

## **Accompanying Clients to RSD Interviews at UNHCR**

### **General Principles**

Asylum-seekers have the right to legal representation at all stages of refugee status determination procedure (UNHCR, *Asylum-Processes: Fair and Efficient Asylum Procedures*, para 50g, 2001) and may have a legal representative accompany them to their RSD interviews at UNHCR (UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* section 4.3.3, 2005). This guide is intended to assist legal advocates to provide the best possible advocacy during the RSD interviews at UNHCR.

At an RSD interview, your client must be his/her own advocate. Your job as lawyer should mostly be completed before this interview; in appeal, you may have already produced success for your client simply by getting this interview opportunity. But in the end your client is the only one who can testify to the facts of his or her life. You can support him/her, and repair or at least identify some major problems, but your role is very much secondary to your client's.

**Your role on interview day should be addressed to three objectives, in order of priority:**

- 1) Support your client and make sure s/he is in a good frame of mind for the interview.**
- 2) Help make sure your client has the opportunity to tell all relevant facts.**
- 3) Identify potential errors in decision-making, and begin to correct them.**

You should never attempt to testify on behalf of your client. And you should never take an adversarial tone or antagonize the decision-maker who holds your clients fate in his or her hands.

A RSD interview is not an argument, and it is not a trial in court, with UNHCR staff as opposing counsel. Your job on behalf of your client is to help the process. A great deal of on the spot judgment is required to decide how to maximize the RSD interview as an opportunity for advocacy. But remember, most problems that occur in the interview can be corrected later in writing, in consultation with your supervisor. Follow the rule of medical ethics: Do no harm. If unsure, stay quiet.

### **Before the interview**

You might need to email your colleagues the day before you are leaving to UNHCR, so that other legal advisors who may need documents delivered can give them to you before you go.

As well as **preparing the client**, ensure that you are prepared for the RSD interview by:

- Familiarising yourself your client's testimony (and legal submission if applicable)
- Ensure you bring spare copies of all documents to UNHCR to give to the eligibility officer even if you have sent them ahead already (in case the officer has lost the copies or in case you need to refer to them before/during the interview)
- The most important document is the UN Authorization form – without which you will not be able to be present for the interview
- If the interview date has been rescheduled via emails between your office and UNHCR, bring all email correspondence to show at Reception
- Remind the client to bring all original documents and their appointment slip on the day

### At the interview

UNHCR rules place fairly strict limits on a lawyer's conduct in the RSD interview. The legal representative may make brief remarks at the close of the interview. The representative should in general not interrupt the interview except in the case of "breaches of procedural fairness that could not be adequately addressed or remedied if they were raised in closing submissions" (*Procedural Standards for Refugee Status Determination under UNHCR's Mandate* section 4.3.3).

In order to know how to conduct yourself during the interview, you need first to have a feel for the disposition of the UNHCR interviewer. Some interviewers welcome more interventions, while others dislike it. At the end of the day, the interviewer is in charge. Remember, do not antagonize the interviewer, and err on the side of silence. But if the interviewer allows it, take advantage of the opportunity to make sure your client gets a fair opportunity to provide complete and clear testimony.

The only events that should trigger your interruption of the interview in all cases are cases of severe misconduct, such as abusive statements by the interviewer, statements that erode the client's trust in UNHCR so that they may not be able to give complete information even in a future interview with a different person, or misunderstandings (for example due to poor translation) which snow-ball to the extent that the entire interview is prejudiced.

The legal advisor should in all cases take a complete transcript by hand of the interview. In many ways, this is their key job. Since UNHCR does not provide copies of its interview transcripts, this will be our only record of the interview, and an indispensable tool for assessing the case later on. Pay attention to what the interviewer seems to focus on; this is a clue as to how s/he is assessing the case. Also pay attention to whether your client seems able to provide complete information on the key points. Especially, note whether the interviewer at any point notes an inconsistency and asks your client to clarify or explain it.

If the interviewer seems flexible and a point of confusion (especially confusion in translation) arises, you may want to interject, gently, that there seems to be confusion and ask that a question be rephrased. You should definitely try to do this if an innocent misunderstanding seems to be escalating into a confused interview that could rattle your client or lead the interview to doubt credibility. But remember to interject with humility and not in an adversarial tone, and do not try to correct the misunderstanding. The most you can do is raise the possibility that there was an innocent confusion, and get your client a chance to try again to make him or herself understood.

The close of the interview offers you several advocacy opportunities. UNHCR rules give you the opportunity to make a **Closing Statement** and this is the time when the legal advisor is allowed to address the eligibility officer directly. Here are steps to consider; not all will be applicable in all cases.

First, if there is anything important in your client's case that s/he did not get a chance to explain, or if something came across in a confused way, you can suggest to the interviewer that it may be worth asking your client **more questions** on a particular topic. UNHCR is not bound to comply with such requests; but in theory the UNHCR interviewer should be interested in examining all the facts; suggesting additional questions can therefore be a way to be helpful.

Second, another means to correct confusions or misunderstandings in the interview is to **ask for sections of the transcript to be read back** to your client. UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* section 4.3.11 says that interviewers should "read back elements of the RSD Interview transcript that are most relevant to the determination of the claim." Do not ask for the whole transcript to be read back, but you can ask that a specific part be read back. This should give your client the chance to hear how his/her words have been recorded, and to correct any mistakes.

Third, by now you should have a diagnosis in your head about how the interviewer seems to be responding to the case. One important issue to consider is whether any **credibility problems** have come up. According to UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* section 4.3.6, interviewers should provide applicants an opportunity to clarify or explain any gap or inconsistency during the interview; if an applicant is not allowed to explain a gap in his or her testimony it cannot be used later to reach a negative credibility decision. If the interviewer has not noted any gaps or inconsistencies by the end of the interview, then you can say in your closing statement "I note that no gaps or inconsistencies have been brought up for Mr/Ms X to clarify, so I assume that there are no negative credibility issues in his/her testimony." If the interviewer objects, do not argue. Simply ask that your client have the chance to respond to any negative credibility factors, either now or at a future interview.

Fourth, the interview should have given you an indication of how the interviewer perceives the case, and whether there are doubts that could lead to a rejection. The closing statement is a chance to address these and to refocus the definition of the case in a way favourable to your client. But that doesn't mean you should argue with the interviewer; do not criticise the way questions have been asked. Instead, gently and indirectly address what it seems the interviewer is thinking.

You should not give a factual summary of the case, and you need not re-argue every legal point raised in the written submission. You should be short and engaging. You need to remember that the key to winning in any adjudication is defining the case in a way favorable to your client.

Take a typed version of your statement along to the interview. Of course, you will probably make some additions to this as you listen to the interview. It is ideal for the eligibility officer to have a written copy of your closing statement on file. Although in theory eligibility officers should listen to the closing statement and record what you say, the reality is that they may be pressed for time and have to interview other applicants directly after your client, or they may be distracted after a lengthy interview when you are giving your closing statement. It is best practice to hand them your closing statement after you have given it. Some eligibility officers may prefer that you email the statement to them after the interview so be flexible and arrange with them.

### **After the interview**

After the interview, make sure to **talk to your client**, and hear how he or she feels about it. Your job now is just to listen; there won't be much advice to give unless a specific problem has come up during the interview.

Remind the client that sometimes UNHCR decisions are delayed well-beyond the date that they are given and that this is normal.

Back at the office, you should **discuss with your supervisor** how the interview went if you need to, and especially bring up any problems that you believe occurred. Discuss with your supervisor if you think there is a need for any follow up action of any kind.

Type up the **Interview Transcript** while it is still fresh in your mind and save into your case management programme. Be sure to record any observations about the conduct of eligibility officers that you think may become relevant on appeal.