



# Unit 2.7

## **LEGAL REPRESENTATION IN UNHCR RSD PROCEDURES**



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## 2.7 Legal Representation in UNHCR RSD Procedures

### 2.7.1 Legal Representation in UNHCR RSD Procedures

**Legal representation** includes legal and procedural advice, assistance with the completion of various forms, including the RSD Application form, preparation of oral and written submissions, collection and submission of supporting evidence, and attendance of Interviews throughout the RSD process, including where applicable at the appeal stage, as well as in re-opening procedures and procedures for cancellation, revocation or cessation of refugee status. In all instances, **legal representation must be consistent with the non-adversarial nature of UNHCR RSD procedures.**

Legal representation is an important factor in establishing fair and transparent mandate UNHCR RSD procedures and strengthening the quality of decision-making. It can assist in the identification of international protection needs of Applicants by helping them put forward all the information relevant to their refugee claims, as well as discouraging the submission of false claims by dispelling misguided or exploitative information, and thus contributes to the efficiency and expediency of the RSD process.

UNHCR Offices should encourage the participation of responsible, high quality legal representation in mandate UNHCR procedures. Wherever possible and appropriate, UNHCR Offices should develop partnerships with established legal aid providers that offer responsible, high quality legal representation in mandate RSD procedures, and which have appropriate systems of training and ensuring accountability for their staff.

### 2.7.2 Right to Legal Representation

Applicants have the **right to engage the services of qualified legal representatives at their own cost or on a *pro bono* basis**, where such services are available. Applicants should be informed of this right as soon as practicable and UNHCR Offices should generally facilitate the Applicants' ability to exercise this right, wherever possible. Where Offices have implemented an accreditation system for legal representatives or have developed partnerships with legal aid providers, information on accredited legal representatives or legal aid organizations should also be provided to all Applicants.

The absence of legal representation should in no way delay or otherwise adversely impact the determination of the Applicant's refugee claim.

In the case of **unaccompanied or separated child Applicants**, the legal representative cannot also act as the child's appointed guardian or designated representative unless there are compelling reasons to exceptionally allow it (see, inter alia, § 3.4.6 – *Child Applicants (Under 18)/Unaccompanied or Separated Children* and § 4.3.7 – *Interviewing Child Applicants*).

As a general rule, processing timelines and scheduling of Interviews need to provide Applicants with enough time to obtain legal representation. Where there are compelling protection reasons to process the claim on a priority basis or where the claim is manifestly unfounded or clearly abusive, UNHCR Offices may, however, implement shorter timelines in accordance with set accelerated RSD procedures (see § 4.9 – *Accelerated RSD Processing*). The implementation of accelerated procedures should not preclude the Applicant's right to legal representation.

## 2.7.3 Authorization to Act as Legal Representative

### (a) Qualifications to Act as Legal Representative

In order to act as a legal representative in mandate RSD procedures, an individual must have the **necessary training and/or experience to perform this role**. While a formal law degree or current professional legal accreditation is not required, individuals proposed as legal representatives need, as a general rule, to possess the following:

- i. a working understanding of international refugee law;
- ii. a working understanding of UNHCR procedures;
- iii. experience in assisting refugee status claimants;
- iv. a thorough understanding of the Applicant's claim; and
- v. be bound by a code of ethics or professional responsibility, such as the *Model Rules of Ethics for Legal Advisors in Refugee Cases* ("Nairobi Code") (see § 2.7.4(c) – *Professional Conduct and Adherence to Code of Ethics*).

An individual who:

- i. possesses a valid license or professional legal accreditation from a member State of the United Nations as a lawyer, solicitor, attorney, barrister, counselor-at-law or equivalent professional designation; or
- ii. is a member of an established and reputable organization providing free or low-cost legal representation to asylum-seekers and refugees with which UNHCR has a partnership arrangement; or
- iii. has already been authorized by UNHCR to act as legal representative in mandate RSD procedures;

is deemed to possess the qualifications set out above unless there are good reasons to believe that they are not qualified.

Where an individual is **not deemed to possess the required qualifications** set out above, UNHCR Offices should make appropriate inquiries to ascertain whether he/she has the necessary training or experience to be authorized to act as legal representative in UNHCR RSD procedures. Such inquiries should be carried out by the RSD Supervisor or another designated staff member in accordance with set procedures and/or the provisions of partnership arrangements with established and reputable organizations providing free or low-cost legal representation to asylum-seekers and refugees, where such agreements exist. The determination whether a person has the qualifications and/or experience to act as legal representative in UNHCR RSD procedures should be conducted on a case-by-case basis, in a fair and timely manner.

In cases where the proposed legal representative possesses the required qualifications, UNHCR may, nevertheless, deny him or her authorization to act as legal representative for reasons related to conflict of interest, past gross misconduct, an exploitative relationship or other serious ethical concerns. This will also be the case, even where an individual has already been authorized by UNHCR to act as legal representative, where the reasons set out above exist.

A determination that a proposed legal representative **does not have the qualifications, or is otherwise not suitable** to act as a legal representative should be explained to the Applicant and the prospective legal representative, unless there are compelling reasons not to do so, such as protection or security concerns for the Applicant or UNHCR staff. The reasons for such a decision should **be recorded on the Applicant's file**. Wherever possible and appropriate, the UNHCR Office must endeavor to refer the Applicant to alternative providers of legal representation. UNHCR Offices should use discretion in determining whether it would be appropriate to permit a proposed legal representative, who does not have the required qualifications or is otherwise not suitable, to observe the RSD Interview under the conditions set out in § 4.3.4 – *Attendance by Third Parties other than a Legal Representative*.

UNHCR Offices should maintain, for future reference, a record of all individuals who have been authorized to act as legal representatives.

To facilitate the process of authorization and appointment of legal representatives, UNHCR Offices may consider implementing an **accreditation system** to acknowledge the qualifications of legal representatives who represent Applicants in UNHCR RSD procedures.

As a general rule, an individual has to be physically present in the host country/country of asylum to be authorized to act as legal representative in UNHCR RSD procedures. Out-of-country representation may, however, be appropriate in certain circumstances, including where there are no quality legal aid providers in the host country/country of asylum, or for compelling protection reasons. Legal representatives not physically present in the host country/country of asylum should possess the same qualifications and abide by the same procedural requirements as in-country legal representatives.

### **(b) Appointment of the Legal Representative**

An Applicant may appoint a legal representative at any stage of UNHCR RSD procedures, provided that the proposed legal representative has the qualifications to perform this role as set out in § 2.7.3(a) – *Qualifications to Act as Legal Representative*. Such representation may be full or partial, and may include inter alia counseling, preparation of written submissions, and Interview preparation and attendance (see § 2.7.4(a) – *The Role of the Legal Representative*).

The Applicant must provide written consent to the participation of the legal representative (Annex 2.7-2 – *Authorization to Act as Legal Representative*) and has to inform UNHCR whether there are any limitations on the legal representation. Until such time as the required consent form is received by UNHCR, the Office will not enter into correspondence with the legal representative, nor allow his or her attendance at Interviews or other appointments with the Applicant.

Any documentation or related information pertaining to the appointment of the legal representative should be kept or recorded on the Applicant's file and, where confirmed, recorded in the registration database.

### **(c) Termination of Legal Representation**

The Applicant may withdraw from his or her legal representative the authority to act on his or her behalf at any time and for any reason, and must inform UNHCR in writing to this effect. The termination of legal representation has to be duly recorded on the Applicant's file.

The legal representative may withdraw from representation in accordance with their professional code of ethics and/or the Nairobi Code, and should inform UNHCR in writing to this effect. The legal representative must also inform the Applicant and, wherever possible, refer the Applicant to alternative providers of legal representation.

UNHCR Offices may, at any time, reconsider the authorization of the legal representative to participate in UNHCR RSD procedures, where there are good reasons to believe that the legal representative no longer possesses the required qualifications set out in § 2.7.3(a) – *Qualifications to Act as Legal Representative*, or where legal representation may be affected by a conflict of interest, gross misconduct, a exploitative relationship or other serious ethical concerns.

UNHCR Offices may, at their discretion and at any time, make inquiries with the Applicant and/or legal representative to ascertain whether a withdrawal of authorization to act as a legal representative in UNHCR procedures is appropriate in a particular case for the abovementioned reasons. As a general rule, a decision to withdraw authorization to act as legal representative has to be made by the RSD Supervisor or another designated protection staff member in accordance with set procedures and/or the provisions of partnership agreements with established and reputable organizations providing free or low-cost legal representation to asylum-seekers and refugees, where such agreements exist. UNHCR must notify the legal representative, the organization with which the legal representative is affiliated, and the Applicant of the withdrawal of authorization in writing and the reasons for such decision should be recorded in the Applicant's file. Wherever possible and appropriate, UNHCR should endeavor to refer the Applicant to alternative providers of free or low cost legal representation.

## 2.7.4 Role and Responsibilities of the Legal Representative

### (a) The Role of the Legal Representative

The role of the legal representative is to provide an Applicant sound, confidential legal and procedural advice, to ensure that the Applicant's refugee claim is fully and accurately presented, and that the Applicant's rights are protected and respected throughout the UNHCR RSD procedure.

A legal representative may assist in the preparation of oral and/or written submissions, the collection and submission of supporting evidence, including country of origin information, and may submit legal arguments in support of the Applicant's claim.

UNHCR offices must accept and consider all material submitted by a legal representative on behalf of the Applicant in a timely manner, in accordance with specified timeframes, and prior to a decision being taken in the Applicant's case. UNHCR Offices shall develop fair and transparent rules governing the form and timeframe for making written submissions.

Applicants may be accompanied by their legal representative during any RSD or Appeal Interview, as well as any Interview in which UNHCR gathers information that is relevant to the determination of the Applicant's refugee status, or to the cancellation, revocation or cessation of his/her refugee status.

The Applicant's legal representative may request, in writing and with the Applicant's consent, a postponement of the Interview and rescheduling at a later date. The request for a postponement needs to be made in a timely manner, in accordance with set procedures, and should be granted where the legal representative presents legitimate reasons (e.g. the need to obtain supporting evidence or to make written submissions) and where the request does not unduly prejudice the rights or safety of the Applicant. The legal representative should take all possible steps to avoid delaying an Interview for personal reasons, including by making alternative arrangements for the Applicant's legal representation. If the postponement is granted, the legal representative's request for postponement should be documented on the Applicant's file and the Interview rescheduled according to established scheduling procedures (see § 3.5 – *Scheduling of RSD Interviews and Appointments*).

At the beginning of the Interview the Eligibility Officer has to explain to all present at the Interview the role and responsibilities of the legal representative. The legal representative should refrain from interrupting the Eligibility Officer or the Applicant during an Interview, and should limit interventions during the Interview to those relating to breaches of procedural fairness that could not be adequately addressed or remedied if they were raised in submissions at the end of the Interview. The legal representative may not testify on behalf of the Applicant about the facts of a case, nor bring his or her own interpreter to the Interview without prior approval by UNHCR. The legal representative may take notes during the Interview, but cannot otherwise record it. The legal representative will be given the opportunity to make brief oral submissions at the end of the Interview and these submissions should be recorded in the Interview Transcript and/or audio recording.

The involvement of the legal representative in the Interview should at all times **be consistent with the non-adversarial character of RSD and other procedures conducted by UNHCR**, and serve to promote full and reliable disclosure of the Applicant's claim. Should the involvement of a legal representative obstruct these objectives, he or she will be asked to withdraw from the Interview. In any case where an Eligibility Officer denies or withdraws permission of a legal representative to participate in an Interview (after consultation with the RSD Supervisor), the reasons for this decision must be explained to the Applicant and recorded in detail on the Applicant's file. The Eligibility Officer should use discretion in determining whether it would be appropriate to continue the Interview in the absence of a legal representative or whether the Interview should be stopped and rescheduled to allow, *inter alia*, the Applicant to seek alternative legal representation.

## **(b) Communication and Access to Information**

Unless otherwise requested by the Applicant in writing, UNHCR Offices must communicate with the Applicant and/or his/her authorized legal representatives on all matters relevant to the determination, cancellation, revocation or cessation of the Applicant's refugee status, including Interview scheduling, notification of decisions and reasons for negative decisions. In cases where the legal representative is not physically present in the host country/country of asylum, all communications may be addressed solely to the Applicant, who can then inform his/her legal representative as appropriate. Legal representatives should be informed of the applicable form and timeframe for making submissions.

In addition to written submissions, authorized legal representatives may communicate with UNHCR on behalf of Applicants on all procedural matters, such as scheduling, giving notice of appeals, notifying UNHCR about interpretation or other special needs, submitting supporting or missing documentation and other issues relevant to the conduct of the RSD procedures.



Authorized legal representatives may request, with the express consent of the Applicant, and UNHCR must share, to the extent possible, all medical, psychiatric and other expert reports as well as any other documents submitted by or on behalf of the Applicant. Legal representatives may, on request, access on the UNHCR Office premises and under supervision, or through other secure and appropriate means as established by UNHCR Offices, the transcript or audio recording of the Interview with the Applicant. All **disclosure of information** to a legal representative must be **in accordance with UNHCR's data protection policy** and must **respect the Applicant's right to confidentiality**.

### **(c) Professional Conduct and Adherence to Code of Ethics**

A legal representative must be bound by a code of ethics or professional responsibility. This may be established through a national system of bar registration, or through organizational or individual adherence to a code of ethics such as the Nairobi Code.

At the time of the recognition of the authorization to act as a legal representative, UNHCR should inform the Applicant of the obligation of the legal representative to abide by a code of ethics. The legal representative should provide the Applicant with a copy of the applicable code of ethics on request. In cases where the legal representative does not have professional accreditation or is not a member of an established and reputable organization providing legal representation to asylum-seekers and refugees, a copy of the Nairobi Code should be provided to the legal representative as well as the Applicant.

Applicants need to be made aware of existing standard office complaints procedures by which they are able to bring issues to the attention of UNHCR, including in relation to the professional conduct and ethical practices of legal representatives.

Legal representatives must also be made aware of existing standard office complaints procedures by which they are able to bring issues to the attention of UNHCR.

# Annexes

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## Annex 1: List of Additional Resources

**Notice:** The list below highlights the UNHCR policy resources and guidelines that are relevant to legal representation in UNHCR RSD procedures. All Protection staff members who are responsible for RSD should have access to and be familiar with these documents. Managers should ensure that documents are disseminated to staff who are responsible for their implementation, and that the directions in these documents are reflected in the RSD procedures and practice in the UNHCR Office concerned.

*Policy on the Protection of Personal Data of Persons of Concern to UNHCR*, May 2015,  
<http://www.refworld.org/docid/55643c1d4.html>

*Model Rules of Ethics for Legal Advisors in Refugee Cases (“Nairobi Code”)*, Southern Refugee Legal Aid Conference (SRLAC), 1 February 2007, <http://www.refworld.org/docid/4700d1572.html>

## Annex 2: Authorisation to Act as Legal Representative

**UNITED NATIONS  
HIGH COMMISSIONER  
FOR REFUGEES**



**NATIONS UNIES  
HAUT COMMISSARIAT  
POUR LES RÉFUGIÉS**

### **AUTHORIZATION TO ACT AS LEGAL REPRESENTATIVE**

*To be Completed by the Applicant*

**Name of Applicant:**

**Date of birth:**

**RSD File no.:**

This is to certify that ..... is acting as my legal representative for all matters relating to my application for refugee status with the United Nations High Commissioner for Refugees.

I hereby authorize UNHCR to disclose to the above-named individual information or documents that I have provided directly to UNHCR, and to inform the above-named individual of decisions taken by UNHCR regarding my application for refugee status.

This Authorization is valid until a final determination in my refugee claim has been made by UNHCR, or the date upon which I give notice to UNHCR that the person named above is no longer authorized to act as my legal representative.

**Applicant's Signature:**

**Date:**



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