



UNSW
Kaldor Centre
for International
Refugee Law

POLICY BRIEF 14

Asylum Capacity Development: Building New and Strengthening Existing Systems

Brian Barbour
September 2023

About the author

Brian Barbour is Senior Refugee Protection Advisor at Act for Peace and an Affiliate at the Kaldor Centre for International Refugee Law, UNSW Sydney, where he is completing a PhD on the topic, 'Building New Asylum Systems from the Ground Up in Asia'. He has conducted research with the United Nations High Commissioner for Refugees (UNHCR) to develop tools and guidance to support the transition of the Refugee Status Determination (RSD) function from UNHCR to a new State asylum system, on RSD backlog prevention and reduction, and on building and strengthening the institutions responsible for RSD and related services. His work to support the Government of the Philippines, through evaluation of proposed legislation to formally establish the refugee and statelessness status determination system and accede to the 1961 Statelessness Convention, applied an earlier version of the framework discussed in this Policy Brief. Brian is admitted to the New York Bar as an Attorney and Counselor-at-Law. He has represented asylum claimants in both UNHCR and government RSD systems, and has implemented projects with UNHCR, governments, non-government organisations and local partners in several countries throughout the Asia-Pacific.

Acknowledgments

I am extremely grateful to Daniel Ghezlbash and Frances Voon for their consistent support and invaluable comments and suggestions. I am also thankful for feedback from Jane McAdam on this work, and for feedback and support from several colleagues and friends from the Kaldor Centre for International Refugee Law. I would like to express my deepest appreciation to my PhD thesis supervisors, Guy Goodwin-Gill and Sangeetha Pillai. I am also indebted to Elise Currie-Roberts, Daniel Kamphuis, Aram Fahim Hashemi, Kate O'Malley and colleagues at UNHCR for their insightful comments and suggestions on an earlier draft. I am extremely grateful to Christoph Sperfeldt for his detailed feedback on an earlier draft, and thank the participants of the research symposium, *Meeting the 'Dual Imperative': Working towards solutions for displacement in the Asia Pacific through policy-oriented research* organised by the Centre for Asia Pacific Refugee Studies (CAPRS) at the University of Auckland and the Kaldor Centre at UNSW for a fruitful discussion of this work. I would also like to thank Rutaban Yameen for her expert copy-editing support, Frances Nolan for support with formatting and design, and Lauren Martin for support with communications. All opinions are the author's and any errors are mine alone.

The Kaldor Centre for International Refugee Law

The Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney is the world's leading research centre dedicated to the study of international refugee law. The Centre was established in October 2013 to undertake rigorous research to support the development of lawful, sustainable and humane solutions for, and with, displaced people, and to contribute to public policy involving the most pressing displacement issues in Australia, the Asia-Pacific region and the world.

www.kaldorcentre.unsw.edu.au

The Policy Brief Series

The Policy Brief series showcases high quality, policy-relevant research on issues relating to forced migration and international refugee law. The views expressed in the Policy Brief are those of the author(s) and do not necessarily reflect those of the Kaldor Centre for International Refugee Law. Policy Briefs are available online at www.kaldorcentre.unsw.edu.au/publications.

ISSN: 2205-9733 (Print); ISSN: 2205-9741 (Online)

Contents

- Executive summary 1
- Recommendations 2
- 1 Introduction 3
- 2 What is asylum capacity development (ACD)? 3
 - 2.1 Embracing a more expansive definition of ACD 3
 - 2.2 What ‘capacities’ must be developed? A needs-based approach 4
 - 2.3 Shifting from a ‘capacity building’ to a ‘capacity development’ approach 5
- 3 The characteristics of an effective asylum system 6
 - 3.1 Chart of characteristics 7
 - 3.2 Indicators 12
 - 3.3 Limitations 14
- 4 A whole-of-society approach to ACD 14
 - 4.1 Establishment of a well-coordinated referral network as a target of ACD 15
 - 4.2 Localise the approach to ACD 15
- Appendix 17
- Endnotes 19

Executive summary

Refugees are guaranteed a set of rights under international law, but whether a refugee can enjoy those rights depends on the asylum system that they encounter in the country where they seek refuge. An 'asylum system' can be understood as the legal, institutional, and social arrangements in place to meet the needs of refugees. Asylum capacity development (ACD) is the emerging area of policy and practice concerned with strengthening asylum systems.

The concept of ACD is still being developed, but there is a tendency to equate ACD with building State capacity to conduct refugee status determination (RSD); that is, the institutional processes in place to decide asylum claims. The success of ACD is sometimes measured by the passage of legislation or regulations, the establishment of a new RSD unit, or 'handover' of RSD functions from the Office of the UN High Commissioner for Refugees (UNHCR) to the State. ACD is often centred on building government capacity, without engaging civil society actors.

A focus on RSD alone will not equip States to meet the diverse protection needs of refugees in practice. In the worst-case scenario, asylum systems are established that do not meet relevant needs or resolve asylum cases, resulting in frustrations for both people seeking asylum and governments. When non-governmental stakeholders are excluded, key capacities may be missing and there is no shared ownership of the asylum system that is established.

Clarifying the purpose and scope of ACD is important to ensuring that initiatives to strengthen asylum systems are effective. This Policy Brief seeks to contribute to both the conceptual and operational development of ACD, by setting out an approach to strengthening asylum systems that is grounded in the protection needs of refugees and reflects a whole-of-society approach.

ACD can be conceptualised as the process of developing institutional, national, and local capacity so that States and UNHCR, in collaboration with individuals, organisations, and society as a whole, can each do their part to meet the protection needs of refugees and resolve protection claims effectively, efficiently, fairly and sustainably.

This Policy Brief provides practical guidance by setting out a framework that can be used to evaluate existing or proposed asylum systems. While there is a remarkable diversity among asylum systems around the globe, a comparative analysis of State practice reveals that effective asylum systems share a number of common characteristics. This Policy Brief identifies eleven characteristics: accessibility; specialisation; expertise; independence and impartiality; transparency; integrity; accountability; efficiency; adaptability; and collaboration. This Policy Brief provides a set of indicators that can measure progress towards achievement of these characteristics or standards.

This Policy Brief promotes a needs-based approach that seeks to develop capacities or scale them up, in order to meet the identified needs of refugees. It also emphasises the importance of a whole-of-society approach that engages all stakeholders, governmental and non-governmental, with the capacity to contribute. A well-coordinated platform for cooperation and coordination among all relevant stakeholders should be a target of ACD.

Ultimately, the success of ACD efforts should be assessed with reference to whether there are improved protection outcomes for refugees, and whether case processing capacity is strengthened such that asylum claims can be resolved effectively, efficiently, fairly, and sustainably.

Recommendations

On the conceptual framework of ACD

1. **Adopt a needs-based approach to ACD:** States and UNHCR should adopt a needs-based approach to ACD by mobilising and developing capacities, or scaling them up, to meet the needs of people seeking asylum.
2. **Start with a baseline needs and capacity assessment:** States and UNHCR, together with all relevant service providers, should conduct a needs and capacity assessment to serve as a baseline against which progress in ACD can be measured. This should identify the needs of refugees and people seeking asylum, existing capacities to meet identified needs, and capacity gaps.
3. **Measure success by protection outcomes and case processing capacity:** States and UNHCR should measure the success of ACD in terms of improved protection outcomes for refugees and strengthened case processing capacity. Success should not only be measured by indicators such as the set-up of an institution, the adoption of legislation, or the 'handover' of responsibility from UNHCR to the State.
4. **Engage all relevant stakeholders in ACD:** States and UNHCR should engage diverse stakeholders with a range of skills and capabilities in order to strengthen asylum systems, with a view to collectively meeting the identified needs of refugees.
5. **Promote a shared national and local ownership of ACD:** ACD efforts should promote a shared national and local ownership of ACD, recognising and building upon existing capacities, and engaging at the individual, organisational, and societal levels.

On measuring progress towards the achievement of an effective asylum system

6. **Identify common standards to measure effectiveness of an asylum system:** States and UNHCR should consider measuring institutional effectiveness on the basis of common standards, and identify measurable indicators that can be used to evaluate existing and proposed asylum systems. (A proposed set of standards and indicators are elaborated in Section 3.1 and 3.2 of this brief.)
7. **UNHCR should consult widely on ACD-related guidelines and tools currently being developed:** UNHCR should engage experts, including those with lived experience of displacement, and consult widely in the development of tools and guidelines for ACD-related work.

On a whole-of-society approach to ACD

8. **All relevant stakeholders should cooperate to develop local referral networks:** A well-coordinated platform for cooperation and coordination should be a target of ACD.
9. **Localise the approach to ACD:** States and UNHCR should mobilise a diverse group of governmental and non-governmental stakeholders including those that have capacity to contribute to strengthened protection capacity in each local context, thereby permanently strengthening local protection capacity for long-term impact.

1 Introduction

Refugees have a range of rights set out in international humanitarian, human rights and refugee law. In practice, their ability to enjoy those rights depends upon the asylum system that they encounter in the country where they seek refuge. An asylum system can be understood as the legal, institutional, and social arrangements put in place to meet the needs of refugees. Asylum systems vary widely in structure and effectiveness, and globally there is now considerable interest in how these systems can be improved. The emerging area of policy and practice concerned with strengthening asylum systems is known as asylum capacity development (ACD).

There is a great deal of work currently underway on ACD, in three separate but interconnected contexts. First, at a national level, many governments are seeking to either establish new asylum systems or strengthen existing ones. Second, at an intergovernmental level, the Global Compact on Refugees (GCR) encouraged efforts to strengthen asylum systems, ‘with a view to ensuring their fairness, efficiency, adaptability and integrity’.¹ Third, the Office of the UN High Commissioner for Refugees (UNHCR) is currently developing tools and guidance to bolster the agency’s own approach to ACD.²

Despite this growing interest, the concept of ACD is still being developed. Clarifying the purpose and scope of ACD is important to ensuring that initiatives to strengthen asylum systems are effective. To date, ACD efforts have tended to concentrate on refugee status determination (RSD) — the institutional processes in place to decide individual asylum claims — and on the capacity of States to conduct RSD. This narrow focus lacks a clear articulation of how State RSD procedures relate to the protection needs of refugees, and to the wider range of actors involved in meeting these needs. ACD efforts based on this narrow understanding risk establishing asylum systems that are inefficient and ineffective at both resolving asylum claims and meeting refugees’ needs. This may result in wasted resources, systemic backlogs in asylum processing and poorer protection outcomes for refugees.

This Policy Brief seeks to contribute to both the conceptual and operational development of ACD, by setting out an approach to strengthening asylum systems that is grounded in the protection needs of refugees and understood as requiring a whole-of-society approach. Within this framework, the success of ACD can be measured by the efficient and effective resolution of asylum claims, and by improved protection outcomes for refugees.

Section Two provides a conceptual framework for discussing ACD, the capacities an asylum system requires, and how such capacities are developed. Section Three sets out a range of characteristics or standards common to quality asylum systems, which can be used to evaluate existing and proposed systems, and a set of indicators to measure progress towards achieving these standards. Section Four makes recommendations for advancing shared ownership of ACD through a whole-of-society approach, including through local referral and coordination mechanisms.

2 What is asylum capacity development (ACD)?

2.1 Embracing a more expansive definition of ACD

UNHCR has led significant efforts to strengthen national asylum systems and continues to undertake important work on ACD. A recent evaluation of UNHCR’s work on ACD provided a working definition of ACD as:

[The] range of UNHCR’s activities and actions that aim to increase government ownership of national asylum systems, government capacity to manage asylum systems and quality

improvement of asylum, including progressive handover of responsibility from UNHCR to government, and UNHCR's supervisory role.³

This definition raises a number of issues. First, it suggests that the main objective of ACD is the establishment of national asylum systems. In that case, indicators of success could include the adoption of asylum legislation, creation of national asylum institutions, and the handover of responsibilities for asylum processing from UNHCR to government. However, such measures do not guarantee, or necessarily correlate with, improved protection outcomes or case processing capacity.⁴ The success of ACD should be determined with reference to these two substantive overarching objectives.⁵

A second issue is that the definition appears to be aimed primarily, if not solely, at building the capacity of government. However, a range of stakeholders must necessarily be involved to meet refugees' diverse needs, which may include: legal assistance; interpretation and translation support; child guardianship; and access to medical care, shelter, education, and livelihoods. Various government departments may be involved, as well as interpreters, lawyers, doctors, social workers, and other community and civil society actors. Capacity development efforts must engage with all relevant stakeholders to be effective. A failure to recognise this reality can result in ineffective systems incapable of addressing needs, or adversarial and uncollaborative systems with various gaps and overlaps.

Finally, the definition puts an emphasis on 'handover of responsibility' from UNHCR to government. The ACD Evaluation found that '[t]erms such as "ownership", "handover", and "exit strategy" were used widely by UNHCR staff'. However, given that UNHCR's mandate is concurrent with States' responsibilities, UNHCR does not hand over responsibility *per se*, but may transition to a different role within a newly established asylum system.⁶

With these considerations in mind, this Policy Brief proposes a different definition of ACD, and invites critical engagement with it:⁷

Asylum capacity development (ACD) is the process of developing institutional, national, and local capacity so that States and UNHCR, in collaboration with individuals, organisations, and society as a whole, can each do their part to meet the protection needs of refugees and resolve protection claims effectively, efficiently, fairly and sustainably.

2.2 What 'capacities' must be developed? A needs-based approach

When it comes to building asylum capacity, governments, UNHCR and other stakeholders will often be required to prioritise among many needs. While ACD efforts may initially focus on legislation and other measures to ensure access to fair and effective RSD procedures, ACD should be progressively guided by protection needs and gaps in capacity. Ultimately, the 'capacity' to be developed depends on the needs that must be met in any particular context. The approach should not be formulaic, but must be designed to achieve protection outcomes in a given context, and evaluated according to whether they succeed in doing so.

Refugee protection is a matter of both law and practice. UNHCR emphasises that protection 'entails activities aimed at obtaining full respect for the rights of individuals, in accordance with international humanitarian, human rights and refugee law ... [and that the] delivery of protection goes beyond promoting the adoption of legal standards and includes activities aimed at ensuring their respect in practice.'⁸

Local protection involves understanding the context in which a protection response takes place, including the specific needs of the relevant refugee population, and the capacities that exist or must be mobilised to address those needs in practice. For example, whether interpretation and translation services are required, and for which languages, is determined by the needs of the specific refugee population and the capacities available in the host community.

A needs assessment is, therefore, the most appropriate place to begin ACD, and serves to establish a baseline against which progress can be measured. This assessment is best conducted jointly with actors who possess local knowledge. When a government develops a system behind closed doors, without consultation with local stakeholders, it risks missing important knowledge and the opportunity to foster shared ownership of the outcomes. The starting point should be the inclusion of all relevant stakeholders, with meaningful opportunities to contribute to assessment and decision-making processes.

2.3 Shifting from a ‘capacity building’ to a ‘capacity development’ approach

Until recently, capacity building focused primarily on building individual technical skills in a particular functional area, especially through training.⁹ Capacity building could also be donor-driven and led by external experts attempting to instruct a local audience, encouraging the import of a one-size-fits-all model without an understanding of the local context. This could involve short- or long-term gap-filling by external actors, without sustainable transfer of knowledge or skills to local audiences and actors. In some cases, capacity building efforts may do more harm than good by replacing or disempowering local actors, undermining existing systems, creating dependency, or generating conflict among actors.¹⁰

Over time, there has been a shift in understanding to appreciate that capacity development must recognise and build upon existing capacities and, fundamentally, ensure national and local ownership.¹¹ Furthermore, capacity must be considered at several levels: individual, organisational and societal.¹² Individuals must have relevant technical skills, as well as managerial skills, socio-cultural understanding, and the relationships required to perform effectively. Organisations must have appropriate resourcing, policies and programs, infrastructure, and governance arrangements to ensure they can deliver on a mandate. Meanwhile, deeper societal transformations may be needed to de-escalate conflict, promote inclusion, and ensure an environment conducive to protection.

The importance of shifting from short-term gap filling to a sustainable capacity development approach is well illustrated in the context of efforts in South Africa to reduce a backlog of asylum claims.¹³ Despite a series of backlog reduction projects, there remained a significant backlog of unresolved asylum claims. The lesson was that the goal should not be *to reduce or eliminate the backlog*, because a time-bound surge of staff tasked with tackling a backlog does not build long-term capacity, and the problem returns once the ‘surge team’ leaves. Instead, the goal should be *to increase case processing capacity to sustainable levels*. Without a case processing capacity that matches the demands placed on the system, a one-off backlog reduction project will not fix the problem in the long-term.

Recommendations on the conceptual framework of ACD

1. **Adopt a needs-based approach to ACD:** States and UNHCR should adopt a needs-based approach to ACD by mobilising and developing capacities, or scaling them up, to meet the needs of people seeking asylum.

2. **Start with a baseline needs and capacity assessment:** States and UNHCR, together with all relevant service providers, should conduct a needs and capacity assessment to serve as a baseline against which progress in ACD can be measured. This should identify the needs of refugees and people seeking asylum, existing capacities to meet identified needs, and capacity gaps.
3. **Measure success by protection outcomes and case processing capacity:** States and UNHCR should measure the success of ACD in terms of improved protection outcomes for refugees and strengthened case processing capacity. Success should not only be measured by indicators such as the set-up of an institution, the adoption of legislation, or the ‘handover’ of responsibility from UNHCR to the State.
4. **Engage all relevant stakeholders in ACD:** States and UNHCR should engage diverse stakeholders with a range of skills and capabilities in order to strengthen asylum systems, with a view to collectively meeting the identified needs of refugees.
5. **Promote a shared national and local ownership of ACD:** ACD efforts should promote a shared national and local ownership of ACD, recognising and building upon existing capacities, and engaging at the individual, organisational, and societal levels.

3 The characteristics of an effective asylum system

This section identifies common characteristics of effective asylum systems and develops a set of indicators towards achieving these characteristics or standards. The framework can be utilised to evaluate existing institutions, inform the establishment of new institutions, identify gaps in the system, and inform ACD priorities. The indicators set out in this Policy Brief contribute to the ongoing work of the UNHCR to develop a diagnostic or ‘self-assessment’ tool to review the capacities and gaps of asylum systems, and identify priority areas of support in relation to ACD.¹⁴

The common characteristics of effective asylum systems are set out below in section 3.1. These characteristics are: accessibility; specialisation; expertise; independence and impartiality; transparency; integrity; accountability; efficiency; adaptability; and collaboration.

These characteristics are sourced from domestic, regional, and international laws and standards associated with fundamental notions of due process and the rule of law, as well as commonalities in State practices. States already accept and strive to achieve most, if not all, of the identified characteristics.¹⁵

This framework has been utilised in practice in several jurisdictions.¹⁶ It has also been shared, discussed, and critiqued among academics and practitioners in a variety of fora. Further critical engagement is welcome.

3.1 Chart of characteristics

Characteristics	Description
Accessibility	Ensuring equal access to asylum, including access to relevant authorities, service providers, information, and procedures. Accessibility includes elimination of obstacles and barriers, and the provision of appropriate assistance and support.
Specialisation	Limiting actors' roles to a particular functional area to encourage the development of greater expertise and/or greater efficiency.
Expertise	Broad and deep understanding and competence in a particular functional area, often gained through continual learning (knowledge) and practice (experience).
Independence and Impartiality	Independence involves the ability to make good faith determinations based on law and fact, free from external influence, inducement, pressure, threat, or interference. Impartiality involves the ability to perform duties without favour, bias, or prejudice.
Transparency	Operating openly without hidden agenda, while facilitating access to and examination of policies, decisions, reasons, evidence relied upon, and data on the outcomes of decision-making.
Integrity	Commitment to achieving and upholding high standards of ethical and professional conduct, and to preventing and addressing corruption and misconduct.
Accountability	The obligation to listen and be answerable for the responsibilities undertaken or assigned. Accountability is both top-down and bottom-up.
Efficiency	Ensuring case processing capacity is adequate to meet the demands being placed on the system in a timely manner without compromising fairness. This involves utilising the least input to achieve the highest output, minimising waste and expense.
Adaptability	The ability to adjust in response to projected, sudden, or unforeseen changes.
Collaboration	Commitment to inclusivity and complementarity of practice, reflected in mechanisms for effective coordination among relevant stakeholders through a whole-of-society approach.

Accessibility

The right to seek and enjoy asylum¹⁷ entails a right to access asylum procedures.¹⁸ Accessibility is about ensuring equal access to relevant authorities, service providers, and procedures, including equal access to information.¹⁹ It includes both the identification and elimination of obstacles and barriers, and the provision of appropriate support. If persons in need of protection want to access asylum systems and services, these questions might arise: where should people seeking asylum go? Can they get there? What barriers (eg. physical, social, cultural, related to age, gender, LGBTIQ+, etc) stand in the way? Do those stakeholders who are likely to first encounter people seeking asylum, understand what to look out for and how to make a referral?

For example, in Japan, a poster from the Forum for Refugees Japan, a national network of local NGOs, is displayed at the airport before anyone might reach the immigration counter.²⁰ The poster provides the contact number for the Japan Association for Refugees (JAR), a local NGO. JAR can then identify the caller, their needs and location, and advise them of their rights and relevant procedures by telephone. In some circumstances, after this initial communication, UNHCR can contact the Ministry of Justice to facilitate a meeting between the caller and JAR or a lawyer at the relevant immigration detention centre. Release to an NGO-operated shelter can then be facilitated, as seen with a recent pilot project.²¹

Specialisation and Expertise

Specialisation and expertise are distinct but related characteristics. Specialisation means that an actor's role is limited to a particular functional area, usually to encourage the development of greater

expertise and to increase efficiency. Expertise involves high levels of skill or knowledge in a particular field.

A specialised institution or staff may lack expertise if they are new and inexperienced. However, specialisation provides a focus for decision-makers, who can then develop relevant skills, knowledge, and judgement through training, study, or practice and thereby gain expertise over time. Specialised staff are therefore more likely to become experts, and to do so quickly.

An institution responsible for RSD is specialised when its role and responsibility is primarily or solely focused on refugee protection, possibly including: reception, registration, documentation, referrals, status determination, and case resolution.²² Expertise in the context of RSD entails familiarity with the ethical use of interpreters, appropriate cross-cultural interviewing techniques, client sensitivities associated with trauma and vulnerable situations, country of origin information (COI) research, and an in depth understanding of relevant domestic and international law.²³

Independence and Impartiality

Independence and impartiality are related but distinct characteristics. Independence requires that the decision-maker is able to make an individualised assessment of a case based on law and fact, free from external influence, inducement, pressure, threat, or interference. Freedom from external influence does not mean the decision-maker is free from oversight; but that steps are taken to ensure that extraneous considerations will not influence the outcome of an otherwise fair assessment. Impartiality refers specifically to the performance of duties, 'without favour, bias or prejudice.'²⁴ Independence can be achieved through structure, priority setting, and careful management, while impartiality is case-by-case.

Independence and impartiality are relevant to institutions conducting RSD, and to judiciaries, lawyers and other legal actors, certified interpreters and translators, health providers, and a number of other practitioners. Independence and impartiality are considered good practice because the potential for conflicts of interest is decreased. A conflict of interest exists where a decision-maker or institution is subject to conflicting obligations, opposing loyalties, or is expected to sustain two or more co-existing interests that work against each other or lead to different outcomes. Clear processes for identifying and addressing conflicting interests are needed. These may include: clear priorities among interests (eg. protection takes priority over immigration enforcement), 'firewalls' (a separation between immigration enforcement and public service provision),²⁵ or declaring and documenting a conflict and recusal. For example, separating RSD from the enforcement of immigration law, allows decision-makers to focus solely on the question of eligibility for protection.

Independent bodies with exclusive jurisdiction over asylum cases are increasingly common, such as the Immigration and Refugee Board of Canada (IRB).²⁶ Other countries, including Switzerland, Sweden, and the Netherlands, have implemented firewalls between immigration enforcement and service providers, as a means of ensuring access to basic protections and services for all, including undocumented arrivals.²⁷

Transparency

Transparency requires operating openly and without hidden agendas.²⁸ Greater transparency contributes to increased consistency, efficiency, and accuracy in decision-making.²⁹ It provides legitimacy to an institution and builds trust with communities. It also facilitates access to and the opportunity to examine policies, decisions, reasons, and evidence relied upon.³⁰

In the asylum context, transparency means ensuring laws, policies, and procedures relevant to people seeking asylum are available, for example, accessible online and translated to relevant

languages. Transparency requires access to all the evidence that a decision-maker relied upon in reaching a decision, and detailed written reasons for refusal with an opportunity for appeal. Transparency also involves regularly publishing data on the performance of RSD processes, which facilitates evidence-based evaluation and accountability.

Freedom of information (FOI) laws are an important tool for ensuring transparency. At least 125 countries have information disclosure laws.³¹ FOI laws do not just create a right to request and receive information, but can often include obligations for government agencies to track and collect data, and to publish information on a routine basis.

Systems must be designed to ensure transparency, while ensuring confidentiality and data protection. In the refugee context there are serious risks around breaches of privacy, as refugees or their associates may suffer harm, for example through retaliatory action, if their information is exposed. Section 2.1 of the UNHCR Procedural Standards for RSD, deals with confidentiality and data protection, with detailed sections on criteria for disclosures to various stakeholders.³² Transparency towards asylum applicants themselves is a core standard identified by UNHCR,³³ and the Procedural Standards emphasise that, 'Asylum-seekers and refugees have a right to access their personal data or other information on their file'.³⁴

Integrity

Integrity requires high ethical and professional standards in the conduct of work.³⁵ It entails a commitment to preventing exploitation, abuse, fraud, or corruption. An asylum system with a high-level of integrity will generally have a publicly available code of conduct that is intended to guide staff. It also generally provides the standards against which individual conduct is assessed when there is a complaint, with mechanisms for independent review.

Integrity requires both individual and institutional responsibility. Clearly establishing and articulating standards of conduct is also likely to provide greater predictability, transparency, and accountability for those subject to the asylum system. In Canada, for example, members of the IRB are subject to a code of conduct, and an independent Office of Integrity considers and investigates complaints.³⁶

Accountability

An accountable institution has upward and hierarchical accountability, meaning it is answerable for the responsibilities assigned to it, and for the budget allocated for its work. An accountable institution also demonstrates downward or qualitative accountability to those subject to its decisions.³⁷ In the refugee context, this latter form of accountability requires that an institution's performance meets the needs and expectations of people seeking asylum, and that it respects the dignity and rights of such persons.³⁸ This is best achieved through the meaningful participation of refugees in all decision-making forums. The Global Compact on Refugees recognises that, '[r]esponses are most effective when they actively and meaningfully engage those they are intended to protect and assist'.³⁹

An appeal process is the primary mechanism of accountability for adjudication (whether it is conducted by an administrative or judicial body. The appeal process is considered a basic requirement of RSD procedures, as is the requirement that an appellant 'be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending'.⁴⁰ Nearly every State that conducts RSD has instituted an appeals procedure. ExCom Conclusion No. 8 says, 'If the applicant is not recognised [as a refugee], he should be given a reasonable time to appeal for a formal reconsideration of the decision, *either to the same or to a different authority*, whether administrative or judicial, according to the prevailing system'.⁴¹ To the extent that an appeal is lodged with the same body that considered the case in the first instance, this may give rise to concerns about independence, impartiality, integrity, and accountability.

Other forms of accountability may be provided through complaints mechanisms including an ombudsman; ongoing quality assessment procedures; managerial methods of evaluating individual decision-makers, for example through discipline, promotion, transfer, appointment, and tenure; and methods of evaluating decision-making bodies as a whole, for example through statistics, assessments of consistency and timeliness.⁴²

Efficiency

In the context of status determination, efficiency can be described with reference to timeliness, resource efficiency, and sustainability. A process is timely when it takes only as much time as is necessary to fairly determine the caseload.⁴³ Resource efficiency ensures that funds, workforce, and technology are put to the best use, minimising expense, duplication, and waste. The system is sustainable to the extent that case processing capacity matches demand.⁴⁴

There are a number of features that contribute to efficiency. These include: 1) infrastructure; 2) decision-making structure; 3) evidence or data-driven approaches to resource allocation; 4) evidence or data-driven approaches to case management; and 5) utilising different case processing modalities.

First, inadequate infrastructure can contribute to inefficiency. This might include: insufficient interview rooms; unreliable internet services; deficient filing or case management systems; or inadequate data collection tools to monitor trends. Inaccessibility of a facility may have consequences, in terms of no-shows or late arrivals. Inadequate reception and scheduling systems can have similar consequences. Conversely, the availability of fit for purpose data management tools, schedules, forms, or templates can improve accuracy and speed. The collection of more detailed and accurate statistical information promotes effective planning and provides evidence of performance. Investment in improved infrastructure can, therefore, boost case processing capacity.

Second, the way that decision-making institutions are structured can also affect efficiency. For example, when a decision-making authority is centralised and assigned to a particular minister, commissioner, or committee, capacity is limited by the number of cases that a single decision-maker can determine.⁴⁵ By contrast, decentralised systems which delegate authority among a large number of decision-makers, generally have a higher case processing capacity. Here, the number of decision-makers can also increase or decrease depending on demand.

Third, evidence-based approaches to resource allocation can enhance efficiency. The collection of reliable data on demand (that is, the number of applications in a given period) enables budget projections to be based on projected demands on the system. Case processing capacity can be calculated as follows:

the sum of (applications granted) + (applications rejected) + (applications otherwise closed) for a given period of time

The time period could be for the month, quarter, or year, for example.⁴⁶ To sustain an adequate case processing capacity, the number of staff in place must be adequate to meet the demand.⁴⁷

Fourth, case management should also be data-driven. Institutions that conduct RSD, generally establish benchmarks for expected output of decisions per decision-maker. It is important that these are realistic, that is, they allow sufficient time for high quality casework, and are flexible enough to accommodate differences in complexity on a case-by-case basis. This requires effective management and supervision. Against the established benchmarks, institutions with accurate data and statistics will also be able to monitor the real case processing capacity of the institution over time

and take corrective measures. The real case processing capacity can establish a baseline, and ACD efforts can then focus on increasing it to sustainable levels.⁴⁸

Finally, UNHCR and States often adopt different case processing modalities to achieve greater efficiency. This may involve, for example, accelerated or simplified procedures. Acceleration refers to shortened timelines for processing applications for asylum, but should not affect procedural safeguards. A procedure may be simplified, for example, when several elements of the definition of a refugee are conceded from the start, and a smaller number of criteria are considered by the decision-maker.⁴⁹ States may also allocate cases among decision-makers based on their geopolitical and thematic expertise, or other specialised skills.

Adaptability

Adaptability is the ability to adjust in response to projected, sudden, or unforeseen changes.⁵⁰ In the asylum context, this requires the ability to increase or decrease the number of decision-makers or adopt different case processing modalities based on need.

A large movement over a short period of time is not uncommon: consider recent movements from Syria, Venezuela, Myanmar, or Ukraine. Asylum systems must be designed to cope with such influxes and times of increased need. Many principles and practices have been designed to address these circumstances: *prima facie* recognition; presumption of inclusion or eligibility; surge rosters; cross-department stand-by capacity; and temporary refuge, among others.⁵¹ International responsibility-sharing, and collaboration through a whole-of-society approach, are also both critical in this regard.

In 2020, in the context of the COVID-19 pandemic, Portugal temporarily regularised the residency status of all foreign citizens who had filed a request for residence or asylum.⁵² This decision responded to a state of emergency, and was made from a public health perspective to ensure access to health and public services.⁵³ Other State practice examples include Brazil's decision to recognise Venezuelans through a simplified process, and the EU's decision to activate the Temporary Protection Directive for Ukrainians. These demonstrate the benefits of adaptable institutional structures and differentiated case processing modalities.⁵⁴

Collaboration

An asylum system that is collaborative is committed to inclusivity and complementarity of practice⁵⁵ Collaboration is reflected in mechanisms for effective coordination among all relevant stakeholders through a whole-of-society approach. It is unrealistic for any actor to deliver all aspects of a protection response alone.⁵⁶ Effective protection is better ensured when responsibility is shared by a diverse set of capable local actors that communicate and collaborate across referral networks.⁵⁷

While there is no perfect asylum system, various coordination structures are in place in virtually every context. Systems that strive to establish an inclusive network of service providers, and embrace collaboration as a fundamental principle, enjoy access to a diverse set of capacities and expertise. In Bangladesh, for example, over 100 NGOs alongside the Government of Bangladesh and the UN are providing services to both Rohingya refugees in camps and host communities.⁵⁸ The relevance and value of the whole-of-society approach is examined further in section 4 below.

3.2 Indicators

To illustrate how the framework described above could be applied in practice, a set of potential measurement indicators are provided below.

Characteristics	Examples of Indicators for Developing an Assessment Tool
Accessibility	<ul style="list-style-type: none"> • Are there designated convenient and safe points of reception? • Are competent immigration, border or other officials with first contact with refugees and people seeking asylum: <ul style="list-style-type: none"> ○ Given clear guidance for dealing with protection needs, vulnerabilities and risks? ○ Required to refer cases to a responsible authority? ○ Required to uphold <i>non-refoulement</i> obligations? • Is there adequate time and space for private and confidential interviews in the presence of quality, ethical interpreters, at reception, registration, and other stages? • Have physical, social, cultural, gender, LGBTIQ+, age, disability and other barriers and risks in accessing the asylum system been formally assessed? Have steps been taken to address these barriers? • Are there up-to-date referral guides identifying service providers that can address identified protection needs? Are referrals documented and tracked? How often are referrals made on a daily/monthly basis? Are there referral networks through which cross referrals are made? • Is there adequate information available so that people seeking asylum understand asylum processes, including how to access and fill relevant forms, and access advice and support?
Specialisation	<ul style="list-style-type: none"> • Is there a clearly identified authority responsible for making decisions on protection requests in the first instance? Does that authority have responsibilities aside from refugee protection? • Are there conflicts of interest? If so, are they addressed through prioritising protection over immigration enforcement, firewalls, or recusals, etc.? • Do staff have specialised skills and knowledge of refugee and asylum matters?
Expertise	<ul style="list-style-type: none"> • What is the percentage of annual staff turnover? Is there a transparent merits-based promotion and recruitment process? How long does it take to fill vacancies? • Are there staff retention policies and strategies, including processes to promote self-care and prevent frustration or burnout? • Does the institution stipulate continuing professional development requirements to promote and enhance staff expertise? • Are decision-makers trained in working with interpreters and appropriate cross-cultural interviewing techniques? Are guidelines available on quality and ethical interpretation? • Are there staff with specialised capacities in the dynamics of gender, LGBTIQ+, age, and disability, and experience working with those with lived experiences of gender-based violence, arriving as an unaccompanied minor, or other traumatic experiences? Are asylum applicants with protection needs able to access them?
Independence and Impartiality	<ul style="list-style-type: none"> • Is the authority responsible for RSD independent from the authority responsible for immigration enforcement? If not, are firewalls in place to separate protection and immigration enforcement functions? • Among the institutions responsible for RSD, is the appeal body independent from the first-instance decision-maker? • Is the right to a fair hearing before an independent and impartial court or tribunal enshrined in law? • Is access to the asylum system equal and non-discriminatory across different groups of people seeking asylum?

	<ul style="list-style-type: none"> • Is there a system of identifying potential conflicts of interest? Are policies and procedures in place for their mitigation?
Transparency	<ul style="list-style-type: none"> • Are laws, procedures and policies accessible and publicly available to those subject to the asylum system? Are there summaries or fact sheets available in different languages? • Are detailed written reasons for refusing protection provided at every stage of the process? • Are there FOI laws? Can they be used by an asylum applicant and/or their lawyer to access government records regarding their asylum case? • Is an asylum applicant's informed consent required before disclosure of their personal information to a third party? • Are statistics on the operation of asylum processes regularly produced? Are they published?
Integrity	<ul style="list-style-type: none"> • Are there staff codes of conduct? Are staff trained in accordance with these codes? Are they publicly available? • Is there a code of conduct for interpreters? Are interpreters trained in accordance with this code and on the ethics of interpretation? Are they properly equipped with quality interpretation skills? • Are there accountability mechanisms, eg. complaints mechanisms, feedback forms, etc.? Are they used? What are the outcomes?
Accountability	<ul style="list-style-type: none"> • Do people seeking asylum receive adequate notice regarding rules and procedures at every stage of the asylum process? • Do asylum applicants have the opportunity to exercise a right to be heard by a competent decision-making authority at every stage of the asylum process? • Do asylum applicants receive detailed written reasons for a negative decision at every stage of the asylum process? • Do applicants have the right to appeal adverse decisions? Is the appeal body independent from the first instance decision-maker? Is judicial review available or is appeal limited to an administrative body? Can an appeal be heard <i>de novo</i>, ie. heard anew without reference to the previous decision? • What accountability mechanisms are in place to hold an institution and its staff to account? Are these mechanisms evaluated for their effectiveness? • Are protection needs and capacity assessments regularly conducted? <ul style="list-style-type: none"> ○ How often are they conducted? ○ How are they used? • Are systematic referrals made based on these assessments? • Are people seeking asylum included in coordination mechanisms, i.e., networks of support involving a variety of actors? Do people seeking asylum have a voice in decisions that affect their lives?
Efficiency	<ul style="list-style-type: none"> • Are there established benchmarks for expected output of decisions? Are they realistic? • Is case processing capacity ascertainable based on available data? • How extensive is the current backlog? Are there strategies in place to address it? • Is there a projected budget for running the asylum system? Is it adequate to address current demands? Are budget shortfalls understood in relation to case processing capacity? • Are databases, archives and filing fit for purpose? <ul style="list-style-type: none"> ○ Are they secure? ○ Do they ensure asylum applicant files are accessible and up-to-date? ○ Do they capture and produce relevant data and statistics? • Is there a body that specialises in COI research? Is there a COI database? Is it regularly updated? • Are physical infrastructure for reception, registration, and/or RSD, fit for purpose, eg. are there adequate security; adequate space for reception and waiting; private and confidential rooms for interview; shelter from adverse weather; child-friendly spaces?

Adaptability	<ul style="list-style-type: none"> • Does a competent authority have discretion to respond and adapt quickly to changes in the number of asylum applications, e.g. due to a mass influx? Or are higher-level approvals or legislative changes required before a changed response can be implemented? • Does the asylum system provide for group-based recognition? • Are different case processing modalities used, such as presumption of inclusion or simplified procedures?⁵⁹
Collaboration	<ul style="list-style-type: none"> • Are there referral guides and cross-referral mechanisms in place? Are they up-to-date and in use? • Is there a local network of relevant service providers, ie. a local coordination mechanism? Does it meet regularly? Is this network inclusive of all stakeholders including refugees? • Does UNHCR conduct RSD processes? Is this running concurrently with State RSD processes? Is a transition planned or underway from UNHCR-run RSD to State-run RSD? Does or will UNHCR have a role in State-run RSD procedures, eg. as an observer or advisor; with voting rights; with access to files and written reasons for decisions; and/or secondment of staff, etc? • Does UNHCR provide make budgetary allocations or provide financial support for State-run RSD or other aspects of the asylum system? How dependent on UNHCR financing is the system? • Is a quality assurance project underway for the State and their asylum systems?

3.3 Limitations

The framework put forward in this Policy Brief is intended as a constructive contribution to ongoing efforts to advance principled and evidence-based approaches to ACD. Critical engagement with the proposed framework is likely to result in further refinement of the characteristics, their descriptions, and the indicators that can be identified and mobilised to evaluate achievement of standards common to effective asylum systems. Ongoing application and development of the resulting tools through piloting and practice with a view to continual learning and improvement will also be important.

Recommendations on measuring progress towards the achievement of an effective asylum system

6. **Identify common standards to measure effectiveness of an asylum system:** States and UNHCR should consider measuring institutional effectiveness on the basis of common standards, and identify measurable indicators that can be used to evaluate existing and proposed asylum systems. (A proposed set of standards and indicators are elaborated in Section 3.1 and 3.2 of this brief.)
7. **UNHCR should consult widely on ACD-related guidelines and tools currently being developed:** UNHCR should engage experts, including those with lived experience of displacement, and consult widely in the development of tools and guidelines for ACD-related work.

4 A whole-of-society approach to ACD

The whole-of-society approach is a concept recognised in the 2016 New York Declaration and the 2018 Global Compacts.⁶⁰ In essence, States recognised that ‘a comprehensive refugee response ... should involve a multi-stakeholder approach that includes national and local authorities, international organisations, international financial institutions, civil society partners (including faith-based organisations, diaspora organisations and academia), the private sector, the media and refugees themselves.’⁶¹ The concept is not just a matter of principle. Effective protection capacity *requires* a whole-of-society approach in practice, and in fact, most systems already take this approach. A large

number and variety of stakeholders collaborate through referral networks: identifying needs, vulnerabilities, and risks, and making referrals on the basis of those needs.

4.1 Establishment of a well-coordinated referral network as a target of ACD

One operational implication of a whole-of-society approach is that it will be necessary to establish a national or local referral network. Ideally, all relevant service providers are networked into a common referrals system, and referrals are made systematically between governmental and non-governmental service providers. Every service provider should have a referral guide, developed through outreach. An interagency referral network could develop common forms for referral, designed to pull out critical information on protection needs. Training on protection needs, vulnerabilities, and risk assessments, can be provided to all service providers to improve the quality of referrals. These kinds of processes have been piloted by UNHCR and partner organisations in Malaysia, with positive impact.⁶²

ACD should strive to ensure that governmental and non-governmental stakeholders involved in national and local referral networks are able to recognise protection needs, vulnerabilities, and risks; document gaps for the purposes of capacity development; and ultimately ensure that referrals are made to those actors with the relevant mandate, capacity, and expertise, who can assess claims and facilitate an appropriate intervention with a view towards case resolution.

4.2 Localise the approach to ACD

Every protection response is context-specific. There is recent widespread acceptance of the need to engage local capacity in delivering a humanitarian response.⁶³ This is often referred to as the 'localisation agenda'. There is room to apply this principle in the context of ACD. For example, the GCR created a new mechanism called the Asylum Capacity Support Group (ACSG). It was established to provide support to relevant national authorities to strengthen asylum systems, 'with a view to ensuring their fairness, efficiency, adaptability and integrity. In 2023, UNHCR indicated that the ACSG will establish a Dialogue Platform to facilitate 'relationship-building between States ... and reinforcing linkages with key stakeholders'.⁶⁴ UNHCR notes that, 'Engagement of States in the platform will be mostly at a technical asylum level, being asylum institutions or refugee management organisations ... Other stakeholders engaged in the platform will be regional organisations active in asylum capacity'.⁶⁵ UNHCR notes that there are 'a range of other actors that have expertise in asylum capacity development, including civil society, academia, professional organisations, private sector, and users of asylum systems ... [and that the] expertise of such stakeholders ... will progressively be sought to provide contributions into the global meetings or relevant workstreams after the initial meetings.'⁶⁶

The political dynamics of ACD in global fora, and in mechanisms like the ACSG, reveal that the balance of power is heavily in favour of Global North donors and policymakers, whose voices and policy objectives are given predominance over Global South stakeholders and those with lived experience of displacement. Since its launch in 2019, the ACSG has focused on matching State requests for support with corresponding offers of support. There have been seven matches made, with a tendency for the Global North to offer support to the Global South, suggesting a narrative that the Global North *has capacity*, and must *build the capacity* of the Global South.⁶⁷ Instead, UNHCR and States should consider localised, multi-stakeholder ACD initiatives.

This Policy Brief has emphasised the importance of understanding ACD as involving more than just RSD and engaging diverse stakeholders beyond government RSD institutions. By extension, the ACSG should consider how local protection capacities can be brought together and operationalised

among all relevant stakeholders through a whole-of-society approach. One way to do that is to support the development of a collaborative platform nationally or locally in the relevant jurisdiction. This is a different kind of matching: mobilising a more diverse group of governmental and non-governmental stakeholders, that can contribute to strengthened protection capacity at the local level.⁶⁸

Recommendations on a whole-of-society approach to ACD

8. **All relevant stakeholders should cooperate to develop local referral networks:** A well-coordinated platform for cooperation and coordination should be a target of ACD.
9. **Localise the approach to the ACD:** States and UNHCR should mobilise a diverse group of governmental and non-governmental stakeholders locally, including all those that have the capacity to contribute to strengthened protection capacity in each local context, thereby permanently strengthening local protection capacity for long-term impact.

Appendix

The following sources were consulted to identify common standards.

International Conventions, Compacts, and Declarations

1. [Universal Declaration of Human Rights](#) (1948)
2. [International Covenant on Civil and Political Rights](#) (1976)
3. [Global Compact on Refugees](#) (2018)
4. [Global Compact for Safe, Orderly and Regular Migration](#) (2018)
5. [New York Declaration for Refugees and Migrants](#) (2016)

Judicial Codes, Standards, and Guidelines

6. [Basic Principles on the Independence of the Judiciary](#) (1985)
7. [The Bangalore Principles of Judicial Conduct](#) (2002)
8. [Draft Universal Declaration on the Independence of Justice](#) (1987)
9. [Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region](#) (1997)
10. [The International Framework for Court Excellence](#) (2013)
11. [International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors](#) (2007)
12. [Universal Declaration on the Independence of Justice](#) (1983)
13. [IBA Minimum Standards of Judicial Independence](#) (1982)
14. [Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System](#) (2000)

Regional Human Rights Frameworks

15. [ASEAN Human Rights Declaration](#) (2012)
16. [African Charter on Human and Peoples' Rights](#) (1986)
17. [American Convention on Human Rights](#) (1978)
18. [European Convention on Human Rights](#) (1950)
19. [The European Code of Good Administrative Behaviour](#) (2001)
20. [The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#) (2004)

UNHCR Guidelines, Standards and Research

21. [Statute of the Office of the UN High Commissioner for Refugees](#) (1950)
22. [Determination of Refugee Status](#) (1977)
23. [Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection](#) (2019)
24. [Strengthening Protection Capacities in Host Countries](#) (2002)
25. [Procedural Standards for Refugee Status Determination Under UNHCR's Mandate](#) (2020)
26. [Refugee Status Determination: Identifying Who is a Refugee](#) (2005)
27. [Protection Gaps Framework for Analysis: Enhancing Protection of Refugees](#) (2008)
28. [Building in Quality: A Manual on Building a High Quality Asylum System](#) (2011)
29. [Providing for Protection: Assisting States with the Assumption of Responsibility for Refugee Status Determination — A Preliminary Review](#) (2014)
30. [Formative Evaluation of RSD Transition Process in Kenya](#) (2014)
31. [Refugee Status Determination](#) (2016)
32. [A Guide to International Refugee Protection and Building State Asylum Systems](#) (2017)
33. [Refugee Status Determination Backlog Prevention and Reduction](#) (2018)
34. [Non-paper on the Asylum Capacity Support Group](#) (2018)
35. [Asylum Capacity Support Group: Note for Discussion](#) (2019)
36. [Aide-Memoire & Glossary of Case Processing Modalities, Terms and Concepts Applicable to Refugee Status Determination \[RSD\] Under UNHCR's Mandate](#) (2020)
37. [Guidance on Registration and Identity Management](#) (2018)
38. [Asylum Capacity Support Group Mechanism: Guide to Working Modalities](#) (2021)
39. [Asylum Capacity Support Group Mechanism: Working Modalities](#) (2021)
40. [Philippines: Policy Briefs on Identified Legislative Priorities](#) (2021)

National Standards, Codes and Guidelines

41. [Restatement of Values of Judicial Life](#) (1997)
42. [Federal Constitution: Judges' Code of Ethics](#) (2009)
43. [Guide to Judicial Conduct](#) (2022)
44. [New Code of Judicial Conduct for the Philippine Judiciary](#) (2004)
45. [Ethical Principles for Judges](#) (1998)
46. [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (2019)
47. [ABA Model Code of Judicial Conduct](#) (2007)
48. [A Model Code of Judicial Conduct for State Administrative Law Judges](#) (2018)
49. [Codes of Conduct for the Immigration Judges and Board Members](#) (2007)
50. [European Charter on the Statute for Judges](#) (1998)
51. [Code of Judicial Conduct](#) (1994)

Case Law

52. [MSS v Belgium and Greece](#) (2011)
53. [Juridical Condition and Rights of Undocumented Migrants](#) (2003)
54. [The Pacheco Tineo Family v Plurinational State of Bolivia](#) (2013)
55. [Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection](#) (2014)
56. [Kenneth Good v Republic of Botswana](#) (2010)
57. [Secretary for Security v Sakthevel Prabakar](#) (2004)
58. [FB v Director of Immigration and Another; NS v Director of Immigration and Another; M v Director of Immigration and Another; RO and Others v Director of Immigration and Another; PVK v Director of Immigration and Another; ND v Director of Immigration and Another](#) (2008)
59. [C. KMF, BF v Director of Immigration, Secretary for Security and United Nations High Commissioner for Refugees](#) (2013)

Practitioner Guidance and Tools

60. [Model Rules of Ethics for Legal Advisors in Refugee Cases](#) (2007)
61. [Whose Responsibility? Accountability for Refugee Protection and Solutions in a Whole-of-Society Approach](#) (2017)
62. [Access to the Asylum Procedure](#) (2023)
63. [IPSN Tool](#) (2023)
64. [Practical Guide on Registration: Lodging of Applications for International Protection](#) (2021)
65. [There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention](#) (2015)
66. [Vulnerability Screening Tool — Identifying and Addressing Vulnerability: A Tool for Asylum and Migration Systems](#) (2016)

Academic Articles and Findings

67. [Capacity Development](#) (2015)
68. [Institutional Adaptability in the Time of COVID-19](#) (2020)
69. [UNHCR's Withdrawal from Kiryandongo: Anatomy of a Handover](#) (2000)
70. [Getting the Balance Right: Strengthening Asylum Reception Capacity at National and EU Levels](#) (2016)
71. [Adaptable Asylum Systems in Portugal in the Context of COVID-19](#) (2020)
72. [Rethinking Commonality in Refugee Status Determination in Europe: Legal Geographies of Asylum Appeals](#) (2022)

UNDP and OECD Guidelines on Capacity Development

73. [Capacity Assessment Methodology: User's Guide](#) (2008)
74. [Supporting Capacity Development: The UNDP Approach](#) (2009)
75. [Capacity Development: A UNDP Primer](#) (2009)
76. [Capacity Development: Practice Note](#) (2008)
77. [Governance Principles, Institutional Capacity and Quality](#) (2011)
78. [Capacity Development: UNDAF Companion Guidance](#) (2017)
79. [The Challenge of Capacity Development: Working Towards Good Practice](#) (2006)
80. [Understanding Capacity-building/Capacity Development: A Core Concept of Development Policy](#) (2017)

Endnotes

¹ The Global Compact on Refugees (GCR) created a new mechanism called the Asylum Capacity Support Group (ACSG) to provide support to relevant national authorities to strengthen asylum systems. See United Nations General Assembly, *Report of the United Nations High Commissioner for Refugees: Part II Global Compact on Refugees*, UN Doc A/73/12 (II) (13 September 2018) [62].

² An independent evaluation of UNHCR's work relating to ACD was conducted in 2022: Itad, *UNHCR Asylum Capacity Development (ACD) Evaluation: An Independent Evaluation of UNHCR's Support for Strengthening National Asylum Systems* (Evaluation Report, 2022) ('ACD Evaluation'). Based on its recommendations, UNHCR committed to adopting high-level ACD policy, developing a five-year strategy, and crafting a set of guidelines and tools to strengthen its work on ACD. Operationally, UNHCR is engaged in several capacity strengthening initiatives, and transitions of the RSD and registration functions from UNHCR to States. See 'Quality Assurance', UNHCR (Web Page, 30 August 2023) <http://www.refworld.org/qualityassurance.html>.

³ ACD Evaluation (n 2) 3.

⁴ Ibid 76.

⁵ Protection outcomes might include: stronger assurances of *non-refoulement*, avoiding arbitrary detention; regularisation of stay; progressive access to social and economic rights and assistance; and ultimately access to a durable solution. Stronger case processing capacity for the government means that cases are resolved more efficiently and sustainably so that all stakeholders, in particular refugees and people seeking asylum, can move forward.

⁶ ACD Evaluation (n 2) 58, n 100.

⁷ This is based on the definition of 'capacity development' by the UN Development Programme (UNDP) as, 'The process through which individuals, organizations [sic] and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time': Lonel Zamfir, *Understanding Capacity-building/Capacity Development: A Core Concept of Development Policy* (Policy Brief, European Parliamentary Research Service, 2017) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599411/EPRS_BRI\(2017\)599411_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599411/EPRS_BRI(2017)599411_EN.pdf), 3. See also United Nations Development Programme, *Capacity Development: A UNDP Primer* (Report, 2009) 53. This definition set out in this Policy Brief was developed by the author as a part of his PhD thesis. The definition specifically refers to UNHCR and States because they both have international obligations regarding refugee protection. UNHCR is mandated to provide protection: *Statute of the Office of the United Nations High Commissioner for Refugees*, GA Res 428 (V), UN GAOR (14 December 1950) art 8. States have legal obligations to all persons within their jurisdiction, including to: uphold *non-refoulement* obligations; provide temporary refuge; and other human rights obligations, depending on relevant domestic and international law.

⁸ Executive Committee of the High Commissioner's Programme, *Note on International Protection*, UN Doc A/AC.96/1178 (4 July 2018).

⁹ ACD Evaluation (n 2) 5–6, 41; United Nations Development Programme (n 7); See also DAC Network on Governance, 'The Challenge of Capacity Development: Working Towards Good Practice' (2008) 8(3) *OECD Journal on Development* 233, 244.

¹⁰ Veronique Barbelet, 'As Local as Possible, as International as Necessary: Understanding Capacity and Complementarity in Humanitarian Action' (Working Paper, Overseas Development Institute, November 2018) https://cdn.odi.org/media/documents/As_local_as_possible_as_international_as_necessary_understanding_c

[apacity_and_comp.pdf](#) ('As Local as Possible'); Veronique Barbelet, 'Rethinking Capacity and Complementarity for a More Local Humanitarian Action' (Report, 2019).

¹¹ United Nations Development Programme (n 7); See also DAC Network on Governance (n 9).

¹² Ibid. See also ACD Evaluation (n 2) 19 for a model theory of change for national asylum system capacity development.

¹³ Jeff Handmaker, 'Starting With a Clean Slate? Efforts to Deal with Asylum Application Backlogs in South Africa' in Jeff Handmaker, Lee Anne de la Hunt and Jonathan Klaaren (eds.), *Advancing Refugee Protection in South Africa* (Berghahn Books, 2008) 122. See also Brian Barbour, 'Refugee Status Determination Backlog Prevention and Reduction' (Legal and Protection Policy Research Series Paper No PPLA/2018/03, UNHCR, January 2018) <https://www.refworld.org/docid/5b1a38374.html>, 30.

¹⁴ See n 2.

¹⁵ Some State practice examples are provided to illustrate identified characteristics, as well as policies developed and practices so far conducted in this space. These examples are neither intended as endorsements of any State asylum system, nor as examples of best practice. They are provided to illustrate work being conducted in this space in relation to the principle being discussed, and to make the discussion less theoretical and more pragmatic.

¹⁶ For example, an earlier version of this framework was applied in research conducted with UNHCR and the Government of the Philippines to evaluate three proposed models for the Philippines Refugee and Stateless Status Determination system: Brian Barbour, 'Philippines: Policy Briefs on Identified Legislative Priorities' (Policy Brief, UNHCR, 13 October 2021) <https://www.refworld.org/docid/61765a434.html>, 2, 26–54.

¹⁷ See, eg, *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 14 ('UDHR'); *ASEAN Human Rights Declaration*, ASEAN (18 November 2012) art 16; *African Charter on Human and Peoples' Rights*, OAU Doc CAB/LEG/67/3 rev. 5 (entered into force 21 October 1986) art 12; *American Convention on Human Rights* 'Pact of San Jose', OAS (entered into force 18 July 1978) art 22. The principle of *non-refoulement* under the *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) art 31 ('Refugee Convention') together with international human rights frameworks and international customary law more broadly, provide for access to asylum procedures. As UNHCR notes, 'the existence of a determination procedure is not of any value to an applicant who is not given access to that procedure and is summarily expelled from the country before his claim has even been seriously considered': Executive Committee of the High Commissioner's Programme, *Follow-up on Earlier Conclusions of the Sub-committee on the Determination of Refugee Status, inter alia, with Reference to the Role of UNHCR in National Refugee Status Determination Procedure*, UN Doc EC/SCP/22/Rev.1 (3 September 1982).

¹⁸ T Gammeltoft-Hansen and H Gammeltoft-Hansen, 'The Right to Seek – Revisited. On the UN Human Rights Declaration Article 14 and Access to Asylum Procedures in the EU' (2008) 10(4) *European Journal of Migration and Law* 439.

¹⁹ See United Nations General Assembly, *Addendum to the Report of the United Nations High Commissioner For Refugees*, UN Doc A/32/12/Add.1(Supp) (31 October 1977) [53], (6)(e)(i) ('ExCom Conclusion No 8 (XXVIII)'), noting 'The competent official ... to whom the applicant addresses himself at the border or in the territory ... should have clear instructions ... [and] be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority'.

²⁰ Associated Press, 'Japan to Focus Refugee Screening System on Those Who Want Protection, Not Employment', *South China Morning Post* (online), 12 January 2018 <https://www.scmp.com/news/asia/east-asia/article/2127925/japan-focus-refugee-screening-system-those-who-want-protection>.

²¹ Forum for Refugees Japan, Ministry of Justice and Japan Federation of Bar Associations, *Alternatives to Detention Pilot Project for Foreign Nationals Seeking Asylum at Airport in Japan* (Report, March 2015) <http://frj.or.jp/news/wp-content/uploads/sites/2/2015/03/2a0c3b232a42d9e89d6d4715133b1aab.pdf>.

²² ExCom Conclusion No 8 (XXVIII) (n 19) [53], (6)(e)(iii), states, 'There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance.'

²³ Department of International Protection, 'Refugee Status Determination: Identifying Who is a Refugee' (Guideline, UNHCR, 1 September 2005) <http://www.refworld.org/docid/43141f5d4.html>, ss 5.2.1–5.2.2.

²⁴ *The Bangalore Principles of Judicial Conduct*, JIG (25–26 November 2002) v 2 ('Bangalore Principles').

²⁵ François Crépeau, 'The Case for "Firewall" Protections for Irregular Migrants: Safeguarding Fundamental Rights' (2015) 17(2-3) *European Journal of Migration and Law* 157.

²⁶ *Immigration and Refugee Protection Act* (SC 2001, c 27) s 162.

²⁷ See comparative practice discussed in International Organization for Migration, 'Coordinated Responses to Mixed Movements: Partnerships and Collective Action to Protect Rights — Facilitating Social and Economic Inclusion' (Background Paper, Global Forum on Migration and Development, 2019) <https://www.qfmd.org/final-qfmd-2019-rt-session-12-background-paper>.

²⁸ Bangalore Principles (n 24) v 3.

²⁹ *The Istanbul Declaration on Transparency in the Judicial Process and Measures for the Effective Implementation of the Istanbul Declaration*, ESC Res 2019/22, UN ESCOR (1 August 2019).

³⁰ '[O]pen policy statements, open rules, open findings, open reasons, and open precedents ... openness is the natural enemy of arbitrariness and a natural ally in the fight against injustice', discussed in Kenneth Culp Davis, 'Discretionary Justice' (1970) 23(1) *Journal of Legal Education* 56, 59.

³¹ UNESCO, 'Powering Sustainable Development with Access to Information: Highlights from the 2019 UNESCO Monitoring and Reporting of SDG Indicator 16.10.2 – Access to Information' (Program and Meeting Document, 2019) <https://unesdoc.unesco.org/ark:/48223/pf0000369160>. FOI procedures, however, do not always function effectively, and relevant bodies too often refuse FOI requests relating to RSD procedures, including performance.

³² UNHCR, 'Procedural Standards for Refugee Status Determination Under UNHCR's Mandate' (Guideline, 26 August 2020) <https://www.refworld.org/docid/5e870b254.html> ('Procedural Standards').

³³ *Ibid.* See also 'Core principles and standards' at *ibid* 15.

³⁴ *Ibid.* See also 'Disclosure to Individual Asylum-Seekers and Refugees and Other Rights relating to Personal Data in the Context of RSD Procedures' at *ibid* 24.

³⁵ International Consortium for Court Excellence, 'International Framework for Court Excellence' (Guideline, May 2020) http://www.courtexcellence.com/_data/assets/pdf_file/0015/53124/The-International-Framework-3E-2020-V2.pdf.

³⁶ 'Code of Conduct for Members of the Immigration Refugee Board of Canada', Government of Canada (Web Page, 9 April 2019) <https://irb.gc.ca/en/members/Pages/MemComCode.aspx>. This Code is distinct from processes and procedures relating to challenges to a decision on an asylum claim, which are dealt with through the appeal process.

³⁷ CHS Alliance, Group URD and Sphere Association, 'Core Humanitarian Standard on Quality and Accountability' (Guideline, Core Humanitarian Standard, 2014) <https://corehumanitarianstandard.org/files/files/Core%20Humanitarian%20Standard%20-%20English.pdf>, 19. See also CHS Alliance, Groupe URD and Sphere Association, 'Core Humanitarian Standard on Quality and Accountability: Updated Guidance Notes and Indicators 2018' (Guideline, CHS Alliance, 2018) <https://www.chsalliance.org/get-support/resource/chs-guidance-notes-and-indicators/>.

³⁸ Extensive guidance is currently being developed and implemented. See, eg, UNHCR, 'Accountability to Affected People (AAP)' (Emergency Handbook, 19 April 2003) <https://emergency.unhcr.org/protection/protection-principles/accountability-affected-people-aap#:~:text=UNHCR%20is%20accountable%20to%20persons,in%20decisions%20that%20affect%20them>.

³⁹ United Nations General Assembly (n 1) [34]. States committed to 'develop and support consultative processes that enable *refugees and host community members* to assist in designing appropriate, accessible and inclusive responses ... include [stakeholders] ... in key forums and processes ... [and] to receive complaints, and investigate and prevent fraud, abuse and corruption ... to ensure accountability'.

⁴⁰ ExCom Conclusion No 8 (XXVIII) (n 19).

⁴¹ ExCom Conclusion No 8 (XXVIII) (n 19) (Emphasis added).

⁴² Richard Mohr and Francesco Contini, 'Judicial Evaluation in Context: Principles, Practices and Promise in Nine European Countries' (2007) 1(2) *European Journal of Legal Studies* 254, 1–40.

⁴³ International Consortium for Court Excellence (n 35) 7.

⁴⁴ Case processing capacity is the sum of (applications granted) + (applications rejected) + (applications otherwise closed) for a given period of time, for example the month, quarter, or year: Brian Barbour (n 13).

⁴⁵ See, eg, Eligibility committee models in Macau, Thailand, Korea, Burkina Faso, Botswana, Gambia, Nigeria, Antigua and Barbuda, Brazil, and Venezuela.

⁴⁶ Brian Barbour (n 13).

⁴⁷ An asylum system must have access to and capacity to track accurate, up-to-date, disaggregated statistics. If this is unavailable, fit for purpose data management tools and procedures may become a key part of an ACD project.

⁴⁸ In situations of mass influx, increasing case processing capacity to sustainable levels may be an unrealistic objective, even for efficient and high quality asylum systems; and group-based approaches, highly simplified procedures such as *prima facie* recognition, or the use of temporary protection and stay arrangements, may be more appropriate: Brian Barbour (n 13).

⁴⁹ Accelerated or simplified procedures should not fall short of procedural standards, or be used to deny access to RSD; yet such procedures are often used to do just that in practice. This is particularly prevalent among so-called 'manifestly unfounded' procedures. Where such practices exist, they must be challenged. See UNCHR, 'Aide-memoire & Glossary of Case Processing Modalities, Terms and Concepts Applicable to

Refugee Status Determination [RSD] Under UNHCR's Mandate' (Guidance, 2020)
<https://www.refworld.org/docid/5a2657e44.html>.

⁵⁰ UNHCR, 'Asylum Capacity Support Group Mechanism: Guide to Working Modalities' (Guideline, June 2020)
<https://globalcompactrefugees.org/sites/default/files/2020-06/ACSG%20Guide%20to%20Working%20Modalities.pdf>.

⁵¹ UNHCR (n 49); <https://www.unhcr.org/en-au/excom/exconc/3ae68c6e10/protection-asylum-seekers-situations-large-scale-influx.html> United Nations General Assembly, *Addendum to the Report of the United Nations High Commissioner For Refugees*, UN Doc A/36/12/Add.1 (9 November 1981) [57], (2)(I)–(IV) ('ExCom Conclusion No 22 (XXXII)').

⁵² *Order No 3683-B/2020*, Portugal Council of Ministers (27 March 2020)
<https://dre.pt/dre/detalhe/despacho/3863-b-2020-130835082>.

⁵³ Angela Moore and Periklis Kortsaris, 'Adaptable Asylum Systems in Portugal in the Context of COVID-19' (2020) 65 *Forced Migration Review* 51.

⁵⁴ Elise Currie-Roberts and Sarah-Jane Savage, 'Institutional Adaptability in the Time of COVID-19' (2020) 65 *Forced Migration Review* 56.

⁵⁵ Complementarity is defined as 'an outcome where all capacities at all levels – local, national, regional, international – are harnessed and combined in a way that supports the best humanitarian outcomes for affected populations': Barbelet (n 10), 'As Local as Possible', 3.1.

⁵⁶ NGOs and Humanitarian Reform Project, 'Humanitarian Reform: Basic Information Leaflet Series — Principles of Partnership' (Guidance, June 2010) <https://globalhumanitarianplatform.org/doc00004351.pdf>.

⁵⁷ Asia Pacific Refugee Rights Network, 'Strategies to Promote Protection inside and outside of RSD' (Joint Report of the Legal Aid and Advocacy Working Group, 2016)
https://aprrn.org/media/Publications/files/Strategies_to_Promote_Protection_Inside_and_Outside_RSD_-_APRRN_Recommen....pdf, 3, noting '[O]utreach and capacity building of local and national actors...does not mean engagement with only or even primarily government policy-makers, but should include: schools, hospitals, lawyers, law schools, law students, police, judges, municipalities and communities, social workers and every relevant service provider. Every step by these local actors towards acceptance of responsibility for the refugees and asylum-seekers within their reach, with some accountability and justiciable framework, is progress towards meaningful State protection.'

⁵⁸ The 2023 Joint Response Plan in Bangladesh sought US\$876 million for 116 partners, 57 of which are Bangladeshi NGOs. The Strategic Engagement Group at the national level in Dhaka, and the Inter Sector Coordination Group at Cox's Bazar level provide coordination structures for collaboration across different sectors: Inter Sector Coordination Group, *2023 Joint Response Plan: Rohingya Humanitarian Crisis* (Report, 7 March 2023) https://reliefweb.int/report/bangladesh/2023-joint-response-plan-rohingya-humanitarian-crisis-january-december-2023?qclid=Cj0KCKQjwr82iBhCuARIsAO0EAZzyZC9c3nMbYCbVA0OGGcj_bjRv1ux_OdvSEcGniiUTZagkvDANiWoaAjRQEALw_wcB.

⁵⁹ UNHCR (n 49).

⁶⁰ *New York Declaration for Refugees and Migrants*, GA Res 71/1, UN GAOR (3 October 2016) [69] ('NYD'); United Nations General Assembly (n 1). This approach explicitly includes a variety of stakeholders, including but not limited to: refugees; States and national institutions; parliamentarians; host communities; local authorities and community leaders; UNHCR; international institutions; humanitarian and development actors; financial actors; civil society organisations; faith-based actors; the private sector; academia and research

institutions; and sports and cultural facilities. See also *Global Compact for Safe, Orderly, and Regular Migration*, UNGA Res 73/195, UN GAOR (19 December 2018) [15], which also discusses a whole-of-government approach considering, ‘that migration is a multidimensional reality that cannot be addressed by one government policy sector alone. To develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government.’

⁶¹ NYD (n 60).

⁶² ‘Community-based Protection in Malaysia’, UNHCR (Web Page, 2001–2023) <https://www.unhcr.org/en-my/community-based-protection-in-malaysia.html>.

⁶³ Barbelet, ‘As Local as Possible’ (n 10).

⁶⁴ UNHCR, ‘Asylum Capacity Support Group: Dialogue Platform’ (Background Note, January 2023) <https://acsq-portal.org/wp-content/uploads/2023/01/ACSG-Dialogue-Platform-January-2023.pdf>.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ See ‘ACSG Matches and Asylum Pledge Implementation’, UNHCR (Web Page, 2023) <https://acsq-portal.org/acsg-matches/>.

⁶⁸ In some cases, local capacity may not be necessary if there is regional or global capacity that is deployable. If, however, local protection needs remain long-term or are permanent, local capacity must be mobilised and available long-term or permanently.

