

Refugee Rights Leadership Training, Geneva, 13 – 15 July 2014: Session summaries

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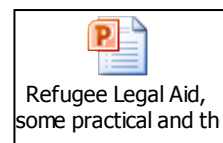
Day 1: New Developments in Refugee Legal Aid

Goal: To take stock of where the refugee rights movement is at, where we need to go from here, and how to get there. We will look at new developments in theory, programming and tools.

Refugee legal aid: current theoretical foundations & Theories applied: approaches to implementing refugee legal aid
Martin Jones, University of York

Understanding the theories behind refugee legal aid: exploring different theoretical models such as ‘access to justice’ or ‘legal empowerment approaches.’ Concrete examples of rights-based programming; how theories are applied in different contexts.

Double click on icon to open presentation or [download from google drive](#):



Notes on presentation:

- Characteristic issues relating to protection and refugee legal aid
 - Limited resources (as much an issue in ‘global north’ as in ‘global south’)
 - There is not such a thing as global south in terms of political use of protection space. Is this misconception holding the refugee rights movement back?
 - Global south as a term can be better understood as something that unites civil society rather than something that defines the problem.
 - Lack of respect for rule of law or rejection of international refugee law.
 - Can this change? Is this uniform across and within jurisdictions? (Courts decide differently in different contexts – see what works in yours.)
 - Lack of legal framework for refugee protection.
 - This CAN change: see Turkey, Hong Kong, South Korea.
 - Obligations in other legal frameworks can be applied to immigration: CEDAW, CRC.
- Is a ‘protection spaces’ approach working?
 - Civil society organisations (CSOs) excluded from political conversations led by international actors, and when included they have little power.
 - Focus on ‘protection spaces’ approach may come at expense of longer-term solutions.
 - Negotiations of protection space CAN be rights-based: Cartagena, Malaysia.
- Foundations of the refugee rights movement
 - Legal aid movement is a response to the above approach. And indeed it must sometimes engage with the other approach. We define ourselves in opposition.
 - Commitment to recognising refugees as rights bearers, support role.
 - Rights of refugees, but also [the rights of people who happen to be refugees](#).
- Rights-based approach (see table on slide 12: charity, needs and rights-based approaches)
 - Takes international human rights norms, goals and principles into refugee protection.
 - ‘Goals and principles’ cut across most human rights conventions, general comments, etc., and apply to service providers. (NB. Accountability is *towards the people we serve*.)
 - Service providers must also advocate for governments and others to adhere to them.

- Models of legal aid delivery
 - Classic access to justice model (slides 28-29)
 - Helps identify gaps, orient focus: spend more time on counsel or awareness raising?
 - Model does not address root causes of a problem, it is merely responsive. Mapping the steps doesn't necessarily complete a rights-based approach.
 - Model focuses on the law. Insufficient to lasting change.
 - Legal empowerment model – an evolving idea (slides 31-33)
 - Steve Golub, namati.org: legal empowerment is the use of the law to allow full human agency, or as much as possible. Strengthening this is a goal and a process.
 - Often packaged by UN as poverty alleviation tool. Needless use of the word 'citizen' recurs in such discourses – politically saleable but can unwittingly exclude refugees.
 - Empowerment entails understanding the way that discrimination creates power. One can only empower oneself e.g. when you understand why you became a refugee (i.e. that displacement is due to power dynamics) you are empowered.
 - Our role? To legally empower refugees or support them in this process?
 - Don't underestimate the power of information.
 - The process of bringing about the CRPD (Convention on the Rights of Persons with Disabilities) was a process of legal empowerment not of beneficiaries / dependents.

- Questions to ask yourself:
 - How to design a legal aid programme that is rights-based? Compare your model to all the rights you need to be practicing yourself. Are they respected?
 - Does legal aid address the problem of rights violations in the first place? It might get people out of detention but it doesn't stop people from being detained.
 - What is the problem to which legal aid is the solution? How therefore do we address underlying causes of violations, as well as directly addressing violations?
 - Is there always work to do, or are you trying to put yourself out of a job?
 - Are you trying to create a situation where the initial grievance doesn't happen?
 - Is your model responsive / perpetual?
 - Judge training? As advocates, don't train judges, have other judges train RSD adjudicators.

- Concrete models?
 - Centralised (in-house advocates) vs. several connecting centres (distributed pro-bono lawyers or employees) vs. communities that connect to everyone (combination?).
 - Is a central system incompatible with participatory, rights-based approach?
 - In Uganda: separate units for training, advocacy, legal aid, etc.
 - Legal awareness activities done at entry to system, by rapid assessment teams and in reception centres: aiming to reduce violations, address root causes.
 - In Hong Kong: refugees are referred to legal aid organisation by UNHCR or others. Interviews conducted by in-house volunteer advocates or pro-bono lawyers from around 7 firms, trained 3 times a year. These lawyers begin researching country of origin information (COI) and progress to more direct representation.
 - Decentralised method responding to situation where number of people requiring legal services exceeds supply.

Legal aid monitoring and evaluation

Laura Parker, Asylum Access

Best practices in [monitoring and evaluating legal aid](#): the importance of and practical challenges to defining case outcomes and selecting impact indicators.

Double click on icon to open presentation or [download from google drive](#):



(Contains examples of common legal aid goals, and how to monitor and evaluate them.)

Notes on presentation:

- M&E is a tool for results-based management and an input to advocacy.
 - Part of a cycle: monitor during implementation, evaluate at agreed-upon point.
 - Benefits (slide 4): avoid getting lost – enables clarity of and focus on priorities, learning (donor accountability secondary).
 - Difficulties (slides 5-8): requires buy-in. Can be time consuming, but don't waste energy building monitoring systems and not evaluate their output. Do smaller evaluations every quarter and have a more robust process at end of the year.
- Evaluations are not staff appraisals: don't judge staff on their case outcome success rate, as this also depends on external factors.
- Involve financial staff to guard against budgets that reflect old goals, reoriented post-evaluation.
- Inwards vs. outward-looking evaluation: reorienting strategies and evaluating progress towards goals vs. wider impact evaluation looking at changes in refugee rights landscape.

- Structuring M&E plans: [download sample Goals and Objectives Worksheet from google drive](#) (slide 9).

- Some goals (13-15) assume [legal aid is inherently valuable](#) e.g. increasing service provision.
 - Monitor and maintain quality alongside growth of service provision (particularly important during influx, organisational growth, staff shortage).
 - Review work, Nairobi Code compliance, qualitative client feedback (17-21).
 - If 90% rate services highly, what are the 10% saying? Who are they - all from a particular subset of the population? Was the existing bar very low?
 - Monitoring mechanisms (16), such as databases or tables, should disaggregate data (age, gender, other vulnerabilities) to assess whether you're reaching different subsets of the population equally and pinpoint where failures/dissatisfaction lie.
 - Evaluation would focus on finding out e.g. we reached 30% more clients than last quarter and our client satisfaction / Nairobi Code adherence has not decreased.

- Other goals (22-26) assume that legal status helps access rights, e.g. by bringing 1951 Convention rights into play (protection against deportation, access to justice, education).
 - Only set such goals if there is a link between status and access to rights in your context.
 - Conceptualise success against [UNHCR baseline for RSD](#) (Data Table Annexes Tab 10).
 - Case Guides (27, 37) crucial for monitoring: define outcomes per case type and instance, ensure staff track and record these systematically.
 - Mitigate follow-up obstacles (client unreachable, resource intensive) with clear legal agreements, setting a time to cease follow-up, using 'not applicable' case outcome.
 - Evaluating impact (31-32): contextualise – external vs. internal factors; variations by gender/age/ethnicity. Implement quality control to avoid mis-attributing changes.
 - Mitigate obstacles (lack of a baseline for non-RSD work, comparing apples and pears): look for improvements against past performance not national trends.

- Wider discussion needed: transferability of impact (knock-on effects of legal aid to an individual on the wider community or to families)? Durability of impact? Monitor cases 2 years on?

Best practices in [child protection policies](#): understanding the importance of child protection, followed by a workshop to create our own policies.

Notes: discussion of common dilemmas.

General conclusions in response to discussion of common dilemmas:

- Avoid strict rules: what is in the interest of one child may not be in the interest of another.
- Find ideas from practitioners/organisations outside our direct 'industry.' California 'kid law' groups.
- Conduct external research with similar issues outside the refugee context, share transposable lessons.
- **Voice**: If a child can't articulate well, how to determine their best interests, and who to involve?
 - Encourage UNHCR to uphold [their own guidelines](#) and assign guardians to speak on behalf of a child in RSD. (This is rare/inexistent in practice). Consider guardian's own interests.
 - Advisor's role in determining the truth e.g. between conflicting family versions? Be more open minded (children assimilate/express experiences uniquely, especially in response to trauma)?
- **Confidentiality**: Should parents and children be in the interview room together?
 - Information-sharing: children may have separate claim (e.g. on account of LGBTI identity) but not wish to tell the family. Parent may wish to conceal that other parent has died.
 - Will child disrupt interview vs. does it create a protection risk to have them alone in the office?
 - Can depend on age, or can ask family to decide. Could interview separately and together.
- **Vulnerability**: Children may be at risk within family unit e.g. corporal punishment witnessed at legal aid office – what is advisor's responsibility? How to react taking culture & parental stress into account?
 - Local legislation may mandate contacting authorities. What if they are untrustworthy / exploitative / uncooperative and ultimately risk further danger?
 - You can breach the confidentiality obligation under the Nairobi Code if your client is going to be the cause of immediate harm – the obligation is less clear if harm has already been committed.
 - Reduce tension: separate spaces, support networks (psychological) for parents *and* children.
- High protection needs of minors with children (e.g. 16 year-old refugee mothers).
- Can certain children be part of a particular social group? Can children be granted automatic status?
- **Identification**: Binary view inappropriate: much age assessment practice is highly inaccurate (medical checks not thorough) and inaccessible (burden placed on claimant to obtain test, claimant pays).
- Authorities/adjudicators may manipulate age to avoid onerous obligations or bans on child detention.
 - Advocate for replacing old, inaccurate tests with creative alternatives (story-telling, COI); and for giving children benefit of the doubt if there is conflicting information on their identity/age.
 - Argue that age is not central to the claim and that other issues of vulnerability be considered.
 - Look for solutions independent of RSD: family reunification / humanitarian relief for children.
- **Conflicts of interest**: E.g. vulnerable minors living together and involved in an abusive incident. Not enough psychosocial support to deal with their own trauma, perpetuating further abuse/exploitation.
 - [Nairobi Code](#): create a firewall between the two legal representatives from same organisation ensuring no communication about a case. But implications include: having two supervisors, preventing access to files, separate meetings (internally and ensuring clients don't coincide).
- **Custody issues**: Sometimes child would be resettled if one parent hadn't put in a custody claim.
 - Local/national laws? Can you represent the child and have parents look for other lawyers?

[Funding for legal aid: skills training](#)

Emily Arnold-Fernández, Asylum Access (AA) and Beth Fernandez, Sigrid Rausing Trust (SRT)

A funder's perspective: how to position yourself to be attractive to a legal aid funder, and how to market your organization to diverse audiences.

Double click on icon to open presentation or [download from google drive](#) (Beth Fernandez):



Notes:

- AA: How to frame a grant – (1) Need: what is the problem? Address any myths e.g. that refugees are ‘taken care of’ already, or that they are in a temporary predicament. Educate donors. (2) Offer the solution (i.e. why your work needs to be done). (3) How the donor can help make that happen.
- AA: What foundations are looking for – review their past and current grants to identify priorities.
 - Use their terminology and key words to describe your work. Avoid hard uphill battles – you can’t change someone’s values if they are really not progressive. E.g. the word ‘illegals.’
 - Also an issue with government funders. You could move this debate over to your [advocacy](#) portfolio e.g. that change is part of our advocacy strategy, until it gets to the point where it becomes part of a fundraising portfolio.
 - If fundraising for an area they don’t cover, link ‘new’ issue with their current portfolio.
- AA: [Relationships](#) are the most important – [writing grant applications](#) is the least. Get to know decisionmakers. Explain links that might not be obvious, in person.
- SRT: Private foundations are very different from one another, along a continuum of behaviour (e.g. conservative vs. activist – Open Society Foundations is more activist).
 - SRT grants often 1–3 years; without technical advice. Often core funding (to use anywhere – no need to ring-fence it). This is hard to find, so SRT feels it’s filling a gap, recognising that all human rights organisations work in a fast paced environment, so it’s a waste of time to ask a donor to transfer budget items between lines in the case of subsequent operational changes.
- SRT: When writing applications, take steps back from what you do every day. Tell compelling stories. Give the big picture but with specific illustrative examples. Foundations give to people.
- SRT: Foundations are looking for...
 - Convincing theory of change – is the proposal likely to work?
 - Good leadership: how would the person manage external disturbances, or change management? How do they lead other people? What are they creating behind them? There must be other people to continue your work, otherwise it is not sustainable. Charismatic leaders are not necessarily good at bringing on other people.
 - Strong governance and accountability: good board structure, oversight. Accountability also relates to how you decided to work on your topic: how did you identify that need?
 - Working with other organisations: SRT wants to see where you perceive yourself in relation to others. Consider issues relating to service gaps, or whether only one provider is needed.
 - What is the role of our grant? Foundations are egotistic, like to be told their grant is crucial.
 - What was someone doing before the organisation was set up? Track-record important to [gain seed-funding](#). Be creative at demonstrating impact when you’re doing something new.
- Research is key! Show prior knowledge. E.g. average refugee rights grant is 60,000 GBP per year. SRT unlikely to fund an organisation with a 3 million budget. SRT can see its contribution could be more important to smaller organisations. SRT does not want to contribute more than ¼ of an NGO’s budget.

Additional resources for legal aid providers

Short presentations by participants on new developments that may be of use to the community:

- Hong Kong Justice Centre (Victoria Wisniewski Otero)
 - Refugee-led advocacy strategy – new initiative for public awareness and campaigns, dealing with governments, social media.
 - <http://www.justicecentre.org.hk/framework/uploads/2014/07/Voices-for-Protection-Flyer-and-Application-Form-Fall-2014.pdf>
- Refugee Work Rights Coalition (Anna Wirth, Asylum Access)
 - Important for government-level advocacy: economic participation and contribution as key advocacy points.
 - www.refugeeworkrights.org
- Marko Macskovich
 - Biometric data is increasingly being recorded by governments and can be used in protection claim processes.
 - What does this mean for the legal advice we give? The refugee legal aid community may not be aware of the implications of this new technology.
- Helsinki Citizens Assembly (Zaid Hydari)
 - Refugee Solidarity Network – a recently-launched US-based non-profit, to support the refugee rights movement in Turkey.
 - <http://www.refugeesolidaritynetwork.org/>
- Asylum Access (Laura Parker)
 - The Refugee Rights Toolkit is now much improved and operational – an online manual with practical 'how-to' guidance on setting up and running refugee rights initiatives, and on advocating for refugee rights through legal aid, community empowerment, strategic litigation and policy advocacy. Goes hand in hand with [mentoring programme](#).
 - Currently seeking editors – please share the call for editors
 - www.refugeerightstoolkit.org
 - Relevant pages from the Toolkit are linked to and highlighted in **green** throughout this document.

Day 2: From Legal Aid to Rights Advocacy

Goal: To further our understanding how to link refugee legal aid with national, regional and international advocacy. To develop an outline for context-specific national, regional and/or international [advocacy plans](#) best suited to promote respect for refugee rights.

National level strategy and tools

Zaid Hydari, Helsinki Citizens Assembly (Turkey) and Susan Alupo, Refugee Law Project (Uganda)

Exploring experiences in conducting refugee advocacy on a national level in Turkey and Uganda. Based on these case studies, we will consider how to engage with national advocacy in our own contexts.

Notes:

- Advocacy needs case-by-case approach. Understand political environment, build strategies repertoire.
- [Strategies:](#)
 - Identify specific issues. Take one not 15 to government at any one time.
 - Deal with the institutions that are directly responsible for change.
 - Identify short, mid and long-term goals. The latter require patience and sustainable approaches, e.g. refugees advocating for themselves.
 - [Build coalitions](#) on specific issues, have a united voice.
 - Understand government perspectives: why don't they want to engage in refugee issues? Resource limitations? Don't care? Don't like refugees? Aim to enhance capacity of government to understand refugee issue, particularly a new angle and how it's relevant.
- Uganda: Refugee Act 2006 took 7 years of intense advocacy. Regulations needed for procedures and processes under the act were then implemented in 2010.
 - Strategy: Involve government from the beginning so they feel part of coalition, working hand in hand with civil society. [Build rapport](#): civil society not just there to criticise, wants change too.
 - Invited officials to events/field visits so they saw gaps, realities and CSO's transparency. Invited 5 refugees to each government meeting to explain their own needs.
 - Produced documentaries to show authorities. Surprising stories effective e.g. male rape.
 - Committees established in each refugee group (by nationality) to lobby government.
 - Held repeated round-tables. Some failed so switched to diplomacy. This was unsuccessful. Ministers' political ambitions complicate things. Took government to court.
- Turkey: legal aid work flagged issues (such as procedural inconsistencies, lack of prevention of removals where there are appeals), leading to a monitoring & advocacy unit to address these.
 - Strategy: Identify government benchmark, work to this. Decide on achievable goals.
 - EU accession goals meant human rights framework was of interest to government.
 - Began [researching](#) and writing reports on specific topics in 2006, relationship-building in 2008.
 - Studied regional laws to advocate for Turkish legislation to meet European standards. (Noticed holes in EU legislation, but improving this not achievable in short-term. Engage later.)
 - Developed coalition, introduced national grassroots CSOs to refugee issues.
 - Fostered new mentality – culture of stakeholders supporting government by monitoring and suggesting achievable goals. CSOs used to just criticising.
 - Political mobilisation: [lobbying](#) opposition, build consensus to pass legislation.
 - Sought NGO access to removal centres, then to wider monitoring processes (small steps).
 - UNHCR and IOM appointed as consultants to the government: coalition engaged them as stakeholders but worked separately – international so less constrained than CSOs, could be more assertive.
 - UNHCR is RSD adjudicator: challenges working with refugee legal aid organisations. Remained separate, involved in monitoring.

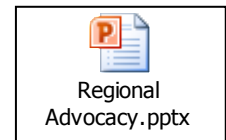
- Final considerations:
 - Are you setting an agenda or working with an issue?
 - Importance of coalitions and [education/capacity building](#). Find allies – influencers able to champion your cause. Decide if it's worth meeting with most radical anti-refugee authorities, or not worth your while. Seek out National Human Rights Institutions.
 - Choose strategy based on your goals. Multi-level strategy good: different phases, approaches.
 - Refugee involvement: establish dialogues to present issues. Can refugees be witnesses in court?

Regional level strategy and tools

Karina Sarmiento, Asylum Access Ecuador

Exploring experiences of conducting refugee advocacy on a regional level in Latin America. Based on this case study, we will consider how to engage with regional advocacy in our own contexts.

Double click on icon to open presentation or [download from google drive](#):



Notes on presentation:

- Advocacy starts and ends nationally to deliver real change. It can be escalated when experiencing problems nationally. Holistic strategy sees needs & solutions at national, regional, international levels.
- A regional policy strategy: Ecuador's example
 - What are the problems to solve in Ecuador?
 - A new restrictive law regarding refugee rights (barriers to accessing asylum); difficulty implementing existing refugee rights; weak RSD procedures in Ecuador and the region (restrictive and not well applied); problems so institutionalised an individual organisation may not have an impact; integration (the asylum seeker issue is siloed).
 - Government was hesitant to work with CSOs (restrictions on CSO protection). We must work to change the apparent trend in restricting civil society from participating with governments.
 - Regional office of UNHCR active, but they played an underground role.
 - UNHCR is an inter-governmental agency not a CSO: be clear on perspective, language.
- For steps for implementing regional campaigns, see slide 6.
 - Looked at the context:
 - Mapped local and regional legal frameworks, protection systems and political scenarios: issues and opportunities? Which countries better on RSD? To create a comparison.
 - CSOs: who is working in the area, both locally and regionally? Competition or synergies?
 - Important to build consensus, particularly across other civil society issues.
 - Strengthened the ability of civil society to understand that refugee migration is a regional issue, not just a national one. Shared information with the [coalition](#) and other CSOs.
 - Understood the legal framework at the regional level i.e. the Inter-American human rights system. Now advocating for countries to meet the standards of the Inter-American region.
 - Produced [regional report on RSD](#) comparing 5 issues across 5 countries: deadlines for requesting asylum, fora, appeal processes, commissions and access to information.
 - The report, as a document was seen as less confrontational: instead of criticising a particular government it was mapping what was going on in the region.
 - Don't tell governments they're doing badly, say: this is better elsewhere, try doing it that way.
 - Used the RSD report as a platform to push for a relationship with the Inter-American Commission and for a public hearing (cases may eventually appear there).
 - Meetings with government authorities at national level.
 - Cartagena +30 regional report followed, covering borders and security.

Innovative tactics and approaches in international advocacy to realize human rights
Victoria Wisniewski Otero, Justice Centre Hong Kong

Exploring experiences in conducting refugee advocacy on an international level with UNHCR and other international NGOs and Agencies.

Double click on icon to open presentation or [download from google drive](#):



Notes on presentation:

- What to do when there are no regional frameworks? Why bother with international advocacy?
 - Can force government to be accountable, reporting obligations can be used to advance rights.
- Human rights treaties and treaty-based bodies:
 - Comprised of experts who review States Parties and monitor the implementation of recommendations, through reporting and complaints mechanisms. Permit dialogue.
 - Steps and entry points (learn about working methods/guidelines):
 - State drafts a report, CSOs can provide a shadow report
 - Pre-sessional working group: report with questions you want the committee to raise with the state, feed into issues that will be discussed. Find out who drafts reports, engage.
 - State review: 'constructive dialogue.'
 - Post-review: follow up on recommendations made, [work with media](#), apply pressure.
 - Monitoring and evaluation.
 - Get to the main issues, include suggested questions/recommendations to make a committee's job easier. Consider previous recommendations, recommendations made to other states.
 - Eclectic coalition-building (facilitates information sharing, public awareness/media work).
 - Push for innovative recommendations to ensure governments can't provide cut-paste responses.
- Charter-based bodies:
 - Human Rights Council manages Universal Periodic Review (all countries are reviewed even if they haven't ratified certain treaties).
 - Peer review process: states review other states. However this becomes politicised.
- Other opportunities:
 - Special procedures
 - Mandate holders on country and thematic issues
 - Complaints mechanisms (including for interim measures)
 - Technical agencies for thematic issues
 - Permanent missions of states to the UN
 - OHCHR (Office of the United Nations High Commissioner for Human Rights)
 - Universal Human Rights Index
 - Handbook for Civil Society
 - Civil Society Section
 - [Guide on How to Follow Up on UN Human Rights Recommendations](#)
 - United Nations Non-Governmental Liaison Service
 - NGOs: International Service for Human Rights, UPR-INFO, CIVICUS, Mandat International
- Challenges:
 - Enforceability
 - Civil society barriers for entry: cost, complexity
 - Uneven expertise and independence of experts
 - State delegations inadequate
 - Harmonisation and integration
 - Workload/lack of resources
 - Time input vs. outcome (be strategic about who to engage and why)

Strategic litigation as an advocacy tool and Planning for systemic change
Jessica Therkelsen, Asylum Access

Discussion of the use of [strategic litigation](#) as a supplement to policy advocacy: when is it appropriate, and how to engage effectively. Bringing it all together: generating a starting point for organization-specific advocacy plans.

Notes:

- Does refugee rights movement have bandwidth to do international advocacy? Should we focus on clients?
- When conducting advocacy, remember you are using up someone's time. Be direct: 'we are having a serious problem and I would like you to help me resolve this.'
- Regional advocacy – think strategically about the [best venue](#) for advocacy or strategic litigation in your country (national or international venues). Regional bodies and issues include:
 - Arab League
 - African Commission (specific complaints e.g. detention)
 - East Africa: how to add freedom of movement without protection compromises?
 - Asia Pacific regional gap for human rights complaints – Asia Pacific Refugee Rights Network (APRRN) has decided to pretend there's a regional structure and all get together as a region to advocate on the same issues, even though the system doesn't exist yet.
 - Asian Intergovernmental Commission of Human Rights (ASEAN) starting to engage.
 - One issue: political repercussions between states of publishing asylum decisions (look at Argentina – hides asylum decisions too).
 - Inter-American Commission: Cartagena +30, detention, children.
 - V4 – four EU countries, rotate chairmanship, migration always on the table.
- More sub-regions moving towards freedom of movement (refugees often stay within sub-region). Can we phrase protection in a regional way? Does freedom of movement regime include non-*refoulement*?
- International bodies and participants' experiences:
 - Push for international bodies to look more thematically at refugee issues.
 - In Malaysia government can be held accountable to others in only a few areas, as has only ratified CEDAW, CRPD, CRC. Frame issues as women's/children's/disability issues?
 - In 2012 UNHCR and CRC met to discuss migrant children and detention.
 - Could a work rights venue be ILO? Committee on Migrant Workers?
 - Asylum Access Ecuador bringing case to CEDAW.
 - Corporate accountability? [Asylum Access intervention at Human Rights Council](#) to mainstream forced migrant issues into current discussions on business and human rights.
 - UPR: could we have more of the community involved in shadow reporting processes?
 - UNHCR: Annual Tripartite Consultations on Resettlement take place the week after Annual Consultations with NGOs. Driven by UNHCR, governments, civil society in resettlement countries.
 - A mediated process: little direct input from countries where refugees are coming from.
 - Could we be present to understand how populations are selected for resettlement?
 - Concerns are currently voiced from hosting countries in ad-hoc way.
 - Interim measures at treaty bodies – being used in South Korea.
- Advocacy is a multi-phase process: look into committee recommendations and follow up. Don't assume government members will know about recommendations and treaty bodies. Circulate recommendations to government and to civil society. No alerts as to when recommendations are published: check websites every week, establish relationships with treaty bodies secretariat staff for tip-offs.
- We should share our conversations with the refugee rights community and beyond e.g. [People's Global Action](#). During Annual Consultations, plan interventions with everyone relevant in Geneva to highlight refugee legal aid providers' top issues and advocacy goals, not just UNHCR e.g. OHCHR, ILO, Global Forum on Migration and Development.

Day 3: Nairobi Code Workshop

Goal: To critically reflect on ethical issues in legal services delivery and enhance our appreciation of challenges in client relations, refugee participation, screening policies and Nairobi Code compliance.

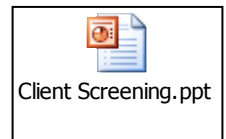
Sessions coordinated by: *Amalia Greenberg Delgado, Asylum Access and Martin Jones, University of York.*

Contributions from: *Rachel Levitan, HIAS; Brian Barbour, Japan Association for Refugees; Junita Calder, Jesuit Refugee Service; Chantal Hudson, Janemary Ruhundwa and Karina Sarmiento, Asylum Access.*

Who do we help and how do we help?

Examples of [refugee legal aid 'screening' policies](#) and the decision-making process behind them.

Double click on icon to open presentation or [download from google drive](#):



Notes on presentation:

- Service levels: 1. full representation, 2. customised advice, 3. general advice ([self-help kit](#), workshop, information sessions), 4. [referrals](#). Everyone receives (3) & (4), screening decides who's assisted further.
- Reasons for screening with intake interviews/information sessions before providing fuller legal services:
 - Quantity vs. quality: what are we trying to achieve providing these services? Filters to meet goals.
 - Decide on priorities: screening is like triage – who will be assisted? Screening is setting priorities.
 - Take only the most complex cases because if unrepresented, complex cases are harder?
 - Take those with greatest legal needs who will benefit the most from a lawyer?
 - Provide representation at certain levels only? Decide on case-by-case basis (flexibility)?
 - E.g. in Japan, don't prioritise based on legal need (100% RSD rejection rate), but on level of risk if deported. Claim assessment process allows advisors to help those whose death imminent upon deportation. [Explain to clients that representation is given based on need.](#)
 - Cut out those with bad/no claims? Are lawyers obliged to find out if there is a claim?
 - Screening can: flag conflicts of interest; maximise impact with few resources; reduce [emotional impact](#) on staff; manage expectations; foster trust from decision-makers, promote transparency.
- Not an unnecessary overhead or step: often a service in itself – [orienting](#), sign-posting, promoting self-help, even solving simple problems (e.g. calling an employer to inform of obligations).
 - Have screening policy ready before influx/resource cuts, even if work currently manageable.
- Ethical/protection considerations:
 - How to monitor those we screen out in order to reaffirm or reorient priorities?
 - You can accept that a service of lesser quality than yours could be ok – but what if someone has legal representation, but by an exploitative / bad-faith lawyer?
 - [Referrals](#) may be needed in case of conflict of interest, ensure others' agreement to Nairobi Code.
 - Does clients' socio-economic situation/integration help determine need for representation? Does client have enough income to access protection through other means? Not all refugees vulnerable.
- Organisational considerations:
 - Resources, funding restrictions, competency (legal skills, language, interpreter availability), office time/space for screening (how to screen post-eviction or in a community-based/house visits model?), [availability of referral services](#) (NB. Important to know who else client is seeing for assistance). Organisational position on relevant political questions also important to consider.
- Other considerations:
 - Strategic litigation: need enough cases to identify common issues for advocacy. Or get this information from general advice stage? Take some cases with poor chances, e.g. post-deadline claims to establish bank of rejections as evidence for a strategic case?
 - If you don't come within a year of a rejection, don't offer legal aid? (Client seriousness)
 - Focus on RSD or look at violations of other, including economic, social and cultural rights?

How are refugees involved?

Discussion of the ways in which refugees can (and cannot) be involved in legal aid programming. Structure and ethics of participatory approaches to service delivery to refugees.

Notes:

- Is 'do no harm' sufficient? There is little regulation of our services so how do we ensure we do it right?
- Who to work with? Use existing networks or groups?
 - Representational issues: are community leaders all men? Are others ostracised?
 - Communities or populations? Cohesive or fragmented, from different backgrounds?
 - Create spaces for subsets of population: bring the doubly marginalised together for support e.g. LGBT, male rape survivors – empower those isolated from own community.
 - Will involvement put leaders at risk? Ensure new role doesn't make them vulnerable e.g. Asylum Access Tanzania (AATZ) changed 'refugee fellows' to 'outreach fellows' to avoid security issues.
- Community leaders:
 - Extend services to those without access, can help identify or trace vulnerable people.
 - AATZ 'outreach fellows': explain services to other refugees. They found confusion, resources and fear of deportation barred people from accessing services → organised mobile clinics to respond.
 - Asylum Access Ecuador (AAE): enable a person to become a communicator for your services, remain respectful of human rights. Different levels of participation e.g. community legal advisors.
 - Women's groups: different to leader profile – survivors of violence. Go through an individual process to become leaders. AAE has a role at start but spaces are sustained by the women, group organises its own activities (way to measure if groups are the women's own space). Understand your power as an NGO, what knowledge both parties are sharing.
- Refugee interpreters:
 - JRS: In Thailand, cellmates used as interpreters in detention. Always seek alternatives: students?
 - Asylum Access Thailand: Interpreter Resource Centre – place to work, professional development.
 - Refugee interpreters in particular gain status, connections, power: set time to revisit ethical guidelines and reevaluate relationship between interpreter and community.
 - Train a subset of interpreters to be comfortable working with vulnerable populations e.g. LGBT.
 - Rapid language-learning techniques, graphic methods for direct refugee-advisor communication.
 - Clients refuse interpreter & blame case failure case on this: run language classes for refugees too.
 - Reward interpreters' services with legal representation, even if they can manage own case alone?
- When working with refugees in general:
 - Refugees are not objects of service: recognise their capacity to empower their own communities.
 - Understand existing power relationships and share knowledge from both sides to produce something stronger. Reassess power relations and obligations, avoid creating dependency.
 - Agree on codes of conduct/standards/procedures e.g. confidentiality. Many are volunteers.
 - Check on how leaders are coping; whether risks to them have increased e.g. visiting communities; whether relationship with community different e.g. offering or being asked for favours.
 - Mitigate. E.g. have them say services are only offered at an office. Tell others that if someone says they're working for the NGO outside of their offices, then they're not.
 - How to process someone without papers as an employee? Struggle with legality.
- Ethical use of 'refugee voices' for fundraising and advocacy:
 - Link between individual cases and moving issues into national/international fora?
 - Create community events where refugees participate in planning e.g. refugee seder/iftar.
 - In Tel Aviv, refugees are involved as tour guides sharing stories with students, army, politicians.
 - Unlocking voices vs. ethics of fundraising with poignant stories of suffering.
 - 'Stop Stealing Our Stories': The Ethics of Research with Vulnerable Groups – reciprocal approach

What rules should we follow and what should these rules say?

[History of the Nairobi Code](#), discussion of its gaps, of [ethical issues](#) and how ethical codes should deal with them.

Notes:

- [Ethical code](#) developed by lawyers: who can provide representation, how to make representation ethical. Self-policing to address government/UNHCR fears about quality legal advice.
- Beyond expressing ethical values – refugee rights community developed, [SRLAN Charter](#), shared identity.
- [Questions about the Code and its rules](#) (essential to [address these](#) so not in violation of own rules):
 - It is subordinate to national rules but some countries don't recognise foreign lawyers – would signing up to the Code therefore violate the Code in such a context?
 - Clarity needed on payment e.g. when refugee clients are also interpreters/outreach workers.
 - Exploitative to have refugees volunteering their services for no payment/compensation?
 - What if the only interpreters are under 18? Can we hire them?
 - Working with refugees who are also legal advisors, must consider the Nairobi Code from the point of view of the advisor themselves.
 - Can using refugee voices for advocacy/fundraising come into conflict with the Code?
 - How to define due diligence (4.1)?
 - Guidance needed on how to deal with (5.4) – there is tension between the idea of having a personal relationship with someone and being able to maintain objectivity.
 - How to interpret duty of integrity (7)?
 - Are the Annexes understood as part of the Code (variations in interpretation inside and outside the movement?) or do we adhere to them separately? Pay attention to definition of legal advisors.
 - Need for current licence but many advocates will be volunteers unable to afford Bar fees.
 - Refugee outreach workers must abide by the Code – accept lower standard of education?
- Gaps:
 - Provisions on strategic litigation
 - Protection for minors
- Applying ethics to advocacy and psychosocial work with refugees: have journalists, psychologists adhere.
- Donors need to understand what the Code allows us to do and doesn't – confidentiality issues with reporting requirements. Sensitise donors. Could UNHCR involvement help (involved during creation)?
- Disseminating information about the Code is helpful:
 - UNHCR has asked legal aid NGOs to run RSD and Nairobi Code trainings – increasing their confidence in understanding the need for legal services, and reassuring them that we follow rules.
 - Need to translate Code into local languages (has been done in some contexts – share these).
 - Refugee Law Project (Uganda) has discussed the Nairobi Code's rules with refugees.
- There is a need to establish branding, a membership label.

How should these rules be determined and enforced?

Group discussion of the processes and institutions that should be involved in setting ethical standards, including the role of SRLAN and other international networks or organisations. Discussion of Nairobi Code review and issuance of interpretative guidance.

Notes:

- Determining the rules: publish advisory opinions and issue these publically? Important to spread our interpretation of the rules particularly where there are potential grey areas. This may be a better strategy than issuing a revised Code (given support for the existing version).
 - Form a small working group on the Nairobi Code for this purpose?
 - Involve refugees in such processes, or in development of any other internal organisational ethics policies.
 - Communication is hard but paramount when coordinating ethics across networks and organisations: regional coalitions useful?
- Overarching questions regarding enforcement and complaint mechanisms:
 - Important to hold up legitimacy, but balance must be found – do not want to be in situation of having to police restrictive requirements.
 - Would a regulatory body wait for complaints to come up or check adherence actively?
 - Would enforcement be coercive or persuasive? E.g. striking advisors off a list vs. discussing fundamental principles and concerns so they are understood before disciplinary measures taken.
- Possible scenarios for receiving complaints that arise under the Code and enforcing responses:
 - Board?
 - [Self-policing: complaints](#) boxes in our offices must be checked regularly.
 - Peer review system? One organisation takes responsibility for receiving complaints each year?
 - Must avoid political issues between NGOs.
 - Is SRLAN an appropriate forum or not to be an enforcer?
 - Was this the imagined next step when SRLAN was established in Nairobi? SRLAN was not founded to be an ethical body.
 - Resources: how does SRLAN manage money – relevant. APRRN model is funding-based: funds its member organisations and meets regularly.
 - Form our own Bar Association (also a self-governing body)?
 - ‘Bar’ narrows participation – would it be open to all practitioners including refugees?
 - Approach existing Bar Associations for adjudication?
 - New Zealand Bar Association thought it would be useful to hear a complaint brought under the Nairobi Code (not bad for their credibility).
 - Bar Associations don’t always have positive reactions: would it be inappropriate for them to sign up to another Code?
- Could a Nairobi Code working group also draft proposals for complaints bodies / branding / dissemination, and circulate these for comments. Diverse participation necessary for buy-in, legitimacy.