Working Paper
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**Whose Needs are Right?
Refugees, Oustees and the Challenges
of Rights-Based Approaches
in Forced Migration**

LYLA MEHTA AND JAIDEEP GUPTE
Institute of Development Studies, Sussex

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C O N T E N T S

1. Introduction

Uprootedness, exile and forced displacement, be they due to conflict, persecution or even so-called 'development', are conditions which characterise the lives of millions of people across the globe. While the international development community has largely been concerned with refugees crossing borders to flee persecution, violence, impoverishment and brutal regimes, less attention has been paid to displaced populations who experience refugee-like status in their own countries for similar reasons or those displaced as a consequence of infrastructure projects such as mines, dams and roads. The condition of uprootedness, regardless of its cause, is unlikely to go away in the 21st century. Globalisation, with its accompanying acceleration of international capital flows and economic liberalisation, is likely to increase the number of projects that entail the forced displacement of marginal populations. Conservative estimates put this number down to about 10 million annually. Similarly, in some parts of the developing world such as Africa, the growing exodus of people from their homes due to natural disasters and civil strife was said to be close to 4.6 million in 2003 alone (UNHCR 2003).

Studies on forced migration have conventionally been concerned with understanding the social, cultural and economic impacts of forced uprootedness and the policy or practical interventions that could minimise the accompanying processes of impoverishment and help restore the livelihoods of the displaced. Largely, refugees have been viewed as 'problems' for host countries and interventions have focused on 'durable solutions', i.e. voluntary repatriation back to their home country, resettlement in another country or integration into the host society (Harrell-Bond 2001:1). Oustees often are viewed as the unfortunate victims of development projects that are necessary for a country's prosperity or for the greater common good (cf. Roy 1999). Both traditional approaches treat the uprooted, at best, as recipients of charity and welfare, or at worst, as victims or problems. The approaches that have tried to accord agency to refugees and oustees as they make the best of their adverse conditions and mobilise around their rights are few and far between. Largely, the policy and conceptual frameworks that have focussed on their problems have been top-down, almost bordering on social engineering.

In this paper we examine the growing literature, in both refugee and oustee studies, that explores the application of rights-based approaches to forced migration. Introducing a rights regime to both oustee and refugee issues has the potential to overturn the injustices encountered by refugees and oustees, protect them from the violations of basic rights that they encounter almost daily, while also awarding them with the agency to shape their life choices around settlements, livelihoods and social networks in their new homes. Still, of course, rights-based approaches in forced migration are not without challenges, and the paper explores issues around responsibility, potential problems around universality and enforceability, and concludes by proposing a research agenda based on the existing gaps in the literature.

Before we proceed, a few words on nomenclature are in order. Studies on refugees and oustees broadly fall under the umbrella of 'forced migration' even though they rarely speak to each other (see section 'Bridging the Divide' below). Forced migration[1] is largely concerned with people who are compelled or forced to move, when they would rather choose to stay; 'the force involved may be direct, overt and focused, or indirect, covert and diffused' (Van Hear in Robinson 2003: 5). The labels given to populations encountering forced uprootedness/migration are varied. The refugee, according to the UN Convention Relating to the Status of Refugees (1951), 'must be outside his or her country of nationality and unable or unwilling to return due to a well-founded fear of persecution for any one of five reasons: race, religion, nationality, membership of a social group or political opinion' (cited in Robinson 2003: 5). Subsequent formulations by the Organization of African Unity and the Latin American Cartagena Declaration have a wider scope. Largely, refugees have the protection of international law that internally displaced people (IDPs) lack even though they might be affected by refugee-like conditions resulting out of violence, violations of human rights, and natural or human-made disasters. The number of IDPs, defined by the UN as 'persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of internal strife, systematic violations of human rights, or natural or man-made disasters, and who are within the territory of their own country' (UN 1992: Para 17), were estimated at about 20-25 million worldwide in 2002[2]. In this paper, however, our discussion of IDPs largely focuses on

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[1] Forced migration and voluntary migration are treated as separate categories in the literature. However, in reality there are elements of both in most displacements encountered by people. Forced migration has voluntary elements, since people may rationally decide that moving is a better option than facing very difficult conditions in their ancestral homes. Much of so-called voluntary migration can also result out of coercion (see for example 'survival migration' in Zohry and Harrell-Bond forthcoming).

[2] See among others Cohen and Deng 1998a, 1998b and Deng 1993.

'development' induced displacement though our conclusions are applicable to other kinds of internal displacement caused due to conflict/violence etc.

The term 'oustee' is borrowed from the Indian literature on involuntary population displacement, where it is commonly used to describe people 'ousted' from their habitat through government intervention, generally for the purpose of some development-required change in land or water use (cf. Lassailly-Jacob 2000). The term oustee is preferable to 'development-induced displaced' people or 'resettlers' since the latter terms do not highlight the unjust and coercive nature of forced uprooting.

We begin by spelling out the similarities and differences in refugee and oustee studies and then go on to explore the literature highlighting the inadequacy of needs-based approaches and the problems with top-down settlement schemes. The paper then reviews the literature that seeks to understand local struggles around rights and discusses why some oustees/refugees either opt for self-settlement or resistance. The paper then discusses universalist frameworks and tensions in their application. It concludes by raising challenges for future research.

2. Bridging the Divide

> Like becoming a refugee, being forcibly ousted from one's land
> and habitat by a dam, reservoir or highway is not only immediately
> disruptive and painful, it is also fraught with serious long-term
> risks of becoming poorer than before displacement, more
> vulnerable economically and disintegrated socially.
>
> - Cernea 1994: 18

It is important to recognise from the outset that though refugee and oustee studies virtually 'do not speak to each other' (ibid.: 1), they proffer a vast space for comparative research through several substantive matters such as causality, magnitude, impoverishment processes, rights and entitlements, and assistance strategies (Cernea 1996; 1990; also Lassailly-Jacob 2000). Such comparisons are grounded in some similar disruptions both refugee and oustee populations face to

their social and cultural organisation, in terms of surviving the disruption by adopting new strategies to absorb the shock of displacement and reestablishment. Empirically, theoretically, and methodologically then a sharing could 'sharpen and enrich their inquiry by exchanging research technique, approaches, conceptual apparatus, and factual findings' (Cernea 1994). Moreover, a collaboration of the two fields could have a greater influence on policy agenda vis-à-vis *all* displaced populations, thus mutually reinforcing their practical recommendations.

Some have understood the similarities between refugees and oustees as a strong overlap, choosing to describe development oustees instead as 'development refugees' (see Mahapatra 1983). This, however, has also been viewed as 'overstatements of similarities...which [therefore] risk becoming more metaphorical labels rather than rigorous concepts' (Cernea 1996: 296-7). Voutira and Harrell-Bond (2000) point to other issues that impede a smooth bridge across the divide. As they argue, both the causes of impoverishment and what constitutes a successful 'solution' are different. For oustees, as per World Bank definitions, displaced people's original standard of living should be improved or at least restored[3]. By contrast, for refugees the UNHCR discusses three durable solutions, namely integration into the host society, resettlement in another country or repatriation back to their home country. Largely however, the focus is on repatriation, making resettlement a transitory process and not as permanent as the resettlement of oustees. Furthermore, there are massive institutional differences in the major agencies dealing with refugees (namely the Refugee Settlement Commission of the League of Nations, the UNHCR, regional organisations such as the Algerian Red Crescent, the Sahara Arab Democratic Party, and host countries such as Greece, Turkey, and India, for example) and oustees (namely the World Bank, regional banks such as the Asian Development Bank, national governments and regional resettlement agencies). Another key difference concerns who assumes responsibility for the successful resettlement and rehabilitation/ integration of oustees/ refugees. In oustee displacement, the responsibility usually lies with the state since the state in concern decides to enforce the legal principle of eminent domain to acquire the lands of the to-be-displaced. To a lesser extent, lending agencies such as the World Bank can also be held responsible though it is well known that they usually abdicate from accepting responsibility for the problems around flawed

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[3] See Dana Clark (forthcoming) for a detailed overview of revisions to the World Bank Resettlement Policy.

resettlement and rehabilitation and pass the buck to national governments when policies are violated (Clark, Forthcoming).

By contrast, refugees' claims to entitlements are rooted more directly in the universality of human rights and their rights are protected by international law. However, the imperative on host states to assume responsibility for their overall wellbeing is not so clear cut since they cannot claim entitlements from host states on the basis of citizenship (see section 'Does Universalism Matter?'). Clearly, though, both population groups encounter a loss of entitlements (regardless of the cause of the displacement) and factoring oustee *and* refugee entitlements into a combined analysis allows for mechanisms which safeguard against the sliding process of impoverishment of oustees and displaced persons as mentioned above. This can simultaneously serve as a check to human rights violations against refugees. Thus the similarities and differences between the status of refugees and the status of oustees 'permit the highlighting of circumstances in which either the use of violence, bad planning, or other forms of abdication of government responsibility, convert oustees into refugees…' (Cernea 1996). The universalism, accelerated in recent years by globalisation, which underlies the principles of human rights and entitlements, further strengthens the bridge between the study of, and assistance to, oustee and refugee circumstances (see 'Global Humanism' in Gurtov 1991; also see 'UN Covenants' in US Department of State 1977; Gurtov 1988; Kim 1984; and Burton 1984).

3. Inadequacies of a Needs-Based Regime

As discussed, policies for refugees and oustees have different institutional contexts and are governed by different legal regimes. These differences notwithstanding, both refugee and oustee policies and programmes have largely focussed on providing relief to refugees and providing the bare minimum of compensation to oustees. Traditionally at least these approaches have seldom gone beyond the provision of basic needs, limiting their efforts therefore to physical protection at best.

Refugee and displacee policy in the South has been largely driven by the demands of donors and humanitarian organisations (Karadawi 1984, Harrell-Bond 2002). The pressure to see results is

overwhelming and is interpreted as seen through the satisfaction of immediate needs like food, water, shelter, and sanitation. This, added to knee-jerk reactionism, has lead to the adoption of a confinement strategy, keeping large numbers of refugees in settlements or camps, and dependant on relief (Voutira and Harrell-Bond 1995, Hyndman 1997). In a critique of UNHCR practices, Stein (1994) articulates that efforts have been aimed at ameliorating the situation of the refugees, the host community and the state, pending the day those refugees returned to their country of origin, rather than promoting settlement and eventual reintegration of refugee populations in countries of asylum. As is all too evident from past and present examples, these encampment strategies that view refugees as a 'problem' and are aimed at satisfying their 'immediate needs', present several shortcomings.

For example, the inadequacies of supporting only basic-needs programmes were evident in the large scale relief camps set up for the Bangladeshi (East Pakistani) refugees in eastern India, where efforts were centred around the provision of the 'five major necessities…of space, the construction of shelters on this space, provision of medical assistance, supply of water and the supply of food' (Luthra 1971). Even though the refugees were provided with numerous services, stretching government resources to the extreme, insofar as the refugees were concerned, they were economically isolated and therefore, according to a refugee testimonial, had 'hardly any rights' (Mukherji 1974a). As Jeff Crisp of the Evaluation and Policy Unit, UNHCR articulates, '…it is now time to reconsider the wisdom of using scarce resources to feed, shelter and generally "warehouse" refugees who are deliberately prevented from establishing livelihoods and becoming self-sufficient. Notions such as "integrated zonal development" and "refugee aid and development" may be forgotten or discredited. But the principles on which they are based – that refugees should enjoy productive lives and contribute to the development of the areas where they are settled – could usefully be revived' (2001: 16). Moreover, it has long been known that focussing assistance on camps can ignore the needs of the majority of the refugees or displacees who are self-settled (Chambers 1979; Hansen 1982) or who have chosen to self-exclude themselves from resettlement programs (Harrell-Bond 2002).

Many attempts at formulating national refugee policies, or ratifications to global conventions, have for various reasons been half-measures. As Zohry and Harrell-Bond (forthcoming) point out, while

signing on to the 1951 Convention, Egypt entered reservations to Articles 12 (personal status), 20 (rationing), 22 (access to primary education), 23 (access to public relief and assistance) and 25 (labour legislation and social security), making them inapplicable in Egypt. Thus, refugees were explicitly excluded from recourse to public funds, creating isolated 'refugee islands' (see three tiers of assimilation in 'Rejection of Assistance' below). Notwithstanding that, Egypt is a further signatory of the 1989 UN Convention on the Rights of the Child and there are specific Presidential decrees allowing refugee enrolment in public schools (like, for example, for Sudanese refugees), such that 'primary and secondary education for most refugees is not allowed' (Ibid: 26). Palestinian refugee students have been specifically excluded by decree from studying medicine, pharmacy, dentistry and engineering, and must pay university fees in foreign currency at overseas rates. Zohry and Harrell-Bond surmise that Palestinians in Egypt are probably the least educated amongst the Palestinian diasporas worldwide.

What about forced displacement due to 'development'? Oustee policies and programmes worldwide had very dismal beginnings. While international solidarity towards refugees began to be formulated in 1951 (no doubt against the backdrop of cold war politics), it was only in 1980 that the World Bank came up with its first policy on involuntary settlement, which later took the form of its Operational Directives (OD) in 1990, despite massive displacement processes in the 1950s and 1960s[4]. Countries like India still lack an official resettlement and rehabilitation (R and R) policy. Countless studies and reports have documented that the interests of 'development oustees' were rarely taken into consideration when infrastructure projects were built (Oliver-Smith 1991; Thukral 1992 and 1996; Parasuraman 1993 and 1999; Scudder 1996; Colson 1999; WCD 2000). By drawing on the notion of 'eminent domain' governments felt empowered to appropriate the lands of the displaced, a large number of whom were poor and marginalised groups and indigenous peoples. In the early years of 'development-induced-displacement' there were no comprehensive R and R plans and the oustees were given a paltry amount of cash compensation and no assurance of land, livelihood or job security. Due to their lack of experience with cash transactions, it is little

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[4] With 72 percent of World Bank loans in its first year of lending going to dam projects, mega hydro-projects have been easy to finance. Between the 1950s and 1980s, approximately 35,000 large dams were built worldwide (IUCN-World Bank 1997:4), while large scale dam construction in the '50s and '60s was geographically pocketed: the Hirakud dam in India, completed in 1957 displaced 110,000 people, whereas the Dongpinghu, Xinanjiang, Sanmenxia, and Zhaxi dams (all constructed by China between 1958 and 1961) displaced a total of 1,135,000 people. Likewise the Mangla dam in Pakistan (1967) displaced 110,000, the Aswan High dam in Nubia, Egypt (1970) required the relocation of nearly 100,000 (see Fahim 1981) and the Kaptai dam in Bangladesh (1962) ousted 100,000 (data taken from Appendix 3 of McCully 1996).

wonder that many landed up cheated by brokers, money-lenders and in the slums of large cities (Thukral 1992). The history of forced displacement thus has been characterised by trauma, psycho-social loss, impoverishment, a reduction in well-being and ill-heath (for detailed studies in the South Asian context see among others Agnihotri 1996, Dwivedi 1997, Joseph 1998, and Khodka 1999; and for the African context see among others Fahim 1981, Horowitz and Salem-Murdock 1993, Mburugu 1993 and Hitchcock et al 1999).

Recognising these factors and building on decades of research with World Bank infrastructure development and their high human costs, World Bank sociologist Michael Cernea developed the highly influential Impoverishment Risks and Reconstruction (IRR) model (see 1999, 2000, etc). This model has been key in showing how displacement goes hand in hand with physical, social and economic exclusion, which results in a broad range of impoverishment risks namely landlessness, joblessness, homelessness, marginalisation, increased morbidity, food insecurity, loss of access to common property, social disarticulation (Cernea 1997). Together these risks constitute the Impoverishment Risks Model. The basic idea is that if these risks are built into the planning process, they can be anticipated in advance and even minimised or mitigated through advance planning. His model is now widely used in resettlement research (see for example, the book by Mathur and Marsden 1998) and one of its aims is to help operationalise a just planning process around resettlement (Cernea 1997:1571 and 1999). It is now increasingly being applied in refugee studies too (e.g. Kibreab 2001). How and whether it addresses questions around the rights of displaced people is something we turn to shortly.

4. The Top-Down Nature of Settlement Schemes

The literature in both refugee and oustee studies is unanimous about the top-down nature of settlement schemes. Questions of what 'adequate protection' or resettlement and rehabilitation mean to the refugee or oustee are seldom asked. Their centrality ironically forgotten, the local host's and refugees' perceptions of asylum are hardly taken note of or involved in decision making (Karadawi 1982; also see Harrell-Bond 2001). A case in point is the inadequacy of policies, programs and studies in addressing the hazards of being landless. As recent studies have shown, for both refugees and oustees alike, regaining access to productive land is essential in the process

of regaining their livelihoods, minimising their risks and therefore rebuilding their coping strategies (see Cernea 2000). Apart from having disastrous economic, ecological and political effects, becoming landless also has 'profound transformative effects on people's behaviour, practices, psychology, and emotions' (ibid: 88). Due to these social and behavioural effects often being entrenched in local and culturally specific perceptions there is a great need for a 'local dimension' to any refugee or displacee assistance effort (see, for example, the traditional land tenure system in Eritrea in Kibreab 2001, and the deprivation of society's norms, values, morals, and beliefs caused by landlessness in the Kisan tribe of India in Nayak 2000).

The varied experiences of women and men also dictate the need for a closer look at on-the-ground realities. For instance, although men might be more actively involved in organised fighting, women may need to flee to refugee camps, be subjected to violence, assume non-traditional responsibilities, and intensify their efforts to secure food, shelter and security for their family (see UN DDA 2001). These dissimilar experiences need to be recognised in order to have programs catering to actual, rather than assumed refugee rights and needs[5]. In the same vein, and because dislocation drastically reworks social norms and necessitates the uptake of new responsibilities for daily survival, the experiences of oustees too have been different for women and men. Research on the gender impacts of forced displacement is only just emerging but it has highlighted the several male biases that underlie the design and implementation of resettlement and rehabilitation policies and programmes (see Thukral 1996; Mehta and Srinivasan 1999; Indra 1999). For instance, compensation is usually directed to men, while women are rarely involved in decision-making and implementation processes of resettlement schemes. Thus, resettlement programmes often exacerbate gender inequalities among displaced people. Moreover, as research amongst displaced women and men of the Sardar Sarovar dam in India shows, women largely have rights and control over resources in customary law or informal arrangements: for example, in the forest villages along the banks of the Narmada River, women earned an independent source of income from the sale of minor forest produce. But in Gujarat, the resettlement programme neither grasped, nor compensated them, for this loss. As a result, women's economic dependence on male members increased upon resettlement (Mehta forthcoming). Colson's 40-year study of the Gwembe Tonga communities in the Zambezi Valley also shows how interventions largely ignored

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[5] See Beyani 1995, Ager, Ager and Long 1995, Kaffel 1999 and Ward 2002.

women and resulted in a loss of autonomy for them. Any gains that accrued to women were more of an incidental character and not due to any planned form of intervention (Colson 1999).

There is now growing acknowledgement that resettlement research has largely focussed on the highly negative social, economic and cultural impacts of resettlement and its various impoverishment risks. However, it has been less vocal on the need to understand the dynamics around realising the rights of displaced women, children and men (e.g. Dwivedi 1999; Robinson 2003). This is because mainstream research has largely been interested in the perspective of the planner or the researcher, instead of the priorities and needs of the refugee or oustee. Take the IRR model: while it has been key in identifying the relatively visible impoverishment process, it needs to be complemented by a contextual analysis that takes into account certain relatively latent dynamics[6]. For example, it intends to redress the inequities of forced displacement and achieve resettlement based on the principle of equity. It refers to the risks encountered by sub-groups within a community (such as the landless and women) who suffer specific losses that might not be predicted by policymakers and planners and thus suffer a more severe impact. But it does not go far enough in teasing out the dynamics of social differentiation among resettled populations, especially with respect to the reconstruction phase. For example, it is argued that the risk of landlessness can be eliminated through land-based relocation schemes. But the elimination of risks for one group may increase the vulnerability and risks of another group. As the Narmada experience shows, the resettlement package in Gujarat correctly endows major sons (over 18 years of age) with five acres of land. But major daughters receive nothing and married women face growing insecurity, given that in the past it was common for women to have control over forest resources and forest land. Conflicts over land have also intensified, given the struggle for survival due to the poor quality of the land endowed and the absence of forest and other common property resources to meet basic subsistence needs. Land has now achieved a monetary value previously unknown. Thus while sons may welcome being considered beneficiaries of the compensation package, many women bear greater risk. Thus, in order to address inequities within communities,

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[6] This has to do partly with the lens that is used by the researcher. Nayak stresses that such latent dynamics can be made visible either through 'the vocal or educated among the victims', or through studies based on intensive and interactive anthropological fieldwork (2000: 106). Likewise, Merkx (2000) calls for the use of 'border anthropology' to better understand refugee crises that are situated in oft misunderstood borderlands of Africa, Bakewell (2003) recommends the use of 'situation analysis' explicitly to investigate refugees' capacities and resources rather than blanketing them only as the source of needs and problems, and Harrell-Bond and Chambers stress that the power of anthropology to illuminate contemporary issues has been 'under-valued and under-utilised' (see 'Learning from the Poor' in Harrell-Bond 2001 and Chambers 1983:73).

the IRR model may need to advocate explicit partisan interventions for vulnerable groups within displaced communities (Mehta 2002). It may also need to develop mechanisms whereby displaced people can provide their own definitions of loss, impoverishment and development and thus become respected stakeholders in the displacement and planning process (see also Dwivedi 2002). In sum, its emphasis on the risks and impacts of displacement often ignores the need to help institutions to protect and strengthen the rights of oustees as defined by them, even in cases where these might contest the whole exercise of forced displacement.

5. Rejection of Assistance

Given the top-down nature of policies and programmes, it is little wonder that both refugees and oustees often reject official settlement programmes. In 1989 only 25 percent of all refugees lived in settlements where they would receive aid (Cuenod 1989). Instead, the majority had found their own way within the host society. More poignantly, studies have repeatedly shown that despite the availability of food aid and services in places of encampment, people prefer freedom and the autonomy to decide and rebuild their own lives (Harrell-Bond 2002). Bangladeshi (East Pakistani) refugees in India quickly returned home after the liberation of Bangladesh, even though the actual ground-improvements were scant. '[I]n comparison to the prospect of a free life in a newly independent country, camp life appeared to be like bondage which had suddenly become intolerable. The impatience with which they awaited release was notable' (Mukherji 1974b:450). A less dramatic, though similar example of refugees refusing formal settlement schemes is that of Tibetan refugees in Bhutan, where a significant number refused the offer of citizenship by the Bhutanese government (Roy 2001).

It must be acknowledged that many governments have made an attempt to distinguish 'camps' from 'resettlement efforts'. For example, in northern Uganda resettlement was portrayed to be on par with local reintegration that recognises refugees or displacees as having rights as citizens. Thus land was made available to refugees for agricultural production, under the assumption that the settlement efforts would automatically translate into refugee integration. However, as argued by Merkx, local settlement, local integration and assimilation, terms often used interchangeably, are in nature quite different (2000: 15). The difference being evident in a three-tiered spectrum, beginning

at 'local settlement' where refugee-services can be provided for while completely ignoring the local host populations. Consequently, such blinkered settlement schemes give birth to 'refugee islands', with the exclusionary aid isolating the displaced within (as with the Palestinian refugees in Egypt. See section 'Inadequacies of a Needs Based Regime' above). Moreover, local integration constitutes the second tier wherein resources are shared by the host and refugee populations, leading to the third tier where the refugees become full participants of the host community by gaining citizenship and political rights. Using settlement, integration and assimilation interchangeably therefore ignores this gradient. In hindsight, the assumption of integration coming part-and-parcel with settlement in Uganda has proved wrong (ibid.), with local integration requiring more complex processes for understanding whether refugees themselves want to be integrated (cases in point being the Palestinians and the Tibetans (cf. Tsering 1990) who have actively campaigned *not* to be assimilated).

Similar trends can be viewed in oustee displacement. The road from relocation to resettlement and finally rehabilitation is a long one. Invariably, resettlement schemes perpetuate immiseration not only for their top-down style of decision making and the suppression of the ousted, but also due to the incapacity of local economies to sustain both newly resettled displaced communities as well as the host populations around new resettlement schemes. Stein (1998) notes that both urban and rural resettlement schemes in China, particularly the projections of those in connection with the ongoing Three Gorges Dam, have left the ousted far from major markets and facing unfavourable economic prospects. Furthermore, the adverse effects of sudden and distorted price competition are borne by the long-standing farmers, who have the misfortune of having large populations suddenly resettled on neighbouring lands, but who have rarely been included in the budgets of the resettlement compensation schemes. The misappropriation of economic livelihoods is more blatant in the Yacyretá Hydroelectric Project on the Paraná River, on the Argentine-Paraguayan border, where the clay deposits which are the primary source of raw material for the ousted brick makers have been completely flooded by the reservoir (Mejía 2000).

While relocation and resettlement are largely physical and economic initiatives, rehabilitation is more protracted and difficult since it involves restoring a community's and individual's livelihood, income, dignity, wellbeing and the capacity to interact in the new environment as an equal (Asif

2000). According to Asif (2000: 205), in India between 1951 and 1991, about 213,000 were displaced due to 'development' schemes, of which nearly 30 percent were 'tribal'. Nearly 75 percent of the 'tribal' populations had not been settled at all and the author suspects that most of them refused resettlement. In part, this has to do with the resettlement experience, a classic social engineering exercise where oustees are often exposed to control from project officials and have little or no say in site selection or on questions around land, grazing, water provision and so on (see Asif 2000; Mehta and Punja forthcoming). No wonder that many refuse resettlement. According to Asif (2000) this has less to do with the physical problems around resettlement (i.e. inadequate land, water sources, poor civic amenities), than with the fact that oustees woefully lack the ability to participate as equal actors around compensation procedures, around determining solutions to the problems of resettlement and in the protection of their human rights. Clearly then, refugees and oustees are compelled to engage in local struggles around rights to which we now turn.

6. Realising Rights in Local Contexts

Policies of 'forced settlement', whether implicit or explicit, therefore often violate the right of oustees and refugees to self-determine their circumstance as well as their right to social, civil and political liberty. As Khanal puts it, in reference to the Lhotshampa refugees being forcibly evicted from Bhutan: those who wish to preserve their distinct identity 'should not be subjected to forced assimilation, segregation or discrimination' (1998: 144).

Rebuilding Lives and Livelihoods

An emerging literature is now acknowledging the need to recognise the universality of recipient rights while simultaneously taking a deeper look at the individual's situation, treating individuals as responsible actors, and creating a legitimate space for involving refugees and displacees in the decision making processes. For example, Harrell-Bond (2002) proposes a shift from the conventional needs-based to such a rights-based approach[7], collectively pursued by the local government, aid agencies like the UNHCR, and NGOs, as a solution to the resettlement failure that took place in the Ogujebe Transit Centre, Uganda. During the destruction of the transit centre

(which over a ten year period became the largest market in Uganda) Sudanese refugees resisted moving to settlements even at gun point (see Merkx 2000). Had the protection of rights been the focus of the resettlement effort, it would have necessitated engaging refugees and local administrators in all discussions of their own goals and objectives. Identifying other stakeholders would have also been of importance: the local landlords who had given the land to the refugees and were extending land to residents even for farming, needed to have been involved. Most importantly however, there needed to have first been a consideration of the 'legitimate security fears, concerns and livelihoods' of the refugees and then a 'measure of these against the rights to which refugees are entitled' (Harrell-Bond 2002: 8; also see Merkx 2000).

In this context, camp based programs are particularly blameworthy. They often fail to recognise the resources which the refugees themselves bring and often assume that the needs of displaced populations are uniform (also see Clark and Stein 1985; Nieburg, Person-Karell and Toole 1992). As Harrell-Bond (2002: 9) asks:

> Why are refugees and displaced people defined as a welfare
> problem requiring 'relief' or 'care and maintenance', rather than as
> people who have problems, but who also have the determination
> to survive and who are ready to put their energies into productive
> work that could also benefit their hosts?
>
> (also see Wilson 1992; Kuhlman 1990)

The particular skills, capabilities and the rights to livelihood of refugees are often ignored. For example, many of the Tamil refugees from Sri Lanka were practising doctors and advocates when they arrived in India, and those who were self-settled outside the camps have been able to find work despite official prohibitions. 'Even within the camps refugees have taken to self-employment, with fishermen regularly fishing, and others setting up shops selling vegetables, dried fish, soft drinks, blades, pencils and so on' (Subramaniam 1991; also see US Committee for Refugees).

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[7] Alternatively, this distinction is also referred to as that between 'property-compensation policy' and 'people centred resettlement policy' (see Serageldin 1995).

Due to the politically charged nature of forced dislocation, recognising refugee capacity and their right to livelihood is often entrenched in the impasses of local/regional politics. Ironically, because refugees usually take asylum in neighbouring countries, the very situation of strife that forced their dislocation can in turn affect how refugee policy is shaped in the host country. In Egypt, Nasser's 'employment projects' for 50,000 Palestinians residing in the Sinai were revoked by Sadat after peace negotiations with the Israelis sparked tensions between the PLO and the Egyptian government. Palestinian refugees, numbering between 50,000 and 70,000[8], have since been 'prohibited from work in public and private sectors' and have 'no more rights than other foreigners' (Zohry and Harrell-Bond forthcoming: 28).

> Being a refugee doesn't mean that I am helpless and in need of
> assistance. I want UNHCR to know that yes, I am a refugee as
> long as I am living in exile as one who had to flee persecution and
> problems in my country, but I don't want one dollar of their help.
> Don't give me material assistance. Give me economic opportunity
> so that I can help myself. That's all I ask.
>   - Wilfred Brown, a Liberian refugee in Accra, Ghana (Dick 2002)

When given the opportunity, displacees and refugees have exercised their capacities to the full and in the process have also been a benefit to the host community. Tibetan refugees in Nepal have set up a carpet trade, using skills they brought with them, which is now the largest foreign exchange earner in Nepal (see case studies in Hagen 1994 and Jacobsen 2001). This evidence is by no means pocketed: In the Ugandan border district of Moyo, approximately 32,000 self-settled refugees pay local taxes, access local courts and use local health services and schools on the same basis as nationals; some have gone further by setting up self-help schools (Harrell-Bond 2002). Similar examples can be seen in Cyprus, where refugees were paid for their labour in building refugee homes, giving them the freedom to feed themselves (Zetter 1992), and in Kenya, where being granted refugee status includes the right to work. Refugees here have, for example,

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[8] There are no official Egyptian government figures on Palestinian refugees. According to Al-Wafd, Al-Ahram and Al-Ahram Hebdo, during the 1990s there were between 80,000 and 100,000 Palestinians in Egypt, while the Palestinian Ambassador said this number was 53,000 in 2001. The Arab League and the Egyptian Foreign Ministry sets the figure at 70,000, while Yassin (1996) states that 256,973 Palestinians held Egyptian travel documents in 1994 (see Zohry and Harrell-Bond forthcoming: 27).

started textile businesses, and even employed Kenyans (Harrell-Bond 2001). Similarly, in oustee research, there are countless examples of how displaced people have tried to build sustainable livelihoods in unfamiliar environments with little or no state help (e.g. Mehta and Punja forthcoming). These positive examples show that when possible refugees and oustees try to assert alternative means to define their life situations and restore and improve their life chances.

Information on Rights/Rights on Information

In order to facilitate their involvement and recognise their capabilities as assets, refugees and oustees alike must themselves have a good understanding of what rights they are entitled to, and have credible knowledge of the situation they are in. Though it may seem improbable, it is often the case that oustees or refugees do not have complete knowledge of the circumstances around them. Knowledge or information (such as impending submergence schedules or eviction dates associated with dam-based-displacement), whether purposely or unintentionally withheld, can be very disempowering and can therefore keep a displaced community bound to outside assistance. In tune with Nagarnaar, India, where the indigenous people have good knowledge of their constitutional rights (see below), Abrar (2000) calls for credible information on the conditions in Burma, particularly in the state of Arakan. This, he argues, will facilitate a rights-based approach to dealing with the Burmese refugees in Bangladesh, allowing them to make informed choices about their situation themselves. These refugees have for long demanded adequate information about their homeland, but strict government policies have denied them this right.

Furthermore, there is a real need for adequate legal acumen vis-à-vis refugee and oustee issues, and adequate access for all to that legal framework. As Khiddu-Makubuya (1994) argues, refugees just happen to be people who have problems that force them to leave their country without notice. There are no reasons why refugee affairs cannot be justiciable. To subject a person 'exclusively to administrative or executive justice simply because they are a refugee, as is the case in Uganda, amounts to denial of benefits of the rule of law' (ibid.: 409). Without access to courts, there are examples of refugees taking it upon themselves to carry out the duties of a court. Refugee camps often take to 'dispute treatment centres', which Harrell-Bond claims are non-democratically appointed committees of refugees, who, with the encouragement of the UNHCR, take it upon

themselves to settle disputes that arise within camps (see example of Kakuma, Kenya in Gainsbury 2003).

Given the accelerated provision of infrastructure and the magnitude of development-induced population displacements, there are similar stakes at play if the legal dimensions of the resettlement process are not taken into account. In fact, the legal definitions of rights and entitlements are pivotal to how displacement and resettlement takes place since the very decision to expropriate and displace people, taken on the basis of eminent domain, violates people's right to self-determination. As described by Lassailly-Jacob, 'eminent domain laws exist as a legal framework in case of expropriation; however, these have no means for solving the many legal problems that arise from displacement of a population' (2000:123). Practice shows that 'only a small portion of the losses suffered by displaced people are recognised in the formal economic and legal systems or procedures…loss of usufruct rights, rights of way, customary rights to land are poorly or not at all recognised in many national legal systems' (Cernea 1994:16). In short, successful resettlement cannot occur unless there is an inbuilt and adequate account for legal shortcomings, such as the inabilities of the existing legal frameworks to capture the whole gamut of their rights, as well as the inaccessibility of those frameworks. In the complex realm of justice then, refugee/oustee rights need to be safeguarded through the mechanisms of law, though of course the law itself is janus-faced, since it can both protect as well as violate locally experienced and perceived rights.

7. Self-Settlement, Coping Strategies, and the Capacity to Seek Rights

Social networks and ties play a key role in realising rights in local contexts. In answering the question of how the self-settled refugee or oustee makes ends meet, Harrell-Bond describes refugees in Guinea (cf. Van Damme 1999) and in Nakivale, Uganda (cf. Human Rights Watch 2002) strategically deploying 'members of their households to take advantage of services or food distributions available in camps' (Harrell-Bond 2002: 6). For this reason then refugees do not appear out of a historical vacuum lacking in social networks, skills and experience, and they are not necessarily a group of traumatised people whose social norms have disintegrated. Neither do they

form uniform groups, with each family and each individual being shaped by different opportunities, experiences and capacities.

Examples of self-settled or self-excluding refugees relying on their social 'safety net' abound: the Eritrean refugee community in Sudan displayed strong social networking, a capacity gained through the collective experience of hardship, and because this emerged as a response to the war, it gave birth to 'new social organisations [which] transcended the old kinship networks or ethnic affiliations' (Kibreab 2001: 7). The powers of traditional leaders declined, while new leaders emerged with strong links to the liberation movement. The community then relied on their collective and co-operative efforts in dealing with aid agencies, the Sudanese authorities as well as for evolving a coping strategy for overcoming hardship and social disorientation. Similarly, Roy (2001: 27) provides evidence of Bangladeshi refugees that 'settle down on their own by using their resources [of] kinship nets and the accommodative social atmosphere in West Bengal'. Numerous such examples (like the Sri Lankan Tamils, Chakmas, Tibetans, and Lhotshampas, to name a few others in South Asia) all point to the heavy reliance on social networks by self-settled refugees, particularly when the host community displays cultural, religious or lingual commonalities. Kibreab contrasts such examples with those from Liberia, Rwanda, and the former Yugoslavia, where the social trellis was weakened by divisions of ethnicity, tribe, religion and/or language.

Another illustration of the collective efforts of refugees being a source of much protection and empowerment is seen in the collective efforts of the refugees from the Chittagong Hill Tracts (CHT) which enabled them to withstand pressures to return. Despite the Bangladeshi government promising to improve local conditions and applying considerable pressure to extradite refugees, the refugees were able to collectively put forth a charter of demands, which they demanded be met before any repatriation (see CHT in Chimni 1994). Similarly, the people's movement in Nagarnaar, in Chhattisgarh, India is also an example of how collective action and good knowledge of one's constitutional rights can be empowering: For years now the indigenous peoples of Nagarnaar have been battling with the recommendations of the National Mineral Development Corporation (NMDC) for establishing a steel plant in Nagarnaar. Strong social connectivity among the people of Nagarnaar has allowed them to sustain a high level of protest, and collectively demand for their

rights to be upheld (for details see PESA e-discussion group on www.panchayat.org; also see 'A report on terror, repression and criminal conspiracy against tribal people' on www.ambedkar.org).

Though an important resource, reliance on social interconnectedness does not encapsulate the entire gamut of coping strategies displayed by refugees and displacees. Of the Eritrean refugee population that returned home from the Sudan and elsewhere in 1991, approximately 200,000 came without external assistance. Even though the self-returnees did not have access to entitlements of, for example, the PROFERI Pilot Project[9], they shared whatever service opportunities were available close to their settlement area. 'Those who self-settled generally did better than those who settled under government schemes' (Kibreab 2001:12) by combining a diversity of income-generating activities including agriculture, and working in construction or collecting and selling water, firewood, building materials and thatching grass or engaging in petty trade during the slack season.

It is worth noting that when refugees take advantage of the situations they are placed in, they are not exhibiting dependency so much as a capacity for changing their livelihood strategies (cf. Bakewell 2003). And further, though the call is for the upkeep of individual rights, such collective struggles must be seen as retaliations against oppressions too large to be taken on single-handedly. In sum, local struggles around rights hinge on several factors which include the ability to draw on local skills and networks, and the active process around redefining one's officially determined status and position. Success often depends on existing legal frameworks, information about rights and pre-existing networks and skills. In many cases, though, such options are not available to displaced people, and massive resistance is often the only way to struggle and mobilise around their rights.

8. Resistance and Rights

The last decades have been characterised by vibrant resistance movements against forced displacement. Some examples include the anti-dam movements in Pak Mun (Thailand), Narmada

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[9] 6386 households were settled by the government with the help of international donors – these households were provided with basic administration, health care, primary education, water supplies, food aid, and in some cases two hectares of cultivable land, seed, and tools.

(India), James Bay (Canada), Alto Rio Doce (Brazil) and Berg River (South Africa). Despite the differences in these movements, they are united by a few overarching aims which include resistance to displacement, settlement programmes and the overall 'development' or other rationales underlying the projects displacing them. Another common feature is the perceived sense of lack of control that displaced people have over determining their lifeworlds and livelihoods. Thus resistance is largely about the 'recognition and restoration' of the rights of displaced people (Oliver-Smith 1991). This recognition varies across different kinds of rights. One form includes the recognition of the risks that accompany displacement (e.g. the risk of losing one's land, cultural identity, job, livelihoods and so on). Clearly, those who potentially stand to risk more may, in some cases, be the most vocal in their resistance. This may explain why Dwivedi finds that it is the landed with huge material assets that are the most active in protest movements against the SSP project in India's Narmada Valley, as opposed to the landless wage labourers (1999), though other groups such as women who own far fewer assets also play key roles in protest movements (for example, India's Maheshwar struggle in Madhya Pradesh in Mehta, forthcoming). Resistance also takes place due to exclusion from categories/labels (such as 'project affected person') or compensation packages that would help restore the rights and livelihoods of displaced people. For example, people who live downstream of dams may have their right to livelihood infringed because their fishing livelihoods will be at risk once a reservoir is dammed.[10] Others may want recognition for their rights in customary law and thus seek compensation for their usufruct rights over trees and forests. Hence displaced people and their allies, NGOs and activists, struggle for inclusion in a category or compensation package from which they are excluded.

It is now well known that conventional compensation packages are very inadequate in capturing loss (cf. WCD 2000; Mehta forthcoming) since they rely on cost-benefit analyses and balance sheet approaches which are silent about the hidden costs of forced displacement, and intangible issues entering the socio-cultural domain. They also display a market bias in valuing costs and benefits. Given that markets are not neutral but ideological sites laden with power and social relations, certain issues are valued more than others (e.g. irrigated land receives more compensation than common property). Moreover, it is often impossible to put a 'price' to intangibles

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[10] The World Commission of Dams refers to this as 'livelihood displacement' as opposed to physical displacement (WCD 2000).

such as the loss of livelihood strategies, common property assets, changes in socio-cultural identity and geographical space, crucial for a community's sense of wellbeing. For example, in the resettlement programmes around the Sardar Sarovar (Narmada) dam, women were not compensated for the loss of minor forest produce which earned them about Rs 1,000 a year. Fisher-folk and sand quarry workers may not have land and thus fail to receive official compensation packages, but 'their land' is the river which gives them 'gold' in the form of sand, fish, water and crops grown on the riverbank (Mehta 2002).

When official recognition is not awarded to questions around memory and loss and rights in the informal realm of customary law, oustees often resort to the most extreme form of resistance, which is a struggle around the right to remain in their ancestral homes and veto the project's construction.[11] In dam-based-displacement this often entails massive threats to life and property since it often means battling with both the hostile waters of a rising reservoir and the police who are keen to evict the community to the resettlement site. For example, since the early 1990s, activists of the Save the Narmada Movement have become world famous due to their ongoing battle with the Indian state against forced displacement. Despite the risks of submergence and policy intimidation, almost every monsoon, a dedicated group of activists and potential oustees who have not yet encountered resistance fatigue, face the rising waters of the Narmada to defiantly protest against the violation of their basic rights.

The success of such high-profile resistance activities depends on transnational alliances of NGOs, campaigns and movements (see Khagram, forthcoming). Here international human rights standards as well as the policy directives of international organisations such as the International Labour Organisation[12] and the World Bank are evoked and adapted to grant salience to local struggles and campaigns.

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[11] This is implicitly recognised in the WCD recommendations around 'negotiated outcomes…:
[12] For example, ILO 107 and later ILO 169 specifically deal with the rights of indigenous peoples.

9. Do Universalisms Matter?

The preceding section has outlined how oustees and refugees seek rights and how rights are often locally defined and rooted. This section now outlines legal and largely universalist instruments that refugees and oustees often draw on in these local struggles to realise rights.

The key difference between human needs-approaches and human rights-approaches is that the latter entail an element of entitlement to them that the former lack. As Goldewijk and Gaay Forman (1999) describe it, 'a rights based approach to social and economic security implies that people's access to basic needs is protected by law and legal mechanisms' (cited in Mehta 2004: 8). Rights based approaches then readily serve as a check against the violation of basic rights of refugees and oustees.

The perception of what should be defined as a 'basic human right' often draws on universal standards enshrined in the 1948 Declaration of Human Rights (UNDHR). But human rights and even what the very term 'refugee' implies are not just legal matters, but also dependant on culture as well as on the development standards of a country (Cernea 1994; Harrell-Bond 2001). As pointed out by Downing and Kushner, 'the precise content of human rights logics varies between and within the same culture at different times. Yet, the logics also tend to share critical, perhaps universal dimensions' (1988:9). We now explore some universalist standards along with potential tensions in their application.

We realise that distinctions between the so-called first and second generation of rights are quite problematic since both the so-called negative rights (i.e. civil and political rights) and positive rights (i.e. social and economic) are indivisible and inter-related. In recent years, citizenship has increasingly been seen as encompassing both civil and political rights as well as social and economic rights. In fact, the distinction between negative and positive rights is highly problematic because both involve outside intervention and commitments for their protection. Still, for purposes of clarity, we follow this traditional distinction and present three realms of rights, including customary rights that are relevant for oustees and refugees, and go on to then explore difficulties in applying universalist dimensions.

Civil and Political Rights

These rights are clearly the most acknowledged and fall under the umbrella of the International Covenant of Civil and Political Rights which has 144 signatories[13]. Refugees have a strong basis for protection against persecution and abuse of their civil and political rights. By 'voting with their feet' (Hathaway 1991: 120) refugees fleeing from oppressive state regimes and the abuse of their human rights can expect protection from international law and from host countries[14].

Coercive displacement can also lead to violations of the civil and political rights of oustees. For example, governments can resort to police violence to stop oustees protesting against displacement. Similarly, civil and political rights can be violated at the hands of officials implementing resettlement schemes. State governments may often be willing to violate civil and political rights when they evoke the principle of 'eminent domain'. Thus oustee attempts to seek redress can be tricky since the State is often both the perpetrator of human rights violations and the arbiter of justice. By contrast refugees can draw on the right to flee an oppressive state regime and gain protection from international law and host governments (see below). The fact that they are non-citizens and thus may not gain the desired entitlements from host states is discussed in detail in for refugees in India by Chimni (1994) and for Uganda by Khiddu-Makubuya (1994).

Social and Economic Rights

The displacement and resettlement of both oustees and refugees leads to several risks to basic social and economic rights. These include: the right to development and self-determination[15], the right to participation, and the right to livelihood. Clearly the loss of a home leads to a marked loss of all these rights as illustrated through the case study material presented in this paper. Moreover, economic globalisation and its accompanying skewed process of wealth creation has also led to the increasing poverty of vulnerable groups.

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[13]In 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) which was virtually endorsed by all states. It has now acquired the status of customary international law and is premised on the inherent dignity and worth of all human persons, regardless of background, class, race etc. It is constituted by the International Covenant on Civil and Political Rights (ICCPR) which has 144 parties and the International Covenant on Economic, Social and Cultural Rights which has 142 parties.

[14] As Mehta (2003:3) points out, not only do civil and political rights entail negative obligations on the state to refrain from infringing on personal freedoms of speech, but they also entail positive actions – e.g. investing in a functioning police service, courts, and judiciary to protect citizens.

[15]The 1986 General Assembly Declaration on the Right to Development endorses individuals' rights to participate and enjoy economic, social, cultural and political development to realise fundamental human freedoms. This also includes the right to self-determination over the natural environment and resources. The right to participation is drawn from the various articles of the International Bill of Human Rights, and specifically ILO Convention 169. Similarly, the Right to Livelihood is founded in the UDHR and articles 6 and 11 of the ICESCR (see Robinson 2003: 14).

Social and economic rights fall under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which has 142 signatories. However these rights are often viewed as 'second generation' rights which can only be progressively realised once civil and political rights are dealt with. While a growing literature has now pointed out that both forms of rights are indivisible and inter-related (e.g. Plant 1998), in practice there still remain many hurdles to equal recognition of social and economic rights. Take the definition of who constitutes a refugee. Several authors point to the narrowly framed 'fear of persecution' standard to describe refugees, which largely refers to civil and political rights. However, Hathaway (1991) proposes that 'refugee status could become the entitlement of all persons whose basic human rights are at risk'. In other words, the loss of human dignity arising due to the deprivation of social and economic rights should also be a legitimate claim to refugee status and would be in keeping with the ways in which the definition of who is a refugee has been expanded by the Organisation of African Unity (OAU) and the Latin American Cartagena Declaration[16]. Such an extension could thus undermine the primacy awarded to civil and political rights from the cold war era and award entitlements for refugees whose social, cultural, political and civil rights are violated in their own states.

However, why should states honour these commitments towards non-citizens given that they honour existing obligations (such as the right to seek asylum) with such reluctance? This question goes to the heart of what constitutes membership in a country/community. Conventionally, it is citizenship which facilitates this membership. However, as Hathaway, drawing on Walzer argues, while states have the right to exclude non-citizens from membership in their country, viewing refugees as 'necessitous strangers' grants them special entitlements in a national community (1991: 124). This calls for both a 'limited and complex redistribution of membership and/or territory… The same difficulty arises with regard to wealth and resources. These, too, can be superfluous, far beyond what the inhabitants of a particular state require for a decent life… [In these circumstances, members of the state] could share their wealth with necessitous strangers outside their country or with necessitous strangers inside their country' (Walzer in Hathaway 1991: 125).

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[16]The OAU (Article I(2)) now recognises 'external aggression, occupation, foreign domination or events seriously disturbing public order' as further grounds for the claim to refugee status, while the Latin American Cartagena Declaration recognises persons in flight from 'generalised violence, foreign aggression, internal conflicts, massive violations of human rights, or other events w hich have seriously disturbed public order' as refugees (see Hathaway 1991: 123).

This calls for states to extend conventional notions of membership to refugees in order to protect a range of political and socio-economic entitlements. Hathaway however feels that rather than viewing refugees as persons with special entitlements to membership in a new community, it is better to view them as 'necessitous strangers' with no place to go and that eventually the host states will have to cease providing them protection when they can receive entitlements in their states of origin which is in keeping with the conventional wisdom of repatriation. Whether this is a realistic argument in an era of 'polarized economic globalisation' (Bhabha 2002: 171) is another matter. Clearly, we are increasingly witnessing situations where political violence and dictatorships go hand in hand with economic destitution, calling for the need to provide more attention to social and economic rights. Though politically tricky, this would translate to an extension of rights to entitlements around membership even in the new community, over and above their states of origin.

With oustee displacement, the protection (at least on paper) is more clear-cut. States that force population groups to relocate clearly need to firstly avoid the likelihood that oustees' social and economic rights will be corroded. Secondly, if possible, they also need to enhance the socio-economic status of oustees and help secure a better standard of living for them, thus making 'development' a just process that enhances the life choices of all. Consequently, there are now growing calls for the need to link resettlement with wider developmental efforts. This explains why the World Commission on Dams (2000) seeks to make hitherto losers emerge as winners of dam projects. Recent policy statements by the World Bank call for 'resettlement activities to be conceived and executed as sustainable development programmes, providing sufficient *investment resources* to give the persons displaced by the project the opportunity to share in project benefits (cited in Cernea 2000). Whether or not governments and agencies have the political will to execute these aims is something we turn to shortly.

Customary Rights

While the 1945 Declaration of Human Rights has now acquired the status of international customary law, the dynamics of local customary law are often ignored in official resettlement policies. In particular, this affects oustee populations. There is often a marked lack of recognition of the fact that customary rights of indigenous and tribal people and women, including their access to common property resources, are often enshrined in informal arrangements recognised by

customary law that is rooted in local understandings of property regimes. In particular, women largely have rights and control over resources in customary arrangements which are often corroded in newly created formal institutions to govern resources which may be male dominated and also ignore local dynamics (Mehta 2002). This manifests itself in official categories such as the 'landless' for those who lack official titles, despite the fact that they may control and cultivate vast tracts of forest and so-called 'waste' land (for extensive documentation of this in the Indian context see Morse and Berger 1992).

10. Balancing Risks and Rights

Resistance to the principles of rights often stem from the fact that competing rights claims exist due to a lack of clarity around who has rights, whose rights are at risk and who is to be the duty-bearer to protect and fulfil the different rights described above. Take oustee displacement. The fact that it is legitimised through the overarching principles of 'development' and 'national purpose' has often made it traditionally difficult to contest the corrosion of the three sets of rights outlined above. This is because oustees' rights are pitted against the so-called rights of the larger population expected to benefit from the planned highway, road, park or dam. Increasingly, however, it is now acknowledged that such social development processes have been skewed in terms of how gains and pains are spread. Often a small and elite minority has benefited immensely, while a large silent group has borne disproportionate costs. As W. Cortland Robinson argues, 'Development is a right but it also carries risks to human life, livelihood, and dignity that must be avoided if it is to deserve the name' (2003: 59)[17].

Thus there is a need to conceive of new imaginings and practices of development (Dwivedi 2002). One significant effort to highlight crucial issues around rights and enhance the agency of those disenfranchised by displacement is the 'risks and rights' approach of the World Commission on Dams (2000). Its report was the result of a two-year stakeholder dialogue between industry, affected groups, governments and NGOs concerned with large dams that, amongst other things, highlighted the magnitude and dynamics of dam-based-displacement worldwide. Critical also was the development of a 'rights-and risk' approach to be used as a tool for decision making which

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[17] See also Arundhati Roy's evocative essay on the 'Greater Common Good' (1999).

contrasts sharply with balance-sheet approaches. This approach explicitly links risks with the concept of rights by advocating an approach that recognises rights and assesses risks (in particular rights at risk). The rights include constitutional rights, customary rights, rights to livelihoods, legislated rights and rights to property. By distinguishing between 'involuntary risk bearers' from 'voluntary risk bearers', the approach seeks a way for all stakeholders to negotiate together in a transparent manner so that risks and benefits are spread in an equitable manner (WCD 2000: 208). Unlike conventional balance sheet approaches, it also seeks to give more voice to those who face the greatest risk and whose rights and entitlements are the most negatively affected. Thus the World Commission on Dams seeks to abandon involuntary resettlement in favour of voluntary resettlement through mutually agreed and legally enforceable mitigation and development provisions. If countries and agencies accept the WCD guidelines, they would need a radical rethinking of the way in which resettlement programmes are planned and executed, making it virtually impossible to pursue current programmes that are largely divorced from the needs, rights and aspirations of refugees and oustees. The guidelines are thus a significant step to show how poor people's lifeworlds, aspirations, rights and values can be respected and built on in forced migration research, policy and practice.

11. The Real Strains of Rights and Problems Around Definitions

The preceding sections have discussed why it is important to shift the balance from settlement based 'relief' and welfare oriented efforts towards more rights based 'development' which could lead to treating individuals as responsible actors capable of making decisions about their own lives in the course of forced migration. We have also outlined frameworks and universalist human rights instruments that oustee and refugee struggles draw on to realise their rights, despite the problems in translating from the universalist to the local level. We conclude by highlighting some of the difficulties in implementing RBA.

It can be argued that a rights-based refugee and oustee regime places severe strains on the host country. On receiving close to seven million refugees in the state of West Bengal alone, the government of India issued the statement that 'refugees will not be given any employment in India' (GOI 1971). Although in contradiction with a rights-based regime, the reasoning behind this might

be easy to understand, as at the time West Bengal already had unemployment to the tune of 2.5 million (see Chimni 1994 and Luthra 1971). Besides this economic burden, there is also the threat of being culturally swamped. The states of Meghalaya, Assam and Tripura in India were concerned that with the already substantial Bengali presence, the large influx from Bangladesh would result in the indigenous population becoming a minority in their own land (see Myron 1993). The pressures of a rights-based refugee regime can at times be seen as unrealistic for a poor country to bear[18], and are great enough to keep the issue of population movements off the purview of organisations such as the SAARC, for 'fear that it would disrupt the organisation' (Muni 1993; also see Chimni 1994).

There is also a tension between a refugee-specific rights regime and international human rights law. The problem with distinguishing these two regimes is that it might appear to legitimise the differential (adverse) treatment of refugees. However, Chimni (1994) argues that in view of the commitment of states to the general human rights law, it would be difficult for a state to deny that the international law does not have application where refugees are concerned. On the other hand, a distinction between the two regimes is in fact needed to ensure that refugees are given certain rights which are not available to non-nationals in general. The Covenant on Economic, Social and Cultural Rights (Article 2(3)) allows for this differential treatment of refugees over non-nationals. That is, 'a refugee-specific rights regime can contain standards relating to economic rights which are higher than those applicable to non-nationals in general' (Chimni 1994). While human rights law has contributed to the universalization of human rights norms, 'it is still necessary to maintain focus on the specific needs, interests and aspirations of refugees' (Khiddu-Makubuya 1994). Likewise, synchronising 'the Refugee Convention with regional instruments, like the Organisation of African Unity 1969, and other regional norms is one step that may be taken to strengthen the system of refugee protection' (Ibid.).

Similar strains exist for development-induced-displacement too. As Robinson argues, the recent inclusion of 'development-induced-displacement' within the 'guiding principles' of internally displaced people has on the one hand the potential to highlight oustee concerns to many UN and

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[18] Chimni cites several reasons for India not being a member of the 1952 UN Convention. However, while India can invoke the reservation clause of the Convention, this will not provide sufficient protection against criticism from UNHCR and the NGO community (1994: 396).

international agencies and the Representative of the Secretary General (2003: 55). Still, it has met with much resistance from southern officials since there is concern that the limited aid budgets and attention available to the already ignored problem of the victims of conflict-induced-displacement (approximately 20–25 million people per year) will be diluted. Moreover, it will provide international agencies and NGOs monitoring the implementation of these guidelines the legitimacy to 'interfere' with and criticise what national governments consider domestic affairs, especially since displacement is not occurring due to a national disaster or conflict but due to state action.

12. Apprehensions Towards Rights Based Approaches?

Despite the prescription that there be an expanded role for community services to foster a rights based model, such efforts have not had the same financial backing as the priority 'life support sectors' of food, health, water and sanitation. With respect to refugees, Bakewell concludes that agencies are not yet ready to adopt the principles and practices put forward within the UNHCR's community development approach[19]: 'An organisation that has not developed a participatory, empowering management structure cannot run a participatory programme' (2003: 17). For the UNHCR to make a genuine shift from a needs- to a rights-based approach, there primarily needs to be a phasing out of referencing to 'dependency' and 'vulnerables', especially in operational manuals (ibid). There is also the larger issue of dialectics: it is worth noting that since the Convention Relating to the Status of Refugees (1951) treats the refugee as an individual whose rights must be protected and respected, its provisions do not easily translate into the actual protection of large numbers of people (see Ugandan example in Khiddu-Makubuya 1994). Within the UNHCR, there has also been a shift in the emphasis on the meaning of protection. Protection of refugees is now primarily defined as security of refugees and refugee operations rather than in terms of the legal asylum process (see Adelman 2001).

With respect to oustee displacement, gauging from reactions to the WCD Report, there is a marked lack of official endorsement for a shift from policies/programmes that focus on impacts/risks of displacement to upholding the rights of the displaced. For example, the World Bank, despite being

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[19] For example, the UNHCR Handbook (1982-3) argues for an awareness of the need to involve and consult refugees in planning, and against a rigid policy of assistance. It recommends sensitivity to the traditions, customs, and even to the tastes of the refugees. It sets standards for the quality and delivery of food and medical services which cannot be faulted (see 'Learning from the Poor' in Harrell-Bond 2001).

one of the founding members of the Commission, declined to adopt the rules of the WCD as the guiding principles for its operations. It is also not clear whether states and institutions executing relocation and resettlement programmes will relinquish power to hitherto marginalised groups to make them respected equals in the process.

Furthermore as Michael Cernea has shown in recent work, there is an inherent incompatibility between the goal of providing a compensation package that will improve incomes and livelihoods and the lack of means to do it. Thus he calls for additional investment financing that could help lift the uprooted above their pre-displacement livelihood status (Cernea 2002:3). Whether or not agencies will run with this is open to debate. Existing signs indicate that in practice there is very little incentive for agencies to invest in sound resettlement and to treat oustees as 'investors' who, by giving up land as livelihoods, are entitled to an equal share in the benefits of a project.

Moreover, as lawyer Dana Clark has demonstrated, the World Bank's revised resettlement policy of 2001 waters down some of the strengths of its 1990 policy which clearly states that displaced people should benefit from the project and should have their original standard of living improved or at least restored (Clark 2002). However as Clark (forthcoming) demonstrates, the revised 2001 policy introduces new language which can potentially weaken the strengths of the 1980 policy, thereby placing vulnerable people at greater risk of impoverishment. For example, the revised policy no longer applies to those affected by the 'indirect' impacts of a project (e.g. downstream impacts of a reservoir). Similarly the focus on the restoration of past incomes is a step back from embracing development-oriented objectives of improving life styles and livelihoods of project affected people (see criticisms by Scudder 1996; Clark forthcoming etc.). It may also seriously disadvantage indigenous peoples, women and ethnic minorities, who often lack formal legal rights to land, but whose rights are enshrined in customary arrangements. To underscore the point, these measures are a step back from the previous provisions that provided compensation mechanisms to those without formal titles to the land.

13. Challenges for Future Research

This paper's starting point was that the condition of uprootedness is likely to be on the rise in the 21st century, not least because the processes of economic globalisation, violence and conflict are showing no signs of abating. In order to achieve social justice for millions of people encountering forced displacement, debates around forced migration have to go well beyond addressing the physical needs of displaced women and men. Instead, there is a need to evolve institutions to protect and strengthen a wide range of rights, including the right to livelihood, survival, cultural integrity and sustainable development, and even the right to veto either projects that displace people or settlement schemes that are inadequate.

Following a literature review concerned with the different aspects of rights in both refugee and oustee studies at the levels of research, policy and practice, the paper has demonstrated that there is still a marked lack of approaches that awards agency to refugees and migrants and sees them as makers and shapers of their lifeworlds. Instead, conventional frameworks largely view forced migrants as problems, victims and recipients of charity, which results in settlement programmes that do not capture the priorities of migrants, do not draw on their skills and aspirations and are consequently often rejected by displaced people who often opt for self-settlement or resist official programmes and frameworks altogether.

In part this has to do with the frameworks deployed to understand processes of forced migration. The massive focus on understanding the impoverishment risks and impacts of displacement at the social, cultural, economic and institutional levels has been key in teasing out the various impoverishment processes accompanying displacement for both refugees and oustees. However, by largely serving as tools for planners they often fail to capture local dynamics, contextualised nuances and the perspectives of displaced people. On the other end of the spectrum is a large social science literature in both oustee and refugee studies that has generated numerous locally-rooted studies highlighting the inadequacies of the needs-based regime and documenting how refugees/ oustees are realising their rights. However, this literature is sometimes less explicit in making links with wider policy processes and local/ global processes and in articulating how rights can be institutionalised and realised.

The paper also highlighted several problems around definitions. Definitions of who is a refugee or oustee are often very contested, and globally defined norms and standards often do not match up with local claims and definitions. Similarly, the violation of a variety of rights as experienced by a displaced person are institutionally broken down in an artificial distinction of negative and positive rights and may deny the displaced person the right to seek redressal from external actors. Thus while both oustee and refugee studies are beginning to grasp the diverse ways in which rights are being violated at the local level through detailed ethnographic research, the institutional frameworks to deal with this are compartmentalised and often fail to grasp the interconnectedness of how rights are experienced at the local level.

What are thus the challenges for future research in refugee and oustee studies around questions of rights and rights-based approaches? One, as the review demonstrated, is that refugee and oustee studies rarely talk to each other despite many similarities. Thus it would be desirable for future work to make systematic analyses around potential synergies and differences around the following:

a) How do refugees and oustees experience and mobilise around rights in different contexts?

b) What are the similarities and differences in the institutional contexts that shape the outcomes of these rights struggles?

c) How are responsibilities and duties around realising rights spread out across different institutional actors (at the local, regional and global levels?)

Two, many of the studies reviewed either provided very detailed ethnographic data or were more abstract around questions of rights. Very few made explicit links between global and local dimensions, while maintaining a focus on the strengths of the ethnographic method. Similarly, while there is no dearth of work discussing how human rights violations constantly take place in the processes of forced migration experienced by both oustees and refugees (especially at the theoretical level), there is a marked lack of approaches that seek to understand how universalist frameworks are translated in different local contexts. Thus there is a need to understand how universal standards are translated, deployed, challenged and resisted by different actors at the local, regional and global levels. Part of the problem in doing this is the lack of clarity around questions of duties, responsibilities and implementation of abstract and universalist assumptions.

The study has discussed some challenges but clearly there is a need for far more nuanced multi-sited research amongst refugees/ oustees/ NGOs/ planners around how rights can be realised in different contexts and how rights talk can emerge as rights practice.

Finally, there is also the need to explore methodologies that could systematically assess locally appropriate notions of rights and risks building on the WCD principles. While this would hold more for oustee studies, since the rights of some groups are knowingly put at risk in the course of forced displacement, it could also be explored with respect to how the rights and risks of refugee and host communities could be balanced in an equitable manner. In this regard, public hearings and multi-stakeholder dialogues organised by coalitions of researchers/activists together with oustees/refugees/officials/planners could be useful forums for local perceptions of rights/ risks to be discussed and balanced against those of other stakeholders. Here the insights of 'situation analysis', 'border anthropology', legal pluralism and other deliberative processes would be helpful.

To conclude, there is no consensus on whose needs are right in processes of forced migration. However, the focus on developing bottom-up frameworks to understand and strengthen the rights of oustees and refugees (despite all the challenges and messiness outlined in the paper) is a small step in redressing the unjust processes that increasingly confront refugees and oustees today.

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