

“Legitimate” protection spaces: UNHCR’s 2009 policy

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UNHCR’s revised urban refugee policy has moved on from its outdated predecessor – but is it fit for purpose?

UNHCR’s latest Policy on Refugee Protection and Solutions in Urban Areas, issued in September 2009, responds to the phenomenon of refugee urbanisation, partly mirroring the global trend towards urbanisation but also reflecting sub-standard care and protracted stays in refugee camps in which freedom of movement is restricted, self-sufficiency or employment opportunities are limited, and access to full human rights is far from assured.¹

The new policy follows over ten years of discontent expressed by many NGOs and others about the predecessor 1997 policy, and a host

of consultations on that document about how to make progress. In many ways, therefore, the release of the 2009 version, revising the 1997 policy, must be seen as a protection triumph. It is no easy task to reconcile, or at least attempt to reconcile, competing interests – both inside and outside UNHCR – and to produce a statement that aims to shift the working ethos of the organisation from being camp-focused to recognising that seeking protection in urban spaces is “legitimate”. So what does this new policy provide, and what does it tell us about the priorities of and challenges facing UNHCR?

Rights and protection

The policy is based on the principle that the rights of refugees are not affected by location, their means of arrival or their status (or lack of status) in national legislation (para. 14). Neither are UNHCR’s mandated responsibilities affected by these factors. The policy covers many of UNHCR’s areas of concern, including reception conditions, registration and data collection, documentation, refugee status determination, community outreach, fostering constructive relations with urban refugees, security, a zero-tolerance policy in respect of improper behaviour, strategies of self-reliance and access to livelihoods, access to health care, education and other services, durable solutions, and the question of freedom of movement.

The document is guided by a general rights framework (Pt II) but this could have been expanded to feed into the remainder of the document. Although a list of 'indicators' of 'protection space' are outlined at para. 21, they are not directly framed as rights, yet they easily could have been, which would have given them a better legal basis. Interestingly, except in its opening pages the policy opts to define and utilise the non-legal terminology of 'protection space', rather than 'protection' or 'rights' language. 'Protection space' is said to denote "the extent to which a conducive environment exists for the internationally recognized rights of refugees to be respected and their needs to be met" (para. 20). Specifically, the policy is rather vague on the question of rights to work, which is not helped by its policy – rather than legal – orientation.

The policy references its guiding principles, as usual – rights, state responsibility, partnerships, needs assessment, age, gender and diversity mainstreaming, equity, community orientation (previously 'people-centred planning') and self-reliance. But it adds a new, albeit a rather odd, principle: that of 'interaction with refugees', which subtly reminds UNHCR staff that they must "interact regularly and directly" with refugees in urban areas (paras. 46, 47, etc.).

The first of the protection strategies is on reception facilities, and reiterates what should be a prerequisite of refugee protection, that "no refugee or asylum seeker will be prevented from having direct access to UNHCR offices and staff members" (para. 47). However, access to UNHCR and its staff is increasingly difficult for refugees in both rural and urban areas, reflected in elitist attitudes of some staff, the location of offices far away from areas where refugees live, and the increasing outsourcing of refugee protection through either implementing partners or local organisations. The urban refugee policy makes reference to UNHCR staff making "periodic

visits" to neighbourhoods where refugees live and to facilities used by them, e.g. schools and health centres (para. 80). However, this rings of minimum engagement with refugees, rather than of building meaningful relations with refugees.

The policy further encourages an outreach service, not of itself a bad thing, including the engagement with trained refugee outreach volunteers who keep in daily contact with all segments of the refugee community. However, again these persons are "to liaise with UNHCR" (para. 79), rather than UNHCR having direct and regular contact with urban refugees. It does, however, note the need for more community services positions within UNHCR to respond to the phenomenon of urban refugees.

Partial dislodging of the camp bias

The camp bias in the policy and practice of UNHCR is partially dislodged by the new policy, although there are statements that appear to qualify the underlying premise that urban areas are "legitimate" protection spaces. The policy states that it is legitimate for refugees to live and exercise their rights in urban areas and, in this regard, UNHCR foresees that its role in creating this space will include advocacy, monitoring and capacity building for local services to meet the particular needs of refugees (paras. 110-112). Despite these positive statements, however, there are still lingering hints of a camp bias in the latter pages of the document, in which UNHCR's responsibilities in regard to camp refugees are reaffirmed, juxtaposed with a recitation of why refugees leave the camps. This seems to suggest that one of the aims of the document is to acknowledge that if camp environments improve, motivations for leaving them will be reduced and there will be fewer refugees seeking protection in the cities.

This may not be the intention at all of the drafters but regrettably

these latter pages may play into the hands of governments operating camp confinement policies who argue that UNHCR should spend its time improving camp conditions rather than engaging with urban refugees. Moreover, the document says little about any positive contributions refugees make to urban economies and communities.

Foreshadowing broader protection challenges

Overall, the new policy is ambitious in its orientation, protection-focused, broad in its coverage, yet rather vague in its specifics. It starts with a realistic set of caveats on the scope of the document, interwoven with honest statements on the inevitable constraints on UNHCR's capacity to deliver its protection mandate in urban areas. Indeed, the challenges outlined in the document in relation to urban refugees provide a small window onto the challenges facing the organisation more generally in the 21st century. At the same time as UNHCR engages in the operational delivery of refugee rights, it also plays the role of 'gatekeeper' or, in its own words, it 'polices' the refugee population with negative attendant consequences for its relations with refugees (para. 126). In many situations, the organisation decides who is and who is not a refugee, and distributes humanitarian assistance while advocating for rights as well as monitoring the implementation of those same rights. Recognising that the organisation is often working in a vacuum of state protection, it is time that it addresses some of these 'conflicts of interest' more broadly. Nonetheless, the policy on urban refugees should be praised for its candidness of identifying these and other wider protection challenges.

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1. UN High Commissioner's Dialogue on Protracted Refugee Situations, 1 Dec 2008: <http://www.unhcr.org/4937de6f2.html>

Resources on urban displacement

RSC's Forced Migration Online resource summary: <http://www.forcedmigration.org/browse/thematic/urban-displacement/>

'Selected bibliography: displacement to urban areas', prepared for UNHCR by Tim Morris: <http://www.unhcr.org/4b0ba1209.html>