



Australian Refugee Rights Alliance

"No Compromise on Human Rights"

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Implementing UNHCR's 10-Point Plan on the Asylum-Migration Nexus in the Asia Pacific

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Comments Invited

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The 2007 High Commissioner's Dialogue on the asylum-migration nexus

In convening the first Dialogue on *Refugee Protection and International Migration* (or the 'asylum-migration nexus') in December 2007, the High Commissioner's intention was to move beyond the current State focus on combating 'unlawful' migration and smuggling and trafficking of people in order to examine the relationships between protection, solutions and migration, and promote a human rights and protection perspective. More specifically, it aimed to develop an international consensus around UNHCR's *10 Point Plan of Action on Refugee Protection and Mixed Migration*, draw together the relevant actors needed to form a partnership to address these issues and strengthen international protection capacity to deal with mixed asylum-migration flows.

The first Dialogue thus focused on some of the key protection concerns that UNHCR has attempted to address in its' *10-Point Plan*. This includes the nature and proper characterisation of mixed movements; securing protection for those who need and deserve it; addressing irregular secondary movements of asylum-seekers and refugees; rescue at sea; smuggling and trafficking aspects; solutions; and international solidarity and burden-sharing. Over 200 participants were invited to the dialogue including other UN agencies, strategic INGOs (including members of the Global Migration Group), NGOs from all countries and regions (including migrant and employer representatives), the Red Cross/Red Crescent Movement and other experts from states, academia and NGOs.

Actioning the 10-Point Plan

UNHCR has begun developing a range of models and strategies for facilitating the implementation of the 10-Point Plan. In particular, UNHCR has proposed a series of initiatives for states located in Central America, Western Africa, East Africa and South Asia.¹ These include:

- Stakeholder consultations in Yemen, Dakar, Bangkok and Costa Rica;
- Publication of a "Good Practice Handbook"; and
- Convening of "expert roundtables" on aspects of the 10-Point Plan, the feedback of which will be incorporated into the Good Practice Handbook.

While the 10-Point Plan provides a useful guide for the development of regional approaches to dealing with mixed migration flows, to date the emphasis for the implementation of the Plan has remained on Europe, Africa, Central America and South Asia; however, issues arising from the asylum-migration nexus are particularly acute within the Asia-Pacific region. Further, given the large numbers of undocumented migrants in the region, many of whom have complex forced migration experiences, it is crucial that the any efforts to respond to refugee protection needs within the framework of the 10-Point Plan must be sensitive to these realities and constraints.

Beginning with a mapping of migration patterns, including refugee flows, within the Asia-Pacific region, this paper will attempt to highlight some of the specific challenges confronting UNHCR, states, NGOs and refugee communities in adapting the 10-Point Plan to this part of the world. The paper will then identify some suggestions for mechanisms that could be adopted to more appropriately and effectively apply the Plan in the Asia-Pacific.

Regional Snapshot: Who is moving and to where??

	Inflows of Asylum Seekers			Outflows of Asylum Seekers and Refugees		
	Type of Procedure	Applications for Asylum Received during 2007	Pending Applications ¹ (End 2007)	Number of Applications for Asylum Lodged ²	Asylum Seekers (Pending Cases, End 2007)	Main Destinations (where available)
Australia	Government	6,303	1,516	18	1	
Bangladesh	UNHCR	55	53	10,642	7,335	Primarily Europe
Cambodia	UNHCR	579	239	282	424	
Indonesia	UNHCR	277	211	1,661	2,353	Malaysia, Papua New Guinea, Australia
Lao People's Democratic Republic	-	-	-	101	168	Thailand
Malaysia	UNHCR	13,816	6,851	320	116	Australia

¹ UNHCR (2008) *UNHCR's 10 Point Plan in Central America, Western Africa, Eastern Africa and Southern Asia: A Two Year Project*. UNHCR, Geneva.

² UNHCR (2006) *Statistical Yearbook*. UNHCR, Geneva.

Burma (Myanmar)	-	-	-	14,528	19,026	Thailand, Bangladesh, Malaysia, Indonesia, India.
Papua New Guinea	Government	8	9	40	24	
Philippines	Government	15	31	614	758	Canada
Singapore	UNHCR	44	24	25	19	
Thailand	<i>Government: First Instance and Review UNHCR: administrative review decisions, first Instance and reopened application decisions.</i>	1,466	13,484	302	371	
Viet Nam	-	-	-	3,639	1,784	Cambodia, China

1. The number of pending cases is considered an important indicator of the efficiency of asylum procedures in determining refugee status.
2. This does not necessarily equate to the number of persons as it includes appeals lodged also.

Chart 1. Main Inflows of Asylum Seekers

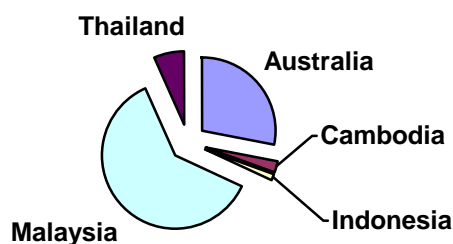
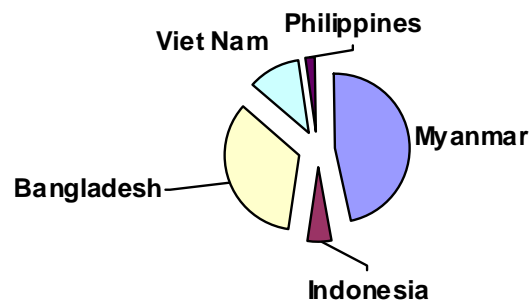


Chart 2. Main Outflows of Asylum Seekers



- By the end of 2007, Asia hosted approximately one third of the world's refugee population, with the vast majority (80%) of them being Afghans. The Asia-Pacific was also home to the largest population of concern to UNHCR at the end of 2006.
- Burma (Myanmar) is one of the main countries of origin of Asylum seekers of anywhere in the world (with 12,900 persons). The chief countries to host these asylum seekers are Bangladesh and Thailand.
- Malaysia received the second highest number of new asylum applications across the world in 2007, with 13,800 new claims (n.b. these trends reflect asylum applications lodged on an individual basis and do not include mass refugee inflows or people accorded refugee status on a group or prima facie basis).
- Thailand, Malaysia and Australia are the key access points for asylum applications in the region. However, each also has a significant backlog.
- The vast number of refugees in Asia (86%) find asylum within same continent, indicating that asylum flows are highly regional in nature.

Non-asylum-related, formal migration in the Asia Pacific³

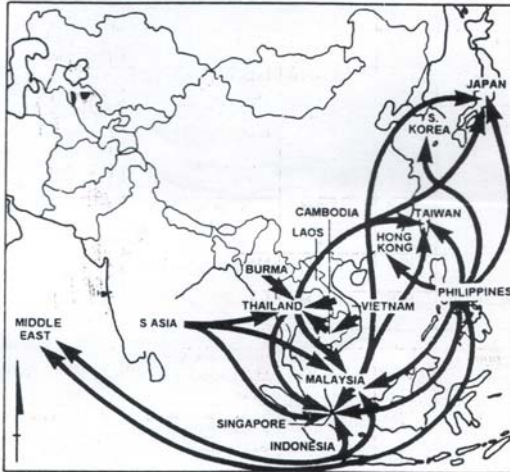
The last decade has seen greatly increased levels of mobility in the Asian region. Increased levels of education, improved transport systems and the internationalisation of labour markets and business are they key factors behind this increase. The extension of social networks across Asia and the commercialisation of migration through migration agents, recruiters, travel providers and the like link citizens across Asia and have also made migration both easier and more appealing.

³ Hugo, G. (2005) *Migration in the Asia Pacific Region*, Global Commission on International Migration, <http://www.gcim.org/mm/File/Regional%20Study%20202.pdf>

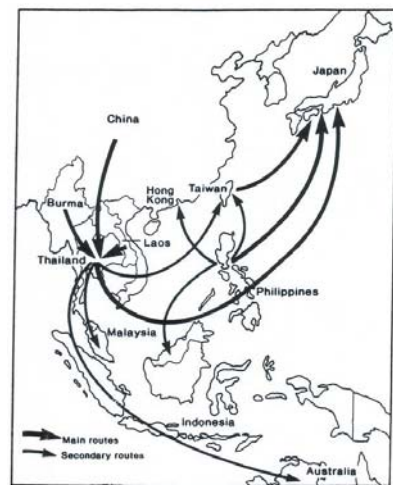
The key patterns in formalised migration in South East Asia are:

Mainly Emigration		Mainly Immigration	Both Significant Immigration and Emigration
Philippines	Burma (Myanmar)	Singapore	Malaysia
Cambodia	Laos	Australia	Thailand
Indonesia	Viet Nam		

Unofficial / undocumented migration in the Asia-Pacific



Despite increases in migration encouraged by globalisation, there has not been a significant relaxation of migration laws and barriers. As a result, international migration occurring outside official migration systems has increased exponentially, outstripping documented, official migration (Hugo 2005 – the map left shows the key flows, p.22). Malaysia and Thailand are the most prominent destinations by far for undocumented migration.



In addition, there has been an increase in trafficking within the Asia region. The key victims are women and children and the chief routes are: (map, right, Hugo.p24)

- China, Burma (Myanmar) and Laos to Thailand
- Thailand to Malaysia, Japan, Australia and Taiwan
- Philippines to Indonesia, Taiwan and Hong Kong

Challenges in implementing the 10-Point Plan in the Asia-Pacific

Cooperation, data collection and information sharing

- A significant number of countries within the region – including the major host states of Malaysia, Thailand and Indonesia – are not parties to the 1951 Refugee Convention. Framing advocacy and policy development in relation to the protection obligations arising from Convention is therefore problematic as these states have explicitly refrained from acceding to these obligations. The governments of some states have also on occasion denied the existence of refugee and asylum-seeker communities within their domestic populations, instead conflating individuals with protection needs with other undocumented migrants.
- UNHCR operations, particularly in non-Convention states, are undertaken in a difficult environment and within a space of both state refusal to provide comprehensive assistance to refugees in accordance with international human rights norms, and state recognition that UNHCR's work is necessary to address a key migration issue affecting these countries.
- A large number of asylum-seekers and refugees in the Asia-Pacific are not registered with UNHCR and are therefore frequently excluded from data analyses. In addition, the vast majority of refugees are not in camp situations but located in urban populations. Not only are urban refugees less likely to have the ability to access UNHCR registration and associated support services but their need to engage in employment in order to support themselves often leads to being considered undocumented / unlawful workers.

Protection-sensitive entry systems, reception arrangements, mechanisms for profiling and referral, differentiated processes and procedures

- Entry systems into the majority of states within the Asia-Pacific are far from sensitive to the refugee or humanitarian protection needs of migrants. While most states, including Australia, have policies supporting the interception and repulsion of all undocumented migrants attempting to enter their territories, there is also a tacit recognition that unauthorised migration, sometimes in significant numbers, is a reality that cannot be fully controlled. An understanding of the conflict and human rights situations in neighbouring countries that give rise to refugee flows further facilitates a certain degree of ad-hoc leniency

towards permitting entry of asylum-seekers. In addition, the fact that unauthorised migration (including migration of refugees) supplements formal migration and helps address labour shortages contributes to an acceptance by some states of some level of undocumented migration.

- Many states within the Asia-Pacific do not have legislative structures established for differentiating let alone processing claims for refugee protection. These states rely on UNHCR, which is under-resourced and not anticipated to have such significant responsibilities for refugee status determination. Those states that do have sophisticated processing systems, such as Australia and New Zealand, do not have land borders and are thus shielded from major flows of both asylum seekers and other undocumented migrants.
- From time to time, states in the Asia-Pacific have sought to “crackdown” on undocumented migrants undertaking raids, mass detention and deportations. These operations are rarely conducted with a view to protection of the human rights of undocumented migrants, let alone the specific protection needs of refugees who may be caught up in these processes. UNHCR and NGOs have experienced difficulties gaining access to detention centres for unlawful migrants to assist in identification and registration of refugees.
- The nature of survival and relocation pressures as well as the absence of effective in-country registration and processing means that refugees and asylum-seekers may share migration experiences with other undocumented/unauthorised migrants.

Solutions for refugees

- Given the large proportion of refugees living in urban, protracted displacement situations, opportunities for local integration have remained restricted. As noted above, the unwillingness of many host countries to even acknowledge the existence of refugees within their domestic population compromises access by these migrants to health care, education and employment.
- Resettlement programmes for refugees from the Asia-Pacific have not expanded commensurate to the growing demand for resettlement places. Access to family reunion is often not an option for resettled refugees. Preference for resettlement of skilled refugees from camps without appropriate mechanisms for replacement have also compromised the care and services available to refugee remaining in the camps.
- While resettlement options are being increasingly pursued as a strategic option for states, there continues to be difficulties in trying to effect this in states that perceive resettlement as an unwanted “pull-factor” and where other political considerations undermine states’ preparedness to recognise even this basic human rights obligation to refugees.

Secondary movements

- Secondary movement flows of refugees and asylum-seekers within the Asia-Pacific are marked and result in part from refugees finding that they are not able to access protection in their initial host countries.
- Some states within the region in fact provide impetus for secondary movements by regularly expelling refugees and other migrants from their territory without first making a determination about protection needs. These policies coupled with relatively porous borders help sustain flourishing people smuggling operations in border regions.

Return and alternative migration options for non-refugee migrants

- Poor treatment of and access to services for refugees and asylum-seekers in many host countries in the Asia-Pacific matches the substandard treatment for other undocumented migrants within their territories. The complex migration experiences of many undocumented migrants and the untenable situations in their countries of origin means that resolution of their migration status cannot be simply be achieved through return or pursuit of alternative migration pathways.
- Current models of protection within the region are not sufficiently sensitive to the fact that experiences post-initial migration (eg, trafficking, sexual exploitation, slavery-like practices, arbitrary detention) may give rise to *sur place* refugee claims or the need to access other forms of humanitarian protection.

Conclusion

While UNHCR’s 10-Point Plan provides a good framework for approaching the issues relating to mixed migration flows, it is clear that using this as a one-size-fits-all model is not appropriate, particularly for the Asia-Pacific region. In this region, while the aspirations of the 10-Point Plan remain sound, a more nuanced approach is required that takes account of the specificity of existing geopolitical realities, the particular nature of refugees’ migration experiences, the engagement of states with international human rights instruments, UNHCR penetration, and the activities of NGO partners.