

Introduction

Human Rights as an Ethical Framework for Advocacy

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There are over thirty-three million refugees and internally displaced people in the world today.¹ A disproportionate percentage of these displaced people are in Africa. Most have been driven from their homes by the armed strife of both interstate and intrastate conflicts. Such coerced migration violates people's freedom, and most have been displaced into settings where conditions fall far short of what is required to live with basic human dignity. Such displacement, therefore, violates people's most basic human rights in multiple ways.

Human rights have played an increasingly important role in the assessment of international affairs since the proclamation of the Universal Declaration of Human Rights in 1948. The Universal Declaration was a response to the genocidal extermination of the Jewish people attempted by the Nazis and the destruction and displacement caused by World War II itself. This history thus ties contemporary human rights norms directly to the conditions faced by most refugees and internally displaced people today. In addition, the long-standing historical discussions of the ethics of war and peace in Western and non-Western traditions are also linked with key issues raised by forced migration. Both human rights norms and the ethics of war and peace, therefore, have direct relevance to the plight of displaced people and the way the world should respond to their needs.

Refugees and internally displaced people, however, are regrettably often the forgotten victims of human rights violations. The human rights issues raised by forced displacement have not been addressed in the same depth as other grave human rights issues, such as depriving people of their liberty for political reasons or the use of torture in gathering intelligence. Nor have the consequences of war for refugees received more than minimal attention in most legal and ethical analyses of armed conflict. We take it for granted today that intentionally killing civilians is a violation of the law and ethics of warfare. The displacement of millions from their homes, however, is not rejected nearly

as strongly as is the targeting of civilians in bombing raids. In practice, the displacement of refugees often seems to be accepted as a sad but inevitable consequence of war. The fate of the displaced fails to raise the concern, analysis, protest, and action for which their suffering calls.

In addition, neither public opinion nor the existing norms of international law adequately address the plight of internally displaced people—those who are not refugees in a strict legal sense because they have not been forced across an international border. This is particularly important in the African context, for about half of the more than twenty million internally displaced people in the world today are in Africa.² If human rights practitioners and policymakers are to address the needs of these populations more effectively, we need to reflect on both existing political practice and legal standards from a normative human rights standpoint. The *Guiding Principles on Internal Displacement* developed under the leadership of Francis M. Deng, representative of the UN secretary-general on internally displaced persons, provides a strong sense of the direction we need to move.³ Deng's important leadership has led to the development of careful policy proposals to protect and aid the internally displaced. But in practice many of the internally displaced are still not being protected in a minimally humane way, nor are their most basic human rights secured.

This volume arose from a conviction that the human rights grounds for advocating change in practice and policy toward the displaced need to be addressed in greater depth, and that such examination is overdue. This book seeks to provide an analytic framework for a more vigorous and effective advocacy on behalf of refugees and internally displaced persons, so that more effective responses to their suffering are forthcoming in practice. Advocacy on behalf of the victims of humanitarian crises is increasingly seen as a key part of the work of the organizations that have traditionally provided them with direct aid and assistance. Both secular and religious nongovernmental agencies increasingly see their mission as including the advocacy of public policies that will alleviate and prevent the suffering of refugees.

For example, the Jesuit Refugee Service calls “advocacy” on behalf of justice for refugees and other forcibly displaced people one of its three overarching goals, along with accompaniment and service to the displaced.⁴ Catholic Relief Services has adopted a “justice lens” to aid in focusing all of its relief and development work so it can advocate more effective response to the needs of vulnerable people both with the Catholic population of the United States and with the United States and other governments.⁵ *Médecins Sans Frontières* (Doctors Without Borders) speaks of its obligation to bear witness (*témoignage*) when it encounters severe injustices in its work, rather than allowing its commitment to political neutrality to lead it to remain silent in the face of the causes of suffering.⁶ Other humanitarian and relief organizations also see their roles as going beyond immediate response to the urgent needs of people in crisis situations. They aim to make more systematic responses that address the root causes and long-term consequences of humanitarian crises. Addressing these causes and consequences leads them to adopt stances of advocacy that address governments, intergovernmental bodies, and other sectors of civil society. For church-linked groups such as the Jesuit Refugee Service and Catholic Relief Services, such advocacy also addresses the larger

religious communities in which they are based and seeks to influence the responses of these communities to the needs of the displaced.

Staff of these organizations, however, observe that they are often so caught up in response to crisis situations that they are unable to develop approaches to advocacy that are sufficiently grounded in empirical and normative analysis. In an effort to help provide a stronger framework for advocacy on behalf of displaced persons, the Boston College Center for Human Rights and International Justice, in collaboration with Catholic Relief Services and the Jesuit Refugee Service, organized a conference in Nairobi, Kenya, in October 2006, on the rights of refugees as a framework for advocacy. The chapters in this volume were initially presented at that conference. Some of them are descriptive case studies prepared by practitioners working directly with displaced people. These chapters reflect the direct experience of those working on the ground to bring assistance to people forcibly driven from home. Indeed, the first chapter in this book powerfully presents the personal experience of an Ethiopian refugee who has been living in camps for over fifteen years. Other chapters are more systematic analyses by scholars. At the conference, authors of both types of chapters engaged in a rich dialogue, and they have subsequently revised their presentations in light of this discussion. The dialogue led participants to some new insights into how to improve both theoretical analysis of the realities of displacement and practical responses to the plight of the displaced. It will be useful to highlight several of the key points that emerged.

There was agreement that advocacy will be more effective if it is grounded in the fundamental human rights of displaced persons, and if the conditions that impede or promote these rights are better understood through careful social and political analysis. The conference was also guided by a conviction that human rights are moral as well as legal norms, and that when existing legal standards fail to serve the human dignity of displaced persons, the law should be changed and developed in light of ethical requirements of humane treatment. Thus, the authors of this book's essays sometimes make ethical arguments for moving beyond existing international law. The authors do not hesitate to suggest changes in the international law of human rights and in humanitarian law when such changes are suggested by what is required if the displaced are to be treated in a way that is minimally humane.

Ethics, of course, is a domain of notable pluralism across cultures and religious traditions. The authors of the essays presented here are very much aware of this pluralism and want to respect its requirements. Pluralism, however, does not mean that anything goes in the treatment of the displaced. Pluralism is appropriately limited by the duty to respect and protect the basic human dignity of the persons whose lives and freedoms are threatened by the crisis of forced displacement. In other words, human rights set boundaries for legitimate pluralism.

Part I of this book addresses this issue of rights in the face of pluralism. The first essay, by Abebe Feyissa, with Rebecca Horn, describes the struggles and sufferings of one Ethiopian refugee over many years. This poignant narrative will lead most if not all people to say that no one should have to endure conditions like this. This is an ethical judgment similar to the response to the *shoah* and to the violence of World War II, which led to the formulation of the Universal Declaration of Human Rights. Despite

the ethical diversity that characterizes our world, including the diversity of Africa, most people, including the authors writing here, are ready to conclude that the plight of refugees is morally problematic and that it is beyond the domain of the morally tolerable when it reaches conditions like those faced by Feyissa.

In chapter 2 William O'Neill builds a theoretical, philosophical argument for why the rights of refugees and internally displaced people should be affirmed by all of us, despite the diversity of our cultural and religious traditions. Indeed, O'Neill argues that all traditions that are broadly humanistic can affirm the fundamental rights of the displaced on grounds internal to their own traditions while they also respect the cultural differences of others. This applies to most African traditions as well as to the Catholic and Christian traditions that shape the approach of the organizations that sponsored this project. This approach is very much in line with the conviction, rooted in the natural law tradition, that the values embedded in Christian faith are compatible with reasoned reflection on human experience in many cultures. Thus, starting from the lived experience of the suffering of long-term refugees and moving through rigorous philosophical reflection, Part I makes a case for the validity of an ethic of human rights as the ground for advocacy on behalf of refugees and internally displaced people.

Part II addresses the issue of the right to the freedom of movement that is problematic for or denied to many refugees. All forcibly displaced people have been coerced to leave their homes, and so, by definition, their freedom of movement (or of nonmovement) has been violated. When they gain asylum in another country, their freedom of movement is often once again violated by being confined to camps. The essay by Feyissa in Part I describes this restriction vividly. Feyissa has been compelled to live in Kakuma Refugee Camp in northwestern Kenya for the past fifteen years. A camp is supposed to be a "temporary" refuge for the displaced, and the term "camp" does not even appear in the 1951 Refugee Convention. In actuality, however, the time spent in camps by displaced people frequently stretches to years, even decades. This leads the essay by the Joint Commission for Refugees of the Catholic Bishops of Burundi and Tanzania, chapter 3, to ask whether becoming a refugee means that one's human rights have become so "contingent" on circumstances that they are not really treated as genuine rights at all. Chapter 4 describes how internally displaced persons in Uganda have been confined to camps by the Ugandan government, supposedly for their protection against the attacks of the rebel Lord's Resistance Army (LRA). Whether this confinement has in fact improved their security can be debated, but it has surely limited their freedom. Similarly, in chapters 5 and 6 the situation of urban, "self-settled" refugees is discussed in two very different contexts: Kenya and South Africa. In Kenya most refugees are not supposed to be in the cities but are expected to live in camps far from urban settings. This restricts their freedom of movement and limits their access to many other human necessities, as Burton Wagacha and John Guiney describe. South Africa is more accommodating to refugees who settle in the cities, and Loren Landau makes an ethical argument for the basic resources to which they should have access.

Freedom of movement by refugees became one of the basic human rights that the conference identified as central to advocacy on behalf of the displaced. Many conference participants would join their voices to that of the U.S. Committee for Refugees and Migrants in challenging the protracted "warehousing" of refugees.⁷ To be sure,

conference participants recognized that camps can be a necessary way of responding to the needs of the displaced in the face of emergencies, and there was not full agreement on how long emergency encampment could be considered legitimate. But confinement to a camp is a serious diminishment of one's basic human dignity and a restriction of a fundamental human right. Thus, conference discussion highlighted several key norms that should govern restriction to camps:

- Confinement to camps should be imposed only when it is necessary for protection. It should be a last resort, used only when free movement by displaced people is not compatible with their protection or with the resources available to the host country.
- It should be temporary, lasting only as long as is strictly necessary to ensure protection of displaced people.
- It should be employed only when the harm that results from restricting people's right to freedom of movement is proportionately less than the harm they would face outside camps and less than the harm free movement by large numbers of refugees would cause to the host society.

Enabling refugees to exercise very basic rights such as those to freedom of movement and to obtain a livelihood can cost a lot more than very poor African countries can manage. If the human rights of displaced people are not contingent, therefore, richer countries have a fundamental responsibility to share the burdens of coming to the aid of the displaced. The burden should not fall exclusively on the very poor neighboring countries that are usually the first asylum for Africans forced from their homes. Pressing developed nations to assist in aiding the displaced find work and education for their children through development assistance for refugee-receiving countries in Africa should be a central emphasis of advocacy on behalf of the displaced today. Developing international institutions that will support and facilitate such assistance is also a key task. Thus, the rights to movement and to a livelihood help shape key points on an advocacy agenda that is very relevant to the African context.

Part III addresses the rights of women as criteria for a more adequate response to the struggle of refugees and the internally displaced. In chapter 7 Binaifer Nowrojee highlights some of the most egregious forms of violence to which displaced women are too often subjected. To be a refugee is to be in an extremely vulnerable situation, because the supportive frameworks of family, local community, and nation have been torn away. The internally displaced are often vulnerable to attacks by the agency that should be protecting them, namely their own national government. In these circumstances, women are often more subject to sexual and domestic violence than in other settings; thus, their rights to bodily integrity and even to life can be in severe danger. The major refugee-serving agencies have been developing standards and practices to protect displaced women from such abuse, and these efforts have shown some success where there is a concerted political will to implement them. There is urgent need, however, to deepen and broaden the commitment to implementation.

In chapter 8, Susan Martin notes that the challenge of cultural difference for universal human rights standards is particularly acute when traditional gender roles are at stake. The experience of forced migration itself also has complex effects on the roles of women. It not only subjects women to greater vulnerabilities and dangers but can also

lead to role change that enhances women's autonomy, agency, and capacity for community leadership. Martin argues that there is no necessary conflict between protection of displaced women from violence or repression and respect for cultural traditions. How to balance these concerns, however, can be a delicate matter and can call for a great deal of concrete practical wisdom. The need for such practical wisdom also applies in human rights-based advocacy. Both the rights of women and the right to respect for one's culture are human rights, and these two sets of rights must be brought into an appropriate balance. Nevertheless, this call for practical wisdom should not be misunderstood as a call for timidity. The dignity of all human persons is the basis of both the rights of women and the right to respect for diverse cultures. Commitment to respect for this dignity means no attack on their dignity can be tolerated. Thus, violence against women, rape as a tool of war, and other serious violations of women's personal security must be challenged across cultures and wherever it occurs.

This suggests several further points for an advocacy agenda regarding displaced women:

- All refugee-serving programs and institutions should be assessed in light of their support for the equality and dignity of women. Practices that seriously violate that dignity should be challenged in the name of human rights. This may call for careful discernment of how to balance respect for cultural traditions with the protection of the rights of women.
- Despite the importance of respect for cultural traditions, protection of women's right to physical security and safety should always be a priority for refugee-serving programs.
- Active participation of women in the design and administration of programs aiding displaced populations is a key to protection of the rights of women.

Advocating the rights of refugees thus calls for strong advocacy on behalf of the rights of displaced women.

Part IV turns to analyses of war as the principal cause of displacement and how a human rights perspective can help frame a response to it. Africa is beset with numerous conflicts that have created many millions of refugees and internally displaced persons (IDPs). In chapter 9, Khoti Kamanga outlines the scope of the tragic displacement caused by war in the Great Lakes Region. Kamanga discusses legal norms concerning "crimes against peace" and norms outlawing the use of force for purposes other than self-defense. He also considers the Geneva Conventions' ban on forcible deportations and their standards of civilian protection. Both deliberate forcible transfers and the killing of defenseless civilians are serious crimes as well as being morally reprehensible. These are human rights issues that can help shape a framework of advocacy for the prevention of the kind of conflicts that are causing most displacement in Africa today. Kamanga notes that the implementation of these norms will depend on embedding these standards more deeply in public political will, national laws, and international institutions. Advocacy for such changes in opinion, law, and institutions will be important to reducing the causes of displacement in regions like the Great Lakes and elsewhere.

My own chapter 10 addresses what the 2005 UN World Summit called the "responsibility to protect"—the duty to safeguard populations from genocide, war crimes,

ethnic cleansing, and crimes against humanity.⁸ This responsibility is first the duty of each national government to protect its own citizens. Thus, national governments have the responsibility not to create humanitarian crises by committing grave evils such as genocide, ethnic cleansing, religious persecution, or any other form of attack that will compel people to flee from their homes. These duties raise serious questions about the behavior of the governments of a number of African countries like Rwanda, Liberia, and Sierra Leone in the 1990s and Sudan today. They also challenge the actions of nonstate actors like the LRA in northern Uganda. If national governments fail to protect their citizens from these abuses, the larger international community has a duty to come to their aid, even if this means intervening across national boundaries. Such interventions should initially take the form of efforts to sustain or build peace in ways that prevent displacement or other forms of humanitarian crisis. These preventative measures could be diplomatic or economic, depending on the need. In the face of grave abuses such as genocide, exercising this responsibility could take the form of military intervention by proportionate means as a last resort. The responsibility to protect can also call for efforts to rebuild a divided society in the aftermath of conflict. Such efforts are best carried out multilaterally, whether through the African Union, through regional agencies such as the Economic Community of West African States (ECOWAS), or on a global level through the United Nations.

In chapters 11 and 12, Lam Oryem Cosmas and Stephen Pope directly address the issue of how to pursue reconciliation and reconstruction in societies like Uganda that have been deeply divided by war, displacement, and grave human rights abuses. Reconciliation in the aftermath of a severe humanitarian crisis is probably the most problematic and elusive political objective that a society can pursue. If the cycle of conflict is to be broken, however, some effective steps toward healing social divisions are essential. Cosmas argues that reliance on the traditional justice systems of the people involved in the northern Uganda conflict can help them move toward reconciliation. Hybrids that blend traditional approaches with forms of international law familiar in the West may also make contributions to the needed reconciliation. In either case, there must be an acknowledgment of responsibility by those who have committed grave crimes and genuine assurance to the victims that the abuses will cease. Without such assurance of safety, the blurring of the distinction between self-defense and revenge can be expected to lead to continuing conflict.

Stephen Pope explores ways that reconciliation and rebuilding can facilitate the return of refugees and IDPs to their homes in the aftermath of conflict. He considers both the option of holding the perpetrators of grave abuses accountable for what they have done following standards of strict justice and the alternative option of seeking peace through amnesty or forgiveness. Pope draws on the experience of efforts to attain reconciliation in South Africa, Argentina, Chile, and El Salvador. In particular, he explores the current debate about whether a peace based on amnesty for LRA leaders should be the first step toward healing the wounds in northern Uganda, or whether justice through prosecution of LRA leaders in the International Criminal Court should come first. In effect Pope argues that neither justice without forgiveness nor forgiveness without justice can bring a lasting peace, and that truth about what has happened is an essential element of both justice and peace. Thus truth, justice, and steps toward

forgiveness are all needed both to heal the conflicts that have driven so many people from home and to prevent repeat conflicts.

Thus, the conference discussions suggested the following conclusions on advocacy regarding conflict as a cause of displacement:

- Prevention of conflict is a key to avoiding much of the displacement that mars the face of Africa. Working to strengthen the commitment of public opinion, legal standards, and multilateral institutions to the prevention of conflict and its causes should be a principal focus of advocacy on behalf of refugees.
- Strengthening the recognition that national borders do not set limits to the scope of moral and legal responsibilities to protect the rights of human beings should be central to the work of refugee advocates.
- Healing the divisions of war-torn societies calls for a process that builds on truth, that requires the cessation of injustice, and that works toward reconciliation through a form of forgiveness.

Addressing the causes of refugee displacement and working to break the cycles of conflict that continue to drive people from home is of course a long-term goal. Some might even say it is utopian. Even incremental movement toward this goal, however, can itself save the lives of huge numbers of people and enable many to avoid the fate of long-term refugee status. Such incremental steps should be central to the work of refugee advocates.

In chapter 13, Agbonkhanmeghe Orobator addresses concrete human rights and ethical issues that arise for the humanitarian organizations, both religious and secular, that are so deeply involved in efforts to lift some of the burdens carried by refugees and internally displaced people. He explores the tension between the political neutrality that such agencies value and how they can come to be seen as political actors when they speak out on the injustices and human rights violations that displace people. He addresses the question of whether and how humanitarian agencies should relate to military forces that both oppress and seek to defend the displaced. He explores ways that refugee-serving agencies can be either empowered or compromised by the sources of their funding. And he considers the ethical standards that should govern the way NGO personnel relate to those they serve and the ethical norms for the kind of service they provide. This final chapter shows that the choices facing those who seek to serve refugees can be difficult and many-sided. But it also shows that there is a way forward if the well-being, dignity, and human rights of the displaced are kept in clear focus. The same is true for those who seek to be advocates on behalf of the displaced. Thus, this final chapter serves as a kind of conclusion for the volume as whole. It calls for practical wisdom, the moral virtue that aids in discerning how human rights norms should be pursued in practice. This wise discernment, as well as the moral virtue of courage, are equally needed in efforts to advocate refugee rights.

Notes

1. United States Committee for Refugees and Immigrants, World Refugee Survey 2006, Key Statistics, Table 1, http://www.refugees.org/data/wrs/06/docs/key_statistics.pdf (accessed May 22, 2007).

2. Internal Displacement Monitoring Centre and Norwegian Refugee Council, *Internal Dis-*

placement: Global Overview of Trends and Developments in 2006 (Geneva, 2007), 6, available from the website of the Internal Displacement Monitoring Centre, <http://www.internal-displacement.org> (accessed May 22, 2007). See the link under Resources, for IDMC Publications, Global Overview.

3. See the *Guiding Principles on Internal Displacement*, available from the website of the United Nations High Commissioner for Human Rights, <http://www.unhcr.ch/html/menu2/7/b/principles.htm> (accessed May 22, 2007).

4. See Peter Hans Kolvenbach, S.J., “Accompany, Serve, Advocate Their Cause,” address to JRS regional directors, June 23, 1997, in Jesuit Refugee Service, *Everybody’s Challenge: Essential Documents of Jesuit Refugee Service 1980–2000* (Rome: Jesuit Refugee Service, 2000), 77–79.

5. For a description of the CRS “justice lens” approach, see Robin Gulick, “Justice,” available from the CRS website, http://www.crs.org/our_work/what_we_do/CRS_themes/justice/index.cfm#background (accessed May 23, 2007).

6. See the description of the *Médecins Sans Frontières* mission of “Speaking Out to End Suffering,” available from the MSF website under “About Us,” <http://www.doctorswithoutborders.org/aboutus> (accessed May 23, 2007).

7. See U.S. Committee for Refugees and Immigrants, “Statement Calling for Solutions to End the Warehousing of Refugees,” February 2007, which affirms that the basic human rights of refugees include “the rights to earn a livelihood—to engage in wage-employment, self-employment, the practice of professions, and the ownership of property—freedom of movement and residence, and the issuance of travel documents,” http://www.refugees.org/uploadedFiles/Investigate/Anti_Warehousing/statement.pdf (accessed May 23, 2007).

8. United Nations General Assembly, *2005 World Summit Outcome Document*, September 16, 2005, no. 138, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (accessed May 23, 2007).