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How the Millennium Challenge Account Fails Refugees’ Human Rights and their Potential as Agents of Development

Of the world’s 11 million refugees, nearly 7 million have essentially been “warehoused”—confined to camps or segregated settlements or otherwise denied their rights to work, practice professions, run businesses, own property, move about freely, or choose their place of residence in countries of asylum—in situations lasting ten years or more, sometimes for generations. This is not only a violation of human rights but an enormous waste of human potential and a binding constraint on economic development. Refugee protection is not just the job of poor countries that happen to border unstable neighbors but an international responsibility. This does not mean, however, that the only job of the United States and other donor nations is simply to provide humanitarian relief. Our assistance must ensure the *protection* of refugees’ human rights and help the underdeveloped countries that host them effectively realize their potential as agents of development in a mutually beneficial way.

The intent of the innovative Millennium Challenge Account (MCA) is to reward developing countries that adopt constructive policies to govern justly, promote economic freedom, invest in people, and engage civil society in formulating their development plans. All of these features could contribute to the protection and human rights of refugees as well but, due to inadvertent and easily amended omissions and technicalities in the MCA’s authorizing legislation, this has not happened. These shortcomings are manifest in at least four major areas:

- 1) failure to consider general human rights violations of refugees under the *Civil Liberties* indicator consistently;
- 2) under the *Regulatory Quality* indicator, a) failure to consider the rights of refugees to work, practice professions, run businesses, own property, move about freely, and choose their place of residence and livelihood and b) lack of transparency in the assessment of this indicator making it difficult to know *what* was evaluated and/or how it was assessed in particular countries;
- 3) pervasive citizen-centric orientation in the Millennium Challenge Corporation’s (MCC) guidance that undermines consideration of projects that may benefit refugees and stateless persons and the communities that host them; and

- 4) failure to fund participation of local civil society organizations in the selection, compact development, monitoring, and evaluation processes.

Major refugee hosting countries such as Benin, Namibia, and Tanzania are eligible for MCA programs in 2006 and Kenya, Uganda, and Zambia are on the threshold of eligibility. Tanzania, in particular, has fallen dramatically from its once exemplary standards of refugee protection and this paper will focus on the failure of the MCA with regard to refugee rights in this country as an example. We are not necessarily calling for Tanzania or any other country with poor refugee protection to be cut off—constructively allocated development aid could very well help such countries *improve* their records. It is hardly likely to do so, however, if those records are not taken into account—and visibly so—in both the eligibility phase of analysis and in the development, monitoring, and implementation of subsequent MCA aid Compacts.

1. The *Civil Liberties* Indicator

MCC's ratings on the *Civil Liberties* indicator are taken from Freedom House, which publishes the annual *Freedom in the World*, containing individual country reports justifying them. The checklist Freedom House uses to evaluate countries' performance in this regard, includes as questions regarding "Personal Autonomy and Individual Rights":

1. Is there personal autonomy? Does the State control travel, choice of residence, or choice of employment? Is there freedom from ... excessive dependency on the State?
2. Do citizens¹ have the right to own property and establish private businesses? ...
4. Is there equality of opportunity...?

Countries that earn the most favorable rating in this category "enjoy free economic activity and tend to strive for equality of opportunity."

Although Freedom House does excellent work in human rights documentation in most areas, its reporting on the human rights of refugees is uneven. For example, according to the *World Refugee Survey 2005* (WRS), pp. 111-13, Tanzania's refugee rights violations—from *refoulement* (forcible return) and arbitrary detention, to onerous restrictions on livelihoods and freedom of movement—earned it two D's and two F's, respectively. On the other hand, the Freedom House report on Tanzania included no mention of the treatment of refugees except to note that "[t]he presence of refugees from conflicts in Burundi, Rwanda and the Democratic Republic of Congo, however, has in the past raised tensions."

Below is a table of countries that Freedom House and USCRI both covered, where USCRI felt the treatment of refugees was egregious enough to merit a D or an F, and there was no mention or inadequate treatment of it in the Freedom House report. The table includes the scores that Freedom House gave those countries on *Civil Liberties*, the grades that we gave them

¹ This use of the word *citizen* was inadvertent and not intended to exclude the rights of refugees as when, for example, the report on Lebanon describes the denial of such rights to Palestinian refugees. (Telephone conversation, Arch Puddington.)

on refugee rights, and a brief note on the coverage of refugee rights in *Freedom in the World* (FIW) for that country. Admittedly, a poor grade on any or several aspects of refugee rights does not necessarily merit a correspondingly low score in *Civil Liberties*, although in some cases it might. The most important discrepancy is where it simply does not address the issue. (In some cases, most notably those of Lebanon and Thailand, there was little serious discrepancy between our treatments.)

Egregious Refugee Rights Violators: Comparative Treatment in <i>Freedom in the World</i> and <i>World Refugee Survey</i>			
<u>Country</u>	<u>FIW</u>	<u>WRS</u>	<u>FIW on refugee rights</u>
Bangladesh	4	CFDF	no discussion of rights (except '03 Bihari naturalization case)
Burundi	5	DACB	no mention
China	6	FFDD	no mention
DR Congo	6	BDAB	no mention
Côte d'Ivoire	6-	ADCB	no mention
India	3	DDDD	hosts 100s thousands
Iran	6	FFFC	no mention
Iraq	5	CDA A	no mention
Kenya	3	CDDF	presence and criminal activities
Malaysia	4	FFFF	no mention
Pakistan	5	FFCB	no mention
Russia	5	FFFF	no mention
Serbia & Montenegro	2	CFDC	no mention
South Africa	2	FFCB	no mention
Tanzania	3	D DFF	no mention, except as cause of tension
Turkey	3+	DDDD	no mention
Yemen	5	DFDC	no mention
Zambia	4	DDDD	no mention

In FIW's scores, 1 is highest and 6 is lowest. WRS grades are for *Refoulement/Asylum*, *Detention*, *Right to Earn a Livelihood*, and *Freedom of Movement and Residence*, respectively.

2. The Regulatory Quality Indicator

According to the MCC's "Millennium Challenge Account—Indicator Descriptions," the *Regulatory Quality* indicator measures "country performance on the burden of regulations on business." MCC also specifically lists "legal restrictions on ownership of business and equity by non-residents" among the factors on which it evaluates countries' *Regulatory Quality*—along

with “labor market policies” and others quite relevant to refugee rights to participate in the economy.

Regulations prohibiting hundreds of thousands of refugees in a given country from working, practicing professions, running businesses, owning property, and moving about would count as regulatory burdens on business (in addition to being a serious human rights violation). But do they? Sadly, it would appear not.

The World Bank Institute (WBI) compiles the ratings on *Regulatory Quality* (and other governance indicators) from up to 15 different sources. The rating process, however, is not transparent because many of the reports justifying *those* ratings are not publicly available and/or quite expensive. Neither WBI, nor MCC, nor its oversight committees in Congress even collect the reports. Although WBI and MCC statistically adjust the input ratings to yield a single final rating, they essentially take the substantive evaluations of the various sources on faith. That faith may be well placed with regard to some of the standard regulatory questions the World Bank and others deal with but what about refugee rights or gender integration or any number of concerns related to the rights of vulnerable and marginalized groups?

It is virtually impossible to understand specifically why that indicator for Tanzania, for example, steadily declined from around 0.6 in 1998 to 0.05, i.e., just above the passing median, in 2004. (See MCC’s ratings for Tanzania [here](#).) Exactly what changed in Tanzania’s regulatory policies in that period? Did the eleven input sources that WBI used in its case even consider whether perhaps hundreds of thousands of persons lawfully staying in a given country are statutorily *barred* from working, practicing professions, running businesses, owning property, living where they choose, or even setting foot outside a camp or segregated settlement?

Although Freedom House inadvertently omitted proper consideration of refugee rights in some countries, *Freedom in the World*, clearly shows why countries went up or down in their Civil Liberty ratings from year to year. In fact, this is how we *know* about such lapses. The underlying reports of the 11 contributors to the *Regulatory Quality* indicator for Tanzania, on the other hand, are largely unavailable.

What is available, however, is not encouraging. (See box, next page.)

**Treatment of Tanzania’s Regulatory Restrictions on Refugee Economic Activity
in Reports Underlying WBI’s *Regulatory Quality Indicator*
(Where Available)**

Heritage Foundation’s report, [Index of Economic Freedom](#), shows Tanzania’s score steadily *improving* from 3.53 in 1998 to 3.24 in 2004 (where 1 is best and 5 is worst) but no consideration of regulations restricting refugees;

Merchant International Group’s *Grey Area Dynamics*, does not make its Tanzania report available on its website but it does make one available as a sample: [that for Bangladesh](#)—another egregious violator of nearly 200,000 refugees’ economic rights (not to mention the stateless Bihari and the internally displaced and dispossessed indigenous persons of the Chittagong Hill Tracts). It does not mention refugees at all. *World Refugee Survey 2005*, on the other hand, gave Bangladesh a D on Right to Earn a Livelihood and an F on Freedom of Movement (not to mention another F on Detention a C for *Refoulement*);

African Development Bank’s [Country Strategy Paper for Tanzania 2002-2004](#) contains no mention of refugees; and

[Bertelsmann Transformation Index](#) mentions the fact that Tanzania hosts hundreds of thousands of refugees but says nothing about the regulatory restrictions on their economic activities.

Countries’ failure to allow refugees to own and run businesses may also have spillover effects that distort their ratings on other indicators. MCC’s methodologies on the *Days to Starting a Business* and the *Cost of Starting a Business* indicators, for example, assume that business “is 100% domestically owned” in order to make the data comparable across countries. Thus a country that warehoused refugees would get off the hook on two more indicators as well.

3. MCC’s Citizen-Centric Guidance

In various guidance documents to candidate countries, MCC frequently uses narrow language referring to “citizens” as the beneficiaries of its development assistance and as the civil society participants rather than using more inclusive alternatives such as *people*, *individuals*, or *residents*. (See Box, below.) This has the effect of persuading governments that, in the words of a Tanzanian official, “MCA is not about refugees!” It also undermines the efforts of civil society actors, in both the refugee and hosting communities, to work together for integrative development projects that allow refugees their rights to engage in livelihoods and contribute to the economy. One of the best ways to counteract xenophobia and communal rivalries that often erupt into violence and intolerance and undermine development is to make mutual respect and refugee rights a win-win proposition for refugees and the communities that host them.

The only place the Millennium Challenge Act of 2003 uses the word *citizen* is in Section (b)(2), requiring a “demonstrated commitment to economic policies that--(A) encourage citizens and firms to participate in global trade and international capital markets.”

**Citizen-centric Language in MCC’s Guidance Documents
(with Suggested, more Inclusive Edits)**

In “[Key MCA Principles](#)”:

Reward Good Policy: Using objective indicators, countries will be selected to receive assistance based on their performance in governing justly, investing in ~~their citizens~~ **people**, and encouraging economic freedom.

In [FAQs #2](#):

Countries should focus on improving performance on political, economic, and social policies that are fundamental for countries to grow and for ~~citizens~~ **people** to escape from poverty and to lead better lives.

In “MCC Compact Support Funding” (p. 1):

MCC encourages a country to look to and consult with its own ~~citizens~~ **residents**

In “[Country Questions and Answers](#)”:

p. 3—“MCC encourages a country to look to its own ~~citizens~~ **residents** and resources in the development of a proposal”

p. 5—“Proposals for MCC assistance should identify goals that will lead to economic growth and poverty reduction for a broad range of ~~its citizens~~ **individuals**.”

Continued...

Citizen-centric Language in MCC's Guidance Documents (with Suggested, more Inclusive Edits)

Continued...

In [“Guidance on the Consultative Process”](#):

p. 1—“MCC seeks to strengthen domestic processes within a country and believes a foundation for true country ownership is participation by ordinary ~~citizens~~ **people** in a consultative process.”

p. 1—“MCC expects governments in eligible countries to manage a transparent ongoing process that provides opportunities for ~~citizens~~ **individuals** to have input into the identification, prioritization and design of development programs proposed for MCC funding.”

p. 1—“...e) broad dissemination of information related to the program to permit informed ~~citizen~~ **public** oversight.”

p. 1—“A meaningful process allows ~~citizens~~ **individuals** to have genuine input into the process.”

p. 3—“e. Planning for broad dissemination of information related to the program to permit informed ~~citizen~~ **public** oversight”

p. 4—“11. Was the media employed to communicate how ~~citizens~~ **individuals** could engage in the consultative process?”

4. Civil Society Participation

The participation of civil society in drafting and implementing development programs is crucial to their success. It broadens the concept of recipient country “buy in” beyond narrow political cliques and economic elites and deepens the constituencies for the essential policy environment for development.

Civil society solidarity with refugees is also crucial for their protection. The implementation of human rights standards can have limited effect if government action it is not matched by local buy-in. Lack of such engagement or, worse, hostility toward refugees can undo the protective effect of any convention. This is why USCRI devotes a substantial portion of its advocacy toward cultivating the civil society component of the anti-warehousing campaign in host countries.

The MCC has authority and resources, including under Section 609(g) of the Act, to fund meaningful and independent participation of local civil society organizations from the outset of MCA eligibility through Compact development, monitoring, and evaluation. But the MCC has resisted calls to use these resources, claiming that such support would undermine the principle of recipient country ownership. On the contrary, however, civil society engagement *increases* country ownership if we conceive ownership as being that of the people in it and not merely of those that happen to govern it at a given point in time.

Accordingly, Congressmen Hyde and Lantos introduced the Millennium Challenge Reauthorization Act of 2005 (HR 4014), Section 106(d)(3) of which provides that MCC's

facilitation of the development and implementation of the Compact may include supporting the meaningful participation of a broad spectrum of independent civil society representatives in such development and implementation.

Conclusion

Many MCA eligible countries host significant populations of refugees and many will continue to do so for the foreseeable future. For development strategies in major refugee hosting countries to succeed, they must take the potential economic activity of refugees into account. Specifically, they must implement their rights to work, to practice professions, to run businesses, to own property, and move about freely in countries of asylum so that no one is left with dependency on foreign aid as their only means of survival. U.S. development aid cannot leave hundreds of thousands of people who fled persecution and violence warehoused in enforced idleness.

Fortunately, by making a few minor changes, the United States can ensure that it remains a world leader both in development and refugee protection. (See box below.)

What Congress Can Do

One way to help ensure that states honor refugees' fundamental human rights is to include refugees expressly in the criteria and objectives of the Millennium Challenge Act. In addition to explicitly authorizing MCC to fund civil society participation, as noted above, HR 4014 would also

- expressly add “refugees” as persons to whose human and civil rights eligible countries must have a demonstrated commitment and
- replace “citizens” with “individuals” among those that eligible countries must commit to economic policies encouraging to participate in trade and markets.

Finally, Congress should replace references to “investment in *the* people” (emphasis added) in Section 7702(8) with the more inclusive “investment in people” throughout. Some have construed the present language to exclude refugees, which was not the intent of its drafters.

The MCA is still in its infancy, but as more and more countries sign compacts its influence will grow. Tweaking its language now would not be controversial. It would be a simple way to help refugees and the countries that host them. It would signal the United States' support for human rights and solidarity between donors, hosting communities, and refugees.