



Development Aid for Refugees:

Leveraging Rights or Missing the Point?

by Merrill Smith, Editor

Introduction

Of the 11.5 million refugees in the world, nearly 7.8 million have, in effect, been “warehoused”—confined to camps or segregated settlements or otherwise deprived of basic human rights—in situations lasting five years or more. With the release of *World Refugee Survey 2004—Warehousing Issue* (the Survey), the U.S. Committee for Refugees and Immigrants (USCRI) launched an international campaign to end warehousing. The campaign promotes the rights in the Convention Relating to the Status of Refugees (1951 Convention) of refugees to live as normal a life as possible while they await durable solutions. In particular, the campaign seeks to persuade states to allow refugees to work, to run businesses, to practice professions, to own property, to move freely and choose their place of residence in countries of asylum, and to have travel documents (see “Anti-Warehousing Rights” foldout, Table 7, *supra*). The Universal Declaration of Human Rights and other human rights instruments champion these same rights for all persons.

The principal obstacle to refugees enjoying these rights is lack of political will. The 1951 Convention itself has no practical legal enforcement mechanism. Courts in states party to it vary in effectiveness, depending not only on the strength of implementing legislation (often subject to restrictive reservations) but also on the overall strength of the rule of law in countries of asylum. But if refugee

protection is truly an international responsibility, the onus does not rest exclusively on host countries. Warehousing also implicates the practices of donor countries and international agencies. The main venue for enforcing these rights is the court of public opinion, internationally and in both host and donor nations.

Conditionalities limit even the most binding terms in the 1951 Convention. Paragraph 1 of Article 17 does not require parties to grant refugees rights to wage employment any greater than those of other foreigners. Paragraph 2 lifts restrictions “for the protection of the national labour market” for those refugees that have resided in the country for three years, married nationals, or have children who are nationals. Paragraph 3, on the other hand, declares that “The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals... .” “Sympathetic consideration” might be vague language in law, but the court of public opinion in host countries can construe it to mean that refugees should be allowed to work. Whether or not host states accept the latter, more generous interpretation of Article 17 depends on the political work of activists, ordinary citizens, and refugees themselves in raising public awareness, identifying potential constituencies, and mobilizing civil society to cultivate a policy environment conducive to that interpretation.

Similarly, no international law prohibits donor countries from subsidizing warehousing or requires them to fund more integrative, rights-friendly approaches to refugee assistance. Donor assistance is discretionary and need not be consistent or reliable. Donor countries are not legally required to sit down with host country governments

Top Photo: The detritus of short-term humanitarian aid is part of the architecture of Kakuma refugee camp, Kenya, 2004.

Photo credit: B. Meshack

to discuss more appropriate ways to offer aid. But development aid, in itself, is neither a necessary nor sufficient condition for refugee rights. Past and current initiatives to link development aid to refugee assistance have failed to focus on refugee rights. Public opinion and advocacy, however, may persuade donors to change this.

More than 150 nongovernmental organizations (NGOs) and notable individuals from around the world, half of whom represent refugees in or from the global south, have endorsed the Statement Calling for Solutions to End the Warehousing of Refugees.¹ But they are not just signing statements. They are taking concrete actions in donor and host nations to reshape the refugee protection agenda (see sidebar, pp. 26-27). Such international action is the beginning of a coordinated campaign to bring pressure to bear on the relevant parties for the rights of refugees.

Background—From Protection to Relief

In establishing the Office of the UN High Commissioner for Refugees (UNHCR), the Western states generally agreed

that its primary function should be to provide international protection “aimed at safeguarding the rights and legitimate interests of refugees and at overcoming any disabilities arising from their status as refugees.”² They constrained the agency to give material assistance only if host governments requested it and then only with the approval of the General Assembly.³ In 1952, GA Resolution 538B(VI) allowed UNHCR to appeal for emergency aid but also directed it to promote the integration of refugees into economic reconstruction and development.⁴ Later, UNHCR initiated the Camp Clearance Program, also with primary emphasis on local integration.⁵ When this program cleared the last European camp of the era in 1960, participants ceremoniously burned it to the ground.⁶ Receiving countries were more likely to view refugees as agents of democracy and the preferred durable solution was local integration.⁷

Even as late as 1976, UNHCR favored non-operational, spontaneous settlement over formal encampment in Africa.⁸ At a 1979 conference in Arusha, then-President of Tanzania Julius Nyerere did not rule out eventual voluntary repatriation:



Movement restrictions required Burundian refugee carpenters in Lukole A camp, Tanzania, to pay a 10 to 20 percent premium for wood and prevented them from marketing their products outside the camp.

Photo: USCRI/G. Chen



It is impossible to deal with these refugees as if all that is required is temporary relief from distress. They must as quickly as possible be given a means of producing or earning their own livelihood. The only practical way of proceeding is to work as if they are likely to be permanent inhabitants of their host state. Investment to meet their needs will never be wasted in the growing African economies even if these refugees should all in the future return to the place from whence they came.⁹

With wars of independence generating most of the world's refugees, the durable solution preference shifted to repatriation as one colony after another achieved its independence. After the independence of the last African colonies, however, seemingly intractable conflicts erupted in Angola, Ethiopia, Somalia, Sudan, Uganda, and elsewhere, causing the number of refugees in Africa to rise from less than two million in 1970 to over four million in 1980.¹⁰

As these situations dragged on, nations of the host countries came to resent refugee-centered aid. Their governments feared refugees' competition with their own populations, obstructed their integration, and limited refugee employment and access to land and natural resources, leading to their increased dependence on relief. Development agencies such as the World Bank, UN Development Programme (UNDP), and others acquiesced in the segregation of refugee settlements to avoid host government opposition, as, without the right to earn a livelihood, refugees would burden host country public services and the environment. According to Agnès Callamard:

By focusing strictly on the needs of the refugees, relief agencies avoided dealing with the political, economic, and social environment. Yet, it has become increasingly obvious that the questions of refugee protection and refugee settlement cannot be adequately addressed without regard to political practices, economic policies, and human rights records of the country of asylum.¹¹

In the years since, the international community came to see long-term displacement and dependency in the third world as acceptable and unremarkable.

From ICARA to Convention Plus

In the early 1980s international attention turned to protracted refugee situations in Africa. Instead of promoting refugees' rights in exile, however, governments adopted an



Top: Ugandan fishermen on the Nile near Rhino Camp Settlement, 2004. Locals refer to the river as the "World Bank" but prohibit refugees from fishing there.

Above: Refugees in the Babanga Women's Group, Arua, Uganda, 2004. They strive to run a catering business but movement restrictions confine them and other entrepreneurial refugees to a market in the settlement area with few customers. *Photos: T. Kaiser*

approach grounded in the view of refugees as burdens. As compensation, donors provided large-scale turnkey projects including roads, irrigation, drainage, and buildings in segregated settlement areas.¹² This idea was further developed in two ill-fated International Conferences on Refugees in Africa (ICARA) in the early 1980s.¹³

According to Mary Louise Weighill, the conferences "evaded the central issues of refugee employment, security of status and ability to operate as an economic actor in the country of asylum" and the extent to which governments were responsible.¹⁴ While donor countries saw the purpose of the programs to be the permanent settlement of refugees in countries of first asylum, they did not condition aid

on the enjoyment of rights. The host countries saw the conferences as ways to fund development projects unrelated to refugee rights.¹⁵ Even with technical assistance, host countries were unable to demonstrate that refugees actually were a burden or to show how infrastructure projects would help.¹⁶

Donors promulgated a plethora of vogueish development theories calling for “self-sufficiency” within segregated settlements.¹⁷ Development schemes were top heavy with extensive feasibility surveys, impact studies, and bureaucratic coordination that strained host countries’ managerial capacities.¹⁸ According to the World Bank, “Successful project preparation often requires location-specific data generated over a fairly long period of time. Good projects cannot be developed quickly (in 3 to 9 months) by visiting teams of specialists.”¹⁹ Some donor governments insisted that their own countries’ agencies implement the projects.²⁰ Humanitarian care and maintenance programs on the one hand and development assistance on the other each had their constituencies in both donor and host bureaucracies, each jealously guarding its resources leaving little institutional support for integrating the two.²¹

Alex de Waal offers a trenchant critique of ICARA’s outcome, seeing it as undermining local accountability and political contracts and leading UNHCR from its original protection mandate to one of population maintenance. He labels it:

a successful attempt by UNHCR to wrest back the initiative in refugee policy from African governments, which had held conferences in Arusha in 1979 and Khartoum in 1980 to press for increased refugee assistance. One of UNHCR’s strategies was to enlist the NGOs as allies in its institutional aggrandizement, turning the nascent neo-liberal agenda of promoting non-governmental service contractors to its advantage. A key battleground was eastern Sudan. Between 1980 and 1985, the Sudan Government ceded near-total control over refugee programmes to foreign agencies. By this time, the idea was beginning to arise that the NGO network, in co-operation with the UN and funded by Western governments, might move from merely filling the gaps in official relief

programmes run by national governments, to being the primary response to disasters....

As donor governments began to channel emergency funds through NGOs, deliberately circumventing African governments, they radically changed the nature of institutional humanitarianism.

During the 1970s, a strong national institution (the Commission of Refugees) had placed an indigenous NGO (the Sudan Council of Churches) in the dominant role as implementing partner, in collaboration with the refugees’ own



“THE TRUCKS CARRYING SOLDIERS—THE ARMIES GOING TO FIGHT IN MUTUKULAN IN SUDAN,... MANY ARE GOING TO DIE BUT SOME WILL COME BACK” —BOYS PLAYING WAR IN KAKUMA III REFUGEE CAMP, KENYA, 2004. Photo: M. Bordas, *Displacements*, www.displacements.info

organizations. After the 1980 Khartoum conference on refugees, this began to change. Donors increased their assistance for refugees in Sudan, but the funds were provided to UNHCR and foreign NGOs and Sudan ceded control of the programmes....

[F]or most agencies, refugee or displaced persons camps are the essence of aid; they are a visible sign of comprehensible and concentrated human need for charity.²²

Even as refugee situations persist for decades, donors typically fund their assistance out of humanitarian relief budgets designed for emergencies. But this need not



entail rights-blind population management. The Good Humanitarian Donorship initiative of donor governments and humanitarian actors prefers the term “action” rather than “aid” to describe humanitarianism in order to highlight protection and includes “the return to normal lives and livelihoods” as one of its objectives. The Organization for Economic Co-operation and Development (OECD) recognizes that aid to refugees should include “protection-related activities such as registration of status and awareness raising activities on the status and rights of refugees.” To

“THE MAIN VENUE FOR ENFORCING THESE RIGHTS IS THE COURT OF PUBLIC OPINION, INTERNATIONALLY AND IN BOTH HOST AND DONOR NATIONS.”

make the relationship between rights and livelihoods explicit, however, the OECD needs to specify the relevant articles in the human rights instruments it cites.²³

The internationalization of care and maintenance has in fact contributed to the isolated, zonal approach to segregated settlements characteristic of both ICARA and its modern incarnation in UNHCR’s “Convention Plus” framework, Targeted Development Assistance (TDA). Both ICARA and Convention Plus avoid dealing with host governments on refugee rights, even as Callamard notes that “to the extent that refugee integration necessitates access to land, work permits, or the possibility to engage in business, ... the [host state] must necessarily be involved.”²⁴

Alexander Betts recently surveyed ICARA then and TDA now, noting their common controversial emphasis on permanent local integration as a durable solution and the refugees-as-burden paradigm.²⁵ Donors today are increasingly eager to deter illegal migration—“irregular secondary migration” is a companion topic in Convention Plus—and welcome more flexible bilateral approaches. But the rights-deprived conception of self-reliance still rarely transcends marketing folkloric handicrafts and cultivating kitchen gardens in camps. Moreover, some of the leading examples of TDA, such as programs in Azerbaijan and Serbia and Montenegro, have “targeted” members of dominant ethnic groups for assistance with integration, to the exclusion of other refugees.

USCRI offered a different approach in its presentation to UNHCR’s Annual NGO Consultations last year entitled “Moving Forward: Identifying Specific Measures

to End Refugee Warehousing,” advocating a straightforward commitment to reimbursement of direct expenses as a minimum first step:

Most of the basic rights of the Convention do not impose direct costs to host country governments. They are essentially negative freedoms merely calling for the state’s non-interference with refugees’ economic activity or choices of residence. Others, however, like access to courts, primary education, and public assistance, require government expenditures...

A minimal first step ... would be for UNHCR, through its Executive Committee and with the approval of its donors, to commit to reimbursing host countries as necessary for expenses they incur pursuant to granting refugees in their territories their rights under the 1951 Convention.

*This begs many detailed questions as to how such a fund would be organized and administered. At this stage, however, we hope to set forth the basic idea of what such a commitment would entail. It should not make per capita payments for all refugees hosted in the country but a pro rata compensation for services actually delivered to refugees in an integrated manner and related expenses. It should enhance the host countries’ capacity to provide not only refugees but also their own populations with essential opportunities and services rather than to segregate refugees with parallel aid streams that breed resentment. UNHCR would play the key role in the reimbursement process of verifying that the refugees actually enjoy their rights and receive the services. This would mean UNHCR shifting its activities from care and maintenance in such countries to protection consonant with its original mandate. The tie to reimbursement would create a strong incentive for host countries to welcome such a role.*²⁶

Development and Rights

Much relief-to-development thinking is based on uncritical assumptions about development aid. In development studies, it is very much an open question what, if any, relationship exists between aid on the one hand and actual development on the other. Most of the debate hinges on the policy environment of recipient countries, including both substantive policies affecting economic growth and the institutional strength and integrity to implement those or any other policy choices. Conservative critics of aid even suggest that humanitarian assistance is never warranted. If policies and institutions are bad, they claim, aid will only reinforce them. If the policies and institutions are good, then aid is unnecessary because more efficient private financial markets will intervene as they did in the development of East Asian economies. In any event, mainstream



SUDANESE REFUGEE PATRICK OOLA HOLDS RATION CARDS IN KAKUMA CAMP, KENYA, 2004: “ABOVE ALL, LIFE IS HARD IN KAKUMA BECAUSE REFUGEES ARE NOT ALLOWED TO WORK OR CULTIVATE SO THEY DEPEND ON HUMANITARIAN AID.” RATIONS LAST FOR 12 DAYS BUT ARE ONLY DISTRIBUTED EVERY 15. OF THE DIFFERENCE, HE SAID, “THESE HUNGRY DAYS HAVE BECOME POPULARLY KNOWN AS THE ‘BLACK DAYS.’” ADMINISTRATORS WITHHELD RATIONS TO THE ENTIRE CAMP AS COLLECTIVE PUNISHMENT IN 1994 AND 1996.

Photo: M. Bordas, Displacements, www.displacements.info

development thinking eschews the rights-blind approaches of ICARA and TDA and, in poor rights environments, calls for creative idea-sharing and public awareness-raising to facilitate organic change.

Aid that encourages good policies, including refugee rights, could become a constructive form of international responsibility-sharing in the protection of refugees. Prior local commitment to inclusive policies is essential to the efficacy of aid and international attention cannot substitute for the engagement of civil society for refugee protection. It may be more than a happy coincidence that such engagement also supports growth-oriented, poverty-reducing economic policies—it may represent a convergence ripe for international civil society collaboration.

The UN's Millennium Development Goals (MDGs) implicate economic inclusion as a human right.²⁷ The UN Millennium Project's report, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (the *Report*) makes clear that development requires

inclusive economic policies:

Economic development stalls when governments do not uphold the rule of law, pursue sound economic policy, ...protect basic human rights, and support civil society organizations—including those representing poor people—in national decisionmaking.

The rule of law involves security in private property and tenure rights, safety from violence and physical abuse, honesty and transparency in government functions, and predictability of government behavior according to law.²⁸

The MDGs promote nondiscriminatory access to open, private economic activity and trade. The *Report's* “Ten Key Recommendations” suggest that MDG-based strategies should “provide a framework for strengthening governance, promoting human rights, engaging civil society, and promoting the private sector.” Among other things, they should



Anti-Warehousing Work Around the World

A review of some of recent civil society initiatives to secure refugee rights. For more information, see www.refugees.org/warehousing.

In Host Countries

Kenya The Refugee Consortium of Kenya (RCK) has been building alliances with civil society actors and the business community and working with government officials to improve the language of a draft refugee bill. It also works regionally to harmonize east African refugee legislation in compliance with the 1951 and African refugee conventions, using development assistance as leverage.

RCK presented a proposal to the Kenya Land Reform Commission to expand refugee freedom of movement to whole districts so that refugees can engage in more economic activity and the government can seek development assistance as the camps need less relief.

RCK is researching urban refugees' contribution

to the economy and the loss of revenue caused by the government's failure to license their trade. On International Women's Day 2005, RCK briefed the immigration minister before she addressed refugees and assured them that she would not enforce encampment policies.

Lebanon The refugee legal aid agency Frontiers contributed to the 'shadow report' presented to the Committee on the Elimination of Racial Discrimination in March 2004, showing how Lebanon's *de jure* failure to recognize refugee status effectively denied refugees the right to work.

Russia The Human Rights Center "Memorial" found refugees jobs in manufacturing and construction. Local authorities shut the project down, however, fining the employers and threatening to close their businesses.

Tanzania See pp. 32-47 *infra*.

Uganda In October, the Refugee Law Project of Makerere University in Uganda published "Land and Ethnicity in Nakivale Refugee Settlement: The Need to Resolve Competing Claims and Address Tensions," addressing land conflict with Rwandan refugees.

Zambia Lusaka Refugee Coordination leader Nkurikiye Etienne's World Refugee Day speech denounced Zambia's restrictions on urban refugees, including exorbitant fees and capital requirements for residence permits, and prohibitions against running small businesses.

In Donor Countries

Australia The Refugee Council of Australia highlighted warehousing in its annual “Intake Submission” to the Minister for Immigration as one of three all too pervasive “non-durable solutions,” including irregular secondary migration and involuntary return.

Germany ProAsyl opposed the government’s planned asylum restrictions with a media campaign highlighting aggravated warehousing as a likely consequence.

International USCRI carried the campaign to Geneva in its presentations at the Annual NGO Consultations with UNHCR in September 2004. At the 9th International Association for the Study of Forced Migration Conference in Sao Paulo in January 2005, WRS editor Merrill Smith gave a plenary address and led an anti-warehousing workshop.

United States The humanitarian aid consortium, InterAction’s November letter to the State Department asked “what more the U.S. might do to ... restructure present assistance incentives in ways more conducive to refugees enjoying [their] rights” to work and to freedom of movement. Interaction’s September letter in preparation for the meeting of UNHCR’s Executive Committee called for “UNHCR and its donors to pursue ways to better enable host countries to allow refugees their rights;” referring to the Gatumba Massacre, it called on UNHCR “to explore alternatives to encampment as a mode of refugee assistance and protection in such circumstances.”

The New York Times ran an editorial calling for an end to warehousing that the International Herald Tribune picked up as “End refugee warehousing,” September 29, 2004. In December, both BBC radio and NPR featured interviews with USCRI President Lavinia Limón criticizing refugee warehousing.

U.S. Senators Sam Brownback (R-Kan.), Edward Kennedy (D-Mass.), and Patrick Leahy (D-Vt.) introduced S. Res. 449 in October 2004 denouncing refugee warehousing, directing the State Department to pursue models of refugee assistance compatible with refugee rights, and encouraging donor countries and UNHCR to shift the incentive structure of assistance toward the rights of the 1951 Convention.

Faith Communities

His Holiness, the late Pope John Paul II noted on World Refugee Day that “unfortunately, millions in various countries of the world are still living in refugee camps or prevented for long periods from fully exercising their rights.” The Holy See forcefully denounced warehousing in its

intervention at the 55th Session of UNHCR’s Executive Committee in Geneva.

Archbishop and Nobel laureate Desmond Tutu endorsed the Statement Calling for Solutions to End the Warehousing of Refugees.

The National Council of Churches in Australia developed Refugee and Migrant Sunday Campaign Education Kits addressing warehousing for Schools and Parishes. Council spokesperson James Thompson rebutted arguments that asylum seekers were resettlement “queue jumpers” in a September broadcast of Radio National with anti-warehousing arguments and the sound-bite: “it’s not a queue, it’s a lottery that few people win and some don’t survive.”

Numerous faith groups have also issued their own statements on the issue including Episcopal Migration Ministries, Jesuit Refugee Service—USA, and Lutheran Immigration and Refugee Service. In Australia, the August Lutwyche Parish News denounced the “shelving” of more than 7 million of the world’s refugees. The South Carolina branch of the Christian Rural Overseas Program raised the inadequate diet of warehoused refugees during an August fundraising event.

Scholars

In his July 2004 United States Refugee Program: Reforms for a New Era of Refugee Resettlement, commissioned by the U.S. State Department, Professor David Martin referred to the 2004 World Refugee Survey—Warehousing Issue and declared that “when camp life is little better than human warehousing, and where it has persisted in this mode for several years, resettlement must enter the picture as a potential durable solution” and that “real humanitarian gains [are] to be realized by offering thousands of men, women and children... the chance to escape from human warehousing.”

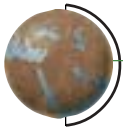
In October, Susan Banki published “Refugee integration in the intermediate term: a study of Nepal, Pakistan, and Kenya,” which analyses why refugees enjoy rights in some circumstances but not others.

Guglielmo Verdirame and Barbara Harrell-Bond published Rights in Exile: Janus Faced Humanitarianism, which underscores the importance of refugee rights. Dr. Harrell-Bond and Mike Kagan highlighted the anti-warehousing campaign in an editorial on refugee status determinations and other protection issues in their August editorial run by Pambazuka News.

Anna Schmidt and Eftihia Voutira conducted a course on “Refugee Camps and Warehousing” at the American University in Cairo in January 2005.

Photo: Resourceful local youth makes toy trucks out of ration boxes near Kakuma camp, Kenya, 2004.

Photo credit: D. Kassahun



“outline a private sector promotion strategy and an income generation strategy for poor people.”²⁹

Freedom of Movement Without specifically referring to refugees, the *Report* nonetheless makes some strong indirect arguments against their segregation in remote settlements by calling for

*a particular focus on marginalized groups, migrants, and displaced persons. If growth-enhancing policies are likely to produce or worsen severe regional or ethnic inequalities, compensatory investments should be made in disadvantaged areas, with steps to facilitate migration to areas of faster growth, encouraging the return of remittances.*³⁰

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Refugees' Right to Work Analogous to Open Trade The *Report* gives little explicit or specific attention to the right to work, which is perhaps the most contentious and important of refugees' rights to live as normal a life as possible while in exile. Even the most repressive countries generally permit their nationals to work. But refugees are by definition not citizens of the countries in which they live and host governments typically restrict their employment.

The *Report* cites the widely used Sachs-Warner measure of openness which, in turn, looks at trade openness as a proxy for a country's overall economic policy.³¹ The *Report* notes that businesses cannot effectively operate “when trade barriers hinder the acquisition of inputs from abroad, preventing them from attaining international competitiveness in their own market” and that governments should promote foreign direct investment.³²

Indeed, refugee populations warehoused in remote settlement areas within developing countries are analogous to those countries themselves in relation to other countries. Resistance to refugees' access to markets is also based on some of the same protectionist rationales that are roundly rejected by the Millennium Project.

Developing countries suffer from protectionist measures, the *Report* concludes, because protectionism

reduces not only their competitiveness in world markets but also the enormous opportunities of increased trade among themselves. Developed countries bear a special responsibility to liberalize in the Doha Round [of WTO trade negotiations], but developing countries should also do so because they are important markets for each other, including the poorest countries.

*There is no compelling case for exemption for rules on traditional trade policies. Additional freedom to use bad policies promises few development gains, and risks harming other developing countries.*³³

The *Report's* analysis of trade in services is even more relevant to refugees and could arguably surpass supporting the rights of refugees to work in their countries of first asylum to include the right to refugee travel documents and visas to participate in orderly labor migration to other countries:

*Liberalization of trade in services, especially of so-called mode 4 (the temporary movement of people to supply services), has been recognized as a major source of gains for developing countries, capable of bringing more benefits to them than perhaps any other part of the Doha Agenda. Services liberalization promises real development gains in efficiency, in the growth potential of the economy, in the export of goods and other services, and in access to basic services to improve the lives of the poor. Done right, services negotiations offer developing countries an opportunity to act in their own economic interest and get paid for it. They also offer the opportunity to manage the world's mounting migration pressures in a much more orderly fashion.*³⁴

Legalizing the Marginalized The *Report's* strong arguments in support of entrepreneurship in developing countries and the inclusion of the otherwise marginalized—especially women, the informal sector, and the poor—can also be extended to refugees. A favorable legal and regulatory environment “defines and protects contracts and property rights” by facilitating the registration and protection of informal businesses, improving the enforcement of contracts, and simplifying taxation and accounting norms. Government can also “enable easier access to financial capital by simplifying rules for collateral [and] increasing flexibility for informal entrepreneurs...”³⁵ The *Report* cites with approval UNDP's *Unleashing Entrepreneurship: Making Business Work for the Poor*. UNDP's report recommends moving informal enterprises into the formal sector with one-stop business and title registration kiosks, single permits for ownership and operation, alternative dispute resolution systems, automated court case assignments to thwart corruption, and specialized consolidated debt courts.³⁶ To this list we would add ending the categorical exclusion of millions of refugees from legal entrepreneurship.

Property Rights In the *Report*, a box illustrating “The means to a productive life” declares that “The core political, social, and economic rights include: ... Security of tenure and property rights for shelter, businesses, and other assets,” rights governments frequently deny to refugees. Security of tenure for marginalized actors, the *Report* goes on, facilitates:

- housing investment and asset accumulation by the poor,
- improved labor market participation and access to credit markets,
- fixed addresses permitting children to attend school,
- access to health systems and emergency obstetric care for women, and
- improved access to HIV/AIDS treatment and prevention.³⁷

The *Report* notes:

*Some improvements in governance do not cost much money, if any, and some actually save money (by cutting corruption or granting land tenure, for example). Some improvements in economic outcomes are thus available at low cost, and such opportunities must not be squandered.*³⁸

The majority of the world’s refugees are women, and the *Report* also explicitly calls for upholding women’s property rights in the contexts of ending poverty, promoting gender equality, reversing loss of environmental resources, and improving the lives of slum dwellers. Its “Ten Key Recommendations” provide that MDG-based strategies should focus on women’s and girls’ “access to economic ... opportunities [and] right to control assets.” In the first MDG area of intervention, rural development, under “Special interventions to reach women farmers,” the *Report* lists “promotion of women’s property rights to land, water, trees, and fisheries.” In a box labeled “Quick Wins—solutions to implement now,” the *Report* suggests: “Reform and enforce legislation guaranteeing women and girls property and inheritance rights.” “Guaranteeing property and inheritance rights” is among the seven strategic priorities identified by the UN Millennium Project Task Force on Education and Gender Equality as “the minimum necessary to empower women and alter the historical legacy of female disadvantage ... and would rectify a fundamental injustice.”³⁹

Millennium Challenge Account The United States’ Millennium Challenge Account (MCA) aims to aid countries that rule justly, invest in their population, and promote economic freedom with outright grants, rather than loans, predicated upon achievement of specific key indicators.⁴⁰



Mae La refugee camp in Thailand, October 2004. The Government made the Myanmar refugees construct the barbed wire fence that confined them. Photo: USCRI/V. Martin

Refugee rights are not explicitly mentioned among the criteria, but a civil liberties component among them implies many rights pertinent to refugees. Indeed, the rating system of Freedom House’s annual *Freedom in the World* survey includes the rights of refugees to work, own property, and engage in business enterprises under its civil liberties metrics which substantially influence those of the MCA. In the Civil Liberties Checklist Freedom House uses to evaluate countries performances, the question area “Personal Autonomy and Individual Rights” includes:

1. *Is there personal autonomy? Does the state control travel, choice of residence, or choice of employment? Is there freedom from indoctrination and excessive dependency on the state?*
2. *Do citizens have the right to own property and establish private businesses?*⁴¹

Countries earn the most favorable rating in this category if individuals “enjoy free economic activity and tend to strive for equality of opportunity.”⁴² Articulating refugee rights more explicitly and monitoring their implementation could be an effective tool to link them to development assistance. In order to enhance its protection analysis, this *World Refugee Survey* modifies its format to analyze and rate countries’ performances along refugee rights criteria (see Table 6). In addition, UNHCR has drafted a “Framework for Identifying Gaps in Protection Capacity,” a document that largely tracks the rights of the 1951 Convention for use in its



Strengthening Protection Capacity projects in Kenya, Tanzania, Benin, and Burkina Faso.⁴³ It has completed gaps analyses for Kenya and Tanzania.

Mobilizing for Change

In its 1998 *Assessing Aid: What Works, What Doesn't, and Why*, the World Bank shares the consensus that assistance to countries with poor policies will not have much effect.

*The priority for the world community in these countries is to help in the domestic political and social process of policy change: that is, in contributing knowledge rather than big finance. Of course, some financial flows provide opportunities for dialogue and knowledge transfers. But aid to these economies has to be justified more for its indirect contribution to policy change than for its direct effect on poverty reduction.*⁴⁴

The UNDP notes that, in overcoming restrictive regulations, “Someone benefits from every rule, and finding out how to overcome resistance by those who benefit is the first step in effective reform... Successful models have taken a multiple-stakeholder approach to developing functioning markets,” relying less on money and more on pressing for policy change.⁴⁵

Aid has proved ineffective in buying reform from otherwise uninterested recipients largely because international financial officers’ performances are too tied to disbursement for them to hold countries accountable. Non-monetary or low-cost strategies that disseminate ideas, stimulate policy debate, and train new leaders, on the other hand, may be more effective in the long run. Donors have sought to insulate their projects from local institutions with bad policy but the more sustainable, if challenging, approach is to convince countries of the value of better policy.⁴⁶ According to the World Bank,

This is not easy. Leaders in countries with poor policies have interests in maintaining those policies. Highly distorted trade regimes, exchange rates, and agricultural prices, for example, can lead to corruption and rent seeking among favored groups. In such cases donors should look for space to develop a dialogue with the middle civil service—usually more technocratic than political—and with elements of civil society.

In Ukraine, for example, during an era of poor policies, the World Bank decided that lending would be counterproductive. It would postpone reforms even further, and other interventions were needed—for example, public education for the government and civil society. The media, reformers within government, parliamentarians, nongovernmental organizations, and the private sector were involved in major seminars, nationwide town meetings, and a weekly, high-

*profile roundtable with the media on key economic and institutional reform issues. One champion of this program was the governor of Ukraine’s central bank, who participated actively and remarked publicly that the most important things that the World Bank did in early transition to help promote reforms and development were to refrain from large-scale lending and implement the public education program.*⁴⁷

North-South Civil Society Work on Refugee Rights

USCRI did not coin the term “warehousing” nor did we begin the substantive work, study, and advocacy, on winning rights for refugees in exile. Much scholarship and advocacy began with the work of Jeff Crisp, Barbara Harrell-Bond, Karen Jacobsen, and many others too numerous to list here.⁴⁸ USCRI’s campaign has contributed by moving the issue prominently into public awareness and before policymakers.⁴⁹

As noted, the principal obstacle to refugees enjoying their rights is a lack of political will, first among countries of first asylum but also among donors. The major thrust, therefore, of the anti-warehousing campaign has been and will remain to create, facilitate, and enhance that political will to honor refugees’ rights. The campaign will not simply try to use development assistance as leverage for rights, but Cuénod notes that the political context is similar in both cases:

*[T]he problem should be moved from the humanitarian to the economic level. But this approach may have strong political connotations. One can be cynical and consider it as buying the goodwill of a country of asylum with increased economic aid; one can also consider that refugees offer an economic potential which, if properly tapped, would contribute to the development of the country of asylum.*⁵⁰

ICARA and Convention Plus suffer from the same shortcoming: they are focused on inconsistent objectives of donor and host nations and not on the rights of refugees. That may be an inevitable feature of the *realpolitik* world of purely government-to-government relations. The new ingredient that the anti-warehousing campaign brings to this scenario is that of grassroots civil society pressure to focus the attention of both donor and host country governments on refugee rights and equitable responsibility sharing. (See sidebar, pp. 26-27.)

These civil society initiatives are all promising even as they are embryonic. Refugee rights activists need to expand, refine, cultivate, and coordinate them. Were such efforts expanded and coordinated, when donor and host governments sit down to negotiate, either bilaterally or multilaterally, civil society would play an influential role in pressing for genuine positive change for refugees. Toward

this end, the Dutch Refugee Council, Frontiers (Lebanon), the Refugee Consortium of Kenya, Refugee Council USA, the Thai Catholic Commission, the World Council of Churches, and a number of other NGOs will convene the first North-South Civil Society Conference on Refugee Warehousing in Geneva on September 25-26, 2005, immediately prior to UNHCR's Annual NGO Consultations. This will enable activists and scholars to compare notes, learn from each other's experiences, and map out future collaborative strategies.

It's about time.

Endnotes

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- ³ T.F. Betts (edited by Shelly Pitterman), "Evolution and Promotion of the Integrated Rural Development Approach to Refugee Policy in Africa," (Betts 1993) in Robert F. Gorman, ed., *Refugee Aid and Development: Theory and Practice*, 1993 (Gorman 1993), pp. 15-16; Holborn 1975, p. 63.
- ⁴ *Ibid.*, p. 330.
- ⁵ *Ibid.*, pp. 471-73.
- ⁶ See clip from UNHCR Video Archives at www.refugees.org/warehousing.
- ⁷ Memorandum by the Secretary-General to the Ad Hoc Committee on Statelessness and Related Problems," UN Doc. E/AC, January 3, 1950, pp. 6-7 (cited in Karen Jacobsen, "The forgotten solution: local integration for refugees in developing countries," UNHCR Evaluation and Policy Analysis Unit (EPAU), Working Paper No. 45, July 2001, p. 1). See also Christine Mougne, "UNHCR's Policy and Practice Regarding Urban Refugees, A Discussion Paper," UNHCR, October 1, 1995, ¶156.
- ⁸ Betts 1993, p. 16; R. Chambers, Report on Workshop/Seminar on Rural Refugees in Africa, UNHCR 1976.
- ⁹ Julius Nyerere, Arusha Convergence 1979 quoted in UNHCR, Report of the Conference on the Situation of Refugees in Africa, Tanzania, 7-17 May 1979, REF/AR/CONF/Rpt.1, HCR/INF/48/Rev. 2; Barry N. Stein, "ICARA II: Burden Sharing and Durable Solutions," in John R. Rogge, ed., *Refugees: A Third World Dilemma*, 1987 (Stein 1987), p. 57.
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- ¹¹ Agnès Callamard, "Refugee Assistance and Development: But What Sort of Development?" (Callamard 1993) in Gorman 1993, p. 142.
- ¹² Weighill 1997, preface, pp. 2, 20-21; Gorman 1993, p. 148.
- ¹³ Poul Hartling, "Refugee Aid and Development: Genesis and Testing of a Strategy," WRS 1984, pp. 17-19; Weighill 1997, pp. 16-17.
- ¹⁴ Weighill 1997, pp. 3, 23-24; see also UNHCR Africa Bureau, "Discussion paper on protracted refugee situations in the African region," October 2001, prepared for the Panel Discussion of October 3, 2002, during ExCom's 52nd Session, p. 4 (¶16).
- ¹⁵ *Ibid.*, pp. 3, 23, 31-32, 39, 42; Stein 1987, pp. 48-49.
- ¹⁶ Stein 1987, p. 53.
- ¹⁷ Jacques Cuénod, "Refugees: Development or Relief?," in Gil Loescher and Laila Monahan, eds., *Refugees and International Relations*, 1989 (Cuénod 1989), p. 245; Callamard 1993, pp. 138-40. See also Björn Hettne, *Development theory and the three worlds*, 2nd Edition, 1995, pp. 176-85.
- ¹⁸ Gorman 1993, p. 78.
- ¹⁹ Stein 1987, p. 53.
- ²⁰ Cuénod 1989, p. 231; Arthur Dewey, Deputy Assistant Secretary of State for Population, Refugees, and Migration, personal conversation, October 1, 2004.
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- ²² Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*, 1997, pp. 79, 90, 199.
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- ²⁷ UN Millennium Declaration, UN General Assembly, 55th Session, A/RES/55/2, September 18, 2000. See <http://www.un.org/millenniumgoals/>.
- ²⁸ <http://www.unmillenniumproject.org/reports/fullreport.htm> (Report), p. 31.
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- ³⁰ *Ibid.*, p. 184.
- ³¹ Jeffrey D. Sachs and Andrew Warner, "Economic Reform and the Process of Global Integration," *Brookings Papers on Economic Activity* 1995, pp. 2, 22-35.
- ³² Report, pp. 121, 123-24.
- ³³ *Ibid.*, p. 214-15, 219.
- ³⁴ *Ibid.*, p. 216.
- ³⁵ *Ibid.*, pp. 121, 124.
- ³⁶ UNDP, *Unleashing Entrepreneurship: Making Business Work for the Poor*, March 1, 2004 (UNDP), pp. 24-25.
- ³⁷ Report, pp. 74, 282, 284, 287, 288.
- ³⁸ *Ibid.*, p. 32.
- ³⁹ *Ibid.*, pp. xx (emphasis added), 66, 88, 266, 277, 281, 285, 290, 292.
- ⁴⁰ www.mca.gov/countries/selection/data.shtml.
- ⁴¹ "Freedom in the World 2003: Survey Methodology," www.freedomhouse.org/research/freeworld/2003/methodology.htm. Use of the word *citizen* was an oversight. The Universal Declaration of Human Rights Article 17, upon which this is based, applies to all people. (Personal conversation with Freedom House official.)
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- ⁴³ UNHCR, "Framework for Identifying Gaps in Protection Capacity (Draft)," January 20, 2005; UNHCR, "Strengthening Protection Capacity (SPC) Project Status Report," March 1, 2005.
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- ⁴⁵ UNDP, p. 24.
- ⁴⁶ World Bank, pp. 54, 84.
- ⁴⁷ *Ibid.*, p. 57.
- ⁴⁸ For a brief overview, see the Endnotes to Merrill Smith, "Warehousing Refugees: A Denial of Rights, a Waste of Humanity," *WRS 2004*, USCRI, pp. 55-56.
- ⁴⁹ Numerous articles and editorials and radio and television coverage of the issue are compiled and hyperlinked at the campaign website www.refugees.org/warehousing.
- ⁵⁰ Cuénod 1989, p. 241.