



International Council of Voluntary Agencies
Conseil International des Agences Bénévoles
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talk back

The Newsletter of ICVA

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SPECIAL ISSUE: SELECTING THE NEXT HIGH COMMISSIONER FOR REFUGEES

While 2005 was supposed to be the year that would see an appointment process for the next High Commissioner for Refugees, recent events have hastened the need to find a replacement. Following the leaked investigation report into allegations of sexual harassment by High Commissioner Ruud Lubbers, the position of the High Commissioner had become untenable, leaving Lubbers with little choice but to resign.

As was done in 2000, ICVA had planned to launch a campaign pushing for an open and transparent recruitment process for Lubbers' replacement. In

2000, those efforts seemed to be in vain with the surprise nomination by UN Secretary-General Kofi Annan of Ruud Lubbers to the General Assembly.

A Welcome Process This Time

This time around, however, there is a welcome new approach by the UN Secretariat in the search for candidates for the position. Letters have been sent to governments and to some NGOs – including ICVA – asking for candidates that will then be shortlisted and interviewed according to a “rigorous interview procedure”. A lengthy list of criteria has been drawn up to guide the nomination process and the process is moving forward at a quick pace, with the nominations to be provided to the Secretariat by 9 March 2005.

This effort to take a new approach to appointing a senior UN official is a welcome one that very much meets some of the criticisms that NGOs have had of the appointment process in the past. The inclusion of NGO opinions on candidates in the process is particularly relevant, given the close relationship between NGOs and the High Commissioner's office.

Who is Asking the Real Stakeholders?

The real stakeholders in the selection of the next High Commissioner, however, should be the refugees and other persons of concern to UNHCR who rely on

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the person chosen to provide them with international protection. There should be a more concerted effort to seek the opinions of those most affected by the selection. Given that democracy is touted as the system for all, it seems strange not to allow refugees a say in the selection of the person who will be in charge of ensuring that they receive international protection.

Providing an Open Forum for the Candidates

There is a need, however, to ensure that the openness and transparency of the process does not end with the closing of nominations. While there is a risk that the integrity of an interview process could be compromised by opening up the rest of the process further, there is also a need to ensure that the candidates put forward for such an important position are able to provide to the stakeholders of UNHCR more detailed explanations of what they would bring to the position of High Commissioner.

In order to contribute to this broader transparency, and to help ensure that the process is as open as possible, ICVA will provide an open and public forum for any candidates, as was done in 2000. The ICVA Secretariat will write to the candidates put forward for the position of High Commissioner for Refugees to allow them to express how they feel they meet the criteria set forth by the Secretary-General's office, but also (and perhaps more importantly) how they would respond to a number of concerns that the NGO community has about the position and the future of the office. Those concerns (elaborated below) are ones that many NGOs see as requiring crucial and urgent attention by the office under the leadership of the next High Commissioner. ICVA has already written to the Secretary-General's Chef de Cabinet, Mark Malloch Brown, who had written asking for candidates, informing him of the process that ICVA is undertaking. A copy of the letter sent to the candidates, as well as a list of the recipients of the letter, will be sent to the Secretary-General's office. In the letter to the Chef de Cabinet, ICVA requested that other candidates, of which the ICVA Secretariat was unaware, kindly be informed of the opportunity to elaborate their views via ICVA's forum and/or that their names be passed to ICVA so that they can be contacted directly.

Talk Back Editorial Team

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The responses of the candidates will be published, as last time, in a special issue of *Talk Back* (see *Talk Back* 2-5, *The Next UN High Commissioner for Refugees*, 25 September 2000, <<http://www.icva.ch/cgi-bin/browse.pl?doc=doc00000192>>). By providing an open and public forum, it is hoped that the candidates take the opportunity to expand more concretely on their ability to respond to the numerous challenges facing the organisation so that the various stakeholders will be in a better position to know who the best candidates are for the job.

Keeping UNHCR Relevant

The criteria put forward by the Secretary-General's office include a number of the qualifications that ICVA had seen as important and necessary at the time of the last appointment of the High Commissioner for Refugees. The Secretary-General's office's criteria include, *inter alia*, the ability to "represent UNHCR, and the interests of refugees worldwide"; "a thorough knowledge of refugee issues"; "proven skills in the management of complex organizations"; and an understanding of basic refugee law, as well as knowledge of ongoing debates around "voluntary and forced migration, and about internally displaced persons".

While the criteria and qualifications put forth by the Secretary-General's office are indeed crucial for the successful leadership of the organisation, the way that the candidates will address the various challenges facing UNHCR is also of great importance. UNHCR is currently facing a situation where the numbers of refugees and asylum-seekers are dropping. Some suggested that the agency was digging its own grave when it reported recently that 2004 had seen the lowest number of asylum-seekers in industrialised countries since 1988. The total number of refugees and people of concern in the world has dropped from 22 million in 2000 to 17 million in 2004.

In general, refugees and asylum-seekers have become part of the migration management agenda. States are much keener on managing migration and so throw refugees and asylum-seekers into the same "migration" basket. Under these circumstances, it will be extremely difficult for the incoming High Commissioner to ensure the relevance of UNHCR's mandate for refugees. Will the agency further reach-out to non-traditional UNHCR persons of concern and activities?

Some argue that through his Convention Plus initiative and the High Commissioner's Forum, the former High Commissioner kept UNHCR in the picture. They say that he was effective in implementing his mantra of combining protection with solutions. Others question the results of his initiatives in terms of their impact on the protection of refugees. Why should UNHCR focus on questions relating to development aid or "irregular secondary movements," as discussed in Convention Plus, while, on the face of it, these issues seem to have little to do with refugees? In their eyes, UNHCR should focus on the requirement for states to keep their borders open to refugees and asylum-seekers.

Responding to the Restrictive Policies of Governments

In recent years, one of the main threats that UNHCR has faced with regards to refugee protection is increasingly restrictive asylum policies, particularly on the part of Western governments. Epitomised by the *Tampa* incident off the shores of Australia in 2001, there have been various moves to keep asylum-seekers away from the borders of many industrialised countries. As illustrated by the recent statistics, these policies to contain refugees in their regions of origin seem to have been quite successful.

Governments have, in many countries, helped to feed xenophobic prejudices in too many places and have inadequately fulfilled their responsibility to provide protection to refugees. The new head of UNHCR will have to tackle these attitudes by governments to ensure that the spirit in which the 1951 Convention was drafted, and in which UNHCR was created, is found again. Challenging states on their responsibilities to refugees and asylum-seekers to ensure effective and quality protection will need to be one of the new High Commissioner's top priorities.

Operationalising Protection

The challenge of ensuring that protection to refugees is provided is probably one of the greatest facing the organisation. Getting states to provide effective, quality protection is only part of the protection challenge. UNHCR itself has long faced challenges in properly providing protection to refugees where it operates. While there is consistent talk about protection and assistance being two sides of the same coin, it often seems that magically, the sides of the

coin are rolling in two different directions. The ability of the organisation to operationalise protection and concretely ensure that protection complements assistance, and vice versa, is not happening on a consistent basis.

Too often, as has been repeatedly noted by NGOs in the past, protection is relegated to certain posts within UNHCR. The fact that the entire organisation is supposed to be engaged in providing protection to refugees has yet to materialise. The separation between the Department of Operational Support (DOS) and the Department of International Protection (DIP) is one that is trying to be bridged, but so far inadequately. The perception seems to continue among many on the operational side that DIP continues to provide a dogmatic and legalistic approach to protection that is of little help to their daily work.

The recent discussions and consultations around the potential creation of the post of an Assistant High Commissioner for Protection may be reflective of a desire to make the organisation more protection-oriented. However, simply having an elevated post for the head of protection will likely not be enough. Profiling protection at a higher level may bring advantages, but only if the entire organisation – and most importantly the High Commissioner – is on board.

Without strong leadership to instil such a culture of protection within the organisation, there will continue to be the false dichotomy too often seen between the delivery of assistance and protection by UNHCR staff. At the same time, there must be efforts made to ensure that management within UNHCR is accountable for protection. How will those who do not fulfil the organisation's protection mandate be held accountable?

IDPs and Protection

While UNHCR's mandate on refugee protection is clear, the response to the protection needs of internally displaced persons (IDPs) is one that continues to challenge the international humanitarian community in cases where the government is unable or unwilling to provide adequate protection to its citizens. UNHCR, along with other humanitarian organisations, has been involved in elaborating the collaborative approach and response to IDPs. Yet despite these discussions and agreements amongst agency heads as to how to respond, the reality on the

ground continues to see a much more whimsical, rather than predictable, response to IDPs.

The role of the Humanitarian Coordinator in ensuring a collaborative response cannot be overstated. At the same time, however, there continues to be much confusion over UNHCR's role in responding to IDPs and when UNHCR can be expected to take on particular tasks (such as protection) in relation to IDPs. There have been a number of guidelines and policies developed by UNHCR in the past on IDPs, but each of them has been viewed with a level of cynicism – they are vague enough that UNHCR could be seen as doing anything or nothing with regards to IDPs, as it suits UNHCR at the time.

Having such a broad, open-door policy does little to contribute to a more predictable response to IDPs. The new High Commissioner will need to quickly elaborate a clearer policy on IDPs so that the overall response can become a more effective one. The urgency of this policy is heightened by the fact that the inter-agency Internal Displacement Division will be providing a report towards the end of the year on how the collaborative response is working. In order for the report to be a more positive one, UNHCR's role will need to be clarified and then fulfilled.

The way in which UNHCR has now started taking on IDP protection in West Darfur could serve as a model for future engagement, but then the parameters of such engagement need to be clearly delineated to avoid a situation as was seen in Darfur, where months of negotiations meant precious time lost for those who were displaced. The situation could have been largely avoided if the International Organization for Migration (IOM) had not been arbitrarily given a role with IDPs by political actors.

The Threats to Humanitarian Space and Humanitarian Action

Humanitarian space in conflict-situations has been increasingly coming under threat from a variety of sources in recent years, particularly with the war on terror. The ability of humanitarian organisations, including UNHCR, to function in an independent manner is being compromised as many governments look to turn humanitarian action into a political tool.

At the same time, internally within the UN, there is a trend that increasingly tries to bring the political, humanitarian, human rights, and development agendas all under one hat in integrated missions. While the degree to which these integrated missions are impacting on humanitarian space and humanitarian action varies, the trend is a worrying one from the NGO side, but also in terms of the ability of the “humanitarian” wing of the UN to function properly.

The response of the new High Commissioner to the encroachment on humanitarian space is another urgent priority. As governments and the political side of the UN pursue their agendas, the humanitarian agenda of UNHCR is one that needs to be strongly and forcefully pushed in the midst of these other agendas. How the next High Commissioner will respond to these other agendas will not only have a major impact on the work of the agency, but also potentially on the relationship that the organisation has with its NGO partners. If NGOs see that humanitarian space is overly compromised by the political wing of the UN and governments, then there is the potential for a distancing of NGO operations from the UN – a situation that could have serious consequences for the future of cooperation and coordination.

Working with NGOs

UNHCR is unique within the UN system for the efforts it has made over the years to work with NGOs. Through various processes, NGOs have been in dialogue with UNHCR on a variety of issues – both at the field and headquarters levels. There is the recognition, on the part of UNHCR, that without its NGO partners, UNHCR would be unable to fulfil its mandate.

This partnership with NGOs has, however, to continue to be nurtured. Putting in place policies and having regular meetings about partnership is not enough. The partnership with NGOs is one that has to be seen and operationalised on a daily basis. While there are many in UNHCR that do ensure such partnerships with NGOs, there are still many within UNHCR that do not see the need or the value of working with NGOs as operational partners, as opposed to seeing them as merely implementers. How the new High Commissioner will approach partnerships with NGOs and how s/he will have the organisation approach those partnerships will be key.

Working with the International Organization for Migration (IOM)

The relationship between UNHCR and IOM has been a rocky one over the last several years. While they are very different organisations, there are several situations in which the two work closely together with regards to displaced populations, be they refugees, IDPs, or other persons in need of international protection. Both are part of several inter-agency forums in which discussions on humanitarian response and coordination take place. At the same time, there seems to be an increase in the number of instances in which the two agencies clash over different views on approaches and strategies – at least at the political level – or in which they are competing with each other. UNHCR tends to be principled, while IOM takes an extremely pragmatic approach.

With regards to IDPs, for example, the case of Darfur provides a classic example of a situation where UNHCR and IOM engaged in some serious competition at the political level. While initially refusing to take on IDPs as it was caught up in developing its emergency programme in Chad, UNHCR woke up when IOM was handed the responsibility for IDPs in Darfur through the Plan of Action and the subsequent Memorandum of Understanding (MoU. See related article in *Talk Back* 6-1, 4 October 2004, <<http://www.icva.ch/cgi-bin/browse.pl?doc=doc00001253>>). The refugee agency started extensive negotiations behind the scenes to win back the lost territory.

In this case, NGOs clearly took the side of UNHCR. While UNHCR has often been criticised by NGOs on its protection response, IOM has received even more criticism from NGOs. The IOM involvement in Darfur had significant protection implications, a role for which it is totally unequipped.

Other areas where UNHCR's protection mandate and IOM's pragmatically oriented service areas may clash relate to the asylum-migration nexus and repatriation movements. One such case was seen in Indonesia. As reported in *Talk Back* 3-2, (30 April 2001, <<http://www.icva.ch/cgi-bin/browse.pl?doc=doc00000307>>), the Australian government developed a programme to intercept asylum-seekers before they could reach Australia in 2000. Reception centres for those intercepted were set up in Indonesia. IOM keenly became involved in the programme, which forced asylum-

seekers to have their claims handled in Indonesia. Earlier, this programme had been offered to UNHCR, which refused on principled grounds.

A similar case was seen last year with regards to the mass deportations from the Italian island of Lampedusa to Libya. UNHCR expressed deep concern over the deportations and stressed the need to screen the arrivals for their protection needs. At the same time, IOM readily involved itself with several Mediterranean governments to discuss, according to its press notes, "regional cooperative approaches in the field of migration management."

In addressing the relationship between the two agencies, the new High Commissioner must look at the pragmatic IOM policies and approaches and the consequences for UNHCR. In this sense, s/he needs to be prepared to take a more antagonistic approach, rather than a friendly course, in challenging IOM's policies and programmes.

Zero Tolerance

Since the West Africa scandal came to light in 2001, there have been a number of efforts to try to reduce and respond to abuse and exploitation. At the same time, the 'zero tolerance' policy, to which both the Secretary-General and the former High Commissioner have referred, seems to still require implementation in many places. There are still situations where the conditions for abuse and exploitation are allowed to take place – such as the reduction of food rations. The ability to respond to allegations with independent and confidential investigations must be ensured in order to guarantee that those who have been abused or exploited are not afraid to come forward.

Putting in place mechanisms at the field level, sensitising staff, and ensuring an independent investigative capacity are all essential elements in preventing and responding to abuse. Yet, they alone are no guarantee of putting an end to abuse and exploitation. The next High Commissioner will have to make strong efforts to ensure that the organisation is seen as one that takes its zero tolerance policy seriously and that refugees and other persons of concern to UNHCR will be fairly treated.

Fulfilling UNHCR's Supervisory Role of the Refugee Convention

An issue that has long been of concern and interest to NGOs is UNHCR's role in supervising the 1951 Refugee Convention, as contained in Article 35. While many states are wary of being supervised in the fulfilment of their responsibilities under the Convention, there is a need to ensure that states are living up to those obligations. UNHCR's responsibility in fulfilling this function is one that has been rather narrowly interpreted to date.

The UNHCR protection reports, for example, are a concrete manifestation of this responsibility. While presumably, the protection reports make note of violations of the Refugee Convention, they are not made public. The protection reports may be shared with states, but it is not clear how far UNHCR takes up the concerns raised in those reports with states.

While UNHCR often makes note of how NGOs are partners in protection, there is no discussion between UNHCR and NGOs of the issues of concern raised in the protection reports. UNHCR could be discussing the difficult issues with NGOs so that they could take up those issues through other means.

Writing a report and making that public, however, does not go very far in terms of stopping violations of responsibilities under the Refugee Convention. NGOs had hoped that the Forum envisioned in the Agenda for Protection would be a way to increase the accountability of both UNHCR and governments. A frank and open exchange on protection challenges and failures would have been an ideal manner in which to improve refugee protection. The Forum, however, took on a life that was geared to High Commissioner Lubbers' Convention Plus idea and has been turned into a rather benign gathering of UNHCR, states, and NGOs.

Hopefully, the new High Commissioner will take a broader view of the Forum and use it to better supervise the Convention and improve the protection responses of states and UNHCR. At the same time, the supervisory function could be even more widely interpreted by the office, but it will be up to the new High Commissioner to delineate that role. After all, "biting the hand that feeds" is often a tricky path to tread, but one that must be done in order to defend refugee rights.

The Final Challenge

At the end of the day, the next High Commissioner will have to face the dichotomy that has always plagued UNHCR – is it an organisation for refugees or for states? While states created UNHCR, refugees, asylum-seekers, and their advocates feel that the office is first and foremost meant to defend the rights of refugees. Refugees and asylum-seekers need a personality who will hold to account those states that violate their rights and who will stop the restrictive policies of governments. At the same time, as a Western diplomat noted recently, states will not be keen on appointing someone who will simply preach the rights of refugees and asylum-seekers.

There is no question that the position of High Commissioner requires the ability to balance the interests of refugees and the interests of states. Without the support of states, UNHCR cannot survive. The budget of UNHCR is only met because states agree to the programmes. Whether that system can be changed is a question facing the organisation. However, before the budget can be guaranteed through some other means, UNHCR will have to continue to ensure that states support UNHCR's programmes and activities. Catering too much to states' interests, however, can result in a situation where refugees suffer at the expense of political interests and priorities. The next High Commissioner cannot allow such a situation to occur. ♦

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