



Unit 2.9

APPLICANTS WITH MENTAL HEALTH CONDITIONS OR INTELLECTUAL DISABILITIES IN UNHCR RSD PROCEDURES



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2.9 Applicants with Mental Health Conditions or Intellectual Disabilities in UNHCR RSD Procedures

2.9.1 General Considerations relating to Applicants with Mental Health Conditions or Intellectual Disabilities

Persons with mental health conditions and intellectual disabilities may also face challenges to actively engage in the RSD process, as it may affect their responsiveness during interviews or in other interactions with the UNHCR Office in the host country/country of asylum. Mental health conditions and intellectual disabilities may affect an individual's ability to meaningfully participate in the RSD process, i.e. his/her **ability and willingness to recall and recount the events leading up to his/her departure from the country of origin, as well as his/her capacity to understand the RSD process and procedures, including the rights and obligations they entail.**

Applicants with mental health conditions¹ or intellectual disabilities² may also face additional risk factors that heighten their vulnerability and hence, affect their ability to engage. For instance, Applicants with mental health conditions may be separated from sources of support (e.g. family/community or specialized support in the country of origin) as a result of their displacement and may face greater hardship in the host country/country of asylum. Such individuals often face stigmatization and/or discrimination in their host communities, which may lead to isolation and can detrimentally impact both their willingness to participate in the RSD process and their general health and wellbeing.

An Applicant's mental health or intellectual disability may also be relevant to the determination of his/her refugee status claim where the particular condition or disability gives rise to a risk of persecution upon return to that person's country of origin. Where an Applicant's mental health condition or intellectual disability is a relevant consideration in the determination of his/her refugee status claim, it should be examined in the same way as any other material element of the Applicant's claim.

Applicants with mental health conditions or intellectual disabilities should receive all **necessary assistance and support in making their claim** (see also § 3.2.4 – *Distribution and Completion of the RSD Application Form* and § 7.2.1 – *Assistance with Submitting the Appeal Application*).³ **UNHCR Offices should take all reasonable steps to ensure that Applicants with mental health conditions or intellectual disabilities are able to meaningfully participate in the RSD process.** The principles and procedural standards set out in this section and, more broadly, the RSD Procedural Standards, must be observed whether the Applicant is making an individual refugee status claim (see, in particular, § 4.3 – *The RSD Interview and Assessment*) or

¹ For the purposes of the RSD Procedural Standards, the term "mental health condition" is used to designate a broad range of conditions affecting the mental health of an individual, with different symptoms, generally characterized by some combination of abnormal thoughts, emotions, behaviour and relationships with others, and which may be of an innate or an acquired nature (such as ongoing effects of a trauma).

² A disability that can be related to intellectual functioning (referring to general mental capacity, such as learning, reasoning, problem solving etc.) and adaptive behaviour (the total of conceptual, social, and practical skills that are learned and performed by people in their everyday lives). Intellectual disability is also sometimes referred to as cognitive or learning disability.

³ Applicants may also receive assistance in submitting their RSD or Appeal Application and information supporting their claim from their legal representatives (see § 2.7.4 – *Role and Responsibilities of the Legal Representative*).

applying for derivative refugee status as a dependant of a recognized refugee (for guidance on derivative refugee status see § 5 – *Processing Claims based on the Right to Family Unity*).⁴ Additional procedural safeguards will apply to Applicants with mental health conditions and/or intellectual disabilities who are children (for further guidance, see § 2.8 – *Children in UNHCR RSD Procedures*).

Persons with mental health conditions or intellectual disabilities, and where applicable their accompanying family members or caregivers, should be consulted (for instance through participatory assessments, individual counseling sessions, focus groups) about how RSD procedures can better accommodate their specific needs.

2.9.2 Procedural Safeguards and Accommodation and Support Measures

(a) Identification and Protection Interventions

Reception procedures in UNHCR Offices should include **measures and mechanisms to facilitate the identification** of Applicants who may have mental health conditions or intellectual disabilities in order to accommodate and respond to their specific needs in a timely fashion. Early identification may be achieved in a variety of ways, including tailored protection screening, community, partner or UNHCR Protection staff referrals, or self-identification. Identification should also be facilitated throughout the RSD process, whether at the reception, registration or RSD stage.

UNHCR Protection staff may form a view that an individual has specific needs as a result of, or linked to, their mental health condition or intellectual disability, before or in the absence of a formal assessment by a mental health professional, and should take appropriate measures to accommodate such needs (for further guidance on accommodation and support measures see § 2.9.2(b)-(f) below).

If mental health needs are identified, **counselling** with the Applicant should be conducted, preferably by UNHCR staff or implementing partners with training and expertise in assisting persons with mental health conditions or intellectual disabilities, with a view to determining whether there is a need for additional support or tailored assistance in the registration and RSD process (see also § 2.9.2(b) – *Counselling and Information*). The counselling may also help to assess the **need for referral to medical, psycho-social or other specialized services and resources** available to the individual in the host country/country of asylum. Referral to such services can only be made with the **Applicant's consent** or, if the Applicant is not capable of providing free and informed consent, in accordance with his/her will and preferences (for further guidance, see § 2.9.2(i) – *Confidentiality of UNHCR RSD Procedures and Data Protection*).

⁴ All Applicants who meet the refugee criteria under UNHCR's mandate should be recognized as refugees in their own right even if they have applied for refugee status as part of a family rather than on individual basis (see § 5.2 – *Derivative Refugee Status*).

(b) Counseling and Information

Applicants with mental health conditions or intellectual disabilities must be provided with clear, accessible and easy to understand information about the RSD process and procedures, and adequate support to present their refugee status claims (see §1 – *Core Standards for Due Process in Mandate RSD*).⁵ Information about the RSD process and procedures must be provided as early as possible, and throughout the RSD procedures as necessary (see, for example, § 3.1.3 – *Dissemination of Information to Asylum-Seekers*, § 3.1.4 – *Counselling on UNHCR RSD Procedures*, and § 7.1.2 – *Informing Rejected Applicants of the Right to Appeal*). Where applicable, information about the availability of legal aid must also be provided as early as possible in the RSD process.

In order to enhance the ability of Applicants with mental health conditions or intellectual disabilities to understand the RSD process, the rights and obligations that ensue, and to assist them to present their claim, such information must be provided in accessible formats and language. It is recommended that UNHCR Offices develop accessible information, including in easy-to-read formats, as well as effective methods of dissemination of such information. Such Applicants, their legal representative and support person should also be provided with an opportunity to ask questions and to receive additional information and counseling to facilitate their understanding of the requirements of the RSD procedures at any point during the process.

(c) Attitudes, Behaviors and Skills of RSD Staff

RSD procedures involving Applicants with mental health conditions or intellectual disabilities should be carried out by **trained staff who have the knowledge** and, wherever possible, **experience** in interviewing and assisting asylum-seekers with such conditions or disabilities. This includes Eligibility Officers, interpreters, as well as other Protection staff involved in or supporting RSD procedures. Eligibility Officers must be attentive to the specific needs and vulnerabilities of Applicants and be able to adapt the manner in which the interview is conducted to the Applicant's communication needs and preferences and other relevant personal and contextual circumstances (see also § 2.9.2(g) – *RSD Interview and Adjudication* for further guidance on interviewing techniques). Interpreters should also be sensitive to the specific needs and vulnerabilities of Applicants with mental health conditions or intellectual disabilities and be provided with training and guidance to carry out their work effectively.

Resources permitting, UNHCR Offices should consider designating a **focal point(s)** within the RSD team to provide advice and support to Eligibility Officers when adjudicating claims by Applicants with mental health conditions or intellectual disabilities ('Mental Health Focal Point'). The Mental Health Focal Point may also assume responsibility for ensuring appropriate liaison with other Protection staff within the UNHCR Office or partner staff to ensure the Applicant's specific protection needs and vulnerabilities are appropriately addressed within the context of RSD procedures.

⁵ It is recommended that information regarding the RSD process and procedures is developed in consultation with mental health professionals, where possible, and in various forms, such as brochures, guidance for Protection staff, etc.

(d) Support Persons

Where appropriate and with a view to facilitate their participation in the RSD process, Applicants should be given the option to be accompanied during interviews and other appointments with UNHCR staff by a support person, such as a family member, a caretaker or a professional working with them and whom they trust.

STANDARDS & GUIDELINES

MAIN ROLES AND RESPONSIBILITIES OF SUPPORT PERSONS FOR APPLICANTS WITH MENTAL HEALTH CONDITIONS OR INTELLECTUAL DISABILITIES IN UNHCR RSD PROCEDURES:

- ▶ Accompany and support the Applicant throughout the RSD process by providing moral and emotional support;
- ▶ Support communication throughout the process and facilitate the expression of the Applicant's will and preferences at all stages of the RSD process;
- ▶ Avoid any conflict of interest with the Applicant; and
- ▶ Respect the confidentiality and integrity of UNHCR RSD procedures and abide by existing data protection policies (see also § 4.3.4 – *Attendance by Third Parties other than Legal Representative*).

The presence of a support person may be particularly beneficial during the RSD Interview to help create a comfortable and trusting environment and to encourage rapport building and disclosure during the Interview. The support person can also play a key role in helping Eligibility Officers and other UNHCR Protection staff understand the Applicant's will and preferences relating to decisions affecting him/her, such as the way the RSD Interview is conducted, referral to medical or psycho-social support or evaluation, or disclosure of personal data to the authorities of the host country/country of asylum.

The support person can, however, neither testify on behalf of the Applicant nor otherwise intervene in a manner that it is disruptive or otherwise undermine the objectives of the interview. His/her role is limited to facilitating the expression of the Applicant's will and preferences and he/she must not be asked to make decisions on the Applicant's behalf.

The Eligibility Officer should explain the role and responsibilities of the support person and obtain the consent of the Applicant to the participation of the support person, which should be duly recorded on the file. Where the Applicant cannot provide free and informed consent, the Eligibility Officer should seek the Applicant's views regarding the participation of the support person in the Interview before determining whether the presence of such person is appropriate in a particular case. The Eligibility Officer should verify the identity of the support person and keep a copy of the relevant identity documents and contact details on file, as well as explain to the support person his/her duty to preserve the confidentiality of UNHCR RSD procedures.

The presence of a support person in the RSD Interview may not always be appropriate or conducive to disclosure. In assessing the appropriateness of the participation of a support person in the interview, Eligibility Officers should consider the Applicant's specific needs and vulnerabilities, the nature of the relationship between the Applicant and the support person, as well as any factors indicating that the attendance of the support person would be likely to promote or undermine the objectives of the RSD Interview. The reasons for refusing to allow a support person to attend the RSD Interview should be

explained to the Applicant and noted on his/her file. As a general rule, Applicants should be given the option to proceed with the RSD Interview without the support person present or to reschedule the interview in order to allow for the identification and participation of a different support person (for more guidance on the participation of a support person in a RSD Interview, see § 4.3.4 – *Attendance by Third Parties other than Legal Representative*).

(e) Legal Representation

Like all Applicants in UNHCR RSD procedures, individuals with mental health conditions and/or intellectual disabilities 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 with mental health conditions and/or intellectual disabilities must be informed of this right as soon as practicable and UNHCR Offices should facilitate such Applicants' ability to exercise this right, wherever possible, with the assistance and involvement of any other actors supporting them (for further guidance on legal representation see § 2.7 – *Legal Representation in UNHCR RSD Procedures*).

Where individuals with mental health conditions and/or intellectual disabilities are legally represented in RSD procedures, Eligibility Officers must communicate with that person's legal representative at the earliest opportunity or, at least, at the beginning of the RSD Interview in order to obtain any relevant information regarding the individual's specific needs, including needs relating to the person's mental and/or physical health, interpretation or access to premises, in order to make any necessary accommodations.

(f) Assessing Capacity to Meaningfully Participate in the RSD Interview

The fact that an individual has a mental health condition or an intellectual disability does not, by itself, indicate that the individual is not capable of understanding and effectively participating in the RSD process. Applicants with identified mental health conditions or intellectual disabilities should be registered for RSD processing in accordance with the guidance set out in § 3 – *Reception and Registration for Mandate RSD*, subject to any accommodation and support measures necessary.

In exceptional cases, where there are **serious indications that an Applicant's mental health condition or intellectual disability would fully prevent his/her meaningful participation in the RSD Interview**, either permanently or temporarily, including by removing his/her ability to provide information relevant to the refugee claim, an assessment of whether it is appropriate to conduct the RSD Interview with the particular Applicant should be undertaken. (*For more information on protection avenues in such circumstances, see § 2.9.2 (g).*)

An assessment of the Applicant's capacity to meaningfully participate in the RSD Interview will generally not be necessary in cases where a decision on the Applicant's claim may be reached on the basis of reliable information already available, including information provided by the Applicant in the earlier stages of the RSD process.

STANDARDS & GUIDELINES

EXAMPLES OF CASES WHERE AN ASSESSMENT OF THE CAPACITY TO PARTICIPATE IN THE RSD PROCESS MAY NOT BE NECESSARY INCLUDE:

- ▶ Child Applicants making an application for derivative refugee status based on their close family relationship with a recognised refugee;
- ▶ Adult Applicants making an application for derivative refugee status based on their relationship of dependency with a recognised refugee; or
- ▶ Applicants who are part of caseloads or profiles to which a *prima facie* approach applies or which benefit from a presumption of inclusion.⁶

Provided that there are no exclusion or other serious credibility concerns relating to the core material elements of the claim (see also § 2.9.2(g) – *RSD Interview and Adjudication*).

An assessment as to an individual's capacity to meaningfully participate in the RSD Interview (and thus whether such interview should be conducted) **must be based on the information gathered during the reception and registration processes and other protection interventions, as well as on the interactions with the Applicant and information provided by or on his/her behalf, with due consideration to any available medical/psychological assessments.**

Wherever possible and relevant and **subject to their consent, Applicants should be referred to medical/mental health professionals for a psychological evaluation** to determine whether the individual has a mental health condition or intellectual disability that impacts on his/her ability and willingness to recall and recount information relevant to the material elements of the claim.⁷ The qualifications of the source of the psychological/medical assessment, as well as the quality, details and relevance of the information provided are factors to consider in determining the evidentiary weight to be given to a psychological or medical assessment (see also § 4.3.9 – *Review of Original Documents in the RSD Interview*).

It is also recommended that the Eligibility Officer meet with the Applicant and his/her support person and legal representative, where available, for the purposes of assessing the nature of any support needed as well as the Applicant's capacity to meaningfully participate in the RSD Interview. Applicant's will and preferences must also be taken into account in determining whether conducting a RSD Interview (or Complementary Interview) is appropriate in a particular case.

⁶ Exceptionally, where a refugee status claim is processed through simplified RSD procedures, refugee status may be recognised on the basis of the information gathered at registration and through the RSD Application Form alone, without conducting an individual RSD Interview, provided that the information available is sufficient to establish that the Applicant meets the inclusion criteria of the applicable refugee definition and that no credibility or exclusion concerns arise. This may be the case for caseloads or profiles to which a *prima facie* approach applies or which benefit from a presumption of inclusion (for further guidance, see § 4.10.4 – *Procedures for Simplified RSD Processing*).

⁷ Depending of the circumstances of the case, information regarding the Applicant's mental health condition or intellectual disability (such as for how long has the Applicant suffered from the condition and the circumstances that may have caused it, or how the mental health condition or intellectual disability may affect the Applicant's behaviour, reality perception, etc.) may also be relevant to the determination of the claim.

FACTORS TO BE TAKEN INTO ACCOUNT IN ASSESSING AN APPLICANT'S CAPACITY TO MEANINGFULLY PARTICIPATE IN THE RSD INTERVIEW INCLUDE:

- ▶ Ability to understand a question and provide an answer that is coherent/can be understood;
- ▶ Whether lack of understanding can be overcome, for instance through re-formulation, further clarification or tailored counselling;
- ▶ Ability to communicate orally, in writing, through drawings, etc.;
- ▶ Demonstrated understanding of the rights and obligations associated with the RSD process and procedures, including by providing relevant information regarding his/her claim and the outcome of the process;
- ▶ Degree of engagement with the RSD process.

The assessment should be carried out by the Eligibility Officer to whom the case has been assigned in consultation with the Mental Health Focal Point, where available, the RSD Supervisor and other relevant Protection staff. The assessment must be recorded on the Applicant's file.

In addition to forming the basis of a decision regarding the appropriateness of conducting a RSD Interview with the Applicant, the **assessment should inform what accommodation and support measures** can and should be taken to facilitate his/her effective participation in the RSD Interview. These may include adapting the interviewing techniques or questions, additional counselling, adjusting the time and length of the interview, facilitating the identification of a support person and his/her attendance at the interview (for more guidance on accommodation and support measures, please see § 2.9.2(c)-(i) below).

If the conclusion of the assessment is that the Applicant fully lacks the capacity to meaningfully participate in the RSD process (and thus is not able to provide any reliable information relevant to the claim), the assessment should be endorsed in writing by the RSD Supervisor. **Participation in the RSD process, in particular the RSD Interview, must always be encouraged; therefore it should only be in the clearest of cases that an individual is found to fully lack capacity to participate.** Thus, all efforts should be made to enable the Applicant to participate to the extent that he/she is able to do so without experiencing undue stress or other harm. Where a lack of capacity to meaningfully participate in the RSD process may be the result of a **temporary condition, all efforts should be made to provide the Applicant with the necessary assistance and support**, including referral to specialized medical/mental health and psychosocial services services, **to enable his/her future participation.**

The information provided by the Applicant should be given appropriate weight in light of the conclusions of the assessment conducted, with any limitations on the Applicant's ability or willingness to provide reliable information taken into account in the credibility determination (see also § 2.9.2(g) – *RSD Interview and Adjudication*).

(g) RSD Interview and Adjudication

Applicants with mental health conditions or intellectual disabilities may be unable or unwilling to provide the information that is necessary to determine their claim. This may be due to a variety of reasons, including but not limited to a lack of understanding of the RSD process and ensuing obligations, fear or distrust of authorities, impaired memory, the traumatic nature of the events underlying his/her claim, reduced attention and concentration, mood disturbances, diminished cognitive functions, etc.

At the earliest opportunity in the RSD process, Eligibility Officers responsible for determining the refugee status of Applicants with mental health conditions or intellectual disabilities **should coordinate with other Protection staff and when required, liaise with partners for Mental Health and Psychosocial Support (MHPSS), to inform the RSD procedures and accommodate any specific protection needs and vulnerabilities of such Applicants during the RSD process.** Any protection concerns that arise during the RSD procedures and that require a protection response should be brought to the attention of the relevant Protection staff without delay. It is recommended that UNHCR Offices establish procedures to facilitate the coordination of protection interventions and sharing of relevant information pertaining to Applicants with mental health conditions and/or intellectual disabilities between Protection staff conducting registration, RSD and other protection activities.

Insofar as possible, the Eligibility Officer should discuss, prior to the interview, with the Applicant and his/her support person and legal representative, where available, what, if any, specific measures or accommodations could reasonably be implemented to maximize effective participation of the Applicant at interview. These may include the identification of a support person and their attendance at the interview, re-scheduling of the interview in order to allow for access to including services for mental health and psychosocial support or other specialized services, scheduling of multiple shorter interviews, tailoring the interviewing techniques and integration of other forms of expression, such as drawing or writing. The Eligibility Officer should also consult with relevant Protection staff and, where applicable, implementing partners or medical or MHPSS professionals who have been in contact with the Applicant regarding any specific needs he/she may have and means to accommodate them to the extent possible. Consideration should also be given to the interviewing environment, in particular the set-up of and materials in the room, the seating arrangements, as well as any necessary security measures that may need to be put in place in order to ensure the safety of the Applicant and UNHCR staff participating in the interview (See *Unit 2.4- Office Security*).

The Applicant's capacity to understand the RSD process and procedures should inform the way that the RSD Interview is to be conducted, in particular the interviewing techniques and communication methods. **Regular breaks or multiple and/or shorter RSD interviews,** as well as the **presence of a support person** may be useful to facilitate the Applicant's meaningful participation in the RSD interview and encourage full and truthful disclosure. At the beginning of the RSD Interview, the Eligibility Officer should take particular care to explain, in a manner that the Applicant would understand, the procedures and objective of the interview, including the fact that the interview may need to cover issues that may be difficult for the Applicant to talk about (for further guidance on the opening of the RSD Interview see § 4.3.6 – *Opening the RSD Interview*).

In cases where **the Applicant is reluctant to discuss particular facts or events** relevant to the determination of his/her claim, it may be appropriate to provide additional counselling or to postpone or cease questioning on the particular aspect of the account, including in order to avoid re-traumatization. Where the Applicant becomes distressed, manifests aggression or other behaviour impeding the interview, including refusal to cooperate with the Eligibility Officer or interpreter, the Eligibility Officer may call for a break or stop and reschedule the interview in order to de-escalate any mounting tension or fear in the Applicant, to minimize the risk of self-harm, and to ensure the safety of UNHCR staff. The case may also be reassigned to a different/more experienced Eligibility Officer and/or Interpreter if this might encourage the Applicant to be more forthcoming regarding information relevant to his/her claim; however, due care should be taken not to unnecessarily re-interview the Applicant and risk re-traumatization.

In assessing the information gathered through the RSD process that is relevant to the determination of the claim, the Eligibility Officer should be mindful of whether and, if so, how the mental health condition or intellectual disability may have affected the Applicant's ability or willingness to recall and recount the events leading to his/her departure from the country of origin. Inconsistencies or a lack of specificity of detail in the Applicant's account may, for instance, be due to an impaired ability to recall or unwillingness to recount past traumatic events. Similarly, fear, shame or distrust associated with stigma against persons with mental health condition or intellectual disability may be the cause of an apparent refusal to cooperate. Where there are indications that the mental health condition or intellectual disabilities may have affected the Applicant's ability or willingness to provide an account or his/her participation in the RSD interview more generally, it may be appropriate to conduct a complementary interview taking all steps necessary (e.g. additional counseling, presence of support person, adapted interview techniques, etc.) to encourage the fullest disclosure possible.

Where the Applicant faces significant obstacles to his/her participation in the RSD process as a result of his/her mental health condition or intellectual disability, and where conducting a RSD/complementary Interview is not appropriate in a particular case, it will be necessary to **use other reliable sources** (such as accompanying family members, caregivers, friends, witnesses or other persons acquainted with them) **to obtain relevant information about the Applicant's eligibility for refugee status**. The Applicant's consent or, if the Applicant is not capable of providing **consent**, his/her views should be obtained prior to contacting family members, caregivers or other witnesses for information regarding the Applicant's claim (for further guidance regarding consent, see § 2.9.2(i) – *Confidentiality of UNHCR RSD Procedures and Data Protection*).

In some cases, it may be possible to **reach a decision regarding the Applicant's refugee status claim on the basis of already available information from other reliable sources**, including objective information relating to risks upon return for persons with similar profile as the Applicant, **without conducting a RSD Interview**. This includes information provided by the Applicant himself/herself, and any supporting information provided by family members or other persons with first-hand knowledge of the Applicant's situation in the country of origin, and up-to-date COI.

Where the Applicant fully and permanently lacks the capacity to meaningfully participate in the RSD Interview and a determination of the Applicant's claim is not possible due to insufficiency of information relating to the material elements of the Applicant's claim, UNHCR Offices should advocate for and pursue other protection avenues (e.g. granting of humanitarian protection, regularisation of status through national immigration channels, etc.) with the authorities of the host country/country of asylum.

Notification of RSD decisions to Applicants with mental health conditions or intellectual disabilities should be done in accordance with the guidance in § 6 – *Notification of RSD Decisions*. Offices should make every effort to ensure that Applicants with mental health conditions or intellectual disabilities have the possibility of meeting with a UNHCR staff member to receive counselling on the reasons for the negative RSD decision and on appeal procedures. Applicants may be accompanied by their legal representatives and, where appropriate, support persons for the purposes of in-person notification and counselling.

(h) Priority and Accelerated RSD Processing

Applications for refugee status by Applicants with mental health conditions or intellectual disabilities may be processed on a priority basis and/or referred to accelerated RSD processing where there is a clear protection benefit to do so, such as access to a durable solution or to rights or assistance in the host country/country of asylum (see also § 4.9 – *Accelerated RSD Processing*). A decision to prioritize

or accelerate the refugee status claim of an Applicant with mental health conditions or intellectual disabilities should be based on a holistic assessment of that individual's specific needs and personal and contextual circumstances. This may include, for example, considerations as to whether more extensive counselling, shorter and/or multiple RSD Interviews, or a longer time to understand the RSD procedures, achieve a level of trust and prepare for the interview, is necessary in order to facilitate a meaningful participation of the Applicant in the RSD process and a correct determination of his/her claim.

Where appropriate, priority and/or accelerated processing must allow sufficient time for the Applicant to receive any necessary protection interventions, such as medical or psycho-social support, as well as to understand the relevant procedures and to adequately prepare for their RSD Interview.

As a general rule, where the claim of an Applicant with a mental health condition or intellectual disability is related to the claims of accompanying family members, including where he/she is applying for derivative refugee status, it will not be necessary to process the refugee status application on a priority and/or accelerated basis, unless the family members' applications are also processed on a priority/accelerated basis, or unless there are compelling reasons to do so (for instance in order to access durable solutions or medical care/services). Referral of such cases for priority and/or accelerated processing should be made on a case-by-case basis, considering the individual vulnerability or special needs of the Applicant in question.

(i) Confidentiality of UNHCR RSD Procedures and Data Protection

Applicants with mental health conditions and/or intellectual disabilities have the same right to the protection of their personal data, including rights to make decisions in respect to the use of their personal data, as other asylum-seekers (for further guidance on data protection see § 2.1 – *Confidentiality and Data Protection in UNHCR RSD Procedures*). Depending on the specific needs and capacity to understand the RSD process and procedures of the Applicant, tailored communication methods and additional counselling regarding the confidentiality of UNHCR RSD procedures and data protection may be needed.

In the absence of indications to the contrary, Eligibility Officers should assume that Applicants with mental health conditions and/or intellectual disabilities have the capacity to provide **consent** to processing of personal data, including disclosure of such data and other information relating to or provided by them. In cases where the Applicant does not adequately understand the RSD process and procedures, and, as such, may not be able to consent, a decision to disclose or not the information should be informed by the Applicant's will and preferences. A support person may help facilitate understanding and communication of the Applicant's will and preferences. If it is determined that an individual is not able to adequately understand the process, and its ensuing rights and obligations, the Applicant's personal data may be processed on an alternative legitimate basis, such as vital and best interests, in accordance with UNHCR data protection policy and guidance (see § 2.1.2 – *General Criteria for Disclosure of Personal Data and Other Information on Individual RSD Files*).

Annex: List of Additional Resources

UN General Assembly, *Convention on the Rights of the Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I, [available at: http://www.refworld.org/docid/4680cd212.html](http://www.refworld.org/docid/4680cd212.html)

UN Committee on the Rights of Persons with Disabilities, *General comment No 1 (2014) – Article 12: Equal recognition before the law*, 19 May 2014, available at <https://bit.ly/2SgTXH4>

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

UNHCR, *Guidance on the Protection of Personal Data of Persons of Concern to UNHCR*, 23 August 2018, available at: <http://www.refworld.org/docid/5b360f4d4.html>



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