

## LEGAL ANALYSIS TEMPLATE

### Purpose of the Legal Analysis Template

The purpose of this document is to provide guidance in undertaking a legal analysis. A legal analysis provides the foundational evidence that will guide DRC's legal aid intervention and is a process undertaken to understand the legal and situational environment within the country operation – providing a holistic view of the legal environment. A legal analysis will be country and context specific.

A legal analysis can be undertaken via a secondary data review, where existing resources related to the context and legal environment are examined. A legal aid needs assessments or other primary data collection efforts can be undertaken to complement secondary sources and / or if there are information gaps in the legal analysis. The legal analysis should be a living document and be regularly updated so that it can also be used for other purposes such as advocacy and strategic planning.

A legal analysis will feed into and complement [DRC's Protection Analysis](#) and feed into the country [Strategic Programme Document](#) (SPD). Complementary sections of a legal analysis and protection analysis include context and conflict analysis, key stakeholders, overview of protection risks or rights violations, and legal frameworks. A legal analysis should be undertaken with the relevant legal and protection competencies to ensure the analysis vigour and depth.

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### 1. Situation Analysis

Section 1 and 2 should be concise and contain only factual information and providing a descriptive narrative of the situation and include the numbers and status of the affected population groups and main humanitarian, protection and legal implications. Avoid legal discussion here. Section 1.1 and 1.2 should be approximately a page

#### 1.1 Country situation

- Chronological account of major relevant events
- Security situation in country, and specific regions if relevant
- Profile and status of largest groups of people of concern
- Obstacles related for people of concern accessing rights accessing human rights

#### 1.2 General conditions for people of concern

- General protection concerns / human rights violations
- Particularly vulnerable groups amongst people of concern
- Treatment of people of concern in general (e.g. discrimination, harassment or other concerns) and in terms of legal protection
- General picture of living conditions including access to basic services or needs including access to food and water, health, housing, labour market and employment

## 2. Legal issues and implications in relation to Housing, Land and Property (HLP), Asylum Procedures, Civil Documentation and access to legal remedies and services.

*As mentioned above, section 2 should be concise and contain only factual information. For a better and easier overview and if it makes sense in the country context, this section can be divided into subsections according to each legal theme.*

- Humanitarian conditions in which this theme is present
- Detail legal theme or issue, implications and impact on people of concern. A legal theme could be HLP, asylum, access to civil documentation, etc.

### A. HLP: Detail physical, material, and legal safety issues, including for example:

- Material: access to adequate standard of living, access to livelihoods and employment, access to justice, access to seek asylum/access to protection
- Legal: damage, destruction to property, secondary occupation, eviction trends, informal sales and transfer, inheritance dispute, and property documentation issues, civil documentation issues, participation in public affairs
- Physical safety: Freedom of movement, social cohesion, safety and security

### B. Asylum: issues in relation to asylum could include:

- Access to seek asylum
- Access to appeal a negative decision in asylum matters
- Risk of refoulement/push-backs
- Use of immigration detention
- Access to family reunification, health care, education etc for refugees.
- Discrimination against refugees and asylum seekers

### C. Other legal themes or issues: could include the following element:

- Access to legal protection within the legal theme
- Obstacles to legal protection within the legal theme
- Formal or informal systems / institutions responsible for determining legal theme
- Access to legal representation, counselling, information related to legal theme
- Community capacities or coping strategies used in relation to legal theme

## 3. National Policy Framework on legal theme

- National policy on legal theme (brief outline – bigger picture only)
- National Framework and procedures for management of legal theme claims: (brief outline – bigger picture only)
- Any other

## 4. Legal Framework (National)

### 4.1 Constitution

- List areas where the constitution derogates from international human rights law
- List any major deviation from ICCPR
- List any specific strength of the constitution – e.g. grants more rights than ICESCR

## 4.2 Laws

List laws that are relevant to processing claims or to access remedial services for the legal theme – provide short description of scope and purpose of each law in separate sub-heading. Example below

- Ratification of international/regional conventions such as the Refugee Convention
- Law on Immigration: A brief description of scope and nature of the law with a focus on the asylum procedure
- Special rights for unaccompanied minors
- Procedural guaranties or residence permits for other vulnerable groups?
- Possibilities for family reunification for refugees

## 4.3 Case Law (Any international/regional or national relevant judgements concerning the legal theme)

## 4.4 Legal Pluralism

- Constitutional mandate, if any
- Areas covered by legal pluralism
- Territories where legal pluralism is prominent
- Hierarchy of law, in case of conflict
- Mechanism for resolving conflicting laws

## 4.5 Other Legal frameworks

- List other legal frameworks other than formal legal frameworks that are applied, including for example:
  1. *Customary/religious courts, e.g. Sharia, tribe/community structures* What is it, what is its legality, how is it enforced
  2. *Alternative dispute resolution*: What is it, what is its legality, how is it enforced
  3. *Other*

# 5. Stakeholders

List all government ministries, departments and specialised institutions that have major role to play in relation to DRC legal aid intervention. Use subtitles and describe mandate and authorities of each entity briefly.

- Administrative bodies (*For example: ministries, departments, directorates etc. Briefly discuss mandate and authority*)
- Judiciary:
  1. Outline of judicial structure/hierarchy
  2. Is judicial precedent binding on subordinate courts
  3. Any issue on independence on judiciary
- Ombudsperson or Human Rights Commission or Parliamentary Commission on HR:
  1. Mandate
  2. Is it administrative or quasi-judicial in nature? Power to issue summon? Non-compliance of summon/inquiry is considered as contempt of court?
  3. How decisions/observations of such entity are implemented
  4. Accessibility and mandate to make decisions in the thematic area
- Customary justice

- 1. Legal authority
- 2. Areas of law covered
- 3. Enforcement mechanism
- Extra-judicial practices
  - 1. Any extra-judicial practices, like honour killing?

## 6. Legal Aid Actors

- International actors
  - 1. Geography covered
  - 2. Activities covered
  - 3. Size of operation
- National actors (same as above)
- Any restrictions/demands for organisations to be registered in order to provide Legal Aid.  
Description of DRC's status in country.

## 7. Legal Aid Issues and Challenges

Section seven will require thorough elaboration and will be the lengthiest section in the legal analysis. There is overlap with section two above, however, while section two is a brief overview of issues, section seven is a detailed analysis of the legal aid issues and challenges and the legal aid needs of the target group that DRC would like to address.. In this section please define each issue/challenge in clear terms. Wherever relevant, describe the process flow.

For inspiration, examples of legal issues or challenges are provided below. These have been sorted according to legal themes. Your country and context will define what legal issues and challenges that exist.

### Inspirational catalogue of legal aid issues and challenges

#### Asylum Procedures

- Legal status of refugees
- Rights for asylum seekers and access to residence permits, e.g. representation, access to justice, access to information on procedures etc.
- Access to alternative legal pathways. E.g. work permits, education, family reunification, etc.
- Return procedures for rejected asylum seekers
- Access to information on procedures and independent counselling
- Access to voluntary return/repatriation of refugees with residence permits
- Detention of asylum seekers

#### Civil Documentation

- Birth Certificate – how it is registered and issued, conversion of birth certificate, etc.
- National ID – age, documentation requirements
- Marriage Certificate – documentation and other requirements
- Death Certificate – documentation and other requirements

## Other Documentation

- Proof of residency – who and how issued, required for what purposes
- Migration Card (MDMC) – who and how issued, required for what purposes
- Nationality certificate - who and how issued, required for what purposes
- Public Distribution System Card - who and how issued, required for what purposes
- School Certificate – mandatory for new admission, what other purposes does it serve?
- Missing Person Certificate - who and how its issued, required for what purposes?

## Housing, Land and Property

- Property title – outline the record/cadastre system; digital or manual? Centralised or local? Any IDP specific issue? National statistics, if available, of property titles being in the name of women.
- Housing Card - who and how issued? Required for what purposes?
- Migration Card (MDMC) – who and how issued, required for what purposes?
- Nationality certificate - who and how issued, required for what purposes?
- Issues with rental – formal agreement practiced? Tax consequences?
- National standards for eviction – period of notice; administrative or judicial process? Eviction trends
- Secondary occupation – Rights of secondary occupants under national law.
- Pension – what was the system before conflict; challenges now?
- Inheritance issues – is legal process customary or formal? Challenges?

## Livelihoods and Employment

- Any issue on labour relation? e.g. unpaid wage, unlawful termination, maternity benefit, pension entitlement, severance payment, etc.
- Employment documentation.
- Any issue on IDP's equal opportunity for starting business at place of displacement?
- Hurdles on IDP business registration, tax registration and payment.
- Discrimination in public and private employment – on ground of displacement, gender, religion, sect. Remedy available in national law.

## Social Welfare

- List social welfare benefits available in general for vulnerable people, e.g. old age benefit, disability benefit, stipends for students, etc. and challenges
- List IDP related social benefits and challenges.

## Family Law Issues

- Challenges relating to divorce proceedings and maintenance payments.
- Challenges relating to child custody and child support.
- Inheritance challenges and women's property right issues?

#### Access to Justice (both judicial and administrative justice)

- Any fees issue? Civil documentation or court fees
- Any issue relating to distance to court and administrative services
- Women's access to judicial and administrative justice
- Availability of government legal aid
- Availability of non-government legal aid
- Any negative impact of legal pluralism