

DRC expertise as a legal actor

Asylum & Legal Stay



This paper provides an overview of *why* and *how* DRC engages in legal aid in and around asylum procedures, as well as on legal aid for other types of protection and legal stay for displacement affected people.

The area of refugee protection has grown increasingly complex. While the Refugee Convention is still the overarching legal instrument under which refugee protection is recognized, it has been supplemented by protection statuses based in international, regional, and national human rights law. Some States apply a narrow interpretation of the refugee definition in the Refugee Convention and have introduced subsidiary or complementary protection permits that have a widened scope building on human rights law. Most States will assess the need for either refugee status or complimentary/subsidiary protection as part of the same asylum procedure. Other regions of the world have introduced regional frameworks applying a broader refugee definition, such as the Cartagena Declaration on Refugees or the OAU Refugee Convention.

In addition, some regions of the world favor alternative protection schemes for displaced persons focusing on shortening the duration of residence permits and limiting the access to associated rights, while other regions strategize around ‘outsourcing’ asylum processing and refugee protection all together or criminalizing refugees by imposing penalties for irregular entry or by other means deterring refugees from seeking and accessing protection.

Refugee protection builds upon the binding and non-derogable principle of non-refoulement set out in the Refugee Convention and similarly in various human rights instruments, which allows people to access territory and seek protection without being returned to their country of origin or pushed back across the border before an asylum claim has been duly processed. The principle of non-refoulement is inherently linked to the right to seek and enjoy asylum, as returning a person without proper assessment would run counter to the obligation to make sure that no-one should be returned where there is a risk of irreparable harm on account of torture, ill-treatment or other serious breaches of human rights obligations. The principle of refoulement binds States irrespective of whether they have signed the Refugee Convention or not. In practice some States systematically violate their obligations by pushing people back across borders where their life will be at risk or returning refugees to their country of origin without proper assessment of their need for international protection/ asylum claim.

While international law provides clear and binding norms for the right to seek and enjoy asylum, there is no universal binding structure for the processing of asylum claims. In non-signatory states (to the Refugee Convention) the asylum processing is mostly conducted by UNHCR, whereas signatory States can process asylum claims in national asylum procedures, or with the assistance of UNHCR. The quality of asylum systems varies significantly, both in terms of ensuring fair and competent decision-making authorities, as well as providing asylum seekers with due process guarantees, such as access to an interpreter, right to a personal interview, right to appeal within reasonable time and with suspensive effect and access to legal aid services – including legal representation in appeals and legal information about the procedure.

Navigating a landscape of complex and often lengthy legal procedures requires access to legal aid to ensure that refugees can make informed decisions about their future and ultimately that they are able to acquire and enjoy the protection that they are in need of and entitled to.

For conflict- and displacement-affected people legal stay in its various forms - be it refugee status, subsidiary/complementary protection, temporary protection, humanitarian protection, family reunification etc. – is the foundation that secures a regularised legal stay in a hosting State. But legal stay is also often the prerequisite for accessing a range of associated and important rights, such as family reunification, access to civil documentation, the labour market, education and/or health care, moving freely within the host country or renting or buying land/property. Thus, legal aid focused on asylum and legal stay can have links with other humanitarian sectors, such as Economic Recovery, Shelter, Camp Coordination and Camp Management (CCCM) etc.

DRC as a legal aid provider

DRC's approach to legal aid is two-pronged; legal aid services directly targeting persons in need of protection, supplemented by legal aid activities aimed at addressing obstacles and gaps in the legal environment (legal environment building activities). The different components of DRC's legal aid programming are adapted to the needs in the specific context. DRC has different modalities for legal aid programming, legal aid can be provided through DRC staff, in partnership with a local partner or through referrals – and often DRC legal aid programming will be a combination of the three modalities based on an analysis of the legal aid needs, relevant stakeholders and capacities/expertise needed.

In a recent survey mapping of legal aid activities approximately 60 percent of DRC country operations stated that they provided legal aid services in and around the asylum procedure and/or legal aid services in relation to other types of legal stay. 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.

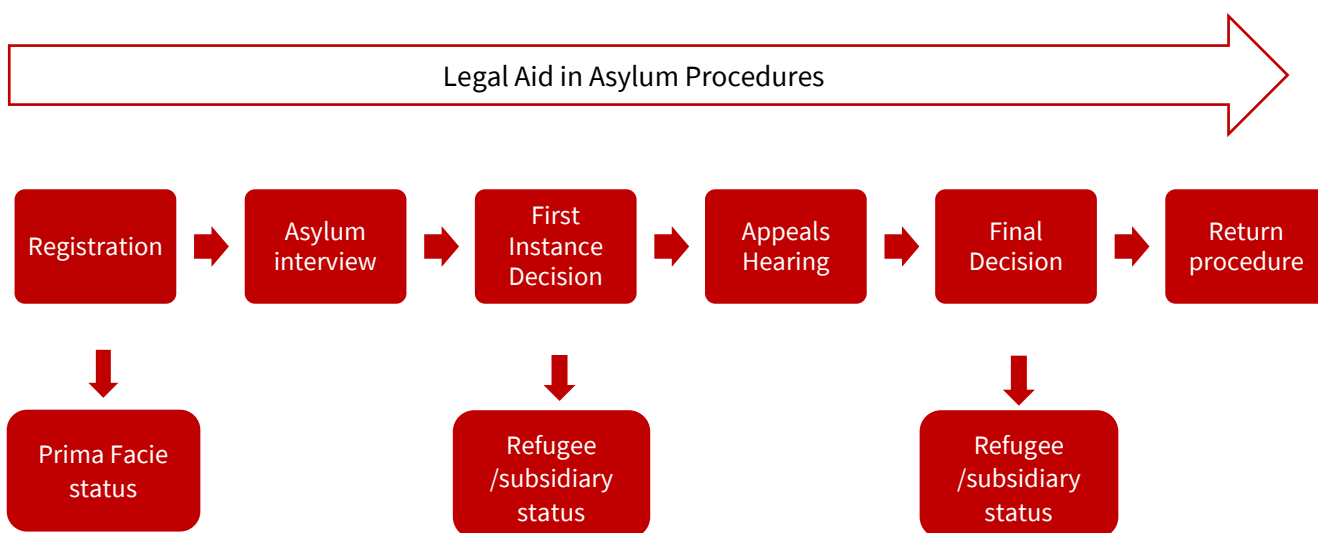
Legal aid services in the asylum procedure

DRC views legal aid services as an important part of ensuring that asylum seekers (i.e. persons who have applied for refugee status or subsidiary/complementary protection) can claim their rights and are empowered to participate in the procedure, make informed decisions 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 proof¹ 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’.²

With decades of experience providing legal aid in and around the asylum procedure, DRC has expertise on a wide range of both technical areas, but also expertise on how to set up and continuously adapt legal aid programming to address protection risks related to the asylum procedure and legal stay.

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.



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. The 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 other socio- and economic rights etc. could also be relevant.

¹ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, Revised February 2019, p. 43-44

² UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, Revised February 2019, p. 19-20



The model above illustrates some of the questions/legal issues that the asylum seeker may have during the registration phase. The model underlines why DRC takes a holistic and people-centered approach when providing legal aid related to asylum procedures: While it is important to ensure accurate and timely information about the asylum procedure, it is also important to be attentive to the obstacles that the asylum seeker may struggle with in the margin of the procedure.

DRC legal aid on other types of legal stay

As mentioned previously, DRC’s legal aid engagement also addresses other types of legal stay linked to the person’s need for protection. These types of legal stay often build upon States obligations under human rights law, while the associated rights granted with legal stay and the administrative process for acquiring legal stay will be regulated by national or regional law. Examples of other types of legal stay linked to the person’s need for protection are temporary protection status, humanitarian permits, humanitarian visas, or protection permits for unaccompanied minors. States also have an obligation to protect and respect family unity, and for instance offer family reunification for family members of refugees or holders of other types of protection permits.

So, even if a person does not meet the criteria for refugee status or complementary/subsidiary protection there may still be serious grounds not to return to the country of origin – for instance due to the risk of separation of family, humanitarian crisis/conflict in the country of origin, serious mental or physical health issues, best interest of the child etc.

DRC also provides legal aid services in transit countries or non-signatory states, where people – even though meeting the criteria of the Refugee Convention – are not able to access asylum procedures and/or

effective protection. In such situations, DRC aims at mitigating risks by focusing efforts on regularizing temporary stay.

DRC assists people with legal aid both in terms of creating awareness and sharing information about the different types of legal stay and the procedures for obtaining legal stay. In different country contexts, there may be different factors to take into account when a person who is displaced decides whether to register as an asylum seeker (i.e. apply for refugee status or subsidiary/complementary protection) or apply for other types of legal stay. There may be differences in case processing times (which in some cases can take years, and years), in the duration of the residence permit or rights attached to the residence permits, not least when it comes to family reunification. Thus, making the decision to register for asylum, or applying for other types of legal stay will have a great impact on the lives of forcibly displaced and legal aid is needed to make informed decisions, and to ensure successful applications.

In the European context, an example would be displaced persons arriving from Ukraine where the majority qualifies for temporary protection under the EU Temporary Protection Directive or similar legislation, which is issued swiftly in most countries and gives immediate access to social services, education and the labour market. As the situation currently looks, it will be beneficial for many to apply for temporary protection instead of registering as an asylum seeker, but this situation can change as the conflict progresses and/or intensifies and temporary protection permits run out. Besides the temporary nature of the status, which means that someone might lose it before they find their country of origin safe for return, one notable difference is that the years with temporary protection status does not “count” towards long-term residency.

In Latin America, Colombia has provided Temporary Protection Status (TPS) to more than 1,9 million Venezuelan refugees and migrants to manage largescale in-flux, fast-track regularization of migration status and thereby facilitating access to rights, such as formal employment, healthcare and education. While TPS does provide protection from refoulement, it is also a step away from the asylum procedure and an introduction of a more short-term definition of protection needs.

DRC areas of experience and expertise on legal aid in and around the asylum procedure and other types of legal stay

Across regions and country operations, DRC has decades of experience and expertise on legal aid, and on asylum procedures and legal stay linked to the need for protection. Below is a non-exhaustive overview of DRC's areas of competencies and expertise relating to legal aid in and around the asylum procedure and other types of legal stay. The areas of experience and expertise as listed below illustrate both what type of legal aid services we provide, how we engage to strengthen the legal environment around refugees and

other forcibly displaced through advocacy, strategic litigation, engaging with human rights mechanisms, capacity building of duty bearers etc. The list also illustrates the different areas of legal expertise that are anchored in DRC, some areas are closely linked to specific regions while other areas are broadly represented in DRC’s more than 40 country operations.

AREAS OF EXPERIENCE AND EXPERTISE

Legal aid services in and around the asylum procedure and other types of legal stay

<p>Information and awareness raising sessions</p>	<p>Information relevant to an individual or group is disseminated. The information can be provided through visual material, digital platforms, video conference or by other means of communication. Often very relevant during the registration phase of the asylum procedure or prior to registration as well as application procedures for other types of legal stay to reach a larger number of people with similar legal issues. To provide general information about different types of residence permits, the asylum procedure, rights and obligations etc.</p>
<p>Legal counselling</p>	<p>May be relevant through-out asylum procedures as well as application procedures for other types of legal stay to ensure correct guidance on procedures and how to fill out applications and present the case to duty-bearers. Legal counselling enables informed decision-making, and ensures access to due process guarantees, associated rights - right to work, right to health, right to education.</p>
<p>Legal assistance</p>	<p>Legal assistance can be relevant through-out the asylum procedure procedures as well as application procedures for other types of legal stay, both in terms of ensuring active participation in the procedure, but also in terms of accessing associated rights. Some groups may also face difficulties in contacting duty-bearers personally and thus legal assistance is an essential means to access rights and services in practice. See AGDM perspectives below.</p>
<p>Legal representation</p>	<p>Representation before courts or quasi-judicial bodies. Often relevant in appeals procedures to ensure correct decision-making and overall human rights compliance, including non-discrimination. Relevant in both asylum procedures as well as application procedures for other types of legal stay.</p>

<p>Detention counselling</p>	<p>In some country operations DRC provides legal aid counselling for migrants, asylum seekers and refugees in immigration detention. DRC can provide information about the asylum procedure and other types of legal stay, assist with accessing the asylum procedure and procedures for other types of legal stay.</p> <p>DRC also works on promoting alternatives to detention, often using data from detention counselling to inform legal aid environment-building activities, for instance through advocacy, capacity-building or law and policy engagement.</p> <p><u>The impact of immigration detention on Rohingya Refugees in Malaysia and the need for reform DRC Danish Refugee Council</u></p>
<p>Return and Reintegration</p>	<p>Focus on dignified return and non-directive return and reintegration counselling.</p> <p>In some regions, DRC has extensive experience in providing legal counselling to rejected asylum seekers. The aim being to support informed decision-making by the rejected asylum seeker through impartial, independent and non-directive counselling.</p> <p>See more information here: <u>DRC Policy Brief on Return Counselling</u> <u>DRC Policy on Return</u> <u>DRC Return Counselling Methodology Brief</u></p>
<p>Other types of legal stay</p>	
<p>Temporary protection status</p>	<p>Temporary protection schemes are mostly regulated directly by national law, but often with a reference to obligations under international or regional human rights law. The rights associated with temporary protection status, the administrative procedures and requirements for obtaining or renewing the status will also be regulated by national law and thus both legislation and practice requires regular monitoring to ensure correct and quality legal aid.</p>
<p>Family reunification</p>	<p>Refugee families often face painful separation for many years. Family reunification is an important pathway to legal stay to restore family unity for refugees. Family reunification</p>

	<p>procedures are regulated by national (or regional) legal frameworks and require dedicated legal expertise to navigate practice. The procedures require applicants to submit various forms of civil documentation, obtain biometrics, and in some instances go through DNA tests or age assessments procedures. Depending on the type of protection permit, the law may also provide for additional requirements, for instance in terms of financial security, employment records etc.</p>
<p>“Humanitarian” permits</p>	<p>Many national legal frameworks have various types of “humanitarian” permits building on human rights obligations. The humanitarian permit can be issued on account of severe illness or disabilities, identified survivors of human trafficking, best interest of the child assessments, or other grounds. The administrative procedures and the level of documentation required will be regulated by national law.</p>
<p>Thematic areas:</p>	
<p>Counselling methodologies</p>	<p>Working with interpreters</p> <p><u>Motivational interviewing</u> (MI) counselling techniques: An evidence-based counselling approach that aims to empower people to take decisions in their lives by drawing on their own capacities.</p> <p>Legal Information dissemination through visual means</p> <p>Digital legal aid (DRC Ukraine <u>Digital Legal Aid Platform</u>)</p>
<p>AGDM perspectives</p>	<p>Age, Gender and Diversity perspectives are mainstreamed in all DRC legal aid programming. In terms of legal aid in relation to asylum and other types of legal stay, AGDM is important both in terms of access to the procedure, asylum motives, risks in relation to accommodation or health care, additional rights in the procedure (children for instance) and more. These groups can include children (including unaccompanied minors), women, elderly, LGBTQI+ persons, people with</p>

<p>Working with Country of Origin (COI) information</p>	<p>disabilities, but also other marginalized groups depending on the country context.</p> <p>Country of origin information (COI) is an essential factor when authorities assess the merits of an asylum claim. Often authorities look to COI for an overview of the human rights situation in a specific country, but also importantly, they look at COI as a factor in determining whether the applicant has a well-founded fear of persecution. DRC has extensive expertise in working with COI, including drafting reports and using COI in asylum cases, particularly in appeals.</p>
<p>Children in asylum procedures including unaccompanied minors</p>	<p>Although children in asylum procedures have specific rights and duty-bearers must take into account their best interest in all actions concerning the child, this is not always the case in practice. DRC has extensive expertise in promoting child-friendly procedures and providing legal aid services to children. Providing legal aid services to children requires dedicated skills in order to adapt services to the age and maturity of the child.</p>
<p>Engaging with Human Rights Mechanisms</p>	<p>Part of DRC’s two-pronged approach to legal aid is addressing barriers and obstacles that displacement affected people face through legal aid environment-building activities; be it strategic litigation, advocacy, monitoring and reporting, law and policy engagement or training.</p> <p>In relation to asylum and other types of legal stay, DRC has extensive experience and expertise engaging with various human rights mechanisms; the UN treaty body system, the universal periodic review process, UN special rapporteurs, the Council of Europe, the Inter-American Human Rights Commission as well as regional courts, such as the European Court of Human Rights and the European Court of Justice.</p>

Examples of DRC legal aid programming on asylum & legal stay

DRC's two-pronged approach to legal aid focuses both on legal aid services to displacement affected people, but an essential component of our legal aid work is also our legal aid environment-building activities, be it advocacy, law and policy engagement, strategic litigation, capacity building or monitoring and reporting. The examples below show both the technical complexity and great span of legal aid activities within legal aid programming in and around asylum procedures and other types of legal stay.

Access to asylum procedure

In Colombia DRC is a founding member of the strategic litigation network of different legal actors, **Red-LEM** (Red de Litigio Estratégico en Migración) with the aim to improve the legal environment for refugees in Colombia through joint initiatives. As a coordinated effort from legal aid actors, Red-LEM has been able to submit amicus curiae in asylum cases to be reviewed by the Colombian Constitutional Court on strategic cases. Red-LEM is also working on a regional report that provides recommendations to the Colombian Administration with a strong emphasis on strengthening asylum procedures and push for access to asylum from international airports in Colombia.

In Denmark, DRC provides legal aid services in all stages of the asylum procedure, including legal representation to asylum applicants, who have received an admissibility rejection with reference to the so-called 'Dublin' EU regulation. DRC represents applicants before the Refugee Appeals Board and have also submitted complaints to the European Court of Human Rights and European Court of Justice (Preliminary Question). Based on years of experience from thousands of cases, DRC advocates at both national and EU level for access to fair and efficient asylum systems, decent

Immigration detention

In Kenya DRC engages in a collaborative effort with our local legal aid partner, Refugee Consortium of Kenya (RCK) to address protection issues for children in immigration detention. DRC Kenya provides psycho education to children in immigration detention and police custody while RCK provides legal aid counselling and representation to the children to prepare them for court hearings.

In Peru, DRC works together with its partner Encuentros including on strategic litigation. Encuentros' legal clinic with the support of DRC has developed a strategic litigation plan to challenge two recent Peruvian Legislative Decrees (*Decreto Legislativo N° 1574 y 1582*). Decree 1574 allows authorities to detain migrants who are not able to provide a civil identity document in public spaces for up to 12 hours and Decree 1582 allows authorities to deport/expel migrants without legal stay within 24 hours. Encuentros' strategic litigation plan includes two possible avenues: Bringing strategic cases before the courts testing the legality of the detention and secondly through filing for the unconstitutionality of the decrees through the Ombudsman and five thousand signatures from Peruvian citizens.

Other types of legal stay

In Italy, DRC has run a regional toll-free hotline since March 2022. The hotline provides comprehensive legal aid services to individuals fleeing Ukraine and seeking refuge in Italy. This service is designed to facilitate their access to essential public and private services, ensuring they can fully exercise their rights and avail themselves of opportunities for social inclusion within the host country. DRC hotline's staff provides individualised, non-directive and neutral legal counselling to enable and empower individuals to make informed decisions on the most appropriate type of residence permit to apply for. While most opt for Temporary Protection, this isn't the best choice for everyone. Generally, international protection is explained as offering a more durable residence permit, with quicker access to family reunification and, if eligible, citizenship. The differences between permits are explained, and a recommendation is made based on individual's situation and needs.

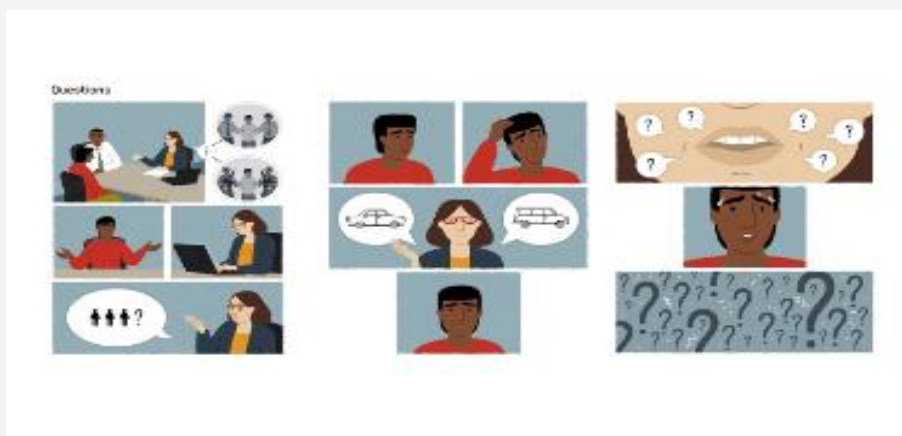
On the southern border of Mexico with Guatemala, DRC provides legal counselling to support persons in mixed migration flows to understand the differences between asylum procedures that could lead to permanent residence in Mexico and other forms of temporary or permanent legal stay, including humanitarian visas and family-based regularization, in order to promote informed decision-making. DRC's counselling has helped many beneficiaries understand which pathway is the most appropriate given their circumstances and individual legal representation by DRC's legal aid team has led beneficiaries to successfully obtain other forms of legal stay.

Children in asylum procedures

Over half of the world's refugees are children. DRC seeks to target the specific issues that face children that have been forcibly displaced.

In Ethiopia, DRC assists unaccompanied refugee children from Eritrea, who arrive without their parents. If the child has other relatives in Ethiopia, DRC can provide legal representation before the Ethiopian Courts to establish guardianship and ensure that the children are reunited with relatives, thereby providing safety and stability for the child.

In Denmark, DRC has specially trained legal advisors providing age-appropriate legal counselling to unaccompanied children who have applied for asylum. DRC has developed a cartoon over the Danish Asylum Procedure making complex information more accessible and helping children to better engage in the asylum procedure: [DRC cartoon of asylum procedure](#)



DRC legal aid environment-building and border monitoring

DRC has had a humanitarian response in **Mexico** since 2020. Since the onset of operational activities, DRC Mexico has carried out protection monitoring in numerous locations in Mexico, including along the southern and northern borders. Protection monitoring involves systematically and regularly collecting, verifying, and analysing information over an extended period to identify violations of rights and protection risks for populations of concern for the purpose of informing effective responses. On the basis of the data from protection monitoring, DRC Mexico submitted [comments and recommendations](#) to the United States regarding the proposed ‘interim final rule’ to restrict access to territory and asylum following the Proclamation on Securing the Border. The interim final rule represents a concerning threat to effectively protect the rights of asylum seekers and refugees through the suspension and limitation of entry to US territory. This is one example out of many on how DRC uses protection monitoring to inform law and policy engagement aimed at strengthening the legal environment for refugees and asylum seekers.

In Europe, DRC is coordinating an interagency initiative ‘[Protecting Rights at Borders \(PRAB\)](#)’ formed by protection and legal aid actors operating across eight countries in Europe. The partners are protection and legal aid organisations focusing on documenting and monitoring human rights violations, as well as responding to needs of individuals at the European Union’s external and internal borders. PRAB was born out of the protection monitoring done by DRC Bosnia-and-Herzegovina (BiH) since 2020. Protection monitoring and data collection highlighted the systematic use of violence against people on the move by the border personnel when preventing them to cross into the EU through its external borders. Since 2020 the PRAB initiative has expanded monitoring and documentation.

The PRAB initiative continues to issue reports, policy briefs and engages in strategic litigation. The overall aim being to ensure that national governments enable and enhance access to remedies for individuals experiencing pushbacks, and that EU Member States and neighbouring countries governments improve accountability at the EU borders by effectively setting up independent border monitoring mechanisms.

On the **border between Tunisia and Libya**, DRC has established a cross-border protection monitoring mechanism. The monitoring data documents rights violations at the borders and has informed DRC legal aid environment-building activities at EU level. Monitoring reports have been presented to members of the EU parliament as well as donors in Brussels with the aim to inform EU policy in the area of asylum and third country cooperation, but also advocate for Libya and Tunisia to uphold their commitments under international law.

Dignified return procedures

In Venezuela, DRC provides legal assistance for returnees who need to access civil documentation for their children, who were born in a third country. The DRC Venezuela legal team works cross-border with DRC Colombia to obtain legalization/authentication of birth certificates issued in Colombia, so children have civil documentation proving their legal identity, also enabling access rights and services.

In Denmark, DRC has provided legal aid to asylum seekers in all stages of the asylum procedure since the 1980's. This includes legal aid to asylum seekers with a finale negative decision on their asylum claim. Neutral and non-directive legal aid in return procedures is essential to ensure that rejected asylum seekers understand and respect the decisions of the authorities – but also that incorrect or flawed decisions are challenged.



Founded in 1956, the Danish Refugee Council (DRC) is Denmark's largest international NGO, with a specific expertise in forced displacement. DRC is present in close to 40 countries and employs 7,500 staff globally.

DRC advocates for the rights of and solutions for displacement-affected communities and provides assistance during all stages of displacement: In acute crisis, in exile, when settling and integrating in a new place, or upon return. DRC supports displaced persons in becoming self-reliant and included into hosting societies. DRC works with civil society and responsible authorities to promote protection of rights and inclusion.

Our 6,200 volunteers in Denmark make an invaluable difference in integration activities throughout the country.

DRC's code of conduct sits at the core of our organizational mission, and DRC aims at the highest ethical and professional standards. DRC has been certified as meeting the highest quality standards according to the Core Humanitarian Standard on Quality and Accountability.

HRH Crown Princess Mary is DRC's patron.

To read more about what we do, see: www.drc.ngo

DRC DANISH
REFUGEE
COUNCIL
• We are there