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Development Without Refugee Rights? A Civil Society Response

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Abstract

More than 300 non-governmental organizations (“NGOs”) and notable individuals from around the world have endorsed the Statement Calling for Solutions to End the Warehousing of Refugees, half representing refugees in or from the southern hemisphere. These NGOs are not just signing statements but taking concrete actions in donor and host nations to reshape the refugee protection agenda. Such international breadth of support is the beginning of a coordinated campaign to bring pressure to bear on the relevant parties.

DEVELOPMENT WITHOUT REFUGEE RIGHTS? A CIVIL SOCIETY RESPONSE

Merrill Smith*

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.¹ With the release of its World Refugee Survey 2004 Warehousing Issue² (“the Survey”), the U.S. Committee for Refugees and Immigrants (“USCRI”) launched an international campaign to end warehousing.³ The campaign promotes the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”) rights of refugees and asylum seekers to live as normal a life as possible in exile while they await durable solutions.⁴ 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 within the national territories of countries of first asylum, and to have international travel documents.⁵ The Universal Declaration of Human Rights and other human rights instruments champion many of these same rights for all persons.⁶

The principal obstacle to refugees enjoying these “anti-warehousing” rights is lack of political will. The Convention itself has virtually no practical legal enforcement mechanism.⁷ Courts in

* Editor, World Refugee Survey.

1. Merrill Smith, *Development Aid for Refugees: Leveraging Rights or Missing the Point?*, in WORLD REFUGEE SURVEY 2005, 20, 20 (U.S. Comm. For Refugees ed., 2005), available at <http://www.refugees.org/article.aspx?id=1342> [hereinafter WORLD REFUGEE SURVEY 2005].

2. WORLD REFUGEE SURVEY 2004 (U.S. Comm. For Refugees ed., 2004), available at <http://www.refugees.org/article.aspx?id=1156> [hereinafter WORLD REFUGEE SURVEY 2004].

3. See Gregory Chen, *A Global Campaign to End Warehousing*, in WORLD REFUGEE SURVEY 2004 *supra* note 2, at 21, 21.

4. See U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention].

5. See Smith, *supra* note 1, at 20.

6. See Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3rd Sess., 183d plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

7. See generally Refugee Convention, *supra* note 4.

States party to the Convention vary in effectiveness, often depending not only on the strength of implementing legislation — which is often subject to restrictive reservations — but also on the overall strength of the rule of law in countries of asylum.⁸ But if refugee protection is truly an international responsibility, the onus does not rest exclusively on host countries. Warehousing also implicates donor country practices. The main venue for enforcing these rights, therefore, is the court of public opinion, internationally and in both host and donor Nations.

Even the most stringent terms in the Convention are limited by certain conditions. Paragraph one of Article 17 does not require States to allow refugees to engage in wage-earning employment any more so than it does its most favored foreign nationals.⁹ In paragraph two of Article 17, the Convention obliges parties to lift restrictions they may have “for the protection of the national labour market,” but only for those refugees who have resided in the country for three years, married nationals, or have children who are nationals.¹⁰

Paragraph three of the Refugee Convention, by contrast, declares that “[t]he Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals”¹¹ “Sympathetic consideration” might be vague language for legal purposes, but in practice, 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 reli-

8. See U.N. High Comm. for Human Rights, Status of Ratifications, Reservations and Declarations to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, at <http://www.unhchr.ch/html/menu3/b/treaty5.htm> (last visited Oct. 24, 2005).

9. See Refugee Convention, *supra* note 4, art. 17, ¶ 1.

10. *Id.* art. 17, ¶ 2.

11. *Id.* art. 17, ¶ 3.

able. Donor countries are not legally required to sit down with host country governments to discuss more appropriate ways to offer aid. 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 300 non-governmental organizations ("NGOs") and notable individuals from around the world have endorsed the Statement Calling for Solutions to End the Warehousing of Refugees, half representing refugees in or from the southern hemisphere.¹² These NGOs are not just signing statements but taking concrete actions in donor and host nations to reshape the refugee protection agenda.¹³ Such international breadth of support is the beginning of a coordinated campaign to bring pressure to bear on the relevant parties.

I. HISTORICAL BACKGROUND

In establishing the United Nations 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"¹⁴ They confined the agency to giving material assistance only as host governments requested and only then with the approval of the General Assembly.¹⁵ In 1952, General Assembly 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.¹⁶ Later, UNHCR initiated the Camp Clearance Program, also with

12. See U.S. Comm. for Refugees and Immigrants [USCRI], Statement Calling for Solutions to End the Warehousing of Refugees, at <http://www.sepnet.org/refugeewarehousingstatement.pdf> (last visited Oct. 24, 2005).

13. See *Anti-Warehousing Work Around the World*, REFUGEE REP., vol. 26, special edition, 2005, at 1, 1-10, available at http://www.refugees.org/uploadedFiles/Investigate/Publications_and_Archives/Refugee_Reports/Refugee%20Proof.pdf.

14. LOUISE W. HOLBORN, 1 REFUGEES: A PROBLEM OF OUR TIME 62 (1975).

15. See T.F. Betts, *Evolution and Promotion of the Integrated Rural Development Approach to Refugee Policy in Africa*, in REFUGEE AID AND DEVELOPMENT: THEORY AND PRACTICE 15, 16 (Robert F. Gorman ed., 1993) [hereinafter REFUGEE AID AND DEVELOPMENT]; see also HOLBORN, *supra* note 14, at 63.

16. See HOLBORN, *supra* note 14, at 330.

a primary emphasis on local integration.¹⁷ When this program cleared the last European camp of the era in 1960, participants ceremoniously burned it to the ground.¹⁸ Receiving countries were more likely to view refugees as agents of democracy and the preferred durable solution was local integration.¹⁹

As late as 1976, UNHCR favored non-operational, spontaneous settlement over formal encampment in Africa.²⁰ At the 1979 Arusha Conference, then President of Tanzania, Jules Nyerere did not rule out eventual voluntary repatriation:

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.²¹

With wars of independence generating most of the world's refugees, the durable solution preference shifted to repatriation, a solution generally available 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

17. *Id.* at 471-73.

18. See Video: Last Refugee Camp is Ceremoniously Burned to the Ground (UNHCR Video Archives 1960) (video clip, on file with USCRI).

19. U.N. ESCOR, *Memorandum by the Secretary-General of the United Nations to the Ad Hoc Committee on Statelessness and Related Problems*, U.N. Doc. E/AC.32/2 (Jan. 3, 1950) ("Refugees will lead an independent life in the countries which have given them shelter. With the exception of the 'hard core' cases, the refugees will no longer be maintained by an international organization as they are at present. They will be integrated in the economic system of the countries of asylum and will themselves provide for their own needs and for those of their families. This will be a phase of the settlement and assimilation of the refugees. Unless the refugee consents to repatriation, the final result of that phase will be his integration in the national community which has given him shelter.").

20. See Betts, *supra* note 15, at 16.

21. Barry N. Stein, *ICARA II: Burden Sharing and Durable Solutions*, in *REFUGEES: A THIRD WORLD DILEMMA* 57 (John Rogge ed., 1987) (quoting Jules Nyerere at the 1979 Arusha Conference).

than two million in 1970 to over four million in 1980.²²

As these situations dragged on, nationals 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 natural and agricultural resources, leading to their increased dependence on relief. Development agencies such as the World Bank, United Nations Development Programme (UNDP), and others acquiesced in the segregation of refugee settlements to avoid host government opposition, as, without rights to earn a livelihood, refugees would burden host country public services and the environment.²³ 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.²⁴

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

II. 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 a new 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.²⁵ This idea was further developed in two

22. See *Africa: Refugee Crises Worsen*, in *WORLD REFUGEE SURVEY* 1981, at 6, 6-9 (U.S. Comm. For Refugees ed., 1981).

23. See Merrill Smith, *Warehousing Refugees: A Denial of Rights, A Waste of Humanity*, in *WORLD REFUGEE SURVEY* 2004, *supra* note 2, at 38, 44.

24. Agnès Callamard, *Refugee Assistance and Development: But What Sort of Development?*, in *REFUGEE AID AND DEVELOPMENT*, *supra* note 15, at 129, 142.

25. See Robert F. Gorman, *The Quest for a Theory of Refugee Aid and Development: Empirical Limits to a Theory of Obligation*, in *REFUGEE AID AND DEVELOPMENT*, *supra* note 15, at 147, 147-48; see also Mary Louise Weighill, *ICARA II — Refugee Aid and Development* 7-8, 10, (July 31, 1997) (unpublished manuscript, on file with the Refugee Studies

ill-fated International Conferences on Refugees in Africa (ICARA) in the early 1980s.²⁶

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"²⁷ and the extent to which governments were responsible. 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.²⁸ The host countries saw the conferences as ways to fund development projects unrelated to refugee rights.²⁹ Even with technical assistance, host countries were unable to demonstrate that refugees actually were a burden or to show how infrastructure projects would help.³⁰

Donors promulgated a plethora of vogueish development theories calling for minimal "self-sufficiency" within segregated settlements.³¹ Development schemes were top heavy with extensive need for feasibility surveys, impact studies, and bureaucratic coordination that strained host countries' managerial capacities.³² According to the World Bank, "[s]uccessful 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."³³ Some donor governments also insisted that their own countries' agencies implement the projects.³⁴ Care and maintenance programs on the one hand and development assistance on the other

Centre); WORLD REFUGEE SURVEY 1971, at 4 (U.S. Comm. For Refugees ed., 1971); WORLD REFUGEE SURVEY 1980, at 33 (U.S. Comm. For Refugees ed., 1980).

26. See Poul Hartling, *Refugee Aid and Development: Genesis and Testing of a Strategy* in WORLD REFUGEE SURVEY 1984, at 17-19 (U.S. Comm. For Refugees ed., 1984)); see also Weighill, *supra* note 25, at 16-17.

27. Weighill, *supra* note 25, at 3.

28. See *id.* at 3, 23-24.

29. See *id.* at 23, 31-32, 39, 42; Stein, *supra* note 21, at 48-49.

30. See Stein, *supra* note 21, at 53.

31. See Jacques Cuénod, *Refugees: Development or Relief?*, in REFUGEES AND INTERNATIONAL RELATIONS 219, 245 (Gil Loescher & Laila Monahan eds., 1989); see also Cal-lamard, *supra* note 24, at 140; Bjorn Hettne, DEVELOPMENT THEORY AND THE THREE WORLDS 176-85 (1995).

32. See Robert F. Gorman, *Linking Refugee Aid and Development in Africa*, in REFUGEE AID AND DEVELOPMENT, *supra* note 15, at 61, 78.

33. Stein, *supra* note 21, at 53.

34. See Cuénod, *supra* note 31, at 231.

each had their constituencies in both donor and host bureaucracies, each jealously guarding its resources, leaving little institutional support for integrating the two.³⁵

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.³⁶ 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.³⁷

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

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 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.³⁸

In addition, "[F]or most agencies, refugee or displaced persons

35. See Gorman, *supra* note 32, at 74-77; see also Gorman, *supra* note 25, at 148, 151; Cuénod, *supra* note 31, at 231.

36. See generally ALEX DE WAAL, *FAMINE CRIMES: POLITICS & THE DISASTER RELIEF INDUSTRY IN AFRICA* (1997).

37. *Id.* at 79.

38. *Id.* at 90.

camps are the essence of aid; they are a visible sign of comprehensible and concentrated human need for charity.”³⁹

Even as refugee situations persist for decades, donors typically categorize their assistance as “care and maintenance” and fund it out of humanitarian relief budgets designed for emergencies. This should not entail rights-blind population management, however. In 1994, the United Nations Office for the Coordination of Humanitarian Affairs stated that humanitarian aid includes efforts to “reduce dependency on food aid and other emergency aid.”⁴⁰ 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.⁴¹ 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.”⁴² To make the relationship between rights and livelihoods explicit, however, the OECD needs to specify the relevant articles in the human rights instruments it cites.⁴³

The internationalization of care and maintenance has in fact contributed to the isolated, zonal approach to segregated settlements characteristic of both the International Conference on Assistance to Refugees (“ICARA”) and its modern incarnation in UNHCR’s “Convention Plus” framework, known as Targeted Development Assistance (“TDA”).⁴⁴ Both ICARA and Convention Plus avoid dealing with host governments on refu-

39. *Id.* at 199.

40. U.N. Office for the Coordination of Humanitarian Affairs, Financial Tracking Service, Consolidated Appeal Process Guidelines 14 (1994) [hereinafter CAP Guidelines].

41. See Org. for Econ. Co-operation & Dev., *DAC and Good Humanitarian Donorship: Improving Humanitarian Statistical Reporting: Identifying a Common Definition of Humanitarian Work for Statistical Reporting Purposes* 10 (2004) (draft paper on file with author).

42. *Id.* at 14.

43. See CAP Guidelines, *supra* note 40, at 21, Annex B.

44. U.N. High Comm. for Refugees [UNHCR], Convention Plus Issues Paper on Targeting of Development Assistance (2004) (draft) available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=PROTECTION&id=40e408924&page=Protect> (last visited May 21, 2005); see also Alexander Betts, *International Cooperation and the Targeting of Development Assistance for Refugees: Lessons From the 1980s* (UNHCR Evaluation and Policy Analysis Unit Working Paper No. 107, 2004) available at <http://www>.

gee rights,⁴⁵ 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.”⁴⁶

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.⁴⁷ 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.

USCRI offered a different approach in its presentation to UNHCR’s Annual NGO Consultations last year, advocating a straightforward commitment to reimbursement of direct expenses as a minimum first step:⁴⁸

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 toward realizing this principle 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.⁴⁹

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

unhcr.ch/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=415d0d982 (last visited Oct. 28, 2005).

45. See Betts, *supra* note 44, at 6-9, 12-16.

46. See Callamard, *supra* note 24, at 140.

47. See Betts, *supra* note 44, at 2, 13.

48. See generally USCRI, MOVING FORWARD: IDENTIFYING SPECIFIC MEASURES TO END REFUGEE WAREHOUSING (2004), [hereinafter MOVING FORWARD], available at <http://www.refugees.org/data/warehousing/docs/Pre-ExComStatement040929.pdf>.

49. Smith, *supra* note 23, at 53-54.

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.⁵⁰

III. *Development and Rights*

Much relief-to-development thinking is based on uncritical assumptions about development assistance. In development studies, it is very much an open question what, if any, relationship exists between development assistance 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/or institutions are bad, they claim, aid will only reinforce them. If the policies and/or institutions are good, then aid is unnecessary because more efficient private financial markets will intervene as they did in the development of the East Asian economies. Mainstream 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.⁵¹

Aid that encourages good development policies and institutions, including refugee rights, may act as a substantial form of international responsibility-sharing in the protection of refugees. Prior local commitment to such inclusive policy is essential to the efficacy of aid. But international attention cannot substitute

50. See *MOVING FORWARD*, *supra* note 48, at 2-3.

51. See generally Betts, *supra* note 44.

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 also represent a convergence ripe for international civil society collaboration.

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.⁵² Refugee rights are not explicitly mentioned among the criteria, but the civil liberties and regulatory quality indicators imply many rights pertinent to refugees.⁵³ Freedom Houses's annual Freedom in the World survey influences the MCA's distribution of aid; its rating system contemplates the rights granted to refugees to work, own property, and engage in business enterprises under its civil liberties metric.⁵⁴ In the Civil Liberties Checklist⁵⁵ used to evaluate a country's performance, questions regarding "Personal Autonomy and Individual Rights" include:

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?⁵⁶

Countries earn the most favorable rating in this category if individuals "enjoy free economic activity and tend to strive for

52. See generally The Millennium Challenge Corp., The Millennium Challenge Account, at http://www.mca.gov/about_us/overview/index.shtml (last visited May 21, 2005).

53. See, e.g., Millennium Challenge Corp., Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2005, [hereinafter MCA Report], available at http://www.mca.gov/about_us/congressional_reports/Report%20to%20Congress%20on%20Criteria%20and%20Methodology%20FY051.pdf (last visited May 24, 2005); see also Larry Nowels, Congressional Research Service, *CRS Report for Congress: Millennium Challenge Account: Implementation of a New U.S. Foreign Aid Initiative* (Jan. 21, 2005), available at <http://www.fas.org/sgp/crs/row/RL32427.pdf>.

54. See Freedom House, Freedom in the World 2003: Survey Methodology [hereinafter Freedom Methodology], at www.freedomhouse.org/research/freeworld/2003/methodology.htm (last visited May 24, 2005).

55. See MCA REPORT, *supra* note 53.

56. Freedom Methodology, *supra* note 54.

equality of opportunity.”⁵⁷ In this light, articulating refugee rights more explicitly and monitoring their implementation could prove an effective tool toward linking them to development assistance. In order to enhance its protection analysis, the 2005 World Refugee Survey modified its format to analyze and rate countries’ performances through refugee rights criteria.⁵⁸ In addition, UNHCR has drafted a “Framework for Identifying Gaps in Protection Capacity” — a document that largely tracks the rights of the Convention for use in its Strengthening Protection Capacity projects in Kenya, Tanzania, Benin, and Burkina Faso⁵⁹ — and has completed gaps analyses for Kenya and Tanzania.⁶⁰

Another approach that identifies economic inclusion as a human right emanates from the United Nations’ Millennium Development Goals (“MDGs”).⁶¹ The United Nations’ Millennium Project’s report, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (“the Report”)⁶² 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 decision making.

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.⁶³

57. *Id.*

58. See generally WORLD REFUGEE SURVEY 2005, *supra* note 1.

59. See generally UNHCR, Framework for Identifying Gaps in Protection Capacity (Apr. 2005), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=41fe3ab92>; see also UNHCR, Strengthening Protection Capacity (SPC) Project: Project Description (Apr. 2, 2005) [hereinafter SPC Project], available at <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=420b65e24>.

60. See SPC Project, *supra* note 59.

61. See generally United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/2 (Sept. 18, 2000), available at <http://www.un.org/millenniumgoals/>.

62. See generally U.N. MILLENNIUM PROJECT, A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS (2005), available at <http://www.unmillenniumproject.org/reports/fullreport.htm> (last visited Oct. 28, 2005) [hereinafter MILLENNIUM REPORT].

63. *Id.* at 31.

IV. FREEDOM OF MOVEMENT

Without specifically referring to refugees, the report makes some strong indirect arguments against their segregation in remote settlements by calling for a particular focus on marginalized groups, migrants, and displaced persons.⁶⁴ 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.⁶⁵

The MDGs promote nondiscriminatory access to open, private economic activity and trade.⁶⁶ Recommendation 2 of the Report's "Ten Key Recommendations" suggests 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 "outline a private sector promotion strategy and an income generation strategy for poor people."⁶⁷

V. REFUGEES' RIGHT TO WORK IS 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.⁶⁸ Even the most repressive countries generally permit their nationals to work. Refugees, however, are by definition not citizens of the countries in which they live,⁶⁹ and host governments typically restrict their employment.⁷⁰

The Report cites the widely used Sachs-Warner measure of openness which, in turn, looks at trade openness as a proxy for a

64. *See id.* at 74, 184.

65. *See id.* at 184.

66. *Id.* at 121.

67. *Id.* at xx.

68. *See generally id.*

69. *See, e.g.,* Gerrit Jan Van Heuven Goedhart, U.N. High Comm. for Human Rights, Nobel Lecture: Refugee Problems and Their Solutions (Dec. 12, 1955), *available at* <http://nobelprize.org/peace/laureates/1954/refugees-lecture.html> (last visited Oct. 28, 2005) (accepting the Nobel Peace Prize on behalf of the UNHCR).

70. *See, e.g.,* Karen Jacobsen, *Local Integration: The Forgotten Solution*, MIGRATION INF. SOURCE, Oct. 1, 2003, <http://www.migrationinformation.org/Feature/display.cfm?id=166>.

country's overall economic policy.⁷¹ 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"⁷² and that governments should promote foreign direct investment.⁷³

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.⁷⁴

The Report notes that developing countries suffer from protectionist measures because protectionism:

[R]educes 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.⁷⁵

and because

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.⁷⁶

The Report's analysis of trade in services is even more relevant with respect 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

71. See Jeffrey D. Sachs & Andrew Warner, *Economic Reform and the Process of Global Integration*, BROOKINGS PAPERS ON ECON. ACTIVITY, vol. 1, 1995, at 2, 22-35.

72. MILLENNIUM REPORT, *supra* note 62, at 121.

73. See *id.* at 123.

74. See *id.* at 266.

75. *Id.* at 214-15.

76. *Id.* at 219.

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.⁷⁷

VI. SELF-EMPLOYMENT AND ENTREPRENEURSHIP — LEGALIZING THE MARGINALIZED

The Report's strong arguments in support of entrepreneurship in developing countries⁷⁸ 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.⁷⁹ Government can also “enable easier access to financial capital by simplifying rules for collateral [and] increasing flexibility for informal entrepreneurs”⁸⁰ The Report cites with approval *UNDP's Unleashing Entrepreneurship: Making Business Work for the Poor*.⁸¹ 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.⁸² To this list, one might add ending the categorical exclusion of millions of refugees from legal entrepreneurship.

77. *Id.* at 216.

78. *See id.* at 120-21.

79. *Id.* at 121.

80. *Id.* at 124.

81. *See id.* at 120-21; *see also* U.N. Comm. on the Private Sector and Dev., *Unleashing Entrepreneurship: Making Business Work for the Poor* (Mar. 1, 2004) [hereinafter *Unleashing Entrepreneurship*], available at <http://www.undp.org/cpsd/documents/report/english/fullreport.pdf>.

82. *See* UNLEASHING ENTREPRENEURSHIP, *supra* note 81, at 5.

VI. PROPERTY RIGHTS FOR THE POOR . . . AND FOR REFUGEES

The UNDP's Millenium Report declares that "[t]he means to a productive life" includes certain "core political, social, and economic rights . . . [such as] security of tenure and property rights for shelter, businesses, and other assets."⁸³ Governments, however, frequently deny these rights to refugees. "Security of tenure" for marginalized actors such as women and slum dwellers facilitates: housing investment and asset accumulation by the poor,⁸⁴ improved labor market participation and access to credit markets,⁸⁵ fixed addresses permitting children to attend school,⁸⁶ access to health systems and emergency obstetric care for women,⁸⁷ and improved access to HIV/AIDS treatment and prevention.⁸⁸ The Report also notes that "[s]ome 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."⁸⁹

Recommendation 2 of the "Ten Key Recommendations" provides that MDG-based strategies should focus on women's and girls' "access to economic . . . opportunities [and] a *right to control assets*."⁹⁰ 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."⁹¹ In a box labeled "Quick Wins—solutions to implement now," the Report suggests: "[r]eform and enforce legislation guaranteeing women and girls property and inheritance rights."⁹² "Guaranteeing property and inheritance rights" is among the seven strategic priorities identified by the United Nations Millennium Project Task Force on Education and Gender Equality as "the minimum necessary to

83. MILLENNIUM REPORT, *supra* note 62, at 8, box 1.

84. *See id.* at 74.

85. *See id.* at 96.

86. *See id.* at 284.

87. *See id.* at 287.

88. *See id.* at 298.

89. *Id.* at 32.

90. *Id.* at xx (emphasis added).

91. *Id.* at 266.

92. *Id.* at 66.

empower women and alter the historical legacy of female disadvantage . . . and would rectify a fundamental injustice.”⁹³

The Report also explicitly calls for upholding women’s property rights in the contexts of ending poverty,⁹⁴ promoting gender equality,⁹⁵ reversing loss of environmental resources,⁹⁶ and improving the lives of slum dwellers.⁹⁷

The majority of the world’s refugees are women.

VII. MOBILIZING FOR CHANGE

In *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.⁹⁸

In addition, the UNDP Millennium Report notes that, in overcoming restrictive regulations, “[s]omeone benefits from every rule, and finding out how to overcome resistance by those who benefit is the first step in effective reform.”⁹⁹ With regard to credit, it notes that “[s]uccessful models have taken a multiple-stakeholder approach to developing functioning markets.”¹⁰⁰

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.¹⁰¹ Non-monetary or low-cost strategies that disseminate ideas, stimulate policy debate, and train

93. *Id.* at 88.

94. *See id.* at 281.

95. *See id.* at 277, 285.

96. *See id.* at 290.

97. *See id.* at 292.

98. *Assessing Aid: What Works, What Doesn’t, and Why*, World Bank Policy Research Report, 45 (1998) [hereinafter *Assessing Aid*], available at <http://www.worldbank.org/research/aid/pdfs/ch1.pdf> (last visited May 24, 2005).

99. *See* MILLENNIUM REPORT, *supra* note 62, at 24.

100. *Id.* at 26.

101. *See Assessing Aid*, *supra* note 98, at 51.

new leaders, on the other hand, may be more effective in the long run.¹⁰² But:

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 counter-productive. 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.¹⁰³

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.¹⁰⁴

VIII. NORTH-SOUTH CIVIL SOCIETY WORK ON REFUGEE RIGHTS

USCRI did not coin the term "warehousing,"¹⁰⁵ nor did we begin the substantive work, study, and advocacy, on winning

102. *See id.* at 54.

103. *Id.* at 57.

104. *See id.* at 84.

105. The earliest usage in the refugee context was during a speech given on October 24, 1988, by Jean-Pierre Hocké, then-High Commissioner for Refugees. *See* Jean-Pierre Hocké, U.N. High Comm'r for Human Rights, Speech to the A.C.C. (Oct. 24, 1988), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/openssl.htm?tbl=ADJMIN&page=home&id=3ae68fcec1c> ("Far too many [refugees] are virtually 'warehoused' in a state of near-total dependence."). For further UNHCR references to refugee warehousing, see <http://www.refugees.org/article.aspx?id=1372&rid=1179>.

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.¹⁰⁶ USCRI's campaign has contributed by moving the issue prominently into public awareness and before policymakers.¹⁰⁷

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 continue to be to create, facilitate, and enhance that political will to encourage more favorable policy environments. 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.¹⁰⁸

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. A review of some of recent civil society initiatives to secure refugee rights follows below.

A. *In Host Countries*

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

106. See Smith, *supra* note 23, at 55-56 (giving overview of scholarship).

107. Numerous articles, editorials, and radio and television coverage of the issue are compiled and hyperlinked at the campaign website, <http://www.refugees.org/warehousing> (last visited May 24, 2005).

108. Cuénod, *supra* note 31, at 241.

of a draft refugee bill.¹⁰⁹ It also works regionally to harmonize East African refugee legislation in compliance with the 1951 and African refugee conventions, using development assistance as leverage.¹¹⁰ 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.¹¹¹

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 Kenyan immigration minister before she addressed refugees and assured them that she would not enforce encampment policies.

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.¹¹²

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 in Uganda.¹¹³

In 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.¹¹⁴

109. See Transcript, Side Meeting: The Campaign Against Refugee Warehousing: Moving Forward (Sept. 30, 2004, Geneva), at http://www.refugees.org/data/warehousing/docs/Pre-ExCom_side_meeting_040930.pdf (last visited Oct. 28, 2005).

110. See *id.*

111. See *id.*

112. See Nkurikiye Etienne, Representative of the Lusaka Refugee Coordination, Speech on the Occasion to Mark the Fourth World Refugee Day (June 20, 2004) available at http://www.refugees.org/data/warehousing/docs/Lusaka_Refugee_Coordination_Speech.pdf (last visited Oct. 28, 2005).

113. See Refugee Law Project, *Land and Ethnicity in Nakivale Refugee Settlement: The Need to Resolve Competing Claims and Address Tensions* (Oct. 27, 2004), at http://www.refugees.org/data/warehousing/docs/nakivale_update.pdf.

114. See Frontiers Ctr., *Lebanon: Discrimination Against Refugees and Asylum Seekers* 1-

B. *In Donor Countries*

The November letter of InterAction, a U.S. humanitarian aid consortium, 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.¹¹⁵ 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."¹¹⁶ 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.¹¹⁷

ProAsyl, a human rights organization based in Germany, opposed the government's planned asylum restrictions with a media campaign highlighting aggravated warehousing as a likely consequence.¹¹⁸

USCRI carried the campaign to Geneva in its presentations at the Annual NGO Consultations with UNHCR in September 2004.¹¹⁹ At the Ninth International Association for the Study of Forced Migration Conference in São Paulo in January 2005, World Refugee Survey editor Merrill Smith gave a plenary ad-

2 (Dec. 2003) (report to the U.N. Comm. on the Elimination of Racial Discrimination, on file with USCRI).

115. Letter from Nazare Albuquerque & Ky Luu, Co-Chairs, InterAction UNHCR Partnership Working Group, to Arthur E. Dewey, U.S. Assistant Sec'y of State, Bureau of Population, Refugees, and Migration (Nov. 18, 2004) *available at* <http://www.refugees.org/data/warehousing/docs/InterAction041118.pdf>.

116. Letter from Nazare Albuquerque & Ky Luu, Co-Chairs, InterAction UNHCR Partnership Working Group, to Arthur E. Dewey, U.S. Assistant Sec'y of State, Bureau of Population, Refugees, and Migration (Sept. 14, 2004) *available at* http://www.refugees.org/data/warehousing/docs/Letter_to_Dewey_9.14.04.pdf.

117. See REFUGEE COUNCIL OF AUSTL., AUSTRALIA'S REFUGEE AND SPECIAL HUMANITARIAN PROGRAM: CURRENT ISSUES AND FUTURE DIRECTIONS: VIEWS FROM THE COMMUNITY SECTOR 15-18 (Feb. 2005), *available at* <http://www.refugeecouncil.org.au/docs/index%20page/intakesubmission/intakesubmission05.pdf>.

118. See USCRI, Bulletins — New Endorsements to Anti-Warehousing Statement (Aug. 17, 2004), *at* <http://www.refugees.org/article.aspx?id=1169&rid=1179>.

119. See generally MOVING FORWARD, *supra* note 48.

dress and led an anti-warehousing workshop.¹²⁰ The New York Times ran an editorial calling for an end to warehousing¹²¹ that the International Herald Tribune picked up the next day as an editorial entitled *End Refugee Warehousing*.¹²² In December, both BBC radio¹²³ and NPR¹²⁴ featured interviews with USCRI President Lavinia Limón criticizing the practice of refugee warehousing.

U.S. Senators Sam Brownback (R-Kan.), Edward Kennedy (D-Mass.), and Patrick Leahy (D-Vt.) introduced Senate Resolution 449 in October 2004,¹²⁵ denouncing refugee warehousing, directing the State Department to pursue models of refugee assistance compatible with refugee rights, and encouraging donor countries and the UNHCR to shift the incentive structure of assistance toward the rights of the 1951 Convention.¹²⁶

C. *The Faith-Based Community*

His Holiness 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.”¹²⁷ The Holy See forcefully denounced warehousing in its intervention at the 55th Session of UNHCR’s Executive Committee in Geneva, while Archbishop and Nobel laureate Desmond Tutu endorsed the Statement Calling for Solutions to End the Warehousing of Refugees.¹²⁸

120. See generally Michael Collyer, *The Search for Solutions: Achievements and Challenges: Report of the Ninth IASFM Conference, São Paulo, Brazil, January 2005*, 18 J. OF REFUGEE STUD. 247 (2005).

121. See Editorial, *Warehouses for Refugees*, N.Y. TIMES, Sept. 28, 2004, at A24.

122. See Opinion, *End Refugee Warehousing*, INT’L HERALD TRIB., Sept. 29, 2004, at 6.

123. *Call to End Refugee “Warehousing”* (BBC News radio broadcast July 12, 2004).

124. *Millions of Refugees Denied Work, Travel* (NPR radio broadcast Dec. 6, 2004), available at <http://www.npr.org/templates/story/story.php?storyId=4204283>.

125. See S. Res. 449, 108th Cong. (2004).

126. See generally Refugee Convention, *supra* note 4.

127. Monsignor Silvano M. Tomasi, Statement of the Holy See at the Executive Committee of the United Nations High Commissioner for Refugees (Oct. 4, 2004) (quoting a speech by Pope John Paul II on World Refugee Day in 2004).

128. Refugee Council USA, Statement Calling for Solutions to End the Warehousing of Refugees, available at <http://www.refugeecouncilusa.org/sign-on-refware-040802.pdf> (last visited May 25, 2005). USCRI notes that Archbishop Tutu Endorsed the statement, at <http://www.refugees.org/article.aspx?id=1109&rid=1179> (last visited May 25, 2005).

The National Council of Churches in Australia developed Refugee and Migrant Sunday Campaign Education Kits addressing warehousing for Schools and Parishes.¹²⁹ 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 soundbite: “it’s not a queue, it’s a lottery that few people win and some don’t survive.”¹³⁰

Numerous faith groups have also issued their own statements on the issue including Episcopal Migration Ministries,¹³¹ Jesuit Refugee Service–USA,¹³² and Lutheran Immigration and Refugee Service.¹³³ In Australia, the August Lutwyche Parish News denounced the “shelving” of more than 7 million of the world’s refugees.¹³⁴ The South Carolina branch of the Christian Rural Overseas Program raised the inadequate diet of warehoused refugees during an August fundraising event.¹³⁵

D. *Scholars*

Professor David Martin has 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

129. See Christian World Serv., Nat’l Council of Churches in Australia, *At Work With Refugees: Educational Resources*, at <http://www.ncca.org.au/cws/rdp/education> (last visited May 25, 2005).

130. *Refugee Camps: Way Stations or Warehouses?* (transcript of Radio Nat’l radio broadcast Sept. 10, 2002), available at http://www.refugees.org/data/warehousing/docs/Perspective_10_September_2004_James_Thomson.htm (last visited May 25, 2005).

131. See Richard Parkins, *As Refugees Languish*, EMM MESSENGER, Summer 2004, at 1, available at http://www.episcopalchurch.org/documents/EMM_newsletter_summer_04.pdf.

132. See Jesuit Refugee Serv. USA, *World Refugee Statement: Invest in Refugees to Create the Conditions for Durable Solutions* (2004), available at <http://www.jrs.net/statement/stat.php?lang=EN&statDir=WRd04&statId=WRd0407en> (last visited May 25, 2005).

133. See Ralston Deffenbaugh, President, Lutheran Immigration and Refugee Serv., *The Situation for Refugees Continues to Be Mixed* (July 2004), at <http://www.refugees.org/data/warehousing/docs/LIRS,%20From%20the%20President's%20Desk%200407.htm> (last visited May 25, 2005).

134. See Lutwyche Parish News (Australia) (Aug. 2004), at http://www.refugees.org/data/warehousing/docs/lutwyche_parish_news.pdf.

135. See Christian Rural Overseas Prog., *Refugee’s Plight: Food for Thought at Breakfast*, at <http://www.refugees.org/data/warehousing/docs/CROPKickoffBreakfast.htm> (last visited May 25, 2005).

the picture as a potential durable solution”¹³⁶ and that “real humanitarian gains [are] to be realized by offering thousands of men, women and children . . . the chance to escape from human warehousing.”¹³⁷

Guglielmo Verdirame and Barbara Harrell-Bond published *Rights in Exile: Janus Faced Humanitarianism*, which underscores the importance of refugee rights.¹³⁸ Dr. 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.¹³⁹ Anna Schmidt and Eftihia Voutira conducted a course on “Refugee Camps and Warehousing” at the American University in Cairo in January 2005.¹⁴⁰

These civil society initiatives are all promising even as they are embryonic. Refugee rights activists need to expand, refine, and cultivate them. Most importantly, however, we need to coordinate them. Were such efforts expanded and coordinated, when donor and host governments sit down to negotiate, either bilaterally or multilaterally, civil society could play an influential role in pressuring for genuine positive change for refugee rights. Toward this end, the Dutch Refugee Council, Frontiers (Lebanon), the Refugee Consortium of Kenya, USCRI, the World Council of Churches, and a number of other non-governmental organizations convened 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.¹⁴¹ This enabled activists and scholars to compare notes and learn from each other’s experiences and map out future collaborative strategies. According to Alexander Betts,

136. DAVID A. MARTIN, MIGRATION POLICY INST., THE UNITED STATES REFUGEE AD-
MISSIONS PROGRAM : REFORMS FOR A NEW ERA OF REFUGEE RESETTLEMENT 21 (2005) .

137. *Id.* at 37.

138. GUGLIELMO VERDIRAME & BARBARA HARRELL-BOND, *RIGHTS IN EXILE: JANUS
FACED HUMANITARIANISM* (2005).

139. See Barbara Harrell-Bond & Mike Kagan, *Protecting the Rights of Refugees in Af-
rica: Beginning with the UN Gatekeeper USCRI*, PAMBAZUKA NEWS, available at [http://www.
refugees.org/data/warehousing/docs/Pambazuka_News.htm](http://www.refugees.org/data/warehousing/docs/Pambazuka_News.htm).

140. See American Univ. of Cairo, Forced Migration Studies Dep’t, at [http://www.
aucegypt.edu/fmrs/ShortCourses.htm](http://www.aucegypt.edu/fmrs/ShortCourses.htm).

141. See USCRI, Next Steps and Recommendations From the North-South Civil
Society Conference on Refugee Warehousing in Geneva, September 25-26, 2005, at
[http://www.refugees.org/uploadedFiles/Investigate/Anti_Warehousing/Summary_of_
Next_Steps_from_Civil_Society_Conference.pdf](http://www.refugees.org/uploadedFiles/Investigate/Anti_Warehousing/Summary_of_Next_Steps_from_Civil_Society_Conference.pdf).

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.¹⁴²

It's about time.

142. Alexander Betts, *International Cooperation Between North and South to Enhance Refugee Protection in Regions of Origin* 57-58 (Oxford Univ. Refugee Studies Centre, Working Paper No. 25, 2005), available at <http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper25.pdf>.