

## The Deficiencies of UNHCR's RSD Procedure: The Case of Choucha Refugee Camp in Tunisia

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*After the collapse of the Libyan regime in 2011, hundreds of mainly African refugees moved to Tunisia and found refuge in UNHCR Choucha camp waiting for their asylum requests to be processed. According to various NGO reports, several irregularities occurred with regard to UNHCR's Refugee Status Determination (RSD) procedure. Hence, by taking the example of Choucha refugee camp, this article explores the failures of UNHCR to comply with both human rights law and its own procedural standards. In particular, this article analyses the lack of a fair and impartial RSD procedure through the testimonies of three asylum seekers. Evidence from these testimonies clearly demonstrates UNHCR's malpractices and its failure to adhere to due process standards. This analysis highlights the need for a more critical discussion on the RSD procedures and outcomes.*

### Introduction

After the collapse of the Libyan regime in 2011, hundreds of forced migrants moved to Tunisia and found refuge in UNHCR's<sup>1</sup> Choucha camp, where they waited for their asylum requests to be processed. According to various reports from Tunisian and human rights organisations, irregularities and malpractice in the RSD procedure occurred (Human Rights Council 2013: 3-4).<sup>2</sup> On 30 June 2013, the camp was officially closed. However, many of the recognized refugees who could not be resettled and about 250 refused asylum seekers remained in the camp, living under very poor conditions without access to basic needs and facilities.<sup>3</sup>

In 2005, UNHCR published *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* (RSD Standards) to assure an efficient asylum process under its mandate (UNHCR 2005). This article explores how UNHCR has failed to provide a fair and impartial RSD procedure to many of the asylum seekers in Choucha, using concrete cases and testimonies as examples.<sup>4</sup> First, this article assesses whether UNHCR has respected its own procedural standards in Choucha. Second, it questions whether the provisions governing the appeal mechanism and the right to receive reasons for rejection comply with the requirement of human rights law, especially with Art. 14 ICCPR. The procedural shortcomings in Choucha exemplify the urgent need for a reform of the appeal procedure and a more critical assessment of UNHCR's performance.

### The Implementation of UNHCR's Procedural Standards in the Case of Choucha

The mandate of UNHCR was defined in 1950 through the General Assembly Resolution 428 (V).<sup>5</sup> According to its Statute UNHCR is responsible for ensuring the international protection of refugees under the auspices of the UN. UNHCR conducts RSD procedure mainly in countries in the Global South, which often do not have refugee legislations (Kagan 2005:3). Therefore, UNHCR's RSD procedure determines the fate of a high number of forced migrants all over the world. A fair procedure in the RSD is crucial, as impartiality eliminates the appearance of arbitrariness within the process. Also, rigorous procedures are a safeguard against human mistakes (Kagan 2002:13). In the following sections the implementation of some of UNHCR's RSD Standards is analysed in the context of Choucha.

<sup>1</sup> United Nations High Commissioner for Refugees.

<sup>2</sup> See also Human Rights Watch 2011; R. Al-Abbasi and J. Hardman (Internews Network) 7-15 March 2011; Forum Tunisien pour les Droits Economiques et Sociaux 2013.

<sup>3</sup> As part of a local integration project, UNHCR, in cooperation with the Tunisian Red Crescent, tried to resettle part of the asylum seekers in the city of Medenine. However, due to massive protests among the Tunisian population, the majority of them were forced to return to Choucha.

<sup>4</sup> The evaluation relies on three confidential testimonies (who are referred throughout the article as A, B and C) provided by the UK-based NGO Fahamu Refugee Programme. All three asylum requests were declined by UNHCR. These asylum denials were upheld after the appeal procedures which were however characterized by several flaws. Fahamu tried to convince UNHCR to reopen the files due to the irregularities in the RSD procedure, but UNHCR refused to do so without explanation. The cases concern a Chadian national A, who worked in the presidential guard and was tortured for refusing to kill civilians; a Pakistani national B, whose life was endangered both in Pakistan and in Libya, where he had spent most his life, because of his father's political activities; an Ivorian national C, whose father was accused of being a spy for the current opposition party.

<sup>5</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees (14 December 1950) A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html> [accessed 30 April 2014].

### *Security and Confidentiality*

According to section 2.4 of the RSD standards, UNHCR is under the obligation to provide facilities which enable petitioners to present their asylum claim without being threatened or harassed. For instance, when Chadian national A went to UNHCR's office in Libya he saw Chadian embassy employees collecting information about asylum seekers from Chad. He also noticed that the same problem occurred in Choucha, where the Chadian *Renseignements Généraux* were in contact with UNHCR officials and thus scared the Chadian asylum seekers. This is clearly in breach of the security standards and of the applicants' right to confidentiality found in section 2.1.1. When A and other fellow nationals submitted a complaint report to the UNHCR Senior Protection Officer, UNHCR replied that it could not take any steps against the Chadian officials due to their protected diplomatic status.

This is very problematic, as the applicants were persecuted for different reasons in Chad. Letting Chadian embassy employees access private information and question asylum seekers against their will can endanger their life and security. Moreover, the cooperation with Chadian officials also raises concerns about UNHCR's impartiality, which deserves further investigation and assessment based on these findings.

### *Staff Behaviour and Complaint Procedure*

According to section 2.6 of the RSD Standards, procedures should be established to respond to complaints made by asylum seekers in cases of serious misbehaviour of UNHCR employees or procedural misconduct. However, the testimonies show that UNHCR in some cases ignored the complaints it received. For example, in the case of the Pakistani national B, he and his family were repeatedly pressured to go back to Pakistan by a Pakistani UNHCR employee in Al-Hayat camp and given the impression that their asylum request had no chance of success. When B informally complained about the employee's behaviour to the manager of the Al-Hayat camp, he did not receive information about his right to complain under section 2.6 and he never got a response. The same situation then occurred in Choucha, and as a result of his past experience, B was afraid to fully disclose his story during the official asylum interview, and did not file an official complaint.

### *Access to Trained and Qualified Interpreters*

According to section 2.5.1 of the RSD Standards, asylum seekers should be granted the right to interpreters 'at all stages of the RSD process'. This standard was not always respected during the asylum seekers' interviews in Choucha. In the case of the Pakistani national B, whose first languages are Punjabi and Urdu, the interview was conducted in English due to a lack of professional interpreters. This increased his mistrust toward UNHCR as he found it difficult to articulate his refugee claim in a non-native language and in the stressful conditions of the RSD interview. In the case of the Ivorian national C, the interview was conducted in French, which he could speak. However, the interviewer's language skills were dubious, and the asylum seeker expressed concerns about his ability to be fully and correctly understood.

### *Handling of Documents*

According to section 2.2 of the RSD Standards, each camp office should establish detailed file management procedures for the handling of RSD files. These include processes for the efficient filing and retrieval of RSD files as well as securing physical storage to prevent loss or damage. However, serious irregularities appear to have taken place in Choucha. For example, in the case of the Ivorian national C, UNHCR took his passport when he first came into to the camp, even though the RSD standards only require that photocopies of ID documents are taken. When C went to the UNHCR office in Zarzis to get his passport back, UNHCR said that they had lost it.

## **Compliance with Art. 14 ICCPR**

The right to a fair trial is prescribed in various human rights documents that stipulate that all persons shall be considered equal before courts and other legislative bodies.<sup>6</sup> It has been argued that UN bodies are not bound by human rights obligations and that Art. 14 (1) ICCPR is not a norm of customary international law (Pallis 2005: 880-1). Nevertheless, UNHCR has instructed its employees to respect the spirit of these agreements. Moreover, where refugee law is absent and UNHCR effectively takes over the role and functions of the state, it should be bound by the same human rights obligations as states (ibid). UNHCR's own practice and statements clearly demonstrate that it has accepted the applicability of the right to a due process in the RSD procedure (UNHCR 1995). However, those international human rights standards are not clearly expressed in the procedures and have not been sufficiently implemented in Choucha.

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<sup>6</sup> Art. 10 UDHR; International Covenant on Civil and Political Rights, Article 14(1): 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...].

### *Reasons for Rejection*

Section 6.2 of the RSD Standards requires that, 'wherever possible', applicants whose claims are rejected should be informed in writing of the reasons for the rejection. This very weak wording of the procedural guidelines is unlikely to meet the requirements of a fair procedure. Art. 14 (5) ICCPR requires that the access to 'a duly reasoned, written' decision be granted in all circumstances (Human Rights Committee 2007: para 49). Therefore, a reasoned rejection should be given to all asylum seekers in order to avoid unnecessary appeals and to give rejected asylum seekers the opportunity to prepare their appeal claim in the best way possible. In Choucha, though the Pakistani B and Ivorian C did receive a written rejection, they were not notified about the specific reasons for it. This serves as evidence of the weakness of this procedure in practice.

### *The Right to Appeal*

The right to a fair procedure under Art. 14 (5) also requires that decisions can be reviewed by a 'higher tribunal'. Under section 7.1.1. of the RSD standards, the applicant should be informed of his/her right to appeal upon notification. Furthermore, '[a]ppeal applications should be determined by a qualified Protection staff member who was not involved in the adjudication or review of the RSD claim in first instance' (7.3). In practice, appeal procedures may actually be conducted by the same group of UNHCR employees who carry out the RSD interviews, as in the Choucha context. This situation calls into question the ability of appeal procedures to be impartial and objective, and to comply with human rights standards. Additionally, according to section 7.5, it is only *recommended*, and not compulsory, to give reasons for the appeal decision. Hence, the asylum seekers felt the appeal decisions were arbitrary.

### **Final Remarks**

Three different types of problems can be observed with regards to the RSD Standards. First, the language is sometimes ambiguous and leaves room for broad and loose interpretations that challenge UNHCR's ability to provide adequate information to asylum seekers throughout the RSD process. Second, despite the fact that many rights are listed in the standards, failed implementation was a consistent issue in Choucha. The three testimonies used for this article, which are just a small example of a wider problem, give reasons to question that the UNHCR's effective implementation of its own procedural standards. Therefore, UNHCR should re-open the relevant files, critically assess its own performance in Choucha and identify those responsible for the violations of the forced migrants' rights.

Third, some provisions in the RSD Standards are themselves in breach of the internationally recognized right to a fair trial<sup>7</sup> and due process.<sup>8</sup> As highlighted above, the most critical structural deficiency is the lack of a separate, impartial appellate body which the competence to review and overrule decisions. The transparency of the procedure could also be greatly improved, for example, by giving reasoned decisions to all rejected asylum seekers.

In order to prevent such shortcomings in the future, more research is needed that focuses on improving the accountability of UNCHR. Moreover, as Pallis suggests, we need to acknowledge asylum seekers as rights-bearers with agency rather than as simply beneficiaries of assistance (Pallis 2005: 917). Only then situations like Choucha can be avoided and the human rights of refugees and asylum-seekers truly respected. The introduction and implementation of fair and impartial procedural standards could be a first necessary step in this direction.

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### **References cited**

**AL-ABBASI, R. AND HARDMAN, J.** (7-15 March 2011) *Humanitarian Information Assessment at Choucha Camp on the Tunisia/Libya Border*, *Internews Network*. Available from: [/www.internews.org/sites/default/files/resources/HumanitarianInformationAssessment\\_ChouchaCamp\\_Tunisia\\_2011-03-07.pdf](http://www.internews.org/sites/default/files/resources/HumanitarianInformationAssessment_ChouchaCamp_Tunisia_2011-03-07.pdf) > (accessed 26 March 2014).

<sup>7</sup> Art. 10 UDHR. As it is indicated in the RSD Standards (7.4.1), 'procedural fairness'.

<sup>8</sup> Art. 14 (1) ICCPR.

**FORUM TUNISIEN POUR LES DROITS ECONOMIQUES ET SOCIAUX** (2013) *Rapport Concernant la Situation des Réfugiés au Camp de Choucha*. Available from: <[www.ftdes.net/sites/default/files/choucha.pdf](http://www.ftdes.net/sites/default/files/choucha.pdf)> (accessed 26 March 2014).

**HUMAN RIGHTS COMMITTEE** (12 August 2007) General Comment No 32 CCPR/C/GC/32

**HUMAN RIGHTS COUNCIL, GENERAL ASSEMBLY** (28 May 2013) *Report on the Rejected Asylum Seekers of Choucha Refugee Camp A/HRC/23/NGO/103*.

**HUMAN RIGHTS WATCH** (2011) 'Tunisia: Protect Migrant Camp Residents'. Available from: <[www.hrw.org/news/2011/06/23/tunisia-protect-migrant-camp-residents](http://www.hrw.org/news/2011/06/23/tunisia-protect-migrant-camp-residents)> (accessed 26 March 2014).

**KAGAN, M.** (2002) 'Assessment of Refugee Status Determination Procedure at UNHCR's Cairo Office 2001-2002', American University in Cairo, Center for Migration and Refugee Studies.

**KAGAN, M.** (2005) 'The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination', *Int J Refugee Law* 18(1): 1-29.

**PALLIS, M.** (2005) 'The Operation of UNHCR's Accountability Mechanisms', *N.Y.U. J. Int'l. L. & Pol.* 37: 869-918.

**UNHCR TRAINING MODULE** (1995) 'Human Rights and Refugee Protection RLD 5'. Available from: <[www.unhcr.org/publ/PUBL/3ae6bd900.pdf](http://www.unhcr.org/publ/PUBL/3ae6bd900.pdf)> (accessed 26 March 2014).

**UNHCR** (2005) 'Procedural Standards for Refugee Status Determination under UNHCR's Mandate'. Available from: <[www.refworld.org/pdfid/42d66dd84.pdf](http://www.refworld.org/pdfid/42d66dd84.pdf)> (accessed 26 March 2014).

**UNHCR** (2013) 'Populations of Concern to UNHCR'. Available from: <[www.unhcr.org/50a9f81b27.html](http://www.unhcr.org/50a9f81b27.html)> (accessed 27 March 2014).

### **Legal instruments**

*1948 Universal Declaration of Human Rights*

*1950 Statute of the United Nations High Commissioner for Refugees*

*1951 Convention relating to the Status of Refugee*

*1966 International Covenant on Civil and Political Rights*

*1967 Protocol relating to the Status of Refugee*