



Realizing Refugee Rights  
in Africa, Asia and Latin America

## The Nairobi Code: Hypotheticals and Answers

**Question 1:** A man comes to you wanting to seek asylum here, claiming persecution by the political group currently in power in his country. He also claims that his government will persecute him if he is forced to return and that some embassy officials are even looking for him in this country. You get some details from him and ask him to come back for a follow up meeting so you can look further into the situation.

Before you meet with him again, you do some human rights research and realize that members of this man's political party are human rights violators, and it is likely that he committed atrocities against others. When he comes in, you inform him of what you learned and advise him that it would not be a good legal decision for him to apply for asylum because his application will be rejected. He responds that he did participate in human rights violations, including rape, but tells you he was justified because he was acting in self-defense. He tells you that therefore he should be eligible for asylum.

**Answer to Question 1:** You can not ethically represent him if you believe he has no claim to asylum. You should explain to him the bars to asylum in the 1951 Convention, and, if you feel it is necessary, you can even read the language to him (i.e. if he does not believe you). Further explain that he does have the right to apply on his own (pro se), but that you wouldn't advise it. You may also want to have someone with you for your own safety when you have this discussion with him.

**Question 2:** The following week, this man's wife requests legal assistance in filing her asylum claim for imputed political opinion based on her husband's political activities. She knows nothing about her husband's past and believes that he is a heroic freedom fighter.

**Answer to Question 2:** This client may have her own independent asylum claim due to her husband's political activities, however unsavory, even if he is barred from asylum. For example, she may be targeted in revenge or as a means to get to him. However, you can not tell her anything about her husband, or advise her based on information you learned from her husband.

If there is another organization that can provide legal advice or representation, you should refer her that organization. If there is no other organization that could provide legal assistance, talk with your supervisor about referring her to another legal advisor and creating safeguards to ensure that none of the husband's information is shared with the new legal advisor. If there are no other legal advisors available, talk with your supervisor about whether you can provide basic advice to this client without revealing any of the information you have learned from or about her husband.

If you are the only legal advisor available, you may need to advise the client that you can only provide her with limited legal advice because you are not ethically permitted to discuss anything



you have learned from her husband. You may also want to encourage her to talk to her husband about what he was advised, and hope he tells her. If she knows the name of the political party or any other information, you can give her advice based solely on Country of Origin Information (COI) because it is independently verifiable.

**Question 3:** A 21-year-old man was separated from his father and six siblings as a teenager when his house was attacked in his country of origin. His father and siblings fled to one country, and he fled to another, where he stayed for five years. After years in a refugee camp, his father and siblings have been resettled to the U.S. He has also been approved for resettlement through his father's refugee status. He had a hard time getting an appointment at the embassy in his first country of refuge, so he now came to this country to try his luck at the embassy here. He has been having a hard time getting through the embassy process.

You agree to help him and are able to arrange an appointment with the embassy for visa processing. In the course of assisting him, you learn that he was married and had a child in the second country. Married adults are not permitted to resettle under their parent's refugee status. You are aware that he will not return to his first country of refuge and will not see his wife and child again. You are also aware that the wife and child will be better off financially if he is working in the U.S. and not living as a self-settled refugee in this country.

**Answer to Question 3:** You have to advise him that he is not eligible for refugee resettlement because he is married. You also have to advise him to be truthful in his resettlement application. As a legal representative you cannot ethically present his claim to the embassy knowing he is ineligible for refugee resettlement. However, you can withdraw from representation and let him decide what to tell the embassy or what to tell his next legal advisor. You should not accompany him to the embassy, as this would involve assisting a misrepresentation. You are not obligated to cancel his appointment with the embassy, as you provided this assistance before you knew of the misrepresentation. And, of course, you are not permitted to tell the embassy that he is married unless you have his express permission.

**Question 4:** You become aware that one of your interpreters is selling testimonies to refugees. Sometimes asylum seekers with valid claims believe that a testimony written by an experienced professional is more likely to achieve refugee status than their own testimony. Sometimes they are too ashamed to tell what really happened to them. You believe that your clients have valid claims and are not recipients of his fabricated testimonies. Even though your interpreter is selling testimonies, he is a good interpreter, and you do not have any other way to communicate with your clients. He is also a recognized refugee himself and you do not want to cause legal problems for him.

**Answer to Question 4:** Let your supervisor decide. If you are the supervisor, you probably should let this interpreter go, even if it may harm other cases. You have no obligation to report



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this interpreter, however, if he has harmed the asylum claims of any clients in the office, it is your duty to try and repair any damage this might have caused for those clients who were deceived. In the future, always try and cultivate relationships with more than one interpreter.

**Question 5:** You are taking testimony from an asylum seeker who you believe is giving you false information. As in many of these claims, there is no means of independent verification. You know that this client comes from a region that is volatile and an ethnic group that is in serious danger, but the details of her personal story don't add up.

**Answer to Question 5:** You can not present something you know to be a lie or a misrepresentation. However, when you suspect something may be a lie or misrepresentation but are not sure, you are not required to withdraw from representation. Be sensitive to the implications of representing someone who presents a false story: you could be representing a human rights violator. In addition, the legal aid organization's credibility could be impaired by representing clients who present false information, and your time is taken away from other clients. This is one reason why it is important to be familiar with the Country of Origin Information (COI) and the human rights situation in each country your clients come from.

**Question 5A:** Your client gives you what you believe is true information, then testifies to a misrepresentation in an RSD proceeding.

**Answer to Question 5A:** As soon as you hear a misrepresentation, ask for a break from the proceedings and speak with your client privately. If it is not possible to speak privately with your client at the RSD proceeding, you should ask to continue the proceeding after lunch or on another day. You are not required to inform the tribunal of your client's misrepresentation, but if the misrepresentation is central to the asylum claim and you cannot convince your client to correct the misrepresentation promptly, you will have to withdraw from representation. You may not, under any circumstances, make a misrepresentation to the tribunal.

**Question 5B:** Your client gives you true information you know might harm their claim.

**Answer to Question 5B:** You cannot lie, but you are under no ethical obligation to disclose everything your client tells you. It is your job as the legal advisor to decide how to present the claim effectively. This is true, of course, unless the information causes you to believe they are not eligible for refugee status. In that case, you cannot ethically continue to represent the client.