



Evading Scrutiny:

*Does UNHCR's
Refugee Determination Procedure
Measure up to
International Standards?*

(An assessment of the practice of the UNHCR Branch Office in Turkey)

**Preliminary Assessment of the new Turkish
Government and UNHCR Refugee Processing
System for non-Europeans**

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Preface

This document puts on public record the issue of legal protection of Iranian asylum seekers in Turkey which is critically undermined. Both the United Nations High Commissioner for Refugees (UNHCR), the agency mandated by the international community to protect refugees, and the Turkish Government, have failed to satisfy international standards governing fair refugee status determination procedures. Until July 15, 1994 an agreement between the two agencies allowed UNHCR to determine refugee eligibility of Iranian asylum seekers. After this date, the Turkish Government declared itself the authority for determination of all non-European asylum seekers in Turkey.

Currently, hundreds of asylum seekers whose arrival predates July 15, 1994 and whose applications were previously rejected by the UNHCR Branch Office in Turkey languish under harsh conditions and threat of imminent deportation. Many of them fled to Turkey several years ago. Determined and labeled by the Office to be “persons of no concern to the UNHCR”--also called “economic migrants” and “abusers”--these persons have not been granted protection against forcible return. Even when other countries have granted them entry visas on humanitarian or refugee grounds, the UNHCR Branch Office has refused intervention with the Turkish authorities to prevent their deportation. Forcible returns continue to take place under desperate circumstances. Despite these terrible odds, asylum seekers refuse to repatriate voluntarily. They maintain that the UNHCR Branch Office owes them a fair and just opportunity to argue their cases. They are determined to achieve their rightful refugee status.

Arrivals after July 15, 1994 encounter an even more horrendous gauntlet once they discover that new regulations require that they lodge an application for “temporary asylum” with the Turkish police. Many asylum seekers have refrained from approaching the authorities because of the serious risk of deportation. The new procedure fails every formal standard of fairness and incapacitates UNHCR from performing its protection function. Only a few months into its implementation, dozens of asylum seekers are reported to have been rejected after cursory initial examinations. The rejections have led to instant deportations since the procedure does not provide an opportunity to appeal negative decisions. These deportations are evidence that Turkey is guilty of a breach of the duty of non-return. The binding obligations associated with the principle of non-return are derived from international law and enjoin any action on the part of a state which returns or has the effect of returning people to territories where their lives or freedom may be threatened.

Despite overt and insidious flaws in the system, UNHCR has demonstrated a deleterious passivity. Neither the secretive process of discussions between the UNHCR and the Turkish Government before the establishment of the new system, nor the UNHCR’s recent signature of approval on the procedure, impart the agency’s will to hold the Government accountable for violating international refugee laws. While the Branch Office’s staff allegedly ascribe this passivity to diplomatic exigencies, asylum seekers blame it on the agency’s inherently flawed standards of treatment. How can international standards apply in dealings of the UNHCR with the Turkish Government when UNHCR is itself not bound to the standards?

This document focuses on the role of the UNHCR because it is pivotal to protection of asylum seekers. The main body of the report identifies major shortcomings in the previous UNHCR refugee determination procedure. By elucidating minimum international standards required for fair procedures, this document questions the standards of treatment adopted by the Office and concludes that the process could not be relied on to identify all refugees, and therefore may return refugees to persecution. It sets forth sixteen recommendations and calls for urgently needed improvements in that determination procedure. The report urges the Office to take all the necessary actions so that no rejected asylum seeker is forcibly returned to Iran until effective measures have been implemented to remedy the flaws and until aggrieved asylum seekers have had a thorough and fair examination of their asylum applications.

The addendum deals with the new system and identifies gross violations of international norms. It charges the Turkish Government with immoral and illegal violation of international refugee laws and calls for an immediate halt to deportations. It maintains that if Turkish authorities want to establish a determination procedure in line with international standards they have to co-operate with the UNHCR as well as with other inter-governmental and non-governmental organizations. As far as UNHCR's role is concerned, the agency is urged to resign from quiet diplomacy and denounce the system publicly.

An earlier draft of the main section of this report was submitted to the UNHCR Branch Office in Turkey for pre-publication comments. In a brief response, without any specific consideration of the findings or of the recommendations, the Office expressed disagreement with "most of the observations" and refuted the criticism as "biased". In the absence of any specific comments we were unable to reflect views of the Office for the final version. Few revisions have been made to the draft to bring the report up-to-date with the new developments. The addendum is also written based on new information that the Office provided.

The principal author of this report is Deljou Abadi. We would like to thank Diana Wear and Anina Karmen Mead for editorial assistance. Also comments from Behrooz Ghamari, Curt Goering, Arthur C. Helton, and Reza Jalali are greatly appreciated. We wish to thank all asylum seekers in Turkey who provided us with information but requested anonymity. Finally we are grateful to The Council of Iranian Refugees in Turkey for facilitating investigations.

Evading Scrutiny:

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Summary

According to United Nations High Commissioner for Refugees's (UNHCR) mandate, the organization's protective role extends to all refugees, regardless of whether or not the country they seek asylum from is a party to the 1951 Refugee Convention. The Turkish Government ratified the 1951 Convention and 1967 Protocol, but has stipulated that it will apply the provisions of the Convention only to European refugees. In the absence of a national legislation for non-European refugees, UNHCR has been carrying out refugee status determination of Iranian asylum claims in Turkey for several years. The status determination procedure has been the cornerstone of UNHCR's protection role in Turkey, since only those who have been recognized as refugees have been afforded protection against forcible return and eventual resettlement in another (third) country. Yet, the determination system has lacked regard for procedural safeguards essential to ensure full and fair determinations. Currently, several dozens of asylum seekers who may have been rejected erroneously under this determination procedure are at imminent risk of deportation.

Iranian asylum seekers in Turkey are in an extremely vulnerable and insecure situation. In past years there have been numerous cases where Iranian asylum seekers, even those who have been recognized or have had their cases under consideration by the UNHCR, have been forcibly returned to Iran from Turkey. These attempts have made Turkey liable for breach of international refugee laws. The most important binding obligation derived from international law is the prohibition on forcible return (*refoulement*), that no person may be returned against his or her will to a territory where he or she may be exposed to persecution.

Circumstances such as lack of employment and education rights, frequent harassment and ill-treatment by Turkish border and local police, protocols agreed to in the past two years between Turkey and Iran dealing with border security and extradition, and assassination of Iranian political asylum seekers in Turkey have further exacerbated the already dire situation. Furthermore, since 15 July 1994, new arrivals have been notified that in order to be issued temporary stay in Turkey, the Turkish Government will decide on their refugee status and UNHCR will only seek solutions for those recognized by the certain authorities. The new regulations, which have proved in practice to have no fairness safeguards whatsoever, warrant more deportations.

¹ United Nation High Commissioner for Refugees.

This report, which is the result of two years investigation and monitoring of the relationship between asylum seekers and the UNHCR Branch Office in Turkey [hereafter the Branch Office] by volunteers of Iranian Refugees' Alliance (IRA), examines the reliability of the Office's refugee status determination procedure to identify all Iranian asylum seekers in need of protection and durable solutions. Although secluded confidentiality rules adopted by the Branch Office have prevented open scrutiny of the procedure, plenty of evidence has been adduced to show lack of basic safeguards provided by UNHCR's own recommended guidelines for full and fair procedures. These safeguards, which are guaranteed by due process in many countries, have most significantly, included legal counseling and representation, full and fair interviews, and provisions for an effective appeal.

Despite explicit emphasis on legal advice and representation by the UNHCR, neither a comprehensive written form, nor individual professional assistance have been available to asylum seekers. In the vacuum of information and guidance, asylum seekers have had no choice other than to rely on word-of-mouth advice from other asylum seekers as to what to expect and how to prepare for the ordeals that await them. Even after going through the entire procedure successfully, many asylum seekers have appeared confused or felt misinformed about what had taken place. Some asylum seekers have omitted important relevant details about their past, for example, imprisonment for their political opinion. The procedure has also been designed in a way that does not allow any meaningful involvement of representatives or advocates at any stage of the process. Representatives not only have been barred from accompanying asylum seekers to the interviews, they have also been denied access to files and any relevant information about an asylum seeker's case. Submissions in support of asylum cases have been generally not replied to and it is never clear if they are included in assessment of a claim.

While interviews play an important role in the procedure, they have lacked essential safeguards for fairness which are unequivocally enunciated by the UNHCR. A patently delinquent flaw has been the failure to ensure that the records reflect accurately what has been said by an asylum seeker. Notes taken during the interview by legal officers were not read back to the asylum seeker, nor had the asylum seekers received a chance at any other stages to inspect the accuracy of what was recorded from their statements.

Consistent complaints regarding the manner in which interviews were conducted as well as problems with communication indicate that interviews were conducted in ways that are in contradiction with the spirit of UNHCR guidelines. According to reports from asylum seekers, interviews were highly controlled by the interviewers, and a personal presentation by an applicant free of the strict question-and-answer format was not allowed. It is also reported that, even in strictly answering questions, interviewers cut short potentially relevant responses, insisting on yes-or-no answers, refusing narrative answers. As a result, it has been difficult for basic facts of an asylum claim to be communicated. Many asylum seekers relate that questions were asked in a random fashion, and repeated in cycles. Such an approach is not only interrogatory, it is ultimately inconsequential. In addition, a piecemeal approach hinders an applicant's ability to remember and describe her/his experience coherently and accurately.

Reports also show that the duration of the interview has not permitted some asylum seekers to provide complete accounts. Many applicants report having left the interviews without

knowing of objections to their claims. The scope of questioning in the interviews is of concern because the general questionnaire used does not adequately address the criteria required to establish refugee status in the context of particular conditions of persecution in Iran in relation to all of the five grounds explicated in the Convention. There have been numerous reports on the confrontational, hostile, unpleasant, and at times contemptuous behavior on the part of interviewers. In particular, some interviewers have been identified who systematically badgered asylum seekers and lacked sensitivity in psychological, interpersonal and cultural awareness. An expressed presumption of skepticism by the Branch Office staff about the truthfulness of the testimonies seems to further affect the adversarial nature of interviews. What appears to have been completely absent from the determination interviews is the development of trust and rapport with the asylum applicant, both on general and personal terms. These attitudes have increased applicants' apprehension and nervousness and are contrary to UNHCR guidelines which say interviews should be cooperative attempts by the investigators to elicit all the relevant information and require that every step possible should be taken to win over the asylum seeker's confidence so that s/he will tell her/his story in its entirety.

Although UNHCR guidelines stipulate that asylum seekers should be provided with the services of a competent interpreter, inadequacy of interpretation facilities has been another complaint commonly raised by Iranian asylum seekers. The most striking example is the use of an Iraqi Kurd in interpretation for Iranian Kurds, while Iranian Kurds speak the Surani dialect which is different from the Kurmanji dialect that some Iraqi Kurds, including the person selected here, speak.

For the most part, inadequate interpretation facilities seem to be the result of lack of selection criteria and allocation of resources. Some interpreters, who were hired from recognized asylum seekers, were chosen without any standardized selection criteria and started work with no training. Many of these interpreters had political backgrounds such that they were looked at with suspicion when they interpreted for asylum seekers whose political backgrounds were different. Yet, some newly hired interpreters are reported to have links with Iran, a factor that makes asylum seekers even more suspicious. Another factor that may, in particular, have compounded the problems of interpretation in the Branch Office, is that communications between officers and asylum seekers were often conducted in a tri-lingual situation. Although the language of the proceedings is English, in IRA's experience, and according to many reports by asylum seekers and accounts from interpreters, some of the Branch Office's legal staff are not fluent in English. Under these conditions, important details are likely lost by way of interpretation.

Lack of a meaningful and effective opportunity to appeal a negative judgment has been another major flaw in the Branch Offices system, despite the fact that a significant number of cases have gone on to the appeal stages (involving review of an initial rejection or re-opening of a case closed as "manifestly unfounded"). Legal assistance and representation have not been provided at the appeal stages. The opportunity to appear before a reviewing officer has not been granted to all applicants, even on review of an initial rejection. Many appeal interviews have been reported to be cursory and inconsequential in the sense to provide an appellant a fresh look at the facts of her/his case and her/his credibility. Most importantly, asylum seekers have been severely handicapped in what they can accomplish on

appeal, because they have not been provided the grounds for a negative decision. Without reasons, there can be no informed decision on how to challenge the decision. The right to appeal thus becomes meaningless. As a result, few requests on appeal include information other than what the applicant claimed to have already given at her/his initial interview. It has not been uncommon that protracted appeal procedures result in expiration of an applicant's stay permit in Turkey, which, regardless of the result, would put the applicant at greater risk of deportation.

Cases that are closed (rejected after review or rejected initially as "manifestly unfounded") have been even more handicapped in what they can accomplish at the appeal stages. In order to be granted a re-opening, they have been required to submit new information while they have no idea if the old information has been properly considered or understood. Such appellants are labeled by the Office as "persons of no concern to the UNHCR", a classification that virtually means "can be deported by the Turkish authorities." There have been no formal procedures to lodge and resolve a request for re-opening a closed case in a reasonable period of time and there is no formal suspension effect on deportation when a request is lodged. It is not uncommon for an appellant to have waited for several months to receive a response to her/his request under constant threat of deportation. Since the clamp-down in the summer of 1994 by the Turkish police on Iranian asylum seekers, who used to appear in front of the Office in order to put pressure on the Office to re-open their cases, the number of re-openings has decreased significantly. Many compelling re-opening requests lodged since then have not been considered.

Given the absence of basic procedural safeguards, it should not be surprising that the Branch Office erroneously denies or unnecessarily delays the granting of refugee status for compelling claims. IRA is aware of several cases which squarely fit in the UN Convention definition, but were rejected by the Office for unknown reasons. The Branch Office's refugee determination procedure cannot be relied on to effectively identify all those who will be at risk of forcible return, and, therefore, may refuse protection to asylum seekers who may otherwise be entitled to protection. Currently, several dozens of asylum seekers, who have been determined not to be refugees by the Branch Office and whose cases have remained closed on appeal, are in great danger of deportation by the Turkish authorities.

IRA submits sixteen recommendations with the intent of promoting full and fair determinations. Until effective measures have been implemented to remedy the weaknesses and flaws in the determination process, no asylum seeker should be labeled "as a person of no concern to the UNHCR" and be denied protection against deportation. IRA strongly urges the UNHCR to give a further careful and thorough review to those rejected asylum seekers whose applications for refugee status have been previously determined. The cases of these persons should receive an immediate official re-opening, and Turkish authorities should be appropriately informed to not forcibly return such persons. Consideration should be given to a review of these cases by a different body of the UNHCR such as the Headquarters. This should be enacted as swiftly as possible.

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1. Introduction

Refugee protection is governed by the 1951 United Nations Convention² [hereafter the UN Convention]. The UN Convention sets out to position the refugee in a human rights framework. The basic principle affirmed in the 1948 Universal Declaration of Human Rights, that human beings shall enjoy fundamental rights and freedoms without discrimination, is highlighted in the first paragraph of its Preamble. By virtue of this grounding, legal and procedural standards and rights concerning refugees and persons seeking refugee status (asylum seekers)³ must be accorded fundamental human rights.

A critical element of refugee protection is individual refugee status determination. The purpose of the determination procedure is to establish whether a claimant satisfies the definition of refugee as stipulated in the UN Convention, and is therefore entitled to protection.⁴ A determination procedure which does not accurately determine refugee status runs a risk of returning refugees to places where their lives and freedom are endangered. The key to the legitimacy of a determination procedure is fairness. Minimum requirements have been established based on international instruments and by the UNHCR. In order to meet their international obligations, signatory states of the UN Convention are bound by their general duty to ensure that their domestic law and practice are in conformity with these minimum standards. Any reduction or denial of the right to these minimum standards renders a procedure unfair.

According to UNHCR's mandate, the organization's protective role extends to all refugees, regardless of whether or not the country they seek asylum from is a party to the 1951

¹ United Nations High Commissioner for Refugees.

² United Nations Convention relating to the Status of Refugees, adopted by the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (adopted 28 July 1951). As of Dec. 1994, 123 states are party to the Convention.

³ In this report, "asylum seeker" is used to identify a person whose refugee status is not accepted as yet by the responsible authorities and "refugee" is used when the claimant has been granted refugee status.

⁴ *Prima facie* refugee status (group determination) is also expressly provided for in the UNHCR statute. For several decades, UN General Assembly resolutions have also served to extend on an ad hoc basis UNHCR's mandate to persons who do not necessarily qualify under the Convention definition but were in refugee-like situations. The term "mandate refugee" refers to these categories and encompasses both "Convention refugees" and "non-Convention" refugees. For example, for more than a decade, Vietnamese who left the Socialist Republic of Vietnam without exit permits were granted *prima facie* status as "mandate refugees."

Refugee Convention. UNHCR has viewed its participation in determination procedures of countries as one of assistance and supervision on establishing fair and generous procedures.⁵ In certain countries and under certain circumstances, however, UNHCR has determined refugee status of asylum seekers solely by itself. Turkey has been one such country.

This report evaluates the refugee determination process adopted by the UNHCR Branch Office in Turkey [hereafter Branch Office] regarding assessment of the refugee claims of Iranian asylum seekers in Turkey. Although several organizations have criticized the procedure, these procedures have so far been subject to very little empirical investigation. A major reason for this is the vacuum of information surrounding the operation of the office in general and the determination procedure in particular. Neither the Branch Office involved in the determination procedure nor the Geneva Headquarters charged with setting the policy have ever disclosed the criteria actually deployed or the specific guidelines used to determine the refugee eligibility of Iranians. Furthermore, secluded confidentiality rules adopted by the Office prevents open scrutiny of the procedure. Independent observers are barred from monitoring the procedures and judicial opinions. Case materials are also considered confidential and are not investigable in any manner. Whatever the content of the adopted procedures by the Branch Office, a serious objection would always be raised on the basis of the secrecy of the procedures.

Despite these barriers, during the past several years, plenty of evidence has been adduced to show that, whether due to disregard of the human rights situation in Iran, or because of a policy not to “offend” the Iranian government, which is admitting refugees from other countries,⁶ or following the general trend of destroying procedural safeguards by the resettling countries, or for other reasons, a restrictive approach not consistent with the “spirit of the Universal Declaration of Human Rights” and fundamental guidelines set forth by the UNHCR, is adopted by the Branch Office.

The Office’s refugee processing system in Turkey is conducted largely as an extra-legal process. Under the procedure, applicants lack certain basic guarantees provided by UNHCR’s recommended guidelines and observed in many countries. Applicants do not receive effective legal advice and counseling; they are not allowed to be represented by counsel or advocates; they are not appropriately informed of the basis for a decision denying them refugee status; they are refused access to their files, including access to records of their interviews; and, they are not afforded an effective appeal. Other elemental safeguards for fairness, such as the availability of competent and trained interpreters, a practice to allow applicants to acknowledge the accuracy and completeness of their statements recorded in the interviews, or even a laxity as basic as taking notes by the applicants during the interviews, are dispensed with.

During the past two years Iranian Refugees’ Alliance (hereafter IRA) has received numerous allegations regarding attitudes of hostility, partiality and exhibition of

⁵ EXCOM Conclusions No. 8 (XXVIII) (1977), para. d.

⁶ Although the Iranian government has been in breach of its international obligations, and in particular, in regard to inhumane treatment of Afghan refugees and forcible repatriation and refoulement, UNHCR has never criticized or publicized these practices.

presumptive skepticism on the part of the legal officers who conduct interviews and make decisions on the applications. Asylum seekers have often spoken of the refugee status eligibility interviews as criminal interrogations, and the role of interviewers as that of prosecutors. The determination examination is regarded as “nerve status determination.” Although it is difficult to confirm these allegations regarding what is going on behind the closed doors of the determination interviews, the frequency and breadth of these allegations and their consistency with other restrictive regulations of the office raise serious concerns about the quality of treatment. Many asylum seekers have not applied for refugee status from the Branch Office because they perceive the determination procedure as being unfair and likely to lead to their deportation by Turkish authorities.

The refugee determination procedure of the UNHCR in Turkey has been controversial among international human rights organizations. Amnesty International has identified serious shortcomings in the procedure and has made the following recommendations to enhance the procedure:

- 1)provision of more systematic legal counseling,
- 2)the right to an automatic review of an initial rejection regardless of the reasons for it,
- 3)requiring the office to state reasons in writing for negative decisions.⁷

To date there has been no effort to meet these recommendations.

Given the removal of commonsense procedural safeguards, it should not be surprising that the Branch Office erroneously denies or unnecessarily delays the granting of refugee status for compelling claims.⁸ IRA is aware of several cases which squarely fit in the UN Convention definition, but were rejected by the office for reasons unknown. Even though Iranian asylum seekers do not live in camps, they are detained in small towns under constant scrutiny of the Turkish police and constant threat of deportation while waiting for their refugee status to be determined by the UNHCR. Many are forced to lead lives of misery, hunger, disease and enforced inactivity. It is bad enough that they have to wait months to receive an initial determination by the UNHCR, it is even worse that this wait is prolonged for unwarranted and avoidable reasons.

⁷ TURKEY Selective protection: Discriminatory treatment of non-European refugees and asylum-seekers, Amnesty International, March 1994, EUR 44/16/94.

⁸ When such concerns were raised with the UNHCR staff, they stated that the 58% rate of approval (including both first instance and review decisions) in 1993 indicates that the procedure is reliable. In our view such quantification is inappropriate. The proportion of Convention refugees among asylum seekers is only based on their backgrounds and any other consideration is meaningless. Furthermore, quantification dangerously implies that there is a set target for approvals. Reliability has to do with fairness and thus the emphasis must be on affording the system the minimum safeguards necessary for identifying all those who are in need of protection as refugees.

In any case, the 58% figure does not reflect correctly the situation of those who, on a case by case basis, have to show that they come within the definition of the Convention. There is a large group of Iranian Baha'is receiving automatic admission from the Office, as long as they are approved by the Bahai Assembly. Therefore, in order to obtain the precise percentage with respect to the actual portion of asylum seekers affected by the determination procedure, i.e., claims based on grounds other than religion, the figure has to be broken down properly. Unfortunately, when IRA requested detailed statistics based on grounds of admission, the Office replied that due to limited resources such an exercise which would request a look at each file is not possible to implement.

Our worries are heightened because new regulations have been established by the Turkish authorities to further restrict the grant of temporary stay to Iranian asylum seekers and thus warrant more deportations. The Branch Office's refugee determination procedure cannot be relied on to effectively identify all those who will be at risk, and therefore may refuse protection, i.e., intervention with the Turkish authorities to prevent deportation, to asylum seekers who may otherwise be entitled to protection. Other than dozens of new arrivals who would be at risk, IRA is aware of several dozens of cases who are awaiting a review or have remained closed on appeal and are in great danger of deportation by the Turkish authorities. It is the intention of this report to set out objective grounds for an urgent revision in the standards governing refugee determination by the Branch Office.

This report is based for the most part on information, knowledge and experience gained over two years (1993-1994) of monitoring the activities between the Branch Office and Iranian asylum seekers⁹ and also in-person interviews with dozens of asylum seekers by an IRA representative during a visit to Turkey in summer 1994. The report also draws on conversations with the Branch Office's staff which took place during the same visit. The report sets out sixteen recommendations to the Branch Office which, if implemented, would bring the determination procedure in line with UNHCR's enunciated standards.

2. The Significance of UNHCR's Role in Protection of Iranian Refugees in Turkey

The office of the UNHCR has been charged by the United Nation's General Assembly with the duty to provide international protection to refugees, to seek durable solutions for the problems of refugees, to supervise the application of international conventions for the protection of refugees by governments, and to promote the implementation of "any measures calculated to improve the situation of refugees."¹⁰ According to its Statute, the work of the Office shall be of an entirely non-political character; it shall be humanitarian, and social, and shall relate, as a rule, to groups and categories of refugees.

In parallel with the creation of UNHCR, the United Nations Convention Relating to the Status of Refugees was adopted in 1951. The Convention was restricted to European refugees forced to flee because of events before 1951. The 1967 United Nations Protocol Relating to the Status of Refugees¹¹ expanded temporal and geographical coverage of the Convention. Under these instruments, individuals qualify as refugees if they are unwilling to return to their country of nationality or habitual residence "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion."¹²

⁹ IRA has not been able to include in this report asylum seekers who have applied for refugee status on religious grounds.

¹⁰ Statute of the Office of the United Nations High Commissioner for Refugees, adopted by United Nations General Assembly, 14 Dec. 1950.

¹¹ United Nations Protocol relating to the Status of Refugees, adopted by ECOSOC res. 1186 (XLI), 18 Nov. 1966. As of Dec. 1994, 123 states are party to the Protocol.

¹² 1951 Convention, *above* note 1, art. 1(B)

The UN Convention only provides minimal protection for refugees. Although the right to seek asylum is recognized in the UN Convention as well as several other international instruments, there is no corresponding state obligation to grant asylum--states retain discretion in granting asylum. However, they are bound not to return refugees to persecution or similar situations of personal danger. The most important provision of the UN Convention is the prohibition on *refoulement* (forcible return) of refugees set out in Article 33, that no person may be returned against his or her will to a territory where he or she may be exposed to persecution. *Non-refoulement* has a firm basis in conventional and customary international law, which means that even states which are not parties to the United Nations instruments are bound to respect the principle. As such, an essential duty of the UNHCR in providing international protection to refugees is to supervise the scrupulous observance of this principle. In longer terms, durable solutions for protection of refugees are sought by countries of first asylum, by the UNHCR or by both in cooperation with each other. When neither voluntary repatriation nor local integration in the country of first asylum are possible, resettlement in a third country is considered.

Under Article 35 of the UN Convention, signatory governments are obliged to cooperate with UNHCR and facilitate its task of supervising the application of the UN Convention. However, in practice governments have acted differently. For example, the Japanese Government is known to have denied refugee status to cases which UNHCR had considered deserving of protection.¹³ On the other hand, in Australia, UNHCR is entitled to attend the meetings of the Determination of Refugee Status Committee in an observer capacity. From 1954 to 1986, Belgian authorities left the task of determining the refugee status of each asylum seeker in the sole hands of the UNHCR. In 1989, several South Asian Countries--most of them non-parties to the UN Convention--agreed on a unique regional plan for refugee status determination of Indochinese asylum seekers, in which the UNHCR participates both as an observer and an advisor.

In Turkey, however, the situation is more complicated. Turkey has acceded to both the UN Convention and the 1967 Protocol, but has expressly maintained a limited geographical coverage of these instruments--Turkey declares no obligation to receive refugees from outside Europe. Although under Article 35 of the UN Convention Turkey is obliged to cooperate with the UNHCR and UNHCR has maintained a crucial role in protection and resettlement of non-European refugees in Turkey, especially with respect to Iranians and Iraqis, there has never been a formal agreement between the government of Turkey and the UNHCR in terms of the obligations of the former and the role of the latter. UNHCR has had the responsibility of protecting Iranian refugees for more than a decade. However, it has only protected those who, through its determination mechanism, have been recognized as "Convention" refugees (refugees who satisfy the Convention definition).¹⁴

¹³ See Japan: Inadequate Protection for Refugees and Asylum-seekers, Amnesty International, AI Index: ASA 22/02/93.

¹⁴ Despite country-wide and gross human rights violations committed by the Iranian government, the question whether UNHCR's extended mandate is applicable to Iranians has never been addressed. Even assuming the determination procedure adopted by the UNHCR effectively and fairly identified the "Convention" refugees in Turkey, those who remain unidentified cannot be presumed not in need of protection by the mere fact that they do not qualify for "Convention" refugee status. If returned to Iran, an overwhelming majority of rejected asylum seekers would suffer severe violations of fundamental human rights that are expressly prohibited under international standards. More

Iranians are one of the largest groups of asylum seekers in Turkey. They began to arrive in large numbers in the early 1980s, and are reported to number from 200,000 to a million.¹⁵ As it was impossible for them to be granted refugee status by the Turkish authorities, the best that has been worked out during these years has been that Turkish authorities have allowed them temporary stay if the UNHCR recognized their refugee status and would work for their resettlement.¹⁶ This arrangement has afforded Iranians some level of protection against forcible return but has not prevented Turkish authorities from contravening the arrangement and forcibly returning asylum seekers. Over the past decade, numerous *refoulements* of Iranian asylum seekers have taken place, including those recognized as refugees by the UNHCR.¹⁷ Asylum seekers were arrested and immediately taken to the border, without access to a court of law to appeal the decision.¹⁸

importantly, there are no mechanisms for monitoring the circumstances of the returnees. UNHCR has on many occasion recognized the applicability of *non-refoulement* to “non-refugees” or persons in “refugee-like situations.” In 1985, the High Commissioner recognized “[non-refoulement] requires that no person shall be subjected to such measures as rejection at the frontier or, if he has already entered the territory, expulsion or compulsory return to any country where he may have reason to fear persecution or serious danger resulting from unsettled conditions or civil strife.” Report of the High Commissioner for Refugees, UN, GAOR Supp. No. 12, par. 22, 1985. In 1982, UNHCR stated: “As regards persons not meeting the criteria of the refugee definition but coming within the High Commissioner’s extended competence . . . protection may be limited to . . . refoulement and to treatment according to various minimum standards.” Note on International Protection, 33rd Session of the Executive Committee of the High Commissioner’s Programme, par. 19, UN Doc A/AC.96/609/Rev. 1, 1982.

¹⁵ See World Refugee Survey 1988 - 1994, US Committee for Refugees. See Report on Iranian and Iraqi refugee and asylum seekers in Turkey, 17 Jan, 1989, CE doc 5995 (Parliamentary Assembly, Council of Europe, p. 45) as cited in “The Legal Status of Asylum Seekers in Turkey” - Kemal Kirisci, *IJRL* 3.3 (1991). Turkish dailies, on the other hand, have reported up to 2 million Iranians in Turkey. In 1991, the Turkish Red Crescent Society told a Lawyers Committee delegation that Turkey had provided temporary shelter to 5 million Iranians since 1979, while the Director-General for Multilateral Political Affairs at the Foreign Ministry has referred to 1 million, Asylum under Attack, Lawyers Committee for Human Rights - April 1992.

¹⁶ A report by Lawyers Committee for Human Rights notes that although the UNHCR “had traditionally enjoyed very little leverage with Turkey,” in 1986 UNHCR succeeded in making, as considered by human rights organizations, a “behind the closed door deal” with the Turks. The report says: “[w]orking under the European consultation, Widgren [UNHCR’s coordinator for the European consultations] and Hocke [High Commissioner from 1986 to 1990] persuaded Turks to allow UNHCR officials screen Iranians, and Western governments to accept a quota of 3,000 Iranians for resettlement. This, explained Hocke, allowed Turkey a way out of two unpalatable options--harboring opponents of the Iranian regime (which might have threatened its oil) or expelling Iranians.” *The UNHCR at 40 : Refugee Protection at the Cross Roads*, Lawyers Committee for Human Rights, February 1991, p. 72.

¹⁷ In February 1985, in a memorandum to the Turkish authorities, Amnesty International enclosed a list of 94 names of individuals reportedly subjected to refoulement from Turkey during 1984 and 1985. In June 1987, Amnesty International reported deportation cases of 400 Iranians which took place from October 1986, without them having a chance to have their cases considered by the UNHCR. In August 1988, Turkish press reported an incident in which 40 out of a group of 58 Iranian asylum seekers handed to the Iranian authorities were executed in Orumieh on the Iranian side of the border. In July 1989, an Amnesty International report described the cases of 9 Iranians forcibly returned to Iran in November 1988, seven of them were reportedly executed by firing squad after their return and the two others detained. The report added that in many of these cases the Iranians had been recognized as refugees by the UNHCR. In February 1992 Amnesty International expressed concern over 5 deportation cases which took place in late 1991. The organization raised concern over 100 cases in January 1992, 2 in January 1993 and at least 6 in January 1994.

¹⁸ This is despite the fact that Turkey is a party to the European Convention on Human Rights and has accepted the right of individuals to take cases to the European Commission. The Convention applies not only to the nationals of members of the Council of Europe, but also to non-nationals in the territory or subject to the jurisdiction of

Since July, 15 1994, Turkish authorities have established a prerequisite for issuing temporary stay permits to Iranians. Only those who can prove to the Turkish authorities that they are "genuine refugees" would be allowed to stay and request assistance for resettlement from the UNHCR. This practice not only has no legal grounding since Turkey has maintained its reservation to the UN Convention, i.e., that it has no obligation towards non-European refugees, but also has proved in practice to have no safeguards whatsoever for fairness. Asylum seekers are interviewed by the Turkish police, which has no competence in refugee determination. Basic rights such as representation and appeal of a negative decision are absent from the procedure. UNHCR has no role in these procedures to ensure a fair and just application of the international requirements. Nonetheless, the Branch Office has been instructing newly arrived asylum seekers to go through the screening interviews conducted by the police as a condition for any possible cooperation from the Office.

Those asylum seekers who had registered with the police before the start of this program are also screened retroactively based on the information they had given to the police when they registered. For these asylum seekers, the application of the new system is grossly inequitable because they interviewed with the police prior to learning of the policy change and in reliance on the former system of single determination by the UNHCR. Several of them have so far been evaluated as having unworthy claims and as unworthy of temporary stay in Turkey. From this group, only those who were recognized or have active cases with the UNHCR have benefited from the intervention of the Branch Office with the Turkish authorities to prevent their deportation.

The already insecure circumstances of Iranian asylum seekers in Turkey have further been exacerbated by several security protocols between the governments of Iran and Turkey enacted in the past two years. The latest protocol was signed on June 14, 1994. The protocols have been explicit in their aim to repress the activities of opposition groups fleeing from one country to another. After the signing of each protocol, deportation and ill-treatment of Iranian asylum seekers in Turkey has escalated. Agents of the Iranian government who have been in Turkey to further persecute members of opposition groups continue to operate uninhibited. Several abductions and/or assassinations of Iranian opposition members have been reported since 1985.¹⁹ These circumstances have been closely monitored and publicized by Amnesty International. In March 1994 an Amnesty International report starts by saying that "The protection of refugees in Turkey has reached a crisis point." It is noted that "[I]ranians who have fled in search of safety, and to avoid arbitrary detention, torture or execution in Iran, live in a state of extreme anxiety and insecurity in Turkey - desperate to be recognized as refugees by UNHCR so that they can be resettled as quickly as possible in other countries."

contracting states. Turkish law also provides the possibility of appealing administrative decisions to the Council of State. See "The Legal Status of Asylum Seekers in Turkey" - Kemal Kirisci, *IJRL*, 3.3 (1991).

¹⁹ 12 incidents are reported in "Human Rights under the Islamic Republic of Iran" () on the occasion of the International Conference of Human Rights, Vienna 14-25 June 1993, Published by Aghazi No. In August 1993, Bahram Azadfar and Mohammad Ghaderi, 2 Iranian asylum seekers were assassinated. Ghaderi was abducted and his mutilated body was later found by the Turkish police. In January 1994, Taha Kermanj, another Iranian asylum seeker, was shot dead by gunmen in Turkey.

Although UNHCR has chosen quiet diplomacy in the face of Turkey's obvious contravention of the UN Convention and remains far too timid in responding to the unfair refugee status screenings conducted by the Turkish police, its protection, though undefined and unreliable, remains a matter of life and death for Iranian asylum seekers in Turkey. Asylum seekers desperately and urgently need to be recognized as refugees by the office to be entitled to its protection while they are in Turkey and to be afforded a durable solution, i.e., resettlement in a third country. It is crucial that Iranian asylum seekers, as vulnerable as they are, be afforded a fair and just opportunity to show that they come within the criteria to be afforded protection, so that no asylum seeker is unjustly denied recognition and risks forcible return to the hands of her/his persecutor.

3. The UNHCR Refugee Determination System in Turkey

3.1 International Standards

A formal determination of refugee status is precedent to providing protection to refugees by states or by the UNHCR in most situations. A denial of protection may lead to the return of a refugee and is in direct contravention of the most basic aspect of international refugee law--that a person may not be returned to a country where s/he has a well-founded fear of persecution. Erroneous evaluations may happen by reason of lack of procedural protections and by misapplication of the refugee criteria.

General guidance on the question of procedural standards in determination of refugee status can be found in a variety of international sources including: article 14(1) of the 1966 Covenant on Civil and Political Rights providing entitlement to a fair hearing before an independent and impartial tribunal "in the determination of . . . rights and obligations in a suit of law"; article 13 of the Covenant providing that non-nationals lawfully in the country are entitled to "submit the reasons against expulsion and to have the case reviewed by, and be represented for the purposes before the competent authority"; and also the Conclusions on International Protection adopted by the Executive Committee of the High Commissioner's Programme.

In 1977, the Executive Committee elaborated several "basic requirements" which asylum procedures should satisfy.²⁰ The Committee also requested the Office of the UNHCR to produce an authoritative *Handbook on Procedures and Criteria for Determining Refugee Status* (hereafter the *Handbook*) "for the guidance of governments . . . relating to procedures and criteria for refugee status." Accordingly, if they are to abide by their international obligations, the states parties to this Convention and Protocol should be guided by the *Handbook* when hearing applications for refugee status. Although the *Handbook* does not supply sufficient detail to cover all potential due process problems it recommends that applicants receive guidance on the procedures to be followed and that they be provided with a competent interpreter if necessary, appeals against negative decisions are to be allowed, and the applicant is to be permitted to remain in the country of asylum pending initial decision and pending the outcome of any appeal. Based on the recognition that all potential refugees are in a "vulnerable position", the *Handbook* sets out

²⁰ See EXCOM Conclusion No. 8 (XXVIII) (1977).

several recommendations regarding how to examine the facts and the credibility of the refugee claim and how to apply the refugee definition and criteria to these findings.

The establishment of more comprehensive refugee determination procedures by governments and by the UNHCR, where it has been involved, has provided a virtual laboratory for introduction of more detailed elements for a fair procedure. Guy S. Goodwin-Gill, an authoritative commentator, has summarized these elements as follows: "The principle of universal access [to refugee status determination] for the physically present involves the corollary of a hearing. No international standard prescribes the detailed handling of cases, but general principles of justice and adjudication suggest as a minimum the opportunity to present and develop a claim, to adduce evidence and to rebut adverse inferences or allegations, preferably before the decision-making authority itself. There is considerable support also for the principle that applicants should be entitled to counsel."²¹ Through much pressure and litigation, several governments have set up determination systems which include all or some of the above procedural rights. These rights have been considered as part of the principles of legal culture by human right and national refugee organizations.²²

In its recommendations to governments, UNHCR has expressed its own views regarding more detailed standards on fair procedures. In 1990 UNHCR issued a "Note on fair and efficient procedures" (hereafter the *Note*) in connection with a judicial challenge brought in the Hong Kong High Court concerning alleged unfairness in the screening and review procedure in a jurisdiction. The *Note* further sets forth UNHCR's interpretation of standard procedures necessary to ensure fair refugee status adjudication and further illuminates the fundamental components of these procedures. We will refer to this *Note* later.

3.2 Description of Branch Office's Refugee Determination System

Based on information available, up to 1995 the system operated as follows. Upon registration with the office a pre-interview form in which the applicant provides biographical data and some background information is completed. Applicants are then instructed to register with the police. Previously the registration with the police included an informal interview in which biographical data was collected and within three months, a stay permit was issued. As of July 1994 the visit for registration with the police also included a "refugee eligibility screening interview" to determine if the applicant is a "genuine refugee" in the eyes of the Turkish authorities and worthy of temporary stay in Turkey.²³

Until the summer of 1993, asylum seekers were not given any written information about the procedures. Since June 1993, UNHCR has distributed an "information notice" to the asylum seekers when they register. The notice explains the steps involved in UNHCR's determination procedure and the kinds of assistance the office provides. Although the notice tersely addresses refugee status eligibility by emphasizing the importance of "truthful

²¹ The Determination of Refugee Status: Problems of Access to Procedures and the Standard of Proof, Guy S. Goodwin-Gill, *Year Book- The International Institute of Humanitarian Law*, 1985, 60.

²² See "Fair and Efficient Procedures for Determining Refugee Status: A proposal", European Consultation on Refugees and Exiles, *IJRL* 3: 1 (1991).

²³ For a description of the current practice see the addendum to this report.

statements” and “credible” claims, it does not articulate what is expected of an applicant in terms of the definition of “persecution”, “credibility”, standards of proof and criteria, the purpose of the interview, or what an applicant is expected to accomplish in the interview. In addition, although the “information notice” states that applicants must approach the Police with the “police letter” given to them by the Office, the notice has not been updated to provide clear and consistent advice to anxious and confused applicants who are informed by the Branch Office that now, in addition to biographical data, they have to present the reasons of their flight to the police.

A full interview with the office is scheduled for the applicant within three months. Applicants are not required to submit a written claim before the full interview. They are asked to report promptly on the interview date, which actually means that they have to report to the office at 9 am and wait, sometimes until the final hours of the work day, to be called in. The interview is conducted by a legal officer, who was usually assisted by an interpreter. During the interview, the officer completes a questionnaire, sometimes not in full. An official decision is made later, although some applicants are told during their interviews that their cases are not acceptable. Based on our case studies, interviews ranged from 20 minutes to several hours in length.

Asylum seekers are notified of the results of the interview within four months after the interview has taken place. The decisions are in the form of a standard form letter which does not specify reasons for rejection. There are three kinds of decisions: positive, negative with an opportunity for a review, and a closed case without an opportunity for an automatic review. In lieu of the latter decision the person is pronounced to be “not of concern” to the UNHCR and the “information notice” explains that one’s case was rejected as “manifestly unfounded” or as “abusive of the procedures”. There is no explanation of the categories of claims that are considered as such.

Positively evaluated cases are interviewed for eligibility to receive financial aid. The refugee is referred to the embassy of one of the resettling countries, which in most cases involves a redetermination of refugee status by that country. The result can be positive which leads to resettlement, or negative after which the rejected applicant is referred to another embassy. This cycle can repeat several times. There are some refugees who have stayed in Turkey for over three years and have almost exhausted the list of eligible embassies.

If the decision is negative with the opportunity for a review, the applicant is informed that s/he can write an appeal letter within 30 days. A form in which an appeal letter should be written is provided. The only instruction given for preparing the appeal is that the letter “SHOULD NOT EXCEED TWO PAGES ”. An interview is not always granted but a different legal officer makes a second decision on the case. While the case is reviewed the applicant maintains an “active case” with the office, which in effect entitles her/him to protection against deportation.

Although there is the possibility for a re-opening of cases that are closed, there are no formal procedures for lodging an appeal. A request for re-opening is granted only based on introduction of new information that was not presented during the initial examination. During the time in which the applicant is appealing for a re-opening, which can take several months and several petitions to the office, s/he maintains an “inactive” case with the office

and therefore is not entitled to protection against deportation. Cases closed after a negative decision on appeal can be re-opened similarly.²⁴

3.3 Problems with the System

In determining whether international standards of fairness in determining a refugees status are being satisfied, each step of the process must be examined. Fairness in determining the facts of an asylum case largely depends on the availability and quality of information and counseling prior to each interview; the interview itself, including the way it is conducted and the quality of available interpretation as well as the procedure for appeals.²⁵

An equally important element in refugee status determination is the extent to which the refugee criteria are generously or stringently applied to the facts of a claim. This report does not address this element for two reasons. First, due to the secrecy surrounding the procedure, findings related to the decisions on the claims are not accessible for independent investigation. Second, without the presence of minimum procedural safeguards, even the most liberal application of the definition would not ensure that genuine refugees are recognized as such .

The evidence used in assessing the procedural problems in the Branch Office refugee determination system is based on dozens of reported grievances from asylum seekers, interviews with dozens of asylum seekers in Turkey and interviews with some of the interpreters assisting the Branch Office. References made to the Branch Office's views in this report are based on in-person conversations with the Office's staff.

Legal Advice and Representation

Asylum seekers who fear persecution are often reluctant to speak freely to authorities adjudicating their claims. Details of persecution are very often repressed because they are so painful to recall. Asylum seekers will also be wary of saying anything to compromise or endanger family, friends and comrades they have left behind. Each asylum seeker has a particular case with its own peculiarities which needs to be fully and adequately presented to the examining authority. Refugee laws and procedures are most often foreign, unfamiliar and complex to asylum seekers. Given the high stakes of an improperly presented case to a potential refugee, individual counseling is, therefore, considered as a common-sense safeguard to ensure that asylum seekers identify and effectively present all the relevant facts of their claim. Representation by counsel further enhances an applicant's ability to articulate and support a claim. In many countries, asylum seekers are assisted by their representatives to submit a written claim and are allowed to be accompanied by their representatives in interviews and hearings. While the simple presence of a representative during the interview provides, in the least, a monitoring of the procedure, her/his probing questions, cross-examination of witnesses and finally her/his attempts to challenge an adverse finding, actually ensure fairness.

²⁴ Although a modified procedure is now followed for new arrivals, the above appeal procedures are still applied to those arrived before July 15, 1994.

²⁵ Another important aspect of a determination process is the training and background of the officials involved. Information for IRA to make a substantive assessment in this regard is not available at this time.

The requirement for legal advice and more specifically for individual legal advice is emphasized by the UNHCR. The basic standards in the *Handbook* include that :²⁶

The applicant should receive the necessary guidance as to the procedure to be followed.

More specific requirements are explicitly highlighted in the *Note*:²⁷

Given the vulnerable situation of an asylum seeker in an alien environment, it is important that s/he should *on arrival* receive appropriate information on how to submit his/her application. Such advice is most effective on an *individual basis* and is provided in many countries by legal counseling services, funded by governments, the UNHCR or non-governmental sources. [Emphasis added]

In regard to the interview it says:²⁸

The reference to “necessary facilities” could, in UNHCR's view, *also include legal advice and representation, if the applicant requires these in order to present his case properly.* [Emphasis added]

And in reference to the appeal procedure the possibility for the applicant to be able to “*obtain legal advice and representation*” is included in what UNHCR considers as:²⁹

the basic principles of fairness applicable equally to judicial or administrative reviews. [Emphasis added]

Despite the emphasis on legal advice and representation by the UNHCR, the Branch Office balks at giving the same “necessary facilities” and “the basic principles of fairness” to asylum seekers that it adjudicates. In the Branch Office’s procedures, not only is comprehensive written information not available to asylum seekers, but asylum seekers are also denied individual professional advice or assistance prior to an interview, during the interview, or at any other stage. This is despite the fact that an asylum seeker is likely to have been waiting for an interview for several months, with ample time for such consultation.

As far as the “information notice” is concerned, it does not provide any meaningful legal assistance to asylum seekers. The notice only sets out the general refugee definition and does not contain what is normally considered as legal advice in terms of presenting a refugee claim. The few references that are made are in connection with informing asylum applicants about the importance of “telling the truth throughout contact with the office” and “risking to have an application rejected, in presenting events, circumstances or facts which do not correspond to one’s own situation.” Rather than providing information to ensure

²⁶ *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979), &192(ii).

²⁷ UNHCR, *Note on the subject of the role of UNHCR in the Hong Kong procedure for refugee status determination* (1990), cited in *Refugee Determination under the Comprehensive Plan of Action: Overview and Assessment*, Arthur C. Helton, *IJRL* 5.4.

²⁸ *Ibid.*

²⁹ *Ibid.*

that genuine claimants are guided to fully and accurately present their claims, the notice, in fact, demonstrates an overzealous attempt to prevent “abuse.”

Although the notice informs asylum seekers that they can receive “counseling” by “legal officers,” in practice, no asylum seeker has been actually counseled in order to prepare for presentation of a claim before an interview or to be informed of the basis of a denial. The term “counseling”, indeed, has assumed a new meaning in this procedure. Asylum seekers often receive notices that they should come to the office for “counseling.” However, when they present themselves, they are simply handed a rejection decision, informed of reversal of a negative decision, or are spontaneously interviewed.³⁰

In this vacuum of information and guidance, asylum seekers have no choice other than to rely on word-of-mouth descriptions and advice from other asylum seekers as to what to expect and how to prepare themselves. Even after going through the whole procedure successfully, many asylum seekers appear confused or feel misinformed about what they have been through. Some have omitted important relevant details about their past, for example, imprisonment for their political opinion, because they were under the impression that without physical evidence such testimony would be detrimental to their case.

The considerable number of approvals at the later stages is also in part due to lack of information on the part of asylum seekers who are simply unfamiliar with the criteria and the laws and therefore cannot present their claims coherently when they are interviewed for the first time. Most applicants do not understand the reasons underlying particular questions because they have received no legal counseling prior to the interview. Without such advice applicants cannot respond adequately to questions designed to elicit evidence of persecution. The adverse consequences are compounded by the fact that, as described in greater detail below, records are considered confidential even to the applicants, and a failure to elaborate a claim by the applicant because of unfamiliarity with the requirements is unlikely to be remedied at later stages.

UNHCR procedure is also designed in a way that does not allow any meaningful involvement of representatives at any stage of the process. Representatives not only are barred from accompanying asylum seekers to the interviews, they are also denied access to files and any relevant information about an asylum seeker's case. Asylum seekers usually do not know if a submission by an advocate or a representative is included in their record, on which decisions are based, because such submissions are not substantively challenged by the office.³¹

Although a comprehensive, general information notice is necessary and should be provided to asylum seekers by the Branch Office, it can never address the more

³⁰ In contrast to the narrow interpretation of the Branch Office regarding legal counseling, in other countries that UNHCR has been involved in, the organization has provided comprehensive counseling. One example is in Asian first asylum countries determining refugee eligibility of Vietnamese and Laotian asylum seekers under the Comprehensive Plan of Action. In these countries UNHCR either recruited lawyers, trained lay persons, involved non-governmental organizations or counseled asylum seekers itself on an individual basis, both pre-interview and on appeal.

³¹ With its hands tied, IRA has, nevertheless, submitted several written submissions for re-openings of cases. None of them have received a noteworthy reply.

fundamental issue of providing case specific advice and assistance to individual asylum seekers regarding what to expect and how to prepare for an interview, what details of their own case may be relevant, what specific documentation might be useful to try to obtain, etc. Individual legal counseling should be made available to asylum seekers at every stage of the process. Steps should be taken to ensure that sufficient resources are made available to achieve these ends. Local lawyers and non-governmental organizations should be consulted and if necessary provided a role. Current procedures should be revised to include legal representation on behalf of asylum seekers both in writing and during the interviews. The provision of representation undoubtedly would assist in the development of more coherent claims, and should result in increased positive decisions in the first instance.

• Interview

The interview plays an integral part in a fair refugee determination procedure. Few asylum seekers are able to prove their claims through physical evidence such as decisions of courts, warrants or press reports of arrest. Many claims are rejected on the grounds that they are not credible. A fair interview gives an applicant the opportunity to prove her/his credibility, an important factor in the determination. The fairness of the interview requires certain standards. Some general standards have been recommended by the UNHCR. The significant responsibility resting on “persons charged with determining refugee status” is set out in the *Handbook*:³²

It will be necessary for the examiner *to gain the confidence of the applicant* in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings. [Emphasis added]

UNHCR called upon the Hong Kong government to observe fairness in the interviews conducted for refugee status determination of Vietnamese people by being more specific about interview requirements:³³

[A]s refugee status is primarily an evaluation of the applicant’s statement, the quality of the interview is crucial to a proper determination of the claim. Paragraphs 196-205 of the [UNHCR] Handbook deal with this aspect of the procedure and make it clear that “while the burden of the proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner” and also that the examiner should “ensure that the applicant presents his case as fully as possible and with all available evidence.” *The interviewer therefore has a particular responsibility to ensure that the interview is comprehensive and the records reflect accurately what has been said.* The reference to “necessary facilities” could, in UNHCR’s view, also include legal advice and representation, if the applicant requires these in order to present his case properly. [Emphasis Added]

³² Handbook, *above* note 22, Article &200.

³³ UNHCR Note, *above* note 23.

The inclusion of oral interviews is a positive aspect of the Branch Office's refugee determination procedure. However, as mentioned in the *Handbook*, it is the quality of the interview that is crucial to a proper determination of the claim and not merely the interview. Since in the Branch Office procedures, interviews are used as the significant means to elicit the simple facts of a claim as well as assessing the credibility of claims, they constitute the primary aspect of the whole status determination.³⁴

A patently delinquent flaw in the Branch Office's refugee status interview is the failure to ensure that the records reflect accurately what has been said by an asylum seeker. Misinterpretation and non-interpretation of an applicant's statements by the interpreter or mis-characterization, misunderstanding or mis-transcription of the applicant's statements by the interviewer are always reasons for concern in the interviews. Investment in avoiding such errors is not only a question of fairness, but leads to a better assessment of factual situations from the beginning. It is interesting to note that even countries which are not bound by the UN Convention have accepted the practice that notes taken during the interview should be read back again to the asylum seeker to check their accuracy and for amendments.³⁵ Since in the Branch Office's interview the original (Farsi or Kurdish) testimony of the applicant is not preserved, for example, by tape-recording the session, such a practice is even more crucial to ensure that the applicant presents her/his case as fully as possible. Nonetheless, notes taken during the interview by legal officers of the Branch Office are not read back to the asylum seeker, nor would the asylum seeker receive a chance at any other stage, to inspect the accuracy of what is recorded from her/his statements.³⁶

A "comprehensive" interview requires certain ground rules and interview techniques. The details are not discussed in the *Handbook* and are left to be devised by the determining authorities. Unfortunately, there are no publicly available documents to examine the rules and techniques adopted by the UNHCR adjudicating officers in general, nor for Branch Offices' in particular.³⁷ The confidentiality rules adopted by the Branch Office, which

³⁴ In most other countries, a written submission prior to interview is either mandatory or optional. For example in the US applicants are required to present the facts of their case by completing a questionnaire ahead of their hearing.

³⁵ Although the United Kingdom has signed the 1951 UN Convention the obligations have not been extended to the Hong Kong territory. Nonetheless, in addressing the issue of fairness regarding the application of a Vietnamese asylum seeker, a Hong Kong court stated: " Having regard to the risks of error and misunderstanding and the importance of the record in the decision making process and the likely effect of the decision I have no doubt that fairness requires that the contemporaneous note of the interview should be read back again through interpretation to the asylum seeker at the end of the interview, or during it, in order to check a) its accuracy, and b) its completeness. This would give the opportunity to check the correctness of the note and also it would give the opportunity to add anything with which on second thoughts the applicant may wish to deal. Further, it would give the immigration officer the opportunity to ask supplemental questions if he considers further details may be of value to his enquiry or fair to the applicant." Affirmation of Do Giau, March 2, 1990, cited in *Judicial Review of the Refugee Status Determination Procedure for Vietnamese Asylum Seekers in Hong Kong : The Case of Do Giau*, Arthur C. Helton, *Brooklyn J. Int'l L.* 10.2.

³⁶ Branch Office's staff attributed the failure to extend the interviews to read back notes to applicants to lack of resources. They further pointed out the general UNHCR confidentiality rules which prohibit any inspection of files by applicants or their representatives/advocates.

³⁷ For example, in Canada, the Immigration and Refugee Board has published a booklet in which "The Refugee Hearing Process" is explained. One section includes the following: "The refugee determination hearing is non-

prohibit both monitoring of the interview and the review of interview records, have made an objective assessment even more difficult. Nonetheless, what has been reported by asylum seekers indicates that interviews are generally conducted in ways that are in contradiction with the spirit of the *Handbook*. Complaints have been consistent and relate to the manner in which interviews are conducted as well as problems with communication.

• **Manner**

In order to gain the confidence of an asylum seeker to present her/his claim in full, a non-adversarial interview is recommended. This requires that the interviewer conduct proceedings in a sympathetic and neutral manner and mutually engage with the applicant in establishing and probing the basis of her/his claim. In some countries regulations governing a non-adversarial interview are specified and special techniques are instructed to interviewers.³⁸ Also, in places where monitoring of the interview is allowed or where records of the interview are open for independent review, finding a deficiency in the way the interview was conducted can warrant a new interview.³⁹ This safeguards against the return of a genuine refugee who has been rejected because of a faulty interview.

As noted before asylum seekers attend the Branch Office's interviews without prior legal counseling. They are not only uninformed about what is expected of them in the interview (other than truthful statements), but also do not receive notification of their rights during the interview. For example, applicants do not know what they are entitled to if the interviewer or the interpreter exhibits incompetence or bias. There is neither a mechanism for reporting, nor a right to appeal a flawed interview. In practice, asylum seekers confront restrictive regulations unheard of in legal systems. They comply out of fear. A consistent restriction is that applicants are prohibited to take notes, or even possess a writing tool,

adversarial in nature. Every effort is made to ensure that claimants can put forward their cases as thoroughly and completely as possible. Claimants have the full protection of the *Canadian Charter of Rights and Freedom*, have the right to be full participants in the process, to be represented by counsel and to the services of an interpreter if necessary. The presentation and acceptance of evidence at hearings are not restricted by technical or legal rules of evidence; the process is designed to elicit all the relevant information pertaining to a claim. To this end, a Refugee Hearing Officer assists the panel in the hearing by ensuring that all available and relevant evidence is presented." p. 7.

³⁸ For example in the United States the regulations state that the interview is to be conducted in a "non-adversarial" manner. The instructions state that the interviewer is to assist the applicant in the development of her/his claim, not be her/his opponent. "In both the legal and generic sense of the word, the interview is non-adversarial. Do not attempt to disprove the applicant's account of events or fears of persecution. Maintain an interested and friendly demeanor while guiding the applicant through his application and eliciting as much information as possible from the applicant on these events or fears. The purpose of the interview is to elicit all relevant facts on which to make an informed adjudication; it is not to 'break' the applicant's story...The applicant's testimony may be the only source of evidence available to the Asylum Officer. The interview is complete only when the applicant has been allowed to fully explain why he or she fears persecution if returned to the country of persecution." *Procedures Manual and Operations Instructions* - Asylum Branch, INS, March 1991. It should be noted that the Manual's language has developed through consultation with non-governmental organizations.

³⁹ In addressing the issue of fairness regarding the application of a Vietnamese asylum seeker, a Hong Kong court stated the applicant could only "get a fair deal" if the immigration officer was "careful to sympathetically elicit" complete and accurate information as the basis of a refugee status determination. The court suggested that an asylum seeker who is able to provide a full narrative of "his own experience, his fears and the conditions in Vietnam as he saw them" would be hindered from rendering such an account in the absence of a sympathetic attempt on the part of the interview to obtain the information. Affirmation of Do Giau, March 2, 1990, *above* note 30.

during the interviews. Such an imposition not only contradicts the *Handbook's* pursuit of gaining “the confidence of the applicant”, but is contemptuous. From the beginning of the interview, asylum seekers are sent a clear message that they are “suspect”.⁴⁰ An interview that starts with such an attitude violates the spirit of fairness explicated the *Handbook*.

According to reports from asylum seekers, interviews are highly controlled by the interviewers, and a personal presentation by an applicant free of the strict question-and-answer format is not allowed. A question-and-answer format does not encourage an applicant to put forward her/his claim freely and affirmatively. Many applicants have reported that, although they have insisted on their need to make a personal presentation at the end of the interview, in order to complete their testimony, they have not been allowed to do so, or have been stopped after presenting a few statements. It is also reported that, even in strictly answering the questions, interviewers cut short potentially relevant responses, insist on “yes-or-no” answers where explanations are required and refuse to allow narrative answers. Asylum seekers who have received some introduction to the interview from the interviewer at the beginning of the session reported that these explanations emphasized the strict question-answer format. As a result, it has been difficult for the basic facts of the asylum claim to be communicated and considered. Based on review of the contents of the initial interviews--reported by the asylum seekers--several first instance rejections appear to have been due to a failure to elicit all the important facts of a claim at the initial interview. For example, an asylum seeker who was politically active for 15 years before he fled Iran, served a 9 year prison term, and continued his activities after his release, which led to his flight to Turkey, was forced to stop his testimony before he explained his activities after his release from the prison. He received an initial rejection. In his second interview, on appeal, the new examiner confronted him with a discrepancy between his initial testimony and a written letter submitted to the office after the initial interview,⁴¹ which contained information about his activities after his release from prison. It was not until the second interview that the concerned asylum seeker was given an opportunity to present his whole experience, at which point he was immediately recognized.⁴²

Many asylum seekers relate that questions are asked in a random fashion, and repeated in cycles. One asylum seeker related that he was asked five times in between other questions about the date that he was dismissed from the university. Although the date was solidly inscribed in his mind, this approach exacerbated his inability to clearly describe his whole experience. Another asylum seeker was asked seven or eight times the date that her husband was executed, which she said, exhibited a “painful insensitivity to her loss.” Such an approach is not only interrogatory, it is ultimately inconsequential because even if an asylum seeker fails to give the same answer every time, it does not mean that s/he had lied. In addition, a piecemeal approach hinders an applicant’s ability to remember and describe her/his experience coherently and accurately.

⁴⁰ Branch Office staff stated this regulation is maintained to prevent asylum seekers from taking such notes to smugglers who would then fabricate new stories and sell them to asylum seekers.

⁴¹ This letter was sent to the Office with the English translation.

⁴² The names of asylum seekers referred to in this report have been omitted as a matter of protection.

In probing the substance of questions upon which eligibility determinations are made, UNHCR staff told IRA that they use a general questionnaire obtained from the UNHCR Headquarters. IRA believes that a general questionnaire does not adequately address the criteria required to establish Convention refugee status in the context of a particular group of asylum seekers. In this case, a proper questionnaire should accurately reflect particular conditions of persecution in Iran in relation to all of the five grounds. According to asylum seekers' reports, as far as an applicant's fear of persecution is concerned, questions revolve around generalized stereotypes where systematic contact with the larger political organizations and recent imprisonment are considered primary elements of persecution in Iran. Areas such as gender-based persecution, religious based persecution of Moslem born non-believers and atheists, and discrimination or deprivation with respect to other basic rights are not covered. Paragraph 53 of the *Handbook* states that an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well founded fear of persecution on cumulative grounds. The Iranian government is well known for the wide range of measures it takes against any one lacking absolute faith and allegiance to the government. The measures explicitly defy the concepts of individual integrity and human dignity as elucidated in several international instruments.⁴³ To identify all those who have a "well founded fear of persecution" in Iran, a comprehensive inquiry is indispensable.⁴⁴

Many applicants report leaving interviews without knowing of objections to their claim. Possible objections to a claim include: inconsistencies, contradictions, concealing material facts, or making misrepresentations. It is unfair to reject a claim based on these objections before giving the claimant a chance to respond. An applicant must have the right to know the objections to her/his claim and an opportunity to respond to these objections before a decision is made. The *Handbook* recognizes this need by stating that:⁴⁵

While an initial interview should normally suffice to bring an applicant's claim to light, it may be necessary for the examiner to clarify any apparent inconsistencies, to

⁴³ See Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All forms of Discrimination against Women; the Convention on the Political Rights of Women. These instruments need not be ratified by a state to provide guidance as a source of human rights norms. International human rights organizations, such as Amnesty International, and Human Rights Watch in the US as well as the UN Human Rights Commission and the European Parliament have reported major violations of these Conventions by the Islamic Republic of Iran.

⁴⁴ Lack of discretion in completing the whole questionnaire is also notable at times. For example, interviewers indiscriminately ask applicants "if they have approached the Iranian Consulate after they fled Iran." An applicant who was asked this question right after he finished his statements about his imprisonment and torture before fleeing Iran related to IRA that "first I thought the interpreter had made a mistake." After the question was repeated I was so shocked and angered that all I could ask in reply was that "if the interviewer knows what she is talking about." Another applicant who went through a similar pattern of questioning regarded the question as "nerve breaking" and as having the purpose of "undermining the veracity of everything that he had said."

⁴⁵ *Handbook*, above note 22, Article & 199.

resolve any contradiction in a further interview and to find an explanation for any misrepresentation or concealment of material fact.

In some instances, even when applicants have provided explanation for unresolved matters, they were told by their interviewers that such additional testimony was not necessary or that what was said was sufficient and clear. Ultimately, many of these applicants received negative assessments.

Reports show that the duration of the interview has not permitted some asylum seeker to provide complete accounts. Several initial examinations have been reported to have lasted less than an hour. Only half that time is substantive dialogue, since most interviews are interpreted. Some applicants reported having been given a time restriction on their interview. One exasperated asylum seeker had 45 minutes in which to condense his 15 year long political background; he was told this was "Office's regulations."

IRA has received numerous reports on the confrontational, hostile, unpleasant, and at times contemptuous behavior on the part of interviewers. In particular, some interviewers have been identified who systematically badger asylum seekers and lack sensitivity in psychological, interpersonal or cultural awareness.⁴⁶ One asylum seeker reported that he was badgered before the interview even started; the interviewer insisted they had seen him before, and tried to force him to recall when and where. This, he said, "made me feel suspect right from the very start, because no matter how many times I said that I had not had the honor of meeting the interviewer I was not believed."

Further, by several reports, these interviewers refused to greet applicants or identify themselves to applicants. Some have been reported to have made fun of applicants' statements, demonstrating expressions of disbelief while writing interview notes, making derogatory remarks, drawing unwarranted conclusions, and making unrealistic demands on the applicant. These attitudes have increased applicants' apprehension and nervousness. An explicit example of this was offered by an applicant who recorded his recollections on questions and answers immediately following an interview:

Applicant (A): Hello.

Interviewer (I): Don't mention the delay for this interview and let's proceed with the interview.

A: Is that all you have to say about what has happened?

I: Your complaint is already on record. There is no need to go into it again. Let's get on with the interview. How did you obtain the prison document ?

A: The document was sent to me indirectly by first going to . . . and then was mailed to me here.

I: Show me the envelope from . . .

A: I threw it out because I feared that the [Turkish] police would come for inspection.

I: I don't care, I must receive the envelope. We think the document is fake.

A: You mean my seven years of imprisonment is not real?

⁴⁶ There are also allegations that the rate of approval of some officers have been very low. IRA is not in a position to confirm these reports. But if true, these officers are suspect of prejudice in their decisions.

I: How would we know that your brother was really executed?
A: He was executed with several other persons . . .
I: We will contact your organization to find out if this is true.
A: Please do so, because I am telling the truth.
I: How long were you in prison ?
A: My term was from . . . to . . . but I was released in . . .
I: Why did not they execute you?
A: I was arrested because of my brother. I was very young and only helping him.
I: When did you escape . . .?
A: . . .
I: When did you leave your town?
A: . . .
I: The telex [corroboration letter] that your organization has sent to us is not consistent with your statements.
A: If you were me and I showed you a Farsi document would you be able to read it? I don't know English. But I am sure they have send me a telex.
I: We will contact them to see if you are telling the truth.
. . .
I: How did they torture you in the prison?
A: They will tie my hands and feet and then torture me with electrical currents or magnetic telephone. There are scars. . .
I: We will take you to the hospital and verify if these scars are from torture.
A: OK.
I: Your prison term was . . . years, but you only did ...
A: This is a government scheme. On some occasions they release some prisoners and in order to keep their face that they also release political prisoners, they release a few of them too.
I: You mean, they opened the prison door and said go out?
A: No, I had to sign every week.

...

In consideration of repeated reports on adversarial interviews, the Office's disinclination to provide meaningful information and guidance to asylum seekers in presenting their claims, and allegations made by the Office's staff regarding rampant "abuse" of the procedure by Iranians in Turkey, IRA is concerned about a troubling possibility--that the refugee determination system of the Branch Office is itself abused in its zeal to remove "abusers."⁴⁷ Over the past two years, IRA has received many reports regarding such allegations by the staff. The legal officers who spoke to an IRA representative also described the "problems"

⁴⁷ Considering what is at stake, IRA finds the term "abuse" completely inappropriate. When an "abuser" is admitted as a refugee, all it may result in is that an immigrant who does not meet normal immigration criteria is admitted to a country.

of the procedure in one context--that of "abuse". According to asylum seekers' reports, some officers have gone as far as commencing the interviews by inviting the applicant to "spell out" her/his "lies" or have offered them help "only if they admit that their stories are lies" or other comments to that effect.⁴⁸

Although misrepresentation and concealment of facts are undeniable possibilities in refugee claims, a presumption of doubt and disbelief against an asylum seeker is contrary to the "generous spirit" of the *Handbook* and the requirement to give asylum seekers "the benefit of the doubt." Article &199 of the *Handbook* states: "Untrue statements by themselves are not a reason for refusal of refugee status anegeit is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case." It is further suggested that, instead of dismissing a claim, an explanation for any misrepresentation or concealment of material fact should be sought by the examiner. The *Handbook* also cautions against taking isolategeeincidents out of context, ang advises that the cumulative effect of the applicant's experience should be considered.⁴⁹

What appears to be completely absent from the determination interviews of the Branch Office is the recognition of the need to develop trust and gain rapport with the asylum applicant, both on general and personal terms. Closure and reticence are important parts of the lives of Iranians. In order to survive in Iran, people have to learn to feign ignorance, keep silent ang lie about their beliefs, actions, relationships and aspirations. These are the ways to survive under constant interference, terror and repression by a theocratic state. In order to best elicit a claim ang establish credibility with an Iranian asylum seeker, an examiner should first understand this reality. In this connection, the lack of fundamental safeguards for fairness in the Branch Office's procedures, including non-adversarial interviews, is indeed the main cause of endemic distrust among Iranian asylum seekers.

The spirit of the Branch Office's interviews is a matter of great concern since they appear to be exactly the opposite of what is recommended by the Handbook. An important factor in changing the manner in which interviews are conducted is to change the presumed skepticism. The Handbook says hearings should be co-operative attempts by the investigators to elicit all the relevant information. Every step possible should be taken to win over the asylum seeker's confidence so that s/he will tell her/his story in its entirety. Independent monitoring is the safeguard to ensure factors such as if the interviewer has asked an applicant sufficient questions to elicit the claim, if the interview was conducteg in a non-adversarial manner, if the asylum seeker was given enough time to answer the questions and if the interviewer has been competent and unbiased. Finally, a provision for appealing a negative decision on procedural flaws should become available to aggrieved asylum seekers.

⁴⁸ For example, a couple who applied for asylum based on the wife's persecution were accused right at the beginning of their interview to have fabricateg the case because it had seemed that female claimants receive more favorable evaluations.

⁴⁹ Handbook, *above* note 22, Article &201.

• Problems with Communication

Communication is the crucial element of the determination interview. An applicant's claim cannot be developed or fairly assessed if the communications are not accurately and completely interpreted. Problems with communication increase the risk that the applicant will misconstrue the questions and that the examiner will be insensitive to subtleties in the applicant's answers. Determination of credibility substantially can be affected by interpreter errors, for example, non-interpretation and misinterpretation of important parts of the applicant's testimony. When such difficulties occur, then, through no fault of the applicant, the interviewer may come to doubt the applicant's credibility, and may deny the asylum application.

Interpretation is then the weakest link in all determination procedures, not only because the examining authorities usually speak a different language but also because they are often not knowledgeable about the culture and, when applicable, the sub-culture that the asylum seeker comes from. Much has been studied on the cultural relativity of words, notions, concepts and perception, as major sources of misunderstandings in cross-cultural communication. Such misunderstandings can contribute to the denial of refugee status to asylum seekers who, while doing their best to give all the requested information, fail because their statements are misinterpreted by the interpreter or by the interviewer for these reasons. It is very difficult, perhaps impossible, to guarantee complete and correct interpretation during an interview. However, a determination procedure has to be alert for safeguards in order to avoid and correct errors caused by interpretation. The *Handbook* provides that the asylum seeker "should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities."⁵⁰

Inadequacy of interpretation facilities at the Branch Office interviews is a complaint commonly raised by Iranian asylum seekers. The most striking example which has come to the attention of IRA is the use of an Iraqi Kurd in interpretation for Iranian Kurds. It is striking because, after several years of determining Kurdish-Iranian applications, the office has not acquired the basic background knowledge that Iranian Kurds speak the Surani dialect which is different from the Kurmanji dialect that some Iraqi Kurds, including the person selected here, speak. One Kurdish applicant whose interview was translated by an Iraqi Kurd said that she could not comprehend the entire interview because of the use of such an interpreter. Although she complained, she was not given any other choices. In another interview, after the applicant objected to the inadequacy of interpretation, the Iraqi Kurd initially on the job to translate from Kurdish to English was asked by the interviewer to translate from Farsi, which he could not speak fluently. This interview was, nevertheless, completed in Farsi.⁵¹

Another frequently reported problem is non-interpretation. While precise interpretation often requires elaboration on words and concepts, interpreters of the Branch Office are known to be experts at "translating several sentences with only a few words." Other than

⁵⁰ Ibid., Article &192 (iv).

⁵¹ When this example was brought to the attention of the Branch Office's legal officers, they said that within the particular framework of that interview the translation was adequate.

the adverse consequences of non-interpretation in establishing a claim, asylum seekers who feel that information presented by them is not valued enough to be considered in full continue the interview in distrust, frustration and disappointment. Several asylum seekers, who knew some Turkish themselves and have been interviewed by Turkish legal officers, reported that because of the inadequacy of the available translation, they preferred to communicate with the interviewer with their own inadequate knowledge of Turkish language. One asylum seekers said that when he conversed in Turkish with the interviewer, he found out the discrepancies in the interpreter's translation. For example, while he was asked by the interviewer to explain the "ideological line that Mussa represented" the interpreter had simply translated the question as "who is Mussa." The lack of specific vocabulary appears as the major reason for non-interpretation. Some interpreters use dictionaries or even exchange vocabulary on the phone with other interpreters during interviews. However, the effort is reported to be more of an impediment in creating a climate of trust and rapport between interviewers and applicants than contributing to the communication.

It is also reported that interpreters get involved in the interview in matters other than translation. For example, they offer personal comments to applicants. In one instance, an applicant was casually warned by an interpreter, at the beginning of his interview, that his interviewer has a reputation of rejecting political Iranians. This, he reports, made him fearful and uncomfortable even before he was questioned by the interviewer. In several instances, instead of interpreting the applicants' response, which had challenged the strict order set by the interviewers, the interpreter had only kept pressuring the applicant to give up the response. In some instances, interpreters were asked by interviewers of their opinion on an applicant's statements.

Lack of selection criteria and allocation of resources are obviously major problems in providing adequate translation facilities by the Office.⁵² Until recently, interpreters were hired from asylum seekers who were recognized by the Branch Office. In speaking to some of these interpreters, IRA has found that they were chosen without any standardized selection criteria and started work with no training. Many of these interpreters had political backgrounds and were therefore looked at with suspicion when they interpreted for asylum seekers whose political backgrounds were different. One political refugee reported that, because he was suspicious of his interpreter, who had been employed among the military personnel of the former Shah's army, for the most part of the interview, he got engaged in censoring himself rather than explaining his experience in full. Since the summer of 1994, the Branch Office has employed new interpreters by putting ads in the Turkish press. It is reported that these new interpreters have ties with Iran, a factor that makes asylum seekers even more suspicious. Asylum seekers fear that what they say regarding their persecution in Iran might leak across to the Iranian government by these interpreters who travel back and forth to Iran.

⁵² In speaking to interpreters, IRA found out that written documents, such as appeal letters, are also translated by the same interpreters and not always in full. They said that before such translation is done the head translator selects parts of the document which s/he finds important.

Yet another factor that may, in particular, compound the problems of interpretation in the Branch Office, is that communication between officers and asylum seekers are often conducted in a tri-lingual situation. In IRA's experience some of the Branch Office's legal staff are not fluent in English, although the language of the proceedings is English. Under these circumstances details may be lost by way of the interviewer's lack of fluency to present her/his questions and to correctly perceive the applicant's answers. Asylum seekers have reported instances where apparent miscommunication between the interviewer, who has appeared to be even less fluent than the interpreter, and the interpreter, has impeded the communication. Such instances have also been related by interpreters themselves.

Interpretation problems are difficult to correct. But because errors stemming from interpretation may lead to someone's return to a country of persecution, great care and attention have to be paid. Selection of interpreters according to standardized criteria and training would significantly mitigate this problem. Neutrality and fluency as well as familiarity with the culture of the asylum seeker are other essential requirements. The practice of reading back contemporaneous notes to the applicant for acknowledgment and amendment, tape recording the session and including the tape in the record, as well as the right to review interview records by applicants and opportunities for an effective appeal after a written statement of findings and reasons would significantly diminish the risks involved in improper translation. In other countries a number of rejections are reviewed only on interpretation grounds. Presumably a number of Iranian applications rejected by the office could be reviewed on these grounds alone if rejected applicants have the opportunity to investigate these problems.

• Appeal

The test of any legal system is how it handles mistakes, especially when there are circumstances which can lead to disastrous and irreparable consequences. If a refugee is found not to be a refugee and sent back erroneously to the country he fled, he may be killed or tortured. Refugee determination is a complex evaluation of subjective and objective fear. Errors can occur for various reasons, including improper finding or recording of facts, lack of appreciation or misinterpretation of facts, a wrong credibility finding, and also because of a restrictive application of the refugee definition. The right to a meaningful and effective appeal is an essential safeguard in refugee determination procedures. The UNHCR Executive Committee recommends, "If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or a different authority, whether administrative or judicial, according to the prevailing system"⁵³ Even where the claim is "manifestly unfounded", the UNHCR recommends "an unsuccessful applicant be allowed to appeal a negative decision before being removed."⁵⁴ In further recognition of the importance of a formal and fair appeal, UNHCR has required several basic principles:⁵⁵

⁵³ EXCOM Conclusion 8 (XXVIII) (1977), para. (e)(vi).

⁵⁴ EXCOM Conclusion 30 (XXXIV) (1983), para. (e)(iii).

⁵⁵ UNHCR Note, *above* note 23.

Although this requirement [appeal for a formal reconsideration] is phrased in general terms, in UNHCR's view the notion of "appeal for a formal reconsideration" includes some basic principles of fairness applicable equally to judicial or administrative reviews, such as *the possibility for the applicant to be heard by the review body and to be able to obtain legal advice and representation* in order to make his submission; for reconsideration to be based on all relevant evidence; and for a consistent and rational application of refugee criteria in line with the guidelines established in the Handbook. UNHCR believes that *the notion of fairness also requires the review body to provide the grounds for its decision, so that the applicant can be reassured that he has had a fair hearing and the criteria have been applied properly.* [Emphasis added]

Although in the Branch Office's refugee determination procedure a significant number of cases go on to the appeal stages and a considerable number of positive decisions have been granted on appeal, i.e., at either "review" or "re-opening" stages,⁵⁶ asylum seekers are not provided a meaningful opportunity to enjoy any of the above basic principles. As discussed earlier, applicants receive no legal assistance or representation at any stage. As it will be discussed later, the opportunity to appear before a reviewing officer is not granted to all applicants on appeal, even on review of an initial rejection. But most importantly, asylum seekers are severely handicapped in what they can accomplish on appeal because they are not provided the grounds for a negative decision. Applicants are not assured in any manner whatsoever, let alone reassured, that they have had a fair hearing or that the criteria have been applied properly.⁵⁷

The Branch Office's failure to provide the grounds for a negative decision applies to both types of rejection i.e., persons whose initial evaluation has been negative with the opportunity for a review as well as cases that are closed as "manifestly unfounded" or "abusive of procedure" and have to be re-opened for reconsideration. It is ironic that rejected applicants are asked in their form rejection letters to write an appeal letter and set out reasons "justifying" a review or a reopening of a case while they have no inkling why they were rejected in the first place. In examining some of the appeal letters submitted by asylum seekers to the Office, IRA has found that, except when applicants' testimonies were cut short or prohibited in the interview, few of them include information other than what the applicant claimed to have already given at her/his initial interview.

⁵⁶ Based on statistics obtained from the UNHCR, since 1992, 29 to 39 percent of cases were recognized at the review or reopening stages.

⁵⁷ In response to the question why reasons are not given to applicants in writing, UNHCR staff expressed concern about "abuse", that if reasons are provided then asylum seekers would know what types of claims are more likely to get rejected. The staff further stated that a written reason would imply a judgment on the Iranian government which may deteriorate UNHCR's relationship with the government, make assisting and protecting refugees more difficult. Both reasons are, in IRA's view, unacceptable. Providing grounds for a decision is considered as a basic principle of fairness by the UNHCR and can not be compromised in any manner whatsoever. Moreover a condemnation of the government involved in persecution of a refugee is always implicit in finding that person to be a refugee. The consequences of this approach can be further questioned, since UNHCR promotes "prevention" as the most effective form of protection for people. Considering that constructive prevention aims to reduce and remove the conditions that cause people to flee, disinclination to get involved in condemning human rights violations of the Iranian government only distances the UNHCR in addressing the root causes of the flight of Iranians.

In the absence of substantive appeal letters, appeal requests are examined largely on the basis of an applicant's existing record. As said earlier, ambiguities, inconsistencies, errors from translation, and documents that are simply lost or not placed in an applicant's file are unlikely to be discovered and resolved in the procedure because of the existing confidentiality rules. Therefore, to the extent that the existing record of an appellant is badly prepared, the reviewing officer is going to be disadvantaged in granting a request or in reevaluating an initial negative decision. When an examination on appeal is based on an inadequate or improperly prepared record, it is not just a waste of the office's resources, it also exhausts an applicant's limited opportunities to have her/his appeal considered. In addition, because of the protracted appeal procedures, by the time an appellant receives a result s/he is likely to also exhaust her/his stay permit in Turkey which, regardless of the result, would put her/him at greater risk of deportation.⁵⁸

Although UNHCR staff have stated that reasons of rejection are given orally at the commencement of the appeal interview, this provision is not specified as part of the procedure in the "information notice" and applicants are not informed, in any other way, that they are entitled to such explanations in the interviews. In fact, most applicants who have gone through this step have claimed otherwise, that no reasons have been given to them at these interviews. The few who believed that they were given an explanation for the original negative decision described the explanations as scant and uninformative. For example, some former members/supporters of political groups were told that they are required to provide corroboration letters from their respective organizations or their claim would not be credible. Some of these applicants have presented logical reasons for not being in a position to provide such corroboration and have, instead, provided other testimonial or documentary evidence to corroborate their claim. Nevertheless the explanations have not addressed the other evidence presented. In other instances applicants were given hints about some contrary evidence from an extrinsic source without being fully informed about the evidence and without being given reasons as to why that evidence was deemed more credible than the testimony and documents provided by the applicant. Some other applicants, who have corroboration from their organizations, were told that their testimony contradicts with the corroboration without being given the opportunity to investigate the original corroboration letter.⁵⁹

⁵⁸ Refugees who carry a passport have to exit and enter Turkey every three months. Other than the costs (\$80-\$100 per person), which UNHCR does not cover, it is reported that refugees are harassed and threatened with being sent back to Iran by the Turkish border police. IRA is aware of cases of refugees recognized by the UNHCR who were deported to Iran on the grounds that their visa had expired. The situation is even more dangerous for those who are without documents and are issued temporary residence permits (Ikamet Belgesi). As reported, after the 12 month allowable stay, these persons face constant harassment and threats of deportation when they go for their daily signature duty in their designated towns of residence. In some instances the Interior Ministry of Turkey, which is responsible for issuing the stay permits, has refused to extend the permits of even those who have been recognized by the UNHCR and were still awaiting resettlement after the allowable stay period. These threats should be considered in the light of the more general threat which faces all refugees since the Turkish authorities are now issuing stay permits only if in their assessment the applicant is a "genuine refugee".

⁵⁹ In one instance IRA contacted the concerned organization and requested an original of the corroboration. While the applicant, a Kurdish activist, had been told by the interviewer that in the corroboration letter his association with the organization was stated as a Peshmarge (in contemporaneous conditions refers to members of the open and armed wing of Kurdish organizations), the letter had actually corroborated his association as a "militant", which was indeed correct because the applicant was an unarmed and underground activist in the clandestine section.

In any event, even if reasons are given at the commencement of the appeal interview, appropriately and without exception, they are not going to put the applicant in a position to overcome or rebut them. An applicant has to be informed of the reasons for her/his rejection well ahead of time to be able to address them intelligently and effectively both in order to have her/his appeal granted and to win his case on appeal.⁶⁰ Finally, this method of informing appellants is absolutely unfair to those who never get a chance for an appeal interview. As stated in the rejection letters of the Branch Office, not all appellants are granted an interview on review. IRA is aware of several cases which were denied an interview on review.

In questioning applicants about the types of questions asked by a new examiner during the review interviews and about the duration of these sessions, IRA has found out that some of the review interviews have been cursory and inconsequential in the sense to provide an appellant a fresh look at the facts of her/his case and her/his credibility. A number of these interviews have lasted as little as 20 minutes and have consisted of a few yes-no questions, simple inquiries such as dates or family trees.

Appellants whose cases are closed (“manifestly unfounded” or “abusive of procedure”) are even more severely handicapped in their accomplishments at the appeal level. In order to be granted a re-opening, they are required to submit new information while they have no way of knowing if the old information has been properly considered or understood. IRA believes that several cases have been closed only based on an initial misrepresentation or concealment of minor facts by applicants, where there had been good reasons for such misrepresentations and where appellants had been otherwise capable of fulfilling the refugee criteria.⁶¹ In the absence of a definition for categories which are considered as “manifestly unfounded” or “abusive of the procedure” such evaluations could never be challenged fairly and effectively.

The UNHCR Executive Committee has said a claim must be rejected as manifestly unfounded only if it is “clearly fraudulent” or “not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the status of refugees nor to any other criteria justifying the granting of asylum.”⁶² However, claims could be unfairly rejected as manifestly unfounded where there are no procedural safeguards in place to ensure the claim is, indeed, not genuine. Unless there are safeguards in place to challenge these determinations on facts, on law and on procedures, genuine refugees might be deported to the hands of their persecutors. UNHCR has explicitly recognized “the

⁶⁰ In response to the question as to why applicants are not informed of the reasons of rejection prior to the appeal interview so that they would be able to overcome them in the appeal interview, the staff emphasized “spontaneity” as a necessary method of breaking the information to the appellants so that untrue answers are prevented.

⁶¹ Since 1993 the Branch Office started rejecting political Iranian asylum seekers who fled to Turkey via Iraq regardless of the substance of their claims. They were called “Irregular Movement” (IM) cases and were asked to return to Iraq by the Branch Office. IRA is aware of some such applicants who, after knowing the office’s policy on similar claims, had concealed or made misrepresentations to avoid an IM decision by the Office. These applicants had indeed fled the insecure and inhuman conditions of the Iraqi territories and could not go back. The Branch Office has recently admitted the remaining 20 to 30 IM cases, some of whom had made mis-representations before. Several of the admitted cases have been languishing in Turkey under the threat of deportation as far back as August 1992.

⁶² EXCOM Conclusion 30 (XXXIV) (1983), para. (d).

substantive character” of a “decision that an application for refugee status is manifestly unfounded or abusive.” It has also recognized “the grave consequences of an erroneous determination for the applicant and the resulting need for such a decision to be accompanied by *appropriate procedural guarantees*” [Emphasis added].⁶³ A right to a full and effective review cannot be swept away for a “manifestly unfounded” claim.

The unfair treatment received by closed cases is of high concern also because these appellants are labeled by the Office as “persons of no concern to the UNHCR”, a classification that virtually means “can be deported by the Turkish authorities.” It normally takes several months for a re-opening to even be considered. For example, IRA is currently pursuing a case that has remained closed since September 1994. Despite several petitions by the applicant, which in this case has included substantive new evidentiary documents, the appeal request has not received a response. The concerned appellant’s stay permit will expire shortly and the appellant may, any day, receive a deportation order based on a negative eligibility determination by the Turkish authorities. IRA is aware of a number of other asylum seekers who had received deportation orders by Turkish authorities before they were finally granted a re-opening of their case by the UNHCR. Some of these asylum seekers were told of or shown by the Turkish police, documents that based their deportation on the UNHCR’s indication that their cases were closed by the office. Because there is no formal procedure for reopening a case an appellant can easily get deported before her/his reopening request is considered or decided by the office.⁶⁴

In the absence of a formal procedure to lodge and resolve an appeal, re-openings that were granted by the Branch Office in the past seem to be mostly in response to pressure. Until the summer 1994, asylum seekers would often attribute their hard-won reopening to “pressure” on the Office. A common form of pressure has been in the form of long term sit-ins in front of the Office and petitioning officers on their way in and out of the office. Asylum seekers would finally be called inside the Office and would be told that they will be granted another interview “which of course does not guarantee a positive evaluation.” Since the clamp-down in summer 1994 by the Turkish police on Iranian asylum seekers who appear in front of the office, such pressure to reopen cases has been taken off of the Office. As a result the number of reopenings has decreased significantly. IRA is aware of many compelling reopening requests lodged since then that have not been granted or even challenged in their content.

Many problems might be corrected if an effective appeal mechanism were to exist. Formal procedures should be incorporated so that no appellant, including those whose cases are closed, would be denied protection against deportation and therefore rendered appeals meaningless. Individual decisions citing the reasons for rejection are necessary to ensure that the asylum seeker is being given a meaningful opportunity to appeal a negative decision. Asylum seekers and their representatives and advocates should be able to review

⁶³ Ibid., paras. (e) & (e)(iii).

⁶⁴ There is no clear written information regarding eligibility for protection against deportation. In practice, the office has refused to intervene on behalf of appellants who have been subjected to deportation before their requests for reopening were responded to by the Office. The staff have also verbally confirmed to IRA that closed case are deserving of deportation to Iran.

both a recorded transcript of the interview(s) and reasons for denials prior to filing an appeal. Submissions by the latter should be considered and challenged in substance.

4. Conclusions and Recommendations

Of course, no screening process can guarantee that some errors will not be made in determining who is or is not a “Convention” refugee. However, as we have discussed in this report, the absence of certain basic safeguards would render any refugee determination procedure unfair, prone to error and lacking opportunity for redress of grievances. The failure to invoke fundamental standards of fairness, enunciated by UNHCR itself, is the greatest shortcoming of the Branch Office’s determination procedure.

IRA expresses grave concern over the determination process of the Branch Office, because it is the only instrument of the international community to protect Iranian refugees against serious and increasing violations of the UN Convention they face by the Turkish authorities. Neither the duty to apply fairly UNHCR guidelines for refugee status determination nor the duty of *non-refoulement* are upheld by the policies of the Turkish authorities in regard to Iranian refugees. IRA urges the UNHCR to act with vigor and outside the closed doors to condemn and obligate the Turkish authorities to observe the UN Convention and other relevant instruments concerning protection of refugees.

As far as the refugee determination procedure of the Office is concerned, IRA strongly urges the UNHCR to pay due regard to fundamental procedural guarantees so that no refugee would erroneously be denied the protection of the office. The Office should make public assurances that there is no such negative presumption about the truthfulness of Iranian claims. IRA submits the following recommendations with the intent of promoting full and fair determinations. Until effective measures have been implemented to remedy the weaknesses and flaws in the current process, no asylum seeker should be labeled “as a person of no concern to the UNHCR” and be denied protection against deportation. Moreover, IRA strongly urges the UNHCR to give a further careful and thorough review to those rejected asylum seekers whose application for refugee status have been previously determined. The cases of these persons should receive an immediate official re-opening and Turkish authorities should be appropriately informed to not forcibly return such persons. Consideration should be given to a review of these cases by a different body of the UNHCR such as the Headquarters as swiftly as possible.

The following recommendations are based on safeguards and provisions that are common to many other international administrative or judicial refugee determination processes but are absent from the refugee processing system of the UNHCR in Turkey.

Legal Advice and Representation:

- Detailed information of the nature of the determination mechanism--including the procedures and criteria for determining refugee status--should be provided to every asylum seeker in writing well in advance of the interview.
- Adequate individual legal advice and assistance should be made available to every asylum seeker at every stage of the proceedings. Provisions should be made to assign a legal officer not involved in deciding cases or to engage

volunteer lawyers and trained lay persons, particularly Farsi language speakers, to assist asylum seekers in the preparation of their cases. Steps should be taken to make arrangements with non-governmental organizations and local lawyers if necessary.

- Asylum seekers should be accorded the right to have their appointed representatives present at the interview, during which time representatives should be free to put questions to their clients and to make representations on their behalf. Written submissions from representatives should be included in an applicant's eligibility determination.

Rights in Interview:

- Contemporaneous notes taken during the interview should be read back to the asylum seeker, who should be given the right to amend the record before signing it. A complete transcript of each interview should be made available to every asylum seeker and her /his representative/advocate before a decision is made on the application.
- Interview rights should be defined and asylum seekers should receive information about their rights in the interview and how to object if these are violated.
- Interviews should be non-adversarial. Applicants should receive a chance to hear apparent objections to their claim and a chance to overcome the objections before the decision maker and before a decision is made. If necessary, additional interviews should be arranged before a decision is made.
- There should be proper oversight to be sure that interview procedures are conducted in a sympathetic manner and that questioning of the applicant has been thorough and fair. To ensure unprejudiced decisions by examiners, the rate of approvals of each adjudicator should be considered and open for scrutiny.
- Interpreters should be selected based on standardized criteria and should receive training before assisting in interviews.
- Applicants should be free to take notes.
- Interviews should be tape recorded. Tapes should be available for transcription on request by the applicant or her/his representative.

Appeal:

- A formal appeal procedure should be set up, whereby all appellants, including those whose cases are assessed as “manifestly unfounded” or “abusive of procedure”, receive adequate protection against deportation while their appeal are pending.
- A complete written statement of the reasons for negative decision in each case, including findings of fact and law, should be made available to all asylum seekers well in advance of the deadline for appeal. In the least, if the reasons are going to be given to the applicant orally, an exclusive session should be arranged

for stating these reasons. This session should take place prior to the deadline for an appeal.

- Files concerning asylum applications should be open to the asylum seeker and her/his representative/advocate. Asylum seekers should be allowed to inspect adverse information received by the office regarding their case. Information from any source that cannot be disclosed to the applicant should not be accepted.
- An applicant's right to appeal must not be restricted solely to cases involving new information. It should also be expanded to include procedural flaws.
- Because of the limitations on having to appeal to the same body, arrangements should be made so that a final appeal can be lodged with an independent body, for example, with the UNHCR Headquarters.
- The role of representatives/advocates must become part of the appeal proceedings.

Addendum

Preliminary Assessment of the new Turkish Government and UNHCR Refugee Processing System for non-Europeans

Background: Discussions between the Turkish officials and the UNHCR to make new arrangements for determining refugee eligibility of non-European asylum-seekers were reportedly held as far back as August 1993.¹ These discussions continued to be held behind closed doors. The process has, however, appeared to be uncollaborative and filled with irregularities.² Since July 15, 1994, asylum seekers were notified by the UNHCR Branch Office in Turkey [hereafter Branch office] that the Turkish Government would decide on their refugee applications in order to issue them temporary residence. They were instructed to register and lodge applications for asylum with the Turkish police. However, the Government's regulations on the new procedure were not issued until November 30, 1994. As of this date, new arrivals without proper documents were also instructed to lodge their applications in the governorship closest to their point of entry. Until recently, no written information on the procedure was available for asylum seekers.

The booklet, titled "INFORMATION FOR NON-EUROPEANS REQUESTING ASYLUM IN TURKEY" [hereafter the booklet], recently published by the Turkish Government and the UNHCR, clarifies some of the major issues concerning the new procedure.³ It confirms the Government's commitment to establish a state run refugee status determination procedure and, to a large extent, clarifies equivocations regarding UNHCR's role in the new procedure. The booklet is significant in determining whether the two actors of the new system, Turkish Government and the UNHCR, meet their obligations to ensure protection and human rights of asylum seekers in accordance with international laws.

Obligations of the Actors: By exercising sovereign authority to establish a state run refugee status determination system, the Turkish Government is legally and morally bound to observe international obligations and guidelines governing the situation. These obligations include the duty to fairly apply UNHCR guidelines in the refugee determination process and the duty to observe *non-refoulement*, which prohibits forcible return of a person to a country where his or her life or freedom may be threatened and now hinges on the institution of an appropriate refugee determination procedure. Further responsibilities

¹ See "TURKEY Selective protection: Discriminatory treatment of non-European refugees and asylum-seekers", Amnesty International, March 1994, AI INDEX: EUR 44/16/94.

² In November 1993, Turkish authorities told Amnesty International that they, and not the UNHCR, were responsible for deciding which asylum seeker in Turkey has a "genuine" claim to refugee status. However, UNHCR officials indicated that, as far as they were concerned, no new system had yet been agreed. (see *above* note 1). A UNHCR fact-sheet on Turkey states: "In early 1994, eligibility process for Iranian asylum-seekers was hindered for several months due to changes in internal procedures involving the Ministry of Interior (MOI) and the Ministry of Foreign Affairs (MFA). There were also some confusions in the asylum process primarily concerning the parallel interviews conducted by the government agencies and UNHCR. By July 1994, however, UNHCR achieved better collaborative relations with the government authorities and the determination process has improved." (TURKEY: Fact Sheet, UNHCR Public Information Section). As reported by asylum seekers full interviews by the Branch office for all arrivals after 15 July 1994 were held until the end of 1994. In March 1995 several of these asylum seekers are reported to have been re-interviewed by the Turkish police.

³ The draft of the document is dated March 20, 1995. The final version has no date.

arise from the UNHCR Statute, in which the UN General Assembly calls upon governments “to co-operate with the United Nations High Commissioner for Refugees in the performance of his function concerning refugees falling under the competence of his office.” Under Article 35 of the 1951 UN Convention and Article II of the 1967 Protocol, both of which Turkey is a party, governments are obliged to co-operate with UNHCR and facilitate its task of supervising the application of the UN Convention.

It further follows that states ratifying the 1951 Convention and the 1967 UN Protocol necessarily undertake to respect fundamental individual rights of persons seeking asylum, regardless of whether they are recognized by the host government as “refugees” or are classified as “illegal aliens”. The standard of treatment to which all non-citizens are entitled is the same as that applied to nationals, and should not fall below that level. Turkish legal and administrative procedures should be used efficiently to further facilitate the protection of asylum seekers. Other treaties to which Turkey is a party should also be appropriately utilized. Turkey is a party to the European Convention, which prohibits subjecting any one to forcible return to a country when there are serious reasons to believe a person might face a severe violation of basic human rights amounting to torture or inhuman or degrading treatment.

UNHCR’s involvement in legal protection of asylum seekers remains critical, since Turkey still maintains the geographical limitation to the Convention not to accept non-European refugees. The fundamental importance of UNHCR’s protection function in respect of States whose obligations under the 1951 Convention or the 1967 Protocol are restricted by the geographical limitation is reaffirmed by the Executive Committee of the UNHCR.⁴ One of the most important aspects of protection is that would-be refugees are afforded a just and a fair opportunity to show that they come within the criteria; that they are afforded a fair refugee status determination procedure. The Statute of the UNHCR specifies the organization’s fundamental interest in the process of determining refugee status based on co-operation with Governments and combined with a “supervisory role”.⁵ The part played by the UNHCR has varied. Although human rights organizations have frequently criticized UNHCR’s involvement as inadequate and even at times conflicting with its mandate, there is general consensus that the enterprise has advanced more detailed standards for fair refugee status determination procedures. Additionally, important lessons have been cited when mechanisms were developed to facilitate co-operation with government authorities and supervision.⁶

⁴ EXCOM Conclusion No. 6 (XXVIII) (1977).

⁵ *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979), “E. Statute of the office of the United Nations High Commissioner for Refugees”.

⁶ One relevant example is when the Hong Kong government declared a new procedure to determine eligibility of Vietnamese asylum seekers for temporary asylum. After 15 years of giving Vietnamese asylum seekers automatic temporary refuge, on June 15, 1988 Hong Kong announced a refugee determination program; effective immediately, to determine the eligibility of new arrivals from Vietnam for refugee status. Although the procedure contained in form, some of the basic safeguards such as the right to formally object with the Governor in Council, UNHCR refused to participate in the process until September 20, 1988, when a Statement of Understanding was reached between the Hong Kong Government and the UNHCR. Pursuant to the Understanding the UNHCR obtained the role to monitor screening interviews, review files subject to negative determinations and arrange legal advice for asylum seekers wishing to challenge denials of refugee status. The immigration examiners involved in the screening

Early in the discussions with the Turkish authorities the Branch Office indicated that “any reconsideration of respective UNHCR and Turkish Government involvement in refugee recognition procedures would be done in light of the safeguards specified in relevant Conclusions of the UNHCR Executive Committee and other international instruments of refugee law.”⁷ However, such reconsideration would comply with the respective laws if there are adequate assurances that resultant obligations are satisfied. Considering that Turkey insists that it will not lift the geographic limitation and thus accept to be bound by the international standards with respect to non-European refugees, it is of utmost importance that Turkey reaffirms unconditional commitment to *non-refoulement*. Furthermore, in absence of a national legislation, any new legislation for establishing a refugee status determination should be scrutinized and, if necessary, authoritatively clarified by the UNHCR to conform with international standards. In addition, provisions to secure safety and humane conditions for asylum seekers should be sought and finally efficient mechanisms to resettle those recognized as refugees must be established. UNHCR must further ensure that in the long run it is given a “meaningful role” to perform supervision on the procedures, as mandated by the Executive Committee Conclusions.⁸ As a final safety net to prevent return of refugees to possible persecution, UNHCR should be able to exercise its mandate power to declare an individual a refugee, in spite of certain adverse determinations by the Turkish Government.⁹

The New System: According to the booklet, the new Turkish Government refugee determination procedure requires that asylum seekers register with the local police within five days of their arrival. Those who have no travel documents must lodge their applications with the governorship closest to their point of entry. Applicants are interviewed by “a member of the local police”. The interview by the police is “the only opportunity” that asylum seekers have to tell the Turkish authorities the reasons for their application. During the interview applicants must give a “precise and detailed description” of their reasons to come to Turkey. The booklet further stipulates that an interpreter be provided to assist the interviewing police officer, who will make a “summary” of the applicant’s statements during the interview. The summary is shown to the applicant for accuracy and amendments. The applicant has the option not to sign the notes if her/his requested alterations are not made.

Several governmental bodies and institutions take part in the decision-making process, including the Ministry of Interior, who will assess the claim in conformity with the 1951 Geneva Convention, the Ministry of Foreign Affairs, “the responsible governorship,” and

procedures received formal UNHCR training, the interview questionnaire was revised to include all subject areas relevant to a determination of Vietnamese refugee eligibility in accordance with UNHCR criteria. As an ultimate safeguard, it was also agreed that the Office of the UNHCR exercise its mandate to declare a person a refugee in any case, whether before or after status determination procedures have been concluded. (see: *In Search of Asylum: Vietnamese Boat People in Hong Kong, A Report Prepared By Janelle M. Diller, Attorney at Law for Indochina Resource Action Center*). Later on, in reply to criticism from international human rights organizations more formal safeguards such as providing written reasons for negative decisions were included in the procedure.

⁷ Correspondence with Amnesty International, see *above* note 1.

⁸ EXCOM Conclusion No. 28 (XXXII) (1982), para. (e).

⁹ Such refugees are referred to as “mandate refugees”, para. 16 of the *Handbook*. It, of course, follows that UNHCR’s own system afford asylum seekers necessary procedural safeguards and fair application of criteria.

“other relevant ministries and organizations.” The document states that “UNHCR may present an opinion about an asylum request.” The applicant is notified by the governorship about the decision which is provided by the Ministry of Interior in writing. If the application is rejected, the applicant will be deported to the country of the origin or the country before arrival to Turkey. As described in the booklet, if Turkey “is not the first country of asylum” after having left one’s country of origin, this “can constitute a reason” not to be granted temporary asylum in Turkey.

If the application is accepted, the applicant is assigned to live in a Turkish city and will be given a “reasonable time” to receive a visa to be resettled in a third country. UNHCR seeks resettlement opportunities for those asylum seekers who receive a positive decision for temporary residence in Turkey. Such opportunities are sought under the condition that resettlement is considered by the UNHCR as “the only solution”. The organization also provides “legal counseling” on “serious and urgent” matters for those whose “request for temporary residence has been accepted as well as those for whom a final decision has not yet been taken.”¹⁰

Problems with the system: Although several important questions remain unanswered by the booklet,¹¹ a precursory examination of the descriptions given reveals serious flaws at every step of the procedure. Only a few months into the new procedure, there is evidence of greater concern because in practice, treatment is not even in compliance with the provisions of the booklet.

Structural Discrimination: In its opening section, the booklet states that “If Turkey is not your first country of asylum after having left your country of origin or the area in which you were at risk, this can constitute a reason not to give you temporary asylum in Turkey” [Emphasis in original]. By setting a presumption of ineligibility, a considerable number of Iranian asylum seekers who continue to flee to Turkey via Iraq, are categorically denied access to the determination procedure. Such a presumption is against Executive Committee Conclusions which points out that asylum should not be refused solely on the ground it could be sought from another state.¹² It is ironical that UNHCR gave up a similar policy only a few months ago.¹³ It seems that the policy was reversed by the UNHCR only because it was going to be reaffirmed in a new euphemism.

¹⁰ See Appendix.

¹¹ These include the eligibility criteria and guidelines used by the Turkish Government to assess the claims. In addition, there are ambiguities regarding the mechanism that UNHCR “may present an opinion on a case” and the parameters based on which UNHCR may decide that resettlement in a third country “is the only solution” for a person admitted for temporary asylum by the Turkish authorities. Although a second layer of determination is implied, the mechanism and criteria used are not specified. The existence of a second layer of determination by the UNHCR can also be inferred from section IV of the booklet which clarifies:

“The way a refugee claim is evaluated by UNHCR may be different from the way the resettlement country may evaluate that claim. Therefore it can happen that although UNHCR *finds that you fulfill the criteria for refugee status*, the resettlement country may not accept you for resettlement.” [Emphasis added] (Appendix)

¹² EXCOM Conclusion No. 15 (XXX) (1979).

¹³ For the past number of years a considerable number of Iranian asylum seekers have come to Turkey via Iraq. Some have only passed through the territory because it was more convenient, some resided there to join the Iranian opposition forces based in that territory, and some sought for many years asylum from persecution while residing in

Appeal: When drawing fundamental requirements for fair determination procedures, the Executive Committee of the UNHCR recognized that the chances of erroneous denial are too great to justify any compromise to appeal a negative decision. In 1977, in its conclusions on refugee status determination, the Committee concluded that if an applicant for refugee status is not recognized by the government to which he or she applies, the applicant should be given a reasonable time to appeal.¹⁴ The Committee concluded in 1983 that even unsuccessful claims of manifestly unfounded or abusive applications should be eligible for a review of a negative decision before they are rejected.¹⁵

There are no opportunities for appeal in the new system, either administrative or judicial. Failure to invoke this basic principle of fundamental justice is perhaps the greatest violation in the new system. Such a structural deficiency makes the system stand out conspicuously in not identifying genuine refugees, and forcibly return them to places where they have fled. At the time of this writing, dozens of asylum seekers are reported to have been served deportation orders after cursory interviews with the police. In the absence of a right to appeal, deportations have taken place immediately.

Legal assistance: No form of effective legal assistance is available for applicants prior to the interview--the only moment in the whole process that applicants can present their cases to the authorities. The written information provided in the booklet does not provide meaningful and adequate guidance. The booklet fails to articulate "refugee criteria". The provision that assessments of claims would be "in conformity with the 1951 Geneva Convention" is meaningless to most asylum seekers who are not trained in such legal matters.

Although there is a section that provides guidance on questions asked during the interview, the information is insufficient and misleading in places. The mark of the "Convention refugee" is a "well-founded fear of being persecuted". However, the booklet does not give any clues as to what is considered as "persecution". Thus the door is left open for adjudicating authorities to narrow the interpretation. "Well-founded" in turn means that there must be sufficient facts, not necessarily relating to one's personal experience, so that,

camps or in places in northern parts of Iraq. From 1992 until the end of 1994, the UNHCR Branch Office in Turkey, which was at the time in charge of assessing asylum applications, denied assistance to many of such applications on the grounds that they should have sought protection from the UNHCR in Iraq. Denials continued despite the fact that for many asylum seekers' conditions in Iraq continued to be neither safe nor humane. Since the end of the Iran-Iraq war the activities of Iranian government's saboteurs whose numbers in Iraq were steadily increasing remained uninhibited. There have been numerous reported Iranian shelling of villages inhabited by Iranian Kurdish refugees. Abductions and assassinations continue to be reported. According to one recent Urgent Action from Amnesty International, two Iranian Kurds were reportedly abducted on 26 January 1995 at a checkpoint on their way to Rawanduz in Iraqi Kurdistan by members of the Kurdish Revolutionary Hizbollah (Hisbullahi Kurdi Shorishger). They were then handed over to the Iranian authorities and reportedly taken to Orumiyeh prison. The two men had fled to Iraqi Kurdistan in 1992 fearing arrest for their opposition activities. (Fear of Torture/ Fear of Execution, AI Index MDE 13/01/95 Distr:UA/SC 17 February 1995). To date, as indicated by UNHCR in its 1995 issue of assessment of global resettlement needs, there is neither an effective access to a local procedure for the determination of refugee status nor an adequate resettlement machinery provided by the UNHCR in Iraq. By the end of 1994, UNHCR policy was announced to have changed. The last remaining 20 to 30 of such cases--many of them arrived in Turkey in 1992--were accepted for resettlement.

¹⁴ EXCOM Conclusion No. 8 (XXVIII) (1977).

¹⁵ EXCOM Conclusion No. 30 (XXXIV) (1983).

if returned to her/his country of origin, the applicant would face a reasonable likelihood of being subjected to persecution. What is implied by the wording in the booklet is much narrower than UNHCR *Handbook's* guidelines.¹⁶

Interview: Failure to conduct the interview in accordance with UNHCR guidelines and to record the interview properly, is another unfair factor in the examination process. This is despite the acknowledgment that the interview is the “only opportunity” that an applicant has to tell the Turkish authorities the reasons for one’s application.

UNHCR *Handbook* specifies the role of an asylum “officer” as a partner to the applicant to bring to light the facts underpinning the persecution claim. However, as described below, the interviewing officers assigned in the system--members of the local police--lack the qualifications to fulfill the role.

The specifications about the interview, not only does not impart the required sense of confidence and cooperation between interviewer and applicant but, rather, burdens applicants with unwarranted demands and promotes anxiety and distrust. For example, asylum seekers are “advised” to “offer facts and details” even if “they are not asked directly”, while according to the *Handbook* the applicant does not bear the duty to ascertain such facts and details. It is the examiner who bears the duty to ascertain reasons for persecution, which in order to be fulfilled may require her/him to conduct “independent research” using “all the means at his disposal to produce the necessary evidence.”¹⁷

The biggest irony of the interview process is when the applicant is given the opportunity to correct “the notes of the interview”. While there is no doubt that such an opportunity is crucial to present claims accurately and completely, the opportunity would have no effect if there are no guarantees that corrections are actually made. The booklet foresees the situation where disputes between the applicant and the interviewer concerning the recorded statements remain unresolved. However, the proposed resolution is “not to sign the statements”--this hardly solves the problem. The opportunity is, thus, compromised when it is needed the most. Given that only the interviewer’s summary of an applicant’s statements is kept on record and that each applicant has only one opportunity to present her/his case, such disputes are not going to be resolved at later stages either. Therefore, deciding authorities, who never hear applicants personally, adjudge potentially distorted claims.

These formal deficiencies aside, based on reports received from asylum seekers who have gone through these interviews, it appears that in practice even the above provisions are not fully implemented. Interviews are reported to have consisted of rigid questions cited from a

¹⁶ For example, one relevant paragraph in the booklet states:

“It is of the utmost importance for you to give a true and complete report of your personal experiences and the danger you could face if you return to your country.” [Emphasis in original]

The paragraph is misleading for undue emphasis on personal experience. The *Handbook* emphasizes that a “well-founded” fear of persecution “need not necessarily be based on the applicant’s own personal experience.” What happened to those close to him “and other members of the same racial or social group may well show that his fear that sooner or later he will also become a victim of persecution is well founded.” *Handbook*, above note 6, Article (&43).

¹⁷ *Handbook*, above note 6, Article (&196).

questionnaire, disallowing applicants to offer extra “facts and details”. Questions have been reported to focus on certain stereotypes of political activism with opposition organizations which significantly narrows the refugee definition. Details that have been asked were reported to be irrelevant and instead concerned with identifying an applicant’s organizational superiors, affairs, structure, and whereabouts.

It is further reported that no interpreters were present at interviews. Some applicants who were interviewed in Nevsehir, reported that an 11 year old asylum seeker who could speak some Turkish was assisting some asylum seekers to communicate. Applicants who were interviewed in Hakkari also reported that they were not availed of the services of an interpreter and if it weren’t for other asylum seekers who could speak some Turkish, communication would have been impossible. Subsequently, “notes of the interview” were also not read back to applicants and as reported applicants were requested to sign their statements.

Examining authorities: Another factor of serious concern is the partiality and incompetence of the wide range of decision makers involved in examining applications. The Executive Committee has required that “There should be a *clearly identified* authority--wherever possible a *single* central authority--with responsibility for examining requests for refugee status and making a decision in the first instance.”¹⁸ However, according to the booklet the police interviews and other identified and unidentified bodies decide without ever hearing the applicant.

Although UNHCR guidelines have not excluded any particular governmental body from examining asylum applications, they have required that the application should be examined by “qualified personnel having the *necessary knowledge and experience*, and *an understanding of an applicant’s particular difficulties and needs*.¹⁹ [Emphasis Added]. Such provisions are required by the *Handbook* because an “applicant for refugee status is normally in a particularly vulnerable situation . . . in an alien environment” with serious difficulties in submitting his or her case to the authorities.²⁰

Members of the local police, apparently do not qualify for interviewing applicants. They do not have the necessary knowledge of the subject matter including human rights and refugee laws. Neither are they knowledgeable about conditions that applicants have fled from or have an understanding of the circumstances concerning asylum seekers. Further, as stated in the *Handbook* applicants’ difficulties may include fear of authority and resultant inability to speak freely and give a full and accurate account of one’s case.²¹ The police undoubtedly represent the most typical authority figure invoking fear and intimidation in asylum seekers. Particularly, due to past behavior concerning harassment and ill-treatment of asylum seekers, it is more than unlikely that asylum seekers would be willing and able to talk about

¹⁸ EXCOM Conclusion No. 8 (XXVIII) (1977).

¹⁹ *Handbook*, *above* note 6, Article &190.

²⁰ *Ibid.*

²¹ *Ibid.*, Article (&198).

fears of persecution to the police.²² More so, due to the current political situation in Turkey, Kurdish applicants, feel extremely inhibited to speak about their persecution in Iran.²³ The on-going war between the Turkish Government and its Kurdish population in Turkey, has put any expressions of Kurdish resistance at risk of reprisal. Those who are interviewed at points of entry, such as Silope, Sirnak and Hakkari are interviewed in the middle of war zones, putting them at further risks.

On the other hand, another basic problem is lack of an independent and impartial arbiter. The booklet provides that the Turkish Interior Ministry will assess the claims in conformity with the 1951 Geneva Convention, however qualifications for making such decisions are not clear. Neither is there an affirmation that the criteria are applied in the manner recommended by the *Handbook*. Participation of other bodies in the decision making process is reason for greater concern. The Ministry of Foreign Affairs who is one of the identified participant is in charge of two essentially incompatible tasks: While refugee determination should aim at protecting the vital interests of a group of particularly vulnerable people, the Ministry of Foreign Affairs obviously pursues foreign policy interest. Currently, the Ministry is engaged in protocols agreed with Iran concerning common problems against opposition groups fleeing one country to the other and enforcement of extradition agreements. Although the booklet does not state that the Turkish intelligence agency (MIT) is also involved, it is reported that in addition to the interview with the local police, asylum seekers are also interviewed by the MIT. Such involvement makes the examination to even more identify with a policy for treating criminals.

Security and humane treatment: Turkey's "temporary asylum" has denied asylum seekers work, education, freedom of movement and assembly, and effective security. For many, these restrictions have indeed become disincentives to seek asylum in Turkey. By enforcing more onerous conditions, the new regulations aim to deter more asylum seekers from access to asylum. Those who enter Turkey "illegally" suffer beyond all reasonable bounds. They have to reside in border cities, such as Silope, Sirnak and Hakkari, where there is an on-going war with the Kurdish population. Shortage of food, medicine, hygiene and other amenities on one hand and lack of security on the other hand have subjected asylum seekers to conditions that are substantially below international standards for safety and humane treatment of asylum seekers and refugees. Spouses and minor children of asylum seekers who have arrived for reunification after the cut off date for new regulations are obliged to separate in order to follow regulations which strictly require that they reside in border cities. Minor infractions may lead to catastrophic consequences. As stated in the booklet, non-conformity with Turkish "laws and regulations" may lead to an asylum seeker's "deportation". This is despite the fact that deporting asylum seekers on the grounds that they fail to follow formal requirements to lodge an application is against Executive

²² During the past years, frequent and consistent incidents of harassment and, on occasion, ill-treatment of Iranian asylum seekers by the Turkish police have been reported (see Amnesty International's report, *above* note 1; World Refugee Survey 1994, US Committee for Refugees).

²³ Even when Turkish legal officers of the UNHCR interviewed Kurdish applicants, they were hesitant to speak freely.

Committee guidelines,²⁴ and that such a measure violates Turkey's obligation to *non-refoulement*.

UNHCR's role: In its specific recommendations to governments about basic requirements for refugee status determination procedures, the Executive Committee specified that when submitting a case to the authorities concerned "[a]pplicants should also be given the opportunity, of which they should be duly informed, to contact a representative of the UNHCR."²⁵ The booklet neither duly informs nor provides for such access. Indeed, the five-day time limit to lodge an application with the Turkish authorities makes it extremely difficult for those who, nevertheless, opt to contact the Office of the UNHCR in Ankara before lodging an asylum application. Aside from impeding access, even if asylum seekers approach the Branch Office before they lodge an application, the contact will turn out meaningless, because "legal counseling" is provided by the Office only after an asylum seeker has lodged an application for temporary asylum with the police; and not before, when it is needed the most.²⁶

Legal assistance is not the only area that UNHCR does not assist. The agency appears to be excluded from monitoring the interviews, training the interviewers, or even providing guidelines for questioning applicants. As far as refugee status determination is concerned, the booklet stipulates that UNHCR "may present an opinion on a case". Yet it is not clear whether the organization is allowed an opinion on every case and what will result if differences of opinion arise. Given that applicants' cases consist mainly of the "summary" of their statements compiled by the police, even if UNHCR's opinion is sought on every case, the opinions will reflect potential errors and prejudices recorded by the police. Finally, failure to establish provisions, whereby UNHCR can exercise its mandate power and declare a person a refugee at any stage of the process, leaves the door completely open for the Turkish authorities to forcibly return refugees.

Concluding remarks: While other countries have managed to dismantle one or some of the safeguards in refugee determination procedures, only Turkey has succeeded discarding the full set. The new Turkish Government and UNHCR refugee determination procedures is outrageous in its aim to deny asylum seekers a right to redress grievances, a fair and full interview, and legal assistance. It conflicts with basic international obligations that have been established in order to protect refugees including humane treatment.

IRA condemns the new Turkish Government refugee determination procedure as immoral and legally deficient and urges the Turkish Government to put an immediate halt on deportations. The Government should formally reaffirm its commitment to *non-refoulement* and incorporate necessary legal measures into Turkish law to ensure effective protection for non-European asylum seekers and refugees in Turkey. Examination of asylum applications should be dealt by a qualified authority independent of foreign policy and immigration

²⁴ The Executive Committee has specifically state that non-fulfillment of formal requirements "should not lead to a request for asylum being excluded from consideration." EXCOM Conclusion No. (XXX) (1979), para. 2 (i).

²⁵ EXCOM Conclusion No. 8 (XXVIII) (1977).

²⁶ This restriction would actually make no difference because UNHCR's "legal counsel" does not, in any case, include legal assistance to asylum seekers to better present their claims.

concerns and knowledgeable in international refugee and human rights laws. International standards for fair determination procedures should be adopted and effectively implemented. If Turkey wants to establish a determination procedure in line with international standards it has to co-operate with the UNHCR. This should include unhindered access for asylum seekers to the UNHCR and respect for UNHCR's decisions on asylum applications. Deliberations to establish a system in line with international standards should be open to other inter-governmental and non-governmental organizations working with asylum seekers. Conditions of stay should comply with international standards for safety and humane treatment of asylum seekers and refugees.

While there is no doubt that the UNHCR Branch Office has been faced with an inherent lack of co-operation on the part of Turkish authorities, the organization's passivity to petition the cause of refugees remains unjustified. Neither the secretive process of discussions between the UNHCR and the Turkish Government before the establishment of the new system, nor the UNHCR's recent signature of approval on the procedure, impart the agency's will to hold the Government accountable for violating international refugee laws. In fact, what makes the new system all the more alarming is that such endorsement by the UNHCR avails the Turkish Government a defense to exonerate its violations. While the Branch Office's staff allegedly ascribe the passivity to diplomatic exigencies, the Office's inherently flawed standards of treatment, demonstrated in its own determination system, are more evidential.

While the UNHCR must operate with the consent of the host States, at the same time, its Statute commands support of States. If the UNHCR cannot acquire permission to fulfill its mandate in Turkey and protect people under internationally accepted procedures, then it should campaign the Government for the cause of asylum seekers. UNHCR is universally respected in the exercise of its function to protect people. Having the moral authority it has the capacity to go beyond quiet diplomacy and campaign its own member government.²⁷ IRA urges the UNHCR to resign quiet diplomacy and denounce the new refugee status determination procedure. In order to authoritatively challenge the system and petition for basic safeguards for fairness in determinations, UNHCR has to first accept the full set of safeguards itself. IRA urges the UNHCR to adopt and implement immediately the recommendations made earlier in this document in order to bring the standards governing the practices of the Office in line with international standards.

²⁷ Quiet diplomacy has not always been the agency's approach to governments: Although generally behind human rights organization in criticizing governments, the agency has had criticized government action. As recent as March 1995, a 292-page evaluation report issued by the Austrian office of the UNHCR strongly criticizes the Austrian asylum law and its implementation; claiming that it seeks to close the door for those fleeing persecution. The report confirms the claims of refugee counselors who have over the years complained that the asylum law grants few legal rights to asylum seekers, thus violating Austria's obligations under international and regional laws. The home minister Franz Loeschnak, however, has refuted the UNHCR criticism. The report, he said, has made false observations and merely confirms the earlier prejudices issued by the UNHCR and other refugee organizations. (InterPress Third World News Agency (IPS), [c] 1994). Earlier, on 10 January 1995, the representative of the UNHCR to the US was also quoted as saying that the agency would not be involved in the process of screening those Haitians at Guantanamo not wishing to return to Haiti because "it does not permit us to fulfill our mandate to protect people under internationally accepted procedures." (Amnesty International - EXTERNAL, AI Index: AMR 51/08/95)