

SRLAN Domestic Refugee Law Project Terms of Reference for Contributors

Introduction

The Southern Refugee Legal Aid Network (SLRAN) is a new Fahamu¹ global refugee programme directed by Dr. Barbara Harrell-Bond. Under this programme is a project to produce rigorous critical legal reviews (the Reviews) of domestic refugee legislation or the legal framework for refugee protection in all states of the Global South with such legislation or legal framework² (the Project). The Project coordinators are Marina Sharpe (all countries except Southern Africa Development Community (SADC) and Asia), Fatima Khan (SADC countries) and Martin Jones (Asian countries) (the Project Coordinators).

The Reviews will be drafted by volunteer contributors (the Contributors), edited and reviewed by one or more of the Project Coordinators and peer reviewed by outside specialists. Each Review will be published as soon as it is finalised (Initial Publication) and again in regionally themed monographs that will collate all Reviews at the conclusion of the Project (the Project Monographs).

These terms of reference set out and elaborate (i) the Project context; (ii) the Project objectives; (iii) the proper scope and structure of Reviews of domestic legislation; (iv) the process by which Reviews will be peer reviewed; (v) the method of publication for each Review; and (vi) the Project timeline. These terms of reference should inform Contributors regarding what is expected of them and ensure consistency in scope and structure across all Reviews.

Context and Objectives

Less than 1% of refugees will be ‘resettled’ to countries where their rights are respected; most will remain in countries of asylum in the Global South where the observance of rights for everyone, but especially refugees, is generally deteriorating. The basic infrastructure for enforcing refugee rights is missing in most countries. Forty-five states have not ratified the *1951 Convention Relating to the Status of Refugees* (the ‘51 Convention) or its 1967 Protocol, some of them hosts to major refugee populations. Even fewer states in the Global South have domestic legalisation to regulate refugee matters. Where domestic legislation does exist, it is often not in conformity with the standards of the ‘51 Convention, regional refugee law instruments³ or international and regional human rights law,⁴ and in some cases domestic refugee law conflicts with domestic standards such as those set forth in national constitutions. Most Southern states are thus in urgent need of law reform to

¹ See www.fahamu.org.

² A draft list of such states is attached hereto as Annex A.

³ Such as the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* and the *1984 Cartagena Declaration on Refugees*.

⁴ Such as the *1948 Universal Declaration of Human Rights*, *1966 International Covenant on Civil and Political Rights*, the *1966 International Covenant on Economic, Social and Cultural Rights*, the *1969 American Convention on Human Rights*, the *1981 African Charter on Human and Peoples’ Rights* and the *1989 UN Convention on the Rights of the Child*.

bring their domestic refugee law into conformity with international standards. The Project's objective, therefore, is to produce Reviews that will highlight the gaps in and shortcomings of domestic refugee laws, in order to promote law reform and to provide the basis for domestic advocacy and litigation.

Scope and Structure

Each Review should provide rigorous critical analysis of domestic refugee legislation and any regulations promulgated thereunder or the domestic legal framework for refugee protection, using international refugee law, regional refugee law, international human rights law, regional human rights law and, if appropriate, domestic human rights standards contained in instruments such as a the national constitution as benchmarks (see footnotes 3 and 4 above for a non-exhaustive list of suggested benchmark instruments).

The outline below suggests a structure for Reviews of domestic refugee legislation.

1. Introduction

1.1. Overview of the refugee situation in state X

2. Overview of human rights and refugee rights standards applicable in state X

2.1. Overview of international and regional refugee instruments that state X has ratified

2.2. Overview of international and regional human rights instruments that state X has ratified

2.3. Overview of domestic human rights standards applicable by virtue of state X's constitution or other relevant legal instruments

3. Overview of state X's refugee legislation and any regulations promulgated thereunder

3.1. Legislative history if current refugee law in state X repeals state X's prior law

4. Critical Legal Analysis

4.1. Exposition of benchmarks to be applied. Benchmarks should be some or all of the instruments surveyed in section 2 and should be only briefly presented in this section, such that the reader is clear regarding the standard against which domestic legislation is being measured. It is likely that in many cases the '51 Convention will be the primary benchmark. Where the '51 Convention is the benchmark, the author should detail all relevant reservations state X has made to the '51 Convention

4.2. Critical legal analysis of state X's refugee legislation, organized provision-by-provision, measured against benchmarks presented in section 4.1. Each provision analysed should, wherever possible, be accompanied by suggested reforms. It may also be necessary to recommend that other legal instruments, such as the constitution, be amended

5. Conclusion

Peer Review

Each Review will be edited and reviewed by one or more of the Project Coordinators for style and substance to ensure consistency of presentation across Reviews and correct legal analysis. The Project Coordinator(s) will provide comments as

necessary, pursuant to which the Contributor will revise his or her Review. The Project Coordinator(s) will continue to provide comments and the Contributor will continue to revise his or her Review until a final draft is agreed between the Contributor and the Project Coordinator(s). If a final draft cannot be agreed, the Project Coordinators may choose not to include the Contributor's Review in the Project. In such cases, the Contributor retains full rights to his or her Review.

Agreed final drafts will be peer reviewed by outside specialists. In some cases, such as where the forum for Initial Publication is a peer reviewed academic journal, the Project peer review process will be substituted by that of the forum for Initial Publication.

Publication

Each Review will be published as soon as it is finalised and again in the relevant Project Monograph. The Contributor and the Project Coordinators will jointly determine the forum for Initial Publication based on their assessment of where the Review will have the strongest potential impact for legal reform. Generally, however, the Reviews should meet the standard of and be publishable in peer reviewed academic journals such as the *International Journal of Refugee Law*. The Contributor is responsible for all aspects of ensuring Initial Publication; however, the Project Coordinators will provide any reasonable support requested. Reviews may also be published on-line on the SRLAN website, if permitted by the forum for Initial Publication.

If the Contributor would like to publish his or her Review in a forum in addition to the forum for Initial Publication, the SRLAN website and the relevant Project Monograph, the Contributor will seek permission from the Project Coordinators. Permission will not be unreasonably withheld.

Timeline

Reviews should be finalised (including the process of peer review) within 8 months of the Contributor's agreement to participate in the Project and published within a further three months. It is hoped that the Project will be concluded and the Project Monographs published within 3 years of November 1, 2008.

Further Information

If you have any questions or concerns, please contact Marina Sharpe at marina.sharpe@asylumaccess.org, Fatima Khan at fatima.khan@uct.ac.za or Martin Jones at martindavidjones@gmail.com.

LIST OF STATES TO BE COVERED

CENTRAL ASIA

Kazakhstan
Kyrgyz Republic
Russian Federation
Turkmenistan

CENTRAL AND SOUTH AMERICA

Argentina
Belize
Bolivia
Brazil
Chile
Colombia
Costa Rica
Ecuador
Mexico
Nicaragua
Panama
Paraguay
Uruguay
Venezuela

EUROPE

Albania
Armenia
Azerbaijan
Belarus
Bosnia and Herzegovina
Croatia
Georgia
Macedonia
Montenegro
Turkey
Ukraine

MIDDLE EAST AND NORTH AFRICA

Algeria
Iran
Mauritania

SUB-SAHARAN AFRICA

Angola
Benin
Burundi
Cameroon

Congo-Brazzaville
DRC
Ethiopia
Ghana
Guinea
Lesotho
Liberia
Malawi
Mozambique
Namibia
Niger
Kenya
Senegal
Somalia
South Africa
Sudan
Tanzania
Uganda
Zambia
Zimbabwe

EAST, SOUTH AND SOUTH EAST ASIA

Bangladesh
Cambodia
China
East Timor
Hong Kong
Indonesia
India
Japan
Malaysia
Nepal
Pakistan
Philippines
Sri Lanka
South Korea
Thailand