Ensuring respect for rights in the provision of refugee protection and assistance

Summary of an expert meeting held at UNHCR, Geneva 13 November 2017

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The UN Summit for Refugees and Migrants held in September 2016 brought together the world's political leaders to find ways of improving the global response to large movements of refugees and migrants. The resulting document, the New York Declaration for Refugees and Migrants (NYD), reaffirmed the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, and the core international human rights treaties, recognizing "all [refugees and migrants] are rights holders" and committing to fully respect international human rights, refugee, and humanitarian law.² The NYD also reaffirmed the central place of the 1951 Convention relating to the Status of Refugees (the 'Refugee Convention') and its 1967 Protocol as the foundations of the international refugee protection regime, and recognized the importance of their full and effective application by State parties.³ Finally, the NYD reaffirmed that international human rights, refugee, and humanitarian law "provide the legal framework to strengthen the protection of refugees." 4 In this respect, the NYD makes clear that the rights of refugees are the starting point for the Global Compact on Refugees (GCR), including through the development of a Comprehensive Refugee Response Framework (CRRF) and Programme of Action (PoA). The commitment to view refugees as rights-holders reflects a core aim of the United Nations system, namely to promote and encourage respect for the human rights and fundamental freedoms of all people.5

On 13th November 2017, critical thinkers, experts and representatives from international and civil society organisations including those working with refugees in different settings around the globe met together at UNHCR for a frank and open exchange around how to ensure respect for refugee rights is central to, and promoted throughout, the Global Compact process (i.e. the CRRF and PoA) (see Annex 1 for participants). The discussion was both detailed and wideranging. Although participants were not always in agreement, this document provides a summary of the key themes and recommendations made by participants to guide the Global Compact process. These included:

- 1. **THE CENTRALITY OF RIGHTS** It is important that a commitment to realising the rights of refugees (including international human rights, refugee, and humanitarian law) is front and centre in the framing and application of the Global Compact on Refugees, including in both the CRRF and PoA. Refugees are fundamentally rights holders and entitled to the respect, protection and fulfilment of their rights.
- 2. **THE PRINCIPLES OF EQUALITY AND NON-DISCRIMINATION** Among the pillars of the rights framework are the principles of equality and non-discrimination, which recognize that all people are equal in dignity and human rights. Rights are not a zero-sum game. Situating the delivery of human rights within an understanding of equality and non-discrimination can provide greater access to rights for both citizens and non-citizens, raising the bar for all, reducing inequalities and marginalisation and ensuring that 'no-one is left behind'. Such an

¹ The views expressed in this summary do not necessarily represent the views of individual participants or UNHCR, but reflect broadly the themes and understandings emerging from the discussion.

² New York Declaration, para 5.

³ New York Declaration, para. 65.

⁴ New York Declaration, para. 66.

⁵ United Nations Charter, Article 1(3).

approach can also help to reconcile state interests in providing for their citizens, while also respecting refugee rights.

- 3. **ENSURING ACCESS TO RIGHTS IN PRACTICE** For rights to be meaningful, they must be operationalised. Putting rights at the centre of operational and programmatic responses to refugee protection and assistance is a key feature of the rights-based approach and can help to ensure the practical implementation of refugees' rights, including in countries that are not signatories to the Refugee Convention. In this respect, States can rely on the rights-based approach and the rule of law more generally, to ensure access to refugee rights in practice.
- 4. **IMPORTANCE OF A WHOLE-OF-SOCIETY APPROACH** Realizing the rights of refugees will necessarily require a 'whole-of-society' approach involving a wide range of government, UN, and civil society actors. A whole-of-society approach properly understands that rights are indivisible, interdependent and interrelated, therefore implicating the provision of services and legal safeguards that will touch upon both refugee and host communities, and which will need to be considered across a range of populations, government ministries, civil society and international organisations.
- 5. **THE BENEFITS OF A RIGHTS-BASED FRAMING** Rights-based approaches and practical initiatives to deliver refugee protection and assistance often create a number of opportunities for both refugees and host communities. Respect for the rights of refugees must not, however, be contingent on the evidence of such benefits. Upholding the rights of refugees is an obligation of states regardless of the benefits, and refugee rights should always be respected, protected and fulfilled.

1. THE CENTRALITY OF RIGHTS

It is important that a commitment to realising the rights of refugees (including international human rights, refugee, and humanitarian law) is front and centre in the framing and application of the Global Compact on Refugees, including in both the CRRF and PoA. Refugees are fundamentally rights holders and entitled to the respect, protection and fulfilment of their rights.

The meeting began with a discussion about the centrality of rights to refugee protection and assistance. Some participants expressed concern that the rights afforded to refugees under international human rights, refugee, and humanitarian law not be lost or taken for granted in the context of discussions about how to operationalise refugee protection and assistance. The GCR provides an opportunity to reinforce and ensure more effective respect for the fundamental rights laid out by world leaders over 60 years ago, as well as those contained in regional instruments and other commitments. As noted by one participant, this is not a time to speak quietly.

Upholding human rights and the principles of dignity and humanity, among other core principles, should be the cornerstone of our thinking and action. The GCR provides an opportunity to strengthen our commitment to international law and the international refugee protection regime, in particular by ensuring that access to territory and the right to seek and enjoy asylum are respected, that the principle of *non-refoulement* is upheld, that arbitrary detention and arbitrary or collective expulsions are prohibited, that due process and procedural safeguards are upheld, that 'voluntary repatriation' is genuinely voluntary, and that refugees enjoy their fundamental economic, social and cultural rights including the rights to family, work, health, and education. It is important that the GCR does not lower standards nor backtrack on the important commitments to uphold rights which have already been made.

Participants acknowledged that this is a daunting task in the current political climate. The difficulty of upholding refugee rights should not, however, compromise UNHCR's approach or

its refugee protection mandate. Uncompromised persistence on rights is the only guarantee for refugee protection and assistance in the long run.

In addition participants emphasised the importance of situating refugee protection within a broader human rights framework. Whilst the Refugee Convention is the cornerstone of refugee protection and assistance, it is complemented by the application of international human rights law and principles. Refugees and asylum seekers are entitled to specific protections under international and regional refugee law but they also have rights as human beings. Hence, reinvigorating the commitment to all civil, political, economic, social and cultural rights as well as additional specific protections (e.g. for children, women, persons with disabilities, etc.) outlined in the core international human rights instruments is vital to refugee protection in the 21st century. It is important that refugees are acknowledged to be holders of fundamental human rights and not only rights under refugee law. Equally, whilst it is important that a range of actors are engaged in refugee protection and assistance (including, for example, the private sector), States will always be the principle duty bearer for respecting, protecting, and fulfilling refugee rights and are responsible for meeting their obligations under relevant international law.

2. THE PRINCIPLES OF EQUALITY AND NON-DISCRIMINATION

Among the pillars of the rights framework are the principles of equality and non-discrimination, which recognize that all people are equal in dignity and human rights. Rights are not a zero-sum game. Situating the delivery of human rights within an understanding of equality and non-discrimination can provide greater access to rights for both citizens and non-citizens, raising the bar for all, reducing inequalities and marginalisation and ensuring that 'no-one is left behind'. Such an approach can also help to reconcile state interests in providing for their citizens, while also respecting refugee rights.

Refugee rights have come to be seen as a problem by some States and increasingly presented as a zero-sum game, in other words as though there is a limited quantity of opportunities associated with the provision of rights (particularly socio-economic rights) such that giving rights to one group takes away and/or undermines the rights and opportunities available to another. In this way different groups are set against one another, such as nationals and non-nationals. Refugee rights have also come to be seen as a threat to border control particularly in contexts where issues of national security have been emphasised in domestic political narratives, and despite the fact that there is no statistical correlation between increased migration and refugee movements on the one hand, and increased criminality or national security threats on the other.

One of the objectives of the GCR is to work with States and a range of non-State actors to develop new approaches and ways of working in practice which not only facilitate the protection and rights of refugees under international law but also highlight the very considerable benefits for States and host communities associated with ensuring respect for the rights of all, including through functioning legal and social systems. In this context one of the key challenges is how to encourage States to understand – and promote - the wider benefits of a rights-based approach to refugee protection and assistance for all members of society.

Discussion focused on two key issues. First, participants emphasised the need to situate the aversion to upholding refugee rights within a broader set of social and political changes and a wider shift away from the State delivering for its citizens towards free market solutions. In other words, to address the failure of States to deliver rights for refugees it is necessary to engage with broader inequalities in society of which inequalities associated with being a refugee are just a part, and with which the inequalities associated with being a refugee

intersect (for example, the experiences of refugee women vis-à-vis refugee men, children vis-à-vis adults, experiences of different ethnic or religious groups). Addressing these inequalities will necessarily require engagement with a broad range of organisations working with these groups (see 'whole-of-society approach below).

Second, it is important to highlight the relationship between rights and equality. Rights are not a zero-sum game in which the host society loses out if refugees access their rights. Providing meaningful access to rights is part of improving the situation for all of those living in a society, both citizens and non-citizens – including both migrants and refugees. The core UN human rights treaties include a provision prohibiting discrimination. The provision affirms that human rights apply to every person without discrimination of any kind, with respect to race, colour, sex language, religion, political opinion, national and social origin, birth and other status. A rights-based approach based on the imperative to protect, respect and fulfil human rights therefore offers a potential framework for reconciling State and refugee interests. Inherent in such an approach is the need to ensure non-discrimination and to consider very carefully when exceptions to the general principle of equal treatment (equality) can be made.

A rights-based approach also aims to support better and more sustainable outcomes by analysing and addressing the inequalities, discriminatory practices and unjust power relations that are often at the heart of inequalities. As such it has potential benefits for everyone in a society. Promoting equality and rights for the most vulnerable in society (both citizens and non-citizens) increases social inclusion and enhances capabilities for all. Providing access to rights gives States an opportunity to promote the values they adhere to and creates opportunities for economic and social participation. Conversely undermining access to refugee rights or providing them with opportunities (e.g. work) with rights (i.e. labour rights) can lead to a downward spiral of 'ripple effects' and creating a hostile political and policy environment which can make it different for all of those from different backgrounds, including those who are citizens, find it difficult to access and/or assert their rights.

A rights-based approach has the potential to reconcile perceived differences in the interests of refugees and host communities not least by enabling closer collaboration between groups working together towards common / shared objectives and outcomes. It will, however, require significant investment in work on the ground with a range of groups not typically associated with refugee protection and assistance, including refugees themselves. And it will mean situating refugee protection and assistance with wider processes. In Uganda, for example, the political and policy response to displacement is usefully seen as part of the broader peace-building process: displacement is both a result of conflict but can also undermine the peace building process. Promoting refugee rights can therefore increase the opportunities for peace which benefits everyone.

3. ENSURING ACCESS TO RIGHTS IN PRACTICE

For rights to be meaningful, they must be operationalised. Putting rights at the centre of operational and programmatic responses to refugee protection and assistance is a key feature of the rights-based approach and can help to ensure the practical implementation of refugees' rights, including in countries that are not signatories to the Refugee Convention. In this respect, States can rely on the rights-based approach and the rule of law more generally, to ensure access to refugee rights in practice.

A rights-based approach is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities and redress discriminatory practices and unjust distributions of

power that impede progress. A rights-based approach is underpinned by the fundamental principles of non-discrimination, empowerment, participation and inclusion, and accountability and, when applied to the issue of refugee protection and assistance, brings the treatment of refugees as human beings to the forefront of discussion and programming. In other words, the plans, policies and processes associated with refugee protection and assistance are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of protection and assistance work, empowering refugees themselves— especially the most marginalized—to participate in policy formulation and holding accountable those who have a duty to act.

A rights-based approach to refugee protection and assistance requires, at a minimum:

- people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons;
- measures to address the specific needs of all people in vulnerable situations;
- ensuring border control procedures are in conformity with applicable obligations under international law;
- respect for the principle of non-refoulement;
- means to combat exploitation, abuse and discrimination;
- promoting gender equality and the empowerment of all women and girls;
- protecting the human rights and fundamental freedoms of all children, regardless of their status, and giving primary consideration at all times to the best interests of the child;
- providing due process of law in the assessment of legal status, entry and stay;
- addressing the drivers and root causes of large movements of refugees and others with international protection needs; and combating xenophobia, racism and discrimination

Participants noted that whilst the origins of the GCR process lie in concerns about the increased arrival of refugees to Europe, the vast majority of refugees are hosted by neighbouring countries within which rights-based approaches to refugee protection and assistance may be differently understood. Whilst participants were clear on the importance of a rights-based approach for delivering refugee protection and assistance, they acknowledged that the language of rights can and does take different forms and the need to be sensitive to the sociopolitical and cultural contexts within which rights are understood and delivered. Many countries hosting large numbers of refugees are not signatories to the Refugee Convention. This point was made particularly strongly by participants based in India and Malaysia. In some countries a rights-based approach is neither understood nor accepted. In others it is only partially understood and/or implemented due to a gap between policy and practice.

In this context, participants explored a range of different approaches that might be pursued by States which can help to ensure and demonstrate that the rights (and needs) of refugees and host communities are complementary and mutually reinforcing, rather than conflicting, including how these can most effectively be framed in different political and policy contexts. The discussion centred around three key strategies for ensuring a rights-based approach to refugee protection and assistance is delivered in practice.

First, those countries which are signatories to the Refugee Convention must be supported to create the necessary political and policy space to uphold their commitments and to do things differently where needed, for example by openly discussing the benefits of a rights-based approach to refugee protection and assistance for all residents, both citizens and non-citizens,

rather than presenting refugees as a threat. Regional instruments and agreements appear to be more effective than bilateral agreements in this regard. Participants noted that some States, most notably those in Central America, have explicitly framed their response to refugees (and migrants more generally) in terms of respect for the human rights of refugees and migrants. In these contexts, the discourse of "rights" is motivating States to do more and can legitimate and/or strengthen the policy making process. In this regard, UNHCR's supervisory function under the Convention can be directed towards capacity building in these states.

Second, where States are not signatories of the Refugee Convention, relevant regional and international human rights law principles can be leveraged to deliver protection and assistance for refugees. International human rights standards offer a basis for principled, norm-based and constructive engagement in humanitarian action, based on an accepted framework which takes into account the specific needs of vulnerable groups and individuals, aims at empowering people to claim their rights and strengthen the capacities and accountability of duty-bearers to meet their legal obligations.

Third, whilst it is important to advocate around the potential for refugee protection and assistance through the existing human rights framework, it could also be helpful in some contexts to adopt a rule of law (RoL) approach. In 2012, the High Level Meeting of the UN General Assembly passed Res. 67/1, reaffirming that all States are bound by the RoL as is the UN itself. The UN understanding of RoL is rich, encompassing more than police, justice and corrections, and upholding all human rights (see Preamble para 3 to UDHR 1948). India, for example, is not a signatory to the Refugee Convention but in practice organisations have been able to leverage opportunities for refugee protection and assistance (e.g. work, education, citizenship) by developing shared facilities, institutions and infrastructure for the host community and refugees. Such an approach necessarily requires additional institutional, practical and financial support for national human rights organisations and human rights defenders to include refugees in the work that they do (see also 'whole-of-society' approach below). Under the 1950 Statute, UNHCR has the mandate to provide international protection to refugees, which it can best achieve through the rights-based approach by building the capacity of states as part of its Memoranda of Understanding with all States and by drawing on the resources of the rest of the UN as part of a rights-based approach to governance and the rule of law.

Finally, participants emphasised the need to support the countries that are already doing the 'heavy lifting' in terms of refugee protection and assistance, including those which are not signatories to the Refugee Convention. An estimated 85% of refugees live in low and middle-income countries, including in countries neighbouring conflict zones. In many cases, nationals of refugee hosting countries may also not have access to all rights in practice. For example, lack of sufficient employment opportunities render the right to work ineffective for both locals and refugees. For these reasons, more equitable and predictable burden and responsibility sharing including through the resettlement of refugees to third countries remains pivotal to a rights-based approach to refugee protection and assistance.

4. IMPORTANCE OF A 'WHOLE-OF-SOCIETY' APPROACH

Realizing the rights of refugees will necessarily require a 'whole-of-society' approach involving a wide range of government, UN, and civil society actors. A whole-of-society approach properly understands that rights are indivisible, interdependent and interrelated, therefore implicating the provision of services and legal safeguards that will touch upon both refugee and host communities, and which will need to be considered across a range of populations, government ministries, civil society and international organisations.

The delivery of refugee protection and assistance cannot be within the mandate of any single organisation or government ministry, precisely because there are a number of interdependent and indivisible human rights at stake with obligations sitting in different jurisdictions in multiple duty-bearers. A rights-based approach, which puts the individual rights holder at the centre of the operational or programmatic response, will necessarily require a whole- of-society approach. Importantly, joint programming will benefit both refugees and host communities.

Although there has been increasing use of 'whole-of-society' terminology in relation to refugee protection and assistance since the NYD in September 2016, the concept is far from new. Participants noted that across a range of geographical and political contexts communities have been working with a range of civil society organisations to deliver protection and assistance to refugees. Reframing protection and assistance from a rights-based perspective means acknowledging these interventions and allowing them the freedom to deliver on their own terms. It is important that the operational implications of this approach be articulated in a way that goes beyond including new actors such as the private sector and financial institutions to also fully engage NGO partners and affected populations. Civil society plays a prominent role in cooperation and could take up key functions in the CRRF implementation.

A whole-of-society approach also needs to reach well beyond a focus on refugee populations alone. Participants emphasised the importance of building alliances with those interested in and working on broader issues of social justice and human rights e.g. trade unions, social protection and justice-focussed organisations, those working in the areas of development and peace-building. This is especially important in the context of broader issues of inequality affecting all societies into which refugee move and where efforts to provide assistance for refugees, for example through the right to work in special economic zones with reduced labour protection conditions, could potentially undermine working conditions and labour rights for others.

Participants also highlighted the dangers associated with a whole-of-society approach being imposed 'from the top'. A whole-of-society approach requires UNHCR to work more closely and effectively with other parts of the UN as well as increased capacity-building within States in order to deliver protection and assistance on the ground. Establishing or strengthening multi-stakeholder partnerships and cooperation for the purpose of upholding the human rights of all residents, both citizens and non-citizens, is vital. Stakeholders include national human rights institutions, intergovernmental, international and regional organizations, States, civil society organizations including representative migrants' associations, women's organizations, trade unions, representative employers' organizations, and private sector actors, at local, national, regional and international level.

Finally, a whole-of-society approach is not just about the delivery of refugee protection and assistance but also ensuring, through a rights-based approach, that everyone benefits. This is not always the case. For a long time, the planning and delivery of assistance for refugees in many countries remained oriented towards short term humanitarian cycles, leading to increased dependency for refugees and vulnerabilities and resentment among hosting communities. Although more still needs to be done to bring various stakeholders on board, including national and local government, refugees / refugee organizations and host communities, there is increased recognition of the importance of joint programming and local communities with refugees being included in some national services, most notably education and health. In Kenya, for examples, refugees can now access free primary education and can transition to Kenyan high schools without discrimination whilst education programmes in refugee camps have allocated around 10% of both primary and high school

places to host communities. UNHCR has advocated for inclusion of refugees in the National Hospital Insurance Fund and has supported refugees to access the same. South Africa also offers some promising examples of refugee inclusion, with livelihood opportunities, access to housing and education for migrants and refugees who do not necessarily have permanent legal status. Here, the strength of the constitution and its provisions for refugees makes South Africa a place where people can support themselves and become part of the urban neighbourhoods in which they live and work.

5. THE BENEFITS OF A RIGHTS-BASED FRAMING

Rights-based approaches and practical initiatives to deliver refugee protection and assistance often create a number of opportunities for both refugees and host communities. Respect for the rights of refugees must not, however, be contingent on the evidence of such benefits. Upholding the rights of refugees is an obligation of states regardless of the benefits, and refugee rights should always be respected, protected and fulfilled.

One of the objectives behind this event was to identify the practical implications and expressions of a rights-based approach in the refugee protection context, particularly in the context of responses to a large number of arrivals. To support this, it will be important to demonstrate its benefits, not only for refugees in need of protection and assistance, but for host communities in different circumstances (having regard to the dynamics and development context in different regions of the world), and States themselves. There is a small but growing body of evidence that:

- Promoting equality and rights for the most vulnerable in society (citizens and nonnationals), ensures social inclusion and enhances capabilities for all;
- Establishing the right to work promotes self-reliance and socioeconomic enhancement for host societies;
- Addressing rights violations experienced by refugees can reduce threats to law and security including exploitations and social harms such as abusive employers, landlords and organised crime which operate in wider society and undermine the rights and security of other marginalised groups; and
- Enhancing empowerment and accountability for violation of rights within host societies
 can lead to positive outcomes for other aspects of inequality e.g. challenging genderbased violence in refugee contexts promotes stronger whole-of-society normative
 change.

For example:

- In **South Africa** there is evidence that protection interventions which include both nonnational and citizens can promote development⁶. Policy approaches which enforce distinctions between refugees and hosts not only requires (expensive) parallel assistance structures, but may also foster political resentments undermining integration and ultimately the development process itself.
- In Kenya research has found that economic integration and the right to work for refugees in Turkana can increase per capita host incomes by 6%.⁷ This indicates that

⁶ Landau, L. B. and Duponchel, M. (2011) Laws, policies, or social position? Capabilities and the determinants of effective protection in four African cities, *Journal of Refugee Studies*, 24 (1), 1–22, https://doi.org/10.1093/jrs/feq049
⁷ Apurva, S., Harun, O., Varalakshmi, V. (2016) "Yes" in My Backyard? The Economics of Refugees and their Social Dynamics in Kakuma, Kenya and Washington, DC: World Bank.

providing refugees with freedom of movement and right to work is not only a human rights and dignity issue, but rather a key policy reform that can also fuel growth and development in host societies.

 In the United Kingdom, programmes that promote integration for refugees (for example, through language training) are more effective when they are combined with measures that strengthen anti-discrimination and equal opportunities training for citizens, many of whom also experience the negative integration impacts (including discrimination in the labour market) as a result of negative political messages around the rights of refugees and migrants.⁸

Participants were able to identify a number of benefits associated with efforts to ensure a rights-based approach to refugee protection and assistance, including longer term benefits for local integration and peace processes. They did, however, highlight two issues of concern in relation to recent discussions regarding the potential economic benefits associated with refugees.

First, they emphasised the importance of refugee rights remaining central to discussions on refugee protection and assistance. Recent political and policy discussions in relation to the economic benefits of refugees (for example, around the Jordan Compact) has potentially narrowed, rather than opened up, the conversation. Participants highlighted the need to maintaining a focus on refugee rights – rather than shifting the emphasis towards economic needs or the market-related benefits of refugees - in order to avoid refugee rights being instrumentalised. Focusing only or primarily on the economic benefits of refugees to the host country (for example, through the contribution to economic growth or development) weakens the centrality of rights as a principle.

Second, whilst evidence in various forms has a role to play in making the case for a rights-based approach to refugee protection and assistance, participants warned against an overemphasis or reliance on evidence for the delivery of refugee protection and assistance. The danger of relying on evidence relating to the economic (and other) benefits of refugees for host communities is that refugee rights become contingent on information which may, in practice, be unavailable, difficult to collect or contested. This may serve to weaken, rather than strengthen, rights as the fundamental basis for protection.

In this context it is critically important that UNHCR continues to promote the rights of refugees drawing on the Refugee Convention, international human rights law and the rule of law as appropriate. In line with the Refugee Convention, it is important to support and facilitate refugee access to, and participation in, host country services and economic opportunities, including quality education, decent work and banking services. The development of domestic governance frameworks that allow for the realization of these rights in laws, policies and practice also requires support. More broadly, the GCR provides an opportunity to strengthen international support for host countries and communities in order to promote the inclusion of refugees and their families, enabling them to be self-reliant and to participate in society.

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⁸ Strang, A. and Ager, A. (2010) 'Refugee integration: emerging trends and remaining agendas', *Journal of Refugee Studies*, 23 (4), 1, 589–607, https://doi.org/10.1093/jrs/feq046

Annex 1 List of participants

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