

Can Humanitarian Work with Refugees be Humane?

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Exile is the eruption whose lava stream carries you away
Exile is the warning example to those who
Still have their homes, who belong.
But will you take heed of the warning?
Exile is the escape that is often worse than the prison¹

I. INTRODUCTION

This article highlights one dimension of the provision of humanitarian aid, the interactions between “helpers” and refugees in contexts where refugees

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1. PAUL TABORI, *THE ANATOMY OF EXILE: A SEMANTIC AND HISTORICAL STUDY* (1972) *quoted in* VICTOR LAL, *FROM REPORTER TO REFUGEE* (1997).

are dependent for their survival on assistance distributed by humanitarian organizations.² There is much evidence that the treatment meted out to refugees by too many of those delegated to help them is such that it can only be described as “inhuman.”³ This topic is not usually talked about, but the awareness of its ubiquity causes serious personal disquiet and uneasy consciences amongst many who work for these organizations.

This paper will review a number of attempts to explain such behavior and review some solutions that have been proposed. It will be argued that until refugees have access to effective legal remedies, humanitarian assistance will continue to be inhumanely delivered to refugees. In short, what is needed is a “rights-based humanitarianism” that goes beyond “private charity or governmental largess.” This approach is not about discretionary assistance when the mood for benevolence takes us. It is about defending, advocating and securing enjoyment of human rights. It also implies a shift from seeing beneficiaries of humanitarian aid as “victims” to be pitied, to survivors of adversity—who often demonstrate unimaginable strength and dignity in the most adverse circumstance.⁴

Daring to raise the question, “Can humanitarian work with refugees be humane?,” is much like “sending mother’s apple pie to the Federal Drug Administration (FDA) for chemical analysis or turning the family dog over to medical research.”⁵ However, as we shall see, assistance to refugees is

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2. This essay was written at the request of the organizers of the conference, Recovery and Development after Conflict and Disaster, held at the Norwegian University of Science and Technology, 5–6 April 2000. The invitation asked the author to address a topic on which she had already published: Barbara E. Harrell-Bond, *The Experience of Refugees as Recipients of Aid*, in *REFUGEES: PERSPECTIVES ON THE EXPERIENCE OF FORCED MIGRATION* 136–68 (Alistair Ager ed., 1999). This article was directed to psychologists and suggested how relationships between humanitarian “helpers” and their beneficiaries, the refugees, can become a source of psychologically debilitating stress. Its aim was to convince those who have been looking to the experiences of forcible uprooting, torture, and other forms of violence as the main explanation for the lack of mental well-being (or mental illness) among refugees that they may have been looking in the wrong direction. It directed attention to the stress associated with the refugee experiences during the “liminal” period of transition from flight to secure settlement. These experiences take place mainly in the context of camps but everywhere that refugees are dependent on others for their survival.
 3. This article draws on a number of sources and my own research experience since 1982, including recent research on the enjoyment of rights by refugees in Kenya and Uganda. This research in East Africa was part of a collaborative project involving four universities: the Centre for Refugees Studies, Moi University, Kenya; the Institute of Public Health, Makerere University, Uganda; the Institute of Tropical Medicine, University of Antwerp, Belgium; and the University of Oxford’s Refugee Studies Centre. Funding was provided by the Ford Foundation, the EU, the Nuffield Foundation, and the Norwegian government.
 4. Marion Birch, *Principled Aid in an Unprincipled World: Relief, War and Humanitarian Principles*, Conference Report, ECHO/ODI Conference, 7 April 1998. (On file with author.)
 5. S. Waldron, *Blaming the Refugees*, 3 *REFUGEE ISSUES* (Apr. 1987).

conceived of in terms of charity rather than as a means of enabling refugees to enjoy their rights. There are insufficient resources to meet needs, with the power to decide their allocation placed in the hands of humanitarian workers who have no responsibility to consider the views of those for whom they are intended. As a consequence, both humanitarian workers and refugees are “trapped” in asymmetrical relationships in a structure in which accountability is skewed in the direction of the donors who pay for the assistance,⁶ rather than the refugees. As one United Nations High Commissioner for Refugees (UNHCR) management consultant acknowledged, “We work for no other organization in the political, governmental, or commercial world which has such an absence of mechanisms for determining citizen or consumer satisfaction.”⁷

The purpose of this paper is to examine these and other “political” forces at work that lead some humanitarians to take actions which, in the particular context, may appear completely reasonable to them, but which not only fail to uphold the dignity of the people they purport to serve, but positively violate their rights.⁸ As Foucault put it, “the real political task in a society such as ours is to criticize the working of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them.”⁹ After all, what happens in these personal interactions between humanitarians and refugees at the micro-level can be a “microcosm for the ill-starred relations between (western) humanitarian ‘charity’ and its target populations. What goes wrong at this level both reflects and affects (infects) what is wrong at the macro level.”¹⁰

The post-flight refugee experience typically includes a series of events and encounters with many different actors and institutions that are uniquely stressful and take place in a variety of contexts. They begin with the challenge of getting in—past border patrols and immigration officers. In these situations refugees may also be subjected to cruel and inhuman

6. These donor governments are also notoriously anti-refugee.

7. KRC Research & Consulting Inc., *A Communications Strategy for the Office of the United Nations High Commissioner for Refugees: Executive Summary*, Report prepared by Mark Malloch-Brown for UNHCR, at 8 (Sept. 1991).

8. Some humanitarians even regard human dignity as “relative.” Reacting to criticisms of the disparity between the assistance program for the Kosovo refugees and that provided Africans, a CARE worker, experienced as a camp manager in both Africa and Europe, asserted: “The life in Africa is far more simple. To maintain the dignity and lifestyle of Europeans is far more difficult.” T. Christian Miller & Ann M. Simmons, *Chicken for Kosovo Refugees, No Water for the Africans*, *MONITOR*, 26 May 1999, at 14.

9. Foucault, in *HUMAN NATURE*, at 171 (as cited by *THE FOUCAULT READER* 6 (Paul Rabinow ed., 1984)).

10. Marguerite Garling, Email, Comments on draft (1 May 2000).

treatment, but the perpetrators are not employed by humanitarian organizations. For an increasing number of refugees in the South¹¹ the post-flight experience involves the prolonged suffering that refugees are put through in the process of seeking asylum. Some refugees must endure this process more than once.¹² In many countries, judgments concerning who is a refugee are now being made by staff of the office of the UNHCR. This organization was established to protect the rights of refugees, including the right to asylum. Yet UNHCR staff have been found to be following procedures less favorable than UNHCR itself advises states to respect.¹³ Once a refugee has applied for asylum, he must still wait for a decision, sometimes facing years of insecurity.¹⁴

II. THE "TROUBLES" OF GIVING

The social fact that the exchange of goods is not a mechanical but a moral transaction, bringing about and maintaining personal relationships between individuals and groups, was first expounded by a French sociologist, Marcel Mauss.¹⁵ Receiving "gifts generates an obligation to reciprocate."¹⁶ As Mauss put it, the gift "debases" the one who receives, especially if there is no

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11. I use the term "the South" to make a global distinction, in lieu of such terms as "underdeveloped" or "developing."
 12. For example, officials from "resettlement" countries do not automatically recognize as refugees persons UNHCR has recommended. Applicants must re-establish the credibility of their claim in terms of the UN 1951 Convention. This process includes the largely unrecognized pain entailed in reliving experiences in preparing testimonies to justify a claim for refugee status. I have met one Sudanese refugee who had to prove he was a refugee with three different representatives of officialdom before being approved for resettlement in the USA, where, incidentally, his wife and children had already been resettled. This should have made his case one of family reunion rather than a question of status as a refugee.
 13. The majority of refugees go through this process, without enjoying their right to legal representation, in a social environment that is dominated by a "culture of disbelief" or cynicism. See Michael Alexander, *Refugee Status Determination Conducted by UNHCR*, 11 INT'L J. REFUGEE L. 252 (1999); Guglielmo Verdirame, *Human Rights and Refugees: The Case of Kenya*, 12 J. REFUGEE STUD. 54 (1999).
 14. When, in the language of UNHCR, refugees cannot "achieve a durable solution" in the country of asylum or is unlikely to be able to repatriate in the foreseeable future, they may become candidates for resettlement in another country. The possibility of being selected creates another situation of anxiety and stress for refugees, too complicated to discuss within the confines of this article. See LAL, *supra* note 1.
 15. MARCEL MAUSS, *THE GIFT: FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES* (Ian Cunnison, trans. 1925); E.E. EVANS-PRITCHARD, *Introduction in MARCEL MAUSS, THE GIFT: FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES* (Ian Cunnison trans., 1970).
 16. Doreen Indra, *The Spirit of the Gift and the Politics of Resettlement: The Canadian private sponsorship of South East Asians*, in *THE INTERNATIONAL REFUGEE CRISIS: BRITISH AND CANADIAN RESPONSES* 243 (Vaughan Robinson ed., 1993).

possibility of reciprocation. In short, *power* is often at the very center of giving and receiving gifts.¹⁷ As Indra explains: "Anything that impedes the appearance of fully equivalent exchange [reciprocity] therefore can result in the receiver ceding status or power to the giver."¹⁸

"Reciprocity differs from market exchange in its symbolic and social consequences: the things exchanged are not only (or at times not at all) valuable in their own right, but also because of what their exchange means for the relations between the parties concerned." As Indra goes on to explain: "Balanced reciprocity is characterized by an ideology of non-maximizing, spontaneous, uncoerced giving where individuals expect the exchange of things of relatively equal value, have an expectation of fairly immediate return and possess a clear sense of the value of things exchanged and of the possible benefits reciprocity confers."¹⁹ Such "balanced" reciprocity "usually only occurs between people of similar status."²⁰

The dominant ethos of humanitarianism is charity, and charitable giving is carried out by persons voluntarily engaged in *giving* to those in need. As Indra points out,

The western charitable ideal of altruistic, spontaneously and autonomously-motivated giving is so symbolically opposed to "economic" exchange and economising and places such great moral weight on the value of selflessness as to seem to exclude it from use in reciprocal social relations.²¹

Thus in the context of giving humanitarian assistance, whether or not they are aware of it, humanitarian workers stand in an asymmetrical relationship to refugees who are symbolically disempowered through becoming clients of those upon whom they are dependent for the means of survival and security.²²

17. The powerful obligation that is inherent in the act of receiving has been recognized in Islam: rulers are strongly warned against accepting gifts offered to them. I.F. Uthman, *BAYAN WUJUB AL-HIJRA 'ALA 'L-IBAD* (F.H. El Masri ed. & trans., 1978). Indeed, as Mauss put it, the gift "not yet repaid debases the man who accepted it, particularly if he did so without thought of return." MAUSS, *supra* note 15.

18. Indra, *supra* note 16.

19. *Id.* at 343.

20. *Id.*

21. *Id.*

22. "Empowering" is part of the *doxa* of "humanitarian speak" as well as "development speak." How can one "empower" another person? Can one think of any example where power was *given away*? As information is a form of power, one wonders if this is why almost everything related to assistance programs managed by humanitarian organizations is "highly confidential" and documents are classified in terms of the levels in the hierarchy in which they may be circulated. M. Jennifer Hyndman, *Geographies of Displacement: Gender, Culture and Power in UNHCR Refugee Camps, Kenya* (Sept. 1996) (Ph.D. Thesis, Dept. of Geography, University of British Columbia).

III. THE SOCIAL CONTEXT FOR "GIVING" ASSISTANCE TO REFUGEES

The main context in which the distribution of internationally-funded assistance to refugees takes place is the refugee camp. Despite their ostensible "temporary" nature, these settings have become the main living environments for many refugees for years and, in some cases, for more than one generation. As Black has pointed out, there are many and widely varying types of camps and settlements and living conditions within them, but most share certain common characteristics, including an authoritarian structure of administration.²³

In a refugee camp where food and other assistance is being distributed, the source of the gift is a far distant foreign donor. The role of the gift-giver, in Mauss' terms, and the *power* to decide who *deserves to receive*, has been transferred by donors to the staff of humanitarian organizations. There is thus a special relationship of the power of the person who distributes the "handouts" (as they are often disparagingly described) with the refugee who must passively receive. The power of the helper is further "legitimized by its implicit association with altruistic compassion."²⁴ Of course, this method of distribution is "functional": its effect is to reduce visible dissent.

The Non-Government Organization/United Nations(NGO/UN) staff administering the distribution of assistance and representing the humanitarian regime are themselves hierarchically organized, with the staff of UNHCR typically "senior" to all others, including those who are representatives of the host government.²⁵ Refugee populations are heterogeneous in every respect (age, education, gender, social class, and so on), but the *per capita* method of distribution of aid is the "leveler," it emphasizes their "equality" or homogeneity *and* their inferior position *vis-à-vis* those who control the distribution of aid.²⁶ Aid—the need for it and the responsibility to distribute it—is the unifying principle that binds these diverse actors together.

23. Richard Black, *Putting Refugees in Camps*, 2 FORCED MIGRATION REV. 4–7 (1998).

24. Mark Walkup, Policy and Behavior in Humanitarian Organizations: The Institutional Origins of Operational Dysfunction 144 (1997) (unpublished Ph.D. thesis, University of Florida, Gainesville).

25. Control of funds and thus the hierarchy of power varies from place to place. The competition for power between NGOs and between them and UNHCR is discussed in more detail in E.V. Daniel & J. Chr. Knudsen, *Mistrusting Refugees*, in IN SEARCH OF THE LOCUS OF TRUST: THE SOCIAL WORLD OF THE REFUGEE CAMP (E. Voutira & Barbara E. Harrell-Bond eds., 1995).

26. This "de-classing" process has an enormous impact on the social organization that refugees bring with them. Some changes that result from this leveling, however, may be considered as positive. For example, divested of his role as breadwinner, a man frequently finds his wife asserting power in their relationship, even leaving him on the grounds of his behavior that she had previously tolerated, such as his beating her.

The authoritarian character of camp administration is justified on the grounds that humanitarian agencies have been delegated the responsibility for distributing "equitably" and accounting for funds earmarked by donors for "deserving" refugees, objectives that require strict control to achieve. At the same time, both sets of actors are aware of the symbiotic nature of their relationships. One Mozambican refugee in Malawi, having been denied her ration, articulated this relationship clearly as she cried out for all to hear: "Remember, you have your job because we are here."

What legitimizes the helpers' authority is not merely the presence of the refugees, but the maintenance of the exercise of their allotted functions: the helpers and those who need the help. The maintenance of these roles is independent of the actual needs or abilities of the refugees who in many cases could quite capably administer and distribute the aid among themselves, a fact so obvious it hardly requires pointing out. What happens, for example, when the situation is "too dangerous" for foreign-born humanitarians to be present to distribute assistance? Food is dropped from the air by plane and the recipients take full responsibility for its allocation.²⁷ Such self-distribution is often unlikely to be any more arbitrary than what actually happens when organizations distribute aid.²⁸

The external justification for funding the institutional/administrative structure set up to distribute aid relies in important ways on portraying refugees as helpless and desperately in need of international assistance. This image reinforces the view that outsiders are needed to help them. It also conditions the behavior of helpers, whose interests are served by pathologizing, medicalizing, and labeling the refugee as helpless and vulnerable.²⁹

This stereotype of the helpless refugees also informs refugees' perceptions concerning the role they are expected to play to gain the approval of the helpers and to be successful in obtaining aid. As most refugees are able to infer, accepting their client role and ingratiating themselves with camp authorities and individual helpers is one of the survival strategies used in the context of fierce competition over scarce humanitarian aid resources.

Such ingratiating behavior takes many forms, for example, singing

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27. For a discussion of the long-term advantages of such arrangements see BARBARA E. HARRELL-BOND, IMPOSING AID: EMERGENCY ASSISTANCE TO REFUGEES 359–61 (1986); D. & P. TURTON, *Spontaneous Resettlement After Drought: An Ethiopian Example*, in DISASTERS (Mar. 1984). The threat of diversion of food aid from civilians to armed groups is often given as the justification for foreign control of distribution, but the evidence that the presence of humanitarians serves to prevent such diversion is not encouraging.
 28. W. JAMES, THE BONGA SCHEME: PROGRESS TO 1994, AN OUTLOOK FOR 1995: A REPORT FOR UNHCR ASSISTANCE TO SUDANESE REFUGEES IN WESTERN ETHIOPIA (A Report for UNHCR) (1995) (available in the RSC Library, University of Oxford).
 29. Anna Belinda Steen, *Refugee Resettlement: Denmark and Britain Compared*, REFUGEE PARTICIPATION NEWSLETTER 8, RSC, Oxford (1993).

songs in praise of UNHCR or referring to this organization or an NGO as their mother and/or father, or representing themselves as helpless victims of circumstances. Referring to Somali refugees in the camps in Kenya, Hyndman notes that "Some . . . have been representing themselves in this way for so long that, along with convincing the donors of its reality, they've also convinced themselves." This, Hyndman observes, has led to a "diminution" of their capacities "as their energy and intelligence are increasingly directed towards manipulating donors for 'freebies'."³⁰

While images of the "good" refugee who is starving and helpless may motivate people to become helpers, there is an alternative stereotype of "bad" refugees as thankless, ungrateful, cheating, conniving, aggressive, demanding, manipulative, and even dangerous persons who are out to subvert the aid system. Neither image embodies the complexities of human reactions in situations of extreme stress, but as anyone who has worked with refugees will likely agree, *it is the latter image or experience of refugees that has the greatest bearing on how helpers treat refugees.*

It is quite true that refugees—even the same individual refugee—may be just as likely to exhibit what appears to outsiders as anger and aggressiveness as docility, particularly when docility fails. Such reactions are quite normal reactions for anyone who has been placed in a position of powerlessness and lacks opportunity to take control of his or her own life. Moreover, aid workers often alternate between the two images of their "clients"—depending on whether the situation in question is paternalistic and stable or threatening to their power. As Hyndman noted: "One moment they are asked to become leaders and decisionmakers in the camp; the next they are herded behind barricades at gun point in order to be counted for a UNHCR census."³¹

As Hyndman observes from her fieldwork in Dadaab camp, *sometimes* the agency staff would "maintain that a refugee camp [population] can be treated as a *trustworthy* community" while at *other times*, "they treat [the same population of] refugees as institutional subjects who *cannot be trusted*."³² "For the helpers, the ultimate 'good' is the maintenance of their

30. Hyndman, *supra* note 22, at 107.

31. It is also true that refugees, like any other population, include people who are violent. Violence among refugees has probably increased as a consequence of the greater availability of small arms in such places as Uganda and Kenya. Humanitarians may fear refugees, but incidents of physical attacks by refugees on humanitarian staff are extremely rare. This may be because, according to Emanuel Marx, people are likely to reserve the "use" of violence to situations where there is a possibility of it achieving a desired end and they consider themselves "able to suffer the possible dire consequences" of the act. EMANUEL MARX, *THE SOCIAL CONTEXT OF VIOLENT BEHAVIOR: A SOCIAL ANTHROPOLOGICAL STUDY IN AN ISRAELI IMMIGRANT TOWN 100* (1973); see also Hyndman, *supra* note 22, at 109.

32. Hyndman, *supra* note 22, at 109.

exercise of authority, for the refugees, it is the acquisition of material goods."³³

Humanitarian images aside, power in camps in fact is exercised through both coercion and discipline. "Kenyan police guard the camps . . . while the 'humanitarian international' literally organizes the field: building camps in a grid style; generating systems to meet refugees' basic needs in an orderly way; and checking refugee cards to ensure a match between family size and their given rations."³⁴ As in Dadaab, Kakuma refugee camp is administered by UNHCR and its implementing partners, "independently of the government, outside its judicial system, with no checks on powers, and, in effect, without legal remedies against abuses" despite the fact that its population is living on the territory of Kenya.³⁵ When some refugees behaved "badly," on two separate occasions that I witnessed, collective punishment was the "humanitarian" response.

It must be stressed that collective punishment is considered so abhorrent under international law that it is an act prohibited even to an occupying power in time of war.³⁶ No legal justification for the imposition of such measures on the part of a UN agency *and* in time of peace can be found.³⁷ Nevertheless, as Verdirame reports, on two occasions, after "unidentified refugees destroyed the enclosures built for distribution rations and counting refugees," food distribution was cut off. The first occasion was in April 1994 when rations were withdrawn for twenty-one days; the second was in 1996,

[T]his time for 14 days, and the punishment also included the withdrawal of the "incentives" paid to employed refugees with the exception of those involved in "essential services". The withdrawal of food affected the entire population of Kakuma. It must be stressed once again that the people of Kakuma are completely dependent on food aid for their survival.³⁸

IV. UNDIGNIFIED HUMANITARIANISM

Given the increasing use of negative adjectives such as "bogus," "scroungers," "fortune seekers," even "sores,"³⁹ to describe refugees, it is not surprising

33. Voutira & Harrell-Bond, *supra* note 25, at 216.

34. Hyndman, *supra* note 22, at 14.

35. Verdirame, *Human Rights and Refugees*, *supra* note 13, at 64.

36. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 33, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (*entered into force* 21 Oct. 1950) (*entered into force for U.S.* 2 Feb. 1956).

37. Verdirame, *Human Rights and Refugees*, *supra* note 13.

38. *Id.*

39. The discourse on refugees is unfortunately tied to short-hand terms such as "the root cause of flight," which not only seem to mask the substance of the cause of flight and

that many refugees believe their very identity and status has been degraded. However, the image of the “good,” deserving refugee also can have its degrading dimensions. For example, in introducing his book, *From Citizen to Refugee* (which he says is the “story” of those Ugandan Asians who *refused to become refugees*), Mamdani notes that he has used the term refugee “with some hesitation”:

Contrary to what I believed in Uganda [before being expelled], a refugee is not just a person who has been displaced and has lost all or most of his possessions. A refugee is in fact more akin to a child: helpless, devoid of initiative, somebody on whom any kind of charity can be practised, in short, a totally malleable creature.⁴⁰

Agency publications that do give voice to refugees tend to concentrate on publishing refugees’ statements that fit this childlike image: simply worded, semantically flat expressions of “the sadness of exile,” the “longing for home,” and how “grateful” refugees are to those who have come to assist them.⁴¹ However, refugees with whom I have spoken more often feel anger towards their helpers and the institutions responsible for helping them. For example, as I observed during the war in the Former Yugoslavia, Bosnians interpreted the inappropriate contents of the food packages—such as diet foods—as evidence that the donors did not *respect* them enough to bother to consider them as “fellow human beings.”

It is important to emphasize that help provided in a crudely “infantilizing” mode is common. One sees how this could easily arise in the face of power differentials and language and cultural barriers between aid workers and refugees. One refugee, a university student from the now Democratic Republic of Congo, talked about his experiences in Sweden where he was treated “like a baby.” In my kitchen in Oxford, while helping me clear the table, he acted out how one of his “helpers” spoke to him: “Now, this is how you pick up a plate. This is the way you place it on the counter.” He went on, “They tried to make me feel as if I were back to zero.” Even though he found a language class in Uppsala more appropriate for university entrance (his objective), he was forced to learn Swedish with a group of mixed ages and abilities, including persons who had never been to school. “They would not allow me to work things out for myself,” he complained.⁴²

its impact on the individual refugee, but also to contribute to the increasing popular conception of refugees as fortune-hunters or sores. Marjoleine Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, at vii (1997) (published Ph.D. thesis, University of Amsterdam).

40. MAHMOOD MAMDANI, *FROM CITIZEN TO REFUGEE: UGANDAN ASIANS COME TO BRITAIN* Preface (1973).
 41. UNHCR, *Refugee Voices from Exile*, in *REFUGEES* 3–30, at 107 (1997); Rebecca Gilbert, *Letters from Refugees: An Insight into the Refugee Experience*, RSC Student Paper, RSC Library (1995).
 42. Interview with Mahmood Mamdani, 13 July 1997.

Somalians have noted that head counts, the price of receiving food rations in camps (involving being rounded up by armed police and forced to move inside fenced lots), do not “respect basic human dignity” and “reminded them of the slavery under Arab rule.”⁴³ In fact, as has already been shown, the contradictions inherent in “humanitarian” assistance are most graphically illustrated in the confrontational relations between the “helpers” and the “beneficiaries” in the context of distributing assistance.

On the one hand, refugees resist all efforts to count them accurately.⁴⁴ To maximize access to scarce resources, individual family members shift between camps, falsely register household members, assume more than one identity and, very frequently, conceal deaths.⁴⁵

Because numbers are essential for appeals for international funding, extraordinary efforts are taken by UNHCR and NGO partners to conduct “accurate” censuses.⁴⁶ Methods involve herding refugees into enclosures and night swoops on camps. As one manual on registration advises: “Spot checks involve an actual head count and are best carried out at unsocial hours like midnight or dawn when the majority of people will be in their houses. You will need a large number of staff to go round counting every person.”⁴⁷

In a particularly “messy” attempt to conduct a surprise nocturnal census in Somalia, “retaliatory” violence broke out:

43. Hyndman, *supra* note 22, at 101.

44. Barbara E. Harrell-Bond et al., *Counting the Refugees: Gifts, Givers, Patrons and Clients*, 5 J. REFUGEE STUD. 205 (1992). In the contexts of two attempts to count refugees in Kakuma camp, refugees actually “tore apart the enclosures built for the exercise, and on the other, they kidnapped staff participating in the ‘headcount’.” To gain control over the situation, UNHCR finally had to “consort with the leaders of the Sudanese People’s Liberation Army (SPLA). . . . Meeting with political groups contravenes UNHCR official policy, but . . . staff felt they had little choice.” See *id.*; see also Hyndman, *supra* note 22, at 101.

45. One family admitted to me after I got to know them very well, the grandmother whom they had initially claimed had in fact died about 8 months earlier while they were in a tent on the beaches of Khan Younis. Unable to survive without her ration card, the family concealed her death, they buried their mother in the sand under the tent. When they were re-housed, they were unable to bring the body with them.

Louise Weighill, personal communication.

46. UNHCR, REGISTRATION: A PRACTICAL GUIDE FOR FIELD STAFF (May 1985).

47. Being less concerned with the inherent dignity of all human persons than *fairness*, OXFAM commissioned this handbook for the “organization and operation of emergency registration of refugees.” It recommends the introduction of “guards” and “shepherds” to police the queues, and “markers” who are responsible for daubing the registered refugee with gentian violet to prevent cheating. In an annex, entitled “Cheaters,” aid workers are warned to daub this gentian violet on a part of the body difficult to reach since a “determined” cheater can wash it off within twenty-four hours. JOHN MITCHELL & HUGO SLIM, REGISTRATION IN EMERGENCIES: OXFAM PRACTICAL HEALTH GUIDE (1990).

At high speed and with ten people in one car they [the census takers] drove into the camp and stopped just in front of a compound gate. Everybody had to run out of the car, burst into the compound, flashlights flashing around, run into the houses and other structures and count the number of people present. . . . As all this happened at night and without the people in Sigalow knowing that they would be visited, the whole procedure caused considerable disturbance. . . . After two of these runs the project manager was asked to stop. He however insisted on trying another one. Then a hail of stones was thrown at the car. The front wind-screen was smashed, glass flew inside the car and, at high speed, the driver taking considerable risks [of running over refugees], safety was finally reached.⁴⁸

Hyndman describes the implementation of a similar secret plan in Kenya, devised to avoid refugees' subverting the count.

At five in the morning approximately two hundred Kenyan police and army personnel surrounded the camp. Six counting centres had been set up. All refugees were awakened and instructed to move to the nearest center, each of which was fenced and guarded. UNHCR staff, many of whom had flown in from other locations to assist, communicated by walkie talkie between the centres. Refugees then filed through narrow corridors through which only one person at a time could pass. Here, they were counted—their hands marked with ink to signify this—and moved to the next area cordoned off within the fenced center. . . . The exercise was complete by early morning.⁴⁹

V. INHUMANE HUMANITARIANISM

Long ago Alex De Waal noted that people who choose humanitarian work are not experienced in contributing to the death and suffering of large numbers of people, yet “voluntarily being unpleasant to strangers is one of the most frequent activities that working in a relief program involves.”⁵⁰ Mark Walkup suggests that the statement—“being unpleasant to strangers”—is an understatement, particularly in regard to actions taken far from metropole scrutiny. He describes an incident he observed in a refugee camp in Kenya where the UNHCR Field Officer was trying to get a large group of women to sit down while they were waiting for the distribution of plastic sheeting for house construction.⁵¹

48. Harrell-Bond et al., *supra* note 44.

49. Hyndman, *supra* note 22, at 101.

50. Alex De Waal, *The Sanity Factor: Expatriate Behavior on African Relief Programs*, in Refugee Participation Network, Network Paper 2b, 1 RSC/QEH (May 1988).

51. Walkup, Policy and Behavior, *supra* note 24, at 97.

When they did not comply with directives to sit, he seized a small tree branch and began beating the women. His beating continued throughout his time there, which he told me was for “monitoring purposes”. . . . He approached a small group of refugees gathered between the refugee women and the distribution center and grabbed a teenage boy by the neck and roughly slung him to the ground with an audible thud. His threats with the stick persuaded them to disperse. When he approached me later with stick in hand, he said matter-of-factly, “Beating refugees with sticks is not in UNHCR policy, but sometimes we have to do it.” On the beating, his colleague attested, “Somali women need this because they don’t understand like men.”⁵²

The means of violence to control or “discipline” refugees is normally available to the staff of humanitarian organizations,⁵³ but *the threat of violence is usually sufficient to obviate the need for it*. It certainly must be unusual for a researcher to “catch” a UNHCR official in the act of beating a refugee, but it is not unusual for humanitarians to be found passively observing such abuses being carried out by others in their employ.

In January 2000, while evaluating the work of a humanitarian NGO, the author’s team was observing the registration of Burundian refugees in Tanzania. The major challenge at registration, as perceived by UNHCR, is “catching” the “recyclers,” people pretending to be new arrivals so as to acquire extra food rations or non-food items provided them.

Once a “recycler” is identified (by whatever extra-judicial means), the person is ordered to return to his or her camp. . . . a pregnant mother [believed to be such a recycler], carrying a baby and with a toddler following her was pushed out of the queue. The *sungu sungu* [uniformed refugees employed and armed with sticks by UNHCR to police other refugees] then began hitting her on the legs with their sticks.⁵⁴ The woman was pleading and crying, the toddler screaming. This scene was observed by UNHCR and other agency staff, *but none of them interfered*.⁵⁵

52. *Id.* at 83–84.

53. In the form of (usually armed) police and guards (and/or radios and mobile phones to call them when they are not on the spot).

54. All *sungu sungu* carry sticks. The police do not, nor, we were told, do they carry firearms in the daytime. They are only armed for night patrols. Nevertheless, the team questioned the need for such shows of force at the registration center. The refugees arrive exhausted from a journey cooped up in a lorry that is covered by plastic. Water is not provided to the passengers, who are packed in with their properties; there are no “comfort” stops on the way. Their appearance, as they disembark, is one of shock and confusion. According to our observations, they remain passive and “obedient” throughout the registration process.

55. Barbara E. Harrell-Bond et al., *Aid Evaluation of the Tanganyika Christian Refugee Service (TCRS) Refugee Project in Kibondo District, Tanzania: 5–19 Jan. 2000: Report and Recommendations* (Feb. 2000).

Such acts of violence chiefly occur in refugee camps out of eyesight of the media or independent observers, but attempts by refugees to access necessary services in more public places may also be met with threatened, or actual, violence. Very rarely, however, are such incidents reported or even observed by persons whose testimony is sufficiently credible to interfere effectively. An exception was an incident that occurred in Nairobi on 10 July 1997. It was observed by a lawyer employed by Human Rights Watch who promptly reported the incident by email.⁵⁶

There are about 80 Somali refugees (1 Sudanese family) who have been there two weeks. They came from Swalehuguru camp at the Coast (the camp was burnt down some time back after an attack by the local population). . . . [T]his group made their way up to Nairobi and came to the UNHCR office . . . to ask to be transported to Kakuma camp in NE province. They were told that the Nbi office does not process them and to go back to Mombasa. They have no money and have set up a makeshift camp right between the highway and the HCR office. This morning (Oct. 7), they came into the UNHCR compound to ask again for help. It was raining and they crowded under the building awning. According to the refugees a white man ordered the security to get them out. The HCR security beat a number of them and got them out of the compound. . . . One man was injured and his finger appears to be broken. He is lying under a blanket on the side of the road. Another woman I interviewed had a bloody eye from being beaten. I have urged the refugees to file police reports. They had been getting water from the latrine in the HCR compound, but have now been denied access to it so they have no water. All they are asking for is transport to be taken to Kakuma camp. . . . There is no need for excessive use of force by HCR security and surely something can be done to help this group?⁵⁷

The inhuman treatment accorded refugees waiting for their asylum cases to be heard or to receive services at the offices of UNHCR or their implementing partners has been so widely reported that it can only be described as normative. What happens in Kenya, at “Wood Avenue”⁵⁸ was the subject of an essay by a linguist, Dr. Alfred Buregya (a Hutu refugee from Rwanda).⁵⁹ It describes his personal experiences over the two-year

56. Data collected by Guglielmo Verdirame in research on refugee rights funded by the Ford Foundation. His own assistant also was observing this incident and wrote a report. Guglielmo Verdirame, Final Report to the Ford Foundation, Refugee Studies Program (1998).

57. E-mail from Binaifer Nowrojee, Human Rights Watch, to UNHCR, forwarded to Guglielmo Verdirame, 10 July 1997; see also Lucy Hannan, *Police Round Up Refugees “Spies”: Hundreds are Being Sent to Camps in an Operation Denounced as Illegal by Lawyers*, GUARDIAN, 31 July 1997, at 41.

58. The location of the office of the Jesuit Refugee Service, UNHCR’s implementing partner in Nairobi.

59. Alfred Buregya, *And When You Go to UNHCR to Seek Protection: First, Let Us Pray* (unpublished manuscript, available at RSC library) (1998).

period he waited for an appointment and portrays a picture that is the common experience of refugees awaiting their claims for asylum to be heard.⁶⁰

The data collected in Uganda is also replete with examples of inhuman behavior meted out to individual refugees trying to access the services of Kampala's Inter-Aid, the NGO partner of UNHCR responsible for its urban caseload. One of the constraints facing its Ugandan staff employed by UNHCR are the severe restrictions on the budget allocated to provide services to refugees living in urban areas. As is spelled out in UNHCR's 1997 Comprehensive Urban Policy,⁶¹ with few exceptions, assistance should only be provided to refugees in camps. To assist staff who work in urban centers to determine the exceptions, that is "who *might*, after a rigorous needs assessment, be considered for assistance" outside of camps, the following definition is provided:

[A]n urban refugee is an individual of urban background in the country of origin and who is not part of *prima facie* caseload. A refugee of rural background—for whom, in the country of asylum, the option of a rural settlement which offers an opportunity for self-sufficiency does not exist, may exceptionally be considered for assistance in an urban area. *Irregular movers do not qualify for consideration for assistance in urban areas.*⁶² (Emphasis added.)

Given these rules imposed on Inter-Aid by UNHCR, its local Ugandan staff face major dilemmas. For example, decisions to spend money on an

60. He forwarded his essay to Mrs. Ogata, the High Commissioner for Refugees, who returned it to UNHCR Nairobi "for comment." This is the usual practice when a refugee resorts to sending a complaint to UNHCR Geneva. Dr. Buregya learned that when it arrived in Nairobi, "his file was moved" but he could not know if this was an ominous or propitious sign. His essay did, however, motivate the new Senior Protection Officer, Pia Phiri, to attempt to introduce changes. Moreover, she welcomed and cooperated with a study we commissioned, undertaken by a Ugandan refugee, John Otim, to monitor the behavior of staff towards refugees. Such feedback mechanisms need to be institutionalized. See John Otim, *A Study of Problems Affecting Refugees Access Their Rights and Ways of Survival Within Nairobi City* (unpublished, available at RSC Library, University of Oxford).

61. UNHCR, *UNHCR COMPREHENSIVE POLICY ON URBAN REFUGEES* (Mar. 1997).

62. The term, "irregular mover" refers to persons who attempt to live outside the confines of refugee camps and those who have managed to move to a different country where opportunities for earning a livelihood, gaining an education, or being "resettled" might be more accessible than in their country of first asylum. The concept itself has no standing in international law. Understanding the importance of refugees enjoying freedom of movement in order to find just such solutions to their particular circumstances, Nansen introduced the so-called Nansen Passport to facilitate such movement. Article 28 of the 1951 Convention also includes the right to a travel document, today the Convention Travel Document or "CTD." In an interview, 28 March 2000, with Vincent Cochetel, the UNHCR protection officer in Cairo, we were informed that UNHCR now allows his office to assist single women with children who otherwise would be likely to resort to prostitution for their survival.

individual case (IC), the short-hand for individuals with problems that require other than the standard aid package, must be approved by a member of the international staff.

Health services provided even for those on the approved urban caseload list in Kampala are limited to primary health care. It is rumored that staff in Kampala are forbidden to give any assistance, including medical, to anyone over seventy years of age. Although this is hotly denied by Inter-Aid staff, our experiences with elderly refugees would appear to confirm this to be the policy.⁶³ Even a child with second degree burns on his hand who was brought to Inter-Aid for medical attention was turned away.⁶⁴ Resource insufficiency and methods people use to respond to it sometimes involve absurdities: requests to spend money on such serious medical cases must be forwarded for approval to a committee in Geneva.⁶⁵ One Ugandan social worker explained a case with which she had been confronted and how her appropriate reaction almost cost her job.

Three refugees lived together. One was paralysed from the waist down. He was not only dying, he smelled so badly it was impossible to live in the same room. His roommates locked him in the room and abandoned him, but one reported to this social worker. She immediately investigated, called an ambulance and transferred him to a hospice. However, as the cost was significantly above what UNHCR would tolerate, she was warned if she ever did such a thing again, she would be sacked.⁶⁶

Medical cases referred to Inter-Aid from a camp, are, by definition, very serious and the treatment required likely to be expensive. The tendency of the Inter-Aid staff is to ignore the person's needs or put off authorizing

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63. See, for example, the case of Mr. Gaspard Rutama, a elderly Rwandan who had spent most of his life in Uganda. His medical report (from Dr. Lydia AZ Mpanga MRCP(UK), 27 Apr. 1999) details a litany of health problems arising from chronic malaria and malnutrition. He lives on the street and "is occasionally fed by a kind Ugandan woman when she is able to afford it." (Letter, To Whom It May Concern, 9 Aug. 1999). He was, in fact, sixty years old but he looked much older. Perhaps the staff of Inter-Aid could have been forgiven for believing him to be over the seventy-year limit, if indeed this was the reason he was repeatedly turned away when he sought help.
64. The author acknowledges the help of Dr. Ian Clarke, an expatriate doctor resident in Kampala. Over the period of the research we were able to refer increasing numbers of such emergency cases to him for *pro bono* medical services. In other cases, one simply paid out of one's own pocket.
65. Ronald Kalyango, *The Role of the Non Governmental Organizations in Providing Humanitarian Assistance to Urban Refugees in Kampala* (2000) (unpublished Masters Thesis, Dept. of Social Work and Social Administration, Makerere University).
66. *Id.* Persons employed by UNHCR are in a privileged position with regard to salary. Unemployment among university graduates is very high in Uganda.

treatment.⁶⁷ In mid-1999, one very ill refugee, still in great pain, showed me a doctor's report from Mulago hospital informing the Inter-Aid staff that he urgently required abdominal surgery. He explained what had happened after he had been referred to Inter-Aid from a refugee camp, having no place to stay or anyone officially responsible to feed him in Kampala. In the frustration of trying to get access to this prescribed medical attention, he had entered the offices without permission from the receptionist—who had managed to “hold him at bay” for many days. The immediate reaction of the staff was to call their guards, who kicked and punched him *in the stomach*.⁶⁸

In January 2000, a thirty-five-year-old Rwandan refugee referred from a refugee camp for medical treatment died before he could make it past the receptionist at Inter-Aid. Unusually, news of the circumstances of his death reached the local press and created an uproar in Kampala.⁶⁹ Assisted by his uncle, he had arrived directly to Inter-Aid on 11 January 2000. They were told that they were too busy to attend to him that day and Inter-aid staff directed them to the Salvation Army hostel where other refugees in Kampala were residing. These were refugees who had been placed there because they were at risk of abduction by agents from their countries of origin and could not be protected from such a risk even in refugee settlements. Ironically, several weeks earlier these very refugees had been given notice to leave the place and find their own housing. When they did not leave, their food had been cut off (31 December 1999). The Salvation Army Captain, according to his own testimony, had been told to starve them out.⁷⁰

Although in terrible pain, Mr. Kaijuka returned with his uncle to Inter-Aid again the next day. Without money for transport, this involved a long journey on foot. Again, “At Inter-Aid, Mr. Kaijuka sat waiting in the sun for several hours outside the main offices. The staff eventually told Mr. Kaijuka they could not take him to the hospital because . . . they were again too busy.”⁷¹

67. One Ugandan social worker employed by Inter-Aid asked the rhetorical question: “How does it ‘feel’ to be a helper faced with inordinate suffering and be unable to authorise treatment?”

68. He did report this to the Old Kampala Police station and an officer walked to Inter-Aid to ask why they would be “torturing” refugees. However, no further action was taken.

69. Internationally, at least word reached UNHCR Geneva as the articles were scanned and transmitted by email. See Pamela Reynell, Letter: *UNHCR Starves Refugees*, MONITOR, 13 Jan. 2000; Katamba G. Mohammed, *One Dead After Government, UNHCR Dump Refugees in Ntinda*, MONITOR, 14 Jan. 2000; Editorial: *How many Refugees Must First Die Off?*, MONITOR, 14 Jan. 2000, at 8; Murray Oliver, *Death of a Ghost*, MONITOR, 19 Jan. 2000; Lagira S. Oroma, Letter: *UNHCR, InterAid a Disgrace*, MONITOR, 20 Jan. 2000, at 9.

70. Oliver, *supra* note 69.

71. *Id.*

Mr. Kaijuka staggered into an empty room and laid on a small grass mat. Sometime during the night, he curled up into a ball and pulled his threadbare blanket up close to his neck. He tucked his hands under his chin, perhaps for warmth. Then Mr. Kaijuka's humble struggle for survival, his flight from Rwanda, his years in the camp, all slipped away late in the night of January 12, 2000, on the floor of the Salvation Army compound. . . . Mr. Kaijuka died alone.⁷²

VI. EXPLAINING "INHUMANE" HUMANITARIANISM

Can the inhuman behavior of humanitarians be explained in terms of differences in individual reactions to the unequal power relations between them and the refugees? We have already noted how the structure of humanitarian assistance programs is organized in such a way that it makes it almost inevitable that some people will act crassly and sometimes cruelly. Humanitarians, who control the distribution of aid, view themselves as accountable to the donors rather than to the beneficiaries.⁷³ Because giving assistance is generally regarded as charity, humanitarians also assume the power to decide *who is deserving*. Such power is highly seductive and brings out the best or the worst in us.⁷⁴ Whether or not a particular refugee is likeable may in itself be the basis of inclusion or exclusion and woe be to any refugee who articulates his or her needs in terms of rights.⁷⁵ As Verdirame observed in Kenya:

What happens on the ground is much more the result of individuals' decisions and personalities than of the application of standards and procedures. The social scientist may consider this a completely self-evident statement, but for the lawyer—who *must* believe in the existence of principles, procedures and standards as necessarily separate from individuals and views this separation as the basis of the rule of law—this finding is rather discomfoting.⁷⁶

72. *Id.*

73. Waldron describes accountability in assistance programs for refugees: "As long as the food and numbers balance, accountability is satisfied . . . when the balance is disrupted, so is the security of the individual bureaucrat and the system as a whole." Waldron, *supra* note 5.

74. As the author found when asked to do a census of a refugee camp in 1982, many "irregularities" including the breaking open of the food store had occurred. See HARRELL-BOND, *IMPOSING AID*, *supra* note 27, at 104–17; see also DeWaal, *supra* note 50, for a detailed discussion of the inappropriate coping mechanisms adopted by "expatriate" relief workers who find themselves in situations where their actions are inflicting pain on others.

75. Verdirame, *supra* note 13.

76. *Id.* at 54–55.

Can inhumane behavior of humanitarians towards refugees be understood as a function of scarce resources? In his exploration of the social context of violent behavior, Marx notes that “The incompatibility between willingly accepted obligations and the resources required for their discharge is conducive to violence.” However, here Marx was concerned with acts of violence perpetrated by those who are dependent on an official bureaucracy.⁷⁷

The issue of differential allocation of funds to different refugee populations as a result of donor ear-marking clearly does have a negative impact on budgets for refugees in the South.⁷⁸ The scarce resource argument might appear reasonable until one learns that in 1998 UNHCR’s Kampala Branch Office had a significant surplus that it returned to Geneva—suggesting that the problem is sometimes one of allocation and the strict adherence to the policy of discouraging refugees from remaining in urban centers.⁷⁹

Such an interpretation is supported by the changes introduced by UNHCR following the publicity given the case of the Rwandan who died in the Salvation Army hostel. As one refugee reported: “The allowance for refugees [has now been] raised from UgShs 57000 to UgShs 86500. . . . New arrivals are given status quicker than before and refugees have started to get recognition as human beings both at Inter-Aid and elsewhere.”⁸⁰ Moreover, if an enduring problem is scarce resources, would it not be more honest (humane) to explain this reality to refugees? This would, however, require greater transparency concerning how budgets are allocated than humanitarian organizations are prepared to practice.⁸¹ How much do the administrative structures that have been erected to deliver the assistance

77. MARX, *supra* note 31, at 100. He notes that the “violent act seeks to alter the dependence relationship with the aggressor [in his account, the official who controlled resources] and the victim” [the individual aggrieved by not receiving his fair share].

[T]he client tries to redress the balance of dependence in his favour. In effect he intimates to the official that while he may control a valuable resource, he is vulnerable as an individual. He should not retreat behind his official role, but behave as a person, for as such they are both equals. . . . The violent person does not try to escape from dependence, but just to alter the balance of the relationship.

Id.

78. Miller & Simmons, *supra* note 8, at 14.

79. The source of this information was one law student who served as a UNHCR intern (personal communication).

80. Newton Kinity, email, 17 Mar. 2000.

81. Several years ago a UNHCR staff person wrote me a highly disturbing letter about an incident that happened in Ethiopia. With a senior staff person, they encountered a group of Somalians in dire need of food. His senior promised the group that food would be coming in two weeks, both knowing full well it was not. His senior justified this lie by saying it would give the Somalians “hope.” I pointed out that this assumed the Somalians had no other options but to wait, but that by letting them believe food would come if they stayed in one place, they were eliminating that option and probably condemning them to death by starvation.

refugees receive cost in comparison to the value of what refugees receive? An analysis of UNHCR's expenditures prepared for the United Kingdom government's Department of International Development (DFID), concluded that only "10.649 percent would reach the refugees on the basis of the information provided. A government could however perhaps take a more lenient view [of the amount going to overheads by its implementing partners in addition to administrative costs incurred by UNHCR itself] but even then on this basis only 32.07 percent reaches the refugees."⁸²

Is the "cause" of inhumane behavior vis-à-vis refugees a function of a lack of training of humanitarian workers? Walkup argues that staff often lack the skills to cope with the challenges of working in a relief program and recommends apprenticing new personnel to veteran workers to "encourage organizational learning," but he notes that instead of investing in training, "donors would rather spend money directly on 'victims'."⁸³ Referring to UNHCR staff behavior in particular, Mauro De Lorenzo also concludes his analysis of the problem as one that calls for more training:

The locus of the problem is rather to be found in the "institutional culture" of relations between UNHCR staff and the refugees they serve and the lack of accountability in decision-making. UNHCR officials' behavior towards refugees is consistently characterized by defensiveness, mistrust, and even distortion of facts. Refugees who seek intervention from third parties on their cases are administratively and verbally punished. Decision-making seems to be almost entirely discretionary and intuitive rather than rule-based, and there are no obvious channels to review negative decisions. Refugees' claims of physical insecurity are thus often dismissed as lies or manipulation, without any sort of investigation. UNHCR protection staff are not held accountable for their behavior towards refugees, and refugees rarely complain officially for fear of having their cases "sat upon" by the offending staff member. The logic seems to be that standing up for one's rights is not compatible with refugee status. Even effective responses to protection problems are frequently the result of "string-pulling" or the valiant efforts of a single individual within the organization (who may create enemies among colleagues in doing so). The fact that the implementation of UNHCR policy varies so dramatically depending on the individual staff member indicates that UNHCR does not adequately train its officials.⁸⁴

82. Syed Tajammul Hussain, *Implication of Current Financial Statements of UNHCR in Respect of the Actual Aid to Refugees* (Jan. 2000) (unpublished). This document was prepared for the UK government.

83. Mark Walkup, *Policy Dysfunction in Humanitarian Organizations*, 10 J. REFUGEE STUD. 37, 56 (1997).

84. These comments are based on one year's observations of UNHCR/Ugandan staff behavior *vis-à-vis* refugees in Kampala. Mauro De Lorenzo is a Rhodes Scholar, University of Oxford. He spent twelve months assisting the refugee rights research in Uganda, doing most of the interviews of French-speaking refugees. He also acted as an

Until less than two decades ago, there were no specialized courses or degree programs designed to prepare people to work in the field of humanitarian assistance. Although such opportunities for training have proliferated, there is yet no evidence that education *per se* has a direct impact on behavior in the field.⁸⁵ Even if the content of the training or education was aimed to change behavior, it is unlikely to have much effect if the institutional structures in which humanitarian workers have to operate are not changed.

Is inhuman behavior towards refugees best explained in terms of the dysfunctional organizational culture of humanitarian organizations? Walkup's study of the organizational culture of humanitarian organizations has provided perhaps the most convincing theoretical explanation for how and why inhuman behavior towards refugees has become normative and thus self-perpetuating within humanitarian organizations.⁸⁶

Despite their good will and persistence in the face of overwhelming tasks, HO [humanitarian organization] personnel and those who interact with them continue to be frustrated by the lack of learning, improvement, and policy effectiveness within these organizations. A defensive resistance to innovation and information feedback causes HOs to make the same costly mistakes repeatedly when they intervene in crises, *sometimes doing more harm than good to affected populations*. Scarce funding is wasted through mismanagement and poorly-designed policy (often causing donors to cut funding to essential programmes), and the affected populations ultimately suffer due to these institutionalized dysfunctions.⁸⁷

He argues that despite their numbers and diversity, humanitarian organizations, both nongovernmental and intergovernmental, display remarkable similarities in terms of their organizational culture, a culture which he describes as extraordinarily rigid, conservative, and defensive.⁸⁸

In sum, to maintain psychological stability, aid workers utilize various defensive strategies depending on the severity of the distress. However, the strategies are not isolated to the psyche and behavior of the individual aid worker in the field. On a deeper and more complex level, the resulting

interpreter and held several interviews with UNHCR officials in Congo and Uganda. Mauro De Lorenzo, email, 17 Apr. 2000.

85. A method to evaluate the impact of in-service training on the performance of humanitarian professionals has yet, so far as I know, to be devised.
86. See Walkup, *Policy and Behavior*, *supra* note 24; Walkup, *Policy Dysfunction*, *supra* note 83.
87. Walkup, *Policy Dysfunction*, *supra* note 83, at 37. (Emphasis added.)
88. The culture of organizations include basic assumptions and beliefs unconsciously shared by members and the "written and unwritten rules, codes of conduct, patterns of interaction, standard operating procedures, rituals, and myths that shape the behavior of both an organization and the individuals who comprise it." *Id.* at 38–39.

institutionalization of such strategies provides the structure for a common organizational culture.

Defensiveness, according to Walkup, is the posture assumed by humanitarian organizations to protect “two interrelated components essential for organizational survival: myths and money.”⁸⁹ On the one hand, they are characterized as benevolent and selfless organizations, while their “rational” interest in their own survival requires them to employ “the same strategies of aggressive competition for survival and growth in a market environment as are employed by most profit-making corporations.”⁹⁰ This causes tensions in both policymaking and in the psyche of individual staff as they must make decisions and justify actions by two “different sets of often conflicting criteria.”⁹¹ At the same time, “Unlike market-oriented firms, HOs are not threatened by the dissatisfaction of consumers, but by the donors’ displeasure with their service. Understandably, then, they are naturally more responsive to donor interests than to the needs of the affected population.”⁹²

The dysfunctional characteristics of the culture of humanitarian organizations, defensiveness and delusion, as analyzed by Walkup, have developed as a product of frontline aid workers’ efforts to cope with the psychological distress of their work—stress, anxiety, frustration, and guilt. He details some of the conditions of work that lead to these symptoms of distress: the impossibility (given the scale of the need) of significantly improving the conditions of affected populations as a result of insufficient budgets, logistical problems, unreliable transport and distribution networks, militarily hostile environments, unfamiliar cultures and languages, insufficient or incorrect information, inadequate communications systems, interactions with other personnel with “incongruous motivations and behaviors,” powerful ethical dilemmas, and so on.⁹³

Individual “responses to psychological stress result in two general dynamics within HO culture: *delusion* and *defensiveness*.”⁹⁴ Walkup shows how “mediatory myths” have become encoded into the culture of humanitarian organizations to “enable personnel to get on with their work in spite of the various dilemmas arising from the institutional contradictions between expectation and reality.”⁹⁵ He also explains how such myths contribute to the development of mechanisms designed to protect such

89. *Id.* at 50.

90. Walkup, *Policy and Behavior*, *supra* note 24, at 158.

91. *Id.* at 168.

92. *Id.* at 163.

93. *Id.* at 89.

94. Walkup, *Policy Dysfunction*, *supra* note 83, at 47.

95. Walkup, *Policy and Behavior*, *supra* note 24, at 170.

institutions from “contrary information.” He notes especially how reporting formats do not permit free expression of the opinions of humanitarian workers in the field and how even the language used within humanitarian organizations is designed to deliberately portray reality in a more favorable light in order to protect workers from “contrary information” or interpretations of the reality.⁹⁶

This intentional obfuscation of reality is done for several reasons: to generate “good press”; to maintain or justify funding (a legitimate, “rational” motivation); and to perpetuate the internal myth of efficacy, accomplishment, and humanitarian morality. This collective self-deception is [also] necessary for the maintenance of staff morale.⁹⁷

He points out that in order to continue being employed, individuals *must learn to cope* with the horrific conditions of humanitarian work.⁹⁸ He identifies four stages or reactions: overwork, detachment, transference, and reality distortion. “In the *transference stage*, aid personnel are no longer able to detach themselves from the ever present suffering that they are incapable of alleviating. *Now, to protect Self, they begin to rationalize failure by transferring the guilt away from themselves and pointing the blame at other factors.*”⁹⁹

In addition to blaming politics, their superiors, the donors, the bureaucracy, or the host government, they also begin to blame the victims. Quoting Waldron, Walkup notes: “refugees cease to be people *with* problems; refugees *become* the problem.”¹⁰⁰ This manner of coping leads staff to “focus their efforts on *eliminating* the organization problem (refugees) instead of successfully performing their assigned functions by improving their effectiveness through innovation and creativity. . . . Unfortunately, the organizational solution often leads to increased suffering and death.”¹⁰¹

Walkup cites examples of institutional attempts to *eliminate* the refugees, that is, the “organizational problem.” These include increasing attempts to repatriate refugees prematurely, introducing efforts to prevent them from fleeing violence by establishing “safe havens,”¹⁰² and the practice

96. For example, hoes and seeds become “self-sufficiency packages,” landmine-riddled areas where warring factions agree to halt ambushes become “corridors of tranquility” or “safe havens.” Cutting rations to coerce refugees to go home, “voluntary repatriation,” and lack of assistance is defined as preventing the “dependency syndrome.” Walkup, *Policy Dysfunction*, *supra* note 83, at 49.

97. *Id.* at 50.

98. The coping strategies Walkup identifies—denial and rationalization—have shaped the organizational culture accordingly.

99. *Id.* at 45–46. (Emphasis added.)

100. *Id.* at 46.

101. *Id.* Quoting Waldron, *supra* note 5. (Emphasis added.)

102. Walkup, *Policy and Behavior*, *supra* note 24, at 181.

of illegal forced repatriations—all undertaken “simply because proper care for them became difficult and they became a threatening budgetary problem for UNHCR.”¹⁰³ As we have seen, other strategies include defining refugees as undeserving opportunists (“recyclers,” “irregular movers”), refusing them medical treatment, and cutting off support to refugees who were formerly defined as in need of protection as in the case of the refugees who UNHCR attempted to “starve” out of the Salvation Army hostel in Kampala.

VII. A CASE FOR “UNDERSTANDING” OR THE INTRODUCTION OF THE RULE OF LAW?

Will understanding the underlying causes of inhumane behavior towards refugees lead to positive change? Mark Walkup set about the task of analyzing the dysfunctional institutional culture of humanitarian organizations with the underlying assumption that “Once better understood, HOs can improve personnel support, thereby positively modifying organizational culture to better fulfil their objectives.”¹⁰⁴ He concludes his work with a series of recommendations that, if followed, he believes would improve the situation for the beneficiaries of humanitarian work.¹⁰⁵ However, *none of these recommendations address an underlying problem that he also identified: the motivation for institutional survival in a competitive environment.*

Walkup does point out the absence of consumer protection in humanitarian assistance programs and talks about the “HOs’ defensive efforts to keep it that way [which] are characteristic of how most HOs operate in countries in the south.”¹⁰⁶ He compares the power of humanitarian organizations *vis-à-vis* their clients with the “[s]ocial service organizations operating in most northern countries” that is, in principle, “governed by laws, regulations, and licensing requirements that give clients rights to appeals and transparent public scrutiny to ensure that they uphold specified standards.”¹⁰⁷ What he fails to do is to suggest ways in which the abuse of

103. *Id.* at 142.

104. His assumption that understanding might improve the structure of assistance has been shared by others. See, e.g., HARRELL-BOND, *IMPOSING AID*, *supra* note 27; Voutira & Harrell-Bond, *supra* note 25; Walkup, *Policy and Behavior*, *supra* note 24; Walkup, *Policy Dysfunction*, *supra* note 83.

105. These recommendations include improving staff selection and training, retaining good staff and keeping them in an assignment where they can build up local knowledge, introducing sabbaticals for continuing education, psychological support for workers in the field, listening to feedback from field staff, and independent research and consultant evaluations. Walkup, *Policy Dysfunction*, *supra* note 83, at 55–59.

106. *Id.* at 52.

107. *Id.*

power of humanitarian organizations *vis-à-vis* their beneficiaries might be broken by introducing such systems of accountability.¹⁰⁸

It is only recently that humanitarian agencies have begun to incorporate the language of human rights into considerations of their work. In 1997 a group of humanitarian agencies launched the Sphere Project. The Project has developed a Humanitarian Charter and a set of universal minimum standards to “increase the effectiveness of humanitarian assistance, and to make humanitarian agencies more accountable.” The Sphere Project is based on two core beliefs: “that all possible steps should be taken to alleviate human suffering that arises out of conflict and calamity” and “that those affected by a disaster *have a right to life with dignity and therefore a right to assistance.*”¹⁰⁹ The Sphere Project focuses on accountability in the delivery of adequate humanitarian assistance, but it also advocates that “governments and other parties meet *their* obligations under international human rights law, international humanitarian law and refugee law.”¹¹⁰

While the Charter states that NGOs “expect to be held to account,” the question of to whom humanitarian organizations would account is still being considered under a “Humanitarian Ombudsman” project initiated by British NGOs and is beginning to emphasize a more comprehensive rights approach.¹¹¹ Its aim is to increase accountability to beneficiaries by giving them the opportunity to file complaints.¹¹²

At an April 2000 Nairobi meeting of thirty-four African humanitarian and human rights NGOs, the participants began to echo complaints that arose during a November 1999 meeting of Asian NGOs in Bangkok. They accused UNHCR of having become too much of an ordinary relief agency and “told UNHCR to focus on protection.” To demonstrate their contention, “several West African human rights NGOs presented cases of asylum seekers in which UNHCR had failed to intervene for unknown reasons. In investigating these cases, the NGOs found that these asylum seekers were genuine refugees in need of international protection.”¹¹³

There appears to be a growing understanding that refugees “are covered

108. *Id.* at 55–59; Walkup, *Policy and Behavior*, *supra* note 24.

109. HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSES 1 (Isobel McConnan ed., 2000). Although more than 100 agencies that work in humanitarian assistance programs have “signed on” to these standards, so far as this author knows, to date UNHCR has not.

110. *Id.* at 9. (Emphasis added.)

111. The idea that an ombudsman might provide a mechanism for humanitarian agencies to be held accountable to beneficiaries had been suggested by the Joint Evaluation of Emergency Assistance to Rwanda (1996).

112. 2/3 TALK BACK, Newsletter of the International Council of Voluntary Agencies (ICVA), at 16–17 (2000), available at <<http://www.icva.ch>> (visited 17 Nov. 2001).

113. *Id.*

by international human rights law."¹¹⁴ But who will be responsible for upholding these rights?

Ralphe Wilde was a Sadako Camp volunteer who spent time in the Dadaab camps in Kenya.¹¹⁵ His experiences led him to develop the argument that although states are ultimately responsible for upholding the rights of those on its territory, since UNHCR has assumed the responsibility for the governance of refugee camps in this country, it also has assumed "*de facto* sovereignty" over them. Therefore, UNHCR is responsible for upholding the obligations and rights of refugees guaranteed under treaties into which the host state has entered. As he notes, Kenya is a party to the refugee conventions and other international human rights instruments.

The adoption of a human rights framework would require a leap of faith on the part of UNHCR. The organization would have to think in legal terms like a state responsible for human rights rather than a private actor responsible for refugee rights. Instead of viewing itself as the provider of certain basic services in the camps, it would confront the reality of governing a political unit, and therefore adopt a coherent and co-ordinated holistic strategy to run through all aspects of camp life. This would require a shift of emphasis away from what James Hathaway sees as the "remedial or palliative" function of the traditional refugee law activities that prevail in emergency situations, like the prevention of *non refoulement*. Instead, UNHCR would have to act in tune with the "interventionist or facilitative" nature of international human rights law. Governance in . . . camps does not concern refugees solely *qua* refugees, but *qua* human beings, who are entitled to the greatest range of human rights promotion that is possible. A step towards this is evident in the guidelines that UNHCR has already adopted on discrete areas of governance, such as women, children, and sexual violence. . . . Camps require governance that is as multifaceted as the term would suggest, however, involving as broad a range of considerations as any political unit.¹¹⁶

In short, as Wilde puts it:

What is fundamentally required is the wholesale revision of the operation of international refugee law, so that it can have a more effective impact on the rights and duties of refugees, states, and organizations. . . . Human rights law

114. Ralph Wilde, *Quis Custodiet Ipsos Custodes?: Why and How UNHCR Governance of "Development" Refugee Camps Should be Subject to International Human Rights Law*, 1 YALE HUM. RTS. DEV. L.J. 5 (1998).

115. UNHCR has introduced the Sadako program that permits selected young people to live for several weeks in refugee camps. Part of the requirements include writing a report.

116. Wilde, *supra* note 114. By establishing a legal framework for humanitarian assistance in the context of its delivery, Wilde argues that the possibility is opened for partnership with other actors such as the United Nations High Commissioner for Human Rights (UNHCR).

would no longer be the exclusive concern of protection officers. It would be of relevance to all who exercise authority in camp governance.¹¹⁷

Wilde sums up his position by stating: “Until a regime is developed that speaks to the nature of the current refugee phenomenon, the role of human rights promotion in refugee camps will be uncertain and insecure.”¹¹⁸

But do we need a new regime to promote respect for the rights of refugees? What procedures could UNHCR introduce to “assure that the duty bearers meet their obligations to the rights holders. . . . What remedies would be available to the rights holders themselves?”¹¹⁹ What happens when funding that supports UNHCR’s activities is withdrawn, as is being done in Uganda?¹²⁰

Would it not be better to encourage local institutions, both government and local nongovernmental organizations, to incorporate such responsibilities into their already existing activities? As reported in *Talk Back*, the NGO community is continuing to debate how to enforce accountability to beneficiaries among humanitarian organizations. One should not be surprised that, as outsiders, their solutions were to export yet *more outsiders*—an ombudsman, a people’s advocate. They did note, however, that:

Defining possible models of how the concept of a ‘people’s advocate’ will function is a major challenge. Is it an outsider claiming to speak on behalf of the beneficiary population? Or is it a representative, or a group of representatives of the beneficiary population raising public attention to their situation?¹²¹

The *Talk Back* discussion begins to arrive at what one would have thought to be the obvious *starting point*, that upholding rights and ensuring accountability for humanitarian assistance *is a state responsibility that is going unfulfilled*: that there is obviously the need to strengthen (or create) national and local institutions so that, “[H]umanitarian assistance would be brought within the larger framework of human rights institutions—a logical place considering that humanitarian assistance is (or should be) rights-based.”¹²²

117. *Id.*

118. *Id.*

119. Kenya Refugee Consortium (KRC), *The Nutrition Rights of Refugees (Draft)*, KRC Project Proposal (2000) (unpublished).

120. This program is eliminating the parallel health and education programs in place for refugees and making the local authorities responsible for delivering these services. Refugees are to become “self-sufficient” requiring “no greater external assistance than that available to nationals.” GoU [Government of Uganda] and UNHCR, *From Local Settlement to Self-Sufficiency: a Long-Term Strategy for Assistance to Refugees in Uganda 1999–2002* (2 June 1999); UNHCR, *supra* note 61.

121. *TALK BACK*, *supra* note 112.

122. *Id.*

There are many obstacles in the way of encouraging host states and institutions of civil society to assume their responsibilities for upholding the rights of refugees. However, the essential problem is that the authority to determine refugee and assistance policy and its implementation has been assumed by the humanitarian regime, specifically by UNHCR, which is also the main conduit for funds for assisting refugees. There have been exceptions, where governments have rejected humanitarian assistance.¹²³ However, once a host government invites UNHCR “in” and accepts international aid, the government and local civil society institutions and initiatives are often marginalized. As Karadawi noted, national institutions become “alarmingly dependent:

[T]here is rarely an opportunity for indigenous professionals to question the agencies’ approach or contribute to the general theoretical debate concerning their role in refugee assistance. It would sometimes appear that host governments, like refugees, are expected to receive assistance without questioning either the suitability of the gift or the competence of the giver.¹²⁴

In most countries where it operates, UNHCR’s relationships with host governments are for the most part limited to dealing with the staff of a specialized office that has been allocated the responsibility for domestic policy and practice.¹²⁵ Although there are a number of “intervening variables” (particular personalities, for example), one can say generally that the “independence” of host government policy is a function of its ability to avoid financial dependence on UNHCR.

In Uganda, for example, the salaries of the staff of the office of the Directorate of Refugees, Office of the Prime Minister, are “topped up” by contributions from UNHCR. Over the three years of our research on refugee rights we found that with rare exceptions, when addressing matters of policy, the Deputy Director of the Directorate and the Representative of the Kampala Branch Office spoke “with one voice.” Since 1986, the general understanding in the wider Uganda society is also that UNHCR is responsible for refugees in all respects. This view has greatly inhibited the

123. For Africa, see Barbara E. Harrell-Bond, *Breaking the Vicious Circle: Refugees and Other Displaced Persons in Africa*, in *THE AFRICAN SOCIAL SITUATION* (A. Adeji ed., 1990).

124. See Verdirame, Final Report, *supra* note 56, for a discussion of how UNHCR marginalized an NGO initiative in Kenya when it became “too” interested in issue the protection of refugee rights. In fact, it was able to play on competition among NGOs through its so-called “PARinAC process,” to at least temporarily silence complaints about conditions in the camps. See also A. Karadawi, *Constraints on Assistance to Refugees: Some Observations from the Sudan*, 11 *WORLD DEV.* 537 (1983).

125. Jude Murison, a Ph.D. candidate at Warwick University, is studying the history of refugee integration and settlement in Uganda. Her preliminary work suggests that all the relevant ministries of the government of Uganda took on administrative tasks in this respect up to mid-1980s.

development of a sense of responsibility towards refugees among the institutions of what we now refer to as “civil society.”

In Kenya, UNHCR’s control of policy and practice came later. Until 1990–1991, the government resisted giving land for refugee camps, and UNHCR’s presence and influence on policy was minimal. As the Kenya Refugee Consortium notes:

Since the 60’s and 70’s, Kenya has been hosting refugees from the East and Southern Africa region. In the 80’s, it continued to host refugees from Uganda, Sudan and Rwanda. These refugees were received and their status were determined by the Government and recognized as full status refugee[s] under the UN Convention. *This was a productive period for refugees as the host country engaged in programs to help them integrate into the society, for example into the civil service, teaching profession and other specializations.* All the status determination at the period was done at the Ministry of Home Affairs and the National Secretariat for Refugees with support from other organizations such as NCKK.¹²⁶

Once camps were established in Kenya, however, there was apparently no question as to who was in charge. In 1997, the civil servant who was head of the refugee office in the Ministry of Interior and Cultural Heritage complained that for him to visit a refugee camp even *he* had to have UNHCR’s permission.¹²⁷ Comparing the approach to dealing with refugees before and after UNHCR “took over,” Verdirame comments:

[T]he events of the early 1990s marked a significant shift to a new refugee regime in Kenya. On the one hand, the involvement of foreign NGOs and UNHCR guaranteed external resources at a time when the numbers of refugees exceeded Kenya’s capacity to absorb them through its generous, if somewhat *laissez faire*, policy. On the other hand, the emergency nature of the response of the NGOs, and of UNHCR, did not include any effort on their part to preserve the positive aspects of the pre-1991 regime. In particular, this pre-1991 regime was characterized by the fact that, other than poverty, which made survival difficult for many refugees in Kenya, *there were few formal obstacles to local integration and to the enjoyment of such basic rights as the right to work, to education, and to freedom of movement.*¹²⁸

Another remarkable difference in Kenya, as compared with Uganda, are the numbers of churches and secular NGOs with formal programs designed

126. Kenya Refugee Consortium, *supra* note 119. (Emphasis added.)

127. The backlash that resulted from the hostile relations between the government and UNHCR in August 1998 is detailed in Verdirame, *Human Rights and Refugees*, *supra* note 13. In short, the government suddenly announced it did not recognize UNHCR’s role in asylum determination and started arresting and deporting refugees who held “protection letters” that UNHCR had issued.

128. Verdirame, *Human Rights and Refugees*, *supra* note 13.

to assist refugees that emerged in the pre-1990 period. In the 1980s, for example, the numbers were so great that it was found necessary to conduct research to find ways to improve co-ordination among them.¹²⁹ Such local responses to the needs of refugees may be attributable to the relative absence of services for refugees paid for by UNHCR. In any case, until the 1990s, no one in Kenya held the view, so common in Uganda, that refugees “belong in camps.” After 1990, however, when UNHCR did move in,

[T]he same marginalization of national institutions occurred, and this at a time when civil society was, from 1991, beginning to make itself felt. The upshot was that the majority of human rights NGOs did not consider refugees to be their business, “since the UNHCR took care of them.” And this compounded a prevailing view in many African societies that non-citizens in general have no rights, or only on sufferance, and no place in constitutional discussions and texts.¹³⁰

VIII. REFUGEES AS THE “ENTRY POINT” FOR IMPROVING JUSTICE FOR ALL

Events in Uganda in the course of our research on refugee rights suggest that if the aim is to promote refugees’ enjoyment of rights and the accountability of the humanitarian regime to their beneficiaries, it is best to invest in strengthening local and national institutions. Whatever the difference in how donor funding policies are framed today, most have special programs for encouraging good governance, democratization, and human rights in the South. Perhaps because donors also view UNHCR as responsible for refugees, they have neglected to encourage the host institutions they fund to include refugees in their mandates.

If one agrees that the manner in which a society receives refugees (the stranger) and upholds their rights is a fairly accurate barometer of the extent to which human rights are generally respected, it follows that an investment in promoting the rights of refugees is a an investment in a more just society for all. Actions taken as part of the research on refugee rights in Uganda may be illustrative of how refugees can be used as an entry point to catalyze improvements for the hosts as well. The situation for refugees wrongfully detained in prison is one example.

Over the three years considerable data were collected on refugees’ access to justice, including interviews with refugees who were in prison, many of whom were on remand for periods far exceeding the legal limit.

129. Bill Headley, *A Hard Look and a Fresh Start: Local Response to the Refugee in Kenya and Implications for Africa Refugee Services* (prepared for ASAUK conference, Sept. 1998) (unpublished, available RSC library).

130. Verdirame, *Final Report*, *supra* note 56; Garling, *supra* note 10.

One of the author's assistants was also part of a student organization that has official permission to visit prisons on a regular basis, to teach rights to both prison officers and prisoners, and to follow up on cases with particular needs. As the refugee research was winding up in 1999, the author asked the assistant to make a visit to the Luzira prisons in Kampala to check again on how many refugees were incarcerated and, in particular, how many were on remand.

The Ugandan national press published excerpts from this report, and this publicity galvanized a remarkable response.¹³¹ The Prisons Department and the Department of Public Prosecution (DPP) called meetings. Staff from the South African Embassy paid a visit to one of their nationals whom they were unaware was being detained. UNHCR supplied blankets to the prisons. With the help of an expatriate member of the DPP, the author published an article entitled, *What's wrong with our justice system?*¹³² It pointed out that however alarming the situation for the refugees

[W]ho have been languishing in prison on remand for more than two years. . . . What is more alarming is that it is not known how many Ugandans are in the same situation. What is known is that out of some 15,000 prisoners in Uganda, about 70% are remanded into custody and waiting trial. Some of these individuals have been awaiting trial for as long as five to eight years. What is wrong with Uganda's criminal justice system? . . . When we are talking about prisoners, it is usually assumed we are talking about dangerous people who do not deserve our compassion. We may just as well be talking about refugees who were picked up as illegal migrants or "terrorists" because they were never supplied with identification papers, a right under the 1951 Convention. Or we could be talking about the Uganda woman, interviewed last Saturday by the member of the Prisons Project. Her four-year-old daughter was defiled [sexually abused] by a "porter." The suspect disappeared while she was arranging to take the child to the hospital. She was arrested on suspicion of complicity in a possible murder of the suspect since he had disappeared.

This article resulted in further action, including an invitation to meet with the Minister of Justice about the matter. In November 1999, a plan for coordinated legal reform was launched at a workshop organized by the Public Defenders Association. More important for the individuals who were wrongly detained, in October 1999, literally hundreds of remand prisoners—both refugees and Ugandans—were released.¹³³

131. See, e.g., Yunis Abbey, *24 Sudanese, Congo Refugees Languish in Luzira Prisons*, *NEW VISION*, 15 Sept. 1999.

132. Barbara E. Harrell-Bond, *What's Wrong with Our Justice System*, *NEW VISION*, 29 Sept. 1999.

133. Other political events during this period also contributed to the decision to release these large numbers of persons, but this does not detract from the fact that focusing on the rights of refugees can bring about improvements generally in a society.

The judiciary is another institution that received particular attention in the course of our research. In April 1999, a three-day seminar on refugee and human rights law for judges and magistrates in Uganda was organized with support from the International Association of Refugee Law Judges.¹³⁴ More than 100 persons attended, and the highest level of the judiciary supported the seminar.¹³⁵

Perhaps the most important issue raised in the seminar was the challenge magistrates and judges threw to lawyers, particularly those working for legal aid organizations, that they should bring cases to courts. Concerning the role the judiciary should play in the process of asylum determination and upholding the rights of refugees in Uganda, it was generally agreed that the courts should be involved in reviewing the decisions of the executive, deciding on the eligibility of certain refugees, and always when an applicant feels s/he has not received a fair hearing.¹³⁶

Some of the practical problems needing serious attention raised by the member of the judiciary included:

[A]mbiguity about refugees' right to work, the lack of interpreters for the many languages spoken by refugees. The limits and superficiality of country of origin information upon which UNHCR and the Refugee Eligibility Committee (REC) rely was another matter of concern expressed by participants. The composition of the REC, which includes representatives of three security departments and immigration, was also hotly debated and members of the judiciary were quite firm about the need, not only for a proper appeal system, but for an independent and impartial body to take first decisions on claims for asylum. Another issue that was discussed was the European position on "first country of asylum" and how it fails to take account of EXCOM resolutions. Other matters deliberated upon were the conditions of extreme insecurity that obtain for some nationalities in different neighbouring countries, and the lack of freedom of movement suffered by refugees under the current statute and assistance policy. The participants decried the failure of the Government of Uganda and UNHCR to issue identification cards to all refugees as well as the arbitrary decisions taken with regard to the granting of Convention Travel Documents (CTDs), both being rights guaranteed in the 1951 Convention.

134. Barbara E. Harrell-Bond, Report to the Nuffield Foundation Judicial Seminar On Asylum And Refugee Issues, 15–18 Apr. 1999. (Funded by the Nuffield Foundation.)

135. One would have believed that the need for training members of the judiciaries in refugee law would have been self-evident and would long ago have been addressed by human rights and humanitarian organizations responsible for disseminating such information. In fact, the training of the judiciary is only one of the many important target groups that have been seriously neglected.

136. Harrell-Bond, Report to the Nuffield Foundation, *supra* note 134.

There was consensus on the need for an appeal system from the Refugee Eligibility Committee to the High Court for refugees whose asylum claims had been refused. Moreover, concerning the Refugee Eligibility Committee (REC), it was agreed that the judiciary must be given supervisory powers. One suggestion was that retired judges should sit on the REC to ensure it comprised independent people.¹³⁷

IX. WHAT ABOUT THE POLICE?

Another local institution that has direct contact with refugees from the moment they enter a country and throughout their stay is the police force. They play an enormously important role in determining the extent to which refugees' rights will be upheld. As part of our research, 100 policemen in Kampala were interviewed concerning their knowledge of refugee law. Even these interviews had an influence on *their* behavior, as demonstrated by the phone calls we began receiving from police officers asking for advice or intervention concerning a refugee. Scores of police officers participated in two courses on human rights/refugee law. This led to an invitation to institutionalize training of the police at the Kibuli Police Training School. In addition to regular requests for more training opportunities, suddenly it was members of the police force who became a major source of referrals of refugees who suffered protection problems and required independent legal advice and representation.¹³⁸

In February 2000, the newly-established Refugee Law Project (RLP), Faculty of Law, Makerere University, offered a two week intensive course at Kibuli for officers from the rural refugee-hosting districts. Planned for thirty officers from ten districts, the courses finally hosted forty-one officers from fifteen districts.¹³⁹ Presenters and resource persons included refugees and Ugandans who had been refugees who discussed their experiences of flight and exile.

137. *Id.* This problem is experienced not only by UNHCR, Inter-Aid, its implementing partner, and the Directorate of Refugees, Kampala, but, as the judges and magistrates testified, all over Uganda. Part of this quotation refers to the practice by Belgium of forcibly returning refugees, both Burundian and Congolese, to Uganda on these grounds.

138. In late 1999, sixty students from Rwanda sought asylum. They were sleeping at the Old Kampala Police station and were clearly in danger of being forced back to Rwanda by agents of the RPF government. It was the police who brought representatives to us for legal advice.

139. The Refugee Law Project (RLP) is also providing legal aid to refugees and overseeing management of the increasing number of refugees who are consulting FIDA, the Ugandan Women Association of Lawyers, who also provide free legal aid. The RLP has had remarkable success in challenging the decisions of UNHCR that were found to be unsafe.

The contents of the RLP report of this course bring us back to the question of whether or not we need a new regime to improve the protection of refugee rights or whether it would be more effective to invest in and work with existing host country institutions. The police themselves generated the ideas contained in this report, including establishing a “refugee desk” at all points of entry into Uganda, to be manned by a police officer trained in refugee law. They also recommended establishing a “refugee management team,” to consist of senior police, immigration, district internal security (DISO), military intelligence (DMO), and NGO staff, to be chaired by the Resident District Commissioner.

Judging from the participants’ feedback, it appears that much can be done to integrate the different government bodies involved with refugees at district level. At present there seems to be only minimal interaction between police, immigration, NGO’s, and the OPM (represented at district level by the Resident District Commissioner, RDC).

The RLP is currently studying the possibility of carrying out up-country courses or workshops with a view to establishing greater communication between these players. In terms of creating a “pool” of officials aware of refugee rights at the district level, as well as the legal and social problems faced by refugees, the RLP believes that the impact of training would be substantially increased by having participants from a variety of professional backgrounds and government departments attend each course. An added benefit, as far as the RLP is concerned, is that up-country courses would enable the RLP to establish a far clearer picture of the problems faced not only by refugees but also by the government’s representatives whose job it is to handle them.¹⁴⁰

In terms of the economy of this approach, it is perhaps worth noting that the costs of putting on this course, including transporting forty-one officers to Kampala, accommodating and feeding them for two weeks, was a mere US\$6,762.¹⁴¹

X. THE WAY FORWARD

This article has attempted to continue the work of “unmasking” the political violence, which, in Foucault’s terms, exercises itself “obscurely” in humanitarian assistance programs for refugees.¹⁴² The purpose of such unmasking is

140. Ramela Reynell, *The Refugee Law Project: Report on the Two-Week Intensive Course on Refugee Law and Human Rights, Kibuli Police Training School, 14–25 Feb. 2000*, Faculty of Law, Makerere Univ., Kampala, Uganda.

141. *Id.* at 15.

142. Nicholas Stockton, *Non-Government Organizations and Forced Migration*, paper presented to the Refugee Studies Programme Conference (1998) dates the beginnings of

to fight against such violence. Who is best placed to take the necessary remedial action in the interests of refugees and what are the strategies that might be most effective?

It is encouraging that NGOs have begun to take initiatives to introduce codes of conduct and minimal standards in the delivery of assistance to refugees, but, as they admit, the absence of systems of enforcement and accountability is a problem. One such effort is Partners in Action (PARinAC), a Norwegian Refugee Council/UNHCR initiative to foster better relations between UNHCR and NGOs.¹⁴³ A fundamental weakness in the PARinAC strategy is the inference that it is possible to bring about improvements in isolation from the state that hosts the refugees, its institutions of governance and civil society. For example, the 2000 Review of the PARinAC process casts local institutions in an inferior role whose capacity can only be built by northern institutions and UNHCR. On one hand, it notes that “there is an inherent contradiction in having external actors define needs and concepts for local capacity-building. This contradiction can be solved by having capacity-building driven from the grassroots structures themselves.” On the other hand, the solution is still conceived of as requiring the interventions of an external organization: “UNHCR has a central role to play in ensuring that expertise and skills related to assisting refugees is transferred to local NGOs. The capacity-building process should be used to transfer more responsibility and program activities to local agencies as their capacities increase.”¹⁴⁴

The thinking around the role of PARinAC continues to be muddled, but the Review does begin to acknowledge the fact that: “It is important to reiterate that it is the respective *governments* that eventually have to take responsibility and provide space for community development in partnership with civil society.” One could add that, as in any country in the world, the protection of the rights of refugees depends on the active lobbying of the members of the institutions of civil society. The experience in Uganda suggests that the local capacity already exists, it only requires that resources are made available to people who take an interest in playing these roles.¹⁴⁵

this unmasking process to HARRELL-BOND, *IMPOSING AID*, *supra* note 27, and cites “a dozen or so highly influential publications” since that time.

143. More information about PARinAC can be obtained from <<http://www.icva.ch/Parinac>> (visited 20 Nov. 2001).

144. *Id.*

145. In every society only a small number of people will have the qualities and be positioned to carry out effective human rights work. See Janine Wedel, *Rigging the U.S.-Russian Relationship: Harvard, Chubais, and the Transidentity Game*, 7 DEMOKRATIZATSIYA, THE JOURNAL OF POST-SOVIET DEMOKRATIZATSIYA (1999) (for a discussion of the pitfalls when those who have the funding but not the knowledge of the society are responsible for identifying their partners).