

National Governance Frameworks for Refugees:

*A Necessary Component of
Comprehensive Refugee Response*

DRAFT

An Asylum Access Position Paper

WORKING DRAFT



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Executive Summary

Today's global refugee displacement crisis has reached historic dimensions. A reported 22.5 million people worldwide are refugees,¹ and protracted stays in host countries have reached an average of 26 years.² This presents an enormous global challenge, but it also catalyzes fresh ideas and important shifts in the refugee response ecosystem. If the international community is to mount a truly effective refugee response, **we must recognize the important role that displacement-affected communities, including host governments, local civil society and refugees themselves, play in ultimately enabling refugees to rebuild their lives.**

To rebuild their lives and achieve self-reliance, refugees need the ability to safely enter states, obtain legal status, move freely, gain employment and access state and private services on an equitable basis with others. **Such abilities are exclusively granted to refugees by host governments through their local laws, policies and practices—what we are calling the *governance framework*.** Inclusive governance frameworks that ensure such access can benefit refugee and host countries alike by unleashing the human potential, productivity and entrepreneurship of refugees. Though national contexts and constraints vary widely, inclusive governance frameworks are applicable to all countries and contexts, whether the hosting period is intended to be temporary or long term.

A comprehensive global refugee response requires that all actors support the development of host country governance frameworks that ensure refugee rights and societal participation. This is a complement to, and not replacement for, humanitarian aid and development approaches. **Like a three-legged stool, effective global refugee response requires all three components: relief, development *and* governance frameworks.**

Refugees and the local civil society organizations that support their inclusion are among the key actors that can inform and advise host country policy. Refugee voices combined with knowledgeable, connected and locally-led NGOs are uniquely positioned to provide host governments with technical assistance on legislation, argue persuasively for policy reform based on evidence and practices, and bring refugee voices to the table. Currently, such groups are totally underutilized. **Greater funding and participation for locally-led advocacy organizations and refugee representation will help achieve more effective governance frameworks for refugees.**

Without a doubt, ***all* actors within the refugee response ecosystem—including wealthy industrialized nations—bear responsibility.** The refugee response ecosystem must prioritize strategies to support, incentivize and work cooperatively with both donor and affected governments to ensure national governance frameworks that enable displacement-affected communities to recover, rebuild and thrive.

¹ UNHCR, Figures at a Glance (August 24, 2017), <http://www.unhcr.org/en-us/figures-at-a-glance.html>

² UNHCR, Global Trends: Forced Displacement in 2015 20 (June 20, 2016), <http://www.unhcr.org/uk/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>.

Local context varies greatly and is best evaluated by those closest to it. Our experience on-the-ground in multiple settings has demonstrated the following strategies to be effective. We thus recommend that:

- **Host governments** *strengthen and enforce* laws, policies and practices —i.e. governance frameworks—that allow refugees to enter, access status and work, and permit economic and social participation.
- **The international community** *support host countries in developing governance frameworks that enable refugees to access rights and achieve self-reliance.* Of particular importance are safe entry, access to legal status, freedom of movement, the right to work and workplace protections and access to services.
- **Refugees** *and members of host communities participate in establishing effective governance frameworks.* When designing governance frameworks, governments and other decisionmakers should support venues for meaningful input and accountability, such as advisory or oversight committees, that involve members of both refugee and host communities.
- **Refugees** *have access to legal empowerment so they can safely participate in the establishment of governance frameworks that support their interests.* When legally empowered through information and legal support, refugees can assert their own interests and rights.
- **Civil society** *(refugee communities, refugee-serving local NGOs, etc.) continue to lobby for strong governance frameworks, monitor their implementation, and hold accountable those in positions of power.* Deeply informed about the real impacts of local laws, policies and practices, civil society may be best informed on existing barriers to refugee integration.
- **The international community**, *including donor governments, multilateral agencies and relief and development NGOs,* be available to support host countries to establish inclusive governance frameworks through funding or favorable bilateral agreements, diplomatic support and technical assistance.
- **UNHCR** lobby for governance frameworks that uphold refugee autonomy. UNHCR may choose to do so through diplomatic engagement, budgeting for political staff from the host country to sustain engagement with government leaders, evaluating countries' progress in upholding international norms and commitments, or other means.
- **UNHCR** also commit to financially and politically supporting local civil society organizations with proven track records of promoting and enforcing appropriate host government laws, policies and practices.

Through these actions the international community can ensure enabling environments for refugees to rebuild their lives through exercising agency, participating in the economy, and contributing to society **This is the ultimate win-win-win proposition for refugees, host countries and the international community alike, because when refugees are able to rebuild their lives, nations thrive.**

About Asylum Access

At Asylum Access, we believe all refugees deserve a fair chance at a new life.

We know many others share this belief – both those directly involved in responding to refugee displacement and those whose actions touch refugees’ lives in myriad other ways. Achieving this vision is not easy, but we believe it can be accomplished. Toward this end Asylum Access builds transformative rights-based approaches to refugee response. We work to dismantle the barriers that prevent refugees from rebuilding their lives following displacement.

As a global family of national civil society organizations, Asylum Access has operated in diverse contexts for over a decade. Each of our nationally-registered organizations in Tanzania, Mexico, Ecuador, Thailand and Malaysia directly supports and partners with refugees and refugee communities as well as with the wider community of host country residents and citizens. We work collaboratively with national, regional and municipal governments and the international community to develop and maintain lasting solutions and to focus on approaches that restore power and autonomy to refugees themselves.

The viewpoint expressed herein arises from the diverse experiences of Asylum Access organizations in Africa, Asia and Latin America. Collectively, Asylum Access’s leaders have decades of experience in the refugee response field. Our proposal is rooted in this experience.

Effective Governance Frameworks for Refugee Autonomy

Refugee autonomy is critical for resolving the refugee crisis

Today’s global refugee crisis has reached historic levels. The UN Refugee Agency’s (UNHCR’s) 2017 *Global Trends* reports 22.5 million refugees worldwide, and three times that number of forcibly displaced. Every 3 seconds a person is displaced due to conflict or persecution.³ This growth has stretched the global system for refugee response beyond capacity, offering few durable solutions. Refugees now face an average time in exile of over 20 years.⁴

Given this reality, the success of refugee response depends upon refugees having autonomy: the ability to control daily life and make choices involving resources, livelihood, family, and future. Autonomy is only possible when refugees are permitted to live safely, move freely, work legally, and access public

³ UNHCR, Global Trends: Forced Displacement in 2016 (June 20, 2017), <http://www.unhcr.org/5943e8a34>

⁴ UNHCR, Global Trends: Forced Displacement in 2015 20 (June 20, 2016), <http://www.unhcr.org/uk/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>.

and private services that enable them to send children to school, open a bank account, or otherwise participate in the economic and social life of their host countries. Only when refugees can live, move, work, and more, can they unleash tremendous human potential to rebuild their own lives and contribute to their host economy.

For many refugees today, access to the three traditional durable solutions—a return home, local integration in a host country, or resettlement into a new country—is indefinitely delayed. While Asylum Access believes that all refugees deserve a durable solution, refugee autonomy cannot wait upon this. Refugees must be able to participate in the economic and social life of their host countries⁵ regardless of whether the government expects the refugees' stay to be long term or temporary, so they can begin rebuilding their lives and regaining the ability to contribute to their countries of residence as quickly as possible.

Unfortunately, many refugees today do not have the autonomy needed to rebuild. They cannot freely engage in activities that many of us may take for granted, such as walking down the street without fear of being arrested, detained, imprisoned, or deported. Many refugees cannot choose to seek a job so they can provide for their families, and if they do seek a job, they do not have the comfort of working lawfully. Many cannot rely on government protections. Many refugees cannot choose to engage in civic life and contribute to their communities through community service or public discourse without the risk of being punished or exiled for doing so. Many refugees are not granted rights, and if they are, they are not granted the freedom to exercise them. Around the world, refugees face barriers to meaningful participation in daily life, and as a result the world faces barriers to sustainable solutions for refugees.

Host countries play a central role

Refugees can only be self reliant, advocate for themselves, and live normal, healthy lives if a host government permits them to do so. The foundation for refugee livelihoods and self-reliance lies in inclusive laws, policies and practices—the *governance framework*—set by host country governments. Such governance frameworks dictate whether refugees can start a thriving business that creates employment opportunities for others—including nationals—or can use their skills to fill gaps in the labor market. Likewise, governance frameworks determine whether refugees can choose to seek legal recourse when they experience theft, violence or other crime, and whether they can safely choose to report crimes they witness. Additionally, governance frameworks determine whether refugees can pay taxes, engage in community service, or participate in public discourse to solve shared challenges.

A host government has a unique and central role in building an effective governance framework. Only host governments can ensure that their laws, policies, regulations, and the practices and institutions through which such policies are given effect, do in fact give refugees the power to make choices about

⁵ Angenendt, Steffen & Niels Harild, *Tapping Into the Economic Potential of Refugees*, German Institute for International and Security Affairs, May 2017

their lives. This in turn allows refugees to meet their own needs and contribute to their host communities and countries. Other actors—multilaterals, NGOs and donor governments—can only influence refugees' lives to the extent the host government allows.

Refugees who have autonomy can build a future for their families and contribute to the prosperity of their host countries.⁶ In contrast, those who cannot build a future—those in refugee camps sequestered from local communities, or those living in the shadows for fear of detention or deportation—have difficulty creating positive outcomes for their host countries.

A paradigm shift is due

Historically, the concept of refugees' human rights is not new. Refugees' rights are enshrined in international law, both in refugee-specific instruments such as the Refugee Convention of 1951 and Protocol of 1967, and in broader human rights instruments such as the international covenants that together cover civil, political, economic, social and cultural rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), as well as in regional agreements such as the Cartagena Declaration of 1984. However, their implementation has been lacking, and engagement of host countries has lagged behind mobilization of intergovernmental relief.

Most current responses to refugee displacement were initially developed in the wake of World War II, when refugees' displacement was presumed to be temporary. Most refugees were expected to return home within a few months or years. A few, unable to return, would resettle in countries equipped to integrate them. Responses to refugee displacement therefore focused on immediate needs in a temporary moment of crisis: short-term shelter in camps, food and clothing, medical, and education systems operating entirely separately from national systems in the host country. These responses paid little mind to refugees' abilities to move, work, or participate in the economic and social life of their host countries. Relief providers, generally multilaterals and NGOs, focused on delivering immediate relief

⁶ For instance, in the United States, immigrants, including refugees, or their children started 40% of US Fortune 500 Companies (the top 500 U.S. public corporations as measured by gross revenue). Comcast and Thermo Fischer Scientific are two examples of Fortune 500 companies that were started by refugees, and Soros Fund Management and Google also have refugee founders, though they are not on the Fortune 500 list. In Uganda, where refugees enjoy the right to work, education, and freedom of movement, among others, 40 percent of refugee owned businesses employ Ugandans. See also PARTNERSHIP FOR A NEW AMERICAN ECONOMY, THE "NEW AMERICAN" FORTUNE 500 2 (June 2011), <http://www.newamericaneconomy.org/sites/all/themes/pnae/img/new-american-fortune-500-june-2011.pdf>. Mary Mazzoni, *3p Weekend: 7 Companies Led By Refugees*, TRIPLE PUNDIT, Mar. 24, 2017,, <http://www.triplepundit.com/2017/03/refugee-founded-companies/>; Jeff John Roberts, *7 Well-Known Tech Firms Founded by Immigrants or Their Children*, FORTUNE (Jan. 30, 2017), <http://fortune.com/2017/01/30/tech-immigrant-founders/>. See also Kelly T. Clemens, Timothy Shoffner & Leah Zamore, *Uganda's Approach to Refugee Self-Reliance*, 52 FORCED MIGRATION REV., May 2016, at 49, 50, available at <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/solutions/clemens-shoffner-zamore.pdf>.

rather than on working with governments to create longer term solutions.⁷ Aside from obtaining the permissions needed to distribute aid, many relief providers engaged very little with host governments.⁸

Yesterday's model no longer fits today's challenges. The extended longevity of stay necessitates long-term solutions. Most refugees remain in first countries of refuge and in countries relatively near their own in Latin America, Africa, and Asia (including the Middle East and Turkey).⁹ Less than 15% of the world's refugees live in the United States, Canada, Europe, Australia, or New Zealand,¹⁰ and less than 1% annually access resettlement to one of these locations.¹¹

Recent global efforts to adapt to today's displacement challenges are inclining toward longer term solutions, embracing concepts such as self-reliance, integrated programming for both refugees and host communities, involvement of development actors from the onset of an emergency, and greater innovation and diversification of livelihoods.

The UNHCR-led Comprehensive Refugee Response Framework (CRRF), to be completed by end of 2018, intends to ease pressure on states that host refugees, and to increase refugee self-reliance, among other intentions.¹² Initial reports note efforts to revise governance frameworks in countries like Djibouti and Ethiopia.¹³

Other global efforts aim to increase support for longer term solutions. For example, the 2016 Leader's Summit on Refugees hosted by the Obama administration resulted in an increase of \$4.5 billion USD for UN appeals and humanitarian organizations, an increase in pledges for resettlement, and a new World Bank program designed to offer low- and middle- income host countries favorable financing terms to

⁷ Karen Jacobsen, *The Forgotten Solution: Local Integration for Refugees in Developing Countries* 7 (UNHCR, Working Paper No. 45, 2001), available at <http://www.unhcr.org/3b7d24059.pdf>.

⁸ For example, The Border Consortium, the main agency providing food and other aid to refugees in Thailand's camps along the Myanmar border since the 1980s, works in accordance with regulations of the Thai Ministry of Interior, but mainly collaborates with the UNHCR to coordinate humanitarian services in the camps. In South Sudan, the International Rescue Committee has strengthening and expanding local health systems, increasing awareness and community mobilization efforts to develop health seeking behaviors, investing in delivering case management and psychosocial support services as some of its key strategic programs, while strengthening relationships with the host governments are goals in certain regions and for future programs. See also THE BORDER CONSORTIUM, STRATEGIC PLAN 2013-2017 9, <http://www.theborderconsortium.org/media/56402/strategic-plan-2013-2017-en.pdf> (last visited July 17, 2017). See also BURMA LINK, REFUGEE CAMPS, <https://www.burmalink.org/background/thailand-burma-border/displaced-in-thailand/refugee-camps/> (last updated Apr. 27, 2015). See also INT'L RESCUE COMM., SOUTH SUDAN: STRATEGIC ACTION PLAN 3, 5 (June 2016), available at <https://www.rescue.org/sites/default/files/document/749/southsudanexternalsap-final.pdf>.

⁹ THE WORLD BANK GROUP, Refugee Population by Country or Territory of Asylum (2017), http://data.worldbank.org/indicator/SM.POP.REFG?year_high_desc=true; See also AMNESTY INTERNATIONAL, Tackling the Global Refugee Crisis: From Shirking to Sharing Responsibility 7 (2016), <https://www.amnesty.org/en/documents/pol40/4905/2016/en/>.

¹⁰ UNHCR, Population Statistics (2017), <http://popstats.unhcr.org/en/overview> (last visited July 17, 2017) (numbers do not include asylum seekers).

¹¹ UNHCR, Resettlement, <http://www.unhcr.org/en-us/resettlement.html> (last visited, August 29, 2017).

¹² UNHCR, Comprehensive Refugee Response System, <http://www.unhcr.org/en-us/comprehensive-refugee-response-framework-crrf.html>, (last visited August 15, 2017).

¹³ Daniel Endres, *Update on the practical roll-out of the CRRF- Address at the Annual NGO Consultations*, UNHCR, June 14, 2017, <http://www.unhcr.org/en-us/594248734>

support refugee response.¹⁴ In total, 47 countries made specific commitments¹⁵ to improve their response to refugees.

At the national and regional levels, new partnerships have been established to facilitate longer term solutions, e.g. partnerships between the World Bank Group (WBG) and UNHCR focused on Africa and the Middle East. The EU, the WBG, UNHCR, the Netherlands, Denmark, and Italy have established partnerships to implement Regional Development and Protection Programs aimed at longer-term solutions for refugees in the Horn of Africa, the area affected by the Syrian crisis, and North Africa.¹⁶ While these initiatives offer promise for improvements in the lives of refugees around the world,¹⁷ they are first steps on a long road toward ensuring that refugees can be self-reliant, make decisions about their lives, and participate in their host communities.

Because host countries serve as primary gatekeepers to refugee autonomy, a modern refugee response regime must recognize their central role in the global refugee response ecosystem. That does not mean that they carry the responsibility alone. In fact all nations, particularly wealthy nations and those hosting relatively smaller percentages of the world's refugees, must take greater responsibility for ensuring effective solutions for refugees and host countries alike. Due to the extreme imbalance in refugee admission and resources across countries, the international community must increase its commitment to engage with host countries and be responsive to their valid concerns and constraints.

Governance Frameworks - A Closer Look

What are governance frameworks?

Governance frameworks are the legal, administrative, and policy instruments used by refugee-hosting governments to determine the degree to which refugees can control daily life and make choices involving resources, livelihood, family, and future. A governance framework consists of laws, policies, and regulations that apply to a particular group of people, as well as the structures and practices through which those laws, policies, and regulations are given effect (or ignored).

Governance frameworks may include laws passed by the legislative branch of a government, and may also include executive decrees, government codes, and administrative rule-making such as regulations. The actions of ministries, agencies, and local governments or departments may also be part of a governance framework; these entities implement and enforce laws, policies, and regulations through a

¹⁴ ObamaWhiteHouse.archives.gov, Fact Sheet on Leaders' Summit on Refugees (20 September, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/20/fact-sheet-leaders-summit-refugees>.

¹⁵ UNHCR, Summary Overview Document Leader's Summit on Refugees (20 September 2010), <http://www.unhcr.org/58526bb24>.

¹⁶ Angenendt, Steffen & Niels Harild, *Tapping Into the Economic Potential of Refugees*, German Institute for International and Security Affairs, May 2017

¹⁷ Daniel Endres, UNCHR, *supra* note 13.

wide range of civil service activities, from policing to issuing licenses to taxing transactions. Governance frameworks also include other practices of these varied actors, for instance decisions not to implement or enforce certain laws, policies, or regulations, or to implement or enforce them differently for different groups of people.

Governance frameworks dictate and control most aspects of refugees' everyday lives. The elements of an effective governance framework for refugees are fairly straightforward: lawful stay; free movement; access to employment; access to state services like education, healthcare and police protection; access to legal empowerment and justice systems; and access to private services and opportunities (for example, banking) on an equitable basis with others. These elements are critical to refugees' autonomy, enable them to contribute to their host countries, and allow them to build futures and live with dignity.

Effective governance frameworks first must have a means of recognizing refugees as having **legal identity** and **the right to lawful stay**. That means that refugees should have effective access to a fair, transparent and accountable legal status procedure without detention or unjustified deportation to another country. To be fair, transparent and accountable, a legal status process for refugees should, at a minimum, respect principles of non-refoulement and allow refugees the tools needed to establish their status, including evidentiary protections and legal counsel and representation. A governance framework also should make certain that refugees are provided with adequate personal identification documentation that prevents discrimination and enables refugees to participate fully in their host communities.

Effective governance frameworks must grant refugees the **right to work lawfully, in safe and fair conditions**. When refugees are able to work lawfully, their economic participation spurs economic growth and lessens the need for humanitarian aid.

Frameworks that affirmatively allow refugees to work enable them to contribute to the economy; this contribution grows larger if refugees are granted the same labor protections as nationals. Refugees who can choose to work or own businesses spend and invest more than refugees who are living a marginal subsistence existence, dependent on aid or informal, unprotected work.

When refugees are not allowed to work, by contrast, they are forced into the informal economy, depressing wages, leaving the country more susceptible to economic shocks, and reducing potential tax revenue. When refugees work but are not granted labor protections—for example, when refugees are not subject to minimum wage legislation—wages for all workers are depressed and resentment and hostility builds between refugee and host communities. Allowing refugees' to work under the same protections as nationals supports economic progress and social cohesion within host countries.¹⁸

¹⁸ LEGRAIN, TENT FOUNDATION, *supra* note 14, at 22; Fratzscher & Junker, *supra* note 14, at 616.

For refugees to achieve self-reliance and contribute to their host communities by working, they must **be able to own and protect assets**. They must **have access to services** such as **financial services, transit**, and the internet without discrimination because of their status as a refugee. They must have access to national health systems, and children must have access to national education systems.

Governance frameworks must enable refugees to **move freely**. Only when refugees can move freely are they able to participate fully in the economy of their host country. Moreover, allowing refugees to move freely avoids market distortions that negatively impact refugees and host communities alike. Governance frameworks are most effective when they permit refugees to **participate in national institutions**, and to **form or join associations**, as they expand their host countries' culinary, musical, fashion and other cultural options.¹⁹ When governance frameworks enable refugees to participate equally with others in civic life, they bring new ideas and solutions to civic challenges.²⁰ In short, effective governance frameworks are those that fully enable and permit refugees to participate in virtually all aspects of national life, and to do so on an equitable footing.

Governance frameworks are effective when those governed can utilize them and can freely and fully access the rights provided to them. They reduce isolation and vulnerability and as such are a vital pillar for lessening the risk of associated social ills such as human trafficking, domestic and sexual violence, and other type of exploitation. They allow greater responsiveness to individual refugees in search of specific solutions, for example, letting a refugee who identifies as LGBT to find a community apart from his or her compatriots if necessary to ensure personal safety.

Finally and importantly, governance frameworks that enable refugees to make choices about their lives and participate in their communities present opportunities not just for refugees, but also for host countries who can benefit from refugees' skills, labor and entrepreneurial capacity.²¹ An increasing body of analytical, operational and policy evidence supports the idea that refugees offer substantial economic

¹⁹ Charles Hirshman, *The Contributions of Immigrants to American Culture*, 142 Daedalus 3, Summer 2013, at 26, author's manuscript available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3856769/>.

²⁰ Asylum Access Ecuador's Comprehensive Justice program for empowering refugee women has inspired the creation of refugee women's networks and productive initiatives. For example, *Mujeres Dejando Huellas* [Women Leaving Footprints] in Ecuador, is a collective started and run by refugee women that promotes small businesses and local products in Ibarra, Imbabura. Similarly, *Mujeres Libres sin Fronteras* [Women Without Borders], is a national network of refugee women whose mission is to raise awareness for the challenges refugee women face and improve economic and social conditions for refugee families through innovation and social entrepreneurship. Both these initiatives were successfully created because refugees in Ecuador enjoy the rights enshrined in the Refugee Convention, such as the right to association. See Refugee Convention, *supra* note iv, at art. 15. For more information about the initiatives, please contact ecuador@asylumaccess.org.

²¹ Positive impacts of allowing refugees to make choices about their own lives are documented in a diverse and extensive array of sources. See, e.g., ALEXANDER BETTS ET AL., *REFUGEE ECONOMIES: FORCED DISPLACEMENT AND DEVELOPMENT* (2017); Karen Jacobsen, *Livelihoods in Conflict: The Pursuit of Livelihoods by Refugees and the Impact on the Human Security of Host Communities*, 40 INT'L MIGRATION, no. 5, 2002, at 95, available at http://www.humanitarianinnovation.com/uploads/7/3/4/7/7347321/jacobsen_2002.pdf; ASGER CHRISTENSEN & NIELS HARILD, THE WORLD BANK GROUP, *FORCED DISPLACEMENT: THE DEVELOPMENT CHALLENGE* (Dec. 2009), http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164201144397/Forced_Displacement.pdf; Emily E Arnold-Fernández & Stewart Pollock, *Refugees' Right to Work*, 44 FORCED MIGRATION REV., Sept. 2013, at 92, available at <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/detention/arnoldfernandez-pollock.pdf>.

potential.²² Where refugees are given the freedom to participate in the economies, societies and civic life of their host countries, they invariably return manifold economic benefits, typically within about five years.²³

Establishing effective governance frameworks

Building an effective governance framework for refugee protection does not have to be a difficult undertaking for refugee-host governments. First, host governments can look to existing laws. In many cases, these laws can be interpreted, implemented, enforced and explained in ways that give refugees the ability to make choices about their lives. For example, unless a country's legislation explicitly prohibits refugees from working, refugees can often lawfully work—in theory. A host government can move toward making this a reality by issuing decrees explicitly confirming refugees' ability to access work and to enjoy labor protections like other workers. Governments can establish and enforce regulations that reduce refugees' barriers to accessing work (for example, making work permits free for refugees).

Where a country's legislation does explicitly curtail refugees' ability to make choices regarding their lives, amendments may be required. Other refugee-hosting governments, multilaterals and NGOs with expertise in refugee-related legislation can provide examples, analysis and technical assistance to amend laws or policies.

Past experience shows that adjustments to governance frameworks are important to any efforts to transition to refugee self-reliance. On a few occasions, donors and host governments have negotiated plans that aimed to transition refugees to self-reliance after years or decades of dependence on aid. Examples include the International Conferences on Assistance to Refugees in Africa (ICARA I and II) in 1981 and 1984, the Self-Reliance Strategy (SRS) in Uganda in 1999, the Zambia Initiative in 2004, and the International Conference on Central American Refugees (CIREFCA) in 1989.

Of these, only the last, CIREFCA, is widely regarded as successful. CIREFCA alone included adjustments to the governance frameworks of participating host countries²⁴—in particular Mexico and Costa Rica.²⁵ Changes in domestic law in four CIREFCA countries allowed refugees to access labor markets and social services. This, in turn, broadened refugees' ability to make choices about their lives, and increased their

²² Angenendt, Steffen & Niels Harild, *Tapping Into the Economic Potential of Refugees*, German Institute for International and Security Affairs, May 2017

²³ PHILIPPE LEGRAIN, TENT FOUNDATION, *REFUGEES WORK: A HUMANITARIAN INVESTMENT THAT YIELDS ECONOMIC DIVIDENDS* 22 (May 2016), https://static1.squarespace.com/static/55462dd8e4b0a65de4f3a087/t/573cb9e8ab48de57372771e6/1463597545986/Tent-Open-Refugees+Work_VFFINAL-singlepages.pdf; Marcel Fratzscher & Simon Junker, *Integrating Refugees: A Long-Term, Worthwhile Investment*, 45+46 DIW ECON. BULL. 612, 616 (Nov. 12, 2016), available at https://www.diw.de/documents/publikationen/73/diw_01.c.519306.de/diw_econ_bull_2015-45-4.pdf.

²⁴ DR. ALEXANDER BETTS, REFUGEES STUDIES CENTRE, *DEVELOPMENT ASSISTANCE AND REFUGEES: TOWARDS A NORTH-SOUTH GRAND BARGAIN?* 7 (JUNE 2009), <https://www.rsc.ox.ac.uk/files/files-1/pb2-development-assistance-refugees-2009.pdf>.

²⁵ In addition to voluntary repatriation, Mexico focused on self-sufficiency programs like education for its Guatemalan refugees, while Costa Rica enacted a government decree in 1992 that gave all refugees an opportunity to obtain permanent residency.; See also Ron Redmond, *The Human Side of CIREFCA*, REFUGEES MAGAZINE, Nov. 1995, available at <http://www.unhcr.org/publications/refugeemag/3b5426de4/refugees-magazine-issue-99-regional-solutions-human-side-cirefca.html>.

ability to contribute to these host countries. Notably, both Uganda²⁶ and Zambia²⁷ have more recently adjusted their governance frameworks to allow refugees to access jobs as well.

Governance frameworks in Action: Case Studies from Asylum Access

Asylum Access's experience working to build and strengthen governance frameworks in refugee-hosting countries has shown us that host government leadership is key to transforming the lives of refugees. Following are various examples of governance frameworks in countries in which Asylum Access operates. These case studies focus on countries with varying levels of refugee autonomy and participation, allowing us to see that robust governance frameworks are not only possible, but beneficial, and at the same time highlighting ongoing weaknesses that are yet to be adequately addressed.

Case Study: Ecuador

On paper, Ecuador's governance framework is among Latin America's most robust and inclusive for refugees, allowing them to participate in the economic, social and civic life of their communities equally with other residents.²⁸ In practice, however, there is room for improvement.

Ecuador is a signatory to the 1951 Refugee Convention, and its 1967 Protocol.²⁹ It has also signed the Cartagena Declaration, a regional declaration expanding the definition and rights of refugees in Latin America, and has participated in the creation of the San Jose Declaration,³⁰ the Mexico Plan of Action,³¹

²⁶ In 2006, Uganda passed a refugee law that gives them the right to work and freedom of movement, changing from an encampment policy to a local integration policy.; See also Vanessa Akello, *Uganda's Progressive Refugee Act Becomes Operational*, UNHCR (June 22, 2009), <http://www.unhcr.org/news/latest/2009/6/4a3f9e076/ugandas-progressive-refugee-act-becomes-operational.html>.

²⁷ The Strategic Framework of the Local Integration of Former Refugees in Zambia allows refugees to access legal residence if they are married to or are the child of Zambian nationals, and also extends legal residence to Angolan refugees who have arrived between 1966 and 1986, and have continuously lived in Zambia since then. In addition, the Zambia Immigration Department changed the requirement for investment permits for refugees from \$250,000 to \$15,000 and refugees with specialist skills in medicine and other scientific fields are exempt from work permit regulations. See also MUSHIBA NYAMAZANA ET AL., UNHCR ZAMBIA, INST. ECON. & SOCIAL RESEARCH, UNIV. ZAMBIA & REFUGEE STUDIES CENTRE & UNIV. OXFORD, ZAMBIA REFUGEES ECONOMIES: LIVELIHOODS AND CHALLENGES 4, 14, box 1 (Feb. 15, 2017), available at <http://www.unhcr.org/afr/publications/brochures/58b9646b4/zambia-refugees-economies-livelihoods-and-challenges.html>.

²⁸ Ecuador is host to more than 60,000 recognized refugees, the largest refugee population in Latin America and around 98% of refugees in Ecuador are from Colombia; See also UNHCR, ACNUR EN ECUADOR, 1-2 (April 2017), http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/RefugiadosAmericas/Ecuador/2016/ACNUR_Ecuador_2016_General_ES_Abril (last visited July 11, 2017).

²⁹ UNHCR, STATES PARTIES TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL 2, available at <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf> (last visited July 11, 2017).

³⁰ ACNUR, Instituto Interamericano de Derechos Humanos [IIDH] y Costa Rica [UNHCR, Inter American Institute of Human Rights and Costa Rica], Memoria Coloquio Internacional: 10 Años de la Declaración de Cartagena Sobre Refugiados [Recollection of the International Colloquium: 10 Years after the Declaration of Cartagena on Refugees] [hereinafter UNHCR et al., Recollection of the International Colloquium, 10 Years], Sept. 5-7, 1994, at 471.

³¹ UNHCR, Latin America (Mexico Plan of Action) in UNHCR Global Appeal 2007 288, 288, <http://www.unhcr.org/455443b30.pdf>.

and the Brazil Plan of Action³² which reaffirm and define specific steps to improve adherence to the principles in the Cartagena Declaration.

Ecuador built these international and regional commitments into its national governance framework, enshrining equal rights for refugees in the Constitution of 2008³³ and in other national legislation.³⁴ As host to the largest refugee population in Latin America, the Ecuadorian government has pioneered a national governance framework that grants refugees and asylum seekers equal status to national citizens in the workplace and in public life.

The majority of asylum seekers are immediately integrated into urban areas. Detention is the exception, not the norm, in Ecuador.³⁵ National legislation entitles asylum seekers and refugees to the same right to work as Ecuadorian nationals,³⁶ and the Ministry of Labor grants refugee and national workers the same labor protections.³⁷

A strong national governance framework exists, but some challenges remain. Refugees and asylum seekers continue to face work-related problems and barriers such as discrimination, failure to recognize foreign degrees, ignorance of refugees' rights in the workplace, and a lack of professional and personal support networks.³⁸ Collaboration among civil society organizations, public institutions, and local governments is essential to closing the gap between the aspirations of the national governance framework and its implementation in practice.

Case Study: Mexico

Mexico's laws and policies include some that allow refugees to make choices involving resources, livelihood, family and future.³⁹ However, others create serious barriers that prevent refugees from making decisions about their lives, especially after initial entry into the country.

³² INSTITUTO DE POLÍTICAS PÚBLICAS EN DERECHOS HUMANOS [IPPDH] [INSTITUTE OF HUMAN RIGHTS PUBLIC POLICY], MERCOSUR, *Estados Adoptaron Declaración y Plan de Acción que Protege Derechos de Personas Refugiadas y Desplazadas* [States Adopt Declaration and Plan of Action that Protects Rights of Refugees and Displaced People] [hereinafter IIPDH & MERCOSUR, *States Adopt Declaration and Plan of Action*] (Feb. 5, 2015), <http://www.ippdh.mercosur.int/estados-adoptaron-declaracion-y-plan-de-accion-que-protege-derechos-de-personas-refugiadas-y-desplazadas/>.

³³ Constitución del Ecuador, Oct. 20, 2008, arts. 41, 423.

³⁴ Ley Orgánica de Movilidad Humana, arts. 98, 99 (Ecu.).

³⁵ ELBA CORIA MÁRQUEZ, GISELE BONNICI & VANESSA MARTÍNEZ, INT'L DET. COAL., ¿QUÉ ESPERAMOS DEL FUTURO? DETENCIÓN MIGRATORIA Y ALTERNATIVAS A LA DETENCIÓN EN LAS AMÉRICAS [WHAT DO WE HOPE FOR THE FUTURE? MIGRATORY DETENTION AND ALTERNATIVES TO DETENTION IN THE AMERICAS] 20, 21 (2017), <http://www.refworld.org/es/pdfid/590ca6314.pdf> (last visited July 11, 2017).

³⁶ Arnold-Fernández & Pollock, *Refugees' Right to Work*, *supra* note xiii, at 92.

³⁷ Ministerio del Trabajo del Ecuador [Labor Ministry of Ecuador], Autorización y Registro Laboral para Personas Extranjeras [Labor Authorization and Registration of Foreign Nationals], <http://www.trabajo.gob.ec/autorizacion-laboral-de-personas-extranjeras/> (last visited July 14, 2017).

³⁸ Adeline Sozanski, Karina Sarmiento & Carlos Reyes, *Challenges to the Right to Work in Ecuador*, 51 FORCED MIGRATION REV., Jan. 2016, at 93, available at <http://www.fmreview.org/destination-europe/sozanski-sarmiento-reyes.html>.

³⁹ 8,788 people applied for refugee status in Mexico in 2016, a 157% increase from 2015. 89% of the 3,076 refugees recognized were from the Northern Triangle of Central America; See also COMISIÓN MEXICANA PARA AYUDA A LOS REFUGIADOS [MEXICAN COMMISSION FOR REFUGEE ASSISTANCE], ESTADÍSTICAS [Statistics], (April 2017), http://www.comar.gob.mx/work/models/COMAR/Resource/267/6/images/ESTADISTICAS_2013-2017_1er_Trim.pdf (last visited July 11, 2017).

Mexico is a signatory to the 1951 Convention and its 1967 Protocol.⁴⁰ It has also signed the Cartagena Declaration,⁴¹ a regional declaration expanding the definition and rights of refugees in Latin America, and has participated in the creation of the San Jose Declaration,⁴² the Mexico Plan of Action,⁴³ and the Brazil Plan of Action⁴⁴ which reaffirm and define specific steps to improve adherence to the principles in the Cartagena Declaration. Government-issued recognition of refugee status allows refugees permanent residency and legal permission to work in the country.⁴⁵

Asylum seekers, however, do not have the right to work or to leave the state in which they applied for refugee status until they are determined to be refugees.⁴⁶ Asylum seekers are often detained until the determination process is complete.⁴⁷

Although the regulations governing asylum seekers and refugees need some improvement, governance practices have recently shown signs of improvement. The National Migration Institute in Mexico (INM) has piloted practices demonstrating willingness to pivot away from detention as a norm. For example, in April 2017, 11 asylum seekers from El Salvador and Honduras, accompanied by civil society organizations, crossed the border into Mexico from Guatemala and presented their asylum claims at the border entry point. Immigration officials at the border received their applications and, for the first time, the applicants were allowed access to Mexico's territory without being detained.⁴⁸ This set a new precedent, offering the asylum-seekers freedom of movement immediately upon entry rather than after the conclusion of a legal status determination.⁴⁹ This and other advancements demonstrate that the national governance framework can change to allow refugees and asylum seekers greater autonomy from the moment they enter the country.

⁴⁰ UNHCR, States Parties to the 1951 Convention, *supra* note xxxi, at 3.

⁴¹ Cartagena Declaration, *supra* note v, at 5.

⁴² UNHCR et al., Recollection of the International Colloquium, 10 Years, *supra* note xxxii, at 471.

⁴³ UNHCR, Latin America (Mexico Plan of Action) in UNHCR Global Appeal 2007, *supra* note xxxiii, at 288.f.

⁴⁴ IIPDH & MERCOSUR, *States Adopt Declaration and Plan of Action*, *supra* note xxxiv.

⁴⁵ Ley Sobre Refugiados, Protección Complementaria y Asilo Político, Diario Oficial de la Federación, art. 44, [DOF] 27-01-2011, última reforma DOF 30-10-2014 (Mex.), http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPCAP_301014.pdf.

⁴⁶ In order to be able to work, asylum seekers have to be issued a document granting them permission to stay for humanitarian reasons, which is not done in practice. See Ley de Migración, Diario Oficial de la Federación, art. 55, fracción V, [DOF] 25-05-2011, última reforma DOF 30-10-2014 (Mex.), <https://cis.org/sites/cis.org/files/Ley-de-Migracion.pdf>. Regulations prohibit the asylum seeker from traveling outside of the state they applied in without prior authorization by the Mexican Commission for Refugee Assistance. Reglamenta de la Ley Sobre Refugiados y Protección Complementaria, Diario Oficial de la Federación, art. 24, [DOF] 21-02-2012, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LRPC.pdf.

⁴⁷ MÁRQUEZ, BONNICI & MARTÍNEZ, *¿QUÉ ESPERAMOS DEL FUTURO?*, *supra* note xxxvii, at 20, 22-23.

⁴⁸ Press Release, Asylum Access Mexico, Por Primera Vez el Instituto Nacional de Migración de México Acepta Solicitudes de Asilo en la Frontera [For the First Time the National Migration Institute in Mexico Accepts Asylum Applications at the Border] (May 18, 2017),

<http://www.noox.mx/single-post/2017/05/18/POR-PRIMERA-VEZ-EL-INSTITUTO-NACIONAL-DE-MIGRACION-C3%93N-DE-M%C3%93XICO-ACEPTA-SOLICITUDES-DE-ASILO-EN-LA-FRONTERA>.

⁴⁹ The INM has also piloted the “Alternative Care and Reception of Unaccompanied Minors” program giving rights and protection to unaccompanied minors to live freely in their host communities while their migratory situation is resolved. See Instituto Nacional de Migración, Coalición Internacional Contra la Detención, Casa Alianza y Aldeas Infantiles [National Migration Institute, International Detention Coalition, Alliance of Houses and Children's Villages], *Descripción del Programa Piloto de Cuidado y Acogida Alternativa de NNA Mmigrantes Nno Acompañados en México* [Description of the Pilot Program of Alternative Care and Reception of Unaccompanied Minors in Mexico] 1 (June 30, 2016), https://www.gob.mx/cms/uploads/attachment/file/115687/Descripcion_del_Programa_Piloto.pdf

New practices like the pilot described above will be more likely to endure if institutionalized as formal regulations or other policy instruments. Such institutionalization will help to further strengthen the national governance framework in Mexico.

Case Study: Tanzania

Tanzania historically has had a weak governance framework with regard to refugee autonomy.⁵⁰ The country's laws and policies have not, in the past, accorded refugees the ability to move freely, work lawfully or otherwise fully participate in Tanzania's economy, society and civic life. Recently, however, the country has shown promising signs of shifting policies that facilitate greater refugee autonomy and participation.

Tanzania is a signatory to the 1951 Refugee Convention and its 1967 Protocol,⁵¹ as well as the regional 1969 OAU Refugee Convention.⁵² Despite the commitments, refugees are not permitted by law to move freely in Tanzania. Under the 2003 National Refugee Policy and the 1998 Tanzania Refugees Act, refugees must reside inside "designated areas," unless they have permission from the government to travel or reside elsewhere within the country;⁵³ grounds for this permission are limited to a few specific circumstances. Overcrowding and under-budgeting of refugee camps located in the designated areas have resulted in insecurity, spread of disease, and lack of adequate education, health and justice, pushing many refugees out of the camps and into cities.⁵⁴ Urban refugees cannot access assistance provided in the camps, and are generally barred from working lawfully and accessing national health, education, justice and other systems because the government does not recognize them as refugees but instead considers them illegal immigrants.

In 2011, the Tanzanian government awarded temporary residence permits to undocumented migrants including refugees living in the country's cities,⁵⁵ allowing refugees in urban areas to more easily work and move about the city or country. Although this policy was terminated in 2012, it serves as an example of the change that is possible when national governments work toward refugee inclusion and participation in their communities.

⁵⁰ Tanzania is home to one of the biggest refugee populations in Africa, with 301,356 total refugees as of February 2017. There are an estimated three thousand to untold tens of thousands of refugees living in Dar es Salaam as "urban" refugees who are mainly unregistered; *See also* UNHCR, *Tanzania - REFUGEE POPULATION UPDATE* (Feb. 28, 2017), <https://data2.unhcr.org/en/documents/download/55424>; ASYLUM ACCESS TANZANIA, *TOWARDS A TANZANIAN POLICY ON URBAN AND SELF-SETTLED REFUGEES* 7 (June 2012).

⁵¹ UNHCR, *States Parties to the 1951 Convention*, *supra* note xxxi, at 4.

⁵² AFRICAN COMM'N ON HUMAN AND PEOPLE'S RIGHTS, *Ratification Table: AU Convention Governing Specific Aspects of Refugee Problems in Africa* (2017), <http://www.achpr.org/instruments/refugee-convention/ratification/> (last visited July 11, 2017).

⁵³ URBANREFUGEES.ORG, *Dar es Salaam, Tanzania*, <http://urban-refugees.org/dar-es-salaam/> (last visited July 19, 2017).

⁵⁴ *See generally* ASYLUM ACCESS TANZANIA, *NO PLACE CALLED HOME* (November 2011), <https://asylumaccess.org/wp-content/uploads/2014/08/No-Place-Called-Home.pdf>.

⁵⁵ Nadhifa Mahmoud, *Forging a New Path for Urban Refugees*, ASYLUM ACCESS TANZANIA, February 2012, <http://asylumaccess.org/forging-new-path-urban-refugees/>.

The government removed the work permit fee for refugees in December 2015⁵⁶ according to news reports, and is in the process of developing work permit policies for refugees.⁵⁷ This shows that the government is starting to recognize that refugees need to work in order to become self-reliant and contribute to Tanzania's economy.

As a pilot country for the Comprehensive Refugee Response Framework (CRRF), Tanzania has made five pledges to improve the autonomy of refugees and asylum seekers.⁵⁸ The government has committed to the following: to continue to receive people fleeing war, political instability, and persecution; to review the 1998 Refugees Act and the 2003 National Refugee Policy (which offers opportunities to consider improvements in key laws and policies that compose Tanzania's refugee governance framework); to provide durable solutions to Burundian refugees; to enhance refugee access to education and employment; and to support the Global Compact on refugees, once adopted.⁵⁹

These commitments indicate that Tanzania may be moving toward a governance framework where refugees are better able to exercise autonomy over their lives, paving the way for a transition from policies focused on encampment to policies focused on local participation. To further this shift, the government should draft a national plan that includes refugees and recognizes that refugee issues are long-term issues. International cooperation in finding durable solutions for refugees is also a key component of furthering the advancements currently underway in Tanzania.

Case Study: Thailand

Thailand historically has had a weak governance framework that fails to recognize refugees as a legal class of persons or to grant them autonomy.⁶⁰ Recent proposed legislation that would recognize refugees as a legal class is in the process of being adopted by the national government. This may mark a shift toward strengthening Thailand's governance framework with regard to refugees.

Thailand is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, and does not recognize refugees or asylum seekers in its national legislation.⁶¹ Since 1995, refugees living along the Myanmar border have been confined to camps where they cannot access formal work or higher education.⁶² They

⁵⁶ Darpost.com, Work and Residence Permits (last updated January 22, 2016), <http://www.darpost.com/2016/01/work-residence-permits/>

⁵⁷ See The Non-Citizens (Employment Regulation) Regulations, 7, 2016 (Uganda).

⁵⁸ Charlie Yaxley, *Government of Tanzania Brings Together 'Whole of Society' to Implement Landmark Refugee Reforms*, June 5, 2017, UNHCR, <http://www.unhcr.org/afr/news/latest/2017/6/593543ce4/government-of-tanzania-brings-together-whole-of-society-to-implement-landmark.html>.

⁵⁹ *Id.*

⁶⁰ Over 100,000 refugees from neighboring Myanmar have lived in 9 'temporary camps' along the Thailand-Myanmar border for more than two decades without a durable solution to their situation. An additional 8,000 refugees and asylum seekers from over 40 different countries live in Bangkok; See also EUROPEAN COMMISSION: EUROPEAN CIVIL PROTECTION AND HUMANITARIAN AID OPERATIONS (ECHO), *Factsheet: Refugees in Thailand*, 2 (May 2017), http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/refugees_thailand_en.pdf; ASYLUM ACCESS THAILAND, *Urban Refugees in Bangkok*, <http://asylumaccess.org/urban-refugees-bangkok/> (last visited 12 July, 2017); ASIA PACIFIC REFUGEE NETWORK, THAILAND 1 (March 2017), http://aprrn.info/pdf/Thailand%20Factsheet_MAR%202017.pdf.

⁶¹ ASIA PACIFIC REFUGEE NETWORK, THAILAND, *supra* note 74, at 1.

⁶² BURMA LINK, *supra* note 10.

are protected from deportation so long as they remain inside the camps.⁶³ Although almost 100,000 refugees have been resettled from the camps since 2004, those who entered Thailand after 2005 have been prohibited from registering with UNHCR and thus from accessing resettlement.⁶⁴

Meanwhile, under the Immigration Act of 1979, refugees living outside the camps become illegal migrants once their tourist visas expire. As a result, they face arrest, arbitrary and indefinite detention, deportation, and *refoulement*.⁶⁵ UNHCR conducts adjudications in urban areas to determine whether applicants are refugees, but wait times for UNHCR's initial interview—the first part of UNHCR's adjudication process—can span years, and the UNHCR certificates do not carry legal weight with officials.⁶⁶

However, at the US-led Leaders' Summit on Refugees on September 20, 2016, the Thai government pledged to develop a screening mechanism to distinguish refugees from economic migrants.⁶⁷ In January 2017, Thailand's Cabinet approved a proposal to finalize and implement this screening mechanism.⁶⁸ The country's first ever Refugee Regulation now is being drafted by the Office of the Council of the State and, once finalized, will be presented for approval by the Cabinet.⁶⁹ UNHCR and civil society organizations continue to offer technical and other assistance to support the Refugee Regulation process and to promote other elements of a regulatory framework that would improve refugees' lives while they remain in Thailand.⁷⁰ As the Refugee Regulation and other policies are adopted, host government leadership and civil society engagement will be essential to successful implementation.

Case study: Malaysia

Currently, Malaysia does not have a national governance framework that recognizes refugees as a legal class of persons and that grants them autonomy.⁷¹ Developments this year seem to indicate that the Malaysian government may be seeking to initiate the development of some components of a governance framework that would give refugees legal recognition and some elements of autonomy.

⁶³ URBAN REFUGEES.ORG, Bangkok, Thailand, <http://urban-refugees.org/bangkok/> (last visited July 7, 2017).

⁶⁴ BURMA LINK, *supra* note 10.

⁶⁵ URBAN REFUGEES.ORG, *supra* note 76; HUMAN RIGHTS WATCH, AD HOC AND INADEQUATE: THAILAND'S TREATMENT OF REFUGEES AND ASYLUM SEEKERS (Sept. 12, 2012),

<https://www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>.

⁶⁶ UNHCR, *UNHCR Thailand* (2015), <https://www.unhcr.or.th/en/about/thailand>; ASIA PACIFIC REFUGEE NETWORK, THAILAND 1-2 (March 2017), http://aprrn.info/pdf/Thailand%20Factsheet_MAR%202017.pdf.

⁶⁷ UNITED NATIONS, SUMMARY OVERVIEW DOCUMENT LEADER' SUMMIT ON REFUGEES (Sept. 20 2016),

https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf.

⁶⁸ UNHCR, *UNHCR Welcomes Thai Cabinet Approval of Framework for Refugee Screening Mechanism* (Jan. 23, 2017), https://www.unhcr.or.th/en/news/TH_refugee_screening_mechanism.

⁶⁹ *See id.*

⁷⁰ *See id.*

⁷¹ There are over 150,000 UNHCR cardholders in Malaysia. Almost 90 percent are from Myanmar, and 58,600 are Rohingya. In addition, tens of thousands (estimated at 49,000 in 2013) refugees have yet to register with UNHCR; *See also* UNHCR, *Figures at a Glance* (May 2017), https://www.unhcr.org.my/About_Us/@-Figures_At_A_Glance.aspx (last visited July 13, 2017); Caitlin Wake, *Livelihood Strategies of Rohingya Refugees in Malaysia "We Want to Live in Dignity"* (Humanitarian Policy Group 6, Working Paper No XX, 2016).

Malaysia is not a signatory to the 1951 Refugee Convention⁷² or its 1967 protocol. UNHCR registers refugees and provides them with documentation, a process that can take years.⁷³ Although UNHCR documentation does not provide refugees with legal rights, such as the right to work or to send their children to public schools,⁷⁴ UNHCR-documented refugees enjoy some benefits. Documented refugees are slightly less likely to be arrested when stopped by police⁷⁵ and receive a 50 percent discount off fees charged to foreigners at government hospitals.⁷⁶ In addition, since 2009, Malaysia's government rarely forcibly deports refugees.⁷⁷

Despite legal barriers to refugee economic and social participation and limited assistance for refugees—in particular the Rohingya—many can rely on social networks and connections, as well as community organizations run by the refugees themselves, to access temporary economic assistance and to find employment.⁷⁸ Some are self-employed, some work for the refugee-run community organizations, and some find informal employment with Malaysian citizens, who may hire refugees out of sympathy or as a source of cheap labor.⁷⁹ The fact that so many refugees access employment implies that the Malaysian government is not indifferent to their economic needs.

The current Prime Minister has condemned the Myanmar government's treatment of Rohingya⁸⁰ which has led to the development of a pilot project that granted work permits to 300 Rohingya UNHCR-documented refugees this March. The pilot allows permit holders to work for a set of companies in the plantation and manufacturing industries for a three-year period.⁸¹ This, and other indications of government interest in developing a national registration system for refugees, opens a new pathway to create a national governance framework that would allow refugees access to lawful employment and legal stay. However, given the ad hoc nature of current policies affecting refugees, much work remains for the Malaysia government and for all actors in the refugee response system to ensure that these promising initial first steps ultimately lead to the development of a governance framework that allows refugees to become self-reliant and contribute to Malaysia's economy and society.

A necessary role for local civil society organizations

As the above case studies demonstrate, host countries have varying governance frameworks that provide different degrees of refugee autonomy, and all are works in progress. Each host country faces a unique set of factors—political, economic, demographic, etc.—that colors its receptiveness to reform.

⁷² Caitlin Wake, *"Turning a Blind Eye" The Policy Response to Rohingya Refugees in Malaysia*, (Humanitarian Policy Group 3, Working Paper No. XX, 2016).

⁷³ Caitlin Wake, *Livelihood Strategies*, *supra* note 85, at 8.

⁷⁴ *Id.*

⁷⁵ *Id.* at 15.

⁷⁶ *Id.* at 12.

⁷⁷ *Id.* at 7.

⁷⁸ *Id.* at 19-22.

⁷⁹ *Id.* at 23-26.

⁸⁰ ASYLUM ACCESS MALAYSIA, HELEN BRUNT & ANONYMOUS AUTHOR, *The Rohingya in Malaysia*, in *CONFINED SPACES: LEGAL PROTECTIONS FOR ROHINGYA IN BANGLADESH, MALAYSIA AND THAILAND*, EQUAL RIGHTS TRUST 89.

⁸¹ Caitlin Wake, *"Turning a Blind Eye"*, *supra* note 86, at 15; Melissa Goh, *Rohingya Refugees to be Allowed to Work in Malaysia from March*, CHANNEL NEWSASIA, <http://www.channelnewsasia.com/news/asiapacific/rohingya-refugees-to-be-allowed-to-work-in-malaysia-from-march-753844> 4 (last updated Mar. 8, 2017).

Despite the benefits that result from good governance frameworks, many host governments also perceive challenges that require attention, creativity and collaboration to resolve. Moreover, host governments may at times find it hard to prioritize the changes needed to establish effective governance frameworks for refugee autonomy and participation. This is not unique to the refugee response ecosystem—policies don’t change themselves, and many governments struggle to act on governance priorities until and unless constituents or outside catalysts create momentum for reform. **Changing government laws, policies, practices or institutions usually requires targeted engagement by non-government actors.**

Often, these actors are locally-led NGOs (or “local civil society”) who hold refugee rights and government engagement as a central component to their mission and strategy.⁸² The most successful local NGOs are those not only with the drive and resolve to fight for change, but also those who are savvy about the most effective ways to lobby their government, and knowledgeable and connected with at least some powerful elements within the government. Refugees’ direct participation as advocates for their own autonomy is of central importance, but where political participation is risky or inappropriate, such local NGOs are a vital voice for refugee interests.

By lobbying, we mean *any engagement with government entities* – from providing technical assistance to drafting coherent legislation, to arguing persuasively for policy reform based on evidence, to publicly naming-and-shaming bad practices, and everything in between. Effective lobbying in the refugee response space requires much greater financial support, and access to key discussions, than we have seen to date. Human rights funders, both donor governments and private philanthropy, have historically excluded refugees from their human rights advocacy portfolios—a legacy of the outdated myth that refugees are temporary.⁸³ Humanitarian funders have historically prioritized meeting refugees’ immediate needs for food and shelter over advocacy needed to create a governance environment where refugees can meet these needs themselves—a longer-term endeavor, but one essential for a sustainable refugee response system.

Any effort to reform or improve policies for refugees should endeavor to include refugees in its planning process, including design, goal setting and evaluation of impact. Methods for input might include survey or focus group engagement, ongoing dialogue and partnership with leaders in the refugee community, among others. In host countries, refugee associations, whether ad hoc or formalized, can be useful starting points for connecting with the community and its leaders, as can relief agencies like UNHCR and

⁸² For example, in September 2014, Asylum Access Ecuador (AAE) was able to change discriminatory procedures in the RSD process through strategic litigation. After AAE brought a constitutional challenge to Executive Decree 1182, the Constitutional Court extended the time period asylum seekers had to file and appeal their claim, reinstated the extended definition contained in the Cartagena Declaration, and removed the ability to deport an asylum seeker before a final decision is issued; *See also* Daniela Ubidia, *Landmark Victory for Refugee Rights in Ecuador*, ASYLUM ACCESS, <http://asylumaccess.org/landmark-victory-for-refugee-rights-in-ecuador/> (last visited July 19, 2017); *See also* Jaratpratprueang, Mabu, Jason Lubanski, & Marena Brinkhurst, *Lessons from the Field: Engaging Local Officials to Support Community-led Natural Resource Management*, Namati Publications, 2017, <https://namati.org/resources/lessons-from-the-field-engaging-local-officials/>

⁸³ Hunter, *supra* note 12.

civil society organizations offering legal services such as Asylum Access and others. Other avenues to connect with refugee communities include resettlement agencies and organizations or businesses started by refugees, such as the Valentino Achek Deng Foundation.

In short, governments necessarily take a central role in creating effective governance frameworks. But local NGOs, the international community, and refugees themselves can mobilize political will for an effective framework and also can support, incentivize and monitor its implementation.

Comprehensive Response: Governance Alongside Relief and Development

Development approaches are necessary but not sufficient

Unprecedented numbers of refugees and historic levels of protracted displacement present an enormous global challenge but also can act as a catalyst to achieve important shifts in the refugee response ecosystem. Chief among the shifts needed is an infusion of political will (as evidenced by investment of resources) by all actors in the global refugee response ecosystem toward the **establishment of good governance frameworks**. This investment should not be considered a replacement for investments in humanitarian aid or development approaches, but as a critical missing piece that will create a balanced, stable model for achieving truly successful, lasting solutions. Like a three-legged stool, our global response to refugees will only withstand an unprecedented crisis of displacement if it includes all necessary legs: relief, development, and governance.

Over the last few years, the refugee response community has sought longer term, comprehensive approaches to refugee response. Innovators have increasingly embraced *development* approaches, which focus on enabling refugees to participate in the economy and society of their host country, as a complement to humanitarian relief.⁸⁴ Development approaches typically have focused on bolstering refugees' market-relevant skills (e.g. through education, vocational training, or job placement), expanding markets in host countries through targeted investments, and increasing financial incentives for host countries to let refugees access employment.⁸⁵ These development approaches are an important addition to the earlier emphasis on relief alone. However, they still leave the global response to refugees unbalanced.

⁸⁴ See KATHLEEN NEWLAND, TRANSATLANTIC COUNCIL ON MIGRATION, MIGRATION POLICY INST., *NEW APPROACHES TO REFUGEES CRISES IN THE 21ST CENTURY: THE ROLE OF THE INTERNATIONAL COMMUNITY* 4, 5 (Oct. 2006), <http://www.migrationpolicy.org/sites/default/files/publications/TCM-Dev-Newland-FINAL.pdf>.

⁸⁵ KAREN JACOBSEN & SUSAN FRATZKE, TRANSATLANTIC COUNCIL ON MIGRATION, MIGRATION POLICY INST., *BUILDING LIVELIHOOD OPPORTUNITIES FOR REFUGEE POPULATIONS: LESSONS FROM PAST PRACTICE* 1, 2, 6-9 (Sept. 2016), <http://www.migrationpolicy.org/research/building-livelihood-opportunities-refugee-populations-lessons-past-practice>.

A complete, balanced refugee response requires investment not only in relief and development but also in establishing effective governance frameworks that enable refugees to progress from one to the other, i.e. to advance from dependence on aid to using their skills and funds to participate in more robust labor and consumer markets. Without a supportive governance framework—that is, without the right policies, practices, and institutions, and the ability to access them—refugees simply do not have sufficient equitable access to markets and other economic, social, and civic spaces to benefit meaningfully from development investments. Without the ability to benefit from development investments, refugees will remain dependent on relief that cannot keep pace with an ever-expanding need.

Without supportive governance frameworks, development approaches will fail to move refugees out of poverty and dependence on aid and into a role as contributors to their host countries on a meaningful scale. For instance, financial investment in refugee-operated businesses—a means of supporting refugee autonomy and self-reliance—will fail if refugees are denied the legal authorization and support necessary to create, operate, and succeed in those entrepreneurial endeavors. In order for refugees to move from relief to development, they must be able—through rights enshrined in policy and implemented in practice—to access labor and consumer markets as equal participants. A strong governance framework is the mechanism by which this is possible.

Governance: the third leg of the stool

The chart below illustrates how governance, as the currently-reflected third leg of the refugee response stool, is critical to effective short, medium and long-term strategies for refugee response. Without governance, neither relief nor development approaches can achieve sustainable solutions for refugees and their host countries.



The graphic above depicts governance as the third leg of the refugee response stool: **Relief** meets critical urgent needs upon arrival in a host country, but is not productive over the long term; **Governance** enables refugees' recognition, access, and agency so they can participate in basic productive activities such as education and work; **Development** provides a path to refugees' active economic contributions by aligning refugees' skills and capacity with market opportunities.

In order for refugees to access development, not just relief, they must have rights to access labor and consumer markets as relatively equal participants—as enshrined in policy and implemented in practice. The lack of a supportive governance framework that implements rights is an insurmountable barrier that keeps refugees from progressing from dependence on aid to participation in markets.

Recommendations for the Global Ecosystem

The global refugee response ecosystem stands at a moment of both crisis and opportunity. Seizing this moment to modernize our assumptions and facilitate refugee participation in host country economies, societies and civic life can strengthen relief and development efforts, improve refugee self-reliance, and ultimately benefit refugees and host countries alike. Failure to prioritize the critical issue of governance risks undermining the effectiveness of ongoing refugee response investments.

Host governments are the only actors with the power and responsibility to establish governance frameworks, and local civil society within host countries is best equipped to catalyze the establishment of good governance frameworks through lobbying in the broadest sense of the word. However, all actors in the refugee response ecosystem have vital roles to play in supporting the creation, shaping and maintenance of good governance frameworks.

- 1) *Host governments should acknowledge, strengthen and enforce laws, policies and practices—i.e. governance frameworks—that respect refugee rights and permit economic and social participation. In particular host governments should prioritize elements of a governance framework that grant refugees:*
 - Safe entry and protection against *non-refoulement*
 - Access to meaningful legal status and legal identity
 - Ability to move freely within the host government and beyond
 - Access to work permits, employment opportunities—including self-employment—and protection from workplace discrimination
 - Right to self-employment and access to services that facilitate it, such as business permits and microcredit loans on an equal basis with others
 - Access to state services like education, healthcare and police protection
 - Access to private services and opportunities, for example, banking and financing, on an equal basis with others

- 2) *The international community, including donor governments, multilateral agencies and relief NGOs, should support host country governance frameworks as a necessary component in refugee response alongside relief and development. The international community can do this through funding, technical assistance and diplomatic engagement. Without refugee rights and autonomy enshrined in adequate governance frameworks, the success of relief and development efforts is limited or blocked by the barriers to refugee participation and access.*
- 3) *UNHCR should commit to lobby for governance frameworks that uphold refugee autonomy, positioning itself to do so by, for example, appointing country representatives with diplomatic experience, budgeting for political staff from the host country who would serve for multiple years, and evaluating countries for abidance with international norms and commitments.*
- 4) *UNHCR should commit to financially and politically supporting local civil society organizations with proven track records at promoting and enforcing host government laws, policies and practices. Where appropriate, UNHCR should defer to local civil society to lead advocacy and engage with host governments regarding their governance frameworks.*
- 5) *Civil society (refugee communities, local NGOs, and others) should continue to lobby for strong governance frameworks, monitor their implementation, and hold accountable those in positions of power. Civil society often is deeply informed about the real impacts of national laws, sub-national policies, and practices and may be better informed than other actors about the existing barriers that prevent refugees from exercising autonomy. The capacity for legislative and policy advocacy, as well as monitoring government processes, should be developed among the organizations and civil society networks that work with refugees. This should include a clear plan of action for when a government fails to honor its international obligations. Holding governments accountable can be done through legal means, such as litigation at the local and international level, through communication and relationship building with officials, through publicity, or any combination of these approaches.*
- 6) *Refugees' voices should be heard when establishing governance frameworks. Where possible, refugees should lead civil society engagement with host governments and others designing governance reforms. When designing governance frameworks, governments should establish advisory committees that include members from refugee communities in the country. Input should be sought not only from the organizations that represent refugees, but also from refugees themselves. Task forces and advisory committees created to tackle refugee issues, whether at the local, national, regional, or international level, should reserve a proportion of their seats for refugees or former refugees.*
- 7) *Refugees should have access to legal empowerment so they can safely participate in the establishment of governance frameworks. Refugees should have access to information about their legal status, rights and options, training on how to exercise these rights and options, and where needed legal counsel, representation or other support to ensure that they can safely approach and engage with government officials.*

Through these actions, the global community of refugee response actors can create and safeguard environments in which refugees have the autonomy to rebuild their lives.

Conclusion

Based on today's reality—where most refugees stay long-term in first countries of refuge—we assert that barriers to refugee movement, work, and participation are fundamentally impeding the success of refugee response. Reliance on humanitarian aid and development investments alone cannot address these barriers. Rather these barriers arise from weaknesses in the current laws, policies, practices and institutions of host country governments.

Refugee-hosting governments in Africa, Asia (including the Middle East and Turkey), and Latin America are disproportionately responsible for responding to refugee displacement. We strongly urge these host governments to reform their national governance frameworks to enable refugees to make choices concerning life, livelihood, family and future. At the same time, we note that the international community must support host governments through funding, technical assistance and diplomatic engagement. We also highlight the important role played by refugee-serving local civil society, who is often well situated to effectively lobby for governance improvements.

We urge the international community to consider governance frameworks a necessary component in refugee response alongside relief and development, and to invest in their efficacy accordingly. We urge host governments and all actors to take urgent action to put such governance frameworks into place.

This is the ultimate win-win-win proposition for refugees, host countries, and the international community alike, because when refugees can rebuild their lives, nations thrive.