WHO WILL POLICE THE CAREGIVERS?

The public revelation in 2002 that some United Nations High Commissioner for Refugees (UNHCR) staff, NGO workers, and international peacekeeping personnel had been trading refugee aid and food for sex with young women and girl refugees in Guinea and Liberia, West Africa gives way to a simple question: What can be done to punish these abusers and to see that their abominations stop? A joint assessment team, commissioned by the UNHCR and Save the Children-UK to look into allegations of sexual violence and exploitation of young refugee woman and children in West Africa, unveiled its report on 27 February 2002. It was based on focus group discussions and individual interviews involving 1,500 children and adults, documented allegations against 40 agencies and 67 individuals.[i] This report, along with subsequent press reports of similar abuse in UN-run refugee camps in Kenya and Nepal, highlights the pressing need for an adequate response to these questions.

Unfortunately the legal status of international organizations, such as the UNHCR and some international NGOs, renders the answer far more elusive than initially suspected. Even under an extensive regime of headquarters' agreements with international organisations, national legislation, and international treaties, including the 1946 UN Convention on Privileges and Immunities, the organizations and their staff enjoy immunity from both criminal and civil suit) in national courts for acts performed during the course of their official duties. The Convention dictates that it is the Secretary-General of the UN who is empowered to determine whether or not the impugned actions fall within the protected sphere of official duties.

> *"In this community no-one can access CSB (a soya nutrient), without having sex first" (*Refugee woman*).*

No one can seriously argue that the abuses, which took place in West Africa, fall within the official duties of the humanitarian aid workers, as far as the author is aware. Nonetheless, nearly a year after the UNHCR/SC-UK report was first released, not one of the alleged abusers or any of the supervisory officials responsible for running the West African camps have been held accountable, either before a national court or in an internal disciplinary proceeding. Actually, only the disciplinary proceedings would be a viable means of redress, under the present system of functional immunity afforded to international organizations.

> *"It's difficult to escape the trap of those (NGO) people; they use the food as bait to get you to sex with them"* (Refugee child).

Had the UNHCR moved forcefully and swiftly against the alleged perpetrators and negligent managers revealed in the joint report, perhaps there would be no need to examine the system of immunity under which most of the international organizations and some international NGOs operate. Sadly, however, this is an unlikely scenario since there are reports the UNHCR has known of similar problems occurring in several of its refugee camps since at least 1995. Instead, following the anemic response to the shocking allegations made in the joint report, and after being browbeaten by various

> *"When ma asked me to go to the stream to wash plates, a peacekeeper asked me to take my clothes off so that he can take a picture. When I asked him to give me money he told me, no money for children only biscuit"* (Refugee child).

Ambassadors from donor countries at a closed-door briefing, held in Geneva in March 2002, the UNHCR eventually enlisted the UN's internal Office of Inspection and Oversight (OIOS), to investigate the claims set out in the report.

Even though the OIOS investigated at most twelve cases, and provided comments on just four of the sixty-seven specific cases highlighted in the joint report, it ultimately concluded that the majority of the allegations contained in the report could not be confirmed. Curiously, the OIOS itself turned up another 43 new cases of alleged abuse in the West African camps, reducing these to ten "provable" cases. How the OIOS could reasonably conclude, having itself discovered ten more cases not previously reported, that the allegations of widespread abuse were not confirmed, is hard to fathom.[ii]

Ultimately, the UNHCR decided not to take any action on the allegations because, since there were too many individuals responsible for the abuses, no one individual could be held responsible. By choosing to sweep the matter under the rug, rather than to hold the responsible parties to account, the international community is left only to question the very idea and efficacy of functional immunity.

> *"I leave my child with my little sister, who is ten years old, and I dress good and I go where the NGO workers drink or live and one of them will ask me for sex, sometimes they give me things like food, oil, soap and I will sell them and get money"* (Refugee child).

Functional immunity is problematic for all parties involved. The third party actors, in this case the refugees in the West African camps, might be the first considered because of the injury resulting from intentional acts or negligence at the hands of the humanitarian aid workers. Although the international civil servants most often benefit from the immunity, the same immunity also prevents them from bringing an employment dispute to a national court. Instead, any claims of wrongful termination, sexual or psychological harassment, or for compensation for service-related illness or death must be redressed in the internal systems of administrative justice that has been set up within the international organizations. These tribunals have proven to be quite deficient and have been under recent attack from claimants and practitioners alike for their not being able to provide litigants minimum standards of due process required by most international human rights conventions.[iii]

Functional immunity of international organizations must be examined in the context of the era during which it was implemented as well as in relation to its hierarchical superior: sovereign immunity. Indeed, it grew out of the idea that as sovereign states, in creating international organizations, they were in effect endowing such organizations with a part of their sovereign power. The organizations needed protection from judicial and state interference in their exercise of this delegated sovereign authority. Such views were particularly prevalent in the late 1940's, around the creation of the UN, when the conflicting geopolitical forces that would ultimately start the Cold War were already affecting the management of such organizations. As such, functional immunity was implemented and accepted on a scale that the world never experienced before.

However, as Slobodan Milošević can truly attest from his jail cell at The Hague: sovereign immunity today is no longer what it once was! The recent arrests of Milošević and General Augusto Pinochet, for acts committed while they were serving as heads of sovereign states, has brightly underlined the rapid retreat of the heretofore absolute nature of sovereign immunity. Functional immunity, however, has suffered no such blow to date.

The rather arrogant and cavalier manner in which the UNHCR failed to punish any of those responsible for the continued base exploitation of female refugees in their own camps, either by intention or through managerial negligence, needs to be evaluated. For the sake of those who fell victim to sexual abuses in West Africa at the hands of humanitarian aid workers, one would imagine – indeed hope –that sooner rather than later a national or supranational court, such as the European Court of Human Rights, will take up their case. The international community must assert that functional immunity was never intended as a shield to be used by international organizations or their officials to avoid legal responsibility for illegal acts clearly outside the scope of their official duties.

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[i] An executive summary of the full report, entitled *Note for Implementing and Operational partners on sexual violence and exploitation of refugee children,* is available on the UNHCR's web site at.: http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?id=3c7cf89a4&tbl=PARTNERS All quotations set out in this text are taking from the report summary

[ii] The OIOS report may be found at www.un.org/depts/oios/reports/a57_465.htm. One of the authors of the original UNHCR/SC-UK joint report has published a pointed rebuttal to the OIOS report in the January 2003 issue of Forced Migration Review (Refugee Studies Centre/Oxford University) (http://www.fmreview.org/mags1.html)(16 FMR 46).

[iii] For a critical review of one of the most renowned international administrative tribunals, the International Labor Organization Administrative Tribunal, see the opinion of UK Barrister and Sierra Leone War Crimes Tribunal Judge Geoffrey Robertson QC at: http://www.ilo.org/public/english/staffun/info/iloat/robertson.htm.

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