

3rd meeting

**UNHCR'S ROLE IN NATIONAL LEGAL AND JUDICIAL CAPACITY-
BUILDING**

I. INTRODUCTION

1. "National legal and judicial capacity-building" in the context of UNHCR's activities is understood as providing assistance and support to States in their efforts to develop the structures and operational systems which will enable refugees, returnees and others of concern to benefit from effective national protection. It also aims at strengthening the skills, knowledge and sustained ability of Governments, other local entities and non-governmental partners in this area. It is carried out in concert with intergovernmental and non-governmental organizations (NGOs), as well as other United Nations agencies.
2. The ultimate goal of such capacity-building is to enhance the capacity of States to meet their international legal obligations and to strengthen the rule of law and respect for human rights in those States.
3. Traditionally, UNHCR's actions in support of national legal and judicial capacity-building were focused mainly on countries of asylum. These activities included support to States in their efforts to establish national authority for refugee/asylum issues; implement fair and efficient refugee status determination procedures; receive, care for and integrate refugees into their societies; draft equitable laws on issues such as nationality and citizenship; and depoliticize and strengthen the judiciary.
4. More recently, the Office has expanded its approach to include a focus on countries of origin, with the aim of preventing further displacement and enhancing national protection, especially for returnees. UNHCR's actions in support of national legal and judicial capacity-building contribute to the broader international objective of enhancing systems of governance in countries of origin.

**II. THE LEGAL BASIS FOR UNHCR'S LEGAL AND JUDICIAL CAPACITY-BUILDING
ACTIVITIES**

5. UNHCR's support for legal and judicial capacity-building is a necessary part of its overall responsibility for refugees and derives from its mandate to seek lasting durable solutions to refugee problems. At its forty-sixth session, the Executive Committee of the High Commissioner's Programme clearly endorsed the need for UNHCR to promote legal and judicial capacity-building. The Executive Committee recognized in its General conclusion on International Protection that for States to fulfil their humanitarian responsibilities in receiving refugees and in reintegrating returning refugees, and in addressing some of the causes of refugee movements, an effective human rights regime is essential, including institutions which sustain the rule of law, justice and accountability; and in this connection call[ed] on UNHCR to strengthen its activities in support of national legal and judicial capacity-building, where necessary, in cooperation with the United Nations High Commissioner for Human Rights. (A/AC.96/860, para.19 (i))
6. The General Assembly reaffirmed in its resolution A/50/152 of 21 December 1995 that the effective promotion and protection of human rights and fundamental freedoms, are essential

means of addressing some of the causes of refugee movements and helping States to reintegrate their returning refugees. In this connection, it called on the Office to strengthen its support of national efforts at legal and judicial capacity-building.

III. THE NEED FOR LEGAL AND JUDICIAL CAPACITY-BUILDING

7. Refugee protection activities fall within the broader human rights framework. While national institutions have a substantial, or even primary, role to play in the effective protection of human rights, they often need to be complemented by international efforts. Traditional legal structures exist in most countries, but they may not always be accessible or effective. In some countries, the legal systems may need to be revived or revamped. In others, prolonged conflict has destroyed existing civil institutions. In such situations, support for national legal and judicial capacity-building is indispensable.

8. Support of this kind plays a crucial role in ensuring the feasibility and the lasting nature of solutions to refugee problems. In particular, the durability of voluntary repatriation is largely dependent on the level of protection and related reintegration assistance extended to returnees to facilitate their re-establishment in the country of origin.

9. In this regard, the re-establishment or the strengthening of the rule of law is often a key prerequisite. In order for returnees to feel secure, and in order to ensure that the rights of returnees are respected, it is imperative that they have confidence in the legal system, and can bring claims before the courts or other conflict resolution mechanisms to resolve disputes. For example, in some societies to which refugees are now returning, in addition to the problems created by the destruction of property, there is the difficulty of resolving disputes of ownership or occupancy rights. Moreover, one of the most debilitating factors often associated with conflict is the loss of highly skilled professional and technical specialists, including judges and lawyers.

10. In some Central European States, societies need special support from the international community in efforts to transform their legal systems to reflect changed realities or fill the gaps in existing legislation. This need may be exacerbated by the absence of a well-established civil society, or the low priority given to refugee issues by countries which are more concerned with immediate socio-economic and political transition issues.

11. Institutions responsible for sustaining the rule of law can also play an important role in removing the underlying causes of refugee movements. In this sense, helping to build national legal and judicial capacity can serve as concrete preventive action.

IV. SPECIFIC ACTIVITIES

12. Some of the most comprehensive programmes undertaken by the Office in support of national legal judicial and capacity-building have been in the Central Asian region.

13. In Tajikistan, UNHCR is carrying out a judicial assistance programme whose main objective is to provide technical support and training to the judiciary and law enforcement organs. The aim is to promote their active contribution to the reconciliation and peace-building process in post-conflict areas, particularly in the primary returnee areas. In the last two years, assistance has been provided to the Government of Tajikistan through limited material support for building an independent judiciary, and strengthening lawyers' associations, among others. UNHCR has also been directly involved in drafting and promoting the adoption of human rights and refugee legislation.

14. In addition to a series of seminars and workshops for Tajik government officials conducted in 1995 on issues such as refugee law and the role of the judiciary, comparative legal systems and judicial decision-making, the Office intends to support the establishment of a panel of experienced judges to act as a nucleus to train their colleagues. UNHCR also has arranged for the low-cost publication, in Dushanbe, of relevant laws passed in the last four years, to be distributed to judges, prosecutors, government departments, universities and the main national library. This is being done with the assistance of the Organization for Security and Cooperation in

Europe (OSCE). In addition, legal textbooks are to be provided to the courts, law faculties and the national library. This programme is being extended to other Central Asian Republics.

15. In Central Europe, in addition to promoting accessions to refugee law and select human rights instruments, the Office has provided advisory services to various Governments in preparing draft implementing legislation in the following fields: refugee law, aliens' law, citizenship law and select human rights legislation (including protection of minorities, the civil service, independence of the judiciary, laws on NGOs, and legislation on Ombudspersons).

16. A wide range of activity has taken place in several other regions. In southern Africa, in the last two years over 1,000 national officials have been trained by the Office in refugee law and related protection issues in order to enhance their ability to protect persons in need. Trainees have included staff of the police, army, justice and foreign affairs ministries as well as NGOs engaged in social and legal counselling.

17. In Rwanda, relevant activities have included: providing logistical support to the Ministry of Justice; contributing financially to, as well as providing documentation and administrative assistance for, the judicial system; initiating a programme with NGOs to train women on issues relating to property and succession rights; organizing and financing seminars in all communes jointly with the United Nations Centre for Human Rights, the Ministry of Justice and the local authorities on preventive detention and arrest procedures; and distributing office equipment to the tribunals and other national authorities, as well as to the Law Faculty of the University of Butare. The aim of this assistance is to further assure equal access to legal redress for returnees, long-term residents and new settlers alike.

18. In many countries, such as in Angola, Mozambique and Guatemala, UNHCR is assisting in the repair of basic infrastructure and provision of basic materials, and providing limited but focused financial aid to support emerging government and non-governmental structures (office equipment, documentation and translations).

19. In Central America, in addition to renewed collaboration with institutions such as the Inter-American Institute of Human Rights, UNHCR is setting up, through a series of Memoranda of Understanding, a protection network with NGOs, Governments and other relevant institutions aimed at promoting and helping to enact refugee-related legislation, implementing training activities, and serving as a key component of preparedness measures, including early warning systems.

20. Activities in support of national legal and judicial capacity-building require a broad range of experience and expertise which may not be found in a single entity. Thus, in providing support to national authorities, UNHCR has cooperated and continues to collaborate with relevant United Nations agencies, international organizations and NGOs, including in particular the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross.

V. CONCLUSION

21. While support for national legal and judicial capacity-building should generally be demand-driven, there are situations in which initiatives for such activity have to be taken by the Office, particularly in those countries which may not be aware of the full range of assistance or support that they could receive from the international community. However, in order to avoid a situation of dependency by the national authorities on external actors, it is imperative that projects and activities in support of national legal and judicial capacity-building be clearly defined with specific objectives, time-frames and phase-out periods.

22. In this area, UNHCR aims to gradually phase out of projects in support of national legal and judicial capacity-building in order to encourage and enable national systems and local staff to assume greater responsibility and leadership in the process. Towards this end, it is essential that the Office involve as broad a range of parties in these projects as possible from the outset.

23. Although the Office has supported national legal and judicial capacity-building in countries of asylum for decades, its support for national legal and judicial capacity-building in

countries of origin is still evolving. As indicated, and as confirmed by last year's Executive Committee conclusion and the General Assembly resolution cited earlier in this document, support for legal and judicial capacity-building is an indispensable part of the work of the Office. It helps States to fulfil their international legal obligations and to reintegrate returning refugees; and, above all, it helps address some of the root causes of refugee movements.

24. Selected UNHCR Field Offices with experience, or strong potential, in this area are being asked to prepare brief strategy papers delineating the ways in which they would propose to pursue legal and judicial capacity-building in their respective countries/regions. The objective of this exercise is, among others, to identify approaches which could serve as illustrative models for the development of legal and judicial capacity-building activities in other locations worldwide, and to obtain a preliminary indication of the resources required to carry out these activities in a programmatic manner.

25. There is clearly a need to strengthen the ability of UNHCR effectively to provide support to States in their efforts to enhance national legal institutions and capacities in order to strengthen the rule of law. Successful efforts in this area should be to the benefit of all, including refugees, returnees and the internally displaced.