

Predisposed to cooperate

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Recent research in Toronto and Geneva indicates that asylum seekers and refugees are predisposed to be cooperative with the refugee status determination system and other immigration procedures, and that the design of alternatives to detention can create, foster and support this cooperative predisposition – or can undermine or even demolish it.

Alternatives to detention (ATDs) 'work' from the point of view of asylum seekers and refugees if they prevent unnecessary detention and other excessive restrictions, support individuals in seeking protection and achieving a swift resolution of their claims, and – if allowed to stay – accelerate their integration into the host society. And ATDs work from the state's perspective if they encourage asylum seekers to cooperate with RSD system and immigration law more generally, or if they facilitate the removal of those who have no protection needs.

The key factor motivating asylum seekers to cooperate with RSD and other legal processes is the perceived fairness of such processes. Our research into asylum seekers and refugees in Toronto and Geneva¹ supports the finding that detention impedes access to the sorts of advice and support that create trust in and understanding of the RSD process; accordingly, alternatives 'work' better in this sense both for individuals and the system as a whole. The asylum seekers and refugees we interviewed tended to acknowledge the need for countries to run an RSD process in order to discern who was in need of international protection and there seemed to be remarkable consistency in their conception of fairness. For them, fairness included (i) being afforded a proper hearing; (ii) consistency of decision-making; and (iii) taking decisions promptly; however, the single most important institutional factor that fostered trust was (iv) access to trusted legal advice and assistance at an early stage.

Interesting insights into the importance of legal and holistic advice may be gleaned from the refused asylum seekers in Toronto. We encountered some rejected asylum

seekers who felt that the RSD process had not reached a correct finding in their cases but yet did not deem the entire system to be unfair, and seemed to remain cooperative with the authorities. In contrast, in Geneva, the lack of information and advice seemed to contribute significantly to the interviewees' overwhelming perceptions of the RSD process as fundamentally unfair.

Legal assistance in Toronto

Asylum seekers resident in the Toronto Shelter System (which we considered as a form of ATD) reported receiving lists of experienced refugee lawyers from the outset. Although not all asylum seekers receive legal aid, most interviewees had. The shelters often provided legal orientations and general legal information on the process but left it to private lawyers to represent clients; this division of labour seemed beneficial, in that having various sources of information and advice seemed to reinforce trust in the system. Interviewees generally received advice early on, including on how to complete their 'personal information form' (PIF), either from their own lawyer or from caseworkers in the shelter. There appeared to be a good understanding of the importance of fully explaining the reasons for their flight in the PIF form, and that findings at their first hearing were crucial.

"It is crazy but, yeah, I do have trust in the system because I understand it."
(East African asylum seeker in Toronto)

Legal assistance in Geneva

We formed the impression that the interviewees who remained cooperative with the RSD process in Geneva did so out of a sense that they had no other option, and that

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they were simply at the mercy of the Swiss authorities. There is no formal legal aid for refugee claims in Switzerland, so asylum seekers who lack private financial resources have to rely on NGOs for legal representation – if they can find out about them and get access to them. With only one exception, the Geneva interviewees stated they had not received any legal advice or even legal information before either the registration interview or the main interview. In the absence of proper legal advice, asylum seekers had to rely on social workers, and each other, to navigate the asylum process. There was a widespread belief among them that lawyers should only be consulted for the appeal stage, if at all. Consequently, the interviewees frequently misunderstood the RSD process, and seemed ill-equipped to explain their claims.

The interviews revealed that at the outset of their asylum process asylum seekers generally seemed to have a disposition to cooperate with RSD and other procedures in light of four key subjective factors: firstly, the refugee predicament and fear of return; secondly, an existing inclination towards law-abidingness; thirdly, the desire to avoid the hardship and vulnerability of irregular residence; and lastly, trust and perceptions of fairness of the host state, in particular its RSD process.

“I heard about Switzerland, especially about Geneva. It is the country of human rights so I thought they would treat me as human.”
(Asian asylum seeker in Geneva)

However, whether they retain that cooperative predisposition depends on their treatment. There seems to be little justification for detention of asylum seekers, provided that reception conditions are suitable; that RSD is perceived to be fair; and that holistic support is provided to navigate legal processes and life in the host country.

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For more information see Costello C and Kaytaz E *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, UNHCR Legal and Protection Policy Research series, June 2013 www.refworld.org/docid/51a6fec84.html

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