

Exploring RSD handover from UNHCR to States

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Handing over responsibility for refugee status determination from UNHCR to States is a complicated process that is rarely speedy or smooth. A successful handover – and the ability to meet the overarching goal of providing adequate protection for refugees – depends on many factors.

The primary responsibility for refugees – and therefore for refugee status determination (RSD) – lies with States but UNHCR conducts RSD where States are unwilling or less able to do so. Over a 20-year period (1998–2018), there has been some form of handover of RSD from UNHCR in at least 30 countries.¹ Furthermore, under the framework of the Global Compact on Refugees, UNHCR has established an Asylum Capacity Support Group to help more States create or develop their national RSD systems in the coming years.

Despite this significant trend, there has been no systematic examination of handovers in order to assess and compare the quality of decision-making and the quality of protection before and after. Most of the available literature on the subject is UNHCR's own evaluation reports,² which tend not to assess the implications for decision-making and refugee protection more generally, nor do they take into account the views of all relevant actors including governments, NGOs and civil society organisations (CSOs), and – most importantly – asylum seekers and refugees. There is very little independent scholarship on the subject.

Our 'Recognising Refugees' research project³ has examined practices in Kenya and Turkey, two States where UNHCR has recently 'handed over' RSD. While this brief article cannot provide a comprehensive overview and the distinct elements involved in different handovers may vary, it discusses some of the questions about handovers, considering these in light of the unfolding transitional processes in both countries.

Question 1: Will handover of RSD reduce the financial burden on UNHCR?

Even though governments may be willing to take over RSD, they may not be quite as

ready to take on all the associated costs. For example, since 2014 when the transition in Kenya began in earnest, UNHCR has been funding most of the operations of the Refugee Affairs Secretariat (RAS), including paying and training staff, installing necessary infrastructure, and transferring the RSD database. To date, the government has not incorporated the majority of the RAS operational staff into its payroll; they are categorised as project staff whose salaries are paid by UNHCR. Some staff said that this uncertainty and job insecurity affected their commitment to the job and that they were always looking for better opportunities elsewhere. The knock-on effect of this is that the government may fail to retain well-trained staff, which creates a continuing need for staff training.

In Turkey, despite an official handover of RSD in September 2018, UNHCR's budget for status determination has kept increasing. According to UNHCR statistics, in 2018 its status determination-related expenditure was US\$341,808; after the official declaration of the handover of RSD, this figure exceeded \$1 million in 2019, and in 2020 its budget for RSD was over \$5 million. This is because in 2018 UNHCR still needed to work on reviewing 3,470 case files already under assessment, and took on 2,640 additional applicants to be processed under merged RSD and resettlement procedures.⁴

Question 2: How quickly and completely can RSD be handed over?

Despite the fact that 'handover' suggests a specific instance of assuming full responsibility for RSD, in practice it is often a gradual process and rarely has defined start and finish dates. Even in Kenya and Turkey, where State authorities

have taken over RSD, the handover is still a work in progress, often with blurred lines in the division of labour.

By July 2019 UNHCR was no longer conducting RSD in Kenya's Kakuma camp, save to provide technical assistance to RAS staff. In Nairobi, however, both institutions were handling pending and new applications. While this may have been a practical administrative strategy aimed at sharing responsibility equally, it created confusion for asylum seekers and refugees regarding who was processing their cases. A division based on designated cut-off dates would have enabled UNHCR to focus on clearing its backlog, and the government to handle newer cases, creating certainty for asylum seekers as to which institution was handling their application.

In Turkey, the handover has been planned since the adoption of Turkey's new asylum law, Law no. 6458 on Foreigners and International Protection, in 2013. UNHCR started "a phased handover of registration and refugee status determination" for non-Syrian refugees in 2015,⁵ and a government directive of 23 June 2018 established the working procedures for its international protection bureaux, called Decision Centres. However, after the official handover in September 2018, it appeared that the required infrastructure was not ready; for example, there were not enough adequately trained RSD caseworkers.

UNHCR has continued to work with the Directorate General of Migration Management (DGMM) to establish and strengthen the Decision Centres in Ankara and Istanbul and mobile teams and is working to open a new Regional Decision Centre in Van. UNHCR has also continued to provide training on RSD procedures, assessment of evidence, the use of country of origin information, and interviewing techniques. One major obstacle is that staff at Decision Centres change frequently and, consequently, there is a continuous need for training of new staff. The handover process is likely to continue over the next few years unless the government decides it no longer requires UNHCR's training assistance.

Question 3: Will handover of RSD to State authorities enable better access to rights and protection?

UNHCR argues that "as only States are able to ensure comprehensive refugee protection and durable solutions, the assumption of State responsibility for RSD in a sustainable manner is essential".⁶ It could be argued that governments are more likely to respect decisions made by their own agencies, and thus may be more likely to extend rights and benefits to refugees recognised in a government RSD system. This, however, will of course largely depend on how seriously the State department in charge of refugee matters takes its refugee protection mandate. Furthermore, government-conducted RSD usually builds in independent appeal or review mechanisms; UNHCR's RSD appeal process, on the other hand, lacks independent oversight and cannot be challenged before courts of law. A handover could therefore enhance refugee protection – but only in States where there is a relatively high degree of judicial independence and rule of law.

Handovers usually occur when the host State has its own political reasons to want to be seen to be in charge of RSD, including being seen to assert greater authority or control over a security agenda. Once the Kenyan government assumed RSD, for instance, it put a halt to the formal recognition of new Somali asylum seekers in Dadaab and instead started 'profiling' them – that is, manually recording them. As such, rarely is refugee protection alone the motive to take over RSD. UNHCR has little leverage in the face of a State's demand to take over RSD, even if it has protection-related reservations as to the State's intentions.

In some cases, NGOs and CSOs may step in to lobby and advocate for refugee rights. In Kenya they have, for example, lobbied for recognition of refugees' documents to allow access to finance and the national health insurance scheme. Yet some rights, such as the freedom of movement and right to work, continue to be restricted. Nonetheless, NGOs and CSOs are at the forefront of advocating for a new refugee law that would expand upon the substantive protection accorded to

November 2020

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refugees in Kenya. Similarly, in Turkey, NGOs have actively lobbied for refugees' rights, but restrictions continue, most notably in terms of access to the right to work. In addition, international NGOs are reported to face pressure and surveillance by State authorities. The handover negotiations in both countries largely excluded local NGOs and CSOs, although in Kenya some were later consulted by UNHCR in its evaluation of the transition.⁷

As the cases of Kenya and Turkey show, handing over RSD to States does not necessarily or immediately reduce the financial burden on UNHCR, nor is it necessarily a speedy process nor one that automatically ensures adequate protection of refugees. In both Kenya and Turkey, handover is still very much a work in progress and a process that warrants close monitoring.

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1. Based on UNHCR's annual statistics, there has been a transfer of RSD from UNHCR to governments in Angola, Bosnia and Herzegovina, Burundi, Cambodia, Colombia, Cyprus, Democratic Republic of Congo, East Timor (Timor-Leste), Ecuador, El Salvador, Gabon, Guatemala, Guinea, Guinea-Bissau, Kenya, Malta, Mexico, Nicaragua, Niger, Peru, Republic of Korea, Republic of Moldova, Rwanda, Serbia and Montenegro/Kosovo, Sierra Leone, South Sudan, Togo, Uruguay, Vanuatu and Venezuela. Although not yet reflected in the existing statistics, a handover has also officially taken place in Turkey.
2. For instance, UNHCR (2015) *Building on the foundation: Formative Evaluation of the Refugee Status Determination (RSD) Transition Process in Kenya* bit.ly/UNHCR-Building-on-foundation
3. This project is part of the Refugees are Migrants: Refugee Mobility, Recognition and Rights (RefMig) Project, a Horizon 2020 award funded by the European Research Council (grant number 716968).
4. <https://reporting.unhcr.org/turkey>
5. UNHCR (2015) *Global Appeal 2015 Update: Turkey* www.unhcr.org/5461e60c52.pdf
6. UNHCR, Executive Committee of the High Commissioner's Programme, Standing Committee 66th Meeting, 'Refugee Status Determination', 31 May 2016, EC/67/SC/CRP.12. www.refworld.org/pdfid/57c83a724.pdf
7. UNHCR (2015) *Building on the foundation*, supra note 2, paras 183–187.