Anti-Warehousing Work around the World

The following is a round-up of just some of the efforts that faith communities, labor unions, non-governmental organizations (NGOs), politicians, scholars, ordinary individuals, and refugees themselves are making to win rights for refugees. This work focuses on freedom of movement and rights to earn livelihoods. Have you or your organization been doing similar work? Let us know!

AUSTRALIA—Advocating and Educating for an End to Refugee Warehousing
Refugee Council of Australia (RCOA) discussed refugee warehousing as one of three “non-durable solutions” for managing refugees in the international protection framework in its February 2005 “Intake Submission” to the Australian Government. “Non-durable solutions” refers to “those situations where refugees are unable to return to their country of origin, have no effective protection in the country of first asylum and little prospects of being selected for resettlement.” According to RCOA, warehousing is a very serious problem that has been neglected for too long. RCOA acknowledges that while camps are beneficial in the emergency phase of an exodus, in distributing supplies and offering protection, they are a problem when they become the permanent solution, and no steps are taken to resolve the initial crisis or provide the refugee with meaningful options. RCA goes on to say that despite awareness of the problems caused by warehousing, and the Office of the UN High Commissioner for Refugees’ (UNHCR) guidelines for addressing it, the international community’s failure to sufficiently combat warehousing has resulted in wasted lives in refugee camps. Warehousing has also precipitated other non-durable solutions, such as involuntary return and “irregular” secondary movement.

The National Council of Churches in Australia (NCCA) passed an anti-warehousing statement signed by the leaders of 13 of its 15 member denominations on July 23. The NCCA endorsed the international campaign to end warehousing, and called on its members to advocate to end the practice. Its website has a page on warehousing, with information and links to other sites on refugee rights. (www.ncca.org.au/cws/rdp/issues/warehoused_refugees)

Also in July, the Uniting Church of Australia offered its own anti-warehousing resolution.

INTERNATIONAL—Campaign Grows
Since its launch in June of 2004, nearly 300 NGOs, faith communities and notable individuals have signed on to the “Statement Calling for Solutions to End the Ware-
housing of Refugees" (www.refugees.org/warehousing). Versions are now available in French and Arabic, as well as English. In recent months, new endorsers have included Franciscans International, World Vision International, His Holiness the Dalai Lama, and Nasim Hasan Shah, former Chief Justice of Pakistan.

INTERNATIONAL—NGOs Make Strong Statement

In their statement to UNHCR’s June Standing Committee, NGOs from around the world strongly enunciated their support for refugee rights, arguing for:

- De-linking refugees’ rights to engage in livelihoods and freedom of movement from durable solutions in general and local integration in particular;
- Addressing rights in exile separately from local integration in the upcoming Conclusions of the Executive Committee (to be finalized this month);
- Genuine responsibility sharing—not shifting—between donor and host countries; and
- Recognition of such rights as a fundamental and integral parts of UNHCR’s core protection mandate.

The statement also made explicit reference to the Statement Calling for Solutions to End the Warehousing of Refugees and its endorsers. A copy is posted at www.refugees.org/warehousing under “UN Documents and Exchanges.”

KENYA—Activists Arrested Over Petition

by Leslie Olson

Thousands of refugees—many members of Somali ethnic minorities—who cannot tolerate life in the dismal refugee camps of Dadaab and Kakuma struggle to get by in the Eastleigh section of Nairobi even though they lack legal status. When the Government set a deadline for all to register—August 15—panic set in as many feared authorities would arrest and detain them, extort money from them, force them into the camps, or even deport them. Since the early 1990s, the Government has delegated responsibility for refugees and their registration to UNHCR, but UNHCR’s Nairobi office turned away many seeking to register, telling them to go to the camps. As a student in the United States, I had come to know resettled Somali refugees in Colorado. When I went to Kenya for a conference, I looked into the situation. “Refugees belong in refugee camps,” the director of Kenya’s Department of Refugee Affairs told me.

In July, the Somali Refugee Community in Kenya developed a six-point petition addressed to the Ministry of Immigration and UNHCR. It stated that the signatories fled and continue to fear persecution in Somalia, were unable to get refugee status, feared the insecurity and hardship of the camps, could not pay registration fees, and would like to register for identification documents providing freedom of movement.

The group operated on a principle of openness, deliberately presenting themselves to the Eastleigh police chief to inform him of what they were doing. He said it was fine with him as long as they were not collecting money—some scam artists had done so a few months earlier, pretending to register refugees—but that they should get the District Officer’s permission. Because refugee issues were “sensitive,” the District Officer told them they must notify UNHCR and the Ministry of Immigration and get their written permission to proceed with this already legal act, protected by the Kenyan Constitution. As only three weeks remained, the group decided to fax letters explaining their actions to the relevant ministries, agencies, and embassies and to go ahead with the petition without further approval.

Thirty volunteers gathered for three hours of training in how to gather signatures. They were to explain that the petition conferred no immediate immigration benefit; it merely allowed signatories to declare their situation. The volunteers were to collect no money and would not be paid. “You’re not even going to get water at the end of this training,” one man declared from the back of the room, to much laughter. Each volunteer carried copies of the provisions of the Constitution and the Universal Declaration of Human Rights protecting freedom of expression.

A local businessman donated the use of his office for a week. Volunteers passed out flyers at the local mosque saying that petitioning would begin at 9:00 a.m., Monday, July 25. Would-be signatories began gathering at 8:00 and the Eastleigh police chief arrived at 8:30. After the organizers explained the action, he said, “As long as there’s no money involved, I’m not going to stop...
you.” By 9:45, two hundred heads of household had signed. At 10:00, the police arrived in force. “We’re shutting this down,” one said. “We have reports you are collecting money.” The police handcuffed four who tried to explain that they were not and that the petition was protected free speech.

I attempted to intervene but the police pushed me away. I called out to the crowd that had gathered, “Have any of you signed this petition?” Dozens raised their hands or shouted “Yes!” As an officer grabbed my arm, I shouted, “Has anyone in this crowd paid any money?,” to which all replied “No!” The police arrested me with the four others and took us to the District Officer who repeated his demand that we get letters of permission from UNHCR and the Ministry of Immigration. He then said we must go to Kasarani police station on the other side of town to file a formal report. There the refugees explained again what they were doing and how it was protected. When the police asked for their papers, they explained they were petitioning because they had no documents.

“So you’re in the country illegally?,” the officer asked. “We are refugees who have not been given status,” they replied.

“You are illegal immigrants,” the officer shot back. “You are criminals. You will be detained for that.”

The police took the Somalis into custody but released me about 10 p.m., telling me I now needed letters from UNHCR and the Ministry to visit Eastleigh. Investigators from the CID interrogated the four Somalis and pressed them to confess that I was a “spy.” A prison warden told me that a letter from UNHCR saying they had refugee status or were being seriously considered would suffice for their release, but UNHCR refused.

On Friday, the authorities took the refugees to Makandara court for reading of their recorded statements: “I am a citizen of Somalia. I entered Kenya illegally. I do not have any documents to remain here.” The prison warden had counseled them: “When the statement is read, agree, no matter what. If you disagree, you will be taken back and locked up for two months until the appeal hearing is scheduled.” Only one, an activist for Somali Bantu named Suleiman, dared to contradict the statement and declare that he was a refugee.

“You did not go to UNHCR, though. That is where refugees go,” replied the Judge.

Suleiman said, “Your honor, I worked at the UNHCR for a year as a volunteer translator, I was not granted an interview.”

The judge sentenced each to pay 10,000 shillings (about $130) within three hours or serve six months in prison prior to deportation back to Somalia. I and a helpful Kenyan negotiated a few days’ reprieve to raise the money but the men remained in prison in the Industrial Area. Even after paying they were still subject to deportation, as soon as additional funds arrived to pay for it. While in prison, they met an Ethiopian who had been there six months waiting for deportation. “They don’t really deport Somalis and Ethiopians,” he warned them. “If they get the money to deport you, the police just pocket it. And you stay here.” Other asylum seekers they met had been detained two years or more, the prison system having lost their files.

One of the detaining officers proposed simply taking their documents to the border, getting them stamped as if they had been deported, and then returning them. This resulted in their release August 10, five days before the registration deadline, after more than two weeks’ imprisonment, although Suleiman was released August 5.

The arrests were reported by Marc Lacey in the August 1 New York Times. While there has been no public announcement, UNHCR in Nairobi stopped all new registration in the city in July and is advising asylum seekers to go to the camps. Amnesty International issued an August 17 statement calling on the Government to respect the rights of refugees and avoid mass round-ups and none occurred, although the police presence is mounting.

I write this now perhaps out of naivété, perhaps out of hope that looking the other way from suffering is not normal and that the circumstances of the undocumented refugees in Kenya need not reach the point of atrocity before they catch the attention of the world.

KENYA—Religious Leaders call for Respect for Refugees
Religious leaders from three of Kenya’s major faiths—Rev. Boniface Lele, Chairman of the Kenya Episcopal Conference; Abdulla Mohammed Kamwana, Vice Chairman of the Supreme Council of Kenya Muslims, and Dr. Sunil Shah, General Secretary of the Hindu Council of Kenya—wrote a joint letter August 10 to Linah Jebii Kilimo, Minister for Immigrants and Registration of Persons, on the plight of refugees and asylum seekers in Kenya. Acknowledging Kenya’s history of generosity and
sacrifice for refugees, they addressed several pressing problems. Regarding the August 15 registration deadline, they feared humanitarian crises and requested "a constant consultative dialogue with the affected persons, be they institutions dealing with refugees or the individual refugees in their own right, so that this issue is addressed and resolved amicably." Forcibly returning refugees would "grievously" harm Kenya’s reputation, they declared and denounced police corruption and bribe-taking, pointing out that "even where refugees and asylum seekers have valid documents issued by the UNHCR, the police seldom honour them."

While not challenging Kenya's encampment policy categorically, they did point out that

a) some asylum seekers and refugees cannot live in camps because of security reasons,

b) others have medical and educational needs that keep them in the city, [and]

c) sending large numbers to the camps without due preparation and dialogue with the United Nations Commission for Refugees (UNHCR) and other stakeholders would lead to a humanitarian crisis and further insecurity within and without the camps. That is, a sudden influx of refugees will lead to a humanitarian crisis as camp based organizations will not be able to handle a large sudden influx of persons.

They also asked the Government to keep them informed about the draft Refugee Bill so that they may "add our voice in the articulation of a law that will address the issues of refugees in our communities." Finally, they proposed that Kenya establish an office dealing exclusively with asylum seekers and refugees "since Kenya will continue to be a place of asylum for many people who will flee conflict and war in the years to come."

KENYA—Stakeholders Consult
UNHCR hosted a Kenya Stakeholder Consultation May 17-18 in Nairobi inviting local and international government representatives, refugees, and NGOs including CARE, Danish Refugee Council, Don Bosco Development Office, Film Aid International, Jesuit Refugee Service, GOAL, Handicap International, International Rescue Committee, Lutheran World Federation, Refugee Consortium of Kenya, and Windle Trust, according to its report. They focused on the Strengthening Protection Capacity Project (SPCP) and the Comprehensive Plan of Action (CPA) for Somali Refugees. These not only dealt with humanitarian aid and possible durable solutions, but also with enhancing means of self-reliance and improving refugees' access to livelihoods.

Ninette Kelley of UNHCR summarized the "Analysis of Refugee Protection Capacity: Kenya" and "CPA for Somali Refugees: Framework for Identifying Gaps in Protection Capacity and Delivery." The SPCP, she reported, "sought to enable concrete, legal, policy and programmatic interventions." In addition to Kenya's lack of a legal framework, inadequate aid, and insecurity, the gaps analysis pointed to "the negative implications of the Kenyan government's encampment policy with respect to refugee self-reliance." Participants also raised the mental trauma refugees endure as a result of prolonged encampment; the often negative impact of the camps on local communities, in respect to environmental degradation and security; and inadequate information on, and protection of, urban refugees.

Refugee Consortium of Kenya, in particular advocated a human rights approach. They said refugees should be allowed to earn livelihoods outside the camps. The government could retain the camps as a fall-back for vulnerable and at risk refugees facing hardships.

The Consultation's recommendations included not only formulating national development plans to include the actual and potential contributions of refugees but also "that refugees be permitted greater freedom of movement so as to facilitate economic exchanges between refugees and local communities. Access to business and trading licences and free movement will enable refugees to contribute more fully to the overall economic development of hosting areas." The stakeholders also asked the Government, UNHCR, and others to increase public awareness of the reasons refugees flee and the positive contributions they make.

On the camp policy generally, the recommendations stated:

The vast majority of refugees are required to live in the isolated Dadaab and Kakuma camps. The Government's encampment policy, which severely restricts freedom of movement, limits
refugee access to markets, employment, and opportunities for self-reliance. It also inhibits the potential for refugees to contribute to local development. It is recommended that the Government should review the encampment policy and take into account that the main rationale for the policy was to facilitate refugee access to protection and assistance.

MALAYSIA—Campaigning for the right to work
A labor shortage combined with the efforts of Malaysian and international NGOs may lead the Government to permit some refugees to work but possibly under restricted conditions. The Government announced that it will allow refugees to work legally, and is currently deciding how to put that into practice. It has not, however, set any date and the permits may be tied to particular employers and/or economic sectors which would seriously hinder job mobility and risk exploitation. The Government also will likely restrict them to those UNHCR has recognized as refugees, a small subset of the entire refugee population.

NGOs, including the National Human Rights Society/HAKAM, SUARAM, and Tenaganita/Women’s Force, have been sensitizing Malaysian society to the plight of refugees, along with Amnesty International and Jesuit Refugee Service. The Malaysian Trade Union Congress (MTUC) held a conference April 18-19 in Petaling Jaya with representatives of labor federations and governmental representatives from around the region, the International Labour Organization, and NGOs such as SUARAM, Tenaganita, and American Center for International Labour Solidarity. The Concluding Resolution of the workshop on migrant workers declared:

The presence of undocumented workers in large numbers has a profound effect on wage rates and terms of employment for documented migrants as well as for local workers. The undocumented migrant workers are often forced to work more for less and without the other basic facilities such as housing, medical care, overtime payment and so forth....

The work permit issued to migrant workers only allows the migrant worker to be employed by one employer. This policy may create a form of bonded contract where the worker is unable to move to another job and thus is open to abuse and exploitation. ...

When a worker seeks redress for unpaid wages or raises other forms of labour dispute or abuse, the employer often retaliates by canceling the work permit. As a result the migrant worker loses his or her status in the country and his or her right to stay. Without a visa, the worker is unable to con-
continue his or her case through the courts. To enable the worker to pursue his or her case, the Immigration Department only gives the worker a 3 month special pass at RM100 per month. The worker is not allowed to work under this pass....

We recognize that migrant workers are workers with equal rights and dignity. These rights must be protected in laws and policies. Such laws and policies must be effectively and justly enforced by the various agencies. Key principles for migration policy should include non-discrimination and equal treatment of workers - nationals and migrants alike...

Based on the above the MTUC resolves to:

- Undertake actions to give the migrant workers all the necessary protection of their rights and dignity. ...

- Advocate with the relevant government agencies, for the issuance of a T-S visa (Temporary Stay) for all workers who have cases of labor dispute or abuse to enable the workers to stay and work in the country until the case is settled. ...[and]

- Protect refugees and undocumented workers who find themselves in an irregular situation.

MALAYSIA—NGOs Help Asylum Seekers

After a 2001 visit of the Chin Human Rights Organization (CHRO) of Canada to Malaysia, the UNHCR office in Kuala Lumpur began accepting their refugee applications. The interview process, however, is slow, and many applicants wait years to be interviewed. In July 2001, CHRO initiated the formation of the Chin Refugee Committee to help these refugees with registration and communication and to assist those granted refugee status. CHRO has also established several Chin Refugee Centers to provide shelter, welfare services, and information. CHRO continues to visit Malaysia regularly to assist and coordinate advocacy activities with the refugee community and other local and international non-governmental organizations as well as to publicize the conditions and lack of rights of refugees in Malaysia.

As of 2005, the CHRO estimates that 12,000 Chin refugees are in Malaysia, though only about 600 are recognized by UNHCR. Malaysia is not party to the 1951 Convention or its 1967 Protocol, so Malaysian police may arrest and prosecute refugees. Many Chin refugees are crowded together in the cities and thousands are in the jungles of Putrajaya and Cameron Highland Plantation, where the police raid and destroy their camps. Malaysia holds about 400 Chin refugees in detention camps. The amnesty period for "illegal migrants" in Malaysia expired at the end of February 2005 followed by a wave of arrests. In response, the legal aid center of the Malaysian Bar Council created a volunteer task force to provide legal aid to refugees.

NAMIBIA—Voice of Refugees Heard in Osire Refugee Camp and Around the World

The Association for the Defense of Refugees (ADR) in Osire Refugee Camp in Namibia featured "Refugee Warehousing" in the September-December 2004 edition of their mimeographed periodical The Voice of Refugees. In it they illustrate refugee warehousing as a serious violation of refugees' rights, and support the international campaign against it. We put it on the web at www.refugees.org/warehousing under "Other Groups' Efforts."

Not debating why many governments choose to use 'warehousing' to control asylum seekers, ADR instead confronted the issue "with the letter and the spirit of the International Law on Refugees." The ADR reiterated its endorsement of the "Statement Calling for Solutions to End the Warehousing of Refugees," describing it as a "tool to seek the guidance of all Refugee Rights Defenders" in building the campaign against the practice. They offered to provide information about violations in refugees' rights in Namibia, and to offer ideas for combating "warehousing."

NEW ZEALAND—Volunteer Denounces Thai Camp

In the August 29 New Zealand Herald, volunteer English teacher Alex Abela said "the Tham Hin camp should be closed completely, forever. ... It's not fit for human beings." He had just returned from a three-month stint at the Thai camp where he was appalled at the unsanitary conditions. Although Western agencies provided rations, "for most people there is nothing to do in the camp, and they are not allowed to go outside it to work," the Herald reported.
PAKISTAN—NGOs Intervene for Refugees

Afghan refugees in Pakistan are approaching the end of the special tripartite agreement between UNHCR and the Pakistani and Afghan governments with trepidation. The Pakistani Government has restricted issuance of drivers’ licenses to Afghans for the last two years. Pakistanis are increasingly failing to honor debts to refugees, including considerable business investments, and there is little the refugees can do to enforce them. The Government also forbade new construction in the camps in Kurram near Peshawar. Authorities pressuring refugees to return applied this strictly, preventing refugees even from repairing old housing damaged by the heavy snowfalls of last winter. International Rescue Committee’s (IRC) Protection Unit made three visits to the area and intervened with Commissioner for Afghan Refugees staff, getting them to submit an application, signed by the refugee elders from the various camps, to the Kurram Political Agent. The restrictions were subsequently lifted.

Police harass and extort money from Afghan refugee and poor Pakistani street venders alike but refugees have a harder time getting out of detention as this requires the “surety” of two Pakistani nationals of good standing, a difficult condition for refugees to meet. The Norwegian Refugee Council (NRC) helped in some cases, asking courts to use their discretion to be lenient. With camp closures, more refugees are coming to urban areas where they are increasingly vulnerable to such extortion and harassment. Some refugees also suffer from the near-slavery of bonded labor. In several cases, NRC intervened through mediation with the community Jirga (elders committee) or through courts to secure the release of refugees in the brick kiln industry.

PAKISTAN—NGO, Donor, and Government Representatives Meet

UNHCR and various representatives of NGOs, international donors, and the Pakistani Government met September 7 in Islamabad to discuss Host Community Co-existence (HCC) and Refugee Affected Areas (RAA) projects designed to promote integrated development and tolerance in the host communities.

At the meeting, the Chief Commissioner for Afghan Refugees, Dr. Imram Zeb, announced that in early 2006 the Government will begin to register and issue Afghan refugees ID cards allowing them to work although not entitling them to permanent status or allowing them to travel abroad or to run businesses. IRC Country Director Mustafa Elkanzi spoke up to ask if this could be extended to the transport and other sectors where refugees often are obliged to partner with Pakistani nationals...
because they lack legal documents. The Commissioner said this and other issues remain open to discussion. (This also may only apply to Afghans covered by the census earlier this year, excluding many who feared deportation or could not access the process due to recent flooding and extreme snowfalls—another issue IRC and others continue to discuss with the Government.)

UNHCR asked whether the NGOs would consider turning over their UNHCR-supported Basic Health Units to the Government but the NGOs expressed concerned about the Government’s capacity, pointing out that outside sources also support the units. Nevertheless, they said, Quick Impact Projects might facilitate some transfers.

IRC raised their positive example of providing water and sanitation projects that benefited both refugee and host communities without distinction. This principle was more challenging, however, in education. The Government representative emphasized that education should be for repatriation, not integration and that “co-existence” was only an option if the refugees’ stay remains a decision of the Pakistani Government. Balthasar Benz of the European Commission said the HCC/RAA programs should incorporate the federal government as well as district and provincial authorities to allow the EC and World Bank to better integrate the large project in education they are planning.

UNHCR will host a follow-up meeting on September 21 and IRC promises to pursue the livelihood rights issues further.

THAILAND—Seminar on Refugee Protection
Thailand hosts some 460,000 refugees, mostly from Myanmar (Burma) and confines about 150,000—the only ones it recognizes as refugees—to camps where they generally are not allowed to work. Some others, mixed in with the much larger migrant stream have been able to register for temporary work permits tied to particular employers in limited economic sectors.

On July 14, UNHCR hosted a seminar on refugee protection in Thailand, inviting NGOs, media professionals, academics, members of parliament, and the National Human Rights Commission. This was a follow-up on work UNHCR commissioned from Prof. Vitit Muntarbhorn of Chulalongkorn University. He wrote:

Even if Thailand is not a party to the refugee instruments, there should be a more liberal policy towards those who are “screened in,” particularly in relation to the opportunity to seek employment. ... This should be rectified...

A positive Cabinet decision on this issue could open the door to work on the part of asylum seekers; this would not only save cost (since asylum seekers would be able to pay for their own maintenance) but also generate productive activities conducive to development, self-esteem, and self-reliance.

While participants agreed that Thailand had responded positively to humanitarian needs of those seeking refuge, they needed a guarantee of human rights on the basis of non-discrimination, with particular attention to the right to humane treatment and prevention of return.

In his opening address, Hasim Utkan, UNHCR’s Regional Representative, decried the adverse effects of warehousing on refugees’ psycho-social health and called for more vocational training. The Ministry of Interior reportedly will permit companies and factories to give jobs to refugees in camps. Jack Dunford, Chair of the Committee for Co-ordination of Services to Displaced Persons in Thailand, and Dr. Supang Chantavanich, Director of the Institute of Asian Studies at Chulalongkorn University, however, asked about letting refugees seek employment outside the camps. As Dr. Supang delicately put it, refugees needed to “practice what they” learned in vocational training so as to put their skills to good use when they return to their country. Dunford, however, said he was unaware of any such possibility. The Thai authorities did not respond.

Senator Kraissak Choonhaven, Chairman of the Senate Committee on Foreign Affairs, however, criticized the Government’s failure to respond to the plight of the ethnic Shan Myanmarese in the mountains near Chiang Mai and recommended that it register them and allow them to work. Dr. Surin Pitsuwan, Member of Parliament and Democrat Party Deputy Leader, said that confrontational lobbying was counter-productive and called for a campaign of education for the public and for Thai authorities on refugees’ positive contributions to Thai society and inclusion of refugee and human rights courses in Thai curricula. Sunai Phasuk, a Human Rights Watch consultant, recommended using the media and appointing youth groups to carry out the campaign.
Participants agreed to form a subcommittee to follow up on the seminar’s recommendations. Prof Vitit suggested forwarding them to the UN Human Rights Commission.

UGANDA—Law Project Challenges Settlement Policy
by Lucy Hovil
The Refugee Law Project (RLP) at Makerere University in Kampala is a leading advocate of freedom of movement for refugees. Over the course of its existence, it has campaigned for the repeal of the restrictive settlement policy outlined by the Ugandan Government (GoU) and UNHCR. Through the publication of numerous research reports and advocacy meetings with refugees, government representatives, UNHCR, and NGOs, the RLP has demonstrated how Uganda’s settlement policy negates refugees’ freedom of movement. Indeed, it redefines the very concept ‘refugee’ as someone who lives in a physical space defined by the GoU and UNHCR, and discounts the thousands of refugees who are self-settled. As a result, settlement refugees become dependent on assistance programs and have limited ability to improve their livelihoods by drawing upon their own skills and resources (see RLP Working Papers 4 and 14).

Despite these negative implications, Clause 44 of the proposed Refugee Bill 2003 retains the settlement policy, which the GoU argues is in the interest of refugee and national security. Refugees will therefore continue to have their freedom of movement (Clause 30) restricted, in violation of the rights enshrined in the 1951 Convention, the OAU Convention, and national law. Accordingly, the RLP and its allies in the international anti-warehousing movement continue to promote an integrated approach to refugee protection and development, for the benefit of both refugees and their hosts.


UNITED KINGDOM
A History of Recent Efforts on Refugee Rights
In July, Alexander Betts published “International Coop-
eration Between North and South to Enhance Refugee Protection in Regions of Origin,” Refugee Studies Centre Working Paper No. 25 (www.rsc.ox.ac.uk/PDFs/RSCworkingpaper25.pdf). He provides a thorough, cautiously optimistic analysis of the historical antecedents, theoretical underpinnings, and political machinations surrounding inter-governmental efforts. Along with some favorable comments on the anti-warehousing campaign, he points out:

[A]dvocacy networks in areas such as human rights and environmental protection operate across national frontiers [can] bring pressure on states “from above” and “from below” in what [Keck and Sikkink] call the “boomerang effect”. Within the refugee regime, NGOs are playing a growing advocacy role beyond the service provision role that they have adopted since the 1980s."

The influence that non-state actors have had and potentially have in shaping the terms of the debate on protracted refugee situations highlights the limitations of any purely state-centric perspective in analysing the refugee regime. These examples highlight that the perspectives of such actors exist not only alongside those of states but can be constitutive of states’ policies and perceived interests. North-south collaboration on a civil society level may thereby be a route to collaboration on an inter-state level.

UNITED STATES—Middle America against Warehousing
A coalition of Indiana NGOs sent Senator Richard G. Lugar, Chairman of the Senate Foreign Relations Committee, a letter outlining their opposition to the warehousing of refugees across the world. The coalition also strongly supported the adoption of Senate Resolution 177, now before the Senate Foreign Relations Committee, which urges the US State Department to pursue and encourage the right of refugees to livelihoods and freedom of movement, even as they remain in exile.

Citing the example of the Teah family, resettled Liberian refugees who were warehoused for 12 years before coming to Indiana, the coalition lifted up “the enterprising spirit exhibited by these ‘New Hoosiers,”
“enriching our communities with their strength and determination.”

The coalition asked the Senate to realize the powerful role the United States can play in reducing refugee warehousing globally through advocacy for the rights of refugees. Coming from the world’s largest donor of aid for refugees, the passage of S.Res. 177 would bring enormous attention to the problem of refugee warehousing.

UNITED STATES—Warehousing Amendment Passes Senate
July 18, the U.S. Senate approved Amendment 1248 to the 2006 Foreign Operations Funding Bill, which directs that $900 million be used to help better the lives of refugees throughout the world—more than the Bush Administration requested. Amendment 1248 is the bi-partisan work of Senators Joseph Lieberman, Edward Kennedy, and Sam Brownback.

Amendment 1248 would instruct the Secretary of State to work with UNHCR, NGOs, and host countries to design programs that benefit both refugees and the local populations that host them. In addition, it calls on the State Department to encourage discussion between refugees, host governments, the UN, and NGOs, so that coordinated policy towards integration and development may be sustained.

Senator Lieberman addressed the Senate on the issue of refugee warehousing, the text of which is available at the campaign website, www.refugees.org/warehousing, under “Initiatives to end it.”

ZAMBIA—Church Groups Raise Awareness
Jesuit Refugee Service has formed the Christian Initiative for Refugees in Prison (CIRP) and Advocacy Programme, which works to protect refugee rights and educate Zambian society on refugee issues. Its members have urged the Zambian government to ease restrictions on refugees’ freedom of movement and livelihoods. CIRP also organizes meetings to coordinate refugee advocacy with other NGOs, including Christian Outreach for Relief and Development, Lutheran World Federation, World Vision – Zambia, and the YMCA Refugee Project.

CIRP works to secure the release of refugees who have been detained without charges, promotes changes in current legislation, and analyses new bills affecting refugees. It also trains, informs, advises, and coordinates with local church and community groups to raise awareness about the plight of refugees and counter xenophobia. They publish the quarterly Press Review on Refugee Issues in Zambia. In February 2004, JRS and the Inter-church Refugee Task Force met with Zambia’s Chief Immigration Officer on the prohibitive requirements for refugees to obtain self-employment permits and plans to take the matter up with the Minister for Home Affairs.

ZAMBIA—Human Rights Commission Takes a Stand
The Zambian Immigration Department rounded-up, detained, and/or deported as many as 48 “prohibited immigrants” allegedly from Congo-Kinshasa or Tanzania in Lusaka and Chisokone market in Kitwa, on March 26. The next day, the constitutionally autonomous Human Rights Commission denounced the inhuman treatment of both foreigners and Zambians also apprehended. Its chairperson, Mumba Malila, called for amendment of the Immigration and Deportation Act but also noted that no law requires people to carry identity cards when they move about. He said apprehended people should not be presumed guilty of breaking laws and reminded the Department of Immigration of Zambia’s ratification of a number of human rights conventions. Home Affairs Permanent Secretary Peter Mumba replied, however, “This exercise will continue and we just appeal to Zambians who were wrongly rounded-up to bear with us,” reported the Times of Zambia.

ZIMBABWE—One Refugee Makes a Difference
Even an individual can make a difference by working for refugee rights. Kapinga Ntumba, a refugee himself from the Democratic Republic of Congo, has worked tirelessly to protect the rights of refugees during his nearly two years in Zimbabwe. Refugees there are often caught up with other foreigners in waves of arbitrary arrests by police and immigration officials looking for bribes. When they are detained, Ntumba has been successful in directing international attention to their situations, contacting Amnesty International and Human Rights Watch. The international NGOs help him advocate for the release of the refugees, often securing release within a week or two of their arrest.
Book Review

The Content of Protection

The Rights of Refugees under International Law,
by James C. Hathaway
Reviewed by Merrill Smith

At first blush, anyone with passing familiarity with the typical situation of refugees in the world will be astonished that a book entitled The Rights of Refugees under International Law would run to over a thousand pages (not counting nearly 200 pages of appendices, bibliography, and index). Hathaway's major contribution, however, is showing how far short the treatment of refugees falls from their internationally recognized rights, even from a relatively conservative and meticulous legal perspective.

From the outset, Hathaway makes clear that he will take a positivist legal perspective, describing the current state of the law, based on rigorous evidence of what states have agreed to, rather than how he or anyone else might wish it to be based on morality or natural law. One virtue of this approach is that it gives us a clear-eyed view of just how far international law needs to go to realize a full measure of justice for refugees. Another is to give us persuasive arguments for how far international law has already come and to give states that are in violation no excuse for ignoring what they have expressly agreed to honor.

Hathaway took some heat in the past (including in our own World Refugee Survey) for holding that the 1951 Convention Relating to the Status of Refugees (1951 Convention) offers no guarantee of durable solutions. As he points out, states would not lightly give up such a fundamental attribute of sovereignty as the discretion to decide who would be invited to join their polities. Refugee law is not immigration law. In fact, "by legitimating and defining a needs-based exception to the norm of communal closure, refugee law sustained the protectionist norm." But this is hardly a secret and it's unlikely that suggesting otherwise will encourage states to admit more refugees.

Hathaway gives a thorough exposition of just how much the 1951 Convention does offer toward solutions. More than that, however, he gives a fulsome account of the content of protection obligations even in the absence of durable solutions. This is supplemented throughout with description of the cognate provisions of the 1966 International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) and general principles of international law such as non-discrimination.

This is a major contribution because the pursuit of durable solutions, no matter how remote, has become something of an alibi for states and international agencies to ignore the rights of refugees while they remain refugees—a period that can last decades, even lifetimes. In fact, the way the word protection is bandied about these days, detached from any rights-based content, a layperson might be forgiven for thinking it meant no more than rations in camps. Does a duty of temporary protection as opposed to an obligation to offer naturalization prejudice host states against all forms of integration such as the right to work or freedom of movement? Or are refugees enjoying their full Convention rights all the better placed to achieve durable solutions? Either way, Rights of Refugees shines the light where the battle needs to be fought.

Application

As to the contents of protection, Hathaway parses the nuances of the 1951 Convention with extensive elucidation from the preparatory works of its drafters, the resolutions of UNHCR's Executive Committee, expert commentators, and numerous high courts deciding actual cases around the world. He uses these to explain the complex layering of degrees of attachment (jurisdiction, physical presence, lawful presence, lawful stay, durable stay) and contingent standards of assimilation (to aliens generally, to most-favored aliens, to nationals) that govern refugees' legal rights under the Convention. Even more helpfully, however, he brings these provisions into the real world of actual practice and is not shy to name names and pronounce states, whether in the North or South, in violation of the Convention's standards, including states not party to it.

What, for example, does Art. 26's limitation on the right to freedom of movement and choice of residence to refugees "lawfully in" a country's territory mean? Does it require permanent residence or even a refugee status determination? Can a country evade it by diverting refugees into a temporary protection scheme that pro-
vides neither? No. The Convention doesn’t require RSDs or any particular immigration status. “[A] state’s general right to define lawful presence is constrained by the impermissibility of deeming presence to be unlawful in circumstances when the Refugee Convention—and by logical extension, other binding norms of international law—deem presence to be lawful.” Refugee status, in turn, is based on objective criteria and precedes its formal recognition. Refugees have a “prima facie” legal right … to present themselves in the territory” of a state party and, when they do, their presence is lawful.

This is because while the Convention does not require states formally to determine refugee status, neither does it authorize governments to withhold rights from persons who are in fact refugees because status assessment has not taken place.

Thus de facto acknowledgement and official toleration of refugees’ presence in a country renders their presence lawful. A state may require refugees to identify themselves and submit their claims but thereafter their presence is regularized.

In the result, neither the prolonged detention by Malta of African refugees nor Swaziland’s imprisonment of Pakistani refugee claimants for having “trespassed” was in accordance with Art. 31(2). Much less was there any lawful basis for the decisions of Namibia and Thailand to force refugees to live on an ongoing basis only in designated camps.

What about “mass influxes”? Hathaway points to the framers’ clear intent not to deal with this under Art. 26’s general freedom of movement principle but under Art. 31’s more narrowly crafted emergency provisions regarding expulsion and admission. And even Art. 31 does not justify blanket or indefinite detention beyond that necessary to ascertain identity, the basis of claims, or any threat to security.

In the result, general policies of post-regularization refugee detention of the kind pursued by Australia and the United States, as well as the long-term confinement of refugees by such countries as Kenya, Pakistan, Uganda, and Zimbabwe, are in breach of the Convention...

This prohibition on refugee-specific constraints on choice of residence is no less offended when the approach of the authorities is indirect, such as the issuance of threats by Malawi and India to deny food and subsistence allowances to coerce refugees to remain in assigned camps, or the Austrian and British rules which withdraw income support from refugees who choose to exercise internal freedom of movement.

Because Art. 26 requires regulation of refugee movement to be assimilated to that applied to aliens “in the same circumstances,”

[t]he Zambian rule requiring possession of a (very expensive) permit to live as a student, professional, or trader in an urban area is a clear example of a general norm which, if strictly applied, would fail to take account of the general inability of refugees (relative to other non-citizens) to plan and save funds in anticipation of their new circumstances.

What does Art.17(1)’s (and others’) limitation on the right to work to refugees “lawfully staying” (résident régulièrement) in a country’s territory mean? Again, as the Convention doesn’t require RSDs or a particular immigration status, “lawful stay” is based on de facto circumstances and can be implied by official toleration of their ongoing presence for as little as three months or less. The drafters adamantly refused to use the English word resident because its connotations of permanence didn’t match the more inclusive French term, résident. Thus the provision of the European Union’s Qualification Directive that allows states to subordinate the right to work of temporary protection beneficiaries to that of EU citizens “is in breach of the Refugee Convention.”

Can Zambia justify exorbitant fees for work permits on the ground that it requires the same of other aliens? No. “The duty under Article 6 to exempt refugees from insurmountable requirements applies in such a case.”

What is the content of the Art. 13’s right to acquire property?

Specific reference was made during the drafting debates to the importance of enabling refugees to purchase securities (stocks) and land, to acquire a home, and to lease premises for accommodation or in which to carry on a business. [Authorities] logically add that Art. 13 encompasses the right to hold money, and to establish bank accounts.
What is the point of assimilating the rights of refugees to those of aliens? Historically, the law of aliens provided for states to negotiate the rights of their nationals in foreign countries. This is one of the aspects of protection that refugees lack and for which the Convention seeks to compensate. The right to work under Art. 17(1) is that of most-favored aliens, meaning any rights a country grants to nationals of its closest partner, it must also give to refugees, i.e., as if they had a powerful state advocating on their behalf.

Epilogue

Ideally, UNHCR should play the role of this surrogate protector, “to undertake the diplomatic equivalent of diplomatic intervention on behalf of refugees.” But

UNHCR has been fundamentally transformed during the 1990s from an agency whose job was essentially to serve as trustee or guardian of refugee rights as implemented by states to an agency that is now primarily focused on service delivery. Simply put, UNHCR is no longer at arm’s length from the implementation of refugee protection. In most big refugee crises around the world today, UNHCR is—in law or in fact—the means by which refugee protection is delivered on the ground. In seeking to exercise its traditional supervisory authority, UNHCR therefore faces a serious ethical dilemma, since it is often in the position of being responsible effectively to supervise itself.

In the Epilogue, Hathaway deals with the twin challenges of enforcing the Convention’s rights regime and developing the political will to share responsibilities for refugees. With few exceptions, “indifference or fear of bilateral disadvantage means that few direct efforts are made to correct even egregious breaches of Convention rights. In particular, no application has ever been made to the International Court of Justice as contemplated by Art. 38 of the Refugee Convention.” The supervisory bodies of other human rights conventions might be able to consider 1951 Convention norms in the evaluation of refugee-specific applications of their more generic cognate provisions such as the right to work in the ICECSR or freedom of movement in the ICCPR. This could even include national treatment on the basis of non-discrimination principles.

The real challenge, however, is to avoid responsibility-shifting to the less developed countries where most refugees seek protection by developing a “thoughtful system of common but differentiated responsibilities” including, on the part of donor countries, dependable guarantees of financial support for protection in regions of origin and residual resettlement opportunities. There is considerable talk of such responsibility-sharing these days, as there has been in the past. Hathaway cautions,

It is not at all clear, however, that these initiatives are predicated on the central importance of finding practical ways by which to respond to involuntary migration with a rights-based framework ... not simply to avert perceived hardships for states, but also in ways that really improve the lot of refugees themselves. It is not enough to find sources of operational flexibility, ... or to signal the renewed relevance of international agencies to meeting the priorities of states.

As the African proverb has it, when the elephants fight, it is the grass that suffers. How do we keep the plethora of international initiatives from Convention Plus to the Millennium Development Goals focused on the rights of the putatively intended beneficiaries rather exclusively on the comity of states? One of the strongest extra-legal forces for realization of refugee rights can be convergence of interest between refugees and host communities. Hathaway points out that host communities often have such a stake in refugee rights.

The international campaign against refugee warehousing has demonstrated that there are widespread grassroots constituencies to mobilize for refugee rights in both donor and host nations including faith communities, human rights organizations, businesspeople, and women’s groups. As Alexander Betts put it (supra), such action “can be constitutive of states’ policies and perceived interests. North-south collaboration on a civil society level may thereby be a route to collaboration on an inter-state level.” Whether such activism can be constitutive of states’ consent to be bound, and thus, of international law, is another matter. The Rights of Refugees under International Law shows us, however, that getting states to implement as much as they have agreed to will be no mean feat.
Interview with Pastor David Bolombe

July 5th 2005

by Marion Fresia

David Bolombe lived for 6 years in a poor neighborhood of Harare, the capital of Zimbabwe, hiding from local authorities after fleeing war in the Democratic Republic of the Congo (DRC). The Government of Zimbabwe granted him refugee status but he never enjoyed his rights under the 1951 Convention. As he refused to live in the Tongorara camp, located 700 km from the capital, Zimbabwean authorities considered him an illegal migrant, with no right to work or circulate. After the Zimbabwean Secret Services threatened to imprison him, Canada finally accepted him for resettlement in March 2005.

David Bolombe was born in the region of Kisangani, in eastern Congo, where his father was a civil servant. After he graduated from college, he worked as a technician for a private airplane company in Kinshasa, the capital, until the civil war broke out and the company closed. Like many other unemployed young people, he engaged in political activities within the UDPS (Union for Democracy and Social Progress) but was soon threatened by the new Kabila government, which did not tolerate any political opposition. The police arrested him twice as he was one of the UDPS youth leaders. David first thought to return to his home, in the East, but the Rwandan Army that occupied the area also threatened his security. Rwandan soldiers were arresting, and even killing natives of the area, accusing them of supporting the Kabila regime even when it was not the case. “I had no other choice but to leave my country,” he explains, “leaving my wife and relatives behind. Wherever I would have gone, I would have been arrested, tortured, or even killed by either Kabila’s people or the Rwandans.” David fled across the southern border to Zambia in 1999 but did not stay long. “I met a truck driver on the road, who was transporting merchandise to South Africa. He told me that the Zambian authorities were sending all DRC refugees directly to jail and offered to take me down to Zimbabwe, which, according to him, treated refugees far better.” David believed him and gave him all his money to pay for the trip.

In February 2000, David arrived in Harare, the capital of Zimbabwe. A local advised him to go to the “Social Welfare Ministry” because, in “Zimbabwe, we do not go to the UNHCR but to the State. The UNHCR remains under the State.” From there, the authorities transferred him to the Waterfalls Transit Center where they held him until his asylum request was processed. According to the Zimbabwe Refugees Regulations (1985), no person who has been admitted in the Center shall leave for any purpose, unless authorized to do so in writing by the Chief Officer. The center’s administrators gave David only a blanket and soap and made him sleep on the ground. The authorities detained him for a month and a half where the Central Intelligence Organization (CIO) interviewed him twice before he was finally able to make his case to the UNHCR and representatives of the Zimbabwean Refugee Committee. “What is surprising,” he explains, “is that in Zimbabwe, you cannot meet the UNHCR until the third interview. It is as if the UNHCR does not exist or is below the government. But even more surprising is the fact that the government will not recognize you as refugees whenever you mention that your fears of persecutions are based on your political opinion, because Zimbabwe supports the Kabila regime.”

Fortunately, other Congolese warned and advised him to simply state that he was fleeing the war. The authorities finally granted him refugee status and drove him to the Tongogara camp where the government forced all refugees to stay since it opted for rural encampment in the late 90’s. They also gave him a temporary residential permit that clearly stated that he did not have the right to work or to engage in political activities.

After a 700 km ride in an uncovered truck, David arrived in Tongogara camp and what he saw shocked him. The camp was in a national park, where deep jungle and wild animals surrounded it. The nearest Zimbabwean village was at 20 km off the road. Hundreds of Congolese, Rwandan, and Burundian refugees lived in the camp but also some from Sudan and Tanzania. To get out, refugees had to ask the camp administrator for a gate pass which did not allow them to leave for more than a week. Refugees received rations, healthcare, and primary education but only if they remained in the camp. World Vision gave them seeds to cultivate but the Government only allowed them to sell their products to locals willing to come into the camp. Refugees like David, who came from urban areas, had no experience with farm work. In Zimbabwe,
“you have to live the life of a slave because a slave is someone who has no freedom,” Bolombe explains. “You cannot raise your voice and express your opinions, you cannot work, you cannot move, you can only eat what other people in the world don’t want to eat. When you are educated and used to earning a salary, you cannot bear to have your life put on hold like this, and it is humiliating to be asked to cultivate land that you don’t own.”

David decided to leave the camp after a few months. He asked for a gate pass to go to Harare but never came back. Like many other refugees, he became a clandestine or “illegal” migrant and risked arrest from then on. “If the authorities catch you and you don’t have a valid pass or a work permit, they send you directly to jail. They have arrested and detained many refugees for one or two months before freeing them for a fee.” The only way to avoid jail was to buy false papers from corrupt Zimbabwean civil servants but, like most refugees, David could not afford to do this. In the suburb of Harare, David barely survived with his wife and two children who joined him a year after he had left Congo. Fortunately, a relative living in Europe helped him and he did odd jobs in the informal sector, yet with constant fear of deportation. Zimbabwean authorities had already arrested and deported two of his friends working illegally in Harare. For faith in the future, he became very active in an affiliate of the Zimbabwean Assemblies of God and became a Pastor, preaching for peace and reconciliation. In 2003, the Zimbabwean CIO accused him of belonging to a Congolese party opposed to Kabila and supporting Mugabe’s political opponents and threatened to deport him. Anonymous phone callers also threatened his life. To avoid arrest, he moved to different neighborhoods several times. One night, the authorities raided the house where his wife and children were staying. They found his old UDPS membership card and said they would use it against him as evidence that he was still politically active. After he reported this to UNHCR and to human rights organizations, Canada accepted him and his family for resettlement in March 2005.

Although David is relieved to finally be in a secure place after 15 years of flight, he still asks himself “why do people have to treat refugees as if they did not belong to humanity?” Today, many of his friends and relatives living in Harare are victims of the government’s campaign to demolish the settlements of urban poor. “They lost everything in Congo, and now the little they had in Zimbabwe has vanished too.”

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Updates

New Book on U.S. Refugee Resettlement Agencies and Volunteers

The Lost Boys of Sudan: An American Story of the Refugee Experience follows four refugees from southern Sudan for their first two years in the United States.

The four were among about 3,800 “Lost Boys of Sudan” who were resettled around the United States in 2000 and 2001. Published by the University of Georgia Press, the book shows resilient survivors adjusting to the modern world, working long hours and struggling to receive the education they crave. The book also chronicles the history of Sudan and the politics of U.S. refugee policy.

Former U.S. President Jimmy Carter says the story “speaks to the strength of the human spirit to survive and grow under even the most abject circumstances.” The president of the International Rescue Committee and director of Lutheran Immigration and Refugee Service are among dignitaries offering praise. Former Executive Director Roger Winter of the U.S. Committee for Refugees and Immigrants calls it a “fascinating narrative” that sheds light on deprivation in Sudan and opportunity in the United States.


BIA Clerk’s Office has Moved

The Clerk’s Office of the Board of Immigration Appeals moved to a new location August 29, 2005. The new address for courier, overnight delivery, or in-person visits is:

5107 Leesburg Pike, Suite 2000
Falls Church VA 22041

Their mailing address will remain the same:

Post Office Box 8530
Falls Church, VA 22041

The main telephone number will still be 703-605-1007
Public Window Hours: 8:00 a.m. to 4:30 p.m.
See www.usdoj.gov/eoir.
## Summary of U.S. Refugee Admissions (as of August 31, 2005)

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