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**Rights, Not Relief: Mainstreaming Refugees and Other Marginalized  
Populations into Human Rights Grantmaking**

Wednesday, January 25, 2012  
9:00-10:30 am

***Session Organizers:***

- Shira Saperstein, Deputy Director / Program Director, Women's Rights and Reproductive Health, The Moriah Fund
- Emily Arnold-Fernandez, Executive Director, Asylum Access

***Moderator:***

- Shira Saperstein, Deputy Director / Program Director, Women's Rights and Reproductive Health, The Moriah Fund

***Panelists:***

- Karen Musalo, Professor of Law; Director, Center for Gender and Refugee Studies, University of California-Hastings College of Law
- Emily Arnold-Fernandez, Executive Director, Asylum Access

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Shira Saperstein provided an introduction on refugee rights: Most of the world thinks of refugees as victims in need of humanitarian relief. We do not think of them as actors entitled to human rights. How we treat refugees is a marker for how we enforce human rights in general. What is the status of refugees in human rights law and practice? How is this carried out on the ground?

Shira introduced the panelists.

Karen Musalo: Provided an overview of the legal status of refugees under human rights law

- The norms present in the Refugee Convention and in refugee rights in general came out of the WWII experience and the failure of the world to protect Jews during the Holocaust.
- Post WWII leaders negotiated the 1951 Refugee Convention and 1967 Protocol, which updated the convention and eliminated the geographic and time limitations in the original convention.
- In the world today there are: 44 million people uprooted by conflict and persecution; 17 million refugees; and 27 million Internally Displaced Persons (IDPs).

- The definition of a refugee according to the Convention is: a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.
  - The convention is broadly ratified; there are 144 states party to the convention
  - The central principle of the Convention, the Principle of Non-Refoulement has become a customary norm in international law.
- There is a strong relationship between refugee rights and human rights. A refugee is an individual with a well-founded fear of persecution, and the concept of persecution is inextricably tied to the human rights framework.

Emily Arnold-Fernandez:

- It is important to remember that refugee rights are a subset of human rights.
- Refugees are often deprived of their basic human rights.
  - Many in camps cannot leave, work, access police.
  - Average time in a refugee camp is 17 years.

*Q: What is the difference between migrants and refugees?*

Karen:

- The deprivation of basic subsistence could be considered persecution, but for the Refugee Convention to apply the persecution must be based on one of those five specified grounds. If they cannot argue their poverty is based on a government policy that deprives them of basic needs because of their sexual orientation, e.g., then they do not have a claim.

*Q: Could this be considered economic oppression of people of color in the global south by people in the global north?*

Karen:

- The Refugee Convention has not gone that far yet. Climate refugees are provoking a big debate. Should these individuals be considered refugees? Persecution on which of those five grounds? There is a sense that the convention should evolve along with new developments but it is slow to do so.

Emily:

- The Convention was set up with a traditional sense of international law. The state is who should protect you, but when the state fails miserably that is when you are entitled to international protections. When the state is not engaging in the persecution, the Convention falls short.

*Q: How are refugees treated inside the US and by the UNHCR today?*

Emily:

- In theory, the Refugee Convention is one of the strongest conventions in existence, and yet in practice, most of the rights in the convention are often denied (right to employment, freedom of movement, freedom of association, public education, identity/travel documents, equal protections of police/courts).
  - Between half and two thirds of refugees are in refugee camps despite the fact that curbing refugees' freedom of movement is illegal under international law. Yet many large international organizations support this.
  - This is one of the few situations where human rights and economic interests align. It makes so much more sense to have a working, self-sustaining population that also enjoys their rights.

- There are five key tools for transformation that Asylum Access makes use of:
  - Individualized legal aid
  - Community legal empowerment (training communities to exert their collective rights and advocate for themselves)
  - Policy advocacy
  - Strategic and precedent setting litigation
  - Global movement building

Karen:

- There are generally three strategies that states use to circumvent international obligations:
  - Preventing people from getting to countries of asylum through:
    - Militarization of the border
    - Interdiction at sea
  - Detention as deterrence
  - Interpreting the Refugee Convention in a way that leaves people out and is inconsistent with international norms
    - Women are often left outside the definition.
      - The Kassindja case (a precedent-setting case that established gender-based persecution as an acceptable basis on which to claim asylum), for example, should have opened the door to other women facing sexual-based violence but this has not been so simple.
      - Children are also often not included – particularly those fleeing gang violence.

*Q: Blaming only the states ignores the problems of the UNHCR. Kenya, for instance, started putting refugees in camps at the suggestion of UNHCR. Why is more attention not paid to the role of UNHCR?*

Emily:

- When dealing with a mass influx of refugees, how states deal with this is very complicated. This often involves prima facie status and often those individuals are not given the same rights as those with individualized claims.
- We need additional burden sharing mechanisms from northern countries.
- UNHCR does share much responsibility, but criticizing the UNHCR in the US is tricky because there is worry that those people who want the US to pull out of the UN entirely will only use this as fodder for their claims.

*Q: In my experience there is an increased urgency felt by funders to help those asylum seekers outside the US and seeking resettlement here as opposed to asylum seekers already in the US, even if they are in detention. Any insights on how to deal with this?*

Karen:

- The US President/congress admits around 70,000 refugees per year for resettlement. If you are not in a priority group you will probably not be admitted. Otherwise, you have to find a way to flee your country and seek asylum. Both populations are very deserving of support.

*Shira: What can human rights funders do?*

Karen:

- Funders can be more knowledgeable about refugee rights and asylum seekers. This will allow you to see the intersection of refugee rights with other issues you already fund.

- Remember that refugee rights are human rights and should really be under your human rights portfolio. Get out of this rigid framework where you continue to maintain separate refugee rights programs.

Emily:

- For grantmakers, the first thing is making more explicit efforts to include refugees through outreach to organizations already working with refugees or on refugee rights issues.
  - Identify hurdles for access by refugees in the same way you would do with other marginalized groups.
- Ask your grantees if they are including/excluding refugees and what they can do to be more inclusive.