# **Refugee Rights Toolkit**

A leader's guide to making refugee rights a reality

A project of Asylum Access

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# About The Toolkit

The Refugee Rights Toolkit is a product of <u>Asylum Access</u>, and has been made possible with support from <u>United States Institute of Peace</u>, <u>Foundation for a Just</u> <u>Society</u>, the <u>John D. and Catherine T. MacArthur Foundation</u> and other funders. It is an online platform that is used to develop the leadership capacity of refugee rights leaders toward the end of replicating the Asylum Access model in different local contexts especially in Africa, Asia and Latin America. The Toolkit is one piece of Asylum Access's broader Refugee Rights Movement Building Initiative. The Refugee Rights Toolkit is comprised of best practices culled from literature, lessons learnt by Asylum Access's staff and partners and helpful materials, templates, and resources to support a refugee rights leader.

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# The Asylum Access Refugee Rights Toolkit Initiative

The Refugee Rights Toolkit is an online platform to develop the leadership capacity of refugee rights leaders to replicate the Asylum Access model throughout Africa, Asia and Latin America. To this end, Asylum Access couples access to the online Toolkit with direct mentoring and connections to the broader refugee rights community. Asylum Access's Refugee Rights Toolkit seeks to make the rights of refugees a reality by identifying and supporting refugee rights leaders (RRLs) to begin refugee rights projects in major refugee-receiving countries. The initiative does this by providing RRLs each of the following:

- regular, direct mentoring and skills-building with Asylum Access staff in any or all of Asylum Access's competency areas,
- access to this Refugee Rights Toolkit online platform, and
- outside connections to both potential funders and also experts in the fields of refugee legal aid and refugee rights advocacy.

# Benefits of the Toolkit Initiative

The Toolkit Initiative has the potential to provide substantial benefits not only to the RRL but to the Mentor and to the broader refugee rights community. Mentors benefit from this relationship by understanding the issues faced by refugee rights organizations from a new angle, which has the potential to influence mentors to approach problem-solving differently, to better inform organizational policies and to ultimately improve the content of the Toolkit. Additionally, the broader refugee rights community benefits from increased retention of organizations with similar goals. Increased success among global refugee rights organizations has the potential to change the status quo of refugee response, resulting in a benefit to the broader RRL community.

The primary benefit of the mentorship relationship to the RRL is access to directed, practical knowledge from an experienced RRL who has successfully managed similar issues in their own process of building a refugee rights organization from the ground up. RRLs will benefit from a one-on-one mentorship that serves to supplement information provided in the Refugee Rights Toolkit. Additionally, RRLs will become part of a global network of RRLs, and will be introduced to possible sources of funding, where possible.

# Asylum access mentoring

#### Mentoring is a critical part of the theory of change.

The Toolkit approach is based on the assumption that new refugee rights initiatives are most likely to be successful if local leaders have access to knowledge about running a refugee rights program, support through mentorship and a community of like-minded organizations to rely on.

Recent studies such as a <u>2010 U.S. Department of Education meta-analysis</u> suggest that combining online learning with a "face-to-face" format may result in superior learning outcomes. Online learning with direct mentoring provides flexibility, accessibility and self-reflection while providing an interpersonal experience with mentors.

Additionally, the Toolkit provides a general overview of global refugee rights organization strategy. As such, the Toolkit can never be entirely content-specific; mentoring makes it possible for Asylum Access to overcome this limitation by filling in the gaps with one-on-one mentoring. The Refugee Rights Toolkit is not designed to offer explicit direction to budding RRLs, but rather, to prepare each to consider the importance of promoting refugee rights in refugee response and to help brainstorm the proper avenue of applying best practices in unique contexts.

If you are interested in connecting with Asylum Access as a Refugee Rights Leader, please contact refugeerightsToolkit@asylumaccess.org for more information.

# **Direct Mentorship**

The Asylum Access approach works to incorporate the best practices of pedagogical, as well both for- and non-profit mentoring programs. Under this approach,

- The agenda is set by the learner this permits RRLs to set the timing, pace, medium, content, learning style, assessment, as well as collaboration.
- The relationship is long-term
- The mentorship is concerned with the implications beyond the task solving problems in general, not specific ones.

# **Mentorship Structure**

Asylum Access centers its mentorship program on learner-created *Learning Agreements*. The learning agreement is an individualized learner-centered document that recognizes the learner's abilities and educational objectives. Each learning agreement identifies a range of topics that refugee rights leaders choose to undertake, together with associated assessment methods that will verify the RRL's learning. The learning agreement serves to express the following:

- The nature and content of the program of learning;
- Its link to the relevant organizational and broader refugee rights goals
- What the RRL will be able to do on successful completion of each goal. RRLs will understand what will be expected of them in order to achieve the goals *they* have set forth.

RRLs will complete an initial assessment to determine the base level of both skills and knowledge relevant to leading a refugee rights organization. Once the RRL completes the assessment, the Mentor will evaluate the results and provide the RRL with an explanation of identified gaps in knowledge or skills so that the RRL can draft a learning agreement (access the Learning Agreement Template here).

Based on the RRL's learning goals, Asylum Access will determine a set of Mentors within the organization best suited to mentor the RRL in each competency area. Depending on the learning needs of the specific RRL, Asylum Access staff is prepared to mentor RRLs in any or all of following Asylum Access's **competency areas**:

- 1. Start-Up
  - Creating a mission and vision
  - Prepare to Launch
  - Situate Your Organization Locally
- 2. Operate and Manage
  - Results-Based Management
  - Fundraising
  - Communications
  - Human Resources
  - Financial Management
  - Scaling Up Services
- 3. Advocate
  - International Refugee Law
  - Legal Services
  - Community Legal Empowerment
  - Policy Advocacy
  - Strategic Litigation

If you'd like more information about working with Asylum Access, please contact us at: toolkit@asylumaccess.org.

# **Outside Connections**

One of the greatest challenges to beginning a new project, or developing a new program, is finding the right kind of support. Although our mentors have a great deal of knowledge, there may be moments where outside support may be the most helpful for a RRL. Asylum Access's networks can serve as tremendous support to our RRLs. Furthermore, where it is appropriate, Asylum Access strives to connect RRLs with potential funders.

If you are interested in connecting with Asylum Access as a Refugee Rights Leader, please contact refugeerightsToolkit@asylumaccess.org for more information.

# How to Use This Toolkit

The best way to use this Toolkit is to create a learning agreement with Asylum Access that tailors your online experience to optimize learning. For more information on how to establish a learning agreement, contact <u>refugeerightsToolkit@asylumaccess.org</u>. Structurally, the Refugee Rights Toolkit is divided into three main sections: Start-Up, Operate and Manage and Advocate.

# Access to the Refugee Rights Toolkit

The Refugee Rights Toolkit contains best practices for operational and programmatic questions also pertaining to the Asylum Access competency areas. It is best used as a supplement to mentorship, but can also help answer questions in an ad hoc manner.

#### Structure

**Start Up** contains information relevant to you if you are starting a refugee rights organization from the ground up. It will address challenges in finding office space, registering your project with the proper branch of national administration, establishing relationships with the government and institutional partners and guide you in the transition between start-up and good management practices that will promote the longevity of your refugee rights project.

**Operate and Manage** contains information and guidance relevant to you once you have a moderate level of stability. It will help you staff your project, manage volunteers, strategically plan, monitor and evaluate your impact and more.

**Advocate** contains substantive information and guidance on the management and implementation of refugee legal aid, refugee community organizing, refugee advocacy and strategic litigation.

### Navigation

The Refugee Rights Toolkit acknowledges that not every page will be relevant to you. Not every refugee rights project will take on a legal aid program first. Not every refugee rights program will engage in advocacy. Depending on where your organization is in its trajectory, the entire Start-Up section may be very relevant, or not relevant at all to your professional leadership development. That's okay! Every section of the Refugee Rights Toolkit contains information that is meant to stand alone.

# PEOPLE with REGERS not just needs

# Start-Up

Given the challenges faced by refugees worldwide, the role of a refugee rights leader is crucial in advocating for the better implementation of refugee rights in law, policies and/or practices in your country. One effective strategy is to start a refugee rights organization (RRO) that enables you and others to jointly engage in advocacy. As this is a complex and messy undertaking, the Start-up section guides you through the steps of starting a RRO.

Asylum Access

The Start-up section begins by explaining what a RRO is, and differentiates a rightsbased approach from a charity approach and needs-based approach that traditional agencies adopt. It then guides you to conduct a legal and field analysis to help you decide whether starting a RRO is the most effective way to address existing challenges in your country.

Once you have decided to start a RRO, the rest of the section guides you through the practical steps that you will undergo before launch. This includes creating a mission and vision, registering your organization, fundraising at start-up, staffing, securing office space and advertising your services. It also provides practical advice on developing strategies to establish effective relationships with key stakeholders, including with the government, UNCHR and other NGOs at the start-up stage.

By the end of the section, you should have understood the value of a RRO and to have gained a better understanding of the key questions and steps involved when establishing a RRO. However, while this section captures the information that might be useful during start-up, the Toolkit's <u>direct mentorship</u> program can facilitate you to overcome the nuances and situation-specific challenges during the start-up process. When using this Toolkit, you are expected to adopt the information provided according to your own context. Also, note that the steps outlined in this section do not necessarily have to be followed in order. For example, you may decide to establish a relationship with the government before advertising your services.

As a number of topics, such as fundraising and human resources, are also applicable beyond the start up stage. These topics are further addressed in the <u>Operate and</u> <u>Manage</u> section.

**Refugee Rights Toolkit** 

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# What is a Refugee Rights Organization?

Before we address whether to start a refugee rights organization (RRO) and how to start a RRO, it is important that we understand the nature and purpose of a RRO. Therefore, this section will contextualize the need for RROs by outlining the international and regional **legal framework** relating to refugee rights, and explain how refugee rights can be denied despite these frameworks. It then highlights the **principles** of a RRO, and proposes a set of **core tools** that RROs can utilize to address existing challenges. This section is intended to develop a common understanding of what a refugee rights organization is as the basis for further discussions in the Toolkit.

# The legal framework for refugee rights

Refugees seek safety in another country when they experience a threat of persecution and because their own country is unwilling or unable to protect their fundamental rights. When faced with serious violations of their human rights, they have no choice but to leave their homes, their families and communities in order to survive.

By definition, refugees are not protected by their own governments. In lieu of State protection, the international community created key international and regional agreements to safeguard the rights of refugees.

The 1951 Refugee Convention, and its 1967 Protocol, is the only global legal instrument dealing with the status and rights of refugees, while regional agreements include the 1984 Cartagena Declaration and the 1969 OAU Refugee Convention in Africa.

The 1951 Refugee Convention defines refugees' human rights, including the principle of non-*refoulement*, stating that a refugee "should not be returned to a country where he or she faces serious threats to his or her life or freedom". Other refugee rights, also endorsed by human rights treaties, include the right to work, the right to freedom of movement, the right to housing, education, justice and more. For more information on refugee and human rights law, you may refer to the <u>Refugee rights law: The building block</u> section of the Toolkit.

# The gaps in refugee and human rights protection in practice

However, although ratified by 147 countries, the 1951 Refugee Convention and its Protocol do not ensure refugees' enjoyment of their fundamental human rights in their host countries. In fact, many signatories of the 1951 Refugee Convention **regularly deny refugees' their rights** through **restrictive national refugee policies**. Some examples of common challenges include:

Countries with an **encampment** policy deny refugees' right to freedom of movement. Unable to work or move freely, many refugees choose to live outside of the camps and face constant risk of arrest and detention, while those who remain in the camp depend heavily on humanitarian aid.

Administrative barriers and nationality-based restrictions impede refugees' access to safe and lawful employment, access to housing and education.

**Physical** and **idiosyncratic barriers** (lack of roads and lawyers) limit access to justice for the most marginalized and poor. In this context, refugees are the least likely candidates to challenge discriminatory practices, living in the geographic and social peripheries of their respective host countries.

Host countries with high levels of unemployment create a hostile environment to incoming migration flows: both economic migrants and forced migrants tend to be regarded as the same. In a context of large-scale humanitarian influxes, the dominating focus is on channeling international funds to cover immediate food, health and shelter needs, but with little outlook for **long-term livelihoods** of refugees.

In addition, refugees continue to be denied rights in countries that are non-signatory to the 1951 Convention. They live on the margins of society, fearful of arbitrary harassment, extortion, arrest and detention as "**undocumented migrants**".

# Adopting a rights-based approach in a refugee rights organization

To bridge the gap between law on paper and in practice, and to advocate for better refugee protection, a **refugee rights organization** seeks to provide the tools for refugees to assert their rights.

As a founding premise, refugees are people **entitled to rights**, not just people with needs. Upon this basis, a refugee rights organization adopts a **rights-based approach** to provide the tools refugees need to assert these rights. Its approach uses a framework

that integrates the norms, principles, standards and goals of the international human rights system into the plans and processes of refugee protection. This is fundamentally different to a charity or needs-based approach commonly adopted in the existing ecosystem.

Charity approach		Rights-based approach
Focus on input not outcome	Focus on input and outcome	Focus on process and outcome
Emphasizes increasing charity	Emphasizes meeting needs	Emphasizes realizing rights
Recognizes moral responsibility of rich towards poor	Recognizes needs as valid claims	Recognizes individual and group rights as claims toward legal and moral duty-bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestation of problems	Focuses on immediate causes of problems	Focuses on structural causes and their manifestations

The **core tools** of a refugee rights organization help refugees assert their rights. These tools can tackle existing gaps on individual, community and policy levels and may include:

- Legal services: To provide individualized legal information, counsel and representation to refugees. This includes navigating the legal process to obtain refugee status, vindicate workplace rights, access education, healthcare and financial institutions and demand equal protection of police and courts.
  - **Community legal empowerment**: To provide <u>Know Your Rights workshops</u> to help refugees understand their options and how to assert them. Refugee leaders receive training on how to provide basic legal assistance to others in their community and launch their own social justice initiatives. To facilitate self-

sufficiency, refugee work rights workshops and women's groups for survivors of gender-based violence are also provided.

- **Policy advocacy**: To advocate for changes in law and policy that improve refugees' access to rights, working with government officials and global decision-makers to develop and promote solutions to systemic rights violations
- **Strategic litigation**: To establish legal precedents for refugee rights through test cases in local and regional courts. This reduces the need for legal aid by making refugee rights the norm, so that refugees can access their rights automatically without having to fight for them.

These rights-based approaches tackle the existing legal landscape on individual, community, national and international levels. By utilizing a combination of these tools, it attempts to give refugees more options. Ultimately, a RRO seeks to transform the traditional approach of humanitarian handouts into a sustainable solution that gives refugees the tools to provide for themselves and make choices about their own lives.

#### Further resources

Human Rights-based Approach to Programming (Unicef)

# Should I Start a Refugee Rights Organization?

Before thinking about the steps involved in starting a refugee rights organization (RRO), it is important to first analyze whether or not you should start a RRO. While it may be indisputable that refugees in your country have a very difficult time, starting a new organization or taking a rights-based approach may not always be the most effective strategy.

This section guides you through the process of conducting a **legal analysis** and a **field analysis** in your country. These analyses are (1) to help you identify the needs in the existing landscape, (2) to inform your decision on whether to start a RRO and if so, (3) to inform your decision on the organization's focus and strategy.

There are two sub-sections here, including:

#### Step 1: Conducting a legal analysis

This makes it possible to identify the legal and policy framework for refugee protection in your country, and the extent to which these laws and policies are implemented. This is designed to help you identify whether refugees are facing human rights violations, and if so, the scale and severity of these violations. Based on these findings, there is a <u>Self-Assessment Quiz</u> to guide you to decide whether you should (1) start a refugee rights organization, (2) start a project within an existing human rights organization, or (3) adopt alternative approaches.

Step 2: Conducting a field analysis

This will help you determine whether any other organizations are already filling in the gaps that you have identified in your legal analysis. In particular, the section provides guiding questions to help you assess whether refugee rights tools, i.e. legal services, community legal empowerment, policy advocacy and strategic litigation, are currently adopted by existing refugee organizations in your country.

As conducting legal and field analysis can be quite cumbersome and can take months, plan to schedule sufficient time for this process. After conducting your analyses, you should have a better idea of whether you should start a refugee rights organization, and the type of services your organization (or project) can provide to fill the existing gaps in advocating for refugee rights.

Many highly relevant considerations can be found on the <u>Scaling Up Services</u> section, which details key questions to consider when you decide to open other offices in your country, region or further afield.

# **Conducting a Legal Analysis**

To determine whether starting a refugee rights organization is the most appropriate approach, it is essential that there is a thorough understanding of the international, national and local laws and policies guiding refugee rights. The legal analysis is designed to help you assess whether refugees experience significant human rights violation in your country. It maps (1) the legal and policy framework for refugee protection in your country, and (2) the extent to which these laws are implemented in practice. As conducting legal analysis is a timely process, consider obtaining pro bono assistance from law firms to conduct this research.

There is also a <u>Self-Assessment Quiz</u> attached at the end of the section. This is to guide you to decide whether you should (1) start a refugee rights organization, (2) start a project within an existing human rights organization, or (3) adopt alternative approaches. If you have identified significant human rights violations for refugees in your country in your Self-Assessment Quiz, you may proceed to conduct a <u>field</u> <u>analysis</u>.

For a brief overview of the relevant international and regional refugee and human rights law, you may refer to the <u>refugee rights law</u> section of the Toolkit. Note that if you identify a gap for refugee protection in law and/or in practice, it might be effective to adopt a combination of refugee rights tools in your organization to address these gaps. The <u>advocate</u> section of the Toolkit provides practical advice on how to implement these tools.

# Guiding questions in a legal analysis

To conduct a legal analysis, consider researching the following questions:

Is the country a party to any international refugee rights instruments?

Consider whether your country is a party with or without reservations, or not a party. The instrument may not be applicable if it cannot be ratified by your country e.g. because the instrument is restricted to a different geographic area.

- 1951 Convention Relating to the Status of Refugees (1951 Convention)
- 1967 Protocol Relating to the Status of Refugees
- 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)

• 1984 Cartagena Declaration on Refugees

To which other international human rights instruments is the country a party to?

Consider whether your country is a party with or without reservations or not a party. The instrument may not be applicable if it cannot be ratified by your country e.g. because the instrument is restricted to a different geographic area.

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Rights of the Child
- Convention on the Elimination of Discrimination Against Women
- Convention Against Torture
- Convention on the Elimination of Racism
- Regional Human Rights Instrument(s)

What national laws explicitly govern refugees or refugee rights? Which of the following rights are accorded to refugees under national law?

Include all rights accorded to refugees in law, even if those rights are ignored or violated in practice. Consider both encamped and non-encamped, urban or rural, refugees.

- Non-refoulement
- No arbitrary detention
- Free movement
- Employment
- Education
- Equal protection (access to police, courts, etc.)
- Access to healthcare
- Access to social assistance
- Birth registration
- Access to financial institutions
- Naturalization opportunities

What other laws accord rights that apply to refugees equally with other communities in the country?

Note that laws according rights to "all persons" implicitly accord rights to refugees.

#### Which of the following rights are accorded to refugees in practice?

Indicate all rights that refugees actually enjoy, regardless of whether these rights are enshrined in law. Consider both encamped and non-encamped (urban or rural) refugees.

- Non-refoulement
- No arbitrary detention
- Freedom of movement
- Employment
- Education
- Equal protection (e.g. access to police, courts)
- Access to healthcare
- Access to social assistance
- Birth registration
- Access to financial institutions
- Naturalization opportunities

Does national law treat certain nationalities of refugees differently? If so, how?

This question applies only to laws explicitly enshrining different treatment for refugees based on nationality. It does not include discrimination or preferential treatment in practice.

In practice, are refugees of certain nationalities treated differently from those of other nationalities? If so, how?

This question applies to informal policies or common practices in the treatment of refugees.

Does the law distinguish between refugees based on their arrival dates in the country?

This question applies only to differential treatment that is explicitly enshrined in law, not to informal policies or practices.

In practice, does the government distinguish between refugees based on their arrival dates in the country?

This question applies to differential treatment carried out through informal policy or common practice.

After you complete these questions, you may download the Self-Assessment Quiz below to help you determine whether you should start a refugee rights organization. If the results indicate that you should start a refugee rights organization or a project, you may proceed to conduct a <u>field analysis</u>.

Self-Assessment Quiz: Should I Start a Refugee Rights Organization?

# **Conducting a Field Analysis**

Conducting a field analysis is the second step to help you decide whether it is appropriate to situate your refugee rights organization (RRO) in your country. This exercise will guide you through the strategic and operational considerations to determine whether (1) any other organizations are already addressing the human rights violations that you have identified in your legal analysis, and (2) the feasibility of establishing a RRO in your country.

There is also a downloadable template that will guide you to analyze whether specific refugee rights tools (legal services, community legal empowerment, policy advocacy and strategic litigation) are being implemented by other organizations in your country. This will help you identify the gaps of where a new organization might add value for refugees, rather than merely duplicating services.

In your field analysis, relevant actors might include bar associations, NGOs, international agencies (e.g. UNHCR, OCHA, UNICEF, IOM, ICRC), government legal aid agencies, legal aid clinics, policy groups, consultancy firms and research institutes.

To conduct your field analysis, you may examine:

- Which organizations provide assistance to refugees?
- What services do they provide?
- How would your work compliment the work of potential partners?

For a template that enables you to conduct an analysis on the availability of legal services, community legal empowerment, policy advocacy and strategic litigation programs in your country, you may download the document below.

Template to Conduct Field Analysis of Refugee Rights Tools

In addition to identifying whether there are other organizations providing refugee assistance and protection, it is important to consider the political, legal and financial feasibility of establishing a RRO in your country. Some key strategic and operational considerations may include:

• Would the government allow a refugee rights organization to operate and work with refugees?

- If your organization was allowed to work in the country, would the government attempt to limit the scope of its work?
- What is the local UNHCR office's attitude towards refugee legal aid/your organization?
- Do your board members have any connections to the country's government, the UNHCR office, or refugee groups?
- Does the law have any restrictions on receiving foreign funding?
- Compared to other countries with refugee rights programs, would your currency be of more or less value in the local country?
- What is the cost for your organization to pay for office space?
- Is there expertise within the country or do we need to hire foreign staff?
- If you were to hire foreign staff, does the country have restrictive visa policies?
- Are there any security concerns, especially for foreign staff?
- Would it be difficult for volunteers to travel to and stay in the country?
- What is the cost of living in the country?
- What are the legal requirements to set up a refugee rights organization?
- Are there different legal structures that can be considered?
- How long on average will it take to register the organization?

For more details on overcoming the legal barriers of registering your organization, you may refer to the <u>Registering Your Organization</u> page.

With these questions in mind, the field analysis should assist you in deciding whether your country is a suitable place to locate your RRO. During your research, you may choose to refer to the resources offered by International Refugee Rights Initiative, which provides a directory of the legal aid NGOs and pro bono services in various countries. The NGO Law Monitor is also useful when researching your country's legal and political factors.

#### Further resources

NGO Law Monitor

Pro bono information by country (International Refugee Rights Initiative)

# Creating a Vision and Mission Statement

An effective organization needs a clear idea of what it is striving towards. Knowing 'the big picture' will help you and your team of refugee rights advocates focus on your long-term goals, and ensure that partners, supporters and refugees understand the work that you do. This is not only important for your current operations, but it also helps foster continuity for your organization beyond your direct involvement.

Creating mission and vision statements for your organization establishes its purpose, and will help you formulate a coherent plan of action to achieve the change you would like to create in your country. This section will help you take the first steps towards creating your organization's vision and mission statement.

Firstly, it should be noted that:

- A **vision statement** communicates the world you want to create with your organization. It is future-oriented.
- A **mission statement** describes the specific purpose of your organization, often including how you intend to fulfill this purpose, and for whom. It is present-oriented.
- **Core values** are the foundational values common to the entire organization. They determine your organization's activities and decision-making.

For example, Asylum Access's vision and mission statement are:

**Vision**: Asylum Access envisions a world in which refugees live safely, move freely, attend school, work and rebuild their lives. Asylum Access believes that when refugees enjoy their human rights, they can access effective, lasting solutions.

**Mission**: Asylum Access's mission is to make refugees' human rights a reality in Africa, Latin America, Asia and the Middle East.

# How to draft a vision and mission statement

#### Drafting a vision statement

Your vision statement should describe the long-term change that you hope to see as a result of your work. This should align with your strategic plan. For example, Asylum Access "envisions a world where refugees are with rights, not just people with needs".

Consider the following when brainstorming your vision statement:

- What needs to be changed? What is the key problem that you wish to address?
- What is your dream end-state? What is the ideal situation in the future when this problem is solved?
- Will it draw people to common work?
- Does it give hope for a better future?

After you have considered these questions, describe the ideal state with key words and phrases. This might include phrases such as "every refugee" and "refugee rights". Then, attempt to draft a vision statement that includes these key words and phrases. It can be phrased in terms such as "We believe…", "We are committed to…", "We seek…", or "We envision…". Your statement should ideally be one or two sentences long, so be as concise as you can.

### Drafting a mission statement

Before drafting your mission statement, identify the purpose, method, values and beneficiaries. As you and your board brainstorm, consider the questions below.

1. What is your organization's purpose?

The organization's purpose is central to the mission statement in almost all organizations. For example, Asylum Access's purpose is "to make refugee rights a reality".

2. How does your organization achieve this purpose?

Your mission should be separate from your activities. However, you may want to reference the core activities that make up your methodology. Alternatively, if you have more than two core activities, or if your core activities cannot be described in about three words, you may want to find a more general term to describe your methodology or approach. For example, Asylum Access achieves its purpose by providing legal information, advice and representation and by advocating for the implementation of refugee rights.

#### 3. What is your organization's underlying values?

Your values may form part of your mission statement. Even if they are not explicitly included, they can influence the words you choose for your statement. For example, Asylum Access believes refugees should be seen as people with rights, not just people with needs.

#### 4. Who/where are the beneficiaries of your work?

For example, Asylum Access's work benefits refugees in Africa, Asia and Latin America.

Finally, review the following questions and consider revising your mission statement accordingly.

- Does your mission statement explain why the organization exists?
- Is it broad enough to encompass not only your current work, but work you anticipate doing in the future?
- Is it specific enough to guide future decisions about which activities the organization should undertake?
- Is it consistent with your values? Does the content and language reflect your values?
- Does it describe the end result? Does it describe your effect on clients' lives rather than just listing your activities?
- Is it easy to understand and free of technical jargon? Is it concise? Could your mother understand it? Could a 7-year-old understand it?

#### Further resources

Mission, vision, values (CharityVillage) 30 Example Vision Statements (Top Nonprofits)

# Preparing to Launch

After deciding to establish a refugee rights organization, many preparations are needed before you launch your organization. Although launch preparations are often unpredictable, they are vital as the strategic and operational decisions involved can have far reaching consequences to your organization.

This section captures some of the key steps involved before you launch your organization, and includes sections that guide you to register your organization, fundraise at start-up, hire leadership staff, secure office space and advertise your services. By the end of the section, you should have a better understanding of the important steps involved before opening your office to your first clients.

Launch preparations involve many of the same considerations that are present at any time while operating an organization, such as staffing, fundraising and communications. Therefore, this section only highlights the strategies and tips most relevant to the very first phases of setting up an organization. For more detailed information on how to sustain these processes in the long-term within the organization, refer to the <u>Operate</u> and <u>Manage</u> section of the Toolkit.

# **Registering Your Organization**

Registering an organization is generally a vital first move, as it is almost universally required in order to receive funding, hire staff and launch operations. However, although this is often legally required, registration can present unique difficulties in every context. An alternative option is to establish a program under an existing human rights organization that is already registered. This section will present the benefits and challenges of each option, and provide guidance on how these options can be pursued.

# Deciding whether to register your organization

Before deciding whether to register your organization, you will need to be aware of the legal enabling environment in your country, and of the political and other potential risks involved in setting up your organization. For instance, given that nature of work for refugee rights is often sensitive, you may need to be prepared for a degree of official hostility towards your work. A number of countries have recently introduced laws restricting the percentage of foreign funding (including in-country foreign donors) an organization can receive. Some other countries have, for historical and structural reasons, never developed a protected space for civil society organizations.

Additionally, there are usually multiple ways to register an organization, each with their comparative benefits, protections and disadvantages. The choices you make when registering your organization will affect its prospects in the long term. It could influence factors such as the dates of your fiscal year, whether your organization will have members, and what kind of board of directors or governors you choose to have.

Whether you register as a for-profit or non-profit entity often affects what **taxes** you will have to pay, as well as what **funding** you are eligible for. In some cases, you may choose to register as a company as it may be easier, cheaper and less visible. In other cases, registering as a nonprofit may allow you to benefit from tax relief, and to obtain certain types of grants and funding.

Some points of consideration when weighing the potential benefits and risks of registering your organization are listed below.

Potential benefits of registering your organization:

- Legitimacy with funders and the authorities
- Enables subsequent financial management e.g. opening a bank account
- Enables fulfilling financial reporting requirements such as submitting audited accounts
- May provide legal protection from potential closure of operations
- Facilitates legal operations, including ability to enter into contracts (tenancy, purchase of equipment, hiring staff)
- Limits legal liabilities in the event of breaches of contract

Potential drawbacks of registering your organization:

- Attracts more attention in a politically repressive environment
- Some governments restrict the ability to receive funds from certain donors e.g. foreign donors, or impose requirements on what your organization must do to access outside funds
- Registration may constrain your permitted activities
- Registration may also require other additional bureaucratic activities, such as filing certain paperwork each year

# Practical advice on registering your organization

### Obtaining legal advice

One way to identify and analyze your options may be to **enlist the pro-bono assistance of a locally based law firm**, ideally one that has a culture of pro-bono and is committed to providing equally high-quality services to pro-bono and paying clients. Advice from someone familiar with the legal rules and regulations governing the incorporation of new entities in the country is likely to be invaluable, even if that person is not familiar with non-profit organizations.

If pro-bono lawyers are unavailable, it is advisable to invest in **paying a lawyer or other agent experienced at registering social benefit entities to work with you to prepare your paperwork** and **help you navigate the system**. If there is an NGO Council in your country, they may be able to provide such assistance free of charge. However, in certain countries, such ostensibly supportive bodies may prove hostile or corrupt (see the need for risk analysis, above).

### Consulting existing NGOs

It will also be helpful to **talk to existing NGOs** in your country about these issues. You may utilize external help to you with the following:

- Assess risks: Learn about how they assess the risks, how they chose to be registered and why they made the choices they did. Note that junior staff may not be aware of these aspects of organizational history. You will probably need to speak to the director and board of governors, and to any in-house legal advisor the NGO may have.
- Filter for trigger words: Guide you around seemingly innocuous words that may raise red flags to a government if included in your registration information. Trigger words are often surprising and unpredictable. It is likely that these terms, even if central to your registration, can be re-worded and related difficulties easily avoided. For example, 'education' or 'lobbying' could become 'advice' and 'designing policy frameworks'.
- **Tailor goals to government interests:** Identify the interests of the government, and tailor "Objects Clause" to suit them. For example, if the government prefers that all refugees are resettled out of the country and tries to prevent refugees from entering, stating that your services assist the UNHCR process refugees faster is more likely to get your organization registered than mentioning rights, empowerment or advocacy.
- **Speed up the registration process:** Existing NGOs are likely to have built up relationships with government officials responsible for getting registrations done. Utilizing even low-level relationships may speed up this process, which is an additional benefit to the lawyer or agent's familiarity with the procedure.

Note that if you attempt to register and are refused permission, you will have to choose between operating in direct violation of government decisions, or not operating at all. In some contexts – where registration is particularly slow – your application may be put on hold indefinitely. This could be an advantage: you can show you have taken the correct steps, and then operate informally in the interim without actually having received a negative answer. Again, these elements are highly contextual, and we recommend doing extensive research before making decisions with long-lasting consequences.

# Alternative to registration: establishing a project within an existing human rights organization

Alternatively, there may be options to operate as a project within an existing human rights organization that is already registered. In some contexts, this may be advisable for practical reasons, e.g. for low-visibility protection, or as a start-up arrangement while waiting for full, independent NGO status. This may be a relatively quicker route to achieving operational status.

However, note to also identify the 'costs' to such an arrangement beforehand. Working with an existing human rights organization also entails the management and coordination of a further set of organizational relationships. If this path is pursued, it is vital to be clear from the beginning regarding the extent of the 'parent' organization's control over your operations, and to what extent you would have to compensate them in any way for the services they provide. Defining the respective roles of each partner are best spelled out in a formal Memorandum of Understanding. This should seek to cover all eventualities, including an exit clause.

Further resources

The International Center for Not-for-Profit Law

# Fundraising at Start-Up

Fundraising is one of the most challenging, but also crucial, aspects at the start-up stage. Before you start fundraising, the initial period requires some trial and error as you determine what works best for your project. This is the hardest fundraising phase you will probably have to undertake in the history of your organization.

It is important to recognize that fundraising — even start-up funding — is not merely about getting funding now. It is also about creating a long-term and sustainable relationship with your funder to provide financial security in the future. Therefore, it is advisable to engage your team in the process of fundraising. While experienced fundraisers or fundraising consultants might yield faster results, you might want to consider engaging dedicated staff, interns or volunteers to focus on representing your organization. It is also critical that leadership staff understand fundraising processes, as funders will most certainly want to hear from them to learn about the work they are supporting.

This section will guide you on how to mobilize the necessary resources to fund the startup of your organization. It will help you (1) determine who you should target and how, (2) identify knowledge gaps that you might remedy through research and (3) draft a fundraising plan. The sub-sections will guide you through the basic fundraising steps of developing your fundraising strategy and identifying funders to approach

Once you have funded the initial launch, more information about sustained fundraising can be found in the <u>Fundraising</u> section of the <u>Operation and Manage</u> section.

# **Developing Your Fundraising Strategy**

Without a proven track record, it can seem hard to secure initial funds. Funders often support a project but not an organization and often not an individual. They prefer activities that directly empower your clients, rather than covering your salary or time to raise even more funds. Yet, you can still raise funds from individuals and seed funders who provide funds specifically for organizations in their initial start-up phase. This section will provide some practical advice on developing your fundraising strategies. After reviewing this section, you may proceed to Identify Funders to Approach.

As you fundraise, consider your **strengths** and **weaknesses**, such as what resources you have, and what crucial ones you lack. Resources are more than just a person's time. They can include your personal network, access to advice from other fundraising professionals, options for securing in-kind support, referrals from similar organizations and advocates in other locations who might engage prospective funders. Equally important is the **fundraising market** you are working in, which will constrain your eligibility for funds.

As an emerging refugee rights organization, you will face fundraising challenges unique to fledgling organizations. The table below will give you an idea of how certain start-up characteristics might influence your fundraising efforts:

Start-Up Characteristics	What does this mean for my fundraising?
New organization with no track record to demonstrate the effectiveness of your approach.	Focus on funders that provide 'seed funding', which supports organizations in their early days. Sometimes, this funding may be based on support for individual change makers or the founder.

Work solely in refugee rights empowerment, with no direct humanitarian aid services.

Work in one specific country, with limited access to key fundraising markets or long-established cultures of philanthropy. As a new nonprofit, it is advisable to seek out funders with a clear common interest first. These are primarily human rights funders, women's rights funders and funders who work with a subgroup of refugees (e.g. women's rights or refugee human rights of torture). As you develop fundraising expertise, you will be more comfortable engaging a development aid funder for example.

If soliciting donations is tough, consider seeking out resources through in-kind contributions instead. For example, Country Director of Asylum Access Ecuador 's first task was to secure donated office space. Other plausible ways of raising resources are: working with volunteers, interns or universities to provide services; organizing fundraisers through donated goods or support from individual donors in other countries who have a reason to support your cause. For example, a former refugee now living in the US might support operations in your country. With individual donors, you will have higher chances of success if someone you know makes an introduction. Think about your connections and how you might creatively enlist their support.

Fundraising also forces you to review the cost-effectiveness of your model. Funders often want to hear how you plan on sustaining your work beyond their support. Develop clear and focused answers to forward-looking questions such as:

- What is your three-year plan?
- Do you have a clear model or strategy to achieve this?
- Fundraising is not merely about securing money, but the resources to do your work. Hence, also consider questions such as:
- What are your options?
- Might you offer to teach a law course that includes a semester of part-time volunteer legal advocate work?
- Would a law firm be interested in contributing pro bono services?

The Asylum Access model relies heavily on volunteers. Its volunteers are foreign and local law students and lawyers who work at least six months full-time in its overseas offices, helping Asylum Access leverage every dollar raised into USD 40 worth of legal services. Depending on your circumstances, you may or may not want to apply this approach. With founder Emily Arnold-Fernandez based in San Francisco, she had access to US law schools with a tradition of providing a handful of fellowships to their brightest graduates to engage in public interest work.

You may also find a case study of Emily Arnold-Fernandez, the founder of Asylum Access, below. It details her personal experiences of fundraising Asylum Access during Start-up, including the challenges she faced, and how she overcame it.

#### Downloadable material

Case Study: Asylum Access's process of fundraising during start-up

#### Identifying Funders to Approach

After you have developed your fundraising strategy, this section is designed to help you identify which funders to approach. It outlines the types of funders, the common ways to identify donors and a list of suggested resources and funders to help you get started. A Funder Evaluation Worksheet is also available for download to help you determine whether you are a good fit with the funder. Note that this section focuses on institutional funders and not individual donors or securing in-kind support, although many best practices in foundation cultivation can also be applied to individual donors.

As refugee rights empowerment is an emerging field, very few funders have identified this as a priority area. Given that the primary approach to refugee assistance is still humanitarian aid (handouts of food, medical aid and tents), you will need to broaden your target donors and work hard to explain why your work is relevant. This may include human rights funders, women's rights funders, those seeking "a long-term solution to refugees" and others working with marginalized populations. Also consider engaging funders working with survivors of torture, LGBTI funders and those seeking to advance democratic inclusiveness and civil society growth.

#### Types of funders

- Government funders or funds available through foreign embassies
- Private foundations (family and institutional)
- Corporate funders

Individual donors

From experience, Asylum Access has had success raising funds through law firms, but found it challenging to engage private businesses that usually prefer 'safe' causes like poverty alleviation to potentially controversial causes

#### Common ways to identify donors

- Find out who funds similar organizations. This helps you to focus on funders who have a track record of common interests. This information can often be found on official websites, <u>Annual Reports</u> or 990 tax forms (for US foundations).
- Sign up for mailing lists with updates of upcoming call for grants (see below for list).
- Let your network of friends and colleagues know that you are looking for funds, so they can share opportunities with you.
- Research online funder platforms to learn about funders and the fundraising landscape (see below for list).
- Ask for help, but only after you have done your own research. Request for conversations with fundraising professionals working in the same field. People are often willing to give advice.
- If you have already established a sound relationship with a funder, ask them if they would be able to recommend other funders.

Funder Type	Example Organizations
Refugee Assistance	IKEA Foundation
	Norwegian Refugee Council
Human Rights: As a new nonprofit, your best bet is seeking funding for Global Human Rights	Sigrid Rausing Trust
	The Adessium Foundation
	Jacob and Hilda Blaustein Foundation
	The Moriah Fund
	The Norwegian Human Rights Fund

#### Funders that may guide your research

The African Women's Development Fund Foundation for a Just Society Global Fund for Women WomanKind
UN Voluntary Fund for Victims of Torture
Hivos ICCO International
Foundation for a Civil Society
Open Society Foundation
Australia
Denmark
Finland Germany
United States of America

You may also consider using the Funder Evaluation Worksheet, which is designed to help you determine whether you are a good fit with the funder.

Funder Evaluation Worksheet

#### Further resources

fundsforngos.org (Resources and a mailing list for upcoming call for proposals) Chapel and York (Resources and mailing list for upcoming call for proposals) Network for Good (A range of fundraising resources) Guidestar (Database of nonprofits and foundations) Peace and Collaborative Development Network (Philanthropy U)

International Human Rights Funders Group (Resources for grant-seekers)

<u>CIVICUS Resource for Grant-seekers: Writing a Funding Proposal (Page 5 provides an overview of the strengths and weaknesses of each of these types of funders)</u>

# Staffing

In the early stages of creating a refugee rights organization, you may be working alone to refine the details and to set a road map. As you get closer to opening your office

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doors for services, however, you may require more staff to grow your organization. It is therefore important to consider hiring and developing a leadership team of qualified and driven individuals who can take your organization to success together. Ultimately, assembling a launch team (through hiring and partnerships) is central to the sustainability of the organization. In this section, you will be familiarized with the key considerations involved in the recruitment of your staff members.

## Key characteristics when hiring leadership

1. Seek characteristics that complement your own

Before you begin the hiring process, ensure that you have a clear understanding of the characteristics that you are looking for. It is tempting to simply hire someone to provide support and complete everyday tasks. However, it is more beneficial in the long run to seek colleagues who will provide leadership in your absence. This means looking for skills that complement yours and add to the organization's strengths rather than merely replicating them.

For refugee rights organizations, this is particularly important. There is a temptation for a refugee legal aid organization to staff its team entirely with lawyers. However, lawyers do not necessarily know how to manage a fundraising campaign, or have the psychosocial background to provide support to refugee clients with Post-Traumatic Stress Disorder. Hiring multi-talented people is important, and knowing the talents you are seeking in advance is even more critical. A competencies matrix is a simple and useful tool to guide you in keeping your team's strengths in check.

The following questions may help you develop an understanding of the characteristics you are looking for based on your own strengths:

- What do I enjoy doing?
- What am I really good at doing? What am I not good at doing?
- If I could only focus on a few functions, what would they be?
- If I am at my worst, what kind of people do I need around me?
- What are my priorities? What are the priorities of the organization?

#### 2. Create positions from needs

In addition to making a list of characteristics of the person that you would like to hire; you should clarify what role this person will fill. This may involve assessing specific needs and gaps in the organization and prioritizing those. The following are some

typical needs that an organization may have, and the corresponding role or position that might be developed to fill that need.

Specific Needs of Organization	Corresponding Role or Position to Fill Organization's Need
Need to grow existing services to serve more people.	Hire someone with experience in a growing organization, good operational skills and ability to create tools to facilitate growth.
Need to improve existing services to serve existing clients better.	Hire someone who has plenty of client serving experience, can point quickly to factors that ensure good client services and have the knowledge to keep up those variables (i.e. staff training, team environment, work-life balance, etc.).
Want to diversify the types of services offered to meet additional refugee needs.	You may need to look outside the 'usual suspects.' Diversifying services is about exploring new ways in which you can impact the clients' lives. It's best to start by consulting your client base as you think of staffers that would be good at diversifying your services.
Need to focus on structure/legal change before serving individual clients.	In this case, you may be looking for a different staff profile: someone who can speak authoritatively on the matter, and who has connections or is good at building relationships with key stakeholders.
Need to manage internal organization and external partnerships better.	Hire a mid-level administrator rather than leadership staff. Do not underestimate what a very good organized office manager can achieve!
Want to market yourself better so that more refugees know about your organization.	Hire a marketing or communications expert with experience working in resource-limited environments. Creative professionals working with nonprofits tend to be good initial sources for candidates to take this job.

#### 3. Be aware of money and resource limitations

Hiring can be costly. Before starting to become the source of someone's livelihood, go through the following checklist to make sure you are ready to hire them formally.

- Identify a realistic salary that is competitive: Take into account the cost of living and additional expenses for foreigners (if at all) – and have the salary commensurate with experience. Note that while referencing the salaries of other non-profit organizations your size is a starting point, it is common that NGO workers are paid notoriously low wages in many countries, causing a lot of talent to leave.
- **Calculate other costs:** With an idea of the salary in mind, enquire about additional costs the organization must cover, such as mandatory social security costs, pension contributions and taxes. Consider these as part of the cost-to-company costs.
- Assess your revenues: Ensure that you will have enough sustainable revenue to cover the salary, and for how long.

Keep in mind that even if you are not in a position to pay prospective employees very highly, it does not mean people would not be interested in applying. Many people are also drawn by the organization's mission, the position, the people and the environment. As long as the salary you offer is competitive, people will apply. Make sure you advertise the position widely, even in places where prospective candidates may already make more money than what you can offer. In other words, if money is the main priority of the potential candidate, you may want to think twice before making an offer to join your team.

If you decide your organization is not ready to hire new leadership staff, there are other short-term options that may help you get through until your organization is ready to hire. For more details, refer to <u>Non-Hiring Options</u> section of the Toolkit.

#### 4. Do not fall for the culture trap

In general, it's best to avoid ideologies that limit the talent pool from which you can draw. The following are some fallacies to reject:

- Hiring foreign staff won't work because they will never understand the local country conditions.
- Hiring local staff is impossible because locals are not open to receiving refugees in their countries.

Painting broad generalizations about foreign staff vs. local staff will limit your talent pool. Therefore, seek leadership teams with diverse backgrounds, where team members are active facilitators across bridges.

#### 5. Do not overestimate years of experience

The job market for leadership positions generally place substantial weight on one's years of experience. While knowledge of the sector and players is important, it is also important to ask the tougher questions to test the candidate's willingness to 'rock the boat' in addressing the root causes of refugee rights violations:

- If refugee rights have not changed in Country X for the many years you have been working in this area, what part has the candidate played in changing this?
- Have the job candidate's methods been unsuccessful? If so, is the candidate ready to admit it?
- Has the candidate become cynical about the prospects for change in Country X?
- Does the candidate envision future work with refugees in Country X as "business as usual"?

# Securing Office Space

Choosing your startup location and office space is one of the most important decisions that will influence the success of your organization. This section provides practical advice on how to choose a startup location, and points to consider when securing an office space.

## Selecting your office location

Your decision on where to locate your startup should be determined by the type of service you plan to provide, and where you can maximize your impact. If your RRO is to focus on legal services and community legal empowerment, you may decide to locate a place that enables you to provide the most direct access to your clients. In this case, consider a location that is safe and accessible to refugees:

- **Proximity to clients:** People are unlikely to travel far from their homes, particularly if they have few resources, so you should map where refugees live in your city or town and search for a property accordingly. In urban areas where refugees are scattered across the city, finding a place that is accessible by public transportation is preferable.
- **Safety:** Many zones housing marginalized populations tend to be less safe than the more affluent areas of a city or town. The need to be accessible to refugee populations should be balanced with the safety record of the area, keeping in

mind that employees and volunteers – particularly in the start-up stages – may need to bring their own laptops to and from work if the office cannot provide computers.

- Visibility: If operating in an environment where refugees are likely to be detained or questioned by the police, also consider a place that is not so visible but again balance this with all other factors, including the need to ensure the security and safety of staff.
- **Growth:** Consider the likelihood that your staffing will increase in the next year or two and plan for an office space that can accommodate that. It will be difficult, expensive and likely cause confusion to clients if you have to move shortly after setting up.
- **Proximity to policymakers:** Alternatively, if your RRO was to focus on policy advocacy in its initial strategy, consider locating near the policymakers where your lobbying activities can take place. Similarly, if strategic litigation was your main focus, consider locating your office near the courts for easy access.

## Planning your office space

The process of finding and securing office space raises a variety of concerns that should be taken into account. There are certain risks associated with setting up your office space, and there are steps that you can take to mitigate risks – from insurance to circumspect planning. Indeed, your organization may be obliged to take out insurance to occupy office space, or even to function at all.

Privacy and confidentiality are key values in delivering legal services to refugees. It is important to have enough space to be able to interview and work with refugees in separate rooms. This facilitates them to speak freely without the fear of being overheard, including by other clients. You should have the capacity to store physical filing systems securely, and the office space should itself be highly secured against break-ins given the sensitive information it will contain.

Since funds may be scarce in the early days of your organization, an interim solution may be to hire rooms on the premises of another NGO or law firm, though it should be stressed that this is not an ideal situation for reasons of privacy and confidentiality above all.

Over-securitization, however, goes against the ethos that refugees and their service providers are equals. Think twice about stationing guards at the door of your premises, or demanding ID before permitting entry — this does not contribute to a welcoming environment, and may be reminiscent of other institutions that refugees know not to be friendly. Asylum Access offices work on an intercom system, by which refugees announce themselves and are buzzed in. Some have commented that little differences

such as these contribute to an atmosphere of respect, putting those who have come to tell difficult stories more at ease.

# Advertising Your Services

Once you are fully established as an organization, and have secured office space, you will want to notify the local refugee population that your services are now available. This section will outline the key information you can include in your advertising materials, and provide advice on how to distribute advertising materials effectively.

### Important information to include

As a refugee right advocate, you must not assume that refugees will instantly see the value of your organization's work, especially at the initial stages. This is particularly so where legal aid is not common, and rights-based organizations few. Refugees may assume that any organization claiming to help them will deliver material aid, and in the absence of this, they may assume legal services are irrelevant.

Therefore, clear communications are key in whichever format you choose to publicize your services. You may wish to:

- **Convey the benefits of legal advice**, which may include potential access to regularized migratory status; and the contingent rights to work, healthcare, education.
- **Convey that legal advice will be free**. Many may assume that lawyers' services will be expensive and out of their reach.
- **Clarify what the organization cannot do**, such as that it cannot grant refugee status or give humanitarian aid.
- Convey that the organization is not affiliated to UNHCR or the government. Where UNHCR provides RSD, any assistance with RSD will often be mistaken as a UNHCR service. Therefore, it is very important to stress that you are an independent NGO in all advertising materials.

In addition, be aware of the content and reach of advertisement when operating in non-Convention states or states where refugees have no legal status, so as to not attract unwanted attention from the authorities.

## Methods of distribution

Simple messaging is necessary to make sure you appeal to the relevant population. For example, posters and flyers could ask 'Did you have to leave your country for fear of violence?' Depending on the context you are working in, refugees may share one

common language, or may originate from many different communities. Consider translating your materials.

Many marginalized groups have received sub-standard education and are illiterate. Refugees may be literate in their own language but have limited understanding in the language of their country of refuge. All messaging should use clear and simple language, free of jargon and legal terms. Adverts on the radio may reach illiterate populations, but recording costs and the price of airtime are generally high, though probono arrangements could be proposed.

If opting for flyers and posters, consider where these will be most visible to your target population. Buses may carry adverts, as well as tuk-tuks or other forms of public transportation. Other organizations serving refugees – whether government institutions, UN agencies or other NGOs – should be contacted to display information about your new services. Flyers could be handed out door to door in refugee-hosting neighborhoods. For an example, you may refer to an <u>online advertisement</u> designed by Justice Center, a legal aid NGO for forced migrants in Hong Kong.

You will likely notice a snowball effect. Once you have served clients, some advertising will take place by word of mouth. The first few service users will tell their friends if they have a positive experience, and your client base will grow organically. For more information on how to raise awareness and provide information about your legal services to your target population in the community, you may refer to the <u>Community</u> <u>Outreach</u> section under the <u>Community Legal Empowerment</u> section of the Toolkit.

# Establishing Relationships with Stakeholders

Entering the local landscape of refugee rights advocates, actors and decision makers is a difficult step to navigate – but also essential to the success of your initiatives. As the first stages of setting up an organization are often busy and uncertain, allies and advisors are invaluable. Your allies and advisors can come in various forms, which may include the government, UNHCR and other NGOs (including both humanitarian and human rights organizations).

Your allies are useful in providing insight on the political context, the operational realities and the dynamics of the refugee population of your country. They can also be your potential partners. For example, they can be your source of initial clients, or be a part of your organization's client referral network.

Establishing yourself as a refugee rights organization within the local landscape can be challenging. As a new organization with a rights-based approach, seeking to empower

refugees and break cycles of dependency may lead to resistance in some sectors. Governments might be reluctant to collaborate if your advocacy work is targeted against them. NGOs and/or UNHCR might perceive a refugee rights organization as a duplication of services, or as competition for funding.

To establish effective relationships with your allies and partners, this section will first guide you to conduct an ecosystem analysis. This will allow you to break down the relevant actors and the dynamics involved — assisting you to strategize which stakeholders to approach. This section also highlights some relevant considerations for effective relationship building with refugee response actors, with a particular focus on the government, UNHCR, NGOs and Other Partners.

# **Conducting an Ecosystem Analysis**

Before you start building relationships with your stakeholders, it is advisable to conduct an **ecosystem analysis**. This enables you to:

- Identify the breakdown of the relevant actors, the relationships between these actors and the dynamics involved.
- Identify the parts and relationships in the systems that are expected to change, and how it will change.
- Prioritize and make decisions on who you should establish relationships with, and for what purposes.

An ecosystem analysis has two main components, the (1) environmental conditions, and (2) key stakeholders within the ecosystem of refugee protection in your country. The following section will explain these two components in detail, and provide questions to guide you to conduct your own ecosystem analysis. There is also a downloadable template at the end of the section to help you conceptualize an ecosystem analysis in a visual manner. Note that when you are conducting your ecosystem analysis, the legal analysis and field analysis that you have previously conducted may already have useful information that you can refer to.

#### 1. Environmental Conditions

Environmental conditions refer to the external factors that are beyond the organization's control, but nevertheless influence the outcome of your work. Acknowledging these conditions can assist you in the planning process to identify potential partners and collaborators, to identify what other needs must be met in order to address the relevant issue, and to predict which parts of the issue your organization can realistically influence.

Some examples of environmental conditions that can affect the ecosystem for refugee rights could include:

Politics and administrative structures:

- What are the legal and administrative structures to guarantee refugee rights?
- To what extent are refugee rights given priority in relation to other social issues faced in the country?
- How much influence does the organized civil society have?

Economics and markets:

- What is the level of unemployment and informal employment?
- How does this affect local attitude towards incoming migration might flows?
- Where are international funds channeled towards during humanitarian crisis?
- How do refugees respond to large-scale humanitarian crisis, e.g. would they rely on self-employment in the informal sector?

Geography and infrastructure:

• Where are the justice sectors located, and how accessible are they to the most marginalized and poor?

Culture and social fabric:

- What are the local perceptions of refugees?
- How far are they regarded as people with rights, or as people with the potential to contribute to their country of refuge?

#### 2. Key Stakeholders and potential role of RRO

In addition to understanding the environmental conditions that influence refugee rights, you should also identify the key stakeholders involved. Key stakeholders are actors that can influence or be influenced by your RRO's actions. In the suggested template above, the key stakeholders within a refugee assistance and protection space are categorized as resource providers, complementary organizations, bystanders, competitors and opponent actors. Depending on your context and aims, you may add and modify these categories to better organize your analysis.

After you identify the relevant stakeholders, the following questions can guide you to better understand the relationships and dynamics between each of these actors.

- What is their mission and interest?
- Which refugee population(s) do they influence? How, and with what resources?

• Who are their main partners and collaborators?

It is also helpful to identify how you may situate your RRO within the ecosystem. Some guiding questions might include:

- Which actors' approach might be complementary to promoting refugee rights? Is there space for collaboration with your RRO?
- Which actors' approach might be counter to promoting refugee rights? If resistant, how can these obstacles be mitigated?
- What are the gaps in the existing ecosystem that your RRO can fill?
- What are the obstacles to refugee rights in the existing ecosystem that your RRO can address?

Some guiding questions specific to a key stakeholder may also include:

#### Refugees

- What degree of protection do refugees have?
- What is their relative access to justice and administrative mechanisms that they have to wield their rights?
- What rights do refugees have when their cases are pending?
- How does this compare to recognized refugees?
- Are those without access to registration overlooked in the country's protection system?
- How can refugees play a bigger role within the ecosystem to obtain their rights?

NB. Different populations of refugees face different degrees of vulnerabilities. You may find it helpful to break down the refugee population into meaningful categories, such as based on age, gender, ethnicities, etc.

#### Resources Providers

- Who are the main resource providers?
- What resources do they provide?
- Who do they fund?
- Are financial resources centralized in UNHCR-mediated grants and foundational funding?

#### Complementary Organizations

- Which organizations can provide parallel support to your RRO's work?
- Are there any organizations that can be in RRO's referral system to provide tactical political support, or credibility to a rights-based approach, etc.?

NB. This might include UNHCR, local human rights organizations and organizations supplying immediate needs to refugee legal clients.

#### **Refugee Rights Toolkit**

#### Bystanders

- Which actors might be able to play a bigger role if a rights-based approach is adopted?
- Are traditional development actors who have a potential to assist refugee populations (e.g. poverty alleviation, microfinance organizations, job training programs) currently isolated?
- What are the ways to better engage these actors?

#### Competitors

- Which organizations might perceive a competing perspective to RROs in attracting attention, funding and resources?
- How can this be addressed? Can a friendly competition be established, e.g. to build on clarification that there is a place for both humanitarian and rights-based approaches among refugee-serving organizations?
- Can education and outreach conducted to involve more sustainable solutions?

#### Opponent Actors

- Are there actors that set obstacles to refugees' enjoyment of their rights?
- Is there a restrictive legislation? What are the possible ways to challenge this, e.g. feasibility of litigation?
- Is there a restrictive or wrongful application of existing laws? What are the possible ways to challenge this, e.g. through administrative mechanisms?
- Is there an ignorance of rights? What are the possible ways to challenge this, e.g. through education?
- Is there corruption and exploitation? What are the possible ways to challenge this, e.g. through legal empowerment education?
- Are there opportunities for your RRO to address these obstacles?

A template can be found below, which you may adapt according to the context that you are working in.

Template for conducting an ecosystem analysis

Based on these findings, you may develop your strategic plan. This involves key questions such as:

- What do you seek to change in the current ecosystem?
- What are the obstacles to refugee rights that a RRO can address?
- What are the gaps that a RRO can fill?
- How will your strategies influence the ecosystem?
- How can this change be measured?

For more information on how to develop your organization's strategy and goals, you may refer to the <u>Results-based Management</u> in the <u>Operate and Manage</u> section of the Toolkit.

Given the dynamics involved between stakeholders, you will notice that there are specific challenges to establishing a refugee rights organization. As a new organization with a rights-based approach, seeking to empower refugees and break cycles of dependency may lead to resistance in some sectors. After developing your ecosystem analysis and strategic plan, you should have a clearer idea for which stakeholders your RRO will prioritize in establishing relationships with, and with what strategies. The subsequent sections will highlight some practical advice in establishing effective relationships with the government, UNHCR and other NGOs.

# Establishing a Relationship with the Government

When researching and planning your launch, it is usually advisable to talk to the government. To have government allies on board with your plans and intentions from the very beginning could be invaluable. It is more likely that your organization will be listened to and trusted. This may also reduce obstacles encountered down the line – such as when processing bureaucratic registration requirements, when negotiating the resolution of individual cases, or when later lobbying for policy change. In addition, your organization may be invited to working groups and other governmental spaces where there is potential to influence.

Therefore, this section will provide some practical advice on how to strategically position and frame your organization's work in a way that fosters a trusting and effective working relationship with the government. Keep in mind, however, that there might be times where it is wise to *not* introduce yourself to the government, especially with hostile governments. In this case, you might choose to work under the radar. Before you are registered, your interaction with government officials essentially constitutes your **first 'advocacy strategy'**: you are advocating for the ability to get registered in a way that does not compromise what you are trying to achieve. You do not want to agree to register in such a way that you are forced to give up core issues. Therefore, you must attempt to frame your work in a manner that will be effective in relationships with authorities.

It is important to identify the actors and decision makers within the government that will influence your work and then target these stakeholders to build a relationship. Remember that 'the government' is not one actor: different branches of the government may contradict each other and have different attitudes towards your organization and its goals. Therefore, it is important to **identify friendly official government actors** and **individuals** who might also be potential allies.

Consider the composition of your board. Your board can be a great resource to help build relationships in the community. Having contacts and networks may even be an explicit requirement when selecting new board members.

Governments are more likely to be responsive and open if they perceive your organization as **serving their interests**. When establishing a relationship with the government for the first time or re-orienting an existing relationship, keep your audience in mind and remember that you may need to be judicious about describing your plans. Being judicious is particularly important before your organization's registration has been secured. For example, if you know that the government is going to be sensitive to a new organization promoting refugee rights – and if it is likely that your organization is going to challenge state violations of refugee rights – then you need to be strategic in how you present yourself to the government during your presentation.

Specifically, compare these two statements:

- "We are going to help people understand your processes, so as not to waste your time"
- "We are going to seek redress for refugees in the courts."

The first sentence, stating how you are going to benefit the government, is much less combative than the second statement, which outlines that you will be challenging them. In all of your communications, but especially when you are building your image at first, be careful and think about the message that you are communicating to your audience.

In addition, always remember to **learn** and **respect local customs** when interacting with government actors, particularly if you are an outsider who may be viewed with suspicion or disinterest. For example, in some countries, you might not demand or strongly request government officials to do something even if it is a part of their job. Flattery and use of personal relationships could be a more effective way to get things done by the government, rather than reminding them of their responsibilities and lodging an official complaint if they do not act.

For more information on identifying beneficial government actors and tips for building a relationship diagram, refer to <u>Advocacy with Governments</u> section within the Policy Advocacy section.

# Establishing a Relationship with UNHCR

Establishing a relationship with your local UNHCR office is an important aspect of entering the local refugee rights landscape. Although this relationship may be tricky, it is very important that you continuously work on developing and maintaining strong relationships. This allows you to maintain access, and to utilize the opportunity to engage UNHCR as an advocacy partner. This section is designed to help you navigate strategies to reach out to, and foster relationships with (1) UNHCR and (2) UNHCR's implementing partners.

## Understanding UNHCR's work in your country

To begin, it is advisable to familiarize yourself with UNHCR's operations, including its size, projects and priorities in your country. This knowledge will help you approach relationship building. By understanding UNHCR's needs and challenges, it could help you better position and frame your organization in a manner that can fill UNHCR's gap, or be complementary to its work.

Depending on whether it is the government or UNHCR that conducts refugee status determination (RSD) in your country, your relationship with UNHCR is likely to vary greatly. If the former, the Agency's policy advocacy goals may be similar to yours and is generally collaborative with refugee advocates. In these instances, direct representation, community legal empowerment services, and even strategic litigation plans welcomed. For example, UNHCR recently submitted its own amicus curiae brief to the Kenyan Supreme Court in support of a human rights NGO's impact litigation case on the potential *refoulement* of Somalis refugees.

Once you have done your research, reaching out to the UNHCR Country Representative and/or Protection Officer to explain your mission is a logical first step. Sometimes, building relationships with lower level staff (and staff from other departments other than RSD) can also be helpful to get insight on certain processes in UNHCR.

## Practical advice on assisting UNHCR's RSD process

It is generally accepted that UNHCR allows representation of clients: the right to legal counsel is provided for in UNHCR's Procedural Standards under paragraph 4.3.3. Where UNHCR offices are prepared to conduct RSD for refugees with legal representatives, they may wish to work under a Memorandum of Understanding (MOU) between the legal aid organization and the Agency. The MOU is an agreement that typically outlines the established ways of working between two or more partners. If relations are likely to be more productive with an MOU, a sample document employed by Asylum Access Thailand (AAT) can be used for guidance.

MOU between UNHCR Thailand and Asylum Access Thailand

You may also wish to draw attention to the UNHCR-endorsed <u>Nairobi Code</u>. This governs the activities of subscribing legal aid providers. It is advisable, for the growth of an ethical legal aid movement, for the Nairobi Code to be mainstreamed as a regulatory

set of ethical standards among refugee rights organizations, and its use should therefore be suggested before drawing up an MOU.

Yet, although the UNHCR Procedural Standards or the Nairobi Code allow for the representation of clients, this does not always happen in practice. Some UNHCR offices may be reluctant to allow you to be present in interviews, or take issue with some aspect of legal representation. Further details on how the right to counsel has been denied in some countries is documented by RSD Watch.

Your relationship with UNHCR can be tricky as it might not be immediately apparent what the benefits of legal aid are to the UNHCR process. In countries where access to UNHCR or to the governments is limited, you may need to be creative in your strategies. This could include:

- Working as a professional interpreter in UNHCR/the government's RSD interviews, especially when UNHCR/the government is reluctant to permit an external party to be present during the RSD interviews. In countries where professional interpreters are rare, you can be an invaluable asset to UNHCR/the government. However, while you will learn more about the RSD interviews, you will not be able to openly publish your observations. Nevertheless, this information can allow you to better assist clients in preparing for interviews, and in developing an interview guide for your clients.
- Seek permission to observe RSD interviews. In this case, it is advisable to frame your working relationship as collaborative. Rather than to claim that you are monitoring the work of UNHCR/the government, you may highlight that observing interviews would help you gain a better understanding of the interview process in order to improve your organization's ability to prepare clients for the interviews.
- **Negotiate incremental access** (e.g. submission of documents, representation of most marginalized cases) until trust is built and they are confident of your organizations competence to participate in the process.

The downloadable document below outlines the benefits of legal aid during the RSD Process to the UNHCR Eligibility Officer (EO), to the RSD system, and to the refugee. These are important points that you may refer to when establishing your relationship with UNHCR.

Benefits of Legal Aid during RSD Procedures

### **Implementing Partners**

UNHCR offices are frequently divided into 'program' and 'protection' departments. The program department often involves service delivery to refugees through other organizations known as implementing partners (IPs).

UNHCR's Implementing partners – usually NGOs – may also be invaluable contacts, particularly in the start-up stage when referrals should be encouraged. Establishing relationships with UNHCR's IPs may lead to further insight into the state of refugee rights in your context. Services IPs tend to offer assistance in education and healthcare. If your organization plans to look beyond access to asylum and wish to address refugees' human rights, these may be useful contacts.

While more than 75% of IPs are local partners, some international IPs include:

- International Rescue Committee
- CARE International Belgium
- Oxfam
- MSF Belgium
- MSF France
- Lutheran World Federation
- Adventist Development and Relief Agency
- CARE Canada
- Norwegian Refugee Council
- Save the Children Federation UK
- Danish Refugee Council
- CONCERN Ireland

For more details on establishing relationships with NGOs, you may refer to the Establishing relationships with NGOs and Other Partners section.

#### Further resources

Memorandum of Understanding template (Tools4dev)

# Establishing Relationships with NGOs and Other Partners

This section outlines why it is important to establish relationships with NGOs, and how they can provide useful support during the start-up stage. It will also acknowledge the challenges of launching a refugee rights organization in the existing landscape, and provide advice on how to overcome these issues. Note that although this section focuses on establishing relationships with NGOs, you should also consider other partners such as university clinics, law firms, and the media to leverage your work. Differences in approach should also be anticipated when creating and building relationships with other NGOs assisting refugees in your area.

# Potential benefits of establishing relationships with NGOs and other partners

There are many benefits of establishing relationships and/or working with other partners, especially during the start-up stage. Some reasons are listed below.

- Your supporters and sister organizations can be your source to gain **access to your initial clients**. These relationships are particularly useful if you do not invest in publicity to communicate your new services.
- It enables your organization to **develop a strong referral network** can enable you to prevent the duplication of services. This can provide a support network to which you can refer clients with needs, particularly material, that you are unable to meet.
- Building friendly relationships with colleagues at other organizations may **avoid** some of the **potential issues** that come with **increased participation** (sometimes interpreted as competition for funding and influence) in the refugee protection space.
- Human rights organizations not directly working with refugees, but whose work may also affect refugee interests, may benefit from relations with your organization. This can **broaden** their **awareness** of how human rights apply to forced migrants.

## Overcoming potential differences with other NGOs

Given a rights-based approach may not always be the most mainstream, establishing relationships with other NGOs who are service providers can be challenging. Whilst good intentions may be shared, humanitarian aid providers conceive of refugees as beneficiaries (rather than as rights holders). Providing refugees with healthcare is very different to asserting refugees' right to health. Given the fundamental differences in approach, attitudes may be incompatible for close partnership. In such cases, close collaboration such as office sharing with such organizations is not advisable as it could lead to conflict that arise from practices which occur on a day-to-day basis.

Given the fundamental difference between a humanitarian and rights-based approach, Asylum Access has always started its own offices rather than launching as part of an existing organization. Coming to relationships with other serviceproviders as a **peer organization** is a recommended approach. Coalitions can be formed with those supportive of your launch irrespective of organizational cultures. Relationships with agencies, NGOs and government departments can be nurtured in the interests of future referrals between your respective organizations. It is important to establish from the outset a referral list to direct your clients on to further assistance.

Yet, evangelizing about your organization's philosophy is not advisable. Each organization has its own mission and vision, and you are unlikely to be able to influence another's. Nor would this lay the groundwork for collaboration on practical matters.

Regardless of any fundamental differences in attitudes, listen carefully and try to understand what other organizations see as issues of concerns. Seek to learn from others' experiences. However, also be mindful that NGO reports of refugees' needs may differ from the needs expressed by refugees themselves.

In addition, you may seek to develop a relationship with other service providers by organizing trainings on refugee law and RSD. This can help them understand what you do, and how you fit into their work and the protection space generally.

If you choose to partner with an existing organization at the launch stage, for example for registration reasons, ensure that you have a Memorandum of Understanding (MOU) that clearly allows full control of your operational decision making, and does not require the physical sharing of office space. Partnering with organizations in a programmatic sense is different and such collaborations require great care and attention.

# Transitioning from Launch to Operations

Once funding, staff and office space are secured, it is a good idea to write a checklist of what needs to be in place before opening your doors to your first refugee clients. To draft your checklist, you may choose to adopt a template similar to the downloadable material at the end of the section. It suggests a way to plan out your activities according to your need, desired outcome, activities, date of completion and person in charge. This template also includes examples to illustrate how it can be filled in.

Whilst such a list may help you manage priorities, goals and deadlines, do not get hung up on making sure that everything is perfect before opening their doors. As there are many unpredictable factors, it is often the case that adjustment will have to be made once clients start walking in.

However, before you receive your first client, ensure the most important steps are completed. This might include:

- Having client attention protocols in place
- Having client intake documents drafted
- Establishing systems to track cases and to meet court deadlines
- <u>Nairobi Code</u> training completed with all staff and volunteers
- All legal registration requirements completed

It is also advisable to consider adopting a "pilot period" to test protocols, screening mechanisms and case management systems. This provides more freedom for your organization to experiment and adjust during the start-up process.

#### Further resources

Template to plan tasks before launch



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tify that the Asylum Access Thailand Project, under the legal u velopment Foundation, is acting as my legal representative fo for refugee status with the United Nations High Commissione

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# **Operate and Manage**

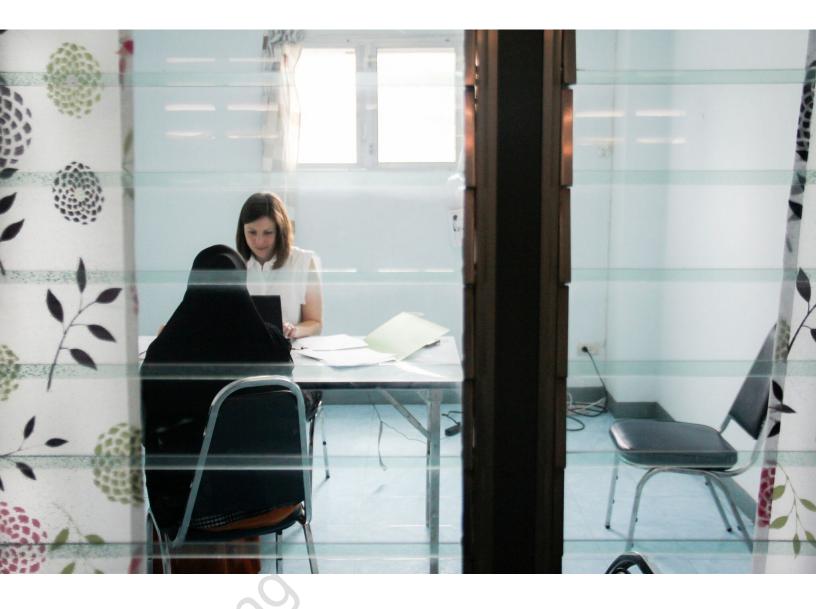
Once your initiative is past the start-up stage, further organizational considerations must be addressed. Fundraising and communications will take on new dimensions different to the initial months; staffing may likely expand bringing new human resources challenges; and sound financial management will be necessary.

Strategic planning, with thought given to monitoring and evaluation of your work from the outset, will be key to success in all areas.

This section aims to give an overview of the essentials of running an organization, at any level or size. iking

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# **Results-Based Management**

Results-Based Management is a broad management strategy aimed at helping you manage your program and team with your commonly understood goals in mind. This usually requires a cycle of planning, implementing, monitoring and evaluating, and learning with no starting point and no ending point.

## Why is results-based management helpful?

If you don't know where you are headed, how will you know you've arrived? How will you know you are off the path? Results-based management practices help you avoid being lost by promoting focus on and clarity of organizational priorities.



During the **planning stage**, organizations determine the objectives for their programs and identify the impact they want their program beneficiaries to experience. During the **implementation stage**, organizations carry out programs and services that align with the strategic plan and help the organization to accomplish its objectives and mission. In the midst of the execution stage, organizations have to **monitor progress** toward objectives and goals, compliance with donor agreements, and adherence to the needs of beneficiaries all within budget constraints. At some agreed upon point, programs need to be **evaluated for impact**. Lessons learned through monitoring and evaluations are integrated into the next planning stage in order to build stronger and better programs. This section of the Toolkit will specifically discuss planning and monitoring and evaluation primarily from a holistic perspective. For information on program implementation, visit the <u>Advocate</u> section.

While this information is helpful for framing your thinking, organizational leaders need to understand how this theory applies to each of their programs individually as well.

#### Further resources

Results-Based Programming, Management and Monitoring Principles (UNESCO, 2008)

Here's what you'll learn in this Results-Based Management section:

Strategic Planning	63
Best practices in strategic planning	
How to strategically plan	
Monitor and Evaluate Impact	
The program cycle	
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# **Strategic Planning**

A strategic plan is a documented roadmap for how you'll accomplish your mission and vision.

## Best practices in strategic planning

Various organizations will encourage many different approaches to strategic planning. Regardless of the approach these are many agreed-upon best practices in strategic planning.

- For new organizations, strategic plans are created and updated usually **once per year**. Over time, organizations often switch to once every three to five years.
- Strategic plans typically require organizations to **specify what they are trying to achieve**. Most organizations will use some combination of the terms, goals, objectives, impact, outcomes, and outputs to describe what they are trying to achieve.
- Strategic planning should have **carefully designed participation**. Top-down approaches to strategic planning can lead to rigidity and an inability to respond to the changing environment, as well as low buy-in from stakeholders.
- Good strategic planning **includes an external and internal assessment** of the organization. This assists an organization in achieving its objectives and understanding if there are obstacles that have to be overcome. A commonly used tool, the SWOT analysis asks organizations to identify its strengths, weaknesses, opportunities and threats.
- There should be clear connections between the staffing, financial plan, and the strategic plans. It is important to consider what human and financial resources are necessary when constructing a strategic plan.

## How to strategically plan

To offer more specificity, the following section offers a more detailed approach for how to plan strategically for mission success. This is the approach used by all Asylum Access offices.

Before beginning, review this overall strategic planning log frame. It is a template that can help you organize your information:

Strategic Planning Template

#### Step 1: Conduct a SWOT analysis

Begin by brainstorming with your team (or conducting on your own if you are a team of 1!) your organizational Strengths, Weaknesses, Opportunities and Threats (SWOT). This exercise is commonly known as a SWOT analysis and typically is takes 1 - 2 hours to complete. Strengths and Weaknesses apply namely to internal analysis, while Opportunities and Threats apply to external analysis. A SWOT can help prepare you to set adequate goals to set for your organization, given the current national situation and organizational capacity.

For example, if being in the public eye is a major organizational threat, you may decide to avoid a goal that will require public presence to be successful. Or, if you discover that one of your organizational strengths is your knowledge of local refugee law, this may lend itself constructing goals that capitalize on that knowledge.

A common approach to conducting a SWOT analysis is to use a basic grid such as the one provided below, and to facilitate an open-ended brainstorm with your key stakeholders (this may include you, volunteers, board members, or other major participants in your work.

Basic SWOT Chart

#### Step 2: Construct long-term goals

After conducting your SWOT analysis, you can begin to construct organizational goals. Goals are broad statements that make your mission more concrete. Goals are typically not measurable, and they are usually not attainable in the short-term. Although it is important to revisit your goals annually, goals are not typically adjusted on an annual basis. Though it is what we all strive for, reaching goals usually takes several years.

As a starting point, it is usually wise to not construct more than three goals. This encourages organizational focus and promotes <u>Results-based Management</u>. Goals are not necessarily tied to a single strategy or program. A goal may be best achieved through a combination of programmatic strategies; this is usually the case! When goals are best achieved through a combination of strategies, it is important to explicitly acknowledge it.

You and your staff should understand how their work compliments the work of others toward the end of achieving organizational goals. For example, if you're goal is to help more refugees access work permits it's feasible that all programs could be working toward that goal.

#### Good-to-great goals

Too specific and short-term oriented. This is<br/>closer to what an objective might containTo increase the number of refugees<br/>with successful RSD cases by 50%<br/>by June 2017Not specific enough.To improve refugee rightsGreat!To increase the number of refugees<br/>with successful RSD cases in my<br/>country

#### Other examples of well-constructed goals

- Increase the success rate of African refugee admissibility cases
- · Promote durable solutions for refugees who are survivors of trafficking
- Improve refugees' access to representation during eligibility interviews
- Promote refugees' access to legal work opportunities in urban settings
- Facilitate refugee-led advocacy efforts that decrease the likelihood of detention

#### Step 3: Construct SMART objectives

For each goal you've constructed, it's important to also create one or more SMART objectives.

SMART objectives are measurable and can be used to monitor and evaluate progress toward goals. They should be *the most ambitious result* (intended measurable change) that an organization, along with its partners, can materially affect within a given timeframe and set of resources for which *it is willing to be held responsible*.

Constructing SMART objectives for the first time can be confusing. Make sure you set aside enough time to concentrate on planning.

#### What makes objectives SMART?

SMART is an acronym. This short guide describes what each of the letters represent.

• **Specific:** Objectives need to clearly describe the results expected. Detailed objectives make it easier to accurately and fairly monitor and evaluate progress toward goals. However, it is important to avoid providing too much details that the objective becomes too narrow and/or quickly outdated.

- **Measurable:** The objective should be measurable.
- Achievable: Achievable does not mean setting low expectations. It is helpful to create objectives that set high expectations for yourself and your staff, but that you believe are achievable within a reasonable timeframe.
- **Relevant:** Objectives should be directly linked to the mission and vision of the organization.
- **Time-bound:** Performance objectives should specify a timeframe in which an objective should be accomplished, which helps to make sure work is accomplished in a timely manner.

For more guidance on constructing goals and SMART objectives, review this worksheet: <u>Asylum Access's Goals and Objectives Guidance</u>

#### Step 4: Construct indicators

Constructing indicators can be very straight forward if SMART objectives can be carefully constructed to be measurable. For each SMART objective, construct one or more ways you will verify to yourself and your stakeholders that you are making progress.

#### Step 5: Plan for monitoring and evaluation

Planning for monitoring and evaluation helps to ensure that your efforts to plan strategically are not wasted. Monitoring progress toward goals can happen as often as you feel is helpful. A general guideline is that at least once every three months you should set aside time to review your goals and SMART objectives and reflect on progress.

Recording your progress toward each of your goals can also help when you need to do donor reporting in a timely fashion.

For more information on best practices in monitoring and evaluation consider reviewing <u>Monitoring and Evaluation: Best Practices</u>.

#### Further resources

Intended Impact Statements, Theories of Change, and Logic Models

# **Monitor and Evaluate Impact**

Monitoring and evaluation (M&E) is frequently seen as an activity that donors require. It is, however, far more critical than what this common view suggests. In reality, monitoring and evaluation is an important part of the program management cycle.

### The program cycle

During the **planning stage**, organizations determine the objectives for their programs and identify the impact they want their program beneficiaries to experience. During the **implementation stage**, organizations carry out programs and services that align with the strategic plan and help the organization to accomplish its objectives and mission. In the midst of the execution stage, organizations have to **monitor progress toward objectives and goals**, **compliance with donor agreements**, **and adherence to the needs of beneficiaries all within budget constraints**. At some agreed upon date, programs need to be **evaluated for impact**. Lessons learned through monitoring and evaluation are **integrated into the next planning stage** to build stronger and more effective programs.

This section is based on the understanding of M&E as they relate to the work of Asylum Access. It will also provide you with some guidance on best practices generally in program monitoring and evaluation. You can also look at the <u>Advocate</u> sections to follow Asylum Access's process for the implementation of M&E systems.

#### Consider reviewing:

Monitoring and Evaluation in Legal Aid Monitoring and Evaluation in Community Legal Empowerment Monitoring and Evaluation in Policy Advocacy Monitoring and Evaluation in Strategic Litigation

### Monitoring and Evaluation: Best Practices

Monitoring and Evaluation (M&E) is a critical component of results-based management—or management that commits to the efficient use of resources to achieve agreed-upon strategic goals and objectives. Organizations that employ results-based management (RBM) often rely on a cycle of planning, implementing, monitoring and evaluating. They also learn through a cycle of continuous improvement with no starting point and no ending point.

During the planning stage, organizations determine the objectives for their programs and identify the impact they want their program beneficiaries to experience. During the implementing stage, organizations carry out programs and services that align with the strategic plan and help the organization to accomplish its objectives and mission. In the midst of the executing stage, organizations have to monitor progress toward objectives and goals, comply with donor agreements, and adhere to the needs of beneficiaries. These three responsibilities must occur within the organization's budget constraints. At an agreed upon date, programs need to be evaluated for impact. Lessons learned through M&E are integrated into the next planning stage in order to build stronger, more effective programs.

It is important to remember that programs can be in different stages in this cycle. Due to the realities of our mission, a single program can be engaged with multiple stages at once (e.g. planning and executing).

#### Why M&E is important?

- Monitoring supports the implementation of our tools with accurate evidencebased reporting. During evaluation this type of reporting helps leadership make informed decisions about the direction of your programs.
- M&E contributes to organizational learning and knowledge sharing by providing opportunities to reflect upon and share experiences.
- Monitoring improves accountability to all of your stakeholders by providing the time and tools to demonstrate that our work has been carried out as agreed and in compliance with our established standards (SMART Objective Guidelines and SMART objectives) and donor requirements.
- M&E is an opportunity for stakeholders especially beneficiaries to provide critical feedback and input into the direction of your work. This demonstrates our dedication to experiential learning and adaptation.
- M&E promotes and celebrates your work by highlighting our accomplishments, building morale and contributing to resource mobilization.

#### Difficulties of M&E

#### Time

- Finding the time to plan. One way to mitigate this difficulty is to set aside time from actual program work for your program staff to work on M&E. This is not a two-hour meeting. Leadership needs to prioritize M&E before your organization can reap its benefits.
- Building systems that lead to adequate monitoring can be time consuming. It can be difficult and time consuming to design surveys, databases, train staff, create tables to consolidate and analyze data.
- Taking the time to learn from the information gathered. A grave mistake is taking the time to design surveys but not leaving time for data entry and data analysis. It may be wise to choose a few pieces of information for careful

collection and evaluation. This is ultimately better than implementing a large monitoring plan that you'll never have the capacity to evaluate.

- **Terminology.** Take the time to unite your organization on common terminology (the meaning of goal vs. objective; output vs. impact, etc.). Create definitions and standardize them throughout your organization.
- Making M&E part of the routine. Integrating monitoring and evaluation to form part of daily practice may be difficult at first. Build a creative M&E program with incentives for participation. Below is a guideline to conducting a quarterly learning meeting.

#### Further resources

Guideline to Conducting a Quarterly Learning Meeting (Asylum Access)

## Using a Gender Framework

It is helpful to acknowledge the role of gender in all aspects of refugee rights advocacy. Whether you're interested in implementing a gender framework to your legal aid program or analyzing policies, ensure you understand the needs of women and girls within the refugee community and determine the impact of advocacy and policy on men, women, boys, girls, and those who fall outside traditional gender roles — adults or children — separately. A *gender framework* can assist you in making progress toward *gender equity.* 

This Toolkit will offer you guidance on effectively using a *gender framework* to not only help realize refugee rights, but to have gender equity in the realization of those rights. Consider reviewing each <u>Advocate</u> section individually to learn more about how a gender framework can influence the development and implementation of your programs:

Gender Framework in Legal Aid Gender Framework in Community Legal Empowerment Gender Framework in Policy Advocacy Gender Framework in Strategy Litigation

## **Gender Framework**

Using a gender framework requires that you gain a basic understanding of the differences between sex, gender, gender equity, gender equality, and a few other key terms.

Sex – Refers to a specific combination of gonads, chromosomes, secondary sex characteristics, hormonal balances, and external gender organs. Terms include intersex, male, and female.

Gender – Ascribing qualities of masculinity and femininity to people based upon a socially constructed system. Characteristics can change over time and between cultures.

Gender Identity – One's own internal sense of gender. This can be the same or different from one's gender assigned at birth. Gender identities include woman, man, transman, agender, etc. Due to the internal nature of gender identity, it is not always visible to others.

Gender Expression – How people express their gender identity. This can be through clothing, behavior, posture, mannerisms, activities, speech patterns and more.

Gender Non-conforming – **Someone who does not conform to societal** expectations of gender.

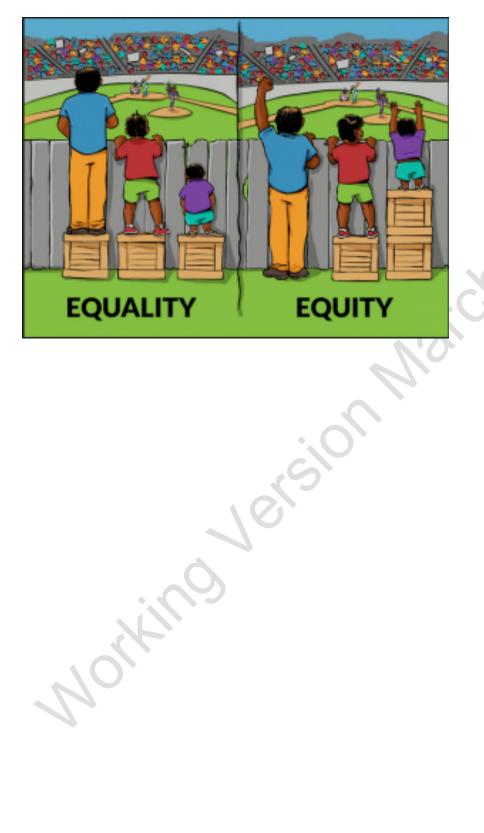
Non-binary – Someone whose gender identity does not fit within the binary of man/woman. Non-binary persons may feel their gender identity falls between a man and a woman, is both fully man and fully woman, is separate from with man and woman, changes between the two, is similar to both but not quite either, does not exist at all or is entirely neutral.

Cisgender – Someone whose gender identity conforms to their assigned biological sex. This is in opposition to someone whose gender identity does not conform to their assigned biological sex or someone who is transgender.

Transgender – When someone's gender identity differs from the social expectations for the physical sex they were born with.

Sexual Orientation – An individual's pattern of attraction to persons of the same sex or gender, opposite sex or gender, or any variety of sex and gender on the spectrum. Examples: heterosexual, bisexual, homosexual, pansexual.

LGBTQ+ – Stands for Lesbian, Gay, Bisexual, Trans, Queer/Questioning, and others. The term refers to persons whose gender identities and sexual orientations differ from the heterosexual and cisgender majority.



Gender equity – The process of being fair to people regardless of their gender. This process often includes measures to compensate for historical and social disadvantages that prevent women and men from otherwise operating on a level playing field.

Gender equality – The equal valuing of women and men, of their similarities and differences, and of the varying roles they play in society. This means that women and men have equal conditions for realizing their full human rights and potential to contribute to national, political, economic, social, and cultural development, as well as to benefit from the results. In practice this has looked like treating men and women the same, but this practice has yet to work because of the systematic devaluing of women. Until systems value women and men equally, providing equal opportunities will not work on its own.

SGBV – Sexual and gender based violence includes sexual violence and a variety of abuses women and girls are exposed to as a result of discrimination against them in male-dominated cultures around the world.

Domestic violence – One partner's use of a pattern of abusive behavior to gain or maintain power or control over another in any relationship. This abuse can be or include physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone are included in the above list.

Intersectionality – A concept to describe the ways marginalizing forces (racism, sexism, homophobia, transphobia, ableism, xenophobia, classism, etc.) are interconnected and cannot be examined separately from one another. Legal scholar Kimberlé Crenshaw (1989) coined the concept and it is now used in critical theory.

# Intersectionality

Intersectionality is how social categories such as race, class, ability, sex, gender, sexual orientation, and ethnicity are interconnected, creating overlapping and interdependent systems of privilege and marginalization.

Intersectionality is both a lens for seeing marginalization and a tool for eradicating marginalization. As a lens, we can use it to accurately see how power operates and better understand the experiences of being marginalized. Seeing marginalization means

recognizing that there are a plethora of marginalizing forces at work in society. These marginalizing forces include racism, sexism, homophobia, ableism, classism, and colonialism, to name a few. These forces operate both individually and interdependently.

In the refugee context, intersectionality is a useful tool for understanding the functions and impacts of marginalization.

Take Marco, a gay activist in Cuba, who escaped the constant harassment from police and traveled to Ecuador where he no longer could afford housing, barely afford food, and was isolated from his community. As a man, Marco has some privileges that women don't have access to. If we stopped at this single identity, we wouldn't see that his sexuality and class level (especially upon arriving in Ecuador) are areas where he experiences great marginalization. Similarly, if we stopped after looking at his sexuality, we would miss out on how living in poverty created increased vulnerabilities for Marco as a gay man. By using intersectionality as advocates, we can better aid refugees like Marco. People cannot be reduced to one aspect of their identity, looking at all aspects allows us to see the full picture, spot possible vulnerabilities, and aid more effectively.

Intersectionality means looking at the intersections of people's identities. It's a way to see how people of different backgrounds experience marginalization or privilege.

How to practice it:

- Examine your own privileges,
- Listen to each other, and
- Practice advocacy through a broader, more inclusive lens.

Privileges are where we hold more power in society than others (e.g. white, cisgendered, able bodied). An important step to examining your own privileges is understanding what your privilege prevents you from experiencing. To do this, listen to those who do not hold the same privileges as you (e.g. As a white woman I actively listen to the voices of black women as our experiences of oppression are different).

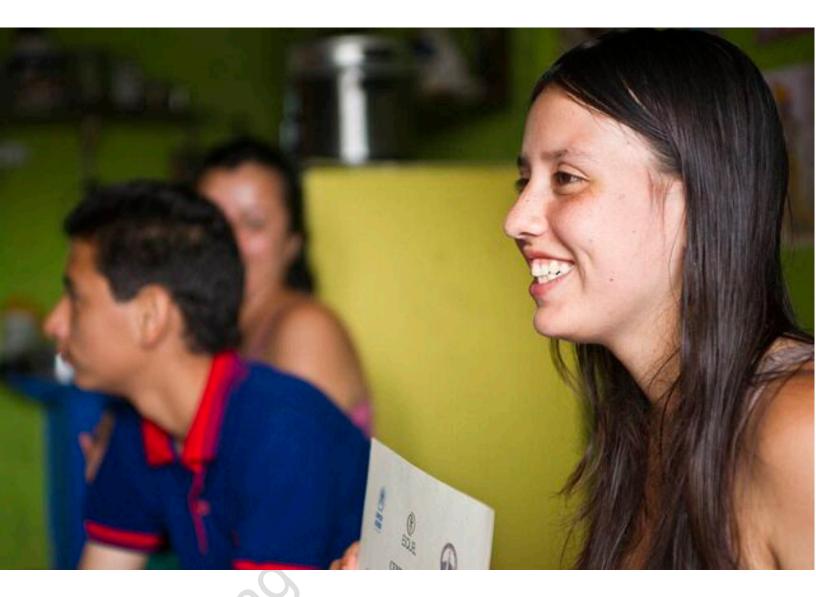
Intersectionality demands each of us look within ourselves at the places we don't understand and where we feel challenged. It is each of our individual task to learn about issues and identities that do not impact us personally. Therefore, taking up the difficult work of investigating our own privilege is key to intersectional advocacy.

Experiencing forms of marginalization does not erase the privileges an individual has. It might change the way in which they experience those privileges, but it doesn't make those privileges nonexistent. For example, male privilege exists, but all males

experience privilege in different ways. It will depend on their class, race, sexual orientation, (dis)abilities, and so on – remember the example of Marco above.

Refugee Rights Toolkit

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# Fundraising

This section addresses sustained fundraising: cultivating relationships with funders and grant writing in order to generate income for your organization beyond the <u>Start-up</u> <u>stage</u>. Fundraising helps nonprofits secure the resources they need to carry out their primary activities. While there might be a range of fundraising opportunities, stay on track by focusing your grant-seeking on what would provide for your existing work. Do not use fundraising to introduce new activities outside the organization's mission.

Strategic fundraising efforts, careful financial planning, budget management processes and sound decision-making are essential to the financial health of your organization. Yet the learning curve is steep, and advocates might underestimate the time and complexity of effective fundraising. While experienced fundraisers or fundraising consultants might yield faster results, you might want to consider engaging dedicated staff, interns or volunteers to represent your organization. It is also critical that leadership staff understand fundraising processes, as funders will most certainly want to hear from them about the work.

You'll discover the following in this section:

Fundraising Basics	77
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# **Fundraising Basics**

Fundraising is not just about getting money; it's about cultivating a collaborative relationship based on common interests.

When foundations look to support projects, they are really looking to invest in a shared vision. Through grant-making, funders want to shape the future by empowering you to advance your mission. Funders also have their own mission statements and priorities, which outline their unique worldviews and explanations about how they'd like to improve the status quo.

Fundraising is about long-term partnerships.

Getting funding today would be great, but you should be concerned about sustainability. Building long-term relationships with your funders will go a long way towards financial stability, whether they grant in consecutive years or not. Foundations staff might introduce you to other funders or move to a different organization, where they may connect you with additional resources.

Effective fundraising is not just grant-writing; it involves a lot of engagement even before you submit a proposal.

Desk research and writing can uncover leads on funders relevant to your work. However, grant proposals are far less effective without direct engagement with foundation staff. Remember, you are one of many organizations appealing for support. What would make you stand out from the other excellent candidates? Pick up the phone or send an email to request a brief conversation and engage the funder about your work.

Funder priorities also evolve and may be different from the information on their website. More importantly, you want the opportunity to engage the people behind grant-making, get them excited about your work and give them the opportunity to ask questions. You want to hear how they think about refugees and the rights-based approach, respond to misconceptions and have the opportunity to persuade them why they should care to fill a key protection gap. This can't be done with words on a page alone. Effective regular communications with prospective funders is critical to fundraising success.

After you've had that first conversation with funders, you also want them to remember you in the future, when their priorities might have changed. How might you do this? Most effective organizations use regular e-newsletters and social media posts as basic engagement tools. In addition to content that caters to a broad general readership, regular personalized communications will go a long way towards building healthy funder relationships, and should be considered for your top 10-20 prospective funders. This can be as simple as brief personal emails with updates, or sending your <u>Annual Report</u> with a note, but could also be more resource-intensive, like regular meetings in person.

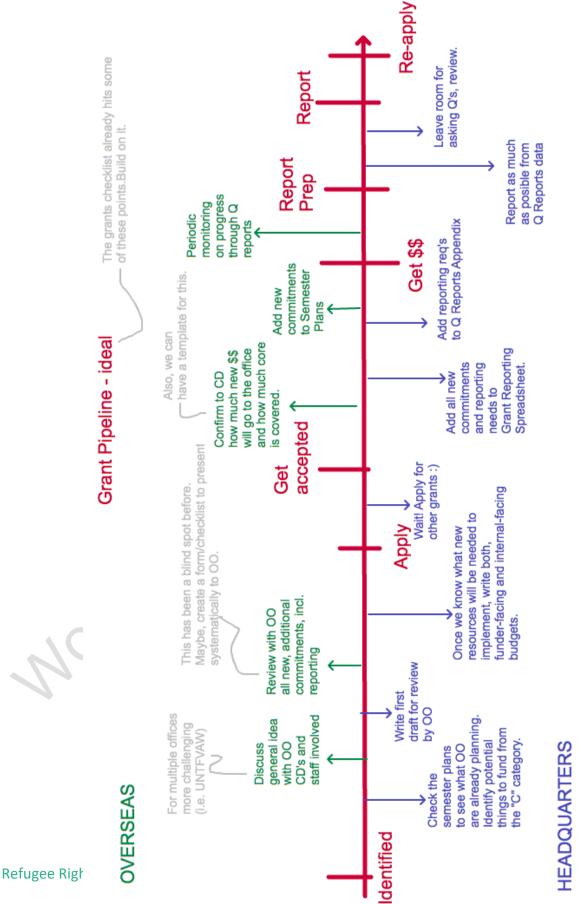
#### Find a way to keep track of these relationships in a systematic fashion.

When you've been fundraising for a year and connected with dozens of prospective funders, you won't be able to remember all these interactions, nor will you want to explain them individually to new staff. More importantly, you don't want to waste staff time on re-doing research or relationship creation you started a while ago; you want them to focus on building on your efforts. Depending on your needs, you might use something simple like a Google spreadsheet or more complex Customer Relationship Management tools like Salesforce. The tool should record key pieces of information in a simple and easy-to-understand manner.

#### Annual Institutional Giving Tracker Template

As you develop best practices for fundraising and build a larger organization with greater resources, you want to ensure that fundraising processes and expectations are clear throughout the organization. The separation of fundraising and program staff is often inevitable for medium or large organizations where fundraising for a larger budget requires more time and resources.

As Asylum Access grew as an organization, it began engaging full-time fundraising staff to allow refugee legal advocates to focus on providing legal assistance. With three offices providing legal aid and fundraising led by staff in San Francisco, clear communication was essential. Guidelines and a variation of our Grants Pipeline can help facilitate effective processes:



>

Even with these tools, differences in perspective between fundraising and program staff might lead to issues in fundraising. Effective communications are essential to ensure accountability and transparency both ways. Fundraising staff should respect that program staff understand the context best and know what is achievable, while program staff should understand that fundraisers know how best to frame an issue to funders who need to understand an issue and impact clearly without knowing every detail.

# Avoid expanding into services outside your organization's original mission

Expanding beyond your core mission, even to provide much-needed services, may negatively impact your ability to achieve your key long-term goals. Think about whether providing a new service in-house is the best solution. Is the new activity directly related to your mission? How? Will it take resources away from your primary mission? Would it be more effective to use other methods to deal with these needs, such as referrals to existing organizations already effective at this work?

Information in this Toolkit is meant to guide your fundraising process based on lessons learned by Asylum Access, but there is no short cut to successful fundraising other than trying it yourself, doing research for your specific context, fine-tuning your approach to fundraising. Use this as a resource to kickstart your activities, but remember that you'll need to find what formula works best for your organizational needs. Good luck!

#### Further resources

<u>Funders Online website</u> <u>Peace and Collaborative Development Network: Guides to Project Funding</u>

# Individual Donors: Building and Cultivating Relationships

### Cultivating relationships with funders

Potential funders may come from all walks of life: wealthy individuals in the community; alumni from your school or university; colleagues from previous workplaces; Rotary clubs or other well-known philanthropists. It is always easier to start with people you already know, who are already inclined to help you. You don't need to ask all your friends equally: prioritize those with financial resources.

A conversation with a funder will help you identify where your common interests lie and understand how they are thinking about refugee rights. Cultivating relationships outside of formal processes are important ways of getting funders to care about your work. This is arguably the most important stage of fundraising.

You can send out dozens of applications, but especially as a new organization with no proven record or reputation, you are just one of many applicants, unless you've already made an impression. An informal conversation with a funder will help you identify where your common interests lie and understand how they think about refugee rights, and can help you develop relationships and get funders to care about your work. Getting to know potential funders this way before submitting any formal request for funds improves your chances of success for each application and also lets you focus your grant-writing on funders where you have the greatest chance of success. Moreover, funders who are already very passionate about your work will go the extra mile to pitch you to the grant-making decision makers within their organizations.

Before making initial contact, research and prepare the following information:

- What are their key interests? Human rights? Women's rights? Development aid? How does your refugee rights work fit within these interests?
- What projects have they funded? Are they similar to yours? This will help you determine whether you are a good fit for their work.
- What kind of funding do they give? Funders might give one-time support for a year, or prefer long-term partnerships with multi-year funds. In addition, funding might be for general support or for a specific project/program. General support funds allow you to use the resources as you decide, while project-specific funds require you to dedicate funding in a specific way.
- Where do they have offices? You want to meet them in person if possible, or schedule a Skype or phone conversation convenient to their time zone.
- Who should you get in touch with? Foundations might divide their portfolio according to area of interest (e.g. human rights, healthcare) or by geographic region.
- How do they identify new partners? Do they issue a call for proposals, require brief Letter of Interests (LOIs) as a first step, or do they accept proposals by invitation only? This will determine how you might cultivate them later.

Based on your research, send an email with a brief introduction and ask for a conversation. You may sometimes need to engage a funder repeatedly and send follow-up emails or have multiple conversations.

Here is an example of how Asylum Access frames a cultivation email:

Dear [Staff Member or Organization],

I hope this email finds you well. I am writing on behalf of Asylum Access Malaysia (AAM), a nonprofit organization working with refugee women in [CITY]. Given our common interests in rights empowerment for refugee women, I was wondering if you might have some time to speak in the coming weeks? I'd love to learn about your approach to long-term rights empowerment and how we might collectively seek improved rule of law protections for refugee women. Please let me know if you think a conversation would be possible.

In the meantime, I thought it may be useful to share a bit of information about AAM. We were founded to build a durable solution for long-term refugee displacement through a rights-based model that includes individualized legal counsel and/or representation, community legal empowerment and policy advocacy. In addition to assisting refugee women with individual rights violations, we are also focusing our advocacy on the development of an urban refugee policy in Malaysia so refugee women will be able to live among local civil society. We've seen some progress on this by the government in the past year, and are working on further developments in 2013. In addition, we have also recently begun providing refugee legal aid to women refugees in prisons.

If you have some time, I'd love to discuss this further with you — would this be possible? Thank you very much for your time, and I hope to speak with you soon.

Warmly, [Your Name]

Notice that this is fairly brief, makes a clear request and contains some basic information introducing your work.

### Having a conversation with a prospective funder

When speaking with prospective funders, you need to have your elevator pitch ready to help them quickly understand the purpose and mission of your organization. You should also be able to provide more details to inform and engage your prospect.

### Initial conversation

Your first conversation with your prospective funder can be seen as an elevator pitch, or a 3-minute description of your organization similar to what you might say to someone in an elevator who asked you about your work.

Honing your elevator pitch:

- Focus on the big picture first
- Use easy to understand catch phrases
- Use examples of client stories, if the funder shows continued interest
- Speak appropriately to the target audience. Avoid using jargons, especially if the funder is not familiar with the refugee rights field.

An elevator pitch includes:

- The basics about your organization:
- International or national non-profit, NGO status
- Human rights for refugees (not humanitarian or charity)
- Refugee legal aid
- Innovative approach

The problem you are working to solve and why it matters (dismantle common assumptions from the start):

- Nearly 20 million refugees in the world as of 2016, excluding internally displaced people.
- Most refugees remain in their first country of refugee; less than 1% of refugees are resettled.
- The average length of stay in exile is approaching 20 years\*
- Rights enshrined in the 1951 Refugee Convention are often not put into practice.
- Your solution to the problem: what is your approach, your theory of change, and the future you envision?
- You should be able to articulate your organization's activities and how they respond directly to the problem.
- Discuss how your work contributes to short-term and long-term goals, e.g. empowering refugees to rebuild their lives themselves, equipping them with tools for sustainable long-term self-reliance.
- Be prepared to explain how your work is effective and how is it similar or different from other approaches.
- An illustration of the impact of your work. Asylum Access often tells a client story of how we are making a difference, as an example of how legal aid leads to concrete changes in a refugee's daily life.\*\*
- Why your work is relevant to the funder's interests. Establish the connection between your goals and activities, and their funding priorities.

\*Note: Ensure that you are presenting the most accurate and updated statistics.

\*\*Remember the <u>Nairobi Code</u>! You should not share any client identifying information, unless you have obtained the client's permission and can do so safely.

Our Cultivation Worksheet will help you prepare for a funder conversation. There is nothing more effective than practice and you will only get better the more you engage with funders. Remember: the number one reason people give money is because they were asked to do so.

**Cultivation Worksheet** 

#### Questions you might ask the funder:

Do you currently work with refugees? In what way? This is a good way to find out how you might link your work to their concerns. For example, if they work with refugee women, you might speak about how your work addresses issues unique to them, such as issues of sexual and gender-based violence. To do this, you'll need to first demonstrate the dynamics of the issue, before showing how you are offering a solution.

Do you work in Country X? Many funders may work in a specific geographic location or with a specific population. On occasion, you may find that there isn't a clear overlap in interests immediately, but that you might still work with a similar population. For example, if most of your clients are Colombians in Ecuador, and the funder works with a Colombian population, you may find common ground.

What are your current priorities within your broad mission? How open are you to new partnerships? A funder may work with refugees, but focus on a specific nationality for now.

Would you encourage us to submit an application?

Funders are used to being approached for these conversations and often take the lead on providing this information without prompting.

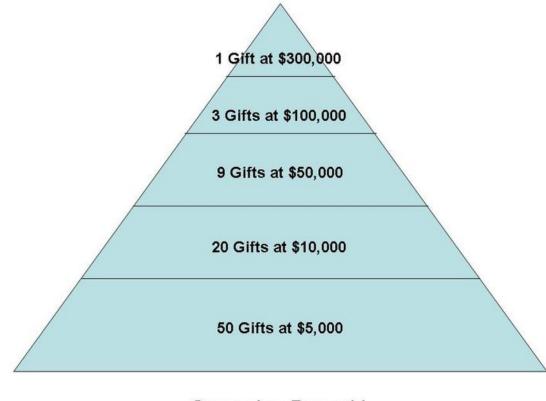
General advice:

- Demonstrate understanding of your field beyond your own work, such as refugee issues and refugee rights approaches.
- Use easy to understand language and avoid legal jargon, unless it is evident that the funder is familiar with these.
- Determine the individual funder's knowledge about your issue and build on that knowledge from that level. Some may already work with other refugee rights organizations and are familiar with the field, whereas for other funders, you would be the first.
- Listen to what the funder is saying and respond directly to their questions.

### Making your request

Steering the conversation to the amount of money quickly is advised: after thanking donors for meeting you, reminding them why you are there and reiterating that you are ready to discuss how they can be involved as a financial supporter of your work, jump straight in with your request.

Once the conversation has progressed to specific details of your request, it is helpful to have a 'donor pyramid' prepared. Prior to the conversation, work out how much the organization or campaign needs to raise overall, and break it down into smaller amounts.



#### Campaign Pyramid

#### Figure 1: Donor Pyramid

Using your visual aid, which can be tailor made to each donor's giving potential, explain that this is how you intend to fund your campaign. Tell your donor that it is not by accident you are approaching them first, as there are not many people you can ask to be the leader of your campaign. Make them understand that they have a unique opportunity, and proceed to show how, without their support, you would have to approach – for example – one thousand other people for \$1,000 each. Be direct.

### Measuring effectiveness

If your organization is serious about building individual relationships as a major fundraising tool, you should be mindful of the time spent on these processes and what the return is on that investment. It makes sense to calculate how much time you are spending on cultivating relationships, and what you expect to get out of it. When working this out, include time spent on preparing for meetings and researching, and money spent on materials in your cost-benefit analysis: you do not want to just "break even" — or worse, cost the organization more than it's making — on the time you invest in these activities.

Quantifying this relationship is difficult, and it is better to roughly estimate the costs than to attempt detailed record-keeping. Come up with rough rule-of-thumb estimates on how long it will take to sit down with someone with whom you already have a relationship and get money. You should aim for a 5:1 ratio on your time investment. You do not need to get a donation out of each donor meeting, but you do need a plan that results in a bigger return on your total investment in time.

There is value to cultivating relationships even when you do not make an ask. You do not need to get a donation out of each meeting; however, you do need a plan that results on a bigger return on your total investment in time. Asks may be executed later on — particularly in the initial stages of your organization, as you are becoming more comfortable asking those outside of your immediate circles for money.

### Cultivate Relationships With Donors

### **Engaging Peripheral Funders**

While human rights funders have a clearer common interest, it can sometimes be more difficult to engage or connect with a funder outside of the human rights sector, and persuading a funder of the importance of your work can be a challenge. Ask questions to understand how they define their focus area. You'll be able to determine whether you can make a case for your work. Remember that it is your responsibility to help them connect the dots.

For a development funder, you might want to argue that refugee work rights will help them access livelihood opportunities. For a women's rights funder, you might want to offer information about the special needs of refugee women and how your work responds directly to these needs. All this is possible only if you genuinely understand the issue and how it intersects with your work.

For example, Asylum Access spoke with a women's rights funder about our refugee legal aid and policy advocacy work using some of the language below about refugees:

"Many refugee women who have been in Malaysia for a long time, and have married Malaysian men still lack access to resident rights. This means that they may not have equal access to land ownership rights for example, and would need legal assistance in cases of land disputes. Our legal advocates are able to advise them and take this issue to court if necessary."

You will notice that we explained an issue unique to refugee women before explaining how our activities make a difference.

In addition to introducing your work, funder conversations may also be useful to gather information. A funder with a portfolio that includes human rights work in your region might focus on another country due to recent socio-political developments presenting a greater need or potential to make an impact. For example, a foundation's Southeast Asia portfolio became more focused on organizations working within Burma in 2012 and 2013 as the political climate shifted towards improved political practices and openness. Without a conversation, we would never have learned this.

In our early years, Asylum Access found that some funders still associated refugee assistance with humanitarian aid and were surprised to learn about a rights empowerment approach. Similarly, one funder refused our inquiry because they worked in human rights and not with refugees. This indicated a knowledge gap at least among some funders, and suggested an opportunity for Asylum Access to educate funders about our approach first, rather than open a conversation by speaking about our program activities.

# Corporate Partnerships

### Understanding how corporations give

Corporate sponsorships are financial contributions from companies. Medium to largesize companies often have a budget for Corporate Social Responsibility (CSR) to give back to the communities where they work. CSR practices vary, ranging from a simple process that matches employee donations, to large philanthropic arms that accept formal applications for funds based on predetermined priorities and criteria, and with whom outreach will resemble what you do for foundation fundraising. Corporations like to see something of value, so fundraising with corporate donors should focus on demonstrating your added value to their work.

### Finding a corporate connection

### Mining your network

The common wisdom among nonprofits is that cold-calling companies is rarely successful. For success with corporations, nonprofits traditionally mine the relationships their employees already have.

This does not mean you need to be directly connected with a company or a senior corporate employee. Think creatively:

- Do you know someone who has a friend or relative working at a company?
- Would he be willing to introduce you to their CSR department?
- Do your supporters know someone, or know someone who knows someone?

If you have connected with a corporation in the past, even briefly, consider whether it would be possible to ask them for an introduction. For example, have you ever had a student job at a company? Is your uncle a frequent flyer on a specific airline? Look at your LinkedIn network. Is there anyone relevant who is a friend of a friend? Can the friend make an introduction?

### Consider your natural allies

Given the nature of Asylum Access's work, we have found law firms to be natural allies. They share common beliefs in appreciating the value of legal aid. With many lawyers among Asylum Access staff and volunteers, the collective network of friends also includes many connections to law firms. Peers from law school are often willing to champion Asylum Access to their firms, or to connect its staff with pro bono departments that make annual donations. This helps you start a relationship that could grow over time.

(Note: In the US, medium to large law firms often make donations to nonprofits they have provided pro bono assistance to. This may be different in your country).

# Consider how a non-financial contribution could provide resources

While money to pay the office rent and utilities might be most valuable, consider how other resources might help with your core needs. For example:

• Would a law firm be willing to offer 20 hours of a staff immigration lawyer's time per week, while covering their wages?

• Would a company be willing to offer donated office space a few days a week to host client consultations?

### Engaging a corporation

A few best practices:

#### Come prepared

Understand their priorities and how your work is relevant. Have an idea of what's realistic to ask for, and be clear about the impact of those funds. For example, "\$1,000 would enable us to rent an office for six months, and see an estimated 50 clients".

#### Your goal in a first meeting is to get the other person excited about your work

A request for donations at the end will be easier once you have accomplished this. Even if they are unable to donate, they will remember you and might help in other ways. For instance, you can ask if they know of individuals or companies willing to donate, or if they would be willing to host a fundraising event at their office. A company's staff might make individual donations, even if the company can't commit funds. Think about how you can build a long-term partnership. This is similar to working with foundations, where you may not secure a donation immediately.

#### Excite a corporation with a narrative

Where does the story begin? Not at your office, but with the system or with a marginalized refugee population. What can you accomplish with the funds you're asking for? Show them in concrete terms the difference they can make by investing in you. They want to feel that they are a part of something good, no matter how small the donation. What recognition or reward might they receive? Remember that not every corporation or corporate decision maker cares about the same things. Where possible, leave them with something to ponder over, such as a brochure or a simple sheet from your printer about your work and a client story.

Listen to their thoughts and concerns, and respond to them.

Corporations have official priorities, but decisions are often made by individuals with specific interests of their own. Do they work on human rights issues, but care more about children? Are they having trouble seeing the connection between your work and their priorities? If you lack the information you need, send a follow-up email later. Be prepared, but be flexible with what you highlight in the conversation.

#### Show gratitude and keep them feeling involved in your work

This can be done through updates and meetings to help them feel a part of something important.

## **Grants and Grant Writing**

Once you understand the funder's interest and have reviewed grantee criteria to confirm your eligibility, you will have the basic information to begin drafting an application.

In preparation for drafting, you should also research previous grants made by the body you are applying to: how much do they usually give to organizations or projects similar to yours? When deciding how much to ask for, consider the body's track record.

It is understandable that newer organizations might feel wary about managing large budgets, along with donor conditions and reporting requirements, however asking for a larger amount is a good practice, since donors often give less than the amount requested. Generally speaking, US\$100,000 is not considered a large request, for example, and it is important to get over feeling uncomfortable when asking for money.

### Understanding the components of a grant application

There are several key components necessary to complete a successful and well-written grant application. In essence, you should explain your mission and objectives, and the activities you will undertake to achieve them.

### The problem

It is essential to include the problem you are trying to solve, and to present your project as a solution. You can explain why your project is necessary and what the context is for your work. Show an understanding of refugee issues and the scale of the problem. Use data and examples to illustrate your points and tie the problem to your work. At times, you may also be asked to discuss your target population. This is just another way of asking about the problem you are working to solve.

### A project oR project goal(s) and specific objectives

This usually includes one or more long-term goals like, "empowering refugees with the tools to rebuild their lives with dignity," and specific short-term objectives that are measurable targets/indicators of success within the project implementation period, like, "helping 200 refugees through the refugee status determination process". How do you

draft these numbers? You'll need to have done your research on the need in your location, and consider what would be feasible based on number of staff and resources.

### Intended impact or what you want to achieve

This section requires elaborating on your long-term goal and objectives. Don't just state what you will do; instead state the impact of your work. For example, instead of saying, "We will provide legal aid to refugees," state that "We will provide 200 refugees with individualized legal assistance to navigate the RSD process, helping them through a complex legal process to obtain legal status, the first step to accessing all other rights such as right to work, education and protection from injustice."

In communicating policy advocacy successes, communicate the long-term implications of your achievements. You may wish to go beyond the goals and objectives of the grant to explain the indirect effects.

It also helps to share a client story to illustrate how legal aid makes an impact on one's life beyond legal status. Use a story to add a human face to your work and engage the reader.

### Past work and accomplishments

Potential funders want to know that you can do what you say you will in your application, so it is helpful to list successes relevant to the proposed project. When your organization is young, you might want to speak about your relevant work in refugee legal aid as an individual, and the steps you have taken to set up the project in the country.

For example, you could say, "We have spent the past year engaging the refugee community in the city and building working relationships with other refugee-serving organizations such as X, Y and Z. This has aided our planning to establish Country X's first refugee legal aid organization, and we have provided refugee legal aid to 12 refugees in our first # months." Note that when you are calculating the number of people assisted by your efforts, it is standard practice to include dependents.

### Potential challenges to your work

Occasionally, an application might ask about potential risks or challenges that may jeopardize your work. Here, they want to see whether you have considered the operational risks and taken precautions. For a refugee legal aid organization, you will want to consider the risks of being a human rights advocate in the country, the political climate and how it may affect your work, and challenges to fiscal health or sustainability.

### Needs

State your concrete budget requests here. You should always research previous grants made by the funder you are applying to, especially to find out how much they usually give to organizations or projects similar to yours. Asking for a large amount of money is a good idea, since donors often give less than the requested amount.

Include a table of costs and explanations. Keep it concise: two pages, including a defense of each line item, is sufficient.

Tips for drawing up a budget:

- It is acceptable to ask for the higher end of the range of grants a donor gives.
- Explain all costs. It might be useful to point out that salaries represent a key part of your work, because you are a direct service provider. Point out that refugees can't generally afford even reduced legal fees.
- Office and infrastructure requests are directly linked to service provision. These could be justified by pointing out that confidentiality requires privacy, which has implications for office space.

Sample budget items for small legal aid start-ups (specify numbers):

- Salaries
- Senior lawyers
- Junior lawyers
- Administrative, communications or fundraising staff
- Professional fees
- Interpreters
- Psychologists
- Accountant
- Operations fees
- Rent
- Utilities
- Supplies
- Furniture and equipment
- Travel

### Previous annual expenditure

Including information about how much your organization spent the previous year gives a potential funder an idea of how much it costs to fund your work overall, and puts your grant ask into context.

### Monitoring and evaluation process

A <u>Monitoring and Evaluation</u> process details how you are going to track progress during the funding period. For refugee legal aid providers, this often includes case files and statistics by gender and type of case. What indicators would help measure success or failure? How are they collected? It can be as simple as stating that as part of your project management cycle you have an ongoing monitoring mechanism with critical benchmarks at which you review your goals and reorient or celebrate strategies.

Essentially, donors look for whether you reach a lot of people, undertake quality work, and have successful case outcomes. Showcase those indicators you use which reflect impact and measure the success of your mission, such as regular client satisfaction surveys and focus groups, percentage of cases with 'successful' outcome – by compliance with the Nairobi Code, by type of case or by positive RSD rate among clients assisted compared to national positive RSD rate, without legal aid, if statistics are available (taking note of first and second instance figures).

Financial compliance is less applicable here, as this is more an institutional or operational goal. Monitoring and evaluation are traditionally thought of as related to progress towards programmatic goals.

### Basic organization information and organization history

This includes information such as when you were founded, significant organizational changes and growth, and previous work, particularly if this is very different from your current project. Depending on the request template (or lack thereof) issued by the donor, it may be a good idea to attach your <u>Annual Report</u> to the submission, in order to fill in details less related to the specific request, such as organizational structure.

#### General advice:

Client stories are helpful in moving potential funders beyond simple calculations and reasoning. They can speak to people's feelings, sense of injustice and compel readers more than statistics.

#### Exercise 1: Grant writing assessment (approx. 45 minutes)

Now that you have reviewed the basic components of grant-writing, read one of Asylum Access's first grant applications submitted to Echoing Green in 2007.

Asylum Access Echoing Green Application

Assess:

- Can you identify where the writer discusses each of these components mentioned?
- Within each of these components, can you identify what tools she uses to build understanding (statistics, data, examples, etc.)?
- Where is this effective and why?

Once you have done this, you can review the annotated version of the application to see how your notes compare with ours.

Asylum Access Echoing Green Application – annotated

Consider how you might employ similar tools to present your own work. (Note that this is an application for a fellowship awarded to an individual, rather than an organization. If you plan to use this application as a template, make sure to adjust your language according to the needs of your application.)

A similar format can also be applied to Letters of Interests (LOIs) and Concept Notes, which should contain the same basic outline as grants. For LOIs, you might want to include an additional letter addressing the program officer directly, briefly stating where you have common interests and introducing your request. Here is a sample letter Asylum Access submitted in 2012.

Sample Letter of Interest

#### Exercise 2: Grant writing assessment (approx. 45 minutes)

Now that you have seen one of Asylum Access's earliest (and therefore least polished) applications, take a look at this general proposal submitted to the Blaustein Philanthropic Group in 2013. Compare the two and consider how Asylum Access has improved the way it discusses its work.

**Blaufund General Support Application** 

In particular, consider the following items:

- The discussion of the fisherman parable in both applications. In the 2013 application, you'll see that Asylum Access fine-tuned its storytelling so that this parable is more concretely analogous to its work with refugees.
- How Asylum Access presents its work in brief. In the 2013 application, this is done succinctly in the first paragraph whereas the language was less tight in the 2007 application.
- How Asylum Access discusses impact in 2007 and in 2013. In the 2013 application, Asylum Access includes a client story, adding a human face to its work and illustrating how refugee legal aid impacts individual lives.

- How Asylum Access is able to bridge the end of one section to the beginning of the next section in the 2013 application. This is possible in part because the Blaustein proposal is a general one and Asylum Access was able to choose how to structure the application.
- How each activity listed detail both what Asylum Access does and what results this would achieve.

### Implementation and Reporting

Funds you receive from grants empower your organization to do the work it was founded to do. But remember that funding also comes with accountability. In most cases, you will need to submit a few reports during the grant period and at its conclusion, detailing progress made, challenges encountered and assessing whether you've achieved the goals you committed in your proposal.

If fundraising staff and project implementation staff are different, they will need to work together to track the project's progress and collect the necessary information to submit reports to the funder.

### Simple and clear communication

Effective communication, with both project implementation staff and funders, is important to ensure smooth processes. Implementing staff should be consulted about the commitments you are making on their behalf (e.g. "We will provide refugee legal aid to 200 refugees this year"). Both fundraising staff and project implementation staff should also regularly review grant targets to evaluate progress and make changes as necessary. If there are delays or unexpected challenges, communicate this to your funder immediately and request changes to your grant agreement if needed.

As you get more grants, it will be easier to track progress if you create processes to monitor project implementation. Asylum Access uses internal Quarterly Reports and Skype conversations between fundraising and project implementation leaders to facilitate communication within the organization. In addition, each office tracks the number of refugee clients who receive services, including specific data according to gender, country of origin, age group, type of legal services required and number of family dependents

With this section designed for emerging refugee legal aid organizations, we have omitted processes involved in fundraising for an international organization with multiple offices.

# **Donor Cultivation Events**

### Why do nonprofits organize events?

Events are one of the best ways to engage supporters and to bring new supporters into your network. There is no greater investment in a personal donor than giving them a personal connection to the cause, like feeling connected to the people involved with the organization.

### How to make the most of your event?

#### 1. Determine your goals and draft a clear plan of action accordingly

Your goal may be to raise funds, but are you planning to accomplish this only at the event? Donor engagement is a long-term project. Your event could also be less focused on donations today, but with an eye for long-term support. Are you looking to raise funds through ticket prices or an ask for donations at the end? This may depend on your costs and norms in your community.

As an organization matures and has a group of key supporters, you might also want to organize a donor event that provides a special opportunity to connect without an ask for a donation. For example, when one of Asylum Access's staff from Ecuador visited San Francisco on a personal trip, the organization's headquarter staff organized a cozy gathering for 10 key supporters to meet her.

Your goal and target audience will help determine what kind of event you will host. Are they potential big donors who can afford a fancy dinner ticket? Or are they less wealthy, preferring a modest affair, supported by smaller donations? Know your target audience *realistically*, and consider how you might reach them. Unless you have a celebrity speaker, most guests will be those who are already connected to your work or someone who is and invites them.

Most importantly, knowing your target audience will help you come up with a suitable theme and program. What is the main feature of your event? Nonprofits often connect guests with inspir-tainment ('inspiring entertainment' – see below) such as getting beneficiaries to speak about how legal aid has made a difference in their lives. If this is difficult, you might want to arrange for a video or photo presentation about your work, and have a legal advocate speak. You could also ask donors who have seen your work, or a Board member make an appeal for donations.

Also consider the attitudes and trends towards philanthropy in your community. In San Francisco, gala dinners or cocktail evenings offer a novelty experience for guests who appreciate a good evening out in support of a good cause. In a smaller town, this might be a cozier evening affair or bake sale at church. Can you get venue and food sponsored in return for publicity and some tickets? Do corporations partner with local organizations? In San Francisco, we seek larger donations from companies who regularly donate to nonprofits.

#### 2. Market your event with lots of advance notice and get guests to RSVP

Marketing and outreach will enable your fundraising event to reach the greatest number of people possible in your target supporter group. Social media and Eventbrite.com is free. Use them. Generate excitement through regular social media posts about the activities leading up to the event. Make sure your current supporters are invited, perhaps even personally, and encourage them to invite others. You might want to provide discounts for bulk tickets as an incentive. Even if free to attend, requesting RSVPs are important so you'll know how many people to expect.

Are there groups or communities that would be a natural fit for the cause? Find out if they will support you. For example, an affordable fundraiser might be promoted to law students. If you are fundraising for work that largely supports, say, a Colombian refugee population, is there a church with Colombians in a nice neighborhood that might be willing to share this event with their congregation? Is there someone from among your supporters that attends and might help bring in new supporters? Consider having an organizing committee of existing supporters who commit to bringing new supporters to the event.

Of course, make sure event information is easily accessible and clear (do they need tickets? Can they just show up?).

#### 3. Deliver "inspir-tainment"

Provide "inspir-tainment", in other words an inspiring showcase of what you are trying to do or have done. What would be the best way to convey the impact you would have on your beneficiaries? Often, the best way is sharing a human story – one of a refugee client. In previous years, we have brought clients on stage to share their lives or screened a short video of a client story.

4. Have clear messaging across all organizing staff and volunteers

Staff and volunteers are the ambassadors of your organization. Make sure they are well-equipped and informed to represent your work. Provide flyers or information for donors to take with them, so they can share the word or learn more about the serious

details even after the event. Also, be sure to thank all volunteers and others who helped organize the event!

#### 5. Other considerations

If this is a direct fundraising event, be clear that you are seeking donations and facilitate giving through available payment methods and easy processes.

Also, have email sign-up sheets where people can put down their email addresses to receive updates, invites to future events and be cultivated as a long-term donor. After the event, consider calling them up to ask for feedback. Besides helping you improve the event, it's a chance to engage with guests personally. Good luck!



# Communications

Communication efforts are vital to ensuring the reputation and credibility of your organization in relation to working partners, funding partners, the media and the general public. As an organization, it is important to intentionally define and plan both internal and external communications. While internal communications help to motivate and inform staff/volunteers, external communications enable an organization to effectively convey the organization's mission to the public, attract supporters and raise general awareness about the cause.

Effective communications depend, to a large extent, on a comprehensive communications plan that is directly related to the organization's mission as well as its strategic plan. In practice, good communication consists of accurate and updated

information, well-written text, compelling graphic design (particularly for external use), and consistency in tone, style and content to match the organization's mission.

For the purposes of this Toolkit, we will focus on external communication strategies, including how to develop an annual communications plan; how to manage public relations; how to make use of social media tools; how to protect our clients while making use of their stories, and how to effectively report on our activities.

On a day-to-day basis, external communication activities include, but are not limited to:

- Writing content for online or print material (e.g. drafting client stories, messaging for online campaigns, social media, press releases).
- Graphic design for print material (e.g. flyers, reports, annual report, postcards) and/or online content (e.g. website, e-thank yous, social media, infographics).
- Editing and archiving photo, video, and graphic design material.
- Tracking and analyzing web and social media traffic.
- Collecting monthly communication materials from overseas offices.
- Coordinating and editing quarterly e-newsletter articles with overseas offices.
- Training staff/volunteer and communication liaisons on communication guidelines.
- Updating contacts database and syncing database with other applications (e.g. Mailchimp for e-invitations and other email announcements).

This Communications section will cover the following:

Strategic Planning	
Use of Media	
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How to set goals: general tips	
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# **Strategic Planning**

Non-profit communications covers a wide range of activities, from reporting to donors and crafting publicity and campaign materials, to engagement with the press, maintaining social media and online platforms, and producing information tailored to the refugee community.

### Use of Media

Using media is another way to get the word out about your work to a broad or particular audience. Using media to communicate is usually best done as a part of a broader strategy, and requires careful planning to be effective.

Use of media:

- Effective media use can change opinions of the general public and of policymakers
- Good for highlighting organizational successes and addressing common misconceptions
- Not good for sensitive issues
- Not good for detailed recommendations

### Best Practices in Engaging the Media

- Research the media in your community get to know who covers what topics. Make connections with those reporters. Let them know that you can serve as a resource for them on the stories that are related to your type of work.
- Identify the opinion page editor(s) at your local paper and review their submission guidelines.
- When pitching a story idea, op-ed or letter to a local media outlet, be sure to emphasize the local angle.
- Avoid jargon and acronyms.
- Use stories, anecdotes, statistics and any other type of easy-to-understand information to drive home your points.
- For any interviews, create a list of talking points you wish to hit upon and stick to them. That being said, it is critical that you listen to the reporter's questions and respond appropriately. It's great to be well prepared with talking points about a subject, but you cannot repeat them by rote without applying them smartly to answer a multitude of questions.
- Be judicious with your outreach to reporters only approach them when you have news and don't expect to get covered each time you have contact with a reporter.

 Once a piece has run, be sure to send a thank you note to the reporter or producer. Thank them for bringing attention to the issue, but don't be overly effusive — remember, they are independent and impartial and do not want to be perceived as taking sides on any issue.

### Tips for Engaging the Media

- Audience analysis is really important. One caution, if a particular issue is very contentious to the general public, using really public media could actually hurt your ability to change a particular topic because of the backlash.
- Media can also change opinions.
- Pair it with other strategies.
- Social media is more about building a base. Be consistent so people know what to expect 5 times a day, or 5 times a month, be consistent so you can build a readership.
- Provide sample templates for press release and op-ed templates and samples

#### Further resource

Tips for Working with the Media

### Strategic planning for communications

Planning for communications requires organization-wide collaboration, given that a large part of your work will be to communicate developments in your projects and programs, and support policy advocacy campaigns and outreach. There will also be day-to-day reactive communications work, responding to social media interactions, or commenting on recent news relevant to the refugee rights movement. Therefore, you will have to think strategically but leave room to be responsive to latest developments, whether in response to fundraising achievements, program developments or national and international events.

### How to set goals: general tips

If you are new to this aspect of NGO work, it is important not to underestimate the time communications tasks take.

#### Communications is interlinked with fundraising and program work

• You must be communicating regularly with your donors as well as with the general public and other interest-group audiences. This may entail individualized letters and human-interest stories, summaries of activities and achievements, or more general progress reports. Your communications work-plan and objectives

should be closely linked with your donor cultivation and fundraising goals. You can plan production of communications tools based on these aims.

- <u>Annual Reports</u> serve a dual communications and donor relations purpose. Production of an annual report will need to be coordinated across all departments of your organization, requiring advanced planning, leaving enough time for the final formatting stages.
- You may have diverse program goals that can be supported by communications products. Liaise with advocacy staff in particular on campaign dates and factor these into your plans.
- Communications is also related to recruitment activities, and should be planned in conjunction with human resources staff. Your website will likely host job offers, and recruitment processes of staff and volunteers will be more successful if these are shared via social media and other platforms such as www.idealist.org, or www.reliefweb.int.

Keep your audience in mind at all times, and tailor your SMART (specific, measurable, attainable, realistic and timely) objectives to your audience.

This means be clear about whether you plan to target donors, the refugee community, lawyer networks, alumni or other supporters.

- If you are promoting services to or seeking assistance from a diverse refugee population, your focus will be on clarity and effective dissemination, which may necessitate translation or time-consuming manual distribution of flyers to be factored into your work plan.
- Donor reporting documents may call for technical or legal jargon, and sound analytical reasoning. This may necessitate a collaborative approach, coordination of different departments' work plans and lengthier editing timeframes.
- You may plan to set up different platforms for different audiences (e.g. donor newsletters, refugee work rights blog), though it is important to consider the sustainability of a variety of initiatives in the long run. A Facebook page is often a general interest page: planning for this could include deciding your number of weekly updates, researching (through online surveys) into what page users find most interesting, or when prime posting times are in your time zone – keeping a global audience in mind.

In your plan, include measurable indicators to achieve which are capable of demonstrating the impact of your work. This may include growth in the number of unique visitors to your website, a statistic which can be monitored and managed via the free Google Analytics tracker. This simple tool produces reports which acquaint you with online trends and enable you to better understand how to market and drive traffic to your website. It may include number of posts shared or interacted with on social media, or number of human-interest stories drafted and kept on file per month.

Be attentive to the way in which your communications may change over time, and consider your short term and long-term image. In the start-up stages you are likely to want to spread information regarding your services and purpose. How you plan to do this will vary greatly depending on the context and whether internet access is widespread or not. Planning for flyers and posters is a common first step. The costs to be factored in here include printing, ad-space and website hosting fees. Later on, you may wish to shift your focus to communicating achievements and needs to donors, once the refugee population is aware of your services.

With these timeframes, collaborations and tips in mind, you should draw up an Annual Plan for communications activities, detailing responsibilities. Asylum Access aligns all communications and development (fundraising) activities: their Annual Plan and simplified 'Master Calendar' for this area of work are as follows.

Note: Communication work may peak around World Refugee Day (20th June) and on other symbolic dates.

Communications and Development Annual Plan Template Communications and Development Master Calendar Template

### Policy setting

You will likely want to set up policies which guide other staff members in how they talk about your organization, and what language they use in external communications, in order to send out a unified message. In elaborating such policies, part of the aim should be to mitigate against the following risks:

- Will progressive or radical positions invite harsh public criticism, jeopardizing other aspects of your work such as RSD decisions, your access to populations or your influence with decision-makers?
- Can you ensure that quotes and figures are 100% accurate? Inaccuracy can affect credibility and integrity both of your organization and of partners – especially if quotes are used without permission.
- Accurate information can be misinterpreted or misrepresented. Personal views can be misrepresented as organizational positions.
- The need for cultural sensitivity cannot be underestimated. When op-eds and other communications are produced, they may be received differently by different partners, governments, UN Agencies and allies than by your primary readership, and this may affect working relations, particularly with field-level implementing staff.
- Will monolingual communications alienate a sector of your readership?

### Social media policy

A social media policy, covered in greater depth in the <u>Social Media</u> section, may also prove useful, in order to guide staff on how to effectively engage a virtual audience: on the importance of brevity and responsiveness. It could also include guidelines for personal use of electronic communications and social networking on topics related to the organization's interests.

### Official statements policy

A document setting out your organization's official policies on various political and legal issues, and the instances in which a stance would have to be approved by senior staff or board members before publishing is highly advisable. It may set guidelines on what topics merit an official position, and proceed to elaborate on the principles or reasoning of these official positions. Stances on refugee rights, international responsibilities and duties, or the legal aid movement may be appropriate here. Include limitations on what staff can say outside of their field of expertise.

### Speaking guidelines

Highlight the most important points and issue common talking points for the organization to ensure knowledgeable responses when staff members participate in public speaking events or connect with donors and other supporters face to face.

### Style guide

Attention to language is vital for sending out a coherent and unified message. There may be phrases or terms that are controversial in some contexts – depending on culture or donor audience – and these should be flagged to all staff, and taken into account particularly in external communications. A style guide might also address how to write the way you talk, or how to use empowered and gender-sensitive language, e.g. 'survivor of torture' rather than 'victim of torture.'

### Confidentiality policy

This is of utmost importance as careless communications can defeat protection aims.

## **Outreach to Traditional Media**

To facilitate the collection of communications material, it is important to have someone on staff responsible for archiving and creating material. Office news, highlights, client stories, and other events for external publication should be recorded and saved for immediate or future use. This also applies to photographs taken at speaking events or newspaper articles written by staff/volunteers.

Outreach is an important first step that allows you to enlist the media in supporting the goals of your organization, such as to demonstrate the success of your work, to ensure the public understands what you do, and to change public perceptions and behavior about refugee assistance when necessary. If your long-term goals include establishing your organization as a leader in refugee rights advocacy, you must strive to be perceived as a reliable resource which can provide expertise to the media regarding refugee rights issues.

This section outlines the best practices in non-profit public relations and media outreach strategy. It will provide practical advice on how to establish relationships with journalists, and how to pitch your story to journalists. The subsections of the section will address other ways to engage with the media, including writing an op-ed, letter to the editor, and a press release.

### Working with Journalists

### Establishing relationships with journalists

All best practices for good nonprofit communications strategies cite establishing consistent, mutually beneficial relationships with journalists as an essential prerequisite for increased press coverage. As a small, relatively young organization, journalists are not likely to reach out to you when in need of expertise on refugees until you have established rapport with that journalist. This section will outline the initial steps to contacting and building a relationship with journalists.

#### Creating a workable database

The first step to creating a media outreach strategy is to compile a database of journalists who write on topics pertaining to your field. These journalists should come from a variety of local, regional, national, and international news sources. To find these journalists:

- Create a Google Alert tagged to words such as "refugee," "displaced people," "UNHCR," that will allow you to efficiently browse the most current news stories pertaining to our work. Read these articles and if you feel you can contribute expertise to the story, add the journalist's information to your media list.
- **Research publications you would like to be published in.** Identify large media platforms as well as more feasible niche publications and local reporters. Look for journalists at those publications who cover your areas of interests such as

refugees, human rights, or the geographic area that you work in. Add the journalist's information to your media list.

• Look at the "press coverage" tabs on web pages of other nonprofits working in refugee assistance to see which journalists are covering their work. Add pertinent journalists to our media list. If you work closely with any of these organizations, ask them to introduce you to these journalists.

Your final media list should have 40 writers. This list should detail the publication for which each journalist works and its circulation, their email, their social media contact information including Twitter handle and/or blog address, a brief description of their topic area, and links to recent articles that could connect to your organization. Any journalists who have already reached out to you or expressed interest in our organization should be added to your media list and contacted immediately.

#### Initiating and cultivating relationships with journalists

Once you have solidified a list of reporters covering your field, the next step is to establish contact with these journalists. There are four main routes to doing this: social media, email, phone calls, and personal meetings.

#### Social media

Most PR professionals suggest engaging journalists on social media such as Twitter or blogs before attempting an email or phone call. Journalists receive mass amounts of email daily, and PR experts and journalists alike suggest that an initial contact on social media is the best tool to get on their radar and present your organization as an expert in the field.

Begin by following selected writers under your Twitter account to become familiar with their content and learn how they prefer to use Twitter or their blog:

- Are they actively conversing with others?
- Do they speak to PR professionals?
- Do they ask for news tips?

Learning how a journalist uses social media will be a good indication of whether or not it is worth trying to start a conversation vs. simply sending them an email or phone call.

This should be done primarily through an organizational handle to maintain consistency and brand recognition; however, individuals may post from personal accounts to expedite response time. If writing from a personal account, tag your organization's handle in the tweet and include it in your Twitter bio. It is also suggested that you engage with journalists by responding to their blog posts or online articles with intelligent commentary, informed critique, or your contact information to act as a potential resource for future material. When crafting these responses, you should use coherent messaging through consistent hashtags and taglines.

You will need to compose a list of about 10 to 20 journalists active on social media to engage with via Twitter and article/ blog comments. You should begin by briefly responding to 2 or 3 journalists, depending on your results. Record all outreach and responses, including posting dates and social media metrics (number of likes, favorites, retweets), directly on your social media list.

To expedite response time, if a member of staff identifies an article or post they wish to respond to, they could be encouraged to independently respond to it immediately. This response can be done directly through a personal account but should reference your organization in some capacity and follow any guidelines or policies on taking a public stance on an issue. Most responses should only be a few sentences or paragraphs and should be completed within the same day or following day. This process can also be utilized for writing Op-Eds and Letters to the Editor. Notify your communications staff or focal point of these posts so journalist engagement can be documented and traced. To be clear, story pitching should never occur over social media, only journalist engagement.

#### Email

Email is the most widely accepted and conventional way of contacting and establishing a relationship with a journalist. All story pitching should be done via email if there is no pre-existing relationship with the journalist, rather than by phone.

Journalists overwhelmingly prefer brief, personalized emails to generic notifications of press releases. When drafting an email to a journalist, read the last five articles they have written to understand their writing style and personality. It may also be helpful to look up the journalist on Google and social media to identify their area of interests or personal background to reference in your email.

When composing an email to a journalist, make the email brief. Emails should be no longer than 2 to 3 short paragraphs and should either present a lead for a newsworthy story or an offer to provide expertise on a particular subject in the current news. If the email presents a story, make sure it relates to a current national or international news story. If it offers expertise, present a bio that describes how your particular spokesperson or "expert" would be a helpful resource for the journalist and provide their contact information.

Document the date a journalist is emailed, the date the email is responded to, and any follow up steps required or additional information directly on the media list.

#### Phone calls

A journalist should only be called if they specifically request a phone call or you have already established relationship a with that journalist. This will usually occur only after social media or email engagement. A phone call can be useful to briefly ask a journalist what days they work, when their deadline is, the best day to supply a story, and what type of stories or resources they would like to receive from us. A phone call is also a good follow up step to say thank you for contacting us.

Document the dates of all calls with journalists and any follow up steps directly on the media list.

#### **Personal meetings**

It can also be beneficial to arrange a meeting with a journalist over coffee or lunch. This will only occur if you have already engaged that journalist via email or social media. In a personal meeting, it is most advantageous to pitch them a ready-made story and/or present yourselves as a helpful resource to the journalist when writing about refugees.

#### Pitching to journalists

When crafting a pitch to a journalist, you must constantly connect your message to current news. To do this you need to monitor the media daily to look for stories about refugee rights in order to contact those journalists directly and offer your services as a reference on these issues. This can be done through a Google Alert tagged to keywords relating to refugee rights.

Your media pitches cannot be focused only on your organization and the work you do. Rather, they must communicate a compelling, newsworthy story that connects to current events. To do this, you need to highlight a potential action plan or unusual solution to a current crisis issue, such as focusing on refugee work rights rather than "warehousing" in the Syria case, for example. You can also approach a pitch as a way to provide expert commentary or perspective on a subject.

When pitching a report release, it is ineffective to send an entire report to a journalist as an attachment. They simply do not have the time or expertise to read them. Drafting a press release regarding the report is often time consuming and unlikely to be read in full by a journalist. Rather, summarize the report into a few essential take-aways in bullet point or short paragraph format that the reporter can easily reference as data for future stories or follow up on if they are interested seeing the whole report. If there is a compelling human story related to the report, inform the journalist of this in the pitch and allow them to contact you for further information. If you do, however, decide to issue press releases, you may refer to the Press Release section below. When dealing with a crisis issue, staff should consider if a media response is the appropriate reaction. Media outreach is just one of many tools for changing policy and public opinion about refugee rights. It is important to consider the audience and desired outcome of media outreach before spending time pitching a story to a journalist; perhaps direct advocacy to a particular government official could be a more efficient and effective form of advocacy to further your goals. If it is determined that media engagement is an important and feasible way to promote your cause, consider writing a story, Op-Ed, or Letter to the Editor for a regional publication.

It is important to remember to distinguish your organization's rights-based message and solutions from other nonprofits working in refugee assistance. Always include how your approach to the issue covered in the story, crisis, or report is unique, in order to create and reinforce a distinct niche within the field.

When pitching, only pitch a story to a single media source at a time. It is also recommended that you pitch early in the day, before 9 AM, and avoid pitching on Friday.

## Op-Eds and Letters to the Editor

In addition to pitching your story to the journalist as addressed in Outreach to Media, you may choose to write your own piece in the form of an op-ed or as a letter to the editor. While letters to the editor usually respond to something written in the paper, the topic of an op-ed is the writer's choice. Nevertheless, more relevant and timely op-eds are more likely to be published. Both op-eds and letters to the editor can be effective ways to call attention to an issue. This section will outline some practical advice on how to write an effective op-ed and letter to the editor.

#### Further resources

Sample Opinion Editorial- Page 17 Hospice Action Network Scrapping legal aid for refugees will cost Australia more than it saves (Jane McAdam, The Guardian, 2014)

## Op-Eds

In reference to writing a successful and compelling Op-Ed, Trish Hall, the New York Times Op-Ed Editor states "we are only interested if its opinionated and we believe our readers will find it interesting. We are especially interested in finding points of view that are different from those expressed in Times editorials."

When writing an op-ed, it is essential to voice a strong, unique opinion and back it with evidence. Submissions that relate to the current news are most likely to be published, especially if they arrive very quickly after a breaking news story. The focus of an op-ed

should be very specific. For example, it should not be about refugees in general, but about a specific refugee's work rights case.

The op-ed should suggest a simple solution to a problem in the opening paragraph of the article, and backed up with factual research or first-hand experience. Readers prefer positive messaging, so it is helpful to provide concrete examples of solutions. Editors receive many weighty, solemn letters and prefer those that can address a serious issue in a unique and uplifting way. It is also preferred to make the topic of personal interest to the reader. It should answer the questions:

- Why should I care about refugees?
- What can I personally do to help them?
- What is your call to action for people to take part in a well-defined solution, rather than simply issuing a criticism?

The suggested writing style of an op-ed article is relatively casual and personal. Editors prefer an article to be in readable conversational English, rather than with many jargons used within the field. Rather than communicating in "expert speak," editors suggest that you embrace your own story and speak from human experience. Let the reader know why refugee rights matter to you by telling them a story of a refugee and how this personally made the writer feel. It is always preferable to use short sentences, short paragraphs, and an active voice.

Most op-ed articles typically run from 400 to 1,200 words. They must be pitched to only one newspaper at a time. If you do not hear back from the publication in 7 business days, it is safe to assume the article will not be published and can then be pitched to another publication. Each publication has a different way of submitting op-ed articles, but most have a specific email address listed on their website. When submitting, include the writers phone number, email address, photograph and a brief two or three sentence bio that explains why we are qualified to write this piece. The editors will usually pick their own headline and graphic to accompany the piece.

## Letters to the Editor

You can also submit a letter to the editor (LTTE), which has a slightly smaller PR affect than an op-ed, but is often easier to secure.

A LTTE differs from an op-ed in that it is shorter, often a 4 to 5 paragraph response ranging from 150 to 175 words that refers to an article that has appeared in the last seven days. The submission must include the writer's address and phone number and the writer will be notified within 7 business days if the letter will be published.

To write a LTTE, you should write quickly, concisely, and engagingly, focusing on one or two points. It is preferred if you can submit the letter within a day or two of the news

story that you are commenting on. These letters can be a response to criticism, a statement of policy, or a view that adds a differing perspective of expertise to a debate.

#### Further resources

Writing an Op-Ed (Advocates for Youth)

### Press Release

A press release, also called a news or media release, is the standard method of distributing news or story to media outlets. Its objective should be to inform journalists of your story or event, and be complete enough to be used with little or no change. A press release is written specifically for a media audience. Note that in some countries, a press release is a paid advertisement. This section refers to press releases that are not paid for and that are sent to journalists on newspapers, magazines, radio and TV, to assist them in producing stories. This section will outline the advantages and disadvantages of using a press release as a communications strategy, and provide practical guidance on how to write and distribute a press release.

A press release usually serves to achieve some of the following:

- Draw attention to an issue.
- Outline an organization's response to an event or action.
- Provide information about an event or action that will take place, or a report to be launched.
- Announce new campaigns and provide progress reports.
- Provide a report of a meeting.
- Report decisions taken by organizations/groups.

#### Should I write a press release?

When considering whether to write a press release, you may consider the advantages and disadvantages outlined below.

#### Advantages of writing a press release

A press release is a very public form of advocacy that can increase pressure on decision-makers to take action. With a press release, you can take your time to craft your message before handing it over to a journalist. In this manner, it lets you control the message by allowing you to offer your selection of facts and opinions, and by letting you decide when to give the information.

You may choose to use press release as part of your advocacy campaign strategy when the general public has been identified as an "indirect target" who will go on to influence a direct target, e.g. voters who will influence a candidate. It may also be useful when influential people are the targets of the article, e.g. politicians, ministers and community leaders reading a newspaper. Press releases are also useful when other advocacy methods are not working or when looking for allies.

#### Disadvantages of writing a press release

Journalists receive a high volume of press releases on a frequent basis. Consequently, your press release might run the risk of being disregarded, particularly if it is not interesting or if a big news story 'breaks'. It is also difficult to involve many people in writing a press release.

It is not advisable to involve media in your advocacy work if you are not familiar with how the media in your area or country operates, if there are disagreements within the organization on the issue, or if bigger issues are dominating the media thus preventing your issue from getting appropriate coverage.

#### How to write a press release

#### Content of the press release

A press release is a pseudo-news story, written in the third person. It seeks to demonstrate to an editor or reporter the newsworthiness of a particular event, person, service, product or point of view. You may choose to structure your press release with the following advice.

- **Headline**: write a striking, simple and interesting headline that helps the journalist understand the story and what the news is.
- **Opening statement**: the first sentence should summarize the most important facts of the story
  - Who is involved?
  - What is happening?
  - Where is it happening?
  - When is it happening?
  - o Why is this happening?
- So what? How does this affect the reader? Why should they care?
- **First paragraph**: expand on these points in further detail. Include the most important facts first and the least important at the end. The aim of this paragraph is to persuade the reader of the facts and importance of the subject.
- **Closing paragraph**: your press release should end with a short paragraph that describes you and your organization, and reiterates the importance of the given issue.

#### Writing style

- Should be written in third person.
- Use short sentences with around 20 words.
- Use short paragraphs with two to three sentences.
- Avoid using unnecessary adjectives or redundant expressions such as "added bonus" or "first time ever".
- Avoid using jargon explain technical words, abbreviations, and initials.
- Avoid fluff, embellishments and exaggerations.
- Mimic the style and story structure of the newspaper or news source you are submitting your press release to.
- Use active, not passive, voice. Do not write: "It is hoped that". Instead, say "I hope that".
- Use a good case study or anecdote as evidence to support your point of view.

#### Quotations

Incorporate one or two brief and simple quotes that journalists can use in an article.

- Quotes should be used wisely. For advocacy, it should be a strong statement of condemnation or statement of the organization's position, not a summary of facts we can include as normal text.
- Quotes are very useful for bringing a personal touch and for highlighting the comments of well-known or key people.
- Try to use direct speech quotations (as opposed to indirect quotations) from people involved in the issue or activity that:
- Express an opinion, fact, or be able to support the view you have expressed in your press release.
- Give a human dimension to the story.
- Remember to get permission to use quotations or materials from other organizations.

#### Presentation

- Use or create headed paper so that it looks official and professional.
- Make sure that it is laid out in a way that is easy to read.
- Type it, using double spacing, on one side of the paper only.
- Include the date and the name of the organization.
- Provide contact information as available (name, telephone, fax number, and email address).
- Give an embargo time (the day, date, and time when the journalists are allowed to use the information) if necessary.
- Provide brief background notes for the journalist.
- If appropriate, include photographs of key people, places or action mentioned in the press release if you have them.

- Remember to include them in the format specified by the publication.
- In addition to including the attachment, paste the text of the press release into the email body, after your usual letter text so that journalists can review easily.

#### Distributing your press release

Once a press release has been written, it should be distributed to selected journalists and press associations by fax or email. You can telephone them to ask for these numbers/addresses. Try to research the most relevant journalist(s) and send the release directly to them. When you send press releases, send to staff or freelance journalists as well as editors.

Once the journalists receive the press release, they will consider whether to include the story in their media work. They may also contact you for further information. As such, it is best to select one person from your team that will serve as the main contact for journalists and provide a 24-hour contact phone number on the press release if possible, so that you can be contacted at all hours. Remember, journalists have a different schedule than you do and may have some questions to ask pertaining to your press release outside of your normal business hours.

When do I...

- Send a fax? If you do not have a personal contact, fax is a good way to submit your press release. If you do not have a fax machine, try an online fax service, which sends and receives faxes from your computer such as <u>http://www.myfax.com</u> which is good and reasonably priced, and <u>http://faxzero.com/</u> which is free with certain page restrictions.
- Send an email? Most of the time. Paste your press release into the body of the email instead of just as an attachment. You may attach the release as well, but never just send an attachment.
- Make a phone call? When your story is very urgent and/or breaking news. Only call if you have a 15 second pitch planned and ready to go.
- Send materials by postal mail? Almost never, only upon request.

#### Further resources

Press Release Template (Asylum Access)

Press Release Sample: Public Unconstitutionality Action Admitted to Review by the Constitutional Court of Ecuador (Asylum Access, 2013)

Press Release Sample: Standing up with Refugee Women and Girls on World Refugee Day (Asylum Access, 2013)

TB-MDR Advocacy Toolkit (Advocacy Partnership, 2011)

Page 105 of this International HIV/AIDS Alliance Advocacy in Action Toolkit Writing Press Releases – Advocacy Partnerships

## **Outreach via Social Media**

Even if they do not have a website, most non-profits have some level of presence on social media networks. Facebook and Twitter are convenient, free platforms upon which to engage users from around the world. Your website and social media pages should be listed on non-profit online directories: reach out to groups such as Guidestar.org, and alert sister organizations to your online presence so that they can link to you from their channels.

Social media can facilitate online fundraising, connect a wider audience – of potential supporters – with your cause, and dispel myths about refugee rights in an interactive forum. The following guidelines are meant to serve as recommendations rather than strict rules: review them and adapt them to the requirements of each situation. Remember that effective communication is a two-way process: this applied to social media as well.' Listening' to other organization's activities and debates as disseminated via social media channels can benefit your work too.

## Overview of key kinds of content

- Updates on your work and achievements
- Posts from your blogs
- Event posts and reminders
- Links to external media coverage of organization
- Links to external resources such as general media coverage on refugees
- Occasional promotion of partners' events

## Social media posting: The basics

Your primary short-term goals in social media engagement may include keeping your supporters engaged and updated about your work and adding value to supporters by providing information about refugees in general (within a somewhat narrow scope to keep things manageable).

- In the medium to long-term, if you want to establish yourselves as the go-to person for refugee rights issues in your area, all communications strategies should support this.
- When posting general refugee content, keep your mission in mind, and endeavor to tie in general articles to your mandate.
- If your primary social media audience is North American supporters, the ideal posting time to effectively reach a large audience is 10am PDT (1pm EST) on weekdays, except Friday.
- Tone should generally remain professional and engaging. Stylistically, you should adopt practices indicated in your organization's style guide. This is

Asylum Access practice, as we seek to communicate with UN and government policymakers. However, if you are working primarily with refugee youth communities and wished to reach out to them via social media, more casual language and engagement may be considered.

- Avoid unnecessarily technical or legalistic language, unless it's very relevant to who you are trying to reach.
- Don't' just state facts, explain the implications of an issue. E.g. We organized a <u>Know Your Rights workshop</u> for 14 refugees, enabling refugees to learn about their rights and how to assert them.
- Be creative about engaging people around refugee rights. Think about ways to improve your message such as using images, quotes, statistics or other creative lines instead of just stating facts and using the same rhetoric
- Visuals are always helpful in drawing people's attention. Think about how you might attach a photo to your post. Especially critical in campaigns!
- For posts to be meaningful to a broad audience, you will need more content than just about your organization. Posting about yourselves only engages those who are already interested. On the other hand, posting about, for example, refugees in a certain community engages everyone interested in the topic, and people are more inclined to share this and appeal to a larger audience.
- Be succinct and clear. Social media is most effective when brief!

Whilst it makes sense to have a communications staff focal point, who is primarily in charge of maintaining social media platforms, you may also wish to allow your director and policy advocacy staff to post, following training on consistency and messaging style.

Timely news articles and other time-sensitive updates should be encouraged by admins at any time, regardless of whether it is prime social media posting time. Social media is a fast-moving platform and with people checking their Facebook often, news grows old very quickly. If you think it would be useful to repost during primetime, procedure should be established so that staff admins check in with the communications focal point in order to avoid posting repeatedly in a short period of time. This would not include job postings, events and other non-time sensitive announcements.

Regardless of other news, you may wish to plan three meaningful updates specifically about your work each week at. This will ensure a steady stream of updates regardless of external media, which will be complementary but should not form the basis of your social media engagement.

#### Further resource:

Sample Social Media Post- Save the Children Second a Da Ad Who should post?

# Special posting guidelines for campaigns (e.g. holiday appeals or other events)

To avoid being forgotten, a series of these should be planned and scheduled ahead of time. They can be scheduled via Hootsuite.com and should be as engaging as possible. Find creative ways to drum up interest instead of just asking people to buy tickets or donate.

How NGOs can use Social Media (bigduck, 2010) Best Practices in Social Media for NGOs (Ethinos)

## Confidentiality

It is of utmost importance that all communications – both internal and external – are considered with client confidentiality in mind. If your primary function as an organization is to protect refugees, this obligation must be balanced with your obligation to communicate to donors and supporters the details of your work. The <u>Nairobi Code</u> provides in-depth guidance on client confidentiality, but there are cases where it may not be enough, for example, if a client agrees to video interview for a campaign but is actively pursued by their persecutors. This is not a Nairobi Code issue but presents a clear security risk.

In order to mitigate risks, you may wish to institute a policy specifying that communications staff should not receive anything that cannot be shared externally. This would apply to:

- Monthly communications reports
- Client stories
- Articles for newsletters
- Information for funders/fund reports
- Photos and videos produced by colleagues

## Guidelines on getting information out safely

## Why are these guidelines important?

Information is often shared among colleagues in your office, with global staff and also with partners and supporters. As something you say spreads among colleagues, including staff who may bring your stories to an external audience, it is important to avoid any miscommunication and misinterpretation on what should and should not be shared. This can be done through clear communication using the recommended guidelines below.

#### How to request information for external communications clearly

When asking for information to be used publicly be clear about what is needed and why. That way the person you are asking can get you the info more easily and will know how to deal with any confidentiality issues!

The following guidelines will help you think about whether you are being clear enough. Include in your request to staff or clients the following specifics:

- This information will be used for...: policy advocacy / grant application / communications / other. Give details.
- The audience will be...: explain what type and number of people.
- The information is required by...: issue an internal deadline and explain your external deadline if necessary.
- This is important because...: explain how it affects the person involved, and how it would affect the organization as a whole.
- The topic required is...: explain the specific question that needs to be answered, or theme that needs to be highlighted. Give an example of a few questions you might ask the person.
- Anticipated problems...: highlight confidentiality or political considerations as appropriate.

What staff should do when contacting a client specifically to obtain information for external communications

Be clear and transparent in how you will use their information, and give them a chance to tell you their concerns and what they want excluded from external publicity. If you identify security risks that they may not have considered, do take the initiative to withhold information from publication. If communications staff identify gaps in the story and seek more information, simply explain why information must be withheld due to risks to your client.

#### Sample dialogue

May, a VLA and Communications Liaison: Hi John, my colleagues have asked for some stories about our clients to share with our partners and supporters. Basically, this will enable us to put a human face on our work and tell them why what we do is important and how it impacts refugee clients individually. We won't publish your real name to protect your identity. Would you be willing to answer a few questions please?

John, a client: Sure. I would be happy to. Just please do not mention what happened to me in prison and my hometown.

May: Great, please do let me know if you're uncomfortable answering any of these questions, and if there is anything else I should withhold, perhaps your job, as you were a very high profile politician?

John: Yes, perhaps that would be best. Thank you.

What staff should consider when sharing client information, a story, photo, video or any other content used publicly

Review the following checklist taking care to consider all aspects of the client's protection needs:

Checklist for information sharing

How to communicate something as internal or strictly confidential

If you were not approached for external communications materials, but want to share an inspiring story or interesting conversation had with a partner with your colleagues, use "stamps" as clear indicators at the start of the email, meeting or phone conversation, to clearly indicate how information can be used. Use them at the top of an email, at the beginning of a conversation, or clearly label a document. Note that Communications Reports should always need to always be cleared for publication.

- Cleared for publication: You have done the checklist, all obligations have been met, and this information can be used in the agreed upon public ways.
- **Needs adjustment in** <u>ways</u>: This content can go public if management staff make certain adjustments that are very clearly stated in this correspondence (e.g. blur face, change name, withhold hometown).
- **Internal**: this information needs to stay internal to the organization, but can be shared internally.

• **Confidential**: this information needs to stay between the people on the email chain, and can't be shared with others in the organization without further approval.

This flowchart may help you to determine the appropriate label:

Confidentiality checklist for external communications

## How to tell inspiring stories without jeopardizing safety

- Use a pseudonym for client
- Obscure face in video
- Remove identifying characteristics
- Country of Origin, if few refugees from his country in your location
- Job and hometown, if this is very small and easily identifies client
- Share only when/if client has been resettled
- Keep story very general in conversations, e.g. "We helped this single mom get refugee status, and with that she got a job and put her children through school."

## **Annual Reports**

## How to write an annual report

An annual report is a communications document, generally made available to the public, as well as a useful supplement to grant requests. You should expect that donors, UNHCR, government, and other partners or stakeholders will read them. They showcase your work in an accessible format, reflect on achievements and challenges, and signal your future direction. Stakeholders in particular will want to know why you did what you did, how you spent your time and money, and what difference it made.

A typical length is around 20 pages, and may be put together by comparing and compiling items from internal quarterly reports. Detailed budgets are generally not included. Annual reports should be jargon-free, clearly presented, and ideally contain visuals – engaging photos or pictures of clients, groups, and project activities that contextualize each chapter. Sans serif fonts such as arial and calibri look neat and professional. Captions are advised to anchor your illustrations in your narrative.

Duplicating information available on your website is not a problem, as an annual report is a self-enclosed document. Equally, if the website is not as up-to-date as an annual report this is understandable, given the priorities of a young legal aid office – this is unlikely to be read as a difference in openness.

## Annual report template

#### Introduction

Could contain founder's note, summary of year's progress.

Overview of refugee situation in your country

Could contain explanation of what refugee status means for access to other rights, gaps your organization aims to fill.

About the organization

Your mission (general) and objectives (concrete, such as the number of cases you hope to take on in the coming year, or awareness-raising initiatives).

Activities to achieve mission and objectives

Brief activity report with images

Achievements

Such as numbers assisted (it is standard to include dependents).

**Client stories** 

You may already have interviews with clients for other public information purposes. Even if this is the case, it is advisable to obtain clients' permission to use their photo or story again (and in future).

Challenges

Concrete needs for accomplishing your ultimate goals. Contextual needs belong in a grant request.

Organizational structure, team

If you choose to explain the management and advisory board structure, ensure that titles are helpful and guiding: those on a board of directors are generally understood as exercising supervision over management staff. An advisory board carries no legal connotations and are external to the management structure.

#### Last reporting period's income and expenditure

This need not be itemized; it can be by type of cost or income. Keep financial information jargon-free and easy to understand. Explanations may be useful, detailing your main fundraising strategies or implementation of cost-saving measures.

#### Conclusion

Aim to summarize and reiterate the progress the project has made towards achieving its ultimate goal, besides that year's specific objectives. Stress that there is work still to be done and issue pointers as to how interested parties could support your work, either with money or time.

An epilogue recognizing donors by name is common practice. Triple check this list for spelling and correct full legal names of foundations and government departments. Smaller donors need not be included if this makes the report too long. They can be acknowledged in alternative communications such as newsletters.

### **General advice**

Over-emphasizing fundraising achievements is less advised than mission-related accomplishments. Readers will likely be more interested in what you did with the money, rather than how you raised it. It is not inappropriate to include information on fundraising progress; however this may come in the financial section, rather than under achievements.

If you do not yet have good quality photographs to illustrate your report, search for 'royalty free stock photos' on the internet in order to complement your write-up.

### Samples

Note the differences between Asylum Access's 2007 – 2008 Annual Report and the Asylum Access Annual Report 2011 – 2012. It is normal for formats to evolve as an organization's portfolio grows – the latest report includes some short, recently published articles, and no longer itemizes salaries by position, for example.

Asylum Access Annual Report 2007 – 2008 Asylum Access Annual Report 2011 – 2012

Further resources

saNGOnet Pulse: Guidelines to Prepare Your Annual Report

## **Communications Focal Points**

To facilitate the collection of communications material, it is important to have staff focal points among volunteers and permanent staff, who can take charge of creating and archiving material. Office news, highlights, client stories, and other events for external publication should be recorded and saved for immediate or future use. This also applies to photographs taken at speaking events or newspaper articles written by staff/volunteers.

Asylum Access relies on designated staff or volunteer Communications Liaisons.

## What does a communications liaison (CL) do?

- Works with communications team to bring news from their office or department to partners and supporters.
- Information collection about office news, highlights, client stories and other events for external publication. This can be collected in Monthly Communications Reports to the communications team.
- Enables communications staff to communicate effectively about the organization's work through clear information, videos and photos.
- A CL's work puts a human face on our work beyond mere statistics. For example, client stories will show how legal aid impacts individual lives.
- How can a CL's work be used?
- Regular social media posts to keep grassroots supporters engaged.
- Published as content in Quarterly Newsletters and on your website.
- Aids grant-writing and report-writing through making examples available to illustrate how your work is transformative.
- Aids prospective partner engagement through illustrative examples in conversations, email follow-ups and donor campaign outreach.

## Working with volunteer photographers

On occasion, the opportunity to work with a volunteer photographer or videographer may arise, whether among VLAs or external to your organization. Before working with them, ensure that activities are planned ahead of time, that they know what to expect and can get the learning experience they hope for in return for their time and skills.

Independent photographers\*, or photographers who may use their photos for personal purposes (i.e. their online portfolio, photo exhibits, or other projects), should sign a photographer agreement to give us permission to use their photos. Volunteers within the organization who are taking photographs exclusively for the organization's use and

would have no interest in using the photographs elsewhere for personal purposes do not need to sign a photographer agreement.

When working with a volunteer, independent photographer, please do:

- Get them to sign the Photographer Agreement (sample available for download below) to give us permission to use photos
- Confirm that they understand that this is a voluntary contribution, and
- Let them know in advance that they need their own separate waivers with clients to publish any photos on their website.

Sample Photographer Agreement (Asylum Access)

Unlike other volunteers, independent photographers volunteer solely to produce visual media. They may use photos for personal purposes like their online portfolio, photo exhibits and photojournalism projects. The terms "Independent photographers" better represents our relationship with them since they have greater autonomy over their work.

#### Further resources

Sample Client Testimony Video Guidelines (Asylum Access) Sample Publicity Waiver for Client Videos (Asylum Access) Sample Monthly Communications Report Guidelines (Asylum Access)



## **Human Resources**

All organizations, regardless of size, benefit from a human resources department or, at minimum, an employee skilled in people management. Human resources aids in the settling of internal disputes and makes certain all employees understand organizational policies and employer expectations. Additional responsibilities of the human resources department include hiring and retaining the best people through the administration of strong employee management systems and leadership and development trainings, offering quality benefits, and the promotion of a positive, supportive, and inspiring company culture.

Perhaps most important, human resources ensures the organization abides by local, and national labor laws, working to protect both employee and employer from potential employment and labor disputes or abuses.

Human resources is a multi-faceted department charged with diverse responsibilities, which support the growth and increased impact of the organization by taking care of employees and employers alike.

#### Further resources

Importance of Human Resource Management (Human Resource Excellence) Ten Reasons Why the Human Resources Department Is Important (Small Business) Why is a Human Resources Department Important? (TriNet)

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Professional Development	

## Recruitment

## Hiring

The following section provides tools to manage both recruitment and hiring of new staff, including resources for creating a job description, advertising the position, interviewing candidates, and making offers.

#### Materials for download

Best Practices in Leadership Staffing Sample Offer Letter Sample Job Description

Through experience and conversations with refugee legal aid organizations, Asylum Access has identified a set of key personality and cultural traits commonly found in effective refugee rights leaders.

#### Materials for download

Finding the Right Leadership: Lessons Learned from Asylum Access

### **Recruitment Planning**

Prior to hiring for any newly created or vacated position it is important to plan out the recruitment process in detail to ensure that the recruitment process is thorough and objective. Recruitment planning includes creating a hiring committee, recruitment timeline, standard procedures, job description, and position advertisement. Effective recruitment planning results in a stronger pool of candidates, cuts down on the duplication of work, and facilitates a timely, efficient recruitment and hiring process.

#### Hiring committee

Starting the recruitment process requires the formation of a hiring committee that will be responsible for creating the recruitment timeline, job description, advertisement, and carrying out the entire hiring process.

The hiring committee then needs to designate specific roles and responsibilities to each member prior to continuing with the planning process. Roles include but are not limited to who will draft the job description, advertise the position, screen resumes, lead the interview process, and send the offer letter and collect needed paperwork.

#### Evaluating needs, resources, and creating the timeline

The hiring committee will evaluate the needs of the organization either technical or soft skill needs, the resources available to compensate the new employee as well as fund the recruitment process, and the preferred timeline for the start date of the new employee.

Once the initial evaluation process is completed, the hiring committee will create a detailed recruitment timeline that both gives ample time to carry-out a thorough recruitment process while still ensuring timely hiring.

#### Job description

One of the first steps on the timeline will be to create a detailed job description that includes daily and/or monthly tasks, larger projects, and overarching organizational responsibilities as well as required and desired qualifications.

#### **Evaluation criteria**

After the job description is finalized, the hiring committee will meet to decide upon how candidates will be evaluated. The committee will choose the top three to five qualities they seek in candidates, as well as list anything that would be nice to have but not required. This ensures that when it comes time to screen resumes there is an agreed upon objective standard that ensures all candidates are evaluated fairly and equally.

#### Advertising the position

The designated person will write the position advertisement, making sure to promote the position while still detailing out the job responsibilities, qualifications, and application process.

The hiring committee will then decide upon an advertising strategy that outlines how and where to advertise the position. To increase efficiency, the committee may choose to create a standard record-keeping system that tracks where and when the position has been advertised.

#### **Resume screening**

The person designated to conduct the initial screening of resumes should have in place a standard system that will allow for easy tracking of strong candidates. Effective recruitment planning includes deciding how the hiring committee will review strong candidates to decide together on which candidates they would like to interview. The above listed steps make up the general recruitment planning process. A more detailed description of what each step entails can be found in the Recruitment Manual section. Information regarding the formal hiring process including the interviewing process and making an offer are found in Hiring Procedures <u>below</u>.

#### Further resources

Top 10 Tips for Running a Good Nonprofit Hiring Process (The Bridgespan Group) Top 10 Tips for Running a Good Nonprofit Hiring Process (The Bridgespan Group) Hiring for Organizational Success: Part 1 (Third Sector New England)

### Recruitment Timeline

It is important to map out all steps and milestones of the recruitment process against a concrete timeline of dates. This will help you anticipate whether you are on track to have a full team or need to strengthen recruitment efforts.

Your recruitment timeline will vary greatly depending on whether you hire volunteers as well as staff, how long you require volunteers to work with your organization, and how long they choose to do so. If all of your volunteers stay for 6 months, your recruitment timeline will be very different compared to a situation where most volunteers prefer to stay for a year.

The sample recruitment timeline below will help illustrate this concept. We encourage you to develop a system for tracking where you are in the recruitment process in order to ensure that you have a full team of volunteers throughout the year. Communication across your organization with regards to recruitment needs is also essential to building your team of volunteers alongside staff.

Please see the section on Annual Volunteer Planning for guidance on record keeping for the arrivals and confirmations of volunteers, and the Employee Management section for similar resources regarding staff.

VLA Recruitment Timeline

## **Recruitment Manual**

The goal of the following recruitment and hiring guidelines and preferred procedure is to ensure the organization upholds recruitment and hiring best practices and executes an objective, fair, and thorough evaluation process of all qualified potential candidates.

## Standard hiring process

#### Hiring for a new position vs. employee promotion

Not all new or recently vacated positions require opening up the recruitment process to external candidates. If a current employee has shown strong potential to advance within the organization and has expanded their responsibilities to include a significant portion of the responsibilities found within the new position description, the Country Director and/or supervisor may choose to promote the employee to the newly available position.

For positions that would require a lateral move for an employee, meaning that the majority of the position requirements and responsibilities fall outside of the employee's current scope of work, it is encouraged that the position be opened to external candidates. However, where possible, the organization should try to allow internal candidates to apply prior to opening up the process to the general public. Employees wishing to transition into the available position should participate in the standard application process, which is outlined in further detail below.

#### Step 1. Forming the hiring committee

#### Hiring for International Leadership Positions

Upon the need to hire for a new or recently vacated leadership position in any of nonheadquarters offices, we encourage that a hiring committee be formed that includes, at minimum, the Office Director, a HQ leadership staff member or equivalent, and an HQ and/or in-country HR or operations staff member. Additional staff may be included in the committee at the discretion of the Country Director, such as an employee that would work closely with the new hire.

#### Hiring for international non-leadership positions

The hiring committee for a non-leadership position in a non-headquarters office does not need to include an HQ staff member. The country office is encouraged to form an internal hiring committee of at least two members, preferably three. The employees chosen to form the hiring committee should include at least one leadership and one human resource staff member, where possible.

#### Hiring for a new country office

When hiring for the Launch Director for a new non-headquarters country office, the hiring committee will ideally include an HQ HR and/or Operations staff members, as well

as an HQ leadership staff member or equivalent. Additional staff may be included as needed.

To hire for the remaining positions in the new country office, it is recommended that the hiring committee include an HQ HR or Operations staff member, an HQ leadership staff member, the in-country Launch Director and/or new Country Director, and any additional staff members as needed. However, it is encouraged not to exceed more than five people on the hiring committee.

#### Hiring for HQ leadership positions

When hiring for HQ leadership positions the hiring committee will ideally include the Executive Director, a HR or Operations staff person, and any other staff as needed. Hiring for HQ Non-Leadership Positions

For HQ non-leadership positions the hiring committee will ideally include a HR and Operations staff member and the new position's supervisor. At the discretion of the new position's supervisor, an additional leadership or non-leadership staff member may be invited to join the hiring committee.

#### Step 2. Visa requirements

If applicable, a member of the hiring committee will research and confirm the visa requirements and labor laws specific to the respective country. Information collected may include the legal requirements for hiring a non-national including the type and length of visa, compensation requirements, and visa application and qualifying process.

#### Approved employment contracts

It may provide helpful to have pre-vetted contracts for each of the respective offices. It can save time and potential legal hassles when going through the hiring process if the hiring committee can easily refer to and use an already put-together, lawyer approved hiring contract. The hiring committee may always exercise the right to make changes to the contract, so long as any revisions fit within both the organization's mission and applicable labor laws.

#### Step 3. Preparation for recruitment

#### Creating the recruitment and hiring timeline

The first step of the recruitment process involves the creation of the recruitment and hiring timeline by the designated hiring committee. The timeline includes but is not limited to activities and deadlines such as, the completion of the job description, when the position will be advertised, deadline for resume collection, interview schedule, and steps for making an offer. For a more robust timeline, the committee may choose to work back from a preferred start date and also include a potential training schedule for the future hire.

#### Delegating responsibilities

It is recommended that members of the hiring committee leave the initial meeting with a clear understanding of their responsibilities as related to the newly created recruitment and hiring timeline. The hiring committee may find it helpful to designate each committee member's specific leadership and/or supportive role(s) for each task.

#### Writing the job description

To facilitate a strong hiring process, it is important to have a clear, detailed, and agreed upon job description. While one person may lead the project, it is helpful that all members of the hiring committee work together to detail out the responsibilities of the new position. In addition to a position description, the hiring committee should take this time to think carefully about technical and/or soft skill requirements and/or any preferred but not required, skills or experience for the position.

#### Establishing evaluation criteria

After the completion of the job description and required and preferred skills, the hiring committee is encouraged to discuss and agree upon the top five qualities for which they will look for in candidates. This step helps set clear evaluation criteria, enabling the committee to later implement a standardized and objective resume review process.

#### Finalizing interview questions and take-home task

Based on the job description and evaluation criteria, the hiring committee should make every effort to confirm a list of "must ask" interview questions and a list of additional questions to ask if relevant and time permitting. Interview questions may be pulled from an organization's standard interview questions (if available) or be freshly created to screen for position-specific technical or soft skills. It is encouraged to include questions that evaluate a candidate's soft skills, as they relate to the ability to succeed in the position and/or advance the organization's overall mission, vision, and values.

The hiring committee may choose to include a technical task that candidates, in their final rounds of evaluation, take home, complete, and send back within a designated amount of time. This is the time where the hiring committee may begin to think about creating such a task, asking questions about how the task might be structured and what questions would be most helpful in evaluating the needed high-level skills.

Completing each of the above steps helps the recruitment and hiring process to remain standardized, objective, efficient, and thorough. Careful planning aids in the timely completion of recruitment tasks and the meeting of the hiring deadline.

#### Step 4. Recruitment

#### Advertising the position

The hiring committee will need to draft and finalize the position advertisement, which should include the job description, position requirements, basic benefits (if deemed appropriate to include), and application instructions. The position advertisement may also include visa requirements if applicable such as requiring that applicants be able to qualify for a visa and/or work permit. It is important applications instructions include to whom candidates send applications.

Depending on the organization the application process may be opened to both internal and external candidates. If opening it up to both types of candidates, it may be looked upon positively to allow internal candidates the opportunity to review and submit their application prior to opening the position to external candidates. Internal candidates may be given the opportunity to start applying anywhere between one to four weeks before the position is publicly posted.

The job advertisement may be posted on local, national, and international recruiting websites and services depending on the need of the position. It has proved helpful for a hiring committee to agree upon a way to track where, when, and how the job advertisement is posted. One record-keeping option is to record in a separate Google doc or a sheet within a larger relevant Google doc items such as posting location and/or contact person, relevant contact, website, and date posted.

#### Resume screening and selecting candidates to interview

The committee member responsible for receiving and screening applicants should make sure to evaluate applications based on the pre-determined evaluation criteria and skill requirements. Similar to how a committee may track job postings, the committee may choose to set up a single spreadsheet to list all of the strong candidates who may be invited to interview. Information can include applicant's contact information and relevant notes to provide easy access to the rest of the hiring committee for review.

It is helpful and encouraged that all application materials for the candidates recorded in the "strong applicant" Google spreadsheet be sent to all members of the hiring committee for review no later than the application deadline. The hiring committee may choose to have applications from strong applicants sent to them on an ongoing basis. The hiring committee is encouraged to review both the Google document and accompanying application materials to choose the top 4-10 candidates to interview. If possible, the committee may choose to pick 1-3 alternate candidates.

In the event that an organization is unable to find more than 4-5 suitable candidates, the application process may remain open and/or start anew, though the committee does not have an obligation to keep it open if they feel the candidates are strong. If needed, the hiring committee may find it worthwhile to edit the job advertisement and/or the benefit package if resources permit and/or the job advertisement and/or post in new locations.

When evaluating internal candidates, the hiring committee may include an employee's performance evaluation(s) and/or work sample(s) when they review the employee's application.

#### Storing application materials

Ideally, a hiring committee will be able to keep records of all applications received but, if that is not possible, the committee should make every effort necessary to at least maintain records of the applications of interviewed candidates. Options for storing application materials include creating a designated folder within the inbox to store all applications received and/or creating a specific file folder in the organization's document database with the position title. The storage of application materials for candidates selected to interview is important for maintaining thorough records supporting the committee's later decision to hire or not hire candidates.

Unless circumstances do not permit, all recruitment and candidate records should be kept in the local country's filing system as well as sent to HQ.

#### Step 5. Interviewing

#### Scheduling interviews

The person chosen to lead the interview process will be expected, though not required, to schedule interviews with candidates.

It is highly encouraged that no less than 2/3 of the hiring committee be present at each interview, with 100% attendance preferred. It is important that the hiring committee members attend each interview to help ensure the fair evaluation of candidates and to prepare the committee to make accurate, objective comparisons of candidates.

#### **Conducting interviews**

Interviews may be conducted in-person, via Skype, or a combination of both. Alternative mediums such as mobile phones may be used to conduct interviews when needed and/or preferred.

It can be helpful to designate a lead interviewer for each or all the interviews. The lead interviewer's main responsibility is to make every effort to ask as many of the predetermined "must ask" questions as possible, with the goal of going through the full list. An encouraged, though not required, practice is to have the lead interviewer ask the "must ask" questions and allow the other interviewers to ask follow-up and/or clarifying questions as needed and desired.

All interviewers are strongly encouraged to take notes during or immediately after each interview. The interviewers may choose to record their notes in a word or Google document, a document with a list of interview questions, on a candidate's application materials, or some other preferred method. Unless circumstances do not permit, all notes should be scanned and saved in the candidate's electronic application folder or, if an interviewer chooses to scan all of their notes from all interviews into one document, into the general electronic DropBox folder specific to that position. At minimum, notes should also be physically stored in the in-office file designated for the hiring of the specific position.

#### **Post-interview**

When possible and time-permitting, interviewers are encouraged to discuss a candidate's qualifications immediately after the interview and to give the candidate an overall ranking based on objective criteria that relate strictly to the applicant's ability to fulfill to job requirements. Job requirements may include both technical and soft skills, as relevant to the position.

If interviewers are unable to discuss a candidate immediately post-interview, interviewers may choose to create a shared Google doc where they can include their notes about the candidates for easy viewing by all committee members.

The hiring committee may choose to interview candidates multiple times and should follow the same record-keeping process for each interview round. Upon the completion of all scheduled interviews, the hiring committee should collaborate to decide upon the top two to three (or more) candidates to whom they will assign the take-home task or, if that step is not needed, to extend the position offer. A member from the hiring committee should record the reasons why a candidate was not chosen to advance in the Google document, a pre-designed form for easy recordkeeping of reasons to hire or not to hire, and/or in the applicants' DropBox folders. When possible, hard copies of notes should be stored in the position's physical file folder in each office.

Step 6. Candidate selection and offer letter

#### Selecting candidate

Selection of candidates should be determined by comparing each candidates ranking, technical skills, soft skills, and, if given, the take-home task. All decisions regarding the hiring or not-hiring of candidates must be recorded. It is helpful to keep these records in the position's recruitment and hiring file and/or in the Google doc used for tracking applicants. A form can be made available that provides space to list each candidate's name and reasons for hiring or not hiring.

In all hiring decisions it is important to strive for consensus or, at minimum, a majority agreement within the hiring committee. However, organizations may choose to delegate ultimate decision-making power to one or more members of the hiring committee based on any number of internally agreed upon reasons.

#### Offer letter

Once the candidate has been selected, a member of the hiring committee will need to notify the candidate of their selection either in-person or by phone, email, and/or mail. The selected candidate should then receive the formal contract, which they will then need to review and sign and return to the organization. It is helpful to give candidates options regarding how they may return documents such as scanning, in-person, fax, or, if absolutely necessary, regular mail.

#### Negotiation

In the event that the selected candidate requests additional or modified benefits, a higher salary, or a title change, the hiring committee may discuss what concessions the organization is willing and/or is able to make based on available financial resources and/or organizational policies. If the hiring committee agrees to any changes, a hiring committee member should adjust the contract and resend to the selected candidate.

#### Notifying other candidates

When the selected candidate formerly accepts the position by signing and returning the employment contract, a person from the hiring committee should notify all other interviewed candidates that they were not selected for the position. It is especially encouraged to not tell any candidate of their not being selected for the position until the signed employment is returned. This is to guard against the possibility of the first-choice candidate turning down the offer, which would force the hiring committee to contact their second or third choice candidates.

#### Paperwork collection

After the candidate accepts the offer, a hiring committee member will collect all remaining paperwork from the new employee. The paperwork collected will be based on previous research regarding the country's labor laws and required documentation for hiring of employees.

#### Visa process

If the new employee requires a specific visa, the organization may need to provide the necessary documents to support the application.

## **Non-Hiring Options**

As you consider the various aspects of hiring leadership staff, you may discover that your organization is not yet in a position to hire a full-time leadership team. If you make this decision, there are other short-term options that may help you sustain your progress and operations until your organization is ready to hire. Below is a guide to these options.

The guide also explains the importance of maintaining effective organization of resources and materials across the organization as well as managing communications between a remote staff.

#### Material for download

Non-Hiring Options

## Volunteer Recruitment Manual

A key aspect of the Asylum Access model is the use of Volunteer Legal Advocates, who are volunteer lawyers or highly-qualified law students who dedicate a minimum of 6 months to our organization. They participate in the legal functions of the office, conducting client intake interviews and assessing needs or making referrals as

necessary, providing legal assistance for the RSD process, submitting written briefs and appeals, advising clients on their rights as refugees and refugees, develop unique legal tactics to assist clients in their legal needs beyond RSD (such as asserting their rights to employment, education, security and social services), and conducting Know Your Rights trainings.

As the turnover rate for VLAs is relatively high, it is essential to have an organized and efficient recruitment system. Having highly qualified and enthusiastic VLAs ensures that new energy and knowledge is introduced to the organization on a regular basis. This section of the Toolkit serves as a step-by-step guide on how to manage VLAs and other human resources for the office in a streamlined way.

#### Step 1: Advertising

The first step in the recruitment process is to advertise the Volunteer Legal Advocate position (or whichever position you wish to fill) within all of your networks. Law schools are a great place to advertise for VLAs, and contact information for career centers or human rights clinics directors is easily accessible on university websites. You may also advertise through your professional networks and any other personal networks you believe to be a good way to connect with volunteer lawyers enthusiastic about refugee rights!

Below is an example of a Vacancy Announcement for Volunteer Legal Advocate positions with Asylum Access, as well as a sample job description for volunteer positions other than VLAs. You may download and adapt either to fit your recruitment needs.

#### Further resources

Sample VLA Advertisement Sample Advertisement for non-legal Volunteers

#### Step 2: Application screening

Once you have widely advertised the open positions, you will start to receive applications. You may decide to interview each applicant, but if not, you will want to screen them beforehand to determine which ones will be offered an interview. Here are some suggested steps in screening applicants. They serve as a sample timeline and set of processes to follow during the application screening process.

#### A: Screen each applicant

You will need to decide who in your organization will be responsible for screening applicants. You may choose to have all applicants send their materials to a separate email address, which can then be checked regularly by the person in your organization in charge of screening applicants. The specific protocol will depend largely on the size of your organization and whether or not there are multiple offices. Asylum Access utilizes a central screening process by which a Headquarters staff member in charge of Human Resources regularly checks an email account designated solely for receiving applications and Volunteer inquiries. The applications recommended for interview are then forwarded on to various Legal Services Managers in the organization.

As a tool for this screening process, it will be very helpful to create a spreadsheet to track the basic information and time frame of applications recommended for interviews. This way everyone in the organization involved in the hiring process will have access to a list of candidates in the recruitment process. You will find a template below for download.

Not all candidates will provide all necessary information in their original application; they may not specify a possible start date or how long they will be able to commit to your organization. Before you decide whether or not to recommend them for a formal interview, there are certain screening questions that you may want to ask. This will avoid Managers taking time to interview candidates who do not fit your organization's specific requirements.

**Screening Questions Email** 

#### Dear XXX,

(Organization name) is interested in your profile and your application, but we would like to make sure that you fulfill other requisites before we take your application to the interview stage:

- 1. May I confirm that you would be available to start on XX-XX?
- 2. May I confirm that you will be able to work full-time?
- 3. I would like to confirm that you realize that this position is entirely self-funded.
- 4. The minimum time commitment we require of all VLAs is X months.\
- 5. Would you be able to stay with us for at least X months?

Thank you. I'll be looking forward to your reply,

Best regards,

XXX

Material for download

Sample VLA Applicant Spreadsheet

B: Make a recommendation

If you decide to interview the applicant, continue on to Step 3. It is helpful to state in the Vacancy Announcement that only candidates selected for an interview will be contacted. In this case, no action is taken for applicants not selected for an interview.

#### Step 3: Manage interviews

For this step, your office will determine its own protocols on how best to manage applicants who have been offered interviews. However, it is important to clearly indicate which applicants have been offered interviews so that they are scheduled, executed, and followed up on in a timely manner. Many applicants are also applying for other opportunities, and not being punctual in managing their applications can sometimes lead to losing them to other organizations.

Some ideas for managing interviews:

 Create a shared calendar for the entire office to see when VLA interviews are taking place.

- Indicate on the Applicant Spreadsheet (step 2) once an interview has happened.
- Have the same person who screens applications assist in scheduling interviews to ensure that all top candidates are interviewed.
- Create a specific email account just for managing volunteer applications, and distribute that email address on all advertisement materials.
- Use www.timeanddate.com to double check time zone differences.

#### Step 4: Conducting an interview

The interview is an important step in the recruitment process. It is an opportunity to hear the candidate elaborate on their written application, clarify ambiguities, and get a general sense whether their personality would be a good fit with your organization. It also gives the candidate an opportunity to get to know your organization. For this reason, it is vital that you are well-prepared for an interview that puts both the interviewer and applicant at ease.

Over time, your organization will develop specific interviewing protocols best suited to its logistical needs. Below, you will find some general guidelines and suggestions on how to prepare for and stay organized throughout the interview process.

When contacting the applicant to arrange for the interview, make sure to set out guidelines for the following information:

- Who Interviews are usually conducted by leadership staff, or in certain cases, senior volunteers.
- **How long** An interview should be about 45 minutes long, allowing for questions from both parties.
- When <u>The Meeting Planner</u> is a very useful tool for planning interviews across time zones.

#### A: Plan in advance

Different organizations are going to develop their own protocols, and individuals will also have their own ways of preparing. However, it is helpful to have some uniformity when it comes to taking interview notes and saving those files in the event that an applicant needs to be revisited or a group decision made.

- Create a file for the applicant. Use the interview notes template featured below.
- Open the template.
- Save the interview notes with the applicant's name.
- Save the notes in a central folder determined by your office.
- Review the applicant's CV and note any specific questions you would like to ask, adding them to the end.

- If you are conducting a more formal interview, choose one or two scenario questions from the interview notes template.
- Ask leadership staff if there are any other positions you should consider the candidate for. (Sometimes, for example, a VLA applicant may not be offered that position, but that of Community Educator or Admin Officer.)
- Adjust interview questions as required.

#### B: Conduct the interview

- Use the interview notes you created in Step A. to take notes during the interview.
- Save ALL interview notes. This is an important human resources practice.
- At the end of the interview, thank the candidate and tell him or her when he or she can expect to hear back. It may be helpful to create a reminder in your calendar for a deadline to respond to applicants, regardless of whether you make an offer or not.
- Send a "Thank you for taking your time to interview" email.

#### C: Make a recommendation

If you are not the sole person making hiring decisions, make a recommendation to the other deciding individuals regarding whether or not to make an offer.

If applicable, update the Applicant Spreadsheet to reflect that the candidate has been interviewed.

#### Material for download

Sample Interview Invite Interview Notes Template

#### Step 5.1: Turning down a candidate

Turning down a candidate must be done carefully and tactfully. They have taken time and effort to prepare and meet with your organization for an interview, so you should always send a follow-up email on the results of the interview process, ideally within three weeks of the interview, but always as soon as possible.

If you have not interviewed a candidate, it is not common practice to send a rejection letter. Rather, include a note in recruitment materials stating that only those selected for an interview will be contacted.

There are various types of rejection letters that you can send to candidates depending on your hiring decision:

- **No offer**: This is for candidates that you do not them seeing being a good fit for the position or organization.
- **Apply at a later date**: This is for candidates who do not currently fit your hiring needs, but who you think might be good additions to your team at some point.
- Later offer: This is for candidates who you'd definitely like to hire, but not for the current time period.

Material for download

<u>Template Letter: No Offer</u> <u>Template Letter: Apply at a later date</u> <u>Template Letter: Later Offer</u>

Step 5.2: Offers and acceptance

Once you have decided to make an offer to a candidate, there are a couple of steps to take.

A: Draft the memorandum of understanding

The MOU is an agreement between your organization and the new hire about the conditions of the offer as well as the job expectations. It should be sent along with the offer letter and signed and returned if and when the applicant accepts the offer. These MOUs should be saved in a central place.

Below you will find a sample MOU, as well as an MOU Template, which you can download and use as a starting point to draft an MOU for your organization.

Material for download

<u>Sample MOU</u> MOU Template

B: Send an offer letter

Once you have decided upon the terms of the offer and specified these in an MOU, you are ready to send an offer letter. Below you will find a template letter for making offers to VLAs. Make sure to attach the MOU and provide instructions on returning it with a signature.

Material for download

Offer Letter Template

Refugee Rights Toolkit

#### Step 6: Pre-departure documents and communications

Once new hires have accepted an offer from your organization and returned a signed MOU, you are ready to begin to prepare for their arrival. Make sure to add them to the Annual Volunteer Planning chart (use left side navigation to visit this section).

In order to prepare for a VLA or new hire's arrival, there are certain documents that you will need to request such as a Waiver of Liability and Proof of Insurance. You should also consider sending any documents or readings that will help them prepare for their position.

Examples of the documents to request and send to your new hires and VLAs are available for download below. You will also find a sample letter to send at this stage of the hiring process.

#### Material for download

Sample Letter: Post-MOU Communications

Waiver of Liability Template

Proof of Insurance

Sample Pre-arrival Information Packet

#### Step 7: Set-up for new volunteer or hire

Once you have received all required documents, the VLA has their visa arranged and has a set arrival date, you are ready to prepare for their arrival. There are a few key steps that will help manage any risks and ensure a smooth transition for the VLA.

- Add new staff to record keeping spreadsheets and Annual Volunteer Planning document.
- **Introduce new email**: Create the email account that the VLA will be using, and provide clear instructions on access to this account.
- Arrange for a welcome and office tour: Make sure all new arrivals have access to your office's Office Basics Manual, or whatever materials provide key information about office logistics, information organization-wide policies etc. Below is an Office Basics Template, outlining the main topics that should be addressed. This document will help get new VLAs oriented, but you should also have more experienced staff give them a tour of your office and operations, making sure to answer any questions they might have.
- Schedule a training week: Providing core training to your volunteers is important not only to the quality of their work but also a key component of the volunteer experience. Volunteers are often willing to donate their time because of

the knowledge and skills they will develop through the experience, and providing a quality training week will help fulfill this. Please see our VLA training curriculum under the Learn section of the Toolkit for further guidance.

#### Material for download

Office Basics Template

# **Employee Management**

Quality employee management is a key determinant of an organization's success. By investing in high quality management of employees, organizations see an increase in employee engagement, higher employee retention, and improved overall work quality. As strong management systems are put in place, organizations prepare themselves to attract and retain the top quality candidates needed to move the work forward. By strengthening its own workforce, organizations increase the likelihood they will survive in the event of changing resources, community needs, or other items that impact the operations of the organization. Strong employee management enables an organization to ensure that company culture and leadership reflect the organization's mission and impact.

Four key aspects are involved with employee management: strong hiring practices, evaluation that gives employees quality, consistent feedback, compensation policy, and ongoing training and development opportunities. A central idea in strong employee management is the value that organizations place on their current and potential future employees.

Organizations benefit from investing in leadership, and development of employees at all levels, to foster an environment that prepares current employees to advance to further positions of leadership. Leadership training and ensuring employees have access to the resources they need to perform their job well help strengthen an organization's work culture and level of performance. Resources include adequate training, physical materials, as well as attention from supervisors that help coach the employees to better performance. Additionally, employees benefit from understanding their place in the organization in terms of what value they bring to the organization's work and fulfilling the long-term mission.

Strong, focused employee management provides organizations the opportunity to form high level leadership and ethical standards that permeate company culture and ultimately encourage increased employee effort and engagement.

#### Further resources

<u>10 Tips for the Leader About Employee Motivation (Susan Heathfield, 2015)</u> Work Success and Management Tips: A directory (Susan Heathfield)

Refugee Rights Toolkit

<u>The business impact of effective employee management- A small business guide</u> (Gevity Institute, 2005) The Importance of Employee Satisfaction (Kristen Gregory)

## **Performance Evaluations**

## What are performance evaluations?

A performance evaluation is an annual review of an employee's work performance over the past year. Supervisors and employees participate equally in the review, both taking time to evaluate and document how the employee's performance has compared to core job standards and expectations. The performance evaluation provides a structured opportunity for supervisors to acknowledge employees' successes as well as give constructive feedback for areas of improvement.

During each annual review, employee and supervisor partner together to set next year's goals and objectives as well as a professional development plan to build upon the employee's skills, which ultimately helps strengthen the organization. Setting up a performance evaluation system keeps employees engaged and motivated, as they know that their efforts will be recognized and gain understanding of how their daily responsibilities contribute to achieving the organization's mission. Additionally, performance evaluations provide objective documentation to help legally support any raises, promotions, demotions, or terminations.

## What are the major goals of performance evaluation?

- Objectively evaluate and discuss employee job performance.
- Discuss accomplishments and areas for improvement.
- Set goals for future professional development.
- Establish next year's objectives for contributing to the organization's mission.
- Discuss expectations for achieving goals and standard job performance.

## What are the benefits of performance evaluations?

Supervisors, employees, and the overall organization equally benefit from performance evaluations, some of which include:

#### Benefits to supervisors

• Employees are clear about their responsibilities and expectations and are better prepared to perform well.

- Builds trusting relationship with employee because employee knows work is valued and will be rewarded.
- Supervisors are able to support employees on improving problem areas before they impact the organization.
- Supervisors can objectively support decisions to award or not award raises or promotions.
- Supervisors gain understanding about employee's potential for greater responsibility and how they can better support work of supervisor.

### Benefits to employees

- Employees are clear about their responsibilities and expectations and are better prepared to perform well.
- Employees remain motivated through positive feedback and knowledge that efforts will be rewarded.
- Employees gain opportunities to continue to develop relevant and desired professional skills.
- Employees find meaning in their work by understanding how their job supports the overall mission.
- Employees feel comfortable with supervisors and trust their leadership, helping them stay more engaged.

### Benefits to organization

- Increased retention and appropriate promotion of valuable employees, as well as support for terminating non-contributing employees to ensure organization has strong staff to accomplish mission.
- Highlights tasks or areas of responsibility that are no longer relevant, helping grow organizational efficiency.
- Helps to legally protect organization's decisions regarding employee status.
- A highly motivated, engaged staff fosters a more collaborative environment and potential for innovation.
- Work remains focused on accomplishing organization's mission and vision.

## How to draft a performance review system?

Performance evaluations consist of a standard review form that is then discussed in the formal annual meeting. Performance evaluation forms can be tailored to fit the needs of the organization both in time available to complete the reviews as well as how the organization prefers to provide feedback to employees. First, though, it is important that there exists a baseline for all performance reviews, meaning that all employees know and understand their annual program goals as well as the standard job requirements.

The way an employee is evaluated and given feedback can include a mere numerical ranking of each objective and core competency and/or a description of the performance, accomplishments, and areas for improvement. It is also helpful to include sections for setting next year's performance goals and professional development plans. The form should also include a final signature page, which both the supervisor and employee should sign to confirm that each understands and agrees upon the contents within.

A common practice is to require a supervisor to give at least a brief explanation if employee is marked as performing below expectations.

#### Sample evaluation forms

Performance Evaluation Form: Employee Self-Review Performance Evaluation Form: Supervisor Copy

### Setting core job standards and examples of what each level means

A common aspect for all performance reviews are the core standards against which each employee will be evaluated. Job standards, also known as "competencies," can be specifically task-oriented or include soft skills such as teamwork, communication, and ability to problem solve. In the example form linked above the core job standards are a combination of the two types of competencies, for the purpose of reducing the amount of time needed to complete the review.

It is helpful to base job standards and objectives on behaviors or tasks directly related to employee's job and on the overall values of the organization. Once core standards are finalized, each standard should be explained in further detail to outline what qualifies as unacceptable, acceptable, and outstanding performance.

### What kind of training do individuals need?

To first implement a performance evaluation system within an organization it is often helpful to create a training for all employees that sets expectations, clarifies process, and outlines best practices for completing the evaluations. Trainings can be written in the form of manuals and also made into an interactive webinar.

It is also helpful to clearly define the yearly timeline for how and when performance evaluations should be executed. Some organizations may choose to coordinate performance evaluations with the creation of the next year's budget in order to adjust for any increases in employee salary.

## Preparing for the review

Approximately one month before the scheduled annual review meeting, the supervisor and employee should each fill out a performance evaluation form. An optional step would have the supervisor and employee exchange completed forms one week before the meeting.

It is helpful to meet somewhat regularly with employees throughout the year so that employees are aware of their progress and nothing comes as a surprise during the formal review.

### During the review

During the review meeting, which should last approximately one hour, go through the entire performance evaluation with employee. Ask the employee for their thoughts about their performance as well as provide your own assessment. If an employee has specific areas for improvement, it is helpful to go through each area one at a time, working on a strategy on how to improve, before you move forward.

During the last quarter of the meeting take time to collaborate with employee to finalize next year's goals and performance expectations. These include annual objectives, core job standards, and professional development goals. Also note any major changes in job description or level of professional responsibility.

At the conclusion of the meeting, both the supervisor and employee sign the finalized performance evaluation, confirming that both parties agree on the contents within.

## Exit Interviews

Exit interviews are a way to survey departing employees about topics related to the employee experience of organizational culture, work motivation, management style, and other items pertaining to the functioning of the organization.

Since employees are leaving the organization they are significantly more likely to give honest feedback that they might otherwise withhold. It is through exit interviews that organizations gain unique insight into the strengths and perhaps undocumented weaknesses of organization structure.

### What is an exit interview?

An exit interview is a 45-60 minute meeting between a current employee and an employee leaving the organization due to voluntary or involuntary termination. Exit

interviews shed light on how the organization might improve, send the employee off feeling good about their time with the organization, and, in certain circumstances, provide a platform to try and retain the employee.

Information collected can include perception of management style, motivation for the mission, areas of frustration, positive aspects of their work experience, and any general departing thoughts the employee would like to share.

### What is the importance of exit interviews?

Exit interviews are not only important for the organization in terms of collecting honest feedback from the departing employee but they also help to send the employee off with a positive experience, as the employee feels that the organization values their service and their opinion.

If done well, exit interviews can support organizations in making major internal improvements that lead to the strengthening staff engagement and retention, goal accomplishment, and level of impact in the organization's service area.

### Should there be an exit interview policy?

The first thing that organizations should implement is a standard policy that all employees leaving the organization must complete a mandatory and confidential exit interview. All employees should confirm they understand the policy, which could be kept in the standard Staff Handbook.

A separate, perhaps more internal policy should be written regarding how the organization will store and utilize the information collected during each exit interview. Exit interviews are not helpful unless the organization knows how to use the information to evaluate structure and potentially create improvement strategies.

## Who conducts the exit interview?

Any current employee may conduct an exit interview, such as an employee's direct supervisor or a neutral human resources staff member. The interviewer should be viewed by the departing employee as someone who will maintain confidentiality and be genuinely engaged and seriously the employee's feedback.

The most important thing in choosing an interviewer is to make sure the interviewer has strong active listening skills and ability to be empathetic. Topics discussed in exit interviews can be sensitive and it is counter-productive if the interviewer takes offense to the departing employee's feedback. Thus, the interviewer may be someone outside

of a supervisory or human resource role but who has strong interviewing skills and practical training.

### How to conduct an exit interview

### Scheduling

The interviewer needs to schedule the interview, which can be either a few days before an employee leaves up to a few weeks after their last day. The timing of the interview depends on how forthcoming the interviewer believes the employee will be. Oftentimes employees are more engaged right before their departure.

### **Optional survey**

In place of or in addition to the exit interview, the employee can be given a survey with standard questions. If it is in place of an exit interview, the employee could fill out an anonymous online form, otherwise the employee can be asked to complete the survey and turn into the interviewer a few days prior. The interviewer can then use this information to focus on the most valuable areas for feedback.

### Questions

- The interviewer should enter the conversation with pre-determined questions and proceed through the questions one by one, taking detailed notes and asking follow-up and clarifying questions as needed.
- Questions can include topics such as pay and benefits, management structure, organizational culture, general work environment, and anything else the organization would find it helpful to know.
- While asking the questions and recording answers the interviewer must remain neutral and objective, to maintain trust of the employee and to ensure answers are not modified.

### Closing the Interview

At the end of the interview, the interviewer should thank the employee for their contribution and service and honest feedback as well as wish them well on their future pursuits. The goal is to leave the conversation on a positive note and a relationship intact.

### Where should the completed exit interview forms be stored?

All exit interview notes should be stored in each employee's personnel file and, if preferred, a file that includes all exit interviews.

When analyzing the information it is important to separate the feedback from employees who were involuntarily terminated and from those employees who choose to leave independently.

## Staff Retention

Resource-strapped start-ups and small NGOs may need to be creative when it comes to ensuring staff and volunteer retention, and as a sector traditionally suffer from high turnover and its associated costs of knowledge and skills loss, discontinuity and time spent running and re-running hiring processes. Organizational culture and morale are key factors in improving staff motivation and retention. You may not be able to offer the most competitive salaries in your field; however, the following tips can help promote career satisfaction among both staff and volunteers.

## Best practices in retaining staff and volunteers

### Be clear about commitments and expectations

This is important from the start of your engagement with a new colleague, i.e. prior to hiring or formally taking on a volunteer or intern. This may help avoid misunderstandings and resentment further down the line.

### **Recognition through titles**

If a non-remunerated collaborator, such as an intern or volunteer legal adviser, is being given any sort of title with regards to their work, they should be expected to perform as if they are working. Indeed, attaching an appropriate title to a volunteer position serves to acknowledge the work an unpaid staff member is doing.

### Alternative forms of promotion

Volunteers could be termed program assistants, and promotion opportunities could come in the form of a change of title, based on work and efforts put in. Rewarding employees with greater responsibility or decision-making autonomy is another way of recognizing competence and can refresh a staff member's interest in the challenges of the workplace.

### Appreciation

The importance of appreciation is often under-appreciated, though it is vital to career satisfaction – whether with paid or unpaid staff. Supervisors should take the time to give specific and detailed feedback to their direct reports about what is working, and what someone is good at.

While money is primarily a factor influencing whether someone can stay with a job, it is rarely a daily motivating factor. Beyond the initial pull of working in the refugee rights movement, such as contributing to social justice in an innovative and arguably provocative manner different to dependency-inducing institutional models, daily motivation is key to employee satisfaction and retention. Employees, interns and volunteers should be acknowledged and thanked for their efforts genuinely and in person, as well as before other colleagues.

#### Openness

Keeping communications channels open between staff is vital, so that issues are addressed before they become problems. Whilst your organization may not have a dedicated Human Resources department, or even staff member, it is important to foster an environment in which complaints, dissatisfaction and concerns can be listened to and acted upon before employees or volunteers feel that leaving the organization is the only path available to them.

#### Pastoral care

Working with refugees, and coming into regular contact with stories of suffering and human rights abuses takes, its toll on everyone. Whilst coping mechanisms vary greatly between individuals, it is important to foster healthy mechanisms of dealing with stress, to avoid burn-out and improve staff and volunteer resilience and retention. It is encouraged to have a pastoral care program in place to address this concern.

### Development and networking opportunities

Connecting volunteers, interns and staff with personal and professional training opportunities can help enhance satisfaction among employees. Attempt to set aside a small budget for training, or at least be proactive about communicating such opportunities among your colleagues. Participation in external trainings can help forge relationships and networks that will benefit your employees both in their current roles and in future.

Other networking events and opportunities should be communicated within your organization. Creating your own network of former and current employees, interns and

volunteers may help promote community support and bring people together beyond their functional profiles or between offices and departments.

## Causes of high-turnover

If your organization experiences high turnover, it is advisable to analyze the causes of staff departure both by directly communicating with departing employees about their reasons for leaving, and by researching your organization's appeal in comparison with other non-profits engaged in similar work in your area. Frequent factors responsible for low employee motivation and high turnover, include:

- Low salaries
- Restructuring and job insecurity
- Concerns for personal safety and security
- Lack of respect and appreciation
- Over-qualified employees in junior roles
- Lack of development opportunities
- Non-alignment of values in the workplace
- Lack of participatory management or consultation over major developments

Investigate the factors specific to your context and plan to mitigate these push-factors. The following resources look at pull and push factor mitigation in greater detail.

#### Materials for download

Motivating Staff and Volunteers Working in NGOs in the South (People in Aid, 2007)

Addressing Staff Retention and Improving Staff Engagement (People in Aid, 2010)

Staff Turnover in Humanitarian Organizations (NOHA, 2007)

# Volunteer Program Management

## The Volunteer Legal Advocate Program

Asylum Access uses a Volunteer Legal Advocate model to provide sustainable highquality legal aid to refugee clients.

In this section you will find more information about this model, as well as a case study about Asylum Access's experience with the Volunteer Legal Advocate program.

Materials for download

Introduction to the Asylum Access VLA Model Case Study: Communicating about the VLA Model

## Is the VLA Program Right for My Organization?

While Asylum Access has found that the VLA model has been an effective way to staff the organization and maintain quality legal services for our clients, the volunteer legal advocate model may not be the perfect fit for all organizations. This section will help you assess whether or not it's a good fit for your organization by presenting various selfassessment questions.

#### Materials for download

Self Assessment: Is a VLA Program Right for My Organization? Alternatives to the VLA Model A Comprehensive Guide to Non-Profit and NGO Management

The self-assessment guide will help you determine whether or not a VLA program is feasible for your organization.

If you determine that a VLA staffing model is not appropriate for your organization, you can find information about other options in the Alternatives to the VLA model guide which follows.

## **Annual Volunteer Planning**

The Annual Volunteer Planning is another useful tool for planning for the arrival of VLAs, increasing recruitment efforts to fill any deficiencies, and visualizing how big your team will be at any point in the year.

The chart linked to below is a very useful tool for this aspect of recruitment and planning. Once VLAs accept, their names and start dates should be added to the spreadsheet, as should the months they will be present (indicated by placing a "1" for each month they will be working with your organization). The Excel sheet is set to tally the number of VLAs for each month.

Your office can easily monitor when you will need to fill open VLA positions using this tool.

Material for download

Volunteer Planning Chart

## Monitoring and Evaluating the VLA Program

In order to serve refugees better through a volunteer staffing model, and ensure that those volunteers go on to advocate for refugee rights beyond their engagement with your organization, evaluating a VLA program against its objectives is a crucial step. These objectives will likely contemplate both the provision of services to refugees, as well as more volunteer-centric aspects such as skills development.

Aims to evaluate could include: improving the skill development of volunteers, increasing the satisfaction of volunteers, and streamlining the organizational effectiveness of volunteers. Below you will find examples of the objectives and intended impacts of all three program areas.

#### Volunteer-centric aims

- 1. Skill development
  - a. Objective: Identify and develop critical skills for VLAs
  - b. **Intended impact**: Help VLAs perform their duties and increase their employability in the refugee rights world
- 2. Satisfaction
  - a. **Objective**: Make sure that VLAs are satisfied with their experience
  - b. Intended impact: Retain and motivate VLAs

#### Mission-centric aims

- 3. Legal aid
  - a. **Objective**: Providing legal aid and advice for Refugees seeking Asylum, Providing Legal counsel for Refugees attempting to assert their legal rights.
  - b. Intended impact/expected result: Securing refugee status for people who would otherwise qualify to have their refugee status recognized but face discrimination or other barriers, securing social services such as education and housing, and promoting the rights of refugees to work and receive fair wages.
- 4. Community empowerment
  - a. **Objective**: Supporting Refugee Community leaders, facilitating educational trainings
  - Intended impact/expected result: Empowering refugees to navigate the systems in the country of refuge for themselves; increased rights-literacy; inclusion.
- 5. Strategic litigation
  - a. **Objective**: Research, legal strategizing, judicial engagement
  - b. **Intended impact/expected result**: Setting legal precedents in courts to protect the rights of wider groups of refugees.
- 6. Policy advocacy

- a. **Objective**: Campaign for national, regional, and international policy change or enforcement.
- b. **Intended impact/expected result**: Governments establishing standards and procedures for protecting the rights of refugees.

#### **Development of indicators**

Based on the above objectives, here are some potential metrics to measure and qualitative indicators to report that you may choose to follow:

- Objective: Identify and develop critical skills for VLAs
  - Indicator: Number of critical skills that VLAs report they have developed
- Objective: VLAs are satisfied with their experience
  - Indicators: VLA thinks that their job experience is useful or meaningful
  - VLAs are included in meetings and feel listened to
  - VLAs are retained
- Objective: Increase the employability of VLAs in the refugee rights world

   Indicator: # of alumni still working in this field
- Objective: Ensure organizational effectiveness through VLAs as a staffing solution across all programs
  - Indicator: e.g. Percentage of all refugee clients whose rights are enforced/main problem is resolved
    - E.g. policy advocacy benchmarks met
    - E.g. Increased frequency of Know Your Rights trainings
    - E.g. Clients with longer-term strategic litigation processes can access comprehensive/holistic justice through psychosocial support, self-care.
    - (And other program-specific indicators)
- Objective: VLA alumni network is a dynamic directory of refugee rights professionals who help members when requested
  - Indicator: Set up an online alumni and network directory, # of discussions / connections per quarter

Information can be gathered in mid-term and exit surveys, as well as through online surveys issued to the alumni network.

### Surveys

This is an example of a survey to run with a volunteer network, in order to gauge what skills current and former VLAs value, and which they need to develop.

#### Material for download

Survey to Identify Critical Skills to Develop in Volunteers

## Midterm and Exit Protocols

Collecting feedback from staff is a valuable organizational tool. VLAs should be given multiple opportunities to share their opinions and suggestions throughout their work for your organization.

This section provides guidance on Midterm Check-Ins and Exit Interviews as well as protocol to follow when a VLA is finishing their time with your organization.

#### A. Midterm check-In

Midterm check-ins not only provide your organization with a valuable opportunity to receive feedback about the Volunteer program, but they also give you a chance to provide feedback to the VLA, enabling them to improve upon their existing skills and abilities and ultimately help you improve client services.

#### Material for download

Sample Midterm Check-In Questions

#### B. Exit protocol

When a volunteer is nearing the end of their term with your organization, it's important to set out a specific protocol for wrapping up their work and handing over their cases, as well as any logistical concerns.

Below is a sample email you can send to your volunteers outlining Exit Protocol. Be sure to think through anything else particular to your organization that you need to include.

Material for download

Sample Exit Protocol Email

### C. Exit interviews

Exit interviews are extremely valuable and should be planned ahead of time so as to allocate sufficient time. An exit interview provides a unique opportunity to garner candid feedback from a departing volunteer or staff member, their perspective on the organization's strengths and weaknesses, and specific ideas about what your organization could do to improve. Through speaking with all departing volunteers, you may better identify trends in the volunteer experience that are particularly positive or may need improvement.

The volunteer or staff member will also have an opportunity to tell you all the benefits of the experience, the skills developed, and the general lessons learned — lessons which are important for further recruitment and for providing refreshed enthusiasm to the leadership team.

Topics covered should include:

- Any handover of cases
- Any initiatives that require follow-up
- Feedback on the experience
- What are the highlights for the experience?

#### Material for download

Sample Exit Interview Questions

#### D. Exit surveys

It is also helpful to create an Exit Survey to keep track of feedback over time. You will also get more candid feedback in this setting, and together with the conversations of the Exit Interviews, this feedback will be very valuable in improving your volunteer program over time.

#### Material for download

Exit Survey Spreadsheet

## VLAs: Managing the Risks

Once you have familiarized yourself with the benefits of the VLA model and assessed its feasibility for your organization, you will want to mitigate the risks of this particular staffing model by taking certain steps.

For every new volunteer that starts with your team, you will need to invest a significant amount of time training her, managing her, and helping her grow professionally. Like everyone else, a new volunteer will go through a transition in the first few weeks of her work where she learns through mistakes, through consulting colleagues on daily tasks, and by observing their peers.

With new cohorts of volunteers starting with your team every 6 months, the key to the success of your program is in managing these transitions effectively. The following sections outline the steps you might take to ensure an effective transition.

#### Step 1: Recruitment

You should consider recruiting **actively** and **often**. Do not find yourself with a reduced workforce due to a lack of planning or foresight. A good way to avoid this is to prepare for the coming year using the annual volunteer planning chart, available for can download below.

Also consider partnering with local and foreign universities to set up fellowships or awards programs. These will provide volunteers with a strong incentive to apply for a volunteer program that is recognized and valued by their own educational institution.

For detailed information on the recruitment process, please refer to the Human Resources Tools and Recruitment Manual located in the Human Resources Management sections.

#### Material for download

Annual Volunteer Planning Chart

#### Step 2: Send new hires a pre-arrival packet

A pre-arrival packet allows incoming volunteers to learn about what they can expect working with your organization in advance.

This is particularly important for volunteers from abroad, since they will likely have questions about the logistics of moving. A pre-arrival packet will hopefully answer most of your new volunteer's questions and mitigate lengthy follow-up emails. The readings should also clarify what kind of support a volunteer might expect to receive from your organization. You can find a sample/template pre-arrival packet below.

Documents that new arrivals will need to sign such as confidentiality agreements, memos of understanding, proof of insurance, etc., should also be sent with the prearrival document. Examples of these documents can also be found in step 6 of the recruitment manual under operation tools.

#### Material for download

Sample Pre-Arrival Packet

Step 3: Give the VLA an 'office basics' manual and conduct a welcome tour

If you have little time to spare fielding volunteer questions, you probably don't want them to be wasted on questions such as "where do we keep our stamps?" or "how do I schedule a new client appointment?" But you want to make sure they have answers for them. For simpler tasks like these, having an "office basics" manual for your volunteers can come in handy.

The "office basics" manual may include:

- An organizational chart
- Lists of volunteer rights and responsibilities
- Record-keeping and scheduling instructions
- Descriptions of policies and standards that volunteers must follow, etc.
- A checklist of things volunteers must complete within the first week (i.e. fill out the staff information form, sign up for monthly tidying up duties, label her mailbox, photocopy and file her insurance information, etc.)

#### Material for download

Sample Office Basics Guide

Step 4: Plan your training week carefully

If you have two or three cohorts of VLAs starting every year, you want to make sure that you schedule your training weeks carefully and well in advance, so new volunteers can plan around these start dates. This way, volunteers can begin in groups and support each other through the transition. Our experience has showed us that it is better to have volunteers match your timeline and not vice versa.

You can also use the annual volunteer planning document provided in step 1 to manage training dates.

The first week of training is the most important determinant of a volunteer's success, and your best opportunity to highlight key notes and processes, since this is when they are most receptive.

We strongly advise against accepting volunteers during busy periods when you cannot commit the time and energy to train them adequately, as this may harm your team in the long-run.

Step 5: Set up a shadowing system

When planning start dates or training weeks, you will want them to coincide with the last few weeks of outgoing VLAs' time with your organization. In this way, the experienced VLAs can serve as mentors and the new hires can shadow them and eventually take over the outgoing cohort's caseload.

#### Step 6: Prevent knowledge loss

This is the biggest fear of someone managing volunteers – they take a few weeks to ease into the job, learn how to do it well after you have invested time and energy into their training, and then they leave without passing along the information to others.

Since they will be working directly with refugee clients, you will also want to ensure that you capture their knowledge of the work.

Here are three ways in which you can manage your volunteers' knowledge:

- **Mid-term interviews** These serve a number of objectives, including capturing the knowledge the volunteer has produced.
- Exit checklists Checklists allow your volunteer to manage their last weeks of working with you easily. These ensure that all their clients' files are correctly archived or handed over, that correspondence or outstanding issues are resolved and that they have had specific meetings or notes written for more complicated client cases.
- Exit interviews Like a mid-term interview, this last meeting with outgoing VLAs provides an excellent opportunity for the organization to receive honest feedback about case management, the way the organization is pursuing its mission, or any other areas of improvement for you or your organization.

# Human Resources Policies and Procedures

Human resources policies and procedures exist to help organizations set organizational standards that protect employer liability; shape company culture; and disseminate a clear understanding of office and employee expectations.

An organization creates policies and procedures to ensure systems exist that guarantee uniformity and consistency within the organization's operational structure and treatment of employees. Clear policies and procedures also protect employers from being held responsible for employee action and potential lawsuits. Additionally, policies and procedures can help with risk mitigation through evacuation planning and the establishment of good financial systems that both save money and protect against employee fraud.

Overall, human resource policies and procedures aim to promote a healthy and safe environment that protects both employee and employer, while consistently moving the organization forward in its growth and impact.

## Types of policies and procedures

At minimum, organizations should research their country and local labor laws in order to create policies that ensure their compliance of said laws. In addition, organizations may choose to create and implement policies that are not required by law, but which promote best practices and overall wellbeing. A list of potential policies may or may not include and is not limited to the following:

- Paid Time Off/Vacation/Sick Leave Policy
- Travel Policy
- Reimbursement Policy
- Hiring Policy
- Performance Evaluation Policy
- Maternity and Paternity Leave
- Bereavement Leave
- Severance Pay Policy
- Communications and Social Media Policy
- Health Coverage Policy

Organizations may also find it helpful to write detailed procedures or guidelines for employees to follow when carrying out specific tasks such as recruitment and hiring, performance evaluation, reimbursement requests, paying invoices, and/or requesting leave for a severe, long-term illness of self or family member, the birth of a child, and the recent adoption of a child.

When writing procedures, organizations should guard against using language that would legally bind the organization to carrying out the procedure exactly. Instead, organizations might want to write in such a way that employees know it is standard procedure but that can be adjusted on an as needed basis.

## **Recording and storing policies**

Prior to storing policies in an official staff handbook, many organizations find it helpful to send their created policies to a legal professional to confirm the legality of the policies and to ensure no policies required by law have been left out. Lawyers can also review new procedures to check for any binding language and confirm that they, too, meet existing legal requirements.

All policies should be stored in a central, easily accessible location, such as an organizational staff handbook. Policies should be thorough and clearly written. All employees should be expected to read and understand the complete Staff Handbook and be required to sign a document confirming their understanding that will be stored in their personnel file.

Further resources

The Importance of an HR Policies and Practices Strategy (Entrepreneur)

## Personnel and Volunteer Paperwork

As your organization and volunteer legal advocate program grow, you will need to develop tools to help you keep records of all of the staff and volunteers. This is a very important human resources practice because it will help your organization keep track of trends with recruitment and hiring as well as provide you with data about your past VLAs and staff:

- Are they typically from a particular region?
- Are they usually a certain age when they look into these volunteer opportunities?
- What universities are represented?

This data will be very useful for the development of your advertisement materials and recruitment strategies. Additionally, former volunteers or employees may use your organization as a reference, and you should be able to easily access their employment dates/location to verify this information with whoever is seeking a reference.

### Annual volunteer planning

Again, you can use the Annual Volunteer Planning chart to keep track of VLAs. With each new year, you can add a tab instead of erasing existing information.

## Emergency information and staff bio information

Once volunteers and new staff arrive, they should also fill out a spreadsheet or form that provides information about their emergency contacts, permanent address, personal address, local address and other important information. Having this information accessible is important for risk management.

Below is a sample spreadsheet for Staff Bio Information, which shows what kind of information is useful for your organization to track for each staff member and volunteer.

## **Personnel files**

Every organization that employs one or more individuals inevitably collects substantial personnel information from each employee. Organizations should keep updated personnel files for all employees in order to protect against any potential labor charges brought against the organization in the future and to help with overall employee

management and engagement. Suggested best practice is to keep personnel records for seven years after an employee's last day at the organization.

Some paperwork and employee information are generally required by law in most countries but organizations may choose to expand personnel files to include information outside of national or local regulations. Personnel files will often include performance evaluations, resumes, documentation of PTO (paid time off), and documentation of salary increases or promotions as well as tax forms and payroll information.

In addition to standard personnel files, it is recommended that employers maintain files for each filled position. Records ideally should include the job posting, resumes and cover letter for each candidate interviewed, interview notes, and reference checks. Documents to store in personnel files include but are not limited to:

- Memorandum of Understanding (MOU) or Employment Contract
- Tax forms
- Employment eligibility forms (legal requirement in many countries)
- Requests for physical accommodations
- Work history
- Performance evaluations
- Disciplinary records and/or performance improvement plans (PIP)
- Personal commendations
- Sick days and vacation days
- Proof of insurance
- Waiver of Liability
- Benefit enrollments
- Beneficiary designations
- Payroll withholding statements
- Salary increases, promotions, or lateral job transition
- Voluntary or involuntary termination
- Reports of reference checks
- Workers' compensation information
- Medical information
- Disciplinary issues or formal complaints

Since personnel files can be requested by the government in the case of a formal legal complaint against the organization, all paperwork held within the files should remain objective and based on factual evidence. It is important that supervisors do not include subjective opinions, especially opinions not relevant to the person's employment history. It is suggested that supervisors remain vigilant in recording only objective observations even in their informal notes, as those, too, could be subpoenaed (summoned by a court).

## How do you store files?

To protect access to employee information and help ease the process of supplying the government with required documents, some organizations choose to separate personnel information into specialized folders. For example, an employer may choose to store all tax documents together in one file and create a specific healthcare file to separate sensitive health records from an employee's general information. In addition, employers can choose to store all payroll records in a separate file to ensure that the accounting department does not have access to the employee's complete file.

Regardless of how an employer chooses to organize their filing system, all important paperwork should be carefully stored in a place that ensures long-term preservation and high confidentiality. Employers may choose to store documents electronically and/or in physical, locked filing cabinet. Considering the sensitive information within the documents, it is important that organizations use an electronic storing system that both encrypts the documents and allows employers to easily restrict access.

### Who has access to files?

Access to an employee's general file should be accessible to HR, the employee, the employee's direct supervisor, and, in some cases, the Executive Director. The accounting department may be granted access to the payroll file but the healthcare file should, if possible, be restricted solely to HR and the employee.

It is suggested that employees have access to their files on an open or designated review period. Employers may choose to require employees review their files only in the presence of their supervisor or HR person in order to ensure the integrity of the files. If an employee disagrees with something recorded in his/her file the employee may request the opportunity to write an explanation or counter-point, which will also be stored.

## Online systems

A snapshot of the basic information required about employees and volunteers can be created using simple free online tools, enabling emergency contact records to be updated on a rolling basis.

You can download the Staff Bio Spreadsheet to change the questions to fit the needs of your organization. If you choose to upload this Excel sheet to your GoogleDocs, you can then create a form by going to "Form- Create form." This will allow VLAs and staff to easily provide their information without having to enter into the spreadsheet. When they submit the form, their answers are automatically saved in your spreadsheet.

#### What the form would look like:

First Name		
l		
Last Name		
Please call me		
Permanent address		
Current or In-Country J	Address	
Mobile		
Other phones (describ		
Non-AA email		
Skype		

Material for download
<u>Sample Staff Bio Spreadsheet</u>

# **Supporting Staff and Volunteers**

Working with marginalized and displaced populations is inherently stressful. As is advocacy for human rights in the face of opposing interests. The ability to develop healthy coping strategies in the face of these pressures is not innate, but must be learnt and practiced. The following section elaborates on how to cultivate and practice selfcare techniques as an individual, and how to promote a supportive environment as an organization.

Whilst discreet team-building exercises such as sports, retreats or other group activities can help foster a friendly working environment, team-building is best fostered by a general organizational culture that reinforces openness, mutual support on a daily basis.

Constructive criticism, learning from failure, encouraging innovation and risk-taking are all part of building a healthy, interesting and engaging working environment. Celebrate and share successes in colleagues' personal and professional lives, ensuring people can relate to each other on other levels rather than just work. Maintain a good sense of humor when confronted with difficult situations, and encourage others to do so too. Be approachable. Keep doors open (when confidentiality duties allow). Create a positive, comfortable physical environment where possible. Publicly acknowledge jobs well done.

One particular way to contribute to the satisfaction of your workforce is to meaningfully take into account their professional development needs and wishes. This is especially key if you are a resource-strapped nonprofit with relatively low salaries and wish to improve staff retention and appreciation in alternative ways. Alternating routine working duties with a change of scenery and activity – as offered by group trainings, or exposure to educational or topic-relevant films or presentations – can help re-kindle an individual's original interest in an issue and permits them to step outside their immediate area of focus and gain a broader perspective.

The following sections outline staff and volunteer training possibilities, which are essential to the growth of well-rounded, competent and confident professionals, and in turn the growth and improvement of your organization.

### What is organizational culture?

In simplest of terms, an organization's culture is how it gets things done. It includes the organization's values, visions, practices, symbols, history, language, beliefs, setting and habits. Whether it is defined or not, all organizations have a culture. There can be both positive and negative aspects of an organization's culture that affect work ethic, productivity, efficiency, and success in achieving goals and completing projects. For an organization with offices in different regions or countries, there can be a dominant culture and subcultures. The dominant culture is the mission and values shared across the entire organization and then subcultures that may differ from location to location.

### Good culture

Culture within any company or organization is an important factor to consider in ensuring a good work environment, productivity, staff retention, and accomplishing the mission. The following are generally considered positive cultural attributes for a company or organization:

- Candor/transparency
- Team cohesiveness
- Shared values
- Clear leadership
- Consistency
- Appreciation for diversity
- Motivation
- Healthy communication

For nonprofit organizational culture, communication is of prime importance. Good communication fosters trust, effective leadership and inclusivity. A nonprofit culture is different than culture in for-profit industry because incentive and motivation are not based on salary increases; they generally come from a passion for the mission. Because of this, it is important to maintain enthusiasm in staff by having a positive atmosphere, acknowledging achievements, and communicating effectively

### Bad culture

According to Patrick Lencioni's book, <u>The 5 Dysfunctions of a Team</u>, the following are the biggest problems with culture within a company:

- **Absence of trust**: A lack of trust can hinder communication because staff members are timid to ask for clarification or help.
- Fear of conflict: This fear can create ongoing unspoken conflict that festers and then has a negative effect on productivity in meetings or group work.
- Lack of commitment: A lack of commitment also hinders productivity, and it creates inefficient meetings and ambiguity in team goals and priorities.
- Avoidance of accountability: If there is no accountability within an office, then there is no incentive to go above and beyond or meet deadlines. It also puts all the pressure of discipline on the team leader.
- Inattention to results: If individuals are too focused on their own goals, focus moves away from organization wide results and accomplishments, which limits growth.

## Concrete ways to promote a supportive working environment?

### Improving communications

Transparency and smooth flow of information between offices and departments allows people to feel in-the-loop and consulted. This may contribute to an overall sense of being valued, and understanding between staff particularly when decisions are made.

You may wish to make leadership meetings more inclusive, to foster transparency and a culture of active participation among staff members. This also helps leadership staff keep their finger on the pulse regarding the concerns, priorities and vision of their co-workers, volunteers and interns. Distributing the minutes of leadership meetings may also promote staff buy-in to difficult decisions by sharing and democratizing decision-making logic.

### Defining responsibilities and encouraging collaboration

Clarity on functional areas and procedures are key to ensuring that individuals do not feel unjustly over-burdened and are not left not knowing where to turn for assistance.

These are also vital for setting limits and enabling employees to plan a realistic and achievable work-plan.

Explicitly promoting collaborative attitudes to e.g. problems-solving or tedious administrative tasks such as letter-stuffing encourages staff to feel comfortable seeking support when they are stuck. It also helps employees understand the difficulties their co-workers experience, fostering empathy.

### Mentoring and advice-giving

- Supervisors should take the time to understand their employees' personal and professional goals, and if possible share insight, experience and advice regarding the individual's progression to meet these objectives.
- Colleagues should provide support for interns' and volunteers' future plans, such as goal-setting and discussing study or employment options.
- Organizations should make their staff profiles available either on their website or internally so fields of expertise are known and enable colleagues to consult them when needed.

### Designate peer-counselors

Few organizations have professional psychologists on hand to attend to staff concerns (whether personal or professional) even if they do work in stressful situations with marginalized groups. It may be beneficial to establish and train one or two staff members in the basics of supportive listening and peer-counselling. Confidentiality is key to the success of this system.

### Flexible working policies

Staff are much more likely to perform higher and enjoy what they do if their personal needs and time pressures are taken into account. Offering staff time off in lieu of extra hours worked, or allowing work from home will encourage your employees to feel comfortable in their workplace and perform to the best of their ability.

Different individuals have different working styles. Flexible policies (allowing work from home or from cafés when appropriate, for example) may nurture your staff in ways best suited to their needs.

Clock-watching is detrimental to any working environment. Trusting workers to complete the tasks entrusted to them, rather than requiring presence at a desk for a certain number of hours per day is far more conducive to a friendly, trusting and supportive working environment.

### Inclusion and non-discrimination

- Be watchful for any signs of discrimination or exclusion in your workplace. Crosscultural differences, such as varying acceptance of LGBTI identities, must be addressed in order for everyone to feel welcome in the workplace.
- If your office has multiple working languages, ensure that no one is excluded from discussions or meetings: facilitate the use of the language that most people can use.
- Set aside 3 minutes in your monthly or weekly staff meetings to share personal successes or news.
- Acknowledge your colleagues' birthdays and important religious festivals.
- Refer to 'partner' rather than husband, wife, girlfriend or boyfriend: do not assume everyone is heterosexual.
- Ensure differently-abled employees' needs are met, and discuss these arrangements with them regularly to ensure satisfaction.
- Institute an education-based approach: encourage sharing of cultural differences, festivals, traditions and lifestyles.
- Respect cultural practices and pursue dispute resolution mechanisms that are sensitive to different styles of people management.

#### Further resources

50 Must-Read Articles on Diversity in the Workplace: Valuable Insights on the Challenges, Benefits, and Best Practices for Cultivating Diversity (Wonolo)

## **Emotional Support and Self-Care**

If you or your team listen to traumatic stories of persecution, flight and related abuses on a regular basis, effective emotional support is a prerequisite. Whilst professional psychological support would be the preferred option – for both refugee clients and service providers – this is often not a resource small and new NGOs can count on. Therefore, developing team support and self-care methods are vital.

#### Further resources

The following downloadable resources look at vicarious trauma, managing emotional stress, emotional responses to overwhelming need and self-care techniques.

Managing Emotional Stress (Asylum Access) Practical Skills (a Training Module)- Reacting to Overwhe

Practical Skills (a Training Module)- Reacting to Overwhelming Need (Asylum Access) UNHCR Information on Vicarious Trauma

Organizational Prevention of Vicarious Trauma (Bell et al.)

<u>Strategies for Reducing Secondary or Vicarious Trauma: Do They Work? (Bober and Regehr, 2006)</u> <u>Vicarious Trauma and Burn-out: Strategies for Survival (Asylum Access)</u>

## **Professional Development**

### What does professional development mean?

When nonprofits consider training and capacity building, it is generally in relation to their clients' needs. Refugees however, are not the only ones who may benefit from skills training! You should consider professional development as one of the keys to your mission's success and actively encourage this among your staff.

Professional development refers to the acquisition of skills and knowledge to benefit a person's career. Promoting professional development essentially means facilitating learning opportunities. It may include externally or internally organized trainings and capacity-building on different aspects of NGO management, legal aid or refugee law, but it also encompasses the process of taking on more complex roles and tasks and greater responsibility in the course of your career. Reflective learning, mentoring and academic study also fall under professional development.

Workshops and courses may present a useful opportunity to network for the benefit of your NGO, as well as improving the skills of those who attend. Allowing employees a certain amount of time off per year, or providing a certain budget for such activities is highly recommended.

In addition to retaining and maintaining engaged, enthusiastic and motivated staff, and honing their skills for the benefit of your organization and clients, staying on top of developments in law, refugee policy and other related humanitarian debates is essential to deliver quality services to refugees. In the fast-moving world of jurisprudence and migration politics, continued learning will facilitate the strategizing and innovation needed to make a difference in refugees' realities.

### How to facilitate professional development?

As well as running targeted training sessions with your staff, or sending them on such courses, as set out in the following sub-sections, there are various actions you can take to foster a colleague's growth in the course of normal working activities.

- Encouraging employees to hire and manage an intern or assistant (if funds permit) builds their people-managing and planning skills.
- Sending a colleague to represent your organization at external meetings can improve communications, negotiations and decision-making skills.

- Setting up a shadowing scheme for interested individuals between departments in your organization can broaden everyone's skill-sets and promote empathy with team members once they have an increased understanding of the duties of their colleagues.
- Allowing workers to take a set number of hours per month for professional development activities.
- Setting aside a 'professional development grant' for each employee to be used as they see fit: for books, course fees, etc.
- Circulating distance and in-person courses on relevant subjects and encouraging employees to apply to specific trainings that would fill a skills gap in your organization.
- Setting up a Google calendar with the dates and locations of training courses or conferences which employees can consult at their will.
- Procuring access to academic journals on forced migration studies, human rights law and similar, and circulating log-in details among colleagues enables them to feed their initial interest in the field, reflect critically, and contextualize their work within the wider world of refugee response professionals.
- Supporting staff proposals to academic journals by reviewing abstracts and brainstorming together may help your employee get published. This could be an important milestone for your colleague, and may draw attention to your work.
- Identify expertise within your workforce that could be spread among other colleagues e.g. IT skills or interviewing techniques.
- Identify the knowledge and skills gaps within your organization and actively search for opportunities to train – whether via distance learning, self-taught guides or at training events. Consult colleagues on their professional goals and interests in order to tailor your professional development program to appeal to them.
- You may wish to incentivize professional development by rewarding (financially or otherwise) those who take continued learning courses or participate in workshops on top of their regular duties.
- Encourage colleagues who attend trainings, capacity building events or courses to share their notes and materials for the benefit of other colleagues.

#### Further resources

<u>NGO Careers: Five top tips for professional development (FundsForNGOs)</u> Directory of conferences of interest to NGOs (FundsForNGOs)

## Legal Training

Training on refugee law is vital across the board: not only must legal staff stay up to date with latest developments, but your entire team – whether finance or administrative or fundraising staff – should be well versed in the basics of refugee law. All staff need to understand who is, and who is not a refugee.

The term 'refugee' is frequently misused in popular media, generating misconceptions. Your team should be able to distinguish between a refugee and a migrant; understand exclusion clause; identify a causal nexus; and able to tell a client or a decision-maker when the Refugee Convention and its protections should apply. Please refer to the relevant information in the <u>refugee rights law: the building blocks</u> section of this Toolkit for resources on training refugee legal advocates on the 1951 Convention refugee definition.

It will ultimately be up to you and your management staff to determine what to emphasize when training your team. Some countries and decision-makers will have very different concerns regarding the refugee definition, and may even use terminology that differs from UN standards. Whereas a U.S. Immigration Judge may be extremely reluctant to "open the floodgates" to a broadly defined particular social group, an Ecuadorian asylum officer will likely accept "Colombian women" as a particular social group, but may refuse to find a justified fear of future persecution when past persecution has not been established. Understanding these regional and local variations on the refugee definition should be a priority for your management staff, and you should tailor your training accordingly.

Developments in jurisprudence are frequent, and more so in refugee law which may draw on authoritative decisions from a variety of jurisdictions – both national and international. Being at the forefront of legal developments enables your organization to provide better services to your clients by enabling innovative argumentation – reasoning which may also be leveraged in policy advocacy campaigns with governments and the UN.

It may be that your organization hires lawyers who do not have experience in refugee rights or public international law, or you may accept volunteer legal advisers and staff who have worked on refugee rights from a non-legal perspective. Getting your whole team up to date on the relevant aspects of refugee law should be a priority.

#### In-house

Consult the <u>Refugee Rights Law: The Building Blocks</u> section of this Toolkit for an outline of the very basics in human rights and refugee rights law, however this is no substitute for effective training and learning conducted in person. A selection of specific trainings on legal issues conducted in the context of Asylum Access Leadership Trainings can be found on the section entitled <u>Leadership Training</u>.

Your organization should put together a training workshop format for new staff and volunteers regarding the basics in refugee law and entitlements specific to your country and region. This should be interactive to test comprehension.

All-staff trainings should be held on significant new developments that will affect your field of work. This may be highlighting the new principles established in an international court case, or a change in government policy.

Refugee legal updates monitoring global developments which could also be circulated among staff:

<u>Weekly Legal Update (ECRE)</u> <u>Forced Migration Awareness Blog and Newsletter</u> <u>Rights in Exile Newsletter</u> <u>Refworld database</u> (sign up to tailored weekly email alerts)

#### **External resources**

The following resources should be consulted for refugee and human rights law trainings and courses. Scholarships are available on some programs; others are fee-paying. The resources listed above also contain sections on conferences, workshops and trainings.

International Summer School in Forced Migration, University of Oxford Refugee Studies Centre, University of Oxford: Short Courses International Institute of Humanitarian Law: Refugee Law Courses Human Rights Education Associates: Distance learning opportunities Refugee Law Initiative Series, Human Rights Consortium, School of Advanced Studies: Events

### **Negotiation Skills**

Sound negotiation skills are necessary in all aspects of refugee legal aid work. Advocacy with institutions requires diplomacy, tact and establishment of influence. Accompanying refugees to mediate disputes with employers or service-providers requires persuasion. Collaborative processes with other NGOs, government institutions and civil society may require intense negotiations involving conflicting priorities, hidden interests and intense frustrations. Managing staff and volunteers requires negotiation on a daily basis. Refugee response may take place in a context where the UN cluster system is in place, necessitating collaboration in such pre-determined spaces where negotiation takes on a different character to bilateral relations with counterparts.

Negotiating skills should not just be developed among leadership staff, but at all levels of your organization. Running in-house negotiation skills trainings could form part of intake training for new colleagues, but could be refreshed with older staff and volunteers in participatory trainings at determined intervals.

Such trainings may include role-plays, self-study or problem-solving based on genuine issues arising in the context you work in.

### Tips for negotiating

Key principles:

- Separate the people from the problem: This helps to maintain healthy relations with others who may just be doing their job or are in some way bound to pursue a different approach to yours. Instead of 'us' against 'them,' change the dynamic into 'all of us' versus 'the problem.'
- **Distinguish between interests and positions**: What someone wants is their position, why they want it is their interest. Ask questions to find out the needs and reasons behind a position that you are presented with. This will help identify grounds for compromise.
- Consider your best alternative to a negotiated agreement: The relative strength of each party's best alternative determines the power balance in negotiations.
- Establish early on your boundaries and limits.
- **Pursue fairness**: This enables greater buy-in from all parties. Durability of arrangements is key to fairness.

Further advice:

- Negotiation is a dialogue and the aim is understanding or compromise, intended to resolve a point of difference or achieve a desired outcome.
- It is important to be aware of cross-cultural differences in negotiating styles: what is acceptable or normal in one context may be insulting or misunderstood in another. Research before entering into discussions.
- Mutual trust can facilitate negotiations: establishing a personal rapport with your interlocutors is advised.
- Research all aspects of a position or situation before entering into discussion.
- Identify the decision-maker.
- Prepare arguments and reasoning based on a variety of possible scenarios.
- Demonstrate engaged listening and respond to your interlocutor's concerns directly.
- Clarify issues where misunderstanding may occur.
- Identify any areas of common ground.
- Maintain calm throughout negotiations.
- Use silence for reflection.
- Ask open-ended questions.
- Observe non-verbal clues with your interlocutor.
- Differentiate between needs (important points on which no compromise can be sought) and interests (where there is potential to concede ground).
- Propose a win-win outcome: list all potential benefits to the employer, official or colleague. It is important for both sides to feel they have gained something in the end.
- Plan for alternative outcomes if agreement is not reached.
- Maintain your walk-away power.

- Establish written confirmation of the agreement reached and commitments agreed upon.
- Express gratitude and appreciation at the outcome of negotiations.
- Practice at every opportunity.

#### Further resources

Negotiation Basics (MIT)

## Leadership Training

Leadership training is key for anyone working in the refugee rights movement. This may be directed at your leadership staff, or at entry-level colleagues in order to ensure they become refugee rights leaders in any sphere of work they are later involved in. Equipping workers with the skills they need to become powerful and effective leaders should be a priority, given the relatively small size of the refugee rights movement globally – compared to humanitarian aid approaches.

Leadership training can be both a continuous and one-off learning experience. Increased responsibility on the job can be coupled with mentoring by existing senior staff, and many of the tips outlined in the Professional Development section apply equally to supervisors as they do to volunteers, interns and other employees.

Organizing leadership workshops, retreats, trainings or conferences however, can have added benefits for staff. If these are internal events, the act of bringing co-workers together facilitates a space in which to collectively brainstorm new directions or solutions to problems the organization is encountering; to celebrate institutional successes together; and to iron out any management or internal issues in a goalsoriented environment.

Residential or longer trainings, whether internal or external, may provide a bonding experience between staff and counterparts, and present particular networking benefits.

In deciding what topics to cover, consult staff on their needs and concerns, particularly regarding gaps in their knowledge that have implications on their work.

Below is Asylum Access's learning guide for a leadership training held in 2012 which can be used for inspiration regarding possible training topics for your team. Topics covered are both operational and legal. It is good practice to provide a program including trainers' biographies, contact details and areas of expertise. The manual also contains space for participants to note down their major take-aways, lessons learnt and questions from the session.

Learning Guide: Leadership Training (Asylum Access, 2012)

Training modules from early Asylum Access leadership training sessions: <u>How to use data in advocacy</u>

<u>The Right to Legal Representation</u>: This session is designed to explore the pursuit of due process for clients as a major objective as well as to provide lessons learned and recommendations from to overcoming international bridges in providing legal representation.

<u>Successful Outreach: LGTBI in Kenya</u>: This session is designed to give an overview of the successful outreach programs in particular communities, specifically LGBTI refugees and includes recommendations for designing an effective outreach program

<u>Prioritizing Cases and UNHCR Accountability</u>: This session is designed to focus on case-management information practical in the field, as well as, more theoretical discussion regarding best practices for approaching interactions or conflicts with UNHCR.

Nairobi Code Opportunities, Challenges, and Change: This session is designed to provide an advanced training of the Nairobi Code for managers. This training is aimed to help UNHCR staff members to understand how to think about lawyers who serve refugees and Legal Aid NGOs.

Human Rights Mechanisms: This document helps clarify what the Human Rights Liaison Unit does as well as examines some of the main treaty monitoring bodies.

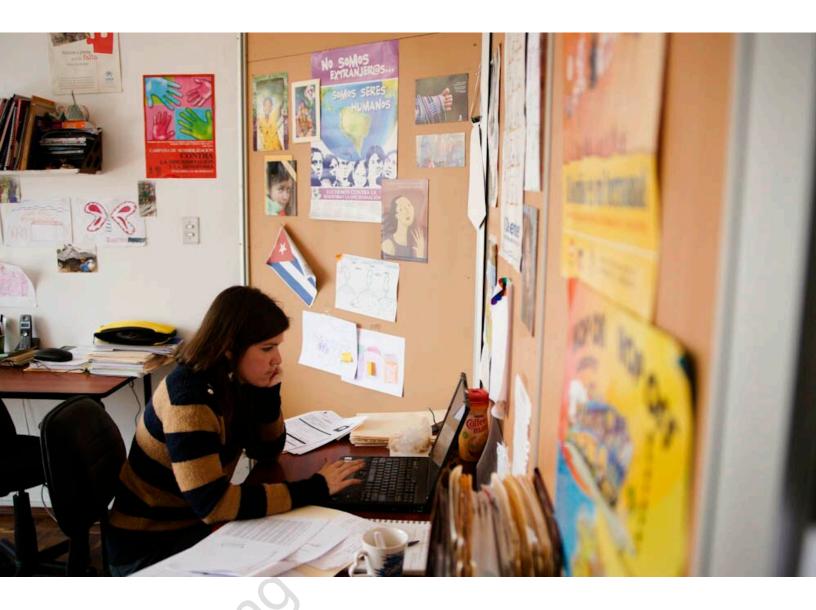
<u>Talking Points in Advocacy</u>: This session, is designed to provide the group with many tips, strategies, and anecdotes about using talking points in advocacy.

<u>Advocacy in Challenging Contexts – Iran:</u> This case study is designed to provide recommendations for action when working in challenging contexts through an example of Refugee Rights in the case of Islamic Legal System and Long Stayed Refugees in Iran.

<u>Leveraging Volunteers</u>: This session is designed to provide you with a staffing model for organizing and training full-time and pro-bono volunteers.

<u>UN Conference</u>: This session provided a space for participants themselves to raise topics which had not, or insufficiently, been treated during the training.

Advocating for Legislative Change in South Korea: Through this South Korean case study, we can learn what was done to make the law, what the content of the Korean Refugee Law is, and what is desired to be done further to advocate for legislative change in each participants' country.



# **Financial Management**

Sound financial management is crucial to the success of your operation. The following tools and considerations are intended to guide those new to nonprofit finances, whether you are starting a nonprofit or a start nonprofit. Depending on the scope of your activities and the size of your project, these tools will vary in complexity.

We'll cover the following in this section:

Financial system	
Evaluation of programs	
Fundraising planning and evaluation	
Preservation of assets	
Liability planning	
Transparency	
Communication	
Budgeting	
Operational budget	
Roles and responsibilities in budgeting	
Drafting the budget	
Financial Policies	
Financial policy setting	
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# Financial ethical conscience

A financial role entails various responsibilities, of which the most important is to safeguard a project's assets. Those responsible for finances must maintain impeccable moral conduct and remember that the first priority of the role is to keep the mission of the project at the forefront of all you do.

# Financial system

An efficient financial system will allow you to track your organizational resources, typically known as your assets. The fact that you owe a commitment to various stakeholders, which may include donors, governments, and people you are serving, among others, obliges you to monitor and keep control of your assets.

A few basic elements of a sound financial system includes:

- A set of policies establishing transparency and accountability.
- A basic procedure manual that includes financial processes to promote internal controls over key operational processes.
- A simple system for financial reporting. A spreadsheet laying out a financial reporting system will enable you to easily sync the different type of controls and information you would like to capture. As a general rule, your spreadsheet should allow you to maintain controls to ensure that the information being reported is synchronized and reconciled. Using this system, as recommended, would ensure that all transactions are recorded correctly and all your balances match actual existing assets.

Material for download

Bookkeeping and Bank Reconciliation Template

# **Evaluation of programs**

Good evaluation of programs ensures that programing decisions are translated into budget line items – expenses and revenues. Programming in financial planning is deciding which activities to engage in and how much in resources each activity will receive. The reality is that some programs grow faster than others, or new programs are added as your organization grows, whichever way the organization grows, each activity must be presented on their respective line items, so comparisons across programs can be made, tracked, and evaluated. In the past, nonprofit financial management was limited to a one-year budgeting process, but for long-term planning you should have at least a three-year budget plan.

# Fundraising planning and evaluation

Fundraising is a crucial, if not the most important, aspect of nonprofit operations, and it requires investment. Once your organization has embraced a fundraising culture, fundraising itself will become another budget line item. The more revenue you want, the more you would invest in fundraising.

# Preservation of assets

The preservation of assets has a specific meaning from a nonprofit financial perspective where liquidity is the key driving factor in preservation of assets. Your current assets are the most liquid of your assets, and these include any high value items such as cash, investments, receivables, and so on. Being liquid will allow the organization to make faster strategic decisions and avoid running with debt. At the end of your first fiscal year, after you have paid all your expenditures, remaining funds should carry over to your Net Assets. Net Assets are important because they show the financial health of your organization at any given time.

# Liability planning

The tools described here emphasize the importance of liquidity. Liquidity should be the most important financial objective of the organization. It is likely that at times your organization will need to search for other sources of funding, such as loans or lines of credit. Although not recommended at the beginning of any start-up project, opting for loans or lines of credit may be necessary, as long as this move was part of the strategic and long term financial plan, reflected in the long term budget. The goal should be to procure some short-term financial assets to bridge the gap between donor funding sources.

# Transparency

Nonprofit organizations have a moral obligation to their founders and usually to the government of the country in which they are registered. This means that these actors can request from you financial reports to verify that funding was used in responsible ways. At any point in time, your financial reports should resemble actual financial activity, and these reports must be complete and verifiable.

# Communication

In any area of work, problems arise from a lack of communication. If you are in charge of managing your organization's finances, it is important to note that your colleagues will

not often be literate in financial terms and procedures. Neither are these easy to explain to those without a financial background. One major responsibility will be to communicate in a manner that your stakeholders can understand, in order to help them understand the reasons behind financial reporting and internal controls. Communicate your goals, problems, and concerns. Remember, strategic decisions will be made based on the financial information you will be providing to program managers.

# Budgeting

Determining the budget is one of the very first steps in taking on a new project, regardless of size or scope. Creating a budget at the beginning of your project allows you to measure the spending levels against the budget at any point in time during the implementation of the project.

A budget should also help you to define priorities. A common practice among nonprofits is measuring the spending on a project against the number of individuals that project has served at the end of the year. This calculation provides an approximation of the cost in providing your service.

Budgeting for your organization is an ongoing process and it should not stop at the approval of the operational budget. You should continue to monitor its effectiveness and gather information on expense alternatives to maximize value.

# Operational budget

This should be your main budget. You may be running more than one program. If this is the case, you should integrate all your programs within this operational budget. Eventually, as your project grows, begin to budget for every single program, keeping in mind that you should integrate them all into your final operational budget.

Regardless of the size of your project, you must include a clear and concise justification for allocation of your overhead costs (fundraising and administration) within your budget. Keeping your project's overhead cost low signals competent financial management.

#### Material for download

#### **Operational Budget Template**

If this is the very first budget you are creating, it is highly recommended to not change any final numbers in the budget. Careful monitoring of the final budget will allow the project to stay on budget, and make better allocations whenever it is time to draft the following year's budget.

# Roles and responsibilities in budgeting

As a general rule, the roles and responsibilities for budgeting should be spelled out in written policies before you prepare the first budget draft. This policy should be revised and updated, if needed, as you gain experience in the budgeting process. A budget is a plan and therefore you need guidelines to implement this plan. The budget policy should focus at least on the following guidelines:

- Which staff are responsible for the drafting of the budget.
- Deadlines for drafting, revising, and approving the budget.
- Staff responsible for supervising the budget
- Person(s) responsible for revising the budget for modifications before submitting it for approval
- Person(s) legally responsible for approving the budget to make sure that it meets legal regulations, the priorities of the project, the productive use of resources, and effectiveness in accomplishing the mission of the project.

You may wish to decide that the Director of your organization is solely responsible for revising the budget, making modifications, communicating the budget to the rest of the leadership team, and presenting the final draft to the board, if your project has been incorporated.

In many cases the Board of Directors is responsible for approving and making sure that the final budget is fiscally sound and will further the purpose of the project. The lead finance staff member is generally solely responsible for creating and monitoring the budget, and for searching for new opportunities in reducing costs. Typically all financial managers use the budget vs. actual as a tool for monitoring operational budgets. This tool will show you the material variances for each expense.

Material for download

Budget vs. Actual Template Form Budget vs. Actual Tutorial

Program managers are better suited to provide information about salaries and operational costs since they deal with the resources to run a program on a daily basis. They also have current information on program needs, and should be consulted throughout – particularly in the event that you need to draw up a corrective action plan for the effectiveness of your overall project. Including program managers in budgeting also enables you to make them accountable for the accuracy of budgets that are integrated into your operational budget.

Fundraising staff should be responsible for providing information about the amount of revenue needed to run a project. Revise your priorities before communicating with your

fundraising team to see if you need to increase your target revenue to cover your operational expenses.

The more information you have about revenues and expenses to run your project the better, as this allows you to make your budgeting simpler and more accurate. With a reliable estimate of your expenses, you are better able to predict the amount of income required to run the project. If this is the first year of operations, the total of your income and the total of your expenses should generally match. As a general rule, your operational budget should nearly resemble your end-of-year Statement of Activities report, also known as a Profit and Loss report. Try not to estimate a deficit, if this is your first budget: a deficit suggests that your priorities are not well balanced. Ending a year with a surplus enables you to maintain some funds set aside as operational reserves, to cover those years in which you are not able to meet your target revenues.

If your project doesn't have a set fundraising plan to cover your operational expenses, think about other sources of income. Perhaps you could charge for the service your project would be providing.

# Drafting the budget

## Revenues/Income

It is highly recommended to have a set revenue plan before starting to draft your first budget. This plan should include committed and projected revenues. Ideally, you should have enough committed revenue to break even at the end of the year, and count the difference between your committed revenue and your projected revenue as your surplus. This will help you to not fail financially the very first year of your project. The following is a guide to identify and differentiate your sources of revenue.

#### Unrestricted revenue

Any donation without a restriction or purpose to be used to pay for operational expenses.

#### **Restricted revenue**

Donations with a restriction or purpose to be disbursed upon donor's restrictions. Restricted income is accounted differently from unrestricted income.

#### Government grants

Known as exchange funds or conditioned funds. Typically you provide the service, and then you get paid for it. The type and duration of service is written on the grant award letter.

#### Time-restricted funds

Funds restricted to be spent within a period of time. These funds are commonly known as multi-year grants.

### Operational expenses

Once you have set your priorities, you should be able to draft the portion of your operational expenses. If you are starting with one office, this does not have to be complicated, but if you running more than one office, divide your operational expenses by office. As mentioned before, programs or divisions can be integrated into this operational budget.

#### Salaries

Use benchmarking to collect information about salaries. Once you have set your salary ranges for the first year, you need to have a salaries policy for the following year's budget. This can help guide you when making salary increases and hiring additional staff. It is a characteristic of non-profits to spend most of their income on salaries. Keep in mind that rather than paying salaries you could also recruit volunteers.

#### **Operating expenses**

Begin with your fixed costs. These are expenses that you would be paying regardless of the amount of services you end up providing. Rent, furniture, communication equipment, utilities, memberships, and insurance are examples of fixed costs. As a general rule for a start-up organization, you should keep your fixed costs low.

Some variable costs (travel and transportation, office supplies, maintenance) that would increase with the amount of work in your project, can be strategically negotiated. For example, rather than using office supplies, you could create, archive and maintain your documents online, or you could start using a single vendor from the very beginning of your project to maximize your loyalty in order to obtain discounts or credits. Use a cost/benefit analysis to project your fixed costs and variable costs wisely.

#### Accounting for your budget

As a final note, separate each expense line item in your budget with names identical to the line items in your chart of accounts. This will allow you to make one to one comparisons and provide clear and accurate financial reporting. The Unified Chart of Account (UCOA) is the best guidance to design your chart of accounts.

Material for download

Chart of Accounts Template

# **Financial Policies**

# Financial policy setting

Financial policy setting should incorporate internal controls that will guide the use of your project's financial resources. For this reason, your financial regulations should, at a bare minimum, contemplate the monitoring of the following activities.

**Refugee Rights Toolkit** 

#### FIGURE 2: POLICY SETTING DIRECTION AND ORGANIZATION



'marketability.'

**Policies for controlling your financial assets and managing their risk**: This relates to regulations to control your bank accounts, access to those accounts and the deposits and expenditures of monies from those accounts. Included in these policies are the processes and the internal controls necessary to detect and prevent fraud.

**Policies that would allow for controlling liquidity**: Although related to assets, you should give consideration to this liquidity specifically.

**Management of resources**: This includes the funds you are receiving, will receive, and other assets.

# **Reserve policy**

**Begin by defining the purpose of the reserve policy**: Background information on how the account is funded, and on the asset account where the funds will be maintained.

**Elaborate on the internal control of the reserve policy**: This should include precise objectives, the beginning balance of operating reserves, how the policy will be implemented, a formula for calculating the minimum adequate ratio, the circumstances under which the reserve funds can be used, and the procedures for approving the use of reserve funds.

## Budgeting

Policies for Budgeting: Covered in depth in the previous section.

# Accounting policies

**Management and revision of policies**: This requires regularly updating the regulations first instituted in your project.

**Policies for accounting your resources**: This includes the regulations and training needed for your financial system.

**Policies for Reporting**: This covers a standardized system of financial reporting to your stakeholders.

Your financial policies should emphasize roles, authority, and responsibilities for essential financial management and decisions. Without financial policies in place, your stakeholders are likely to operate under a set of assumptions that may or may not be accurate or ethical. The proper adoption of financial policies will protect the integrity of the staff member(s) responsible for controlling and monitoring the organization's assets, and eliminate temptations for anyone involved in financial activities and operations.

Sound financial policies lay out fair and sensible ways of dealing with financial and operational issues. Ideally, they are intended to guide the long-term financial goals of your project. They ensure the maintenance of accurate records of financial activities, and compliance with governmental and private donor reporting requirements. Once your policies become organizational practice, they are binding on everyone in the organization. Make sure that everyone in your project has access to these policies.



# Scaling Up Services

There may come a time when you decide to open other offices in your country, region or further afield. While such a decision, and subsequent steps are highly contextual, this section should help identify benchmark goals and general steps for planning and

expanding your operations. These considerations are also highly relevant at the <u>Start-up</u> stage.

- Identifying short-list locations for transferability.
- Complete due diligence investigations for short-list locations. Larger legal firms may be willing to undertake such research on a pro-bono basis.

Research into the feasibility of scaling up should look at the following aspects.

Political and social situation of refugees:

- How many refugees reside in the country/city/area/region?
- Where do they live in camps, in the capital or other urban settings, in rural areas? Is access to refugees restricted?
- Are there significant numbers of refugee claimants or potential refugees who are not acknowledged by UNHCR or the government?
- Are there significant numbers of refugees or refugee claimants in detention?
- How stable is the economy? Does it have the ability to absorb significant numbers of refugees?
- What have the refugee flows been like over time? Can we anticipate that the country/city/area/region will play host to significant numbers of refugees in the near future?

Legal context (general):

- How strong is rule of law in the country/city/area/region?
- What system of law is used?
- Is the government ostensibly a democracy, or does it publicly espouse democratic principles?
- What laws govern speech and association?

Legal conditions for NGO operations:

- What are the legal conditions for operation?
- What is required for registration as an NGO? What are our registration options (local NGO, branch office of international NGO, sponsorship by other local organization, etc)?
- Are there limitations on the type of work an NGO may undertake?
- Are visas and/or work permits required for foreign employees? What is the process for securing such visas/work permits? Are there conditions for the employment of foreigners (number of local staff per foreign staff, payment of fees, etc)?
- Are visas and/or work permits required for foreign volunteers? What is the process for securing such visas/work permits? Are there conditions for the

employment of foreign volunteers (number of local staff per volunteer, payment of fees, etc)?

• What requirements govern access and provision of services to the refugee population? (If the refugee population is entirely interned in camps, for example, a permit may be required to access the camp. Similarly, if 25 percent of the refugee population is in detention, regulations may prohibit the provision of human rights information to detainees.)

Laws relating to refugees:

- What domestic laws govern refugees and asylum-seekers? What international conventions has the country/countries signed?
- In practice, are the laws governing refugees and asylum-seekers enforced?
- Who conducts refugee status determination (RSD)? If UNHCR conducts RSD, does the government respect UNHCR's determination?
- If the government conducts RSD, what is the process like? Does it include due process protections? Is it administrative or judicial? Are there bars to legal representation in RSD?
- Do refugees enjoy substantive economic, social and cultural rights under law (such as access to employment, financial institutions, education, healthcare and public benefits)? Are these laws respected/enforced?
- Do refugees enjoy substantive civil and political rights under law (such as freedom of movement, protection against arbitrary detention, and equal protection of the law)? Are these laws respected/enforced?

Amenability of the legislative system to change:

- Is the government open/responsive to policy advocacy and/or grassroots organizing?
- Have other human rights movements been successful in improving the legislative framework that protects human rights?
- How quickly can we achieve legislative change? What investment is required (of time, funds, relationships, or other resources)?
- How changeable is the political climate? Are we at risk of losing legislative gains due to party or regime change?

Attitudes of policymakers, thought leaders and the public toward refugees:

- How do policymakers and the public view refugees? How do they view human rights advocacy?
- How politically contentious is the refugee population (or portions thereof)?
- Are refugees a lightning rod for popular discontent about other issues (e.g., poor economy, lack of employment opportunities, etc.)?
- To what extent does the government care about its international reputation, both in general and vis-a-vis human rights specifically?

• To what extent is the refugee population or the country/city/area/region politically contentious in relation to your current context and/or internationally (e.g., Palestinian refugees and Israel, respectively)?

Existence and effectiveness of NGOs providing assistance to refugees:

- Who is serving the refugees, and what services are provided?
- How open are other actors (NGOs, UNHCR, the government) to the intervention of an organization providing legal assistance to refugees?

Existence and effectiveness of NGOs advocating for human rights protections:

- Who is advocating for human rights? Is there a vibrant human rights advocacy community?
- Do human rights advocates include refugees in their initiatives?

Local leadership potential:

- Does the country/city/area/region have a strong pool of potential leaders (e.g., experienced local human rights leaders)?
- How easy will it be to instill Asylum Access's corporate culture of rights-based assistance, respect for refugees as decisionmakers, and an insistence on rapid, decisive change where needed to protect human rights?

Operational costs and risks:

- What is the primary language of official business in the country/city/area/region?
- How easy is communication within the country/city/area/region and internationally? How strong is the communication infrastructure (including electricity, phones, internet)?
- How easy is transportation within the country/city/area/region and internationally? Could we reach refugees without incurring high costs or significant travel time? Could we evacuate staff easily if needed?
- What security concerns will we face if we choose to operate in the country/city/area/region?
- What costs are associated with obtaining any required NGO registration, visas/work permits, and access to refugee camps or detention facilities?
- How interested are international donors (individuals, foundations, and government) in the country/city/area/region and/or its refugee population?

Begin financial planning and fundraising process including perfecting justification of why your model works and how scale-up will be managed.

• Select most appropriate location(s) based on a comparative analysis of the factors above. You may wish to prioritize the factors in order to facilitate your shortlisting, or synthesize investigations into a 'SWOT analysis,' summarizing

strengths, weaknesses, opportunities and threats of expansion to each particular location.

- Create a mitigation strategy for each risk or threat identified.
- Assess readiness and define tasks to accomplish in preparation for expansion. This will involve surveying heads of department on their readiness and workload implications relating to expansion. Approval may need to be sought at this stage from your board of directors.
- Establish a timeline with 1 year, 6 months, 3 months etc. marks by which key objectives must be achieved.
- Hire launch director or lead staff member for each new opening.
- Complete new office set-up and staff hiring.

Further tools that may facilitate expansion decision-making

"Gut feeling" and Numerical Rating Charts

Expansion Planning: Due Diligence Sample Guidance (Asylum Access) Note: This pertains to operating in a new country, which may not be the case. Use with appropriate adjustments for national expansion.



# Advocate

#### Refugee rights law: the building blocks

This section details provides a refugee rights leader with basic legal knowledge. Although the Toolkit is not in and of itself a textbook, it provides helpful links to legal information and guidance from external sources.

#### Legal services

This section provides a guide to managing, implementing and evaluating refugee legal services. Special emphasis is paid to refugee legal aid strategies and Refugee Status Determination procedures and protocols under either UNHCR or a government adjudicator.

#### Community legal empowerment

This section provides a guide to managing, implementing and evaluating community engagement and training with rights-based aims. Special attention is paid to the development of workshops, community action plans and community capacity building.

#### **Policy advocacy**

This section provides a guide to managing, implementing and evaluating campaigns aimed at ensuring institutions, laws, policies, and practices respect and promote refugee rights. Special attention is paid to common campaign strategies, and approaches to common audiences including UNHCR, other human rights bodies, and governments.

#### **Strategic litigation**

This section provides a guide to managing, implementing and evaluating strategic litigation cases that serve to improve jurisprudence and provide rights-based outcomes for the general refugee population.

#### Worker rights programs

This section provides a guide to design and implement refugee work rights program to improve refugee resiliency and livelihoods.



# Refugee Rights Law: The Building Blocks

When adopting a rights-based approach, it is crucial that the use of refugee and human rights law is central to your advocacy work. This section highlights the most important protections and provisions in international and regional bodies of law that may be most relevant to refugees.

You may use these protections and provisions to structure and support arguments for refugee rights in a number of ways, such as to:

- support individual legal cases
- structure trainings and community legal empowerment workshops or courses
- support wider impact litigation at any level
- support advocacy with governments and the UN system.

The Refugee Rights Law: Building Blocks section is divided into three sections. The Right to Seek Asylum highlights the most essential provisions in existing international and regional refugee rights instruments, including:

- 1951 Convention Relating to the Status of Refugees (1951 Convention)
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)
- Cartagena Declaration.

Provisions highlighted include the definitions of a refugee, as well as specific situations where refugee status is excluded, cancelled or ceased. It also explains how one can utilize Country of Origin information to support your case.

**Non-Refoulement: A Cornerstone** highlights the principle that no one, including asylum seekers and refugees, can be sent back to where her life or freedom is threatened. This principle is explained with reference to the existing refugee and human rights instruments.

In addition to refugee law, refugees are also protected by a set of human rights law more broadly. **The Human Rights of Refugees** section highlights the relevant human rights laws one can turn to for stronger defense of refugees' rights. Sections highlight existing human rights law relating to the freedom from penalties for illegal entry, freedom from arbitrary arrest, the right to work, education, health care, access to courts. Women's rights and children's rights are also outlined.

It should be noted that this section does not aim to be comprehensive or cover the entirety of laws that can be applied to refugees. Advocates should research these topics further with the help of the resources provided in order to maintain up-to-date and sound legal knowledge. In addition, although domestic law has not been covered in the Toolkit, it is important to gain a strong understanding of the national legal framework. Advocates are also reminded to consider the legal hierarchies and the authority accorded to international and regional law in your jurisdiction. In jurisdiction where UNHCR takes on the role of the decision-making, domestic law might be of less relevance.

For further resources you may choose to refer to The Refugee Law Reader, available in English, Spanish, French and Russian, which provides a comprehensive curriculum on international and regional refugee law.

#### **Further resources**

The Refugee Law Reader: Cases, Documents and Materials

This is what you'll learn in this section:

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# The Right to Seek Asylum

Under refugee law, countries have obligations to protect refugees under their jurisdiction. Yet, the only way for countries to respect their obligations is to distinguish refugees from non-refugees. UNHCR has initially called this process as Refugee Status Determination (RSD). The Procedural Standards for RSD, referenced below, is a useful starting point to understand this process.

RSD is an important as it enables refugees to obtain the rights they are entitled to as refugees, and for countries to respect their domestic and/or international obligation under refugee law. In 1984, ExCom Conclusion No. 35 established a clear link between putting a system in place to allow the determination of individual refugee status, and the

countries' obligations to issue identification documents to refugees (Article 27 of the 1951 Convention).

Providing legal services is one of the most powerful tools to ensure that RSD is conducted in a fair, individualized and unbiased manner in order to uphold refugee rights. This section will provide you with legal guidance pertaining to the provision of legal aid in various aspects of RSD. For more programmatic guidance on legal aid, please visit the Legal Services section of the Toolkit.

#### Further resources

Procedural Standards for Refugee Status Determination under UNHCR's Mandate (UNHCR, 2013) Conclusions Adopted by ExCOM 1975-2009 (UNHCR, 2009)

# **Convention Definition**

The main source of international refugee law is the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Protocol. This section explains the definition of a refugee as outlined under Article 1 of the 1951 Convention. In particular, it explains how the recognized grounds of persecution under the 1951 Convention, i.e. race, religion, nationality, and membership of a particular social group, are interpreted. The interpretation of 'well-founded fear' as part of the refugee definition is also explained.

# Convention definition of a refugee

An individual who meets the definition of a refugee according to the 1951 Convention is known as a Convention refugee. Article 1A(2) of the 1951 Convention defines a refugee as someone who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

This definition can essentially be broken down into four requirements:

- Being outside of the country of nationality (or, if stateless, the country of last habitual residence);
- Being unable or unwilling to return to this country or to invoke its protection;

- Fear of persecution in one's country of origin on the grounds of:
  - o race,
  - o religion,
  - o nationality,
  - o membership of a particular social group,
  - $\circ$  or political opinion, and
- The fear of persecution is well-founded.

Note that the definition refers to *being* outside a country, not to the act of crossing a border. This means that if the situation in someone's home country changes while they are abroad, or if their opinions or activities abroad put them at risk upon return, they **can** apply for refugee status. They are known as 'refugees *sur place*.'

The 1951 Convention links the definition of a refugee to "events occurring before 1 January 1951". This is because the Convention was created in response to the post-World War II exodus of Jews and others from Nazi Germany. However, the function of the 1967 Protocol is to remove this temporal limitation, universalizing the refugee regime. There are still some states, however, which are party to the 1951 Convention but have not acceded to the Protocol, meaning that the temporal limitation is still in place on their territories.

# Convention grounds

In order to be recognized as a refugee under the 1951 Convention, one of the criteria is that the individual has a fear of being persecuted 'for reasons of race, religion, nationality, membership of a particular social group or political opinion'. The interpretation of these five grounds of persecution will be explained below. Note that some refugees are persecuted for more than one ground and can make a claim under each of the relevant grounds.

#### Race, religion, nationality

Race, religion, and nationality should be understood in the widest sense. Race includes ethnic and social groups of common descent. Religion includes identification with any group with a common set of traditions and beliefs, as well as the active practice of that religion. It also includes <u>atheism</u> and other forms of non-theist belief and practice. Nationality includes citizenship, and may also be understood as particular ethnic, cultural or linguistic groups within a country.

### Membership of a particular social group

A particular social group refers to people with a shared background, customs, or social status. It is the Convention ground with the least clarity, but the greatest flexibility. A particular social group is a group of persons who share a common characteristic or who are perceived as a group by society. The characteristic needs to be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights. Whether a characteristic is fundamental to identity can be judged in accordance with fundamental human rights, or may be fulfilled by a historic component: previous membership of a group which is well-known and cannot be altered.

A particular social group cannot be defined by the persecution of the group. In identifying the name of the group, one needs to understand the characteristics that lead to the persecution. There is no need for cohesiveness among the members of such a group; they do not need to know each other or associate together. It may be the case that not all members of the group are at the same risk of persecution, on account of their behavior or other privileges such as class or wealth.

This is the grounds upon which LGBTI refugee claims are often made, and it has been extended to diverse groups, such as landowners and former members of the military. Narrowly defined groups have better success in legal arguments, e.g., "women in Pakistan who have left their husbands," compared to more vague groups, e.g., "Pakistani women."

#### Political opinion

This can refer both to actual or imputed (alleged) political opinion of an individual, as demonstrable by her actions or affiliations. It includes opinions that have been attributed to someone, even if incorrectly. Lack of a political opinion (or neutrality) can also be categorized under this ground.

This ground also includes political opinions that have been hidden out of the need to survive, and have only been revealed post-flight — in which she would be subject to persecution if she were to return to her home country. As mentioned above, this would be a *sur place* claim.

Many, if not all, of the grounds for refugee protection can be imputed. That is to say, a person claiming refugee protection on a certain ground does not need to actually have the characteristic that is the claimed basis for persecution. It is enough that the persecuting agents *perceive* that she has the characteristic. For instance, a woman in a traditional Muslim society who chooses not to adhere to the expected religious dress code may be persecuted because others perceive her to be an atheist, even if she is actually a religious Muslim. What matters for her claim in this instance is not her actual religious beliefs, but what her persecutors reasonably believed her religious beliefs and practices to be. Imputed grounds can be especially important for women and children, whose political opinions and religious practices are often imputed based on the behaviors and actions of their male family members.

#### Well-founded fear

This requirement generally has an objective and a subjective component. "Well-founded fear" must be objectively evaluated, with a focus on the individual's forward-looking risk of being persecuted. A refugee's fear can be justified by reviewing <u>country of origin</u> <u>information (COI)</u>, such as human rights monitors' reports, news items, government and UN briefings. It can also include evidence that the applicant may provide, such as threatening letters or proof of discrimination or mistreatment. To fulfill the subjective component, the individual only has to allege the fear of persecution. This allegation may be direct or inferred from their statements.

For in-depth guidelines on each of the Convention grounds discussed above, you may consult UNHCR's Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. This handbook is periodically updated to reflect the latest thinking on how to evaluate claims based on the various Convention grounds. The current version of the handbook was published in 2011.

#### Further resources

- States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (UNHCR, 2011)
- Michigan Guidelines on Well-founded Fear (University of Michigan Law School, 2004)

Asylum and the Rights of Refugees: interpreting key terms (International Justice Resource Center)

Asylum and the rights of refugees: selected case law (International Justice Resource Center)

UNHCR's Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (UNHCR, 2011) Training Films on Refugee law and Particular Issues when Representing Asylum

Training Films on Refugee law and Particular Issues when Representing Asylum Seekers (International Refugee Rights Initiative, 2000)

Summary Conclusions: membership of a particular social group (UNHCR and International Institute of Humanitarian Law, 2001)

<u>Guidelines on International Protection: "Membership of a particular social group"</u> within the context of Article 1A(2) (UNHCR, 2002)

# **Extended Refugee Definitions**

As seen in previous sections, the 1951 Convention and its 1967 Protocol defines a refugee as someone who is persecuted based on at least one of the five grounds (race, religion, nationality, particular social group and political opinion). Yet, conflicts can create mass displacement and in some cases, individuals fleeing the violence do not fall within the scope of the 1951/1967 refugee definition.

Regional instruments, drafted after the 1967 Protocol, acknowledges this reality in their extended definitions. Indeed, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and the 1984 Cartagena Declaration (applicable in Latin America) confirm the initial 1951 definition, but they also add a definition which removes the need to prove targeted, individualized persecution.

This extension essentially recognizes refugees fleeing generalized violence, war or insecurity. The two regional instruments reflect the massive nature of refugee movements that was occurring at the time of their drafting: the OAU Convention was drafted in the wake of the decolonization of Africa, and the Cartagena Declaration was conceived at the end of severe dictatorships in Latin America.

The extended definitions are useful when dealing with increased refugee arrivals that render individualized RSD problematic. It is important to note that these extended definitions are only applicable in countries party to the OAU Convention (in Africa only) or countries that included the definition in their domestic laws (including most countries of Latin America). UNHCR has also acknowledged the extended definition in countries where it conducts RSD in lieu of the State (extended mandate refugees).

Conflicts and generalized violence can cause large-scale displacement that render individualized RSD difficult to manage. In response, states (and UNHCR conducting RSD) can choose to provide *prima facie* status to all refugees fleeing a certain territory. This removes the need for individualized RSD under the presumption that everyone fleeing that territory meet the eligibility criteria of the applicable definition.

# OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

The first regional instrument to establish refugee protection standards was the African Union's Convention Governing the Specific Aspects of Refugee Problems in Africa (1969). It recognizes and builds on the 1951 Convention and extends protection to all those fleeing any man-made disaster, whether or not they can demonstrate a fear of persecution. Article 1(2) of the OAU Convention states:

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

This recognizes that harm can arise from a government's inability to guarantee protection or stability, and that entire populations can be viewed as refugees given external conditions. The Convention further reiterates that granting asylum is to be viewed as a peaceful, humanitarian act; and establishes the duty of refugees to refrain from the vaguely defined 'any subversive activities' (Article 3) while in the country of asylum. The Convention is binding on Member States of the Organization of African Unity.

# Cartagena Declaration on Refugees (1984)

In response to refugee crises in Central America which caused large numbers to flee generalized violence and oppression, Latin American states adopted the Cartagena Declaration in 1984. This is a set of norms which similarly widen the definition of a refugee. Although it is non-binding, it has been highly authoritative in legal proceedings on a national and international level in the Americas.

Article 3 states:

... the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

In 1985, this definition was approved by the General Assembly of the Organization of American States. This consolidated protection for those who flee in large groups, or for whom the narrow grounds of the 1951 Refugee Convention and 1967 Protocol are inapplicable. Notably, refugees must still prove that their lives, safety or freedom have indeed been threatened. Unlike the OAU Convention, the Cartagena Declaration does not specifically extend protection to those fleeing serious disturbances of public order that affect only part of their country.

The instrument reiterates the humanitarian nature of granting asylum, and explicitly confirms the *jus cogens* (inviolable) status of the international prohibition on *refoulement* in Article 5.

# Exclusion

Both the 1951 Convention and the 1969 OAU Convention specify instances in which those seeking international protection must be *denied* of refugee status. Although the 1984 Cartagena Declaration does not have a specific exclusion clause, it sets the OAU Convention as precedent to the extent that it is regionally appropriate (in Latin America). This implies that the exclusion clause might also apply to refugees under the Cartagena Declaration. Note that your country's national laws and policies may have their own additional exclusion clauses.

The rationale of the exclusion clause is (1) to protect host communities from serious criminals, (2) to protect the humanitarian/civilian character of asylum and the integrity of the asylum regime, and (3) to prevent impunity by ensuring serious criminals cannot flee from justice proceedings in their countries of origin. This section examines Article 1F of the 1951 Refugee Convention, and Article 1(5) of the OAU Convention. This subsection introduces Article 1D of the 1951 Refugee Convention, an exclusion clause unrelated to criminality.

# Article 1F of the 1951 Convention

Article 1F of the 1951 Convention sets out the grounds for exclusion from the 1951 Convention refugee definition:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Exclusion clauses are increasingly invoked by governments unwilling to receive refugees. However, these provisions should be interpreted restrictively, and be applied with caution in the most extreme circumstances. This is particularly so in the case of Article 1F(c), given it contains imprecise language, and should be read in conjunction with Article 1 of the United Nations Charter. Article 1F(c) is almost never invoked. Thresholds for the crimes contemplated should be high, with implications for international peace and security.

The standard of proof for the 1951 Convention's exclusion clauses is "serious reasons to believe". This is generally regarded as below the criminal standard of proof (beyond reasonable doubt), and does not require absolute certainty. There may be jurisprudence in your country on this phrase's precise interpretation: the exact standard needed varies from country to country. In all countries, however, the standard of proof is fairly high. This is to safeguard against the potentially serious consequences of exclusion from refugee status for an applicant. Note that where an exclusion clause applies, the exclusion of an applicant is not discretionary: the applicant must not receive refugee protection, no matter the seriousness of his security risks in his country of origin.

Evolving bodies of international law, such as international criminal law, can help interpret the parameters of Article 1F. Judging whether someone has committed crimes against peace, war crimes, or crimes against humanity, is in its relative infancy as a body of international law. However, precedent from the International Tribunals of Rwanda and Yugoslavia, as well as from the International Criminal Court, should be used to assess the applicability of these definitions.

Further debates in the application of the exclusion clause include whether child soldiers or others coerced into committing such crimes should have diminished responsibility. In addition, states increasingly consider terrorism to fit within the crimes outlined in the exclusion clause. However, because there is no uniform international definition of terrorism, it has been difficult to develop consensus on how to categorize terrorist acts under Article 1F. Since 1994, 'terrorism' (by whatever definition) has been explicitly announced to be contrary to the purposes and principles of the UN. It is not yet clear whether terrorism can qualify as a (serious) non-political crime, or one of the 1F(a) crimes.

### Article 1(5) of the OAU Convention

Article 1(5) of the OAU Convention states:

The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he committed a serious non-political crime outside the country of refuge prior to

(b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;

(d) he has been guilty of acts contrary to the purposes and principles of the United Nations.

This merely adds the additional ground of exclusion that the applicant must not have been found guilty of acts contrary to the purposes and principles of the OAU.

#### Issues in practice

The application of the exclusion clause should be unwarranted (does not apply) if the individual has already served their sentence for the crime in question. In addition, exclusion by association is impermissible. If a family head is excluded from refugee status, dependents should undergo RSD in their own right.

There can be instances where an individual is suspected to fall under the exclusion clause in *prima facie* (group RSD) settings. In these circumstances, the individual may undergo individualized RSD immediately even in *prima facie* circumstances. In addition, the status of persons granted asylum on *prima facie* basis may be cancelled if reliable, verified information becomes available after recognition, revealing that refugee status should never have been granted to the individual to begin with.

Conducting exclusion assessments in large increased refugee arrival situations is almost impossible, yet such increases may present better cover for criminal elements to mingle among refugee flows and escape detection. In situations such as these, individualized RSD should be advocated for as soon as practically feasible to exclude any ineligible members of the group. A crime may be serious enough to warrant exclusion, but the perpetrator may not be considered so dangerous to the community as to trigger the lifting of the prohibition on *refoulement*, as per Article 33 of the 1951 Convention. Human rights instruments offer greater certainty of non-*refoulement*, protecting even serious international criminals from return to potential torture. This creates the possibility of applicants being excluded from refugee status but are protected from *refoulement*. In this case, an alternative migration status must be found to avoid unlawful deportation and/or unjustifiable prolonged detention. Or, in a country with strong universal jurisdiction or implementing legislation of the Rome Statute, the country could choose to prosecute the person, if it is a 1F(a) exclusion.

#### Further resources

Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the status of refugees (UNHCR, 2003)
Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the status of refugees (UNHCR, 2003)
Notes on the Exclusion Clauses (UNHCR Standing Committee, 1997)
Summary Conclusions: exclusion from refugee status (UNHCR and Carnegie Endowment for International Peace, 2001)
Exclusion from Refugee Status under Article 1F of the Convention (International
Refugee Rights Initiative)

# Article 1D of the 1951 Convention

The previous section has introduced the exclusion clause as relating to criminality. However, Article 1D of the 1951 Convention excludes an additional group of individuals, not relating to criminality, from refugee protection under the 1951 Convention. It states:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

The first paragraph of Article 1D excludes from Convention status Palestinians who are outside of Israel and the occupied territories due to the wars of 1948 and 1967. This is due to the role of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), created prior to the 1951 Convention, that had an initial mandate to provide relief and works program to this group. However, according to the second paragraph of Article 1D, when a Palestinian refugee is found outside of the jurisdiction

of UNRWA, she is immediately included as a Convention refugee under the 1951 Convention. This case is of particular relevance when Palestinians who were refugees in Syria since 1948 flee to escape the violence seen in the Middle East.

#### Further resources

Palestinians who fall under the 1951 Convention (International Refugee Rights Initiative)

# Cancellation

The 1951 Convention permits refugee status previously awarded to an individual to be cancelled, where it has subsequently become clear that there was no valid basis for such a decision in the first place. Although cancellation is not explicitly mentioned in the 1951 Convention, it is fully in line with the Convention's object and purpose and is a key concept in international refugee law. Similarly, cancellation is implied in the OAU Convention's cessation clause. Article I(4)(g) of the OAU Convention provides that the Convention will cease to apply to refugees infringing its purposes and objectives. The concept of cancellation is also supported by general principles of administrative law: a decision that was wrong *ab initio* (from the beginning) can be rescinded and treated as if it never existed. Cancellation only applies to decisions made after a status determination has become final—that is, a decision that is no longer subject to appeal or review. After cancellation, a person is not, and is deemed to have never been, a refugee.

# Grounds for cancellation

Cancellation of refugee status may be appropriate or necessary to rectify an initial decision to grant status that was incorrect because:

- the applicant did not meet the inclusion criteria; or
- one of the exclusion clauses would have applied at the time of RSD adjudication had all facts been know; or
- the applicant had an alternative nationality or citizenship which could have provided protection at the time of RSD.

All of the above may be due to misrepresentation, bribery, misrepresentation or concealment of relevant facts, or other misconduct by the applicant. The mistake may also be due to error of fact or law by decision-makers. The UNHCR states that where the error is entirely attributable to the decision-making authority, the principle of proportionality requires that the public interest in rectifying the flawed decision be weighed against that of the individual in maintaining it. It also claims that all relevant circumstances of the case should be taken into consideration, including the person's length of stay and degree of social and economic integration, as well as potential hardship which may be caused by a decision to cancel refugee status.

## Important considerations

It is incorrect to begin cancellation procedures based on a change of opinion regarding the credibility of facts presented by an applicant. However, reliable new country of origin information (COI) or other facts may emerge which contradict information in the RSD file. In such cases, a reassessment of a RSD decision may be appropriate. In general, any decision to cancel recognition must be based on evidence relating to facts that were relevant for the initial decision, and must specifically show why this decision was objectively erroneous.

It is important to note that even when refugee status is cancelled, the prohibition on *refoulement* and other human rights obligations must still be respected. If a person's status is cancelled, many jurisdictions would still look at the best interests of the child principal. Moreover, where cancellation of an individual's status results in the cancellation of her derivatives' status, those concerned must be given an opportunity to apply for asylum in their own right, if they so wish.

Cancellation is a valuable mechanism because the ability to transparently address errors is necessary to preserve the integrity of the refugee definition. However, the emphasis must always be on accurate first-time decision-making. UNHCR's 1999 Guidelines on the application of the cessation clauses state that refugees should not be subjected to constant review of their status.

#### Further resources

<u>Cancellation of Refugee Status: Quick Reference Guide (RSD Watch)</u> <u>Cancellation of Refugee Status (UNHCR, 2003)</u> <u>Procedures for Cancellation of Refugee Status (UNHCR)</u>

# Cessation

Cessation of refugee status may take place when international protection is no longer necessary or justified. This can be due to voluntary acts carried out by the refugee or it can be due to fundamental and durable changes in the country of origin where persecution was once feared and where effective national protection has now been restored. Cessation is being given increasing attention in recent years, due to state interest in reducing their refugee populations in the face of resource strains and anti-migrant sentiment. This section will outline the relevant provisions relating to cessation in the 1951 Convention and OAU Convention, as well as provide comments on how cessation is interpreted in practice.

# Article 1C of the 1951 Convention

Article 1C of the 1951 Convention provides that:

This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality,

6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

The first four clauses of the article refer to acts carried out by the individual refugee which are understood to represent a lack of fear of persecution, or the ability to be protected by the country of origin (or former habitual residence in the case of stateless people). Key elements are the voluntariness of the act, and the effectiveness of the protection re-established.

Clauses 5 and 6 are known as the "ceased circumstances" clauses. They dictate the logic that refugees or stateless people can no longer refuse the protection of the country of origin or former habitual residence if certain significant changes have taken place. These provisions may be invoked by the receiving state providing international

protection, and would usually be invoked for a group of refugees who fled a country a number of years ago. In addition, there are a few points of consideration:

In assessing a changed situation in the country of origin, UNHCR guidelines prescribe that any perceived change must be determined to be of a "fundamental" and "enduring" nature before the circumstances can be said to have ceased to exist. "Fundamental" must be taken to mean major, profound or substantial. Durability of these changes is not indicated by the momentary subsidence of hostilities. The entirety of the political and humanitarian context must be taken into account, as well as peace and reconciliation processes and economic stability.

The restoration of the country's protection abilities must also be verified. Legal reform including the repeal of discriminatory laws, current relations between different ethnic or cultural groups or races, and functioning administration should all be taken into account. Free and fair elections and subsequent regime change are not enough to fulfil this element.

Changes must be territory-wide. Refugee status can only come to an end if the basis for persecution is removed, rather than the case that the refugee has to return to specific safe parts of the country in order to be free from persecution. Not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental.

Despite the mass nature of this cessation of protection, it is important to note that invoking the clause generates a rebuttable presumption. In other words, individuals should have the possibility to request for their case to be individually assessed in accordance to their specific situation.

## **OAU** Convention

Similar provisions for cessation of refugee status exist under Article 1(4) of the OAU Convention.

This Convention shall cease to apply to any refugee if: (a) he has voluntarily re-availed himself of the protection of the country of his nationality, or, (b) having lost his nationality, he has voluntarily reacquired it, or, (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or, (d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or, (e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or, (f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or, (g) he has seriously infringed the purposes and objectives of this Convention.

Articles 1(4)(a) - (e) reflect the provisions laid down in the 1951 Refugee Convention, and articles 1(4)(f) and 1(4)(g) provide for acts of revocation of status rather than cessation.

Revocation is another means by which refugee status can be lost. It is not to be confused with exclusion, cancellation or cessation. As stated in Article 33(2) of the 1951 Convention, refugee status can be withdrawn when an individual commits a "particularly serious crime" that "constitutes a danger to the community of that country [of asylum]". Different to Article 1F, which excludes refugees based on crimes committed *prior* to their admission in the host country, revocation is invoked based on serious crimes committed *after* she is recognized as a refugee.

#### **Issues in practice**

As the ceased circumstances under the cessation clause can affect large groups of people simultaneously, it is difficult to hold individualized RSD to determine whether there are "compelling reasons" to refuse return. This is where **legal aid** may be most useful. In large increased refugee arrival situations in Africa or Latin America, refugees are likely to have been recognized under the regional instruments' extended definitions, and may never have undergone individualized status determination. Legal counseling can therefore provide information on what refugees' rights and duties are, including in situations of cessation.

For individuals, re-establishment in a country requires the demonstration of **serious ties**, and should not be confused with ad-hoc and short-term visits. Refugees can have pressing needs to tend to livestock, trace family, and return for assets impel refugees to return to a place that is not safe. This should not be taken as either the voluntary re-establishing oneself in a country or re-availing oneself of its protection, nor should it be used as an indicator of the durability and fundamental nature of changes in a country.

In a country assessment (for cessation), spontaneous or organized voluntary returns should not be taken as indicators that there is no longer a threat of persecution in the country of origin for everyone. Even if many return out of their own will, this is not to say that everyone of that nationality is ready to return. Some refugees decide to return even though the fear of persecution is still present.

Any individualized RSD process determining whether a person can be exempted from cessation must take into account **present** fears of persecution. These may be completely different to the original reasons which pushed a refugee to leave a territory in the first place. Political activities in exile (particularly if prolonged) may play a significant role here, as well as new forms of discrimination present in the country to which return is proposed. Special attention must be taken in the case of the risk women might face upon return.

As with cancellation, cessation of status does not automatically oblige the return or repatriation of a former refugee to their country of origin. It simply removes the protection granted by refugee status. To those who have lost their status through cessation, States are encouraged to offer **alternative forms of regularization and/or documentation** (e.g. naturalization, the acquisition of foreign passports and residency permits as foreigners) in the country of asylum or in a third country. Non-refoulement must be respected at all times. Long-term displacement can generate strong ties (economic, familial) to the country of asylum which should be considered in any such regularization proceedings.

#### Further resources

The Cessation Clauses: Guidelines on their Application (UNHCR, 1999)
Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees the "Ceased Circumstances" Clauses) (UNHCR, 2003)
Guidelines on Exemption Procedures in respect of Cessation Declarations UNHCR, 2011)
Cessation of Status: Executive Committee Conclusion 69 (UNHCR, 1992)
Current Issues in Cessation of Protection Under Article 1(C) of the 1951 Refugee Convention and Article 1(4) of the 1969 OAU Convention (UNHCR and University of Washington, c.2001)
Note on Cessation Clauses (UNHCR 1997)

Refugee Rights Toolkit

# Country of Origin Information

Country of Origin Information (COI) refers to information relating to the political, social, cultural, economic and human rights situations in the refugees' countries of origin and/or countries of transit. These are used as evidence to help support your client's case. This section explains the importance of COI in supporting a refugee claim, provides tips on how to conduct COI research, and outlines a list of useful resources that you may find useful when conducting your COI research.

# Why is COI important?

COI is helpful when assessing the veracity of a claim for refugee status. It is important for a number of reasons, such as:

- To help ascertain whether the subjective element of fear is well-founded, by permitting comparisons between the asylum seeker's version of events and documented patterns of human rights abuses and repressive behavior by state or non-state actors.
- To provide more general insights into the cultural, social and economic situation in a country in order to contextualize an applicant's testimony.
- To serve a more specific purpose, e.g. by confirming whether certain events or conditions described by an applicant took place or are likely to be true.

# Conducting COI research

COI should be accurate and objective. It normally takes the form of third party research, but may also include other expert evidence such as medical, anthropological or language and document verification analysis reports. It can also include newspaper articles covering a specific event, the country of origin's national laws (especially when wanting to show that the laws are discriminatory in nature), as well as publications from social media and blogs (to use with caution).

COI used in legal arguments should primarily come from well-respected, authoritative sources. This can include reports from human rights NGOs such as Human Rights Watch, Global Witness, Amnesty International, and International Crisis Group. They should also be recent or up-to-date. Academics and other experts can also be called on to provide tailored statements to clarify specific aspects of COI. Using biased or unreliable information could harm the refugee's claim and the credibility of your practice. Yet, when only biased information is available, it needs not be discarded. In these circumstances, it is important to explain the context of the source and establish why the COI can still be used, although with caution.

When conducting COI research, it is important to look at all available information, and not ignore COI that would weaken your argument (whilst keeping one's legal obligation

to support the client's claim in mind). Analyzing "detrimental" COI allows a more profound understanding of the claim. There might also be an explanation as to why the detrimental COI exists which would in fact reinforce the refugee claim.

Lack of COI cannot be invoked when deeming a refugee claim as non-credible. The factors that can explain why there would be no report on a certain human rights situation might include:

- Repressive governments with a lack of press freedom or information restriction
- COI might not be accessible to all, either because it is published in a language that is not known to the researcher or it is not widely available (e.g. it is only available in a newspaper in the country of origin, and not available electronically)
- An event might have occurred in a remote area and not have had media coverage
- A situation might take place in private and have no public attention, e.g. cases of domestic violence
- Some groups may not be included in public reports that are otherwise publicly available, e.g. children, the elderly, LGBTI persons, ethnic minorities.
- Finally, although gathering COI can support a refugee's claim, one should also be aware of the potential security threats involved. For example, gathering COI might alert the country of origin's authorities, and pose a risk to the family members/colleagues that have remained in the country of origin. In these circumstances, it is crucial to mention the risks involved to the refugee, and consider whether that COI should be used.

Note that it is always the adjudicator's burden to consult accurate and reliable COI, and *not* the applicant's responsibility to present this information. A lack of objective assessment of a refugee's fear of persecution may constitute a violation of due process in RSD.

Although COI can be used to aid credibility assessments (more on this later), it is not a lie detector. It cannot prove whether the applicant is truthful, nor can it definitively decide whether the claim is well-founded. Therefore, the role of COI is to corroborate, question or put into context the applicant's statements and other evidences. Thorough research of up-to-date COI may help reduce the margin of error in decision-making.

You may find the list of resources below useful when conducting your COI research. In particular, the International Refugee Rights Initiative has a database of COI experts per country which can be consulted often on a pro-bono basis. For detailed information on how to research COI, the Training Manual below focuses on the quality standards, knowledge and assessment of sources, developing research questions, research strategies and methods, social media, and presentation in COI.

#### Further resources

Country of Origin Information Experts Directory (International Refugee Rights Initiative)

Researching Country of Origin Information: Training Manual (Austrian Red Cross and ACCORD, 2013)

Refworld: UNHCR's directory of country reports, case law, profiles, maps, etc. ReliefWeb

Amnesty International (human rights report search by country and topic)

Human Rights Watch (human rights report search by country and topic)

Transparency International

Transparency International Corruptions Perception Index (expert assessments and opinion surveys by country and year)

US Department of State Human Rights Reports (published annually for each country)

<u>Global Legal Information Network (public database of official texts of laws, regulations, judicial decisions, and other complementary legal sources contributed by governmental agencies and international organizations, currently being revised)</u>

Lexadin World Law Guide (comprehensive site with links to country constitutions, and other domestic laws by topic)

Southern Africa Legal Information Institute

All Africa (news reports search by country and topic)

Note: Where internet access is an issue, one can also consult local offices of human rights organizations and monitors for hard copies of their reports.

# Non-Refoulement: A Cornerstone

The most important protection principle for those who are forced to flee is nonrefoulement. This requires that no one be sent back to where his life or freedom is threatened. Non-*refoulement* is derived from the universal prohibition on torture, as well as prohibition on cruel, inhuman and degrading treatment. As non-*refoulement* is considered a customary international law, it is accorded to both asylum seekers and refugees alike.

Even if states are not party to the 1951 Convention or other human rights instruments, non-*refoulement* is considered so inherently important for all of humanity (*"jus cogens"*) that it exerts obligations on all states. Additionally, the norm is non-derogable. This means that states cannot express reservations to this provision in any treaty where it appears, nor can it be 'suspended' in emergency situations. To avoid *refoulement*, all states are obliged to conduct refugee status determination (RSD) prior to deporting or turning away anybody seeking international protection.

# Article 33 of the 1951 Convention

Article 33 of the 1951 Convention prohibits expulsion or return (*'refoulement'*). It states that:

(1) No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

There are limitations to non-*refoulement* in Article 33. Although Article 33(1) extends a certain level of protection to asylum seekers, the grounds upon which expulsion should be prevented is limited to the same grounds upon which refugee status can be accorded. This leaves those fleeing generalized violence or those without sufficient proof unprotected.

Article 33(2) withdraws protection from refugees who have committed a "particularly serious crime" after admission, and are deemed to be "a danger to the community of that country". This provision is open to interpretation, and runs the risk that politicallymotivated judgments can be taken as reason to deny international protection. There may also be large discrepancies between what constitutes a "particularly serious crime" between countries. Homosexuality, for example, carries the death penalty in certain countries.

# Human rights instruments: stronger protection

Acknowledging the limitations of Article 33 of the 1951 Convention, note that human rights instruments generally have fewer conditions placed on the prohibition of *refoulement* — and can therefore offer protection to a wider population. Treaties include the following.

Article 13 of the International Covenant on Civil and Political Rights, which establishes a duty to ensure due process around attempts to deport foreigners:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This provision establishes far wider grounds upon which acts of *refoulement* can be alleged, expanding protection to refugees who plausibly fear torture, even if proof is only in the form of country of origin information (COI) on patterns of gross human rights violations.

(1) No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 22 of the American Convention on Human Rights:

(6) An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

(8) In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

(9) The collective expulsion of aliens is prohibited.

Article 12 of the African Charter on Human and Peoples' Rights:

(4) A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

(5) The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 2 of the Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention):

(3) No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

Whilst this expands the prohibition on *refoulement* to those whose physical integrity is compromised, it reinstates the grounds on which this can occur – the same as for refugee status – though these grounds are wider in the African Convention and cover more than just targeted persecution.

# Issues in practice

Although states commonly practice closing borders, especially when faced with large flows of refugees mixed with armed actors, it amounts to *refoulement*.

If asylum seekers are not screened before being sent back, *refoulement* may take place. Screening mechanisms may be in place, but are ineffective if undertaken by non-specialist border forces in stressful situations, e.g. in maritime rescues and remote desert crossings.

Few refugees are aware of their right to non-*refoulement* and due process, and legal safeguards are often absent in rushed deportations. Refugees' inability to appeal such decisions once they have been returned makes non-*refoulement* difficult to challenge even if it is possible on paper.

# Strategies

Advocacy and capacity building of law enforcement and border control officials are crucial in preventing *refoulement* at any stage of a refugee's migration trajectory.

Human rights law, including the Convention against Torture in particular, can provide greater protection against *refoulement*. It should therefore be invoked in litigation and advocacy. Human rights bodies provide a forum especially when interim measures are needed, or in the case that redress and prevention are not forthcoming in the national justice system.

Accurate COI should be presented to decision-makers regarding patterns of abuse and violence in the state to which return is proposed.

If your clients are deported in violation of the principle of non-*refoulement*, contact the International Refugee Rights Initiative's (IRRI) Post-Deportation Monitoring Network

(more on this later). IRRI's stance is that even a failure to monitor what happens after deportation can amount to *refoulement*.

It is important to note that some states' and UNHCR's obligations regarding nonrefoulement of refugees differ: governments and UNHCR are bound by different thresholds for return. States not party to the 1951 Convention are only required not to refoule refugees, i.e. to refrain from sending them back to where their lives or freedom would be threatened. In comparison, UNHCR's Statute permits the Agency to facilitate voluntary return, even if there are still security concerns in the country of origin.

As noted by ExCom in 1993, it is difficult to identify true 'voluntariness' in voluntary return. Therefore, there is a need for UNHCR to scrutinize objectively the refugees' situation. "Voluntariness" implies an absence of any physical, psychological, or material pressure. However, this is often clouded by the fact that for many refugees, a decision to return is dictated by a combination of pressures due to political factors, security problems or material needs.

Many refugees freely choose to return home to situations of precarious stability or even continuing conflict or tension, but which they consider "safe enough", well before the international community could determine that they no longer need international protection. When facilitating such voluntary return, UNHCR should ensure that the refugees are properly informed of conditions in the areas of return and that the return of each individual is wholly voluntary.

#### Further resources

Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention (UNHCR, 2007) UNHCR Note on the Principle of Non-Refoulement (UNHCR, 1997) The Scope and Content of the Principle of Non-Refoulement: Opinion (Lauterpacht and Bethlehem, 2003)

# The Human Rights of Refugees

In addition to refugee law, refugees are also protected by a set of human rights law. These are universal protection that are applied to all human beings, regardless of whether they are citizens or non-citizens (including stateless people), refugees or nonrefugees, documented or undocumented individuals. Essentially, human rights instruments are crucial in strengthening refugee protection. This section will explain why it is important to utilize human rights law to strengthen refugee protection,

Advocate

and provide an outline of what the Human Rights of Refugees section will cover. For information on how these rights can be utilized in your legal aid programs, refer to the Access to Rights Procedure section of the Toolkit.

#### Building arguments by linking refugee rights to human rights law

Given the historical and political circumstances to which the 1951 Convention and its Protocol were drafted, its scope of protection is limited. In addition, although regional conventions provide more tailored protection, these are still limited to addressing issues specifically relating to forced displacement. Therefore, international refugee law instruments are not enough to ensure states uphold the comprehensive and dignified treatment of refugees as individuals with rights, futures, duties and needs. Human rights instruments enable us to enhance refugee protection for a number of reasons:

- Human rights instruments envisage a **broader range of rights** than those found in international refugee law instruments. Human rights anchor in crucial positive law absent in refugee-specific instruments, which include principles such as the right to life, security, liberty, freedom of movement, and family life.
- Human rights instruments usually provide for the same treatment for nationals and non-nationals (including refugees, asylum seekers, and stateless persons). While refugees are accorded on the basis of "most favourable treatment accorded to aliens" under the 1951 Convention, asylum-seekers and refugees are entitled to the same enjoyment of rights as nationals under human rights instruments.
- Some human rights instruments are **ratified by more countries** than the 1951 Convention and its Protocol. As many countries in Asia and the Middle East are not signatory to the 1951 Convention, and hence do not provide refugee protection, human rights instruments can be especially important.
- Unlike the 1951 Convention, many major human rights instruments have **human rights bodies** to which complaints can be brought on an international level and whose decisions can be legally binding on states.

# In essence, refugee law should be complementary to the wider and more generous protections of human rights law.

#### Strengthening human rights advocacy

Unfortunately, the premise that human rights are universal is problematic in practice. Although states are the drafters and guarantors of the human rights instruments, they commonly prioritize their own citizens over non-citizens. This often results in a hierarchy of rights: foreigners, including refugees and other migrants, rarely receive equal protection to that of citizens. Therefore, it is the advocates' duty to insist on the protection of basic human rights for refugee and asylum-seeking clients. It is important to promote the universalization of the minimum standards agreed upon by the international community, on account of one's humanity rather than on one's citizenship, nationality or birthplace.

The following sections aims to highlight the relevant human rights laws one can turn to for stronger defense of refugees' rights. This can contribute not only to improved protection of refugee rights, but also to raise the standards across the board to benefit the citizens in the country of asylum. Note that as this section only aims to provide a brief outline, further investigation of these bodies of law is advisable.

#### Further resources

Refugees and Economic, Social and Cultural Rights (University of Minnesota Human Rights Resource Center) Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps (University of Minnesota Human Rights Resource Center) UNHCR Self-Study Curriculum: Human Rights and Refugee Protection (UNHCR) Refugees in International Human Rights Instruments: A Summary

# Freedom from Penalties for Illegal Entry

Due to the unpredictable and sudden nature of flight, as well as increasingly restrictive border controls, refugees can find themselves in circumstances where they have to enter a country illegally in order to seek safety. This section outlines circumstances that lead to refugees' illegal entry. It also highlights Article 31 of the 1951 Convention, which protects refugees' right to seek irregular entry into a country when his life or freedom is threatened.

# Article 31(1) of the 1951 Convention

The 1951 Convention is the only international instrument specifying that it is unlawful to penalize refugees for irregular entry into a state or territory. Article 31(1) of the Convention reads:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

#### Circumstances that lead to illegal entry or presence

This article reflects the unpredictable and sudden nature of flight. Many refugees must abandon all their possessions and flee their homes with no notice or warning, and are unable to bring documents such as passports that permit them to cross borders lawfully. Houses and possessions, including identity documents, may be destroyed. Documents may also be confiscated on route by people smugglers, traffickers, persecutors or unscrupulous officials, and refugees are obliged to cross borders in places where they will be undetected.

In addition, refugees may not possess identity documents in the first place, whether due to discriminatory practices by the country of origin, poverty or loss during previous instances of internal displacement.

As well as a lack of documents, it is common for refugee clients to have used false documents in order to escape a country and pass through official channels undeterred. Entering a territory without documents, with false documents, or at an unauthorized border crossing may all count as instances of irregular – or illegal under the laws of the receiving state – entry.

As enshrined in Article 1A(2) of the 1951 Convention, it requires that the individual is *outside* of her country of nationality (or former habitual residence) in order to be recognized as a refugee. Given the challenges of legal entry or presence as stated above, penalties should therefore not be applied to forced migrants for their illegal entry or presence.

#### Applying Article 31(3) to protect

Article 31 provides protection contingent upon the refugee "present[ing] themselves **without delay** to the authorities" and "show **good case for their illegal entry or presence**." The latter component of this duty is fulfilled by demonstrating that the refugee acted in good faith, i.e. the intent to seek asylum. It must be shown that the individual believes there is a sufficient cause for their illegal entry or presence, such as escaping threats to their life, freedom or security.

It is important to note that threats to life and freedom do not have to be explicitly linked to the country of origin. It is possible that a refugee experiences such threats following their initial flight, and this does not invalidate the protections contained in Article 31. In addition, refugees are not required to have come directly from territories where their life or freedom was threatened.

The former component – declaring their presence to authorities without delay – may create difficulties for refugees unaware of such obligations. Lack of knowledge (or ability to know) the law may be a useful argument to defend refugees who have not complied with this duty to present themselves to host country authorities. It could also be alleged that fear of authorities due to persecution at the hands of state actors in the country of origin is a valid reason for not having sought to regularize one's presence in a foreign state. Note that the mere presence of UNHCR in a country should not be used as a decisive argument for the availability of effective protection in that country.

#### Common reasons states apply penalties for illegal entry or presence

- Refugees have spent years in the receiving state without seeking to regularize their migration status (this may be due to lack of knowledge, or fear as delineated above).
- States criminalize irregular entry to their territory, and (1) fail to specify in domestic legislation that refugees or asylum seekers are exempt under international law from such penalties, or (2) do not implement effective screening in mixed migration flows to implement exemptions.
- Border officials, police or other law enforcement officials are unaware of this exemption for the purposes of seeking international protection, or choose not to follow guidelines in order to meet targets.
- Receiving states are friendly with certain refugee-sending states, causing them to overlook refugees' need to seek international protection and override international obligations to respect Article 31.
- Repressive border protection policies overlook Article 31.

If states turn away an asylum seeker at their border, or refuse to acknowledge justifications for an asylum seeker's 'illegal' presence and deport her, its actions amount to *refoulement*, constitution a grave violation of the Refugee Convention, and in certain cases, the customary prohibition on torture and cruel, inhuman and degrading treatment.

It is also unjustifiable to impose penalties on air carriers that bring asylum seekers with incorrect documentation into the territory of a state. It is common practice for refugees to flee a country with documents (forged or otherwise) and destroy these while on board and seek asylum upon landing.

Further resources

Summary Conclusions: Article 31 of the 1951 Convention (Expert Roundtable, UNHCR and Graduate Institute of International Studies, 2001) Article 31 of the 1951 Convention Relating to the Status of Refugees: Nonpenalization, Detention and Protection (Guy Goodwin-Gill, 2001)

# Freedom from Arbitrary Arrest or Detention

Despite the vulnerabilities faced by those who require international protection, and the prohibition of indefinite and mandatory detention under international law, many asylum seekers and refugees continue to be detained for long periods of time in their countries of asylum. In addition, they often face increased risk of being deported to countries where they faced persecution.

Asylum seekers and refugees can be detained in places such as immigration detention facilities (including offshore processing centers), criminal correction facilities, police stations, airports, ships, shipping containers, and closed refugee camps. In addition, states might contract community organizations to provide community detention. However, although this is relatively more humane, it is rare, and is usually only available to the most marginalized groups.

Detainees face a number of challenges. They often have limited access to basic services including medical care and legal representation. Physical and mental health issues are common, and pre-existing trauma is often heightened by conditions in detention. It is common for detainees to have face mistreatment by detention authorities, language barriers in detention, restricted communication, corruption, abuse, and indefinite detention. In many countries, entire families are detained, including children, while others are separated from their families. Education and other opportunities are interrupted, and detainees are denied the ability to participate in society or live with dignity.

The following section will highlight the international and regional legal instruments relevant to the protection of asylum seekers and refugees in detention. The subsections will provide practical advice on how to assist asylum seekers and refugees in detention: categorized under legal services and policy advocacy.

#### Arbitrary Arrest and Detention under International and Regional Law

#### 1951 Convention

States might detain asylum seekers and refugees for reasons such as possessing invalid or expired visa and/or passport, document fraud (e.g. using a fake passport), no documentation, and criminal charges. Law enforcement officers might also be unaware of special legal status of asylum seekers and refugees.

However, the international law provides a number of provisions to safeguard individuals against unlawful arrest and detention. As explained in the Freedom from Penalties for Illegal Entry section, Article 31 of the 1951 Convention prohibits the penalization of asylum seekers and refugees for their illegal entry or presence, if the individual presented themselves without delay and showed good cause for their entry or stay. In addition, Article 26 provides the freedom of movement and choice of residence for refugees that are lawfully in the territory. Taking these rights together, it means that detention should be a last resort.

Supported by the UNHCR 2012 Guidelines, "arbitrariness" should be broadly interpreted to include unlawfulness, inappropriateness, injustice and lack of predictability. Decisions to detain are to be based on a detailed and **individualized** assessment of the necessity to detain in line with a **legitimate purpose**. In line with the international law, these purposes are generally limited to reasons relating to public order, public health or national security.

#### Other International and Regional Human Rights Instruments

In addition to Article 26 and 31 of the 1951 Convention, key articles in other international and regional instruments relating to detention are listed below. These articles relate to principles including the freedom of movement, the right to liberty and security of person, the prohibition of arbitrary detention, and the treatment of persons deprived of their liberty.

- Universal Declaration of Human Rights (Articles 3, 9 and 13)
- International Covenant on Civil and Political Rights (Articles 10(1), 10(2), 12)
- Convention Against Torture (Articles 10(1) & 11)
- African Charter on Human and Peoples' Rights ("Banjul Charter") (Article 12)
- American Convention on Human Rights (Article 22)
- ASEAN Human Rights Declaration (Articles 12 & 15)
- Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, European Union, 6 February 2003, Article 7: Residence and Freedom of Movement
- Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, European Union, 19 May 2004, Article 32: Freedom of movement within the Member State

To challenge detention, advocates may file complaints or reports to the relevant international human rights bodies. This includes the Office of the High Commissioner for Human Rights' (OHCHR) Human Rights Council. There are also treaty-based bodies that monitor international human rights treaties. This includes:

- the Human Rights Committee;
- the Committee on Economic, Social and Cultural Rights;

- the Committee on the Elimination of Racial Discrimination;
- the Committee on the Elimination of All Forms of Discrimination against Women; the Committee Against Torture; the Optional Protocol to the Convention Against Torture (OPCAT) – Subcommittee on Prevention of Torture;
- the Committee on the Rights of the Child; the Committee on Migrant Workers; and;
- the Committee on the Rights of Persons with Disabilities.

For additional information, the International Detention Coalition provides a detailed list of relevant international law. The UNHCR 2012 Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention is also a useful starting point on how to interpret the relevant international law relating to detention. Meanwhile, the Rights In Exile Program provides an explanation of the detention conditions needed in order to comply with the international law and standards.

#### Further resources

International Detention Coalition: Compendium of international law, standards and guidelines related to the detention of refugees, asylum seekers and migrants (IDC)

<u>UNHCR 2012 Guidelines on the Applicable Criteria and Standards relating to the</u> <u>Detention of Asylum Seekers and Alternatives to Detention (UNHCR, 2012)</u> Refugees in Detention (The Rights in Exile Program)

# Legal Services: Assisting Clients in Detention

Legal services can play an important role to enhance the protection of detainees. This section suggests some practical tips on how lawyers can assist detained persons.

#### Establishing systems and networks

**Mapping of detention populations** will assist effective coordination with other service providers and efficient prioritizing of assistance. This data can also be useful for advocacy purposes. Important information would include number of children, women, men, unregistered persons of concern, asylum seekers, refugees, specific vulnerabilities (e.g. health issues, pregnancy, elderly, survivors of torture, unaccompanied minors and separated children).

**Referral systems** are important at both the time of arrest and within detention. UNHCR and/or legal service providers sometimes provide a telephone hotline for reporting the arrest of refugees. It is important to ensure clients are aware of any such hotline in case of arrest, as immediate intervention by UNHCR and/or legal representatives may in some cases successfully prevent detention. Legal representatives should also be aware

of any available services and referral systems within detention, for example where clients require medical treatment or psychological support; where there are child protection concerns; or where there is an imminent threat of deportation.

#### Time of Arrest

Lawyers should prepare a **checklist** of the key information needed from arrested clients. This can be referred to when lawyers are alerted of an arrest or detention, such as via telephone from a panicked client. The checklist might include the client's name, telephone number, location and time of arrest, reason given for arrest, location of detention, any others arrested at same time, UNHCR file number, status (e.g. unregistered, asylum seeker, recognized refugee), any urgent health issues, any person who should be informed (e.g. family members).

#### Within Detention

Communication is often restricted for detainees, and lawyers can provide an important link between detainees and those outside detention. It is common that where an asylum seeker or refugee is detained, family members and friends from the asylum seeker community are unable to visit due to their irregular status (e.g. no valid visa). Lawyers can **facilitate communication** by passing letters to detainees and updating friends and family regarding the detainee's situation (with consent from the detainee).

**Material support** and **detention visits** can be just as important to detainees as the provision of legal services, if not more. Often detainees lack access to essential items such as soap, sanitary items, toothbrushes, medication, and even clean drinking water, and visitors may be able to bring these items to them. Food provided in detention is often inadequate, so additional food is often extremely beneficial. Cash can also be useful for purchases within detention and telephone calls. Where men and women are detained separately, and visiting spaces are communal, it may be possible to bring separated families together during visits, providing valuable time for husbands to spend with wives, and parents with children.

Corruption and abuse are common in detention contexts. Extortion and the demanding of bribes by officials occurs, as well as exploitation within the detainee population. Legal service providers should consider their organizational position regarding these issues, and what the appropriate advice for clients is in the particular context. **Reporting mechanisms** for abuse should be implemented, as well as appropriate referral procedures to deal with such complaints from clients.

**Release into the community**, with or without bail or bond requirements, may be possible in some circumstances as an alternative option to detention. These options should be strongly encouraged and supported whenever possible. Where appropriate,

systems should be put in place for prioritizing strategic and vulnerable cases for release, and sourcing and allocating bail/bond funds accordingly.

#### Testimony behind bars

If clients are detained, restricted access for legal representatives and interpreters can pose serious challenges in assisting refugees to prepare their cases. Often where visits by lawyers are permitted, the time allowed for the appointment is limited, and appropriate provisions may not be provided or permitted (e.g. private meeting room, computer). This causes practical challenges and also gives rise to concerns regarding the client's privacy and the confidentiality of their claim and any legal advice provided.

Lawyers are required to think creatively to try to overcome the challenges of providing legal advice to detainees. Strategies may include:

- Taking testimony and providing advice via telephone;
- Requesting that the client write their testimony in their own language, and pass it to the lawyer to coordinate translation and other submissions;
- Coordinate with other trusted organizations and service providers who have access to detainees, and who may be able to assist in passing documents or other information in and out of detention;
- Build relationships with other individuals or organizations that may have office space within detention that could be used for meetings or phone calls;
- If access for interpreters is not possible, consider whether other detainees may be able to assist in interpreting, if the client is comfortable with this;
- If using a communal meeting space and sensitive information is being discussed which the client does not feel comfortable speaking about within ear-shot of others, consider writing questions and answers down on paper to maintain confidentiality.

#### Further resource

International Committee of the Red Cross: Visiting Detainees

# Policy Advocacy: Detention Conditions and Alternatives to Detention

International law strongly supports the assertion that detention should not be arbitrary or indefinite, and should be used as a last resort, especially in the case of vulnerable groups such as refugees. Where possible, efforts should be made to promote alternatives to detention, and engage with governments to ensure that asylum seekers and refugees are not unnecessarily detained.

The International Detention Coalition advocates a 'community assessment and placement' (CAP) model. This is a framework designed to assist governments in their exploration and development of alternatives to detention.

The CAP model outlines a 5-step conceptual and practical framework:

- 7. Presume detention is not necessary
- 8. Screen and assess the individual case
- 9. Assess the community setting
- 10. Apply conditions in the community as necessary
- 11. Detain only as a last resort in exceptional cases

In many contexts, the issue of immigration detention is highly sensitive and political. Advocacy campaigns must therefore be tailored to specific settings. In some contexts, 'naming and shaming' the government may be effective. In other contexts, a more indirect approach is preferable. In a number of instances, campaigning to end the detention of children has been found to be a strategic first step to open up dialogue and raise awareness around the issue of detention of refugees.

Other strategies could involve engaging counterparts, such as with international institutions, civil society, and foreign governments. This can take the form of providing **material support** to improve detention conditions, such as by funding new water pipes or a schoolroom. It can also involve **building relationships** with, and **capacity** of, **detention authorities**. This may involve training law enforcement, immigration and detention officers to better understand the exemptions provided to refugees under domestic and international law. Support could also be given to establish and/or improve appropriate screening mechanisms.

The importance of Access v Advocacy can pose operational and ethical challenges. Sometimes the importance of being able to access detainees may mean that the ability to speak out against or criticize the detention facility or authorities is compromised. For example, where a lawyer is working within a highly politically restrictive detention facility, they may witness mistreatment of detainees. However, if they were to publicly criticize this, their future access to detention facilities and other service providers may be jeopardized. In serious cases of abuse or mistreatment, it may be possible to discreetly engage other stakeholders (for example, human rights bodies) to respond, without risking the organization's own access. This dilemma can weigh on individual legal representatives, and should also be carefully considered at an organizational level.

Further resources

There are alternatives to prevent unnecessary immigration detention (International Detention Coalition) End Child Detention Global Detention Project Alternatives to Detention of Asylum Seekers and Refugees (UNHCR, 2006)

# Work

A refugee's right to work is enshrined within a number of international and regional instruments. This most notably includes the 1951 Convention, and the International Covenant of Economic, Social and Cultural Rights (ICESCR). Whilst these instruments do not guarantee employment, it provides a right to freely seek legal employment. This section will highlight the relevant articles relating to work rights in the 1951 Convention and the ICESCR. It will also explain the common barriers that prevent refugees from access to formal labor markets, and provide suggested strategies using policy advocacy and strategic litigation to advocate for refugee work rights.

#### 1951 Convention

Articles 17, 18 and 24 of the 1951 Convention afford explicit protection relating to employment, specifically relating to:

- Wage-earning employment (Article 17);
- Self-employment (Article 18); and
- Labor protections within employment (Article 24).

#### Wage-earning employment

Article 17(1) of the 1951 Convention provides that refugees who are 'lawfully staying' in their asylum country must be afforded the right to engage in wage-earning employment on the same footing as that offered to the most preferred class of foreigner. Although the term 'lawfully staying' is not defined in the 1951 Convention, prominent refugee scholar Hathaway has remarked that the term refers to the situation in which a refugee enjoys 'officially sanctioned, ongoing presence in a state party, whether or not there has been a formal declaration of refugee status' ('The Rights of Refugees Under International Law,' [2005], p. 730.) Thus, once a refugee satisfies the criteria of the refugee definition, initiates his or her asylum application and has an ongoing presence in his or her host country, he or she should be considered to be 'lawfully staying' and benefit from the right to engage in wage-earning employment (lbid., p.158).

Article 17(2) provides that refugees who have the following criteria are entitled to the same employment benefits as any other citizen in the asylum country:

- Resided within the country of refuge for three years;
- A spouse who is a national of the country of refuge; or
- One or more children who are nationals of the country of refuge.

#### Self-employment

Article 18 provides that a refugee who is 'lawfully in' their first country must be afforded the right to engage in self-employment, including a wide range of entrepreneurial activities such as starting a new business. Although 'lawfully in' is not defined in the 1951 Convention, Hathaway notes that the terms apply to refugees who have only a temporary status (i.e. asylum seekers with pending cases), and it requires that states must treat refugees 'as favorably as possible' or 'no less favorable' than other aliens in the same position with regard to a refugee's right to self-employment.

#### Labor protections

Article 24 guarantees that national labor and employment protections apply to employed refugees. It requires that refugees receive the "same treatment as it is accorded to nationals." This language is contentious and catalyzed 15% of countries who have ratified the convention to make reservations and treat it solely as a recommendation.

#### International Covenant on Economic, Social and Cultural Rights

Article 6 of the ICESCR recognizes the right to work, being the "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." The Committee that oversees the compliance of ICESCR has noted (see General Comment 20) that Article 6 applies "to everyone including non-nationals, such as refugees, asylum- seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" (UN Committee on Economic, Social, and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), para. 30).

Despite the seemingly wide protection that Article 6 appears to offer, the provision is limited by Article 2(1) of the ICESCR which states that States are required simply to "take steps" progressively to realize the rights of the Covenant to the extent possible within the limits of their resources. Thus, as Hathaway notes, Article 6 "imposes only a duty of progressive, non-discriminatory implementation, not of immediate result" (see 'The Rights of Refugees Under International Law, [2005], p. 740).

Article 7 discusses "the right of everyone to the enjoyment of just and favourable conditions of work." Comment 23 discusses who is included in "everyone" to explicitly include refugees. It also expands upon who just and favorable conditions applies to and how. In this section, refugee's particular position is discussed including their precarious position and how it increases their vulnerability to exploitation, discrimination, and abuse in the workplace. They even include a push for state parties to enact legislation that ensures refugees have work conditions no less favorable than nationals.

Given that rights may be progressively realized under the ICESCR, the Refugee Convention may be said to offer more robust protection with respect to a refugee's right to work, as progressive realization is not a feature of the Refugee Convention (Ibid., p. 123).

#### Common barriers preventing access

In practice, refugees are often denied access to national labor markets altogether or are afforded access to those markets on very limited terms. The commonly reported barriers that prevent refugees from access to formal labor markets include:

- Lack of a legal right to access employment/self-employment extending from the perception that opening the formal market to refugees will drive down wages for citizens;
- Lack of a legal status;
- Restrictions on freedom of movement;
- Xenophobia;
- Unavailability of jobs;
- Bureaucratic barriers (exorbitant fees, complex paperwork/permitting);
- Access to justice barriers;
- Language barriers; and
- Lack of training or education.

# Advocating for work rights

#### Useful policy advocacy arguments to advance work rights

There is a clear policy rationale to ensure that refugees are able to enjoy a right to work. Access to safe and lawful employment enables self-reliance, allows refugees to contribute to the economic growth of their host country, combats destitution and dependency, reduces risks of exploitation, and preserves human dignity. An effective work rights advocacy campaign will call upon these arguments to persuade policy makers to respect, protect and fulfill refugees' right to employment and selfemployment.

Nations, particularly those with high unemployment rates, may be particularly concerned about the effect that granting refugees access will have upon their national economy, contending that providing the right to work to refugees will inhibit its citizens' ability to find employment. This argument, however, is predicated on a fallacy since refugees are already finding jobs, regardless of whether they are legally allowed to do so or not. (See Arevalo-Carpenter, Michelle, 'Labor Market Arguments on Refugees' Right to Work: A Pragmatic Rebuttal,' [2011] for further information). Refugees find jobs out of necessity, without regard to the legality, and thus are frequently employed in unregulated areas. By passively promoting this practice, it may be argued that nations undermine the

wages of their nations because illegal laborers are often paid less than those who can legally work.

Likewise, extending work rights to refugees plays a crucial role to ensure that they can meet their own needs, reducing the role of international humanitarian organizations. This further promotes the dignity and independence of refugees, permitting them to rebuild their lives in exile.

#### Litigation to advance work rights

When policy advocacy is ineffective in changing laws and practice relating to refugee employment, litigation may be an appropriate tool to change the legal framework. If used effectively, judicial actions at the national level may challenge the legality of denying refugees access from formal labor markets, and establish positive legal precedents. In South Africa, for example, judicial intervention was effective in ensuring that persons awaiting refugee status verification were entitled to work: Minister of Home Affairs v. Watchenuka (2004) 1 All SA 21 (SA SCA, Nov. 28 2003).

At the regional level, complaints regarding work rights violations may be lodged in the African Court/Commission of Human and People's Rights as well as the Inter-American Court/Commission on Human Rights. At the international level, complaints may now be filed with the Committee on Economic, Social and Cultural Rights (CESCR) for violations of employment protections in the ICESCR, but only if the alleged violating nation has ratified the Optional Protocol to the ICESCR.

#### Further resources

<u>Global Refugee Work Rights Report (Asylum Access and Refugee Work Rights</u> <u>Coalition, 2014)</u>

Refugee Economies: rethinking popular assumptions (Betts, Bloom, Kaplan and Omata, 2014)

Minister of Home Affairs v. Watchenuka 1 All SA 21 (SA SCA, Nov. 28 2003)

# Education

The right to education is a fundamental human right that should be accessible to every person, regardless of their legal status within a country. Although asylum seekers are often treated as if they exist outside of the domestic legal framework of rights, benefits and privileges, all children should be given access to an education. In accordance with the Universal Declaration of Human Rights and other international law instruments, refugee children should be given access to free education, at least in the elementary and fundamental stages.

This section outlines the international, regional, and domestic framework for the right to education. Additionally, it highlights some, but not all, of the main issues regarding accessing education for refugee children and provides resources for advocating for the right to education.

### International law

The right to education is found in a number of international instruments, including but not limited to the UDHR (Article 26), ICESCR (Article 13), CRC (Articles 28 and 29), CEDAW (Article 10), CERD (Article 5), and the UNESCO Convention Against Discrimination in Education. In order to fulfill its international obligations, a state should provide free compulsory primary education and should not discriminate on grounds of gender, race, religion, ethnicity, language, opinion, disability, or social or economic status. In addition to primary education, states are obligated to provide general access to technical and professional training, as well as opportunities for higher education on the basis of merit.

The UNESCO Convention Against Discrimination in Education explicitly requires states "[t]o give foreign nationals resident within their territory the same access to education as that given to their own nationals," as stated in Article 3(e). In the 1951 Convention, Article 22(1) requires that states 'accord to refugees the same treatment as accorded to nationals' with regards to primary education. It also states that states 'shall accord to refugees treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances' with respect to education other than elementary education. Other instruments listed above describe the right to education as applying to all. This implies that states have an obligation for all refugee children found within their territory.

# Regional and domestic law

Many regional instruments also elaborate on the definition of the right to education, and the obligations of signatory states. Refugee organizations working within these regional frameworks should not only consider the state's international obligations, but also their regional obligations as a source of law and a means for advocacy. In addition to creating additional obligations, some regional instruments include human rights committees and courts that may be utilized as an alternative means of advocacy.

For example, European Union members have regional obligations that extend beyond their international commitments. In 2003, the EU adopted a directive obligating member states to provide refugee children with access to education "under similar conditions as nationals" [Council Directive 2003/9/EC of 27 January 2003]. As a result, organizations may use this directive in support of their advocacy and even have an avenue for filing a complaint against a European Union member state for failing to satisfy its obligations.

In addition, most states implement the right to education through the implementation of domestic legislation. The Right to Education Project is an offshoot of the work of Katarina Tomaševski, the former UN Special Rapporteur on the Right to Education. The project has compiled an extensive country database that includes information on the right to education in domestic constitutions, national implementing legislation regarding costs and minimum age requirements, and much more. This database provides a concise starting point for any domestic or international advocacy supporting the right to education. You may visit the Right to Education Project's website, referenced below, to find out more about specific regional entities and domestic legislation in your country.

# Some issues facing refugees

Refugees face many of the same problems as all other children, but there are some issues that are unique to migrant and refugee populations. In many countries, education systems are underdeveloped and underfunded, preventing all children from accessing high-quality education. Additionally, many countries are not always able or willing to implement and protect economic and social rights such as the right to education. Refugees, like other migrant communities, also face a number of additional challenges, such as:

#### Inaccessibility

Many undocumented refugees fear sending their children to school will expose the family to immigration police or other repercussions. In some cases, the fear is multiplied by visa, passport, or citizenship requirements, real or rumored. Even in systems where the government recognizes refugees as residents, refugees may face discriminatory admittance policies, high costs, and other hurdles to accessing state sponsored education institutions. In camp situations, refugees often face resource-related issues, such as a lack of qualified and consistent teachers or classroom supplies.

#### Language

Unfamiliarity with or lack of fluency in the asylum country's language is one of refugees' largest hurdles to education. Even in countries where education is free and open to all children within the territory, refugee children often cannot take advantage of such opportunities without first learning the classroom's official language.

It is important for organizations working with refugees to consider the advantages and disadvantages of offering classes in other languages as opposed to the host country's official language. In countries with no integration options, it may be best to offer classes in other languages. However, this makes short-term/temporary integration more difficult, and also prevents children from pursuing post-primary education opportunities in the host country. In countries with large refugee populations from multiple countries,

organizations and governments frequently struggle with supporting many different languages, or cannot find and fund enough foreign language teachers.

#### Classroom difficulties

Like many refugees, refugee children may struggle with cultural expectations and differences. Classroom etiquette varies from country to country and may be a significant challenge, further distancing the refugee children from the other children and teachers. Inconsistencies in curriculum and the disruption of the child's previous education may prevent a smooth transition from one country to the next. Although it may seem minor, the lack of school transcripts or transferability of credit may further prevent a refugee child from being placed in the appropriate level.

#### Further resources

UNESCO Bangkok's guide to Major Human Rights Instruments: the Right to Education

Right to Education Project

UNHCR Education

Women's Commission for Refugee Women and Children: 'Your Right to Education: A Handbook for Refugees and Displaced Communities'

# Health Care

The traumatic circumstances surrounding displacement may expose refugees to a range of health-related issues, such as Post-traumatic stress Disorder (PTSD), sexual and physical abuse, and malnutrition. In response, international law requires states to grant refugees access to quality health services with the same treatment as accorded to nationals. This right to health is enshrined in Article 23 the 1951 Convention, as well as in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to health may be contained within a number of regional human rights instruments as well. The following section will highlight the relevant articles in the 1951 Convention and the ICESCR, and provide practical advice on advocating for health care rights.

# The 1951 Convention

Article 23 of the 1951 Convention states that:

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Although the term 'public relief and assistance' is not defined in the 1951 Convention, it should be interpreted widely. It may be understood to cover a number of areas of public welfare, including medical and hospital care. In the context of health care, this should be understood to include reproductive health care. Given the meaning of 'public relief and assistance' varies to some extent depending on the national law, it should be interpreted in conjunction with the domestic legislation ('The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary,' Andreas Zimmerman, 2011).

Unlike the right to education, which is applicable to all refugees "physically present" in the country of asylum, a significant number of important rights accrue to refugees only once they are "lawfully staying" in the country of asylum. Refugees "lawfully staying" in the country of asylum include individuals who enjoy officially sanctioned, ongoing presence in a state party. In addition to individuals who are granted asylum, this includes those who are admitted into a temporary protection system, or are in other durable protection regimes. There is no requirement of a formal declaration of refugee status or permanent residency ('The Rights of Refugees Under International Law,' James Hathaway, 2005).

Examples of rights given only to the latter group are access to welfare, and the right to benefit from labor and social security legislation (including health care). As Hathaway notes, no government may be excused to enacting and implementing a transparent and socially viable public health strategy that gives priority to the most marginalized groups.

# International Covenant on Economic, Social and Cultural Rights

Article 12(1) of the ICESCR recognizes that everyone, including unrecognized and recognized refugees, have the right to enjoy the highest attainable standard of health, and Article 12(2) sets out a non-exhaustive list of steps to be taken by states in implementing the right to health:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Hathaway notes that Article 12 includes the freedom from interference. This includes non-interference with sexual and reproductive choices, and an entitlement to access a health system on a timely basis. This addresses the quality of health care, and ensures that states are respectful of cultural and individual concerns (Ibid).

General Comment 14 offers further guidance on the application of "the right to the highest attainable standard of health". It states that "a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations [to provide health care], which is non-derogable". Thus, even states with insufficient resources must nonetheless give priority to the realization of the right to health without discrimination of any kind. Governments are also under an "obligation to respect the right to health, by, inter alia, refraining from denying or limiting equal access [to healthcare] for all persons, including...asylum seekers and illegal immigrants" (Ibid.).

# Applying refugees rights to access health care in practice

UNHCR's 'Ensuring Access to Health Care: Operational Guidance on Refugee Protection and Solutions in Urban Areas', referenced below, may be a useful first point of reference for practical guidance on best practices for advocating for and facilitating refugees' right to access quality health services.

It may be useful to engage in advocacy with actors including local and national governments (e.g. the Ministry of Health), and international organizations such as UNHCR and the World Health Organization (WHO). When policy advocacy is ineffective in changing laws and practice to ensure that refugees have access to affordable and quality health care, litigation may be an appropriate tool to change the legal framework. If used effectively, judicial actions at the national level may challenge the legality of denying refugees access to health services, establishing positive legal precedents. In Kenya, for example, judicial intervention was effective in ensuring that urban refugees

were not denied their fundamental rights relating to (amongst others) access to health care. For more information, see Kituo cha Sheria v. Attorney General.

At the regional level, complaints regarding right to health violations may be lodged in the African Court/Commission of Human and People's Rights as well as the Inter-American Court/Commission on Human Rights. At the international level, complaints may now be filed to the Committee on Economic, Social and Cultural Rights (CESCR) for violations to Article 12 of ICESCR, but only if the alleged violating nation has ratified the Optional Protocol to the ICESCR.

However, even if access to health care is included in law, there can be many linguistic, cultural and social barriers in practice. For example, medical personnel might act as self-appointed 'gatekeepers' to refugees. These should be taken into account when planning your advocacy.

Further resource

Ensuring Access to Health Care: Operational Guidance on Refugee Protection and Solutions in Urban Areas (UNHCR, 2011) The Right to Health (OHCHR and WHO) Kituo cha Sheria v. Attorney General [2013] eKLR

# Access to Courts

A refugee's right of access to courts is established in a number of international and regional instruments. This most notably includes the 1951 Convention, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). However, refugees still experience a host of challenges when accessing this right in practice. This section outlines the relevant international and regional law, some of the challenges faced by refugees in securing this right, and the possible areas for advocacy.

# The 1951 Convention

Article 16 of the 1951 Convention explicitly provides for the right of access to courts of law for refugees. It states that:

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Article 16(1) of the 1951 Convention provides that refugees 'shall have free access to courts of law'. This basic right is enshrined without any restriction, and applies also to refugees who reside in a State not party to the 1951 Convention or who have no habitual residence at all. The refugee is also not required to be physically present on the territory of State whose court she wishes to access.

Article 16(2) provides for more specific rights concerning access to the courts for refugees who can establish habitual residence in a Contracting State. These rights include the enjoyment of 'legal assistance' and the 'exemption from *cautio judicatum solvi*'. The latter means refugees are exempted from the need to pay security for court costs.

Article 16(3) stipulates that these rights are also applied to refugees habitually residing in a State that is not party to the 1951 Convention. They are to be given the same rights as the nationals in his country of habitual residence.

# Universal Declaration on Human Rights

Article 10 guarantees the right to a fair and public trial if a person is charged with a criminal offence. This article stipulates that the court must be "independent and impartial".

# International Covenant on Civil and Political Rights

Article 14(1) states that:

All persons shall be equal before the courts and tribunals.

Although not explicit, it has been generally accepted that this principle of equality incorporates a right of equal access to the courts. In Angel N. Oló Bahamonde v.

Equatorial Guinea (Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 [1993]), the Human Rights Committee found "the notion of equality before the courts and tribunals encompasses the very access to the courts". It also considers that if an individual's attempt to access the competent jurisdiction is "systematically frustrated", then it "runs counter to the guarantees of article 14, paragraph 1".

Article 14(2) specifies that everyone shall "be entitled to a fair and public hearing by a competent, independent and impartial tribunal" in the consideration of her rights and obligations.

# UNHCR ExCom Conclusion

The UNHCR ExCOM Conclusion, No. 22 (XXXII)-1981 states that asylum seekers who have been temporarily admitted to country pending arrangements for a durable solution should "be considered as persons before the law, enjoying free access to courts of law and other competent administrative authorities". While Conclusions of the Executive Committee are not legally binding, they do hold considerable weight in the interpretation of international refugee law.

# **Regional instruments**

The right of access to courts is also provided for in several regional human rights instruments. This includes:

- the African Charter on Human and People's Rights (Article 7)
- the American Convention on Human Rights (Article 8)
- the European Convention on Human Rights and Fundamental Freedoms (Article 6)

Similar to the ICCPR, these regional instruments frame the right of access to courts in terms of fair trial rights. For example, although the European Convention on Human Rights does not explicitly refer to a right of access to the courts, the case law of the European Court of Human Rights has long established that this is implicit within the fair trial guarantees provided by Article 6. In Airey v Ireland (ECtHR Application No. 6289/73 [1979]) the European Court further stated "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective."

# Access to the courts in practice

#### Common barriers preventing access to courts

In principle, refugees have a right of access to the courts. In practice, however, there are numerous obstacles that can impede this right. Refugees can often experience

various legal, social, cultural, economic, institutional, and even physical, barriers that can impinge on their right of access to the justice system.

Common barriers preventing access to courts include:

- A lack of awareness about one's rights and how to assert them;
- Excessively complex and formalistic court systems;
- Excessive court fees;
- Lack of affordable legal representation;
- Legal institutions unaware and insensitive to the needs of different cultures;
- Legal discrimination;
- Language barriers;
- Discriminatory and negative social attitude towards refugees;
- Lack of political will to bring about change for refugees' situations; and
- Lack of physical access to legal services (particularly for refugees in camps).

#### Strategies to overcome barriers to courts

To enhance refugee protection, this section outlines possible strategies to overcome the barriers to justice.

#### Legal aid

The financial burden of going to court is a persistent barrier to refugees' ability to access the courts. For this reason, it is important to advocate for a legal aid system that is accessible and sensitive of refugees' particular needs. In countries where a legal aid system is either non-existent or ineffective, other methods to fill the gaps in the legal aid system should be considered and developed. This may include the use of volunteer lawyers, student lawyers and/or paralegals to provide advice on the law and legal processes.

#### Legal empowerment

Legal empowerment is one of the most valuable tools in overcoming barriers to access justice. This typically involves raising awareness among refugees of their rights and of the court system in general. In addition, legal empowerment should strengthen and develop refugees' capacity to assert their rights in court by increasing their skills and opportunities to access court institutions and procedures.

#### Strategic litigation

In some instances, litigation may be the only effective course of action to ensure that refugees' right of access to courts is respected. This type of legal action can be very effective in achieving systematic change in legislation and practice. Such an approach

can be fruitful in a number of ways. For example, the case itself may yield a positive result for the individual involved, the outcome may compel a change in law, policy or practice, or finally, it may simply be effective in raising awareness and exposing injustice.

#### Further resources

UNHCR ExCom Conclusion, No. 22 (XXXII)–1981, Protection of Asylum-Seekers in Situations of Large-Scale Influx

# Women's Rights

Women refugees may be persecuted, or fear persecution, due to the fact that they are women. Examples of gender-related fears of persecution may include fleeing from female genital mutilation (FGM), forced marriage, rape and sexual violence, domestic violence and lack of state protection, death penalty for adultery, and family ostracism or victimization as result of being trafficked. Whether women refugees fear gender-based persecution or are fleeing from generalized violence, they can face particular vulnerabilities. This section outlines the relevant international legal framework, and explores several issues that affect women asylum-seekers and refugees. Domestic violence, trafficking and smuggling, issues relating to healthcare, and challenges faced in detention settings will be covered.

#### International law

Various international human rights instruments protect the rights of women refugees and asylum-seekers, including:

- 1951 Convention on the Status of Refugees and its 1967 Protocol
- Convention to Eliminate all forms of Discrimination Against Women
- Convention Against Torture
- Convention on the Elimination of all forms of Discrimination Against Women
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights, among others.

Although not all countries are signatory to these international human rights instruments, customary international law may arguably bind all states to the contents of many of these instruments. The provisions specifically protecting women and girls, both in situations of forced displacement and in general, should be taken into account when advising, representing and empowering clients, as well as when conducting advocacy to governments.

# Issues facing refugee and asylum-seeking women and girls in practice

#### Domestic violence

Domestic violence may accompany a refugee from their country of origin to their country of asylum. The compounded stress of living in a new and difficult environment while seeking asylum can provoke new instances of sexual and gender-based violence (SGBV) in refugee populations. Frequently, domestic chores are the only activities left in refugee settings. While this leads women to retain purpose and structure in their lives, the lack of work rights or livelihood opportunities may render traditionally productive men idle and frustrated — upsetting power balances in families. Similarly, traditional societal structures are uprooted and altered with forced migration movements, leaving elders and men with less authority than they are accustomed to. These frustrations can trigger incidents of sexual violence in a bid to re-assert control and authority.

Much domestic violence is under-reported because individuals may fear being reported to migration authorities if their status is insecure. In addition, women may fear health and law-enforcement officials due to past trauma, language barriers or experiences of discrimination. To minimize fear, advocates can **work with local authorities** (including police, doctors, and judicial authorities) to improve their knowledge and protection of refugee women's rights, as well as women's rights in general. This can be done through streamlining or optimizing access to courts and services to combat incidences of SGBV. These issues should also be covered with refugee men and women to improve their own ability to demand fair and respectful treatment.

Advocates can also **connect with other service providers**, such as shelters, religious groups or other programs that work with women, to provide useful legal information and recommendations. This can include women's rights, and channels to pursue redress and stop abuses. Building up a network of other service providers can also help: you may need to refer women at risk or suffering SGBV to temporary shelters or safe houses, and to medical and judicial officers sensitive to these issues.

#### Intersectionality

In addition to the challenges that refugees may face as girls or women, their gender identity can intersect with a combination of other identities that lead to additional vulnerabilities. Examples of other identities may include age, migration status, civil status, race, nationality, sexuality, ability, and class. These identities can incur inferior treatment by the country of asylum's officials and community. For example, issues can include the abduction and sale of young girls as brides, the forced marriage of widows and the physical and sexual abuse of those in mixed marriages.

#### Trafficking

Under international law, human trafficking can take a variety of forms including sexual exploitation, forced labor, and removal of organs. Depending on your locale there are differing narratives surrounding the trafficking of persons. Survivors of trafficking may be difficult to identify because not all survivors experiences fall within dominant narratives. For example survivors of trafficking can have diverse socioeconomic backgrounds, varied levels of education, and be from urban or rural locales. Women and girls can experience heightened vulnerability to trafficking from their relative lack of access to resources and education. This is especially true for populations who have experienced violence, trauma, and homelessness.

#### Health Care

Refugees may require gender-specific mental and medical health whilst in the country of asylum. For example, many refugee women are survivors of rape, forced abortion, or other forms of torture and violence. Therefore, when highlighting refugee rights concerns on an individual basis or in wider advocacy campaigns, specific issues including reproductive rights, access to medical attention and protections from sexual and gender-based violence (SGBV) should be considered.

The table below outlines the common issues faced by refugee women. However, this list is not exhaustive and should only be a starting point to trigger thought on how organizations or programs can advance the rights of refugee and asylum-seeking women and girls.

Access to Birth Control	Birth control is an essential part of health care. It helps to plan a strong and healthy family, and allows women to be in control of their own bodies and lives. Access to birth control and family planning is frequently not easily accessible for refugees. Advocating for programs to help refugees access birth control in countries in which they are seeking asylum, and engaging refugees to assert their rights to inclusion in such programs, are vital to ensuring equal health rights.
Pregnancy and Prenatal Care	Pregnant women seeking asylum often do not have access to appropriate prenatal care. In some cases, women do not even have a place to give birth. Hospitals may refuse admission to an asylum-seeker woman in labor for fear that they will not be able to afford the hospital bill. Examples of such discrimination based on migration status should be challenged.
Childrearing	In many societies, women are in charge of taking care of children on a day-to-day basis. It is often difficult for refugee women to access the basic necessities needed to raise a family, including items such as blankets or milk (if the mother is not breast feeding). Women may incur greater health

	and nutrition problems when dividing their insufficient supplies among their children, leading to more frequent health complaints.
Menstruation	Menstruation has many different cultural norms surrounding it that can include limitations on mobility, activity, and interaction with others. With little money, isolation, and unawareness of how to procure feminine hygiene products in a new country, refugee women may not have access to such products. This has ripple effects on girls' attendance at school, productivity, and ability to pursue income-generating activities, affecting a host of other rights.
Sexual Health	Many women may become pregnant or HIV+ as a result of persecution, or as a result of coping strategies in the country of asylum. Populations that are marginalized, whether due to isolation in camps or invisibility as urban refugees, will likely have poor access to sexual health advice, programs, and facilities. They may be barred from accessing services available for nationals, or face briberies even if they have the legal right to access these services. Ripple effects on fertility and long-term illness leave these women unable to achieve their full potential and take control of their bodies and lives.
Mental Health	Rape, SGBV, discrimination and other forms of abuse, whether experienced in the country of origin or asylum, have long-lasting and damaging effects on an individual's mental health, self-esteem and ability to fulfil goals. Refugee women may disclose information on such abuse during case interviews, in women's empowerment groups, or in any other context to legal advisers. Pursuing a refugee claim may re-traumatize applicants, worsening mental health throughout the course of a case.

As an advocate, be alert to the mental health needs of your clients. Referrals to probono mental health professionals are vital in order that integral justice can be pursued alongside formal justice processes. In addition, one can advocate for improved services to survivors of SGBV and other forms of torture.

#### Detention

If a woman asylum seeker is placed into immigration detention because she is without a proper legal status, she may be particularly vulnerable in the damaging setting of a detention centre. Often, refugees do not have access to adequate food (e.g. baby formula), privacy and appropriate sleeping arrangements, or medical care for themselves or their children. Organizations should promote links with local detention centers to allow access, in order to ensure that women's specific needs are being addressed in immigration detention. Be especially alert to signs of sexual abuse or exploitation by – predominantly male – guards in such contexts, which may be

particularly difficult to address given the lack of confidentiality and privacy in detention settings.

Note that many of the areas of concern may also affect men. However, they were mentioned in this section only in relation to women, and further resources should be consulted in order to take men's specific needs and concerns into account. In addition, others may be persecuted because of their sexual orientation or gender (e.g. LGBTQI) identity, among other reasons.

Further resources

Examining the particular relevance of the Convention on the Elimination of All Forms of Discrimination Against Women to the protection of women of concern to UNHCR (Joint seminar of CEDAW Committee and UNHCR)

Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (International Conference on the Great Lakes Region)

UN Women's Note on Sex Work Sexual Exploitation and Trafficking (UN Women)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the UN Convention against Transnational Organized Crime)

Protocol against the Smuggling of Migrants by Land, Sea and Air (supplementing the UN Convention against Transnational Organized Crime)

Human Rights of Refugee, Displaced and Migrant Women workshop (Centre for Women's Global Leadership and UNIFEM)

Ensuring the Reproductive Rights of Refugees and Internally Displaced Persons: Legal and Policy Issues (Françoise Girard and Wilhelmina Waldman)

# Children's Rights

Under the 1951 Convention, individuals who meet the Convention definition should be recognized as refugees regardless of their age. Children, therefore, are entitled to the same rights and privileges as adult refugees. The following section first outlines the international and domestic framework for refugee children's rights. It then discusses some of the issues refugee children may face because of their age and inherent vulnerability, and provide links to additional resources on children's rights.

## International instruments

Refugee children are at the center of two international law regimes: (1) instruments recognizing the rights of refugees, and (2) instruments recognizing the rights of children.

As the 1951 Convention requires any child that meets the definition of a refugee to receive the same treatment as adult refugees, practitioners should simultaneously consider international refugee law and the rights of all children.

The 1959 Declaration of the Rights of the Child and the Convention on the Rights of Children specifically create a framework of rights for children at the international law level. However, many other conventions also refer to children in relation to the convention's topic. For example, labor treaties may establish a minimum age for labor, and conventions on armed conflict may prohibit child soldiers.

The children of refugees, born outside of their parents' country of origin, are at heightened risks of statelessness. This is particularly the case where birth registration does not occur, such as in some emergency settings, or where authorities in the country of asylum lack capacity to provide meaningful migration status or documentation. The right to not be stateless is included in the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, there is a limited number of signatory states, and the right to registration at birth may need to be argued or promoted creatively.

# Researching domestic law and policies

Each country has its own domestic framework regarding the rights of children. As children's rights encompass many areas of the law, it is useful to start by identifying the specific issues facing refugee children in your country. You can use some of the following resources to determine the status of that issue in your specific country.

The WORLD Policy Analysis Center's Children's Chances, referenced below, provides a unique and extensive starting point for specific country research. The WORLD Policy Analysis Center has collected and analyzed comparative policy data on nearly every country in order to create comparative maps for many specific questions. This database of maps begins by addressing a specific topic, such as legislation protecting children from marriage. It then breaks down the issue into sub-questions, and allows you to compare your country with the other countries in your region.

The Right to Education Project, also featured in the preceding Education section of the Toolkit, has a thorough guide for locating information on domestic implementation of the right to education. In addition to the right to education, this guide can be used to identify information on any of the numerous issues facing children.

# Specific issues

#### Unaccompanied minors

Unaccompanied and separated children are highly vulnerable to exploitation and face a diverse range of challenges. In addition to higher risks of sexual and labor exploitation, unaccompanied refugee children struggle with accessing the refugee status determination (RSD) process and may not be able to find or access support organizations.

One significant area for organizations to advocate for may be family tracing, and linking separated refugee children to their family in the country and elsewhere. The International Committee of the Red Cross, the National Red Cross and Red Crescent Societies are working together to reunite families separated by conflict, migration, and disasters. Their Restoring Family Links project is a great starting point for reuniting unaccompanied and separated children with their families.

The International Refugee Rights Initiative has created a thorough resource guide on separated and unaccompanied children, which includes extensive background information, specific guidance on the RSD process for separated and unaccompanied minors, and key resources for advocacy and support. Note that UNHCR has also issued guidelines for the protection of unaccompanied minors seeking asylum. All of these resources are referenced below.

#### Refugee Status Determination process and credibility assessments

The RSD process is intimidating for refugees, regardless of their age, but may be especially difficult for children. RSD interviews may take place in small rooms that are scary for children, and often include questions that may be difficult to answer or may be related to traumatic experiences. Long interviews may leave children hungry or unable to concentrate. Children are likely to fear "failing" the interview and may feel responsible for the outcome of the RSD process, especially if the claim is rejected. Additionally, it may be difficult to assess the credibility of the child's statements, especially when a child has experienced trauma.

UNHCR has implemented a best interest of the child policy with regards to children going through the RSD process. When organizations prepare children for RSD interviews, they should be aware of the **best practices** for interviewing children. This includes choosing a comfortable location, creating an appropriate trusting relationship with the child, and avoiding re-traumatization. However, implementation may vary from office to office, and not every RSD officer implements the best interest of the child or is able to apply best practices. It is important for advocates to know how the local RSD office conducts interviews with children, and what their policies and practices are. This may provide a good starting point for future advocacy, and can also help organizations better prepare underaged clients for their interviews. When appropriate, organization may need to prepare the child or the family for the **worst-case scenario**, i.e. in the event of a difficult interview.

#### Additional areas of concern

In addition to issues related to refugee children's claims, refugee children may lack access to education, proper medical treatment, birth certificates, and other basic rights. Children are often vulnerable to exploitation in the labor market and may be trafficked. Children in detention are often separated from one or both parents, and can be traumatized by their experiences in detention. Many of these issues overlap and exacerbate each other. As refugee children are easily overlooked and often require more attention than other clients, organizations should have their own child protection policies in place and should consider specialized training for all advocates.

When researching children issues, some starting points may be:

- Bridging Refugee Youth and Children's Services (BRYCS), which focuses on issues within the United States, also has developed numerous webinars, publications, and training manuals related to refugee and immigrant children and families.
- Save the Children advocates on behalf of children on a number of issues and has offices globally. Their resource centre may be of use.
- The Child Rights International Network (CRIN) connects children's rights advocates from numerous organizations. CRIN is involved in advocacy, research, monitoring and much more.

Further resources

Children's Rights: International Law (United States' Library of Congress) International Legal Standards (Action for the Rights of Children) Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (UNHCR) UNHCR Guidelines on Determining the Best Interests of the Child (UNHCR) Suggestions for Interviewing Refugee and Immigrant Children and Families (BRYCS) Children's Chances (The WORLD Policy Analysis Center) Right to Education Project Restoring Family Links (ICRC)

Separated Children (International Refugee Rights Initiative)

Save the Children's Resource Center The Child Rights International Network (CRIN) working

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# Legal Services

Legal services comprise a broad range of services that can help refugee clients to navigate the legal process to obtain refugee status, workplace rights, access education, healthcare, and financial institutions, and demand equal protection of police and courts. The protection space and legal frameworks for refugees in your country of information inform the types of legal services that your organization can provide to individual asylum seekers and refugees. In addition, legal services can be tailored to the individual needs of a client and can include representation, advice or assistance to claim one or more of their legal rights.

# Overview

Working out how to focus efforts, prioritize cases and maximize impact is crucial. The legal services section of the Toolkit is set up to help you navigate through the different aspects of program management and case management.

Legal services management comprises a broad range of activities involving program management and case management in individual cases. Monitoring and evaluating and setting quality standards for the legal aid provided are essential in delivering these services.

This is what we'll cover in this section:

Overview	
Program Management	
Quality in Legal Aid	
Ethics in Legal Aid	
Resources to Promote a Gender Framework in Legal Aid	
Interpreters	
Knowledge Management	
Vulnerable Population Guidelines	
Monitoring and Evaluation	
Case Management	
Case Procedures	
Refugee Status Determination Procedures	
Access to Rights Procedures	
Mobile Legal Clinics	
Norking	

# Program Management

The program management section focuses on setting up high quality legal services. This includes meeting client needs and setting realistic goals for your services. Many of these factors discussed in this section are crosscutting considerations for all refugee rights advocacy forms in this Toolkit.

Working with refugee populations can present you with a range of ethical dilemmas, including conflict of interest, and challenges working with community interpreters. When you encounter these, the right course of action is not necessarily clear when providing legal services to refugees, so a dedicated section about the Ethics in Legal Aid will guide you through different ethical obligations of legal advisors and how to deal with ethical dilemmas. You will also find information about the importance of adhering to the ethical code that applies in your country and/or the Nairobi Code, as well as resources on promoting gender sensitivity in programming.

The section on knowledge management provides information about setting up knowledge depositories that help create institutional memory and inform protocols and policies, identifying database needs and the duty to store case information. Furthermore, important considerations when working with interpreters are highlighted in the section about Interpreters.

The vulnerable population section guides you through considerations to keep in mind working with categories of individuals who are particularly vulnerable to exploitation, or whose vulnerabilities impede their ability to advocate for themselves or articulate their legal needs. In addition, the section considers the precautions your organization should take in consideration to respond to violent clients or individuals who threaten harm

Finally, consideration must be given from the outset to the way in which your organization will monitor and evaluate its legal services. This involves discussing what success means to you, and working out how the outcome of your work is to be recorded. These processes are integral to results-based management which enables you to calibrate your work based on feedback, successes and failures, in order to achieve greater protection for refugees going forward. By setting up an effective monitoring and evaluation system of your individual legal aid services, you can also identify themes for advocacy or impact litigation.

# Quality in Legal Aid

This section of the Toolkit will describe the steps to follow to ensure that you are delivering high quality legal services.

There are seven main ways to guarantee that you are providing quality legal aid to your clients:

1. Identify the most important unmet needs in the community that you want to serve.

Talk to local refuge populations and other organizations that work with them in order to discover what legal needs the refugees have.

2. Set program goals and objectives that address these legal needs.

3. Periodically, evaluate your objectives and service delivery methods and adjust them as needed.

It is important to continue to assess whether your work is meeting the needs of the refugee community. As you implement your work, take time at regular intervals to evaluate whether your work is focused on addressing the needs of the community and if it is effectively serving your client community.

An example of some questions that you could ask yourself are:

- Do you feel that your legal aid services are addressing the needs of the population comprehensively?
- After examining case files and talking to your staff about their clients, are there new issues that your clients are experiencing that your office should tackle?
- Are there more efficient ways to help your clients?
- Is your service delivery method allowing you to reach the appropriate people?

4. Regularly review case files and your staff's work.

Review files to ensure that your staff is identifying the client's issue and possible remedies, that the cases are handled in a timely manner, and that your staff had good client contact.

If it becomes too difficult to review every case file, consider having an independent person periodically review a random sample of cases. Consider setting up a system in which cases are peer reviewed.

Other good ways to review your staff's work is by:

- Interacting frequently with staff members.
- Pairing junior staff with senior staff so that they can work on a case together.
- Having staff write brief, frequent reports to their supervisors on their case statuses and results.
- Always reviewing files after a complaint has been made to identify whether there were any problems with how your staff handled the case.

Some questions you could ask yourself are:

- Are cases handled in a timely manner?
- Has your staff been able to have adequate client contact and did they follow the procedures?

5. Ensure that your staff is well-qualified, well-trained, and well-treated so that they can provide quality legal services.

- Provide ongoing training to all management and staff on issues and developments in their areas of responsibility.
- Lawyers need to be trained in the substantive law in which they work and in office skills.
- Non-legal staff need to have a basic knowledge of the program's mission and all aspects of their jobs.
- Avoid staff burn out by promoting fair pay, fair benefits, and good working conditions.
- You should also implement an adequate screening policy.
- Cases should be assigned to the person who is best able to take them based on the person's experience, training, and available time.

6. Make sure that you are providing services equally to men, women, boys, and girls.

Review the gender sensitivity in legal aid section of the Toolkit to find out more about how to do this.

7. Adhere to the Nairobi Code's ethical obligations.

Following the duties and standards in this code will ensure that you are providing ethical services to your clients. It is not possible to provide high quality legal aid unless the work that you are doing is ethical.

Review the Nairobi Code section of the Toolkit to learn more about these obligations.

# Ethics in Legal Aid

Ethics are of critical importance in refugee law because of the uniquely vulnerable position in which refugees find themselves. When providing legal services to refugees, it is likely that you will encounter ethical dilemmas where the right course of action is not necessarily clear. This training will help you understand how to navigate these dilemmas and provide sound and transparent legal advice to your clients.

In this section, we will explore the Nairobi Code, which governs ethics in refugee law in UNHCR context and countries that do not have an elaborate legal ethics system. We will begin by looking at the code more generally and then we will examine its basic principles, including: Duty of Confidentiality, Duty of Diligence, Duty of Integrity, Client-Advisor relationship, Conflicts of Interest, and Duty to Avoid Exploitation. Finally, we will consider how to implement a complaint or feedback mechanism, and how to deal with any ethical dilemmas that working with community interpreters.

# Nairobi Code

The Nairobi Code is a non-binding model for ethics in refugee law. It was developed in 2007 in Nairobi, Kenya by UNHCR by a group of legal advocates from all over the world. The Nairobi Code serves to standardize refugee-related legal aid and guide legal advocates through ethical dilemmas that arise when providing counsel, representation, or advice to refugees. The Nairobi Code is intended to be a model of best practices. It should be adopted voluntarily and it does not replace state regulations for legal aid ethics, but recognizes that it is simultaneously bound to other regulations.

As a refugee rights organization, the Nairobi Code will govern the work of your team and your advocates. This code of professional conduct provides clear guidance to answering ethical dilemmas. Nonetheless, you will likely encounter many ambiguous ethical choices in your work, and may not have satisfying options moving forward.

Moreover, you may find that local attitudes towards ethics diverge significantly from the Nairobi Code. For instance, the duty to keep client confidences even when your client admits wrongdoing — past persecution of others, for example — goes against the instincts of many human rights advocates. Together with the lack of resources to resolve ethical issues in Africa, Asia and Latin America, these cultural differences make solving ethical issues in refugee cases a significant challenge.

When faced with difficult ethical challenges, you should rely on the experience of seasoned colleague in the global refugee rights movement. It is entirely ethical to consult other practitioners on ethical issues, so long as you do not reveal identifying information regarding your client. You should also encourage regular open discussions of ethical issues among your team members. By encouraging the discussion of ethical dilemmas among your legal advocates, you will promote a culture of actively identifying, raising and evaluating them collectively.

The most important role you can play in ensuring that your staff does not make ethical mistakes is to train them to identify when ethical dilemmas arise. Hypothetical and issue-spotting exercises are two ways to prime your advocates to be constantly aware of ethical issues. Asylum Access developed The Nairobi Code Discussion Leader's Guide, which is a good tool to use to train your staff. It is located on the training activities section later in the Toolkit.

Another good practice is to always discuss ethical problems with your entire team whenever they arise. Managers should also play an active role in case management by discussing individual cases with advocates on a regular basis. This will help ensure that even a legal advocate experienced in spotting and resolving ethical issues is aware of potential ethical violations.

#### Further resources

<u>The Nairobi Code: Model Rules of Ethics for Legal Advisers in Refugee Cases</u> <u>Le Code de Nairobi</u> <u>Nairobijski Kodeks</u> <u>Najrobi Koda</u> <u>Кодекс Найроби</u>

#### Duty of Confidentiality

This module will explain what the duty of confidentiality entails. The training activities section contains exercises on the duty of confidentiality, which will allow you to apply what you learn about confidentiality to a fictionalized scenario. At the end of this training you should understand what the duty of confidentiality is, how to respect it, the exceptions to it, and how to apply this duty to your legal services work.

#### Duty of confidentiality

Under this duty, you are obligated to keep all information that you gather in the course of representing a client, particularly information that the client tells you, confidential. This duty applies from the moment the client walks into your office and begins to share sensitive information with you. It also applies equally to prospective, current, and former clients.

#### Right of the client

The client has the right to expect that you will keep his or her information private.

#### Duty of advisor

As the legal advisor, you cannot waive the client's privilege of confidentiality without the client's consent. You have a duty to protect your client's information and to train your staff on the duty of confidentiality. You are also required to make sure that your staff is adhering to this duty.

#### Exceptions

There are certain specific circumstances in which it is acceptable to share some of the client's information without his or her consent.

You may reveal *general* information about the client if:

- You are engaged in confidential professional consultations such as getting advice from another legal aid provider on a specific case.
- That information is already in the public domain and your client explicitly consents.

You may reveal *minimal* information about your client:

- To prevent him or her from causing bodily harm to themselves or to others.
- If a formal charge of an ethics breach has been filed against you and you need to disclose some information to defend yourself.
- If all identifying details have been removed.

#### Duty of Diligence

Under the duty of diligence, you have the obligation to obtain the best results possibly for your client. This refers to both the duty to thoroughly investigate the merits of a case, and to present the information in a way to obtain the best results possible for your client. The duty of diligence is also a duty to maintain proper records and an orderly case management system.

As a legal adviser you have a duty to:

- Act responsibly
- Obtain the best results possible for the client
- Maintain regular access to UNHCR material and Country of Origin Information (COI)
- Maintain filing and record systems

# Duty of Integrity

This section will explain what the duty of integrity entails. The training activities section contains a quiz about the duty of integrity that you can complete to test your understanding of what this duty involves and how to fulfill it.

The duty of integrity requires that the legal adviser:

• Be truthful in all communications including with UNHCR, the government, and any other decision making body.

- Urge clients to be truthful at all times.
- Not encourage, advise, or assist his or her clients in making misleading statements.
- However, the adviser has no duty to screen weak claims.
- This duty is most often activated when a client makes a false or misleading statement to a tribunal or other decision making body.

When a client lies, before the adviser-client relationship, the legal advisor has a duty:

- Not to reveal past misstatements.
- To persuade the client to correct past misstatements.
- To issue no communications founded on misstatements.

When a client lies during the adviser-client relationship, the legal advisor has a duty to:

- Not to reveal misstatements.
- To persuade the client to correct misstatements.
- To not issue any communications founded on misstatements.
- If the lie is central to the case, the advisor must cease representation.

To summarize, if your client makes a false statement to the tribunal, you cannot tell the tribunal unless you have the client's explicit consent. But, if the false statement is central to the issue for which you're providing representation, you have to withdraw from representing that client.

The duty of diligence links a legal adviser's responsibility to the client – not to reveal confidential statements – with a legal adviser's responsibility to the tribunal – not to encourage or assist misleading statements.

#### **Client-Advisor Relationship**

This section will explain how the Nairobi Code governs the client-advisor relationship, and what each person's responsibilities are. First, read the information below. Then, take the quiz on the training activities section to test your understanding of the client-advisor relationship. At the end of this training, you should have a better understanding of the client-advisor relationship.

As a legal adviser, you have responsibilities to a prospective client from the moment he or she comes to seek your help. The Nairobi Code governs these responsibilities. Imagine that a prospective client walks in the door. What do you, as a legal adviser, do first?

- You must clearly explain whether you can offer your services, and explain the services that you can offer.
- Any information the person tells you about him or herself in this conversation is confidential.

- You also need to make clear the objectives and scope of your legal services.
  - Objectives: Help client prepare for first UNHCR RSD interview; Help client draft testimony; Draft legal brief
  - Scope: First UNHCR RSD interview only; No appeal or Request for Review

The person will become your client only when he or she voluntarily consents to your services as a legal adviser, and after being informed of the objectives and scope of the services to which you have agreed.

The person will stop being your client if he or she clearly and explicitly tell you, in writing or orally, that he or she no longer wants your assistance, or is he or she makes an allegation of ethical misconduct against you.

The person will also stop being your client if you withdraw from representation, either because you cannot agree on the goals or strategies of the representation, or because you are ethically required to withdraw.

The client is the one in control of the relationship. Once the legal adviser has agreed to provide representation, and both people have agreed on the scope of the representation, the client has the final say.

The Nairobi Code is explicit about this – it says in section 3.6:

"Clients should remain in control of the goals of representation. If...the client and adviser are unable to agree on the goals or strategies of representation, the adviser may withdraw from representation."

The work done on his or her case belongs to the client. He or she has the right to view and obtain copies of all materials in his or her files. This duty does not apply to work product and lawyer's meeting notes. However, as the legal adviser, you have the right to maintain records of your work on a client's case. Thus, you are not required to destroy a client's files, even if the client requests it.

It is also your responsibility to notify the decision-making body when you are no longer representing the client.

#### Conflicts of Interest

This section will explain what a conflict of interest is and what to do if you encounter one in your work. On the training activities section you will find a quiz to test your understanding of this concept.

#### Conflicts of interest

There are several types of conflicts of interest: your clients' interests could be in conflict, or your personal interests could be in conflict with a client. In either of these situations, it is important that you as the legal advisor take steps to remove yourself from these cases or to minimize the potential effects of these conflicts. In many cases the conflict of interest can be resolved by referring the client to another legal advisor, preferably to another organization that is able to provide high quality legal aid, or if none is available to an alternative advisor within your organization and withdraw yourself from the case entirely.

Do not offer services if:

- Another client has opposing interests,
- You have opposing financial or personal interests,
- You have a personal relationship with the client.

#### Conflicts of interest between clients

First, consider what you would do if one of your current client's and a prospective client's interests conflicted. Ideally, you would never get into this situation because if any of your current clients has an interest that is opposed to a prospective client, you may not take on that prospective client. You must not offer legal services to someone if another one of your clients has opposing interests.

An opposing interest is anything that would keep you from fully performing your duty of diligence to either client.

For example, imagine that you were representing a woman who fled her country because her male family members were threatening to murder her as an "honor killing," and the police refused to protect her. If her brother then asked you to assist him to get refugee status for entirely unrelated reasons, you would have to refuse to represent him because your current client's interests are opposed to those of her brother. Because you have not signed a legal agreement with the brother, you have no duties other than to keep the consultation with him confidential. It is good practice to refer the brother to another legal aid provider who can objectively present his claim for refugee status.

Now, consider what to do if you are representing two clients whose interests are in conflict. Because you have a legal agreement with both brothers, all duties in the Nairobi Code apply and you have a duty to ensure everything that was agreed on in the legal agreement will be fulfilled. While in a conflict of interest with a prospective client, you can refuse services, you cannot stop providing the previously agreed on services to your existing clients.

Let's imagine that you are representing two brothers who are seeking refugee status. Each brother tells you that the other one is wanted in their home country for killing their next-door neighbor. Under the Refugee Convention, committing a serious nonpolitical crime excludes a person from refugee status and therefore directly affects their claim for refugee status. By learning of this issue, your objective judgment of both brothers is tampered. In this situation, as long as the interests of the two clients were harmonious, there was nothing interfering with your objective judgement or ability to represent both brothers. It is only when of the contradicting statements that directly affect their eligibility for refugee status, the conflict of interest arises. In this case, you should refer at least one, if not both, of the clients to alternate advisers immediately.

#### Conflicts of interest between yourself and the client

If your personal interests conflict with your client's interests then you may not take that person on as a client. You should never represent a prospective client when you have a direct financial or personal interest that is opposed to the client's interest. Similarly, if you have a personal relationship with a client that could prevent you from exercising objective judgment, you should refer the client to an alternative legal adviser, if one is available.

#### What if there are no other legal advisers?

#### The Nairobi Code (Section 5.5) says that:

"Where...alternative legal advisors are unavailable, an advisor may assist clients where a conflict of interest exists only after clearly and explicitly notifying the clients of the conflict and its potential consequences, and after seeking ways to limit the scope of representation so as to minimize conflicts."

#### Duty to Avoid Exploitation

This section will explain the duty to avoid exploitation. In the training activities section you will find a quiz to test your understanding of this concept.

One of the most important responsibilities of a legal adviser is the duty to avoid exploitation. Refugees are often in an extremely vulnerable situation. When you are their legal adviser, they are placing their trust in you. With every client, you have to remember that you may play a life or death role in that person's life. Because of this, you have an enormous responsibility to ensure that you treat each client with dignity and respect, and avoid engaging in any relationship that might exploit a client for your own gain.

What rules should legal advisers follow to be sure they are not exploiting a client?

The most important rule is: no sexual or business relationships with any current clients.

Any sexual or business relationship, even if the client initiates it, proposes it, encourages it or agrees to it, is presumed to be exploitative. Therefore, no business or sexual relationships with clients can be allowed.

As a legal advocate, you also have a responsibility to avoid any relationship that directly or indirectly compromises your independent judgment on behalf of your client. For example you should not enter into a business or sexual relationship with someone who decides refugee claims.

In sum:

- No sexual relationships with clients.
- No business relationships with clients.
- No relationships that compromise independent judgement.

In general, you should not enter into any financial relationships with a client until at least six months after you stopped representing him or her.

However, there is one narrow exception. If you purchased goods or services from someone, and that person later comes to you for legal help, and no other adviser was available, then you can continue to purchase goods or services from him or her as long as doing so complies with the conflict of interest rules.

For example, imagine that you hire someone to clean your house once a week. After a year, she reveals to you that she is a refugee who fled her home country to avoid being jailed for practicing her religion. Now she has learned that the local police are cracking down on foreigners without residence permits. She asks for your help in seeking refugee status, and there are no legal advisors to whom you can refer her. Assuming there are no other ethical complications, you can represent her, and she can continue to clean your house.

#### **Training Activities**

This section contains activities that you can complete to test your knowledge of the Nairobi Code.

#### Nairobi code

One good way to ensure that your staff does not make ethical mistakes is to train them to identify ethical problems. Hypothetical and issue-spotting exercises are two ways to prime your advocates to be constantly aware of ethical issues. Asylum Access developed The Nairobi Code Discussion Leader's Guide, which is a good tool to use to train your staff.

Nairobi Code Discussion Leader's Guide

The following case study will help you think about how a failure to prime legal advocates to constantly think about ethics can create difficult situations for your organization. The situation presented in this case study has a relatively clear answer based on the Nairobi Code's provisions. However, you will encounter many situations in which the decisions are more ethically ambiguous. The activity is available as both a PowerPoint and as a PDF so that you can either do the activity with your entire staff or just take it by yourself.

Ethics Case Study- PowerPoint

Ethics Case Study- PDF

The following hypothetical situations will also help you test your understanding of the Nairobi code and how to apply it.

<u>Nairobi Code Hypothetical Situations</u> Nairobi Code Hypothetical Situations and Answers

#### Duty of confidentiality

For this activity, imagine that you are a legal advisor for Asylum Access in a country where UNHCR conducts refugee status determination (RSD). These documents make up the case files of Mr. Moyo's, a client from the Democratic Republic of Congo.

After reading his files, open the file labeled "Duty of Confidentiality Training Activity" and answer the questions about the nature and extent of your obligation to keep his information confidential.

A few other notes before you start: only the first page of the testimony and legal brief are included. Assume that each document is 10 pages long. For the Amnesty International report, please review only the first page.

Case Study: Mr Moyo's file (1. Psychologist Report) Case Study: Mr Moyo's file (2. Newspaper Clipping) Case Study: Mr Moyo's file (3. Newspaper desertion announcement) Case Study: Mr Moyo's file (4. Testimony) Case Study: Mr Moyo's file (5. Legal brief) <u>Case Study: Mr Moyo's file (6. Passport)</u> <u>Case Study: Mr Moyo's file (7. Army ID card)</u> <u>Case Study: Mr Moyo's file (8. Draft summary for organization publicity)</u> <u>Case Study: Mr Moyo's file (9. Amnesty International Report)</u> Duty of Confidentiality Training Activity

Please note that the client: Mr. Moyo, his documents, case file and the all facts therein are fictitious and were invented for purposes of this training, with the exception of the Amnesty International Report. Any resemblance to any actual Asylum Access clients or any other individuals is purely coincidental.

#### Duty of integrity

Use the resource below to take the duty of integrity quiz. This quiz will test your knowledge of this duty.

**Duty of Integrity Quiz** 

#### Client-advisor relationship

Use the resource below to take the client-advisor relationship quiz. This quiz will test enable you to see how well you have understood this part of the Ethics in Legal Aid training.

Client-Advisor Relationship Quiz

#### Conflicts of interest

Use the resource below to take the conflicts of interest quiz. This quiz will test enable you to see how well you have understood this part of the Ethics in Legal Aid training.

Conflict of Interest Quiz

Duty to avoid exploitation

Use the resource below to take a quiz on the duty to avoid exploitation. This quiz will test allow you to see how well you have understood this part of the Ethics in Legal Aid training.

Duty to Avoid Exploitation Quiz

# Complaint (Feedback) Mechanism

This section will explain how to implement a complaint or feedback mechanism for your office. At the end of this section, you should know what forms to use for this mechanism, how to structure the process, and how to address complaints.

In an effort to gain client feedback and to allow for an outlet for clients to safely issue complaints against our services, basic client feedback mechanisms are needed in all our client services locations. Furthermore, refugee legal aid providers are ethically obligated under The Nairobi Code to provide effective complaint mechanisms as part of office operating procedures ('Complaint Mechanisms as a Feature in a Professional Accountability Structure for Legal Aid Providers,' The Nairobi Code, Annex 2, p. 9). To accomplish these goals, the following mechanisms should be adapted to all offices:

#### Feedback form

The form can be called a "feedback" or "complaint" form. We suggest using the term "feedback" to invite a broader range of client assessment of our work. The feedback form should be structured to invite feedback from clients who receive your services.

The form should provide clear instructions and sufficient space for the client to include the date and place of the action complained against and a narrative of the incident (Ibid., para. 1.3).

Clients should be given the option to issue anonymous feedback. Complainants' identification information should be clearly marked as optional. The form should make clear that if the complainant decides to give their name, their information will be kept confidential and will be used to contact the complainant to help address the complaint.

Preprinted complaint forms should be available in all major languages spoken by the client community (Ibid.).

Sample Client Feedback Form (Asylum Access)

#### **Complaint process**

Each office should have clear operating procedures to review and respond to client complaints.

A receptionist or the first point of contact in the office should announce to clients of their right to issue complaints in their language and manner of communicating.

As part of this explanation, the client should be provided the following information to understand the complaint procedures, including the following:

- The client has the option to complain or give feedback about the services received.
- The names of staff members responsible for reviewing the complaints and steps taken to address the complaints.
- The assistance available for individuals who cannot fill out the complaint form on their own.
- A complaint box should be placed in a conspicuous public place or reception area in the office (Ibid., para. 3). The box should be clearly marked in all major client languages for clients to see and to identify its purpose.
- If grievances arise during our interaction with a client, the client should be advised to fill out a complaint form.

#### Addressing complaints

Complaints should be addressed and resolved in a timely fashion by a disinterested person (Ibid., para. 4).

A pre-determined leadership staff member should review the complaint box on a weekly basis at minimum. To avoid any conflicts of interest that may be raised in the complaint forms, the person who reviews the complaints would ideally not also provide individual legal services.

Any complaints received should be investigated and resolved in a timely fashion by a leadership staff member who is disinterested (i.e. not directly involved in the complaint).

Where the complainant identifies him or herself in the complaint,

- The identity of the complaint should be kept confidential from the subject of the complaint to protect the identity of the complainant issuing the complaint save for exceptions of confidentiality raised in The Nairobi Code (section 6, p.4).
- The complainant should be contacted when reachable/ possible to gather additional information if needed and to communicate the results of complaint ('Complaint Mechanisms as a Feature in a Professional Accountability Structure for Legal Aid Providers,' The Nairobi Code, Annex 2, p.9).

Where the complainant remains anonymous,

- The anonymous complaint should never be the source of a negative action against an employee (Ibid., para. 2).
- A presumption of innocence shall be applied to the employee complained against (Ibid., para. 6).
- The employee complained against should be notified of the complaint and evidence used against him or her in a manner that keeps the client's confidentiality. The employee should be given an opportunity to reply to the complaint and all evidence (Ibid., para. 7).

• A disinterested leadership staff member should act as the independent investigator to review the complaint and the employee's response to the complaint.

The complaint should not have a negative impact on the representation of the client

- Exception: Where the client violates his or her responsibilities as explained in the beginning of a client-adviser relationship or according to The Nairobi Code, proper action may be taken (i.e. disclosure of criminal behavior or threats against another individual).
- Sanctions for ethical violations should be reviewed for Nairobi Code and Human Resources policy violations. Appropriate course of action should be taken to respond to the complaints according to these policies.

#### Record keeping

Records of all complaints, the investigations findings and resolutions should be stored securely. Physical copies of the complaints should be kept in a secure confidential location. Each office shall keep records of complaints in their internal database system that includes the following data:

- Date of the complaint
- Name of the complainant if available
- Source of the complaint or individual who complaint is against
- Description of the course of action taken (Ibid., para. 8).
- Copies of notes and information included in the complaint that is relevant to the legal services rendered to the complaint should also be kept in the client file.

# Ethical considerations when working with Community Interpreters

This section will help you consider how to respond to ethical issues that may arise when working with community interpreters. It will also help you practice using the Nairobi Code as a guide to solve ethical problems. Read the following information and then complete the training example. At the end of this section, you should understand what kinds of ethical issues can arise when working with community interpreters, and how to use the Nairobi Code in order to solve those issues. Practice discussing such hypothetical dilemmas with your interpreting team.

The risks and relevant ethical considerations of working with community interpreters are also addressed in the Community Legal Empowerment section on Community Interpreters.

#### Example

You become aware that one of your interpreters is selling testimonies to refugees. Sometimes asylum seekers with valid claims believe that a testimony written by an experienced professional is more likely to achieve refugee status than their own testimony. Sometimes they are too ashamed to tell what really happened to them. You believe that your clients have valid claims and are not recipients of his fabricated testimonies. Even though your interpreter is selling testimonies, he is a good interpreter, and you do not have any other way to communicate with your clients. He is also a recognized refugee himself and you do not want to cause legal problems for him.

#### How to handle

You are not required to report the interpreter to anyone.

Whether you have a duty of confidentiality depends on how you learned that the interpreter is selling testimonies, and whether the interpreter is also a client, but most likely you are not required to keep the testimony-selling confidential – so your supervisor may want to consider warning other NGOs that also use this interpreter.

Your duty of diligence toward your clients may apply: If you think that reporting the interpreter to the RSD decisionmaker would cause the decisionmaker to consider your clients' claims suspect, you should not report the interpreter.

If you report this interpreter to the RSD decisionmaker, the refugee community may not trust your assurances of confidentiality for clients.

You have a duty to try to repair the damage to your clients if their claims were harmed by the interpreter's actions. Deciding how best to repair the damage, however, will depend on the local context, the attitude of the RSD decisionmaker, and how your clients were harmed.

If your clients submitted false testimonies on the advice of this interpreter, you must convince your clients to correct the misstatements. If you cannot convince them to correct the misstatements, under the Nairobi Code you must withdraw from representation. In correcting the misstatements, your clients should explain why they initially made the misstatements.

You should always consult with a supervisor before making a decision about how to handle this type of situation. The guiding principle here is your duty of diligence to your clients: Act in the way that best furthers your clients' interests.

For those clients whose claims cannot proceed without the assistance of the interpreter, you should seek an extension of time from the RSD decisionmaker to prepare their claims. Talk with your supervisor about how to find another interpreter.

What steps can you take to prevent this type of situation from happening in the future?

Let your supervisor decide. If you are the supervisor, you probably should let this interpreter go, even if it may harm other cases. You have no obligation to report this interpreter, however, if he has harmed the asylum claims of any clients in the office, it is your duty to try and repair any damage this might have caused for those clients who were deceived. In the future, always try and cultivate relationships with more than one interpreter.

# Resources to Promote a Gender Framework in Legal Aid

A gender framework includes considering the differential needs of and impact on girls, boys, men, and women as well as avoiding implicit stereotypes and assumptions. Using a gender framework in your legal aid program will benefit both your clients and your organization as you tackle difficult legal issues. The following are resources to help you build a framework in your legal aid program.

UNHCR's "Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement" contains a checklist on page 183-186 for gender sensitivity and a gender framework and procedural issues in the context of refugee status determination (RSD). It is a quick read with major pay off; it may help you quickly assess how "gender sensitive" your legal services are, including:

- A general checklist
- Before interview
- During interview
- Post interview

#### Material for download

Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement (UNHCR, 2005)

The Women's Refugee Commission introduces the concept that economic empowerment (perhaps achieved through work rights-related legal aid) has been known to cause an increase in gender-based violence at home. They offer recommendations on how international organizations can respond to and prepare to mitigate this risk. Peril of Protection: The Link Between Livelihoods and Gender-based Violence in Displacement Settings (Women's Refugee Commission, 2009)

A helpful document in conceptualizing how the experiences of refugee boys and girls can differ is Gillian Mann's paper on Congolese refugee boys' and girls' in Dar es Salaam, Tanzania.

"Wakimbizi, Wakimbizi": Congolese refugee boys' and girls' perspectives on life in Dar es Salaam, Tanzania (Mann, 2002)

UNHCR's handbook for the Protection of Women and Girls shows how rights violations occur for refugees in some unusual ways, including:

- Access to Information
- Nationality, civil status and family relations
- Personal liberty and security
- Administration of justice
- Health
- Access to safe and quality education
- Livelihoods and food security
- Housing, land and property

#### Material for download

<u>UNHCR Handbook for the Protection of Women and Girls (2008)</u> Exercising Rights and Ensuring Protection (UNHCR 2008)

Lastly, UNHCR's Guidelines on Gender-Based Persecution helps to understand genderrelated persecution and how to interpret the 1951 Refugee Convention using a gender framework.

<u>Guidelines on Gender-Based Persecution within the Context of Article 1A (2) of</u> the Refugee Convention (UNHCR, 2002)

# Interpreters

Working with interpreters is often a key aspect of refugee legal aid. After completing this training, you should understand when your clients may need interpreters, how to find professional interpreters, and how to create and manage a community interpreter program.

## When might refuges need interpreters?

There are two main situations in which refugees may need the help of an interpreter: preparing their case and during the RSD process. Refugees are entitled to quality interpretation in the RSD process. You should inform your clients that they have a right

to ask for an interpreter of a particular gender, or to refuse what they deem inadequate interpretation during the RSD process. It is UNHCR's policy to use its own interpreters in RSD interviews. Legal representatives are prohibited from acting as the refugee's translator at these interviews. UNHCR will always try to provide female interpreters for female applicants. However, they are not always able to do so.

# Types of interpreters

There are two main types of interpreters: professional and community based. Professional interpreters are formally trained and they often charge for translations. Community interpreters are generally members of the refugee community or the larger community and they often translate for a lower fee.

#### Professional interpreters

If your organization has the resources, you could hire professional interpreters to help prepare your clients' cases. If you cannot afford to pay an interpreter, you may be able to hire one on a pro-bono basis.

Here is a list of organizations and companies that provide interpretation and translation services:

List of organisations and companies that provide interpretation and translation service (Rights in Exile Program)

#### Community interpreters

Community interpreters are people from the refugee community and the wider host community who have language skills and are willing to serve as translators. This model is a good way to provide interpretation to your clients even when you have few resources to pay professionals.

Community interpreters play both a practical role and can contribute to the empowerment of the refugee community. For more information on how this model can contribute to community empowerment, see the <u>Community Interpreters</u> module in the Community Legal Empowerment section of the Toolkit. This section will focus on the more practical aspects of their role.

# Knowledge Management

Knowledge management is important for refugee legal aid organizations to develop their legal aid program. In a field in which there is high turnover and volunteers do much of the work, there is a risk that not all knowledge will be preserved through handover

practices. Therefore, your organization will benefit from setting up knowledge management systems that can be updated as lessons are learned, and important considerations that inform the legal aid program policies are documented.

Well-organized stores of information also help to ensure that high quality work is produced across the organization, and it will make everything that the legal advisors need to represent their clients easily available.

This section will discuss different types of knowledge management systems. The knowledge management storage section will discuss the types of knowledge that are related to the management of a legal aid program such as repositories for exemplary casework, storing policy information and institutional memory. The client information retention section will discuss your duty to maintain client information and several strategies for storing the information. Finally, the database section will help you consider how to create a database for your office.

# Knowledge Management Storage

There are several types of knowledge management depositories such as casework, policy information, and institutional memory. Your organization should maintain up to date records of each of these types of knowledge. These knowledge stores will help you determine the best approach to take for a client, which cases to appeal, and could serve as a guide to addressing errors in status determination or credibility concerns. They will also help you with the development and management of your legal aid program. This section will discuss the different types of knowledge that are related to the management of a legal aid program such as casework, storing policy information and institutional memory.

#### Casework

Cataloguing aspects of casework such as legal strategies, useful legal arguments, templates, indexing outcomes of impact cases, and country of origin information will help to maintain a high quality of work across different legal advisors or through an extended period of time. It will also help you to develop strategies that help legal advisors in their work and allow you to see how your legal strategies have developed over time.

#### Legal strategies

It may be convenient to store legal strategies and successful legal arguments of individual services provided so that your team does not have to come up with new strategies and arguments when the facts are similar to previous successful cases. This type of knowledge repository differs from using templates because recording legal strategies is not restricted to storing the argument itself. It can also include storing the analysis of unsuccessful arguments, and possible counter arguments. It might be useful to store briefs and minutes from strategies meetings in a database or filing system so that your advocates can access this information.

#### Legal argument templates and standard paragraphs

Templates of legal petitions can be useful references for legal advocates. There are different types of templates that can be developed, from a basic structure for a legal petition, to a complete argument, or a standard paragraph on a specific topic.

Templates that guide the structure of a legal petition – from statement of facts, to arguing the elements of the eligibility for refugee status – are essential tools that support protocols on case procedures and facilitate drafting of high quality of legal arguments across the organization and between different legal advocates.

In some contexts, petitions are so similar that it does not make sense for your advocates to draft original work for each client. For example, each refugee petition that Asylum Access files in Ecuador is identical except for the name and ID number. A template facilitates the legal advocate's work and ensures that in each case the necessary arguments are raised.

In other instances, templates may aid in the drafting of more complex petitions. A wellwritten appeal can be an excellent starting point for a new petition. An approved appeal template may also help your organization avoid errors such as addressing the petition to the wrong body, or omitting a piece of biographical information that is required by law.

Another way of cataloguing successful arguments is in standard paragraphs. Standard paragraphs can be especially useful when the argument drafted can contribute to other cases, even when the individual circumstances of the cases differ. Examples of elements in a legal argument that are suitable for a block text are arguments addressing procedural breaches during the status determination interview, relevance and/or reasonableness of an internal flight alternative, or a nexus argument.

However, you will have to be careful that your legal advocates do not rely too heavily on the work of their predecessors. You should always insist that your advocates reevaluate each piece of copied information that goes into a new petition because different situations and diverse clients may require different strategies.

#### **Country of Origin Information**

<u>Country of Origin Information</u> (COI) is crucial to the RSD process. COI informs legal advocates about the political, social, cultural, economic, and human rights situation in

the client's country of origin and helps advocates to corroborate a client's declaration and substantiate the objective fear of persecution. Governments also use Country of Origin information to assess whether the RSD applicant's fear of persecution is well founded.

Organizations can use a COI database to make frequently used COI easily accessible, or to create standard paragraphs on specific recurring topic such as conversion in a particular country, or the treatment of a particular ethnic group. A COI database can also be used to store specific successful arguments that rely heavily on COI and to store expert opinions.

Similar to the legal argument templates, legal advocates should not rely too heavily on the work of their predecessors. Each case should be argued on their individual merits, and while the core of the claim may be similar, the information should always be reviewed and updated, tailored to the specific circumstances of the individual, and additional information fitting the individual profile researched in online <u>COI databases</u>.

#### Index of outcomes from impact litigation

It is important to track the outcomes of impact litigation cases so that you and your team are aware of trends in court rulings over time, and to catalogue how outcomes of impact cases have affected or aided the development of legal aid strategies and policies (see below). This information could also help when you speak to donors because you would have concrete data to show your organizations work on a specific issue over time.

#### **Policy information**

You may identify that legal needs and possibilities for legal aid interventions are different for each community. This will not only be reflected in your casework, but will also in your office policies. For example, some segments of a population may have such a solid refugee claim that legal assistance can be limited to providing information about the process (see <u>Community Legal Empowerment</u>), while another segment may need a complex legal argument to argue their qualification for refugee status under the 1951 Refugee Convention or local asylum laws.

Your legal advocates and staff will need to stay up to date on policy developments in the country in which you work and on your organizations' protocols in order to effectively advocate for clients. Storing policy information is also useful to record position papers for refugees from a particular country or region. As a result, you may want to establish a system to store: memos from UNHCR and the national government on RSD developments, and protocols for working with different populations.

#### Policy memo Examples

- UNHCR or the national government may issue memos updating their RSD policies or procedures. It is important that your office track and store these memos so that your staff is familiar with the most recent developments.
- It may also be useful to record how the legal services community has responded to these memos by changes in policy, an advocacy program or a particular focus in the legal petitions.
- Your office position papers and background memos analyzing country situations and eligibility for refugee status can be useful references to document why your office has adopted certain strategies.
- Your staff may benefit from knowing how other groups have reacted to changes in the asylum adjudication process and what strategies have been successful.

#### Protocols and manuals

Protocols can be helpful resources for legal advocates because they detail all the necessary steps to take to complete a task. A manual is a comprehensive guide covering all aspects of a service provided by the organization, for example an RSD legal aid manual.

Both protocols and manuals are often very detailed and contain information about practical aspects of the process such as where to get a document notarized or which official to ask for at a specific office. It is useful to record these protocols somewhere that all advocates can update them. This will help ensure that the protocols are always up to date. Below is a sample protocol for a family reunification petition. For more information about case protocols, please refer to the case procedures section.

#### Sample family reunification protocol

To apply for family reunification, you should take the following steps:

In the intake interview, establish that a qualifying relationship to a recognized refugee exists. If the client is related to an asylum seeker, he or she may be able to join the petition, but he or she cannot apply for reunification. If the client is related to a local citizen or someone with an immigrant visa, see the family immigration petition protocol.

During the intake interview, examine if the client has an underlying asylum claim to evaluate whether reunification or a separate asylum petition is best.

If you decide that reunification is the appropriate option, request that the client bring all of the necessary documents to prove the qualifying relationship. These include:

- 1. The relative's refugee document (Absolute must!)
- 2. Official proof of relationship (birth certificate, adoption certificate, marriage certificate, etc.)

\*NOTE—some officials, for example, John Doe the eligibility officer, assert that these documents need to be notarized. This is not the case (see Refugee Decree Art. 17). If John or anyone else will not accept an unnotarized document, ask your manager to contact the Refugee Director personally. He understands the law, and will make sure that it is applied.

If no official proof of the relationship is available, you need to provide a sworn, notarized statement of the relationship and supporting documents such as photos (e.g. wedding photos), letters, emails, academic documents showing the relationship, mortgages, etc. The best notaries to use are Notary 21 (on 5th Avenue and 1st Street, behind the KFC) and Notary 12 (at the corner beside the refugee office—ask for David). Other notaries charge too much or won't work with foreigners.

Once you have all of the necessary documents, fill out this letter. The client should hand deliver it to the third floor of the refugee office. They only accept reunification petitions on Thursdays, from 9 – 11 am. The refugee office should provide a response within 2 weeks. If after 4 weeks there is no response, call Lewis, the office administrator, on his mobile phone (xxxx).

#### Institutional memory

Knowledge about how your organization works and how best to accomplish tasks is often held within your staff. Examples of institutional memory include strategic or program planning sessions, program management grids, and job descriptions. When staff members and volunteers leave, much of this institutional memory can be lost or the reasoning behind a particular course of action may be forgotten unless your office has a system in place to ensure that it is stored.

There are a few steps that you can take to ensure that your organization preserves this knowledge.

- Build an explicit strategy to record institutional knowledge, and update it when changes are made to the way the program is ran.
- Identify a few key procedures that you want every member of your team to know or be able to do.
- Use technology that allows live updating such as Google docs to create a process by which all members of your team continually record and curate institutional knowledge.

## **Client Information Retention**

As a lawyer, you have a duty to retain information about your client's case. This section will describe why you have this duty, your obligation to retain data under the Nairobi Code, and which elements of a case file belong to the client. In this section, you will find some options for file storage policies that your office could implement.

#### Lawyer's duty to retain client information

It is important to maintain thorough case files so that you have the information necessary to help your client. You also have a duty not to prejudice your client's interests even after the person is no longer your client. Therefore, you should maintain all files that your client could use for an appeal or another legal proceeding in the future. As a result of this duty, some lawyers opt to maintain clients' files until the client dies and others keep files for a set number of years after the case is closed. Look to see if the professional standards in your country govern how long you should retain case files.

#### Nairobi Code and information retention

The Nairobi Code also obligates you to maintain certain types of information. Under the duty of diligence, you are required to maintain a case file system in which you record all of the work that you have done on your clients' cases.

It is important that you maintain information about your clients to detect potential conflicts of interest (see previous section) between them and a prospective client. An ethical wall or cone of silence can be created so that a caseworker working on one case cannot access information on a conflicting matter on which a colleague is working or has previously worked. This means that in cases where a conflict of interest has been identified, the files may need to be stored in a different physical location or steps must be taken to restrict caseworkers' access to soft copies of the conflicting files. It can be helpful to register known conflicts of interest in your organization's database or filing system.

An *ethical wall* is an administrative screening process that prevents lawyers or administrative staff from accessing information about a client with whom they or their clients may have a conflict of interest.

A *cone of silence* is an oath that a lawyer or other staff member takes promising not to disclose any information about former or current clients that would create a conflict of interest within the organization.

#### Which parts of the case file belong to the client?

Generally, the entire contents of a client's file, other than work product, belongs to the client. As a result, it must be provided to him or her or to a successor lawyer at the client's request. This includes both the hard and electronic copy of the file. When sending a former client's file to a successor lawyer at a different organization, please keep in mind that you still have a duty of confidentiality to that former client.

Work product is generally defined as a writing that reflects the lawyer's impressions, conclusions, opinions, or legal research or theories. You may also give your work product to the client, but you are not required to do so unless the absence of those documents would prejudice the rights of the client. The client maintains the right to access his or her file even after the client-advisor relationship has ended.

No originals should be kept in the client's file. Originals belong to the client and they should be returned to the client as soon as a copy for the file has been made. When closing a file, you should inform the client of your decision to close the case. Reasonable efforts must be made to inform the client of the file closure, for example by mailing letters to the last known address or contacting by the last known phone number. Regardless of how you decide to inform clients, you should always return any original documents to them.

#### Open and closed files

Your file storage system should allow you to separate open and closed cases.

Types of Open Cases:

- Case is open and active
- Case is open and inactive pending client contact, adjudication, or other reason

Types of Closed Cases:

- Adjudication on the case where client does not wish to appeal
- Client wishes to withdraw application and close case
- Client wishes to terminate representation with your organization
- Conflict of interest arises
- Client has failed to contact office and has been unreachable time for reasonable period of time (i.e. 3 months)
- Client has been resettled to third country or returned to home country or otherwise left the country (and office is not currently assisting family members associated to client's case)

Closed files should be kept for:

- At least, 5 years after the case has been closed and no other action has been taken
- Look at the practice of local law firms and bar associations to assess if there is a local best practice or legal requirement that recommends a longer duration
- Consider the duration of the RSD cycle until the point of resettlement/residency (or other applicable durable solution), which may extend the file storage period you set
- You may also wish to dispose of a file if the client only received an intake, and then failed to return to the office or was not reachable for 3 months

#### Case File Storage Policy

As part of your duty to retain client files, you should develop a case file storage policy. There are several options that each have their pros and cons. You should save client files in multiple locations.

Below we will discuss the pro's and cons of hard file storage, soft file storage, and storage of files in the cloud. Please refer to the sections of these different types of storage for specific steps you can undertake to ensure a good file storage policy.

Hard copy: Keep a paper copy in a file folder.

- All Information in the file is visible
- More difficult to alter and tamper with than soft copy files
- Do not have to train staff to use electronic file system or database
- Take up office space
- More difficult to search for documents and old files
- Can be expensive to make copies and/or print all documents

Soft copy: Keep an electronic copy on the office's own internal office database system.

- Does not take up office space
- Easier to search for files and documents
- Does not use up office resources like paper and ink
- Must have a secure computer system and a reliable power supply
- Must have someone create a database to house these files
- Must have enough computers in the office so that staff members can access these files
- Must have other office equipment such as a scanner to maintain these files
- More difficult to destroy than hard copy files

**Copy in cloud:** Back up all files in Dropbox or another similar program. This account should be password protected.

- Files can be easily accessed outside of the office in case your staff works remotely or travels often
- Files are stored off site, which can be more secure if your office is located in an insecure environment
- Cloud storage services can be expensive
- Must have an internet connection
- Cloud storage sites are susceptible to hacking

## Storing Hard Copies of Files

Keeping track of file folders

- Note the location of the file folder in your database.
- **Storing in alphabetical order**: this is the most straightforward way to store files and allows the legal advisor to look up the file without consulting a database to match the name to the corresponding file number first.
- **Storing in numerical order**: storing files by file number provides an extra measure of privacy. This method is also be preferred if clients have (near) identical names. Furthermore, storing files by file number rather than name can be advantageous if the number of clients is growing rapidly, since you do not have to move large volumes of files around when a file cabinet corresponding to a letter fills up.

Backing up Physical File

- A scanned copy of the client file should be saved at all times.
- It is best practice to scan and upload all client documents as they are received to ensure back up of paper file
- Lawyers' notes are not always necessary to scan and save

#### Storing Closed Cases

- When a case is closed, mark the outside of the file folder with the date of closing and reason for closing the file.
- In the cabinets where you store closed cases, organize the files by case number.
- Closed files should be kept for at least, 5 years after the case has been closed and no other action has been taken
- Look at the practice of local law firms and bar associations to assess if there is a local best practice or legal requirement that recommends a longer duration
- Consider the duration of the RSD cycle until the point of resettlement/residency (or other applicable durable solution), which may extend the file storage period you set
- You may also wish to dispose of the physical file if the client only received an intake, and then failed to return to the office or was not reachable for 3 months

#### Storing Soft Files

#### Data files

A list of the work done with the client, date, time and notes of conversations with clients and other individuals on behalf of the client, and interviews, meetings, and other actions taken should be kept in an electronic format.

#### Confidentiality of files

- Do not save client files to your personal computer
- Keep in zip drive and in database
- Do not save client files to other computers
- Do not work on client case in public computers

#### Duration of retention

- Files should be kept for at least 5 years after the case has been closed
- Look at the practice of local law firms and bar associations to assess if there is a local best practice or legal requirement that recommends a longer duration

• Consider the duration of the RSD cycle until the point of resettlement/residency (or other applicable durable solution), which may extend the file storage period you set

#### Storing Files in the Cloud

#### Data files

A copy of the client's entire case file should be stored in the cloud.

#### Confidentiality

You must take reasonable steps to ensure that the data is secure including learning how the provider will store and secure the data, and staying abreast of appropriate safeguards that should be employed by both you and the service provider.

#### Duration of retention

- These files should be kept for at least 5-10 years after the case has been closed.
- Look at the practice of local law firms and bar associations to assess if there is a local best practice or legal requirement that recommends a longer duration
- Consider the duration of the RSD cycle until the point of resettlement/residency (or other applicable durable solution), which may extend the file storage period you set

## Database

It is important that your organization has a secure and robust database that will enable you to track a high volume of cases, maintain accurate records, identify conflicts of interest, and report to donors and others. This section will help you think about how to build a database, including considerations of what to include, how to manage conflicts of interest, advice for solo practitioners, and steps that you can take to ensure that your database is secure. Finally, it will supply links to some resources and sample databases.

#### Identifying your database needs

A database should be designed as early as possible in your operations because it will be hard to transfer data once cases accumulate. Although this may cost time in the beginning, it will pay off in the long term.

When designing your database, ensure it can accommodate future changes as your organization grows. While all your clients may come from one particular country and

face specific, narrow legal challenges today, in five years you may have a much more diverse client base with a wider range of legal issues. The more rigid your database, the less likely it will be able to support your needs in a few years. You may wish to hire an IT professional to design your database, or you can design it yourself

Also, make sure your legal advocates understand that updating database information is just as important as any other work that happens in the office. Failure to track cases and clients is a violation of the <u>Nairobi Code</u> and will have a major negative impact on the lives of your clients and the reputation of your organization.

The following considerations will help you conceptualize what you need your database to do.

#### Reporting

What kind of figures do your current and prospective donors and other stakeholders require? Will you have to discuss number of cases/clients/workshops/visits/etc.? If you already have reports ready, study them and jot down each type of information. If you don't have reports, look at your proposals and annual plans, and the type of results you have promised to achieve.

Will you be submitting grant applications that could be strengthened with statistical analysis? What type of information might be useful? (e.g. number of girls helped, number of indirect beneficiaries, breakdown of services by nationality/ethnic group, etc.). Look at outstanding or past proposals to see the type of information you used, or that you wish you could have provided.

How will you measure success in your advocacy? How will you track this with your database?

#### Case management and tracking

What basic client information will you need? Think about information that you must include on forms, petitions, etc., as well as information you will need for day-to-day operations (phone numbers, addresses, email, etc.). Look at your intake forms, and any other forms that you or your clients fill out.

Can one client have more than one case? Do you need to track distinct cases in a different manner? For example, if John Doe has a pending RSD appeal, a resettlement case, and a labor violation case, should your database report this as 3 distinct cases, or simply one client helped? What type of information do you need for each case?

Can more than one legal advocate be responsible for activities for a particular client/case? If so, do you need your database to be able to record all the advocates who work on a particular case?

Do you want your database to show how many open cases each advocate has? What other types of information do you need to record regarding your legal advocates?

#### Security

What are the major information security threats your organization faces? (Think about natural disasters, government intrusion upon your database, your clients' agents of persecution, common crime, etc.)

What is your weakest security link?

#### Personal information fields

These fields should contain information such as name, <u>Country of Origin</u>, date of birth, date of arrival, languages spoken, contact number, file number, adjudicator file number, etc.

You should avoid repeating information (for example, having Country of Origin in both your client and your case tables), and try to break the information down to its most basic units (for example, "first name" and "last name" instead of simply name). This will allow you to perform more precise searches and avoid the confusion of duplicated information.

If you are working with names that are transcribed from another script, and therefore have several methods of spelling, you may want your database to be able to accommodate wildcard searches.

Wildcards allow you to search your database for something even when you are not sure of the exact spelling. For example, an \* matches any group of characters so if you search J\*n, the database will find John, Jon, but also Jason and Jasmin etc., an ? matches 1 or 0 characters so if you search Jo?n the database would find John and Jon. You can find more information on wildcards <u>here</u>.

Alternatively, you could come up with an office policy for which spelling you use (e.g. name as transcribed on Asylum Seeker Card, or name as transcribed on passport).

## Conflicts of interest

Your database is a good place to store information about conflicts of interest. It is also an important resource for you to search in order to establish whether you or someone in your organization has a conflict of interest with a potential client. You should keep as much information as possible about your cases in your database so that you can identify conflicts of interests. At a minimum, you should maintain a list of names of people you represented and people who were related to those cases. For example, if a lawyer in your office handles a case in which someone experienced persecution from their family as well as their community, you should include the names of that person's family members and any other relevant people in your database. Make sure that the names are linked to the matter in which they were involved and to the other people who were related to that case in your database.

Also, it is important to note whether the person had a client, adversary, or third party relationship to your organization. This information will help you and your staff more quickly identify whether there is a conflict of interest.

Finally, the database should include information about the lawyers' caseload in your organization. This will help ensure that your lawyers are maintaining their obligations to their former clients as well as their future ones.

#### Database security

Law firms and legal NGOs have increasingly become the targets of hackers. As a result, it is important that you work to secure your database. Some steps that you can take are:

- Do not allow open access to your database.
- Staff members who have access to the database should use unique user names and passwords.
- Encourage your staff to choose complicated passwords or assign them ones.
- You should limit, as appropriate, staff and volunteer's database access privileges. Not all your staff members and volunteers should have access to the entire contents of your organization's database.
- When a staff member leaves, revoke access to the database promptly.
- Ensure access can be revoked remotely in case of a security breach.
- Use optional security features such as limiting the number of login attempts.
- Regularly scan your database for vulnerabilities and misconfigurations.
- Install patches to fix these problems.
- Make regular back-ups of the database and ensure these are stored off site.

## Advice for solo practitioners

Solo practitioners can also benefit from creating and using a database. If you feel that you do not need to invest the resources in building a complex database, you can create a simpler one using Microsoft Access. In these programs, you can create a table and label the columns with the case number, date, contact, matter type, files status, related people and miscellaneous information. Then, you can input information about each of your cases into this table. The advantage of creating a database is that it is easier to search it for information about your clients and conflicts of interest.

Regardless of the kind of database that you use, it is important that solo practitioners store their files on a server rather than on their personal computers and protect their database with a password.

#### Sample databases

<u>HURIDOCS</u> is an organization that helps develop tools and information management systems for human rights NGOs. It is a good resource for information on managing information. They have developed <u>Casebox</u>, which is a case management and document storage system for legal NGOs.

<u>Martus</u> is a free, open-source, information management tool that was built to be used by human rights NGOs.

<u>RIPS (Refugee Information Processing System)</u> is a specifically designed database for refugee legal aid practitioners.

For small or starting legal aid practices, a spreadsheet database could be an option. For example, Google Sheets, or a password protected Excel or Access database stored on a separate server. Be sure to password protect such files.

## **Vulnerable Population Guidelines**

As a legal services organization, you will likely work with vulnerable clients. It is important to establish organizational protection policies that your staff will follow when working with these populations. You should identify which vulnerable populations you are most likely to work with and create policies to ensure that they are protected and well served.

The following sections will examine some general and specific issues to consider when working with some of the most common vulnerable groups: children, LGBTI people, and individuals with mental health needs.

The General Considerations section will lay out some important issues to keep in mind when you are working with vulnerable populations.

The Child Protection Policy section will detail what to include in a child protection policy, and how best to serve and interact with children.

The Working with LGBTI Clients section will suggest some considerations to keep in mind when you are describing your client's sexual orientation, and it proposes one possible way to frame an LGBTI refugee claim.

After reading each of these sections, you should understand the different issues that you need to consider when working with these populations and how to create safe and supportive environments for them.

## **General Considerations**

It is important to note that 'vulnerability' is an imposed category that some 'vulnerable' groups would challenge. While this needs to be acknowledged, it is generally held that vulnerability refers to those individuals or groups who, due to age, ill-health, infirmity, minority status or their otherwise disempowered position in society may be open to exploitation (whether physical, emotional or psychological). Many individuals that seek your assistance are likely to have certain characteristics (age, disability, sexual orientation) that render them comparatively vulnerable: at risk of exploitation, discrimination, mistreatment and so on. Individuals who display multiple "vulnerable" identities may experience greater vulnerability than those who only display a singular disadvantaged identity.

This vulnerability could manifest itself as difficulties or impediments in accessing services – legal aid, legal attention (whether for refugee status determination (RSD) or other access to rights procedures), and should be screened for and taken into account when providing legal aid. Adapting to your clients' vulnerabilities is important not only in order to deliver high quality legal aid and refer vulnerable individuals to relevant necessary support services, but vulnerabilities may have significant impacts on the RSD process in particular. For example, credibility of LGBTI asylum seekers is frequently doubted in certain cultural contexts, or in others the vulnerabilities of children may not be recognized if status determination is taking place in a context where it is normal for young teenagers to have relatively high levels of familial responsibility or duties. In the case of individuals with limited understanding, issues of informed consent and protection through confidentiality are important and must be addressed with the specific individual's needs in mind.

The following sections look at the specific considerations to take into account when working with LGTBI clients, children and those with psychological support needs. It is best practice to establish organizational protection policies or attention protocols in

order to mainstream vulnerabilities-sensitive practices and make the relevant information available to all staff.

Also refer to the information in the Psychological Support section and in the Referrals section to consider approaches for clients who need psychological or other help outside your area of expertise.

The following sections are by no means comprehensive. Vulnerable populations may include:

- Minors
- LGBTI individuals
- economically disadvantaged individuals
- racial and ethnic minorities
- detainees
- the elderly
- pregnant women
- the homeless
- sexual and gender-based violence (SGBV) survivors
- torture survivors
- trafficked individuals
- single mothers
- indigenous people
- HIV positive individuals
- clients suffering post-traumatic stress disorder
- · clients with other chronic health conditions, including mental illness
- rural unaccustomed to navigating institutional settings
- illiterate individuals,
- sex-workers
- former child soldiers
- landmine survivors
- undocumented individuals
- substance users

While it may be unrealistic to prepare a policy specific to each group, you may wish to consider your most common client profiles and draw up policies regarding the most frequent vulnerable groups you assist. Your filing system may also have a section to record vulnerable characteristics.

Further information

Identifying SGBV, Trafficking, and Intra-Familial Violence Cases

## **Child Protection Policy**

Children are a particularly vulnerable population because they are often without their parents, do not understand the information that is provided to them, and are susceptible to exploitation. It is important to remember that they are not just small adults. Children have needs and abilities that are significantly different from those of adults. This greatly affects the ability to impart or gain information from them and for the child to communicate his concerns and experiences.

The provision of accurate information in a child-friendly manner can be empowering to children and facilitates their involvement in making appropriate decisions and choices. Effective communication with children is of paramount importance to uphold the best interests of any particular child. As a result, it is important to employ strategies in your work with child clients that make them feel comfortable and safe speaking to you.

This section will help you consider what strategies would be best to employ. First, it will discuss child protection policies that your office should consider adapting. It will then describe the signs of a stressed child, and finally it will detail ways to communicate and interview a child that may help minimize this stress.

#### Child vulnerabilities

Individual casework with children, including legal representation before the decisionmaking authorities, must be based on a continuous assessment of whether the steps taken are in the best interest of the child.

Working on the child's testimony, the legal advisor might come across specific vulnerabilities that affect the child's ability to articulate his or her claim. This includes, but is not limited to trauma, development level, literacy, trust of countrymen and interpreters, trust of authorities, availability of interpreters, and the interview environment.

The extraordinary experiences refugee children have gone through may lead to an uneven development between their survival skills and emotional development. The child's mental development may affect how he or she acts in the refugee status determination interview. For example, the child's anxiety may take over in an interview and he or she may be unable to determine what information is relevant to their asylum claim.

Many refugee children have been exposed to torture or trauma. As a result, they may develop post-traumatic stress disorder (PTSD) or depression. These mental health problems can severely impede their ability to provide details of their claim, particularly in the case of accompanied, unaccompanied and separated minors. It can also cause them to be highly anxious during interviews. Children have different ways of coping with

trauma, some may be unable or unwilling to recall trauma; for others speaking to a legal advisor can be helpful for developing a coping mechanism.

## Child protection policy

As children may feature disproportionately among the vulnerable groups that you advise, you should draw up a child protection policy for your organization. The policy may aim to create a child-friendly, safe environment in your office and in the delivery of your services through attention protocols. A child protection policy need not address the specific rights of children with regard to RSD and human rights; however it should be rights-based, (i.e. informed by these provisions). Further information on the rights of refugee children can be found <u>here</u>.

A child protection policy should include:

- A Policy Statement including information about:
  - What your organization wants to say about keeping children safe.
  - Why your organization is taking these steps.
  - How (in broad terms) your organization is going to meet this responsibility.
  - Who it applies and relates to (e.g. all staff and volunteers, children up to 18 years old).
  - How your organization will put the policy into action and how it links to other relevant policies and procedures, e.g., taking photographs and videos, internet use, recruitment.
- A Code of Conduct (e.g. do's and don'ts, practical behavior guidelines).
  - Reporting Procedures (e.g. whistle blowing, confidentiality).
  - Responsible Persons (e.g. child protection focal point).

## Protection considerations when working with children

Create systems that minimize children being asked the same question many times.

- It can be useful to have one person stay with a child throughout the whole process (e.g. don't swap lawyers / decision-makers this allows trust and rapport to be maintained).
- Referral systems are important e.g. who to contact when there is a child-related issue.
- Community focal points can be useful a trained community member can keep an eye out for any child protection issues.
- Regulate donor use of information about children or donor contact with children.
- Establish policies on: privacy, photo policy, confidentiality.
- Child abuse/exploitation should be considered in your policy.
- Obligations under national laws must be adhered to.

## Signs of stress and PTSD

The RSD and asylum process can be particularly stressful for children because of the power disparity between the child and the adult decision maker. This can make the child anxious and it may cause him or her to feel that he or she must give the interviewer the "right" answer to his or her question. It can also be stressful for children to try and remember every detail of what happened to them during an interview. Often, children are unable to remember dates or other specifics about their refugee claim.

Children who are suffering from post-traumatic stress disorder often act younger than their chronological age, have trouble concentrating, and may be anxious. They may also suffer from sleeplessness and have failing short term memories. Children who have experienced traumatic events often experience flashbacks and nightmares.

As a result, children suffering from PTSD may have trouble disclosing what happened to them. Often children who have survived traumatic situations hide what happened to them. Therefore, it is important that you take time to build a rapport with the child and work to make him or her feel comfortable during all of your interactions. Children suffering from PTSD also often have a difficult time providing details for their claim during interviews.

The symptoms of PTSD tend to vary across age groups. Younger children usually exhibit very high levels of anxiety, social withdrawal, and regressive behaviors. School-aged children tend to have flashbacks, poor concentration, sleep disturbance and conduct problems. Adolescents often exhibit aggressive behavior, delinquency, nightmares, and trauma and guilt over their survival.

When you are interviewing a child, it is important to be aware of how he or she may manifest stress and identify signs of retraumatization through the refugee status determination interview process. The section below will give best practices on communication with children that can help to reduce stress.

These signs include:

- tight, closed posture (e.g., arms/legs crossed, head down);
- emotional sensitivity and low frustration tolerance (e.g., tears, irritability, aggression);
- nervous behaviors (e.g., nail biting, hair twirling, fidgeting);
- poor eye contact (e.g., looking down, eyes darting around the room);
- shaking or trembling;
- quiet, soft-spoken tone with brief or one-word responses;
- physical complaints (e.g., stomachaches, headaches, fatigue, diarrhea); and
- low self-esteem (negative, doubtful statements about self-worth, abilities).

When working with refugee children, your office should take steps to minimize the risk of retraumatization. You can minimize this risk through conscientious conduct and supporting refugee clients with professional psychological attention.

#### Communication

Good communication is critical when working with children. It also generally requires a different approach than when working with adult clients because children have different emotional and cognitive abilities than adults. Also, there is often a lot of variation between child clients depending on their age or their experiences. Child clients may be naïve and uninformed or they may seem to understand most of what you say. Placing memories in a proper context is a skill that develops over time, and is not fully developed until an individual is in her early twenties. Childhood memories are often recalled as isolated events, without being able to recall the full context. An adolescent would be able to recall a memory with the same factual accuracy as an adult, but may have less orientation to time.

As an advocate for a child, it is essential that you be honest and reliable. A large part of being honest with your client is not making promises that you might not be able to keep. Children often encounter adults who have not followed through on their commitments. Set yourself apart and show your client you are reliable. For example, if you tell your client that you will call her every week on a certain day to check in; then do it. This small gesture will demonstrate your commitment to the child and your ability to stay true to your word.

Confidentiality is also important. Be sure to explain to the child (in simple terms) that you will not be telling everyone about what they say. Do not promise that you will not tell anyone because in some cases you may be obliged to share information with other relevant people (e.g. if child is at risk). If this occurs, you should also explain to the child if and why you must share information. (e.g. 'need to know' concept – "I need to tell [person] so that they can help you and keep you safe.") Check to make sure that the child understands what you are telling him or her.

Be careful not to inadvertently reveal information to the child – e.g. an orphan/adopted child may not be aware that they are orphaned/adopted, and you should not be the one to accidentally reveal this information to them – they have a right to know at some point (e.g. when they are older) but it is not your role or decision. If there are sensitive elements to the case like this, be sure to let all relevant people in the process know so they do not inadvertently reveal such information.

Remember interpreters should also be trained on working with children if possible, and it is important to brief your interpreter before the session with the child – interpreters may also be able to help you to understand the cultural context for the child, and give you a few handy words in the child's language. Also be sure to explain the role of the interpreter to the child so they are not confused.

Do not force a child to talk or probe too much into traumatic events, but also do not stop the child talking if they wish to talk about these events to you – it may be important for them to tell you about these events. When necessary, take breaks and explain to the child why the information you are asking is important.

There are several strategies that you can employ to help communicate with your child clients more effectively: using props, social scripts, and meeting agendas.

#### Using Props

Relying exclusively on verbal communication during a meeting with a child client can limit the client's ability to fully contribute to the process. A child client, especially one experiencing PTSD symptoms that impair focus and concentration, is likely to feel frightened, overwhelmed, distracted, angry, threatened, or any combination of these emotions during a legal meeting. These strong emotions can significantly interfere with a child's ability to process and retain information.

Under these circumstances, you child client may be unable to listen and understand what you say to him or her. One way to overcome this is to use visual aids, games, tools, and other props during your meeting to diversify the way you give the client information. The goal is to use props to encourage information sharing and encourage retention of information by the client.

#### **Social Scripts**

A social script is a type of role play used to prepare a client for a particular legal situation. Social scripting involves reviewing an upcoming legal proceeding or event with the child, and helping him or her understand what he or she will be asked to say or do during the proceeding.

This type of scripting helps a child predict and anticipate what will happen in a given situation, including what others might say, how figures of authority might react, and what possible outcomes can be expected. It can help lessen a child's anxiety about the proceeding.

#### **Meeting Agendas**

Meeting agendas are a good way to help alleviate any anxiety that the child may feel about the meeting because he or she will know exactly what is going to be discussed during the meeting and how long it will take. You should review the agenda with the child at the beginning of the meeting and give him or her the opportunity to add to or change the agenda. This keeps the meeting collaborative and offers you the chance to find out about new concerns the child may have since the last meeting, or to ask questions about matters previously discussed. If the child wants to add many topics or an agenda item that you judge to be low-priority for the day, you can explain the time limitation, why you feel the other topics are essential to get through, and suggest that you add it to the agenda for your next meeting instead. You should immediately set a date for that meeting before proceeding with the agenda for that day.

Give the client a copy of the agenda so that he or she can follow along as the conversation progresses. For young children, you can still provide a copy of the agenda and guide them through it as the conversation moves from item by item. This will allow the child to track progress of the meeting.

#### How to minimize stress and anxiety during the interview process

Interviews can be highly stressful events for children, particularly if they have been interrogated before. The following steps should help you minimize the risk of retraumatizing the child through the interview process.

#### The interview space

- Create a quiet, distraction-free, and comfortable environment in which to meet the child. This will help the child feel safe, which will make him or her more likely to speak openly during the interview.
- Try not to sit across from the child during the interview because this will make the interaction seem like an interrogation. Try to sit diagonally from the child, which will send the message that you are seeking to work with him or her.
- Think about your seating arrangement and consider positioning yourself at eye level and not behind a desk and laptop.

#### Interviewing children

- Take frequent breaks to allow the child to recover from talking about emotionally exhausting experiences.
- Use child-friendly vocabulary and age-appropriate questions.
- Use simple, short words such as "show", or "tell me about" when asking children questions.
- Do not ask a lot of direct, specific questions.
- Allow the child to tell you about their experiences in an open ended manner. This will help build trust and make the child feel more comfortable speaking about their experiences.
- If you need to ask a question again, explain why you need to do so. Children often think that this is a sign that their first answer was not believed so they may be likely to embellish or change their answer if they do not understand why you are asking the question again.
- Inform the child that they have the right to say no to any questions that they do not want to answer or to request a break.

#### Body language and building trust

- Smile, be friendly in your manner.
- Remember that a child might feel pressure to answer your questions or an RSD decision-maker questions in the 'right' way.
- Be patient.

## Working with LGBT Clients and SOGI Claims

You are likely to work with LGBT clients or clients with claims based on sexual orientation and gender identity (SOGI). This section will help prepare you for that by discussing why this population is particularly vulnerable and describing some strategies to employ during interviews to help ascertain whether the client has an SOGI claim and to help these clients feel safe. It will also important discuss questions not to ask during the interview.

Seventy-six countries have laws on the books prohibiting same-sex relationships, with penalties ranging from the death penalty to several years in prison, according to the ILGA. Even in countries with no law prohibiting same-sex relationships, many LGBT people are subjected to violence and discrimination on the basis of their sexual orientation and/or gender identity. This can be a highly vulnerable population, particularly when compounded with the vulnerabilities caused by forced migration, and it is also a population that is difficult to identify, as LGBT people do not have any physical identifiers, and sometimes choose not to disclose their sexual orientation and/or gender identity.

As a result of the persecution and stigma that many LGBT refugees experience in their home countries, many of them may be reluctant to access assistance in countries of asylum. LGBT refugees may not feel safe telling authority figures why they have fled their country for fear that they will be persecuted again. It is important to be aware of this so that you are prepared to reassure the client and make him or her feel safe to express why they fled their home country.

LGBT refugees often feel highly isolated and insecure in the country to which they flee because they fear that people in the new country will not be welcoming of them. In addition, they may be isolated or ostracized from their own refugee community, because of rejection of diverging sexual preference. As a result of this isolation, LGBT refugees are at a higher risk of developing post-traumatic stress disorder. Please refer to the Populations with Mental Health Needs section to learn more about how to work with a client who has PTSD.

In many cases proving refugee status based on actual, or perceived sexual or gender identity, within a humane investigatory framework is extremely difficult. Prejudice may be entrenched within the judicial or administrative systems of countries of asylum as

much as in countries of origin. Jurisprudence may not recognize LGBT clients as a particular social group. As a result, it is particularly important that LGBT clients have a legal advisor.

#### Interviewing

There are eight relevant factors to SOGI claims that you may wish to explore with your client during an interview. Keep in mind that a negative response or a lack of response to a particular area of questioning should not necessarily be considered evidence that the person does not have a SOGI claim.

The eight relevant areas are:

Self identification of the client as LGBT	If the client does not identify as LGBT, that does not mean that he or she does not have an SOGI claim. There may be cultural reasons that he or she does not identify as LGBT.	
Self-realization or "coming out"	This relates to the person coming to terms with his or her sexual orientation or gender identity and communicating it to other.	
Differences experienced in childhood and non-conformity	Most LGBTI people realize that they are different long before they realize who they are sexually attracted to.	
When appropriate, gender transition	Undue weight should not be placed on this factor, but if the client has taken steps to transition to another gender it may be useful to discuss that.	
Family relationships, including whether the client is married to a person of another gender	If a client is married or was married to a person of another gender that should not be seen as an indication that he or she has no SOGI claim. If appropriate, ask questions about the circumstances surrounding the marriage.	
Romantic and Sexual Relationships	Approach this line of questioning carefully and focus more on relationships than sexual activity. If the client has not had any same sex relationships, that is not necessarily a sign that he or she does not have a SOGI claim.	

Community relationships	It may be useful to discuss the client's knowledge of LGBT groups, contacts, and activities in his or her country of origin.	
	Do not assume that the client should have knowledge of these groups.	
Religion	It may be fruitful to explore how the person views the relationship between his or her religion and SOGI.	

#### Difference, stigma, shame, and harm approach

LGBT clients may be reluctant to talk about their past experiences for fear that they will be harmed again. They may also find it difficult to talk about something as private as sexual orientation or gender identity. As a result, it may be difficult to get your client to open up about his or her sexual orientation. One strategy that you could employ is the DSSH model, which S. Chelvan developed. It focuses on difference, stigma, shame, and harm in order to ascertain the refugees' story. Below are examples of different types of questions that you could ask, based on this model, to help your client open up about his or her SOGI claim.

#### Difference

- Can you tell me how you describe your sexual orientation or gender identity?
- Do you know how long you have felt this way about your sexual orientation or gender identity?
- · How has this impacted the way you live your life?
- How are your experiences different from those of your friends, family members, and community?

#### Stigma and shame

- Have you told anyone about your sexual orientation or gender identity? How did they react?
- If you haven't told anyone, why is that?
- Do you think other people know or have made assumptions about your sexual orientation or gender identity? If so, what was their reaction?
- Can you recall any situations in which you felt stigmatized by your community?

#### Harm

- What makes you think you have been persecuted or are likely to be persecuted based on your sexual orientation or gender identity?
- What steps have you taken to keep yourself safe?
- Why did you leave your country or origin?
- Why do you think it is unsafe for you to return?

#### In the interview space

It is also important that you create an interview space that feels safe and nonjudgmental. The following are some suggestions of how to make your client feel more comfortable when you are interviewing him or her.

#### Creating a safe space

- Allow the client to choose whether he or she would like a friend or family member present.
- Some people may feel more comfortable recounting traumatic events if there is a trusted person with them.
- Others, however, may not feel comfortable speaking about their sexual identity in front of their family members or friends.
- As a result, it is important that you identify each member of a case separately to see if he or she has a refugee claim that is different from the main applicant.
- Make sure that you chose a translator who is sensitive to LGBT language, and who is open minded enough to gain the client's trust.

#### Terminology

- Be mindful that your client may not be familiar with the language or terminology to express his or her sexual orientation. Be prepared to use several different words or phrases to describe what you are asking about.
- Use the same language that the client did to describe him or herself, i.e. if the client described himself as gay, use that word rather than homosexual.
- It may be the case that your client is only familiar with terms that are considered slur, because his sexual or gender identity was always approached from a negative point of view. As legal advisor you can explain the difference between words and connotations, and equip him with words to describe his identity.
- For transgendered clients, ask the person which pronoun he or she would like you to use.

#### Interview proceedings

- Provide the client with an overview of how the interview will be conducted, the areas of questioning, and the right of the client to take breaks as necessary.
- Remind the client that the interview and anything else he or she tells you is confidential.
- Be particularly sensitive when asking about past sexual assaults. Your client may feel ashamed of what happened and as a result it could be very difficult for him or her to discuss the event.
- Begin by asking easy questions and gradually ease into asking more sensitive ones.
- If you have to ask a question that is intrusive about the person's sexual history, explain to your client why it is necessary.
- It may make sense to use the same interpreter throughout the consultations with the client, and with all LGBT clients.

#### Assumptions and prejudice

Do not assume that being a sexual minority is a lifestyle or a choice.

Keep in mind that some people who are fleeing from violence based on a same-sex romantic or sexual partner do not consider themselves to be LGBT. A sexual or romantic encounter does not equal an identity as an LGBT person, and in some countries and contexts there is no concept of an LGBT identity. They may still be stigmatized and rejected by their community for it, as an imputed sexual identity or because the encounter is considered disgraceful.

#### Questions not to ask

- Do not ask questions based on stereotypes.
- Do not ask about the client's knowledge of gay "icons" like Madonna.
- Do not ask questions about the person's sexual practices.
- Do not request or review any evidence depicting sexual activities like videos or photographs of the person engaged in sexual conduct.
- Do not request or review any documentation of 'tests' used to demonstrate the client's sexuality like phallometric testing.

## Populations with Trauma Related Mental Health Needs

You will likely have clients who suffer from trauma, depression or other psychological issues that stem from post-traumatic stress (PTSD). Refugees have generally suffered or feared persecution or widespread violence. These experiences often affect one's psychological well-being, even long after the fact. Rates of depression and PTSD vary

widely among different refugee populations. In some populations, the rates of PTSD and depression can be as high as 86% and 31%, respectively.

This section will discuss how to help clients who are suffering from trauma related mental health issues. It will first discuss how these mental health issues may manifest themselves. Then, it will describe how these issues can impact the person's ability to participate in an asylum interview. Finally, it will discuss different strategies that you can employ in your work to create a supportive environment for these clients and refer them to professional mental health services.

# Manifestations of post-traumatic stress and other trauma related mental health issues

Refugees often suffer from mental health issues such as post-traumatic stress, depression and anxiety as a result of the trauma that they experienced in their home country. This condition may manifest itself in a variety of ways such as depression, panic attacks or disorders, phobias, suspiciousness, distrust, detachment, feeling of isolation or alienation, showing inappropriate emotion, feelings of guilt, shame, or helplessness, anger or thoughts of suicide.

People may also experience confusion, loss of concentration, loss of memory and mental dullness. This can make it more difficult for them to articulate their claims.

#### How survivors of trauma may react to interview questions

The questioning during interviews is usually very emotional for the person and survivors often experience the physical pain, sounds and smells when they retell their story. Reliving this trauma will likely impact the person's ability to tell his or her story. For example, the person may avoid discussing what happened so that he or she will not feel the pain associated with those events again. The person may also have trouble remembering what happened. In these instances, the person may display defensive techniques to avoid remembering such as denying that the events occurred, minimizing what happened, blocking their memory of the event or disassociation. The person may also experience confusion or have distorted memories, which will be manifested as mixing up names or dates or being unable to follow questions.

The person may respond in unpredictable ways to questions. He or she may lose composure because the interview format could remind him or her of being interrogated. The person may exhibit many different emotions throughout the interview such as crying, laughing or total emotional detachment. A survivor may also not respond to questions even if he or she knows the answers because he or she does not wish to relive the memories.

Finally, the person may distrust the interviewer and therefore avoid revealing certain information. Someone who has survived trauma, and particularly torture, may distrust people in positions of authority. As a result, he or she may be more likely to withhold information if he or she does not see you as an equal.

It is important to be aware of the reactions that your clients may have to questions about their past because you may have to speak with them several times before they feel comfortable telling you their entire story. Moreover, survivors of trauma can be retraumatized through the RSD process and through interviews about their past because it forces them to focus on traumatic experiences.

As a result, your office should take steps to minimize the risk of retraumatization when preparing a client for an interview, appeal or any other stage of the RSD process. You can minimize this risk through conscientious conduct and supporting refugee clients with professional psychological attention.

## Creating a supportive and healthy environment for your clients

There are many techniques that can be used in daily interactions with your clients to promote their mental health and create a supportive environment in which to resolve their legal issues.

#### Provide space to talk

- Listen non-judgmentally
- Do not force people to talk
- If they want to talk, listen to what they want to share with you
- If they do not want to talk, empathize
- Let the person know how well they are coping in such a difficult situation etc.
- Do not give simple reassurances to people such as "it is God's will" or "look at how others have suffered"
- Do not say that you know what they are going through
- Be sensitive about what you say and what kind of language you use
- Use words that empower people rather than emphasize helplessness, i.e. use survivor rather than victim

#### Your language and body language

- Be empathetic
- Do not tell the person to calm down or relax
- Pay attention to the words that you use
- Questions that you can ask yourself to think in an empathetic way
  - What would I be feeling if I had undergone the same experiences in the past? How would it impact me?

- What is the person telling me in their speech and nonverbal behavior about their feelings?
- Convey compassion and caring:
  - Explain that the person's reactions are normal for what they have experienced
  - Affirm that their responses are the same as other people would have in their situations.
- Say things like:
  - I would like to help
  - How can I help?
  - I would like to understand
- Do not say:
  - Don't worry, everything will be okay
  - I understand what happened to you
  - Forget about it
  - Don't think about it
  - It could have been worse
  - You are really lucky
- Use simple language

#### **Resources and needs**

- Provide accurate information about resources and have this information ready
- Assess people's practical needs and link them to local resources that can provide practical help when possible

#### How to minimize stress and anxiety when conducting an interview

The interview process can be traumatizing for refugees. Here are some steps that you can take to minimize the person's stress when you interview him or her.

- Waiting for an appointment may trigger anxiety; tell the person how long he or she will have to wait.
- Make sure that the waiting room is welcoming, comfortable, and child-friendly.
- Most refugees will feel anxious and uncomfortable during the interview. Explain who you are, your role, how the interview will work, try to avoid any surprises. This will help give the interviewee a sense of control.
- Provide a warm and welcoming atmosphere.
- Speak slowly and clearly.
- Speak in a calm and friendly tone of voice.
- Make eye contact and smile, as appropriate.
- Set a gradual pace; start with neutral topics.
- Questions should be asked gently.
- Questions should be tactful, but direct.

- Acknowledge that speaking about some of these issues may be difficult to talk about.
- When appropriate, offer the person a break or a glass of water.
- At the end of the interview, summarize what was said and explain what will happen next.
- Few refugees understand the RSD process and so most find it very stressful.
- Repeat the information about the process many times.
- Repeat what the next steps are many times.
- Remain calm and patient.

#### Providing professional psychological support

Depending on your office's resources and caseload, it may make sense to employ a mental health professional in your office to provide support and counseling to your clients who are suffering from trauma. If you are unable to employ mental health professionals, you should build relationships with those professionals who operate locally. They may be willing to offer your clients counseling or referrals on a pro-bono basis. If qualified professionals are unavailable, you could consider approaching final-year clinical psychology students to see if they could help your clients.

When you refer a client to counseling, it is important that you gain permission from him or her first. You are still bound by the <u>duty of confidentiality</u> even when you are seeking to connect the client with mental health services.

## Working with Refugees who Threaten Harm

A refugee's history of witnessing violence and trauma may affect his or her ability to articulate his or her claim and also increase the person's capacity for or consideration of suicide. Greater exposure to violence may make a refugee more likely to consider self-harm.

Additional factors that may make refugees more likely to self-harm are feeling culturally or linguistically isolated in a new country, the breakdown of community and traditional support networks, unrealistic expectations in the country of asylum, and prospects in the asylum system in the country of refuge, or decline of refugee status. Furthermore, shame or experiences that are against cultural beliefs may be so ingrained in people that they see suicide as a solution to alleviate themselves or their family of stigma.

These factors not only contribute to an increased risk of suicide, but also to rising tensions between family members, which can result in actual or threatened domestic violence.

A client's threats to harm him or herself or others may come up at any point during a consultation. Although this situation may not come up often, it is important that case

workers know how to deal with such a situation and assess the acuteness and seriousness of the threat.

This section will help you identify signs that a client may be considering suicide, help you asses how serious that person's risk of suicide is, and then provide some strategies that you can use to assist a client who may be considering suicide or who has threatened to self harm or harm others.

#### Signs of suicide

Signs that most directly warn of suicide:

- Threatening to hurt or kill oneself
- Looking for ways to kill oneself
- Talking or writing about death, dying, or suicide
- Making plans or preparations for a serious suicide attempt
- Giving away possessions

Other warning signs include depression coupled with:

- Insomnia
- Intense anxiety, usually exhibited as psychic
- Pain or internal tension such as panic attacks
- Feeling desperate or trapped
- Feeling hopeless or like there is no reason to live
- Rage or anger

The following behaviors can also serve as warning signs, particularly when the person does not normally behave in this manner:

- Acting reckless or engaging in risky activities
- Engaging in violent or self-destructive behavior
- Increased alcohol or drug use
- Withdrawing from family or friends
- Has a sudden interest or disinterest in religion

#### Identifying the seriousness of the threat

High to Severe risk	Moderate Risk	Low Risk
Has a specific plan that is lethal.	Has some suicidal thoughts.	Has some suicidal thoughts.

Has the means necessary to carry out the suicide. Stocking up on medication Obtaining weapons	Does not have a concrete plan to commit suicide.	Has no concrete plan to commit suicide.
Has a history of attempting suicide	May still be deciding whether or not he or she wants to live.	Has no past history of suicide attempts.
Has a specific timeframe in which he or she plans to commit suicide.	Is unsure of when he or she will commit suicide.	Does not have a timeframe in which he or she would commit suicide.
Has told others that he or she intends to commit suicide.	Exhibits some level of intent to self-harm, but does not show a firm conviction or commitment to doing it.	States that he or she will not commit suicide.
<ul> <li>The following signs also indicate that a person has a high risk of committing suicide:</li> <li>Stating that he or she will commit suicide.</li> <li>Planning or preparing for death.</li> <li>Giving away possessions.</li> <li>Making elaborate goodbyes.</li> </ul>		Is not sure how he or she would commit suicide and does not have the means to do it.

Source: "Suicide Precaution: How to Identify When Levels of Sadness or Depression are a Concern." Gulf Coast Jewish Family and Community Services, https://www.youtube.com/watch?v=K6W8QUXP5tU.

Since your organization may not have the in-house capacity to provide professional psychosocial assistance to severely distressed or suicidal clients, it is recommended

that your organization establishes a relationship with mental health professionals that cater to refugees and accept referrals or are able to provide assistance during incidents.

#### Question-persuade-refer

If one of your clients is exhibiting signs that he or she may be considering suicide, you should address that by using the question-persuade-refer strategy which was developed by the <u>Refugee Health Technical Assistance Center</u>. The following guidelines are merely suggestions. In all cases, professional help should be sought.

#### Question

- You need to ask a client who is showing signs of suicide if he or she is considering it.
- If the person does not want to talk about it, ask about their intentions again at a later meeting.
- Talk to the person in a private setting and ask if he or she would like to have any friends or relatives present.
- Ask if the person would like to have an interpreter present for the discussion.
- Make sure that you give yourself plenty of time to have this conversation. It could take a long time because of language or cultural barriers.
- You could phrase the question indirectly by asking the person if he or she has been unhappy recently or directly by stating that you know he or she has been going through a hard time recently, and you're wondering if he or she is considering suicide.

#### Persuade

- Once you have established that the person is suicidal, let the client know that you care about him or her; that he or she is not alone; and that suicidal feelings are usually temporary.
- Give the person your full attention and do not interrupt him or her.
- Suggest that there are better ways to solve his or her problems than suicide.
- Try to convince the person that he or she should seek help to deal with his or her suicidal thoughts.

## Refer

- Try to get the person to commit to accepting help.
- Connect the person to psychologists and other mental health resources.
- Stay in touch with the client and continue to let them know that you care about his or her well-being.
- Ideally, identify a trusted friend or family member who can accompany the person though the referral process. It may be overwhelming for the person to do it alone.

## How to handle refugees who make threats

Below are some examples of the policies that Asylum Access has implemented to handle these kinds of situations.

If your client threatens suicide, or has a history of suicide:

- Take the threat seriously.
- Respond to distressed clients immediately. If necessary, postpone other appointments to make time to attend to the distressed client.
- For actively, suicidal clients, try to calm the person using a soothing, re-assuring, and confident tone.
- Do not leave an actively suicidal client alone. Accompany him or her to a safe and supervised space.
- Ask the client for permission to involve a mental health professional and then ask a counselor to assess how serious the threat of suicide is.
- Establish whether the client is currently being seen by a mental health professional.
- If the person is seeing a doctor, seek consent from the client to consult with that practitioner.
- If the person is not seeing someone, refer him or her to mental health services.
- Per the <u>Nairobi Code</u>, you may reveal minimal information about the client to a doctor to prevent the client from harming him or herself.
- You should also check to see if your jurisdiction has different rules on reporting threats of suicide.

When a client threatens to hurt another person:

- Take the threat seriously.
- Ask for the client's permission to involve a mental health professional and then ask a counselor to assess the client to see how serious the threat is.
- Establish whether the client is currently being seen by a mental health professional.
- If the person is seeing a doctor, seek consent from the client to consult with that practitioner.
- If the person is not seeing someone, refer him or her to mental health services.
- Per the <u>Nairobi Code</u>, you may reveal minimal information about the client to a doctor to prevent the client from harming others.
- You should also check to see if your jurisdiction has different rules on reporting threats to others.

## Monitoring and Evaluation

Monitoring and evaluating your legal aid program is important and it will help you understand the quantity and quality of your casework. It will also help increase your

awareness of the cost required for each case, which will allow your organization to improve budgeting. Finally, legal aid program monitoring promotes case follow up. As your caseload grows, following up on cases can pose increasing challenges. Under the <u>Nairobi Code</u>, legal aid organizations have an ethical obligation to see cases through to completion. Monitoring and evaluating your work helps ensure that you fulfill that obligation.

This section provides an overview of monitoring and evaluation of legal services, guidelines on how to establish a system to monitor and evaluate legal services, as well as tools and mechanisms to facilitate this process. The How to Monitor and Evaluate Legal Aid module explains the steps involved in setting metrics and goals for monitoring and evaluating. It then describes several different ways to evaluate your progress towards those goals.

The Monitoring Tools and Mechanisms section has a list of tools and resources that may help you as you create and undertake a monitoring and evaluating plan.

The Guiding Practices in Legal Aid Monitoring and Evaluation section describes some best practices that you should follow when you monitor your legal aid program.

For a more in-depth overview of Monitoring and Evaluation, review <u>Monitoring and</u> <u>Evaluation: Best Practices</u>.

## How To Monitor and Evaluate Legal Aid

#### Getting started

Remember: All monitoring and evaluation efforts will require that you have made a plan and established clear goals. It is unwise to begin measuring data without understanding how or when you'll use the information. There is one exception to this: if you need a baseline to inform how you establish a goal. For example, you may want to collect your success rates for a year before you are able to establish a target success rate. This will help you to set a realistic goal.

## Structure a monitoring and evaluation plan for refugee legal aid

#### Establishing Common Goals

This section provides an in-depth discussion of common goals among refugee rights organizations, methods of monitoring and evaluating these goals, as well as complications that may arise.

- (1) Establish your goals.
- (2) Establish your indicators for success.
- (3) Create your monitoring mechanisms.
- (4) Monitor your progress on a regular basis.
- (5) Evaluate data and re-strategize as needed.

#### GOAL ONE: # Informed Refugees

X number of refugee men, women, boys, and girls are better able to make informed decisions about their lives because they received quality information, advice, or representation through our legal services.

**About this goal:** This goal does not focus on any specific legal service. This goal is about the inherent value in refugee legal aid, regardless of whether or not a case has a successful outcome; it assumes that legal aid in and of itself will provide refugees with the information they need to better make decisions about their lives. For more information on conceptualizing the inherent value of legal aid, please see the <u>Namati</u> report on the success of legal aid organizations worldwide in achieving greater access to refugee rights through legal empowerment strategies.

What monitoring mechanisms can be used?

#### (1) Measure the number of clients reached

You will need to configure a system to collect data about the number of clients served. Ideally, this information will be input to a database that allows you to disaggregate by sex, gender, and age. Being able to look at each subset of the population will be very useful later in the evaluation process to teach you about who you're serving, and to provide insight into how to improve services to specifically reach underserved populations.

Additionally, think about including client dependents in your measure of the number of clients served. Typically, legal aid offices consider immediate family members — those who will directly benefit from the information the client is receiving — as also served by the legal service. Including dependents in your measurements will give you a more accurate understanding of the true number of people reached by your legal aid program.

To better understand your workload, look at the total number of services rendered, in addition to looking at the total number of clients served. Legal services organizations often provide multiple services to a single family. Measuring by the number of services, separately from the number of clients, will give legal aid managers better insight into the actual workload.

#### (2) Measure the quality of legal services provided

There are many ways to think about what it means to provide quality legal services. Each organization may find different monitoring mechanisms beneficial.

What are some methods of measuring quality of services?

Review Quality in Legal Aid.

1. Independent Review

An experienced practitioner from outside the organization reviews a case brief. It may be preferable to utilize this method less frequently, perhaps once per year. Issues of confidentiality may make this a less preferred method.

2. Second Person Review

A supervisor or a peer reviews a colleague's files.

This significantly improves the quality of work. If the organization's workload grows to a point where it is impossible for a supervisor to review every file, consider permitting "experienced" peers to conduct reviews. During periods where workload grows fast, quality is often put at risk. If peer reviews are undesirable or impossible, consider weekly case reviews, where newly opened cases are discussed among the legal team.

3. Client Satisfaction

Learn from clientele whether they believe legal aid services have been effective, and areas that could use improvement, through surveys, focus groups, complaint/suggestion boxes, or other feedback mechanisms.

This is an imperfect measure of quality. For example, you may provide accurate legal information but because the client was unhappy with the outcome, client satisfaction may appear unduly low. Nevertheless, client feedback can provide useful insight into how to adjust services.

Additional points of measurement that should form part of all quality measurements include:

#### 4. Gender and age sensitivity; Sensitivity to other vulnerable populations

Gender and age should be considered in all quality measurements. Assess whether the organization is successfully reaching different subsets of the population; assess

men/women/boys/girls separately; assess the organization's impact in subsets of the population with vulnerable characteristics; for example, torture survivors; people with disabilities; elderly; female head of households; minors.

5. Adherence to Ethical Standards

Strict adherence to the Nairobi Code should be monitored.

6. Adherence to the Legal Services Agreement

Strict adherence to the Legal Services Agreement should be monitored.

Why should numbers and quality be considered together?

This goal is about getting information to refugees that will help them to make informed decisions about their lives. While you should concern yourself with educating the highest number of refugees, this absolutely cannot be at the expense of quality. Link to PDF describing Project Management Triangle

GOAL TWO: # Individuals Accessing Refugee Status

Through legal services, an increased number of refugees are able to access refugee status so that they may enjoy their full range of rights under international law.

**About this goal:** This is an example of a substantive goal with a specific end goal. Here, legal aid is utilized to help an increased number of refugees to access legal status. It makes the assumption that legal status will assist refugees in accessing their rights. However, this is not always accurate in all contexts. In some cases, refugees that obtain status are concurrently safeguarded against deportation and detention, and granted access to the court system and to work rights. In other cases, refugees are not granted full Convention rights upon gaining status. Be cautious about setting such a goal before testing whether this is true in practice in your country. Perhaps your target population is routinely rejected, or presents a particular challenge to decisionmakers, which will not reflect the quality of your legal services but rather the situation in your region.

#### What monitoring mechanisms can be used?

#### (1) Case Outcomes

Compare case outcomes (success rates) at the legal aid office to the national rate of success. The best way to find national success rates is through the <u>UNHCR Global</u> <u>Trends Report</u> (see See Tab 8), which is released annually. Note that this comparison is an imperfect measurement of impact, because there is no way to identify the strength or weakness of the claims considered in arriving at that baseline. It nonetheless provides information that can teach you something about your work.

This information should be tracked in your <u>database</u>, or through some other collection mechanism (a spreadsheet, for example), with client information updated regularly. To track progress in each case, you should create a clear and agreed-upon <u>AAT Case</u> <u>Guide</u>. A **case guide** is a document used to define success by case type (RSD admissibility, RSD eligibility, wage withholding, etc.). The case guide will define the way in which each case outcome should be monitored.

There are four general categories of case outcomes:

- 1. Successful
- 2. Unsuccessful
- 3. Not applicable: A case outcome is categorized as not applicable if, for example, a client decided to withdraw her case, or perhaps because the legal aid office lost contact with the client.
- 4. Other Favorable Outcome: A case outcome is categorized as other favorable outcome if the case was unsuccessful in one respect, but successful in some other respect. For example, in a land dispute claim, if a client only gets a portion of their land, this case could be categorized as other favorable outcome. The purpose for this category is to be able to organize cases where there is not a clear successful or unsuccessful outcome. For each case that falls into this category, it is essential that you clearly define what makes that case categorized as other favorable outcome.

It may be important to point out to donors how your organization conducts follow up, to demonstrate that you have an established procedure in place that protects quality. You should feel comfortable explaining that case outcomes are imperfect measurements of success, and are better served to inform strategies than to gauge impact.

#### (2) Monitoring mechanisms for RSD case outcomes

It is helpful to track various RSD instances separately. Once a client has moved from first instance (RSD admissibility) to RSD eligibility, open a new case and track it separately. If your client is not granted status and you decide to appeal, open a new

case and track that separately. This mechanism is used because clients arrive at legal aid offices at different stages in the RSD process.

To efficiently track resources, it is important to understand at which stage in the RSD process the client solicited your services. Additionally, utilizing this mechanism will help you to understand the national process — whether admissibility is plenarily granted but eligibility is not, or vice versa. This will help your organization to understand where to spend legal aid resources, to focus legal aid efforts on the processes that require increased intervention. Monitoring will help you to learn these lessons and therefore inform your strategy.

Perhaps this will demonstrate that your organization's rate of success is lower than the national average. This may indicate poor quality of legal aid. This demonstrates the importance of clear quality measurements — to ensure that quality is protected. Alternatively, it could indicate that your client population poses a particular challenge to decision makers and are thus routinely rejected. Perhaps you focused on this demographic or population precisely because of these challenges. Monitoring quality, case outcomes, and documenting external developments will help you to understand the root cause of challenges unique to your target population.

Challenges presented by this monitoring mechanism

Comparative statistics rarely categorize cases in the same way that legal aid organizations do. For example, first instance and appeals are combined, complicating an organization's ability to make apt comparisons. Additionally, the Global Trends Report release dates are delayed, which means this comparison can only be analyzed in hindsight.

Case outcome monitoring requires clear follow-up processes. In many contexts, RSD decision makers release the case outcome directly to the refugee and it can be difficult to contact refugees after this point. Continued efforts to contact refugees can be resource intensive. However, such contact is required under the legal agreement. To mitigate this, be clear upon signing the legal agreement that the client has an obligation to contact you. Set clear guidelines within your organization to standardize the maximum number of client contact attempts before closing a case without a known outcome, in order to preserve resources.

#### GOAL THREE: # Refugees Accessing Work Opportunities Safely

## Through legal services, refugees are increasingly able to access work opportunities and are increasingly protected from workplace violations.

**About this goal:** Similar to Goal Two, this is an example of a substantive aim with a specific end goal pursued through legal services. This is actually a sequential goal — combined in this section for organizational purposes: increased access to work and increased protection in the workplace. The first part of this goal — increased access to work opportunities — could be achieved as an effect of a successful RSD case, or through alternative means of achieving legal work permits (such as the peasant permit in Tanzania). The second portion of this goal — protection from workplace violations — is typically achieved by addressing wage withholding, workplace discrimination and sexual abuse in the workplace, among other forms of exploitation in the workplace. This goal should be conceptualized temporally — the first goal is centered on gaining access, and the second becomes a focus after this first portion has been secured, to ensure that work is dignified and legal.

Mechanisms for monitoring increased access to refugee work rights

Similar caveats and imperfect measurement capabilities present in Goal Two are present in this goal as well — nature of caseload, or of the political situation — which may affect your success rate. To mitigate this, you should implement other monitoring mechanisms to ensure quality of services before proceeding to evaluate the impact of contextual caveats.

To properly measure the impact of your organization's work to increase refugees' access to work rights, you will need to collect certain data from clients when you open the case, updating this information in your database over time. For example, upon opening the client's case, you will find it helpful to ask a set of questions, i.e. What is your job? What is your salary? Then ask again in six months.

Without an available national average baseline, this goal must be measured by improvements in your own ability to address work rights issues. You may decide to gather information for a full year, or perhaps even two to three years for big picture goals, before you can formulate a meaningful baseline to be used to evaluate your impact.

#### Evaluation of Legal Aid

#### Reporting

To begin evaluating the data your organization has been monitoring, each quarter your organization should produce a report, with the fourth quarter report being more robust than the other three.

Quarterly reports can be used to stop and reflect, reevaluate your goals, strategy, and monitoring mechanisms, based on the rate of success in improvement from your initial baseline. Incorporating key staff (including program leaders, finance staff, operations staff, et al.) in this process is essential to effective intra-organization communication, to include those who support legal services to be informed of your organization's priorities.

#### Match the evaluation with the goal

The evaluation process will be different for each type of goal. For example, for a substantive goal about access to work opportunities, you may want to consider the client's work potential (in terms of salary, ability to obtain employment, discrimination, etc.); account for age, race, etc. when evaluating data, to account for possible factors outside of the quality of legal services provided that may affect one's ability to obtain employment. You may find it useful to include a brief explanation of notable external developments affecting your success rates, independent of your organization's ability to provide quality services.

#### Formal impact evaluation

In evaluating your impact of legal services, be mindful to identify big picture research questions that address the *global impact* of refugee legal aid. These questions are resource-intensive and difficult to internally analyze. These are not questions for lawyers or VLAs to address, but rather for external parties — academic or research institutions — with whom you collaborate to increase the transferability of your impact.

Your monitoring mechanisms will play a role in your ability to determine a larger, global impact your organization may be having. Consider asking clients in follow up meetings questions such as, "Did you gain any additional rights as a result of gaining status?" or "Have you informed other members of refugee community about work rights after meeting with us?"

You can conceptualize the formal impact of refugee legal aid in a few ways — the formal impact will be different in different contexts — but underpinning these hypotheses are the following.

# 1. Refugee legal aid makes it more likely that refugees will make wise decisions about their lives as a result of their access to valuable information about their rights.

This is the most vague, but also the most widely accepted.

## 2. Refugee legal aid increases the likelihood that refugees will be able to integrate into their new societies socially and/or economically.

There are several assumptions present here that could, and should, be explored. For example, it is widely believed that refugee legal aid will lead to status for clients, which will lead to integration. However, it must be explored whether status itself should be the starting point for accessing rights.

It has not yet been studied whether having status leads to integration. Current literature does show that refugee legal aid increases the likelihood that a refugee will gain status but it's unclear whether this status leads to an increased likelihood of economic integration. Of course, this could be hindered by other national processes, e.g. encampment policies, and any exploration would have to hold constant for age, duration, education level, and nationality, to isolate what role legal aid has played in helping refugees to access economic opportunity.

## 3. Refugee legal aid increases the likelihood that refugees will locate a durable solution in a shorter time frame.

These questions should form part of wider discussions that refugee legal aid providers should be having in conjunction with each other, to be addressed through partnerships with academic institutions.

## Monitoring Tools and Mechanisms

While the preceding section provides an in-depth overview of setting up a system of monitoring and evaluation of goals, this section is intended to be a simple go-to section to quickly retrieve relevant tools and mechanisms introduced above.

Use the <u>Monitor and Evaluate Impact</u> section (a sub-section of the Operate and Manage section) to gain a deeper understanding of the importance of monitoring and evaluating your organization's impact.

The <u>Strategic Planning</u> should be utilized to understand how Monitoring and Evaluation fit into the broader plan of establishing and running a refugee legal aid organization. See the section <u>How To Monitor and Evaluate Legal Aid</u> for a step-by-step guide to structuring a monitoring and evaluation plan for refugee legal aid.

A <u>Case Guide</u> is a document used to *define success by case type* (RSD admissibility, RSD eligibility, wage withholding, etc.). The case guide will define the way in which each case outcome should be monitored. See Goal Two in the <u>Establishing Common</u> <u>Goals</u> section on this section to understand the four categories of case outcomes to be used with case guides.

A <u>Case Follow-up Procedure</u> defines the different types of follow up that can be done in a case, and when such a follow up should be scheduled.

To understand methods of ensuring quality legal services, please review <u>Quality in</u> <u>Legal Aid</u>. You may find the following documents useful to guide you in establishing mechanisms for ensuring quality:

- A <u>Client Satisfaction Survey</u> should be distributed to every client.
- Periodic focus group surveys can be utilized to understand specific organizational strengths and shortcomings.
  - o Improving Our Services
  - Script-Legal Services Focus Group
  - Focus Group Evaluation
- <u>Legal Services Agreement</u>: This document can be used to formalize the agreement for your organization to render legal services to a client.
- Use the <u>Nairobi Code</u> to ensure your team's compliance with the international code of legal ethics.

## Guiding practices in legal aid monitoring and evaluation

The <u>Legal Services Agreement</u> should stipulate your obligations towards the client as well as the clients obligations towards the legal aid provider. Adherence to these obligations is important to monitor the quality of the service you are providing.

- It is a practice of due diligence under the Nairobi Code for legal advisors to track case outcomes.
- Schedule monitoring date and actions (phone call / other methods / back-up plan, based on decisions timeframe).
- Set clear expectations of when it's time to close a case without an outcome. Sometimes this is necessary to preserve resources.
- The <u>Case Guide</u> could include "not applicable" as an outcome, to signal you have lost track of someone and do not know the outcome. This may, however, pose challenges with donors who want to know the impact of services.
- Point out how you conduct follow-up: this demonstrates there is a procedure in place that protects quality.
- Explain practical difficulties: Donors must understand not all cases can be followed up – a large representative sample is OK.
- Some case outcomes are imperfect measurements of success that better serve to inform strategies rather than gauge impact.

## **Case Management**

Managing cases is not only a job for legal services managers: every legal advocate on your team should be proficient in all aspects of case management.

This section will help you and your staff become familiar with the various aspects of case management. The Case Procedures module will describe all of the different steps that your organization may take with a client. It begins by detailing the intake process, gives some suggestions on how to decide whether to take a case, and provides guidance on what to do if you decide not to take a client. Each section includes best practices to develop forms or protocols, as well as downloadable templates for case management procedures. It then goes on to describe how to open a case, how to close a case once you are finished with it, and how to make referrals.

The RSD Procedures part of this section outlines the procedural steps and possible courses of action to take when working on a Refugee Status Determination (RSD) case. It also describes other types of legal status that a refugee may want to try to obtain and how best to advise a client who is seeking other types of status.

The Access to Rights Procedures section will describe why refugees might want to try to gain recognition other than refugee status. It will then provide some tools that your organization can use to determine whether you can help your client try to gain another status. The Mobile Legal Clinics section will explain when it might be appropriate for your organization to run a mobile legal clinic. It also details how to schedule and run a mobile legal clinic.

## **Case Procedures**

This part of the Toolkit will help you understand the different actions that you can take for a case. It applies to any type of case that you may work on such as a refugee status determination case. It goes through each stage of interaction with your client and explains what you should do.

The Legal Services Documents section lists the most important documents that you should use with each of your clients.

The Intake section details all aspects of this process. It begins with describing how to explain your organization's role and learn about your potential client. Then, it discusses some considerations to keep in mind when you decide whether to take the case. Finally, it explains what to do if you decide not to take on a case and provides resources that you can give to that person.

The Case Action section discusses the various actions that you can take once you decide to work on a case. It begins by describing the necessary steps to go through to take on a case, and how to ensure that the new client is involved in strategic litigation if applicable. Then, it discusses different legal aid strategies that you can use to advocate for your client. Finally, this section describes how to conduct case follow-up and when to assess your client for psychological trauma.

The Close a Case section details some case closure protocols that you could implement in your office and it describes some issues to consider as you decide how to monitor the outcome of your cases.

The Referrals section discusses the importance of making non-legal referrals. It describes some issues to consider when deciding whether you will help your clients with resettlement petitions or other referrals. It also discusses how to find psychological support for your clients. Finally, it details how to build a referral directory, and how to create and use referral agreements.

To complete this training, use each of the documents provided in the various sections beginning with Legal Services Documents (next). After reading all of these sections, you should have a basic understanding of all of the different stages that a case can go through.

## Legal Services Documents

The following is a list of important legal services documents.

- Legal Services Agreement (also known as a Retainer): A contract between the legal aid organization, the legal advisor or lawyer ("advocate") and the client(s) that set ups the terms and responsibilities of the legal relationship between both parties.
- Dual Representation Agreement: An agreement signed by two or more clients and an lawyer who acknowledge that they have understood the potential risk of conflict of interests as explained in the Nairobi Code and throughout legal ethics standards. Conflicts of interests occur when the interests of two current or previous clients are adverse to one another.
- **Case Closing Letter**: A Closing Letter is a document issued to the client that explains the terms by which Asylum Access (or your organization) closes or terminates the client-lawyer relationship.
- **Document Release Form or Client Third Party Disclosure Form**: This document authorizes Asylum Access (or your organization) to discuss with third parties confidential details relevant to the client's case.

## Intake

This section details the process of intake, including how you communicate important information about your organization and your role, how you collect client information, and how you screen for credibility and applicability (see following sections).

Before you begin these processes, review the following preparatory steps:

- Step 1: Ensure you have all of your legal services documents ready
- Step 2: Have an intake check list ready so you don't forget anything
- Step 3: Make sure someone is always available to greet clients as they come in through the door. You may want to create a rotation schedule for you staff.
- Step 4: Issue any clients waiting for intake with a reception questionnaire in their language that will help you and your legal advocates understand the needs of the particular client. Be mindful that some clients may not know how to read or write. A case worker should take these clients to a private space where they can go through the Reception Questionnaire with the client and an interpreter.

Your client intake form or reception questionnaire might include the following elements:

- Date / Hour
- First Name / Last Name
- Telephone number
- Date of Birth
- Number of dependents (children)
- Local Address
- Country of Origin
- Department
- City
- Which can we help you with today? Mark one of our legal services:
  - Refugee Visa □ Education □ Work □ Health □ Living □
  - Bank Account □ Detention □ Civil Registration □ Domestic Violence □
- Is this your first time in our office? YES NO
- Are you applying to be a refugee? YES NO
- Are you a recognized refugee? YES NO
- Are you in any physical pain or experiencing any emotional distress?
- Do you feel safe sleeping in your current living situation?
- Do you have children? If so, are they going to school?
- Please write any other questions you may have

#### Sample

First instance screening form Client intake form

## Explain your organization and your role

The first interaction with a client is very important. In addition to being a time to identify client history, client needs and avenues for relief, it also allows the advocate to begin establishing a relationship of trust between the organization and the client, and communicating important information about your organization and your role. Because many refugees come from places where trust was difficult, it is important to explain your role clearly and carefully, emphasizing confidentiality and ensuring that the client is being heard. The following checklist, welcome script and confidentiality script is meant to helps ensure your first interaction with a client is successful.

## Checklist

- Introduced yourself and interpreter.
- Explained role of interpreter and ensure that client and interpreter understand each other.
- Confirmed client is comfortable with the gender of both interpreter and legal advisor (sometimes, you will need to find different ways of assessing this than asking directly).
- Explained role and types of assistance provided by your organization, including independence of from UNHCR and the government.
- Explained the services are provided on pro-bono basis and this conversation is confidential.
- Explained purpose and structure of the interview:
  - Just an intake interview
  - Purpose is for your organization to get basic information about the client
  - And for the client to get some basic information about the process
  - It is not for the purpose of legal advice or counseling at this stage
  - The interview will help us to decide what level of service we can give
  - The client will be contacted later /informed of the level of services we provide at the end of the intake.
- Explained confidentiality (including interpreter).
- Asked if client needs explanation of refugee definition and if yes, explained (see B. Orientation).
- Asked if client needs explanation of the refugee definition and the local RSD process and if yes, explained.
- Asked if client has received legal advice from any other organization.

## Welcome script

The initial intake interview is usually the first opportunity a potential client has to learn about your organization and the services you may be able to provide for him or her. As the intake interviewer it is important that you put the client at ease, and manage his expectations, by clearly reviewing what your organization does, how your role differs from that of the local RSD decision-making body, and what you are and are not capable of assisting the client with. Be sure to explain your organization's independence from the government and the UNHCR.

Below is a sample script that you should review and modify to reflect your organization's vision and provision of services:

Before we begin, let me tell you a little bit about our organization and the work that we do. First of all, we are a non-profit organization, which means that all the services we provide are completely free of charge. Most of our staff works on a volunteer basis and nobody will ever require or request any money from you. While we appreciate the sentiment, this also means that we are unable to accept any type of gift or token as compensation for any work we do.

We are also a non-governmental organization and are completely independent from both the government and the UNHCR. While we do, on occasion, work closely with several agencies and other organizations in the promotion of refugee and human rights, the services we provide to our clients are in no way dependent on outside politics or forces.

That being said, in order to provide the most thorough and effective service we can, it is important that you share as many details of your story as you can and that you be completely honest. While it may seem like a good idea sometimes to exaggerate details or make up certain facts in order to strengthen your case, I can assure you this will only create problems for you.

If you are ever found to be lying on your application for refugee status, it will be very, very difficult (if not impossible) to regularize your situation and get you status in the future, regardless of the strength of your case.

## Confidentiality script

One of the most important ethical obligations we have to our refugee clients is our duty to maintain client-advisor confidentiality. It is imperative that this duty be explained to the clients so they can feel at ease about sharing the details of their case. However, in order to best assist our clients, it is also sometimes necessary to communicate portions of the client's case with others within the organization as well as in other refugee or human-rights organizations. Before doing so you must get the client's informed consent. This requires that you clearly explain both the <u>duty of confidentiality</u> and its limitations.

Below is a sample script of what you can say.

I also want you to know that we are bound by a duty of confidentiality so you should feel free to share as many details of your situation as possible. Nothing you tell me will leave this organization, or even this room, without your express consent.

That being said, in order to provide you with the best possible advice and assistance it will be necessary for me to share your case with other members of the organization so that we can decide together how best to proceed. In some cases, resolving your situation may require that we communicate some of the details of your case with other human rights organizations or even with the UNHCR. In such cases we always take great care to protect any details that might give away your identity; we merely share those details that are absolutely necessary to resolve the matter before us.

Before we share any details of your case with anyone outside our organization, however, we will always get your express consent first. You are always in control of where and with whom your information is shared.

Is all of this okay with you? Do you have any questions?

Quick reference for legal advocate and interpreter introductions

## Collecting client information

Once you have communicated important information about your organization and your role, advocates should take time to read through the reception area questionnaire (explained above). The information provided within the questionnaire will help the advocate gain some essential information regarding how to proceed with the appointment.

## Fill out an intake form

Before you begin screening a client (see following section), you must first collect important information about your potential client. To do so, advocates often rely on an intake form to record important demographic and other personal information about a client.

#### Sample

First instance screening form Client intake form

## Identifying special needs or other important characteristics

All your clients are vulnerable. However, there is also an understanding that particular sub-groups of refugees need special attention. The UNHCR defines these cases as, "[p]hysically, mentally or socially disadvantaged persons who may be unable to meet their basic needs and may therefore require specific assistance." Because clients with special needs may be eligible for procedural accommodations, it is important that you identify early on in the interview process whether your client is particularly vulnerable to additional risks.

The UNHCR's Heightened Risk Identification Tool (2010) highlights five high risk categories of refugee applicants that may present special vulnerabilities:

- Older People
- Children and Adolescents
- Women and Girls at Risk
- Legal and Physical Protection
- Health or Handicaps

For more information on how to interview refugee clients and identify special needs, please refer to the <u>Vulnerable Populations</u> section of the Toolkit.

#### OLDER PERSONS

- Do you have older persons living with you?
- Do your older family members face any problems with their current living situation?

#### CHILDREN AND ADOLESCENTS

- Do you have children in your family or living with you?
- Please tell me about your children's living situation and what your children do during the day.
- Do your children or the children you are caring for face any problems with their current living situation?

#### WOMEN AND GIRLS AT RISK

- Do women and girls feel safe here?
- Has anything happened to the women or girls in your family? When / where did it happen? Did they receive any help or support?

#### LEGAL AND PHYSICAL PROTECTION

- How is the security situation in your community/living area?
- □ Have you or your family ever been threatened or felt afraid? When / where did it happen?

#### HEALTH AND DISABILITY

- Do you / your family have any health problems, conditions or disabilities?
- What treatment or care do you / your family member(s) receive for these health problems? What support do you need to address these problems?

Below you will find materials to help you identify and address any special needs that your client presents.

Heightened Risk Identification Tool (UNHCR 2010)

## Screening

Managing the caseload of your organization and your staff is one of the most important things you will have to do. In order to help you in this process it is highly recommended that every refugee rights organization implement a screening process to determine which potential cases should be prioritized.

Three important points to consider from the outset:

#### Restricted by resources

Organizations involved in legal aid representation of refugees are almost always restricted by resource issues. It is often impossible to provide a service, or at least the same level of service, to everyone who walks through the door seeking help.

#### Having to limit your services can feel uncomfortable

To many lawyers, this inability to help everyone, regardless of the merits of their case, sits uncomfortably. In the legal ethical rules of most jurisdictions, a lawyer is obliged to assist a client where (a) the lawyer has the expertise; (b) has the capacity to assist; and (c) is not under any conflict of interest (and the client can pay the fees!).

#### The Nairobi Code

The <u>Nairobi Code</u> acknowledges the reality of providing legal aid in the Africa, Asia and Latin America. Rules 3.1 to 3.4 are clear that legal advisers may limit their services and are not under an obligation to assist everyone. In fact, to engage in ethical and responsible legal aid, your organization must establish an effective system of screening potential clients objectively to determine where to devote your limited resources.

### Advantages of screening mechanisms

It is vital that your office sets up Case Screening Mechanisms for the following reasons:

- Without such screening mechanisms, deciding on whether a case is sufficiently strong to accept a client may depend on factors such as the sympathies of the legal adviser who performs the intake interview or the persistence of the potential client.
- If an asylum seeker's chances of receiving legal aid depend largely on the personality of the legal advocate performing the intake interview, your organization will be complicit in the same type of arbitrariness that plagues many RSD processes, and is the object of much criticism by refugee rights organizations.
- You need to be flexible and assess things on a case-by-case basis. For example, you may have a policy of only representing cases that you are convinced meets the definition in the Refugee Convention. If the decision-maker hears of this policy, how does it affect the asylum seekers you end up not representing? It could easily have an adverse impact with the decision-maker (consciously or not) pre-determining some claims on the basis of your non-representation.
- While clear ethical rules exist to deter your organization from representing clients with fraudulent claims or actual conflicts of interest, the Nairobi Code permits you to take on many more claims than your organization can likely handle. It is perfectly ethical to represent an asylum seeker with a weak claim, and nothing

prevents you from moving forward with an implausible case where there is no proof that the client is lying.

 Nonetheless, there are many reasons your organization may want to stay away from such cases. As a matter of resource allocation, you may prefer to devote your time and energy to urgent cases or cases with a greater chance of success.
 Furthermore, your institutional reputation may be at risk if the decision-making body believes you represent abusive cases.

## Objectivity and predictability

Asylum Access's mechanism to promote objectivity and predictability in our screening process, involves two stages:

#### Stage One: Intake Interview

Any new clients who approach the office should be allocated an "intake interview" as soon as possible. This interview should determine any immediate protection concerns and the basis of the claim for asylum.

Stage Two: The Screening Process – three options for how we decide on screening

After the intake interview, there are three options:

- 1. If the potential client is clearly a refugee and there is a sense of urgency (i.e. they have a RSD interview the following day or an appeal due soon), then the VLA who carried out the initial intake interview should make the decision alone. This also applies when the person is clearly not a refugee.
- 2. The Legal Adviser talks to the Legal Manager about the case. Together, they discuss the merits of the case, the weaknesses, and the legal arguments available. On the basis of the available resources at the time, the workload of the Legal Advisers, and any protection concerns, a decision should be made on the level of representation provided and to which Legal Adviser the case should be allocated.
- 3. At each weekly team meeting, the Legal Advisers discuss the new intakes for that week. As a team, and after discussing the same factors as above, a decision is made on the level of representation and who will be responsible for the file.

During these discussions at (1) and (2), objective factors should be considered by which to evaluate cases, depending on the stage the potential client is at in relation to the RSD process.

## Important questions to ask

The following are key questions to consider when evaluating a case. These can be printed out to use individually or as a focus for weekly office case meetings.

A potential client arrives looking for assistance with a first instance RSD interview:

- Is this case particularly vulnerable? (i.e. unaccompanied minors, single parents, persons with disabilities, SGBV/torture survivors, etc.)
- Does this case present an opportunity to expand existing local laws to provide greater protection for all refugees?
- Is a refugee visa the only viable means for the potential client to avoid refoulement (such as other types of visas he could apply for)?
- Is the case particularly complicated and would benefit from a legal brief?
- Is there a legal advocate in the office with sufficient time to manage the case before the deadline, in accordance with ethical standards for diligence?

A potential client arrives looking for assistance with an Appeal on procedural grounds:

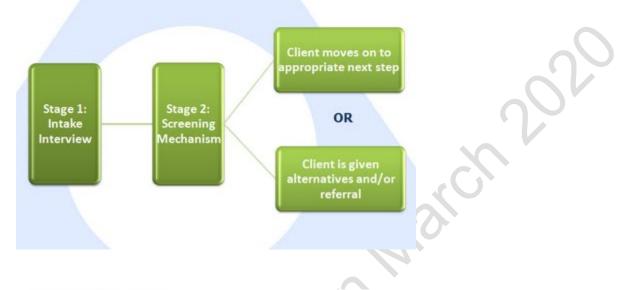
- Is this case particularly vulnerable? (i.e. unaccompanied minors, single parents, persons with disabilities, SGBV/torture survivors, etc.)
- Does this case present an opportunity to expand existing local laws to provide greater protection for all refugees?
- Was this case denied due to an incorrect interpretation of the law?
- Is a refugee visa the only viable means for the potential client to avoid refoulement (such as other types of visas he could apply for)?
- Is there a legal advocate in the office with sufficient time to manage the case before the deadline, in accordance with ethical standards for diligence?

A potential client arrives looking for assistance with an Appeal on credibility grounds:

- Is this case particularly vulnerable? (i.e. unaccompanied minors, single parents, persons with disabilities, SGBV/torture survivors, etc.)
- Does this case present an opportunity to expand existing local laws to provide greater protection for all refugees?
- Is a refugee visa the only viable means for the potential client to avoid refoulement (such as other types of visas he could apply for)?
- Is there a legal advocate in the office with sufficient time to manage the case before the deadline, in accordance with ethical standards for diligence?

#### How to screen

## **A Screening Mechanism Model**



#### SCREENING OPTIONS

OPTION 1: Is potential client clearly a refugee (or clearly not)?

- **YES**: Legal advocate who carried out the initial intake should make the decision alone
- NO or NOT SURE: Move on to next option.

OPTION 2: Is there a sense of urgency?

- YES: Discuss case with Legal Manager (i.e., merits, weaknesses, and available legal arguments).
   On the basis of available resources, and any protection concerns, a decision should be made on the level of services that can be provided.
- □ NO: Move on to the next option.

OPTION 3: Where there is no clear cut case and no specific sense of urgency

- □ At weekly team meeting, the Legal Advisors discuss the new intakes for that week.
- As a team, and after discussing the same factors as above, a decision is made on the level of representation and who will be responsible for the file.

#### Further resources

You can also download and print detailed worksheets breaking down factors to consider when a potential client arrives depending on which stage of the RSD process they are at:

Preparation for First Instance RSD Interview (Asylum Access) Preparation for an Appeal (Asylum Access)

Steps if Not Taking a Client

- Keep the discussion simple. There is no need to over-explain.
- Be respectful but firm.
- Spend most of the discussion explaining and providing alternatives such as the Self Help Kit or referrals to other organizations or NGO's who may be better equipped to deal with the person's concerns.
- Remember why you have to say no.
- Develop and review a Screening Process to ensure best practices.
- Make a note in the client's case log of the conversation you had with him or her, and note the reasons why you cannot represent him or her.

## Sample Scripts

- 1. An economic migrant
- 2. When your capacity is stretched
- 3. A person is presenting a claim that gives rise to strong credibility concerns
  - 1. The Economic Migrant

You have had an initial interview with a potential client and it has become apparent that they are an economic migrant rather than a refugee. You therefore need to let the person know the refugee legal clinic cannot take their case on.

NB: Please remember that if a client starts an interview stating that they have crossed a border to seek a better life and a better job this does not automatically make them an economic migrant rather than a refugee. They may simply be confused as to what information you need to show to be a refugee. That is why it is vital to spend sufficient time with each client to understand all their reasons for fleeing their country of origin.

## SUGGESTED RESPONSE:

Many thanks Mr. J for coming to the office. While I have the utmost sympathy for your story, unfortunately, I do not feel we can help you with your specific application for asylum in this country. As you will see from the refugee definition from the 1951 Convention (show them the definition) it is extremely unlikely that the UNHCR will view you as refugee as you travelled to this country for purely economic reasons.

However, this in no way means we cannot assist you further and you have a number of options available to you:

- We can give you a self-help kit which can assist you in completing your application for asylum if this is the course you decided to take
- I am happy to talk you through the various Visa options available to you so you can apply to remain here.
- We can discuss the work of other organizations close by which may be better suited to assisting you, for example the Red Cross.

#### 2. Stretched Resources

You have an initial interview with a potential client and their case appears to have merit and quite straightforward, however in your weekly meeting with the team and your manager, the decision is made to give the client a self-help kit as the office is stretched with various appeal cases and particularly vulnerable cases with women and children.

## SUGGESTED RESPONSE:

Many thanks Mr. R for coming to the office last week. After reviewing your case with the team we are happy to offer you assistance through our self-help kit and will give you all the information you require relating to other organizations in the area that have the potential to assist you.

We unfortunately are unable to represent you through your asylum case due to capacity constraints within the office. As you can imagine, we work with very tight resources and therefore we have to assist with the most vulnerable and pressing cases as a priority.

This does not mean however we think you have a small chance of success with your application. We strongly recommend reading and using the self-help kit throughout your RSD process. Also, please do not hesitate to come back to the office if you have any further queries and most importantly if your situation changes or you find yourself in trouble.

If you have any queries or concerns, please do not hesitate to ask me any questions.

#### 3. Credibility Concerns

You have an initial interview with a potential client. During the interview he is extremely nervous and anxious.

He starts the interview by saying he fled his country because the state was persecuting him, through harassment by the police and state officials. He also states his brother was killed by the police.

Later in the interview it appears he has amended his story and now is stating armed guerrillas attacked him and stole all his possessions, while he and his brother escaped. When you question the two apparently conflicting versions of his story, he becomes more nervous and then agitated claiming you are calling him a liar.

If it comes to light that the potential client is lying, for example changing his story to fit with the definition of a refugee under the Statute, or you feel his claim is abusive or if there are more urgent cases and resources are stretched then here is a suggested responses:

## SUGGESTED RESPONSE:

Many thanks Mr F for coming to the office. Unfortunately, we feel there are some major discrepancies in your account of events and so your story does not appear to add up. Unless you can re-amend it, we do not feel we can represent you at this time.

As we hold the decision makers at UNHCR to the highest ethical standards, we have to hold ourselves to the same.

If you are unwilling to reconsider your testimony, then we can only assist you further with the following:

- We can give you a self-help kit which can assist you in completing your application for asylum if this is the course you decided to take.
- We can discuss the work of other organizations close by which may be better suited to assisting you, for example the Red Cross.
- If on reflection you believe that you do not fit the refugee definition as explained, we can happily discuss various visa options you can apply for.
- We would stress that it is imperative to tell the truth during the whole RSD process. If the UNHCR find large discrepancies in your story this can seriously jeopardize your chances of gaining asylum.
- If you have any queries or concerns please do not hesitate to ask me any questions.

## Self-Help Kits for Pro Se Use

If you are unable to assist a client yourself, for reasons relating to capacity, mandate, conflict of interest or similar, it is useful to have Self Help Kits to hand. These Kits can be tailored to your context and shared with clients. Translating the kits into the relevant languages may also be helpful.

You should decide what level of input your organization will have when sharing the kits: will you run a workshop based on the kit, guiding groups of people through the process, or will you leave them to their own devices with the written materials?

The following Self Help Kits relate mostly to RSD appeals. You may find it useful to develop Self Help kits on other common types of cases that you see regularly in your office but are unable to assist.

<u>Appeal Self Help Kit</u> <u>Appeal Self Help Kit (Farsi)</u> <u>Self Help Kit: How to Write Your Statement for Your Refugee Status</u> <u>Determination ("RSD") Interview with UNHCR</u> <u>Self Help Kit: How to apply to re-open your UNHCR refugee status file</u>

The following additional materials may help refugees preparing their own cases to make sense of the RSD process:

Summary of UNHCR RSD Process RSD interview preparation Handout

## **Referrals and Appointments**

Whether you are taking a case on or not, you may need to refer the client to other service providers to meet their non-legal needs. These are often more pressing than resolving the client's legal migration status or human rights claims.

You must build up a directory of referral organizations as soon as possible. This involves mapping local service providers and building relationships with as many as possible in order to ensure pro-bono attention for refugees.

Referral directories should be regularly updated with contact numbers, names and focal points in order to facilitate communication. Services to include:

- Mental health professionals
- Health services
- Subsistence grants
- Shelters
- Free meal providers
- Livelihoods support organizations
- Training and educational opportunities
- Ombudsmen
- State services focal points
- Physical rehabilitation for landmine survivors
- Language classes
- Clothes donations
- Women's groups
- Faith groups

Drawing up a Memorandum of Understanding (MOU) with such service providers may be advisable in order to ensure coordinated assistance and referral procedures between organizations. Referral mechanisms should be established: official channels, information requirements and time frames. Many organizations already have established referral procedures and forms: keep these on file.

More detailed referral procedures can be found in the <u>Referrals</u> section.

## Appointments

Note that it may be necessary for you to book the client an appointment with another service provider yourself, as they may not have access to the internet or be able to make phone calls, due to financial or linguistic barriers, or fear of navigating institutional procedures.

Make sure the client knows when and where their appointment with your partner service provider is, and how to get there. You may need to print off maps and write down directions and instructions, and check that your client understands by asking them to repeat the route and time back to you.

Print small appointment cards to be given to clients with the essential information regarding their appointment: time, place, service, staff member who made the referral / took the booking / will see your client.

Your organization may decide to provide discretionary funding for clients to travel to appointments at other offices.

## The Provision of Legal Information

Regardless of whether you take a client or not, intake is an opportunity to provide a client with critical legal information. At Asylum Access, we call this process an orientation.

Parts of an orientation

- The refugee definition and what it means to be a refugee in the country of asylum.
- What rights are availed to them under the 1951 Refugee Convention.
- An introduction to the Refugee Status Determination process.

Please read below to understand more about these three components.

## **Refugee Definition**

This document is designed to provide trainers with a didactic tool to explain the 1951 Conventions. Trainers may opt to use this document if they feel participants need further clarification on who the 1951 Convention applies to or may simply use the tool as a supplemental visual illustration.

Refugee definition visual guide

#### An introduction to the RSD Process

The UNHCR has set forth some basic rights that should be made available to all refugee applicants no matter who the decision-making body is. It is important for the legal advisor to recognize that many of these rights may not exist under local RSD procedures even if conducted by UNHCR. However, as the UNHCR is the international body charged with implementation of the 1951 Convention, knowing these guidelines is helpful for raising procedural abnormalities and may be used on appeal against government agencies in States that are party to the Convention. Visit the <u>Rights and</u> <u>Responsibilities of Asylum Seekers</u> section of the Toolkit for more information on these basic rights and visit the <u>RSD procedures</u> section to learn more about the RSD process.

## **Case Actions**

In order to determine what actions are needed on a case you must interview your client more in depth. On the basis of your interview, proceed to open the case (or not), check against strategic litigation themes, sign legal agreements, pursue your chosen legal aid strategy and monitor the progress of the case.

#### Interacting with refugees

This section contains some of the basic concepts to keep in mind when you're working with refugees. Many of the rules of conduct and best practices that apply when providing legal services to refugees are the same as those that would apply in any lawyer/adviser-client relationship. However, because refugees are often particularly vulnerable due to previous or ongoing trauma, as well as a current uncertain living and legal situations, the following are particularly important:

- 1. Good communication
- 2. Respect for the client
- 3. Client awareness of personal responsibilities
- 4. Proper use of an interpreter when necessary

## Open A Case

Once you have decided to open a case for a client, consider the following steps to onboarding a client.

1. Explain and sign a Client Representation Agreement

In order to clarify the role of your organization, set clear expectations for what you will and will not do for the client, and protect the organization legally, you should sign agreements with your clients as appropriate. You may choose to start with a preliminary representation agreement, signed upon the first client meeting, and then sign additional agreements as the scope of your services to that specific client expands.

#### Sample

Legal Services Agreement

2. Explain and sign a Confidentiality Waiver

You will probably need two forms of confidentiality waivers to fulfill your duties to your client: one that authorizes you to disclose the client's confidential information to other parties such as UNHCR, and another that authorizes other relevant parties (UNHCR, doctors, etc.) to disclose the confidential information to you.

Below are three different sample confidentiality waivers. The first is a general confidentiality waiver that authorizes your organization to release confidential information to UNHCR in relation to your client's refugee claim and to act on the client's behalf. The second is a specific confidentiality waiver that authorizes your organization to release confidential information to specifically named individuals and organizations. The third is a sample UNHCR Authority, which gives permission for UNHCR to disclose client information to your organization.

#### Sample

General Confidentiality Waiver

#### UNHCR Authorization

3. Review the Nairobi Code Obligations

Find this information in the section on the Nairobi Code.

#### 4. Photocopy / Scan Relevant Documents

Be sure to photocopy relevant forms, identification documents, background materials and other resources necessary for the case and store according to data storage policies.

## Check against Strategic Litigation Themes

If your organization is running a <u>Strategic Litigation</u> program, or starting one, it is important for all legal advisers to be aware of the themes this program seeks to focus on. Front-line staff – legal services providers and those running community outreach activities – play an important role in identifying patterns of legal problems requiring change through litigation and cases to take to the strategic litigation level, therefore it is vital that they understand both the relevance of impact litigation and the current impact themes that have been selected for potential action.

Training on strategic litigation should consequently feature in inductions for new staff and volunteers, and impact themes should be communicated regularly to front-line service providers, with refresher training when they are updated or changed. You should make sure these themes are updated and available to all legal advocates, and that they are accustomed to checking their case against the designated impact themes.

Front-line service providers must feel confident in using the internal procedures for referring a case that falls within the scope of these impact themes to the strategic litigation team, and protocols for client consultation before taking the case further. Procedures should be clearly set out, easily accessible, and simple to follow.

This is important because one strategic case may be able to set a precedent judgment affecting all future cases of the same kind. The success of a strategic litigation process depends on front-line legal advocates understanding and implementing this quick check in all cases.

## Agreements

Agreements are the key step in formalizing the client-adviser relationship and setting out commitments and understandings regarding the case. These are listed on the <u>Open A Case</u> and <u>Legal Services Documents</u> pages.

Make sure you check at this stage that you have signed all relevant agreements with the client, and that they have received an adequate explanation of each, in a language they understand, and demonstrate full comprehension.

When children are involved, the parent or guardian may sign for them.

You should have a checklist of all agreements that need to be signed before proceeding to take action on a case. If your caseload is relatively homogenous, you may wish to consider joining all such considerations into one Legal Agreement to be signed by the client and the adviser before going ahead.

## Case Follow-Up

Following up periodically on your case is imperative not only for case management but also for outcome collection. The current section will address the importance of case follow-up for case management processes. For information about outcome collection, please see the <u>Monitoring and Evaluation</u> sections in the Legal Services Program Management section as well as the section on <u>Outcome Monitoring</u>.

Case follow-up may involve a combination of calling relevant institutions or decisionmaking bodies, and the client themselves.

The latter is preferable as it promotes the client's empowerment: they should be encouraged to take control of their own case by drawing up schedules, attending hearings and picking up decisions or other documents as required. You should then ask the client how the case has progressed.

Follow-up can be facilitated by a legal aid database: make sure you set follow-up dates at regular intervals for each case, depending on the decision time frame. Set reminders for these follow-up dates and stick to them.

It is important to have your client's up-to-date details on file. In many situations, however, refugees are obliged to move house regularly (because of insecurity, discrimination, limited resources, interference from authorities) and so their address may not remain current for long. The same applies to phone numbers: if a refugee has a phone, it may easily be stolen, lost or damaged. Therefore, it is good practice to record alternative contact details: the address and phone number of a friend, relative, neighbor or alternative service provider where a message can be left. It must be the address/number of someone with whom the refugee is confident letting you speak and leave potentially sensitive information.

Follow-up is crucial for building client trust and cementing your organization's reputation. It can also help identify further issues relating to refugee rights that may present themselves over time, and which were not the substance of an initial case. It is up to you to enquire as to the client's current situation – oftentimes refugees will not have the time or resources to visit your office regularly to seek further advice.

## Close a Case

#### Case closure protocols

In planning for your legal aid program, you should define what it means to close a case. This could be:

- when a decision is taken on a case by a tribunal,
- when a client has been unreachable for a certain period of time,
- when circumstances change such that the case is no longer relevant or its substance changes such that a new legal services agreement is signed,
- when the legal agreement signed with the client is complete: all services you agreed to offer have been rendered.

The closure of a case may follow the steps below.

1. Notifying a client of the termination of services

If your organization decides to terminate the services using the Client Warning Form, the outcome of the client should be noted before the organization closes the file. If no outcome was reached, VLAs or the Legal Services Manager/Coordinator should register the outcome as "Not Applicable." Below is a template for a Client Warning Form. This form is used to notify your clients of a termination of or alteration to services. You may also choose to note in your initial legal agreement with the client that the case will be closed when any of the above apply. This may save you notifying the client of an official closure: it would be implicit with the passing of a certain date or completion of a certain service.

**Refugee Rights Toolkit** 

## Sample Client Warning Form

Prepared By: Date: Client Name: Brief Background: Notification: Suggestion:

#### 2. Notifying clients of VLA departure

VLA departure may account for case closure in some circumstances. Two weeks prior to the termination of a VLA's contract, it is the VLA's duty to call his/her clients to inform them of his/her departure. During the call, the VLA will also be responsible to ask all pending cases whether a result was reached or not. The purpose of the call is primarily to explain to the client that the VLA is leaving but that the files remain at the organization; asking about the outcome is a side question and will hopefully not cause the stress linked to creating expectations.

#### 3. Re-allocation of cases

When re-allocating the cases that belonged to the departing VLA, the Legal Services Manager/Coordinator will also allocate the cases for which the only action necessary is to register the outcome. The name of the responsible VLA will be changed in the database from the former VLA to the newly appointed VLA. If a client could not be reached before the former VLA's departure, the new VLA will be responsible for calling the client to inform them who the new VLA is, and ask in passing if an outcome was attained.

#### 4. Turnover of case outcome monitoring responsibilities

The VLAs who are responsible to monitor outcomes of clients that belonged to former VLAs will get their information either through Step 1, Step 2 or Step 3. In other words, the VLA responsible for a former case will note the outcome in the database...

- when the new VLA receives information about the outcome of the new cases during the VLA's internship;
- when a case is closed at your organization; or,
- when the new VLA is also about to leave and calls his/her former cases.

If no result was reached, the case is re-allocated to yet another VLA.

## Legal Aid Strategies

There are many different techniques which can be applied in cases to achieve the restoration of your client's rights. These may be oral, written or in-person advocacy. Written and oral advocacy both requires specific skill sets, and each can be improved upon with training and practice. In the context of a refugee rights organization, advocacy will differ from what is traditionally taught in law schools. Depending on your advocates' backgrounds, they may have to unlearn some traditional assumptions about advocacy.

The appropriateness of each strategy should be analyzed on an individual basis. Strategies may be used in combination or isolation. Part of your duties to develop a comprehensive case strategy is also to stay on top of legal decisions and developments, and political and humanitarian changes in the <u>Country of Origin</u> which may affect an RSD case. Also remember to be updating your client's file in your paper records and/or in your client database on a regular basis.

## Interviewing

When assessing a client's needs and developing a case strategy, your ability to communicate effectively and elicit the necessary information is paramount. Furthermore, client interviews are the most important time for your legal advocates to build trust and confidence with refugees. Effectively acquiring all necessary information from an interview will help your organization avoid presenting fraudulent or frivolous claims. The ability to manage an interview helps legal advocates make best use of their time and handle the emotional stress of refugee work better.

As legal advocate, your ability to effectively interview clients is crucial to acquiring all the necessary information for representing a client. Especially when representing client with a complicated claim, or clients who have trouble articulating the reasons for their flight (e.g. traumatized individuals, children, persons facing problems in the country of refuge), how you interview your client is of utmost importance to elicit information.

This section will help you and your team develop effective interviewing skills. First, it will discuss effective ways to interview through a video. Then, it will detail steps to take and strategies to employ during different aspects of the interview process.

The training video below is a good introduction to interview skills. Keep in mind that these skills are a constant work-in-progress, and should be the focus of ongoing training. As there are few strict interviewing rules, the best way to improve your team's interviewing skills is to practice, observe and reflect. Ask your legal advocates to discuss the best and worst part of an interview with their supervisor on a weekly basis. When appropriate, have your legal advocates observe their colleagues' client interview

to provide peer review. To further assess legal advocates' performance, establish objective feedback forms for clients to complete.

Video: Interviewing Refugee Clients

## What is the focus of your interview?

As a legal advocate you will typically spend more time with the client to elicit their testimony than an adjudicating officer has during an RSD interview. Because of this, you are in a position to go into a greater degree of detail and frame the refugee claim. Keep in mind that many clients get rejected at the UNHCR because they place the most emphasis on the general deplorable humanitarian reasons in their country, believing that only this information will get them recognized as a refugee, and cannot understand why they need to go into events that are unimportant in their view. The client should be made aware of this early in the interview so that by the end of the interview, when asked the single question: "What do you fear should you be returned to your home country?" the client's response will include all the following elements without further prompting:

- WHAT does s/he fear (e.g. death/torture/detention)
- WHO does s/he fear (e.g. police/other tribe/political group)
- WHY does s/he fear (ideally this part should match one or more category of persecution as stated in the refugee convention political opinion/ethnic group/religious belief/social group/military service).

Once this has been achieved, it is also important to ascertain factors which strengthen this fear. If the applicant has observed similar ill-treatment of other members of his political/ethnic/religious/social group for the same reasons, then this is said to strengthen his/her fear. Persistent attempts by aggressors to apprehend the client or repeated experiences of detention/ill-treatment will also strengthen the fear. If the client has suffered ill-treatment, then s/he may have residual psychological issues. All these issues should be investigated because they can cumulatively lead to a strong subjective fear of persecution.

## **Interviewing Skills**

The purpose of interviewing clients is to gather information about the client, give the client information about your organization and what you may be able to do for him or he, create a written record of what happened to him or her, and to build a relationship. In order to do this effectively, you need to employ good interviewing skills. Interviews can be highly stressful for refugees so it is important that you work to make the person feel comfortable. Below are some suggestions of how to conduct interviews so that your client feels comfortable and safe.

Throughout the interviews you conduct with your client, you should assess the needs of the client regarding psychological and psycho-social support in particular. Some of these aspects may only become apparent as the relationship of trust grows:

- Be attentive to whether the RSD process or rights claim may have retraumatized your client to some extent. This may be inevitable given the difficult nature of recalling traumatic events for the purposes of proving persecution or experiences of violence or discrimination.
- Be alert in particular for signs of SGBV, torture, trafficking, domestic abuse and other issues which may only have made themselves apparent throughout the case as the trust between the client and the adviser grows.

## Before the Client Arrives

- Familiarize yourself with the client's country of origin and the conditions there.
- Read all notes in the client's record.
- Have all the forms and agreements that the client may need to fill out and sign ready to give to the client.
- Complete other pressing matters so that you can give the client your full attention.
- Speak to the interpreter about ground rules for the interview and any other relevant matters.

## Once the Client Arrives

- Put the client at ease by asking how they are, and offering him or her a refreshment.
- If necessary, introduce yourself and your organization to the client.
- Introduce the client and interpreter to one another. Confirm that they can understand each other.
- Let the client know what you plan to cover in the interview and that s/he can take a break at anytime.
- Explain the purpose of the interview.
- Explain any paperwork that the client needs to sign.
- Assure the client that anything he or she tells you will be kept confidential.

## Once the Interview Begins

- Maintain eye contact with the client and a friendly expression.
- Do not direct questions to the interpreter.
- Always speak directly to the client.
- Make sure that the client can see the notes that you are taking.
- Sit next to the client rather than across from him or her.
- Express sympathy if the client reveals something difficult or sad.
- If the client brings up other issues that he or she is having such as health issues, stop the interview and address those issues first. You could address these issues by referring the client to medical services or other service providers who can help.

- Stay in control of the interview by keeping the interview focused and promote exchange of information.
- Don't ask judgmental questions.
- Don't ask client to speculate.
- Don't ask client to draw legal conclusions.
- Don't break long silences too quickly.
- Don't press for too many details (but try to get as many as possible).
- Don't ask leading questions/don't put words in client's mouth, even if she or he has hinted at something.
- Don't expect perfect recall.
- Make sure that you are able to find out why this client specifically fears persecution rather than general information about the dangers in his or her country of origin.

## Strategies to Elicit Information

- Try to go in chronological order.
- Do not use "interrogation tactics."
- Explain to the client that it is okay if he or she does not remember everything.
- Ask open ended questions.
- If the client cannot remember something, offer suggestions such as:
  - Did you cross the border on foot?
  - Were you detained for days, weeks, or months?
  - Ask one question at a time.
- It can be difficult for people to remember dates of when events happened. Help them by linking the events to other personal markers like their children's ages.
- Other markers are if they remember what season it was, in relation to big events (before or after a revolution, elections, etc), how old they were, or in which grade in school their children were.
- If a client is able to give an exact date, ensure they will be able to remember the date during the interview as well.
- Double check dates against the rest of the client's testimony and general country information, address inconsistencies.
- It is better for clients to say "I don't know" than to make a guess for something that they are not sure about, such as dates, how long they were somewhere, or how far away something is. Giving information when unsure can lead to inconsistencies, and possibly credibility concerns.

#### Ways to Talk about Difficult Subjects

Before you ask about a difficult subject, acknowledge that it may be hard for the person to speak about. Say:

- "I'm sorry, but I need to ask you more about X"
- "I know this is hard to talk about..."

- Let the client know that he or she can take a break whenever they need one.
- Do not ask blunt questions like "were you raped?"
- Do not get into unnecessary detail.
- Be sensitive to your client's emotional state and comfort him or her as necessary.
- Show empathy.

## At the end of an interview

- Read back the testimony to the client.
- Explain to him or her that he or she needs to cross check everything you read back.
- Break down long sentences.
- If the client is uncertain, take out some details.
- Engage the client: ask him or her if what you have written in correct.
- End the interview on an emotionally neutral note.
- Do not leave the most difficult topics for the very end of the interview.
- Explain what will happen next and when you will contact the client again.

## Legal Aid Writing

Legal writing in the refugee rights context is very different from what many legal advocates are familiar with in other areas of law. For one thing, subjectivity and persuasiveness take a much greater role in effective refugee rights advocacy. The legal advocate should be prepared to modify his or her existing writing style to accommodate the very specific needs of their refugee clients.

To produce effective written materials, managers must know exactly what the concerns of the decision-maker might be, and what types of arguments might be persuasive for her. In some jurisdictions, you will receive well-reasoned opinions accepting or denying your arguments, and can use these to tailor your future advocacy. However, you or your clients are most likely to receive a simple "accepted" or "denied" response to your brief. If this is the case, you need to develop strategies to understand what works and what doesn't.

Don't be afraid to approach the decision-maker directly to enquire about what types of arguments she is looking for. Remember that it is in everyone's interest for your organization to produce concise, well-argued briefs. In the Ecuador office, Asylum Access regularly submitted long, detailed appeals to the refugee office until a refugee officer told Asylum Access that they were too long for them to read. As a result of this informal discussion, the briefs produced were both shorter and more successful.

Regardless of the opportunity to approach your decision-maker or to receive constructive feedback, it is prudent to keep a detailed record of which briefs are successful and which fail. Identify the arguments that work; abandon arguments that

don't. Many U.S.-trained lawyers are obsessed with establishing a strong record for the appeal and refuse to abandon arguments that are logically sound but strategically useless. As a manager, you should be intimately familiar with the appeals process in your jurisdiction and think carefully about what needs to be established in a brief. But you should also analyze the likelihood of success at each level, and put your client's interests ahead of other considerations. Don't bother putting an argument on the record if you think it will lose. It will weaken your case, and there is only a slight chance that the client will be willing and able to continue appealing her case.

#### Effective writing training Materials

The following materials are designed to introduce legal advocates to the most effective writing approaches in this context as well as to give them some basic tips for legal writing and client testimony.

Effective Legal Writing for Refugees – Trainer's Guide Effective Legal Writing for Refugees – Summary Sheet Effective Legal Writing for Refugees – Summary Sheet Answer Key Effective Legal Writing for Refugees – Writing Client Testimony Exercise Effective Legal Writing for Refugees – Writing Client Testimony Exercise Trainer's Key Writing a Legal Brief Quiz and Answers

How to use these materials:

It is important for the trainer to be attuned to the specific needs of the group and to tailor these materials to suit them. You should view the training tools as a resource and not as a must-do manual. Although all the sessions have been tried and tested in many different contexts and with a variety of actors, the materials will always need some level of adaptation to suit your specific audience or context.

*Trainer's Guide:* This guide is designed to help the trainer lead the lesson and discussion. It gives a slide-by-slide script that may be used as-is or adapted to suit the particular needs of the group.

*Presentation:* This PowerPoint presentation covers the general and most important area within the broader topic. You should feel free to modify it to include local considerations.

*Summary Sheet:* This Summary Sheet has been developed for use as a guide for participants to follow along with the presentation and to record the major takeaways of the lesson. Alternatively, it may be used as a quiz at the conclusion of the lesson to refresh the major points of the presentation and to facilitate a discussion of the material

in greater depth. Trainers may choose to give participants a hard copy of the sheet that may be filled out manually or they may make available the electronic version which has been created as a fill-in-the-blank document. Keep in mind that the Summary Sheet was created as an accompaniment to the presentation and the corresponding notes as provided in the Trainer's Manual. Any adjustments to the presentation must also be made to the summary sheet accordingly.

*Summary Sheet Answer Key:* The participants' version of the Summary Sheet will have blanks where the Answer Key provides the answers in capital underlined words.

*Writing Client Testimony Exercise:* This exercise is designed to get the participants thinking about the important details that should be highlighted in a client testimony and to put to use some of the practical tips covered in the lesson. Please print and distribute a copy to each participant.

*Writing Client Testimony Exercise Trainers Key:* This document should be used by the trainer as a guide to leading the exercise and discussion.

*Writing a Legal Brief Quiz and Answers:* You can use this document to review the information about legal writing and practice persuasive writing.

## Oral Advocacy and Mediation

Oral advocacy involves a separate set of skills than written advocacy. Because oral advocacy differs widely from country to country, we omitted training materials on this subject. Nevertheless, it will be important for you to consider when, where and how oral advocacy takes place, and to draft a training methodology to train your staff.

Oral advocacy often occurs outside the courtroom or the refugee office. You may find yourself advocating on a client's behalf in the hallway of the Foreign Ministry, detention center, or a hospital — anywhere your client's rights are in jeopardy. In many situations, a personal meeting will be much more effective in resolving your client's legal issues than a brief or other piece of writing. In some cultures, oral advocacy means fighting tooth-and-nail for every advantage for your client; in other cultures, oral advocacy means inviting the other party out to lunch to help understand her concerns about the case.

Mediation is a form of oral advocacy. Mediation may be appropriate between a client and an employer, spouse or landlord. It is a common method of alternative dispute resolution aimed at seeking an agreement between parties before going to court. Mediating between parties may ultimately facilitate access to justice before expensive and time-consuming court processes. Unlike written advocacy, you will be unable to review all of your advocates' work ahead of time. You will not be able to undo a culturally insensitive remark or an erroneous statement about the law, which can have serious repercussions for your organization and your clients. As such, it is imperative that all of your advocates understand organizational policies regarding oral advocacy. Make conscious decisions about who can interact with whom, and always meet with advocates in advance to discuss strategy, tone, etc. Many of the most serious institutional challenges that Asylum Access has faced in our field offices came from well-meaning but improperly trained legal advocates crossing boundaries during oral advocacy.

#### Further resources

Basic Mediation Training (Mediation@MIT, 2002) Mediation: A Beginner's Guide (Nancy Peterson, 2007)

## Accompaniment

Advocacy by Accompaniment is a fairly new term used to describe the practice of escorting a client through processes to address a violation or infringement of their basic rights. This practice first gained popularity within survivors' advocacy efforts in domestic violence and sexual assault cases as a way to prevent re-victimization of the injured party.

In the refugee context, this type of work can be particularly useful in building leadership within the community by empowering the refugee client to take charge of his or her life through the use of legal and administrative channels; channels which, even where they are available to refugees, continue to be perceived as threatening or inaccessible to them.

#### What Right is Being Addressed?:

An accompaniment may be necessary under a variety of different circumstances. For example, a client may have experienced discrimination when attempting to register for Social Security. Another may come to you because she is having trouble registering her children at school. Another may be dealing with access to healthcare. Each of these clients may need an accompaniment but each case addresses a different right. It is important to know which right that is so that the legal advocate may prepare for the visit to the proper authority with full knowledge of the law and legal procedure surrounding that right in the particular context.

It is important to keep both short and long term goals in mind. Short term, the accompaniment must address the refugee's immediate need. Long term, the advocate may seek to make access to this right easier in general. Also, one should keep in mind

what the root issue is in terms of why the client is having this problem. Whether the root cause is institutional, social, political, etc., will affect what our approach will be. While the legal context is very important, the advocate should be focused on the particular obstacles the client is facing. Addressing them directly will help the client have a clear picture of how to deal with this issue in the future.

Accompaniment rests on the client knowing their rights and how to claim them. While the client should walk away from an accompaniment with a basic understanding of the law, the more important outcome should be that they gain the experience and knowledge to overcome future obstacles. Accompaniment seeks to have refugees become multipliers, promoting change in the wider human rights system. Clients should be the main actor in seeking their rights, even when accompanied: this role can contribute to their comprehensive rehabilitation and empowers them to build their new life in the country of asylum. The advocate's approach should be catered to the specific goal of the case without losing sight of the broader goal of empowerment and the longterm goals for continuing advocacy on the issue.

Accompaniment may be the first step of a long-term empowerment plan, and can contribute to an individual's growing sense of autonomy and independence. For this reason, it is crucial to afford your client the space and opportunity to express themselves when you are accompanying them, in order to strengthen their confidence (whilst retaining the possibility of backing them up or supporting them if necessary).

Advocacy by accompaniment also has implications for political advocacy on an institutional or public level, as accompaniment processes can spread awareness of refugee rights among service-providers and others with whom refugee clients have experienced injustice. Indeed, accompaniment should be seen as an opportunity to create a space in which to advocate for refugee rights before public institutions, civil servants or other bodies. The resultant relationships and awareness should contribute to the cessation of discrimination towards refugees in such contexts. The accompanying legal adviser serves as a watchdog, and reminds institutions and individuals that someone is monitoring and documenting the treatment of refugees.

Situations in which obstacles in RSD or access to rights processes may necessitate accompaniment:

- Serious rights violations which have not been solved by ordinary channels.
- New arrivals who are still emotionally affected and have difficulties navigating a new context.
- Cases in which people suffered persecution at the hands of the authorities and still mistrust official systems.
- Instances of discrimination.

Client profiles which may require accompaniment:

• Illiterate clients.

- Indigenous or rural clients who have never navigated administrative procedures or are unaware of the workings of institutions.
- Differently abled clients who may have difficulties understanding processes.
- Elderly individuals.
- Minors.

### Accompaniment Training Materials

The below materials are aimed at practitioners who would like to incorporate advocacy by accompaniment in their programming. The focus of this lesson is the implementation of accompaniment as part of a comprehensive program to use the law as a tool to empower the refugee.

Advocacy by Accompaniment – Trainer's Guide Advocacy by Accompaniment – Presentation Advocacy by Accompaniment – Summary Sheet Advocacy by Accompaniment – Summary Sheet Answer Key Advocacy by Accompaniment – Brainstorming Exercise

How to use these materials:

It is important for the trainer to be attuned to the specific needs of the group and to tailor these materials to suit them. You should view the training tools as a resource and not as a must-do manual. Although all the sessions have been tried and tested in many different contexts and with a variety of actors, the materials will always need some level of adaptation to suit your specific audience or context.

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## **Outcome Monitoring**

A <u>Case Guide</u> defines the way in which each case outcome should be monitored and is a helpful tool for outcome monitoring. Further information about defining case outcomes can be found in the <u>Monitoring and Evaluation</u> section.

Regretfully, it is impossible to identify the most appropriate moment when the outcome should be registered – indeed, results arrive at arbitrary times and the timeline relies on factors that are extremely changeable. Calling clients at arbitrary moments to inquire about the outcome may pose unnecessary stress on them, and it would create expectations that are outside of your organization's control.

As such, the outcome should be monitored when a volunteer legal advocate (VLA) leaves your organization, if it has not been completed during their stay. Alternatively, your organization may set time periods within which to monitor a case, whether or not the VLA has left.

When planning how to monitor the outcome of cases, consider the following:

What basic client information will you need?

Think about information that you must include on forms, petitions, etc., as well as information you will need for day-to-day operations (e.g. phone numbers, addresses, email, etc.). Look at your intake forms, and any other forms that you or your clients fill out.

Can one client have more than one case? Do you need to track distinct cases in a different manner?

For example, if John Doe has a pending Refugee Status Determination (RSD) appeal, a resettlement case, and a labor violation case, should your database report this as three distinct cases, or simply one client helped? What type of information do you need for each case? Will you combine your follow-up calls according to a time convenient for all cases, or will you follow a separate monitoring procedure for each case?

Can more than one legal advocate be responsible for activities for a particular client/case? If so, do you need your database to be able to record all the advocates who work on a particular case?

If more than one advocate is working on a case, set clear responsibilities for monitoring the outcome of the case. Who should call and when? It is important to coordinate and record these duties so no case is forgotten.

Do you want your database to show how many open cases each advocate has? What other type of information do you need to record regarding your legal advocates?

By allowing you to filter cases by open or closed, you can facilitate the monitoring of your cases. Look at all cases closed in the last month/quarter.

You could also include a 'monitoring date' in your database or filing system. Searching for all the monitoring dates set for within a certain month would allow you to monitor outcomes easily.

## Referrals

Clients' non-legal needs are often more pressing than resolving the client's legal migration status or human rights claims. However, the restricted mandate of legal aid providers – necessary to maintain service quality and efficiency – means they are far from able to attend to the comprehensive range of needs their client has.

Nonetheless, seeking comprehensive justice for your clients should be an overall goal for your organization. While you may play a part in seeking legal justice, this is often meaningless without psychological healing, physical rehabilitation, adaptation to a new way of life and other processes that enable refugees to put trauma behind and move on with their lives.

It is therefore important to facilitate your clients' contact with other service providers mandated and able to assist with other facets of their quest for justice. On a more

practical level, referring clients to other service providers may help them meet their immediate needs for shelter, food, clothing or other necessities.

In the quest for durable solutions, resettlement may or may not be an option in your context. Referring a client to UNHCR for resettlement is advisable in protection cases or urgent medical cases, as well as in other instances, though the latter may not always be successful or fast-moving.

Legal cases to regularize migration status may take a long time to resolve, resulting in difficulties in accessing basic services while a client is 'irregular' or undocumented in a country. These immediate needs may therefore also be prolonged over years.

You must build up a directory of referral organizations as soon as possible. This involves mapping local service providers and building relationships with as many as possible in order to ensure pro-bono attention for refugees. Your referral directory should include both crisis and long-term support sources.

A mapping activity should take place before you even begin to offer legal services. It should not look exclusively at refugee-oriented services, but could take in local services aimed at citizens e.g. homeless charities, food banks, faith groups. It is advisable to contact all your mapped organizations and service providers and introduce yourself and explain about the situation of refugees in your area if they are unfamiliar.

Notify your contacts if there are gaps in your directory. It may be possible that private services (e.g. health, language learning, yoga, bicycle maintenance) exist whose practitioners or staff would be willing to allow refugees to attend or participate for free.

When making referrals, the following practical considerations should be taken into account:

- Many organizations use referral forms which ask a number of personal details of the client in question in order to justify attention, free or otherwise. Remember to stick to the principles of confidentiality that characterize client-adviser relationships. If there is important information that the client is not comfortable with you disclosing to a third party which is a requirement on the referral form, state that the question cannot be answered and call the referral organization to discuss your concerns.
- Always try and establish a personal connection or rapport with someone at the agency or organization to which you are referring a client. Speaking on the phone or having an email exchange will help smooth the transfer for the client, and help make sure attention at the other end is personable and welcoming.
- Note that it is often necessary for you to book the client an appointment with another service provider yourself, as they may not have access to the internet or be able to make phone calls, due to financial or linguistic barriers, or fear of

navigating institutional procedures. Try to guide the client through the appointment booking process so as to further their empowerment.

- Make sure the client knows when and where their appointment with your partner service provider is, and how to get there. You may need to print off maps and write down directions and instructions, and check that your client understands by asking them to repeat the route and time back to you.
- Print small appointment cards to be given to clients with the essential information regarding their appointment: time, place, service, staff member who made the referral / took the booking / will see your client.
- Your organization may decide to provide discretionary funding for clients to travel to appointments at other offices.

## Resettlement

Regardless of the services you are providing in a particular refugee case, you will always be looking toward helping your client achieve one of the following durable solutions:

- voluntary repatriation,
- local integration, or
- resettlement.

The materials in this Toolkit focus primarily on legal services aimed at achieving local integration, which begins with obtaining legal status as a recognized refugee. For many clients, however, the battle will not stop there. Your clients may confront not only legal barriers to local integration, but also economic, social, and cultural obstacles as well. For those clients who are unable to locally integrate and to voluntarily repatriate, resettlement to a third country may be an option.

Persons considered for resettlement need:

- 1. a refugee case, meaning a continuing well-founded fear of return to their country based on the refugee (1951 Convention) definition; and
- 2. strong resettlement needs, meaning that resettlement has been identified as the most appropriate durable solution, and the person falls within one of the resettlement submission categories.

It is crucial for your clients to understand that there is no right to resettlement, and it is only available for those who have no other options. Resettlement is managed by UNHCR. UNHCR collaborates with countries. The countries make decisions on resettlement cases, and then receive refugees who are accepted for resettlement. This is a complicated process that involves various criteria and quotas.

Although every refugee can apply to be considered for resettlement, many applications are not found to be eligible by UNHCR, and are not submitted to countries for

consideration. Further, even refugees who are found eligible for resettlement will not be able to choose their country of resettlement, though UNHCR does consider a refugee's family or other ties to particular resettlement countries when submitting cases. Clients should be encouraged to integrate to the best of their ability in their host country, acting under the assumption that they will not be resettled to a third country.

Depending on the scope of your organization's work, you may or may not be assisting clients with their petitions for resettlement. Regardless of whether this falls within the services you provide, you should be prepared to respond to questions about resettlement. There are many misunderstandings about what resettlement is, to whom it is available, and what the process of applying for and being resettled actually entails.

As a refugee legal adviser, you should be familiar with the resettlement process in your host country so that you may adequately advise your clients without creating unrealistic expectations. At the very least, you should be prepared to explain the above information to your clients, and to refer them to the local UNHCR resettlement authority. We also recommend that you familiarize yourself with UNHCR's resettlement materials, and have copies of UNHCR's Resettlement Handbook on hand (or pamphlets that you may be able to obtain from the local UNHCR office) to give your clients.

#### UNHCR's resettlement assessment

Resettlement possibilities vary greatly depending on the country of refuge, UNHCR's policies in that particular location and the third country that would receive the refugee. Based on Asylum Access's experiences with resettlement, UNHCR appears to evaluate the factors below most heavily in considering each case. In this determination, as always, your client's credibility is of utmost importance.

#### 1. Does your client have a strong refugee case?

In some countries, the local RSD office is more lenient with its application of the refugee definition than UNHCR. Just because a client has been granted refugee status by the local authority, does not mean that UNHCR will consider that person a strong candidate for resettlement.

2. Does the client have a durable solution other than resettlement? What are the client's prospects for viable local integration? Does the client have prospects for voluntary repatriation?

UNHCR will consider prospects for local integration. Do refugees have legal rights similar to citizens (or permanent residents)? Are refugees able to be economically self-

reliant? Can refugees safely participate in the social and cultural life of the asylum country? If such conditions exist, UNHCR will look at the steps (and successes or failures) the individual or the family has taken in attempting to integrate in the country of asylum. Asylum Access experienced in Ecuador that UNHCR generally required that an applicant demonstrate that s/he had tried to integrate for two years without success.

UNHCR will assess the possibility of voluntary repatriation. Can the refugee return – in safety and dignity – to his/her home and be protected there? Is UNHCR facilitating or promoting returns to your client's country? Is there a reason why your client cannot return even if conditions are conducive for others to return (i.e. is your client a member of a minority group which was particularly targeted, has your client suffered such acute trauma that s/he should not be compelled to return and/or are there age, gender or other reasons which make return practically impossible – i.e. is your client a separated child or unaccompanied minor, a vulnerable girl or woman, an elderly or disabled person who would continue to be at risk?)

#### 3. Does your client have emergency or urgent legal or physical protection needs?

If your client is facing ongoing persecution/threats in his/her country of asylum s/he may be a candidate for (accelerated) resettlement. Examples of legal / physical protection needs may include threats of refoulement, expulsion and/or arbitrary arrest or detention in the country of asylum. Physical protection needs may also emanate from nongovernment actors, and may include risks from which your client cannot be adequately protected by the host government (i.e. serious harassment / threats aimed at religious or ethnic or other minorities within refugee populations; trafficking, forced marriage or other forms of sexual or gender-based violence; or personalized threats of a political or other nature because of your client's individual refugee claim etc.)

In instances where the host country government is not the agent of persecution, normally the client will have to first show that he has asked for protection from the government in his country of asylum as well as pursued other solutions such as relocation within that country before he will be considered for third country resettlement. For example, if your client is receiving threats, he should first call the police, solicit admission to the Victim and Witness Protection Unit, and attempt to relocate if feasible. He should also make sure to document each of these steps, and obtain/provide copies of that documentation in his application for resettlement, thus demonstrating that he has exhausted all local legal remedies/resources and is still unsafe.

# 4. Does your client fall within a resettlement submission category considered by UNHCR and receiving third countries?

The following individuals are more likely to obtain resettlement, though they still must comply with criteria set out in 1 and 2 above.

- Refugees with legal and/or physical protection needs
- Survivors of torture and violence
- Women and girls at risk
- Refugees with medical needs
- Refugees with family members who have already been resettled or otherwise made it to another country (family reunification)
- Children and adolescents at risk
- Elderly refugees
- Lack of foreseeable alternative durable solutions

#### Offering assistance and advice

You should think long and hard about your organization's role regarding resettlement procedures. Resettlement is a very complex issue, as it is not a right for any individual refugee. Local situations will vary, but UNHCR does not view resettlement as an area for legal advocacy in general. NGOs may lend a hand in identifying cases, but once the case has been presented to UNHCR, it is up to the discretion of resettlement officers to perform an independent case evaluation.

Before making a decision about your organization's role in the resettlement process, you should meet with UNHCR to understand the local resettlement context, and identify areas in which your organization may have a role. Having personal contacts within UNHCR will be invaluable to flag a client for resettlement. You may also consider meeting UNHCR resettlement staff at the beginning of each year, to get a sense of their resettlement priorities and quota.

You can also meet with any other organizations working on resettlement to understand the local challenges and success stories. Once you understand resettlement both globally and locally, you should define how your organization fits within the resettlement framework and what your organization's role will be when potential resettlement cases arise. You will need to adapt your legal advocate training accordingly. Also, if your organization's main activity is legal assistance other than resettlement advice, it is important to prevent the misrepresentation of your organization as a gateway to resettlement.

#### Fraud

Resettlement is further complicated by a small minority of fraudulent cases within the process. The major destination countries for resettled refugees tend to be those that are also seen as desirable places to emigrate. For example, most refugees in Ecuador are resettled to the U.S. or Canada. Immigrants regularly pay human smugglers \$10,000 or more for dangerous and illegal passage to the U.S., so a legal, free journey with the support of the UN is highly prized. This leads to some degree of fraud and in situations where fraud is common, UNHCR is highly sensitive to any inconsistencies or implausibilities in resettlement cases. In such situations, even if your client is able to provide a perfectly good explanation for an alleged inconsistency in her testimony, she may be denied resettlement simply because of the extremely cautious nature of decision making.

#### Further resources

Resettlement Handbook (UNHCR 2011) UNHCR-NGO Toolkit for Practical Cooperation on Resettlement: A Repository for Exchanging Ideas on Resettlement Partnerships (UNHCR 2015) Operational Activities – Referrals and Submissions for Resettlement: Definitions and FAQs (UNHCR 2011) Frequently Asked Questions about Resettlement (UNHCR 2013) Resettlement Flow Chart (UNHCR) Resettlement Fact Sheet (UNHCR 2014)

## Psychological Support

No one should try and provide psychological support to clients if they are not trained. Empathy, listening and peer support are important aspects to your work, however there will be times when professional psychological attention should be sought.

You should make contact with psychologists and psychology schools in order to build up a directory of competent, pro-bono mental health professionals experienced in trauma to whom you can refer clients in need of attention. You may approach child specialists, crisis specialists, or general practitioners. Place advertisements on local nonprofit or mental health fora, including universities.

Remember that it is important for your team to have access to psychological support as well, so you may wish to establish referral protocols for both clients and advocates.

It is also important that any psychologists to whom you decide to refer clients are well aware of the cultural differences between their treatment models and the potentially different worldviews and healing preferences of clients from different backgrounds. Psychological attention must be culturally sensitive.

## **Referral Directory**

Referral directories should be drawn up from the start, when you begin providing legal services, and regularly updated with contact numbers, names and focal points in order to facilitate communication.

Services to include (not a comprehensive list):

- Mental health professionals
- Medical health services
- Subsistence grants
- Shelters
- Free meal providers
- Livelihoods support organizations
- Training and educational opportunities
- Ombudsmen
- State services focal points
- · Physical rehabilitation for landmine survivors
- Language classes
- Clothes donations
- Women's groups
- Faith groups
- UNHCR resettlement procedures

You may want to draw up a Google docs spreadsheet which can be updated by your legal advocates as necessary. Each service provider recorded should contain details on:

- **Contact information**: phone, mobile, alternative numbers, out-of-hours numbers, email address, postal address, fax, Skype.
- **Personal information**: include the full names of staff members, as well as their shifts and/or tips about which approaches work well with certain individuals.
- **Previous communication**: It is important to note when you have made contact with a service provider or referred clients to them. This will help track your relationships and avoid over-burdening one service provider if possible, thereby keeping relationships smooth. It also demonstrates professionalism and promotes friendly relations to be able to mention e.g. 'I hear our last client referred, X, is very pleased with the treatment he received,' or 'How have you been since you last spoke to my colleague X?'
- Alerts: note whether the service provider is near capacity or unable to take more clients.

If an organization has a standard referral form, whether online, in PDF or on paper, these should also be kept on file for easy reach by the legal advocate in charge of the case.

The Rights in Exile Program has a <u>country-by-country directory of pro-bono legal</u> <u>service providers</u> which may be a starting point for building up your directory, as some of the organizations and individuals listed provide further services e.g. psycho-social support, legal advice for migrants in general. Their links and networks section should be checked: it currently provides information about trafficking and detention support networks.

## **Referral Agreements**

Many organizations will already have established channels and referral mechanisms, such as forms requiring detailed information on client's needs and justifications for attending to them.

It may be helpful to customize these processes (and potentially simplify them) by elevating the status of your organization with relation to the organization or agency to which you wish to refer clients. This cements a level of institutional trust and formalizes tailor-made procedures that are more in tune to refugees' needs and the often urgent nature of their support requirements.

Drawing up a Memorandum of Understanding (MOU) with such service providers may be advisable in order to ensure coordinated assistance and referral procedures. Such instruments should lay out the information to be transmitted when referring cases, and time-frames.

Sample MOU: Asylum Access Tanzania and Foundation for Human Rights and Community Development

You may wish to survey your clients' needs, assess their profiles and analyze what services may be most prudent to prioritize for individualized outreach, relationship building and MOU elaboration.

Again, make sure you do not limit your consideration to refugee-specific service providers. Many organizations serving the population in general may be unaware of refugees' situations and may not be averse to furthering their attention to this demographic.

## **Refugee Status Determination Procedures**

This part of the Toolkit outlines the procedural steps and possible courses of action to take when working on refugee status determination (RSD) cases. RSD procedures are relatively uniform around the world. Usually governments or UNHCR run this process. It is important to familiarize yourself with these procedures and be aware of local channels through which you can report irregularities in procedure.

- The rights and responsibilities of asylum seekers section details the rights and responsibilities that refugees have during different stages of the RSD process.
- The credibility assessments section explains why credibility is important, lists some key factors for this assessment, and explains how to apply them.
- The registration section describes this process and some considerations to keep in mind when helping refugees register with the government or with UNHCR.
- The first instance section discusses the steps and procedures involved in refugees' status determination interview.
- The appeal section provides some basic information on the process for appealing an RSD rejection.
- The re-opening section lists the reasons why UNHCR may close a case, briefly describes the process for re-opening a case, and discusses how a legal advocate can assist a client in this process.
- The derivative status section briefly describes the process for applying for derivative status.
- The other mechanisms available in RSD section describes different systems that you may be able to use to challenge a denial of refugee status.
- The other options for legalization section discusses why a refugee would want to pursue other forms of formal legal status, other types of status, and how best to advise clients who are seeking this.
- The raising procedural irregularities section describes when and under what circumstances you could file an appeal based on a procedural irregularity that occurred during the RSD process.

To complete this training, navigate to each of the sections mentioned above beginning with the Rights and Responsibilities of an Asylum Seeker. After reading all of these sections, you should have a basic understanding of the RSD process and how to help a refugee navigate it.

When working with UNHCR-run status determination in particular, consult the following documents:

Procedural Standards for Refugee Status Determination Under UNHCR's Mandate (UNHCR 2013) UNHCR Protection Manual

## Rights and Responsibilities of Asylum Seekers

In addition to the full range of human rights, all asylum seekers have specific rights related to due process in RSD procedures. Similarly, they are obliged by certain responsibilities.

Although UNHCR or local staff may be aware of the asylum seeker's rights, they might not act to enforce them unless the client claims his/her rights. For example, an interviewer might not offer the client a break. The client must therefore be prepared to ask to enforce his/her rights. Explain that this should not prejudice their claim in any way and that should the client feel intimidated in doing so, he/she should report any procedural unfairness to the legal advisor at the first opportunity after the interview.

The following is by no means conclusive, and may vary greatly depending on local legislation or procedural guidelines. Indeed, some of these are best practices, but not necessarily justifiable rights in local jurisdictions. Even the UNHCR guidelines are not the law in many countries.

## **General Rights**

- The right to free, impartial status determination without paying for any aspect of the service.
- The right to have a reasoned written response.
- The right to information on how to appeal a decision.

## Responsibilities

- Under Article 2 of the 1951 Refugee Convention, 'every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.'
- Under Article 3 of the OAU Convention, 'every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.'
- Duty to cooperate with the tribunal by informing them of address or other contact information changes.
- Duty to attend every interview/ meeting/ visa renewal. In many contexts, any action that remotely suggests the applicant is not cooperating with the process could lead to closing of the file.
- During every interaction with officials, credibility is tested. Asylum seekers have to tell the truth and should aim to provide consistent answers in every interview.

## Regarding the interviewer

#### **Rights**

- You have the right to an interviewer in the gender and language of your choice, trained and provided at the expense of the decision maker.
- The interviewer should be non-intimidating, non-threatening and impartial. You have the right to change the interviewer if he/she is intimidating or is suspected of having any bias toward you for any reason, including background, ethnicity, political leanings, and religion.
- You have the right to ask the interviewer to clarify questions at any time when you do not understand what the interviewer is asking. You should also have the opportunity to clarify any information that you may feel was interpreted incorrectly, or simply forgot to mention.
- You have the right to have the transcript of your interview read back to you at the end of the interview and to clarify or add any relevant information.

#### Responsibilities

- Never offer bribes to any member of UNHCR or local RSD staff. This may result in immediate rejection of the claim.
- Treat UNHCR and local RSD staff with respect and formality at all times, regardless of how you feel you are being treated. A formal complaint can be made later with the assistance of your legal advisor, and you should be aware that any display of frustration, anger or aggression on your part will not help your claim. UNHCR or the local authority is the ultimate decision maker and must not be given any superfluous reason to reject or delay the decision of your claim.
- **Tell the truth**. Failing to tell the truth can result in destroying your credibility, and thus your claim, even if the false information seems minor or unimportant. It is also necessary to provide all relevant information. In many contexts, if authorities believe or find out that applicants are hiding relevant information, they will see this as lying.
- The interviewer should read back the transcript at the end of the interview. You should use this opportunity to clarify points and add any other relevant information that was not covered during interview.

## Regarding the interpreter

## Rights

- You have the right to an interpreter in the gender and language of your choice, trained and provided at the expense of the decision maker.
- You may choose to change the interpreter at any stage during the interview for reasons including but not limited to the following:

- The interpreter or interviewer does not seem to be interpreting correctly or sufficiently understanding you;
- The interpreter or interviewer is acting in a way that makes you uncomfortable;
- The interpreter or interviewer is previously known to you;
- The interpreter or interviewer is suspected of having any bias towards you for any reason, including background, ethnicity, political leanings, and religion.

#### Responsibilities

• Contact UNHCR or the local RSD authority in advance of the interview if you speak a language that the they may not be able to provide an interpreter for. You may be allowed to nominate your own interpreter if the authority cannot locate one, but this should be verified before the interview.

## Regarding breaks and scheduling

#### **Rights**

- You have the right to ask for a break at any time during the interview for any reason, including hunger, exhaustion, to use the bathroom, to calm down, to pray or simply to take a break. Interviews can be very long and exhausting, so it is wise to take a break at least every hour, depending on your endurance.
- You have the right to reschedule the interview prior to or during the interview if the you cannot proceed with the interview. Permissible reasons during the interview are illness, hunger, exhaustion, fear or other discomfort. It is often difficult to reschedule an interview and receive a new appointment without some delay, and you should be counseled about the possibility of further delay.

## Responsibilities

- Request a break or rescheduling when you become aware that it is necessary.
- If you have a tendency to become exhausted early during an interview, contact and advise UNHCR or the local authority before the interview.

## Regarding family members

#### Rights

- Each family member has the right to be interviewed individually. Spouses and dependent adults will often be interviewed separately, in part to test credibility.
- Each family member also has the right to individual documentation.

#### Responsibilities

• Dependents of the principal applicant who are under the age of eighteen are not usually offered individual interviews, and should request the opportunity in advance of the interview date if they wish to be interviewed. A specially trained interviewing officer should be provided.

## Regarding legal representation

#### **Rights**

• You have the right to legal advice for the entire duration of the asylum process, until a durable solution is reached. You are entitled to have a representative accompany you during the interview, provided certain conditions are met.

#### Responsibilities

- UNHCR requires that the legal representative is thoroughly aware of the claim, that you consent to the presence of the representative, that the representative does not obstruct or interrupt the interview, and that the legal representative is familiar with the 1951 Convention.
- Permission to have your legal advisor represent you during an interview must usually be sought in advance in writing.

NB. The burden of proof is on the decision maker: an asylum seeker does not have a duty to prove their fear of persecution.

## **Credibility Assessments**

## Why credibility is important in asylum claims

Credibility determination is a step towards deciding how to weigh an applicant's statements and other evidence when making an asylum decision. Credibility assessment is undoubtedly one of the most challenging aspects of asylum decision-making. Claims for international protection are often rejected based on the justification that the determining authority or court does not believe what the applicant says.

Deciding on asylum claims represents a specific challenge as compared to most other types of administrative and judicial procedures. With a limited range of verifiable evidence, decision-makers have to assess whether a future risk prevails at a distant, relatively unknown place, with this decision having vital consequences on the life, physical integrity and human rights of a person. As a result, a high level of uncertainty is

inherent to the system, increased caution is necessary and specific rules apply for evidence and credibility assessment.

- Credibility is: A statement, which is capable of being believed.
- Credibility is not: Definitely true.
- Credibility is not: The overall trustworthiness of the asylum-seeker.
- Credibility is not: A statement actually believed by a particular interviewer.

## Factors determining credibility

There is no infallible and fully objective means to determine whether an applicant's statements are genuine. However, international and national jurisdictions have utilized credibility indicators against which the applicant's statements and any other evidence submitted by the applicant are assessed. These factors are: internal credibility; external credibility; plausibility; and demeanor. The limitation of "demeanor" as a measure of credibility indicator is a certain determinant of credibility or non-credibility.

#### Internal credibility

Internal credibility is the assessment of a person's testimony based solely on her or his own statements and other evidence submitted. Two key factors often referred to in this context are the level of detail (or vagueness), and the degree to which the applicant has been generally consistent (or contradictory).

## Sufficiency of detail and specificity

The interviewer must assess if the level and nature of the detail provided by the applicant is reasonable and indicative of a genuine personal experience by someone with the applicant's individual and contextual circumstances (age, gender, region of origin, education, etc.). The assumption underlying this indicator is that a person who is relating a lived experience will be able to recall and recount the experience in detail, including, for example, sensory details of an event, such as what he or she saw, heard, thought or felt. It is expected that this recall will be greater than for someone who has not had this experience. This then translates into the assumption that vagueness, brevity or an inability to provide information with regard to asserted material facts may, when the individual and contextual circumstances of the applicant have appropriately been taken into account, be considered to cast doubt on the credibility of the asserted facts.

#### Internal consistency

There is no agreed definition of the term 'consistency'. It is understood to comprise a lack of discrepancies, contradictions, and variations in the material facts asserted by the applicant. The use of the indicator 'consistency' is based on an assumption that a

person who is lying is likely to be inconsistent in his or her testimony, presumably because it is considered difficult to remember and sustain a fabricated story; and/or when challenged, it is assumed that individuals who are not telling the truth try to conceal their inconsistencies by altering the facts. The converse supposition appears to be that if applicants actually experienced the events they recount, and are truthful in their statements, then they will broadly be able to recall these events and related facts accurately and consistently.

Consistency may be viewed over the course of an interview, over several interviews, over the comparison between oral statements and written, or among any similarly gathered evidence from the applicant.

Some inconsistency may be tolerated. It should be contemplated by the decision-maker that certain factors may lead to inconsistency that are not necessarily indicative of a lack of credibility. These could be traumatizing events, or events where a person's ability to store the information in the brain is compromised due to fear, adrenaline, or other external forces.

For example, the phenomenon of **dissociation** can lead to gaps in time in a person's story. There is a well-known journalist who described this happening to him: He was in Afghanistan covering the war and traveling with the U.S. troops. One day an enemy up on a hill opened fire on him and a US soldier. The journalist recounts scrambling behind a large rock and then has the distinct memory of the US soldier retrieving his weapon and firing a single shot up towards the enemy fire. He recalls being astounded at the determination in the soldier to fire this one shot. In reality, the soldier emptied most of his entire magazine up into the hill. Dozens of bullets. The journalist was suffering from dissociation due to his panic and he was unable to store the information of the scene in its entirety. His brain recognized and stored only the firing of the final bullet.

Dissociation is a common explanation for differing bystander accounts of a single incident. When an armed robbery occurs in a crowded store, some people may report a white person, between ages 25-35, wearing a blue sweatshirt. While others will report a Hispanic person, over 45, wearing a black t-shirt. These people are often completely convinced of their version of events. Yet, because of the trauma of the situation, the human brain will omit some information, focus on other information and improperly store further information. These possibilities should be considered in the context of asylum seeking, where the interviewee may be the survivor of grave events seriously disturbing his or her memory and recollection of events. Such inconsistency, gaps, or implausible aspects should not necessarily be assumed not credible.

#### **External credibility**

External credibility refers to a comparison between the applicant's statements and other evidence and other sources of information, especially country of origin information.

#### Consistency with information provided by other witnesses

Consistency in the facts asserted by the applicant with any statements made by dependents, other family members or witnesses, may be considered an indicator of credibility. But, personal interviews of dependents should not be conducted with the aim of establishing contradictions and inconsistencies. In particular, UNHCR cautions against a reliance on the statements of children to undermine the credibility of statements by a parent or parents. If any inconsistencies that are material to the determination of the principal applicant's claim arise during an interview with family members or dependents, the principal applicant should be given the opportunity to clarify these.

#### Consistency with available external information (Country of origin information)

This indicator requires that the assessment of the credibility of the material facts that the applicant asserts takes into account what is generally known about the situation in the country of origin or place of habitual residence. It should consider accurate, objective and time-appropriate country of origin information (COI), as well as any specific information or other expert evidence such as medical, anthropological or language and document verification analysis reports.

When looking at this credibility indicator, an interviewer should not necessarily find the applicant credible because his or her story is very similar to another's from a similar place; nor should the interviewer quickly conclude the applicant is not credible if the story differs greatly from others' stories. Research should be broadly done through recognized sources and should not be precisely compared to the story relayed by another asylum seeker, whose ultimate veracity the interviewer is incapable of knowing.

COI is not a lie detector: it provides the wider context for the assessment of an asylum claim, yet it cannot tell whether the applicant is truthful, neither can it decide whether the claim is well-founded. The role of COI is to corroborate, question or put into context the applicant's statements and other evidence. The increasing availability of up-to-date COI may help reduce the margin of error in decision-making.

## Factors to be used with caution or not at all

## Plausibility – use with caution!

Plausibility may be considered by some to mean no more than 'credible'. However, a range of other terms has been utilized in an attempt to capture it's meaning, including: 'likelihood', 'reasonableness', 'probability', and 'common sense'. However, an assessment of whether facts presented by an applicant seem reasonable, likely, or probable, or make common sense, risks becoming intuitive and being based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping,

rather than on objective evidence. A fact is not implausible because it would not occur in a European Union (EU) member state or in the personal life of the decision-maker. Nor is a fact implausible simply because it is exceptional or remarkable.

Interviewers should not be tempted to form a view on the credibility (whether positive or negative) of an applicant's asserted age, ethnicity or sexual orientation based on stereotyping or their physical appearance.

It should be noted that UK law and guidance provide that the indicator 'plausibility' should be taken into account only at the advanced stage in the procedure at which consideration is given to applying the benefit of the doubt.

An example of an historical flawed use of 'plausibility':

On 7 April 1944, Rudolf Vrba and Alfréd Wetzler, two Slovakian Jews, escaped from the Auschwitz concentration camp. Wetzler compiled a report, detailing information about the camp's geography, the gas chambers, and the numbers being killed. This report came to be called the "Vrba-Wetzler Report". In June 1944, the United States received this detailed information. Prior to this information, with few exceptions, the reports and information received by the allied forces were not taken seriously and were even dismissed as atrocity propaganda. And even after the report, the Roosevelt administration waited four months before authorizing its release, as there was an issue of believability. Although this report had much more detail than previous information, and there were similarities to previous reports, the world did not seem to be ready to accept the existence of massive extermination camps.

#### Further resource

<u>Credibility Assessment in Asylum Procedures (Hungarian Helsinki Committee,</u> 2013)

#### Demeanor - Not a viable credibility factor

The term 'demeanor' describes the outward behavior and manner of a person, including his or her manner of acting, expression or reply (for example, hesitant, reticent, evasive, confident, spontaneous, direct etc.), tone of voice, modulation or pace of speech, facial expression, eye contact, emotion, physical posture, and other non-verbal communication.

The use of demeanor as an indicator of credibility appears to be based on an assumption that a certain demeanor is indicative of credibility or non-credibility. However, it is an assumption that is highly flawed. Evidence shows that the demeanor people may consider as clues to deception are unreliable. Looking for behavioral signs of deception may reveal behavioral signs of anxiety, which is clearly problematic in the context of the asylum procedure.

Demeanor is shaped by the individual's personality traits, age, gender, sexual orientation and/or gender identity, maturity, culture, social status, education, psychological and physical state, and their situation within the context of the asylum procedure. A reliance on demeanor overlooks the fact that there is no norm to the way someone tells the truth.

A determination of credibility by reference to demeanor has a subjective basis that will inevitably reflect the views, prejudices, personal life experiences and cultural norms of the decision-maker. As such, there is widespread recognition in jurisprudence, guidance, and academic literature that demeanor is an unreliable indicator of credibility.

## How to apply the credibility indicators to a given case

Using a structured approach to credibility determination will reduce the subjectivity in assessing the credibility of the material facts presented by the applicant.

## Credibility assessment must be structured

Credibility assessment has to be conducted in a structured manner, using a set of clear indicators. The applicant's statements and other evidence should be assessed "in the round" using clear credibility indicators; credibility findings should not be based on a single indicator.

## Credibility must be determined for material facts

Credibility indicators should be applied in relation to materials facts. All the material facts should be assessed using the various credibility indicators, and a final conclusion should be drawn on whether to accept the material facts, or not, following a careful analysis.

## The interviewer must make findings

The interviewer should consider each material fact and make findings of credibility on these facts alone. The interviewer should not determine credibility based on the demeanor or likability of the applicant, nor on any commonalities or differences between interviewer and applicant. By addressing each material fact and determining the credibility of the fact, the interviewer is less likely to rely on personal bias (however unconscious and unintended such bias may be.)

#### The applicant should be given an opportunity to explain any discrepancies

A negative finding in relation to a material fact should only be reached once the interviewer has taken into account all the various credibility indicators and has considered the background of the applicant and, when given the opportunity, the

applicant has failed to produce a satisfactory explanation for the lack of detail or inconsistency. An applicant for asylum may have endured excessive trauma and he or she may have a perfectly credible explanation for an omission or inconsistency. Due to the nature of the applicant's background (including things like educational level, youth, cultural background prescribing shame about certain types of abuse e.g. sexual, based on orientation, etc, learnt lack of trust of figures of authority), he or she must be given a chance to correct, explain or elaborate on material facts that the interviewer has initially found not to be credible.

This is true, for example, for women who are survivors of sexual violence. In many cultures, even though they are survivors, and we would not hold them responsible for their victimization, nonetheless, there exists a common fear of speaking out. Women who are survivors of sexual trauma may fear their husbands will leave them, their father or brothers will disown them, or other fears. As a result, they may not want to walk about their trauma. They may be incredibly reluctant to provide detail or, once shared, they may refuse to return to the subject. Similarly, and perhaps even more so, a man who is the survivor of sexual violence may be virtually unwilling to share the details of his trauma. He may fear condemnation, he may fear being revealed as homosexual, or thought to be homosexual; he may have a variety of social and cultural blocks to providing detail. He may play down the event initially, only to later reveal upon questioning the true nature of the incident. He may be totally unable to reveal the nature of the event if the interviewer is also a man. Such discrepancies should be considered as part of the person's entire flight history and should be tolerated when possible.

Similarly, young people, or those without significant standard education, may be intimidated by the interviewer, or fear being viewed as ignorant. They may try to hurry through events that have shameful emotions attached, even if the event was perpetrated against them and they are survivors. The decision-maker should exercise patience and strive to understand the perceived power differential between himself or herself and the asylum seeker.

## Credibility assessment is a shared duty

The interviewer maintains an important role to effectively interview the applicant. The interviewer cannot make a valid determination of credibility based on a poorly conducted interview. As noted, the interviewer should exercise patience and should strive for understanding of some of the basic difficulties common to the work of interviewing asylum-seekers.

An interpreter should always be provided if the interviewer does not speak the language and all aspects of the interview must be translated throughout. There should be no side conversations either between the asylum-seeker and the interviewer, as important information could be missed, nor between the interviewer and the interpreter, as this may make the asylum-seeker distrustful. Consideration should be made to gender and sexual orientation issues, with particular attention to sexual violence, against women or men. And a young asylum seeker, or someone lacking in standard education, should be given more latitude and effort. If the applicant omits seemingly important details, the interviewer has a duty to inquire and flush out what detail the applicant may be able to describe.

## Conclusion

Determining credibility is neither intuitive nor easy. Commonly used conceptions of credibility, such as eye-contact or volume, should not be used in determining the credibility of an asylum seeker. Rather, the four primary factors: sufficiency of detail and specificity; internal consistency; consistency with information provided by other witnesses; and consistency with available COI; should be applied in a structured way to material facts. The interviewer maintains a duty to ask necessary questions to elicit detail and specificity and must give the applicant a chance to explain any inconsistencies.

## Registration

Asylum seekers will be required to register their presence and intention to apply from refugee status. That process is typically done with the adjudicating government agency or the UNHCR, depending on which one is adjudicating refugee status in the country. Sometimes registration is done with or in conjunction with a local police or local law enforcement agency. Research your country's registration process to be able to adequately advise your client of registration procedures and protocols.

## 1. Government adjudicators

## ID number and registration card

At registration, the applicant will receive an identification number that will be used during the Refugee Status Determination (RSD) process. The applicant should record that number on his or her person and should share that information with your organization. The number will help identify him or her in the adjudicator's system during the process and also in case of detention or any other emergency. For example, if the applicant is detained, a detention official can call the UNHCR or government agency with the ID number to quickly identify that the applicant is a refugee or asylum seeker.

In some instances, the asylum seeker will receive a registration card that can be used as proof of their status and right to stay in the country. Depending on the laws of your country, this ID card may also provide the applicant with other benefits and rights, including the right to work, access health care, public education, and / or other protections under the law. You may find that not all law enforcement or government agencies recognize or understand the registration card (as well as the refugee ID card). Consider engaging in advocacy and public education to inform relevant actors.

In countries where registration cards are not issued, other documents issued at the time of registration may serve the same purpose of an ID card. Applicants sometimes laminate these documents and keep them on their person as proof of their application status.

#### Timing

Countries typically have a timing restriction or bar on the amount of time an applicant can be in the country before they register and apply for refugee status. This time varies widely among countries, from 1 year in the United States to 15 days in Ecuador. Time restrictions may also change over time depending on legislation, regulations, or executive decrees. The way that this time is measured is also very important to understand. Make sure you know whether government agency counts business or calendar days and whether they start counting at the time of entry or from another point in time. Additionally, whether the applicant has left and re-entered the country more than once may also impact when and how this time is counted.

If you believe that your client has surpassed the timing restrictions, understand what exceptions may exist that deems the delay reasonable and how they might apply to the client. These exceptions may be explicit in government regulations or laws or they may be considered in an ad hoc or discretionary fashion. First, take time to understand the laws and practices of the government agency. Second, think creatively and work with the client to fit him or her into exceptions to timing restrictions. Some examples may include:

- **Changed circumstances**: Changes in country conditions, laws, personal circumstances or eligibility based on family connections occur that materially impact the nature of a person's eligibility for refugee status
- Serious illness or incapacity: Applicant or applicant's family member was sick or physically/mentally unable to register in the limited time. Survivors of torture or persons with severe PTSD may be able to prove an exception is warranted through evidence and testimony provided.
- Bad advice or counsel
- Unaccompanied minors
- Persons with severe disabilities
- Other legal status held was terminated
- Initial registration was ineffective
- Domestic violence survivors
- **Other factors**: Extreme isolation within a refugee community, profound language barriers, or profound difficulties in cultural acclimatization

## Information required

The information that an applicant gives at registration should be correct and truthful even if only basic biographic information is collected at the time of registration. The information used at the time of registration will likely be used to check for credibility against future statements given to the adjudicator.

#### Initial screening

An RSD adjudicating office will collect initial screening information to assess the viability of an applicant's refugee status. The assessment may be based on information collected in the registration application that asks for the applicant to provide general information on the reasons for leaving the country of origin and to explain if there is a fear of return. The adjudicating agency may also collect an RSD application at this time. See UNHCR Registration procedures below.

In some cases, the adjudicating office may have an initial screening or registration interview at the time of registration. Understand the procedures and advise your clients accordingly. If a client has been registered and screened before receiving your assistance, try to understand what information was provided during the registration process. Explore options to amend or correct the registration and screening process where needed.

## Advice for client before registration

If given the opportunity, inform and prepare applicants before registration by providing the following advice:

- Make sure that all information provided at registration is truthful and to the best of your knowledge. Refer to credibility section.
- If you don't have information, say you "don't know" and explain why
- Do not provide false documents.
- If you do not have identification documents, explain why. Provide other types of secondary evidence that provides proof of who you are.
- Keep all your original documents unless otherwise required.
- Maintain copies of all information and documents given and signed if possible. Take photos of documents, if possible, if you are not given copies or do not access a copy machine.
- Record any other information given at registration.
- Ask for a receipt or form of evidence of the registration and keep evidence of registration in a safe place. If proof of the registration is not provided, record the date of the registration.
- Keep the ID number and a copy of proof of registration on your person for safety and to show law enforcement agents if necessary. (Discuss with your client if an original or copy should be carried on his/ her person)

- If an interview date is provided, record date of interview and call or tell the legal aid organization with this information to begin preparations.
- Bring copies of registration documents to the legal aid organization.

## 2. Registering with UNHCR

#### **Procedural standards**

The UNHCR Procedural Standards ("Handbook") Chapter 3.2 describes "Registration Procedures for Applicants for RSD." Note that the application of UNHCR Procedural Standards on registration and other procedures may likely deviate from the handbook. Make sure you understand the national and local procedures through meetings with the UNHCR and most importantly, through how they are implemented in practice with applicants. The best practices highlighted above can also be used before the UNHCR.

According to the UNHCR Procedural Standards, registration information permits the UNHCR "to design programmes for protections and assistance" and "identify and assist persons with special needs, and to make decisions about whether individuals should be referred to further UNHCR procedures." The registration process formally initiates the RSD process under the UNHCR's mandate. The UNHCR uses registration to gather detailed information about the applicant, including the circumstances surrounding the applicant's flight from the country of origin and other facts relevant to the refugee status determination.

## UNHCR registration operations and staffing

UNHCR staff should receive training and appropriate oversight to implement the registration procedures effectively. Under Section 3.2.3, the Handbook provides that the UNHCR office should provide "sufficient numbers of male and female Registration staff members to accommodate requests by applicants to have a Registration interview with a registration staff member of a sex preferred by the Applicant." Applicants should be given a meaningful opportunity to issue complaints according to UNHCR Complaint Procedures (Section 2.6). UNHCR should afford separate procedures to unaccompanied minors, as explained in Section 3.4.5. See <u>Child Rights Policy</u> Section of Toolkit. UNHCR should provide applicants with adequate space and privacy to fill out the forms. Id. at Section 3.2.4. UNHCR should be provide in a language and manner that is accessible to all applicants' needs, particularly regarding literacy, language, and disability needs.

## UNHCR RSD registration and application forms

The UNHCR has developed a standard registration sheet that is included in the first part of the RSD application form, which is typically collected at the time of registration. The registration Information Sheet should be completed for Principal applicants and every dependent or accompanying family member that are applying for derivative status through the principal applicant. Family members can decide to have their refugee claim determined separately from their spouse, child or parent and submit a separate application registration and application form. Review your clients' claims and determine if there is a separate basis for the claim and reasons to apply separately. Reasons to apply separately include but are not limited to the following:

- Applicants have weak claims and applying separately will strengthen the possibility of a positive outcome.
- Derivative children may age out (turn 18 years of age) during time of application.
- There is a lack of evidence or questions regarding the familial relationship between principal applicant and derivatives.

## Supporting documents and photos

The UNHCR should accept other forms of information and evidence supporting the RSD claims and circumstances of departure from the home country. Original should be presented where possible. However, UNHCR staff should never keep original documents, but rather will make copies and return originals to the applicant. Applicants should always keep copies for themselves if originals are kept by UNHCR officials. According to the UNHCR handbook Section 3.2.8, "[u]nder no circumstances should Applicants be asked to approach authorities in the country of origin to obtain documents, or to take any other steps that could place family members or associates who remain in the country of origin at risk."

Remember this information will be used throughout the RSD process and during subsequent proceedings (i.e. resettlement, voluntary repatriation, etc.). Accuracy and truthfulness are of utmost importance to avoid credibility and other related problems. Advise clients never to present false documents or information.

UNHCR staff should take photos of the applicant and derivatives during the registration period. Id. at Section 3.2.7.

## UNHCR registration interview

The registration interview may take place during the time of registration or at a later scheduled time. According to Section 3.2.6 of the Handbook, UNHCR staff will review the RSD Application Form, verify the applicants' basic biographic information, confirm that all family members and beneficiaries are identified, request personal documentation and IDs, and assist the applicant with any special protection or assistance needs. If the applicant has previously registered with the UNHCR, UNHCR staff will review previously filed information and update and verify any new information.

The principal and derivative applicants should take part in the registration interview. UNHCR staff interview should provide be individual and confidential for each applicant and his/ her derivatives. Relevant gender and cultural sensitivity procedures should be employed during the interview as according to Section 3.2.6 and other procedural standards found in the Handbook.

#### UNHCR registration certificate

UNHCR procedural standards require that Asylum Seeker Certificates (ASC) be issued to all applicants during the RSD process to "attest to their status as asylum seekers." Id. at Section 3.3.1. While the UNHCR is responsible for informing relevant law enforcement agencies of the significance of the certificate, alert your clients as many agents may not be familiar with the document. The certificate may require renewal, usually at a year's time, if the RSD application is still pending.

## First Instance

An asylum seeker has a finite number of opportunities to apply for refugee status. The applicant should treat the first opportunity as the only opportunity to apply for refugee status. The information given to the adjudicating agency will follow the applicant throughout any appeal. In most countries, the rate of recognition or approval of refugee status is significantly higher in the first instance as compared to appeal or re-opening processes as shown in the UNHCR's statistical year book below:

#### UNHCR Statistical Yearbook 2012 grant rates

Last, appeal and re-opening processes may take years to adjudicate. Without refugee status and the protections and benefits afforded to refugees, an asylum seeker's living conditions in the country of asylum may be unbearable and protections from arrest, detention or non-*refoulement* limited.

## General procedures

## 1. RSD interviews

## a. Scheduling

Interviews are typically scheduled at the time of registration. Understand the adjudicator's procedures for scheduling interviews. The lag time between the registration and the interview may be days, weeks, and sometimes months depending on backlogs and capacity. According to the Handbook, lag times at the UNHCR should not be greater than 6 months although they may be longer in practice. *Id.* at 3.5.3. Check with the adjudicating office to understand their policies on processing applicants with special needs. The UNHCR should offer accelerated RSD processing procedures for these clients. *Id.* at 4.6.

The client has the right to reschedule the interview prior to or during the interview if the client cannot proceed with the interview. Permissible reasons during the interview are illness, hunger, exhaustion, fear or other discomfort. It is often difficult to reschedule an interview and receive a new appointment without some delay, and the client should be counseled about the possibility of further delay. If the client has shown a tendency to become exhausted early during an interview, contact and advise the UNHCR before the interview.

Warn clients that this may be the case and build in time to prepare the client for their interview sometime near the time of the interview. For example, if the interview is scheduled for months after their registration, set a schedule with your client to gather evidence and information and meet periodically before the interview. It is best to have a last preparation meeting the day or two before the interview.

#### b. Interviewer

The client has the right to an interviewer in the gender and language of their choice, trained and provided at the expense of the decision maker. The interviewer should be non-intimidating, non-threatening and impartial. The client has the right to change the interviewer if he/she is intimidating or is suspected of having any bias towards the client for any reason, including background, ethnicity, political leanings, and religion. The adjudicating agency often has procedures for selecting eligibility officers for particular types of cases. Their criteria is typically based on the agency's capacity and the applicant's special needs, vulnerabilities, and background, such as the following criteria:

- Country of origin
- Language spoken
- Special needs or vulnerabilities (i.e. minor, survivor of gender-based violence, etc.)
- Difficulty of case
- Other family members interviewed by same officer

Note: Applicants should typically be able to request an interviewer of a specific gender. Make sure your client is comfortable with the sex of the interviewer.

The adjudicating agency may or may not reveal the identity of the interviewer or "eligibility officer" before the interview. However, you may be able to ascertain how eligibility officers are picked to conduct interviews. Inquire with the adjudicating agency directly, or alternatively observe the patterns and practices of the agency by tracking your clients' interviewers (which should be done as practice during the case). Counsel the client to treat their eligibility officer with respect and formality at all times, regardless of their treatment of the client. A formal complaint can be made later with the assistance of the legal advisor, and the client should be aware that any display of frustration, anger or aggression on their part will not help their claim.

#### c. Interpreter

The client has the right to an interpreter in the gender and language of their choice, trained and provided at the expense of the adjudicating agency. Contact the agency in advance of the interview if the applicant speaks a language for which they may not be prepared to provide an interpreter. The applicant may be allowed to nominate his/her own interpreter if the agency cannot locate one. Make sure to have the interpreter issue settled to avoid prolonging the RSD process.

The client may choose to change the interpreter at any stage during the interview for reasons including but not limited to the following:

- Inadequate or improper interpreting (See Interpreter Guidelines);
- Failure of client and applicant to understand each other;
- Discomfort by client caused by interpreter;
- The interpreter is previously known to the client;
- The interpreter is suspected of having bias towards the client for any reason, including background, ethnicity, political leanings, and religion.

#### d. Preparing your client for the interview

The preparation for the interview is one of the most important services a legal aid advisor can offer to the asylum seeker in the RSD process. The client needs to know his/her rights and obligations and what to expect before, during and after the interview. The legal advisor must remember to allocate sufficient time to review the claim, arrange a mock interview and to help the client feel confident and be ready for the RSD interview.

Prior to the interview it is important to explain to the client exactly what s/he can expect during and after the RSD interview. A mock interview will also allow him/her to visualize the procedures of the interview. However, s/he should also be aware that the interviewer will not always behave according to set procedures and guidelines, and s/he should be aware of the correct procedures, in case it is necessary to make a complaint.

#### e. Rights of the Applicant in the Interview

The client has the right to ask the interviewer to clarify questions at any time when the client does not understand what the interviewer is asking. The client should also have the opportunity to clarify any information that he/she may feel was interpreted incorrectly, or simply forgot to mention.

The Applicant has the right to change the interpreter and/ or interviewer. See relevant sections.

The interviewer should read back or show the interview transcript at the end of the interview. The client should use this opportunity to clarify points and add any other relevant information that was not covered during interview.

The client has the right to ask for a break at any time during the interview for any reason, including hunger, exhaustion, to use the bathroom, to calm down, to pray or simply to take a break. Interviews can be very long and exhausting, so it is wise to take a break at least every hour, depending on the client's endurance.

The client should have the right to have his or her advisor present during the interview and to consult with the advisor when necessary. See Role of Legal Advisor section.

#### f. Interview process

The interview process typically includes the following steps, not always conclusive nor in this order:

- Interviewer introduces him or herself and the interpreter if present;
- Interviewer explains:
  - the definition of a refugee as described in the 1951 Convention and any local or international laws that apply;
  - terms of confidentiality;
  - general RSD process;
  - the rights of the asylum seeker;
  - that the failure to inform UNHCR that any of the documents that have been submitted are false may lead to an adverse decision on the application;
  - that the asylum seeker should truthfully answer all the questions; and that there will be an opportunity to provide additional information at the end of the interview, if they feel that the questions did not fully address their claim;
  - Interviewer asks applicant if any parts of the account have changed since registration; and
  - Interviewer identifies family members present at the interview or otherwise
     listed in the application.
- During the RSD interview, the interviewer aims to:
  - Understand why the client left the country of origin;
  - Understand why the client can not return to the country of origin or find protection in another state;
  - Establish if the reasons for leaving the country of origin amount to persecution;
  - Establish if the persecution was for reason of race, religion, nationality, membership of a particular social group or political opinion;
  - Assess whether there is a well-founded fear of persecution;
  - Assess the plausibility of the claim;

- Establish the credibility of the claim; and
- Understand what the asylum seeker expects from the UNHCR. The interviewer may ask the client, "What do you expect from the UNHCR?" The client should be prepared to answer this question.

#### g. Responsibilities of client in the interview

No bribes. Explain to your client that he or she should never offer bribes to any member of the adjudicating staff. This may result in immediate rejection of the claim. Tell the truth. As a legal advisor, you can never sufficiently reiterate the importance of telling the truth.

Respect all parties involve. Counsel the client to treat adjudicators and support staff with respect and formality at all times, regardless of their treatment of the client. A formal complaint can be made later with the assistance of the legal advisor, and the client should be aware that any display of frustration, anger or aggression on their part will not help their claim. The decision makers should not be given any superfluous reason to reject or delay the decision of the claim.

#### h. Interview logistics

**Explaining the venue**: The legal advisor should provide the client with a full explanation of what to expect on the day of the interview, prior to arriving at the adjudicating agency. Explain the average duration of the interviews and discuss the length of time the client would feel most comfortable holding an interview. Give ample instruction on any security or ID checks that may occur upon entrance into the building.

**Physical directions**: Ensure that the client has the correct directions and knows how to get to the adjudicating agency. If the client does not speak the host country language, write down the essential words needed to take public transportation. Provide a map, how much each mode of travel will cost, and other necessary info.

**Waiting room**: Warn the client if he or she should expect a long waiting period before the interview. The client should bring food and water in anticipation of possibly waiting for long periods of time. If there are special medical or dietary requirements, warn the adjudicating agency if possible ahead of time. An appropriately skilled person should be arranged to care for the children during the interview. In case the client has to have his/her children present in the interview, sufficient food and water should be prepared. Toys or any materials to keep the child(ren) distracted will help make interview more smoothly.

#### i. Interview of minors and family members

It is important to let the applicant know whether family members will be interviewed during the RSD process. Prep those clients accordingly.

## 2. Participation of legal advisor

According to the Handbook, a legal representative may accompany applicants during the RSD interview in UNHCR RSD proceedings through the written consent of the applicant. Id. at 4.3.3. With a local adjudicator, access to legal representation in the RSD process may be limited or not guaranteed for the applicant. The UNHCR lists the following criteria as necessary for representing clients in the RSD process:

- Working knowledge of refugee law and RSD proceedings;
- Experience assisting refugee claimants; and
- A thorough understanding of the applicant's claim.

#### a. Role of legal advisor

The preparation for the interview is one of the most important services a legal aid advisor can offer to the asylum seeker in the RSD process. The client needs to know his/her rights and obligations and what to expect before, during and after the interview. The legal advisor must remember to allocate sufficient time to review the claim, arrange a mock interview and to help the client feel confident and be ready for the RSD interview.

Your presence at the RSD interview as the client's legal representative provides the opportunity to ensure the client's rights are respected, his/her entire claim is heard and any vulnerabilities or special needs are brought to the attention of the adjudicator. It is also an opportunity for the refugee legal aid organization to further its relationship with the RSD adjudicating office.

#### b. Standards for legal advisors

Official protocol for representation at an RSD interview is defined in various international laws, national laws, UNHCR Standard Operation Procedures (SOP's) and inter-agency or operational partnership agreements. Legal advisors are bound by the Nairobi Code and likewise, adjudicating offices are bound by codes of conduct and internal guidelines. Be sure that you are familiar with the basic guidelines to ensure that you represent the client in a way that is consistent with those guidelines and that you are able to identify any failures on the part of the adjudicator.

#### 3. RSD decisions

After the interview, the UNHCR begins the process of making a decision on the claim. The UNHCR officer who conducted the interview will review the case and write a credibility assessment and status determination recommendation based on the interview. He/she will research country of origin information and related claims and will review the documents and legal submissions made by the client and the legal advisor.

The client may be called for a follow-up interview to address new points or clarify issues discussed in the previous interview. Follow-up interviews may also be given to other family members included in the claim, including teenaged children.

The interviewer's recommendation is usually reviewed by an adjudicating officer or officers or goes before a committee to review the case. After the interviewer has prepared and discussed the recommendation, the committee will decide whether the client should be granted refugee status in the first instance. The decision should be prepared within a set time period (i.e. one month according to UNHCR standards), but in fact, may take many months and sometimes years to finalize. The legal advisor should maintain regular correspondence with the UNHCR to check for any updates on the claim.

The client should be informed in writing of the decision and has the right to appeal the decision in writing. Asking for a new decision on a case usually requires proving errors of law, procedural unfairness or providing new information.

If the client is recognized, he or she may be called for a durable solutions interview. The interview aims to determine the most appropriate durable solution, including resettlement or local integration for the refugee. This process normally requires an additional personal interview. As a recognized refugee, the client should receive new documentation, residence status, the right to employment, social services and an assessment for material assistance.

## 4. Access to a detailed decision

A negative decision can only be effectively and efficiently appealed if the client has been informed of the considerations that lead to that decision. Reasons for the refugee status decision should be provided by the adjudicator to either the client or his/her legal representative, upon written request. If the asylum seeker does not have this information, s/he faces the extremely difficult task of rebutting unknown presumptions.

The client has the right to copies of all documents and submissions that the client provided to the adjudicator. The client should have had the right to read the transcript of the interview at the end of the interview. The adjudicating office will likely not reveal documents and country of origin research generated by the adjudicator.

In the event of a negative decision, the legal advisor should request in writing the precise reasons for the decision, and the limited period permitted in which to make the appeal (i.e. 30 days) should not come into effect until the reasons have been provided. If an application for appeal is not made within the permitted amount of time the case will likely be considered closed.

## Appeal

The decision makers in the appeal instance should be independent from the decision maker(s) in the first instance to ensure a fair and satisfactory review. The decision makers should be competent in refugee law and country of origin information.

The appeal review should consider all the relevant circumstances of the claim, including information covered at first instance, in addition to the introduction of any new information. The legal officer should guard against the tendency to consider only the new information instead of the entire claim, as this will prevent the client from receiving a fair independent appeal of the entire claim.

An appeal interview is not normally considered necessary by the UNHCR. Therefore, a request for an appeal interview (rehearing) and the reasons why it is necessary may have to be submitted in writing. The letter of request may include procedural and legal issues or the introduction of new information. Asylum seekers have the right to legal representation in the interview and throughout the appeal process.

Appeal or re-opening interviews are not automatically granted when the case is being reconsidered. However, when an appeal or re-opening interview is necessary, an independent specialized legal officer, who has not previously worked on the case, should conduct the interview and make the recommendation to a panel of independent experts. The interview should not be a continuation of previous interviews but rather a new, independent RSD interview.

Protection provided by the host country, including the right of residence and freedom of movement, must be available until the client has received the final decision in writing. The client should be free from fear of refoulement at all times during the appeal process.

## **Re-opening**

A client may approach you for assistance after he or she has had contact with the UNHCR or government RSD adjudicating office and their case has been closed. Assess a client's possibilities to re-open their case by first identifying the reasons the case was closed.

## Closure

A case may be closed for many reasons:

- The applicant abandoned their application, did not attend an interview or did not respond to follow up inquiries or procedures required by the adjudicating office;
- The applicant withdrew their application or otherwise terminated the RSD process;
- The applicant failed to appeal within the required time limit;
- The applicant's appeal was rejected after the first instance and no other action was taken;
- The applicant was believed deceased;
- The applicant was believed to be naturalized in the host country or third country; or
- The adjudicating office discretionarily closed the case for other procedural reasons.

The handbook on procedural standards for refugee status determination under UNHCR's Mandate (Chapter 9) discusses reasons for closures. Understand local government procedures for closing a case as they may deviate from the above list.

Procedural Standards for Refugee Status Determination under UNHCR's Mandate

## **Re-opening Process**

Once you have clearly identified reasons for the case closure, you can begin to work with the client to decide whether they may re-open their case and what information will be needed to present a successful case.

According to the UNHCR procedural standards handbook, an applicant's case may be re-opened when:

- Evidence of "significant change in personal circumstances" of the applicant,
- Conditions in the country of origin "significantly affect eligibility for refugee status,"
- "Reliable and material new evidence" indicates that the claim was improperly denied, and
- The grounds for refugee status were not "adequately examined or addressed,"
- The applicant failed to appeal a denial and has "a valid and credible explanation" for failing to do so.

UNHCR provides that an application to <u>Re-Open A Case</u> should not be rejected without a screening process, including review of the application by an adjudicating officer. This same opportunity to re-open a refugee claim should exist in countries where a local government adjudicator has reviewed the claim in the first instance. However, the re-

opening mechanism is not consistently available to applicants. In fact, part of your role as an advisor may be to advocate on behalf of your client and others to re-open a case, where this practice is not commonplace.

A new and neutral decision maker should review the application for appeal or reopening from the first instance. The client is not guaranteed a rehearing upon the submission of the legal appeal or re-opening. However, the legal representation and the submission of strong legal briefs may improve the client's chances of being granted a rehearing.

## Assisting your client in appeals and re-openings

You can assist your client to submit a request to re-open their case in a similar fashion to preparing an appeal. While an appeal typically argues errors of law or procedural fairness and may include new information, a re-opening must provide new information or evidence to substantiate claims to re-open the case.

Beware that your client may be afraid to challenge procedural fairness. Educate your client on his rights and where challenges to errors of law are possible. With the assistance of a legal advisor, the client has the opportunity to effectively appeal or reopen a decision. A fair system demands an independent appeal or reopening.

Your first step in requesting a case re-opening is to identify all information provided to the adjudicating officer previously during the first instance application and any subsequent appeals. The client should be an integral part of the preparation of the re-opening, especially if you or your organization did not assist the client during the first instances. Ask the client to try to remember and visualize as much as possible the content and procedures during the first instance. Literate clients may be able to write their own re-opening letter if they are advised of what type of information to include.

The client should be prepared to address contradictions that arise between the information the client provided to the adjudicator in the first-instance or appeal and any new information. Misstatements should be addressed according to the Nairobi Code, Section 7 (Duty of Integrity), which binds the legal adviser to truthful communication with the adjudicating office at all times. Duty of confidentiality and other ethical obligations also apply.

The client should provide details of the events that have occurred since the client's last contact with the adjudicating office. Examine the continued activities of the client, of organizations that s/he is or was associated with, and continued persecution to persons in a similar situation. Include new risks associated with return, arising from the client's activities in the country of asylum or the period of unauthorized absence from the county of origin.

In general, your re-opening submission should include the following information:

- A relevant summary of the first-instance or appeal submission and interview(s);
- New information and grounds for refugee claim and any supporting evidence available;
- New information and any changes in the country of origin that may provide new evidence or grounds that would otherwise be missed;
- Issues of procedural fairness, including irregularities during the first instance or appeal, particularly any that explain an omission of information;
- Omissions in the testimony presented in the first instance or appeal and reasonable explanations for client omissions or procedural irregularities;
- Other reasons (e.g. fear, confusion, intimidation, trauma, etc.) that caused the client to omit information in the first instance and appeal stages; and
- Clarifications about the original claim that may not have been relayed or understood or may have been recorded or interpreted incorrectly in the RSD interview.

# **Derivative Status**

# Family members

The UNHCR mandates that all principal Applicants and all accompanying adult family members must all register in the RSD process to receive the UNHCR's individual protection as "Applicants for Derivative Status." Accompanying family members may have independent grounds for seeking refugee protection and may choose to submit a separate RSD application for individual review by the UNHCR.

In the UNHCR process, family members under 18 years need do not need to complete the entire RSD Application Form unless they have independent grounds from the accompanying adults or there are other reasons that this would be appropriate (e.g. survivors of abuse or trafficking). Children applying independently should be referred for additional assistance and protection.

Consult with your client to ensure that they have revealed all family members. Failing to disclose family members in country, and sometimes in their home country, may likely impact the family members' ability to access UNHCR's protection in the country of refuge and to the resettlement process.

Adult family members should be offered the opportunity to be interviewed individually. Derivatives under 18 years are not usually offered individual interviews, and should request the opportunity in advance of the interview date if they wish to be interviewed. A specially trained interviewing officer should be provided. It is important that spouses and dependent adults are interviewed separately, both in the legal aid office and in the UNHCR. Each family member also has the right to individual documentation.

A state RSD adjudicator may follow similar procedures regarding family derivatives. Identify the state's process for adjudicating family members and appropriately inform your clients. Note that resettling governments often require that all family members process RSD with the local government and will require family members to receive refugee status as derivatives or individually.

Sample Letter: Application for Derivative Status

# Other Mechanisms Available in RSD

Understand and explore mechanisms available for continuing to pursue a client's RSD claims when you feel that they have been erroneously denied due to procedural or factual issues. Where the government is the adjudicator, you may have the opportunity to find administrative appeals beyond or parallel to the government adjudicating office.

## File an administrative complaint

A complaint mechanism should (or may) be available to allow your client to challenge the decision on the case. Identify available complaint mechanisms within the RSD government adjudicating office or the general governmental department or ministry where it exists. Complaints may rise, for example, on issues regarding a RSD officer's conduct or bias, trends or evidence showing discrimination against your client, or other evidence that demonstrates procedural irregularities in the case. Explore how appeals or complaints in other administrative proceedings (i.e. family, tax, etc.) are made. You may be able to use the same or a similar mechanism to challenge the decision on your client's case.

### Judicial review

Another avenue to consider is judicial review of an administrative decision. Countries often have a system of review of executive and legislative actions through the court system. A court's authority and its legal or statutory basis to adjudicate a case will vary widely from country to country and jurisdiction to jurisdiction. Note that in some common-law systems, judicial review may not exist, particularly for the purposes of challenging legislative authority.

In considering your options for judicial review, first understand the jurisdictional and procedural issues that will allow you to bring the action in court. A domestic court system may lack the authority to review a case without the petitioner first exhausting the administrative remedies available. In other instances, the courts may have authority to review particular subject matter, depending on the legal or procedural issues, regardless of how the administrative proceedings have been exhaustive. Second, research and stipulate how your client's particular issues will be treated by the court and specifically in your jurisdiction.

If you are not familiar with the domestic court system, it is highly advisable to consult with the local bar or practicing lawyers to co-counsel and/or help guide you through the court procedures. It is important to understand and communicate to your client what his or rights are through the judicial process, and also the timing and impact of the case on his or her legal status and general well-being. Make sure to warn your client of any risks that might exist, including the potential lack of protection from non-refoulement, arrest or detention that exists during the judicial review process.

# Ombudsmen

This is another channel through which to pursue complaints. If this institution exists in your country, it may be worth leveraging both when violations of RSD procedure occur, or in access to rights cases. The function of an ombudsmen is to act as a check and balance on government and public institutions, and can be invoked at any stage of a case.

#### Strategic litigation

International mechanisms may also be available if you have exhausted domestic appeal procedures, including regional human rights commissions, the UN Committee Against Torture, and other international bodies. For further information and advice on pursuing this avenue, refer to the Strategic Litigation chapter of the Toolkit.

# Other Options for Legalization

Refugee status does not always guarantee a pathway for a refugee to legally and permanently immigrate, or otherwise naturalize, in the host country. Understand the process, if available, for a refugee to adjust status or seek naturalization to gain legal immigrant status in the host country. If the host country does not offer a direct pathway from refugee status to an immigrant status, other legal avenues could be available for refugees to adjust their status.

# Reasons for seeking other forms of legal status

Understanding your country's domestic immigration system is also valuable in situations where the RSD adjudication process is lengthy, the probability of success is low, or the applicant is detained, at risk of deportation, or has other vulnerabilities that require him or her to gain legal immigration status of some form. The applicant may simply opt to apply for parallel forms of legal protection as a way to increase the chances of protection in the host country. In some cases, refugees opt for regularizing their status through other means than refugee status not only due to benefits derived, but also because of a perceived negative stigma associated with refugee status.

# Types of legal status

A state government typically offers immigrant and non-immigrant visas for foreigners wishing to enter and reside within its borders. Immigrant status allows for a pathway to permanent legal status. Non-immigrant visas allow for the applicant to have temporary legal presence in the country. Both types of status may require petitions on behalf of family members or a domestic or international business located in the host country. Student, tourist, and missionary visas are typically temporary non-immigrant visas and require the person to apply from outside the host country. A state may also offer temporary visas or protection based on nationality and/ or humanitarian reasons.

Immigration administrative systems are typically difficult to navigate and require a lawyer or specialist to help the applicant understand application requirements and procedures.

## Considerations

Cost – Immigration visas or adjustments of status are often prohibitively costly for refugees or the process could require the client to return to the country of origin.

Risks – The client should be informed of the risks that exist in applying for immigrant status. Visas that require the client to return to their host or an external country could raise serious questions of fear of return for the RSD applicant. It could also put the client at risk of further persecution in the host country. Leaving to a third country may disqualify the applicant depending on how the adjudicator understands the applicant's travel and stay in a third country.

The client could be "inadmissible" in the host country or otherwise, unable to apply for entry due to the manner of entry, the time spent in the country, exits and entries, prior criminal violations, and other factors. If the client is found "inadmissible" or ineligible to apply for status, the client could be at risk of detention and/ or removal from the host country.

In countries where UNHCR adjudicates RSD, the host state government may not be aware of the client's presence in the country, depending on the information sharing agreements between UNHCR and the host government. In applying for immigration status, the refugee is willingly making him or herself known to the government, which could increase a risk of detention and/ or deportation even while the application for immigrant status is pending.

# Advising clients on pursuing other forms of legal status

Before advising the client to apply for immigration status, identify and provide the client with a clear description of the risks and benefits of applying for immigration status. If you

are not familiar with domestic immigration laws, refer the client to an immigration lawyer or otherwise, proceed with great caution allowing the client to make informed decisions in every step of the process. Understand the grounds for removal and detention in the host country. Consult with other immigration experts where possible to understand procedures and case precedent.

# Raising Procedural Irregularities

As clients go through the RSD process, as a refugee rights organization you will need to be able to spot and respond to Procedural Irregularities. The following section is set out as a guide to enable you to develop a personalized approach to picking up on when procedural irregularities occur within the RSD process by the local UNHCR office or officer and how to respond when appealing a decision based on these irregularities.

The appeal process will vary according to the country in which you are working and the body that governs the RSD process and therefore it is vital to become familiarized with the local system. Please note that this guide focusses on UNHCR run RSD programs, however the information can be tailored and used when dealing with government run RSD programs.

# UNCHR RSD procedures

This section should be read in conjunction with the UNCHR procedural standards for refugee status determination. All references to section numbers refer to the procedural standards in the following:

UNCHR Procedural Standards for Refugee Status Determination

### Some basic facts

In 2011, there were 80,100 first instance RSD applications to UNHCR, and 18,700 appeals.

UNHCR is the second largest system in the world for dealing with new RSD applications. South Africa continues to top the list with nearly 107,000, with the United States third with 76,000.

## Critique of UNHCR RSD procedures

UNHCR's RSD procedures are the subject of global debate and criticism because they lack many of the safeguards expected of a fair refugee status determination system. UNHCR procedures are less transparent than they should be because:

• rejected applicants usually are not given the reasons (see section 6.4)

- rejected applicants usually cannot see most of the evidence that UNHCR uses (see section 2.1.2).
- Although appeals are considered by a different UNHCR staff member than first instance rejections (see section 7.1.1) there is little institutional independence between first instance and appeal decision-making.
- These safeguards are advocated by the UNHCR for governments who run their own RSD process.
- These problems are thoroughly examined in academic literature and NGO reports (see the bibliography on www.rsdwatch.org).

# Scope of client appeals/petitions

Petitions filed for individual clients by your organization are generally not the place to try to reform UNHCR RSD. There are various reasons for this:

- UNHCR do not publish decisions as judicial precedent;
- The best avenue for pushing RSD reform is through public reports, organizations such as RSDWatch, lobbying and the use of the media. You could also raise systemic issues with the UNHCR at the national level once you become established;
- When representing a client, the main goal is gaining refugee status for that client. Therefore, in general, the only procedural standards you would raise in an RSD appeal are those that are relevant to the individual case and likely to benefit his or her chances. This means you should focus on procedural standards that are accepted by UNHCR itself, not on standards that we would all like UNHCR to adopt.

# Complaints against UNHCR staff

RSD appeals are also not a forum for raising complaints against individual UNHCR staff members. They are a means by which to correct errors that occurred in the RSD process, but not a mechanism for establishing accountability for staff.

If there is a report of serious abuse by a UNHCR staff member, or a pattern of systematic gaps, it should be raised through UNHCR's local complaints procedure, or through the Inspector General's Office in Geneva. This however should not be taken lightly and all the factors and potential consequences for the office should be considered before submitting a complaint.

#### Further resources

UNHCR's local complaints procedure

UNHCR's RSD standards provide the following caution in relation to complaints:

 Applicants should be advised that reporting through complaints procedures will not in any way prejudice or positively influence the consideration of their refugee claim or other decisions regarding assistance or services to which the complainant would otherwise be entitled. At the same time, the seriousness of the complaint procedures should be emphasized and Applicants should be advised that unfounded or malicious accusations against UNHCR staff will be reported to UNHCR Headquarters, and may result in prosecution in the host country.

# A Two-step approach to deciding whether to raise PI's

This section should be read in conjunction with the UNCHR procedural standards for refugee status determination. as seen in the following link. All references to section numbers refer to the procedural standards.

UNCHR procedural standards for refugee status determination

#### The two-step approach

When dealing with Procedural Irregularities it is useful to split the issue into two steps for each client:

#### Step 1 – Does the client meet the refugee definition?

Before investigating all the procedural irregularities that occurred with a client's or potential client's case up to this point, the first step is to consider if the person has grounds for claiming to be a refugee.

If in assessing a possible appeal case you can find only procedural issues, you should consider whether to advise your client that she may not be a refugee, and you should consider whether to file an appeal for her.

Everyone has the right to seek asylum, but by the time a person has been rejected and is trying to appeal they have already made an application and had it considered. As an organization you are not obligated to assist in filing an appeal if there is no basis on which to argue that the person is actually a refugee. See the Screening section for further discussion on this and the <u>Nairobi Code</u>.

RSD appeals are about refugee status determination. In other words, they're about whether a person meets the refugee definition. A client's substantive basis for refugee status is always the center of her case; raising procedural irregularities can lead to a new interview and can get UNHCR to look at the case again, but not much more than that.

It is not enough to simply identify every problem in a person's procedural history You need to establish that the problem had consequences for refugee status determination because all of the evidence was not heard, or a client's credibility may have been unfairly damaged.

#### Step 2 – Investigation of the 1st Instance Application

In any appeal case, you need to develop an understanding about what happened during the first instance application (or, in closed files, at both first instance and appeals stages of the application).

You will need to collect copies of all of the forms and testimonies filed previously by your client. If these were not kept, you can request them from UNHCR (see section 2.2). If your office sent a legal representative with the client to the original interview, you will need to review the transcript if one was put in the file. Otherwise, you need to reconstruct what happened in the interview by asking the client what she was asked and how she answered, as well as whether she had the opportunity to present all relevant testimony and evidence.

Remember: the questions your client was asked by UNHCR will be clues about what doubts UNHCR had about the case.

When your client reports something that breached a procedural rule, you should examine three things:

#### Documentary proof

If you raise a procedural irregularity as a ground of appeal, your client will effectively be making a claim on which she bears the burden of proof.

Much like in the substance of the refugee claim, there is likely to be little documentary proof; most claims of procedural irregularities are based just on the clients' testimony. Therefore, the report about what went wrong needs to be detailed and coherent, because your client's credibility is essential. It should be reported in a signed testimony.

Be aware that in making these allegations, your client is at a serious disadvantage. UNHCR will have a transcript of her interview, which she and you cannot access (see section 2.1.2). If the UNHCR staff member made abusive comments, or if there were disruptions or interpretation problems in the interview, they were likely not recorded in the transcript. However, if your client reports that she did not have the chance to talk about particular issues or says that his/her interview was only 25 minutes long, there will be a record that UNHCR will look at. If the UNHCR transcript indicates she was in fact able to testify about the relevant issues or that the interview went on for two hours, your client will have severely damaged her credibility.

#### Procedural issues

You need to advise your client that UNHCR keeps a transcript of the interview, and warn them that they could damage their case by making an exaggerated report about interview problems. If your client is vague or contradictory about what happened in the interview, you need to consider whether it is really in his or her interests to raise a procedural ground of appeal.

Beyond issues of credibility, you need to consider whether the procedural irregularities raised actually affected RSD.

In theory, RSD interviews should be in a quiet, confidential and reassuring environment, without interruptions. Interviewers are supposed to use open-ended questions, and avoid interrupting the applicant (see section 4.3.6). These rules are violated often, and to an extent even the best RSD interviewer would struggle to follow them 100 percent of the time.

When these types of problems arise, you need to assess whether they actually prevented your client from providing testimony on all relevant facts.

For example: If your client is very scared or fragile, or the refugee claim very sensitive – small problems could have big implications. You would then definitely want to raise them on appeal.

Small problems can accumulate to a generally ineffective atmosphere, which also may be relevant, and may contribute to a halting and confused interview that can lead to a negative credibility assessment. But if your client, despite interruptions, was able to provide a complete and coherent account, you may not want to raise procedural claims on appeal.

These are judgment calls, but the point is that you should only raise a procedural ground of appeal if it had some actual effect. Otherwise, you are just complaining for the sake of saying that UNHCR is imperfect, which is not likely to help your client.

But if something did prevent key information from coming out in a coherent, credible way, then definitely raise it, even if the UNHCR standard is ambiguous.

#### Raising these as grounds of appeal

The <u>appeals</u> section will detail specific grounds of appeal.

#### Further resources

A Guide to Raising Procedural Irregularities (PowerPoint)

# Summary of the main procedural standards

#### Credibility assessment

- Interviewers should provide applicants an opportunity to clarify or explain any gap or inconsistency during the interview. If an applicant is not allowed to explain a gap in his or her testimony it cannot be used later to reach a negative credibility decision (Procedural Standards section 4.3.6).
- Credibility problems are particularly common where a refugee claim is based on a person's membership in a political party or religion.
- Interviewers often make the mistake of testing credibility by giving the applicant a knowledge test, with questions like "Who was the first Caliph of Islam? Who is the leader of your political party?" Such knowledge tests favor educated people but do not indicate much about actual credibility.
- Both religion and politics are very subjective, and UNHCR standards call for applicants to be interviewed mainly in narrative form in which they are asked to describe their personal experiences. See UNHCR's 2004 Guidance on Religion-Based Refugee Claims, paras. 28-33.

### Access to evidence

- At the end of the interview, UNHCR staff should "read back elements of the RSD Interview transcript that are most relevant to the determination of the claim" (Procedural Standards section 4.3.11).
- UNHCR's RSD standards require field offices to provide asylum-seekers "originals or copies of all documents they provided to UNHCR, or of which they are the source" (Procedural Standards section 2-2).
- UNHCR generally withholds "documents generated by UNHCR or a source other than the individual concerned" (Procedural Standards section 2.1.2).

#### Interview environment

• In theory, RSD interviews should be in a quiet, confidential and reassuring environment, without interruptions. UNHCR staff should take the opportunity at the beginning of the RSD Interview to create an environment of trust and respect

in which the Applicant will have the best opportunity to tell her story as coherently and completely as possible (Procedural Standards section 4.3.5).

- Problems in interview environment are perhaps the most common procedural issues in RSD, but they are also the most delicate to raise in an appeal.
- Perfection in an RSD interview environment is rarely achieved.
- There are relatively few clear binding standards about what constitutes an effective environment.
- The task is to assess whether the environmental problems prevented your client from coherently and credibly relaying her experiences.

The most relevant UNHCR document on these issues is the 1995 training manual interviewing applicants for refugee status, RLD4 as seen in the link below:

Interviewing Applicants for Refugee Status, RLD4

### Interpretation issues

- Applicants for RSD should have access to the services of trained and qualified interpreters at all stages of the RSD process (Procedural Standards section 2.5.1).
- Clients often report that they believe that the interpretation during their RSD interview was faulty.
- Interpretation problems often lead to negative credibility assessments or misunderstandings of the facts when key information is mistranslated, key details are not translated at all, or questions are mistranslated to applicants leading to an apparent confused reply.
- However, rejected asylum-seekers also may subjectively perceive the interpreter to have been poor because they lack any other explanation for their rejection.
- Before raising interpretation problems, question clients very carefully about why they believe there was a problem in interpretation. Ask for specific examples; do not settle for generalities like "I don't think he understood me."

# Gender issues

- UNHCR's standards require field offices to make "every effort" to provide female interpreters for female applicants, but stop short of committing to do so in every case (Procedural Standards section 2.5.1).
- The right to request interviews be conducted by staff member of the same gender as the applicant (Procedural Standards section 3.1.3).
- Please also check UNHCR's 2002 guidelines on gender-related persecution which lists further rules.
- UNHCR's 2002 guidelines on gender-related persecution lists further rules:
  - Women should be interviewed separately from male relatives
  - UNHCR should explain to women that they may have their own independent refugee claims.

- "The interview room should be arranged in such a way as to encourage discussion, promote confidentiality and to lessen any possibility of perceived power imbalances."
- "The interviewer should allow the claimant to present his/her claim with minimal interruption."
- "The interviewer should remain neutral, compassionate and objective during the interview, and should avoid body language or gestures that may be perceived as intimidating or culturally insensitive or inappropriate."
- "Particularly for victims of sexual violence or other forms of trauma, second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information."
- "Interviewers should be responsive to the trauma and emotion of claimants and should stop an interview where the claimant is becoming emotionally distressed."
- "The type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility."

#### Further resources

Procedural safeguards / Due process rights (UNHCR Protection Manual)

# Access to Rights Procedures

While the RSD process is vital, as states' guarantees of rights to those on its territory are often limited to those with regular migration status, non-RSD topics can be just as significant to refugees in securing their working, legal and educational rights.

Many refugee legal aid organizations begin focusing on RSD and later begin to attend to other human rights cases. Because procedures for accessing rights vary greatly across jurisdictions, this section will not outline the general procedural steps to be taken. Nor will it elaborate on the types of rights abuses from which refugees may suffer. For an outline of the major human rights provisions that apply to refugees, see the <u>human rights of refugees</u> section of the Toolkit.

The following sections are intended to guide you through non-RSD procedures. There is an overview of developing non-RSD services; a self assessment worksheet intended to assess the sources, needs, and practicalities of your organization's non-RSD services.

# Non-RSD Legal Aid: The need for other legal services

Many refugee rights organizations spend most or all of their legal aid efforts on ensuring their clients receive refugee status. This is a natural priority because formal recognition is the first step to accessing other fundamental human rights and building a new life. Nonetheless, formal legal status means very little if your clients are unable to access the other rights protected by the Refugee Convention. Without the right to safe and legal

employment, to send their children to school, to access healthcare and other social services and to secure protection from further injustice, refugees will remain dependent on humanitarian assistance indefinitely. This dependence will prevent them from taking back control of their lives.

This explains why Asylum Access and other refugee rights organizations work on a broad range of rights issues beyond non-refoulement. Asylum Access currently helps its clients demand equal enjoyment of virtually all of the Convention and other internationally-recognized rights.

# The Challenges

RSD procedures often have many elements in common. This makes it easier to develop strategies and protocols based on other countries and regions. However, non-RSD rights are commonly implemented through domestic civil rights law, which causes them to vary widely from country to country and makes it difficult to formulate a uniform approach.

# Incorporating Domestic Law

As non-RSD rights have few similarities across international borders, a detailed knowledge of local laws is essential to providing non-RSD legal assistance. This involves additional training for your staff and bringing experienced domestic practitioners to your organization.

You will find general subsections of laws below and you are encouraged to identify the common rights violations your client base suffers from to focus on the laws you need to investigate most. However, a general understanding of the entire legal system is important because new issues may arise.

# Constitutional and Civil Rights Law

Constitutional and civil rights law are the two most likely places to find laws similar to the rights that refugees are entitled to under international law, and some countries may even go beyond these rights.

Constitutional law also describes the legal system's procedural guarantees, which may assist your client in getting his case before the courts.

# Civil Procedure and Court System Functionality

Beyond knowing what rights are enforced in your particular legal system, it is also important to know how to enforce them in individual cases. For instance, knowing whether an organization can file a claim on behalf of a group may be critical to getting a claim into court. The laws of civil procedure are not only important to being able to litigate a case; they are also critical to knowing whether a certain legal strategy is feasible.

Background information on how the courts function in your country is also essential. You should not only know what the rules are, but also whether these are widely practiced. There may be times when the organization may want to challenge the status quo, but it is important to know what is likely to happen when you file a case in reality as well as in theory.

# Legal Representation and Ethics Codes

A significant part of the training materials in this Toolkit are based on the <u>Nairobi Code</u>, which applies to legal advocates working on RSD and on providing other legal assistance.

However, if your organization plans on providing non-RSD legal aid services which may involve domestic legal services, then your organization needs to become familiar with the domestic ethics codes and laws of legal representation. If most of your staff are foreign volunteers not permitted to represent clients in court, then you will need to find a way around this constraint if you anticipate a large number of clients who will need court representation.

# Domestic Implementation of International Human Rights Law

Refugees are entitled to human rights beyond the rights specified to refugees in the Refugee Convention and regional refugee law.

In some cases, it will be useful to enforce a right that has not been incorporated into domestic law by framing it as international law. It will then be essential to understand the basics of international and regional human rights law. Furthermore, it is possible to ensure the enforcement of an international law in certain countries. You should familiarize yourself with the extent to which this is possible in your local context and if so, what the requirements are.

# Typical Civil and Criminal Law Practice

After thoroughly understanding the technicalities of filing a suit and the rights that you can enforce, it is also vital that you understand the culture and the de facto obstacles surrounding the process.

For example, litigation is extremely unusual in some countries, and would only follow a trend of unsuccessful and ineffective litigation. In these cases, pursuing a strategy that

immediately leads to the courts would not be advisable. Understanding these cultural norms is central to the success of your legal strategy so you may prefer to have a staff member who knows how to bring a complaint of rights violation to resolution.

# Self-Assessment

Before deciding whether your organization should move forward offering expanded services, consider some of the pros and cons of moving into non-RSD rights work:

- Expanding your services can help your organization gain greater national exposure.
- Expanding your services will almost certainly involve working with a broader range of actors, thus promoting institutional networking and allowing for larger referral networks.
- Your organization can build greater trust within the refugee community, by addressing more of your clients' urgent needs.
- Non-RSD rights work may allow your organization to apply more confrontational strategies, without damaging relationships you may have with government officials who work on RSD issues.
- As you expand your services, you will undoubtedly enter areas where your organization has less expertise.
- You will need to be cautious about stepping on other organizations' toes as you enter new territory.
- The expansion of services may overstretch your institutional mission.
- You should be careful not to overwork your legal team. If RSD legal assistance already fills most of your legal advocates' time, you may not have the resources to expand.

The following worksheet will help you decide if your organization can and should expand your services to other rights, please complete the following worksheet and review your answers on the following section. Note that this worksheet requires international and domestic legal knowledge, and may take some time to complete.

Organizational readiness: thinking through expansion to non-RSD cases

Non-RSD Legal Aid Assessment – Discussion Guide

Non-RSD Legal Aid Assessment Worksheet

Non-RSD Rights and Challenges

Once you have completed the Non-RSD Worksheet, you should evaluate if and how your organization should engage in advocacy regarding refugee legal assistance beyond obtaining legal status.

Firstly, you should have already identified which rights are legally recognized in your jurisdiction, under national and international law (see Question 1). Additionally, you may review the Incorporation of Domestic Law section for further information on the

importance of a deep understanding of local legislation and forums in non-RSD services.

Secondly, you should have an idea of the forums in which these rights can be demanded.

Lastly, you should have identified where your clients' priorities lie, which organizations are working on these issues, and which rights can be demanded without the assistance of a licensed lawyer. For further guidance on identifying clients' priorities, see the Needs Assessment section below.

We hope that this worksheet has helped you identify one or more areas where your organization could potentially help clients demand non-RSD rights.

Whether your organization decides to enter into non-RSD rights work and how you provide new services is highly dependent on the local context. The following is an example of the types of successes non-RSD rights work can accomplish. We hope that this section provides some rough ideas on how to move forward, should you decide to enter into non-RSD rights work.

Non-RSD Case Study: The Right to Work in Ecuador

# Needs Assessment

If you have determined that your organization is in a position to cover non-RSD rights legal assistance, you will need to conduct needs assessment to develop these services. The type of legal assistance you provide will ultimately depend on the needs of your clients.

There are three ways of doing needs assessment:

- Rights Training
- Client Questionnaires
- Independent Research or Consulting Field Collaborators

# **Rights Training**

Rights training, where participants are also asked to bring up any rights violations they may have experienced, is a productive needs assessment method. Participants have the opportunity to understand their rights and how to assert them, and the organization has an opportunity to learn about participants' needs. However, only a limited amount of information can be shared and obtained in a day of training. In addition, participants' frustration may build as they are told what rights they have while the instruments to enforce those rights remain limited.

# **Client Questionnaires**

The intake interview can be used as an opportunity to uncover other rights violations. By adding specific questions about other rights during your intake interview, you may uncover violations that require legal assistance. These questions may be formulated based on your background knowledge of local laws and the local refugee population. Analyzing the results for trends in rights violations may help locate where there is the greatest need for non-RSD rights legal assistance.

This method may either be incorporated into the intake interview or implemented as an independent paper questionnaire. Both will require regular review and analysis. You may need to revise your questions based on evolving trends in rights violations, or create new questions to help you design services. Participants should be aware of the purpose of the questions so they do not develop unrealistic expectations of your ability to provide immediate legal assistance. They should also understand that these questions are optional and will not affect their access to your legal assistance.

# Independent Research or Consulting Field Collaborators

Consulting with other organizations already working in the field will help you learn about the needs already identified within the refugee population, and which needs require greater legal assistance. This will also help you learn about their experience working with non-RSD rights legal services, if any. For example, you might learn from their failure to develop a particular legal service and this may consequently help you develop an alternative approach. This will also help you develop strategies that complement other options available to refugees in their local support network.

# **Risk Assessment**

To develop non-RSD rights legal assistance, you will also need to assess the risk involved for your clients, decide whether it is worth taking a specific calculated risk, and then trying to mitigate the risk factor.

# Legal Status

New clients without legal status may present a serious obstacle to providing non-RSD rights legal assistance. In some countries, clients will not have legal status until they are granted refugee status, while refugees in other countries may be granted temporary legal status as asylum seekers. Until they have legal status, clients will not be able to appear before the court or engage in non-litigation strategies for fear of making their presence known to the authorities.

# Fear of Publicity

While refugees have fled their country of origin, they may still fear being discovered in their country of refuge. They may be reluctant to air their stories in a court room or put their name under public records. This barrier may be overcome using non-litigation strategies with the implied next-step of litigation, even if your client would not ultimately wish to engage in litigation. Alternatively, this may not be an issue if your legal system has provisions for protecting identities of the vulnerable.

### Using Test Cases

Due to the risks associated with pursuing non-RSD rights legal assistance in some refugee cases, you may decide to choose your initial cases carefully so as to mitigate these risks and set a good precedent. You may find clients willing to take these risks after you provide an in-depth explanation, and you may also have clients for whom the risk is naturally lower due to their status or situation. You may decide to start with these cases to set a good precedent.

# **Building from Negotiation to Litigation**

Although developing the litigation aspects of non-RSD rights legal assistance is important, it is also complementary to your work to investigate non-litigation tools and treat litigation as the final step of the process. Developing non-litigation techniques may also open the door to activities that clients can initiate with little guidance from a legal advocate, which helps empowers them. Non-litigation tools have the following advantages:

1. They are faster and less resource-intensive

Techniques such as letter-writing, accompanying your clients to meetings, and negotiation are generally less resource-intensive than litigation, which takes time and money for filing fees, trial preparatio, and more. In addition, foreign lawyers may be involved in non-litigation techniques, whereas litigation frequently requires representation by a locally licensed lawyer. Non-litigation techniques may reduce costs and the number of cases that need to be litigated.

#### 2. They are frequently more consonant with the legal culture

Where non-litigation techniques are also an essential part of the legal culture, your organization will gain credibility by applying these methods. This will facilitate your litigation efforts when you do need to take legal action. Of course, there may be times you may need to disregard the customary case progression, but by developing non-

litigation techniques in advance, you will be able to assess the options and consequences of various options to make an informed decision.

#### 3. They are more comfortable for your clients

If litigation is a rarely employed strategy in your country, clients may feel uncomfortable with this option and prefer other methods of engagement. They may have fled persecution or discriminatory treatment by a legal system in their country of origin, and it is imperative that you are sensitive to such possibilities. Using non-litigation techniques will allow your clients to access their rights without the disconcerting experience of going through uncomfortable litigation processes.

#### 4. They are a possible avenue for remedy when there is no legal right

It is easier to incorporate international or regional human rights law into arguments made in non-litigation settings. When a violation of a right that has no protection under local law, litigation efforts may not work and alternative methods may be more effective in securing a favorable resolution.

# Mobile Legal Clinics

Mobile legal clinics may be appropriate if you are unable to open an office in an area where there are many refugees, or in remote areas. Such outreach should aim to strengthen community relations, and can result in greater awareness among refugee populations, both of their rights and how to assert them, and of the services you offer.

The following downloadable resources are based on Asylum Access Tanzania's experience in planning and implementing mobile legal clinics. The template concept note contains strategic planning guidance outlines a community-based approach and highlights training needs and safety concerns among other considerations. It looks at integration of the mobile clinics with existing legal services.

The schedule suggests how to structure outreach days and monthly plans, and the budget highlights line items to be included when planning for this type of community outreach.

Mobile Legal Clinics Concept Note (Asylum Access Tanzania) Mobile Legal Clinics Template Schedule (Asylum Access Tanzania) Mobile Legal Clinics Sample Budget (Asylum Access Tanzania)



# Community Legal Empowerment

This section introduces Community Legal Empowerment (CLE) concepts and programming. CLE approaches provide guidance and space for individuals and their communities to identify, understand and use legal tools to increase their opportunities and advance and protect their rights. Organizations and advocates can integrate CLE programming into new or already existing work as a way to uniquely shape the impact of the work with the community they aim to benefit. CLE concepts and programming explored in these sections reach beyond traditional community paralegal models and dives into other forms of community-based legal empowerment work, including non-legal programming that supports the legal empowerment of refugees. Legal empowerment can be approached in a holistic way of building and facilitating true growth of power within communities, including areas such as economic independence, leadership development, gender sensitivity and trauma relief.

# Overview

The section first dives into why CLE programming is an important and effective approach in refugee services starting with a discussion on the conceptual strategies ideas of empowerment, legal information and community. It provides background to the development of CLE programming and how it complements its Legal Services, Policy Advocacy and other refugee programming.

The section also provides guidance on how to build or improve upon refugee services that intrinsically lead to refugee empowerment and leadership. Integrating programming that builds close relationships with refugee community members, develops leadership capacity, builds external allies and resources and closely understands and responds to refugees' needs are all part of developing a successful CLE program.

Last, the section introduces examples of strategies and programs employed by Asylum Access, including <u>Know Your Rights workshops</u>, social inclusion activities, capacity building, and <u>Community Interpreters</u>.

This is what you'll learn in this section:

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Community	
Integrating CLE Programming into your Organization	
Build Relationships	
Identify Refugees in your Context	
Gender Framework and Impact	
Build Leadership	
Identifying Refugee Leaders for CLE Programming	
Refugee Leadership Qualities	
Cultural and Gender Relevancy in Refugee Leadership	
Community Resources	
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# What is CLE?

Community Legal Empowerment (CLE) is the process of using law to enhance the capacity of marginalized populations to assert their human, civil and political rights, both as individuals and as members of a society. It covers a wide range of activities that use law to benefit the disadvantaged, as a reaction to perceived limitations in rule of law projects that target the reform of state institutions, and as a rights-oriented strategy for poverty alleviation. It has been widely documented that power inequalities form the structural basis for chronic poverty in many contexts. In response to that, legal empowerment approaches are being increasingly acknowledged as a systemic response to address such power inequalities.

CLE approaches provide guidance and space for individuals and their communities to identify, understand and use legal tools to increase their opportunities and advance and protect their rights. Ninety percent of legal problems are addressed outside the courtroom. This means that individuals can address their legal problems themselves, beyond traditional routes. Through an understanding of how laws impact their lives, they can begin to assert their rights.

When individuals play a direct role in addressing social inequality and human rights violations, the results gained are shaped by those most impacted. When able to understand and use the law and legal tools, individuals can gain greater control of their lives.

CLE programming assists community leaders and their allies to break cycles of repeated abuse; influence and increase accountability of powerful actors; contribute to the development of new policies and laws; and take part in the enforcement of legal protections for refugees.

CLE programming impact laws, policies and policy makers when adopted in conjunction with other legal strategies including legal services, advocacy and litigation. CLE expands the sharing of legal information beyond the one-on-one legal services structure and helps guide the delivery specific to its intended audience – based on understanding, needs and other criteria. The messenger and its recipient can be the same person or group of people making the information sharing effective and targeted to their common goals.

# Asylum Accessexperience with CLE

The notion of community legal empowerment for Asylum Access came from refugees' requests to become involved in their own destiny – to protect and fend for themselves and their families in their new context. We realized that refugees never enjoyed the full panoply of rights envisioned under refugee laws. In our nascent stages, we focused on offering refugees legal aid while advocating for improved laws and policies. As lawyers, our ethical limitations limited us to offering only legal advice. But the refugees who came to our offices wanted – needed – more.

We found that as refugees rise from the initial emergency refugee stages, they begin to diagnose their new context and realm of possibilities. And they ultimately seek to independently rebuild their lives and shake off reliance on humanitarian aid. We learned that as a legal organization we could offer refugees a platform to access legal information for their own advocacy, organizing and community building.

Traditionally, CLE programs funded by development and legal organizations sought out community advisors and paralegals to act as interpreters of the law to their own community. Asylum Access has enhanced that model by incorporating trainings to build personal and political leadership and economic growth. Our programs seek to integrate refugees with local, national, and global communities that are already thinking strategically on how to protect the human rights of its people and expand resources for those most in need.

# Empowerment

I feel empowered. I have the power. I am empowered.

I have empowered you. I've been empowered. We empower refugee

The word empower is often thrown around. Understanding the meaning of empowerment is an important part of embarking in community legal empowerment (CLE) programming.

Empowerment is a reflexive process. An empowered individual exercises agency and asserts her own rights. She has the freedom to improve and live her life, unburdened by unjust limitations. It is a reflexive notion – one where an individual becomes empowered

or takes power back in their own hands. She becomes the primary agent in her life to choose what is best for herself.

Ultimately, an empowered person has the choice to exercise her full human rights, including beyond those immediately available to her.

Legal empowerment is used as both a process and a goal. By facilitating tools, resources and forums, CLE programs support a process by which individuals are agents of their destinies through the use of the law and policies that impact them directly. These programs, through education and capacity and leadership building, focus on what individuals can do for themselves and not what others can do for them. The goal is for individuals to become their own best advocates and take steps to rebuild their lives.

# **Refugees and empowerment**

In the refugee context, a refugee may experience various stages of disempowerment. First, a refugee can experience disempowerment through individual loss caused by the displacement of one's home, work and social networks. Second, in a foreign country she may be challenged with disenfranchisement, isolation, increased impoverishment and trauma leading to increased disempowerment. Unaddressed and without effective legal protections, the process of being displaced in combination with state of displacement contribute to an actual loss of agency and empowerment. In short, not only has the refugee lost power to make decisions in her life, but also the sense or feeling that she has that power.

Based on her refugee status alone (and its accompanying negative stigma), she may find her voice and power suppressed due to the fear of arrest and refoulement. Her legal status (or lack thereof), in addition to other refugee qualities, make her vulnerable and victim to powerful state and non-state actors' discriminatory actions. Even if there are fair laws in place, a refugee sometimes finds it impossible to enforce her rights before law enforcement and courts. As a result, the combination of a lack of legal and social protections with depleted internal mechanisms leads to the disempowerment of refugees.

Legal empowerment is a vehicle and a goal by which refugees can gain access to justice. It begins when refugees have information on the laws, policies and other dynamics that influence their rights. The law is used as a means to seize and transfer power – understanding that the law and legal mechanisms are a basis for control and development in society. When refugees understand their rights and options in their new legal contexts, they are able to seize power to make better-informed decisions to rebuild their lives. As empowered individuals, refugees understand their rights and are active participants in using the law to claim what is due to them, particularly in contexts where actors systematically marginalize and disenfranchise refugees. Through effective CLE

programming, refugees take part to break down these power structures and promote their rights and the accountability of powerful actors and institutions.

# Community

The term community is generally understood as group of people that share social ties, common perspectives originating from the same locations or settings or engage in joint action. Participants in a community may self-define as a community, although often times the labeling or characterizing of community may come from outside observers.

The question of what voices a community or communities encompass are fluid and sometimes hard to define. Refugee communities may be defined on characteristics as large as nationality, ethnic groups, religious affiliations, linguistic abilities, age, gender and/or a combination of these factors. Most often refugee groups defined by nationalities are in fact separated by the same factors that led to forced displacement – whether religious, ethnic, political, gender-based or other strife.

In some displaced contexts, refugee community groups may look like micro samples of their home country. For example, Pakistani communities in Thailand are divided by religion and sometimes geographic regions. In other contexts, organized displaced communities are only those of the majority ethnic group leaving all minority groups out and in isolation.

# Understanding refugee communities

Community legal empowerment (CLE) programming seeks to facilitate the voices of refugee communities as both a means and an end. Used in the context of CLE, defining the dynamics of "community" is a crucial step to developing programming. For the purposes of CLE programming, the use of the term community stresses on the understanding that the delivery and its impact is for and by intended participants. Who and how the community is comprised should be identified by and tailored to its participants.

CLE programming should check assumptions made about refugee populations including that refugees live in a cohesive community. Refugee contexts often are made up of multiple refugee communities, depending on language, background or neighborhood, or it may have no discernibly organized community at all. Refugees may be slow to organize – even within national groups – for fear of discrimination or mistreatment in their country of asylum. If not used carefully, the assumption of community can lump groups of people based on general characteristics and ignores internal differences and individuals existing outside community frameworks.

Establishing what communities to serve through CLE and other refugee response programming will be enriched through deeper understanding of refugee community

structures. Additionally, thinking about how to do outreach and include those who may be isolated from traditional community structures will help ensure reaching particularly marginalized refugees.

Some questions to ask include:

- Does the community elect a representative?
- Are the representatives truly representative of demographics of their community? (E.g. overrepresentation of males, certain ethnicity or privileged in some way)
- Do the societal hierarchies of the home country remain intact in the country of refuge? If you are not sure that a community leader is truly representative of women, children, young people, ethnic minorities and other groups within the refugee community or communities, consider working with various representatives other than those formally presented to you.

# The strength of communities in legal empowerment

Through CLE, the mobilization of information comes from within refugee communities. Using an empowerment lens, the focus is on what refugees are able to do and achieve. Community members identify and interpret the laws and policies in ways that are best understood and incorporated by their families, neighbors and communities. By enhancing the legal literacy of a community, refugees can begin to understand their rights and options under those rights. They can also start to demand accountability and take responsible action in both private and public spheres of their lives.

Peer-to-peer programming complements and can even replace the traditional lawyerclient model. Traditional legal aid models rely on lawyers to share legal information with their clients. Lawyers often can fail when the community lacks access to competent, multilingual legal advocates. Lawyers are often expensive and scarce. Language and cultural differences provide challenges when lawyers come from outside the community. And in some contexts, lawyering may simply not be the right fit to addressing refugee rights issues.

CLE seeks to fill in information gaps that may often lead to exploitation, abuse and a lack of protection. For example, an employer can convince her worker that she has no rights to her wages because she lacks a work visa. The employer may even threaten immigration consequences if the employee seeks help. While a lawyer can explain whether she has a right to her pay, community legal advocates are closest to the community and can act quickly to help the employee seek out redress and help other potential employees from similar exploitation. Where refugees may not have access to court systems, direct community education and engagement can offer spaces to find redress for rights violations that otherwise go unaddressed.

# Needs and Resources Assessment

To understand a community's needs and resources, it is helpful to conduct a needs and resources assessment.

## **Preliminary aspects**

**Definitions**. *Needs* are the gap between what is and what should be. *Resources* or *assets* are anything that can be used to improve the quality of life, such as individuals, organizations and institutions, buildings or equipment.

A needs and resources assessment is a study to understand the needs of a group or community. In the refugee context, the focus of an assessment is to: a) identify refugees' needs; b) identify (overlooked) assets, and c) identify gaps in organizations' capacity in meeting refugees' needs.

When should an assessment be done? Needs and resources assessment should be done for various reasons: e.g. when an NGO engages in a new geographic location; when there is an increased arrival of refugees into a community; or when there is a change in legislation that impacts refugees. The assessment can be a one-time process or done periodically.

When NOT to do an assessment. Planning and conducting an assessment are important steps in designing the right programs to address issues the refugee communities face. The data collection and analysis must be followed by action though. Endlessly collecting data may mean unnecessarily spending time and money rather than actually working on different programs.

When to partially do it. In some cases, you might not need to go through the entire process of recruiting a team, making a budget, etc. When you only need to understand if changes in the community have occurred, a few interviews/focus groups/collect surveys might be enough.

# How to do a needs and resources assessment in 12 steps

#### Step 1. Identify purpose of the assessment

The purpose of the assessment explains why the assessment is being conducted and how the results will be used.

Here's why some organizations carry out a needs and resources assessment:

- To gain a deeper understanding of the refugee community.
- To define problems the refugee community faces when it comes to identifying, understanding and using legal tools.
- To assess existing organizations' capacity: what are the physical and material, financial, information and intellectual resources and human resources available? Are they enough to meet refugees' needs?
- How will the results be used? Among others:
  - To make decisions about priorities for future programs or interventions.
  - To prepare proposals for fundraising.
  - To develop the right advocacy messages.
  - To raise awareness among the local government of needs and potential interventions.
  - To evaluate programs. An assessment done at the beginning and at the end of an intervention can help you understand the outcome and success of your intervention.

## Step 2. Write down objectives

Using the purpose of the assessment as your starting point, identify specific questions that you are hoping to answer. Below are some examples:

- To what extent are refugee communities in Turkey currently able to identify, understand, and use legal tools?
- How easy is it to identify and train refugee leaders?
- How are host communities coping? What are some of the challenges they encounter?

### Step 3. Get approval

Consider the following:

- Is there a formal process to approve the assessment, both internally and/or externally (e.g. from a local municipality)?
- Who needs to be informed about the assessment before it goes forward (e.g. UNHCR, government officials, refugee leaders, etc.)?
- Are there any legal requirements you must comply with for any part of the assessment? (e.g. in Turkey you need to get the government's approval to conduct surveys.)

#### Step 4. Recruit the assessment team

Ideally, the team members have the skills and experience to do the assessment; they should also be diverse and truly representative of the community (the most marginalized groups should be included).

Staff may be from a group that is not well perceived by the people you will collect the information from (e.g., ethnic or religious group), or may have prejudices about other ethnic or religious groups. You can address this by:

- identifying members of the refugee community and consulting with them to understand the community dynamics;
- having a diverse team with different backgrounds;
- having a balance of male and female members (e.g. having a male staff might be helpful in the initial outreach to get into the community in certain cultural contexts).

Two aspects you need to clarify at this point:

- Who is planning and who is overseeing the assessment?
- Do the team members need training? If so, how much and what kind of training?

#### Step 5. Consider the budget

The assessment might be a lengthy and costly process that requires trained staff. How much money is available for the assessment? At this point, you do not have to think about the details (e.g. duration of data collection or data analysis). However, being aware of the available budget will help you make decisions throughout the process.

#### Step 6. Determine what types of data must be collected and the sources of data

#### Secondary data collection

Secondary data is existing data that your organization or others have already collected, such as previous assessments and analyses, UNHCR reports, country reports, etc. Secondary data can be used to:

- identify information gaps that other data collection methods can fill;
- build awareness among team members of the current situation in order to choose an area of focus (e.g. specific sites and target populations) for the assessment.

When reviewing secondary literature, take into account factors such as sex, age, ethnicity, stage in the refugee cycle, or educational level. These factors might affect a refugee's capacity to access and claim her rights.

In your secondary data review, identify (i) main findings with references, and (ii) information gaps that your primary data collection should fill (if that is the case). You have to decide whether secondary data collection is or is not enough to inform your next steps. Below are some scenarios for both of these cases.

Secondary data is not enough
it does not provide refugees' perspectives;
it presents more general issues (e.g. national or regional), rather than those of the community you are working with.

#### Primary data collection

In case the secondary data collected isn't enough (and that's very likely!), the team has to do primary data collection. It is essential that all stakeholders are involved in the process. This is especially true when it comes to marginalized groups, who might face additional barriers in speaking up and/or accessing networks or resources.

Next, we'll discuss: how to identify your stakeholders; the importance of sampling; reducing bias; characteristics of some primary data collection methods.

## Whom will you gather the information from?

The first step is to identify the stakeholders and their interests. Stakeholders include individuals, community leaders, groups and organizations that will be impacted by the program or could influence the outcome. To do that, a useful tool is the stakeholder analysis. Below is a template.

#### 1. Identify Stakeholders

Brainstorm who your stakeholders are. Think of all the people who are affected by your work, who have influence or power over it or have an interest in its successful or unsuccessful outcome. This is an example:

- Government Officials
- Refugees
- Employers
- Schools
- Private sectors
- Faith Based Organizations

Remember that although stakeholders may be both organizations and people, you ultimately communicate with people. Make sure you identify the correct individuals within a stakeholder organization.

#### 2. Prioritize Stakeholders

Classify stakeholders by their power over your program and by their interest in it. Using the template below is a great way to visualize power/influence.



3. Understand Stakeholders

Get to know your key stakeholders – those with high power/high interest. Some questions you might consider:

• How will they feel about and react to your project?

- How can you best engage them in the project? What is the best way to communicate with them?
- What motivates them most of all?
- Who influences their opinions generally, and who influences their opinion of you?
- If you don't think you will be able to win them around, how will you manage their opposition?

Finally, using the map above, summarize what you've learned about the stakeholders by showing advocates and supporters in green, blockers and critics in red and others who are neutral in orange.

Tip: Before doing the stakeholder analysis, you might have to interview someone who has a good understanding of the refugee community and who might provide insights. Throughout the assessment:

- Engage stakeholders early in the process and communicate with them frequently.
- Consult as many groups of refugees as possible (women, children, older persons etc.); record groups that are absent.
- Understand the power relations in the refugee communities in order to find the right approaches.

#### 4. Outreach methods

It is essential to collect enough and relevant data from diverse stakeholders to inform future programs. For that, you have to know how to approach the refugee communities and build relationships with them. Think about who you're going to talk to first and what will you request from them. The approaches need to be culturally appropriate (see example below). For more information and an example of a successful outreach program, follow this <u>link</u>.

## Sampling

Sampling is when you select a subset of the refugee population, that allows you to generalize the results back to the population from which they were chosen.

The following rules apply to surveys. Although interviews and focus groups usually involve a smaller number of people, don't forget, the participants should be as diverse as possible. Still, the sample size should reflect the population you are targeting. If the population is mainly young and male, approaching more males is probably more relevant, but do not omit the additional challenges women, children and elderly people face.

Some rules on how to do survey sampling:

- A good maximum sample size is usually 10% of the refugee community.
- Balance feasibility and affordability against accuracy. The more accurate the results, the more resources are necessary and the less feasible it is to implement the survey.
- Random sampling: choose people you will talk to (e.g. call every 15th person in the community phone registry, or knock on the doors of those who live 3 houses/tents apart etc.).
- Talk to the same number of women and men, when possible and relevant. Hold separate focus group discussions for men, women, boys, girls and groups from different social strata.
- 5. Determine the types of data collection tools that will be used

Select your data collection methods by considering possible data sources, time, available personnel, or financial resources. Below is a comparison between common primary data collection methods.

Method	When to use (examples)	Time required		Cost	Resources Required
	ċ	Collect Data	Analyze Data		
In-depth Interview s	To discuss complex issues that require explanations. To obtain sensitive information confidentially. To engage low-literacy population. To distinguish between individual versus group opinion. To refine future surveys.	High	High	Medium to High	Time Skilled interviewer Budget Availability of participants
Focus Groups	To understand issues identified through a larger, quantitative study.	Low	High	Medium to High	Time

	To refine future surveys. To engage low-literacy population. To get community's input on a topic (implementing a new program).				Skilled facilitator Note-taker or recorder Budget Availability of participants
Surveys	To collect data from a large number of people in a relatively short time.	Low to Mediu m	Low	Low	Time Knowledge of survey development Budget
Observati ons	To observe behavior (some unconsciously do things or react to certain situations) To understand interactions between community members.	Low	Low to Medium	Low	Time Availability of participants Observation form Permissions, if needed
Photos and Videos	To capture visual images the current situations. To complement data collected through other methods.	Low	High	Depends on cost of equipment and if experts are hired.	Time Equipment Permissions, if needed

#### Step 7. Budget... again.

You now have a clearer idea on what tools you will use, who will be on your team, who else will be involved in the process. It's time to set priorities to make sure your resources are enough to do the assessment.

Trade-offs must be made in case the resources are scarce. For instance, it might take a long time to interview a large number of people if the assessment team is made up of only two people.

Develop and test the assessment tools

#### Step 8. Design the assessment tools

Keep your objectives and deliverables clear, and measure your progress against them continuously. The situation may change, so remain flexible and be ready to update the assessment to suit new circumstances.

**Approach example:** Asylum Access Malaysia first reaches out to community leaders. Usually, they are the ones who suggest community members to talk to. Sometimes the leaders want to attend the meetings. The assessment team allows them to do that, but keeps the interviews short, takes the interviewees' contact information and follows up later to ask the rest of the questions.

- When designing your questions, make sure you are clear on how the data collected will be analyzed and how it will be used to inform your assessment objectives.
- Consider factors such as the number of people you'll talk to and their literacy level.
- Test your tools and make changes if necessary.

### Interviews

When developing in-depth interview questions:

- Start with general questions and then ask more specific ones; ask them in a logical order.
- Place controversial or sensitive questions at the end.
- Make sure the questions are clear, concise and open-ended.
- Be sure the questions are appropriate for the level of literacy of the participants.

• Prepare answers for the questions you may be asked (e.g. how the information will be used, available resources for refugees, referrals to your own office or to another organization.)

When conducting in-depth interviews:

- Introduce yourself and inform the purpose of the interview.
- Obtain written permission to record the interview.
- Begin with rapport-building questions. For instance, if they have children, you can ask how old they are and what they enjoying doing.
- Make clear that the discussion is confidential.
- Make sure all questions are answered but be flexible: if the participant brings up aspects you haven't covered in the question, feel free to ask follow-up questions.
- Clarify responses when necessary, instead of interpreting ambiguous answers yourself; ask for examples when participants make statements.
- Have a neutral attitude and don't interrupt them.
- Ask whether the participant has any questions or anything else to add.
- Thank the participant for availability and ask whether she/he can be contacted again if necessary.

Focus Groups

A focus group is a small-group (six to 10 people) discussion guided by a trained moderator. It is used to learn about opinions on a specific topic and to guide future action. More on how to conduct a focus group <u>here</u>.

## Surveys

**When**: Surveys are best done after initial needs identification (using interviews/focus groups).

**Why**: To test hypotheses (you came up with after interviews/focus groups) OR to identify other challenges the community faces (through open-ended questions).

When developing survey questions:

- Begin the survey with simple questions.
  - Use concise sentences and language that participants will understand.
  - Avoid leading questions.
  - Offer neutral response or/and "does not apply" choices.
  - Create categories that cover all possible responses and are mutually exclusive, but don't have too many options.
  - Keep the survey as short as possible, no more than 12 questions. There are multiple types of questions. Below there are suggestions on when to best use each kind of question.

Type of Question	When to Use the Question
Open-Ended or Fill-in- the-Blank	Obtain qualitative information
	Probe for more information
	Seek for more information as a follow-up to a close-ended question
Closed-Ended	Obtain quantitative information
Two-Choice	Obtain mutually exclusive answers
Multiple Choice	Obtain one response from a list of choices (with instruction to "check only one")
	Obtain multiple responses from a list of choices (with instruction to "check all that apply")
	Obtain responses with no rank order
Likert Scale	Obtain ratings
Interval Scale	Obtain interval-level data

Adaptability example. Some tools might prove less useful than initially thought. Be flexible: see how the community responds and make changes if necessary. Asylum Access Malaysia first used self-referral forms with text in Rohingya refugee communities. Many were illiterate, so they used to pay someone who knew how to fill out the form for them. They replaced text with images to make it easier for illiterate people to fill them out.

Train the data collection team (if necessary)

During the training:

- Introduce the organization and the purpose of the tools; participants introduce themselves.
- Select clients. This will be done depending on the sample size and methods chosen.

Teach how to conduct interviews. Make sure it is clear how to:

- get informed consent;
- remain neutral and polite at all times;
- ask the questions correctly;
- probe without leading (avoid: giving example answers, negative questions, any implication of judgment).

Go through the questionnaire question by question as a group. Everyone needs a clear understanding of each question.

- Role play is a good way to practice focus groups, too.
- Practice in the field under the trainer's observation.

### Step 8. Collect the data

You know who you're going to talk to and what tools you'll use. It's time to collect the data. These are some aspects to consider when doing this.

- Collect data from every type of stakeholders.
- Find an appropriate location: will you be interviewing refugees at their homes? Are there any safety issues that you and interview participants should be aware of on the way there, during and after the interview? If the participants bring up other locations, will you be able to make any site visits?
- What will you do if you want to interview a woman and her husband/neighbors want to be present as well? A solution is to organize a focus group with women and ask each one of them a few questions separately, if necessary.
- See what works. The Asylum Access Malaysia team prefers to do interviews and focus groups because it's hard to identify issues through surveys. It might seem there is no problem when the community is actually facing big challenges.

#### Step 9. Analyze the data

### **Qualatative data**

For more on how to analyze qualitative data, see this guide.

### **Quantitative data**

For a quick introduction to useful data analysis tools and terms, please follow this link.

### Step 10. Document the assessment

Imagine that someone who is not familiar with the assessment tries to understand it only by reading the documents you have developed in the process. Would they be able to? It is very important to keep records that document every step (e.g. how you chose the team, how and why you decided a specific methodology is appropriate or the interviews you took.) Keep everything organized for future reference.

## Step 11. Present your findings

Present the findings to other staff in the organization and/or refugee communities to inform program design or improvement. The presentation (either written or oral) should include:

- The team who planned/conducted the assessment and each member's role.
- Background information about the stakeholders involved in the needs and resources assessment and how you build relationships.
- Explain what kind of data collection methods you used and what is the reason for choosing them.

For the qualitative data:

- Present the coding strategies used, the codes, categories and themes.
- Support each theme with evidence from the data.
- Explain how the findings address the questions you set out to answer.

For the quantitative data:

- Present hypotheses you wanted to test.
- Present the findings and how they address the questions you set out to answer.
- Make recommendations based on the information you collected.
- Use participatory methodologies to analyze and discuss findings of the assessment and learn how the data will affect your work.

### Step 12. Publishing findings

This is an optional step, that *could* be considered when the following requirements are met:

• The findings add to the body of knowledge or update existing information.

• The identity and dignity of refugees involved in the needs and resources assessment process will not be endangered in any way.

If you decide to publish findings, depending on the context, you might choose from the following two options:

- **Clients sign a waiver**. For each story and photo/video you create, have your clients sign a release waiver after walking them through the purpose and potential uses of the materials. In the case of photos/videos, clients can specify whether they prefer to conceal their faces or not. Lastly, names are always changed and details that might expose their identities are not included in final material (e.g. we'll use Colombia instead of Buenaventura, won't include specific company names etc.) The downside is that a waiver might deter people from sharing their stories. Signing contract-like documents cab intimidate people.
- **Keep it anonymous**. Another suggestion is to keep it all anonymous when collecting primary data (both quantitative and qualitative) from refugees and ensure that certain details are omitted from published work.

# Integrating CLE Programming into your Organization

The previous sections have highlighted how community legal empowerment (CLE) is a powerful tool to advance refugee rights by promoting refugees' direct involvement to steps to actualize their rights. However, integrating CLE approaches into refugee work may require additional costs, time and efforts. This section discusses some of the ways your organization can benefit from CLE programming.

# Building capacity

The Toolkit discusses other strategies for achieving refugee rights including Policy <u>Advocacy</u>, <u>Strategic Litigation</u> and <u>Legal Services</u>. Different from these strategies, CLE allows direct involvement by the refugee to shape and implement programming that directly benefits their well-being. CLE trains and builds refugees' capacity to become their own advocates.

# Accountability

By introducing CLE programming, organizations and advocates promote accountability to the individuals they serve by putting refugees in the drivers' seat. Through workshops and one-on-one relationships built, advocates can learn about the issues most important to refugees and what and how they hope to find resolutions. CLE programming opens the possibility for two-way conversations between refugee-serving organizations and other stakeholders and refugees to ensure that their work is in fact in line with advancing and protecting their needs and rights.

## Data and information

Additionally, CLE programming produces data and information valuable for advocacy and litigation. For example, close partnerships with refugee leaders can help litigators find strong plaintiffs for refugee rights promoting cases and policy advocates can point to positive examples of prosperous refugee led-initiatives.

# How does CLE fit into the broader vision of the refugee rights movement?

With limited capacity to serve all refugees, legal education allows organizations to focus not only on refugees but to raise awareness of the refugee situation to the general population. Relationships built and information gathered with CLE programming can be used alter public opinion and foster deeper understanding of refugee issues among the local population.

# Build Relationships

A crucial first step to building a community legal empowerment (CLE) program requires building relationships with the individuals your program will serve. There are various strategies that can be employed to identify what the refugee population looks like, how to reach them, and engage them directly, and how to begin to shape CLE services.

To lay the foundation for CLE activities, your first focus will have to be on building a relationship with individuals who can first help you understand the refugee communities, their structure and characteristics. Whether the organization is already serving refugees and has a natural pool of refugee clients or has never worked with a refugee before, investing time to map and get to know the refugee populations that live in your targeted geographic area will provide valuable lessons for building the CLE program.

The identify refugee in your context section defines three areas of investigation:

- **Desk research**: Desk research may provide helpful initial sources of information to effectively start to understand who is living in your context;
- **Internal client research**: Assessment of information readily available through your organization's data if it is already serving refugees;
- **Field outreach**: Field research by conducting outreach to refugee populations and also groups and individuals who interact with refugees.

# Identify Refugees in your Context

To identify the refugees in your context, there are different ways to go about it. The below information about desk research, internal client research and field outreach can help you get started to identify the most important refugee communities and understand what their situation is in your country.

# Desk Research

Investigate the history of refugee flows into your area, the causes for their migration, and the laws and policies impacting them locally, nationally and regionally. While there may be one principal group of refugees in your region, seek out statistics and information on other refugee flows to expand your knowledge of all refugee groups living in your context.

Suggested research sites:

- UNHCR country websites for your country of operation;
- US State Department Human Rights reports;
- Human Rights Watch and Amnesty International Reports;
- Local and national news reports;
- Population surveys on foreign born.

You can use Google alerts to be automatically alerted about migration and asylum developments in your country of operation or the broader region. Some useful alert queries:

"Refugee\* AND your country"

"Asylum seeker\* AND your country"

"UNHCR (or adjudicating agency) AND your country"

How to set up a Google Alert

# Internal Client Research

Your organization may already be an expert about the population it aims to serve in its CLE programming. Internally collected data, client surveys and information from staff may provide significant insight.

# Assess Available Data

Organizational information already available including biographic data, income, skills and education levels provides insights into the organization's clients that will be useful for shaping CLE programming. Other refugee serving organizations or groups may also have this information and may be willing to share data or analysis of data.

## EmployEE surveys

Client satisfaction surveys may already ask about refugee needs and conditions not met through current programming. The organization may decide to also add specific questions to the surveys that feed into CLE programming. See <u>Legal Services M&E</u> tools for more guidance.

## Ask employees about their experiences and understanding

Staff working directly with refugee groups at or outside your organization may have the best information about refugee communities and their dynamics. Interview staff members for information and inquire into potential contacts in the refugee community

# Field Outreach

Community outreach helps you to understand the community dynamics and its composition, particularly beyond those already served. As such, community outreach activities can determine how to expand services to more people or more appropriate services to those already served.

# Structuring Outreach

Field outreach helps understand how refugee communities are organized and what representation looks like in the community through some of the following steps:

- Identify where refugee communities have diverse demographics, social divides, religious or linguistic diversity, and other plural characteristics. See mapping strategies under Policy Advocacy;
- Identify community associations or individuals who may be affiliated with community-based organizations (CBOs);
- Talk to refugee schools, religious leaders, and Community Interpreters;
- Contact other organizations, government agencies, churches, etc. who have established relationships with refugee communities.

# Information sharing during outreach

The information shared during outreach goes two ways. During outreach inquiries, be prepared to share information about the organization. Outreach activities may attempt to raise awareness and provide information about legal services or legal counseling and referrals to the target population in the community. It is important that you are honest about your goals and services when speaking to the community to establish a relationship of trust.

# Outreach Tips

During outreach, keen sensitivities to the expectations set and the needs and history of the targets will help your initial contacts develop into lasting relationships:

- Be honest with the communities contacted about the goals of the outreach and its limitations.
- Develop resources that you can distribute to the communities, and use to communicate with community leaders i.e. flyers, protocols, etc.
- Set realistic expectations: do not offer something that you cannot deliver and follow up on your promises and commitment.
- Provide correct and accurate information about legal services provided by your organization to the target population.
- Create clear agreements for confidentiality when necessary. Explain the purpose of the information gathered and how it will be disseminated.
- Offer to share the published materials and results of the outreach.

### Further resources

Questions to ask if you are meeting a CBO for the first time (Legal needs identification)

Successful Outreach: This case study of the successful outreach programs in particular communities, specifically LGBTI refugees in Kenya, includes recommendations for designing an effective outreach program

# **Gender Framework and Impact**

This section looks at both running community legal empowerment programs using a gender framework, and at the gender impact your programs can have. As reiterated throughout this Toolkit, all aspects of your work should be undertaken with consideration of gender implications. This should be reflected in the way you deal with clients and communities, in your strategic planning, in your evaluation of projects, in your communications, recruitment, support and all other activities.

This section will briefly cover the specific aspects of a gender framework that is related to community outreach and look at the gender-related impact such programs are able to achieve. Each section on community legal empowerment strategies contains a gender framework section as well, with specific considerations to keep in mind for each activity.

# Gender framework and community outreach

Be considerate of the culture you are operating in. Whilst you will want to talk to refugee women and girls, you may have to navigate patriarchal structures (community elders and representatives) in order to gain access and trust of women.

When assessing the needs of a community, analyze the needs of men, women, boys and girls separately. Speak to each demographic to understand the dynamics, needs and aspirations within the community.

If you have reason to believe that women may be less likely to speak up about their needs in group session, structure needs assessments in a way that allows for segregated conversations.

Pay attention to the intersections of identity. If you are additionally analyzing the needs of other marginalized groups (youth, disabled, LGBTI) disaggregate findings by gender and age.

Explicitly ask as many members of your community as possible to identify genderspecific factors which may make your proposed route forward (e.g. with Community Action Plans) less effective (e.g. pregnancy, harassment in public spaces, availability of child care, etc.)

Pay attention in certain contexts to the marginalization and invisibilization of women. If you call a refugee community to a needs assessment meeting at certain times of day, or in certain public spaces, will this discourage women's attendance?

Does your evaluation methodology take into account different gender-perspectives and needs?

### Further resources

How to design and implement gender-sensitive social protection programmes (Overseas Development Institute, 2010)

Making Everyone Count Gender-sensitive Monitoring and Evaluation in a Community-Driven Development Project: The Case of the Philippines' KALAHI-CIDSS (World Bank, 2011)

A gender sensitivity resource pack: Community safety training, outreach, and advocacy in Nepal (IHRICON and Saferworld, 2014)

Sectoral Guidelines for Gender-Sensitive Outreach: A Checklist (Elaine Enarson, 2005)

Legal Empowerment for Women and Disadvantaged Groups (Asian Development Bank, 2009) – includes sections on the challenges of defining and measuring the impact of Legal Empowerment

# Gender-impact of community legal empowerment

You should always aim to have a positive gender impact in all aspects of your work. In terms of CLE, this should mean working with women and men to overcome prejudice, discrimination, misconceptions, misogyny, machismo, marginalization of women and girls, and so on.

- Seek to empower female leaders in your community processes.
- Actively recruit female Community Advocates, Legal Advisers and interpreters.
- Mainstream gender issues into all your trainings and workshops.
- Run workshops on women's rights with both men and women.
- Promote gender aware language among the community and with institutions you work with.

Take great care to listen to gender-specific concerns in the community and structure your programs and action plans around these (e.g. men may not express difficulties in accessing land rights whilst women do; nationality or citizenship is in many countries passed down by the father, creating inequalities and even statelessness.)

Train your community liaisons (advocates and legal advisers) to deal with sexual and gender-based violence (SGBV) and gender-discrimination cases, so that they are responsive and voice claims from within the community, promoting the internalization of gender justice.

Acknowledge and respond to the different experiences of men and women when delivering work rights trainings. Women and men often work in gendered professions (e.g. survival sex workers, domestic workers, flower pickers vs. manual laborers, drivers, etc) and these will have greatly different implications when putting work rights claims into practice. Some professions are more exploitative than others, and the fact that they predominantly employ a certain demographic will make that group of people more vulnerable to exploitation.

When doing rights workshops, make sure you include gender-related topics in your warm-up activities and icebreakers, to get people thinking about gender from the start.

Further resources

Examples of gender-related workshop activities (Asylum Access Ecuador)

<u>Good practices on Gender Equality Mainstreaming: A practical guide to</u> <u>empowerment (UNHCR, 2001)</u>

# Build Leadership

Refugee leadership development builds the capacity of refugees to lead sustainable, empowered lives. As leaders, refugees can work to strengthen the resources and networks in their own communities.

Programming that includes capacity building, skills trainings, network building and other leadership development programs invest in refugee individuals who in turn lead refugees to find human rights solutions. The focus should be on developing the abilities the person to provide efficient leadership and not the leadership mechanics to better ensure that refugee leaders stay engaged and committed. While programming should be developed based on the requests and needs of the leaders rather than an organizational agenda, the organization may wish to suggest certain themes and tools but always in agreement with its refugee leader participants.

This section explains how leadership development is a key element of community legal empowerment. It provides brief guidance for building leadership and capacity building programs. Last, it suggests practices regarding cultural relevancy and gender sensitivity to consider in building leadership programs.

# Identifying Refugee Leaders for CLE Programming

In the interest of identifying and growing leadership for community legal empowerment (CLE), community leaders are essential for the communication of information to and from communities. They represent and speak on behalf of refugee community members. Furthermore, they can play a crucial role in providing key legal information back to the community, particularly in the interest of informing, empowering, and strengthening their rights. Finding the right individual to work with you on your CLE program is essential to advance your goals. This section focuses on possible avenues to identify community leaders.

One way to identify refugee leaders is by tapping into relations you have built with refugees through other programs. Often, the refugee community members that have approached the organization – whether they are requesting support in advocacy or resource development – are the individuals ready to take action. Alternatively, these individuals can play a role to connect your organization to community networks and can connect the organization with other refugee leaders.

Individuals with natural leadership skills, including community organizers, peoplepeople, social justice oriented, etc. – whether self-identified or identified by others can also play a role in CLE activities. Depending on their experience, you may reach out to them for specific activities or capacity building initiatives.

There are also established community leaders who are trusted and valued by other community members and/or have been put in leadership positions by other community members. You may find these individuals leading refugee-led schools, religious groups or community based organizations. Because of their established position as a community leader, they may be effective in garnering support for a particular initiative within the community.

Basic interest and capacity, including time, is another simple characteristic to look out for. What individuals are seeking leadership and capacity building? Who has offered time to support their community? Who is already leading in community processes?

# **Refugee Leadership Qualities**

Part of the CLE model includes enhancing the quality of leadership within refugee individuals and communities as a form of empowerment. We focus on building capacity and providing resources to identify and facilitate the growth of leaders in refugee communities.



*Advocate:* Refugee leadership is important for refugees to advocate on behalf of themselves, their families, and their community. Through refugee leadership, refugees can begin to see their needs and rights met.

*Protect:* Refugee leaders have the confidence, know-how and information to facilitate nontraditional forms of protection for other refugees when laws, authorities, and other persons in positions of power are unwilling or unable to do so. Refugee leaders may understand challenges to the safety of a community and are in the best position to find ways to set up its own protection frameworks responsive to cultural, economic and social dynamics within their community. Some of these include information sharing, warning systems, establishing identity forms, etc.

*Survive:* In the refugee urban context, most refugees are focused first on survival – making sure their basic needs are met. Refugee leaders are often faced day to day with survival challenges. CLE programs work with leaders to address their personal challenges and that of their community through democratic action plans that relies on minds and support of many.

*Grow Talent:* Refugees come with many talents. Cultivating and developing those talents facilitates the sharing of people resources and strengthens leadership. Refugees may also build new skills that respond to specific challenges faced in the country of refuge, such as economic opportunities or help them organize and advocate on behalf of their community.

*Develop Resources:* Refugee leaders are both resources for other refugees and utilize the resources in their urban settings. Uniquely positioned to understand and connect with other refugees, leaders offer valuable information, advice, connections, and other tools for their fellow refugees. Where resources are lacking, leaders work together and with allies to strategically meet their communities' needs.

*Build Allies:* Refugee leaders have the potential to bridge communities and seek out friends and allies that offer resources and defend and protect refugees. Leaders can bring unified voices to the table representative of the refugees' voices.

*Nurture:* Refugee leaders can step into care for and encourage the growth of support for others who are similarly situated. For example, leaders can play important role in designing and implementing group workshops and activities that help refugees overcome trauma and take steps to rebuilding their lives together, and strengthen community and support networks.

*Inspire:* By example, refugee leaders set the groundwork for other refugees to start initiatives, build capacity to lead and support their communities in the country of refuge.

# Cultural and Gender Relevancy in Refugee Leadership

Social hierarchies in displaced contexts can be complex and hard to get a handle on. Because of this, continuous program development should include ongoing questioning and reviewing of assumptions about the communities you serve.

One way to ensure your CLE program is crosscutting through the different social hierarchies and dynamics, is by ensuring that refugee leadership include representation of individuals of diverse characteristics. Another important aspect is the inclusion of women in leadership, and to encourage developing programming that meets the specific needs of women. Some tips on gender relevancy in leadership programming:

- If the functions required of community leaders (advocates or legal advisers) are not flexible (regarding time, commitment) you are unlikely to attract many women to the roles, given that they frequently are charged with childcare duties.
- Consider compensating these roles: this can foster women's economic empowerment among female leaders.
- Advertise in non-traditional spaces for these roles: many women may not see them if only displayed only in mainstream newspapers and at public institutions (e.g. women's markets, public restrooms, childcare centers, etc.).
- In a context of widespread discrimination against women, your female community leaders will need to be particularly persistent when engaging with authorities. They may also experience contempt from members of their own communities in some repressive environments. You should support women through such difficulties and empower them with the resources they need to combat intolerance.
- When constructing community action plans be aware of representational issues and guide participants in conducting their own process in a gender-sensitive fashion. This includes gender-sensitive budgeting (if appropriate), needs analysis, planning and delegation, and follow-up and evaluation.
- Train all community outreach leaders in recognizing gender-based constraints and responses.

### Further resources

Towards Gender-Sensitive Participatory Budgeting (ParticipatoryBudgeting.org.uk)

# **Community Resources**

The key to achieving self-reliance for refugees is that they can independently navigate their lives in the country of refuge. Their ability to access resources within the community they live – both refugee and local – will be key to building independence and sustainability. This section focuses on how working in a network can contribute to

increased information provision and awareness of available services by working to promote this independence.

Many countries with large refugee populations have scarce resources and a tension between the need for assistance and the availability of funds and services. In other places where refugees are newly arriving, social and public services may be unaware or unwilling to extend their services. They may also just not know how to serve refugees.

By building and informing networks of organizations and agencies, refugees can make the best of the available resources. Furthermore, the provision of services through networks encourages the development of social capital to positively impact the lives of refugees in protracted or urban refugee situations.

Knowing your network partners furthermore can have an empowering effect since it will benefit your refugee client's ability to navigate through the host country. For example, by providing information about the available services, rather than making an abstract referral you provide refugees with a choice whether they want to use these services and advocate for themselves to claim the services they are entitled to based on their specific characteristics or needs.

Some of the most commonly cited benefits for network members are increased or newly acquired:

- Access to information;
- Expertise and financial resources;
- Efficiency;
- Reach and impact;
- Solidarity and support;
- Visibility of issues, best practices, and underrepresented groups.

# Mapping local resources for CLE

At first glance, the local context may seem void of resources for refugee community. Refugees often complain that they are turned away from social or public services and that private agencies are too expensive. It is important to dig deeper, scope out the landscape and create a plan to contact, inform and strategically connect already existing services with refugees.

Players to include in mapping:

- Non-profits;
- Community clinics;
- Credit unions and other community financial institutions;
- Local government offices;
- Media;

• Clinics and professors and PhD students

Similar to <u>mapping done in building referrals</u> for Legal Services, by taking inventory of the players offering services in the community you can begin to identify resource possibilities for refugees as well as to relevant partners for your community legal empowerment programs. It is important to look beyond refugee-oriented services, and investigate local services aimed at citizens e.g. homeless charities, food banks or faith groups.

# Outreach after mapping

As you begin to contact all your mapped organizations and service providers, research the organization and its leaders as much as possible to learn about their mission and goals, funding sources and limitations. This will help you identify ways to connect their values and objectives with serving refugee community members and convince them that serving refugees matches their mandates and values.

Before contacting them, prepare to introduce yourself and your organization and provide an introduction based on these shared principles. Consider bringing refugee leaders with you to meet with these organizational leaders in the first or second meeting.

Prepare and provide information about the situation of refugees in your area if they are unfamiliar. This is an opportunity to dispel myths about the refugees and build allegiances.

# **Collaborations with Local Players**

After mapping and outreach, your organization may start to accumulate a list of helpful community resources for refugees. These organizations and agencies will benefit from ongoing contact and information about the refugee situation. To facilitate sharing information, consider forming coalition and networks for information sharing. These networks once formed may take interest in engaging in community legal empowerment (CLE) programming, action plans and advocacy.

For example in Thailand, the creation of the Bangkok Asylum Seeker and Refugee Assistance Network (BASRAN) brought organizations and faith-based groups together. Together they worked on providing non-legal services to refugees while keeping each other informed on updates and changes in refugee policies and context.

Bangkok Asylum Seeker and Refugee Assistance Network (BASRAN)

# Health

Look at opening access to medical services through collaboration with health care service providers. Often, language barriers will prevent clinics from offering services to foreigners. Through a CLE initiative that promotes access to language, such as sharing of interpreters between organizations and accompaniment during medical visits, refugees are better able to claim their right to health care. Seek out medical professionals in the refugee population may be available and willing to volunteer in such collaborations.

# **Employment**

Join forces with available employment-centered organizations to help connect refugees with available employment, develop refugee skills and connect refugee and local entrepreneurs with workers.

### Further resources

Asylum Access Tanzania and Junior Achievement collaboration project combined Know Your Rights trainings on business law with trainings on practical entrepreneurial skills

# Community Legal Empowerment Strategies

There are a variety of strategies which your organization can use to empower the community. This Toolkit divides them into two categories: workshops and building the capacity of community leaders.

The former contemplates workshops on refugees' rights, both for refugees themselves and for host country groups, whether communities, authorities or other organizations. It also looks at less legal workshops such as women's empowerment, gender issues and integration. There are also cross-cutting sections on participatory diagnostics and facilitation techniques for workshops.

The latter looks at a variety of ways in which to build the capacity of members of the refugee population in order to spread rights awareness and enable a greater number of people to claim their rights. The various models covered are community advocates, community legal advisers, and <u>Community Interpreters</u>.

Community Action Plans are also discussed as a strategy, as are the necessary processes of monitoring and evaluating the various community legal empowerment strategies.

### Further resources

Legal Empowerment Strategies in Bangladesh: Empowering Women and Poor People through Legal Means (BRAC)

Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment (International Development Law Organization)

The Legal Empowerment Approach to International Development (HAKI)

Scaling Up Legal Empowerment Strategies For Community Land Protection (Namati)

# Workshops

Running workshops is a key component of any community legal empowerment program. Workshops allow an organization to expand its capacity to reach large groups of people with a message, skill or other practical information at one time. It also facilitates conversations and shared learning among refugees, builds community and leadership, and collects information from refugees to inform other program areas.

The section provides workshop techniques for refugee audiences and for institutional partners. The thematic areas covered include:

- human rights (e.g. KYR, KYO) workshops,
- social inclusion workshops, such as women's groups, men's groups,
- integration of refugee host population workshops, and
- gender sensitivity.

Workshops are typically designed to respond to an information need from the population you are serving. For example, if there is a large number of refugees struggling to navigate the local laws to set up a business, you can develop a workshop around work rights, to equip individuals with all the information they need about the local laws, administrative procedures and recourse possibilities.

You can identify the needs of the population through participatory diagnostics. Participatory diagnostics aim to shed light on what the community already knows about a topic, what skills and knowledge does the group bring to the table and what they feel their most pressing issues are, and their solutions. This step also helps you understand what on-topic knowledge the participants bring with them into the training and equip you to respond to concrete problems that are being faced. The section in this Toolkit about <u>participatory diagnostics</u> gives some concrete ideas how to set up such a session.

# **Popular Education**

The following section contains information on the basics of Popular Education, which is important to read before planning your workshops. Popular Education techniques are

central to consciousness, collective learning, empowerment, and social change based on equality.

# What is Popular Education?

A type of <u>alternative education</u> that shares the interests of the people. It involves the use of methodologies for the facilitation of organizational, regional, and community processes, processes of collective learning, that aim for empowerment and the strengthening of the organization, with the purpose of transforming the reality based on the interests of the population of the intervention.

It should not be reduced to the application of a combination of techniques to make workshops more participatory. Instead, participatory techniques are a means to the end of reaching certain objectives.

<u>Popular education</u> is production combined with knowledge oriented towards action and constructed from the specific experiences of the people. It is completely different from the established education system (formal education, and in some cases, informal education), which transmits content unilaterally with little or no space for reflection, although it can be developed perfectly in both the informal and formal spheres (it generally has been linked more to informal education). "No one knows everything, no one is ignorant of everything, we all can learn together."

The starting point of popular education is found in two basic questions:

- What is happening?
- And what can we do?

These two questions should be analyzed and responded to as a group. The process should be participatory, critical, and organized to change the situation that participants find themselves in. The education begins from the people, from the dialogue, the construction of knowledge and participatory processes. In this way, it addresses the practices and realities of the participants, rather than those of anyone else.

It is an education that builds consciousness, knowledge of rights, social and political leadership, and, finally, <u>critical citizenship</u>.

The <u>Social Village</u>: refers to the joining of marginalized, exploited, oppressed, and discriminated-against social sectors. It is necessary to identify common interests between all these most marginalized and damaged sectors with the goal of their empowerment as <u>collective social actors</u> (in this way promoting actions that integrate rather than segregate).

It is important to mention that Popular Education is directed to those people that are most interested in changing the situations around them, because those situations are oppressing them.

The <u>final objective</u> of Popular Education is to contribute to the construction of a society that is more human, just, cooperative and truly democratic; a society in which all people have the ability and possibility to participate in conditions of equality and with access to their rights, contributing and causing social change.

It because of this that we cannot separate education from politics (partisan or not): because, ultimately, as Paulo Freire noted, education is about offering liberation to those who are oppressed.

There is not only one kind of Popular Education. It is not a rigid teaching method but rather a creative process with many practices and experiences, according to the context, the people involved, etc.

It is important to keep in mind the values that it advocates: democratic participation, organized development, organization for action, transformation, and the changing of one's reality.

## How does one set up a process of Popular Education?

The entrance point to the educational process will always be the problems that are closest, that interest different communities and specific groups. It is recommended to begin with specific situations in which there is a good possibility for significant achievements to be reached in a relatively short time period. This will effectively be an incentive to strengthen the organization and propose, as time progresses, more ambitious goals that involve more people.

It starts, then, in the objective reality lived by the participants, their social practices. This is to say: how do people act when faced with their realities in order to transform them. What is their interpretation of these realities? How do the actions of the people relate to their interpretation of their realities?

The facilitator should decide which is the best entrance point, that is, the best subject with which to start. This will depend on the conditions and characteristics of the group and the objectives they want to achieve.

This process has several phases, which feed into each other and are constantly refined: a) critically recognize the realities and practices, b) understand and construct new forms of action, c) rethink actions to improve the realities, and d) act with those realities in mind. It is a circular process, which starts with practices and is later re-conceptualized and modified. It is important to facilitate processes by which participants can gain consciousness of oppressive situations, developing progressively the abilities required to become actors/leaders in their own histories.

# Popular Education and Empowerment

Empowerment is understood as the PROMOTION or STRENGTHENING of the abilities of the people. It is crucially important in Popular Education.

We speak of empowerment in two senses: individual and collective. Individual empowerment refers to the feeling of personal control (to make decisions, to manage resources, to demand rights, etc.). Social and organizational empowerment refers to social leadership, participatory abilities, access and construction of community resources, etc.

PROMOTION or EMPOWERMENT include three basic components:

- Beliefs about one's own abilities and skills
- Understanding of one's own socio-political environment
- Efforts to exercise control over that environment (actions to achieve objectives)
- How do we encourage this? By way of participation.

## Popular Education and Participation

Participation is needed in Popular Education, but it is not sufficient on its own. Accumulated experiences indicate clearly that, without active and effective participation from the community or people involved, a project will fail. The idea is for the people to assume the leadership role in these processes.

Different levels of participation exist, from passive (in which people only participate when they are called on), to empowerment (when organized local people or groups take initiative without waiting for outside intervention, or, in the case of outside intervention, it is only conducted in the form of counsel or partnership).

When we speak of participation in terms of an organization, we have to keep in mind several things:

- Participation inside an organization: promoting spaces for the people to become a part of.
- Participation of civil society: strengthening the network of associated organizations.

The philosophy that inspired Popular Education, as well as the experiences around which it has formed, have been the roots of new fundamental concepts for persons and

communities in the process of change, such as: empowerment, community participation, local capabilities, or institutional strengthening.

## Participatory Techniques in Popular Education

Participatory techniques should be used as tools that help to strengthen the organization and popular consciousness. These tools should be based on the experiences and realities of participants and should be pleasant but dynamic and motivating. They should aim to pique and maintain the interest of the group, thereby facilitating participation, reflection, dialogue and analysis. In this way, the facilitator does not have to provide all the answers, but rather simply help the group formulate the necessary questions and construct their own responses.

It is important to determine the <u>theme, objective, technique, and procedure</u>. When we choose a technique, we must be clear what <u>objective</u> we want to achieve with it/what we want to get out of it.

We must also specify the procedure to follow in order to carry it out, keeping in mind:

- The number of participants
- The time available
- The context

With all techniques, the facilitator must know them well, and be able to use them well and in the opportune moment.

One important element to keep in mind for the application of any technique is having <u>imagination and creativity</u>, to modify, adjust, and create new techniques, based on the participants and the specific situation that is being faced.

One technique can have multiple variants and procedures in order to be applied to a range of participants in different situations or for different objectives.

These techniques should allow:

- Development of a collective process of discussion and reflection.
- Sharing of knowledge and individual experiences by participants.
  - The collective creation of knowledge, which we all participate in building and in its political implications

# Types of Techniques

## **Existential Techniques or Dynamics**

Existential techniques are characterized by creating a fictional situation, which participants involve themselves in, react, and adopt spontaneous attitudes; they are essentially asked to *live* this situation.

We can differentiate existential techniques from those focused more on breaking the ice/creating energy, where the central objective is to encourage participation, fraternity and cohesiveness.

They are also different from analysis techniques, in which the central objective is to provide symbolic examples that allow for reflection about real-life situations.

## Performance Techniques

The central element is bodily expression, which is used to represent situations, behaviors, and ways of thinking. One example:

Auditory and Audiovisual Techniques (i.e. a talk, a radio forum, a movie, a diorama, etc.)

When we use these techniques it is important that the facilitators know the content ahead of time and that it truly serves as a tool of reflection and not only of distraction. It should be followed by a discussion to analyze the content or message presented.

## Visual Techniques

We can name two kinds:

- Written techniques: All that material which uses writing as a central element (for example: flip charts, brainstorming with cards, reading texts, etc.) This kind of technique helps to focus and cement the ideas and reflections of the group of participants.
- **Graphical techniques**: Material that is expressed through pictures and symbols (for example: posters, letter reading, "one for all," etc.) The graphic techniques express content symbolically, which means they require a process of decoding, that is, interpretation of these symbols.

Games are also a tool that can be used. A well-planned game has excellent educational potential.

# The role of facilitators

In order for a technique to be effective in its educational goals, it is crucial that:

- Before choosing a technique, the facilitator is able to answer clearly: What subject are we going to work on? What is the objective we want to reach? Why? With whom are we going to work?
- Once these questions are answered, proposing the best technique to address the subject/achieve the goals, based on the specific participants.
- Later, we will determine how to implement the technique, detailing the procedure that we will follow in its application. Once this is determined, adjust the procedure to the time available.
- Know the theme that you are addressing in order to be able to conduct the formation process and enrich it with all the contributions of the participants.

In any educational activity, we must work to:

- Generate an environment of confidence and motivation between participants and facilitator.
- Adapt the objectives of the workshop to the group.
- Promote the expressivity of the group regarding the theme.
- Put the theme into context.
- Prioritize and analyze problems.
- Support learning.
- Formulate alternatives and plan their implementations

# Techniques

Putting on a workshop can be daunting the first few times. This section is aimed at helping you plan your workshop, women's group, language class or other encounter in order to get your message across effectively, and for participants to best retain the information conveyed in the workshop.

The many examples of facilitation techniques, icebreakers and warm-up activities are far from exhaustive. Be creative and flexible. Listen to the people in your workshop and follow their lead.

Always remember that you and your participants are equals.

## **Facilitation Techniques**

Workshop facilitators must be able to promote the abilities and potential of the participants and groups, and not just focus on their struggles. This allows everyone to learn from everyone else, creating spaces for dialogue that allows for the sharing of experiences and knowledge.

Facilitating means creating an environment of learning and knowledge, etc., which does not mean doing the work for participants, giving information or simply asking and answering questions. If you do any of those, you are reducing the opportunities for participants to strengthen their own abilities.

Remember that no one knows everything. We can all learn from everyone else. Your role is not that of a teacher, leader, etc., but rather to promote mutual learning and active participation among members of the group or community.

### The Facilitator

The facilitator is a person who fosters dialogue and reflection in a respectful, warm, affectionate and friendly way in order to analyze and identify problems, abilities, and potential, searching for alternatives as a group (taking into account the focus on rights).

It is very important to promote the importance and participation of group members by way of techniques or dynamics that are adjusted to the objectives and expectations of the workshop or community process.

### Purposes of Facilitation

**MOTIVATE**: It is important to have a motivating attitude that inspires action. Be optimistic and encouraging that participants are capable of achieving what they want.

**ORIENT**: Make it a goal to provide support that participants need to make the best possible decisions with respect to their situation.

**MODERATE**: Moderation refers to the ability to conduct meetings and workshops in an effective and efficient manner, which requires a combination of techniques. Motivation, information, feedback, synthesis, and integration are crucial to good moderation.

**ACCOMPANY**: This means considering all of the prior functions, but also requires putting into play a series of elements that allows for the creation of conditions that inspire confidence, create alliances, display knowledge bases, inform, observe, and question.

At the same time, remember that a facilitator must be able to synthesize and integrate — that is, to summarize — the discussion.

Try and cultivate the following attitudes and skills:

- Be positive and optimistic
- Be enterprising and take initiative
- Identify with the aspirations and interests of the community

- Be coherent and honest
- Have the ability to dialogue
- Be respectful and tolerance of the ideas of the population
- Be able to agree
- Be able to learn or understand the substance of the conversation
- Manage techniques of participation and dynamics of the group
- Be someone who inspires confidence
- Be communicative
- Be friendly and courteous
- Be enthusiastic and cheerful
- Be empathetic
- Be motivating
- Know how to listen and interpret concepts and the opinions of participants
- Have "stage presence" (communicate eloquently through speaking and writing)
- · Create a warm and pleasant environment between participants
- Manage time and spaces
- Have the ability to convene the group
- Be social
- Be able to dialogue with the community (relating horizontally with community members)
- Be knowledgeable of local, regional, and national realities
- Be knowledgeable of the region and the community
- Share the reality of the community in an informal way

Some basic guidelines for facilitators:

- Punctuality at the beginning and end of the workshop
- Proper presentation of self and of your organization
- Encourage the participation of all in attendance
- Visual contact with all participants
- Ideas are presented, not enforced
- Special attention for slow learners
- Stimulate shy or disinterested participants
- Equal treatment for all people
- Praise good answers and appreciate all contributions
- Organize work in groups
- Manage the unexpected without losing focus
- Remain always visible to participants
- Don't overuse gestures, nor remain unmoving
- Use a natural tone of voice
- Use varied and quality material, keeping in mind the characteristics of the group
- Self-evaluation for constant improvement
- Here are several activities you may customize to your curriculum. Remember to be as creative as you can!

## Warm-up / Icebreakers

This is a list of sample icebreaker activities, which are used at the beginning of a workshop to facilitate introductions and make participants feel more comfortable with one another as well as with the instructor/facilitator. If you do decide to use an icebreaker, please remember to adjust the activity so that it is culturally appropriate.

**Highs and Lows:** Have everyone go around and state their highs and lows (i.e. the best things and worst things) of the week. Group members should start with their low and end with their high, and everyone should share before the rest of the group can discuss or react.

**Zoom**: This is based on the Zoom and Re-Zoom picture books by Istvan Banyai which consists of 30 sequential pictures that continually "zoom" out to encompass a larger part of the scene in question. For example, a story could go from a rooster to a model train set to an advertisement for toys to a stamp on a card. The activity is to take one of these picture books, break up the pictures and hand them out to 20-30 people who will have to re-organize themselves into a unified narrative.

**Categories**: A group will be asked to organize themselves into smaller groups based on different criteria such as number of siblings, favorite color, etc. Once the groups have formed, the facilitator can ask each group to identify itself.

**Fear in a Hat**: Group members write personal fears anonymously on pieces of paper which are collected. Then each person randomly selects and reads someone else's fear to the group and explains how the person might feel.

**Have You Ever**: A group gathers in a circle and the facilitator asks "have you ever" questions such as "have you ever seen a sunrise?" and people who have will rush into the center of the circle and give each other high-fives.

**Bingo**: Facilitator will create a bingo sheet that has personally identifying elements in them such as "I can speak more than one language." Once these sheets are handed out to participants, everyone will have to go around collecting signatures/names of people who have that certain quality.

## Further resources

<u>Self-Esteem Building Warm-Up Techniques (Generalitat Valenciana, translated)</u> Further Warm-Up Activities (Coyuca Youth Ministry, translated)

## Mid-workshop activities

### Activity 1: "Buzz Groups"

These are small groups, consisting of 3 to 6 people, who are given an assignment to complete in a short time period. Each buzz group records their output then reports to the larger group.

This activity is useful for:

- Addressing a topic from a new perspective
- Sharing ideas/personal experiences
- Brainstorming questions/ideas/answers

Materials:

• Paper and writing materials

Facilitator's Process:

- Pre-assess the audience to determine what they already know about the subject.
- Share the purpose of the activity with the audience.
- Explain the process:
  - Form small groups
  - Choose recorder and presenter
  - Complete the activity
  - Report back to large group
  - Debrief the session
  - o Clarify the assignment, guidelines and expectations
  - Ensure that the audience understands the assignment by asking someone to repeat the instructions
- Remind participants to listen to each other and be respectful.
- Announce duration of activity.
- Arrange small groups.
  - Let participants choose.
  - Arrange randomly.
  - Arrange according to common/different interests.
  - Arrange according to skill/learning style.
  - Tell each group to choose a recorder and a presenter.
- Ask for and answer any questions regarding the procedure.
- Start the session.
- Circulate and monitor.
- Remind participants when there are one or two minutes left.
- End activity
- Ask each group to report to larger group
- Summarize the session by recapping main points

• Wrap up with a review of session objectives

### Activity 2: "Jeopardy Review"

If you are familiar with jeopardy, this should be easy for you to adapt as a session or workshop review. If you're not, jeopardy is an American game show which customarily features five to six categories, each with around five questions that increase in difficulty as you go down the list. As each question is worth a certain amount, competing teams/individuals can gather points and whoever has answered the most difficult questions (garnering the most points) wins the game!

This activity is useful for:

- Reviewing
- Assessing understanding (to see where students/participants don't understand something)
- Friendly competition to increase information retention

Materials:

- Index cards
- Markers
- Tape
- Board

Facilitator's Process:

- Compose five to six categories, each with five questions that increase in difficulty.
- Write an index card with the title of each category.
- Write each question with the answer on the back of an index card.
- On the front of the index cards, write the numerical value of the question (10 points = easiest question, 50 points = most difficult).
- Post index cards on the board in front of the room in a grid-like formation.
- Share purpose of the activity.
  - Explain the rules and process.
    - Split into two groups.
    - Elect a representative from each group.
    - One group starts the game by asking for a category and a posted numerical value.
    - They have one minute to discuss and answer.
    - If they answer correctly, they get the question's points.
    - If they answer incorrectly, the other team gets to "steal" the points if they can answer correctly.
    - The other team gets one minute to discuss and answer the question.

- If neither group gets the question, you can provide the answer and no one gets the points.
- The game continues this way until all index cards are taken off the board.
- Team with the most points wins (and possibly gets a prize).
- Ask and answer any questions.
- Start the game by asking representatives to each guess a number between 1 and 10 (you have predetermined number between 1 and 10 in your head and whomever guesses a number closest to yours gets to start).
- Conduct game by asking the questions out loud, keeping time and recording points.
- Calculate points and announce winner.
- Summarize and wrap up with a review of session objectives.

### Activity 3: "Round Robin"

This is a great activity to integrate movement with the chance for everyone to participate. Around the room, there should be a large poster paper with different titles. Participants will go around with a marker and offer their opinion by writing it down on the poster paper.

This activity is useful for:

- Generating subjects for discussion
- Brainstorming
- Sharing ideas/perspectives

Materials:

- Large poster paper
- Markers
- Tape

Facilitator's Process:

- Prepare the large poster sheets with a subject headline and post around the room.
- Communicate purpose of activity.
- Explain procedure:
  - Everyone takes a marker and goes around the room writing their thoughts/opinions on each poster.
  - When everyone is done and seated, instructor goes to each poster and facilitates a discussion centered on the comments left on the poster.
  - Make clear expectations that everyone should try to contribute something to each poster.
- Summarize and wrap up with review of session objectives.

### Activity 4: "Role-Play"

By creating scenarios in which partners or a small group can take on different roles, increased understanding and empathy is encouraged. The idea is that the facilitator/instructor presents a situation before asking two people to take on different roles and talk out the scene.

This Activity is Good for:

- Generating discussion
- Introducing new viewpoints
- Increasing understanding of another's role

Materials:

- Some way to distribute or display the scenario to be played out.
- Sample scenarios such as these.

Facilitator's Process:

• Prepare scenarios beforehand (use case examples).

Example: UNHCR official interviewing an asylum seeker with a particular background – should the asylum seeker be granted refugee status?

- Share purpose of activity.
- Introduce the scenario, give clear instructions.
- Explain process:
- People will take partners (or form small groups in which two people will roleplay and the small group will discuss as a whole)
- Each partner will take some time to familiarize themselves with the story
- Partners will act out a scenario
- Partners will discuss the scenario
- Large group share
- Debrief/summary/conclusion
- Go through the procedure.
- Summarize and wrap up with review of session objectives.

### Activity 5: "Foldables"

Recent research on education has proven that movement encourages learning — as does enjoyment — and this activity integrates both of those elements. A foldable is something created out of paper through folding, cutting and occasionally, gluing, taping, and stapling that can be used as a teaching/learning tool. It's a kinesthetic technique where tactile activities promote information retention. Below are a variety of foldables that can be adapted to your particular curriculum.

This Activity is Good for:

- Booklets
- Review sheets

Materials:

- Paper
- Scissors
- Markers or other writing tools.

Facilitator's Process:

- Prepare an example of the foldable that you want to use beforehand.
- Share purpose of activity.
- Pass out Materials.
- Go through, step by step, how to make the foldable.
- Make sure that each participant is following along with each step (have helping hands go through audience to assist participants).
- Give time for participants to fill in the foldable.
- Summarize and wrap up with review of session objectives.

### Further resource

Example foldables (New South Voices at The University of North Carolina)

# **Rights Trainings**

Training refugees and host community groups and authorities on the rights (and responsibilities) of refugees is likely to be a core part of your community outreach work.

Knowledge of their rights and practical channels for asserting and claiming them is the first step in community legal empowerment. Those attending your workshops will effectively act as multipliers among their communities, workplaces and networks. Be explicit about this aim, and explain that multiplying knowledge can contribute to increased tolerance towards refugees and awareness of the unique challenges they face.

Through data collection methods, such as outreach, participatory diagnostics and focus groups, you should be able to establish what kinds of rights trainings are appropriate and necessary in your context. These may include general Know Your Rights trainings, work rights workshops, and refugee status determination (RSD) workshops, but there are many more potential rights workshops you could run, depending on your expertise, refugees' and institutions' interest and capacity.

Further workshop ideas could include:

- Write Your Own Appeal workshop
- Recent Arrivals: Rights orientations
- Other Methods of Regularization
- Right to Work
- Health Rights
- Right to Education

- Gender-Based Violence: Your Rights.
- Gender-based violence and other gender topics are also covered in the social Inclusion workshops section.

# Know Your Rights Trainings

Know Your Rights (KYR) trainings are central to <u>Community Legal Empowerment</u>. KYR trainings focus on providing refugees with knowledge of the rights they are entitled to under international and local law.

The first and most vital strategic concern is which group(s) to target. This process is discussed in greater detail on the <u>identify refugees in your context</u> section. The group that you expect to attend the workshop (e.g. detained asylum seekers, educated locals) will determine how you will decide to structure workshop content. When considering who your target group should be, consider the following questions:

- What group has the greatest need?
- Who can benefit most from a KYR workshop?
- What do they need to know?
- Will this workshop be for all refugees in the targeted vicinity?
- Is it for a specific cultural group of refugees?
- Is it for women or men or both?

Here is a worksheet to help you analyze the most appropriate group for a KYR workshop.

## KYR: Identifying your Target Group

This section gives a broad overview of how to prepare for and conduct an effective KYR workshop for refugee advocates in any region of the world. It will go over a variety of steps, from choosing an appropriate meeting location to breaking down the 1951 Refugee Convention for diverse audiences, and will also provide basic materials for getting started.

We start with a few basic assumptions:

- You want to create and/or lead a KYR workshop to give refugees the knowledge to become their own advocates in reference to rights granted under the 1951 Refugee Convention, other local declarations and your country's particular laws.
- You have already determined your target group.
- You will have to adjust what is provided here and tailor it to your particular situation.
- You are familiar with computer software such as Microsoft PowerPoint.

This section is comprehensive enough for an instructor with very little experience to find sufficient guidance on most things that go into planning and conducting a workshop,

and streamlined enough for an experienced instructor to find useful as a refresher tool in the planning stages.

## Preparing for a workshop

Preparing for a Workshop is an in-depth process that requires careful attention and thought. Asylum Access uses a five-step process for planning a KYR Workshop. Most of the steps are supplemented by samples and training materials that you may print out and edit for your own use. Remember that, even before starting, you should have chosen and researched your target group for the KYR workshop.

### Step 1: Set clear objectives

### Layering Your Objectives

To give a thorough and effective KYR workshop, you need a clear idea of what participants need to learn from the workshop as well as what the participants' goals are for attending. This will shape your overall objectives. If your workshop encompasses many subjects and is held over a longer period of time, you may also need to create session-specific objectives.

For example, if your workshop is meant to teach asylum seekers about the 1951 Refugee Convention and 1967 Protocol, your overarching objectives may be:

- Explaining international law and the history behind the Convention
- Informing them about their recognized rights as refugees
- Providing an overview of the refugee situation in their country of refuge
- Detailing the resources available to them.

Each overarching or big-picture objective will form the main subject of an individual workshop. For longer workshops, your session-specific objectives will then break these larger objectives into even more detailed learning goals.

### Be detailed

Having concise, well-articulated goals going into a workshop will help participants understand more clearly why they are there and what they are meant to be learning. They may not remember everything that you tell them, but if they remember the objectives, they will have a significantly better understanding than before.

Further resource

Identifying Objectives Worksheet

### Step 2: Research for and draft the curriculum

#### Jurisdiction-Specific Research

Now that you have set some objectives, you need to prepare your curriculum with jurisdiction-specific material. Of course, what needs to be researched will depend on your audience and the session topics of your workshop.

Some general areas of research:

**Specific laws that affect this group**: As a refugee advocate, familiarity with certain documents is a must, such as the 1951 Refugee Convention and 1967 Protocol. Depending on your region, there may also be pertinent regional declarations such as the 1984 Cartagena Declaration on Refugees for Latin America, 1966 Bangkok Principles on Status and Treatment of Refugees for Asia, 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and most recently, the 2004 European Union Council Directive.

**Changes in the law**: It is important to stay updated with changes in laws (local or otherwise) affecting your region and most importantly, that may directly impact the people you are trying to empower.

**Local context**: The RSD process depends greatly on the country it is being conducted in. Additionally, it may be true that in your city/region/country, some groups of refugees are more likely to be granted status than others. In fact, in some areas, there may be certain populations that are immediately turned away for geopolitical reasons. In some countries, while the law provides generous protection for refugees, the reality is the contrary, and the consequences are sometimes serious. As an instructor, this type of knowledge is vital to making the workshop practical and useful for your participants.

### Drafting a curriculum

Your curriculum should present a balanced combination of information and activities.

### Activities

Activities are useful for KYR workshops because they effectively increase knowledge retention and participation while allowing refugees to practice in a safe environment.

Activities should be objective-driven, meaning they should aim to achieve a specific learning goal and not just to lighten the mood or give participants a break. Remember

that a set of activities which worked for one target group may not work for another. A list of suggested activities is available here.

### Learning materials

The last item in preparing for the substantive part of a workshop is the kind of material resources which will be available to participants during and after the workshop (i.e. handouts, worksheets, evaluations). Since not all participants will take notes, it is a good idea to have materials available for participants to take home for family and friends.

### Further resource

Sample KYR PowerPoint Presentation Handout: Summary definition of refugee of refugee Handout: Flowchart of the RSD process Self-Help Kits section (further useful materials)

One idea is to have wallet-sized cards that list refugee rights and the resources available to them for easy reference. Refugees can have these with them at all times and have instant access to critical information. A wallet-sized card is a portable document listing important information refugees can carry around easily for emergency situations. The first example below is a foldable wallet card that the ACLU (American Civil Liberties Union) gives to undocumented workers in the United States detailing their rights in legal situations.

Some wallet-sized cards will have a two-sentence phrase that refugees can use when faced with law enforcement authorities. This phrase varies from region to region. In America, some immigrant rights groups have distributed wallet-sized cards in English with, "My name is \_\_\_\_\_\_ and I have the right to not talk to you." However, this is not always effective in practice because it over-simplifies a complicated position.

The most effective approach involves informing participants of their recognized rights under international law before addressing the regional reality; this empowers refugees to use their own discretion applying either in various confrontational situations. Nevertheless, as the instructor in your area, it is also up to your discretion whether there might be a relevant and useful phrase. The second example below is another card that the ACLU distributes in the United States.

American Civil Liberties Union Sample Rights Card 1 (front, back on following page)

YOUR RIGHTS AND THE POLICE	<ul> <li>If you are stopped in your car, DON'T</li> <li>DON'T physically resist a search, but mal tit clear you DO NOT AGREE TO A SEARCH (this may protect you in court later).</li> <li>DON'T refuse to sign a ticket. You can be arrested for it.</li> <li>DON'T search for your license or registration until asked. It may look as if you are trying to hide something.</li> <li>DON'T refuse a blood, urine, or breath test unless you want your license suspended</li> <li>DON'T refuse a blood, urine, or breath test unless you want your license suspended</li> <li>DON'T refuse a blood, urine, or breath test unless you want your license suspended</li> <li>DON'T refuse the officer. Although you have a Constitutional First Amendment right to do so, it could lead to your arrest.</li> <li>DON'T play music loudly when the police walk up to your car.</li> <li>DON'T have any objects hanging from your rearview mirror. It may provide a pretext to pull you over.</li> </ul>
<ul> <li>Wnetner you are reteased</li> <li>once given a court date, DO</li> <li>D0 remember that you have the right to an attorney and one must be provided to you free of charge, if you are facing jail time.</li> <li>D0 ask the judge if you can be released without bail (on O.R.) or have the bail lowered.</li> <li>This guide is meant to offer some basic "DO's and DON'Ts" when interacting with police officers.</li> <li>This list applies to the state of California only.</li> <li>This list applies to the state of California only.</li> <li>This list applies to the state of California only.</li> <li>This brochure is available in English and Spanish. Esta tarijeta también se puede obtener en ingles y español.</li> <li>MV W. A CLUN C. OR Galanta ONE.</li> </ul>	<ul> <li>If you are stopped in your car, DO</li> <li>Do show your license, registration, and proof of insurance when asked (you have to if you're stopped while driving).</li> <li>Do keep your hands on the wheel and let the officer know what you are doing ("I'm going to reach for my registration now, officer").</li> <li>Do make it clear that you do not agree to have your car searched (they may do it anyway if they suspect you have contraband or evidence).</li> <li>Do sign your ticket if you are given one. Otherwise, you may be arrested. Your signature only means you agree to go to court, you can always fight the court by the date written on the ricket; failure to appear may lead to arrest and a suspended license.</li> <li>Do take the blood, urine, or breath test, unless you are willing to risk your license being suspended unnecessary objects. It may give the police reason to search the car.</li> </ul>
<ul> <li>If you are at rested of taken</li> <li>DON'T give them any information except for your name and basic identifying information.</li> <li>DON'T give explanations, excuses, or stories.</li> <li>DON'T talk to the police about the situation without your lawyer.</li> <li>DON'T talk about your case on the phone, the police might be recording your 3 allotted phone calls (except those to your lawyer).</li> <li>DON'T forget the fact that if you cannot afford an attorney, one must be provided free of charge for you in court, if you are facing jall time.</li> <li>DON'T explain your defense in the police station. Do it in court, once your fawyer.</li> <li>DON'T explain your defense in the police station status with anyone other than your lawyer.</li> </ul>	<ul> <li>If you are stopped for questioning, DON'T</li> <li>DON'T disrespect a police officer. Although you have a Constitutional First Amendment right to do so, it could lead to your arrest.</li> <li>DON'T refuse to give your name, you could be arrested.</li> <li>DON'T run away or physically resist a "pat- down" or search. The police can pay you down if they suspect you are carrying a weapon, but you can ask why you are being detained or arrested.</li> <li>DON'T lie. Don't talk if you don't have anything to say. Tell the police you don't want to there they out on thave to give additional information besides your name and basic dientifying information.</li> <li>DON'T discuss your citizenship or immigration status with anyone other than your lawyer.</li> </ul>
<ul> <li>you are an extern of taken to a police station, DO to a future station, DO to identifying information. BUT NOTHING ELSE.</li> <li>D0 tell the police your name and basic identifying information. BUT NOTHING ELSE.</li> <li>D0 tell the police you want to remain silent and want to talk to a lawyer. They should stop questioning you after that.</li> <li>D0 ask if you can park your car in a safe place or have a licensed driver take it away, to avoid towing or impoundment fees.</li> <li>D0 make sure you get your 3 phone calls within 3 hours of getting arrested or immediately after being booked. You can call a lawyer, bail bondsman, relative, or any other person. If you have children under 18, you get 2 additional calls to arrange childcare.</li> <li>D0 memorize phone numbers for three family members or friends who you can call.</li> <li>D0 assume the police are recording your calls (except the call with your lawyer).</li> </ul>	<ul> <li>If you are stopped for questioning, DO</li> <li>Do give your name and the information on your drivers' license. If you don't, you may be arrested, even though the arrest may be illegal.</li> <li>Do remember you have the right to remain silent. You cannot be arrested or detained for refusing to answer questions. But it can look suspicious to the police.</li> <li>Do show an ID if you are getting a ticket so that you can be released.</li> <li>Do ask the police to see a search warrant if they want to search you or your home.</li> <li>Do make sure the officer knows you do not agree to be search wor opposition known. You can say "I do not consent to a search.").</li> <li>Do ask if you are free to leave. If they say 'yes,'leave; if they say 'no,'DO ask to know why.</li> </ul>

### American Civil Liberties Union Sample Rights Card (front, back)

## **CONOZCA SUS DERECHOS ANTE LA POLICIA**

**CAMINANDO**—PREGUNTE: ¿Estoy libre para irme? *Si el oficial responde:* **Sí:** Manténgase en silencio y aléjese lentamente y con tranquilidad. ¡No corra! **No:** Solamente diga su nombre. Muestre algún tipo de identificación válida si el oficial se la pide, pero no tiene que decir o dar nada más. Puede decir "Quiero guardar el silencio. Quiero hablar con un abogado. No consiento que me registren."

## CONDUCIENDO UN VEHÍCULO

Entregue su licencia de conducir, el registro del auto, y su prueba de aseguranza. Si no tiene licencia, de su nombre u otro tipo de ID para verificar su nombre. Puede decir: "No doy permiso a que registre mi auto ni mi persona." Si quieren quitarle su auto, pregunte si se puede quedar estacionado en un lugar seguro o si puede llamar a un conductor con licencia válida para recoger el auto. El pasajero solo tiene que dar su nombre. Tiene el derecho de mantenerse en silencio. El oficial puede pedir que todos salgan del vehículo. Entregue esta tarjeta al oficial que explica sus derechos.

Escriba datos de un abogado o una organización local:

## Evaluation

It is good practice to have all participants fill out an evaluation form at the end of the session. This is critical to your own performance and effectiveness. This is how you learn what topics to cover, what activities were helpful, etc. The evaluation could be as simple as listing all of the objectives in question form.

Further resource

Know Your Rights Workshop Evaluation Form

Step 3: Choose a location

### Location matters

The location of the workshop is important because attitudes toward refugees may differ by neighborhood and many of your participants may have security concerns. Holding the workshop in a space that is familiar to the community you are targeting — such as a community place of worship — is ideal. By having your KYR workshop in an area where your targeted audience already gathers, you can avoid fears of insecurity and enable your participants to feel more at ease. While having a workshop in your office might seem like a good idea, building rapport with the targeted group may take time. Having your first workshop in their comfort zone can help foster that relationship.

### Choosing a space

To a large extent, the facility or building (school, place of worship, community center, etc.) you select determines the type of workshop you can have, depending on the available resources (i.e. computer, projector, kitchen) and how long you can reserve the area and seating capacity. Before deciding on a space, ensure that you know what resources are needed. Decide based on effectiveness — if your workshop will not be as effective without visual aids, videos, etc., do not settle for a space without these capabilities.

This step may seem preemptive but the logistics of planning an event can often take more time and energy than initially anticipated so you are advised to allocate ample time in advance. Furthermore, the location and facilities available will determine how the workshop is formed.

### Step 4: Create an agenda

Once you have the overarching picture of the workshop, you need to draw it together. This is the practical step of organizing and planning out exactly how the workshop will be conducted.

Things to consider when crafting your agenda:

**Check-in procedures**. It is a great idea to have participants sign-in on a sign-in sheet when they arrive, so that you have a systematic way of gathering contact information and documenting attendance. Be prepared: some participants may be hesitant to give their information for security reasons.

**Late arrivals**. Consider the pros and cons of having a firm starting time (pro: limited interruptions; con: excludes people whose jobs, schedules, etc. prevent them from being able to attend because of the starting time).

**Materials**. Provide all materials and writing tools participants might need. Some common presentation supplies you may consider are markers, poster paper and a computer.

**Activity length**. Consider how long you can hold the attention of your participants. This will depend on your audience.

**Question and answer session**. People fearful for their safety will have questions and want answers. Therefore, it is wise to allocate enough time to this portion of the workshop. For many of the participants, this will be the most useful section. Be wary of spending too much time on a single question or providing one-on-one advice to any participants, which should take place after the workshop. Try to distribute your time and attention evenly throughout the group.

**Final procedures**. Distribute evaluations to every participant. A good way to ensure you retain all forms is to stand by the exit and make sure everyone gives you one as they walk out.

Further resource

<u>Sample Agenda</u> <u>Sign-in Sheet</u> <u>Sample Evaluation Form</u>

Step 5: Advertise

Getting the word out

**Community connections**: If no one knows about the workshop, no one can come. Use connections to community leaders to publicize the workshop. You may want to provide community leaders with appropriate publicity materials if you do not want to publicize it broadly.

**Timing is everything**: Do not advertise too early in advance because people will forget. On the other hand, if you only advertise a few days ahead of time, you might not reach a broad audience. Handing out leaflets one to two weeks in advance in the targeted community is ideal.

**Designing the leaflet**: Lastly, when designing a leaflet, keep it simple and focused on the most relevant information. Be sure to translate it into all languages of refugees in your area.

Work Rights Workshops

Work rights for refugees vary greatly between countries, with complex domestic legal provisions depending on migration status ('asylum seeker', refugee, indefinite leave to remain, etc). The right to work is often also affected by the length of time someone has spent in the country of asylum awaiting RSD processes.

The first step for organizing work rights trainings is to research the legal framework and common issues in your context.

PowerPoint presentations and hand-outs are ideal for these trainings, as participants can then take materials home and spread the information among their communities. Information to cover could include:

- Rights under national and international law
- Local procedures to follow to obtain a work permit, including documentation required, cost and where to go to do this process,
- How to legalize your business
- Advantages and risks of going ahead with documentation or registration processes
- Basics of contract law (do verbal contracts count? employees must comply with contractual duties)
- Entitlements under domestic law to sick pay and sick leave, maternity leave, holidays, dangerous environment protections, social security affiliation, minimum wage, working hours, etc.
- Procedures to follow if your work rights (including social security entitlements) are being violated (ombudsmen, specific government authority).

End your trainings with quizzes on the major points of work rights e.g. what is the minimum wage, what are the main steps to take to get work permits.

If your organization decides to focus more in depth on skills building and getting refugees into work, consider:

- Interview training
- CV revision and workshops
- Job-hunting planning and advice (including contact details of job centres, leaving newspaper job exchanges in your office for clients' use)
- Language classes
- Providing advice on work opportunities and vacancies
- Building links with other job insertion programs designed for refugees, migrants or other unemployed individuals

See the full <u>Work Rights Programs</u> at the end of the Toolkit for additional details on how to conduct these workshops.

# Trainings for Institutions and Organizations

To effectively spread knowledge about refugee rights and refugees' issues in your country, you can address the same issues with host community institutions and individuals in order to build a unified group of refugee rights advocates. This section focuses on host country public institutions and governmental or non-governmental

organizations, as they are – more often than not – the gatekeepers of services, and play an important role in facilitating access to other rights as well.

## Selecting areas of focus and target institutions/organizations

Running trainings for organizations requires a slightly different approach to working with refugees. You can assume that your participants will be literate and speak the local language fluently, therefore PowerPoints, handouts, worksheets and other materials can be more detailed.

Conducting participatory diagnostics with workshop participants from institutions, as well as beforehand with the refugee community – in order to diagnose where knowledge gaps lie and which bodies are least aware of refugee rights – is necessary. You could conduct a mapping exercise of local organizations when seeking who to target.

Building a relationship with individuals from these institutions is likely to improve relations, generate interest and boost participation in your trainings. It is also important to help spread the word among other partner or similar organizations you did not cover on your mapping exercise.

It is important to begin outreach to institutions based on the rights violations you see in your legal services activities and based on client testimonies. Target the most offending institutions first, and repeatedly. Following up on trainings is a good practice: make refresher trainings available to staff, and offer repeat trainings for new staff of public and non-governmental organizations.

## What to cover?

Do not assume that any public institutions are aware of refugee rights laws in the country: few may have attended to refugees on account of their fear of approaching authorities. Even public defenders or ombudsmen may be unaware of refugee laws, rights and issues. Begin by finding out what people know about refugees, or what they think of when they hear the words refugee or asylum.

Your trainings should contextualize refugee issues in the country or region. Discuss briefly the causes of flight and make sure that participants understand that this unique experience of dislocation and lack of national protection make refugees unique and give them specific needs that citizens (whether poor, unemployed or otherwise disadvantaged) do not have.

In many contexts, arbitrary detention of refugees is a serious and common threat. This often derives from a lack of knowledge about the rights of refugees, or the legality of their stay in a country with or without documentation. Targeting the police forces,

military and other law enforcement officials in your context may be a useful starting point e.g. with detention trainings.

When working with institutions, present your own organization briefly. You may need to tailor what you say about your perspective and activities to fit the audience e.g. not going into detail on your combative strategic litigation program if working with state institutions often wary of such approaches.

Evaluating can take the form of feedback surveys, but you may also find it useful to evaluate participants' knowledge by running a short quiz on the refugee definition, the difference between refugees and migrants, the rights of refugees in your context, etc. Questions might include:

- Can a soldier be a refugee?
- Can an army deserter be a refugee?
- Can a child be a refugee?
- Can a war criminal be a refugee?
- Can a women persecuted on account of her gender apply for asylum?
- Can someone fleeing persecution on account of being gay apply for refugee status?
- Can someone with a false passport be a refugee?

## Working with schools

Since discrimination, racism and exclusion are one of the most frequent problems suffered by refugees in their countries of asylum, working with students and young people in hosting areas is important. This not only helps tackle rejection in the present, but lays the foundations for future tolerance.

The key modification to your trainings will be based on the age group you will be working with. Review the Facilitation Techniques section for dynamics and activities appropriate for younger audiences. Consider leaving training materials with teachers in order to run sessions with other classes within the same institution.

Broach issues of armed conflict and refugee flows carefully with young children. You can explain that some people have had to flee insecurity in their country, and that they live among us, but maybe we've never spoken to them or no one has ever told us about this.

Topics to cover include:

• **Stereotypes**: What do we think of people from [REFUGEE SENDING COUNTRY]? What is this based on e.g. media, acquaintances? What experiences have we had?

- **Asylum**: What do we know about asylum or about being a refugee? Brainstorm on what words come to mind.
- **Deconstruct negative perceptions** (e.g. that they are soldiers or guerrilla fighters) and understand that refugees are forced to leave their country it was not their choice; they are persecuted / threatened; their country can't protect them; even if they want to they can't return to their country. Use case studies and personal stories.
- **Discuss the local refugee context** including the conflict in the neighboring or sending country.
- Mention common issues refugees face in this country e.g. lack of income, survival sex, trafficking and/or smuggling, labor exploitation, racism, barriers in accessing healthcare, education, housing, work or justice.
- What would you do in this situation? Have students write the feelings and attitudes they imagine they would have if they had to leave their country. Explain reasons that might make us leave the country.
- How can we promote equality and non-discrimination (brainstorm)?
- Joint projects with host and refugee communities
- Tolerate others
- Work on our own stereotypes and prejudices
- Welcome a recently arrived refugee classmate
- Look out for and call out discriminatory and xenophobic attitudes among friends and family members.

## Further resources

<u>UNHCR Lego Poster: How does it feel?</u> <u>Teacher's Guide to UNHCR Lego Poster: How does it feel?</u> <u>How does it feel to be a refugee – Age group 8-10 (Miracle)</u>

# Other Workshops

This section offers a selection of downloadable workshop materials on themes not covered above, which can be adapted to your context.

# Interpreter Self-Care

The fact that under the Community Interpreter Model, the interpreters that you use are also refugees themselves presents various difficulties, challenges, and risks. These are addressed at greater length later in the section on Considerations and Risks of creating a <u>Community Interpreters</u> program. An important part of mitigating those risks, however, is providing the interpreters with the tools to take care of themselves: to identify when the stress of interpretation is too much for them, how to balance their new responsibility with the other stressors in their lives, and how to ask for outside help when they need it.

This training module is designed to arm interpreters with resources and tools for better self-care.

<u>Self-Care Training Agenda</u> <u>Interpreter Self-Care Presentation</u> <u>Handout/Activity: Visualization Technique</u> <u>Activity: Code of Conduct and Professionalism Role Play</u> Training Evaluation

## Interpreting For Refugee Rights

Providing Interpreters with a basic understanding of the context in which they will be interpreting will improve their interpretation and also empower them. When asked what topics they would like to receive training on, our interpreters consistently shared that they would be grateful for further training on the basis principles of Refugee Law.

We have designed and shared with you, therefore, a half day training workshop on the Key Concepts in Refugee Law. The main topics in this workshop are the 1951 Convention on the Status of Refugees, the Refugee Definition, RSD Timeline, and Legal Terms. The Timeline we have provided is that of the UNHCR. You will need to edit this workshop based on the decision making body in your region, though we determined that this would be an appropriate timeline to use since in many cases, even where decision making bodies other than the UNHCR determine the status of refugees, their timelines are based on that of UNHCR.

Refugee Law Training Agenda Refugee Law for Interpreters Presentation Handout: Brief Summary of Refugee Definition Handout: Refugee Definition Flowchart Handout/Activity: Legal Terms Glossary Worksheet Handout: Legal Terms with Definitions Activity: Code of Conduct and Professionalism Role Play Training Evaluation Form

# UNHCR RSD processes workshop

Sample UNHCR RSD Process Presentation Accompanying participant worksheet (UNHCR RSD Process) Sample UNHCR RSD Interview Preparation Presentation: "Preparing for Your RSD Interview" Sample UNHCR Re-Opening an RSD Application Presentation Accompanying participant worksheet (UNHCR Re-Opening an RSD Application)

### Write your own appeal workshop

These materials are based on UNHCR appeals, but could be tailored to situations in which the government runs RSD and receives appeals.

Sample UNHCR RSD Appeal Process Presentation Accompanying Participant Worksheet

### Recent arrivals workshop

The following resource condenses information about seeking refugee status determination processes, interviews and refugees' rights in the Ecuadorian context. It can be adapted to your situation. The key here is brevity and simplicity: new arrivals may be struggling with many issues and are unlikely to have the time to focus on complex legal information. Focus on the most practical necessities of refugees at this time.

You should advertise this workshop at border crossings and other entry points, as well as in the premises of other NGOs catering to recent arrivals e.g. migrants' shelters, places of worship, etc.

Recent Arrivals Workshop Handout (Asylum Access Ecuador)

### SGBV workshop: know your rights

<u>Gender-Based Violence Workshop Handbook – extensive workshop planning</u> tool including many gender-relevant activities (Asylum Access Ecuador) SGBV-related role play activities (Asylum Access Ecuador)

## General refugee protection workshop

Your organization may wish to put together a workshop to give an overview of refugee protection in the region or country, with less of a focus on how to access refugee status. The legal context could be relevant to public authorities, civil society organizations and refugees themselves. The following is an example of such a workshop in the Tanzanian context.

Refugee Protection Instruments (Asylum Access Tanzania)

## Durable solutions workshop

Regardless of the services you are providing in a particular refugee case, you will always be looking toward helping your client achieve one of the following durable solutions: voluntary repatriation, local integration, or resettlement. You may therefore want to develop a training that focuses on the situation for refugees after recognition. The below is an example of a workshop focused on durable solutions.

Durable Solutions Workshop (Asylum Access Tanzania)

## Language Workshop

A workshop about language may prove useful in demonstrating to interpreters what aspects of language present high risk for interpretation errors. It will also give them a chance to start to build their vocabulary and phrases. Below are the materials we have designed which might be included in a training module about training. We suggest these as a starting point and encourage you also to think about what other topics relating to language would be useful to the interpreters that you work with.

Download and use the following Powerpoint presentation as a teaching aid. The Agenda document is a sample agenda of what you might include in a training about language, outlining the topics of synonyms and homonyms, cultural phrases, and accents. Each section is broken down into material to briefly cover and also accompanied by a group activity or discussion that will help the participants engage and understand the concepts being presented. The role play activity is also suggested as part of this training module. All participants should fill out a Training Evaluation Form after each workshop.

Language Training Agenda Language Training Presentation Language Training Role Play Activity Code of Conduct and Professionalism Role Play Training Evaluation Form

# Social Inclusion Workshops

Refugees are often highly marginalized in the communities where they have settled. This can be due to language barriers, fear of encounters with authorities or even other persecutors, discrimination, gender inequality and lack of economic resources.

These are issues of structural violence which cannot be reversed with a series of workshops. However, building consciousness of exclusion and its causes equips your staff and clients to combat racism and discrimination when encountered, and fight for inclusion. This section looks at practical ways to promote inclusion both within refugee populations, and between refugee groups and the communities hosting them.

Activities aimed explicitly at integrating refugees with their host or future host communities are covered – from language classes and livelihoods trainings to neighborhood committees and sports teams. The men's and women's groups section

looks at promoting gender equality and combating gender violence and discrimination which often results in the double marginalization of refugee women.

# Women's and Men's Workshops

You may wish – or be asked – to combat issues of social exclusion such as sexual and gender-based violence, intra-familial violence or gender discrimination through the medium of women's groups, men's groups or mixed gender discussion groups.

Women's groups are a popular, almost unquestioned method in empowerment work. Their benefits derive from creating a safe space in which individuals who are often marginalized from mainstream debate or political activism can share experiences, find mutual support and plan together to confront gender issues.

However, working with women only is unlikely to change gender discrimination and harmful heteronormative practices. Working with men – in conjunction with women or apart – can also be key to redressing equality and stimulating discussion on topics that are rarely addressed. In addition, in certain post-conflict settings, the proliferation of women's groups, NGOs and projects, which rarely contemplate men, can arguably isolate men and produce resentment in what may be a recently disenfranchised demographic post-upheaval or displacement. The disengagement of men and economic and social empowerment of women may stimulate backlash in some contexts, with men asserting a dominance they were accustomed to through violent means. Therefore, it is doubly important to engage men in pushing for gender progress.

For the purposes of this Toolkit, the focus is on women's groups, as this forms part of Asylum Access's experience, however it is important to keep men, boys, girls and families in mind when planning workshops to tackle social exclusion and promote inclusion – both within the refugee population and across refugee and host communities. Consider whether you should prioritize women-only spaces, joint tackling of issues, or both.

The following sections on conducting women's workshops and sample topics (below), are based on Asylum Access Ecuador's women's group program.

Introduction to Women's Groups: The Basics (Asylum Access Ecuador)

Working with Women – aims, managing trauma and psychosocial needs, and forming groups (Asylum Access Ecuador)

### Why we work with refugee women

Women are "objects of aggression" simply for being women. It is a structural problem in patriarchal societies.

Gender-based violence, which includes sexual violence, is used with impunity as a "weapon of war", a systematized and generalized practice by armed groups in many countries. It is a method of creating terror, having control of a population, etc. For many refugee women, fleeing their country does not mean an end to this violence. Often times this violence is reproduced in the host country, given the situation of vulnerability that women find themselves in.

Asylum Access Ecuador (AAE) has begun a project around Integral Justice, in which it intends to promote access to formal justice and offer tools for accessing rights by way of a process of **personal and collective empowerment**. It is necessary for women to begin to take a more active role and adopt a sense of collective responsibility in order to leave violence and violations of their rights behind. This can happen by way of tools that allow for physical and emotional healing after traumatic experiences.

It is important to recognize not only women's injuries over the course of their lives, but also their grief, their skills, and their capabilities, in order to help them know themselves better. It is therefore necessary to create and equip secure spaces that allow them to break their silence and rebuild their personal integrity. This is the purpose of our work.

The fact is that being a woman refugee and often survivor of gender-based violence puts many women in situations of vulnerability with respect to their identity and selfesteem.

In the majority of societies, a patriarchal value-system prevails, and social messages towards women are centered around shame, sacrifice and blame. This conditions women to be submissive to others instead of caring for themselves, making selfknowledge and fulfillment of their own needs more difficult.

### Further resources

Gender-Based Violence Workshop Handbook – extensive workshop planning tool including many gender-relevant activities (Asylum Access Ecuador) Sample Gender Workshop – key concepts, SGBV, gender persecution, implementing gender perspectives (Asylum Access Ecuador) SGBV-related role play activities (Asylum Access Ecuador) It's All One Curriculum: Guidelines and Activities for a Unified Approach to Sexuality, Gender, HIV, and Human Rights Education (CREA et al.) Workshop Report: Working with Men and Boys to promote gender equality and to end violence against boys and girls (Save the Children, 2004) Working with Men and Boys to Prevent Violence Against Women (Partners for Prevention)

## Sample Topics

This section details the 3 topics on which AAE work. Topics 1 and 2 are given by external facilitators by way of a participatory methodology that involves both mind and body. AAE promotes spaces of stability and emotional expression by way of activities that promote culture, such as music, dance, or theater.

Topic 3 will be achieved with help from the local team. It will begin with a participatory diagnostic exercise for all the participating women (specified below).

Topic 1: Identity, Self-Esteem and Life Skills

### Identity and Self-Knowledge, Self-Confidence.

Encourage self-knowledge and the value that a woman has for herself. Go over her life up to here and now. How could her life be different? Reflect on the external and internal barriers that exist for self-realization. Manage feelings and be aware of emotions.

Offer tools that contribute to alleviating pain, fear, lack of self-confidence, anger, sadness, blame, trauma, grief and other psycho-social effects of forced displacement and violence.

Strengthen resources available for confronting difficulties and promoting tools for protection and self-care. Strengthen and identify positive resources targeted towards individuals, families, and communities that help strengthen their capabilities.

It is important to relate this with the subject of disregard in order to eliminate, by way of exercises of the body, that which is not relevant and negative. To articulate the link between the grief of the past and what each woman has done to survive. Address the concept of survival, the collection of physical, mental, and emotional tools that each woman has used to continue fighting and searching for wellness. What does it mean to be a survivor? What tools were used? What motivated me to survive?

### Self-Esteem, Self-Love

Work on the self-esteem of the women to change the negative perceptions they have and strengthen their abilities.

Work on affection: affection for one's self, giving and receiving affection, experiencing positive feedback.

Self-Esteem Building Techniques

### Abilities, Assertive Rights

Work on social skills and business skills in daily life. It is necessary to develop tools to learn to conduct daily business from a position of confidence in what they do, rather than from a position of lack thereof, or of victimhood. They must know that their rights must be guaranteed.

### Psycho-social Impacts of Forced Displacement and Violence

The effects of forced displacement and violence can include threats on a woman's life (fear), trauma (injury), crisis (stress), or a loss (grief). It is necessary to put emphasis on grief, which can cause profound confusion in relation to the subject of identity: who I was, who I am now, who I will be, and what I will do from now on. You will need to keep in mind other stress factors, such as: social rejection, negative stereotypes, feelings of social, judicial, and economic helplessness, bureaucratic barriers, difficulties in adapting to differences in customs and communication, and frustration in having to do poorly-paid jobs, which often do not have to do with their experience or professional background.

- Encourage, expand, and/or develop the emotional consciousness of participants regarding the struggles they have faced in their lives and the paths they have taken, as well as the tools that have allowed them to survive.
- Life for refugees is not easy, and not for women either. In order to accept one's place, it is necessary to stop idealizing what was left behind and recognize in order to grieve one has to leave behind the "paradise" of the home country.
- Grief starts by recognizing one's injuries and the memories of violence against one's body and soul. Grief serves to grow and learn, in spite of painful experiences.
- One must strengthen her spirit and attitude toward life in order to continue living.

Thus, it is necessary to work on the concept of resilience: the ability to distance ourselves from that which is painful. In this way, we can stay lighter and more sensitive in order to construct new ways of life. We must remember to forget; must recall memories in order to actively send them off.

Topic 2: Gender and Gender-Based Violence

### Gender

Dig deeply into the idea of gender in order to analyze and reflect to the origin and situation of inequality between women and men:

• Realize a process of gender socialization so that each woman discovers that the reality in which she finds herself is a consequence of differentiated socialization, in which the masculine role has the authority and social recognition.

• Discuss roles, stereotypes, and gender prejudices, as well as time usage between genders and stereotypical conceptions regarding the role of women.

### Gender-Based Violence

- Reflect on gender-based violence in situations of armed conflict.
- Identify the mechanisms and consequences of gender-based violence. Characterize gender-based violence in a way that each woman can reflect on her own personal situation. The reconstruction of a new biography.
- Contribute to identifying emotional dependence by way of self-knowledge and work with emotions from the perspective of gender, love and the myths of love and their consequences in relationships.
- In the interpersonal dimension, how are relationships of power, violence, and abuse embraced? How can we create relationships of equality (respecting differences) and good treatment?
- Develop tools to leave violence behind.
- Begin to take an active role to leave violence behind and prevent it from being reproduced. It is possible to put a stop to abuse, discrimination, violence, etc.

## Topic 3: Access to Formal Justice

It is important to address the exercise of rights as a part of the attention and emotional support. In this topic we:

- Promote the right to justice and offer tools for demanding one's rights.
- Offer legal services and strategic litigation, by way of following specific cases and impact and litigation strategies that allow for the advancement of formal justice.
- The meetings should allow for the identification of cases, for the raising of testimonials, and should offer case assessment, orientation and follow-up.
- It is important that the local team is charged with this task. Because of this, Know Your Rights trainings will be performed and space will be given so that women can talk individually with the local team.

## **TOPIC 4: Economic Autonomy**

- It is important to align ourselves with other institutions and civil society organizations in order to promote the economic autonomy of the women.
- Strengthen skills and knowledge bases related to economics.
- Promote entrepreneurship amongst individuals and groups, by way of an economy of solidarity.

## Conducting the Workshop

### Work Structure

Consider how you will divide your functions between teams, if possible. The local team and the facilitators are in charge of structuring the work in each meeting.

The local team could be charged with compiling testimonies and relevant aspects in each workshop (the thoughts and comments of the women), "rescuing" their stories. Such commentary could be organized for publication in a magazine contributed to by all the women.

The women themselves should play a key role in defining who holds responsibility for all the goals they wish to achieve, and the steps they will take to achieve these. See the sample contract below for further information.

How to Start...

You should always aim to create a safe space for the exchange of thoughts, for getting to know participants, for conversation and sharing common reflections and situations. We want to create a space of emotional security.

It is necessary to remember that this is a space of reflection, a place to listen respectfully and in solidarity with everyone. It is crucial to the learning process to not judge or be judged, to not blame or be blamed, and to feel like a part of a group of women that get together to build a sense of community and foment changes in their lives.

It's a good idea to give an introduction of the purpose. Why are these meetings important? Why do we do physical exercises? The relationship these have with the mind, body, and spirit. The connection between emotions, feelings, and thoughts. The concept of integral health.

This is a task that aims to teach us to listen to ourselves, without judging or blaming ourselves, respecting ourselves in the places that we are. Listening to ourselves means realizing what is happening in our bodies, to feel it and reflect on how we can allow the pain to leave and thus heal our bodies.

Introduction of the participants and their emotions. How do you feel? How do you look to each other? Expectations of the women.

### When we begin a new workshop

Not all the women will attend every workshop, although that would be ideal. At the beginning of each workshop all participants and facilitators should introduce themselves, have new participants introduce themselves, and discuss how everyone has been since the last workshop, how they are, what changes everybody has noticed in their lives, and how they found the workshop.

### **Evaluating Meetings**

Evaluation is ongoing and conducted after every session. Beginning with the content, the level of participation, communication, group cohesion, resistance, etc., should all be evaluated. The evaluation of all meetings is important because not only will it allow us to get to know the interests of the women, their motivations, how we are influencing their lives, how they are feeling etc., but also will give us clues as to how we can improve our work.

It is important that, at the end of every session, the women anonymously evaluate the workshop (by way of a questionnaire) and also discuss it in a group setting. Each person should give a statement that summarizes her feelings or what they have learned in each session.

The facilitators should also evaluate what worked and did not work in the session. Sample Women's Group Contract (Asylum Access Ecuador)

# Integration Workshops

Integration workshops should seek to promote integration between refugees and the host community. These could take a number of forms:

- Women's groups or neighborhood groups that deal with problems common to refugees and citizens.
- Language classes: Instruction in the language of the host country, for refugees to be able to better integrate and navigate processes. Classes in the language of the place to which refugees are to be resettled to promote integration in the third country. It is often possible to find pro-bono language tutors. Enquire among language students or teachers in your community. Teachers should commit to a term's classes to avoid disruption.
- Livelihoods skills projects that incorporate refugees and host populations e.g. bicycle maintenance, handicrafts, dance performance groups, catering collectives, IT skills... the sky is your limit!
- Sports: Sports is a universal language why not organize your clients into a football / cricket / running team and arrange friendly matches with local teams. You could also mix teams up, to have refugee-host teams playing against each

other. This requires minimal resources, and staff and/or volunteers could also be encouraged to participate.

 Investigate what skills your clients have. Even if refugees are denied the right to work in your context, many may welcome the opportunity to train others in their skills for free, in order to remain active and spread self-sufficiency. Similarly, investigate what skills your staff, volunteers and partners may be willing to offer.

It is likely that many such workshops are already on offer with other refugee-assisting organizations. Find out about these and promote them to your clients.

# A Gender Framework in Workshops

- Facilitate safe spaces in which women and men feel comfortable addressing gender issues.
- Consider whether you will make progress integrating men and women or creating separate spaces for experiences to be shared e.g. on sexual and gender-based violence (SGBV), masculinities.
- Take into account women's time poverty (on account of having both income generating and child-rearing duties) and plan your workshop duration, location, day and time accordingly.
- Consider the effect public spaces or places of worship will have on participation in your workshop.
- Host workshops in child-friendly spaces and provide childcare if possible. Failing that, set aside a space for children with toys and books, or integrate children into the workshop by running a parallel activity.
- Consider cultural norms and openness in your context: will a male facilitator make a difference? You should consider the gender of your workshop facilitator for certain topics.
- In certain cultures it is uncommon for women to express themselves publicly or take part in physical activities such as those contemplated by icebreakers. Plan your activities accordingly and anticipate reticence to participate at the beginning.
- Be particularly alert for male experiences of SGBV which are often silenced. Be prepared to guide discussion or comfort individuals if such topics come up.

## Further resource

Guidelines for Gender Sensitive Training (ICIMOD, 2009)

# Workshop Considerations

Below are some considerations about how to conduct your workshop if you have decided that offering workshops is a good way to deliver information to the refugee population in your country of operation. The topics below touch on logistical arrangements as well as the content of the workshops.

### Frequently Asked Questions about workshops:

#### Is pre-registration a good idea?

While knowing how many participants to expect aids planning for the workshop, preregistration is not always feasible and may require more time and energy than it is worth. Additionally, if the workshop is the first introduction to your organization, participants may be hesitant to sign up in advance due to privacy and security concerns. Always bring extra materials for additional participants and be as flexible as possible in accommodating them.

#### What do we do if children come with their parents?

Participants may need to bring their children with them in order to attend the workshop if no one else is able to care for them. Since children are generally more distracting to the instructor than participants, having them in the room is usually not a problem. You can keep them entertained by providing some crayons and coloring sheets in an area reserved for children. Consider having a volunteer attend charged with looking after the children.

### Should food or refreshments be provided?

KYR workshops are about empowering refugees with knowledge so workshops should not be incentivized by prospects of free food. However, people learn better if they aren't hungry and it may be customary to provide refreshments in your country. Speak with your local connections and use your discretion (if the workshop is held right after work and participants have no time to get food or if it is held in the early morning and participants would benefit from caffeine, look at your budget, etc).

Refugees are nervous about coming into our office. What can I do to make them feel more secure?

One way to provide a secure environment is to make sure potential clients of your organization call ahead of time and make an appointment. This prevents a rush of people streaming in and out of your office at all times. By locating the office in the heart of the community you serve, you will appear less threatening and refugees may feel more trusting towards the organization.

## Why, in your sample presentations, do you introduce your organization last?

Although it may seem counterintuitive to introduce the organization presenting last, the primary focus of the workshop is to inform and empower refugees about their rights and then to offer services as a secondary focus. Participants may become confused if you start off with an introduction of your organization by thinking that you are there to give them refugee status. It is important to be clear about who determines refugee status before speaking about what you can offer.

### What presentation medium works best for workshops?

The medium will largely be determined by your target group and limited by the workshop location. For example, if your target group is not familiar with PowerPoint, such presentations might prove to be too distracting. If using PowerPoint, however, make sure that you don't use special effects that would distract the audience from presentation content. As for video, turning off the lights and hoping that your participants stay awake is not always the best idea. Video use should be limited to providing visual examples.

In your context, it may be more appropriate to merge aspects of the rights and social inclusion workshops. The following example from Asylum Access Thailand is a Know Your Situation workshop, which welcomes new arrivals to Bangkok, and combines information about rights, accessing services, and integrating practically into the city e.g. navigating the transport system, or where to buy cheap produce.

Know Your Situation workshop (Asylum Access Thailand)

# **Community Capacity Building**

# What is capacity building?

Capacity development is 'the process by which individuals, groups, organizations, institutions, societies and countries develop their abilities, individually and collectively, to perform functions, solve problems, set and achieve objectives, and understand and deal with their development needs in a broader context and in a sustainable manner' (United Nations Development Programme 1997).

Capacity development or capacity building is all about helping people develop their own capabilities so that they can achieve their goals. It is about giving people the chance to improve and strengthen their skills so they can perform tasks better and become more independent. Capacity building is much more than just formal training, and the capacity to govern requires particular kinds of knowledge, skills and experience from leaders.

Building the capacity of the refugee population or community beyond workshops is recommended: this ensures the sustainability of your training beyond the classroom. There are many ways in which you can build refugee leaders and their capacities. Asylum Access has seen great benefits from training refugees as Community Legal Advisers, so they can provide basic legal advice and facilitate civic engagement within their communities. Similarly, training refugees as <u>Community Interpreters</u> so they can assist other refugees to access justice has been and continues to be a key component in advancing the refugee rights movement's mission.

Begin by finding out what skills exist already among the community. Are there lawyers? Community organizers? Political leaders? Linguists? Teachers?

This should be your first step towards building community leader programs. Then work with the community so that they can decide what sort of programs they wish to generate. These could generate a variety of ideas e.g. language trainers, interpreters, peer counselors, community teachers, etc. The following sections are limited to interpreters, legal advisers and advocates, however you should be guided by the interests and aims of the community.

Let clients and workshop participants know that you will be looking for individuals interested in undergoing e.g. interpreter or legal training (or whichever other training you have decided to pursue), and keep a spreadsheet of interested individuals. Once you have designed your training curriculum – with the help of the community – and set out aims for the program, proceed to recruit interested individuals. This should be done in an open fashion, with decisions driven by refugees.

### Further Resources

Indigenous Governance Toolkit (Australia)

Leadership for Social Justice: Capacity-Building Resource Manual (LSJ Resource Manual)

# **Community Legal Advisers**

Training members of the refugee communities you work with to be legal advisers themselves can be a highly effective way of multiplying empowerment and awareness among the refugee population. Refugees may trust members of their own community more, and seek their help before that of an organization.

By situating legal advisers within communities, it is easier for refugees to access legal advice: they do not have to travel to offices, urgent help can be on hand during out of office hours, language or cultural barriers are removed and empowerment is spread.

When training community legal advisers, you should follow much of the same curriculum as with Volunteer Legal Advocates (VLAs). Special attention should be paid

to ethical issues however, given the increased risks of breach of confidentiality or conflict of interest.

# Community legal adviser (CLA) role

## CLAs:

- Provide links between your organization and refugee populations (neighborhoods, camps, ethnic groups), and can identify refugees and remit them to your organization.
- Detect areas where many refugees live.
- Inform and orient refugees about the RSD process and access to rights.
- Support workshops alongside organization staff or volunteers.
- Support other community legal empowerment (CLE) efforts.
- Have diverse backgrounds, availability and roles. They must always be given training and ongoing support by your organization.

When recruiting CLAs, look for:

- Interest and motivation to participate,
- Tact and disposition to work with marginalized people and other ethnic groups,
- Ability to orient people from a rights-based perspective,
- Previous experience in community processes.

Whilst desirable that CLAs are refugees themselves, this is not entirely necessary. You should also consider that the refugee community may wish to vote for CLAs or other community leaders.

# Community legal adviser training considerations

Prepare a simplified version of the RSD process and refugee rights trainings used for full-time, experienced advisers with formal legal training. Some things to consider:

- Tailor your case studies to the specific context of the community legal adviser.
- Community legal advisers can also serve as alert network focal points e.g. for SGBV, landmine issues, rights abuses, protection issues.
- Community legal advisers can be integral in elaborating and achieving community action plans.
- Nairobi Code in depth.
- Non-discrimination principles.

# Community Advocates

Community advocates, like community legal advisers (CLAs), should be recruited from the refugee or host community according to the same criteria set out on the previous

section. Their role however is not necessarily to advise refugees on their rights.

The focus of community advocates' work is highly diverse: all non-legal work that you are pursuing in a community setting can be supported by community advocates.

# Community advocates' role

This is for you to decide with your organization and the refugee community. Examples include:

- Promote and foster popular education on human rights and refugee rights, antidiscrimination, tolerance, etc.
- Promote capacity building and multiplying empowerment among refugee and host communities.
- Support and nurturing community leaders of all ages, genders and backgrounds in their own leadership styles.
- Strengthen community processes of political participation, advocacy and rights initiatives.
- Act as focal point for alert networks e.g. SGBV, new arrivals, protection or rights issues.
- Support elaboration and achievement of community action plans.
- Help vizibilize refugee and host community issues before authorities and public institutions.
- Support your organization's advocacy campaigns e.g. running focus groups or interviews to collect material or evidence to inform campaigns.
- Monitor and communicate community problems e.g. integration difficulties, racism, rights abuses, access to land, to your organization.
- Share information about new services or processes relevant to refugees.

# Community advocate training

Whilst Community Advocates will not be expected to give detailed legal advice, like all members of your organization – staff or volunteers – they should be able to identify refugees, explain the main issues regarding refugee rights to both authorities and community members (in understandable language) and direct refugees to the appropriate channels when seeking redress for rights violations. They should practice active listening and inter-personal relationship-building based on equality.

Training may include the following:

- Learn to recognize others' skills; maintain group cohesion; promote active participation; conflict resolution.
- Beyond workshop dynamics, this should focus on techniques to facilitate community processes (similar to project management techniques, but from a

participatory, rights-based perspective) e.g. promoting the achievement of community aims, prioritizing tasks, following up actions, giving feedback.

- Communications skills.
- Democratic leadership skills.
- Community organizing and motivation techniques e.g. how to generate safe spaces that facilitate participation.
- Non-discrimination principles.

# Community Action Plans

# What are community action plans (CAPs)?

A CAP is a plan that includes a series of activities formulated and implemented in collaboration with other similarly impacted individuals with the end of improving their lives and the lives of their community members.

## Who is involved in creating a CAP?

CAPS are constructed and executed by community members – the protagonists in the collaborative process. Through the development of a CAP, its participants and beneficiaries promote the understanding, implementation and adaptation of a series of activities to meet a concrete need or objective set out by those who are impacted. Community members set out objectives during the CAP that directly relate to the challenges and abilities identified by community members and in relationship with their life goals and objectives.

# How are CAPs implemented?

The goals and objectives of the target community members are not only identified but also implemented by its members. As a starting point in the CAP planning, participants should first identify the goals, challenges, needs, resources and abilities of their working group. With this information, the community members can then begin to develop concrete proposals to reach their goals and objectives towards a better future.

# What is an organization's role in developing CAPs?

- Facilitate a forum or space to motivate discussions to develop CAPs
- Promote an inclusion of community members, both refugee and local, if desired to mobilize and organize people to develop and mobilize an action plan
- Facilitate a collective understanding of the action plan by creating spaces for dialogue and reflection
- Identify what resources, abilities, and capacity exists within community members to successfully implement the CAP

• Provide training and capacity building where identified by the participants

# Four principle rules for involvement in CAPs

- Asylum Access assumes a facilitator role through support and accompaniment, while promoting leadership by members local and refugee communities
- CAP is formulated based on the requests and needs of the participants, without predeterminations of their situation, and with the goal to motivate and promote participation
- We are responsible to support in the development of capacity, know-how, organization, and/or self-management of participants throughout the CAP process.
- Be flexible to the community's self-identified process and avoid pushing an agenda that is not theirs

# Seven Steps to Construct a CAP

- · Learning and identifying your target community
- Mapping of actors
- Participatory diagnostic
- Development of CAP
- Creation of working group
- Implementation of CAP
- Evaluation
- 1. Learning and identifying your target community

It is essential that you start to know your target community and establish trusting relationships to allow for collaborative efforts, like CAPs. Identify where the community shows signs of being organized (even if minimally) or motivation to take participatory action on a project or plan. Without these elements already in place, it is difficult to develop a CAP from scratch.

It is helpful to participate in community meetings and workshops and LISTEN to the needs and issues identified by community members. These issues may not be the issues you think are important to the community and may come as a surprise or sound unimportant to you. Listen and ask questions when the setting is right to understand why the issues identified are important to community members and what they do individually or as a group to try to overcome their particular needs or challenges.

Community leaders and actors often self-identify and show their natural leadership skills organically through group discussions, meetings and through their support to fellow community members in their every day lives. Watch for individuals that show an inclination to lead and listen to leaders identified by other community members.

### 2. Mapping of actors

Analyze the actors who are present in and around your target community (individual, governmental or organizational) that are relevant to the development of a collaborative or integrated plan and that could play a role in developing and implementing the action plan. Take note of what other organizations are already present or intervening within our target community to eliminate the duplication of efforts and to share resources and to potentially collaborate.

Map your actors through some of the following questions:

- What other efforts in the community or neighborhood are being organized?
- What is the relationship among organizations or community groups (e.g. neighborhood associations, community centers, church groups, etc.)?
- Who are the players that bring challenges to the execution of the plan?
- Who are your allies? Your opposition? Your supporters?

### 3. Participatory diagnostic

A Participatory Diagnostic is an evaluation tool that allows us to identify and prioritize together the challenges, capacities and interests of the community to promote community action. It is important that those involved understand and prioritize the same necessities and interests that they have identified. To ensure that you have buy-in from participants, a participatory diagnostic provides for a process of collective reflection regarding issues facing the community: including social, economic and cultural challenges facing their lives. From these assertions, can proposals for resolving common challenges arise based on the abilities and resources that exist within the community.

The diagnostic serves as a base to better understand the community and to collectively plan activities that improve their current lives and situation. It is important that the refugee themselves identify and create strategies against the sources of what makes them marginalized, that they are aware of their abilities and capacity, and that they are able to develop a plan together that implicates the persons involved and members of their community.

Create the Participatory Diagnostic Tool based on the objectives set out by the participants.

4. Elaborating the action plan

The participatory diagnostic period allows you to identify and prioritize issues brought up by participants. Once these are compiled, your job is to facilitate a process where the participants identify and come to an agreement on the collective objectives, activities, responsible persons, and a time frame (chronogram of activities) to meet the objectives. Help facilitate a discussion where that allows the participants to identify needs, capacities and resources. Consider resources available (including physical, human, economic) that are available or limited. Not all challenges can be overcome at once, so prioritizing activities to take on is important.

To help community members select an issue or objective, consider the following questions:

- How many community members will benefit from the proposed plan/ solution?
- What is the most pressing issue facing the community to be resolved?
- How does this issue impact other challenges in the community?
- If resources are lacking, what ways can they be acquired?
- Does the proposed plan solve the problem temporarily or for the long term?
- What issues can be postponed and what issues need to be addressed urgently?
- What plan would generate greater participation and community support?

Requirements for designing a CAP:

- Establish clear objectives
- Identify the activities needed to accomplish the objectives set out
- Identify and adequately distribute available resources (physical, human, economic)
- Identify other resources available and plan for obtaining those resources
- Distribute in an efficient and equitable manner responsibilities and activities that allows for active involvement of all members
- Develop an agenda or timeline to accomplish the activities set forth in the plan

### 5. Develop a pilot group

As you launch CAPs in your office, consider forming a pilot group to actively engage you in not only the CAP process, but also provide feedback on what works or doesn't work. Make adjustments based on this feedback. The pilot group, with the support and participation of the community, will promote and instigate the activities in the CAP.

During the initiation and execution of CAP, consider providing skills training and support in the area of organizing, leadership building, and democratic participation as well as providing information in rights-based issues. Take note of community members who already assume leadership roles who may be equipped to lead workshops and trainings.

### 6. Implementation

Within the execution of the CAP, continue to encourage and facilitate spaces where the protagonists are the individuals who are impacted or benefit from the CAP. Take note of

what works and doesn't work and make adjustments as necessary. For example, help the group reorient activities and resources, modify the focus, the timing or the responsibilities distributed if necessary. A good action plan should allow for flexibility.

### 7. Evaluation

Participatory evaluation of the CAP provides important feedback on the advances, setbacks, and outcomes of the action plan. Before setting the CAP in action, construct your evaluation tools by directly linking them to the objectives set out initially. Decide when and at what stages of the CAP evaluation will take place. If possible, share the feedback with the participants and allow for them to propose improvements to the CAP process.

# Community Interpreter Program

Interpreters serve a vital role, helping to overcome barriers of communication and helping you provide legal aid to clients whom you would otherwise not be able to reach. Employing professional interpreters can present a financial burden that will strain your organization and in many cases, be unrealistic within the constraints of your budget. With a Community Interpreter program you leverage the language skills of your own clients and former clients. While this model presents several challenges and risks, with careful training and management, these risks can be mitigated. Furthermore, this model provides an enrichment opportunity to the Community Interpreters it involves.

In this section, the benefits and the challenges of working with community interpreters will be discussed. Furthermore, the steps towards setting up a community interpreter program will be outlined, including the management of interpreters and building capacity, dealing with gender and sensitive issues, and developing an interpreter resource center will be addressed.

# Benefits of a Community Interpreter Program

While there are certain risks associated with using interpreters who are part of the refugee community, there are also noted benefits both to your organization and to the interpreters to be taken into consideration. After reading the benefits, please continue to read the section on challenges.

**Cost**: Using community interpreters instead of professional, salaried interpreters reduces cost for the organization.

**Availability of languages**: Using interpreters from the refugee community means that there will naturally be interpreters available for the clients in the languages that you need. For example, our office in Thailand has an excess of Urdu interpreters, while the

local UNHCR office is struggling to find Urdu interpreters, which is creating a challenge for them with their caseload due to this limitation.

**Empowerment**: Legal aid is founded on the principle of empowering our clients. Learning a new profession, being a part of the interpreter community, and adding value to the organization are all empowering. They are also able to use a skill to work during a time when they feel very vulnerable, and this allows them some sense of empowerment.

**Livelihood**: If you are able to compensate your interpreters, then they are able to make a small amount of money, which helps them immensely while going through the refugee status determination (RSD) process.

**Interpreter mental health**: Anxiety and depression are common while going through the RSD process and/or awaiting resettlement. Working as an interpreter helps to keep interpreters engaged in an activity, and they also feel that they are helping their fellow refugees, which often leads to a heightened state of emotional well-being.

**Skills**: The Interpreters are building skills that can be transferred to the country in which they are resettled.

**Cultural and country of origin information (COI) exchange:** The legal advocates are often able to learn more about countries of origin and those cultures by interacting with the interpreters.

# Challenges of a Community Interpreter Program

There are two main challenges and considerations presented by the fact that in the Community Interpreter Model, the interpreters are also clients and refugees themselves. The first consideration is that during the interpretation process, there is a high risk of being re-exposed to trauma. This section will explore this challenge and also present some possible solutions. The second consideration is that as refugees themselves, the interpreters are embedded in the refugee community. They commonly live in the same buildings and same neighborhoods as they people for whom they are interpreting. This presents various challenges to protecting confidentiality.

## Retraumatization through Interpretation

Retraumatization occurs when the person who has a history of trauma relives the experience by exposure to additional trauma of any type, retelling their story, or experiencing similar events that trigger memories of the original trauma. Refugees who work as interpreters are susceptible to retraumatization because they are constantly reminded of their own earlier traumas and/or loss as they listen to and retell other people's stories of trauma. The extent to which retraumatization affects the interpreters

will vary, depending on how often they are reminded of their earlier traumas and the nature and severity of secondary exposure.

Signs and Symptoms: What to look for

It can be difficult to identify signs of retraumatization in another person when that person is not aware of it or is not forthcoming about what they are experiencing. However, these are some signs and symptoms to look for when an interpreter may be experiencing retraumatization.

- Anger, irritability, mood swings
- Sadness
- Chronic fatigue
- Fearfulness
- Guilt, shame, self-blame
- Poor concentration
- Anxiety and fear
- Withdrawing from others

## What we can do to help

Teach self-care and stress management techniques (For more information, see our SelfCare Training Workshop)

- Learn to identify stress triggers
- Practice deep breathing exercises
- Take a break (or breaks) during the workday
- Get physical exercise
- Know when to stop and say no to work
- Socialize with colleagues (do not isolate self)
- Do something you enjoy
- Find spiritual connection or community

### Peer support group

Provide a safe and supportive environment in which the interpreters can share and listen to each other's experiences about the work. In serious cases, refer to mental health organizations: It will be very beneficial to seek partnerships with mental health professionals in your local area. There might be a professional or a student soon to be licensed who would be willing to meet with clients on a weekly basis to work on stress management techniques. They could also work with interpreters on how to set up a peer support group, furthering the goal of having them develop self-care methods. Such a professional would also be a great person to conduct a training on Self-Care.

## Interpreters Embedded in Refugee Community

As refugees themselves, Community Interpreters are also embedded in the refugee community. As a result, they are often susceptible to pressure for information that is protected by the confidentiality clauses in the Code of Conduct. Neighbors or family members may want to know who else in the community is a client with the organization, or what the outcome of a particular situation was. They may want to know the details of someone's story before they arrived in the host country, or when their RSD interview is scheduled. There may be rumors around the community that they think the interpreters are in a position to confirm, and this puts them in a position of great pressure. Frequent and clear trainings on the Code of Conduct are essential to mitigating these risks and will help interpreters understand how to resist such pressure to share information.

As Community Interpreters and members of the refugee community, the personal and "professional" lives of the interpreters overlap extensively. The interpreters may see the clients for whom they interpret coming and going to and from home and vice versa. This creates an opportunity for harassment. Certain measures should be taken to minimize this risk and protect the interpreter, such as always having interpreters make interpretation phone calls from the office phone and never their personal phones. When they use their own phones, they are opened up to increased pressure from clients because the professional relationship is not as established. It also leaves the possibility of harassment by supplying the other person with their personal phone number.

### Instances of sexual harassment

Interpreters may be at risk of sexual harassment as a result of the fact that they are also members of the refugee community. Men who would not otherwise approach their interpreter in an inappropriate manner may begin to do so because they realize that that interpreter also happens to live in his neighborhood, for example. This lends itself to a heightened sense of familiarity when the relationship should be strictly professional.

## Conflicts of interest

Conflicts of interest may be more frequent because of this overlap, and as a result it's important that at the beginning of an interpreting session it is made clear to the client that they may request another interpreter if they are not comfortable with the interpreter that has been provided for them. It is equally important that interpreters are regularly trained in professionalism and adherence to the Code of Conduct.

Some tips on specific ways to respond to pressures resulting to the blurred line between the professional and personal spheres:

Example: People in the community want help from the interpreter with their case: "I am sorry, I only do interpretation, I cannot help you with your case, please contact your lawyer."

Example: A client wants interpreter to be a friend as they are alone in the city and don't know anyone else: "I am sorry, because I am your interpreter I have to keep a professional relationship with you during your case."

Example: People in the community ask the interpreter if they have a good chance of getting Refugee Status. "I am sorry, I am unable to make that judgment, you can ask your lawyer about your case."

Example: People in the community ask the interpreter to have the lawyer call them about their case. "I am sorry, I cannot do that, you need to call the lawyer yourself."

Example: People in the community ask the interpreter what similarities do the cases have that get refugee status (wanting to perhaps change their stories to try and get a better chance at being accepted). "I am sorry, I don't know and I signed a confidentiality agreement that I am bound to that states that I cannot share any information about any case with anyone."

Women interpreting for men or making phone calls on behalf of your organization to men may receive inappropriate comments or other forms of sexual harassment. In these cases, the interpreters receiving harassment should be allowed to interpret for only members of the same gender. In the case of phone calls, they should only make calls from the office phone.

### Peer – Peer Ethics

While there are many sample codes of conduct for professional interpreters, these may not be entirely useful for a community setting in which the interpreter themselves is a part of the refugee community and has various extra-professional relationships with your clients. Whilst flexibility is therefore a necessity, it is still possible – and advisable – to draw up a code of conduct to address the inevitable ethical issues that will arise in a community interpreting context.

#### **Further Resources**

Sample Ethical Code for Community Interpreters (Healthcare Interpretation Network)

Sample Ethical Code for Interpreters in Community Settings (Irish Translators' and Interpreters' Association)

Key provisions include:

- Respect clients' right to privacy and confidentiality
- Disclose any real or perceived conflicts of interest
- Decline to undertake work beyond their competence or accreditation levels
- Relay information accurately and impartially between parties
- Maintain professional detachment and refrain from inappropriate self-promotion
- Guard against misuse of inside information for personal gain.
- Never speak on behalf of either party
- Do not accept assignments for which they do not meet the competence requirements or about which they are biased
- Prevent and report any violations of ethics
- Commit to ongoing professional development.

It may be useful to look at ethical case studies with community interpreters. The following examples, some of which are taken from Australia's National Accreditation Authority for Translators and Interpreters (NAATI) <u>guide</u> may be helpful.

#### Example One

While interpreting in an interview between a police officer and a witness, the officer asks you for your comment on the client's background and whether he is telling the truth. How would you reply? Please give reasons for your answer.

#### Example Answer:

The first principle involved is Impartiality. This states that interpreters do not voice or write an opinion, solicited or unsolicited, on any matter. The second principle is Clarity of Role Boundaries, which states that interpreters draw attention to any situation where other parties misunderstand the interpreter role or have inappropriate expectations.

I would explain to the police officer that as an interpreter my only role is to enable communication between two parties who do not speak a common language. As part of this process it is important that I do not express an opinion in relation to his question as this would mean that I do not maintain my independence in relation to the communication.

#### Example Two

You are interpreting for a patient and a psychiatrist. The patient seems rather uncomfortable and does not respond with complete sentences. Their answers to the psychiatrist's questions do not make much sense. What would you do and why?

#### Example Answer:

This issue relates to Impartiality and Accuracy. Impartiality states that interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Accuracy states that an interpreter use their best professional judgement in remaining faithful at all times to the meaning of messages.

Because of these principles, the interpreter must not improve on the coherence of the patient's replies by making them more articulate than they are in the original. Whatever the client says must be interpreted for the psychiatrist, even if such a client's response bears no relation to the question or makes no sense. It is the psychiatrist who will take appropriate action, should this be required.

Other potentially difficult scenarios:

The Decisionmaker turns to the Interpreter and asks: "Do you think she (Client) is telling the truth?"

When the Decisionmaker does not appear to know the limits of the Interpreter's role, it is the duty of the Interpreter to educate the Decisionmaker, by saying, "The Interpreter is not allowed to offer a personal opinion."

The Client is very emotional and scared as she has been traumatized. When the Interpreter speaks loudly, or shows strong facial expressions, the Client withdraws and appears sullen and uncooperative.

In this scenario, the Interpreter's body language has become a hindrance; a low profile and quiet demeanor not drawing attention to himself would be more appropriate.

As an asylum-seeker is in an exceptionally vulnerable situation, it is crucial for the interpreter to be alert to all physical, emotional or semantic nuances of the situation. This includes being mindful of seemingly mundane details like seating arrangements, when to use the first or third person pronoun, and what to do in an awkward situation.

#### Further resources

Ethics for Community Interpreters (M. Eta Trabing)

Interpreting in the Gray Zone: Where Community and Legal Interpreting Intersect (Bancroft et al., 2013)

Training refugees to become interpreters for refugees (Lai and Mulayim, 2010)

Interpreting in a Refugee Context: Chapter 2 'Ethics of Interpreting' (UNHCR, 2009)

Fahamu Refugee Programme Interpreters' Resources

#### Steps to Start a Community Interpreter Program

There are several steps towards starting a community interpreter program. This section will introduce the steps from advertising the need for interpreters to what to focus on during trainings.

#### Advertise the need for interpreters

An advertisement with key information – for which languages you need interpreters, that no prior interpreting experience is necessary, and whom to contact – is a good way to introduce the program to your clients and community. The below sample advertisement can be placed in your waiting room and handed out to clients.

You may also create versions of this advertisement ing both the local language and the languages for which you need interpreters in order to reach a larger group of people – thia may catch the attention of someone who is not able to interpret but who knows someone who may be qualified.

Where else might you try advertising?

- online volunteer boards catered to your region
- local language schools
- local universities language, political science, international relations departments
- volunteer groups on social networking websites such as "couch-surfing", "meetup". While candidates found from these sources should be thoroughly screened, this is a good source of foreigners living in your local community who will likely have language skills and the time and resources to volunteer to interpreting.
- develop partnerships with other local organizations that also use interpreters
- approach local hospitals that may already have working interpreters

#### Further resource

Sample Advertisement

#### Interpreter intake

Individuals identifying as interested should fill out an Interpreter Application Form, enabling you to get a quick sense of the individual's experience, interest, and language abilities. You can find an example of this form below, which you may download and alter to fit your organization.

The individuals who submit an application form should also be added to some kind of registry or list of possible interpreters. This will allow the individual in your organization responsible for managing interpreters to follow-up easily.

#### Further resource

Interpreter Application Form Sample Spreadsheet: Interpreter Contacts Excel

#### Initial training

The objective of the initial small group or one-on-one interpreter training is to introduce new interpreters to the organization, its work, and the responsibilities of interpretation. Some of them may already be clients of the organization and therefore already have an idea of its work, but officially stating its mission and general objectives will serve as an introduction to their new role as interpreter and also empower them as contributing in a valuable way to the organization's mission.

This is also a time to explain exactly what kind of work interpreters will be doing – the situations in which their services will be needed, roughly how often they can expect to be called for interpretation, how their reimbursement and time tracking will work, and give them some basic interpretation tips. It's also important for them to understand that they are not obligated to interpret in situations in which they are uncomfortable – for certain religions, genders, or when refugee testimonies include aspects that may cause them to be re-exposed to trauma.

Finally, this initial training will serve as the introduction to the Interpreter's Code of Ethics, which should be thoroughly explained and signed. Tips for how to avoid situations in which they may unknowingly betray confidentiality or the Code of Conduct may be provided. The organization should also have an Interpreter Agreement, which should be signed at this time.

Below you will find an introductory Powerpoint which you can use to guide the initial training as well as other useful documents and orientation handouts, which you may personalize to better fit the needs of your organization.

#### Further resource

Initial Training Presentation Initial Training Handout Interpreter Agreement Interpreter Code of Conduct Glossary of Terms for Interpreters RSD Flowchart Introduction to the UNHCR RSD Process The Golden Rules of Interpreting

#### Add interpreters to roster

Once the interpreters have gone through the initial training and signed the interpreter agreement and code of conduct, they should be added to the organization's Roster of Interpreters. This Roster should include basic information: the interpreters' names,

contact information, interpretation languages, gender, availability, and general notes about their proficiency.

All legal services providers in your office should have easy access to this document so they are able to find an interpreter quickly when they need one. They can also add notes as they work with and develop relationships with various interpreters. This will be a useful document as new volunteers and staff come to work for the organization.

Below is a sample roster that you may download and alter.

Interpreter Roster Sample

#### Secondary training

Designing and providing training to follow-up on the initial training that your community interpreters go through can drastically improve their skills as interpreters, thereby improving the quality of your client representation, and it can also provide a form of compensation for the interpreters' work. The topic of the secondary training depends on the interpreters needs for skill building, and may include but is not limited to English skills, body language during interpretation, interpreting for group sessions, specific jargon or translating official documentation.

#### Interpreter Management

As you begin to grow your team of community interpreters, it will be useful to develop a set of tools to manage the various human resources aspect of utilizing these interpreters:

#### Scheduling

Each time an interpreter comes in for a session, the legal advocate with whom he or she is working should make sure to fill out an activity log or form. This will ensure that the organization reimburses the interpreter appropriately and keeps track of which interpreters are interpreting for which client interviews and when. An example of such a form is available below for download.

#### Further resource

Interpreter Schedule Spreadsheet

#### Tracking time and stipends

In order to ensure that multiple legal advocates do not rely on the services of a particular interpreter at the same time, establishing a protocol is recommended. For

example, you may share a scheduling document with the entire office or create a shared calendar. See below for a sample scheduling tool.

#### Further resource

Interpreter Time Tracking Sheet

#### Evaluations and providing feedback

Providing consistent feedback will help identify areas for improvement, assist in the skills-building process, and also serve as a type of compensation for the interpreters in the Community Interpreter Model.

After each session, the legal advocate should provide informal feedback, identifying what the interpreter did very well and also what they might work on for next time. If there was something that was particularly concerning – a facial expression that communicated judgement of what the client was saying, for example, or side conversations – this should also be addressed.

In addition to regular informal feedback, it is recommended that the legal advocates working with an interpreter provide periodic formal evaluations as well. This will help with internal recommendations – when a legal advocate needs to find an interpreter for a particular case – and also in the event that an interpreter asks for a letter of recommendation for another interpretation job elsewhere.

The evaluation forms also allow for the interpreter to see where they are improving, and where progress is not being made.

Below is a sample evaluation form, which might be filled out after every four sessions, or in some other regular periodic fashion deemed appropriate by your organization.

#### Further resource

Interpreter Evaluation Form

#### **Rights of Interpreters**

You may wish to draw up a policy outlining the interpreter's rights. Sample provisions include:

- The rights of a community interpreter must be respected at all times.
- Where possible, a community interpreter should receive accurate and sufficient information from the organization regarding the assignment, place, time as well as an indication of the duration of the assignment at least 48 hours before the assignment is due to take place. This is so the interpreter can prepare for the assignment.

- A community interpreter has the right to withdraw from an assignment if it becomes apparent that expertise beyond their technical or language competence is required, or if an interpreter has been given incorrect information or insufficient time to prepare for an assignment.
- If a community interpreter feels exploited or discriminated against during the assignment s/he has the right to withdraw his or her services. All parties must be advised of this decision.
- A community interpreter may refuse an assignment. S/he must advise the organization in advance.
- Any change or cancellation should be made known to the organization the day before the assignment.
- The session should not last longer than previously established without the interpreter's consent.
- If asked to provide a sight translation of technical documents, a community interpreter is quite justified in saying that unless given adequate time and without proper preparation any translation can at best be provisional.
- Interpreters' travel expenses should be reimbursed.

#### **Building Capacity**

By conducting regular evaluations with your interpreters in a similar way you do with staff and volunteers, you create a space where the interpreter can evaluate progress and set learning goals for themselves. This can be related to interpretation or to professional development goals.

#### Trainings

Providing sufficient and regular training is one of the most valuable things you can give your interpreters. Designing and providing training to follow-up on the initial training that your community interpreters receive can accomplish many goals, two of which are the following: it can drastically improve their skills as interpreters, thereby improving the quality of your client representation, and it can also provide a form of compensation for the interpreters' work.

Below you will find a list of topics for secondary training that will strengthen your community interpreter program and also empower the interpreters to contribute substantively to your organization – and possibly to others in the future, should they be resettled or move for another reason.

The workshop topics we have provided here were based on feedback from our community interpreters in Thailand. These were the topics they expressed the most interest in being trained on, and we also find that they are central to the quality of the interpreter program as well as to the well being of our interpreters. The workshops also

address their expressed interest in hands-on practice, visual aids and examples, and the opportunity to continually build their vocabulary.

#### **Professional development**

As your interpreters gain experience, they can also benefit your organization in other ways. For example, they can be involved in the training of new interpreters, by assisting in the practical training, by conducting the induction for new interpreters through shadowing and providing peer support. You may also choose to ask your more experienced interpreters to work with you on legally complex, or sensitive cases.

Furthermore, some interpreters may be interested in or have a background in legal matters. By investing in their training on these matters, they can greatly benefit your legal aid efforts in client work or community legal empowerment (CLE) work if they become <u>community (legal) advocates</u>. Similarly, an interpreter who is interested in social matters or medical issues may help you identify needs in the community by co-facilitating a participatory needs assessment or by becoming a social worker in your own or another NGO. By providing additional training on specialist topics, such as SGBV terminology, health issues, working with child clients, you can also build the skills of your interpreters further.

#### **Gender considerations**

Issues relating to gender often arise in the interpretation process. This section is meant to outline some of these issues and present risk mitigation strategies.

#### Gender and Sensitive Matters

It is important to have both male and female interpreters in your program, as it is very likely that women or men who have suffered sexual and gender-based violence (SGBV) may ask to talk only with someone of a specific gender, which may or may not be their own. Attempt to be able to provide such options.

Men and women may be culturally conditioned to react in different ways to trauma. As the community interpreters will be present in RSD preparation and interviews they are likely to come across reactions to trauma. Factor this into your training and ensure interpreters are comfortable around unexpected displays of emotion and know how to practice self-care themselves afterwards. All interpreters should be trained in using gender-sensitive language.

#### Sensitive subject matter in testimonies

Many refugee clients will be describing sensitive subject matter while giving their testimony to their legal advocate. In many cultures, to share certain details in front of

members of the opposite gender is highly embarrassing and offensive. For this reason, your organization should do it's absolute best to find interpreters of both genders for each language and communicate clearly to your clients that they are within their rights to request an interpreter of a specific gender. Similarly, because the interpreters are also refugees themselves, they may feel uncomfortable with some elements of a client's testimony relating to gender. Such elements may include gender-based violence (GBV), sexual content, reproductive details and other such subject matter. The interpreters should also be aware that they are free to request not to interpret certain interviews, or only to interpret for members of the same gender.

Interpreting for survivors of gender-based violence

Certain elements of interpreters' best practices are particularly vital when interpreting for women who have experienced gender-based violence. The interpreter plays a vital role in ensuring that their experiences are communicated accurately throughout the process. It is essential that the client feel safe, comfortable and able to trust the interpreter so that they will fully disclose all pertinent information. Due to the highly sensitive nature of the testimonies of gender-based Violence, the following is recommended for clients having experienced GBV:

- Ask the client if they are comfortable with an interpreter of their own gender or prefer another gender.
- As your organization should offer regular trainings on the Code of Ethics and Professionalism, it would be best to assign an interpreter that has undergone at least a couple of these trainings and has experience and a proven record with your organization.
- As taught in the professionalism trainings, it is vital that the interpreter make no indication verbal or otherwise of their beliefs, judgments, opinions etc. of any of the acts or experiences of the client described in their testimony of the GBV experienced.
- An interpreter interpreting for a survivor of gs and also have sufficient language skills to interpret such terms. They should also have sufficient language skills to interpret relevant medical and legal terminology. Prior to the interview, the legal advocate on the case should brief the interpreter on these specifications.
- The legal advocate must remain fully in control of the session. This means monitoring body language (including eye contact) of the client and the interpreter and the tone of the interpretation. The legal advocate must have a heightened awareness for whether or not either the client or the interpreter is uncomfortable (or struggling to interpret), in which case the session should be stopped immediately. This could indicate either that there are issues with accuracy or that secondary trauma is occurring.
- The legal advocate should accompany the client when they leave, before helping the interpreter with their time sheet.
- The legal advocate should then spend time with the interpreter, asking them about their well-being and encouraging them to employ the self-care methods that they have learned in the Self-Care Workshop.

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• Similarly the legal advocate should employ self-care methods.

#### Interpreter Resource Center

The Interpreter Resource Center (IRC) is a space within our offices (at Asylum Access Thailand, where we have developed the Community Interpreter Model outlined in these sections) reserved for the interpreters. This section describes this important resource and its main contributions towards strengthening the Community Interpreter Program.

There is also a case study on how Asylum Access was able to leverage partnerships to make the IRC a reality.

#### Further Resources

Introduction to the IRC: Purpose, Benefits, and Management Case Study: Leveraging Partnerships

# Data Collection and M&E for Community Legal Empowerment

# Participatory Diagnostics

Participatory diagnostics are tools to be used both at the beginning of a workshop and at the beginning of a more in-depth, sustained community outreach process. Participatory diagnostics aim to shed light on what the community already knows about a topic, what skills and knowledge does the group bring to the table, and what they feel their most pressing issues are, and their solutions. They take as a starting point the idea that everyone present has something to contribute, and that everyone in the room is equal. The aim is to deconstruct the teacher-learner relationship: everyone can learn from everyone else, improving self-esteem and furthering empowerment in the process.

Before running a participatory diagnostic you may wish to run the following preliminary activity in order for the workshop participants to get to grips with its aims and methods.

Activity 1: Preparing for participatory diagnostics: What is a participatory diagnostic? What do we do to get to know our community?

If you have enough time, it is interesting to start a workshop with this activity to share ideas about what a participatory diagnostic is.

Materials: Flip charts, small pieces of cardboard, markers and some tape.

**Activities**: Create groups to discuss what people do to learn about the reality of their community or neighborhood. Ask the following questions:

- What information is gathered about the community?
- How is it gathered?
- Who participates?
- How is the information used?

At the end of this first step, draw up a definition of a Participatory Diagnostic, stressing their importance.

Activity 2: Conducting participatory diagnostics – brainstorm

**Aim**: to identify achievements and difficulties of/within the community by promoting people's skills in solving these issues.

- This activity could also use thematic classification (e.g. work, health, education) rather than achievements and difficulties.
- Achievements and difficulties could refer to achievements and difficulties on a personal, social and/or community level (the personal level leads into the social/community level).

Materials: Flip charts, small pieces of cardboard, markers and some tape.

#### Activities:

- Put up two flip charts: one for achievements and the other for difficulties.
- Hand out cards (as many as you like or e.g. 3 per person as you prefer) for people to write corresponding community achievements and struggles on. Cards can be written individually or in groups. It is recommended to work in groups to aid subsequent reflection.
- Read the cards out and stick them on the relevant flip charts one by one.
- Then classify the issues/achievements thematically by having the participants read them aloud and identify similarities. Similar cards should be stuck together e.g. education, work, etc.
- At this stage the facilitator's role is to lead the group to synthesize what is written on the cards such that an organized and unified vision of the various issues arises.
- The facilitators must not arrange the cards according to their own criteria: the participants must situate the cards.
- Once the categories are set and analyzed, order the issues by importance. This can be done by voting group by group on each aspect of the card groups. It could

work by issuing 2 stickers to each person in the group and having them stick them on the most important issues.

#### Activity 3: Conducting participatory diagnostics – trip to the future

Aim: To gather the community's aspirations.

Material: Large flip charts, small pieces of card, marker pens, paints, sticky tape.

#### Activities:

Participants close their eyes and imagine a trip to the future, visualizing their community in 5-10 years.

The group must divide into smaller groups (depending on how many participants there are), with different roles (use the roles present in the community or neighborhood where you are working):

- Representatives of public institutions
- Civil society representatives
- Women's representatives
- Young people's / children's representatives, etc.

It is important to support participants with this visualization, posing questions such as:

- What services should the community have?
- What difficulties should they overcome?
- What skills can we develop further?
- How would we like to participate in the community's decisions?

For 10-15 minutes, draw this community on the flip charts on the wall so that everyone can visualize it.

- Organize this information in a table with the aspirations of all the groups.
- In the first column, stick the cards with all the participants' aspirations (or as many as can fit). Mark the group/participant that expressed each aspiration.
- Draw conclusions from the information that you have just organized: one person should be asked to summarize this on the flip chart.
- Re-read the conclusions in order to end the activity.

In all of the above activities it is important to:

• Promote everyone's participation,

 Make people's own skills visible – when listing achievements – and keep them in mind for future interactions.

# Monitoring and Evaluating Workshops

#### **Reviewing feedback forms**

Whether you choose to administer surveys, or conduct non-written evaluations whose results you write down, self-assessment after the workshop is essential. Reviewing all participant evaluations will help you determine what your participants were able to learn from your workshop, and how helpful it was overall. Using their feedback, you can make adjustments to increase the effectiveness of future workshops. For example, if several participants report that your presentation on the 1951 Convention was long and redundant, you might devote lesser time to this and tighten up the presentation, spending more time on another topic — perhaps one that a few participants had expressed confusion about.

#### Direct follow-up

Another great way to assess the effectiveness of your workshop is to follow-up in person with your participants.

- Were they able to take the next step toward applying for RSD after taking your workshop?
- Did they know what to expect when going into their interview?
- Did they access any other available resources?
- Do they still have questions regarding any of the subjects covered during the workshop?

Asking specific, results-based questions will help you determine how well your workshop translated into usable information and skills. Having this type of information is essential to remedying any flaws in your presentation and improving the effectiveness of your workshop.

## Surveys

If you have time, and your workshop participants are literate, surveys may be useful for gaining feedback.

Plan in advance to leave time for the questionnaire or survey at the end. Keep surveys short and to the point. Decide well in advance what you wish to know about your workshops: what will be taken as an indicator of success, and how will you know how to improve your CLE workshops.

#### Further Resource

Sample Workshop Evaluation Questionnaire (Asylum Access Ecuador)

#### Focus Groups

Focus groups can useful when collecting qualitative data. This section will outline how you can design and conduct a focus group.

#### What is a focus group?

A focus group is a small-group (6 to 10 people) discussion guided by a trained moderator. It is used to learn about opinions on a specific topic and to guide future action.

Characteristics of a focus group:

- The moderator should collect ideas from different people.
- Should ideally last anywhere from 45 to 90 minutes.
- The questions are predetermined, but the discussion is free-flowing.

#### When should focus groups be used?

Focus groups are used for a variety of reasons. For example:

- To understand issues identified through a larger, quantitative study.
- To refine future surveys.
- To get community's input on a topic (e.g. effectiveness of a program).
- To ask questions that can't easily be asked or answered on a written survey (e.g. engage low-literacy population).

*Before deciding to do a focus group*: Is this the best approach? Sometimes, people don't feel comfortable sharing their opinions/feelings with other people from their community because others might perceive them as vulnerable.

*If you decide to conduct a focus group*: Is this the only method you'll use? Using a variety of tools may help you gain more insights concerning various issues refugees face. Limited resources may lead to fewer options, and focus groups are a great way to do qualitative data collection in a short amount of time.

#### Steps for Using Focus Groups

1. Prepare

Find a skilled moderator or train staff to facilitate focus groups.

Find a recorder.

Do Community Outreach.

*Establish goals.* What do you hope to learn? What are the questions you're hoping to answer? Examples include:

- Which types of services do refugees access and use?
- Do their access and use of these services change over time? In what ways?

*Meeting particulars.* What day will the focus group take place? Where? What time? How long will it last?

*Incentives.* If potential participants don't necessarily show interest in attending a focus group, consider using incentives. Examples include money; food and drink; public recognition; a later training opportunity. If necessary, consult with community members to identify what incentives are culturally appropriate.

*Potential participants*. Sometimes, it is easier for participants to talk openly when they don't know each other but are alike. Consider the following:

- Gender Will refugee women feel comfortable discussing the topic in a mixed gender group?
- Age Would a young person feel intimidated by being included in a group of older adults?
- Power Would a refugee voice her opinion if she disagrees with a leader who is also present?

*Think about the atmosphere you're creating.* Is it a problem for a potential donor to be in the room? Do you want a co-facilitator who is female? Will that help?

Prepare a list of 10-12 questions. They should be:

- Short, focused on one dimension each, and unambiguously worded.
- Non-threatening or embarrassing.
- Open-ended (use "whys" and "hows" ).
- Make sure you have an interpreter.
- Gather and review existing data e.g. reports, meeting minutes.

Below are some examples that can be adapted to different circumstances.

- "What are some of your thoughts about what's going on now in the refugee camp?"
- "Would you say you are satisfied with the current situation?" (If so) "What are you satisfied with? Why is that?"
- "Are there things you are dissatisfied with, that you would like to see changed?" (If so) "What are they? How should they change? What kinds of things would you like to see happen?"

Probes to get more information on a given question:

- "Can you say more about that?"
- "Can you give an example?"
- "Lama says X. How about the others. What do you think?"
- "Does anyone else have some thoughts on that?"

#### 2. Implement: Conduct focus group

Ideally, a moderator facilitates the discussions and an assistant takes notes and runs the tape recorder.

The ideal focus group moderator has the following traits:

- Can listen attentively with sensitivity and empathy.
- Can keep personal views and ego out of the facilitation.
- Is, ideally, someone the group can relate to but also give authority to, so she/he should remain neutral.
- Can appropriately manage challenging group dynamics.
- Should demonstrate active listening by paraphrasing and summarizing long, complex or ambiguous comments.
- Is familiar with the refugee community context.
- Encourages participation. Allow everyone to speak equally

The assistant moderator should:

- Run a tape recorder during the session.
- Take notes in case the recorder fails or the tape is inaudible.
  - Note/record body language or other subtle but relevant clues.
  - Allow the moderator to do all the talking during the group.

An icebreaker can be used to increase comfort.

Start with the big picture and then dive deeper into the most critical issues. Below are some suggested exercises that could help you do that.

#### To get the big picture

- Divide up groups and ask them to brainstorm what are the biggest issues facing their communities. Ask them to present to the group after 5 minutes what they discussed.

As each group recounts the issues facing their group, write them down in very basic language and post them on the board under images you've printed that represent common issue areas: a book for "education"; a doctor for "health", a ID for "legal status", etc.
When you're done, you have an organized roadmap for the next step.

#### To dive deeper

Have the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 listed across a wall. Ask all participants to stand. For every category of issue described above, ask the participants a question: - "On a scale of 1 to 10, 1 being not a problem at all and 10 being an extreme problem, how much of an issue is [insert category here] for your refugee community?"

- Facilitate conversation from here. For example, you might say:

"How interesting. Participant X, you chose a number 1, while participant Y you chose a number 8. That's a big difference. Participant X, can you share with the group why you chose 1? Then, Participant 8 can you please share why your experience would be something different?"

- Then repeat for top categories IDed in part one.

- When a conversation feels powerful, stick with it! Use your best judgment in terms of when to move from topic to topic. Your goal first and foremost is to learn helpful information.
- Present information about your organization if they are not already your clients.
- When the focus group is complete, thank all participants and distribute incentives (if relevant).
- Immediately after all participants leave, the moderator and assistant moderator debrief while the recorder is still running.

#### 3. Analyze

This can be done in two ways:

- For small studies/when you use multiple sources of data, it may be enough to identify key issues by listening to the tape and taking notes.
- If you conduct multiple focus groups or rely only on focus group data to make conclusions, transcribe and code data.
- Coding allows you to organize large amounts of text and to discover repeated ideas that would be difficult to detect by just listening to a tape or reading a transcript.

This is an example of a coding process:

1. Generate codes as you read responses. A code is a word/short phrase that sums up an idea, a sentence or even a longer piece of writing.

Write notes to yourself, of ideas or relationships between ideas; watch for special vocabulary that respondents use; count the number of times an idea was mentioned.

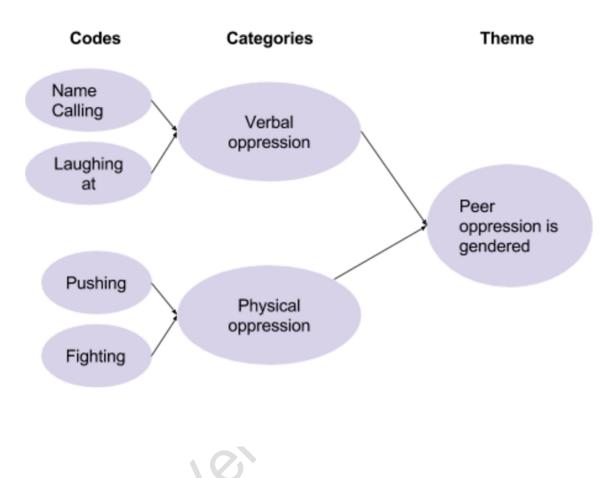
The following is an example of a quote and its assigned code.

QUOTE	CODE
"There's just no place in this country for illegal immigrants.	XENOPHOBIA or
Round them up and send those criminals back to where they	IMMIGRATION
came from."	ISSUES

2. Eliminate overlapping or least important codes or combine them into categories. *A category is a group of similar codes.* 

CODES	CATEGORY
- Name Calling	Verbal Oppression
- Threatening	
- Laughing at	

3. Examine the categories to generate themes. A theme is made up of multiple categories and requires analyzing the codes/code categories beyond what had been said during the focus groups. What common themes emerged in responses about specific topics? In the example below, people were talking about issues their children face. The person who coded the data realized that girls are more likely to be oppressed at school than boys and generated a theme based on this observation.



4. Use the themes to address the questions you set out to answer. Is additional data needed?

Throughout the coding and analyzing process consider these questions:

- Were there deviations from the patterns? What might explain these deviations?
- How do participants' environments or past experiences relate to their behavior and attitudes?
- What interesting stories emerged from the responses?
- 4. Present findings

Present the findings to other staff in the organization and/or refugee communities to inform program design or improvement. The presentation (either written or oral) should contain the following:

• Background information about the participants.

- The coding strategies used, the codes, categories and themes.
- Support each theme with evidence from the data.
- Explain how the findings address the questions you set out to answer.

#### Further Resource

Measuring Community Capacity Building: A Workbook in Progress for Rural Communities (The Aspen Institute)

5101

Narch



# Policy Advocacy

Although advocacy might seem like a relatively straightforward concept at first glance, there are multiple perspectives as to what this means when one attempts to break it down as a concept. Advocacy, broadly, can be seen as actions taken to represent and work with a person or a group of people to ensure that their rights are upheld.

As this Toolkit suggests, advocacy for refugee rights can include legal services, community legal empowerment, policy advocacy and strategic litigation. The focus of this chapter, *policy* advocacy, places specific attention on how refugee rights leaders can influence change in policies and legislation to advance refugee rights. This may involve efforts to:

- Establish new policies
- Improve existing policies
- Challenge the development of policies that reduce the resources and opportunities for refugees
- Ensure that refugee protection policies and legislations are followed through and implemented in practice

Fundamentally, policy advocacy activities seek to 'negotiate and mediate a dialogue' so that influential networks, opinion leaders, and ultimately policymakers, can take ownership of your ideas, evidence and proposals in order to act upon them.

## Overview

To be effective in your policy advocacy activities, careful planning and management is needed. Therefore, the Policy Advocacy Development and Management section of the Toolkit provides a guide on how to plan your policy advocacy, to develop your advocacy goals, and to monitor and evaluate your policy advocacy goals.

As influencing policy is a long-term process and long-term goal, it is helpful to break this down into policy advocacy strategies and activities. For example, an organization's activities may involve relationship-building activities with people of influence on a day-to-day basis. It could also mean drafting recommendations for legislative changes to prepare policymakers in the next policy window. The Policy Advocacy Strategies section of the chapter will explain some of the common advocacy strategies. Strategies addressed include coalitions and networks, letter writing campaigns, events, direct lobbying, relationship building, as well as education and capacity building for policymakers and the general public.

To influence policy and legislations, there are many stakeholders that you can choose to direct your activities towards. Advocacy strategies may focus on working with the local government to influence policies. It may also include advocating with UNHCR, human rights bodies, and with networks on global and/or local levels. The policy advocacy activities you choose to adopt will largely depend on the actor you seek to influence and the context that you work in. The Applying Strategies to Common Stakeholders section of this chapter will provide advice on advocating with the government and UNHCR.

More than a prescription for acting, this chapter should be understood as a recommendation to think carefully before acting – to understand why you are following a particular course, be clear about expectations and be willing to revisit your decisions regularly. This approach reflects a commitment to reviewing results, acknowledging ineffective strategies, and actively changing them to produce the best outcome for refugee clients.

This is what we'll cover in this section:

Overview	
Policy Advocacy Development and Management	
Policy Advocacy Planning	
Policy Advocacy Monitoring and Evaluation	
Working with the Community in Policy Advocacy	
Policy Advocacy Strategies	558
Direct Interventions with Policymakers	
Networks and Coalitions	
Research and Publishing	
Applying Strategies to Common Stakeholders	
Advocacy with UNHCR Headquarters	
Advocacy with Local UNHCR	
Advocacy with Governments	
Norking	

# Policy Advocacy Development and Management

In almost all instances, advocacy takes place in an uncertain environment. Policy advocacy is also a long-term process with a long-term goal. Therefore, in order to maintain focus, it is vital to develop a clear strategy, to set realistic goals, and to regularly measure your progress in achieving the desired result. This section is designed to help you maneuver some of the big picture questions in order to develop meaningful and effective advocacy strategies. It will guide you through the process of developing and managing your advocacy goals and activities. Policy Advocacy Planning will highlight the tools and steps in understanding the problem, creating a policy advocacy goal and developing an advocacy strategy.

Closely related to policy advocacy planning is monitoring and evaluation (M&E). As M&E can shape and transform an advocacy strategy to maximize effect, this process should be closely related to your policy advocacy planning. The Policy Advocacy Monitoring and Evaluation section will highlight the M&E process and provide important resources for further consultation. Finally, Working with the Community in Policy Advocacy provide tools to assist your strategies are inclusive.

# Policy Advocacy Planning

This section will guide you through the steps involved in researching the context that you will work in, and in developing your policy advocacy goals and activities. By the end of this section, you would have understood the process that prepares you to create a policy advocacy plan.

In the Start-up section of the Toolkit, the steps to conduct a legal analysis and field analysis were explained. This was intended to enable you to better understand the general legal and political context that you work in. The Policy Advocacy Planning section, will guide you through further background research within the *specific* context of conducting policy advocacy.

Firstly, the section will guide you to understand where your issue is situated within the wider sequence of policy advocacy. It will also provide guiding questions to help you identify the central problem and key influencing actors that you may target to facilitate systematic change.

After identifying the central problem, this section will guide you to develop long-term and interim policy advocacy goals, and assist you in evaluating the risk of your advocacy

goals and actions. Finally, all of the steps above are intended to prepare you to create a policy advocacy plan – a plan that enables you to align your actions with your goals.

When creating your advocacy plan, your decisions should be informed by a thorough understanding of the existing advocacy strategies and stakeholders available. Therefore, this section should be read in conjunction with the sections Policy Advocacy Strategies and Applying Strategies to Common Stakeholders. In addition, as planning is an integral part of the monitoring and evaluation (M&E) process, the Policy Advocacy Planning section should be read alongside the Policy Advocacy Monitoring and Evaluation section. As you create your policy advocacy plan, it is important to design your advocacy activities in a way that enables you to monitor and evaluate the impact of your advocacy.

# Identifying Where to Start: Agenda Setting, Policy Reform or Practical Change?

The path to policy advocacy can be seen as a three-step process that consists of agenda setting, policy reform, and practical change. It often moves in sequence from agenda setting to policy reform, and finally to practical change. Some issues may not require all three steps but it is useful to think of this framework when analyzing where to begin your policy advocacy activities. The following section will explain these three steps, and offer advice on how to identify the current status of your issue. This is an important procedure before considering how to tackle your issue at hand.

#### Agenda setting

When a critical issue is largely invisible or ignored, a first objective is often simply to get it on the agenda. The goal in this case is to raise awareness of the issue, engage key actors in a discussion about the issue and to persuade policymakers that the issue must be dealt with.

#### **Policy reform**

Once the critical issue is on the agenda, policy reform can produce incremental shifts in existing structures, or to legislate new and innovative policies. For example, the obstacles that block refugees from making choices about their own lives are often embedded in laws and policies at both local and international levels. Policy reform is a step towards creating a supportive policy environment to facilitate long-term, sustainable change in refugee rights.

#### Practical change

Policy reform is typically only the beginning of a long and complicated struggle to implement a norm. Even with supportive policies in place, poor implementation can leave a major gap between the rights refugees are legally afforded and those they can access in practice. Therefore, practical change emphasizes the implementation of a policy in practice.

Consider, for example, the problem of landmines in war-torn countries, and how you might develop a policy advocacy campaign to address the issue:

- Agenda Setting: draw attention to the gruesome dangers of landmines.
- Policy Reform: promote the ratification of a treaty banning landmines.
- Practical Change: mobilize programs to remove landmines from the ground and eliminate them from military arsenals.

For a more detailed illustration of the different stages of policy advocacy, you may download the anti-warehousing campaign case study at the end of the section.

#### Issue status consideration

Given the different stages of policy advocacy, it is critical that you assess the current status of an issue before deciding how to address it. Consider:

- Is there already acceptance of the norm?
- Is the problem in the area of implementation or practicalities?
- Are there different parties or levels of power who see the issue differently than other parties or levels?

For example, imagine that a group of refugees had difficulties communicating with an essential government ministry because it is difficult to travel to its offices. This may be unintentional on the part of the government, but with dire effects on refugee lives. It may be possible to resolve the issue by working with the government to develop a logistical solution – a telephone hotline, a drop box for correspondence, a satellite office, etc. If the government is not in principle opposed to addressing a problem, public criticism – which is common during the agenda setting stage and in the classic "name and shame" strategy – might backfire by eroding goodwill to solve practical problems creatively.

Also, keep in mind that not all advocacy initiatives will move in this order, from agenda setting to practical change. Law and policy are often the products of a particular

agenda, but they also have powerful influence over how people think about issues. One can change the agenda to change the law, but one can also change the law in order to shift the agenda. Likewise with practical change. While implementation sometimes lags behind policy, there is sometimes more flexibility at the front lines than one might realize. Thus it may sometimes be possible to change a practice, at least in a pilot project, and then later push for a change in policy.

#### Further resources

Campaign Warehouse Case Study (Asylum Access)

### **Identifying Problems and Actors**

When developing your policy advocacy plan, it is essential to identify both the main problem and those who are most directly involved in that problem. This section will provide guiding questions to assist you in identifying (1) the central problem and (2) actors you need to influence in order to address the problem. The next section, Understanding Levers of Influence, will explain how some of your identified actors can be influenced to act or to change policy. This will help you gain a better understanding of the power context when developing your policy advocacy goals.

#### What is the central problem?

Begin your planning process by being specific about what the human rights problem is. This is not always a straightforward question.

Consider, for example, if asylum seekers with pending refugee applications are subject to arrest and prolonged detention. The problem may be that the police do not recognize that asylum seekers have the right to be in the country. However, it could also be that the refugee status determination agency does not provide adequate identification papers.

The policy advocacy strategy will differ considerably depending on how the problem is defined. Moreover, if you are targeting a symptom rather than a root problem, your advocacy efforts will not lead to systemic change. To better understand the issue, you may begin by considering the following questions:

- What is the practical problem faced by refugees?
- Is this a violation of international law? Why?
- Is this a violation of domestic law?
- If applicable, is this a violation of UNHCR policies?
- Is there any other feasible or practical way of defining and understanding the problem?
- Who are the main actors that cause the problem? Be as specific as possible. If the problem lies with the government, specify the agency or ministry.

- What exactly are those actors doing or not doing?
- What are the actor's motivations or interests that lead to its behavior?

#### Who are the key actors involved?

The second step in the planning process is to identify which actors need to be influenced in order to address the problem at hand.

Refugee rights issues are often at the intersection of local government and UNHCR policy. For example, consider a country where UNHCR conducts refugee status determination (RSD). Asylum seekers have been complaining that the RSD process takes too long and that they have few rights in the country while their cases are pending. In this case, is the problem that UNHCR procedures are slow? Or is it that the government gives few rights to asylum seekers?

Often, the answer to this type of question is both. In this case, it is useful to consider which actor you are more capable of influencing. While legal theory indicates that the host government has the responsibility to protect refugees, in practice, UNHCR is usually much more likely to act. It may, therefore, be more effective to focus on influencing UNHCR to act in the short term, while aiming for change within the host government in the longer term.

## **Understanding Levers of Influence**

Once the key actors are identified, the next step is to brainstorm the ways in which they might be influenced to act or to change policy. Keep in mind that an NGO should use different methods to influence different institutions. This section will outline the potential ways of influencing an actor, and in particular, explain channels to influence UNHCR and the government. It will then guide you through a thinking process to identify the key actors surrounding your issue – and the possible ways that you may influence them. For more information on how you may influence key actors, refer to the Applying Strategies to Common Stakeholders section.

#### Potential ways of influencing an actor

Listed below are some means of influencing key actors in your policy advocacy:

- Invoking a legal obligation
- Views of governments
- Judicial intervention
- Views of donors
- Intervention by higher authorities within the same agency
- Shame
- An idea that makes work more efficient

- Public opinion
- Ability to reduce costs
- Mass media
- Personal connections
- Specialized media
- Persuasion that an alternative path is better

#### Influencing the government

One of the characteristics of a transparent and accountable government is that it is likely to be open to many different types of engagement from the civil society. Formal mechanisms include litigation in court, formal testimony before parliamentary bodies and submission of comments on proposed policies. Informal mechanisms are perhaps more common, including talking to executive and legislative bodies through private meetings.

#### Democratic vs. non-democratic governments

Democratic governments are, by nature, open to influence by constituents, so that an NGO may organize citizens to contact their representatives. Effective advocates typically use combinations of formal, informal, constituent-based and public media techniques. Less democratic governments are generally more difficult to engage. Some are hostile to the idea of civil society, criticism and advocacy, presenting more of a risk than an opportunity. In this case, it is essential to gain access to the expertise and experience of people who know the local political culture.

It should be noted that with governments, it is possible to influence an authority indirectly by seeking the intervention of another government, a UN body or the media (local or international). In certain contexts, you may find engaging in regional working groups and/or coalitions a more effective strategy in pressuring national governments to change.

#### Influencing UNHCR

The UNHCR is often an important ally in leveraging influence over governments. It is also an actor that an NGO may want to influence in its own right. There are typically few formal procedures with UNHCR and no judicial fora available. Therefore, informal advocacy is essential — both with local UNHCR offices and with its Geneva headquarters. NGOs can also consider public advocacy, and may engage donor states with concerns about UNHCR policies.

#### Guiding questions

You may find the following questions helpful in identifying the actors at work in your local context and the possible ways that you may influence them.

1. Look at the actors that cause the problem. What does or could influence their behavior?

2. Consider what action you would like the actor to take or refrain from taking. What levers of influence could conceivably lead the actor to behave that way?

Actor	Lever(s) of Influence
	Actor

If it is difficult to identify a lever of influence that can produce the change desired, you may wish to review the <u>Setting Policy Advocacy Goals</u> section of the Toolkit, which should help you identify the incremental steps needed to achieve your desired change.

#### 3. Identify solution actors

Look at the identified levers of influence. Do any of them involve other actors that may not have caused the problem, but which could make a contribution to a solution? For example, if mass media is a potential lever of influence, then newspapers might be a potential solution actor. Make a list of these solution actors and the factors that can influence their behavior.

Solution Actor	Lever(s) of Influence

# Setting Policy Advocacy Goals

Effective policy advocacy requires a highly specific understanding of the problem and why it exists, a capacity to use many different types of tools to tackle different challenges and a clear-eyed focus on results. This requires an identification of both long-term ambitious goals, as well as much smaller interim goals that are more immediately achievable. This section will guide you to set both long-term and short-term policy advocacy goals. As you create your policy advocacy goals, it might be helpful to reference the <u>Policy Advocacy Strategies</u> section of the Toolkit to help you better conceptualize the type of strategies and associated activities you may wish to take to achieve your goal.

When you are planning your policy advocacy goals, you should be able to identify an **overall objective** (the total solution), as well as a series of **incremental goals** that work toward the overall objective. The breakdown of your end goal into short-term goals is especially important as policy advocacy is usually a long-term process.

In most cases, your planned actions will focus on an incremental goal. Meanwhile, the overall goal will be a comprehensive project that brings together multiple actions. For each incremental goal that you plan to pursue, you should be able to identify an activity that your organization will take, why this activity may lead to success, and the risks of failure.

For example, consider a government that detains refugees arbitrarily for long periods of time on a wide scale. In this case, the long-term and short-term goals may include the following.

Long-term goal:

• End arbitrary detention of refugees

#### Short-term goals:

- Publish story or op-ed on the detention problem in a newspaper or other media outlet.
- Induce the government to defend its policies, which is potentially the beginning of a discussion about norms.

• Reduce the number of people detained, or reduce the average amount of time spent in detention.

To set goals to measure progress in your policy advocacy work, you may consider:

- What is the general objective of the advocacy project? Essentially, what outcome would constitute a total success?
- Is this outcome likely to be accomplished in one single action within one single year? If the outcome is not likely to be accomplished in one single action within one single year, brainstorm incremental goals that would be steps in the direction of a total solution. It should be noted that incremental goals may reduce the severity of a problem and may also be actions by solution actors.
- For each small action or outcome, what levers of influence might lead the relevant actor to act as needed?

Goal	Actor	Lever(s) of Influence

# Considering Policy Advocacy Risks

When planning your policy advocacy goals and strategies, it is essential to take into account your organization's own capabilities and vulnerabilities. This requires an assessment of what an organization can realistically do in light of your proposed activities' level of risks. This section will provide a framework to help you assess the level of risk associated with your policy advocacy strategies, which is an important step to better prepare you to create your policy advocacy plan.

#### Why assess policy advocacy risks?

Policy advocacy requires an assessment of risk. An organization must recognize that not only may policy goals not be met, but that something worse might happen. Policy advocacy is a process of interaction with other actors who may react in different ways.

It is important to be aware of the ways an advocacy plan might enable the systematic problems it seeks to reverse. You may ask:

- May the ways of planned advocacy lead to retribution against the organization?
- Could it undermine relationships that are useful for the organization in other areas of its work?
- Could it endanger funding sources or staff safety?

Certain policy advocacy tools might only be effective in certain political environments. For example, public campaigning may entail more risk than others. In addition, advocacy can also strain relationships when it involves publicly criticizing particular people or groups. Oftentimes a target for advocacy might also be a partner, so it is important to determine how to influence them without straining the relationship.

Furthermore, working in partnerships may bring its own set of risks. For example, partnering with a political entity or certain government bodies may damage your organization's neutrality. Therefore, it is important to consider how your policy advocacy activities will influence your organization.

As you consider your policy advocacy tools, it is helpful to remember that not all policy advocacy tools are formal and public. Going to court and issuing public reports and statements may be the most well known tactics of human rights advocacy, but informal phone calls, private meetings, negotiating and slow persuasion are sometimes just as effective.

Also, not all advocacy is direct. If the main actor behind a rights violation is beyond an organization's capacity to directly influence, the organization might be able to influence a different actor, which in turn may have more influence on the real target of the policy advocacy. This approach may minimize your level of risks.

#### How to assess policy advocacy risks?

Risks can be minimized through careful analysis and planning. Risk management often involves weighing opportunity costs. For example, speaking out strongly may be better than losing legitimacy by keeping quiet in certain situations. At other times, taking a certain position on an issue may result in being asked to leave the country, or put your staff in physical danger.

Therefore, an organization should, to the best of its ability, develop (1) a clear understanding of dangers, (2) an honest understanding of its own risk tolerance, and (3) be willing to compromise other goals in order to avoid risk. To assess the risk factors associated with each strategy, you may choose to consider following the steps below. This exercise also requires you to be realistic about finances and expected responses. Brainstorm all the actions your organization may take on behalf of a particular issue, keeping in mind the levers of influence discussed in the Understanding Levers of Influence section.

For each possible action, identify how the targeted actor would be likely to respond. Include both positive and negative responses.

Action	Predicted Positive Response	Predicted Negative Response

3. Identify the resources required to perform the actions needed to prompt the expected response from each targeted actor.

Action	<b>Resources Required</b>	Expected Response

After assessing the risks involved in your proposed activities, you should now be in a better position to evaluate which tools and actions are most feasible and effective to implement. You may refer to Creating a Policy Advocacy Plan to align your selected actions to your advocacy goal.

# Creating a Policy Advocacy Plan

Policy advocacy planning will improve the way you make decisions. It involves anticipating other actors' behaviors, predicting the future and understanding risks. While we cannot assess these factors with perfect accuracy, it is essential to calculate as much as possible a course of action's expected outcomes, to know why you think a certain action will produce a desired result, and, most importantly, to anticipate and be prepared for the potential risks.

Once you have identified all factors discussed in the previous sections, including actors, levers of influence, short-term and long-term goals, available resources, and potential risks, you are ready to create a concrete policy advocacy plan. A complete policy plan has two main parts. This includes a **General Advocacy Strategy Plan**, and a **Detailed Action Plan**. This section will explain each part, and guide you to map out your advocacy plan.

#### General Advocacy Strategy Plan

A General Advocacy Strategy Plan should list the following:

- General or overall objectives, e.g. such as ending the arbitrary detention of refugees in totality.
- Interim goals that would represent progress toward this objective.
- Actions your organization can take to achieve each interim goal.
- A general timeline for achievement of the general objective. For ambitious policy advocacy projects, the general timeline can be as long as many years.

General Objective	Interim Goals	Action Taken Towards Interim Goals	Timeline

#### **Detailed Action Plan**

A Detailed Action Plan is a more specific breakdown of each interim goal and the corresponding actions listed in the General Advocacy Strategy. A General Policy Plan may contain an unlimited number of Detailed Action Plans.

Interim Goal	
Action	
Targeted actor	
How might the action influence the targeted actor?	
Actor's possible response	
Resources required	
Possible risks	
Indicators of Success	
Timeline of Evaluation	

# Policy Advocacy Monitoring and Evaluation

During the policy advocacy planning stages your policy advocacy team should develop the infrastructure for monitoring and evaluating your advocacy campaign. It is important to prepare benchmarks and advocacy evaluation prior to engaging in large-scale policy advocacy projects.

Monitoring and evaluation (M&E) is a crucial element to the success of your policy advocacy project. Policy advocacy M&E enhances your organization's programmatic tracking from the planning stage, through implementation, to project completion. To familiarize your policy advocacy team with the basics of the M&E program cycle, visit the monitor and evaluate impact section (below). Additionally, a thorough understanding of the policy advocacy planning section is an important precursor to any successful policy advocacy M&E program. A properly planned and designed M&E program

uncovers formal and informal programmatic strengths and weaknesses, biases, and maximizes your organization's advocacy potential.



Policy advocacy is an inherently risky approach to affecting change for refugees. However, it is still worth pursuing. With proper preparation and the right savvy, policy advocacy is the most productive route toward change. The policy advocacy M&E program cycle is designed specifically to prevent your organization from pursuing a fruitless path. Within the policy advocacy M&E program your organization will explore strategies while analyzing whether there is a viable pathway toward change (i.e. an "open policy window," an influential supportive network, and a powerful inside ally). Finally, the evaluation mechanism will prepare your organization to restrategize or abandon the policy project.

The M&E program is designed to accurately reflect your organization's progress toward policy advocacy goals. The following sections are designed to help your organization efficiently implement a policy advocacy M&E program cycle and prepare your organization for the challenges inherent in policy advocacy. The section on What is Policy Advocacy M&E? explains the components and basic tenets of the policy advocacy M&E program cycle. Why is Policy Advocacy M&E Important? analyzes the

numerous benefits of adhering to the M&E program cycle. Keys To Policy Advocacy M&E outlines vital components of policy advocacy M&E and suggests solutions to common policy advocacy M&E pitfalls. How To Implement A Successful Policy Advocacy M&E program explains the nuance of designing and implementing a policy advocacy M&E program.

The two guides below are useful resources to help you get started in understanding the available tools and process of M&E in policy advocacy.

#### Useful resources

Tracking Progress in Advocacy: Why and How to Monitor and Evaluate Advocacy Projects and Programs (INTRAC, 2009) A Guide to Measuring Policy and Advocacy (Overseas Research Services, 2007)

# What is Policy Advocacy M&E?

# Policy Advocacy Monitoring and Evaluation Consists of Two Components

#### Monitoring

- The continuous collection of information about both a project's process and progress, over time.
- Monitoring seeks to document and understand what is happening.
- Monitoring supports the implementation of our tools with accurate, evidencebased reporting. This type of reporting helps leadership make informed decisions about the direction of our programs.

#### Evaluation

- A systematic and objective assessment of the project at one point in time, including the successes and failures.
- Evaluation seeks to understand why what happened, happened.
- Evaluation focuses on outcomes in terms of achieving policy change objectives, civil society capacity building and refugee access to political processes.
- Evaluation contributes feedback on your policy project's design and implementation, and offers an opportunity to analyze the risk involved in funding specific advocacy strategies.

A monitoring and evaluation program cycle must be operational from the outset of any new policy project or program. Every project should be monitored continuously throughout its lifetime. Generally, monitoring and evaluation efforts are more successful when they become routine procedures of documentation and note taking.

#### Terms Associated with M&E

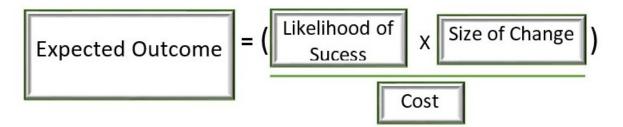
- <u>Inputs</u>: The resources used in your organization's programming and activities (e.g. staffing and production costs).
- <u>Outputs</u>: The programming and activities your organization undertakes.
- Impacts: The outcome your organization expects based on its outputs.
- <u>Indicators</u>: The evidence and documentation you compile to assess whether the outcome has been achieved.

In contrast to traditional programmatic approaches, policy advocacy M&E is often risky and may have a low likelihood of success. It is important to be aware of the inherent political nature of advocacy and the numerous stakeholders which may significantly impact your advocacy efforts. However, that should not deter your organization, in most circumstances, from pursuing policy advocacy projects.

# Why is Policy Advocacy M&E Important?

Considering the overarching goal of your policy advocacy project — to improve the lives of refugees in your focus area — your organization's monitoring and evaluation program must measure the effectiveness of your advocacy program toward achieving your specific project goals.

The M&E program cycle provides a bridge between formal and informal processes. Policy advocacy involves a combination of informal and formal processes and M&E systems are often purposefully aimed at bridging the formal-informal gap. In M&E, undervaluing informal processes can be dangerous, important tacit knowledge and innovation may be lost as a result.



Strong policy advocacy monitoring and evaluation will alert your organization when you are not making progress. Especially in policy advocacy, a lack of progress should not deter your from pursuing your goal, although strategies may need re-evaluation. Your M&E program should provide your organization with feedback on the strategies you pursued, not deter lofty or risky policy advocacy goals.

#### Useful resource

#### Oxfam's long-term M&E use to advocate the Farm Bill

#### Robust M&E programs will yield the following results

<u>Credible funding reports</u>: Collecting quantitative and qualitative indicators will provide your organization with well-reasoned evidence linking your activities and programs to improvements in the lives of refugees, or progress toward long-term objectives.

<u>Demonstrate to colleagues and local partners that your policy advocacy program is</u> <u>having an impact</u>: It is very difficult to draw the connection between policy changes and the policy advocacy work of your organization because of the various other factors that affect these changes. However, thorough documentation allows your organization to produce strong case studies drawing on the experiences of individuals directly impacted by your policy advocacy.

<u>Learn from your experience</u>: M&E programs require your organization to continuously evaluate success and failure of policy advocacy activities. This structured reflection helps fine tune your policy advocacy programmatic goals.

<u>Improve your policy advocacy project</u>: Take time to reflect on the success, failure and efficiency of your organization's brainstorming, planning and implementation of new policy advocacy projects. This investment will lead to noticeable improvements in the efficiency and implementation of your policy advocacy programs.

# Keys to Successful Policy Advocacy M&E

After moving through the policy advocacy planning exercises, M&E can be conceptualized as a continuous cycle that each stakeholder contributes to. This section introduces you to the key components of a successful policy advocacy M&E program. The checklist, found below, should be used as a guide, both during policy advocacy planning, and continuously throughout the M&E program cycle.

#### Keys to Successful Policy Advocacy Monitoring and Evaluation

Your policy advocacy M&E program must be operational at the outset of your policy advocacy programming. This means research, development and implementation of an M&E program should be happening simultaneously with policy advocacy planning. Use the <u>policy advocacy planning exercises</u> you have completed to conduct a SWOT analysis and create a spreadsheet of SMART Objectives. Advocacy programs require the flexibility to operate in a fast-changing environment, yet close attention to and record

of the direction of programmatic changes — making project planning and M&E all the more essential.

Once you are ready to begin designing your M&E program, the following checklist, "The Principles for Policy Advocacy Monitoring and Evaluation," is a useful guide to develop your policy advocacy M&E program:

#### In building a monitoring and evaluation program, your organization should

- ☑ Develop clear programs that can be easily adapted for various locales and levels of advocacy.
- ☑ Focus on testing the links in the chain of policy change, rather than merely assessing the elements in isolation.
- Develop programs that fully contextualize contribution, including understanding the intervention of other actors and an overall sense of the complex dynamics at play.
- ☑ Design monitoring and evaluation systems to fit around existing advocacy programs, establishing a firm link to planning and budgeting processes.
- Secure active involvement of senior managers in review and analysis processes.
- ☑ Prioritize the facilitative role of monitoring and evaluation professionals in building evaluative capacity organization-wide, including through design of ways of working that make it easy for people to engage meaningfully in monitoring and evaluation processes.
- ☑ Take active steps to re-balance accountability where necessary, countering the tendency to prioritize upwards accountability, to funders, in particular.
- ☑ Pay attention to building capacity for strategic, as well as tactical learning and adaptation.
- ☑ Develop an overarching approach to monitoring and evaluation that is intentionally designed to challenge and test strategy and the assumption underlying it, as well as to improve implementation of existing strategy.
- ☑ Gather evidence of monitoring and evaluation costs and benefits.
- ☑ Constantly look for ways to simplify your policy advocacy M&E program.

#### Common Issues and Solutions for Monitoring and Evaluation

#### Time

One way to mitigate this difficulty is to set aside time from actual program work and dedicate it to M&E activities.

For your organization to benefit from any effort put into monitoring and evaluation activities, the leadership needs to actively participate.

It can be difficult and time consuming to design surveys, databases, train staff and create tables to consolidate and analyze data. Plan ahead, leave ample time and monitor and evaluate your M&E program to eliminate time inefficient M&E activities.

A grave mistake is taking the time to design surveys, but not leaving time to do data entry and data analysis. It may be wise to choose two pieces of information to meaningfully gather and analyze. This is ultimately better than implementing a large monitoring plan that your organization will never have the time to evaluate.

# Monitoring and evaluation focus tends to be on serving the purpose of "upward" accountability, with space for strategic learning somewhat constrained

The tendency is for M&E to primarily serve the needs of funders, donors grantmakers and others to whom practitioners are "upwardly" accountable.

M&E processes appear to be less oriented towards uncovering strategic limitations than tactical ones. This could be because identifying operational learning carries less risk, whereas exposing strategic flaws or weaknesses could come at a cost in terms of reputation or future funding.

One consequence of this is that monitoring and evaluation tends to be more directed towards considering how existing strategies can be delivered more effectively, rather than calling those strategies into question altogether.

To actively avoid these issues and improve your monitoring and evaluation program to yield strategic benefits, continuously re-evaluate how clearly defined your objectives, strategies and tactics are within an overall theory of change.

#### Quantity vs. Quality of Analysis

In M&E programs there is often tension between the desire for numerous indicators and the need for more meaningful analysis of progress and achievements. M&E staff often perceive a growing demand from funders and senior managers for advocacy results to be represented in quantified form.

Implications of this trend toward quantification can be that:

- Reporting focuses on what is inherently quantifiable (generally, inputs and outputs), with the result that information about advocacy can be presented in somewhat underwhelming ways, falling short of making the strategic case for investment.
- Attempts to 'quantify' qualitative information (e.g. giving rating scores to levels of support among targets): such approaches rely, necessarily, on subjective assessment and are not robust.

Seeking to contextualize data by pairing quantitative and qualitative information is one approach to mitigating these potential disadvantages. (e.g. interviews or surveys can show trends in implementation failures).

In addition, ensure that the quality of data and consistency of reporting is recognized as crucial to M&E effectiveness.

#### Distinguishing your organization's advocacy efforts

There is no universal method with which to monitor and evaluate policy advocacy success in a way that will be meaningful to philanthropists, foundations and grantmakers.

- Sophisticated, formally designed evaluation mechanisms are often unsuccessful at showing progress toward achieving a policy project's goals.
- Relationships between advocacy work and indicators of progress are complex and often missing a causal link.
- Successful advocacy evaluation requires a deep knowledge of local political issues, strong networks and trustworthy allies, an ability to assess organizational quality, and accurate management of time and funds.

#### Simplify

The main goal of your M&E program should be to make your organization's policy advocacy programs more efficient. A tedious, time-consuming monitoring and evaluation program will produce the exact opposite results.

The unpredictable nature of outcomes for policy advocacy programs means that focusing on why changes need to be made is more important than allocating too many resources to collecting data on pre-determined indicators.

Do not get bogged down in attempting to quantify and track every move you make. In order for your M&E program to maintain effectiveness, it must combine simple, easy to use processes with a thorough, systematic approach to the collection and tracking of policy advocacy progress.

# How to Implement M&E for Policy Advocacy?

Monitoring and evaluation can be a complicated and time consuming process, but with ample time dedicated to planning, monitoring and evaluation, M&E plays a vital role in the success of your policy advocacy project.

#### Planning:

What do we want to change in the community?

Adapting:

How can we build future successes?

Executing:

What are our activities (internal and external)?

Analyzing and Sharing: Why is it happening? Who needs to know? Monitoring: What is happening now?

#### Plan

Starting in the planning stage, spend 1-2 hours with your policy advocacy team conducting a SWOT Analysis. A SWOT Analysis consists of open conversation between the policy advocacy team to identify organizational Strengths, Weaknesses, Opportunities and Threats. Discussing strengths and weaknesses allows your team to conduct an honest internal evaluation. Whereas, analyzing opportunities and threats acts a mechanism to assess external factors impacting your project.

Category	Questions to Consider	
Strengths and Weaknesses	<ul> <li>What are the policy advocacy team's main achievements over the last two years?</li> <li>How successful have you been in achieving your policy goals?</li> <li>How effective are your relationships with key stakeholders?</li> <li>How secure is your financial position? Can you allocate the necessary resources to finance your major advocacy programs?</li> <li>Do you have the volunteer commitments and expert knowledge needed to meet your objectives?</li> <li>How will you be able to build effective relationships with those you wish to influence?</li> <li>How effectively do you communicate advocacy goals and updates to other stakeholders?</li> <li>How effective are your grassroots organizational capabilities? Have you considered how to use your client base in advocacy efforts?</li> </ul>	
Opportunities and Threats	<ul> <li>How is your organization regarded by UNHCR? The government? The public?</li> <li>Are other allied groups considering a legislative push that you could join? If not, would they be supportive of your advocacy goals?</li> <li>Who will oppose your agenda? Who will support it?</li> <li>Are there legislators who are friendly toward your advocacy goals whom you should engage?</li> </ul>	

Using the information identified during the SWOT Analysis, your policy advocacy team is prepared to construct long-term advocacy goals. It is important to make sure that you have articulated clear and tangible policy advocacy goals. For example, "By law and in practice, refugees are able to choose where they live and achieve self-reliance while enjoying their other human rights." Especially in policy advocacy, reaching goals often takes several years, or more.

As a starting point, it is wise not to construct more than three goals. Narrowing down your advocacy goals promotes organizational focus and results-based management. The goals you identify should not be tied to a single advocacy strategy or program. A policy goal is best achieved through pursuing a combination of programmatic strategies working toward a common end.

#### Good-to-Great Goals

To increase the number of refugees that can choose where they live and achieve self-reliance by 50%.	Too specific and short-term oriented. This is closer to what an objective might contain.
To improve refugee freedom of movement.	Not specific enough.
By law and in practice refugees are able to choose where they live and achieve self-reliance while enjoying their other human rights.	Great!

Once your policy advocacy team has constructed an advocacy goal it is important to spend time creating SMART Objectives. SMART Objectives are measurable and can be used to monitor and evaluate progress towards goals. Constructing SMART Objectives for the first time can be confusing, so it is important to set aside enough time to concentrate on planning. SMART Objectives should be the most ambitious result that your organization, along with your partners, can materially affect within a given time-frame and set of resources for which it is willing to be held responsible.

#### For Example

"Asylum Access's draft language is incorporated into the Urban Refugee Policy that guarantees compulsory encampment is ended, self-settled refugees rights are protected, refugees have access to options for employment and self-reliance, and that refugees do not experience discrimination in accessing public services."

This SMART Objective is ambitious; specifically identifies target areas for the urban refugee policy advocacy project; achievable with the resources dedicated to this project; directly relevant to urban refugee policy reform; but does not have a time-bound restriction. Note: SMART Objectives for policy advocacy may not always have a time frame because of their political volatility.

#### **Construct Indicators & Monitor**

If your organization's policy advocacy team constructed SMART Objectives that are easily measurable, then identifying indicators will measure and verify progress toward achieving that objective. Indicators are benchmarks that your organization's policy advocacy team and other stakeholders can use to monitor whether pursuing the current strategy or objective is likely to succeed.

#### Examples of Indicators

- Publish a story or op-ed on the urban refugee problem in a newspaper or other media outlet;
- Continue conducting field research on urban and self-settled refugees;
- Induce the government to defend its policies, which is potentially the beginning of a discussion about norms;
- Reduce the number of urban and self-settled refugees that cannot access the RSD process or other public services;
- Increase urban and self-settled refugees' access to public services.

After your organization's policy advocacy team has identified indicators that will measure and verify progress toward achieving your goals and objectives, the focus should shift to monitoring activities in pursuit of these goals and objectives. The monitoring phase helps to ensure that all the efforts put into strategic planning were not wasted.

The most important aspect of monitoring activities is establishing the capacity to identify new opportunities or deficiencies in your policy advocacy project and implement specifically tailored programmatic changes to reflect this. Policy advocacy monitoring involves collecting and analyzing information from all programs and initiatives — formal or informal. Common monitoring data collection mechanisms include meetings, minutes, telephone call records and project records.

#### When creating a monitoring system, consider

- What do you need to learn about your advocacy?
- How will you find out what you need to know?
- How will monitoring and evaluation be used?
- When will the monitoring be carried out?
- What should be measured?
- Who will make it happen?
- What data collection tools should be used?

Additionally, monitoring your weekly advocacy activities can be as simple as taking a daily log of what was accomplished and compiling an 'Activity List' during a weekly policy advocacy team meeting.

Below is an example of a weekly policy advocacy Activity List monitoring the activities completed:

Policy Goal:	Indicators:	Monitoring Progress Toward Indicator:
Our policy draft language is incorporated into the Urban Refugee Policy that guarantees compulsory encampment is ended, self-settled refugees rights are protected, refugees have access to	Work with a network to produce draft policy language.	Met with two regional refugee NGOs to coordinate research. Continued to coordinate with network members in conducting field research on urban refugee populations in. Created outline of first draft of Urban Refugee policy proposal to introduce to the government.
options for employment and self- reliance, and that refugees do not experience discrimination in accessing public services.	Identify and build relationships with allies within the government to work with to produce draft policy language.	Met with local officials to grow awareness the Urban Refugee policy and get their input on our current draft language. Made contact with interested official in the Ministry of Education.

#### Evaluate

During evaluation stakeholders assess the strengths and weaknesses of your policy advocacy project. The most important part of evaluation is making sure that actionable learning is happening at all levels of your organization. This means all stakeholder groups (staff, partners, allies, other NGOs, individuals participating in the advocacy programs, and individuals who stand to benefit from successful outcomes) should be represented for the evaluation session.

Prior to the evaluation session, all stakeholders should receive baseline questions (examples below) to prepare for the evaluation. These questions are designed to address a variety of issues facing your policy advocacy project, but must not limit stakeholders' input. Encourage stakeholders to come prepared to offer any feedback related to the specific policy project under review.

#### Baseline questions to address during a policy advocacy evaluation session

- To what extent were the original objectives achieved? Were the original objectives the right objectives to pursue?
- What impact did you have on individuals or the community (if at all)?
- Were resources efficiently allocated to policy advocacy programs and activities?
- What activities or programs contributed to policy advocacy success or failure?
- Which specific approaches worked? Which did not?
- What should have been done differently?
- What needs to be changed in the future as a result of this evaluation?

Attention to detail during the evaluation phase is extremely important to realizing organizational learning. While formalizing the evaluation process is absolutely necessary, it is not necessary to convene all the stakeholders for a separate evaluation meeting. Instead, the evaluation can be integrated into a larger Quarterly Strategic Planning Meeting. However, dedicating ample time (2-3 hours) to evaluation is still necessary in order to realize benefits to your policy advocacy project.



Evaluation thrives when stakeholders are engaged and share their diverse perspectives regarding the current advocacy strategy. Stakeholders tend to fully engage in the evaluation process when their participation is recognized as valuable beyond providing feedback to your policy advocacy team. Remind stakeholders that their contribution is crucial to the success of your policy project.

#### The following questions may lead to additional stakeholder contribution

- How did you envision your role with this advocacy project at the time of its inception?
- Thus far, how would you characterize your role in this policy project?
- What contributions have you made to this policy project?
- Do you feel that your contributions have been valued by the policy advocacy team?
- In an ideal world, how do you envision your involvement in this policy project changing in the future?

Additionally, it is important to ask stakeholders to rate their satisfaction with the direction of the policy project and allocate time specifically for open-ended conversation and critique.

While it may seem meaningless to the actual advocacy efforts, these stakeholder perspectives are representative of the wider, national attitudes toward your project. Implementing evaluation activities should be relatively easy if your organization has adhered to the other M&E mechanisms:

- Include 2-3 hours of evaluation at the end of the M&E cycle and before all quarterly strategic planning sessions.
- Send out questions to all stakeholders two weeks prior to the evaluation to enhance their engagement in the process.
- Record all statements and categorize them in a way that will allow your organization to see patterns leading to organizational learning.

What are you Evaluating?	Issues	Actionable Response
<u>Internal</u>	(List issues that are specifically tied to the internal operations of your policy advocacy team)	(E.g. Revise individual work plans; Revise ways of working together)
<u>External</u>	(List issue that are specifically tied to external variables impacting your policy project)	(E.g. Revise tactics and action plan to address concerns of other stakeholders)
<u>Collaborative</u>	(List issues that are specifically tied to communication breakdowns, missed opportunities to collaborate, etc.)	(E.g. Revise tactics for working with others; Update table of alliances, who to work with and how)
Progress Towards Objectives	(List general issues with strategy or tactics toward your organization's policy goals)	(E.g. Suggestions for shifting strategy; new tactical pursuits; untapped resources)

Stakeholder responses can then be used to formulate an updated strategic plan. Even if stakeholder responses are not directly implemented into the new plan, they should be viewed as valuable organizational learning experiences. No stakeholder's contribution should be ignored or discounted because that stakeholder's view is representative of a larger, analogous demographic. Use this new information and cycle back through the entire M&E process.

Finally, do not forget to take time to monitor and evaluate your evaluation mechanism. An exit survey or short conversation asking for future recommendations to improve the evaluation mechanism is an essential end to the evaluation.

# Working with the Community in Policy Advocacy

Establishing a good relationship with the community is important for a policy advocate because it helps ensure policy advocacy goals will positively impact the lives of refugees. This basic guide helps you consider the ways in which it is most important and most appropriate to interact with the community. Specifically, it considers the role of the community when planning a campaign, to ensure accountability to the community, and finally, to bolster the legitimacy of your advocacy activities through partnerships with community groups.

## Role of community in policy advocacy

The voice of the community should inform policy advocacy issues. However, this does not necessarily mean they should be included in your policy advocacy approaches. In

other words, community participation in policy advocacy initiatives can be desirable, but it should not be imposed on community members.

Working with the Community:

- Helps inform your policy advocacy goals
- Helps the advocate be accountable to the refugee community
- Bolsters legitimacy with policy makers

# When planning a policy advocacy campaign

A policy advocacy campaign should be informed by the needs of the community. Here we lay out ways of identifying the needs of a community. The first is that information collection can happen through a **formal needs assessment**.

Through analyzing the needs of the refugee clientele, legal aid work is another platform for information collection. A formal needs assessment process will unveil the needs of the broader refugee community (for example, the need for economic opportunity, or alternatives to detention). The needs of your clientele will unveil the needs of only your current and future clients (for example, a routine denial of a particular nationality may translate well to a specific advocacy goal). Both options are viable and often differently inform policy advocacy campaign goals.

It is important to note that needs identified by broader community may not translate well to specific advocacy goals. For example, a formal needs assessment may show that refugees are interested in accessing micro-finance. As a policy advocacy goal, this community need may be best supported by advocating for a refugee's right to self-employment in national law, or by advocating for a refugee's right to access asylum through the RSD process (if the country respects a refugee's right to self-employment once recognized).

Furthermore, it is possible that a need expressed by the community may be better addressed by other approaches. For example, if the community is concerned about access to schools, and national and international law protects a refugee's access to education, the issue may be better addressed through **strategic litigation, community action plans or another community legal empowerment activity**.

# To be accountable to the community

A policy advocate may wish to communicate to the community their approach to the problem. This allows the community to share concerns with the advocate's approach, and to the extent a community member wishes, participate in systemic change.

It is worth noting that the role of legal reform is not always easy to communicate to community members. For example, if a community is primarily concerned with access to housing, and the advocacy strategy is focused on advocacy for improvements to the RSD process, it can be difficult to explain why a legalistic approach serves community needs. In this situation, you want to communicate the cause of the housing dilemma (i.e. lack of housing options for immigrants without RSD) and explain the impact that an advocacy strategy focused on RSD can have on increasing access to housing. This approach is called a participatory **problem tree analysis**. You can use the basic template attached at the end of the section to guide your accountability to the community.

## Collaboration with community groups

Refugees communities may already be organized. Policy advocates should ensure that partnerships with community groups (whether or not they are formally registered) are prioritized. As organized community groups best understand community needs and the community's desired path toward change, your advocacy activities can be bolstered by this kind of collaboration. For example, the United States <u>Dream Activist</u> movement is a grassroots movement of undocumented young people who have organized to advocate for law and policy change that would allow undocumented migrants to access legal status and educational opportunities. Larger, more established agencies often seek collaboration with the Dream Activists because of their status as an advocacy group.

Of course, collaborating with refugee community groups can also be dangerous. Policy advocates should acknowledge the risks to the community groups when they choose to collaborate. For example, although most community members are acutely aware of the risks they experience when they engage in advocacy, the policy advocate should be careful not to encourage activities that put refugees at risk of arrest, detention or deportation.

Furthermore, community advocacy groups can sometimes decide to participate in activities that your refugee rights organization may decide is too politically risky, or detrimental to the overall refugee rights movement. For example, if an organized sit-in equates to civil disobedience in the eyes of the government, there is a risk of potential backlash against pending RSD applications. In such a case, policy advocates should carefully consider their level of participation in potentially politically charged community initiatives. In the face of political risk, consider fulfilling the role of a capacity or skills-builder for community groups rather than a public supporter.

#### Further resources

Problem Tree Analysis (Asylum Access)

# Policy Advocacy Strategies

After identifying the central problem that you wish to address in your policy advocacy activities, there are many different advocacy strategies that you may adopt to tackle the problem. To inform your decision, this section outlines some of the policy advocacy strategies that are commonly adopted. This can include direct intervention with policymakers, through approaches such as establishing letter writing campaigns, organizing events, direct lobbying, hosting education and capacity building workshops, and engaging in relationship-building activities. Additionally, it may include working with other civil society members to form networks and coalitions to influence policymakers.

This section will also cover research and publishing as a policy advocacy strategy. However, note that this list is not exhaustive, and further resources should be consulted.

When identifying your advocacy strategy, your decision should be made in accordance to the context and policy landscape of your country. For example, in countries where the refugee law and practice are not so clear, a lot of the initial advocacy efforts are spent establishing a baseline and navigating the practice before any direct advocacy can take place. In addition, non-democratic governments are less likely to be influenced by civil society organizations. In this context, your advocacy efforts may require you to engage in relationship-building activities with the government before you can begin your direct advocacy work. In addition, a lot of ongoing advocacy activities may be to sustain your organization's relationship with the government. Therefore, which advocacy strategies are most effective largely depends on the context that you work in.

# **Direct Interventions with Policymakers**

Policymakers are refugee rights gatekeepers. Therefore, interventions with policymakers are among the most important policy advocacy strategies. Direct interventions are often the most effective strategies to changing a policymaker's opinion or to build important relationships that will increase the likelihood of policy change in the future.

Direct interventions with policymakers can take on many forms — some that you can employ as a single organization, and some that may be more effective through a coalition or network. This section will introduce the following direct interventions with policymakers:

- Depending on which policies you seek to change, the policymakers you aim to influence will evidently differ.
- Policymakers might include officials in governments, UNHCR, human rights bodies, as well as members in networks and coalitions.

To tailor your advocacy strategy to your policymaker, you may refer to the Applying strategies to common stakeholders section of the Toolkit.

# **Direct Lobbying**

Lobbying is a process that tries to influence legislators or other public officials for a specific cause. Whilst lobbying has been a common approach in developed democracies, it is also a growing strategy in young democracies. Lobbying can be categorized into direct and indirect lobbying.

**Direct lobbying** is when lobbyists directly communicate their views to decisions makers. In lobbying meetings, advocates have access to individuals who write, approve or oppose legislation that impact the lives of refugees in your community, Lobbyists try to influence a legislator on the passage or defeat of a bill or proposed legislation.

In comparison, **indirect lobbying** is when advocates try to influence the public to express particular views and/or concerns to decision makers. Lobbyists themselves do not interact face-to-face with the policymaker.

Whether you do this through a coalition or just as your organization, direct lobbying should be carefully planned. This section will provide practical advice on how to plan and engage in direct lobbying.

Relationship building activities are crucial in establishing and maintaining your relationship with policymakers. It is likely that you will have to engage in relationship building activities before you are able to arrange a meeting with a policymaker! For more information, you may refer to Relationship Building.

#### Planning your lobbying activities

As you plan your lobbying efforts, ensure that your activities clearly align with your policy goals.

In order to maximize your time and energy in lobbying, it is advisable to stay abreast of national legislation changes and the political climate toward refugees. This will help you to propose language changes to a bill that is up for review, or propose the review of a bill for the upcoming review period.

Understand the lobbying regulations in your country and how those regulations impact your organizational status. For example, organizations in the United States can only spend a certain percentage of their income on lobbying without it impacting their tax exempt status. This may or may not apply in your environment.

#### Preparing your lobbying meeting

Set up a direct lobbying meeting with your target policymaker. This can be difficult if you do not already have a relationship with the official, or those from the official's office. In the United States, you reach out to a legislative assistant to set up a meeting. Before making phone calls or sending emails, practice a 3-5 minute speech about your organization and the reasons you want to speak to the policymaker. In other countries with younger democracies, it might take more effort to establish a relationship. For more information, refer to Relationship Building.

**Direct lobbying can involve information exchange between you and the legislator.** Often, an official does not have the time or resources to research topics fully. These sessions can be used to educate the elected official on an aspect of refugee rights that the legislator might not know very much about.

**Develop talking points**. Once you have set up your meeting with the policymaker, ensure that you and anyone who will be attending with you have copies of the same talking points. Your talking points should present very clear, relevant and attainable requests for the policymaker.

You may wish to **create a one-page document** that presents information about your requests and information about your organization. If you want to provide the official with more information, you should have supporting documentation.

**Consider which of your partners may want to join the session**, and which of those partners would make the policymaker most comfortable or likely to digest the information you provide. In some areas, it may help to bring a well-known, non-confrontation partner to a meeting with a policymaker.

#### During your lobbying meeting

Prioritize your arguments. Focus on one or two topics rather than try to cram in as many topics as time allows. Decision makers are very busy and you might lose their attention if you are too wordy.

- Do not be put off by the policymaker's smokescreen or long-winded answers.
- Bring your audience back to the point and maintain control of the meeting.
- Show openness to counterarguments and respond to them.
- If appropriate, show strengths in numbers and schedule meetings in small groups of coalition.
- Spend time developing relationships with staff.
- Dress in appropriate etiquette for a government building.

Further resources

Sample One Pager for a Policymaker (Asylum Access 2013) Sample Talking Points (Refugee Council USA and HIAS 2015) Tips for Effective Lobbying (Ohio Environmental Council)

# Letter Writing Campaigns

Letter writing campaigns — also known as petitions, sign-on letters or mass email campaigns — are a low-cost, low-effort campaign strategy. They are most effective when backed by additional advocacy strategies. As a primary focus, writing campaigns are usually most effective when a policymaker will be faced with a decision related to your bottom line. For example, when a new or existing legislation will be voted on in parliament, or when a policymaker will be revising a budget and you would like more money to go to refugee livelihoods programming.

As a secondary focus, writing campaigns educate your partners and target policymakers. As an indirect benefit, organizing a writing campaign helps you understand who is interested in connecting with your organization on an important issue. This section will highlight the benefits and limitations of using letter writing campaigns as a strategy, guide you to identify your target audience in your letter-writing campaign, and provide practical advice on organizing a letter writing campaign.

Letter writing campaigns:

- Allow you to target different audiences
- · Useful for identifying partners who want to contribute to your efforts
- Are flexible, low-cost and relatively simple to organize
- A way to show the constituents that you care about the issue
- Not usually effective at persuading a staunch opponent
- Not useful when the policymaker does not have anything at hand to act upon

#### Identifying your campaign's target audience

After identifying your policymaker, you need to decide who you will target for signing-on to your writing campaign. When deciding, consider who will be most effective at influencing your policymaker. Usually, this is one of two possible populations: (1) the general public; or (2) a set of key players and experts. The following sections discuss the pros and cons of both approaches.

#### Targeting the general public

Mass sign-ons targeted at the general public are most effective when you believe a policymaker will be influenced by constituents. However, meaningfully reaching the general public can be time-consuming and expensive, as it may require allocating resources toward community organizing. It can be difficult to get a meaningful portion of

the general public to support refugee rights writing campaigns if xenophobia is widespread or if economic conditions make any outsider population a threat.

#### Targeting key players

More targeted writing campaigns are most effective when you believe a policymaker will be influenced by other key players including other members of civil society, multilateral organizations or government agencies, as opposed to constituents. Writing campaigns focused on key player sign-on requires little cost and little energy, and are generally relatively easy to execute. Often in the refugee rights space, it may be more effective to present a policymaker with a writing campaign backed by experts as opposed to the general public.

#### Best practices in letter writing campaigns

There are some best practices in issuing writing campaigns for sign-ons by key influencers:

- Circulate your draft sign-on once a week for comments and edits. This allows your partners and opponents an opportunity to contribute and promotes inclusion and collaboration.
- Circulate the sign-on for no more than one month. This creates a sense of urgency and importance for the sign-on, and doesn't allow the issue to fall off your partners' radar.
- If you are sending the sign-on to important players, avoid having individuals simultaneously sign-on. This increases the level of professionalism for the sign-on letter. If you feel it is worthwhile to allow specific influential people to sign-on (such as certain academics), create a separate space for individuals to sign-on.
- Consider using <u>Google forms</u> to collect your sign-ons.
- Consider writing individual letters to key players in order to demonstrate to them the value of their participation.
- Try to keep sign-on letters no more than one to two pages in length. The longer the letter, the greater the likelihood that key players may find a point of disagreement and decline to sign.

#### Case study: Asylum access refugee work rights coalition's campaign

The Asylum Access Refugee Work Rights Coalition advocates for promoting refugees' right to enjoy safe and lawful employment. As a campaign strategy, the Refugee Work Rights Coalition issued a writing campaign asking the UNHCR to prioritize livelihood programs and advocacy surrounding refugees' work rights. Specifically, the coalition asked the UNHCR to increase funding for the livelihoods unit, which oversees the right to work programming internationally.

The Work Rights Coalition decided to write specifically to Antonio Guterres, the UNHCR High Commissioner at the time, because the High Commissioner was scheduled to meet with the Executive Committee of UNHCR to decide on institutional priorities and how those relate to the annual budget.

The Work Right Coalition chose to seek out key leaders in the field, such as Women's Refugee Commission, to sign-on because the Coalition believed people who had a credible and reliable expertise in refugee work rights and a good working relationship with UNHCR were most likely to influence Antonio Guterres. For a sample of the Work Right Coalition's sign-on letter, refer to the downloadable material below.

#### Further resources

<u>Work Rights Coalition Sample Sign-on Letter</u> <u>ACLU's Guide to Writing Elected Officials (American Civil Liberties Union)</u> <u>Tips for E-Activism (Amnesty International)</u>

#### **Events**

Events are a great way to educate a large group of people and bring stakeholders together to talk about an issue. When properly organized, events can raise awareness for an issue, myth bust confusing aspects of the refugee rights regime, bring antagonized groups together, and sometimes, raise funds for your organization (though this is not the primary purpose of your policy advocacy work)! Increasingly, many NGOs have been planning events around World Refugee Day on June 20 to raise public awareness on refugee rights.

#### Advantages and Disadvantages of Organizing Events

- Great way to educate a large group of people
- Great way to bring stakeholders together
- Events require a lot of time and money

• May be hard to get your desired stakeholders together in the same room

Events often require so much time and effort that people mistake them for an end in and of themselves. In order to prevent this, repeatedly consider:

- Who needs to present in order for this to be advocacy that contributes to my bottom line?
- What speakers are most likely to attract the kinds of audiences that will help my advocacy agenda?
- Plan your event around your intended target audience.

#### Case study

Refugee Council USA (RCUSA) wanted to educate the United States Congress about the experiences of urban refugees globally. Their goal was to inform Congress about the plight of urban refugees globally in order to increase the number of urban refugees who can apply for resettlement to the United States. To do this, they facilitated a full-day event, invited relevant congressional office staff, and chose keynote speakers who would attract the right participants.

Events are only as effective as the publicity that surrounds them. The guide written by the American Civil Liberties Union of North Carolina is a helpful resource in developing your communications plan for your event.

How to Publicize an Event (ACLU of North Carolina)

# **Education and Capacity Building**

The education and capacity building of various stakeholders is an important nonconfrontational approach to introducing concepts, laws and values that protect refugees. There are moments where education and capacity building may be a more appropriate approach, even though it is less direct than lobbying. Instead of presenting clear routes for change, you are instead focused on providing instructive information to policymakers or policy enforcers.

#### Education and capacity building

Pros and cons of this approach:

- Helpful when there is no identified champion to support your cause
- A way to build relationships with important key officials and plan for long-term needs
- A way to sidestep lobbying restrictions and still connect with key policymakers
- Helpful way to organize your own knowledge

• Can be hard to know if your efforts will help you achieve your policy goals

Note that it can be difficult to know if your capacity building and educational sessions are contributing to your bottom line. Often the impact of this type of meeting will not be felt immediately. However, the knowledge that you have shared may change how a policymakers approaches changes to legislation over time.

As it can be difficult to know for sure that you are contributing to your bottom line, be sure that you have selected the policymakers that you are educating wisely. Ask yourself if the policymaker or policy enforcer is likely to be tasked with something that will impact your bottom line in the future.

#### Additional advice

- In your training sessions, use the language that your participants are most comfortable with. Even if English is an official language, using a local language might be more effective.
- In certain countries, it might be common practice that participants are expected to receive a workshop participation fee and transport allowances. Be sure to take this into account when budgeting.
- To encourage participation, convince participants how the training will assist them in improving their job performance.
- You may refer to the guide below on the suggested steps to take when organizing a training workshop.

#### Further resources

Guide to Hosting Refugee Law Trainings (Asylum Access 2015)

# Relationship Building

Building healthy relationships with policymakers and policy-enforcers is critical in your policy advocacy work. It can be easy to overlook this important step because it is difficult to see the immediate impact of your efforts. However, the relationships you establish and maintain on a daily basis will put you in a better position to directly lobby with policymakers in the long run. This section will highlight the benefits and limitations of relationship building, and provide practical advice on building effective relationships with your policymaker.

This approach:

- Is important especially when your policy goals are long-term
- Helps identify "champions" for your campaign
- Not a way to quickly advocate for change

#### Relationship building strategies

- Invite policymakers to an event.
- Invite policymakers to a training.
- If appropriate, invite the policymaker to lunch.
- If appropriate, setting up a one-on-one meeting to talk about your organization and your model. This can also be conceived of as education and capacity building

To establish a relationship effectively, it is helpful to try to get to know lawmakers and their staff personally. For example, you may look for common interests and backgrounds. Policymakers are more likely to meet with you and listen to you when they know who you are and have a positive perspective of you.

The opportunity to have a direct conversation with a policymaker enables you to establish a real relationship. You may take this opportunity to share your concerns directly, ask questions about important policy issues, and hear what your policymaker has to say. Understanding why a policymaker holds a particular position opens the door for education and friendly persuasion.

# Networks and Coalitions

A network is a group of individuals and organizations whose missions align and who stay connected in at least an ad hoc manner. A coalition is a type of network that is more tightly orchestrated. Coalition members often work together to influence the trajectory of a specific problem.

To begin, This section considers the benefits and drawbacks of utilizing networks and coalitions as a policy advocacy strategy generally. The section is then divided into two sub sections. Participate in a Network or Coalition outlines the benefits of participating in a global coalition, and provides a case study on the key to successes. It also provides a list of relevant networks and coalitions relating to refugee rights. Organize a Coalition outlines the points to consider when deciding whether to establish your own coalition, and the steps needed to build a refugee rights coalition.

#### Benefits of networks and coalitions

- Joining coalitions and networks with a high degree of professionalism may help to legitimize a new refugee rights organization, and position you to advocate more effectively outside network activities.
- Can improve access to policymakers
- Can raise the visibility of a problem or proposed solution. Having multiple organizations vet a strategy for direct intervention typically makes it more

effective, as a recommendation stemming from multiple organizations is typically more powerful than one stemming from a single organization.

- Can be used to safely address politically-sensitive issues
- Can conserve organizational resources
- Can have relationship and capacity building benefits. Joining calls and attending webinars helps to meaningfully share information and ideas, and will allow advocates the chance to compare perspectives. Participation in the established networks is an important moment for relationship building and fundraising.

#### Drawbacks of networks and coalitions

- As divergent groups participate, the need to compromise may lead to the loss of autonomy. It can be time-consuming to build consensus.
- If coalition members' missions do not directly align, they might not be actively engaged unless the organizer took initiative.
- In some networks and coalitions that involve the participation of organizations whose missions vary widely, it could be difficult to gather expert information. While your coalition might be able to gain more pressure and weight from the number of participants, it does not necessarily mean that you will be able to collect more expert information in the field.
- Some coalitions and networks suffer from a lack of direction. In such circumstances, progress can feel slow and messaging can be difficult. These drawbacks are best mitigated when a network or coalition is orchestrated by a core group of people who provide strategic directions and maintain momentum.
- Coalition management can be slow, complicated and inefficient. There can be logistical and internal communication challenges, e.g. poor internet connections, fuzzy conference calls, and off-hour meetings due to time zone differences.

# Participate in a Network or Coalition

In extension to the benefits and drawbacks of networks and coalitions in the overview section, this section highlights the strategic benefits of participating in a *global* coalition to further your advocacy goals, and provides a case study on the key to successes. It also provides a list of relevant networks and coalitions relating to refugee rights.

## Why participate in a global coalition or network?

Participating in global coalitions can be a helpful strategy for small organizations to gather adequate traction to communicate with and influence international bodies. Global coalitions have historically been successful in **communicating with international bodies** within the United Nations. It can be an effective way to network and legitimize even very small organizations in the eyes of policymakers.

In addition, global coalitions can support local organizations when dealing with **politically charged advocacy goals**. For example, if an organization is concerned about a particularly challenging national issue, a regional network may be better situated to advocate for change to an international body rather than a single organization directly advocating to a government for change. In this way, global coalitions offer local organizations a certain degree of protection.

#### Case study: successes of the Southern Refugee Legal Aid Network

In 2012, the Southern Refugee Legal Aid Network (SRLAN) met every other week for six months in order to prepare an advocacy strategy to improve UNHCR's RSD Procedural Standards. The suggestions for improvement were included in the most recent iteration. This success can be attributed to several things:

- The coalition had a **clear strategy** for change: they were going to draft adjustments to the Procedural Standards in detail and advocate for those changes during UNHCR's Annual NGO Consultations.
- All coalition members felt strongly that their goal was important, and therefore there was a **high degree of participation**.
- UNHCR was **soliciting input from NGOs**, giving coalition members the general feeling that their efforts were not going to be wasted.

However, global coalitions may move slow and cannot always quickly respond to national level concerns. To this end, consider the timeline of your advocacy goal. If you have a tight time frame, global coalitions may not be the best strategy.

# Aligning your advocacy goals to the level of participation in networks or coalitions

Evidently, participating in a network or coalition can bring many benefits. As a starting point, however, it is critical that your advocacy goals align with the mission of the network or coalition. Therefore, it is advisable to consult your policy plan and bottom line before deciding whether to participate in an existing refugee rights coalition. When deciding how active of a member you want to be in a network, consider whether your goals are closely aligned with the goals of the network or coalition. If they are closely aligned, allocating a greater amount of time to coalition activities may lead to faster policy change. However, because facilitating networks and coalitions can be time consuming, it is important that your efforts to mobilize others and build consensus is done to further your policy goal, rather than simply for relationship-building purposes.

#### Refugee rights networks and coalitions

Within the refugee rights movement, there are a few predominant networks and coalitions. Most networks are receptive to new membership and will welcome the growth of the movement.

#### The Southern Refugee Legal Aid Network (SRLAN)

SRLAN is a network of refugee legal aid providers who advocate for reform of UNHCR refugee procedural standards and who take on other special projects related to raising the profile of the refugee legal aid movement, including improving adherence to the Nairobi Code.

#### The Asian Pacific Refugee Rights Network (APPRN)

APPRN is a network of over 160 organizations that advocate for the rights of refugees in the Asia Pacific region.

The International Detention Coalition (IDC)

The IDC researches, advocates and provides direct services to refugees, asylum seekers and migrants in an effort to respect and promote their human rights.

#### **RCUSA**

Refugee Council USA is a coalition of organizations dedicated to welcoming and protecting refugees in the United States.

#### The Refugee Work Rights Coalition (WRC)

The Refugee Work Rights Coalition is chaired by Asylum Access and aims to ensure that refugees' rights to access safe and lawful employment in the formal sector is respected, protected and fulfilled. Any person or organization that agrees to uphold the Refugee Work Rights Coalition's mission can be a member.

## Organize a Coalition

When an existing group is not already convened around a particularly important issue, advocates may choose to convene a local or regional coalition. This section outlines how to determine whether it is appropriate to organize a network or coalition, and suggests approaches for doing so.

## Should I build a refugee rights coalition?

To decide whether to organize a coalition, carefully consider the following. A coalition should only be established if:

- You can logically see how advocacy through a coalition will be **more effective than advocacy as a single organization**. This is often true of small organizations, where influence and access to policy makers are limited.
- You have the **adequate time and funds** to effectively manage the preparation work, logistics and strategy of the coalition. Registering a coalition could be a lengthy process that involves a lot of back and forth with the government, especially when there is no clear Coalition Act. Be sure to budget in related costs as the organizer, e.g. paying to hold meetings at larger venues, transportation costs for members to attend.
- No other effective refugee rights coalition is better positioned to advocate for the same policy goals.

Assuming there is no other coalition better positioned to advocate for your policy goals, and you have both the logical rationale to advocate through a coalition and the resources for management, building a coalition can be a very effective advocacy strategy.

#### Building a refugee rights coalition

Step 1: Identify ideal coalition members and create a coalition mission

Building a refugee rights coalition begins by: (1) understanding which coalition members may help you achieve your policy goals; and (2) developing a coalition mission that is aligned with the interests of your desired coalition members.

To begin this process, first consider which potential coalition members can help you achieve your goals. This may include:

- other refugee rights organization at a national or regional level;
- other refugee response organizations from the humanitarian and development sectors;
- UN officials;
- government officials; and
- other non-refugee response actors.

Remember that if you invite organizations from other time zones scheduling in-person meetings may not be possible, and conference calls may be held at unusual hours. Once you understand your desired participants, establish the mission of your coalition.

To do so, consult your internal policy goals. Ask yourself if your policy goals will be of interest to your potential coalition members. If so, you can easily transform your own policy goals into coalition goals. For example, if one of your policy goals is that the right to work for refugees be included in the coalition, and your partners are similarly focused on work rights, your work is mostly done.

However, if the interests of your potential coalition partners are focused differently or more broadly (for example on the provision of humanitarian aid, or micro-finance or other development initiative) you may want to reframe your coalition mission as more generally improving refugee livelihoods outcomes. In such an example, work rights could be one part of a broader strategy.

The decision to frame a coalition broadly does not necessarily make it less effective. Coalitions that promote cross-sector collaboration may increase the likelihood that your rights-based policy goals will be achieved. Cross-sector collaboration may help local humanitarian and development actors better understand the role and importance of refugee rights, therefore improving general awareness of refugee rights.

#### Step 2: Invite participants

Inviting participants to join your coalition can be a marketing challenge. Participation needs to be seen as valuable and as an efficient use of time. Rather than relying on mass email invitations, consider reaching out to people personally to explain the mission of the coalition, and to stress how the coalition can add value to their existing work.

When conducting outreach, it may help to have a Concept Note available. A Concept Note explains the mission and purpose of the coalition along other information such as a rationale, expected results, and innovation. Please find below the Asylum Access Work Rights Coalition concept note used during initial outreach.

When formulating outreach letters and initiating discussions, be careful not to be too prescriptive about the coalition's strategy. Some participants may want the space to impact coalition strategy. Use the outreach moment for generating excitement and the feeling of possibility. Of course, be careful that your messaging does not deviate too far from your organization's general policy goal.

#### Step 3: Establish roles and terms of reference

Once you and your coalition members agree generally on the role of the coalition, use a session or two to review the Terms of Membership. Consider creating a draft of the terms of membership in advance of these initial conversations either on your own, or with a select few partners.

Terms of Membership is a document that outlines the expectations and requirements for participating in a group. This can help clarify the roles of coalition members, the process for establishing coalition strategies, and the external communication messages of the coalition. Please see the below Terms of Membership from the Asylum Access Work Rights Coalition, as an example.

Step 4: Create and implement a strategy

Creating a strategy with coalition members can be complex. This aspect of coalition building may be best handled by a core committee within a coalition during a strategic planning process. Be sure to know the ultimate outcome you want to achieve prior to beginning a strategic planning session, and consult your own policy goals.

#### Further resources

Work Rights Coalition Concept Note Work Rights Coalition Terms of Membership

# **Research and Publishing**

Policy research is a type of research that provides communities and decision makers with pragmatic **action-oriented** recommendations to address issues, questions or problems. It is usually linked to the public policy agenda, and it can provide useful information when developing public policies. Generally, policy research efforts (1) begin with a social issue or question, (2) evolve through a research process to develop alternative policy actions to address the issue, and (3) communicate the alternatives to policymakers. This section will guide you to decide whether research and publishing is an appropriate strategy for your advocacy by explaining its benefits and limitations. It will then outline the types of policy research that you may choose to engage in, and provide practical advice on conducting policy research.

# Adopting research and publishing as a policy advocacy strategy?

Research and publishing can be a great way to position yourself as an expert in the field, to help set a national or international agenda, and to provide information to a broader audience. Good research can also help you establish a baseline and can inform your campaign strategies overall.

However, given research and publishing is time consuming, your research and publishing should be contributing to <u>your policy advocacy goals</u>. Research and publishing is best conducted as a part of a broader campaign strategy and is typically ineffective as a standalone activity. If you choose to pursue publishing, it should be

because you want to put something out there that has not been said yet, or needs further elaboration. Consider:

- Will publishing this work position you as a thoughtful leader?
- Will publishing this work clarify an unaddressed issue in the field?
- Will publishing this work have a tangible impact?

The benefits and limitations of research and publishing:

- Great for agenda-setting
- · Opportunity to make specific recommendations to a broader audience
- Allows you to provide clear and detailed analysis
- May position you and your organization as a thought-leader
- Not usually a way to quickly advocate for change
- Is very time consuming to do well
- Can be difficult to measure its impact on your policy goals

# Types of policy research for advocacy

The role of research in advocacy varies widely, and includes aims such as to (1) recognize problems and identify issues, (2) understand key issues, (3) support a selected plan of action, or to (4) evaluate and monitor progress. Evidently, the type of policy research that you will conduct depend on the aim of your policy research. Several types of policy research are listed below.

- Focused Synthesis: a selective review of existing research
- Secondary Analysis: examining data from existing databases
- **Field Experiments**: to collect and analyze information on how effective a particular strategy is in addressing the issue. This is useful in gathering evidence on the potential impact of policy change prior to implementation, as well as monitoring and evaluating the impact of a policy change after its implementation.
- **Survey**: used to gather data on an issue and its causes. This may include personal interviews, written questionnaires, and polls.
- **Case Studies**: to record and analyze the experience of an organization or community regarding a specific issue. This can be used to better understand the behavior and other variables surrounding a situation. It can also be used to examine the process of how a policy action has been implemented.
- **Cost-benefit Analysis:** a set of methods adopted by researchers to compare at the cost and benefits of alternative policy options.

For a sample of a piece of policy research, you may refer to the Global Refugee Work Rights Report at the end of the section.

# Conducting policy research for advocacy

The steps to plan your advocacy research may include:

- Identify the main topic or research question on an issue.
- Narrow down to a sub-issue to generate sub-topic or research question.
- Determine your source of information. Depending on the type of information that you are seeking, this may come from the media, official statistics, polls, specialized policy analysis unit and think tanks, academic institutions, and traditional knowledge.
- Identify possible researchers and partners that may contribute to your research.
- Determine your data collection and data analysis methods.

Some best practices to follow:

- Be sure your writing is tied to the pursuit of your policy advocacy goals.
- Ensure that the identities of your clients are always protected. For more information on this, visit the <u>Confidentiality</u>.
- Carefully choose the forum for publishing. You should try to publish in a forum which you expect your target audiences are likely to read.
- Develop a communications strategy that promote your writing. Your published work is only as effective as your promotion of the piece.

#### Academic research vs. advocacy piece

It is important to distinguish between objective social science research and advocacy. Social science is very helpful when trying to understand and present a situation objectively. This may be helpful, for example, if you are trying to demonstrate refugees' economic impact on a host country. If you decide to conduct a social science research study, you may want to partner with an academic institution. Academic institutions are experts in at developing research questions, sampling, choosing a proper methodology for implementation, and presenting both qualitative and quantitative information. If you decide to undertake your own research study, it may be helpful to consult experts in research design.

If you are simply seeking opportunities to publish advocacy pieces, you do not need to present objective information. Advocacy pieces can helpfully shine light on a specific theme, or on a particularly marginalized person.

#### Further resources

Ten Steps for Conceptualizing and Conducting Qualitative Research Studies in a Pragmatically Curious Manner (Roland Chenail, 2011) <u>Global Refugee Work Rights (Asylum Access and Global Refugee Work Rights</u> <u>Coalition, 2014)</u>

# Applying Strategies to Common Stakeholders

Policy advocacy can be targeted to a wide spectrum of stakeholders. This may include policymakers, government officials, human rights bodies, networks, coalitions, the public, donor organizations, NGOs and the media. Evidently, the stakeholders you choose to target will depend on your policy advocacy goals and the context in which you work.

In the <u>policy advocacy planning</u> section, the understanding levers of influence section explained the process of identifying which stakeholders can influence the central issue you wish to advocate on. This section further develops this process by focusing on specific strategies that you may use to engage with the relevant stakeholders. A guideline is provided on how, and who to approach in UNHCR and the government to achieve the most effective results.

# Advocacy with UNHCR Headquarters

Although choosing to engage with UNHCR on an international level can be very helpful, it should be pursued with caution. Interacting with UNHCR on an international level is like approaching the local UNHCR's boss – it is possible that the local UNHCR will view this kind of advocacy counter to the spirit of in-country partnership. However, depending on the particular nature of your relationship with the local UNHCR, UNHCR headquarters can play a powerful intermediary role. This section will outline the ways in which you may advocate with UNHCR on an international level.

Advocacy with UNHCR headquarters can happen in a few different ways. First, you could pursue writing opportunities through the **Policy Development and Evaluation Service**. These reports have a wide-array of viewership.

UNHCR makes most of its major decision-making once per year with its member states during **meetings of the Executive Committee**. This typically takes place in October every year in Geneva. It is generally difficult for NGOs and other members of civil society to gain access to Executive Committee, however, some actors choose to position themselves in Geneva during this time period in order to strategically schedule meetings with relevant national refugee officials as they are most focused on refugee response. More commonly, NGOs will attend **Pre-Executive Committee NGO consultations**, which occur in June every year in Geneva. NGO consultations formally consists of a series of theme-specific panels, in which UNHCR and NGOs discuss pressing issues in refugee response. Informally, UNHCR consultations also have several networking events and trainings, including the Asylum Access Refugee Rights Training.

Participating in NGO consultations allows you and your organization the opportunity to communicate specific messages to your fellow refugee response actors who work either in your country or in others, and to engage with members of coalitions that you might only interact with over Skype or phone. These are critical relationship building moments that can raise the professionalism and legitimacy of your organization in the eyes of powerful actors.

Aside from relationship building, attending NGO consultations should not be in and of itself a goal. Rather, it is a forum that can be used to strategically pursue other goals. For example, if one of your goals is to help refugees in your country access work rights, you can use NGO consultations to call UNHCR's attention to work rights in your region.

You might use this moment to look for a potential champion at UNHCR headquarters to help you engage with local UNHCR, or to locate potential coalition partners for a work rights campaign. You might also do some direct advocacy by setting up meetings with UNHCR officials or other potential partners specifically calling attention to the state of work rights in your country. You might also seek to participate on a panel that is discussing work rights so you can communicate your message more broadly.

Attending NGO consultations can be expensive. As it requires significant resources, it is important that you carefully construct and focus on some specific goals for your organization.

When UNHCR is the adjudicator, it is critical to maintain a positive working relationship in order to protect your clients' ability to receive unbiased treatment. For this reason, advocacy approaches should not be overly publicized or adversarial. This can be especially difficult for young advocates who experience feelings of frustration and injustice. As a program director, it is critical that you keep staff focused on the protection of the client.

# Advocacy with Local UNHCR

For a refugee rights organization, engaging with local UNHCR is typically more targeted. However, the type of advocacy you will be engaging in is likely to be tied to whether or not UNHCR is the adjudicator. If UNHCR is not the adjudicator, they can be your potential advocacy partner. If UNHCR is the RSD adjudicator, legal aid providers are often focused on ensuring that UNHCR is upholding the RSD procedural standards.

This section will explain how a refugee rights organization can engage in advocacy to hold UNHCR accountable in its RSD procedures.

When advocating for UNHCR to improve its RSD procedure, you may want to focus on areas such as:

- Clients are not wrongly denied of refugee status
- Reduction of long waiting time for RSD interview for those identified as marginalized
- Adequate time notification of delayed interview
- Lawyer representative present (as observer) for RSD interview
- Provision of transcripts or interview recordings
- Access to evidence
- Fair and transparent independent appeals
- Development of Child Protection Protocol

Establishing this kind of agenda is most effective when your advocacy is meaningfully informed by your clients' experience with UNHCR. As you provide legal services to your clients, you might notice patterns in their experiences that suggest non-compliance with UNHCR's RSD procedural standards. Generally speaking, a good advocate will be able to represent the experience of their clientele. Therefore, to monitor your clients' experiences more systematically, it is worth developing a system to capture information about your clients' experiences navigating the RSD system. For further details on data management, you may refer to the <u>Database</u> section in the Legal Services section.

After you have identified ways in which UNHCR should improve its RSD procedure, direct advocacy is the likely starting point for reaching out to local UNHCR regarding concerns about due process in RSD. Ideally, you can resolve the concerns directly with the office. However, if the local UNHCR does not respond to direct advocacy, you can try other strategies. This may include a letter writing campaign in collaboration with a coalition, or asking a regional or international office to assist.

It is important to note that when UNHCR is the adjudicator, it is critical to maintain a positive working relationship in order to protect your clients ability to receive unbiased treatment. For this reason, advocacy approaches should not be overly publicized or adversarial. This can be especially difficult for young advocates who experience feelings of frustration and injustice. As a program director, it is critical that you keep staff focused on the protection of the client.

### Advocacy with Governments

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When dealing with the government to advocate for a specific policy, refugee rights leaders will need to decide on how they approach the government. This may vary from

adopting a naming-and-shaming approach to a collaborative approach. This section will discuss the advantages of adopting a confrontational versus a collaborative approach with the government. It will then highlight how you can build and maintain a collaborative relationship with the government. In particular, it will provide advice on (1) mapping government structures and identifying officials, (2) approaching the government, and (3) coordinating a unified approach.

### Confrontational vs. collaborative approach

There are benefits to both a confrontational or a collaborative approach with the government. A confrontational approach may allow your organization to maintain its independence. If an NGO, for example, is monitoring the government's implementation of a certain policy or new law, the NGO must be able to freely identify problems with it so that the appropriate critique can be addressed.

On the other hand, there are benefits in building a collaborative relationship with the government, especially when advocating for refugee rights and in legislative change. Refugee rights organizations can benefit from engaging elected and appointed officials in their local and federal governments. Such an ally can increase the changes for wide scale reform, and potentially increase your organization's resources for a specific cause. For example, an NGO can collaborate and join resources with the government to carry out public awareness campaigns. For more details in assessing your risk, refer to Considering Policy Tools and Risks.

### Mapping government structures and identifying officials

NGOs must be strategic about their government relationships. To successfully build a strong and cooperative relationship with the government requires time and aligning yourself with the right allies. The following section provides advice to facilitate your interaction with the government.

Find government officials who both have the influence and can champion your organization's advocacy goals. Just as operating with NGOs, the first step when engaging the government is to do your research and become familiar with the government landscape.

To do this, build a relationship diagram that outlines local and federal government agencies and individuals. Identify your potential supporters and challengers and then map out how they relate to your organization. This can be challenging in countries that do not have a clear government structure – try to be as specific as you can! Some useful questions to consider when constructing the relationship diagram are:

• Is there a government ministry or department responsible for the issue?

- Is there a sub-committee or committee in the legislature that is responsible for the issue?
- Has the government issued any policy statements on the issue?
- Has the government signed any relevant international treaties?
- Are there any Members of Parliament interested in the issue?
- Have the political parties taken a position on the issue?
- Is there a National Human Rights Institution and can it freely conduct its work? Does it serve as a smokescreen or can it be a key ally?

Consider reaching out to customary or traditional leadership who themselves may administer customary law in the local area or may hold sway over formal government structures in certain contexts.

Moreover, it is important to note that establishing a relationship with the government may not be in your best interest if the government does not have the citizen's trust. Would relationship-building with the government to advance advocacy programs affect your legitimacy in the eyes of the community in which you run empowerment activities or legal services?

### Approaching the government

The next step is to strategize how your organization is going to build these relationships. To do this, brainstorm on how the government officials can be accessed. Consider whether there are any formal or informal channels of access. Consider who or what will influence the government on a specific issue. Is it other businesses? Other countries? The media? Particular journalists?

The International Refugee Rights Initiative has a directory of refugee-sympathetic journalists that your organization can leverage. Use this directory, and also help contribute to it!

The most effective working relationships are built when the civil society involves the government in their efforts. For example, you may update the government about recent initiatives and research efforts, and invite them to events and training sessions.

In addition, remember that governments are more likely to be responsive and open if they perceive your organization to serve their interests. It is important to consider whether your advocacy goal may go directly against the state's interests. For example, if your organization is seeking to enable refugees to become more autonomous and self-sufficient, this may go directly against the state's interests in perpetuating aid income for economic and foreign relation purposes. In this case, you may choose to reframe your goals

Your relationship with the government can be seen as reciprocal: direct service providers need the government just as the government needs them. For example, the grassroots relationships that you have established in your communities may mean you can reach people that the government does not otherwise have access to. As you engage with the government, it is important to highlight the benefits that your organization can bring to the government.

While national-level advocacy and relationship-building is often vital, it is important not to overlook local authorities with whom you may also interact with on a regular basis. These actors may not react favorably if they feel overlooked by the organization. Therefore, make sure to involve both national and local level government actors. For more information, refer to the <u>direct interventions with policymakers</u> section.

### Coordinating a unified approach

In maintaining a good relationship with the government, recognize that each formal and informal interaction between your organization's staff members and the government reflects on the organization.

It may therefore be advisable that your team defines a clear strategy and standard operating procedure for working with government bodies. Consider, for example, whether interaction should be coordinated through one central person or department. It may be practical to assign a single person to communicate between your organization and a certain government office or official. This can minimize the government from receiving multiple, and potentially conflicting, messages from within your organization.

To avoid this situation, a good strategy is to inform your staff members and volunteers about your defined approach with the government from the beginning. Outline the status of the relationship with the government, as well as potential frustrations and risks. Let frontline advocates know the best manner with which to raise their concerns within your organization. For example, advocates may:

- Write a memo suggesting a policy change that is then strategically brought forth through the organization.
- Discuss their concerns with other refugee rights organizations to decide whether there is a larger, concerning trend that needs to be addressed in a strategic manner. This may lead to targeted policy advocacy or even litigation.

It is important to ensure that your staff members are aware of how your organization interacts with the government. One challenge that Asylum Access was confronted with was when zealous, well-intentioned advocates, who often had just arrived in the host country, would charge into a government office on their own demanding change because something unfair had just happened to their client. Unfortunately, while such frustration is understandable, this approach often leads to the opposite effect. The approach was detrimental to the client, jeopardized the organization's overall relationship with the government, and affected the larger refugee rights movement.

#### Confrontational relationships

In addition, while a refugee rights initiative should strive to have a cooperative relationship with the government, it should also not be afraid to let that relationship become confrontational. Achieving your aims may sometimes work best through collaborating with the government, while at other times it will come about through confrontation.

When confronting the government, however, it is important to have the necessary research and data to back-up any assertions. Such independence is a crucial tool for maintaining an organization's effectiveness and credibility. Refer to the Research and Publishing section for more information on data for advocacy.

To be effective and credible, NGOs must ensure that the staff and volunteers who carry out monitoring of government policies or new laws are knowledgeable, well trained and impartial.

Further resources

Directory of Journalists Interested in Reporting on Refugees (International Refugee Rights Initiative)

## Gender Frameworks in Policy Advocacy

Policies are often analyzed for how they will impact the economy. Sometimes, they are analyzed for how they will impact different social, economic or cultural subsets of the population. Keep in mind that policy analysis is not complete until you have also conducted a gender analysis. Policies are often created with the needs of men in mind. Societies typically default to writing and enforcing legislation in a way that promotes the interests and experiences of men. Sometimes this discrimination is obvious. Other times the discrimination is hidden. Because of that, it is critical to examine policies from a gender framework and use that information to encourage policies that will lead to gender equity.

This section will specifically address the following intersections between gender and policy advocacy:

- Gender Sensitivity During Needs Assessments
- Gender Perspective in Analyzing Policy

### Resources for Planning for Policy Advocacy

There are many existing materials that can help you plan for policy advocacy. Consider referencing the following Policy Advocacy planning tools from Continuous Progress and Innovation Network. Key policy advocacy planning resources:

<u>Continuous Progress Advocacy Planner Toolkit</u> <u>A Guide for using the Continuous Progress Advocacy Planner</u> <u>Innovation Network Point K</u>

Also, consider referencing these Asylum Access materials on Policy Advocacy campaign planning.

Asylum Access Planning Worksheet Asylum Access Policy Advocacy Tracker Asylum Access Advocacy Planning Guide

### Using a Gender Perspective in Policy Analysis

Using gender perspective can change the way you view the world. At its core, a gender perspective helps understand how men, women, boys and girls experience things differently. In policy advocacy, using a gender perspective helps uncover inequities in policy or its implementation. This section will provide a brief outline on how to adopt a gender perspective in policy analysis. As you conduct your policy analysis, it is

advisable to consult research regarding gender issues faced by refugees in your specific country.

Often times, when policies do not make explicit reference to men or women, it is assumed that they are not discriminatory in nature. However, it is critical to remember that equal treatment under the law does not always lead to equal protection.

For example, a law may state that all refugees have access to the right to work. However, there are many reasons why that may not lead to gender equality in work opportunity. Firstly, there may be other laws, such as discriminatory work policies, that contradicts this law. In order for the policy to create equal access to work opportunity in this instance, this policy must be upheld over other contradicting policies. In addition, it is also important to promote affirmative policies to facilitate equality. For example, laws on parental leave and affordable child care might target women more than men in order to ultimately allow women and men to have equal access to work.

Evidently, women and girls are not the only population that may experience discrimination. Often youth, including men, face discrimination in policy as well. Fully implementing a gender perspective requires the examination of how men, women, boys and girls experience policies individually.

### Guidance from the status of women Canada

The Status of Women Canada, a Canadian government organization that promotes equality for women and their full participation in the economic, social and democratic life of Canada, has helpfully developed a gender-based analysis tool for policymakers and policy advocates. It covers the eight steps of policy development, and explains how a gender analysis can promote gender equitable outcomes during each of the steps. Specifically, their document covers the follow eight stages:

- Identifying, defining and refining the issue
- Defining desired/anticipated outcomes
- Defining the information and consultation inputs
- Conducting research
- Developing and analyzing options
- Making recommendations/decision-seeking
- Communicating Policy
  - Assessing the quality of analysis

#### Materials for Download

Gender-Based Analysis in Policy-Making (Status of Women Canada, 1998)

### Identity Protection in Advocacy Materials

It is often a powerful advocacy tactic to share the stories of refugees — especially the stories of women and girls who have overcome tremendous hardship and yet continue to face rights violations. Because we work with survivors of persecution, it is critical we always take precaution that refugees are not identifiable by their persecutors or any other authority figure with the power to deport, detain or otherwise harm refugee clients.

For this reason, it is critical that when you use the story of any refugee that you protect his or her identity. Following these simple rules can help ensure you are protecting the refugee from any potential harm.

- Always get explicit permission from a client before using her story in organizational materials.
- Never use a photo of a refugee that accompanies her story.
- Change names.
- Don't use identifying information that would single out the woman (e.g. real names, contact information, etc.) Any specifications that are unique to a person's experience or could identify the person should not be used. If someone is the only person from a particular city that resides in Bangkok, don't share that person's story.



## **Strategic Litigation**

Strategic litigation, also known as impact litigation, public interest litigation or class action, is a process that utilizes judicial systems to enforce, describe or define a right. In this context, it refers to the use of courts at the national, regional and international level to address widespread problems preventing the realization of refugee rights, for the benefit of large numbers of refugees.

It may secure the implementation of existing policies and laws, or seek to change these, generating domestic, regional or international jurisprudence that positively affects a right

 including through definition or precision – and positively changes the public perception of refugees.

Strategic litigation is a relatively combative method of engaging with governments, and may therefore be seen as a final resort when negotiation, lobbying and advocacy efforts are ineffective.

### Overview

When time and resources are in short supply, working out how to focus efforts, prioritize cases and maximize impact is crucial. This section details important considerations throughout the case's lifetime. It highlights factors that might influence case selection – from admissibility requirements and evidential standards of international bodies and courts, to client participation, funding and impact potential. The section also considers the impact of strategic litigation through monitoring activities, and seeks to expand influence by conducting related policy advocacy and media outreach.

Specifically, this section offers guidance on:

Overview	
Strategic Litigation Management	
Plan for Strategic Litigation	
Monitor and Evaluate Strategic Litigation	
Gender Frameworks in Strategic Litigation	
Strategic Litigation Procedures	607
Case Selection	
Case Approval	
Client Engagement	
Pre-Litigation Actions	
Litigation Actions	

# Strategic Litigation Management

Managing your strategic litigation program will likely require cooperation by various departments in your NGO. For instance, financial planning, staffing your team and elaborating related communications and advocacy strategies must all be attended to by strategic litigation managers before proceeding to pre-litigation stages. If your organization plans to keep management in-house, or within the strategic litigation department, coordinators should familiarize themselves with other aspects of litigation,

beyond mere legal theory (e.g. business operations and human resources).

Therefore, collaboration between functional profiles is key to the success of strategic litigation. Additionally, managers must focus on building-up contacts with potential collaborators, both locally and internationally; and should dedicate substantial time to networking with refugee and human rights practitioners, academics, funders and consultants.

Networks focusing specifically on strategic litigation exist, for example the strategic litigation initiative of the Adjudication of Economic, Social and Cultural Rights Working Group. They offer support in the form of networking, case law databases, and capacity building training sessions.

The highly collaborative nature of strategic litigation necessitates the involvement of a number of relationships, which must be managed. For example, the relationships involved may range from those established and built with court or other justice officials, to daily working relationships with interns, volunteer legal advisers and other colleagues. Despite the long, stop-and-start nature of many cases, these relationships should be attended to throughout the process, and beyond, in order to expedite the collaboration of future cases.

The following sections address the diverse and interlinked aspects of managing strategic litigation.

### Plan for Strategic Litigation

Conducting strategic litigation is a long-term process, which must be reflected in financial and strategic planning. Most international bodies require that domestic remedies be exhausted prior to submitting your case. This often requires years of waiting while cases work their way through national systems, which means setting time frames may be entirely speculative. This necessitates different techniques for fundraising, budgeting and hiring, addressed below.

This section addresses operational concerns. For step-by-step advice on planning actions on specific cases, click on the following link:

Pre-litigation Actions and Litigation Actions

### Strategic planning: setting and achieving goals

Visible progress in strategic litigation is traditionally slow, with cases stretching over years – even at the admissibility stage. Although a final court decision is the ultimate aim, the process itself can have a significant impact. It is important to acknowledge progress in the form of awareness-raising and agenda-setting, and reflect this in drawing-up the objectives of your strategic litigation program.

Further information on understanding, defining and measuring success can be found in the <u>Monitoring and Evaluation in Strategic Litigation</u> section. This section offers examples of flexible and useful SMART objectives, indicators and potential measurements. It also provides an evaluation report of a human rights strategic litigation program to illustrate these issues in practice, as well as an academic paper discussing the challenges of evaluating strategic litigation for human rights.

### **Financial planning**

The longevity of strategic litigation cases means that serious consideration must be given to financial planning. When taking on a case, you have an obligation to see the process through with your client(s), unlike, for example, policy advocacy, where strategies can be reoriented without affecting commitments to others.

As a stop-start process, reserve resources are required for those go-moments in strategic litigation cases. It is easy to be caught off guard, unlike in legal services, community empowerment or advocacy programming. This is particularly important when bringing gender-based violence (GBV) cases, in which clients may suddenly find themselves in a position of immediate danger and interim measures are sought.

Costs related to strategic litigation may include (but are certainly not limited to):

- Court filing fees
- Covering potential liabilities in the event of a negative decision
- Professional fees (lawyers, interpreters, translators)
- Staff time (salaries)
- Research costs (subscriptions to legal databases of jurisprudence, additional legal researchers)
- Travel (to access refugee litigants; for refugees to visit your organization; to access courts may include air fare, accommodation)
- Printing costs (document production can be expensive)
- Communications (phone calls to and by refugee litigants; international calls to partners)

Although predicting case outcomes is not possible, it is important to have funds in place for all potential steps of any strategic litigation process, in the event that the complaint is pursued to the highest level at which your organization hopes to litigate. This may present difficulties complying with donor reporting requirements, which typically expect all funds allocated to be spent as planned, and view failure to fulfill all aspects of a plan negatively – with some even imposing penalties.

Asylum Access has approached the constraints posed by timescale uncertainty and the contingent nature of many strategic litigation actions by earmarking staff time, travel and printing costs, and by seeking both unrestricted funding (that does not have to be spent on a specific activity or item, and which can be internally earmarked for strategic

litigation) and non-time-bound funding (even if restricted) that does not come with a deadline by which to be spent.

It is important not to tie your strategic litigation cases to any one source of funds, as this is inherently unstable. It is risky to pursue long-term cases if you are funded by just one grant: if this is unavoidable, examine your organization's unrestricted funds for potential fallback in case that grant is lost.

Another consideration is whether you may be investing too heavily in one case, which could become a significant resource drain and jeopardize other programs. Such decisions should be made when dividing up your organization's annual budget and allocating resources.

National and international grant-making bodies exist to fund or assist in-kind with strategic human rights work, such as:

Advocates for International Development Open Society Initiative for Southern Africa

Local and international fundraising events may both raise the profile of your case, widen the support base and lead to funds or in-kind donations (e.g. press coverage, interpretation). Coordinate all outreach with media and communications efforts.

### Human resources

### Internal

Strategic litigation also has implications for hiring staff, as national laws may impose certification or registration requirements allowing, for example, only local lawyers standing to represent litigants.

Litigating cases at international levels requires a different skill-set than that needed for legal services advisers. Job or volunteer adverts tailored to strategic litigation programs may include the following requirements:

- Provide information management regarding pending judicial proceedings;
- Prepare written arguments for and carry out procedures with international courts and other agencies using legal argumentation based on statute laws and jurisprudence;
  - Carry out in-person court visits to national courts and other agencies;
  - Revise and analyze legislation and internal, international, and comparative jurisprudence according to the strategic litigation cases;
  - Assist in strengthening judicial strategy and complementary activities for the initiation of cases and obtain any other information necessary for adequate case management;

#### External

Successful cases rely on partnerships and collaboration: Activating these early on creates a sense of ownership and motivation among different participants, whether or not they are official parties to a case, fostering their commitment.

It may be that you require the services of a locally registered lawyer if you do not have this capacity internally. Cases may be strengthened by amicus curiae briefs (expert opinion or testimony) presented by other organizations or experts, and while some jurisdictions allow the introduction of an amicus at various stages of the proceedings, others require their inclusion from the outset. This must be factored into outreach planning and partnership building, with clear communication and commitments between all parties regarding timelines and submission deadlines.

Additionally, cases may require additional resources for psychological support for clients. This support is essential at all stages of the process to minimize re-traumatization and promote healing and empowerment.

It is therefore advisable to build up a directory of researchers, advisers, pro-bono lawyers, academics interpreters, translators, psychologists, safe houses, faith-based organizations, media and court contacts to support different aspects of strategic litigation processes.

Fahamu Refugee Programme maintains a directory of pro-bono legal assistance providers including organizations, lawyers and others who are able to assist refugees, free of charge, in legal matters. Fahamu aims to connect legal providers assembling and arguing cases worldwide and provide them with expertise on COI, case development and other aspects. Advocates for International Development offer a broker service to source legal assistance for human rights projects focused on ending poverty.

Fahamu's Directory of Pro-Bono Legal Assistance Advocates for International Development Broker Service

### **Identify Impact Themes**

Strategic litigation seeks to address widespread problems that significantly affect a large group of people. Examples of refugee rights strategic litigation cases include the initially successful challenge to the legality of deporting Somali refugees from Kenya, brought by Kenyan legal NGO, Kituo Cha Sheria, and Asylum Access Ecuador's Public Unconstitutionality Action underway against Executive Decree 1182.

Kituo Cha Sheria's Challenge to the Legality of Deporting Somali Refugees, Kenya: Asylum Access's challenge to the constitutionality of Decree 1182, Ecuador When identifying major problematic themes, you should consider the potential number of individuals or groups that may benefit from a positive case outcome. Activities and procedures that may already form part of your every day work may help pinpoint key areas where strategic litigation challenges could make a difference:

- Annual planning activities;
- Internal monitoring meetings or exercises;
- Field visits;
- Consultations with clients, community groups, NGOs and legal practitioners; and
- Themes may also be sourced from publications such as journals, newsletters, and reports from other parties tuned into refugee issues in your area.

Regularly discussing major trends and issues arising from the client base within your organization and among partners and colleagues is an important activity regardless of strategic litigation intentions. However, these discussions could be structured with the aim of identifying particular barriers to refugee rights, or patterns of rights violations that might be remedied through the court system.

Many potential themes are likely to arise, and it is important to assess the appropriateness of addressing such themes through impact litigation. Deciding to pursue strategic litigation may depend on whether an issue is being negotiated in other fora – through policy advocacy, or by capacitating refugees to pursue such avenues themselves – and the success, or otherwise, of these endeavors. Strategic litigation is often perceived as confrontational and may jeopardize already strained relationships with government authorities. In some contexts it may even put refugee clients at risk, whose cases may be affected simply by association. Consequently, it is better saved for circumstances in which direct negotiation is no longer feasible.

If you identify many strategic themes it may be useful to prioritize, taking into account the costs and efforts required to effectively litigate such a case. Not all themes will be available themselves to be litigated at the same level – some may be possible in domestic courts, while others may have standing to be brought internationally, with varying implications for time-frames, funding and staffing.

When themes are identified these must be communicated to all staff and volunteers providing legal services or running community legal empowerment activities, so that they are able to refer compelling cases to the strategic litigation coordinator to decide on further action. Staff and volunteers should be given guidance on understanding whether a case is suitable for impact litigation under one of the chosen themes, and encouraged to flag cases regularly, even if unsure of their potential.

### Map Potential Fora

Refugee rights can be litigated in local, national, sub-regional, regional and international courts. Each has their own admissibility requirements, benefits and disadvantages, all of which could affect the outcome. It is important to determine, early on:

- 1. What instruments has country X signed and ratified? Do they have reservations to parts of these treaties?
- 2. Which forums exist that could accept the complaint (the Refugee Convention, despite nascent interest, has no complaints mechanism for hearing cases)?
- 3. What are their specific admissibility requirements? This is composed of several elements:
- Admissibility Rationae Materiae: The alleged violation must relate to a right protected by that instrument. If this link is not sufficiently demonstrated claims may be dismissed as 'insufficiently substantiated' or 'manifestly ill-founded.'
- Admissibility Rationae Loci: The alleged violation must have occurred on the territory or under the control of the country where the suit is being brought.
- Admissibility Rationae Temporis: The alleged violation must have taken place since the country adopted the treaty (signed and ratified).
- Admissibility Rationae Personae: The person(s) or organisation(s) bringing a case must be citizens of the accused state.

The "Admissibility Rationae Personae" requirement (above) relates to 'locus standi' – who can bring a claim or be the named defendant (i.e. individual litigants, organisations, the state or state departments). This consideration also applies to amicus curiae (interested party briefs) if these are allowed. There may also be time limits on admissibility. Cases may not be admitted beyond a certain period after the allegedly unlawful act took place.

- 4. What might exempt a claim from the body's jurisdiction?
- Duplication of Procedures: Pay attention from the start to whether courts or commissions admit cases that have already been heard, or are being heard, before other international courts. When joining instruments that admit cases heard or underway elsewhere, many countries make a declaration stating that they do not recognise claims submitted simultaneously elsewhere.
- Issue Preclusion: Claims on issues previously dismissed by the supervisory body may be dismissed as 'abusive' complaints.
- 5. What is the body's track record on upholding refugee or migrant rights? Which is the most empathetic or impartial body?
- Whether decisions are binding and whether states comply with them?
- What opportunities are there to appeal?
- What is the most preferable outcome for the organisation and the refugees involved (e.g. generous reparations, a policy change, etc.)?

- Whether urgent 'interim measures' are required to stop irreparable harm, and which body can enforce these (e.g. injunction, restraining order, etc.)?
- 6. If urgent interim measures are not sought, most regional or international courts will require you to exhaust all available domestic remedies first:
- Work out how you can do this most efficiently, keeping in mind your end result. Which national bodies will issue decisions the fastest?
- It may also be that domestic judicial remedies are ineffectual or take an unduly amount of time, providing grounds for exemption from the requirement to exhaust domestic remedies.

Consider where the court is located. Refugees may need to travel long distances to hearings, and may feel isolated from the process if the court is distant. Some courts may be able to host video connections in hearings, others may not. Travel and its associated costs may be steep, however many people find it important to 'have their day in court,' to feel justice is carried out.

Keeping a document on file that summarizes the above characteristics in relation to available fora is advised to easily reference and expedite the selection of the most appropriate and effective forum when cases arise. Attached is a template to assist in understanding available fora.

#### Material for download

Template for Mapping Fora

### Train Staff

A crucial component of setting up a strategic litigation program is staff and volunteer training. Front-line staff – legal service providers and those running community outreach programs – play an important role in identifying patterns of legal problems requiring change through litigation, therefore it is vital that they understand both the relevance of impact litigation and the current impact themes that have been selected for potential action.

Training on strategic litigation should consequently feature inductions for new staff and volunteers. Impact themes should be communicated regularly to front-line service providers, with refresher training when they are updated or changed.

Front-line service providers must feel confident in using the internal procedures for referring a case that falls within the scope of these impact themes to the strategic litigation team, and protocols for client consultation before taking the case further. Procedures should be clearly set out, easily accessible, and simple to follow.

The staff and volunteers working directly on the strategic litigation program must be instructed regarding:

- The available fora and their admissibility requirements and appropriateness for different types of cases;
- Applicable international and regional law;
- Rules of procedure for filing and pursuing a complaint at these institutions; and
- Internal protocols for client engagement and media outreach or other communications.

Such training may also include going through internal policies on division of responsibilities between legal and administrative staff, and procedures for soliciting external help mindful of confidentiality. In establishing these policies and teaching staff and volunteers what is to be expected, consider the balance between spreading work out over many people. This may be appealing to busy lawyers seeking future *pro bono* work, but it is important to maintain consistency and open communication channels.

Strategic litigation is often costly and labor-intensive. Consider flagging the need for external collaboration to all staff when they receive training, regardless of their direct involvement with the program. This practice alerts a wider group of people to the need to activate their network of professional contacts and may boost the organization's directory of advisers, researchers, interpreters, psychologists, court contacts and other partners.

### Monitor and Evaluate Strategic Litigation

Monitoring and evaluation, as discussed in general in the <u>Results-based Management</u> section, is necessary to convince funders that your organization is making a difference, and to allow staff to reflect on their achievements and areas for improvement. Evaluating strategic legal processes is complicated, given the slow and long-term nature of cases, and what may appear to be a low success rate.

Success in strategic litigation should not be defined solely on victories in court. Losing legal battles is common, given the inherently combative and contentious nature of human rights impact litigation subject matters. Moreover, countries often have decades of cases waiting in backlog. Be aware that the judicial atmosphere may severely limit your progress, but there are strategies to expedite hearings. Therefore, dialogue with officials, establishing publicity, and forming campaign alliances should be classified as related successes.

### How to think about successes

It is important to evaluate success based on goals. Therefore, clearly defining goals at the outset is key, and should enable monitoring and evaluation to take place effectively

from the start of the litigation process. Defining goals that consider indicators and other measures can broaden your understanding of success.

Beyond evidently favorable case outcomes, the following indicators could be factored into your monitoring procedures as impact indicators for the actions or outcomes of cases

#### How did case actions or outcomes:

- Advance the interests of survivors/claimants;
- Explore and promote under-utilized laws or mechanisms to advocate for other litigants in the future;
- Catalyze similar actions, movements or solidarity among shared interest groups;
- Further attempts to investigate, document and publicize alternative 'truths' related to a conflict or rights abuse;
- Contribute to survivors' healing, reconciliation or search for comprehensive justice;
- Illustrate the utility of universal jurisdiction or other extraterritorial or under-utilized jurisdictional principles;
- Strengthen the networks and skills of human rights actors;
- Cause shifts in public opinion or create open spaces for healthy debate;

Examples of <u>SMART objectives and indicators</u> for strategic litigation programs

# In the early stages, short-term objectives may also form part of the organization's capacity building, administrative, or research and policy advocacy activities:

- By [date], the organization applies for observer status at regional commission or court.
  - Indicator: Status successfully granted.

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- By [date], the organization circulates job descriptions to attract specific staff or volunteers for strategic litigation.
  - Indicator: Recruitment process initiated and staff/volunteers are hired
- By [date] the organization identifies major thematic issues for strategic litigation and trains legal advisers to recognize cases.
  - Indicator: Thematic issues are delineated and advisers refer such cases, or consult strategic litigation staff for identification help
- By [date] the organization builds capacity for strategic litigation.
  - Indicator: Holding at least two training sessions for all staff on relevant strategic litigation guidelines (e.g. case identification)

- Indicator: Developing partnerships with individuals or institutions who can assist significantly with litigation through mediums such as authoring or mentoring a submission
- By [date] the organization contributes at least two amicus curiae to a relevant strategic litigation case brought by partners.
  - Indicator: Number of amici briefs submitted
- By [date] the organization prepares at least two contributions to regional or international human rights protection mechanisms on the basis of observed trends.
  - Indicator: Number of contributions presented

#### Later on, long-term objectives could include:

- By [date] the organization identifies major thematic issues for strategic litigation and a process for recognizing specific cases that fall within the parameters of these themes.
  - Indicator: three potential cases identified through a systematic process
- By [date] the organization develops a specific litigation plan for at least one rights violation.
  - Indicator: Existence of a comprehensive litigation plan
- By [date] the organization prepares a written submission.
  - Indicator: Draft submission finalized and case submitted
- By [date] the organization prepares monitoring plans for each individual for whom a case is being brought.
  - Indicator: Establish a monitoring plan document, carry out community meetings or outreach with individuals
- By [date] the organization develops a communications strategy in conjunction with case work and demonstrates progress towards implementation.
  - Indicator: Number of times your case has garnered media attention
- By [date] organization submits at least two amici to strengthen an existing case.
   Indicator: Number of amici submitted
- By [date] the organization promotes the positive development of a particular case.
  - Indicator: Report progress or occurrence of hearing
- By [date] the organization evaluates actions undertaken on cases every two months to ensure strategy direction is followed or tailored.
  - Indicator: Progress reports on cases
- By [date], the organization wins a case establishing or enforcing a right under relevant domestic or international law.
  - o Indicator: Positive decision by national, regional or international body
  - Indicator: Recognize deference to the legislature as neutral, but look for avenues to infiltrate legislature, or reform your litigation strategy to target courts in different jurisdictions or with different views. Judicial deference to

the legislature should be seen as a tool for your Policy Advocacy efforts and mechanism to identify available, contentious issues to litigate

- By [date] the organization influences the revision of current refugee status determination (RSD) rules / access to rights procedures / [other legal reform need] through the courts.
  - Indicator: Existence of case documents such as plan of action and legal documents
- By the end of every two years the procedures and strategies for the methodology for strategic litigation are validated.
  - Indicator: Development of methodology document
- By [date] a positive change in government behavior occurs, arguably as a result of the organization's strategic litigation and public awareness efforts, considering rights under relevant domestic and international law.
  - Indicator: Evidence that behavior has changed drawing data from refugee testimony, observed practices, human rights reports, etc.
  - Indicator: The next step is analysis establishing causal link with your organization's work
- By the end of the organization's year it produces a report on trends in violations of refugee rights and emblematic cases worked on during the previous year.
  - Indicator: Report document, release event etc.

#### Examples of analysis and evaluation of progress measurements

- Number of training sessions held internally on strategic litigation guidelines
- Number of partnerships developed which can assist with litigation
- Number of bodies at which Observer status (or other appropriate standing) applied for and/or successfully received
- Number of potential cases identified (or progress towards identifying those cases)
- Number of times your case is in the media

#### **Recommended resources:**

Tackling the Evaluation Challenge in Human Rights- Assessing the Impact of Strategic Litigation Organizations (Hertie School of Governance, 2010) Final Evaluation Report: Strategic Litigation on Anti-Discrimination and Minority Rights Issues in Bosnia and Herzegovina, Croatia and Kosovo (Minority Rights Group International, 2011)

### Gender Frameworks in Strategic Litigation

Using a gender framework means being attentive to women's, men's, boys' and girls' and adults or children who fall outside traditional gender roles specific needs, concerns, roles, responsibilities and identities, and the differences and inequalities therein, in all aspects of your work and behavior. These gendered risks and vulnerabilities may not be obvious, so every effort should be made to listen carefully to people's individual needs and perspectives in order to understand them, and perceive issues that may not have occurred to you naturally, and in turn reflect these considerations in your client interaction and litigation work. Because every individual comes from particular cultural and gender backgrounds, we are unlikely to be aware of all the concerns of people different from us. This is why listening and creating a friendly, open environment in which no one is afraid to express intimate concerns is of utmost importance.

#### Case study

Over several months a male client was attending the office regularly in order to follow up and work on a case. The client became familiar with the activities of the organization and expressed interest in attending the women's groups he saw taking place among other refugee clients. Surprised, his legal adviser asked him if he identified as a woman, to which the answer was yes. This brought up the issue of how to reflect this identity in other legal documents and integrate the client into a group of potentially unwelcoming refugee women clients. Only then did we realize that gender-sensitivity training should not be confined to staff, volunteers and other colleagues, but also extended to community outreach activities.

# Gender Framework Considerations Specific to Strategic Litigation

There are particular issues to be aware of when bringing impact litigation cases to national and international courts. Since these cases are often lengthy processes, spanning several years, gender-specific concerns may vary with time, so thinking of gender – and the intersection of other identity categories – should be present throughout your engagement in a case.

Discrimination is intersectional meaning that other identity categories such as race, age, ability, income level, sexuality or ethnicity in combination with gender can impact the level and kind of discrimination clients experience. We should therefore be aware of multiple sources of discrimination and how discrimination may be different for someone who is marginalized in more than one area than for someone experiencing marginalization in only one area (e.g. a white woman will be marginalized differently

from a black woman or from a queer woman). Consider developing a checklist of things to look for in potential impact or strategic litigation cases – often these issues may not be explicitly stated.

As well as duration, the international aspect of strategic litigation cases is likely to generate particular gender-related concerns among refugee clients that are less present in other aspects of your work, such as in-country legal services, workshops and advocacy activities.

If your organization has selected gender-based violence (GBV), or women's rights as a particular thematic area of focus for litigation, it is likely that gender issues and perspectives will be very present in your work. It is recommended to consider the wider gender-impact of your strategic litigation cases from the outset, and aim to have a positive gender impact by selecting appropriate cases with potential.

An example of a positive gender-impact outcome through strategic litigation is the case Asylum Access Ecuador brought to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) alongside Loyola Law School's International Human Rights Clinic. The case aims to establish domestic violence as a grounds for refugee status.

Press release: Groundbreaking Gender Claim Filed

Media coverage: Colombian Woman's Case Could Establish Domestic Violence as Basis for Refugee Status, VICE News, 2015

It is important to distinguish between the gender issues that you are tackling in the judicial system and gender issues which may present themselves as a direct result of you resorting to the judicial system – the latter being aspects which you have greater ability to influence and manage. It is crucial to be gender sensitive in all your dealings with clients – whether directly related to legal work or not – and to prepare your clients when you foresee that an issue is likely to arise or affect them in your dealings with the judicial system. Sensitive treatment of petitioners is part of a duty of respect to the client under the Nairobi Code and will likely make your client more comfortable and thus committed to the process. A strategic litigation case should affirm the empowerment of the client by attempting to focus on the client's goals while the legal team fits the strategy to pursue these goals.

If you become aware that services your client is receiving from other organizations or institutions are gender-insensitive, reaching out to such partners and collaborating on providing comprehensive gender-sensitive services is recommended.

Below is a non-exhaustive list of concerns that may be important when conducting strategic litigation. This is by no means exhaustive and we recommend that you explore all worries and expectations clients may have on an individual basis at regular intervals throughout the case.

- The Gender Implications for Budgeting section will discuss the impact of budget on gender equality.
- The Treatment of Clients section will detail how to interact with clients throughout the strategic litigation process.
- The Practicalities section will lay out the practical details that should be kept in mind when doing strategic litigation.
- The Working Within Biased Legal Systems section will touch upon the entrenched bias within the legal system that you will combat.
- The Wider Discriminatory Contexts section will zoom out and take a look at bias within the larger society.
- The Reparations section will cover what forms of justice clients may receive or desire to receive from strategic litigation.

### Gender implications for budgeting

Organizations have a responsibility to understand the structural roots of gender-based discrimination and violence if they are to address these issues in their work. In all activities a gender framework must be reflected in the budgeting process – it is important to analyze your strategic litigation budget from a gender perspective, identifying the implications for women and girls compared to men and boys, and asking whether the impact of the budget would reduce, increase or not affect gender inequality. Budgets are not neutral: the way project funds are spent can have negative impacts down the line if not considered from the outset. It may be that women's participation in a trial flags over time, and no resources have been allocated for potential support, such as travel or surplus psychological support costs.

However, gender-framed budgeting is not solely about boosting funding on women's programs. It involves looking beyond balance sheets and working out – through consulting those affected – whether women and men fare differently under existing expenditure plans and routines, and adjusting them accordingly to meet their specific needs. Gender budgeting gives a concrete dimension to the gender implications of your project. Gender framed budgeting is not about whether an equal amount is spent on women and men, but whether the spending is adequate to address women's and men's needs.

### Understanding Gender Framed Budgeting, IOM, 2008

Flexibility in programs may permit more gender-responsive service provisions, allowing for adjustments in both budgets and activities if unforeseen circumstances arise. This is key when working with young clients – girls' and boys' needs may change as they mature and acquire different social roles and responsibilities.

### **Treatment of Clients**

Clients may wish to be paired with certain staff, volunteers, interpreters or counselors, and not others. Although it is important to respect clients' wishes regarding the gender of their legal adviser, and it is common for woman clients who have experienced gender-based violence (GBV) to ask to speak to a woman only, it may not always be possible to guarantee such pairings. It is important for male staff or volunteers to take extra care when attending to sensitive cases with female clients and demonstrate empathy even if clients state that a man cannot understand their situation. Some women may be extremely reserved if talking to an adviser who is a man, which may hinder progress in preparing a case.

It is vital to stress to all clients that all communication is confidential. This is of utmost importance in GBV cases, particularly when talking about rape. You should display confidence when asking family members to leave the room for a confidential conversation to take place. Typically, when a woman client hints at being raped, all men should leave the room and only one woman should remain. This is to ensure that the client feels comfortable when she is asked to give an in-depth account of her story.

However, there may also be benefits to welcoming dependents and other family members into meetings and working with them on litigation processes (many cases may involve multiple litigants – related or otherwise). This may help spread gender-sensitive relations within family units or groups by promoting tolerance through exposing them to a wider understanding of the types of gender-related concerns individuals face. This is not to be construed as a waiver to the confidentiality privilege, and when there are multiple litigants, one-on-one meetings must take place because the testimony that petitioners give can be biased when there is another petitioner in the room.

As strategic litigation processes are, by nature, lengthy, it is important to guarantee continuity of attention in an environment with a high turnover of legal advisers. This is difficult when your organization has a small staff but runs with many volunteers. Take great care to make sure that clients do not feel passed around or are ever unnecessarily retraumatized – manage case handover closely. The client should not have to recount their testimony more than once – this should be accurately recorded in the early stages of contact, and subsequent staff and volunteers working on the case should familiarize themselves with all aspects of the case to avoid asking superfluous and potentially damaging questions later on. This does not mean that the client may not be asked at different points how they are managing the stress of the incident or what the client's life at that time is like. Further, it does not mean that it is unacceptable to hold a series of interviews in order to obtain a comprehensive account from the client.

Every individual reacts differently to emotional stress. Without accentuating gender characteristics or cultures, you may notice that certain people tend to react in similar ways. Anger and shouting may be a common reaction where men are expected not to show emotions or be perceived as weak, while crying and silence may be a response

among others. Ideally a gender-trained psychologist should be engaged as a resource. Lawyers may consider having them present in meetings to observe and assist clients overcoming difficult emotional burdens, but should take care that this presence does not waive the lawyer-client privilege, depending on the jurisdiction. If for jurisdictional issues or other circumstances psychologists cannot be present, a psychologist can be utilized to help debrief the client. Unexpected emotional reactions should not influence any credibility assessment you perform on a client. Cultural differences in gender roles play as important and complex a role as trauma in determining behavior.

Ensuring that clients are aware of an available mechanism for anonymous complaint submission if they do not feel that their gender-related concerns are sensitively addressed is necessary for continued client confidence and trust. Checking that clients feel the litigation process has been made as gender-sensitive as possible may also be factored into monitoring and evaluation exercises.

Every effort should be made to support a client's healing throughout the duration of a long and often draining impact litigation case. This is known as "comprehensive justice," and additional information is available in the Spanish-language paper below, and summarized in the notes from the Second Annual Strategic Litigation Roundtable held in the margins of the UNHCR Annual Consultations with NGOs 2014. Helping the client understand that gender-based discrimination and violence is structural and not the fault of the individual may help them break the GBV cycle and obtain some measure of healing and non-judicial rehabilitation. Understanding that these structural issues are what has put individual(s) at a disadvantage may empower clients to address structural causes of violence through participation in advocacy or support groups.

Helping clients think through or set out life plans or goals is a vital step and may also reduce the client's potential dependency on the outcome of their case which will take a long time to be resolved, and may not ultimately deliver the redress they are expecting. The strategic litigation process must not become the individual's only hope for healing and improving their life. Envisaging and building life goals and plans may enable them to access some measure of justice by continuing their lives and moving on from the trauma of sexual gender-based violence (SGBV). This is arguably a form of risk mitigation as well as client empowerment. Clients that are empowered in this way are better prepared for the future, including long-term engagement with their case and related responsibilities. It is important to recognize that organisations have an interest that goes beyond that of the client, given the emblematic nature of such cases. Therefore, the individual petitioner should have a strong support system and fully comprehend the shared responsibility. Long-term relationships in any walk of life can create elements of dependency. This should be avoided by equipping the client with some essential tools to continue living independently.

Clients should always be referred to or included in support groups, women's empowerment groups and other avenues that enable them to 'unlearn' structural violence and prepare themselves for the future.

#### Further resources

Second Annual Roundtable on Strategic Litigation and International Refugee
Protection: Trends and Best Practices (UNHCR, HIAS and Asylum Access,
<u>2014)</u>

<u>Justicia Integral: Mujeres refugiadas y violencia basada en género – Cuaderno de Trabajo (Asylum Access Ecuador, 2012)</u>

Escrito en el cuerpo: rompiendo el silencio y construyendo justicia integral (Asylum Access Ecuador, 2012)

#### Practicalities

Where women bear primary responsibilities for care of dependents and are more confined to domestic settings, it may be more difficult for women to travel to your organization's offices – let alone to national or international hearings. Women and girls may suffer greater time poverty than men and boys, as they must often shoulder a triple burden of productive work, care work within the family, and community work, with minimal support in domestic chores from relatives who are men due to traditional gender norms. The need to be present at offices and courts may exacerbate women and girls' time poverty, and should be discussed from the outset with participants. It may also be that social norms restrict women's mobility based on traditional notions of decency and independence – be attentive to such dynamics in your context. One suggestion is to allow the client to bring their children and have a toy box in a part of the room. The child should generally not be in the room because there is a danger that lawyer-client privilege will be waived, but lawyers must understand that care should be given to familial responsibilities and daycare availability for the client.

It is vital to ascertain whether the clients' children are also at risk of gender-based violence (GBV), by talking to the family. This must not entail any breach of confidentiality. Rather, it is necessary to acknowledge that there is a risk that patterns of GBV are sustained, and address this risk. If a mother is very young it may be a sign of GBV and exploitation – make the necessary enquiries.

Women in certain contexts are likely to have lower socio-economic means (due to limited ownership of and access to productive assets and credit) and educational level than men, particularly in terms of literacy/competence in their non-native language, resulting in greater difficulties in accessing services. This may affect their ability to pay court or other fees and to understand and follow the litigation processes. Limited opportunities for meaningful participation in formal and informal community institutions may mean that women are less experienced, and thus less confident in such settings and may require extra coaching or preparation before appearing in court, for example.

A lack of facilities for breast-feeding or for young children at your offices, courts or other public institutions may discourage mothers from attending vital steps in the litigation process.

A committed client may become pregnant during the litigation process, limiting their engagement in travel and hearings. Investigate remote court participation preemptively (e.g. video-links, or child-friendly provisions). Check how to expand protection cases in your jurisdiction to include new children. Take care to go through any administrative steps that may be required, keeping in mind that refugee status determination (RSD) cases are often individual, though dependents can receive protection through alternative processes of derivative status.

Other unforeseen eventualities may occur during a strategic litigation process spanning several years. For example, a client may have a sex-change, or wish to identify as a different gender. This should be a straight-forward administrative procedure. It is important to let clients know that they have the option to identify as a different gender, and it is important for you to respect clients' identity in your own communications and in all written documents.

Many women whose immigration status is insecure may employ coping strategies, such as entering into relationships with local men, for financial protection or protection from deportation. Such relationships of convenience have the potential to break down, particularly over the span of a lengthy litigation process, and a client may suddenly encounter financial hardship or even homelessness, and consequently reduced mobility and ability to commit. It could be helpful to be aware of such living situations among your clients.

A teenage or child client may withdraw consent to the case later. Therefore, it is essential to work with the individual to gain an understanding about how the case is expected to develop, the required commitments and the potential effects, as early on as possible, and to communicate these in an age-appropriate way. A 15-year-old litigant may be 50 before a decision is reached – age and maturity must be factored into considerations before bringing cases with young litigants.

### Working Within Biased Legal Systems

Gender-bias is inherent in public international law. The public is conceptualized as a masculine domain, while feminized, domestic space often remains outside the remit of international law according to the principle of non-interference in a country's internal affairs. Many states exempt, through reservations and declarations, gender-justice aspects of domestic legislation from international regulation. National laws in many systems do not sufficiently regulate behavior in the home: domestic and inter-familial violence, including rape in marriage, remain under inadequate legal sanctions in countries across all continents, with the private sphere assumed to be beyond the reach of the law.

The language used in legal instruments and systems that you may be obliged to adopt in official documents may be outdated or discriminatory. Many instruments refer to women and children as in need of special protection, simultaneously sidelining men's needs and fixing females in a place of assumed vulnerability. Age-bias is equally present, particularly in laws regarding child soldiers, who are often presumed passive victims rather than active agents capable of undergoing processes of justice and reconciliation.

You may intentionally select cases to challenge gender-insensitive laws and jurisprudence, particularly in fields such as access to justice for women, gender-based violence (GBV) or citizenship inheritance claims. Much of the global body of refugee jurisprudence is based on men's experiences, given women's relative lack of mobility and consequent under-representation in cases: women often experience persecution in different ways from men, so assumptions based on the existing body of refugee jurisprudence should be questioned.

You may have difficulties litigating gender issues – even in relatively mainstream cases. For example, understandings of men as possible survivors of GBV, or of coercion rather than consent or resistance in rape cases, may attract even greater difficulties when litigating in some national courts. Spreading gender-sensitivity through litigation alone is unlikely. Such processes are more effective in ending the invisibility of gender-bias if run hand in hand with educational campaigns in the media or among influential persons, including actors in customary legal systems.

Trafficking may be a recognized crime in the legal system you are working in. However, it is often recognized solely in relation to women in the sex industry. It may be challenging to promote an understanding of trafficking outside of this including men in the sex trade or women or men in forced labor like domestic work or agricultural work.

Your services may be gender-sensitive, but court systems may not offer, for example, woman judges to hear GBV and rape cases. Extra support may be required both psychologically and emotionally in such instances.

Certain legal systems may not recognize LGBTI identities despite international equality laws. Following through with such processes may be demoralizing for clients and may attract repercussions. It is important to consider the level of publicity a case will receive, and the risks present for your client, including psychological risks.

### Wider Discriminatory Contexts

In addition to the concerns present when navigating judicial systems, the treatment of the petitioner by society, communities and the family may also be discriminatory. It is imperative that an individual who chooses to litigate their case is protected from revictimization by the public.

There may be severe repercussions for women challenging the status quo through contentious, highly public court cases than there are for men. Female clients may

experience greater pressure from their families not to go through with cases. This dynamic should be discussed at the outset, as client commitment is a key to success.

There may be steps that are vital to a cases success which marginalized or minority individuals, in particular, are unwilling to take. Reporting crimes to the police may be resisted out of fear based on past experiences. This is a common reaction when dealing with GBV or hate crimes against LGBTI individuals, particularly where non-heteronormative identities and issues such as GBV and trafficking are not recognized as crimes. It is important to be explicit with clients' expectations and explain the need to exhaust domestic remedies in order for the case to progress, even if the judicial or police system is unwilling to help and may create further obstacles in clients' lives, such as reinforcing practices of victim-blaming. Counselling is recommended throughout the process to assist in coping with potentially traumatic, but necessary steps in the litigation process.

A same-sex marriage registered in a country of origin or transit may not be recognized in the country of refuge. This may present issues when litigating family cases and issues related to derivative status, particularly when such marriages include children.

### Reparations

To benefit women, reparations programs must take account of all forms of sexual and GBV. Such programs must include individual, community and symbolic measures, paired with access to services and land restitution. Packages of benefits can address underlying gender inequality through a design that promotes victim empowerment and self-sustainability. It may be prudent to leverage national commitments to gender equality by reminding courts of obligations or intentions in your written submissions (e.g. Universal Periodic Review, Sustainable Development Goals or other international or regional commitments).

All your briefs should reflect a gender perspective, particularly in terms of the reparations requested. Consider including gender training for police forces or other authorities and gender-sensitive legal reform (e.g. obligating the introduction of female investigators) in your reparations request, instead of, or as well as, standard monetary reparations. Keep in mind that the reparations requested should reflect both the client's goals, as well as the avenues offered by the judicial system. Seeking reparations that address underlying gender inequality (livelihoods training, land restitution to women, etc.) furthers the gender justice agenda and can address clients' long-term needs.

Reparations programs should take into account all forms of GBV and include individual, community and symbolic measures as well as access to services and land, to promote empowerment and self-sustainability. This is not always standard, so explicitly pushing for the normalization of comprehensive reparations programs should be a goal for your strategic litigation cases.

Studies often reveal that men and women prefer different reparation types. It is important to take this into account and gather an understanding of your clients' wishes. Take particular care to include all needs and viewpoints when cases involve multiple litigants.

Monetary reparations involve important considerations:

- Is a female client likely to retain control over that money if family members exert an influence?
- If your client has no training in money management, how should such reparations be dealt with so that your client is not left vulnerable to outside influence and exploitation?
- Could the collection of reparations be directed to promote increased socialmobility and independence of women?
- If reparations are in the form of a symbolic gesture or an in-kind reparation, such as skills training or livelihood assets, like goats, it is crucial that this will not and stigmatize your client(s).

## Strategic Litigation Procedures

This section is intended as a guide to steps that may take place in the strategic litigation of a case. Procedures vary greatly between jurisdictions; therefore, this chapter is intended to highlight frequent issues, considerations and actions that may occur, though it is by no means definitive.

This following diagram summarizes potential steps to be taken internally by your organization:

Strategic Litigation Procedures Chart

As litigating refugee rights internationally is a developing field, the refugee rights community may be able to learn from your experiences. Please share any successes, struggles, lessons learned and requests for advice with networks such as:

Fahamu Refugee Legal Aid Network

Southern Refugee Legal Aid Network (SRLAN)

Asia Pacific Refugee Rights Network (APRRN)

When deciding to pursue strategic litigation avenues, always consider the worst case scenario outcome. Exercise caution where conservative judiciaries have a tendency to issue reactive decisions or defer to government wishes, and in such instances always report any regressive steps to human rights monitors.

### **Case Selection**

The following guidelines – considered along with the section on impact themes – may help determine which cases to prioritize for impact litigation and how to go about selecting the right cases, but they are not intended to discourage organizations from pursuing other useful litigation avenues.

Cases may well affect only a few refugees but still be strategically important to your organization. A case may, for instance, result in setting a precedent for the violation of a core human right – such as the prohibition on discrimination or the prohibition on cruel, inhuman and degrading treatment – which may carry significant weight in certain contexts and result in increased awareness raising, public opinion, advocacy and publicity. Indeed, this may take place even in the face of a negative decision. A case may also be politically impactful, or serve to discredit an institution, further bolstering public pressure and campaign efforts.

It is likely that your organization will identify more potential strategic litigation cases than you have the capacity to work on. This may result in making difficult decisions not to represent some very worthy clients. This is both normal and understandable, and should not discourage your organization from making a difference in specific focus areas.

Turning away cases with impact potential due to a lack of resources is disappointing, and often inevitable. Not taking a case further may require great sensitivity when communicating this decision to a client or a group of clients. It is important to maintain good ongoing client and community relations. Again, it could help to keep an extensive directory of sympathetic legal practitioners who may be able to take on referrals for impact litigation cases – including national and international agencies mandated to assist refugees, survivors of sexual and gender-based violence, children and other marginalized groups. It may help to reassure those refugees whose cases cannot be pursued that litigation is not necessarily the only avenue to pursue, and that in many contexts refugees can, and do, organize politically to demand their rights.

Following the notification of a potential litigation case, or a referral from a partnering organization or other external source, a strategic litigation team member should undertake an initial consultation with the client to explain the litigation purpose, process, and its potential gains, risks and difficulties. If the client chooses to explore this route, they should sign an agreement indicating their willingness to have the case assessed for strategic litigation. The client can then be interviewed to determine if the case meets the basic selection criteria for inclusion into the strategic litigation agenda.

The staff member or volunteer conducting the interview should be direct and clear that the conversation is not a guarantee that Asylum Access will pursue litigation. Review

the following information and the Sample Case Selection Checklist before choosing your case.

#### Sample Litigation Case Selection Checklist

#### The Case:

- The case is sufficiently aligned with an impact theme (i.e. it relates to a central issue that significantly affects many refugees' lives). It deals with a problem that is widespread, or a pattern of rights violations.
- The case would most appropriately be dealt with through strategic litigation, as opposed to other advocacy methods such as negotiation, political pressure or campaigning.

#### The Client:

- The client is a recognized refugee, an applicant or a refugee under your organization's criteria (base your organization's criteria on international law use in cases where refugee status has been denied domestically).
- The client is credible.
- The client is willing to be involved, wishes to actively participate in the litigation, and commits to being in touch with your organization, long-term.
- The client has a good relationship with your organization and the lawyer representing him/her.
- The client understands potential risks and benefits of litigation.
- There are no conflicts of interest, according to the code of ethics for lawyers, such as the Nairobi Code.
- The safety of the client, your organization's staff and/or any related parties will not be jeopardized through the use of strategic litigation.

Once the above requirements have been met, assess the following further considerations for selection. However, if at this stage it is clear that the case is not suited for strategic litigation by your organization, but the case could be pursued elsewhere, try and refer the case to partnering NGOs or legal assistance elsewhere, providing the client is in agreement (e.g. if the matter falls outside the scope of your work or is too controversial).

### Further considerations for selection

If the case is to be explored further by your organization, consider the following matters and start to develop a litigation plan for any necessary approval stages:

#### 1. Appropriate forum

- What institutions are available on the national, regional, sub-regional and UN levels to pursue the complaint?
- Which of these institutions is the most independent, impartial, well-regarded, sympathetic to the issue, generous with reparations, and has the widest jurisdiction over the case?
- Which forum offers the best prospect for success with respect to issues that must be resolved?
- Do you have relationships with forum officials that can propel your case forward?

If you are attempting to exhaust local remedies quickly to access a regional or international forum, consider a local forum that will expedite the final decision.

#### 2. Admissibility requirements

- Does the case meet statute of limitation requirements?
- Does this case meet the exhaustion of local remedies requirement (if any)?
- Other admissibility requirements?

#### 3. Parties to the lawsuit (standing)

- Who will be named as the complainant/petitioner (your organization, an individual, a group of individuals, etc.)? All standing requirements must be carefully reviewed.
- Who will be named as the defendant?
- If your organization intends to bring the case in its name as the complainant, are there partnering agencies with which it could/should join in bringing that action?

#### 4. Evidence

- What evidence will be relied upon to support the case? All rules of evidence should be carefully considered.
- Would the client feel comfortable and be able to provide oral evidence before a court if necessary?
- What are the strengths and weaknesses of the claims and individual facts surrounding the claims?

• How reliable is this evidence? If the reliability is in doubt, can you use authoritative international NGO or UN reports for further proof?

#### 5. Laws

- What laws will be relied upon to support the case?
- How clearly have these laws been written, interpreted and applied?

If the claim relies upon international law principles, it may need to be considered how those laws interact with the jurisdiction in which the claim will be brought.

#### 6. Remedies

- Is it appropriate or necessary to apply for interim injunctions?
- If the suit is successful, will the defendant have the resources funds and infrastructure to supply the relief sought?

#### 7. Decisions

- Are decisions binding?
- Are decisions final? If not, what are the opportunities and procedures for appeal?

#### 8. Extent of impact

- How great is the potential for media coverage for this case?
- Would the key issues of the case be easy to understand for the media and general public?
- Will the case generate attention and change on the local, state, regional level etc.?

#### 9. Required resources

- What is the projected time frame (approximate) for pursuing this case from start to finish?
- How many staff members/volunteers would be required to pursue this case?
- Are there adequate facilities to support the staff required for the case?
- Will this case require expert support (for expert testimony or otherwise)?
- Will this case require the use of an outside lawyer? Is pro bono available?
- In consideration of printing costs, filing fees (if applicable), etc., what is an approximate estimation of costs to pursue this case from start to finish?

- 10. Safety and well-being of participants as a priority
  - Given that a media campaign could accompany litigation, would the litigation process jeopardize the safety and well-being of your organization's staff or volunteers, clients, or other parties associated with the action?
  - Will psychological support be available for the client if necessary?
  - Will involvement in a larger support network be necessary / feasible?

Clients are more likely to remain engaged if they have a participatory program designed to help their psychological reconciliation and empowerment.

On balance and in consideration of all of the above, the strategic litigation team should determine whether they are going to pursue the case. If the matter warrants litigation, you may wish to proceed with formal internal approval procedures, client agreements, and a litigation plan. A written memo analyzing the above-listed criteria can be used to seek preliminary approval from your organization's management or directors, inform funders, streamline appeals and build media campaigns.

### Case Approval

Depending on the size of your organization, approval from management staff may be required to go ahead with a strategic litigation case. Such cases may necessitate discussions with staff regarding new or unexpected costs, financial implications, staff hours, and resource management.

A detailed litigation plan analyzing potential steps and costs is imperative at this stage. Your litigation plan must highlight whether additional resources would be required from the organization, and whether the case will substantially impact or affect the work of the organization as a whole.

Once relevant staff have been consulted and a decision is made on proceeding with a case, client approval must also be sought. Litigation staff or volunteers should discuss the plan with the client, including steps, processes, time-frames, risks and expected client participation and input. It is crucial that the client fully understands the entirety of the case plan. To guarantee client comprehension you may need to go over aspects multiple times, and ask the client to explain the process back to you in their own words. The client should sign a legal services agreement and any other authorizations that may apply.

It is important to keep an up-to-date list of cases undergoing strategic litigation that is shared between all relevant parties within your organization, whether this involves communication between different country offices, headquarters or departments. This is important so as to maximize opportunities for support and publicity, and to standardize and coordinate any external messaging.

# Client Engagement

Your organization's case rests on committed and effective client engagement – this should not be underestimated.

As detailed earlier, engagement should be prioritized from the first moment of assessing whether the case is appropriate for strategic litigation. All client participation in the process should be with a view to empowering the client. Therefore, it is crucial that prospective clients fully comprehend, at the outset of consultation for case selection, the litigation process (both its general purpose and in their specific case), and the surrounding advocacy efforts, including steps and processes, time-frames, risks, difficulties and expected client participation. All important decisions and changes should be fully consulted with the client, and their opinions, concerns and suggestions should be given due attention. Communicate openly with your client – especially regarding setbacks and disappointing results – and remain available. This can be made possible by appointing one focal contact point in the strategic litigation team, for continuity.

Your clients may be illiterate, not speak the language of the court, or even if they do, they may not understand the legal jargon your office is accustomed to using. Explain the process as many times as is necessary, taking great care not to use legalese which may alienate or intimidate clients. This stems from the fact that refugees must be empowered, not left dependent on lawyers as a result of strategic litigation. Enable your clients to learn from the process. Interpreters must be used if necessary, and at all stages the client's comprehension must be verified. Continue to engage your client by asking them to explain information back to you and asking questions to check they fully comprehend all relevant issues.

When legal agreements are signed it is important to clarify clientele and organizational commitments, duties and expectations throughout the process. Agreements should be drawn up and signed at the following stages:

- Upon consultation to discuss case selection minimum requirements;
- Upon agreeing to go forward with an approved litigation plan; and
- In the event of any significant changes to this plan

Participating in litigation must not re-traumatize refugees. Even when your organization has prioritized tact and sensitivity in collecting testimony and evidence, people may understandably still be upset by the process. It is crucial to ensure adequate psychological support for clients throughout the process. Staff working on emotional cases should also have access to such support, or peer counseling, in order to remain effective.

It is also important to remain aware of representational issues. If you are litigating on behalf of a group of refugees or asylum seekers, in a class action, who is speaking for the refugee population? Who is not represented? Within an apparently homogeneous group, experiences can be surprisingly different – you should pay particular attention to women, children and minority groups among clients involved in litigation and its accompanying advocacy or outreach. Moreover, cohesion among the population should not be assumed: refugee groups may be made up of diverse ethnicities, nationalities and backgrounds – groups of individuals are not necessarily a community.

# **Pre-Litigation Actions**

As soon as a case is identified for potential litigation, all those working on the case should maintain clear evidence and activity logs in the client's file. Accuracy and detailed documentation are vital to navigate the scrutiny from a judicial body.

"Having both policy and strategic litigation going on in tandem is very useful ... The sharing of information is crucial in terms of lobbying, because the front that [government authorities] put up in meetings with officials is different from the cases they are actually taking to court behind the scenes"

#### Step 1: Plan development

The litigation team should develop the following documents:

- An overall, comprehensive litigation plan;
- A research plan;
- An evidence collection plan;
- A media and outreach plan; and
- A fundraising plan (if necessary)

#### Step 2: Negotiate with authorities

The team should engage in final discussions or negotiations with relevant authorities if possible, to attempt to solve the human rights violation through non-litigious means. Attempting to solve the problem out of court can reduce costs; help prove that you are litigating in good faith; and lend evidence to show exhaustion of local remedies for a regional or international case.

Step 3: Mobilize outside support

The litigation team should begin mobilizing support and building alliances with UNHCR, academic institutions, legal clinics, friendly organizations and refugee groups. Consider co-contributors – pro-bono where possible – to:

- Sign a court/commission complaint;
- Comment on a complaint;
- Provide research support;
- Act as legal representative on your behalf (if necessary);
- Assist with written documents; and
- Prepare amicus curiae submissions.

#### Step 4: Division of labor

Determine initial litigation team:

- Assign staff, volunteers and external contributors to work on each aspect of the case;
- Prescribe clear responsibilities and actions with deadlines and benchmarks for time-sensitive matters.

Step 5: Begin related advocacy efforts

Initiate media outreach to journalists that may be sympathetic to your cause:

- Prepare press releases that present the issue in a clear and easily digestible manner;
- Keep in mind sensitivities surrounding debates on migration and forced migration in your context in order to avoid potential backlash.

Safety and confidentiality issues must be addressed and stories must be conveyed sensitively, with clients' consent, but without stereotyping, generalizing or simplifying the issue. This may go hand-in-hand with building a targeted advocacy campaign and mobilizing students, grassroots activists and other pressure groups or coalitions to build momentum and awareness around your case. See the <u>Design a Policy Advocacy</u> <u>Campaign</u> section for more information on this subject.

Such campaigns may be linked to fundraising efforts, which may flourish off the back of increased publicity and participation, however fundraising should be conducted well in advance of establishing any strategic litigation program.

#### Further resource

• Refugee Children's Rights Project (Coe and Kingham, 2012)

# **Litigation Actions**

While all courts and commissions have their own steps and procedures, some overarching similarities can be drawn. This section highlights considerations that should be addressed in all systems.

Throughout strategic litigation, organization and attention to detail are key:

- Maintain accurate and thorough filing systems;
- Pay close attention to and map relevant judgments and decisions; and
- Coordinate effectively with all parties collaborating on a case.

It is crucial to maintain healthy channels of communication between all parties working on a complaint. Moreover, facilitate client participation by taking into account potential barriers such as travel distances, costs and phone charges.

The first step after completing the pre-litigation actions is to prepare an initial complaint detailing the facts of your case in an outline that includes the pertinent evidence and legal standards necessary to be successful on your claim.

Once your complaint has been submitted, it is important to stay involved with the ongoing action. This includes keeping close contact with the litigation team members and the client(s) and tracking developments in the relevant jurisprudence.

Before the final decision is issued, make sure you have submitted at least one amicus curiae brief to the court and stay in constant contact regarding the status of your case, especially if it appears to have stalled. Additionally, facilitate contact between reporters and lawyers working on the case.

After a final decision has been issued on your case, follow-up with your litigation team regarding areas for improvement and report the decision to the appropriate human rights monitoring group.

## **Prepare Initial Complaint**

#### Step 1: Prepare the draft complaint

**Evidence**: Look carefully at the rules of evidence at your chosen forum, and at subsequent regional or international levels. Outline the necessary evidence to support the case, taking its strengths and weaknesses into consideration. File primary and secondary evidence meticulously. If the reliability is in doubt, can you use authoritative international organisation or UN reports for further proof. Review how to write <u>Country of</u> <u>Origin Information</u> (COI) in order to develop support evidence.

**Laws**: Outline national, regional and international legal frameworks applicable to the case, and situate your legal arguments within these. Look at how international law or principles can be applied in domestic courts. This relationship may be expressed in an explicit hierarchy, or you may need to be persuasive.

**Research jurisprudence at each leve**l: Regional and international courts' websites catalogue their past decisions. It may be helpful to look at high-level decisions from other jurisdictions (countries) which may constitute authoritative interpretations in your own context. Free online resources such as Refworld may be a useful starting point for such research. Recent developments may be reported on platforms such as Fahamu Refugee Legal Aid Network, or on more informal discussion boards such as UNHCR's Policy Development and Evaluation Service social media section.

#### Further resources

UNHCR's Refworld Fahamu Refugee Legal Aid Network UNHCR's Policy Development and Evaluation Service (PDES) Facebook Page

Step 2: Determine urgency

Consider whether this case requires urgent attention (e.g. an application for an injunction or a request for precautionary measures).

Step 3: Share draft

Share the draft complaint for comments with management staff, directors or other relevant parties (academics or pro-bono lawyers).

Step 4: Coordinate submission

Coordinate submission of amicus curiae (interested party) brief(s) in jurisdictions where all such interventions must be received at the initial presentation of the complaint. In many jurisdictions this may be submitted at a later stage in proceedings, however keep this in mind from the outset.

#### Step 5: Do a review

Undertake a comprehensive review of the complaint before submission to the court or commission.

#### Step 6: Review with client(s)

Go over the complaint and related submissions with the client(s) and prepare your client(s) for any potential court appearances. This may require practice in public speaking, working with an interpreter, and travel arrangements and orientation

## Before Final Decision

At this stage the following actions may be considered:

- Coordinate the presentation and submission of an amicus curiae (interested party) brief to the court. Some jurisdictions only allow an amicus to be included upon submission of the complaint and not subsequently.
- Facilitate contact between reporters and lawyers assigned to the case from the court, commission or committee.
- Depending on the forum, stay in frequent contact about your case, particularly if it has stalled.
- Consider organizing a thematic hearing. You can watch one held in 2013 at the Inter-American Commission for Human Rights by Asylum Access and other parties seeking a review of RSD processes in the Americas.

<u>Video of the Inter-American Commission for Human Rights, Asylum Access</u> (Spanish only)

## **Ongoing Actions**

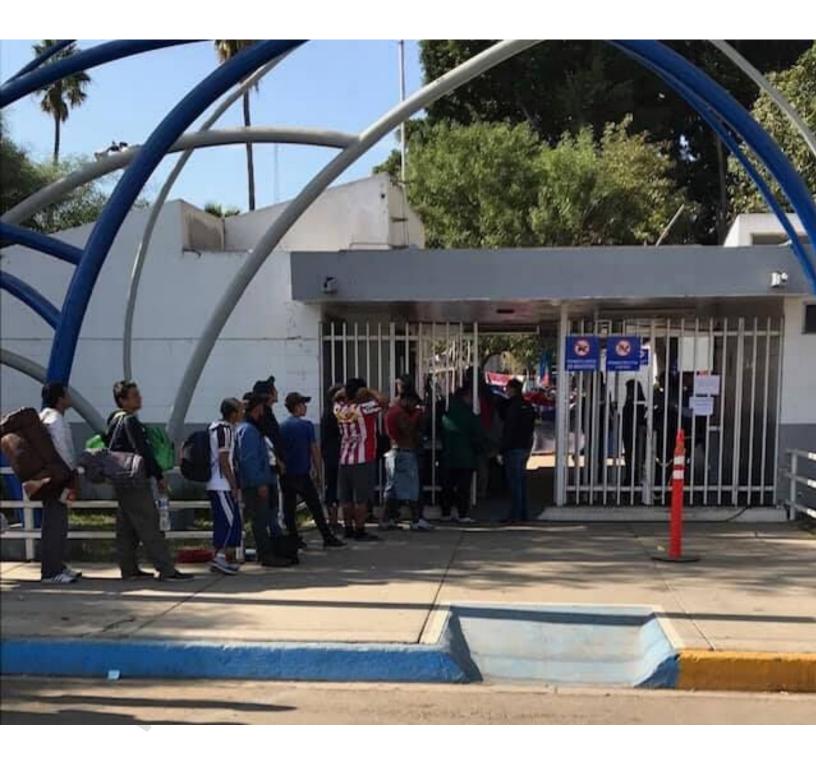
The litigation team should:

- Create a litigation calendar for the court / forum deadlines after filing the complaint.
- Consider arranging psychological support for the client if necessary.
- Remain in regular contact with the client, keeping them informed of the case's progress and paying attention to any needs that may arise from participation in the case.
- Meet monthly with all litigation team members.
- Coordinate with other parties (headquarters and external contributors if applicable) regarding the management of any related media or advocacy campaigns.
- Continue to follow developments in relevant jurisprudence and watch for changes in violatory policies.
- If the forum allows ex-party communication, stay in contact with the judge.

## Follow-Up

- Following the finalization of a case, the litigation team should conduct a debriefing exercise to evaluate what worked, what did not work, and how to improve in future cases.
- It is vital that any regressive steps, decisions or harassment during the case be reported to human rights monitors.

**Refugee Rights Toolkit** 



# Work Rights Programs

Refugee Rights Toolkit

Advocate

Traditionally, refugee response actors have offered support through the provision of humanitarian aid. While such aid has an essential role to play in protecting the physical security of refugees, it alone is not enough. A comprehensive response must extend beyond short-term needs if it is to enable refugees to rebuild their lives and achieve self-sufficiency. By investing in refugees' access to safe, lawful employment, we are investing in the long-term success of refugees and their host communities.

Under international and oftentimes regional law, refugees have access to a series of rights that facilitate their ability to rebuild a life in a new country. This includes the right to access jobs and business permits, and also a right to be free from workplace discrimination, forced labor and other abuses. Paired with rights to freedom of movement, legal documentation, education and access to financial services, you get the package of "refugee work rights" that allow a person to become self-sufficient and build a life in a new country. This section will explore different programmatic approaches that facilitates work rights for refugees, in law and in practice.

# Overview

Effective advocacy for refugee work rights (RWR) can take on various programmatic strategies and approaches. The purpose of the section is to help you design and implement a RWR program that can make the right to safe and lawful employment a reality for refugees in your country. It provides the tools to assess country contexts, and based on your findings, design and implement refugee work rights programs. It also includes best practices, implementation challenges and lessons learnt based on Asylum Access's experience in implementing RWR programs globally. Case studies of RWR programs cover legal services, community empowerment and policy advocacy tools.

Here's what you'll learn in this section:

Defining Goals and Objectives of a Work Rights Program	
Choice of a Work Rights Program	639
Developing a Work Rights Program Plan	644

# **Goal of Promoting Work Rights**

Although international law gives refugees the rights to live safely, seek employment, put children in school and build a life in a new home, few countries have governance frameworks (practices, policies or laws) that honor these rights. This leaves people without options for taking care of themselves or their families; indeed, these restrictions prevent refugees from rebuilding their lives.

History has shown us that refugee situations are not temporary; refugees in protracted situations are now spending an average of 26 years in refugee camps or left on the margins of society. Only 1 percent of refugees are resettled yearly to the U.S., Canada, Europe or Australia. Coupled with the restrictions placed on refugees, this reality means around the world, the potential of entire generations is squandered with startling frequency.

While humanitarian aid is available for refugees inside camps and out, the provision of food, water and medical care inherently does not lead toward long-term solutions. In recognition of this, donor and host governments, multilaterals and NGOs have increasingly focused on development efforts like vocational training and market interventions. However, these initiatives fall short. Vocational training is only as valuable as the markets refugees can use them in, and most cannot access formal markets. In some countries, market investments have funded companies with poor labor practices and below minimum wage pay. More often than not, the governance frameworks that refugees live under prevent them from moving beyond the need for humanitarian aid, or finding value in development initiatives.

The result of these barriers is profound. Refugees work in the informal market where they are subject to exploitation, abuse, rape or sometimes detention and deportation for working without authorization. Fearful and misinformed refugees are disincentivized from applying for work permits when bureaucratic and financial requirements provide further barriers and uncertainty of success.

This is a lose-lose proposition: refugees who live in countries with ineffective governance frameworks cannot build a future and cannot contribute to the broader community. In contrast, refugees who live in host countries with rights-respecting governance frameworks not only build bright futures for themselves, but they also stabilize their host country and bolster its economy. Self-reliant refugees also relieve pressures on public services and lower the costs incurred by host countries.

In acknowledging this reality, a complete, balanced response requires investment in not only relief and development, but also in **supporting host governments and other key stakeholders to establish rights-respecting solutions that enable full social and economic participation**.

# Complementing relief and development with governance

In order for humanitarian aid to give way to successful development initiatives, we must address the systemic barriers which prevent refugees from accessing the rights they need to rebuild their lives.



In particular, the protection and enforcement of refugee work rights will serve not only to alleviate refugee dependency on aid and otherwise abject poverty, but also to stabilize the domestic workforce. Furthermore, the impacts of job creation, training and skills matching, and market investments are amplified when refugees' rights are respected.

The right to work provides an entry point for refugees to access a range of other rights — civil, political, economic, social and cultural. By securing lawful and safe employment, refugees are enabled to provide a livelihood for themselves and empowered to become a member and economic contributor to their host community.

The goal is to promote work rights in order for refugees to access safe and lawful employment and self-employment. Program strategies can utilize a combination of direct service, legal assistance, advocacy for policy change, and other related approaches to achieve the following:

- Refugees understand their options, understand the applicable laws and have support when navigating the bureaucratic complexities information sharing among refugees and employers on the laws available that allow refugees to work.
- Where employers willfully disregard laws and policies that limit the exploitation of employees — regardless of legal status — a legal empowerment approach

should be available to **address employment violations at individual and systemic levels**.

- **Civil society must encourage governments** to respect, protect and promote refugee work rights in a collaborative and solution-generating manner.
- Employers are engaged early so that they become allies in encouraging refugee market participation.
- The general public's attitudes are well-understood and responded to their voices are critical when encouraging governments to invoke effective and rights-respecting governance frameworks.

# Is refugee work rights relevant in all contexts?

Refugees deserve the right to work regardless of country context. Therefore, while your programmatic or advocacy approach might differ depending on context, promoting refugee work rights is relevant in all contexts.

In countries where refugees have limited or no rights, it is especially crucial to develop a long term vision and build momentum for systemic change. This can include a number of different strategies. For example, to transition refugees from the informal to formal economy, first steps might involve strategies that convene, inform and train decision-makers on refugee work rights. The Needs and Landscape Analysis section will guide you to assess your country context in order to design an effective and impact-focused refugee work rights program.

# Conducting a Needs and Landscape Analysis

Before designing a program, you must first understand the framework and parameters that your program will operate in. Conducting a needs and landscape assessment will help you (i) identify the needs of the target population, (ii) analyze the existing legal and political framework, and (iii) adequately evaluate the interests and impact of all relevant stakeholders.

Such an analysis is crucial when designing your refugee rights program. For example, the structure and effectiveness of a program that provides legal advice on obtaining a work permit depends on a thorough understanding of the existing legal framework and the relevant stakeholders. This section will cover the following analysis tools:

- Legal Framework Analysis
- Market Analysis
- Stakeholder Analysis
- Needs Assessment

# Legal Framework Analysis

**Purpose**: An analysis of the existing legal framework in the host community is essential in designing a refugee work rights program. The applicable international and domestic legal protections are crucial to the provision of legal services, community empowerment as well as targeted policy advocacy. Specifically, it can be used to assess:

- What laws and policies refugees can use to advocate for their right to work?
- Where are the gaps in the current legal framework? This can help identify where you can advocate for policy improvements to enable refugees to access work.

#### Tool:

Country	
What international instruments	Consider:
is the host country signatory	1951 UN Refugee Convention
to?	1967 Protocol
	Universal Declaration of Human Rights
	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
	Convention on the Rights of the Child
	Sustainable Development Goals
	International Covenant on Economic, Social and Cultural Rights
What regional legal	Consider:
instruments is the host country signatory to?	Latin America
	1984 Cartagena Declaration on Refugees
	Inter-American Convention of Human Rights
	1994 San José Declaration on Refugees and Displaced People
	2004 Mexico Plan of Action for the protection of refugees in Latin America

	2014 Brazil Declaration and Plan of Action
	Africa
	African Charter on Human and Peoples' Rights ("Banjul Charter")
	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)
	Asia
	ASEAN Human Rights Declaration
	Bali Declaration on People Smuggling and Trafficking on 23 March 2016
	ASEAN Convention against Trafficking in Persons, Especially Women and Children.
What domestic legislation	Consider:
protects the right to work?	Constitutional Protections
	Migration Law
	Asylum Law
	Labour Laws
	Anti-Discrimination Law
	Women's Rights
	Rights for People with Disabilities
	Children's Rights
	Local legislation

## Country example

Country

Ecuador

What international	1951 UN Refugee Convention		
instruments is the	1967 Protocol		
host country signatory to?	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		
	Convention on the Rights of the Child		
	Sustainable Development Goals		
	Palermo Protocol 2000		
What regional legal	1984 Cartagena Declaration on Refugees		
instruments is the	Inter-American Convention of Human Rights		
host country signatory to?	2004 Mexico Plan of Action for the protection of refugees in Latin America		
	2014 Brazil Plan of Action		
What domestic legislation protects the right to work?	2008 Constitution stipulates right to apply for asylum, and that refugees will have their rights protected in the country. (Art 41). Accordingly, all foreigners in Ecuador have the same rights and duties as Ecuadorians, including the right to work. (art 9, 11)		
	Ministry of Education Agreements for refugee children access to education		
	Human Mobility Organic Law and its Regulation (Ley Orgánica de Movilidad Humana y su Reglamento)		
	National Well Being Plan (2017-2021)		
	Ecuadorian National Equality Agenda (Human Mobility)		
	Organic Code of Territorial Organization, Autonomy and Decentralization (COOTAD Código Orgánico de Ordenamiento Territorial, Autonomía y Descentralización)		
	Labor Code (Código del Trabajo)		
	Local Ordinances regarding refugee rights and access to work in formal and informal sectors.		

## Tool:

In addition to understanding existing laws, the **Refugee Work Rights Scorecard** is a useful tool to analyze the extent to which laws and policies are realized in practice. Use the "Respect", "Protection" and "Promotion" metrics of the Scorecard to identify other barriers in accessing work.

For Scorecard, see page 23 of Global Refugee Work Rights Report.



Note: The scorecard can be used as a complementary tool to your stakeholder analysis and needs assessment.

# Market Analysis

**Purpose**: A market analysis identifies the economic barriers, risks and opportunities for refugees to access safe and lawful employment and self-employment in the host community. The assessment helps you identify and design program interventions (including activities and partnerships) that will increase employment opportunities and improve the living conditions of refugees and host communities. A proper market assessment is vital to understand the parameters within which a refugee work rights program will operate.

Complementary to your Legal Framework Analysis which identifies refugees' legal barriers in accessing work rights, a market analysis should:

- Collect macroeconomic information of the local area e.g. income levels, unemployment rates.
- Identify the main market sectors and market capacity in the targeted areas (i) which markets and (ii) which population is your program working with?
- Identify sectors / value chains with the highest potential for growth, profitability and employment for refugees given your target population's needs and capacities.
- Identify sectors and value chains that are not overly saturated. This ensures that refugees' entry into the labour market will not cause tension with host communities (due to competition)
- It should focus on sectors and businesses that are allowed to hire refugees, and where international labour standards are respected.

When identifying non-legal barriers for refugees to access employment and selfemployment in the formal market, consider the following.

- Age
- Gender
- Language
- Education and skills gap e.g. foreign qualifications might not be recognized in the host country
- Refugees' perception and knowledge on work rights
- Employer perception and knowledge on refugee work rights e.g. refugee situation in the country, procedure needed to hire refugees
- Access to networks and resources

Understanding non-legal barriers will help you design programs that can address barriers identified. For example:

- If your target population lack the technical skills to enter local job markets, your program might include vocational trainings activities.
- If employers in the sector lack knowledge on hiring refugees, your program might include information sessions on employment law and legal services to help businesses to apply for refugee work permits.
- If refugees and employers lack access to networks, your program might include networking and job matching activities.

Further resources

Market Assessment Toolkit for Vocational Training Providers and Youth (Women's Refugee Commission) Manual for Conducting Market Assessments (Forcier Consulting)

# Stakeholder Analysis

**Purpose:** To effectuate a successful refugee work rights program, it is important to determine 'who' has 'what' interest. The most appropriate means for clarifying these issues are:

- Institutional mapping: identification of institutions, their roles, purpose, mandates and scope
- Stakeholder analysis: determining nature of interest (and stakes on issues) of all stakeholders

Consider all different stakeholders who may impact and/or be impacted by the program and its outcome and what their incentives and interests in supporting or opposing any such program may be. Potential stakeholders may include government actors, businesses, academic institutions, host community's civil society, NGOs and local interest groups as well as refugees and other potential affected groups.

Stakeholder	Why are they relevant?	How can they support your RWR project?	How to approach them
National governments			
Local governments			
Businesses			
Academic institutions			
NGOs			
Faith-based organization			

#### Tool:

**Refugee Rights Toolkit** 

Schools	
Public/Civil society	
Refugees	
Migrants	
Donors	
Multilateral organizations	
Host community	

## Governments

An awareness of relevant government actors is crucial when seeking to implement a refugee rights program as they dictate the legal and political parameters within which you operate. In identifying relevant government actors, focus on agencies and individuals that are responsible for legislating on and regulating access to work permits as well as refugee rights generally.

Agencies of interest could be the Ministry of Labour, Ministry of Commerce, Revenue Department, the Immigration Department, Homeland Security, the local police, local municipalities and social security services.

In analyzing the role government actor may play in implementing your refugee rights program, consider the following questions:

- What are possible incentives for them to assist you in establishing and conducting your refugee work rights program?
- How do different government institutions work (or not work) together?
- How does the context influence public policy and the work of public institutions?
- In what way could you interact with government actors?
- What ways exist to create a pro refugee narrative?
- What are their concerns about refugees?
- What arguments exist in favor of refugee rights programming and against from their point of view?
- How can you connect these concerns with providing refugees with access to lawful employment or rights to organise and represent? e.g. diminution of shadow economy/national security concerns/giving leverage on international stage.

- What data and information might be helpful for governments that you can offer?
- What resources can you offer to help build the relationship with the government?
- What is your reputation and what needs to change to create the relationship you need?
- What other partnerships will help you improve your relationship with your target government agencies/officers?

## Refugees

eds and interests of

When implementing refugee work rights programs, assessing the needs and interests of refugees are of primary importance. The effectiveness of any program depends on the degree to which it utilizes the existing skills and resources of the refugee community and addresses their most urgent needs. Thus, when thinking about which refugee work rights program may be most effective consider the following:

- What do refugees need in your particular country of operation? e.g. mental health care, language assistance, legalization of status, access to work permits, vocational training, empowerment, representation, freedom of movement.
- To what extent are refugee communities currently able to identify, understand and use their rights?
- How can you make their rights understandable and accessible to them?
- How easy is it to identify and train refugee leaders?
- What will empower refugees to self-advocate and expand the reach of the program?

## Businesses

The private sector is a crucial ally in the implementation of refugee work rights programs. Businesses can contribute with expertise, the creation of opportunities and the contribution of technological, human and financial resources to create access to work mechanism that seeks to connect refugees to specific needs of industry. The private sector is also an important ally in policy advocacy and can provide important leverage.

Consider the following questions when analyzing the incentives for businesses to contribute to your work rights program:

- What concerns may businesses have about employing or not employing refugees?
- In what ways can an individual business support your program and why should it do so?
- In what employment sector can refugees be incorporated and why?
- What are the skills and needs of the individual business in the respective employment sector?

- What are incentives for businesses to employ refugees, in particular when there are similarly qualified locals?
- How can you match business needs with refugee's skills?
- In what ways can you appeal to social corporate responsibility?

## Academic and Vocational Training Institutes

Academic institutions and vocational training institutes play a crucial role in allowing refugees and the host community to develop and adjust their skills to the requirements and demands of the local economy. Thus, they form an important ally in ensuring that refugees can become meaningful contributors to their host communities.

Here are some questions that you can assess in your stakeholder mapping:

- What opportunities exist for refugees?
- What are the languages available for the program?
- Are there scholarships or low-cost programs specifically for refugees?
- What restrictions exist for refugees to access existing programs?
- What are their incentives to support the establishment of refugee work rights?
- What are specific ways in which academic institutions can improve your efforts? e.g. support research on market assessments or reduce barriers to access education by providing scholarships.
- Are there any potential allies for policy advocacy?

## NGOs

Other local, regional and international NGOs can both support and complement your program and are valuable sources of knowledge and human, technological and other resources. They can form potential allies in advocacy, possess more specialized knowledge or can provide broader access to your target group. Consider the following questions:

- What international, regional and local NGOs exist that may be willing to support your specific program?
- Which NGOs are potential advocacy allies?
- Which NGOs possess specialized knowledge concerning the right to work?
- Are there any NGOs that are already running refugee rights work programs?
- What are learned lessons and best practices?

## **General Public**

The general public is instrumental to the successful integration of refugees. Sentiments of xenophobia, concerns about high unemployment and general hostility towards immigrants can severely inhibit the implementation and effectiveness of refugee work

rights programs. Thus, when designing and implementing refugee work rights programs it is crucial to consider the concerns, attitudes and issues the host community is facing and how they can be best addressed.

- Who is affected when refugees are given access to lawful employment and how?
- What does it mean for the host community to provide refugees with access to work?
- Which parts of civil society are likely to be most opposed and most in support of a refugee rights program? Why?
- What are the challenges host communities are tackling generally? e.g. high unemployment?
- What specific benefits can refugee workers bring? e.g. to fill skills gaps, do unpopular jobs, etc.?
- What are potential concerns of the civic host community? How can they be rebutted/alleviated?
- Increased competition for jobs and a resulting loss of opportunity?
- Increased pressure on social services?
- Why would the host community support/oppose a refugee work rights program?
- How could hostility be addressed and support be created?

## Needs Assessment

Needs are the gap between what is and what should be. A needs assessment is a study to understand the needs of a group or community. In the refugee context, the focus of an assessment is to understand what the particular community your program is meant to support requires.

<u>Tool</u>:



# Target Group

When trying to assess your target group, consider the following questions. When conducting your assessment, also consider the needs of the host population.

- Who are the main refugee population? Who are the local population?
- What income and education level, skillsets do they have?
- What were their previous occupations in their country of origin?
- What sectors do they want to work in?

- What are their current livelihood strategies?
- What are their experience in the formal and informal market?
- What sectors are they working in? With what salaries? What type of businesses have they started, and with what success?
- What common work rights violations do they face, if any?
- Are there any difference in experience based on factors such as culture, ethnicity, education qualification, and geography that leads to different livelihood outcomes?
- How far are the existing domestic legislations that protect the right to work enforced in practice?
- What are refugees' experience in obtaining work permits or a business license? What challenges do they face? Any assistance to help them access employment?
- Have they been able to access banking in practice? Where else do they gain capital to start businesses?

## **Identify Needs**

When identifying needs, consider the following issues if refugees cannot access legal employment:

- Is access to legal employment denied in total or only in part?
- Getting refugee status approved?
- Acquiring work permits?
- (Non)-existence of any method of entering legal employment? What are the specific obstacles to accessing legal employment?
- Can refugees work on their own (entrepreneurship, peddling)?
- Refugees can work, but there is no demand for their skills (skill supply/demand mismatch)
- Refugees do not know how to access their rights or opportunities
- Refugees feel isolated and helpless

For more detail on conducting needs assessment, see Legal Services Needs Assessment and Community Needs and Resources Assessment.

# Designing a Work Rights Program

This section will help practitioners understand how to use the information obtained during the needs and landscape analysis to design a successful refugee work rights program. Depending on the identified needs and landscape, a specific program or a certain combination of programs may be preferable to another.

For example, where there is no legal framework in place for refugee work rights, programs such as <u>community empowerment</u> and <u>policy advocacy</u> are most effective, whereas relationship building between the private sector and the refugee work force would be premature and thus inefficient. By contrast, where the legal framework provides refugees with the possibility to access lawful employment, a combination of individualized legal assistance in combination with relationship building with the private sector is more effective

The section will also provide practical tips in developing a program plan. This includes setting program goals, assessing capacity, allocating resources, and developing a monitoring and evaluation plan for your program.

# Defining Goals and Objectives of a Work Rights Program

Establishing program goals and objectives is crucial because it:

- Specifies changes you expect to see in the target population and helps to inform what types of programming you should select to implement.
- Clearly identifies the particular target population and helps to inform what types of programming may fit with programs already offered for that group.
- Clearly identifies goals and objectives and suggests outcome statements that will be useful in evaluation.

# Defining the goal of your program

Goals are broad statements that describe the desired longer-term impact of what you want to accomplish. They should describe the ideal future impact you would like to see after having implemented your program, focusing on visible changes. Goal statements provide the overarching direction of a program and state what is to be accomplished. Once the goal is clearly defined, you are capable of determining the specific objectives (i.e. desired outcomes) and activities necessary to achieve it.

For example, a potential goal statement might be, "Refugees are able to work and are protected at work, enabling them to live safely, gain self reliance and contribute to the economic well-being of the host community in Country X".

In defining your goal, consider the following questions:

- What are we trying to accomplish?
- What are the desired results we expect?
- How would we like the conditions to change?

Some examples of a SMART goal for a refugee work rights program could be as follows:

• Refugees in Tanzania are able to work and are protected at work, enabling them to live safely, gain self-reliance and contribute to the economic well-being of the host economy.

## Defining the objectives of your program

Objectives/desired outcomes are the specific changes expected in your target population as a result of your program. There can be numerous objectives for each goal. In defining them, you should state what will change, for whom, by how much and by when. Typically, they are related to changes in:

- Knowledge: What refugees know about their rights and opportunities
- Attitudes: How refugees see themselves, their host community and vice versa
- Skills: The development of labour market skills
- Community awareness and mobilization: Refugees empowerment through representational organs
- Changes in policies and law
- Increased cooperation: e.g. between employers and refugees

In defining objectives, consider the following questions:

- What should be the immediate changes in our target population as a result of our program?
- What changes are reasonable to expect?
- Objectives should be SMARTER: Specific, Measurable, Agreed Upon, Realistic, Time-Based, Ethical, Recorded

Step	Concept
	Specific
1	
	Exactly what is it you want to achieve in your business or personal life? A good goal statement explains the what, why, who, where and when of a goal. If your
	goal statement is vague, you will find it hard to achieve because it will be difficult to define success.

2	Measurable
	You must be able to track progress and measure the result of your goal. A good goal statement answers the question, how much or how many. How will I know when I have achieved my goal?
3	Agreed
	Your goal must be relevant to your stakeholders and agreed with them. Examples of people to agree your goal with are your line manager, employees and customers.
4	Realistic
	Your goal should be stretching, but realistic and relevant to you and your company. Make sure the actions you need to take to achieve your goal are things within your control. Is your goal achievable?
5	Time-Bound
	Goals must have a deadline. A good goal statement will answer the question, when will I achieve my goal? Without time limits, it's easy to put goals off and leave them to die. As well as a deadline, it's a good idea to set some short-term milestones along the way to help you measure progress.
6	Ethical
	Goals must sit comfortably within your moral compass. Most people resist acting unethically. Set goals that meet a high ethical standard.
7	Recorded
	Always write down your goal before you start working towards it. Written goals are visible and have a greater chance of success. The recording is necessary for the planning, monitoring and reviewing of progress.

Example taken from Asylum Access Tanzania Work Rights Campaign:

Goal

SMART Objectives

Refugees in Tanzania are able to work and are protected at work, enabling them to live safely, gain self-reliance and contribute to the economic wellbeing of the host economy. Design and implement a participatory program that builds livelihood skills for refugees is responsive to refugee needs, skill sets and market analysis. 60 to 100 refugees are reached through the skills building program, in which at least 50% of refugees are employed or self employed within 6 months.

AATZ develops knowledge and expertise on relationship building and advocacy with potential refugee employers based on in-depth understanding on employer challenges and barriers in hiring refugees.

Through advocacy activities implemented within a network of potential refugee employers, employers' understanding of refugee employment law and procedure and attitudes of hiring refugees are improved. This leads to an increase in refugee employment in Dar es Salaam.

# Choice of a Work Rights Program

Having assessed the needs and resources of our target population and defined the goals and objectives specified, the next step is to decide what program(s) are best suited to achieve the respective goal. Below are some examples of work rights programs.

# Types of refugee work rights programs

Legal Services

<u>Purpose</u>: Legal services programs provide individualized legal assistance and representation to refugees, helping them navigate the refugee status determination (RSD) process and access rights protected by national laws. They are the most direct way of accessing and implementing refugee work rights, however, their reach is limited by the available staffing capacities. For more detail, see <u>Legal Services</u>.

## **Rights Workshops**

<u>Purpose</u>: Through <u>Know Your Rights trainings</u>, refugees are enabled to understand their options and how to exercise them. Know Your Rights Workshops are instrumental for community empowerment and an effective way of disseminating knowledge about options available to refugees to improve their situation.

### Community empowerment

<u>Purpose</u>: Community empowerment projects are crucial to assist refugees in rebuilding their lives and to facilitate their integration into the host community. This could include programs such as <u>Social Inclusion Workshops</u> and <u>Community Capacity</u> <u>Building</u> programs. The long term purpose of these programs is that by law and in practice, refugees are able to choose where they live and achieve self-reliance while enjoying their other human rights.

### Vocational training programs

<u>Purpose</u>: Vocational training programs play an important part in developing or building on the target populations' existing skillset and matching it with the host community's economic demands. They can foster refugee integration not only by creating job opportunities through cooperation with local businesses, but also by adjusting the refugee livelihood means to the requirements of the local economy.

#### Business engagement

<u>Purpose</u>: The private sector is a powerful ally in implementing refugee rights. They can support your refugee work rights program in a variety of ways. Most obviously companies can provide employment opportunities to refugees, however, they can support refugee rights programs by other means such as providing accommodation for refugees, funding for scholarship opportunities, vocational training programs, tickets for transport to reduce barriers to freedom of movement or support in policy advocacy. It is thus important to know how to best pitch your proposal to potential business owners.

### Policy advocacy

<u>Purpose</u>: Policy Advocacy can influence the legal and political framework a refugee work rights program will operate in. As a result, it is of particular importance in countries lacking any form of legal framework for refugee rights as it can change the existing parameters. Successful advocacy can simplify the execution of your program and can garner widespread support within the host community as a whole. For more detail, see <u>Policy Advocacy</u>.

## Choosing the appropriate refugee work rights program

The information collected in the assessment process should provide a road map, guiding the decision of which refugee rights program is most needed in the respective country. For example, if there are no legal possibilities at all for refugees to obtain lawful employment, then the most effective program would lie in the domain of policy advocacy and strategic litigation. By contrast, if there are legal paths to employment, but there is a lack of knowledge and other barriers to access, <u>Know Your Rights workshops</u> or individualized legal assistance are more appropriate.

### Logic Model

To determine what refugee rights program has the best fit according to your needs and landscape assessment a logic model is instructive.

A logic model describes a series of connections that link problems and/or needs you intend addressing with the actions you will take to obtain your outcomes. Your program activities should target those factors that you have identified as contributing to the problem. Logic models are frequently phrased in terms of "if-then" statements that address the logical result of an action.

Needs  $\rightarrow$  Goals/Objectives  $\rightarrow$  Activities  $\rightarrow$  Output  $\rightarrow$  Outcome Measures

Below is an example of a logic model grid that shows how there is a direct relationship between the reasons for the problem (causes identified in a needs assessment), the desired goals and objectives to correct the problem, the solution to bring about those changes (i.e., the activities of a program), and the tool (outcome measure) used to document the changes in the refugee rights context.

#### Example:

Needs Assessment Data	Risk-Factor-Based Goals/Objectives	Activities and Output	Outcome Measures
Lack of knowledge of how to obtain a work permit	Goal: Refugees have comprehensive understanding of how to obtain a work permit Objective: More work permits are obtained by refugees	<ul> <li>Individualized legal assistance</li> <li>Know your rights workshops</li> <li>Community legal empowerment</li> </ul>	Number of work permits obtained

It is apparent from the above example that to achieve the desired goal and objectives a combination of different refugee work rights programs may be appropriate.

## Fit: Selecting the program that "fits" the community context

Program fit is the degree to which a selected best practice program fits within the community context. The idea of fit describes the anticipated compatibility of the proposed work rights program with the following:

- Values and practices of the community
- The characteristics of the target populations
- Culture of the target population, which affects how they can be reached and best served (eg. refugees having restricted rights and/or movement)
- Community's anticipated perception of the program e.g. existing sentiments of xenophobia, hostility towards immigrants etc.
- The priorities of key stakeholders, such as funders and policy makers.

#### Why does it matter?

- To ensure that the selected program matches the needs and characteristics of the target population
- To ensure that your program's goals complement those of other available programs
- To ensure that the community can support the program and has the capability to benefit from it
- To ensure adequate resources exist to implement the program properly
- To ensure sufficient participant involvement in the program
- To improve the likelihood of success for the program

To demonstrate the importance of fit, the following are examples of programs that would have a good fit:

- Community Empowerment Programs that **involve nationals as program participants** where appropriate to address community tensions (if locals perceive refugees as being able to access support that they are not entitled to.)
- Vocational Training Programs that **complement and build upon existing skills** of refugees but are at the same time **in line with the requirements of the local economy** and involve local population.

### How do you determine program fit?

To determine program fit, use the data collected from the needs, resources and landscape assessment. This information should include an analysis of the existing barriers to implementing refugee work rights such as rights restrictive legislation, barriers such as restricted movement, community values and beliefs or logistical issues such as lack of available space, funding or resources. As program fit may change over time, it should be reviewed regularly. Periodic assessment and M&E are essential.

### Assessing Capacities Needed for a Work Rights Program

When implementing a work rights program it is vital to conduct an analysis of the following required capacities:

- Human capacities, e.g. staff with appropriate credentials and experience
- Technical (include the expertise needed to address all the aspects of program planning, implementation, and evaluation
- Fiscal capacities or the adequate funding to implement the program as planned
- Structural/formal linkage capacities, which are the links to and buy-in from other key members of the community and access to the target population

#### Why is assessing organizational capacities important?

It is important to assess your capacity before program implementation because capacity directly relates to how well the program will be implemented. If there is not enough capacity to implement the program as intended, then it is likely that the program will not achieve the outcomes desired.

The goals of the capacity assessment are to determine what capacities the organization possesses and what capacities need to be developed to implement the program with quality. Some programs may be too difficult or resource intensive. In that case, clear plans should be developed to obtain or access them elsewhere or to modify or choose a different program.

#### How do you assess capacities?

Below you can find a sample capacity tool with examples taken from Asylum Access's Hospitality Route. Use this tool for each of the above identified capacities.

CAPACITY ASSESSMENT ITEM	CAPACITY REQUIREMENTS	EXISTENT CAPACITIES	CAPACITIES TO DEVELOP
STAFF			
TECHNICAL EXPERTISE			
FISCAL			

# Developing a Work Rights Program Plan

Once you have decided what refugee work rights program you would like to implement in accordance with your needs and landscape assessment and what capacities are required to do so, you will have to develop a plan for your program. A plan is a roadmap for your activities that will facilitate systematic implementation of a program and entails the following steps:

Program Name: What is the title of your program?

**Program Summary**: Provide a description of your program components, goals and activities sketch and a statement about how the program is expected to have a positive impact.

**Identifying Program Components**: Programs are made up of specific components. For example, the components of a legal assistance program might include training of advocates, advertising about services, advising of clients. Each component should link directly to the program objectives. When identifying program components, consider what will be useful to monitor the implementation of your program and how they inform the evaluation process. Examples of components are the following:

- Disseminating information about legal services
- Training of advocates
- Provision of advice

**Identifying Anticipated Outputs**: What outputs will show that the components were implemented as intended? Outputs are direct products of program activities and are usually measured in terms of work accomplished, i.e. service delivered and number of people served.

F YOUR COMPONENT	A POSSIBLE OUTPUT MIGHT BE
TRAINING OF ADVOCATES	Number of people trained

When we proceed to evaluating the program, the anticipated outputs will be compared with the actual outputs of the program. If your objectives are not achieved, the difference between the anticipated and actual outputs could demonstrate why. By

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monitoring program outputs throughout the course of the program, you will gather information to make improvements while the program is still active.

## Planning each program component

Once you have chosen your program component, each one needs to be planned. In planning each component, consider what the major activities are that need to be completed to make each component successful. Each component is made of several activities. List each of the activities necessary to implement your program. Some possible activities could be:

- Recruitment of participants: How to enroll participants
- Staff training: How and in what do staff need to be trained?
- Other activities: Planning meetings, establishing standard operating procedures

For each of those, consider the following:

- Scheduled dates
- Who will be responsible
- Resources needed
- Location

Program Component	Activities	Dates	Who is Responsible	Resources Needed

## **Collaboration partners**

Identify your collaboration partners and the roles each partner will play in the implementation of your program. Collaboration, including the development of partnerships in your community, is an integral part of effective programs. Effective programs enhance the efficiency and effectiveness of their efforts by developing partnerships with other agencies. Such efforts promote the sharing of ideas and resources.

# Budget of program

What are the anticipated costs of the program? Cost for what?

- Staff
- Logistics
- Materials
- Other

## Implementation barriers and proposed solutions

Refugee work rights programs can be difficult to implement and often face many challenges. What are your anticipated barriers and proposed solutions? Consider the following:

- Proposed solutions
- Program barriers

## Monitoring and Evaluating a Work Rights Program

During the program planning stage, remember to define what data you need to collect, and how you intend to collect it in order to monitor and evaluate program success. Planning your M&E from the start will help you to:

- Establish the baseline before starting the program.
- Integrate data collection tools into your program to monitor ongoing outputs.
- Collect data that can help you evaluate whether your intended objectives are achieved.
- This section provides practical tips on identifying what data to collect, designing data collection tools, and evaluating program impact.

Do not leave M&E until you have completed your program! During the piloting stage, devote adequate time and resources to monitoring, evaluation and learning.

Encourage critical reflection and be ready to make (sometimes major) shifts in your program approaches.

Even if you have conducted many assessments during program planning, expect a steep learning curve as you will inevitably realize that some aspects of your program design are not feasible or effective in practice. Adaptive planning is the key to success!

Evaluative questions should be asked throughout program execution, e.g. during monthly staff meetings. It is also advisable to conduct a more in-depth evaluation after program completion. Depending on program scale and budget, you might wish to hire an external evaluator to validate your program design and impact.

#### Building a M&E Plan

When building your M&E plan, refer back to your program goals to clarify what program outputs and outcomes you want to measure. Once you have identified what data to collect, design data collection tools that can be embedded into your program.

Identify what data to collect

Break down your **long term goals** and **SMART objectives** to identify what data you need to collect in order to measure progress towards goal. Consider:

- What data will you collect to record the output of your program?
- What data will you collect to understand the anticipated vs. actual outcome of your program?
- What baseline and post-program data is needed to compare the difference before and after implementation?

	Examples of indicators
Output	# of Know Your Rights workshops conducted
Output	# of people reached

	Outcome	% of clients who demonstrate an increase in knowledge on employment law	
Outcome		% of work permit applications made that are successful	
	Outcome	% of participants that have an improved employment or self-employment status 3 months after training completion	
		For <b>employee</b> participants, you may track client changes before and after the program by designing a spectrum illustrating different employment statuses. This can be used to measure whether their employment status has improved as a result of the program.	
		<ul> <li>No Job</li> <li>Temporary, irregular/seasonal</li> <li>Regular part-time employment</li> <li>Full-time employment</li> <li>Full time employment; saving a portion of earnings</li> </ul>	
		For <b>business owner</b> participants, you may establish indicators that can help you track any visible improvements in measuring improvements in livelihood opportunities. e.g. started business, legalized business, increase in monthly profit, successfully expanded business (increased number of customers and/or employees).	
	Col		

Design data collection tools

After deciding what data you want to collect to measure progress and success, design how you will collect this data. Identify your sample size and population (e.g. gender, literacy levels). Reduce bias in your data collection approach. Test your tools and make changes if necessary.

In your baseline survey, consider what types of questions are appropriate depending on context. For example, in countries where there are limited work rights for refugees, do not create false expectations of what your livelihood program is able to achieve.

Examples of data collection tools:

<u>Program activity</u>: provide work-rights related **individualized legal services** to support refugees in accessing safe and lawful employment.

SMART Objectives

Data collection tool

160 refugees reached through work-rights related individualized legal services, at least 50% of which are women.	Collect and store client and case details in database, including gender, nationality, and case types for trend analysis
At least 90% of clients express satisfaction, a sense of empowerment and knowledge gained through our individualized legal services.	Conduct (i) reflection session at the end of the workshop, and/or (ii) workshop feedback form
90% of work permit applications made are successful.	Track and store case outcomes in database, including gender, nationality, and case types for trend analysis
80% of non-formal dispute resolution with employers are successful.	Track and store case outcomes in database, including gender, nationality, and case types for trend analysis

<u>Program activity</u>: Conduct <u>Know Your Rights</u> information sessions to provide information on refugee employment laws and policies, and how to protect themselves as business owners and employees.

SMART Objectives	Data collection tool	
160 refugees reached through KYR sessions, at least 50% are women.	Workshop attendance form	
90% of participants demonstrate an increased understanding on refugee employment law and protection through in-training feedback and feedback surveys.	Conduct reflection session at the end of the workshop, and/or pre/post workshop survey	
After 3 months, at least 60% have taken action to improve their livelihoods strategy using the information gained in KYR.	Interview or focus group	

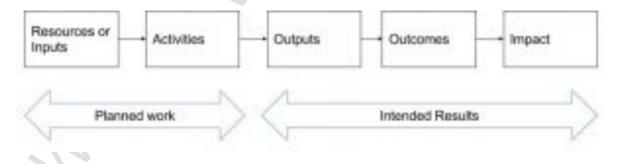
<u>Program activity</u>: Based on client interest and market gaps, provide **vocational training** to refugees and nationals to improve livelihood opportunities.

SMART Objectives	Data collection tool
160 refugees reached through vocational training, at least 50% are women.	Collect and store client and case details in database.
At least 90% of program participants express that the training was useful and relevant.	Evaluation form, phone call or monitoring visit.
80% of participants' employment or self-employment status have improved within 3 months after training completion.	<ul> <li>(i) Collect baseline data before the program using socio-economic screening form</li> <li>(ii) Collect post-program evaluation 3 and/or 6 months after training completion. This includes a focus group followed by an individual survey.</li> </ul>

#### Workshop Evaluation

#### Logic Framework

To evaluate your program success, use the logic framework that you have developed during program planning as your conceptual framework. This can allow you to break your program down into different parts, and to evaluate the relationship between them.



Using the data collected, evaluate your activity strategies and targets:

- Were your actual inputs the same as planned? What was different in practice? If the program is not carried out as designed, then it might not be reasonable to expect that the desired program objectives will be accomplished.
- Were your activities carried out as intended?
- Were there any shifts in program strategies, and for what reasons? e.g. any barriers or practical considerations.

• What, if anything, was added and/or left out, and for what reasons?

Evaluate whether the "if-then" conditional logic in your logic framework were met. This can help you identify gaps and ways to improve the program.

In your logic model, components should be linked to the next in a conditional logic "if–then" relationship:

- If you have access to resources, then you can carry out planned activities.
- If you carry out activities (inputs), then you can deliver results (outputs).
- *If* you have a positive effect on refugee work rights implementations, *then* refugee livelihoods will be strengthened and improves (outcomes).
- *If* refugees are capable of accessing lawful employment, *then* they become self-sufficient, and independent from humanitarian aid (impact).

**Did your planned work lead to the intended results?** Refer to your program goals and SMART objectives for intended results.

**If your activities did not lead to your intended results, what were the barriers?** What were the gaps in the "if-then" logic? For example, according to your logic framework, you might have assumed that participants will be able to seek employment (intended outcome) once they have completed vocational training (output). However, you realize that participants cannot find employers that are willing to hire them in your post-program evaluation. In such case, you might need to conduct another assessment to identify additional barriers to employment, and design new activities accordingly to tackle the new gap in your logic framework. e.g. job matching activities or conduct

#### Progress, Problems and Lessons Learned

employer information sessions.

For each component of the evaluation tool, record the successes, challenges experienced and lessons learnt during program implementation. What specific things went well and not so well as a result of implementing this program? Which areas require extra attention?

Recording the successes and challenges of a program can help you to:

• Reflect on barriers, obstacles and challenges to a program presents the opportunity to make improvements.

• Record challenges and successes helps to avoid pitfalls in future implementation of similar programs, both for your organization and others that might use you program.

Components	Evaluation Questions	Successes, Challenges and Lessons Learned
Program Plan	Did the program follow the basic implementation plan?	
	If not, where did it deviate and why?	
Stakeholders	Were the stakeholders correctly defined and identified for the individual program?	
	Who were the stakeholders that were addressed and involved?	
Target Group	Was the target group adequate for the program?	
	What was the participants' satisfaction?	
Output	What individual activities were completed?	
	Did more activities need to be added?	
	What was the output of each activity?	
Resources	W the allocated resources sufficient?	
	If not, what was lacking?	