

JOINT OPEN LETTER

8 August 2005

UN High Commissioner for Refugees Antonio Guterres
Case Postale 2500
CH-1211 Genève 2 Dépôt
Suisse
BY FAX AND BY POST

RE: Reform of UNHCR's refugee status determination procedures

Dear Mr. High Commissioner,

We wish to welcome you to your new post, one of the most critical and challenging positions in protecting human rights in the world today.

The undersigned refugee rights organizations write this joint open letter to raise the issue of reform in the way UNHCR conducts refugee status determination (RSD) in some 80 countries. UNHCR offices around the world handle tens of thousands of applications every year (more than 75,000 in 2004), making UNHCR the largest decision-maker on refugee status in the world. Reforming the way UNHCR carries out RSD is one of the chief challenges that you have inherited.

Non-government organizations and academic studies have pointed out that UNHCR's RSD procedures often lack basic safeguards of fairness, including the very safeguards that UNHCR publicly espouses to governments. UNHCR has acknowledged the need to improve its RSD practices, and there has been improvement in some UNHCR offices. We believe that there is an opportunity to make significant progress on this issue in the near future.

UNHCR has published relatively little information to date about its RSD reform program. However, we understand that in September UNHCR will publish procedural standards for use in RSD by its field offices. We eagerly await this crucial moment in the context of comprehensive RSD reform.

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We expect that the procedural standards will reaffirm existing UNHCR standards for governments on fairness in asylum procedures.¹ Retreat from these standards would simply lower the bar rather than engage in real reform, and would send the explicit message that UNHCR does not hold itself to the same standards that it sets for states. Gaps between what UNHCR says to governments and what UNHCR does in its own operations can only erode UNHCR's credibility. This is something that neither UNHCR nor refugees can afford.

In our view, UNHCR's procedural standards for mandate status determination should address the following key issues:

- Establishing fully independent appeal procedures in which appeals are judged by people institutionally insulated from those who decide first instance cases.
- Providing all rejected applicants detailed written explanations for decisions.
- Facilitating provision of responsible and independent legal aid to asylum-seekers in preparing their applications, representing them at RSD interviews, and writing appeal petitions.
- Transmitting to applicants copies of all interview transcripts, forensic assessments, references to relevant country of origin information, and other evidence used by UNHCR in assessing their cases, except in rare individual cases that raise specific security concerns. As UNHCR has advised governments, the decision-maker and the applicant should in general be given equal access to information.
- Providing all asylum-seekers notice of any potential negative credibility factors, and a chance to provide explanation or rebuttal.
- Making available trained interpreters in all applicable languages and dialects. UNHCR should establish mechanisms for ensuring the competence of its interpreters. Both male and female interpreters should be available in all languages.
- Ensuring separated children are represented in all situations that concern their welfare.

We recommend that UNHCR publish a report describing, country by country, the implementation of procedural improvements. Making such information public will allow UNHCR and independent refugee advocates to

¹ UNHCR's position on RSD fairness was most recently and most comprehensively published in comments to the Council of Europe released on 29 March 2005. UNHCR also issued comprehensive advice on RSD procedures in 2001 as part of the Global Consultations on International Protection. *See Asylum Processes, EC/GC/01/12 (31 May 2001).*

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start from a common understanding about what has already been done, and what steps remain to be taken.

We hope that we are about to turn a new page in the ongoing debate over mandate status determination. Both globally and locally, all of our organizations plan to continue to work on this issue, and look forward to continued cooperation with UNHCR.

Sincerely,

(In alphabetical order)

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