asylum access
Realizing Refugee Rights in Africa, Asia and Latin America

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Disclosure of evidence in UNHCR's refugee status determination procedures

Critique and recommendations for reform

People who apply to be recognized as refugees should generally have access to the evidence considered in their cases. UNHCR has endorsed this basic principle of fairness as a safeguard against errant rejections of genuine refugees.

UNHCR's policies for its own refugee status determination (RSD) procedures lead to the withholding of substantial evidence in routine cases, including transcripts of applicants' own interviews. This widespread withholding of evidence raises concerns about the fairness and reliability of the agency's RSD procedures in 80 countries around the world, affecting more than 100,000 people every year.

This report makes concrete proposals for how the UNHCR can reduce the gap between generally accepted principles and its own operational policies.

1) Introduction

We offer this commentary as a contribution to the office of the UN High Commissioner for Refugees' commitment to bringing its refugee status determination procedures into conformity with minimum standards of fairness and due process. Our concern is very practical, and central to UNHCR's mandate: Unfair procedures lead refugees who are in danger of persecution to be errantly refused protection. Unfair procedures can lead people to be detained, tortured or worse. Though procedures are technical, the stakes in fairness are high.

There are many elements of a fair refugee status determination (RSD) procedure, including access to a personal interview, legal assistance, qualified interpreters, impartial decision-making by a trained adjudicator, clear standards and individualized written reasons for decisions, and availability of an independent appeal. Access to evidence is one of the most critical of all protections, because it is essential to the function of other parts of the process. Even the best adjudicators will not be able to reach reliable assessments of applicant credibility if the applicants cannot review the record of their interview for errors or misunderstandings, and they may unknowingly underestimate the risks to a person's life if the person cannot respond to evidence that initially appears to weaken their refugee claims. Even the best legal advocates will not be able to adequately advise clients or advocate for them if they do not know all of the evidence being considered. Reasons for rejection will often be incomprehensible if the applicant and her lawyer cannot review them in light of the evidence that was considered. Without access to evidence, rejected applicants, even with trained lawyers, will have to rely on guesswork to file effective appeals.

For several years, refugee rights NGOs have criticized UNHCR for withholding from scrutiny substantial pieces of evidence that are considered in RSD. Although NGOs generally welcomed UNHCR's 2005 publication of *Procedural Standards for RSD under UNHCR's Mandate*, there was disappointment about lack of progress in easing asylum-seekers' access to evidence. However, during the 2007 Annual Consultations between UNHCR and NGOs it became evident that there may be confusion about the reason for these criticisms. The possibility was raised that the problem may not be a matter of UNHCR policy, but rather the way existing policy is applied by the dozens of field offices that perform RSD under UNHCR's mandate.

In practice, from the experience of Asylum Access and reports we have gathered from legal aid colleagues in multiple countries, UNHCR field offices generally do not provide asylum-seekers or their legal representatives copies of documents

that are critical to UNHCR's decision-making on their cases. These documents include transcripts of applicants' own interviews at UNHCR, in some cases medical reports solicited by UNHCR, statements of other witnesses or experts, and country of origin information. We believe that this practice is a striking departure from established notions of fairness and due process, because they allow a person who claims to fear for her life or freedom to be denied protection based on evidence that she cannot scrutinize, explain or rebut. We have seen alarming cases where this practice allowed errant rejections of refugee claims, with potentially tragic results.

UNHCR's evidence policy appears to have contributed to the failure of the agency to correctly assess the risk of lashing to an Iranian couple in the European Court of Human Rights case of *D. v. Turkey*.[1] In that case, UNHCR concluded that the couple accused of an illicit relationship in Iran faced a risk of only a "symbolic" lashing.[2] UNHCR stated that it based this conclusion on "information available,"[3] but as the couple argued in court UNHCR did not disclose the information so that the couple could respond to it.[4] UNHCR's conclusion turned out, in the eyes of the European Court, to be a serious factual and legal error.[5] Very few asylum-seekers are fortunate enough to be able to challenge UNHCR rejections in the European Court or in any other judicial body. It is thus essential that safeguards be in place to prevent errors like this one.

Despite these concerns, we have reason to believe that there is in fact little disagreement between UNHCR and NGOs about the general principles that should govern disclosure of evidence to RSD applicants. Rather, the problem appears to be located in the implementation of these general principles in the specific rules of the *Procedural Standards*. We are encouraged that UNHCR is interested in addressing these concerns, and we thus offer these comments and suggestions, calling for revisions in UNHCR's *Procedural Standards*.

2) General Principles

The need for procedural fairness is hardly unique to refugee status determination, but it has particular importance in RSD because of the tragic consequences of errant rejections of refugee claims. Basic procedural fairness requires that individuals' whose rights are at stake in an

[1] ECHR Application No. 24245/03 (22 June 2006).
[2] Id. at para. 28.
[3] Id.
[4] Id. at para. 43.
[5] Id. at para. 51.

adjudication have the opportunity to review and reply to the evidence considered in their cases.

We believe that UNHCR correctly articulated applicable standards in its 2003 and 2005 comments to the Council of Europe.[6] In these documents, UNHCR criticized rules that would allow sources of evidence in RSD to be withheld from asylum-seekers or their counsel. UNHCR said on 29 March 2005 that it was "concerned that this would leave asylum-seekers and decision-makers in unequal positions and limit applicants' possibility to challenge factual errors." UNHCR instead advised that evidence should be withheld "only in clearly defined cases" involving threats to "national security or the security of organizations or persons providing the information in question."

UNHCR's comments closely echoed the European Court of Human Rights' 1986 judgment in *Feldebrugge v. The Netherlands*,[7] which embraced the principle of "equality of arms" in administrative adjudication. The *Feldebrugge* case concerned the rejection of a woman's application for disability-related unemployment insurance, and thus concerned a civil right with considerably lower stakes than the life or death context of refugee status determination.[8] Feldebrugge had been denied a benefit on the basis of medical opinions that she was not permitted to see. The medical experts had allowed her to submit comments before they gave their opinions, just as UNHCR allows refugee applicants to submit evidence and arguments in refugee status determination. But the European court concluded that this was not adequate to provide a fair hearing, since she was not allowed

> the opportunity to consult the evidence in the case-file, in particular the two reports which were the basis of the decision … Whilst the experts admittedly examined Mrs. Feldebrugge and gave her the opportunity to formulate any comments she might have had, the resultant failing was not thereby cured.[9]

We also note that UNHCR's Department of International Protection Services Director George Okoth-Obbo made very positive comments in regard to access to evidence in his 26 September 2006 letter to NGOs. He wrote: "The circumstances in which it would be appropriate or permitted to withhold

[6] UNHCR submitted these comments as "observations" on the European Commission's proposals for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status.
[7] Application no. 8562/79.
[8] The case arose under the European Convention on Human Rights and Fundamental Freedoms, article 6(1), which guarantees a "fair" hearing "in the determination of his civil rights and obligations. This European provision closely mirrors the International Covenant on Civil and Political Rights' article 14, which similarly guarantees a "fair" hearing" in any "determination … of his rights or obligations in a suit at law." Administrative adjudication, even in non-adversarial contexts, fall under these provisions so long as there is a substantive right at stake. *See Feldebrugge* judgment at para. 26.
[9] Feldebrugge judgment at para. 44.

disclosure of information that is considered to be material to an Applicant's claim are exceptional." He also explained that, in his view, UNHCR's *Procedural Standards* provide that "all available measures are taken to ensure that the Applicant is not unduly denied the opportunity to challenge or explain the facts in question."

We thus believe that UNHCR has essentially already embraced a sound general approach to evidence in the context of refugee status determination, including two basic principles:

1) **As a general rule, both applicants and decision-makers should have equal access to the evidence considered in the RSD decision.**

2) **In unusual and clearly defined cases an exception may be made to this general rule where necessary to protect the security of other parties (including especially UNHCR staff and third party witnesses).**

The remainder of this paper contains comments and recommendations aimed and bringing UNHCR's *Procedural Standards* in line with these general principles.

3) Specific concerns and recommendations regarding UNHCR's *Procedural Standards*

Departure from general principles: § 2.1.2

The primary source of concern about UNHCR withholding evidence in RSD can be traced to a single bullet-pointed paragraph found in the *Procedural Standards*, § 2.1.2, page 2-3.[10] It reads as follows:

> Individuals who seek information from their own UNHCR file should be permitted to receive originals or copies of all documents they provided to UNHCR, or of which they are the source. Disclosure of documents generated by UNHCR or a source other than the individual concerned should only be made where the conditions for disclosure set out [elsewhere in the *Procedural Standards*] are met, and should require the approval of a Protection staff member designated under established confidentiality procedures in the

[10] This bullet point appears to repeat a rule found in an internal set of "Confidentiality Guidelines" issued by DIPS in August 2001.

> UNHCR office. As a general rule, UNHCR interview transcripts and notes should not be disclosed, however the interview transcript taken directly from the Applicant's own statement may be read back to the Applicant during the interview. Disclosure of the reasons for an RSD decision should be governed by the considerations set out in §6 – Notification of RSD Decisions and § 4.8.6 – Confidentiality in Exclusion Cases.[11]

This rule is a substantial departure from the general principles to which we understand UNHCR to be committed. Rather than state a general rule that applicants and decision-makers should be on an equal footing, and that non-disclosure should be exceptional, this rule essentially makes disclosure itself the exception.

This rule explains why so much critical evidence is withheld by UNHCR field offices from the people concerned, absent special approval to release it. Applicants generally will only have free access to the evidence that they have themselves submitted. But in order for applicants to be able to correct, rebut or clarify evidence they most need to have access to the evidence that UNHCR has obtained elsewhere.

Most striking, applicants are prohibited from obtaining transcripts of their own interviews, a restriction that we believe to be entirely unjustifiable and contrary to UNHCR's commitment to basic transparency and due process. The European Union's directive on minimum procedures in asylum cases – which has been criticized by UNHCR and others for inadequately protecting refugees – states:

> Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.[12]

We believe that UNHCR should not choose to fall below even the highly minimal standards of the EU in this area. In most RSD cases, an applicant's own testimony is the main source of evidence substantiating his or her refugee claim, and the detail contained in an interview transcript is likely to be the primary basis for credibility assessment. Interview transcripts are thus generally the most important documents in most RSD cases, and errors – even relatively small errors – in the transcripts can be a major source of errant decision-making.

[11] Despite our concerns about this bullet-point, we fully concur with the rule set out in the following paragraph on the same page, § 2.1.2, page 2-3, governing disclosure to legal representatives.
[12] COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, art. 14(2).

By way of example, an attorney associated with Asylum Access recently handled an appeal RSD case at a UNHCR field office where the applicant said in her appeal interview that most of her family remained in Eritrea but were not in jail. She was told that during her first instance interview, before she was initially rejected by UNHCR, that she had said, "All my family are in prison." The woman, who had complained of poor interpretation in her first interview, replied, "I was not asked whether they were in prison. I was asked if they were in Asmara, and I said yes, they are all in Asmara." Given that UNHCR considers such discrepancies in its assessment of applicant credibility, and that negative credibility assessments are a major cause of rejections, it is difficult to see how withholding of interview transcripts can serve UNHCR's purposes of correctly identifying *bona fide* refugees. By this policy, we fear that UNHCR is obstructing an important mechanism of preventing dangerous mistakes in refugee status determination.

Beyond these specific critiques of the terms of this rule, we would raise concern that the rule may contribute to an apparent culture of secrecy about RSD-related documents that some legal aid organizations have found with some UNHCR field staff and offices. UNHCR has indicated elsewhere that withholding information should be exceptional. One would expect that special criteria and approval should be required to avoid disclosure. Yet the rule at §2.1.2 requires special criteria and approval *to disclose* information. It thus deters disclosure in general. Although the rule in technical terms might actually allow UNHCR officials to approve some disclosure, the structure of the rule sends a message to junior UNHCR staff that sharing evidence with asylum-seekers is something discouraged by UNHCR. The structure of this rule is considerably different from what one would expect from Director Okoth-Obbo's letters or the High Commissioner's statements to the Council of Europe.

Confusion on the part of field offices may result from the fact that the key rule in § 2.1.2 is found in a single bullet point (at page 2-3) of a larger section governing confidentiality and disclosure to third parties. Confidentiality typically concerns disclosure of private information to third parties, which should of course be highly restricted with refugee cases. But it is potentially confusing that by inclusion in this section restrictions on disclosure of evidence to the person concerned have been implicitly explained by concerns for confidentiality. We would urge UNHCR to make clear distinctions between disclosure to third parties, and disclosure to Applicants themselves. These are two very different issues; it makes sense in terms of confidentiality to prohibit sharing interview transcripts with third parties, but it does not make sense to withhold them from the person who was interviewed.

In informal dialogue with UNHCR officials, questions have been raised about whether the particular operational challenges facing some UNHCR offices might justify UNHCR withholding interview transcripts from the people who have been interviewed. First, UNHCR generally believes that it conducts RSD with fewer

resources than governments. Second, UNHCR conducts RSD in countries whose governments may be hostile to refugees, and has concerns that providing copies of interview transcripts to applicants would lead to breaches of confidentiality and could put refugees in danger. Third, questions have been raised about whether evidence disclosure would be necessary if UNHCR improves the specificity of reasons for rejection given to refugee applicants and strengthens its appeal system. Although neither reform has been accomplished yet, UNHCR has indicated an intention to do both, and has initiated a pilot program to improve the provision of individualized rejection letters in some field offices.

The resource question is quite complicated; UNHCR probably does have fewer resources than some governments, but it is not clear whether this is always the case. UNHCR has a mandate to promote refugee protection globally, not only in wealthy countries of Europe and North America. Relatively limited resources cannot justify risky RSD procedures, and provides UNHCR an opportunity to lead governments by example. However, since it costs little to provide applicants copies of transcripts and other evidence, resources do not appear to be the main challenge at hand.

We propose that UNHCR provide copies of transcripts and other evidence to applicants *if they request it*. If there is a security risk to refugees in holding these documents, the refugees can choose not to request them. Where UNHCR believes such risks to be acute, there would be no objection to UNHCR counseling applicants accordingly. But the choice about whether to receive the evidence must be left to the individual concerned. For UNHCR to make the choice over the wishes of asylum-seekers would be paternalistic, and potentially self-serving since disclosure might reveal UNHCR errors in some cases.

The greatest danger to a refugee in RSD will usually be a risk of an errant rejection of her application, which would put her in immediate danger of detention and *refoulement*. The best way to keep refugees safe in practice will usually be to make sure that RSD procedures are fully fair and reliable. It should be recalled that written documents describing people's refugee claims are produced outside UNHCR offices wherever UNHCR conducts RSD. Legal aid programs produce personal statements for clients, and more commonly refugees produce them for themselves (sometimes with assistance of varying quality from other refugees). UNHCR requires or at least encourages refugee applicants to produce and submit these documents as part of the registration and RSD procedure. If there is a danger in such testimonies circulating, then the danger is already present. In this respect, it is difficult to see the added danger stemming from allowing people to have a copy of the interview transcript that UNHCR actually uses to decide their cases.

Disclosure of evidence is a safeguard that makes other safeguards more effective, including providing detailed reasons for rejection and an independent

appeal. To argue that disclosure of evidence might not be necessary if other safeguards are in place is effectively circular. If applicants cannot see and rebut evidence (or an errant interview transcript), then even a fully independent appeals officer will not realize there is problem with the evidence. Moreover, even if a skilled UNHCR official might catch a mistake, limited disclosure reduces the overall margin for error and thus makes the RSD procedure more high risk. UNHCR's own concerns about its limited resources heighten this problem; if RSD adjudicators in UNHCR field offices are overworked or inadequately trained, they will be less effective in catching mistakes. Applicants themselves have more incentive and more knowledge by which to catch mistakes in their files than any other person involved in the process. Restricting applicants from reviewing their own files is not just unfair; in a refugee context it is dangerous.

RECOMMENDATION

A specific, separate section of the *Procedural Standards* should be developed governing disclosure of evidence to applicants. This section should be clearly distinct from the rules governing confidentiality and disclosure to third parties.

The operative paragraph in § 2.1.2 should be deleted and replaced with a revised rule based on the general principles already embraced by UNHCR elsewhere. We suggest the following text as a starting point, based on language that UNHCR has already embraced in other documents or in other sections of *the Procedural Standards* themselves:

> **In UNHCR RSD procedures, applicants and decision-makers should in general be in equal positions in terms of access to evidence. As a general rule, due process requires that the individual be informed of any evidence that is relevant to their refugee status determination before a decision is rendered, and if they request should be given copies of all such evidence or, in the case of easily accessible evidence that is in the public domain, applicants should be given specific references to the sources considered in their cases. This disclosure, if requested by the applicant, should include in all cases transcripts of their interviews with UNHCR. It may also include (but is not limited to) statements by other witnesses, country of origin information, documentary evidence, and expert (i.e. medical or psychological) evaluations.**
>
> **In clearly defined and exceptional cases raising particular security concerns, specific pieces of evidence may be withheld from disclosure. Non-disclosure may be justified only**

under the limited and exclusive criteria set out (below) and should require the approval of a Protection staff member designated under established procedures in the UNHCR office. In any case of non-disclosure, applicants must be clearly informed in writing that there is a piece of evidence considered in their cases which cannot be provided to them, and should be informed of the reason for non-disclosure and the general nature of the evidence to the maximum degree possible without raising security risks.

Defining exceptional cases justifying non-disclosure

As described above in the discussion on general principles, in some rare cases legitimate security concerns may justify non-disclosure of certain evidence to applicants. However, such non-disclosure should be narrowly defined and rare; the exception should not swallow the rule. As already recommended, non-disclosure should require special approval by a higher ranking official, and should involve written notification to the affected applicant. Such procedural steps can help to maintain non-disclosure as a rare exception, and also introduce an element of transparency into the process by forcing a UNHCR office to state openly that it has found reason to withhold a piece of evidence.

In the current *Procedural Standards*, there are three exceptions justifying non-disclosure of evidence, set out in §6.2:

- Disclosure of the information could jeopardize the security of UNHCR staff;
- Disclosure of the information could compromise UNHCR's ability to effectively carry out its mandate;
- Disclosure of a particular kind of information could jeopardize the availability, security or reliability of the source of the information (including family members who provide statements regarding a Principal Applicant).

These exceptions are quite ambiguous and potentially quite broad. For instance, judgments about what would could compromise UNHCR's ability to effectively carry out its mandate are likely to be especially subjective from one UNHCR official to the next. This exception could be read to justify withholding evidence not because it poses a security threat, but it would be inconvenient or embarrassing for UNHCR.

In order to be consistent with the exceptional nature of the non-disclosure, the exceptions themselves should be more narrowly defined. We would submit that only genuine, well-founded risks of physical violence can justify compromises in due process; the general institutional interests of UNHCR are not sufficient. The "well-founded" standard may be useful here because it would strike a balance

between risks to refugees who might be errantly refused protection and the level of danger posed to third parties. UNHCR would normally protect a person as a refugee if her risk of persecution is well-founded. Security threats should be specific and based on concrete, individualized reasons, not a general supposition that refugee applicants as a rule are threats to UNHCR staff.

Director Okoth-Obbo provided some additional commentary on §6.2 in his 26 September 2006 letter. He wrote that these exceptions are usually invoked where relevant evidence has been provided by another RSD applicant, especially by a family member of the person concerned. He noted,

> In such cases, the reliability of the information provided by third parties is not assumed … [T]he weight given to the information in the determination of the Applicant's claim will depend on the degree to which the facts and issues can be raised with the applicant, and he or she can have the opportunity to respond or provide additional relevant information.

These comments are critical, because they allude to the danger of using information that an applicant cannot scrutinize, especially when complex personal relationships are involved. Rule §6.2 would be strengthened if it included a statement to this effect, which it regrettably does not. Currently, UNHCR's *Procedural Standards* call on UNHCR staff to consider only the dangers posed by disclosure, rather than to call for the dangers of disclosure to be balanced against the risks of non-disclosure.

Because of the risk posed by non-reliable evidence, even where genuine security concerns are present, UNHCR offices should consider alternatives to non-disclosure of evidence. Two alternatives are worth highlighting. First, UNHCR could use anonymous evidence, as already embraced in UNHCR's Guidelines on Exclusion (see below). Anonymous evidence would hide the source of the information, in order to protect his/her security, but allow the substance of the asserted facts to be disclosed. This is less of a compromise on due process than complete non-disclosure. Second, UNHCR offices should be encouraged to simply disregard evidence that raises security concerns and that thus cannot be shared with applicants. Disregarding evidence because it cannot be cross-examined minimizes the risk of unreliable evidence influencing the decision-making.

RECOMMENDATION

The exceptions currently defines in § 6.2 should be revised as follows:

> **In exceptional individual cases, UNHCR may restrict the disclosure of a specific piece of evidence to applicants only**

> **where a Protection staff member designated under established procedures in the UNHCR office concludes in a detailed written assessment that there are specific, concrete, and objective reasons for believing that disclosure would lead to a real chance of physical violence against another person. This conclusion may be based, for instance, on past documented acts or threats of violence by the applicant, or circumstances that would lead a reasonable person to conclude that a real chance of violence would result from disclosure.**
>
> **In any such circumstance, UNHCR should first consider using the evidence anonymously (by disclosure of the substance but not the source), and should consider completely withholding the evidence only if anonymity would not substantially reduce the risk of violence. In any case justifying non-disclosure, UNHCR will restrict disclosure only to the minimum extent necessary to lessen the security threat. Non-disclosure of one piece of evidence should not prevent the disclosure of other evidence in the applicant's file.**
>
> **Where security grounds justify restricting evidence, the designated staff member's written assessment should include an examination from known facts of the likelihood that the evidence in question may be misleading, based on incomplete knowledge of asserted facts, or derived from sources who may bear ill-will toward the applicant. In any case where such a risk arises, the withheld evidence should be disregarded entirely in refugee status determination or, in the case of anonymous evidence, should be given less weight.**

Special rules in exclusion cases

UNHCR correctly has a specialized rule governing evidence disclosure in exclusion cases, given the unique stakes involved in such situations. Indeed, the rule in § 4.8.2 of the *Procedural Standards* could in some respects be a starting point for a general policy governing evidence disclosure. However, we do not believe the rule sufficiently addresses the particular concerns of exclusion cases, and in fact appears to differ somewhat with other UNHCR statements on the issue.

Section 4.8.2 states the following:

> Due process requires that the individual be informed of considerations, including any evidence that is relevant to the

> exclusion determination, during the exclusion examination, so that he/she has the opportunity to respond to the evidence. However, in exceptional circumstances, generally relating to the security of UNHCR staff or a witness or other source of information, it may be necessary to limit full disclosure of relevant evidence.

As UNHCR has stated in its 2003 exclusion guidelines on the application of article 1F[13] the burden of proof in exclusion cases rests with UNHCR, and the applicant should be given the benefit of the doubt. In exclusion cases an RSD applicant is placed in an essentially defensive position, attempting to rebut accusations of serious criminal activity. Moreover, exclusion in UNHCR's approach is relevant only after a positive determination in an inclusion examination. Thus the consequences are grave; an excluded individual will be potentially returnable to a country where s/he faces a well-founded fear of persecution. An applicant's need to rebut evidence considered is thus especially acute.

UNHCR's Exclusion Guidelines state, at paragraph 33:

> Exclusion should not be based on sensitive evidence that cannot be challenged by the individual concerned. Exceptionally, *anonymous evidence* (where the source is concealed) may be relied upon but only where this is absolutely necessary to protect the safety of witnesses and the asylum-seeker's ability to challenge the substance of the evidence is not substantially prejudiced. *Secret evidence* or evidence considered in camera (where the substance is also concealed) should not be relied upon to exclude. Where national security interests are at stake, these may be protected by introducing procedural safeguards which also respect the asylum-seeker's due process rights. (emphasis added)

UNHCR's Exclusion Guidelines thus allow only the use of anonymous evidence in exceptional exclusion cases. Anonymous evidence differs from secret or withheld evidence because the asylum-seeker is able to scrutinize and reply to its substance, even though the origin may be obscured. The *Procedural Standards* §4.8.2 by contrast appear to allow the use of non-disclosed evidence in exceptional cases.

RECOMMENDATION

Section 4.8.2 should be revised using the same rule found in paragraph 33 of UNHCR's Exclusion Guidelines.

[13] UNHCR, Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05 (4 September 2003).

Use of country of origin information

As Director Okoth-Obbo wrote on 26 September 2006,

> UNHCR relies almost exclusively on publicly available country of origin information when examining refugee claims … It is very rare that UNHCR is in possession of information or documents that are material to an eligibility decision but are not able to make disclosure of this information to an Applicant.

The fact that UNHCR mainly relies on public domain COI does not fully answer the disclosure question, since there is frequently a vast amount of public information about relevant issues in an RSD case. Without knowing exactly what source UNHCR intends to consider, an applicant or even a skilled attorney will often not be in a position to effectively understand UNHCR's assessment or to respond to it. However, this problem can be dealt with simply by UNHCR offices informing rejected applicants of the specific sources, and where possible the page references, of public COI that has been used in a case. Since many UNHCR field offices consider many RSD cases from the same countries raising similar issues, the COI references are likely to be quite similar in many cases and thus the added work for UNHCR staff can be minimized to some degree.

A greater concern would arise with regard to the rare situations where UNHCR does rely on non-pubic COI. In this case, Applicants and decision-makers can be placed in an equal position only with full disclosure of the source, and thus we would submit that this situation should be governed by the same general principles as all other evidence disclosure. As a general rule, the evidence should be disclosed in full, except in the narrowly defined exceptional cases.

Asylum Access envisions a world where refugees are seen as people with rights, not just needs. To make these rights a reality, Asylum Access provides on-the-ground legal counsel and representation for refugees in Africa, Asia and Latin America, and advocates for refugee rights worldwide. Asylum Access believes that by empowering refugees to assert their human rights, we can create effective, lasting solutions for refugees, throughout the global south and around the world.

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