

Refugee Protection and Regional Cooperation in Southeast Asia

A Fieldwork Report

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1. Executive Summary and Recommendations

1. This report is based on fieldwork that Professor Penelope Mathew and Mr Tristan Harley conducted in Thailand, Malaysia and Indonesia in October - November 2013. The authors gratefully acknowledge all of the participants in our research who graciously offered their time, expertise and hospitality. The purpose of the fieldwork was to examine the treatment of refugees in each of the three countries and discuss the issue of regional cooperation with respect to refugees in the Southeast Asia region. Some key findings of the fieldwork are:
 - a) Thailand and Malaysia remain reluctant to become party to the 1951 Refugee Convention and the 1967 Protocol because they believe that it will lead to an increase in the number of refugees arriving in their territory and they believe that

there are associated security threats. On the other hand, ratification is currently part of Indonesia's national agenda. However, there are concerns that this process has been stalled and may not be realised.

- b) States in the Southeast Asia region have indicated a desire to cooperate with one another in the area of refugee protection, particularly through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) and the Association of Southeast Asian Nations (ASEAN). However, states continue to act unilaterally in ways that endanger refugees and cause friction among states. Current Australian policies undermine efforts at regional cooperation.
 - c) Thailand, Malaysia and Indonesia recognise that regional cooperation is necessary in order to address the particular refugee situations that each country is facing individually and to tackle the initial causes of displacement in countries of origin. While ASEAN members adhere to the principle of non-interference in the sovereignty of other states, it was suggested that ASEAN could be an appropriate forum whereby states could assist countries of origin to minimise the need for persons to flee the country and seek asylum elsewhere.
 - d) Interviewees in Thailand, Malaysia and Indonesia suggested that resettlement programmes in the region should be increased and that states from outside the region should increase their efforts to help share the responsibility of hosting refugees.
 - e) Malaysia and Indonesia appear willing to consider granting refugees the right to work. However, there are strong concerns about how this policy would affect national migrant worker schemes and domestic labour supply. States are also concerned about the 'pull factor' that they perceive such a policy may produce.
2. This report concludes by making recommendations for states to enhance the protection framework for refugees. These recommendations are divided into short, medium and long terms goals. Some key recommendations in this report include the following:
- a) Skills training programmes should be established in countries of first asylum that prepare refugees for either resettlement to another country, voluntary return to their country of origin or local integration in the host country. These programmes can be funded by donor and resettlement countries;
 - b) Refugees should be granted the right to work in countries of first asylum and employment programmes for refugees should be established in areas and industries where there is high demand;
 - c) Refugees should be allowed to access health care at the same cost as nationals and refugee children should be allowed to access the public education system;
 - d) United Nations High Commissioner for Refugees (UNHCR) offices in Thailand, Malaysia and Indonesia, should be expanded and more funding allocated with the particular focus of improving both speed and fairness of refugee status determination (RSD) procedures;
 - e) Resettlement states should increase their annual intakes to provide protection to a greater number of refugees and share responsibility with countries of first asylum.

- f) New projects and programmes should be established which simultaneously aim to support both refugee communities and local communities hosting refugees; and
- g) The 1951 Refugee Convention and the 1967 Protocol should be ratified by states in the region.

2. Scope of the research

- 3. On 30 October 2013, the research team arrived in Bangkok for two weeks of interviews in Bangkok, Kuala Lumpur and Jakarta. The purpose of the interviews was to discuss the idea of regional cooperation with respect to refugees. The research team wanted to learn more about conditions for refugees and asylum-seekers in each of the three countries visited, to ascertain the reasons that countries in the region are reluctant to become party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and, above all, to explore the idea of regional cooperation with respect to refugees: what does regional cooperation mean to governments and other actors in the region, and how might it be implemented in practice?
- 4. Over the course of the two week period, the research team conducted 17 interviews with intergovernmental and governmental officials and members of civil society. The interviews were semi-structured and lasted 90 minutes each on average. The Australian National University Human Research Ethics Committee approved this fieldwork prior to its commencement.

3. Background

- 5. There are many examples of regional arrangements concerning refugees from the past and present. Some of these regional arrangements have attempted to share responsibility for refugees by allocating states different roles. For example, the Comprehensive Plan of Action for Indochinese refugees (1989 – 1996) brought together the countries of origin (Vietnam and Laos), countries of first asylum (Thailand, Hong Kong, Indonesia, Malaysia and the Philippines) and countries of resettlement and allocated different responsibilities to these countries.
- 6. Another regional arrangement, the Common European Asylum System (CEAS), seeks to harmonise various elements of refugee protection, with the aim of ensuring that refugees are treated equally throughout the European Union (EU) and minimising onward secondary movement. The harmonised elements of refugee protection include interpretation of the definition of a refugee and a system of complementary protection; the procedures for determination of refugee status or 'subsidiary' status i.e., complementary protection; and standards for reception of asylum seekers and standards of protection for refugees and beneficiaries of complementary protection. The CEAS allocates responsibility for refugees primarily on the basis of the place of first entry by the asylum-seeker, although it has an

early warning system for states facing ‘particular pressures’,¹ and there is also an asylum support office and a refugee fund to help states facing particular pressures.

7. Another regional arrangement, the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America establishes three pillars of protection – the borders of solidarity, the cities of solidarity and resettlement in solidarity. It may be thought of primarily as an arrangement aimed to improve and harmonise standards of protection, by establishing ways in which refugees can earn a living in the cities of solidarity, for example. However, it also has elements of sharing responsibility through external funding for these programmes and the resettlement in solidarity programme.
8. Presently, the notion of ‘protection-sensitive’ regional cooperation in the Asia-Pacific region forms part of the Bali Process. Agreement on a Regional Cooperation Framework (RCF) was set out in the Co-Chairs statement for the Fourth Ministerial Meeting of the Bali Process.² The core principles underpinning the RCF are:

- a) elimination of smuggling and promotion of orderly migration;
- b) access ‘where appropriate and possible’ to consistent asylum procedures, whether through harmonisation or regional arrangements which could include regional centres;
- c) durable solutions;
- d) return of people not in need of protection; and
- e) targeting people smuggling through border security, law enforcement and disincentives.³

9. The document goes on to say that any practical arrangements, which could include bilateral arrangements,⁴ should:

- a) promote human life and dignity;
- b) build capacity to process mixed migration flows;
- c) reflect principles of burden-sharing and collective responsibility, while respecting sovereignty and national security;
- d) address root causes and promote population stabilisation;
- e) promote orderly migration and provide appropriate opportunities for regular migration;
- f) avoid pull factors;
- g) seek to undermine people smuggling and create disincentives, including transfer and readmission; and
- h) promote information exchange.⁵

¹ As stated in the European Commission’s literature on the CEAS, ‘responsibility for examining the [asylum]

² See Foreign Ministers of Indonesia and Australia, ‘Co-Chairs Statement’ (Paper presented at the Fourth Meeting of Ad Hoc Group Senior Officials of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 9 March 2011.

³ Ibid [16].

⁴ Ibid [17].

⁵ Ibid [19].

10. The research team visited three countries, Thailand, Malaysia and Indonesia, to explore what practical arrangements under the RCF might look like.
11. One major initiative under the RCF is the establishment of a Regional Support Office (RSO) hosted by Thailand which exists to operationalise the RCF and provide a focal point for capacity-building, sharing information and best practices, pooling resources, and providing support for joint projects. The two Bali Process Co-chairs, Australia and Indonesia, in consultation with UNHCR and the International Organization for Migration (IOM), are responsible for overseeing the RSO and day-to-day operations are overseen by co-managers from the Australian and Indonesian governments. One of the four foundational projects examines irregular movements by sea, with the aim of developing a set of regional guidelines on disembarkation.⁶
12. Australia currently provides administrative funding for the RSO and has also funded a number of projects and activities. This included a project on unaccompanied and separated children.⁷ Funding has also been received from the USA for a Regional Roundtable on irregular movements by sea.⁸ Thailand, New Zealand and Japan have provided funding for activities and for the maintenance of the Bali Process web site.⁹ Canada has recently agreed to fund the RSO for a Junior Professional Office (JPO) and internship program.¹⁰
13. Civil Society participation in the Bali Process is limited, but the RSO has held some discussions with NGOs and encourages ongoing dialogue.¹¹ Given the importance of civil society to support of asylum-seekers and refugees, the co-chairs of the Bali Process might push for greater civil society involvement in the RSO.

4. Country Profiles

I. Thailand

Legal, Social and Economic Profile

14. Thailand, like many other countries in the region, is not a party to the Refugee Convention. It appears that there is a fear that ratification will encourage arrival of refugees, asylum-seekers and migrants. Thailand also does not want to promote local integration, which entails rights such as the right to work and the possibility of citizenship. There have been perceived security issues.¹² For example, border skirmishes, mortar attacks and gunfire have

⁶ Regional Support Office for the Bali Process, 'Follow Up to the Regional Roundtable on Irregular Movements by Sea', *RSO Newsletter 5* (Bangkok), 24 October 2013

<http://www.baliprocess.net/files/RSO/Edition%20Five_FINAL.pdf>.

⁷ Interview with Greg Kelly, Regional Support Office of the Bali Process (Bangkok, 1 November 2013).

⁸ Interview with Greg Kelly (Bangkok, 1 November 2013).

⁹ Interview with Greg Kelly (Bangkok, 1 November 2013).

¹⁰ Interview with Greg Kelly (Bangkok, 1 November 2013).

¹¹ Regional Support Office for the Bali Process, 'RSO's Engagement with Civil Society', *RSO Information Sheets* (Bangkok), 20 May 2013.

¹² Interview with a Thai government agency (Bangkok, 4 November 2013). Interview with Corinne Day, Committee for Coordination of Services to Displaced Persons in Thailand (Bangkok, 5 November 2013). For further analysis, see Vitit Muntarbhorn, 'Refugee Law and Practice in the Asia and Pacific Region: Thailand as a Case Study' (2004) (1) *UNHCR Research Paper* 13 – 14.

occurred in the area of the Thai border where Burmese refugees are sheltered, although not in the last few years.¹³

15. Like Malaysia and Indonesia, Thailand is a member of ASEAN and the ASEAN Human Rights Declaration enshrines a right to *receive* asylum.¹⁴ Thailand's practice is that it generally does not return refugees or asylum-seekers. Thailand does accept that it has obligations to refugees, whether as a matter of customary international law or under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁵ or the International Covenant on Civil and Political Rights.¹⁶ Thailand has also been a member of the Executive Committee of the High Commissioner's Programme (ExCom) since 1979. It hosts the RSO established under the Bali Process RCF and provides some funding for it. Thailand is also seeking a place at the Human Rights Council and the Security Council.
16. Thailand appears to accept the needs of obviously visible groups of refugees fleeing generalized violence, as opposed to individuals fleeing persecution, particularly if the refugees are from neighbouring countries.¹⁷ Over the years, Thailand has hosted more than a million people in need of protection.¹⁸ The Thai position may have been shaped by this influx of people.
17. Thailand is now an upper middle income economy according to the World Bank, and it has high labour demand. It has one of the lowest unemployment rates in the world and is reliant on migrant workers.¹⁹ However, there is a desire to control migrant labour by having formal contract labour that is linked to labour needs and which can terminate when the need is not there.²⁰ Its transition to an upper middle income country suggests that Thailand should take some responsibility for refugees, but it is also clear that it will not be dictated to by other, more developed countries such as Australia.

¹³ Interview with Corinne Day (Bangkok, 5 November 2013). See also The Border Consortium, *Camps: Mae Sot area* <<http://theborderconsortium.org/camps/mst.htm>>.

¹⁴ *ASEAN Human Rights Declaration* (adopted by the Heads of State/Government of ASEAN Member States at Phnom Penh, Cambodia), 18 November 2012, art 16.

¹⁵ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (CAT). Thailand acceded to CAT in 2007.

¹⁶ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR). Thailand acceded to the ICCPR in 1996. Thailand has also signed, but not yet ratified the *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 20 December 2006, UNTS 2715 (entered into force 23 December 2010).

¹⁷ Human Rights Watch is critical of the criteria applied by the Thai government. As described by Human Rights Watch, the criteria used by the Provincial Admission Boards between 1999 and 2001 was Burmese 'fleeing fighting and the consequences of civil war', which was adjusted in 2005 to include Burmese fleeing for 'political reasons'. Human Rights Watch, 'Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers' (Human Rights Watch, September 2012) 20 – 21.

¹⁸ UNHCR, *UNHCR Thailand* <<https://www.unhcr.or.th/about/thailand>>. For some of the history, see Muntarbhorn, above n 12, 5. Also Interview with a Thai government agency (Bangkok, 4 November 2013).

¹⁹ The International Labour Organization's statistics database record an unemployment rate of 0.6% for Thailand in 2012. See International Labour Organization, *International Labour Organization Statistics Database (ILOSTAT)* <http://www.ilo.org/ilostat/faces/home/statisticaldata?_adf.ctrl-state=13vbza3xqk_4&clean=true&_afLoop=817996729085713>. For a critical examination of Thailand's dependency on cheap, often irregular, migrant workers, see Pracha Vasuprasat, 'Agenda for labour migration policy in Thailand: Towards long-term competitiveness' (2010) *International Labour Organization*.

²⁰ Interview with a Thai government agency (Bangkok, 4 November 2013).

Refugees on the Thai/Burma border

18. Thailand hosts close to 150,000 refugees and asylum-seekers from Burma/Myanmar on the Thai/Burma border.²¹ Thai officials call this group 'displaced persons from Myanmar.'²² They are held in 'temporary shelters'. In theory, these camps are closed, but in practice many refugees leave and re-enter these shelters for work because the ration of food assistance is insufficient.²³ Camp life is difficult, as levels of violence are high, teaching is substandard, and there is a risk of landslides.²⁴
19. In 2005, the Thai government took responsibility for refugee status determination (RSD) for Burmese refugees, while UNHCR is responsible for conducting RSD under its mandate for other groups of refugees.²⁵ Burmese refugees are recognized *prima facie* – that is on a group basis, pursuant to an ad hoc administrative framework, by Provincial Admission Boards. However, the process has stalled, with no registrations over the last five years²⁶ and there are many unregistered refugees. Cessation of registration may have resulted in a decrease in the number of people coming across the border, although the decrease in arrivals may also relate more directly to improved circumstances in the country of origin.²⁷
20. Assistance to refugees is provided through a network of non-governmental organizations, the peak body for which is the Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT). The Thai Border Consortium, which is a consortium of ten international NGOs and provides food, shelter and capacity-building support to Burmese refugees in the border regions, is a member of the CCSDPT.²⁸
21. Group resettlement²⁹ commenced in 2005 in order to help deal with the protracted refugee situation along the Thai/Burma border and has resulted in resettlement of about 80,000

²¹ According to the website for UNHCR in Thailand, there are 84,900 registered refugees and 62,000 unregistered asylum seekers from Myanmar hosted in the nine camps along the border. See UNHCR, *2013 UNHCR country operations profile - Thailand* <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e489646>>.

²² Interview with a Thai government agency (Bangkok, 4 November 2013).

²³ Interview with Corinne Day (Bangkok, 5 November 2013).

²⁴ For a detailed discussion of the conditions in camps including cuts to rations, poor education, incidence of violence and mental illness, see Human Rights Watch, above n 17, 28 – 59.

²⁵ For a recent discussion, see *ibid*.

²⁶ Interview with Corinne Day (Bangkok, 5 November 2013). For a detailed discussion of the failure to register and process asylum seekers, see Human Rights Watch, above n 17, 20 – 24.

²⁷ Interview with Corinne Day (Bangkok, 5 November 2013). See also Human Rights Watch, above n 17, 22 – 23.

²⁸ The Border Consortium, *What we do* <<http://theborderconsortium.org/whatwedo/whatwedo.htm#building>>.

²⁹ As explained by UNHCR, although resettlement is generally undertaken on the basis of individual needs, in some cases an entire group of refugees (eg Burmese in Thailand) will be eligible for resettlement: 'the resettlement of an entire refugee group in a country may be warranted in some situations, either to ensure international protection, or to provide a durable solution in a protracted refugee situation. For example, in circumstances where refugee status is not acknowledged or recognized and where all refugees face a risk of deportation and/or refoulement, resettlement of the whole group may be required to ensure their protection. Where a country has not ratified any of the international or regional refugee treaties, has maintained a geographical restriction with respect to the 1951 Refugee Convention, or has not adopted domestic legislation and policies in line with the responsibilities they have assumed under international or regional conventions, resettlement may also be the most appropriate response to protection needs.' UNHCR, 'Frequently Asked Questions About Resettlement' (November 2013) <<http://www.unhcr.org/524c31666.pdf>> 3 – 4.

refugees. As more people have entered the camps as people have been resettled,³⁰ it is argued by some that resettlement is acting as a pull factor, 'attracting' more people to the camps.³¹ A fully functional system for local integration might prevent any pull factor created by the prospect of utilising resettlement to leave the region, and ensure that the places in camps created by resettlement are not simply filled by more refugees.

22. In anticipation of eventual voluntary repatriation of some refugees residing on the Thai/Burma border, new skills and education projects could be developed on both the Thai and Burma sides of the border in ways that benefit both citizens and refugees. Creating similar protection environments on both sides of the border between the host country and the country of origin can minimise some of the push and pull factors and resentment towards refugees.³²

Maritime arrivals

23. The Thai government is particularly concerned by Rohingya maritime arrivals. The Myanmar government has persecuted the Rohingya, a Muslim minority from northern Arakan state in western Burma, by restricting their freedom of movement, assembly and association, appropriating their land, making demands for forced labour, and arbitrarily arresting and detaining them.³³ Under the 1982 Citizenship Act, the Myanmar government effectively rendered the Rohingya stateless.³⁴
24. In 2006, Rohingya boat arrivals started gaining momentum and the Thai government has developed various types of political responses to deal with their arrivals.³⁵ Chris Lewa argues that, at that time, the reason for this sharp increase was not due to any significant deterioration in the human rights situation in North Arakan, but rather due to the stricter security measures implemented in Bangladesh after the bombings in 2005 and tighter immigration control at airports in Saudi Arabia (which was until then the preferred destination beyond Bangladesh).³⁶
25. Until mid-2008, the Thai government responded to the increase in maritime arrivals by arresting Rohingya arrivals, processing them through Immigration and then informally (or softly) forcibly deporting them back to Myanmar via Mae Sot or Ranong.³⁷ However, brokers or smugglers facilitated the return of the deportees to Thailand.³⁸ In March 2008, the Thai Prime Minister announced that Thailand could not accept all Rohingya boats and threatened to put all the Rohingya arrivals on a 'desert island'.³⁹ In late December 2008, the Thai

³⁰ For information about the numbers, see Human Rights Watch, above n 17, 23 – 24.

³¹ For discussion of donor attitudes, see *ibid*, 28 – 29.

³² *Report from the Colloquium on Refugees, Regionalism and Responsibility* (Australian National University, 22-23 August 2013) 9.

³³ Human rights Watch, above n 17, 75. See also *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN GAOR, 68th sess, Agenda item 69(c), UN Doc A/68/397 (23 September 2013).

³⁴ *Report of the Special Rapporteur on the situation of human rights in Myanmar*, 15.

³⁵ Chris Lewa, 'Asia's New Boat People' (April 2008) (30) *Forced Migration Review* 40, 40.

³⁶ *Ibid*.

³⁷ Interview with Chris Lewa, The Arakan Project (Bangkok, 3 November 2013). See also Human Rights Watch, 'Perilous Plight: Burma's Rohingya Take to the Seas' (May 2009) <http://www.hrw.org/sites/default/files/reports/burma0509_brochure_web.pdf> 8.

³⁸ Interview with Chris Lewa (Bangkok, 3 November 2013).

³⁹ 'We'll Put Rohingya on Desert Island: Thai PM', *The Irrawaddy* (Chiang Mai), 1 April 2008 <http://www2.irrawaddy.org/article.php?art_id=11231>.

Internal Security Operations Command (ISOC) used the remote Ko Sai Deang (Red Sand Island) as a transit centre for Rohingya refugees before towing them out to sea.⁴⁰ Reports emerged of several boats involving approximately 1000 people rescued near the Andaman Islands of India after being towed out to the high seas without an engine and set adrift by the Thai authorities. At least 300 people died in this process attempting to swim ashore after suffering from malnutrition and dehydration.⁴¹

26. After a significant reduction in boat arrivals between 2009 and 2011, boats began to arrive in Thailand again in January 2011.⁴² In June and August 2011, Thai authorities decided to deport all Rohingya detainees informally to Myanmar through Mae Sot and Ranong.⁴³ Thai authorities also developed a 'Help On Policy' which officially involved escorting boats onwards to Malaysia.⁴⁴ However, unofficially, the help-on policy facilitated the transfer of refugees to smugglers who detained them in jungle camps until a ransom was paid before carrying them overland into Malaysia.⁴⁵ In June 2012, increased violence in Myanmar caused more forced movement, and brokers started to use bigger boats and women began to use the boats.⁴⁶ Recently, there have been reports that Thai immigration officials have collaborated with human traffickers and sold Rohingya refugees to the traffickers.⁴⁷
27. Rohingya boat journeys are often funded by relatives in Malaysia or by Rohingya selling all their property in their village in Myanmar.⁴⁸ Sometimes, the journeys are funded by relatives in Saudi Arabia, which until the 2006 recession was a destination for many Rohingya.⁴⁹ Many Rohingya will go on to Malaysia because relatives or the existing Rohingya community will be able to assist them in finding a job.⁵⁰ A 'pull' factor would be the desire to gain an identity, even a UNHCR card, as the Rohingya are stateless.⁵¹ Economic opportunities also play a role.⁵² It should be noted that in pushing back boats, Thai officials might be able to point to Australian practice as a justification for the Thai policy.

Urban refugees

28. Thailand has also received refugees and asylum-seekers from 39 different countries other than Burma/Myanmar, including Palestinian, Pakistani, Syrian and Sri Lankan refugees.⁵³ Thai officials call this group 'persons of concern' and Thailand has an informal understanding with

⁴⁰ Human Rights Watch, above n 37, 8.

⁴¹ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁴² Interview with Chris Lewa (Bangkok, 3 November 2013).

⁴³ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁴⁴ Human Rights Watch, above n 17, 79.

⁴⁵ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁴⁶ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁴⁷ Jason Szep and Andrew R.C. Mashall, 'Thailand secretly supplies Myanmar refugees to trafficking rings', *Reuters* (Ranong), 4 December 2013 <<http://www.reuters.com/article/2013/12/05/us-thailand-rohingya-special-report-idUSBRE9B400320131205>>; Charlie Campbell, 'Tourists Enjoy Thai Beaches Unaware of Trafficking Camps Just a Boat Ride Away', *Time* (New York City), 7 January 2014 <<http://world.time.com/2014/01/07/thailand-asked-to-end-rohingya-trafficking/#comments>>.

⁴⁸ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁴⁹ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁵⁰ Interview with Chris Lewa (Bangkok, 3 November 2013). See also Human Rights Watch, above n 37, 8.

⁵¹ Interview with Chris Lewa (Bangkok, 3 November 2013).

⁵² Absence of these in the country of origin or country of first asylum can also be thought of as push factors. Interview with Chris Lewa (Bangkok, 3 November 2013).

⁵³ See UNHCR, above n 21.

UNHCR concerning UNHCR activities on behalf of urban refugees.⁵⁴ Non-governmental organizations such as the Jesuit Refugee Service and Asylum Access Thailand provide support to the urban case-load. The biggest group is from Pakistan. Most of the non-Myanmar refugees arrive by plane and enter on a visa, and they live in urban areas, but it is difficult to renew the visa and they generally end up without a lawful immigration status as a matter of Thai law.

29. Refugees in urban areas such as Bangkok receive an asylum-seeker certificate when registered by UNHCR, and a refugee certificate if recognized as a refugee. Refugees may be arrested,⁵⁵ and UNHCR documentation does not provide much protection.⁵⁶ If arrested, refugees are held indefinitely in immigration detention centres. The Thai Committee for Refugees Foundation (TCR) has created a bail-out fund supported by Thai citizens, and bailed out 100 refugees from the immigration detention centre.⁵⁷ Apparently, there has been a sharp increase in urban refugees in Bangkok. There are now 1,000 recognized refugees and 2,000 asylum-seekers in Thailand. UNHCR does not have capacity to do refugee status determination as quickly as is desirable, with registration taking two to four months and RSD taking two years on average.⁵⁸ This is an area where countries like Australia could assist UNHCR.

Advocacy and public attitudes

30. Civil society in Thailand is currently pushing for the adoption of domestic legislation concerning refugees.⁵⁹ Ten thousand signatures are required in order to put the bill before Parliament.⁶⁰ Civil society also provides humanitarian assistance and protection to refugees in many ways. For example, the TCR runs education programmes. One of these education programmes operates along the lines of targeted development assistance – that is, aid which helps locals as well as refugees. The Thai government has a universal education policy that should enable all children regardless of migration status to enrol in Thai schools.⁶¹ According to UNHCR, '[a]dvocacy continues for the admission of refugee and asylum-seeking children to public schools. In 2013, 109 children have been enrolled in primary and secondary levels while 192 children attended non-formal education classes'.⁶² In the Tak province, which is close to the border with Myanmar, the TCR advocates for refugee camp

⁵⁴ Interview with a Thai government agency (Bangkok, 4 November 2013). See also Muntarbhorn, above n 12.

⁵⁵ Interview with Jacqueline Wydler (Bangkok, 31 October 2013).

⁵⁶ For discussion of the contexts in which arrests take place and lack of protection conferred by UNHCR documentation, see Human Rights Watch, above n 17, ch. 5.

⁵⁷ Interview with Jacqueline Wydler, Thai Committee for Refugees (Bangkok, 31 October 2013). See also 'Special Refugee Fund Bails Out Pakistanis', *Bangkok Post* 7 June 2011.

⁵⁸ See Jesuit Refugee Service Asia Pacific, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Phillipines* (JRS Asia Pacific, 2012) 33-34. See also UNHCR, 'UNHCR Global Appeal 2014-2015: Thailand' (December 2013) <<http://www.unhcr.org/528a0a330.html>> 1.

⁵⁹ Thai Committee for Refugees Foundation, *Proposing Thailand's first Refugee Bill* <<http://www.thaiforrefugees.org/proposing-thailands-first-refugee-bill/>> (copy of English translation on file with authors).

⁶⁰ Interview with Jacqueline Wydler (Bangkok, 31 October 2013).

⁶¹ See UNICEF, *Thailand Education Overview* <http://www.unicef.org/thailand/education_303.html>.

⁶² UNHCR, 'UNHCR Thailand Fact Sheet' (September 2013) <<http://www.unhcr.org/50001e019.html>> 2.

children to be able to go to local Thai schools.⁶³ The TCR supports the school with in-kind donations and volunteer English teachers.⁶⁴

31. Refugees have not been a matter of much public debate in the past, however, there is now rising debate and more information is publicly available.⁶⁵ Public attitudes towards refugees are generally tolerant.⁶⁶ Researchers at Mahidol University found that Thais have security fears with respect to refugees and migrants from Burma as well as fears about the impact on the economy, but that those with actual contact with refugees were less likely to hold these fears.⁶⁷ As is the case in many countries, many Thais do not know the distinction between refugees and other migrants. The Thai term for refugee (พ่ลี้ภัย) is usually used in the context of migrant workers.⁶⁸ When a fire in Karenni Site 2 of the Ban Mae Surin camp killed 37 people, there was a lot of support from the Thai government and the public.⁶⁹ Corinne Day of the CCSDPT described this empathy as reflecting Buddhist teachings, although she also highlighted that this support did not result in any government policy changes to prevent or minimise future fires from occurring.⁷⁰

II. Malaysia

Legal, Social and Economic Profile

32. Malaysia has hosted refugees since the 1970s, with influxes from Aceh, Bosnia and Burma following the Indochinese influx of the 1970s and 1980s.⁷¹ There is presently a continuous flow of refugees into Malaysia,⁷² and it hosts around 130,000 refugees.⁷³ The vast majority of the refugees are from Burma/Myanmar, and there are 46,999 Chin and 32,611 Rohingya, comprising over 60 per cent of the Burmese refugee population in Malaysia.⁷⁴ Malaysia perceives itself primarily a transit country.

⁶³ Interview with Jacqueline Wydler (Bangkok, 31 October 2013).

⁶⁴ Interview with Jacqueline Wydler (Bangkok, 31 October 2013). See also, Thai Committee for Refugees Foundation, *Border Education Program* <<http://www.thaiforrefugees.org/core-program/border-education-program/>>.

⁶⁵ Interview with a Thai government agency (Bangkok, 4 November 2013).

⁶⁶ Interview with Jacqueline Wydler (Bangkok, 31 October 2013).

⁶⁷ See Malee Sunpuwan and Sakkarin Niuomsilpa, 'Perception and Misperception: Thai Public Opinions on Refugees and Migrants from Myanmar' 21(1) *Journal of Population and Social Studies* (2012) 47; also Interview with Jacqueline Wydler (Bangkok, 31 October 2013).

⁶⁸ See Thai Freedom House, 'The Living Conditions of Burmese Refugees in Thailand', *Thai Freedom House News* (Chiang Mai), 11 August 2010 <<http://thaifreedomhouse.org/blog/burma-news/the-living-conditions-of-burmese-refugees-in-thailand/>>.

⁶⁹ Interview with Corinne Day (Bangkok, 5 November 2013).

⁷⁰ Interview with Corinne Day (Bangkok, 5 November 2013).

⁷¹ See Bar Council Malaysia, 'Developing a Comprehensive Framework for Refugees and Asylum-Seekers in Malaysia' (20 June 2011) 1.

⁷² Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna, Bar Council Malaysia (Kuala Lumpur, 10 November 2013).

⁷³ At the end of November 2013, there were 133,614 refugees and asylum seekers registered with UNHCR in Malaysia. See UNHCR, *Figures at a Glance* <http://www.unhcr.org/my/About_Us-@-Figures_At_A_Glance.aspx>.

⁷⁴ *Ibid.*

33. Malaysia is an upper middle income country that relies on migrant workers, including unauthorized migrant workers.⁷⁵ According to the Malaysian government, there were 2.8 million migrant workers in Malaysia at the end of August 2012, 1.5 million of whom held a temporary working visiting pass and 1.3 million of whom were irregular.⁷⁶ The refugee population is small by comparison.
34. Malaysia is not a party to the Refugee Convention or the 1967 Protocol and thus does not recognise the status of refugees or asylum-seekers. The Malaysian government has indicated that the reasons that it is not a party are 'due to the heavy financial burden it will impose upon Malaysia in providing for the refugees' upkeep such as shelter, food, education and healthcare' and 'the view that the huge presence of "refugees" or "asylum-seekers" may be a potential threat to national security'.⁷⁷ In part the perceived security issue arises because the identity of refugees may at first not be easily verified. Refugee issues have not been a huge matter of public debate. However, it is clear that there is a public concern about connections between unauthorized foreigners and crime.⁷⁸ Once Malaysia becomes a developed country, cost cannot be used as an argument and it will have to take responsibility for refugees, and Malaysia's goal is to reach that status by 2020.⁷⁹
35. While Malaysia has a visa on arrival system that permits many asylum-seekers to enter Malaysia lawfully, Malaysia has tightened this visa category over the years. In 2010, it removed visas on arrival for nationals of India and seven other countries.⁸⁰ It also moved to limit the stay of Iranians to 14 days, and in response to pressure from Australia has now done away with visa on arrival for Iranians altogether.⁸¹
36. Malaysia justifies its position by pointing out that there are states parties to the Convention that do not implement it, while Malaysia hosts refugees but does not feel the need to ratify

⁷⁵ For a critical analysis of Malaysia's reliance on low-skilled migrant labour and Malaysia's emphasis on punitive enforcement measures see Vijayakumari Kanapathy, 'Controlling Irregular Migration: the Malaysian Experience', ILO Asian Regional Programme on Governance on Labour Migration Working Paper No. 14 (ILO, Regional Office for Asia and the Pacific, July 2008).

⁷⁶ Zarina Zakariah, '2.8 million legal, illegal foreign workers in Msia', *New Straits Times* (Kuala Lumpur), 11 July 2013 <<http://www.nst.com.my/latest/2-8-million-legal-illegal-foreign-workers-in-msia-1.317515>>.

⁷⁷ Email from Lazuli Nambiar, Special Officer to YB Hajah Nancy Shukri, Minister in the Prime Minister's Department of Malaysia, to Penelope Mathew and Tristan Harley, Australian National University, Wednesday 8 January 2014.

⁷⁸ The government frequently expresses concern over links between 'illegal' immigration and crime and, for example, has authorized finger printing of arrested unauthorized migrants. Immigration Director-General Datuk Alias Ahmad justified the measure by stating that 'With the data, we hope that criminal cases involving illegal immigrants can be solved. The government views the issue of illegal immigrants seriously as they have been linked to crime, drugs, prostitution and other illicit activities which can threaten national security'. Kalavaani Karupiah and Kanyakumari Damodaran, 'Fingerprint bonanza for cops', *New Straits Times* (Kuala Lumpur), 4 September 2013 <<http://www.nst.com.my/top-news/fingerprint-bonanza-for-cops-1.348879?localLinksEnabled=false/Article>>.

⁷⁹ See Prime Minister's Office of Malaysia, *The Way Forward* <<http://www.pmo.gov.my/?menu=page&page=1904>>.

⁸⁰ 'Malaysia scraps visa-on-arrival for Indian tourists', *The Hindu* (Chennai), 3 August 2010 <<http://www.thehindu.com/news/international/malaysia-scraps-visaonarrival-for-indian-tourists/article549867.ece>>.

⁸¹ A. Azim Idris, 'Tighter border checks for Australia-bound asylum seekers', *New Straits Times* (Putrajaya), 24 October 2013 <<http://www.nst.com.my/latest/tighter-border-checks-for-australia-bound-asylum-seekers-1.384124>>.

the Convention.⁸² Malaysia does not appear to appreciate that it has legal obligations (for example, under customary international law) to shelter refugees. Rather it views providing assistance to refugees and asylum-seekers as a humanitarian act that can be done on a case by case basis with the UNHCR.⁸³ In some instances, such as the Rohingya, religion plays a role in the decision to tolerate the presence of refugees. However, as there have been clashes between Buddhist and Muslim Burmese in Malaysia,⁸⁴ the Bar Council Malaysia Migrants, Refugees and Immigration Affairs Committee expressed concern over advocacy for asylum based on religion.⁸⁵

37. As Malaysia is not a party to the Refugee Convention or Protocol, the UNHCR offers a limited form of protection under its mandate. UNHCR conducts refugee status determination and offers a wide range of assistance to allow basic self-reliance of refugees in the absence of any State-provided support. UNHCR certificates do not result in a formal, legal status conferred by the Malaysian government. Malaysian authorities do not use the term refugee, but 'UNHCR cardholders in Malaysia'. UNHCR issues an asylum-seeker card on registration of an individual case and, once full RSD is completed – a process that can take up to 2 years - issues a refugee card for people determined to be refugees.⁸⁶ The UNHCR documentation gives refugees and asylum-seekers some protection from detention, and from judicial caning which is a sentence that could in theory be ordered against a refugee or asylum-seeker who does not have a lawful migration status in Malaysia.⁸⁷ The Malaysian government also allows UNHCR cardholders freedom of movement in Malaysia,⁸⁸ albeit restrictive in nature and cardholders are constantly subjected to spot checks and arbitrary detention for verification purposes.⁸⁹

Refugees in Malaysia

38. Refugees in Malaysia are not able to exercise many positive rights. For example, they cannot work in the formal sector. It is apparent that work rights are viewed as a step to permanent residence, although it is also apparent that some Malaysian officials would be willing to

⁸² Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

⁸³ Email from Lazuli Nambiar, Special Officer to YB Hajah Nancy Shukri, Minister in the Prime Minister's Department of Malaysia, to Penelope Mathew and Tristan Harley, Australian National University, Wednesday 8 January 2014.

⁸⁴ 'Myanmar clashes spill into Malaysia', *The Nation* (Bangkok), 5 June 2013

<<http://www.nationmultimedia.com/aec/Myanmar-clashes-spill-into-Malaysia-30207655.html>>.

⁸⁵ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

⁸⁶ The government wants to upgrade the card so as to prevent forgery and to permit satellite tracking: BERNAMA, 'UNHCR card in Malaysia will be upgraded - Ahmad Zahid', *New Straits Times* (Kuala Lumpur), 11 July 2013 <<http://www.nst.com.my/latest/unhcr-card-in-malaysia-will-be-upgraded-ahmad-zahid-1.317568#ixzz2pHwMPPDB>>.

⁸⁷ The law regarding caning is still in place, and there is anecdotal evidence that it is still implemented, particularly in rural areas. However, the government has also raised the issue as something that may be amended in the future. See

<http://www.malaysianbar.org.my/legal/general_news/time_to_modernise_archaic_laws_says_nazri.html>.

⁸⁸ Email from Lazuli Nambiar, Special Officer to YB Hajah Nancy Shukri, Minister in the Prime Minister's Department of Malaysia, to Penelope Mathew and Tristan Harley, Australian National University, Wednesday 8 January 2014.

⁸⁹ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

permit refugees to work.⁹⁰ Many refugees work in the informal sector, which renders them vulnerable to exploitation because they have no protection under the Employment Act 1955 or in terms of non-payment of wages or social security/insurance, or from detention.⁹¹ There have been reports of refugees securing their release from detention by bribing immigration officials.⁹² There appears to be widespread public indifference to this kind of corruption.⁹³ The former Director-General of the Department of Immigration was convicted for issuing 4,307 work permits to Bangladeshis.⁹⁴

39. Refugee children are unable to attend public schools in Malaysia,⁹⁵ and have to rely on informal education programmes run by the community sector. Refugees also have problems securing medical treatment. While Malaysians pay a nominal sum for medical treatment of five ringgit, foreigners pay a few hundred per cent more than that, while refugees receive a fifty per cent discount of the foreigners' rate.⁹⁶ This is still very expensive, and it is not appropriate to compare refugees with other foreigners who may be able to return home to receive treatment at lesser expense. The appropriate comparator for refugees is citizens or other permanent residents.⁹⁷ Pressures such as lack of health care have in cases known to civil society resulted in asylum-seekers resorting to people smugglers.
40. One exceptional category of refugees is the Filipinos from Mindanao who settled in Sabah.⁹⁸ This appears to have been a deliberate policy on the part of the Malaysian state to alter the demography of Sabah for political reasons. A Royal Commission of Inquiry on Illegal Immigrants is due to report soon on the issue of identification given to foreigners in Sabah.
41. UNHCR now has fifteen refugee status determination officers in Malaysia, but there is still a waiting period of around a year for registration. Malaysia is the one of the largest resettlement hubs in the world, with 15,813 submissions from UNHCR for resettlement and

⁹⁰ For example, concerning Myanmar traders at the wholesale markets, Home Minister Datuk Seri Dr Ahmad Zahid Hamidi reportedly said that '[n]inety per cent of the workforce at the markets consist of Myanmars whose services are badly needed because locals do not want to do this type of work. Not all of them have valid UNHCR cards. Most do not have any identity documents. My ministry is coordinating with UNHCR on this matter. If they qualify as refugees, we will get the Immigration Department to issue them work permits.' See BERNAMA, above n 86.

⁹¹ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013). See also Bar Council Malaysia, above n 71.

⁹² See Jesuit Refugee Service Asia Pacific, above n 58, 13.

⁹³ Tunku Abdul Aziz, 'Corruption at the heart of many ills', *New Straits Times* (Kuala Lumpur), 14 September 2013 <<http://www.nst.com.my/opinion/columnist/corruption-at-the-heart-of-many-ills-1.355423>>.

⁹⁴ Hidir Reduan, 'Ex-Immigration DG jailed 6-years, fined for corruption', *New Straits Times* (Kuala Lumpur), 30 October 2013 <<http://www.nst.com.my/latest/ex-immigration-dg-jailed-6-years-fined-for-corruption-1.388231>>.

⁹⁵ According to the Bar Council Malaysia, the lack of government documentation means that refugee and asylum seeker children cannot access any national education programmes: Bar Council Malaysia, above n 71, 4.

⁹⁶ Email from Lazuli Nambiar, Special Officer to YB Hajah Nancy Shukri, Minister in the Prime Minister's Department of Malaysia, to Penelope Mathew and Tristan Harley, Australian National University, Wednesday 8 January 2014. Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013). For details of the impact on refugees, see Bar Council Malaysia, above n 71, 3 – 4.

⁹⁷ See the analysis of the minority in *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others* (CCT 39/06 [2006] ZACC 23, 2007 (4) BCLR 339 (CC) and commentary in Penelope Mathew, *Reworking the Relationship between Asylum and Employment* (Routledge, 2012), 173 – 174, 176 – 177. The Bar Council Malaysia has recommended that refugees and asylum seekers pay the same rates for health services as Malaysian citizens: Bar Council Malaysia, above n 71, 12.

⁹⁸ Bar Council Malaysia, above n 71, 1.

10,489 actual departures in 2013.⁹⁹ Some might view resettlement as a pull factor as a consequence. If local integration was offered as a solution in addition to resettlement, however, resettlement might not act as a pull factor.

42. In 2011, Malaysia signed an MOU with Australia under which 800 unauthorized boat arrivals to Australia would be sent to Malaysia in exchange for Australia receiving 4000 UNHCR-recognized refugees. The deal was to cost the Australian government \$300 million dollars.¹⁰⁰ The arrangement was expressly non-binding, probably at Malaysia's insistence. This arrangement followed the development of the RCF under the Bali Process. The swapping element was perceived to act as a deterrent to people smugglers seeking to take asylum-seekers onward to Australia. Civil society organizations and the Malaysian Bar Council were sceptical of the Malaysian government's capacity to provide the protection agreed to under the MOU.¹⁰¹

III. Indonesia

Legal, Social and Economic Profile

43. Indonesia is a co-chair of the Bali Process and recently initiated a meeting of 13 of the Bali Process countries, resulting in the Jakarta Declaration.¹⁰² It has an impressive record concerning ratification of the core UN human rights treaties, but it is not a party to the Refugee Convention or Protocol. Reasons for non-ratification are the fear of a pull factor,¹⁰³ as well as a perception of refugees as a burden on the economy, a possible cause of conflict with locals and a national security issue.¹⁰⁴ The security question arises because of a perceived connection with the drug trade, even though the drug trade appears not to involve refugees and asylum-seekers, and due to the perception that some asylum seekers have acted as armed combatants in foreign conflicts and may pose security challenges to the Indonesian government.¹⁰⁵ In the case of the Rohingya, there are concerns regarding radicalisation, both of Rohingya and other Muslims.¹⁰⁶ Like other ASEAN countries, Indonesia does not perceive itself as a country of immigration and in fact it is a source of migrant

⁹⁹ UNHCR, 'UNHCR Global Resettlement Statistical Report' (2012) 4.

¹⁰⁰ Ben Packham, 'Australia pays but Malaysia has final say on which asylum-seekers it accepts under swap deal', *The Australian* (Sydney), 25 July 2011 <<http://www.theaustralian.com.au/national-affairs/chris-bowen-backs-down-on-boatpeople-pledge-as-malaysia-deal-is-signed/story-fn59niix-1226101418127>>.

¹⁰¹ See, for example, Lim Chee Wee, 'Asylum seekers and refugees are not commodities to be traded', *The Malaysian Bar Press Release* (Kuala Lumpur), 9 May 2011 <http://www.malaysianbar.org.my/press_statements/asylum_seekers_and_refugees_are_not_commodities_to_be_traded.html>.

¹⁰² *Jakarta Declaration on Addressing Irregular Movement of Persons*, Jakarta, 20 August 2013.

¹⁰³ Interview with Roichatul Aswidah, Komnas HAM (Jakarta, 12 November 2013).

¹⁰⁴ Interview with Febi Yonesta, LBH Jakarta (Jakarta, 12 November 2013); Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

¹⁰⁵ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹⁰⁶ For analysis, see Eliane Coates, 'Myanmar's religious violence a threat to Southeast Asia's security', *East Asia Forum* (Canberra), 4 July 2013 <<http://www.eastasiaforum.org/2013/07/04/myanmars-religious-violence-a-threat-to-southeast-asias-security/>>.

labour.¹⁰⁷ Indonesia is a lower middle income country and many Indonesians live on less than \$2.00 a day.

44. However, the issue of ratification of the Refugee Convention and Protocol is on Indonesia's agenda. In its last two National Human Rights Action Plans, Indonesia indicated that it would ratify the Convention and Protocol.¹⁰⁸ It also pledged to do so when it was elected as a member of the United Nations Human Rights Council. Indonesia's constitution also enshrines the right to seek asylum, although this provision clearly does not impact on the rights of the many persons seeking refugee status in Indonesia. A bill for the parliamentary ratification of the Convention and Protocol has been drafted. The process for parliamentary ratification will be difficult however, as every agency will have to agree and the bill must go through the parliamentary process. The legislative agenda is currently very full and elections are due on 9 April 2014.
45. Indonesia recognized the principle of non-refoulement in a 2002 Immigration Directive¹⁰⁹ and accords UNHCR documentation some recognition, allowing them temporary stay in Indonesia under a 2010 Immigration Directive.¹¹⁰ There is also a draft Presidential decree that may implement parts of the Refugee Convention/Protocol,¹¹¹ but there are concerns that government may not move forward with this legislation or that the legislation may not adhere to some of the core principles stipulated in the Refugee Convention/Protocol.¹¹² Under a 2011 Immigration Directive, the government makes no mention of refugees or asylum seekers, and instead focusses on victims of people smuggling.¹¹³ This Directive also allows the government to detain any illegal immigrant for up to ten years without trial.¹¹⁴

Refugees in Indonesia

46. According to UNHCR, in the last five years, Indonesia has experienced an 18-fold increase in the number of refugee and asylum-claimants seeking protection through UNHCR in Indonesia.¹¹⁵ Indonesia presently hosts 11,132 refugees and asylum-seekers.¹¹⁶ While Indonesia has traditionally been tolerant of refugees in its country, refugees have become a topic of more attention recently. This is evidenced by the fact that the coordinating minister for political, legal and security affairs, Mr Djoko Suyanto, is now responsible for the issue.
47. Of the 11,132 refugees and asylum-seekers currently in Indonesia, 2,260 have been recognized as refugees by UNHCR.¹¹⁷ The main countries of origin include Afghanistan,

¹⁰⁷ According to the ILO, around 700,000 documented Indonesian migrant workers leave Indonesia to work abroad each year and in 2012, there were an estimated 4.3 million Indonesians working abroad. ILO Indonesia, 'Better protecting Indonesian migrant workers through bilateral and multilateral agreements', *ILO News* (Jakarta), 8 May 2013 <http://www.ilo.org/jakarta/info/public/pr/WCMS_212738/lang--en/index.htm>.

¹⁰⁸ See Jesuit Refugee Service Asia Pacific, above n 58, 25.

¹⁰⁹ *Directive from the Director General of Immigration No: F-IL.01.10-1297 Re: Procedures Regarding Aliens Expressing Their Desire to Seek Asylum or Refugee Status*, Jakarta, 30 September 2002.

¹¹⁰ The Directive is discussed in Jesuit Refugee Service Asia Pacific, above n 58, 17.

¹¹¹ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹¹² Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹¹³ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹¹⁴ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹¹⁵ UNHCR, 'Playing the waiting game in Indonesia', *UNHCR News* (Jakarta), 30 October 2013 <<http://www.unhcr.org/527113036.html>>.

¹¹⁶ See UNHCR, 'UNHCR Indonesia Fact Sheet' (September 2013) <<http://www.unhcr.org/50001bda9.html>>.

¹¹⁷ *Ibid* 1.

Burma/Myanmar, Iran, Sri Lanka, and Syria. Afghanistan and Burma/Myanmar are protracted refugee situations, helping to demonstrate that the increase in the refugee population in Indonesia is due in part to push factors.

48. In recent months, UNHCR indicates that there has been a substantial decrease in the no-show rates for first instance interviews with UNHCR.¹¹⁸ UNHCR suggests that asylum-seekers are increasingly deciding to remain in Indonesia to undergo UNHCR RSD procedures due to the recent policy shift by the Australian government to transfer people arriving by boat to Nauru and Papua New Guinea.¹¹⁹
49. There are 14 detention centres, in which asylum-seekers may be detained – for example, upon trying to enter Indonesia or if trying to leave on a boat, as well as a number of other rooms located in places such as immigration offices.¹²⁰ There are about 1700 people in detention.¹²¹ Women, children and other vulnerable groups are frequently detained, often for long periods of time.¹²² IOM provides detention services, such as food, health check-ups and counselling, with funding from Australia.¹²³
50. Recently, a standard operating procedure was adopted that requires detention centres to document more thoroughly who has been arrested and why. There is no bail process, however, UNHCR secures release from detention for families and unaccompanied minors by submitting a letter and it attempts to accelerate RSD in these cases.¹²⁴ Men without families will remain in detention until recognized as refugees.¹²⁵ The 2010 Immigration Directive provides for the release of persons from detention if they are under the care of an international organization. The relevant organization is the IOM.¹²⁶ Bribery is another means to secure release from detention.¹²⁷ However, there are also delays in securing release from detention as there is a gap in terms of the numbers of persons in detention and the capacity of IOM to accommodate them.¹²⁸
51. Apparently, there has been an increase in the numbers of detainees recently. This is highly problematic because the detention centres are frequently overcrowded and those in charge of the detention centres are not adequately equipped to care for refugees and asylum-seekers.¹²⁹ Indonesia's National Human Rights Commission, Komnas HAM, has begun monitoring the conditions in immigration detention. It has limited access, however, and, in practice, can only conduct announced visits.¹³⁰ An MOU with the Indonesian ombudsman

¹¹⁸ Ibid 2.

¹¹⁹ Ibid.

¹²⁰ See Amy Nethery, Brynna Rafferty-Brown and Savitri Taylor, 'Exporting detention: Australia-funded immigration detention in Indonesia' (2013) 26(1) *Journal of Refugee Studies* 88.

¹²¹ UNHCR, above n 116, 2.

¹²² See, for example, Human Rights Watch, 'Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia' (Human Rights Watch, June 2013).

¹²³ Nethery, Rafferty-Brown and Taylor, above n 120, 102.

¹²⁴ See UNHCR, above n 116, 2.

¹²⁵ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹²⁶ Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

¹²⁷ Interview with Febi Yonesta (Jakarta, 12 November 2013). See also Antje Missbach and Frieda Sinanu, 'Life and death in immigration detention', *Inside Indonesia* (Melbourne), July/September 2013 <<http://www.insideindonesia.org/current-edition/life-and-death-in-immigration-detention>>.

¹²⁸ Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

¹²⁹ Interview with Roichatul Aswidah (Jakarta, 12 November 2013). See also the description of the case involving Taqi Nekoyee who died in the Pontianak Immigration Detention Centre, in Missbach, above n 127.

¹³⁰ Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

permits that institution to access the detention centres. Indonesia is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but it is not party to the Optional Protocol which establishes a procedure for visits by the Subcommittee on Prevention of Torture to the detention centres.

52. Generally, refugees and asylum-seekers live in the community. IOM provides community housing, and refugees and those asylum-seekers in IOM community housing receive an allowance of 1,250,000 rupiah per month (about AUD \$115).¹³¹ A member of Komnas HAM reported on the difficulty they have in communicating with refugees in IOM community housing.
53. In West Java, many refugees and asylum-seekers live in Cisarua. Recently, there have been some tensions between locals in Cisarua and refugees and IOM had to move its operations from Cisarua to Jakarta.¹³² Despite this, there is some anecdotal evidence that many locals are friendly with refugees and feel there is an economic benefit that flows from having refugees in the community. The Jesuit Refugee Service works with asylum-seekers in Cisarua, providing assistance to the most vulnerable, including housing, a food allowance and health care.¹³³
54. The majority of refugees are single males. One source of tension has been relationships between young male refugees and young local women resulting in unplanned pregnancies and difficulties in obtaining birth certificates.¹³⁴ Another source of tension is the allowance which refugees receive. This is viewed as a problem because they do not work,¹³⁵ because they are not permitted to do so. Projects which aim to benefit both local communities and refugees in this area, such as employment and training programmes, microcredit opportunities, and quick impact projects, may alleviate some of the tensions between these groups.
55. UNHCR conducts refugee status determination in Indonesia. The UNHCR card gives some protection – for example, it protects against arrest on the street. However, there is often a delay in securing a UNHCR card. Asylum-seekers may arrive in Indonesia lawfully through a 30-day visa exemption, but they cannot then apply for a visa whilst in Indonesia, meaning that there will often be a period when they have no protection from arrest and detention. SUAKA provides some legal assistance to refugees and asylum-seekers, including with RSD. SUAKA, which means shelter or asylum, is a network of organizations. Members include LBH Jakarta (the Legal Aid Foundation Jakarta), the Indonesian Legal Aid Foundation and the Human Rights Working Group. UNHCR permits SUAKA lawyers to attend the interviews with UNHCR, unlike the situation in Thailand and Malaysia.
56. As with the other two countries visited during this field work, Indonesia does not permit refugees or asylum-seekers to work legally. Indonesia is a ‘sending’ country for migrant workers. Unlike Thailand or Malaysia, where it is clear there is strong labour demand, including for foreign workers, it may be that Indonesia would have difficulty fulfilling the

¹³¹ Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

¹³² Michael Bachelard, 'Unrest Grows over Asylum Seekers', *Sydney Morning Herald* (Sydney), 13 July 2013 <<http://www.smh.com.au/world/unrest-grows-over-large-asylum-seeker-numbers-20130712-2pvkj.html>>.

¹³³ Jesuit Refugee Service Indonesia, 'Refuge' (March 2012) <<https://jrsap.org/Assets/Publications/File/Refuge-Maret-2012-new-Engl.pdf>> 2.

¹³⁴ Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

¹³⁵ Interview with Roichatul Aswidah (Jakarta, 12 November 2013).

right to work for refugees and asylum-seekers in a context where it is difficult for Indonesian citizens to attain work. On the other hand, it was pointed out in interviews that some refugees, doctors for instance, have skills that may be needed in Indonesia. It was also argued that refugees should be able to establish businesses informally, given the fact that most of Indonesia's labour occurs in the informal market.¹³⁶ The lack of opportunities may operate as a push factor for onward movement.¹³⁷ Furthermore, deskilling or extended periods in detention may make it more difficult for refugees to integrate when offered a durable solution, whether that is resettlement or repatriation to their home countries.¹³⁸ Febi Yonesta recommends that educational programmes need to focus not only on formal curricula for children, but also vocational and language skills training for adult refugees.¹³⁹

57. Resettlement from Indonesia has increased in recent years and UNHCR now has the capacity to make 1300 referrals. A member of Komnas HAM indicated that resettlement was difficult for Rohingya because of their lack of skills and language difficulties.¹⁴⁰ This indicates a need for resettlement countries not to unduly overlay resettlement needs, which should primarily be based on protection, with perceived integration potential.
58. At the time of our visit, an advisor to the Indonesian government stated in the press that the Australian and Indonesian government were presently discussing a swap arrangement along the lines of the Malaysia swap, but this was denied by the Australian government.¹⁴¹

IV. Australia

59. Australia is a party to the Refugee Convention and its Protocol. It is a co-chair of the Bali Process and it provides a great deal of the funding for the RSO. It has a relatively generous resettlement policy and offers excellent settlement services to resettled refugees, as should be the case for a developed country. However, Australia has maintained a mandatory detention policy with respect to unauthorized boat arrivals for over twenty years, and in recent years, its policies towards unauthorized boat arrivals have focussed heavily on deterrence, including offshore detention centres on Nauru and Papua New Guinea; bridging visas without work rights for asylum-seekers and cuts to legal aid for boat arrivals; and the recent return of boats to Indonesia.¹⁴²
60. Each of these policies involves actual or potential violation of Australia's international legal obligations. The UN Human Rights Committee has found Australia's policy of mandatory and prolonged detention to be a violation of Article 9 of the International Covenant on Civil and

¹³⁶ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹³⁷ See Savitri Taylor and Brynna Rafferty-Brown, 'Waiting for Life to Begin: the Plight of Asylum Seekers Caught by Australia's Indonesian Solution' (2010) 22(4) *International Journal of Refugee Law* 558.

¹³⁸ See *Michigan Guidelines on the Right to Work*, 31 *Michigan Journal of International Law* (2010) 293, [20].

¹³⁹ Interview with Febi Yonesta (Jakarta, 12 November 2013).

¹⁴⁰ Interview with Roichatul Aswidah, Komnas HAM (Jakarta, 12 November 2013).

¹⁴¹ 'Australia says no Indonesia refugee swap deal', Channel News Asia, 12 November 2013:

<http://www.channelnewsasia.com/news/asiapacific/australia-says-no/883700.html>

¹⁴² See Brendan Nicholson, 'Navy now 'towing' back the boats', *The Australian* (Sydney), 9 January 2014 <<http://www.theaustralian.com.au/national-affairs/policy/navy-now-towing-back-the-boats/story-fn9hm1gu-1226797698285#>>; 'Australia navy drives boat people into Indonesian waters', *The Jakarta Post* (Jakarta), 6 January 2014 <<http://www.thejakartapost.com/news/2014/01/06/australia-navy-drives-boat-people-indonesian-waters.html>>.

Political Rights.¹⁴³ While the Australian government's position appears to be that Australia is not responsible for offshore detention, this position has been contested by UNHCR and by the Australian Parliamentary Joint Committee on Human Rights.¹⁴⁴

61. Asylum-seekers on bridging visas without work rights are entitled only to 89 per cent of the lowest welfare entitlement due to citizens and consequently they may end up destitute, which would violate the prohibition on inhuman and/or degrading treatment,¹⁴⁵ among other rights.
62. The policy of towing back or escorting back boats would appear to violate the principle of flag state jurisdiction once the Australian vessel moves beyond Australia's contiguous zone, and it has been revealed that Australian vessels have in fact inadvertently trespassed into Indonesian territorial waters.¹⁴⁶ The policy may also endanger safety of life at sea and Australia should not be relying on Indonesia to accept back asylum-seekers when Indonesia is not party to the Refugee Convention and is not cooperating with the policy.¹⁴⁷
63. The current government has militarized and securitized the issue of boat arrivals.¹⁴⁸ This was perceived as a concern by some participants in the research, given that governments in the region have always held security concerns over refugees. Australia's stance may encourage an approach that neglects refugee protection and undermines regional cooperation. There is also a clear concern among governments in the region that Australia's policies could lead to more people being stranded in countries of first asylum.¹⁴⁹

¹⁴³ Human Rights Committee, *Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights: Communication No 560/1993*, 59th sess, UN Doc CCPR/C/59/D/560/1993 (30 April 1997) ('*A v Australia*').

¹⁴⁴ Parliamentary Joint Committee on Human Rights, 'Examination of legislation in accordance with the Human rights (Parliamentary Scrutiny) Act 2011: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation' (June 2013) 30 – 35; UNHCR, 'Mission to the Republic of Nauru' (3-5 December 2012) <http://unhcr.org.au/unhcr/images/Amended%20footnote%202012-12-14%20nauru%20monitoring%20report%20final_2.pdf>.

¹⁴⁵ *R (Adam, Limbuela, Tesema) v Secretary of State for the Home Department* [2006] 1 AC 396.

¹⁴⁶ George Roberts, 'Australian border protection vessels 'breached Indonesian territorial sovereignty'', Scott Morrison', *ABC News* (Sydney), 17 January 2014 <<http://www.abc.net.au/news/2014-01-17/australia-breached-indonesian-territorial-sovereignty-morrison/5204746>>.

¹⁴⁷ See UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* (UNHCR, 2013); also Michelle Foster, 'Protection elsewhere: The legal implications of requiring refugees to seek protection in another state' (2007) 28 *Michigan Journal of International Law* 223.

¹⁴⁸ See Liberal Party of Australia and The Nationals, 'The Coalition's *Operation Sovereign Borders* Policy' (July 2013) <<http://www.nationals.org.au/Portals/0/2013/policy/The%20Coalition%E2%80%99s%20Operation%20Sovereign%20Borders%20Policy.pdf>>. See also Jane McAdam, 'Australia and Asylum Seekers' (2013) 25(3) *International Journal of Refugee Law* 435, 440. Prime Minister Abbott has even characterized the situation as a war.

¹⁴⁹ Interview with a Thai government agency (Bangkok, 4 November 2013).

5. Durable Solutions, Responsibility Sharing and Cooperation

Durable Solutions

64. In Thailand, Malaysia and Indonesia, there is a severe lack of durable solutions available to refugees that allow them to move on with their lives. As the three countries under study are not party to the Refugee Convention and Protocol, it appears that they would generally be interested in responsibility sharing and cooperation through resettlement as well as diplomatic efforts to resolve the situations in countries of origins that result in refugee flows. Thai officials expressed the view that Australia had been generous with resettlement opportunities for particular groups, particularly the Burmese refugees in the 'temporary shelters'.¹⁵⁰ However, more resettlement could be offered for other case-loads.
65. Voluntary repatriation may become an option for Myanmar/Burma in the near future.¹⁵¹ Both government and non-government sources expressed the view that Burma should be persuaded to improve the situation for minorities within the country and that ASEAN provides a forum in which that could occur.¹⁵² Many other countries are not ready for return.
66. Local integration was suggested as a durable solution by civil society organizations and the Bar Council Malaysia Migrants, Refugees and Immigration Affairs Committee.¹⁵³ Australia could consider discussing with Indonesia ways in which Australia could provide support in order for Indonesia to become a party to the Convention, given that the question of ratification is currently on Indonesia's agenda.
67. Given the reluctance to offer local integration to refugees, labour migration has been suggested as a fourth durable solution that could assist states with labour shortages and provide at least a means for self-sufficiency and a formal status for refugees that would eliminate some kinds of exploitation.¹⁵⁴ Thai officials stated that it was desirable to have a migrant labour system that operated on a system of temporary contract workers, and therefore it was not possible to mix the refugee cohort with migrant labourers.¹⁵⁵ Presently in Thailand, it is not possible to transition from a refugee/asylum-seeker to authorized migrant worker because a visa must be granted prior to entry.¹⁵⁶
68. Yet, the German experience with 'guest workers' suggests that a strictly temporary system is not workable.¹⁵⁷ As Stephen Castles has highlighted, the belief that temporary migration does not lead to long-term settlement is essentially a myth.¹⁵⁸ Moreover, as ASEAN is

¹⁵⁰ Interview with a Thai government agency (Bangkok, 4 November 2013).

¹⁵¹ UNHCR, 'Bureau for Asia and the Pacific Regional Update' (September 2013)

<<http://www.unhcr.org/5000139a9.pdf>> 1. See also 'Taking the pulse on Burmese repatriation', *Irin News* (Bangkok), 25 July 2013 <<http://www.irinnews.org/report/98471/taking-the-pulse-on-burmese-repatriation>>.

¹⁵² For example, Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

¹⁵³ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

¹⁵⁴ Katy Long, 'Extending protection? Labour migration and durable solutions for refugees' (2009) 176 *New Issues in Refugee Research*.

¹⁵⁵ Interview with a Thai government agency (Bangkok, 4 November 2013).

¹⁵⁶ Interview with Corinne Day (Bangkok, 5 November 2013).

¹⁵⁷ Stephen Castles, 'New migrations in the Asia-Pacific region: a force for social and political change' (1998) 50(156) *International Social Science Journal* 215, 225.

¹⁵⁸ *Ibid* 221.

moving towards increased labour mobility in 2015,¹⁵⁹ there may be increasing momentum among states to consider allowing work rights for refugees in the region.

69. Providing both refugees and asylum-seekers with 'the right to gain a living by work freely chosen or accepted', as has been recommended in the Michigan Guidelines on the Right to Work, would not only enhance the protection of refugees in the region, but would also greatly minimise the need for refugees to move onwards in an irregular way in search of protection.¹⁶⁰ Many refugees in the region are currently forced to work illegally without any labour protection. They survive on money that is sent to them by family members, rely on limited social services provided by NGOs, and/or live in destitute conditions in the host country.¹⁶¹ For many refugees, these conditions may leave them no choice but to leave the country of first asylum and move onwards in search of adequate protection for themselves and their families.
70. More funding for UNHCR refugee status determination could improve the quality and speed of RSD. Refugees should be permitted to have their lawyers with them during RSD. As the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, stated, '[I]legal aid is an essential component of a fair and efficient justice system founded on the rule of law. It is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy'.¹⁶² While UNHCR in Indonesia permits lawyers to be present during RSD, UNHCR in Malaysia and Thailand do not.

Regional Cooperation and Responsibility Sharing

71. Our fieldwork suggests that governments in the region are dismayed by the current turn in Australian policy. Officials suggested that Australia's policies may impact the region by bottling up refugees in countries of first asylum. The bilateralism or unilateralism in which Australia is engaged is undermining regional cooperation on issues such as the question of how to deal with rescues at sea. This was most clearly demonstrated by Indonesia's recent refusal to accept a boat of asylum-seekers that had been rescued or intercepted by Australia. It was apparent that the Indonesian government thought that Australia had pushed the boat closer to Indonesia, meaning that this was really an interception masquerading as a rescue,¹⁶³ and that Australia is better placed both to conduct the search and rescue and to offer a durable solution to asylum-seekers on board the boat.

¹⁵⁹ See Association of Southeast Asian Nations, 'ASEAN Economic Community Blueprint' (2008) <<http://www.asean.org/archive/5187-10.pdf>> 15-16.

¹⁶⁰ 'The Michigan Guidelines on the Right to Work (Fifth Colloquium on Challenges in International Refugee Law)' (2010) 31(2) *Michigan Journal of International Law* 293. These guidelines were adopted by a group of academics expert in the field of refugee law, human rights and labour law, together with senior Michigan law students.

¹⁶¹ See Jesuit Refugee Service Asia Pacific, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Phillipines* (JRS Asia Pacific, 2012) 57.

¹⁶² *Report of the UN Special Rapporteur of the Commission of Human Rights on the independence of judges and lawyers, Gabriela Knaul*, UN GAOR, 23rd sess, Agenda item 3, UN Doc A/HRC/23/43 (15 March 2013) [20].

¹⁶³ See Peter Alford, 'Asylum Brawl Flares as Asylum Boat gets into Trouble', *The Australian* (Sydney), 14 November 2013 <<http://www.theaustralian.com.au/national-affairs/policy/asylum-brawl-flares-as-another-boat-gets-into-trouble/story-fn9hm1gu-1226759379890#>>.

72. While the Southeast Asian region has historically participated in one of the largest regional sharing arrangements for refugees — the Comprehensive Plan of Action for Indochinese Refugees (CPA) — states tend to view the CPA as a unique historical event that took place in significantly different circumstances from the situation today. States have indicated that there is not the same kind of political will for regional cooperation as there was during the 1970s and 1980s. This is largely because, as one official suggested, the number of refugee arrivals are much smaller, the impact of these arrivals on states is significantly less, and states are no longer being impacted in similar ways as they were before.¹⁶⁴ In addition, the root causes behind the refugee movements are now more complex and diversified.¹⁶⁵
73. However, despite this change in circumstances, some of the legacies of the CPA still remain intact in the Southeast region. In particular, states continue to argue that it is not their responsibility to offer local integration to refugees. Furthermore, they continue to implement ad hoc policies which essentially warehouse refugees until they are resettled elsewhere. This is despite significant economic advances in these countries of first asylum.
74. Even the significant maritime arrivals issue, which although it is not on the scale of the Indo-Chinese boat crisis, has not yet galvanized momentum for a regional solution. Thai officials said that they were concerned about what would happen to asylum-seekers post-disembarkation. In other words, would people disembarked after rescue at sea automatically become the responsibility of countries of first asylum under any regional arrangement?
75. Meanwhile, civil society is sceptical of the Bali Process RCF because the process is viewed as being driven by Australia and to be focussed on deterrence of boat arrivals rather than protection of victims of smuggling.¹⁶⁶ Various alternative ways of sharing responsibility that focus on civil society were suggested. Funding for civil society organizations, for example to assist asylum-seekers with the refugee status determination process is an option that could improve the quality and speed of refugee status determination by UNHCR.¹⁶⁷ Funding for advocacy would also be welcome,¹⁶⁸ although governments might see this as overly interventionist. It was also suggested that Australia and other donor countries could fund educational and vocational programmes while refugees are awaiting resettlement in order to effect a smoother resettlement process at the end of the day.¹⁶⁹

¹⁶⁴ Interview with a Thai government agency (Bangkok, 4 November 2013).

¹⁶⁵ Interview with a Thai government agency (Bangkok, 4 November 2013).

¹⁶⁶ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

¹⁶⁷ The Bar Council Malaysia has already begun working in this area in Malaysia. See Bar Council Malaysia, '2012/2013 Subcommittee on Migrants, Refugees and Immigration Affairs Interim Report' (24 December 2012) <http://www.malaysianbar.org.my/subcommittee_on_migrants_refugees_immigration_a/2012/2013_subcommittee_on_migrants_refugees_and_immigration_affairs_interim_report.html>.

¹⁶⁸ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013).

¹⁶⁹ Interview with Dato M. Ramachelvam and Sumitha Shaanthinni Kishna (Kuala Lumpur, 10 November 2013). Interview with Febi Yonesta (Jakarta, 12 November 2013).

6. Recommendations

76. In light of the information gathered in the process of our field work and informed by our previous academic work, we make the following recommendations for consideration, particularly by governments in the region, including the Australian government:

Short term

1. Host countries should offer refugees skills training programmes that prepare refugees for either resettlement to another country, voluntary return to their country of origin or local integration in the host country. These programmes should be funded by donor and resettlement countries.
2. Host countries should grant refugees the right to work in countries of first asylum and establish employment programmes for refugees in areas and industries where there is high demand.
3. Donor states should fund the expansion of UNHCR offices in Thailand, Malaysia and Indonesia, with the particular aim of improving both speed and fairness of RSD procedures.
4. UNHCR should ensure that its refugee status determination process adheres to its own Procedural Standards.¹⁷⁰ In particular, UNHCR should ensure that refugee applicants are allowed to have legal representation during their RSD interviews, and receive specific, and individualized reasons for rejection.¹⁷¹
5. States, in collaboration with UNHCR, should provide refugees and registered asylum-seekers with high-quality identity documents which allow for easy verification amongst government agencies. These documents should be designed in a way that minimises fraudulent reproduction. Documents which are used to confirm a refugee's entitlement to work should avoid identifying the person as a refugee, as it may discourage the employer from hiring the refugee.¹⁷² Identity documents should also be compatible with national databases related to the access of social services, in order to ensure that refugees and asylum-seekers are not denied access due to administrative issues.
6. Host states should allow refugees to access health care services at the same costs as nationals. If states can present evidence that they do not have the economic capacity to provide health care to refugees and citizens on a non-discriminatory basis, then donor states should financially assist.
7. Host states should allow refugee and asylum-seeker children to attend local schools. Education should be free and mandatory.
8. States should preference integrating refugees into existing community assistance programmes instead of developing parallel programmes for refugees, where possible. In communities where there are substantial numbers of refugees and there are shortages in assistance programmes, new projects should aim to assist both refugees and local nationals at the same time. This type of assistance minimises discrimination and tension between

¹⁷⁰ UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* (UNHCR, 2005).

¹⁷¹ See António Guterres, 'Re: Fairness in UNHCR RSD Procedures: Open Letter' (2007) 19(1) *International Journal of Refugee Law* 161, 162.

¹⁷² Michigan Guidelines on the Right to Work, above n 160, 303.

refugees and host communities and fosters positive relationships between the two groups. Such projects may include work and education programmes, quick impact projects and microcredit financing programmes.

9. States should develop alternatives to immigration detention for asylum-seekers and refugees, so that asylum-seekers and refugees are only detained as a last resort and only in exceptional cases.¹⁷³ Donor states such as Australia should dedicate funding programmes towards fulfilling the rights of asylum seekers in countries of first asylum, rather than sponsoring immigration detention facilities.¹⁷⁴
10. States and regional organizations such as the Bali Process should continue to expand their research and mapping of mixed migration movements in the region. In particular, there is a need to examine more thoroughly why refugees decide to move onwards and why people smuggling occurs in the region. Research in these areas can then be used to make positive contributions to the lives of refugees in the region and contribute to the eradication of the people smuggling market. Such research would also ensure that lessons are learned from previous mistakes and that new projects developed are not hindered or compromised by unintended consequences.
11. Regional organizations such as ASEAN and the Bali Process should promote stronger engagement with civil society organizations in the region. Involvement of civil society organizations is an important addition to the Bali Process and ASEAN because many of these civil society organizations are acutely aware of the particular protection needs of refugees in the region. For several decades, civil society organizations have played an important support and advocacy role for refugees in Asia Pacific states, often in areas where government protection mechanisms for refugees have been limited or non-existent.

Medium term

1. States which have not already done so, should ratify and implement human rights instruments, particularly the 1951 Convention and the 1967 Protocol. Accession to the Refugee Convention and Protocol will create numerous benefits for both states and refugees, providing that effective implementation follows accession. First, accession will establish a number of rights and protections for refugees in the state, including the right not to be returned to a country where the person may face persecution (*non-refoulement*), the right not to be penalized for unlawful presence, the right not to be subjected to unnecessary restrictions on freedom of movement, the right to non-discrimination, the right to education, and the right to work. These rights are owed to refugees under other human rights treaties as well. Second, accession will greatly increase the potential for regional cooperation and responsibility-sharing on refugee issues. Responsibility-sharing is more feasible among countries that have the same or similar responsibilities towards refugees as compared with countries which have no responsibilities at all. Third, uniform accession will

¹⁷³ See International Detention Coalition and La Trobe Refugee Research Centre, 'There are alternatives: A handbook for preventing unnecessary immigration detention' (2011) <<http://idcoalition.org/cap/handbook/>>; Alice Edwards, 'Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants ' (April 2011) *UNHCR Legal and Protection Policy Research Series*.

¹⁷⁴ Interview with Febi Yonesta (Jakarta, 12 November 2013).

greatly reduce the need for refugees to make irregular secondary movements in the region and, in turn, diminish the market for people smugglers.

2. States should promote the development of the non-governmental sector, particular in regards to providing services for refugees such as legal representation, health care, housing, education, and language training.
3. States should also offer training programmes for service providers in regards to refugee issues. For example, in Indonesia there is a need for staff members in detention facilities to be trained in regards to the particular vulnerabilities and needs of asylum-seekers in detention. In areas such as healthcare and education, service providers should receive training with regards to victims of torture and trauma, for example.
4. Resettlement states should increase their annual intakes to provide protection to a greater number of refugees and assist states of first asylum with the responsibility of hosting refugees. Currently, less than one per cent of the world's refugees benefit from the durable solution of resettlement and there is a significant shortfall between the numbers of refugees who require resettlement to a third country and the numbers of resettlement places offered by States.¹⁷⁵ Such resettlement should be strategic, in the sense that it should aim to achieve protection outcomes beyond the individual benefit that the refugee selected receives. The resettlement process should also be predictable and transparent so that the contributions of states can be more accurately measured.

Long term

1. States should develop a consistent, region-wide RSD process throughout the ASEAN region. This process should ensure that refugees have access to an appellate system that is institutionally independent from the first-instance decision maker. In addition to national appellate systems, a region-wide process could involve the ASEAN intergovernmental commission on human rights in the appellate process. Alternatively, a separate appellate body may be established to review asylum appeal claims.
2. ASEAN Members and donor/resettlement states should develop an agreement to equitably share responsibility for refugees. This may include arrangements for situations where states face a mass influx of refugees, or it may include arrangements for disembarkation processes following irregular maritime arrivals. The equitable distribution of responsibility should be based on states' capacity to protect refugees.
3. States and regional organizations should seek to combat corruption in the area of immigration and ensure that refugees are not sold to human trafficking organizations.
4. States should work with countries from where refugees are departing to address root causes of displacement and to facilitate voluntary repatriation in safety and dignity. Such collaboration may involve advocating for countries of origin to address human rights issues, such as the citizenship law in Myanmar which renders Rohingya stateless. It should also involve development programmes that allow displaced persons to reengage in work and education in the countries of origin.

¹⁷⁵ UNHCR, *Global Trends 2012: Displacement: The New 21st Century Challenge* (UNHCR, 2013) 17.

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