

# Institutional adaptability in the time of COVID-19

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**The ability of an asylum system to adapt its processes is important and plays a key role in ensuring sustainability over time. Adaptation, however, must never come at the expense of other vital elements of a strong and just asylum system.**

The 2018 Global Compact on Refugees highlighted the identification of international protection needs as an “area in need of support” and subsequently established an Asylum Capacity Support Group.<sup>1</sup> The aim of this mechanism is to strengthen aspects of national asylum systems to ensure their fairness, efficiency, adaptability and integrity.<sup>2</sup> While the concepts of ‘fair’ and ‘efficient’ are often referred to in discussions regarding an optimal refugee status determination (RSD) procedure, ‘adaptability’ is less clearly and comprehensively defined.

In an adaptable institution, preparations are made to adapt to anticipated changes in external and internal environments rather than introducing ad hoc changes in reaction to external factors. To ensure that the adaptation is sustainable, an adaptable institution has systems in place to evaluate the positive and negative impacts of any change

while ensuring continuous improvements are made. Applying this approach to the RSD context, an adaptable RSD institution is one that values innovation (and therefore invests in innovation when planning for future scenarios) and seeks continuous improvements to existing processes by ensuring that any change enhances the fairness, efficiency or integrity of the system.

## **Pre-pandemic adaptations**

The measures that governments around the world have introduced to protect public health in response to the COVID-19 pandemic have forced the authorities charged with managing RSD systems to make a stark choice: change their way of doing business or stop doing business entirely.

Prior to recent challenges posed by COVID-19, a common scenario in which RSD systems have needed to adapt was in

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response to rising numbers of applications. A common resulting adaptation has been to introduce different ways of processing varying types of cases. For example, in the face of increasing or mass arrivals, several African countries – such as Kenya, Uganda and Ethiopia – have frequently applied group (*prima facie*) refugee recognition instead of conducting individualised RSD. The ability to do this at short notice is facilitated by existing legislation that specifically provides for this dual modality of recognising refugees.

In 2015–16, when Europe experienced a dramatic increase in the number of asylum seekers, many States began introducing or expanding their use of varied case-processing modalities. For example, Italy, Greece and Germany all introduced templates and other tools to process certain case profiles while many other countries triaged different types of claims into simplified or other types of processing modalities. Germany went one step further and, for a time, abolished individual face-to-face interviews for certain Syrian and Iraqi applicants. Such triaging of cases would not have been possible without pre-existing robust registration procedures and sophisticated case-management systems along with rapid training of staff who were recruited to assist with the surge in applications.<sup>3</sup> In parallel, to ensure that these adaptations did not have a detrimental impact on the fairness or integrity of the RSD process, many European States maintained or improved their quality control or assurance procedures.

A more recent example is the decision in 2019 by Brazil's National Committee for Refugees (CONARE) to recognise over 21,000 Venezuelans – who fulfilled certain conditions – based solely on the registration of their claims without requiring, as they normally would, an RSD interview. This decision was facilitated by the significant recent investments that Brazil has made

in its registration platform SISCONARE, which allows for self-registration of claims.

While many of these adaptations were 'forced' in response to a relatively abrupt external change, most were only possible because of existing adaptable institutional structures. Moreover, as differentiated procedures have developed, guidance and policy relating to these procedures have been issued with the objective of striking the appropriate balance between the efficiency gains of these adaptations and the other required characteristics of an optimal procedure. Indeed, there are now many good practice examples to guide authorities as to how to implement differentiated modalities while maintaining the fairness, efficiency and integrity of RSD case processing.<sup>4</sup>

For example, it is widely accepted that group (*prima facie*) recognition should only be used to **recognise** refugee status, whereas due



UNHCR staff explain the consent form for cash-based assistance for vulnerable asylum seekers during the COVID-19 crisis, San Jose, Costa Rica, March 2020.

process (fairness) requires that decisions to **reject** require an individual RSD assessment. Even where an individual assessment takes place, there is a growing acceptance that, where the intention is to recognise the claim, the written application can be considered as the applicant having been afforded the right to be heard as long as the applicant is informed of this intention and offered the opportunity for interview should s/he so

desire. Canada's Immigration and Refugee Board (IRB) has robust and detailed guidance on the different processing streams that it implements, including claims that can be positively decided without a hearing, claims that can be decided in a short hearing, and those that require a regular, longer hearing.<sup>5</sup>

### Essential factors enabling adaptation

Observing these and other adaptations brings an increasing appreciation of the common institutional factors in which authorities should invest so that they can adapt their RSD systems effectively and sustainably.

Almost all of the above examples highlight the importance of strong data collection at the registration stage of the RSD process and of a database that allows this information to be effectively managed and analysed in order to triage appropriate cases into relevant modalities. Involvement of legal aid professionals early and throughout the RSD process (as takes place in Switzerland) can lead to processes that are fairer and more efficient and have more integrity by ensuring that problems arising in a new or changed procedure can be quickly identified and remedied. The existence of dedicated capacity to conduct the necessary country of origin research, such as exists at the UK Home Office, helps identify which applicants may fall into particular risk profiles and for whom a particular case-processing modality may therefore be appropriate. Quality Assurance Initiatives, embarked on by several States (such as Ireland and Sweden) and in some instances by entire regions (such as in South and Central America), allow RSD systems to be continuously evaluated and enable adaptations to be made.

In contrast, countries that have RSD systems with weaker institutional adaptability (and therefore less investment in innovation, assessment and continuous improvement) are typically less able to react and are slower to change, even when change is necessary. For example, such systems might have an outdated, obsolete or inflexible electronic case-management system or their file management may be manual. Other countries have rigid laws and/or regulations governing

processing that require amendment through a parliamentary process. Some systems do not have dedicated country of origin research capacity or do not have expert RSD decision-makers, making it difficult to develop and fairly implement differentiated case processing. Such institutions are also less likely to be able to implement effective systems for quality assurance and evaluation.

### COVID-19: pressures and adaptations

The public health measures introduced as a result of the COVID-19 pandemic give rise to a new set of challenges which necessitate rapid adaptation, perhaps more rapid than ever before. Social distancing requirements and limitations on freedom of movement for all parts of society effectively appeared overnight and have made the processing of even one individual's claim more challenging.

Some RSD systems, at least for the initial period, have not been able to adapt and have temporarily ceased operations. Even in such situations, however, many governments (such as those of Argentina, Israel and South Africa) have extended the validity of asylum seekers' documentation/visas and/or have ceased to enforce penalties for expired documentation. Depending on their level of preparedness and institutional adaptability, other States and UNHCR have quickly implemented changes, primarily by moving in-person interactions and functions online. The Federal Office for Migration and Refugees in Germany, for example, is now accepting asylum applications in writing, while Ecuador has used remote systems to – among other things – allow for registration of asylum applications.

States are also finding ways to ensure that the staff who work for their asylum authorities can continue to carry out their duties. For instance, Kenya's Technical Affairs Committee, the body that vets decisions on asylum recommendations, moved a deliberation session online. Meanwhile, Canada's IRB issued a new Practice Note on the use of electronic signatures by its Members, noting that the change will not just increase efficiency during the pandemic but also contribute to longer-term modernisation efforts.

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For its part, UNHCR has been focusing on the relevant procedural considerations applicable in the context of the pandemic, such as those relating to the remote participation of applicants and interpreters in RSD interviews.<sup>6</sup> Where technological infrastructure allows, UNHCR is also piloting remote RSD processing for asylum seekers with appropriate profiles, and has updated its guidance on remote communication with persons of concern, which now includes thorough assessments of whether mobile messaging applications and software meet appropriate data protection standards.

While changes induced by COVID-19 may be necessary to allow RSD to continue in the context of a pandemic, and while they could lead to gains in efficiency over the longer term, it is important to ensure they do not come at the expense of fairness. This is where the two elements of institutional adaptability must be kept in mind: both preparing for change and continuous improvement, and monitoring of change against other indicators.

For example, it is useful to consider that, prior to the pandemic, moves towards conducting remote processing did not always meet with desirable outcomes, and concerns were raised about the impact of remote processing on applicants. Some years ago, for example, Canada implemented videoconferencing for asylum interviews. A few years after its introduction, an evaluation highlighted clear concerns with various aspects of the procedure, including the possible detrimental impact on refugee claimants' ability to communicate effectively, and the absence of support provision when applicants arrived at the teleconference facilities. The inadvisability of conducting remote interviews for claimants with PTSD and/or who had suffered sexual violence or torture was also stressed.<sup>7</sup> While the IRB has continued to use videoconferencing in certain cases, its guidance specifically explains that continuous monitoring and training are conducted to improve the procedure.<sup>8</sup> More recently, in 2019, attempts by the French National Asylum Court (the French RSD appeal body) to introduce videoconferencing for certain hearings

provoked protests from lawyers who felt that it would prejudice their clients' claims.

It is too soon to predict what impact the rapid period of adaptation brought on by the pandemic will have on RSD systems in the longer term. What is clear, however, is that it is vital that any adaptations be assessed to ascertain whether they enhance (or, at a minimum, do not have a negative impact on) the fairness, efficiency or integrity of the RSD system. It is also an opportune moment for authorities to take stock and recognise that institutional adaptability should be a key goal, allowing systems to respond quickly to change while ensuring continuous improvement of procedures.

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- [bit.ly/GCR-ACSG](https://bit.ly/GCR-ACSG)
- [www.unhcr.org/5c658aed4](https://www.unhcr.org/5c658aed4)
- Human Resource systems that can quickly upsize and downsize in response to changing flows are also a key element of an adaptable RSD institution.
- For example, UNHCR (2018) *Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union* [www.refworld.org/docid/5b589ee4.html](http://www.refworld.org/docid/5b589ee4.html); UNHCR (2020) *Aide-Memoire & Glossary of case processing modalities, terms and concepts applicable to RSD under UNHCR's Mandate* [www.refworld.org/docid/5a2657e44.html](http://www.refworld.org/docid/5a2657e44.html)
- Immigration and Refugee Board of Canada, Information Sheets, 'Less Complex Claims: The short-hearing and file-review processes' [bit.ly/IRB-less-complex-claims](https://bit.ly/IRB-less-complex-claims)
- For example, UNHCR (2020) 'Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview' [www.refworld.org/docid/5ebe73794.html](http://www.refworld.org/docid/5ebe73794.html)
- IRB 'The author's conclusion and recommendations', Videoconferencing in Refugee Hearings [bit.ly/IRB-video-conferencing](https://bit.ly/IRB-video-conferencing)
- Immigration and Refugee Board of Canada, Procedures and practice notes, 'Use of Videoconferencing in Proceedings before the Immigration and Refugee Board of Canada' [bit.ly/IRB-videoconf-2010](https://bit.ly/IRB-videoconf-2010)