

Challenging RSD clients' preferences for foreign service providers

Christian Pangilinan

Organisations that provide legal services to refugees and asylum seekers face the challenge of responding ethically to clients' requests to be assisted by foreigners as opposed to by nationals in country offices.

NGOs that provide support in the Global South for refugees and asylum seekers in the refugee status determination process (RSD) or with respect to asylum claims usually host both domestic and foreign attorneys in their offices. What, then, should their response be when a client asks that they be served by a foreigner rather than a national attorney or legal advisor?

There are a number of reasons why asylum seekers might request a foreign attorney. Their interactions with citizens of the country of asylum may have been negative and they may think that attorneys from the country of asylum would be similarly unfriendly; some asylum seekers fleeing ethnic or tribal conflict may believe national attorneys might favour one or other side to the conflict; others may believe that a foreign attorney is more likely to be taken seriously by UNHCR or by the government of the country of asylum; and, finally, some asylum seekers may hope that foreign legal aid attorneys from countries that asylum seekers wish to be resettled to might be able to facilitate such resettlement.

Legal aid organisations need to be prepared to respond to such situations when they arise. Existing ethical codes do not address these situations, and there is very little literature on how attorneys should respond when clients express a national preference regarding their attorney; the literature that does exist does not address situations where clients seek attorneys of their own rather than another nationality.

Organisations should adopt a policy of not assigning attorneys to clients on the basis of clients' preferences for foreign attorneys, for the following reasons:

- Clients' preferences for foreign attorneys are unlikely to be well-informed. Foreign attorneys are unlikely to be taken more seriously than a national attorney; they are unlikely to be better able to assure resettlement for their clients; and they do not have access to a 'back door' for resettlement to their own countries.
- National attorneys are likely to be more effective advocates for their clients, facing fewer linguistic

barriers when communicating with clients or when reading client documents.

- A preference for a foreign attorney when a national attorney is equally or more qualified, equally or more able to handle that particular case, or equally or more experienced is unfairly discriminatory. Refugee lawyers should be the last to perpetuate stereotypes.
- In a multinational environment dependent on effective cooperation between national and foreign staff, service providers need to be assured that they are being treated on the basis of their ability – not their nationality.

Legal aid organisations should encourage open discussion with clients about a preference for a foreign attorney. By doing this, the attending attorney can inquire as to why the client is expressing that preference, explain to the client the organisation's policy (and the reasons for that policy), and explain what the client can do if the client is dissatisfied with his or her legal representation. By encouraging the client to communicate his or her concerns openly and responding to them methodically, the attorney may be able to establish a more open and communicative attorney-client relationship.

The organisation's policy on handling client preferences for particular attorneys should be mainstreamed into attorney training and development, for both current and incoming attorneys. A particularly important goal of training should be to encourage national staff not to seek to transfer cases or clients when a client expresses an interest in a foreign attorney. Legal aid supervisors may find it difficult to encourage national staff to take on cases where the clients are perceived as lacking confidence in them but the effectiveness of a policy against discriminating on the basis of national origin also depends on the willingness of national staff to challenge clients' preconceptions.

Christian Pangilinan christiandpangilinan@gmail.com is a Volunteer Legal Advocate and Georgetown Fellow with Asylum Access Tanzania www.asylumaccess.org The views expressed here do not necessarily represent those of Asylum Access.