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Refugee Status Determination

Summary

The purpose of this paper is to present a new approach within UNHCR to strategic engagement with respect to refugee status determination (RSD). The paper also shares some examples of the steps that States and UNHCR are taking in this direction.

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I. Introduction

1. The term “refugee status determination” (RSD) describes the process used to establish whether an individual who seeks international protection is a refugee – that is, whether he or she meets the eligibility criteria established under international or regional refugee instruments, national legislation or UNHCR’s mandate. For States, this is a necessary step for the implementation of their obligations under the 1951 Convention relating to the Status of Refugees (1951 Convention), the 1967 Protocol, or regional refugee protection instruments. Under certain circumstances, UNHCR may need to undertake RSD in order to exercise its core function of providing international protection.

2. Although States have the primary responsibility for determining refugee status, UNHCR may do so in accordance with its mandate, de facto substituting for States where they do not perform this function. In practice, UNHCR often conducts RSD in countries and territories that are not party to the 1951 Convention, or which have not yet established the legal and institutional framework to support a RSD process. This process can be done on an individual or group basis. Historically, UNHCR has advocated for an individual procedure to be conducted, wherever possible, following an in-depth examination of the individual circumstances of the applicant’s case. More recently, however, UNHCR has published guidance on the use of prima facie recognition and on temporary protection and stay arrangements,¹ methodologies that should be considered when conditions for their use are in place.

3. The determination of refugee status is often a critical step in ensuring protection which affords the individual access to a range of rights including protection against refoulement. There are, however, situations in which refugees may not be able to access safety and protection through RSD but may be able to find it through other means. Under such circumstances it would be appropriate to conduct an assessment as to whether and when RSD is undertaken.

4. This paper presents the new strategic direction for RSD and describes some of the ways that both States and UNHCR are adapting their methodologies to cope with this challenging context of large-scale displacement.

II. Introducing the new strategic direction for RSD

5. RSD is not an end in itself, but rather a means, an indispensable tool, to ensure the protection of refugees. Where the individual is assured all of the safeguards of refugee status, including protection from refoulement and access to rights, there may be very little distinction in practical terms as to whether RSD is undertaken or not. In 2015, UNHCR developed a new strategic direction reflecting on the role of RSD in ensuring protection and access to rights, as well as on how it can be more efficiently carried out. The urgency to implement a more strategic approach to case processing was also underscored by the global rise in refugee numbers and the need to enhance the capacity of UNHCR to respond to the increased number of individual applications. It is important therefore to review the circumstances under which it is essential to conduct RSD, consider how it can be streamlined, and where protection might be provided through other frameworks.

¹ UNHCR, *Guidelines on international protection no. 11: prima facie recognition of refugee status*, 24 June 2015, HCR/GIP/15/11, available from: <http://www.refworld.org/docid/555c335a4.html>; UNHCR, *Guidelines on temporary protection or stay arrangements*, February 2014, available from: <http://www.refworld.org/docid/52fba2404.html>.

6. The Office's strategic direction encourages UNHCR operations worldwide to review their engagement with RSD, both in relation to UNHCR mandate RSD and State procedures. This approach ensures an objective evaluation of the protection impact derived from mandate RSD processes, in particular whether it is necessary to secure access to refugee rights for the individual. Operations are currently exploring alternative protection interventions that may be equally effective, as part of a comprehensive protection strategy that do not require RSD for every individual, but ensure protection while simultaneously laying the foundation for durable solutions.

7. UNHCR nevertheless recognizes that there will be circumstances in which, after an in-depth analysis of the overall protection environment, mandate or State RSD remains the most effective protection intervention for some populations. In such circumstances, diversified case processing strategies – such as group processing based on a prima facie recognition of refugee status or simplified procedures for nationalities manifestly in need of protection – need to be considered to safeguard the quality, integrity and efficiency of the process. Regular asylum procedures can also contribute to addressing security concerns by providing a means to exclude persons responsible for serious criminal acts, including acts of terrorism.²

A. Increasing the efficiency of RSD

8. In the face of an overwhelming number of applications for international protection, some States have adapted their RSD procedures in order to more efficiently cope with a changing context. For example, Germany introduced accelerated procedures based on a presumption of eligibility for Syrians and other groups with very high recognition rates, while at the same time, putting in place an accelerated procedure based on a rebuttable presumption of non-eligibility for applicants from the Western Balkans and other groups with very low recognition rates. Canada adopted a similar approach to recognizing Syrians on a prima facie basis. A number of countries in Africa continued to use group-based recognition for asylum-seekers from Burundi, the Central African Republic, Mali, Nigeria and South Sudan, amongst others. It is, however, essential that any measures implemented to enhance efficiency contain the appropriate procedural safeguards.

9. UNHCR also pursued alternative strategies, such as accelerated case processing, enhanced registration and simplified procedures – particularly in respect of Syrian and Iraqi asylum-seekers in the Middle East and North Africa region including the merging of RSD and resettlement case processing. At the same time, UNHCR has adopted and advocated for pragmatic alternatives to RSD – such as temporary protection arrangements and the suspension of RSD processing – for a limited period of time until the situation in the country of origin becomes clear or stable and either voluntary return or a resumption of RSD becomes possible. Opportunities for such arrangements are, however, context-specific. Such responses have contributed to relieving the burden on RSD systems, while preserving traditional RSD procedures for specific categories of persons in need, such as those in detention, and for potential resettlement or exclusion cases.

10. In order to further enhance both the efficiency and quality of its operations, in 2015, UNHCR provided training to 117 eligibility officers through the RSD Learning Programme, finalized an e-learning tool on the use of country of origin information, and initiated work on a mandatory three week induction programme for newly recruited RSD

² UNHCR, Addressing security concerns without undermining refugee protection - UNHCR's perspective, 17 December 2015, Rev.2, available from: <http://www.refworld.org/docid/5672aed34.html>.

decision makers, to be rolled out in 2017. UNHCR also issued country-related guidance for more than 15 countries and territories in 2015 and 2016,³ improving the efficiency and quality of decision-making.

B. Improving the quality of decision-making

11. In situations where RSD is deemed critical to ensuring protection, the procedure applied must be efficient and of high quality. UNHCR's collaboration with asylum authorities has, in some contexts, extended to the development of mechanisms to regularly monitor and review asylum decisions and related processes with a view to maintaining high standards. UNHCR engages with a range of States to review or audit the quality of RSD processes and outcomes to support national and regional approaches through programs such as the Quality Assurance Initiative Project in the Americas and the Asylum Systems Quality Initiative in Eastern Europe and South Caucasus. Dedicated quality assurance teams were also established in a number of countries, joining a growing number of States with such frameworks in place.

12. State-to-State arrangements also play an important part in building quality asylum systems and these have been promoted by UNHCR in the context of quality assurance projects as vehicles for capacity building. In the Americas, efforts made by States range from twinning and RSD capacity building projects between State adjudicatory bodies in Canada, Mexico and the United States to joint fact-finding missions to countries of origin as carried out by members of the United States, Canada, and Mexico's eligibility committees to El Salvador in 2016. The European Asylum Support Office (EASO) continues to facilitate expertise and operational support to EU Member States, in particular to Italy and Greece. EASO asylum capacity building support was also extended to Jordan, Morocco and Tunisia, as well as the Western Balkans.

13. Legal representation is an important element of fair and transparent RSD procedures. For this reason, UNHCR has supported the establishment of legal clinics in Benin and Senegal in 2015, contributing to increased local expertise on asylum issues. The importance of legal representation in UNHCR RSD procedures was underscored in the new procedural standards.⁴

C. Sustaining State assumption of responsibility for RSD

14. As only States are able to ensure comprehensive refugee protection and durable solutions, the assumption of State responsibility for RSD in a sustainable manner is essential. UNHCR is currently supporting RSD transitions in several States, while working with other States in Africa, Asia and Europe where UNHCR conducts RSD under its mandate in order for them to take on a larger role in the process. This could include a range of possibilities from joint UNHCR/State registration of asylum applications, to State assumption of full responsibility for RSD. In UNHCR's experience, States that engage in more a gradual transition from UNHCR mandate RSD to State RSD have more success in building sustainable, high quality national RSD systems. This could be attributed to a period of joint or supported RSD decision-making, which allows for an exchange of knowledge and expertise, while UNHCR gradually reduces its engagement in mandate

³ Available from: <http://www.refworld.org/publisher,UNHCR,COUNTRYPOS,,,0.html>.

⁴ UNHCR, *UNHCR RSD procedural standards - legal representation in UNHCR RSD procedures*, February 2016, available from: <http://www.refworld.org/docid/56baf2c84.html>.

RSD. This is the approach currently promoted by UNHCR in Cameroon and Morocco. More successful transitions from UNHCR mandate RSD to State RSD have also taken place in countries where, as a first step, relevant legislation and policy frameworks were put in place, fully embedding the newly established national asylum procedure in the rule of law.

15. Continuing or resuming mandate RSD for protection purposes for individual or groups of applicants may in specific cases be a necessary element of responsible transition strategies. Mandate RSD is still carried out in a number of countries where national procedures exist, mostly as an exceptional response to serious protection risks.

III. Conclusion

16. The introduction of the more streamlined and differentiated procedures described in this paper represent important steps in changing how and when UNHCR and States determine refugee status, with a view to more efficiently responding to protection needs and delivering durable solutions. Bolstered by a strengthened RSD Section with dedicated capacity to implement this new strategic direction, UNHCR looks forward to building on these first steps through continued, and increased, strategic State engagement.
