

IN THE UPPER TRIBUNAL
B E T W E E N:

AMM
MW
ZF
FM
AF

Appellants

and

Secretary of State for the Home Department

Respondent

STATEMENT OF JANICE LYN MARSHALL

I, **JANICE LYN MARSHALL**, of Case Postale 2500, CH-1211 Genève 2 Dépôt, Suisse, state as follows:

Scope

1. I am a Deputy Director in the Division of International Protection at the Office of the United Nations High Commissioner for Refugees ("**UNHCR**"). In this role, I supervise the section within UNHCR headquarters in Geneva that is responsible for the production of Eligibility Guidelines. In this capacity, I oversee the process of researching, drafting and clearance of such Guidelines.
2. Except where otherwise stated, the facts and matters set out in this witness statement are within my own personal knowledge and are true. Insofar as the facts were supplied by others I have indicated their source, and they are true to the best of my knowledge and belief. Pursuant to the provisions of Article II, Section 2, as well as Article V, Section 18(a) of the Convention on the Privileges and Immunities of the United Nations, dated 13 February 1946, UNHCR, as an integral part of the United Nations, is immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Nothing in this statement shall be interpreted as any expressed or implied waiver of UNHCR's or its officials' privileges and immunities.
3. The purpose of this statement is to assist the Upper Tribunal (Immigration and Asylum Chamber) (the "**Tribunal**") in understanding how and why UNHCR produces Eligibility Guidelines such as the 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Somalia' (the "**Somalia**

Eligibility Guidelines"), which I understand are to be provided to the Tribunal in these proceedings.

4. The strong value and authority of UNHCR Eligibility Guidelines and submissions derives in particular from three considerations: UNHCR's mandate responsibility to supervise the application of the international refugee instruments; the Office's widespread presence and network in the field; and its decades of experience in refugee protection, in particular in adjudicating refugee status under its mandate in a variety of circumstances. No other entity is as well placed to offer guidance on eligibility issues affecting, amongst others, asylum-seekers and refugees.

UNHCR mandate and UNHCR Eligibility Guidelines

5. UNHCR has been charged by the international community with assisting States in the interpretation and application of the international legal framework established for the protection of refugees and its responsibilities have been extended to include persons who may fall outside the definition of refugee in the 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol Relating to the Status of Refugees, but who nonetheless warrant international protection.¹
6. One of UNHCR's primary tasks under its mandate is to monitor States' refugee status determination processes worldwide.² Performance of this important function has both (i) required UNHCR to develop and maintain the highest quality of Country of Origin ("COI") analysis, and (ii) incrementally added to UNHCR's institutional memory and breadth of experience. In other States, UNHCR is entrusted to adjudicate definitively individuals' claims for refugee status; UNHCR now handles in excess of 100,000 such applications per annum in over 50 countries around the world.
7. UNHCR produces and makes available to States its Eligibility Guidelines as a means of furthering its mandate responsibility of assisting States in their interpretation and application of international refugee law. Informed by UNHCR's wide field presence and significant status determination experience, UNHCR seeks to assist domestic decision-makers by providing, in its Eligibility Guidelines, its best analysis of objective COI evidence. UNHCR notes that its Eligibility Guidelines are also used by organs of the United Nations, intergovernmental organisations ("IGOs"), non-governmental organisations ("NGOs") and other institutions of global, regional, national and local government, including judicial and quasi-judicial bodies.

¹ See generally *UNHCR Note on International Protection*, submitted to the 45th session of the Executive Committee of the High Commissioner's Programme, UN Doc. A/AC.96/830, 7. Sept. 1994.

² See Article 35, 1951 convention relating to the status of refugees.

Contributions from Regional Bureaux and Field Offices: Local Knowledge

8. UNHCR has 272 Field Offices worldwide. UNHCR staff working in these offices possess longstanding experience and knowledge of the country and operations in which they work, and acquire considerable knowledge of the circumstances pertaining to the asylum-seekers and refugees with whom they work.
9. Information is gathered from a variety of Field Offices, in particular those which host asylum-seekers and refugees from the country about which the Eligibility Guidelines are prepared. Field Offices are overseen by Regional Hubs or Representations, as well as by Regional Bureaux and the various Divisions in UNHCR's Headquarters in Geneva.

The Production of Eligibility Guidelines

10. Recognition of the need for a new Eligibility Guideline can be prompted by a variety of 'triggers', which include but are not limited to Regional Bureaux or Field Offices communicating the need for new guidance in respect of a particular country, often owing to a lack of or conflicting available COI. In other cases, States may themselves identify evidential or legal issues, the resolution of which would be assisted by the provision of new UNHCR Eligibility Guidelines.
11. There is no set formula for the production of Eligibility Guidelines and different countries and circumstances may call for slightly different approaches.
12. The process of drafting and approving Eligibility Guidelines is a lengthy and laborious one, involving all layers within the organization and includes a rigorous assessment of country conditions against the criteria for refugee recognition. It includes an assessment of risk levels that is consistent with UNHCR's approach in other countries.

The Assessment Methodology

13. Underlying each of the stages of the production of the Eligibility Guidelines production process, outlined above, is UNHCR's assessment methodology. The methodology is comprised of three major considerations: (i) criteria to be applied to the process of collecting information; (ii) the determination of information's reliability; and, (iii) the assessment of policy and risk thresholds. I will briefly describe each of these in turn.

Process of Collecting Useful Data

14. Information is collected from a variety of different sources. Information is also obtained from those seeking a determination of refugee status and from information from UNHCR Field Offices and Regional Bureaux. Information is also obtained from external sources. All information gathered remains clearly associated with the

source from which it comes, so that the subsequent determination of reliability and assessment of policy and risk thresholds can be undertaken in a fully informed manner. The information collection stage involves an assessment of the relevance of the information. To be considered for inclusion in the Guidelines, the information must be relevant with respect to subject matter and time.

15. It is essential that information is collected from a balance of sources. To ensure this, UNHCR requires the 'triangulation' of sources for any one piece of information. This involves guaranteeing that information from one type of source is corroborated by information from different kinds of sources, with the aim of minimising the effects of bias or inaccuracy. For example, representations from States on their own State practices must be assessed in the light of independent reports of such practices' effects in the Subject State. Through this process, we seek to obtain information from, for example, each of the following categories of source independent from UNHCR: (i) UN/IGOs; (ii) NGOs; (iii) Government; and, (iv) news or media organisations. Quite apart from other filters, such as the determination of reliability, information that is not triangulated will not be included as the basis of a factual statement in the Eligibility Guidelines.
16. This means that all factual statements made in Eligibility Guidelines (whether a footnote reference appears or not) are assessed to be reliable and are corroborated. It also means that the association of a factual statement in an Eligibility Guideline with a public source by a footnote reference does not mean that this reference is the only basis for that statement; in many cases it will represent a form of corroboration for the statement.

Determination of Reliability

17. Both the source and reporting of the information are subjected to intense scrutiny to ensure that UNHCR can be confident in the reliability and veracity of the information. By way of example, the following determinants of source reliability are examined: (i) institutional or personal experience of the source in dealing with the subject matter at hand; (ii) objectivity of the source; (iii) observational capacity and proximity; and (iv) the methodology applied by the source to gather and record data, conduct analysis etc.

Assessment of Policy and Risk Thresholds

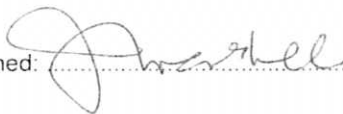
18. Information collected, determined to be reliable and being considered for inclusion in the Eligibility Guidelines is subjected to repeated analysis in light of UNHCR's policy and risk thresholds. In assessing risk levels, UNHCR is guided by its institutional memory of producing Eligibility Guidelines and adjudicating on refugee status claims in many countries. By ensuring that a common approach is followed and that the standard of proof and risk levels are uniformly applied, UNHCR seeks to ensure that Eligibility Guidelines report findings in a manner consistent and compatible with

international legal instruments and useful to States' administrative and judicial decision-makers.

Conclusions

19. For the reasons set out in this statement, I commend the Somalia Eligibility Guidelines to the Tribunal, and hope that the Tribunal considers the document useful in its deliberations in the present country guidance case. I hope that this background evidence may be informative to the Tribunal also in other cases.

I believe that the facts stated in this witness statement are true.

Signed: 

Dated: 6 June 2011

Janice Lyn Marshall