

From Crisis to Collaboration



Reflections on ASEAN's
protection mechanisms
for forced migration

ASIA DIALOGUE
ON
**FORCED
MIGRATION**

ABOUT ADFM

Established in August 2015, the Asia Dialogue on Forced Migration (ADFM) is a ‘second track’ process pursuing more effective, durable, and dignified approaches to forced migration in the Indo-Pacific. The ADFM brings together government and non-government decision-makers from nine affected countries and representatives from UNHCR and IOM, each of whom acts in their personal capacities. The ADFM is led by a regional Secretariat, convened by the Centre for Policy Development in Australia, in partnership with the National Research and Innovation Agency (BRIN) in Indonesia, the Institute of Human Rights and Peace Studies (IHRP) at Mahidol University, Thailand, and the Institute of Strategic and International Studies (ISIS) Malaysia. Through its independent discussions and policy development, and its work in conjunction with existing mechanisms for government-to-government cooperation on these issues, the ADFM is helping to build a platform for greater regional cooperation to address the challenges of forced migration in the Indo-Pacific.

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Cite this paper as: The Asia Dialogue on Forced Migration (2024) “From Crisis to Collaboration: Reflections on ASEAN’s actions on forced migration,” ADFM discussion paper, Centre for Policy Development.

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EXECUTIVE SUMMARY

Southeast Asia hosts hundreds of thousands of refugees and asylum seekers, while having the lowest ratification rate of the Refugee Convention of any region in the world. Some states have developed **practical** refugee protection policies, while others lag on effective implementation, which has led to a patchwork of protection and rights that vary significantly among states, and sometimes within states.

The absence of an agreed protection framework within ASEAN leaves the region unable to adequately respond to crises as they emerge, let alone prevent or prepare for them, and causes ad-hoc, inadequate responses to forced migration.¹

Ongoing crises in the Asia Pacific in Myanmar, Afghanistan, and Sri Lanka possess the capacity to cause further large-scale displacement, not to mention global impacts of the crises in Gaza and Ukraine. No one country can manage these challenges alone: regional cooperation is critical.

In late 2023, Indonesia faced a renewed refugee crisis when over 1,500 ethnic Rohingya people arrived in Aceh on nine boats in the space of four weeks from mid-

November until mid-December.² This number exceeded the total number of arrivals between 2020-2022. Indeed, overall 2023 was the deadliest year for maritime movements in the region since the Andaman Sea Crisis in 2015.³ Without the mandate and willingness to respond to refugee issues, ASEAN is doomed to repeat the mistakes of the past.

Given the patchwork nature of protection available to displaced persons in ASEAN, this report is the first attempt to summarise what already exists at the ASEAN level to address forced migration, identify gaps that remain and how they can be addressed. Taking a pragmatic approach, the report demonstrates how to make the most of existing frameworks and processes over a ten-year period to strengthen ASEAN’s forced migration architecture.

The report also highlights gaps in this existing architecture, and puts forward ideas for how this could be improved. Rather than create entirely new regional architecture, this report shows there are opportunities to build on frameworks and processes that already exist within ASEAN.

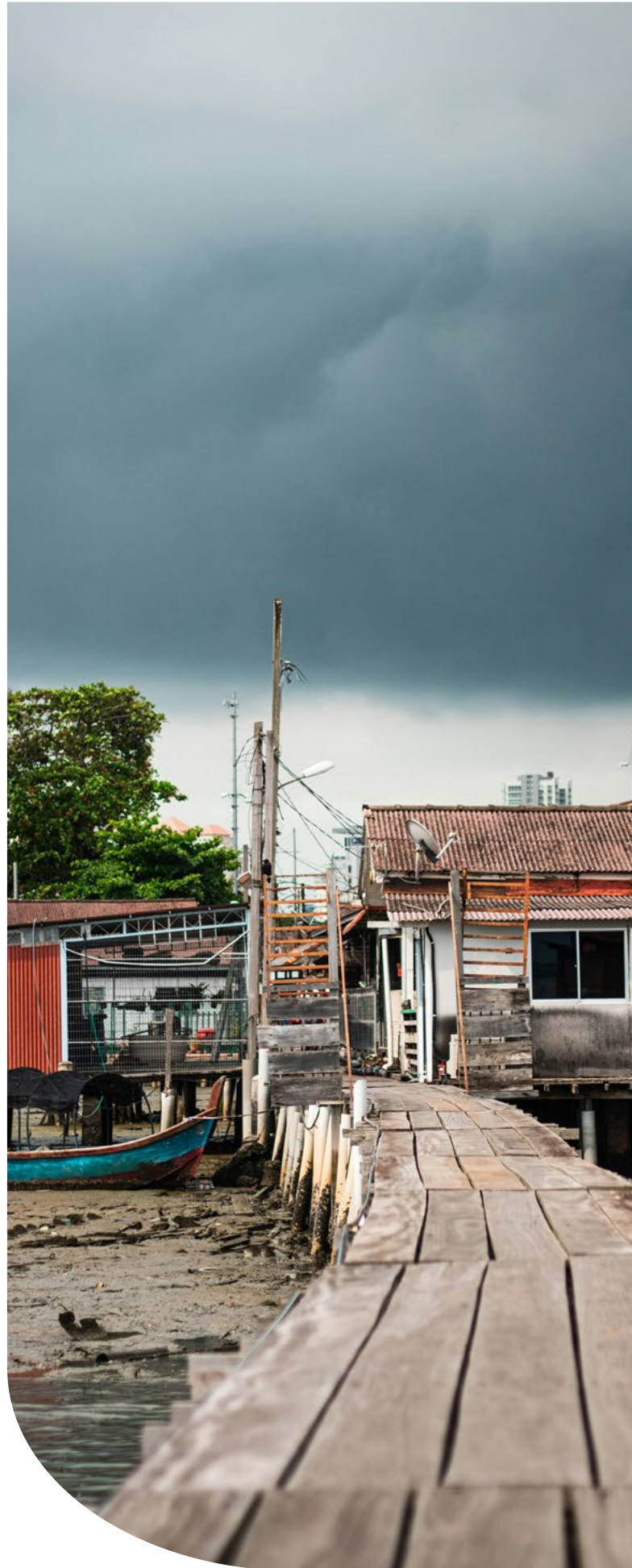
The report proposes six recommendations to strengthen ASEAN’s forced migration architecture:

Changes to existing structures:	1. Incorporate forced migration in the ASEAN Community’s Post 2025 vision 2. Work to build resilience and connectivity through employment and education for forcibly displaced populations in transit 3. Enhance search and rescue capabilities
Creating new structures:	4. Establish a Ministerial Dialogue on Forced Migration 5. Create an ASEAN Declaration of Forced Migration 6. Create a multi-stakeholder ASEAN Forum on Forced Migration

This report is divided into four parts. The first outlines the background, scope, and methodology of the paper. Second is a stocktake of frameworks, declarations and other ASEAN mechanisms that relate to migration issues, and analysis of the landscape. Third is a discussion of the gaps and challenges and fourth is a summary of opportunities and recommendations.

The recommendations recognise that this will be a long journey and there will be no quick fixes. The recommendations outlined have a decade-long implementation pathway. We hope this report can illuminate a feasible path forward for those working within ASEAN, and for those on the outside, we hope it can highlight opportunities that may not have been clear before.

This stocktake was proposed at the 12th meeting of the Asia Dialogue on Forced Migration (ADFM), held in Jakarta in May 2023, and was conducted by the ADFM Secretariat, in consultation with partners across the region working on migration and refugee issues.





1. INTRODUCTION

A. Context

Southeast Asia is a region of rich cultural, linguistic and religious diversity that has long benefited economically and culturally from migration. People have moved for work, study, family reunification, crisis situations, and asylum. This migration includes movements within and between countries in the region, as well as movements to and from the region.⁴ These movements are increasingly 'mixed' - movements of people for a variety of reasons and for varying lengths of time, often temporarily, sometimes permanently. Cross-border movement creates challenges which cannot be resolved by single countries alone, but require coordination among states. This is where the role of regional organisations is key.

The Association of Southeast Asian Nations (ASEAN), formed in 1967,⁵ remains the central regional bloc that brings states together around its three pillars: economic, socio-cultural, and political-security. Since its creation, ASEAN has made progress in addressing shared challenges: it has developed capabilities to address trafficking in persons, established a human

rights body and a declaration on the rights of migrating children. However collective agreements on refugee protection are still lacking. This is in part because traditionally most ASEAN member states do not consider themselves a long-term destination for refugees.⁶ Even Cambodia and the Philippines, who have signed the Refugee Convention, host a tiny proportion of refugees (although this number is now growing in the Philippines).

Despite instances of local receptivity to refugees in ASEAN countries, states have been slow or reluctant to institutionalise policy. This is also the result of political sensitivity. Myanmar remains the source of the vast majority of the region's refugees and displaced people, which has only risen since the military coup in February 2021 and ensuing civil war. Myanmar's membership of ASEAN is one of the many challenges with advancing a focus on refugee issues in the bloc, discussed further below.

According to the UN Refugee Agency (UNHCR), in 2022 the ASEAN region was home to 239,691 refugees, 52,040 asylum seekers, 1.6 internally displaced persons, and 1.4 million stateless persons.⁷ Although ASEAN countries consider most of

these populations to be 'temporary', in reality many live in limbo for years - even decades - without access to basic services and rights such as education, livelihoods or healthcare.⁸ Those who are stateless lack the ability to return home, rendering their situation even more precarious. These compounding exclusions also make people vulnerable to labour exploitation and human trafficking. Rather than rely on downstream counter-trafficking measures, working upstream on root causes and known protection needs would both improve lives and save resources.

Not only does ASEAN lack frameworks to ensure protection of refugees in place, but it also lacks a system for coordinating responses to sudden displacement and has so far dealt with them in an ad hoc manner. This is a major gap, as was evidenced most starkly in 2015 during the Andaman Sea Crisis, and more recently in increased maritime movements of Rohingya refugees to Aceh, Indonesia.

There are substantial economic dividends to be made from recognising that refugees in ASEAN are not a burden, but rather are valuable contributors to the economy. Countries like Singapore, Malaysia, Thailand and Brunei Darussalam are net 'destination' countries in ASEAN and rely heavily on migrant workers for their economic development. They all also host many workers in 'irregular' or 'undocumented' status. In Malaysia, a 2019 report from the think tank IDEAS found that refugees could contribute RM3 billion in GDP (approximately 725 million USD) and even more in tax if they were granted the right to work.⁹ Even when confined to camp environments, which many experts argue is detrimental to health and wellbeing,¹⁰ refugees can have a positive contribution to the economy. In Thailand the areas around the refugee camps on the border have experienced economic benefits from development projects and local procurement.¹¹

It is timely to be discussing this now. A High-Level Task Force has been created to develop an ASEAN Community Post-2025 Vision, looking ahead at the next two decades. This will replace the existing ASEAN 2025 Community Vision which covered the period 2015-2025, and builds on the preceding "Roadmap for an ASEAN Community: 2009-2015".¹² The vision and associated work plan is set to be announced during Malaysia's ASEAN Chair year in 2025. If we consider what ASEAN will look like in the year 2045, imagining a capability to prevent and respond to forced migration becomes more than possible, it is essential.

B. Purpose and objectives

The aim of this stocktake is to highlight opportunities to work with existing ASEAN migration mechanisms on refugee and protection issues, as well as to demonstrate gaps and opportunities to improve existing frameworks and mechanisms. This research takes as its starting point the desire to strengthen existing architecture rather than create new, overlapping or duplicative entities. It is hoped that the paper can assist civil society in collaborating with ASEAN mechanisms more effectively. We also hope that this research can help to inform the drafting of the ASEAN Post-2025 Vision work plan, by outlining a long-term plan to include forced migration on the ASEAN agenda.

C. Scope and methodology

This report has been drafted by the Secretariat of the Asia Dialogue on Forced Migration (ADFM). The analysis is based on publicly available information gathered from official documents and sources such as the ASEAN Secretariat, national governments, other organisations, and media. Annex A outlines the full list of documents consulted. The paper also greatly benefited from feedback and input from ADFM partners in Southeast Asia and the wider region. This paper builds on a discussion paper prepared for the twelfth ADFM meeting in Jakarta in May 2023, which resulted in the recommendation for this stocktake.¹³

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Not only does ASEAN lack frameworks to ensure protection of refugees in place, but it also lacks a system for coordinating responses to sudden displacement



2. STOCKTAKE OF ASEAN MECHANISMS

A. Alignment of refugee issues with ASEAN Charter and Vision

A greater focus on refugee issues is in line with the **ASEAN Community Vision for 2025** which seeks to realise “An inclusive community that promotes high quality of life, equitable access to opportunities for all and promotes and protects the human rights of women, children, youth, the elderly/older persons, persons with disabilities, migrant workers, and vulnerable and marginalised groups.”¹⁴

This ASEAN Community Vision is undermined when vulnerable and marginalised groups of refugees and asylum seekers are excluded from accessing safety, security, education, health, or employment opportunities.

A greater focus on refugee issues is also in line with the purposes and principles laid out in the **ASEAN Charter** including:

- Purpose 11: “To **enhance the well-being and livelihood** of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice.”
- Purpose 14: “To promote a people-oriented ASEAN in which **all sectors of society** are encouraged to participate in, and benefit from, the process of ASEAN Integration and community building.”
- Principle 2(g): “**Enhanced consultations** on matters seriously affecting the common interest of ASEAN.”
- Principle 2(i): “Respect for fundamental freedoms, the **promotion and protection of human rights**, and the promotion of social justice.”
- Principle 2(l): respect for the different cultures, languages, and religions of the peoples of ASEAN, while emphasising their **common values in the spirit of unity in diversity**.”¹⁵

In 2022 ASEAN published the first edition of an ASEAN Migration Outlook. In his forward, then Secretary General of ASEAN Dato Lim Jock Hoi wrote, “the safe and orderly migration of workers within and beyond the region is a key component of realising an ASEAN Community that is politically cohesive, economically integrated, and socially responsible”.¹⁶ The report’s focus on labour migration and the problem of “effective implementation of the return and reintegration mechanisms” indicates that ASEAN continues to have a blinkered view of the nature of migration in the region. This ignores the fact that countries are increasingly having to deal with mixed migration flows, due to complex interplay of poverty, economic and social disparities, persecution and exclusion, human rights violations, environmental degradation and climate change.

Sriprapha Petcharamesree, former AICHR Representative for Thailand¹⁷

B. What is ASEAN already doing?

The following is an analysis of existing ASEAN frameworks, documents and agreements related to migration and protection including labour migration, human trafficking, search and rescue, women and children, human rights, and engagement with civil society. This section discusses the background, strengths, and weaknesses of each development, as a means of demonstrating how change can happen at the ASEAN level. A full list of documents consulted can be found in Annex A.

EMPHASIS ON MIGRANT WORKER PROTECTIONS

The most well understood aspect of migration in the ASEAN context is labour migration, and consequently there are a wide range of declarations, instruments, and frameworks in place to manage this phenomenon. The “inclusion” of migrant workers is named in the ASEAN 2025 Vision.¹⁸

For example, in 2007 ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration), a framework for safeguarding the rights of migrant workers in the region, and the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. To support implementation of these two documents, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) was formed in 2008, under the Socio-Cultural Community Pillar of ASEAN. ACMW focuses on policy development, capacity-building, and regional cooperation to ensure the wellbeing and welfare of migrant workers within the region.

In addition, the ASEAN Forum on Migrant Labour serves as a platform for dialogue among governments, employers, and workers on labour migration issues. This forum facilitates exchange of good practice and ideas to improve the situation of migrant workers in ASEAN member states, and fosters cooperation and coordination to protect the rights and wellbeing of labour migrants. This forum has assisted in the development of portability of social welfare benefits.¹⁹

COVID-19 also led to an increased focus on the safety and health of migrant workers, evidenced by the 2020 Guidelines on Effective Return and Reintegration of Migrant Workers and the 2023 Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations. Notably the 2023 Declaration included recognition of the need to “respond to the adverse impact of the COVID-19 pandemic on all migrant workers, regardless of their migration status.”²⁰ This is unusual in ASEAN documents, which generally restricts their scope to workers who are “documented and those who become undocumented through no fault of their own,”²¹ reflecting the unusual circumstances of the pandemic.

Given the high number of migrant workers in the region it is appropriate that this has been a major focus, however this focus on regular migrant workers overlooks the prevalence of undocumented migrant labour in the region, which is often carried out by refugees and asylum seekers.

PROGRESS TO COMBAT TRAFFICKING IN PERSONS

The primary way ASEAN has addressed 'forced' migration has been through combating trafficking in persons and migrant smuggling. In 2015 following the Andaman Sea Crisis, the Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia was issued, recognising the challenges posed by "irregular migration" and committing to cooperative efforts to address these issues. Following this, ASEAN adopted and ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), which has associated plans of action (Bohol Work Plan 1.0 (2017-2020) and Bohol Work Plan 2.0 (2023-2028)). The Senior Officials Meeting on Transnational Crime (SOMTC) Working Group on Trafficking in Persons works to monitor and review implementation of ACTIP and the associated plans of action, with the Philippines serving as the Lead Shepherd for these activities in ASEAN.

This focus on trafficking in persons was aligned with a trend of wider regional focus on transnational crime, also evidenced by the 2001 establishment of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (co-chaired by Australia and Indonesia) and the AUD \$80 million 2018-2028 ASEAN-Australia Counter Trafficking (ASEAN-ACT) program. This rise of securitisation and the use of terminology like "irregular migrant" to describe those seeking protection has been criticised for prioritising national security over human security, and dehumanising

those in need of support, who are often stateless minorities.²²

Framing migration as a transnational crime issue also overlooks root causes such as religious persecution, racial discrimination and statelessness. As Former Assistant High Commissioner of the United Nations Refugee Agency Erika Feller said to the Bali Process Ministerial Conference in 2011: **"failure to address the humanitarian and protection needs of refugees only destabilises refugee groups, contributes to their onward movement and feeds the growth of a now flourishing people-smuggling industry in the region."**²³

Nonetheless the existence of ACTIP provides a useful avenue for discussing and addressing complex issues of irregular migration within ASEAN. The Bohol Work Plan 2.0 (2023-28) is a particularly useful entry point for these discussions, including activities like engaging with victim-survivors of trafficking and establishing 'national TIP survivors advisory councils', which could be encouraged to also include refugees or displaced persons with lived experience of trafficking.²⁴

ASEAN has made a strong start in addressing trafficking in persons, however focusing on transnational crime elements without taking into account the humanitarian protection needs of refugees is not sustainable and will not address root causes.

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SEARCH AND RESCUE

Search and rescue of boats in distress, particularly but not exclusively in the Andaman Sea, has been a major focus for humanitarian advocacy in recent years.²⁵ This is due to the absence of a coordinated response to several cases of boats in distress, amid record numbers of movements and deaths at sea.²⁶ In 2010 ASEAN agreed a Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea, and in 2023 this was again reaffirmed through the ASEAN Agreement on Aeronautical and Maritime Search and Rescue Cooperation, however these have to date unfortunately led to limited change in practice.

The most recent agreement outlines commitments to joint training and information sharing, however ultimately leaves implementation to the individual

states and **“subject to the availability of relevant resources”** (Article 11, emphasis added).

Without dedicated resources associated with the Agreement, it is unlikely that it will lead to substantive change to practise. Further, while search and rescue capabilities are important and welcome, they need to be complemented with safe disembarkation protocols, and screening of new arrivals for protection needs, which are not covered in the agreements.

Search and rescue is a valuable area of cooperation for ASEAN states, and has the potential to save lives. Existing agreements need to be backed by sustained resourcing, and commitments to safe disembarkation and screening.

FOCUS ON WOMEN AND CHILDREN

All ASEAN states have ratified the Convention on the Rights of the Child, making child rights an easier entry point when discussing challenging topics. In 2010 ASEAN established a Commission on Women and Children (ACWC), with one national representative each for women and for children. ACTIP also maintains a focus on “especially women and children”, identifying these groups as particularly vulnerable to trafficking in persons. In 2017 ASEAN adopted a Joint Statement on Promoting Women, Peace and Security in ASEAN, aligned with United Nations Security Council Resolution 1325 (2000).²⁷

A noteworthy development in this space is the 2019 ASEAN Declaration on the Rights of Children in the Context of Migration, accompanied by a Regional Plan of Action (RPA). This Declaration recognises “the need to enhance the identification, referral and protection of, and assistance to all children in the context of migration, including those who have become victims of trafficking, **refugees, asylum-seekers,** and internally displaced children and all other children requiring protection and assistance.”²⁸

The associated Regional Plan of Action contains 21 activities and 41 priority indicators, including prohibiting immigration detention of children (1.2.3), developing alternatives to detention (1.2.4) and allowing access to education for all children (2.2.1).²⁹

This document has the potential to substantially improve protection for refugee children in the region.

Significant progress has been made in addressing vulnerabilities of children through the Declaration on the Rights of Children in the Context of Forced Migration, as all ASEAN countries have signed the Convention on the Rights of the Child. This is a valuable entry point to discussing the needs of refugee and asylum seeking children, and their families.



Case study: ASEAN's Growing expertise on disaster management

ASEAN is recognised as a leader in managing natural disasters and climate induced catastrophes, but this was not always the case. The genesis for ASEAN's work on disasters came after the 2004 tsunami in Aceh and Nias. This devastating natural disaster most significantly impacted Indonesia, Thailand, and the Philippines, however in response all ten ASEAN countries came together to support recovery efforts.

The ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) was established in 2011 and has grown to be recognised as a world leader on disaster management. The AHA Centre reports to the ASEAN Committee on Disaster Management and is guided by the ASEAN Declaration on One ASEAN One Response, and the ASEAN Vision 2025 on Disaster Management.

Although its mandate has been limited to natural disasters and crises, in September 2017 the ASEAN Chair asked the AHA Centre to provide humanitarian assistance in Rakhine State to those Rohingya who remained there, following the displacement of 700,000 Rohingya to Cox's Bazar, marking the first time it was active in response to conflict.³⁰ The AHA Centre's role in Myanmar since then has been subject to much debate, particularly after the 2021 Myanmar coup, given Myanmar sits on its Governing Board.³¹

The Centre's role in Myanmar notwithstanding, the AHA Centre, and ASEAN's broader emergency response architecture, stands as an example of ASEAN's ability to address shared challenges collectively. ASEAN has done this before and can do it again to address refugee protection.

RECOGNITION OF HUMAN RIGHTS

As noted above, the ASEAN Charter recognises human rights norms as fundamental to its principles and purpose as an institution. In 2009, after years of civil society advocacy, ASEAN created an Intergovernmental Commission on Human Rights (AICHR), with national representatives appointed for three-year terms from a range of backgrounds. Some have claimed that AICHR was intentionally established as a "toothless" body, lacking independent monitoring or enforcement mandates.³² However it has managed to make solid strides in establishing an ASEAN Human Rights Dialogue,³³ and has stepped up its engagement with national human rights institutions and civil society.³⁴ Its very existence marks both a shift and an opportunity to

transform the normative culture in the region, as one representative noted: **"Having a regional space in which ASEAN member states can exchange their views on neighbours' human rights concerns was unthinkable to happen in the region in the past".**³⁵

In 2012 ASEAN adopted the ASEAN Human Rights Declaration, which crucially recognises in Article 16 that **"Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements."**³⁶ Groups including the UN Office of the High Commissioner for Human Rights expressed concern with some elements of the statement, particularly lines about balancing rights and duties, and caveats about consideration of "national

context" and being "in accordance with national law," which in practice may undermine international standards.³⁷

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"Having a regional space in which ASEAN member states can exchange their views on neighbours' human rights concerns was unthinkable to happen in the region in the past".³⁵

An illustrative example of the limited nature of ASEAN discussion on refugee issues in a human rights context is the recent AICHR Thematic Study “Migration Management for the Most Vulnerable Groups within ASEAN.” Despite its title, this report defines “vulnerable groups” in a very limited capacity, to mean “women and domestic workers” and covers labour migration only. We would argue that the “most vulnerable groups” within ASEAN includes those refugees and asylum seekers who are not afforded protection under existing legislation.

Another important body related to human rights is the ASEAN Institute for Peace and Reconciliation (ASEAN-IPR). With a peace-building mandate, this Institute would appear to be well placed to discuss root causes of displacement including conflict, religious and ethnic persecution. ASEAN-IPR conducts research and holds inter-generational and interfaith dialogues. One could argue there is scope under its mandate for dialogues between citizens and non-citizens, including refugees and displaced persons across ASEAN, in pursuit of greater community level understanding, and in line with the ‘One Community’ vision of ASEAN. However, like all sectoral bodies, the Institute does face limitations since the ten ASEAN Member States sit on its governing council, giving Myanmar an effective veto on topics it does not wish to pursue.

Another element of human rights that ASEAN has focused on is the rights of people living with a disability. In 2011 ASEAN inaugurated the ASEAN Disabilities Forum (ADF), after several years of advocacy for greater disability inclusion. The Forum aims to mainstream the needs of people with disabilities into policy frameworks in ASEAN. At its founding the ADF adopted the Bangkok Declaration, which offers guidance for advancing disability-inclusive policies, as outlined in the Strategic Framework of Social Welfare and Development 2011-2015, a component of the 2011-2020 ASEAN Decade of Persons with Disabilities.³⁸ In 2023 ASEAN further adopted a Declaration on Disability-Inclusive Development and Partnership for a Resilient ASEAN Community, which recognises the link between disability inclusion and a “resilient and prosperous ASEAN community”.³⁹

Progress made in human rights bodies in ASEAN offer an opportunity to address the rights of refugees and other forced migrants, however to date this has not been sufficiently embraced. That is likely due to political reasons explored later in this paper.

ENGAGEMENT WITH CIVIL SOCIETY

ASEAN engagement with civil society is enshrined in ASEAN Charter Article 16 stating that **“ASEAN may engage with entities which support the ASEAN Charter in particular its purposes and principles”** wherein the term “entities” includes parliamentarians, think tanks, academic organisations, business organisations and ‘accredited civil society organisations’. It is also reaffirmed in Article 41: Conduct of External Relations.⁴⁰

As noted above, the ASEAN Charter also enshrines in Article 1.13 the promotion of a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.⁴¹ Sectoral bodies like AICHR also include civil society engagement in their terms of reference, and hold regular consultations with civil society groups, and annual ASEAN Civil Society Conferences (also called ASEAN People’s Forum) have been held since 2005.⁴²

Having engagement with civil society enshrined in the ASEAN Charter is an important opening to propose greater engagement with civil society and lived experience experts on displacement and forced migration issues.

ASEAN already works on forced migration issues through many of its existing frameworks, agreements and groupings, including:

- **Emphasising migrant worker protections:** Given the high number of migrant workers in the region it is appropriate that this has been a major focus, however this focus on regular migrant workers overlooks the prevalence of undocumented migrant labour in the region, which is often carried out by refugees and asylum seekers.
- **Progress on combatting trafficking in persons:** ASEAN has made a strong start in addressing trafficking in persons, however focusing on transnational crime elements without taking into account the humanitarian protection needs of refugees is not sustainable and will not address root causes.
- **Collaborating on search and rescue:** is a valuable area of cooperation for ASEAN states, and has the potential to save lives. Existing agreements need to be backed by sustained resourcing, and commitments to safe disembarkation and screening.
- **Through a focus on women and children:** Significant progress has been made in addressing vulnerabilities of children through the Declaration on the Rights of Children on the Move, as all ASEAN countries have signed the Convention on the Rights of the Child. This is a valuable entry point to discussing the needs of refugee and asylum seeking children, and their families.
- **Recognising human rights:** Progress made in human rights bodies in ASEAN offer an opportunity to address the rights of refugees and other forced migrants, however to date this has not been sufficiently embraced. That is likely due to political reasons explored later in this paper.
- **Engagement with civil society:** Having engagement with civil society enshrined in the ASEAN Charter is an important opening to propose greater engagement with civil society and lived experience experts on displacement and forced migration issues.

C. National level examples

There are a number of national-level commitments in ASEAN member states, in particular in the Philippines, Thailand and Indonesia, that complement the broader ASEAN migration frameworks and initiatives to manage migration.

THE PHILIPPINES

As one of the only two ASEAN states that has ratified the 1951 Refugee Convention and its 1967 Protocol, the Philippines has developed domestic regulations and procedures on refugee recognition. Several national laws contain specific provisions on the protection of refugees and stateless persons including the Philippine Immigration Act of 1940, the 1987 Family code, the Philippine Passport Act of 1996.⁴³

Although there is no dedicated legislation in the Philippines for the protection of asylum-seekers, refugees and stateless persons, the Department of Justice (DOJ), responsible for providing protection, issued Department Circular No. 58 in 2012. This circular outlines the current refugee and stateless status determination procedure. Furthermore, the Philippines Government adheres to such basic principles as preservation and promotion of family unity; non-detention on account of being stateless or a refugee; non-deprivation of refugee or stateless status; non-discrimination in the application of the Conventions; non-refoulement; and non-punishment on account of illegal entry or presence in the country.⁴⁴

In addition, the President of the Philippines issued Executive Order No. 163 institutionalising access to protection services for refugees, stateless persons, and asylum seekers in 2022 to ensure the full protection of persons of concern's (POCs) rights to liberty, security, and freedom of movement. Under the Executive Order, the Inter-Agency Committee on the Protection of Refugees, Stateless Persons and Asylum Seekers was established to provide services and assistance to POCs.⁴⁵

THAILAND

Despite not having ratified the Convention, Thailand hosts high numbers of refugees, particularly from Myanmar. This has led to the Thai Government developing a number of different protection mechanisms, aligned with former Prime Minister Prayut Chan-o-cha's commitment made during the 2016 UN Summit for Refugees and Migrants. For example, in December 2019 the Thai Cabinet approved a 'National Screening Mechanism' (NSM) for refugees, which aims to screen for those who warrant "protected person" status, which would give them permission to remain in Thailand legally under certain conditions, with access to health care and education.⁴⁶ The NSM officially came into force in September 2023, however, it is yet to be tested.⁴⁷

Some civil society organisations have expressed concerns that the NSM excludes certain groups, such as those holding migrant worker status, from applying for protection screening.⁴⁸ In its current form it also only applies to those who are already in immigration detention, meaning that there is no avenue for

a person to claim asylum without first being detained. Nonetheless, this is a significant move and illustrates what can be achieved in a non-signatory country, particularly through productive collaboration between government, civil society and UNHCR.

INDONESIA

Indonesia is unique, as the only non-signatory country in ASEAN to have defined the term 'refugee' in line with the 1951 Refugee Convention and its 1967 Protocol.⁴⁹ In response to the 2015 Andaman Sea Crisis, Indonesia issued Presidential Regulation (Perpres) No 125 of 2016. The regulation outlines procedures and mechanisms for the treatment and management of individuals seeking asylum or refuge in Indonesia. Like many of its neighbours, Indonesia perceives itself solely as a 'transit' nation, so considers the need to provide protection to refugees as inherently temporary.

To date, the most significant outcomes of the Presidential Regulation include official recognition of the duty to rescue refugees stranded in Indonesian waters, and clarifying some procedures for detention and non-custodial alternatives to detention.⁵⁰ The Regulation is not perfect, in that it does not assign resources to the agencies responsible for implementing the Regulation, leading to budgetary challenges.⁵¹ It also only acknowledges refugees as those in detention or those found stranded at sea or on land, and ignores refugees who may have been living in the community in Indonesia for years already. As of writing, the Presidential Regulation is undergoing

review, which may be an opportunity to address some of these gaps. Despite its flaws, it does indicate initiative, and provides a clear definition from which to build greater refugee protection in Indonesia.

D. Regional precedents

There are three key precedents that indicate willingness of ASEAN member states to act together on refugee and asylum seeker issues.

COMPREHENSIVE PLAN OF ACTION

In 1989, delegates from 70 countries (including all of the then ASEAN Member States) met in Geneva for the International Conference on Indo-Chinese Refugees, which ultimately agreed to the Comprehensive Plan of Action to address the ongoing boat movements out of Viet Nam since the 1970s.

The core elements of the Plan were that countries in Southeast Asia agreed to stop boat push backs on the condition that asylum seekers would be individually screened for eligibility for resettlement, those found eligible were resettled and those who were not were returned. This built on existing regional processing centres in Indonesia and the Philippines, and an established 'Orderly Departure Program' that provided a legal avenue for those fleeing Vietnam to be resettled directly, rather than undertake risky journeys.⁵²

The plan is often cited as a successful example of responsibility sharing, as interlocking commitments to grant local asylum, resettlement and repatriation were all agreed, leading to the eventual cessation of boat movements within the space of four years. Critics of the plan point out that the long-term impacts on asylum systems in Southeast Asia were “neither particularly positive or potent” as it ultimately reinforced notions that ‘solutions’ to refugee issues lay outside the region.⁵³

While largely considered a success, the Comprehensive Plan of Action had two elements in its favour that make it difficult to replicate. At the time, Viet Nam was not a member of ASEAN, and the situation in the country by the 1990s meant that many refugees were already able to return home safely. Modern crises such as that occurring in Myanmar do not have the same characteristics, and therefore may not be able to respond to the same kind of intervention.⁵⁴

SPECIAL MEETING ON IRREGULAR MIGRATION

On 29 May 2015 in response to 7,000 people being stranded in the Andaman Sea, Thailand led an ad hoc initiative to bring affected countries together around a solution. This built on a smaller meeting held in Putrajaya between Indonesia, Malaysia, and Thailand. The resulting statement agreed to three elements: an immediate humanitarian response to those stranded, future prevention efforts, and tackling root causes. The agreement also included establishing

a fund to support responses over the long-term, and for Indonesia and Malaysia to temporarily shelter the migrants provided that they were resettled within the next year.⁵⁵

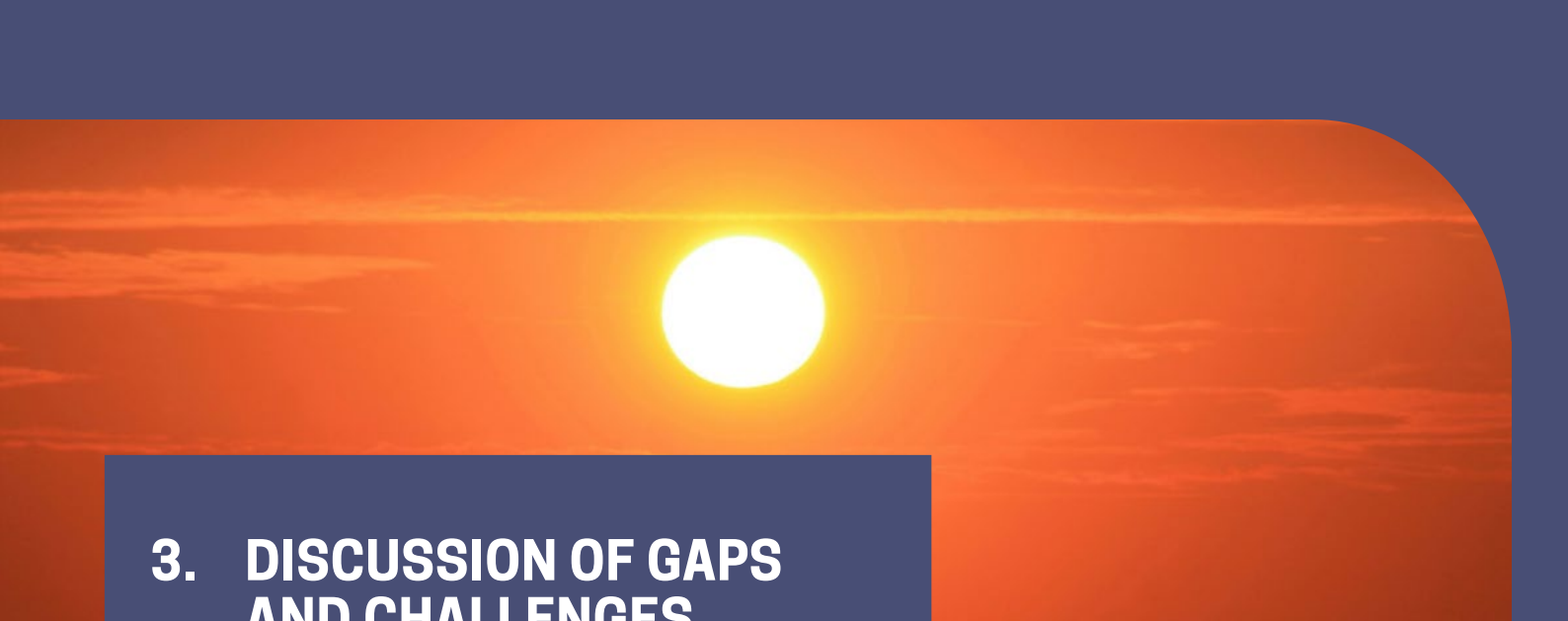
It is unclear whether either of these outcomes eventuated. After this ad hoc meeting, an Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning the Irregular Movement of Persons in the Southeast Asia Region was held on 2 July 2015, following which a trust fund was established to deal with future challenges involving irregular movement, and the Kuala Lumpur Declaration was agreed.⁵⁶ The ‘Trust Fund to Support Emergency Humanitarian and Relief Efforts in the Event of the Irregular Movement of Persons in Southeast Asia’ is overseen by the SOMTC, which has the power to approve proposals to use the Fund.⁵⁷ However it appears it has not been used in response to recent movements, which would appear to fit the criteria for use.

The Special Meeting on Irregular Migration was a welcome initiative to address the crisis in the Andaman Sea in absence of more coordinated, predictable action. However, the lack of clarity on whether longer-term commitments were honoured - like longer-term resettlement and availability of a trust fund - undermine confidence in repeating this ad hoc process in the future.

2016 AND 2018 BALI DECLARATIONS

All ASEAN member states are also members of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.⁵⁸ In 2016, again in response to the failure to act during the Andaman Sea Crisis the year prior, the Bali Process issued a declaration which acknowledged **“the abuse and exploitation of migrants and refugees at the hands of people smugglers and human traffickers.”** The document also **“reaffirm[s] our commitment to our respective international legal obligations and encourage members to identify and provide safety and protection to migrants, victims of human trafficking, smuggled persons, asylum seekers and refugees, while addressing the needs of vulnerable groups including women and children, and taking into account prevailing national laws and circumstances.”**⁵⁹

The fact that all ten ASEAN member states have agreed to the Bali Declaration indicates they recognise the inter-linkages of refugee and asylum seeker issues with other migration issues, and addressing them formally through ASEAN is a logical progression.



3. DISCUSSION OF GAPS AND CHALLENGES

Having outlined the relevant ASEAN commitments to protection and migration issues above, this section outlines the remaining gaps and challenges, namely:

- Prioritisation of transnational crime over protection
- Lack of political will to address sensitive issues
- Bureaucratic and institutional challenges
- Lack of implementation at the national level
- Limited civil society engagement

A. Prioritisation of transnational crime over protection

There is a clear emphasis on transnational crime, counter-trafficking and migrant smuggling in the region, which dominates discussions of migration and obfuscates the linkages with refugee protection. Trafficking in persons and smuggling of migrants are serious and sometimes deadly crimes that should be an area of regional focus and attention. However, there is also a need to recognise that refugees and asylum seekers are often those who end up

caught in trafficking networks, so the two issues of protection and crime cannot be considered separately.⁶⁰

The rise in ‘tough on crime’ rhetoric regarding trafficking and smuggling work is not limited to the ASEAN region, and reflects a wider trend of securitisation of borders, making movement more dangerous for refugees and migrants worldwide.⁶¹ It is also reflected in national approaches to refugee issues among ASEAN member states, resulting in the use of immigration detention and other punitive and damaging measures when interacting with refugees and asylum seekers.

In general, states are more comfortable discussing human trafficking and migrant smuggling - which could happen to any state’s citizens - as opposed to refugee movements, which can be perceived to arise from the failure of a state itself. However, this overlooks the fact that refugees and those in need of protection are often the very people most vulnerable to human trafficking and related exploitation.⁶² ASEAN has recognised and responded

to trafficking in persons from a transnational crime angle, but has not looked as closely at root causes, which can be addressed with a focus on protection.



The rise in ‘tough on crime’ rhetoric regarding trafficking and smuggling work is not limited to the ASEAN region, and reflects a wider trend of securitisation of borders, making movement more dangerous for refugees and migrants worldwide.⁶¹

B. Lack of political will to address sensitive issues

ASEAN norms of non-interference and respect for national sovereignty can mask a lack of political will to address sensitive issues.

An emphasis on independence and sovereignty are an understandable reaction to the region's colonial past. However, as a regional bloc, tensions arise when domestic matters like conflict, discrimination, or violence lead to cross-border impacts of people fleeing to neighbouring countries. This becomes a problem logically dealt with at a regional level.

On issues like climate and natural disasters, the 10 ASEAN member states have managed to collaborate despite not all being affected in the same way, whereas on matters of refugee and asylum movements, it has been harder to convince the bloc that collective action or responsibility sharing is needed.

However, the rhetorical norms around non-interference remain strong. It is likely some governments are also afraid that addressing issues in one country may expose human rights abuses or conflict within their own borders. Member

states may be cautious about taking action that could also strain diplomatic relations or exacerbate existing tensions. At the same time ASEAN has moved away from its non-interference principle by becoming more assertive in certain cases, such as on economic and humanitarian cooperation, but this has been selective and atypical.⁶³ The lack of ability to discuss refugee challenges openly means they are mostly dealt with in an ad-hoc manner that fails to address the root causes or find a long-term solution.

C. Bureaucratic and institutional challenges

As a large inter-governmental organisation, ASEAN has bureaucratic and institutional challenges that are somewhat baked into its structure. The most well-known challenge is ASEAN's consensus approach to decision-making, which was designed to keep everyone at the table and maintain harmony among members. There are benefits to this approach, including encouraging national ownership over decision-making, and helping to avoid a 'Brexit' style splintering of the bloc. However it also precludes swift,

decisive action and can lead to lowest-common-denominator decision making.

The political, cultural, and economic diversity of ASEAN members means that bridging differences to reach consensus on sensitive matters will always be a fraught process, and regularly results in imperfect policy. This is particularly evident when dealing with complex and protracted matters such as refugee crises. Further, ASEAN decision-making and negotiation often lack transparency, making it difficult for civil society and the public to understand and participate in the process. Bureaucratic red tape can also halt or slow the formulation and implementation of regional policies. Analysis of existing ASEAN mechanisms demonstrates that many suffer from a lack of enforcement measures or monitoring of implementation. This leads to a common criticism of ASEAN being more about talk than about action. In addition, most agreements and declarations are non-binding, meaning that member states are not legally obligated to adhere to their provisions. Lack of enforcement mechanisms diminishes the effectiveness of these agreements, leaving refugees vulnerable to inconsistent treatment and limited recourse in case of rights violations.

"The broad policy framework for elaborating an ASEAN approach to humanitarian action in situations of conflict, complex emergencies and forced displacement already exists, as the ASEAN Political Security Community Blueprint includes activities to strengthen humanitarian assistance, promote human rights and protect vulnerable people, conflict prevention, conflict resolution and post-conflict peace-building. The missing piece is political will."⁶⁴

Lilianne Fan, Co-Founder & International Director, Geutanyoë Foundation

D. Lack of implementation at the national level

There is a disparity between the formulation of statements at the regional level and their implementation at the national level, which we refer to here as the “implementation gap.”

Even the best of ASEAN policies rely on translation into national-level action by each member state, which often falls short, since each member state has its own level of interest, resourcing, legal standard or definition on migration issues. Given ASEAN is an intergovernmental organisation rather than a supranational one like the European Union, it lacks a legal enforcement ability, and instead relies on creating normative change. For example, the recently agreed Regional Plan of Action for implementing the Declaration on the Rights of Children in the Context of Migration contains 41 indicators and envisages four implementation reviews over its ten year period, however there are no repercussions for states which do not meet the indicators. Further, while the indicators in this Plan are mainly quite strong, there are no timelines associated with their implementation, making even informal follow up challenging.

E. Limited civil society engagement

As noted above, civil society engagement and a ‘people-oriented ASEAN’ is enshrined in the ASEAN Charter, however, in the context of human rights or forced migration, civil society participation and engagement with ASEAN depends on how ASEAN member states have perceived them. ASEAN’s current decision-making process is mainly driven by consensus over their national interests. Under-representation is the main issue of the people in political spheres due to the lack of participation and engagement in policy development and implementation.⁶⁵

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The political, cultural, and economic diversity of ASEAN members means that bridging differences to reach consensus on sensitive matters will always be a fraught process, and regularly results in imperfect policy.





4. OPPORTUNITIES AND RECOMMENDATIONS

Based on the ADFM Secretariat's analysis of the gaps outlined in the previous section, and further informed by discussions with experts with experience working in and with ASEAN, this paper proposes the following six ideas to improve ASEAN's forced migration architecture.

The aim of these ideas is to spark discussion on the future role of ASEAN on these issues. These ideas draw on existing commitments and agreements made within ASEAN, centring the ASEAN Charter and drawing on other international agreements states have acceded to, such as the Convention on the Rights of the Child and the Global Compact on Refugees. The ideas can all be integrated into the existing ASEAN system, ensuring a cohesive and effective regional response to forced migration.

These ideas are expanded upon below. To demonstrate how change is possible, we have mapped these opportunities on a short, medium, and long-term time horizon below, to demonstrate how to bring systemic change in ASEAN over the next decade.

Changes to existing structures:	1. Incorporate forced migration in the ASEAN Community's Post 2025 vision and work plan 2. Work to build resilience and connectivity through employment and education for forcibly displaced populations in transit 3. Enhance search and rescue capabilities
Creating new structures:	4. Establish an ASEAN Ministerial Dialogue on Forced Migration 5. Create an ASEAN Declaration of Forced Migration 6. Create a multi-stakeholder ASEAN Forum on Forced Migration

IDEA 1: INCORPORATING FORCED MIGRATION IN THE ASEAN COMMUNITY'S POST 2025 VISION AND WORK PLAN

- **This is aligned with** the ASEAN Charter's aspiration for a 'people oriented' ASEAN.
- **This addresses** the lack of political will to address sensitive issues by normalising discussion of forced migration as part of the region's next twenty year plan.

What would this look like?

The development of the next twenty-year vision for ASEAN post-2025 is a key opportunity for the body to look ahead and plan for the future. It is critical that this vision and associated work plan considers the future of forced migration in ASEAN and builds a stronger ability to respond effectively.

The vision and related work plan is expected to be announced in 2025 during Malaysia's year as ASEAN Chair and is being developed by a High-Level Taskforce, with Malaysia as permanent co-chair. At the time of writing, it seems the broad strokes of the vision have already been agreed, however the work plan is still being developed.

Recognising the reality of forced migration in the work plan, and building regional capacity to provide protection, including access to safety, education, health and employment, will set ASEAN up well for the next two decades.

IDEA 2: WORKING TO BUILD RESILIENCE AND CONNECTIVITY THROUGH EMPLOYMENT AND EDUCATION FOR FORCIBLY DISPLACED POPULATIONS IN TRANSIT

- **This is aligned with** ASEAN's strength in migrant worker protection and progress made combatting trafficking in persons. It is also aligned with 'People-to-People' Connectivity and specific goals to reduce gaps between vocational skills demand and supply across ASEAN.⁶⁶
- **This addresses** the gap earlier identified of a prioritisation of transnational crime over protection issues. By offering opportunities for employment and education, ASEAN can provide sustainable alternatives, reducing vulnerabilities to exploitation and transnational crime while demonstrating a commitment to addressing the root causes of forced migration.

What would this look like?

Given the state of play in the region, where refugees often have to live in limbo for years,⁶⁷ there would be immense benefit for individuals and host communities in allowing access to work and education while in transit. There are significant unmet labour needs in the ASEAN region, where countries like Thailand and Vietnam are facing ageing populations that would benefit from increased migration.⁶⁸ Singapore, Brunei and Malaysia already depend on migrant labour (38%, 37% and 15% of the total workforce, respectively) which could be opened up to refugees.⁶⁹

While in many of these places refugees and forced migrants already work irregularly, recognising this status officially would enable benefits in terms of increased tax revenue and social cohesion.

A truly integrated and people oriented ASEAN Community would benefit from including refugees and displaced persons within existing pathways to employment and ASEAN connectivity initiatives, ensuring that these pathways contribute to enhancing socio-economic connectivity and fostering a more cohesive, resilient ASEAN Community. As part of ASEAN's existing engagement with the private sector and with educational institutions, discussions should cover topics like:

- employment programs that enhance the skills and potential of refugees;
- expanding access to vocational training, skills development, and entrepreneurship programs;
- formal and non-formal education programs that enable refugees to acquire knowledge and skills necessary for their future integration and contribution to society.

ASEAN member states should also include this in discussions with dialogue partners and resettlement countries to link these opportunities to resettlement and/or formal complementary pathways. In the long run, this will encourage ASEAN to formulate and implement inclusive policies within member states that enable refugees to legally access employment and education opportunities while living temporarily in their countries. These activities should also be added to ACMW discussions and

also the ASEAN Senior Labour Officials Meeting (SLOM) to expand on their existing focus on migrant workers.

IDEA 3. ENHANCING SEARCH AND RESCUE CAPABILITIES

- **This is aligned with** existing ASEAN agreements on search and rescue.
- **This addresses** prioritisation of transnational crime over protection, by working directly with those in need of protection to ensure their safety and security.

What would this look like?

The ASEAN Agreement on Aeronautical and Maritime Search and Rescue Cooperation in 2023 is an important initiative for addressing emergencies at sea, including ship distress calls, accidents, and natural disasters. This agreement should be expanded to include training focused explicitly on handling refugee-related distress situations, underlined humanitarian aspects and the protection of human lives. Over the medium to long-term, ASEAN should work on Guidelines on Safe Disembarkation and Screening Protocols, to complement this agreement.

Using this agreement ASEAN will have the opportunity to expand its search and rescue capabilities to participate in responding to emergencies involving refugees on boats, ensuring a swift and coordinated response. ASEAN member states can use the established channels of communication and coordination outlined in the agreement to

promptly share information and mobilise resources when notified of distress situations involving refugee boats.

More ambitiously, expanding the mandate of the AHA Centre to also encompass human-induced disasters like conflict-induced displacement would make a difference to the regional ability to respond to displacement. If refugee movements were covered by the AHA Centre mandate, SAR training on refugee boat related distress situations at sea could be incorporated into the ASEAN Regional Disaster Emergency Response Simulation Exercise (ARDEX): a full-scale simulation exercise that seeks to test, practice, review, and evaluate ASEAN's emergency response and disaster management mechanisms, co-organised by the National Disaster Management Authorities of ASEAN Member States and the AHA Centre.

IDEA 4. ESTABLISH AN ASEAN MINISTERIAL DIALOGUE ON FORCED MIGRATION

- **This is aligned with** the protection of women and children and the commitments to uphold human rights.
- **This addresses** the lack of political will to address issues at the national level by bringing states together to discuss joint solutions.

What would this look like?

The new Ministerial Dialogue would be a high-level platform to facilitate discussion and cooperation among ASEAN member states and relevant stakeholders on issues related to forced migration. The ASEAN Senior Officials Meeting on Social Welfare and Development would serve as a focal point for the ASEAN Secretariat and member states on issues related to forced migration. These bodies would meet when appropriate and mutually agreed, and be a platform for national development agencies and/or coordinating agencies to address above mentioned "implementation gaps" at the national level over time, in addition to working to shift political will.

This Ministerial Dialogue would contribute to the development of a robust legal and policy framework within ASEAN to address forced migration. It would provide a platform for member states to discuss and negotiate common approaches, standards, and obligations. It could model similar dialogues such as the ASEAN Ministerial Dialogue on Accelerating Actions to Achieve the Sustainable Development Goals and the ASEAN Ministerial Dialogue on Strengthening Women's Role for Sustainable Peace and Security. Ministers involved in this dialogue should include welfare and development ministers, foreign affairs ministers, labour ministers, and education ministers, in order for them to discuss the cross-cutting issues to address displacement and ensure the well-being of vulnerable populations.

IDEA 5. WORKING TOWARDS THE CREATION OF THE ASEAN DECLARATION OF FORCED MIGRATION

- **This is aligned with** the emphasis on migrant worker protections in ASEAN, the protection of women and children and the commitments to uphold human rights.
- **This addresses** the prioritisation of transnational crime over protection.

What would this look like?

Although non-binding, a Declaration would still signify the commitment of ASEAN member states to uphold international humanitarian principles and human rights standards in their response to forced migration. It would also highlight the importance of regional solidarity and responsibility-sharing among ASEAN member states. Such a document would encourage member states to work together in providing humanitarian assistance, access to employment and education, and protection for those forcibly displaced.

A specific declaration should address the gaps in the protection landscape left by the prioritisation of transnational crime and human trafficking issues. Key elements of the declaration should include the principle of non-refoulement, access to essential services, coordination among relevant stakeholders, and working towards a regional legal framework. We need to acknowledge that the existing agreements, declarations, and conventions in ASEAN do not

adequately serve this population, and looking ahead, ASEAN needs a specific declaration on forced migration.

IDEA 6. CREATING A MULTISTAKEHOLDER ASEAN FORUM ON FORCED MIGRATION

- **This is aligned with** ASEAN's existing engagement with civil society on other issues, and its work on human rights dialogues.
- **This addresses** the limitations of civil society engagement, and the political will to address sensitive issues will also be addressed through constructive engagement with diverse actors.

What would this look like?

Finally, creating a multistakeholder ASEAN Forum on Forced Migration would help to promote good practice, drawing on diverse expertise. This should be similar in structure to the existing fora like the ASEAN Disability Forum (ADF) or the ASEAN Forum on Migrant Labour (AFML), which has been a useful platform for sharing best practices and experiences for governments, workers' and employers' organisations, private sector, civil society, migrant-led groups and international organisations.⁷⁰

It is evident that, while ASEAN engagement with external actors has improved in recent years, challenges remain in engaging with civil society working on forced migration issues, which means that ASEAN is unable to tap into their considerable knowledge and expertise. Establishing an ASEAN Forum

on Forced Migration would provide a venue for dialogue and collaboration between ASEAN member states, the ASEAN Secretariat, the private sector and civil society working on forced migration issues. It would provide a structured mechanism to engage in meaningful discussions, share information, and exchange best practices. Further, it should also contribute to the development of evidence-based policies and strategies that address the needs and rights of forcibly displaced populations more comprehensively in ASEAN.

One example of an activity that could take place within this type of Forum is convening a Peer-Learning Platform on Protecting Children in the Context of Forced Migration. This would support member states in their implementation of the Declaration on the Rights of Children in the Context of Migration and Regional Plan of Action, by sharing positive practice and lessons learned with each other. This type of Platform can also strengthen trust and collaboration among member states and non-government stakeholders, nurturing a network of expertise and partnerships necessary to effectively reform policy and practice to improve the lives of children in the context of forced migration.

WHO WILL BE RESPONSIBLE?

We propose that the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) and the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) could jointly take a leadership role in the creation of the ASEAN Mechanism on Forced Migration.

Given the complex nature of forced migration challenges, involving both social welfare and security dimensions, this joint leadership model is valid. This cross-pillar approach could duplicate how ASEAN works on other multi-sector issues like trafficking in persons and migrant smuggling, or the rights of people with disability.⁷¹

AMMSWD, which also leads on implementing the ASEAN Declaration on the Rights of Children in the Context of Migration, is well positioned to drive this agenda, while at the same time AMMTC can consider the humanitarian and security aspects of the issue, ensuring a comprehensive approach. This holistic approach recognises the interconnected nature of these issues and the need for coordinated responses across multiple sectors.

We acknowledge the inherent complexities and challenges associated with cross-pillar cooperation within ASEAN. Like any large organisation, working on cross-cutting issues can come up against practical institutional barriers. However, ASEAN has made significant strides in enhancing cross-pillar cooperation on other issues. For example, to address trafficking in persons and migrant smuggling the AMMTC led on ratification and entry into force on the ACTIP, ACWC led on adopting gender sensitive guidelines for handling female victims of trafficking, and SOMHD led on strengthening health systems and access to care for 'special populations'.⁷² We believe this type of cross-pillar collaboration would be necessary to respond to forced migration issues in ASEAN.

Inclusion of forced migration on the agendas of both ministerial meetings allows for better coordination and collaboration between sectors responsible for addressing forced migration. The AMMSWD can focus on providing support and assistance to affected populations, while the AMMTC can focus on protecting migrants and refugees from exploitation. Both the AMMSWD and the AMMTC also have important roles to play in addressing root causes of forced migration, such as poverty, inequality, conflict, and persecution: the AMMSWD implements development programs to address socio-economic vulnerabilities, while the AMMTC addresses security challenges that contribute to displacement.

The AMMSWD and AMMTC's involvement will ensure that the ASEAN mechanism is rooted in principles of social inclusion, protection, and human rights. Forced migration has significant social welfare and security implications, affecting the well-being and protection of vulnerable populations. By entrusting AMMSWD and AMMTC with the creation of the ASEAN Forced Migration Mechanism, ASEAN would recognise the intersection of social welfare, security, and forced migration issues and underscores the importance of a holistic response. This approach will not only contribute to the protection of forcibly displaced populations but also promote their dignity and resilience.



INDICATIVE TIMELINE

The timeline below is an example of the types of activities and timeframes that could lead to stronger ASEAN Forced Migration Architecture. It is meant to illustrate possible pathways and entry points as a way of demonstrating how change can be achieved over a ten-year horizon. Change doesn't happen overnight and requires periods of progress, trialling, evaluation, adaptation, and consolidation of efforts over time.

Actors	Entry points	Activities		
		Short Term (1-2 years)	Medium Term (3-5 years)	Long Term (6-10 years)
ASEAN Member States HLTF-ACV, CSOs, Think Tanks, UN agencies, Dialogue partners	Drafting process of ASEAN Community's Post 2025 Vision and associated Work Plan partners Work of think tanks and Track II dialogues like the Asia Dialogue on Forced Migration Implementation of the ASEAN Plan of Action for Cooperation on Immigration Matters Implementation of the ASEAN Declaration on the Rights of Children in the Context of Migration and related Regional Plan of Action.	Include forced migration in the work plan for the High-Level Task Force on ASEAN Community's Post-2025 Vision (HLTF-ACV): • Include forced migration issues in the ASEAN agenda for the next two decades, including with dialogue partners. • Explicitly include forcibly displaced populations as part of the ASEAN Community. • Build protection capacity for forcibly displaced populations	From 2025 onward, begin implementing the ASEAN Community Post-2025 Vision 10-year Work Plan.	Continue implementing the ASEAN Community Post-2025 Vision Work Plan. At 10 years, work to develop a stronger emphasis on preventing forced migration crises in the second 10-year work plan.

Actors	Entry points	Activities		
		Short Term (1-2 years)	Medium Term (3-5 years)	Long Term (6-10 years)
ASEAN Member States, ASEAN Secretariat, CSOs, Education institutions, Private sector organisations	ASEAN Connectivity Master Plan 2025, specifically goals to “reduce the gaps between vocational skills demand and supply across ASEAN” and “increase the number of intra-ASEAN students”. Regular ASEAN Human Rights Dialogues ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers 2018 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers Work of think tanks and Track II dialogues like the Asia Dialogue on Forced Migration	Allow employment and education for forcibly displaced populations in transit • Conduct feasibility studies and consultations to identify employment and education opportunities for forcibly displaced populations in transit in ASEAN • Initiate pilot programs for employment and education pathways in ASEAN Member States	Regularly monitor and evaluate the success of employment and education pathways and opportunities for improvement. Discuss these pathways with dialogue partners, particularly resettlement countries, to share lessons learned particularly on access to healthcare, education, and employment, and explore linking to existing complementary pathways.	Bring lessons into the ASEAN Forum on Forced Migration once it has been launched

Actors	Entry points	Activities		
		Short Term (1-2 years)	Medium Term (3-5 years)	Long Term (6-10 years)
ASEAN Member States, ASEAN Secretariat, AMMSWD, SOMSWD, AMMTC, SOMTC, ACWC, AICHR	ASEAN Regional Plan of Action (RPA) to implement the ASEAN Declaration on the Rights of Children in the Context of Migration. Regular ASEAN Human Rights Dialogues. Regular ASEAN Civil Society Conferences.	Propose forced migration issues are discussed at regular ASEAN Human Rights Dialogues and ASEAN Civil Society Conferences going forward.	Conduct consultations with stakeholders for the development of a Multistakeholder ASEAN Forum on Forced Migration. Drafting the institutionalisation of the forum, drafting ToR which identifies: principles, mandate, functions, mechanism.	Launch the ASEAN Forum on Forced Migration After a few years of activity, begin to plan the ASEAN Peer-learning Platform on Forced Migration to facilitate knowledge exchange and capacity-building

ANNEX A: DOCUMENTS CONSULTED FOR THIS STOCKTAKE

ASEAN Instruments/Documents/Studies

Migrant worker protection and management	2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Also known as the Cebu Declaration)	This declaration outlines the rights and protection measures for migrant workers in ASEAN countries. It includes provisions related to obligations in the areas of: (1) protection from exploitation, discrimination, and violence; (2) labour migration governance; and (3) the fight against trafficking in persons. Following the signing of the Declaration, a Committee on the Implementation of the Declaration (ACMW) was set up to advance efforts in these areas.
	2018 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers	The ASEAN Consensus stipulates the general principles, fundamental rights of migrant workers and members of their families, specific rights of migrant workers, obligations, and commitments of ASEAN Member States. It aims to establish a framework for closer cooperation among member states on addressing migrant worker issues in the region. While it is not legally binding, the ASEAN Consensus is considered a living and evolving document.
	2020 ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers	A set of guiding principles for ASEAN Member States on policies, institutional mechanisms, programmes, and services required for ensuring effective and sustainable return and reintegration of migrant workers.
	2022 ASEAN Declaration on Portability of Social Security Benefits for Migrant Workers in ASEAN	ASEAN joint commitment to work towards portability of social security benefits for migrant workers. ACMW is now implementing a project to develop ASEAN Guidelines on Portability of Social Security Benefits for Migrant Workers. This intends to guide Member States on how to create bilateral and multilateral instruments on portability of social security benefits for migrant workers between the sending and receiving countries within ASEAN.
	2023 ASEAN Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations	The Declaration calls for the inclusion of migrant workers and their families into crisis preparedness, response and recovery frameworks in ASEAN and facilitates their timely access to sustained safety, health care, psychosocial support, social protection, livelihood support, and return and reintegration support. Importantly, the Declaration acknowledges the need

		to provide humanitarian assistance to all migrants and their family members irrespective of their legal status.
	2023 ASEAN Declaration on the Placement and Protection of Migrant Fishers	The Declaration acknowledges both the migrant fishers' positive contribution to the region's economies, as well as their human rights as enshrined in the ASEAN Human Rights Declaration. It also emphasises that protecting and fulfilling the rights of migrant fishers in the entire migration cycle (recruitment, placement, and repatriation) is a shared responsibility among the ASEAN Member States.
Irregular migration	2015 Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia	This Declaration agrees to include people smuggling as one of the transnational crimes, and to strengthen law enforcement efforts, as well as conduct analysis and studies on the irregular movement of persons. Following the Declaration, ASEAN adopted the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and the effective implementation of the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA).
Forced migration, particularly trafficking in persons	2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and related Bohol Work Plans 1.0 and 2.0	This is a legally binding Convention that standardised the understanding and application of trafficking in persons legislation, promotes cooperation between ASEAN member states, and enhances the protection of, and support provided to victims of trafficking. The Convention aims to provide specific action plans within Member States' domestic laws and policies, as well as relevant international obligations, to effectively address regional challenges common to all Member States, such as: (1) Prevention of trafficking in persons; (2) Protection of victims; (3) Law enforcement and prosecution of crimes of trafficking in persons; and (4) Regional and International cooperation and coordination.
	2019 ASEAN Declaration on the Rights of Children in the Context of Migration and related Regional Plan of Action.	The Declaration reaffirms the commitment of Member States to ensure that the best interests of the child are a primary consideration in all relevant policies and practices in the context of migration. It is also decided to provide access to basic services such as health, a clean and safe environment, and psychosocial support services for children in the context of migration. The Declaration also agrees that states should 'develop effective procedures and alternatives to child immigration detention'. Following the declaration, ASEAN adopted the Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration.

		The ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) is tasked, with the support of the Senior Officials Meeting on Social Welfare and Development (SOMSWD) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), as the focal point for monitoring the progress of this RPA.
	2023 ASEAN Leaders' Declaration on Combating Trafficking in Persons Caused by the Abuse of Technology	The Declaration was initiated under Indonesia's ASEAN Chairship to address the urgent need for collective action to tackle the complexity and challenges of human trafficking facilitated by the abuse of technology and outlines a comprehensive strategy. To ensure effective implementation, ASEAN leaders have agreed to establish a dedicated regional mechanism on combating trafficking in persons caused by the abuse of technology. This mechanism will serve as a platform for regular dialogue, coordination, and monitoring of progress. It will also facilitate the sharing of resources, technical assistance, and capacity building initiatives among member states.
Other relevant declarations and agreements	2005 ASEAN Agreement on Disaster Management and Emergency Response (AADMER)	AADMER is a legally binding regional agreement aimed to address ASEAN vulnerability to natural disasters and to guide regional cooperation in the field of disaster management and response. Since its inception, it has galvanised ASEAN to take concrete action towards building a safe and united ASEAN Community through disaster risk reduction and climate change adaptation initiatives. AADMER vision is to "build a region of disaster-resilient nations, mutually assisting and complementing one another, sharing a common bond in minimising adverse effects of disasters in pursuit of safer communities and sustainable development".
	2012 ASEAN Human Rights Declaration	This Declaration outlines a set of human rights principles and commitment, also incorporates elements that reflect the region's diversity and development needs. It serves as a framework for human rights protection within ASEAN and includes provisions such as "All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity" and recognises the right to seek and receive asylum in Article 16. The Declaration also references to "migrant workers, and vulnerable and marginalised groups"

2012 Declaration on the Elimination of Violence Against Women in the ASEAN Region	This Declaration aims to strengthen regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region. Following the declaration, ASEAN Leaders adopted the ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA-EVAW). As a landmark regional framework, it embodies the collective political stance of ASEAN to eliminate all forms of violence and discrimination against women and girls. More importantly, it is an expression of commitment of all Member States to take concrete actions at the national level.
2013 ASEAN Declaration on Strengthening Social Protection	This Declaration emphasises ASEAN's goal of enhancing the well-being and livelihood of ASEAN people by providing equitable access to opportunities for human development, social welfare, and justice. Following the declaration's adoption, ASEAN approved the Regional Framework and Action Plan, which breaks down the provisions of the declaration into goals, objectives, and specific actions to be implemented by sectors of the ASEAN SocioCultural Community.
2013 Treaty on Mutual Legal Assistance in Criminal Matters	It aimed to support and strengthen ASEAN Member States' effort and capacity to combat transnational crimes and other transnational challenges by enhancing cooperation in law enforcement and mutual legal assistance in criminal matters.
ASEAN Community Vision 2025 (2015)	The ASEAN Community Vision 2025 outlines ASEAN's strategic direction for 2016-2025, which is aimed at consolidating the development of the ASEAN Community and deepening ongoing integration. The ASEAN Vision articulates the aspirations to realise an ASEAN community that is a rules-based, people-oriented, and people-centred with greater emphasis on the peoples of ASEAN and their well-being. It is a part of the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, as well as the ASEAN Political-Security Community Blueprint 2025, the ASEAN Economic Community Blueprint 2025 and the ASEAN Socio-Cultural Community Blueprint 2025.
2021 ASEAN Guidelines on Disaster Responsive Social Protection to Increase Resilience	The Guidelines provide a framework, guiding principles and key considerations that are critical for social protection programs to deliver on resilience outcomes. It also identifies practical steps for policymakers and practitioners from the concerned sectors – social welfare and development, disaster risk management, public health and others – to work together in building the necessary blocks for leveraging adaptive social protection systems based on case studies gathered from Member States.

	2021 ASEAN Plan of Action for Cooperation on Immigration Matters	A plan to forge and strengthen immigration cooperation with a view to establish an effective network to promote the modernisation of immigration facilities, systems, and operations; upgrade human resources capabilities and capacities of immigration officials to support the economic aspirations of ASEAN; and support in combating transnational crime.
	ASEAN Migration Outlook 2022 (Report studies)	This is a deliverable from the Action Plan 2018-2025 to implement the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. This Outlook provides a situational analysis of the return home of migrant workers because of crisis situations – primarily the COVID-19 pandemic – and the economic and social costs of their return and reintegration. The Outlook aims to inform the implementation of the ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers.
	2023 ASEAN Agreement on Aeronautical and Maritime Search and Rescue Cooperation	The agreement has the objective to develop and strengthen the aeronautical and maritime search and rescue (SAR) cooperation among Member States. The key areas of cooperation include sharing information and experiences, conducting joint exercises, providing support in joint operations, providing technical assistance, and promoting SAR coordination.
	2023 Migration Management for the Most Vulnerable Groups in ASEAN (Report)	This study aims to examine (a) state practice (policies, processes to regulation, and enforcement measures) in managing the different forms of migration (b) existing cooperation mechanisms, (c) best practices of effective migration management of the labour migrants in migration and provide recommendations for the consideration of related ASEAN Sectoral Bodies on the protection and promotion of the rights of migrant workers. It draws the lessons learnt and best practices in labour management of the ASEAN Member States, however, does not define 'most vulnerable groups', nor refer to clearly vulnerable groups such as stateless or displaced populations.
	2023 ASEAN Declaration on Disability-Inclusive Development and Partnership for a Resilient ASEAN Community	This declaration acknowledges the strategic position of regional cooperation to mainstream the rights of persons with disabilities and ensure their full participation in society to enable them to better contribute to the region's inclusive development and growth. It also guarantees an ASEAN community that supports and provides fair opportunities and inclusivity for people with disabilities in the human development process. The ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) with the support of the Senior Officials Meeting on Social Welfare and Development (SOMSWD) is tasked to realise this Declaration through operational documents and resource mobilisation for its implementation in accordance with the national laws, regulations, and policies of ASEAN Member States.

ASEAN Bodies/Groups/Forums/Institutions

Migrant worker protection and management	ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)	The ACMW was established in 2008 to oversee the implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. It monitors and facilitates cooperation among member states on issues related to migrant workers. The ACMW reports to the Senior Labour Officials Meeting (SLOM).
	ASEAN Forum on Migrant Labour (AFML)	The AFML is an annual event that brings together representatives from governments, workers' and employers' organisations, civil society, and international organisations to discuss labour migration issues. It serves as a platform for sharing best practices and experiences. It is institutionalised under the work plan of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.
	Regular meetings of ASEAN Directors General of Immigration and Heads of Consular Divisions of Foreign Ministries (DGICM)	A regular gathering of heads of the immigration agencies in ASEAN to discuss and coordinate regional cooperation on immigration and consular matters towards the achievement of ASEAN Community building goals.
	ASEAN Labour Ministers Meeting (ALMM), ASEAN Senior Labour Officials Meeting (SLOM)	ASEAN cooperation on labour is led by the ASEAN Labour Ministers Meeting (ALMM) which meets every two years and is supported by the Senior Labour Officials Meeting (SLOM). SLOM is supported by three Subsidiary Bodies namely: Senior Labour Officials Meeting Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN (SLOM-WG); ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW); and ASEAN Occupational Safety and Health Network (ASEAN-OSHNET).
Human Rights	ASEAN Intergovernmental Commission on Human Rights (AICHR)	AICHR is a consultative body of ASEAN that serves as a vehicle for progressive social development and justice, human dignity, human security, and wellbeing. It is composed of one Representative nominated from each ASEAN Member States. The AICHR's priority areas on human rights are found in the Five-Year Work Plan, which is based on the 14 mandates of the AICHR outlined in their TOR. The AICHR holds two regular meetings per year and additional meetings when necessary, and reports to the ASEAN Foreign Ministers.

	ASEAN Commission on The Promotion and Protection of The Rights of Women and Children (ACWC)	The ACWC is identified as the monitoring body of the DEVAWC, tasked with promoting its implementation and reviewing progress with the support of member states. To fulfil this mandate, the ACWC has held a joint meeting with the ASEAN Committee on Women to develop the ASEAN Regional Plan of Action on the implementation of the DEVAWC.
Transnational Crime	ASEAN Ministerial Meeting on Transnational Crime (AMMTC)	AMMTC convened pursuant to the ASEAN Declaration on Transnational Crime adopted in Manila in December 1997, shall be the highest policy making body on matters relating to cooperation and collaborative efforts in combating and preventing transnational crime within ASEAN. Its mandate is To facilitate and promote cooperation and coordination within ASEAN in preventing and combating existing and emerging transnational crime; strengthen and improve cross-sectoral coordination including information sharing on transnational crime issues with relevant ASEAN sectoral bodies; and enhance cooperation with ASEAN Dialogue Partners and relevant stakeholders. The AMMTC comprises the Minister responsible for combating transnational crime from each Member State. The AMMTC shall be assisted by the Senior Officials Meeting on Transnational Crime (SOMTC), which will be responsible for the preparations prior to the convening of the AMMTC, the implementation and monitoring of AMMTC decisions, and any other tasks as assigned by the AMMTC.
	Senior Officials Meeting on Transnational Crime (SOMTC)	SOMTC is one of several ASEAN Sectoral Bodies addressing trafficking in person (TIP). SOMTC Working Group on Trafficking in Persons (WG on TIP) has served as a platform to facilitate discussions on the development of strategies to prevent and mitigate TIP cases in the region as well as ways to enhance cooperation to counter new challenges. The SOMTC WG on TIP also serves as a permanent mechanism for monitoring and reviewing the implementation of ACTIP and APA.
Other relevant bodies/ groups/ institutions	ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD)	ASEAN's regional cooperation on social welfare and development is overseen by the Senior Officials Meeting on Social Welfare and Development (SOMSWD). Comprising senior government officials representing the national ministries in-charge of social welfare and development, SOMSWD's mandate is to implement ASEAN's commitment to foster cooperation in social development aimed at raising the standard of living of disadvantaged groups and seek the active involvement of all sectors of society to realise its objectives. SOMSWD supports and reports to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD).

	ASEAN Senior Officials Meeting on Education (SOM-ED)	ASEAN Senior Officials Meeting on Education (SOM-ED) responsible for implementing directives and priorities identified by ASEAN's Leaders and the ASEAN Education Ministers for effective cooperation in the field of education within the ASEAN region and with interested Dialogue Partners. The SOM-ED shall report to the ASEAN Education Ministers Meeting (ASEM).
	The ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre)	The AHA Centre is an intergovernmental organisation, established to facilitate cooperation and coordination of disaster management amongst ASEAN Member States. It serves as the regional hub for information and knowledge for disaster management, and as the coordination engine to ensure ASEAN's fast and collective response to disasters within the ASEAN region, including in the mobilisation of resources to disaster-affected areas. The AHA Centre reports its progress and activities to the ASEAN Committee on Disaster Management (ACDM) on a regular basis.
	ASEAN Committee on Disaster Management (ACDM)	The ACDM members consist of heads of National Disaster Management Organisation (NDMOs) of the ten ASEAN Member States who also serve as the Governing Board of the AHA Centre. One of the main roles of the ACDM is to provide leadership and guidance towards fulfilling the goals and objectives of AADMER. The ACDM reports regularly to the ASEAN Ministerial Meeting on Disaster Management (AMMDM) and the Conference of Parties (COP) to the AADMER.
	ASEAN Ministerial Dialogue on Accelerating Actions to Achieve the Sustainable Development Goals (SDGs)	The first meeting of this Ministerial Dialogue was held on 20 September 2021. The Dialogue was the result of complementarities between the ASEAN Community Vision 2025 and the UN 2030 Agenda for Sustainable Development, which also resulted in the establishment of the ASEAN Centre for Sustainable Development Studies and Dialogue in 2019.

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ON

FORCED MIGRATION



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and Peace Studies

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Policy Development
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on behalf of the Asia Dialogue
for Forced Migration

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