



UNIT 1

Introduction

INTRODUCTION

UNHCR's Mandate for Refugee Status Determination (RSD)

Refugee status determination pursuant to UNHCR's mandate is **a core UNHCR protection function**. The purpose of mandate RSD is to permit UNHCR to determine whether asylum seekers fall within the criteria for international refugee protection. The determination of refugee status has potentially profound implications for the life and security of the individuals concerned. It also defines the obligations of UNHCR towards the individuals, and may also determine the obligations and responsibilities of governments and other actors with whom UNHCR cooperates to protect refugees. The effectiveness of mandate RSD as a protection function depends upon the fairness and integrity of UNHCR RSD procedures and the quality of UNHCR RSD decisions.

In certain contexts, particularly in situations of large-scale refugee movements, or where the prevailing conditions have substantially the same effect upon a large population, UNHCR may determine eligibility for refugee status on a group basis, rather than through individual screening. The considerations that follow have been developed to provide guidance on **UNHCR procedures to determine eligibility for mandate refugee status on an individual basis**, through the examination of individual claims.

Procedures for UNHCR Mandate RSD

Given the very diverse and challenging operational environments in which UNHCR carries out mandate RSD, **each UNHCR Office is responsible to develop and implement RSD procedures** to ensure the quality and efficiency of its own RSD operations. The specific procedures adopted by each UNHCR Office will necessarily reflect the size of the particular RSD operation, the staffing and other resources available in the UNHCR Office, as well as the conditions in the particular country. Nonetheless, certain **core principles and standards** must be incorporated into the RSD procedures in every UNHCR Office to ensure that all asylum seekers, regardless of where they apply for RSD by UNHCR, benefit from consistent standards of due process.

Core Standards for Due Process in Mandate RSD

- ▶ Asylum seekers who approach UNHCR Offices should have appropriate access to UNHCR staff and RSD procedures, and should receive the necessary information and support to present their refugee claims.
- ▶ Procedures should be in place to identify and assist vulnerable asylum seekers.
- ▶ RSD applications should be processed on a non-discriminatory basis pursuant to transparent and fair procedures.
- ▶ RSD Applications should be processed in the most timely and efficient manner possible.
- ▶ Staff who are responsible for RSD procedures should have adequate qualifications, training and supervision to effectively carry out their duties.
- ▶ Applicants should have an individual RSD Interview with a qualified Eligibility Officer.
- ▶ Rejected Applicants should have access to procedures for review of the RSD decision by an Officer, other than the Officer who decided the claim in first instance.
- ▶ There should be organization-wide consistency on procedures that define substantive rights in the RSD process, including procedures affecting the submission and receipt of applications, individual interviews, and the notification of UNHCR decisions.
- ▶ All aspects of the RSD procedures must be consistent with established UNHCR policies relating to confidentiality, standards of treatment of vulnerable asylum seekers, and gender and age sensitivity.

Recent evaluations of UNHCR Offices indicate that these standards have not been consistently achieved, and have highlighted the need to adopt a more harmonized approach to the development and implementation of UNHCR RSD procedures to enhance their quality, fairness and integrity. In furtherance of these objectives, the Department of International Protection ("DIP") has produced the **Procedural Standards for Refugee Status Determination under UNHCR's Mandate** ("RSD Procedural Standards"), which introduce uniform standards for UNHCR RSD procedures, and provide specific guidelines to assist UNHCR Offices to incorporate these standards into their own standard operating procedures for RSD.

The RSD Procedural Standards

The RSD Procedural Standards provide detailed procedural guidelines for every stage of the process of mandate RSD, from the reception of asylum seekers by UNHCR through to the final determination of the claim.

The issues addressed in the RSD Procedural Standards include:

- Standards for reception of asylum seekers and refugees
- Registration of Applicants for RSD
- Issuing documents to asylum seekers and refugees
- Scheduling of RSD interviews and appointments
- RSD file management
- Conducting and documenting interviews in RSD procedures
- Participation of third parties / legal representatives
- Preparing written RSD Assessments
- Review of RSD decisions
- Appeal procedures
- Notification of decisions in RSD procedures
- Procedures for accelerated RSD processing
- Processing derivative status applications
- Examining the application of the exclusion clauses
- Procedures for cancellation / revocation and cessation of refugee status
- Closing and re-opening RSD files
- Qualifications and training of staff who are involved in RSD
- Preserving confidentiality in RSD procedures
- Supervision and oversight in RSD procedures
- Gender and age sensitivity in RSD procedures

A selection of **standard forms, checklists** and **other RSD tools** have been developed to support the implementation of the RSD Procedural Standards and are included as Annexes. The tools have been specifically designed to promote more effective and consistent information gathering and reporting in RSD procedures, and to guide UNHCR staff in preparing concise and comprehensive referrals and assessments. The tools also include models for individual letters and certificates relating to RSD procedures.

A Complement to Other UNHCR Documents and Resources

The RSD Procedural Standards have been developed as a procedural tool and as such, do not provide guidance on the interpretation of the refugee criteria or address other substantive issues relating RSD. Eligibility staff should be familiar with existing guidelines and resources produced by DIP to assist in the determination of refugee status. Staff who are responsible to support and supervise RSD procedures are expected to disseminate relevant documents and resources to all staff who are responsible for RSD as they are issued, and to ensure that they are being effectively used in UNHCR Offices.

The RSD Procedural Standards incorporate elements of existing UNHCR operational guidelines that are relevant in RSD procedures. However, the references are intended to **highlight important issues and principles and the existence of relevant resources**, and do not provide comprehensive operational recommendations. A list of relevant UNHCR resources for each chapter of the RSD Procedural Standards has been included as an Annex (**Annex 1-1**), and will be updated on a regular basis. UNHCR Office managers are expected to be aware of all current UNHCR operational guidelines affecting RSD operations, and should ensure that they are reflected in the RSD procedures in each UNHCR Office and that they are understood by staff who are responsible for their implementation. Overall accountability for this lies with the Representative or Head of Office.

Implementation of the RSD Procedural Standards

The RSD Procedural Standards should be **implemented in all operations where UNHCR has responsibility to conduct RSD pursuant to its mandate**, and should apply to all individuals who are requested or engaged by UNHCR to carry out RSD procedures in these operations. Each UNHCR Office should ensure that the RSD Procedural Standards are shared with and fully understood by those who are responsible for their implementation.

Effective implementation of the RSD Procedural Standards will require that they be **incorporated into standard operating procedures for RSD** in every UNHCR Office. Where necessary, UNHCR Offices should seek the advice and support of the relevant Bureaux and DIP in this process.

The RSD Procedural Standards **reflect the particular constraints and challenges under which UNHCR must conduct RSD**. They are not intended to identify standards for national procedures, which in certain States may exceed the standards proposed. However, many of the principles upon which the recommendations are based are equally relevant in all RSD operations. Where UNHCR staff conduct RSD on behalf of, or in cooperation with state authorities, UNHCR staff may make recommendations based on specific elements of the RSD Procedural Standards where this would establish or enhance standards of due process in these RSD operations.

Considerations Relating to Staffing in UNHCR RSD Operations

The assignment of specific responsibilities for RSD must be determined within each UNHCR Office, taking into account the number and qualifications of available staff, and the size and nature of the RSD operation. The recommendations in the RSD Procedural Standards are intended to have general application in the wide range of UNHCR RSD operations, and are not based upon specific staff requirements or structures.

The RSD Procedural Standards identify the **primary functions associated with RSD**, and specify the **core responsibilities associated with these functions**. Titles are assigned to some of these functions for ease of reference and clarity, however, the named functions are not intended to establish requirements for individual positions or posts. In smaller RSD operations, one Protection staff member may be able to effectively carry out the responsibilities associated with several distinct functions i.e. supervision of reception, supervision of registration procedures, approving referrals for accelerated RSD processing, and acting as protection staff focal point for security issues. Similarly, the distinct responsibilities of Reception staff and Registration staff may in many operations be carried out by the same individuals. In larger operations, it may be necessary to divide responsibility for distinct functions among several staff members. Under the RSD Procedural Standards, UNHCR Offices continue to have the responsibility to assess the number of staff required to effectively carry out each specific function in their RSD operation, and have the necessary flexibility to ensure the most efficient and appropriate use of staffing resources. The RSD Procedural Standards are intended to guide UNHCR Offices in systematically assessing and presenting staffing needs.

In the RSD Procedural Standards, references to **"UNHCR staff"** are intended to include all individuals engaged or formally requested by UNHCR to carry out functions related to UNHCR RSD procedures, including UNHCR professional staff, individuals hired under consultancy or TA contracts with UNHCR, locally engaged project staff, and UNVs. References to **"UNHCR Protection staff"** are intended to include UNHCR professional Protection staff, and all Eligibility Officers, regardless of their professional status in UNHCR or the nature of the contractual arrangement under which they provide services to UNHCR.

Role of Implementing Partners in UNHCR RSD Procedures

Wherever possible, responsibilities in UNHCR RSD procedures should be carried out by UNHCR staff. Where resources in UNHCR Offices do not allow UNHCR staff to carry out all aspects of the RSD procedures, **arrangements with implementing partners may be necessary to implement certain aspects of RSD procedures.** Implementing partners can provide valuable assistance to UNHCR in reception and registration procedures, and in providing social counselling and other support to asylum seekers. However, responsibility for examining or determining eligibility for refugee status under RSD first instance or appeal procedures, or procedures for cancellation / revocation or cessation of refugee status, should be carried out by qualified UNHCR Protection staff, and should not be delegated to implementing partners.

Guidelines for Cooperation with Implementing Partners

- ▶ Where implementing partners carry out responsibilities in RSD procedures, the recommendations and requirements set out in the RSD Procedural Standards for UNHCR staff in these procedures apply equally to implementing partners, unless other direction is provided.
- ▶ If responsibility for any element of UNHCR's mandate RSD function is delegated to an implementing partner, the UNHCR Office retains the ultimate responsibility to ensure that the implementing partner fully understands and complies with the RSD Procedural Standards.
- ▶ Responsibility for functions related to RSD procedures should only be delegated where UNHCR is able to provide the necessary direction, and conduct effective monitoring to ensure the quality of the services provided.
- ▶ Delegation should be made pursuant to a written agreement, which should set out clearly the nature and scope of the specific functions assigned, the expectations of UNHCR regarding the performance of these functions, and specific provisions for reporting and monitoring.
- ▶ The scope of the access by specific implementing partners to UNHCR documents and files, and UNHCR premises should also be clearly defined and regulated in the standard operating procedures of each office.

In addition to the guidelines above, UNHCR Offices should consult the more comprehensive operational UNHCR resources and seek the advice of UNHCR Headquarters as necessary, when establishing arrangements for the participation of implementing partners in UNHCR RSD operations.

Supervision and Oversight

Effective mechanisms for supervision and oversight of RSD procedures are essential to ensure both the quality and integrity of UNHCR RSD operations. Oversight mechanisms can only be **built upon a clearly defined operational structure**. This requires that responsibilities for every aspect of the RSD procedures, including responsibilities for **reporting and supervision** be clearly determined and reflected in the **standard operating procedures in each UNHCR Office**. The RSD Procedural Standards include specific guidelines for reporting and supervision in each function associated with RSD.

Given the protection principles and objectives associated with RSD, **UNHCR Protection staff** must be actively involved in the implementation of RSD procedures. Protection staff should have direct responsibility for supervision of all aspects of the RSD process and should participate in decisions and policies that affect the quality of protection afforded in UNHCR RSD operations.

An essential feature of the RSD Procedural Standards is the designation of the role of **RSD Supervisor**. In every UNHCR Office, a Protection staff member should be designated by the Head of Office to oversee the RSD operation and to ensure the quality and integrity of UNHCR RSD procedures. The RSD Supervisor should be a Protection staff member who has **appropriate qualifications and experience** to effectively carry out the supervisory role in RSD procedures.

In smaller RSD operations, the designated RSD Supervisor may perform this role in addition to other protection responsibilities in the UNHCR Office. In larger RSD operations, effective supervision of RSD procedures will require that a Protection staff member be designated to perform the role of RSD Supervisor exclusively. In larger RSD operations, it may also be necessary and appropriate for the RSD Supervisor to delegate responsibilities for direct supervision of certain aspects of the RSD procedures to one or more Protection staff members. However, wherever responsibility is delegated, the RSD Supervisor must ensure that the person to whom the responsibilities are delegated has the appropriate experience to exercise supervisory responsibilities, and the RSD Supervisor should remain accountable to ensure that the relevant procedures comply with the RSD Procedural Standards.

The RSD **Supervisor should report directly to the Representative or the Head of Office**, who has overall accountability for the implementation of the RSD Procedural Standards in the Office and compliance by all persons who are responsible for the RSD procedures.