



**Second Annual Roundtable on
Strategic Litigation and International Refugee Protection:
Trends and Best Practices**

20 June 2014 | Geneva, Switzerland

Executive Summary

In the last decade, refugees across the globe have increasingly looked to the courts to improve their access to fundamental rights and freedoms. During the *Second Annual Roundtable on Strategic Litigation*, panelists and participants discussed ways that strategic litigation can advance legal standards and help refugees increase access to rights and protection. The focus of the Roundtable was both on jurisdictions where refugee rights have been extensively litigated, as well as newer environments. A summary report of the Roundtable is attached as Annex 1.

Organized jointly by UNHCR, HIAS and Asylum Access, the four-hour Roundtable was attended by 42 participants from NGOs from around the world and UNHCR. Key discussion points are summarized below.

1. Why litigate? Objectives and Benefits of Strategic Litigation

- Litigation must complement existing efforts that advance legal protection for refugees and expand the rule of law.
- Cases – regardless of outcome – require further advocacy to ensure appropriate follow up in the courts and with the government, as appropriate.
- Strategic litigation of refugee rights is a powerful means of educating judges about refugee and relevant human rights law.
- Litigation can draw attention to an otherwise lesser-known issue, such as statelessness, and at the same time build up jurisprudence (e.g. on the Statelessness Conventions).
- Litigating refugees' economic, cultural and social rights can lead to incremental increases in protection.
- Adequate publicly funded legal aid and pro bono legal advice are critical to successful strategic litigation.

2. Key Challenges

- Strategic wins in court require implementation by governments, which often take steps to undermine good decisions if their public mandate is anti-refugee.
- National security justifications to limit refugee rights are similarly difficult to challenge when the public supports measures restricting refugee rights.
- Litigating politically sensitive issues may limit the ability, in particular of UNHCR, to engage in productive policy discussions with national authorities (e.g. detention of refugees).
- Identifying the right case, the appropriately focused legal issue, and sometimes the right court, is often a challenge.

- Clients may not be able to or want to pursue a long-term litigation strategy.

3. Capacity Building

- Collaboration amongst civil society, UNHCR, lawyers and others (e.g. academics and law students) is needed to build a meaningful corps of refugee law experts.
- 2007 Humanitarian *Principles of Partnership* (equality, transparency, results-oriented approach, responsibility and complementarity) provide guidance on the appropriate power balance between UNHCR and its NGO partners in the litigation context.
- Judges may benefit from being trained on refugee law by other judges rather than lawyers.
- UNHCR's role as a neutral third-party intervener can help reduce stigma around litigation.
- Framing arguments in the language of the court ensures that they are better understood.

4. Regional Issues

- In all regions, strategic litigation is seen as a tool for social justice aimed at developing legal standards, promoting policy change, and access to justice for vulnerable people.
- Globally, UNHCR is inconsistent in its approach to strategic litigation – more transparency and standardization is needed.
- Litigation is more central to protection strategies in some regions (e.g. Europe) than in others, where capacity building has been more the focus (e.g. Asia).
- Detention and broad restrictions on movement are key protection challenges common to all regions.

5. Next Steps

- UNHCR will prepare a publicly available summary of UNHCR's internal guidelines on court interventions.
- UNHCR and civil society will explore holding regional Strategic Litigation Roundtable meetings and/or trainings.
- UNHCR will explore with HIAS and Asylum Access themes for next year's Strategic Litigation Roundtable.

6. Feedback – Survey Results

A survey was sent to the Roundtable participants to evaluate its impact, gain knowledge about participants' practice areas, and to assess interest in next steps.

- 95% said that the Roundtable met or exceeded their expectations, but noted that more time was needed for discussion, particularly during the regional break-outs.
- 81% were interested in planning regional Roundtables.
- Suggestions for topics at next year's Roundtable include: statelessness; refugee status determination procedures; establishing new litigation programs; cooperation among various stakeholders; balancing UNHCR's diplomatic obligations to host state vis-à-vis its support for litigation against the State in adversarial systems; and judicial engagement by UNHCR outside Europe.



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Summary Report of Key Findings and Next Steps

Introduction

Building on the first Strategic Litigation Roundtable held in June 2013, UNHCR, HIAS and Asylum Access organized the Second Annual Strategic Litigation Roundtable in the margins of UNHCR's 2014 Annual Consultations with NGOs.¹ Forty-two participants from civil society and UNHCR participated in discussions structured around two issues:

- *Learning from experience: how litigation shapes refugee rights over time;*² and
- *Litigating in new environments / how to start a litigation program.*³

The Roundtable also provided an opportunity for break out groups to discuss the role of strategic litigation in regional contexts.

This report summarizes the points raised by panelists and in follow-up discussions, including:

- Objectives and Benefits of Strategic Litigation
- Key Challenges
- Capacity Building
- Regional Trends
- Next Steps

This Report does not necessarily represent the individual views of participants, unless explicitly mentioned, or UNHCR, but reflect broadly the themes and understandings emerging from the discussion.

1. Why litigate? Objectives and Benefits of Strategic Litigation

For UNHCR, strategic litigation is part of its protection mandate and is one of several tools used by the Office in the context of judicial engagement more generally. UNHCR uses the term “judicial engagement” to broadly encompass a wide range of activities that can be roughly categorized as follows: (a) building partnerships with the legal and judicial community; (b) training lawyers and judges (professional development); (c) ensuring legal

¹ Agenda and questions for break-out sessions annexed (Annex 2 and 3).

² Session 1: Yonatan Berman, University of Oxford, Hotline for Refugees & Migrants, Israel; David Manne, Refugee and Immigration Legal Centre, Australia; Solomon Masitsa, Kituo Cha Sheria, Kenya; Mark Daly, Daly & Associates, Hong Kong – session facilitated by Rachel Levitan, HIAS.

³ Session 2: Martin Jones, Egyptian Foundation for Refugee Rights; Sathia Rafi, Dutch Refugee Council; Bryan Barbour, Japan Association for Refugees; Laura Bingham, Open Society Foundation – session facilitated by Jessica Therkelsen, Asylum Access.

aid and representation as well as access to courts (“access to justice”); (d) supporting strategic litigation undertaken by others; and (e) acting as an intervenor in court.⁴

Like UNHCR, most participants attending the Roundtable do not use strategic litigation as their main protection tool; however there was wide acknowledgment of the need to further deploy litigation to complement existing legal work, be it protection advocacy or legal assistance to refugees. The objective of **securing the strongest possible bulwark against regressive government action** motivated all of the panelists’ interventions. Participants referred to litigation as a tool that “turns individual justice into social justice” and placed strategic litigation within the context of **expanding the rule of law**.

Panelists with long track records of strategic litigation as well as ones with more fledgling experiences illustrated how litigation had been used reactively and proactively depending on the legal and political context they were working in. Two panelists – from Kenya and from Israel – spoke to the significant hurdles they faced since winning direct legal challenges to government policy in their respective jurisdictions last year,⁵ in both cases with UNHCR acting as a third-party intervenor.⁶ Both cases were mounted by NGOs to challenge wide-ranging restrictive government measures that failed to be corrected through political dialogue, necessitating an **external check against executive measures**.

Equally, panelists with a long history of focusing on legal challenges – whether as a mainstay of their work or as an integral part of their protection advocacy – spoke to the difficulties they faced in implementing recent successful decisions.⁷ **Successful and unsuccessful cases both require further advocacy to ensure full and adequate implementation of court decisions when successful, and further follow up strategies when unsuccessful.**

Aside from the powerful effect of a court decision on government action, panelists alluded to other beneficial effects of litigation. For example, speaking to experiences in Asia, panelists referred to litigation as a means of **building judges’ and lawyers’ awareness of refugee and human rights law**. In the case of addressing the global problem of statelessness, it was noted that litigation presented a **dual opportunity to draw awareness to a hidden issue and to build up jurisprudence** on the 1954 and 1961 Statelessness Conventions by reference to international human rights law.⁸

Panelists in both sessions suggested that **long-term strategies** were needed to see the full effects of strategic litigation. However participants noted that planning for the long term posed difficulties in terms of **case identification as well as decision making about which level of appeal to intervene in**. This included UNHCR.

The question of when strategic litigation is ripe was posed and it was suggested that in the face of governments determined to side-step courts’ rulings, **litigation on less politically sensitive topics might be a way to obtain results incrementally**. By the same token,

⁴ UNHCR’s publicly available legal interventions are available on www.refworld.org [click tab jurisprudence/court interventions].

⁵ *Kituo Cha Sheria and others v. The Attorney General*, Kenya: High Court, 26 July 2013, available at: <http://www.refworld.org/docid/51f622294.html>; *Adam and others v. The Knesset and others (7146/12)*; *Doe and others v. Ministry of Interior and others (1192/13)*; *Tahangas and others v. Ministry of Interior (1247/13)*, 7146/12, 1192/13, 1247/13, Israel: Supreme Court, 16 September 2013, available at: <http://www.refworld.org/docid/524e7ab54.html>.

⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Supreme Court of Israel, High Court of Justice, in the case HCJ 7146/12*, 7 March 2013, available at: <http://www.refworld.org/docid/513dbe952.html>; UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the High Court of Kenya in the case of Kituo Cha Sheria and others v. The Attorney General*, 12 March 2013, Petition No. 115 of 2013, available at: <http://www.refworld.org/docid/5151b5962.html>.

⁷ *Plaintiff M70/2011 v. Minister for Immigration and Citizenship; and Plaintiff M106 of 2011 v. Minister for Immigration and Citizenship*, [2011] HCA 32, Australia: High Court, 31 August 2011, available at: <http://www.refworld.org/docid/4e5f51642.html>; *Plaintiff M61/2010E v. Commonwealth of Australia; Plaintiff M69 of 2010 v. Commonwealth of Australia*, [2010] HCA 41, Australia: High Court, 11 November 2010, available at: <http://www.refworld.org/docid/4cd6b6b12.html>;

Final Appeal Nos 18, 19 & 20 of 2011 (Civil) between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents) and United Nations High Commissioner for Refugees (Intervener), Hong Kong: Court of Final Appeal, 25 March 2013, available at: <http://www.refworld.org/docid/515010a52.html>.

⁸ <http://www.refworld.org/statelessness.html>

litigation on socio-economic rights was suggested as a way of seeing decisions implemented more easily. This was in part because it presented an opportunity for dialogue with branches of governments more concerned with refugee integration and less concerned with policing and security.

Although most participants agreed on **the need for adequate publicly funded legal aid** to back up a strong strategic litigation plan (i.e. Hong Kong), it was noted that in many jurisdictions there is either no legal aid at all or it is being provided by NGOs whose resources are stretched by enormous caseloads. It was also noted that public funded legal aid systems are hard to argue for when other parts of the system are so under-funded.

The **provision of pro bono services** by non-refugee law specialist and mainly corporate law firms generated a discussion about whether such firms had the requisite level of expertise and whether such pro bono advice may displace the advocacy needed to press authorities to fund legal aid. Participants endorsed the view that pro bono advice was welcome in that it provided much needed legal support regardless of whether such advice was specialized in refugee law or not. Pro bono assistance is a source of untapped funding, as corporate law firms' interest in corporate social responsibility is high and it is their expertise in public or administrative law, which is often of direct relevance to domestic courts (less to regional courts). In addition, pro bono lawyers are often more morally engaged in such cases given the nature of their "non-human rights" mainstream legal work.

2. Key Challenges

Panelists noted that refugee protection obtained through strategic litigation require implementation by the executive branch, often making **courtroom wins rather tenuous**. Executive responses are not always positive and have taken the form of: executive action to strip statutes down and establish new legal tests to circumvent court decisions (Australia); stall tactics on the implementation of court rulings (Kenya); quick legislative responses to pursue government policy despite court rulings (Israel); or requiring further legal challenges and settling cases at lower level courts – or outside of court – so as not to set protection precedents (Egypt).

In other countries, victories in court have led to positive responses from the executive in developing new laws and policies, but have also led to further challenges more broadly to ensure that such laws and policies are adequately implemented. For example, following a successful decision of Hong Kong's Final Court of Appeal,⁹ the government was required to establish a new unified screening mechanism for persons in need of international protection.

Panelists also noted the challenges associated with litigating against government policies implemented to deal with **perceived national security threats posed by refugees and asylum seekers**, particularly in the face of public support for these policies (Kenya and Israel). Related to this are the perceived or actual **political risks of litigation for NGOs as well as for UNHCR, for whom the choice to litigate on politically sensitive issues could narrow the space for policy dialogue with national authorities (Kenya and Israel)**. By contrast, in relation to the hidden issues of statelessness, it was noted that the political space for dialogue might not be available in the first place. Participants noted that a UNHCR intervention in court helped underscore the importance of the issue at stake to the government and may alleviate the political risks. In this respect, participants suggested that for an NGO litigation strategy to be predictable, **UNHCR's own litigation strategy also needed to be more transparent**.

⁹ *Final Appeal Nos 18, 19 & 20 of 2011 (Civil) between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents) and United Nations High Commissioner for Refugees (Intervener)*, Hong Kong: Court of Final Appeal, 25 March 2013, available at: <http://www.refworld.org/docid/515010a52.html>

Litigating in a difficult political environment was a topic common to several presentations with panelists noting that litigation had been undertaken because of a lack of progress with government authorities on a particularly pressing and wide-ranging protection risk posed by the introduction of restrictive legislative measures. Although this was noted as a huge challenge requiring specific alternative strategies at the domestic level, for those working with regional courts, this posed less of a problem.

Participants queried **how to balance client wishes and a litigation strategy** and wondered how clients could be persuaded to take their case through various stages of appeal in what is often a long judicial process in the name of pursuing a particular litigation strategy. It was suggested by some, that clients are politically aware enough to remain engaged with the legal process whilst other suggested that they involve their clients in comprehensive justice plans so that they are not left feeling that they are waiting for the resolution of their appeal to begin with their process of local integration. The need for lawyers to take an overarching view of their strategic cases was emphasized over the natural tendency for litigation to be about “winning the case” and personal victories.

As regards particular themes of concern, **laws and policies on detention and/or broader restrictions of movement** were identified in many participants’ interventions as being a pressing protection challenge which lawyers sought to tackle in their jurisdictions through the courts with very concrete and rewarding individual outcomes for clients and litigators alike.

3. Capacity Building

Participants welcomed ideas for **further collaboration amongst civil society and with UNHCR** to work on a number of fronts, ranging from building awareness of refugee law amongst lawyers, to involving non-traditional actors such as academics (the Netherlands) and law students (law clinics). It was suggested that existing refugee NGO networks such as Asia Pacific Refugee Rights Network,¹⁰ Refugee Research Network,¹¹ Southern Refugee Legal Advocacy Network,¹² and the European Council for Refugees and Exiles¹³/ELENA¹⁴ could be tapped into to support emerging litigation programs as some networks already had advocacy activities focusing on legal issues such as legal aid (see for example the APPRN legal aid and advocacy working group).¹⁵

The existence of a developing refugee protection environment (as opposed to an openly hostile one) was highlighted in the Asian context as providing an opportunity for awareness-raising and capacity building by NGOs and UNHCR leading to some concrete examples of success already. It was suggested that the *Principles of Partnership* endorsed at the 2007 Global Humanitarian Platform meeting should also apply to cooperation on legal interventions. The principles are: equality, transparency, results-oriented approach, responsibility and complementarity.¹⁶

The role of UNHCR not as a direct participant in litigation but as a provider of support or a facilitator, for example of a local working group, was acknowledged. It was also explained that UNHCR directly participates in litigation, by way of an amicus or neutral intervenor in accordance with its mandate vis-à-vis refugees and stateless persons. This approach complements strategic litigation undertaken by others and serves as a useful basis for partnerships with NGOs seeking to take a more individual rights-based approach. It was also

¹⁰ www.aprrn.info

¹¹ www.refugeereseearch.net

¹² <http://srlanetwork.wordpress.com/>

¹³ www.ecre.org

¹⁴ <http://www.ecre.org/topics/elena/introduction.html>

¹⁵ <http://www.aprrn.info/1/index.php/programmes/thematic-programmes/legal-aid-and-advocacy>

¹⁶ <http://www.globalhumanitarianplatform.org/pop.html>

noted that UNHCR's involvement in litigation, including as an intervenor, can push back the stigma surrounding strategic litigation.

Although noted by many panelists and participants that **judges' lack of familiarity with refugee law** and human rights law was an issue, it was not considered to be a constraint to litigating, rather an opportunity to build the capacity of judges and to build case law with often **global precedent setting value**.

Focusing on a particular issue to litigate or a particular court was suggested as a way of narrowing the wide range of cases which would need to be monitored in order for the "right" case from a strategic perspective to be selected. This strategy worked for some participants litigating in regional courts such as the European Court of Human Rights and the Court of Justice of the European Union.

A related discussion topic **was the question of how to frame protection issues before the courts**. Panelists in both sessions indicated that successful cases had been won on the strength of arguments based on domestic law or common law principles (i.e. concepts of procedural fairness) and not on international refugee law or human rights law arguments as judges' knowledge of such legal regimes was often incomplete. At the same time, UNHCR presenting the international legal framework as an intervenor has proven to be complementary and effective. Legal frameworks in need of development such as statelessness for example, benefitted from arguments making referencing international human rights law in regional human rights courts. Also at the level of regional courts, it was noted that the strategy of reading across between international human rights and refugee law regimes was helpful in developing the jurisprudence of new courts such as for example in the interventions made by UNHCR before the Court of Justice of the European Union on the legislative instruments of the European Union.

Negative decisions still presented opportunities. Panelists noted that having a bad decision is better than none, because **bad judgments will be criticized, discussed, and analyzed, and one day perhaps overturned**. Equally, litigation even though resulting on negative decisions have the benefit of exposing government's strategies and **providing an opportunity to reframe protection advocacy or reframe the legal challenges** accordingly.

4. Regional Perspectives

Asia¹⁷

Participants noted that strategic litigation may be a useful tool to promote refugee rights, for example, because judges are more progressive than the government (e.g. South Korea). In discussing the opportunities of cooperation with UNHCR, it was mentioned that UNHCR has a dual role in some countries: as decision-makers and protection advocates. Where UNHCR is decision-maker intervening directly in court may conflict with the authorities' perception of UNHCR's supervisory responsibility. UNHCR's role in capacity building was illustrated by the example of South Korea where an Australian judge was invited through the International Association of Refugee Law Judges to conduct training with domestic decision-makers.

Africa¹⁸

Strategic litigation serves a multifold purpose of developing legal standards, promoting policy change, and access to justice for vulnerable people. Strategic litigation and normal litigation are different in that the latter is about justice and the former about *social* justice. UNHCR in Africa was not seen as an active partner in strategic litigation, preferring to act in an advisory capacity generating confusion as to whether UNHCR prefers to maintain relations with government authorities or intervene on the side of refugees. However, it was

¹⁷ Thailand, Japan, Hong Kong, Australia and South Korea represented.

¹⁸ South Africa, Tanzania and Kenya represented.

noted that when civil society organizations need to engage with the government, UNHCR may be a reliable partner.

Americas¹⁹

Civil society partnership was emphasized as was the possibility of collective litigation where individual victims were reluctant to pursue their cases. UNHCR's relative lack of engagement with civil society in Canada but quiet engagement through amicus briefs was contrasted with its good civil society relations in Mexico but relative lack of engagement in litigation. UNHCR's regional hub in Panama was successfully engaged with NGOs and the Supreme Court of Mexico on a protocol for judges.²⁰

MENA²¹

Although UNHCR had intervened in a high profile case in Israel, UNHCR's broader litigation strategy remained unclear to civil society. In the face of a difficult political environment, an incremental approach to litigation was discussed as was the possibility of engaging in partnerships with NGOs active on the international scene to bolster domestic litigation work.

Europe²²

The two main objectives of strategic litigation are the development of legal standards and the improvement of the rights of people concerned. Strategic litigation differs from normal litigation in terms of efforts and resources put into it, case selection, follow-up and its broader precedent setting value. Cross-fertilization of the international human rights law regime with refugee law in the European context has ensured more robust protection for refugees.

5. Next steps

- (a) Survey on litigation strategies to be distributed to all participants – see survey questionnaire results annexed (Annex 4);
- (b) UNHCR to prepare a publicly available note on UNHCR's internal guidance on court interventions;
- (c) UNHCR and civil society to explore holding regional roundtable meetings;
- (d) UNHCR to explore with HIAS and Asylum Access themes for next year's Roundtable based on feedback provided by participants.

¹⁹ Canada, Ecuador, USA and Mexico represented.

²⁰ http://www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/protocolo_migrantesISBN.pdf

²¹ Egypt, Israel, Morocco, and UNHCR represented.

²² Switzerland, Netherlands, UK and UNHCR.

**Second Annual Roundtable on
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Friday, 20 June 2014 | 9:00-13:00 | Geneva, Switzerland
UNHCR HQ Room MBT-04 (Basement) | Lunch Provided

Agenda

In the last decade, refugees around the world have increasingly looked to the courts to improve their access to fundamental rights and freedoms. Please join us for a second annual roundtable session highlighting specific ways that NGOs and UNHCR can work together to advance strategic litigation as a tool for refugee protection. Together we will share good practices and discuss ways strategic litigation can advance legal standards and help refugees increase access to rights and protection.

9:00 – 9:15 Introduction

Cornelis Wouters, UNHCR; Jessica Therkelsen, Asylum Access; and Rachel Levitan, HIAS

9:15 – 10:30 Session 1: Learning from Experience How Litigation Shapes Refugee Rights Over Time

Facilitator: Rachel Levitan, HIAS

Panelists: Yonatan Berman, University of Oxford, Hotline for Refugees & Migrants, Israel;
David Manne, Refugee and Immigration Legal Centre, Australia;
Solomon Masitsa, Kituo Cha Sheria, Kenya;
Mark Daly, Daly & Associates, Hong Kong.

Focusing on contexts where strategic litigation has played a high profile role as a tool for refugee protection, this session will focus on the complexities associated with this work, including: enforcing legal victories when public sentiment opposes refugee protection; responding to efforts by government to “legislate away” good decisions; determining how and when UNHCR can add value to litigation; and determining how to follow up on losses.

10:30 – 11:30 Session 2: Litigation in New Environments / How to Start A Litigation Program

Facilitator: Jessica Therkelsen, Asylum Access

Panelists: Martin Jones, Egyptian Foundation for Refugee Rights
Sadhia Rafi, Dutch Refugee Council
Bryan Barbour, Japan Association for Refugees
Laura Bingham, Open Society Foundations

Panelists will focus on how and why they have begun to engage in strategic litigation as a protection tool for refugees, addressing the country-based and institutional challenges in taking it on. They will also share the role that UNHCR does, should and can play in supporting strategic litigation.

11:30 – 12:15 Regional Breakouts over Working Lunch

Breakout groups representing East Africa, MENA, the Americas, Europe and Asia will discuss how to maximize their network and engage UNHCR at the local, national and international level. UNHCR representatives from each regional bureau will be invited to join in the constructive conversation.

12:15 – 12:45 Conclusions and Recommendations from Breakout Groups

12:45 – 13:00 Observations and Next Steps

Regional Break-Out Groups – Questions for Discussion

The Objectives and Impact of Strategic Litigation

- What is the main objective of strategic litigation? (e.g. to advance legal standards)
- How is strategic litigation different from ‘normal’ litigation?
- How is it more or less effective than individual or group representation or legal advocacy?
- How does it complement other forms of protection for refugees?
- What aspects/elements are relevant for strategic litigation to be effective? (e.g. (1) re specifically the litigation: choosing the issue for the right reasons; identify a good case; coordination with other players; ensure follow up; (2) re the judicial system as a whole)

Cooperation with UNHCR

- How can or should UNHCR engage with the legal community in pursuing strategic litigation?
- What are some of the key challenges that NGOs or the legal community face engaging UNHCR in strategic litigation efforts?
- If UNHCR staff are in the group: what are some of the key challenges that UNHCR staff face engaging with NGOs or the legal community on strategic litigation efforts?
- How can some of the misperceptions around strategic litigation be overcome? (e.g. the idea – in particular within UNHCR – that strategic litigation is an aggressive form of advocacy)

Substantive Legal Issues

- What are some of the pressing legal issues in your jurisdiction where strategic litigation can make a difference, e.g. as opposed to other forms of advocacy?
- Challenges
- Do you have sufficient resources (human and/or financial)?
- If resources impede your ability to initiate strategic litigation, what models do you think might be effective in securing long-term support to pursue this work?

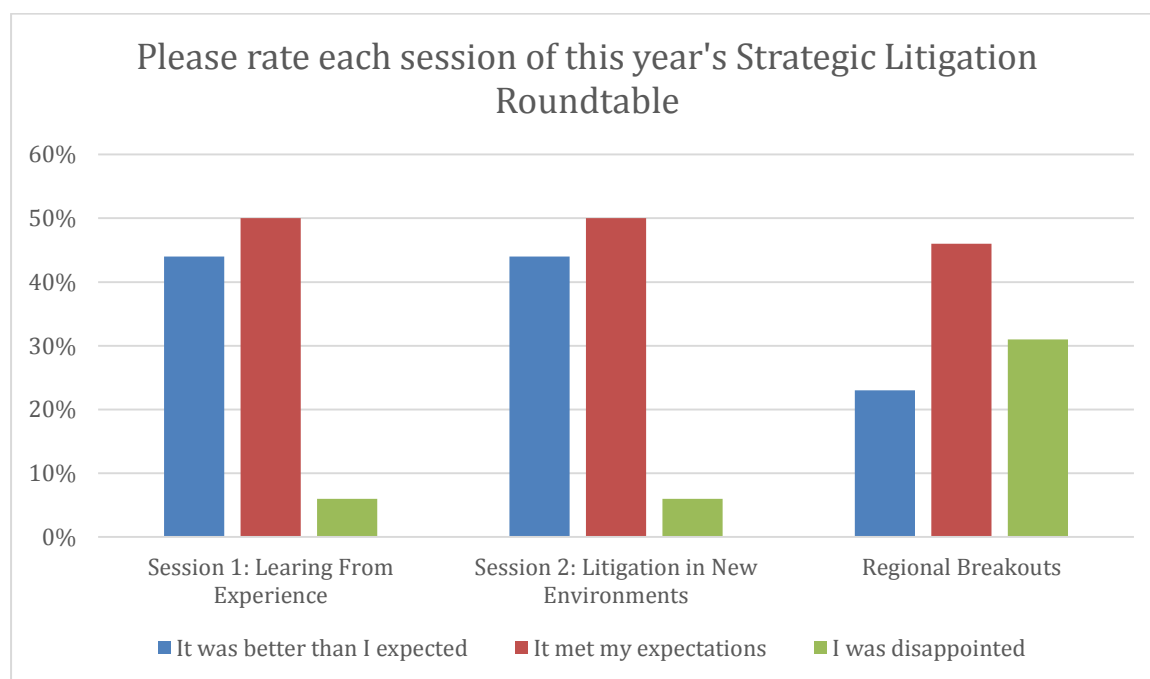
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Summary of Participant Survey

The following summarizes responses to a questionnaire that was sent to Roundtable participants. The online survey was sent to 50 participants, and after four emails, we got responses from 16, or a 32% response rate, which is about average for an online survey.²³ Overall, the panels were rated higher than the regional breakout sessions. Almost all were interested in attending and planning similar regional sessions. Respondents shared very useful information about the kind of strategic litigation they undertake and more generally, the types of legal and other services they provide to refugees and stateless persons. It was generally very well received – in the words of one respondent, “Great event! I look forward to it becoming a much anticipated and enjoyed feature in the AC's schedule! Thanks for all your work organizing everything!”

Q1: Please rate each session of this year's Strategic Litigation Roundtable:



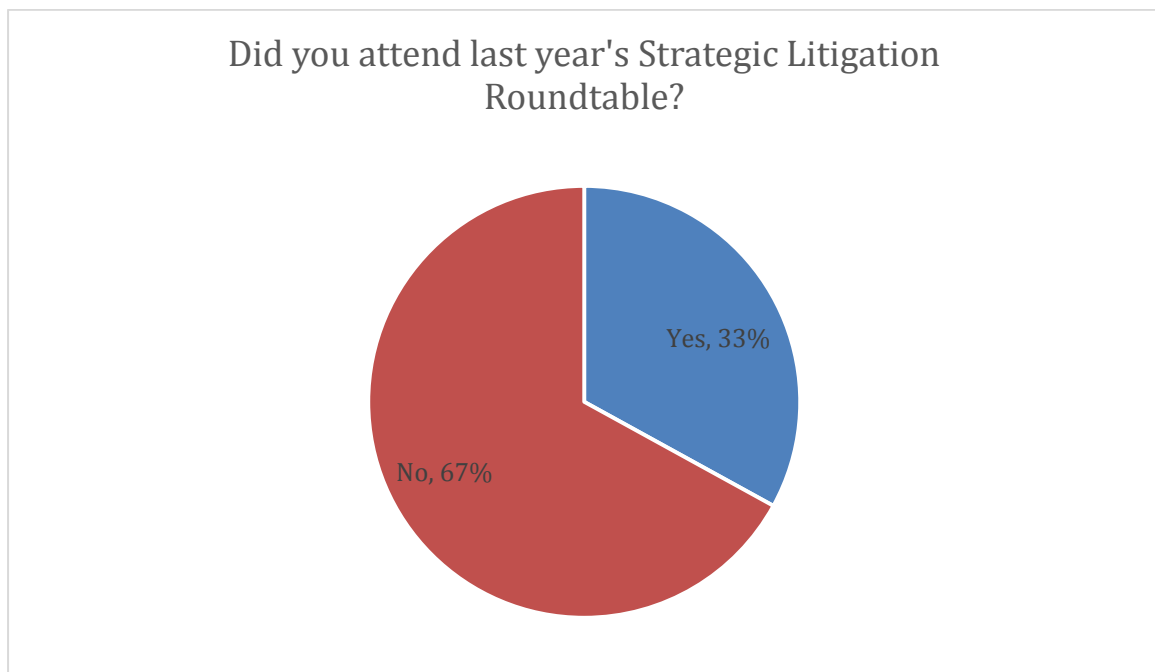
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1. Really instructive to hear about other regions' practices and to realize the common challenges and tips on how to solve them
2. I would have liked to have more time for the regional break outs. Time was now too short to really discuss the questions.

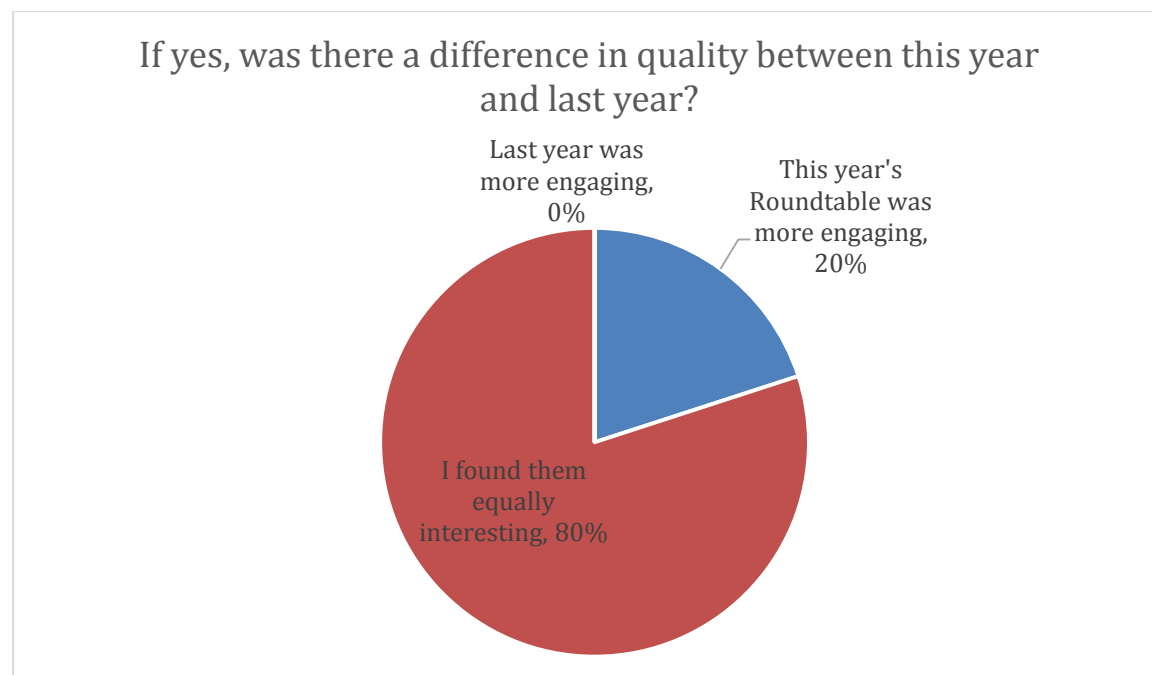
²³ Michael Braun Hamilton, *Online Survey Response Rates and Times: Background and Guidance for Industry* (2009), available at: http://www.supersurvey.com/papers/supersurvey_white_paper_response_rates.pdf.

3. I had to leave before the regional break outs to catch a flight, but thought the sessions were important in terms of bringing people together and forming a community around this topic going forward.
4. It is a pity that there was little geographical balance during the breakout session. For next year's roundtable, it would be nice to have many countries representing each region.
5. I think the speakers were wonderful but very little time was given to dialogue and engagement afterwards.
6. I was less interested in regional connections than in thematic connections - e.g. learning from another organization that is facing similar challenges. There are other geographically organized fora (e.g. APRRN).
7. The session was fantastic.
8. Regional Break Outs: it was interesting to have a discussion, but there were perhaps too many questions to address at once. Perhaps next year there could be more targeted but less numerous questions so we can try to discuss them (in our case, we ended up talking about our own questions!). The updates were very interesting, though not always positive. Thank you for the very stimulating session 2.
9. Dedicated time in regional focus groups would have enabled much more time dedicated to the Q&A's as well as being able to share litigation experiences.

Q2: Did you attend last year's Strategic Litigation Roundtable?



Q3: If yes, was there a difference in quality between this year and last year?



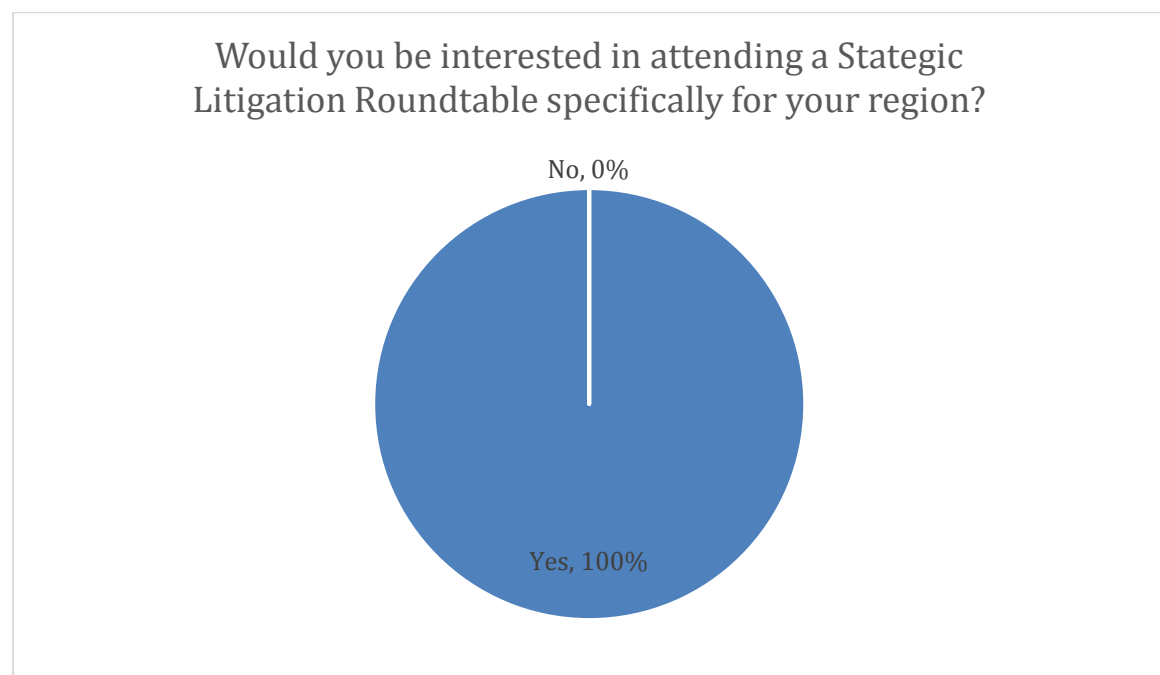
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1. It was good to hear about what happened to the same cases since last year.

Q4: What issues would you like to see addressed at next year's Round Table?

1. Statelessness asylum procedure.
2. Cooperation between different players in the field, lawyers, NGO's, academics, UNHCR – potential role of legal clinics.
3. A focus on how to start a litigation program would be interesting, especially in countries where there is a gap between theory and practice; how to use strategic litigation in countries where access to justice for vulnerable people such as refugees is almost inexistent (sharing of experiences).
4. Balancing UNHCR's diplomatic obligations to host state vis-à-vis UNHCR's support for litigation against the State in adversarial systems.
5. Concrete strategies to achieve a government funded legal aid system.
6. I think it would be useful if ever year a theme/topic(s) is (are) identified and discussed thoroughly.
7. Case studies.
8. Judicial engagement by UNHCR outside Europe; ethical discussion on client participation / comprehensive justice (not just case strategy).
9. Statelessness in regional courts and extra-judicial advocacy to support statelessness (e.g. building political momentum for policy change).
10. Challenges of doing strategic litigation in Africa.
11. Updates (including Australia; also, cases from Canada, US and/or UK/Europe would be helpful).
12. Would be useful to have greater in depth discussions about cases being litigated at various levels to be able to share and learn from strategies. It's not so much an issue that needs to be explored, but more an issue of the structure of the session.

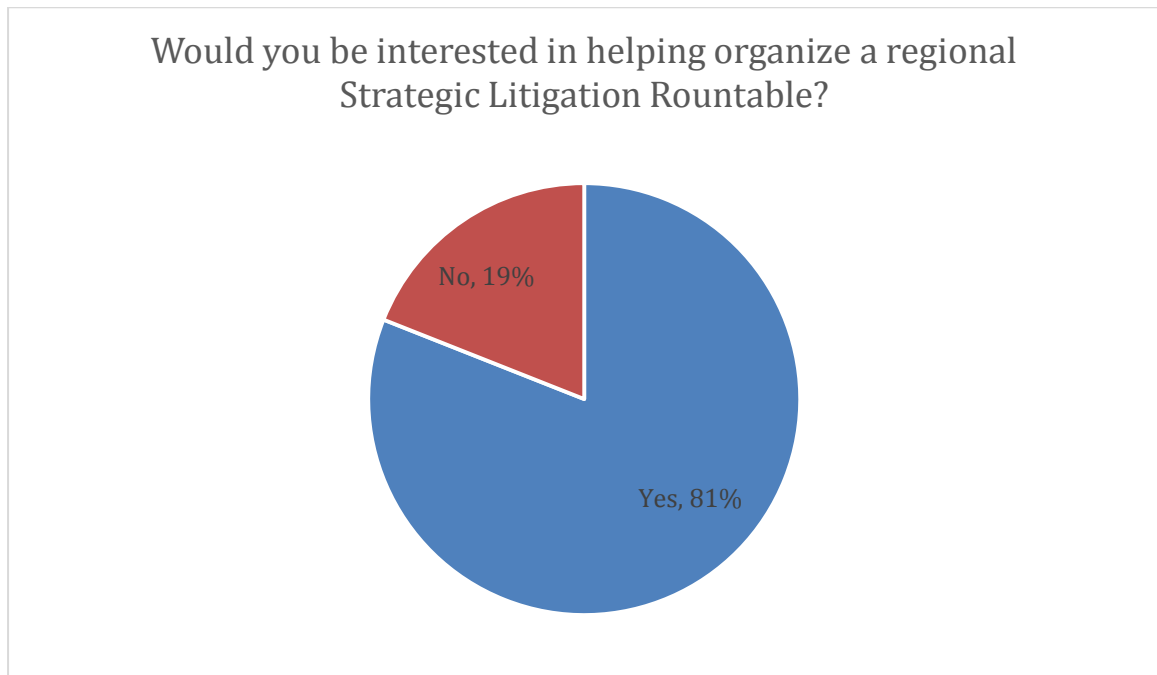
Q5: Would you be interested in attending a Strategic Litigation Roundtable for your region?



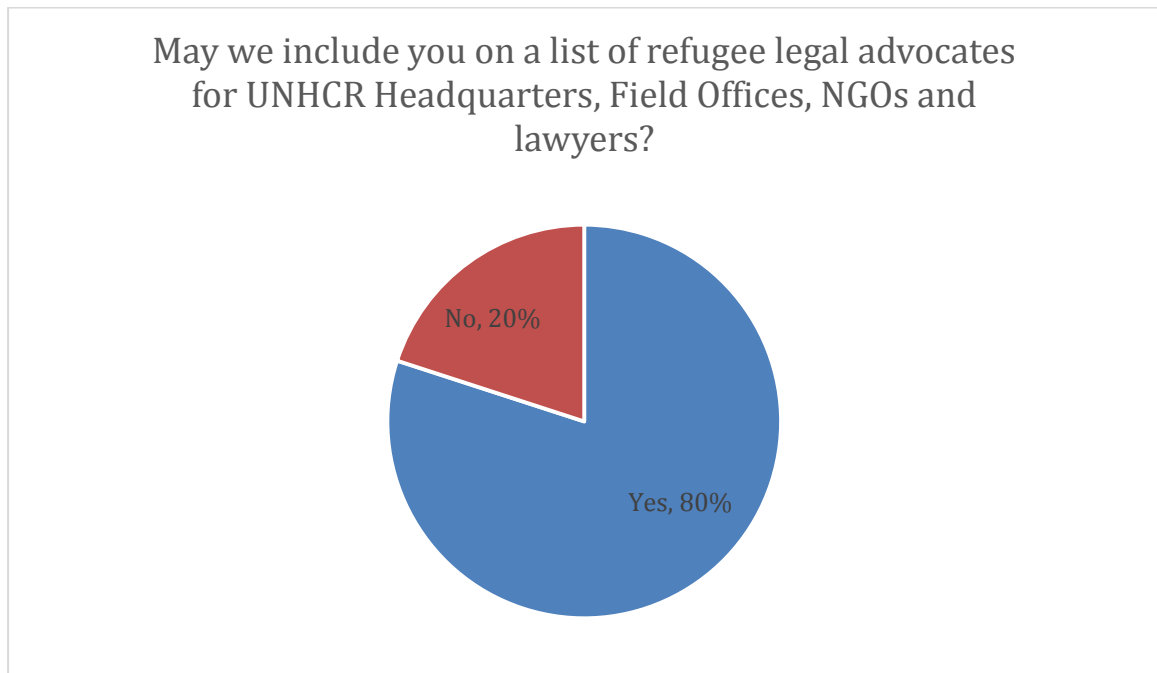
(Comments)

1. Identification of strategic cases for litigation/engagement for lawyers and UNHCR, how to litigate or intervene as a third party on evidentiary issues (burden of proof, standard of proof) and statelessness.
2. Bringing cases before the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).
3. Challenges of compliance with/enforcement of favorable human rights judgments in developing democracies.
4. Regional cooperation in drafting petitions, training, materials, lobbying, etc.
5. Adjudication of sexual orientation and gender identity and gender based violence (including rape as a weapon of war, female genital mutilation, harmful customary practices) as a basis for claiming asylum and statelessness.
6. It would be good to share good practices on how to be strategic when litigating. It would also be interesting to share specific cases that have been started and in general to discuss what topics others are working on.
7. For most participants it would likely need to focus on getting things started, but it would also be useful to do some mapping of interested stakeholders with the capacity to contribute to strategic litigation and how better to network them.
8. Not for my region because I think it is distinct but more because it is more local, cheaper, and there are fewer language issues.
9. Africa and strategic litigation effectiveness.
10. Including strategic litigation with Universal Periodic Review or Treaty body mechanisms
11. Freedom of movement, statelessness and SOGI rights.

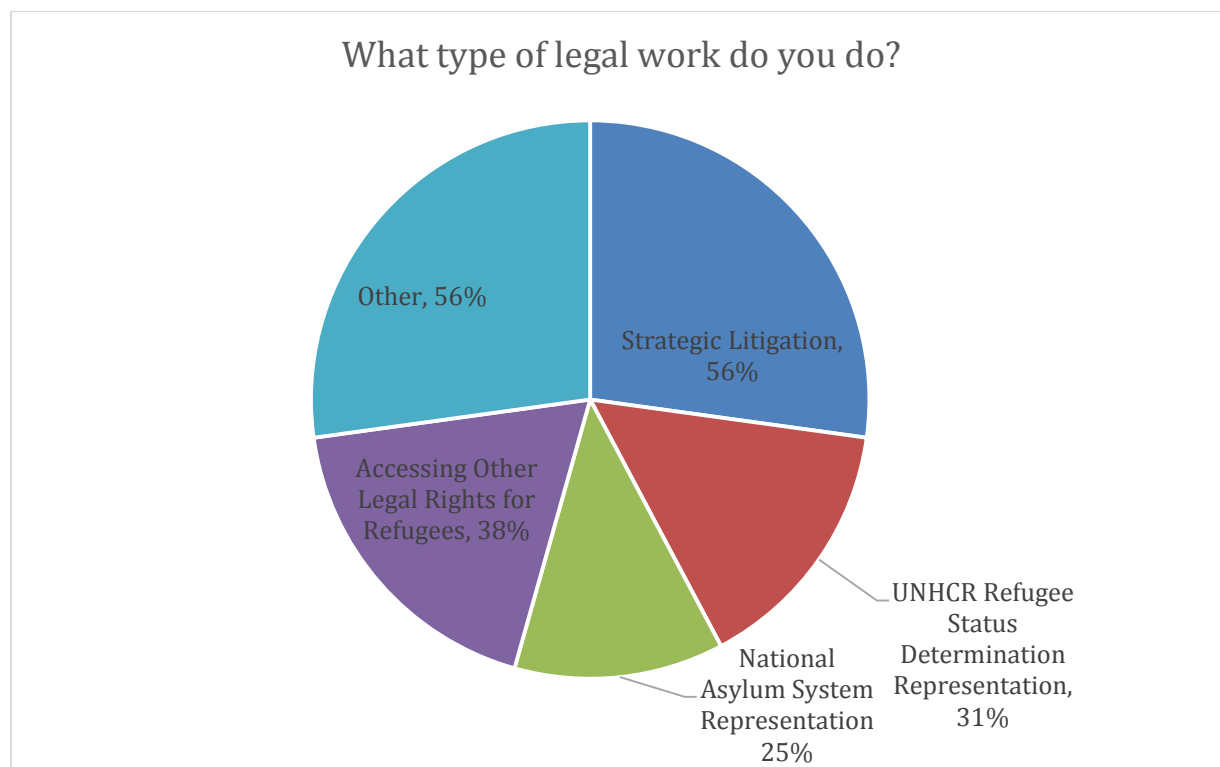
Q6: Would you be interested in helping to organize a Regional Strategic Litigation Roundtable?



Q7: May we include you on a list of refugee legal advocates for UNHCR Headquarters, Field Offices, NGOs and lawyers?



Q8: What type of legal work do you do?



(Responses to 'Other')

1. Judicial Engagement Coordinator for UNHCR Bureau for Europe.
2. Advocacy, lobbying and campaigning for an expanded asylum space and a favorable protection environment in Kenya and regionally.
3. Country of Origin Information support and expert testimony clinic. We would like to get involved in strategic litigation as we build capacity at our clinic.
4. Assisting Refugee Status Determination appeal cases.
5. Training, set up pro bono partnerships, set up clinical legal education programs, registration of asylum-seekers, referrals, etc.
6. Program support for the above (M&E, learning initiatives).
7. Durable solution (resettlement) representation; representation in personal status issues (divorces, birth / death registration, marriage); law reform advocacy.
8. Legal representation before quasi-judicial bodies in terms of the Refugee Act; Litigation in court in order to ensure access to rights (documentation); socio economic rights and recognition in cases where claims are rejected (e.g. for SOGI or sexual violence claims).
9. Legal advocacy (law reform, media, publications, treaty body reports), legal empowerment (paralegal projects, trainings, capacity-building), legal advice and technical assistance, grant-making.

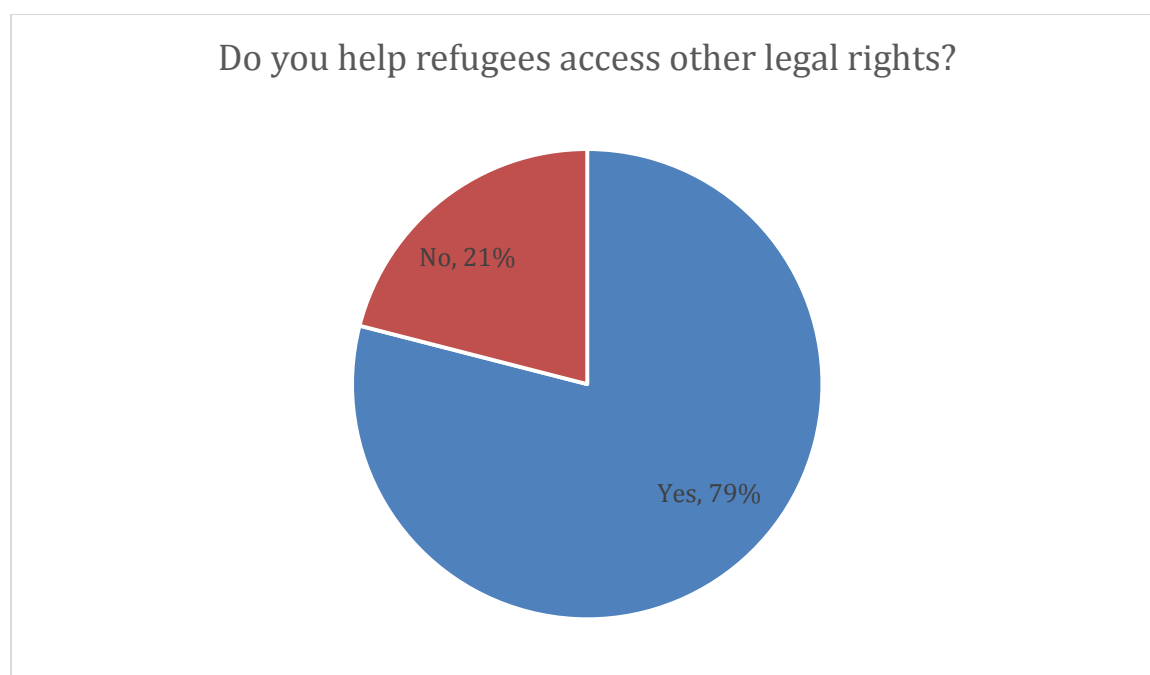
Q9: If you practice Strategic Litigation, what issues have you litigated or do you plan to litigate?

1. I coordinated the preparation of a number of third party interventions for UNHCR including in the following cases: - M.S.S. v. Belgium and Greece (ECtHR, Dublin transfers) - Hirsi and others v. Italy (ECtHR, extraterritorial scope of non-*refoulement* and material scope of that obligation) - Malevanaya v. Ukraine (ECtHR, non-

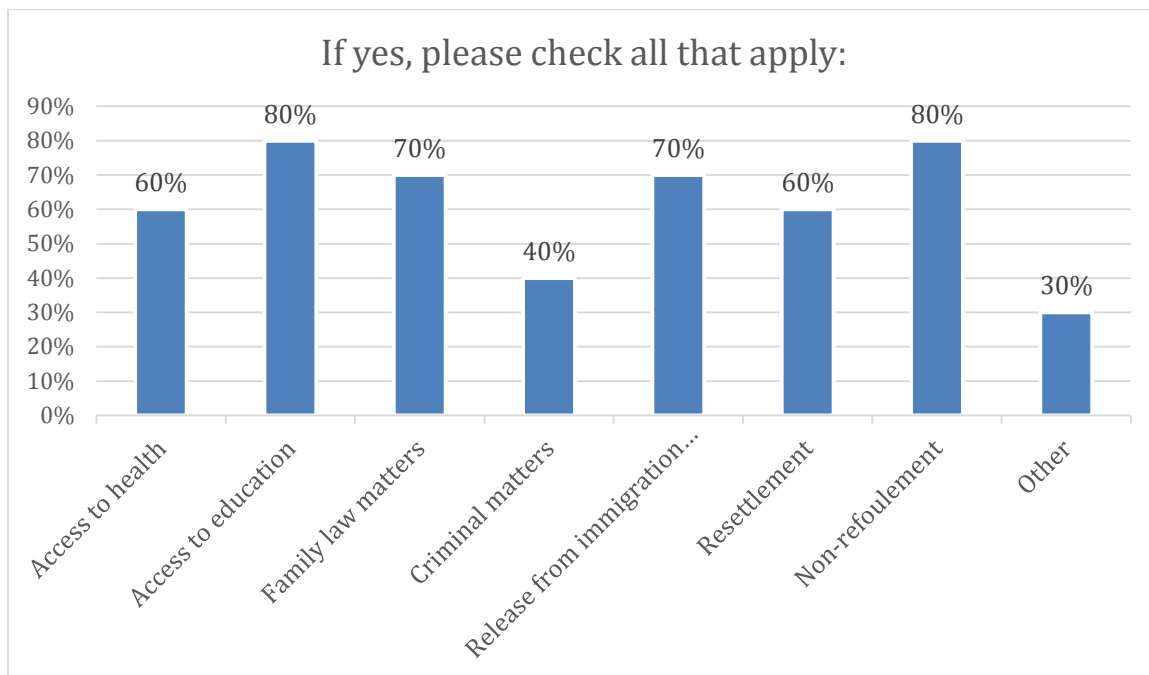
refoulement at the border) - Kuric and Others v. Slovenia (ECtHR, legal and material limbo of stateless "erased") - Lakatos and others v. Russia (ECtHR, detention of stateless persons) - NS and ME (CJEU, Dublin transfer and sovereignty clause) - Bolbol (CJEU, Article 1(D))

2. Assessment of the risk of *refoulement* under Article 3 ECHR in cases of persons returning to Somalia: <http://migrationlawclinic.org/category/adviezen/>; Integration requirements abroad (regular migration).
3. Free movement and residence easy access to socio-economic rights including health, education and livelihood an end to arbitrary detention.
4. Rejection of asylum cases related to SOGI, documentation of unaccompanied minors.
5. We are increasingly interested in amicus work related to the rights of migrants and children, including refugees. In early 2015, we will be issuing a report on migrant children in the US.
6. Yet to litigate on: credibility assessment, burden of proof, refugee status.
7. Standard of proof in refugee cases, refugee status determination in detention, detention of minors, rejection of Syrian cases in Japan, several due process issues (e.g. denial of legal aid at first instance).
8. We are planning on trying to litigate around socio-economic rights, including education and work.
9. Shortcomings on RSD in Tanzania; situation of newly naturalised former Burundian refugees (NNT); and constitutionality of the 1998 Refugees Act.
10. Adjudication of claims based on SOGI; adjudication of claims based on gender based violence, FGM and harmful customary practices. Past cases include access to status determination offices, access to school and education, right to social security benefits
11. Non-discrimination, access to citizenship and statelessness.

Q10: Do you help refugees access other legal rights?



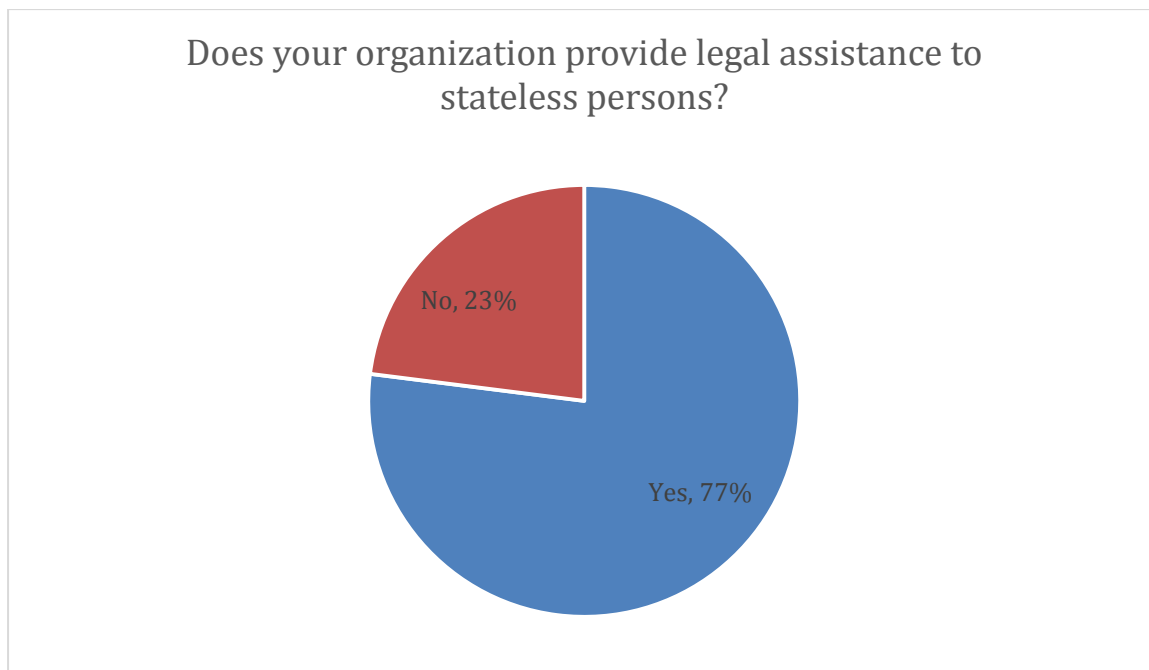
Q11: If yes, please check all that apply: (Responses to 'Other')



(Comments)

1. Right to an effective remedy.
2. Insurance, employment, housing, etc.
3. Access to citizenship by naturalization and access to identity documentation.

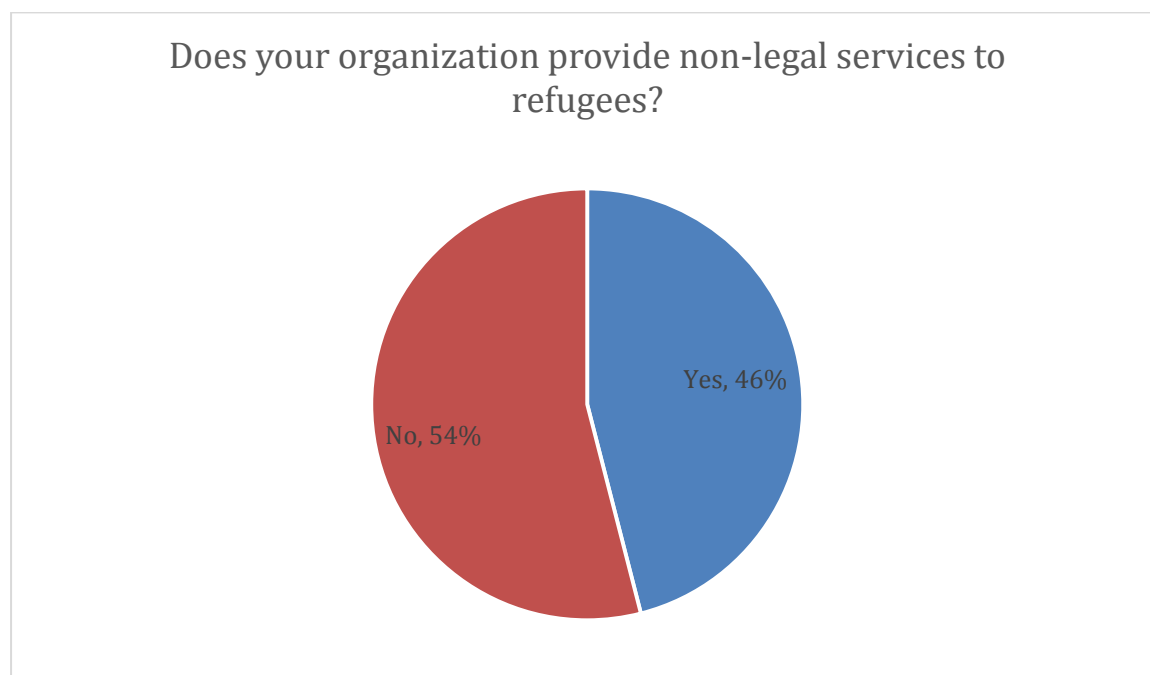
Q12: Does your organization provide legal assistance to stateless persons?



(Comments)

1. The Migration Law Clinic does not provide legal assistance, but would provide legal advice concerning statelessness.
2. We identify, offer court representation for, secure their release and link the victim to UNHCR for further assistance.
3. Minor unaccompanied children who are present in country of asylum.
4. But mostly in relation to asylum procedure.
5. We deal with relatively few statelessness cases (mainly involving Egyptian born children, individuals from Eritrea / Ethiopia, and individuals from (South) Sudan)).
6. Pro bono legal aid.
7. As part of the refugee system.
8. Currently working on cases in respect of Angolan children who are in foster care, and with no legal links to Angola or their parents who for all intense purposes are stateless in South Africa.
9. Strategic litigation, paralegal assistance in accessing identity documentation.

Q13: Does your organization provide non-legal services to refugees?



(Comments)

1. Referral of clients to other organization offering non-legal service.
2. The Dutch Council for refugees offers refugees practical support during the asylum procedure and the process of integration into Dutch society.
3. Health, education, shelter, community mobilization, advocacy employment, etc.
4. Community empowerment of women's groups.
5. A range of psychosocial services including individual and group counselling; case management for unaccompanied children; community outreach to local and refugee communities.
6. Pro bono legal aid.

Q14: We welcome any other comments that you have:

1. Thanks for organizing this round table. I found it interesting and inspiring.
2. Great event! I look forward to it becoming a much anticipated and enjoyed feature in the AC's schedule! Thanks for all your work organizing everything!
3. We are just developing our clinical program, and will be providing more legal assistance in the future.
4. Thanks.
5. Thank you for the very interesting session
6. Thank you for including us this year - looking forward to more collaboration in the future!