Protecting Refugees
Where There is No Law

Protection in the Urban Refugee Context
in the Asia Pacific

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Resistance to refugee protection obligations in Asia

Countries that have signed the Refugee Convention (Although China has signed the convention, the protection to refugees is limited and differs by territory)

States that have not signed the Refugee Convention
Asia and the Pacific

- Between 1/3 - 1/2 of the world’s refugees originate and are hosted in the Asia Pacific
- Only 17 of the 44 countries in the region have signed the Refugee Convention
- UNHCR RSD in most countries
- Many asylum-seekers and refugees remain unregistered and therefore invisible
- Asylum-seekers are frequently subject to human rights violations throughout the region, including:
  - Forcible return back to persecution (refoulement)
  - Arbitrary and prolonged detention
  - Lack of access to healthcare, education, and livelihood
  - Sex and gender-based violence, trafficking, torture...
Lack of legal & procedural foundations

- Many non-signatory countries
- Lack of comprehensive legislation
- Lack of legal aid
- Procedural fairness
  - Legal representatives often not allowed
  - Insufficient training of lawyers and decision-makers
  - Limited resources mean long waiting periods
  - Rejection reasons sometimes not given
  - Inconsistency
  - Decisions largely based on unfettered discretion
- No legal status for asylum-seekers or refugees
- Subject to detention (prolonged, indefinite, mandatory)
- No right to work
- Lack of durable solutions
Lack of Compliance with Legal Standards

- Adoption of restrictive laws aimed at reducing the number of asylum seekers reaching the border
- Increasing use of harsh detention practices, accelerated procedures, and 3rd country return
- Tendency to interpret the Convention refugee definition narrowly
- Convention recognition rates vary significantly
- Disparate interpretation and application of legal and procedural standards for refugees
- Tendency to adopt lower standards with restrictive concepts and practices
- Limitations on local integration
China

Signatory of the 1951 Refugee Convention and 1967 Protocol

- **Taiwan:** Not a U.N. Member, China claims sovereignty over Taiwan, but has never exercised actual control over Taiwan; Taiwan has legislated the ICCPR, ICESCR, and CEDAW despite the UN refusing to register them, and a Draft Refugee Act is pending with the legislative Yuan.

- **People’s Republic of China:**
  - China is a signatory to the Refugee Convention, but has recent limited legislation
  - UNHCR has an office in Beijing and engages in RSD
  - There are no NGOs we are aware of serving refugees in Mainland China
  - Legislation has been expected for years (New Exit and Entry Law recognizes refugees)
  - China is largely unchecked, and suspected of explicitly undermining refugee protection

- **Macau S.A.R.:** Refugee Convention is extended to Macau which is beginning to do Government run RSD

- **Hong Kong S.A.R.:** Refugee Convention is NOT extended to Hong Kong, but recent judicial review has led to the development of systems to ensure non-refoulement
Malaysia
Not a Party to the Refugee Convention

- Large urban refugee population (no camps)
- Largest proportion are Burmese refugees
- Many unregistered
- Many community organizations
- Many civil society organizations
- Innovative coping mechanisms for insecure circumstances
Australia

- Politicization of Refugee Protection
- 3rd Country Processing: PNG, Nauru
- Interception or Rescue at Sea
- Mandatory Indefinite Detention
- Boat arrivals are transferred to Papua New Guinea (PNG) or Nauru; and there is no chance of resettlement from there to Australia
Resettlement:
- First country in Asia to serve as a resettlement country
- Pilot resettlement program: first four groups of Burmese refugees have already arrived from camps in Thailand

Tripartite Dialogue:
- MOU signed between MOJ, JFBA, and FRJ
- Pilot airport reception program
- Pilot ATD project (10 cases)

5 Points: regular dialogue between government agencies involved and civil society

Japan-Korea-U.S. Good Practice Exchange
Korea

Signatory of the 1951 Refugee Convention and 1967 Protocol

- **Refugee Bill:**
  - A draft bill addressing the determination and treatment of refugees and others was passed on 29 December 2011
  - Will go into effect in July 2013

- **Refugee Reception Center:**
  - A refugee reception center is being constructed.
  - Its functions are to include: language training, vocational counseling, training for social integration, and medical assistance.
  - It will be located on an island far on the outskirts of Seoul which has resulted in concerns about separation of the population, limiting freedom of movement and putting barriers on integration.

- **North Koreans:** Over 10,000 admitted as citizens under a resettlement program
Urban Refugee Policy
“Legitimate” urban refugees are:

- Those who are not irregular movers
- Those who are not part of a prima facie caseload for which a UNHCR assistance program already existed in a camp or settlement to which they should be directed
- Those who have some valid exceptional reasons for remaining in an urban area rather than in a designated camp or settlement

...All others can legitimately be denied assistance from basic care to resettlement
UNHCR’s 2009
Urban Refugee Policy

“The rights of refugees and UNHCR’s mandated responsibilities towards them are not affected by their location, the means whereby they arrived in an urban area or their status (or lack thereof) in national legislation. The Office considers urban areas to be a legitimate place for refugees to enjoy their rights, including those stemming from their status as refugees as well as those they hold in common with all other human beings.”
Comprehensive Strategy

1. Providing reception facilities
2. Undertaking registration and data collection
3. Ensuring that refugees are documented
4. Determining refugee Status
5. Reaching out to the local host community & authorities
6. Fostering constructive relations with urban refugees
7. Maintaining Security
8. Promoting livelihoods and self-reliance
9. Access to healthcare, education, and other services
10. Meeting material needs
11. Promoting durable solutions
12. Addressing the issue of movement
Registration

UNHCR Urban Refugee Policy: "The importance of registering refugees and asylum seekers residing in urban areas cannot be overstated. It is a vital tool of protection, as it provides protection against refoulement, access to basic rights, the identification of refugees with urgent and specific needs, the reunification of refugee families and the pursuit of durable solutions. Registration is an essential component of status determination, enables UNHCR to collect accurate statistics on urban refugee populations and facilitates the task of needs assessment, programme planning and budgeting."
RSD: Delegation to the UNHCR Local Office

Each UNHCR Office is responsible to develop and implement RSD procedures.

The specific procedures adopted by each UNHCR Office will necessarily reflect the size of the particular RSD operation, the staffing and other resources available in the UNHCR Office, as well as the conditions in the particular country.

Nonetheless, certain core principles and standards must be incorporated into the RSD procedures in every office to ensure consistent standards of due process.
UNHCR Procedural Standards for RSD under UNHCR’s Mandate are intended to introduce uniform standards and specific guidelines for incorporation into Standard Operating Procedures.

The procedural standards note that evaluations have shown these standards are not being met, and therefore envision these standards as guidelines to assist the creation of SOPs:

- UNHCR Thailand SOPs
- UNHCR Hong Kong SOPs
- UNHCR Delhi SOPs
Standards of Due Process

- Participation of legal representatives at every stage
- Detailed written reasons for refusal at every stage
- Transcripts and Evidence Disclosure
- Appeal after a grant of extended mandate protection
Community Relations

- Capacity building of local and national authorities
- Trained outreach volunteers to keep daily contact with all segments of refugee community
- Local community centers, where refugees and locals can socialize, engage in recreation, gain access to information, services, and counselling
- Active communications systems
- Surveys and opinion polls
- Establishing field units and field offices
Safe and Sustainable Existences for Urban Refugees

- Advocacy efforts designed to remove legal, financial, cultural, and linguistic barriers to their efforts to establish sustainable livelihoods
- Vocational training
- Skills development
- Language programs
- Comprehensive assessments of local challenges and opportunities
- Support coping strategies

- Whether UNHCR should promote refugee livelihoods in countries where they are denied the right to work by law is identified as a difficult question, and UNHCR Offices are advised to explore every opportunity to encourage flexibility in legislation and practice
Civil Society Momentum

4th Asia Pacific Consultation on Refugee Rights
“Local initiative - Global concern: Advancing refugee rights protection in Asia Pacific”
Seoul, Korea
23-24, August 2012

ASIAN REFUGEE LEGAL AID NETWORK (ARLAN)
3rd REGIONAL MEETING AND
1st INDONESIA NATIONAL REFUGEE LAW TRAINING
January - September 2011

South Asia Legal Aid Training
Dhulikhel, Nepal
17-21, July 2012
Collaboration

- Networks: International, Regional, Domestic
  - SRLAN
  - APRRN (LAAWG, IDWG, etc.)
  - FRJ

- UNHCR Engagement:
  - Regular engagement and dialogue (National, Regional, Global)
  - Civil society taking the lead
  - Focus on concrete steps

- Government Engagement:
  - Regular Engagement, Dialogue, and Advocacy
  - Training: Police, Adjudicator, etc.
Law Reform & Legal Strategy

- Strategic Litigation
- Utilizing Human Rights Treaty Bodies
- Pro Bono Network
- Law School Clinics
- Regular Training
- Collaboration: lawyers networks
- COI Research & Expert Reports
- Advocacy / Lobbying
Comprehensive Protection Strategies

- **Integration Programs:**
  - Alternatives to Detention
  - Case Management
  - Cultural Orientation
  - Language Programs
  - Employment Assistance

- **Basic Needs:**
  - Transition Shelters
  - Material Assistance
  - In-kind food distribution or regular community meals

- **Health Care:**
  - Medical Care: access to insurance, clinics, specialized doctors, emergency
  - Refugee Mental Health: Training and Networking

- **Education**
  - Compulsory
  - Adult
  - Higher
  - Language
  - Vocational

- **Community Interpretation**
- Referrals Guides to fill gaps
Developing a Framework for Regional Protection

1. The “Regional Protection Framework” is not a vision for APRRN, but a vision for the region meant to articulate what States, UNHCR, civil society, donors, and others should be doing in order to realize the Vision.

2. This is about APRRN becoming an agenda setting body, mobilising resources, and generating momentum and collaboration towards the vision it articulates. It should be realistic, build on existing capacity, and identify what is already working.

3. The “Regional Protection Framework” will be a living document designed to facilitate, guide and focus research and consultations.

4. An extensive and inclusive consultation process is envisioned involving a wide cross-section of stakeholders, and the process itself should serve as a model for how such initiatives should be conducted.

5. The “Regional Protection Framework” is made up of 3 documents: A Vision, Plan of Action, and Research Framework
## Vision for Regional Protection

A broad, high-level statement about what the successful outcome of our work would look like.

**Key Questions:**
- What do we want to see in the region in 10-20 years’ time?
- What is realistic and achievable?

**Example:**
Governments, UNHCR, other international organisations and civil society value inclusiveness and collaboration and engage in regular and timely dialogue to evaluate and improve the protection of refugees, asylum seekers, stateless persons and IDPs. Government funding and cooperation to actively provide assistance and protection is crucial in supporting an engaged civil society.

## Plan of Action

The operational element laying out what we will do as APRRN members and our recommendations about what governments, UNHCR, donors and others should be doing in order for our vision to be achieved.

**Key Questions:**
- How do we operationalize the framework?
- Who must do what to ensure the vision becomes a reality?

**Example:**
- Complete comprehensive referrals guides identifying every service provider engaged, the services they provide, and how to make an appropriate referral
- Mobilize donor support for consultations that bring government, international institutions, as well as NGOs and other civil society actors together to engage in meaningful dialogue.

## Research/Consultations Framework

Will facilitate research and consultations towards the development of the Vision and Plan of Action, help map and prioritise the key issues of interest to stakeholders, and focus on what is working already.

**Key Questions:**
- What do we need to know in order move forward?
- What topics will we prioritise and what questions do we need to ask?

**Example:**
- Identify all stakeholders engaged in service provision to refugee populations in each jurisdiction
- Identify gaps and overlaps
- Identify whether consultation is currently taking place, whether it is regular and inclusive
- How are refugees coping in each jurisdiction
- ...etc.
**Consultation Process**

- **Consultation on the “Vision”**: Consultations on the 1st Draft of the “Vision” have been ongoing since the launch in Geneva, and have engaged NGOs, UNHCR, academics, and other IGOs. States will not be consulted until the 2\textsuperscript{nd} draft is consolidated, and a draft plan of action is completed.

- **Drafting the “Plan of Action”**: The ASCRP will begin developing a Plan of Action to achieve the Vision this month, and today we will engage in some brainstorming.

- **The Consultation Process**: An extensive consultations process has been envisioned to allow for adequate engagement with key stakeholders and extensive dialogue on key issues, policies and regional challenges. The process is as important, if not more important, than the end product, and should serve as a model for how such endeavours should be conducted.
Submitting Feedback

APRRN highly values the views and expertise of its members and of all relevant stakeholders and would very much appreciate your input on the content of the vision, the consultations process, the possible usage of the Vision or Plan of Action, or any other input.

To submit your comments, please email: regionalprotection@aprrn.info

Written comments and track changed versions are both encouraged.
Questions?

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