



# 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><b>Training for UNHCR Eligibility Staff</b></p> <ul style="list-style-type: none"> <li>■ An overview of international refugee, humanitarian and human rights law and the mandate of UNHCR</li> <li>■ Detailed briefing on refugee law and principles relevant to RSD, including interpretation of the relevant eligibility and exclusion criteria</li> <li>■ 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)</li> <li>■ 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</li> <li>■ 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)</li> <li>■ 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</li> <li>■ Instruction on preparing written RSD Assessments</li> <li>■ Instruction on the RSD procedures in the UNHCR Office and the implementation of these RSD Procedural Standards for UNHCR RSD Operations</li> </ul>
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- **In addition, UNHCR Offices should establish a programme for continuing training for Eligibility Officers which should include:**

training	<p><b>Ongoing Professional Development for Eligibility Officers</b></p> <ul style="list-style-type: none"> <li>■ Regular updates on COI that is relevant to Applicants who are registered by the Office</li> <li>■ Updates on new guidelines and directions from UNHCR Headquarters that are relevant to RSD</li> <li>■ 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</li> </ul>
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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.