

The background of the top half of the page features a collage of data visualizations. At the top left, there is a pie chart with several segments. Below it, a bar chart shows data for 'May', 'June', and 'July' with bars for 'Asia' and 'Europe'. Further down, a line graph plots data for 'France', 'Japan', and 'Germany'. The entire background is a muted blue-grey color.

RECOMMENDATIONS OF THE LEGAL RIGHTS AND ASYLUM WORKING GROUP

MAY 2018



Report and Recommendations of the Legal Rights and Asylum Working Group

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Introduction

Global displacement is currently at record levels, with 65.6 million people forcibly displaced worldwide, including 22.5 million refugees.¹ The global distribution of the world's refugee population is highly uneven. Overall, 84% of the global refugee population resides in low- and middle-income countries, while the six wealthiest countries, which represent 50% of the world's economy, host less than 9% of the total.² Refugees and the communities and countries that host them are the groups most affected by forced displacement across borders, and thus, their experiences and perspectives should play a leading role in shaping the policy and programmes designed to support them. Currently, however, these groups are systematically under-represented at all levels of policy making and programme design. For instance, only 4% of the organisations³ that participated in the Summit on Refugees and Migrants in New York in September 2016 were from the top five countries hosting refugees.⁴

The Global Compact on Refugees (GCR)⁵ is a response to the need for the international community to come together and find ways to equitably share responsibility for meeting refugees' needs. It offers an opportunity to create a more comprehensive approach to equitably respond to large-scale refugee movements and protracted situations. It also represents a chance to fundamentally strengthen the international refugee regime and the mechanisms through which refugees, host communities, and their organisations participate in the response, including in formulating and implementing policies, programmes, and actions.

In response to this opportunity, a group of refugee-led organisations, national civil society organisations from some of the world's major refugee-hosting countries⁶, and allies from around the world came together in late 2017 to build a joint platform to provide input to the GCR and other refugee-related policy-making processes. The first step was a participatory and inclusive international civil society consultation and policy development process that has engaged nearly 500 organisations and academics from 47 countries.⁷ From among these participants, the following five working groups were formed to develop concrete policy recommendations: Durable Solutions and Responsibility Sharing, Women and Displacement, Legal Rights and Asylum, Access to Services, and Representation and Participation.

This paper puts forward a set of initial policy recommendations drafted by the Legal Rights Working Group. It reflects inputs from 12 member organisations, including three refugee-led organisations, eight national organisations, and one international organisation from



Bulgaria, Ecuador, Egypt, Ethiopia, France, Kenya, Pakistan, South Korea, Thailand and Turkey. These recommendations will be discussed and further developed at the International Refugee Congress 2018.⁸

Background

Legal rights are at the core of refugee protection. Fridtjof Nansen, the world's first High Commissioner for Refugees, defined "legal recognition" as paramount to normalising refugee situations. Legal status and access to legal recourse are fundamental to progressive refugee policy, the pursuit of durable solutions, the enjoyment of basic rights in exile, and the protection of those under threat.

The right to seek asylum from persecution, the right to legal recognition, and respect for the principle of *non-refoulement*⁹ are at the crux of international protection obligations toward refugees as articulated in the 1951 Convention Relating to the Status of Refugees (CSR) and its 1967 Protocol. These rights include freedom of movement, non-penalisation for entry, access to courts, provision of travel documents, and access to education and employment among others. In addition, Guidelines on the Protection of Refugee Women were adopted by the United Nations High Commissioner for Refugees (UNHCR) in 1991, calling for "integrating the resources and needs of refugee women into all aspects of programming so as to assure equitable protection and assistance activities."

Justification

While the 1951 CSR and its 1967 Protocol relating to the Status of Refugees provide an international framework for protecting the rights of refugees, not all states have ratified these documents or obliged themselves to its responsibilities.¹⁰ While debates continue over common law interpretation of some articles, there is broad variance in the interpretation and application of refugee rights depending on the state, geography, legal and political systems, and the qualification of adjudicators, representatives, and civil servants.

Simultaneously, some regional instruments, such as the 1969 Organization of African Unity Convention Governing the Specific Problems of Refugees in Africa (OAU Convention) and the 1984 Cartagena Declaration on Refugees (Cartagena Declaration) serve to expand eligibility for refugee protection.

While some states have committed themselves to regional and/or international instruments; others maintain no regulatory framework for governing refugees in their own territories. Others are selective as to which articles of international instruments to apply, leaving refugees disenfranchised from some rights. Some nations rely on vague and often legally confounding bilateral or multilateral admission and return agreements, while others refer matters to heads of state for interpretation and discretionary implementation. There are also nations that refuse to acknowledge the presence of refugees altogether, in turn denying them any sort of legal protection.



In the face of this global disparity in legal obligations and their application, refugees have no guarantee in accessing their rights as defined through international law, and considerable practical obstacles obscure legal remedies for those entitled to fully exercise these rights. Therefore, it is essential that stakeholders at the international, regional, and national level focus their efforts toward ensuring consistent, accessible, substantive, and effective legal protection for refugees and asylum seekers based on international law and best practices.

Recommendations

The Legal Rights and Asylum Working Group identifies the following priorities for policy development and action planning. As follow-up to the International Refugee Congress in Istanbul, this working group will collaborate with experts and officials to create the necessary policies and instrument for their implementation.

1. Strengthen global-level mechanisms.

- a. The UNHCR and other global actors should ensure that signatories to the 1951 CSR uphold commitments, especially but not exclusively with regards to the principle of *non-refoulement*, lift reservations, and expand legal protection of refugee women and men. Non-signatory states should be encouraged to adopt the 1951 CSR and its Protocol, and/or create national refugee laws which ensure refugee protection.
- b. Where states are not signatories to international conventions or fall short in establishing compatibility between international and national legal frameworks, stop-gap strategies should be encouraged, targeting context-specific rights such as family reunification, statelessness, due process and *ad hoc* responses such as granting temporary protection status¹¹ or temporary work permits for asylum seekers. Efforts should be made to gradually replace *ad hoc* responses with structured pathways to durable solutions at the earliest possible stage.
- c. Space should be created for the direct participation of refugee-led and host community organizations in international and national decision-making processes pertaining to protection of the legal rights of refugee women and men, including at the annual meetings of the UNHCR Executive Committee and UNHCR Annual Consultations with NGOs. Refugees should be allowed to directly communicate their protection needs, and the legal framework for protection should be increasingly responsive, relevant, and effective at both international and national levels.
- d. UNHCR and other actors should continue to encourage and support states to bring their existing legal protection and assistance frameworks for refugee women and men into conformity with international refugee laws and policies. Courts and administrative bodies that have jurisdiction to accept and resolve cases and complaints of violations of refugees' rights should be identified.
- e. Regional instruments such as the Cartagena Declaration and the OAU Convention that expand protection of persecuted populations need to be prioritised in legal proceedings. Development of such regional systems and instruments should be encouraged in regions that do not have them.



- f. Systems should be created for regional-level compliance monitoring and reporting on violations. Such mechanisms may be linked to processes like the Universal Periodic Review, which involves a review of the human rights records of all UN member states.
- g. UNHCR and all other actors should use all available means for promoting the rights of refugee women and men. Public communication, including through media, should promote awareness on the need to respect and fulfil the rights of refugee women and men, as well as communicate the gaps and solutions for realising these rights to create necessary public support.

2. Strengthen legal protections and rights

- a. UNHCR registration procedures that facilitate protection and *non-refoulement* should be made more efficient and timely, and waiting periods should be considerably reduced to protect refugees from the risk of harassment, indefinite administrative detention or *refoulement*.
- b. Alternatives to detention and non-penalisation of irregular entry should be developed and encouraged. Refugees in detention are commonly denied basic rights, including access to legal counselling, diminishing their ability to build a legal case. Refugees and asylum seekers should not be classified as “illegal aliens” and subjected to indefinite detention.
- c. All international and national protection systems, including legal frameworks and assistance, should be assessed from the perspective of their differentiated gender impacts. They should be modified and improved in ways that guarantee equal access of women and men to legal rights, and should meet the special assistance needs of women, including prevention of and response to gender-based violence, and legal redress mechanisms.

3. Increase and improve legal assistance and training

- a. All refugees and asylum seekers should be assured free legal assistance and interpretation at all times. The confidentiality of legal proceedings should be respected in all cases.
- b. Access to legal representation within asylum procedures should be increased, especially within the UNHCR mandate of refugee status determination (RSD). An independent oversight mechanism, monitoring mechanism, and proper and consistent training of UNHCR and government officials should be established to ensure due diligence, maximise inclusion and accuracy, and ensure transparency. Examples may include tiered appeals processes or regular external evaluations by independent parties.
- c. Standards for qualification that are demonstrably poor in some contexts, blockages in accessing procedures, and issues around refugees’ substantive appeals should be addressed through the above-mentioned accountability mechanisms.
- d. Access to free legal assistance should be ensured for asylum seekers and refugees, including for refugee women, on all legal matters regarding refugee status, civil or



criminal cases for respect and fulfilment of refugee rights. Assurance of due process under law is essential.

- e. Awareness-raising among legal professionals in criminal and civil proceedings on issues such as refugee protection, trauma, and factors leading to asylum should be implemented on a larger scale. Legal education and on-going professional trainings and refresher courses should be provided at all levels, including for UNHCR Eligibility Officers (EOs), government officials, judges, legal counsel, and civil society organisations to guarantee the highest level of fairness and due diligence in legal processes.
- f. Roles, responsibilities, and accountabilities of all actors including the UN, government agencies and civil society organisations should be clearly defined in terms of legal protection. In addition, enactment of provisions allowing refugees to provide legal representation should be adopted. Doing so would help address capacity constraints, strengthen understanding of refugee conditions within the judicial process, and improve representation.
- g. While legal rights are fundamental to refugee protection, a comprehensive approach to durable solutions for refugee situations should include a wider and more holistic understanding of the myriad of dynamics shaping experiences of exile and integration. In order for this comprehensive approach to be actualised, proactive participatory practices must be prioritised, and inclusion of refugee and asylum-seeker populations as well as host communities in setting priorities and establishing sustainable policies should be guaranteed. Similarly, inclusion of women and minority groups should be ensured in platforms representing refugee and host community groups.



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References

- ¹ UNCHR 'Figures at a Glance', available at <http://www.unhcr.org/uk/figures-at-a-glance.html>.
- ² UNHCR (2017) *Global Trends: Forced Displacement in 2016*, available at <http://www.unhcr.org/5943e8a34.pdf>.
- ³ Based on the published list of NGOs who have been approved to participate in the High-Level Meeting, available at: https://refugeesmigrants.un.org/sites/default/files/20160823173049_0.pdf.
- ⁴ The top five refugee-hosting countries based on the total number of refugees hosted are: Turkey, Pakistan, Lebanon, Iran and Uganda. UNHCR (2017), op. cit.
- ⁵ The GCR is one of the two new global compacts aimed at improving the way in which the international community responds to large movements of refugees and migrants, as well as protracted refugee situations. The New York Declaration of 2016 calls for development in response to the need for the international community to come together and agree upon ways to share responsibility in responding to large-scale displacement, and help countries most affected. UNHCR defines it as "an agreement that is not legally binding but that captures, by consensus, political commitment both to principles and to concrete action by Member States.", available at <http://www.unhcr.org/uk/new-york-declaration-for-refugees-and-migrants.html>.
- ⁶ Some of the world's major refugee-hosting countries, based on the total number of refugees hosted, include Turkey, Lebanon, Pakistan, Iran, Uganda, Ethiopia, Jordan, Germany, Democratic Republic of Congo, Chad and Kenya. UNHCR (2017), op. cit.
- ⁷ International Refugee Congress 2018: Consultation Report (March 2018), available at https://drive.google.com/file/d/1ADCDeJyIfiETtL_7Gh2AKw_IM5nc1pTa/view
- ⁸ 10-11 May 2018, Istanbul, Turkey.
- ⁹ The principle of *non-refoulement*, articulated in Article 33 of the 1951 Convention Relating to the Status of Refugees, provides that no contracting state "shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
- ¹⁰ Reasons for non-ratification vary widely depending on circumstance and local political and economic context. Simultaneously, debates around the applicability of the 1951 Convention, now over 60 years old, to modern contexts are common among politicians seeking to limit access to territory, academics seeking to situate international legal theory, and practitioners seeking to shift protection structures away from a covenant that some view as obsolete or unenforceable.
- ¹¹ Where 'Temporary Protection' rights are in place, policy must aim to ensure that these rights are accessible and enjoyed by populations falling under this type of protection.



