



# Lessons from Responsibility Sharing Mechanisms

For an ambitious and strong Global Compact on Refugees

## Background

By September 2018, the Norwegian Refugee Council (NRC) hopes to see Member States of the UN General Assembly endorse a Global Compact on Refugees that provokes tangible positive change to the status quo of refugee protection. In particular, NRC hopes to join other members of civil society to push for a robust mechanism for fair and predictable responsibility sharing for refugees.

On the 10<sup>th</sup> of July 2017, at the first Compact Thematic Consultation, UNHCR, States and NGOs looked to previous and current responsibility sharing mechanisms for inspiration and guidelines for the Global Compact. Through decades of protecting and assisting displaced people in new and protracted crises across 30 countries, NRC has vast operational experience with a range of regional refugee protection and responsibility sharing mechanisms. We have been a key advocate in shaping the outcome of some of these agreements. In all regions, we have seen direct impacts of these policies on the lives of refugees and displaced people.

These experiences lead us to draw **three key lessons from responsibility sharing mechanisms**; three lessons which must not be forgotten as the Global Compact on Refugees is designed.

**Lesson 1: Refugee protection objectives must be prioritised in any responsibility sharing mechanism, including in financing arrangements**

As the seventh-largest refugee hosting state in the world, hosting 660,550 Syrian refugees registered with UNHCR and another 19,000 without registration, there is no question that more needs to be done to support Jordan and share some of the heavy responsibility that the state is bearing. In early 2016, the **Jordan Compact** was launched, securing \$1.7 billion in grants, low-interest loans and pledges from the international community and the World Bank. This support provided an important contribution to Jordan's refugee hosting efforts. Specifically, it allowed Jordan to open up its labour market and to improve education outcomes for Syrian refugees. Among some of the key elements to the agreement were the promise of 200,000 job permits for refugees, the creation of special economic zones, and in turn, trade concessions for exports from these zones to the European Union. The Jordan Compact is one of the first in a series of large funding agreements marking the shift towards a development response to displacement crises.

The Jordan Compact is innovative in that it uses macroeconomic strategy, with international support, to build a multiyear approach to the protracted refugee crisis in Jordan. It has provided pathways for opening up the formal employment

sector, previously closed to refugees, and has increased refugee access to formal education in Jordan. Notably, Jordan's responsiveness to the Compact indicates that such mechanisms are well placed to set ambitious goals for refugee protection. However, while the current Compact pushes for improved access to services - namely focused on the issuance of work permits and increasing school enrolment for refugees - this focus on service provision has left little room for improving the larger protection environment for refugees living in Jordan. Much of the requisite work on removing barriers to access to education or employment has received significantly less attention. This has highlighted the challenge of such initiatives, where meeting formal requirements of the agreement may not address the substantive issues underlying the problems. While education enrolment may have increased, financial challenges for families continue to draw children away from school and into work. Long distances to school, lack and/or cost of transportation as well as exposure to violence/bullying due to being foreigners, also remain major barriers to refugee families keeping their children in school. For employment, there are important limitations on the types of jobs that can be accessed through the issued permits. The garment factories in special economic zones are located far away from camps and cities, with little reliable public transport to enable refugees to commute to work and with poor living conditions for those staying on site. The Compact does little to address the significant number of refugees working in the informal economy in Jordan; one in which refugees may choose to access and remain a part of, due to the flexibility and opportunities for growth it provides. Finally, an underlying, and problematic assumption of the Jordan Compact is that work permits can be equated with employment. This assumption can paradoxically justify the reduction of humanitarian assistance for individuals with work permits, however, as many remain unemployed, they are ultimately left more vulnerable. This suggests that further thought should be given to the targets and indicators used in such Compact arrangements, in order to minimise potential unintended negative consequences in their execution. It is also essential to have independent monitoring of the actual

effectiveness of such initiatives to ensure protection concerns are addressed. Arguably, an increased focus on achieving a larger protection environment would ultimately also result in more meaningful access to services such as education and employment.

#### **Countering-Violent Extremism (CVE) Provisions in Responsibility Sharing Agreements**

NRC is committed to providing impartial assistance and protection based on needs alone, rather than countering violent extremism and other political agendas. Humanitarian aid that is motivated by the CVE agenda risks compromising the humanitarian principles and humanitarian space. CVE and Counter Terrorism (CT) provisions have appeared in recent responsibility sharing arrangements, such as the Jordan Compact (i.e. "Fully acknowledging the priority for Jordan to generate stability and security along its borders and in the country, the EU-Jordan Compact reflects the ambition to strengthen cooperation in the fight against terrorism and the prevention of radicalisation and violent extremism" – EU-Jordan Compact, 2016, p. 11)

These provisions are broad in scope but require clarification regarding implementation. It is imperative that any such provisions do not limit the ability of principled humanitarian actors to deliver impartial assistance and protection to displaced people. CT/CVE objectives and activities which are typically conducted by development and/or humanitarian actors are used interchangeably throughout the Compact (e.g. education, livelihoods, shelter etc.). If possible, future agreements should contain more language to better preserve principled humanitarian space.

Finally, core protection and humanitarian principles, which would be particularly relevant for supporting the most vulnerable refugees in Jordan, are not part of the current Compact. The funding that is tied to the Compact is an important incentive for the host country, which could be used more effectively to address concerns about maintaining open borders, preventing forced relocation to the

camps, and ensuring non-refoulement. Addressing these concerns is as much a part of the ‘responsibility’ to be shared by states as the financial impact of refugee movements. Financial arrangements can be used to respond to both elements if designed properly. Finally, as part of improving the protection environment, the regularisation of status for refugees in a host country, regardless of whether they are in or outside camps, should be an essential element of any compact, as having such status is critical for ensuring access to rights.

A similar bilateral effort was made between the EU and Lebanon, resulting in the adoption of the **Lebanon Compact** in 2016. The Lebanon Compact complemented commitments made in the February 2016 London Conference, as well as the EU/Lebanon Partnership Priorities document, but with specific focus on ensuring access to education for all Syrian and Lebanese children, enhancing growth and job opportunities, increasing efforts on security and countering terrorism, and supporting good governance and the rule of law. Similar to the Jordan Compact, the Lebanon Compact largely missed the opportunity to improve the protection environment. While it does state that a core objective is to provide “an appropriate and safe environment for refugees,” specific obstacles to access to services - ranging from the prohibitive costs of residency renewal, rent, and other basic services, to safety concerns around movement due to many refugees’ inability to secure legal residency papers and severely restricted ability to earn a livelihood - have not been addressed in the Compact’s execution.

In particular, the lack of attention paid to barriers to legal stay in Lebanon has undercut progress in implementation of the Compact. While the Compact included a commitment from the Government of Lebanon to ease the burden of residency fees and renewal requirements, this has not been applied to all, or even to a majority of refugees. UNHCR estimates that only 320,000 out of an estimated total of 1.5 million refugees will benefit from a 2017 residency renewal fee waiver. Numerous caveats have also created substantial barriers for those who should have access to this fee waiver, including heavy documentation

requirements. Beyond the question of fees, protection concerns related to legal documentation and residency are particularly acute for older children. This is especially as refugee children’s legal residency is considered invalid when the child turns 15 years old and in turn, some documents are only issued in Syria from the age of 15 onwards, leaving some Syrian children unable to access legal residency in Lebanon.

Changes which have been made to the residency fees and renewal requirements are not, thus far, sustainable, far-reaching, nor have they fundamentally changed the structural issues that hinder Syrian refugees from maintaining legal status and access to rights. In addition, the fee waiver is temporary in nature and there is no indication if it will be renewed or canceled after 2017. While the Lebanon Compact included clear commitments from the government, it lacks a follow-up or accountability mechanism, for ensuring future funding is based on Compact progress. While many of the commitments in the Compact address core protection concerns on paper, the requirement for action to be taken on these commitments is less apparent.

While innovative financial arrangements will be essential to improving responsibility sharing for refugee protection across the globe, **greater attention must be paid to how funding arrangements can be leveraged to improve protection outcomes for refugees**. Money given to front-line states to “bear the burden” of large numbers of displaced people needs to be specifically targeted to address structural issues that refugees face in fulfilling legal rights, accessing livelihood opportunities, and obtaining education. Safeguards must be in place to ensure that funding coming from such an arrangement genuinely addresses refugee needs, and is not used simply to provide trade and finance benefits to a hosting state. For these types of funding agreements to work and to provide tangible change for refugees, close collaboration and consultation is needed with displaced people, local communities, NGOs, and other actors to ensure that responses are adapted to local policy, law and realities. Moreover, greater attention needs to be paid to

monitoring the implementation of the arrangement, to ensure that any action taken does not create or exacerbate protection risks for the refugee population. Finally, it must be kept in mind that the limits to state absorption capacity for arriving refugees cannot be addressed by money alone.

## Lesson 2: Externalisation and preventing onward movement is incompatible with responsibility sharing

Under the rationale of preventing people from making dangerous journeys, efforts are increasingly being made by states to externalise their borders and prevent people from seeking safety and protection beyond neighbouring countries. Of particular concern is the perceived trend of the European Union increasingly eschewing its international responsibilities under refugee law and commitment to solidarity by arguing that asylum seekers should seek refuge in the '**first safe country**'. There is increasing pressure on frontline states such as Turkey, Kenya, Jordan, Iran, Pakistan, Lebanon, Ethiopia and Uganda to prevent the onward movement of asylum seekers from neighbouring countries. This tendency is not only fundamentally incompatible with the principles of solidarity and responsibility sharing enshrined in the 1951 Refugee Convention, but it provides justification for large hosting states to increasingly push back on protection obligations to the refugee populations within their borders. The aim of preventing dangerous journeys should be addressed by providing safe and regular channels for people to move - including by issuing humanitarian visas - and by substantially increasing resettlement, not by pressuring already overburdened host states.

A key example of this trend is the **EU-Turkey Statement**, which stipulates that any Syrian arriving irregularly to the Greek islands from Turkey after the 20<sup>th</sup> of March 2016 should be returned to Turkey where their asylum claim will be examined by Turkish authorities. The EU offered EUR 3 billion in aid to Turkey to provide for the needs of Syrian

refugees in their borders, and to prevent them from moving onward to Europe. The EU also offered a 'one-for-one' exchange whereby the EU would resettle one Syrian from Turkey for each Syrian returned from Greece. Following the EU-Turkey Statement, one of the first measures taken by Turkey to stem "migration" was to seal its border with Syria. Populations originating from Hama and Aleppo who would have attempted traditionally to seek refuge in Southern Turkey, were essentially denied access to protection and resorted to taking the perilous journey to the North Eastern border of Jordan, crossing several frontlines, spending their meagre savings to pay numerous smugglers along the way. Through this effort, they eventually reached the desert of Rukban, also known as "the berm"- where a closed border has prevented them from moving. There are currently at least 55,000 Syrians stranded in the berm, with very limited access to humanitarian assistance and no ability to seek asylum in Jordan.

Rather than assessing each individual's protection needs, the EU-Turkey arrangement effectively deflects Europe's international responsibility to Turkey. While this and other arrangements have significantly slowed the movement of refugees into Europe, it has done so at the cost of protection to which refugees are fundamentally entitled. Instead of leading the example in refugee protection, as the wealthiest continent in the world, there is evidence that the EU's approach is encouraging other countries to question their own responsibilities to refugees<sup>1</sup> and has undermined years of European leadership in calling on other countries to respect the refugee convention. Parallel approaches, such as the **EU Migration Partnership Framework** aims to address the root causes of migration and displacement and prevent onward movement to Europe through leveraging development funding, trade, energy and security to prevent onward movement. Rather than allocating funds based on need and through a principled, transparent process, there are concerns that humanitarian and development action is increasingly being pushed to prevent migration and deal with returned failed asylum seekers.

<sup>1</sup> For more information on the EU-Turkey deal, see the report written by NRC, IRC and Oxfam: <https://www.nrc.no/news/2017/march/eu-turkey-deal-makes-seeking-refugee-in-europe-mission-impossible-for-most-vulnerable/>

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The adoption of the New York Declaration brought the principles of solidarity and responsibility sharing back into the global arena, after years of closed borders, stalling resettlement programmes, and tendencies towards externalisation, containment and isolationism. A strong responsibility mechanism must recognise that refugees and migrants do not have the obligation to remain in the first state of arrival, and that onward movement is not something to be prevented. Indeed secondary movement is an important aspect of durable solutions for refugees and a means by which families access protection outside of overburdened states. To reduce the recourse to dangerous and deadly migration routes, **states must ensure safe and regular pathways for refugees to access protection and assistance.** The Global Compact on Refugees must increase resettlement numbers, humanitarian visas, private sponsorship and family reunification. Most importantly, non-refoulement must remain at the centre of all discussions.

### **Lesson 3: Political commitment is essential to opening space for concrete action**

Some regional agreements for responsibility sharing can provide inspiration for the road ahead to the Global Compact. NRC has been at the forefront of civil society pushing for the success of **The Brazil Declaration and Plan of Action**, an agreement that came to fruition in Brasilia in December 2014<sup>2</sup> after a long consultation process between governments, UNHCR and civil society.

The agreement, signed by all Latin American countries, brings together key commitments for refugee protection across the continent, aiming to implement durable solutions and end statelessness. Built on previous regional frameworks, it includes eleven strategic programmes such as improving asylum systems, integration programmes for labour mobility and

increased resettlement commitments. A subsequent declaration was established to tackle the specific impacts of gang violence and displacement, making the challenges faced by people in the Northern Triangle of Central America visible.

The Brazil Declaration and Plan of Action took an important step forward in the conceptualisation of regional responsibility sharing. Particularly innovative was the encouragement of legal pathways for migration (particularly through increased labour mobility across the region) and the complementary protection of persons who do not fall under the 1951 Refugee Convention. This built upon the good practice from the 2004 Mexico Plan of Action, which served to strengthen refugee protections in countries that were not party to the 1951 Convention. Going one step further, the Brazil Declaration incorporated elements from a much broader set of relevant bodies of international law (specifically, the law of the sea, anti-trafficking, protection of minorities legislation) to ensure more comprehensive protection for displaced people. The process encouraged normative and institutional development, starting from the respect for the basic principles of refugee protection (non-refoulement, confidentiality of information and due process of law) and pushing for improvements in asylum and RSD processes. The Plan of Action explicitly addressed the challenges of managing mixed flows at borders by ensuring training of border services personnel and formally adopting alternatives to administrative detention. A variety of best practices for durable solutions were encouraged: repatriation based on free and well-informed decisions (with a recommendation to set up a mechanism including countries of origin, destination, UNHCR and refugees to support this decision-making); local integration with effective access to public services, employment and documentation and resettlement, incorporating lessons from the solidarity programme of the Mexico Plan of Action.

However, ambitious and forward thinking as the agreement is, it lacks a substantial follow-up and

<sup>2</sup> NRC organised two sub regional meetings in Panama and Colombia in 2015 and 2016 for the follow up of the Brazil Plan of Action. Both meetings were important milestones to take stock of country progress.

accountability mechanism. Civil society proposed a tripartite mechanism with UNHCR, government and civil society to follow up on the implementation, yet this was not accepted in the final declaration. As a result, the implementation of the plan varies from country to country. While Ecuador, Brazil, Chile, Costa Rica, Bolivia and Mexico are leading the way in strengthening their asylum systems, in other countries, asylum systems and refugee rights have eroded over time. Significant challenges remain, especially the speed of refugee status determination systems, violations of the principle of non-refoulement, and detention of refugees and migrants. A first review of the progress made on the Brazil Plan of Action will be undertaken this year. This review is an important opportunity to outline a more specific accountability mechanism to ensure continued forward movement in the regional solidarity called for in the Declaration.

Another recently established regional agreement has the potential to change the lives of the 875'000 Somali refugees in the Horn of Africa and Yemen, if decisive action is put into place. In March 2017 the **Intergovernmental Authority on Development** (IGAD) organised a high-level regional summit on Somali refugees concluding with the **Nairobi Declaration**, an important statement of principles on refugee policies in the region. Notably, the Declaration does not highlight voluntary repatriation to Somalia as the only option presented to Somali refugees but also mentions resettlement and integration – committing to providing refugees with a range of durable solutions. In the Declaration, countries in the region recognise the need to move away from encampment policies that limit refugees' freedom of movement and to promote employment and self-reliance. Before durable solutions are reached, the Declaration also importantly commits to "maintain asylum space and, with the support of the international community, improve the living conditions of refugees". This regional approach may have already had some positive effect on state practice. The IGAD process has successfully opened the space for countries in the region to expand their policies and practice to improve refugee protection. A number of IGAD countries are softening encampment policies and considering steps towards greater local integration of refugees.

In this case, both peer country pressure and the peer country support offered through IGAD has pushed the countries of the region in a positive direction. Notably, the regional attention has also seemed to have had a specific moderating effect on Kenya, as the country has taken small steps back from hard line positions on camp closure and the return of Somali refugees.

IGAD member states now need to ensure that their legal and policy frameworks reflect the provisions of the Nairobi Declaration and Action Plan. These provisions then need to be implemented at the national level with coherence across participant member states. Importantly, the current experience of Somali refugees is not yet consistent with the commitments of the Nairobi Declaration. There is still a dominant focus on return, where gaps in information provision, incentives to move back and deterrents for staying in the host country combine to create a dangerous counter-current to the solidarity expressed through IGAD. While creating conducive conditions for voluntary returns is important, local integration and resettlement must remain on the table and practical ways to ensure alternatives to return must be discussed as part of IGAD's Plan of Action, which will guide the regional response. Furthermore, reintegration in Somalia must be sufficiently supported to prevent a situation in which returnees are not able to provide for themselves in Somalia. Additionally, greater clarity needs to be provided on how the various ongoing processes addressing refugees – and in this case, Somali refugees in particular – will be coordinated.

Like older responsibility sharing arrangements, such as the Comprehensive Plan of Action (CPA) and the International Conference on Central American Refugees (CIREFCA), both the Brazil Declaration and the Nairobi Declaration have used political dynamics to raise and address important humanitarian concerns. Moreover, **linkages that were encouraged by the regional processes between origin and host countries have been essential to generating political buy-in** by all involved. Additionally, the increased regionalisation, and the space that this has created for innovation in cooperative response, may ultimately help prevent forced displacement in the longer term. Notably, for both the Brazil Plan of Action and the Nairobi Declaration, **the non-binding nature of the regional agreements amplifies the importance of having a specific benchmarks for implementation against which parties agree to engage and be held accountable.** Without such an accountability framework – and the resources to ensure its proper application – implementation is likely to be uneven, and opportunities for important advancements in regionalised response to refugees

must be driven by the goal of increased protection and solutions for refugees. Securitisation and protectionist narratives in refugee response must be pushed back, and trade and finance incentives should be used strategically to promote inclusion and freedom of movement. For protection and solutions to be available for refugees on a global scale, legal and policy frameworks that guide states in receiving, protecting, and hosting refugees must lead to a standardised minimum level of entitlements (as enshrined in the Refugee Convention) across all countries. We need to better understand the limits of host state capacity and regional cooperation. Such understanding will allow us to trigger key global responses where necessary, in order to ensure greater equity across states while allowing refugees to live in safety and dignity. Providing increased options to refugees – rather than restricting their movement and ability to integrate in the communities where they find themselves – must be the foundation for a new global approach to refugee protection.

## Conclusion

As the wide variety of bilateral and regional arrangements highlighted above demonstrates, the concept of responsibility sharing for refugee protection across states is not new. However, if successful, the Global Compact on Refugees will be the first instrument to provide a globalised framework for responsibility sharing. While it will be important to learn from past examples, there is a fundamental shift in approach that will be required to create global ownership for refugee protection. In order to achieve this, negotiations across states

## Contact:

Brooke Lauten, Humanitarian Policy and Protection Adviser, [broke.lauten@nrc.no](mailto:broke.lauten@nrc.no)  
Suzanna Nelson-Pollard, Programme Associate, [suzanna.nelson-pollard@nrc.no](mailto:suzanna.nelson-pollard@nrc.no)