

NGO Statement on 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. While the full diversity of the NGO community's views and experiences cannot be covered in one brief statement, we appreciate the opportunity to highlight several key issues.

The COVID-19 pandemic has exacerbated the lack of protection for asylum seekers, refugees, internally displaced persons (IDPs), and stateless persons, and has further exposed the absence of national legal protection frameworks and human rights protections for displaced persons in most countries in the region. While some non-signatory states host significant numbers of displaced persons and have extended their support to meet urgent humanitarian needs, severe rights violations persist, including arbitrary detention, sexual and gender-based violence, *refoulement*, and lack of access to justice, education, lawful employment, and, critically, healthcare.

In close collaboration with relevant civil society organisations (CSOs), NGOs recommend expanded dedication to ensuring action on the following:

1. ***Enhance the protection and promotion of rights for refugee women and girls***

Refugee women and girls in the region continue to suffer from serious human rights abuses, including sexual and gender-based violence and a lack of access to justice, preventative measures, and adequate legal representation. They are disproportionately impacted by COVID-19. Rates of gender-based violence spiked in 2020, especially domestic and intimate partner violence, due to confinement¹. Forced and child marriage cases, arrest, detention, and suicide rates also reportedly rose. With increases in irregular maritime movements, women and girls are at heightened risks of sexual exploitation and other forms of trafficking. At the same time, refugee women and girls have repeatedly demonstrated that they are not passive victims – they are often the first responders to their communities' needs.

States and UNHCR must include refugee women and girls in rapid risk and impact assessments to ensure that their specific needs are sufficiently acknowledged and responded to in a timely manner. NGOs urge states and UNHCR to meaningfully consult with and include refugee women representatives on decision-making committees. Implementation of a gender-sensitive response to the pandemic and the recovery phase is essential.

2. ***Ensure that affected communities can meaningfully participate in decision-making***

Members of affected communities possess insights that others do not; by involving them in decision-making, UNHCR, States, and civil society can improve policies and programming by more effectively identifying and addressing needs and simultaneously increasing respect for the affected communities' dignity and right to self-determination. Granting legal status as a refugee or other protected person is foundational if this engagement is to occur, as the lack of legal identity serves as a barrier to participation and prevents meaningful engagement in decision-making processes. NGOs encourage UNHCR, governments, and other stakeholders to provide refugees with the necessary access, resources, and support to ensure meaningful

¹UN High Commissioner for Refugees, "Displaced and Stateless Women and Girls at Heightened Risk of Gender-Based Violence in the Coronavirus Pandemic," 20 April 2020:

<https://www.unhcr.org/news/press/2020/4/5e998aca4/displaced-stateless-women-girls-heightened-risk-gender-based-violence-coronavirus.html>

participation in decision-making. For example, UNHCR and relevant committees must include Rohingya refugees in repatriation and relocation discussions.

3. ***Recognise, support, and protect LGBTIQ+ and gender diverse people***

The structural vulnerabilities experienced by LGBTIQ+ and gender-diverse people may be compounded by their status as asylum seekers and refugees. LGBTIQ+ forcibly displaced people experience high rates of sexual and gender-based violence inflicted by their families and communities leading to their displacement, both in transit and in host countries, especially during the pandemic. It is critical that state and non-state actors address the multiple and intersecting forms of discrimination experienced by these communities in partnership with LGBTIQ+ refugee-led organisations, during the design, implementation, and evaluation phases of projects. Urgent actions are required to afford immediate safety to LGBTIQ+ forcibly displaced people, including through resettlement to a safe third country.

4. ***Ensure that changes to national refugee law increase refugee protection***

Attempts to introduce or alter refugee law to increase efficiency must not come at the cost of due process and protection of human rights. In December 2020, the Hong Kong Government tabled a bill, ostensibly to expedite the refugee status determination process. However, proposals included allowing the government to increase the use of detention, begin liaising with risk States for deportation before claimants exhaust their right to appeal, and restricting the submission of new evidence on appeal. The government and the legislature have been reluctant to meaningfully consult with civil society on this proposed legislation, and repeatedly refused to convene public hearings on the bill, citing COVID-19.

Also in December 2020, the South Korean Government issued a notice to the public on an amendment to the Refugee Act. The amendment includes several concerning elements, including stringent inadmissibility procedures, a broad scope of ‘manifestly unfounded’ applications, and punishment for submission of falsified documents. Despite strong dissenting opinions from APRRN, UNHCR, Korean Bar Association, and the National Human Rights Commission of Korea, the Korean government still plans to push for the amendment within 2021.

UNHCR should robustly exercise its protection mandate and protect refugees’ rights and safety when regressive policies, practices, or legislative changes are proposed. We encourage States to take steps to increase refugee protection and access to rights, including the right to work and to education.

5. ***Consistent with the core principles of the Sustainable Development Goals of “leaving no one behind”, States must ensure that all persons are included in national COVID-19 response plans***

COVID-19 does not discriminate by legal status. States that do discriminate by legal status open themselves up to spikes in infection and delayed recovery. For example, in Singapore and Malaysia, weak legal protections combined with cramped living conditions and poor sanitation led to high rates of infection among migrant communities. In India, access to public health facilities has become increasingly difficult as hospitals started to require government documentation as a prerequisite to access this essential service. As few refugees can provide this, their only option is expensive private care, which most cannot afford. Further, there were reports in numerous countries of refugees being reluctant to disclose or be tested for COVID-19 as they feared that they would be arrested – a concern stemming from their uncertain legal status. For States to effectively protect all persons within their territories and to help rebuild their economies, they must include refugees, other migrants, and stateless persons in their COVID-19 response plans, including but not limited to risk-free testing, vaccination campaigns, and access to affordable health services.

6. ***States must maintain access to asylum and immediately stop pushbacks***

In 2020, over 2,000 Rohingya refugees, a large proportion of whom were women and children,

took arduous journeys across the Andaman Sea in search of safety despite border closures. The right to seek asylum is a fundamental human right and there is no exception for pandemics. States in the region have intercepted asylum seekers and have engaged in pushbacks, leaving hundreds to die at sea². Quarantine upon arrival, as practiced in Indonesia, is a reasonable intervention to address concerns of asylum seekers possibly carrying COVID-19. In June and September 2020, Acehese fishermen and communities rescued around 400 Rohingya refugees who had been stranded at sea for months, effectively creating access for humanitarian assistance by civil society and protection by the Indonesian government.³ Still, implementation of a rights-respecting regional framework for prevention, search-and-rescue, and predictable and timely disembarkation is urgently needed to avoid further senseless deaths. Once they have disembarked, people must be able to claim asylum and have their claim processed in a fair manner, regardless of whether the State has signed the 1951 Refugee Convention.

7. ***Urgently examine the situations of vulnerable populations, especially those arbitrarily detained and at risk of refoulement***

In Thailand, at least 54 Uyghur men have been in prolonged and arbitrary detention since entering the country seeking asylum in 2014. These detainees have been denied access to UNHCR, legal representation, and judicial oversight on the legality of their detention. Conditions in detention centres are harsh and concerns are mounting regarding the mental health of these asylum seekers who find themselves in protracted long-term detention. As of early February 2021, 18 of the men were reportedly moved out of the detention centre where their presence was established; their whereabouts are unknown. In the absence of operational national screening mechanisms, and as pressure to forcibly repatriate Uyghurs increases, we call upon UNHCR to urgently examine their individual situation. Neither extradition clauses nor security concerns shall avail State authorities from their duty to abide by the non-*refoulement* principle, whether the 1951 Convention applies or not.

8. ***Expand UNHCR's protection and assistance to IDP communities in Myanmar, and guard against forced return of displaced populations by military authorities***

UNHCR is urgently requested to advocate for the protection of all IDP communities in Myanmar, including those displaced by land grabs and recent attacks. UNHCR is also urged to mobilise international partnerships to offer comprehensive and gender-responsive aid for conflict-affected communities, and to demand that the regime respects international law, including their primary duty to protect IDPs. In particular, UNHCR is encouraged to take all feasible measures to guard against forced return of displaced populations by military authorities.

9. ***Stop the use of immigration detention***

As stated by the Human Rights Council Working Group on Arbitrary Detention, “indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary⁴.” However, governments throughout the region continue to use immigration detention even with the additional concerns over COVID-19. Throughout the region, immigration detention conditions are harsh, with overcrowding, regular reports of abuse and

² Kate Lamb and Augustinus Beo Da Costa, “Amnesty Says 1,000 Rohingya Stranded at Sea as Southeast Asia Seals Borders,” *Reuters*, 15 May 2020: <https://www.reuters.com/article/us-health-coronavirus-rohingya-idUSKBN22R11A>; Amnesty International, “Malaysia/Thailand: Launch Urgent Search and Rescue Missions for Remaining Rohingya at Sea,” 27 July 2020: <https://www.amnesty.org/en/latest/news/2020/07/launch-urgent-search-and-rescue-missions-for-remaining-rohingya-at-sea/>

³ Hidayatullah Tahjuddin, “Indonesian Fishermen Rescue Nearly 100 Rohingya Refugees in Aceh,” *Reuters*, 26 June 2020, <https://www.reuters.com/article/us-indonesia-rohingya/indonesian-fishermen-rescue-nearly-100-rohingya-refugees-in-aceh-idUSKBN23X0TG>; Amnesty International, “Indonesia: Nearly 300 Rohingya disembarked in Aceh shows urgent need for search and rescue,” 7 September 2020: <https://www.amnesty.org/en/latest/news/2020/09/indonesia-nearly-300-rohingya-disembarked-aceh/>

⁴ UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/39/45, 2 July 2019, para. 26.

mistreatment, and limited access to health services – a particular concern during this time. For instance, in May 2020, following months of xenophobic attacks, the Malaysian authorities conducted mass arrests of migrants and refugees, including women, children, and babies. In Hong Kong, the government announced plans to provide for wider and more prolonged use of immigration detention despite having settled 731 claims of unlawful detention in the last five years.⁵ In some cases, such as in Malaysia, UNHCR is unable to access detention centres. States that have reduced their use of immigration detention are encouraged to build upon this stance beyond the pandemic. We further encourage States to explicitly prohibit the immigration detention of all refugees, asylum seekers, migrant children, and stateless persons, and to grant UNHCR unrestricted access to detention centres.

10. ***Increase protection of and support to Rohingya refugees in Bangladesh***

As conditions within Rakhine State continue to deteriorate, and now with a military coup, prospects for safe, dignified, and voluntary return to Myanmar for Rohingya refugees in Bangladesh and the wider region are diminishing, leaving over one million Rohingya in a cycle of increasing vulnerability, marginalisation, and long-term encampment. In the spirit of responsibility-sharing, the Bangladesh Government and other States, with UN agencies and support through entities like the World Bank, need to expand the scope of solutions for Rohingya refugees to include the possibility of local integration, the grant of temporary protection, third country resettlement, and access to work rights. Additionally, NGOs need greater cooperation from the Bangladesh Government and financial support from the international community, as the currently available humanitarian aid is woefully insufficient and planned interventions to ensure education, protection, and self-reliance are forced to be tabled as a result of underfunding. Without these critical services, refugees are denied the resources to live full and dignified lives in Bangladesh, as well as if and when they return to Myanmar.

Further, the Bangladesh Government's construction of a barbed-wire fence of over 28 kilometers around 25 of the interconnected refugee camps in Cox's Bazar District not only violates the dignity and right to freedom of movement of thousands of Rohingya refugees, but also affects the delivery of vital services and humanitarian aid in the refugee camps.⁶ More than 3,400 facilities – from tube wells to health clinics – are now located outside the fencing.

Rohingya refugees in the camps struggle with an increasingly alarming security situation: the camps today are rife with drug trafficking and human trafficking activities, with armed groups conducting arbitrary kidnapping and extra-judicial killings. The influence of armed groups has increased, as COVID-19 restrictions severely limit humanitarian staff's access to the camps. The Bangladesh Government must ensure security in the camps while still respecting refugees' human rights. Movement to Bhashan Char ought not to be presented as the single solution to the complex security challenges in Cox's Bazar camps.

11. ***Halt relocation to Bhashan Char, pending the report release from the independent UN-led assessment of its suitability***

Concerns around the voluntariness of relocations of Rohingya refugees to Bhashan Char and the quality of protection and other services available on Bhashan Char persist. The Bangladesh Government should give UNHCR unfettered access for independent assessments of refugees' experiences and access to rights on Bhashan Char, including the 306 refugees rescued at sea in April 2020.⁷ The Bangladesh Government should ensure all movements to the island are

⁵ Refugee Concern Network, "Submissions to the Bills Committee on Immigration (Amendment) Bill 2020," February 2021: <https://www.justicecentre.org.hk/framework/uploads/2021/02/Refugee-Concern-Network-Submissions-on-the-Immigration-Amendment-Bill-2020.pdf>, p. 4.

⁶ Fortify Rights, "Bangladesh: Remove Fencing That Confines Rohingya to Refugee Camps," 9 October 2020: <https://www.fortifyrights.org/bgd-inv-2020-10-09-2/>

⁷ UN High Commissioner for Refugees, "UNHCR Bangladesh Operational Update, 1 – 31 May 2020," 16 June 2020: <https://reliefweb.int/report/bangladesh/unhcr-bangladesh-operational-update-1-31-may-2020>

voluntary and that refugees are fully informed about the conditions there. The Bangladesh Government should maintain the same minimum standards of access to service delivery as in Cox's Bazar camps.

12. Increase efforts to address protracted displacement of Afghans

Across the Asia-Pacific, protracted displacement remains an issue of serious concern. As the humanitarian and protection situation in Afghanistan continues to deteriorate, durable solutions for displaced Afghans remain scant. In 2020, Afghanistan witnessed the largest number of undocumented returns on record, with over 865,000 Afghans returning, mostly from Iran, including over 320,000 deportations.⁸ Around 15% reported that they initially fled Afghanistan due to conflict. Almost 4.8 million Afghans are internally displaced.⁹ Should large numbers of returns continue, there will be significant pressure on infrastructure, possibly resulting in greater levels of internal displacement and/or remigration – current estimates suggest that 2,000 - 2,500 Afghans are arriving in Iran every day through irregular means.

With secondary effects of COVID-19, a faltering economy, and severe concerns for the deteriorating humanitarian and conflict situation, it is paramount that UNHCR continues to support Afghanistan, Iran, and Pakistan as the main host countries, and promote a strategic vision to find sustainable solutions for Afghans' displacement across the region. This should include involving NGOs in the Solutions Strategy for Afghan Refugees and its Support Platform.

13. Respect the principle of non-refoulement

In February 2021, Malaysia deported 1,086 individuals to Myanmar, in defiance of the Kuala Lumpur High Court's interim stay order granted earlier that day, in violation of its obligations under international law, and without regard to the situation in Myanmar.¹⁰ While the Malaysian government maintains that none of the people they deported were refugees, asylum seekers, or Rohingya, this could not be verified as UNHCR has not had access to detention centres in Malaysia since August 2019. On 9 March, the court granted leave for judicial review on the deportation, affirming the role of NGOs in challenging government decisions that could potentially harm lives – helping to ensure accountability and transparency. We urge the Malaysian Government to grant immediate and unrestricted access to UNHCR to adequately assess people in need of protection in the detention centres.

14. Address the protracted issues of statelessness in the region and increase support for stateless communities, specifically in the context of the COVID-19 pandemic

Statelessness is prevalent throughout the region, with a growing number of vulnerable populations denied citizenship and basic rights. Statelessness contributes to barriers to obtaining birth registration and other documentation, denial of access to health, increased poverty, and the risk of detention and human rights abuses. COVID-19 has exacerbated these challenges and has been used to spread xenophobia, with non-citizen populations being targeted as public health risks due to the COVID-19 pandemic. We urge states to address statelessness across the region.

Thank you, Chair.

⁸ International Organization for Migration, "Return of Undocumented Afghans – Weekly Situation Report, 20 – 31 December 2020," January 2021: https://afghanistan.iom.int/sites/default/files/Reports/iom_afghanistan-return_of_undocumented_afghans_situation_report_20-31_december_2020.pdf

⁹ International Organization for Migration, "Displacement Tracking Matrix: Baseline Mobility Assessment Round 10," 1 October 2020: <https://dtm.iom.int/reports/afghanistan-%E2%80%94-baseline-mobility-assessment-summary-results-january%E2%80%94june-2020>

¹⁰ Asia Pacific Refugee Rights Network, "Joint Statement: Malaysia Defies Court Order, Putting Lives at Imminent Danger," 26 February 2021: <http://aprrn.org/joint-statement-malaysia-defies-court-order-putting-lives-in-imminent-danger/>