

DRC Legal Aid Resource Pack

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1. Introduction

Whether in situations of acute crisis or protracted displacement, the ability to move freely, seek asylum, be reunited with family members, obtain civil documentation and legal status is inherently linked to people's ability to claim their rights. The lack of capacity and/or willingness of authorities to ensure conflict- and displacement affected people's access to fundamental rights and services often result in legislative and administrative obstacles. Thus, access to legal aid services becomes instrumental in achieving these rights.

DRC has a longstanding experience and expertise with legal aid programming in many of the 40 countries of operational presence in Africa, the Americas, Asia, Europe and the Middle East. DRC provides legal aid in contexts where the rule of law is under pressure, and the legal context for the people we support is often complex.

The DRC Legal Aid Resource Pack defines DRC's global approach to legal aid, including principles and minimum standards for DRC's legal aid programming. The Resource Pack has been developed in cooperation between DRC Asylum and the Global Protection Unit, with valuable input from DRC's Legal Aid Reference Group and Legal Aid Network. As such, it builds on existing guidance, tools, and practices on legal aid across DRC and include global guidance on key components and methodologies in legal aid provision. The purpose of the Legal Aid Resource Pack is to support consistency and quality in legal aid interventions aimed at supporting conflict- and displacement-affected people in leveraging rights and services.

DRC's legal aid programming is a key component of DRC's protection work, either as a stand-alone component or integral part of a holistic protection response. Furthermore, legal aid is part of an integrated response with other sectors, e.g., the shelter sector, when it comes to rights around housing.

DRC's approach to legal aid is two-pronged; legal aid services directly targeting conflict- and displacement affected people are supplemented with activities aimed at addressing gaps and obstacles in the legal environment. DRC's global approach further includes the principles and modalities for legal aid provision (see Chapter 2).

The foundation and starting point for a successful legal aid intervention is a thorough and context specific legal analysis (see Chapter 3 and Annex I).

The Resource Pack includes guidance on the various legal aid services and environment building activities (see Chapter 4), as well as procedural guidance, e.g. on information and knowledge management, case management and monitoring and evaluation of legal aid programming (See Chapter 5).

DRC carries out legal aid activities in a wide range of legal areas, with three core competency areas: civil documentation; refugee law/asylum procedures; and housing, land, and property (HLP) (see chapter 6 & 7).

2. DRC Global Approach to Legal Aid Programming

DRC provides legal aid in many different contexts, with diverse legal frameworks and legal aid needs of our target group, to which the specific legal aid intervention must be tailored. DRC has a global approach to legal aid, which includes a definition, principles, minimum standards and modalities.

DRC's approach to legal aid is two-pronged and consists of *legal aid services* directly targeting conflict- and displacement affected people - with the purpose of assisting people in claiming and obtaining their rights and accessing services, while the other component is *legal aid environment building activities*, which aim at creating awareness and addressing gaps and obstacles for the enjoyment of rights. These activities include law and policy engagement, advocacy, strategic litigation, capacity building of authorities and other stakeholders, and monitoring and reporting.

2.1. DRC Definition of Legal Aid

DRC Definition of Legal Aid

Legal information dissemination, legal counselling, legal assistance, legal representation and legal aid environment building activities with the *purpose of supporting and empowering conflict- and displacement-affected people in accessing and claiming their rights*

DRC's approach to legal aid is two-pronged and thus DRC Legal Aid programming consists of two components:

- 1. Legal aid services** for and directly targeting conflict- and displacement-affected people. Legal aid services include:
 - Legal information dissemination and awareness raising;
 - Legal counselling;
 - Legal assistance; and
 - Legal representation
- 2. Legal aid environment building activities** carried out with the aim of raising awareness, strengthening capacities or addressing barriers to legal aid that affect the enjoyment of fundamental rights by conflict- and displacement-affected people. Legal aid environment building activities include:
 - Strategic litigation
 - Training and capacity building of authorities, civil society actors, partners; and
 - Advocacy
 - Law and policy engagement
 - Monitoring & reporting

2.2.DRC Legal Aid Target Groups

The target group for DRC legal aid services is: Asylum-seekers (incl. rejected asylum-seekers), refugees, IDPs, and other conflict- and displacement-affected people, including host communities.

The target group for DRC legal aid environment building activities is: Authorities (e.g. ministries, administrative bodies, police, border officials), the judiciary, sharia courts, non-state actors, national lawyers, informal justice system actors, civil society actors, national and international partners and the general public.

As a general principle, DRC will refer people to other legal aid providers, if DRC cannot offer the legal aid services needed or if they are not included in the target group of DRC's legal aid intervention(s). When people are referred to other national or international legal aid providers, the referral should follow the best practice described in Chapter 4 to ensure that people receive the relevant support in an effective and secure manner.

2.3. Modalities for Legal Aid Programming

In DRC's country operations, legal aid is a component of Protection programming. Thus, legal aid programming should be implemented in an integrated manner within Protection, including Child Protection and Gender Based Violence (GBV) programming as well as into other sectoral responses, including shelter and economic recovery.

DRC has three modalities for delivery of legal aid services:

- 1) DRC provides legal aid service through DRC staff;
- 2) DRC oversees and funds legal aid services implemented by a partner; and
- 3) DRC makes legal aid referrals to local, national, or international partner(s).

2.4. DRC Legal Aid Core Competency Areas

DRC has specialised legal expertise and competencies in many different legal areas, but DRC has three core competency areas in legal aid: Asylum, Civil Documentation and housing, land, and property (HLP).

DRC Asylum has decades of experience and expertise in relation to Asylum/Refugee Law and practice. DRC Asylum has developed guidance and tools on counselling methodologies, quality assurance, and various legal issues - all of which support a consistent approach and quality in the delivery of legal aid.

DRC country operations and Global Protection Unit / protection sector have legal aid experience in multiple contexts and a wide range of legal expertise and competencies related to civil documentation; HLP; and legal aid programming that responds to the child protection and Gender-Based Violence (GBV) issues. However, the level of legal specialisation and capacities to implement legal aid varies across countries and regions.

DRC does not litigate criminal law cases before the courts but can provide other legal aid services in criminal cases.

DRC Legal Aid Principles¹

- DRC legal aid interventions must align and uphold DRC's vision, mission, and values
- DRC provides legal aid services to affected people to ensure their access to and ability to enjoy their rights
- DRC legal aid services assist individuals, families, and communities to make informed decisions about his/her/their situation
- DRC provides legal aid services in a neutral manner
- DRC provides legal aid services with the relevant skills and capacities
- Data and information provided by affected people will be managed in a safe, responsible, and confidential manner. Affected people will be informed about data protection and data security procedures and measures to ensure confidentiality of the data.
- DRC's legal aid services must respect relevant legal aid standards and standard operating procedures (SOPs).
- DRC legal aid interventions must incorporate a quality assurance procedure, including a structure for regular monitoring of the quality of legal aid services provided by DRC legal staff.
- DRC legal aid interventions must incorporate a framework for monitoring and evaluation, in particular of outputs and outcomes of legal aid interventions for the affected people.

¹ DRC's legal aid interventions must align to DRC's values, including: respect for the equal rights of all people; independence and neutrality in regard to our surroundings; inclusion of the people we work to help; and honesty and transparency, for all people of concern, donors, partners and others.

DRC Minimum Standards for Implementation of Legal Aid

1. A context specific legal analysis must be in place prior to legal aid programming and implementation.
2. The legal analysis and legal aid intervention must feed into and complement DRC's broader protection analysis, strategy, and response.
3. A written Standard Operating Procedure (SOP) must be in place for provision of legal aid. The minimum content of the SOP includes: Reference to legal analysis and protection analysis, definition and guidance on legal aid services to be provided, stipulation of legal staff roles and responsibilities, procedure for quality assurance and M & E, and guidance on data protection.
4. DRC legal staff must receive an induction and training in the SOP and existing guidelines for the legal aid intervention prior to implementation.
5. The legal aid staff must comply with DRC Code of Conduct and must not have a conflict of interest in relation to a case or issue. This includes that the same legal officer cannot represent two parties to the case or issue.
6. There must be a Feedback and Complaint Reporting Mechanisms (FCRM) in place for the legal intervention, in line with DRC's commitment to accountability to affected people.

3. Determining the Scope of Legal Aid Interventions

The scope of DRC's legal aid programming depends on the legal aid needs, the presence and capacity of legal actors and the operational environment in the specific context. Each operation must therefore conduct a legal analysis prior to legal aid programming and implementation. The Legal Analysis Template, found in Annex I, is an inspirational tool that provides the structure and guidance for undertaking a legal analysis.

3.1. Legal Analysis

The legal analysis provides the foundational evidence that guides DRC's legal aid intervention, aimed at quality protection outcomes to meet the legal aid needs of the affected people. A legal analysis is a process undertaken to understand the legal and operational environment within the country operation. The legal analysis includes the following key components:

- Conflict and displacement situation and trends
- Key demographics and statistics on affected people
- Key legal and protection issues
- Applicable legal frameworks and policies
- Legal aid stakeholders, including available services and capacity
- Assessment of legal aid needs of the affected people, including the most vulnerable groups.

Based on the legal analysis, the added value of DRC's legal aid intervention can be assessed, including which of the three legal aid modalities is most appropriate (DRC provides legal aid services directly through DRC staff; DRC oversees and fund legal aid services implemented by partner(s); and / or DRC makes legal aid referrals to local, national or international partner(s).² The legal analysis also provides the basis for an assessment of whether certain groups or areas of expertise should be prioritised, and if specific training and guidance for legal staff is needed.

A legal analysis can be undertaken as a secondary data review, where existing resources related to the context and legal environment are analysed. However, primary data collection may also be needed to complement secondary sources and to ensure sufficient information about the legal aid needs of affected people. The legal analysis should be a living document and be regularly updated, and it can also be used for other purposes, such as advocacy and strategic planning. Please refer to the Legal Analysis template in Annex 1, which also includes an inspirational catalogue of legal aid issues and challenges to be analysed³.

The legal analysis is an important component in support of DRC's legal aid strategy setting and programming, and the legal analysis will help DRC answer the following topics:

- Demographic and geographic priorities
- Priority legal aid needs, gaps, challenges (including access to and availability of legal aid services)
- Capacities of stakeholders
- Coping mechanisms of affected people

² See chapter 2.3 of the DRC Legal Aid Resource Pack

3.2. Legal Aid Programming Considerations

Once the legal analysis has been completed, DRC should consider the following when designing the legal aid intervention.

- The level of access to people affected by conflict and displacement, and possible partnerships with national or other legal aid actors.
- DRC's relationship with authorities and other stakeholders. *Are there any concerns on neutrality, political sensitivity of legal aid work?*
- National frameworks for legal aid actors. *Is DRC a registered legal aid provider. Are there any restrictions, obstacles⁴ or demands in national law or procedures for providing legal aid services?*
- Conduct a risk assessment to determine if there are risks involved with engaging with a specific group or thematic area and plan for risk mitigation measures.

3.3. Linkages with DRC's Protection Analysis and Strategy

Each DRC operation planning to implement or implementing Protection programming should have an updated protection analysis and strategy in place. Although a protection analysis and legal analysis are different, there are commonalities and complementarity between the two and they should be developed at the same time and/or build upon each other. Both will be reflected in the country level protection strategy and feed into the development of the country level strategy / Strategic Plan.

⁴ This could for instance include very high costs of administrative or judicial proceedings, or the length hereof.

4. Legal Aid Components and Guidance

This chapter outlines the four legal aid services offered by DRC 1) legal information dissemination and awareness raising; 2) legal counselling; 3) legal assistance; 4) and legal representation.

4.1. Legal information dissemination and awareness raising

Definition:

Legal information dissemination and awareness raising are activities that disseminate information to an individual or group. The information provided aims to target the legal information needs of the target group.

Key elements of legal information dissemination and awareness raising activities

- The session informs people of their rights and obligations and of available the services to them.
- Relevant legal procedures and processes are explained
- Legal information dissemination and awareness raising should be based on experience and knowledge of the context and national legal systems, cultural and social norms as well as international standards
- Information should be attentive to vulnerable groups and have an Age, Gender, Diversity (AGD) sensitive focus

Purpose of Legal Information Dissemination & Awareness Raising

The purpose of legal information dissemination and awareness raising activities is to ensure that people have safe access to relevant, accurate, neutral and timely information on legal matters of importance to their situation. Provision of legal information supports people in claiming and exercising their rights and to make informed decisions.

Legal information dissemination and awareness raising activities do not involve individual/confidential issues and therefore not require a case management approach.

It is important to understand the difference between legal information dissemination and legal counselling. In the case of information dissemination, DRC selects the theme of the information provided. In legal counselling, it is the affected person who decides what to talk about. While information dissemination and awareness raising can be done in both individual and group settings, legal counselling should only be done on a one-on-one basis.

When deciding whether a session should be categorised as legal information dissemination or individualised legal counselling, it should be considered who is talking during the session. If the session only contains information provided by legal staff, it is to be categorised as legal information dissemination. While, on the other hand, if the client takes a more engaged role and legal staff is required to answer questions specific to the concrete case and thereby individualise the legal information provided, it is categorised as a legal counselling session (see next section).

In country operations where legal aid needs are larger than the available legal aid financial and human resources, the use of legal information sessions is a way to reach a large number of people and contribute to awareness of rights and addressing legal aid gaps related to accessing legal services and justice mechanisms.

Examples of legal aid information dissemination and awareness raising activities

- Community outreach sessions
- Telephone hotline services with general information
- Visits at community centres
- Legal aid mobile clinics
- Radio and community theatre / role plays
- Online apps and social media
- Banners and billboards
- Posters, leaflets, fact sheets, other written materials
- Workshops

Targeting Information Dissemination and Awareness Sessions

It is important to apply an Age, Gender, Diversity (AGD) perspective when developing DRC's approach to information dissemination and awareness raising activities to be attentive to different levels of education, socio-economic backgrounds, roles, experiences, and legal aid needs. In some situations, it might be beneficial to differentiate the sessions according to the specific target group. For example, in a context where different segments of the population have different legal status, where one group is entitled to legal rights or benefits that other groups are not entitled to, it can be beneficial to create two different sessions in order not to create confusion and to ensure a conflict sensitive and do no harm approach to DRC's legal aid intervention. The number of participants depends on the content of the session, the scope of the intervention and the practical facilities.

Methods

- Use simple language. Avoid using legal terminology, or at least explain the legal terms in an understandable and relatable manner.
- Use short sentences and repeat main points.
- Use examples that are relevant to the context.
- Sessions should be short and include many breaks for questions.
- Ensure inclusion and interaction with participants
- DRC staff should balance the content, focusing on the most relevant information on rights, obligations, and procedures.

Implementation of Legal Information Dissemination and Awareness Raising Activities

Before the session:

- Plan and research: ensure information is relevant, accurate, up-to-date and neutral. It is important to continually monitor the developments of the legal situation to ensure the information provided in sessions is updated and correct
- Plan and consider the appropriate venue or space for the information session to take place. If possible, ensure that a level of confidentiality can be obtained. It must be clear that DRC's role is neutral. Consequently, using a venue linked to authorities' facilities or similar should be avoided, if possible.

- Engage and inform the community in advance of the awareness sessions or information dissemination. Ensure you communicate this through visual material in areas where people will notice and through word of mouth at coordination meetings and with community stakeholders. It is best practice to have regular sessions, e.g., on a fixed day of the week and set time, so people know when to expect the information sessions.
- Inform interpreters about the task at hand and assess whether the interpreter can handle a larger group. Perform limited sessions per day and have breaks for the interpreters. For more information on the use of interpreters please refer to the “Best Practices” section below and resources related to the “Use of interpreters”.

During:

- Clearly state DRC’s role and mandate and wear visual DRC identification to distinguish from other actors.
- Plan for enough time during/after the session for individual questions. The sessions are an opportunity to identify individual cases and protection concerns that can be brought to the attention of legal and protection staff for further action (referral, case management or other protection interventions). It is also a good opportunity to use the information obtained during the session to inform the development of the programme and to be aware of development in the legal needs among the population.
- Inform participants if there will be time after the session to ask confidential individual questions. If the subject is too sensitive, it should not be addressed during the session but addressed in a private and confidential setting, for instance at a DRC office.

After the session:

- Allocate time for participants to provide feedback. This can be an important element to ensure programmatic learning and enable DRC to improve its methods for information dissemination and awareness activities. In addition to feedback from participants, staff leading the information sessions should debrief and informally evaluate the information session. If there were any challenges, or if there were any questions raised that for which there was not information, or if future information sessions need to be adapted. This information should be reported via regular activity monitoring mechanisms or directly to the supervisor. Please refer to the Best Practice section for examples of forms to record information for legal information dissemination and awareness sessions.
- Escort the interpreter from the venue. This ensures that they are not put in a position where they are asked a lot of questions by the people that they cannot and should not answer.

Non-exhaustive list of sources for legal dissemination and awareness sessions

- Legislation and jurisprudence
- Information from relevant government organs
- Information from law societies, bar associations or legal aid working groups
- Information from senior experienced legal staff
- Information from international organisations (e.g. UNHCR) and civil society organisations
- Official newspapers that publish legal updates

4.2. Legal Counselling

Definition:

Legal counselling is individualised verbal or written legal advice in compliance with general legal aid principles and consists of structured individual advice to the person, though not necessarily requiring further action or follow up sessions to be taken by DRC legal staff.

Purpose of Legal Counselling

The purpose of legal counselling is to provide neutral and accurate information that enables people to make informed decisions and access their rights and services. Legal counselling goes beyond information dissemination, because it entails a deeper degree of analysis of the problems faced by the person. Consequently, DRC legal staff will provide individualised advice on what is the best possible course of action to solve a particular individual problem. When selecting whether a session should be categorised as information dissemination or individualised legal counselling, it should be considered who is talking during the session. If the session contains only information provided by DRC legal staff, it is categorised as an information session. If the client takes the lead and the legal staff responds to the questions presented, it is categorised as a legal counselling session.

Legal counselling includes for example, explaining the content of a legal document or legal obligation that the individual is facing, as well as advice on possible legal steps that can be taken. It can also entail advice and explanation of a legal procedure that the person might be involved in or have access to or of a legal framework, e.g. international human rights framework. If a need for further action or sessions is identified during the initial counselling session, the case will be registered for case management to ensure continuity in the case and documentation of the work of the legal staff. Depending on the nature of the legal action required, the case might be categorised as a case of legal assistance or legal representation. Counselling may result in referrals to other service providers or other DRC sectors beyond Protection.

As mentioned in the definition, legal counselling can be provided on both an oral and written basis. Legal counselling goes beyond in-person sessions and can also be provided via e-mail, telephone, Whatsapp or similar.

Knowledge about the law and legal practice and procedures is of course paramount when providing legal aid, but just as important is communication, interaction, and the ability to engage with the client in a constructive and empathetic manner, where the client understands the information given, feels heard, and subsequently is able to make an informed decision. Consequently, legal advisors also need excellent communication skills to gather detailed information about sensitive issues in order to give correct advice and information.

Best practices for legal counselling methodology, including communication methods and techniques, can be found via this [link](#).

Implementation of Legal Counselling

Before the session

- Ensure appropriate venue and setting for legal counselling. DRC can provide legal counselling through DRC offices, legal aid clinics, mobile legal teams, community centres, and other places that ensure the

safety and confidentiality of the client. If legal counselling is provided via email or the phone, ensure that appropriate data security steps are taken.

- If an interpreter is used, inform the interpreter about the task at hand. For more information on the use of interpreters please refer to the Best Practices section below and resources related to the “Use of interpreters”.

During

- Each session begins with a clear introduction of DRC’s legal staff, DRC’s mandate and of the legal aid services DRC provides (including that the services are free).
- It should be emphasised that the person can explain confidential matters with no risk that information will be passed to the authorities or other actors, unless DRC is obligated by law to share the information due to best interest of the child considerations, security risks etc.
- It should be emphasised that DRC is a non-governmental, neutral and independent humanitarian organisation.
- As a starting point, consult with the person on their expectations for the counselling
- Listen to the person’s story and provide counselling thereafter.
- Use a people-centered and empowerment approach to engage with the person. Ensure the affected person takes initiative while DRC supports the person.
- Always be clear and realistic regarding the potential outcome of the counselling. DRC does not provide guarantees for the potential outcome of the counselling.
- Ensure the affected individual understands the available options, as well as the risks related to possible next steps and ensure the person is involved and empowered to make an informed decision going forward.

After the session

- A counselling session may lead to internal referrals to legal assistance or representation, as well as external referrals to other legal aid providers and/or other protection and assistance services.
- If relevant, DRC should plan to follow up with the person to evaluate if the person resolved his/her legal issue.
- If additional legal aid is needed, it is recommended to inform the person of the expected case processing time for the legal aid services. To have an expected case processing time in the SOP makes it easier for legal staff to prioritise tasks and to communicate expected time to the person.
- It is recommended to collect data about the counselling session’s themes and questions raised. This enables identification of legal aid needs and issues to raise through legal aid environment building activities.

4.3. Legal Assistance

Definition

Legal assistance is defined as any action taken by legal staff in an individual case that goes beyond information sessions and an individual counselling session. If a counselling session establishes a need for action by the legal staff, excluding representation in a court or quasi-judicial authority, it is registered as legal assistance.

Purpose of Legal Assistance

The purpose of legal assistance is to provide neutral and accurate legal advice and assistance that empowers the client to make informed decisions and enables the client to access their rights through legal and/or judicial procedures. People may need legal assistance because they do not know how to navigate legal procedures, or do not have the financial capacity to buy services from private legal providers. Special attention should be paid to persons with particular vulnerabilities and limited personal resources, which might entail a stronger need for legal assistance.

Legal Assistance includes the following:

- Registration and documentation related to civil status, property, employment, travel and movement, health, and education, etc.
- Drafting legal documents, in administrative or judiciary procedures
- Submitting legal briefs or other written statements to administrative boards or other legal bodies.
- Access to obtain benefits or services (e.g., pension, social welfare benefits, and healthcare, etc.)
- Representation outside court or quasi-judicial administrative bodies

Targeting Legal Assistance

DRC's approach to legal assistance is to support the client through the legal process by taking action related to potential legal obstacles. The approach should be focused on empowerment of the client and facilitating help to self-help. This entails, that in some cases, the client will be able to undertake actions themselves to help address their legal aid needs. In this case, legal staff will guide the client on the steps to be taken. If the person is not able to undertake the necessary steps themselves, due to vulnerabilities or lack of personal resources, legal staff will take action with the consent of the person.

Examples of legal assistance

Iraq: Legal assistance is provided to people on administrative procedures to assist them in accessing services and relevant legal documents. This entails legal staff contacting the legal authorities by phone, in writing, and presenting themselves at administrative offices to deliver the necessary documentation on behalf of the client.

The legal assistance entails phone calls and e-mails to authorities, lawyers and other stakeholders in

Greece: Legal assistance includes drafting of legal documents. Assisting asylum seekers to obtain full registration of claims, vulnerability assessments, any other actions required for processing asylum cases.

4.4. Legal Representation

Definition

Legal representation is a case where the legal staff represents the client in court or before a quasi-judicial authority either orally or in writing. Legal representation requires written authorization from the client in compliance with national legislation.

Purpose of Legal Representation

The purpose of legal representation is to ensure that clients can access legal procedures regardless of their financial or personal capacity.

DRC represents a client before a judicial or administrative body, when DRC believes that the client's claim has a foundation in the relevant legal context and when it aligns with the legal intervention's objectives and strategy. Often, cases of representation are more complex and require more time and commitment from legal staff. The line manager must be aware of the balance between the amount of time required for legal representation cases and other counselling or assistance cases and plan sufficient time for these tasks within legal staffs' work schedules.

In legal representation cases it is important to inform the client of the scope and mandate of DRC representing them in the case, in addition to roles and responsibilities of DRC's legal staff and the client, and expectations in relation to estimated time of the case. This will help ensure the client understands the commitment, scope, and responsibilities of both parties in relation to their case.

In situations where a case does not fit clearly within the intervention's strategy or does not have a good chance of a positive outcome, but falls outside of the referral system, the case should be consulted with the technical line manager to decide how to proceed with the case.

Often there will be national requirements for bar registration of lawyers to represent a client in court and other practical difficulties. This may entail that DRC has to refer legal cases requiring legal representation to a national lawyer or enter into partnership with national lawyers.

Examples of legal representation cases

Denmark: DRC provides legal representation through written submissions of legal briefs on behalf of asylum seekers to the Refugee Appeals Board. DRC legal staff conduct a session with the client and based on this meeting the legal staff write a submission to the Appeals Board. After obtaining a power of attorney, DRC represents the client before the authorities and before the quasi-judicial authority.

Ukraine: Each year DRC Ukraine, along with its implementing partners, assist beneficiaries in 700 to 800 court cases. Court cases related to reinstatement to pension and social benefits, registration of death and birth that occurred in non-government-controlled area, inheritance, and miscellaneous other social benefit issues.

Iraq: DRC legal staff represents the client during the proceedings and in court in cases concerning family lineage, death of missing person, or proof of marriage. In Iraq, lawyers must be registered with the bar association of Iraq to appear in court. Consequently, DRC lawyers in Iraq must be registered with the bar association.

4.5. DRC Legal Aid Environment Building Activities

In line with DRC's two-pronged approach to legal aid, DRC implements legal aid environment building activities that aim at raising awareness, strengthening capacities and /or addressing barriers to legal aid that affect the enjoyment of fundamental rights by conflict- and displacement-affected people.

Legal aid environment building activities include:

- Strategic litigation
- Training and capacity building of authorities, civil society actors, partners
- Advocacy
- Law and policy engagement
- Monitoring and reporting

As noted in Chapter 3, legal analysis is the starting point and foundation of DRCs legal aid interventions. The findings from the legal analysis process will establish the key legal issues to be addressed, the stakeholders DRC will engage with, and what activities will be implemented. In addition, on-going legal analysis may be a prerequisite for some legal aid environment building activities – including advocacy, law and policy engagement, and strategic litigation.

4.6. Strategic Litigation

Definition

The aim of strategic litigation is to create changes in the legal environment in which DRC's target population find themselves, with a view to achieving enjoyment of entitled rights or better access to rights. Strategic litigation involves the analysis and selection of legal cases that identify an administrative or legal provision or practice that constitutes a possible violation of International Humanitarian Law, International Human Rights Law or other applicable human rights provisions in national law.

Purpose of Strategic Litigation

Strategic litigation helps achieve long term results and make necessary changes to the legal system and legal practice for the benefit of a larger number of people within DRC's target group. Strategic litigation involves the careful analysis and selection of key legal themes or issues affecting DRC's target group and litigating these issues before national, regional, or international courts and committees.

DRC's approach to strategic litigation is:

Litigation on a limited number of prioritised themes. The priority themes are identified based on the 'case selection criteria' listed below.

Case selection criteria

1. Clear indications of violations of international/national human rights law
2. Gaps in practice/jurisprudence? If not, perhaps advocacy on the issue is preferred
3. Impact – What is the likelihood of the violation affecting a large number of people. How many will benefit, if we succeed in causing a change in practice?
4. Chances of success /Risk assessment
5. Alignment with DRC legal aid and protection strategy

Each legal aid intervention should identify their respective success criteria in order to continuously monitor the strategic plan developed and revise it if necessary. Risks related to strategic litigation should be identified to make sure that DRC's strategic litigation work does not do harm to our target group.

Steps to take in Strategic Litigation cases:

- **Identification of legal challenges, violations or obstacles** that are suited for strategic litigation often arise from information documented in awareness sessions, counselling sessions or through other contact with the target group. Legal matters to litigate could be; limited access to rights, rights not available, or wrongful application of the law in the national legal system. When several people of concern report the same legal challenges, it should be further investigated, whether these challenges are based on an administrative practice or legal provision, which imposes an obstacle to the client in contradiction with a higher source of law, such as the constitution or international law. The issues documented through DRC's engagement with the target group can also be combined with desk research, which maps out the legislative framework and jurisprudence on the issue.
- **Selection of test cases:** Test cases are selected by legal staff and are often identified in legal counselling or awareness sessions when meeting the client. When selecting which case to litigate, it is important to select a strong case, where the facts of the case are not questioned, and where the facts of the case fit the legal requirements clearly. It is also important to take into consideration the client's specific vulnerabilities and possible negative consequences of lengthy proceedings and/or a negative decision for the client.

In the initial part of the litigation process, the weaker cases must await the litigation of the strong test cases that will hopefully lead to a change in practice or law benefitting all.

When deciding to litigate cases, the respective success criteria should always be identified, and a strategic plan should be outlined. The litigation process should be continuously monitored, and the strategic plan revised if necessary.

- **Information to the client:** When a test case has been selected, it is very important to provide clear information on the expected procedure to the client. Since the litigation will concern an unchallenged legal issue, the staff will not have the knowledge of the expected outcome or exact procedure of the case. It is important to be very clear, that DRC cannot promise a successful outcome of the case. Often the proceedings of strategic cases are longer, since they often are litigated in higher courts and entail principle legal issues. The client must also be informed of and accept this factor.

- **After the judgement:** After the outcome of a strategic litigation case, it is important to evaluate and analyse the decision and potential impact both for the client and for the entire group. This might lead to other test cases to test the reach of the judgement.

If the judgement creates a change in practice, – positive or negative- this should be communicated broadly to partners and the people of concern.

If the decision has a negative impact on the rights of the client or the target group, it must be assessed whether to take the case further, for instance to an international complaint body. This will require a new assessment of the chances of success and risks involved.

In legal systems where enforcement of judgements might be poor or inconsistent, it is important to link strategic litigation to other legal aid environment-building activities, e.g. advocacy, policy engagement etc.

4.7. Training and capacity building of authorities, civil society actors, and partners

Engaging with Authorities

DRC's rights-based approach guides DRC's protection and assistance work. Based upon DRC's legal analysis a holistic intervention should take into consideration programmatic entry points with both the rights holders and duty bearers. This includes analysing the authorities' willingness in relation to legal processes and ensure DRC's target group have equal access to legal procedures and services. Based on this analysis, entry points and activities will be developed to substitute or support authorities in their legal responsibilities.

Training on legal themes and issues and other capacity building efforts - including secondment of staff and resources are examples of DRC engaging with authorities.

Engaging with Civil society

Civil society actors are highly relevant to cooperate with to improve the legal situation for DRC's target group. Engaging with civil society can take several forms – for instance through capacity building of civil society actors aimed at improving the quality of services provided to DRC's target group. This can also have the effect of enhancing the trust and recognition of DRC as a legal actor, which will make DRC's position when engaging in advocacy and capacity building of authorities stronger. Involvement of civil society in country and national institutions is the sustainable solution going forward, when DRC's presence is no longer needed.

Best practice examples:

Ukraine:

DRC Ukraine is working with local self-government authorities to utilise abandoned and ownerless properties for the purpose of housing and livelihoods solutions to the conflict affected people in rural areas. DRC Ukraine has designed the approach and it involves substantive legal work and lengthy court processes.

DRC Ukraine utilises its legal research and analysis capacity towards raising awareness of national and international standards as well as to build capacity of local and international actors on selected thematic areas.

DRC Ukraine publishes a monthly legal alert that provides analysis on legislative and policy developments to a growing list of 1500+ subscribers.

Furthermore, DRC Ukraine intervention runs HLP training for humanitarian mid-managers, ministry officials and assistants to members of parliament. The objective is to ensure that humanitarian mid-managers and government officials have the necessary knowledge of HLP international standards while designing programme or drafting new law and processes.

Denmark:

In Denmark, DRC's Asylum & Refugee Rights Division has provided training for the Danish border police on the definition of refugee law and human rights law, including the right to seek asylum and access to territory.

Furthermore, the Asylum & Refugee Rights Division has frequent meetings with the authorities engaged in the asylum procedure, including the Danish police, Immigration Service and Refugee Appeals Board. These meetings are an opportunity to discuss recent developments in law or practise and for DRC Denmark to raise areas of concern.

Lastly, Asylum & Refugee Rights Division provides training for other stakeholders in the asylum procedure, such as legal guardians for unaccompanied minors, staff at asylum centres, volunteer counselling organisations, women's shelters. Also, the Asylum & Refugee Rights Division coordinates and chairs a network of civil society organisations that support asylum seekers in Denmark.

4.8. Advocacy

DRC's advocacy comprises the mindset, processes and activities aimed at influencing decision-makers, opinion-makers, and the general public at national, regional, and/or international level for the purpose of protecting refugees and displaced persons and safeguarding their rights.⁵

Advocacy is based on a thorough analysis to identify and assess the risk entailed by the advocacy effort – in terms of the continued assistance to targeted people of concern, in terms of staff safety; in terms of the operations of DRC; and in terms of the organisation's fundamental interest.

Advocacy is not a stand-alone activity but part and parcel of DRC programmes, including legal aid interventions. It is important that DRC continuously seek to strengthen advocacy efforts and is an organizational priority. In this regard, DRC's Advocacy Toolbox was developed to strengthen the quality and impact of the advocacy work undertaken by DRC. An advocacy strategy (or plan) underpins all advocacy work, elaborating the issues to advocate on, the target audience, the potential risks involved, and the way(s) in which the actual advocacy message is delivered. DRC's advocacy toolbox includes

- Definition of advocacy
- Principles for DRC's advocacy work
- Roles and responsibilities in DRC's advocacy work
- Guidance, tools and formats for advocacy work
- Listing of existing, relevant advocacy forums, networks and events
- Good practice examples of different types of advocacy work at different levels from DRC operations.

DRC's Advocacy toolbox and related annexes can be accessed via InSite: [Advocacy Toolbox](#)

⁵ DRC, Advocacy Paper, 2010.

4.9. Law and Policy Engagement

Law and policy engagement covers DRC's engagement in legislative and policy processes at national, regional and international level. The aim is to influence or inform decision-makers of the potential risks or benefits that the law or policy (or the lack thereof) may entail for affected people. Examples of law and policy engagement could be submitting written responses during consultation processes in parliament for new legislation or engaging in informal dialogue with decision-makers on potential draft amendments or policies.

Law and policy engagement has strong linkages to advocacy, but unlike advocacy, DRC's law and policy engagement will always be directed at decision-makers and be linked to specific legislative acts or policies that are either in a formal process or DRC is encouraging decision-makers to start the formal process of adopting or changing a law or policy.

4.10. Linkages with Protection Monitoring and Referral

There are clear linkages between protection monitoring⁶ and legal aid interventions. On one hand, protection monitoring findings and trends can form part of the evidence base to inform DRC's legal aid approach and interventions. The on-going monitoring undertaken by protection monitoring can support the adaptation and re-design of DRC's legal interventions. On the other hand, legal aid data and information, analysis, and advocacy can complement protection monitoring activities and advocacy. For example, legal aid case management data can provide important details related to constraints in accessing legal and justice procedures and/or specific groups affected by legal issues. Further, legal analysis can supplement and support protection monitoring analysis and advocacy, thereby ensuring a collaborative approach to DRC's Protection programming.

Further, DRC's referral component within protection monitoring should be directly linked to legal aid interventions. During protection monitoring, staff identify individuals with protection issues and refer them (internally within DRC or externally to other agencies) to the relevant department or agency that can assist in addressing the protection issue. Referrals can be made to overcome issues related to legal aid – for example, people lacking civil documentation or people in need of housing, land and property legal counselling to regain their land. When both protection monitoring and legal aid interventions are implemented a clear referral process should be established to ensure the two components of protection complement each other. Further information on protection monitoring can be accessed through [DRC's Global Guidance on Protection Monitoring](#).

⁶ Protection monitoring is defined as “systematically and regularly collecting, verifying, and analyzing information over an extended period in order to identify violations of rights and protection risks for populations of concern for the purpose of informing effective responses”.

4.11. Best practices

The best practice examples are meant to provide country operations with inspiration on how to implement legal aid in an effective and professional manner. The documents are available in a Sharepoint folder, which will be regularly updated and includes subfolders to facilitate an easy overview of themes of the available documents. The Sharepoint folder can be accessed via this [link](#) and includes best practise examples of:

- Legal Analysis
- Legal Information Dissemination and Awareness Raising Activities
- Legal Counselling, Assistance and Representation
- Legal Counselling Methodology – Communication Methods and Techniques
- Use of Interpreters
- Legal Aid Environment-Building Activities
- Quality Assurance
- Legal Aid on Civil Documentation
- Legal Aid in Asylum Procedures
- Legal Aid on Housing- Land and Property

5. Procedures

5.1. Information and knowledge management

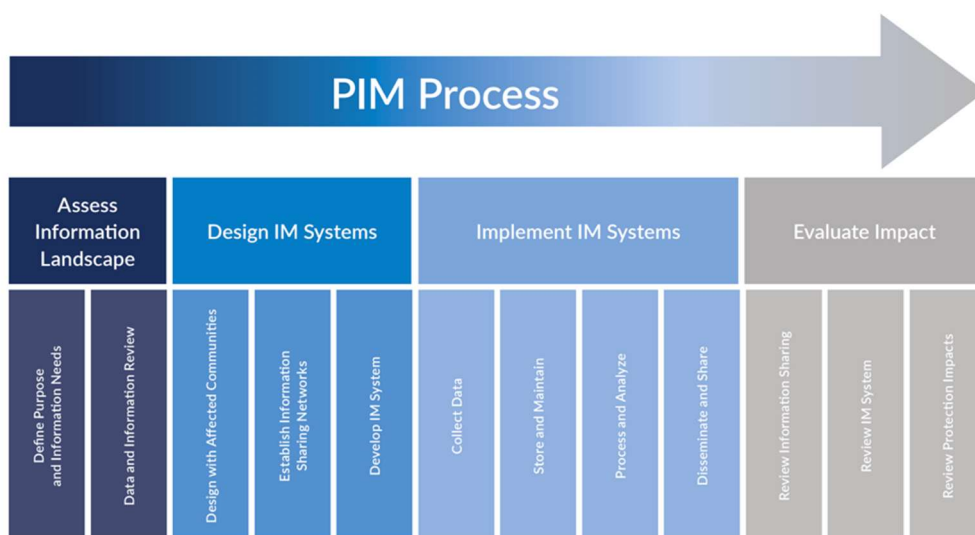
DRC legal aid programming must be guided by ensuring the safe, responsible, and purposeful handling and management of legal aid data and information when DRC collects, processes, analyses, and stores data and information.

Protection Information Management (PIM) principles guides us in ensuring we safely and responsibility undertake our information management responsibilities. PIM principles are listed below and can be accessed [here](#):

- People centred and inclusive
- Do no harm
- Defined purpose
- Informed consent and confidentiality
- Data responsibility, protection, and security
- Competency and capacity
- Impartiality
- Coordination and collaboration

PIM Process

The PIM Process provides guidance on steps to be undertaking when developing, implementing or renewing a protection information management response. This includes, for example, when we decide to undertake a protection assessment focused on legal aid issues, or in developing a case management system for DRC's legal assistance and representation activities.



5.2. Information Sharing Protocol

Communication on individual cases internally and between partner agencies should be conducted in a safe, responsible and purposeful manner. References to client names should be avoided; only non-identifying information should be shared unless specifically needed.

Under no circumstance shall information from a client file be shared with a third party without the consent of the client. See example of a [consent form](#). Clients and persons receiving services from DRC must be informed of their right to confidentiality. Requests for information disclosure may only be considered if they are received in writing for the purpose of services provision and assistance only and should include:

- Name of the organization requesting information,
- The precise information requested,
- The purpose for which the information is sought

Information about clients should only be disclosed to third parties, if all of the following conditions are satisfied:

- Disclosure is required for a legitimate purpose;
- Disclosure would not jeopardise the safety and security of the individual concerned, his/her family members, or other persons with whom the individual is associated; Disclosure would not compromise the safety and security of DRC staff;
- Disclosure would be consistent with DRC's international protection mandate, including its humanitarian and non-political character, and would not otherwise undermine the effective performance of DRC
- Consent of the person is obtained and documented

5.3. Data Protection Impact Assessment

DRC must assess the risks at each step of collecting and processing data and information and must mitigate any potential adverse consequences for those providing it, and for their families and communities. This responsibility falls upon DRC to assess the risks and put in place procedures to ensure data and information is collected, processed and safely stored. In assessing the risks, DRC should undertake a Data Protection Impact Assessment (DPIA).⁷ It should include at a minimum the following:

1. Information flows – define data that will be handled by DRC and if its level of sensitivity; how it will be used and for what purpose, how and where it will be stored and who will have access, and whether any data will be shared or transferred to external organisations or partners.
2. Compliance with relevant laws, regulations, codes and guidelines.
3. Principle stakeholders involved in handling data
4. Data protection impacts or risks
5. Risk assessment
6. Organisational issues and required capacities

⁷ A DPIA should be undertaken during the planning and design stages of new data processing initiatives but it can also be used to assess and mitigate the data protection risks arising from projects already in progress.

Examples of data protection impact assessments can be found here:

- [ICRC – Handbook on Data Protection in Humanitarian Action](#)
- [Risk Assessment Checklist for Do No Harm](#)

5.4. Case Management

Case management is defined as the “provision of protection and/or targeted interventions to identified individuals or groups through the management of data – from case identification to case closure – related to a specific case.”⁸

Case management involves collaborative, multi-disciplinary processes that require dedicated case management system, resources, and approach for their effective implementation. Case management ultimately aims at empowering the client by giving them increased awareness of choices they have in dealing with the incident of violence, coercion or abuse and assisting them to make informed decisions about how to address it. For further details on DRC’s approach to Case Management, please refer to [DRC’s Case Management Factsheet](#).

Legal aid interventions that include counselling, legal assistance and / or legal representation should have guidelines in place for case management, and as a minimum have a filing system that protects the personal information of clients and ensures a structured and organised approach to legal case procedures.

⁸ <http://pim.guide/guidance-and-products/product/pim-matrix-cover-page>

Case Management Principles

Do no harm: Ensuring that actions and interventions designed to support the client do not expose them to further harm. At each step in the case management process, care must be taken to ensure that no harm comes to the client or relatives as a result of caseworker conduct, decisions made, or actions taken on behalf of the client.

Impartiality / Objectivity: Staff support vulnerable individuals in need without discrimination or appearance of bias. People are assisted according to DRC guidelines regardless of age, gender, race, nationality, ethnicity, beliefs, etc.

Sensitivity: Staff are compassionate, empathic and aware of the suffering of affected communities; staff are careful to avoid contributing to re-traumatization.

Informed consent and confidentiality: Personal data and information may be collected only after informed consent has been provided by the individual in question and that individual must be aware of the purpose of the collection and use of the information. Confidentiality must be clearly explained to the individual before the information may be collected.

Safeguarding data¹: All identifying information must be carefully guarded and only information that is needed should be shared with relevant DRC and external partner staff. The confidentiality of recorded information must be safeguarded so that even the unintentional sharing of personal data and information does not happen. An information management system is important to develop, follow and improve as needed.

Respect: Staff must respect the rights, wishes, choices and dignity of those it serves. It is the responsibility of staff to explain options and risks, but in the end, it must be the client's choice (not the recommendation of staff) that determines the relevant actions related to case management activities.

Skills, competencies, and capacities: Case management activities must be carried out by staff who have been equipped with the relevant skills, competencies and capacities needed to responsibly carry out case management duties.

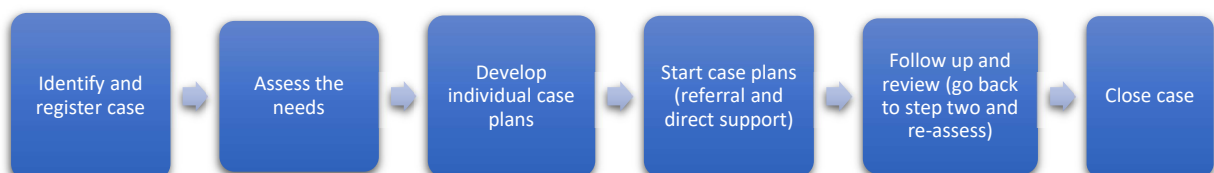
DRC Minimum Requirements for Case Management Systems

Legal aid case management systems or databases should follow these minimum requirements

DRC's case management approach should have the following minimum requirements:

- The case management approach must support the monitoring of legal aid activities and outputs by all staff including lawyers or legal staff as well as enable supervisors to review and provide supervision.
- The case management approach should make it possible for legal staff to create visible deadlines and manage several case files at the same time. An example could be obtaining both a marriage certificate and registration of children, which would be registered as two different case files with different forms, but under the same client in the case management system.
- When a legal case file is created, it should contain a comprehensive file based on the client, so that it includes all forms, documents and a clear overview of the different case steps performed on behalf of the client. This includes as a minimum case registration and client intake, assessment, case follow ups, and case closure documentation. This ensures that the legal staff has the overview of the clients' situation and DRC services provided for each client.
- The case files, whether electronic or hard copy should be stored securely, so that only DRC legal staff have access to the files.
- The case management system must be accompanied by Standard Operating Procedures (SOPs) which have clear roles and responsibilities for all staff involved in the use and maintenance of the system.
- All staff involved in case management should receive training on SOPs, case management processes, databases and software, and roles and responsibilities.
- The design of the case management system is undertaken before legal aid activities are implemented. Establishing and agreement on common legal aid typologies will be required, classification of cases, common understanding of case registration, follow up, and case closure processes, etc. and be disaggregated by age, sex and disability.
- Ensure to assess the context and donor requirements related to reporting on legal aid case management activities. As noted above, the guiding approach for case management is to support legal staff in the management of their cases and activities. If donor reporting requirements are burdensome or create challenges for legal aid staff then advocacy with the donor might be required.
- Case management forms, systems and work processes should be kept as simple as possible so that time can be prioritised on case work.

Case Management steps:



1. Introduction & Case Intake: Introduction and engagement with the client while building trust and rapport. Assess immediate safety, explain confidentiality and obtain informed consent. A case is registered in the first counselling session with the client using a Legal aid case intake & assessment form. Depending on the content of the case, different forms might be relevant.

2. **Assessment:** Understand the client's situation, problems and needs, provide information and determine if client would like to continue. Depending on the context Step 1 and Step 2 might be closely linked and undertaken at the same time.
3. **Case Planning:** Develop action plan based on legal aid needs of the client and the actions that client and DRC will undertake in relation to the case.
4. **Implement Case Planning:** Assist and advocate for the client, provide direct support and referral, and case coordination.
5. **Case Follow up:** If the case requires further actions DRC will undertake follow up actions for the case and document this using a follow up form. Further documents needed: Power of attorney to represent client, other information that might be relevant to document in the form for reporting or advocacy purposes. When consent from client is obtained make sure to update the consent if new actions are necessary. The legal staff should never act on behalf of clients without a clear consent. If the clients are spouses with children, a power of attorney is needed for each adult over the age of 18. Children are included under parents' power of attorney.
6. **Case Closure:** A case has been closed when 1) the required legal action has been taken, 2) the decision in the case has been made, 3) if the client no longer wants to continue with the case, 4) or if DRC is unable to contact / find the client. The case closure form should include information on the outcome of the case and an assessment of whether further action is necessary and possible on behalf of the client.

The outcome of the case should be communicated directly to the client with a clear explanation of DRCs further engagement. If we are not able to assist the client further, we make it very clear that DRC are no longer representing the client. If possible, we refer to partners that can provide further counselling.

If the client is still facing a legal issue and there is no partner to refer the case to, it should be noted as a legal issue that might be relevant for strategic litigation or advocacy work. The outcome of the case should then be analysed and documented in the case system, so it can be used for such purposes and for further counselling in similar cases.

5.5. Quality Assurance

In order to ensure high quality legal aid services and the continued development of legal capacities within DRC, it is recommended to have a procedure in place for regular quality assurance of the legal aid intervention. Each intervention should incorporate a quality assurance procedure. This should entail an established structure for regular monitoring of the quality of legal aid services provided by DRC legal staff and a set of indicators to evaluate the quality of our work.

Structure and Design of Legal Intervention

In order to ensure a basis for regular, consistent and continual quality assurance of the legal aid intervention, the structure and framework of the intervention should include and support a clear focus on quality assurance as a key element in high quality legal aid. The structure and framework of the legal aid intervention may be very context specific; however, the following elements are recommended to support the quality assurance procedure:

- A clear structure of responsibility. In particular, technical responsibility in relation to legal aid vs. staff management responsibility.
- Regular quality assurance of legal aid services provided by DRC staff. The quality assurance procedure can be included in funding proposals as a necessary activity included in the legal aid intervention to ensure the quality of the services.
- A structure for information-sharing between legal staff. This will ensure that all staff receive updated knowledge on relevant legal issues.
- Specialised legal knowledge and skills should be kept up to date and shared regularly within the legal aid intervention. This could be done through designated technical focal points responsible for keeping up to date within their selected legal areas. The purpose is to have a person that can keep up to date with the latest developments and provide the legal team with updates and trainings within their area of expertise
- It is recommended that all legal staff, whether new or experienced, should have access to a technical experienced staff that can provide professional feedback on the technical content of the legal aid services.
- Experience and information-sharing should be encouraged between different country operations working within the same technical legal area or a similar method of legal counselling/information provision.
- A knowledge management system should be in place to ensure a professional case management.

Quality Assurance Procedure

Qualitative indicators:

Different models can be considered when conducting a quality assurance procedure depending on the specific legal aid intervention, context and staff. A quality assurance procedure should assess the quality of the legal aid services provided and provide recommendations and a plan for the implementation of the findings of the procedure. It is recommended that the procedure should have qualitative indicators that have a focus on the quality of the legal information provided as well as the counselling methodology and communication approach of the staff.

As mentioned above, a key qualitative indicator, apart from the legal information provided, is the way staff engage with clients. Communication, interaction, and the ability to engage with a client in a constructive and

empathetic manner where the client understands the information given, feels heard, and subsequently is able to make an informed decision. The quality assurance procedure should always be carried out with the aim to meet the needs of the people we support.

Models of Quality Assurance

A quality assurance procedure can have a broad focus, but it may also focus on a specific theme. A theme can be linked to a technical area or on counselling method/communication skills. The themes can vary depending on the context of the legal aid intervention. Examples could be; themes that align with the country legal strategy, or an area where DRC wants to improve or expand the legal aid intervention.

Below are examples of models that can be used for conducting a quality assurance procedure:

Model 1: Assessment by group/technical focal point

- Identify a staff member or a group of experienced legal staff working for DRC. It does not necessarily have to include a manager. The person/persons should have a high technical capacity in the relevant legal area.
- The technical focal point/group should identify the relevant theme of the quality assurance procedure.
- When a theme has been selected, the technical focal point/group should decide on the process of quality assessment assurance procedure:

Process of written quality assurance:

- Select a number of cases randomly, making sure that each legal staff receive feedback on at least one case. The number of cases should be sufficient to provide a representative overview of cases.
- The technical focal point/group should read through the cases with the qualitative indicators in mind (either technical content, structure of legal arguments, etc.). Best practice is to develop a form with the qualitative indicators that can be filled out for each case to ensure that the technical focal point/group will look at the same indicators.
- After reviewing the cases, each legal staff should receive individual feedback.
- When the review and feedback steps have been finalised, the technical focal point/group should discuss and share the general results with the whole legal team.
- The general tendencies should be collected and points for improvement should be noted. The result should be used to inform the further development of the legal aid intervention. For example, general guidelines or fact sheets can be drafted based on the knowledge from reading through the selected cases.

Process of oral quality assurance:

- The technical focal point should observe each legal staff during the provision of legal aid services. The client should be asked for consent before initiating the session. It can be helpful to inform the client that the 'observer' is there as part of a standard procedure in place to learn from the staff, so that the trust in the legal staff conduction the session will not be compromised.
- The technical focal point/group should use the same indicators when observing each session.

- During the session the ‘observer’ should be silent and only take notes. The observer should not interrupt the session.
- After the session, feedback should be provided to the legal staff without the client present.
- After all sessions have been observed, the technical focal point/group should collect the results and compare them in order to identify general tendencies and areas for improvement. The results should be used to inform the further development of the intervention. For example, it can lead to further guidance or work in a technical area or further training on communication skills.
- The general results should be presented to the legal team with recommendations for best practice.

Model 2: Peer to peer assessment

- The legal staff should be divided into teams of 2-4. They will select a couple of their own cases to send to their colleagues to read through them.
- After reading through the cases, the team should discuss the cases and provide mutual feedback on the cases and discuss possible improvements.
- It is recommended to formulate questions prior to the review of the cases in order for the team to have a common focus for the review. Based on the answers, the team will feedback to the person/persons in charge of the quality assurance procedure (technical focal point, group or management).
- After the session and feedback from groups and staff, the management or technical manager should provide general advice based on the feedback and possible guidelines or fact sheets for further technical support if necessary.

Training of Legal Staff

A thorough and well-prepared onboarding of new legal staff and continued training of existing legal staff is an essential part of quality assuring a legal aid intervention. Competent and well-trained staff combined with clear success criteria and indicators ensure that the level of quality is high.

Onboarding:

The onboarding procedure should ensure that new staff understands and follows the method and approach to legal aid services that is described in chapter 4 of this resource pack.

The content of an *introduction programme* can vary depending on the legal aid intervention, but should as a minimum include:

- A written copy of DRC’s legal strategy and details of the legal intervention.
- A clear description of DRC’s mandate and approach to legal aid
- A clear description of the structure of the legal aid intervention: Who is the line manager, who will the legal staff report to and who is responsible for the quality of the legal advice provided.
- Written guidance for conducting legal aid services and case management responsibilities of legal staff. The written guidance should focus both on the legal content and the methods and standards related to engaging with clients.
- A clear description of and a written copy of the legal aid SOP.

- New legal staff should as a minimum observe an experienced legal staff member on how to conduct legal aid services and the new staff should be observed by an experienced staff member to ensure a secure and efficient on-boarding process.
- New staff should be able to discuss cases with experienced staff and have access to feedback on both oral and written legal aid services.
- It is recommended that written work by new legal staff should be read by an experienced staff and provided with feedback before being shared externally. It is up to the experienced staff to assess when it is no longer necessary to assess the written work of new staff.

5.6. Monitoring and Evaluation

Regular monitoring of legal aid interventions should be planned for and incorporated into the design phase of the programme cycle. Monitoring will assess not only the effectiveness and achievement against planned activities – measured with output and outcome indicators but should also assess the quality of legal aid provided by staff, and the effectiveness of systems and SOP that guide the legal intervention. On a regular basis, legal interventions should assess the quality and status of implementation to ensure compliance with donor obligations and to ensure interventions are meeting intended outputs, results and outcomes.

Questions that should guide the monitoring of legal interventions include:

- Are the results and objectives of the intervention being achieved?
- What is quality of the legal intervention and what are results (impact for the target population?)
- Has there been a change in the context that requires adaptation of the legal intervention?
- Does DRC incorporate feedback from clients and target group to assess the quality of services and satisfaction of legal intervention?
- Is the legal intervention high quality, timely, and relevant?
- Are the systems and SOP's efficient, understandable and applied by all staff?
- What types of cases or issues do legal staff spend most of their time on?
- What is the rate of progress between new cases and closed cases?
- Are resources being spent according to plans?

Indicator library for legal aid

Protection	Legal Aid	# of persons who receive information on relevant rights, legal aid and documentation AND/OR support to alternative housing
Protection	Legal Aid	# of persons who obtain appropriate documentation / legal status
Protection	Legal Aid	% of affected population lacking personal identify / civil documentation
Protection	Legal Aid	# of civil / individual documents issues / supported to be issued
Protection	HLP	# and % of surveyed persons reporting personal HLP documentation issues
Protection	HLP	# and % of personal HLP documents protected, replaced, or issued
Protection	HLP	# of public HLP documents destroyed or damaged
Protection	HLP	# of public HLP records protected, replaced, improved, and/or created
Protection	HLP	# and % of surveyed persons/communities reporting a situation of forced eviction

Protection	HLP	# and % of surveyed persons/ communities provided with support in situation of forced eviction
Protection	HLP	% of the surveyed population settled on hazardous or inappropriate land
Protection	HLP	# and % of surveyed persons/ communities reporting lack or limited access to HLP rights
Protection	HLP	# and % of surveyed persons / communities reporting HLP disputes
Protection	HLP	# of HLP disputes addressed
Protection	HLP	% of operational HLP dispute resolution mechanisms within surveyed communities
Protection	HLP	# of HLP dispute resolution mechanisms provided with support
Protection	HLP	# of complaints / disputes reported in relation to the use of land for humanitarian response activities
Protection	HLP	# of interventions to improve land use and management
Protection	HLP	# of advocacy initiatives carried out to promote HLP rights and/or to ensure that HLP issues are addressed
Protection	HLP	# and % of surveyed persons / communities provided with access to information on HLP rights, referral services, and available support
Protection	HLP	# of targeted persons provided with HLP capacity building / training

5.7. Staff Safety

Standard operating procedures (SOPs) should be in place to take into consideration safety and confidentiality issues for the people of concern and for DRC legal staff prior to implementing legal counselling activities.

Reference should be made to DRC's Risk Management Framework and country level safety and security situation.

6. Civil Documentation - The right to civil registration and legal identity

This chapter of the Legal Aid Resource Pack serves to define and describe what civil documentation work is and how DRC works with civil documentation.

Civil documentation is one of the core competency areas of DRC's legal aid work. According to DRC's Legal Aid Scoping Study Report from January 2018, 83% or more of DRC legal aid programming has a component that focuses on civil documentation.⁹

Obtaining civil documentation is often the enabler for access to a long list of rights and basic services, including the right to personal liberty, freedom of movement and access to humanitarian assistance, health care, education, housing, land and property rights, work, residency, public services, social benefits etc.

DRC's work with civil documentation is therefore of great importance not only to the daily life of conflict- and displacement-affected people, but also in the overall promotion of human rights of forcibly displaced people, including the prevention against statelessness, and for refugees and IDPs, a necessary means for accessing durable solutions.

6.1. International Definition and Legal Frameworks

The United Nations defines 'civil registration' as *"the continuous, permanent, obligatory, and universal recording of the occurrence and characteristics of vital events (births, adoptions, marriages, divorces and deaths) and other civil status events pertaining to the population by decree, law or regulation, in accordance with each country's legal requirements"*¹⁰.

Birth is one of these vital life events, and birth registration establishes the legal identity of the person and provides the foundation for both civil, political, economic, social and cultural rights and is an important step in the prevention of statelessness. Birth registration is safeguarded and regulated in international human rights law, for instance through the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which requires States to ensure that children are registered at birth and able to acquire nationality:¹¹

Article 24 of the International Covenant on Civil and Political Rights states:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

⁹ DRC Legal Aid Scoping Study Report, January 2018, page 23

¹⁰ United Nations Statistics Division Handbook on Civil Registration and Vital Statistics Systems, 1998

¹¹ See also art. 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families. On the right to be recognized before the law and the rights to nationality see also: The UN Convention on the Reduction of Statelessness, UDHR art. 6 and 15, CCPR art. 16, CEDAW article 9, ICERD art. 5d, CRPD art. 18, UNDRIP art. 6.

Article 7 of the Convention on the Rights of the Child states:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

More specifically for IDPs, the Guiding Principles on Internal Displacement¹² principle 20 states that:

1. Every human being has the right to recognition everywhere as a person before the law
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates, marriage certificates. In particular, the authorities shall facilitate the issuance of new documents, or the replacement of documents lost in the course of displacement without imposing unreasonable conditions, such as requiring the return to one's habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own name.

Political steps have also been taken internationally to ensure that States comply with International Human Rights instruments by ensuring legal identity for all. The Sustainable Development Goals, Target 16.9 has the aim to: *"Provide legal identity to all, including birth registration, by 2030"*.

Whereas civil registration has an internationally recognized definition, civil documentation does not and thus, there is no fixed term to identify what is meant by civil documentation in international law, but generally civil documentation relates to the official documents issued in accordance with national law on civil registration to register vital life events, which provides documentation for the legal identity and/or civil status of the individual.

6.2. DRC's Work with Civil Documentation

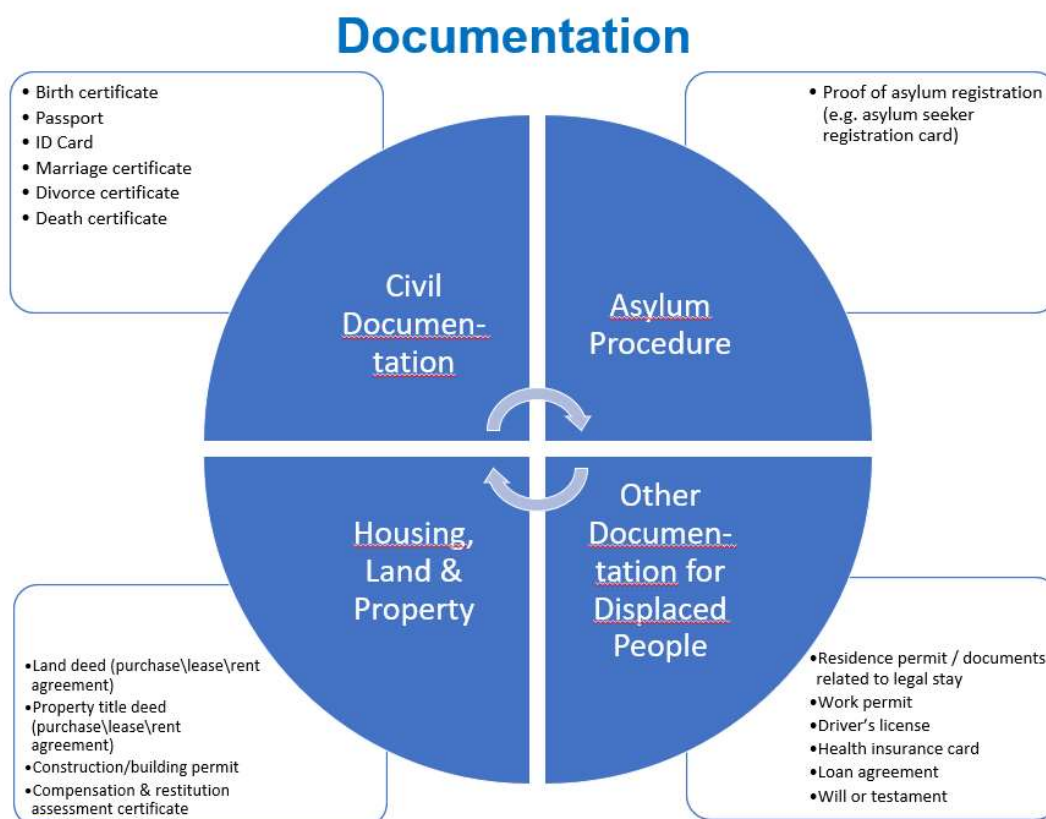
Civil documentation has a profound importance for conflict- and displacement-affected people, but unfortunately the path towards obtaining these documents is often paved with various obstacles, including discrimination on the basis of gender, ethnicity, nationality etc., but also costly and complex procedures making it difficult for people to undergo the process and access these documents without support.

The aim of DRC's work with civil documentation is to facilitate people's ability to access and claim the right to civil registration and legal identity, thereby enabling people to access the associated rights and services that civil registration accrues. Bearing this in mind, the scope and definition of DRCs work with civil documentation will have to take into consideration the diversity and complexity of the national legal and administrative systems in which the legal aid intervention operates.

¹² The Guiding Principles on IDPs are not binding law, but are based on binding law, human rights law, humanitarian law and refugee law by analogy.

DRC’s Definition of Civil Documentation is:

Civil Documentation is the proof of civil registration, which provides legal identity and/or enables access to associated rights and services to conflict- and displacement-affected people. Documents included under DRC’s civil documentation work are (non-exhaustive list): birth certificate, marriage certificate, divorce certificate, death certificate, passport, ID card.



The above diagram illustrates examples of various forms of documentation related to different legal areas of expertise. The diagram also seeks to illustrate that in a given case, the documents may be closely connected even though they do not fall under the same legal area.

Civil documentation work requires expertise and experience with national civil registration law, administrative law and procedures, but it also has strong ties to family law, citizenship and naturalization, immigration law, refugee law, social security law etc., which require additional legal ‘skill-sets’.

When working with civil documentation, it should be assessed whether the civil documentation work is mainly linked to obtaining certain civil registration and documentation and establishing access to associated rights and services, or if it goes beyond the law and procedures linked to civil registration and civil documentation and in fact has a stronger focus on the legislative framework regulating associated rights.

Examples of legal areas that can involve civil documentation as a precondition, or “initial step”, include family reunification; other types of ‘legal stay’/residence permits on the basis of work, study etc.; or legal aid regarding social and economic rights, such as social security benefits etc. In a family reunification case for example, documentation for the kinship, e.g. through a marriage certificate, birth certificate or family book is an essential requirement in an application for family reunification.

6.3. Components in DRC Legal Aid Programming on Civil Documentation

A legal analysis is the starting point for legal aid programming on civil documentation (see chapter 3 and Annex 1). The legal analysis facilitates an understanding of the legal and situational environment in a specific context and enables DRC to make informed decisions about a future intervention. This includes information about conflict and displacement, legal and protection issues, applicable legal frameworks and policies, and legal aid stakeholders. It also includes an overview of the legal needs of the affected populations, including the most vulnerable groups.

Based on the legal analysis, DRC’s civil documentation work includes different components adapted to the needs in the specific context. Often legal aid services are needed, both in the form of legal information dissemination and awareness raising sessions that provide general, accurate and easily accessible information to an individual or group on the right to obtain civil documentation, the administrative procedures, the associated rights and services that civil documentation can give access to and how DRC may be able to assist. Due to the often complex and costly procedures for obtaining civil documentation, there is usually an additional need for legal aid services adapted to the situation of the individual person, which can also be aimed at addressing age, gender and diversity barriers. Legal aid services may include both legal counselling, legal assistance, legal representation, but also economic assistance to cover the public administrative fees or charges of civil documentation.

Depending on the needs in the individual context, it may be important for DRC operations to supplement the legal aid services with legal aid environment-building activities to raise awareness among duty bearers and find solutions to the specific challenges and obstacles that are sometimes particular to people affected by conflict and displacement, such as high costs of documents, language barriers or other administrative barriers. Environment-building activities could include: Law and policy engagement, advocacy, training and capacity building and strategic litigation.

Advocacy and law and policy engagement can be a relevant pathway to take to influence duty bearers and raise awareness on issues related to conflict- and displacement-affected people’s access to civil documentation, but also to raise awareness, form alliances and gain support from civil society and communities. Training and other forms of capacity building can also be essential components in civil documentation work to ensure accurate decisions from decision-makers and to improve awareness and sensitivity of authorities.

In general, strategic litigation is rarely used in civil documentation. Strategic litigation requires a thorough risk analysis, substantial resources, time, and expertise. Also, some of the administrative, practical or financial difficulties that DRC’s target group face in trying to obtain civil documentation are not necessarily most appropriately dealt with through the judicial system, as issues related to obtaining civil documentation are usually not linked to a general misinterpretation or misapplication of the law, but rather an insufficient legal framework, the public authorities’ lack of resources, awareness, lack of willingness or overly burdensome,

complicated, and costly administrative procedures. Thereby making strategic litigation a less appropriate tool to address and solve these issues.

6.4. Examples of DRC civil documentation work

DRC Libya: Based on legal research from 2020 aimed at collecting essential information on migrants' and refugees' access to civil documentation in Libya, DRC provides legal awareness raising sessions, legal counselling and legal assistance to migrants and refugees as well as conflict affected and displaced Libyans. Lack of civil documentation increases the risks of arrest, detention, abuse, and exploitation and hampers access to critical services such as medical care, restricts freedom of movement, consequently impacting the ability of the individual to secure a source of income or even access to humanitarian assistance. While there is no legislation referring or permitting this practice, confiscation of civil documentation has become a common practice in both public medical facilities and private clinics for migrants and refugees as well as for Libyans. To address this issue DRC's legal team accompanies individuals to the medical facilities to inquire about their fees to release the document or to negotiate with the hospital for a reduction in fees. Depending on the risks or the consequences of lack of documentation to the individual, DRC may partially cover the debt.

DRC Lebanon provides legal awareness sessions, legal counselling, and legal assistance in relation to civil documentation, including birth registration. In Lebanon, the majority of refugees' births remain unregistered with the authorities and that has a myriad of negative effects. Birth registration is often not completed or initiated because of the complexity of the process, lack of information, fear of approaching authorities, COVID-19 related lockdowns and their effect on the closure of institutions and the increased socio-economic crisis after years in displacement impacting people's financial abilities to cover the costs associated with the procedures. As a result, DRC is assisting refugees in Lebanon with birth registration through accompaniment to authorities and settling the required fees on their behalf. Consequently, refugees are supported in preventing statelessness by proving that the child is a Syrian national and in obtaining an identity document. Without this, the child may have problems accessing health care, social services and education, as well as going back to Syria or moving on to another country together with his/her parents. In addition, a birth certificate is important to prove age in front of courts, treat the child efficiently (e.g. vaccine), obtain inheritance, and in case of disaster it will facilitate the reunification of the family members.

7. Legal Aid in Asylum Procedures

7.1. Introduction to Legal Aid in Asylum Procedures

This chapter of the Legal Aid Resource Pack serves to define and describe why and how DRC provides legal aid in and around asylum procedures. Furthermore, the purpose of the chapter is to establish a common understanding in DRC of what is considered quality asylum systems.

Legal aid in asylum procedures can have a great impact for the individual asylum seeker, ensuring their access to and ability to enjoy their rights and access durable solutions, but also more broadly to ensure fairness, efficiency, adaptability and integrity in asylum procedures. DRC views legal aid services as an important part of ensuring that asylum seekers are empowered to participate in the procedure, make informed choices about his/her situation, as well as understanding and respecting the decisions of the authorities. But also, legal aid is needed to challenge incorrect decisions by authorities.

DRC takes a holistic and rights-based approach to legal aid in asylum procedures and the provision of legal aid can span from the arrival stage and registration of asylum seekers, through-out the different stages of the asylum procedure until refugee protection has been obtained or a final and correct negative decision has been issued by the relevant decision-making body and a return procedure will be initiated. Furthermore, DRC's advocates for the rights of asylum seekers and refugees and our legal aid environment-building activities¹³ help to create awareness around refugee issues and influence policies and practices aimed at improving asylum procedures.

This chapter starts with an overview of the international legal framework for asylum procedures, taking point of departure in the 1951 Refugee Convention and international human rights standards. The purpose of this overview is to establish what defines a quality asylum system, both with regards to the procedure and the decision-making authorities, but also the safeguards and due process guarantees for the individual asylum seeker. Finally, the chapter includes a description of components of DRC's legal aid work in asylum procedures, based on DRC's two-pronged approach to legal aid.

7.2. International Legal Frameworks for Asylum Procedures

The right to seek asylum

Following the Universal Declaration of Human Rights, *"Everyone has the right to seek and to enjoy in other countries asylum from persecution"*¹⁴.

The Universal Declaration of Human Rights is broadly considered to be customary international law¹⁵ and States thus have an obligation to comply with these principles regardless of whether the State has ratified any human rights or refugee law.¹⁶

UNHCR defines asylum as *"The grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. Asylum encompasses a variety of elements, including non-*

¹³ See chapter 4 of the DRC Legal Aid Resource Pack on Legal Aid Components and Guidance

¹⁴ [1948 Universal Declaration of Human Rights](#), Article 14(1).

¹⁵ UNHCR defines customary international law as *"The existing legal rules and practices of states which are so prevalent and generally recognized that they have become the usual norms of civilized states even in cases where those rules are not codified in international treaties or conventions."*, UNHCR, [NGO manual on international and regional instruments concerning refugees and human rights](#), 1998/07, page 16.

¹⁶ The 1948 Universal Declaration of Human Rights Article 14 on the right to seek and enjoy asylum has been recognized as customary international law and is thus binding on all States, c.f. Hurst Hannum, [The UDHR in National and International Law](#), 1996, pages 145-146.

refoulement, *permission to remain on the territory of the asylum country, and humane standards of treatment.*¹⁷ The elements included in the definition of asylum will be described below.

Refugee Law

The term 'refugee' is defined in the Refugee Convention as a person, who has fled her or his home country or country of habitual residence "*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.*"¹⁸

Globally, a majority of States have ratified the Refugee Convention¹⁹ and are thereby obligated²⁰ to provide protection to refugees in accordance with the Refugee Convention.²¹ States may also have incorporated the Refugee Convention or regional human rights law into national law.

In addition to international refugee law, many States have also ratified regional legal instruments on refugees such as the Organisation of African Unity (OAU) Convention²², the Cartagena Declaration on Refugees²³ and the Common European Asylum System²⁴.

States' obligations under international refugee law have strong linkages to human rights law and in many areas the two branches of public international law are intertwined and provide a broader foundation for States' obligations to provide protection for people seeking refuge beyond the scope of the 1951 Refugee Convention - as well as a multifaceted practice from international courts and human rights bodies. Whereas the Refugee Convention has a narrowly defined focus, human rights law provides an obligation for States to protect third-country nationals on their territory, who risk serious human rights violations if returned to their country of origin. The term 'subsidiary protection' means that a State must grant a person protection, where the person is in need of international protection, but does not qualify for refugee status according to the Refugee Convention.

The principle of non-refoulement

Like the right to seek and enjoy asylum, the principle of *non-refoulement* is a core principle in refugee and human rights law. The principle of *non-refoulement* is also recognised as customary international law that States are legally bound by²⁵.

Non-refoulement means that States cannot expel or return ("*refouler*") a person to another State, where she or he could risk persecution or harm in the form of a violation of the person's fundamental human rights, such as the right to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment as well as the liberty and security of the person.²⁶

¹⁷ UNHCR, [Master Glossary of Terms, Rev. 1](#), June 2006.

¹⁸ The Refugee Convention Articles 1A(2).

¹⁹ [The 1951 Geneva Convention on the Protection of Refugees](#) (the Refugee Convention) and [the 1967 Protocol relating to the Status of Refugees](#) (the 1967 Protocol).

²⁰ Pacta sunt servanda, Vienna Convention on the Law of Treaties, art. 26.

²¹ 145 States are parties to the Refugee Convention, and 146 States are party to the 1967 Protocol. UNHCR, [States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol](#), 2015.

²² [The 1969 Organisation of African Unity Convention governing the specific aspects of refugee problems in Africa](#) (OAU Convention); Article 1 includes the definition of a refugee.

²³ [The 1984 Cartagena Declaration on Refugees](#) (Cartagena Declaration), non-binding, but incorporated in the domestic legal framework of many countries in Central and South America.

²⁴ [The Common European Asylum System](#) (CEAS), consists of the Asylum Procedures Directive, the Qualifications Directive, the Reception Conditions Directive, the Dublin Regulation and the Eurodac Regulation.

²⁵ The principle of *non-refoulement* is a rule of customary international law that has been written into different legal instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 3 as well as the Refugee Convention Article 33.

²⁶ UNHCR, [Note on the Principle of Non-Refoulement](#), November 1997.

Combined with the right to seek asylum and the principle of access to the territory, the principle of *non-refoulement* obligates a State to receive – and not expel – a person asking for asylum and examine the asylum claim to decide whether the person is in need of international protection as a refugee or not.

Processes and standards for asylum procedures

The determination of refugee status is declaratory in nature because it follows from the Refugee Convention that a person is a refugee from the moment, she or he meets the criteria defined in the Refugee Convention. To ensure that refugees are granted full access to their rights and are protected against refoulement, it is paramount that States set up procedures and systems to determine whether an asylum seeker is a refugee or not.

The Refugee Convention does not lay down standards for procedures for determining refugee status beyond the mentioning of some general overall safeguards, such as the prohibition against discrimination.²⁷ Global fundamental procedural safeguards have however been developed through best practices and soft law such as the Conclusions made by the UNHCR Executive Committee.²⁸

States must have dedicated and competent institutions with caseworkers and judges trained in refugee law to make decisions on refugee status.²⁹ To guide government officials on applying the refugee definition, UNHCR has issued the Handbook on procedures and criteria for determining refugee status and guidelines on international protection³⁰.

Although States have the primary responsibility for determining refugee status, UNHCR may conduct refugee status determination (RSD) in countries that are not party to the Refugee Convention, or which have not yet established the legal and institutional framework to support an RSD process. For UNHCR mandated refugee status determination procedures, UNHCR has issued separate procedural standards for RSD procedures, however these can also be used as a point of reference for national asylum procedures.³¹ Asylum systems may also be referred to as '*transition systems*' when States engage in a gradual transition from UNHCR mandated RSD procedures to national asylum procedures.

Normally, States should use individual asylum procedures to either recognise or reject asylum seekers as refugees. However, asylum procedures can be set up in different ways depending on the profiles and/or the number of arriving asylum seekers. For instance, in situations where a high number of asylum seekers of specific nationalities arrive to a State, it can be appropriate for the State to use group-based determination of refugee status.³² which is referred to as *prima facie* refugees in UNHCR mandated systems or transition systems.³³

²⁷ The Refugee Convention contains safeguards such as ensuring access to courts, Article 16, and the prohibition on penalizing refugees for illegal entry or stay, Article 31.

²⁸ [UNHCR, A Thematic Compilation of Executive Committee \(ExCom\) Conclusions, 7th Edition, June 2014.](#)

²⁹ States can get assistance with refugee status determination procedures by international organizations such as the United National High Commissioner for Refugees (UNHCR) or regional support agencies such as the European Asylum Support Office (EASO).

³⁰ UNHCR, [Handbook on procedures and criteria for determining refugee status and guidelines on international protection – Under the 1951 Convention and the 1967 Protocol relating to the status of refugees](#), February 2019.

³¹ UNHCR, Procedural Standards, [UNHCR Procedural Standards 2020.pdf, 2020](#)

³² UNHCR, [Master Glossary of Terms, Rev. 1](#), June 2006.

³³ UNHCR, [Procedural Standards for Refugee Status Determination](#), 26 August 2020, section 3.3.1, footnote 5, and [ExCom Conclusion No. 94 on the Civilian and Humanitarian Character of Asylum](#), 2002.

Prima facie recognition can be used both as a group-based determination of refugee status³⁴, but also (although less common) in individualised refugee determination procedures. Prima facie recognition can be used where there are readily apparent objective circumstances in the country of origin that provide evidence of persecution against an entire group on account of a Refugee Convention ground. UNHCR's handbook on Procedures and Criteria for Determining Refugee Status, describes that group determination on a prima facie basis is appropriate when:

*"[s]ituations have [...] arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called "group determination" of refugee status, whereby each member of the group is regarded prima facie (i.e. in the absence of evidence to the contrary) as a refugee."*³⁵

Prima facie recognition can also be used under regional refugee definitions, such as the Cartagena Declaration³⁶ or the OAU Refugee Conventions³⁷ that apply a broader refugee definition.

The OAU Convention extends the refugee definition to:

"every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality"

The Cartagena Declaration extends the refugee definition to:

"persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order"

Quality Asylum Systems

According to UNHCR, an asylum system is defined by *"the laws and policies, institutions, structures and resources that, taken together, form a crucial part of a State's response to the arrival of people seeking international protection."*³⁸

³⁴ UNHCR, [Master Glossary of Terms, Rev. 1](#), June 2006.

³⁵ UNHCR, [Handbook on procedures and criteria for determining refugee status and guidelines on international protection – Under the 1951 Convention and the 1967 Protocol relating to the status of refugees](#), February 2019, para. 44

³⁶ [The 1984 Cartagena Declaration on Refugees](#) (Cartagena Declaration), non-binding, but incorporated in the domestic legal framework of many countries in Central and South America.

³⁷ [The 1969 Organisation of African Unity Convention governing the specific aspects of refugee problems in Africa](#) (OAU Convention)

³⁸ UNHCR, [Non-paper on the Asylum Capacity Support Group](#), 4 June 2018, Para II, 3.

DRC follows UNHCR's recommendations for a quality asylum system that is fair, efficient, adaptable and have integrity:³⁹

- **Fairness:** Asylum procedures that provide robust due process guarantees and have expert and professional decision-makers applying the relevant legal framework in accordance with the rule of law⁴⁰.
- **Efficiency:** Decision-makers should quickly identify and assist those with international protection needs, while simultaneously ensuring that persons not in need of international protection are also identified in a timely manner.
- **Adaptability:** Asylum procedures must be possible to adapt easily in a timely manner, in response to or in anticipation of changes in circumstances (such as a large influx or a sudden change in the composition of the group of persons seeking international protection).
- **Integrity:** An asylum system must be designed and operated with integrity in order to avoid and prevent fraud and corruption, and to secure proper oversight.

DRC also supports the UNHCR Executive Committee Conclusion no. 8, which states that the following safeguards form the basis of quality asylum procedures:⁴¹

- **Competent authority to receive asylum applications:** An asylum seeker must be able to claim asylum with a competent official, e.g. immigration officer or border police officer, who is well-trained on asylum law, acts in accordance with the principle of *non-refoulement* and subsequently refers the asylum seeker to the correct authority.
- **Guidance on the asylum procedure:** An asylum seeker should receive the necessary guidance on the State's asylum procedure.
- **Competent authority to make decisions on asylum applications:** A State should have a clearly identified single central and well-trained authority that is responsible for examining applications for asylum and making decisions in the first instance.
- **Right to present the asylum application:** An asylum seeker should be given the necessary facilities, i.e. a competent interpreter and the possibility to contact a representative of UNHCR, to be able to participate in the asylum procedure and present her or his case to the asylum authorities.
- **Proof of refugee status:** The authorities should inform an asylum seeker if she or he is recognized as a refugee and issue documentation certifying the refugee status.
- **Right to appeal a negative decision:** If an asylum seeker is rejected, she or he should be given a reasonable time to appeal for a formal reconsideration of the decision by a competent higher administrative or judicial authority.
- **Right to remain, while the asylum application is being examined:** An asylum seeker should be allowed to remain in the State while the competent authority is examining her or his initial asylum application

³⁹ UNHCR, [Asylum Capacity Support Group – Note for Discussion](#), 28 May 2019

⁴⁰ According to the United Nations, rule of law "refers to the principle of State governance in which all persons, institutions and entities, public and private, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. This includes measures to ensure equality before the law, fairness in the application of the law, the avoidance of arbitrariness, and procedural and legal transparency.", UNHCR, [Note on international protection](#), 2 July 2015.

⁴¹ UNHCR, [Determination of Refugee Status Determination of Refugee Status No. 8 \(XXVIII\)](#), 1977, *litra e*.

in both first and second instance, unless it has been established by the first instance authority that the asylum claim is clearly abusive.

7.3. Components in DRC's Approach to Legal Aid in Asylum Procedures

A legal analysis is the starting point for any legal aid programming, including in asylum procedures.⁴² The legal analysis facilitates an understanding of the situation and the legal environment in a specific context and enables DRC to make informed decisions about future interventions. The legal analysis includes information about (non-exhaustive list): conflict and displacement, legal and protection issues, key demographics and statistics on asylum seekers and refugees, applicable legal frameworks and policies, and legal aid stakeholders, including available services. It also includes an overview of the legal needs of the affected populations, including the most vulnerable groups.

Based on the legal analysis, the added value of DRC's engagement in and around the asylum procedure can be assessed, including which of the three legal aid modalities is most appropriate – meaning that DRC can provide legal aid services either directly through DRC staff; oversee and fund legal aid services implemented by a partner; or finally DRC can make legal aid referrals to local, national or international partner(s).⁴³ The legal analysis also provides the basis for an assessment of whether certain groups or areas of expertise should be prioritized, and if certain guidance for legal staff is needed, for instance on country-of-origin information (COI), case law, counselling methodologies etc. Examples of groups/themes to be prioritized could be certain nationalities, unaccompanied minors, other vulnerable groups, asylum seekers in detention, newly arrived or rejected asylum seekers, as well as cessation or exclusion cases. The resource pack does not provide guidance on what should be DRC's main priorities, as this will depend on the assessment done in the legal analysis that is country specific.

DRC's engagement in asylum procedures includes different components adapted to the needs in the specific context. Often legal aid services are needed, both in the form of legal information dissemination and awareness raising sessions that provide general, accurate and easily accessible information to an individual or group, but also legal aid services adapted to the situation of the individual, such as legal counselling, legal assistance, and legal representation. Legal aid services should be provided in accordance with DRC's legal aid principles and undertake an age, gender and diversity perspective in the approach to activities.⁴⁴

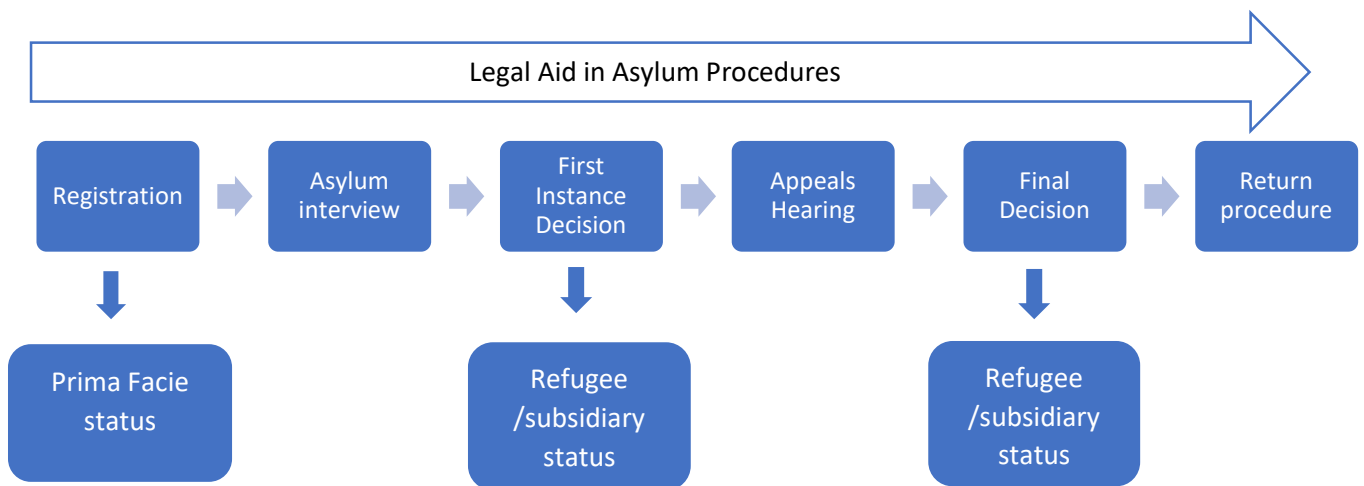
DRC views legal aid services as an important part of ensuring that asylum seekers can claim their rights and are empowered to participate in the procedure, make informed choices about his/her situation, as well as understanding and respecting the decisions of the authorities – but also challenging incorrect or flawed decisions. Legal aid may also be an important factor in equipping the asylum seeker to make an oral and/or written statement of the asylum motive. Given the shared burden of proof between the asylum seeker and the authorities in asylum cases and the fact that asylum seekers quite often cannot provide physical evidence of the risk of persecution, the asylum seeker's personal statement is very important in the authorities' assessment of whether the asylum claim is '*well-founded*'.

The model below illustrates a fictional asylum procedure and which steps/phases an asylum procedure can have. Due to the complex and often lengthy nature of asylum procedures, legal aid services are necessary throughout the procedure, and not just in appeal stages.

⁴² See chapter 3 and Annex 1 of the DRC Legal Aid Resource Pack

⁴³ See chapter 2 of the DRC Legal Aid Resource Pack

⁴⁴ See chapter 2 and 4 of the DRC Legal Aid Resource Pack



Legal aid services are needed throughout the procedure, but the themes (the questions that asylum seekers have and the information they need) will often vary greatly depending on the different stages in the procedure. For instance, an asylum seeker may have different legal aid needs upon arrival than during the appeal stages. Legal aid information and awareness raising session during the registration phase can provide the asylum seeker with information about his/her rights in the procedure and obligations – e.g., the right to an interpreter, the right to stay – but also what to be aware of prior to the interview with the asylum authorities. In the registration phase, legal aid on themes such as family reunification, the right to work as an asylum seeker or socio- and economic rights etc. could also be relevant.



The model above illustrates that asylum seekers will often have many questions that are not related directly to the asylum case, but about everyday life as an asylum seeker, and thus information and awareness raising sessions during the registration phase should be attentive to what the asylum seeker deems relevant, while

also striking a balance between the information that is necessary to be able to participate in the asylum procedure.

During appeal stages, on the other hand, information and awareness raising sessions in larger groups may be less appropriate, since the questions that asylum seekers have at this stage will often be more specifically related to the individual circumstances of the asylum case and thereby requires a more individually adapted form of counselling, but also a more confidential setting. In general, legal aid services during appeal stages in the asylum procedure are quite resource and time-consuming, but also indispensable for the individual asylum seeker and for the asylum system as a whole. Due to the severe consequences of a wrongful decision for the asylum seeker, DRC may choose to provide legal representation during appeal stages or even after a final negative decision.⁴⁵

Depending on the needs in the individual context, it may be important for DRC operations to supplement the legal aid services with legal aid environment-building activities. Legal aid environment-building activities are aimed at supporting and improving the asylum system. DRC can raise awareness among duty bearers or support the capacity-building of authorities that engage with asylum seekers and refugees. DRC's environment-building activities are described in chapter 4 and encompass law and policy engagement, advocacy, training and capacity building and strategic litigation.

Strategic litigation can be an important component when engaging in legal aid in asylum procedures and DRC may choose to engage in strategic litigation in cases concerning violations of asylum seekers and refugees' rights. Duty bearers may have introduced laws or practices not compliant with international human rights law and using litigation to address these violations may be a way to hold duty bearers accountable, raise attention or even change a policy or practice.⁴⁶

7.4. LIST OF RELEVANT DATABASES WITH GUIDANCE MATERIALS:

Refworld database on [Refugee Status Determination](#), including:

- UNHCR Handbook on procedures and criteria for determining refugee status and guidelines on international protection – Under the 1951 Convention and the 1967 Protocol relating to the status of refugees
- UNHCR Procedural Standards for Refugee Status Determination under UNHCR's mandate
- UNHCR Executive Committee Conclusions

Refworld database on [detention](#), including

- UNHCR Detention Guidelines

UNHCR [ACSG Portal](#), including

- UNHCR, [Asylum Capacity Support Group, Note for Discussion](#), May 2019
- Good practices, tools and reference materials

⁴⁵ This will depend on the individual context. In some countries DRC may not, for various reasons, be able to provide legal representation or even legal assistance during the appeal stage in the asylum procedure.

⁴⁶ See chapter 4.6 of the DRC Legal Aid Resource Pack on strategic litigation; definition, purpose, case selection criteria and steps to take in strategic litigation cases.

ANNEX 1 - LEGAL ANALYSIS TEMPLATE