



KEYNOTE PAPER

PROTECTION, HUMAN RIGHTS AND FORCED MIGRATION

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September 2009

International Conference: 'Protecting People in Conflict and Crisis: Responding to the
Challenges of a Changing World'

Abstract

The keynote address begins with a discussion on the role of the international human rights system in the protection of people who are displaced either within the borders of a country or forced to cross national borders in order to seek refuge from conflict situations. It explores the extent to which protection premised on the international human rights system has been streamlined within international mechanisms for protection. Some of the jurisprudence of human rights bodies relating to such protection is highlighted.

The address then turns to the problem of non-compliance with international human rights norms by States Parties to international treaties and conventions. By implication this raises the question of the effectiveness of the current protection system in the face of impunity by governments and when fundamental political, economic and social problems inherent in conflict situations have not been resolved. A brief account of the situation in the Darfur region of Sudan is given as an example of such impunity.

The last part draws attention to the challenge of providing protection in an urban setting in South Africa in the context of xenophobic attacks and the ensuing displacement of refugees, asylum seekers, economic migrants, labour migrants and undocumented migrants.

Introduction

The movement of people fleeing from wars, armed conflict and persecution in search of safety is an age old phenomenon. It was not until the 20th Century that universal standards for the protection of such people were developed. Since the post-World War I period when the League of Nations was established, the international protection of people in conflict situations has evolved over the years and much has been written about conceptual, legal and institutional challenges that have contributed to this evolution. In addition to developments in the international humanitarian regime, the UN took the lead in developing an international 'bill of rights' that laid the groundwork for further elaboration of protection mechanisms under international human rights law. One of the earliest of these internationally agreed upon human rights instruments is the Universal Declaration of Human Rights (UDHR), which enshrined the rights to seek and enjoy asylum (Articles 13 and 14).

It was not until 1950-51, when UNHCR was established and the 1951 Refugee Convention drafted and adopted, that a formal structure was put in place for the protection of people who cross borders to seek asylum from persecution and wars, that is, refugees/asylum seekers. The Convention was significant *inter alia* in that it recognized that a refugee should benefit from certain rights and provided a definition of who should benefit from the rights enshrined in it. More importantly, it placed the responsibility for protecting and assisting refugees and asylum seekers squarely on states.

Early years of protection

States Parties to the 1951 Convention were under an obligation to comply with provisions that relate to the protection of people in need of asylum; together with its 1967 Protocol, the Convention has come to be regarded as the cornerstone of the international protection framework. Three very important provisions are the right to seek asylum, the prohibition against *non-refoulement* and minimum standards for the treatment of refugees by host countries. These principles have become a foundation for the international judicial regime according specific protection to refugees.

Following the 1951 Convention, other UN treaties and conventions have incorporated into the international human rights system provisions for the protection of the rights of both nationals and non-nationals, regardless of status. Thus article 2 of the International Covenant on Civil and Political Rights (ICCPR) provides that "Each State Party to the present Covenant undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Regional instruments in Africa and Central/South America have contributed to a gradual increase in the scope of legal protection afforded to people in need of protection. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa expanded the term 'refugee' to cover victims of armed conflicts and of massive human rights violations. This was to ensure *inter alia* that the recognition of the unique characteristics of African refugees got binding legal status.

Although the 1951 Convention has been signed and ratified by many countries, an immediate problem is the manner in which states have interpreted their duties under this convention. Most states have narrowly interpreted the Convention to relate mainly to procedures for granting refugee status. Given that the 1951 Convention does not have a compliance mechanism, it is not surprising that states tend to be guided by their own domestic laws and procedures for granting asylum. In addition to thus subjecting an international instrument to domestic interpretation, refugee protection was initially seen as isolated from the international human rights system. The existing treaty bodies were not considered as having competence to examine protection accorded to refugees and equally, UNHCR had no legal standing before these bodies.

This changed with Resolution 1998/49 of the UN Commission on Human Rights which recognized that the human rights machinery of the UN had an important role in addressing the human rights violations that caused people to flee in the first place. This Resolution had far reaching consequences as it reversed the *status quo ante*. We now have a situation where refugees not only benefit from the range of rights enshrined in the 1951 Refugee Convention, but also benefit from the wide array of civil, political, economic, social and cultural rights that are provided for under international human rights law. In the absence of a treaty body to monitor compliance with the 1951 Convention, using human rights mechanisms to examine states' practice is one way to assure compliance and accountability. In practice, this has been fairly effective especially at regional level where more and more complaints relating to violations of refugee rights are being brought before the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the European Court of Human Rights..

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Currently, there are four principal sources of protection within the international human rights system:

- A. The treaty bodies
- B. The Charter-based bodies of the UN, generally established by resolutions of the former Human Rights Commission, now the Human Rights Council, such as Special Rapporteurs and Working Groups
- C. International tribunals
- D. Regional human rights courts and commissions

Examples of specific rights protected

The right to seek and enjoy asylum

This is the very foundation of the international refugee protection system. First articulated in the 1948 UDHR, it is not fully articulated in subsequent international instruments, including the 1951 Refugee Convention. It does however emerge under regional human rights systems. When for example Haitian asylum seekers were indicted¹ on the high seas in 1997, the Inter American Commission on Human Rights ruled that this was a gross violation of the Haitians' right to seek and enjoy asylum. In its 1991 Annual Report, in relation to the expulsion of Haitians from the Dominican Republic, this Commission emphasized the need to 'consider the individual situation of persons accused of violating immigration law and to grant them the right to present their defence in the framework of a formal hearing'.

The African Commission on Human and People's Rights (ACHPR) has also progressively addressed refugee protection using this principle. It found that the expulsion of Burundian refugees from Rwanda was a breach of their right to seek and enjoy asylum. The African Commission invoked Article 12 of the African Charter on Human and People's Rights (ACHPR) on the right to seek and enjoy asylum, Article 12(5) that prohibits mass expulsion and Article 7(1) which provides that every individual shall have the right to have his case heard. It concluded that by expelling the Burundian refugees from Rwanda without giving them the opportunity to be heard by the national judicial authorities, the government of Rwanda had violated Article 7(1) of the ACHPR.

The principle of Non-refoulement

This is the second cornerstone of the international refugee regime. The principle of *non-refoulement* is articulated very clearly in both the 1951 Convention and Regional Conventions. It is strengthened by human rights provisions such as article 7 of the ICCPR, Article 3 of the 1950 European Convention on Human Rights and article 3 of the 1984 Convention Against Torture, Inhuman and Degrading Treatment or Punishment. In fact, the protections contained in human rights law are far stronger than those in the 1951 Refugee Convention. For example, Article 33(2) of the 1951 Convention qualifies the principle of *non-refoulement* by reference to national security.

However, human rights law is absolute in its protection and thus provides an important source of protection for refugees, asylum seekers, rejected refugees and in fact all migrants. The absolute nature of the protection has been affirmed in a number of cases before the UN Human Rights Committee. The Committee found a breach of the prohibition on *refoulement* by Sweden in a case of *Almery v Sweden* involving the expulsion of a man from Sweden to Egypt where there was a real risk of torture and other ill treatment.

1 Interdiction is the procedure of intercepting vessels at sea and returning vessels and their passengers to the country from which they came

The European Court of Human Rights and other regional human rights systems have also provided protection under the principle of *non-refoulement*. In an early judicial decision concerning the cases of Ahmed and Chahal, the Court held that the prohibition of return to a place where one might face torture or cruel and inhuman treatment was absolute. Ahmed was a recognized refugee from Somalia who had his refugee status revoked by Austria after he was convicted of committing crimes, including attempted robbery. Chahal was (is) a prominent member of the British Sikh community whose indefinite leave to remain had been revoked after he was arrested for suspected involvement in terrorist activities. He and his family faced deportation from the UK on the grounds that he was a threat to national security.

In its ruling, the European Court said: “Article 3 enshrines one of the most fundamental values of democratic society. The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances the Court prohibits in absolute terms torture, irrespective of the victim’s conduct”.

Human rights provisions on torture are specifically applicable in the protection of female refugees. As the experience of many internally displaced females and female refugees shows, rape has become widely recognized as a form of torture. Women seeking asylum on the grounds of fleeing from systematic rape, domestic violence and other forms of degrading treatment can invoke mechanisms of the UN to ensure they are not returned to face such situations.

Subsequent to its early decisions relating to refugee protection, the African Commission has gone on to issue more comprehensive decisions in relation to refugees when expelled en masse by States Parties to the African Charter. In *African Institute for Human Rights and Development v Guinea*, the Commission held that a speech by the president of Guinea urging the arrest, search and confinement of Sierra Leone refugees, causing thousands to flee and return to Sierra Leone was a violation of a number of provisions under the African Charter. Article 12(5) of the Charter expressly prohibits the mass expulsion of non-nationals.

Even more significantly the Commission recommended specific action to remedy this violation. This included a review of immigration policies by Guinea, proper medical treatment and care in cases of detention of non-nationals, access to places of detention by monitoring bodies, procedural safeguards and payment of adequate compensation.

The right to life and physical integrity

The right to life provision can be important in deportation and *refoulement* cases and in procedures employed by states to forcibly deport rejected asylum seekers. The right to life is protected by a wide variety of human rights instruments. Being a customary principle of international law, it is non-derogable and cannot be suspended even in times of emergency or armed conflict. The right to life imposes a positive obligation on states to take steps to protect life. Therefore, states must take affirmative steps to prevent arbitrary killings by criminals, security forces and agents of the state.

While human rights law regulates the conduct of the state towards those under its jurisdiction, actions by non-state actors are not necessarily excluded. The right to life can therefore bring into question the conduct of states in situations where refugees or IDP's are frequently subject to physical attack, as is happening in refugee camps in Darfur and Chad. Indeed, in its examination of Chad's first periodic State Report, the UN Human Rights Committee expressed concern about the safety of citizens caught up in the cycle of violence and the civil war by armed groups along Chad's border with Sudan.

The right to freedom of movement

This is a major issue for refugees/asylum seekers and internally displaced persons who often find that their freedom of movement has been restricted either through not being allowed out of certain parts of a country or even an airport or possibly being detained in prison. The 1951 Convention contains a provision in favour of freedom of movement in Article 26, a provision echoed in Article 12 of the ICCPR. The latter limits this right if the restriction is provided for by law or is necessary to protect national security, public order, or public health. The right should also be consistent with other rights in the Covenant, a requirement that is particularly relevant where freedom of movement has to be balanced with other rights such as family life or equal protection under the law.

The rights not to be arbitrarily detained

Article 31(1) of the 1951 Convention provides for non penalization on account of unlawful entry into a country by a refugee, while Article 31(2) provides that "The Contracting States shall not apply to the movements of (such) refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized." This provision is commonly cited by states as the basis for detention of asylum seekers and refugees.

The Human Rights Committee has however interpreted Article 9(1), freedom from arbitrary detention, such that, to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State Party can provide appropriate justification. In the case of an Iranian national held as a non- citizen without an entry permit in immigration detention in Australia (*A v Australia*), the Committee did not consider that Australia had demonstrated a justification for continued detention of this non-citizen, despite Australia advancing reasons linked to its immigration and border security policies. It took the view that Australia had failed to show that there were not less invasive means of achieving the same ends by, for example, imposing reporting obligations, sureties etc. In these circumstances, whatever the reason for the original detention, continuance of immigration detention for over two years without individual justification and without any chance of substantive judicial review was, in the Committee's view, arbitrary and constituted a violation of article 9(1).

International human rights law clearly contains stronger provisions against detention than international refugee law. The European Court of Human Rights invoked Article 5 of the European Convention to challenge the detention of three Somali asylum seekers who were held in the international zone of Paris Orly airport for a period of 20 days. The

court held that holding the Somali nationals in the transit zone of the airport was equivalent to a deprivation of liberty and that consequently Article 5 had been violated.

From the above, it is clear that human rights provisions and strategies can go quite far in establishing benchmarks and improving states' practice regarding the treatment of refugees. International human rights mechanisms must therefore be considered an integral part of the broader international system for protecting refugees, particularly where national protection is inadequate or ineffective. Having said that, the challenging nature of contemporary forced displacement and the changing nature of conflicts that generate refugee movements confront us with the reality that human rights mechanisms are not a panacea for all these new challenges. There is also the related question of their effective implementation and monitoring.

Limits to the effectiveness of human rights mechanisms

Nowhere are the limitations of the human rights system more evident than in situations such as Darfur in Western Sudan, Eastern Chad, and surrounding countries. Since 2003, Darfur has been the theatre of struggle between the government of Sudan and rebel movements, a conflict that seriously violates human rights. The main casualties are civilians who are constantly subjected to indiscriminate attacks. Killings, rapes, torture, systematic looting, villages set on fire are decimating the Darfur population. By 2005, the UN Security Council was referring to these violations as crimes against humanity. The fighting has left more than 2 million people displaced and hundreds of thousands forced to take refuge in Chad and the Central African Republic. Recently, attacks have been targeted at personnel of humanitarian organizations, impeding the access of civilians to basic relief supplies.

The Sudanese and Chadian authorities have shown a distinct lack of willingness to end the hostilities and in the process are breaching their obligations under international human rights law. Instead of protecting their citizens, the two governments are reportedly complicit in the indiscriminate attacks by their military forces on civilians.

The UN Security Council has passed a plethora of resolutions that cite the suffering of civilians and the obstacles created to the delivery of humanitarian assistance, including the targeting of humanitarian personnel. The question arises whether invoking the norms of international human rights law and the consequences of non-adherence matter in the face of such impunity by the government of Sudan. In particular do these invocations have an effect on the protection of civilians caught up in this crisis in any meaningful way?

The UN referred the situation in Darfur to the ICC on 31 March 2005 through UN Resolution 1593. The Special Prosecutor subsequently applied for an arrest warrant for Sudanese President Omar al-Bashir on 14 July 2008. The Pre-Trial Chamber of the ICC

issued the arrest warrant on 4 March 2009. Sudan is not a signatory to the Rome statute of the ICC and has refused to cooperate with the ICC. The decision of the government of Sudan to expel 13 international humanitarian NGOs immediately following the announcement by the Security Council has caused the already precarious situation in Darfur to deteriorate. Since then, there has been a sharp rise in the harassment, interrogation and arrest of Sudanese human rights defenders. There have also been reports of severe torture of Sudanese citizens engaging in public discussion of the ICC.

In summary, and in an escalating pattern of persecution since 4 March 2009, Sudan's domestic human rights community is currently facing internal restrictions on freedom of movement, arrest, interrogation, detention incommunicado, ill treatment and torture, physical and electronic surveillance, summary closure of organizations, freezing of bank accounts and confiscation of personal property. All this is notwithstanding Sudan's obligations both domestically and under international law to ensure that the humanitarian gap created by the expulsion and suspension of humanitarian organizations is appropriately filled. Protections guaranteed in international and regional human rights instruments are integral to the Constitution of Sudan's Bill of Rights are. Article 16 of the African Charter stipulates that every individual "has the right to enjoy the best attainable state of physical and mental health". Article 11(2) of the International Covenant on Economic and Social Rights provides for the rights of everyone to be free from hunger and that States Parties shall take the required measures individually and through international cooperation. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) also obliges states to adopt positive measures to ensure enjoyment of the right to life. This has been interpreted to mean that refusal by a state to consent to an offer of relief might amount to a violation of the right to life in certain circumstances. The situation in Darfur is a perfect example of such circumstances.

In light of the foregoing it is absolutely clear that no specific human rights mechanism for the protection of the displaced has been effective in Darfur. The impunity shown by the government of Sudan poses a big challenge to the international protection system, especially when even humanitarian protection measures that include the combined use of UN and African Union armed forces to protect victims have not mitigated the deteriorating situation in Darfur.

Challenges faced by the South African government in responding to current migration patterns

As the protection of refugees and internally displaced persons in conflict situations becomes more complex, so are legal frameworks and institutional arrangements for protection evolving. To highlight this, I now present a case study that consists of a brief analysis of a conflict situation described as the most complex humanitarian disaster ever seen in South Africa. The purpose is to highlight the challenge of providing protection in a low intensity conflict situation involving forced migration across and within a national boundary.

South Africa is one of the few countries in Africa that signed the 1951 Refugee Convention without any reservations to Article 26 on freedom of movement, Article 17 on self employment, Article 18 on job opportunities and Article 19 on practicing one's profession. At the same time, the country faces a challenge posed by lack of clarity in policies relating to undocumented migrants, labour migrants, and economic migrants as opposed to refugees and asylum seekers. The policy gap is highlighted by the fact that South Africa has signed but not ratified the UN Covenant on Economic, Social and Cultural Rights. The urban setting of refugee protection as opposed to encampment adds yet another dimension to the challenge.

Against this background, the outbreak of xenophobic violence in the country in May 2008 has been described as one of its most complex humanitarian disasters. An estimated 28,000 foreign nationals were forcibly displaced and 68 killed. In the process, no distinction was made between refugees, undocumented or economic migrants. All ended up being forced out of their homes to live in temporary shelters provided by the government. This created a new category of internally displaced refugees and a government response characterized by the absence of coordinated activities, especially among the three tiers of government, national, provincial and local. Pertinent protection issues that arise are outlined below:

1. The xenophobic crisis was an unusual emergency which led to confusion over responsibilities to protect and assist the affected persons. Amnesty International for example stated that "all of those displaced by the violence are properly regarded as internally displaced persons". UN OCHA also used the term IDPs as well as displaced foreign nationals. In contrast to this, UNHCR did not accept the classification of "internally displaced persons".
2. One reason given was that the term applies to nationals displaced within their own country, a criterion which did not apply in the case of South Africa. The main issue here of course is the fact that the label IDP guarantees protection for a person who is no longer protected by his/her own state and who, due to being in his/ her own country, does not have to seek asylum in another country.

3. On being interviewed, all government, NGO and other actors stated that they were caught off guard and were not prepared for a response to an emergency of the extent that the xenophobia crisis unleashed. Despite the fact that the South African government had claimed that they would handle the response to the crisis on their own, it did make a formal request for assistance to the UN. However, UN actors found it continuously challenging to define their own mandate in a crisis which was not a normal emergency where the UN's role would be clear. Lack of resources and lack of staff capacity also severely hindered their response. Other international actors faced the difficulty of defining their own roles and mandate in responding to an internal crisis in a politically stable middle- income country. UN agencies in particular ended up being limited to a consultation role, giving technical assistance to government with a minor response delivery role on the ground.
4. Absence of an international policy framework relevant to the circumstances for both government and the UN was a frustrating obstacle to putting together a comprehensive response. As one UN agency official observed, the initial focus of government appeared to be on who the displaced were and their documentation rather than concern for speedy, effective protection and effective delivery of humanitarian assistance.
5. The displaced were urban refugees and migrants who had settled alongside South African local communities. The fact that migrants and refugees from different nationalities were now compelled to live close together in temporary shelters created tensions , with food being diverted and this becoming one of the most critical and politicized issues during the crisis. The main challenges faced by international actors revolved around the lack of participation of the affected non-nationals. Lack of communication from government to the displaced and poor management of the shelters fostered mistrust and an unwillingness to cooperate on their part.
6. The fact that the displaced non-South Africans were assisted by both the state and civil society over a period of several months while local communities were living in impoverished conditions and lacking access to basic services generated a lot of controversy. Many South Africans struggling to survive, particularly those in informal settlements, did not understand why so much assistance was being given to migrants and not to themselves. When the NGO Catholic Welfare & Development restructured its target group to include a higher percentage of locals, they faced reluctance from their international donor who refused to allocate more than 20% of the assistance originally aimed at displaced foreign nationals.
7. Similar concerns were brought up by government officials. Humanitarian assistance during this crisis was continued over a long period and provided in a reasonably comprehensive way, creating the impression among some that the response by government far exceeded the standards they considered to be necessary and legitimate. They felt that government had over-compromised itself and had gone way beyond what is normally provided in other crisis situations.

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8. In the overall crisis response, lack of knowledge and skills by local NGOs and the fact that the advice and recommendations given to government were received with a lack of interest was a problem for international actors. Since there had been no similar crisis in the country before, there was no institutionalized basis for the coordination of civil society for responding to the crisis. Consequently there was inadequate consultation. Most had never done emergency humanitarian work before and they had never worked together, having different structures and mandates. While various coordination and information sharing mechanisms were established, they did not result in a unified civil society position, nor were there mechanisms for monitoring and holding civil society accountable for their emergency work.
9. The overall lack of communication among different actors not only resulted in the spreading of incorrect information but also impeded effective functioning of existing coordination mechanisms. The majority of the conflicts among government, UN agencies, civil society and the affected individuals and within each of these sectors could have been avoided through more open and effective communication. Communication from government to the displaced, from government to civil society and from UNHCR to the displaced was especially problematic. There was also lack of communication between different levels of government and between different government departments. The joint engagement of government and civil society in participation forums was for the most part *ad hoc* and inconsistent.
10. Three months after the attacks, the government announced that the temporary shelters where the displaced were accommodated would be closed in order to make way for them to be reintegrated with the communities that had chased them away. With the imminent closure of the shelters, the majority of the displaced believed they had no option but to go back to the communities that had rejected them. Research on the ground shows that many did not go back to the communities where they had formerly settled. A year and some months after the attacks, there are a few hundred refugees who have refused to 'reintegrate' among local communities and have consistently demanded to be resettled by the UNHCR outside South Africa. They have now resorted to legal action in order to have their cases heard. Paradoxically, South Africa does not have a camp policy but has to come to terms with refugees who refuse to leave the temporary shelters they are occupying on the grounds that they cannot integrate into communities that had previously pushed them out.
11. Much as the xenophobic attacks are to be regretted, they have led to the development of policy and institutional arrangements at various levels of government that is geared to respond to similar outbreaks in the future. At national level, there are moves to implement aspects of the SADC Protocol on the Facilitation of Movement in the region. At provincial level, a draft document on contingency measures to be taken in the case of a possible flare up of xenophobic violence is being prepared. Lastly at local government level, the City of Jo'burg is spearheading a forum for sharing strategies with other local governments for dealing with the challenges of migration.

I would like to conclude by outlining the following challenges to international protection:

Decline in the willingness of States to provide asylum

There is a growing tendency for international human rights instruments to be interpreted in such a restrictive manner by states that they are rendered ineffective. The 1951 Convention is no exception. Governments have interpreted their international obligations under this Convention poorly. The obligation for states to protect refugees and IDP's has been overtaken by states' preoccupation with national security interests. Consequent violations include large scale incidents of *refoulement*, arrests, detention, and harassment. The general spread of xenophobia is a good reflection of the consequences. The challenge to ensure that those who flee human rights abuses are protected in the spirit of the 1951 Convention and human rights treaties remains. How do we make a better link between human rights law, humanitarian and refugee law? How best do we to affirm the legal and political responsibility of states at international, regional and national levels with a view to preventing involuntary displacements in the first place?

Militarization of refugee and IDP camps

Rebel movements, host country governments and others often manipulate situations of conflict, generating pervasive insecurity affecting displaced populations. Armed conflict is now the driving force behind most forced displacement. This poses the challenge of providing protection in the midst of ongoing war and preserving the civilian and humanitarian character of refugee and IDP camps in the face of constant criminal attacks on civilians. This is exacerbated by the crackdown by governments on humanitarian agencies, making it virtually impossible for them to reach people in need of protection or even more seriously, a complete ban on their activities, their harassment and arrests of human rights defenders.

The changing nature of protection – many more actors

The state-centric nature of the 1951 Convention is reflected in the fact that the primary responsibility to protect refugees was placed squarely on states. In the evolution of the international protection regime, we have seen the decreasing role of the state and the ascendancy of non-state actors. This raises the question: is the state-centric approach to refugee protection premised on state sovereignty being limited by transnational notions of human rights? If so what are the consequences?

Although the nation state is not about to disappear, its power is limited by the growth of a global civil society influenced by public opinion that is hostile to refugees on the one hand; and on the other non-governmental organizations which are committed to the international protection of people in conflict situations. The increasing role of non-state actors also brings up the question of differing mandates, resources, philosophies and capabilities and the further question: do their interventions always serve the best interests of refugees, internally displaced people or other categories of migrants in conflict situations?

Concluding remark

This presentation had one main objective: to examine the role of the international human rights system in the protection of people who are displaced either within the borders of a country or forced to cross national borders in order to seek refuge from conflict situations. It explores the extent to which protection premised on the international human rights system has been streamlined within international mechanisms for protection. It further raises the problem of non-compliance with international human rights norms by States Parties to international treaties and conventions. By implication this raises the question of the effectiveness of the current protection system in the face of impunity by governments and when fundamental political, economic and social problems inherent in conflict situations have not been resolved.

Zonke Majodina

Zonke Majodina joined the South African Human Rights Commission in 1999. She obtained her BSc degree in Psychology from the Fort Hare University, and an MPhil degree from University of London. Zonke Majodina spent 18 years in Ghana as a Clinical Psychologist at the University of Ghana Medical School, and was later a Visiting Fellow at the Refugee Studies Programme, University of Oxford. She returned to South Africa in 1992 and completed her doctorate with the University of Cape Town in 1999. She is a member of many professional associations, mainly concerning applied psychology, forced migration and human rights. Currently she is serving as the Deputy Chairperson of the South African Human Rights Commission. Her special focus in the Commission is the rights of refugees, asylum-seekers, and migrants.

Dr Majodina has published and presented many papers on human rights, the effects and problems of war, violence, exile, refugees and repatriation. She also serves as an expert member at the UN Human Rights Committee, a Treaty Body that monitors States' compliance with the International Covenant on Civil and Political Rights.