

REPORT

SOUTHERN REFUGEE LEGAL ADVOCATES CONFERENCE

The 'Southern Refugee Legal Advocates' Conference (SRLAC), 28 January to 1 February 2007, was held at the Nairobi School of Law, Nairobi, Kenya.¹ The Conference, the first of its kind, was funded by the US Institute for Peace and organized by the Africa and Middle East Refugee Assistance (AMERA) together with Mike Kagan, Policy Director, Asylum Access. It was hosted locally by the HIAS (Hebrew Immigrant Aid Society), Refugee Trust of Kenya and the Refugee Consortium of Kenya (RCK). It was attended by representatives of 16 non-governmental organizations (NGOs); two represented networks comprising 32 countries in West Africa and Southern Africa, and two represented university law clinics. Resource persons were: Oldrich Andrysek, Dr. Rosemary Byrne, Marc Daly, Michael Gallagher, Dr. Barbara Harrell-Bond, Parastou Hassouri, Alice Johnston, Martin Jones, Michael Kagan, Allan Leas, and Estelle Strizhak.² Alexandra Hartman, who arranged the travel for participants, served as rapporteur for the meeting and we thank her.

SRLAC's tasks were to establish a code of ethics for refugee legal aid practitioners who work through NGOs and law clinics, to consider creating a 'southern' network to address common concerns and to advocate more effectively on behalf of refugees as a collective. Participants also discussed current issues facing refugee legal aid and advocacy organizations. Michael Gallagher chaired a committee to draft the code, comprising: Sadikh Niass, Anat Ben Dor, and Goodwin Buwa.³ They worked each evening using a discussion document, prepared for them in advance by Mike Kagan.⁴

By the end of the conference, participants had produced two documents that are meant to shape the future of refugee legal advocacy: the Model Rules of Ethics for Legal Advisors in Refugee Cases (The Nairobi Code)⁵ and the Charter for the Southern Refugee Legal Advocates Network (SRLAN).⁶ Participating organizations were charged with taking these documents back to their main offices and circulating them with the goal of having them approved by the governing structures of their organization.

It was decided that SRLA Network (hereafter SLARN) should develop an internet interface for member organizations to post information and to facilitate communication. Finally, an interim executive committee was created comprising AMERA UK (Allan

¹ One month before the conference dates, it became necessary to change the location of the conference to Kenya from the proposed site, Cairo.

² See Appendix A for affiliations.

³ Other participants were free to join these discussions.

⁴ In advance of the conference, Sandra Lee and Mike Kagan prepared and distributed, 'Setting Standards of Ethics, Competence and Accountability for Legal Aid in the Context of UNHCR RSD'. It set out examples of ethical codes from many constituencies as examples, and a draft model ethical code for the NGOs to assist them in their discussions.

⁵ Attached.

⁶ Attached.

Leas), Asylum Access, (Mike Kagan), and WARIPNET (Sadikh Nias).⁷ This will further the process of approving ethical standards and make sure SRLAN moves forward as a network to fulfil, over time, the other purposes of the meeting. These are to address ongoing training and technical assistance needed to enable SRLAN members to meet their self-imposed standards. The SRLAN will set up a programme to a) share best practices for serving refugee clients, b) work collectively to promote recognition of refugee rights as guaranteed in international treaties, c) share strategies for achieving the enactment of domestic legislation that ensures access to rights or otherwise promotes rights-based refugee assistance, d) provide each other with pertinent information and, where necessary, assist with training on refugee and human rights law, e) document and report on the refugee protection in each country, and f) work jointly to push for fairer practices respecting refugee rights by the United Nations, governments, and other international and regional actors. Addressing the training and technical needs of SRLAN members will be a substantial step towards ensuring that member organizations' efforts will promote fairness for asylum-seekers in RSD procedures, and will uphold best practices in the provision of *pro bono* legal aid and counselling to refugees.

All of the discussions were held under Chatham House rules (i.e. no comments were to be attributable to any participant). The report has been written accordingly with only the formal presentations identified by the name of the speaker.

We wish to thank Martin Jones for his clear exposition of refugee rights beyond RSD.⁸ We also thank our Israeli, South African and Hong Kong lawyers for challenging us with the cases successfully litigated in court. In Hong Kong, Marc Daley has set an example for all NGOs, using the Convention Against Torture (CAT) to prevent refugees from deportation who had been denied refugee status by UNHCR ('Prabakar', CACV No. 211 of 2002).⁹ We also particularly thank Oldrich Andrysek, UNHCR, for his clear exposition of the crucial need for accurate country of origin information and his 'exposition' of RefWorld as an essential tool. All of the resource persons participated in the discussions in a most positive way and we thank them for their illuminating presentations. Special thanks go to Michael Gallagher who assumed the task of shepherding us through the process of drafting and agreeing to the 'Nairobi Code' and the 'SRLAN Charter'.

Conference Discussion

The first day of the conference was devoted to the introduction of participants and their organizations,¹⁰ highlighting the particular national contexts and challenges they

⁷ West African Refugees and Internally Displaced Persons Network

⁸ Copies of Hathaway, James (2005) *The Rights of Refugees Under International Law*, Cambridge were made available to four NGOs, and information supplied about how the others without copies might purchase them at a discount price.

⁹ We are presently following up on test cases. Currently we are preparing cases on the detention of CAT claimants/asylum seekers and will be following up with a challenge to the way RSD decisions are being made in Hong Kong Special Administrative Region (HKSAR), and the fairness of the present 'CAT' determination process.

¹⁰ See Appendix B for details of the participating organizations.

confront in their work. The agenda led to important discussions of issues, some of which are reported below.

Building Strong Fundable Legal Aid Organizations

Allan Leas spoke about a ‘new age’ in the voluntary sector whereby funders are concerned to know that the monies they are providing will be invested in organisations that are demonstrably viable, ethical in purpose and practice, and compliant with financial, institutional and equal opportunities principles.

To this end he described a list of issues about which the participants need be concerned in the process of building their organizations. These included a description of ‘due diligence’ requirements that funders now expect an organisation to have in place, e.g. robust and compliant financial procedures (up-to-date management accounts, cash flow forecasts, accurate budgets and so on); and *unqualified* auditors accounts. By this is meant where the auditor is satisfied that the financial statements fairly present the financial position at which point s/he will issue what is referred to as an *unqualified audit opinion*. An ‘unqualified audit opinion’, or a ‘clean’ opinion, is one without any restricting or limiting circumstance – which is what NGOs should be aiming for. Many auditors are still prepared to sign off ‘qualified’ accounts (sometimes to protect themselves) if the irregular practices are minor, but in those circumstances the governing Boards should be made aware of them and the auditors may require an official response from the Board as to how these issues will be dealt with in future. Finally, all NGOs need to ensure that their governing Boards include the skill sets the organisation needs and transparency in institutional practices. He stressed how important are regular independent evaluations of the work of an NGO to fundraising.

He also discussed fundraising in the broader sense, describing the need to develop a fundraising strategy, stressing the risks of developing an over reliance on a single donor or of being donor led. Finally, he described how important it was to understand the funding environments and range of opportunities that should be explored, providing an overview of the respective advantages of each, e.g: foundations, the corporate sector, public giving, government and inter-governmental agencies, national lotteries, ‘rich’ people and ‘trading’. Participants raised issues such as: the resources needed to become compliant with the demands of large donors, the skills an organisation needs to manage the application and reporting processes, and the importance of government or inter-governmental funding and the risks associated with this income stream, particularly for organisations who undertake advocacy work.

Building a Network: Allan Leas presented the experiences of his work in the European Refugee and Exiles in Europe (ECRE) and the European Legal Network on Asylum (ELENA), remarking that the latter probably was a better model for the SRLAN. ELENA provides annual and bi-annual training in refugee law essentially by utilising the knowledge and skills of practitioners in the field, a training model that could be easily adopted by the SRLAN (focussed, inexpensive and high quality training). He described in

detail the networks he has been actively involved in, both in Europe and Africa, highlighting the advantages and disadvantages of the various models.

He reiterated the fact that there is a growing number of refugee assisting organisations in the geopolitical south – and that we need to encourage the growth of these organisations, agreeing that the purpose of this meeting was both timely and highly relevant. He discussed with the participants the need to advocate on common concerns, to share information and good practice and to agree to adopt common professional standards. Following a discussion about the merits of the various approaches it was agreed that a training needs survey would be circulated, together with a skills mapping of the participating organisations so that we could begin the process of developing a solidarity network that would share good practice, in-house competencies and expertise.

Staff Training in refugee law

The constant challenge of all NGOs is to provide continuous training on the complicated field that refugee law constitutes along with training on policy changes and advocacy strategies. All countries face a deficit in lawyers trained in refugee law and few law schools teach it except as a brief topic under international law (South Africa, Uganda, and Egypt being the exceptions). There is always a shortage of lawyers who are willing to commit their careers to human rights work, but usually a surplus of potential untrained paralegals.

The Refugee Law Reader project was introduced by Dr. Rosemary Byrne. Designed for law teachers, it is currently being used to develop legal curricula in new refugee legal clinics in over 25 universities in the Baltic region and Central and Eastern Europe. It may be accessed at www.therfugeelawreader.org. It is supported by the Hungarian Helsinki Committee, European Refugee Fund and the UNHCR. It has four sections: Introduction to International Refugee Law, International Framework for Refugee Protection, European Framework for Refugee Protection and UNHCR and Other Actors in International Asylum Law.

In the past year the site has had 20,000 individual users from all five continents. New regional sections adapted for users in Africa, Latin America and Asia will be introduced in its next edition which also be published in Spanish, French and Russian language versions. Resources such as these are especially helpful where up-to-date adequate legal and research resources are not readily available or where there are no nearby university teaching refugee law.

The Refugee Law Reader (and close to 1,000 downloadable cases, instruments and materials) is already available on line at www.refugelawreader.org. A very small number of materials (some articles) require a password. When you attempt to access these, the web site will prompt you to fill out a form in order to gain access. Depending upon the publishers' copyright terms, passwords for some materials are only given out to professors, students and researchers. The fourth edition will contain an African regional section, which I hope will be useful to everyone. Spanish, French and Russian versions will be forthcoming. We also intend to distribute future editions of The Reader on CD

ROM and mail it to users, as a means of ensuring that technical internet problems do not create an insurmountable barrier for access. If there is important case law from your jurisdiction that you feel should be included, please pass it along to Dr. Rosemary Byrne at rbyrne@tcd.ie.

Interpreters – The Critical Link

In most contexts where refugees speak different languages than the national population, and/or when foreign lawyers are also working with refugees, it is necessary to employ interpreters during all aspects of the legal aid process. Training of interpreters was identified as an urgent priority for all. Only two NGOs represented at the Conference used trained interpreters. All the others used available volunteers to interpret for a particular language.

As detailed by Alice Johnson (see Appendix D for full presentation), considering different practical and ethical questions raised by interpreting is crucial to effective legal aid and advocacy. There are different types of interpretation and specific challenges that are posed in the refugee legal aid and advocacy context. In most legal contexts, interpreters practice community interpreting, less formal than conference interpreting. Community interpreting has specific challenges: confidentiality, the ethics of the interpreter, social pressures on the interpreter, the scope of the interpreter's role, lack of interpreters for a specific language group that are socially neutral, the information the organization possesses about an interpreter, the security of the interpreter, establishing trust with the interpreter, the inappropriate use of the interpreter by the legal advisor or service provider, and the pay of the interpreter. Having a specific interpreter policy, including clear regulations regarding what interpreters can and cannot do and how they are paid, can help meet these challenges.

Country of Origin Information¹¹

Country of Origin Information (COI) plays a crucial role in refugee status determination and resettlement for refugees and few of the participants have access to good use of the web for the human rights reports of, for example, the US and British governments to help them.

COI can include reports; articles; Q&As on the factual situation in a country; political, social, cultural, economic and human rights conditions; information on ethnic and religious groups; geography and mission reports; maps, statistics, language analysis, legislation and jurisprudence (and information about its implementation).

COI does not include judgments, biased assessments, or anonymous sources. Paragraph 42 of UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status states that an individual applicant's testimony should normally be sufficient for reaching a Refugee Status Determination (RSD) decision, but that a testimony cannot be considered without relevant background and that a client's knowledge of their home country is a factor in assessing their credibility.

¹¹ Oldrich Andrysek's Power Point presentation is attached.

COI can be divided into the following ‘hierarchy of sources’: Intergovernmental Sources, Governmental Sources, International NGOs, International News, National NGOs, National News, Academic Sources, Local Government, and Local News.

Refworld, the COI source created and maintained by the UNHCR, includes many different documents from all over the world in a searchable database. A copy was provided each participant and lessons on how to use it were given. Participants were urged to convince their local university libraries to buy it.

Another support for an RSD case is the use of ‘expert’ witnesses on COI, such as academics who have up-to-date information on an area, particularly, one not covered by official sources. The use of such affidavits has been severely neglected by NGOs in the south. In the US or UK, for example, such academics are paid well for the service, but it should be possible to find experts who will do such work *pro bono*. Some are experienced in writing affidavits, others have to be taught. Affidavits have to be notarized (or ‘legalized’, as it is referred to in the UK) and, although scanned signed copies may be acceptable, usually courts require originals. One of the services that the SRLA Network could provide is names of particular academic experts.

The Use of Foreign Interns

One question that many legal aid and advocacy organizations face is how to best mobilize limited resources to meet the legal needs of refugee communities.

Many NGOs use foreign interns who are self-funded. Some of the challenges are a high turn over, inadequate training, the responsibility of supervision, the necessity for interpreters and issues of cultural sensitivity. Participating organizations recognize that on the positive side, in addition to bringing specific skill sets and training - sometimes difficult to find in certain countries - foreign interns provide new energy and motivation in the office, and may have language skills (e.g. English) to help local NGOs needing editing assistance to work in the international environment.

AMERA reported its experience, heavily relying as it does on volunteers. It has instituted a scheduled intake three times per year that is accompanied by intensive training. It is attracting interns who are experienced lawyers, many of whom have refugee experience, and psychosocial workers with qualifications. All are required to spend at least six months with AMERA (except for three law schools with which it has agreements to take students for their long vacation). It requires foreign interns to be insured in advance of their arrival and asks them to follow the regulations of the office handbook which contains, among other things, ethical standards of behaviour.

One NGO who regularly uses foreign interns spoke about the dangers of overworking an enthusiastic intern. It was recognized that each NGO was responsible to ensure that interns had some training about the local context and that, in the absence of the ability to interview before appointment, references should be taken up.

Refugee Rights in International Law: Beyond Refugee Status

The application of refugee law frequently focuses on the determination of who is a refugee under the 1951 Refugee Convention definition and not on the many rights provided in that same treaty.¹² These rights are generally determined through the intersection of domestic law and international law. As a refugee becomes more ‘attached’ to the country where s/he resides, s/he will have greater claim to these rights, which are generally granted to the same level as they are granted to other specifically defined populations. One key point is that refugee law is not human rights-based; it is state-based, determined by nation-states’ specific domestic laws for other populations.

For example, a refugee is guaranteed freedom of religion by Article 6 of the Refugee Convention. However, since domestic law in Egypt only allows the freedom to practice one of three religions, a refugee is bound by the terms of Article 6 to the same choice amongst three religions; if the religion of a refugee coming to Egypt differs, he/she may not freely practice his/her religion – this is similar to restrictions placed on Egyptian nationals. Whereas human rights instruments may attempt to guarantee freedom of religion more completely, the rights arising from the Refugee Convention are generally linked to (and thereby limited by) the rights actually enjoyed by groups within the state in question.

Entitlement to rights can be broken into different levels of attachment. The greater attachment a refugee has to a particular state, the greater his or her entitlements. At the first (lowest) level of attachment (a refugee within a state’s jurisdiction), a refugee enjoys certain basic rights, including the right to *non-refoulement* and access to the courts. At the second level of attachment (a refugee within state territory), a refugee begins to enjoy additional rights, many of which are required to achieve a minimum level of functioning in the host society, including the right to identity papers, freedom of religion, and non-penalization of illegal entry. The third level of attachment (a refugee lawfully within state territory) a refugee enjoys a greater ability to integrate into the host society, including the freedom of movement and various employment-related rights. At the fourth level of attachment (legal residence or regular residence – term generally interpreted to mean a presence of several months), a refugee enjoys the freedom of association, access to public housing and welfare, access to labour legislation and welfare and intellectual property rights and wage earning employment. At the fifth (highest) level of attachment (durable residence), a refugee enjoys various remaining rights all of which are designed to allow him/her to complete his/her integration into the host society.

Almost all of these rights are not granted in absolute terms to a refugee. Rather, a refugee is simply entitled to enjoy these rights to the extent that these rights are enjoyed by various other types of individuals in the host society. The comparator groups in relation to which the enjoyment of rights by a refugee are defined are: aliens generally, most favoured aliens, and citizens.

¹² See Appendix E for Martin Jones’s full presentation.

Strategies for Domestic Litigation

Participants also discussed the intersection between domestic and international law and the best ways to realize refugee rights through domestic litigation. Participants were particularly concerned with the denial of entry to asylum seekers constituting *refoulement*. The reluctance of the government to issue identity papers was also raised, as well as the potential solution of convincing governments that it is in their best interest to know exactly who is in their territory by issuing all refugees identity cards and taking their fingerprints.

Some nations do not wish to pass any domestic legislation that relates to refugees because they fear it will become a pull factor that would attract refugees in large numbers. However, the example of South Africa might suggest that progressive legislation is not a huge pull factor. When the question was raised which refugee rights participants would consider priorities for legislation, participants raised issues of freedom of movement, work, the right to social assistance, access to asylum (specific airport deportation problem in Turkey), and access to secondary education. The case of UNHCR paying refugees who live and work in camps 'incentives', rather than wages that conform to national law, should be litigated. It would be possible to take the NGO implementing partner to court. In Nairobi, the International Labour Organization (ILO) has been contacted about this issue.

Participants also suggested specific legal strategies that might be used to realize or protect refugee rights. The *writ of prohibition*, whereby a court order prohibits the authorities from taking action that endangers the protection of an applicant, could be used to protect refugees. In Uganda, however, this can only be argued before the high court and most refugees do not live in urban centres and it is difficult for them to access the court. A *writ of habeas corpus*, which demands that a person in detention be brought before the court and receive a judgment on the lawfulness of their detention, is one way that refugees might be freed from prison when they are arbitrarily detained. In some countries it is also possible to petition the government's human rights commission on behalf of a refugee. One obstacle, however, to using domestic litigation is that clients sometimes fear going to court. In Egypt, if they have no legal residency, they are effectively excluded from the right.

In some cases it is possible to ask a well-known personality to write an *amicus brief*, for example, that brings attention to a particular refugee rights issue. This strategy, which was employed successfully by one organization, engaged the media on behalf of the Darfurian refugees. Another strategy is to co-file a lawsuit with an NGO so that if a client wishes to make a deal with the court, there is still a case to adjudicate. One more strategy has been to file a *tort* claim on behalf of some clients who had been detained in violation of their human dignity. There was another case of some refugees being held without a legal order of detention and the legal aid NGO filed a class-action lawsuit on their behalf.

In one country, the NGO took a case for judicial review after UNHCR had denied the person refugee status. When UNHCR knew the case was going to court, they suddenly decided to grant status to this refugee. The NGO lost their case, largely due to the judge's

ignorance of refugee law. When UNHCR heard this, they revoked the refugee's status – requiring long and heated negotiations with UNHCR to restore it.

The ground-breaking case tried in the European Court of Human Rights was noted. A group of Iranians took a case that had been rejected by UNHCR in Turkey to this court and won (see www.rsdwatch.org). African NGOs can use the Africa Commission.

It was agreed that the several refugee cases that have been won in South African courts, and the cases presented by Marc Daley at the conference, should to be made accessible to the SRLA Network.

International Advocacy Organizations

What is the value of international advocacy organizations in refugee legal aid and advocacy work, and how do these organizations work on behalf of refugees? It is possible to get Amnesty to act on critical cases *if* refugee legal aid NGOs report promptly to them. The case of so-called terrorist threats to be deported from one country recently was made the subject of an urgent action report by Amnesty International.

The critique was made that frequently these organizations do not include refugees in their reports on the human rights situation in a particular country. NGOs dedicated to refugee legal aid and advocacy should help major human rights organizations, such as Human Rights Watch and Amnesty International, include refugee related issues in their reports by passing on cases and documentation to these organizations. Another option is to try to bring issues dealing with rights violations to the European Union and UN monitoring bodies, write shadow reports and to try to be as involved as possible in agenda setting. Overall, the conclusion is that major human rights organizations and even governmental monitoring bodies such as the US State Department are important resources and that it is necessary to guide them to see and understand the refugee issues.

United Nations High Commissioner for Refugees – UNHCR – A discussion

Given UNHCR's integral role in status determination, its ambiguous role as the protector of refugees, and at the same time, its work as a welfare organization, the relationship between the UNHCR and many refugee legal aid NGOs is complicated. This was a subject that arose over and over again throughout the conference. Some of the NGOs represented were 'implementing partners' of UNHCR, most were independent. The following were some of the highlights of that discussion.

Relationships with UNHCR greatly depend not so much on UNHCR's policy, often very problematic, but on the temperament and competence of staff in the field offices. The most serious complaints were with the procedures followed in the refugee status determination process, as it is conducted by UNHCR in many places. It does not conform to its own standards that it promotes with states. The UN has no freedom of information act, a major stumbling block. We need to advocate on issues that are problematic. When one NGO reported on branch offices practices, the UNHCR/Geneva was happy to get this feedback. Even though it was negative, without NGOs reports, they would not have

access to this kind of information. Hopefully, all participants will begin to send information/reports to Mike Kagan to be used on www.rsdwatch.org.

In most country offices where UNHCR conducts RSD, it still does not give reasons why refugees have been rejected; few NGOs are allowed to represent refugees in refugee status determination (RSD) interviews where UNHCR is the decision-maker; and there is no independent appeal system. The importance of representing refugees in the RSD process was illustrated by one NGO. It found the interviewers asking problematic questions to Pentecostal applicants such as ‘Do you speak in tongues?’, ‘Which kind of Christian are you – Orthodox, Catholic, Protestant?’, and so on. If the NGO had not attended these interviews it would have no idea what problems arise.

However, there have been some major improvements in *some* countries, whereby the right to legal counsel during the RSD interview is permitted. Two participants noted that in their country, *some UNHCR offices* are even allowing clients and their lawyers to see the files, a practice which should be as automatic as it is in any judicial system.

One major hurdle is communication between UNHCR headquarters and UNHCR field offices - sometimes policies change but the field officers refuse to enact the policies.

Field offices often follow *wrong* country of origin information and *do not use UNHCR’s RefWorld resources*.

UNHCR RSD interviewers are generally badly trained and rarely lawyers. In some cases, even their supervisors are not lawyers or properly trained. In one UNHCR office, an officer excused their not providing refugees with reasons for rejection on the grounds that his interviewers were not competent to write such reasons! (The suggestion was made: ‘If they are not competent to write reasons for rejection, they are also not competent to take decisions’.) **The same officer reviewed his interviewers’ work when they accepted a refugee’s status, not when an asylum seeker was rejected.**

There are many decision-maker errors in the RSD process. Applicant errors also occur, due to the fact that not all applicants have access to information about UNHCR procedures, legal assistance with testimony preparation, and a gender-sensitive interview, for example. The 1951 Convention did not set out procedures for RSD so unless highest standards of procedural law are followed, lives are at risk.

UNHCR lacks resources for its core function at all levels; resettlement which affects only a tiny number of refugees has more staff. Something is clearly wrong with UNHCR’s priorities. The RSD Unit today comprises two staff, one JPO and one person on temporary assistance (with a specific task to re-write the (new) RSD Training Programme (2007)). On balance precious few resources are allocated to RSD, especially at HQs. In recent years there has been an effort to ‘de-centralise’ RSD support by creating a 3 additional Regional Global RSD Officer posts (Nairobi, Kuala Lumpur and, recently, Beirut) which is another move in the correct direction, as this also enhances capacity.

Around the world, there are 144 full-time RSD Officers (on all sorts of contracts) plus another 142 who do it on an occasional basis (this ranges from *ad hoc* supervision, part time RSD combined with other protection functions, to the occasional airport case in a country-operation where UNHCR does not otherwise carry out RSD). This is not enough person power for the work: UNHCR is doing 12% of RSD work in the world (in terms of applications received as well as decisions made), with maybe 1% or less of total available staffing resources. 144 full time Eligibility Officers is nothing – OFPRA¹³ alone or the UK Home Office have more than that.

One thing to be careful with is filing complaints against inadequate or incompetent UNHCR officials. In some cases this can bring about change, but it can also damage relationships between the complaining NGO and the local UNHCR staff. At the same time, the SRLA Network, individually or collectively, could exercise more influence by demanding accurate country of origin information, sending complaints to the Geneva level when field offices refuse to correct errors of law, and so forth. NGOs have been very lax about using their influence. Legal Aid NGOs who advocate for refugee rights live under the shadow of the willingness of some UNHCR representatives playing local politics to get them into trouble with their government. An example was given of a representative of a field office who wrote to the state security when the NGO complained about its practices. This resulted in the director's arrest and being charged with defaming the name of the country. Lawyers, defending the director, found the letter among the documents subpoenaed from the state security and reported to Geneva. This resulted in an investigation that finally led to a change in leadership in the field office.

Participants agreed that sharing cases and legal arguments would strengthen their approach to UNHCR's RSD practices. The success of a small group of NGOs lobbying at the Geneva-level on RSD issues was presented. Among other improvements, UNHCR has been persuaded to publish its guidelines on mandate status refugee status determination for the first time in September 2005. There are still many procedural problems with these guidelines, but there is at least a standard that can be debated (as it is, through www.rsdwatch.org) to which the SRLA Network was encouraged to supply materials).

Both in extraordinary circumstances and situations that arise in a regular caseload, participants saw problems with UNHCR's implementation of its duty to protect. In most countries represented there were no safe houses, even for sexual and gender based violence (SGBV) survivors. A specific case in Uganda was mentioned, where witnesses to a rape in a refugee camp were ready to testify against the camp commandant, the alleged perpetrator of the crime. However, before this could take place, the witnesses were expelled from the camp. They were subsequently hunted down in Kampala by friends of the camp commandant, and blacklisted as members of militias from Congo and Rwanda. Although the case was brought to the attention of the UNHCR, UNHCR failed to step in and protect the witnesses to the crime and the case had to be dropped.

¹³ Office français de protection des réfugiés et apatrides

Another problem is the role of UNHCR and its implementing partners in helping particularly vulnerable refugees. CARITAS, UNHCR's implementing partner that provides medical services to recognized refugees in Cairo, provides some services specifically for unaccompanied minors, and in some cases they can provide foster care. However, CARITAS is not always able to provide services, and sometimes staff members from the legal aid NGO have had to take children home with them. In other countries the situation for separated children is much worse. In a southern African country, unaccompanied children are placed in jail because there is no other place for them. UNHCR pays more attention to determining if children are 'really' minors and if they are 'really' unaccompanied, than to ensuring that they are cared for. Of course, they have uncovered fraud in some cases.

In cases where SGBV is a factor UNHCR has taken a similar stance, whereby they question the credibility of many claims, fearing fraud. This has had the unintended effect of increasing the burden of proof for vulnerable refugees.

Resettlement

Resettlement affects only a minority of refugees, yet it takes up inordinate resources, time, personnel and money. One estimate some years ago suggested that it costs \$125,000 to get a refugee on their way out of a host country, to say nothing of the expenses of 'resettling' them.

Resettlement is imperative where people are facing problems with protection in their host country: the dilemma is how to determine which of the many difficult cases ought to be resettled in another country; and how to justify this to the many other cases that wish to be resettled as well.

One of the major concerns for legal aid and advocacy organizations is that they may only be equipped to provide services relating to RSD and other legal problems and not for resettlement, effectively not meeting the demands of their clients. On the other hand, the policy to go to camps to look for vulnerable cases, such as rape, creates complete cynicism about refugees alleging rape, with the result that some or even most genuine cases are never investigated.

One solution is to have an agency devoted to resettlement, such as HIAS Trust Kenya, which only takes referrals from other agencies, where individual refugees may NOT apply. As Estelle Strizhak explained, 'HIAS is a second tier legal aid organisation. Once taken on by HIAS, while the refugees' cases are examined, they are given psychological support and kept safe until resettled (or rejected as an HIAS case). HIAS deals with all the resettlement countries; it collaborates with UNHCR, but is not dependent on it for referrals.'

As pointed out in the discussion, it has emerged that in many regions UNHCR has stopped referring cases to the resettlement countries, such that even the resettlement countries cannot fill their quotas. This has created a situation where despite the great

demand for resettlement, not all the places available are being filled. When an NGO is an implementing partner of UNHCR, it has to tell refugees when UNHCR has rejected them for resettlement, creating a difficult situation for the NGO.

When refugees suffer protection problems, there is a tendency for no one to believe them even though there is information that 'hit squads' from countries of origin are active in the host countries. In addition, there are certain structural problems that stop serious protection cases from being effectively protected through resettlement. For example, if a refugee has family members in a specific militia on the US list of banned 'terrorist groups', they cannot be resettled, even if these family members have passed away (the 'material support' ban in the US which is being followed to a greater or lesser degree by others). Canada will not accept the resettlement of minors because there is a discrepancy between municipal law and national law as to who would be responsible for taking charge of the child should s/he come to Canada. Finally, certain health issues, such as HIV, also prevent resettlement in all but the US. All in all, the most 'vulnerable' cases are not always those who are resettled, as resettlement tends to be driven by the politics of the resettlement countries. In a country that has not signed the Convention, literally all refugees that are recognized should be resettled. This leads UNHCR to 'ration' refugee status in those countries, e.g. Jordan. Meanwhile, large resettlement programmes exist in some countries that have signed the Convention. There appears to be no rational programme being instituted by countries that accept refugees for resettlement.

The annual referral meetings in Geneva, where the quotas for different countries are determined, are one area for lobbying. NGOs could play a greater role in helping both to determine quotas and who should be identifying cases to be referred.

Refugee Legal Aid and the Value of Collaborating Across Borders

Barbara Harrell-Bond led the discussion about the values of collaboration, giving an example of how the Refugee Law Project was able to verify and send the marriage certificate of an asylum seeker in Cairo. Family members have been found through such collaboration. Detailed country of origin information can often be obtained from other NGOs who may be able to provide details on conditions about a specific place that have not been covered by the media.

Collaboration can also improve the quality of cases; twenty lawyers, most of them members of ELENA, who are highly experienced in refugee law, have offered to review cases for lawyers in the 'South'. Participants were urged to use this resource which now requires sending cases through Harrell-Bond, but if we have a web site, the names will be posted so that they can be used anonymously.

Collaboration with Universities

There are many advantages to be had by collaborating with academics, especially if they have a refugee studies programme or even a lecturer teaching about the subject.¹⁴

¹⁴ There are refugee studies programmes in Egypt, Kenya, South Africa, Tanzania, and Uganda.

AMERA's main partners is the Forced Migration and Refugee Studies (FMRS) programme at the American University in Cairo (AUC). AMERA suggests research topics and assists researchers, but they are carried out by FMRS¹⁵ where there are people skilled in research methods. Moreover, the tradition of 'scholarly independence' allows a university to investigate topics that would be sensitive – even dangerous - if done by an NGO, for example, a study of refugees' experiences in detention (Grindell 2003).¹⁶ It may also be valuable for universities in the 'global south' to link up with universities in the 'global south' because the former may be able to access funds more easily. University students in Cairo have organized a chapter of STAR¹⁷ They provide free English and Arabic classes for refugees and, with refugees, organize the celebration of international refugee day. Providing internships for students is a way of encouraging interest in the field of refugee law. AMERA holds monthly journalist workshops on the AUC campus.

Collaboration with National NGOs

Refugees do not only have needs for legal aid, but present a host of economic, social and psychological needs. Refugee legal aid NGOs need to know where to refer them. In many countries, however, local NGOs do not accept refugees among their beneficiaries.

In Turkey, a special training programme has been instituted by the Helsinki Peoples Assembly Refugee Legal Aid and Support project (which is located in Istanbul), to train NGOs about the refugee situation in the 'satellite' cities where refugees are forced to live. In Cairo, *Tadamon*,¹⁸ the Egyptian/Refugee Multicultural Council has been started. It aims to be an 'umbrella' organization for both Egyptian and refugee NGOs and to bridge the gap between the Egyptians and the refugees by working for the betterment of both populations in poor neighbourhoods populated by both. It has been funded by the Dutch Refugee Council which we hope to get funding for development projects in these neighbourhoods which will assist both populations.

Refugee Councils exist in all European countries. In the UK, the Refugee Council has branches in several major cities to provide assistance to refugees. In Canada, the emphasis of such institutions is on assisting refugees who are referred to a 'newcomers', not refugees, and on integration. Today, because of restrictions on the entry of refugees, and the dramatic reduction of numbers in Europe, some of these refugee councils in Europe (e.g. the Refugee Council of Denmark, the Dutch Refugee Council) are maintaining their organizations by getting involved with refugees in 'the south'. This is one possible source of funding for legal aid NGOs and/or for starting initiatives such as *Tadamon* is attempting.

¹⁵ Forced Migration and Refugee Studies Programme at the American University in Cairo (AUC).

¹⁶ See

http://idcoalition.org/portal/component?option=com_remository/Itemid,105/func,select/id,9/

¹⁷ Student Action for Refugees is a British University programme. Students from AUC went to a STAR conference and got permission to use the title.

¹⁸ 'Solidarity' in Arabic

Mobile Clinics

The importance of the location of refugees and their access to the NGO office was discussed, especially in countries where refugees are kept in camps and legal aid services are located in the capital city. One NGO is planning to open offices in the districts affected by refugees. Mobile clinics may be one answer, but they also pose challenges – cost of transport, efficient use of resources, funds, interpreting, space for confidential interviews, and so on.

Survivors of Sexual and Gender Based Violence

Parastou Hassouri of AMERA led a discussion on survivors of SGBV; in particular, highlighting the issue of SGBV as it occurs in the first country of asylum. Clearly, many refugees experience SGBV in their countries of origin. Unfortunately, many are subject to it again during flight and in the country of first asylum. The experience of SGBV in the country of asylum can be particularly traumatic, since the individual experiencing this has presumed that by virtue of having left their country of origin, s/he would be ‘safe.’

AMERA has a Protection Team which has generally designated one individual as a ‘focal point’ for SGBV matters. This frequently has been a volunteer legal advisor who is only with the institution for six months. However, given the needs of SGBV survivors and the many gaps in services, it has been decided to create a formal SGBV Team at AMERA.

Some of the factors leading to SGBV, and gaps in protection and services that AMERA has thus far discerned, include the following:

- *Lack of proper emergency procedures and general lack of access to UNHCR:* many refugees who have been subject to SGBV and wish to report this to the UNHCR often have virtually no means of doing so, as the guards at the UNHCR gate will not allow them access without an appointment and they have no other means of contact with them.
- *No shelter/safe house:* in Egypt at least, refugees do not currently have access to the few existing women's shelters. So, a refugee at real risk, say, from an abusive partner, who cannot turn to the community, will have no place to go. Although others said that in their countries the UNHCR has placed women at risk in hotels or guest houses (i.e. Turkey), this is not the case in Egypt.
- *Fear of police and lack of access to justice:* in Egypt, the UNHCR generally requires that a refugee wishing to report an incidence of SGBV also file a police report. For many refugees, this is difficult due to an immense fear and distrust of the police (particularly since the violent breakup of the Mustafa Mahmoud sit-in in December 2005). There are a few cases that AMERA is aware of where refugees have gone to the police to report a crime, but have had very negative experiences with the police who have actually accused them of prostitution.
- *Exploitative work conditions:* AMERA has had a few clients who have been raped and sexually exploited by their employers. There is every reason to

believe that the phenomenon is widespread, particularly in the case of failed asylum seekers who continue to remain in Egypt ‘illegally,’ and whose employers can threaten them with reporting them to the police should they complain.

- *Breakdown of family and community structures:* AMERA is aware of many instances where refugee women have had an easier time finding a job in Cairo than their husbands, since the women can work as nannies/maids and are often paid more highly for that work than men are for other menial labour. This role reversal, coupled with the frustration and boredom that some men feel (add to that drinking) results in high incidents of domestic violence within refugee communities.¹⁹

In discussing the situation in refugee camps, the work of Eileen Pittaway and Linda Bartolomei, who have conducted extensive research in refugee camps in Kakuma and on the Thai-Burmese border, was presented. Pittaway and Bartolomei assessed the ‘Women at Risk’ programs, and made the following findings:²⁰

- There is a great deal of confusion surrounding the definition of ‘women at risk.’ It is often said, ‘All these women are at risk. How do we identify those particularly at risk?’
- There is a lack of procedural standards for processing women at risk.
- Many decision makers do not see rape or other forms of sexual violence as sufficient grounds for special protection measures.
- There is a culture of distrust of refugee testimonies. The belief is that the system might be abused (it was noted that this was a problem in urban contexts too, where the UNHCR believes that women might be fabricating or embellishing security concerns just to get resettled).
- There is poor access to justice in refugee camps and poor quality of legal protection. For instance, some camps set up ‘traditional justice’ tribunals where, for example, a woman is just told to marry her rapist. This also happens in cities where ‘tribal’ leaders adjudicate disputes.
- There is an urgent need for coordinated response and follow-up.

Lastly, there was a discussion of how the whole camp set-up and operation systematically disadvantages women and leaves them vulnerable to sexual violence (ex: unlit paths to latrines, women leaving the camp to collect firewood, communal living spaces, and so on).

¹⁹ According to the physician working at one NGO, sexual abuse of children is becoming rampant for the same reason.

²⁰ Dr. Eileen Pittaway directs the University of South Wales, Sidney, Australia’s Centre for Refugee. Materials were taken from the course, Women at Risk, which she and Linda Bartolomei taught at the American University in Cairo, June 2006.

Separated Children

Parastou Hassouri of AMERA Egypt also led a discussion on separated children based on the experiences of AMERA Egypt in representing such children, who are particularly vulnerable and susceptible to exploitation. Consequently, she explained that separated children receive a wider range of services than other clients. Firstly, they are immediately assigned both a Legal Advisor and Psycho-Social Worker to jointly work on their case. Secondly, they are accompanied to all interviews, not just the interview at the UNHCR, but also to interviews with social service providers.

Some of the pressing issues and gaps in services for separated children highlighted were the following:

- *Identification of separated children:* at the moment AMERA relies mostly on children who themselves approach the office, or may be referred to them by the UNHCR or other service providers or community organizations. However, no system exists for the identification of separated children upon arrival in Cairo.
- *Alternative care arrangements:* although the UNHCR guidelines on separated children indicate that national or local child welfare agencies must be responsible for this, in Egypt, the UNHCR has delegated the responsibility to its implementing partner, Caritas. Caritas is supposed to conduct home visits to separated children, although generally this happens on a one-time basis (and some times not even once); generally the purpose of the visit is both to ensure that the child is truly a separated minor, and also to ensure the well-being of the child. There is an assumption often that the ‘community’ will take care of the children. However, there are many cases of children falling through the cracks and incidents of children bouncing from home to home, and even being abused by their care givers. On several occasions, separated children have shown up at the AMERA office with their bags and nowhere to go.
- *Education:* the Convention on the Rights of the Child (CRC) says that *all* children should receive free compulsory primary education. In practice, refugee children have a hard time accessing public schools in Egypt, especially if they do not have residency permits and other necessary documentation. Also, Egyptians say that their schools are already overburdened. Some refugees prepare to send their children to separate schools because they say that their children will be harassed and subjected to racist taunts. Also, the parents sometimes prefer that their children be instructed in English, as they hope that eventually they will be resettled. The separate schools for refugees in Egypt are not accredited schools. Schooling is very important for children, as it gives structure to their lives. Many refugees who are not going to school express concern about this and look at the years they are spending in Cairo without an education as lost years. Separated children are even less likely to be enrolled in school.
- *Refugee Status Determination:* Although there have been improvements in the RSD process for separated children, especially in terms of trying to expedite the process, there are still many concerns. One has to do with accessing the UNHCR in the absence of legal representation, especially for protection issues. Also, children may be more easily re-traumatized as a result of questioning (although

the burden of proof should be lightened for them). Separated children who are rejected face a real dilemma as their financial assistance also stops at this time.

During the discussion after the presentation, the issue of *prima facie* refugee status for separated children, particularly from certain countries, was raised. Also, it was suggested that more parallel reports on children that specifically address the issue of refugee children need to be written.

Psychosocial Support and Refugee Legal Aid

In the absence of Dr. Nancy Baron, Alexandra Hartman gave a summary of a course she had attended led by Dr. Baron.

It is important to identify what problems actually affect refugees; there are misperceptions about post-conflict mental health disorder, the most common being that ‘everyone’ has post traumatic stress disorder (PTSD). In *every* population about 3% will suffer a psychiatric disorder. In conflict situations this percentage may increase due to constant stress, alcoholism, or drug abuse. This group will manifest PTSD, depression, schizophrenia, or symptoms of suicide. For another group, perhaps as many as 40%, symptoms such as sleeplessness, irritability, hopelessness, and hyper-vigilance may persist and become more severe, interfering with daily life. This group is not classified as suffering a *psychiatric disorder*, but may have a psychosocial disorder as evidenced by domestic violence, substance abuse, depression, crime, school drop-out and so on.

Thus, research shows that the majority of people do not develop PTSD or other major disorders even after traumatic exposure. They may experience symptoms of distress, but people are resilient and find ways to cope and avoid long standing mental health consequences. It follows that when organizing and implementing a psychosocial program, legal aid organizations must focus on resilience and how to reinforce environmental and social structures that can help clients cope with stressful experiences. In situations where there are limited resources, community level interventions might also serve to support the social and family structures that allow people to cope with stress.

In only three of the NGOs represented was psychosocial support offered to clients. One employed a professional who could do diagnostic tests which could be used to support a claim for refugee status. Combining legal and psychosocial assistance for refugees may be new ground for legal aid NGOs in the ‘south’, but there have been similar initiatives in many places over the years. A model of combining psychosocial workers with lawyers in the process of testimony taking is being adopted in Cairo, as discussed in Fiske and Kenny 2004, a paper made available to all participants.²¹

²¹ Fiske, L. & Kenny, M. ‘Marriage of Convenience’ or a ‘Match Made in Heaven’: Lawyers and Social Workers Working With Asylum Seekers’ (June 2004) *Australian Journal of Human Rights*, Vol. 10 (1): pp 137 – 157

APPENDIX A: RESOURCE PERSONS

Oldrich Andrysek (United Nations High Commissioner for Refugees), Geneva, Switzerland.

Dr. Rosemary Byrne (Trinity College, Irish Human Rights Commission), Dublin, Ireland

Dr. Martin Jones (University of York, Centre for Refugee Studies), Toronto, Canada

Marc Daly (Barnes & Daly, Law firm, Private Practice) Hong Kong²²

Michael Kagan (Policy Director, Asylum Access), Cairo, Egypt

Dr. Barbara Harrell-Bond (Executive Director for Overseas Operations, AMERA UK), Cairo, Egypt and Distinguished Adjunct Professor, Forced Migration and Refugee Studies Program, American University in Cairo)

Estelle Strizhak (Director, HIAS Refugee Trust Kenya), Nairobi, Kenya

Allan Leas (Executive Director AMERA, UK, Outgoing Head of Operations European Council of Refugees and Exiles), London, UK)

Michael Gallagher (Jesuit Refugee Service, JRS Southern Africa), Johannesburg, South Africa

Parastou Hassouri, (Sexual and Gender Based Violence Team Leader, AMERA Egypt), Cairo, Egypt.

Alice Johnston (Director, Cairo Community Interpreters Project, Forced Migration and Refugees Studies Program, American University in Cairo), Cairo, Egypt

²² Marc Daley began his career working with refugees as a volunteer with a British barrister, Pam Baker, taking test cases on behalf of Vietnamese refugees. At the time Hong Kong had legislation for the Vietnamese, but it ended in 1998.

B - REPRESENTATIVES OF PARTICIPATING ORGANIZATIONS

- Raquel Amador, Christian Aid, Hong Kong. Christian Aid recently started a refugee legal advice unit although the organization dates to the 1950s. The unit is currently very small, but trains local lawyers and supervises cases they take. The organization also provides some material support to refugees. There are plans to establish a separate NGO in Hong Kong to provide refugees legal aid. www.christianaid.org
- Anat Ben Dor and Ora Bloom, Refugee Rights Program (Legal Aid Clinic), University of Tel Aviv, Israel. Founded in 2002 as a project of the Public Interest Law Resource Centre at Tel Aviv University, the Project became the Refugee Rights Clinic in 2003. The clinic works to free refugees in detention and to litigate in the Israeli court system for refugee rights. <http://www.tau.ac.il/law/clinics/english/frames.html?main=refugees.html>
- Godwin Buwa, Dr. Chris Dolan (Director), Refugee Law Project, Uganda. Established in 1999 as an autonomous project within the Faculty of Law of Makerere University in Kampala, RLP provides legal aid services to refugees in Kampala in addition to research and advocacy, education and training for stakeholders and psychosocial services. The current situation in Uganda is largely related to a new law that will provide for access to legal aid for refugees, an improvement from the previous legislation. However there are still many loopholes, specifically, there is no appeals process and no access to the right to work. <http://www.refugeelawproject.org/>
- Michael Galleghar, Jesuit Refugee Service, JRS Southern Africa. The South African Branch of the Jesuit Refugee Service, whose mandate is to accompany, serve and defend refugees and displaced people. Founded in 1980 it serves in 50 countries around the world. The Southern Africa region covers South Africa, Zimbabwe, Mozambique, Malawi, Namibia, Zambia and Angola. <http://www.jesref.org/old/jrs/ar2000/saf/zaf2000.htm>
- Chrysoula Giannopoulou, Rehabilitation Centre for Victims of Torture (HELLENIC AID), Athens, Greece. It provides medical services, psychological support and legal aid for people who have been subject to torture. Involved in this, is ‘certifying’ that a person is a torture survivor to assist them in acquiring recognition of their status as refugees. <http://www.hellenicaid.gr/english/index.html>
- Fatima Kahn, University of Capetown Legal Aid Clinic, South Africa. The clinic has a program that specifically helps asylum seekers and is partially funded by the UNHCR (an implementing partner). Major issue in South Africa is helping people access their rights; the legislation for refugees is by and large very progressive. <http://www.uct.ac.za/faculties/law/research/lawclinic>
- Vitalina Kyrylovska, Helsinki Citizens Assembly Refugee Legal Aid and Support Project (RLAS) Turkey. Part of the Helsinki Citizen’s movement. Provides legal aid to refugees, although it is difficult to access them in the ‘satellite cities’, where they are forced to reside. <http://www.greekhelsinki.gr/bhr/english/index.html>

- Nyari Machingambi, Lawyers for Human Rights, Durbin, South Africa. The Refugee and Migrant Rights Project provide legal services to refugees. LHR does not provide legal aid for refugee status determination because there are not enough resources, but they do provide legal aid at the appeal stage. One problem that refugees face in South Africa is a very high level of poverty for a middle-income country, which means that resources are scarce. <http://www.lhr.org.za>
- Tarek Mahrous, Senior Legal Officer, Africa Middle East Refugee Assistance, Egypt. AMERA provides legal services to the refugee community in Cairo. Main challenges AMERA faces are getting refugee access to the rights they are entitled to, such as the right to work and the right to education. AMERA also provides psychosocial services for refugees and assist in protection cases in Egypt. www.amera-uk.org
- Eunice Mdonga, Judy Wakahui, Director, Refugee Consortium of Kenya, Kenya. Started in 1998 as a consortium of organizations, RCK combined resources into one organization that provides legal aid, advocacy and research about refugees in Kenya. The legal aid programs deals with both urban refugees and refugees in camps. The newest development in Kenyan law is that the government will now take refugee status determination over from UNHCR. RCK considers this a positive development, as the government will take responsibility for the refugee population. The newest RCK program will reinforce the new law that refugees have the right to legal representation during the RSD process. <http://www.rckkenya.org/>
- Sadikh Niass, (West African Non Governmental Organizations Refugee and Internally Displaced Persons Network) WARIPNET, Senegal. WARIPNET was founded in 2000 as a network of 16 organizations in 11 countries in West Africa (Ivory Coast, Gambia, Senegal, Liberia, Sierra Leone, Nigeria, Benin, Burkina Faso, Guinea, Cameroon, Ghana). WARIPNET's coalition seeks to protect and promote the rights of refugees, asylum seekers and internally displaced persons in Western Africa. WARIPNET would benefit from training and networking for their legal aid program. <http://refugee-rights.org/NGODirectory/WARIPNET.htm>; www.waripnet.org
- Guillermo Rovayo, Jesuit Refugee Service, Ecuador. JRS in Ecuador is mainly occupied with the large Columbian refugee population in Ecuador. They face many obstacles including a shift in UNHCR policy regarding resettlement of Columbian refugees. <http://www.jesref.org/about/index.php?lang=es>
- Mweetwa Siaciwena, Legal Resources Foundation, Zambia. LRF was founded in 1991 as a non-profit organization with the goal of providing legal aid, promoting human rights and litigating in the public interest, and functioning in areas that affect disadvantaged sectors of society. One of its projects includes providing advocacy for refugees on specific legal issues that affect them in Zambia. <http://www.lrf.org.zm/>
- Harold Sungusia, SALAN Network and Legal and Human Rights Centre, Tanzania. 12 member organizations in Southern Africa from 9 countries (Botswana, Lesotho,

Malawi, Mozambique, Namibia, South Africa, Zambia, Zanzibar, Zimbabwe and Tanzania). The Refugee and Asylum Seeker Project is focused on refugees. The Legal and Human Rights Centre deals with the question of refugees in the camps in Tanzania, specifically issues of access to justice, which is a major problem. A new program of mobile legal clinics in the refugee camps is being launched this year in order to try to address this problem. <http://www.humanrights.or.tz/>

- Samira Trad, Frontiers Association, Ruwad, Lebanon. (unable to attend because military roadblocks prevented her getting to the airport). Created in 2003-2004 to focus on the problem of the deportations of non-Palestinian refugees and currently providing legal services, as well as refugee protection, under international law in Lebanon. <http://www.frontiersassociation.org/>
- Anne Mwangi-Wambugu, Hebrew Immigrant Aid Society Refugee Trust, Kenya. HIAS Kenya was founded in 2002 to seek resettlement solutions for refugees most in need based in Kenya and Uganda. HIAS liaises with partner NGOs to locate cases and then, after a detailed evaluation process, works with resettlement countries to make a durable solution for refugees.
<http://www.hias.org/programs/Offices/kenya.php>

APPENDIX C: AGENDA

Southern Refugee Legal Advocates Conference Kenya School of Law

28 January – 1 February 2007

Convened: AMERA UK with Asylum Access
Hosted by, and HIAS Refugee Trust of Kenya and Refugee Consortium of Kenya
With funding from: US Institute for Peace

The number of refugee rights legal advocacy organizations in Africa, the Middle East, Asia and Latin America is growing. Most organizations confront common challenges, but lack of resources and networking limits their ability to work together to advocate on issues of common concern, share information and training resources, and set common professional standards. This first ever global conference aims to fill this gap, and thus encourage the growth of refugee legal aid in the geopolitical south.

Day 1: 09:00 - Building a movement

- Why are we here? *Raison d'etre* for establishing professional standards for refugee legal advocacy with UNHCR RSD (Barbara Harrell-Bond)
- Agenda for a Southern Refugee Legal Advocates Network (Michael Kagan)

Coffee – 10:00 – 10:30

- *Roundtable: Recent developments in countries from the country (ies) representatives*

(Personal introductions; description of major refugee rights challenges; description of your organization and how it tries to meet these challenges; assessment of what your organization is good at and what it could gain most from working with other refugee legal aid organization; what your organization has to offer refugees.)

Lunch - 13:00 – 14:00

- Building a Network (Allan Leas)
- The challenges of establishing ethical standards for refugee legal advocacy with UNHCR RSD (Michael Gallagher).

Coffee – 16:00 – 16:30

- Appointment of a drafting committee on ethics and accountability (Chair-Michael Gallagher)

20:00 FILM: Practicing Refugee Law – in lounge

Day 2: 0:900 - Building our Capacity as Refugee Legal Aid Organizations

- Building strong and accountable organizations (and funding them) (Allan Leas)

10:00 – 10:30 Coffee

- Staff training resources (Rosemary Byrne)
- The Critical Link: Developing interpreter resources (Alice Johnson)

13:00 – 14:00 Lunch

- Country of origin information resources (Oldrich Andrysek, in his personal capacity)

16:00 – 16:30 - Coffee

- The Role and Use of Foreign Interns: Advantages and Pitfalls (Mike Kagan, Tarek Mahrous and Parastou Hassouri - discussion)
- *Roundtable: Building and maintaining staff knowledge and skills (facilitator: Rosemary Byrne and Martin Jones)*

FILM: - 20:00 Well-Founded Fear and/or Voices in Shadow (film about demonstration in 2005 Cairo.

Day 3: - 09:00 - Legal rights and remedies

- Refugee rights in international law beyond refugee status (Martin Jones)

10:00 – 10:30 – Coffee

Session continued

13:00 – 14:00 Lunch

- Strategies for domestic litigation (Marc Daly, Godwin Buwa, Anat Ben-Dor)

16:00 – 16:30 - Coffee

- Reporting to international advocacy organizations, and utilizing international human rights bodies (a discussion)
- *Roundtable: Strategies for promoting government and international responsibility for refugee protection*

Day 4: - 09:00 - Legal Rights and Remedies (cont)

- The role of legal aid in UNHCR's RSD procedures (Michael Kagan and Oldrich Andresky, DIP, UNHCR)

10:00 – 10:30 Coffee

- Resettlement and legal advocacy (Estelle Strizhak)
- Collaborating across borders (exchange of information, COI, family reunion, police reports, etc.) (Barbara Harrell-Bond, facilitator)

13:00 – 14:00 Lunch

Attention to vulnerable groups

- Questioning the concept of vulnerability (Barbara Harrell-Bond)
- Legal aid for unaccompanied refugee children (Parastou Hassouri)
- Legal aid with victims of sexual and gender-based violence (Parastou Hassouri)

16:30

- The importance of providing psychosocial support to victims of torture and violence (Alexandra Hartman and discussion).

Day 5: - 09:00 - Moving forward

- Debating and voting on model standards of ethics and accountability (Facilitators: Rosemary Byrne, Michael Gallagher)

10:00 – Coffee

Debating and voting continued

13:00 – 14:00 – Lunch

Setting the agenda for future collaboration (Facilitator: Marc Daly and Allan Leas)

- Joint advocacy
- Information sharing
- Training
- Accountability

16:30 - CLOSING SESSION – Thanks to Co-Organizers and to Kenya School of Law.

APPENDIX D: *Interpreters and Training Issues – Alice Johnson*

In contexts where refugees speak languages other than that of the host population and/or when foreign lawyers are also working with refugees, it is necessary to employ interpreters during all aspects of the legal aid process. Understanding the different practical and ethical questions raised by interpreting is key to more effective legal aid and advocacy, and having access to trained interpreters is essential.

Among the participant groups represented, only Helsinki Citizens' Assembly, the Refugee Legal Aid Project, and AMERA-Egypt reported using trained interpreters. In the case of Cairo, the American University in Cairo's Forced Migration and Refugee Studies Department (AUC-FMRS) developed an interpreter training program in 2002. AUC's Cairo Community Interpreter Project (CCIP) is now a capacity building program for multilingual refugees and has trained over 350 refugees in community interpretation roles, ethics, and techniques.

The conference participants also reported interpreter training collaboration between represented organizations. The Helsinki Citizens' Assembly worked with CCIP in 2004 to develop an interpreter training project in Turkey. The HCA has designed interpreter training for the Turkey context and it has been in continuous operation since 2004.

CCIP Project Director Alice Johnson provided the conference with an overview of the field of interpretation and the specific challenges posed when interpreting in a refugee context. She began with a review of the two general fields of interpretation practice, conference interpretation and community interpretation. While both fields share key principles of interpreter ethics and accuracy, they are generally differentiated as follows:

Conference Interpretation usually refers to large-scale events of international entities such as the bodies of the United Nations, where interpreters work in special audio booths and are removed from the discussion on the floor.

Community Interpretation usually refers to smaller-scale groups or one-to-one interactions in community life, such as the interpretation done in hospitals, health clinics, municipal courtrooms, between lawyer and client, etc, where the interpreter is present in the discussion and more actively involved in facilitating communication between the parties.

The interpretation done in refugee legal aid settings is generally considered a part of Community Interpretation.

Alice also reviewed the basic modes of interpretation:

Simultaneous Mode is when the interpreter renders the interpretation at the same time as the speaker says it, with a few seconds delay, but without the speaker pausing for the interpreter. This mode is usually used in Conference Interpretation and sometimes in courtrooms or small-group settings during Community Interpretation.

Consecutive Mode is when the interpreter waits for the speaker to pause in his or herspeaking before rendering their interpretation in the other language. The speaker and interpreter then ‘take turns’ talking and interpreting. This mode is usually used in Community Interpretation and during some speeches in larger conference or official settings.

Sight Translation is when an interpreter reads a document written in one language and produces a verbal rendition of the document aloud in a second language. Sight Translating occurs in both conference and community interpretation settings.

It was noted that the term ‘**translation**’ refers to rendering written messages from one language to another, and ‘**interpretation**’ refers to rendering verbal messages from one language into another. This is because interpreters and translators rely on different cognitive skills in their respective multilingual tasks.

Alice then reviewed the guiding principle of an interpreter’s role and scope of practice:

An interpreter’s role is to render a verbal message from one language to another **without adding, deleting, modifying, or editing its meaning or intent**. Their job is to help the other people present to communicate with each other as if they spoke the same language, but not to participate in the discussion themselves.

At times, it may be necessary for an interpreter to request a clarification or offer a brief explanation of a culture-specific concept, so as to make the message understood, but they should not participate as one of the parties, nor insert their own opinions and views into the discussion. This type of neutrality and communication facilitation are skills separate from that of merely being a multilingual person, and are usually only acquired through training.

The conference participants reviewed shared challenges they face with interpretation in refugee legal aid settings, including, but not limited to:

- understanding the scope and limitation of the interpreter’s role and practice,
- strengthening interpreter ethics (ie: scope of role, accuracy, cultural sensitivity, confidentiality, impartiality, and self-recusal in conflict of interest or other impediments to ethical practice),
- pressure on interpreters to step outside of their role and ethics, pressure applied both by legal aid entities and by the social group that the interpreter may belong to,
- fair compensation to interpreters for service rendered,
- security of the interpreters if they are seen to be privy to sensitive information from their presence in asylum interviews, and
- accessing interpreters of rare languages, and establishing trust with those interpreters.

The participants discussed how the above issues require special consideration when building the capacity of refugee aid organizations, and that training for both the interpreters and the aid providers is often required in order for interpreted communications to fully succeed.

At the close of the interpretation issues session, Alice re-emphasized CCIP's commitment and willingness to partner with refugee aid entities wishing to develop interpreter training programs in their region. Various organizations from Kenya voiced the desire to develop a joint training project for refugee interpreters in Kenya.

APPENDIX E: Refugee Rights in International Law: Beyond Refugee Status
Dr. Martin Jones

Refugee law frequently focuses on the determination of who is a refugee and not on the many rights that are accorded refugees by the 1951 Convention. An indication of this preoccupation with status determination comes in the form of the tens of thousand of refugee status determination decisions that have been made in the past decade. In comparison, during the same time period, there have been no more than a couple of hundred decisions focusing on the rights to which refugees are entitled. Martin Jones addressed the question of why refugee rights have been overlooked and elaborated upon the rights to which refugees are entitled under international law.

Refugee status determination (RSD) is clearly an important legal process for many refugees. For those refugees subject to individualized status determination, it can determine whether or not the refugee will be allowed to remain in the host state. In as much as RSD largely determines whether or not an individual will benefit from the core refugee right, the right to non-refoulement, it is not irrelevant to the protection of refugee rights. However, by being so closely linked to protection against refoulement, RSD often overlooks or leaves to the vagueries of domestic law and policy the protection of the other basic rights of refugees in a host state: the right to education, the right to housing, the right to gainful employment, etc. It is these other refugee rights, which are protected in the 1951 Convention relating to the status of refugees on an equal footing as the right to non-refoulement, that the presentation focused.

Refugee rights are generally determined through a combination of a refugee's level of attachment to the host state and the level to which other individuals residing in the host state enjoy the right in question. As a refugee becomes more 'attached' to the country where he or she resides, the refugee will have an increasing number of rights. These rights are generally granted to the refugee at the same level as they are granted to other specifically defined reference populations residing in the host state. Thus a refugee's entitlement to a particular right is defined in part by his/her attachment to a country and in part by the level to which that right is accorded to a reference population.

An example of this proposition is found in the guarantee in Article 15 of freedom of association:

'As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.'

This right is guaranteed to refugees who are 'lawful staying' in the host state. Until a refugee has reached this level of attachment, a refugee is not entitled to freedom of association (at least under the 1951 Refugee Convention). Further, Article 15 guarantees a refugee the freedom to associate according to the terms accorded to 'the most favourable treatment accorded to nationals of a foreign country'. Thus a refugee benefits

from the same freedom of association offered by the host state to the most favoured group of foreign nationals.

The levels of attachment outlined in the 1951 Convention include the following:

- (i) Subject to jurisdiction of a host country
- (ii) Within the territory of a host country
- (iii) Lawfully staying in a host country
- (iv) Lawfully residing in a host country
- (v) Having a durable residence in a host country

Generally speaking the varying degrees of attachment unfold chronologically: a refugee first arrives within the territory of a host state and then, over time, acquires a greater attachment to the host state until he or she achieves a durable residency in the host state. However, while this is the usual pattern, nothing precludes a refugee from starting midway through the process, as would be the case of a refugee who is resettled to a new host state.

The levels of attachment are defined in part in reference to domestic law. In particular, the definition of ‘lawful’ staying and residing must make reference to compliance with domestic legal provisions. Both the travaux of the 1951 Convention and the analytical coherence of the 1951 Convention suggest such an approach. However, this is not to suggest that ‘lawful’ should be defined completely in line with domestic law. International law will proscribe limits on the definition of lawful: for example, the definition of ‘lawfully staying’ will simply require that a refugee claimant’s application for protection has complied with basic domestic procedural formalities and that the host state has determined that it is responsible for determining the availability of protection for the refugee in question (for example, has granted the refugee access to domestic RSD – even if it has not actually determined whether or not the individual is a refugee). While the precise contours of when one category of attachments cedes to another are at times in dispute (in particular, the important boundary between category (ii) and (iii) above), the fundamental approach to defining rights according to attachment is supported in most of the jurisprudence and most importantly in the travaux.

As noted earlier, in addition to rights being defined according to a refugee’s level of attachment to a host state, they are also defined in relation to the extent that the right is enjoyed by one of several reference populations within the host state. Unlike international human rights law which generally defines rights in absolute terms (e.g. complete freedom of conscience under Article 18 of the ICCPR) the 1951 Refugee Convention defines rights contingently (e.g. freedom of conscience ‘at least as favourable as that accorded to their nationals’ under Article 4 of the Refugee Convention). The Refugee Convention uses the following three reference populations to define the level of entitlement of rights to be enjoyed by refugees:

- (i) Aliens generally
- (ii) Most favoured aliens
- (iii) Nationals of the host state

In addition, a few basic rights are defined absolutely, including the right to access the courts (Article 16). Of particular importance in rights defined according to the 'most favoured alien' standard is the careful research of domestic law to determine which group of foreign nationals is accorded the most favourable treatment; in many cases some group of alien nationals is accorded a very high level of treatment.

Having set out the analytical framework, the scope of refugee rights under the 1951 Refugee Convention was discussed. It was pointed out that these rights extend far beyond simply the right to non-refoulement. Indeed, these rights guarantee many refugees the right to services and support from the host state, including the right to access rationing (Article 20), public housing (Article 21), and public education (Article 22).

Various examples of how the various rights in the 1951 Refugee Convention are defined were discussed. It was noted that in addition to applying the foregoing analysis that, given the treaty basis of the rights in question, attention should be paid to the various reservations and declarations entered upon signing the Convention. In relation to employment related rights, over a significant number of states have entered a reservation precluding refugees from claiming some or all of these rights.

In closing, the overlap of the 'refugee rights' of the 1951 Refugee Convention with other human rights were discussed. In the African context, the refugee rights guaranteed under the OAU Convention are significant.

A discussion was had over how the concept of refugee rights can be used in advocacy. Clearly, there is some danger in distinguishing between the rights of refugees vis-a-vis those of host populations. However, the concept of refugee rights does underscore that signatories to the 1951 Refugee Convention have undertaken to do more than simply not *refouler* refugees.

Please see attachments:

- (A) Slides of the presentation
- (B) Quick Reference Guide to 1951 Refugee Convention rights