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# BRIEFING PAPERS



## COMPILATION

These papers have been compiled by the Secretariat in preparation for the third meeting of the Asia Dialogue on Forced Migration.

They are presented here to provide a basis for Dialogue discussions and should not be read as reflecting the view of the Dialogue itself or its members. Feedback is very welcome in advance and during the Dialogue meeting in Kuala Lumpur.

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# Paper 1: Security and Forced Migration

## **Insecurity as a Cause of Forced Migration**

The goal of the Asia Dialogue on Forced Migration is to generate improved policy responses to those forms of migration within, and into, the Asia-Pacific region, which are proving the most difficult for governments to manage. These migratory movements involve people in the most vulnerable of circumstances and raise complex challenges within national communities – the movement of asylum seekers, refugees and trafficked persons.

The purpose of this paper is to make policy recommendations about real and perceived security threats generated by forced migration. Better management of these threats can reduce their likelihood, improve community confidence in the management of forced migrant movements, and encourage a larger number of countries to participate in establishing more effective, durable and dignified regional architecture on forced migration.

Importantly, forced migration is caused by security threats and is itself a security threat. Forced migration movements in the region are multi-causal.<sup>1</sup> Reasons for movement include conflict, civil unrest, natural, environmental, chemical or nuclear disasters, famine or development projects.<sup>2</sup>

The Asia-Pacific region faces a changing security environment. Conventional threats like interstate conflict and civil war remain, as do the risks of escalating tension between major powers and nuclear proliferation. Other risks posed by terrorism, cybersecurity and pandemics are significant. Many of these threats, at any given time, may force individuals to move internally or internationally.

## **New Causes of Insecurity**

The security environment impacting forced migration in the Asia-Pacific is further complicated by non-traditional threats. Put simply, the region is becoming older, hotter, less equal and more porous. Certain non-traditional threats, such as political uncertainty (short of civil war), climate change, economic downturns and rising inequality, impact the likelihood of forced migration just as much as traditional security threats.

Collectively, these threats impact regional and national security. Non-traditional threats are often aggregated under the term ‘human security’. Human security is, broadly, about a community of people having the ability and capacity to meet their economic, social, cultural and political needs, which enables individuals to fully develop their human potential.<sup>3</sup> Regional security is weakened when human security is undermined or compromised.

<sup>1</sup> Norwegian Refugee Council and Internal Displacement Monitoring Centre, ‘Global Overview 2015’, pp. 56-58, <http://www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global->

<sup>2</sup> More information available from website of International Association for the Study of Forced Migration, <http://iasfm.org/>.

<sup>3</sup> International Federation of Red Cross and Red Crescent Societies, 2005 World Summit Outcome (A/RES/60/1), entitled ‘Human Security’, Paragraph 143, accessed at International Federation of Red Cross and Red Crescent Societies, <http://www.ifrc.org/docs/idr/I520EN.pdf>; United Nations, Human Security Unit Strategic Plan, 2014 – 2017, Appendix, <http://www.un.org/humansecurity/sites/www.un.org/humansecurity/files/hsu%20documents/HSU%20Strategic%20Plan%202014-2017%20Web%20Version.pdf>, pp. 18.

The impact that climate change will have on the future displacement of persons is one of the major non-traditional threats that will profoundly affect the region's security. Extreme weather, resource scarcity and increasing natural disasters act as stressors that can trigger mass migration of people, leading to social destabilisation within countries and in neighbouring countries.

Asia, with its mixture of developed and developing nations, is the frontline of climate challenges.<sup>4</sup> Globally the top five countries in low-lying coastal areas, classified by population, are Bangladesh, China, Vietnam, India and Indonesia. Asia has more than 90 per cent of the world's exposure to tropical cyclones.<sup>5</sup> In many parts of Asia, around one-third of the population live in low-lying coastal areas that are highly susceptible to storms, flooding and climate induced sea-level rises.<sup>6</sup> The effects of climate migration are already being felt, with the Asia Development Bank estimating that over 42 million people were displaced between 2010 and 2011 due to 'sudden-onset climate related and extreme weather events'.<sup>7</sup> Failures of any of one Asia's five major river systems, whether induced by human activity or climate change, impacting on regional agriculture, could be the catalyst for further forced migration. Among climate change experts, the question is not if climate change will prompt another mass migration event, but when.

Addressing human security means developing preventive measures that build community capacity to mitigate future insecurities. For example, developing countries will be hit the hardest by a changing climate.<sup>8</sup> The 2014 Report from the Intergovernmental Panel on Climate Change warns that 'displacement risk increases when populations that lack the resources for planned migration experience higher exposure to extreme weather events, in both rural and urban areas, particularly in developing countries with low income'.<sup>9</sup> Syria is a striking example of what the future will look like as climate-induced migration occurs more frequently. Approximately 50,000 Syrian families migrated from rural to city areas in 2010 (prior to the civil war) after suffering the impact of prolonged drought on their agricultural livelihoods.<sup>10</sup>

### **Forced Migration as a Cause of Insecurity**

The Asia-Pacific region is home to the largest undocumented flow of migrants and the largest number of refugees and displaced people in the world.<sup>11</sup> The movement of labour migrants is the region's most significant form of migration, which includes associated problems like irregular movement, trafficking in persons, smuggling, exploitation and forced labour. For example, Thailand and Malaysia host up to 3 and 6 million migrant workers respectively, many of whom

<sup>4</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation and Vulnerability, Part A: Global and Sectoral Aspects, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, Cambridge University Press, 2014, pp. 373.

<sup>5</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation and Vulnerability, Part B: Regional Aspects, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, Cambridge University Press, 2014, pp. 1346.

<sup>6</sup> Christoff, Peter and Eckersley, Robyn, "No Island Is an Island: Security in a Four Degree World," in Christoff, Peter (ed.), *Four Degrees of Global Warming: Australia in a Hot World*, Oxford, Routledge, 2014, pp. 191.

<sup>7</sup> Asian Development Bank, *Addressing Climate Change and Migration in Asia and the Pacific*, Manila Asian Development Bank, 2012, pp. 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation and Vulnerability – Summary for Policymakers, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, Cambridge University Press, 2014, pp. 20.

<sup>10</sup> Werrell, Caitlin, Femia, Francesco (eds), *The Arab Spring and Climate Change: A Climate and Security Correlations Series*, February 2013, Center for American Progress, Stimson Center, The Center for Climate and Security, pp. 35.

<sup>11</sup> International Organization for Migration, 'Asia and the Pacific', <http://www.iom.int/asia-and-pacific>.

have 'undocumented' status.<sup>12</sup> Numbers of refugees and asylum seekers are lower; just over 150,000 asylum seekers and refugees are currently registered with the UNHCR in Malaysia, and approximately 105,000 are registered in Thailand.<sup>13</sup>

Security considerations have become prevalent in debates about refugees and migration more broadly. There is at least a perception, for example, that refugees pose a security risk. A 2016 Pew Research Centre Survey of ten European nations found that more than 50 per cent of respondents in eight of these countries believed 'incoming refugees increase the likelihood of terrorism in their country'.<sup>14</sup>

By the same token, however, there is little evidence to suggest refugees pose any greater security threat than other groups of migrants. A recent study for the International Centre for Counter Terrorism reported that 'historically, the number of criminals and terrorists in mass migration movements has been low' and that 'fears about "refugee terrorists" are largely unfounded'.<sup>15</sup> Indeed, of the 800,000 refugees admitted to the United States since the 9/11 terrorist attacks, not one has committed an act of domestic terrorism.<sup>16</sup> Furthermore, only 3 individuals have been arrested of any crime at all. Yet, in a recent Brookings survey, 58 per cent of U.S. respondents believed the number of arrests was more than 25. Nearly one-third of respondents estimated the number of arrests to be more than 100.<sup>17</sup>

The migrant flows giving rise to the greatest security concern in Asia-Pacific countries is that of irregular or undocumented labour migrants. These flows are largely uncontrolled and raise associated problems of trafficking, smuggling, forced labour, criminal syndicates and money laundering. They affect the integrity of borders and immigration regimes, and can overwhelm state capacities to respond. At an individual level, large numbers of irregular migrants trying to find work and working illegally can result in high levels of disenfranchisement and poverty, leading to criminal behaviour and social unrest. Often irregular labour migrant flows are mixed with refugees in need of protection. These large, mixed flows of people moving irregularly, and not tracked through official channels, are themselves a source of insecurity.

Even though flows of asylum seekers and refugees are a comparatively smaller security issue for many Asian countries, the security consideration is largely the same as other migrants: whether or not an individual represents an actual or potential threat to national security, public order and/or community harmony. To this end, robust security checks built into status determinations are a necessary condition for greater community confidence. As much was demonstrated by a recent Brookings finding that 59 per cent of Americans would support the

<sup>12</sup> Asia Dialogue on Forced Migration, "Rohingya Case Study" Briefing Paper, January 2016, <http://cpd.org.au/intergenerational-wellbeing/asia-dialogue-on-forced-migration/>.

<sup>13</sup> UNHCR, 'Figures at a glance', June 2016, [http://www.unhcr.org/my/about-us-@-figures\\_at\\_a\\_glance.aspx](http://www.unhcr.org/my/about-us-@-figures_at_a_glance.aspx) and <https://www.unhcr.or.th/en>.

<sup>14</sup> Pew Research Center, 'Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs', 11 July 2016, <http://www.pewglobal.org/2016/07/11/europeans-fear-wave-of-refugees-will-mean-more-terrorism-fewer-jobs/>.

<sup>15</sup> Alex Schmidt, 'Links between Terrorism and Migration: an Exploration', Paper for The International Centre for Counter-Terrorism – The Hague, May 2016, pp. 4, 44, <http://icct.nl/wp-content/uploads/2016/05/Alex-P.-Schmid-Links-between-Terrorism-and-Migration-1.pdf>.

<sup>16</sup> Ambassador Samantha Powers, U.S. Permanent Representative to the United Nations, Remarks on "The Global Refugee Crisis: Overcoming Fears and Spurring Action," at the U.S. Institute of Peace, June 29 2016, <http://usun.state.gov/remarks/7360>. <https://www.brookings.edu/research/american-attitudes-on-refugees-from-the-middle-east/>.

<sup>17</sup> Ibid.

United States taking more refugees from the Middle East if they were screened for security risks.<sup>18</sup>

Although immediate risks posed by refugees can dominate public and policy conversations, greater security issues can arise if resettlement and integration of refugees and other migrants is done poorly. Recent research suggests a lack of attentiveness to effective settlement services may generate greater security risks over the long term.<sup>19</sup> This problem will be more pronounced if 'refugees are treated as a short-term humanitarian problem rather than as a long-term integration challenge.'<sup>20</sup> Indeed, perceptions that forced migrants are a security risk are often motivated by concerns about longer term radicalisation of migrants.

### **Obligations of States**

Forced migration of whatever category imposes international legal and moral obligations on countries of haven (transit or destination countries) to treat the victims of forced migration with compassion, generosity, respect and to also provide practical support.

Notwithstanding the obligations placed on nation states by ASEAN conventions on human rights, human trafficking, stateless persons and refugees, or by the UN 1951 Refugee Convention and Guiding Principles on Internal Displacement, it is a political reality that national governments are also obliged to take a number of competing factors into account in deciding how to treat the subjects of forced migration. These factors include public acceptance of immigration and refugees, security and safety, in-country arrangements for refugees and other forced migrants, and relevant cost implications. Addressing these factors influences a government's decision whether to grant temporary haven, to accord a person refugee status, to offer that person permanent protection, and whether to extend work rights and other social benefits.

An especially relevant political reality which governments of receiving countries must take into account is the willingness of their general publics to accept immigration of any kind, including immigration by virtue of refugee status. While granting temporary first asylum (i.e. in transit countries) is sometimes applied, typically in response to a mass influx, the public perception in developed countries is that persons accepted as refugees, trafficked or stateless persons generally become permanent settlers in those countries. Justified or not, this perception has prompted heightened public concerns in Europe about immigration in general and refugees from Syria and North Africa, and illegal immigration and refugee intakes in the United States, Canada and Australia. In addition, it is an issue in the major countries of transit and first asylum, particularly in Africa and the Middle East, as well as in South and Southeast Asia.

Governments in both transit and destination countries must be responsive to these public concerns. In many countries, local acceptance of immigration or protection for forced migrants is based on an unwritten but clearly understood compact between the government and the

<sup>18</sup> Ibid.

<sup>19</sup> Alex Schmidt, op. cit., pp. 45-46.

<sup>20</sup> Daniel Byman, 'Do Syrian refugees pose a terrorism threat', Markaz, Brookings Institution, 27 October 2015, <https://www.brookings.edu/2015/10/27/do-syrian-refugees-pose-a-terrorism-threat/>.

governed – that the government will regulate the volume of immigrants and persons offered protection in accordance with a broad criteria:<sup>21</sup>

- the ability of the economy and society to absorb such people, temporarily or permanently
- the nature and character of the immigrants or temporary entrants and their impact on civil society
- the preservation of national security, public order and community harmony.

The above criteria are difficult to measure and constantly up for debate, nevertheless there is often community expectation that the government will apply them in determining migration intake levels. For example, in Australia, Canada and the United States, the principal final destination countries for many refugees, there continues to be a general public acceptance of immigration and of refugees, provided that governments demonstrate they remain in control of their borders and are able to mitigate potential threats against security, public safety and public wellbeing.<sup>22</sup>

Comparable attitudes can be seen in other Asian countries. A 2014 Gallup Poll found relatively high levels of public sympathy in several Asian countries toward immigrants who have fled persecution or a lack of political or religious freedoms, particularly Indonesia (58-62 per cent), Malaysia (63-70 per cent) and Vietnam (73-79 per cent).<sup>23</sup> Efforts in certain Asian countries encourage social cohesion and more positive attitudes towards migrant workers, including Migration Works in Malaysia<sup>24</sup> and the Saphan Siang (Bridge of Voices) campaign in Thailand.<sup>25</sup> Other indicators point towards more positive perceptions of refugees in Asia than in other regions. A November 2015 Essential survey found that 80 per cent of respondents in India, 75 per cent in Vietnam and 72 per cent in China agreed with providing social protection and work rights to refugees – a much higher percentage than in the United States (55 per cent) and the United Kingdom (53 per cent).<sup>26</sup>

Globally, prevailing public perceptions and attitudes towards migrants, including forced migrants, can change quickly. Recent Gallup polling recorded 52 per cent of Europeans desiring lower immigration levels in December 2015, whereas only 34 per cent worldwide wanted immigration to decrease.<sup>27</sup> Such perceptions are fuelled by economic insecurity, concerns for community and personal safety, and fears that migration is uncontrolled. Prejudices towards migrants may be more pronounced if their mode of arrival is perceived to be illegal or irregular,

<sup>21</sup> Members of the Refugee Convention are required to absorb those asylum seekers on their territory found to be refugees.

<sup>22</sup> For example, 73 per cent of Australians have positive views on the impact of immigration on the Australian economy, The Lowy Institute Poll 2016, Lowy Institute, 21 June 2016, pp 15, [http://www.lowyinstitute.org/files/2016\\_lowy\\_institute\\_poll.pdf](http://www.lowyinstitute.org/files/2016_lowy_institute_poll.pdf).

<sup>23</sup> International Organization for Migration, How the World Views Migration, 2015, pp. 11, [http://publications.iom.int/system/files/how\\_the\\_world\\_gallup.pdf](http://publications.iom.int/system/files/how_the_world_gallup.pdf); Marie McAullife, 'Resolving the Policy Conundrums: Enhancing Protection in Southeast Asia', Paper for the Trans-Atlantic Council on Migration and the Migration Policy Institute, January 2016, pp. 16, 35.

<sup>24</sup> More information available from website, <http://migrationworks.org/>.

<sup>25</sup> More information available from website, <http://www.saphansiang.org/#home>.

<sup>26</sup> Essential Media Frontline Poll for the International Trade Union Confederation, 'Special Topic: Refugees', November 2015, [http://www.ituc-csi.org/IMG/pdf/ituc\\_1510\\_res\\_omnibus\\_frontlines\\_refugee\\_report\\_09112015.pdf](http://www.ituc-csi.org/IMG/pdf/ituc_1510_res_omnibus_frontlines_refugee_report_09112015.pdf).

<sup>27</sup> Gallup, 'Europeans Most Negative Towards Immigration', 16 October 2015, [http://www.gallup.com/poll/186209/europeans-negative-toward-immigration.aspx?g\\_source=Asia-Pacific%20Immigration&g\\_medium=search&g\\_campaign=tiles](http://www.gallup.com/poll/186209/europeans-negative-toward-immigration.aspx?g_source=Asia-Pacific%20Immigration&g_medium=search&g_campaign=tiles).

especially when these issues are politicised or when new arrivals fail to integrate quickly into the life and society of the receiving country.<sup>28</sup>

Given the need to ensure public acceptance of immigration, confidence in the security screening process for refugees and forced migrants is essential. Governments must judge in the first instance whether the claimant for refugee or immigrant status might represent a potential threat to:

- national security
- public order
- community harmony.

A second series of policy decisions must be made about the ability to absorb refugees and the treatment to be accorded people who are granted (prior to or after determination of refugee status) some form of temporary or permanent entry. This set of policy decisions will be based on:

- the national capacity to provide the basic necessities of life and social services (food, housing, health, education and employment services, etc.)
- the ability of individuals to live harmoniously within local communities
- the potential for mitigating assessed threats to security, public order or community harmony.

Each of these criteria for public acceptance of immigration has nuances that can change according to national circumstances and the public mood. But governments ignore them, exploit them, and fail to lead and set the tone on them at their peril.

That said, the criteria and methodology for assessing refugee status, security and character threats and communal harmony issues should not differ according to the method of arrival. The risk assessment is no different whether a person arrives by regular or irregular means, as a claimant for refugee status, as a trafficked person or as a stateless person. Identifying opportunities to build security features into the identification and registration processes would alleviate some state and community concerns. The ability of assessment processes to improve documentation and underpin a more confident understanding of who is within a country's borders, and the risks that they do or do not pose, will be important. This too would have a positive impact on public confidence, particularly as governments consider whether or not to grant refugees and other forced migrants permission to work.

### **Security Case Study**

The case study on the next page is intended to focus attention on security considerations relating to a hypothetical forced migrant. It discusses the associated processes of security and character assessment. It then outlines how those processes could be streamlined and made more reliable. The intent is to advance the ADFM's thinking on national and regional security issues in one context (refugees) with the view that similar reforms to security and character assessments can be translated to other forced migrant cohorts, not just those seeking asylum. If ADFM-participating countries can be persuaded to develop better security checking regimes, the scope for cooperation increases.

<sup>28</sup> Malee Sunpuwan and Sakkarin Niyomsilpa, 'Perception and Misperception: Thai Public Opinions on Refugees and Migrants from Myanmar', *Journal of Population and Social Studies*, vol. 21, July 2012, pp. 47-8; Harriet McHugh Dillion, 'Public attitudes towards unauthorized arrivals in Australia', Foundation House, 2015.

## Case Study

A single male, Claimant X, has arrived from the Middle East at an intermediary country of first asylum, which is not a signatory to the Refugee Convention. That country accepts Claimant X, according to its own criteria, and places him in some form of holding arrangement (in detention or free within the community).

- By not immediately deporting or repatriating him, the country of first asylum has in effect made a judgement that at the very least Claimant X has a plausible or *prima facie* case for special treatment on humanitarian grounds.
- It has also made a judgement that it will not grant a specific status to enable Claimant X to settle permanently in that country.

Claimant X has two options:

- Seek refugee status from an appropriate authority (e.g. UNHCR or a country of final refuge) wait until the application is accepted, and then travel to the destination country (legal entry);
- Seek alternative means of travel (land, sea or air) to his preferred destination without prior approval by that destination country (illegal entry).

In either case, the destination country has to adjudge Claimant X to be a genuine refugee, based on its assessment of his claims of persecution or fear of persecution, its knowledge of conditions in his country of origin; and its assessment of his identity and bona fides.

Claimant X in effect undergoes two or three assessment processes run by different authorities, each requiring him to provide information to relevant authorities in order to support his claims:

- proof of identity
- a narrative justifying his claim to refugee status
- other documentary information to back up his claims.

Each process is conducted according to that process owner's priorities; for example, the country of first asylum and the UN processes may place less priority on the security or character issues that are so important to the final destination country.

In the meantime, between those three independent and unconnected processes, Claimant X has presented and then lost his passport and his narrative about his possible relationship with individuals believed to be supporting known-terrorist organisations in the Middle East has changed.

The final decision-maker of the receiving country usually has to start from scratch, further prolonging the process.

Without documentation or proof of identity, assessors are usually forced to rely on their interviews with the claimant, any corroborative information that can be obtained in the source country (often surreptitiously), interviews with other refugees who may have some knowledge of the claimant, together with a careful assessment of the claims against known conditions in the source country. The process may also be complicated further by changing narratives and deliberate withholding of information on the part of the claimant.

## A More Efficient Process

The remainder of this paper suggests reforms that would enable a more efficient process, first for refugees and subsequently for other irregular arrivals. The process suggested is as follows:

- Claimant arrives in the country of first asylum
- Claimant interviewed by country of first asylum, UNHCR and NGOs
- Interviewing authorities record and retain relevant information
- Information obtained is shared with decision-makers on refugee status and with possible destination countries
- Destination countries use the information provided to conduct their more forensic evaluation in relation to:
  - Their willingness to accord the claimant refugee status
  - Their willingness to provide an entry visa on humanitarian or refugee grounds, measured against their assessment of risk in respect of security and character.

## Refugee Determinations

In determining refugee status, destination countries will seek to establish the merits of an individual claim against the stated criteria of a 'well-founded fear of persecution' in the Refugee Convention.<sup>29</sup> In recent times, necessarily subjective judgements by authorities and agencies, including by the UNHCR, have tended towards a very broad and inclusive interpretation of these criteria. This is despite the fact that economic push factors, as distinct from persecution-related push factors, have increased.

- Determination of refugee status is made particularly difficult where, as is increasingly the case, decision-makers are unable to verify the bona fides, the truth of claims or even the true identity of claimants for humanitarian visas under the Refugee Convention.
- The ability to make inquiries in the country of origin, in order to test the claims of an individual, has been severely circumscribed by *non-refoulement* principles. Although strictly speaking *non-refoulement* refers to the obligation not to force refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution,<sup>30</sup> making inquiries with a country of origin may give rise to refugee sur place claims where such inquiries, for example, introduce the risk of persecution on return, result in adverse impacts to family members in the country of origin, or reveal intelligence about the individual in question that may result in discovery and further persecution. Such inquiries are therefore often avoided.

## National Security and Character Considerations

The Refugee Convention allows for a national government to refuse entry or residence to a person whom there are reasonable grounds for regarding as a danger to national security or who, having been convicted of a particularly serious crime, constitutes a danger to the community of that country.<sup>31</sup>

In practice, the destination country will want to satisfy itself that an applicant for entry (of any type, not just on humanitarian grounds) will not:

<sup>29</sup> Article 1 of the 1951 Convention, as amended by the 1967 Protocol: a refugee being a person, outside of his country, who has a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'.

<sup>30</sup> Article 33 of the 1951 Convention, relating to the Status of Refugees.

<sup>31</sup> Article 33 of the 1951 Convention relating to the Status of Refugees.

- threaten national security in terms of espionage, sabotage and politically motivated violence (which includes terrorism, and the export of terrorism)
- seek to exercise improper political influence
- threaten communal harmony.

The receiving country will also want to be assured that the applicant is of good character and will not conduct serious or organised criminal activities - for which the principal test has been evidence of a conviction for a serious crime involving a prison sentence of one year or longer (itself an arbitrary, mono-dimensional and unreliable guide).

In the Australian experience only a small proportion of visa applicants (refugee or otherwise) are rejected on national security or character grounds. That does not, however, obviate the need for careful security and character checking, in accordance with community expectations and the “compact” on immigration.

### **Security and Character Checking**

The principal destination countries have developed systematic processes and procedures for evaluating the merits of a claim for refugee status and assessing the potential threat represented by an individual. However, those processes are inhibited by deficiencies in the ability of the transit and destination countries to verify claims, incorrect or incomplete information provided by claimants and a prohibition against seeking corroborative information from the country of origin (including protection of the identity of the claimant).

Security and character checking is also inhibited by insufficient cooperation, information-sharing, record-keeping and standardisation of security criteria between international agencies and intermediary and final destination countries. This not only contributes to more difficult decision-making but also to extending the time claimants are left in limbo in an unsatisfactory, half-way house transit (and with it significant personal and emotional damage to claimants).

The result is the countries of final destination are being required to make national security judgements based on insufficient or unreliable information. In most cases, the consequences of giving a claimant the benefit of the doubt on security or character issues may not be a cause for concern. But the nature of terrorism and the consequences of serious and organised crime are such that the main destination countries are unwilling to accept that risk given their own commitments to national security, public order and social cohesion. This unwillingness is compounded by the reflexive public perception already described that, for example, Muslim immigration brings with it an enhanced risk of terrorism (albeit still a very low risk). In the face of this low risk but high consequence equation, governments remain concerned not to betray their side of the national “immigration compact.”

### **Systematisation of Security and Character Checking**

The destination country will make the final decision on a claimant’s eligibility for a humanitarian protection visa. However, the process could be sped up and made more reliable.

The first step should involve greater cooperation between countries of first asylum, appropriate international authorities and some NGOs (although destination countries will be wary of perceived bias on the part of some NGOs against the security checking process). Improved information-sharing, with destination countries receiving full access to a claimant’s details and

initial narrative, would speed up significantly the destination country's decision-making processes.

Cooperative measures could include:

- early sharing of claimant details between countries of first asylum, UN authorities, NGOs, and potential receiving countries
- early checking of international police records and, where possible and consistent with *non-refoulement* and refugee protection principles, with the country of origin (source country)
- agreed protocols for standardised reception and interviewing procedures applicable at each point in the journey to refugee status
- agreed requirements on the nature of information to be obtained from claimants
- proper recording by authorities of information and documentation provided by claimants
- full sharing of information obtained in the preceding phases with the putative receiving country.

These measures would require considerable internal coordination between agencies within the transit countries, between the transit country and UN authorities and NGOs, and with the destination countries.

Cooperation on the dual issues of establishing refugee status and evaluating character and security risk may require legislative change in some countries.

### **Cooperation and Confidence**

Ideally, stronger cooperation between the countries of the Southeast Asian region and with key countries of final destination (e.g. United States, Canada, Australia and New Zealand) would assist in managing the presence and movement of refugees or other forced migrants in our region. Such cooperation could be organised through formal agreements and memorandums of understanding between transit and destination countries, setting out both the objectives, principles and detail of enhanced cooperation on refugee flows.

Cooperation on addressing security and character issues will not be achieved in the absence of improvement on the broader issue of cooperation between UNHCR, transit and destination countries to control and manage the flows of refugees.

In practical terms this could be facilitated by:

- destination countries reaching agreement on numbers or quotas of refugees from the transit countries, and to assist in the management and sustenance of claimants in the transit countries (in a manner that does not generate an additional pull factor)
- transit countries controlling the movement of claimants and arranging for the return or repatriation of persons who do not meet the criteria for refugee status
- close cooperation between immigration, law enforcement and intelligence agencies of both the transit and destination countries
- capability development of immigration, law enforcement and intelligence agencies in transit countries to manage refugee flows more effectively and humanely (this should be supported by destination countries).

Likely destination countries, such as Australia, also need to strengthen assistance to alleviate the burden of housing, subsistence costs and processing refugees in regional transit countries. Ultimately, confidence in the new arrangements will only be achieved if they meet the needs of both transit and destination countries.

### **Treatment of Refugees Rejected on Security or Character Grounds**

Although in practice only a small number of people deemed to be refugees in accordance with Article 1 of the Refugee Convention are rejected by destination countries under the provisions of Article 33 on security or character grounds, such rejections occur. Destination countries, already under pressure themselves, are increasingly unlikely to accept a refugee deemed to be a security risk or of a criminal character.

Similarly, persons whose claims for refugee status have been rejected or simply not yet processed are likely to remain in the transit countries for some time. So, too, are persons already adjudged to be refugees but who have been rejected for entry into a destination country on security or character grounds.

These claimants have a range options, all unpalatable to them:

- return to the source country (an option when political conditions change in that country)
- remain in transit camps in the hope that a destination country will eventually accept them
- seek to integrate into life in the transit country (assuming that they allowed to do so).

### **Longer-term Security Implications of Forced Migration**

Given the significant increase in displaced people worldwide, it is not surprising the global emphasis has been on managing the *flow* of refugees and other forced migrants. That focus has meant less attention on how refugees and forced migrants are faring once they arrive in a receiving country. However, once the number and nature of victims of forced migration to be accepted for temporary protection or permanent residence are determined, governments need to absorb such people into their national fabric via settlement services.

Settlement and employment outcomes must improve in order to strengthen community cohesion and avert alienation or radicalization. Governments, international agencies, business and civil society cannot address the unprecedented flow of forced migrants without turning their attention to these issues, particularly at a time of lower economic growth. Indeed, the time is right for the Bali Process to include on its agenda regular discussion of the effectiveness of settlement services, emerging best practice, and the relationship of settlement services with longer-term security threats.

In Australia, for example, blue collar work opportunities for unskilled immigrants are reducing as the economy undergoes structural change. Victims of forced migration are spending much longer periods dependent upon social welfare than was the case with previous waves of immigrants prior to the Global Financial Crisis. Some groups find it more difficult than others to integrate and become comfortable within Australian society, despite its multicultural composition. Recent years have seen higher rates of integration difficulties and even alienation occurring within the second generation, the children of forced immigrants. In the past it has been those children who represented the “take-off” generation in terms of integration in the new society. Today, however, it is that second generation who came to Australia at an early age

or were born here, who are more likely to experience symptoms of alienation that may be translated into criminal activity, anti-social behaviour or, in a tiny minority, into acts of terrorism. Regularisation and registration of migrants can positively influence perceptions. For instance, public opinions in Thailand are more positive towards 'registered' migrants and – albeit less so – refugees, than they are towards other 'non-registered' migrants.<sup>32</sup> Greater proximity and familiarity between migrants and community members, including in workplaces, can also open up interpersonal channels and improve perceptions. In Thailand, people living closer to refugee camps are much more likely to hold positive views of refugees than those living in urban centres away from camps.<sup>33</sup> Studies in Europe and International Labour Organisation (ILO) studies in host Asian countries have confirmed this pattern.<sup>34</sup> Research suggests that the converse – namely that a lack of interaction with migrants can perpetuate negative stereotypes – is true in other Asian countries.<sup>35</sup>

Recognised pathways and legal channels for forced migrants to acquire work reduce the attractiveness of irregular movements and counterbalance the incentive to move and secure work irregularly.<sup>36</sup> Given the concrete measures taken to tackle trafficking and forced labour by various regional organisations, national and sub-national governments, including the U.S. *Trafficking in Persons* report, Californian Anti-Trafficking Legislation, the ASEAN Convention Against Trafficking and the UK's Modern Slavery Act, regularisation and other anti-trafficking measures are increasingly central to preserving international reputation. Regularisation of labour market integration is also beneficial in terms of practical and monetary remittances once the conditions in the country of origin are conducive to repatriation and returns.

In floating the benefits of labour market integration and regularisation for refugees and forced migrants, the 'benefits' of undocumented or irregular labour migration, real or otherwise, should also be acknowledged. Although there are human and national security concerns associated with forced labour and trafficking, there are also economic considerations which cannot be ignored. A 2014 ILO report found that the Asia-Pacific region profited the most from forced labour, receiving an annual profit of US\$51.8 billion from the practice.<sup>37</sup> Undocumented migration channels can be attractive to both employers and workers where they are faster, less expensive and allow greater freedom of movement between workplaces. However, the disadvantages are also significant, including exposure to abuse, exploitation and trafficking of persons.

Governments of transit and receiving countries need to devote greater resources than hitherto has been provided to the resettlement and treatment of the victims of forced migration,

<sup>32</sup> Malee Sunpuwan and Sakkarin Niyomsilpa, op. cit.

<sup>33</sup> Ibid.

<sup>34</sup> Tunon and Baruah, 'Public attitudes towards migrant workers in Asia', *Migration and Development*, vol. 1(1), 2012, pp. 149-162.

<sup>35</sup> Further information available via Vanessa Steinmayer, 'Social cohesion, migration policies and the perception of migrant workers in the Asia-Pacific region', paper presented to EU-Asia Dialogue Conference on Addressing Social Cohesion and Effects of Migrants' Integration in Europe and Asia, November 2014, [http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2014/10/P6\\_S1-KAS-2014\\_Steinmayer.pdf](http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2014/10/P6_S1-KAS-2014_Steinmayer.pdf).

<sup>36</sup> Elizabeth Collett, Paul Clewett and Susan Fratzke, 'No Way Out? Making Additional Migration Channels Work for Refugees', Migration Policy Institute, March 2016, pp. 1-2, 15, [http://www.migrationpolicy.org/sites/default/files/MPIEurope\\_UNHCR-Resettlement-FINAL.pdf](http://www.migrationpolicy.org/sites/default/files/MPIEurope_UNHCR-Resettlement-FINAL.pdf).

<sup>37</sup> International Labour Organization, 'ILO says forced labour generates annual profits of US\$150 billion', 20 May 2014, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm). Full report, *Profits and Poverty: The Economics of Forced Labour*, available at [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_243391/lang-en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang-en/index.htm).

promoting the integration of these new arrivals into society and assisting them to take full advantage of the opportunities that society offers for their prosperous, safe and secure futures. In many cases, labour market integration is a necessary (though not sufficient) element of successful integration. A 2016 International Monetary Fund staff note argued the ‘net fiscal impact of migrants is mostly driven by their success in the labour market’, and that impact of asylum seekers ‘on medium and long-term growth depends on how they will be integrated into the labour market’.<sup>38</sup>

Labour market integration for refugees can be challenging, but promising practices have emerged involving micro-finance, community mentorship, recognition of prior learning, and private sector partnerships. For Asia-Pacific countries who are considering extending work rights and labour market access to refugees, there is an opportunity to adopt best practices and, at the same time, improve economic, security and community outcomes over the long term. Indeed, refugees may be a suitable pilot group for countries in the region. Granting refugees access to the labour market offers a modest economic return, but also provides clear benefits in relation to security and community perceptions. Labour market integration of refugees would afford them greater protection from the abuse, exploitation and trafficking associated with being undocumented migrants in the informal labour market.

### **Full List of Recommendations**

Cooperative and confidence building measures to systematise security and character checking:

- early sharing of claimant details between countries of first asylum, UN authorities, NGOs and potential receiving countries
- early checking of international police records and, where possible and consistent with *non-refoulement* and refugee protection principles, with the country of origin (source country)
- agreed protocols for standardised reception and interviewing procedures applicable at each point in the journey to refugee status
- agreed requirements on the nature of information to be obtained from claimants
- proper recording by authorities of information and documentation provided by claimants
- full sharing of information obtained in the preceding phases with the putative receiving country
- destination countries undertaking to accept agreed numbers or quotas of refugees from the transit countries, and to assist in the management and sustenance of claimants in the transit countries (in a manner that does not generate an additional pull factor)
- transit countries controlling the movement of claimants and arranging for the return or repatriation of persons who do not meet the criteria for refugee status
- close cooperation between immigration, law enforcement and intelligence agencies of both the transit and destination countries
- capability development of immigration, law enforcement and intelligence agencies in transit countries to manage refugee flows more effectively and humanely (this should be supported by destination countries)

<sup>38</sup> IMF, Staff Discussion Note, ‘The Refugee Surge in Europe: Economic Challenges’, January 2016, pp. 26-28, 4, <http://www.imf.org/external/pubs/ft/sdn/2016/sdn1602.pdf>.

Settlement services measures include:

- Inclusion on the Bali Process agenda of a regular discussion about the effectiveness of settlement services, emerging best practice, and the relationship of settlement services with longer-term security threats.

# Paper 2: Engaging the Private Sector in the Asia Dialogue on Forced Migration

## Introduction

1. The purpose of this brief paper is to stimulate discussion at the 3<sup>rd</sup> meeting of the Asia Dialogue on Forced Migration ('the Dialogue') on the potential to incorporate the private sector in the Dialogue's deliberations and in concerted action on forced migration in the region.

2. First the paper explains the benefits of dialogue between government and the private sector on migration; second it provides examples of recent private sector initiatives; third it considers the value of incorporating the private sector in the Dialogue's deliberations; and finally it provides preliminary recommendations on priorities for private sector engagement on forced migration.

## The Benefits of Government-Private Sector Dialogue on Migration

3. The potential benefits of engaging the private sector have been recognised across a range of relevant public policy fields, from development,<sup>39</sup> through conflict prevention,<sup>40</sup> to preventing violent extremism,<sup>41</sup> although the potential has rarely been realised.

4. In the field of migration specifically, the potential benefits are also widely acknowledged. For governments and international organisations, the private sector can mobilise resources and expertise. The private sector can also plan beyond the constraints of short democratic and institutional time cycles, and may be less beholden to popular and media agendas, thus enabling a longer-term perspective to be taken of the benefits of migration.<sup>42</sup> For the private sector, engaging governments is critical to satisfy business requirements such as access to the global talent pool by negotiating entry and stay for foreign labour. For migrants, too, government-private sector dialogue can generate tangible benefits, for example by promoting and implementing ethical recruitment schemes, protecting the rights of workers, and reducing the costs of migration including remittances. Broadening the range of private sector and community stakeholders in migration 'can improve immigration outcomes and ease social tensions by extending ownership of the immigration and integration processes'.<sup>43</sup>

5. Some progress has been made in engaging the private sector in migration policy, including at the institutional level by the International Organization on Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR), and by a number of governments. Of note for the Dialogue's discussion is that a Business Mechanism (comprising the Institute of Employers and

<sup>39</sup> UN, 2015, 'Transforming our World: The 2030 Agenda for Sustainable Development', <http://www.unfpa.org/resources/transforming-our-world-2030-agenda-sustainable-development>

<sup>40</sup> World Economic Forum, 2016, 'Responsible Investment in Fragile Contexts', Geneva, [http://www3.weforum.org/docs/GAC16\\_Responsible\\_Investment\\_Fragile\\_Context.pdf](http://www3.weforum.org/docs/GAC16_Responsible_Investment_Fragile_Context.pdf)

<sup>41</sup> UN Secretary General, 2016, 'Plan of Action for Preventing Violent Extremism', [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/674](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674)

<sup>42</sup> See Hugo, G., 2011, 'Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants', Department of Immigration and Citizenship, pp. 1, 256, <http://www.border.gov.au/ReportsandPublications/Documents/research/economic-social-civic-contributions-about-the-research2011.pdf>.

<sup>43</sup> Papademetriou, D., & Banulescu-Bogdan, N., 2016 'Understanding and Addressing Public Anxiety about Immigration', Migration Policy Institute, pp. 2, 18, <http://www.migrationpolicy.org/research/understanding-and-addressing-public-anxiety-about-immigration>.

World Economic Forum) has formally been endorsed by the Global Forum on Migration and Development (GFMD), and the private sector will be incorporated in the next summit in Bangladesh in December 2016. Additionally, the draft outcome document for the 19 September 2016 High-level Meeting to Address Large Movements of Refugees and Migrants, and the proposed Global Compact, both acknowledge a role for the private sector. A Private Sector Forum is part of the UN Meeting on 19 September.<sup>44</sup> The White House has issued a Call to Action for private sector engagement and highlighted the work of Chobani, LinkedIn, Airbnb, Google, Western Union and Microsoft, among others, in the lead-up to President Obama's Leaders' Summit on refugees on 20 September.<sup>45</sup> Importantly, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime has also proposed a Business Forum for 2017.

6. Significant reservations nevertheless remain about engaging the private sector in dialogue on migration policy. First, only a limited number of companies have thus far demonstrated genuine interest, in particular those with a direct interest in migration markets such as telecommunications and financial companies. Second, the engagement of the private sector has been limited, mainly to corporate social responsibility activities, and discrete negotiations with governments and organisations. A particular frustration has been the unwillingness of business leaders to support migration publicly, despite clear acknowledgement that diversity drives success. Third, many governments also remain wary of engaging the private sector, especially because of concerns that civil society and migrants' rights may be sidelined.

### **Examples of Private Sector Initiatives in Source, Transit and Destination Countries**

7. Many leading global businesses are participating in initiatives to respond to current displacement crises, including in the context of the Syrian crisis and Europe's ongoing migration challenge. Across Europe and in Jordan, Lebanon and Turkey, the private sector has financed humanitarian organisations, provided jobs, apprenticeships and training, and launched social media campaigns for support. Attention has now turned to how public-private partnerships might also be implemented in refugees' countries of origin, to reduce fragility, violence and conflict. But there is a concern first that this engagement may only last as long as the crisis/challenge remains a significant global focus, and second that the private sector is limiting its intervention to responding to the crisis.<sup>46</sup>

8. The private sector's track record in addressing root causes of forced migration and building public support for migration programs is growing. This emerging role reflects an imperative to address social and humanitarian implications of mass displacement; the prospect of accessing new workforces, markets and business opportunities; and a growing embrace of the notion of 'shared' value – that is, business models that can create financial value while also delivering better social and environmental outcomes by addressing issues like poverty and pollution. Forced migration challenges are increasingly being seen alongside issues like climate, human

<sup>44</sup> For further information, see <https://www.unglobalcompact.org/take-action/events/691-united-nations-private-sector-forum-2016>

<sup>45</sup> See The White House, 2016, 'Fact Sheet on Private Sector Engagement on the Global Refugee Crisis', <https://www.whitehouse.gov/the-press-office/2016/06/30/fact-sheet-white-house-launches-call-action-private-sector-engagement>

<sup>46</sup> Koser, K., 2015, 'A Migration Agenda for the Private Sector', Project Syndicate, <https://www.project-syndicate.org/commentary/europe-private-sector-response-to-refugees-by-khalid-koser-2015-10?barrier=true>

rights and water scarcity as mainstream issues for corporate social responsibility practitioners.<sup>47</sup>

9. A May 2016 report by the World Economic Forum (WEF) highlights the potential for responsible private sector investment to address root causes of displacement by investing, stimulating economic growth and job creation, paying taxes, building capacity and empowering local populations.<sup>48</sup> The report advocates for private-public partnerships to strengthen resilience in fragile environments and proposes a set of guidelines for this purpose. The work of BATA Brands SA with women in Bangladesh, as well as the experience of Total E&P and Cordaid Investments in Myanmar, are among the case studies considered by the report.<sup>49</sup> Other initiatives to address root causes of forced migration include Patagonia's rigorous employment standards for migrant workers to ensure that suppliers and third-party labour brokers comply with forced labour and trafficking provisions and meet social and environmental benchmarks,<sup>50</sup> and Gammon's strategies for improved on-the-job training of semi-skilled workers in industries like construction.<sup>51</sup>

10. Private sector initiatives can also facilitate job creation and labour market integration, and unlock entrepreneurship in transit and destination countries. Private and community sponsorship of refugees, for example, has been seen to 'bring down costs to the state and accelerate integration outcomes'.<sup>52</sup> Research has highlighted the strong entrepreneurial skillset of forced migrants and the great potential for small business and social enterprise development.<sup>53</sup> More broadly, the complex and often unmet service and social needs of refugees and migrants – including in areas like proving identification and skills, job-matching and tailored education and training applications – provide opportunities for 'disruptive' innovators working with, or from within, these communities. Refugees in Thailand, for example, have made significant contributions through local procurement of materials and food supplies, and development projects set up around refugee camps.<sup>54</sup>

11. The private sector can also facilitate more effective reintegration and return of forced migrants. In partnership with the International Rescue Committee, CSR Asia has created a program to develop training, apprenticeship and employment schemes that can prepare refugees and migrant workers in Thailand for eventual voluntary return to Myanmar as economic and political reforms continue. CSR has drawn directly on the experience of the hotel chain,

<sup>47</sup> See for example 'The Future of CSR: Issues for the next decade', [http://www.csr-asia.com/report/report\\_future\\_of\\_csr.pdf](http://www.csr-asia.com/report/report_future_of_csr.pdf)

<sup>48</sup> World Economic Forum, 2016, 'Responsible Investment in Fragile Environments', [http://www3.weforum.org/docs/GAC16\\_Responsible\\_Investment\\_Fragile\\_Context.pdf](http://www3.weforum.org/docs/GAC16_Responsible_Investment_Fragile_Context.pdf)

<sup>49</sup> For further information, see [http://www3.weforum.org/docs/WEF\\_Bata\\_Rural\\_Sales\\_Programme\\_in\\_Bangladesh.pdf](http://www3.weforum.org/docs/WEF_Bata_Rural_Sales_Programme_in_Bangladesh.pdf); [http://www3.weforum.org/docs/WEF\\_Total\\_in\\_Myanmar.pdf](http://www3.weforum.org/docs/WEF_Total_in_Myanmar.pdf);

[http://www3.weforum.org/docs/WEF\\_Cordaid\\_Investments\\_in\\_Myanmar.pdf](http://www3.weforum.org/docs/WEF_Cordaid_Investments_in_Myanmar.pdf)

<sup>50</sup> See Patagonia, 2014, 'Migrant Worker Employment Standards & Implementation Guidance' for Taiwan-Based suppliers for a country specific example [http://eu.patagonia.com/pdf/en\\_US/Migrant\\_Worker\\_Employment\\_Standards.pdf](http://eu.patagonia.com/pdf/en_US/Migrant_Worker_Employment_Standards.pdf). A timeline of Patagonia's Migrant Worker Policy is available here: <https://www.patagonia.com/protecting-migrant-workers.html>

<sup>51</sup> For further information on the Gammon Construction Contractor Cooperative Training Scheme, see <http://sustainablebusiness.org.hk/gammon-education-employment/>

<sup>52</sup> Collett, E., Clewett, P., & Fratzke, S., 2016, 'No Way Out? Making Additional Migration Channels Work for Refugees', Migration Policy Institute, p. 1 [www.migrationpolicy.org/sites/default/files/MPIEurope\\_UNHCR-Resettlement-FINAL.pdf](http://www.migrationpolicy.org/sites/default/files/MPIEurope_UNHCR-Resettlement-FINAL.pdf).

<sup>53</sup> See Hugo, G., 2011, 'Economic, social and civil contributions of first and second generation humanitarian migrants', <http://www.border.gov.au/ReportsandPublications/Documents/research/economic-social-civic-contributions-about-the-research2011.pdf>; and [https://www.refugeecouncil.org.au/docs/resources/reports/What\\_Works.pdf](https://www.refugeecouncil.org.au/docs/resources/reports/What_Works.pdf)

<sup>54</sup> Sunpuwan, M., & Niyomsilpa, S., 2012, 'Perception and Misperception: Thai Public Opinions on Refugees and Migrants from Myanmar', Journal of Population and Social Studies, vol.21, no.1., p.47-8.

Accor Asia, whose 'Job Ready Program' to train and employ migrants in Australia (in partnership with the Australian government) seeks to develop a best-practice model for supporting and developing refugee job seekers that can be replicated across other employers.

12. Impressive as these examples are, the potential for concerted and effective engagement by the private sector – in line with shared mutual interest in better outcomes for forced migrants and vulnerable populations – will only be realised if the private sector is involved comprehensively in dialogue, strategy and policy development on these issues.

### **The Asia Dialogue on Forced Migration**

13. There are at least three reasons why the Asia Dialogue on Forced Migration may be especially well-positioned to engage the private sector; relating to its thematic focus, its geographical focus, and its informal approach.

14. One of the reasons for the limited engagement by many companies with migration generally is that in many parts of the world it has become a 'toxic' issue, which risks dragging down corporate image and share value. In contrast, the private sector has demonstrated a far greater willingness to engage in the humanitarian issue of refugees. The Dialogue's focus on forced migration may in this regard be considered an advantage, without underestimating the politicisation of forced migration in some parts of the region.

15. The 2015 Bay of Bengal and Andaman Sea crisis notwithstanding, it may be argued that Asia is currently not experiencing a serious refugee crisis. The Dialogue therefore may provide a space to test the willingness of the private sector to engage in a more sustainable and proactive dialogue than is currently possible in Europe. For example, is the private sector willing to invest in fragile environments, in order to address some of the root causes of displacement? Or become more actively engaged in promoting the sustainable return and reintegration of refugees?

16. Finally, the informal character of the Dialogue may provide the 'comfort zone' that the private sector requires to engage. The experience of the World Economic Forum Global Agenda Council on Migration is that confidence-building is critical to develop a meaningful engagement with the private sector.

17. Importantly, for all these reasons the Asia Dialogue on Forced Migration might be considered a 'laboratory' for a more ambitious engagement with the private sector, with the potential to extend lessons beyond forced migration, Asia, and an informal process only.

### **Recommendations to the Asia Dialogue on Forced Migration**

18. Both for the general and more specific reasons stated here, it is recommended that the Dialogue seeks to extend its membership to include representatives of the private sector. The Dialogue will need to decide which sectors, with which regional/global coverage, would be most appropriate to its aims. National and regional business councils may be a good place to start.

19. Given its experimental and 'track two' nature, the Dialogue could serve as a testing ground for the proposed Bali Process Business Forum. This would be a way to raise awareness of migration issues among potential private sector representatives on the Forum, and build

confidence. It would also be a way to leverage expertise on migration from other institutions in the region (such as the APEC Business Mobility Group), nurture new interest in forced migration from peak private sector bodies like the International Chamber of Commerce, and strengthen proposals on labour market integration for refugees by the Regional Support Office of the Bali Process.

20. It is too early to finalise Dialogue recommendations on private sector engagement to the forthcoming High-level Meeting (although the Dialogue is well placed to make regionally-based recommendations). However, the Dialogue may provide a regional focus for the engagement of the private sector as the Global Compact is negotiated over the next two-three years.

21. The forthcoming Dialogue meeting should also consider which issues private sector representatives should engage in, in the context of forced migration. Local businesses and communities must be included from the start in ameliorating the root causes of forced migration. They must also be central actors in improving resettlement outcomes.

22. A forward agenda for private sector leaders engaged with the Dialogue and other organisations on these issues should include:

- (a) integrating responsible investment principles into core business practices, and ensuring business-to-business support of core operations to counteract trafficking and exploitation
- (b) investing in skills and language training in countries of origin and processing centres
- (c) developing new technologies and algorithms so that dispersal policies can effectively and expeditiously match the talent of forced migrants with regional demand
- (d) supporting complementary migration and visa pathways which enable business and community sponsorship of forced migrants and the provision of microfinance
- (e) facilitating research and promotion of best practice on private sector involvement in the amelioration of root causes of displacement and the provision of settlement services, including employment, microenterprise, return and reintegration.

# Paper 3: Operationalising a resilient regional architecture on forced migration

## Introduction

We live in an interconnected world. No country is immune from global developments. Traditional security threats such as conflict, civil war and nuclear proliferation remain. Increasingly, non-traditional threats including economic downturns, climate-induced changes or inequality within or between countries are impacting the ability of the world's people to lead a dignified life of their choosing.

These developments feed into increasingly volatile people movements that, as a result of our interconnection, are a key element in regional and national security. It is necessary to develop a regional approach to handling forced migration undergirding the security concerns of individual nations whilst simultaneously strengthening collective, regional security. To be effective in practice, such an approach must also include safeguards to help stabilise population flows between countries whilst also affording certainty to host and transit countries about who is in their territory. Finally, it is important that this proposed regional architecture protect the lives and dignity of forced migrants and other similarly vulnerable populations.

There is therefore a mutual interest in getting the regional and human security frameworks working together in the design of a broadly based regional architecture on forced migration. This means developing and operationalising a regional architecture that:

- addresses root causes of movement and conflict
- improves protection of displaced people
- creates an environment where civil society and private sector are key players in supporting displaced people
- develops the analytical capabilities to quickly identify the early warning triggers for displacement
- develops the logistical capabilities to manage sudden mass displacements.

There are two necessary precursors for eventually building a resilient long-term regional partnership framework: a **strategic approach to (and mechanisms for) analysing and addressing the root causes of displacement**, and a **robust emergency response mechanism**.

Recent developments in the region suggest momentum towards, and a platform for, operationalising the required strategies. For example, there are significant opportunities presented by the adoption of the Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime by Ministers at the Bali Process Ministerial Conference in March 2016. Within this context, this paper poses two questions:

- How can regional forums seize the opportunity of the Bali Declaration to operationalise their commitments and strengthen the regional architecture?
- How can the Asia Dialogue on Forced Migration best add value to these efforts?

## Regional Architecture Overview

The current regional architecture (please see Appendix 1. Regional Architecture Diagram) on issues pertaining to forced migration in the Asia-Pacific is weak and disjointed.

Asylum seekers and refugees have limited legal protection in the region. The 1951 Refugee Convention is universal rather than regionally specific and the majority of countries in the region are not signatories. The other relevant UN conventions are focused on addressing transnational crimes of trafficking and smuggling and setting standards for safety at sea.

The Regional Cooperation Framework,<sup>55</sup> an initiative of the Bali Process, sets out principles and good practice approaches to forced migration. However, its non-binding nature limits the influence of the principles and approaches over the policies and actions of regional governments. The Regional Support Office (RSO) was established by the Bali Process to support regional countries to operationalize the Regional Cooperation Framework. The RSO oversees intergovernmental exchange and collaboration on good practices in relation to managing forced migration issues and is a good resource due to its focus on practical activities.

ASEAN's Human Rights Declaration places more emphasis on migrant workers than it does on refugees or asylum seekers. It includes a caveat that a person has the right to seek and receive asylum in a State, but only "in accordance with the laws of such State".<sup>56</sup> Some hope can be derived from the adoption of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, although again this has a specific focus on trafficking as it relates to labour migrants.

Most countries in the region have scant protection infrastructure, with asylum seeker and refugee registration and protection services being managed by external organisations and relying on funding from wealthier countries outside the region. Those national capabilities that have been developed are focused on border protection and tackling the crimes of trafficking in persons and migrant smuggling.

There are few points at which civil society can engage with the regional architecture on forced migration. The ASEAN Intergovernmental Council on Human Rights has strong civil society engagement. The Bali Process has historically had very little interaction with civil society.

Similarly there are few examples of the private sector relating to the regional architecture on forced migration issues. A small number of related forums exist globally, such as the Business Stream of the Global Forum on Development and Migration.

## Regional Forums and Initiatives

The two key regional forums that could influence the development of a broader mutually agreed architecture for the region are hampered by their own processes and natures.

ASEAN has taken action on a number of migration issues although in a piecemeal fashion, seemingly without a higher-order vision or agenda. In ASEAN the concept of non-interference

<sup>55</sup> The Regional Cooperation Framework is available at: <http://www.baliprocess.net/regional-support-office>

<sup>56</sup> ASEAN Human Rights Declaration, Clause 16 p.6. Available at [http://www.asean.org/wp-content/uploads/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](http://www.asean.org/wp-content/uploads/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf)

and respect for national sovereignty, consultation and consensus weakens its ability to step up to the increasing regional challenges of population movements and displacement. With the exception of issues concerning labour mobility and the vulnerability of migrant workers it gives scant recognition to population movements or the triggers for forced migration and how to handle such movements when they occur, whether intra-regionally or into the region.

The other forum, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, is not a decision making body. In its processes it emphasises that any action taken by member countries is voluntary and non-binding. This again weakens its capacity to develop stronger regional cooperation on cross border issues even when, in the outcomes of its meetings, it urges greater regional cooperation.

As a result these forums have failed to adequately tackle the root causes of forced migration, to manage sudden mass displacement events and to prepare the region for future displacement.

The upcoming UN General Assembly Summit Addressing Large Movements of Refugees and Migrants (19 September 2016) has further highlighted the need for coordinated and complementary action on population movements and displacements. It has identified as its main themes:

- addressing the root causes of large movements of refugees
- assessing the root causes of migration and the contribution of migrants
- international action and cooperation on refugees and migrants - the way ahead
- responsibility sharing for refugees and respect for international law
- a global compact for safe, regular and orderly migration - towards realizing the 2030 Agenda for sustainable development
- addressing vulnerabilities in transit for refugees and migrants.<sup>57</sup>

There are a small number of civil society networks in the region with a focus on forced migration issues. The Asia Pacific Refugee Rights Network (APRRN) has the core objective of advancing the rights of refugees in the region. It has 26 organisational members and over 200 organisations and individuals participating in programs and dialogues. The International Detention Coalition (IDC) is a global network of civil society organisations and individuals, including in the Asia-Pacific, focusing on the rights of refugees, asylum-seekers and migrants affected by immigration detention. The Asia Pacific Forum (APF) is a network of National Human Rights Institutions, with government and non-government partnerships, focusing on the rights of migrants, refugees and asylum seekers.

### Recent Developments

The recent Sixth Ministerial Conference of the Bali Process on 23 March 2016 highlighted, in its final Co-Chairs Statement,<sup>58</sup> the need for better planning and preparedness for potential large influxes of irregular migrants in the future. In so doing, the language of the statement urged

<sup>57</sup> Draft resolution submitted by the President of the General Assembly, High-Level Plenary Meeting on addressing large movements of refugees and migrants on 19 September 2016, Annex p.7. Available at <http://www.un.org/pga/70/wp-content/uploads/sites/10/2015/08/Refugees-and-Migrants-29-April-2016-1.pdf>

<sup>58</sup> Sixth Ministerial Conference of The Bali Process On People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 23 March 2016, Co-Chairs Statement. Available at [http://www.baliprocess.net/UserFiles/baliprocess/File/BPMC Co-chairs Ministerial Statement with Bali Declaration attached - 23 March 2016 docx.pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%20Co-chairs%20Ministerial%20Statement%20with%20Bali%20Declaration%20attached%2023%20March%202016.docx.pdf)

countries to cooperate, noted participation would be voluntary and non-binding and expanded on several key themes:

- the need for protection-sensitive systems
- better emergency response arrangements that cover rescue at sea, disembarkation and reception and screening
- opening alternative migration pathways and negotiated arrangement for return and readmission of people not in need of international protection
- cooperation on disruption and law enforcement action on syndicates involved in people smuggling and trafficking, as well as shared biometric and border management systems.

There was further acknowledgment that the region needed to be more agile in responding to mass displacements and proactive in anticipating future movements. This included recognising the trigger points that prompt new outflows – restrictive policies on freedom of movement and access to secure livelihoods being the most obvious – as well as human rights violations and communal violence.

The accompanying Bali Declaration clearly emphasises the need for a “comprehensive regional approach, based on the principles of burden sharing and collective responsibility” and the need to translate “political commitments into concrete action”.<sup>59</sup> The Declaration also notes:

... the need to address the root causes of irregular movement of persons and forced displacement, and the frequent linkages between the breakdown of good governance and the ease of people smuggling and irregular migration ventures. Our collective response should promote good governance, rule of law, full respect for human rights and fundamental freedoms, a sense of security and belonging, inclusive economic growth, livelihood opportunities, access to basic services, social tolerance and understanding, and measures to prevent and reduce statelessness, consistent with humanitarian instruments.<sup>60</sup>

Significantly, Bali Process Ministers agreed to undertake a review of the Andaman Sea crisis of 2015 and specified that that review “would consider options for improving national, regional and sub-regional contingency planning and preparedness for potential large influxes of irregular migrants in the future”.<sup>61</sup> Ministers also agreed to create a consultation mechanism to convene future meetings to “discuss urgent irregular migration issues with affected and interested countries in response to current regional issues or future emergency situations”, while also noting that participation would be voluntary and non-binding.<sup>62</sup>

Ministers further noted the importance of humanitarian and protection-sensitive arrangements in managing irregular migration and specifically requested that members give priority to

<sup>59</sup> Bali Declaration On People Smuggling, Trafficking in Persons and Related Transnational Crime, Sixth Ministerial Conference of The Bali Process On People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 23 March 2016, Paragraph 3 p.2 and Paragraph 14 p.5. Available at [http://www.baliprocess.net/UserFiles/baliprocess/File/Bali Declaration on People Smuggling Trafficking in Persons and Related Transnational Crime 2016.pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016.pdf)

<sup>60</sup> Ibid. Paragraph 4 p.2.

<sup>61</sup> Sixth Ministerial Conference of The Bali Process On People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 23 March 2016, Co-Chairs Statement, Paragraph 2 p.1.

<sup>62</sup> Ibid. Paragraph 5 pp.1-2; also see Paragraph 14, p. 5 of the Bali Declaration.

“coordinating procedures for rescue at sea, identifying predictable places for disembarkation, improving reception and screening systems, and engaging civil society in delivery and post-disembarkation emergency assistance.” Ministers also highlighted the importance of temporary protection and local stay arrangements and recommended research into their viability.”<sup>63</sup>

Complementing these developments are initiatives in ASEAN such as the ASEAN Political and Security Blueprint 2025, the ASEAN Human Rights Declaration and the 2005 ASEAN Agreement on Disaster Management and Emergency Response. While these are largely silent on forced migration and displacement, they do contain within them key elements for a regional approach to forced migration and displacement. These include elements such as developing preventive strategies, enhanced cooperation on border management and trafficking, respect for human rights and improved emergency response capabilities.

The recently adopted ASEAN Vision 2025 on Disaster Management charts the strategic direction that ASEAN needs to embark on in the next 10 years.<sup>64</sup> In this vision ASEAN notes that the region must focus on the evolution of the humanitarian landscape and the nature of disasters. This is important to ensure that it has a comprehensive and robust disaster management and emergency response system in place. While it does not specifically consider or indeed acknowledge mass displacements as part of its disaster response, there is no reason why such displacements, as in the Andaman Sea crisis, cannot easily be adapted into the disaster response mechanisms.

Alongside these two regional forums sits the Jakarta Declaration on Addressing Irregular Movement of Persons (2013), which outlines four main areas of action: prevention, early detection, protection and prosecution.<sup>65</sup>

In short the key strategies in the proposed regional architecture are consistent with broader global policy debates including at the upcoming UN General Assembly High Level Summit on Refugees and Migrants. It is now time to operationalise these aspirations.

## Moving Forward

There is recognition from countries that more needs to be done. This is best reflected in the Bali Declaration of March 2016. These recent developments provide a platform upon which to expand the three key strategies required for a comprehensive regional architecture, namely:

- addressing root causes through core contact groups
- developing a regional emergency response mechanism
- strengthening regional partnership.

Proposals for moving forward the first two of these strategies are expanded below, with specific reference to how the consultation mechanism the Bali Process has recently created might be developed to address these identified capability needs.

## Core Contact Groups

<sup>63</sup> Ibid. Paragraph 8 p.2.

<sup>64</sup> ASEAN Vision 2025 on Disaster Management. Available at <http://www.asean.org/storage/2016/02/ASEAN-Vision-2025-on-Disaster-ManagementAdopted.pdf>

<sup>65</sup> Jakarta Declaration on Addressing Irregular Movement of Persons, Jakarta, 20 August 2013. Available at <http://www.unhcr.org/5214ae709.pdf>

Since at least the late 1980s, the UN and others have used processes such as: “friends of...”, “contact groups” and “core groups” as ways of initiating dialogue and discussion on seemingly intractable situations – often in a conflict or immediate post-conflict situation.

These approaches have had a mixed record of “success” but remain an important element in the search for dialogue, the creation of shared understandings of intractable situations and the generation of ideas that have the potential to broker new mutually-advantageous approaches.

This paper advocates building a new approach to addressing the root causes of forced migration in the Asia-Pacific through the development of core contact groups. Core contact groups can assist the region to address root causes of movement and conflict through the development of analytical capabilities to quickly identify the early warning triggers for displacement, as well as providing avenues for engaging civil society and the private sector effectively in addressing forced migration and mass displacement. They have the potential to be an effective and proactive approach to what can be slowly emerging but very real crises.

Because each displacement is different, there is no one approach as to how to address the root causes. Issues of national interest as well as widely differing cultural and governance approaches often hamper governments’ attempts to address the complex events that trigger a mass or sudden displacement of people. Understanding the triggers that motivate movement, whether at source or as a secondary movement – be it social, economic or political or a combination of factors – enhances the ability of key players to draw on a “toolkit” of strategies in addressing emerging concerns and facilitating a new dialogue with affected countries.

In an attempt to explore the current operational context, this paper presents two scenarios within which the strategy of a core contact group could be applied – mass displacement resulting from political instability or conflict- and climate-induced displacement. The intent is that these two examples of the application of core contact groups demonstrate their utility and potential for strengthening the regional architecture and effectively addressing the complex root causes of mass displacement and forced migration in the region.

#### *Mass Displacement Induced by Political Insecurity/Conflict*

The events of 2015 in the Andaman Sea highlighted the need for strengthening cooperation in addressing root causes of displacement within the region. The movement of Rohingya has not been caused by war but rather as the result of ethnic and communal politics and violence in Myanmar. Political resolution of such displacement is wholly possible and desirable.

The answers lie not just with Myanmar, but also with the issue of how the region and its key players can approach a dialogue that seeks to stabilise the movement of Rohingya from Myanmar. This requires an approach that engages the national and regional governments of Myanmar on civil and political rights for all its populations. It would require action on poverty, strengthening governance and institutional capacities as well as creating new opportunities for jobs, education and sustainable livelihoods.

There is broad consensus that something needs to happen but no consensus as to how. As a first step there would be value in establishing a dedicated working group to undertake detailed

country analysis and early warning indicators that might point to a sudden or slowly emerging crisis point.

This could include, for instance, using reporting from established organisations and groups (such as the annual Peoples Under Threat report from the Minority Rights Group International, the UN Office on Drugs and Crime, the UN High Commissioner for Refugees and the International Organization for Migration, as well as more local reporting such as from the Arakan Project regarding Rohingya) to build up a profile of countries/issues where early intervention and a more proactive approach to addressing emerging issues could have an impact.

Approaches likely to be most effective could include addressing issues of human security, good governance, capacity building, development assistance, intense diplomatic engagement, access to employment and other basic services, opening alternative migration pathways and opening trade and investment opportunities, among other strategies.

Bringing that information and suggested approach to governments or forums such as the Bali Process or the ASEAN Political and Security Community could then help facilitate an intergovernmental/civil society contact group. This group would be formed with decision-making authority or links to such authorities to address critical issues and have the capacity to broker initiatives that could break an existing stalemate. Such an approach has the potential to start the process of confidence building and trust in the development of a new paradigm.

#### *Climate-Induced Displacement*

There is a need for planning now on population movements that respond to intense weather events, gradual erosion of livelihoods and climate-induced changes to food security, as well as broader human security issues.

The politics of climate-induced mass movements is complex. It is a difficult combination of land degradation, flooding, food insecurity, freak weather events, slow and sudden changes – all of which have significant policy relevance for human and regional security.

The presence of environmental factors that drive displacement require us to take an interdisciplinary approach. Building on the commitments and declarations made at the Bali Process Ministerial Conference, a proactive strategy is timely. It could for example be developed along the lines of the Climate Change, Environment and Migration Alliance (CCEMA), co-founded by IOM in 2008. This alliance seeks “to bring together actors representing a range of perspectives including environment, migration, development and humanitarian assistance. Its objective is to bring migration considerations to the environment, development, and climate change agendas and vice versa”.<sup>66</sup> The CCEMA has been a valuable platform for raising global consciousness about human mobility impacts of climate and environmental change.

Bringing government and non-government experts into a forum that is unique to this region and its challenges could well lay the groundwork for a coordinated and strategic regional response to such events. Such a regional grouping could provide a neutral and open forum for a policy

<sup>66</sup> Climate Change, Environment and Migration Alliance, <http://www.ccema-portal.org/>

dialogue. It could help in identifying and discussing major cross-cutting issues on displacement and identifying environmental tipping points, as well as explore policy scenarios such as:

- measures for strengthening institutional capacities to deal with changing population circumstances
- Addressing internal displacement and adaptation strategies – particularly in relation to human security
- Finding common ground for strengthening cooperation between governments and developing region wide responses as well as adaptation of legal and policy frameworks.

### **Emergency Response Mechanism**

In addition to highlighting the need for strengthening cooperation in addressing root causes of displacement within the region, the Andaman Sea events highlighted the need to establish a mechanism to facilitate timely consultation to respond to emergency situations. But equally important is the need to move beyond discussion and into action.

The paper *Options for Building a Resilient Regional Architecture in the Management of Mass Displacement in the Asia Pacific* prepared for the Bangkok meeting of the Asia Dialogue on Forced Migration<sup>67</sup> proposes a way to do this. It suggests the establishment of a rapid response deployment team, and presents a brief outline of what an emergency response deployment could entail and the protocols for its operation.

In the case of a sudden displacement, a team would have the capability to establish:

- emergency accommodation
- health services
- registration processes - including capture of biometric data.

Agreed protocols would be needed that address:

- how to integrate and standardise various national approaches into a regional strategy
- mandatory training needs and expertise
- triggers that activate a rapid deployment<sup>68</sup>
- agreed timeframes for deployment (say five days) and length of deployment (as a precursor to establishing longer term assistance and relief)
- assignation of a focal point on a rotational basis for the coordination, administration, readiness and activation of the deployment teams
- agreement on skills needs, coordination and leadership.

The Bali Process Andaman Sea Review, the Bali Process consultation mechanism, and the ASEAN Vision 2025 open the opportunity to lay the building blocks for sustainable long-term emergency response capability in the region on mass displacement.

There is an opportunity for development of a regional response complementing ASEAN's Disaster Management response mechanisms.

<sup>67</sup> Asia Dialogue on Forced Migration Second Meeting Briefing Papers, January 2016. Available at <http://cpd.org.au/wp-content/uploads/2016/02/Track-II-Participant-Pack-2-9-Feb.pdf>

<sup>68</sup> UNHCR, UNODC, and IOM have authored a joint proposal outlining ten models for deployment response, in reaction to the migration crisis of the Andaman Sea and in the Bay of Bengal. Available at <http://www.unhcr.org/55682d3b6.html>

## Key Questions

The newly created Bali Process consultation mechanism has the potential to develop both the capability of a core contact group/s on key forced migration challenges in the region as well as catalyse the establishment of capability for emergency responses to mass displacement.

In light of the operational context of forced migration in the region outlined above, some key questions aimed at guiding the further development of this mechanism are:

- What expertise and capacity does the mechanism require?
- How should it be resourced?
- Who does the mechanism need to consult with and how?
- How could the mechanism build on the momentum and outcomes of recent developments, including ASEAN Vision 2025 and the World Humanitarian Summit?

## Opportunities for the Asia Dialogue on Forced Migration

With its focus on a stronger, more proactive and resilient regional architecture, the Asia Dialogue on Forced Migration (the Dialogue) is well placed to assist the regional bodies to operationalise their recent commitments.

The question for the Dialogue is how best to provide this assistance. The following are some suggested ways in which the Dialogue could add value, for further exploration at the next Dialogue meeting in September 2016 in Kuala Lumpur.

- Contributing directly to the Bali Process Andaman Sea Review, through aggregating Dialogue analysis and recommendations thus far, as well as exploring the development of the Bali Process consultation mechanism so that it bolsters regional capability in:
  - addressing root causes of forced migration and agreeing preventative action
  - assessing early warning triggers of mass displacement
  - responding to emergency mass displacement events effectively.
- Assisting the region address the root causes of forced migration through participating in core contact groups as appropriate.
- Assisting in the development of emergency response capability in the region through further identification of the necessary components of such a capability and definition of the required protocols. Further to this, contributing to the assessment and communication of early warning triggers of mass displacement.
- Continuing engagement with the Bali Process Co-Chairs, the Regional Support Office and the ASEAN Secretariat in pursuit of a strong, proactive and resilient regional architecture.

## Conclusion

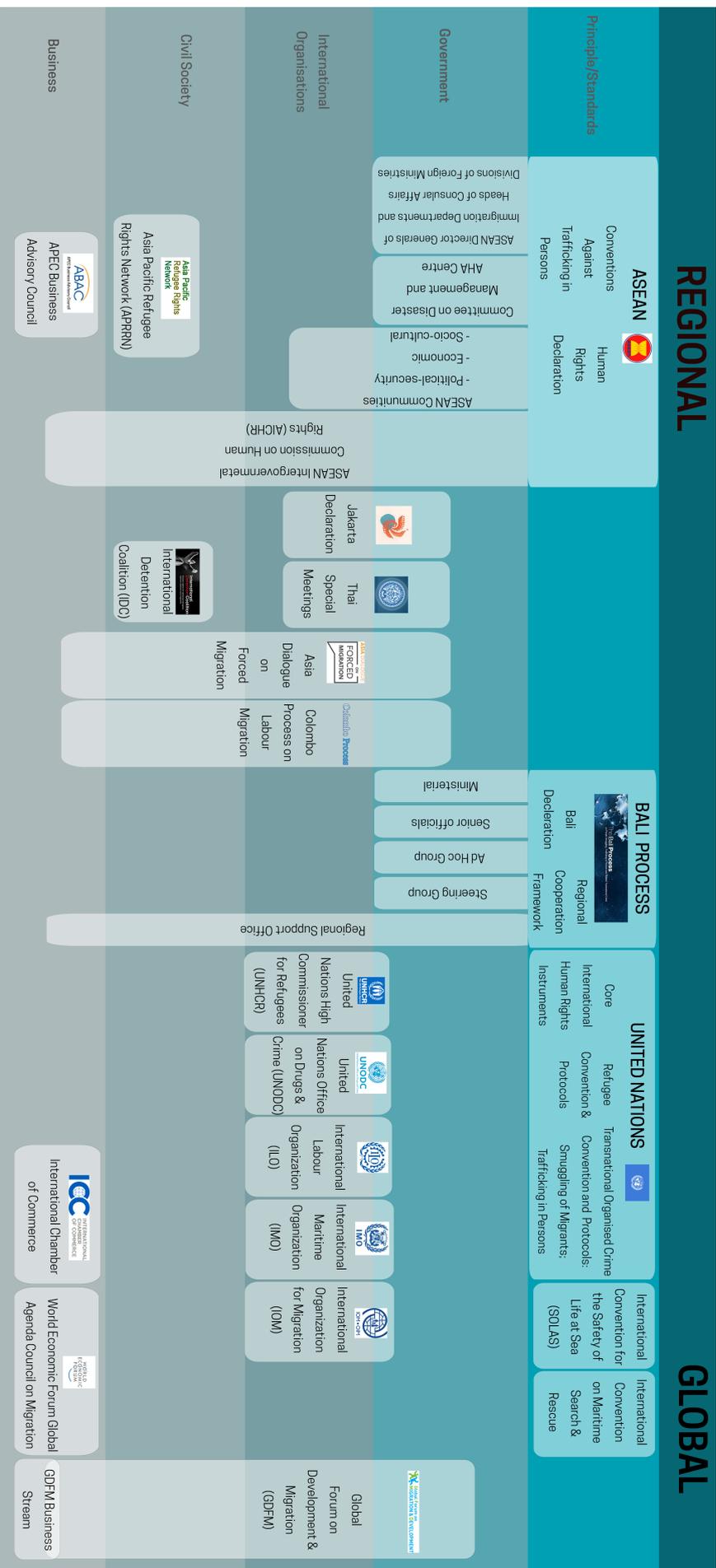
The timing is right to take forward the aspirations of the Bali Process Outcomes of March 2016, the Jakarta Declaration, and the UN High Level Meeting in September and translate these into concrete action.

Core contact groups that bring together key players (governments, regional bodies and international players) are highly desirable.

An emergency response mechanism will position the region to be in control of its own future – dealing with displacement whether intra or inter regional with compassion and dispassion – ensuring human security concerns are at the core, while acknowledging the legitimate national and regional security concerns of governments.

The Bali Process consultation mechanism is a significant step forward in developing much needed capabilities within the region. Its effective operationalisation could contribute to a sustainable, strong and resilient architecture for the region, respecting national sovereignty while at the same time recognising the humanity of displaced people. The two are not mutually exclusive.

### Appendix 1: Regional Architecture Diagram



## Paper 4: Governance of migration in the region: a bigger role for ASEAN

### **How Governance of Migration in the Region Works Now**

Governance of migration in Southeast Asia is primarily based on national policies and bilateral arrangements. Arguably, legal frameworks remain limited and policies lack clear articulation and predictability.

Most countries in Southeast Asia have chosen to remain outside formal global frameworks affecting migration such as the 1951 UN Refugee Convention and the 1954 and 1961 UN Conventions on Statelessness. For example, only two of 10 ASEAN member countries (Cambodia and the Philippines) are parties to the Refugee Convention and only one (the Philippines) is a party to the Conventions on Statelessness.

Similarly, only five ASEAN members (Cambodia, Myanmar, Philippines, Thailand and Vietnam) are in the 165-member International Organization for Migration, although Indonesia is an observer. See attachment A.

And yet Southeast Asia is an important crossroads for all forms of migration - labour emigration and immigration and forced migration (including internally displaced persons, refugees and trafficked persons). These migrations have involved both movements within and between countries in the region as well as movements into and out of the region from other areas.

The need for co-operative multilateral efforts to manage the issues arising from these movements has been filled in part by the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime ('Bali Process') and in part by ASEAN.

### ***The Bali Process***

The impetus for establishment of the Bali Process in 2002 was the relatively narrow problem of maritime asylum seekers, but also longer-term regional concerns about trafficking in persons. Under the co-chair arrangements involving Indonesia and Australia, the Bali Process has brought together 45 member countries and three international organisations. Its membership originally reflected the preferred response of involving source, transit and destination countries in the solutions to irregular movements of people. It stretches from Turkey in the west to Kiribati and the United States in the east, to Mongolia in the north and New Zealand in the south.

Since its inception, the Bali Process has raised regional awareness of the consequences of people smuggling and trafficking in persons and developed strategies and practical cooperative measures in response to these people flows. It has also established a Regional Support Office (RSO) to help build capabilities. The Bali Process Ministerial Meeting in March 2016 gave the Bali Process an important new role in providing an emergency response to displacement crises. Ministers authorised the co-chairs to initiate a consultative process on urgent irregular migration issues with affected and interested countries, when necessary.

## ASEAN

ASEAN has, over time, taken action on several forms of migration – migrant workers, the internal free movement of labour and forced migration, particularly trafficking. ASEAN's approach to forced migration has been well documented.<sup>69</sup>

In summary, some key examples of ASEAN actions are:

- **Migrant worker protection and management** (ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers 2007)
- **Internal migration within ASEAN countries** (9 agreements on "free" movement of highly-skilled workers)
- **Irregular migration** (2015 Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia and regular meetings of ASEAN Directors General of Immigration and Heads of Consular Divisions of Foreign Ministries)
- **Forced migration, particularly trafficking in persons** (2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children).

The 2012 ASEAN Human Rights Declaration and the work of the ASEAN Intergovernmental Commission on Human Rights also clearly have implications for migration.

This degree of willingness to involve itself in migration issues clearly signals ASEAN's confidence in its authority and capability to act in the area of migration governance.

### Why ASEAN Needs to Do More and What It Could do

The movement of ASEAN into the field of migration governance has happened progressively and in response to many different stimuli. However, it does not appear to derive from any general "migration agenda" within the organisation and therefore represents a piecemeal approach within each of the three ASEAN communities (political-security; economic and socio-cultural). Nor is there any sense of a forward-looking, coordinated approach to migration in all its forms.

As the pre-eminent multilateral body in the region, it would seem logical for ASEAN to take the lead on a coordinated approach to migration governance issues, particularly forced migration. It would also seem to be a natural evolution of the work that it has done to date. In one sense, ASEAN would simply be "joining up the dots" of work it has already undertaken rather than continuing to involve itself on an ad hoc basis.

The kinds of issues it could incorporate into a more formal migration governance agenda are:

- **labour emigration and worker protection** (i.e. ASEAN nationals working in non-ASEAN countries)
- **regular migration into ASEAN countries** (i.e. non-ASEAN nationals entering ASEAN countries under legally authorised programs)
- **internal migration within ASEAN countries** (i.e. programs for freer internal movement)

<sup>69</sup> For Example: Sriprapha Petcharamesree (2016) ASEAN and its approach to forced migration issues: The International Journal of Human Rights 20:2, 173 – 190.

<http://www.tandfonline.com/doi/full/10.1080/13642987.2015.1079021#.V5Gx301f2so>

- **irregular migration** (i.e. non-authorised movements from outside ASEAN and between ASEAN countries)
- **forced migration (including trafficking in persons)** from outside the region into ASEAN countries and also within ASEAN countries, including tackling root causes
- **acceptance by countries of return of their own nationals/residents** (i.e. acceptance by non-ASEAN countries of returns from ASEAN and acceptance by ASEAN countries of returns from other ASEAN countries).

ASEAN is well placed because of its established dialogue frameworks to also be the centre of a process of working with regional neighbours, including Australia and New Zealand, on migration governance issues.

Despite the past achievements and future potential of the Bali Process, it cannot do these things as effectively as ASEAN can do them in the long term. Its huge membership means that there is not a strong synergy of interests, or priorities, between the participating countries. Further, its agenda is relatively narrow, covering only people smuggling and trafficking. It does not have the strong formal political structures and the Secretariat that ASEAN has.

### **Why Now?**

ASEAN of course has many other pressing priorities. There is currently no great migration crisis facing it, although there are ongoing unresolved forced migration issues, particularly in relation to the movement of Rohingya and others in the Andaman Sea.

However, a forward-looking approach would suggest that global mobility will mean increased pressures for movement of people from outside the region towards ASEAN countries and an expansion of movement of people within. The migration crisis being experienced in Europe, with unprecedented irregular flows of refugees and migrants from the Middle East and Africa, show how quickly and unexpectedly large-scale population movements can develop. ASEAN would be better placed to anticipate, mitigate and manage such movements if it were to develop some of the basic infrastructure now, rather than wait for a crisis to develop. Doing so would add to the security and resilience of ASEAN countries.

More broadly, ASEAN needs to take on these issues in a more active and integrated way to avoid negative perceptions from the international community that it is merely passive in the face of serious migration problems such as occurred with the 2015 Andaman Sea crisis.

### **Where to Start?**

In the long term, there is scope for ASEAN to develop further conventions and frameworks relating to the full range of migration issues - economic migration, forced migration, regular migration and worker protection. There is also scope for developing greater internal free movement arrangements and processes as well as migration understandings with external partners. In all of these areas, there are numerous specific sub-agendas which could be considered and on which coordinated action is probably overdue.

In the short term, however, some reasonable recommendations for ASEAN to consider might be:

- Developing an ASEAN mechanism which would enable the coordinated discussion, at ministerial level, of the full range of migration issues

- Developing a forward work agenda on the full range of migration issues, which sets clear priorities for action.
- Placing forced migration into and within ASEAN at the head of such an agenda, given the inherent challenges for governments in managing forced migration without a collective approach
- Developing an ASEAN migration database to support ASEAN and member states in developing policy
- Ensuring that migration issues are part of the regular agenda for discussion in forums with external partners to ASEAN.

### **Building on a Stronger ASEAN Migration Governance Approach**

By developing a more sophisticated and coordinated approach to migration governance, ASEAN would be better placed to pursue a collective position on migration, including root causes of displacement, in forums such as – the ASEAN Regional Forum, the East Asia Summit, the UN Summit on Addressing Large Movements of Refugees and Migrants and the Global Forum on Migration and Development. For example, the recent ASEAN Regional Forum in the Lao PDR touched on irregular migration in its deliberations and in the Chairman's statement.

### **How ASEAN Could Go About it**

It is a matter for discussion as to how ASEAN could best take on this agenda in a coordinated way. Migration issues can be framed in many ways – security based, economic based or socio-cultural based. In truth, migration governance cuts across all three ASEAN communities.

With a political commitment by ASEAN member countries to take on such an enhanced role, a suitable framing of the issues would need to be found as well as a permanent home within ASEAN structures. One approach might be to incorporate the migration agenda into the Political-Security Community. There may also be a creative way to set up a mechanism that straddles all three communities to ensure properly coordinated consideration of the issues.

### **What the ADFM Can Do**

If the ADFM wishes to promote greater ASEAN involvement in the governance of migration, particularly forced migration, it could write to the ASEAN Secretary-General with a set of proposals, as it did to the Bali Process co-chairs.

There is also scope for ADFM partner organisations and participants to promote these ideas within their own jurisdictions.

### **Questions for Discussion:**

- How can ASEAN best build on the work it has already done on the governance of migration, particularly forced migration?
- How can ASEAN leaders be encouraged to take greater interest?
- What should be the priorities for strengthened involvement in migration by ASEAN?
- How could a stronger approach to migration governance best be built into ASEAN structures?
- What can the ADFM do to encourage ASEAN to be more active in this area?

### Attachment A



Asia: Parties to the 1951 Refugee Convention (Green) Source: DIAC, Australia



Asia: Members of the International Organization for Migration (Pink) Source: DIAC

## Glossary

As noted above, there is no settled terminology for forced migration issues. Where terms in this document have been used we have relied on the definitions below. These definitions have been sourced from the IOM (Glossary on Migration), the UNHCR (Global Trends Report) and the November 2014 report from CPD, Australia21 and the Kaldor Centre, *Beyond the Boats: building an asylum and refugee policy for the long term*.

**Asylum Seeker:** A person who is seeking protection as a refugee but has not yet had their claim determined by an official.

**Country of Origin:** The country that is a source of migratory flows (legal or illegal).

**Country of Transit:** The country through which migratory flows (legal or illegal) move.

**Durable Solutions:** The term used to describe a permanent solution for refugees to allow them to settle and rebuild their lives in dignity and peace. The three durable solutions pursued by states and UNHCR are voluntary repatriation, local integration and resettlement to a third country. The UNHCR estimates that around 800,000 refugees are in need of resettlement each year. There are around 80,000 resettlement places available annually worldwide.

**Forced Labour:** All work or service, which is exacted from any person under the threat of any penalty and for which the said person has not offered himself/herself voluntarily.

**Forced Migration:** A migratory movement in which an element of deception or coercion exists, including human trafficking and threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects).

**Human Trafficking:** The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation.

**Irregular Migrant:** Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country.

**Irregular Migration:** Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. From the perspective of destination countries it is illegal entry, stay or work in a country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.

**Internally Displaced Person (IDP):** A person who has been forced to flee his or her home but remains within the borders of his or her country of origin.

**Maritime Arrival:** An asylum seeker who arrived by boat without a valid visa.

**Migrant:** A person who moves from one country to another for a range of different reasons, including for work, education or to join family members. Migration may be temporary or permanent. Migrants are accepted at the discretion of the state, as opposed to refugees and other persons with protection needs who states may be required to accept as a result of their international legal obligations.

**Migrant Smuggling:** The procurement of the illegal entry of a person into a state, of which the person is not a national or a permanent resident, in order to obtain, directly or indirectly, a financial or other material benefit. Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights.

**Migrant Worker:** A person who is to be engaged, is engaged or has been engaged in a paid activity in a state of which he or she is not a national.

**Mixed Flows:** Complex population movements including refugees, asylum-seekers, economic migrants and other migrants.

**Non-Refoulement:** The principle of non-refoulement prohibits states from sending a person to a place where they face a real risk of persecution, arbitrary deprivation of life, torture, cruel, inhuman or degrading treatment or punishment, or being subjected to the death penalty.

**People of Concern (to the UNHCR):** This includes persons who are forcibly displaced (refugees, asylum-seekers, IDPs, etc.), those who have found a durable solution (returnees), as well as stateless persons, most of whom have never been forcibly displaced. This categorization is neither identical to nor synonymous for the forcibly displaced persons worldwide, a category that not only includes refugees and IDPs beyond UNHCR's mandate but also excludes returnees and stateless persons.

**Protection:** This refers to the protection owed under international law to refugees and others with international protection needs (such as beneficiaries of complementary protection under international human rights law). At a minimum, it requires respect for the principle of non-refoulement, and the safeguarding of basic human rights in accordance with international refugee and human rights law.

**Receiving Country:** Country of destination or a third country. In the case of return or repatriation, also the country of origin. Country that has accepted to receive a certain number of refugees and migrants on a yearly basis by presidential, ministerial or parliamentary decision.

**Refugee Convention:** The 1951 Convention relating to the Status of Refugees, the key legal instrument in international refugee law and protection. The Convention was supplemented by the 1967 Protocol relating to the Status of Refugees, which removed the temporal and geographical limitations of the earlier treaty.

**Refugee Status Determination (RSD):** A process by which a government authority or UNHCR assesses a person's claim for refugee status against the criteria set out in article 1A(2) of the Refugee Convention.

**Refugee:** A person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, and who is unable or unwilling to return to his or her country of nationality or former residence on account of that fear.

**Regular Migration:** Migration that occurs through recognized, legal channels, including with the assistance of a government, governments or an international organisation, as opposed to spontaneous, unregulated migration.

**Stateless Person:** A person who is not considered as a national by any state under the operation of its law. As such, a stateless person lacks those rights attributable to nationality: the diplomatic protection of a state, no inherent right of sojourn in the state of residence and no right of return in case s/he travels.

**Undocumented Migrant Workers:** Migrant workers or members of their families, who are not authorized to enter, to stay or to engage in employment in a state.