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Rights in Exile:

Global Perspectives on Legal Assistance for Refugees and IDPs

Organised by the 3R Foundation in collaboration with
the Migration and Human Security Research Group at the
International Institute of Social Studies (ISS), Erasmus University

ISS, Kortenaerkade 12, The Hague

21 June 2010

Conference Report

Contents

1	Executive Summary	3
2	Cees ten Thije, Chairman of the Board, 3R Foundation.....	5
3	Jacob van Garderen, National Director, Lawyers for Human Rights.....	5
4	Protection of Refugees and IDPs and the Role of UNHCR	12
4.1	Gert Westerveen, UNHCR Regional Representative Office in Brussels	12
4.2	Sadikh Niass, Raddho, Senegal:	13
4.3	Marjoleine Zieck, University of Amsterdam and member of the Advisory Committee of the 3R Foundation: Discussant	15
5	Grassroots Legal Initiatives for Refugees and IDPs in Africa and the Middle East	17
5.1	Kenechukwu C. Esom, Refugee Law Project, Uganda:.....	17
5.2	Tarek Mahrous, AMERA, Egypt.....	19
6	Grassroots Legal Initiatives for Refugees in Europe & the Middle-East	20
6.1	Mr. Hazem Jamjoum, Badil Resource Centre, Palestine.....	20
6.2	Ms. Rachel Levitan, Helsinki Citizens Assembly	22
6.3	Ms. Marieke van Eik, Attorney with Bohler Advocaten	24
6.4	Dr. Jeff Handmaker, ISS and Board Member of the 3R Foundation: Discussant	25
7	Solidarity and Support.....	27
7.1	Dr. Barbara Harrell-Bond, Fahamu	27
7.2	Ms. Dieuwerke Luiten Dutch Refugee Council.....	28
7.3	Dr. Jeff Handmaker	30
8	Mr. Christian Mommers, Member of the 3R Board – Lessons Learned	31
	Annex – Background to the Conference Theme and Organisers.....	32

1 Executive Summary / Overview of the Conference Proceedings

On 21 June 2010, on the occasion of World Refugee Day, the 3R foundation of the Netherlands, together with Erasmus University's International Institute of Social Studies (ISS) in The Hague, organised an international conference on *Rights in Exile: Global Perspectives on Legal Assistance for Refugees*.¹

The conference was attended by approximately sixty people from a wide range of fields, including representatives of UNHCR, the Dutch Ministry of Foreign Affairs, practising lawyers, Dutch and foreign universities and NGOs in The Netherlands, South Africa, Uganda, Egypt, Turkey and Palestine. Some visual impressions, including short video interviews with some of the presenters and a full "vodcast" of the conference proceedings, are available here: www.stichting3r.nl/events

The conference was opened by 3R Board Chairperson *Cees ten Thije*, who explained the aims and challenges of the Foundation and introduced the Conference Chair of the Day, *Professor Jan Pronk* of the ISS and member of the 3R Advisory Committee. After a short introduction, Professor Pronk gave the floor to *Advocate Jacob van Garderen*, National Director of Lawyers for Human Rights in South Africa, who presented the Keynote Address of the conference.

Van Garderen addressed the policy trends in Africa, the role of the African Commission on Human and Peoples' Rights in refugee protection and the experiences of refugee protection in South Africa, including a growing body of case law through the courts. He concluded that public interest litigation was a powerful tool to address refugee protection issues, but the success of a case depended on certain pre-conditions. *Gert Westerveen*, UNHCR's Regional Representative in Brussels followed with a presentation on the functions and tasks of UNHCR, including refugee status determination. He explained the dual role of UNHCR: firstly, as a supervisory organisation monitoring the protection of refugees and secondly, as an operational organisation carrying out the mandate provided to it by member states to the UNHCR's Executive Committee. *Sadikh Niass* of Raddho in Senegal then gave a presentation on the legal basis, institutional arrangements and procedure for claiming refugee status in Senegal. He also spoke about the situation of IDPs in Africa and provided insight into how NGOs responded to the plight of refugees and IDPs in West Africa through the WARIPNET initiative. Niass closed by highlighting five central problems that presented obstacles to refugees realising their rights in Senegal. *Marjoleine Zieck*, Professor of International Refugee Law at the University of Amsterdam and member of the Advisory Committee of the 3R Foundation, followed with some critical commentary on the mandate and role of UNHCR in refugee protection, including refugee status determination, focusing in particular on the problematic situations in Libya and Turkey.

Kenechukwu Esom of the Refugee Law Project presented the situation of legal assistance to refugees and IDPs in Uganda. He explained the challenges in providing legal aid to refugees and how UNHCR could improve its protection role towards refugees and IDPs in the country. He was followed by *Tarek Mahrous* of AMERA in Egypt, who spoke to the asylum determination procedure and legal assistance to refugees in Cairo as well as the role played by AMERA-Egypt, from psycho-social assistance to legal counselling. *Hazem Jamjoum* of the Badil Resource Centre in Bethlehem, Palestine then gave a presentation on the highly politicised topic of Palestinian refugees and their legal status. He explained the mandate of the UN Relief and works Agency, the failed protection role of another,

¹ Special thanks are due to the organizing efforts of Hanine Shatou and Alida Pham as well as Vivian Ting Yuan and Anna Gilsbach, who prepared a draft version of this conference report.

former UN organisation (UNCCP) and proceeded to outline the root causes of the Palestinian refugee problem. Jamjoum concluded by stressing that the plight of Palestinian refugees is not primarily a humanitarian or charity issue, but a political issue. *Rachel Levitan* of the Helsinki Citizens Assembly in Istanbul then proceeded to discuss key legal challenges, and the responses of HCA to refugees' protection in Turkey, and in particular stressed the problem of accessing refugee status determination, which is overwhelmingly administered by UNHCR. *Marieke van Eik*, an attorney and partner with Bohler Advocaten in Amsterdam discussed the roles fulfilled by lawyers in the asylum determination procedure in the Netherlands. She stressed the key issue of credibility, which all asylum seekers must contend with and highlighted the importance of being properly prepared in advance of a status determination hearing. Van Eik furthermore addressed the aspirations of the EU towards a harmonised asylum system and concluded by sharing her experiences as a trainer for HCA in Istanbul. *Jeff Handmaker* of the ISS and Board Member of 3R then presented his perspectives on the preceding presentations, highlighting the role of advocacy and representation from the grassroots. He explained the principal tension faced by civic actors in human rights advocacy and assistance towards refugees when dealing with governments, namely a desire to support government as and when it demonstrates a willingness to move in a progressive direction, while at the same time maintaining their critical independence. Drawing on examples raised in the presentations, he explained how the civic-government interplay works and elaborated on the value of lawyers, advocates and academics sharing their knowledge and experiences, in a spirit of critical self-reflection.

Barbara Harrell-Bond then presented the word of the Southern Refugee Legal Assistance Network (SRLAN), at the same time highlighting the plight of "northern" networks for refugee legal assistance to refugees. She highlighted health as the biggest problem faced by refugees, followed by legal assistance. *Dieuwerke Luiten* of the Dutch Refugee Council then explained the work of the council, both in The Netherlands, and in the context of international projects. She explained the tension faced in lobbying the government on refugee issues, while at the same time receiving a great deal of funding from them. *Handmaker* returned to the discussion (at the request of the chair), making recommendations aimed at legal representatives and advocates. *Christian Mommers* closed the conference by explaining that there are many misunderstandings about the situation of refugees and IDPs in the South and a somewhat fictitious divide between the Netherlands and the rest of the world. Understanding and global solidarity is needed to bridge these divides.

2 Cees ten Thije, Chairman of the Board, 3R Foundation

Welcome Address and Introduction to the Conference

'When the going gets tough, the tough get going'. Cees ten Thije opened the conference with this quote from Billy Ocean to illustrate how he and his colleagues at the 3R Foundation have felt since they became involved in refugee rights issues. As Barbara Harrell-Bond, who inspired the establishment of the Foundation, had told him a few years earlier, legal aid in the global South is not a very popular subject among the broader public and it is a tough task to raise awareness and funds for refugee rights. According to ten Thije this was an understatement. He pointed out that it was not easy to set up and maintain a foundation dedicated to legal assistance to refugees in the South. This is especially so since the Foundation functions on a one hundred percent voluntary basis. However, the members of the 3R Foundation are convinced of the importance of this task and inspired by the organizations in Uganda, Egypt, Turkey and elsewhere they cooperate with. These are doing an excellent job despite the sometimes very difficult circumstances. Persistent and dedicated efforts were necessary to raise funds and generate awareness for legal assistance to refugees and IDPs. These efforts have resulted in the funding of specialist legal aid projects in different countries and to enable NGO delegates to participate in the UNHCR-NGO Pre-Executive Committee consultations in Geneva. As ten Thije emphasized, the present conference provided a special opportunity to transmit a very important message. It is not enough to provide refugees with shelter, food and water. This alone will not solve refugees' problems. To protect refugees effectively, legal aid is a critical factor. It will be a time-consuming challenge to pass this message on to a larger audience. However, it is a challenge the 3R Foundation will not back away from.

3 Jacob van Garderen, National Director, Lawyers for Human Rights

Keynote Address: Protecting Rights in Exile: A South African Perspective

Jacob van Garderen focused on the development of refugee law on the African continent and the possibility of using courts and public interest litigation to promote and support adherence to refugee protection.

In 1969 the Organization of African Unity (OAU) adopted the *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969 Convention). This was the most significant development in refugee law since the 1951 Convention Relating to the Status of Refugees adopted within the framework of the United Nations (UN) (1951 Convention). It envisions a new approach on refugee policy and practice. The 1969 Convention is based on the principles of African solidarity and international cooperation to address the refugee crisis on the continent. Compared to the 1951 Convention it expanded the definition of the refugee status and thus the scope of refugee protection. However, even though many African states have ratified the 1969 Convention and implemented its provisions into national law the reality nowadays remains far removed from the ideal the 1969 Convention promised. The question follows which legal opportunities exist to give flesh to the 1969 Convention.

Before van Garderen started discussing the specifics of litigation in the protection of refugees he outlined the trends in refugee policy in Africa. These can broadly be divided into two periods. The

early stages between the 1960s and the 1980s saw the displacement of people struggling against colonialism, occupation and racist governments. In part because of the nature of the events causing these movements, African states were largely supportive of the displaced populations and offered sanctuary and solidarity. This “open door policy” in states’ admission of asylum seekers has been referred to by Rutinwa as the “golden age” of refugee policy.

Unfortunately this did not continue. In the late 1980s and 1990s, the root causes of displacement began to change, and the receiving or host states’ policies and attitudes towards refugees changed as well. While displacement in the 1960s, 70s and early 80s stemmed primarily from armed struggles against racism, colonial oppression, and apartheid, the principal causes of displacement in the late 1980s and 1990s were largely domestic armed conflict and civil strife in post-colonial states. These included ethnic conflicts and the abuse of human rights on massive scales. Several of these conflicts are still continuing in many parts of the African continent.

For both political and practical reasons, African states became less committed to receiving asylum seekers from the 1990s onwards until today. The change in policy was a result not just of the different causes of displacement, but also stemmed from a backlash against the unintended consequences of an open door policy towards refugees. The sheer magnitude of displacement and the disproportionate burden on host communities had a pronounced effect on governments and their willingness to offer protection.

The constant displacement and refugee flows have created problems of national security and diplomatic relations for host countries, particularly where refugee populations are not effectively demilitarized and/or refugee settlements are established close to border or conflict zones. Whereas the 1969 Convention explicitly states that grants of asylum are humanitarian acts and should not be regarded as unfriendly acts, countries offering refuge to civilians and combatants who flee their home countries often have strained relations with the states from which refugees have fled from.

In addition, host countries without the social, financial and environmental resources to adequately support their own population have struggled to provide adequate protection for an influx of the number of persons who have arrived and their greater need of services. Further, as states have won independence and democratization has taken place, host states’ governments have become increasingly sensitive to their own citizens’ perceptions and opinions. Such factors have led to a decreased willingness to receive refugees and to a decline in the standard of refugee protection in Africa.

Host states began to implement more restrictive policies even as the 1969 Convention offered expanded legal rights for refugees. These shifts in policy starkly highlight the fact that legal advancements by themselves will not increase refugee protection in the absence of political will and popular support.

However, in contrast with this growing reluctance of African states to offer real protection to refugees it is ironic to note that governments have become increasingly willing to develop protection-oriented domestic refugee legislation. This was described by Mwalimu who divides the development into three distinct periods. In the initial period following the adoption of the 1969 Convention governments largely used the general immigration framework to enforce refugee protection. In the 1970s and 1980s a period followed in which separate refugee legislation was adopted by host governments. However, the emphasis was on control and only little protection was

offered in relation to non-refoulement. At the 1969 Pan-African Conference on Refugees which was hosted by the UNHCR a model statute was developed which was promoted by the UNHCR and the OAU. This was followed by a phase in which refugee laws were amended and new laws were adopted by many African states which offered more generous protection against refoulement. However, these are not fully implemented in practice and it is rather ironic that while nowadays the law offers significant protection governments are not willing to offer it.

Van Garderen then moved on to discuss the influence of the African Commission on Human and Peoples' Rights regarding refugee rights issues.

The African Commission on Human and Peoples Rights is the treaty monitoring body of the African Charter on Human and Peoples' Rights. It operates through state reporting and an individual complaints mechanism.

Soon after its transition from the OAU to the new African Union (AU) in 2000, the body mandated the African Commission to enforce the 1969 Refugee Convention. In doing so, the Commission was tasked to monitor states' compliance with the Convention and to encourage states to implement the Convention in domestic law. Article 55 of the Charter allows individuals and non-governmental organizations to lodge complaints. Unfortunately the commission has not heard many complaints that have a direct bearing on refugee protection. So far, there are only three cases that have a direct bearing on refugee rights.

In *Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia*² the commission found that the mass expulsion of West African nationals without any opportunity to challenge the expulsion was a violation of Article 12(5) of the Charter. In *Organisation Mondiale Contre La Torture v Rwanda*³ the African Commission found in similar fashion that the mass expulsion of Burundian refugees of Hutu identity presented a "special threat to human rights". In *Africa Institute for Human Rights and Development (on behalf of Sierra Leonean Refugees in Guinea) v Guinea*⁴ the commission ruled that the government of Guinea was in violation of the African Charter and OAU Convention after the president incited soldiers and civilians over national radio to arrest all Sierra Leonean refugees and detain them in refugee camps. This call by the president led to massive human rights violations, including eviction, looting, extortion, and arbitrary arrests.

From looking at these cases it appears that this regional body has failed to offer effective protection to refugee communities, especially regarding the principle of non-refoulement. It is to hope that lawyers and civil society on the continent and elsewhere can find ways to engage the Commission and politicians to provide solutions to the many practical problems that keep the Commission from making quick decisions and making sure that these decisions can be enforced.

Van Garderen now focused on the situation of refugees in South Africa, the country he is from and where his organization provides legal services to asylum seekers, refugees and migrant workers. The hosting and protection is a rather new phenomenon here. The country officially commits itself to the protection of refugees since the first democratic elections of 1994. Since then there has been a gradual increase of the arrival of asylum seekers from all over the continent, mainly originating from

² (2000) AHRLR 321 (ACHPR 1996).

³ (2000) AHRLR 282 (ACHPR 1996).

⁴ (2004) AHRLR 57 (ACHPR 2004).

the big conflict areas. Today, South Africa hosts one of the biggest refugee populations in the world. According to government statistics 340 000 new asylum claims were made in 2009.

Initially the country did not have the necessary legal framework to determine status and offer protection. In 1998 the South African parliament adopted the Refugees Act which was implemented in 2000. It is a quite progressive piece of legislation which contains comprehensive protection against refoulement, both the UN and expanded OAU refugee definitions and furthermore grants recognized refugees full protection in terms of the South African constitution and its bill of rights. That in itself offered a huge opportunity to give flesh to the promises made in the Refugees Act. However, looking back at the government's attempts to implement the Refugees Act in the past decade it can be concluded that it has failed to give effective protection to refugees and asylum seekers. Despite its inability to process asylum applications effectively and fairly, the South African government disappointingly remained unwilling to engage with civil society, and even the UNHCR, in finding creative solutions to the complex problems in the refugee system. When the crisis in Zimbabwe exploded South Africa was therefore unprepared and did not have an operating administration in place that could receive, determine and grant protection to refugees. As a result of this lack of engagement between the government and civil society the only option left was to approach the courts to seek solutions. This led to the development of a new jurisprudence of refugee law in South Africa.

One important area where new case law developed is the granting of access of refugees to the asylum system. It took a couple of cases until the courts not only ruled that the government was obliged to grant refugees access to the asylum system but also demanded the government to find a solution to the problem that this was often denied. The courts hence did not present a solution to the government but rather required it to work one out itself. Furthermore the courts provided the government with professional help in doing so.

Nevertheless access to the asylum system unfortunately remains a big challenge and a lot of asylum seekers remain outside the refugee framework. In this regard South African courts have also declared it to be unlawful to prevent stowaways from ships to access the asylum system. The same happened to the safe third country-policy according to which refugees who had travelled through a neighbouring country in order to reach South Africa were denied the possibility to claim asylum there. In a number of cases the courts also dealt with the problems of unaccompanied minor refugees to access the asylum system.

In the *Centre for Child Law* case, the Pretoria High Court granted an interdict in 2004 to prevent the deportation of two unaccompanied Rwandan girls who were scheduled to be deported back to Rwanda the next morning. The Department of Home Affairs refused the two unaccompanied minors to make asylum applications. The Pretoria High Court found that the Department's refusal to be inconsistent with the Refugees Act and ordered the release of the minors.

In *Van Garderen N.O. v Refugee Appeal Board and Others (TPD)*⁵, the High Court found that the procedures to determine the asylum applications of unaccompanied children in South Africa were inadequate and fell short of international guidelines, which prescribe the appointment of legal guardians and childcare professionals to help unaccompanied children in their asylum applications. This judgment echoed an earlier case heard in the same court that prescribed the appointment of

⁵ Case no 30720/2006.

state funded legal representation to help foreign unaccompanied children. The court acknowledged the difficulty experienced by asylum seekers in proving claims without the necessary documentary evidence of their persecution. The court also found that there was a positive duty on administrative tribunals such as the Refugee Appeal Board to inquire into the human rights situation in the countries of origin of asylum seekers.

Unlawful arrest and detention is another area where new case law is emerging. Even though South Africa does not have a policy of encampment or mandatory detention of new asylum seekers in practise significant numbers of refugees are held in detention. Often these are deported and placed at risk of e.g. further torture. The Forced Migration Studies Programme recently published a report on unlawful detention and deportation practices in South Africa which can be found on the organization's website.⁶ This report highlights the importance of legal intervention and access of asylum seekers to legal representatives. The South African state is not offering them legal representation. However, only a state funded programme could secure broad access of refugees to legal services.

Lawyers for Human Rights (LHR), the organization van Garderen works with, has established a dedicated public interest litigation strategy which pursues two objectives. Firstly, it aims at the release of refugees and asylum seekers detained unlawfully. Secondly, the government shall be put under pressure to motivate it to change its policy and to improve the conditions of detention. During the last two years, the organization brought more than fifty successful court cases against the government and private detention operators. One would imagine that this success is quite an embarrassment for the government. However, it has not always led to an improvement in policies and practise. This shows that the litigation process is an ongoing one that does not end with it achievement of a judgement but requires ongoing monitoring and engagement with the respondents.

Van Garderen then summarized some of the cases LHR brought successfully before different South African courts. Among these are the following.

In *Lawyers for Human Rights v. Minister of Home Affairs*⁷, the constitutionality of the detention and deportation provisions of the Immigration Act was challenged, due to the far-reaching and arbitrary powers that the Act accorded to immigration officers. The government maintained that the Bill of Rights did not apply to foreign nationals before they had been formally admitted to South Africa. Although the court only found one section of the Act to be unconstitutional, this case served as one of the leading cases for institutions which have brought these kinds of cases to the courts in the public interest. It has also served as an opportunity for the court to reiterate that the provisions of the Bill of Rights apply to foreign nationals on matters of arrest and detention, unless such a measure was specifically restricted to citizens.

In *Ulde v. Minister of Home Affairs and another*⁸, the Supreme Court of Appeal in South Africa found that immigration officers must exercise careful discretion when detaining persons who are suspected of being illegal foreigners in the country. This decision marked an important step in challenging

⁶ The report can be found at http://www.migration.org.za/sites/default/files/reports/2010/Lost_in_the_Vortex-_Irregularities_in_the_Detention_and_Deportation_of_Non-Nationals_in_South_Africa_0.pdf (last visited 10 October 2010).

⁷ 2004 (4) SA 125 (CC).

⁸ (*Lawyers for Human Rights as amicus curiae*), [2009] 3 All SA 332 (SCA).

immigration enforcement as it separated the decision that someone is unlawfully in the country from the decision to detain that person. The decision furthermore required the immigration officer to account for why he or she detained any person under the Immigration Act.

In *Lawyers for Human Rights v. Minister of Safety and Security and Others*⁹, another policy of the South African Police Forces was challenged. In 2006, the South African Police Service (SAPS) started operating an illegal detention centre for undocumented asylum seekers in the small town of Musina along the Zimbabwean border. This facility was detaining thousands of Zimbabweans and other nationals and keeping them in deplorable conditions. There was no access to toilets, inadequate food and unaccompanied children were detained together with adults. In 2009, the court found that the detention centre operated unlawfully and in violation of the basic rights of detainees at the facility. The court was especially concerned about the detention of children in such terrible conditions and the risk to their safety and ordered the immediate closure of the facility.

In *JPAB v Minister of Home Affairs and 2 Others*¹⁰, the court ordered the return of a Congolese asylum seeker who was unlawfully detained and then deported to the DRC. The court further requested the filing of additional papers by the state to defend whether it should be held in constructive contempt. At the time of writing, the constructive contempt issue was still pending before the Johannesburg High Court.

In *Centre for Child Law v Minister of Home Affairs* the Pretoria High Court declared the detention of unaccompanied minors at the Lindela Repatriation Centre unlawful and ordered a thorough inquiry into the detention of children.

Economic and social rights are another area in which litigation is a successful strategy. Here it is very helpful that the South African constitution contains a justiciable bill of such rights. These are not limited to citizens but are also available to non-citizens. The courts have ruled that many social and economic rights are to be realized progressively and do not have to be enforced immediately. Employment rights, health care and social security and assistance are two sets of rights the courts have applied to asylum seekers.

In *Union of Refugee Women and Others v. Director: Private Security Industry Regulatory Authority and Others*,¹¹ the Constitutional Court found that refugees may not be excluded from working in the private security industry, which has provided employment to almost 20% of all economically active asylum seekers and refugees in South Africa. In the *Watchenuka*-case, the Supreme Court of Appeal concluded that a blanket policy prohibiting asylum seekers from working and studying while awaiting the outcome of their asylum application was unconstitutional. As a result the Department of Home Affairs changed its policies and allowed refugees to work and study while awaiting the outcome of their proceedings which may take up to five years. As refugees are not hosted in camps in South Africa but have to survive on their own some form of employment is their only option.

Concerning social assistance it has to be noted that according to government policy, disabled refugees in South Africa were excluded from accessing government-provided social assistance grants. Following the Constitutional Court judgment in the *Khosa* matter, which held that the exclusion of permanent residents from the welfare scheme was discriminatory and unfair and infringed the right

⁹ Case no 5824/09 (North Gauteng High Court).

¹⁰ SGHC, 2009/17271.

¹¹ 2007 (4) SA 395 (CC).

to equality, LHR pursued the extension of grants to disabled refugees. In *Scalabrini Centre of Cape Town v Minister of Social Development and Others*¹², the government agreed to change its social assistance regulations to allow disabled refugees to receive disability grants to the same value as those received by South African citizens.

In terms of health care there was a very interesting initiative coordinated by a numbers of NGOs and the UNHCR. The South African government initially denied HIV positive refugees access to anti-retroviral treatment. While the NGOs threatened the government with litigation should it not change this policy the UNHCR assisted it in practical matters to help it do decide whether to do so. In the end these joint efforts were fruitful and an amicable solution was found. Today, at least in theory, every HIV positive refugee has access to anti-retroviral treatment.

After giving this overview over the recent development of case law, van Garderen then came to a conclusion. Looking on these positive and progressive judgements it may seem that public interest litigation is a very powerful tool to achieve immediate solutions to intractable problems in the refugee sector he emphasizes that in his experience it is more complicated. Even though it is definitely a useful strategy it has to be combined with other forms of advocacy to be successful and there are a number of potential negative consequences of public interest litigation. Firstly, it can create distance between the government and civil society stakeholders. Therefore one has to be very careful when bringing a case to court and a contact with the government should be sought to communicate ones aims. Ironically, mid-ranking government officials often encourage NGOs to litigate in cases where they are not in favour of a certain policy themselves. As according to several surveys South Africans in general are opposed to immigration litigation can also worsen existing public negative sentiments against foreigners. When bringing a case it is thus important that it is communicated to the public at large why it is important that a specific government policy is challenged and why it is in the public interest that the courts find against the government. Of course litigation also bears the risk of negative precedent and new judgements might worsen the status quo. Moreover it has to be kept in mind that litigation can only be successful is the necessary financial and professional capacity is given.

In summary, there are a number of preconditions for public interest litigation to be a successful strategy in the field of refugee protection. Firstly, the legal system and constitutional framework have to allow for public interest litigation. While the South African constitution allows NGOs to bring cases, also on behalf of others, this is e.g. not given in a lot of its neighbouring countries. Secondly, an independent judiciary has to be in place which is willing to make unpopular judgements. Finally, the government has to be willing to comply with those judgements. According to van Garderen South Africa is rather fortunate regarding these conditions.

¹² 32054/05 (TPD).

4 Protection of Refugees and IDPs and the Role of UNHCR

4.1 Gert Westerveen, UNHCR Regional Representative Office in Brussels

UNHCR's RSD Programme

In his contribution Mr. Westerveen presented the functions and tasks of the UNHCR. The current number of refugees and IDPs is 43 million. Of these approximately 11 million are refugees recognized according to the definitions of different legal instruments. UNHCR is not only in charge of refugees and IDPs but also for stateless persons and returnees, i.e. people whose exile ended and who returned to their country of origin. UNHCR is hence competent in a number of different situations and has to deal with different types of peoples.

Concerning refugee rights it has according to Mr. Westerveen to be kept in mind that further standards have developed since the 1951 Convention was adopted almost 6 years ago. Rights of refugees and IDPs should therefore be understood as a broader set of human rights as laid down in various treaties and not just as those contained in the 1951 Convention.

UNHCR has a dual role. On the one hand it is a supervisory organization of the UN monitoring all action on behalf of refugees. On the other hand it has an operational role. As an UN organization the UNHCR is dependent on the UN's member states and can only do what these states allow it to do.

Some examples of UNHCR's operational tasks include the following activities. In Morocco UNHCR cooperates with the government to set up a system to provide protection of refugees as Morocco does not have such a system in place yet. This is a long-term engagement. Pending its development UNHCR is concerned with direct assistance to refugees. In cooperative agreement with the Italian government UNHCR is also present on those islands which receive a high influx of refugees arriving on boats. Here the agency monitors the practises of the local authorities and gives suggestions on how to improve these and make entry procedures more protection-sensitive. Another example of UNHCR's operative approach is its engagement in Jordan, Syria and Lebanon where more than one million Iraqi refugees have arrived. None of these countries is a party to any legal instrument dealing with refugee protection but they have a policy of allowing their 'brothers' in and granting them wide-ranging rights. Here UNHCR is supporting the national authorities in their efforts to assist refugees.

Besides its operative engagement UNHCR also still has its advisory role. This encompasses the commenting on developments of policy and legislation in national systems and the communication with governments to influence the formulation of legislation and policies. This happens whenever governments ask UNHCR for its opinion but also without a government's wish for assistance. UNHCR also tries to influence state practise. This includes attempts to make its opinion known to courts, e.g. through becoming a third party, which is possible in the UK and Ireland. Another means is the assistance to lawyers.

In all its activities UNHCR is dependent on partnerships. Concerning both, its operative and its supervisory role its most important partners are national governments who allow UNHCR to work on their territory and grant it the right to make itself heard. NGOs are also important partners regarding UNHCR's operational role but also regarding its advisory tasks, e.g. through the publishing of studies dealing with refugee issues. Furthermore the writings and comments of academics are also important for UNHCR's work.

4.2 Sadikh Niass, Raddho, Senegal:

Protection of Refugees and IDPs in West Africa

The persons who are in the competence of the UNHCR are asylum seekers, refugees, IDPs, stateless persons and repatriates. Concerning the international protection all states have a duty to insure the international protection for refugees under their jurisdiction. UNHCR has a supplementary role to protect refugees and the persons recovering from its mandate. In Senegal, UNHCR has essentially a role of advice and control. It participates in the National Eligibility Commission (NCE) where it is granted the possibility to express its opinion. UNHCR also delivers legal advice to asylum seekers. It is also necessary to mention that UNHCR takes especially a diplomatic action to protect refugees. The assistance to refugees is never definitive; the UNHCR rather helps them to gradually become autonomous.

The asylum system in Senegal is governed by Decree number 68-27 of 24 July 1968 modified related to the Status of Refugees and the Decree number 78-484 of 5 June 1978 modified related to the National Eligibility Commission amended in 1989 (the Decree). The Decree provides discretionary relief and adopts the definition of Refugee as defined by 1951 Convention and 1967 Protocol Relating to the Status of Refugees. The Senegalese government has furthermore signed and ratified two regional instruments that allow for the free movement of persons within the countries they cover. These are the West African Economic and Monetary Union (UEMOA - Union économique et monétaire ouest-africaine) and the Economic Community of West African States (ECOWAS). This can interfere with the refugee status.

The refugee status determination is a very long process in Senegal and encompasses the following steps. Firstly, an asylum seeker applies for asylum at the NEC by submitting a letter to the president stating his/her intent to apply for asylum and registering as an asylum seeker. The applicant receives a *recepisse* (receipt) identifying him/her as an asylum seeker. This paper is valid for up to three months whereby the deadline is arbitrarily decided by the competent NEC Administrator. It has to be renewed upon expiration. The applicant is then given an appointment to come back to the NEC to meet with the competent NEC Administrator. At this first appointment the NEC Administrator gives the asylum seeker an application form which is written in French and takes two photographs of the applicant. The applicant is then given a second appointment to bring back the completed application form and submit it. At this second appointment the applicant may also submit supporting documentation. Moreover he/she will be interviewed by the NEC Administrator. This is not a lawyer, judge, or hearing officer and does not have any background in refugee protection issues. The asylum seeker is not permitted to be represented by legal counsel at this interview. After this interview the applicant is given another appointment to be interviewed by a police inspector from the Ministry of Interior. At this second interview two police inspectors are present; one of them speaking English, the other one French. Again, the applicant is not permitted to be represented by legal counsel at this interview and the interviewing police inspector does not have any relevant background in refugee protection issues. After this interview the NEC holds a case review eligibility meeting to come to a decision. This meeting is attended by the two police inspectors present at the second interview; one of whom has interviewed the asylum seeker, the president of the Supreme Court, the NEC Administrator who conducted the first interview, an official from the Social Affairs Ministry, and the UNHCR as observer who is not allowed to participate in the decision. Neither the asylum seeker nor

his/her legal counsel are permitted to attend. If the applicant is recognized as a refugee at this meeting he/she will firstly receive a letter from the NEC and later a final approval letter from the President's office. The latter may take months to be issued. If the applicant is rejected he/she will receive a short letter from the NEC in French stating the decision is unfavourable. No reasons are given and no notice of his/her right to appeal is stated in this letter. The NEC permits appeals. However, the right to appeal is not contained in the Decree; it is a right granted at the largesse of the NEC. The appeal process is an internal procedure at the NEC and the decision is made by the same decision maker who decided the first instance claim. The appeal must be in writing and can be supplemented with supporting documentation. Asylum seekers are not afforded an appeal interview. If the Appeal is denied an asylum seeker can appeal to the Administrative Court of Appeal and/or the Supreme Court for Administrative cases or the Office of the President for a discretionary grant (called *Appeal Gracious*). After all national legal options have been exhausted the applicant can appeal to the African Commission on Human and People's Rights as authorized under the African Charter of Human Rights of refugees.

The situation of IDPs, refugees and asylum seekers is worrisome in many parts of Africa. Political and economic reasons are, more often than not, at the origin of IDP and refugee exodus in Africa. However, it is observed in recent years that climate change is also a serious threat that could increase the numbers of IDPs and refugees in Africa. In east Africa flooding and drought have affected more than 20 million people this year alone. Africa is host to about 3 million refugees and 13 million IDPs. While the number of refugees is diminishing and refugee camps are shutting down in some countries the number of IDPs is rising. The number of refugees in Africa has decreased from about 8 millions some 10 years ago to 3 millions in 2009. This decrease is attributable to voluntary return and repatriation of refugees but also because some host countries are naturalising long-time refugees in their countries. In some African region the situation of IDPs and refugees is long-standing or chronic while in others it is emerging. This requires two different kinds of interventions and action including political transformation and/or early warning depending on the specific context and situation.

After this general overview over the challenges Africa faces with regard to refugees Mr. Niass brought attention to the specific situation in Senegal. Here due process standards are very low for asylum seekers and regularly violated. Asylum seekers e.g. do not have the right to an explanation of the asylum procedure and the legal standards; they are not allowed to be represented by legal counsel even though this right is granted in Article 8 of the Decree; they are not assisted by a translator; there is no notification on the right to appeal the eligibility decision and no independent appeals process. In the case of an appeal neither the asylum seeker nor his/her legal counsel have the right to attend the review meeting even though the sessions of the NEC are supposed to be open to the public according to Article 7 of the Decree. Furthermore the decisions of the NEC are not transparent and no reasons for the denial of asylum are given. If a refugee is granted asylum he/she is usually not issued an identity card even though this is regulated in Article 12 of the Decree. Consequently, even a recognized refugee does not have access to local police protection and cannot work, open a bank account or travel.

Mr. Niass added that the NEC does not recognize as refugees persons who have claimed asylum in another country before coming to Senegal. Not even if they left their first country of refuge for security reasons.

Mr. Niass then introduced WARIPNET, the West African Refugees and Internally Displaced Persons Network which is comprised of 18 organizations spread over 11 countries in the sub-region. It is an example of what civil society can do to improve the situation of refugees in Africa. WARIPNET aims to use legal and non-legal means to promote the rights of refugees and displaced persons in Africa and, in particular, West Africa. The network assists asylum seekers by educating them about the grounds of protection and the legal definitions related to their case, preparing their written testimony, practicing their oral testimony with them, and developing supporting documentation. Generally asylum seekers seek legal assistance from WARIPNET after their claim has been rejected. Therefore WARIPNET usually cannot provide legal advocacy in first instance claims. It is thus one of its current goals to outreach and identify asylum seekers that can be given legal assistance from the beginning of the proceedings to increase the probability of their success. In 2000, WARIPNET and Human Rights First conducted a study of refugee rights in West Africa including Senegal.¹³ They concluded at that time that refugees' economic, social and cultural rights were not respected in Senegal. Unfortunately, eight years later this has not changed.

In summary, five central problems can be identified which prevent refugees and asylum seekers from realizing their rights beyond non-refoulement according to Mr. Niass. These are the lack of adequate standards and procedures for determining refugee recognition; the lack of temporary protection during the asylum seeking process; the lack of issuance of identity cards to recognized refugees; the lack of willingness of the UNHCR to assist anyone who has not been recognized as a refugee by the National Eligibility Commission; and finally the lack of understanding of the authorities, e.g. police, judges, detention guards, of what a refugee and asylum seeker is.

4.3 Marjoleine Zieck, University of Amsterdam and member of the Advisory Committee of the 3R Foundation: Discussant

The role of the UNHCR in refugee protection

To take a critical look at the role of UNHCR assumes that the agency has a clearly defined and delimited role. Theoretically this may be the case as Articles 1 and 8 of the UNHCR Statute define and limit its functions. Through the emergence of new needs which cannot be met by states themselves UNHCR's role has however expanded and become operational in practise. There are also certain variables which have an impact on the role of UNHCR. It is, e.g., of relevance whether the country of refuge is a party to any of the international refugee instruments and whether it has enacted national legislation that deals with refugee protection. Furthermore it is important whether it also observes its legal obligations in this area.

To Prof. Zieck it seems that the process that caused the change of UNHCR's role from a non-operational agency to a highly operational one is open-ended and gives rise to questions. It is, e.g., not clear whether UNHCR is following a clear policy in this process or whether it is taking on anything

¹³ From response to solutions – strengthening the protection of refugees through economic, social and cultural rights; A Discussion Paper on the Economic, Social and Cultural Rights of Refugees in West Africa, WARIPNET & Human Rights First; Presented during the 51st meeting of the Executive Committee of the High Commissioner's Programme Geneva, October 2000. Available at http://209.212.64.43:777/archives/arc_pubs/ResponseSolutions.htm (last visited 10 October 2010).

in the field of forced migration that presents itself. Even though an answer to this question would require research to Prof. Zieck it does not seem as if the changes are the result of an explicit long-term policy. Furthermore it is questionable whether UNHCR formulates clear conditions that have to be fulfilled when new tasks are assumed.

Many of the new tasks UNHCR has assumed require an operational presence on the territory of states. UNHCR's presence in the field is predicated on need. Such need may be expressed by a country itself or suggested to a country by UNHCR. As a result UNHCR has a presence in more than 100 states. These may be parties to different international and regional refugee instruments but UNHCR also operates in states which are not parties to any of these. UNHCR's presence in a state is based on a cooperation agreement it concludes with the government. The relevant provision of the UNHCR statute does not contain conditions that have to be fulfilled for UNHCR to assume new tasks in the territory of states. Moreover, cooperation agreements are not always concluded. In the absence of an agreement there is no substantive basis UNHCR can rely on concerning cooperation beyond the general obligation to cooperate with UNHCR when the host state is not a party to the relevant treaties. This is problematic. An example is the refugee status determination exercised by UNHCR in Libya and Turkey. Turkey is a party to the 1951 Convention and the 1967 Protocol but has confined the scope of its obligations to refugees from Europe. In her example Prof. Zieck only addressed the case of non-European refugees arriving in Turkey.

Libya is not a party to the 1951 Convention and the 1967 Protocol but has signed and ratified the 1969 OAU Convention. It still has no law on granting refugee status and claims there are no political refugees in the country. UNHCR was invited by Libya to establish a presence in 1991. This was not governed by a cooperation agreement. UNHCR's tasks encompassed registration and refugee status determination to which the Libyan authorities consented. Nevertheless Libya often does not honour the letters of registration granted by UNHCR to those it recognized as refugees. In June 2010 Libya ordered UNHCR to close its office.

Turkey grants temporary status to non-European refugees with the view to enabling them to resettle in a third state. It is the task of UNHCR Turkey to find resettlement places for these refugees. A precondition is that these refugees are eligible to refugee status under UNHCR's mandate. Non-European refugees in Turkey are hence subject to two different eligibility schemes. Access to the Turkish procedure cannot be achieved by applying to UNHCR. Only after a refugee has applied to the Turkish authorities her/his case can be decided by UNHCR. UNHCR will not conduct a status determination interview if a refugee is not registered with the Turkish authorities. The Turkish authorities see it as a measure of burden-sharing by the international community that UNHCR carries out status determination in Turkey. The procedure has never been formalized but a common practise has evolved. The Turkish authorities usually wait until a case has been reviewed by UNHCR before they decide whether to grant temporary asylum. Usually the Turkish authorities grant temporary asylum to a person recognized as a refugee by UNHCR. However, this is not always the case. Whenever they do not follow UNHCR's assessment the reasons for this decision are unknown to UNHCR as it does not have access to individual files held by the Turkish authorities. Accordingly recognition as a refugee by UNHCR does not ensure protection in Turkey.

Lack of protection of refugees recognized by UNHCR is not limited to Libya and Turkey. As UNHCR India has stated, it could not do much should the Indian authorities decide to take action against any person recognized by UNHCR as a refugee. According to its mission statement it is UNHCR's primary

purpose to safeguard the rights and the wellbeing of refugees. In its effort to achieve this objective UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state and return home voluntarily. One can hardly find fault with this objective. However, problems arise when this objective is implemented. If it is indeed the primary aim that refugees find safe refuge in another state and it is decided that UNHCR carries out status determinations it has to be borne in mind that status determination is only the first step in ensuring protection. Mere recognition as a refugee by UNHCR is not enough as it does not always lead to an outcome.

UNHCR has gradually taken up responsibilities that are probably those of states. This is consistent with the practise to attempt to ameliorate any situation even if this results in compromising protection standards. Leaving aside the fact whether or not UNHCR should assume responsibilities of states if this choice is made it should be made conditional. Regarding refugee status determination this means that states should be prepared to accept UNHCR's assessment when they allow UNHCR to carry out status determination and extend protection to those recognized as refugees by UNHCR.

In conclusion Prof. Zieck agreed with Westerveen who said that UNHCR is dependent on what states allow it to do. However, she added that UNHCR should formulate clear conditions before it becomes active in a state as otherwise status determination by UNHCR does not lead to refugee protection.

5 Grassroots Legal Initiatives for Refugees and IDPs in Africa and the Middle East

5.1 Kenechukwu C. Esom, Refugee Law Project, Uganda:

Legal Advocacy for Refugees and IDPs in Northern Uganda

Mr. Esom started his contribution outlining the situation of refugees in Uganda. Uganda hosts 150,000 refugees mainly from the Democratic Republic of the Congo, Somalia, Sudan, Kenya, Ethiopia and Eritrea. In total there are 900,000 refugees hosted by one of the five East African countries Uganda, Kenya, Tanzania, Rwanda and Burundi. Of these, 300,000 have the citizenship of one of those countries. This is interesting against the background that the East African Community is implementing a political federation which shall include the free movement of persons and will affect the refugee situation eventually.

In the last years a number of events have occurred that affect the situation of refugees and IDPs in Uganda. One of these is the passing of the Refugee Act. This is a progressive instrument which expands the refugee definition. It does not only incorporate the refugee definitions of the 1951 Convention and the 1969 Convention but also adds the category of people fleeing from gender-based persecution as refugees. It further introduces a refugee status determination procedure which is conducted by an Eligibility Committee, provides for an Appeal Board and a number of rights including the right to freedom of movement. For the first time refugees in Uganda may now choose to stay outside of refugee camps and move and reside within the whole country.

Another development which caters for legal challenges is the return of IDPs. With the establishment of relative peace in Northern Uganda a lot of IDPs returned home and many IDP camps closed down. The number of IDPs declined from 1 840 000 in 2005 to currently only slightly above 200 000.

The Refugee Law Project was established in 1999 because research showed that there was no legal aid available to refugees and asylum seekers in Uganda. It started as a community outreach project

to address the issue of legal aid to refugees but has grown beyond that in the last decade. Nowadays the organization runs several programmes which address different issues with regard to refugees and IDPs. To these belong programmes concerning refugee status determination issues, sexual and gender based violence, deportees and durable solutions.

The provision of legal aid to refugees faces a lot of challenges. One reason is that Uganda does not have a comprehensive legal aid policy in place. The provision of legal aid is only regulated for cases of capital offences. Furthermore the Ugandan justice system is inadequate. In rural areas the funding of the courts is not always ensured which causes delays. While these problems affect Ugandans and refugees alike there are further specific challenges only refugees encounter. The Refugee Act is not implemented effectively. Even though the law provides for an Appeals Board in fact appeals are decided by the same instance that took the initial decision. The question how to balance the criteria for asylum on the basis of gender is also problematic as Uganda faces increased homophobia and the access to the asylum system is restricted on the basis of sexual orientation. The situation is also affected by the transitional justice mechanisms currently in place. The country has to deal with war crimes, land disputes and restitution of property claims. It is an important issue what justice means to the communities and what can be done to appease the country. The government has recently passed the ICC Act but it is still unclear how it can be implemented in practise and how the issues revolving around repatriation and return can be addressed. Another challenge Uganda has to deal with is UNHCR Uganda does not prioritize legal aid. It took years to convince UNHCR to establish legal aid offices in the refugee camps. A breakthrough was achieved two years ago when two such offices were opened. However, this is not sufficient. The Refugee Law Project tries to visit all refugee camps on a regular basis to provide legal advice but to do so properly is very challenging. In addition the asylum space in Uganda is shrinking. As other African countries Uganda is closing its doors to refugees. This development is fuelled by so-called cooperation agreements which refugee producing countries are signing with host states and UNHCR. An example is the political understanding between Uganda and Rwanda according to which Rwanda is at peace and it is safe for refugees to return. As a result only a very limited number of refugees arriving in Uganda is granted status and rejected refugees are not granted the right to appeal this decision. Furthermore the funding of legal aid is difficult. Since relative peace was established in Northern Uganda donors focus on development and reconstruction there and less money is available for legal aid to refugees.

According to Mr. Esom different things need to be done to address the challenges mentioned above and improve access to legal aid. Firstly, UNHCR should establish a parallel refugee status determination procedure in Uganda. As political considerations lead to a lack of protection of people deserving protection UNHCR should take a more active stand in this regard. Furthermore refugee communities and their host communities need to be empowered and educated about the rights of refugees. The Refugee Law Project is providing information on this topic and in partnership with the police is trying to educate local authorities on the rights of refugees. In addition refugees should also be granted access to the naturalization process in Uganda. According to the constitution foreigners who live in Uganda for a number of years can apply for citizenship. However, this provision is not applied to refugees. The Refugee Law Project is about to launch a constitutional petition against this practise. Mr. Esom also pointed out that the East African Community is not dealing with refugee issues but only focuses on economic policy. It would therefore be desirable if development partners used their influence to address refugee issues.

5.2 Tarek Mahrous, AMERA, Egypt

Legal Advocacy and Representation for Refugees in Cairo

Mr. Mahrous began with a brief introduction of his organization. The American and Middle East Refugee Assistance (AMERA) was founded in 2003. It is a UK charity organization which has its office in Egypt and offers legal aid and psychosocial services to refugees.

Mr. Mahrous then outlined the asylum system in Egypt. Egypt is a drafting member of the 1951 Convention but only ratified it in 1981. In 1954 Egypt and UNHCR signed a memorandum of understanding which led to the opening of the first UNHCR office in the Arab world in Cairo. In the beginning UNHCR was tasked with the registration and assistance of the stateless population in Egypt. Gradually UNHCR assumed further tasks and nowadays conducts refugee status determination as well as durable solutions interviews. Furthermore UNHCR supports refugees with educational grants, medical and financial assistance. However, due to a lack of resources and despite its best efforts UNHCR Cairo does not always provide clear, accurate and timely decisions consistent with their mandate, procedural standards and international law. This means that asylum seekers can remain in limbo for months, and sometimes years, without certainty about their status. In cases where refugee claims are incorrectly assessed, failed applicants are at risk of deportation which can lead to detention, torture or even death in their home countries. As in Senegal there is no independent Egyptian body for appeals so that these are carried out by UNHCR as well. Of course the persons who took the initial decision are not deciding the appeal. Nevertheless both decisions are taken in the same building and the participating personnel is discussing cases with each other. Furthermore it is problematic that UNHCR is not allowed to visit refugees in detention to determine their status. There is no asylum procedure at the border so that refugees entering the country are often doing so illegally and are punished. After their detention they are deported without there being a chance that their status is determined by UNHCR. To summarize, refugee and asylum seeking populations in Egypt are marginalized and at risk in multiple, serious and sometimes dangerous ways.

In response to these challenges AMERA-Egypt continues to work for the realization of refugee rights in different and creative ways including direct service (legal aid and psychosocial assistance), local and international policy advocacy, training and cooperation with other NGOs in the region. It is AMERA's main aim to assist refugees during their status determination procedure. This includes assistance with the registration at UNHCR, taking testimonies in preparation for the status determination interview, accompaniment to the interviews at UNHCR, submission of appeals. Furthermore there is a Protection Team which –unlike UNHCR- visits refugees and asylum seekers in prison and detention centres on a regular basis. This team accompanies clients to government offices and police stations to ensure their security. AMERA also offers workshops to educate refugees and lawyers about refugee rights and the Egyptian asylum procedure. In addition the organization helps refugees to access governmental institutions, e.g. the health office to register newborns.

Beside legal services AMERA also offers psychosocial assistance. The Psychosocial Team consists of trained psychologists, counsellors and social workers. It provides in-house counselling and psychological assessments for clients affected by emotional, psychological or psychiatric issues. By focusing on psycho-education AMERA-Egypt counsellors also help clients to understand reactions to trauma, gain insight into their extremely difficult situations and develop effective coping mechanisms.

To build a bridge between refugees and AMERA as well as UNHCR and to facilitate refugees' access to AMERA the organization also has a Community Outreach Team which focuses on cooperation and capacity building. By maintaining constant communication with, and between, refugee communities as well as with the Egyptian public and institutions, AMERA-Egypt's Community Outreach Team is able to understand refugees' needs. This allows it to tailor the services and information necessary to meet those needs. The Community Outreach Team also invests in capacity building for refugee groups in order to improve the refugees' ability to better represent and serve themselves within the Egyptian context.

Major challenges and obstacles AMERA faces encompass the constant worry for sufficient funding to keep the organization running. There is a lack of interest in funding legal aid projects and it is therefore hard to keep the current services in existence. Moreover the organization needs capable refugee lawyers and counsellors to be able to provide quality services. These are hard to attract due to the low salaries paid in Egypt.

The situation of refugees in Egypt is challenging because of a lack of social and economic assistance by the government, the UNHCR and the local services providers. Restrictions on employment and access to public schools and the lack of affordable health care are also problematic. Concerning their legal situation it is difficult that despite the ratification of international refugee instruments there is no domestic refugee law in Egypt and no judicial procedure is in place to oversee the deportation of refugees. Further problems refugees face in their everyday life include racism in the Egyptian society and the high inflation rate.

6 Grassroots Legal Initiatives for Refugees in Europe & the Middle-East

6.1 Mr. Hazem Jamjoum, Badil Resource Centre, Palestine

Legal Advocacy and Representation for Palestinian Refugees

Mr. Jamjoum opened the Panel 2B discussion in the afternoon by enlightening us on the highly politicised topic of the status of Palestinian refugees. Mr. Jamjoum highlighted the fact that because the stance of Palestinian refugees embodied so much politics and controversy; this carried with it an unfortunate level of ignorance of the issue by the general international community. In light of the legal expertise possessed by the audience, Mr. Jamjoum did not focus his presentation purely on the law but instead delved straight into the core of the issue: the root causes of the problem faced by Palestinian refugees.

Mr. Jamjoum firstly discussed the mandate of United Nations Relief and Works Agency for Palestine Refugees in the Near East ('UNRWA'), which was set up by the United Nations as an assistance mechanism to support Palestinian refugees in various manners such as the provision of education; job opportunities; and health care. UNRWA defines Palestinian refugees as "people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict". Palestinian refugees are excluded from Article 1A of the 1951 Refugee Convention because of the existence of UNRWA as a separate agency. However, they are classified as refugees on a prima facie basis under Article 1D.

UNRWA, however, does not in itself contain a protection mandate. This is due to the fact that there was already a co-existing United Nations Conciliation Commission for Palestine which was charged with a duty to protect Palestinian refugees. Unfortunately, the fulfilment of this protection mandate was largely prevented by the stubborn refusal displayed by Israel to allow the return of Palestinians back to their home land. Consequently, this UN Conciliation Commission became a body which only “exists on paper” because no protection has been actually realised for over 59 years. In other words, currently there is no agency that is properly mandated to provide protection to Palestinian refugees.

Additionally, many Palestinians do not register for refugee status under UNRWA. This is attributed to two factors. Firstly, it is an issue of pride. Many Palestinians view UNRWA as a form of charity and as such the stigma associated therewith inhibit them from registering. Secondly, it is due to a plain lack of opportunities for some Palestinians to register for refugee status under UNRWA.

In outlining the root cause of the Palestinian refugee problem, Mr. Jamjoum drew our attention to the history from which the current issues originate. He argued that the reason behind the displacement of Palestinians is due to the racist and exclusionary ideology that was inherent within the creation of the State of Israel. That is to say, implicit in Zionism, the intention to create Israel was the creation of a Jewish state at the expense of the indigenous and non-Jewish inhabitants. Law and policy was instituted in Israel which expressly allowed for the denial of the return of Palestinian refugees simply because they were non-Jewish.

The 1948 conflict saw over 750,000 Palestinians displaced and their return denied. This constituted over two-thirds of the Palestinian population. In this process, over 500,000 towns and villages were destroyed. Further, 320,000 citizens were prohibited from returning to the villages that they came from. Moreover, Israel adopted a military law which allowed for the continued confiscation of Palestinian land, further displacing Palestinians from their land.

In 1965, a new piece of planning and construction law was passed. This resulted in 18,000 Palestinians living in unrecognised villages with no infrastructure. The non-recognition of these villages by Israel means that water pipes, for example, are actually considered illegal structures.

In the 1967 conflict, over 400,000 Palestinians were forcibly expelled, primarily from Jerusalem. Over half of the expelled were from the 1948 war; so for some of the Palestinians, it would be their third time to be displaced. Israel continued to occupy land with the goal of having the maximum amount of Israelis living on these pieces of land.

Moreover, in host States, Palestinian refugees are considered the most vulnerable. Since the Iraqi occupation in 2003, Palestinians became the victims of sectarian violence; with many instances of disappearance, torture, death threats and so forth. Tens of thousands of Palestinians from Iraq have been displaced. Adding salt to the injury is the fact that Jordan and Syria did not allow Palestinians to cross their boarder. Consequently, many Palestinians were stuck in between boarders while anxiously awaiting responses from other States such as Iceland, Chile and Brazil to grant them refuge. In 2007, the Lebanese government seized a refugee camp in Lebanon and destroyed the camp.

Palestinians are the largest and longest standing refugee group in the world. Mr. Jamioum emphasised that the core problem which has fed into the current issue existing for over 60 years is the fact that the international community has taken no action to create enforcement mechanisms for Palestinian refugee rights or the rights of IDP's. Israel has been continually allowed to discriminate

against Palestinian refugees. No enforcement mechanisms have been set up to uphold Israel for these crimes and thus there are no deterrents for Israel to stop the commission of these crimes.

The Gaza Strip houses over 1.2 million Palestinian refugees. Israel has instituted a discriminatory policy which means that the return of Palestinian refugees is forbidden. This policy is a direct infringement of international law and principles. For example, UN Security Council Resolutions 194 and 237; the application of international humanitarian law with the prohibition of forcible transfers under the Geneva Conventions of 1949. Additionally, there is the potential application of international criminal law relating to the crime of apartheid. Mr. Jamjoum argued that the denial of return of one group over another ought to be deemed as a crime of apartheid.

In Israel's defence, there is the opinion in the international community which asserts that Israel is too small to house the Palestinians seeking return. However, Mr. Jamjoum dismissed these allegations by presenting the facts which illustrate that in the 1990's Israel absorbed over 1 million migrants from the former USSR. Further, over 80% of the lands where the Palestinians refugees came from are still vacant; thus there is clearly space for these refugees if they were to return.

Mr. Jamjoum concluded his presentation by introducing his organisation and its goals. The Badil Resource Centre aims to examine the existing law and legal principles and how to apply these laws to hold Israel accountable for its actions. However, the main obstacle faced by Badil Resource Centre is the difficulty of finding standing. To elaborate, under international law, Palestine is not recognised as State. Under national law, there are continuing interference from different political bodies. Universal jurisdiction is a possible route. This path has been investigated by States such as Belgium and Spain with an unfortunate lack of success.

In the meantime, the strongest tool is the continued documentation and publication of the findings in Palestine and its situation. In view of the failure of the various legal avenues in the last 62 years, civil action appears to be the most effective thus far. For example, youth training programs and 'know your rights' campaign which highlight not just Israel's brutality but the actual meaning of the right to return. This campaign also advocates for sanctions against Israel. Although it is only five years old, States such as South Africa, Canada, United Kingdom and Ireland have joined on board by withdrawing funds from organisations that commit war crimes and crimes against humanity.

Mr. Jamjoum ended his discussion by emphatically stressing the fact that the issue and hardships Palestinian refugees face are not a humanitarian or a charity issue. It is a political issue. It is an issue that has been humanly made; made by Israel.

6.2 Ms. Rachel Levitan, Helsinki Citizens Assembly

Legal Advocacy and Representation for Refugees in Istanbul

Ms. Levitan commenced her presentation by praising the efforts of organisations that strive for the recognition of legal advocacy of refugees and to bring justice to these refugees which in turn underline the importance of bringing international human rights standards into international refugee law.

Commenting on the key challenges refugees face in Turkey, Ms. Levitan remarked that one of the biggest obstacles to overcome for Turkish refugees is the fact that Turkey is a country which is

consisted primarily of transit migration yet it is also a transient nation. Tremendous changes are taking place presently in Turkey in response to bringing this nation's standards in alignment with European and international standards. Further, a continuing issue which poses significant barriers to the asylum system in Turkey is the lack of prolonged support for the asylum seekers and refugees. The existing system offers ad hoc support which is proving to be insufficient and ineffective.

Moreover, despite the efforts of organisations such as Helsinki Citizens Assembly insisting on maintaining an open relationship with the Turkish government; there still remain an issue of transparency. The push for refugee rights is only appearing on the agenda of human rights NGO's in Turkey now. It is only in the last five years or so that the problem has attracted more attention for a need of its address.

Since it is a country of transient migration, it is hard to place an exact figure on the number of asylum seekers and refugees in Turkey. Approximately 50 to 60,000 people are transported annually. Many leave from the South and the East of Turkey in an attempt to get into the rest of Europe. Further, there are many regular workers in Turkey who are originally from the former Soviet Union but based permanently Turkey; and they leave Turkey from time to time in search for work. As such, the number of asylum seekers and refugees that do actually register are not a true representation of the actual data. Currently, approximately only 16,000 people are registered. Half of them arrived in Turkey last year. Approximately 40% were from Iraq; 25% from Iran; 18% from Afghanistan; 7% from Somalia with the remaining 10% from other parts of Asia and Africa.

A central feature of Turkey's asylum system is that it does not integrate non-Europeans as refugees. This is due to the fact that Turkey is a party to both the 1951 Refugee Convention and acceded to its 1967 Protocol; but it maintained the optional 'geographical limitation' under the 1951 Refugees Convention. Consequently, Turkey only offers protection to those fearing persecution as a result of "events occurring in Europe". For example, if an Iranian arrives in Turkey, he or she would apply for refugee status with UNHCR; they would then register and apply for temporary asylum with the Minister of Interior; after which they would be sent off to a small town in Turkey and would remain in that town until UNHCR makes a decision regarding their case.

This entire decision-making procedure could take between one and a half to two years. UNHCR would then attempt to find a durable solution which usually entails resettlement to a third country. 8% of those resettled last year went to US. Some refugees were also resettled in Canada and Australia. However, European countries do not accept any resettled refugees from Turkey. This is due to the ongoing accession issue in Turkey. The political sensitivity means that no European country would want to be seen to be treading on another nation or Turkey's toes. Asylum seekers suffer as a result.

Ms. Levitan then drew our attention to another facet of the core problem faced by asylum seekers and refugees in Turkey: access to the asylum system. She pointed out that many people who are on their way to countries such as Greece or other European countries may be apprehended and thus detained. Lawyers have very limited access to these people in detention. NGO's have no access at all. The conditions in these detention centres are extremely poor. There is hardly any access to legal systems. As such, many people are deported without notice. The attitude of the Turkish government towards the issue of Turkish refugees has been expressed as follows: "This is the Republic of Turkey;

not the Republic of UNHCR". Therefore if NGO's want to intervene; the most plausible solution is to seek remedies before the European Court of Human Rights.

Moreover, even if asylum seekers are entered into the system, there remain tremendous challenges. For example, access to health care and education are very limited. Accommodation also remains a major issue. The UNHCR procedure is not only challenging but also time consuming. Resettlement is not always guaranteed and the status determination procedure still battles with transparency issues. The Helsinki Citizens Assembly is aimed at obtaining more transparency in the status determination procedures by insisting on transcripts of interviews being made available. Further, it hopes to integrate this practice amongst other refugee NGO's.

6.3 Ms. Marieke van Eik, Attorney with Bohler Advocaten

Legal Representation for Refugees in The Netherlands

Being a refugee lawyer herself, Ms. Van Eik firstly spoke of the important role lawyers play in the Dutch asylum seeker procedure. She made a distinction between the two different stages of the interview process under the Dutch system. During the initial interview in the asylum seeking procedure, the client firstly attends an interview without any legal representation. It is only after this interview that the refugee lawyer will meet his or her client. This rule is set to change on 1 July 2010 which newly requires a lawyer to meet his or her client before the first interview.

A recurring issue for asylum seeker interviews is credibility. When the lawyer meets his or her client after the first interview and prepares the client for the second follow-up interview; the lawyer must help the client to formulate all the reasons behind the asylum seeking application. Ms. Van Eik emphasised that at this stage the lawyer's role is essential because good preparation is the key to success. Since any inconsistencies or ambiguity would directly attack an asylum seeker's credibility; the need to ensure consistency and clarity in these applications is absolutely pivotal. It must be noted that there can be various causes for any inconsistencies in an asylum seeker's application. The most common being the trauma which an asylum seeker has endured from events leading up to the seeking of asylum; or it could be attributed to the pressure and stress experienced by an asylum seeker during the interview process. Further, language barriers and confusion by the phrasing of multiple questions by the interviewer also are factors to be taken into consideration.

After the completion of the second interview, the lawyer will receive a written report from the second interview and its content are to be checked with the client. Any mistakes must be rectified. Here, a lawyer's role is also vital because when checking the report; the lawyer must seize all opportunities to clarify any inconsistencies before submitting the report to the immigration office. These two-stage interviews form the basis under which the asylum applications are considered and assessed. It is against this light that a lawyer's role in the interview process can make a real difference to the outcome of his or her client's asylum seeking application.

Ms. Van Eik then discussed the European asylum seeking procedure and the EU's ambition of establishing a common system which contains uniform European asylum seeking procedures amongst EU states. Unfortunately, despite efforts being made since 1999 towards this common system, there is currently no uniformity of asylum seeking procedures in Europe. However some directives have been implemented to ensure the observation of minimum norms and guarantees. For

example, the implementation of the procedure directive which stipulates the minimum standards ought to be maintained. Then there is the qualification directive which addresses recognition of refugee status and the conditions and regulations for refugees and the responsibility of States. Further, there are directives regarding third parties. The current deadline for the realisation of a set of uniform European asylum seeking procedure is set for 2012.

The primary advantage of this common system is conformity with EU norms. Inherent in this is the requirement that national systems must align with these norms and standards. However, differences between the developments of the various refugee systems within the EU systems should not be overlooked. This clearly raises difficulties when working under a uniform system. For example, under the Dublin regulation, it requires the State which the asylum seeker first arrive at to process the asylum seeker application despite the fact that the asylum seeker may continue their journey elsewhere to another State after their arrival. Further, this requirement under the Dublin regulation should not be applied to those States that do not comply with the minimum standards.

Ms. Van Eik wrapped up her discussion by sharing with us her experiences in Istanbul. She highlighted that one of the greatest avenues of improving protection for refugees is educating and training people about the various legal systems and their similarities and differences. She spoke of her own experience in Istanbul where she could train the locals about the Dutch procedure and other European States' systems. This information sharing is invaluable as it aims to help to improve the legal aid options for refugees in Turkey. Information exchange can also serve to identify the problems in Dutch system and how to mend the system to fix the identified problems.

6.4 Dr. Jeff Handmaker, ISS and Board Member of the 3R Foundation: Discussant

Advocacy and Representation from the Grassroots

Dr. Handmaker entered the discussion by outlining the various actors who have active responsibilities in ensuring legal protection to refugees. At the top is UNHCR; this is followed by State governments, NGO's and then various other stakeholders.

There is tension in human rights advocacy and assistance when dealing with State governments. On the one hand there is the desire to support the government as it demonstrates a willingness to move in a progressive direction. On the other hand, critical distance must be maintained especially in relation to advocacy and legal assistance. Handmaker explained this relationship by critically examining the interplay between civic actors and the government.

According to Handmaker, this interplay is premised on the principle of State responsibility and notions of civic participation. The civic interactions and participation are structurally conditioned and must be contextualised. To elaborate, Handmaker made three propositions. Firstly, civic actors have the capacity to hold States accountable. Secondly, strategic choices should be made on the basis of an appreciation of structural boundaries, which condition civic agency in holding States accountable. These are also measured by social distance such as shared interests and political positions.

Finally, the various relevant actors are not only valuable during the investigation process but they can also act as translators. What these actors are translating are global norms, objects and purpose of the relevant governing documents and minimum standards. The route of their translation is then channelled into the local work of the various States.

On the issue of knowledge and expertise sharing, Handmaker noted the indispensable value of this method of learning and interaction. However, he cautioned us on making a distinction between the actual value of knowledge sharing and essentialism. Essentialism is the dangerous presumption of what works for us will work for them. Such presumption is premised on the basis of 'we know the best'. However, this is not where the focus should be. The spotlight should be shone on the sharing of dialogue; the facilitation of discussion which provides the most helpful support to one another.

Furthermore, self-reflection is a powerful tool. It should be honoured at all costs. There have been many cases which involve contradictory interpretations of the law. This is clearly problematic; but it can be resolved if the applicable parties were to critically analyse their own standpoints and were willing to take a step back and accept that they may be wrong.

It must be noted that not all legal systems have the same foundational support and origins. For example, the Dutch legal system is exclusively the product of State institutions; whereas the South African refugee law was the result of fruitful interactions by NGOs and the government. UNHCR used to operate several refugee determination systems in Africa, and still do in certain African countries, although the extent of their funding and support to government is significantly less. Issues of under-developed legal systems and limited access to the Courts still remain a prominent issue on the agenda in these States. Needless to say, the necessity of legal systems is absolutely crucial; as it is the engine that provides the assurance of rights enforcement.

As such, different structural systems must be taken into account. We must ask ourselves to what extent litigation can be utilized as a tool. Handmaker illustrated this point by again comparing the refugee determination systems of the Netherlands and South Africa. In the Netherlands most claimants are represented and there is much reliance on case law. However, many issues still exist, including contradictory interpretations of substantive law and limited visible advocacy on refugee issues. On the other hand, in South Africa, few claimants are represented and there is limited case law. Problems are mainly geared towards structural deficiencies in the system as few cases deal with interpretations of substantive law. Interestingly, as opposed to the Netherlands, there is much visible advocacy on refugee issues in South Africa. With such differences in mind, an appropriate approach by different actors should be to make a critical assessment in light of the different systems in order to decide whether the legal avenue in question is the best path to pursue or whether it would be better to focus on other legal options.

Handmaker concluded with the following thoughts. The possibilities of interaction and solidarity are based on strategic choices. Global solidarity and support may involve other dynamics and actors and it may involve various means such as the training of the police force and governmental officials. It is also critical that all actors work together in this field and support each other.

7 Solidarity and Support

7.1 Dr. Barbara Harrell-Bond, Fahamu

Building a Southern Regional Network of Legal Advocates

Dr. Harrell-Bond opened her presentation by underlining Mr. ten Thije's remarks which highlight the difficulty of sufficient provision of legal aid to refugees and the obstacles of securing the much-needed funding for legal aid. This was timely illustrated by the fact that one of Britain's largest legal aid organisations 'Refugee and Migration Justice' just went into receivership.

Dr. Harrell-Bond advised us that there are approximately 10,000 unrepresented refugees in Britain. Such figure painted a grim picture for refugees. Without legal aid, how can one properly prepare a successful testimony? In addressing the absence of legal aid, various effective attempts have been made to rectify the situation. Dr. Harrell-Bond made reference to the Southern Refugee Legal Aid Network; the Asian Pacific Network; and the workgroup in Europe: Migrants and Asylum Seekers. Further, many international volunteer agencies work with UNHCR in Geneva to conduct annual consultations regarding these matters. For example, in 2004 a meeting was held which investigated the effectiveness of the refugee status determination procedures carried by UNHCR. Weaknesses emerged from this study which revealed the issues of a lack of legal representation; a lack of reasons given for rejection of applications; and a lack of availability of interview transcripts.

Studies have found that alongside health as the biggest problem refugees face; a lack of legal aid comes closely second. There are several legal aid organisations in the global South such as in Hong Kong, Korea, Japan and Indonesia that seek to provide more legal aid assistance. Unfortunately, the problem is still alive and well.

Dr. Harrell-Bond introduced us to the project which she was currently working on: the development of a website – www.srlan.org – which was aimed to serve as a one-stop-shop for those providing legal aid to refugees. The website was still very much under construction at the time of the conference. The purpose of the website is to provide useful and requisite information to people worldwide; even in areas where only very low bandwidth is available.

The website is not only aimed at accessibility to refugees but also to provide a source of education. It is surprising and alarming to note the lack of knowledge of refugee law among some of the lawyers who assist refugees. Needless to say, this is highly problematic. In 1982, there were only two places in the world which offered refugee law as a learning course. Dr. Harrell-Bond emphasised that refugee law is one of the most complicated areas of law as it entails interplay with other areas of law such as family law and criminal law. Without studying refugee law properly, one cannot fully appreciate the complexity of the subject matter. Most people who study public international law only study the Conventions on refugees without in-depth knowledge. Therefore, there should a real campaign to lobby for the education of international refugee law.

On www.srlan.org, users can find the addresses and phone numbers of all the UNHCR offices worldwide. This is important because usually the first difficult hurdle for asylum seekers to overcome is how to locate UNHCR to be able to ask for assistance. As such, the information on this website will provide a directory for all users.

The website also contains information on the country of origin with the support of various major external sources such as Refworld. The idea behind this is to encourage individuals from these countries to work on a pro bono basis by providing information such as reports for those who are trying to seek information about that particular country. Refworld has kindly offered to put all of the relevant case law on its website.

The website also categorises the different grounds for seeking refugee status. Dr. Harrell-Bond listed the various categories such as religion; gender; military service invasion; the issues of Palestinian refugees; separated children; sexual orientation and gender identity; statelessness; victims of witch craft; and victims of trafficking. Dr. Harrell-Bond welcomed suggestions for any emerging issues which the website should also accommodate.

An additional goal of the website is to provide information regarding studying opportunities for refugee law; as well as training materials which are available for other human rights groups. With the availability of these sources on the website, users can gain an understanding of refugee law without the need to purchase many other refugee law books.

The website is also preparing a glossary of all the relevant and technical terminologies associated with refugee law. Information on a course for interpreters can also be found on the website. This course can be taught on-site of your agency at very just costs. Agencies in Turkey and Hong Kong have used this service already.

A section dedicated to refugee voices can also be located on the website. To date, there has been only one known refugee newspaper: "KANERE" and it is run by Ethiopian and Eritrean journalists. Attempts have been made to suppress the publication and circulation of this newspaper due to its content and the sensitivities of politics. The website will publish 'Canary' online and calls for article entries by anyone interested in refugee law which will be published in a newsletter circulated to the 500,000 readers of Fahamu Trust worldwide.

Finally, www.srlan.org is hosted by Fahamu Trust. It is still a work-in-progress and it is hoped that it will be formally launched soon. Dr. Harrell-Bond strongly encouraged feedback and any offers of assistance to the website.

7.2 Ms. Dieuwerke Luiten Dutch Refugee Council

Legal Assistance for Refugees in the Netherlands and International Projects with Partners Abroad

The Dutch Refugee Council is a refugee organisation aimed at helping refugees to gain access to legal protection. Ms. Luiten structured her discussion by the work the Dutch Refugee Council conducted in the Netherlands and overseas.

Ms. Luiten is the international project manager at the Dutch Refugee Council and she is primarily responsible for refugee work within the Netherlands. She introduced the Dutch Refugee Council as an independent organisation which strives to promote and represent the interests of asylum seekers in the Netherlands. It is the largest refugee organisation in the Netherlands as it offers support to asylum seekers from the moment asylum seekers arrive in the country to the moment they are granted refugee status and to the stage of ongoing protection and integration of refugees. The

organisation believes that refugees have a right to fair asylum seeking procedures; education; health; and training.

The Dutch Refugee Council receives assistance from approximately 7,000 volunteers around the country. It has a strong presence in approximately 90% of the Dutch municipal districts and centres. It is aimed to ensure asylum seekers have access to fair refugee determination process. It monitors development; engages in lobbying activities; as well as provides direct assistance to lawyers of refugees and asylum seekers.

In assisting asylum seekers, the Dutch Refugee Council informs asylum seekers about the asylum procedure to ensure their understanding of the various requirements and the application stages. It helps asylum seekers to prepare for their interview; substantiate the claims behind their application; and to conduct searches to document and strengthen an asylum seeker's case. Additionally, it monitors the interviews by attending the interviews. Due to practicality limitations, not every interview can be accompanied by the Dutch Refugee Council. As such, only the most vulnerable asylum seekers are accompanied by the Council

Further, the Dutch Refugee Council brings refugee claims to the attention of politicians and policy makers in order to brief them on these matters in the hope of receiving support for a positive outcome. The Dutch Refugee Council supports all lawyers who represent asylum seekers. Usually, the assigned lawyers receive funding from the State. However, they often work under heavy time pressure. This is also where the Dutch Refugee Council steps in to alleviate some of this pressure by assisting the lawyers to conduct research on the country of origin and locate the relevant jurisprudence.

Ms. Luiten drew our attention to the issue of the need for the Dutch Refugee Council to keep a critical distance from the authorities it receives support from. As noted earlier, the Council receives support from different branches of the government of the Netherlands such as the Dutch Ministry of Justice and the Ministry of Social Affairs. The Council is supported by various independent organisations which advocate refugee rights. There is inherent tension in this dimension of the working relationship which Ms. Luiten described as "walking a very thin line". She explained the need for the Dutch Refugee Council to balance on the one hand, the maintenance of a solid relationship with its good contacts; and on the other hand, the freedom to publicise refugee issues even if it is to the dismay of the Government.

Internationally, the Dutch Refugee Council is a part of the European council of Refugees and Exiles and they also work outside of the European Union. Usually, the support the Council gives outside of the Netherlands are in the form of answering questions they receive and responding to various requests for support. For example, the Dutch Refugee Council assists in strengthening local refugee organisations by providing training or providing direct support for refugee camps on an ad hoc basis.

One of the main challenges for international projects is the fundraising. There are a number of projects which are being implemented presently. In Bulgaria, the main focus is on advocacy and cooperation with other States. In Croatia, the emphasis is being placed on guaranteeing access to the asylum procedure by ensuring that asylum seekers are not rejected at the border.

Ms. Luiten commented that the work the Council is involved in is increasingly being affected by international developments. For instance, Eastern Africa is a region which is gaining an increasing

international profile. It is a region that is becoming a major hosting agency for neighbouring countries. The main type of support is usually man driven. The Dutch Refugee Council's role here is to assess the current situation; how to improve it; and the ways in which the Council can be of assistance. Some projects involve training and workshops.

Usually, the first step is to assess which colleagues within the national office have knowledge that is transferrable in an international context. Then, the Council will select who is the most suitable candidate for a particular project. Ms. Luiten emphasised the benefit of knowledge sharing with other organisations in order to save time and effort without an unnecessary reinvention of the wheel.

Ms. Luiten outlined some of the important lessons to be learnt.

- 1) allow sufficient time for the working partner organisations to get to know each other and understand and appreciate any differences. The assumption that your approach is the best is a dangerous assumption and can be counter-productive.
- 2) critically assess whether the knowledge in discussion is transferrable.
- 3) always try to involve the different refugee organisations to let them share their experiences
- 4) the provision of training and workshops alone is not sufficient. Additional funding is vital in order to enable the newly gained knowledge/skills to be implemented. Often, there may not be enough means to set up the advocacy strategies; thus without the funding to carry out the strategies, a workshop will not fully serve its useful intended purposes.
- 5) involve trainers who are also practitioners to allow wider knowledge coverage.
- 6) avoid any overlapping of work

Ms. Luiten underlined the fact that all refugee assisting organisations carry out similar types of work as they all possess the same goal. Even if they operate in different countries and in different settings, the ultimate aim is to assist refugees. With this in mind, these organisations should see each other as equal partners. Additionally, the importance of reciprocity should be noted. The flow of information and knowledge from one organisation to the other is not one sided; the assistance and knowledge benefits flow both ways.

In conclusion, Ms. Luiten urged other refugee organisations to show solidarity and take the active responsibility of sharing essential knowledge and information to further promote the rights of refugees.

7.3 Dr. Jeff Handmaker

Handmaker reaffirmed his earlier recommendations for more effective civic-State interactions to provide a better linkage between legal assistance, advocacy and politics. The pretext of extending these interactions rests in the necessity to base advocacy and solidarity on strategic sources which take into account the historical context that conditions our responses. In other words, civic-State interactions need a 'human face' which serves to broaden the scope for global solidarity and support.

To do this, Handmaker made three recommendations:

- 1) to recognize that the nature of the issue possesses truly global dynamics;
- 2) to engage other dimensions of solidarity which extend beyond civic actors. Examples include training government officials, police, military; and addressing global policies and policy-making processes; and
- 3) to engage in self-reflection and criticism of the nature and manner in which solidarity and support are provided.

8 Mr. Christian Mommers, Member of the 3R Board – Lessons Learned

In the global North, there appear to be many misunderstandings about the protection of refugees and IDP's in the global South. There is a somewhat fictitious divide between the Netherlands (and the global North in general) and the global South, giving the impression of 'here' and 'there'. However, refugees 'here', 'there' and everywhere have similar legal protection needs. Approximately USD\$10 billion are spent every year on refugee status determinations by countries in the global North, far outstripping the contributions of those countries to UNHCR. Often, we make the mistake of thinking that legal aspects are important only as long as they are in our backyard. By focusing primarily on the physical aspects of refugee assistance in the global South, taking the shape of tents or food aid, it is easy to ignore that refugees in the global South also encounter juridical problems, which can severely affect their enjoyment of their rights. Hopefully today's presenters will have helped show that legal assistance is a vital instrument, alongside all other forms of assistance, to effectively protect refugees, wherever they may be.

When it comes to the provision of legal aid, the global North has the advantage of years of experience. As a result, the linking between legal practitioners from, for example, the Netherlands and the countries discussed during this conference may provide an important stimulus for knowledge and capacity building in the global South. The global North also benefits from far better resources than Southern legal aid providers. It is therefore also important for Northern donors, both non-governmental and governmental, to step up and contribute to building a legal aid infrastructure in the global South, as well as to advocate with their governments to allow this infrastructure to be used effectively. However, it would be a gross misrepresentation to suggest that the North-South exchange should be a one-way street. At this moment, the institution of asylum, and with it the provision of legal aid, are under pressure in the global North. This is an everyday experience for Southern legal aid providers, who continually have to look for innovative ways, combining legal action and advocacy, to represent refugees' interests. I am convinced that legal practitioners in the global North can be inspired by the persistence and the creativity of their Southern counterparts, and that they can learn many useful lessons from them. Furthermore, enhanced exchange may provide ways for Northern legal aid professionals to receive up-to-date, expert information about their clients' countries of origin from their colleagues working in those regions, which will be a huge boost to their own work.

In summary, if we are serious about tackling the problem of forced migration, closer engagement between those actors working in the global North and in the South is necessary at all levels. This engagement would receive a substantial boost if we were to move beyond the idea that the global North simply has to 'help' the South. Rather, we need to think of this as a possibility to learn from *each other*.

Annex – Background to the Conference Theme and Organisers

Whether they are in a refugee camp or elsewhere, refugees depend heavily on the protection afforded by their legal status. The recognition of one's status as a refugee raises obligations on the part of governments in countries where refugees have fled to. Governments are responsible for their protection. Refugees in the South often flee their countries in very large groups. Think of Darfur, Somalia, Iraq and currently Kyrgyzstan. Their status may be determined at once, purely based on the situation they fled. However, as in the Netherlands, it may be the case that an individual process for recognition as refugees must be completed (Refugee Status Determination procedures RSD). Recognition of refugees' legal status, on both a collective and individual basis, is sometimes done by the governments of host countries, which are primarily responsible for this. This makes the status of refugees vulnerable. Sometimes these countries have not become party to the Refugee Convention or other human rights treaties, so there is no legal basis in international law for recognition. In other cases, countries may have acceded to the Refugee Convention, but not translated this into national law. In the absence of a sound, national system (e.g. a court to decide on refugee issues), it is very difficult for refugees to challenge a decision of the authorities to refuse to recognize anyone - meaning that no protection is available. In many countries in the South the situation is even more difficult. Often, national governments have no capacity to process the legal status of refugees - this responsibility is sometimes assumed by the United Nations refugee agency, UNHCR. In almost all refugee camps, UNHCR fulfils a major role in determining who is recognised or not as a refugee. Even when it comes to individual cases (RSD) UNHCR plays a major role. In about 80 countries, it is not the government that conducts refugee status determination procedures, but UNHCR. Although established as a global organization to ensure the protection of refugees, UNHCR argues that the procedures are often not transparent, arbitrary, and they offer few opportunities to refugees to obtain their rights. For example, refugees have often not heard the reason why their application was rejected, that their files may not be consulted and have no possibility of an independent court of appeal. UNHCR, as an international organization, falls outside national legal systems. For an overview of the problem of the UNHCR RSD procedures, see www.rsdwatch.org

About the Organisers

Since 2004, the Dutch **3R Foundation** (Respect for Refugee Rights) has sought to improve the status of refugees in the South, where pro bono legal assistance, is not properly regulated. In countries such as Egypt, Kenya and Uganda, a number of small-scale initiatives exist for good and free legal aid for refugees during their asylum proceedings. These organisations also advocate for the enforcement of refugee rights through the official institutions and raise awareness among the local population. The 3R Foundation raises financial support for such initiatives. For more information (in Dutch), see: www.stichting3r.nl

Erasmus University's **International Institute of Social Studies (ISS)** is a graduate school geared to critical social science through research, teaching, capacity development and public debate. Founded in 1952, the ISS deals with issues from globalisation to migration and human security. Participants in ISS Diploma, MA and PhD programmes come primarily from the global South and now number more than 11 000 alumna. ISS also provides a national and international platform for public debate and critical reflection on development, for the sake of greater public understanding. For more information, see: www.iss.nl