Executive Committee of the
High Commissioner’s Programme
Standing Committee
74th Meeting
5-7 March 2019

NGO Statement on the Asia and the Pacific

Dear Chair,

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

NGOs remain deeply concerned by the overall lack of protection for asylum seekers, refugees, IDPs, stateless persons and other people in need of protection, and the absence of legal protection frameworks at the national level, in most countries of the Asia Pacific region. Refugees and stateless people are subject to severe rights violations including arbitrary detention, lack of access to healthcare, education and lawful employment, exposure to exploitation and sexual and gender-based violence and, most seriously, forced return (refoulement) to countries in which they are likely to suffer persecution – a violation of the most fundamental of refugee protections and the core element of UNHCR’s mandate.

Ratification of the 1951 Convention and Introduction of National Refugee Legislation

Only 20 of the 45 countries in the Asia Pacific region are states party to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol. Some of these non-signatory states host the majority of the displaced populations and have supported some of the most urgent humanitarian needs.

In the absence of any legal or administrative framework for refugees or mechanisms for asylum processing, refugees and asylum seekers continue to be criminalised, remain at severe risk, and face potential refoulement. In Malaysia, a country with a considerable and complex migrant composition, legal frameworks lack clear distinctions between refugees, asylum seekers, and undocumented migrants, often subjecting people deserving of international protection to arbitrary and indefinite detention, compounding a number of significant rights violations. NGOs commend the newly appointed government in commitments made in the coalition’s manifesto during the election campaign, including the ratification of the 1951 Convention and the 1967 Protocol. NGOs believe that Malaysia has an enviable opportunity to become a regional leader in protection of refugee rights. NGOs strongly urge Malaysia to fulfil the commitments made, and provide refugees with legal protection in the country. NGOs encourage other governments in the region to recognise and encourage this process, not only in Malaysia but in their own constituencies, joining the international community in recognising the fundamental legal rights of refugees.

NGOs encourage all states in the region, including those states which have signed other international human rights instruments, to ensure that they provide specific protections to refugees, asylum seekers and other people of concern.
Rohingya refugees
Nearly one million Rohingya people have sought international protection in neighbouring Bangladesh. More than three-quarters of the Rohingya population from northern Rakhine State, including women, children, and the elderly, have been forcibly displaced. Renewed violence continues to result in increases of this figure.

As documented by international investigations, the Myanmar military’s sustained campaign to forcibly remove the Rohingya ethnic minority has employed torture, sexual violence, indiscriminate killing, assault of children, arson and forced disappearance on a massive scale. Independent investigators and eyewitness accounts report atrocious crimes committed.

Despite limitations and challenges, Bangladesh currently hosts a massive Rohingya refugee population without sustainable solutions. NGOs commend Bangladesh for its response in the face of a continuous influx. NGOs also strongly urge the government of Bangladesh to abide by international law in responding to this challenge. The relocation of thousands of Rohingya refugees to Bhasan Char, an uninhabited island lacking adequate infrastructure, and the pursuit of repatriation plans without regard to international norms may lead to massive rights violations and contribute to regional instability.

Rohingya refugees have responded to perceived threats to their protection by going into hiding, eschewing support structures, and, in some cases, attempted suicide. It is paramount that any future actions must involve greater transparency, inputs from refugees, and independent international monitoring to ensure safe, sustainable, voluntary, dignified processes that are appropriate and proportional to risks. Peace and reconciliation schemes addressing the root cause of the crisis must be in place, and international standards of protection must be considered.

In early August 2018, UNHCR shared a Concept Note on ‘A Solidarity Approach for the People of Rakhine State’ proposing an approach to comprehensive solutions for all people of Rakhine State. The approach also highlights the importance of “responsibility-sharing and inclusive growth” and encourages multiple stakeholders to address the refugee situation in a holistic and coordinated manner. While notable, NGOs found that the approach lacked the appropriate language, the rights-based focus, the comprehensive indication of the protection and development component, and the emphasis on dignified and voluntary returns as well as accountability – thus reflecting the lack of advocacy for the protection of fundamental rights, and ultimately ending the cycle of displacement of Rohingya people.

The Rohingya refugee crisis, as all refugee crises, is a shared responsibility. As such, the regional and international community must explore, and be willing to provide, durable solutions to ensure solidarity with countries hosting the majority of the Rohingya population. This effort must include financial, humanitarian, and development support, as well as increased resettlement opportunities. The crisis highlights the need for shared engagement to also assert political pressure on Myanmar, address root causes, and find lasting solutions.

Policy on the Cessation of Status for Chin Refugees
On 13 June 2018, UNHCR announced the implementation of processes to end international protection for Myanmar Chin refugees in India and Malaysia. This decision effectively strips approximately 35,000 refugees of international protection, risking refoulement and setting a dangerous precedent regarding the circumstances under which cessation proceedings may occur. Myanmar has not
demonstrated the requisite fundamental and enduring change required to institute cessation processes, nor are NGOs convinced that a stabilisation of the ‘generalised human rights situation in the country’ has been adequately considered, as required under UNHCR policy. NGOs express deep concern with UNHCR’s decision to implement cessation proceedings under these circumstances, and remain alarmed at the lack of legal counselling, the continuation of confused messaging, and the progression of cessation in advance of the issuance of up-to-date Country of Origin Information regarding Chin State.

Despite Myanmar’s democratic transition in 2015, substantive and fundamental changes have yet to materialise for numerous ethnic minorities in Myanmar. Conditions in many areas of the country are unconducive for return, particularly for those who have experienced prolonged displacement. Public information regarding the socio-economic and political support in Chin State is lacking, projecting considerable uncertainty toward the sustainability of repatriation. NGOs are concerned that ethnic Chins forced to return would risk a lack of reintegration opportunities in places of origin or elsewhere, potentially producing internal displacement, vulnerability to exploitation, and further persecution. This may not only endanger returnees, but would also potentially stoke fresh tensions in Myanmar towards minority populations.

For sustainable return, the existence of functioning and robust protection structures through an accountable system of law, as well as adequate rights protection, is essential. Any change in circumstances to justify the removal of international protection is required to be ‘significant and profound’, and these changes ‘should be given time to consolidate before any decision on cessation is made’. In assessing the durability of change, reports from independent observers and developments such as voluntary repatriation and the experience of returnees should be given considerable weight. NGOs have not seen progress in this regard.

NGOs therefore appeal to UNHCR to halt the cessation proceedings until a comprehensive review of the appropriateness of cessation is carried out. NGOs acknowledge UNHCR India and Regional Office for their willingness to engage alternative solutions, and to undertake an information gathering mission to Chin State. NGOs, however, urge UNHCR offices to ensure that information be objective, public, timely, and considerate of the protection concerns of Chin populations in exile. UNHCR reporting that 99% of Chin refugees interviewed in India refuse return is alarming, and must be heeded. The dissemination of findings regarding Chin concerns must be made public in a timely manner as an essential component of informed decision making. NGOs also appeal to UNHCR and involved States that the return of Chin refugees, be informed, voluntary, and consultative. NGOs ask that UNHCR work together with host countries and Myanmar to build more robust mechanisms to ensure a rights-based approach to safe and dignified return in the best interests of the vulnerable population.

**Waziristan Refugees living in Khost, Afghanistan**

In 2019, UNHCR will cease its operations in the Khost province of Afghanistan which currently coordinates the response to an estimated 7,000 refugees from the Waziristan region of Pakistan. Approximately 200,000 Waziristan refugees were displaced from Pakistan in 2014. They are recognised by UNHCR as prima facie refugees. While half of the Waziristan refugees have repatriated over the past 2.5 years, a significant number of them are still apprehensive about returning due to the lack of physical security and possible detention. For those who remain in Khost, barriers to access such as obtaining proper legal documentation and education certification continue to persist. The closure of the UNHCR operations in Khost risks stripping the Waziristan refugees of
international protection, primarily in ensuring the right to return for families who wish to do so but are fearful of potential repercussions, and ensuring access to legal identities within Afghanistan for those wishing to integrate. NGOs therefore appeal to UNHCR to postpone the closure of their Khost programme until durable solutions – specifically local integration in Afghanistan or verifiably safe and voluntary return in Pakistan – can be ensured.

**Durable Solutions**

Limited prospects for durable solutions are available to refugees in the Asia Pacific region, particularly those in protracted refugee situations. As a result, risks are increased for refugees, who are subsequently susceptible to rights violations under international law. This results in tremendous consequences for refugees and states alike, including heightened risks of trafficking, sexual and gender-based violence, organised crime, insecurity, exploitation, and abuse.

NGOs appeal to UNHCR and States, particularly Australia, Japan, Korea, and New Zealand in the Asia Pacific, to ensure greater resettlement opportunities and decreased processing times for refugees in Asia, regardless of country of origin in the spirit of commitments made under the Global Compact on Refugees. NGOs appeal to host States to remove obstacles to local integration. There are tremendous benefits to States in ensuring local integration from the first instance. NGOs encourage States to recognise the considerable economic and social benefits of refugee rights to work and education, and to ensure legal access to labor markets and education systems for refugees and asylum seekers.

NGOs call upon UNHCR to guarantee the informed consent of refugees in instances of voluntary return, in line with international standards of dignity, voluntariness, and safety. It is incumbent upon UNHCR and States to ensure that refugees and their communities are actively involved – both in host and return countries – in all stages of the voluntary return processes.

NGOs are concerned by the pace of returns to Afghanistan. Afghanistan remains unsafe for return and, despite some recent potentially positive steps in negotiations between armed actors, there are few signs of improvement. Since 2015, around three million Afghans have returned from neighbouring countries of Pakistan and Iran. Thousands of Afghans have also been deported from Europe. NGOs call upon UNHCR to emphasise to all host States that safety upon return for refugees is paramount, and to address unprincipled practices where they exist. Building upon historic experiences of returns, NGOs urge UNHCR to take necessary emergency preparedness measures in Afghanistan, particularly at border crossings, in the event of mass returns from both Pakistan and Iran over the course of the year. This includes recognising that large-scale return movements, like large-scale displacements, place whole communities under strain. NGOs call upon UNHCR, as a key emergency response actor, to support the provision of assistance in displacement affected communities on the basis of vulnerability, not according to displacement status.

NGOs believe that the international community must share responsibility to host and assist displaced refugees, including Rohingya and Afghan populations, in the region by urgently and substantially scaling up support to neighbouring countries. NGOs also welcome efforts that may result in regularisation processes and commend States endeavouring to integrate refugee populations.

Despite positive media attention on a recent successful case, NGOs express concern about signs of declining support for refugees in Thailand. It is also evident for those on the Thailand-Myanmar border and the pressure to pursue large scale return policies. The situation for refugees detained on
Manus Island and Nauru also remains of particular concern. With the cessation of services such as medical services, there are serious concerns for the health and wellbeing of many of the men, women and children still held offshore. We call on Australia to show moral, ethical and legal leadership by finding durable solutions for them. And any solution must ensure the centrality of voluntariness, safety and dignity.

Finally, NGOs encourage a more holistic approach to durable solutions that integrates planning and policy for IDPs in tandem with those of returning refugees. An important first step would include incorporating the Guiding Principles on Internal Displacement into national law.

Alternatives to Immigration Detention

Despite some notable progress, the use of immigration detention for asylum seekers, refugees, and stateless people across the region remains alarming. States continue to use arbitrary immigration detention practices as a migration management tool. Refugees and asylum seekers 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 (ATD) to prevent unnecessary and damaging detention practices that undermine fundamental concepts of refugee protection and legal process.

NGOs welcome the steps taken by States in the region to implement alternatives to detention, including public commitments and the progression of ATD policies at the national level that prevent the separation of families and the need for foster care arrangements.

NGOs express concern about the detention of children across the region, for example in Malaysia, and call on governments to introduce pilot alternatives to detention programs for unaccompanied and separated children, and all refugees. In Indonesia, although there are provisions in the Presidential Decree for children and other vulnerable groups to be placed in community shelters, the focus appears to be on institutional, rather than community-based care arrangements for unaccompanied and separated children.

There have been alarming reports of deteriorating conditions in immigration detention centres, including physical violence at the hands of guards, lack of access to basic medical care, food and clean water, and widespread psychosocial risks arising from a lack of solutions. NGOs express concern about Australian government policies, such as interception at sea, boat pushbacks, and relocation for third-country processing. We call on Australia to recognize the significant risks associated with such policies, including for refugees detained on Nauru and Manus Island, and demonstrate regional leadership in advancing refugee protection.

NGOs recognise and commend UNHCR’s efforts to connect regional actors in order to benefit from best practices in refugees and asylum seekers treatment outside of immigration detention facilities. NGOs continue to support UNHCR’s Global Beyond Detention Strategy but encourage further collaboration with civil society when implementing action plans, as well as translating instrumental policy into local language and national practice.

NGOs commend New Zealand for their commitment to doubling their annual refugee quota from 750 in 2016 to 1,500 by 2020. However, the needs remain great and NGOs encourage other regional actors to substantively engage.
Global Compacts and CRRF

NGOs urge regional States to respect, fulfil, and abide by commitments made under the Global Compact for Migration and the Global Compact on Refugees, resulting from the historic 2016 New York Declaration on Refugees and Migrants. These commitments include specific reference to ‘concrete measures’ by States to meet the objectives of the compacts, and regional States have publicly endorsed the fundamental protection components of the compacts. This includes providing equal access to asylum and basic rights in the process, mobility in labour and movement to promote self-reliance and efforts to uphold the obligation of non-refoulement. NGOs encourage States to meet these commitments and demonstrate regional leadership by exceeding them. The largest host States in the region should begin leading by transforming their humanitarian approach into a legally-binding commitments in order to provide sustainable protection and durable solution for the forced migrant population.

NGOs commend Pakistan for pledging a commitment to the implementation of a national law that would grant citizenship to all Afghan refugees born in the country. Pakistan is hosting one of the most protracted refugee populations in the region. NGOs urge UNHCR to continue efforts to assist Pakistan in finding permanent solutions and ensuring sustainable reintegration of Afghan returnees.

NGOs also commend the government of Afghanistan for being the first country in Asia to apply the Comprehensive Refugee Response Framework (CRRF). This commitment paves the way for sustainable reintegration of voluntary Afghan returnees, and ensures the inclusion of returnees in national policies and priorities. NGOs look forward to the application of the CRRF and the principles of the Global Compact to the longstanding Afghan refugee crisis across the region. NGOs see the application of the CRRF as a golden opportunity to build upon the progress made by the Solutions Strategy for Afghan Displacement, and develop a region-wide policy which is reflective the Global Compact’s whole of society approach. To that end, NGOs call for greater involvement and inclusion of voices from civil society organisations and returnees in the shaping of the national CRRF framework, as well as greater transparency, consultation and coordination with civil society in ongoing tripartite and quadripartite talks between UNHCR, Afghanistan, Iran and Pakistan.

In addition, NGOs also commend the Thai government for rising to its pledge to end the immigration detention of mothers and children, and to progress a refugee screening mechanism. NGOs stress, however, that such mechanisms must enshrine fundamental refugee rights as a central component of protection under norms of international law wherever they are implemented.

Refugee Status Determination

NGOs remain concerned about the state of asylum systems across the region, which at times fail to respect international standards and maintain some of the lowest recognition rates in the world. As a result, valid applications for asylum and access to international protection may be undermined in case law, and the integrity of international protection weakened.

The lodging of repeat applications to avoid refoulement, marginalisation, destitution, and degradation of health is a significant concern, and an avoidable cost to State systems. NGOs welcome UNHCR’s Procedural Standards on Legal Representation and Interpretation in Mandate Refugee Status Determination (RSD), and encourage implementation across the region.
NGOs welcome UNHCR’s decision to allow legal representatives to attend RSD interviews in some regional contexts, and underscore the critical role legal advising plays in adjudication of asylum claims. NGOs also welcome the signing of formal MoUs for the provision of legal services and representation between UNHCR and legal aid providers in the region and encourage expansion of that effort.

NGOs encourage UNHCR to work towards greater transparency with regard to UNHCR’s registration and RSD processes, particularly when dealing with refugee communities that have limited access to registration or who have been affected by changes in UNHCR’s RSD process.

**Statelessness**
Statelessness affects more people in the Asia Pacific than in any other region of the world. It includes a complex combination of sizeable populations, protracted cases and multifaceted causes and impacts.

In addition to the stateless Rohingya, there are large *in situ* stateless communities across the region that have been denied access to civil registration due to ethnic and gender discrimination and other factors. This represents a failure to uphold the fundamental prerequisite of all human rights protection: the right to hold rights.

NGOs welcome regional efforts to issue ID cards and produce screening mechanisms, but remain concerned about processing times, access, thorough implementation, and the lack of protections build into these processes. NGOs strongly recommend scaling up support from the international community to assist in implementation.

UNHCR’s estimates of 1.4 million stateless people in the region likely underrepresent the reality due to challenges of unreliable data. NGOs call upon all governments to increase efforts to map issues of statelessness, eradicate discriminatory laws, and publicly condemn practices that cause and perpetuate statelessness. NGOs believe the establishment of procedures to identify and protect stateless persons in the Asia Pacific region is critical to progressing towards effective protection in the region.

Thank you, Chair.