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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

CIVIL AND POLITICAL RIGHTS

SPECIFIC GROUPS AND INDIVIDUALS

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Joint written statement\* submitted by International Catholic Migration Commission and the Jesuit Refugee Service, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 February 2003]

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\*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## Refugees' human rights – Whose responsibility?

Traditionally, refugee issues have not been addressed in a systematic manner within human rights bodies. They have primarily been considered to be the responsibility of other agencies, such as the United Nations High Commissioner for Human Rights (UNHCR) for their protection, or the World Food Programme (WFP) for their feeding needs. These organizations, however, face increasing difficulties in attracting the necessary funding. There is a need to launch a discussion on whose responsibility it is to ensure that refugees have access to and enjoy without discrimination all human rights included in universal norms and standards, and not only those spelled out in refugee and humanitarian law.

The severe and long-lasting physical, mental and psycho-social consequences of denial of the fundamental human rights of forcibly displaced persons, in particular on refugee, asylum-seeking and internally displaced women, children and the elderly, urgently need to be addressed. Refugee children without access to education throughout their formative years and pregnant refugee women without access to adequate pre-natal and post-delivery care are crying examples of social injustice. The combined effects of denied access to human rights is best summarized in the words of a colleague from an African non-governmental organization in Kenya: “refugees complain that it is impossible to learn on an empty stomach”. That is if they indeed do have the opportunity to go to school or receive education in any form. UNHCR has achieved progress with regard to providing primary education to refugee children. Forty four percent of refugee children in 2000 had access to primary education. However, only three percent of the children of concern to UNHCR in the age group 12 –17 year have access to education, whether this is access to secondary education or vocational training, whereas the figure for the least developed countries for this age group is 17 %.

Many States do not see it as their responsibility to ensure that forcibly displaced persons enjoy all their fundamental human rights. This responsibility is often ignored or overlooked and left with UN agencies. Though UNHCR and other UN agencies have a very important role in assisting and protecting forcibly displaced persons, it is often beyond their means to ensure that these displaced do enjoy all their fundamental human rights, nor is theirs the primary legal responsibility.

Not all displaced persons in refugee-like circumstances fall within the protection mandate of UNHCR. In some cases this is because the State is not party to the 1951 Refugee Convention and Optional Protocol (in particular most States in Asia are not) or because the individual or group is/are not considered to be refugees. Others are displaced within their own country, or in circumstances, where the nature of the “border” is disputed. Most of the internally displaced are not assisted or protected by UNHCR or other UN agencies. Additionally, UNHCR’s protection mandate has emphasized legal protection, whereas the protection of economic, social and cultural rights is equally critical.

Programmes for refugees and persons in refugee-like situations are overwhelmingly conceptualised and delivered as short-term and emergency oriented. However, we now see that most situations of displacement last for years rather than being short-term. For children in particular, the impact of long-term deprivation of their most

fundamental rights and needs warrants greater attention.

Mind the institutional gap!

Because forcibly displaced persons often fall through the regular institutional set-ups, both domestically and internationally, and are often perceived by society as being unwelcome outsiders, or marginal members of the community, they are particularly vulnerable to being ignored or deliberately excluded from social services and other programmes. In camp situations they often live in an environment where law enforcement and administration of justice are absent or highly inadequate. Because of this prevailing impunity, they make up a disproportionate section of the “high risk” category for all forms of exploitation, trafficking, abuse and violence. They are often subjected to arbitrary detention if they dare to leave the camps or labelled “irregular movers” and/or considered “illegal migrants”.

Over the last couple of years it has been increasingly difficult for organizations such as the UNHCR and the WFP to receive adequate levels of funding, especially for protracted refugee situations in Africa. For instance, refugees in Zambia were kept on half food rations for 8 months when WFP had problems with their food “pipe-line” during famine in the region. For the new arrivals from Angola, who had not been allocated any land, this led to unassisted repatriation back to Angola, where humanitarian organizations were not yet in place to receive them.

UNHCR in a brief paper in December 2002 outlined the predicted humanitarian impact of their budget shortfall for 2002 to include:

- sub-standard assistance leading to riots, hostage taking and other security incidents by refugees; many transit shelters remaining un-repaired after being severely damaged by storms in September; virtual absence of sanitation in some of the newer villages (Sierra Leone);
- health budgets being exhausted with the last person assisted in mid-October (West-Africa);
- income generating projects, vocational training and other empowerment activities being the first sectors to suffer (Benin, Cote d’Ivoire, Nigeria and Senegal);
- rental and subsistence allowances to urban refugees having to be cut (Benin, Burkina Faso, Niger and Togo);
- provision of safe houses for critical protection cases being reduced; cessation of counselling for refugee victims of violence, rape, or trauma as well as medical referrals and assistance except for cases where death would otherwise result; supplementary feeding of vulnerable groups reduced (Kenya);
- interruption of educational programmes for refugee children aged 5-17 year (Somalia);
- inadequate healthcare and supplies, latrines maintenance suspended (Namibia);
- referral to hospitals having to be reduced (DRC);
- only 20% of eligible students receiving scholarship assistance (Zambia);
- distribution of assistance for refugees from DRC in Northern Congo having been discontinued;
- improvement to water supply for 165,000 refugees at Tindouf camp postponed (Algeria);

- shelter repairs of collective centres, housing some 3,400 residents, in preparation for winter postponed (Federal Republic of Yugoslavia);
- 40,000 returnees to Abkhazia affected as health and community services are suspended (Georgia).

Likewise, in other parts of the world, failure to grant benefits to refugees and asylum-seekers results in severe deprivation of access to basic human needs for an increasing number of desperate men, women and children, pushing them to into delinquency or into the hands of ruthless traffickers. Increasingly we see asylums-seekers, including children, held in detention, which is at time mandatory, indiscriminate, automatic and for indefinite periods of time. The Working Group on Arbitrary Detention should continue to examine the legality and consequences of such practices.

Until now, no one has really looked at such budget cuts or restrictions from the point of view of the obligation to fulfil the fundamental human rights of forcibly displaced persons.

#### Recommendations to human rights mechanisms

The first expert consultation on the right to food, held in Geneva on 1 and 2 December 1997 clarified that the obligation to fulfil the right directly exist when individuals or groups are unable, for reasons beyond their control, to enjoy the right to adequate food through the means at their disposal.<sup>1</sup> The obligation to *fulfil* (facilitate) means that States must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security.<sup>2</sup> This obligation also applies to many other human rights.

Because of the complexity of the problem, there is a need for an exploration of key issues. Amongst the critical issues that arise are access to education, to health care, and the right to food, the right to nationality, freedom of movement, and freedom from arbitrary detention.

1. We recommend that the Commission on Human Rights request that relevant thematic procedures address the current institutional gap in documenting violations of the human rights of refugees and asylum-seekers in order to ensure the effective protection of their economic, social and cultural as well as civil and political rights.
2. We recommend in particular that the Special Rapporteurs on the right to food, to adequate housing, on the right to education, on the right to health, on torture, and the Working Group on Arbitrary Detention document patterns of violations of those rights.
3. Treaty Monitoring Bodies should formulate general comments on the complex issues of the responsibility to ensure that forcibly displaced persons enjoy all the rights set out in their respective instrument, and the roles of various local, national and international actors in achieving this goal.

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<sup>1</sup> *World Food Summit: Five Years Later, Rome, Italy, 10-13 June 2002: Report by the United Nations High Commissioner for Human Rights*, <http://www.unhchr.ch/html/menu2/i2ecortf.htm>

<sup>2</sup> *General Comment 12 of the Committee on Economic, Social and Cultural Rights, E/C.12/1999/5, CESCR, 12 May 1999*

4. Finally, Treaty Monitoring Bodies should request that State Parties systematically report on the situation of forcibly displaced persons on their national territory, including through the provision of statistical analysis. This would give visibility to critical issues pertaining to the enjoyment of the rights set out in the conventions and covenants by forcibly displaced persons. As a result, State Parties could be assisted in identifying and developing the necessary strategies, in collaboration with others, to overcome obstacles and better protect refugees, asylum-seekers and internally displaced persons.

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