

NGO statement on Asia and the Pacific
Agenda item 3(a)iv

Thank you, Chair.

This statement has been drafted in consultation with, and is delivered on behalf of, a wide range of NGOs working in the Asia Pacific region. It reflects the diversity of views within the NGO community.

Introduction

NGOs remain deeply concerned by overall lack of protection and basic rights for people affected by forced displacement in the majority of countries in the Asia Pacific region. In the absence of meaningful protection, refugees are subject to severe rights violations including arbitrary detention, lack of access to legal advice on how to claim refugee status, basic healthcare and education, inability to access sustainable employment lawfully, exposure to exploitation and sexual and gender-based violence and, most seriously, forced returned to countries in which they are likely to suffer persecution (refoulement). Asylum seekers also endure lengthy registration and refugee status determination procedures, which often leave them in limbo.

NGOs call upon states to respect and uphold the human rights of all refugees seeking asylum, paying particular attention to the increased vulnerability of groups such as women, children (especially unaccompanied and separated children), people living with disabilities, and the elderly.

Ratification of the 1951 Refugee Convention and Introduction of National Refugee Legislation

Noting that only 20 of the 45 countries in the Asia Pacific region are State parties to the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol, NGOs call upon States to ratify these Conventions and to also develop national legislation to safeguard refugees and asylum seekers. We also encourage those States which have signed other international human rights instruments to extend the associated protections to refugees, asylum seekers and other people of concern.

In Indonesia, we welcome the Presidential Decree adopted on 31 December 2016, which notably upholds the definition of refugees contained in the 1951 Refugee Convention, and we urge the

Indonesian government to immediately begin implementing the regulation. NGOs continue to be alarmed by policy changes that rollback the international obligations of those States that have signed and ratified the Refugee Convention. In particular, the Australian Government's ongoing use of offshore processing and detention centres, despite persistent controversy and reports of assault, sexual abuse, child abuse, and squalid conditions. We urgently call on all State parties to the Refugee Convention to respect their obligations under international law and to set positive examples in the region for other States to follow.

Regional Cooperation

NGOs welcome the Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime as a positive step towards regional cooperation. We also welcome the Bali Process Review of Region's Response to Andaman Sea Situation in May 2015, in particular the recommendation to establish a Task Force on Planning and Preparedness. However, in light of the rapidly deteriorating conditions in northern Rakhine State, we remain gravely concerned that States are failing to uphold their commitments made in signing the Bali Declaration.

The Myanmar military crackdown against Rohingya launched in October 2016 has resulted in extrajudicial killings, torture, mass rape, detention, and forced eviction of innocent civilians. An estimated 73,000 Rohingya have fled Myanmar by boat into Bangladesh, while an additional 22,000 people remain internally displaced in northern Rakhine State. Another 100,000 mostly Rohingya displaced during earlier 2012 violence remain confined to ill-equipped internment camps and subject to avoidable deprivations in aid. NGOs call upon the government of Myanmar to provide unfettered humanitarian access in Rakhine State and urge the Bali Process member States to fulfill their commitment "to address the root causes of irregular movement of persons and forced displacement" by engaging in direct advocacy with the Government of Myanmar to end the persistent and systemic persecution of the Rohingya.

Durable Solutions

NGOs are concerned over the limitations to durable solutions available to refugees in the region, particularly for those in protracted refugee situations. The reality of limited durable solutions results in refugees being stuck in limbo, which forces them to consider unsafe and irregular onward migration channels, and also heightens their susceptibility to trafficking. NGOs appeal to UNHCR and states to ensure faster resettlement processing times and increased resettlement spaces. In light of the recent suspension of resettlement to the United States and the unprecedented scale of global displacement, NGOs urge UNHCR to ensure increased resettlement spots from countries other than the United States. We reiterate our call to governments in the region that have resettlement programmes such as Australia, Japan, New Zealand and South Korea to increase their resettlement quotas.

NGOs are also mindful of the decreasing opportunities for third country resettlement, and thus encourage UNHCR to strengthen dialogue with states on the feasibility of integrating refugees

into local host communities. We reiterate the findings of multiple studies which clearly show that refugees and migrants contribute significantly to the development and economy of their host countries.

In cases of voluntary repatriation for refugees on the southeast border of Myanmar, we call upon UNHCR to guarantee the informed decisions of refugees in line with international standards of dignity, voluntariness of the decision to return, and safety. Additionally, we would like to suggest to UNHCR that their process of voluntary repatriation be shortened so as to ensure that children's access to education is not unduly interrupted and that they also account for the agricultural seasons to enable the adults to find work during the periods of planting and harvesting. We also encourage the Myanmar government and ethnic armed groups in Kachin state to find a peaceful solution to the ongoing conflict in Kachin State that has caused secondary and new displacement.

NGOs welcome ongoing regional efforts to address the Afghan refugee situation. However NGOs are concerned by reports of forced returns and that return conditions in Afghanistan remain far from conducive. We continue to stress the importance of ensuring that return happens in a manner that is gradual, safe, voluntary and in conditions of dignity. We encourage UNHCR to consult with NGOs more regularly and establish appropriate regional coordination forums to enable complementary advocacy and facilitate pragmatic planning arrangements for hosting and receiving Afghan refugees in a more predictable and sustainable way.

Building on the positive steps marked by the Islamic Government of Pakistan's recent adoption of the national policy relating to the management of Afghan refugees and Afghan nationals in Pakistan, NGOs urge the Islamic Government of Pakistan to demonstrate a strong commitment to upholding the principles of voluntary repatriation in line with the terms of the Tripartite Agreement and within the framework of the Regional Solutions Strategy for Afghan Refugees (SSAR). A longer-term Proof of Registration (PoR) card extension period agreement is especially important to ensure Afghan refugees can stay in dignity in Pakistan until it is genuinely safe for them to return to Afghanistan.

Alternatives to Immigration Detention

Despite some progress, the use of immigration detention for asylum seekers, refugees and stateless people across the region remains extremely alarming. States in the region continue to use arbitrary immigration detention practices as a migration management tool, and refugees seeking asylum continue to face prolonged, and in some cases, indefinite periods in detention.

NGOs call upon governments in the region to explore and strengthen the use of alternatives to detention to prevent unnecessary and damaging detention practices. States must ensure that the right to liberty is ensured for those seeking international protection and that immigration *detention is only ever used as an absolute last resort. States must also ensure that children and other vulnerable groups are not subject to immigration detention.*

NGOs commend the ruling by the Papua New Guinea Supreme Court that the Manus Island detention centre is unconstitutional and deprives asylum seekers and refugees of their liberty. We call on the governments of Papua New Guinea and Australia to immediately close the centre and facilitate resettlement in Australia or a safe third country. NGOs believe that the Australian government bears the primary responsibility for the detention centres on Manus Island and Nauru and is therefore responsible for facilitating timely and durable solutions for those who have been detained in these places.

NGOs welcome the steps taken by several governments in the region to explore and implement alternatives to detention. We welcome the Thai government's recent engagement with locally based refugee support organisations on a potential screening process and hope it contributes to providing refugees in Thailand with more security and opportunities to contribute to Thai society. At the same time, we express serious concern over the indefinite detention of refugees in Immigration Detention Centers (IDCs) and closed government-run shelters. The suspension of the bail system in mid 2016 heightened the risks of indefinite detention or the potential of refoulement back to countries where they may face a threat of persecution. We express particular concern over the protracted and indefinite detention of Rohingya refugees and survivors of trafficking, some of whom have been detained for several years now without any options for release. We call on the Thai government to end all arbitrary and indefinite detention of asylum seekers and refugees and reinstate the bail system with the view of ensuring that asylum seekers and refugees meaningfully enjoy alternatives to immigration detention.

We recognise UNHCR's efforts to connect governments in the region, in order to share and learn from good practices in managing refugees and asylum seekers outside of immigration detention facilities. NGOs continue to support UNHCR's Global Detention Strategy but encourage further strengthened collaboration with civil society when developing action plans, as well as translating key documents into local languages.

Refugee Status Determination (RSD)

NGOs acknowledge that amidst the myriad crises in our world today, UNHCR is facing an unprecedented predicament in managing the highest caseload in history of people requiring Refugee Status Determination (RSD) verification. As the number of people who are displaced and seeking refuge from fear and persecution continues to rise exponentially, NGOs are concerned about refugees' restricted and inconsistent access to due process.

Unfortunately, UNHCR's RSD procedures in countries across the region continue to vary significantly, and often include long and opaque recognition procedures. These shortcomings have adverse effects on the lives of asylum seekers with refugee recognition itself offering little or no protection. UNHCR is falling short of meeting its own procedural guidelines on RSD, for example with regards to legal representation and appropriate interpretation services in many countries. SNGOs call upon UNHCR to ensure a consistent, fair, transparent and easily

accessible registration process in line with UNHCR's protection mandate that follows set standards.

In Malaysia, we welcome UNHCR's decision to allow legal aid representatives to attend RSD interviews. We welcome that UNHCR is working towards reducing the time applicants are required to wait for registration interviews but are concerned that access to the UNHCR remains limited for certain refugee populations, including for Rohingya, Kachin, Shan, and other communities from Myanmar as well as communities from other countries. We note that changes in UNHCR Malaysia's RSD process with limited meaningful consultation created confusion and anxiety about the process. We therefore encourage UNHCR to work towards greater transparency and meaningful engagement with all stakeholders, including service providers and affected communities as well as improved access to information on UNHCR's registration and RSD processes, particularly for refugee communities. In addition, whilst the Malaysian authorities are aware that Rohingya may have refugee claims, we are concerned that this may not be the case for persons from other Myanmar ethnic groups. Authorities therefore appear to be less likely to facilitate access to UNHCR whilst such persons are in detention and are at greater risk of deportation.

In Indonesia, refugees and asylum seekers have voiced frustration over the lack of information forthcoming from UNHCR on their status determination and resettlement prospects, resulting in prolonged periods of uncertainty and insecurity.

In Australia, where RSD is undertaken under domestic law, NGOs have expressed grave concern about changes to RSD processes for people who arrived by boat. These include: the narrowing of the definition of who is a refugee under Australian law; the limited timeframes for people to make protection applications; their lack of access to appropriate legal and language support to fill in applications, and; restrictions placed on access to review in the case of a negative decision.

Statelessness

In absolute numbers, statelessness affects more people in the Asia Pacific than in any other region of the world and includes a complex combination of sizeable populations, protracted cases and multifaceted causes and impacts. UNHCR's estimates of 1.4 million stateless people in the region are likely to be significantly underrepresenting the reality, due to challenges of unknown and unreliable data. Further, NGOs remain concerned at the low levels of accession to both the 1954 Convention Relating to the Status of Stateless Persons (six countries) and the 1961 Convention on the Reduction of Statelessness (four countries). NGOs call upon all governments to take steps to ratify these treaties, as well as develop national legislation to ensure the reduction and elimination of statelessness.

Of particular concern to NGOs are developments that undermine protection and can perpetuate statelessness, especially obstructions to civil registration. NGOs urge UNHCR and states to enhance protection for stateless refugees, especially the Rohingya. In particular, we are

concerned about the large number of Rohingya who remained detained, some indefinitely, in appalling conditions in a number of countries across the region. The root causes of their forced migration from Myanmar must be addressed, and regional and international responses must take into account and provide both immediate protection, and durable solutions for their statelessness.

NGOs urge the Myanmar government to amend the 1982 Citizenship Law and bring it in line with international standards in order to prevent and combat statelessness, and provide Rohingya with equal access to full citizenship rights. We appeal to all governments to explore a regional solution that would strengthen protection and provide durable solutions for stateless Rohingya across the region, and prevent prolonging the humanitarian crisis in our region.

Education, Health and Livelihoods

NGOs welcome the commendable efforts undertaken by the Government of Iran to open its health and education systems to refugees and to work with NGOs to establish systems to regularize different categories of undocumented Afghans – substantially widening access to protection for Afghans in Iran.

NGOs fully acknowledge the immense challenges facing both UNHCR and states to manage displaced populations in the region within the context of complex emergencies, and the shift in focus from resettlement to local integration as a durable solution. Nevertheless, NGOs express concern over the currently ineffective and failing systems attempting to provide protection for refugees, especially those living in urban centres throughout the region. NGOs support efforts by UNHCR to design and implement a sustainable livelihoods strategy for urban refugees. The dramatically reduced likelihood of resettlement points to the importance of unencumbered access by refugees and asylum seekers to basic services such as education, healthcare and civil registration, as well as the right to a standard of living adequate for their health and well-being.

Thank you, Chair.