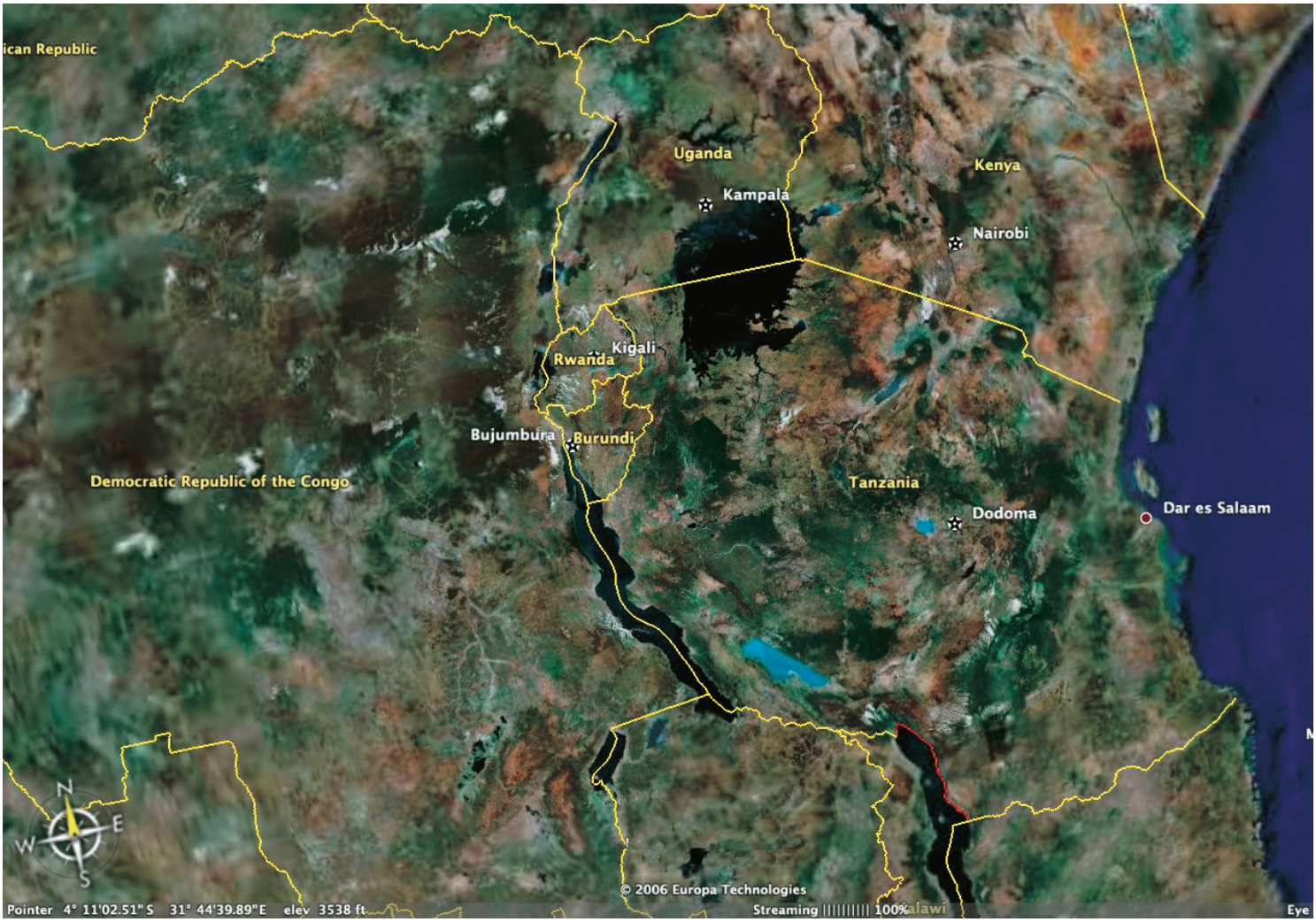

Citizenship and Forced Migration in the Great Lakes Region

Report of a Consultation on the Feasibility of a Collaborative Network-Building Project Linking Research with Program and Policy Development

co-hosted by

The Social Science Research Council

and

The International Refugee Rights Initiative

Kampala, Uganda

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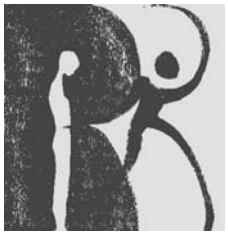

ABOUT THE INTERNATIONAL REFUGEE RIGHTS INITIATIVE

The International Refugee Rights Initiative (IRRI) works to enhance the protection of the rights of those who are forced to flee their homes worldwide. IRRI grounds its research and advocacy in the rights accorded to the displaced in international human rights instruments and strives to make these guarantees effective in the communities where the displaced and their hosts live. Based in New York and Kampala, IRRI acts as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home. Currently IRRI has a regional focus on Africa, the continent which hosts more refugees per capita than any other continent.

This report was written by Deirdre Clancy of the International Refugee Rights Initiative and edited by Josh de Wind, Program Director of the Migration Program at the Social Science Research Council and Lucy Hovil of the Refugee Law Project, Faculty of Law, Makerere University, Uganda.

ABOUT THE SOCIAL SCIENCE RESEARCH COUNCIL

The Social Science Research Council (SSRC) leads innovation, builds interdisciplinary and international networks, and focuses research on important public issues. Since its inception in 1994, the SSRC Migration Program has had as its primary goal the strengthening of international migration studies. Its field-building strategy has been to recruit young, promising scholars to the field, to connect scholars with shared thematic interests across disciplines and to link social scientists with other researchers in the humanities, the professions, and the not-for-profit sector. The purpose of the SSRC Migration Program's "Forced Migration and Human Rights" project was to explore how an international human rights framework could be used in collaborations between scholars and practitioners in international humanitarian and human rights organizations to develop new understandings and program designs that will enhance the protection of forced migrants in Africa.

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Copies of the report are available from the International Refugee Rights Initiative and the Social Science Research Council at:

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EXECUTIVE SUMMARY

The following report provides a narrative account of a consultation that took place in Uganda in April 2005. The aim of the discussion was to explore the feasibility of a collaborative network-building project linking research with program and policy development in the Great Lakes Region.[1] It brought together local non-governmental organizations (NGOs) from seven core Great Lakes countries,[2] in addition to representatives of law faculties, forced migration and conflict research centers based at the region's universities, and a small number of nationality and citizenship experts. In order to focus the discussion, the consultation concentrated specifically on questions surrounding belonging and citizenship, a dynamic that has been one of the major causes of flight in the Great Lakes region over the last decade, sending millions into exile.[3]

The status bestowed on individuals or groups – whether political, social or cultural – has a direct impact on the ability to realize rights. Indeed, the antithesis to citizenship and belonging, namely statelessness and alienation, leaves people vulnerable to numerous human rights violations. Throughout the Great Lakes region, unequal access to, or exclusion from, citizenship rights has frequently been based on official, *nationally* sanctioned discrimination on grounds of race, ethnicity, religion, culture, lineage, language, or other identities. At the same time, discourses of differentiation around belonging at the *local* level have also resulted in the violent exclusion of "strangers," often citizens of the same nation-state. Indeed, local perceptions of belonging play a crucial role in the everyday lives of different individuals and communities: their contestation has been the basis upon which populations have been forced to divide and regroup across national borders seeking shelter from inequality, conflict and persecution.

The task of finding solutions to forced migration in the Great Lakes therefore particularly requires a regional approach to understanding the impact of national membership and citizenship rights on displacement. Specifically, previous research has shown the extent to which there is a significant divide between policy formulation and realities on the ground.[4] There is, in particular, a deficit in quality research on the issues which confront the millions of forced migrants who live in the region: while it is easy to guess at many of

[1] The consultation was co-hosted by the Social Science Research Council and the International Refugee Rights Initiative with the support of the Harry Frank Guggenheim Foundation.

[2] The consultation included participants from Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Sudan, Uganda and Zambia.

[3] From a sociological perspective, the notion of citizenship and belonging refers to an individual or groups' sense of identity within a specific location, and to the status that is imposed upon them by the political, social and cultural dynamics in which they are living. From a legal perspective, citizenship or nationality constitutes the link between a state and the people it includes in its territory: a defined population is an essential element in the recognition of the existence of a state. It is worth noting, however, that there is no accepted definition of the substantive content of the nationality/citizenship (the terms are interchangeable) link in international law. Not only is acquisition of nationality differently described at national law, the rights and duties that adhere to citizenship also vary from country to county. *See*, *inter alia*, Malcolm N. Shaw, *International Law*, 5th edition, Cambridge, 2003, pp 584 – 587)

[4] The Refugee Law Project's Working Paper series demonstrates the divide between national and international policies and the way in which displaced persons perceive their situation. *See* www.refugeelawproject.org/publications.

the problems they face, finding creative solutions is difficult without the necessary empirical knowledge that might inform any process of advocating for change.

During 2001/2 the Social Science Research Council (SSRC) developed and facilitated a collaborative research project that brought together social scientists and international humanitarian actors to explore specific challenges faced by Sierra Leonean refugees and their advocates in West Africa.[5] The project was structured around the development of a series of case studies oriented towards having an impact on the programming of the participant international NGOs. A human rights approach was used as a common framework for the encounter between the academic researcher and the practitioner at all stages of the project, from the choice of case studies, to the design of the research and to the identification of policy outcomes.

The findings of the SSRC project in West Africa prompted consideration of a new project, focused on the Great Lakes region, the region which hosts the majority of the forcibly displaced in Africa. In an extension of the elements of the original project, it was envisaged that the Great Lakes work would enable social science and legal researchers at university-based centers in the region to collaborate with local NGOs, with the objective of strengthening capacity for research and analysis and identifying strategies to better protect the forcibly displaced. Conflict over the question of belonging and citizenship as one of the major causes of flight and prolongation of exile in the region was identified as an appropriate anchor for the case studies, facilitating a coordinated advocacy effort around the findings.

Subsequent to conducting preliminary background research on national law and practice, the SSRC, in partnership with the International Refugee Rights Initiative (IRRI) convened a meeting of advocates, lawyers and social scientists from the Great Lakes region in April 2005. The aim was to assess the need for the project, discuss the framework for its development, and to identify those core areas of policy concern which would benefit from deeper research. It was also hoped that the planning session would generate a network of partners committed to using the project research in developing joint interventions in regional program and policy debates. The workshop brought together 18 lawyers, sociologists and activists from seven countries of the Great Lakes region with expertise in forced migration, citizenship law and policy and conflict studies.[6]

From the outset of the discussion it was agreed by participants that the origins of many conflicts in the region could be understood in terms of access to, or exclusion from, citizenship rights -- with citizenship being understood broadly as the basis of rights to belong and to access particular resources. Exclusion from social and material resources and defensive and offensive claims to particular identities were sharply connected with

[5] See description of the project at http://www.ssrc.org/programs/intmigration/working_groups/forced_migration_and_human_rights.page .
[6] See agenda and participant list and at Annex II and III.

conflict and displacement. During the course of the discussion, three primary areas within the nexus of forced migration and citizenship were identified:

(a) gaining and losing membership/citizenship: causes of displacement;
(b) needing to belong: protecting the excluded and the displaced; and
(c) returning "home": reintegration and the restoration of rights.

The discussion explored the possibility of a multi-disciplinary methodology, bringing together tripartite teams of lawyer, advocate and researcher to explore specific case studies. At the close of the session it was agreed that a deeper understanding of perceptions of citizenship and belonging could contribute to more effective advocacy and law making and, ultimately, the reduction of conflict within the region. Second, it was agreed that the three strands of participant expertise -- lawyer, activist and sociologist/anthropologist -- had much to learn from each other and to contribute to the field. Third, a networked and regionally coordinated policy and research effort would be highly beneficial, considering the interconnectedness of issues and populations across borders. Finally, a range of topics were identified as potentially benefiting from the multidisciplinary approach envisaged by the project, and participants pledged their commitment to work together to move these issues forward.

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1 BACKGROUND TO THE CONSULTATION

In April 1994 genocide and an extraordinary exodus of refugees, government militias, and rebels from Rwanda marked the beginning of a decade of conflict, which displaced great swathes of the Great Lakes region's population. Over ten years later, as the effect of protracted conflict in the region continued to prevent millions from returning to their homes, local communities hosting forced migrants in the Great Lakes found themselves increasingly overburdened and governmental authorities were uncertain of how to delimit and manage their responsibilities. In April 2004, local and international advocates, along with academic experts, gathered together in Kampala, Uganda to review these trends and assess the state of protection for the displaced in the region. Entitled *Ten Years After the Rwanda Exodus: Assessing Refugee Protection in the Great Lakes*, the conference allowed participants to share national experiences and strategize about key concerns in forced migration policy in a regional context. At the close of the session a set of recommendations was adopted, targeted not just at governments and United Nations agencies but also at non-governmental organizations (NGOs) themselves.[7]

Among the principle challenges identified by participants at the Kampala meeting was the impact of national membership and citizenship rights on vulnerable populations, and how this related to the task of finding solutions to forced migration. Questions surrounding belonging and citizenship were recognized as being among the major causes of flight in the Great Lakes, sending millions into exile. In particular, fuelled by conflicts over land and other resources, postcolonial discourses of *national* citizenship had been displaced over the last decade by new *localist* discourses of belonging and "autochthony,"[8] resulting in the violent exclusion of "strangers," who, in many cases, were citizens of the same nation-state. Exacerbating the situation was the fact that the criteria for national membership and access to the full rights of citizenship were themselves variable between countries of the region. Unequal access to, or exclusion from, national citizenship and local community membership was frequently based on officially sanctioned discrimination on grounds of race, ethnicity, religion, culture, lineage, language, and other identities. These identities were the basis upon which displaced populations divided and regrouped across national borders. Inconsistencies between socio-cultural identities, national/local membership, and state borders in the region accounted for much of the pattern of forced migration. It was imperative that region-wide solutions be sought.

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[7] The conference was organized by Human Rights First's International Refugee Program, in partnership with the Refugee Law Project, Uganda, the Centre for the Study of Forced Migration, Tanzania, and the Refugee Consortium of Kenya, April 14 – 16, 2004. A full report of the conference is available from Human Rights First, at http://www.humanrightsfirst.org/intl_refugees/regions/africa/decade_of_unrest.htm

[8] According to Jackson, *authochtonie* is a French term that "sound[s] notes of indigenousness and authenticity. From Greek, the term means 'sprung from the land' and implies intimate, aboriginal connection with territory, a status as 'son of the soil'." He goes on to highlight how, in DRC's Kivu Provinces, it is a preferred term to '*indigène*,' possibly because of the added association with land or because of negative associations with colonialism. Stephen Jackson, "Sons of the Soil": The Language and Politics of Autochthony in Eastern D.R.. Congo," *African Studies Review* (forthcoming), p. 2.

Participants agreed that if NGOs in the region were to become more effective advocates for the displaced they would need to deepen their capacity to negotiate relations between the rights of citizens, nationals, and other minority groups within the region as a whole. Most NGOs, however, had few resources to engage in either the kind of field research and legal analysis that could feed the development of new thinking about ways of ensuring protection. The success of such efforts, therefore, would depend on NGOs being able to strengthen both their internal capacity and collaborative relations with other NGOs, academic experts, and networks of legal advocates throughout the region. As a matter of strategy, analysis of comparative practices, and the identification of optimal models for implementing protection standards within the region were also important endeavors. One of the tasks specifically mentioned was conducting a study of existing law and practice relating to the acquisition and loss of nationality from the perspective of its effect on displacement and discrimination.

1.1 Genesis of a research and capacity building project

In 2001/02 the Migration Program at the Social Science Research Council (SSRC) anchored a major project in West Africa which brought together academic sociologists and anthropologists to work with international humanitarian organizations to tackle key questions raised by forced migration. In order to most effectively draw out policy lessons learned, all of the project case studies had focused on the experiences of the conflict-affected Sierra Leonean population. A human rights framework was used as a common site of discussion for the collaborative work, influencing not just the design of the case studies but assisting in drawing out the legal and policy implications of the research, including recommendations for humanitarian practice. The findings of the project and case studies, some of which were far reaching and challenging, were presented in Sierra Leone at a conference in December 2003. At that session local advocates and forced migration researchers from the East African/Great Lakes region joined with the West Africa project participants to discuss whether a similar approach might be helpful in tackling some of the intractable problems of forced migration in the Great Lakes.

Inspired by the reactions of advocates at that meeting, the SSRC began to explore how a new project might build on the lessons learned from the West Africa academic/practitioner collaboration.[9] First, it was decided that priority should be placed on supporting the training and collaborative capacity of NGO and academic networks in the region to produce coordinated research. Second, it was agreed that the project would take a prescriptive approach, with the potential for policy outcomes woven into the design from the beginning of the project. Furthermore, drawing on the recommendations of the Kampala Great Lakes meeting, the contestation of citizenship and belonging underlying displacement and conflict in the region was identified as a potential theme for the coordinated study and advocacy. By focusing on specific issues relating to belonging

[9] Separately from this discussion, the Social Science Research Council has begun to develop the groundwork for a comparative and cross-regional initiative on "Belonging, the Crisis of Citizenship and the Nation-State". The work seeks to identify, articulate and promote spaces of innovative research and debate in the social sciences on the changing landscapes of belonging and exclusion, the transformations of the nation-state, and the emergence of new and re-articulation of old political/territorial identities across a number of the world's regions. *See* http://www.ssrc.org/programs/citizenship/.

and exclusion, the research would be designed to inform policy processes which tended towards enhancing the protection, settlement, and national incorporation of the region's forced migrant populations.

It was envisaged, therefore, that the new project would be structured around the organization of collaborative research teams that combined the perspectives of social scientists, legal experts, and NGO advocates, to address specific problems faced by forced migrants with regard to national membership and citizenship rights within and between countries of the Great Lakes region.

2 CITIZENSHIP AND FORCED MIGRATION IN THE GREAT LAKES REGION: THE CONSULTATION

In order to initiate support for the project, in April 2005 the Social Science Research Council and the International Refugee Rights Initiative, co-hosted a feasibility and planning meeting for the project in Kampala, Uganda. The session brought together local NGOs from seven core Great Lakes countries, in addition to representatives of law faculties, forced migration and conflict research centers based at the region's universities, and a small number of nationality and citizenship experts with experience in African countries outside of the Great Lakes region.[10] The aim of the meeting was to discuss the framework for the development of the project and identify the core areas of policy concern that could benefit from deeper research. In the selection of the participants it was envisaged that members of the group might be able to take a leading role in developing a project plan, including forming the nucleus of an advisory panel for the project.

The session opened with a presentation on the background to the project and an agreement by participants on expectations for the session. Each participant also shared information on current projects and efforts related to issues of forced displacement and citizenship, whether being undertaken individually or organizationally.

2.1 Key themes and challenges: citizenship, rights, and displacement

From the outset, it was acknowledged that a significant root cause of conflict in the region was the denial and loss of citizenship rights, from rights to belong in a particular territory and access resources (particularly land) to the right to vote, whether at the state or local level. Discourses of autochthony, indigenousness and aboriginality had been pervasively and often violently mobilized across the region as a way of aligning territorial claims with specific ethnic, racial, and religious identities, producing conflict both within and across national boundaries.

[10] See Annex III for the full list of participants.

In a wide ranging discussion on the nexus of forced migration and citizenship in the region, three specific areas were identified which, thematically, track the process of displacement:

(a) gaining and losing membership/citizenship: causes of displacement;
(b) needing to belong: protecting the excluded and the displaced; and
(c) returning "home": reintegration and the restoration of rights.

A range of specific topics under these headings were identified as being especially amenable to, and potentially benefiting from, multidisciplinary study. These included questions as diverse as how forced migration can result in the constitution of new identities and the role played by customary/local law in constituting citizenship.

Gaining and losing membership/citizenship: causes of displacement

As noted above, a significant root cause of displacement concerns conflicts over membership and belonging. As a result, participants indicated that the dynamics surrounding the loss and acquisition of citizenship might particularly benefit from social science inquiry and aid the refinement of existing legal regulation of citizenship. In forced migration contexts, the apparently simple question of whether an individual held, or at some point had held, national citizenship was often a complex one that had both legal and social consequences. In addition to the fact that citizenship might never have been formally asserted in the first instance, there was also potential for denationalization to occur both in fact and in law. Regardless, in many instances, the final outcome of "unbelonging" has been conflict and displacement.

It was pointed out that national citizenship as the first associative identity for individuals was a relatively new idea, with earlier forms of belonging being rooted in "traditional" affiliations. Participants discussed how notions of autochthony (original connection), chieftaincy, nationality, or indigenousness,[11] had operated as strong barriers to enjoyment of citizenship in the region. Autochthony, signifying a kind of supra-citizenship, or recognition of a first or original belonging in a particular area, was identified as a

[11] It is worth noting that although the concept of indigenousness has been employed in certain situations to exclude individuals from their rights it has also been employed by marginalized groups in order to affirm their rights. The African Commission offered the following reflection on the meaning of indigenousness in the African context:

> "When some particular marginalised groups use the term indigenous to describe their situation, they use the modern analytical form of the concept (which does not focus merely on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination they suffer from. They do not use the term in order to deny all other Africans their legitimate claim to belong to Africa and identify as such. They use the present day understanding of the term because it is a term by which they can very adequately analyse the particularities of their sufferings and by which they can seek protection in international human rights law and moral standards." Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa" and Adopted by the African Commission on Human and Peoples' Rights at its 28th Ordinary Session at p. 88.

particularly critical concept in understanding the roots of conflict in the region.[12] At the same time, the capacity to assert a form of local belonging was often much more important for the facilitation of daily life than national or formal citizenship. Indeed, even where national citizenship can be established, problems remain on the ground with respect to recognition of "belonging." It was described, for example, how the father of a Vice-President was denied burial in the area where he was born, as local chiefs had denied his "autochthony" or local belonging, despite the fact that he held national citizenship. Conversely, without a valid claim to local citizenship, it was often very difficult to access recognition of national citizenship.

A specific issue discussed by participants in this regard, and one that is particularly highlighted by the experience of the Banyamulenge[13] in the region, was the question of how to reconcile local custom and state law, particularly given the need to take into account human rights and rule of law requirements, such as the principle of non-discrimination. Participants talked of how customary law and other sources of collective authority were increasingly being invoked as alternatives to the legal regimes of the region's nation-states, leading to competing systems of authority which directly challenged state hegemony over the dispensation of justice, the use of legitimate violence and the conferral of citizenship. For instance, it was noted that there are indications that recognition of custom/customary law as a source of regulation or mode of engagement was becoming increasingly popular. In light of this, caution was urged with respect to engagement with "customary law," with several participants asserting that custom was more often used to limit rights rather than to expand or localize their operation. Further, the concept was eminently malleable and not as "traditional" as often presumed. It was noted, for example, that much of the language of exclusion used in the region, which was justified on grounds of custom and tradition, was in fact colonially constructed. The notion of autochthony, for example, so essential to the rhetoric of "outsider" in the region, had been particularly influenced by colonial policies, such as the creation of "homelands" and arbitrary border construction. As such, it was suggested that it might be helpful to

[12] Jackson talks of autochthony as a notion that has become increasingly salient in the DRC in recent years, reflecting a discourse that has permitted "comparatively localized instances of violence to inscribe themselves upwards into regional, and even continental meta-ethnic logics, with dangerous implications for the future" (Jackson, "Sons of the Soil," p. 1).

[13] The Banyamulenge are ethnic Tutsi living in the DRC, whose ancestors migrated from Rwanda and Burundi to the DRC generations ago. Their national identity has increasingly been contested over a long period of time, with growing tension between them and other ethnic groups resulting in violent clashes that partly brought about the wars in eastern DRC. The Banyamulenge are associated closely with Tutsi originating in Rwanda and Burundi, and Bafumbira in Uganda, but have been at pains to accentuate their own specific Congolese identity. As Jackson writes of the Banyamulenge: "In literal terms, this is a toponym meaning 'people from [the hill of] Mulenge [South Kivu]'. Whatever the historic origins of Tutsi in South Kivu, Banyamulenge is a recent name, most likely adopted by older Tutsi settlers in the 1960s to distinguish themselves from more recent Rwandaphone refugees fleeing violence around independence in Burundi and Rwanda" (Jackson, "Sons of the Soil," p. 16.). For additional information, see Koen Vlassenroot, *Citizenship, Identity Formation & Conflict in South Kivu: The Case of the Banyamulenge.* Review of African Political Economy, Vol. 29, No. 93/94, Sept/Dec 2002, pp. 499 – 515; and a report by Human Rights Watch showing the extent to which Banyamulenge living in DRC are increasingly being identified as "Rwandan." (See Human Rights Watch, "Chaos in Eastern Congo: UN Action Needed Now," October 2002, http://www.hrw.org/press/2002/10/easterncongo-bck.htm).

conduct research to unearth the history and etymology of descriptions such as *originaire*, autochthonous, indigenous and so on, in order to identify their historical origins.

The gender dimension was also seen to be critical in understanding how exclusion from full citizenship could operate. The right to conferment of citizenship by birth or marriage was frequently discriminatory on gender grounds in the region, with women not permitted to confer citizenship upon marriage to their husband or children. It was pointed out that, even where discrimination was not formally embedded in legislation, it was often endemic to practice. In Sudan, for example, in the context of return, intervention and authentication of identity by a male relative was often critical in order for a woman to successfully assert both her citizenship and the right to return to her area of origin. At the same time, some positive trends were acknowledged – for instance in Egypt, the government had recently passed an amendment which allowed women to pass on their nationality to their children, although not yet to their husbands. This advance in the law had been brought about by a vigorous civil society campaign.

Religion was also recognized as an element around which exclusion from belonging and from enjoyment of the full rights of citizenship had been constructed, formally and informally. One example was from Sudan, where southerners living in displacement in the north, in particular non-Muslims, were frequently denied enjoyment of their rights as citizens. It was noted that in delineating the status of Khartoum and its population and the multiple religious identities within the capital and Sudan itself would have to be acknowledged in a future North-South peace settlement.

Thus the relationship between exclusion from citizenship rights and the origins of conflict in the region was identified as a potential cross cutting issue that could relate to all the particular case studies in the eventual project. In this regard, it was recognized that a focus on cross border communities and dynamics could provide a site for the exploration of constantly changing, sometimes self-generated, sometimes imposed and state-defined identities. The unresolved citizenship of many cross border communities in the region was termed by one participant quite starkly as an "unresolved challenge to the nation state."

Indeed, inadequacies in the functioning of citizenship both reflect and have contributed to a wider crisis in nation-statism within the region which, in turn, has led to conflict. In such instances, national identity has been superseded by more localized notions of belonging that are seen to hold great currency for individuals or groups. It is indicative of the way in which identities have been mobilized in the region for political ends, and in order to have better access to resources. This has generated a context in which difference has become antagonistic and, in many instances, has led to violent conflict. Thus notions of belonging and exclusion dictate an individual's personal security, their access to resources – indeed their whole ability to realize their rights. At times such mobilization has taken place at the national level – most notoriously with the genocide in Rwanda. Increasingly, however, such identity markers are realized along localized rather than national lines, and are manifest in what is often crudely referred to as "inter-ethnic" warfare.

In this regard the situation of the Banyamulenge was identified as ripe for exploration, a crucible of much of the conflict and displacement in the region. Indeed, their plight speaks volumes about inadequacies in the current status of citizenship: it has been suggested that they have nurtured the cohering label "Banyamulenge" in order to give themselves an indigenous identity that might enable them to better access their rights in the DRC. If citizenship issues were better addressed, mobilization along such ethnic lines would no longer be necessary. While it was noted that the exclusion, forced movement and relocation of various populations for reasons of political management and conflict over resources had begun before colonial times, during the last decade, recognition of the national citizenship of the Banyamulenge had particularly suffered from the vagaries of shifting controlling authorities whether rooted in attributed political allegiance, assessments as to the "real" identity of the group, or security concerns.

As a result, the Banyamulenge have been forced to move back and forth across the region seeking safety, their very trajectory variably interpreted as proof of identity. For instance those who did not return rapidly to the Democratic Republic of Congo (DRC) in 2003 when conflict abated following a peace deal and formation of a transitional government were deemed to have demonstrated that they were in fact "Rwandan." Those from Masisi, who found themselves pushed towards Rwanda, had their continued support for Laurent Kabila in Rwanda viewed as "proof" that they were "Congolese." At the same time, those who never left or returned to the DRC were suspected of harboring "infiltrators." The reality was that many Banyamulenge had never been issued passports and had lost identity documents in flight, complicating the process of recognition of their right to remain in, or return to, DRC. It was pointed out, for example, that in the eastern DRC many people still travel internally using documents testifying to organizational affiliation as opposed to national citizenship.

It was suggested that research could helpfully tease out the strands of history and myth around the presence and experiences of the Banyamulenge in the region, including the effect of inter-state conflict on perceptions of where they belonged and what rights they could claim. Without a clear understanding of how individuals perceive themselves in relation to their localized and national identities, it is impossible to ascertain how to target any advocacy on their behalf. Such work might also indicate innovative ways in which attitudes at a local level could be challenged in order to facilitate a minimum of cohabitation. It could also look at the impact on the ground of the way in which citizenship is regulated at a national level through teasing out the vulnerability of individuals who lack clear legal and social identity markers recognized outside the group. It was not clear, for example, whether the fact that the newly agreed Congolese law on nationality contained some recognition of a possibility of dual nationality would have an impact on how belonging was perceived on the ground.

In relation to this and other issues discussed, it was noted that one of the basic functions of citizenship is to level discrimination with respect to treatment of individuals by a state. At the same time, and despite the fact that national citizenship carries with it a bundle or rights and identities which should not be disaggregated, there was a tendency in the region to a fractionalized approach towards citizenship. The imposition of differential "grades" of citizenship was often based on centuries of accepted exclusion from the

mainstream or influenced by presumptions about the true allegiance of certain groups of citizens. Some states in the region, for example, draw distinctions between the rights enjoyed by persons who are citizens by birth ("*originaire*") or by naturalization, with respect, for instance, to access to public service. One of the most extreme examples cited was that of the situation in Zambia where an amendment to the Constitution in 1996 had required that candidates for the Presidency demonstrate that they were "true" Zambians, "by birth and by descent." The fact that Kenneth Kaunda's parents had been born in Malawi left his second Presidential candidacy ripe for challenge, despite the fact that he had held power as Zambia's first President for thirty years.[14]

Differentiation between citizens can happen at a much less dramatic level of daily experience and administrative practice. It was recounted how in Kenya people from the marginalized northeast say, when coming to Nairobi, that they are "going to Kenya": this language demonstrates the extent to which they feel marginalized from the rest of the country. Indeed, such marginalization is not always imagined: participants also recounted how, in Kenya, there is a separate process for obtaining identity documents imposed upon those from the East of the country, including a requirement to prove that they are not "Somali."

Another specific dimension to citizenship highlighted as being open to abuse was access to the political process of an individual's home country while in exile. In Liberia, for example, it was noted that the inability of the displaced (both as refugees and internally displaced) to return to their places of origin to vote for their local representatives, or indeed to vote by absentee ballot, in the elections, contributed to the prolongation of their sense of insecurity and might even have the effect of compelling them to remain longer in exile.[15]

Thus the inclusion and exclusion of individuals and groups – whether at national or local level, and whether real or imagined – is a critical lens through which many of the dynamics of conflict can be understood in the region. Indeed, given that enjoyment of the protections of group membership is inextricably linked to an individual's ability to access their rights as members, it is inevitable that conflicts occur when particular groups are excluded. As a result, there is a need for a clearer understanding of how the dynamics of exclusion function at a local, national and international level, in order to generate policies and programs that better reflect such realities. Furthermore, the need to map out the range and level of exclusion from the full enjoyment of citizenship rights experienced by certain groups and individuals was seen as an important first step in helping policy makers understand the reality of citizenship.

[14] Ironically, the author of this constitutional amendment, Frederick Chiluba, himself subsequently fell victim to similar accusations (this time accused of adulteration with Congolese ancestry).

[15] *See* International Refugee Rights Initiative, "Liberian Elections Exclude IDPs," *Refugee Rights News,* Volume 2, Issue 4, November 2005, available at http://www.refugee-rights.org/Newsletters/WestAfrica/V2N4LiberianElectionsExcludeIDPs.htm.

Needing to belong: protecting the excluded and the displaced

Not only are issues of belonging linked to root causes of conflict, they also continue to play a crucial role in situations of displacement. Indeed, given the very nature of exile – whether internal or external – the need to belong only becomes more pertinent. However, in many instances displacement has led to a new set of complex dynamics, with numerous individuals and groups – whether within a state, in cross border communities, refugees, indigenous groups, or cultural minorities - subject to exclusion from certain claims to identities and thus access to rights.

Access to rights was often the dominant motivating factor in how individuals and groups negotiated identity and affiliation. Not surprisingly, excluded individuals and groups often view national belonging less as a question of identity and more as a tool for accessing certain rights. In Daadab refugee camp in Kenya, for example, many Turkana citizens of Kenya masqueraded as non-citizen refugees in order to better their socio-economic position. At the same time, it was noted how in Uganda refugees who were in a position to pay graduated tax were able to receive tax registration and enjoy *de facto* citizenship rights or effective nationality, without taking steps towards formal naturalization.[16]

The way in which the relationship between citizenship and refugee status is perceived by refugees themselves, as well as the communities within which they find themselves, the broader citizenry, and those who make policy, was recognized as critical to what happens at a legislative level, and in how refugee policy is implemented on the ground. One particular area for research identified in relation to this was the issue of how refugees can find a way to contribute as "citizens" and what assistance and opportunities are required for them to find their particular contribution within the host community. One significant question preoccupying advocates in the region, for example, is whether or not one of the central pillars of global refugee management, that of the practice of confining refugees to settlements, is in fact inimical to the long term resolution of refugee status and to access meaningful citizenship rights.[17] Interestingly in the instance of Uganda, research has shown the extent to which self-settled refugees – those who have opted out of the formal refugee assistance structures – have been able to negotiate an identity for themselves at a local level, even though their presence outside of the camps means they are not recognized as legitimate from a national perspective.[18]

A final question raised in this discussion was whether, as a matter of strategy, permanent residence or other forms of legal identity and rights could provide temporary solutions for displaced people in situations where recognition of citizenship was considered too inflammatory. In discussions on citizenship during the Great Lakes Conference process,[19]

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[16] *See* Refugee Law Project, Final report to John D. and Catherine T. MacArthur Foundation, *Questioning the Settlement Policy for Refugees in Uganda: A Socio-Legal Analysis*, April 2003 – September 2005.
[17] It was pointed out that this confinement was in contravention in many respects of the rights of freedom of movement and other rights conferred on refugees under the UN Convention on the Status of Refugees.
[18] Refugee Law Project, *Questioning the Settlement Policy for Refugees in Uganda: A Socio-legal study*, final narrative report to the John D. and Catherine T. MacArthur Foundation, October 2005.
[19] See discussion of the Great Lakes Conference process below at p. 18.

for example, it was clear that states were concerned about the implications of extending citizenship to refugees who are perceived as a security risk and where full integration might pose problems for host communities. Research which explores the empirical basis for such concerns or unearths the misconceptions bolstering such presumptions might be an important first step in helping to open the door towards consideration of citizenship in the long term for excluded groups. Ultimately, this might enable refugees and other forced migrants who had suffered exile for over a generation and who had no reasonable expectation of returning home to become full members of their new communities.

The question of whether or not, and to what extent, systematic discrimination and exclusion could be viewed as constituting *de facto* revocation of citizenship was also a major topic for discussion. Those who were forced to flee and seek refugee status were the most visible embodiments of such loss of citizenship or state protection. While the theory of refugee protection assumes that the break with the state is only temporary, in reality, refugee status and the refugee experience often operates as a barrier to both the reassertion of original citizenship, or the gaining of a new one, whether in the country of refuge or in the country of origin.

Returning "home": reintegration and the restoration of rights

The issue of return was the third theme identified during the course of the discussions. Of the three durable solutions, return is perhaps seen as the most straightforward and optimal outcome of any situation of displacement. However, there are indications to suggest that the point at which refugees and IDPs make the decision to return to their homes is rarely clear cut. Addressing the vulnerability created by the decision to return was critical both in allowing individuals to return peacefully and successfully to their homes, and in preventing future flight. Specifically, the numerous problems facing Rwandan and Sudanese refugees (and IDPs) at the point of return, particularly in relation to access to citizenship rights, was raised as an area in need of further research.

For instance, although repatriation is mentioned briefly in some of the documents surrounding the Sudan peace deal signed in Naivasha, Kenya, in January 2005, little practical preparation has been made for this to happen.[20] Thus careful research is needed to understand problems of potential exclusion and identify best practice in the design of any potential return strategy. Gaining an understanding of the nature of the social fabric in both the country of exile and the country of origin is a critical starting point. How can returnees negotiate their relationship with the population they left behind so many years previously, particularly with respect to access to scarce resources? There was already evidence that persons returning to Sudan from exile in Uganda without documentation were being accused of being "Ugandan" and "not Sudanese." To what extent could the declaration of a firm national policy assist in helping to mediate these relationships? The existing gaps in the legal framework with respect to the protection accorded returnees

[20] The Comprehensive Peace Agreement for Sudan, which was signed in Naivasha in January 2005, was the culmination of a long process of negotiation between the Government of Sudan and the Sudan People's Liberation Movement/Army. The impetus for negotiations came about, in part, at the initiative of the Heads of State of the Intergovernmental Authority on Drought and Development (IGADD). For more information see http://www.unmis.org/English/cpa.htm.

therefore need to be carefully examined. What, for example, would be the effect of an affirmative action program on both the returnee and the stayee communities and their relationships? Was there a difference between local understanding of the identities and rights of the returnees, that of the returnees own perceptions, and of the population nationally?

This last question opened up an additional question: to what extent was the experience of forced migration itself, across the whole continuum of flight, exile and residence away from home, a factor in the construction of new identities, whether through changing self-identification or encountering the perceptions of others? Not surprisingly, the way in which displacement alters questions of identity was seen to be critical, particularly among members of a displaced community who return home after a long period of exile. Instead of a seamless re-attachment to the original national identity, returnees were frequently found to have adopted, or been ascribed, new identities, whether associated with the former country of refuge or the experience of exile. This creates a danger that return will generate new divisions within communities. Furthermore, the way in which displaced communities chose or magnified certain elements of identity as a tool for managing the experience of conflict and exile was also noted. Were there different identities that the displaced took on in order to be in a position to negotiate different claims? The community polarization emerging in Darfur as a result of the war was presented as a prime example. Thus it was suggested that comparative research into the creation of understandings of belonging would be helpful.

2.2 Engaging researchers, advocates and lawyers: possible synergies

Having agreed on a number of specific themes relating to issues of citizenship, there was then considerable discussion on how such topics might be translated into research projects that would generate maximum impact at a policy level. The structure that had been proposed for the project was of a series of networked teams employing a research strategy that combined legal and socio-cultural perspectives, with the input of an advocate/activist at all stages of the project. The idea of creating three-member teams of researchers, lawyers and advocates to clarify and address problems of citizenship was taken up by the discussion, focusing on the expected contribution of each perspective to the advantages of a multi-national case approach. This three-pronged strategy had been proposed as a means of bringing together legal and socio-cultural perspectives which, in turn, would be constantly shaped by input from advocates or activists, with a view to the work having the potential to have a greater impact on policy.

Within this paradigm, the legal contribution was envisaged as focusing on a comparison between international human rights, regional, state and customary laws governing access to nationality, and exploring the way in which they are interpreted at a local level. The researchers' role was to pursue socio-cultural inquiry that would focus on the different social identities and practices that result in forced migrants' exclusion from national membership. The NGO/advocate team members would be charged with not only helping to identify the research questions and guiding its design but also in developing the new policies or programs that might contribute to the reduction of discrimination and inequalities explored.

The first substantial question raised was whether this proposed collaboration between the disciplines would be fruitful, and what might be the starting point for such an exchange.

In order to summarize the discussion, the following sections focus in turn on each of the three "roles," and emphasize the specific advantages for each actor in taking such a multi-disciplinary approach.

The advocate's perspective

The advocates present were clear that there is much to be gained in drawing on the strength of academically rigorous research. Indeed, it was recognized at the outset that one of the strongest ways to advocate for policy change was through reliance on convincing and clearly presented empirical material. In particular, it was argued that scientifically verifiable information in support of policy prescriptions could result in more informed debate and, ultimately, more thoughtful and accomplished advocacy. However, it was also acknowledged that activists rarely have the necessary capacity – both in terms of time and resources – to engage in systematic research. In addition, both advocates and policy makers sometimes see the academic world as irrelevant and detached, as it is often removed from the practical preoccupations with which they are grappling. There was, therefore, a clear need for the project to dispel these assumptions and to build positive experiences of collaboration among the participants.

A number of potential advantages for the advocate in fostering engagement with research were identified, including:

- Improving advocacy strategy: Social science research could contribute to a greater understanding of the dynamics that underlay presumptions and policy positions, and therefore could enhance the possibility of promoting change.
- Co-option of policy makers: Encouraging decision makers to engage with or participate in a research project, with its hallmark of objective inquiry, could render them more open to considering those policy refinements which flow out of the findings. For instance, in one project carried out by a participant, government officials had been included in the design of the research and were kept up to date regularly with the process of the project.
- Defining policy terms: Research could help to provide substantive content for concepts which are used frequently in policy discussions but lack sufficient definition and understanding for purposes of precise policy prescription. One example of a term which required elucidation was the question of when a refugee can be considered to have become a "long-term" refugee or a refugee in a "protracted situation."
- Increased awareness-raising among beneficiaries: Participants pointed out how in Zambia many refugee families were unsure of how to engage with a new law which permitted refugee children to access citizenship. A well-designed research process, therefore, coupled with strategic dissemination of findings, could be used to generate awareness of specific issues among a range of interlocutors.

- Identification of new advocacy issues: In situations where an ostensibly protective legal and policy framework exists, social science research could be used to explore precisely to what extent practice accords with the intention of the legislation. One participant had developed interview maps that created a clearer picture of how refugees in Uganda were enjoying particular rights, thus leading to the development of new policy recommendations.
- Challenging assumptions: There was recognition by participants that advocates often operate in a prescriptive bubble, assuming that the solution or policy position is obvious. Research can function to challenge presumptions and suggest new ways of thinking about strategies for change in policy and practice. Thus the task of interrogating and challenging the certainties of the advocate was seen to be important.
- Providing an objective forum for discussion: The process of carrying out objective research could create a more conducive environment for dealing with controversial issues from a perceptively less "political" position.

The potential for policy intervention

Having discussed the benefits of research for the purposes of advocacy, participants then explored possible opportunities for policy intervention. One specific dimension to advocacy that was seen to be crucial was having the opportunity to take a more regional approach to issues that cut across borders. As a result, participants discussed the benefits that might derive from coordinated advocacy at the regional level. It was noted that opportunities for moving policy and practice in a positive direction are emerging in the Great Lakes Region, with conflicts abating in the Democratic Republic of Congo (DRC), Burundi and Sudan. New refugee rights legislation has recently been passed in Uganda, and in Kenya a new proposed bill is under consideration.

Specifically, states in the region have embarked upon a major effort to develop an integrated approach to fostering peace, security and development. This process, "the International Conference on Peace, Security, Democracy and Development in the Great Lakes Region"[21] (the Great Lakes Conference), is a multi-year process facilitated by United Nations and African Union designed to regenerate the region after a decade of turmoil.[22] The signing of a Final Declaration on Peace, Security, Democracy and Development in November 2004 was the culmination of the preparatory phase of the conference, setting out a program of priority actions for states in the region to take forward collectively.[23]

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[21] For more information on the Great Lakes process see http://www.icglr.org; and "International Conference on the Great Lakes: New Hope for Refugees," *Refugee Rights News*, Volume 1, Issue 2, December 2004. http://www.refugee-rights.org/Newsletters/GreatLakes/V1N2IntConfGreatLakes.htm

[22] The idea of holding an international conference on the Great Lakes had been discussed within the framework of the Organisation of African Unity (OAU) since 1995 and finally endorsed by the UN in 2000 with a call by the UN Security Council for the convening of an International Conference on Peace, Security, Democracy and Development in the Great Lakes Region under the joint auspices of the AU and the UN. The Conference is now in its implementation phase. *See* summary overview of the process at Annex I.

[23] The Declaration on Peace, Security, Democracy and Development was adopted by the Heads of State of eleven African countries (Angola, Burundi, the Central African Republic, the Democratic Republic of Congo, the Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia). The full Declaration is available on the website of the African Union, www.africa-union.org.

The Declaration reaffirms the commitment of states in the region not only to comply with the OAU and UN Refugee Conventions, as well as the UN Guiding Principles on Internal Displacement, but also to explore innovative ways of responding to the practical challenges faced by the displaced.[24] With respect to citizenship, for example, states in the region have agreed to ratify the UN Conventions on statelessness and work towards "harmonization" of policies. States have also pledged to develop new ways to ensure that returnees "upon return to their areas of origin, recover their property with the assistance of local traditional and administrative authorities."[25]

The Dar es Salaam Declaration is to be followed by a series of implementing protocols and projects. For example, a regional protocol on internal displacement and a project attempting to address the situation of statelessness in the region have been developed as part of this second phase of the project. The draft protocols and projects designed in this second phase of the project are expected to be adopted at a second summit in September 2006.

It was noted that the Conference provides a unique context within which efforts to tackle root causes of conflict and displacement can be channeled for lasting regional impact. Not only can NGOs make their voices heard now both in discussions on standard setting going forward (e.g., additional implementing protocols, including one on statelessness, may be considered), they will also have a range of new legal instruments and structures for implementation and monitoring of compliance to draw upon. Despite a difficult start-up phase, remarkably courageous and progressive accomplishments are now emerging from some key areas of the Conference work-plan: the protocols which are expected to be adopted in September 2006 in the realm of displacement, for example, reflect arguably some of the highest standards in terms of state obligation and deal with issues around which agreement was expected to be hampered by major controversy.

In addition to the Great Lakes Conference process, it was recognized that regional organizations were increasingly engaged in discussion on the parameters of national and regional citizenship, particularly through provision for the ascription of certain rights based on regional belonging. It was noted that the new African Union Executive Council, for example, had been charged with taking "decisions on policies in areas of common interest to the Member States" including "nationality, residency and immigration matters."[26] Although the possibility of a pan-regional citizenship had been mooted, it was at the sub-regional level – where economic communities had created reciprocal rights of residence and movement – that the concept of regional belonging was being most developed. The new focus on freedom of movement within organizational groupings

[24] See 1951 United Nations Convention relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22, 1954. [hereinafter "the 1951 UN Convention"]; 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45, *entered into force* June 20, 1974. [hereinafter the "1969 OAU Convention."] and UN Guiding Principles on Internal Displacement at http://www.brookings.edu/fp/projects/idp/resources/GPsEnglish.pdf

[25] See UN Convention on the Reduction of Statelessness at http://www.unhchr.ch/html/menu3/b/o_reduce.htm and the UN Convention Relating to the Status of Stateless Persons at http://www.ohchr.org/english/law/stateless.htm.

[26] Article 13 (1) k of the Constitutive Act of the African Union.

across the Great Lakes region, from Inter-Governmental Authority on Development (IGAD) to the East African Community (EAC), had planted the seed for the creation of membership in an effective regional citizenship.[27] In particular, it was expected that with the development and expansion of the EAC, the situation of the Rwandan refugee population in the region would be given a new dimension, with far reaching implications.

It was clear that the inter-governmental fora in which discussions around these new developments took place presented new opportunities for advocacy, whether at the level of the sub-regional parliaments (e.g. the East African Legislative Assembly) or through expert working groups coordinated by an organization's secretariat (e.g. in IGAD or through the Great Lakes process). Successful engagement, however, demands both an understanding of the issues and related state interests *from a comparative perspective* in the region, and the capacity to work collaboratively for maximum impact.

The legal perspective

Following on from discussions regarding the benefits of research in carrying out advocacy, it was pointed out that advocates turned most frequently to lawyers both in the design of new policy, and for advice on how the law can be used to advance the rights of the displaced and the excluded. The relationship between national membership and legal protection in the Great Lakes has been fraught with discrimination, unequal access and exclusion, resulting in conflict, displacement and the obstruction of the resettlement and national integration of forced migrants. For the legal practitioner grappling with this framework, it was recognized that research had an important role to play, both in enhancing the effectiveness of litigation strategy and choice of action and in fostering imaginative use of the law during the drafting of primary and secondary legislation. Although practicing lawyers engaged daily with clients and individual human stories, there was much potential for rethinking the legal categories and mechanisms through understanding anthropological or sociological approaches to the material.

Research could provide useful empirical information in support of litigation, and in generating innovative courses of action: domestic courts in the region are increasingly open to considering the evidence of social science research in deciding legal matters. An NGO participant from Zambia recalled preparations around a legal action seeking a declaration that a group of Angolan refugees long resident in Zambia might be considered "ordinarily resident" for purposes of fulfilling naturalization criteria: he suggested that research examining the experiences of former long-staying refugees in returning "home" and self-identity among the remaining population, would be taken into account by the Court in interpreting the concept of "ordinarily resident."

Another important area in which research was seen to be of potential use to lawyers was in understanding the gap between law as described in statute, and law as it operates on the ground. Given that jurisprudence operates in a specific context and never in a vacuum, there are situations where law produces outcomes which are contradictory or

[27] See East African Community website at http://www.eac.int; and the IGAD website at http://www.igad.org

hostile to constitutional or legislative principle. Effective promotion of the rule of law is therefore impossible without a fundamental understanding of how it will be received and interpreted at a local level.

From the perspective of drafting legislation, it was suggested that targeted research could also lay the foundations for more relevant legal provisions through a better understanding of how citizenship and other forms of status were experienced on the ground. For instance, social science data could reveal the numerous levels of social membership around which persons organize themselves politically, and which need to be taken into account in understanding the impact of a proposed instrument. In particular, the lack of understanding of local customs by lawyers, both on the ground and in interaction with national law, was mentioned. In light of this, lawyers from the DRC talked of how they had tried to engage in public discussion around the new citizenship law passed earlier in the year in order to ensure that its implementation did not on the ground have the effect of creating further exclusion. Unfortunately they found that there was little research to which they could turn in order to explore the potential effect of various provisions. They were aware that what might seem an innocuous provision – such as, for example, the inclusion in the legislation of a registration procedure for recognition of double nationality – could potentially be used as a tool of exclusion. But there was no research available. They suggested that there was a chance that such outcomes could be pre-empted, however, if the underlying policy dynamics driving the provision had been understood earlier.

With respect to law enforcement, a more thorough understanding of the various movements of populations and the historical underpinnings of identity (felt and ascribed) was necessary, not just for developing appropriate legislation which reflected such realities, but in terms of explaining the rationale and principle for such measures and assisting public acceptance of the legislation.

Participants also recognized the need for social science and legal research efforts that were regional in their reach, and therefore could inform a network of regional legislative strategies. It was pointed out, for example, that the transnational character of the Banyamulenge "problem" in the region demonstrated acutely how domestic legislation needed to be complemented by parallel and complementary legislation in other countries of the region in order for it to be effective in tackling exclusion of this population.

Finally, it was recognized that it was important to look outwards to relevant regional or international provisions when considering law regulating citizenship and belonging, but that these were often little known: lawyers had insufficient time for the comparative legal research required. The question was posed, for example, as to whether innovative legal research could suggest a way of extrapolating various international human rights provisions towards providing a basis for the acquisition of citizenship by refugees left in limbo for may years (so-called "protracted refugee situations"). Jurisprudence at the international level on the question of mass expulsion had been drawn upon in support of litigation engaged in by some of the lawyers present.

There was widespread consensus, therefore, that social science research methodologies have much to offer advocates and lawyers who are seeking to challenge and change the status quo. In particular, the ability for social research to draw out subtle dynamics relating to culture and society was seen as crucial to informing any process of policy change: by giving individuals a voice, and in trying to understand the complexities and diversity on the ground, legal and advocacy processes have the potential to be more targeted and relevant.

The researcher's perspective

For the academic researchers present, conducting research in partnership with advocates and legal experts was also viewed as having significant potential – both in terms of introducing new subject matter and new questions for inquiry, and in bringing the findings and insights of social science to a wider audience with the hope of influencing policy. Indeed, given the project's objective of generating quality socio-legal research on issues relating to citizenship and belonging that could then be used to advocate for policy changes, the roles of both advocate and lawyer were seen to be crucial in framing the debate. Thus researchers talked of the benefits of carrying out social research within a human rights framework, as the latter provides a helpful set of benchmarks for analysis as well as providing an internationally recognized structure for any subsequent advocacy activities.

In addition to such benefits, a number of problems and opportunities presented by activist research were also teased out. While it was acknowledged that there could be a place for consideration of advocacy goals and strategy in the design of a specific research project, it was also important that the independence and integrity of the research was maintained. While such potential problems were noted, it was also agreed that any action-oriented research project could simultaneously retain its academic integrity and engage with issues at an advocacy level, if adequate attention was given to assuring that this balance was maintained.

At the same time, it was also noted that there are certain requirements expected of the researcher when engaging with the public realm, whether in terms of the choice of material, the questions posed, the language and format used to explain findings, or the willingness to present in public fora. In particular, it was emphasized that for research to be viable in support of the advocacy function, it must be presented in an accessible format, with clearly outlined recommendations.

Finally, it was noted that researchers working in the Great Lakes region could benefit from the insight of international colleagues, as well as from the benefits of learning from other comparative studies done, particularly with reference to the issues of citizenship and belonging. A literature review and a mapping of key issues in comparative situations should therefore form the background for the qualitative research in every case.

Bringing the perspectives together

Having ascertained the benefits of a collaborative approach, the discussion then turned to consider how this might function in practice. In thinking through possible models for collaboration between lawyers, social scientists and advocates, it was pointed out that there were institutes in the region that had already managed to create a dynamic interaction between these activities. The local host organization, the Refugee Law Project at Makerere University, was singled out for mention. Indeed, the need to ensure adequate interaction between the team members at all stages of the project was well recognized. It was recommended that that sufficient time be allowed within the project structure for a genuine and meaningful exchange to take place between the legal and social science disciplines, and to enable substantial interaction and capacity building to take place within the advocate NGO.

In particular, ongoing dialogue between the advocate and the researcher were seen as vital. Not only should advocates be involved in the choice and design of research, but there should also be room for the research to take into consideration any potential future advocacy strategies right from the beginning. Likewise input from the lawyer throughout the project was seen to be vital, particularly in ascertaining specific national and international legal concepts and mechanisms which might have the potential to strengthen the advocacy potential of the research. Thus it was suggested that the prospective forum for the findings of the research be identified and explored prior to the decision on the case study.

From the perspective of any potential public engagement, the need to synthesize and present findings in an accessible format was emphasized. It was also viewed as vital that the outcomes were disseminated among the communities in which the research had taken place. Furthermore, meetings with stakeholders to discuss the research in an open forum at various stages of the project were also recognized as an essential component of the process. In light of this discussion, four ground rules were identified for management of the case studies:

- Collaboration with local partners from the outset;
- Hosting of open discussions with the communities in which research is taking place in order to allow for feed-back on preliminary findings;
- Condensing the results into a format that is accessible to a wide variety of actors; and
- Translating findings and recommendations into local languages.

2.3 Formulating multi-disciplinary research projects

During the final working group sessions, participants were invited to consider how they might formulate research project topics/questions based around the key themes identified during the discussion, with particular reference to cross border communities and/or communities with multiple experiences of exile. It was suggested that the research questions be formulated to maximize the potential policy impact of the outcomes of the research, whether at a local or regional level, or with a view to re-thinking how norms

were implemented on the ground. The groups were also requested to consider the different contributions that could be sought from an advocate, a social scientist and a lawyer as part of the case study team.

It was clear from the feedback that a range of topics were amenable to, and could potentially benefit from, the multidisciplinary approach proposed, including questions as diverse as how forced migration results in the constitution of new identities and new demands on the law, to the role of customary/local law with respect to citizenship.

2.4 Finding a common framework

Having agreed on the benefits of a multi-disciplinary approach and discussed some possible case studies, the discussion then turned to the issue of how to consolidate the ideas into a workable framework. One of the issues raised during the consultation was the question of whether or not human rights could function as a cohering framework for engagement between the advocate, lawyer and social scientist. This question reflected, in part, the fact that the SSRC West Africa project had clearly demonstrated how research could benefit from using human rights as a tool, both in identifying new ways of interrogating the case study problematic, and in providing a bridge for exploring policy implications, even at the stage of research design. Furthermore, participants talked of how they were already involved in various ways with consideration of human rights principles, whether as a tool of analysis or the identification of policy solutions. Human rights law was already widely used by advocates in the region to position their policy prescriptions. Lawyers present had engaged in rights arguments in litigation, whether through constitutional reference or by direct citation of regional human rights obligations. Thus a discussion took place on some of the ways in which using a human rights framework for the project might enhance its impact.

Citizenship and the development of human rights

Despite the fact that the issue of citizenship is closely related to the dynamics of transnational displacement and conflict, the conferral and recognition of citizenship is still traditionally viewed by international law as the sole prerogative of states. The development of human rights law over the last 30 years has, however, begun to challenge this position, building in new levels of protection for individuals, restricting the extent to which states can deny citizenship, and generating greater awareness of the multi-national dimension to the issue.

At the most fundamental level, the Universal Declaration of Human Rights ascribes to all human beings the right to a nationality. This right is based on the expectation that national membership will provide individuals with access to the rights and protections of citizenship that will, in turn, enable the realization of other human rights. It does not, however, confer a right to a particular citizenship. The Convention on the Reduction of Statelessness, which came into force in 1975, recognizes that persons can be both *de jure* and *de facto* stateless (without effective nationality) but offers little in the way of binding obligations on states. National law, with the full imprimatur of international law, generally maintains the discretion to ascribe citizenship. Furthermore, even if formal

citizenship is recognized, it has rarely produced a seamless connection to effective state protection in the region.[28] Globally, over 11 million people are estimated today to be without citizenship or effective nationality.[29]

The development of human rights law has, however, begun to erode the absolute nature of state discretion with respect to a range of issues related to citizenship, from the loss and acquisition of nationality and how the rights attaching to citizenship are protected and enjoyed, to the identification of situations in which a state is obliged to provide protections analogous to individuals with whom it has no citizen link. The principle of non-discrimination and equality before the law, one of the most fundamental human rights precepts, has been at the core of transforming this area of law, challenging discrimination in the enjoyment of basic rights and demanding that differentiation in treatment is necessary and proportionate. In October 2005, the Inter-American Court of Human Rights in a landmark decision on the law in the Dominican Republic, affirmed the right to nationality as the gateway to the equal enjoyment of all rights, confirming that discrimination on the basis of race was unlawful when it came to access to nationality.[30]

In Africa the foundation of the African Union (AU) in 2000 elevated protection of human rights, as set out in the African Charter on Human and Peoples Rights (the African Charter), to a specific objective of the Union alongside a right of intervention in cases of "grave circumstances, namely war crimes, genocide and crimes against humanity."[31] Although the Charter does not specifically protect the right to nationality, the communitarian aspects of the rights regime established in the Charter in many respects affirm the principle of the "right to belong," with protection of rights of "peoples" to self-determination, development, a satisfactory environment and "existence" (Article 20) enshrined in the instrument.

Based on the growing status of human rights on the continent, a raft of new case law relevant to the nexus between displacement and the experience of citizenship or effective nationality has been developed by the national courts during the previous decade, particularly in the Great Lakes.[32] It was noted that a major study, coordinated by the Open Society Justice Initiative, was ongoing to map this case law in selected countries of the region, including in the DRC, Uganda and Zambia. In addition, the African Commission on Human and Peoples Rights has rendered a series of decisions during the period dealing, *inter alia*, with questions of denationalization, forcible exile and illegal deportation of political opposition members, mass expulsion, property rights, due process

[28] A preliminary survey and analysis of the matrix of existing legal provisions relating to citizenship and rights of movement in the region has been carried out and is available from the International Refugee Rights Initiative.
[29] This estimation was made in a report by Refugees International. *See* http://www.refugeeinternational.org/content/publication/detail/5051/.
[30] The Inter-American Court of Human Rights, The Case for the Girls Jean and Bosico v. Dominican Republic, Series C, No, 130, Judgement of September 8, 2005, available at http://www.corteidh.or.cr/seriec_ing/index.html.
[31] *See* Articles 3 (h) and 4 (h) of the AU Constitutive Act.
[32] For more information on the Africa Citizenship and Discrimination Audit, see http://www.justiceinitiative.org/activities/ec/ec_africacitizenship

and equality.[33] In light of these developments, it was suggested that one of the key questions for exploration through the project and the case studies might be the content of citizenship and the right to nationality, both *de jure* and effective, in African human rights law, based on a study of the pattern of decisions at both a national level and in regional human rights and sub-regional judicial bodies.

Effective nationality

Another question raised was whether or not alternatives to citizenship identity as the basis for state interest and protection could be extrapolated from human rights law. The elaboration of a folder of rights for the non-citizen and of the forcibly displaced, coupled with the conception of individual and collective rights set out in the African Charter, may have set the stage for the beginning of a discussion of a theory of citizenship which is rooted in a state's recognition of a responsibility to protect rather than determined by the existence of a citizen-state link based on traditional categories of bloodline or place of birth. Further, the African Union is in the midst of developing a new Convention on the rights of internally displaced persons, as a complement to the continent's refugee convention, which would identify the scope of protections due persons forced to flee their homes but who remain within the territory of their country of nationality or habitual residence. Thus the question was raised as to whether human rights could be used to flesh out the content of what could be termed as effective nationality.

Participants noted that the development of human rights law has helped to break down the exclusivity of the citizen-state link when it came to identifying the content of, and responsibility for, protection of the human person. The requirement to provide state protection has unquestionably been extended beyond the citizen to all those on the territory, or within the jurisdiction of, a state. As a result, most modern constitutional bills of fundamental rights referred not to the rights of *citizens* but to the rights of *persons*. Early on in the development of human rights law, the UN Refugee Convention on the Status of Refugees had created obligations for states to protect individuals who were unable to rely on the protection of their own states from serious harm. The creation of refugee law constituted one of the first direct challenges to state authority, forcibly inserting the refugee into the new community and establishing a basic status and set of rights to which the persecuted exile was entitled. However, the next logical step in community attachment, namely granting of citizenship, continued to be perceived as a matter that should be left entirely to the discretion of the state.

Thus, although human rights confers basic rights and remedies on the grounds of humanity, the implementation and delivery of the protection granted still requires the establishment of a link between an individual and a particular state. In the refugee context, the trigger is the refugee's flight from the country of origin and presentation to the authorities of the state of refuge. While international organizations with mandates for

[33] See *inter alia*, Amnesty International v. Zambia, 5 May 1999; Union Inter Africaine des Droits de l'Homme and others v. Angola, 11 November 1997; Rencontre Africaine pour la Defense des Droits de l'Homme v. Zambia, October 1997. See more generally, *A Guide to the Use of the African Human Rights System in the Protection of Refugees*, Chaloka Beyani, available from the International Refugee Rights Initiative and the Windle Charitable Trust..

protection, such as the United Nations High Commissioner for Refugees, can be charged with identifying persons of interest and exercising protective or diplomatic functions on behalf of refugees or the displaced, for that protection to be meaningful they must persuade a state to exercise its protection umbrella.

In some respects it could be argued, however, that refugee and human rights law, in its extension of protection to those at risk of great harm who manage to leave their state of origin, has managed to create a kind of "bridge" citizenship. Instead of establishing permanent links to a particular physical territory, refugee status provides for temporary admission to a tangible "territory of human rights" as embodied in the international refugee/non-refoulement protection regime and affirmed through the award of a Refugee Convention Travel Document/passport.[34] Refugee status thus has the potential in theory to function as a kind of doorway to the creation of a new citizenship link: the UN Refugee Convention urges states to "as far as possible facilitate the assimilation and naturalization of refuges" and to "make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings." [35] Once citizenship has been achieved, or the individual re-avails him or herself of the genuine protective umbrella of the state of original citizenship, refugee status ceases.

The importance of having a relevant and functioning national and international legal framework governing citizenship is vital given the vast discrepancy in the experiences of displaced people across the Great Lakes region. In particular, it is important to tease out the divide between the lived reality of displacement and the legal and human rights mechanisms which exist: without a framework that can function effectively at a grassroots level individuals are left unprotected. Essentially, this dilemma lies at the heart of the discussion – the need to generate a legal framework that can regulate belonging and citizenship in a way that both makes sense of, and can be used to improve, the day to day lives of displaced people across the region.

3 CONCLUSION

At the close of the session participants reached agreement on a number of issues. First, that a deeper understanding of perceptions of citizenship and belonging in the region can contribute to more effective advocacy and law making, better protection for displaced persons and, ultimately, reduction in causes of conflict. Second, the three strands of participant expertise – lawyer, activist and sociologist/anthropologist – have much to learn from one another, potentially enriching the capacities of each for more effective work. Third, the dimension of human rights provides a framework that has the potential to pull the three perspectives together and to provide a context for powerful advocacy. Fourth, a networked and regionally coordinated policy and research effort would be highly beneficial, considering the interconnection of issues and populations across borders in the Great Lakes region. Finally, in terms of bringing the findings of the project

[34] The principle of non-refoulement is a cornerstone of refugee law. It bars States from returning anyone to a place where they would risk persecution "for reasons of race, religion, nationality, membership of a particular social group or political opinion." (1951 UN Refugee Convention, art. 33).

[35] 1951 UN Refugee Convention, art. 34.

into the policy arena, it was agreed that there were a number of important standard-setting and policy reform activities underway in the region which present clear advocacy opportunities. Combined together these reflections indicate that the project proposed presents a real opportunity to contribute to the process of resolving conflicts over citizenship and access to citizenship rights, and to promoting the regional incorporation of forcibly displaced populations.

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ANNEX I: SUMMARY OF THE INTERNATIONAL CONFERENCE ON THE GREAT LAKES PROCESS

The International Conference on the Great Lakes is a process jointly sponsored by the AU and the UN, designed to promote peace, security, democracy and development in the region. The idea for the conference was first introduced in the aftermath of the 1994 genocide in Rwanda, an event with profound national and regional consequences. The idea was formally initiated by the UN Secretary-General, Kofi Annan, who assigned Special Envoys to the Great Lakes region to discuss the matter with regional governments in 1996 and 1997. In 1999, a Special Representative of the Secretary-General in the Great Lakes region was appointed, tasked with facilitating UN support for the project. The Conference was endorsed by the Security Council in 2000.[36] As preparations for the conference got underway, and initial agreement on participation was solicited from Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Uganda and the United Republic of Tanzania, each country appointed a National Coordinator for the process. These coordinators met for the first time in Nairobi from June 23-24, 2003.

The Dar es Salaam Declaration

By the time that the Conference convened its first Heads of State meeting in November 2004, the Conference had expanded from six to eleven states (Angola, Central African Republic, Republic of Congo, Sudan, and Zambia had joined). The first stage of the process produced a Declaration on Peace, Security, Democracy and Development (the Dar es Salaam Declaration) which was signed by Heads of State at the November 2004 summit. The Dar es Salaam Declaration is the foundation stone of the Conference's program of regeneration for the region, containing several important provisions related to the rights of refugees and internally-displaced persons. It recognizes the need to address long term refugee crises, promote local integration and voluntary repatriation and to "establish a regional mechanism and national systems enabling resettlement locally." The Declaration also commits states to ensuring that "refugees and displaced persons, upon return to their areas of origin, recover their property with the assistance of local traditional and administrative authorities." In terms of security, it stipulates the creation of a "regional mechanism for the identification, disarmament and separation of combatants from civilian refugees and displaced persons, and their confinement in distinct facilitates to prevent them from manipulating refugees and displaced persons for political or military purposes."[37]

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[36] United Nations Security Council Resolution 1291, February 24, 2000, and United Nations Security Council Resolution 1304 June 16, 2004.

[37] The Declaration on Peace, Security, Democracy and Development was adopted by the Heads of State of eleven African countries (Angola, Burundi, the Central African Republic, the Democratic Republic of Congo, the Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia). The full Declaration is available on the website of the African Union, www.africa-union.org.

The Second Phase

Agreement on the Declaration was only the first step in the process. Following the signature of the Declaration, a Regional Inter-Ministerial Committee began to prepare concrete and achievable draft protocols and programs of action in coordination with the Regional Preparatory Committee, which includes members of civil society.[38] Protocols and programs of action were grouped around four thematic pillars:

- Democracy and good governance;
- Economic development;
- Humanitarian and social issues; and
- Peace and security.

Within each of these thematic pillars regional protocols are being drawn up. Particularly relevant to the situation of the displaced are regional protocols on the protection of the internally displaced and addressing restitution of property to returned refugee and IDPs. Both have now been agreed. Two additional protocols on the prevention and punishment of the crime of genocide, war crimes and crimes against humanity and on the prevention and suppression of violence against women and children also serve to address the root causes of flight. A protocol on statelessness is currently under discussion.

In addition to the elaboration of legal instruments, the Conference process also incorporates a program of action to ensure that the agreed standards are converted into practice. The program of action consists of a series of projects that have been designed by experts and reviewed, first by the Technical Task Force of the Conference, and then by the Regional Preparatory and the Regional Inter-Ministerial Committees.

One project which has been agreed in principle, for example, focuses on the "promotion of compliance with international and regional instruments on human rights, international humanitarian law, statelessness and issuance of identity documents to refugees and displaced persons." This project recognizes that although many regional governments have ratified relevant international instruments for the protection of the displaced, implementation has been uneven. As part of this project it is proposed to conduct a baseline survey to verify whether the 1954 and 1961 UN Conventions on statelessness have been ratified appropriately. This work will include developing awareness-raising and sensitization campaigns, proposing enabling law to provide for domestication of international standards, and developing mandates to monitor compliance.[39]

Another project envisions an analysis of the status of ratifications and harmonization of national procedures with regard to issuing documentation to displaced persons. Other proposed activities involve a regional assessment of the environmental impact, and the restoration and rehabilitation, of human settlement in and around refugee and IDP camps

[38] Dar es Salaam Declaration, Paragraph 76.
[39] *See* Proposed Project Cards, http://www.icglr.org/common/docs/Documents/ProjectCardsHumSoc.pdf for more information.

and settlements. Establishment of a regional disaster management and contingency planning centre is also under consideration.

While the exact structure of the mechanisms that will be employed to implement these projects is still being discussed, it is envisioned that a proposed Regional Centre for the Promotion of Democracy, Good Governance, Human Rights and Civic Education will play a role. This Centre will be mandated to monitor human rights, focusing on marginalized groups and establishing and facilitating observatories for monitoring and observing democracy building, one of which could be an NGO observatory. It is also foreseen that the Centre will promote monitoring through existing mechanisms, such as the NEPAD peer review mechanism.

It is expected that these projects, programs and protocols will be endorsed at a second meeting of the Heads of State, slated for September of 2006. The Conference process is then set to move into a third phase, one that will focus on resource mobilization.

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ANNEX II: AGENDA FOR THE CONSULTATION

Kampala, Uganda

April 6-8, 2005

Wednesday, April 6, 2005

19:00 Dinner

Welcome

Thursday, April 7, 2005

09:00 Introduction

Chair: Dismas Nkunda, Co-Director, International Refugee Rights Initiative

Presenter: Josh DeWind, Director, International Migration Program, Social Science Research Council

Introduction and background to the project (questions)
Agreement on meeting objectives

Participant introductions and presentation of participant work and projects focusing on issues of forced displacement and citizenship

10:30 – 11:00 Coffee

11:00 Combining social science, legal and advocacy perspectives

Chair: Josh DeWind, Director, International Migration Program, Social Science Research Council

Reflections

- The social science perspective – Stephen Jackson, Associate Director, Conflict Prevention and Peace Forum, Social Science Research Council
- The human rights law perspective – Deirdre Clancy, Co-Director, International Refugee Rights Initiative
- An advocate's perspective – Zachary Lomo, Director, Refugee Law Project

13:00 – 14:30 Lunch

14:30 The nexus between citizenship and forced migration in the Great Lakes region – key themes and challenges

Chair: Deirdre Clancy, Co-Director, International Refugee Rights Initiative

- Identification of key themes/questions
- Are country specific, common subject matter or population themes emergent?

16:00 – 16:30 Coffee

16:30 Discussion (Continued)

18:00 Close of session

Friday, April 8, 2005

09:00 Summary of previous day's discussion

09.15 Defining a Research Agenda

Chair: Josh DeWind, Director, International Migration Program, Social Science Research Council

Reflections:

- The relationship between research and advocacy – tensions and potentials: Refugee Law Project (a conversation on possible models)
- Angela Khaminwa, Open Society Justice Initiative

Group discussion of disciplinary challenges

10:30 – 11:00 Coffee

11:00 Issues and Possible Case Studies

Chair: Dismas Nkunda, Co-Director, International Refugee Rights Initiative

- Which questions might benefit from a tripartite law/social science/advocacy strategy research project?
- How might projects be clustered? Optimal case study criteria?

13:00 – 14:30 Lunch

14:30 Developing Projects

Chair: Josh DeWind, Director, International Migration Program, Social Science Research Council

- Development of possible case studies/projects
- Country specific/disciplinary or subject expertise working groups

15:30-15:45 Coffee break

15:45 Going Forward

Chair: Dismas Nkunda, Co-Director, International Refugee Rights Initiative

- Methodological issues
- Development of the project, defining the process and schedule.

17:00 Close of Session

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