

## Section 1: Background of the Policy Consultation and Development Process

In December 2017, a policy consultation **and development process was launched through the collaboration of the Asylum and Migration Research Centre (IGAM), Oxfam, The Turkish Refugee Council, Human Resources Development Foundation (IKGV), Support to Life (STL), Ravda Nur Foundation, Asil Vakfi, and Foundation for the Support of Women's Work (KEDV), Education Reform Initiative (ERG), Economic Development Foundation (IKV) and Network for Refugee Voices.** The initiative began with **an online multi-language survey in Arabic, English, Turkish, Spanish and French, as well as in-depth interviews designed with an aim to better understand the views and perspectives of refugee-led and national civil society organizations (CSOs) from the world's top refugee-hosting countries constituted part of this process.** To date, almost 500 online surveys and 79 in-depth interviews have been completed. Responses to the online survey include views from nine of the world's top refugee-hosting countries, covering 47 countries in total.

The process helped to determine priority areas for refugee-led organisations and civil society organizations in host countries which has, subsequently, led to the creation of a number of thematic working groups. Access to legal rights, including asylum, was one of the priority issues of consulted organizations. As with other working groups who will be working on specific thematic areas, the Access to Legal Rights Working Group will be chaired by refugee-led and national CSOs from the world's top refugee-hosting countries who, collectively, will lead the development of thematic policy positions and recommendations. This background paper aims to support the working group by providing a brief analysis of relevant international frameworks, major refugee-hosting governments' responses and positions in relation to the Global Compact on Refugees, and policy positions of CSOs from the world's major refugee-hosting countries on issues particularly relevant for discussions around access to legal rights for refugees.

## Section 2: The Context

Protecting the legal rights of refugees, including the right to seek asylum is at the heart of refugee protection. However, in today's day and age, obtaining asylum and access to legal rights and asylum for refugees has become a greater challenge. UNHCR reported that there were over 65.6 million displaced persons across the world at the end of 2016, of which 22.5 million are refugees.<sup>1</sup> States across the world increasingly close their borders to asylum seekers, and thus push asylum seekers to make riskier choices to cross international borders.<sup>2</sup> Even after arriving in the country of asylum, some states purposefully impede asylum seekers' access to legal refugee status for

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<sup>1</sup> <http://www.unhcr.org/afr/news/stories/2017/6/5941561f4/forced-displacement-worldwide-its-highest-decades.html>

<sup>2</sup> See: <https://www.migrationpolicy.org/article/borders-and-walls-do-barriers-deter-unauthorized-migration>

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various political reasons, leading to overwhelmed asylum systems in other states.<sup>3</sup> The UK, for example, adds further strain to other states by sending asylum seekers back to other European states even after asylum seekers arrive in the UK.<sup>4</sup>

The inability to access legal status and registration can directly influence the ability of refugees and asylum seekers to access basic assistance and services that are essential for living a dignified life.<sup>5</sup> UNHCR acknowledges that access to legal status and legal rights is a prerequisite for realizing successful local integration.<sup>6</sup> But even upon obtaining legal status, many refugees continue to face legal challenges, such as having access to courts and justice, accurate legal information, access to free movement within and across borders, and access to other kinds of legal services.<sup>7</sup> Women, children, and other groups with special needs also face another specific set of challenges in realizing their legal rights.<sup>8</sup> Given the importance of accessing legal rights and asylum for protecting refugees, there is an overall need to analyze the kinds of legal issues which have a direct effect on the lives of refugees and asylum seekers. Yet despite this, discussions on access to legal rights for displaced persons tend to overwhelmingly focus on the rights of asylum seekers in European states, with little focus given to the legal rights of displaced persons outside the European context. Civil society organizations in major refugee-hosting countries can play a key role in this, as they often have a unique understanding of the legal issues of refugees because of their close connection and contact with refugees. Thus, this paper aims to analyze their positions on the legal rights of refugees in comparison to the positions of their governments and existing international policy frameworks.

### **Section 3: International Policy Framework on Legal Rights of Refugees**

#### **1951 Convention Relating to the Status of Refugees and other relevant Conventions**

Since its enforcement, the 1951 Convention relating to the Status of Refugees (CSR) has been the basis of refugee protection. The CSR came to the effect after World War II during a period in which western countries were developing a new framework of human rights law and were interested in addressing the human rights concerns of people who did not have a state which could protect them.<sup>9</sup> As a result, the 1951 CSR imposed a temporal and geographical limitation on refugee status, meaning that in its first implementation, the 1951 CSR only applied to

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<sup>3</sup> See: <https://academic.oup.com/jrs/article-abstract/27/4/574/2798182?redirectedFrom=PDF>

<sup>4</sup> <https://www.refugeecouncil.org.uk/20facts>

<sup>5</sup> On access to working through legal rights, see: [https://asylumaccess.org/wp-content/uploads/2014/09/FINAL\\_Global-Refugee-Work-Rights-Report-2014\\_Interactive.pdf](https://asylumaccess.org/wp-content/uploads/2014/09/FINAL_Global-Refugee-Work-Rights-Report-2014_Interactive.pdf). On access to education through legal rights, see:

<sup>6</sup> See: <http://www.unhcr.org/44bb90882.pdf>: p. 8

<sup>7</sup> See: <http://www.unhcr.org/44bb90882.pdf>: p. 140-149.

<sup>8</sup> Ibid.

<sup>9</sup> There is also an argument that the 1951 CSR, like other bodies of human rights law were targeted towards the Soviet Union and its bloc under the context of the Cold War. However, some sources argue that this sentiment does not appear in the *Travaux Préparatoires*

<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/ilp201005.pdf>

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displaced persons in the context of World War II in Europe. The 1967 Protocol Relating to the Status of Refugees lifted the temporal and geographical limitation, and thus expanded the CSR 1951 to apply to future contexts in countries outside of Europe.

The 1951 CSR defines a refugee as a person who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself (or herself—emphasis of the writers of this brief)<sup>10</sup> of the protection of that country” (Article 1A(2))<sup>11</sup>

Since its development, this definition has been the ‘principal tool’ for providing protection to refugees, and has provided an adaptable definition to the meaning of a refugee. However, the adaptability of this definition has also contributed to discrepancies across states in refugee status determination procedures. In northern countries where many people go to seek asylum, differences in interpretation and implementation of the CSR 1951 across states and regions has resulted in diverging refugee status procedures to the point that recognition rates for refugees vary depending on the country in question.<sup>12</sup>

The 1951 CSR generally recognizes *individual* refugees who have well-founded fear of facing persecution in the country of origin. In the context of mass displacement, however, conducting refugee status determination procedures for each individual may be inefficient and delay protection.<sup>13</sup> To address this, some states, with the consultation of UNHCR, issue *prima facie* refugee status. This means that individuals are provided refugee status on the basis of their membership in a certain group or nationality facing persecution. Despite the benefits of *prima facie* recognition, an overreliance on *prima facie* recognition has brought its own set of problems, such as the inability to account for people who should be excluded from refugee status as accorded by Article 1F of the 1951 CSR,<sup>14</sup> as well as how to deal with the cessation of *prima facie* refugee status.<sup>15</sup>

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<sup>10</sup> The original text of the 1951 CSR did not include women as potential refugees. According to Olivius (2010), this is because the 1951 CSR was constructed in the Cold War context, in which the “typical refugee was imagined to be a male dissident fleeing political persecution behind the iron curtain” (2-3). Today, gender is generally treated as a ‘particular social group’ in refugee status determination procedures. For more information on the Cold War context, see:

[http://citation.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/4/1/5/4/8/p415481\\_index.html](http://citation.allacademic.com/meta/p_mla_apa_research_citation/4/1/5/4/8/p415481_index.html). For more on gender as a particular social group, see: <http://www.fmreview.org/community-protection/smith.html>

<sup>11</sup> <http://www.unhcr.org/3b66c2aa10.pdf>

<sup>12</sup> See: Rates of Recognition for EU Member States,

<http://ec.europa.eu/eurostat/documents/2995521/7233417/3-20042016-AP-EN.pdf/>

<sup>13</sup> <http://www.refworld.org/pdfid/4d37d8402.pdf>

<sup>14</sup> Article 1F of the CSR excludes people from refugee status if they are found to have committed certain kinds of criminal acts. See: 1951 CSR, <http://www.unhcr.org/3b66c2aa10>

<sup>15</sup> <http://www.unhcr.org/3db9636c4.pdf>

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typical refugee was imagined to be a male dissident fleeing political persecution behind the iron curtain

Recognizing that the provisions of the 1951 CSR do not fully account for the displacement contexts of regions outside of Europe, other regions have supplemented the 1951 CSR with their own regional conventions. **The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa**, for example, expanded the definition of a refugee to persons fleeing “external aggression, occupation, foreign domination or events seriously disturbing public order”.<sup>16</sup> **The 1984 Cartagena Declaration also adopts an expanded legal definition of refugees in Latin America to** “...persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of *human rights* or other circumstances which have seriously disturbed public order”.<sup>17</sup> The Asian-African Legal Consultative Organization, an international body made up of states from Asia, Africa, and the Middle East adopted the **Bangkok Principles in 1966**, thus expanding the definition of a refugee to persons who were forced to leave their country “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality”.<sup>18</sup>

Though there are some textual limitations in the legal definition of a refugee, the 1951 CSR accounts for access to legal rights for refugees. This includes the need to provide documents and administrative assistance to refugees (Articles 25 and 27), freedom of movement inside and across national borders (Article 26 and 28), protections against punishment even if a person crossed a border illegally and are found to be residing in the country of refuge without authorization (Article 31), fiscal rights equivalent to that of citizens (Article 29 and 30), and protection against *refoulement* (Article 32 and 33). Regional conventions such as the 1969 OAU Convention, the 1984 Cartagena Declaration, and the 1966 Bangkok Principles do not afford the same legal rights to refugees. For example, the 1969 OAU Convention only adopts the provision of travel documents to refugees from the 1951 CSR.

### **The NY Declaration, CRRF, and the Global Compact on Refugees**

The NY Declaration, Comprehensive Refugee Response Framework (CRRF), and the Global Compact for Refugees (GCR) are more vocal on certain legal issues while remaining silent on other legal rights. According to the CRRF and the GCR:

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<sup>16</sup> <http://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

<sup>17</sup> <http://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>

<sup>18</sup> <http://www.aalco.int/Final%20text%20of%20Bangkok%20Principles.pdf>

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- UNHCR should provide legal protection and assistance through the reception and admission process, particularly through the initial stages of registration and documentation.
- The need for registration and documentation focuses on the need to ‘develop digital systems for individual registration, documentation, and biometrics (including for women and girls)’.<sup>19</sup>
- Civil registries are important for accessing services and avoiding statelessness. Thus, states and relevant stakeholders could provide support to host countries to improve civil registries, such as by digitizing these registries as needed.<sup>20</sup>

The GCR also states that UNHCR will establish an ‘asylum capacity support group’ which will provide technical expertise and capacity building to different state institutions as needed. Under this framework, UNHCR will provide advice on how to best and most efficiently recognize legal status or protection needs of refugees, including whether *prima facie* recognition is necessary in a given displacement context. The GCR also states that UNHCR will provide assistance for states to accede to the 1951 GCR and its 1967 Protocol as another protection mechanism.<sup>21</sup>

However, the GCR is silent on access to a number of other rights for refugees. Most notably, the zero draft of the GCR had no mention of safeguarding the principle of *non-refoulement*, nor did it address the right to seek asylum. This has since been rectified in Draft 1 of the GCR.<sup>22</sup> The NY Declaration and the CRRF also has a contradictory stance on the right to seek asylum, as it recognizes the right of states to stop irregular migration into their territory, yet also states that it will not prejudice against refugees’ right to seek asylum.<sup>23</sup>

The zero draft of the GCR remains silent on a number of other legal rights which the 1951 CSR expects states to provide for refugees. Most of these rights deal with the legal rights of refugees *after* determining their refugee status. For instance, the GCR never mentions the right to freedom of movement *inside* borders, nor makes any explicit mention on access to justice or courts. While the NY Declaration does mention that access to justice is an important element for integrating into host communities, the GCR itself never mentions access to justice, legal aid, or access to other kinds of legal services.

**Section 4a: Positions of national governments**

Of the top refugee-hosting countries, the following countries have acceded to the 1951 CSR: Turkey, Iran, Germany, Uganda, Kenya, Ethiopia, Chad, and the Democratic Republic of Congo. However, each of these countries have complied with the 1951 CSR to different extents. In some of these countries, the 1951 CSR has little relevance for protecting the legal rights of refugees.

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<sup>19</sup> Paragraph 40-41, Zero Draft of GCR (January 31 2018)

<sup>20</sup> Paragraph 61, Zero Draft of GCR (January 31 2018)

<sup>21</sup> Paragraph 46, Zero Draft of GCR (January 31 2018)

<sup>22</sup> Paragraph 4, Draft 1 of GCR (9 March 2018)

<sup>23</sup> Paragraph 24-27 of the NY Declaration

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**Iran** maintains reservations to a number of articles in the 1951 CSR, including Article 26, which allows for freedom of movement within the territory of the hosting state.<sup>24</sup> **Turkey** continues to impose a geographical limitation which does not recognize refugees coming from outside Europe. But due to the growing number of Syrians crossing the border to Turkey, it quickly came up with the Temporary Protection regulation that provides Syrians with legal protection and basic social services. However, because this legal framework does not align completely with the 1951 CSR, there are other limitations on the legal rights of refugees. For instance, this regulation does not allow freedom of movement for Syrians, and instead requires them to obtain permission.<sup>25</sup>

Regional conventions impact legal protection for refugees. **Germany** complies with the EU Qualification Directive, which includes other forms of right to reside in the country such as subsidiary protection. Consequently, many asylum seekers are provided less rights under subsidiary protection, as they are given humanitarian protection rather than refugee protection.<sup>26</sup> States signatory to the OAU Convention (**Ethiopia, Kenya, Uganda, Chad, and DRC**) have expanded the legal definition of refugees by allowing for the recognition of *prima facie* refugee status, and thereby have provided legal protection to larger groups of people. While Ethiopia, Kenya, Uganda, and DRC have all adopted this definition into their national legislation on refugee protection, Chad is still in the process of approving their national law of asylum.<sup>27</sup>

**Pakistan, Jordan, and Lebanon** have not acceded to the 1951 CSR. Nevertheless, these countries have provided legal protection to refugees in their territories, but in varying degrees. **Pakistan**, for instance, announced in February 2017 that it would adopt a national policy for managing Afghan refugees, including measures which facilitate legal registration and documentation.<sup>28</sup> **Jordan** has an MoU with UNHCR in Jordan, through which it delegates the task of legal protection of refugees to UNHCR. It also provides other forms of basic legal protection in its national legislation, such as the prohibition of *refoulement* for political refugees, and the removal of sanctions for people who entered the country irregularly (provided that they are a political refugee).<sup>29</sup> In contrast, **Lebanon** has avoided providing legal status and documentation to refugees. The reasons for this may be both for political and historical reasons. Due to political stalemate in the government, there are contradicting positions across different branches of government and municipalities, thus affecting the refugee response. Lebanon may also have a fear of facing another protracted refugee situation as it did with the displacement of Palestinian refugees, and therefore does not expand legal registration to Syrian refugees.<sup>30</sup>

It is worth considering the reasons why states might avoid acceding to the 1951 CSR. Notably, Pakistan, Jordan, and Lebanon are signatory to the Bangkok Principles but have avoided acceding

<sup>24</sup> <http://www.fmreview.org/detention/farzin-jadali%20.html>

<sup>25</sup> <https://www.hrw.org/reports/2000/turkey2/Turk009-10.htm>

<sup>26</sup> <http://legal-dialogue.org/subsidiary-protection-instead-full-refugee-status-complicates-family-reunification>

<sup>27</sup> See: Ethiopia's Refugee Proclamation No. 409/2004, Kenya's Refugees Act of 2006, Uganda's Refugees Act of 2006, and DRC's Law No. 021/2002 on the Status of Refugees.

<sup>28</sup> <http://unhcrpk.org/unhcr-welcomes-new-government-policy-for-afghans-in-pakistan/>

<sup>29</sup> <https://www.loc.gov/law/help/refugees/legal-status-refugees.php>

<sup>30</sup> <https://academic.oup.com/rsq/article/35/4/58/2609281>, p. 60.

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to the 1951 CSR. The reasons for this might range from the 1951 CSR's overemphasis on 'political refugees' being inappropriate to displacement contexts outside of Europe, a wariness of the UN's 'interventionist' methods, the belief that acceding to the 1951 CSR would make no significant impact in refugee response in the region, and the fear that developed countries would derogate from their international responsibilities to protect refugees after having other countries accede to the 1951 CSR.<sup>31</sup> **While the Bangkok Principles have not had a strong effect on state legislation, examining the reasons that states opt for the Bangkok Principles over the 1951 CSR provides a glimpse into the positions of these states on legal protection.**

The following section provides a brief explanation of the current situations which refugees face in accessing registration and legal documentation in their host country.

- In **Chad**, the Commission Nationale d'Accueil de Reinsertion des Refugies et des Rapatriees (CNARR) registers refugees, and has been working since March 2015 to issue birth certificates to newborns without identification.<sup>32</sup>
- **DRC** also prioritizes having asylum seekers register within 30 days of arriving in the territory, and thereby obtain permission to remain in the DRC through the refugee status determination process.<sup>33</sup>
- Civil registration has become a key component of implementing the CRRF in **Ethiopia**, and has also become a part of the country's Development Agenda.<sup>34</sup>
- Upon arriving in **Germany**, asylum seekers are provided with a proof of arrival (*Ankunftsnaehweis*) at a reception facility, and this document entitles asylum seekers to reside in Germany through the refugee status determination process.<sup>35</sup> However, there are reports that delays in the process create hurdles in accessing legal protection in Germany.<sup>36</sup>
- After suspending its registration processes for some years, **Iran** began to register refugees with 'Amayesh' cards in 2003. The most recent re-registration exercise took place beginning in June 2011. However, human rights reports note that registration cards are required to be renewed annually for high fees.<sup>37</sup>
- In **Jordan**, the government leaves the task of registering refugees to UNHCR, but it remains a major priority for the government.<sup>38</sup>
- **Kenya's** Department of Refugee Affairs was disbanded in 2016, meaning that there is currently no registration process for refugees. However, Kenya and UNHCR are currently in the process of unifying their registration systems to verify information on refugees who

<sup>31</sup> <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR10/fmr10.8.pdf>

<sup>32</sup> <http://www.unhcr.org/protection/operations/524d81849/chad-fact-sheet.html>

<sup>33</sup> <https://www.legavox.fr/blog/yav-associates/question-refugies-republique-democratique-congo-17175.htm>

<sup>34</sup> <http://www.unhcr.org/news/briefing/2017/10/59f2f4757/historic-first-ethiopia-begins-civil-registration-refugees.html>

<sup>35</sup> [https://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/das-deutsche-asylverfahren.pdf?\\_\\_blob=publicationFile](https://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/das-deutsche-asylverfahren.pdf?__blob=publicationFile)

<sup>36</sup> <https://www.theatlantic.com/international/archive/2015/10/germany-refugee-migrant-crisis/408877/>

<sup>37</sup> <https://www.hrw.org/news/2013/11/20/iran-afghan-refugees-and-migrants-face-abuse>

<sup>38</sup> <https://reliefweb.int/report/jordan/unhcr-jordan-factsheet-june-2017>

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are still in Kenya. The government also imposes restrictions on refugees leaving camps, thus providing limitations on freedom of movement.<sup>39</sup>

- **Lebanon** used to register refugees until 2015, when it pushed UNHCR to suspend their registration process. Since then, individuals with a record of UNHCR registration certificate or individuals who are sponsored as laborers are eligible for residency.<sup>40</sup>
- In **Pakistan**, a new national policy for managing refugees has led to the government issuing Proof of Registration cards to 1.3 million refugees in 2017, under an effort to extend registration to refugees who were previously unregistered.<sup>41</sup>
- Most Syrian refugees in **Turkey** are registered under the Temporary Protection regulation, allowing for Syrian refugees to reside in the province to which they are registered. Some reports demonstrate, however, that the high number of refugees in some provinces creates challenges in obtaining this permit.<sup>42</sup> While the Temporary Protection regulation accounts for refugees' access to social services and access to legal services, it imposes limitations on refugees' freedom of movement.
- **Uganda's** Refugees Act prioritizes issuing identification and travel documents for refugees, as well as registering refugees. The law allows refugees the same legal rights as Ugandan citizens, including freedom of movement and access to courts.

**Section 4b: Positions of civil society organizations**

Refugee-led organizations, national organizations, and international organizations have all highlighted issues which impede refugees' access to legal registration. However, they also highlight the legal challenges which refugees face *after* registration, such as an unclear legal framework, access to legal information, freedom of movement and accessibility of other legal services. The following section will provide details on the positions of CSOs in major refugee-hosting countries in these issue areas.<sup>43</sup>

Refugee-led organizations and national CSOs in major refugee-hosting states both note that **access to legal status and registration and refugee status determination** is a major challenge for refugees. Refugee-led organizations and CSOs in **both Turkey and Lebanon**, for instance, have claimed that the lack of a legal registration system is the main cause for refugees to be unable to access a safe and dignified life. In **Pakistan**, CSOs advocate for the extension of Proof of Residency cards for Afghan refugees.<sup>44</sup> Meanwhile, CSOs in **Uganda** and **Kenya** demand better

<sup>39</sup> <http://www.unhcr.org/ke/10374-unhcr-conducts-joint-verification-refugees-government-kenya.html>

<sup>40</sup> <https://alefliiban.org/publications/rights-future-threats-legal-physical-safety-2017/>

<sup>41</sup> <http://unhcrpk.org/unhcr-welcomes-new-government-policy-for-afghans-in-pakistan/>

<sup>42</sup> Triangulation on IPSOS Perception Survey – Legal Issues

<sup>43</sup> CSOs of some major refugee-hosting countries may be less featured in this section. This is dependent on available publications and statements from CSOs on the internet, and should not be interpreted to be the only kinds of positions which CSOs in these countries have. However, this section should provide a glimpse into the kinds of themes which come through in the positions of CSOs in these countries.

<sup>44</sup> <https://alefliiban.org/publications/rights-future-threats-legal-physical-safety-2017/>; [In-depth interviews in the policy consultation process](#)



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transparency in legal registration and refugee status determination processes.<sup>45</sup> FPRRD, a refugee-led organization in Uganda, stated that there are serious concerns about bribing in the refugee status determination process.<sup>46</sup> The results from the consultation survey and in-depth interviews also demonstrate that access to registration and legal status was consistently one of the top three priorities of refugees for both refugee-led and national CSOs, with refugee-led organizations slightly more likely to cite it as a priority for refugees.

In countries where the legal framework for refugees is in flux, CSOs also advocate for national governments to **clarify and reform the legal frameworks** for refugees. **In Germany** for instance, CSOs such as PRO ASYL advocate for reforming the Dublin Regulation.<sup>47</sup> **In Lebanon**, refugee-led organizations and national organizations came together to call for reinstating a transparent refugee framework which protect refugees and enables informed policy development.<sup>48</sup> **In Pakistan** where there is no law on asylum or refugees, CSOs demand that the government institute a national refugee law, as well as implement national measures which protect refugees.<sup>49</sup> Organizations in **Turkey** have also expressed that the Temporary Protection Regulation needs to be updated, considering that Syrian refugees have been living in Turkey now for seven years.<sup>50</sup> In-depth interviews with civil society organizations also confirmed this sentiment. **Civil society organizations in the in-depth interviews for the policy consultation process most frequently stated that they expected national governments to create a national framework, response, or strategy.**<sup>51</sup>

Beyond clarifying and reforming the legal framework, some civil society organizations also note that there should be better **access to legal information for refugees**. In **Jordan**, ARDD-Legal Aid has repeatedly advocated that refugees should be informed on their legal rights, as having awareness of legal rights prevents refugees from becoming victims of exploitation and fraud, as well as lowers uncertainty and confusion among refugees.<sup>52</sup> ICVA has also stated that staff in reception centers should provide information to vulnerable groups in the appropriate language.<sup>53</sup>

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<sup>45</sup> The Report that the Refugee Consortium of Kenya issued during the UNHCR Executive Committee (EXCOM) meetings in Geneva 2005. <https://rsdwatch.com/2005/11/13/forum-unhcr-refugee-status-determination-the-kenyan-experience/>

<sup>46</sup> Open Letter to Ugandan Government, FPRRD <http://foundationppdr.org/2018/01/16/sign-the-letter-to-abolish-illegal-laws-and-practices-affecting-refugees-in-uganda/>

<sup>47</sup> [https://www.proasyl.de/wp-content/uploads/2015/12/Kommentar\\_Dublin-IV-PRO-ASYL-EN.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Kommentar_Dublin-IV-PRO-ASYL-EN.pdf)

<sup>48</sup> <https://alefliban.org/publications/rights-future-threats-legal-physical-safety-2017/>

<sup>49</sup> <https://rightsnowpak.wordpress.com/tag/refugee-rights/>

<sup>50</sup> Triangulation on IPSOS Perception Survey – Legal Issues

<sup>51</sup> Policy Consultation Process – In-depth interview results

<sup>52</sup> [https://ardd-jo.org/sites/default/files/resource-files/false\\_promises\\_-\\_fraud\\_and\\_aspirations\\_of\\_resettlement\\_for\\_syrian\\_refugees\\_-\\_english.pdf](https://ardd-jo.org/sites/default/files/resource-files/false_promises_-_fraud_and_aspirations_of_resettlement_for_syrian_refugees_-_english.pdf)

<sup>53</sup> NGO Key Messages for the 10th High Commissioner's Dialogue on Protection Challenges <http://www.unhcr.org/events/conferences/5a33d5917/ngo-key-messages-tenth-high-commissioners-dialogue-protection-challenges.html>

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A number of refugee-led and national organizations also cite that **freedom of movement** is a key issue for refugees. **In Jordan**, for instance, ARDD-Legal Aid expressed that there should be access to safe mobility for refugees to enter Europe.<sup>54</sup> In the consultation survey, refugee-led organizations were more likely to state that the ability to cross international borders was a top priority for refugees.<sup>55</sup> Though CSOs note that **freedom of movement across international borders is a top priority**, there are also many CSOs which advocate for **freedom of movement within national borders**. **One refugee-led organization in Turkey**, for instance, noted that the limited mobility allowed under the Temporary Protection Regulation for Syrians causes serious protection concerns for Syrians who wish to travel or move to other provinces.<sup>56</sup> **In other major refugee-hosting countries, encampment is cited as the cause for limited freedom of movement**. The Refugee Consortium of Kenya, for instance, stated that there is too much money being wasted on prosecuting refugees who violate camp policies by leaving the camps.<sup>57</sup>

Finally, civil society organizations also note that adequate **access to legal services**, namely its availability, accessibility, and affordability is a key issue for refugees in realizing their legal rights. According to a survey conducted by Oxfam and civil society partners in 2017 across Turkey involving 1630 refugees, 94% of refugees had not ever attended a legal counselling session organized by government, INGOs, or civil society organizations.<sup>58</sup> HAMI and APRRN, a national and refugee-led organization respectively note that unregistered refugees in Iran are unable to access legal support.<sup>59</sup> The Refugee Law Project in Uganda notes that remote communities face challenges in reaching locations with access to legal services.<sup>60</sup> **CSOs in Turkey, Lebanon, and Uganda** all report concerns that asylum seekers and refugees in detention are unable to access legal services.<sup>61</sup> Refugee Rights Turkey (MHD) further notes incidents where the refugees are at times arbitrarily denied legal services, even when free legal services exist.<sup>62</sup> These kinds of examples might also be indications of a more general state of affairs in institutions which impact vulnerable groups such as refugees more than others. Finally, some civil society organizations note that though legal remedies are available that there are unaffordable for most. Lebanese CSOs, for instance, advocated for a \$200 fee waiver for obtaining identification for refugees.<sup>63</sup> Lastly, access to legal services and protection was most commonly cited by women's organizations as a priority in the policy consultation survey. 31.8% of women's organizations cited it as a priority compared to 19.3% of all other types of organizations.

<sup>54</sup> [https://ardd-jo.org/sites/default/files/resource-files/0607\\_final\\_joint\\_ngo\\_statement\\_with\\_signatories.pdf](https://ardd-jo.org/sites/default/files/resource-files/0607_final_joint_ngo_statement_with_signatories.pdf)

<sup>55</sup> 34.1% of refugee-led organizations stated that the ability to cross international borders was a top priority, while only 26.8% of national organizations and 22.5% of international organizations raised this as a top priority.

<sup>56</sup> Triangulation on IPSOS Perception Survey – Legal Issues

<sup>57</sup> [https://www.rckkenya.org/?media\\_dl=846](https://www.rckkenya.org/?media_dl=846)

<sup>58</sup> IPSOS Survey – p. 36

<sup>59</sup> <http://hamiorg.org/en/?p=1137>

<sup>60</sup> [https://www.refugeelawproject.org/files/others/courts\\_can\\_never\\_solve\\_problems\\_in\\_the\\_community.pdf](https://www.refugeelawproject.org/files/others/courts_can_never_solve_problems_in_the_community.pdf), p.

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<sup>61</sup> Triangulation from the Perception Survey – Legal Issues; [https://alefliiban.org/wp-content/uploads/2018/02/Legal-and-Physical-Safety\\_v02\\_web.pdf](https://alefliiban.org/wp-content/uploads/2018/02/Legal-and-Physical-Safety_v02_web.pdf); Open Letter to Ugandan Government by FPRRD

<sup>62</sup> <http://www.mhd.org.tr/images/yayinlar/MHM-47.pdf>

<sup>63</sup> <https://alefliiban.org/publications/rights-future-threats-legal-physical-safety-2017/>

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NGO Key Messages for the 10th High Commissioner's Dialogue on Protection Challenges  
<http://www.unhcr.org/events/conferences/5a33d5917/ngo-key-messages-tenth-high-commissioners-dialogue-protection-challenges.html>

While the policy positions and perspectives of CSOs and INGOs do overlap on legal issues, publications and statements from INGOs indicate that INGOs have slightly more focus on the initial reception and admission of refugees. International Alert in Congo and ADES International in Chad, for example, both specifically advocate for identifying people in need of special protection and assistance upon arrival, as well as identify refugees, economic migrants, and stateless persons.<sup>64</sup>

Nevertheless, INGOs have raised similar concerns to other national and refugee-led civil society organizations, such as that refugees are unfairly being charged money for obtaining registration documents and that refugees should be provided better access to legal information.<sup>65</sup> They have also advocated against encampment, and have called for expanded freedom of movement for refugees within countries.<sup>66</sup> In the consultation survey, international organizations did not identify access to legal services and protection as a top priority when unprompted. However, when prompted with the response “access to legal services and protection”, they were slightly more likely to cite it as a priority (27.5%) compared to refugee-led organizations (24.4%) and national civil society organizations (20.7%).

#### **Section 4c: Analysis of international policy frameworks in relation to positions of national and civil society policy positions/priorities.**

Looking at existing international policy frameworks, the priorities of states, the priorities of CSOs (including refugee-led organizations), and international organizations enables us to analyze how these frameworks and positions overlap and diverge from one another.

First, the Global Compact for Refugees has a reduced emphasis on access to various kinds of legal rights compared to the 1951 CSR. There is no mention within the text of the GCR to other legal rights which are included in the 1951 CSR, such as freedom of movement within and across borders, and protections for people found to have crossed borders illegally. The zero draft of the GCR failed to include any reference to the principle of *non-refoulement*, long considered to be one of the main principles of legal protection for refugees.<sup>67</sup> Instead, the zero and draft 1 of the GCR dedicates an entire section on reception and admission, such as preparedness for large movements of refugees, immediate reception arrangements, security through the admission process, development of digital registration systems, and identifying special and international protection needs. In contrast, adequate reception and admission conditions was less emphasized

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<sup>64</sup> [http://ades-international.org/assets/rapport/rapport\\_mission\\_de\\_prospection\\_et\\_devaluation\\_au\\_lac.pdf](http://ades-international.org/assets/rapport/rapport_mission_de_prospection_et_devaluation_au_lac.pdf) ;  
[http://www.international-alert.org/sites/default/files/publications/Refugees\\_Eastern\\_DRC.pdf](http://www.international-alert.org/sites/default/files/publications/Refugees_Eastern_DRC.pdf)

<sup>65</sup> Uganda Red SS Durable Solutions

<sup>66</sup> NRC 2017 Ethiopia Report; Lebanon (Oxfam, NRC, DRC, Save the Children)

<sup>67</sup> This has since been updated in the most recent version of the GCR draft

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by civil society organizations, which tended to raise more concerns on access to other kinds of legal rights, including access to free movement, access to legal information, and access to various kinds of legal services. The only other explicit mention to other kinds of legal rights in the GCR is on improving the civil registries of host countries in the section on ‘meeting needs and supporting communities’. **Thus, with the exception of improving civil registries of host countries, the GCR appears to focus solely on the initial arrival of refugees, while overlooking most other legal rights that are necessary for facilitating better integration into host communities.**

Second, the GCR lays out that one of the best legal protection mechanisms for refugees is to provide support in having states accede to the 1951 CSR.<sup>68</sup> **Though CSOs advocate for states to clarify their national laws and frameworks on refugees and asylum, this does not necessarily translate into advocating for accession to the 1951 CSR.** The current GCR promotes the formation of national comprehensive plans for each respective country, but does not specify how legal protection can be incorporated into these comprehensive plans.

Lastly, civil society organizations highlight the need to expand access to registration and documentation for refugees because of the problems that lack of registration can create for refugees’ access to various other services. Though the GCR notes that access to proof of identity is essential for refugees’ access to solutions, the language of the GCR on the topic of registration also places focus on the need to assure states ‘for the purposes of security’<sup>69</sup> and ‘ensure integrity of protection systems’.<sup>70</sup> **By framing registration and documentation a security issue for states, there are concerns that the GCR, perhaps unintentionally, can reinforce an image of refugees as a security concern rather than as individuals who should have access to registration processes to secure their legal rights as indicated in international frameworks.**

**Section 5: Key Questions for Working Groups:**

The following questions aim to provide a basis for discussion between organizations in the working group on legal issues as they form and develop policy recommendations in preparation for the International Refugee Congress. Discussion should not be limited to the scope of these questions, and we encourage working group members to discuss issue areas as they see fit.

- There are a wide variety of issues faced by refugees in accessing and exercising their legal rights. As the Working Group on Access to Legal Rights, what are the top priorities you think should be addressed from a policy and advocacy perspective?
- What should be done at the local, national, regional and international levels to ensure the right to seek and enjoy the right to seek asylum?
- Who should be developing and implementing policies at the local, national, regional and international levels with regards to promoting and protecting legal rights for refugees and

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<sup>68</sup> See paragraph 46, Zero draft GCR

<sup>69</sup> See paragraph 61, Zero draft GCR

<sup>70</sup> See paragraph 40, Zero draft GCR

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asylum seekers? Which institutions or public bodies could safeguard the legal rights of refugees?

- What mechanisms can be implemented to measure for better access to legal protection and legal services in refugee-hosting states?
- What legal formulas and solutions would allow refugees to have access to a dignified life?
- What measures can be taken to avoid statelessness? Who should be responsible for implementing them?
- Besides acceding to the 1951 CSR, what else can be done to ensure the legal rights and protection of refugees?
- Are there non-legal approaches which could be used to assure the legal rights of refugees? If so, what are they, and how can they be implemented?
- What should be done across the international humanitarian and development sector to ensure the legal protection and access to legal services for refugees? What role can civil society organizations and other stakeholders play in monitoring this process?
- Does the GCR provide a sufficient legal protection framework for refugees and asylum seekers? If not, what should be added in the GCR?