



IRAP's Response to Zero Draft of Global Compact on Refugees

February 2018

About the International Refugee Assistance Project

The International Refugee Assistance Project (IRAP) at the Urban Justice Center, based in New York, USA, provides comprehensive legal representation to refugees and displaced persons. Since its founding, IRAP has provided *pro bono* legal representation, legal advice, and expert referrals to thousands of refugees around the world seeking legal pathways from persecution to safe countries. IRAP recruits, trains, and supervises *pro bono* legal professionals to represent the world's most vulnerable refugees, harnessing private resources to advance refugees' access to durable solutions.

IRAP's clients include LGBTI individuals, religious minorities subject to targeted violence, survivors of sexual and gender-based violence, children with medical emergencies for which local treatment is not available, and interpreters who are persecuted for their work with the United States and NATO.

IRAP submits these comments on the Zero Draft of the Global Compact on Refugees (GCR) as a stakeholder and partner to: emphasize the importance of the right to claim asylum and the principle of *non-refoulement*, urge UNHCR to lead by example in promoting human rights in refugee protection, note concern that the Zero Draft fails to outline specific steps for responsibility-sharing, and welcome the Draft's focus on durable solutions.

1. IRAP reaffirms the importance of the right to claim asylum and the principle of non-refoulement

IRAP expresses its concern that the GCR's Zero Draft prioritizes orderly migration over the right to seek asylum and the prohibition on *non-refoulement*. The Zero Draft is to be commended for promoting access to livelihoods, legal identity, and many other important principles. However, none of this replaces, nor can it justify replacing, the right of individuals who are fleeing persecution to seek asylum. The New York Declaration stated that its promotion of orderly migration would be done "without prejudice to the right to seek asylum,"¹ and "reaffirm[ed] respect for the institution of asylum and the right to seek asylum . . . [and] the fundamental principle of non-refoulement in accordance with international refugee law."²

¹ New York Declaration, U.N.G.A. Resolution A/Res/71/1, para. 27.

² Id. at para. 67.

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But in the GCR, providing the “programme of action” to “facilitate the application” of the New York Declaration and its Comprehensive Refugee Response Framework (CRRF), the principles of non-*refoulement* and the right to seek asylum are mentioned only in a footnote by reference to the international instruments that set forth these principles.

IRAP also notes its concern that the Zero Draft of the GCR emphasizes group-based and alternate forms of identifying protection needs over individualized refugee status determination (RSD) and asylum processes.³ This is concerning, as it could be seen as undermining or diminishing the 1951 Refugee Convention and its refugee definition. While group-based refugee recognition is a valuable tool for inclusion, overreliance on group-based designations can mean that individuals with protection needs are overlooked because their nationality or group is not generally threatened. Further, subsidiary forms of protection often fail to grant refugees the full range of rights guaranteed to refugees in international human rights law, including the 1951 Refugee Convention.

The failure to ground the GCR in these two bedrock principles is deeply concerning given, in the words of UNHCR’s Assistant High Commissioner for Protection Volker Türk, “the growing tendency in both law and State practice to approach refugees from a strictly security perspective. . . . Deterrence measures, such as restrictive asylum policies, push-backs at borders, offshore processing arrangements, and even numerous instances of *refoulement* have unfortunately come to the fore.”⁴

IRAP expresses its strongest support for concrete commitments in the GCR to affirm, strengthen, and implement the right to seek asylum and the principle of non-*refoulement*. Without these principles, the GCR risks advancing orderly migration while undermining the core international protection rights of refugees.

2. UNHCR and other UN agencies must lead by example in advancing human rights in refugee protection

IRAP reiterates that UNHCR and other UN agencies’ actions provide an opportunity to demonstrate best practices for ensuring that human rights are central in refugee protection. In many countries, UNHCR conducts RSD as a substitute for State asylum procedures; wherever UNHCR conducts RSD, it must do so in a manner that respects human rights. Because RSD decisions often have implications for access to rights in countries of asylum and for preventing *refoulement*, UNHCR has an obligation to ensure that its policies are effective and to prevent erroneous denials.⁵

³ Global Compact on Refugees Zero Draft, Jan. 31, 2018, para. 46.

⁴ Volker Türk, Keynote Address to the International Association of Refugee Law Judges, 29 November 2017, <http://www.unhcr.org/admin/dipstatements/5a1e68417/keynote-address-international-association-refugee-law-judges.html>.

⁵ Niamh Kinchin, The Implied Human Rights Obligations of UNHCR, *International Journal of Refugee Law*, 2016, Vol. 28, No. 2, 251–275.

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UNHCR has an international mandate to advocate for refugees with States, and given UNHCR's role as an adjudicator, UNHCR has both the opportunity and obligation to set a positive example for State-run RSD systems by ensuring that UNHCR RSD is conducted with maximum transparency, including by implementing due process protections such as the ability of asylum-seekers to challenge evidence used against them and to benefit from access to counsel in all situations where refugee status may be granted or denied.

Likewise, in its resettlement activities, UNHCR can set a positive example to States by implementing procedural safeguards and other trauma-sensitive measures that will enhance refugees' ability to participate fully in the adjudication of their cases, including training in trauma sensitivity and allowing access to counsel in resettlement interviews.

3. Failure to outline specific steps for responsibility-sharing undermines the GCR's potential to advance refugee protection

IRAP expresses its concern that the GCR falls short of the principles of the New York Declaration by failing to outline concrete steps for implementation. In its opening paragraph, the GCR states that it "addresses a perennial gap in the international system for the protection of refugees: the need for more predictable and equitable burden- and responsibility-sharing among States, together with other stakeholders"⁶ and will implement the principles of the CRRF in a "programme of action."⁷

Far from listing how states will collaborate to provide more "predictable and equitable burden- and responsibility-sharing," the Zero Draft lists options that interested states could take. It is difficult to be optimistic about this menu of positive steps, when "we are seeing a shirking of responsibilities and repeated efforts to contain, rather than resolve, refugee situations."⁸ Indeed, based on lack of funding and donor participation, Tanzania, which hosts a significant refugee population, recently withdrew from the CRRF.⁹ Without concretely outlining the contributions of donor and refugee-hosting states, the GCR's potential to advance refugee protection is sharply curtailed.

⁶ Global Compact on Refugees Zero Draft, Jan. 31, 2018, para. 1.

⁷ Global Compact on Refugees Zero Draft, Jan. 31, 2018, para. 6.

⁸ Volker Türk, Keynote Address to the International Association of Refugee Law Judges, 29 November 2017, <http://www.unhcr.org/admin/dipstatements/5a1e68417/keynote-address-international-association-refugee-law-judges.html>.

⁹ AFP, "Tanzania Withdraws from UN Refugee Programme," Feb. 10, 2018, <https://www.news24.com/Africa/News/tanzania-withdraws-from-un-refugee-programme-20180210>.

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4. IRAP welcomes the GCR's emphasis on durable solutions, including resettlement, and on complementary pathways

Resettlement, a solution only for a small number of refugees, is essential in providing the world's most vulnerable refugees with a durable solution. IRAP welcomes the GCR's emphasis on durable solutions, including resettlement, and complementary pathways. IRAP stands in strong support of UNHCR's efforts to expand resettlement opportunities, as well as the emphasis in both the CRRF and GCR on the role of civil society and private sector engagement in promoting refugee protection.¹⁰

¹⁰ Comprehensive Refugee Response Framework, U.N.G.A. Resolution A/Res/71/1, 19 September 2016, para. 14; GCR Zero Draft, paras. 25-32.