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REFUGEE RIGHTS CLINIC

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RE: SUBMISSIONS TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS (NATIONAL ASSEMBLY) ON REFUGEE APPEAL AUTHORITY DRAFT RULES

24 April 2020

INTRODUCTION

The Refugee Rights Unit is housed within the UCT Law faculty and it is a multi-functional unit, housing a LAW CLINIC (registered with the Legal Practice Council of South Africa), a Research UNIT which is duly recognised as such by the University's Research Body. The Refugee Rights Unit Teaches Refugee Law to Final year LLB students as well as at a master's level to LLM and M.Phil. students. It also provides direct legal assistance to approximately 5000 refugees and asylum seekers annually to navigate the complex asylum process in South Africa.

We therefore welcome the opportunity to make submissions on the Refugee Appeal Authority ("RAA") draft rules published on the 4 March 2020. These submissions will begin with general comments about the RAA and the system as a whole and then will move on to specific inputs on the rules on the RAA rules.

GENERAL COMMENTS IN REGARD TO THE REFUGEE APPEAL AUTHORITY.

The Refugee Appeal Authority (“RAA”) serves an important function in ensuring that the right to non-refoulement¹ is not violated by making sure that applications rejected as unfounded² by the Refugee Status Determination Officer (RSDO) do not slip through the cracks and violate the rights of asylum seekers. The RAA is an independent body established in terms of the Refugees Act 130 of 1998 and has a quasi-judicial function to either sustain, substitute or set aside a decision of the RSDO.

The RAA, previously the Refugee Appeal Board, was established as a safety net to the few cases that created doubt as to applicant’s status as a refugee. It thus did not require a great deal of resources in order for the RAA to fulfil its functions. However, over time, due to systemic issues with poor RSDO decisions³ the RAA has collapsed through the high number of cases and concurrent lack of capacity to meet these demands. A report published by the Auditor General in 2019 stated that in 2000 the RAA had a backlog of 4419 cases, in 2007 this decreased to 893 and in 2017 this amount shot up by 16 450% to 147 794 active cases pending before RAA. As it stands, it will take RAA more than 68 years to finalize the backlog of cases. An estimated 18 000 asylum seeker permits have been extended more than 20 times. This means that some asylum seekers remain on their short terms permits for up to 10 years. This is highly prejudicial to refugees and has created more work for the Refugee Reception Offices (“RRO”) who have to process up to 1165 permit extensions per day. ⁴ Not only is this highly prejudicial to refugees and overwhelming the RRO’s it also opens up the asylum system to abuse by persons wanting to remain in South Africa as they are able to remain on an asylum seeker permit for extended periods of time.

The RAA lacks the capacity to deal with this backlog.⁵ For many years the RAA has only had three members each of whom have to be present for an appeal to be heard. Ultimately collapsing the system. Therefore, although specific comments can be made about the rules, it is submitted that a complete overhaul of the failing asylum seeker

¹ Refugees Act 130 of 1998, Section 2.

² Refugees Act 130 of 1998 “definitions”

³ Roni Amit. Flawed status Determination and the Failures of South Africa’s Refugee System to Provide Protection (2011) *International Journal of Refugee Law* (23).

⁴ Auditor General South Africa Report (2019) Follow – up performance audit of the immigration process for illegal immigrants at the department of home Affairs

⁵ Ibid.

system is needed to address these above-mentioned issues. It is submitted that targeted initiatives by the Department of Home Affairs combined with the assistance of organisations like the UNHCR (who have declared their willingness to help) are used to deal with the massive backlog of the RAA. It is also submitted that the RAA should be better funded so that they are able to hire more members who can efficiently hear new matters. Lastly it is submitted as a preventative measure: RSDO's need to be trained to prevent continuously overloading of the system. In this regard UCT Refugee Clinic, as they have done in the past, pledge their time to assist the Department of Home Affairs to train staff.

The submissions below individually comment on each rule and by way of conclusion general observations are made. Despite these specific inputs it is maintained that although some of amendments are welcomed, they are not sufficient to deal with the backlog and or future addition to this backlog.

SPECIFIC INPUTS

Refugee Appeal Authority Rules (GN notice)

1. Definitions

“member” – the definition of member was previously excluded from the rules. This is a welcomed addition as it not only defines a member as a legally qualified person but it also brings the rules in line with the Refugees Act 130 of 1998 as amended (hereafter the “Refugees Act”).

“Refugee Reception Office” – the RRO is defined as the reception office where the asylum application was lodged. Issue is taken with this definition. The rules cannot create their own definition beyond the scope of their principle Act. The Refugees Act states that Refugee Reception Offices are defined by those established in terms of section 8(1) by the Minister, it is unclear why then the definition in terms of the rules is one where the asylum seeker made their initial application.

The impact of the definition in terms of the rules is that appeal hearings will take place at the RRO in which an asylum seeker made their initial application and

not necessarily where they are resident. Although some asylum seekers are resident in areas in which they made their applications two issues must be flagged in this regard.

Firstly, the Cape Town RRO remains closed to new applicants, forcing them to travel to Pretoria, Durban, Musina or Port Elizabeth in order to apply for asylum despite a court order requiring the Cape Town office to open.⁶ The cost of travelling to another city is a major financial burden for many refugees, particularly those with young children. After applying asylum seekers are able to renew these permits in Cape Town where they live and thus it would only be reasonable that their RAA hearing should follow suit.

Secondly a large portion of applications are made at the Musina RRO due to its placement near the border. However, there is low economic activity in the area and most asylum seekers after application do not remain in Musina.

It should be highlighted that on analogous lines the rules have the effect of violating *Abdulaahi* and *Nbaya*⁷ cases which required the Cape Town RRO to renew the permits of persons who had made their initial application for asylum at another office. The effect of the definition is that asylum seekers are being forced to return to an office which may be in an area that they are not resident in for a RAA hearing which defeats the purpose of why the two above mentioned cases were launched.

In light of this it is submitted that the definition of RRO should be amended to follow the same definition of the Refugees Act.

2. Rule 4(1) – Lodging an appeal

⁶ *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others* 2018 (4) SA 125 (SCA)

⁷ *Nbaya and the Director General of the Department of Home Affairs and others* 6534/2005; *Abdulaahi and Others v The Director General of Home Affairs and Others* Case 7705/2013.

The time period in which to lodge an appeal with RAA has been substantially changed from 30 days to 10 days. The reason behind this is unclear and 10 days is simply not enough time considering the circumstances of many asylum seekers.

Firstly, lodging an appeal requires the completion of an affidavit, something for which an asylum seeker will likely require legal assistance, especially given the importance the RAA attaches to this affidavit. It will be highly prejudicial to the refugee claimant if refugees or non-lawyers are to complete the affidavit.

If an asylum seeker were to seek legal assistance with a private lawyer in completing the appeal, the period in which to lodge the appeal does not give adequate time for consultation and ensuring the affidavit is correctly completed.

Secondly if that asylum seeker were to seek the assistance of a free legal clinic, as many do, they may struggle to get an appointment within that period and then further meet the time period to submit the notice and affidavit. A broader consideration in this regard is the necessarily rushed assistance that is given to the asylum seekers in order to lodge the appeal in time by a free clinic such as ourselves.

If an asylum seeker was to complete this form themselves, then considerations of language barriers needs to be highlighted. Asylum seekers may need the assistance of someone in order to duly complete the form and 10 days is not enough time.

As we see it, there is no good justification or reason to lessen the time. It should be further pointed out that it is unreasonable to think that the RAA has the capacity to consider the case within these 10 days and thus it would appear unreasonable and procedurally unfair to lessen the time frame in which to lodge the appeal considering the factors outline above.

It should also be noted that the UNHCR guidelines note that a reasonable time to appeal is given to an asylum seeker who is not recognised.⁸The Procedural Standard Guidelines on Appeal hearings by the UNHCR suggest that 30 days

⁸ UNHCR ' Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' January 1992.

from receiving their negative decision is the minimum time that should be given for an appeal to be lodged.⁹ The rules should be brought in line with the UNHCR guidelines.

It should also be noted that a major issue we have flagged is the lack of dissemination of the appeals process to the asylum seeker. Many asylum seekers will not have the assistance of an attorney and will be navigating the system themselves. We therefore believe, that when an asylum seeker has been rejected as unfounded that an information sheet is given to an asylum seeker that is catered to a person without legal knowledge. As will be suggested below this information should further be included in notices given to the asylum seeker.

Despite taking issue with the time frames we welcome the fact that an appeal can be lodged via email to the RAA, however we note that no email address is designated in this regard and that for the sake of transparency this should be included in the rules and also be disseminated to asylum seekers on the notice of appeal.

Rule 4(5)(a) and (b) do not make it clear whether all asylum seekers who apply for condonation together with their application for appeal will have an appeal hearing where the merits of the application for condonation are heard. Rule 4(5)(a) states that the Refugee Appeals Authority of South Africa will determine condonation together with the appeal, but it does not state if this happens in all cases or whether the RAA will review an application for condonation before setting a date for the hearing.

It is suggested that the procedures for how the RAA will consider condonation need to be included in the rules and that the rules comply with standards of procedural fairness.

Despite our concerns with Rule 4(5)(a) we welcome that the rules are more expansive in accepting criteria for condonation than that of the regulations.

⁹ UNHCR 'Procedural Standards for Refugee Status Determination under the UNHCR's Mandate, Unit 7 Appeal of Negative RSD decisions' 01 September 2005 <https://www.unhcr.org/4316f0c02.html>.

3. Rule 7(1) and (2) Parties to the Appeal

Rule 7(1) - This clarifies that the RSDO is party to the appeal whereas before it stated that Department of Home Affairs is party to the appeal. We welcome that there is now an identifiable person to the appeal.

Rule 7(2) – This rule was amended from allowing parties 5 days from the hearing to submit heads of argument to 7 days prior to the hearing to submit heads of argument. If this rule is read with rule 10(1) which states that the notice period for a hearing is 10 days, an asylum seeker is only given 3 days in which to submit heads of arguments from when they are notified of their hearing. We do not dispute that it is reasonable that the RAA is given sufficient time to consider the heads of argument however it is submitted that is unreasonable to expect an asylum seeker to prepare heads of arguments within 3 days from being notified of the hearing.

The 7-day submission of heads of arguments is in line with Court Practice, however notice of such hearing or the initiation of proceedings ranges between 1 and 2 months.¹⁰ The RAA is not a court of law, but is quasi-judicial body and therefore ought to some extent follow the time periods similar to a court of law in order for it to be fair and reasonable.

3 days is simply insufficient for both an asylum seeker to submit heads of arguments themselves and or to seek legal advice, consult with an attorney and for that attorney to submit those heads within 3 days. Therefore, it is recommended that 7 days is only reasonable if the notice period in terms of rule 10(1) is extended to 30 days at a minimum.

It should also be noted that this information relating to timeframes of submissions of heads of arguments is not relayed to the asylum seeker. The notices do not indicate that you are firstly allowed to submit heads of arguments or the period in which to do so. As per the rules of court or legal notices the other party must be informed of time frames for submissions and further

¹⁰ Rule 53 Review for example: Uniform Rules of Court 53 after an application is launched, 15 court days is given for a notice of intention to defend, from there 15 days to supply the rule 53 record, 10 days from there a supplementary affidavit is filed and from there 30 days for an answering affidavit. This is 40 court days, about 2 months before the proceedings are even closed, after which a hearing date can be about 2 months.

indicate where it must be submitted to. As good practice some precedents for notices include an explanation on the format of such document that must be submitted to the other party. It is thus recommended that the proforma notice of appeal hearing should include both information relating to time frames on submission of heads of argument, where this must be submitted too and lastly a proforma instruction on what should be included in the heads of argument.

4. Rule 8 Change of Address

It is suggested that as with the service of documents, appellants are able to update their addresses and or personal contact details via email or telephone. Although the RAA may allow this informally it should be included in the rules for sake of clarity.

5. Rule 9 Right to Representation

Although throughout the Refugees Act reference is made to “legal representation”, Rule 9 merely states representation and has removed the qualification that this be legal. The rules previously qualified representation to that of the legal profession with rights of appearance.

It is submitted that the restriction that legal representation requires rights of appearance was limiting to refugees. The broadening of this is a welcomed inclusion as it expands the possibility of assistance an asylum seeker may seek and utilise. Many appellants are unable to secure legal assistance while experts who may not have legal rights of appearance are able to assist them at their hearing. Furthermore, the removal of the term “legal” allows for appellants to make assistance of a “support person” in cases where the appellant may have a mental health condition or possible intellectual disabilities.

6. Rule 10 Notification of Appeal Determination

Rule 10 states that a person will be given 10 days’ notice of a hearing prior to such hearing. For the same reasons stated above in terms of rule 7 and due to

the fact that 10 days' notice is simple insufficient notice of a hearing, issue is taken with this rule.

After receiving a notice of hearing an asylum seeker will likely try to seek legal representation for the hearing. If an asylum seeker were to seek legal assistance with a private lawyer for the hearing the period until the hearing does not give adequate time for consultation, preparation for trial or heads of arguments to be submitted.

Secondly if that asylum seeker were to seek the assistance of free legal clinic, as many do, they may struggle to get an appointment within that period and then further meet the time period before the hearing date or the submission of their heads of arguments.

As aforementioned notice of court proceedings, hearings and trial dates to a respondent is at minimum two months in advance. Taking into account the slightly different nature of the RAA and a court of law, it is suggested that to some extent the RAA should observe a fair notice period of a hearing date.

From the UCT clinics experience, the clinic becomes overwhelmed when notice of hearings are given out in Cape Town. We are forced to see additional clients over and above our normal intake in order to ensure that asylum seekers with notice of appeals are all seen. On top of that the attorneys have to put other work on hold to ensure that heads of arguments are submitted to the RAA.

We therefore recommend that an asylum seeker is given 30 days' notice in advance of a hearing in order for them to be adequately prepared and to have had the opportunity to explore legal services available.

As mentioned above, issue is also taken with the information included on the notice of hearing. We recommend that the following should be included on the notice of hearing: timeframes of submissions, information on how to submit and to whom. As will be mentioned below the notice should also include what happens in the event that you are unable to make a hearing and what to do if you have missed your hearing date.

7. Rule 11 and 12 Postponement of a Hearing and Non- appearance of the Appellant.

Rule 11 details how to postpone a hearing and what happens if you fail to do so. Rule 12 details the procedure for non-appearance of the appellant at a hearing. Due to the similar nature of these rules they will be dealt with together.

We welcome the additional rules of the procedures for non-appearance at a hearing and the opportunity given to an asylum seeker to give reasons for such failure to appear. However, we reiterate that such information should be given to the asylum seeker on their notice of hearing.

The clinic has observed that the rules regarding postponement and or non-appearance are not communicated to the asylum seeker during the process. The rules themselves are reasonable in that: where you have not postponed a hearing or given reasons for failure to appear within the time period, this might result in a decision being made in absentia. However, it is unreasonable to have this rule without it being communicated to the asylum seeker. In the interest of fairness such rules should be included in the notice of hearing and the effect of not complying with these rules should be communicated to the asylum seeker.

8. Rule 13 Conduct of Proceedings at Hearings

Rule 13 follows on from the amendments made to Refugees Act in that one member of the RAA can hear and determine any appeal hearing. This change is welcomed as it promotes flexibility and the ability for the RAA to hear more matters. We further welcome that along with this change that all members of the RAA are required to be legally qualified.

As a best practice the UNHCR recommends for an internal review of an appeal decision.¹¹ Due to the fact that appeal hearing is now conducted by one member it would be in the public's interest that an asylum seeker who has unsuccessfully appealed their negative decision has the opportunity to request for their decision to be heard before a full board (3 members) before that

¹¹ Supra note 9

decision is declared functus. This suggestion, as would an appeal in the High Court would require the full board to consider whether there is merit for the matter to be heard. If they do not find merit then the decision of the first member would be functus.

Not only does this align with the best practice of the UNHCR regarding appeals, on a pragmatic level it allows for an additional avenue before a review is launched before the court. Recently the Department of Home Affairs has come under fire for cost they have spent on litigation. This measure could save both the state and the appellant time and money by avoiding the costs involved in litigation where a decision is made by one member of the appeal board.

Rule 13 does not give guidance to the conduct of the RAA member when conducting an appeal hearing. It is suggested that the rules should set out basic requirements when an appeal is conducted. It may not be appropriate for the rules to spell out verbatim a checklist to conducting a hearing and it thus suggested that RAA members are to be bound in terms of the rules to a secondary document outlining the manner in which to conduct a hearing. The instructions should supplement their rules and be in line with the UNHCR procedural standards.¹² We refer the reader to Section 4.3.5 of the UNHCR procedural standards on adjudicating a refugee claim and Section 7.4.3 of the UNHCR procedural standards on appealing a negative decision attached.

We further suggest that Rule 13 require the RAA keep verbatim transcripts and where possible, as audio recording of the hearing.

9. Rule 14 Closed Proceedings

Rule 14 states that proceedings before the RAA are confidential and therefore closed to the public. However, the RAA is given the discretion to allow the public to attend the hearing.

¹² Supra note 9; UNHCR 'Procedural Standards for Refugee Status Determination under the UNHCR's Mandate, Adjudicating Refugee Claims' 01 September 2005 <https://www.unhcr.org/4316f0c02.html>.

This rule follows from the Refugees Act which was amended to reflect the Constitutional Court judgement of *Mail & Guardian and Others v M.J. Chipu (Chairperson of the Refugee Appeal Board) and Others*¹³ where confidentiality of proceedings was declared to not be absolute and that where it is in the public interest confidentiality may be lifted.

The Refugees Act however states certain things that are not reflected in the rules. For instance, the Act states that an RAA can allow the public to attend a hearing when given consent by the asylum seeker or where they conclude it is in the public interest and it lists the considerations for public interest. It is submitted that the rule should adequately reflect the Act as currently the rule is insufficient in relaying the balance of concerns and the consent of the asylum seeker.

Furthermore, the rules as they stand do not give consideration to the asylum seeker who will ultimately be affected by the decision. We therefore further recommend the asylum seeker is given a mechanism in which to object to the inclusion of the public in such a matter.

10. Rule 16: Consolidated proceedings

Rule 16 allows for the RAA to consolidate different matters and decide them together. Rule 16(1) states that matters can be consolidated where there is a common question of law or fact. In our opinion, as do courts this is an acceptable reason to consolidate proceedings. However, issue is taken with the fact that there is no consultation of parties when making this decision. For instance, the discretion lies with the RAA and the appellant is neither consulted nor given the opportunity to object to such consolidation.

Rule 16(2) allows for family members cases to be heard together. This is problematic as it is common cause that family members should be heard

¹³ *Mail & Guardian and Others v M.J. Chipu (Chairperson of the Refugee Appeal Board) and Others* 2013 (11) BCLR 1259 (CC)

separately to ensure individuals claims are properly considered. The only time that it would be acceptable to consolidate matters such as these is where the family members claim for status is only in terms of section 3(c) as a dependent. In other instances, this has a particular negative impact on women and children. What has been observed by the UCT Refugee Rights Clinic and many scholars who study asylum seeker systems with a gendered perspective is that the individual claims of women and children are often ignored and the claim of the husband or father is taken and used for the entire family.

This places women and children at the mercy of the claimant, their husband or father, to remain on a permit. Women and children who are in abusive relationships may be forced to remain in this situation because of the reliance on the permit. Further if the wife or child is deserted by their husband, they risk cessation of their refugee status without having their individual claim considered.

This makes it of utmost importance to ensure whether individual claims exist for women and children and subsequently these must be considered. Rule 16(2) would risk an undue prejudice on women and children refugees. Although the problem with claims of women and children being ignored is systemic and exists throughout the asylum seeker system, it should not further be perpetuated by the RAA. In light of this it is recommended that this rule is removed.

Rule 16(3) states that where it is practical or efficient that claims can be heard together. The consideration of claims being heard together place a major risk on individual claims not being considered. For instance, refugees from the Eastern DRC may be grouped together to consider their claim in terms of 3(b) and ignore their individual claims for status. This could result in cessation of refugee status where public order is restored, however ignore the claimants individual claim which may not have ceased. It is therefore recommended that this rule be removed.

Consolidation of proceedings should only be done where there is a clear common question of law or fact and the rules should reflect that caution should exercise to not ignore possible individual claims.

11. Rule 19 Review of Decisions

Rule 19 states that where the RAA makes a decision it is functus officio, subject to certain instances that the RAA may rehear the matter. These instances are when a party fails to appear for a hearing and applies for condonation or when a Judicial review is instituted, and a settlement agreement has been reached to rehear the matter. This section appears to be confirming common practice that is currently happening.

As stated above in point 8, it is recommended that a further qualification should be made to a decision being functus. It is recommended that at the request of an asylum seeker, an appeal hearing heard by one member can be reviewed by a full board (3 members). Please see the reasoning above.

12. Rule 21 General

Section 21(3) needs clarity. It is unclear if the rule is stating the obvious scenario that when the RAA give documents to a legal representative then it is no longer confidential as a third party has these documents. It could also be interpreted to mean that RAA are no longer bound by confidentiality in all respects when documents are merely requested on behalf the appellants legal representatives.

The latter interpretation would be problematic in light of the importance placed on confidentiality of proceedings. The *Mail & Guardian and Others v M.J. Chipu (Chairperson of the Refugee Appeal Board) and Others*¹⁴ case clearly stated that confidentiality can only be lifted where it is in the public interest. This balance is not communicated in this rule. It should also be pointed out that this rule would be considered ultra vires as it is beyond the scope of the principle

¹⁴ Supra note 13

act. If the latter interpretation is taken the principle act clearly states that RAA only has the discretion to lift confidentiality in a hearing and not generally. It is therefore recommended that this clause be clarified.

13. Notices

Throughout these submissions' attention was drawn to the fact that none of the proforma notices included information on the rules and procedures of an Appeal.

The Procedural Standards of the UNHCR state that it is important for an asylum seeker to receive all information regarding the right to appeal, the relevant procedures of the Office (RAA) and the deadlines. Like legal notices, the Clinic submits that the easiest and most convenient way for this to be achieved is for the information to be included on the various notices.

It is therefore submitted that the notices be amended to give adequate information regarding the rules and procedures and contact information for enquiries. This is particularly important for asylum seekers who are unrepresented or not represented by someone with legal knowledge.

In addition to this, it is recommended, as does comparable bodies like the CCMA or Rental Housing Tribunal, is that asylum seekers receive a comprehensive breakdown which is accessible to an asylum seeker of the rules and procedures of the RAA when they receive their rejection.

CONCLUSION

Sadly, the inputs above indicate a worrying trend at the RAA. The rules give the impression that instead of addressing problems within the RAA they are rather focussed on creating a barrier to prevent asylum seekers from being heard or a fair hearing at that.

Not only do the rules appear to make it harder for refugees to access an appeal through time restrictions, it is also observed that these rules are inaccessible to asylum

seekers. Nowhere within the rules or notices does it provide for the communication of information on rules and procedures of the RAA to the asylum seeker who are ultimately the beneficiaries of these rules.

Although constrained by the Refugees Act the rules are not impressive in their attempt to address a system under the brink of collapse. The changes merely appear to make the life of the DHA easier without considering the far-reaching implications on the asylum seeker. They clearly lack a context in which they operate.

It is therefore submitted that despite a few welcomed rules, it is suggested the above recommendations are taken on board, and that the DHA addresses the broader issues within the asylum seeker system as a whole as suggested above.

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UNIT 7

Appeal of Negative RSD Decisions

APPEAL OF NEGATIVE RSD DECISIONS

7.1 The Right to Appeal

7.1.1 The Scope of the Appeal Right

- Every rejected Applicant has the **right to appeal a negative RSD decision**. The appeal should be determined by an Eligibility Officer other than the Officer who heard the claim in first instance. Access to appeal procedures should not be restricted for reasons relating to procedural misconduct by the Applicant during the RSD procedures or the merits of the claim.
- While the appeal application is pending, Applicants should continue to enjoy the rights accorded to them as registered Applicants for RSD.

7.1.2 Informing Rejected Applicants of the Right to Appeal

- Applicants should be informed of the right to appeal a negative RSD decision and the relevant procedures. At the end of the RSD Interview, Eligibility Officers should inform Applicants on the procedures to receive notification of the RSD decision, and the relevant appeal procedures (§ 4.3.11 - *Closing the RSD Interview*).
- At the time of notification of a negative RSD decision, rejected Applicants should also receive **information regarding the right to appeal** the RSD decision and the relevant procedures in the Office, including the Appeal deadline. An **Appeal Application Form (Annex 7-1)** should be provided to the Applicant upon notification (§ 6.1- *Procedures for Notifying Applicants of RSD Decisions*).
- Rejected Applicants should also receive sufficient information regarding the reasons for the rejection to permit them to determine whether an appeal is appropriate and to focus their submissions on issues that are relevant to the appeal application (see § 6.2 - *Notifying Applicants of Negative RSD Decisions*).

7.2 Procedures for Receiving Appeal Applications

- As a general rule, **applications for appeal should be made in writing**. Applicants should complete and sign an **Appeal Application Form** and submit it to the UNHCR Office that decided the claim in first instance, according to the appeal procedures established by that Office.
- Persons who wish to appeal a negative RSD decision should receive any necessary **procedural counselling and assistance by trained UNHCR staff**. Information or advice relating to the substantive elements of the RSD decision or the appeal should only be provided by UNHCR Protection staff members who are involved in RSD.
- Appeal applications that do not strictly conform to formal filing procedures may be accepted where the Applicant has clearly indicated an intention to appeal against the negative RSD decision. As a general rule, the intention to appeal should be communicated in writing.

- UNHCR Offices should establish a **time-limit** within which Applicants must submit the Appeal Application Form, and after which RSD decisions for which no appeal has been made should be considered to be final. As a general rule, the standard time limit **should not be less than 30 days** after the date on which the Applicant has been notified of the RSD decision (see § 6.1 - *Procedures for Notifying Applicants of RSD Decisions*).
- Where Applicants are required to attend at the UNHCR Office on an established date to receive notification the RSD decision, as a general rule, the appeal period should run from the date assigned to the Applicant for notification of the RSD decision (see § 4.3.12 - *Assigning Date for Notification of the RSD Decision*), unless the Office determines that another date would be appropriate.
- Where alternative methods of notification are used, an appropriate date on which the Applicant can be deemed to have received the notification should be determined and recorded. The appeal period should run from the date of deemed notification.
- Appeal procedures should be **sufficiently flexible** to permit filing of Appeal Application Forms after the deadline in appropriate cases. As a general rule, the files of rejected Applicants should not be referred for file closure within the six weeks following the expiry of the appeal deadline (see § 9.1 - *Closing RSD Files*).
- Similarly, for appeals received after the RSD file has been closed, if it is not possible to establish that the Applicant was duly notified of the negative RSD decision, or the relevant appeal deadline, the file should be referred to procedures to re-open the RSD file, and the file should generally be re-opened for the purpose of examining the appeal application (see § 9.2 - *Re-opening RSD Files*).

7.3 Assigning Appeal Files

- Appeal applications should be determined by a qualified **Protection staff member who was not involved in the adjudication or review of the RSD claim in first instance**. The procedures and principles set out in § 4.1 - *Assigning Files for RSD Adjudication* are applicable to the assignment of files for determination of appeal applications.
- Wherever possible, the appeal should be decided by an Eligibility Officer or other Protection staff member who has equivalent or greater experience with RSD than the Eligibility Officer who decided the claim in first instance.
- Where staffing resources in a UNHCR Office do not permit assignment of an appeal file to a Protection staff member who was not involved in the adjudication or review of the claim in first instance, an appeal may be decided by another qualified staff member who has the necessary protection experience and training (i.e. the Deputy Representative or Representative). Where necessary, the UNHCR Office should consult with other UNHCR Offices in the Region, and the relevant Bureau in UNHCR Headquarters, to make appropriate staffing arrangements for determining the appeal. These arrangements should not preclude the possibility of an Appeal Interview where it is not appropriate to determine the appeal through a paper review. The criteria for determining whether an Appeal Interview should be granted are set out below in § 7.4.1 - *Assessing whether an Appeal Interview is Necessary*.

7.4 Procedures for Determining Appeal Applications

7.4.1 Assessing Whether an Appeal Interview is Necessary

- The purpose of the appeal procedures is to re-examine the first instance RSD decision to assess whether it was based on a **reasonable finding of fact and a correct application of the refugee criteria**.
- Eligibility Officers should begin the appeal determination by conducting a **thorough review of the RSD file**, including the RSD Interview transcript and RSD Assessment, the Appeal Application Form, and any other information provided by the Applicant in support of the appeal.
- As a general rule, Applicants should be given the opportunity to present their appeal in person. However, **determination of the appeal through a paper review** may be appropriate if, after a thorough examination of the file, the Eligibility Officer is satisfied that each of the following conditions exist:
 - All relevant evidence has been presented
 - The determination of the facts, including decisions to accept or reject particular evidence, is supported by the RSD Interview transcript and RSD Assessment
 - The RSD decision reached is based on a clearly correct or incorrect application of the refugee criteria to the accepted facts

An Appeal Interview should be granted in the following circumstances:

- The negative RSD decision was based on **credibility findings** that were not adequately addressed during the RSD Interview and supported in the RSD Assessment;
- Evidence that was relevant to the determination of the claim was presented by the Applicant but was **not adequately considered in the RSD Interview** and the RSD Assessment;
- **New evidence** is raised in the appeal application that is relevant to the determination of the refugee claim. The Appeal Interview should be granted to assess the reliability of the evidence;
- The Appeal Application Form and/or the RSD Interview transcript and RSD Assessment, or other reliable evidence, indicate that a **breach of procedural fairness** is likely to have occurred, which could have limited the ability of the Applicant to establish his/her claim, including:
 - Inadequate interpretation
 - The Applicant's discomfort regarding the conduct or profile (ethnic, religious, gender etc.) of the Eligibility Officer or interpreter
 - Denial of the opportunity to present relevant evidence
 - Real or perceived concerns regarding the confidentiality of the RSD procedure
 - Inappropriate questioning

- Where an Appeal Interview is required, the Eligibility Officer should refer the file for scheduling under established procedures. As a general rule, applications for appeal should be processed in the order that they were filed. Where compelling protection grounds exist, **appeal applications may be determined on a priority basis** pursuant to the procedures set out in § 4.6 - *Accelerated RSD Processing*.
- Whether an appeal application is determined on the basis of a paper review or an Appeal Interview, UNHCR Offices should adopt appeal procedures to ensure that **appeal applications are processed in a fair, prompt and transparent manner**.

7.4.2 Conducting the Appeal Interview

- The Eligibility Officer should open the Appeal Interview by briefly reviewing the introductory points set out in § 4.3.5 - *Opening the RSD Interview*.

The Eligibility Officer should explain the following procedural issues relating to the appeal process:

- The Appeal Interview is being conducted because the Applicant has requested a review of the RSD decision;
- The purpose of the Appeal Interview is to examine the issues or concerns presented by the Applicant in the Appeal Application Form and to clarify other issues that are relevant to the determination of the refugee claim. The Appeal Interview will not re-examine all of the evidence that is relevant to the claim;
- If the appeal is denied, the Applicant's file with UNHCR will be closed.



- Before commencing the Appeal Interview, the Eligibility Officer should ensure that the Applicant understands the **general reasons why the refugee claim was rejected** in first instance.
- As a general rule, the Eligibility Officer should focus the Appeal Interview on issues that relate to the grounds for granting the Appeal Interview and on the specific information or concerns presented by the Applicant in the Appeal Application Form. The Eligibility Officer should not conduct a full RSD Interview unless this is necessary to decide the appeal. Evidence that was accepted in the RSD Assessment should not generally be re-examined in the Appeal Interview.
- The Eligibility Officer who conducts the Appeal Interview should maintain a detailed **Appeal Interview transcript**. The principles set out in § 4.3.8 - *Recording the RSD Interview* are relevant to the appeal procedures.

7.4.3 The Appeal Assessment

- The reasons for the determination of the appeal should be documented in an **Appeal Assessment Form**, which should be signed by the Eligibility Officer who decided the appeal.

7.4.4 Review of Appeal Decisions

- As a best practice, every Appeal Assessment should be reviewed by a UNHCR Protection staff member other than the Officers who decided the claim in first instance and on appeal. Where it is not feasible to review all Appeal Assessments, it is strongly recommended that every Appeal Assessment that overturns the first instance RSD decision be reviewed.

7.5 Notification of Appeal Decisions

- UNHCR Offices should establish timelines for the issuance of appeal decisions. Appeal procedures should promote fair and **prompt review and determination** of all appeals.
- Applicants should be **notified in writing** of the decision on their appeal. As a general rule, it is **not necessary to provide reasons for the appeal decision**. However, where detailed reasons for rejection were not provided to the Applicant upon notification of the RSD decision in first instance, Applicants who request it should have the possibility to know the reasons why their claim was rejected, either in writing or through counselling with a qualified UNHCR staff member.
- The files of Applicants who are rejected on appeal should be referred to procedures for closure of the file (see § 9.1 - *Closing RSD Files*).



UNIT 4

Adjudication of Refugee Claims

ADJUDICATION OF REFUGEE CLAIMS

4.1 Assigning Files for RSD Adjudication

4.1.1 Assigning RSD Files - Relevant Factors

- In each UNHCR Office the adjudication of refugee claims should be conducted only by Eligibility Officers who have been assigned to this function by the Head of Office and have received the necessary training.
- RSD files should be assigned to Eligibility Officers by designated Protection staff **according to established and transparent procedures**. The Protection Staff member who is responsible for file assignment should report to and be supervised by the RSD Supervisor.

Factors Governing the Type of RSD Files Assigned to Eligibility Officers

- ▶ The assignment of RSD files should be based upon an average processing capacity for Eligibility Officers as determined by the RSD Supervisor in the particular UNHCR Office (see § 4.1.2 - *Determining Case Processing Capacity for Eligibility Officers*).
 - ▶ **Difficult or sensitive cases**, including cases raising complex exclusion issues should be assigned to Eligibility Officers who have appropriate training and experience.
 - ▶ File assignment should take into account the **specialized knowledge of Eligibility Officers** on particular types of claims or regions.
 - ▶ RSD files for RSD should not be assigned to Eligibility Officers of the same nationality as the Applicant.
 - ▶ Wherever possible, files should be assigned to an Eligibility Officer of the same sex as the Applicant, or the sex they prefer. This is of particular importance when the RSD Application Form indicates that **gender issues** may be raised at the RSD Interview, or when the Applicant has requested to be interviewed by a staff member of a particular sex.
 - ▶ As a general rule, the same Eligibility Officer should interview **different members of the same family** who may have filed separate refugee applications.
- Files for RSD should be **distributed as far as possible ahead of the RSD Interview** date to permit adequate review and preparation by Eligibility Officers.
 - Protection staff who are responsible for assignment of RSD files should, in consultation with the designated Scheduling Coordinator and the RSD Supervisor as appropriate, endeavour to ensure that weekly RSD Interview assignments for individual Eligibility Officers match the **actual processing capacity of the Eligibility Officers**.

4.1.2 Determining Case Processing Capacity for Eligibility Officers

- Given the many factors that affect the time required to process RSD Applications, it is not possible to provide a recommendation for an average processing capacity that will be relevant and accurate for all Eligibility Officers in all UNHCR operations. Rather **RSD file assignments should be based upon an established average processing capacity for eligibility staff in the particular UNHCR Office**. The RSD Supervisor is responsible to determine the appropriate average processing capacity for RSD file assignments. Where responsibility for assignment of RSD files is delegated to another Protection staff member, the RSD Supervisor should consult with this Protection staff member to ensure that expected processing levels meet actual processing capacity.
- Averages for processing capacity should **promote the objectives of quality as well as efficiency** in UNHCR RSD procedures, and should **avoid burnout of Eligibility Officers**. They should serve only as a guideline and may be increased or decreased as appropriate to reflect the actual experience and capacity of individual Eligibility Officers.
- **In assessing the processing capacity for Eligibility Officers the following factors should be taken into account:**
 - The familiarity of the Eligibility Officer with the country of origin information of a given caseload;
 - The nature of the interviews, including whether the Applicant is a child or an Applicant with special needs, or whether the services of an interpreter are required;
 - The degree of complexity of the files;
 - The number of other interviews and appointments scheduled for the Eligibility Officer in a given week (i.e. Family Unity Interviews, complementary interviews, document appointments etc.);
 - Any additional protection responsibilities of individual Eligibility Officers should also be taken into consideration in determining the appropriate RSD case processing capacity.
- **The RSD Supervisor should monitor how Eligibility Officers are managing their individual caseloads and meeting expected processing requirements.** Where Eligibility Officers frequently postpone scheduled interviews and appointments, or repeatedly seek extensions on the timelines for finalizing written RSD decisions, the RSD Supervisor should follow up with the Eligibility Officer concerned to determine the reason for the difficulty in managing the assigned caseload, and should take the appropriate response, which may include adjusting the volume of the caseload of the individual Eligibility Officer (see § 4.2.3 - *Supervision of Eligibility Officers*).

4.1.3 Controls on File Assignment / Transfer

- All Eligibility Officers should **maintain a complete and current file list** of all RSD files assigned to them, and the status of each file. The file list should be submitted to the RSD Supervisor at the end of each month.
- Under no circumstances should Eligibility Officers select files for RSD or transfer files assigned to them for RSD to another Eligibility Officer.
- Eligibility Officers should report to the Protection staff member who assigned the RSD file, or the RSD Supervisor, **any conflict of interest** or other factors, including offers of bribes or favours by or on behalf of the Applicant, that could affect the Eligibility Officer's ability to fairly adjudicate an assigned case, or give rise to negative perceptions about the Officer's impartiality or fairness of the RSD process. If appropriate, the file should be reassigned to another Eligibility Officer.

4.2 Training and Supervision of Eligibility Officers

4.2.1 Minimum Qualifications for Eligibility Officers

- Persons engaged as Eligibility Officers should hold a degree in a related field, preferably in law, international relations or political sciences. They should always have had legal training and relevant professional experience. Training and/or experience in the field of human rights, psychology or social work is a clear advantage.
- **All persons engaged as Eligibility Officers should possess the following traits and qualifications:**
 - Legal knowledge and the ability to apply legal principles
 - Good analytical skills
 - Good oral and written communication skills
 - Strong interpersonal skills
 - Cultural and gender awareness
 - Tolerance for diversity
 - The ability to work effectively under stress and in crisis situations

4.2.2 Training of Eligibility Officers

- **Before carrying out RSD responsibilities each Eligibility Officer should receive comprehensive RSD orientation training, which should at a minimum include the elements set out below:**

training	<p>Training for UNHCR Eligibility Staff</p> <ul style="list-style-type: none"> ■ An overview of international refugee, humanitarian and human rights law and the mandate of UNHCR ■ Detailed briefing on refugee law and principles relevant to RSD, including interpretation of the relevant eligibility and exclusion criteria ■ A detailed examination of the <i>UNHCR Handbook on Procedures for Determining Refugee Status</i> and other UNHCR policies and guidelines relating to RSD (including UNHCR Guidelines on International Protection and other documents contained in the UNHCR Protection Manual) ■ Briefing on country of origin information (COI) that is relevant to the Office caseload, including instruction on how to conduct COI research, evaluating the reliability of available sources of COI, and guidelines on using COI effectively in RSD procedures ■ Training on how to access information and resources relevant to RSD and to use available research tools (i.e. the CDROM Refworld, KIMS on the intranet, UNHCR's website, and another internet resources) ■ Training on interviewing techniques, including age and gender sensitivity, conducting RSD Interviews of children and other vulnerable claimants, appropriate techniques for examining the credibility of the Applicant, and working with interpreters ■ Instruction on preparing written RSD Assessments ■ Instruction on the RSD procedures in the UNHCR Office and the implementation of these RSD Procedural Standards for UNHCR RSD Operations
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- **In addition, UNHCR Offices should establish a programme for continuing training for Eligibility Officers which should include:**

training	<p>Ongoing Professional Development for Eligibility Officers</p> <ul style="list-style-type: none"> ■ Regular updates on COI that is relevant to Applicants who are registered by the Office ■ Updates on new guidelines and directions from UNHCR Headquarters that are relevant to RSD ■ Seminars on specific issues related to RSD, as requested by Eligibility Officers, or as identified by the RSD Supervisor or other Protection staff who are responsible for reviewing RSD Assessments
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- In each UNHCR Office, a minimum of **one half day a month** should be allocated for the **RSD professional development activities** referred to above. The RSD training activities should be provided in addition to general Office briefings on security and administrative issues.
- Wherever possible, Eligibility Officers should be afforded additional possibilities to acquire knowledge or skills relevant to their RSD functions or obtain additional training on areas of identified individual weakness.

4.2.3 Supervision of Eligibility Officers

- The **RSD Supervisor** should be responsible for the hiring and training of Eligibility Officers and should supervise and support Eligibility Officers in all aspects of the RSD duties.
- The RSD Supervisor should **randomly monitor RSD Interviews** to ensure that the conduct of Eligibility Officers in the RSD Interview meets relevant standards for fairness and due process.
- The RSD Supervisor should also conduct regular and detailed **review of the RSD Assessments prepared by each Eligibility Officer**, and should provide substantive and procedural comments to Eligibility Officers on their RSD Assessments.
- Random file reviews should monitor compliance by Eligibility Officers with established procedures for postponing RSD Interviews (see § 3.5.5 - *Rescheduling RSD Interviews*) and issuing RSD decisions (see § 4.5 - *Timelines for Issuing RSD Decisions*).
- Frequent postponements of scheduled interviews and appointments, repeated requests for extensions of the timeline for finalizing written RSD Assessments, the accumulation of individual backlogs of unwritten RSD Assessments, are **indicators that an Eligibility Officer is falling behind expected levels for case processing**, which can have a negative impact on the efficiency and quality of RSD processing. In such cases, the **RSD Supervisor should follow up directly** with the Eligibility Officer to determine the reason for the difficulties in managing the assigned caseload, and should undertake the necessary response, which may include arranging additional training and assistance, or adjusting the weekly file assignments where appropriate. In some cases, the persistent failure of an Eligibility Officer to meet reasonable expectations for the volume and rate of case processing may be an indication that the Eligibility Officer lacks the required competence and should not continue to perform the responsibilities of an Eligibility Officer in mandate RSD procedures.
- The procedures for supervision of Eligibility Officers set out above should be implemented as a complement to the standard procedures for review and approval of RSD decisions (see § 4.4 - *Procedures for Review of RSD Decisions*; § 7.4.4 - *Review of Appeal Decisions*), which may be conducted by the RSD Supervisor or other Protection staff members designated by the RSD Supervisor.
- All Protection staff should understand and be alert to signs of **compassion fatigue and burnout** among Eligibility Officers that may negatively affect the quality of RSD Interviews or Assessments. The RSD Supervisor should be responsible to take effective measures to prevent and respond to cases of staff burnout.

4.3 The RSD Interview

4.3.1 The Applicant's Right to an Individual RSD Interview

- All Principal Applicants must have the opportunity to present their claims in person in an RSD Interview with a qualified Eligibility Officer. Under no circumstances should a refugee claim be determined in the first instance on the basis of a paper review alone.



4.3.2 File Preparation by Eligibility Officers

- **Before meeting with the Applicant, Eligibility Officers should conduct a thorough review of the Applicant's file.**

Preparing for the RSD Interview

- ▶ Carefully read the RSD Application Form, including the Applicant's written statement, to highlight the relevant facts and determine the sequence of relevant events.
- ▶ Review the information provided in travel and other documents, and note information which supports or is inconsistent with the facts presented in the RSD Application Form.
- ▶ Consult relevant COI, including maps of the regions referred to in the claim, and ensure that relevant maps are available for the interview.
- ▶ Identify preliminary issues that will be relevant to the determination of the claim.
- ▶ Make a list of any missing information that the Applicant should be asked to provide at the RSD Interview, as well as unclear or inconsistent facts or statements that the Applicant should be asked to explain.
- ▶ Ensure that any necessary inquiries have been made with other UNHCR Offices and undertake any appropriate follow up.

4.3.3 Participation by Legal Representatives

- Applicants may be accompanied by a legal representative during the RSD Interview. **The Applicant should provide written consent to the participation of the legal representative (Annex 4-1)**, which should be added to the file.
- Before proceeding with the RSD Interview, the Eligibility Officer should make appropriate inquiries to ascertain whether the individual proposed has the **necessary training or experience to perform this role**. While a formal law degree or current legal accreditation should not be required, persons proposed as legal representatives who do not have formal accreditation should, as a general rule, possess the following:

Qualifications to Act as Legal Representative in Mandate RSD

- A working knowledge of refugee law and RSD procedures
- Experience assisting refugee claimants
- A thorough understanding of the Applicant's claim

- UNHCR Offices may consider implementing an **accreditation system** to acknowledge the qualifications of legal representatives who regularly represent Applicants in UNHCR RSD procedures and who are known to the UNHCR Office.
- If the Eligibility Officer has good reason to believe that the **third party is not qualified, or otherwise suitable**, to participate in the RSD Interview as a legal representative, the request should be denied. The Eligibility Officer should use discretion in determining whether it would be appropriate to permit the third party to observe the RSD Interview under the conditions set out in § 4.3.4 - *Attendance by Third Parties other than a Legal Representative*.

When opening an RSD Interview at which a legal representative will participate, the Eligibility Officer should explain:

- The legal representative will have the opportunity to make brief submissions at the end of the RSD Interview;
- The legal representative should refrain from interrupting the Applicant or the Eligibility Officer during the RSD Interview, and should limit interventions during the RSD Interview to those relating to breaches of procedural fairness that could not be adequately addressed or remedied if they were raised in closing submissions;
- The involvement of the legal representative should be consistent with the non-adversarial character of RSD conducted by UNHCR and should promote complete and reliable disclosure of the Applicant's claim. Should the involvement of the legal representative obstruct these objectives, he/she will be asked to withdraw from the RSD Interview.

- In any case where an Eligibility Officer denies or withdraws permission for a legal representative to participate in an RSD Interview, the reasons for this decision should be explained to the Applicant and should be recorded in detail on the Applicant's file.

4.3.4 Attendance by Third Parties other than Legal Representatives

- As a general rule, the participation of third parties in RSD procedures should be limited to a legal representative or, in the case of child Applicants or Applicants who are suffering from mental illness or disability, the designated representative. Where the attendance of a third party other than a legal representative or a designated representative is specifically requested by an Applicant, Eligibility Officers should exercise **discretion in determining whether to grant the request**. In assessing the appropriateness of the participation of a third party, Eligibility Officers should consider any special needs or vulnerabilities of the applicant, the nature of the relationship between the Applicant and the third party, as well as any factors indicating that the attendance of the third party would be likely to promote or undermine the objectives of the RSD Interview.
- The Applicant should provide **written consent** to the participation of the third party, which should be added to the file. The Eligibility Officer should explain to the third party the confidentiality of UNHCR RSD procedures.
- The Eligibility Officer should **deny the request for participation by any third party, or request that a third party leave the RSD Interview**, if the Eligibility Officer has reason to believe that participation of the third party is likely to jeopardize the security of the Applicant or UNHCR staff, or otherwise obstruct the objectives of the RSD Interview. In any case where an Eligibility Officer denies or withdraws permission for a third party to participate in an RSD Interview, the reasons for this decision should be explained to the Applicant and the request and reasons for denial should be recorded on the Applicant's file.
- In principle, a third party observer who is not a legal representative may observe the entire RSD Interview but should not intervene during the RSD Interview. Eligibility Officers should have discretion to permit or request a greater degree of involvement by a third party in the RSD Interview, where this would be appropriate and constructive.
- Eligibility Officers should **note in the RSD Assessment** that a third party attended the RSD Interview, and should record any relevant substantive statements or submissions made by the third party. Any conflicts or incidents involving the third party should also be noted.

4.3.5 Opening the RSD Interview

- Eligibility Officers should take the opportunity at the beginning of the RSD Interview to create an **environment of trust and respect** in which the Applicant will have the best opportunity to tell his/her story as coherently and completely as possible.
- It is recommended that Eligibility Officers address introductory issues systematically at the beginning of each RSD Interview.

Checklist for Opening the RSD Interview**☑ Introductions:**

The Eligibility Officer should introduce him/herself, and introduce the interpreter and any other person in the interview room, by functional title.

☑ Gender Issues:

Where staff resources do not permit assignment of an Eligibility Officer and/or Interpreter of the sex requested by the Applicant, the Eligibility Officer should explain this to the Applicant and should consider any factors indicating that the Interview should not proceed under the existing arrangement.

☑ Interpretation in the RSD Interview:

The Eligibility Officer should confirm that the Applicant and the interpreter understand each other and that the Applicant is comfortable with the interpretation arrangement. The Applicant should be advised that any specific problems with the quality or accuracy of interpretation should be identified during the RSD Interview as they arise.

☑ Explanation of RSD Interview Procedures:

The Eligibility Officer should explain the following procedural matters:

- The purpose of the RSD Interview and how it will proceed;
- The purpose and scope of use of notes taken by the Eligibility Officer;
- The Applicant's right to ask for a break during the RSD Interview, during which he/she will be asked to remain on UNHCR premises.

☑ Confidentiality:

The Applicant should be reassured that all information disclosed in the RSD Interview, as in all other stages of the RSD process, will be treated as confidential by UNHCR, and will not be shared with the authorities of the country of origin without the Applicant's express direction and consent. The Eligibility Officer should fully explain the scope and conditions of any disclosure of information regarding the Applicant to third parties as set out in § 2.1 - *Confidentiality in UNHCR RSD Procedures*. The Applicant should also be advised that the interpreter is also under a strict oath of confidentiality.

☑ Obligation to Tell the Truth:

The Applicant should be advised of the obligation to be truthful and to make the most complete disclosure possible about the facts that are relevant to the refugee claim. The Applicant should be told that if he/she does not know the answer to a question, or if clarification is required, he/she should say this to the Eligibility Officer. The Eligibility Officer should explain that misrepresentations during the RSD Interview may put in doubt the truthfulness of other evidence provided by the Applicant.

☑ Duty to Cooperate:

The Applicant should be informed of his/her obligation to fully cooperate with UNHCR in all aspects of the procedures to examine the refugee claim.

☑ Applicant's Fitness to Proceed:

The Eligibility Officer should ask whether the Applicant feels physically and psychologically fit for the RSD Interview. If the Applicant indicates that he/she does not feel well, the Eligibility Officer should ask follow up questions to assess the nature of the problem, and whether it would be appropriate to proceed with the RSD Interview or whether it is necessary to reschedule. In determining whether or how to proceed with an RSD Interview of an Applicant who appears to be suffering from mental illness or other emotional problems, Eligibility Staff should refer to the considerations set out in § 3.4 - *Applicants with Special Needs*.

☑ Opportunity for Questions or Comments by Applicant:

The Applicant should be given the opportunity to make preliminary remarks or to ask questions before the RSD Interview.

4.3.6 Questioning the Applicant

- Questioning by the Eligibility Officer during the RSD Interview should facilitate the most complete and accurate disclosure of the facts that are relevant to the refugee claim. Wherever possible, Eligibility Officers should use **open-ended questions** to permit Applicants use their own words to describe the elements that they consider most important to their claim. Eligibility Officers should **avoid interrupting the Applicant** unnecessarily.
- Eligibility Officers should encourage Applicants to describe the events that are relevant to their claim in **chronological order**. This will permit the Eligibility Officer to fully appreciate the significance of facts presented and identify and to follow up on gaps and inconsistencies during the RSD Interview, thereby avoiding the need for Complementary RSD Interviews.
- Eligibility Officers should use the RSD Interview to **clarify incomplete or contradictory facts or statements**. Inconsistencies in the evidence provided by the Applicant, or between the evidence provided by the Applicant and other sources of relevant information should be pointed out to the Applicant, in a non-confrontational manner, **during the RSD Interview**. As a general principle, unless an Applicant has had the opportunity to explain inconsistencies or evidence that is otherwise not believable, the Eligibility Officer may not make a negative credibility finding in the RSD Assessment on facts that are material to the refugee claim.
- The recommendations above are not intended to provide comprehensive guidance on interviewing in UNHCR RSD Procedures. Eligibility Officers should have access to and be familiar with UNHCR tools and resources on effective interviewing techniques.



4.3.7 Interviewing Child Applicants

- Wherever possible, RSD Interviews of children should be carried out by **Eligibility Officers who have special training and knowledge** regarding the psychological, emotional and physical development and behaviour of children. UNHCR Offices should make every effort to develop this staffing capacity.
- As a general rule, RSD Interviews of children should be conducted in the presence of a **designated representative**, who may be the child's guardian or another appropriate adult who is trusted by the child. Decisions to appoint a designated representative should take into account the views of the child regarding the selection and need for a designated representative (see 3.4.5 - *Child Applicants (Under 18) / Unaccompanied & Separated Children*).
- Special emphasis should be placed on **putting the child at ease and developing a relationship of trust**. The environment and tone of the interview should be as informal as possible.
- Eligibility Officers should use simple and **age-appropriate language** to advise the child about the purpose of the RSD Interview and how it will proceed. The importance of being truthful, and providing as much information as possible, should be explained in a way the child can understand. In addition, the child should be assured that if he/she does not understand the question or does not know the answer, he/or she should say so.
- **Questioning the child on the factual elements of the claim** should be guided by the following considerations:
 - The child's age and stage of development during the interview and at the time of the relevant events;
 - The psychological impact the events related to the claim may have had on the child;
 - The child's possibly limited knowledge of conditions in the country of origin, and their significance for the determination of refugee status.
- Children may be unable or unwilling to provide the information that is necessary to determine their claim. **Where the child is very reluctant to discuss particular facts or events** it may be appropriate to postpone or cease questioning on the point. In many cases involving child Applicants it will be necessary to use other appropriate sources to obtain relevant information about the child's eligibility for refugee status, including family members, and country of origin information.
- The RSD Interview of child Applicants should include **regular breaks** during which the child should be permitted the appropriate degree of freedom to move around.



4.3.8 Recording the RSD Interview

- Eligibility Officers should maintain a **detailed transcript of the RSD Interview** which should record the following:

The RSD Interview Transcript

- Name of the Eligibility Officer conducting the RSD Interview
 - Name of the interpreter
 - Any third parties who were present
 - The date and time that the RSD Interview began and closed and any breaks, interruptions or adjournments
 - The precise questions asked by the Eligibility Officer and the responses provided by the Applicant and any witnesses
 - Relevant observations regarding the behaviour and demeanour of the Applicant at particular stages of the RSD Interview, as well as non-verbal communication
- In the RSD Interview transcript, Eligibility Offices should attempt to record the **precise words** used by an Applicant, and should avoid summarizing the Applicant's statements.
 - Wherever possible, the RSD Interview transcript should be recorded on a computer during the RSD Interview. Where it is not possible to record the transcript on a computer, Eligibility Officers should maintain a detailed and legible hand-written transcript.

4.3.9 Evidence by Witnesses

- Applicants **should be permitted to bring witnesses** to the RSD Interview to support elements of their claim. The witness should attend only to provide the evidence, and should not be in the interview room for the rest of the RSD Interview.
- As a general rule, the **evidence of witnesses should not be given in the presence of the Applicant**. The evidence of a witness should never be given in the presence of other witnesses or third parties.
- Before receiving the evidence of a witness, the Eligibility Officer should **establish the identity of the witness**, and should examine and copy identity documents of the witness for the file. The Eligibility Officer should also explain the confidentiality of UNHCR RSD procedures and the obligation to tell the truth.
- The evidence and examination of the witness during the RSD Interview should be **clearly recorded in the interview transcript** (see § 4.3.8 - *Recording the RSD Interview*).

4.3.10 Review of Original Documents in the RSD Interview

- The Eligibility Officer should examine the original documents to ensure that copies on the file are identical to the originals, and that a **legible and complete copy of every original is on the file**.
- When examining original documents, Eligibility Officers should take the opportunity to **inspect the following features of the documents** to identify evidence of tampering or other signs that the documents may not be authentic:

Inspecting Documents

- Quality and consistency of the paper of the document
- The numbering and sequence of pages
- Photographs and signatures against those of the Applicant
- Discoloration or smearing around dates or names
- Smudged or irregular stamps
- Separation of the photograph from the page, or blistering of lamination

- Any **irregularities in the documents** should be raised with the Applicant during the RSD Interview, and the Applicant should be given an opportunity to provide an explanation.
- Each UNHCR Office should maintain a file of information that might assist Eligibility Officers to assess the validity of documents. This file should be updated regularly and any new information should be brought to the attention of Eligibility Officers.
- Where it is not possible to verify the authenticity of a document, and there are no grounds to believe the documents are not authentic, they should generally be accepted.
- Where an Applicant is in possession of a document that is relevant to the determination of the refugee claim but has not brought it to the RSD Interview, or where the Applicant indicates that he/she is able to acquire a relevant document without personal risk or risk to others, he/she should be asked to return to the Office with the original document or best available copy. A Document Appointment should be assigned under established scheduling procedures (see § 3.5.1 - *General Scheduling Procedures*).



4.3.11 Closing the RSD Interview

Closing the RSD Interview

- ▶ Ensure that the Applicant has been given the **opportunity to present all elements of the refugee claim**;
- ▶ Ask the Applicant whether he/she would like to add anything to the information provided;
- ▶ Where the facts presented or the known conditions in the host country suggest that the Applicant may have protection concerns in the host country, it may be necessary to make inquiries regarding the Applicant's personal circumstances in the host country;
- ▶ **Read back elements of the RSD Interview transcript** that are most relevant to the determination of the claim. As a general rule, any part of the evidence presented in the RSD Interview that is unclear, or regarding which there were apparent difficulties with interpretation, should also be read back. Clarification or elaboration offered by the Applicant at this stage should be noted separately at the end of the transcript, but the original transcript should not be revised;
- ▶ Confirm and note documents or other information that the Applicant has agreed to provide following the RSD Interview, and the arrangements that have been made to provide it;
- ▶ Explain the **next steps in the RSD process**, including:
 - How and when the Applicant will receive the RSD decision
 - Consequences of a positive or negative RSD decision
 - Applicant's right to appeal a negative RSD decision and the appeal procedures
 - Family Unity procedures, where appropriate

4.3.12 Assigning Date for Notification of the RSD Decision

- At the end of the RSD Interview the **Eligibility Officer should assign a date on which the RSD decision will be issued** (see § 4.5 - *Timelines for Issuing RSD Decisions*).
- **Where the Applicant is required to come to the UNHCR Office to receive notification of the RSD decision**, the Applicant should receive an Appointment Slip with the date on which the decision will be issued.
- If it is not possible to issue the RSD decision on the scheduled date UNHCR staff should make every effort to minimize uncertainty or inconvenience for the Applicant. Wherever possible, the staff member concerned or a Reception staff member should contact the Applicant in advance to advise him/her that rescheduling is necessary.

4.3.13 Interview of Family Members/Dependants

- The Eligibility Officer should **confirm** that every accompanying adult family member/dependant of the Principal Applicant **has completed an RSD Application Form** and has **had an individual Registration Interview**.
- Wherever feasible, Eligibility Officers should take the opportunity to meet briefly with each adult family member/dependant of the Principal Applicant, to ensure that they understand the refugee criteria and to give them the opportunity to discuss any independent protection needs they may have.

A separate interview with a family member/dependant must be conducted in the following circumstances:

- If an adult family member/dependant did not have an individual Registration Interview;
- If the information provided in the RSD Application Form or at the Registration Interview of an accompanying family member/dependant, or any other information obtained during the examination of the Principal Applicant's claim, indicates that a person who is seeking derivative status may have an independent refugee claim, which should be examined through a separate RSD Interview.

- The Eligibility Officer may take the opportunity of the RSD Interview of the Principal Applicant to **examine eligibility of accompanying family members/dependants for derivative status** pursuant to the criteria and procedures set out in § 5 - *Processing Claims based on the Right to Family Unity*.
- It would generally be appropriate to **defer examination of eligibility for derivative status** to a separate Family Unity Interview after the status of the principal Applicant has been determined, in the following circumstances:
 - The determination of eligibility for derivative status requires review of complicated evidence or facts or complex legal issues (i.e. exclusion);
 - Not all individuals or evidence necessary for the determination of derivative status are available at the time of the Principal Applicant's RSD Interview;
 - The claim of the Principal Applicant is unlikely to be recognized.
- When interviewing family members/dependants of the Principal Applicant, Eligibility Officers should respect the **right of confidentiality** of the Principal Applicant and Applicants for derivative status in UNHCR procedures. **Interviews with the Principal Applicant and the Applicants for derivative status should be conducted separately** unless there are compelling reasons to indicate that this would not be appropriate or constructive. Should new evidence or inconsistencies that are material to the determination of the Principal Applicant's claim arise during an interview with family members/dependants, the Principal Applicant should generally be given the opportunity to clarify these aspects of the evidence in a Complementary RSD Interview (see § 4.3.6 - *Questioning the Applicant*). However, the Eligibility Officer should use the utmost discretion and sensitivity in **assessing the reliability of the evidence** and testing the credibility of the Principal Applicant, and should respect the obligation to preserve the confidentiality of the interview with the family member/dependant.

4.3.14 The RSD Assessment Form

- As soon as possible following the RSD Interview, the Eligibility Officer who conducted the RSD Interview should prepare the written decision using the **RSD Assessment Form (Annex 4-2)**. The Eligibility Officer should sign and date the RSD Assessment Form before referring the file to the review and approval procedures established by the Office.



4.4 Procedures for Review of RSD Decisions

4.4.1 General Principles

- UNHCR Offices should establish mechanisms for **review of the quality of first instance RSD decisions before they are issued**. Effective review of first instance decisions is of particular importance in UNHCR Offices where Applicants who are rejected in first instance are at risk of expulsion by the host authorities before they have the opportunity to exercise their right to appeal.
- As a **best practice**, every RSD Assessment should be reviewed by a UNHCR Protection staff member other than the Officers who are responsible to hear the claim in first instance and on appeal.
- Where it is not feasible to review all RSD Assessments, it is **strongly recommended** that the RSD Assessment for **every negative RSD decision be reviewed**.
- At a minimum, the RSD Supervisor must conduct **routine random reviews** of RSD Assessments prepared by each Eligibility Officer.
- All applications that are rejected on the basis of the application of the Article **1F exclusion clauses must be reviewed** (see § 4.8.3 - *Review and Approval of Exclusion Decisions*).
- Given the **training and supervision objectives** of the review of RSD decisions, UNHCR staff who are designated to review RSD decisions should have appropriate experience and proven competency in RSD.

4.4.2 Procedures for Revising the RSD Assessment or Decision

- When the Protection staff member who is designated to review RSD decisions detects substantive or procedural errors with the RSD Assessment, the file should be **returned to the Eligibility Officer who prepared the RSD Assessment**, with detailed comments regarding issues that are incorrectly or inadequately addressed, and directions for a complementary RSD Interview, if necessary. Any comments by the reviewing staff member should be attached to the RSD Assessment, or should be written on the text and initialled to clearly identify the individual who made the comments. All comments should be retained on the file.
- As a general rule, changes to the RSD decision during the review period should only be made by the Eligibility Officer who heard the claim and prepared the RSD Assessment, unless there is good reason to believe that this would not be appropriate.

RSD files should be referred to the RSD Supervisor in the following circumstances:

- The reviewing staff member is of the opinion that the RSD decision is erroneous or unsupported in the RSD Assessment, and the Eligibility Officer is unavailable to revise the RSD Assessment before the date of issuance of the decision;
- The Eligibility Officer is not willing to revise an RSD decision that is, in the opinion of the reviewing staff member, erroneous or unsupported in the RSD Assessment;
- The concerns regarding the conduct of the RSD Interview or the quality of the RSD Assessment are sufficiently serious that referral of the file to the Eligibility Officer who decided the claim is unlikely to restore the fairness, or perceived fairness, of the RSD process.

- In the circumstances outlined above, the RSD Supervisor should determine whether the RSD decision should be issued, and any appropriate follow up, including assigning the file to another Eligibility Officer for a Complementary RSD Interview.
- When a file is referred to another Eligibility Officer pursuant to the review procedures set out above, the RSD Assessment and all notes of the Eligibility Officer who originally heard the claim should be **retained on the file**.
- When a file has been returned to an Eligibility Officer or reassigned pursuant to RSD review procedures, the RSD decision should not be issued to the Applicant until the issues identified in the review have been adequately addressed, and the RSD Assessment is approved by a Protection staff member who is authorized to approve RSD decisions.
- Where, as a result of the review procedures, it is not possible to issue the decision on the assigned date, the date for issuing the decision should be postponed pursuant to the procedures set out in § 4.5 - *Timelines for Issuing RSD Decisions*.

4.4.3 Procedures for Consultation with UNHCR HQ on RSD Decisions

- UNHCR Offices must submit final decisions for **review and approval by UNHCR Headquarters** in the following types of cases, unless there is a special arrangement in place under agreement by DIP and the relevant Regional Office and Bureau:

RSD Decisions for which Review by Headquarters is Required:

- Decisions to **exclude** an individual from refugee protection (see § 4.8.3);
 - Decisions to **cancel/revoke** the refugee status of persons recognized under UNHCR mandate, pursuant to cancellation procedures (see § 10.3.6);
 - Decisions to terminate refugee status of persons recognized under UNHCR mandate, pursuant to **cessation** procedures (see § 11.2.4).
- Submissions should be directed to the **Legal Advisor in the appropriate Bureau, copying DIP** as appropriate.
- DIP should be copied on all submissions involving the **exclusion of children**, and exclusion decisions that raise **complex doctrinal issues or interpretative standards**, and will make the final recommendation in these cases. DIP should also be copied on all **decisions to cancel / revoke the refugee status** of any individual who was recognized as a refugee by UNHCR, and unless alternative arrangements are agreed to by DIP, the approval of DIP should be required to cancel mandate refugee status.
- In addition, UNHCR Offices **may submit certain types of cases to Headquarters for review and advice**. The advice of UNHCR Headquarters should only be sought after the Office has used all available resources within the Office to resolve the outstanding issue.

Requests for advice of Headquarters in determining individual cases should generally be reserved for the following circumstances:

- The UNHCR Office has been unable through its own efforts to obtain country of origin information that is required to assess the well-foundedness of a claim;
 - The UNHCR Office requires legal assistance in interpreting the refugee definition, or its application to the particular facts of an individual claim;
 - The UNHCR Office is deciding a claim that raises facts or issues with which the Office has not had previous experience, and which are likely to set a precedent for future claims of a similar nature.

Information to be included in requests to Headquarters for advice on individual claims:

- ▶ Where the decision on which advice is sought has been finalized by the UNHCR Office, a copy of the completed RSD Assessment Form, and the Office recommendation for the decision on the claim;
 - ▶ Where the advice of Headquarters is required to finalize the decision, the submission by the UNHCR Office requesting advice should include a thorough credibility assessment and analysis of the relevant issues and the recommendation of the UNHCR Office;
 - ▶ Copies of any supporting documentation provided by the Applicant, or other information that would be relevant to the issues on which advice is sought.
- All requests to Headquarters from UNHCR Offices for advice on the determination of individual RSD claims **should first be submitted by the RSD Supervisor** or another designated Protection staff member who should ensure that the request is submitted with all required information.

4.4.4 Procedures for Changing the RSD Decision after it is Issued

- **Review and revision of the RSD decision after it has been issued** to the Applicant may only be made pursuant to the following established procedures:
 - ▶ Appeal procedures (§ 7)
 - ▶ Re-opening of the RSD file (§ 9.2)
 - ▶ Cancellation/Revocation of refugee status (§ 10)
 - ▶ Cessation of Refugee Status (§ 11)
- Where a UNHCR staff member has reason to believe that an RSD decision issued by the UNHCR Office is incorrect, he/she should direct the file and any relevant information to the RSD Supervisor, who should determine appropriate follow up.

4.5 Timelines for Issuing RSD Decisions

- Once a date for issuing the RSD decision has been communicated to the Applicant, Eligibility Officers and Protection staff members who are responsible for reviewing RSD Assessments should work within established timelines to ensure that RSD decisions are issued on the assigned date. As a general rule, RSD decisions should be issued **within one month following the RSD Interview**.
- **Where an Application raises complex issues, or requires consultation** with third parties or additional research on matters that are central to the RSD decision, Eligibility Officers should be permitted to **assign a later date to issue the RSD decision**, which should not be later than two months from the RSD Interview. If a period longer than two months is required, the Eligibility Officer must obtain the approval of the RSD Supervisor, or another designated Protection staff member to assign a later date for issuing the RSD decision.
- **Where it is not possible to issue an RSD decision on the assigned date**, the Eligibility Officer should be permitted to postpone issuing the decision, on one occasion only, for a period not to exceed one month. If a longer postponement is necessary, or if additional postponements are sought, the Eligibility Officer should consult with the RSD Supervisor, or another designated Protection staff member, who should assess whether it is necessary and appropriate to postpone the decision for a longer period.
- Procedures relating to timelines and postponements of RSD decisions for claims determined on a priority basis are set out in § 4.6 - *Accelerated RSD Processing*.
- In any case where the issuance of an RSD decision must be postponed, UNHCR Offices should notify the Applicant of the postponement at the earliest occasion, and take all possible steps to minimize inconvenience to the Applicant.
- The RSD Supervisor should **monitor compliance by Eligibility Officers with established timelines** for preparing RSD Assessments. As lengthy delays between the RSD Interview and the writing of the RSD Assessment may adversely affect the quality of the RSD Assessment and/or the RSD decision, the RSD Supervisor should ensure that Eligibility Officers do not accumulate individual backlogs of pending RSD decisions (see § 4.2.3 - *Supervision of Eligibility Officers*).

4.6 Accelerated RSD Processing

4.6.1 General

- UNHCR Offices should develop Accelerated RSD Processing procedures to which Applicants can be referred when there are **compelling protection reasons** to process the claim on a priority basis. Measures for early identification of Applicants who should be considered for Accelerated RSD Processing should be incorporated into UNHCR procedures for reception and registration (see § 3.4 - *Applicants with Special Needs*). Referral to Accelerated RSD Processing may, however, be undertaken at any stage in RSD processing.
- Accelerated RSD Processing procedures should incorporate **reduced waiting periods** at each stage of the RSD procedures, and **shortened timelines** for the issuance of RSD decisions. All Applicants who are processed through Accelerated RSD Processing procedures **must have an RSD Interview**, at which a UNHCR Eligibility Officer will examine all facts or statements relevant to the refugee claim and prepare an individual **RSD Assessment**.

4.6.2 Oversight of Accelerated RSD Processing Procedures

- Procedures for Accelerated RSD Processing should include **an effective referral mechanism** and **appropriate controls**, including the requirement that all referrals to Accelerated RSD Processing be submitted for review and approval by the RSD Supervisor, or a designated Protection staff member who has supervisory responsibility in RSD procedures.
- The RSD Supervisor should be responsible for oversight of procedures for Accelerated RSD Processing and should ensure the effectiveness and integrity of the referral system.

4.6.3 Appropriate Cases for Accelerated RSD Processing

Categories of Applicants who should be considered for Accelerated RSD Processing:

- Applicants who are manifestly in need of protection intervention, including persons who may be subject to immediate refoulement, arbitrary arrest or detention in the host country, or who may have other serious legal or protection needs;
- Victims of torture or trauma (including victims of gender-based violence), who are suffering from ongoing mental or physical health problems;
- Women who are at risk in the host country;
- Elderly asylum seekers who are without support in the host country;
- Disabled asylum-seekers who are without necessary support in the host country;
- Asylum seekers who require urgent medical assistance;
- Certain child Applicants, in particular children who are unaccompanied or otherwise separated from their parents or other primary legal or customary caregivers (see § 3.4.5 - *Child Applicants (under 18) / Unaccompanied & Separated Children*).

UNHCR staff should **exercise discretion in identifying other Applicants** whose claims should be determined on a priority basis.

4.6.4 Manifestly Unfounded Applications

- Claims that appear to be manifestly unfounded (i.e. clearly fraudulent or manifestly outside of the scope of the refugee definition) should be **processed under normal RSD procedures**, and should not be referred to Accelerated RSD Processing procedures. As access to Accelerated RSD Procedures involves giving staffing and scheduling priority to certain categories of Applicants over other registered Applicants, it should be reserved for Applicants who have compelling protection needs.
- Under no circumstances should claims believed to be manifestly unfounded be decided on the basis of a document review alone (see § 4.3.1 - *The Applicant's Right to an Individual RSD Interview*).

4.6.5 Procedures for Accelerated RSD Processing

- UNHCR staff who identify Applicants whose claims should be determined on a priority basis should promptly refer the case to a Protection staff member who is authorized to approve cases for Accelerated RSD Processing. The staff member who refers the case should complete a **Referral Memo for Accelerated RSD Processing (Annex 4-3)**, which should outline the details of the Applicant's vulnerability in the host country. Copies of any counselling notes or available medical reports or other relevant documents should be attached to the Referral Memo for Accelerated RSD Processing.
- The Protection staff member who is responsible for reviewing referrals to Accelerated RSD Processing should **assess the protection needs of the referred Applicant**, if necessary through a meeting with the Applicant, and should determine whether referral to Accelerated RSD Processing is appropriate.
- If the designated Protection staff member approves the referral, he/she should add any additional relevant information, sign the Referral Memo for Accelerated RSD Processing, and make a **recommendation for the time limit within which the RSD Interview should be scheduled**. The cover of the file should be marked to indicate that the file is being processed under the Accelerated RSD Processing procedures.
- The RSD Interview for Applicants referred to Accelerated RSD Processing should be scheduled for the first available date within the time limit recommended in the Referral Memo for Accelerated RSD Processing.
- As a general rule, scheduled interviews by Applicants who have been approved for Accelerated RSD Processing **should not be rescheduled by UNHCR**. Where rescheduling is unavoidable, it should be done only in consultation with the Protection staff member who approved the referral to Accelerated RSD Processing, or another designated Protection Staff member. Changes to scheduled interview dates, either by UNHCR or at the request of the Applicant concerned should be noted on the Referral Memo for Accelerated RSD Processing.
- The **decision for claims heard under the Accelerated RSD Processing** procedures should generally be **issued within one week** of the RSD Interview, unless the Protection staff member who approves the referral indicates on the Referral Memo for Accelerated RSD Processing that a shorter or longer period would be appropriate.
- Where it is not possible to issue the RSD decision on the date specified in the Referral Memo for Accelerated RSD Processing, the Eligibility Officer who conducted the RSD Interview must consult with the Protection staff member who approved the referral, or another designated Protection staff member, to obtain authorization to defer the issuance of the RSD decision and to determine an appropriate alternative date.

4.6.6 Appeals by Applicants Rejected under Accelerated RSD Processing

- Applicants whose claims were determined under Accelerated RSD Processing but were rejected may appeal the negative RSD decision through the **ordinary appeal procedures** (see § 7 - *Appeal of Negative RSD Decisions*). The appeal application should not be processed on a priority basis.

4.7 RSD Procedures for Applicants in Detention

- Detained individuals who wish to apply for refugee status **have the right to access UNHCR RSD procedures**. The claims of detained asylum seekers should be adjudicated promptly, regardless of the reasons for the detention. Where Applicants are detained for alleged criminality, UNHCR Protection staff should consider the details of the charges and/or sentence to assess their relevance to the determination of the Applicant's eligibility for refugee status or protection needs of the Applicant in the host country.
- UNHCR Offices should establish **specific registration and RSD Adjudication procedures** for Applicants who are in detention.
- Each UNHCR Office should take **necessary measures in the host country** to ensure that detained asylum seekers are able to access RSD procedures, including:
 - Undertaking demarches with the host authorities to ensure that detained asylum seekers can contact UNHCR and that UNHCR staff are afforded necessary conditions for conducting fair and effective RSD;
 - Promoting the fullest possible access by UNHCR staff to asylum seekers in detention.
- Wherever possible, UNHCR Offices should seek alternatives to conducting Registration or RSD Interviews in detention facilities. Where there is no available alternative, UNHCR staff should be accompanied by a UNHCR interpreter or other independent and qualified interpreter, and should take every possible measure to ensure that interview conditions preserve, to the greatest extent possible, the **Applicant's right to confidentiality** in the RSD procedures.
- UNHCR staff and interpreters who conduct interviews in detention environments should receive **appropriate training** on interviewing detained Applicants and on making necessary and effective interventions with detaining officials.
- The appropriateness of **accelerated RSD processing** should be examined for Applicants who are detained (see § 4.6 - *Accelerated RSD Processing*).
- Every effort should be made to ensure that Applicants in detention are **fully informed** regarding the RSD process and procedures as well as the rights and obligations of refugee claimants, and that Applicants in detention have **sufficient time to prepare their claim**.
- Necessary arrangements should be made to notify Applicants who are in detention of the RSD decision. Rejected Applicants should be **notified of the reasons for the RSD** decision pursuant to the procedures set out in § 6.2 - *Notifying Applicants of Negative RSD Decisions*. Detained Applicants who are rejected in first instance should also be given the opportunity to file an appeal application and to present their appeal in accordance with the principles set out in § 7 - *Appeal of Negative RSD Decisions*.

4.8 The Application of the Exclusion Clauses

4.8.1 General Principles

- All UNHCR **Protection staff should be aware of the criteria for exclusion from refugee protection**, and should be trained to identify facts indicating that the applicability of the exclusion clauses should be examined in the particular case. Whether information suggesting that an individual may be excluded from refugee status becomes known during RSD procedures, or after an individual has been formally recognized as a refugee, UNHCR Offices should take appropriate steps to examine whether the exclusion clauses apply.
- Examination of the applicability of the exclusion clauses must be conducted on an individual basis, under procedures that incorporate **appropriate standards for due process**. The individual concerned should be informed of the considerations that have given rise to the exclusion examination and should have the opportunity to consider and respond to them.
- Wherever possible, UNHCR Offices should designate and provide **specialized training to designated Eligibility Officers** to adjudicate and review cases that raise exclusion issues, and to provide substantive and procedural support to other UNHCR staff in processing these cases.
- When the facts relating to the possible application of the exclusion clauses are known before the RSD Interview, the file should be assigned to an **Eligibility Officer who has experience and knowledge regarding the application of these clauses**. If the exclusion issues do not arise until during or after the RSD Interview, the Eligibility Officer should seek any necessary procedural or substantive direction from the RSD Supervisor or another Protection staff member who has appropriate knowledge and experience.
- If facts come to light after an individual has been recognized as a refugee that the exclusion criteria applied and the individual may have been incorrectly recognized, examination of the application of the exclusion clauses should be conducted through the **procedures for cancellation of Refugee Status** (see §10 - *Procedures for Cancellation of Refugee Status*).
- If an individual who has been properly recognized as a refugee, subsequently engages in conduct that falls within the exclusion clauses of Article 1 F (a) or (c), the refugee status should be revoked. UNHCR Offices should undertake the necessary examination to establish whether the conduct in question would bring the individual within the criteria for these exclusion clauses. The procedural standards for due process when re-examining refugee status in cancellation procedures would be generally relevant and applicable in procedures for **examining the appropriateness of revocation of refugee status** (see §10 - *Procedures for Cancellation of Refugee Status*).
- The recommendations that follow are intended to provide **procedural guidance** for examining the applicability of the exclusion clauses. For guidance on substantive issues relating to the interpretation and application of the exclusion clauses, Eligibility staff should refer to the detailed directions provided by DIP.

4.8.2 Procedures for Examining the Application of Article 1F

- The application of the exclusion clauses in Article 1 F of the 1951 Convention (**exclusion of persons who are undeserving of protection**) has the effect of excluding from eligibility for refugee status an individual who is otherwise determined to be in need of refugee protection.
- Because of the particularly serious implications for the individual concerned, and the complex criteria that are relevant to the determination, examination of the application of the exclusion clauses in Article 1 F should only be undertaken by UNHCR Protection staff who are **knowledgeable about the relevant evidence and principles**.
- Due process requires that the individual be **informed of considerations**, including any evidence that is relevant to the exclusion determination, **during the exclusion examination**, so that he/she has the opportunity to respond to the evidence. However, in exceptional circumstances, generally relating to the security of UNHCR staff or a witness or other source of information, it **may be necessary to limit full disclosure** of relevant evidence. The criteria and principles regarding limiting disclosure set out in § 6.2 - *Notifying Applicants of Negative RSD Decisions* are relevant to decisions to limit disclosure during exclusion examinations. Eligibility Officers should seek the guidance of the RSD Supervisor, or another Protection staff member who has knowledge and experience in exclusion cases, to determine the appropriate disclosure. Alternatives to withholding relevant information should be considered, including making partial disclosure, or disclosing the evidence without revealing the source, so that the individual concerned is not unduly denied the opportunity to challenge or explain information upon which the exclusion decision is based.
- The **application of Article 1 F exclusion clauses to children** requires an assessment of the maturity of the child, and his/her mental capacity to assume individual responsibility for the acts in question. The interview to examine these issues should be conducted by an Eligibility Officer who is also knowledgeable and experienced in interviewing children.

4.8.3 Review and Approval of Exclusion Decisions

- The principles and procedures set out in § 4.4 - *Procedures for Review of RSD Decisions* are relevant to the review of exclusion determinations made in RSD procedures or Cancellation procedures.
- Decisions to exclude an individual from refugee status should also be reviewed by the **RSD Supervisor** or the **Head of Office**. Once an exclusion decision has been finalized by the UNHCR Office it should be **submitted to the Senior Legal Advisor in the relevant Bureau for concurrence and copied to DIP as appropriate** before the individual is notified. Exclusion cases which raise complex doctrinal or interpretative issues relating to Article 1F of the 1951 Convention, or which involve children must be **submitted to DIP**, which will make the final recommendation. (See § 4.4.3 - *Procedures for Consultation with UNHCR Headquarters on RSD Decisions*).
- **Alternative review procedures** may be adopted in certain RSD operations where the Bureau and DIP determine that only cases of a specific type or exceptional nature need be referred to UNHCR Headquarters.

4.8.4 Notification of Exclusion Decisions

- Individuals who are determined to be excluded from refugee protection should be **informed in writing of the reasons for the exclusion decision**, in accordance with the principles and procedures set out in § 6.2 - *Notifying Applicants of Negative RSD Decisions*. As a general rule, notification of the exclusion decision should permit the individual concerned to know the considerations, including any evidence upon which the decision was based.
- In some cases, it may be **necessary and appropriate to limit disclosure** of the evidence that was relied upon, or other findings upon which the exclusion decision was made. The considerations and principles regarding limiting disclosure during the examination of exclusion cases set out above in § 4.8.2 - *Procedures for Examining the Application of Article 1F* are relevant to the disclosure of information in notification of exclusion decisions. As limiting disclosure of information that was material to an exclusion determination may affect the ability of the individual concerned to provide effective response or clarification in appeal procedures, the decision to limit disclosure should be made in consultation with the RSD Supervisor, or another designated Protection staff member.
- Where appropriate, UNHCR Offices may make more complete disclosure regarding the reasons for the exclusion determination through counselling by a qualified Protection staff member.

4.8.5 Appeal of Exclusion Decisions

- Applicants whose refugee claims are rejected because of the application of the exclusion criteria should have the opportunity to appeal the exclusion decision. The principles and procedures set out in § 7 - *Appeal of Negative RSD Decisions* are applicable to appeals from exclusion decisions.
- If, after an individual is determined to be excluded from refugee status in the final instance, reliable information comes to light to indicate that the **exclusion criteria were improperly applied or the exclusion decision may otherwise have been incorrect**, a closed file may be re-opened pursuant to the procedures set out in § 9.2 - *Re-Opening RSD Files*.

4.8.6 Confidentiality in Exclusion Cases

- Examination of the possible application of the exclusion clauses should not undermine the **right of the individual concerned to confidentiality in UNHCR RSD procedures**. Disclosure of any information about the individual, including the fact that the individual has registered with UNHCR for RSD, should only be made in accordance with UNHCR policies and standards relating to confidentiality (see § 2.1 - *Confidentiality in UNHCR RSD Procedures*).
- UNHCR staff should not approach the **authorities in the country of origin** to obtain information to assist the exclusion determination.
- UNHCR Offices may share information with the **host country authorities** regarding final RSD decisions of persons who were registered by UNHCR in the host country (see § 6.3 - *Notification of RSD Decisions to Third Parties*). However, UNHCR Offices should use discretion in determining whether it is appropriate to disclose the fact that an individual has been found by UNHCR to be excluded from refugee protection. The decision to disclose this information should give due weight to such factors as staff safety as well as the legitimate interest of the host authorities to receive information that would be relevant to national security, public safety and the prevention and suppression of criminal offences. These interests must be balanced against the right of the excluded individual to confidentiality in UNHCR procedures and to the protection afforded by other international human rights instruments.
- Given the potential implications of disclosure to third parties of information in exclusion cases for the security of UNHCR staff and the individual concerned, UNHCR Offices should seek the **advice of DIP and the relevant Bureau** in UNHCR Headquarters before disclosing information relating to UNHCR exclusion determinations in individual cases.
- Requests by international courts or tribunals for disclosure of information regarding excluded individuals should be referred to DIP.

4.8.7 Implications for Family Members/Dependants

- The right to family unity generally operates in favour of family members/dependants and not against them. Therefore, where the Principal Applicant is excluded, family members/dependants are **not automatically excluded** as well. Independent claims for refugee status by family members/dependants should be determined separately. Such claims are valid even where the fear of persecution is a result of the relationship to the excluded individual. Family members/dependants are only excluded from refugee protection if there are serious reasons for considering that they too are individually responsible for excludable crimes.
- Where family members/dependants have been recognised as refugees, however, the excluded applicant cannot then rely on the right to family unity to secure protection or assistance as a refugee.