

3. Starting a movement for refugee rights in the Global South: Asylum Access and beyond

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INTRODUCTION

Refugees across the Global South are frequently deprived of fundamental rights,² often for a decade or more.³ Since the late 1990s, advocates across the Global South and around the world, including young people, outraged by this phenomenon and feeling that traditional refugee humanitarian organizations were ignoring the rampant violation of refugees' rights, have begun to pursue an alternative mode of refugee assistance: a movement to make human rights a reality for refugees in the Global South.

The movement's first and still primary tool is legal aid. Refugees need legal assistance as soon as they arrive in a host country. Their lives may depend on the outcome of a refugee status determination (RSD) proceeding. Failure to gain such status exposes a refugee to the risk of forcible repatriation and subsequent persecution. Recognition of refugee status is also a prerequisite for other basic rights guaranteed to refugees by international law, such as the right to seek employment, to move freely, and to obtain education and healthcare on the same terms as citizens.

Typically, governments determine refugee status. Where they are unwilling or unable to do so, the Office of the United Nations High Commissioner for Refugees (UNHCR) makes the determination. In 2010, UNHCR conducted status determination for nearly 100,000 individuals in more than 50 countries,⁴ making its RSD system the world's largest after that of South Africa.⁵ Although UNHCR's focused mandate to protect refugees distinguishes it from states, RSD serves the same gate-keeping function regardless of who conducts it. Consequently, refugees need legal aid in proceedings before UNHCR as urgently as they do before host governments.

This is the story of the earliest days of the worldwide movement for refugee rights in the Global South. In East Africa, socio-legal research on refugee rights identified an urgent need for permanent legal aid for refugees.⁶ Researchers and lawyers established the first formal programs in Uganda and Kenya in 1998, and in Egypt in 2000.⁷

Funding for refugee rights advocacy abroad, especially refugee legal aid, is rare and fickle. The programs discussed in this chapter have all faced the threat of closure because of changes in donor funding priorities. To address this risk, activists from the Netherlands, the U.K., and the U.S., who had volunteered in the programs in Uganda and Egypt, started advocacy and fundraising organizations. The ability of Western volunteers to secure resources and invest ‘sweat equity’⁸ was a critical initial component of the refugee rights movement.

Within a few years of their creation, the Uganda, Kenya, and Egypt programs were cooperating with similar efforts in Ecuador, Hong Kong, Israel, Lebanon, South Africa, Senegal, Tanzania, Thailand, Turkey, and Zambia. As a result, host governments and UNHCR increasingly recognize that demands for legal aid should not be seen as a threat to the power of decision-makers, but as a cornerstone of an effective refugee protection regime. Still, none of the programs could have survived without scores of dedicated volunteers, mostly young and from Western countries, who worked to scale up the first embryonic legal aid providers into mature human rights organizations.

THE CONTEXT

Most refugees will never be resettled (offered a permanent home) in the West, and many will never be able to go home. In 2010, 22 countries offering resettlement – mainly Australia, Canada, and the U.S. – admitted 98,800 refugees from a global total estimated at 15.8 million refugees.⁹ The remainder will spend their years of exile in another country of the Global South. There, as a matter of policy, many refugees are confined to camps or otherwise ‘frequently and systematically denied [their] rights under international law, sometimes for decades, in a practice known as “warehousing”.’¹⁰

Many of the refugees who seek resettlement abroad must undergo an individual RSD interview. Most refugees prepare their cases themselves and are interviewed, without representation, by a host government official or a UNHCR protection officer. Rejected refugees are often given no reason for the rejection, nor are they told of appeal procedures, if appeal procedures even exist.¹¹ Serious procedural deficiencies are commonplace in both UNHCR and host government RSD.¹² Some procedural improvements have occurred in correlation with advocacy by the organizations described here and others that comprise the refugee rights movement.¹³

KENYA AND UGANDA: HOW THE MOVEMENT BEGAN

In 1993, Hannah Garry, an American, then an undergraduate student,¹⁴ travelled to a refugee camp in Ethiopia to participate in a UNHCR program for students. The human rights violations she observed appalled her. One refugee was shot fleeing unlawful detention, and combatants from Sudan raided the camp to round up children to fight as soldiers. Because of her experience, Garry enrolled at the Refugee Studies Centre (RSC) at the University of Oxford the following year.

There, Garry met Dr. Barbara Harrell-Bond, the RSC's founder and director, and Guglielmo Verdirame, a young Italian lawyer conducting research on the weakness of enforcement mechanisms in human rights law. Garry, Dr. Harrell-Bond, and Verdirame designed a research program carried out in Kenya and Uganda between 1997 and 2000 to investigate the extent to which refugees can actually access their rights.¹⁵ Their work culminated in *Rights in Exile: Janus-Faced Humanitarianism*, a book about the flaws in refugee protection.¹⁶ The first refugee legal aid programs outside South Africa – Refugee Law Project (RLP) at Makerere University in Kampala, Uganda;¹⁷ the Refugee Consortium of Kenya (RCK);¹⁸ and Africa and Middle East Refugee Assistance (AMERA) in the U.K.¹⁹ and Egypt²⁰ – were born from this research.

Virtually every refugee who approached the *Rights in Exile* team required legal assistance. The team helped hundreds of people prepare testimony and represented them in RSD interviews. The team also trained the Ugandan police in refugee rights and wrote about refugee rights in local newspapers. Dr. Harrell-Bond worked with Pamela Reynell, a young Ugandan-British barrister, to establish a law clinic at Makerere University and to offer refugee-related coursework for law students there. With funding from the Amberstone Trust in the U.K., the RLP, discussed further below, was created in 1999.

EGYPT: STARTING REFUGEE LEGAL AID IN CAIRO

In 2000, the American University in Cairo (AUC) invited Dr. Harrell-Bond to establish a graduate program in refugee studies. Refugees learned of her arrival and began lining up outside her office to request help with their applications to UNHCR, the asylum decision-maker in Egypt.

Verdirame arranged for a British law student, Mark Pallis, to travel to Cairo at his own expense to help Dr. Harrell-Bond cope with the demand. In 2001, 14 self-funded volunteers, mainly from the U.K. and the U.S., joined Pallis. That year, the Danish embassy and the Amberstone Trust pledged US\$100,000 for two years and the Refugee Legal Aid Project (RLAP) began, initially under