

# Global Compact on Refugees: Step Towards Attainment of Social and Economic Rights

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## Abstract

The Geneva Convention Relating to the Status of Refugees, 1951 contain a range of provisions relating to the social and economic rights of refugees (SERs)) but is limited in protecting these entitlements. More powerful claims for social and economic rights can be put forward by refugees under human rights law, since it is broader and universal in nature. However, at the same time it is also true that social and economic rights in ICESCR are weak in realization, and more powerful claims for social and economic rights can be put forward by refugees under human rights law, since it is broader and universal in nature. However, at the same time it is also true that social and economic rights in ICESCR are weak in realization. Besides, the implementation and enforcement mechanism of international human rights law, particularly with regard to ICESCR, has not kept pace with standard setting thereof.

There are two developments in the field of international refugee law i.e., New York Declaration for Refugees and Migrants, 2016 and Global Compact on Refugees, 2018 having bearing upon the protection of SER. Both these instruments are not legally binding, but are a reflection of the will of the international community to address the current global refugee crisis and also to prepare the world for future challenges. The present paper critically examines the international legal framework for the protection of SER of refugees. In this regard, the paper will primarily focus upon the Global compact on Refugees, 2018; the impact it will have on protection of SER of refugees and also will look into the soft law challenges to the instrument. The paper concludes with bring out the opportunities and challenges to these two soft law instruments and suggests that all united effort by all those involved in social policy, welfare, development, law and human rights to work together to improve the lot of the economically and socially disadvantaged.

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## Introduction

As per the cardinal human rights norm as enlisted in Article 1 of Universal Declaration of Human Rights “All human beings are born free and equal in dignity and rights” which by necessary implication means that each person without discrimination is entitled to live with human dignity which necessitates adequate realization of the social and economic rights (SER) indispensable for survival, dignity and also for the development of his personality. The issue assumes

primary significance where SER of the refugees are concerned. These entitlements are significant for refugees since they are living outside their country of origin in a foreign country where they are most susceptible to the denial of basic sustenance rights. Furthermore, the search and effective implementation of the appropriate durable solution is not possible without the adequate enjoyment of SERs by refugees.

## Identifying Social and Economic Rights

The entire body of human rights can be divided into two categories i.e., civil and political rights; and economic, social and cultural rights.

Civil and political rights are that class of entitlements which prevent the government from infringing the freedom of an individual apart from providing an opportunity to take part in the civil and political verve of the country without any discrimination or repression.<sup>1</sup> Conversely SERs enable a person to lead a healthy life in a dignified manner. These are entitlements which warranties that each individual is given opportunities to live life in a dignified manner.

However, when defined individually, social rights more specifically are those rights which, if adequately guaranteed and protected, are emancipatory, empowering and transformative in nature.<sup>2</sup> These rights generally ensure that right holders are able to live dignified and holistic life as a civilized being in consonance with the parameters prevailing in the society.<sup>3</sup> This category of enticements, by and large relate to the right to safe, sufficient and nutritious food; to an adequate standard of living; adequate housing; the right to the highest attainable standard of physical and mental health & right to education.

The guarantee of economic rights facilitates a person in making positive contribution to the economy of the host country. Furthermore, these rights have dual purpose to serve, firstly- to provide a foundation for ensuring adequate standards of living; and secondly, these entitlements provide a basis for economic independence and hence freedom from deprivation. The rights included in this category are right to work, to favorable conditions of work, the right to form and join trade unions and the right to wages necessary for a decent standard of living.

Under the human rights regime, there has been a long-standing debate regarding primacy of civil

and political rights over economic, social and cultural rights. In fact, social and economic rights are wedged in the quandary of ‘less importance’ in so far as they are often termed as the “second generation rights” after civil and political rights.<sup>4</sup> This implies that civil and political rights are accorded more protection in comparison to social and economic rights. Various authors have put forward a number of likely reasons for this approach. Few have put forward an argument that civil and political rights impose immediate binding obligations upon the states, while the social and economic rights on the whole requires progressive steps to be taken by the states for their realization. There are others who have argued that civil and political rights are more readily enforceable and the overall expenditure implications are not as much as in comparison to social and economic rights, the enforcement of which is directly correlated to the economic viability of a state concerned, thereby making it all the more difficult to enforce.<sup>5</sup>

However, it has now come to be firmly established principle of law that all rights whether- civil, political, economic, social or cultural are Interdependence and indivisible; and demand equal respect and protection not only from international community but from nation states as well. In this regard, 1993 Vienna Declaration and Programme of Action, paragraph 5 of part I of which states in this regard that: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and

<sup>1</sup> Flavia Piovesan, “Social, Economic and Cultural Rights And Civil And Political Rights” International journal of human rights, (2004), available at: <https://sur.conectas.org/en/social-economic-cultural-rights-civil-political-rights/> accessed on 20<sup>th</sup> March 2022.

<sup>2</sup> Paul Hunt, Social Rights Are Human Rights: But the UK System Is Rigged (2017), <https://citizen-network.org/uploads/attachment/584/social-rights-are-human-rights.pdf> , accessed on 25<sup>th</sup> March 2022.

<sup>3</sup> Asbjørn Eide, “ Economic Social and Cultural Rights, Springer; 1 edition (June 6, 2001) Editors: Catarina Krause, Asbjørn Eide, Allan Rosas P.113

<sup>4</sup> Helene Albrecht, Beyond Justiciability: Economic, Social and Cultural Rights on the advance as exponents of a dignified humanity, available at: <http://www.westminsterlawreview.org/downloads/Beyond%20Justiciability.pdf> (Accessed on June 12, 2022).

<sup>5</sup> Javaid Rehman, *International Human Rights Law* 142 (Pearson Education Limited, U.K, 2010).

protect all human rights and fundamental freedoms.”<sup>6</sup>

### Significance of SERs for Refugees

Social and economic rights are particularly significant for the well-being of the refugees. Respect for these entitlements is essential not only for preventing the flow of refugees and but also to protect them from their sufferings in the asylum country.<sup>7</sup> Without the realisation of these rights, they cannot survive and live with dignity in the country where they have taken refuge. In effect, these entitlements are an important player at all stages of refugee protection. Firstly, it provides a shield to them in their country of origin against deprivation, and forced migration. Secondly, it works as a benchmark while dealing with refugees in the host country. Thirdly, the respect of social and economic rights is also relevant to maintain the sustainability of safe and dignified return of refugees to their home country or for resettlement in a third country.<sup>8</sup>

Recognition and protection of SERs by the nation states is also importance for due regard to one of the most essential principles of customary international law i.e. principle of non-refoulement which implies that no refugee should be expelled or forced to return to a country where he has genuine fear of being persecuted for reasons of his race, religion, nationality, membership of a particular social group or political opinion.<sup>9</sup> If in compliance with this principle, a nation state grants asylum to a person, however, subsequently he is not able to satisfy his basic needs in terms of food, work opportunities, education etc., he will be forced to leave the country. Consequently, denial of SERs to refugees, insofar as it impedes them to live a dignified life, tantamount to implied *refoulement*.<sup>10</sup> This hypothesis is based on the fact

that without having access to adequate standard of living in terms of food, work opportunities, housing etc.; the refugees will have no choice but to be forced to return to their country of origin where they maybe continued danger of being persecuted.<sup>11</sup>

Thus, in order to address the protection needs of the refugees and to find a durable solution to the refugee crisis, it is absolutely imperative to adequately guarantee SERs refugees.

### International Refugee Law: Developments of Last Decade

In order to address the current refugee crisis and to prepare the world for future challenges, New York Declaration for Refugees and Migrants was adopted by the UN General Assembly in September, 2016. This Declaration does not override the existing international law regime for the protection of refugees comprised primarily of Geneva Convention relating to the Status of Refugees, 1951 and its 1967 protocol and other regional instruments;<sup>12</sup> rather it provides a blueprint for a more humanitarian response by international community to meet the protection needs of those flee persecution and also those who are forced to leave because of violation of their SERs.

The declaration is based on the principle of equitable sharing of burden and responsibility for hosting and supporting refugees. It contains commitments agreed upon by member states directed towards full recognition and protection of all human rights of refugees and migrants; and also reflects an understanding that providing protection to those who are constrained to leave their country of origin, and supporting the countries that grants asylum to such persons must

<sup>6</sup> Vienna Declaration and Programme of Action available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> (Visited on January 23, 2022).

<sup>7</sup> Pankaj Chaturvedi, “Refugees within the Contours of Human Rights”, 2(2) *Ideal Journal of Legal Studies* 97(2011).

<sup>8</sup> *Ibid.*

<sup>9</sup> 1951 Refugee Convention defines non-refoulement in Article 33(1). This principle has also been recognized in Article 7 of The International Covenant on Civil and Political Rights, 1966; Article 3 of UN Convention against Torture and other Cruel, Inhuman or Degrading

Treatment or Punishment, 1984, Declaration on Territorial Asylum 1967, OAU Refugee Convention 1969 and American Convention on Human Rights 1969 and Cartagena Declaration 1984.

<sup>10</sup> Penelope Matthews, *Reworking the Relationship between Asylum and Employment* 105 (Routledge, London, 2012). *Refoulement* means forcible return of a refugee to his country of origin where there is a risk of being subjected to persecution.

<sup>11</sup> *Ibid.*

<sup>12</sup> Para 65 of New York Declaration for Refugees and Migrants

be a shared international burden and responsibility.<sup>13</sup>

Under the Declaration, there are number of Commitments made by member states which are particularly relevant for the protection of SERs. These include commitments to:<sup>14</sup>

- a) Safeguard the fundamental freedoms of all persons, whether refugees or migrants, without any discrimination and taking concrete efforts for finding durable solutions to end their protection needs.
- b) Ensuring that children of refugees and migrants have access to educational facilities within few months of advent in the asylum country.
- c) Provide assistance to those nation states which are facing large influx of refugees and migrants.
- d) Bolster and augment the progressive contributions made by the refugees and migrants to the social and economic development of the country of asylum.
- e) Exploring and strengthening new third country resettlement opportunities for UNHCR refugee status conferred refugees.

The New York Declaration also contained a framework to attain these commitments which was again in the form of commitments by member states to develop two Global Compacts: The Global Compact on Refugees and the Global Compact on Safe, Orderly and Regular Migration.

### Global Compacts on Refugees

The Global Compacts on Refugees was adopted by the UN General Assembly on 17 December 2018 and thereafter affirmed in 2019. It represents the political will of the international community to tackle the current refugee crisis and also to have in place the principle of equitable burden responsibility sharing for hosting and supporting refugees.<sup>15</sup>

The GCR has four primary interlinked and interdependent objectives:

1. An improved system of burden- and responsibility-sharing;
2. Strengthened national protection systems and response capacities worldwide;

3. Enhanced socioeconomic conditions for refugees and host communities;
4. Greater efforts to resolve protracted refugee situations.

One of the most outstanding features of the GCR is that it contains an arrangement for allocation of accountability amongst not only Member States of UN but amongst other broad range of stakeholders like international organizations; humanitarian agencies; international and regional financial institutions; regional organizations; local authorities; civil society, academics and other experts; the private sector; media; host community members and refugees themselves.

The GCR is not legally binding and is sought to be operationalized through voluntary contributions made by the relevant stakeholders and member states. These contributions will be made by each State and relevant stakeholder, taking into account their domestic economic dynamics, policies and priorities.<sup>16</sup>

The Comprehensive Refugee Response Framework, which was also a part of New York Declaration, forms an integral part the GCR.

### *Comprehensive Refugee Response Framework*

One of the components of the New York Declaration is the Comprehensive Refugee Response Framework (CRRF), which lays down the framework for dealing with large scale movement of refugees and migrants. It basically has four primary objectives-<sup>17</sup>

- a) Ease the pressures on host countries and communities;
- b) Enhance refugee self-reliance;
- c) Expand third-country solutions; and
- d) Support conditions in countries of origin for return in safety and dignity.

The aforesaid objectives are sought to be achieved by involving broad range of actors (both public and private), adopting creative and innovative approaches towards making refugees self-reliant, apart from ensuring support to the host countries accommodating them.<sup>18</sup>

The CRRF focuses on strengthening of local and national infrastructures, so as to ensure that it is able to meet the needs of only the refugees and

<sup>13</sup> New York Declaration for Refugees and Migrants, available at: <https://www.ohchr.org/EN/Issues/Migration/Pages/NewYorkDeclaration.aspx> (accessed on 20th March 2022)

<sup>14</sup> *Ibid.*

<sup>15</sup> Global Compact on Refugees available at <https://globalcompactrefugees.org/article/global-compact-refugees>, accessed on January 15 2022.

<sup>16</sup> *Ibid*

<sup>17</sup> *Supra* note 13.

<sup>18</sup> *Ibid*

migrants, but also of the host community as well. This will ensure that they are able to live peacefully and in harmony with each other having adequate access to their SERs in terms of education, work, healthcare facilities etc.

### **Global Compact on Refugees & Social and Economic Rights**

As stated earlier, the GCR is not legally binding and it also does not seek to replace the existing refugee protection regime. On the contrary, it is guided by principles of international refugee law, international humanitarian principles as well as human rights regime.<sup>19</sup> In form of these guiding principles, there already is in place a mechanism for ensuring compliance with GCR. Thus, for SERs, International Covenant on Economic, Social and Cultural Rights (ICESCR) can very well be used as an influencer or yardstick for guaranteeing these rights and for assessing compliance thereof.<sup>20</sup> For instance, the basic premise of GCR is equitable sharing of burden and responsibility for hosting and supporting refugees. One of the references to this premise can be traced to Art. 2(1) of the ICESCR which requires Nation states to take progressive steps, individually and through international assistance and co-operation, for full realization of the covenant rights.<sup>21</sup> Also in this regard, 1951 Refugee Convention also provides that for ensuring satisfactory resolution to any refugee crisis, international cooperation is imperative as grant of asylum may place unduly heavy burdens on certain countries.<sup>22</sup> Apart from this, another indicator to the aforesaid principle can be traced to UN Charter, one of the purposes of which provides that international co-operation is required to resolve global problems.<sup>23</sup> Thus, GCR cannot be read in isolation and the obligations therein have to be interpreted and implemented in the light of the pre-existing norms of various branches of international law by which states are bound.

## **Part 2**

This part of the paper provides an insight and analyzes the provisions of GCR related to SER, specifically education, livelihood and health, and to locate the influencers thereof in other international normative frameworks and global agendas that can be made applicable for protection and guarantee of refugee rights. Also, thereafter, this paper assesses the progress made till date in attainment of the objectives of GCR pertaining to these entitlements apart from outlining a roadmap to translate the vision of GCR into action.

As stated earlier, while the Refugee Compact is non-binding, it cannot be wholly divorced from a series of pre-existing international obligations by which States are bound. This yardstick is applicable in case SERs as well.

### **Right to Education Under International Human Rights Instruments**

As per the international human rights principles incorporated in several treaties, each person as a member of society has vested in him right to be educated and at the very least, primary education should be freely available to all children without any discrimination.<sup>24</sup> The Committee on Economic Social and Cultural Rights (Committee on ESC) i.e. the body responsible for monitoring the implementation of ICESCR, in its General Comment No. 13 has emphasized the significance of education as a fundamental human right and its intrinsic role in realisation of other human rights.

#### ***International Covenant on Economic, Social and Cultural Rights***

On right to education, Articles 13 and 14 of the ICESCR along with General Comment No. 13 Committee of ESC provides:

- a) Free and compulsory primary education for all;
- b) State must take measures to ensure free secondary education;
- c) Those having required qualification must be provided higher education; and
- d) Every person must be provided technical and secondary vocational education without any discrimination.

<sup>19</sup> Para 5 of GCR

<sup>20</sup> Geoff Gilbert, Indicators for the Global Compact on Refugees, International Journal of Refugee Law, 2018, Vol 30, No 4, 635–639

<sup>21</sup> Ibid

<sup>22</sup> Preamble of Convention Relating to The Status of Refugees available at:

<https://www.refworld.org/docid/3be01b964.html> accessed on 25th February 2022.

<sup>23</sup> Article 1(3) of UN Charter.

<sup>24</sup> Article 26 of UDHR; Article 13 of ICESCR; Articles 23, 28 and 29 of CRC; Articles 10 and 14 of CEDAW; Article 5 of the CERD apart from others.



As stated earlier, duty to provide compulsory and free primary education as incorporated in ICESCR has been particularly emphasized by the Committee on ESC, by observing that “the obligation to provide primary education for all is an immediate duty of all States parties” and constitutes one of the “minimum core obligations” in Article 13 of ICESCR.”<sup>25</sup> Furthermore, principle of non-discrimination as incorporated in Article 2(2) of the ICESCR makes right to education available to all person including refugees residing in the territory of the State. In this regard Article 13(1)<sup>26</sup> of the covenant is also relevant since it requires that right to education is to be made available to “everyone” and there is no limitation which imposes a restriction upon non-nationals including refugees from enjoying this entitlement. <sup>27</sup> The Committee on ESC has further reaffirmed this by stating that “the principle of non-discrimination extends to all persons of school age residing in the territory of a state party, including non-nationals, and irrespective of legal status”.<sup>28</sup>

### ***Convention on the Rights of the Child, 1989 (CRC)***

<sup>25</sup> Committee on ESC, General Comment 13, available at : <https://www.refworld.org/pdfid/4538838c22.pdf>, accessed on 27<sup>th</sup> January 2022.

<sup>26</sup> Article 13(1) of ICESCR provides that “The States Parties to the present Covenant recognize the right of everyone to education...”

<sup>27</sup> Ryszard Cholewinski, Overview of Social and Economic Rights of Refugees and Asylum Seekers in Europe: International Obligations – Education and Employment available at: <http://repository.forcedmigration.org/pdf/?pid=fmo:1925> (Visited on December 18, 2021).

<sup>28</sup> Committee on ESC, General Comment 13.

<sup>29</sup> Article 29(1) of the CRC states that “States Parties agree that the education of the child shall be directed to:(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

Article 28 of the CRC recognizes right to education for children. In this regard it provides for-

- a) Free and compulsory primary education for every child;
- b) Secondary education must be made available to all and appropriate measures must be taken by state parties in this regard;
- c) Those who have requisite qualification must have access to higher education;
- d) Ensure regular attendance at schools and tackle reasons for dropout;
- e) Ensure that school environment is in consonance with human dignity of a child; and
- f) International cooperation must be there encouraged in matters relating to education.

Article 29 of the CRC<sup>29</sup> illustrates the objectives of education for the children & identifies the liberty of individuals and other bodies as well to establish and direct educational institutions. Article 23 deals with the right of education of disabled children. Every refugee child is entitled to the benefit of right to education recognised in CRC.

### **Right to education under Refugee Convention**

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.”

Article 29(2) reads as: “No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

Article 22 of the 1951 Refugee Convention recognises the right to education for refugees in following terminology:

“1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”

The above provision relates only to those schools opened/ funded by the government and is not applicable in case of private schools. This provision seeks to ensure that with regard to elementary education refugees must be equal treatment at par with nationals.

So far as higher education is concerned, the Convention entails that the states should confer upon the refugees treatment which is as favourable as possible and at minimum must grant them at least the same treatment as other foreigners in the same circumstances.

### **Education under Global Compact on Refugees**

GCR gives a roadmap for the attainment of the aforesaid principles. Regarding education, reference can be found in Para. 68 and 69 of GCR. These references encourage States and relevant stakeholders (Concerned ministry of education UNICEF, UNESCO, UNHCR etc.) to impart resources and expertise to expand and enhance the quality and inclusiveness of national education systems so as to facilitate access by not only refugees by the host community as well to primary and secondary education. Direct financial support shall also be provided to ensure that refugee children are provided with education within three months of their arrival in country of asylum. Additional support can also be provided to improve other educational and teaching facilities such as technical, vocational training, online teaching, and learning.<sup>30</sup>

<sup>30</sup> Para 69 of GCR

<sup>31</sup> Ibid

<sup>32</sup> Refugee Education 2030: A Strategy for Refugee Inclusion available at :

Para 69 also provides for extending additional support to meet the distinctive education needs of refugees, especially girls and person with disabilities, via opening of safe schools and adopting other innovative teaching methodologies like imparting online education, offering flexible certified learning programs specifically designed to meet the educational needs of refugees.<sup>31</sup>

Full endorsement of this provision by member states will be a positive step in the right direction towards bringing refugee children in the mainstream of the national education system.

### **Refugee Education 2030: A Strategy for Refugee Inclusion**

Refugee Education 2030 is a strategy which has been developed by the UNHCR in deliberation with other United Nation functionaries, international organizations, multilateral organizations, nation states, educational set ups, private and most importantly refugee groups themselves. The strategy is premised upon GCR and UNHCR Education Strategy 2012- 2016.<sup>32</sup>

The primary goals of Refugee Education 2030 are:

1. To work towards ensuring equitable and sustainable inclusion of refugees in national education system.

2. To provide a safe and conducive educational ambience for all children without any discrimination on the basis of sex, legal status etc.

3. Empower all to utilize their education and skills to work towards a sustainable future.

This strategy sets out a road map to improve education opportunities for refugee and other displaced children and youth globally.

### **Right to work under International Human Rights Instruments**

Having access to gainful employment is a fundamental human right which is essential for all persons. This right is of particular significance for refugees as it augments their self-dignity, self – respect and self-worth, apart from securing to them economic independence and financial security. The realization of the right to work is also a means for attaining and enjoying other social and economic rights, thereby satisfying a refugee’s need to have a sense of being useful, valued and productive<sup>33</sup>. In this regard the

<https://www.unhcr.org/5d651da88d7.pdf>, accessed on 25<sup>th</sup> March 2022.

<sup>33</sup> Refugees and the right to work, Report of Committee on Migration, Refugees and Displaced Persons Doc. 13462, 24 March 2014, *available at:*

Executive Committee of UNHCR has stated that “the enhancement of basic economic and social rights, including gainful employment, is essential to the achievement of self-sufficiency and family security for refugees and is vital to the process of re-establishing the dignity of the human person and of realizing durable solutions to refugee problems.”<sup>34</sup>

Guaranteeing right to gainful employment to refugees and thereby, allowing them access to the labour market enables them to make productive contribution to the prosperity of the host country and also helps them in their integration with the local community. Many of them bring with them specific knowledge, skills and training which when applied can make a valuable contribution to the economy of the host country.<sup>35</sup>

Failure of the State to provide employment opportunities to refugees often makes them financially and emotionally destitute. In such situations, often refugees are forced to take up unauthorised work exposing them to physical, sexual, and gender-based violence. In order to earn their livelihood, they may also be forced to engage in illegal activities, thus jeopardising not only theirs but their family’s future as well.

Further, unemployment of refugees not only prevents them from attainment of fresh skills and knowledge, but also results in diminution of pre-existing skills leading to financial dependency, and reduced self-worth.<sup>36</sup> Unavailability of work also diminishes intellectual and working capacities, thus undermining the probability of local integration within the society of the host country, successful integration in the third country of settlement and voluntary repatriation may also be mired in situations where refugees have been unemployed for years and do not have the sufficient resources or skills to return to country

of origin.<sup>37</sup> Considering the importance of education for refugees, the same has recognised and protected as rights in several international human rights instruments including GCR.

### ***International Covenant on Economic, Social and Cultural Rights***

Article 6 of the ICESCR, which applies to all persons, including refugees, provides for the right to work in the following terms:

“The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

The Committee on ESC has stated that this right applies “to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>38</sup>

However, the protection accorded by Article 6 has been qualified by Article 2(1) of ICESCR, which provides that the States are required merely to “take steps towards progressively realisation of the rights incorporated in the Covenant to the extent possible within the limits of their resources”.

In the words of James Hathaway, Article 6 “imposes only a duty of progressive, non-discriminatory implementation, not of immediate result.”<sup>39</sup> Therefore, since progressive realization is not an aspect of the 1951 Refugee Convention, thus it provides more vigorous protection to refugee’s right to work in comparison to ICESCR. The protection of right to work under ICESCR is further narrowed down by Article 2(3), which provides that “developing countries, with due

<http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20569&lang=en> (Visited on December 14, 2021).

<sup>34</sup> UNHCR Executive Committee General Conclusion on International Protection No. 50 (XXXIX) (Oct. 10, 1998), available at: <http://www.unhcr.org/3ae68c9510.html> (Visited on March 25, 2022).

<sup>35</sup> U C Jha, “Refugees Right to Work: An Indian Perspective”, III *ISIL Yearbook of International Humanitarian and Refugee Law* 196 (2003).

<sup>36</sup> The Michigan Guidelines on the Right to Work, *Michigan Journal of International Law* 296(2010).

<sup>37</sup> *Ibid.*

<sup>38</sup> Committee on ESC, General Comment No. 20 on *Non-Discrimination in Economic, Social and Cultural Rights*, 2009, Para 30, available at: <http://www.refworld.org/docid/4a60961f2.html> (Visited on April 25, 2022).

<sup>39</sup> James Hathaway, *The Rights of Refugees Under International Law*, 123(Cambridge University Press, Cambridge, 2005).



regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

Due to the above limitations, the 1951 Refugee Convention provides a much more concrete foundation for the protection of the employment rights of refugees.

### **UDHR**

Apart from ICESCR, there are other international instruments as well providing for right to work which can be made applicable to refugees as well. Primary amongst them is Article 23(1) of the UDHR which states that: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

### ***Convention on Elimination of Racial Discrimination (CERD)***

Article 5(e) (i) of CERD makes provision for enjoyment of “The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.”

Refugee Convention 1951

Chapter III of the 1951 Refugee Convention dealing exclusively with gainful employment divides right to work of refugees into three categories:

- a) Right to engage in wage-earning employment (Article 17),
- b) Right to self-employment (Article 18), and
- c) Right to practice liberal professions (Article 19).

Article 17 obliges the states to provide to the refugees the “most favourable treatment accorded to nationals of a foreign country in the same circumstances.” Articles 18 and 19 obligates the states to accord to refugees treatment in the areas of self –employment and the liberal professions, which is, at least as favourable as that accorded generally to persons of other countries.

The terms self-employment, liberal profession and wage- earning employment needs elucidation. Self- employment as defined in Article 18 includes agriculture, industry, handicrafts and commerce, and the establishment of commercial and industrial companies. The liberal professions encompass practitioners of law, physicians,

surgeons, dentists, veterinarians, engineers, architects, accountants, and so on. However, 1951 Refugee Convention does not specifically define the term wage-earning employment and therefore, it should be given wider interpretation to include within its ambit all kinds of employment like labourer, mechanic etc.

The provision for self-employment & liberal professions under Articles 18 and 19 are much more constrained in comparison to Article 17 since they give the right to refugees to treatment which is not less favourable to foreigners ‘generally’ as opposed to the ‘most favourable treatment’ accorded to nationals of a foreign country.

Article 17 (2) provides that states should not impose restrictions or measures on refugees that are applicable to aliens for the protection of the domestic labour market. Article 17 is further reinforced by Article 17(3) by providing that state must consider granting to refugees as far as possible the same employment rights as those offered to nationals. Thus, Article 17 is meant to provide to refugees access to wage- earning employment which has been reserved exclusively for citizens or other aliens.

Further, Article 18 read in conjunction with Article 6 of the 1951 Refugee Convention, implies refugees must be excluded from complying with any formal requirements to start a business if they are unable to meet those requirements due to the hardship resulting from forced displacement.

In addition, Articles 17, 18 and 19 read together with Article 34 of the Convention which requires the States to facilitate, to the extent possible, the assimilation and naturalisation of refugees, advocates that wider interpretation should be given to the Convention provision of gainful employment.

### **Jobs and livelihoods under GCR**

With regard to work related rights, GCR requires States and relevant stakeholders like international humanitarian agencies, private sector and civil society to contribute resources and expertise to generate economic opportunities, decent work, job creation and entrepreneurship programmes not only for refugees but also for host community.<sup>40</sup> GCR further provides that efforts to attain these objectives will be steered by Employment and Decent Work for Peace and Resilience Recommendation, 2017 adopted by the

General Conference of the International Labour Organization and the “Guiding principles on the access of refugees and other forcibly displaced persons to the labour market”.

Other important steps to promote and generate jobs and livelihood opportunities laid down by GCR are:

1. There should be a thorough analysis of labour market to recognize the opportunities for income generation and employment creation.
2. To identify the specific skills & qualifications possessed not only by refugees but also by citizens of the country and mapping these skills with market requirements. Training programs & vocational trainings should be conducted for strengthening the employability specifically for women, persons with disabilities, and youth.
3. Efforts should be taken for bridging the technological gap and to empower refugees to avail online livelihood opportunities.
4. Facilitate access to reasonably priced financial products and services both for refugees and host communities.
5. Wherever possible, preferential trade arrangements in line with international obligations should be worked upon specifically in those areas where there is high engagement of refugee workforce.

### **The Right to Health**

#### *UDHR*

The right to the highest attainable standard of physical and mental health or right to health is a recognized as a human right. Article 25(1) UDHR states that “everyone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing, and medical care and necessary social services.”

#### *ICESCR*

Right to health is also finds place in 12 (1) of ICESCR. In this regard, Article 12 (2) lists the steps to be taken for full realization of this right including the right to-

- a) maternal, child & reproductive health;
- b) healthy natural & work environments;
- c) prevention, treatment & control of diseases;
- d) health facilities & services.

Health related rights are also recognized and protected in CERD, CEDAW, CRC apart from other regional instruments as well.

#### *Health under GCR*

Para 72 and 73 of GCR deals with attracting support for ensuring the guarantee of health-related rights of not only refugees but host communities as well. It calls for the relevant stakeholders to contribute resources & expertise to improve the quality of health care services in nation states hosting the refugees in order to facilitate access not only by them but by the citizens of the country as well. In line with this, the compact provides for engagement of refugees themselves as healthcare workers which will empower them economically as well thereby making a positive contribution to the economy of the host country.

#### **Evaluative Assessment: SER under GCR**

As envisaged under the GCR, Global Refugee Forum (GRF) has to be held every four years wherein all the member states of UN and other relevant stakeholders will come together to translate the principle of international responsibility-sharing into concrete action by sharing good practices and contribute with financial support, technical expertise and policy changes for attainment of the objectives of GCR and transforming the lives of refugees.<sup>41</sup> In this regard, first GRF was held in December 2019 focusing upon six broad areas i.e. burden- and responsibility-sharing, education, jobs and livelihoods, energy and infrastructure, solutions, and protection capacity.<sup>42</sup> This forum drew more than 3,000 stakeholders and 1,400 pledges. There were around 350 pledges made to improve socio-economic condition of refugees and thereby to strengthen their SERs. These were broadly related to-

- Admit and grant refugee status;
- To have in place “out of camp” strategies & strengthen asylum systems;
- Provide opportunities for work to refugees to work and enable them to have access to financial services; and

<sup>41</sup> Supra note 15.

<sup>42</sup> First Global Refugee Forum Registers Pledges to Improve Refugee Protection, available at: <https://sdg.iisd.org/news/first-global-refugee->

[forum-registers-pledges-to-improve-refugee-protection/](https://sdg.iisd.org/news/first-global-refugee-forum-registers-pledges-to-improve-refugee-protection/) accessed on 21 May 2022.

- Involve refugees in national development planning and policies for education and health.

Most importantly there were financial contributions pledged by international organizations like World Bank to the extent of USD 2.2 billion for refugees and host communities, apart from USD 2.5 billion directed specifically towards generating job opportunities in those countries marred by either armed or non-armed conflict. One billion USD was pledged by Inter-American Development Bank and over two billion USD financial commitments were made by “a broad range of States and other relevant stakeholders.” Apart from this, over 200 pledges and financial contribution was made by the private sector towards direct employment of refugees, free legal services & other pledges linked with education and vocational training, women’s economic empowerment, business development services etc.<sup>43</sup> Additionally, 130 pledges were also made for increasing access to education for refugees, focusing on supporting the inclusion of refugees in national systems of the asylum countries.<sup>44</sup>

It’s almost been four years since the adoption of the GCR and two years since the GRF was held which saw the coming together of different stakeholders committing to contribute resources through pledges for protection of the refugee community across the world. However, since then there has been a sweeping change in the global environment marked by COVID 19 pandemic, protracted conflict, new and re-emerging issues because of multilateralism and geopolitical realities which shows a clear trend towards further protracted displacement situations in coming years. The compact was largely conceived to tackle large scale movement of refugees to Europe; however, these unprecedented developments have posed grave challenges for nation states & UN agencies for attaining the commitments enlisted in the GCR.

In order to determine the progress made towards attaining the four objectives of GCR, UNHCR released Global Indicator Report in November 2021. The report quantified international progress on each of the GCR’s four objectives.<sup>45</sup>

Objectives of GCR	Attainments
Reduce Pressure on Host Country	There was 9% increase in funding to countries hosting largest number of refugees. However, on the flip side there was a 20% increase in number of refugees hosted by these countries as well.
Enhance Self-Reliance (Directly linked to SERs)	There was an improvement in the livelihood opportunities for refugees with having better access to job and education opportunities. Again, on the flip side, social and economic condition of the refugees was adversely impacted because of the pandemic.
Resettlement of refugees	There was an improvement in the resettlement ratio of the refugees. However, on the other hand, there has been a constant decline in resettlement cases since 2016.

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> UNHCR, Global Indicator Report available at: <https://www.unhcr.org/global-compact-refugees->

[indicator-report/wp-content/uploads/sites/143/2021/11/2021\\_GCR-Indicator-Report\\_spread\\_web.pdf](https://www.unhcr.org/global-compact-refugees-indicator-report/wp-content/uploads/sites/143/2021/11/2021_GCR-Indicator-Report_spread_web.pdf), available at: 25<sup>th</sup> May 2022.

Support Voluntary Repatriation	There was a marked increase in voluntary return of refugees to their country of origin by 75% which indicates that refugees who moved back to their countries felt assured about their physical safety apart from having better access to their SERs.
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On the basis of the indicators in aforesaid UNHCR report, for the very first time, High-Level Officials meeting (HLOM) on theme of “reflecting progress and charting the future” was held in December 2021 for the purpose of accessing and evaluating the progress made in the accomplishment of the aims and objectives of GCR and to recognize lacunas in realizing pledges made at the GRF. In this meeting, the members deliberated to identify the challenges in the implementation of objectives enlisted in GCR and also to recognize the areas wherein increased efforts were required to be taken for ensuring overall protection needs of refugees.<sup>46</sup>

With regard to SER, the HLOM assessed the extent to which the refugees have been able to become self-reliant in the host country in terms of having access to job opportunities and educational facilities for their children as being self-reliant is imperative for refugees since it enables them participate in the social and economic life of their host communities and contribute to rebuilding their countries should they be able to return.<sup>47</sup>

In the meeting it was recognized that increased and joint efforts were required to be taken by the nation states and relevant stakeholders to find appropriate durable solution (DS) for refugees which will end their predicament as refugees forever. With respect to all the three traditionally recognized durable solution i.e., local integration, voluntary repatriation and resettlement, it was highlighted that the choice of either of three of the DS by refugees was directly linked to the protection and guarantee of SERs and therefore, the need to further strengthen these rights for refugees.<sup>48</sup>

The first GRF held in December 2019 and HLOM, 2021 was a significant step to assess the implementation of GCR and socio-economic objectives enlisted therein, but much more remains to be done before success can be declared.

### Conclusion

Protection and guarantee of SERs of refugees from the moment they are forced to leave their home country & till a durable solution can be found to their problems is absolutely imperative. The most fundamental rights of refugees that they should not be *refouled* and that return to their country of origin should be voluntary, is essentially endangered when their SERs are not protected during flight or within the country where they have taken shelter. Often refugees are compelled to leave due to degrading conditions of life that they have to experience in the country of refuge. Thus, realistically, even if refugees are not forcibly ousted, if they cannot have access to minimum essentials for life in the host country, they may be left with no other alternative but to return to danger. Thus, the safeguard of SERs of refugees is a matter of grave concern which can be best addressed within the framework of international refugee law, human rights law and domestic law.

In this direction a concrete step has been the adoption of GCR in 2018 which recognizes that for holistic protection of refugees there has to be burden responsibility-sharing among host countries, international communities and other relevant stakeholders as well. The GCR indeed is a commendable step by the international community to fill the lacunas in the

<sup>46</sup> UNHCR High-Level Officials Meeting available at : <https://www.unhcr.org/high-level-officials-meeting.html>, accessed on 27<sup>th</sup> May 2022.

<sup>47</sup> Ibid

<sup>48</sup> High-Level Officials Meeting Summary of the Roundtable on Solutions, 02 December

2021, available at : <https://reliefweb.int/report/world/high-level-officials-meeting-summary-roundtable-solutions-02-december-2021-1400-1700>, accessed on 28<sup>th</sup> May 2022.

international refugee protection regime. It provides a roadmap to tackle not only the current refugee crisis but to tackle future refugee situations as well. Apart from this, it also provides a framework for burden sharing wherein more collaborative, stable solutions for protection of refugees can be identified thereby strengthening access to their SERs so they can become more self-reliant and end their predicament as refugees altogether.

It's been four years since the adoption of GCR and in order to assess the progress made thereunder, GRF was held in 2019 and thereafter HLOM was held in 2021 wherein it was recognized that international community at large has made a positive contribution towards attainment of the objectives of compact specifically towards expanding refugees' access to work and education. However, still the statistics reveal that developing countries continue to bear the majority of the responsibility of hosting more than 85% of the world's refugees, while richer nations are neither providing protection for refugees nor sufficient economic support.<sup>49</sup> The fact that progress in achievement of the objectives of the GCR has been hindered by COVID 19 cannot be set aside but at the same-time it has also highlighted the importance of such instruments to respond to these kinds of crises so that stakeholders can come together and figure out how to work together better in the face of a crisis.

The need of the hour is that under the aegis of GCR, efforts should be made by the international community for the adoption of a binding instrument incorporating the principle of burden-responsibility sharing for taking care of the protection need of refugees. For effective implementation of the objectives of GCR specifically in terms of SERs, it required that international community and other stakeholders must come together for equitable responsibility-sharing towards refugees.

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<sup>49</sup> Externalization and the Global Compact on Refugees: Responsibility Shifting and the role of the EU, available at :

<https://www.asileproject.eu/externalization-and-the-global-compact-on-refugees/>, accessed on 29<sup>th</sup> May 2022.