

THE GLOBAL COMPACT ON REFUGEES

Indian Perspectives
and Experiences

Edited by
Jessica Field | Srinivas Burra

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Description: Rohingya refugees cross the border from Myanmar to Bangladesh.

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**Indian Perspectives
and Experiences**



ARTIST: NASRIN SAFE
Afghan Refugee

Safe

*To
all those who are forced to flee
from their homes*

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FOREWORD

B.S. CHIMNI

Over the years I have proudly stated that despite not being party to the 1951 UN Convention on the Status of Refugees, India has shown a generosity towards refugees which is a part of its civilizational ethos. It has mostly respected the principle of non-refoulement (or non-return) contained in Article 33 (1) of the 1951 Convention which is a norm of customary international law. Furthermore, even in the absence of a domestic legislation on the status of refugees, Indian Courts have responded to their concerns. While the Hon'ble Supreme Court of India (SCI) has pronounced that Section 3 of the 1946 Foreigners Act gives the government the absolute right to deport (albeit subject to principles of natural justice) it has stopped deportations and High Courts and lower courts have referred particular asylum seekers for status determination to the Office of the United Nations High Commissioner for Refugees (UNHCR). Indeed it can be argued that these decisions have already carved out in the instance of refugees an exception to the Foreigners Act. The National Human Rights Commission (NHRC) has also taken up the cause of refugees in order to protect their rights. Thus, for instance, the NHRC had taken the case of Chakma Refugees to the SCI to stop their possible deportation. The NHRC also undertook to see that all refugee groups have basic and equal rights. As is well known, Articles 14 (right to equality) and 21 (right to life) of the Constitution of India are available to citizens and aliens alike. On the social plane, it has been seen that given an opportunity, refugees are perfectly capable of rebuilding their lives. The Tibetan refugees have done so, the Sri Lankan Tamil refugees have done so and so have other groups to whom India has offered safe haven.

In the same period, I have been highly critical of the law and policies of western states towards refugees. I have pointed out that while the west preaches human rights to the rest of the world, it does not greatly respect them when it comes to the rights of asylum seekers and refugees. In fact, it has constructed an elaborate non-entrée regime that ensures that refugees cannot reach the borders of western states. It has inter alia led to the deaths of thousands of asylum seekers: between 2014 and present about 18067 asylum seekers have drowned in the Mediterranean alone in attempting to reach Italy and Greece. I have also expressed disappointment with the UNHCR for not protesting sufficiently the restrictive Western policies.

Therefore, when in December 2018 United Nations General Assembly adopted the Global Compact on Refugees (GCR), I thought it was a welcome

step. At a time that nationalism, populism and weak multilateralism are the order of the day, when many States are averse to taking in refugees, one should not underestimate the significance of any multilateral text reminding them of their obligations towards refugees. While it is true that the GCR is high on rhetoric and low on mechanisms to enhance international responsibility sharing, it is hoped that global consensus on the need to promote refugee protection will be respected and that the institutional mechanisms it has established will play an effective role in this regard.

India voted in favour of the resolution. Keeping this in view, India as a major power and member of the Executive Committee of the UNHCR, may consider becoming party to the 1951 Convention. There are sufficient provisions in the 1951 Convention that will allow India to protect its legitimate national security interests. Meanwhile, there have been other developments with implications for refugee protection. First, there is the Citizenship Amendment Act 2019 (CAA). It inter alia provides that persons 'belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014...shall not be treated as illegal migrant for the purposes of this Act'. It would be noticed that persons belonging to the Muslim community have been left out. The Objects and Reasons of CAA justifies this by mentioning religious persecution of minority communities in these nations whose constitutions 'provide for a specific state religion'. In order to implement CAA, appropriate changes have been introduced into the rules of 1920 Passport Act and Foreigners Act 1946. Several petitions have been filed before the SCI challenging the constitutional validity of CAA. It is inter alia argued that CAA by arbitrarily leaving out the Muslim community is violative of the right to equality contained in Article 14 of the Constitution of India. It is also argued that CAA goes against the secular character of the Constitution as it grants citizenship on the basis of religious criteria. Finally, the CAA is not viewed as in conformity with India's international law obligations under International Convention on the Elimination of All Forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966, the Convention of the Elimination of Discrimination against Women, 1979, and the Convention on the Rights of Child, 1989. It is hoped that in deciding the petitions before it, SCI will accept the considerable weight of these arguments.

The CAA also raises the question as to whether post its notification on January 10, 2020 the principle of non-refoulement will continue to be respected.

The issue here is not of an individual being granted citizenship but of being given safe haven. This is the intent of the Standard Operating Procedure of the government of India, in effect from 29-12-2011, vis-à-vis foreign nationals who claim to be refugees. The SCI will need to clarify this matter.

Another concern is the proposed National Register for Citizens (NRC). If implemented across the nation it may leave millions of people stateless, as can be gathered from the outcome of the NRC process in Assam. Therefore, concerned citizens should call upon the government to become party to the two international conventions on statelessness viz., the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Hannah Arendt's oft quoted phrase "the right to have rights", used in the context of stateless peoples, succinctly captures the need to do so.

In this backdrop the essays compiled in this volume look at GCR in context of refugee law and policies in India with the objective of enhancing refugee protection. These raise issues that deserve to be actively debated.

B.S. Chimni
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FOREWORD

V. K. NAMBIAR (RETD.)

The predicament of refugees across the globe is a common concern of humankind. Almost 70.8 million people find themselves forcibly displaced worldwide today, a number never witnessed since the founding of the United Nations. Around 60 per cent of the world's refugee population lives in and around 10 countries, all in the global south. Meanwhile, both in the Global North and its South, we are witnessing the “anathematisation” of refugees and actions being taken against them based on the worst stereotypes. It is particularly disappointing to see the “pariah-isation” of legal residents based on ethnic and cultural differentiation happening even in countries with the reputation of being among the “happiest” in the world.

I recall vividly the many meetings in the UN Secretariat during 2016 ahead of the High-Level Summit that year on Migration and Refugees, where Special Adviser Karen Abu Zayd worked steadily and with intrepidity, behind the scenes, to raise support for concerted global action on the range of these sensitive issues in a sharply polarised multilateral milieu. After 18-months of intense engagement between 193 Member States of the United Nations and other stakeholders – non-governmental organizations, the private sector, faith communities, and refugees themselves, the world community was able to agree on two major global compacts which today constitute an important body of “soft” international law governing the treatment and management of migrants and refugees. As a high ranking UNCHR official then described it: “The global compact is a document that consolidates practices acquired over many years and often over decades, and puts forward a new vision of how the international community will engage with countries that are particularly affected by refugees.”

In India, the legal framework and legislative action on refugees and on statelessness are scant. There are not only critical gaps in nationality laws but also minimal legal precedent on the protection or rights of stateless asylum seekers. This hiatus is deepened by the fact that India is not signatory to the 1954 UN Convention Relating to the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness. As the contributions to this volume makes clear, the lack of a protection-based policy framework on statelessness effectively leaves refugees at the discretion of the Indian state, without any institutional or legal safeguards against arbitrary detentions, deportations or disenfranchisement. This also leaves them vulnerable to arbitrary national processes that may re-displace

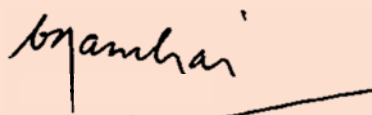
them within or beyond national borders. While there have, doubtless, been instances where the National Human Rights Commission has taken cognisance of the situation of various refugee groups in India, and even invoked the jurisdiction of the Supreme Court, this has not obviated the pressing present need for a more organised approach to legislative action as well as a collaborative role to be played by institutions such as the NHRC, the Indian courts and other concerned government bodies. In India, successive Governments had adopted an ad hoc yet positive approach towards refugees without addressing the gaps in national legislation. Today, this very ad-hocism and sustained legal vacuum threatens to exclude thousands of refugees in India from basic rights and protections that had been available to them over previous years. In these circumstances, what is urgently needed is a multi-stakeholder, protection-based and responsibility sharing-centric approach that also ensures better coordination between the national government and an international agency like the UNHCR. The Global Compact for Refugees framework can not only foster better understanding of statelessness in India, but also create space for a wide range of stakeholders to mobilize regional and sub-regional support. It is also important to recognize that the GCR, as a soft law has the potential to influence state practices on the quest of refugee burden- and responsibility-sharing and contribute eventually to making such practices established norms of customary international law. As one contributor states: “the non-binding nature of the GCR is the point of its strength as we live in an age in which soft laws do have legal consequences.”

Despite the serious protection risks refugees face from detention, deportation, evictions and harassment, public understanding on refugee issues remains low. In the absence of opportunities of regular positive engagement between refugees and local or national civil society, public attitudes towards them will remain negative. The uniqueness of Global Compact on Refugees resides in its inclusivity and holistic approach towards refugee protection by bringing multi-stakeholders on board and generating wide-ranging support. The current volume argues for an informed national dialogue on refugee rights.

In such an environment the media will play a crucial role “in propagating, promoting and influencing narratives around on-going refugee and migrant crises” and thereby modulating the public perception and attitudes towards

issues and concepts like statelessness, non-refoulment and repatriation. It is only by building up a 'whole of society approach' that we can change popular mindsets and help reorient community development plans and public services affecting ordinary citizen and refugees in a way that benefits both communities.

These Reflections on the Global Compact on Refugees, brought out by the Academicians Working Group in collaboration with the UNHCR on Indian perspectives and experiences are a response to a pressing need for the international community to come together and to help countries that are particularly affected by refugee movements. The volume, which has emerged from a seminar organized in April 2019, represents an important contribution towards enriching this discourse. I am sure it will fulfil this purpose.



(V.K. Nambiar)

Indian Foreign Service (Retd.)

Former Chef de Cabinet to the UN Secretary-General

20 November 2019

ACKNOWLEDGMENTS

This volume is an outcome of the academic efforts for more than a year. Two seminars were held in this process. The first one was on the theme of ‘Research and Advocacy in Action for Refugee Protection’ on 11 September 2018 and the second one was on ‘Global Compact on Refugees (GCR): From Hope to Action’ on 18 April 2019. Both these events were organized by the Faculty of Legal Studies, South Asian University, New Delhi in collaboration with the United Nations High Commissioner for Refugees (UNHCR). We thank both the institutions for hosting these events. Interactions between the participants of both these events led to the formation of the Academicians Working Group (formally named as Advocacy and Action Group). Formation of this Group would not have been possible without the active involvement of Ms. Yasuko Shimizu, the then Chief of Mission of the UNHCR, New Delhi. We sincerely thank Ms. Shimizu for her unflinching support. Ms. Grace Shaidi Mungwe, deputy Chief of Mission of the UNHCR, New Delhi and Ms. Ipshta Sengupta, formerly Policy Associate, UNHCR, New Delhi, played a significant role in the formation of this Group. Ms. Mungwe continues to support this Group with her advice and encouragement. We thank both of them. We thank Mr. Kiri Atri of UNHCR, New Delhi who has been supportive of this volume with his valuable suggestions. We sincerely thank Professor BS Chimni, formerly Professor at Jawaharlal Nehru University, New Delhi and Mr. VK Nambiar, IFS (Retd.) for accepting our request and writing Forewords to this volume. Ms. Mekhla Jha, Assistant Reporting Officer, UNHCR and Ms. Sumedha Choudhury, Assistant Research coordinator, Intern, at UNHCR have been instrumental in this volume. It would not have been possible without their diligent editorial assistance in communicating with contributors, coordinating with copy editors, and printers. We sincerely thank them for their valuable assistance. A special note of appreciation must also go to the refugees in India who have generously contributed their artwork to this collection. We would like to extend our warm welcome to Mr. Oscar Mundia, Chief of Mission, UNHCR India, and look forward for future collaborations. Finally, our sincere thanks to all the contributors for accepting our invitation to contribute, patiently responding to our communications and their cooperation in finalizing the volume.

Jessica Field | Srinivas Burra
Editors

INTRODUCTION

JESSICA FIELD^{*} SRINIVAS BURRA[°],
MEKHLA JHA⁺ AND SUMEDHA CHOUDHURY[∞]

INTRODUCTION

In September 2016, the UN General Assembly convened to discuss the international community's effectiveness in responding to mass migrations – forced and voluntary. This was a significant meeting with two outcomes: the New York Declaration for Refugees and Migrants, which set out principles that would guide the global response to refugee displacements and large movements of migrants, and the Comprehensive Refugee Response Framework (CRRF), which was to guide the operationalisation of those principles in relation to refugees.

On 17 December 2018, the Global Compact on Refugees (GCR) was officially affirmed by the United Nations General Assembly. In a sign of global commitment, it was adopted by 181 Member States – many of whom had not ratified international laws relating to refugee protection and assistance. The Compact, a non-binding instrument, sets out to provide a basis for predictable and equitable responsibility-sharing among all United Nations Member States. Together with other relevant stakeholders, the GCR is also underlined by a “whole of society approach” to refugee protection and assistance. Though non-binding, it seeks to strengthen cooperation and solidarity with refugees and host countries, and it is buttressed by four key objectives:

- Ease pressure on host countries;

- Enhance refugee self-reliance;
- Expand access to third country solutions;
- Support conditions in countries of origin for return in safety and dignity.

India took an active role in contributing to the development of the Compact and affirmed it in December 2018, along with the majority of Member States. Although India is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 protocol and does not have a national framework for refugee protection, it grants asylum to a number of refugees from neighbouring States. As of August 2019, 39,458 refugees are registered with the United Nations refugee agency (UNHCR) in the country,¹ and around 160,000 more are recognised by the government. India also supports the concept of “burden-sharing” and has recognised the paramount importance of the principle of *non-refoulement* in its ratification of the International Covenant on Civil and Political Rights, among other laws. Nonetheless, in recent years, concerns about national security and the rise of anti-migrant and anti-Muslim rhetoric in broader political discourse have had a negative impact on attitudes towards asylum in the country. In October 2018 and January 2019, for instance, the Indian government forcibly deported a total of a dozen Rohingya refugees to

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Myanmar.² Refugees within India have also seen increasing exclusion from education and health services, job opportunities and financial services.

In such an environment, the absence of a uniform legal and administrative framework for refugees creates significant protection challenges.

THE GCR—A TURNING POINT FOR INDIA?

In 2018, the then-UNHCR India Chief of Mission, Yasuko Shimizu, established a research and advocacy initiative with academics working on refugee issues in India. The Academicians Working Group (AWG), as it was named, became an independent working group and began to meet semi-regularly with UNHCR India in Delhi to discuss refugee protection and assistance, and share findings from recent studies. In April 2019 the AWG convened a seminar and, in response to discussions on the paucity of literature at the international level of India's refugee protection and assistance past and present, agreed to invite contributions for a special volume on India and the GCR. The scope of invited contributions were broad, and the aim was to bolster national and international discussions on topics such as: the importance of the GCR for this political moment in India; what work Indian stakeholders are already doing that aligns with GCR objectives; where there are gaps and how they can be filled; and the overall relevance of the GCR to a country that has consciously eschewed the formation of domestic laws related to refugee protection. This special volume – *The*

Global Compact on Refugees: Indian Perspectives and Experiences – is the product of those discussions and inputs. We were delighted to receive contributions from across India, as well as reflections from stakeholders overseas whom have a connection to this discussion. This volume represents just some of the rich work that is ongoing in the field of refugee research and protection in the country and across the South Asia region.

What is clear from the discussions that have emerged within and between the contributions is that India has a long history of offering refuge to individuals and communities fleeing conflict and persecution. This protection has come in different forms for different refugee groups. Some, such as Tibetan refugees who arrived in India in significant numbers from 1959, have been allotted land and have been given the space to develop a level of autonomy and preserve Tibetan culture within India. Others, such as Sri Lankan refugees who arrived in waves from 1983, have been designated camps and have received material support from

designated authorities. Other refugee groups, such as Rohingya and Chin refugees from Myanmar and refugees from Afghanistan, have received no material support from the government but have, for the time being, been able to seek refuge within India's borders and receive support from UNHCR and civil society organisations, as well as their own self-started refugee organisations. Nonetheless, as many of the authors of this collection highlight, the absence of any domestic asylum law and India's non-ratification of the 1951 Refugee Convention and 1967 Protocol have meant that protection and assistance for refugees in India has too often been ad hoc, arbitrary, and affected by the political winds of the period. The recent passing of the much-criticised Citizenship (Amendment) Act in December 2019—which extends citizenship rights only to non-Muslim forced migrants from Afghanistan, Bangladesh and Pakistan—sets a worrying precedent for discriminatory refugee protection and signals of who is (and who is not) welcome in India.³

The hope that runs through this collection is that the Global Compact on Refugees could present a turning point for that ad hocism and

arbitrariness, as the GCR outlines four key objectives that India has agreed to work towards. Authors have highlighted many ways that stakeholders in India—government, civil society and others—are *already* undertaking work similar to the objectives underlined in the GCR. Therefore, bringing some cohesion and uniformity to good practice in the country should not be a giant leap, but a case of connecting the dots. For instance, civil society actors and refugee groups have been working towards enhancing refugee self-reliance within India since Partition and Independence in 1947. Contributors have also highlighted that the groundwork for a domestic legal framework exists, and that the protections enshrined in international refugee law and the non-binding GCR already have foundations in the Indian Constitution and other legal precedent. In terms of “responsibility-sharing” and easing pressure on host countries, contributors have pointed out, too, that India has taken an active role internationally in providing assistance to other States responding to mass refugee movements—particularly in the South Asia region, where the country takes a bilateral approach to displacement crises.

INDIA AND THE GCR: PAST, PRESENT AND FUTURE

To organise these rich discussions, the volume has been organised into four main parts: an introductory section (of which this Editorial Introduction forms a part); a collection of articles that examine the GCR in international perspective; contributions on the GCR and India from a diversity of legal perspectives; and a closing section examining the broader implications of the GCR in India for policy and society.

To begin, we have been delighted to include a foreword for this special volume from Ambassador Vijay Nambiar, a retired Indian diplomat who has also served as the UN Secretary General's Special Advisor on Myanmar. He was Deputy National Security Advisor to the Government of India and Head of the National Security Council Secretariat. Ambassador Nambiar's foreword addresses the critical gaps in the legal and legislative framework for refugees and discusses the importance of GCR in filling those gaps. This contribution sets the tone for the volume as one of critical and constructive engagement with India's refugee protection past and present.

The GCR in International Perspective

The second section of this collection includes articles that place India's contributions (or potential contributions) to the GCR within an international

context. Madeline Garlick, Chief of the Protection Policy and Legal Advice Section in UNHCR's Division of International Protection, opens by narrating the drafting history of the GCR, from the initiation of the global consultative process in 2016, to the GCR's global adoption in December 2018. India's influence on this process, Garlick highlights, has been present from the beginning, which is a signal of the State's strong commitment to its objectives. Garlick argues that, given the international backing this Compact has received, the opportunity cannot be missed to seek and create new ways for States and other stakeholders to advance the debate and work towards the core objectives. Part of this advancement comes from knowledge-sharing between diverse stakeholders across boundaries, institutional and national.

Spring boarding from a similar observation, Yasuko Shimizu—UNHCR India Chief of Mission between 2015 and 2019 and initiator of the Academicians Working Group—offers reflections on the significance and potential of the GCR for India and carries messages from members of Japanese civil society about shared goals and hopes for collaboration. Shimizu's interviewees call for increased opportunities to share learning between stakeholders in Japan and India, and highlight that there is much work yet to be done across the Asia region to bridge these gaps.

This is followed by a contribution from Kennedy Gastorn, Secretary General of the Asian-African Legal Consultative Organisation. Gastorn highlights that Asia and Africa host a significant proportion of the world's refugees and notes that AALCO has been at the forefront of promoting legal protection in these regions for many decades. With their significant experience of “mainstream[ing] marginal voices” across the continents, Gastorn proposes that AALCO would offer an ideal coordinating forum for collaborative learning, confidence building and responsibility sharing activities. It is these types of solidarity forums, he argues, where innovative solutions to tackle protracted displacement can emerge.

In the final paper of this section, Constantino Xavier and Aasavri Rai of Brookings India look at the GCR in international perspective in relation to India and her history of protecting refugees across the world. Building on annual reports from the Ministry of External Affairs from 1947 to present, as well as newspaper reports from the period, the authors chart the proactive humanitarian activities that India has undertaken across the globe to support refugees from Palestine, Syria, Afghanistan, Bangladesh and Rwanda, and internally displaced persons from Sri Lanka. The GCR, Xavier and Rai argue, offers India the opportunity to build on this past and “become a more active subject in shaping stabilisation and developmental support mechanisms in other countries”.

The GCR and India: Legal Perspectives

The third section of this collection includes contributions from legal experts and scholars across India who reflect on the significance of the GCR for the country from a legal perspective. Srinivas Burra, from the Faculty of Legal Studies at South Asian University, begins this section with an analysis of the gaps and contradictions in the Compact. Burra argues that the GCR is unlikely to significantly change the position of refugees in India because of its non-binding nature and the Indian State's overt emphasis that it does not see its own obligations under the GCR as the same as States that are a party to the 1951 Convention and 1967 Protocol.

Following this, Pallavi Saxena and Nayantara Raja, from the Migration and Asylum Project in Delhi, explore what opportunities India has to build a National Asylum System—despite the State's reluctance to codify refugee protection. Saxena and Raja argue that, although the GCR does not offer a “full and finalised” framework for refugee protection that India can adapt, it does offer a “stepping-stone”. This stepping-stone, their contribution argues, is a crucial one of many on the path to an enhanced protection environment—from India's rich refugee hosting history, to the legal foundations contained within the proposed Asylum Bill, 2015, to India's support of the GCR today.

The GCR emphasises the importance of a multi-stakeholder approach in its quest for solutions to refugee

displacement and protection gaps. Taking this question from a legal perspective, Anubhav Dutt Tiwari examines the potential role of the National Human Rights Commission (NHRC) to be one such stakeholder in India. Tiwari argues that the NHRC has a powerful mandate for promoting and safeguarding human rights in India and has historically influenced refugee protection for the better—such as in the case of the Chakma refugees in the 1990s where, with the intervention of the NHRC, the Indian Supreme Court upheld that “Article 21 of the Indian Constitution also extends to the protection of life for refugees”. He points out, however, that the NHRC is now taking a much less proactive role in refugee issues, which risks decreasing its effectiveness as a mechanism for accountability.

This is followed by a contribution from Fazal Abdali, an Advocate at the Human Rights Law Network, who examines the complementarity of the GCR with the Indian Constitution. Abdali argues that it is not such a stretch India to implement the priorities of the GCR given the similar protections afforded to all citizens and non-citizens in the Constitution. Nonetheless, as ever, the limitations are in the application of these rights and protections on the ground.

Tackling the issue of statelessness, Angshuman Choudhury, Senior Researcher at the Institute of Peace and Conflict Studies in Delhi, examines the extent to which the GCR might help fill the “critical gaps” in protection

for stateless asylum seekers in India. Noting that national frameworks on statelessness are currently very limited, Choudhury suggests that the GCR could provide the catalyst and foundations for much needed change – particularly in its potential, through the multi-stakeholder approach, to create a groundswell of support for statelessness protection.

This is followed by Vinai Kumar Singh’s contribution, which explores the extent to which the GCR affirms “group refugee determination” and its relevance to the South Asian context. Along with other nations in the region, he explains, India has historically placed a greater reliance on group status determination than individual. In this contribution, Singh also explores the weighting of importance given to the durable solutions of voluntary repatriation and third country resettlement, and examines the implications of this for India.

The GCR and India: Policy and Society

The final part of the special volume is concerned with the social and political context of refugee protection in India; contributors in this section explore the role of diverse stakeholders in refugee protection and assistance. The discussion opens with a contribution from Ipshita Sengupta, of the Bangladesh Rohingya Response NGO Platform. Sengupta examines the GCR’s emphasis on a “whole of society approach” (WOSA) and its relevance to the Indian context. WOSA, Sengupta argues, is fundamental

to ensuring responsibility-sharing and effective protection for refugees because it requires all stakeholders to work together collaboratively, and it offers more opportunities to include local voices, mobilise resources and expand partnerships for more effective action. This may be particularly effective in the Indian context, Sengupta highlights, as there are diverse actors involved in refugee protection and assistance, but the challenge is maintaining momentum in the current political environment.

This is followed by a contribution from Jessica Field, Brunel University London and O.P. Jindal Global University, whose article examines civil society in India and its potential to enhance refugee protection and assistance in line with GCR objectives. Field highlights Indian civil society's historic contributions to promoting refugee self-reliance, arguing that such actors have long been working towards similar goals enshrined in the GCR. However, connecting these experiences to GCR platforms, and contributing vital evidence to relevant global discussions, will be challenging as the GCR remains a top-down instrument with global forums that less-formalised civil society actors—such as volunteer groups—will struggle to participate in. There is a need, Field argues, for international-level GCR stakeholders to develop non-traditional coordination approaches and partnerships in order to work towards the Compact's objectives.

Maya Mirchandani, of the Observer Research Foundation, follows with a

critique of the role of the Indian media in both communicating the relevance of the GCR to national audiences and its often-negative coverage of vulnerable refugee groups. Looking at “old” and “new” media's coverage of the recent Rohingya refugee crisis in India, as well as coverage of other displacement situations, she highlights that a “national security” lens has taken root. Despite this, Mirchandani posits that there are opportunities for the media to both improve its coverage of refugee protection issues, keeping humanity as a core principle, and to build wider consensus around India's leadership opportunity with the GCR.

Priyanca Mathur Velath, Jain University, explores in her article the impact that forced migration has on women and girl refugees. Taking a feminist perspective, Velath highlights that the GCR provides a potentially useful guide for inclusive and rights-based action, particularly in South Asian countries where legal frameworks are absent. A strength of the GCR, she argues, is its championing of refugee women's leadership—but the challenge will be turning words into action. While inclusion initiatives might seem promising—for instance UNHCR's digital platform—they might not always be accessible. In India, Velath highlights, women have significantly less access to mobile and internet technology than men, and even male access is not ubiquitous. Thus, all have to be cautious with “silver bullet” solutions.

The final contribution of this section is from Father Louie Albert of the Jesuit

Refugee Services. Albert interviewed Chin, Afghan and Sri Lankan refugees for their perspectives on the potential of the GCR to make a difference to their daily lives, and what challenges they continue to face living in India. Building on these interviews, Albert writes of the everyday reality facing refugees in India, which include: worries over personal security; difficulties making ends meet financially; poor education access and quality for their children; and mental and physical health challenges that

have arisen as a result of their current living conditions in India as well as their experiences of forced displacement. While the majority of refugee participants of this study were not aware of the GCR and India's support for it before the interview discussions, they expressed hope that it might lead to genuine responsibility-sharing at the international level, as so many are waiting for third country resettlement, or at least the opportunity to live and work in India with dignity.

THE NEED FOR CHANGE

These reflections from refugees living in India put into context all of the discussions, debates and concerns running through the collection. Of course, compliance with the GCR is not an end goal in its own right—the ultimate objective must be to ensure the safety, security and dignity of refugees in refuge and work towards a durable solution to their displacement.

Nonetheless, the hope captured in this special collection—*The Global Compact on Refugees: Indian Perspectives and Experiences*—is that the GCR might provide a powerful instrument for stakeholders in India to cohere around, or at least a set of committed objectives to hold the State to account with when the government's efforts are falling short.

NOTES

1. UNHCR, 'Factsheet India', *UNHCR India*, September 2019.
2. Zarir Hussain, 'India deports second Rohingya group to Myanmar, more expulsions likely', *Reuters*, 3 January 2019. Available: [reuters.com/article/us-myanmar-rohingya-india/india-deports-second-rohingya-group-to-myanmar-more-expulsions-likely-idUSKCN1OX0FE](https://www.reuters.com/article/us-myanmar-rohingya-india/india-deports-second-rohingya-group-to-myanmar-more-expulsions-likely-idUSKCN1OX0FE) [Accessed 13 January 2020].
3. The Citizenship (Amendment) Act, 2019, was passed during the final editing stages of this collection. The majority of the contributions were finalised before its passage. There is much important discussion to be had on its implications for refugee protection in India, and on national protests against its exclusionary remit.



ARTIST: ZAHRA AHMADI
Afghan Refugee

**THE GLOBAL COMPACT ON REFUGEES IN
INTERNATIONAL PERSPECTIVE**

THE GLOBAL COMPACT ON REFUGEES

**BROADENING STATE ENGAGEMENT
ON REFUGEE PROTECTION**

MADLINE GARLICK*

INTRODUCTION: IMPLEMENTING PRINCIPLES AND ADDRESSING THE GAPS

The international framework for the protection of refugees has proven its resilience and adaptability over time. In the seventy years since the Universal Declaration of Human Rights¹ established the right to seek and enjoy asylum, legal instruments have been adopted and applied to grant international protection to refugees fleeing persecution and serious human rights violations in all regions of the world. The interpretation of the 1951 Convention Relating to the Status of Refugees² and its 1967 Protocol³ has evolved and broadened significantly through its application by States, including administrative decision-makers, judges and legislators. Beyond treaty law, the central principle of non-refoulement has been recognised as a norm of customary international law, binding upon all States, including non-parties to the 1951 Convention. Other bodies of law, including human rights law and international humanitarian law, are also widely applied to ensure protection for the rights of people in need of international protection.

At the same time, the international refugee protection system has come under evident strain. With more than 70.8 million people displaced at the end of 2018, including 25.9 million refugees and 41.3 million internally displaced persons,⁴ the numbers of those forced to flee their homes has continued to rise, while solutions prove

challenging and elusive for many/most. New conflicts have broken out while longstanding wars have continued, and the root causes of refugee movements have increasingly interacted with other geopolitical challenges including state fragility, underdevelopment/poverty and the effects of climate change and environmental degradation. At the same time, the average length of time spent in displacement has increased. By the end of 2018, 15.9 million refugees, or 78% of the total, were in protracted refugee situations, defined by UNHCR as 25,000 people or more who have been displaced for at least five years. This number, which is additional to the Palestine refugees under UNRWA's mandate in countries in the Middle East, increased from 66% the preceding year, with nine new situations in Africa, Central Asia and Europe becoming protracted, and none being resolved.⁵

While many countries have kept their borders open to receive refugees, notably countries in Asia, Africa and in Latin America, diminishing political will and limited capacity to provide international protection have become evident in others. Many of those fleeing for their lives were denied access to safety due to physical or administrative barriers at frontiers, or policies and practices aimed at deterrence. Some people, having no other options, have consequently resorted to hazardous

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journeys over land or by sea in the absence of safe and legal channels.⁶

Countries in regions of origin of refugees have long experienced disproportionate pressures, with four out of five refugees residing in countries neighbouring their own. However, in 2015, awareness of the realities of displacement sharpened significantly in Europe, where the numbers of refugees, as well as migrants, arriving at some of the EU's external border States rose suddenly, overwhelming the capacity of countries such as Greece and Italy. The

combination of challenges evident at the same time in refugees' regions of origin, as well as in other parts of the world including Europe and the Americas, highlighted starkly the limitations on national, regional and international frameworks for managing arrivals, and identifying and protecting refugees. As a result, the need was recognised for concerted international action to address these challenges. These efforts—like the pressures felt in different parts of the world —would concern both Contracting Parties as well as non-Contracting Parties to the 1951 Convention.

THE NEW YORK DECLARATION (2016) AND THE GLOBAL COMPACT ON REFUGEES (2018)

Against the background of increased global attention to refugee and migration challenges, the UN General Assembly adopted the New York Declaration for Refugees and Migrants⁷ in September 2016. This represented a pivotal moment when the 193 Member States of the United Nations agreed on the urgency of responding to movements more effectively, and enhancing the protection of all people on the move, including those crossing borders to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations; in response to the adverse effects of climate change and natural disasters; in search of new economic opportunities

and horizons; or for a combination of these or other reasons.

The New York Declaration set in motion two separate and complementary processes. The first of these was a consultative process led by UNHCR to develop a Global Compact on Refugees,⁸ and the other, an intergovernmental process of negotiation for a Global Compact on Safe, Orderly and Regular Migration⁹. Although distinct processes with different objectives, they also have sought to address a number of similar challenges relating to refugee and migratory movements. Among others, these have included the need to uphold free movement and promote

alternatives to detention for people on the move; ensuring border management respects human rights; and combating the criminal actions of traffickers and smugglers, which are all areas in which UNHCR and States have worked to ensure coherence and mutually-reinforcing outcomes.

Tasked with developing the Global Compact on Refugees, from 2016 UNHCR engaged with States, civil society, the private sector, academic experts, and with refugees themselves to determine how best to design and ensure arrangements to strengthen protection and responses to the needs of refugees. Five thematic consultations and a stock-taking exercise were held in 2017 and six formal consultations in 2018, supplemented by more than 500 written submissions. These inputs and many more collectively led to the development of the Global Compact on Refugees, which was affirmed by the UN General Assembly in December 2018.

India was actively involved in the process of developing the Compact from its outset. India addressed the UN General Assembly in September 2016, at the adoption of the New York Declaration, drawing attention to the challenges faced by refugees, as well as the need for measures to address the root causes that force them to flee. In the thematic discussions in 2017 on the Global Compact, India expressed its support for the central concept of ‘burden-sharing’ to ensure protection for refugees, as well as for upholding

the 1951 Refugee Convention and the international legal principle of *non-refoulement*¹⁰—which, as a norm of customary international law, binds all States, regardless of whether they have ratified the 1951 Convention.

The Global Compact on Refugees is built upon a strong foundation of law, policy, and practice developed over many decades. While not legally binding, the Compact has provided a firm basis for a more robust, comprehensive, and good faith application of international law and principles which are already established and widely acknowledged in many national legal frameworks. Moreover, it aims to address what has been recognised as a perennial gap in the international protection regime¹¹: that of ensuring burden and responsibility sharing for refugees, particularly in countries hosting the largest numbers for sustained periods of time.

Current statistics highlight clearly the persisting global imbalances, with 84 per cent of the world’s refugees living outside developed regions in 2018, while one-third—some 6.7 million people—were in the Least Developed Countries.¹² The disproportionate impact of refugee situations on low- and middle-income countries has been recognised as demanding more predictable and impactful support and solutions, which would ensure refugees can be protected more effectively wherever they are located. Pressures on host communities need to be alleviated

by facilitating access to solutions for refugees; an ongoing challenge which demands expanded opportunities for solutions in third countries; improvement of conditions for voluntary repatriation in safety and dignity; and strengthened economic resilience and access to local solutions for refugees.

The Global Compact on Refugees envisions several new ways of approaching large-scale refugee situations, working in innovative ways with a wide range of stakeholders, including national and local authorities, international and regional organisations, international financial institutions, civil society, the private sector, academia, refugees, and host communities. It engages all States—whether parties or non-parties to the 1951 Convention; those with or without national legislation on refugees; with national or UNHCR-led refugee status determination systems; those which can offer support to the development of refugee institutions, responses and infrastructure, as well as those which could benefit from such help. Among other international actors, it aims to bring in development actors,

in particular from the early stages of a displacement crisis, to help lay the foundations for comprehensive future solutions from the outset. In addition to immediate basic support based on humanitarian principles in times of emergency, development cooperation can help ensure more long-term sustainable responses and solutions.

The Compact also proposes the creation of a global academic network on refugee, forced displacement, and statelessness issues, that would be supported by UNHCR, and involve universities, academic alliances, and research institutions.¹³ Academics have been encouraged to contribute to the evidence-based policy making and analysis that will be central to realising the goals of the global compact, particularly in the areas of responsibility sharing, admission and reception, improving conditions for persons of concern and host communities, and developing solutions. The network will facilitate research, training, scholarship opportunities, and innovative initiatives, which aim to produce concrete deliverables in support of the Global Compact on Refugees.

PROMOTING RESPONSIBILITY-SHARING

Strong collaborative partnerships will be pivotal to the success of the new arrangements set out in the Global Compact to facilitate more equitable

responsibility sharing. Amongst these arrangements, in the first place, is the Comprehensive Refugee Response Framework (CRRF), which was

contained in an annex to the New York Declaration. The CRRF is based on an approach which recognises that the resilience of the host communities—which often face development challenges themselves—needs to be strengthened to enable them to continue providing protection in line with adequate standards for refugees. The CRRF aims to strengthen national and local services and infrastructure to ensure they can meet the needs of both the host communities and refugees, rather than creating parallel systems for refugees. It achieves this through the leadership of the host country government and the mobilisation of partners to invest in and initiate planning for solutions from the outset of an emergency.

By the end of 2018, UNHCR had rolled out the CRRF in 15 countries in Africa and the Americas and two regional refugee situations, namely the Somalia situation and in Central America and Mexico under the ‘MIRPS’ framework (which is the acronym for CRRF in Spanish). Measurable changes have been made on the ground, including the adoption of new laws or policies on refugee inclusion in Djibouti, Ethiopia, and the African Union. The World Bank’s fund for the poorest countries—the International Development Association (IDA)—has provided USD 2 billion in additional financing to support low-income countries hosting large numbers of refugees, and other development banks are also investing in measures to strengthen refugee

responses. Private and community sponsorship resettlement programmes and complementary pathways are the focus of expansion efforts, to enable more refugees to gain long-term protection in third countries.

In addition, the private sector has become heavily engaged in projects in refugee host countries around livelihoods, infrastructure, connectivity, and energy. In this connection, it is noted that India in recent years has adopted legislation requiring corporations to devote at least 2% of their profits to activities linked to Corporate Social Responsibility. Some of the initiatives supported under this law, which have included measures to improve access to education, healthcare, environmental protection and sustainable livelihoods, relate to needs which affect refugees as well as citizens. Thus, Corporate Social Responsibility programmes could provide a vehicle for private companies in India to support efforts to strengthen refugee protection and paths to solutions.

As a second key responsibility-sharing measure, the Global Compact on Refugees envisions that a Global Refugee Forum will be held periodically at the ministerial level starting in December 2019. This provides an occasion at which States and other actors can make pledges of support to meet the goals of the Global Compact on Refugees; highlight good practices, as well as report back on progress made. This aims to help promote

accountability for commitments made and ensure more sustained international attention to refugee issues. Pledges will be concrete and mutually reinforcing, and could take the form of financial, material, and technical assistance; changes to national policies, laws, and practices; or the creation or expansion of programmes. Within the Global Compact on Refugees, in addition to the CRRF, the Programme of Action details areas where such contributions could be made to support host States and refugees, such as support for early warning, preparedness, and contingency planning; reception arrangements; safety and security; registration and documentation; addressing specific needs; identifying international protection needs; access to education; voluntary repatriation; and resettlement places and complementary pathways for admission to third countries. In the area of third country

solutions, a three-year strategy is planned, as a part of the Programme of Action, to broaden opportunities for resettlement and complementary pathways to protection.¹⁴

Third, the Global Compact on Refugees proposes the creation of situation-specific Support Platforms, comprised of groups of States dedicated to mobilising support for particular host countries and to advance the search for solutions. The Support Platforms will aim to promote context-specific, predictable, broadened fora to garner support for refugees, host countries, and communities, in line with national priorities and national response arrangements. They should furthermore galvanise political commitment, facilitate support, and facilitate the early engagement of development actors; and also foster dialogue, confidence building, and initiatives to find solutions.

FROM PAPER TO PRACTICE

The final text of the Global Compact on Refugees was proposed by the High Commissioner in conjunction with his annual report to the General Assembly, on 20 July 2018. It was subsequently affirmed by the UN General Assembly in its annual resolution on UNHCR on 18 December, with 181 States—including India—voting in favour, only two against and three abstentions.

It is hoped that these new arrangements will provide tools, knowledge and political will to significantly strengthen responses to refugee situations, enlisting the help parties as well as non-parties to the 1951 Convention. Over the course of the consultations on the Global Compact, UNHCR observed clearly the challenge of achieving a balance between engaging a wide range of States in impactful

measures on the one hand, and respecting States' autonomy and varying perspectives on the other. The fact that it was adopted in December 2018 with overwhelming support from UN Member States can be seen as confirming that this balance was effectively struck.

While the text might not have fulfilled the aspirations of all stakeholders,

it does provide a key opportunity to provide a frame for more sustainable responses to forced displacement. It is also important to keep in mind that the Compact is not the end, but rather the beginning, of a process that will allow a continuation of dialogue, including on the further development of burden and responsibility sharing arrangements through their practical application.

RELEVANCE OF THE COMPACT FOR NON-STATE PARTIES

In its introduction, the Compact clarifies the contexts in which refugees are forced to flee their homes, grounding this in international and regional law, where applicable. Based on comments from States through the consultations, the last iteration of the draft included a new subsection, entitled “guiding principles”, including more extensive reference to relevant human rights instruments, along with language from the annual HCR Omnibus resolutions on the work of the Office of the UN High Commissioner for Refugees. This section acknowledges the contributions made by non-State parties to the 1951 Convention, with a call to consider accession. It recalls clearly that the GCR is “grounded in the international refugee protection regime, centered on the cardinal principle of non-refoulement, and at the core of which is the 1951 Convention and its 1967 Protocol”.¹⁵

Importantly, the introduction equally highlights important efforts to prevent conflict and other root causes of flight, underlining that the Compact will complement ongoing UN endeavours in areas of prevention, peace, security, sustainable development, migration and peacebuilding, calling on “all States to cooperate to tackle the root causes of large refugee situations, including through heightened international efforts to prevent and resolve conflict”.¹⁶

It consciously draws on legal standards, obligations and practices, to move forward in addressing the gap on responsibility sharing, indicating that “there is an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees, widening the support base beyond those countries that have historically contributed to the refugee cause...” and

that “ ... refugees and host communities must not be left behind”.¹⁷

The Programme of Action includes areas for concrete contributions in support of host States by States and relevant stakeholders. This includes:

- Support for **early warning, preparedness and contingency planning**, for example on developing risk and situational analyses and scenario-building exercise, developing contingency plans and preparedness measures, and ensuring standby capacity
- Support for **immediate reception arrangements**, for example the establishment of reception and transit areas, identification and referral of those with special needs, and supporting efficient mechanism to transfer new arrivals away from borders
- Support for **safety and security considerations**, such as security screening of new arrivals, strengthening international efforts to combat sexual and gender-based violence, smuggling and trafficking, the identification and separation of fighters and combatants at border entry points, and the implementation of programmes to help children formerly associated with armed forces and groups
- **Registration and documentation**, for example rolling out biometric identification systems, establishing protocols for collecting and

managing personal data, and procedures to assist with the identification of stateless persons

- Addressing **specific needs**, for example with health care and psychosocial support, and services for people with disabilities, those who are illiterate and older people
- **Identifying international protection needs** for persons who are outside their own country and unable to return home
- Supporting the **expansion and enhanced quality of educational facilities**; foster inclusive economic growth for host communities and refugees; enhance national health systems
- Importantly, the GCR also calls for solutions. This includes through expanding opportunities for **voluntary return**, which requires engagement by development and peacekeeping actors, but also first and foremost, by countries of origin. It also includes strengthening resilience in host countries, on which I have spoken, as well as opportunities in third countries in particular, increased resettlement spots and supporting newly emerging resettlement countries.

The Programme of Action highlights examples of many areas where support can be provided, drawing on existing positive practices and partners. It is not meant to be prescriptive nor impose additional responsibilities on hosting

States, with language noting that the support is to be provided at the request of hosting States, with full respect of national ownership and leadership, and importantly, that success of the measures hinges on robust and well-functioning mechanisms of burden and responsibility sharing and a demonstrable commitment on the part of the international community.

The Global Compact on Refugees constitutes a valuable tool for States which have not ratified the 1951 Convention, as well as its Contracting Parties. It seeks to assist States to respond more effectively to practical challenges associated with the presence of refugees, notably in the context of large-scale movements or protracted situations—challenges which affect many non-Contracting Parties worldwide. It does so by mobilising international support through

responsibility-sharing measures and concrete actions designed to ensure support for host communities, as well as reinforced opportunities for self-reliance and solutions for refugees.

As India's representative acknowledged in its statement to the 6th round of formal consultations on the Compact, "the strength of the non-legally binding Compact would lie in its consensual adoption premised on international solidarity and national ownership. The litmus test would be the mobilisation of international support and action under the Compact for realisation of its objectives". In this way, India has recognised the value of the Compact before the international community, as a means to strengthen international cooperation beyond the legal commitments articulated in international instruments, in much-needed ways in countries across the world.

CONCLUSION

The Compact aims to provide fresh impetus to efforts to ensure more effective implementation of the instruments and principles that have contributed to more effective and humane responses to displacement challenges. The opportunity cannot be missed to seek and create new ways for States and other stakeholders to advance the debate. When the process began, States expressed concern that the

political situation did not create more scope for further binding obligations to strengthen refugees' protection. Yet, the UN General Assembly unanimously agreed that something must be done. The Global Compact represents a tangible foundation for measures to be taken to improve the protection, lives and prospects of solutions for refugees, but also those of the communities which host them all around the world.

NOTES

1. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA res 217 A(III).
2. Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.
3. Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.
4. UNHCR, *Global Trends: Forced Displacement in 2018* (Geneva: UNHCR, 2019).
5. UNHCR, *Global Trends*.
6. See UNHCR, *Note on International Protection 2019*, EC/70/SC/CRP.10.
7. *New York Declaration for Refugees and Migrants*, UN Doc. A/RES/71/1 (16 September 2016).
8. *Global Compact on Refugees*, UN doc A/73/12 (18 December 2018).
9. *Global Compact for Safe, Orderly and Regular Migration*, UN Doc. A/RES/73/195 (19 December 2018).
10. *Statement by India made during the 1st round of formal consultations on the Global Compact on Refugees, delivered by Dr Sadre Alam, First Secretary*, 13 February 2018: <https://www.pmindiaun.gov.in/pages.php?id=1600>
11. Volker Türk, "The Promise and Potential of the Global Compact on Refugees," *International Journal of Refugee Law* 30, no. 4 (2018): 575; Volker Türk and Madeline Garlick: "From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees," *International Journal of Refugee Law*, 28, no. 4 (2016), 656-678.
12. UNHCR, *Global Trends*.
13. GCR, para 43.
14. UNHCR, *The Three-Year (2019-2021) Strategy on Resettlement and Complementary Pathways*, June 2019. <https://www.unhcr.org/5d15db254.pdf>
15. GCR, para 5.
16. GCR, para 9.
17. GCR, para 1.
18. *Statement by India made during the 6th round of formal consultations on the Global Compact on Refugees, delivered by Dr Sadre Alam, First Secretary*, 4 July 2018: <https://www.pmindiaun.gov.in/pages.php?id=1790>



ARTIST: NASRIN SAFE
Afghan Refugee

SPECIAL CONTRIBUTION

SOME PERSPECTIVES ON THE GLOBAL COMPACT ON REFUGEES FROM JAPANESE CIVIL SOCIETY

YASUKO SHIMIZU*

I would like to begin by congratulating the Indian Academicians Working Group and UNHCR India on the publication of this special collection on The Global Compact on Refugees: Indian perspectives and experiences. It is my great pleasure to make a short contribution to this important publication.

ABSTRACT

The primary purpose of the contribution is to congratulate the Indian Academicians Working Group on their first publication focused on the Global Compact on Refugees. My special contribution, in contrast to the contributors from India who write about India's role, will present some views of those working in Japan on GCR and their messages to Indian civil society members. The special contribution is not an academic research paper, but it will share some views of civil society members in Japan on:

- How they perceive GCR
- If and how GCR makes impact on their work

In this relation, I have conducted interviews with civil society members who work for refugees or on related issues about their views on GCR.

BACKGROUND

The Academicians Working Group was one of the initiatives that I, as the then Chief of Mission of UNHCR India, put my heart into. Indian civil society, as well as its government, has long been known for its history of assisting refugees without receiving much external support. During my assignment in India from 2015 to 2019, the role of civil society in advocating for refugee rights and refugee-friendly policies became even more important than before. Scholars, NGO practitioners, and UNHCR staff explored ways to make the best of their efforts to support

refugees and asylum seekers. In 2018, such efforts led to the creation of the Academicians Working Group, which aimed to advance consolidated advocacy by promoting research, refugee education, and policymaking.

In 2019, the group planned a set of activities relating to the Global Compact on Refugees (GCR)¹ including a seminar and the publication of essays. I had to leave India immediately after the seminar organised in April 2019 and could not participate in the process of publishing the articles. Given this

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background, the Academicians Working Group and UNHCR kindly extended their invitation for me to make a special contribution.

I can highlight at least three reasons for the importance of issuing this volume now. Firstly, it will provide Indian perspectives in response to global-level discussions on the GCR. The International Journal of Refugee Law, for example, devoted its special issue to the Global Compact on Refugees,² which had a contribution from Dr. B. S. Chimni of India along with others from across the world. In addition to this prominent Indian professor's work on refugee protection, it provides the

right opportunity to add Indian views to the ongoing global discourse on the GCR. Secondly, if we look at the national and local levels, this journal on GCR will enrich debates on refugee issues within Indian society and, I hope, it will contribute to strengthening Indian support for refugees and asylum seekers. Thirdly, the critiques that academics, researchers, and practitioners may raise or the reviews that they share in this journal can spark constructive arguments among experts, practitioners and also within UNHCR on the latter's policy decisions or responses from the aid community in general. Thus, I believe such professional reflections will lead us to more meaningful actions.

SHARING VIEWS FROM JAPAN

Given that the contributors to the journal will write about Indian perspectives and the role of Indian civil society for refugee protection, this short essay will present to Indian readers of the journal some feedback on the GCR from Japanese civil society members working on refugee issues. It will also carry their messages to their Indian counterparts. The following messages are from university professors, NGO leaders, and lawyers. As I reached out to only six colleagues from Japanese civil society for interview, these interview findings

do not represent the larger group of people working for refugees and asylum seekers in Japan. Nonetheless, they provide an important foundation for further discussion.

Before presenting these views from Japanese civil society members, I would like us to first recapture some key comments from the International Journal of Refugee Law on GCR. Then, this essay will share the views of Japanese interviewees on GCR and their messages to their Indian counterparts.

KEY COMMENTS FROM THE GLOBAL LEVEL

The International Journal of Refugee Law devoted its final issue of 2018 to the two global compacts adopted in the year, namely, the Global Compact on Refugees, and the Global Compact for Safe, Orderly and Regular Migration (GCM). Of the 25 contributors, 21 wrote about the GCR, some on global issues, and some others on regional or country-level perspectives.

Unsurprisingly, some tough criticisms and disappointment were expressed. While criticisms were varied, one of the frequently repeated points was that the GCR does not adequately address core protection challenges such as access to territory and respect of the *non-refoulement* principle. Another repeated point was on the nature of the compact, that is, a compact, unlike a convention or a protocol, does not have binding power or this compact does not propose to create a binding legal instrument.³ In addition, a few contributors were unconvinced about the appropriateness of UNHCR's engagement in the process of GCR or a possible protocol (if it is to be created).⁴ Further, some authors questioned the relevance of using indicators to measure progress on rights issues, the feasibility of data collection, and the role of academics proposed in GCR,⁵ while one author urged a need to develop indicators as the first step to measure the progress on burden-sharing.⁶

In response to such skepticism, Volker Türk (the then Assistant High Commissioner for Refugees) stated in his article in the same journal that “The Global Compact on Refugees builds upon a strong foundation of law, policy, and operational practice developed since the earliest days of the UN”. He also stated that the answer to challenges in situations with a large number of refugees “does not lie in draconian measures or revising the international refugee protection regime” but in “a more robust, comprehensive and good-faith application of the tenets of protection”.⁷ He further explained the arrangements that GCR envisions for fair responsibility-sharing. These arrangements include organizing Global Refugee Forums, arranging Support Platforms, partnerships with development actors (the World Bank, in particular), enhanced resettlement opportunities and other third-country solutions, seeking regional approaches, etc.

Echoing these points, contributors to the journal, in general, recognised a seriously worsened protection environment as a global challenge that makes it even more arduous to bring States to endorse the GCR at the UN General Assembly.

Therefore, adopting the GCR in this global context was meaningful by itself to preserve the norms of refugee protection. In this regard some authors

SOME FEEDBACK FROM JAPANESE CIVIL SOCIETY ABOUT GCR

saw added merits of the GCR. It has been endorsed also by States not party to the 1951 Refugee Convention,⁸ and it proposed arrangements for responsibility-sharing that were not in the Convention.⁹ However, UNHCR's increased capacity was considered to be essential in delineating a strategy and leading the implementation of such arrangements as, expanding resettlement, organising Global Refugee Forum and Support Platforms, and so forth.¹⁰

The interviewees were asked what they saw as achievements and drawbacks of the GCR. They were also asked if the GCR had an impact on their own work. Reactions of the six interviewees to the GCR were divided among “positive”, “critical”, and “neutral.”

Positive reactions were basically on two points. Firstly, the fact that the GCR had been brought to the UN General Assembly (GA) and adopted in this difficult time for refugees and asylum seekers was generally seen as an achievement. In relation to that, one interviewee commended the capacity of UNHCR for having coordinated and negotiated with States on its text. Secondly, all the interviewees except one welcomed the GCR's emphasis on a multi-stakeholder approach. More concretely, the interviewees considered it to be important that the GCR brought a new concept of international

protection where it is not only of concern to the government of a host country but involves other States and the international community by sharing burden and responsibility. Similarly, the emphasis on the role of civil society and the private sector was welcomed.

This particular point of the GCR—about the role of the international community in supporting refugee-hosting countries—was considered to be the primary achievement of the GCR by interviewees, and was certainly a key message of the Compact. Nonetheless, it was also considered by some as a drawback, which would exacerbate the global protection gap. They explained that, today, we see asylum seekers pushed back or detained in many countries in the Global North and the GCR does not address this primary protection concern—instead, by encouraging financial support or promoting third-country solutions (such as responsibility-sharing), the GCR risks preserving the States' non-commitment to the primary protection principle – access to territory. Likewise, sharp criticism came from some interviewees on the GCR's inadequate reference to core protection principles such as non-refoulement, and the rights of asylum seekers. Interestingly, one of the interviewees, a lawyer whose clients include asylum seekers, stated that he refers to the GCM more than the GCR for his work, as it includes clauses on border management

relevant to asylum seekers. Indeed, the GCM is already relevant to those who are not yet considered as refugees, while the GCR is more relevant to refugee situations. As pointed out by Dr. Chimni and other international contributors to the International Journal of Refugee Law, the GCR inadequately addresses the issue of access to territory or asylum. On the other hand, the GCM includes Objective 11, which deals with border management. Many clauses under this objective are relevant to asylum seekers who are at risk of detention or deportation.

In relation to the above, one of the interviewees was concerned that people forcibly displaced due to climate change

and natural disaster could fall into a gap in the system of international protection, as it is not sufficiently covered by the GCR. Another interviewee expressed the view that the GCR—in its attempt to touch upon, climate change, Internally Displaced Persons (IDPs), and people affected by natural disaster—has lost its focus which makes it difficult to provide assistance to IDPs.

The scholars interviewed did not see a significant impact of the GCR on their own work. Other interviewees stated that the GCR supports their advocacy work vis-à-vis policy makers, motivates them to add global perspectives to their work, and helps them to stimulate others into action.

Messages
from
Japanese Civil Society

The interviewees are my colleagues from Japanese civil society working for refugee issues. Some of them work as lawyers representing asylum seekers, one of them leads an NGO advocating refugee rights, while the others research on refugees and teach at universities. This final section conveys their messages to their counterparts in India. (The order of the presentation is alphabetical.)

International Assistance often uses “displacement” or “mobility” as a standard for selecting beneficiaries. Categories of “Refugee”, “IDPs”, and “Returnees” are based on this selection criterion. However, vulnerability is not completely a result of movement. In order to use limited resources efficiently, vulnerability assessment and knowledge about their lifestyles and their transition should be emphasized more.

Horie Masanobu

Professor
Mukogawa Women’s University, Nishinomiya

I would very much like to learn more about Indian civil society and your work on refugee protection. In this regard, I hope to have opportunities to develop our network to exchange information on our work and our views. If any Indian readers of this journal plan to participate in international conferences such as LAWASIA, IBA, and IPBA, let me know. I look forward to meeting you there.

Kirimoto Yuko

Lawyer, Tokyo.

Today, we see nationalism growing in Japan and the world, possibly also in India. In this worldwide trend, it is not easy to support asylum seekers and refugees successfully. But because of such a tough environment, I believe, the role of civil society at the field level is even more important in advocating for refugee rights, just as emphasized in the GCR. It can also play an important role in challenging the government and its decisions. I would like to show my sincere respect to Indian civil society for the efforts it has made for refugee protection in such a difficult time. I hope to have further opportunities to exchange views and collaborate with you.

Namba Mitsuru

Lawyer, Tokyo

In the current global environment where refugee issues have become highly contentious and politically charged discussions, a greater emphasis should be placed on the formulation of policies on the basis of evidence-based research and analysis. For this purpose, the establishment of an academic circle in India on the issues of forced displacement is timely and most welcome. Their contribution could play a significant role in safeguarding the long-established refugee protection regime and in addressing the human displacement issues in a more effective manner. I hope that in the near future, we will have an opportunity to exchange views between India and Japan on issues of mutual interest!

Obi Naoko

Program Coordinator, Network on Humanitarian Action,
International Christian University, Tokyo

GCR connects those of us, who live far apart from each other in different cultural contexts. I would like to continue to voice with respectful Indian civil society members that “There is no one who is not responsible for refugee issues”.

Soda Katsuya,

Representative, Nanmin Now!
Visiting Associate Professor, Doshisha University, Kyoto

Regional approaches, which GCR also emphasizes, may not have so much progressed in Asia as in other regions in the world. Unlike, for example, AU(Africa), EU (Europe) or Central and Latin America, the Asian region does not have its convention or other regional legal instruments on refugees or Internally Displaced Persons. I have been hoping that one day, Asia will establish its regional convention or declaration on refugee protection in order to provide comprehensive protection of refugees. Members of Indian civil society, I would like to work together with you towards this goal. I also would like to be engaged in an India-Japan network among researchers and academicians.

Sugiki Akiko

Professor
Keio University, Tokyo

POSTSCRIPT

Having reviewed global discourse and Japanese interviews, I share the major points on the GCR raised by those interviewed. UNHCR has long been working to bring different stakeholders, development actors, and humanitarians to support refugee self-reliance and host-communities. As far as I recall, the highest that such efforts reached in the UN system was the Secretary General's decision No. 2011/20 on Durable Solutions¹¹ as an outcome of collective efforts by the Early Recovery and Protection Clusters, in which UNHCR had played a leading role. It is remarkable that the GCR was endorsed at the General Assembly, with 181 votes in its favor. Considering the trends against refugees in the world, it was not an exaggeration when the

High Commissioner for Refugees, Filippo Grandi, said that it was "historic".¹² At the same time, as many have commented, the GCR by itself cannot be the end, rather it should be a stepping-stone towards an improved system on refugee protection. The GCR asks each one of us, including those from the civil society (to which I belong now), what we are going to do towards the common goal.

It was a positive experience that all the interviewees expressed their interest in being connected with members of Indian civil society. I would like my future role in this area and to contribute towards bridging the two civil societies for creating stronger synergies between two Asian countries.

NOTES

1. The United Nations, A/RES/73/151: Resolution adopted by the General Assembly on 17 December 2018 [on the report of the Third Committee (A/73/583)] (2019). The UN General Assembly adopted Global Compact on Refugees in December 2018. It aims to “provide a basis for predictable and equitable burden- and responsibility- sharing (para 3)” and “to protect and assist refugees and support host countries and communities (para 5)”. GCR has four specific objectives; (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity (para 7).
2. *International Journal of Refugee Law*, 30:4 (2018), <https://academic.oup.com/ijrl/issue/30/4>.
3. See, for example, Alexander Betts, “The Global Compact on Refugees: Toward a Theory of Change?,” *International Journal of Refugee Law*, 30:4 (2018), pp. 623–626; B. S. Chimni, “Global Compact on Refugees: One Step Forward, Two Steps Back,” *International Journal of Refugee Law*, 30:4 (2018), pp. 630 – 634; James C Hathaway, “The Global Cop-Out on Refugees,” *International Journal of Refugee Law*, 30:4 (2018), pp. 591–604; Thomas Gammeltoft-Hansen, “The Normative Impact of the Global Compact on Refugees,” *International Journal of Refugee Law*, 30:4 (2018), pp. 605–610; T Alexander Aleinikoff, “The Unfinished Work of the Global Compact on Refugees,” *International Journal of Refugee Law*, 30:4 (2018), pp. 611–617.
4. Chimni, “Global Compact on Refugees”, pp. 630, 633; Hathaway, “Global Cop-out”, p.602; Jeff Crisp, “A Global Academic Network on Refugees: Some Unanswered Questions,” *International Journal of Refugee Law*, 30:4 (2018), pp.640-642, p. 641.
5. Chimni, “Global Compact on Refugees”, p. 633; Crisp, “Global Academic Network”, p. 642.
6. Geoff Gilbert, “Indicators for Global Compact on Refugees,” *International Journal of Refugee Law*, 30:4 (2018), pp. 635–639.
7. Volker Türk, “The Promise and the Potential of the Global Compact on Refugees”, *International Journal of Refugee Law*, 30:4 (2018), pp.575-583, p. 577.
8. Hansen, “Normative Impact”, p. 610.
9. Betts, “Theory of Change”, p. 623; Aleinikoff, “Unfinished Work”, p. 612.
10. Betts, “Theory of Change”, p. 626; Aleinikoff, “Unfinished Work”, p. 616.
11. United Nations, Decision No.2011/20, Durable Solutions: Follow-up to the Secretary General’s 2009 Report on Peacebuilding (2011).
12. “UN Affirms ‘Historic’ Global Compact to Support World Refugees,” *UN News*, December 17, 2018, <https://news.un.org/en/story/2018/12/1028791>



ARTIST: NASRIN SAFE
Afghan Refugee

BEYOND THE CONVENTION APPROACH

**THE ADDED VALUE OF
THE GLOBAL COMPACT ON REFUGEES**

KENNEDY GASTORN*

ABSTRACT

The Global Compact on Refugees (GCR) of 2018 is a tangible outcome of the work undertaken following the UN New York Declaration for Refugees and Migrants 2016. As a soft law supported by 181 UN Member States, the GCR has a political will. As a result, the political value embodied within the GCR is shared equally by the parties to the 1951 UN Convention on Refugees and non-parties that may or may not have a specific law on refugee protection. For instance, India is not a party to the 1951 UN Convention on Refugees but is one of the signatories to the GCR 2018 and has also signed the New York Declaration. This paper argues that the GCR has the potential of enhancing and renewing the political commitments and will of the global community to implement the refugee protection regime through a more equitable and predictable burden- and responsibility-sharing. This is relevant given the fact that the GCR has been enacted at a time when nations are increasingly militarizing their borders, building walls, increasing detention, and forcing migrants and refugees back into the high seas. Furthermore, it has the potential of influencing State practices on the quest for burden- and responsibility-sharing which may ultimately form the binding norm of customary international law. The non-binding GCR could be a fairer approach as it would not create, on the face of it, any jurisprudential liability and deterrence in international law. Whether or not the above potentials of the GCR will be realized given political and legal complexities is a question whose answer lies only in the future. However, the potential of the GCR in galvanizing States and stakeholders to generate a new degree of political will in support of refugee protection and solutions is unparalleled. This does not mean that the GCR is without any drawbacks. At times, it lacks precision on addressing the responsibilities of those responsible for refugee flows and the existing imbalance of mechanisms of hosting refugees.

INTRODUCTION

One of the gravest challenges to multilateralism grounded in international law is the growing number of individuals

displaced from their homelands due to conflict, famine, climate change and other causes of extreme suffering. By

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the end of 2017, according to a recent UNHCR report,¹ there were 68.5 million forcibly displaced people in the world, including 25.4 million refugees. The number also includes about 40 million internally displaced people — people who were forced to leave their homes but are still in their home countries — and 3.1 million asylum seekers, or people who have applied for refugee status but are waiting for approval. 2017 was also the sixth consecutive year that the number of forcibly displaced people in the world surpassed peak World War II levels, and this trend shows no sign of slowing down.

The problems of displacement are persistent all over the world. In Asia, the Asia-Pacific region itself is home to 5.5 million refugees.² The Afghan refugee population constitutes one of the largest protracted situations in the world, with up to 96 per cent of refugees being hosted by Iran and Pakistan. According to the UNHCR Global trends survey of 2017, in Myanmar, hundreds of thousands of people from various ethnic groups, primarily Rohingyas, have been stateless for decades searching for protection from violence and persecution. Africa is home to over a quarter of the world's refugees, which also makes this a topic of key priority for Asian-African Legal Consultative Organization (AALCO).

In late 2015, the UN General Assembly decided to convene a high level plenary meeting on addressing large movements of refugees and migrants. On 19 September 2016, 193 UN

Member States signed the New York Declaration, reaffirming the importance of the international refugee regime, and pledged to adopt a set of commitments to enhance the protection of refugees and migrants. The New York Declaration called for the development of two new global compacts to be adopted by the UN General Assembly in late 2018, one on refugees, the other for safe, orderly and regular migration. The New York Declaration is by and large a set of commitments based on principles that address large-scale movements of refugees and migrants.

The New York Declaration called for a consultative process, led by the United Nations High Commissioner for Refugees (UNHCR) to develop a Global Compact on Refugees (GCR). It also set out a Comprehensive Refugee Response Framework (CRRF) for addressing large-scale refugee situations and tasked the UNHCR with applying this framework in the field, with a view to securing more predictable, sustained support for refugees and their host communities. The process of developing the GCR drew upon lessons learned from the application of this framework in 15 countries and regional refugee situations. It also engaged States, partners, civil society and refugees in five thematic discussions, which culminated in a stocktaking exercise in 2017, as well as six formal consultations on the text of the GCR in 2018.

This paper investigates and examines the relevance of the GCR as a non-

binding directive or soft law towards the development of international law on refugees and the extent to which it promotes the protection of refugees. It is suggested that the GCR affords an opportunity to countries to conform with the customary international law on refugee protection that has evolved over the years and to show compliance with the normative framework of this regime. For instance, as India is a signatory to

the GCR and the New York Declaration, the country's best practice examples on refugees are likely to be shaped and aligned in the context of the GCR. Indeed, despite the fact that India had not been a party to any of the conventions on refugees in the past, the country has given asylum to people moving from other countries especially from south Asian countries. This includes Tibetans, Sri Lankans, and Bangladeshis.

UNPACKING THE GLOBAL COMPACT ON REFUGEES (GCR)

Developments Prior To The Adoption of the GCR

Over the years, AALCO has been closely involved and promoted the refugee protection regime in the Asia-Africa region. In the context of the GCR, AALCO adopted the Bangkok Principles in 1966, which continues to be the most significant. The Bangkok Principles are recognized among the most significant contributions to the "*lex specialis*" of international refugee law and continue to be recognized as a foundation that guides contemporary developments in the subject.³ The principles were among the first to be adopted post the Refugee Convention, 1951 and precede the 1967 Protocol, the 1969 OAU Convention and the 1984 Cartagena Declaration.⁴

In 1987, AALCO adopted the second addendum to the Bangkok Principles by incorporating the concept of "burden sharing", an idea that is of

acute concern for Asian and African countries. Subsequently, this was accepted internationally and is one of the bedrock concepts of international refugee law and policy today. The GCR has also addressed this issue, the roots of which can be traced to AALCO's historical efforts to mainstream the marginal voices of two great continents—Asia and Africa.

Some authors and experts of international refugee regime and scholarship have stated in the past that the challenge of a high number of refugees does not lie in revisiting the international refugee protection regime—which has proven to be a good law and practice when there is the political will to implement it. The answer lies in a more robust, comprehensive, and good-faith application of the tenets of protection. This requires that the international refugee protection system be better capacitated to absorb the growing pressures.⁵ This

is precisely what was understood by the international community when, in September 2016, all Member States of the United Nations unanimously adopted the New York Declaration for Refugees and Migrants.

The GCR consolidates practices acquired over many years—often decades—and puts forward a new vision of how the international community may engage with countries that are particularly affected by refugees.⁶ UNHCR was tasked to prepare this Compact, which consists of two components: the Comprehensive Refugee Response Framework (CRRF) and the Programme of Action. The final text of the Compact was adopted by the UNGA later, in 2018. UNHCR had initially hoped that the New York Declaration would include the GCR, which, at that time, primarily consisted of the CRRF. The failure to adopt the GCR in 2016 has had positive consequences. First, despite the profound challenges facing the international refugee regime, the CRRF breaks little new ground. As described below, it essentially calls for an operational model that humanitarian and development agencies had already largely adopted. Second, the two-year drafting process established by the New York Declaration permitted programmatic reforms to be included in the GCR that go beyond the CRRF.

This was accomplished through UNHCR's decision to include both the existing CRRF and a new Programme of Action in the GCR. As the GCR

process has moved forward, UNHCR has focused nearly all of its attention on the Programme of Action. The text of the draft sets out the GCR's four major goals.⁷ These are: (1) to ease pressures on host countries; (2) to enhance refugee self-reliance; (3) to expand access to third country solutions; and (4) to support conditions in countries of origin for return in safety and dignity.

The GCR is not legally binding (para. 4) and is divided into four parts. These are: (1) Introduction and Guiding Principles (pp.1–9), (2) Comprehensive Refugee Protection Framework (pp.10), (3) Programme of Action (pp.11–100) and (4) Follow-up-and-Review (pp.101–107).

The GCR is also unique in the sense that it is meant to garner more investment from host and donor governments, as well as the private sector, and to encourage a more development-oriented approach from the onset of any new refugee crisis, as opposed to shorter-term humanitarian responses. The GCR aims to bring together a broader range of stakeholders to assist refugees: States and international aid organizations, as well as international and local civil society groups, development actors, the private sector, and for the first time, financial institutions.⁸ The GCR also outlines how host countries can now “mobilize financial, material, and technical assistance” through a new Support Platform at the onset of a new crisis, to ensure cooperation between donors and host countries takes place

at a quicker pace. This platform is to be activated or deactivated by UNHCR, with the support of donor and host States.

As a State stakeholder, India's commitment to refugee protection under the GCR is evident in its active participation in the GCR consultations, where it has emphasized the need for a clear mechanism for the refugee response regime.

The Comprehensive Refugee Response Framework (CRRF)

The CRRF is incorporated into Part II of the GCR. According to UNHCR, there is no need to repeat the language of the CRRF, because UN Member States agreed to it when they adopted the New York Declaration. This decision by UNHCR essentially takes revision of the CRRF off the table. The CRRF spells out four main areas of focus, which overlap with the overall goals of the GCR.

The first is policies and practices for refugee reception and admission, including measures for identifying persons in need of international protection as refugees, and for recognizing and meeting their immediate needs. The second is support for immediate and ongoing needs, with resources to be provided in a prompt and predictable manner and at an adequate level to meet the needs of refugees and hosting communities, supported by joint planning of humanitarian and development actors. The third area of focus is support for host countries

and communities and incorporation of the CRRF into national development planning, with additional financing, and without prejudice, to official development assistance. Finally, the CRRF focuses on the promotion of durable solutions, including complementary pathways for admission and local solutions, such as legal stay arrangements and efforts to foster refugee self-reliance.⁹

The Programme of Action

The Programme of Action is set out in Part III of the GCR. It is divided into two main sub-parts. Part A of the Programme of Action addresses “mechanisms to achieve more equitable and predictable burden- and responsibility-sharing”. For many years, a central challenge facing the international refugee regime has been the lack of a well-structured system for responsibility-sharing among States. The result is that the vast majority of refugees reside in countries in the Global South, with few opportunities to move beyond countries of first asylum. The failure of other nations to share the responsibility has resulted in some countries, especially in Asia and Africa, having high refugee populations. As the drafting of the GCR has proceeded, UNHCR has put more emphasis on this aspect of it, which represents the major innovation of the GCR.

Part B sets out “specific areas requiring concrete and mutually reinforcing contributions to be made in support

of host States, and countries of origin where appropriate, by other States and relevant stakeholders”.

The Programme of Action includes several new elements, not specifically referenced in the CRRF. These new elements further the goals of the New York Declaration, support the development and implementation of a comprehensive response to refugee situations, and address a number of important related issues. This is appropriate given that both the New York Declaration and the GCR cover the entire scope of refugee response, from reception to solutions. These new elements include: (1) recommendations for group-based recognition of refugee status in large-scale movements; (2) establishment of an asylum capacity support group; (3) delivery of assistance through local and national service providers where possible (instead of establishing parallel systems for refugees from which host communities do not benefit over time); (4) negotiation of preferential trade arrangements and access to global supply chains; (5) promotion of internet connectivity and access to new technologies; (6) preference for alternatives to refugee camps; and (7) support for renewable energy and sustainable development for refugee hosting States.

In addition, the Programme of Action contributes significantly to developing two key areas of refugee protection that are critical to meeting the current challenges facing the international refugee regime.¹⁰ These are: (1) equitable and predictable

responsibility-sharing among States, and (2) broadening the scope of international protection. The Programme of Action set out in the GCR proposes several new structures for international cooperation. The first is the convening of global refugee summits at which participating States would pledge financial, material and technical assistance, resettlement places and other pathways for admission, and, where appropriate, support for countries of origin working toward voluntary repatriation arrangements.¹¹

The second innovation is the creation of a Global Support Platform, which would be *activated* for specific refugee situations and whose membership would vary depending on the context. The Platform would be “dedicated actively to providing and mobilizing more equitable and predictable burden- and responsibility-sharing through concrete financial, material and other contributions”, to assist in the search for solutions, and to support development of country or regional compacts.¹²

For countries in Africa and for India, the plan of action could prove to be significant but the obstacles they may face are lack of resources and poor infrastructure. If the GCR is to be effectively implemented, there has to be burden-sharing and extensive support from developed countries.

Third, the Global Support Platform could organize solidarity conferences whose goal would be to broaden the number of States and other organizations participating in the

Platform. AALCO, as a multilateral platform for Asian and African nations, has been organizing conferences to discuss the issues of refugees, migrants, and human rights. The organization can use the opportunity to a great extent to organize conferences on the GCR to expand the model in Asia and Africa and create a global impact.

The GCR also recognizes the responsibility-sharing role of non-state actors.¹³ For example, the enhanced role of development actors is recognized throughout the GCR as vital to improving responsibility-sharing and effective implementation of comprehensive response plans. It is important to note, development actors are called upon to provide support to refugees and hosting communities over and above regular development programming.¹⁴

States would also commit to examining opportunities for private sector investment that can benefit

hosting communities and support job creation.⁴ Specifically, States and other stakeholders, such as international financial institutions, could assist in searching out investments that are commercially viable and supporting “de-risking” arrangements for such investments.

Refugee-hosting States have regularly called for a greater appreciation of the burdens they assume in welcoming and sustaining refugees within their borders, and they have sought quantification of their efforts in a way that is comparable to the financial support offered by donor States. The GCR responds to this concern by requesting UNHCR to work with international and local partners to measure the cost and impact of hosting refugees “with a view to assessing gaps in international cooperation and to promoting burden-and responsibility-sharing that is more equitable, predictable and sustainable”.

IMPLICATIONS FOR INTERNATIONAL LAW

Taken together, these measures could move the international system of refugee protection and assistance forward in a significant way. For the first time since the adoption of the 1951 Refugee Convention, international structures may be established to bring States together on a regular basis with the express goal of enhancing international responsibility-

sharing. It is equally important to recognize that comprehensive refugee responses and solutions to protracted situations cannot be accomplished through the work of humanitarian organizations alone; the new role of development actors in displacement may act as a game-changer. While the GCR does not add a new set of

rights to the plethora of rights already envisaged in the covered agreements described in Section II of the CRRF and included in the GCR, it provides a set of guidelines intended to ensure effective and equitable implementation of international law. Although there are only a few direct references to international human rights law in the GCR, its language reflects a human rights perspective. This becomes visible through references to safety and dignity (paras. 7 and 87), non-discrimination (paras. 9, 13, and 84) and “age, gender and diversity considerations” (para. 13) that permeate the text (paras. 59 and 72). Thus, although the GCR lacks an explicit anchoring in international (human rights) law, its language is “human rights compatible”. However, it can also be argued that it could have been framed more explicitly from a human rights perspective. Indeed,

many areas in need of support (Part B of the Programme of Action), such as safety and security, education, health, food security, and nutrition overlap with human rights norms. The text could have included relevant international standards, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the General Comments of the Human Rights Committee, and Committee on Economic, Social and Cultural Rights. Given India’s commitment to these covenants and committees, additional human rights language in the GCR might not have faced resistance. Likewise, the GCR could have referred to the relevant provisions in Articles 3–34 of the Refugee Convention, which outline socio-economic rights of refugees.

INFLUENCE ON STATE PRACTICE REGARDING RESPONSIBILITY SHARING

For States which have already been willing to share the burden of others for hosting or supporting large numbers of refugees, the Compact – specifically the measures proposed under “Mechanisms for burden- and responsibility sharing” – provide an excellent blueprint based on which forums and tools can be used to achieve equitable burden sharing. Indeed, the GCR recognizes “the primary responsibility and sovereignty of States” (para. 33)

and will be operationalized through voluntary contributions which “will be determined by each State and relevant stakeholder, taking into account their national realities, capacities and levels of development, and respecting national policies and priorities” (para. 4). Likewise, Part B of the Programme of Action (areas in need of support) is “not exhaustive or prescriptive” and “not intended to create additional burdens or impositions on host countries” (para.

50). It is somewhat disappointing that existing international legal obligations of States and (where applicable) relevant stakeholders towards refugees are not mentioned, giving the impression that they are irrelevant. The GCR thus seems to emphasize that it does not create new legally binding obligations for States, rather it recalls that such obligations already exist.

There are three elements in the GCR which are particularly praiseworthy: First, solidarity conferences, as ad-hoc burden sharing settings can allow States to carry out case-by-case negotiations leaving room for situations to be adapted to,¹⁶ which can increase

the prospect of a fruitful negotiation culminating in fair burden sharing. Second, the proposed review function of the Global Refugee Forums can indeed encourage States to fulfill their pledges. Third, the GCR envisages use of relatively new and creative forms of responsibility-sharing, such as changing national asylum policies to refugee-friendly ones, offering scholarships for refugees, and implementing private sponsorship programs. For instance, Canada's private sponsorship program,¹⁷ which has enabled Canadian citizens to provide financial, material, and personal support to resettle refugees successfully since 1978 has been incorporated into the GCR.

EVALUATING THE EFFECTIVENESS OF THE GCR

The effectiveness of the GCR can be analyzed by considering the various avatars it may morph into. First, it could lead to the adoption of a binding instrument of burden sharing, or lead to the adoption of commonly agreed principles on how to achieve equitable burden sharing in the form of soft law. Several authors, including UN Secretary General Antonio Guterres,¹⁸ Volker Türk and Madeline Garlick,¹⁹ and Guy Goodwin-Gill²⁰ acknowledge that this normative gap should ideally be addressed under a new treaty or an additional protocol to the 1951 Refugee Convention. The most obvious advantage of regulating how burden-

and responsibility-sharing should be materialized in a new treaty or a protocol is that it would create clear legal obligations that are enforceable. Yet, the main obstacle behind the adoption of such an instrument is the fact that, today, very few States²¹ are willing to be bound by clear pre-determined criteria for the distribution of responsibility. Thus, as noted by Guy Goodwin-Gill, adoption of a new convention or protocol on burden sharing seems unlikely in the near future.²²

The second possibility for addressing this gap is through soft law. The biggest disadvantage of remedying the gap

with soft law is that the recommended guidelines or agreed principles on responsibility sharing would be non-binding and States usually cannot be held accountable for their unfulfilled pledges. Soft law is never a substitute for multi-lateral treaties but can fill gaps in cases where the specificities render consent hard to come by²³. However, in order to do so, it needs to provide clear and solid measures on how to distribute burdens and responsibilities equitably among States while also providing a clear coordination mechanism. However, as noted by some scholars, the GCR thus far has not succeeded in introducing any clear mechanism or concrete measures to ensure adequate compensation to the States hosting or supporting large numbers of refugees.²⁴

In March 2018, Turkey attempted to provide such concrete steps, and proposed the inclusion of a template as an annex to the GCR for theoretically guiding or assisting States on what to do during the outbreak of a crisis.²⁵ UNHCR can provide different models in the Annex to the GCR on how to distribute the burdens during times of large-scale influx. UNHCR can carefully review these proposals, add its own expertise to come up with a range of concrete and practical actions for

predictable sharing of burdens. This is where UNHCR can be creative; it can propose distribution keys based on the size of a State, GDP, population; establish certain resettlement quotas; or determine a minimum amount of financial support to be provided by each State in a particular emergency. Consequently, when a Global Refugee Forum or a solidarity conference is convened, States may choose from one of the methods recommended in the Annex of the GCR and proceed with the distribution of burdens accordingly. This can save time and truly facilitate adoption of comprehensive responses to large-scale movements of refugees and other complex situations.

AALCO, which has served as coordination mechanism before, for example during UNCLOS negotiations, can serve as a forum for efforts made towards the implementation of the GCR in Asian and African countries. It can facilitate confidence building measures, regular burden sharing negotiations and work with countries to set optimal quotas. Using AALCO as a coordination forum would enable Asian and African nations which bear the brunt of the refugee crisis, have their voice heard while contributing to the resolution of each other's challenges.

CONCLUSION AND RECOMMENDATIONS

The GCR is the recent and a more rejuvenated effort by the international

community to fill the gaps in the 1951 Convention and its 1967 Protocol. The

GCR provides some very concrete measures to achieve its aims, such as providing better solutions to protracted refugee situations, providing better life to refugees in general, and burden sharing—uniquely through the medium of soft law.

Many scholars and practitioners of international law today are contemplating whether international law has reached the limits of its ability to coordinate State action to address truly global problems.⁶ However, while States have failed to come up with formal, binding legal rules on issues ranging from climate change to financial regulations, they have been actively creating non-binding soft laws that address the same problems. We are living in an age in which soft law—non-binding rules that have legal consequences—is assuming an increasingly important place in international governance. Soft law is optimal in an increasing number of situations where States

face uncertainty, characterized predominantly by common interests.

This is most relevant in the refugee law regime. The rule stands that every sovereign State has the right to grant or deny asylum; and past experiences have demonstrated how States have held on to that right, sometimes in spite of the fundamental principle of non-refoulement. Therefore, it can be said that the GCR as an instrument fostering further cooperation between States, holds more potential than any other instrument before it.

This is an opportune time for India to reassess the need for a national asylum policy which is compliant with the principles laid down in the GCR. This will not only reestablish India's place as a democratic regional power committed to core humanitarian principles but will also provide refugees with the chance to give back to the country that has adopted them.⁷

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ENHANCING INDIA'S INTERNATIONAL CONTRIBUTION TO REFUGEES THROUGH THE GCR

CONSTANTINO XAVIER* AND AASAVRI RAI°

ABSTRACT

India has been criticised in recent years for shying away from her international obligations towards asylum seekers and refugees. India's adoption of the Global Compact on Refugees in 2018 was hailed as a welcome step by the global community since this was seen as an opportunity where the country would embrace some of her obligations regarding asylum. Due to the present narrative around India's non-adherence with the non-*refoulement* obligations, India's long past of welcoming asylum seekers and providing aid to refugee crises across the globe is often forgotten. This paper highlights the contributions that the nation has made to refugee crises in terms of humanitarian assistance and capacity building. The scope of the paper does not extend to analysing India's non-*refoulement* obligations and asylum granted to various groups across the years. The paper is a study of the efforts undertaken by India in easing the hardships of refugee and host communities across the globe. By primarily focusing on annual reports from the Ministry of External Affairs from 1947 to the present, and supplementing the same with press releases and news reports, this paper presents a geographical analysis of the contributions India has made since independence.

The relevance of this documentation becomes even more pertinent after the adoption of the Global Compact on Refugees last year. One of the priority areas for the Compact is burden- and responsibility-sharing. This paper emphasises the proactive measures that India has made by providing aid and assistance to refugees across the globe and easing the burden on host countries. It identifies the support India has extended to refugees from Palestine, Syria, Afghanistan, Bangladesh and Rwanda and internally displaced persons from Sri Lanka. The paper also outlines the capacity building initiatives undertaken by India in host countries in terms of conducting training sessions and constructing infrastructure as required.

INTRODUCTION

This article examines how the Global Compact on Refugees (GCR) offers

India an opportunity to enhance its ambition as a leading power and signal

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its commitment to multilateralism under the United Nations framework. An examination of India's rich historical experience of offering refugee assistance since 1947 reflects a forgotten history of significant contributions at the regional and global levels, whether in Palestine, Afghanistan or Sri Lanka. While India is not a signatory to the Convention Relating to the Status of Refugees (1951) and a reluctant actor in the prevailing refugee regime, the GCR allows India to move away from a traditionally defensive position as a *recipient or passive object* of assistance or international pressures. Instead, the GCR offers India avenues to build on its past role as a *provider* and become a more *active subject* in shaping stabilisation and developmental support mechanisms in other countries.

India's lack of specific institutions or laws to deal with refugees should not be confused with a blank hostility or absence of policies to manage and assist displaced people. In fact, the Indian government's principled approach has always been to pursue an open-doors policy, by default granting asylum to persecuted people. This includes the Uyghurs who escaped East Turkestan in 1949, the Tibetans from China after 1959, the Tamils from Sri Lanka since the 1980s, or the Afghans since the 1990s—among many other displaced people who still see India as a safe haven from conflict and discrimination. In 2005, the Ministry of External Affairs thus defined

refugee inflows as a constitutive element of India's identity as a secular and diverse democracy:

The internal pluralism of India has always been matched by its external receptivity. Over the ages, we have welcomed travellers, trade, ideas, faiths and refugees—all with open arms. The eclecticism that they have spawned has been our defining characteristic. We have always valued our interaction with the world and were clearly poorer without them[.]¹

Despite this approach, India did not play an enthusiastic role in shaping the GCR. The official statement in response to the final draft, in July 2018, betrays India's many concerns, including that, from their perspective, the GCR should be “legally non-binding and apolitical and non-prescriptive” in nature, that the GCR's scope should be limited to address “large scale and protracted situations of refugees”, that there must be an exclusion of internally displaced people in the framework, and also that the GCR should be considered as fundamentally different from existing [non-universal] international refugee instruments.²

Beyond reiterating such concerns, however, India ended up welcoming the finalised GCR a few months later as providing “an opportunity to change the ‘business as usual’ approach”.³ Its supportive stance is mainly due to the GCR's adherence to two of India's long-held demands about any international refugee response mechanism.

First, the GCR satisfies India's traditional preference for a multilateral and universal approach. It respects all of India's demands: the GCR is anchored in the United Nations system; it is based on the UNHCR's "core mandate" of its "impartial, transparent and objective role"; it is driven by Member States; and adherence to the Compact is voluntary.⁴ Seeking to "trigger and activate mechanisms that are faster, more equitable, more predictable, and more comprehensive", the GCR can thus play the classic role of an institution to reduce transaction costs and decrease redundancy by offering a coordination platform that may spill over into cooperation.

Second, the GCR addressed India's repeated demands for the international refugee regime to be more than an emergency response mechanism. In 2004, for example, India had asked the UNHCR to recognize the "link between humanitarian assistance and long-term development as a key input for preventive strategies for refugee protection". India articulated issues of particular concern to developing countries which host the bulk of refugees today, including the needs to address the phenomenon of massive and mixed refugee flows, and international

burden sharing and responsibility.⁵

The GCR does this by encompassing a variety of new dimensions, including early warning, preparedness, safety and security, documentation, education, health, employment, gender, energy, nutrition, statelessness, repatriation, resettlement, and integration. By satisfying these two principles that traditionally guided India's approach to refugees, the GCR offers an opportunity for India to be a more proactive player by also supporting other countries, especially in its regional neighbourhood. To do so, it is important to first recognise India's past experience, contributions and own approach to refugee crises in South Asia and around the world.

This paper traces the contributions made by India to refugee crises around the world, from 1947 to the present, and is organised in two sections. The first section reviews the country's support in four forms: cash-based, in-kind, medical, and capacity building assistance. Based on this past and the current context, the second section then forwards specific examples of how the GCR can enhance India's present and future contributions to the global refugee regime in South Asia and beyond.

HELPING REBUILD LIFE: CASH-BASED ASSISTANCE

Right from the 1950s, India has made significant contributions to the United

Nations Relief and Works Agency for Palestine Refugees in the Near East

(UNRWA), which was established in 1949, in the wake of the Arab-Israel conflict. The Agency provides relief programmes specifically to the Palestinian refugees and almost the entirety of UNRWA's budget is funded by the voluntary contributions of Member States.⁶ Indian contributions commenced from an annual amount of 100,000 INR, in addition to the donations made in kind, at a time when the country was still building the economy in the aftermath of partition and decades of colonial rule.⁷ Over the years, India continued increasing her support and by the early 2000s, India's contributions amounted annually to 20,000 USD.⁸ The aid continued and India pumped in additional amounts for providing household items, shelter and other assistance to the Palestinian refugees, as requested by UNRWA.⁹

To commemorate the 60th anniversary of the Agency, India announced a marked

increase in the annual contribution to the Agency, taking the amount to an unprecedented 1 million USD, in addition to one million USD as special assistance.¹⁰ Six years later, the annual contribution was again increased to 1.5 million USD.¹¹ In 2018, India stepped up once more and responded to the massive cash-crunch that UNRWA faced in the wake to the United States' decision to withdraw the aid being provided to Palestine India's support increased to 5 million dollars.¹²

While India made significant contributions to Palestinian refugees, her cash-based assistance programmes are not merely limited to Palestine; the country has been proactive in extending support to the sub-continent as well. For example, to maintain good bilateral relations with Afghanistan, in the late 1980s and early 1990s, India pledged over three-hundred million INR for the relief and rehabilitation of Afghan refugees.¹³

SUPPORTING LIFE WITH DIGNITY: IN-KIND SUPPORT

The assistance provided by India to refugees across the globe extends beyond cash-based assistance. In the 1950s and 1960s, India maintained a sustained supply of goods for the relief of Palestinian refugees through UNRWA. Instances include the government's donations of cloth for the refugee

Palestinian Arab school children residing in Jordan in the 1950s,¹⁴ and the 1970 goodwill delegation to Lebanon carrying relief material for the refugees from Southern Lebanon.¹⁵ Further, to sustain the efforts made by Botswana and Zambia towards the relief and rehabilitation of South African refugee

students, the Indian government made contributions by providing blankets and medicines to the two countries in 1977.¹⁶ In 1989, India sent relief supplies worth over 1.3 crore INR for the rehabilitation of Afghan refugees.¹⁷

In 1994, to assist the Rwandese refugees in Tanzania, India sent relief material in the form of medicines, biscuits, and milk powder.¹⁸ Similar efforts have continued through the decades with India contributing 800 metric tons of fortified biscuits for refugees from Iraq, seeking asylum

in Syria,¹⁹ and pledging support for providing food and assistance to Syrian refugees in Jordan.²⁰

India has remained committed to support the rehabilitation processes in the neighbourhood and to facilitate the reconstruction in northern Sri Lanka, India provided family packages which were distributed amongst the beneficiaries by UNHCR and the Red Cross.²¹ These packages, amounting to a total of 500 crore INR, assisted nearly 3 lakh internally displaced persons by providing them with food, clothing, utensils, and hygiene kits.²²

HEALING TOGETHER: MEDICAL ASSISTANCE

India has been sensitive to the significant medical needs of people forced to leave their homes and has tried to alleviate some of the suffering by contributing to the healthcare of the refugees. Indian efforts extended beyond aid packages and cash-based assistance for the Palestinian refugees and between the 1950s and 1990s, India sent multiple medical missions to Jordan, fully equipped to provide key medical support to the displaced Palestinian population.²³ Assistance and supply of medicines continued in the later decades as well, with donations amounting to nearly 450

thousand USD.²⁴ In 2015, India also announced a project to commence the construction of a multi-specialty hospital for Palestinians in Bethlehem.²⁵

Similar initiatives have also been undertaken in the subcontinent with India donating medical equipment and essential items for the treatment of Afghan refugees in the 1990s.²⁶ Further, in 2009, India set up an emergency field hospital in Sri Lanka and supplied medicines and medical equipment benefitting over 50,000 persons who were internally displaced due to the armed conflict.²⁷

STRENGTHENING THE COMMUNITY: CAPACITY BUILDING

While emergency assistance and medical aid is required for immediate relief of the displaced people, it is also imperative to strengthen the resilience of the displaced population and host community through long-term capacity building measures—a priority clearly articulated in the GCR.

To assist in capacity building measures for Palestinians, the Indian government trained para-medical staff from Gaza and Jericho and fostered economic reconstruction efforts by setting up a computer centre to train young people in Information and Communication Technology (ICT) skills in order to combat unemployment among the Palestinian youth.²⁸ Pledges were regularly made for reconstruction projects in Palestinian-administered areas of the West Bank and Gaza,²⁹ and in 2012, India financed schools in Shuhada and Tamoon villages in Palestine, providing vocational training and enhancing the information and communication network.³⁰

India has been responsive to the needs of host countries, setting a

commendable example of international ‘burden-sharing’. In 2007, India contributed USD 600,000 for the reconstruction of the telecommunication network in Lebanon.³¹ This pledge was renewed in 2008 when India committed to contribute the same amount again for ongoing activities at the Nahr el-Berad refugee camp for Palestinians.³²

Responding to the need to rebuild war-torn Northern Sri Lanka, in 2009, India supplied 7,800 tonnes of construction and roofing material. India also helped revive agriculture as a means of livelihood for the internally displaced Sri Lankan population by sending personnel for the demining of agricultural fields, providing starter kits, as well as equipment, high quality seeds and tractors. India also sanctioned a loan of USD 8 million to help Sri Lanka rebuild her railway and telecom network, in addition to undertaking other developmental projects like the construction of KKS Harbour, Palaly airport, a coal-fired thermal plant in Sampur, a cultural centre in Jaffna, a hospital in Dikoya, and setting up of vocational training centres.³³

NO PLACE LIKE HOME: SUPPORTING THE RIGHT TO RETURN

The Indian government has been of the firm view that no individual should

have to be forcibly displaced because of religious beliefs and ideologies.

Moreover, India has a record of supporting the right to return—a principle that guarantees a person’s right to voluntarily return to their country of origin or citizenship. The government, for instance, has continued supporting the rights of the Palestinian refugees wishing to return to their homeland.³⁴

As in the case of Palestinian refugees, the Indian government supported the return of Algerian refugees wishing to return to their homeland. In 1962, to support the relief and rehabilitation of Algerian refugees returning from Tunisia and Morocco, India had contributed in-kind by sending tents and medicines.³⁵

India has, through the years, continued its commitment to the cause of a free Afghanistan where stability is restored, economic conditions are enhanced, democratic institutions are strengthened, civilian protection is enhanced, and threat of terror from the

Taliban is curbed. Progress towards these goals has been recognised by India when she lauded the return of over four million refugees by 2007 and made heavy investments in Afghanistan, in addition to committing an amount of USD 750 million for reconstruction projects in the country.³⁶

After 1971, the Indian government also made consistent efforts to revive the war-torn territory of Bangladesh after the Liberation War and provided relief and rehabilitation facilities for the return of Bangladeshi refugees. India provided monetary assistance to the Government of Bangladesh for providing cash doles to the refugees and for the purchase of urgent commodities. In addition to this monetary assistance, a loan was provided for rebuilding their railway network.³⁷ As discussed earlier, India has also helped facilitate the return of Sri Lankan refugees through various aid programmes.

ENHANCING INDIA’S INTERNATIONAL CONTRIBUTION THROUGH THE GCR

India has been at the forefront of many missions to support refugee populations in Africa, the Middle East or South Asia. Whether through cash support, various types of emergency relief, or capacity building programs, India’s international support has been extraordinary since 1947, especially given its own economic limitations. Far from being a free-rider or isolationist power who refuses

international cooperation, India has proactively contributed through a variety of multilateral and bilateral channels to mitigate refugee crises worldwide.

While focused on India’s approach to refugee crises *abroad*, the examples above also allow us to infer India’s *domestic* approach to displaced people, within its own borders. In 2012,

the UNHCR Antonio Guterres thus “expressed his high appreciation for India’s age-old tradition of tolerance and understanding which manifested itself in its current policy of protecting and assisting refugees”.³⁸

Based on this historical experience reviewed above, India can become a global leader in realising the GCR’s potential by focusing on two dimensions. The first way for India to increase its international standing and share best practices more effectively would be by formalising its own approach to refugees, adopting the required domestic institutions and regulations that enshrine asylum and refugee rights in national laws. This is what the GCR refers to as “national arrangements”,³⁹ which are manifestly lacking in India. There is an urgent need for a formal Indian monitoring and governance approach to refugees. To support the development of such a system, the Indian government must incentivise academic and policy-oriented research of Indian history and practices, both domestically and internationally, in dealing with refugee populations. The field of refugee studies has stagnated in recent years in India and requires urgent revitalisation, and the GCR’s proposal for a “global academic network” could be helpful in this light.

Second, India can make use of the GCR to address refugee crises in other countries, in addition to its own territory. India’s historical contribution worldwide,

as also reflected in this article, should serve as a strong foundation for her to not just continue her legacy of hosting and helping those approaching the nation, but also actively contributing to other crises worldwide. Together with Bangladesh or Southeast Asian countries, for example, India could create a regional “support platform” under the GCR,⁴⁰ rather than operating in isolation to address the Rohingya refugee crisis. India could also engage the GCR to facilitate “exchange of good practices among regional and sub-regional mechanisms”,⁴¹ to exchange best practices and coordinate approaches to refugee flows in the South Asian or Bay of Bengal region, including through Bangladesh-Bhutan-India-Nepal (BBIN) initiative or Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

The GCR also shifts the broader debate about refugees from crisis management to long-term, sustainable development: as a lower middle-income country, India could, for example engage with the World Bank and other international financial institutions in order to attract significant grants, credits, and other economic assistance to spur developmental and inclusive growth in its states hosting significant refugee populations.⁴² India can also use the Global Refugee Forum, initiated in 2019, to take initiative, make pledges and contributions to signal its commitment as a leading regional and global power in humanitarian and developmental issues.⁴³

CONCLUSION

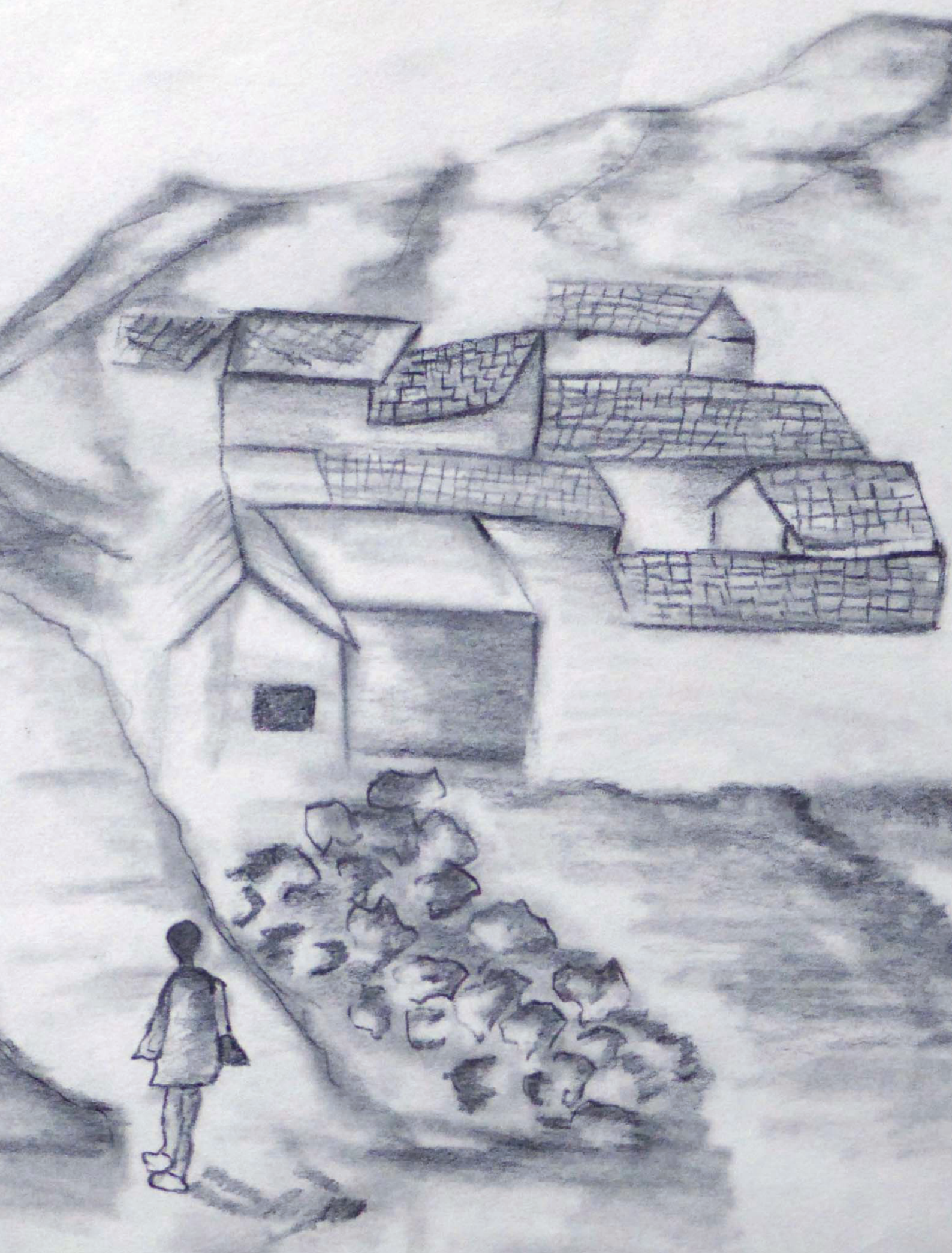
The world has much to learn from India on how to ensure the safety, health, and wealth of refugees. In 2015, for example, at the 5th High Level Bilateral Consultations between India and UNHCR, the High Representative “specifically appreciated India’s effective handling of refugees and termed India’s refugee protection measures including that for urban refugees as a role model for other

countries to follow”.⁴⁴ In 2013, Antonio Guterres had even referred to India’s refugee policy as “an example for the rest of the world to follow”.⁴⁵ In the end, however, whether with UNHCR or any of the GCR partners, willingness to continuously engage in an international dialogue on refugees will depend on an open and constructive approach that sees Indian policies as part of the solution, rather than the problem.

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ARTIST: KHALIDA
Afghan Refugee

Khalida

**THE GLOBAL COMPACT ON REFUGEES AND INDIA:
LEGAL PERSPECTIVES**

THE GLOBAL COMPACT ON REFUGEES AND INDIA

REINFORCING THE STATUS QUO

SRINIVAS BURRA*

ABSTRACT

The Global Compact on Refugees elaborately focuses on various issues that are significant for the protection of refugees. However, a critical evaluation of its nature and the obligations that emanate from it is necessary to assess its likely impact on the ground. The GCR was adopted with the large-scale support of States which is contrary to the reality of rejection of refugees. This points to the fact that the GCR is non-binding and ambiguous in its nature and obligations. In the Indian context, access to protection remains an important task in the absence of clear legal and policy frameworks. The multi-stakeholder approach may also pose challenges in the present context of India, as issues of citizenship and refugee protection are getting intermingled on religious lines. For India, which has no treaty obligations and no clear legislative framework on refugees, the GCR does not seem to alter the status quo.

INTRODUCTION

The adoption of the Global Compact on Refugees (GCR)¹ on 17 December 2018 is an important achievement for States and other international actors who are involved in the refugee-related activities. It is equally important for refugees and asylum seekers who are arguably the direct beneficiaries of this Compact. The GCR is not legally binding on States, and it is intended to address State parties and non-party States to international refugee law instruments. However, its impact on refugees and asylum seekers depends on how States incorporate the various elements of the GCR into their legal and policy framework at the domestic level.

India has an atypical position concerning refugee protection issues. First, it is not a party to the 1951 Refugee Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Second, it is not part of any regional arrangement on refugees as no such regional mechanism exists. Third, India also does not have national legislation on refugee matters. However, India is a member of the United Nations High Commissioner for Refugees (UNHCR) Executive Committee (ExCom) since 1995. It also has a record of hosting a large number of refugees.

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Against this backdrop, it would be intriguing to examine the potential impact of the GCR on India. This article is intended to deal with the general structure of the GCR and its implications for the Indian context. It is divided into four parts. Part one provides an introduction. Part two deals

with the structure of the GCR, and the ambiguity and contradictions of its obligations. Part three focuses on India and the GCR, examining how relevant its commitments are to the country given India's refugee-hosting history and recent events. Part four provides conclusion.

NATURE OF THE GCR

The GCR quite elaborately deals with various issues that are central to the protection of refugees and asylum seekers. The GCR is, therefore, metaphorically compared with a menu of wonderful courses offered in a special function dining hall which will be available only if large number of people arrives.² However, a critical evaluation of the GCR's obligations and their implications are necessary to assess its likely impact on the ground.

Acceptance of the GCR and rejection of refugees

The GCR was adopted with the support of an overwhelming number of UN Member States.³ While the Compact was being discussed and adopted, the global movement of refugees was receiving increasing—and often negative—levels of attention around the world. Countries were increasingly closing their borders while refugee flows grew in scale.⁴ Looking at the lacklustre global response

to the refugee situation, particularly from the Global North, it is perplexing to see how the GCR could receive such a large-scale consensus. The general support that the GCR continues to receive makes it clear that a common minimum standard that is acceptable to a large number of States has become part of the Compact. At least two important features come out of this general acceptance by States. First, the GCR is not legally binding on States. Even though it is "grounded in the international refugee protection regime, centred on the cardinal principle of non-refoulement and at the core of which is the 1951 Convention and its 1967 Protocol"⁵, it does not have any binding effect on States. Second, its emphasis on the "multi-stakeholder" and "partnership" approach makes States, along with other entities, partners in refugee protection, which replaces the rights-based approach with a charity-based framework. As BS Chimni rightly points out, it is "not surprising that the right to seek asylum finds a place only

in footnote 5”.⁶ Therefore, despite the general reluctance on refugee protection among many States, the GCR receives approval from them.

Ambiguity on the nature of obligations

Another important feature of the GCR is that it wavers between reaffirming the existing legal framework and its non-binding nature. Similarly, it also wavers between underlining the GCR's non-political nature and its dependence on the political will of States. These vacillating and contradictory assertions on its nature come out clearly, as it says in one part that the "global Compact is not legally binding".⁷ However, in another part, it asserts that the GCR "is grounded in the international refugee protection regime, centred on the cardinal principle of non-refoulement, and at the core of which is the 1951 Convention and its 1967 Protocol".⁸ Similarly, it asserts that it is entirely non-political in nature, including in its implementation, and is in line with the purposes and principles of the Charter of the United Nations".⁹ This non-political nature of the GCR is contradicted when the Compact later states that it "represents the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries".¹⁰ The GCR also intends to achieve its objectives through the mobilisation of political will.¹¹ The GCR, like every other internationally adopted instrument, is a carefully negotiated document,

a product of varied concessions and compromises between negotiating States.

Private sector participation

One of the important features of the GCR is that it talks about burden and responsibility sharing. Thus, arguably, with a view to expanding the scope of refugee protection, the GCR visualises the possibility of involving different stakeholders and partnerships with various entities. While dealing with funding and effective and efficient use of resources, the GCR aims at maximising private sector contributions. It talks about opportunities for private sector investment, infrastructure-strengthening and job creation. Emphasis on private sector investment in host countries or countries of origin stems from a one-sided view on the importance of the private investment. It emerges from a view that private investment always leads to growth and employment generation. Thus, it is argued that the "private sector can introduce initiatives to stimulate job creation and economic growth benefitting refugees and their hosts".¹² However, so far as the refugees are concerned, private investment has the potential negative role at least in two ways.

First, private investor activities have the potential to violate the human rights of people. These rights violations can take place in the form of, inter alia, the displacement of people through large-scale projects and mining, leading to

mixed movement of people—often many of those displaced may meet the legal definition of refugees. The UN Human Rights Council, while acknowledging that the “transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth,” also underlines that they can cause adverse impacts on human rights.¹³ For instance, allegations of violations of human rights by private business entities led to efforts to draft a treaty on business and human rights.¹⁴

Second, studies show that the refugee labour force is treated not in accordance with labour standards.¹⁵ Refugees are often paid less than the general minimum wages, ill-treated and even child refugees are engaged as labourers. There are also instances of refugees being denied employment by business entities for want of proper documentation.¹⁶ This requirement can be unfair in certain circumstances as refugees often cross borders without

proper documentation. The GCR fails to take note of these challenges involving private business entities. While seeking the support of private investors, the GCR could have sought to develop provisions for preventing the violation of refugee rights by such entities. By ignoring the potential negative impacts of private business entities and seeking their investment in host and origin countries, the GCR risks legitimising activities which have an adverse impact on refugees. While the GCR states that the “private sector is encouraged to advance standards for ethical conduct in refugee situations”,¹⁷ it does not underline the need for withholding business investments and activities in situations that contribute to conditions for the origin of refugees, like the situations overlapping with displacement of people through large-scale projects and mining. The GCR also fails to outline the imperative that private actors should treat refugees humanely and on par with others in the workplace, taking into consideration their special legal status.

INDIA AND THE GCR

The GCR is mainly structured in the form of general obligations towards all States irrespective of a State being a party to the 1951 Convention and 1967 Protocol. It makes a general observation that non-party States are encouraged to become

parties to international instruments. Nonetheless, asylum seekers who attempt to seek refuge in States which are not parties to the 1951 Convention or any other instrument, arguably confront a situation of limited protection

that is similar to what it was before the adoption of GCR. India is not a party to the 1951 Convention and 1967 Protocol. Going by the statements made by India during the consultations, it does seem to understand that no new obligations emanate from the GCR for itself.

Differential Responsibility of Non-Party States

In the context of India, it is important to analyse as to what difference the GCR makes to asylum seekers. During the first round of formal consultations on the GCR, India suggested that they “recognise the fact that a number of States not parties to the international refugee instruments have shown a generous approach to hosting refugees and that the commitments and obligations of those who are party to the Refugee Convention and its protocol and those who are not, differ”.¹⁸ India recommended including a paragraph in the GCR on the differential responsibility of non-State parties to the international refugee instruments. It stated that “the international obligations of States party to the international refugee instruments differ from those not party and the contributions expected of and made by Member States under the Compact would be consistent with their obligations under international law”.¹⁹ These suggestions reveal that India wants to make a distinction between State parties and non-party States to international instruments, particularly the 1951 Convention and 1967 Protocol, in relation to the obligation that would

arise from the GCR. India continues to claim that it is “a generous host to and not a source of refugees”, and renews its commitment for the protection of refugees and cooperation with the international community.²⁰ India's emphasis on the distinction between State parties and non-party States, and its claim to hosting refugees while not being a source to refugees, seems to underline that it voluntarily recognises the obligations, but will not be held accountable to them.

Access to protection

In the Indian context, one of the most important aspects of the refugee issues is access to protection. As it is not a party to the 1951 Convention and 1967 Protocol or any other legal instrument, there is a clear absence of any treaty obligation for India to provide access to refugee protection in the form of allowing their entry into its territory, recognising refugee status, providing humanitarian assistance, and supporting refugee self-reliance. Though it has the obligation to respect customary international law on the principle of non-refoulement, there is no national legislation codifying refugee status and protection. Despite this, India has a history of hosting mass influxes of refugees, including Tibetans, Sri Lankans and Afghans.²¹ Contrary to this there are also instances of India acting against the protection of asylum seekers, most recently in the case of Rohingya refugees from Myanmar. Rohingyas are from Myanmar

who have been violently displaced—yet, the Indian government arguably intends to consider them only as “illegal immigrants” and is seeking to deport them to Myanmar. The Indian judiciary's response has been mixed on refugee protection. In the recent past, in one case, it ordered the deportation of Rohingya refugees²² as well as ordering the prevention of deportation in another.²³

Such contrary actions are creating an ad hoc and uncertain protection environment. While Rohingyas and others are refused recognition as refugees, the protection of other refugee groups (for example, Tibetans and Sri Lankans) is undertaken by the government of India. In addition, there are yet other refugees and asylum seekers who are registered with the UNHCR.²⁴ In this legal and policy ambiguity around access to refugee protection in India, a new development like the GCR could be seen with hope—for better access to protection and assistance for refugees. However, the GCR disappoints in that respect. It does not provide any new avenues for better access to protection in general, and for specific cases like India. It does not specifically engage with the question of access to protection. It is rightly pointed out that access to protection is the first and most critical priority and ironically it is not even addressed in the GCR.²⁵ In the absence of any new obligations accruing on the issue of access to protection, GCR's relevance to India remains insignificant.

Multi-stakeholder approach and India

It is important to understand the implications of the multi-stakeholder approach of the GCR in the context of India, particularly in the background of recent developments at the legislative, executive and judicial levels. The GCR's multi-stakeholder approach seeks to involve multiple actors and entities like faith-based actors and other civil society organisations. It is important to involve these groups to create a sense of acceptance of refugees among the host communities. However, at the same time, one needs to be cautious about their involvement. Refugees flee their countries of origin or residence because of fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or a political opinion. When faith-based actors and civil society organisations are involved in the humanitarian activities, there would be a possibility of them acting in a discriminatory way which might result in the favorable treatment of some and neglecting the other or humanitarianism may have religious and other motives.²⁶ This can be contained through the well-established and transparent systems in place which should work under the supervision of the concerned State. If such systems are not in place, it is necessary to be wary of such involvement.

This is particularly important in the current situation in India. A particular narrative has been built around Muslim

Rohingya refugees in India based on their religion.²⁷ This situation is aggravated by the recent Citizenship Amendment Act of 2019, which extends Indian citizenship rights to people from minority religions in the neighbouring countries of Afghanistan, Bangladesh and Pakistan who entered into India on or before 31 December, 2014.²⁸ While this Act is not directly related to refugees in general, it favors people with particular religious identities from specific neighboring countries for granting citizenship. This law is clearly discriminatory and violative

of India's human rights obligations under international law, though it does not go directly against asylum seekers. However, these measures have the potential of bringing religious and other identities as discriminatory fault lines to the refugee framework. In such situations, the involvement of faith-based actors and civil society organisations might exacerbate polarisation against refugees of certain identities. This is particularly true in India now, as there is no clear legal and institutional mechanism dealing with refugees.

CONCLUSION

The growing plight of refugees and asylum seekers across the world has created the momentum for a global response, and the GCR is a testimony to it. However, the GCR does not alter the existing legal obligations of States, as it is not a binding instrument. The GCR's multi-stakeholder approach uncritically seeks the participation of various entities like the private sector and faith-based organisations. The GCR may not substantially change the position of refugees and asylum seekers so far as India is concerned. Not least because India makes a

distinction between States that are parties to international instruments and those that are not, in terms of obligations that arise from the GCR. In the Indian context, access to protection remains an important challenge in the absence of clear legal and policy frameworks. However, GCR does not seem to make any difference to the existing access to protection. The multi-stakeholder approach may also pose challenges in the present context of India, as issues of citizenship and refugee protection are getting intermingled on religious lines.

NOTES

1. Global Compact on Refugees, https://www.unhcr.org/gcr/GCR_English.pdf.
2. James C Hathaway, “The Global Cop-Out on Refugees”, *International Journal of Refugee Law*, 30, no. 4 (2018):591–604, at 592.
3. When the resolution was considered in the Third Committee of the UN General Assembly on 13 November 2018, the United States of America called for a vote. There were 176 votes in favour, one against (US), three abstentions (Eritrea, Liberia, and Libya), and 13 countries were absent.
4. Jane MacAdam observed that 2019 “was also the year that saw the ongoing but escalating exodus of Venezuelans, fleeing for a combination of economic, social, political, and humanitarian reasons. Algeria deported thousands of migrants to inhuman conditions, often without examining their legal status or individual circumstances. Over 700,000 Rohingya refugees who fled violence in Myanmar remained in precarious conditions in Bangladesh, in dire need of humanitarian assistance and durable protection. Hungary enacted unprecedented legislation allowing the imprisonment of anyone assisting undocumented migrants, refugees, or asylum seekers. ... [T]he United States separated more than 2,300 children from their parents as they sought to enter from Mexico. ... Meanwhile, Italy closed its ports to boats rescuing asylum seekers and migrants in the Mediterranean, while some refugees clocked up more than five years on Manus Island and Nauru, stuck in limbo as part of Australia’s offshore processing policy.” Jane McAdam, “The Global Compacts on Refugees and Migration: A New Era for International Protection?,” *International Journal of Refugee Law* 30, no. 4 (2018):571–574 at 571-572.
5. *Supra*, note 1, Para. 5.
6. B S Chimni, “Global Compact on Refugees: One Step Forward, Two Steps Back,” *International Journal of Refugee Law*, 30, no. 4 (2018): 630-634 at 631.
7. *Supra*, note 1, Para 4.
8. *Ibid.*, Para. 5.
9. *Ibid.*, Para. 5.
10. *Ibid.*, Para. 4.
11. *Ibid.*, Para. 7.
12. Volker Türk , “The Promise and Potential of the Global Compact on Refugees,” *International Journal of Refugee Law*, 30, no. 4 (2018):575–583 at 578.
13. ‘Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights’, Resolution adopted by the Human Rights Council, A/HRC/RES/26/9, 26 June 2014.
14. The Office of the UN High Commissioner for Human Rights (OHCHR), “Business and Human Rights” <https://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>.
15. Samentha Goethals et al., “Business Human Rights Responsibility for Refugees and Migrant Workers: Turning Policies into Practice in the Middle East”, *Business and Human Rights Journal*, 2, no. 2 (2017): 335–342 at 339-340
16. *Ibid.*, at 339-340.
17. *Supra*, note 1, Para. 42.
18. Statement by India made during the first round of formal consultations on the Global compact on refugees (Geneva, Switzerland,

- 13-14 February 2018) Agenda 1, <https://www.unhcr.org/en-in/events/conferences/5a86d1d67/statement-india-first-formal-consultation-agenda-item.html>
19. Statement by India made on during the fifth round of formal consultations on the Global compact on Refugees - Delivered by Dr. Sadre Alam, First Secretary (Geneva, Switzerland, 12-13 June 2018) Agenda 1-4, <https://www.unhcr.org/en-in/events/conferences/5b2ba4e27/statement-india-fifth-formal-consultation.html>.
 20. Statement by India made on during the fifth round of formal consultations on the Global compact on Refugees - Delivered by Dr. Sadre Alam, First Secretary (Geneva, Switzerland, 12-13 June 2018) Agenda 1-4, <https://www.unhcr.org/en-in/events/conferences/5b2ba4e27/statement-india-fifth-formal-consultation.html>.
 21. See, Rajeev Dhavan, "India Needs a Proper Refugee Law, Not a CAA Suffused With Discriminatory Intent", *The Wire*, published December 20, 2019 <https://thewire.in/law/india-needs-a-proper-refugee-law-not-a-cao-suffused-with-discriminatory-intent>
 22. Mohammad Salimullah v Union of India [WP (C) 793/2017]. See also, "India: 7 Rohingya Deported to Myanmar, Forced Returns Threaten Life, Liberty; Violate International Law," *Human Rights Watch*, published October 4, 2018, <https://www.hrw.org/news/2018/10/04/india-7-rohingya-deported-myanmar>
 23. Abdur Sukur and anr v The State of West Bengal and ors [W.P. 23644 (W) of 2019]. See also, Ashok Kini, "Calcutta HC Stays Deportation of Rohingya Couple to 'Uphold the Spirit of Humanity'," published December 25, 2019 <https://www.livelaw.in/top-stories/calcutta-hc-stays-deportation-of-rohingya-couple-151088>.
 24. UNHCR in India, https://unhcr.org/in/index.php?option=com_content&view=article&id=18&Itemid=103
 25. Hathaway, *Supra*, note 1, at 597.
 26. For a discussion, see, Ven. Pinnawala Sangasumana and Rajith W. D. Lakshman, "Humanitarian Interventions and the Suspicion Factor of Faith Based Organizations in Sri Lanka," *International Journal of Multidisciplinary Studies*, 1, no. 2, (2014): 55-65.
 27. A letter written by some Indian intellectuals counters this narrative. See, "Yes, We Are Rohingya Sympathisers", *The wire*, published November 26, 2018 <https://thewire.in/rights/open-letter-home-ministry-list-rohingya-sympathisers>
 28. The Citizenship Amendment Act, 2019, <http://egazette.nic.in/WriteIotnsAndDoNotHaveAnySignificantForTheProtectionOfRefugees/HoweReadData/2019/214646.pdf>

THE GLOBAL COMPACT ON REFUGEES:

INDIA'S STEPPING-STONE TO A NATIONAL ASYLUM SYSTEM

PALLAVI SAXENA* AND NAYANTARA RAJA°

ABSTRACT

South Asia is a confluence of different cultures, religions and ethnicities, and has historically provided shelter to refugees. It is home to nearly 2.6 million refugees of which over 200,000 reside in India. India has offered asylum to various persecuted communities over the years, such as the Jews, the Parsis, and even thousands of Polish refugees during World War II. In recent times, despite being at the heart of population movement, India is neither a signatory to the 1951 Refugee Convention, nor does it have a domestic asylum framework. Refugees are in fact governed by *ad hoc* administrative arrangements which are often arbitrary, discriminatory, and driven by geo-political interests. In spite of the legal vacuum for the refugee population living in India, they have been granted certain basic rights afforded to any person living in the territory of India, and in the past, India has remained committed to refugee protection principles. This commitment is also visible through India's acceptance of the Global Compact on Refugees which aims to usher in a new era of stronger and fairer response to large refugee movements and protracted refugee situations. One of the key aspects of the Compact is responsibility sharing, which is considered imperative in order to reduce the burden on the host country. For this reason, the Compact envisages a multi-stakeholder and partnership approach, thereby involving not just the traditional humanitarian actors but also institutions/networks that have not played any role in this field in the past.

Given this background, the authors presuppose a possibility that the Compact may be the key to improving refugee protection in India, as it brings with it an opportunity for India to create a national asylum system. This paper will aim to interpret the implications of the Compact towards India adopting a clearly defined asylum policy which will not only ensure a cohesive manner for responsibility sharing but will also allow home-grown solutions to address the refugee situation. While the authors acknowledge the possibilities, we also seek to critique the Compact within the Indian context. Thus, this paper will attempt to establish that the Compact can provide the requisite momentum to build a legal foundation for a system of refugee protection in India.

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INTRODUCTION

South Asia is a confluence of different cultures, religions and ethnicities, and has historically provided shelter to refugees, hosting nearly 2.6 million.¹ India, as the largest country in the region, has offered asylum to various persecuted communities over the years, such as Jews, Parsis, and even thousands of Polish refugees during World War II. Notably, despite being at the heart of population movement, India has neither become a signatory to the 1951 Refugee Convention, nor does it have a domestic asylum framework. Nevertheless, in spite of the legal vacuum, refugees here have been afforded certain basic rights granted to any person living in its territory, and in the past it has demonstrated commitment to refugee protection principles. However, in recent times, the ad hoc administrative arrangements by which refugees in India are governed have more and more become hostage to geo-political interests, and as a result, have sometimes been arbitrary and discriminatory.

In light of this, India's signing of the Global Compact on Refugees ("Refugee Compact") seems to signal its willingness to usher in a new era of stronger and fairer response to large refugee movements and protracted

refugee situations. One of the key aspects of the Refugee Compact is responsibility sharing,² which aims to reduce the burden of hosting refugee populations on the host country. For this, the Refugee Compact envisages a multi-stakeholder and partnership approach, not just involving the traditional humanitarian actors but also looking towards institutions/networks that hitherto have not played a role in this field. Given this background, the authors are optimistic about the possibility that the Refugee Compact may push the government towards better refugee protection mechanisms, using it as an opportunity for India to create a national asylum system. This paper thus aims to interpret the implications of the Compact for India's refugee protection landscape, extrapolating on the positive effects of a clearly-defined asylum policy which will not only ensure a cohesive framework for responsibility sharing, but will also propose home-grown solutions for addressing the refugee situation. In short, this paper will attempt to establish that the Refugee Compact can provide the requisite momentum to build the legal foundation for a consistent system of refugee protection in India.

HISTORY OF REFUGEE PROTECTION IN INDIA

Over the course of the country's history, India has largely been a generous host to persons fleeing from situations of conflict—showing generosity and magnanimity to certain groups of refugees. However, the country has addressed the influx of refugees on an ad hoc basis, offering varied degrees of protection and solutions to different refugee populations.

Modern India's experience with refugee management is as old as the country itself: the birth of independent India, in 1947, was heralded by its partition—the first situation of forced displacement that the country had to deal with. The scale of this movement of people was unprecedented, yet the government rose to the challenge and basic amenities as well as rehabilitation efforts were provided for those who crossed the new borders.³ Then in 1959, when the first wave of Tibetan refugees started to arrive in India, the government set up transit camps, provided food and medical supplies, issued identity documents, and later even transferred land for exclusively Tibetan enclaves across the country along with government-provided housing, healthcare, and educational facilities for the refugees.⁴ In a demonstration of progressive humanitarian policy, Tibetan refugees were allowed to set up the Central Tibetan Administration—the Tibetan government-in-exile under the political leadership of the Dalai Lama.

The generosity of India continued with the Sri Lankan Tamil refugees who started to arrive in India in 1983. While their movement remained restricted to the state of Tamil Nadu in South India due to cultural similarities, the Government of Tamil Nadu assumed responsibility for these refugees, setting up camps, registering refugees, and providing government assistance in the form of cash, health facilities, clothing, and other essential items. In cases of refugees who had possible links with the LTTE, officials of the police and intelligence departments (the 'Q' Branch) conducted enquiries to determine whether any of the asylum seekers were associated with militant groups/movements.⁵ If they did have an association with militant groups they were transferred to special camps and monitored closely, thereby ensuring refugee protection while addressing national security concerns. Now, the Government along with the UNHCR is ensuring the safe and dignified repatriation of Sri Lankan Tamils.⁶

All these policies showcase India's proactive attitude towards refugee protection in the fairly recent past, to the extent that they have been hailed as global best practices.⁷ However, the policies have remained ad hoc, and with respect to refugees fleeing from non-neighbouring countries and Myanmar, the State has remained inactive in securing the rights of refugees and

asylum seekers. This category of refugees is not given any specific government protection, and must seek protection under the mandate of the UNHCR.⁸ While in large measure this may be attributed to their ambiguous legal status, it is fair to say that over the course of India's history, some attempts have been made to introduce a refugee law in the country. The National Human Rights Commission ("NHRC") has time and again recommended that the government accede to the Refugee Convention and enact refugee protection legislation for the country. This is recorded in its Annual Reports of 2000–01, 2002–03, 2003–04, and 2008–2009.⁹ Most notably, in December 2015, Member of Parliament, Dr. Shashi Tharoor introduced a private member's bill, The Asylum Bill, 2015¹⁰ which seeks to codify the rights and duties of refugees in India and proposes the establishment of an autonomous National Commission by the government, which will assess and determine claims for asylum in India.¹¹ The Bill, however, remains pending and it is unclear when it will be listed again in the reconstituted Parliament.

At present, in the absence of a specialised law for refugees, the government relies on the Foreigners Act, 1946 and the Registration of Foreigners Act, 1939 to govern the entry, stay, and exit of foreigners—defined as anyone who is not a citizen of India. These Acts do not recognise the special humanitarian treatment accorded in practice to refugees, as distinguished

from other classes of foreigners such as irregular migrants. These Acts do not address the growing needs of India as a regional power. They are flawed on two fronts: a) they give wide discretionary powers to the State to detain and deport foreigners without adhering to any due process; and b) they fail to reflect India's long-standing humanitarian practice of hosting refugees.

Despite India's disinclination to sign the international 1951 Refugee Convention, India has committed itself to protecting the rights of refugees through a number of other instruments and statements in international forums, including signing and ratifying international instruments that discuss the rights of asylum seekers and refugees. These include the 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1966 International Convention on Economic, Social, and Cultural Rights; the 1966 International Convention on the Elimination of all Forms of Racial Discrimination; the 1985 Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment; and, the 1979 Convention for the Elimination of all Forms of Discrimination Against Women. More notably, the country is a member of the Executive Committee of UNHCR. It is also a member of the Bali Process, and was part of the Sixth Ministerial Conference on 23 March 2016¹² where the Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime was adopted.¹³

Furthermore, as a founding member of Asian-African Legal Consultative Organization (AALCO), India adopted the Bangkok Principles¹⁴ in August 1966, which specifically mention the principle of *non-refoulement* in Article 3.¹⁵ Most

recently, India actively participated in the consultations and thematic discussions that preceded the Global Compact on Refugees, reaffirming its commitment to the principle of *non-refoulement* and responsibility sharing.

RESPONSE OF THE INDIAN JUDICIARY

Indian courts, while generally strict in interpreting the stringent legislation on foreigners by refusing to interfere with the powers of the executive, have, on occasion, evoked a wider and more humane approach to protect the rights of refugees in India. Thus, to supplement the executive policies, the Judiciary in India has extended the protection of Article 14 (Right to Equality) and Article 21 (Right to Life and Liberty) of the Constitution to all foreigners,¹⁶ including refugees.¹⁷ With regard to Article 14, while foreigners have the right to equality before law, the State is allowed to classify them into groups on the basis of distinctive characteristics, in a manner consistent with its objectives.¹⁸ Similarly, the protection offered by Article 21 applies to foreigners only to a certain extent; the State can in certain circumstances curtail this right. In addition, foreigners have certain other constitutional rights such as: Article 20 (the right against prosecution under retrospective penal law; the right against double jeopardy; and the right against

self-incrimination); Article 22 (rights upon arrest or detention); and Article 32 (the right to move the Supreme Court for enforcement of the rights listed above).¹⁹ In 1996, the Supreme Court in National Human Rights Commission v. State of Arunachal Pradesh (1996) came up with a liberal interpretation of the law to suggest that refugees are a class apart from foreigners and deserving of the protection of Article 21 of the Constitution. The court held:

We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise.

INTERPRETING THE GLOBAL COMPACT ON REFUGEES

The Global Compact on Refugees was developed to address the issue of growing numbers of people displaced by conflict, violence, human rights abuses, extremism, poor governance, environmental degradation, disasters, and the adverse impacts of climate change.²⁰ This phenomenon of “people on the move” was recognised in the New York Declaration when it was adopted in 2016, wherein State parties committed to a more equitable form of responsibility sharing in hosting refugees. This formed the basis of the Refugee Compact, which focuses the refugee protection framework on responsibility sharing and on refugees as individuals who are

integrated, contributing, and rights-holding members of host countries and communities.²¹ Through its four core objectives—(i) to ease pressures on host countries and communities; (ii) to enhance refugee self-reliance; (iii) to expand access to third-country solutions; and (iv) to support conditions in countries of origin for return of refugees in safety and dignity, and its adoption of a multi-stakeholder and partnership²² approach to responsibility sharing, the Compact sets out an achievable framework. Thus, the Compact attempts to fill the normative gap, which was left behind by the 1951 Convention with respect to responsibility sharing.

THE RELATIONSHIP BETWEEN RESPONSIBILITY SHARING AND SUSTAINABLE DEVELOPMENT

Sustainable development has been a keyword for almost two decades in the international development sector—starting with the Millennium Development Goals, which later transitioned into the Sustainable Development Goals. States have agreed to focus on building a sustainable world where environmental sustainability, social inclusion, and economic development are equally valued. The Refugee Compact seeks to

mainstream sustainable development within the refugee protection space through each of the core objectives and “*intends to provide a basis for predictable and equitable burden- and responsibility-sharing among all United Nations Member States*”.²³ As a result, the Refugee Compact directly considers the concerns that have arisen within India and other developing countries with respect to protracted refugee situations.

Paragraph 14 of the Refugee Compact further addresses the need for responsibility sharing, as it states: *“countries that receive and host refugees, often for extended periods, make an immense contribution from their own limited resources to the collective good, and indeed to the cause of humanity. It is imperative that these countries obtain tangible support of the international community as a whole in leading the response”*. This concept of responsibility sharing as envisaged by the Refugee Compact includes a multitude of actors, such as civil society organisations, faith-based actors, and academic institutions. Responsibility sharing as understood within this context includes financial support,²⁴ information and technology to close employment gaps through private partnerships,²⁵ humanitarian support,²⁶ and local and municipal support to improve infrastructure.²⁷ This is all in an effort to ensure that the issues faced by host countries/communities on one hand, and refugees on the other, are not aggravated, but improved.²⁸ This aspect of responsibility sharing which seeks to ensure that the host community is not left behind in humanitarian aid, also elaborates upon the nexus between humanitarian aid and the development agenda. A working instance of this is the Za'taari Camp in Jordan which has a 12.9 megawatt solar plant funded by the German government, providing refugees with electricity for 12–14 hours a day. While at present the solar plant

is only used for the benefit of refugees, the hope is that surplus power could be utilised by the host population.²⁹

While interpreting the Refugee Compact in the Indian context, in addition to responsibility sharing, the authors look towards the complementarity of humanitarian action and development as elaborated within its text. As noted in Paragraph 64, *“the global compact can help attract support to ensure that refugees and their host communities are not left behind in a country’s progress towards the Sustainable Development Goals”*.³⁰ A defined framework for hosting refugees would allow regularised support from the international community to ensure resilience for not just the refugee population but also the host community. This is extremely relevant in the Indian context as it hosts refugees living in urban areas and not in camps, where the ideal situation would be to avoid building parallel systems for the refugees that cannot be accessed by the host community, and *vice-versa*. A legal framework could channel and regulate the support accessible to both refugees and the host community. This would not only break down barriers and counter xenophobia but could also work to mitigate host community animosity towards the refugee population.

While acknowledging the need to ease pressure on States hosting refugees and provide a workable framework for responsibility sharing, scholars like Professor B.S. Chimni have warned

that the Refugee Compact could lead to the dilution of fundamental and well-established principals of international refugee and human rights law by prioritising the demands of the State over the needs of refugees.³¹ Thus, while one of the objectives of the Refugee Compact is to “ease pressures on host countries”, this can easily be used to reinforce *non-entrée* regimes which have begun to become the norm globally. In Paragraph 4, it is stated that contributions by States “will be determined by each

State and relevant stakeholder, taking into account their national realities, capacities and levels of development, and respecting national policies and priorities”. It follows that the Refugee Compact relies heavily on political will, funding, and on finding new coalitions of actors in what is a highly politicised and divisive field, thereby leaving States to “cherry-pick” issues of interest and focus their resources on those issues rather than approach refugee protection more holistically, which was its original aim.³²

THE COLLABORATION BETWEEN HUMANITARIAN ACTORS AND NON-TRADITIONAL ACTORS

At this juncture, it is pertinent to note that even though the Refugee Compact talks about the involvement of non-traditional actors in the refugee protection framework, it also recognises “*the primary responsibility and sovereignty of States*” and that “*a multi-stakeholder and partnership approach will be pursued, in line with relevant legal frameworks and in close coordination with national institutions*”. Thus, the Compact puts refugee protection at the doorstep of States and confirms that the primary role is retained by governments, giving them the lead in refugee response and protection. Such a role is further emphasised by the fact that, apart from institutions like the World Bank and United Nations, most other stakeholders that have been proposed to form a part

of the Compact’s multi-stakeholder approach fall within a State’s jurisdiction and, thus, its regulations. This clearly implies that any intervention that is made with this multi-stakeholder and partnership approach in mind needs to be overseen by the concerned host government.

With this multi-stakeholder and partnership approach in mind, the Refugee Compact significantly broadens the number of actors involved in refugee protection. Managing these various actors who come from the development and humanitarian spaces cannot be done on an ad-hoc basis, and there is the need to have a formalised system in place. The situation of India’s neighbour Bangladesh is worth noting here, As is

well known, the Rohingya refugee crisis has resulted in Bangladesh hosting nearly one million Rohingya since late 2017. Bangladesh's decision to allow the International Organization for Migration (IOM) to take the lead in international relief efforts has led to wasteful friction between UNHCR and IOM, as well as internal disputes within the UN.³³ All

this has resulted in a weakened effort to protect Rohingya refugee rights. Given that this is the outcome of an overlap of mandates in the context of traditional humanitarian agencies, one can only imagine what could happen when others, including private actors, are brought into the mix with nothing more than a *de facto* structure in place.

CONCLUSION

Despite its shortcomings, the decisive adoption of the Refugee Compact by almost all the countries at the UN General Assembly is a much-needed push for an improved response to refugee situations by the international community. Most notably, it involves more equitable and predictable responsibility sharing among a broader range of actors, which, if implemented effectively, could deliver sustainable benefits for refugees, their hosts and the global community at large. It could build and strengthen existing regional leadership and momentum through the provision of enhanced resources and involvement of fresh actors, leading to improved response and delivery of assistance.

While considering an asylum law for India with the Refugee Compact in mind, efforts must be made to strengthen the human rights of displaced populations, including their rights to freedom of movement and protection from

detention, improved access to services, and non-discrimination. The integration of these aspects of the Compact would contribute to building an inclusive environment for the refugee population, where they are able to integrate with the host community. Further, non-traditional actors, as enumerated in the Compact, need to be supported at a national level in order to make substantial contributions to refugee protection. A law must also keep in mind that active support and effective platforms must be provided to ensure the participation of refugees in the peace process, so as to give them a voice in matters pertaining to them. Furthermore, specific national advocacy efforts must be carried out in support of collaboration on financing, as well as in support of expanding opportunities for resettlement solutions—this is in order to fulfil the “responsibility-sharing” goals of the New York Declaration and the Refugee Compact.

Building on India's unique historical experience with refugee protection, the country must work to establish a national platform to mobilise greater protection for refugees. In addition, as a key actor in the South Asian region, India should also play an active role in creating and building on regional mechanisms for refugee protection and durable solutions, as envisaged by the Compact. The current state of forced displacement warrants the need for developing an inclusive regime of refugee protection, more so in these times when States are looking to close off their borders. The Refugee

Compact does not offer a full and finalised framework that India can adapt in totality for refugee protection, however, it does offer a stepping-stone. Thus, it is important to understand and appreciate that, even though the Compact does not bind States, India could use the opportunity to build on it while keeping in mind the long-established principles of refugee law, such as the right to seek asylum and principle of *non-refoulement*. Whether it will deliver depends on the willingness of India and the rest of the international community of States to honour these commitments.

NOTES

1. The World Bank, “Refugee Population by Country or Territory of Asylum,” accessed 23 October 2019, <https://data.worldbank.org/indicator/sm.pop.refg>
2. The term “responsibility sharing” is often used interchangeably with “burden sharing”. Both can be regarded as a form of international cooperation. The terms “burden sharing” and “responsibility sharing” do not have a clear definition in international law. In the refugee law context, these terms usually refer to the distribution of costs and benefits between States, stakeholders, and other actors in order to address the challenge of refugee protection. As the term “burden sharing” connotes that refugee protection is cumbersome, the authors prefer to use the phrase “responsibility sharing” in this article.
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5. Abhijit Dasgupta, “Repatriation of Sri Lankan Refugees: Unfinished Tasks,” *Economic and Political Weekly* 38, no. 24, (2003)
6. ANI, “Working with Indian government on repatriation of Tamil refugees says new Lankan envoy,” *New Indian Express*, 19 January 2019
7. Smriti Kak Ramachandran, “India’s refugee policy is an example for the rest of the world to follow,” *The Hindu*, 3 January 2013
8. UNHCR India, “What We Do In India,” accessed 1 October 2019, https://www.unhcr.org.in/index.php?option=com_content&view=article&id=8&Itemid=130
9. NHRC Annual Report 2000–2001: “*The Commission is firmly of the opinion that a comprehensive national law ought to be devised, keeping in view the decisions of the Supreme Court as well as international instruments on the subject.*”
NHRC Annual Report 2002–03: “*The Commission has stressed the need for a comprehensive national legislation to deal with refugee situations facing our country and to distinguish bona fide refugees from economic migrants, illegal immigrants and other foreigners. The Commission expressed the hope that the action initiated by the Central Government in this respect would be completed within a clearly defined time frame and that it would be consonant with the decisions of the Supreme Court, as well as with the principal international instruments on this subject, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.*”
NHRC Annual Report 2003–04: “*The Commission’s views on the need for a comprehensive national legislation to deal with refugee situations facing the country have been recounted in detail in the previous reports. The Commission continued to pursue this matter during the year under review.*”
NHRC Annual Report 2008–09: “*While reviewing international human rights instruments, the Commission stressed the need to ratify the 1951 UN Convention relating to the Status of Refugees and the Convention against Torture.*”
10. Migration & Asylum Project (M.A.P) worked with a sitting MP, Shashi Tharoor to draft The Asylum Bill 2015. The intention behind the draft was to establish

- an asylum framework in the country that would fuse international human rights norms along with India's established asylum processes.
11. The Asylum Bill, 2015, accessed 1 October 2019, <http://164.100.47.4/billtexts/lb/billtexts/asintroduced/3088LS.pdf>
 12. "Sixth Ministerial Conference Of The Bali Process On People Smuggling, Trafficking In Persons And Related Transnational Crime" Bali Process, accessed 1 October 2019, http://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%20Co-chairs%20Ministerial%20Statement_with%20Bali%20Declaration%20attached%20-%2023%20March%202016_docx.pdf
 13. The Bali Process focuses on People Smuggling and Trafficking, however, it also discusses irregular migration and the exploitation of refugees at the hands of traffickers. It states the following "*the need to grant protection for those entitled to it, consistent with relevant international legal instruments and in all cases, the principle of non-refoulement should be strictly respected.*"
 14. "1966 Bangkok Principles on Status And Treatment Of Refugees," AALCO, accessed 1 October 2019, <http://www.aalco.int/Final%20text%20of%20Bangkok%20Principles.pdf>
 15. Furthermore, Article 5 of the Principles, which deals with Expulsion and Deportation, requires the States to follow due process in carrying out any deportation. While India had three reservations, none of them were pertaining to the principle of *non-refoulement* or the process of deportation.
 16. Basheshar Nath v. The Commissioner of Income Tax, Delhi & Rajasthan and Anr. (1959)
 17. National Human Rights Commission v. State of Arunachal Pradesh and Anr. (1996)
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 22. UNHCR, *Global Compact on Refugees*, paragraphs 33–44, 2 August 2018, available at: https://www.unhcr.org/gcr/GCR_English.pdf
 23. *Ibid.*, Paragraph 3
 24. *Ibid.*, Paragraph 18
 25. *Ibid.*, Paragraph 32
 26. *Ibid.*, Paragraph 23
 27. *Ibid.*, Paragraph 37
 28. Khan and Sackeyfio, *Promise Global Compact for African Refugees*
 29. "How can the world better share responsibility for refugees?", UNHCR, accessed 1 October 2019, <https://www.unhcr.org/5ba5131e4>
 30. Global Compact on Refugees, Paragraph 64
 31. B.S. Chimni, "Global Compact on Refugees: One Step Forward, Two Steps Back," *International Journal of Refugee Law* 30, no. 4 (2018)
 32. Guy S Goodwin-Gill, "The Global Compacts and the Future of Refugee and Migrant Protection in the Asia Pacific Region," *International Journal of Refugee Law* 30, no. 4 (2018)

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<https://www.thenewhumanitarian.org/news/2017/10/23/bangladesh-resists-greater-unhcr-role-rohingya-crisis>

**THE POTENTIAL ROLE OF THE NATIONAL
HUMAN RIGHTS COMMISSION OF INDIA
IN OPERATIONALISING THE GLOBAL
COMPACT ON REFUGEES**

ANUBHAV DUTT TIWARI*

ABSTRACT

The paper seeks to explore the potential role which can be played by the National Human Rights Commission (NHRC) in setting the stage for addressing the key tenets of the Global Compact on Refugees (GCR), with respect to refugees in India. In fact, there have been numerous instances in the past where NHRC has taken cognisance of the situation of various refugee groups in India, *inter alia*, by invoking the jurisdiction of the Supreme Court, for instance, in relation to the *Chakma* refugees. However, the paper will also focus on the opportunities which were missed due to varied reasons—a recent instance being the deportation of seven Rohingyas from the state of Manipur—before analysing the present need for a more concerted and collaborative role of national human rights institutions, such as the NHRC, together with judicial courts, key government bodies, UNHCR and other UN organisations, academic institutions, civil society.

In light of the ongoing case of *Mohd. Salimullah v. Union Of India* (where the Supreme Court has been asked to address related questions with respect to Rohingya refugees in India), and the opportunities presented by India's adoption of the GCR, the paper puts forth the argument for a strong, cohesive and complementary role of the NHRC in promoting the basic and fundamental rights of refugees in India, in particular, the potential role of NHRC in better coordination, in line with the multi-stakeholder collaboration and partnership approach, put forth in GCR. In doing so, the paper will attempt to evaluate the efficacy of National Human Rights Institutions, such as NHRC, mandated to protect and promote human rights, with respect to the protection and assistance to refugees around the world and in India.

INTRODUCTION

The Global Compact on Refugees (GCR)¹ is already being seen as a “game changer”,² as it offers a roadmap for better cooperation to bring about equitable burden- and responsibility-

sharing, in a more genuine effort to effectively deal with the lack of humanitarian avenues for refugees. A key feature is its emphasis on partnerships. This paper seeks to interrogate the “multi-

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stakeholder and partnership approach” under the GCR—in particular, the role of National Human Rights Institutions (NHRIs) under this approach. The paper analyses the contribution of the National Human Rights Commission of India (NHRC) for the well-being of refugees in India, before moving further to explore its potential involvement pursuant to GCR. In this context, the paper will highlight

some of the challenges NHRC may face, particularly emanating from the Government’s stance before the Supreme Court of India in an ongoing case concerning the Rohingya refugees. The paper concludes with certain suggestions for NHRC’s future interventions, in line with the GCR, and for the better protection and promotion of human rights of all refugees in India.

GCR LAYING THE PATH FOR THE INVOLVEMENT OF NHRIS IN PROTECTING AND ASSISTING REFUGEES

Multi-Stakeholder Partnership: A Key Recognition in the GCR

One of the ways in which GCR seeks to achieve its four “interlinked and interdependent” objectives is through a multi-stakeholder cooperation and partnership mechanism.³ A commendable recognition in this mechanism is the inclusion of refugees themselves and the host communities, in addition to, faith-based actors, private funders, academia and even partnerships to foster sports and cultural activities.⁴ An underlying goal of proposing such a cooperation mechanism seems to be to leverage and network the often ignored and hidden responders to refugee situations at local levels, with other responders such as the United Nations High Commissioner for Refugees (UNHCR) and other United Nations (UN) organisations, international

Non-Governmental Organisations (NGOs), regional organisations, local authorities, and the civil society. In doing so, the GCR attempts to lay down paths for cooperation, partnerships and support systems at multiple scales with the aim of sharing responsibilities and finding enhanced solutions for the benefit of refugees.⁵ The significance of the GCR’s multi-stakeholder cooperation proposal lies in States recognising and agreeing to foster these partnerships, viewing them essential for sharing responsibilities to better protect the refugees, and instilling in the spirit of genuine collaborations in future work.⁶

Further, GCR highlights the many dimensions of addressing and solving the refugee situations through the profile of the actors it seeks to bring together, including those focused on the human rights of refugees. In

fact, in addition to the international refugee protection regime, the GCR is guided by the Universal Declaration on Human Rights and other international human rights instruments.⁷ In the New York Declaration, the signing States have reaffirmed that all refugees (and migrants) are rights holders, regardless of status, and have committed themselves to fully protect their human rights.⁸ Therefore, all actors that have been working towards extending, promoting, and protecting the rights of refugees are necessarily included in the multi-stakeholder approach envisioned in the GCR.

NHRIs: Unique Entities in the Human Rights System

NHRIs are unique entities in the human rights system. Although created and funded by States, NHRIs are expected to act independently to protect and promote human rights and assist their respective States in doing so.⁹ Endowed with specific powers and often legislative mandates, their interventions are at least considered and heard by the government.¹⁰ This may be particularly relevant since the idea of human rights calls for compliance by States, beyond their domestic laws, of international human rights treaties, and States are encouraged to accept more human rights obligations, for example, by signing other treaties—encouraging them usually lies under the purview of the NHRIs.¹¹

Moreover, NHRIs act as neutral facilitators bringing together the State

and the civil society on issues requiring the urgent attention and action of the State—highly desirable endeavour considering the often hostile stance of the government towards the civil society.¹² Constructive engagement with other actors and creating awareness on human rights issues remain other key responsibilities of NHRIs. Moreover, NHRIs which are mandated to receive individual complaints may be the only effective recourse for many victims of human rights violations, other than the long, arduous, and often inaccessible judicial remedies with limited remedial options.¹³ In this way, NHRIs can truly be the voice of the victims they are envisaged to be, and, a bridge between the States and the civil society and other actors, they are expected to be.

At the same time, there is an ever-present threat of their independence and functioning being undermined by the States. In this context, the accreditation of NHRIs by the Global Alliance of National Human Rights Institutions (GANHRI)¹⁴, is a noteworthy accountability mechanism. GANHRI is an international association of NHRIs from across the world, which “promotes and strengthens NHRIs to be in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights”.¹⁵ The Office of the High Commissioner for Human Rights (OHCHR) acts as a permanent observer on GANHRI’s Sub Committee on Accreditation which is responsible for the review and accreditation of NHRIs.

Through GANHRI, NHRIs can interact directly with UN human rights system, which is a definite matter of prestige, but only if they are adjudged to be in compliance with the Paris Principles and are “A” rated.¹⁶

Further, NHRIs, by virtue of being created by States, may incentivise the State to see them as members of international networks such as GANHRI and in turn lend their ears to GANHRI’s call for compliance with the Paris Principles.¹⁷ Moreover, where the State is considering undermining the powers and functions of its NHRI, the threat of international review may act as a possible deterrent.¹⁸ At this point, it is also important to mention regional NHRI associations, particularly the Asia Pacific Forum of National Human Rights Institutions (APF) which has a parallel membership, accreditation, and review structure (for NHRIs in the Asia Pacific region), based on the Paris Principles. APF’s role is potentially important, particularly for a region which lacks a regional human rights mechanism.¹⁹

Role of NHRIs vis-a-vis Refugees

Do NHRIs have any role in addressing refugee situations, either by virtue of being in an origin country, a host country or a third country? This question may not pose difficulty in an origin State where they are dealing with citizens who are not yet refugees in other countries,²⁰ but in host States and third countries, this may be a tricky query at the outset due to refugees being non-citizens. The genesis

of NHRIs provides a swift answer. Carver puts forth that during the early discussion leading to the creation of NHRIs, the idea of NHRIs embracing international human rights norms and principles, “meant that, in principle, these institutions aimed to promote and protect the rights of all persons, not just citizens”.²¹

Moreover, OHCHR has identified the special responsibility of NHRIs in relation to “help those least able to help themselves”, *inter alia*, refugees.²² According to OHCHR, NHRIs can support humanitarian assistance in addition to monitoring assistance programmes and identifying protection gaps in relation to refugees.²³ The UNHCR itself has recognised the important contribution of NHRIs in “protecting and monitoring respect for the rights of asylum-seekers and refugees”.²⁴ UNHCR has also recognised the role of NHRIs in specific situations, such as combatting racism and xenophobic sentiments against refugees.²⁵ In fact, Carver goes further to state that “[i]f refugee protection is to be reconceptualized in human rights terms, these independent governmental actors will have to play a central role”.²⁶

The NHRIs, themselves, have been working for refugees, besides coming together at various forums to recognise the growing need for better protection of refugees around the world.²⁷ As part of GANHRI, the member NHRIs pledged to continue their work in relation to the plight of the refugees, particularly through a coordinated

strategy with multiple actors at the UN Summit for Refugees and Migrants held in September 2016.²⁸ Even APF has “mass movement of people”, which include refugees, as one of its thematic priorities, thus encouraging NHRIs in the region to actively take up the issue.²⁹ Therefore, the role of NHRIs vis-à-vis refugees is irrefutable, and, one might even say, vital.

Role of NHRIs Under the GCR

Although, the role of NHRIs is apparent for the protection of refugees and they have long been working on this issue, a peculiar observation is the explicit absence of NHRIs from the GCR—in contrast to their specific inclusion in the Global Compact for Safe, Orderly and Regular Migration (GCM).

The GCM mentions NHRIs as part of its multi-stakeholder partnership and of the “whole-of-society approach”.³⁰ In particular, the GCM seeks to even establish independent institutions such as NHRIs which can monitor migrants’ access to basic services,³¹ and partner with NHRIs “to prevent, detect and respond to racial, ethnic and religious profiling of migrants by public authorities, as well as systematic instances of intolerance, xenophobia, racism and all other multiple and intersecting forms of discrimination”.³² Clearly, these are also vital for the refugees and hence NHRIs should have found specific mention in the GCR too. A pessimistic interpretation of this could be in line with Carver’s observation that

although, “the relationship between human rights and refugee protection is self-evident ... [y]et practitioners in both the refugee and human rights fields know from bitter experience that these links seldom function in practice”.³³

According to Türk, there are necessary overlaps between the GCM and the GCR, especially with reference to “operational responses to mixed situations of refugees and migrants”. He further adds that the GCR “allows space for States facing large mixed movements to draw upon the architecture of support set out in the [GCM] where appropriate”.³⁴ The above observations are also in line with past collaborations, work and statements from UNHCR, OHCHR, NHRIs, GANHRI, etc., with respect to the important role of NHRIs vis-à-vis refugees. Therefore, the argument would follow, the absence of NHRIs in the GCR should not be seen as NHRIs being excluded from the multi-stakeholder approach under the GCR, as the spirit of cooperation and the range of stakeholders necessarily creates overlap between both the Compacts. However, caution must be maintained with this interpretation, as the following observations highlight.

GANHRI in the wake of the Compacts, has been conducting conferences, follow-up meetings and studies stemming from the role of NHRIs pursuant to the GCM.³⁵ It even released a statement on the GCM;³⁶ however, none yet on the GCR.³⁷ Further, the German NHRI recently presented a

report to lay down the roadmap for NHRI's engagement and cooperation on migrant rights issues under the GCM.³⁸ The report was based on a survey populated amongst 110 NHRIs (GANHRI-accredited) of which 32 responded. Although the questionnaire did delve into the "refugee-migrant" conundrum for NHRIs (through one question) and highlighted certain NHRIs work on refugee issues; significantly, it also stated that since the questionnaire was in furtherance of GANHRI's work on the GCM, the focus is on human rights issues of migration, and *"not on asylum and refugee-related aspects, which is the topic of another Compact"* (own emphasis).³⁹

One of the questions in the questionnaire was: "what drives the NHRIs to work on migrants' issues?" Although only two

NHRIs responded that it was due to the GCM, this number can increase in the future, particularly for NHRIs who are yet to take it up as a new issue.⁴⁰ This begs the question: will this renewed focus of NHRI participation in the GCM deter NHRIs from taking up refugee rights and, instead, focus broadly on migrants? Consequently, will it influence NHRIs, which have been working on refugee issues, to instead take up migrants' issues? These are difficult questions but with serious consequences, particularly, in the context of GANHRI, which leads the protection and promotion of human rights through its NHRI members. In this respect, it is desirable that a clarification on an international forum or through GANHRI reinstating the complementary role of both Compacts with respect to NHRIs, is put forward at the earliest.

NHRC'S POSITION TO PROTECT AND PROMOTE THE RIGHTS OF REFUGEES IN INDIA

NHRC's Background, Functions and Powers

NHRC was setup under the Presidential Ordinance of October 1993, replaced by the Protection of Human Rights Act, 1993 (Act 10 of 1994) (PHRA), which came into force on 8 January, 1994. It was established as a body "for better protection of human rights" in India.⁴¹ Incidentally, the Act is also the first time that a definition of "human

rights" was laid down as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".⁴² Therefore, NHRC is mandated to protect and promote human rights beyond the fundamental rights guaranteed by the Constitution of India.

NHRC has a broad mandate and extensive functions, such as handling

individual complaints, intervening in judicial proceedings relating to alleged human rights violations, monitoring places of detention, reviewing Constitutional safeguards and their implementation, recommending the effective implementation of international human rights instruments, undertaking human rights research and spreading literacy, encouraging NGOs working in the human rights field and undertaking “other functions necessary for the promotion of human rights”.⁴³ In order to carry out its functions, it has been granted powers relating to inquiry, investigation, and even in relation to allegations against members of the armed forces.⁴⁴ However, remit has not necessarily guaranteed success.

NHRC has been regularly criticised as being a mere recommendatory body without any enforcement mechanism, and with limited resources.⁴⁵ Interestingly, it has itself acceded to this criticism on more than one occasion and so has the Supreme Court, which has earned it the title of a “toothless tiger”.⁴⁶

NHRC’s Work on Refugees in India

NHRC has been taking up the issue of the refugees’ well-being almost since its inception. A landmark evolution of law came when it intervened for the Chakma refugees, before ultimately bringing their case to the Supreme Court of India (hereafter ‘Court’). In NHRC v. State of Arunachal Pradesh⁴⁷ (hereafter ‘NHRC case’), the Court upheld that Article 21 of the Indian Constitution also extends

to the protection of life for refugees. This was not the first time that the Court was asked to extend fundamental rights under the Indian Constitution to the refugees. Earlier, in the case of State of Arunachal Pradesh v. Khudiram Chakma,⁴⁸ the question was whether Articles 19 (1) (d) and (e) of the Indian Constitution, relating to freedom of movement and to settle anywhere in India, were available to refugees. In that case, the Court had denied the contention on the grounds that only the fundamental rights which are applicable to a person and not a citizen, are available to refugees and foreigners. Thus, in a way, the NHRC case remains a landmark extension of constitutional protection for the refugees.

At the same time, the NHRC case presents NHRC’s limitations, as by its own admission, it was forced to seek the Court’s interventions, due to the lack of enforcement powers, to bring about an improvement in the refugees’ conditions.⁴⁹ In fact, this has been a recurring constraint in NHRC’s work on refugee well-being in India. An analysis of NHRC’s annual reports⁵⁰ indicates three phases of NHRC’s efforts in relation to refugees in India. During the first phase, extending from 1994 to 2000, NHRC sought to mainstream its work on refugees by bringing it under its priority areas within “vulnerable groups”.⁵¹ It also states that “[t]he Commission intends to monitor the treatment of refugees in the country and to pursue its recommendations in regard to this matter”.⁵² NHRC even

undertook a range of efforts for the *Chakma* and *Hajong* refugees⁵³ as well as for the Sri Lankan Tamils, including visiting their refugee camps,⁵⁴ in addition to pushing government authorities to take a wide range of actions.⁵⁵ NHRC managed to get the Government of Tamil Nadu to comply with its direction relating to the well-being of refugees in camps.⁵⁶ During this phase, NHRC initiated a sustained dialogue with the Indian Government to consider signing and ratifying the Convention Relating to the Status of Refugees, 1951 and its 1967 Protocol (“Refugee Convention and its Protocol”),⁵⁷ and to “develop a national policy and possibly a national law” in line with it.⁵⁸ NHRC also points out that, “it is unbecoming for a country, that has now been a Member of the Executive Committee of the Office of the UN High Commissioner for Refugees Programme for a number of years, to function in an ad-hoc manner in respect of a matter of such importance as this”.⁵⁹ Most of the academic literature highlighting NHRC’s work with refugees also sheds light on this phase only.⁶⁰

In the second phase, between 2000 and 2004, NHRC mainly continued its advocacy for the enactment of a Model Refugee Law (drafted by an Eminent Persons Group setup by the UNHCR) and even set up its own expert group for this purpose.⁶¹ During sustained advocacy with the government, it again reiterated:

It has been the experience of this Commission ... that there is an

area of arbitrariness in the present practice that must be corrected if the rights of bona fide refugees are to be properly and consistently protected. India has every reason to be proud of the generosity of its historical tradition in granting protection to those who have sought refuge within its territory... Despite this great tradition, however, there is now need ... to establish a system that works uniformly and systematically to distinguish between the bona fide refugee and the economic migrant.⁶²

The above efforts during the first two phases, although limited by resources and a range of human rights issues in a country the size and population of India, are commendable. However, the Government effectively diluted these efforts by not taking forward the NHRC’s strong recommendation in relation to framing of a national law.⁶³

The third phase is from 2004 till 2017, wherein besides an occasional repeat of discussions with the government on the question of framing a national law and/or signing and ratifying the Refugee Convention and its Protocol, there is no mention of any other substantial activities conducted by it akin to its efforts in the first phase.⁶⁴ Refugees also move out of the category of ‘vulnerable persons’ in the annual reports from this phase. Incidentally, in 2004, NHRC was part of a NHRI conference where the Seoul Declaration was adopted, under

which NHRIs agreed to promote the national implementation of international standards on *inter alia* refugees,⁶⁵ something which it had already been trying to do. But, ironically, since 2004, as may be assumed from the annual reports that, the importance of refugee well-being diminished for the NHRC, which restricted itself to occasionally reminding the government of the need for a national legislation on the issue.

It is pertinent to point out another observation in this regard. The number of individual complaints received by the NHRC has gone up rapidly every year from 496 in 1994 to 91,887 in 2017, which decreased from 117,808 in 2016.⁶⁶ This is a significant number for any institution grappling with resource limitation and, thus, it is fair to question whether this may have forced NHRC to prioritise its work and focus areas towards *citizens* rather than *non-citizens*? As Carver has pointed out, NHRIs with a strong focus on complaints-handling tend to disadvantage non-citizens, such as refugees, as they are less likely to be aware of the mechanism or be able to access them effectively.⁶⁷

Potential Challenges for NHRC in its Work on Refugees

India has not been immune to increasingly hostile sentiments around the world against refugees, particularly when it comes to Rohingya refugees in India. Indeed, the government, in its order dated August 18, 2017, has called

for their deportation.⁶⁸ Moreover, the Ministry of Home Affairs' responses before the Supreme Court in an ongoing case, Mohammad Salimullah v. Union of India⁶⁹ (hereafter 'Rohingya case'), clearly reflect a hard attitude which is not based on humanitarian concerns. Notably, NHRC has stated its clear view that it is against deporting Rohingyas and even issued a notice to the government.⁷⁰ However, beyond the notice, it is yet to take any other action.

The Court is grappling with a challenging situation with two competing arguments. The refugees contend that the government has done little to provide them with access to basic facilities, yet they are happy with the safe sanctuary provided to them from the violence in Myanmar, which should not be taken away.⁷¹ The government, on the other hand, has made it clear that the present laws and the provisions of the Indian Constitution put the onus on the executive to deal with the Rohingyas according to 'several facts, parameters, diplomatic and other considerations, potential dangers to the nation etc.'⁷² Based on its affidavits in the Rohingya case, the Government views the Rohingyas as a threat to national security, and a burden on resources meant for Indian citizens.⁷³ Moreover, the government has stated that it is not bound by the principle of *non-refoulement* even for Rohingya children and that its signing of the New York Declaration or the GCR thereunder, as well as its statements in international forums to the contrary, do not create

any legal obligations whatsoever under its domestic laws.⁷⁴

The Court, on its part, had asked various state governments to file status reports on the condition of Rohingyas in their settlements, in a connected case.⁷⁵ While in the 1990s, the NHRC visited refugee camps and proactively took up their issues with government authorities, they have notably not done the same in relation to the Rohingyas, leading to the Court relying on the state governments instead. Indeed, the notice issued by the NHRC was based on newspaper reports, and only focused on the issue of deportation.⁷⁶ Even then, the NHRC did not issue any statement or notice on the deportation of the seven Rohingyas, which was not stopped by the Court.⁷⁷

In addition, NHRC is reeling from its autonomy, independence, and functioning being undermined by the government. The Working Group on Human Rights presented a factsheet to GANHRI, prior to NHRC's accreditation review in 2017, contending that NHRC is not in compliance with the Paris Principles.⁷⁸ GANHRI even postponed NHRC's accreditation for a few months⁷⁹ before eventually renewing the "A"

status (albeit with suggestions).⁸⁰ Since then, the amendments to the PHRA⁸¹, according to practitioners, has dealt a huge blow to the independence and effective functioning of NHRC, which has a direct impact on its mandate.⁸²

Finally, as recent annual reports of NHRC suggest, it seems to have moved away from cooperating and coordinating with UNHCR or other NGOs on the issue of refugees, which does not bode well for an effective partnership envisaged under the GCR. In fact, partnerships result in sharing responsibilities and strategically paving the way for advocacy and solutions with the government. In this context, NHRC is well-placed to make the government listen, especially due to the government's adoption of the New York Declaration. At the same time, it is important to note criticisms around the GCR, particularly that it does little to take the burden off low and middle-income countries such as India⁸³, and that it allows host countries to shape action around their own priorities and national security⁸⁴. The consequences of these limitations are already manifest in the Indian government's stance before the Court in the Rohingya case.

POTENTIAL NHRC INTERVENTIONS IN LINE WITH THE GCR

The NHRC needs to widen advocacy around a national law focussing on

refugees, which it had initiated in the late 1990s. Its reactive positioning

in relation to the government has exacerbated—or at least, not challenged—the government’s arbitrary treatment of refugees. In light of this, NHRC needs to employ a more proactive consultative approach involving other stakeholders, as envisaged in the GCR, in its renewed dialogue with the Indian government. For example, pending a national law, it can advocate for interim measures, such as Long Term Visas or the issuing of other identity cards, to enable refugee access to basic facilities. It can even coordinate research and awareness, in partnership with other stakeholders such as UNHCR, NGOs, universities and research institutes, media, etc., on the situation of refugees in India, which can feed into its advocacy with the government on the need for a national law in line with the Refugee Convention and its Protocol.

The NHRC should consider strengthening regional cooperation on refugee issues, such as through the Asia Pacific Forum and through regional organisation of refugee rights practitioners like the Asia Pacific Refugee Rights Network.⁸⁵ Better coordination with NHRIs in refugee-origin countries will also go a long way in understanding the background of the refugees and coordinating a safe and dignified voluntary repatriation, if/when feasible. It may be difficult to get the government’s assent—however, the government should understand the utility of engaging through the NHRC, which will prevent it from violating international law and other international obligations.

The NHRC should consider setting up a refugee helpdesk, hotline or online portal which coordinates directly with UNHCR in order to kickstart the GCR multi-stakeholder partnership and engage directly with other stakeholders working with refugees in India, as well as with the refugees themselves. This need not be like the individual complaints mechanism which already exists, but a forum to aggregate issues of refugees and find shared solutions.

The NHRC should also consider actively intervening before the courts in India, including the various High Courts, focussing not just on access to basic services on the grounds of humanity but also on issues such as refugees in detention or in facilitating their access to UNHCR. NHRC is well-placed to do this since it has the relevant powers to induce actions from government authorities and prevent *refoulement* of refugees.

Finally, it can assist in creating awareness about the refugees’ plight in their home countries to better inform the host communities and calm racist and xenophobic sentiments. Moreover, it can assist in developing information leaflets for refugees to inform them better about their rights in India.

NHRC’s mandate and functions, in addition to its important position in India, justifies the above suggestions and other proactive actions. It is imperative that NHRC recognises its responsibility and sets a positive trend for contributing to humane solutions to the refugee situations in the Indian subcontinent.

CONCLUSION

In the present paper, the focus has been on one of the key aspects of GCR, i.e., the multi-stakeholder partnership approach proposed therein, with reference to the role of NHRIs, particularly, NHRC in India, in protecting and assisting refugees. While doing so, the paper has attempted to highlight some of the potential challenges, emanating both from the GCR to India's changing attitude towards some refugee groups in the country, for a more effective participation of NHRIs. However, the spirit of the New York Declaration and the GCR should be

upheld, and the humanitarian lens of finding solutions to refugee issues in which the NHRIs have a definite role to play, including NHRC in India. Thus, the paper has presented certain suggestions for an enhanced role of NHRC with respect to refugees in India, in line with the spirit of the GCR, particularly the cooperative and partnership mechanism envisaged therein. It is to be noted that these are not meant to be exhaustive but are merely indicative. A definite start in the right direction would be for NHRC to endorse the GCR and create an action plan in pursuance to it at the earliest.

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7. Geoff Gilbert, "Indicators for the Global Compact on Refugees," *International Journal of Refugee Law* 30, Issue no. 4 (Dec 2018): 636. See also GCR, paragraph 5.
8. UN General Assembly Resolution 70/1 adopted on September 19, 2016, paragraph 5.
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13. Steven L.B. Jenson, "Lessons from Research on National Human Rights Institutions" *Danish Institute for Human Rights*, (Mar 2018), last updated October 8, 2019, https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/research/workingpaper_lessons_research_nhris_web_2018.pdf: 23.
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16. OHCHR on NHRIs: 7. See also, Jenson, "Lessons from Research....." 16, where quoting Peter Rosenblum, the criticism is put forth that the accreditation system focusses more on promotion of NHRIs for their expansion, in terms of number, resources and access, and less on assessing the actual effectiveness of NHRIs. See also, GANHRI, "Paris Principles", last updated October 8, 2019, <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>.
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 31. GCM, paragraph 33 (d).
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A COMPARATIVE ANALYSIS OF THE GLOBAL COMPACT ON REFUGEES AND THE CONSTITUTION OF INDIA

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ABSTRACT

The Global Compact on Refugees (GCR) highlights the need for global responsibility-sharing in refugee hosting and obliges host nations to identify the needs of refugees and support them to enhance self-reliance if other durable solutions are not possible. Similar to the protection and rights provided in the GCR, the Constitution of India also provides certain rights for all individuals, which include refugees and asylum seekers. India does not have any refugee law but, theoretically at least, protects the rights of the refugees by the judicial interpretation of the Constitution of India.

This article compares the rights enshrined in the Constitution of India and the obligations entailed under the GCR. With particular reference to the refugee population in India, the article examines: the rights available to refugees under the umbrella of the Constitution of India; the complementarity or divergence of the GCR to those rights; and their implications for future refugee protection in India. It argues that, while there is complementarity, the key problem remains translation to effective protection on the ground.

INTRODUCTION

India has a tradition of hosting refugees, pre- and post-independence, from various nationalities, ethnicities, and religions. Despite India being non-signatory and having no domestic law relating to asylum, the country provides support and protection to the refugees and asylum seekers through the Constitution of India, Human Rights legislation and precedence. The Constitution has been interpreted from time to time to protect refugees. For instance, in the mid-1990s, the Supreme Court of India ruled that the right to life enshrined within Article 21

of the Constitution extended to asylum seekers as well. There have also been several cases wherein the deportation order or exit notice issued against refugees has been cancelled by the court in light of the Constitution.¹

In this context, the Global Compact on Refugees (GCR) and the Constitution can be seen as complementary to each other; the GCR commits its signatories to meet refugee needs and support refugees to live among host communities where safe and dignified voluntary return is not possible, which

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the Constitution of India also protects through various Articles. Nonetheless, while the Constitution of India extends protection and rights to refugees and asylum seekers on a case-by-case basis, there is no systematised approach that guarantees refugees and asylum

seekers security within the country. This short commentary piece explores, from a legal practitioner's perspective, where the Constitution of India and the GCR converge and diverge, and what that might mean for India fulfilling its commitments under the GCR.

THE GCR, THE CONSTITUTION AND NON-REFOULEMENT

The GCR contains four key objectives: Ease the pressures on host countries; Enhance refugee self-reliance; Expand access to third-country solutions; and Support conditions in countries of origin for return in safety and dignity. In addition, the international priorities of responsibility-sharing, ensuring access to education, health, jobs and livelihoods, food security and nutrition, and so on are key underlying features of these objectives—particularly in terms of increasing refugee self-reliance. As a multi-stakeholder framework, the GCR expresses that stakeholders should contribute resources and expertise to expand and enhance the quality and inclusiveness of the various services that support refugees within host countries. The GCR expresses concern for age and gender-related barriers that limit access to services or foment insecurity, and it espouses possible solutions to promote refugee participation and leadership in initiatives.² Importantly, the GCR expresses concern for responsibility-

sharing among host countries and urges stakeholders across international, regional, and local levels to work for refugees and host country communities to reduce the burden on the latter.

Similarly, the Constitution of India also has the principle of inclusiveness and protection. The Constitution of India speaks about the protection, development, and support of all the communities with basic necessities under Articles 14 and 21 within the ambit of equality before law and right to life. The Supreme Court, in the interpretation of the right to life and liberty of Article 21 of the Constitution, provides protection of life, access to health facilities, education, food security, nutrition and livelihood to refugees and asylum seekers. Moreover, the Constitution of India has several provisions which are available to all and are not restricted to the citizens of India—equality before the law, right to life and liberty, protection against arrest and detention in certain cases.

The Supreme Court in Anwar v. State of Jammu and Kashmir (AIR 1971 3 SC 337), National Human Rights Commission v. State of Arunachal Pradesh (1996 1 SCC 724), Luis De Raedt v. Union of India (1991 3 SCC 554) stated that these rights are available for citizens and non-citizens—acknowledging an extension of protection through non-refoulement to a national from Pakistan, Chakma refugees in Arunachal Pradesh, and a Belgium national, respectively. Importantly, the principle of ‘equality before the law’ is guaranteed by the Constitution of India as a fundamental right and has been universally recognised.³

The Constitution of India under Article 21⁴ ensures that no person, whether a citizen or an alien, shall be deprived of her life or personal liberty except in accordance with a procedure established by law that must be fair. The protection under Article 21 of the Constitution is available for non-citizens as long as they are in India. The Supreme Court, in several cases like Chairman Railway Board and Others v. Chandrima Das and Others (2000 (2) SCC 465), Maneka Gandhi v. Union of India (1978 AIR 597, 1978 SCR (2) 621), Francis Coralie v. Union Territory of Delhi (1981 AIR 746), Bandhua Mukti Morcha v. Union of India, not only

interpreted the concept of life and liberty, but also enlarged the ambit of the right. The Courts of Law in India have not only protected the rights of refugees but also specified, in cases like Khudiram Chakma v. State of Arunachal Pradesh (1994 Supp (1) SCC 615), National Human Rights Commission v. State of Arunachal Pradesh (1996 1 SCC 742), Ktaer Abbas Habib Al Qutaifi v. Union of India (1999 CRI.L.J. 919), Premanand v. State of Kerala (2013 3 KLJ 543), that refugees and asylum seekers also have the right to life and liberty.

Nonetheless, while these cases have established a precedence of protection, the de facto implementation of protection through non-refoulement is always a challenge in the absence of any domestic legislation. For instance, the government has deported refugees who belong to a recognised, if not registered, refugee group by UNHCR. The most recent incident in this regard is the order issued by the Ministry of Home Affairs for identification and deportation of all Rohingyas.⁵ In this sense, there are similarities between the Constitution and the GCR—in that neither guarantees refugees the protection they require, but this is not a positive comparison in terms of meeting protection objectives.

THE CONSTITUTION, THE GCR AND EDUCATION

In terms of other areas of overlap, the Constitution of India states that right to education is a fundamental right under Article 21 and ‘it directly flows from the right to life’. Education is, of course, a central component of refugee self-reliance—an objective of the GCR. However, in India this is not an absolute right and its content and parameters have to be determined in the light of the Constitution. The Supreme Court of India affirmed the fundamental right to education in two landmark cases, Mohini Jain v State of Karnataka (1992 AIR 1858) and Unni Krishnan J.P. v State of Andhra Pradesh (1993 AIR 217). Also, in December 2002, the Constitution (Eighty-Sixth Amendment) Act was passed, entrenching the right to education in Article 21A which made the State provide free and compulsory education to all children between the age of six to fourteen years. A similar effect can be witnessed wherein the government issues an order to provide educational facilities to refugees and asylum seekers on the basis of the identity certificate issued by UNHCR.⁶ Nonetheless, while the standards exist on paper, there are gaps with implementation on the ground. A recent study of settlements in Delhi, Haryana⁷ and Hyderabad⁸ revealed frequent

refusals of admission and structural discrimination in the classrooms experienced by Rohingya children. Admission for higher education poses the biggest hindrance to refugee children as they are treated as foreigners who should have a student visa, which makes them liable to unaffordable ‘foreign student’ tuition fees. In one case, Mr Sameer Hamood Ahmed Mohammad Al-Waeli. v. Union of India and Anr (W.P. (C) 434/2017), the government stated that the concerned Yemeni refugee student could not get a research visa while having refugee status. Due to fear of persecution, he chose to apply for a Long Term Visa instead of research visa, which led to his non-admission in a postgraduate course.

There is a clear violation of the right to education when it comes to refugee children, yet the prospect of challenging these exclusions at the Supreme Court is expensive, time-consuming and not guaranteed in terms of success. Here again there are disappointing parallels between the Constitution and the GCR—rights guaranteed on paper may not be translated to practice, and refugees have limited opportunity to hold authorities to account either under the Constitution or the GCR.

THE CONSTITUTION, THE GCR AND HEALTH

Further, Article 21 also provides the right to health and medical care as a fundamental right (within the limits of the economic capacity of the State). Under this Article, primary health care facilities should be made available free of cost. In this, too, the Constitution does not distinguish between a national and non-national. The Government of India, in a status report to the Supreme Court in 2018, stated that health centres are providing all primary, secondary, and tertiary health care services as per standard National/State guidelines and that Rohingyas have equal access to these health services.⁹ Theoretically, and going by the claims of the government, it appears that refugees have unimpeded access to the health care system in India; while, practically it is different. Refugees are discriminated

against and denied access to services and schemes by the government health care system.¹⁰ The recent linkage of Aadhar, a unique identity card based on biometric data, with all government health schemes has created further barriers for refugees to access the health care services, since they are refused Aadhar cards. This means that civil society organisations have to step in and fill the gap, providing (often) limited medical care, which by itself is not adequate for the needs of refugees and asylum seekers.¹¹ While the GCR imagines a multi-stakeholder approach and promotes a greater role for civil society in supporting refugees to enhance self-reliance (which includes education and healthcare), this is not meant to fill the gaps created by the retraction of the State.

THE CONSTITUTION, THE GCR AND LIVELIHOODS

Furthermore, Article 21 interprets that the right to livelihood is included under the right to life. The Government of India has, historically at least, issued Long Term Visas to refugees and has not prevented them from working in the informal economy.¹² But for many refugee groups, these opportunities have contracted in recent years—even informal economy employers are less

willing to employ refugees without Aadhar cards and salary bank accounts (facilities inaccessible to many refugees). Moreover, refugees, even when they have a work permit, are exploited in informal sectors and have limited means for recourse against their employers. There have been several cases reported by refugees on non-payment of wages, discrimination, exploitation and

bonded labour because employers take advantage of refugees' – employers know that refugees face difficulties holding them to account for discrimination. Such livelihood challenges are accompanied by increasing general hostility against refugees by Indian citizens, many of whom allege that refugees are utilizing

resources which should only be available to them. Thus, despite the right to a livelihood being enshrined in the Constitution and being a central component of the GCR's objective to enhance self-reliance, there appears to be a worsening environment in India for refugees seeking to earn a living.

CONCLUSION

Beyond domestic parameters, the Constitution of India through Article 51(C), asserts that the State shall endeavour to foster respect for international law and treaty obligations. Article 51 is a directive principle of State policy, indicating the spirit in which India approaches her international relations and obligations. The Supreme Court in Gramophone Company of India Ltd. v. Brinder Bahadur Pandey and Ors (1984 AIR 667) held that 'there can be no question that nations must march with the international community and the municipal law must respect rules of international law even as nations respect the international opinion'. Further, the Supreme Court of India, in Apparel Export Promotion Council v. A.K. Chopra (1999 (1) SC 756) and Vishaka v. State of Rajasthan (1997 (6) SCC 241), reiterated the principle and held that in cases involving violation of human rights, the courts must forever remain aware of the international

instruments and conventions, and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. The position is thus quite clear and establishes a clear bridge between the international GCR and India's own domestic actions towards refugees. Importantly, the principle is such that, if an international convention runs counter to an Indian statute, it loses its relevance to the Indian context. If, however, the Compact does not clash with any Indian law, then it must be accommodated and absorbed into domestic law. In case of the GCR there is such complementarity between rights enshrined within the Constitution and protection goals of the Compact, that there is space for incorporation the GCR in Indian domestic law—despite the GCR being non-binding. As reality suggests, however, the challenge is not in its adoption, but in the translation of protections to practice.

NOTES

1. In State v. Shri K. Htoon Htoon S/o Uhla Htoon & 4 Others (F.I.R. 18(3)89 SGT.P.S.), State v. Thang Chi (FIR No. 330/ 2001, P.S. Ch Puri), State v Chandra Kumar (FIR No. 78/2010, P.S. IGI Airport), State v Tsibangu Kalala, F.I.R. P.S. Vasant Vihar,
2. UNHCR. *Global Compact on Refugees* (Geneva,2018), Paras 74,75, 76 and 77.
3. Constitution of India, Article 14.
4. Constitution of India, Article 21.
5. Government of India, Ministry of Home Affairs No.24013/29/Misc./2017-CSR.III(i)
6. Admission of refugee/asylum seeker students, No. DE. 23(363)/Sch. Br./ 2017/880-886 (28 April 2017)
7. “Rights Violations in the Rohingya Refugee Camps: Delhi, Mewat, and Faridabad,” *HRLN*, [https://hrln.org/report-on-rohingya-refugee-camps-in-delhi-and-haryana/](https://hrln.org/reporting_publications/fact-finding-report-on-rohingya-refugee-camps-in-delhi-and-haryana/)
8. “Living Conditions and rights violation in Rohingya refugee settlements in Hyderabad,” *HRLN*, <https://hrln.org/wp-content/uploads/2018/08/Living-Conditions-and-Rights-Violations-in-Rohingya-Refugee-Settlements-in-Hyderabad.pdf>
9. Jaffar ullah v. Union of India and Ors. (W.P.(C) 859/2013), (2018) https://sci.gov.in/supremecourt/2013/27859/27859_2013_Order_11-May-2018.pdf
10. HRLN, “Living Conditions.”
11. “Annual Report,” *Human Welfare Foundation*, <http://hwfindia.org/publications/annual-report-2018-19/>
12. Government Of India, Ministry Of Home Affairs No. 25022/34/2001-F.IV (29 December 2011).

THE ROLE OF THE GLOBAL COMPACT ON REFUGEES IN ADDRESSING STATELESSNESS IN INDIA

ANGSHUMAN CHOUDHURY*

ABSTRACT

In India, the overall legislative and legal frameworks on statelessness are acutely scant. Besides critical gaps in nationality laws that facilitate statelessness, there is minimal legal precedent on the protection or right of stateless asylum seekers. These policy voids are only deepened by India's non-signatory status to the 1954 UN Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. The lack of a protection-based policy framework on statelessness effectively leaves stateless communities, such as Rohingya Muslims, at the discretion of the Indian State, without any institutional or legal safeguards against arbitrary detentions, deportations or disenfranchisement. This also leaves them vulnerable to arbitrary national processes that may re-displace them within or beyond national borders.

In this regard, the Global Compact on Refugees (GCR) can trigger a normative shift towards addressing statelessness within the Indian context. It can help national and regional stakeholders put in place relevant safeguards and mechanisms to address existing and potential situations of statelessness. This paper examines how the GCR can achieve that in the Indian context through a multi-stakeholder, protection-based and responsibility sharing-centric approach that also ensures better coordination between the national government and UNHCR. The GCR framework can not only foster better understanding of statelessness in India, but also create space for a wide range of stakeholders to mobilise regional and sub-regional support. In the Rohingya case particularly, which has a clear sub-regional dimension, the GCR can help the Indian government address the root causes of displacement (and statelessness) through closer coordination with the country of origin (Myanmar), a secondary regional host partner (Bangladesh) and the UNHCR's regional offices. The GCR's focus on developing 'national arrangements' can ensure that the Indian government has significant agency in developing and undertaking such policies. Additionally, the dynamic and context-specific nature of the Comprehensive Refugee Response Framework (CRRF) can create closer synergies between the government, civil society, and the host communities to address potentially protracted situations of statelessness, and put pressure on the government to close the existing gaps in nationality laws. In all, the GCR regime is well poised to fill the critical institutional gap in India with respect to stateless people.

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“The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion [...] but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.”

—**Hannah Arendt**,
The Origins of Totalitarianism (1951)¹

PART I: STATELESSNESS, FORCED DISPLACEMENT, AND THE COMPACT

What is statelessness?

The United Nations Convention on the Status of Stateless Persons (1954)—the first international treaty on statelessness—established the definition of a stateless person as one “who is not considered as a national by any State under the operation of its law”.¹ But this is not a universally accepted definition, since the bulk of the UN Member States have not ratified the treaty, and continue to operate on disparate understandings of nationality.

At the core of the statelessness phenomenon lies the basic bond of nationality between a State and a person. The subversion of this bond, in other terms, the inability of a person to qualify for specific pathways to citizenship of a country, leads to statelessness. There are multiple means through which this can happen—forced displacement, a specific legislation passed by a national government, gaps in national laws, or the termination

of an existing State. While migration and forced displacement are common means towards statelessness, the bulk of stateless persons today are not displaced across borders and live in their “own country”.

The consequences of statelessness can be severe. A stateless individual may face great difficulty in accessing essential, and often life-saving, services—education, healthcare, rations, State subsidies, banking, voter card, etc. Needless to say, such a condition creates structural and existential barriers towards the development of an individual, and in many cases of mass statelessness, development of an entire ethnic or religious community. It robs them of the crucial political agency to decide their own future within a particular administrative unit. More importantly, statelessness deprives individuals of critical legal safeguards, which protect them against human rights abuse and economic exploitation by “national” groups.

Statelessness is a complex phenomenon that needs context-specific assessment. The basic conditions necessary for individuals to become stateless may have commonalities across different national or regional contexts, and yet, the exact machinations of the process and how it is responded to by key stakeholders may vary. In this regard, it is important to note whether an individual (or set of individuals) is *de jure* stateless, meaning stateless by law, or *de facto* stateless, or unable to establish nationality of any country. The response to statelessness by relevant stakeholders, then, would vary accordingly.

Within the said context, this paper explores the potential application of the Global Compact on Refugees (GCR) in preventing statelessness in India. It does so in two parts: the first part outlines the normative links between forced displacement and statelessness, which forms a core premise of both the New York Declaration (2016) and subsequently, the GCR, and the space for the GCR to prevent statelessness across a wide range of contexts; the second part begins with outlining the specificity of statelessness within the Indian legislative and legal contexts and then goes on to explore the potential of a soft law framework, such as the GCR, in building normative and institutional structures to prevent statelessness. The paper ultimately argues that the GCR can effectively create an institutional prerogative to prevent statelessness in India by triggering norms where there are none, and plugging critical gaps in legislative and legal structures that

proactively encourage statelessness or fail to provide sufficient safeguards to stateless asylum seekers.

Statelessness and forced displacement

As recognised by the New York Declaration (2016) and the GCR, statelessness can both be a cause and consequence of forced displacement.² This symbiotic link can have three distinct archetypes, as identified by the Norwegian Refugee Council.³ First, because of statelessness in a particular country, individuals might migrate or be forced to flee to other countries (such as the Rohingya in Myanmar).⁴ Second, asylum seekers or refugees entering a particular host country may fall into the gaps in the domestic nationality framework of that country and become stateless, while and by failing to prove their links to the home country (such as the Chakmas in India⁵ and Syrian refugees in Jordan, Lebanon, Turkey, and other neighbouring countries⁶). Third, asylum seekers and refugees who are stateless face much greater vulnerability compared to their counterparts who can confirm citizenship of their home countries (Rohingya refugees in India⁷).

In countries with serious gaps in citizenship laws, lack of a national refugee policy and scant legislative policies on preventing statelessness, such as India, asylum seekers are at greater risk of becoming stateless and may remain so for protracted periods of time without adequate

safeguards. Further, a unique form of forced displacement that statelessness could spur is internal displacement. Once an individual or community loses nationality, they might be forced by national governments or local “indigenous” communities to abandon their current residences or settlements in a particular country and become Internally Displaced Persons (IDPs), with the intent of cutting their access to local resources or physically distinguishing them from communities of “indigenous” citizens. Within the statelessness domain, little attention is given to this form of non-international dislocation that lack of citizenship can trigger, unlike the copious attention given to forced displacement across international borders.⁸ Yet, the fundamental conditions of such displacement are normatively and operationally equivalent to cross-border refugees, especially in a country like India that remains dormant to the problem of statelessness and follows highly discretionary policies on asylum seekers.

In terms of policy responses, the symbiotic relationship between forced displacement and statelessness is crucial because of the practical location of the subjects— asylum seekers, refugees, IDPs—within the national policy-legal context. Countries are often unresponsive or simply unaware of the fact that displacement, either internal or cross-border, can actively promote statelessness, or vice-versa. Naturally, hence, there is an acute dearth of protection-centric policy responses in this regard.

The GCR and Statelessness

While the GCR’s remit is broad and deals with a wide spectrum of displacement situations, its structural and substantive design make it a solid global soft law framework to prevent statelessness across a multitude of national and regional contexts. More importantly, the GCR duly recognises statelessness as a distinct component within International Human Rights Law (IHRL) in the “guiding principles”,⁹ thus extending official protection under the compact to stateless persons. It also identifies statelessness as a specific area in need of support, and outlines an operational framework for “identification and referral of stateless persons and those at risk of statelessness determination procedures” by “States and relevant stakeholders”.¹⁰ Notably, further, it acknowledges the critical intersection between statelessness and forced displacement.¹¹

A prime achievement of the GCR is its due recognition of the complex nature of forced displacement and cross-border movements in today’s date. This gives the necessary flexibility to the action and resource mobilisation frameworks under the compact, also allowing adequate and affirmative attention to statelessness as a cause and by-product of forced displacement. In this regard, the broad-spectrum design of the Comprehensive Refugee Response Framework (CRRF) is particularly relevant.¹² Further, the GCR lays emphasis on

installing “statelessness determination procedures”—the first step in the policy-action chain to prevent statelessness within refugee movement paradigms.¹³

Most crucially, the GCR’s continued application and the resultant visibilisation of the statelessness phenomenon within institutional systems has the potential to establish long-lasting normative principles on prevention of statelessness. The final outcome of this is expected to be the installation of permanent self-enforcing rights- and protection-based principles within IHRL that would accord greater agency to the “statelessness prevention” norm, which are only sparsely enforced and practiced today. This is particularly crucial in the context of those countries that lack a coherent asylum policy or haven’t signed the key international treaties on refugees and statelessness—the GCR can shape State behaviour in such cases

as to direct them towards establishing protocols on statelessness prevention within their own national contexts.

Notwithstanding the potentialities, the GCR does not specify the exact contours of how statelessness is to be tackled. It avoids a discussion on national legal frameworks that proactively facilitate statelessness and thus, forced displacement (including internal displacement), or how the compact would address such peculiar situations. The point about “statelessness determination procedures” is perhaps the only exception here in terms of operational specificities.¹⁴ Furthermore, in order to foster a watertight rights- and protection-based regime on statelessness, the GCR needs to be more tightly linked to the Global Compact on Migration (GCM) and stakeholders need “to ensure that the text of neither document inadvertently puts stateless persons at risk”.¹⁵

PART II: THE INDIAN CONTEXT

Statelessness in India: Legislative and Legal Contexts

In India, the policy and legal domains on statelessness are acutely malnourished. The legislative regime remains oblivious to the specificity of statelessness and the institutional prerogative to address it affirmatively through targeted policy measures. Most importantly,

the Indian State has never made any serious attempt to universally define “statelessness” in the national context, not unlike its reluctance to define a “refugee”. The outcome of this institutional passivity has been significant—India’s citizenship laws continue to be ridden by critical gaps that create or exacerbate statelessness.

This is further aggravated by the absence of a national refugee policy and India's non-signatory status to both the 1954 and the 1961 Statelessness conventions, which has kept India dangerously distant from international norms on preventing statelessness. Yet, it may be argued that India is obligated to prevent statelessness within its territory by virtue of being a contracting party to various other international instruments, which address the phenomenon directly or laterally.¹⁶

1. Legislative context

In the Indian context, nationality or the lack of it is deeply linked to the complex history of post-Partition migration across borders and the subsequent patterns of movement. Within this unique context, the Indian nationality framework has progressively become stricter since the enactment of the Citizenship Act, 1955 (or the 'Principal Act'), which stipulated five pathways to citizenship: birth, descent, registration, naturalisation, and incorporation of territory.¹⁷ The Citizenship (Amendment) Act, 1986 was a watershed legislation as it triggered a doctrinal shift from *jus soli* (citizenship by birth) to *jus sanguinis* (citizenship by parents' nationality).¹⁸ The Act was inherently designed to limit pathways to Indian citizenship in response to continued post-Partition migration, particularly in the northeastern state of Assam that borders erstwhile East Pakistan, now Bangladesh.¹⁹ One particular addition, Section 6(A), inserted in the Principal Act after the

Assam Accord (1985), was even more exclusionary—it left in a limbo those who entered Assam from the "specified territories" after 24 March 1971.²⁰ It would be fair to say that this is the most unambiguous provision in Indian law with regard to fostering statelessness.

Subsequent amendments that added more preconditions for citizenship further tapered the nationality regime. Of these, the Citizenship (Amendment) Act, 2003 was significant in terms of encouraging statelessness—it laid down the definition of an "illegal immigrant" as someone who enters India without valid travel documents or overstays with expired travel documents, extended the naturalisation period, and specified "citizenship by birth" to the precondition that none of the parent should be an "illegal immigrant".²¹ There is no specific provision, further, that lays down a *jus soli* pathway in case any one parent is stateless. A similar gap exists in the "citizenship by registration"²² and "citizenship by naturalisation"²³ pathways.

There are other exclusionary norms embedded in the Indian nationality framework that prevent stateless persons in India from acquiring Indian citizenship. For instance, Rule No. 10 of the Citizenship Rules, 2009 states that "adequate knowledge" of one of the constitutionally-recognised languages is a prerequisite for acquiring Indian citizenship²⁴—a clear and discriminatory barrier for refugees and asylum seekers. Further, there is no clarity on what happens to a minor if

one of the parents renounces her or his Indian citizenship.²⁵ These minor but critical gaps, ambiguities and lack of safeguards have left many in a lurch, particularly those who do not possess the necessary travel documents but were already in Indian territory or are forced to flee into Indian territory from another country. In other terms, the legal definition of an “illegal immigrant” in India, which primarily emanates from an over-securitisation of the concept of nationality, has played a critical role in fostering statelessness.

2. Legal context

Not unlike the Indian policy regime, the legal-judicial domain, too, remains inconsistent on the norm of preventing statelessness. The Indian judicial framework lacks a consistent definition of “statelessness” and decisions are rather based on discretion of specific benches. Furthermore, the existing understanding of “statelessness” is not aligned with the 1954 and 1961 Statelessness conventions.²⁶ There have been various cases where higher courts have either underestimated the scope and nature of statelessness or haven’t made a serious attempt to contextualise it within Indian law. For instance, last year, a senior Supreme Court bench led by the Chief Justice of India refused to stop the deportation of seven Rohingya refugees to Myanmar, where the community remains denationalised, on the basis that the deportees were Myanmar “nationals”.²⁷ This is despite the fact that the individuals were given

travel permits by Myanmar that identify them as immigrants, and despite several precedents in Indian law and international obligations regarding non-refoulement of vulnerable refugees.²⁸ Thus, notwithstanding the few cases that have categorically addressed statelessness, there remains a lacuna in understanding the phenomenon in all its distinctiveness and versatility within the Indian judicial domain. This only allows the gaps in the policy fora to go unaddressed, thus actively abetting the Indian State’s detrimental passivity on statelessness.

The GCR’s potential application in India

In the Indian context of statelessness, the GCR can play a critical role in compensating for the lacuna in the policy and legal regimes and create an affirmative policy approach on statelessness. Through its soft law approach, it can progressively spur a normative change in how the Indian State, and its relevant institutions (including the judiciary), understand and respond to statelessness without the weight of hard-set legal obligations. It can create better operational synergies between the government and UNHCR within the framework of the dual refugee protection regime²⁹ to tackle complex situations of statelessness arising out of internal or transborder displacement. The ultimate objective here is to create a rights-based safety net for individuals who are arbitrary and proactively denationalised by the State, including due to legal gaps, and those asylum

seekers and registered refugees who fail to provide citizenship links to their countries of origin.

In this regard, the GCR has the capacity to achieve three distinct objectives:

First, it can mobilise a broader, multi-stakeholder support and operational base to direct material resources towards stateless asylum seekers and registered refugees, while encouraging the promotion of protection- and rights-based systems to address situations of mass statelessness arising internally or as a result of cross-border displacement. Second, it can push the legislative and judicial regimes to become more responsive to gaps in nationality laws that encourage statelessness and bring about a normative change to facilitate protection-based policy measures and rights-based safeguards. Third, it can encourage regional solutions to statelessness through collaborative joint action on complex situations of transborder displacement.

From the Indian perspective, national ownership should be an important component of any potential compact-based application of IHRL, refugee-protection and joint resource mobilisation. This is something that the GCR recognises throughout—within the “guiding principles” and under the “multi-stakeholder and partnership approach” for effective burden- and responsibility-sharing.³⁰ The Indian State has traditionally kept

its guards up on international refugee protection norms, and even more so on statelessness prevention. Hence, without directly engaging with the national government and according it prime agency, little practical action or resource allocation can be expected. Yet, on the other hand, the space for national ownership may throw open the GCR to the throes of national political and security impulses, thwarting important protection- and rights-based norms on statelessness within the *de facto* asylum framework in the name of protecting borders or so-called “indigenous” communities.

For the Indian context, the GCR’s dual emphasis on establishing “statelessness determination procedures” (SDPs, henceforth) and integrating them with national systems are central—recommendations that Indian experts have already made with regard to preventing statelessness.³¹ The lack of targeted institutional attention on stateless asylum seekers or refugees has naturally resulted in an acute dearth of comprehensive data on such persons of concerns, thus limiting access to material and legal aid. The SDPs can immediately tackle this through meaningful collaboration between national and state governments and the UNHCR, which has the technical capacity to undertake enumeration and Refugee Status Determination (RSD). Further, the GCR stipulates a support platform “for the inclusion of refugees and host communities, as well as returnees

and stateless persons as relevant, within national data and statistical collection processes”.³² This is crucial in the Indian context wherein stateless persons are not included in decadal census operations. Further, inclusion of stateless persons in national data collection processes is important in light of emergent citizenship registries in India, such as the National Register of Citizens (NRC) designed to identify “non-genuine” Indian citizens (read: illegal immigrants) living in the northeast Indian state of Assam.³³

Additionally, the GCR encourages relevant stakeholders and States to contribute “resources and expertise” towards strengthening the “capacity of national civil registries to facilitate timely access by refugees and stateless persons, as appropriate, to civil and birth registration and documentation”. In the Indian context, which still lacks a robust system of birth registration due to “bureaucratic obstacles and technical complexities”³⁴, and is ridden with restrictive nationality laws, this is an important provision that may not directly prevent statelessness across the board, but will create conditions to limit it. Civil registries that are sensitive to statelessness as a distinct phenomenon can help stateless asylum seekers in India obtain essential documents—birth, identity, travel—that could help them access material and legal aid, and reunite with their families.

However, the GCR fails to take into account civil registries and enumeration

exercises that may become the source or premise of denationalisation policies. For example, the NRC updation exercise in Assam, which may soon be extended to the rest of India,³⁵ is a unique civil registry that is designed to identify so-called “illegal immigrants” and denationalise them through attendant quasi-judicial processes. While the registry itself has no direct bearing on the citizenship of the applicants, once excluded, individuals risk becoming stateless in subsequent stages of appeals and hearings. The GCR framework is not designed to engage with unique State-sponsored data collection processes like these that may proactively create situations of mass statelessness, rather than prevent them.

Finally, the GCR can act as a key driving force for India in forging a regional collaborative order to prevent statelessness and take an affirmative approach on stateless refugees. This is important in the wider South Asian context that, in extension of the Indian context, lacks legislative or legal safeguards against the threat of arbitrary denationalisation³⁶ and continues to securitise asylum. In conjunction with this, the convoluted nature of international borders, mixed patterns of forced displacement and the loaded institutional memory of Partition make this region ideal for complex and often protracted, refugee situations arising out of statelessness and causing statelessness. Thus, a regional working consensus on asylum and statelessness is the need of the

day—a proposition that sits at the heart of the GCR. In this regard, the “Support Platform” mechanism³⁷ can be the nucleus of multi-stakeholder (including State-to-State) regional collaboration, particularly during situations of mass and protracted displacement, which often push persons of concern towards statelessness. Through continuous structural and practical cooperation under its framework, the GCR can steadily but surely establish the norm on preventing statelessness in the region, notwithstanding overbearing geopolitical and “national security” compulsions.

Further, the GCR’s emphasis on addressing the root causes of displacement within the ambit of “solutions” paradigm³⁸ could

automatically segue into institutional action on limiting and preventing statelessness in the short- and long-terms, respectively. Only once the Indian state recognises statelessness as a root cause of displacement can it affirmatively move to devise commiserate solutions to prevent both through targeted regional action. In this regard, the GCR’s emphasis on directing resources towards addressing root causes in countries of origin to permit safe, dignified and sustainable voluntary repatriation, further creates a robust framework for a South Asian consensus on preventing statelessness-induced displacement, particularly since States are often eager to send back asylum seekers during situations of mass displacement.³⁹

THE GCR AND STATELESSNESS IN INDIA: A CASE STUDY

In the context of the normative and operational capabilities explored in the previous section, the GCR’s constructive potential for the Indian context can be better understood through a case study that encapsulates the statelessness problem within the forced displacement paradigm in India and South Asia.

Case Study: Rohingya asylum seekers in India

Around 20,000 Rohingya asylum seekers are currently registered with

the UNHCR in India.⁴⁰ The rest remain effectively invisible to the Indian State, and thus, are wholly cut off from pathways to Indian citizenship. More importantly, the displaced community remains deprived of citizenship in their country of origin, Myanmar, by virtue of the latter’s exclusionary citizenship law.⁴¹ According to a recent study, most of the Rohingya in India come to the country due to “harsh conditions” in Bangladesh—where nearly a million of them currently live in designated camps—and also for

“security, community and economic opportunity”.⁴²

The GCR could initiate the first step towards visibilising the Rohingya to institutional processes of asylum and entitlements through SDPs. Comprehensive data could segue into affirmative policy action and fresh RSDs by the UNHCR, thus bringing more and more Rohingya into the ambit of refugee protection. This will assist the stateless community in getting critical access to educational, health, employment, and subsidy systems. The distinct classification of the Rohingya within national and UNHCR registries through SDPs, as posited by the GCR, will also help the higher court benches look at statelessness through a unique lens of rights- and protection-based norms as and when they deal with cases of repatriation or pathways to citizenship. This could offer legal protection to the Rohingya from arbitrary deportations to Myanmar.

Moreover, by forging a comprehensive multi-stakeholder refugee protection consensus, the GCR can plug the detrimental gap between the government’s discretionary asylum policy and the UNHCR’s own refugee registration system, wherein the government rejects the latter⁴³, thus rendering even the registered Rohingya refugees vulnerable to rights abuses. The crucial component here would be the primacy of national ownership, which ensures that the national government does not feel alienated from the compact-led process or common norms

that may supersede its own “national security” concerns. Further, the GCR, by leveraging the capacity of community-level actors, can direct necessary resources for the overall socioeconomic well-being of the Rohingya community, which remains cut off from critical services at the moment due to lack of paperwork.⁴⁴ Moreover, the GCR’s proposition to support and strengthen “programmes fostering respect and good relations” and “facilitate access to livelihood opportunities for integrating refugees” can help the Rohingya population in India fit better into local socioeconomic systems.

A key element of the GCR that is highly relevant for the Rohingya context in India is its core emphasis on producing sub-regional solutions. The Rohingya displacement paradigm has a predominantly sub-regional aspect to it—these asylum seekers often end up in India after being primarily displaced from Myanmar and then secondarily re-displaced from Bangladesh.⁴⁵ For most parts, however, India has avoided talking about the political drivers of Rohingya displacement in bilateral discussions with Myanmar for the sake of maintaining cordial relations.⁴⁶ Its diplomatic approach to the mass displacement has been piecemeal, resulting in the perpetuation of existing patterns of displacement, made worse by fresh violence in Myanmar.⁴⁷ The GCR, in this regard, can create an effective and sustainable sub-regional framework of dialogue between the three stakeholders so as to facilitate solution-building on the

root causes of displacement, which in this case, is the lack of political rights for the Rohingya in Myanmar.⁴⁸ This is even more so given the GCR's categorical

reference to “past [regional or sub-regional] comprehensive responses” that encompass the “political dimensions of causes”.⁴⁹

CONCLUSION

The GCR is a unique international instrument that can usher in new norms on stateless asylum seekers and refugees through collaboration and multi-stakeholder mobilisation.

It can help offset critical gaps in the international refugee protection and statelessness prevention regimes, shaping State behaviour towards a rights- and protection-based framework where there are none. In the Indian context, particularly, it can create a constituency for affirmative institutional policies on stateless immigrants and asylum seekers through a whole-of-society approach that is central to the compact's remit.

At the same time, the GCR, as a soft law instrument, is not well placed to affect important legislative and legal changes

that either encourage or directly create situations of statelessness. The Indian State will continue to have discretionary powers over its own nationality space, including on enumeration and classification processes. It will continue to collaborate with non-state stakeholders, including the UNHCR, based solely on its own perceived notions of citizenship and asylum. However, the GCR's comprehensive framework has immense potential in the medium-to-long term to trigger small but decisive shifts in how the Indian State approaches the statelessness phenomenon or deals with stateless refugees. These shifts, one can only hope, accumulate to establish non-mandatory but self-enforcing norms on rights- and protection-based policy action to prevent, or at the very least, limit statelessness within Indian borders.

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“GROUP REFUGEE DETERMINATION” AND “DURABLE SOLUTIONS”

**A SOUTH ASIAN VIEW ON THE
GLOBAL COMPACT ON REFUGEES**

VINAI KUMAR SINGH*

ABSTRACT

The 1951 Refugee Convention, as a result of European resistance, consciously delinks group refugee status determination in terms of “protection mechanism” and establishes a selective approach to burden-sharing in terms of “durable solutions”. However, there is historical precedence under the League of Nations and subsequently there are soft laws (UNHCR Guidelines, UNHCR Notes and EXCOM resolutions) for “Group refugee determination”. In addition, there is widespread and consistent practice, and *opinio juris* that large scale refugees, including war refugees as a group have been given international protection under international refugee law. Interestingly, South Asian countries have placed greater reliance on group or category approach to determine status of refugees. This article argues the criterion “objective condition of State of origin” could be used more effectively to address large scale refugees including those from areas of armed conflict, by forging synergies with group refugee determination. To some extent, GCR reaffirmed and strengthened the status of “group refugees” by underlining this provision, especially in para 1.6. This article also seeks to demonstrate that despite the preferred nature of “voluntary repatriation” as a durable solution, GCR articulated to give prominence to “third country settlement” over the principle of voluntary repatriation by the introduction of burden- and responsibility-sharing principle.

INTRODUCTION

On 17 December 2018, the Global Compact on Refugees (hereafter GCR) was adopted.¹ Following the Syrian crisis, there was an acceptance that the 1951 Refugee Convention,² the key treaty protecting refugees, was not entirely fit for large scale influx of refugees. It had, for example, left the concept of “group refugee determination” and “durable

solutions” undefined, leaving too much leeway for interpreting the way it should be applied on the ground. The GCR attempted to clarify the terms “protection” and “burden-sharing” by widening its scope, i.e., by permitting complementary pathways for admission to third countries along with the host countries to seek the activation of a Support Platform

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which would include galvanising political commitment and advocacy for prevention, protection, response and solutions, and mobilising financial, material and technical assistance.³ In other words, the GCR also attempts to provide logic to that which UNHCR and States have been doing for past 10 years. For instance, UNHCR engaged with the European Union and its Member States on reforms to the Common European Asylum System, including the submission of a series of recommendations for the system to better assess protection needs and foster greater responsibility-sharing among Member States.⁴ The GCR seeks to operationalise the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities. Importantly, the GCR devises a new form of additional protection while the Comprehensive Refugee Response Framework (CRRF) is designed to strengthen protection and assistance for refugees, to support host States and communities involved, and to facilitate access to solutions. These innovative approaches are similar to the Regional Refugee and Resilience Plan (3RP) for the Syria situation.⁵

Another feature of the GCR is the periodic Global Refugee Forum, at ministerial level, which will be convened for all UN Member States, together with relevant stakeholders, to announce concrete pledges and contributions towards the objectives of the global compact, to consider opportunities,

challenges and ways in which burden- and responsibility-sharing can be enhanced.⁶ The first Forum was convened in December 2019. Subsequent Forums will be convened every four years.

In brief, from a descriptive point of view, the GCR points to signs of a growing trend towards the recognition of “admission along with the refugee status determination” and “durable solution” at the international level. The aim of this article is twofold. First, this article argues that the GCR needs to be analysed in the light of two issues—“group refugee determination” and “voluntary repatriation a preferred durable solution” since both concepts are fundamental for the protection of largescale refugees. The second aim of this article is to exhibit that due to the absence of specific provisions related to the two aspects of “group refugee determination” and “durable solution” in the 1951 Refugee Convention, UNHCR through General Assembly resolutions⁷ and Executive Committee of the UNHCR (EXCOM) conclusion,⁸ seemed to be striving to set norms related to protection of large scale refugee influx, but often struggled to develop a coherent and consistent approach in terms of the norms related to “protection” and “solution”. Despite these obvious struggles related to the application of “group refugee determination” and “voluntary repatriation as a preferred durable solution”, the analysis provided below in this paper cannot be ignored.

TRACING THE LEGAL STANDARDS FOR LARGE SCALE REFUGEES INFLUX

Large Scale Influx of Refugees And Persons Fleeing Armed Conflicts During The League Of Nations

Doctrinal difficulties arise from the theory of sovereignty under which individuals do not have right to get asylum under international law, and no obligations can therefore be imposed on the State. However, there is a growing recognition as a matter of law that refugees are deemed to get “international protection” and hence are eligible to get asylum.⁹ The first critical effort for international protection for group refugees occurred under the League of Nations. Under the League of Nations, the refugee was defined in terms of “categories”, and the criteria applied was based on an evaluation of the “objective situation in the country of origin”. In other words, the individual applying for refugee status was not required, therefore, to justify his/her claim in light of specific circumstances which had obliged him/her to leave their former home country. They only needed to show that they did not have protection of their home country. Thus, the general determination of group refugee character placed a lighter burden of proof on the part of individual claiming refugee status, requiring them to only show that they had no protection in their home country. The purpose was to ensure admission to safety, protection from refoulement and basic humanitarian treatment to those patently in need of it.

It is important to highlight that the League applied a criterion based primarily “on the circumstances existing in the country of origin”, that led to a particular refugee exodus.¹⁰ In case of Armenian refugees and refugees from Germany and Austria, the general determination of refugee character was made on the basis of the known situation affecting these groups in their respective countries of origin.¹¹

Since the adoption of four multilateral League arrangements by the League of Nations, between 1922 to 1928, in response to mass refugee exodus caused by World War I, the legal regime of the recognition of group situations has occupied an important place in international refugee law.¹² The loss of protection from their country of origin prompted the need for international protection, with the League of Nations regularising the status in 1922. The League of Nations Council, on 12 May 1926, discussed the expansion of existing arrangements for the protection of refugees in analogous situations. The governments which adopted the Arrangement of 30 June 1928 relating to the Legal Status of Russian and Armenian Refugees: “[h]aving agreed that it is necessary to define more clearly the legal status of Russian and Armenian refugees”, recommended the appointment of representatives of the High Commissioner for Refugees “in the greatest possible number of

countries". Three crucial criteria were used in identifying additional refugee groups: (1) *de jure* lack of protection by the country of origin; (2) flight from events connected to World War I; and (3) territorial or ethnic origin.¹³ The extension of refugee protection was thus meant to include people who fled from conflict and violence in the context of the First World War when protection by the country of origin was absent. The practice of the League of Nations in dealing with refugee groups also illustrates the problem of *prima facie* determination of group refugee character and the refugee status of individual members of the group.¹⁴

The following part of this article explains that criterion for dealing with "group situations, based on the objective situation in the country of origin" that emerged under the League of Nations continues to apply in one form or another, notwithstanding the UNHCR and States' struggle with the application of the same.

"Well Founded Fear of Being Persecuted" and its Interpretations

The second factor is the interpretation of the phrase "well-founded fear of being persecuted" from the 1951 Refugee Convention. "The objective condition of the State of origin" criterion was again found to be useful for an appropriate test to determine the element of "well-founded fear of persecution" existing in the definition of Refugee. The interpretation of this

phrase before and after the 1990s leads to two distinct understandings within the UNHCR. Before the 1990s, two opposite interpretations of this phrase, were available. These were "primarily subjective" and "inherently objective". Before the 1990s, UNHCR espoused the test of "primarily subjective". Fear was considered as subjective, the definition involved a subjective element in the person applying for recognition as a refugee.¹⁵ This view was underlined in its Hand Book in 1979 supporting that the phrase replaces the earlier methods of defining refugees by categories (i.e., persons of a certain origin not enjoying the protection of their category). Thus, in accordance with this view, determination of refugee status would *primarily* require an evaluation of the applicant's statement rather than a judgement on the situation prevailing in his/her country of origin.

It seems this interpretation prevailed within UNHCR due to an understanding that often refugees undergo "interview" in the absence of his/her official documents because they often have to leave their country suddenly to save their lives. Subjective fear test is, therefore, the only way which gives opportunity to them to verify their identity and fear. This interpretation was opposed by James Hathaway in his work in 1991, who argued that the concept of "well-founded fear" was *inherently* objective and intended to restrict the scope of protection to persons who can demonstrate a present or prospective risk of persecution,

irrespective of the extent or nature of mistreatment, if any, that they might have suffered in the past.¹⁶ Hathaway's view of "objective test" as the right test was defended by Patricia Tuitt in her 1996 work relying on the argument that an overemphasis on the refugee's subjective fears approach would result in inequalities between treatment accorded to refugees on the basis of their varying emotional strengths.¹⁷ Lord Keith (of the British House of Lords), in the Sivakumaran case settled the issue and held that "the question is what might happen if he were to return to the country of his nationality".¹⁸ Thus this judgment underlines the importance of "objective conditions" of the State of origin.

After 1990s, re-edited version of the UNHCR Handbook seems to have changed its position and provided primacy to "objective test" over "subjective test" as explained below.¹⁹

Prima facie refugee: "Objective Situation of the State of Origin" and Contextualizing UNHCR Guidelines 11 and 12 with the GCR

The third factor can be referred to is the situation of *prima facie* regime as it has developed over the last few decades for the purpose of protecting massive influx of refugees. *Prima facie* regime recognised the criterion "objective situation of the State of origin" which led to the mass displacement. Kagan describes *prima facie* refugee a "manifestly well-founded" claim to refugee status and Rutinwa similarly

describes it as the status for "those patently in need of it".²⁰ These commentators who have addressed the question of the legal foundation of *prima facie* refugee determination make reference to paragraph 44 of the "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees". Recognising refugee status on a *prima facie* basis has been a common practice of both States and UNHCR for over 60 years. The progress on legal standards related to *prima facie* refugees including the test "objective circumstances in the country of origin" has become part of the UNHCR Guidelines 11 (2015) on *prima facie* recognition of refugee status. It underlines a normative standard "readily apparent, objective circumstances in the country of origin or former habitual residence".²¹ Refugee law jurisprudence therefore leaves no question that "group situation" in general covers benefits extended on the basis of "objective situation of the State of origin". In Asia, *prima facie* status was accorded to refugees who fled Vietnam after the fall of Saigon until the adoption of the Comprehensive Plan of Action which required an individualized RSD procedure to be followed.²²

UNHCR Guidelines on International Protection 12 were adopted on 2 December 2016,²³ and dealt with the claims for refugee status related to situations of armed conflict and violence under Article 1 A(2) of the

1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions. These guidelines provide substantive and procedural guidance for assessing claims for refugee status involving situations of armed conflict and violence. It further clarified that the phrase, “persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol”, contained in paragraph 164 of the UNHCR Handbook needs to be understood as limited to situations where there is no causal link between a person’s well-founded fear of being persecuted and the grounds of the 1951 Convention. Importantly, the Guidelines explicitly addressed related group risk that a person may have a well-founded fear of persecution that is shared by many others, and to a similar or same degree. This specific Guideline responds to the erred judgments of some courts which referred to a “differential risk” formula that requires an applicant seeking *prima facie* refugee status to establish a risk of harm over and above that of others similarly situated.²⁴ The Guidelines clarified that “differential risk” requirement asked by the courts is not a proper application of the causal-like element of 1951 Refugee Convention.

Importantly, GCR para 1.6 specifically underlines that, in the context of large refugee movements, group-based protection (such as *prima facie*

recognition of refugee status) can assist in addressing international protection needs, wherever considered appropriate by the State. The author suggests that explicit recognition of the “objective situation of the country of origin” in the GCR would have strengthened the process of group refugee determination.

Group Determination and South Asian States Practice

Vijaykumar’s comprehensive examination of the South Asian States’ practice in relation to group refugee determination, published in 2001, states that “all the refugee-receiving States in this region have resorted to this group determination of the refugee status to a large extent”.²⁵ In his 1991 treatise, Jackson considered that “in the case of Burmese refugees in Bangladesh, UNHCR’s initial approach was based on the refugee definition in the UNHCR Statute, as the group included persons who were refugees according to this definition”.²⁶ In 1959, following China’s invasion of Tibet, India offered asylum to the Tibetan refugees as a large group. The movement of East Pakistani refugees into India marked the largest movement of refugee population in human history. At the time, in May 1971, there was an average daily influx of about 97, 821 refugees into India. In 1983, a large number of refugees came to India from Sri Lanka. In July 1990, about 2000 to 3000 Sri Lankan refugees arrived in Tamil Nadu every day.²⁷ Pakistan and Bangladesh also faced similar situations while accepting

Afghan refugees and Rohingya refugees from Myanmar respectively. In the years 1959, 1960, and 1961, following the 1959 Tibetan uprising and exile of the Dalai Lama, over 20,000 Tibetans migrated to Nepal. In the early 1990s, nearly 106,000 Bhutanese refugees came to Nepal as well. UNHCR recognised most of the arrivals between 1990 and 1993 on a *prima facie* basis. Countries in the South Asian region have not established any administrative or quasi-judicial bodies to determine the status of refugees. In the absence of any mechanism to determine the status of refugees, South Asian States have placed greater reliance on this procedure. Almost all the refugee movements in this region required immediate acceptance from the receiving States, allowing very little time to think about alternatives. In doing so, the judiciary in these countries have directly or indirectly recognised the principles of international refugee law and have prevented deportation of these refugees even if States have

not become parties to the relevant international instruments.²⁸

In 1955, the Indian Parliament enacted the Citizenship Act in pursuance of the plenary powers given to it under Article 11 of the Constitution of India. After the enactment of the Citizenship Act, all such persons were registered as Indian citizens. The Citizenship Amendment Act of 1986 saw a large number of refugees from Bangladesh being made deemed citizens of India. In a similar way, the Indian government sought to grant special status and protection to refugees fleeing religious persecution in Pakistan and Bangladesh under two notifications in 2015.²⁹ Similarly other South Asian States amended their citizenship laws to accommodate some of these refugees to claim citizenship. For instance, the Bangladesh High Court judgment in Sadakat Khan et al. v. The Chief Election Commissioner in 2008 has acknowledged the groups' right to Bangladesh citizenship for Bihari refugees.³⁰

STANDARD SETTING RELATED TO “SOLUTION”: CAN “VOLUNTARY REPATRIATION AS A PREFERRED SOLUTION” BE CONSIDERED AS A CUSTOMARY INTERNATIONAL LAW?

This part of the article begins with the observation made by Prof. Chimni that it is the dominant States in the international system that decide from time to time, in light of their interests, which solutions to the global refugee

problem should be promoted as the preferred solutions.³¹

During the Cold War and the national liberation struggles of the 1960s and 1970s, resettlement and local

integration were generally regarded as the most viable and strategically desirable durable solutions on the assumption that repatriation was not an option.³² Thereafter, the increase in movement of people since the 1980s from poor to rich countries witnessed the reluctance of wealthy nations to offer resettlement, in effect, influencing the solution approach towards repatriation. On the other hand, most of the States in the Global Southern, due to increased globalisation, have been less willing to support local integration. This is in contrast to the situation in the 1960s and 1970s when, in Africa, for instance, rural refugees were allowed a high level of de facto local integration.³³

Consequently, repatriation has, over the years, been regarded as the emerging customary international law and the most desirable durable solution—provided that return is genuinely voluntary and sustainable.³⁴ The 1990s were known as the decade of repatriation: more than 9 million refugees returned home between 1991 and 1996. Policy and practice in relation to repatriation took the centre stage.³⁵ Therefore, during the 1990s, legal basis for repatriation was explored which relied on the 1950 UNHCR Statute.³⁶ A point of distinction between the 1950 Statute and 1951 Convention is that unlike the 1951 Convention, the 1950 UNHCR Statute does refer to voluntary repatriation. Paragraph 1 of the 1951 Convention provides that UNHCR has the primary mandate of international protection of refugees,

and of seeking permanent solutions for the problem of refugees by assisting governments. Subject to the approval of the governments concerned, private organisations were to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities. Another provision of UNHCR Statute 1950, dealt with “protection” as defined in Paragraph 8:

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by:

...

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities.

The search for a legal basis for voluntary repatriation heavily relies on paras. 1, 2, 18 and 19 of UNHCR Statute of 1950. This period ensured the development of standards related to voluntary repatriation. During this period, voluntary repatriation as a principle was reaffirmed and reiterated by General Assembly resolutions and Executive Committee Conclusions, to upgrade its status as customary international law.³⁷ Importantly, “voluntary repatriation a pre-eminent solution” was recognised in the Bangkok Principles put forward by the Asian-African Legal Consultative Organization (AALCO) in 1966. Despite the progress on standards related to voluntary repatriation, there were instances where returns took place

under heavy pressure from host governments—particularly the 1996 return of Rwandan refugees hosted by Zaire (now the Democratic Republic of Congo, or DRC) and Tanzania. These incidents have raised fresh questions about the degree of voluntariness and the role of compulsion in “imposed return”. Again, premature repatriations to the former Yugoslav republics and Afghanistan in the early 2000s have renewed the debate on sustainable reintegration and its relationship to post-conflict reconstruction.

Thus, the 1990s and 2000s saw the culmination of a cycle of reflection within UNHCR on the use of durable solutions, with the debate being reinvigorated by new initiatives. The 2000s began with Global Consultations on International Protection with States, academics, NGOs and refugees, resulting in the publication of an Agenda for Protection which stressed the need to redouble the search for durable solutions. To further these aspirations, UNHCR and partner States published a Framework for Durable Solutions for Refugees and Persons of Concern (hereafter referred to as the Framework for Durable Solutions).³⁸ This elaborated the “4Rs”: Repatriation, Reintegration, Rehabilitation, and Reconstruction, as a process that would bridge the gap between relief and development. It also emphasised the two related concepts of Development Assistance for Refugees and Development through Local Integration. Both of these concepts build upon the legacy of UNHCR’s

attempts in the 1980s to promote local integration by using development assistance as a burden-sharing tool. The idea of addressing the gap between relief and development builds upon the partnerships between UNHCR, the World Bank, UNICEF, UNDP, ILO, and WFP. As a result of inter-agency collaboration and commitment by donors, it has been possible to apply the 4Rs in Afghanistan, Sierra Leone, and Sri Lanka.³⁹

Evidently, there is explicit recognition of the “principle of international solidarity and burden-sharing” in the Bangkok Principles adopted in 1966. However, despite all these efforts, Europe was not willing to reconsider other solutions besides voluntary repatriation. Ironically, the Syrian conflict and Arab Spring resulted in large scale movements that compelled European States to debate on alternative solutions apart from voluntary repatriation, as the preferred solution. This eventually culminated into the adoption of the New York Declaration for Refugees and Migrants (New York Declaration), in the United Nations General Assembly in September 2016, which set the tone for a profound review of the three durable solutions and how they relate to one another.⁴⁰ The New York Declaration called for the High Commissioner for Refugees, in consultation with States and other stakeholders, to develop a global compact on refugees (GCR) for inclusion in his annual report to the General Assembly in 2018.⁴¹ GCR was adopted on 17 December 2018.⁴²

One of the key issues addressed by the New York Declaration is burden- and responsibility-sharing: i.e., the idea that the countries and communities that host large numbers of refugees should be supported in doing so by the international community. Burden- and responsibility-sharing has been a component of international refugee law since its foundation. This component reflects the reality of refugee challenges being inherently transnational in nature and therefore incapable of being addressed by any one State on its own. The need for international cooperation in order to share the burdens of granting asylum to refugees is referred to, not just in the preamble of the 1951 Convention relating to the Status of Refugees, but also in numerous regional instruments, such as the 1966 Bangkok Principles, the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), the 1984 Cartagena Declaration on Refugees, and the Treaty on the Functioning of the European Union. The importance of burden- and responsibility-sharing in responding to refugee challenges has also been emphasised in several General Assembly resolutions and conclusions adopted by consensus by UNHCR's Executive Committee.⁴³

A number of burden- and responsibility-sharing arrangements were in policy and practice in order to respond to specific large-scale refugee situations, which created basis for the GCR to include the Comprehensive Refugee Response

Framework (CRRF) component.⁴⁴ Past examples of burden- and responsibility-sharing arrangements set the tone again for revival of, for example, use of resettlement; innovative funding arrangements; stakeholders and partnerships, including between humanitarian and development actors. For instance, the adoption of various international instruments: the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) in June 1989⁴⁵; the Humanitarian Evacuation Programme (HEP) in 1999⁴⁶, and in March 2017, the Intergovernmental Authority on Development (IGAD)⁴⁷. These efforts emphasised the need to accelerate efforts to create conditions conducive for voluntary and sustainable return to States of origin, as well as to increase resettlement opportunities and expand complementary pathways for third country admissions. For instance, in line with the New York Declaration, the Nairobi Declaration and its action plan together constitute a comprehensive refugee response framework for the Somali refugee situation.

These above instances advocated in favour of "Third Country Resettlement", referring to the modern practice which recognises that "voluntary repatriation" solution is of doubtful effect and that "resettlement" should be an adequate mechanism for durable solutions. The opening remark in the negotiations of GCR that ten countries host 60 per cent of the world's refugees and the vast majority of refugees (85 per cent) live in developing countries secured the

support of developing countries without proper assessment of the “burden-sharing role of western countries” and thus made it possible to unfold the GCR. This paved a way for preference of third country resettlement over and above “the voluntary repatriation as a preferred solution” in the GCR. These proponents of the new approach to durable solutions, however, ignore the fact that resettlement produces extended exile and thereby resulted in “protracted refugee situations” to continue.⁴⁸ Hyndman and Giles doubt

the rescue narrative in showing that people are not necessarily saved by resettlement and that the politics of resettlement are not strictly guided by non-political generosity.⁴⁹ In fact resettlement programmes for refugees have allowed the States to justify more exclusionary measures towards asylum-seekers. In my view, GCR does not appear to have given full consideration to the longstanding concerns of the Global South that it is the political will of the Global North to keep refugees in the Global South.

CONCLUSION

While exhibiting progressive development in the existing legal instruments pertaining to protection of large-scale refugee movement, including war refugees under International Refugee Law, this article also aims to demonstrate the South Asian States’ approach in terms of “group refugee determination” and “durable solutions”. Prima facie recognition of refugees provided the opportunity to evolve various innovative measures of protection and set forth adoption of interpretations of 1951 Refugee Convention which progressively developed into UNHCR Guidelines 11 and 12. In sum, this article finds that there are some soft laws in place providing for group determination, and there is widespread and consistent State

practice and *opinio-juris* that large scale refugee and war refugees as a group have rights to asylum. In view of the author, the GCR missed the opportunity to further strengthen the legal criterion of “objective situation of the State of origin” by ignoring forging its synergies with group refugee determination.

In spite of traditionally “voluntary repatriation” being a norm for a preferred durable solution, the recent conclusion of the GCR to underline the importance of a “spirit of co-operation between all parties concerned” favours prominence to “Third Country Resettlement” solution. To the contrary, the GCR, set out to change existing voluntary repatriation—a customary international law that has successfully provided durable solutions

over the last three decades. It is worth noting that Turkey currently hosts the largest number of refugees in the world and has had a burden-sharing agreement with the European Union since 2016—yet this is an unsustainable situation for both the refugees and the host community. Early in 2019, the United Nations High Commissioner (UNHCR) noted that “less than 5 percent of global refugee resettlement needs” were met in 2018.

These conflicting positions related to “refugee determination” and “durable solutions” testify the author’s claim that the UNHCR and States often struggle to develop coherent and consistent standards to deal with large scale refugee influxes. This paper seeks to forward southern views and argues to stop “turning a blind eye” to group refugee determination at the stage of protection and to durable solutions.

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نسرین

**THE GLOBAL COMPACT ON REFUGEES AND INDIA:
POLICY AND SOCIETY**

BUILDING NATIONAL OWNERSHIP OF REFUGEE PROTECTION IN INDIA

**REALISING THE GLOBAL COMPACT ON REFUGEES
THROUGH THE WHOLE-OF-SOCIETY-APPROACH**

IPSHITA SENGUPTA*

ABSTRACT

The refugee protection landscape in India has transformed in the past few years. The traditional generous attitude towards refugees that marked much of India's pre- and post-independence history stands challenged by restrictive government policies and negative rhetoric against refugees. Against that backdrop, this paper analyses India's evolving approach towards refugees through the lens of 'Whole-of- Society Approach' (W-O-S-A) promoted by the Global Compact on Refugees (GCR). In principle, W-O-S-A offers opportunities to strengthen meaningful engagement between refugees and host communities and provides national civil society actors with a platform to play a larger role in identifying collective solutions to refugee issues. In practice, this needs a fundamental shift in thinking and action by humanitarian and development actors engaged in refugee protection. W-O-S-A can help gradually rebuild national ownership of refugee protection in India through better collaboration between refugees and a variety of national actors by harnessing and aligning their values, interests, and capacities. Application of W-O-S-A should create a bottom-up model of refugee protection that brings together diverse actors from national society, especially refugees and host communities, supported by non-governmental organisations, media, academics, researchers, and the private sector. At the same time, accountability of States and mandated agencies such as UNHCR should continue to be reinforced while adopting flexible and creative approaches to include refugee voices and key national actors towards better protection and solutions for refugees.

INTRODUCTION

In a world where one person is forcibly displaced every two seconds due to conflict or persecution,¹ we are witnessing large scale media coverage and increased public interest in refugees. Yet, studies show that global attitudes towards refugees have

hardened in recent years with a growing suspicion towards refugees and their ability to integrate into host societies.² In India, successive governments had adopted ad hoc yet positive approaches towards refugees without ratifying the 1951 Refugee Convention or adopting a

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domestic legal framework for refugees. Today, this same ad-hocism and sustained legal vacuum threatens to exclude thousands of refugees in India from basic rights and protection that they have enjoyed over the years. This paper seeks to analyse India's evolving approach towards refugees through the lens of 'Whole-of- Society

Approach' (W-O-S-A) promoted by The Global Compact on Refugees (GCR). It will explore how W-O-S-A can help gradually rebuild national ownership of refugee protection in India, through better collaboration between refugees and a variety of national actors by harnessing and aligning their values, interests, and capacities.

INDIA'S EVOLVING APPROACH TOWARDS REFUGEES

As of 30 September 2019, India hosts some 240,000 refugees and asylum-seekers, including some 200,000 Tibetan and Sri Lankan refugees registered with the government and some 40,000 registered with UNHCR.³ India is not a party to the 1951 Refugee Convention and its 1967 Protocol and does not have a national refugee law. India is party to a host of international human rights instruments,⁴ which embed key refugee protection principles, including the right to seek and enjoy asylum and the customary international law principle of non-refoulement.

India's differential treatment of refugee groups, based on its geostrategic priorities, is executed through a range of administrative measures accompanied by wide executive discretionary powers creating space for arbitrariness.⁵ These powers of discretion were somewhat restricted by rulings of the Supreme Court,⁶ where refugee rights have been

read into the non-derogable right to life under Article 21 of the Constitution of India. However, the application of these rulings on the ground have remained uneven with many lower courts routinely prosecuting refugees for illegal entry under The Foreigners Act, 1946.⁷

The 1951 Refugee Convention is one of the most widely recognised and ratified international instruments with 146 State Parties. Despite India's longstanding record and experience of sheltering tens of millions of refugees, it has still not acceded to the Convention. While there was no formal communication on the reasons for non-ratification, official records and expert views offer a few explanations. Firstly, India was irked by the Euro-centrism of the Convention provisions as well as the drafting process, as it struggled to cope with the largest mass movement of people in human history. Secondly, the Convention's individualistic

conception of refugees, rather than as part of a group, was in contrast to India's understanding and experience with mass influxes, mixed migration, and fluid ideas of citizenship. Thirdly, the Convention did not contain strong 'burden sharing' provisions as countries in the Global South continued to receive the majority of the world's refugees.⁸

Despite not being a party to the 1951 Convention, India has been a member of UNHCR's Executive Committee since 1995, regularly participates in institutional meetings, and makes a token annual voluntary contribution of 400,000 Indian Rupees (approx. 5,500 USD) to UNHCR.⁹ In 1959, India granted asylum to HH Dalai Lama which was followed by a wave of Tibetan refugee arrivals. As a leading voice in the non-aligned movement during the Cold War era, India adopted a "neutralist" approach in providing asylum to Tibetans with limited and indirect international involvement.¹⁰ In 1971, nearly 10 million refugees from then-East Pakistan sought safety in India. While the then-Prime Minister of India, Mrs. Indira Gandhi, offered protection to refugees at the time, the principle underlying the provision of relief was that they would return home at the earliest opportunity.¹¹ The granting of protection was a political exercise which meant that the refugees were dependent on State benevolence rather than being guaranteed their rights.¹² Some 95,000¹³ Sri Lankan refugees are currently living in India, a majority of whom are in more than 100 refugee camps across Tamil Nadu with

access to basic rights and services but with restricted freedom of movement. A few thousand have voluntarily returned with UNHCR support while some others wait for security conditions to improve in Sri Lanka.¹⁴ Some among them also hope to get Indian citizenship or permanent residency rights.¹⁵

While Partition refugees were welcomed in 1947 as members of the new Indian State without any pressure to return,¹⁶ East Pakistani refugees were voluntarily repatriated en masse soon after the creation of Bangladesh, and Tibetan and Sri Lankan refugees continue to be hosted in India as they search for durable solutions.¹⁷ The status of some 40,000 UNHCR mandate refugees who have traditionally enjoyed State protection is much more precarious today than ever before. The non-ratification of the 1951 Convention, the lack of a national refugee law, and the absence of a formal operational agreement between the Government of India and UNHCR has complicated and restricted UNHCR's mandate and activities in India.

India's current view of UNHCR's role was briefly explained by India's Minister of State for Home Affairs, Mr Kiren Rijju, in 2017:

They [UNHCR] are doing it, we can't stop them from registering. But we are not signatory to the accord on refugees. As far as we are concerned, they [Rohingya] are all illegal immigrants. They have no basis to live here. Anybody who is illegal migrant will be deported.¹⁸

REALISING THE WHOLE-OF-SOCIETY APPROACH IN FORCED DISPLACEMENT CONTEXTS

The New York Declaration calls for the comprehensive refugee response to be grounded in W-O-S-A that includes national civil society organisations, international agencies, local authorities, private sector, media, and refugees themselves. W-O-S-A is important to address large scale refugee movements because it ensures inclusion of local voices, mobilises new resources, builds partnerships between humanitarian actors and non-traditional agencies, harnesses contributions from private and development sectors, and enhances efficiency and effectiveness through coordination between different initiatives.¹⁹

In practical terms, the W-O-S-A aims to achieve two key objectives—improve outcomes and enable self-reliance for all communities affected by forced displacement, and foster social cohesion between refugees and host communities.²⁰ In a complex humanitarian emergency, this approach may signify a shift from an emergency to a medium-term plan for affected displaced and host communities underpinned by a strong national and regional development plan and multi-year support.²¹ In an urban refugee setting like India, this approach should aim to establish multi-sectoral alliances between diverse stakeholders to address urgent needs of affected communities and gradually build a

nationally led, cohesive, and inclusive refugee protection environment.

Globally, more than 60% of the world's refugees and 80% of internally displaced persons live in urban areas.²² Cities are centres of economic opportunities—while restrictive and discriminatory policies may marginalise displaced communities in such settings, cities also offer hope of autonomy, inclusion, and self-reliance if the right support networks and enabling legislative and policy frameworks are made available.²³ The role of cities in hosting and supporting displaced persons within the complex phenomenon of refugee urbanisation and the need to ensure appropriate and integrated policies for displaced and host communities is well-recognised in the GCR.²⁴

Humanitarian actors need to strengthen engagement with city governments and build effective partnerships with the private sector²⁵ to create welcoming and inclusive spaces for refugees. In this regard, efforts should be rallied by national civil society and the UN in cooperation with the Government of India to showcase the rich experience of Delhi as a city that has continued its tradition of welcoming groups of refugees and migrants over the years.

Given that 95 per cent of the world's displaced population lives in developing

countries and 78 per cent of refugees globally are in situations of protracted displacement,²⁶ our understanding of forced displacement needs to be reframed as a humanitarian crisis and development challenge. This

underscores the need for sustainable and efficient longer-term programmes focused on the displaced and host communities²⁷ through partnerships between humanitarian and development actors such as the World Bank.²⁸

THE WHOLE-OF-SOCIETY APPROACH AND NATIONAL OWNERSHIP OF REFUGEE PROTECTION

Over the years, India has developed her unique system of refugee protection without becoming a party to the 1951 Refugee Convention, in the absence of a national refugee law, and with limited international support. Arguably, Indian civil society has demonstrated strong national capacity and rich experience in managing mass influxes over the years, but its contribution remains underrepresented in public discourse.

The growing divergence between the Government of India's position on refugees and international protection principles may be reconciled only if national civil society is mobilised to gradually undertake a leadership and ownership role in constructing a strong and inclusive counter-narrative in favour of refugees. In order to build national ownership of refugee protection through W-O-S-A, a diverse, inclusive, and multi-pronged approach is proposed to achieve two key objectives: shaping favourable public attitudes towards refugees and influencing legal and policy debates on refugee protection and solutions.

Shaping Favourable Public Attitudes Towards Refugees

As public debates on refugee issues in India become stronger and more visible, the need for fairness, accuracy, and empathy in media representation of refugees should continue to be reinforced. This is particularly applicable to the Rohingya whose systematic persecution in Myanmar was augmented by anti-Rohingya social media narratives.²⁹ In addition, the popular portrayal of Rohingya as poor, vulnerable, stateless, and in need of assistance has deeply undermined opportunities of self-representation and agency.³⁰

Academic institutions and researchers can play a significant role in enhancing public understanding of refugee issues through the development and delivery of curricula focused on refugee law and forced migration, and promotion of theoretical, evidence-based, and refugee-centred research. The GCR envisages that “a global academic network on refugee, other forced

displacement, and statelessness issues will be established, involving universities, academic alliances, and research institutions, together with UNHCR and other relevant stakeholders, to facilitate research, training and scholarship opportunities which result in specific deliverables in support of the objectives of the global compact".³¹

Some scepticism has been expressed on limiting the academic network's focus in support of "specific deliverables" in line with the GCR objectives, rather than expanding its line of enquiry to better understand the complexity of forced displacement.³² The linkages between academic research and policy development need to be strengthened to ensure effective integration of evidence-based research and advocacy into global efforts addressing the needs and priorities of the forcibly displaced.³³

There is an urgent need to consolidate academic engagement on refugee issues in India, which has fallen dormant in recent years creating critical gaps in research and accurate understanding of key concepts and issues. UNHCR has offered strong support in past years to enrich academic research and scholarship on refugee protection in India by experts such as Dr B.S. Chimni,³⁴ Dr Rajeev Dhavan,³⁵ and Dr Ranabir Samaddar.³⁶ Creative methodologies such as reciprocal refugee research³⁷ have also been successfully piloted in India. These past good practices should be resumed

in collaboration with credible national academic and research institutions.

Lastly, any efforts at changing the narrative on refugees cannot succeed without the meaningful participation and self-representation of displaced communities themselves. While the GCR refers to the meaningful participation and engagement of refugees, more clarity is required in terms of what it means for people of diverse ages, gender, and ethnicities and how these principles will be integrated in policy engagement and practice.³⁸ Studies have shown that it is easier to find opportunities of refugee self-representation at the local level but this space shrinks considerably at the national and international decision-making level.³⁹ Community-based organisations need more support and resources towards effective self-representation at important advocacy and policy platforms.⁴⁰

New media has opened doors for refugees and members of the diaspora to engage in advocacy and activism by challenging existing power relations and through the creation and dissemination of multiple refugee/diaspora voices.⁴¹ Behrouz Boochani, an Iranian journalist who was detained at Manus Island for six years, won a prestigious prize for his book detailing his experiences, written via text messages.⁴² Similarly, underground poetry reading sessions have helped build bridges between Rohingya refugees in Bangladesh and Myanmar artists in Yangon through the exchange of creative ideas and experiences.⁴³

Influencing Legal and Policy Debates on Refugee Protection and Solutions

National and regional civil society stakeholders have the power to come together and develop alternative people-centred, nationally-driven refugee protection narratives and approaches beyond the conventional legal and state-centric frameworks.⁴⁴ In India, efforts at developing a national refugee law, while demonstrating the need for a consistent and equal protection regime for refugees in India⁴⁵, have not yet succeeded.⁴⁶ Perhaps, smaller steps need to be taken to influence uniform, equitable and inclusive implementation of existing refugee policy, judicial orders and administrative directions with the support of local authorities, the police, the judiciary, political decision-makers, and refugees themselves.

Refugee researchers and practitioners also have the tough task of unpacking and articulating India's dilemmas within the complex regional mixed migration context and proposing alternative legal and socio-political pathways that acknowledge the South Asian experience of nation building and the coexistence of multiple yet inclusive nationalisms.⁴⁷ While India's hesitation in ratifying the 1951 Refugee Convention is well-noted, it is no longer legally or morally tenable to argue in favour of a differential approach, given the continued expansion of executive discretion, and discriminatory and inequitable decision-making affecting refugees.

There is no reason why India cannot make progress towards enacting an appropriate domestic legal framework for refugees that protects against refoulement and upholds constitutional rights while balancing national security interests.⁴⁸ At the same time, any legislative proposal that seeks to recreate the provisions of the 1951 Refugee Convention without taking into account India's fundamental reservations about the international refugee protection regime and historically complex dynamics with UNHCR⁴⁹ as well as her own experiences with forced migration, may be met with some resistance.⁵⁰ In this regard, it has been proposed that any national asylum system for India consider the following:⁵¹ recognise that the concept of asylum is pluralistic; contain effective provisions to address mixed migration and mass influxes; and put in place comprehensive, inclusive and participatory refugee governance structures through strengthened institutional mechanisms.

Further, to secure India's interest and engagement in global and regional refugee debates, there is a need for deeper analysis of India's tradition of bilateral humanitarian assistance as a strategic foreign policy tool.⁵² The Government of India uses a narrower definition of 'humanitarian assistance' or 'disaster relief' than what is internationally accepted.⁵³ The language of 'disaster relief' to include humanitarian assistance is applied with caution to maintain apparent neutrality

in complex situations⁵⁴ and stems from India's colonial legacy and policy of non-alignment.⁵⁵

While India has supported disaster relief efforts in many countries in the region, humanitarian assistance has also been provided by India for post-conflict recovery and reconstruction in countries such as Afghanistan, Sri Lanka, Myanmar and beyond,⁵⁶ thus contributing towards the creation of sustainable conditions for achieving durable solutions in these countries.

India's approach to development cooperation was summarized in October 2019 by India's Minister of External Affairs:

India's development cooperation with partner countries is based on equality, mutual respect for sovereignty as well as freedom of choice, and not on competition, conditionalities or prescriptions ... India's development cooperation and support to the cause of multilateralism flow from the philosophy of inter-connectedness and interdependence which reflects commitment to 'Vasudeva Kutumbakam' (world is one family).⁵⁷

Linked to this, an evaluation of India's growing and diversifying philanthropy sector will also be a significant factor in securing complementary support for refugees and realising the GCR. Local models of aid rooted in India's rich cultural and religious tradition should be explored to understand individual and

community impulses, emotions, and values that drive daily decisions to help alleviate vulnerability and suffering.⁵⁸

The GCR presents a unique opportunity to support a diverse, inclusive and nationally driven and owned refugee protection discourse in both countries of origin and asylum. This vision is shared by the Government of India as a State party to the GCR:

The Global Compact on Refugees (GCR) provides an opportunity to change the 'business as usual' approach. Being a non-negotiated outcome of a UNHCR led iterative consultative process, its strength would lie in its consensual adoption premised on international solidarity and national ownership.⁵⁹

UNHCR and partners must start by generating awareness on the key tenets of the GCR among a wide group of stakeholders by establishing linkages with national plans and agendas. For example, the 'Leave No One Behind' principle of the Sustainable Development Goals (SDGs) may provide an overarching framework to frame discussions and debates on the GCR. In this complex environment, given UNHCR's operational limitations, stronger partnerships with a range of well-positioned government and intergovernmental and non-government actors and investments in complementing existing national capacity may provide better opportunities to influence public opinion and drive policy change.⁶⁰

CONCLUSION

The GCR is a stepping-stone towards reclaiming refugee protection principles from its continued global decline. While imperfect, it provides an initial framework for engagement for States and a range of diverse non-state entities on refugee issues which was not available or accessible thus far. Going forward, the GCR needs to shed more light on how responsibility-sharing will work in practice. Ultimately, any pragmatic measures to ease pressures on host countries through a shift from humanitarian to development assistance will not be sustainable and effective if the root causes behind shrinking asylum policies and practices are not addressed.

To ensure effective implementation of the GCR in countries like India, which has offered refugee protection outside of the internationally recognised models, it will be important for stakeholders to gain a comprehensive understanding of the historical, social, political, economic, and security aspects driving India's "strategic ambiguity". Those specific push and pull factors should be harnessed in influencing policy debates and bringing about necessary legal reforms to institutionalise India's approach to refugees.

A network of formal and informal civil society platforms and networks with their donors and supporters is needed to bridge the divides in the social sector and mitigate some of the political risks faced by individual organisations through stronger civic engagement and cooperation.⁶¹

Mobilising political will and getting States to accept formal obligations and additional responsibilities will remain challenging in a highly divided and polarised world,⁶² but it may be eased through the application of W-O-S-A beyond national governments and international actors to municipalities and host communities who may exercise their autonomy to adopt and implement progressive and inclusive approaches to refugees within the broader paradigm of social justice and human rights.⁶³ At its very core, W-O-S-A should aim to evoke and advance India's civilisational journey—one which embraces plurality and diversity, through its solidarity with refugees, based on values and principles of care, compassion and empathy beyond the constraints and constructs of citizenship.⁶⁴

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INDIAN CIVIL SOCIETY AND THE GLOBAL COMPACT ON REFUGEES

JESSICA FIELD*

ABSTRACT

The Global Compact on Refugees (GCR) is a voluntary framework that commits signatories to four objectives: easing pressure on host countries, enhancing refugee self-reliance, expanding access to third country solutions, and supporting conditions in countries of origin for return in safety and dignity. Civil society actors are key stakeholders in the fulfilment of these commitments. While many civil society actors in India, such as humanitarian NGOs and faith-based groups, have long been working towards similar objectives, much of it has been siloed and project-based. The GCR, in theory, provides a framework to cohere around and to build a greater platform of advocacy for refugees—but to what extent will it (or can it) galvanise and organise national- and local-level change for enhanced refugee protection?

This paper explores the contributions that Indian civil society can make to ensure that the country adheres to its commitments under the GCR. It focuses particularly on the second GCR objective— “enhance refugee self-reliance”—and highlights how Indian civil society actors have long been working towards similar goals. As such, there are already rich experiences and data ready to be shared at GCR platforms. However, making the most of these platforms requires recognition from international/national actors that top-down collaborative frameworks are difficult for less formalised civil society actors—such as ad hoc voluntary groups and refugee self-started organisations—to participate in for a variety of reasons. Thus, for the GCR to be truly transformative in its work towards refugee protection and its inclusion of civil society contributions, non-traditional coordination and partnership approaches are also necessary.

INTRODUCTION

The Global Compact on Refugees (GCR) is an international voluntary framework launched in December 2018 that aims to galvanise refugee protection and assistance and to support collaboration and responsibility-sharing at multiple

levels. Signatories, which include India, have committed to four objectives: easing pressure on host countries, enhancing refugee self-reliance, expanding access to third country resettlement, and supporting conditions

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in countries of origin for return in safety and dignity. Civil society actors are key stakeholders in the fulfilment of these objectives—as advocates for these outcomes, as providers of services that contribute to these goals, as collectors of data that inform theory and practice, and as activists to hold governments to account when they are falling short.

Civil society actors in India, such as humanitarian non-governmental organisations (NGOs), volunteer groups, and faith-based institutions, have long been working towards similar objectives. Support to Partition refugees after 1947, for instance, included employment and skills training, as well as material relief and housing assistance. In more recent decades, civil society actors have developed education programmes, sought to enhance employment opportunities and hosted cultural events, as well as undertaking advocacy for increased legal protection. Nonetheless, substantial protection gaps remain at the national-level, and much of the work undertaken by civil society at the local-level is siloed and project-based, with sustainability challenges and limited opportunities to share data and

good practice strategies. Moreover, as a result of a shifting national agenda over ‘who counts’ as a citizen in India and whether certain refugee groups are welcome, civil society actors have had to navigate an increasingly complicated and constantly evolving protection politics.

The GCR and India’s support of it provides, in theory, a framework to cohere around, and an opportunity to build a greater platform of advocacy for refugees—which is vital in a country that lacks codified protection. To what extent will it (or can it) galvanise and organise national- and local-level change for enhanced refugee protection? How relevant is the framework to Indian civil society in the first place? This paper explores the role of Indian civil society in ensuring the country lives up to its commitments in the GCR. It will focus in particular on the second GCR objective—‘enhance refugee self-reliance’—and will examine the ways that civil society actors have *already* been contributing to that goal, what obstacles remain, and where opportunities may still lie for change and holding the government to account on their commitments.

WHO CONSTITUTES CIVIL SOCIETY IN INDIA?

The first question when examining the contribution of civil society actors in a

given situation is: who exactly constitutes civil society? In India, just as elsewhere in

the world, there is not a straightforward answer. The broad definition of civil society is inclusive of any group linked by shared interests, and these interests need not necessarily be working towards ideas of equality and justice (as exemplified by the numerous civil society networks that supported fascist regimes in Europe during World War II¹ and the rise of exclusive fundamentalist civil society networks across Asia and the world today). International organisations such as the United Nations and the World Bank generally define “civil society” as including NGOs, foundations, charities, voluntary agencies, faith-based organisations and businesses, among others.² Working from that definition, India’s civil society capacity is significant; as well as being home to countless businesses and faith-based organisations, India’s Central Bureau of Investigation calculated in 2015 that the country hosted over 3 million NGOs.³ Despite this volume, the picture of this grouping’s activities related to refugee wellbeing remains complicated and incomplete.

Firstly, the number of civil society actors working with de facto refugees⁴ (indeed, on any cause) is not known, as a significant proportion of civil society organisations are small scale, local in geography and irregular in their activities and/or financial reporting.⁵ Secondly, welfare activities undertaken by differently- or un-regulated groups, such as faith-based groups and collectives of volunteers, may not be captured in a way that can be registered or measured as a contribution to refugee assistance/protection. Faith institutions are not required to report their donations and activities in the same way as registered NGOs are in India.⁶ Moreover, while volunteering is a significant aspect of social work in India, it is often small in scale, ad hoc, reactive and unrecorded.⁷ Of what is known about civil society contributions to refugee assistance and protection in India, the impacts have been important but have only addressed the tip of the iceberg of challenges that refugee groups face in the country.

CONTRIBUTIONS OF INDIAN CIVIL SOCIETY TO ‘ENHANCING SELF-RELIANCE’

It is oft-cited that India has a long history of hosting refugee populations. Linked to that, the country also has a long history of supporting refugees to find work and regain a level of self-sufficiency. In the aftermath of Partition and the mass

displacement of millions, employment schemes were set up as a part of the national rehabilitation programme, and refugees could access financial assistance and training in a variety of skills.⁸ As the government began to

reduce its social welfare capacity in the later decades of the twentieth century, civil society stepped in to fill the gap.

Some of the most well-known civil society actors currently working with refugee groups are those with a nation-wide presence and/or programme partnership with UNHCR India, for example, Don Bosco, the Development and Justice Initiative, The Fair-Trade Foundation India, and Save the Children India. These NGOs have been working for many years across different objectives enshrined in the GCR, particularly on the issue of enhancing refugee self-reliance.

In recent years, their work has included: facilitating documentation essential for working, offering language classes and skills training for refugee men and women, establishing linkages to relevant employment markets, and offering employment opportunities within civil society organisations themselves. Overall success in supporting refugees into sustainable livelihoods has been mixed, with many refugees struggling to secure sufficient incomes and ongoing employment.⁹ Nonetheless, these organisations have in many cases successfully identified opportunities for income generation and promoted interaction and sociability between refugee groups through, for instance, sports and music events (although more could be done to facilitate interactions with host communities, too).

Importantly, these types of supportive activities are not restricted to organisations run by Indian citizens; refugees themselves have founded their own supportive civil society organisations.¹⁰ Two examples from Delhi include the Khalsa Diwan Welfare Society, founded in 1992 by Sikh refugees from Afghanistan to provide a wide range of welfare support for the Afghan Sikh and Hindu refugee community in India, and the Rohingya Literacy Group, established by Rohingya youth leaders in 2017 to support Rohingya refugee children in education.¹¹ More widely, the Tibetan refugee community have an even more established, self-started civil society (and Government-in-Exile) network, which has been supporting its own community in education, employability, and welfare since the 1960s. The work of these refugee-led organisations is an important reminder that refugees are often part of host communities and civil society, and that they can fulfil different needs and provide different services to refugees than other civil society organisations.¹²

Nonetheless, while these narratives suggest that Indian civil society might be making significant progress on the goal of enhancing refugee self-reliance, there are a number of challenges internal and external to the sector that may inhibit the sharing of good practice and opportunities to feed into the GCR.

CONSULTATION AND COORDINATION

Civil society actors working with refugees in India lack inclusive and effective consultation and coordination structures at the national, state and local levels—such mechanisms are vital for collecting and sharing data, reporting of progress, and adapting protection strategies.¹³ While the same can be said in virtually all refugee hosting contexts across the world, the sheer size of India,¹⁴ and its strong federal system with distinctive state-level identities, cultures and politics make inclusive and systematic coordination a particular challenge.

UNHCR India has attempted to lead somewhat in this regard by holding regular thematic consultations with partners who include programme-focused NGOs, academia, legal experts, and refugee representatives. This has included consultations on the GCR itself. However, the scale and impact of coordination can only ever be limited when UNHCR's geographical and resource scope is mostly limited to the National Capital Region (i.e. Delhi and parts of surrounding states), and when its coordination structures and partnership protocols are ill-equipped, or ill-inclined, to include non-formalised and/or ad hoc civil society groups, such as student volunteers, or refugees themselves. As has been highlighted in other humanitarian contexts, international organisations are institutionally structured to engage

primarily with professional organisations that have key features, such as: a particular technical expertise; the resource and physical capacity to assist; relevant bureaucratic skills to report on that assistance; and a shared technical vocabulary related to the humanitarian issue at hand.¹⁵ Ad hoc volunteer groups and other non-formalised humanitarian actors often do not have these attributes or capacities.

Moreover, such centralised coordination structures tend to be hierarchical and bureaucratic, and therefore slow to respond to rapidly changing ground realities and uncertainty.¹⁶ For more effective coordination in refugee settings and other crisis contexts, norm-setting and decision-making must not be top-down, and actors at different scales require the independence to act, and shape or adapt their action around local knowledge and uncertainty—with feedback loop mechanisms built in to ensure continued learning and relevance.¹⁷

Where other actors and individuals have attempted to foster coordination at different scales—for example, with the establishment of a Delhi-based 'Refugee Forum' by an academic activist in 2018—a lack of resources, time, or a sense of competition have meant these initiatives have fizzled out. Indeed, the more "formal" civil society actors in India (e.g., NGOs and

businesses) are affected by the same perverse incentives as civil society groups elsewhere in the world, i.e., competition over funding, accountability to donors (often above refugee beneficiaries and peer organisations), and grant/project cycles with limited timescales for impact.¹⁸ This can result in a reluctance to engage in forums not directed by a donor, or that are run by a “competitor” agency.

Civil society groups that are less formalised—such as small volunteer groups, faith community members mobilising for charity, or student associations—provide their time for free when they have it and are often not wired-in to the information networks of more established NGOs. Other groups, such as faith-based foundations or grassroots groups, may have no need or interest to feed into national or international reporting mechanisms, as their motives and understandings of impact may differ entirely. Much work

on refugee protection and assistance, therefore, continues in siloes and is project-based or reactive to the needs of the moment (or the agenda of an organisation). For instance, after a fire destroyed a Rohingya refugee settlement in Delhi in April 2018, Ali Johar, a Rohingya youth leader commented on the response, explaining that:

We are grateful for the generous humanitarian response that mobilised following the fire ... However, the area has become a bit of a circus, with journalists, aid groups and informal volunteers pouring onto the scene and jostling for access and visibility. Some people have been vocal in blaming authorities, and we are worried that politicising the incident will cause a backlash.¹⁹

His concern points to competition, limited coordination and inadequate consultation with refugee communities as well as a politics inherent in protection.

THE POLITICS OF PROTECTION

The challenges noted above are neither unique to India, nor are they solely internal to civil society. Civil society organisations are incredibly sensitive to changes in political winds, as they are often reliant on governments for funding, information, and a secure operating environment.

In the 1980s, for instance, the Congress-dominated Indian State attempted to exert more control over the NGO sector, as it feared that the growth of many campaign-orientated organisations in this decade might pose a governance threat.²⁰ Some of this fear was steeped in the bipolar politics of the Cold War

and India's concern about international interference in domestic governance through NGO funding. It also hinted towards the different visions of welfare and governance held by different elements of Indian civil society. In the 1990s, as a result of security concerns and the assassination of Prime Minister Rajiv Gandhi by a Sri Lankan militant, refugees from Sri Lanka were subjected to tight restrictions in refugee settlements in Chennai—local and foreign NGOs and UNHCR were prohibited from operating inside the camps where the conditions were deplorable and continued to worsen.²¹ There are still some areas in the country where civil society actors struggle to access, including sensitive border areas in the Northeast where many refugee and vulnerable migrant communities reside.

Beyond access, the funding environment for civil society has also long been challenging. In 1976, during the midst of the Cold War, the Indian government passed the Foreign Contribution Regulation Act (FCRA), which was aimed at monitoring and controlling foreign funds to NGOs.²² The Act has been enforced and amended to varying degrees over the years in order to suit the political priorities of the day. In 2010, for instance, Congress amended the Act to prohibit “any organisation of a political nature” from receiving foreign funds. More recently, the governing Bharatiya Janata Party (BJP) has used the provisions under the FCRA to shut down around 10,000 NGOs in 2014, declaring failed

compliance under the Act. Amnesty India—an organisation that has spoken out against the Indian government's treatment of refugees, among other issues—had their offices in Bangalore raided in 2018 with the explanation of failed FCRA compliance. The Lawyers Collective based in Delhi and Mumbai have been similarly targeted for FCRA violations since 2016.²³ Many have argued that the BJP is using the FCRA as a tool to curb the activities of organisations it finds problematic, such as human rights and environmental agencies.²⁴ It remains a difficult and long-winded process for an organisation to get FCRA status, and easy for an organisation to lose it.

The sense of targeting can create a “chilling effect” among civil society organisations working on refugee human rights issues. In other words, the fear of reprisals can discourage an organisation from working in contentious humanitarian areas, or can result in keeping a low profile while engaging with certain issues. This risk is high with organisations working with Rohingya refugees in India, as the refugee group has been labelled by the government as “illegal” migrants who are not welcome in the country. The Indian State is currently attempting to deport the whole community, and successfully deported seven Rohingya refugee men to Myanmar in October 2018 and a family of five Rohingyas in January 2019, after refusing access to UNHCR to assess their refugee status and wellbeing.²⁵ This hardening

agenda in the last two years has led organisations and individuals to lower the profile of their activities or implement stricter reporting measures than was previously necessary. For instance, one NGO working with refugees in Hyderabad operates regular voluntary check-ins with local police to keep them informed of all activities and individuals associated with the programme. This type of risk management can be beyond the time, resource and political capacity of smaller, volunteer-led organisations and therefore might push them out of the refugee-focused civil society space.

The muting of advocacy is also visible in relation to other refugee communities.

Tibetan refugees, for example, have also seen restrictions on their rights and mobility as a result of India's changing bilateral relations with China. Tibetans have had national events featuring the Dalai Lama cancelled, their movement curtailed, and have seen activists arrested when the government in Delhi has wanted to carefully manage its relationship with Beijing.²⁶ While detentions and deportation have been less of a threat against this community than for refugees from Myanmar or Pakistan, the fluctuating protections that Tibetans receive have reinforced their "enclavement" in parts of India,²⁷ and have muted Tibetan civil society advocacy for further progress in rights to work, education, and welfare.

SOLIDARITY AND CULTURAL INTERCONNECTIONS

Despite these systemic political challenges, there is much to celebrate in what Indian civil society has contributed to refugee protection and assistance, not least in the form of solidarity and cultural interconnections. There are numerous civil society organisations run by Indians, migrants and refugees that have, among other examples, supported Rohingya refugees to play football, supported Afghan refugees to pursue music, and have encouraged other Indian citizens to understand refugee experiences through art.²⁸ While not meeting some of the more

conventional protection needs, these initiatives are still vital for refugee well-being and social cohesion within the local community. Importantly, the meaning of refugee self-reliance goes beyond livelihoods; it must account for all the opportunities and capabilities that refugees have or need to live a meaningful life, which can include sports, music, arts and education.²⁹

These cultural inter-connections are largely overlooked in the GCR. The text does highlight the importance of sport and culture for fostering "peaceful co-

existence” among communities, but the stated scope only includes “children, adolescents and youth” and “older persons” or “persons with disabilities” as identified stakeholders. Moreover, its emphasis on these activities as bridge-building for wider social cohesion

misses their importance for individual well-being. Perhaps what Indian civil society can bring to the GCR, therefore, are good practice examples that encourage a broadening and deepening of key terms within it, such as “self-reliance”.

LOOKING AHEAD

The Indian government has a history of scepticism over international compacts, conventions and agreements, viewing them, at best, as irrelevant, and, at worst, as a tool of foreign interference in domestic issues. Despite (or perhaps because of) the challenges presented by this wider political environment, Indian civil society has expanded over the decades and has continued to make significant progress in areas of refugee assistance and protection—without receiving overseas support and often without explicit reference to international norms. This poses the question as to whether the GCR is really relevant or necessary at all in the Indian context?

While the compact encourages coordination and consultation, it offers only top-down voluntary mechanisms to do so, such as the “Support Platforms” organised at the national-level to galvanise commitments and funds. Participation in these national-level mechanisms, as well as general reporting on compliance, will require additional

time and resource capacity among civil society actors that many in India simply do not have. Some groups are too small, or operate on an ad hoc basis, and for others such a task may seem irrelevant if the nature of their engagement with refugees is driven by different motives (such as faith or charity).

Moreover, as noted above, public displays of compliance to an international compact may actually present problems for Indian civil society organisations. Successive Indian governments have curbed foreign involvement in domestic humanitarian issues for stated reasons of security. Additionally, in the current moment in India, popular opinion is turning away from humanitarian assistance and protection for refugees. Programmes supporting refugees to achieve self-reliance (and potentially integration) into local communities may be perceived by many as contentious and NGOs may not wish to draw undue attention to themselves as a result of engagement with the GCR.

It is, of course, not the sole responsibility of Indian civil society to ensure that India meets its obligations under the Global Compact on Refugees, but it still has a significant role to play despite the challenges noted above. This must be recognised as a two-way process between international and national/local actors, particularly in the areas of data collection and sharing analysis and good practice. Concrete data from the Indian context on refugees and host communities is desperately needed for a more accurate picture of the challenges and opportunities to support refugee well-being and protection—civil society actors in

India (especially older refugee-started networks) will likely have this in abundance given their huge numbers and longevity of experience—sharing it is key and the GCR may provide the platform. Likewise, individuals and international organisations connected to the GCR should actively look for studies and good practice examples from the Indian context that are not self-selected by civil society actors who have the capacity to engage in international forums. This is vital to overcoming the entry barriers that smaller actors may have to participation in global processes, and therefore essential for ensuring cross-fertilisation of good practice.

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ARTIST: MOHAMMED REZA
Afghan Refugee

NEWSROOMS AND REFUGEE CRISES:

**HUMANITY VS. NATIONAL SECURITY - THE ROLE OF
THE MEDIA AS STAKEHOLDER IN IMPLEMENTATION
OF THE GLOBAL COMPACT ON REFUGEES IN INDIA**

MAYA MIRCHANDANI*

ABSTRACT

August 2019 marked the second anniversary of the exodus of nearly one million Rohingyas from Myanmar, fleeing atrocities arguably amounting to genocide and other crimes. For the most part, this news sank without a trace in India. This reality begs the question why the Indian media is unable or unwilling to create public consensus on the need to recognize refugees as victims of violence, terrorism, or State oppression. In comparison with news coverage of earlier refugee influxes into India, reportage around the Rohingya has seen a major shift. Tibetans, Bengali Hindus, Sri Lankan Tamils, among others, were welcomed with empathy, historically. However, the Indian media's reportage of the Rohingya crisis is at best negligible; at worst misleading, exaggerated and emotive—pitting the Bengali speaking Muslim Rohingya as an economic and security threat to India, and feeding into rising xenophobia and anti-Muslim ideologies in India and abroad.

The role of the media as a watchdog in democracy cannot be understated. Its task is to inform the public accurately and hold governments to Constitutional standards—actions that can influence both opinion and policy. Much like the anniversary of the Rohingya exodus, reportage around India's acceptance of the Global Compact on Refugees and the Global Compact on Migration has also been next to absent in the Indian media—both print and television. Given the voluntary nature of the GCR, its uniqueness lies in its holistic approach towards refugee protection by bringing different stakeholders, including the media, together in order to generate support for victims of humanitarian crises. With nomenclature around refugees, migrants, asylum seekers merging into each other in the public mind today, how can the media improve its coverage of refugees as victims of a humanitarian crisis? Can it play a role in positively influencing opinion and building wider consensus around India's acceptance of the Global Compact on Refugees? Accurate, well-informed reportage can sensitise audiences to the situation facing refugees and their distress, as well as introduce them to key debates and potential solutions to humanitarian crises. This paper analyses the role of media as a stakeholder in propagating, promoting and influencing narratives around ongoing refugee and migrant crises.

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INTRODUCTION

On the eve of Mahatma Gandhi's 150th birth anniversary in October 2019, India's Home Minister, and the President of the ruling Bharatiya Janata Party, Amit Shah addressed a rally in Kolkata and promised Hindu, Sikh, Jain, Buddhist, Christian and Parsi refugees that they will not be forced to leave India.¹ The Home Minister was referring to residents in India who have been excluded from a recently concluded exercise to update the National Register of Citizens in the north-eastern state of Assam. While promising a nationwide register of citizens, he also pledged that his government would enact the Citizenship Amendment Bill to ensure such individuals get full citizenship. The glaring omission of Muslims from his list of potential refugees seeking asylum is telling, both for its ideological position, as well as its geo-political ramifications. Globally, refugees—particularly those fleeing terrorism, civil war, and State-sponsored violence in the Middle East, Afghanistan and parts of Africa, as well as the disenfranchised Rohingya from Myanmar—are among the most vulnerable today. Partly as a result of growing xenophobia and a (frequently deliberate) conflation of many refugee groups with terrorism, these vulnerable populations are “nobody's people”—unsafe in their homelands and rejected by nations that could protect them. The apparent pressures faced by developing nations and emerging economies to prioritise their own citizens in the

distribution of welfare and resources against the needs of millions of refugees fleeing low- or middle-income countries feeds into political populism and insularity. This is the “conflict” that finds its way into dominant public narratives in India, too.

India's own history, despite not being a party to the 1951 UN Convention on Refugees, is replete with examples of an accommodative policy towards people seeking refuge from war and violence, irrespective of ethnicity or religion. Nonetheless, the shift in the identification of which communities are more vulnerable than others—or who might be more needy of asylum and protection in India and why—is both a result of popular politics as well as the near absence of an informed discussion in the mainstream media on the victims of “new” conflicts in the 21st century.²

In this context, it is both interesting and necessary that India's institutional, bureaucratic machinery has attempted to separate domestic political discourse from foreign policy and international commitments both as a member of the United Nations (UN), as well as a regional leader, setting the agenda within the South Asian region. The voluntary, legally non-binding nature of the Global Compact on Refugees (GCR) makes it easier for New Delhi to maintain that balance between perception and action, especially as

demands for more equitable burden- and responsibility-sharing for refugees mutate into domestic narratives in accordance with domestic laws.

In this landscape, relevant stakeholders—international humanitarian organisations, civil society actors, private enterprise, governments, judiciary, and the media—all have the capacity to inform and influence public opinion and highlight the need for urgent solutions in the face of ongoing refugee crises. Visible media discourses that often reflect official positions are shaped not only by elite English or Hindi press and television but regional, vernacular players too—especially in the context of electoral politics.³ As this paper will illustrate, reportage that depicts the “refugee” as a victim, or depicts the “migrant” as an infiltrator have been used differently to either elicit empathy or generate outrage. Both kinds of responses have fed into political statements and official policies of their times.⁴ Like elsewhere, the media in India is not a monolith. Over 1 lakh newspapers are registered with the Registrar of Newspapers, across English, Hindi and other major Indian languages.⁵ News and current affairs channels on TV total

over 400.⁶ And the explosion of digital media portals as well as social media not only challenge more traditional media formats, but also their reach and visibility. This paper argues that the media as the watchdog of constitutional democracies and facilitator of public discourse needs to ensure that the imperative of national security doesn’t subsume national or constitutional commitments to human rights in the context of refugees.

Unlike the legally binding 1951 Refugee Convention, to which India is not a party, the GCR is held together by a moral force. Indian diplomats have long argued that signatories to the older convention have repeatedly attempted to find ways to mitigate their own responsibility towards refugees—the refusal of several European nations to take in Middle Eastern refugees is a case in point. Unofficially, Indian diplomats say that more than refugees, it was the need for protection offered to legal migrants specifically (e.g., social security, identification, legal protection) under the 2016 New York Declaration that led to the compact, that propelled India to sign on, given its ever growing diaspora abroad.

INDIA’S APPROACH TO REFUGEE INFLOWS

Much of India’s approach to refugees is linked intrinsically to its creation and identity as a nation in a hostile

neighbourhood in the mid-20th century. While the installation of borders and the division of South Asia brought an end to

the British Empire in the subcontinent, it didn't curtail the transfusion of culture, ethnicity, and the practice of free flow of movement. In a sense, official and societal acceptance of refugees who moved into India over the last seventy years have been as much a result of subcontinental political cultures as they have of India's geo-strategic imperatives. In spite of being a new nation born of a violent Partition—and therefore a country preoccupied with the business of nation-building, with little capacity to host new migrant populations, volatile border disputes, and a generally turbulent neighbourhood—Sri Lankan Tamils, Afghans, religious minorities from Pakistan, Chakma tribals, and many others have all found their way to India's embrace.⁷

In April 1959, when the Dalai Lama entered India, seeking political asylum

as the leader of a persecuted religious community in communist China, Jawaharlal Nehru announced his arrival in Parliament,⁸ and spelled out some parameters for India's ambiguous refugee policy. These included: that the issues of refugees would be dealt with bilaterally; that they would be accorded humane treatment; and that they would be expected to return once their home nations are deemed safe. Much of the public discourse and acceptance of the arrival of such refugees was driven by detailed news reportage in national newspapers and State-owned broadcast media. These journalists explained the nature of conflict and the role of its various actors within the framework of India's domestic interests, India's growing global stature as a leader of the Non-Aligned Movement, and fundamental humanitarian values.⁹

DEMOCRACY'S FOURTH PILLAR

As the ubiquitous fourth pillar of democracy—tasked to record triumph and tragedy, to bear witness to history; to prioritise fundamental rights and freedoms of speech, life, and liberty; to inform the public and to hold power to account—the media is perhaps the most critical stakeholder in shaping discourse around refugee crises, especially in politically polarised times. Justiciable fundamental rights, protection from violence, access to shelter, nutrition and

health for refugees are critical needs. The media's role in documenting the plight of refugees can have a significant impact on public opinion when it comes to providing safe harbour and resources. However, just as the political discourse around receiving refugees in India has shifted with domestic political discourse, so has the media's portrayal.

Today, the mainstream media has an additional challenge from social media

when it comes to reporting stories or pandering to public opinion. Vitiating social media discourse around the Bengali speaking ethnic Rohingya fleeing State-sponsored violence and persecution in Myanmar,¹⁰ for example, was led by social media “influencers” with millions of followers.¹¹ Their comments conflated Rohingya refugees with older “illegal” Bangladeshi migrants whose identification and documentation has been a key focus of the National Register of Citizens. They also stereotyped the Rohingya trying to enter India as representative of a new influx of Muslims posing a security threat to the country. This narrative, fueled by trending hashtags and viral comments found its way to primetime news debates on TV, as well as opinion and editorial pages of several leading newspapers.¹²

This discourse, which feeds on a perceived sense of persecution and “offendedness” among the majority, runs counter to India’s history of refugee protection, which is based on both moral principle and international customary law that ties India to principles of *non-refoulement*.¹³ In fact, even worse, if the Rohingya are seen primarily as a radicalised, Islamist threat, it makes it hard for India to lead efforts for repatriation to Myanmar and assistance to Bangladesh (where the largest number of Rohingya refugees are currently housed), in the process.¹⁴ An Amnesty International report that exposed communal violence among the refugee population when 99 Hindu

Rohingya were killed by the militant Arakan Rohingya Salvation Army (ARSA) in the early days of the conflict was used to illustrate such a threat.¹⁵ As a result, when several Rohingya (detained at the Assam border while crossing over) were deported after time in prison, the Supreme Court upheld their repatriation, in spite of appeals by UN bodies against a violation of *non-refoulement* under International Customary Law.

In September 2017, when a major wave of Rohingya fled Myanmar after widespread violence in the Rakhine province, news reportage around the exodus and imminent entry to India found itself divided, much as the Indian government.¹⁶ The Ministry of Home Affairs argued in the Supreme Court that the principle of *non-refoulement* was not binding on India. However, it perhaps did not realise it had contradicted the Ministry of External Affairs which had, just two months earlier, said the following during discussions around the GCR in Geneva:

[W]e support the concept of burden-sharing, including relocation of refugees on a case to case basis, that too with the consent of the refugees. While doing so, we need to be cautious not to open the path for re-defining the Refugee Convention and its protocol, and in no case diluting the principle of *non-refoulement*.¹⁷

The Union Home Minister at the time, Mr. Rajnath Singh, defended his

ministry's position by arguing instead that the Rohingya were not refugees but illegal migrants, as they had not applied for asylum status,¹⁸ and that by deporting them, India was not violating international commitments.¹⁹

It is with this conflation in mind that the Government of India challenged the petition filed by two Rohingya men against the deportation of 40,000 of their community. Additional Solicitor General Tushar Mehta argued that India would become the world's refugee capital if the Supreme Court upheld the petition.²⁰ Based on the hearings, it is fair to say that the bulk of reportage around the Rohingya has been restricted to a faithful detailing of court proceedings across most print and digital news media. Although some independently owned and publicly funded platforms tend to focus on rights-driven stories, overall, migration and displacement-related discourse has suffered conflicting narratives, especially in several mainstream newspapers and television channels.

Reportage variously referred to the presence of nearly 40,000 refugees already in India as resource “burdens”, focused on the “militant” nature of the August 2017 violence in Rakhine against the Myanmar military, and suggested that the ARSA was developing links with radical Islamist groups in relief camps of Bangladesh. As such, it framed the narrative in ways that often presented a near-equal representation of both the humanitarian and national security imperatives, thereby de-prioritising the humanitarian crisis. Reportage that repeatedly underscored the “voluntary nature” of India's refugee policy implied that Delhi had no real obligation towards refugees. A simple content analysis of news reports during August and September 2017,²¹ when the hearings in the Supreme Court began, indicate a “national” position against the Rohingya—one that seems to deny any protection mechanisms, especially to those detained trying to enter India, or unable to make it to the UNHCR offices in Delhi and obtain proper documentation.²²

REFUGEE REPRESENTATION IN THE ANALOG ERA

The depiction of refugees in India's broadcast and print media has oscillated over the decades between humanitarian priorities, sensationalism, regional narratives, and a religiously-driven communalism. To understand

shifting media narratives, the fifth filter of Noam Chomsky and Edward Herman's propaganda model is useful.²³ They identified a symbiotic politico-media complex knit tightly together by five filters: (i) ownership

and orientation of media outlets, (ii) advertising, (iii) complicity between government and media managers in sourcing news, (iv) generating flak or negative responses amongst a mass public and (v) identifying a common enemy. While it was framed in relation to anti-communism in USA at the time, the underlying model is useful to understand elsewhere how the media stokes fear of the enemy in a way that exploits public animosity towards groups that pose potential threats—both real and imagined. The years immediately after 9/11 saw media narratives around the Global War on Terror converge around a two-fold objective: to eliminate vocal opponents of the “with us or against us” policy stated by US President George W. Bush for both domestic and international audiences, and to frighten the rest into acquiescence with the politics of the day. This propaganda model explains the nexus between the State’s political and ruling classes, its media and other agencies like law enforcement, and defined government interest as national interest, and political interest as public interest in the aftermath of 9/11. In the context of international conflicts in general, several studies point to government influences over foreign policy reportage. Refugee crises involving “foreign nationals” or stateless people can also fall prey to these influences. This nexus is responsible for “manufacturing consent”, with the media almost entirely following the State’s line – and similar can be witnessed in India.

In the name of national security, cultural protection, and an unwillingness to share economic benefits or resources, the political position around Muslim refugees and migrants in the Indian media feeds into an escalatory ladder of alienation, xenophobia, Islamophobia and potential violence that resonates on social media platforms. Headlines like “India Calls Rohingya Refugees Threat to National Security”,²⁴ or hashtags like #RohingyaHinduMassacre,²⁵ channelled both anger and fear against a disenfranchised community. A study of hate speech on Facebook by the Observer Research Foundation documented an 11 percent rise in anti-Muslim commentary on the platform between 2016 and 2017.²⁶ Rohingya refugees and Bangladeshi Muslim migrants in particular, both legal and illegal, have become victims of this rise of religious politics in India.

The use of the national security argument against refugees in the media has evolved over time, and in tandem with global shifts in the conversation. In spite of the LTTE’s assassination of former Prime Minister Rajiv Gandhi in a suicide bomb attack in 1991, Sri Lankan Tamil refugees in India were not seen through the same security lens. While some Sri Lankan refugees were repatriated, many others continued to live in India, albeit in tension-ridden camps on the margins of Tamil society. Given India’s attempts at mediating peace between the majority Sinhala and minority Tamil populations, New Delhi allowed thousands of Sri Lankan Tamil refugees to stay on even as

efforts to repatriate continue. The State's position that "cultural commonalities with the neighbours"²⁷ made it imperative to "recognize the exceptional nature of

the problem in the region",²⁸ and convince policy makers to adopt necessary changes was communicated down the line.

SRI LANKAN TAMIL REFUGEES: EMPATHY THROUGH THE MEDIA

During the 30-year civil war, Sri Lanka's Tamil minority population sought refuge in India primarily in three waves in 1984, 1999, and 2006. A sympathetic outlook towards Tamils facing violence in Sri Lanka was not just vocalised through popular Tamil Nadu politicians, but also through constant reportage of the conflict by the Indian media. Growing domestic pressure from Tamil Nadu's political parties, and ordinary Tamils across the country forced the centre's review of a non-interventionist policy. In fact, two of India's military interventions in the neighbourhood, against Pakistan in 1971, that led to the liberation of Bangladesh, as well as the attempt to send Indian Army peacekeepers into Sri Lanka in the mid 1980s, were governed not only by geo-politics, but by the moral principle of helping those in distress. In these contexts, waves of Hindus, a religious minority in Bangladesh, and Tamils, an ethnic minority in Sri Lanka, looked to India's regional leadership for help.

The failure of the International Peace Keeping Force to broker peace between the Sinhalese and Tamils led to a hardening of the LTTE against India, and

ultimately, the assassination of Prime Minister Rajiv Gandhi in May 1991. Yet, news reportage around the arrival of Tamil refugees remained largely sympathetic. News reports across the English language press used emotional language to describe Sri Lankan Tamils as "hapless victims of this no-holds barred conflict" and "ordinary Tamils caught in the middle". The "sad plight" of Sri Lankan Tamils dominated front pages and reinforced the need for empathy for them as victims of conflict. In spite of the stated objective of refugee repatriation once the conditions return to "normal", Sri Lankan refugees, living in 109 camps in India, have been deeply resistant to returning.²⁹ In 2015, seven years after the war ended, only 3000 were reported to have returned.³⁰ Tamil Nadu's political parties, once influential in New Delhi's coalition governments, have also leveraged refugee politics to extract power in return for their support. From dual citizenship to wage rights, the State's political parties took up refugee issues vocally. A combination of cultural, linguistic, and ethnic ties as well as political intervention, saw their "ignored plight" often highlighted in the press.³¹

POROUS BORDERS, RELIGIOUS AND ETHNIC PERSECUTION: BANGLADESHI REFUGEES AND MIGRANTS

Reporters and editors frame stories via a complex interplay between newsroom policies, socio-cultural norms, politics, and resource availability. Throughout recent history, India has received millions of refugees from what is modern day Bangladesh. The first group were Hindus who fled the violence of Partition, as Bengal was divided. They fled religious persecution in East Bengal—then part of the newly formed Islamic Republic of Pakistan. Two major waves of refugees followed in the 1960s, when the Buddhist Chakma and Hindu Hajong tribal communities of the Chittagong Hill Tracts fled after losing their lands to the development of the Kaptai Dam in erstwhile East Pakistan and eventually sought asylum in India. A majority—nearly 48,000—³² continue to live in relief camps in Arunachal Pradesh and their presence is a constant source of friction with local populations, even though the Supreme Court has ruled they be granted citizenship. The last significant wave was in 1971, during Bangladesh’s war of independence when over 10 million people are estimated to have fled the conflict into eastern states bordering Bangladesh.³³ The influx led to local fights over resources and the rise of “vote bank politics”, especially in Assam, as ethnic

Assamese began to feel culturally threatened. Even though the Assam Accord of 1985 naturalizes all who came to Assam before 1 January 1966, and provides residence to all those who entered before 25 March 1971,³⁴ local communities allege that Bangladeshi migrants—either climate refugees or economic migrants—continue to enter India illegally, impacting both the ethnic and religious composition of their areas. Sparks of communal violence, especially in the years since 1992, when the agitation for a Ram Temple at Ayodhya peaked with the demolition of the Babri Masjid, have flown between local communities and Bengali speaking populations— many of them Muslim. Local, social tensions between host populations and Bengali migrants dovetailed with the ruling Bharatiya Janata Party’s Hindutva politics in the nearly two decades that have followed. Political propaganda and regular mass agitations led by prominent BJP leaders against Bangladeshi migration found their way into daily media coverage.³⁵ It is the politics around the status of these migrants, as well as the exclusionary, ethno-national nature of the Assam Agitation, that has led to the exercise to update the National Register of Citizens in India.

THE GCR: VOLUNTARY AND AMBIGUOUS, NEEDS TEETH

The line between refugee and migrant—where the former has no choice but to flee to safety from violence and persecution,³⁶ and the latter leaves voluntarily for reasons that range from destitution to the search for a better future or forgiving climate—has been blurred. Unlike the more benign approach to Chakma refugees, as was evident in the media reports of the time, or the embracing of Hindu Bengalis left out of the NRC exercise,³⁷ the clear distinction being made with regard to Muslim and non-Muslim refugee populations, particularly in the context of India’s Citizenship Amendment Bill,³⁸ is what any attempt at refugee mediation will need to address in India today.

It is this distinction that India seeks to draw between the Global Compact on Migrants and the Global Compact on Refugees born out of deliberations at the UN in New York in September 2016. A full two years later most Member States of the UN, including India, adopted both voluntary mechanisms with different objectives, and with different target groups in mind. Answering how it would be different from the 1951 Refugee Convention, Volker Türk of UNHCR said that while the Refugee Convention focuses on “the rights of refugees and obligations of States, it does not deal with international cooperation writ large”. With the bulk of the world’s refugee population in the Global South, it aims to specify burden sharing

mechanisms and hopes that the spirit of multilateralism and political will displayed by 164 Member States who adopted the compacts will carry them along.³⁹

As the political discourse in India around “illegal migrants” increases momentum, this bifurcation of the New York Declaration into two subsequent Compacts could end up working against the very refugees it seeks to protect. Not only did India vociferously argue that disaster- and climate-induced displacements had no place in the Compacts, it dovetailed politics around Rohingya and Bangladeshi migrants as simply “illegals” for whom the principle of *non-refoulement* does not apply.⁴⁰ The outcome was curious—major migrant receiving nations either did not sign on (for example, the US) or faced severe opposition at home. India’s keenness on the other hand to ensure the Compact on Migration went through was influenced by its vast diaspora of legal migrants across the world, despite India’s unwillingness to sign any prior law on migration and refugees.⁴¹

While this broadly leaves the Indian government free to determine for itself who is a migrant and who is a refugee, the selective application of these definitions and the intentional downplaying of the relevance of the GCR to India’s refugee policy need to be questioned more forcefully. The media can facilitate an empathetic

policy towards the most vulnerable and dispossessed populations around the world, provided it does its job freely and honestly, keeping in mind the first principles of journalism—truth, accuracy, accountability and fairness.⁴² As a welcoming host to refugees in the past, India has a proven track record of balancing humanitarian imperatives with national interest and security. Refugees often live on the margins of societies they move into. They are not invisible, but they are far from the State's priority. It is now, when refugees have become the focus of political campaigns geared towards religious exclusion, that they have become targets of hyper nationalist rhetoric, threatened every

day with deportation to places that are unsafe, places that are unwelcoming.

As the Indian government sends Rohingya refugees, detained in Assamese jails, back to Myanmar, or sends 1.9 million (including 1.1 million Hindus) undocumented “illegal” migrants to a “no man's land” in detention facilities while they appeal their exclusion from the register, the media needs to tilt the balance between neutrality and objectivity and reinforce the need to prioritise humanitarian objectives, instead of diffusing empathy with constant commentary around security alongside human interest stories.

CONCLUSION

India has frequently found itself receiving marginalised, persecuted, and destitute communities from neighbouring countries. Its ambivalent position on refugees has often meant allowing international agencies like UNHCR to determine their status and readiness for repatriation.⁴³ Critics of the refugee policy void call this a halfway house. The adoption of the GCR, too, can be critiqued in the same manner, as essentially it not only underscores commitments India has already made in the past, but also allows India to choose whom it wants to help and whom it does not, on a case-by-case basis. Such

a policy will necessarily be subject to the vagaries of bias—based on both domestic, identity driven politics, as well as national interest. In the process of making this choice, vulnerable populations who don't align with either will inevitably be left out or targeted for expulsion by the State.

In order to protect refugees from these imponderables, and to pursue its diplomatic goals to be recognised as a legitimate candidate for permanent membership to the UN Security Council, India must continue to act on the basis of precedent and moral principle.

Formally recognised refugees whose grants of asylum are approved, should be allowed to live as legal residents in India with proper identity and travel documents, and be allowed access to healthcare and education, rather than be confined to transitory camps. “Illegal” migrants seeking refugee status should be allowed to make their case to both the government and UNHCR, before being pushed into detention centres.

These are ideal outcomes, none of which is possible without the sensitisation of local communities to the vulnerabilities of refugee populations. Chomsky and Herman both concluded that the mainstream media tends to follow a State agenda in reporting on foreign policy and international commitments, and in doing so often fails to provide context or openly criticise when government actions are incompatible with fundamental rights and freedoms of refugees. While theirs was a commentary on American media, Indian mainstream media, especially television,⁴⁴ is following a similar path. Social media platforms—that have begun to drown out the mainstream with populist narratives—can be leveraged just as well by individuals and agencies who seek to defend the moral principle and work actively for the protection of rights and freedoms.

Globally, it has been well documented that conversations around Syrian refugees in Europe shifted from

immigration and national security to humanitarian needs after major European newspapers published the image of a Syrian toddler’s body washed upon a Mediterranean shore.⁴⁵ The Kurdish refugee Aylan Kurdi was just three years old and fleeing the violence of the Syrian civil war. The framing of newsroom bias, in this case, was to highlight the gravity of conflict and the innocence of its victims. This paper has already argued that equal weightage to different aspects of the refugee story devalues humanitarian imperatives, and that public empathy can be encouraged by choosing priorities. The role of the media in acting to promote the values adopted in the Global Compact on Refugees lies precisely in this—encouraging conversations around rights and protections enshrined in the 1948 Universal Declaration of Human Rights and in the Indian Constitution.⁴⁶ It must do so, not by unquestioningly reporting official positions or using social media voices as the sole representatives of public opinion, but by countering and questioning equally through reportage—and not just editorial commentary. In doing so, the media will not only fulfil its roles as a witness and an invaluable contributor to an informed public debate in a vibrant democracy; it will also ensure that India works to evolve consensus on genuine logistical concerns around resource allocation and rehabilitation, rather than pander to majoritarian politics.

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A FEMINIST VIEW OF THE GLOBAL COMPACT ON REFUGEES

POTENTIALITY AND CHALLENGES

PRIYANCA MATHUR VELATH*

ABSTRACT

Despite the strong focus on gender in the New York Declaration for Refugees and Migrants of September 2006, the Comprehensive Refugee Response Framework (CRRF) remains uncertain on these issues. The CRRF had hoped to mainstream a gender perspective, following which UNHCR undertook a “gender audit” to assess how gender equality and the protection of women and girls has been addressed in the process. Subsequently, the word “women” finds mention 32 times in the text of the Global Compact on Refugees (GCR). It’s crucial to evaluate why refugee women and girls do not enjoy adequate international protection, and why they experience high rates of sexual and gender-based violence and discrimination in host countries. It is also vital to evaluate whether the gender frames used in international compacts such as the GCR sufficiently address vulnerability and the agency of refugee women. Very often, refugee women’s capacities, skills, and abilities go unrecognised, and they are silenced due to limited access to representation at every level. This paper seeks to examine these issues in greater detail.

INTRODUCTION

The lives of women and girls are often impacted in ways distinct from men, particularly in situations that lead to displacement. Refugee women not only face gender discrimination, but also the threat of gender-based violence (GBV) within host societies and/or within their family as a result of the displacement, putting them in situations that create or exacerbate vulnerability.¹ According to the Women’s Refugee Commission, “Displaced girls are even more exposed to exploitation, abuse, and sexual violence”.² In addition, women and girl

refugees face barriers to self-reliance and greater well-being and safety, such as inaccessible asylum systems,³ gender-blind needs assessments, limited access to education, insufficient reproductive health-care, unsafe livelihood opportunities, and increased rates of detention as a deterrent and control mechanism.⁴ These risks are accentuated by an intersectionality of factors, including age, disability, ethnicity, religion, sect, and sexual orientation.⁵ It is thus critical to explore how the problems and needs of women

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and girl refugees are defined, who defines them, who determines the allocation of resources for them, and what is the socio-cultural-political context within which refugee women find themselves. Very often, refugee women and girls face discrimination that lies at the intersectionality of two identities—namely gender and race, which doubly marginalise them. The marginalisation of refugee women can also be traced back to the gender-blind nature of UN Refugee Convention of 1951 (which sees the apparently universal identity of a refugee as male and able-bodied), as well as the patriarchal values and inherent racism that are deeply embedded in societies throughout the world.⁶

Taking into account the rights, specific needs, contributions and voices of women and girl refugees, the New York Declaration on Refugees and Migrants (NYD) includes strong human rights and gender commitments to both refugees and migrants, and invites refugee and migrant organisations to participate in multi-stakeholder

groups to support implementation of the commitments. In the 2016 NYD, all members of the UN agreed to a shared global responsibility to a set of commitments, in order to improve the protection of refugees and migrants. A concrete Plan of Action (POA) derived through lengthy meetings was laid down in two documents, namely the Global Compact for Migration (GCM) and the Global Compact for Refugees (GCR).⁷ The NYD looks to tackle ‘multiple and intersecting forms of discrimination against refugee and migrant women and girls’⁸ and ensure leadership of women and girls for full, equal, and meaningful participation in the development of local solutions and opportunities. It aims to do this through: commitments to refugee and migrant women and girls to ensure promotion of gender equality and the empowerment of all women and girls; fully respecting and protecting the human rights of women and girls; combating sexual and gender-based violence; provision of access to sexual and reproductive health-care services.⁹

STATE COMMITMENT IN THE GCR

In fact, States have made a powerful commitment to action on behalf of and in partnership with refugee women and girls towards the fulfillment of the above stated objectives:

We will ensure that our responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment

of all women and girls, and fully respect and promote the human rights of women and girls. We will combat sexual and gender-based violence to the extent possible. We will provide access to sexual and reproductive health care services. We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls ... we will work to ensure their full, equal and meaningful participation in the development of local solutions and opportunities. We will take into consideration the different needs, vulnerabilities and capacities of women, girls, men and boys.¹⁰

These gender commitments made in the GCR intend to improve international refugee protection for refugee women and girls within a framework of enhancing gender equality, supporting women's leadership and seeking to end sexual and gender-based violence as underlined by the UNHCR's Age and Diversity Policy (AGD).¹¹ The GCR makes strong promises to refugee women and girls and has been able to move towards active refugee women leadership. The test will be how these commitments in paper move towards being enacted in practice. Nonetheless, it cannot be denied that the GCR has propelled political momentum towards the realisation that things needed to

be done differently. While there may be some governments that dilute the above-mentioned commitments, there will also be others that would seek to honour them. It is significant that the words "refugee women" have been spelt out so clearly and forcefully in a UN document for the first time.¹²

In the GCR, it is acknowledged that "women and girls may experience particular gender-related barriers that call for an adaptation of responses in the context of large refugee situations".¹³ The responsibility and accountability to ameliorate this situation is squarely placed on the shoulders of States and relevant stakeholders who are entrusted to adopt and implement policies and programmes to empower women and girls in refugee and host communities, and to promote full enjoyment of their human rights, as well as equality of access to services and opportunities.¹⁴

The words and texts of the GCR, and the commitments that have been made within it, have been subject to a "gender audit" to ensure that the broader aims of inclusion and gender equality as outlined in the NYD have been adhered to—the gender audit was proposed as one strategy to support UNHCR in its efforts to ensure that the NYD commitments to gender equality are fully reflected across the GCR".¹⁵

PLEDGES

It is now time to move beyond critique towards action. Thus, in December 2019, States and other actors have been urged to come forward and pledge support to the GCR, exchange good practices, and promote the digital platform for the same.¹⁶ UNHCR and the international protection community is looking at developing a system of indicators to track the implementation of these pledges and the impact of the GCR.¹⁷ It is important to get strong commitments and exchange good

practices. One of the platforms where this takes place is the Global Refugee Forum which looks at the six thematic areas in need of support for pledges, namely—a) burden-and responsibility-sharing, b) education, c) jobs and livelihoods, d) energy and infrastructure, e) solutions, and f) protection capacity. Hence, it is important to connect with refugee women and girls at the ground level to see how their lived experiences can strengthen these objectives at the GCR level.

CHALLENGES AND LIMITATIONS

Any discussion through the lens of gender-sensitisation and/or feminisation today needs to address the reality that the word “gender” is no longer simply an enumeration of women’s rights. In July 2019, the UN Women Executive Director has specifically laid down that it will no longer focus on women’s rights, but on equality of all genders, particularly LGBTIQ+.¹⁸ Today, confining the reach of the term “gender” to women only, or only to men and women will be a limited exercise.

Participation

The golden rule of refugee studies is ‘Not Without Them’. This means

that any decision about refugees must include refugees themselves as participants and stakeholders making those decisions.¹⁹ Thus, whatever be the list of objectives that the GCR claims to fulfil for refugee women and girls, “States and relevant stakeholders must facilitate meaningful participation of refugee women, (including persons with disabilities and youth) in “Global Refugee Forums”, ensuring the inclusion of their perspectives on progress”.²⁰ The best medium for doing this is the digital platform developed by UNHCR, which is apparently accessible to all and will enable the sharing of good practices (notably from an age, gender, disability, and diversity perspective) in

the application of the different elements of the GCR. However, the benefits of digitisation have not percolated down to all stratas of society or to marginalised groups in many parts of the world. In India, while mobile phones offer the main form of access to the internet, only 59% of women own a mobile phone compared to 80% of men.²¹

Among those who own a phone, in the last three months, only 16% of women have used them to browse the internet compared to 36% of men. It should be noted that these figures concentrate on rural areas.²² Thus, relying solely on a digital platform may not be advisable if advocacy and access to information or services is to be equitable.

Access

It will be critical to see how States and civil society actors promote the meaningful participation and leadership of women and girls and strengthen the institutional capacity and participation of national and community-based women's organisations, as well as relevant government ministries. In order to do so, measures that strengthen the agency of women and girls, promote women's economic empowerment and support access to education by women and girls must be fostered. To guarantee the safety of women and girls, refugee women's access to resources, expertise, justice, and security needs to be strengthened. Their primary need comprises institutions, structures and processes that help prevent and respond

to all forms of violence, including sexual exploitation and abuse, sexual- and gender-based violence, and harmful practices. In addition, they invariably and immediately need facilitated access to age, disability and gender-responsive social and health-care services.

Supportive systems and networks that involve refugees and host communities must give access to refugee women, while States and other actors involved in the refugee protection systems need to encourage and support the empowerment of refugees at the outset of an emergency phase, to establish the same. Secondly, gender-sensitisation and gender equality cannot be achieved without efforts that foster reconciliation and dialogue, particularly within refugee communities with the equal participation of women and youth, to ensure respect for the rule of law at the national and local levels. Thirdly, any discussion on peace and reconciliation processes, particularly those that support the return of refugee women in safety and dignity, must be done with the participation of refugee women. Fourthly, it is imperative to adopt measures that enable refugees, particular women and youth, to make the best use of their skills and capacities, and recognise that empowered refugees are better able to contribute to the well-being of themselves and their communities.

State Support—National and International

For women refugees to feel empowered and recognised, what will be crucial

is the support of national and regional authorities in host countries to assist them with basic rights of livelihood access and survival. Refugee women need the support of countries opting to provide local integration, of the international community which as a whole will, in close cooperation with national authorities of host countries, contribute resources and expertise to assist with the development of a strategic framework for local integration. In the larger picture, it is critical that the capacity of relevant State institutions, local communities, and civil society be strengthened to support the local integration process through activities like vocational and language training for women and girls, assistance with documentation and livelihood issues, etc. For example, Afghan refugee women living in New Delhi receive livelihood assistance from NGOs and UNHCR, and some small groups have been able to start their own food catering and crafts business for income generation.²³

Accountability

In the text of the GCR, which is over 100 pages long, what stands out is

that the word “women” finds mention 32 times. This is testimony to the international community’s commitment towards the framework’s gender-friendly approach. However, all of this could become null and void if countries do not respect international law or do not accept accountability. For example, the largest number of Rohingya refugees in the world are in Bangladesh. Yet, Bangladesh, like many other countries, has done nothing to make refugees part of the fabric of its law and policy.²⁴ Rohingya women have borne the brunt of this insecurity, as they have few opportunities to speak up and influence within their own communities,²⁵ and this marginalisation is compounded by the absence of any national law recognising equal rights to asylum and dignity. On top of this, regional organisations like Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC), stand on the sidelines and do not intervene in displacement situations. This is a display of “non-interference” consistent with their charter principles of mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations.

RIGHTS FRAMEWORK AND POLITICAL WILL

Gender and rights go hand in hand and, for a gender approach to be viable, it must be situated within a rights framework. Thus, refugee women in

host countries must be accommodated within a rights-protecting framework that enables them to work, and to contribute to the development

and economic well-being of host communities. This in turn, ensures that children have access to education, and they are strengthened in their capacity for self-reliance, as well as in the acquisition of skills and experience which may assist in their positive and successful reintegration on return in safety and dignity, or settlement. Disregard for either causes or the rights dimension to protection is ultimately self-defeating.

Let us not forget that rights do not operate in a vacuum. State infrastructures and their political leaders can act as enablers for refugee women claiming their rights. Thus, perhaps everything will depend on political will, on funding,

and on finding new coalitions of actors and stakeholders who are willing to work towards strengthening refugee women's rights. Given the hardening anti-immigrant hostility visible in the political arena all over the world, it is a natural deduction that it will always be hard to get States to accept formal undertakings.²⁶ The situation also becomes more bleak with anti-immigrant policies gaining currency in South Asian countries—Indian political discourse is dominated by heated discussions and policy action over apparent illegal migration from neighbouring countries; Bangladesh is reluctant to take in more refugees from Myanmar and is planning to remove thousands of Rohingya refugees from camps to a remote island.²⁷

CRISIS TO OPPORTUNITY

Nonetheless, the GCR now offers, at least potentially, mechanisms for translating crisis into opportunity for both refugees and host communities, and one must always push on States and other actors to find the way to manage and deliver the rights of refugee women humanely and for the good of all involved. Some questions will always remain, such as whether there are any critical gaps, either in coverage or in substantive content.

If seen only through a critical and presumed pragmatic lens it will always

be too easy to criticize the GCR, and many have already begun to do so, in the less-than-positive sense of speculation conveniently removed from outcomes. Perhaps, it would be better to test this on a thorough empirical basis or through an assessment of impact or progress.

The GCR has been lauded for the fact that, while suggesting alternatives, it has drawn attention away from the humanitarian assistance model onto the development assistance model by attempting to find new ways in which to

bring together donors, humanitarian and development agencies, the private sector, civil society, and refugees themselves in order to achieve sustainable outcomes.²⁸ It would surely be helpful, particularly for the cause of refugee women if, instead of merely berating the GCR and putting it down, its critics look at its potential to help guide in norms to be followed—particularly in countries where there is no legal framework within which refugee rights can be protected. It can also serve as a reminder to States that they have

moral and normative accountability under the “whole of society approach”, and must operate within a rights framework. The potential contained within the GCR must not be lost as it is undeniably an effort in the right direction in bridging the humanitarian–development divide, in expanding the constituency of stakeholders, in emphasising resilience and self-reliance for refugees and host communities, and in maintaining a rights focus—as much for refugee women as refugee men.

CONCLUSION

The GCR, undoubtedly, has potential for new mechanisms for responsibility sharing, for innovative financial mechanisms within the “whole of society approach” that can perhaps acquire new resources within the system, and it envisages new structures like the “Global Refugee Forums”.

Although modest in its scope, it has a long-term strategic vision. Even if it is non-binding, it can normatively galvanise change, propel State behaviour in that direction, and compel more States and other actors to commit to gender- and refugee-friendly behaviour.

In the end, gender audits, gender-sensitive pledges, and commitments can all make a difference when they are working towards a Theory of Change on

how to translate the text (of the GCR) into practice. The GCR, particularly in South Asia but also in the rest of the world, has emerged and is being put to test in a unique political environment. Betts couldn’t have said it better when he pointed out that, “We must understand that the Refugee Compact emerges in the context of major political constraint with growing populist nationalism—often accompanied by anti-immigrant politics that is taking hold of the world”.²⁹

It is a tall order to expect States that are increasingly becoming misogynistically anti-immigrant and refugee-phobic to exhibit gender-sensitive behaviour towards women—that too, refugee women. It will be challenging, to say the least, to demand of States that

discriminate on the basis of religion in their asylum practices, to put in place laws and policies which are non-discriminatory in gender.

Finally, the Global Academic Network on Refugees, in order to effectively produce policy-relevant research, needs to acknowledge that it is dominated by political scientists, anthropologists, geographers, and lawyers and needs more representation from the community of economists, historians,

and sectoral and technical experts to truly add value to the academic exercise of analysing human displacement, particularly from a gender lens.³⁰ When the refugee studies and protection community is facing serious funding shortfalls, there needs to be serious introspection, clarity, and focus in the body of work produced by this network, along with a concerted effort to ensure that the same does not fall by the wayside and is instead considered seriously.

NOTES

1. The Forced Migration Research Network in October 2017 disseminated their Report dated titled, 'Is the International Protection System Failing Refugee Women and Girls?'. Within it they state that 'Women and girls are also categorized as a "vulnerable" group with an emphasis on personal vulnerability. However women are not inherently vulnerable but rather placed in situations, which create or exacerbate vulnerability and human rights abuses. Multiple levels of discrimination are inherent in the labels "minority" and "vulnerable" and compound the difficulties faced by women and girls. It is also important to note that refugee women and girls in all their diversity are not a "special needs" group. While sharing the same basic needs for food, water, shelter, sanitation and security with men and boys, they do have different needs and face additional difficulties in accessing these.' Forced Migration Research Network, 2017. 'The World's Biggest Minority?' *UNSW Sydney*, October 2017, <https://www.unhcr.org/59e5f4447.pdf>.
2. Women's Refugee Commission, "Facts and Figures", n.d., <https://www.womensrefugeecommission.org/empower/resources/practitioners-forum/facts-and-figures>
3. UN Women, "Report On The Legal Rights Of Women And Girl Asylum Seekers In The European Union" (Istanbul, March 2017).
4. Detention Watch Network, "Ending the Use of Immigration Detention to Deter Migration", April 2015, <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Detention%20as%20a%20Deterrence%20Policy%20Brief.pdf>
5. Forced Migration Research Network, 2017. 'The World's Biggest Minority?'.
 6. This intersectionality between the identities of gender and race leading to the double marginalisation of refugee women has been addressed by Pittaway and Bartolomei (2001) in Eileen Pittaway and Linda Bartolomei, "Refugees, Race, and Gender: The Multiple Discrimination against Refugee Women", *Refuge: Canada's Journal on Refugees*, 19:6 (2001), pp.21-32.
 7. Forced Migration Research Network, "Refugee women and girls: Key to the Global Compact", *UNSW Sydney*, n.d., <http://aprrn.info/wp-content/uploads/2018/12/WAGAR-Project-Summary-Brochure.pdf>; UNHCR, "New York Declaration for Refugees and Migrants", n.d., <https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>
 8. Racism and sexism often intersect to compound the human rights violations that refugee women experience. For more on this see Pittaway and Bartolomei, "Refugees, Race and Gender ...".
 9. See full text of GCR at <https://www.unhcr.org/the-global-compact-on-refugees.html>.
 10. Ibid.
 11. For more on AGD see: UNHCR, 'UNHCR reaffirms its commitment to Age, Gender and Diversity (AGD)', 2018, <https://www.unhcr.org/news/latest/2018/3/5aa1435d4/unhcr-reaffirms-its-commitment-age-gender-diversity-agd.html>.
 12. Linda Bartolomei, of UNSW's Forced Migration Research Network, speaking at the APNOR – APRRN Refugee Summit held in Bangkok, September 2019, where the author was present. According to Pittaway and Bartolomei gender mainstreaming leads to invisibility and to genuinely achieve the former we must

- “ask ourselves what the outcomes are when we fail to recognise and address barriers to gender equality.” See Eileen Pittaway and Linda Bartolomei, “Enhancing the protection of women and girls through the Global Compact on Refugees”, *Forced Migration Review*, Issue 57: Syrians in Displacement, (February 2018), pp77-79.
13. Noted in the Gender Audit Report on the Second and Third Thematic Discussion on the Global Compact on Refugees, 17th – 18th October, 2017 <https://www.unhcr.org/uk/5a251be07.pdf>.
 14. This could include NGOs and relevant civil society actors like the World Health Organization; UNHCR; UNICEF; UNFPA; IOM; the Global Alliance for Vaccines and Immunizations; the Global Fund to Fight AIDS, Tuberculosis and Malaria.
 15. The Gender Audit of the October Thematic meeting was undertaken following a proposal from Linda Bartolomei and Eileen Pittaway, to audit each of the preparatory meetings for development of the Global Compact on Refugees. The team were charged with two important roles designed to contribute to UNHCR’s commitment to ensuring that Gender Equality is a central focus of the GCR and that the strong gender commitments made in the NYD are fully integrated across the GCR and in its Preamble, Concluding Paragraph and the POA. This involved firstly undertaking a Gender Audit of both the process and content of the meetings and secondly, actively intervening in the discussions to ensure that key gender considerations were included. See: Linda Bartolomei, Tina Dixson, Melika Sheikh-Eldin, Cheery Zahau and Eileen Pittaway, “Gender Audit Report on The Second and Third Thematic Discussion on The Global Compact on Refugees”, *UNSW Sydney*, 2017, <https://www.unhcr.org/5a251b537.pdf>
 16. To advance the objectives of the GCR, the Global Refugee Forum will be the platform for States and other stakeholders to announce pledges and contributions that aim to benefit refugees and their host communities. For more see: UNHCR, “Pledges and Contributions”, 2019, <https://www.unhcr.org/pledges-and-contributions.html>.
 17. The December 2019 meeting wants to draw from all actors and to make everyone reflect on what they want to do and to measure their impact.
 18. Gender today implies going beyond the binary of men and women to also include lesbian, bisexual, gay, transgender, questioning or queer, intersex, pan sexual, gender non-conforming, nonbinary, and the full range of gender diversities that exist. See https://c-fam.org/friday_fax/un-women-to-replace-women-with-gender/.
 19. The International Refugee Congress advocated in 2018 that, “Refugee policy and programme formulation, implementation and monitoring at the international, regional and national levels should be informed by the perspectives, experiences, and priorities of those most affected by forced displacement - refugees and host countries and communities. The policy paper developed by the Representation and Participation Working Group encourages stakeholders to design and lead processes that encourage listening, foster a real exchange of views, and include representatives of relevant stakeholders, above all women. It calls for concentrated efforts to address barriers that prevent refugee-led and host community organizations in a transparent and mutually supportive manner.” International Refugee Congress, “Report and Recommendations of the Representation and Participation Working Group”, May 2018, <https://www.refugeecongress2018.org/participating-in-decisions/>
 20. See Para 106 of GCR <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/Global-Compact-on->

- Refugees.pdf. Besides, in September 2019, APRRN – APNOR brought together refugees from different hubs in different parts of the world together through a digital platform in a meeting in Bangkok to discuss pledges and good practices.
21. GSMA, “The Mobile Gender Gap Report 2019”, February 2019, <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/GSMA-The-Mobile-Gender-Gap-Report-2019.pdf>.
 22. GSMA, “The Mobile Gender Gap Report 2019”.
 23. Helped by UNHCR and its partner ACCESS Development Services (a national livelihoods promotion organisation), this venture, named ‘ILHAM’ (meaning ‘positive’ in the Dari language), was started by four Afghan refugee women living in New Delhi. See, Shuchita Mehta, “Catering start-up empowers Afghan refugee women in Delhi”, UNHCR, 8 March 2016, <https://www.unhcr.org/news/latest/2016/3/56dd8b216/catering-start-up-empowers-afghan-refugee-women-delhi.html>.
 24. Guy S. Goodwin-Gill, “The Global Compacts and the Future of Refugee and Migrant Protection in South Asia”, *International Journal of Refuge Law*, 30:4 (2018), pp. 674-683.
 25. Oxfam, ‘Breaking barriers for Rohingya refugee women’, 2019, <https://www.oxfam.org/en/breaking-barriers-rohingya-refugee-women>.
 26. B.S. Chimni, has warned that the Refugee Compact “It may lead in some respects to the erosion of rights of refugee children and women as there is an absence of specific measures protecting the rights of women in the entire cycle of displacement.” See B.S. Chimni, “Global Compact on Refugees: One Step Forward, Two Steps Back”, *International Journal of Refugee Law*, 30:4 (2018), pp. 630-634.
 27. See: IANS, “60 Illegal Bangladeshi Immigrants to be Deported from Bengaluru”, *News18*, 30 October 2019, <https://www.news18.com/news/india/60-illegal-bangladeshi-immigrants-to-be-deported-from-bengaluru-2366547.html>; Brad Adams, “For Rohingya, Bangladesh’s Bhasan Char ‘Will Be Like a Prison’”, *Human Rights Watch*, 14 March 2019, <https://www.hrw.org/news/2019/03/15/rohingya-bangladeshs-bhasan-char-will-be-prison>.
 28. See: Kemal Kirişçi, “How to make concrete progress on the Global Compact on Refugees”, *Brookings*, 7 June 2019, <https://www.brookings.edu/blog/order-from-chaos/2019/06/07/how-to-make-concrete-progress-on-the-global-compact-on-refugees/>; Volker Turk, “The Promise and the Potential of the Global Compact of Refugees”, *International Journal of Refugee Law*, 30:4 (2018), pp. 575-583.
 29. Alexander Betts, “The Global Compact on Refugees” Towards a Theory of Change”, *International Journal of Refugee Law*, 30:4 (2018), pp 623 – 626.
 30. Jeff Crisp, “A Global Academic Network on Refugees: Some Unanswered Questions”, *International Journal of Refugee Law*, 30:4 (2018), pp. pp 640 – 642.



ARTIST: NASRIN SAFE
Afghan Refugee

REFUGEE PERSPECTIVES ON LIVING IN INDIA AND THE GLOBAL COMPACT ON REFUGEES

LOUIE ALBERT*

ABSTRACT

India has traditionally been a country that receives refugees. With the growing anti-refugee sentiments in India, and, in the absence of a legal framework, many refugees suffer multifarious problems, such as lack of access to quality education, livelihood opportunities and employment, basic health care, and free movement. Refugee women often face harassment, abuse, sexual and gender-based violence from their landlords or in their workplace.

The Global Compact on Refugees (GCR) places a high priority on the provision of security and protection for refugees. This paper explores the familiarity of the refugees with the objectives of the GCR, and presents refugee perspectives on their lives in India. It examines how refugee protection might improve as a result of the commitments under the Compact and the shared responsibility of all stakeholders. The paper employs the qualitative research method in order to get insights, perspectives and suggestions of refugees for a better understanding and operationalisation of the Global Compact on Refugees in India. In-depth interviews and focus group discussions were used to explore the participants' perception, opinion, world view and knowledge of the provisions and objectives of the GCR.

INTRODUCTION

Historic Context: Refugee Inflow To India

India is neither a party to the 1951 Convention Relating to the Status of Refugees nor to the 1967 Protocol. Moreover, India does not have a separate refugee legislation despite hosting refugees from different countries. India's welcoming of refugees goes far back in time, perhaps as early as the 8th century, when it embraced the Parsis who were fleeing persecution in Iran.¹ In recent history, India has been

very generous and tolerant towards refugee communities at different periods when refugees were flowing through Indian borders—the Tibetan refugees in 1959, the then-East Pakistan refugees in 1971, the Chakma arrival in 1963, the Tamil refugees from Sri Lanka in 1983, 1989, and 1995. Most recently, Rohingya refugees from Myanmar have also sought asylum in India. As there is no legal status governing the refugees, India has been meeting, on

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humanitarian grounds, some needs of some refugee groups. Nonetheless, with recent changes in government and policy, there has been a shift in India's position towards certain refugee groups and the protection space has decreased. In order to explore the implications of these shifting attitudes, the researcher has identified a few refugee groups such as The Chin refugees, The Afghan refugees, and the Sri Lankan Tamil refugees to elicit their perspectives on their current situation as well as on the recent Global Compact on Refugees.

Research Methodology

Around 50 Chin refugees were interviewed in Chanakaya Place and Janakpuri. About 125 Afghan refugees from Bhogal, Lajpat Nagar, Malviya Nagar, Tilak Nagar and Ashram took active part in the interview. Then, approximately 250 Sri Lankan refugees were invited to different locations, such as Trichy, Chennai, Madurai for the interview. It is a challenging process to elicit their views on the objectives of the GCR. Approximately 175 Women, 50 young people, and 25 elders constitute this sampling. The research design was qualitative and focus group discussions (FGD) were conducted among Sri Lankan, Chin, and Afghan refugees to

collect their perspectives on the status of refugees and GCR. Questions related to socio-economic variables, living conditions, demographic variables, human development variables, and amenities variables were presented to the members in order to capture their opinions, knowledge of GCR, and their future anxieties.

More than ninety percent of refugees, irrespective of their ethnicity, whom we interviewed are unaware of the contents and contours of GCR. On hearing the explanation on GCR, they were happy to know the commitment of the international community and shared their perspectives. In particular, the refugee community were glad to know about the objectives of GCR—to ease the burden of host communities by undertaking the responsibility jointly; to enhance the self-reliance of refugees so that they can live with dignity; to expand the access to third country settlement; and to find ways of safe return to the home country. Unfortunately, most of the refugees in India are unaware of GCR. UNHCR's partner agency and NGOs can conduct an awareness campaign on the salient aspects of GCR for the refugee community. The clubs in colleges can also be enlisted to disseminate the implications of GCR among refugees and host communities.

THE CHIN REFUGEES IN DELHI

The Chin refugees, who fled the Chin state in Myanmar due to violence and persecution based on ethnicity, religion, freedom of opinion, and liberty during the military regime, continue to live in a difficult environment in Delhi. Accessibility to basic needs like drinking water, healthcare, education, and housing is a big challenge. Views for this paper are drawn from the Chin community through focus group discussions, and from the organisations coordinating the work among Chin refugees. Chin refugees have tremendous confidence in UNHCR for their safety, security, and future settlement. Apart from UNHCR, they consider some Chin refugee organisations, such as Chin Human Rights Organisations (CHRO), Chin Students' Union, and Delhi Chin Committee Fellowship, addressing their needs and advocating for their causes.

To acquire a refugee card, one has to go through the UNHCR interview. A few Chin refugees feel that their refugee status has been rejected when they are not able to fulfil the requirements. This can have serious consequences, as all entitlements are denied to those who have no refugee card from UNHCR. In the absence of local integration, the refugees seek third country settlement.

Obtaining a refugee card has been a tiresome and complex process. Some of the interviewees shared that it

took two to five years to get the card initially, but due to the intervention of NGOs, it has been reduced to a year. In addition to UNHCR Refugee Cards, Chin refugees require visas from the relevant government office. The FRRO (Foreigner Regional Registration Office) demands an electricity bill, water bill, identity card, and proof of address for registration. Interviewees reported to us that they have been harassed by officials and have experienced non-cooperation from landlords. After a long and arduous procedure, refugees get a residential permit with a validity of one year only. Civil society actors should be allowed to provide technical support and legal representation to refugees and asylum seekers,² but this can be difficult in such challenging circumstances. It is hoped that with the GCR, organisations such as UNHCR, with the support of the States and other stakeholders, will contribute resources and expertise to strengthen national capacity for individual registration, documentation, digitalisation and biometrics.³ Such support would surely speed up processes and alleviate the pain of refugees.

For many, India is only a temporary settlement. The Chin refugees look for other opportunities outside India. Resettlement in a third country is a durable solution according to UNHCR and is offered if, among other reasons: the refugee's needs cannot be met

in the first country of asylum; and/or in order to reunite families; and/or if resettlement is viewed as the only way for the refugee to build a durable future.

However, possibilities are increasingly limited as fewer countries open their doors. The Chin refugees feel that they are unable to provide convincing answers during the interview, hence their applications for resettlement are summarily rejected by UNHCR. Some of them have been waiting for more than a decade to get an invitation for resettlement. Faced with a prolonged stay in India without hope of getting resettlement in a third country, refugees are often dissatisfied with UNHCR.

There is a communication gap between the refugee protection agency and the refugees themselves regarding durable solutions. The communication gap is then exacerbated by inconsistent and incoherent refugee assistance approaches of the Government of India. These issues can be addressed in diverse ways by academicians, parliamentarians, and UNHCR along with refugee representatives. Perhaps the first step—in light of the GCR and its commitment to the establishment of a global academic network—is independent academic research into legal and bureaucratic issues stalling resettlement options from the Chin perspective. This research could then be supported by evidence from elsewhere about “what works” in resettlement—for instance, the “Matching Systems for Refugees” is a

framework for resettlement proposed by Will Jones and Alex Teytelboym.⁴ In this framework, refugees and hosting communities or countries exchange information, requirements, and preferences and match them with the capacities of the localities. This method, with some modifications, can be applied in India for resettlement.

Employment and skill training are provided to some extent in India, which are very beneficial and have given Chin refugees a sense of hope. Most of the Chin refugees feel that they are able to receive training in tailoring, knitting, jewellery making, stone carving, which increases their confidence levels and self-esteem. Such trainings are provided by NGOs that are working with UNHCR. After training from these institutes, the Chin refugees engage in ethnic wear production and these materials are marketed to the Chin community living abroad. Nonetheless, while the Chin refugees experience these small successes, broader employment opportunities are highly competitive and stressful for the Chin refugee youth. For instance, they lack documents to get into professional and IT related jobs. Fostering inclusive economic growth for the host community and refugees through job creation, entrepreneurship programmes for youth and women is in the GCR. As such, it is hoped that India’s commitment to the Compact might translate to a working environment that is more welcoming to refugees. UNHCR could give assurance to companies on this front. Subsistence allowances are

provided for the vulnerable people to make ends meet. However, with inflation and GST (Goods and Services Tax), the subsistence allowances are not sufficient to manage their regular expenses.

The education system in India and medium of instruction is different and difficult for Chin refugee children. The educational expenses are very high and some refugees feel guilty for their inability to give quality education to their children. For health care, most Chin refugees approach government hospitals. Though services are rendered free of cost, Chin refugees who do not know the local language are compelled to pay extra money at different counters. Getting treatment for serious and chronic diseases from private hospitals is a distant dream for most of them. Even if a few individuals have received such treatment in private hospitals, the expenses for chronic conditions are not reimbursed by UNHCR. Some of them suffer from depression and visit hospitals for mental-health related treatment. The causes of depression are partly due to long waiting times for resettlement, traumatic experiences in the past, and living constantly in fear of

uncertainty. With its focus on refugee self-reliance and, within that, well-being, the GCR could offer a framework for other actors to build on in order to find ways to strengthen national health system to facilitate access by refugees.

Legal services are offered to refugees if they approach the Socio-Legal Information Centre (SLIC). Some Chin refugees are of the opinion that the paperwork and official meetings with authorities are herculean and laborious tasks, which take up much of their time and resources. Some Chin refugees are afraid of legal consequences and intimidation from local people and keep to themselves. It has been suggested by refugees that there could be an independent body to look after legal issues concerning Chin refugees. The GCR, and India's commitment to it, has the potential to enhance opportunities and increase the bargaining capacity of INGOs, NGOs, and leaders from refugee community to negotiate with government officials and bureaucrats in a more systematic and structured way for getting access to basic facilities, protection from intimidation, and avenues for durable solutions.

AFGHAN REFUGEES IN INDIA

Afghans began to flee Afghanistan after the invasion of the Soviet Union in 1979. The occupation and intervention by

different countries, and conflict between internal factions led to widespread destruction, death, and the forced

migration of people to neighbouring countries, particularly Pakistan, Iran, and India. A significant proportion of Afghan refugees who have reached India are from a middle class and educated background. Since their life was under threat, many fled to India with a view to securing resettlement in other countries. India has no laws on asylum and, as with Chin refugees, the Afghans are tolerated as foreigners temporarily residing in India. After their arrival, UNHCR conducts a Refugee Status Determination assessment by going through their valid documents. If they pass the assessment, the office issues refugee certificates. Afghan refugees were previously entitled to subsistence allowances, but these have since been discontinued. Senior refugees want the subsistence allowance scheme to be continued, despite financial constraints experienced by UNHCR, at least to the poorest among Afghans. The subsistence allowance, which was once provided to all refugees, was withdrawn due to paucity of funding and relatively well-off families wanting to avail the benefit. Presently, there are many deserving elders, single mothers, and sick members, who depend on NGOs for dry rations, medical assistance, and expect UNHCR to identify the poorest among Afghan refugees to continue the provision of subsistence allowance.

The prevailing laws and legal procedures do not allow refugees to take up jobs in the formal economy. More than fifty percent of refugees interviewed feel that their Refugee

Certificates should be recognised by Government of India, which should be supported through the influence of UNHCR. This recognition should come since their employment, identity status, movement and registration for third country settlement depend on documents. Building social capital and community support is felt to be a vital need by many. As Afghan refugees settled in different parts of Delhi, they now increasingly feel the need for social cohesion. During Bakri-eid celebration, Afghan refugees from different locations in Delhi gather in Lodhi Garden and Nehru Park to showcase their cultural talents, exchange food, interact with one another, and express their support and solidarity. Such celebrations foster their social capital. They build trust, mutual support, and strengthen their support base. These celebrations are co-organised by NGOs and community leaders. Sometimes, the Afghan embassy brings the wider community together by launching cultural programmes. Afghanistan Independence Day is celebrated in many places in Delhi with the support of the Afghan Embassy. This brings together not only the Muslim community, but also Afghan Sikh and Hindu communities.

However, many Afghan refugees continue to live in constant fear, threat, and intimidation from police and officials. Afghan refugees opine that there is a need for a strong bond and good relationship with officials, which will enable them to procure the following

documents—Long Term Visa (LTV), passport renewal, police registration from local police, rent agreement, and UNHCR card, which are mandatory for their survival. Some Afghan refugee interviewees shared that they have a background of trading, business, ethnic productions, weaving, and embroidery, and opportunities could be created to make use of their entrepreneurial skills so they can live independently and look for avenues for resettlement with the help of civil society. The Indian government can be requested by the civil society and international bodies to find newer legal pathways, or utilise existing legal avenues, to resolve longstanding refugee issues. Skill development, access to microcredit, and improved internet accessibility are required to support refugees become entrepreneurs, in turn, this could help them become contributors to local and regional development.⁵

Vocational training, skills training, and innovative strategies are offered by UNHCR and partner NGOs in order to support refugees to work towards self-reliance or self-employment. Some of the youngsters have acquired skills in tailoring, embroidery, and electronics repair. The refugees are aware of such courses offered by UNHCR and likeminded NGOs, which enhance their livelihood opportunities in a hopeless situation. The likeminded NGOs in partnership with UNHCR are enthusiastic, and creatively help refugees working towards self-reliance. Some of the members of refugee communities

are glad about such programs and are showing their support through participation.

GCR underscores the need to mobilise additional actors and to adopt a whole-of-society approach to strengthen refugee self-reliance and help ease pressure on host countries, and as such the Compact can be effectively mobilised to shore up support for filling gaps in building social capacity and livelihood opportunities. Volker Türk in his paper, “Prospects for Responsibility Sharing in the Refugee Context” States that providing social support—health, education, and social assistance—to refugee groups and enhancing their capacity and self-reliance would stimulate their integration with local communities and later on in the settlement countries.⁶ This would require political commitment that could be galvanised by the Support Platforms envisaged under GCR. Support platforms would enable context-specific support for refugees and concerned host communities and countries. The support platform encompasses functions such as—mobilizing financial, material and technical assistance, as well as resettlement and complementary pathways for admission to third countries, facilitating coherent humanitarian and development responses, building resilience, self-reliance and finding solutions.⁷

Afghan refugees in Delhi avail medical facilities provided by government hospitals and trusts. For major and

complicated illnesses, they are referred to more specialised hospitals. Due to the unaffordable expensive nature of treatment in private hospitals, most of the refugees are of the opinion that their chronic and critical medical expenses can be met by UNHCR or partner

agencies. The investigation and medical treatment bills have been reimbursed in some cases. Some of the senior refugees contend that their medical expenses could be reimbursed without delay as they have borrowed money from others.

SRI LANKAN REFUGEES IN INDIA

As per data furnished by Commissionerate of Rehabilitation, Government of Tamil Nadu, as of 1 January 2018, the total Sri Lankan refugee “population of concern” was 61,812. A significant proportion of these refugees live in State-run camps numbering around 107, and those suspected of LTTE (Liberation Tigers of Tamil Eelam) affiliation are detained in “special camps”, while some live outside the camps. People who live inside the camps receive government aid and a ration of basic supplies and services, such as free education, healthcare, electricity, shelter, and sanitation facilities. Those living outside the camps do not receive such subsidies. Refugees living in the camps share that they are constantly checked for documents, and their movement is controlled. They related that they are often treated by officials as fugitives, which is painful and humiliating. Due to the restrictions imposed on them, job opportunities or chances to integrate with the local community are limited.

Hence, the jobs they find are usually minor jobs in the informal economy where they are often paid less than the local employees.

The difficulties faced by the Sri Lankan refugees parallel those in other refugee camps: basic housing, sanitation, streetlights, community centres, burial grounds, playgrounds, and water facilities are scarce. Most of the camps do not have emergency medical services—resulting in tragic deaths in the camps. Education facilities are poor; and while the government makes efforts to improve the situation, the support is insufficient. Despite paying a heavy price for educating their wards, they are not getting proper jobs since they are refugees. There is no chance of getting government jobs. Either private companies pay them unfair salary for their service, or they are rejected due to their refugee status. Most of the young men and women in camps are educated up to undergraduate level and some of them are professionally qualified, or

have post graduate degrees but remain unemployed or underemployed due to refugee status. During the focus group discussion, some of the elders attributed unemployment, prolonged stay in camps and influence of media as some of the reasons for psycho-social problems in camps. Depression, divorce, separation, sexual and gender-based violence are found in the camps. During the discussion, most of women expressed that they felt cheated by the false promise made by India and Sri Lanka that peace-stability would prevail in Sri Lanka after defeating the banned organisation.

With the end of military attacks on the militants in 2009, the government of Sri Lanka communicated to the world that peace would prevail in the country and justice would be delivered to all. The country was freed from militant violence and minorities were guaranteed protection with constitutional rights. The Indian government too endorsed the views. The refugees were under the impression that the bilateral agreement would be made by Sri Lanka and India in resolving long lasting refugee issues, but there seems to be little hope in sight even after ten years of ending the war with the militants. The life of refugees is in limbo. The GCR offers the potential to strengthen the networking between host and home countries of refugees so as to find a suitable and amicable solution for the dignified and safe return of refugees, who are interested in repatriation. According to the GCR, the international community

as a whole will contribute resources to the country of origin to address root causes, to remove obstacles to return, and enable conditions favourable to voluntary repatriation. The support includes development, livelihood, economic opportunities, housing, land and property issues.⁸

The general perception of Sri Lankan refugees is, to find a durable solution for their displacement, which could include a safe return to their home country, possible local integration or third country settlement. If the government arranges a ferry service to Sri Lanka, some of them would be willing to return. Their repatriation has to be voluntary and safe. They feel that an international agency like UNHCR along with NGOs should monitor the rehabilitation package, which includes housing, retrieval of land, obtaining documents for citizenship, guaranteeing an employment for one person in a family, and creating livelihood opportunities. If such package is prepared, many refugees would volunteer for a repatriation plan. Those who are unwilling to go back to their home country due to perceived threat, and the stateless people could be integrated in India. Successful factors for reintegration include the use of international monitors to oversee the repatriation process to ensure the safety of returnees and the proper use of funding for the effort, the involvement of private sector and NGOs to support the returning population, the ability of refugees to decide their timing of return.⁹

WAY FORWARD

Pursuing a “whole-of-society” approach is needed to resolve outstanding issues of refugee protection in India, and this is also underlined as a global priority in the GCR. As of now, activities and programmes for refugee community are done at different levels with varying levels of engagement. NGOs are interested in programmes like education, basic health care, livelihood training for women, psycho-social care; academicians engage in articulations; politicians use the refugee issue for their narrow political ends; governments follow ad hoc policies on refugees; and the role of UNHCR is limited in India. Consequently, the refugee community lives in fear, despair and their genuine concerns are not addressed adequately. Under the aegis of GCR all the likeminded stakeholders (academicians, camp leaders, NGOs, government officials, UNHCR including refugee representatives) can engage in pragmatic debate and discussions on early resolution of refugee issues. A unified body can place the charter of needs of refugees to both the host and home countries of refugees.

The GCR plans for the establishment of Global Academic Network on refugee, other forced displacement, and statelessness, which will work with universities, academic centres to promote research activities in order to achieve the objectives of the Compact.¹⁰ Since the refugee issue is beyond the borders

of one country, a unified body can take up the issue with the governments and bureaucrats. The participation of civil society in empowering refugees to be self-reliant and enhancing their dignity can be encouraged through strategic planning and funding.

A significant number of urban refugees face challenging experience in terms of sexual and gender-based violence. Ensuring safety and creating a safe environment should be developed with a participation of civic authorities, university students, legal bodies, and NGOs. The redressal mechanism is absent or weak in dealing with refugee problems. Feeling isolated and powerless, refugees suffer silently through all humiliations and tortures. There is a significant protection mechanism in GCR for children, including those who are unaccompanied or separated, women at risk, and survivors of torture, trauma, human trafficking, sexual and gender-based violence or harmful practices.

Some facets of GCR can enable the establishment of a ‘Talent Hub’ for young refugees who show impressive knowledge in sports, science, technology, liberal arts, social sciences, medicine, and engineering, and create a range of new opportunities in entrepreneurship, agriculture, energy, environment, economy, and marketing. The hope to explore and expand their knowledge is kept up and refugees

feel happy to contribute their mite to humanity. The ongoing development of 'Talent Hub' can be monitored and managed by UNHCR or UNHCR-nominated members from civil society. GCR talks about the engagement of children, adolescents, and youth through sports and cultural activities, language learning, and education.

Introspection into the root causes of refugee and migration problem should be given serious and sincere consideration. Credible and authentic information has to be collected and placed at UN meetings so as to pressurise the leaders to address the issue with definitive timelines. It is not an issue pertaining only to home and host countries. Alerting the world community about the potential large movement of refugees due to conflict, natural calamity is in GCR. George Rupp endorses the idea saying that nations must intervene early on in situations of potential or actual conflict to prevent mass migrations.¹¹

Developed countries must be forced to share the responsibility of hosting refugees by taking refugees through sponsorship. It is disheartening to note that the U.S government has decided to limit the number of refugees to be taken into their country. The number of refugees is growing phenomenally around the globe, but third country settlement is very slow. The U.S. administration recently announced a proposal to cap admits in the financial year 2020 (1 October 2019—30

September 2020) at 18,000—the lowest since the country's Refugee Act of 1980 was passed. The international civil society and human rights watch bodies should deal with the US government for its recent non-friendly approach towards immigrants and refugees.

India being one of the largest democracies in the world, should frame a refugee law to deal with the issues of refugees. It is the moral commitment of India and imperative action on the part of civil society to make India evolve a policy in order to treat refugees with dignity and rights. If there is no legal framework for refugees and if India remains outside the international treaties dealing with refugees, all these ideas will be fruitless and it is pointless for India to talk about civilizational values. UNHCR in India is limited and it is at the mercy of government authorities. When so many issues related to refugees' resettlement and repatriation are on the rise, UNHCR remains handicapped. India, being in the executive committee (EXCOM) of UNHCR, cannot maintain silence over growing refugee issues. It is time to formulate a sustainable policy for refugees in line with the GCR in order to enable refugees with access rights and opportunities to live with dignity. With a rise in right-wing politics, India has become hostile towards refugees, which will undermine its status as a global player. Ad hoc policy and political selectivism in dealing with refugees will pose potential threat to the implementation of GCR.

CONCLUSION

Though the Global Compact on Refugees is not a legally binding document, it can provide a robust, integrated, and sustained support to the most vulnerable refugee communities in the world. Sharing the burden of developing countries, which host large number of refugees, and engaging developed countries to deal with this humanitarian crisis can be achieved with this document. It is a humanitarian expression of support, solidarity and strong political will that is necessary to tackle the humanitarian

crisis of 21st century. The number of persons becoming refugees and migrants due to violence, conflict, drought, degradation of eco-system are on the rise globally and hence, the Global Compact on Refugees is relevant and significant to mitigate not only the mass exodus of people to different locations, but also to find responsible and resolute solutions globally with a network of governments, civil society, international bodies, refugee leaders, INGOs and members from host community.

NOTES

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THE GLOBAL COMPACT ON REFUGEES: INDIAN PERSPECTIVES AND EXPERIENCES

On 17 December 2018, the Global Compact on Refugees was officially affirmed by the United Nations General Assembly. India took an active role in contributing to the development of the Compact and affirmed it, along with the majority of Member States. The Compact, a non-binding instrument, sets out to provide a basis for predictable and equitable responsibility-sharing among all United Nations Member States. It also emphasises the need for stakeholders to enhance refugee self-reliance in host states.

While India is not a party to the 1951 Refugee Convention or its 1967 Protocol and does not have a national framework for refugee protection, it grants asylum to a number of refugees from neighbouring states and has a rich and well-documented history of hosting refugees. Lately, however, concerns about national security and shifts in political discourse have had an adversely restrictive impact on the asylum space in the country. In such an environment, the absence of a uniform legal and administrative framework for refugees presents serious protection challenges. Yet, India's recent commitment to the Compact raises hopes about what might still be achieved. The contributions to this edited collection—who include legal experts, researchers, academics and distinguished figures from across India and beyond—explore the importance and relevance (or irrelevance) of the Global Compact on Refugees for present-day India.

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