UNHCR and individual refugee status determination

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**Determination of refugee status is a critical first step in meeting the protection needs of those requiring international protection and is one of UNHCR’s core functions.**

Refugees may be recognised as such either on a group basis (‘prima facie’) or individually. The vast majority of the world’s refugees are recognised by way of a prima facie group determination, based on an evaluation of the situation in the country of origin which gave rise to their leaving. This article, however, focuses on individual refugee status determination (RSD).

Individual RSD is used primarily in situations of mixed flows, when it is necessary to distinguish refugees from other migrants. It may be carried out by states and/or UNHCR. It is preferable, however, that RSD be conducted by states as it is governments which are responsible for ensuring that refugees on their territory are treated in accordance with international standards, subject to supervision by UNHCR as required by its protection mandate. 102 of the 146 states signatories to the 1951 Convention and 1967 Protocol have established national procedures.

Where states have not yet acceded to the international refugee instruments or have not yet established effective national procedures, UNHCR may have to step in and undertake individual RSD. Through conducting RSD, UNHCR can determine whether asylum seekers qualify for international protection.

In 2007, UNHCR was involved in refugee status determination in 68 countries. Over 90% of the RSD work in terms of applications received and decisions rendered was carried out in 15 countries; the largest operations were in Kenya, Malaysia, Turkey, Somalia, Egypt and Yemen. Between 2003 and 2006, applications to UNHCR increased by 48%. In 2007, UNHCR received 75,690 applications (12% of global asylum applications) and rendered 51,200 decisions.

The growth in UNHCR’s role in conducting RSD has brought with it a number of challenges, some faced by states and some unique to UNHCR. The first is to ensure adequate and appropriate staffing. UNHCR has 140 staff devoted full-time to RSD, and another 150 part-time. The ratio of staff to the number of asylum applications received by UNHCR is far less than in most national systems in Europe or North America, for example. In addition, half of the 140 full-time staff are on short-term contracts which, in view of the resulting high turnover, has a negative impact on efficiency and increases training demands. Expert RSD supervision is also required in all of these operations. Having staff spread across the globe makes consistency – and provision of training – a challenge. There are also issues of ensuring that decisions are made in a timely manner plus concerns about staff security, integrity of the system and burnout. Finally, while in some countries the attitudes towards asylum seekers and refugees are very positive, in others the protection environment can be quite negative, rendering UNHCR’s RSD work even more challenging.

In view of these obstacles and limited resources, UNHCR has made and continues to make efforts to strengthen and improve RSD under its mandate, and to strive for high quality ‘first-instance’ decisions – i.e. to ensure the early identification of those in need of international protection, as well as of those who do not need or deserve it.

**Improving UNHCR’s RSD operations**

A number of initiatives have been taken to ensure quality, efficiency and consistency in UNHCR’s RSD operations. These include the publication in 2003 of Procedural Standards for Refugee Status Determination under UNHCR’s Mandate (designed to harmonise procedures globally) and a comprehensive training programme for all staff responsible for conducting or supervising RSD; in 2008, this course was provided in six regions of the world.

Efforts have also been made, in line with the commitments made in the Agenda for Protection, to ensure adequate staffing in RSD operations. We provide substantive advice from UNHCR headquarters to the field and have issued Eligibility Guidelines relating to different ‘caseloads’ of asylum seekers. These guidelines, along with legal, policy and country-of-origin (COI) information from relevant and reliable sources, are disseminated globally through UNHCR’s Refworld. UNHCR recently launched a Community of Practice of RSD Supervisors and Officers to consolidate legal advice and to provide a forum for peer-to-peer discussion and exchange of best practices. Regional RSD officers have been posted in five regions of the world to help improve quality, consistency and productivity, as well as to work on capacity building with governments. Finally, regional meetings have been held to deal with inconsistent approaches to similar cases.

Like states, UNHCR occasionally faces sudden increases in the number of asylum applications to specific offices. This has required UNHCR to develop strong case-management techniques which are shared as best practices among offices. Furthermore, UNHCR has instituted an RSD Deployment Scheme under which experienced RSD consultants and UN Volunteers can be deployed to offices facing a dramatic and sudden upsurge in applications. In 2008, 15 operations were assisted through this scheme.

UNHCR has also developed strategic partnerships with governments with many years of experience in
Refugee status determination: three challenges

Martin Jones

Refugee status determination (RSD), which is vital to the protection of so many asylum seekers worldwide, is at best an imperfect, haphazard and challenging process. It merits greater attention and appropriate reform.

Asylum seekers are subject to a variety of procedures examining their individual reasons for being outside their country of origin, and thus determining their status as refugees. Even within states, procedures can vary based upon location, country of origin and personal history. Despite recent efforts to harmonise RSD procedures, notably in the European Union, there is still no single model for RSD and there remains a troubling variation in outcomes in similar cases. For example, the acceptance rates for Iraqi refugees in European states governed by the EU’s RSD standards have varied between 0% in Greece and 81% in Sweden.

Studies of outcomes in RSD processes have linked recognition rates to a variety of seemingly extraneous factors, including government ideology, country of asylum demographics and the number of refugees already in the country of asylum.1 Recent studies in Canada and the US have shown that the identity of the decision maker in RSD is often the most significant influence on the outcome.2 Recognition rates have also been linked to refugee movements, with higher recognition rates prompting future population movements. At best, RSD is an imperfect, haphazard and challenging process. Even factoring in successes upon appeals and grants of ‘complementary protection’, in 2007 a majority of (55%) of asylum seekers worldwide were refused protection.

The high rejection rates and consequent threat of forced removal from the country of asylum make these issues of vital concern to asylum seekers and to the international community. Although there are many issues to debate relating to RSD, there are three broad, inter-related issues that cut across national jurisdictions. These are: access to counsel, the increasing transnationality of RSD and current governance of the international refugee regime.

Access to counsel

In setting out a framework for RSD, the Executive Committee of UNHCR has recommended that “the applicant should be given the necessary facilities, including the services of a competent interpreter” and be allowed “to contact a representative of UNHCR.” Both of these recommendations help to ensure an outcome that is based on a full understanding of the facts of the case and on international law. However, the Executive Committee’s conclusions about international protection are conspicuously silent on one issue: the access of asylum seekers to legal advice.

Access to a representative of UNHCR cannot be a substitute for the provision of or access to independent legal counsel. This is especially true in the approximately 80 jurisdictions in which UNHCR serves as a decision maker. Statistics on RSD indicate that self-representation rarely, if ever, serves the interests of the individual.1 Fortunately, the provision of independent legal advice to asylum seekers has recently spread beyond the ‘global north’ where such services are well established (though subject to budget cutbacks). The Southern Refugee Legal Aid Network (SRLAN)3 was founded in 2007 in order to facilitate representation of asylum seekers in the ‘global south’. A growing number of legal aid organisations now exist in the South, providing representation to a significant number of asylum seekers, though the overwhelming majority remain without access to counsel.

References

1. The term ‘first instance’ means the first decision, as opposed to decisions at appeal level. It describes the first stage of the RSD process.
2. Online at http://www.unhcr.org/publ/PU/L/4316f0c02.html
4. See for example those issued for Iraqi asylum seekers, online at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46deb05557