

Submission of the Asia Pacific Refugee Rights Network to the tenth annual High Commissioner's Dialogue on Protection Challenges on the theme of "Towards a global compact on refugees"

12 and 13 December 2017

Introduction

1. Throughout the course of 2017, the Asia Pacific Refugee Rights Network (APRRN) has actively participated in consultations with states, international organisations, civil society organisations, refugees, and other relevant actors to consider and comment on the development of the Global Compact on Refugees (GCR). This has included, *inter alia*, convening a regional roundtable in Bangkok in May 2017, participating in the UNHCR's annual NGO consultations and five thematic discussions as part of its roadmap towards the GCR, and acting as a member of the UNHCR-NGO-IFRC Comprehensive Refugee Response Framework Reference Group.
2. APRRN has also followed the process of the Global Compact on Safe, Orderly and Regular Migration (GCM) and participated at the Civil Society Days for the Global Forum on Migration and Development (GFMD) in June 2017 and the stocktaking meeting on the GCM in Puerto Vallarta in December 2017.
3. APRRN has produced four written submissions for the consultations under the GCR roadmap.¹ These submissions have considered the significance and application of the New York Declaration

¹ APRRN, *Reflections on the significance of the New York Declaration on Refugees and Migrants for the Asia Pacific region* (12 June 2017) <<http://aprrn.info/wp-content/uploads/2017/07/APRRN-Reflections-on-the-significance-of-the-New-York-Declaration-on-Refugees-and-Migrants-for-the-Asia-Pacific-region-1.pdf>>; APRRN, *Past and present responsibility-sharing arrangements for refugees in the Asia Pacific region* (9 July 2017) <<http://aprrn.info/briefing-paper-past-and-present-responsibility-sharing-arrangements-for-refugees-in-the-asia-pacific-region/>>; APRRN, *Measures to be taken at the onset of a large movement of refugees, Meeting Needs, and Supporting Communities*

(17-18 October 2017) <<http://www.unhcr.org/events/conferences/59e5f4617/rohingya-refugee-crisis-building-capacity-rapid-predictable-humanitarian.html>>; APRRN, *Measures to be taken in pursuit of solutions and issues that cut across all four substantive sections of the comprehensive refugee responses, and overarching issues* (14 and 15 November 2017) <<http://www.unhcr.org/events/conferences/5a12a4e77/measures-taken-pursuit-solutions-issues-cut-across-four-substantive-sections.html>>.

on Refugees and Migrants (New York Declaration)² for the Asia Pacific region, as well as some of the preliminary issues, concerns and opportunities that should be taken into account in the development of the GCR. For ease of reference during this stocktaking period, these submissions have been summarized and are annexed to this document.

4. This brief submission seeks not to reiterate previous submissions, but rather aims to focus on cross-cutting issues that are relevant to the High Commissioner's Dialogue on Protection Challenges and to provide some further recommendations regarding the scope and content of the Programme of Action proposed for inclusion in the GCR.

Cross-cutting issues

Strengthening the response to women and girls

5. Throughout the course of 2016 and 2017, APRRN and its members have welcomed the strong commitments made by states in the New York Declaration to ensure that responses to large movements of refugees and migrants 'fully respect and protect the human rights of women and girls' and 'promote gender equality and the empowerment of all women and girls'.³ Importantly, this includes commitments 'to combat sexual and gender-based violence' and exploitation and to recognise the significant 'contribution and leadership of women in refugee and migrant communities'.⁴
6. It is essential going forward that, consistent with these commitments, the needs and capacities of women and girls are not sidelined or ignored.⁵ This will involve regular monitoring, evaluation and learning to ensure that all commitments to refugees and migrants are 'gender-sensitive, with a particular emphasis on the protection and empowerment of women and children'.⁶
7. As part of this approach, it is important to recognise that women on the move are not vulnerable per se. Rather, it is the circumstances that lead to their displacement, as well as the immigration and asylum policies they encounter, that place women at risk and in situations of vulnerability. Women are 'not just passive victims'.⁷ They are advocates for their rights and agents of change.

² *New York Declaration for Refugees and Migrants*, UNGAOR, 71st sess, Agenda items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) ('New York Declaration')
<http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E%20>.

³ *Ibid* [31].

⁴ *Ibid*.

⁵ See Eileen Pittaway, Charlotte Bell and Linda Bartolomei, *Strengthening the response to refugee women and girls in the Comprehensive Refugee Response Framework* (5 June 2017)
<https://www.arts.unsw.edu.au/media/FASSFile/CRRF_working_document_updated_June_5.pdf>.

⁶ New York Declaration, above n 2, Annex 1: 7(c).

⁷ Eileen Pittaway and Linda Bartolomei, 'The international protection system is failing refugee women and girls' *Thomson Reuters Foundation News* (online), 17 November 2017,
<<https://news.trust.org/item/20171117153956-kw7l8/>>. As Pittaway and Bartolomei state, 'in many camps and

Promoting and facilitating refugee leadership and participation

8. APRRN is committed to promoting and facilitating the leadership of people with lived refugee experience and the greater inclusion and participation of refugees in decision making processes that affect them. Participation needs to be meaningful and non-tokenistic. This is an essential component of a properly functioning whole-of-society approach.
9. Various proposals have been put forward on this issue throughout the consultations to date. These proposals include engaging refugee communities in the planning and selection of durable solutions,⁸ including ‘refugees and returnees in peace and crisis recovery strategies and national development plans’,⁹ employing more people with lived refugee experience in UNHCR roles, and creating opportunities for people with lived refugee experience to become researchers in academic institutions.¹⁰ In addition, there are proposals to improve consultation methodologies with refugee communities. APRRN supports the inclusion of all of these measures in the GCR and is committed to working with refugees, refugee-led organisations and networks, states and other actors to implement and mainstream these measures in practice.
10. Importantly, in order for the voices of refugees to be incorporated effectively into decision-making processes, steps need to be taken to resource and strengthen the capacity of refugee-led organisations and networks. Steps also need to be taken to provide spaces, both physical and virtual, for refugees to meet, plan and discuss policies and proposals without fear of discrimination, political interference, persecution, arrest and detention, deportation, or jeopardy with respect to their protection claims. There also needs to be more holistic consideration as to how refugee participation can become more inclusive of refugee women, women seeking asylum and groups that may face additional challenges to participation, such as youth, older refugees, and people with disability. In developing policies, governments and other decision-makers should ensure accountability to those they mean to protect and assist, while

refugee sites, women run crèches for children, arrange care for orphaned or lost children, provide safe spaces for women who have experienced sexual and gender-based violence, manage scarce rations to ensure that families are fed, run small businesses to provide some meagre additional support their families, run basic schools, and provide protection. They generally do this without funding or external support’.

⁸ Refugee Council of Australia, *Positions relating to durable solutions and crosscutting issues in the Global Compact on Refugees* (November 2017) <<http://www.unhcr.org/en-au/events/conferences/5a1812ec7/australian-ngo-positions-durable-solutions-cross-cutting-issues-gcr.html>> 2.

⁹ UNHCR, *Summary: Thematic discussion four: Measures to be taken in the pursuit of solutions - Panel one: How can we support voluntary and sustainable return?* (14 November 2017) <<http://www.unhcr.org/5a182efc7>> 2.

¹⁰ UNHCR, *Summary: Thematic discussion five: Issues that cut across all four substantive sections of the comprehensive refugee response framework, and overarching issues -Panel two: How can we ensure a whole-of-society response to large movements of refugees and protracted situations?* (15 November 2017) <<http://www.unhcr.org/5a18304f7>> 2.

providing mechanisms for meaningful participation, such as advisory or oversight committees that involve members of both refugee and host communities.

Addressing the needs of refugee children and youth, including unaccompanied and separated minors

11. APRRN is committed to working with states, international organisations, refugee-led organisations and other relevant actors to address the specific needs of refugee children and youth, including unaccompanied and separated minors. To this extent, APRRN welcomes the multilateral Initiative for Child Rights in the Global Compacts.¹¹ This initiative sets out key recommendations for protecting, promoting and implementing the human rights of refugee and migrant children in the Global Compacts.
12. The initiative identifies six key priority issues affecting refugee and migrant children that should be addressed in both the GCR and the GCM: (1) non-discrimination; (2) best interests of the child; (3) child protection; (4) ending child immigration detention; (5) access to services for refugee and migrant children; and (6) sustainable solutions in children's best interests.
13. Importantly, the initiative also documents clear goals, targets and indicators for the monitoring, and evaluation of these rights. These goals, targets and indicators should be incorporated into a broader monitoring evaluation and learning framework relating to the broader commitments made by states in the New York Declaration.
14. It is also essential to take into account specific issues affecting refugee youth, recognizing that the transition between childhood and adulthood is graduated and individualistic, and flexible approaches should be adopted with respect to policies and programming relating to refugee youth, giving weight to individualized and sensitive assessments of maturity and always taking into account both the wishes and motivations of the individual, as well as what is in their best interests.
15. As indicated in the report of the 2016 Global Refugee Youth Consultations, this includes, *inter alia*, concerns regarding youth-sensitive sexual and reproductive health care and psychosocial support, limited youth employment and livelihood opportunities, difficulties in obtaining recognition for existing qualifications and accessing quality learning, and lack of empowerment and engagement opportunities.¹²

¹¹ Jacqueline Bhabha and Mike Dottridge, *Child Rights in the Global Compacts: Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts* (24 June 2017) <<http://www.childrenonthemove.org/wp-content/uploads/2017/02/Working-document-English-11-Nov-2017.pdf>>.

¹² Women's Refugee Commission, UNCHR and GRYC, *Global Refugee Youth Consultations: Final Report* (November 2016) <<http://www.unhcr.org/57e1126e7.html>> 6.

Countering xenophobia, racism and discrimination

16. APRRN believes that as we work towards the development and implementation of the GCR more efforts need to be taken to counter the xenophobia, racism and discrimination that many refugees, asylum seekers and migrants experience around the world, including in the Asia Pacific region. Importantly, measures to counter xenophobia need to occur in all situations where refugees may be present, not just in countries of first asylum.
17. In the New York Declaration states have committed 'to combating xenophobia, racism and discrimination in our societies against refugees and migrants' and to 'take measures to improve their integration and inclusion, as appropriate, and with particular reference to access to education, health care, justice and language training'.¹³ States have also recognised that 'these measures will reduce the risks of marginalization and radicalization'.¹⁴
18. However, many host community perceptions of asylum seekers and refugees continue to be influenced and shaped by governments and media that present refugees as a 'deviant social group' who take advantage of government policies and undermine the sovereignty of host states.¹⁵ This can be seen in the frequent use of terms such as 'illegal', 'unauthorised migrants', 'bogus' 'queue jumpers' and 'economic refugees', among others. These representations, in turn, undermine campaigns that target xenophobia, and influence government policies focused on control, border management and the exclusion of refugees, people seeking asylum and migrants from host communities.

Establishing effective firewalls between service providers and immigration enforcement agencies

19. APRRN believes that there needs to be widespread implementation by states of effective firewalls within service provision, including between access to justice and immigration enforcement agencies. This is necessary in order to ensure trust in the provision of protection services for refugees, asylum seekers and migrants, and to encourage refugees, asylum seekers and migrants to report human rights violations and other crimes and abuses. As the UN Secretary-General stated in 2014, 'one of the main barriers faced by migrants in an irregular situation is the fear of deportation if they are reported to immigration authorities while seeking

¹³ New York Declaration, above n 2, [39].

¹⁴ Ibid.

¹⁵ See Sharon Pickering, 'Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia' (2001) 14 *Journal of Refugee Studies* 169 and Fiona H Mckay, Samantha L Thomas and Susan Kneebone, "'It Would be Okay If They Came Through the Proper Channels": Community Perceptions and Attitudes toward Asylum Seekers in Australia' (2012) 25 *Journal of Refugee Studies* 113, 128.

public services'.¹⁶ Consequently, 'public service institutions should not be required to report to or otherwise share data with immigration authorities'.¹⁷

20. This is particularly relevant for asylum seeking, refugee and migrant women and girls who must be able to report crimes (such as sexual and gender-based violence, other crimes and labour exploitation) without fear of the information being shared with immigration agencies.
21. Meanwhile, staff engaged in reception of people with specific needs or vulnerabilities, and in assisting victims of violence, as well as staff of immigration enforcement authorities, should all receive training on how to address the needs of undocumented migrants, refugees and asylum seekers, and all other migrants in a mixed migration situation to ensure people's unhindered capacity to seek protection and assistance.

Recommendations for the proposed Programme of Action and GCR

Recommendation 1: The GCR should operationalise the commitments made in the New York Declaration and build on its Comprehensive Refugee Response Framework (CRRF)

22. The adoption of the New York Declaration by all 193 Member States of the United Nations General Assembly marked a significant commitment by the international community to address the shortcomings in refugee protection, particularly with respect to establishing more equitable and predictable responses to large-scale refugee movements and protracted refugee situations.
23. APRRN proposes that the GCR operationalise and seek to deliver on the commitments made in the New York Declaration broadly, not just those set out in the CRRF. The New York Declaration, including the full breadth of its commitments, should continue to be seen as the contextualising document for the development and implementation of the GCR.

Recommendation 2: The Programme of Action should elaborate on the scope and meaning of responsibility-sharing

24. Although the GCR no longer includes responsibility-sharing in its title, it remains the case that one of the key purposes of the New York Declaration, and in turn the GCR, is to establish 'a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees'.¹⁸
25. APRRN believes that the Programme of Action should elaborate on the scope and meaning of responsibility-sharing with respect to refugee protection. This is necessary to ensure consistency of approach in collective action. It is also important to ensure that responsibilities to protect

¹⁶ *Report of the Secretary-General: Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, UNGAOR, 69th sess, Agenda Item 69(b), UN Doc A/69/277 (7 August 2014) [29] <<https://reliefweb.int/sites/reliefweb.int/files/resources/N1449837%20%281%29.pdf>>.

¹⁷ *Ibid* [79](g).

¹⁸ New York Declaration, above n 2, [68].

refugees are distributed fairly according to ‘differing capacities and resources among States,’ and inclusive of civil society and other actors in order to benefit from diverse, available capacities and resources.¹⁹

26. Currently, there remains significant uncertainty as to what specific responsibilities should be addressed with regards to this concept, how responsibilities should be distributed according to ‘differing capacities and resources among States’, and what it will mean in practice among diverse actors in a whole-of-society approach.
27. Since the adoption of the New York Declaration, various proposals have been put forward calling for more effective and equitable methods to measure and implement responsibility-sharing in the refugee regime. During the stocktaking phase, it is important that each of these proposals is fully considered and due consideration given to issues arising, including the advantages and disadvantages of measuring states’ contributions hosting refugees alongside states’ financial contributions, how responsibility-sharing may be measured and implemented, and whether and how it can be enforced.
28. To the extent that questions and controversies surrounding responsibility-sharing remain following this process, the Programme of Action should provide for ongoing consultation towards development of a more predictable and equitable approach to responsibility-sharing, seeking to strengthen existing mechanisms, discuss adjustments in regional governance, and develop new operational mechanisms moving forward.

Recommendation 3: The Programme of Action should address issues of complementarity and convergence with the GCM

29. APPRN believes it is essential that the Programme of Action identify and address issues of complementarity between the GCR and the GCM so as to ensure that commitments relating both to refugees and migrants are fully captured, the GCM upholds international legal protections afforded to refugees as a special category of persons, and refugees are not excluded from additional protections and opportunities encompassed within the GCM.
30. APPRN proposes that issues of complementarity and convergence be included within the scope of the monitoring, evaluation and learning framework recommended below, and that each of the mechanisms and groups that may be established within the scope of the Programme of Action (as anticipated in the concept notes prepared for the GCR Thematic Discussions 2-5) be tasked with attending to matters of complementarity and convergence as part of their work.
31. APPRN further proposes that a mechanism be established to enable the structured, periodic sharing of information and ideas across the GCR and GCM processes in order to ensure and create clear accountability for their complementarity and convergence during development and ongoing implementation. The establishment of such a mechanism should be called for within

¹⁹ Ibid.

the body of the GCR. Without this the success of neither Compact is assured and their combined potential is diminished. APRRN believes greater international solidarity and more comprehensive responses to refugee flows will encourage a more receptive environment for people on the move generally, and that better managed migration will in turn support creation of a more conducive environment for the effective implementation of asylum regimes.

Recommendation 4: the Programme of Action should include a monitoring, evaluation and learning framework

32. APRRN believes that in order for the GCR to deliver sustainably and substantively on the promise and potential of the New York Declaration it is essential that its proposed Programme of Action incorporates a monitoring, evaluation and learning framework. This framework should include provision for baseline assessments, as well as measurable indicators and goals for all refugee-related commitments made by states in the New York Declaration, including those relating to refugees' participation in decision-making and programming, as well as all commitments relating to complementarity and convergence between the Global Compacts. The framework should provide for reporting at specified intervals on the level of implementation and progress with regards to each indicator and goal. Such an approach will enable continuous learning and enhance transparency and accountability.
33. Consideration should also be given as to how the diverse contributions of non-State actors can be defined, included and monitored over time, in keeping with a whole-of-society approach.
34. Given its protection mandate, lead role in the development of the GCR and long supervisory history on refugee issues, APRRN proposes that this framework should be developed and led by UNHCR. However, there should also be consultation and input from all relevant actors as part of a whole-of-society approach. The Sustainable Development Goals framework may provide a useful model for comparison and consideration.