



**PAPERS ON LIBERTY
AND SECURITY IN
EUROPE**

GLOBAL ASYLUM GOVERNANCE AND THE EUROPEAN UNION'S ROLE

**Rights and Responsibilities in
Implementing the United Nations
Global Compact on Refugees**

Sergio Carrera



ASILE

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INTRODUCTION

What are the characteristics and impacts of emerging international and European Union (EU) asylum governance regimes, and what are their policy implications on the EU's role in implementing the United Nations Global Compact on Refugees (UN GCR), which calls for more equitable and effective arrangements for responsibility sharing? This is an especially pressing question as the UN GCR states that it is to be grounded in international refugee protection and international human rights instruments.

The ASILE project (*Global Asylum Governance and the EU's Role in Implementing the UN Global Compact on Refugees*) has explored the changing relationship between containment and mobility in asylum governance from an international comparative perspective and in the EU. It has also examined the EU's asylum policy considering its role and commitments in implementing the UN GCR.

ASILE has assessed asylum governance systems - instruments and actors - in selected world regions and countries such as Bangladesh, Brazil, Canada, Jordan, South Africa and Turkey, as well as EU third country cooperation asylum arrangements with Turkey, Serbia, Tunisia and Niger. The project has studied their practical implementation dynamics and impacts. It has evaluated their compatibility with international/regional refugee law and human rights standards, along with questions related to the attribution and allocation of multi-actor responsibilities in cases of human rights violations.

This Policy Brief synthesises the main research findings and policy recommendations of the project which ran between 2019 and 2024.



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This Policy Brief falls within the scope of the Horizon 2020 ASILE project (Global Asylum Governance and the EU's Role in Implementing the UN Global Compact on Refugees). The ASILE project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement n° 870787. For more information about the project and all the results, please go to <https://www.asileproject.eu/>

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KEY FINDINGS

Finding #1. Contained mobility: asylum governance instruments officially framed as ‘mobility’ or ‘integration’ – including those referred to by the UN GCR as legal and complementary pathways¹ – feature *sophisticated forms of contained mobility* in their design, practical implementation and effects². These include instruments portrayed as ‘promising practices’ internationally, such as resettlement, community/private sponsorships, humanitarian admission/dispensation programmes, economic investment/trade deals on labour market integration, and temporary protection regimes.

These instruments feature relevant inclusionary and human rights-upholding components seeking to facilitate entry or admission for some asylum seekers and refugees. However, ASILE research shows that they also display exclusionary components and often form part of wider containment and migration management agendas. They are not always asylum-driven and *additional* to the right to asylum. They are time-bound, leaving beneficiaries with insecurity of residence or in permanent temporariness.

These asylum governance instruments also raise questions regarding non-discrimination due to their limited personal scope applying only to specific countries of origin and not to all³. They foresee working rights which not always qualify as ‘decent work’ under international labour standards⁴ and nurture hyper-precarity⁵. Furthermore, they are characterised by legal uncertainty, a large margin of discretion for implementing actors and the lack of effective remedies for applicants in terms of access and outcomes in the procedures for determining their statuses and rights⁶. The selection or eligibility criteria of applicants are also driven by hierarchies of deservedness (e.g. who is not ‘vulnerable’), temporariness and utilitarianism.

¹ The UN GCR foresees the objective of increasing the availability and predictability of complementary pathways to protection, including by establishing ‘private or community sponsorship programmes that are additional to regular resettlement, including community-based programmes promoted through the Global Refugee Sponsorship Initiative (GRSI)’, paragraph 95. Refer to UNHCR, ‘[Complementary pathways for admission of refugees to third countries](#)’.

² S. Carrera, F. Khan, A. Fallone, N. Medina Araujo and I. Sanlier Yuksel (2023), [Asylum Governance Instruments in Canada, Brazil, South Africa and Turkey](#), ASILE Report. On the notion of contained mobility refer to Carrera, S. and R. Cortinovis (2019), [The EU’s Role in implementing the UN Global Compact on refugees: contained mobility vs. international protection](#), CEPS, Brussels.

³ S. Carrera and M. Ineli-Ciger (eds) (2023), [EU Responses to the Large-Scale Refugee Displacement from Ukraine: An Analysis on the Temporary Protection Directive and its Implications for the Future of EU Asylum Policy](#), EUI: Florence.

⁴ C. Costello and C. O’Cinneide (2021), [The Right to Work of Asylum Seekers and Refugees](#), ASILE Report.

⁵ S. Carrera, L. Turner and M. Sanjeeb Hossain (2023), [Status Determination, Vulnerability and Rights](#), ASILE Report.

⁶ C. Costello, M.S. Sanjeeb Hossain, M. Janmyr, N.M. Johnsen and L. Turner (2022), [Refugee Recognition and Resettlement](#), ASILE Report.

This can be evidenced in EU policy too. Some asylum instruments supported or adopted by the EU feature some inclusionary or mobility-related components or give priority to building or developing national asylum systems in third countries. That notwithstanding, these also show a prevailing securitarian and *externalisation*⁷ agenda where asylum serves the larger purpose of containment - *asylum for containment*⁸.

Non-EU states are artificially labelled as ‘safe’ to serve EU and its Member States’ interests to implement and hasten expulsions and readmissions of unauthorised asylum seekers. Instruments such as the 2016 EU-Turkey Statement or deal and its ‘one-for-one’ resettlement component, the 2014 EU-Tunisia Mobility Partnership, or the 2017 Emergency Transit Mechanism (ETM) in Niger, feature sophisticated forms of exclusion, selectivity and discrimination running contrary to the UN GCR commitments as well as international refugee and human rights legally binding standards⁹.

Finding #2. The reframing of people seeking asylum: the concepts of ‘refugee’ and ‘protection’ remain contested across many jurisdictions around the world¹⁰. Emerging asylum governance actors, and their instruments, often relabel the status of legitimate asylum seekers and refugees, particularly those engaging in spontaneous unauthorised arrivals, in a manner which is incompatible with the right of asylum¹¹. These include labels such as ‘forced migrants’, ‘forcibly displaced migrants’, ‘temporary protection beneficiaries’, or even ‘irregular immigrants’¹².

The use of these terms can be partly understood as a strategy by some state actors to evade their own legal responsibilities, or as a form of contention by some ‘Global South’ actors against international refugee protection norms that are perceived to originate from ‘Global North’ countries’ interests, and which fail to consider structural inequalities and responsibility shifting on asylum at global levels¹³.

⁷ A. Solveig, S. Carrera, N. Keith Tan and J. Vedsted-Hansen (2022), [Externalization and the UN Global Compact on Refugees: Unsafety as Ripple Effect](#), Policy Paper, EUI: Florence.

⁸ The term ‘containment’ has been used in the ASILE project to refer to instruments aimed at preventing access, reducing admission and increasing the expulsion of asylum seekers and refugees to countries of transit or origin. These include restrictive visa requirements, carrier sanctions, the use of the ‘safe third country’ and ‘safe country of origin’ concepts, readmission agreements and arrangements, and interdictions at sea. See B. Ayoub Tinni et al (2023), [Asylum for Containment: EU arrangements with Niger, Serbia, Tunisia and Turkey, ASILE Report](#).

⁹ N. Feith Tan and J. Vedsted-Hansen (2021), [Catalogue of International and Regional Standards: Refugee and Human Rights Law Standards applicable to Asylum Governance](#), ASILE Report.

¹⁰ L. Brumat, A. Geddes and A. Pettrachin (2022), [Actors and their Networks: Scope for adaptation to and contestation of global norms of refugee protection](#), ASILE Report.

¹¹ N. Feith-Tan and J. Kienast (2022), [The Right of Asylum in Comparative Regional Perspectives: Access, Procedures and Protection](#), ASILE Report.

¹² S. Carrera, L. Turner and M. Sanjeeb Hossain (2023).

¹³ L. Brumat, A. Geddes and A. Pettrachin (2022).

This reframing or relabelling of people problematically blurs refugee protection and asylum with a migration management rationale/approach which negatively impacts people's human dignity, their security of residence, access to justice, rights to decent work and family life, and more generally their human rights and agency. It also impacts how state and implementing actors consider themselves responsible or to have discretion when allocating and granting rights, as well as the applicable international and regional legal standards, which UN agencies are involved and 'who does what' and 'who frames knowledge' in these fields.

Finding #3. Rights curtailed and informality: The UN GCR refers to the principles of humanity, international solidarity and responsibility-sharing. It is anchored in the international refugee protection regime and guided by relevant international human rights. However, the GCR left out an explicit mention of the issue of access to territory and the right to asylum. It includes no references to externalisation policies, the ongoing pushbacks and pullbacks malpractices, as well as offshoring asylum initiatives around the world.

ASILE research shows the continued or prevailing misuse and proliferation of policies focused on containment, deterrence, pre-entry screening and the mandatory use of expedited border procedures, and *de facto/de jure* detention¹⁴. These have led to well-documented human rights violations and rule of law-backsliding contrary to binding international and regional standards¹⁵ and national constitutions.

Emerging asylum policies come increasingly in the shapes of non-legally binding, secretive and informal deals or arrangements, of a bilateral or multilateral nature, such as Memorandum of Understandings (MoUs), readmission arrangements, joint declarations and so-called partnerships. These arrangements often include providing funds to support projects giving priority to trainings and so-called capacity building on migration and border management, which are directly or indirectly linked to containment policies such as pullbacks or unlawful interdictions at sea, 'safe third country' and readmission policies, border surveillance technologies, etc.

The nebulous nature of these instruments negatively impacts their enforceability, democratic accountability and judicial control. They are characterised by legal uncertainty and curtail individuals' 'right to have rights'¹⁶. The use of such arrangements in asylum governance brings about serious illegitimacy costs for all parties involved,

¹⁴ S. Carrera and A. Geddes (2022), [The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees International Experiences on Containment and Mobility and their Impacts on Trust and Rights](#), EUI: Florence.

¹⁵ J. Kienast, N. Feith Tan and J. Vedsted-Hansen (2023), [Refugee and Human Rights Law Standards Applicable to Asylum Governance and the Right to Asylum](#), ASILE Report.

¹⁶ H. Arendt (1986), *The Origins of Totalitarianism*, London: Andre Deutsch.

including the EU which is constitutionally required to ensure and promote *full consistency* in all its external or foreign affairs policies with these same values¹⁷. Crucially, the EU can only be a legitimate and credible international actor championing human rights if it fully upholds them on its own territory.

Finding #4. Concepts contesting principles: The asylum governance regimes under investigation make use of a toolbox of concepts raising fundamental challenges to asylum:

4.1. Vulnerability: this concept finds no common place across all national jurisdictions and languages around the world. It remains controversial in nature. The term disregards how policies co-create structural precarities and irregularities affecting various groups of people. Its official framing and increasing use in some countries, together with other managerial techniques such as registering and storing biometric data in the scope of resettlement policies, undermine individuals' agency and exclude certain applicants from protection such as young male applicants and those from LGBTQ+ communities¹⁸.

4.2. Self-reliance and labour market integration: these two notions often follow a utilitarian, selective and migration-management approach. They come with high expectations and demands for refugees to swiftly 'integrate' into the labour market and contribute to the economy. They fail to acknowledge their specific individual characteristics, traumas and situations, existing institutionalised discrimination and how national rules may actually prevent them from doing so. Moreover, the focus of certain trade policy instruments on labour market integration needs to be critically examined as part of wider deterrence-driven policies¹⁹.

4.3. Solidarity: This concept tends to follow an *inter-state and state-centric understanding of responsibility sharing*²⁰, without considering the impacts of the policies adopted in its name on individuals' rights and their agency. It problematically reframes states' obligations to uphold their responsibilities under international, regional and national constitutional norms as a 'pick and choose' game or charity-based option. An example is the use of 'flexible solidarity' by the new EU Pact on Migration and Asylum, which is not

¹⁷ Article 21.3 TFEU states that 'The Union shall ensure consistency between the different areas of its external action and between these and its other policies. Article 21.2 TFEU emphasises that 'The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (a) safeguard its values...; (b) consolidate and support democracy, the rule of law, human rights and the principles of international law'.

¹⁸ C. Costello, M.S. Sanjeeb Hossain, M. Janmyr, N.M. Johnsen and L. Turner (2022), [Refugee Recognition and Resettlement](#), ASILE Report. S. Carrera et al (2023), [Status Determination, Vulnerability and Rights](#), ASILE Report.

¹⁹ L. Turner (2023), [Jordan: Final Country Report](#), ASILE.

²⁰ E. Karageorgiou and G. Noll (2023), Receiving Ukrainian Refugees in the EU: A Case of Solidarity? In S. Carrera and M. Ineli-Ciger (eds).

informed by EU Treaty principles enshrined in Article 2 TEU and the EU Charter of Fundamental Rights²¹.

Finding #4. Responsibility attribution and allocation - Portable Justice: The existence and interplay of multi-instruments and multi-actors' settings where asylum governance regimes are shaped and implemented complicates the attribution of international responsibility in cases of international refugee law and human rights violations and international wrongful acts. The informality and externalisation dynamics characterising policies in these fields complicate matters further.

However, these policies may well unlock direct or indirect responsibility for the receiving state, international organisations, and potentially also for the EU institutions and actors, under the law of international responsibility or human rights law²². A *portable justice* model applies in these circumstances, whereby justice and responsibility should be expected to follow²³. Justice will catch up with those seeking to evade it, in particular because the law of international responsibility has developed over the past decade to better capture multi-actor conduct and shared responsibility²⁴. Rule of law and fundamental rights principles function as sensors for the exclusionary and illiberal practices exercised in their name²⁵.

POLICY RECOMMENDATIONS

1. Principled and rights-compliant asylum policies: Asylum governance instruments presenting mobility and inclusion features – including those presented as ‘legal/regular, safe and complementary pathways’ - must comply with: *First*, the principle of non-discrimination among applicants depending on their colour, national/ethnic origin or nationality, religion, sexual orientation, etc.; *second*, the principle of additionality, so that they are *additional to*, not a substitute of, the right to asylum. They must not be an alternative to states’ obligation to ensure effective and timely access to asylum, including for spontaneous unauthorised arrivals; and *third*, an asylum-driven paradigm instead of

²¹ S. Carrera and R. Cortinovis (2023), *The Declaration on a Voluntary Solidarity Mechanism and EU Asylum Policy: One Step Forward, Three Steps Back on Equal Solidarity*, in S. Carrera and M. Ineli-Ciger (eds).

²² J. Kienast, N. Feith Tan and J. Vedsted-Hansen (2023), [EU Third Country Arrangements: Human Rights Compatibility and Attribution of Responsibility](#), ASILE Report.

²³ According to Carrera and Stefan, ‘EU law is therefore portable because it captures abusive practices regardless of where they take place’. S. Carrera and M. Stefan (2020), *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union: Complaint Mechanisms and Access to Justice*, Routledge Studies in Human Rights.

²⁴ E. Karageorgiou, G. Noll and G. Ovacik (2024), [Responsibility Allocation and UN GCR Implementation](#), ASILE Report.

²⁵ On the recapturing capacity of the rule of law refer to J. Habermas (2001), *The Postnational Constellation: Political Essay*, MIT Press: Cambridge.

migration management or containment disguised as an approach to asylum governance²⁶. Furthermore, instruments considered to be ‘complementary pathways’ should not substitute state-led refugee resettlement programmes and states’ own responsibilities to deliver asylum²⁷.

2. The foundational role of genuine responsibility sharing to the international refugee system: Policies that block access for spontaneous asylum seekers in high-income countries undermine international cooperation on refugees and the entire global protection system. The closing of borders and shifting of protection responsibilities through externalisation policies place a disproportionate responsibility on developing and least developed countries (LDCs) in the world²⁸. International cooperation on asylum and labour market inclusion should not pursue a containment agenda and rely on conditionality or ‘issue-linkage’ serving ‘Global North’ agendas and priorities of expulsions/readmission policies²⁹.

3. A human rights and rule of law-centred approach: such an approach should inform the adoption and scrutiny of national, regional and EU policies in light of the UN GCR. Priority should be given to ensuring that these policies do not run contrary to human rights, and that they facilitate effective access to rights by *all* asylum seekers, refugees and other international protection beneficiaries, including their security of residence, access to permanent residence³⁰ and protection against expulsions, addressing their hyper-precarities and facilitating effective access to key human rights such as the right to decent work and a family life. Asylum governance policies should not violate absolute human rights which accept no derogation in the name of migration policy priorities or during times of declared political crises. This should be coupled with ensuring the principle legal certainty and procedural fairness in these policies, as well as facilitating access to justice and effective remedies as they are constitutive components of the rule of law³¹.

²⁶ S. Carrera, L. Vosyliute, L. Brumat and N. Feith Tan (2021), [Implementing the United Nations Global Compact on Refugees? Global Asylum Governance and the Role of the European Union](#), Policy Brief, EUI: Florence.

²⁷ A. Fallone and R. Cortinovis (2023), [Emphasizing Fairness and Effectiveness: Best Practices for Ensuring Additionality and Fostering Refugee Agency in Complementary Pathways for Refugees in Canada and Beyond](#), ASILE Policy Brief.

²⁸ S. Als, K. Starup and C. Vejby-Andersen (2023), [Addressing Protection Implications of EU Extra-Territorial Migration Cooperation: Policy recommendations](#), ASILE Policy Brief.

²⁹ L. Turner (2023), [Creating an Inclusive Refugee Response in Jordan](#), ASILE Policy Brief; F. Raach (2024), [Tunisia-EU cooperation in migration management: From Mobility Partnership to containment](#), ASILE Policy Brief; and M. Ineli-Ciger, O. Ulusoy and G. Ovacik (2024), [The EU-Turkey cooperation in the field of migration and asylum: What is wrong with it and how to fix it?](#).

³⁰ F. Khan (2024), [Assessing the effectiveness of South Africa’s Zimbabwean Dispensation policy](#), ASILE Policy Brief.

³¹ M. Sanjeeb (2024), [The Protracted Rohingya Refugee Situation in Bangladesh: Towards Reducing Precarity and Increasing Responsibility Sharing](#), ASILE Policy Brief; A. Fallone and R. Cortinovis (2023).

4. Upholding refugee, human rights and rule of law and democracy standards: The European Commission should reject efforts and initiatives aimed at externalising asylum processing and refugee protection by some EU Member States as they are both ineffective and inhumane³². It should take effective enforcement action against illegal pushback, pullbacks and expulsions practices, and do so with clear reference to Member States', and EU agencies such as Frontex, obligations under international and EU law³³.

5. Use of formal and long-term international agreements and legal instruments instead of informality and non-binding arrangements: asylum governance instruments should take the form of legislation and treaties instead of, as they increasingly do, non-legally binding arrangements, declarations and partnerships. This will ensure proper judicial control and enforcement, as well as the credibility and legitimacy of the policy at hand³⁴.

6. Upholding EU principles – systematic evaluation and monitoring: International cooperation on migration and asylum management, and its instruments, should not undermine the rule of law and democratic institutions of host countries. In line with the EU Better Regulation Guidelines and Toolbox, and the 2016 inter-institutional agreement on Better-Law Making, adopting instruments should be preceded by *ex-ante* evaluations, Impact Assessments and audits focused on the compliance with these international and regional principles and standards. This should be complemented with ongoing and *ex-post* independent monitoring and audit tools to gather evidence on their actual impacts and effects in specific national, regional and local contexts, including in the scope of both external border controls and surveillance. The timely integration of evidence must be ensured to inform policy responses and actions, and to facilitate accountability and justice³⁵.

7. Regional and national democratic accountability: Democratic accountability of asylum governance instruments considering the implementation of the UN GCR should be further strengthened nationally, regionally and across world regions. This could take the shape of an inter-regional parliamentary mechanism on asylum. This mechanism would

³² A. Solveig, S. Carrera, N. Keith Tan and J. Vedsted-Hansen (2022), *Externalization and the UN Global Compact on Refugees: Unsafety as Ripple Effect*, Policy Paper, EUI: Florence.

³³ J. Lehmann (2023), [EU asylum reform and the Western Balkans: What does the future hold for Serbia](#), GPPi Policy Paper, Berlin; and S. Carrera, R. Cortinovis and D. Colombi (2023), [Policing Search and Rescue NGOs in the Mediterranean: Does justice end at sea?](#), CEPS In-Depth Analysis paper, Brussels; and S. Carrera, G. Campesi and D. Colombi (2023), [The 2023 Italy-Albania protocol on extraterritorial migration management A worst practice in migration and asylum policies](#), CEPS Policy Insight, Brussels; and S. Carrera (2021), [Walling off responsibility? The Pushbacks at the EU External Borders with Belarus](#), CEPS Policy Insight: Brussels.

³⁴ Ayoub Tinni et al (2023), [Shortcomings in EU Cooperation for Externalization of Asylum: Lessons from Niger, Serbia, Tunisia and Turkey](#), ASILE Policy Brief, and J. Lehman and A. Dimitriadi (2023), [The Tunisian Red Flag Lessons from the EUTunisia Strategic Partnership for the external dimension of EU Asylum policy](#), ASILE Paper.

³⁵ Ayoub Tinni et al (2023); S. Als, K. Starup and C. Vejby-Andersen (2023).

be a venue for formal exchanges, joint fact-finding missions, and policy strategy-setting on key issues to follow up of UN GRF political commitments by governments³⁶. This should go hand-to-hand with guaranteeing the transparency and public accountability of national and multilateral asylum projects.

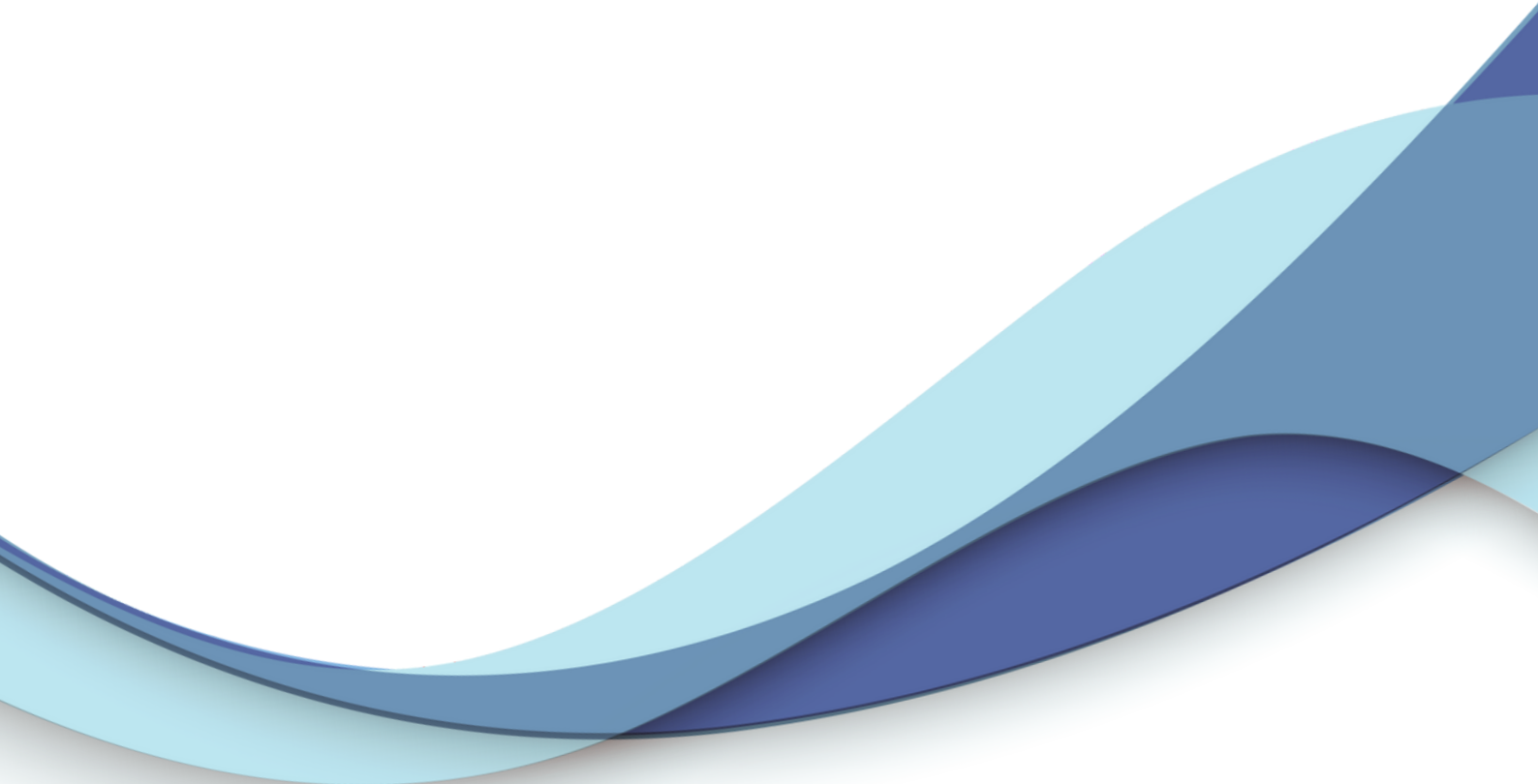
8. Ensuring the independence of civil society actors and guaranteeing refugees agency in policymaking: Priority should be given to establishing and ensuring systematic involvement, support and inclusion of civil society and of those affected by policies, so that timely and appropriate corrective actions can be taken in policy interventions raising human rights and rule of law issues³⁷. There should be more concerted efforts to amplify the role and contributions by local and international civil society actors and refugee-led organisations and activists working to improve access to asylum, assistance and services for refugees, asylum seekers and migrants.

At the same time, the scope and implementation of the UN GCR ‘partnership principle’, which calls civil society actors to work together with national and local authorities, the private sector, etc. should not run at the expense of fully guaranteeing the rights of human rights defenders and the independence of civil society actors who should not be criminalised or policed in any of their activities. Crucially, asylum policies should be adopted, reviewed and monitored based on the actual experiences, meaningful participation and self-mobilisation of asylum seekers, refugees and other international protection beneficiaries because they are the people most directly affected by asylum policies. With this in mind, the mantra ‘nothing about us without us’ thus turns into a tangible reality³⁸.

³⁶ S. Carrera, L. Vosyliute, L. Brumat and N. Feith Tan (2021); Ayouba Tinni et al (2023).

³⁷ S. Als, K. Starup and C. Vejby-Andersen (2023).

³⁸ UNHCR (2022) <https://globalcompactrefugees.org/news-stories/nothing-about-us-without-us-7-ways-you-can-promote-refugee-leadership>



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