

# INTRODUCTION

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## 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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.