

Refugee Resettlement: Expanding its reach and effectiveness through broader NGO Participation

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1. Introduction

I will address the following issues in this presentation:

- How can NGOs and UNHCR offices jointly put in place a system for referrals for resettlement (based upon mutually agreed upon criteria and procedures)
- How NGOs can work effectively with local UNHCR offices to establish a new channel of resettlement referrals, particularly if the NGO is new to resettlement?
- An overview of the South African asylum situation and the challenges in protection which necessitate the need for resettlement referrals
- A description of the way in which Lawyers for Human Rights works with the UNHCR to refer cases for resettlement
- An indication of the kinds of cases which we have submitted and which kinds of cases have been accepted for resettlement
- The benefits of making resettlement referrals and the challenges connected with these cases

2. Protection issues in SA: Introduction and Context

I will begin with an overview of the South African situation as well as an explanation of why we need to refer cases for resettlement.

South Africa employs a state managed RSD system and an urban refugee policy where asylum seekers and refugees are not confined to camps. This is one of the few African country situations

where refugee camps are not the norm. Despite this progressive situation the implementation of the Refugees Act and the protection it offers is extremely poor.

In addition to this since 2011 there have been significant shifts in policy and practise leading to a limitation in the available protection for refugees. These shifts have occurred in several different areas including group exclusion on arrival at ports of entry to the closure of urban refugee reception offices with the overarching plan to move asylum processing to the border regions where access to work and basic services are not readily available.

The length of time that it takes from lodging an asylum application and being recognised as a refugee can take anything from 6 months to 8 years. The reasons for these long delays are the:

- high rejection rate at the first instance (of about 92%)
- coupled with insufficient capacity in the refugee appeal stage to process applications to finality

The result is that many asylum seekers remain in the asylum seeking limbo stage for a very long time. This is a temporary situation in which they may be rejected and removed from the country at any time.

In addition to the challenges within the asylum system there are also issues outside the asylum system which make it difficult or impossible for some asylum seekers and refugees to fully integrate into South African society.

The Numbers:

And to give you an idea of the numbers of people who are seeking protection in South Africa:

57 000 refugees

219 000 asylum seekers

(63 000 undecided at first instance and 156 000 awaiting finalisation on appeal)

As at 1 March 2013:

230,486	pending asylum applications
86,833	pending RAB appeals
58,000	cases pending before SCRA

South Africa was receiving significantly more new asylum seekers from 2008- 2011 but the numbers have drastically reduced since this time. The State has noticed a drop in the numbers of asylum seekers and attributes this, partially due to faster turnaround times, which identify and send back those who are not genuine refugees, and partially due to negotiations with neighbouring states that they must also share the burden of taking in refugees. There were 85 000 new asylum applications in 2012, compared to 300 000 in 2010.

3. Identification of cases for resettlement

Lawyers for Human Rights has been identifying and screening refugees for resettlement for many years. These referrals are mainly coming from persons residing in and around the 2 big urban centres in Johannesburg and Pretoria. There are challenges with local integration particularly with persons who are in the asylum seeking limbo period for a very long time. There is also a very high rejection rate in South Africa where the state is overly concerned that too many people are lodging abusive asylum applications and need to be worked out of the system.

Lawyers for Human Rights in carrying out its protection and legal assistance work does come across cases which are compelling and which need to have their protection needs considered. In these cases we may carry out a screening to identify the needs of a particular client or family group and prepare a referral to the UNHCR where we would recommend that the case be considered for resettlement.

We find that there is a very high demand for persons to be considered for resettlement. Many people want to leave South Africa as they feel that resettlement could resolve all the difficulties which they face. We are only too aware however that both the UNHCR and any resettlement country will closely scrutinise any cases which are referred and only the strongest cases will be put forward and be accepted on a resettlement programme. As a result we carry out a very detailed evaluation of the case and make detailed submissions and recommendations to the UNHCR on the merits of the case.

There are also instances where we may screen an individual and find that there are no compelling grounds for us to make this submission. In these cases we would not refer the case for resettlement consideration and would instead counsel the client on other local integration options that they could consider such as livelihoods training, small business loans, applications for permanent residence etc.

In our experience we find that it is very important to manage your client's expectations when you are referral their case for resettlement. This can be a lengthy process which could take anything from 6 months – 3 years to finalise. We have observed that some clients will call in regularly to enquire about their process and become very upset at our organisation if these processes are not moving along more quickly.

There have also been instances where we have referred a case on an urgent basis and the person was resettled within a period of 2 months.

Making a resettlement referral is time consuming and one needs to ensure that the client's situation is well represented and that there is no likelihood of conflicting information arising that could negatively affect the client's credibility. At Lawyers for Human Rights we could carry out at least 4 or 5 consultations and spend 10 – 20 hours in the case preparation stage.

The major challenge for LHR is that once a case has been referred it becomes very difficult to receive feedback from the UNHCR on the progress of the matter. As a result it becomes difficult to keep the client informed about where the matter is and what next steps they can expect.

There have been instances where we are not informed that a particular client has been accepted for resettlement and we find out when the client comes into say goodbye to us or drops us an email from his/her resettlement country.

In consideration of the resources and capacity that we have previously spent on carrying out these resettlement referrals, in 2012 we engaged with the UNHCR on this and were able to receive via a partnership between Lawyers for Human Rights, UNHCR and the Resettlement Support Centre a person seconded to us for a short term appointment earlier this year only to carry out and submit resettlement referrals. This partnership proved to be very useful in dealing with cases which had had serious protection concerns. We have plans to run have a second placement in the second half of the year based on the success of the first placement.

We do on occasion meet with UNHCR to re-define the issues which will be considered for resettlement as well as the method and form of submitting these referrals. These have been refined and redesigned over a number of years to suit operational requirements and the needs of both organisations.

4. Resettlement cases

To give you an idea of the kinds of cases which we have processed for resettlement out of South Africa

- We have submitted cases dealing with persons who have been the subject of serious and sustained xenophobic attacks;
- Women at risk and Individuals who have shown that they are unable to integrate into local communities and who are not able to support themselves and their families – for various reasons which could be related to their inability to speak local languages, single mothers, persons who have faced deep trauma;
- Cases where persecution following individuals to country of asylum;
- Cases where the state RSD process has failed to offer adequate protection to the claimant and where we would recommend that UNHCR carry out a mandate RSD process and thereafter resettlement;
- LGBTI individuals;

I will go into some detail on 2 situations in particular- xenophobia and the protection of LGBTI individuals.

4.1 Xenophobia

Foreigners and foreign traders including refugees and asylum seekers have for many years faced xenophobic violence including verbal abuse, oral and written intimidation; looting and systematic destruction of property and stock; physical violence; and homicide. Foreign traders are entitled to full protection of the law but in reality this is often inadequate leading them to flee their homes and shops and abandon their stock to looting.

South Africa — in its 19 year democratic history — had never before seen the scale and intensity of the 2008 xenophobic violence and displacement. It was because of this that the horror of the displacement caused such a media and public outcry. After initial attacks in the townships of Alexandra, Diepsloot and Tembisa during the first five days of the attacks, security forces were unable to prevent the spread of violence or halt the mushrooming attacks, loss of life and property. By the end more than 60 people had been killed in the violence.

In 2012 140 persons were killed in the course of xenophobic violence and at least 250 were injured. Since 2008, 230 persons have been killed in xenophobia related incidents. According to the United Nations High Commissioner for Refugees' xenophobia hotline, an average of 238 incidents a month are reported to the police. SAPS have displayed a success rate of 50% in preventing death, injury and loss of property through early intervention efforts.

In our resettlement screening we see many individuals who present with cases where they have been the subject of xenophobic attacks and discrimination. Because this is so widespread we are able to process only those who have shown that they have been seriously and systematically targeted and were not protected by the police. We have submitted cases where refugees have been rendered disabled as a result of xenophobic attacks or where they have suffered so many attacks and lootings that they are severely traumatised.

4.2 LGBTI groups

While we see a very small number of persons arriving in South Africa seeking protection as refugees on the basis of their sexual orientation, those who do experience difficulties in integrating. South Africa's constitution guarantees freedom from discrimination based on sexual orientation however this traditional and religious communities are very conservative and do not accept lesbians and homosexuals. We find that foreign lesbians living in lower income areas (townships and rural areas) in particular experience prejudice and discrimination. They are also attacked and face corrective rape attacks by people who see their sexual orientation as a perversity and as being against nature.

We have submitted cases in particular of lesbian refugees successfully for resettlement.

*Case Study of Annie**

LHR has spent many years assisting a Ugandan lesbian woman who was unsuccessful in applying for asylum in Botswana. We assisted her to lodge her asylum application in South Africa, she was rejected at the first instance, and we assisted her with the refugee appeal which was successful. She has been very unwell as a result of her HIV + status and has been unable to work as a result of this. There is very limited financial assistance available for cases like hers from the state or NGOs.

We then made an application for resettlement to Canada which was rejected. She was also rejected by Australia. Both these rejections seem to have been based on a failed application to the United Kingdom. Fortunately she has now been accepted on a resettlement programme by Norway and will very soon be leaving South Africa to start her new life.

*not her real name

5. Concluding remarks

To conclude

Despite the challenges around the resettlement process, this is a very useful protection tool and which we would like to encourage other NGOs to utilise. Resettlement is a durable solution which is available for cases where a solution cannot be found or is not effective.

Resettlement offers hope to cases where both NGOs and UNHCR cannot find adequate solutions to assist vulnerable refugees. The case of Annie is an example of how resettlement is able to improve the life of a vulnerable refugee who is in need of protection.

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