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including the right to development

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), the Union of Arab Jurists, the Arab Lawyers Union, the General Arab Women Federation (GAWF), North-South XX1, the United Towns Agency for the North-South Cooperation, the Indian Movement “*Tupaj Amaru*”, Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale - OCAPROCE International and the World Wide Organization for Women (WOW), non-governmental organizations in special consultative status; the World Peace Council and International Educational Development, Inc. (IED), non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Report on the rejected asylum seekers of Choucha Refugee Camp*

The Choucha refugee camp, created following the war in Libya, is being closed. After two years of living in the desert, approximately 250 rejected asylum seekers have not been given any durable solution to their situation.

Choucha Camp

Asylum seekers in Choucha were required to go through a "Refugee Status Determination-Process" (RSD) managed by UNHCR, which included personal interviews. In case of rejection, applicants were given the possibility to submit a written appeal. If the appeal is rejected, then the rejection becomes final. Persons granted refugee status are considered for a resettlement-program, which, if accepted, consists of reinstallation in a host country with a functioning asylum system.

On 29 March 2013 there were only 819 recognized refugees still living in the camp, along with an additional 30 people who were still undergoing the asylum process,¹ and approximately 250 rejected asylum seekers.

By the onset of 2013, the inhabitants of Choucha Camp could be divided into five categories:

- Recognized refugees approved for resettlement by UNHCR
- Refugees recognized by UNHCR, but not yet accepted for resettlement
- Refugees without possibility of resettlement because they registered after the resettlement program deadline of 1st December 2011
- Rejected asylum seekers: These are persons who have undergone the RSD procedure, but were not granted refugee status by UNHCR. They are no longer under the protection of the UNHCR and are deprived from camp services (food, medical care and other services). Despite their unofficial status in the camp and their marginalization, they continue to live there, struggling to find a solution.

Examples of malpractice by UNHCR

Problems caused by information sharing: UNHCR works closely with diplomatic and consular- and hence intelligence and security- staff of foreign embassies. This is not only unnecessary; it is dangerous and should never be done. At Choucha, it is clear that in a number of cases, this information sharing prejudiced refugees' claims for asylum. On a number of occasions, refugees' claims for status were rejected after visits by officials from the country concerned. While the evidence is circumstantial, the fact that it has occurred on

* Centre de Tunis pour la Migration et l'Asile (CeTuMA), Geneva International Centre for Justice (GICJ), , BRussels Tribunal, Arab Lawyers Association- UK, Association of Humanitarian Lawyers (AHL), The Iraqi Commission on Human Rights (ICHR), Monitoring Net of Human Rights in Iraq (MHRI), International Coalition against War Criminals (ICAWC), The African Association of Human Rights (AAHR), Protection of Human Rights Defenders in the Arab World, the International Network of Arab Human Rights NGOs, International Lawyers.org, Association of Human Rights Defenders in Iraq (AHRDI), The Iraqi Centre for Human Rights and Association internationale des droits de l'homme, NGOs without consultative status, also share the views expressed in this statement.

¹ UNHCR Zarziz: Persons of concern of UNHCR in Shousha camp, Demographics. 29 March 2013.

several occasions is compelling. The most corrosive and incontestable effect of such unauthorized information sharing is on the refugees themselves. Aware that what they said in their RSD interview was likely to be shared with the governments or agencies from which they were fleeing, those remaining were seriously inhibited in what they said. This was particularly significant for the large majority who still had family members in their country of origin.

- **Problems in the handling of asylum seeker files:** Mistakes have occurred in the transcription of names and in the designation of nationalities from one file to another. These unprofessional errors led to an atmosphere of mistrust by asylum seekers towards UNHCR.
- **Misinformation regarding the processes:** The UNHCR's guidelines, "Procedural Standards for Refugee Status Determination under UNHCR's Mandate", underline the importance of providing information to asylum seekers regarding the RSD process. Nevertheless, asylum seekers in Choucha Camp have reported that the process was not clearly explained to them. The RSD process requires asylum seekers to recount their personal past with precise facts. This task is extremely difficult for persons who have undergone, and are obligated to talk about, traumatic experiences. The lack of information about the procedure leaves asylum seekers unprepared and unable to meet requirements.
- **Lack of legal aid:** Asylum seekers were not provided any legal aid other than counseling provided by UNHCR. Accounting to UNHCR, "At all stages of the procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel."²

As in all legal procedures, and particularly with regards to asylum claims, it is essential that individuals be informed of their rights, obligations, status and options. Throughout any asylum claim and especially in the cases of appeal, it is of utmost importance to be assisted by a neutral legal representative who should accompany the asylum seeker, ensure adherence to the applicant's rights and take appropriate action if these are violated. This lack of legal independent counseling deprived asylum seekers at Choucha Camp of a fair judgment.

- **Lack of professional translation:** There were no professional translation services provided to refugees. In some cases, UNHCR deployed interpreters that belonged to clans or ethnic groups opposed to those of the asylum seekers. This was the case with Arab Darfurians and African Darfurians. UNHCR guidelines advise the use of qualified interpreters and explain that external interpreters may be used, if their qualification is guaranteed and if their relation to the asylum seeker is asserted. Lack of professional interpreters during interviews may lead to cases where asylum seekers feel uncomfortable to speak freely or their responses are not interpreted correctly. Even in cases where the interpretation is done accurately, the translation of an asylum claim by another inhabitant of the camp is a huge interference in the personal life of the former.
- **Lack of information in cases of rejection:** UNHCR did not provide rejected asylum seekers with sufficient information regarding the reasons for their first rejection. It is crucial for asylum seekers to fully understand the weak points in their claims in order to ensure appropriate preparation for an appeal.

² UNHCR (2001): Global Consultation on International Protection. Asylum Processes. Fair and Efficient Asylum Procedures.

- **Problems with camp management:** UNHCR created a division between rejected and recognized refugees. Rejected refugees have been deprived of food and money and are unable to receive medical care as they do not possess an ID card, which is only issued to recognized refugees. UNHCR staff also told refugees to not share their food and money with the rejected asylum seekers. These separations exacerbated tensions, which created conflicts and divisions between these groups.

Possible options for rejected asylum seekers

- **Returning to their home country:** The International Organization for Migration has proposed an assisted "voluntary" return for all those rejected. However, for the majority of these people, returning to their countries means that they may be subjected to serious violations of their human rights. The fact that asylum seekers have remained in this desert camp for two years, facing extremely difficult weather conditions, a lack of a private life and hardships with regards to basic needs, attests to the seriousness and validity of their fear and the danger they would face if they were to return to their countries.
- **Going back to Libya:** Although the war in Libya has ended, foreigners and particularly sub-Saharan migrants are exposed to serious risks of violence and human rights violations mainly due to insecurity and to the reign of militias.
- **Crossing the Mediterranean into Europe:** Another unofficial solution which is considered by many of those rejected is to attempt to reach Europe by boat, which poses great risks to their lives. In 2011 and 2012, frustrated by the slow progress of asylum procedures, some refugees decided to attempt to cross the Mediterranean. Many of them are still missing³. More than 1,500⁴ deaths and disappearances at sea were counted in 2011 by international organizations (i.e. UNHCR, Migreurop, FortresseEurope). This fact increases our fears and concerns for the safety of all those concerned⁵.
- **Staying in Tunisia illegally:** This last solution would leave people in a situation of lawlessness and insecurity. Without possessing any documentation from UNHCR, they can be imprisoned at any time. In Tunisia, illegal foreigners are being held in detention until they are able to raise sufficient funds to pay their own deportation.

Requests

Rejected asylum seekers have organized themselves and have led several actions and claims against UNHCR, the EU delegation in Tunisia, international organizations and embassies. On 28 of January 2013, rejected asylum seekers, supported by international and Tunisian activists, organized a sit-in in front of UNHCR's headquarters in Tunis. They also protested at the World Social Forum in an attempt to raise international support and awareness about their humanitarian situation.

All NATO and non-NATO states that were involved in the Libyan war have an indisputable responsibility to assist in the resolution of the humanitarian problems resulting from the crisis. This matter should not be considered solely as a Tunisian problem, but instead must be regarded as an international issue.

³ Nicanor Haon, "Tunisie: pas de printemps pour les migrants", FTDES, Gisti, 2012.

⁴ UNHCR, "Triste record pour les traversées de la Méditerranée par les migrants et les réfugiés en 2011", briefing, 31 January 2012; <http://www.unhcr.fr/4f280ad3c.html>

⁵ FTDES, "La situation des réfugiés du camp de Choucha", with the collaboration of B4P network, August 2012.

Therefore we urge international organizations and all governments to meet their commitments and responsibilities under international conventions for the protection of human rights. Rejected asylum seekers currently remaining in the Choucha Camp must be protected and relocated to safe countries.

Furthermore, UNHCR itself states that “until now, no state has been able to successfully develop strategies, which would allow to distinguish in a just and effective manner between refugees with a well-founded fear of persecution and migrants with economic or other motivation.”⁶ As outlined in this report, the mistakes committed during the Refugee Status Determination process in Choucha show that the status of rejected asylum seekers does not respond to objective criteria. Under the circumstances, rejected asylum seekers must be given the opportunity to undergo a new RSD procedure.

⁶ Original: Kein Staat hat bisher erfolgreich Strategien zu entwickeln vermocht, mit denen sich gerecht und wirksam zwischen Flüchtlingen mit begründeter Furcht vor Verfolgung und Migranten mit wirtschaftlichen oder anderen Motiven unterscheiden lässt.“ UNHCR (2000): Zur Lage der Flüchtlinge in der Welt. UNHCR-Report 2000/2001. 50 Jahre humanitärer Einsatz. Bonn.