

Protracted Refugee Situations and the Right of Return

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According to the United Nations High Commission for Refugees (UNHCR), protracted displacement situations occur where no durable solution has been found five years after that displacement took place, though the U.S. Committee for Refugees and Immigrants (USCRI) describes them as “warehoused” after a period of ten years. Protracted refugees and internally displaced peoples (IDPs) are often correlated with protracted violent conflicts over a long period. However, there is no necessary linkage. Tutsi refugees remained in a protracted situation for approximately 30 years, but the violence had ceased almost a quarter of a century before, resuming only in 1990. Bhutanese refugees lived in camps in Nepal for years without a protracted conflict. In protracted situations resulting from forced displacement, in a context of physical and psychological insecurity, most refugees’ lives remain on hold confined to refugee camps often in remote, desolate and dangerous border areas in countries of first asylum usually without rights of mobility or employment and very limited opportunities to engage in commerce or trade. Militias and locals often prey on them. In addition to material deprivation, they suffer from psychosocial problems, violence and sexual exploitation. Their sense of self worth is eviscerated by hopelessness and despair. Compassion fatigue often leads to the provision of reduced rations and services.

Approximately 4.5 of 6.2 million refugees under UNHCR protection live in protracted refugee situations, mostly in Africa and Asia. According to a 2004 report by

UNHCR, the average duration of protracted situations increased from nine to 17 years between 1993 and 2003. There are now also twice as many IDPs than refugees in protracted situations.

The oldest extant protracted refugee situation in the world is that of the Palestinian refugees. Over 700,000 fled or were forced to flee the hostilities that occurred in 1948 when five Arab armies invaded the new, UN-endorsed, Jewish state. In their 2006 report on the Iraq War for the U.S. Congress, entitled *The Iraq Study Group Report: The Way Forward – A New Approach*, Lee H. Hamilton and former U.S. Secretary of State James A. Baker III recommended addressing the right of return to end the conflict. President Bush repeated the centrality of the right of return instead of the formula, a just solution to the Palestinian refugee conflict. What did the settlement of the Iraq War have to do with the “right of return” of Palestinian refugees to homes from which they have fled, in 1948, in what is now Israel? Is there a right of return? Has anything ever been done anywhere at any time to implement it?

The right of return is included in a plethora of international covenants and documents in addition to the myriad of resolutions passed by the UN General Assembly interpreting the original 1948 resolution and urging Israel to permit return following a peace agreement when and if refugees agreed to return in peace. Can a rights-based approach help resolve the problem and find durable solutions for these refugees? Article 13(2) of the Universal Declaration of Human Rights states: “Everyone has the right to leave any country, including his own, and to return to his country.” The Convention Relating to the Status of Refugees (July 28, 1951), in Article 1(C), insists

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that only the refugee can freely determine whether or not to return to his home or country. Article 12(4) of the 1966 International Covenant on Civil and Political Rights provides the displaced with a "right to enter his own country." Rights guarantee freedom of movement.

Prior to the 1990s, UNHCR emphasized voluntariness and the exercise of free will by the individual refugee in contemplating return. The exercise of that free will was linked with the disappearance of the sources of the violence that had stimulated the exodus rather than as an exercise of a right. Return was not to be coerced. However, UNHCR's 1996 Handbook on Voluntary Repatriation: International Protection, which can be traced back to UNHCR's September 1993 draft "Protection Guide on Voluntary Repatriation," subsumed voluntary repatriation under the right of return rather than linking return simply with changing conditions, namely reduced violence. Is repatriation as a right the solution for refugees and IDPs in protracted refugee situations?

Currently, there are over 1 million refugees in Zimbabwe; almost 1.5 million IDPs in the Democratic Republic of the Congo and a similar number in northern Uganda; 750,000 in Côte d'Ivoire; 250,000 in Georgia; over 500,000 in Azerbaijan (though 60,000 Georgian refugees returned to Abkhazia's Gali District where the Georgians constitute the majority); an estimated 4 million plus in Colombia resulting from both the civil and narcotics wars; over 3 million Afghans who remain as refugees and IDPs; and over 2 million Iraqi refugees and over 2 million Iraqi IDPs as a byproduct of the U.S.-led invasion, the resultant insurgency, internal ethnic and religious wars. Though many will return when the violence stops, it is unlikely there will be returns where the returnees constitute a minority. Look at the historical record.

In the organized return of Indochinese refugees beginning in the late 1980s, no ethnic minorities were returned. In Rwanda, Tutsis returned from almost 30 years in exile in 1994 but only behind the victorious Tutsi-led rebel army and only after almost 1 million Tutsi civilians were slaughtered by Hutu extremists in the worst genocide since the Holocaust. When 1 million Hutus were released from the control of the extremists in Zaire (now the Democratic Republic of the Congo) after the former Rwandan government army and its militia allies in Zaire were defeated, the Hutu refugees returned to Rwanda where they constituted 85% of the population. In addition to Zaire, the Tanzanian government forced an additional 500,000 Hutus to return. In contrast, after the war broke out in the late 1990s between Ethiopia and Eritrea, those of Ethiopian and Eritrean extraction living in the opposite country who were forced or "encouraged" to leave have not been permitted to return.

Following the Dayton Accords, leaders in the West, strongly supported by NGOs and international agencies, were committed to cease ethnic cleansing in Bosnia by repatriating the refugees. The High Representative of the UN Secretary-General had the power to force recalcitrant local officials to follow the policy and remove the obstreperous ones who did not. The international community invested enormous amounts of money to implement this policy. More than half of the 2 million refugees returned and Bosnia was cited as a successful case of repatriation. However, the vast majority were ethnic-majority returns and many cases recorded as minority returns included those who had only returned to reclaim and sell their property. Genuine cases of minority returns

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to majority controlled towns and areas consisted mostly of the elderly who were in no position to restart their lives. Relatively little genuine minority repatriation took place. In the Kosovo war in 1999, the UN Security Council resolution 1239, adopted on May 14, 1999, decreed "the right of all refugees and displaced persons to return to their homes in safety and in dignity." NATO military action against Serbia enforced the decree but did far too little to ensure the security and safety of the Serbian minority except in the small enclaves where they were the majority. Consequently, tens of thousands of Serbs fled Kosovo.

Similar events took place during the same period in Asia. Following the withdrawal of the Indonesians from East Timor after the independence movement won the vote, a large return to East Timor took place, but new refugees fled to Indonesia. The Lhotshampa refugees, who were denaturalized and had been chased out or had fled Bhutan in the 1980s, were not reintegrated into Nepal but kept in refugee camps. In October 2006, the U.S. offered to resettle 60,000 Bhutanese refugees, with Canada, Denmark, Norway, the Netherlands, New Zealand and

Australia agreeing to pick up the rest who want to resettle. In Burma, there were two separate failed repatriations of the Rohingyas, the first resulting in their wide scale abuse which forced most to flee again and undercut any possibility of the second effort succeeding. The international community never tried to repatriate the large number of Burmese refugees along the Thai border. However, the international community, again led by the U.S., has recently initiated a resettlement policy along with a small effort to integrate some of the refugees into Thailand. In Sri Lanka, after IDPs fled the battle between the Sinhalese-dominated government in Colombo and the Tamil Tigers, Hindu Tamils were resettled to ensure Sinhalese both demographic as well as strategic control of certain areas.

The discrepancy between the moral ideals of repatriation and its implausibility in the real world in cases of ethnic conflict has not lead to any re-evaluation of the principles or the language of rights... Insistence on a right of minority repatriation only leads to greater misery for refugees and inhibits the development of more feasible solutions.

In southern Sudan, a large return movement began after a peace agreement was signed in 2004 between the Khartoum government and the Southern rebels. As a result, refugees began returning to areas where their ethnic group was the majority. Before ink had been put on paper to settle the southern war, a rebellion broke out in the Darfur region of western Sudan, and the government of Khartoum, with the support of nomadic Arab militias, initiated the ethnic cleansing of the African agriculturalists, the Fur, the Masalit, and the Zaghawa. Over 2 million were internally displaced and 200,000 fled to Chad. In spite of the presence of large numbers of humanitarian workers, a relatively large peacekeeping force, the widespread condemnation of the actions of the Sudanese government, and the prosecution of Sudanese government officials by the International Criminal Court, there is no sign of return for the displaced, a return that continues to be unlikely unless coercive force is used.

Returning to Europe, in 2004 Kofi Annan proposed a peace agreement for Cyprus endorsed by Greece, Turkey and the EU that called for non-repatriation of refugees

and Turkish settlers brought into Cyprus by the occupying Turk power in the north. The Greek Cypriots rejected the deal although practice belies the right of return widely upheld.

The failure to integrate refugees locally or resettle them abroad often produces refugee warriors who continue to destabilize the states from which they fled as well as neighbouring states. Refugee camps become a base from which they wage war, recruit others, or rest, unintentionally abetted by the humanitarian aid available in the refugee camps.

Authorities and donors can ensure that aid meets the basic needs of refugees but this will not resolve the protracted nature of the refugee and IDP crisis. One can follow the UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) model to increase the capacity of refugees through education and training programs and to increase the readiness of refugees to seek meaningful and productive employment, for such points in the future when durable solutions are available. Such a policy was made public in the Pre-ExCom Consultations, "Moving Forward: Identifying Specific Measures to End Refugee Warehousing" (September 2004, 29), and in an alphabet soup of partnership programs based on C+, CPA, FDS, DAR, the 4Rs and DCI. But this does nothing to aid the search for durable solutions and nothing to end the protracted situation of refugees.

Another proactive response to protracted situations is a rights-based approach as opposed to a needs-based or capacity-building approach. Instead of merely trying to ensure that the standards in the camps meet minimum conditions, and instead of going one step further and trying to build the capacities of those refugees, countries of first asylum are urged to guarantee the rights of refugees to move and seek employment so that refugees can be economically integrated even if they are not politically integrated, a program consistent with the 1951 Refugee Convention.

There are a number of reasons why countries of first asylum are extremely reluctant to offer more rights to refugees: rising unemployment rates in their own countries could lead to domestic unrest if refugees were given the opportunity to work; such rights would provide a disincentive for refugees to return home and an act as a magnet for others to come; and settlement would not encourage refugee-exporting countries to look for solutions. The policy of local integration, which was the original mandate for UNRWA in dealing with the Palestinian refugees, largely did not work. What about pushing for another set of rights, the right of refugees to return to their homes?

The "right of return" has become a symbol for resolving refugee crises the world over lest ethnic cleansing be

legitimized. On December 23, 2004, the Tibetan Refugee Welfare Office in Nepal and the Eminent Persons Group on Refugee and Migratory Movements in Sri Lanka issued a statement calling for solutions to end refugee warehousing that was endorsed by more than 100 organizations and a great number of individuals including refugee law scholars and human rights activists as well as four Nobel laureates, Archbishop Desmond Tutu among them. This right applies despite whether or not the individual or group held citizenship in the state that now controls the territory from which the flight took place. Furthermore, the right has been extended to progeny not born in the country from which the refugees fled. For many, return provides an assumed solution to the refugee crises.

However, a century of historical practice indicates that when ethnic or religious minorities are uprooted, the displacement is most often permanent even when the international community makes strenuous efforts, except when coercive force is used. The discrepancy between the moral ideals of repatriation and its implausibility in the real world in cases of ethnic conflict has not led to any re-evaluation of the principles or the language of rights. Emphasizing return as a durable solution in cases of minority return perpetuates the plight of refugees and extends the protracted situation while prolonging the misery of refugees and fostering the creation of refugee warriors. Insistence on a right of minority repatriation only leads to greater misery for refugees and inhibits the development of more feasible solutions.

The pre-eminence of ethnicity as a source of violence is not necessarily applicable in cases of ideological conflict as in the case of Afghanistan. The Tripartite Memorandum of Understanding Between the Government of the Kingdom of Sweden, the Government of the Islamic Republic of Afghanistan, and UNHCR signed in Kabul on December 26, 2007, designed to help Afghan refugees return recognized "that the right of all citizens to leave and to return to their country is a basic human right enshrined, inter alia, in Article 13(2) of the 1948 Universal Declaration of Human Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights." Return was ostensibly based on international human rights agreements guaranteeing that right. But Afghan return was a matter of majority return. Other than the continuing violence of the Taliban, which clearly impeded return, there was no threat to the returnees because of their ethnic identity. This was not a case of minority return and the citation of a right to return was superfluous to the actual repatriation.

Majority return following a political settlement is often successful and does not require the citation of a right to return. Minority repatriation has almost never been

implemented successfully, except through force. Citing a right to return has not and will not reverse the reality. If, in cases of ethnic and religious conflict, administrative and political energies are spent holding refugees in "temporary" camps for long periods in the hopes that they can be repatriated when the violent conflict ends, return will remain forlorn and refugees will suffer unnecessarily. Of course, while resettlement with reparations may solve the individual deprivation, it may undermine the contribution of refugees to the self-determination of the group.