

Call for Input: Views and proposals on a draft legally binding instrument on the right to development

Questionnaire responses by UNHCR

UNHCR welcomes the opportunity to provide replies to the questionnaire regarding a draft legally binding instrument on the right to development, in relation to Human Rights Council resolution 39/9 and the request of OHCHR's Right to Development Section dated 24 May 2019.

UNHCR's mandate

UNHCR is the global UN entity with a mandate to provide international protection and to work for solutions for refugees and asylum-seekers, among others. It has been granted the authority to supervise the application of international instruments for the protection of refugees and asylum-seekers, in particular the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). State parties to these instruments are required to cooperate with UNHCR in the exercise of its functions (Art.35 of the 1951 Convention). UNHCR's role is also reflected in many regional refugee law instruments. Over the years, the UN General Assembly has expanded UNHCR's mandate to various groups of people, who are not covered by the *1951 Convention*. Some of these people are qualified as "mandate" refugees; others are returnees, statelessness persons and, in some situations, internally displaced persons (IDPs).

UNHCR has a direct interest in development issues, particularly in the humanitarian and development nexus where development efforts may contribute to prevention of displacement and/or play a role in achieving durable solutions for displaced and/or stateless persons while strengthening links with host communities. Without pronouncing itself on the need for or merit of a binding instrument on the right to development, UNHCR wishes to share some initial observations on several points raised in the questionnaire.

UNHCR's preliminary observations

Question/Topic 2: Content of the instrument

2. Which previous instruments and provisions should be referenced in the preamble?:

- 1951 Convention relating to the Status of Refugees
- 1967 Protocol to the Convention relating to the Status of Refugees
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness
- The New York Declaration for Refugees and Migrants (A/RES/71/1)
- The Global Compact for Refugees (A.73.12 (Part II))
- The Global Compact for Safe, Orderly and Regular Migration
- The GP 20 Plan of Action in relation to the Guiding Principles on Internal Displacement

Sub-Questions 3 - 5: *3. Which considerations should be incorporated in the preamble? 4. How should the object and purpose of the instrument be formulated?: 5. Which elements should be included in the instrument and how should it be structured?*

The following considerations, drawn from, *inter alia*, the New York Declaration, the Global Compact for Refugees, and other relevant sources, may be relevant both to the preamble, as well as the operative elements of the instrument:

- Large movements of refugees have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders. These are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own. Countries neighbouring countries of origin of refugees, mostly developing countries, are often disproportionately affected. In many cases, their capacities have been severely stretched in many cases, affecting their own social and economic cohesion and development. In addition, protracted refugee crises are now commonplace, with long-term repercussions for those involved and for their host countries and communities. Greater international cooperation is needed to assist host countries and communities which have lesser capacity to receive and protect refugees.
- International solidarity is core to a human-centred and human-rights based approach to development. This includes burden and responsibility sharing among United Nations Member States, together with other relevant stakeholders, for hosting and supporting the world's refugees and responding to displacement crises.
- There is a need to address the drivers and root causes of large movements of refugees, internally displaced, including protracted crises. This includes actions and programmes aimed at reducing vulnerability by combatting poverty, improving self-reliance and resilience, ensuring a strengthened humanitarian-development nexus, and improving coordination with peacebuilding efforts. Also, as recognised in the GCR, 'climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements'.
- Joint responses involving a wide range of actors are needed in order to strengthen the nexus between humanitarian and development actors, facilitate cooperation across institutional mandates and, by helping to build self-reliance and resilience, lay a basis for sustainable solutions.
- Humanitarian financing should be adequate, flexible, predictable and consistent, to enable host countries and communities to respond both to immediate humanitarian needs and to longer-term development needs.
- Support is needed for environmental, social and infrastructural rehabilitation in areas affected by large movements of refugees.
- Prevention of displacement, is a thread that ties all UN interventions together, including in delivery on the SDGs. Central to the purpose of the 2030 Agenda is identifying and overcoming obstacles to allow marginalized populations to contribute to, and benefit from, inclusion in sustainable social and economic development processes.
- Local governments in hosting areas often lack capacity to manage and deliver public resources to ensure basic public service delivery. Strong capacity to generate resources, budget, plan, manage, deliver, coordinate and adapt public services in an inclusive and accountable manner are essential for local socio-economic development. This is especially important in refugee and IDP hosting areas where municipalities and towns have often grown in a rapid, unplanned manner. This can create pockets of exclusion where services are not adequately delivered and space for social integration and inclusive economic growth is limited.
- In some situations, ethnic and demographic balances are changed due to the IDP and refugee influx. Such rapid changes in social fabric may demand changes to humanitarian and development systems for accountability, transparency, oversight, participation and legitimacy.
- Stateless persons are often denied access to basic rights and services, both in law and practice, and this can have a compounding effect on their exclusion from

nationality. Initiatives to include stateless persons in services available to the rest of the community is vital to ensuring integration and to disrupt cycles of intergenerational marginalisation which can prevail even once stateless persons have acquired nationality unless they have had an opportunity to develop skills and fully participate in the societies in which they live.

- Research has shown that participatory planning and management of public resources and functioning grievance mechanisms are as important to social cohesion and trust as the delivery of the public service itself. However, public service delivery at local levels is often severely underfunded or challenged by weaknesses in local capacity. Financing for inclusive local governance is even scarcer and severely under-prioritised by both Government and donors.
- Justice and security are particularly important public services without which other public services and inclusive economic development cannot be accessed or delivered. Justice and security institutions have a key role to play in ensuring the protection of the rights of IDPs, stateless persons and refugee and ensuring the civilian character of asylum. Displaced women and girls (as well as boys and men) have often experienced sexual abuse and other gender-based violence before flight; and depending on the living situation in their new location, may often be at a high risk thereof. However, often justice and security institutions might not be aware of the specific rights and circumstances of refugees, stateless persons and IDPs or might not have the capacity to deliver justice and security.
- In many situations, dysfunctional rule of law institutions may cause or contribute to insecurity and injustice; they may be directly involved in violations of rights such as non-refoulement, freedom of movement, freedom from arbitrary detention, protection from exploitation and abuse, sexual and gender based and other forms of violence; and evictions. In other cases, justice and security institutions play an indispensable role in providing community security and ensuring equal access to justice for forcibly displaced and stateless populations and local communities.
- Increasingly, the adverse effects of climate change and disasters forcibly displace people from their homes to survive. New displacement patterns, and competition over depleted natural resources can spark conflict between communities or compound pre-existing vulnerabilities. People displaced across borders in the context of climate change and disasters may in some circumstances be in need of international protection. Refugee law therefore has an important role to play in this area.
- The following constraints may oblige populations of concern to remain dependent on humanitarian support for protracted periods and/or to subsist on the socio-economic margins. This can limit development both for these displaced and/or stateless persons, but also for members of host communities and the country at large:
 - **Geography:** Displacement often occurs to, and in, remote, under-developed and often insecure areas, sometimes alongside very poor communities that themselves received limited attention from national development policies, processes and programmes;
 - **Governance:** Domestic legal frameworks, policies, institutional and administrative measures often restrict the opportunities for displaced populations and stateless persons to exercise their rights and to participate in and contribute productively to their host communities and societies. Laws and policies may also cause statelessness, a status which usually relegates those affected by it to the margins of society.
 - **Status:** Refugees are unable or, for valid reasons, unwilling to avail themselves of the protection of their country of origin. As a result, they are entitled to a special status, as set out in international refugee law.

Discrimination, the lack of access to rights, and the loss of official identity documents and papers – which often occur as a consequence of displacement or statelessness - may create barriers to access to rights and benefits on par with nationals as well as hinder the prospects to lead dignified lives, pending permanent solutions to their situation. In addition, only a small number of countries have established statelessness determination procedures through which stateless persons may be formally recognized and afforded basic rights.

- Vulnerability: Poorest households are the most vulnerable to external shocks including conflict, climate, and environmental impacts. Socio-economic status and discrimination are also linked to marginalized circumstances. The trauma and loss of assets and capital which is frequently experienced during displacement and the lack of adequate legal and social protection make displaced and stateless persons particularly vulnerable.

6. *Which duty bearers, in particular non-state actors, should be included?:*

- Obligations under the instrument, including respect for human rights obligations, should extend to non-state actors, including private companies, as duty bearers in any development processes or projects.
- It is important to ensure that state entities at all levels should be duty-bearers (not solely central government).
- The United Nations and humanitarian organizations should work within a strengthened and more coherent and interlinked humanitarian, development and peace framework to ensure that humanitarian work is undertaken in a manner that is conducive for longer term development activities.
- In addition to state entities responsible for humanitarian and development assistance, The engagement of multilateral development banks and improvements in access to assistance, including concessional development financing for refugee and/or IDP and host communities should be encouraged. Increased private sector investment in support of displaced and host countries, with due respect for human rights obligations and application of the principle of no one left behind and do no harm.
- Other actors should be encouraged to contribute to the right to development, for a whole of society approach, including, *inter alia*, local authorities and local actors, cities and municipalities, parliamentarians, civil society organizations, faith-based actors, educational institutions and academics, and the private sector, including in the context of public-private partnerships.

7. *Which obligations should the instrument concretize?:*

- The principles of universality, equality and non-discrimination, accountability and participation, which should be central to the object, purpose, and effect of any development processes or projects.
- The principle of leaving no one behind, including the inclusion of refugees, asylum-seekers, internally displaced persons and stateless persons in realizing the right to development. This involves identifying and overcoming obstacles to allow marginalized populations to contribute to, and benefit from, inclusion in sustainable social and economic development processes.
 - Some populations may have specific vulnerabilities which are greater than those of others, including in countries affected by fragility, conflict and violence, and climate change and disasters. Those affected by crises need to be situated within the overall framework through efforts to address their vulnerabilities, advance their human well-being and social development and build social and economic stability.
 - This will require stakeholders to address and improve the situation of the poorest and most marginalized, enable them to enjoy their rights, and assist them to exercise agency over their development.

- Actively seek to reduce the number of populations of concern and the communities that host them impacted by marginalization, lack of access to rights and poverty through:
 - (i) promoting an enabling legal framework and realizing their participation in national and local social and economic development;
 - (ii) ensuring the inclusion of refugees and other persons of concern in national services, such as education, health, access to livelihoods and social services including social safety nets; to this end, established parallel humanitarian systems will need to be integrated into national systems benefiting host and refugee communities; and
 - (iii) building effective approaches to resilience and solutions that assist them and the governments that host them to better manage and overcome the consequences and effects of displacement. For stateless populations, the objective of inclusion also requires addressing discrimination and exclusion in law, policy and practice to prevent and reduce the phenomenon of statelessness.
- Data and evidence collection, including data that captures poverty and development levels of vulnerable groups such as refugees, asylum seekers, IDPs and stateless persons, as well as host communities.
- Conduct human rights impact assessments prior to and throughout the implementation of any development processes or projects, and give due consideration to any risks of displacement which could arise as a result of such activities.
- Ensure that all development work is carried out with full participation of involved subjects and communities; ensure the right to prior, full and informed consent.
- Ensure due consideration is given to the protection of the environment and preservation of natural resources in all development processes and projects.

8. How should the relationship with other rights and obligations under international law be determined?:

- States should respect, protect and fulfil their human rights obligations as well as their obligations deriving from other international instruments, including international refugee law, in all development processes and in the implementation of development projects.
 - The principles of universality, equality and non-discrimination, participation and accountability should be central to the effective realization of the right to development.
 - The realization of the right to development should promote respect for the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights, as well as the relevant rights contained in the 1951 Convention, 1954 Convention and other international instruments to which the State is a party.
- Consideration should be given to extraterritorial human right obligations, including in relation to including climate change and eco-destruction, tax evasion or corporate impunity, and any resulting displacement which may be caused or exacerbated.