

Yemen and refugees: progressive attitudes – policy void

by Nesya H B Hughes

Despite accession to the refugee Convention, the sources of codified law governing the practice of asylum in Yemen have remained limited.... Similarly, administrative capacity and policy formulation related to asylum seekers and refugees are still evolving.

'Yemen 2000 Annual Protection Report – Executive Summary', UNHCR Sana'a, Yemen

The Republic of Yemen is the only country in the Arabian Peninsula to have signed the Convention and the 1967 Protocol. Yemen's proximity to the troubled countries of the Horn of Africa and to neighbouring wealthy Gulf countries have led to its hosting a large number of refugees despite its status as one of the world's least developed nations. UNHCR regards the Government of the Republic of Yemen as having a very tolerant and progressive attitude towards refugees. Yet, as the quotation above indicates, problems hinder the full protection of refugee rights.

The dearth of academic studies on refugee issues in Yemen provided the impetus for this paper. It examines the legal and administrative context in which refugees are situated, the current socio-economic status of refugees and measures taken by government to assume responsibility for refugee affairs.

The legal and administrative context

Theoretically, the international and national legislations that codify refugee law and the administrative framework determine the status and rights enjoyed by refugees in the Republic of Yemen. In 1980 the Yemen Arab Republic (North Yemen) became a signatory to the 1951 Refugee Convention and its 1967 Protocol. When Yemen united in 1990 the People's Democratic Republic of Yemen (South Yemen) acceded to all

treaties to which the North was already a signatory.

Despite having signed the Convention there has been no significant progress on the creation of comprehensive national refugee legislation. Sources of national law governing the treatment of asylum seekers or refugees in Yemen remain limited to Article 46 of the Republic's Constitution which states that "no political refugee shall be extradited". The absence of national refugee legislation means that in legal terms asylum seekers and refugees are treated no differently from other non-nationals and are, for example, subject to laws pertaining to employment as foreigners.

In 1984 Ministerial Resolution No 10 was passed to establish a Department of Refugee Affairs within the Ministry of the Interior. However, the Resolution was never implemented and UNHCR, whose assistance Yemen requested after the large and sudden influx of Somali refugees in 1992, remains the only office to deal directly with refugee affairs.

The status of refugees in Yemen

The Government of Yemen's prima facie acceptance of particular groups and general tolerance towards asylum seekers represents a progressive open-door policy. Yet it has to date been unable to convert its international obligations towards the protection of refugees' rights into national level policy.

As of March 2002, there were 71,313 refugees registered with UNHCR, 92.5% of who were Somalis.¹ The Government of Yemen has recognised Somalis on a prima facie basis since 1992 and continues to do so. Yemen has previously also recognised on a prima facie basis 1,269 Ethiopians (officers and cadets from the former Ethiopian Navy forced to flee after the 1991 overthrow of the Mengistu regime) and 389 Eritreans who fled Assab following renewed Ethio-Eritrean conflict in May 2000.

Other asylum seekers must go through refugee status determination (RSD) conducted by UNHCR. In 2001, UNHCR Yemen had an overall recognition rate of 17%, excluding prima facie recognitions. It encourages local integration and repatriation as 'durable solutions' for refugees. In 2001, it only resettled 157 people to a third country, asserting that "a liberal interpretation of the [resettlement] criteria would produce a pull factor and undermine UNHCR policy".² It consequently reserves resettlement for vulnerable cases, including medical cases such as HIV sufferers (Yemen

'We are not moving forward and we are not moving backward. We can understand not being given political or civil rights in this country but [the Government of Yemen] cannot keep our economic or social rights from us. We cannot live this way.'

Ethiopian refugee and ex-Lieutenant in the Ethiopian Navy, who has resided in Yemen for the past 11 years.

reserves the right to deport non-nationals with HIV) and single female heads-of-household.

There is one camp in Yemen, the facility at Al Kharaz hosting 10,000 refugees near the southern port city of Aden. The camp admits recognised refugees only, which means that, pending RSD, refugees must find their own way. Due to its limited capacity, UNHCR encourages local integration and urban settlement, reserving the camp for "vulnerable refugees... who are unable to survive without international assistance".³ With the exception of the Al Basateen suburb of Aden, which hosts some 20,000 Somalis who arrived in 1992, refugees in urban areas tend to intersperse with the Yemeni communities.

Respecting the 1951 Convention, the Yemeni government permits refugees the right to work, education and healthcare but refugees face obstacles in securing these socio-economic rights. Refugees assert that the Ministry of Labour requires foreigners applying for

work permits to present a passport, which refugees obviously cannot do. It also requires a letter from a potential employer; refugees claim that employers will not do this as employing illegal labour permits them to pay lower wages. Unable to work, most refugees are also unable to afford education and healthcare. In addition, public hospitals will neither serve HIV patients nor, for cultural reasons, single females requesting reproductive or natal care. This is why the services provided by NGOs are in high demand, far exceeding their capacity.

Ten of the 11 NGOs that work with refugees in Yemen are implementing partners of UNHCR and, therefore, depend at least in part on UNHCR funding. This is unfortunate because UNHCR's diminishing budget from Geneva reduces these NGOs' funding as well. Limited funding has necessitated prioritising the most serious cases. UNHCR's assumption that camp refugees are less able to secure their rights has meant that more resources and services are provided in the camp than in urban areas. Urban refugees felt that this 'camp bias' marginalises them, 'punishing' them for their initiative to self-settle and contribute productively to the economy of their host country.

In Sana'a, the Yemeni capital, Ethiopians have established an Ethiopian Community Centre, while the Somali community has established the Refugee Community Centre, now attended by refugees from other nationalities as well. These two centres represent refugees' initiatives to support themselves. But they are the only ones of their kind and refugees assert that, while they provide some

support and comfort, they do not address the core socio-economic problems faced by refugees living in cities. Government and UNHCR

officials indicate that extra pressure is placed on NGOs to provide services because of the fact that many Somalis benefiting from these services are not refugees as defined by the 1951 Convention. Some officials believe that Somalis come to Yemen to take advantage of, among other things, healthcare services provided free of charge by NGOs. UNHCR has recommended that the Yemeni government cease *prima facie* recognition of Somalis in order to ensure that those who do benefit from services are actually refugees.

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A further obstacle faced by refugees in securing their socio-economic rights is racial and cultural discrimination. Ethiopian and Eritrean refugees recount stories of harassment on the streets and several refugees testify to being victims of racial beatings. Non-Muslim, mostly Ethiopian or Eritrean refugee women, often face discrimination, particularly for not wearing the *hijab*. In addition, Ethiopian refugees – both men and women – assert that Yemenis have a preconceived notion of them as being promiscuous and they are, therefore, often accused of having AIDS. Racism prevents them from equal employment opportunities and their children are subject to racism in Yemeni schools. Most Somali refugees accept that Yemeni treatment of Somalis is better than that afforded to other Africans. This appears to be due to the fact that these two peoples share cultural traits – most Somalis are Muslim and many speak Arabic.

Perhaps the ultimate socio-economic and civil injustice feared by refugees is unfair detention and deportation. Notwithstanding the absence of data on the prevalence of detentions, refugees assert that the threat of it is real, in particular outside Sana'a. Municipal authorities do not appreciate the meaning of a refugee card. On the other hand, authorities do not appear to act strictly regarding deportation. Refugees believe that deportation is done on an entirely *ad hoc* basis and assert that detention is used primarily as a method to extort bribes from people.⁴



'In spite of many problems [with the transfer of responsibility], Yemen may be considered a pioneer in the Arab world for its efforts.'

Interview with Deputy Representative,
UNHCR Sana'a, 21.09.02

Transfer of responsibility

Since 2000, the Government of Yemen has taken measures to enhance the situation of refugees. It has established the National Committee for Refugee Affairs (NCRA) that is currently working on two projects with the aim of government assuming greater responsibility for refugee affairs.

The first is a pilot project, begun in May 2002, between UNHCR and the Yemeni government, involving the registration, issuing and extension of refugee cards. Until recently UNHCR was responsible for this administrative process. One benefit of involving the Government is that it has agreed to place the Republic of Yemen's emblem on the card. Refugees issued with the new card testify to fewer problems with the authorities because the new card now appears to carry greater credibility. UNHCR believes that government involvement in registration also builds confidence in the registration procedure so that authorities are more hesitant to arrest refugees arbitrarily.

The second NCRA project involves drafting national refugee legislation. Such legislation is necessary to avoid the possible contradictions between refugees' rights and the laws that apply to foreigners, under which refugees now fall.⁵ National legislation provides the means by which to translate international law into national level action.

Finally, UNHCR has trained government officials regarding refugee rights and permitted officials from the Ministry of Interior to attend RSD interviews – a bid towards confidence and capacity building in the RSD process. The UNHCR Representative has also met with the Chief of Justice to encourage the judiciary to respect the principle of *non-refoulement*.

However, greater training is necessary. Refugees believe that the greatest misunderstandings regarding refugee

affairs exist at lower government levels, including amongst municipal authorities and the Yemeni coast-guard. UNHCR recognises this, stating that "training of Immigration officers and coastguard personnel on refugee law is seen as one of the important objective [sic] in UNHCR strategy".⁶ However, no projects have been implemented to fulfil this strategy.

Refugees, NGO staff and academics alike express concern that since the events of 11 September 2001 the Government is abrogating from its human rights responsibilities in the name of national security. The authorities, now under pressure from the US to crack down on alleged terrorists, can use Article 33 of the 1951 Convention which permits it to deport refugees suspected of being a threat to national security.⁷ Greater training and monitoring on the part of the UNHCR is necessary to avoid any unjustified 'scapegoating' of refugees.

Conclusion

Although Yemen is signatory to the relevant international treaties that espouse a commitment to protection of refugee rights it has failed to translate this commitment into national level policy. Failure is most starkly represented by the marked absence of national refugee legislation, a void which means that refugees are often treated as foreigners. Despite this, UNHCR Yemen continues to 'offer' local integration as its primary 'durable solution'. Yet integration cannot be considered durable until national legislation is in place, as only national laws can provide the primary structure necessary to give people a real (and not theoretical) chance of integrating.

Other impediments exist that prevent individuals from successfully integrating and securing employment. On the other hand, interviews with refugees showed that individuals and communities have created their own support structures so that they are not entirely dependent on NGO, UNHCR or

government service provision. Nevertheless, the Yemeni government has made progress towards fulfilling its international obligation to protect refugees and assume responsibility for refugee affairs. The establishment of the NCRA, in particular, has been productive in catalysing government efforts.

Many areas of the refugee situation in Yemen need to be better understood. The heterogeneous nature of Yemen and the state's willingness to admit, but not to fully accept, asylum seekers make Yemen a complex and challenging refugee situation in the Middle East.

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For further information on refugees in Yemen see the US Committee for Refugees at www.refugees.org/world/countryrpt/mideast/yemen.htm.

1. These numbers refer only to registered refugees. There are additionally an estimated 300,000 more Somalis, 70,000 Iraqis, 2,000 Ethiopians and some Palestinians. Whether these individuals are refugees fleeing persecution or economic migrants is contested.
2. 'Donor's Meeting Yemen: Briefing Notes', 9 June 2002, UNHCR Sana'a, Yemen.
3. *ibid*
4. Yemen appears to maintain an open-door policy on its northern borders. Refugees testified that many cross into Saudi Arabia for work, returning sporadically and illegally to visit their families. The Yemeni government does not appear to monitor these northern borders strictly, claiming to not have the resources to do so. But the reasons are more complex. First, the border remains poorly defined and local tribes continue to dominate the region, hindering the government's control. Second, the return of illegal migrants is facilitated by people smugglers, often tribesmen of the area. Finally, Yemen maintains bilateral re-admission agreements with Saudi Arabia (and some European countries as well) to maintain good diplomatic relations because it is hoping to accede to the Gulf Cooperative Council. In addition, Saudi Arabia hosts over 200,000 Yemeni workers, many of whom reside illegally and who provide a boon to the Yemeni economy through remittances. Yemen does not want them expelled.
5. Currently, a refugee found guilty of a crime faces double sentencing by virtue of being a 'non-national/foreigner'. The first, derived from Yemen's criminal code, relates directly to the crime. The second, deriving from the law concerning non-nationals, is an automatic deportation sentence, thereby, violating a refugee's right to *non-refoulement*.
6. *ibid* endnote 2.
7. The Yemeni government is facing external pressure, particularly from the US government, to 'crack down' on potential security threats. At the time of writing, two Somalis – both of whom are allegedly trained pilots and aircraft engineers – had been arrested on security grounds and their whereabouts unknown.