

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME
STANDING COMMITTEE
77th Meeting
10-12 March 2020

NGO statement on Asia and the Pacific

Dear Chair,

This statement has been drafted in consultation with, and is delivered on behalf of, a wide range of NGOs, particularly those 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, Internally Displaced Persons (IDPs), stateless persons and other people in need of protection, and the absence of legal protection frameworks at national level, in most countries of the Asia Pacific region. This includes severe rights violations including arbitrary detention, lack of access to justice, healthcare, education and lawful employment, sexual and gender-based violence and forced return (*refoulement*) to countries in which they are likely to suffer persecution. NGOs call upon States to respect and uphold the human rights of all persons seeking asylum, particularly women and girls, the elderly, and people with disability.

Ratification of the 1951 Convention and Introduction of National Refugee Legislations

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. Despite having not acceded the Convention, some States in the region host significant levels of displaced populations, and have extended their support and enhanced protection to meet urgent humanitarian needs.

Several positive developments in the region were seen throughout 2019. The Philippines reiterated their 'open door policy' for refugees by offering citizenship especially to Rohingya Muslims. Malaysia, a country hosting more than 170,000 refugees has begun negotiations for a greater role of government agencies in managing refugees and asylum seekers, and the possible formation of a domestic refugee framework providing access to employment, healthcare and education. NGOs strongly urge the Malaysian government to fulfil their commitments to refugee protection by providing them with legal rights.

On 24 December 2019, the Thai cabinet approved the establishment of a National Screening Mechanism to identify and legalise recognised 'protected persons' in the country. NGOs commend this important initiative and the increasingly open and collaborative approach with civil society. NGOs would like to express some concerns relating to the texts of the regulation following international refugee protection standards, and urge the need to adequately train officials with the appropriate skills, knowledge, and competencies such as assessing refugee claims, working with interpreters, and dealing with trauma survivors.

NGOs encourage all States in the region, including those States which have signed other international human rights instruments, to ensure increased protection to refugees, asylum seekers and other people of concern.

Forced Returns of Refugees

NGOs witnessed an increased trend of governments forcibly returning people in need of international protection to their country of origin. Within the ASEAN subregion alone, there were several notable cases of individuals being extradited and deported from countries like Thailand and Malaysia upon the requests of foreign governments.

Large-scale deportation of refugees from Iran to Afghanistan was seen in 2019. Approximately 254,343 Afghan refugees and asylum seekers were forcibly repatriated, with more than 1,700 of them being unaccompanied minors. Due to the arbitrary nature of these deportations by governments – especially to countries with extreme security challenges such as Afghanistan – attempts of return to countries of asylum or elsewhere often increases the vulnerability of individuals to human trafficking or smuggling.

NGOs call upon governments across the region to uphold their fundamental legal obligations to the principle of *non-refoulement* and prevent putting the lives of refugees at risk through unwarranted deportation.

Citizenship Amendment Act, National Register of Citizens and Concerning Developments in India

On December 12, 2019, the Parliament of India passed the Citizenship Amendment Act (CAA). NGOs express grave concerns over the CAA that appears to be exclusionary, discriminatory in nature and violative of fundamental rights. The enactment of the CAA seems to be largely defined within the confines of religion as citizenship is offered to non-Muslims from Pakistan, Afghanistan and Bangladesh, while explicitly excluding the mention of Muslims. Attention must be given to the arbitrary deportation of 15 Rohingya Muslims by the Indian government who were recognised refugees in the country.

NGOs are also concerned with the implementation of a nationwide National Register of Citizens (NRC). Proof of citizenship in the form of ancestry documentation – documents which a huge proportion of the poor and illiterate Indians do not possess – are made compulsory. The arbitrary NRC exercise in the state of Assam, one of the most religiously diverse parts of the country, resulted in the exclusion of at least 1.9 million people in the state, who risk disenfranchisement, detention and being rendered stateless. According to a human rights group, Assam has thus far recorded deaths of over 100 detainees due to the deplorable detention conditions and suicide. The special status of Kashmir, a Muslim majority state was also controversially revoked in August 2019. There was immediate phone service and internet blackout, and physical lockdown of Kashmir's residents, which continues until today.

NGOs call upon the international community and UN agencies to act and exert pressure on India to ensure that governance measures are human right-based. We also call upon justice and legal assistance for victims of discriminatory procedures.

Rohingya Refugees in Bangladesh

Despite strong efforts of the humanitarian community, Rohingya refugees continue to live with restricted access to basic rights and services in extremely congested camps in Cox's Bazar. NGOs welcome the education pilot programme led by the Bangladesh government and UNICEF for 10,000 Rohingya children from grades six to nine.

While NGOs commend Bangladesh's continued willingness to host such a large population given the limitations, NGOs urge the government to refrain from responding in haste, at risk of violating international protection principles due to mounting pressure in managing the response.

NGOs remain concerned with the emphasis on repatriation of stateless Rohingya despite precarious conditions in Myanmar. The August repatriation of 3,450 Rohingya failed despite the deep desire for return among Rohingya refugees, reflecting the absence of viable and secure conditions as prerequisites for return to Myanmar. NGOs echo the importance of meaningful consultations with refugees, greater transparency, and independent international monitoring to ensure safe, voluntary, dignified processes appropriate and proportional to risks for future actions. NGOs call upon UNHCR for the guarantee that any actions taken affecting refugees are in line with those principles. Rohingya refugees must be afforded the right to make informed decisions about their futures through an inclusive process.

Since September 2019, restrictions have been imposed on communications, negatively affecting refugees, host communities and humanitarian operations, particularly medical and related emergencies. NGOs are especially concerned when operations critical for services and assistance are affected. Many NGOs faced increased restrictions, thereby delaying the delivery of life-saving and life-sustaining services. Barbed wire fences are also constructed around the camps, causing anxiety among both refugees and host communities as livelihoods are impacted, and potentially hinder humanitarian access and services.

Ongoing Human Rights Crisis Within Myanmar

NGOs remain deeply concerned with the grave human rights crisis in Myanmar and the severe humanitarian impacts it has on civilians. Serious abuses and violations of international humanitarian and human rights law have been widely documented. These included the denial of humanitarian assistance and freedom of movement, indiscriminate attacks, arbitrary detention, and sexual and gender-based violence. The presence of armed groups continues to grow in ethnic areas such as Kachin, Rakhine and Northern Shan states, posing barriers for the return of Internally Displaced Persons (IDP).

Decades-long armed conflict, systematic persecution and oppression of ethnic communities leave the displaced Karen, Karenni, Mon, Ta'ang, Pa-Oh, Kachin and Shan refugee communities desperately in need. Some 128,000 displaced Rohingya and other Muslim communities have remained trapped in confined camps in central Rakhine state since 2012, unable to return home. Over 90,000 ethnic communities are still living in limbo at the Thai-Myanmar border. The international community must resume or continue to support ethnic communities displaced due to conflict, including cross-border humanitarian aid.

Refugees have made it clear that safe and dignified return must include accountability of the government for crimes committed, and respect for their human rights. NGOs commend The Gambia and take positive note of the recent developments at the International Court of Justice (ICJ) that have opened the door for justice and accountability for serious human rights violations committed against Rohingya in Rakhine state. NGOs call on the international community to continue addressing the root causes of the crisis in Myanmar. NGOs also call for peace and reconciliation schemes with international standards of protection to be in place.

Alternatives to Immigration Detention

The deliberate use of immigration detention as a tool for migration management of refugees and asylum seekers across the Asia Pacific remains a cause for serious concern.

NGOs express concern about the high numbers of children in detention across the region. As of November 2019, approximately 2000 children were detained in Malaysia. NGOs welcome steps taken by some countries in the region, such as Thailand, to implement alternatives to detention. On 21 January 2019, the Thai Government announced the establishment of new internal governmental procedures for children and their mothers to be released from detention to community-based alternatives. NGOs encourage governments in the region to explore and strengthen the use of alternatives to detention.

NGOs express serious concern about Australian government's harmful detention policies. As of February 2020, there were around 450 refugees and people of concern still held in Nauru and in Papua New Guinea (PNG). Over the 6½ years of the current policy, 12 people have died, most due to medical negligence and suicide. We are deeply concerned that the Medevac legislation, which enabled 179 people to be transferred for treatment in Australia after assessment by medical professionals, was repealed by the Australian Parliament in December.

NGOs are concerned that 53 men were detained incommunicado in PNG's Bomana Immigration Centre, some for up to 5½ months. Those detained were isolated from any external connection or support and lived on meagre rations of food in stifling cells with minimal ventilation. Many of the men felt coerced into signing agreements to return to their country of origin, despite fearing persecution and jail on return. NGOs welcome the release of these men and call on the Australian and PNG governments to ensure that all of them are protected from return under duress, and given appropriate and durable solutions.

Enhancing Protection and Promotion of Rights for Refugee Women and Girls

Women represent almost half of the population of migrants and refugees, yet they are often classified as a minority group attributing to their status, along with groups of people with disability, members of the LGBTI community and the elderly. Sexual and gender-based violence (SGBV) remains a critical protection issue and the biggest barrier for participation of refugee women and girls. Despite the prevalent human rights abuses faced by a large majority of displaced women and girls, it remains under-reported and under-addressed.

NGOs are concerned with the increase in numbers of refugee women and girls being trafficked across borders. IDP women and girls from Kachin and Northern Shan state in Myanmar have been sold into

China and forced into marriage as a coping strategy for families living in poverty, lacking security and opportunities. NGOs are also concerned about the security of women and girls living in the camps. In the crowded camps in Bangladesh, young girls are smuggled to Malaysia for marriage and work. Cases of young girls who go missing and violence happening within the camps after monitoring hours go unreported.

NGOs are also concerned about insurmountable barriers faced by refugee women and girls in the camps along the Thai-Burma border. The drastic reduction of resources and support have left refugees in desperation: higher incidence of forced and early marriage, children malnourished and dying because of the lack of healthcare; women going beyond the confines of the camps to gather resources and work illegally; deteriorating shelters increasing safety risks for women and girls. Levels of suicide and SGBV are reportedly on the rise. Older women and the disabled are often neglected, and the harsh conditions in displacement renders them more susceptible to abuse. NGOs strongly urge UNHCR and stakeholders to increase efforts in seeking immediate and durable solutions by working in partnership with refugee women groups and community-based organisations.

Global Compact on Refugees and the Global Refugee Forum

NGOs are encouraged to see the recurring theme and strong consensus on the importance of refugee participation from the local to high level. NGOs urge all stakeholders to ensure meaningful refugee participation in designing and implementing programmes, access to essential services, and promotion of self-representation for advocacy opportunities in the region. Participation must be genuine and not be tokenistic. NGOs encourage UNHCR and stakeholders to provide refugees, including stateless refugees with the necessary resources and support to ensure meaningful participation. NGOs encourage UNHCR to continue supporting refugee participation at regional consultations and look into facilitating remote participation of refugee groups.

NGOs commend Pakistan for pledging to implement a national law that would grant citizenship to all Afghan refugees born in the country. NGOs urge UNHCR to continue efforts to assist Pakistan in finding permanent solutions and ensuring sustainable reintegration of Afghan returnees. NGOs call for greater involvement and inclusion of voices from civil society organisations and returnees in the shaping of the Afghanistan national CRRF framework, as well as greater transparency, consultation and coordination with civil society in ongoing talks between UNHCR, Afghanistan, Iran and Pakistan.

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. Discriminatory laws, policies and practices on the basis of gender, race and religion have significantly contributed to statelessness. Forced migration as a cause for statelessness has not only affected the Rohingya but also other groups, including ethnic Cambodians who were forcibly displaced in the 1970s and who have lived in Vietnam for many generations. Also, the lack of civil registration can increase risks of statelessness, as birth registration is often a prerequisite in establishing a child's legal identity.

UNHCR's estimates about 2.2 million stateless people in the region, a figure increased and likely to be an underestimate, due to challenges of obtaining reliable data. NGOs are also deeply concerned about

children born in exile who are at risk of statelessness due to the operation of nationality law or difficulties obtaining documents to establish their connection to a country.

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. For instance, people of Indian Origin and the Bajai Laut in Malaysia, the ethnic Khmer Krom in Cambodia and the ethnic Chinese in Brunei Darussalam.

NGOs would like to heartily commend Kyrgyzstan in Central Asia for becoming a leading example in eradicating statelessness in the country by bringing the number from over 13,000 people to zero just within five years.

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.

Regionalisation of UNHCR

NGOs express optimism that the UNHCR regionalisation process will substantively enhance collaborative approaches to advocacy, including the meaningful involvement of affected populations and grass-roots organisations in policy design and evaluation. NGOs look forward to the Regional UNHCR-NGO Consultations, to be held in Bangkok, as an opportunity to demonstrate this new relationship.

Thank you, Chair.