then goes on to briefly describe the role of UNHCR in the country, and then mention social and economic rights: 'Although Lebanon does not allow UNHCR registered refugees the right to work, many manage to work illegally. Some receive social assistance through the Middle East Council of Churches.'

In its 2000 *Survey*, USCR provides the clearest published early warning of the breakdown in Lebanese refugee protection:

During USCR's October site visit to Lebanon, UNHCR reported that the situation of non-Palestinian asylum seekers and refugees has grown more tenuous since Lebanese president Emile Lahoud took office in the fall of 1998. Arrests and detention of undocumented foreigners, including asylum seekers and refugees, increased during 1999, according to UNHCR. ... Deportations also increased in 1999.

The next year and in 2002, USCR said that the situation had worsened, expressing concerns over mass arrests, deportations and reports of torture.

The amount of information provided in the 2003 and 2004 *Surveys* was much more limited. However, the 2005 *Survey* was considerably more comprehensive. It described widespread detention, noting that 'Authorities imprisoned many foreigners, including recognized refugees, past the expiry of their prison term.' It also described gaps in both the terms and the application of the MOU, notably involving detention. The 2005 *Survey* also discussed (in brief) refugees' lack of access to legal employment, and dependence on UNHCR for medical care. Also notably, the 2005 *Survey* for the first time did not discuss Palestinian and non-Palestinian refugee issues separately. Instead, the USCR discussed restrictions on the security and social and economic rights together.

## Comparisons of Human Rights Reports

At an international level, talking about non-Palestinian refugees in Lebanon is not a new phenomenon. Nevertheless, these reports indicate that the international human rights movement has taken a relatively limited approach to refugee rights in Lebanon, and has failed to deal effectively with the question of who is responsible for realizing refugee rights. Though refugee rights are now regularly included in general human rights reports, the focus is nearly exclusively on the issues of detention and deportation. Social and economic rights are not dealt with in these reports. The State Department and Amnesty reports are quite similar. No information is reported about refugees' access to healthcare, education or other welfare services. No information is provided about whether they have the right to work (in fact they do not). This stands in stark contrast with a heavy focus on these issues with regard to Palestinians. One of the strengths of specialized human rights organizations like USCR is that their reports go into more detail about the conditions of refugees. Yet, here also social and economic rights were generally ignored until the most recent report.

Another similarity between the Amnesty and State Department report confirms our hypothesis that official institutions assume that responsibility for non-Palestinian refugee protection belongs not to the Lebanese government but to the international community. Both reports focus on the role of UNHCR. This is in part a reflection of UNHCR's central role, but (especially in the State Department reports) cooperating with UNHCR is used as a standard for judging the Lebanese government. Hence, Lebanon is not really responsible directly to refugees. Instead, Lebanon's main responsibility is to cooperate with UNHCR.

As we explain in our conclusions to this study, the focus of these human rights reports could be justified by the fact that arrests and deportations were the most severe problems facing non-Palestinian refugees in Lebanon. Yet, it is quite possible that the international human rights organizations publishing these reports had not yet fully embraced the idea that social and economic issues are also human rights issues. Moreover, the human rights organizations appeared unable to offer commentary on the division of responsibility between the government and UNHCR, despite the fact that human rights law actually includes fairly clear standards placing primary responsibility on governments.

## Perceptions of Key Institutions and Refugees in Lebanon

Of the institutions that we interviewed, only one – the Lebanese Ministry of Health – spoke clearly against human rights being the basis of refugee policy in the social and economic arenas. Two others, MECC and Caritas, voiced no opposition to refugee rights in theory, but said that for pragmatic reasons they did not necessarily use rights as the foundation for their own work<sup>18</sup>. Although all of the NGOs said that they consult with refugees, MECC stressed that it mainly implements policies set by UNHCR,

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<sup>18</sup> Interviews with MECC, Aline Papaziane, 7 October 2005; CARITAS Migrant Center, Isabelle Saadeh, CARTIAS, 6 October 2005

which sometimes does not consult them, much less the refugees themselves<sup>19</sup>. Both organizations said that the preferences of donors made a big impact on their activities. Caritas portrayed its activities as pragmatic, noting that whether or not the government is supposed to do more and whether or not a person is recognized by UNHCR, their presence in Lebanon requires someone to take responsibility for them<sup>20</sup>.

In the Ministry of Health's view, refugees cannot have rights until they are acknowledged in a domestic legal regime. The Ministry said that it provides limited health services to refugees when their medical problems could cause a general public health threat<sup>21</sup>. Refugees hence are relevant to the Ministry only when they affect the interests of the general Lebanese public; they are not people with rights on their own. Yet this may only represent the view of a particular Ministry. The Ministry of Education responded to our request for an interview but due to the overall political development in the country, a convenient time for the interview was not fixed during the timeframe of our research; given that the Education Ministry does provide access to education to recognized (UNHCR ID) refugee children if seats are available, education officials might have presented a somewhat different view. The Education Ministry's approach would seem to be premised on the idea that refugees can have some legitimate rights, but are not equal to Lebanese citizens. Both Ministries' policies appear related to the lack of legal status for refugees in Lebanese law.

UNHCR spoke about both the health and education policy in terms of rights rather than needs, and described rights as the dominant force in UNHCR policy. But in a number of ways it appeared that their conception of rights-based refugee policy did not necessarily involve refugees having a voice, and did not lead to actual legal entitlements for refugees. As we will address in the next chapter, UNHCR did not necessarily see rights as a means of giving refugees more autonomy or voice. In our interview, UNHCR's most explicit invocation of human rights principles were in discussing cases where refugees had objected to UNHCR policy, such as in directing services to women or encouraging children to enroll in school. In both cases, UNHCR invoked human rights principles in order to legitimize policies that male and adult refugees believed to infringe on their prerogatives<sup>22</sup>.

All refugees who we interviewed said that they had rights, and distinguished rights from needs. One distinction mentioned by several refugees was that a need could be temporary and that assistance to meet it could end suddenly. A right, by contrast, was more fundamental and permanent. For the refugees, rights to healthcare and education were perceived as important regardless of a person's legal status (i.e. recognized or not). All the refugees said that UNHCR treats them more as people with needs than people with rights, yet they also noted at least one area where conceptions of rights differ. Several refugees protested UNHCR and NGOs'

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<sup>19</sup> Interview with MECC, Aline Papaziane, 7 October 2005

<sup>20</sup> Interview with CARITAS Migrant Center, Isabelle Saadeh, CARTIAS, 6 October 2005.

<sup>21</sup> Interview with Director-General of Ministry of Health, 7 October 2005

<sup>22</sup> Interview with UNHCR staff, 21 October 2005

insistence that parents send children to school; the refugees saw this as an infringement on parental choice while UNHCR and NGOs saw it as an expression of children's right to education.

In talking about access to healthcare, refugees returned repeatedly to the theme that security is the most important right of all. Many refugees said they do not go to hospitals even if they could pay for it because they are afraid of arrest. Refugees also complained of practical gaps. For instance, the NGO MECC has contracts with several hospitals to provide services, but the hospitals can only admit patients with the NGO's approval. Since MECC is not accessible at night, refugees complained of difficulty accessing emergency care in the evening. Cost was also a major obstacle to healthcare; refugees reported cutting back on food and selling belongings to pay for medical treatment. Some refugees said that they avoid seeking NGO assistance for minor treatment because it required too much time and money.

In many cases, there appeared little tangible difference in the actual conduct of NGOs that spoke about the role of refugee rights in different ways. Both Caritas and MDM provide services to migrants detained by Lebanese authorities. MDM takes a more explicitly rights-based approach. For example, MDM says that their policy is to lobby for policy change and raise awareness about refugee rights, rather than simply providing services. Yet it is not clear whether their activities are actually different from those of Caritas. In other cases, willingness to use rights talk seemed to reflect ideological differences in the organizations. MECC sees material assistance as an embodiment of Christian values that was driven by awareness of a need<sup>23</sup>. Caritas said that it sees its social work as a means of promoting human rights, but it does not concern itself with policy and lobbying to the same degree as MDM<sup>24</sup>.

### *The Frontiers Experience*

For around five years, Lebanon has always had at least one significant refugee rights advocacy group. In 1999, Samira Trad, one of the authors of this study, was a founding member of a group called the Ad Hoc Committee for the Support of Refugees and Asylum-Seekers (ACSRA). ACSRA convened to document and protest the Lebanese General Security's campaign of arrests, detentions and deportations. Initially, ACSRA worked in close coordination with UNHCR, but communications became more strained when in 2001 and 2002 ACSRA criticized UNHCR for failing to act quickly enough when refugees were scheduled for deportation. In mid-2002, the General Security Directorate began harassing Trad. Between June and December 2002, she was prevented from leaving the country once and was summoned for interrogation four separate times. ACSRA disbanded at the end of 2002 as a result of this pressure.

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<sup>23</sup> Interviews with MECC, Aline Papaziane, 7 October 2005

<sup>24</sup> Interview with CARITAS Migrant Center, Isabelle Saadeh, CARTIAS, 6 October 2005

In 2003, Trad and two other Lebanese human rights activists formed a civil company partnership called Frontiers Center (FC) to provide counselling and legal services to refugees and to conduct research about refugee issues in Lebanon. Michael Kagan, the co-author of this study, worked as a legal consultant with FC. In June 2003, FC produced a report called *Promises without Solutions: Iraqi Refugees in Limbo in Lebanon*, about neglect of Iraqi refugees by the UN refugee agency and the US government. The full report was only sent to the US Embassy in Lebanon, and to the UN High Commissioner for Refugees for their comments. A shortened version later was published in the journal *Forced Migration Review*.

On 10 September 2003, General Security arrested Trad, detained her for 30 hours at several different locations, and interrogated her about the work of Frontiers Center and about the *Promises without Solutions* report. Over the next four weeks, General Security officers repeatedly called Trad to demand that she appear at their office, and tried to intimidate her from working with refugees without their consent.

The General Security Directorate sought charges against Trad for 'harming the reputation of Lebanon' and for operating a 'non-declared association'. At this time, Frontiers Center was a civil company partnership, and the prosecutor declined to file any accusation based on FC's legal status. Trad was charged on 11 September 2003 for defamation or libel against public officials under Article 386 of the Lebanese Penal Code. Though the charges apparently relate to the *Promises without Solutions* report, on the eve of her trial prosecutors have failed to specify who Trad libelled or how. The arrest and charges against Trad were widely condemned by Lebanese and international human rights organizations. The UN Special Representative for Human Rights Defenders also raised concerns with the Lebanese government about the arrest and prosecution.

Judicial files indicated that the information leading to Trad's arrest was passed to General Security by staff of UNHCR in Beirut. For several years, Trad had been a persistent critic of UNHCR in Lebanon, arguing that the agency neglected refugees detained in prison and subjected asylum-seekers to unfair procedures while providing them no health protection. In two cases, ACSRA had made public appeals on behalf of refugees in Lebanon who needed urgent medical treatment that was not provided for by either UNHCR or the government. The *Promises without Solutions* report contained only brief criticism of the Lebanese government, and mainly critiqued the work of UNHCR and the US government.

On 4 February 2004, Trad requested that the UNHCR Inspector General's Office (IGO) in Geneva investigate whether UNHCR-Beirut staff had deliberately precipitated her arrest in order to retaliate against her. The IGO's investigation proved inconclusive, but it revealed problems in the general management of the UNHCR-Beirut office. On 21 September 2004 UNHCR's headquarters sent a letter to the Lebanese Government stating that it had no specific objection to Trad's work, expressing the hope that she and her organization would be allowed to continue their activities, and raising concern about the fact that internal UNHCR documents had been obtained and used by the General Security. The Regional Representative's



contract was replaced in 2005. In late 2005, contacts between Frontiers Association and UNHCR, Beirut office resumed.

Frontiers Association is different from any other NGO interviewed in this study in that it provides no direct social or economic service to refugees. Its only activities are directed at human rights advocacy, through individual counselling or policy research and advocacy. Through most of its history, Frontiers concentrated on the issues of arrest, detention, and deportation, and on the problems refugees faced in obtaining recognition at UNHCR. Only in late 2004 and 2005 did Frontiers begin researching social and economic services specifically; its research is the basis for much of the data in this study.

Most of our interviews have focused on the role of human rights in setting policy; Frontiers experience in Lebanon indicates many of the obstacles to human rights advocacy on behalf of refugees. As we explained, Frontiers, its predecessor ACSRA and their director, Samira Trad, have been targeted for harassment by Lebanese security forces. UNHCR reacted with hostility as well, at times cutting off relations and on other occasions providing evidence to security forces that contributed to Trad's arrest.<sup>25</sup> The reason for this appears to be the fact that Frontiers, ACSRA and Trad have been openly critical of both UNHCR and the government. Indeed, criticism of authority is often central to human rights advocacy; it is the primary mechanism for holding powerful agencies accountable.

Officials, both in the government and in UN agencies, sometimes prefer needs-based humanitarian organizations because they are less likely to be critical. Rights-based organizations are more likely to be seen as troublemakers and a threat, at least if they advocate rights through direct critique or protest. Such rights-based approaches are discouraged by the fact that activists like Trad risk government harassment and rights-based organizations like ACSRA risk closure and ostracism. As we report earlier in this study, refugees told us that fear and insecurity inhibit their willingness to make complaints to UNHCR. Both NGOs and refugees expressed substantial pessimism about the prospects for effective rights-based advocacy in Lebanon. Although we clearly come from a subjective perspective, we believe that Trad's experience in Lebanon is an essential factor illustrating why so many stakeholders view rights-based refugee advocacy with a certain degree of hesitation.

UNHCR's reaction to human rights advocacy for refugees in Lebanon stands in marked contrast to its official dedication to refugee rights. In part, the harassment that occurred was a sign of the times; it occurred in the last years of the Syrian military presence in Lebanon. The general who ordered Trad's arrest in 2003 is at the time of writing in detention under charges related to the Hariri assassination. The UNHCR regional representative has been changed, and by the end of 2005 Frontiers and UNHCR had resumed open dialogue. Yet it also indicates a great deal about the nature of decision-making in refugee policy. We have noted that rights-based policy is

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<sup>25</sup> These facts formed the basis of a detailed complaint filed by Trad to the UNHCR Inspector General's Office in 2004.

not necessarily bottom up. Yet rights-based refugee policy should in theory be less paternalistic than needs-based policies. Human rights encourages refugees (and their advocates) to question policy-makers and to hold them accountable. UNHCR was resistant to being questioned in this way. This suggests not just that UNHCR had a top down decision-making mechanism, but that it did not believe anyone could legitimately raise questions or criticise its policies.

The most direct impact of the harassment of Frontiers may have been on refugees. We have noted that the refugees we interviewed felt essentially helpless to speak for themselves, and several noted that past efforts to do so had failed. We would suggest that repression of refugee advocacy by local human rights groups can only serve to discourage mobilization of refugees themselves. Refugees who feel insecure due to lack of legal status are likely to feel even more hesitant to organize themselves or express their opinions to those in power when they see *bona fide* citizens attacked for advocating refugee rights. Similarly, it is likely to discourage other NGOs from asserting refugee rights in any manner that may be considered critical of the authorities. This might be one reason why the NGOs we interviewed appeared open to the theoretical idea that refugees have rights, but doubtful or vague about how rights could be utilized in actual practice.

## 7. CONCLUSIONS AND RECOMMENDATIONS

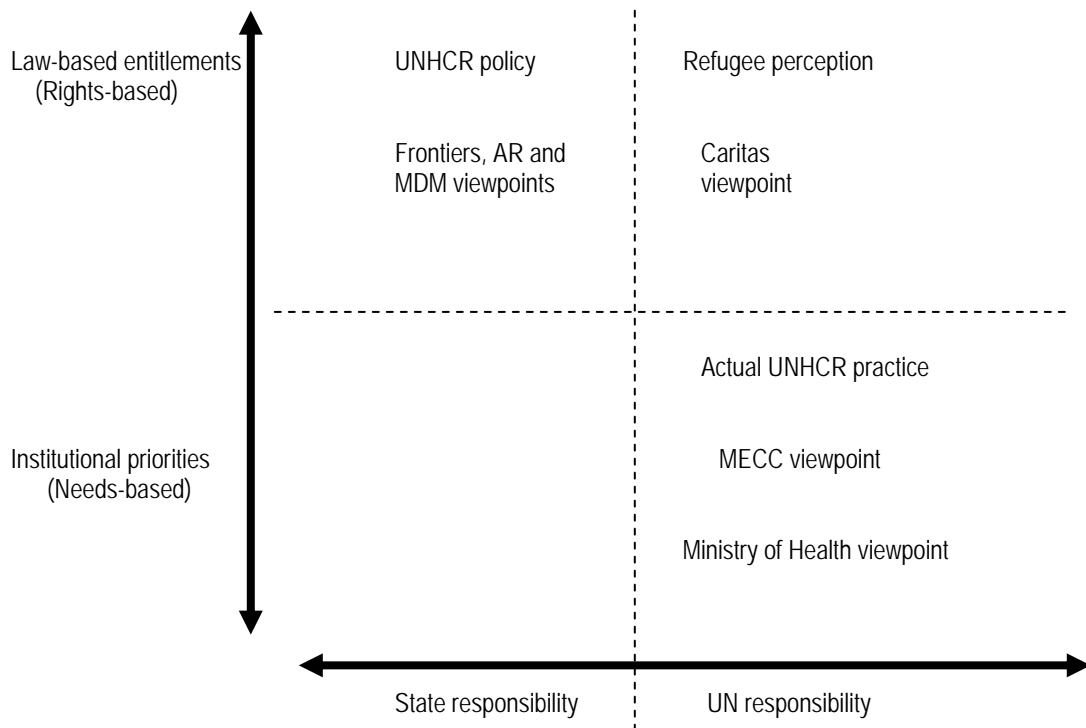
### Understanding Perceptions of Rights and Responsibility

From this analysis, we wish to propose an analytical matrix by which to understand the role and effectiveness of rights-based approaches to refugee policy. Our matrix is built from the premise that there are two key questions that must be asked. First, is refugee policy based on rights drawn from law, or is it based on the interests of policy-making institutions? Second, who is responsible for refugees (the government or the UN)? These two questions can be answered independently of each other. However, one of the challenges in rights-based refugee advocacy is that the agency that is perceived to be responsible is not necessarily actually capable of living up to expectations.

Our purpose in this study has been to examine what approach is used in setting refugee policy by different actors and the challenges to rights-based approaches to refugee policy in Lebanon. Our finding is that the assertion of refugee rights faces some resistance from government officials, and sometimes from UN agencies as well. However, we argue that challenges to rights-based refugee policy also come from two other sources. First, there is no clarity about who should be responsible for delivering refugee rights. Second, refugee involvement in policy-making is stymied by lack of security and the fact that refugees are often suspicious of humanitarian agencies' motives.

In actual practice, health and educational services to non-Palestinian refugees in Lebanon are delivered by UNHCR and NGOs in programs that are managed from the top down and driven by resource and donor priorities. In essence, the practice on the

ground follows a needs-based model in which refugees are passive recipients of charitable services. Yet, this practical reality contrasts with the official viewpoints of the key stakeholders involved. In particular, UNHCR endorsed human rights rather than needs as the foundation for its programs. Refugees expected UNHCR and NGOs to protect their rights even though the agencies claimed to lack resources and the government in theory has more responsibility in international law. In general there is a mismatch between the institution that refugees and some NGOs see as primarily responsible for refugees (UNHCR) and its actual capacity to meet expectations. Using the matrix that we proposed earlier, we can see the confusion and disagreement among different stake holders:



One of the notable results of our interviews is that nearly all respondents perceived that UNHCR, rather than the government, is responsible in practice for refugees, although some NGO staff questioned whether this should really be the case. Yet both UNHCR and NGO staff stressed the political and resource constraints on UNHCR activities. Because UNHCR policy is set in Geneva, then handed down to the local office, then to local NGOs, and finally to refugees, there was little sense of accountability or opportunity for participation in decision-making. But there was also considerable skepticism about whether UNHCR's resource limitations would allow for any changes in policy even if refugees (much less NGOs) were consulted first.

Refugee perceptions of the system were anticipated to some degree by Gaim Kibreab's research on why refugees sometimes cheat humanitarian agencies. Whereas UNHCR and NGOs perceived resources to limit UNHCR capacity to act, refugees saw the problem more as a lack of will. For refugees, UNHCR, and to some extent NGOs, have vast resources. But perhaps even more importantly, refugees take the agencies' mandates and rhetoric seriously; they expect UNHCR to be their voice, and feel betrayed when it is not. Not only do refugees complain that they are not consulted (or sometimes not even informed) about policy, they do not share UNHCR's or NGOs' factual assessment about what can realistically be accomplished.

In our interviews, there was widespread pessimism about the prospect of rights-based advocacy. For refugees this resulted from their own sense of insecurity, which they said stymied their ability to organize and speak out. It also resulted from a very strong perception that UNHCR did not want to hear complaints from them. For the NGOs and UNHCR, the problem was more complex. They believed that most responsibility for refugee policy rested on UNHCR's shoulders, but simultaneously they also believed that UNHCR's ability to meet expectations was limited. Refugees believed UNHCR to be unwilling to implement their rights, while the agencies tended to describe their problem and inability. Either way, stakeholders saw refugee policy as a kind of trap, in which responsibility rests with an agency that either cannot or will not deliver on refugee rights. With this pessimistic view, agencies set policy based on their perception of their limited capacity in what amounts to a resource-driven, top-down decision-making mechanism. Rights are easily talked about, but rights-based approaches are not actually implemented.

## **Recommendations**

From this study, we can make several recommendations for rights-based approaches to refugee policy.

First, while social and economic rights are in theory independent of refugee status, it is essential to address the ways in which they are linked in practice. Lack of legal status is often the central practical obstacle to refugees' enjoyment of education and healthcare in Lebanon, and a cornerstone of refugee policy (or lack thereof). We therefore recommend that research and advocacy efforts focus on the problem of

legal status. Social and economic deprivation should be noted as an effect of inadequate legal status.

Second, the question of basic security is inseparable from legal status and social/economic issues. Lack of legal status often leads refugees to fear arrest, detention and deportation. This fear in turn impairs their ability to take actions that might improve their social and economic well being, either through mobilization or through measures of self-help. Refugees who lack legal status are likely to be passive in the face of policies that leave them feeling frustrated and abandoned.

Third, any rights-based approach to refugee policy must carefully assess the question of who is responsible for realizing refugee rights. Most of international law assigns responsibility to sovereign governments; by neglecting to establish a legal framework for refugee protection, governments often manage to shift responsibility to the United Nations. The fact that UNHCR has a mandate to protect refugees leads refugees to have very high expectations of the agency, but UNHCR is not necessarily equipped to meet these expectations. At the same time, NGOs and human rights organizations often lack clarity about who should be responsible for refugee policy, especially in countries like Lebanon that have not ratified the Refugee Convention. Lack of clarity about who bears responsibility is likely to produce lack of clarity about how to promote refugee rights effectively.

Fourth, the connections between refugee mobilization and refugee rights needs more study. Strictly speaking, human rights approaches that are based on human rights law can be quite hierarchal. A rights-based policy is not necessarily the same as a policy formed from refugee mobilization and engagement. At the same time, human rights should encourage refugees to mobilize to speak for themselves, assist each other, and in some cases question those who have power over them. One of our findings is that UNHCR in Lebanon believes that its policies are based on human rights, but it has at times been highly resistant to outside criticism of its policies. This suggests not just a top-down mechanism of decision-making, but an assumption that UNHCR will hold a monopoly on refugee rights.

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## ANNEX: METHODOLOGICAL NOTES

**Timeframe:** The research for this study ran from May to December 2005.

**The Research Team:** The co-authors Michael Kagan and Samira Trad were involved in the formulation of the research hypothesis and methodology. Michael Kagan did the literature review and Samira Trad was responsible for the field research with the assistance of two interviewers, Berna Habib and Farid Qamar. Berna Daou completed the transcript of the interviews from Arabic to English. The three of them were trained for the interviews and supervised by her.

### Interviews

*Notes:* The questions below were prepared as guidelines for the interviews. There was no form to fill. Most interviews were taped.

*Refugees:* We interviewed 25 refugees and asylum seekers. 14 were single men, and 11 were married. Four women were among the married couples. Their breakdown by nationality is as follows: 15 Iraqis; 8 Sudanese; 1 Egyptian, and 1 Congolese. Their status with UNHCR is as follows: 10 recognized refugees, 9 asylum seekers, 2 cancellation cases, 2 closed files, 2 never applied for asylum.

As to the choice of the interviewees, initially we selected 9 cases who were registered with Frontiers Association; they then put us in touch with the others.

*NGOs:* Six NGOs that work directly with refugees were interviewed. These were:

MECC (implementing partner of UNHCR, Lebanon)  
AJEM (socio-medical assistance in Rumieh prison)  
Danish Refugee Council (carried a field survey of Iraqi refugee needs)  
Medecin du Monde (AJEM partner in Rumieh prison)  
National Evangelical Church (assist Sudanese refugees)  
CARITAS (assist migrants and has a special programme for Iraqi refugees)

*UNHCR:* We interviewed two staff members of the UNHCR, Beirut office.

*Government Officials:* Letters of request for interviews were sent to the following ministries:

- Ministry of Health
- Ministry of Interior
- Ministry of Education

The three ministries confirmed receiving the letter of request and were willing to be interviewed but appointments were repeatedly postponed by the officials. Only the interview with the Ministry of Health took place. The deadline for the paper made it



impossible to wait for longer. The Directorate of General Security, which regulates the status of foreigners in Lebanon, is a department of the Ministry of Interior.

The draft paper was sent to a number of stakeholders to comments on. These are the Beirut office of UNHRHC (Mazen Shaqoura); ILO Beirut Office (Simel Esim); UNHCR Regional Representative (Stephan Jaquemet); UNESCO Regional Office (Dr. Ramzi Salameh).

### Interview Guides/Questionnaires

#### **Interview Questions for Stakeholders on their Policy Regarding Refugee Rights to Education and Health Care in Lebanon**

##### **I. Common Questions to Stakeholders, NGOs and Refugees:**

1. What are the factors taken into consideration when forming refugee policy (existing national policies, international standards, external factors such as funding and/or other people's agenda)
2. How do they form their policy? Who is involved in policy making? Are the refugees involved/consulted in the process?
3. Who do they think is ultimately responsible for the refugees in the country?
4. How do they understand the concept of rights-based versus needs-based approaches to policy formulation in general and in the context of refugees in particular?

##### **II. Questions for Officials**

Ministry of Interior  
Ministry of Health  
Ministry of Education

1. What is the Ministry's policy regarding refugees' right to basic education / health care?
2. How does the government see the role of UNHCR and other stakeholders such as UNESCO, WHO, EU, etc. in providing assistance and/or relief to refugees? Do they coordinate with them, and if yes, how?
3. What are the considerations for not signing the 1951 Refugee Convention?
4. Non-Palestinian refugees and asylum seekers are today considered illegal migrants. This policy makes Lebanon violate basic and fundamental human rights – health and education. How can they accommodate and recognize these rights under international standards?
5. How do they form their policy? Who is involved in policy making?
6. What in their opinion should be done to improve the refugee situation?

### III. Refugees

1. How much are refugees aware of their rights and the policies that affect them (HCR, government, NGOs policies).
2. What is the refugees definition of rights /needs?
3. How do refugees perceive the services they are offered (meet needs or rights)?
4. Do they think they have rights in Lebanon?
5. What are their major concerns in Lebanon?
6. How is assistance affecting them?
7. How do they perceive the service providers (HCR, government, NGOs)?
8. How do they interact with the policy environment in Lebanon?
9. How is their relation with the local population?
10. How is their perception of government policy?
11. Do they have regular contacts with UNHCR? If yes, how would they describe their interaction?
12. Do they have regular contacts with NGOs (which ones, in what situations, and how would they describe these interactions?)
13. Do they have contacts with other refugee communities, including Palestinians? (which ones, in what situations, and how would they describe the interactions?)
14. How do they see solutions (e.g. would they stay in Lebanon if their situation is improved even if option of resettlement is still there?)
15. As individuals and/or groups what do they do to access their needs/rights? If nothing, why not? How do they function taking in consideration the limitation/security /access and mobility/lack of funds?
16. How do refugees themselves see their role in policy making?
17. In their opinion, how do stakeholders form policy? What are the factors that affect such policy (existing national policies, international standards, external factors such as funding and/or other people's agenda)?
18. How do they articulate/mobilize around the right to education and access to health?
19. What are the obstacles restricting articulation?
20. How do they challenge these obstacles?
21. How do policies on refugees in Lebanon impact their livelihoods, especially in terms of access to education and health, as also work?
22. Do they participate in policy making of other organizations? Are they consulted in programming? If yes, in what way? If no, why not?
23. In their view, how could the policy on refugees be changed in Lebanon? What type of policy should be adopted?

### IV. NGOs

1. Brief description of their refugee project.
2. What are the main issues/ problems refugees complain about/ seek assistance for/ lack access to?
3. How are these projects determined? Based on refugee needs or rights? Who determines these policies of assistance?

4. How can they describe the assistance they provide to refugees? How does it alleviate their suffering, improve their living conditions, integrate them, etc.
5. Are they able to meet the needs? If not, why not? And what should be done in their opinion?
6. Do they think they are filling gaps? Or working in a vacuum?
7. Is it possible, in their opinion, that the refugees should have access to basic and fundamental rights to education and health care? And what are the prerequisites for such development / improvement in government refugee policies?
8. Why have they decided to provide health and/or education assistance to the refugees? What are the driving forces that made them choose to help the refugees in Lebanon?
9. Do they take refugees' opinions when deciding a project/activity?
10. Do they think their role/project is useful and how?
11. How do they see their role/project fitting the overall country refugee policy?
12. What are the long term objectives/goals that they aim to achieve with these projects?
13. Does such project/work have a spill-over on the general situation of the refugees in the country? Does it bear some elements of radical change that could improve positively the national refugee policy?
14. What are the indicators used to evaluate the impact of the projects/work?
15. What are the major hindrances for the improvement of the refugee situation?
16. Do they think refugees have rights?
17. What are the impacts of existing policies on the livelihoods of refugees in Lebanon?
18. Who do they think is ultimately responsible for refugees in the country?
19. How do they form policy? Who is involved in policy making?
20. Do they coordinate and cooperate with other organizations and governmental bodies assisting refugees? If yes, in what way? Is there a regular coordination forum? If not, why not?

## V. UNHCR

1. What are the factors that UNHCR takes into consideration in creating the general policies concerning refugees?
2. What is the mechanism to form policies? Who sets them? Do refugees participate in their formulation? If yes, how?
3. Does UNHCR believe that refugees have rights? And if so, what are these rights?
4. Who is responsible for refugees in Lebanon? Is this responsibility shared with other stakeholders?
5. What is UNHCR's approach (rights or needs) when formulating policies and programs concerning education and health for refugees? Why?
6. Where in the UNHCR's scale of priorities are situated education and health, particularly while preparing the budget? And do those priorities vary from one country to another, and on what basis?
7. Are UNHCR Beirut office policies made from above, or it is tailored to meet specific problems in country?

8. How does UNHCR describe its relationship with the government? What is the government's perception of its work and policies?
9. What are their responsibilities toward refugees concerning health and education?
10. How does UNHCR describe the relationship between the Lebanese government and refugees?
11. How does UNHCR describe its relationship with refugees in Lebanon?
12. How did the Memorandum of Understanding with the Lebanese General Security affect the situation of refugees in Lebanon?
13. What are the services offered to refugees in general in Lebanon?
14. Who are the beneficiaries (registered, unregistered, mothers, single, with children...)? And what are the criteria adopted to focus the assistance for these categories? Give statistics.
15. What are the major problems that refugees face in Lebanon? And what are the solutions that UNHCR can present to them? Give details of how many are benefiting from UNHCR, and what type of services they are receiving.
16. Can refugees afford their needs, and who determines those needs?
17. Is UNHCR assistance for education and health sufficient? If not, how are the refugees managing to meet their need? What are the major obstacles?
18. What is the role of donor countries in setting policies that concern the refugees?
19. What refugee policies should be adopted by the government and NGOs? How is UNHCR promoting its views regarding refugee policy with different actors? What is the level of coordination and cooperation with the different parties?