

Measures to be taken in pursuit of solutions and issues that cut across all four substantive sections of the comprehensive refugee responses, and overarching issues

14 and 15 November 2017

1. Introduction

1. The pursuit of durable solutions for refugees remains one of the most pressing issues for our global community today. It is the absence of durable solutions for so many refugees, and of equitable responsibility-sharing more broadly, that places the entire asylum system under stress and leaves millions of refugees facing desperate circumstances. Host communities - particularly those that face a disproportionate share of the world's refugees - are also severely impacted by the lack of available durable solutions for refugees.
2. Since the adoption of the New York Declaration on Refugees and Migrants (New York Declaration)¹ in 2016, APRRN has committed to working with states, UNHCR, civil society organisations and other relevant stakeholders to build upon the international legal framework for refugees - underpinned by the 1951 Refugee Convention and its 1967 Protocol - and to implement the commitments made in the New York Declaration in relation to greater responsibility-sharing among states, particularly in large scale and protracted refugee situations. This has included calls for expanded opportunities for resettlement and complementary pathways, greater local integration of refugees within host communities, and support for refugees to return voluntarily to their country of origin, if and when it is feasible, in conditions of safety and dignity. It has also included calls to strengthen attention to cross-cutting issues, such as ensuring that all commitments made to gender equality and the rights of refugee women and girls in the New York Declaration are upheld.
3. Yet, as we approach the conclusion of the thematic discussions, as part of UNHCR's consultative process for the development of a Global Compact on Refugees (GCR), there remains significant uncertainty as to how the compact's two central components, the Comprehensive Refugee Response Framework (CRRF) and the programme of action, will deliver strengthened durable solutions for all refugees in large scale movements and a more equitable distribution of responsibility for their protection among states and other relevant actors.
4. The developments that we have seen to date, including at the Leaders' Summit on Refugees² and the interim application of the CRRF,³ have not been able to meet and keep pace with the

¹ *New York Declaration for Refugees and Migrants*, UNGAOR, 71st sess, Agenda items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) ('New York Declaration')

<http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&E%20>.

² United Nations, *Summary Overview Document: Leaders' Summit on Refugees* (10 November 2016)

<https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf>.

increasing pressures being put on the asylum system globally. In 2016, UNHCR's Global Trends reveal that the refugee population under its mandate increased by 1.1 million to a total of 17.2 million refugees,⁴ yet the total amount of refugees locally integrated, as defined by naturalisation, decreased to only 23,000 refugees for the year.⁵ In the Asia Pacific region, long term protracted refugee situations, such as the extended and repeated displacement of Afghan refugees in Pakistan and Iran, have now been coupled with the largest mass influx of refugees in the region in decades. Since 25 August 2017, over 600,000 Rohingya refugees have fled Myanmar and sought refuge in neighbouring Bangladesh.⁶ As global resettlement needs have increased to close to 1.2 million persons, the number of available places for UNHCR-referred refugees has decreased by 43% to 95,000, largely as a result of the reduction in places offered by the United States of America.⁷

5. In addition to these pressures, some states continue to undermine the pursuit of durable solutions and responsibility-sharing through unilateral and bilateral responses that deny protection to refugees and in some cases breach international obligations. One example of this in the Asia Pacific region is the attempt by the government of Australia to outsource its asylum obligations by establishing 'offshore processing' on Nauru and Manus Island (in Papua New Guinea). This policy, introduced in 2013, has caused significant physical and psychological harm to the asylum seekers detained in the facilities, and has involved the deaths of six men in detention.⁸ On Nauru, there have been numerous horrific accounts of sexual and gender based violence (SGBV) and physical assault, predominantly against women and girls, with devastating consequences including deaths.⁹

³ See Daniel Endres, 'Introductory remarks' (Speech delivered at UNHCR's 'Towards a global compact on refugees: thematic discussion two', Geneva, 17 October 2017) <<http://www.unhcr.org/en-au/events/conferences/59e747f37/thematic-discussions-introductory-remarks-daniel-endres.html>>.

⁴ This does not include the 5.3 million Palestinian refugees under UNRWA's mandate, which collectively amount to a refugee population of 22.5 million. See UNHCR, *Global Trends: Forced Displacement in 2016* (June 2017) <<http://www.unhcr.org/5943e8a34.pdf>> 13.

⁵ UNHCR acknowledges that naturalisation is a crude proxy for local integration, given the 'availability of data and poor coverage as well as policy and legal changes over time'. See UNHCR, above n 4, 28.

⁶ Inter Sector Coordination Group, *Situation Report: Rohingya Refugee Crisis Cox's Bazar* (29 October 2017) <https://reliefweb.int/sites/reliefweb.int/files/resources/171029_weekly_iscg_sitrep.pdf>.

⁷ See UNHCR, *UNHCR Projected Global Resettlement Needs 2018* (June 2017) <<http://www.unhcr.org/en-au/protection/resettlement/593a88f27/unhcr-projected-global-resettlement-needs-2018.html>>.

⁸ See Border Crossing Observatory, *Australian Border Deaths Database*, <<http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/>>. There are also serious concerns about the return of almost 600 men to their countries of origin, and whether such return can be considered voluntary due to the pressure of detention and the financial incentives offered by the Australian government. See Madeline Gleeson, 'Manus detention centre: Australia is still responsible for these men — and those who haven't made it this far' in *ABC News* (online), 1 November 2017 <<http://www.abc.net.au/news/2017-11-01/manus-island-australia-still-responsible-for-these-men/9106804>>.

⁹ See Phillip Moss, *Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru: Final Report* (6 February 2015)

6. At the time of writing, an escalating humanitarian crisis is unfolding on Manus Island due to the closure of the facility and the lack of protection and solutions provided to the approximately 600 refugees that remain inside the decommissioned detention centre. Despite withdrawing, Australia ‘continues to have responsibility for the men transferred to PNG against their will, as well as an ongoing obligation to find appropriate solutions for them’.¹⁰ This includes 200 men who received negative status determinations, and may be subject to *refoulement* or placed in indefinite detention, even though their cases either merit a second review or have not been assessed at all.¹¹ There are also serious concerns about the return of almost 600 men to their countries of origin, and whether such return can be considered voluntary due to the pressure of indefinite detention and the financial incentives offered by the Australian government.¹²
7. This brief submission starts by considering a major overarching issue that has not been included in any of UNHCR’s thematic discussions for the GCR, namely the convergence between the two global compacts and how refugees may be impacted by developments in relation to the Global Compact for Safe, Orderly and Regular Migration (GCM).
8. The submission then responds to the questions raised by UNHCR in its schedule for the fourth thematic discussion - “measures to be taken in the pursuit of solutions” - and the fifth thematic discussion - “issues that cut across all four substantive sections of the comprehensive refugee response, and overarching issues”. These questions are:
 - how can we support voluntary and sustainable return;
 - how can we expand access to resettlement;
 - how can we expand access to complementary pathways for admission;
 - how can we make local solutions work for refugees and the communities in which they live;
 - how can we address the root causes of large movements of refugees;
 - in what ways can regional institutions contribute to comprehensive refugee responses; and
 - how can we ensure a whole-of-society response to large movements of refugees and protracted situations?¹³

<<http://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf#search=moss>>. Also, Border Crossing Observatory, above n 8.

¹⁰ Ibid.

¹¹ Gleeson, above n 8. See also Eric Tlozec, ‘Manus Island: Asylum seekers given ‘negative’ status could face indefinite detention in PNG’, *ABC News* (online), 15 September 2017 <<http://www.abc.net.au/news/2017-09-15/asylum-seekers-on-manus-face-indefinite-stay-in-png/8947356>>.

¹² Gleeson, above n 8. There are reports that the Australian government has offered up to A\$25,000 to Rohingya refugees in detention to return to Myanmar. See Oliver Holmes and Ben Doherty, ‘Australia offers to pay Rohingya refugees to return to Myanmar’, *The Guardian* (online), 19 September 2017 <<https://www.theguardian.com/world/2017/sep/19/australia-offers-pay-rohingya-refugees-return-myanmar>>.

¹³ UNHCR, *Towards a global compact on refugees: thematic discussions four and five - Preliminary outline* (23 October 2017) <<http://www.unhcr.org/59c4c1727>>.

7. In addressing these questions, this submission also responds to some of the proposals that UNHCR has put forward in its concept note released on 6 November 2017.¹⁴ We note the importance of recognising the gendered nature of refugee movements, and the need for gender equality in all responses, recognising that sexual and gender based violence is a major barrier to gender equality and the protection measures and solutions to which all refugees are entitled.
8. While this submission offers commentary and recommendations on each of these questions, it is important to recognise that what is needed most importantly is not a new set of recommendations and approaches, but rather the realisation of concrete commitments from states and other actors that match global needs and effectively provide protection to refugees.¹⁵ Anything less than this is, as a matter of principle, inadequate.

II. Issues of convergence between the two global compacts

9. Although consultations on the GCR and the GCM have been underway for more than one year, there is yet to be substantive engagement on the issues of convergence between the two global compacts and consideration as to how refugees may be impacted by the ongoing development of the GCM. APRRN believes that it is a necessary to address this overarching issue to ensure that the GCM is compliant with international legal protections afforded to refugees as a special category of persons, and to ensure that refugees are not excluded from additional protections and opportunities that all migrants or other subsets of migrants may be entitled to under the GCM. It is also important to ensure that the compacts adequately capture the section of the New York Declaration relating both to refugees and migrants, and the commitments to gender equality in the Declaration.
10. Like UNHCR, APRRN is concerned about the possible conflation of refugees within a broader migratory framework built around a concept such as ‘vulnerable migrants’. Such a concept has no legal standing, no clear normative framework and no clear enforcement procedures. As Volker Türk indicated at the Executive Committee of the High Commissioner’s Programme on 5 October 2017, ‘blurring the distinction between refugees and migrants undermines the specific

¹⁴ UNHCR, *Concept Paper for Thematic discussion four: Measures to be taken in pursuit of solutions – and – Thematic discussion five: Issues that cut across all four substantive sections of the comprehensive refugee responses, and overarching issues* (3 November 2017) <<http://www.unhcr.org/en-au/5a0019467>>.

¹⁵ As then United Nations Secretary-General Ban Ki-moon stated, ‘in most cases, the actions needed to address the causes of large movements of people across international borders are well-known. New lists of recommendations are not necessary. Instead, mobilization of the political will and the resources to implement the decisions of the international community in the General Assembly, the Security Council and other international forums are needed.’ See *In safety and dignity: addressing large movements of refugees and migrants: Report of the Secretary-General*, UN GAOR 70th sess, Agenda items 15 and 116, UN Doc A/70/59 (21 April 2016) [52].

legal protections to which refugees are entitled. It obscures focus on who is accountable for their protection. And it feeds into justifications for restrictive measures towards refugees.’¹⁶

11. Yet, this does not mean all actors should not consider the issues of convergence between the two global compacts and the implications for refugees. Arguably, it makes it even more important, so as to preserve the unique rights of refugees as a special category of migrants, and to ensure that the role of UNHCR as the lead international agency on refugee protection is clearly and consistently maintained. Given UNHCR’s supervisory role under article 35 of the 1951 Refugee Convention, as well as its long history of policy development and programmatic protection responsibilities, this is essential.
12. When examining some of the proposals put forward in the discussions for the GCM, it is clear that refugees will be impacted by some of the proposals, if implemented. For example, in the Report of the Special Representative of the Secretary-General on Migration, Peter Sutherland recommended states establish in-country processing for resettlement or humanitarian visa programmes.¹⁷ Such a recommendation has significant implications for refugees and requires further analysis as to its merits. While it does potentially offer ‘those who face an immediate threat to be resettled without the need for taking dangerous routes to flee their country’,¹⁸ there are also challenges and concerns that arise in terms of access and security of interviewing, and the fact that the prohibition against *refoulement* does not apply.¹⁹
13. Other areas where refugees are likely to be impacted also include proposals relating to: migrant labour rights; remittances; registration and provision of identity documents; new migration pathways, such as private sponsorship, labour mobility, scholarships, and an increase in visas at lower cost; alternatives to detention; protections afforded to victims of people smuggling and human trafficking; and access to the courts.

III. How can we support voluntary and sustainable return?

14. One of the most troubling developments in the asylum system has been the advocacy by states and international agencies for the return of refugees on a so-called voluntary basis from the immediate onset of displacement. In some cases, this is being promoted even when refugee status determination systems are not yet established to identify properly the protection needs of the potential claimants, fact finding missions to obtain reliable information on the situation in

¹⁶ Volker Türk, ‘Statement to the 68th Session of the Executive Committee of the High Commissioner’s Programme’ (Geneva, 5 October 2017) <<http://www.unhcr.org/admin/dipstatements/59d4b99d10/statement-68th-session-executive-committee-high-commissioners-programme.html>>.

¹⁷ *Report of the Special Representative of the Secretary-General on Migration*, UNGAOR, 71st sess, Agenda items 13 and 117, UN Doc A/71/728 (3 February 2017) [55](a).

¹⁸ *Ibid.*

¹⁹ For more, see Claire Higgins, ‘In-country processing and other protected entry procedures’ (Factsheet, Andrew & Renata Kaldor Centre for International Refugee Law, 1 August 2016) <http://www.kaldorcentre.unsw.edu.au/sites/default/files/factsheet_in-country_processing.pdf>.

the country of origin have not occurred, and refugees have not been consulted as to their individual choices regarding return.

15. Prior to asking how can we support voluntary and sustainable return, it is essential to ask whether we, as a coalition of actors committed to the protection of refugees as a global public good, should support return with regards to the particular refugee situation in the first place. This is necessary in order to ensure that we are not actively being complicit in the *refoulement* of refugees, and that return is truly voluntary, and undertaken in safety and dignity. It is also essential to ensure that we are not complicit in the *refoulement* of persons who are found not to be refugees but are nevertheless owed complementary forms of protection, such as those rights protections provided under other human rights instruments and customary international law.
16. In the Asia Pacific region, this trend can be seen most recently in the immediate calls for the return of Rohingya refugees from Bangladesh to Myanmar, even when the situation unfolding in Rakhine State has been characterised by the United Nations High Commissioner for Human Rights as a ‘textbook example of ethnic cleansing’ and there is no substantive evidence that protection for Rohingya in Myanmar can currently be met.²⁰ APRRN is deeply concerned that one of the four main objectives of the most recent inter-agency Pledging Conference for the Rohingya Refugee Crisis on 23 October 2017 was the promotion of ‘safe, voluntary, dignified and sustainable return of the refugees to the place of origin’, yet the possibility of resettlement, as either an emergency or long term solution, was not canvassed.²¹
17. APRRN also strongly condemns the current proposals in India to deport Rohingya refugees at this time. Although India is not a party to the 1951 Refugee Convention, it nevertheless still has obligations under customary international law, as well as by being party to international human rights instruments such as the International Covenant on Civil and Political Rights, not to expel persons to a place where they risk torture or other serious violations.²² There are approximately 40,000 Rohingya in India currently, of whom 16,000 have received refugee documentation.²³ This puts all refugees at extreme risk and also has strongly gendered impacts.
18. Concerns about the active promotion of returns in situations where the safety and dignity of returnees cannot always be guaranteed can also be seen in other refugee situations in the Asia Pacific region. In our submission for the first thematic discussion, we highlighted our grave

²⁰ *Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries*, UN HRC, 36th sess (11 September 2017)

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041>>.

²¹ UNOCHA, ‘Concept Note’ (Pledging Conference for the Rohingya Refugee Crisis, 23 October 2017)

<https://www.unocha.org/sites/unocha/files/ConceptNote_RohingyaPledgingConference.pdf>.

²² See *Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries*, above n 20. Also Aishik Chanda, ‘UNHCR: India bound by law not to deport Rohingyas’, *The New Indian Express* (online), 21 September 2017

<<http://www.newindianexpress.com/nation/2017/sep/20/unhcr-india-bound-by-law-not-to-deport-rohingyas-1660231.html>>.

²³ *Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries*, above n 20.

concerns about the return of over 380,000 Afghan refugees from Pakistan in 2016,²⁴ noting that research conducted by Human Rights Watch suggested that some returns may have amounted to constructive *refoulement*, given the coercive factors being employed by the Pakistani government.²⁵ UNHCR's use of cash-based incentives for returnees, which Pakistan recently requested be restored from \$200 to \$400,²⁶ should also be examined, given the evidence that economic deprivation of refugees within Pakistan may also be inducing Afghan refugees to return, even when the grounds for cessation of refugee status are clearly not met.²⁷ Without access to sustainable livelihoods, women and girls face heightened risks of forced and early marriage and single women are at particular risk of having to engage in survival sex to feed and shelter themselves and their children.

19. On the border between Thailand and Myanmar, there are also concerns about the significant reduction in services and support in the camps, which is placing many refugees in desperate circumstances and raising the likelihood that future returns may not be voluntary or sustainable.²⁸ The particular risks for women and girls and the potential of increased SGBV both in the context of the withdrawal of services and in the context of unsustainable returns must be fully considered in all repatriation planning.
20. In order to facilitate voluntary and sustainable return, UNHCR's protection responsibilities, as Guy Goodwin-Gill and Jane McAdam note, 'require it to obtain the best available information regarding conditions in the country of origin, and an accurate analysis of the extent to which causes of flows have modified or ceased. Such information must in turn be shared with refugees and governmental and non-governmental agencies involved, including repatriation commissions and implementing partners'.²⁹ UNHCR also should monitor the reintegration of refugees by, for example, 'being there, by close contact with returnees, and by activating regional political and human rights mechanisms'.³⁰ APRRN notes that it is essential that any such analysis and monitoring includes age, gender and diversity perspectives.

²⁴ UNHCR, above n 4, 26.

²⁵ See APRRN, *Past and present responsibility-sharing arrangements for refugees in the Asia Pacific region* (9 July 2017) <<http://aprrn.info/briefing-paper-past-and-present-responsibility-sharing-arrangements-for-refugees-in-the-asia-pacific-region/>> [22] - [25]. See also Human Rights Watch, *Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees* (February 2017) <<https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>> 16-25.

²⁶ *Statement by Lt Gen (R) Abdul Quadir Baloch, Minister for States and Frontier Regions, Pakistan* (68th Meeting of the Executive Committee of the High Commissioner's Programme, 2 October 2017) <<http://www.unhcr.org/59d395d57>>.

²⁷ See Human Rights Watch, above n 25, 6.

²⁸ See, for example, Ron Corben, 'Myanmar Refugees in Thai Camps Face Repatriation Challenges' *Voice of America* (online) 11 May 2017 <<https://www.voanews.com/a/myanmar-refugees-thai-camps-repatriation-challenges/3847329.html>>.

²⁹ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd, 2007) 495.

³⁰ *Ibid.*

21. There also needs to be the adequate provision of services, accessible to all, in both the host communities and the returnee communities so as to make returns sustainable. Some APRRN members have expressed concerns regarding instances in which refugee populations have expressed a willingness to return, but have not been sufficiently supported to enable their return in conditions of safety and dignity.
22. APRRN welcomes the proposals put forward by UNHCR in its concept note that aim to provide additional support in the context of return. These include proposals targeted towards rebuilding state institutions, public services and social infrastructure, as well as the proposals that seek to include returnees, and their reintegration, in national development plans, and facilitate participation of refugees and returnees in decision making processes such as peace building initiatives.³¹ Refugee leadership with respect to preparedness for safe, dignified, voluntary return must also be recognised and supported. New partnerships with organisations such as the World Bank highlight the possibility under the CRRF to support the reintegration of returnees through rehabilitation, reconstruction and development services and funding.³²

IV. How can we expand access to resettlement?

23. For too long, the expansion of resettlement programmes around the world has occurred primarily due to knee-jerk responses to particular refugee incidents, such as the UK government's decision to extend its Vulnerable Persons Relocation Scheme to 20,000 Syrians the day after the photograph of a deceased Syrian refugee child was published widely in the media.³³ Robust and reliable resettlement is an essential component of a functioning asylum system and the GCR provides a significant opportunity for it to be significantly scaled up in order to match global needs and be used purposefully and strategically. Resettlement can serve several different purposes, including protecting the most vulnerable; promoting international and regional solidarity and responsibility sharing; leveraging other durable solutions; and averting *refoulement*.³⁴
24. While 2016 marked the largest refugee resettlement response in over 20 years globally, UNHCR anticipates that the global resettlement places available for UNHCR-referred refugees will fall by 43% to 93,000 in 2018.³⁵ This marked decrease is not due to a widespread reduction in resettlement places offered by a variety of states, but rather largely because of the United

³¹ UNHCR, above n 14, 3.

³² New York Declaration, above n 1, Annex 1: 12 (c).

³³ See Alexander Betts, 'Resettlement: where's the evidence, what's the strategy?' (February 2017) *Forced Migration Review* 54 <<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/resettlement/betts.pdf>> 1.

³⁴ *Ibid.*

³⁵ Refugee Council of Australia, *Report of 2017 Annual Tripartite Consultations on Resettlement* (August 2017) <https://www.refugeecouncil.org.au/wp-content/uploads/2017/08/ATCR_2017-Final-Report.pdf> 2.

States of America's decision to reduce its own refugee resettlement programme from 110,000 per year to 50,000 per year.³⁶

25. The dependency of the global resettlement programme on a single state highlights both the current fragility of the resettlement system and the need for more states to resettle more refugees. While some progress was made in 2016 in terms of broadening the number of resettlement states to a total of 37, most of these states provide very small numbers of resettlement places. It is problematic that three countries provide 90 per cent of resettlement places.³⁷ There is clearly more that needs to be done in order to meet global needs.
26. APRRN supports the proposal that resettlement should be scaled up to meet the annual resettlement needs identified by UNHCR. However, APRRN is concerned about the timeframe put forward by UNHCR in its concept note, particularly the aim of meeting this target by 2028.³⁸ Such a timeframe is inconsistent with current needs, lacks ambition and ineffectively delays the development of greater responsibility-sharing among states through the use of resettlement. Based on current annual global resettlement needs, this timeframe could lead to over one million refugees who require one not receiving a resettlement place over the next ten years.
27. There also needs to be greater clarification under this proposal as to whether global resettlement needs will be calculated by general resettlement programmes alone, or also through additional migration pathways, as proposed by the former United Nations Secretary General Ban Ki-moon in his report, *In safety and dignity*.³⁹ APRRN believes that the first approach should be taken to maximise resettlement's key humanitarian purpose and ensure that it is not replaced solely or in part by complementary migration pathways, but rather indeed complemented by them.
28. As Assistant High Commissioner for Protection for UNHCR Volker Türk indicated at the Executive Committee of the High Commissioner's Programme in October 2017, 'we are witnessing an erosion of its (resettlement) function as a protection tool. The critical protection and life-saving function of resettlement for the most vulnerable individuals risks giving way to pressures to resettle individuals with 'integration potential' – as if language, education, or professional skills make one more deserving than those who are at the greatest risk of harm. To guard against this slippage, resettlement programmes need to be anchored in protection and solutions strategies.'⁴⁰
29. In its concept note, UNHCR proposes that states dedicate at least 10 per cent of their resettlement programme to emergency cases, and promptly resettle at least 25 per cent of

³⁶ Ibid.

³⁷ Daniel Endres, above n 3, 3.

³⁸ UNHCR, above n 14, 4.

³⁹ Ki-moon proposed that these concrete measures could be met through a variety of third country pathways, including 'enhanced resettlement; medical evacuation and humanitarian admission programmes; temporary evacuation programmes; and opportunities for skilled migration, labour mobility, education and family reunion'. See *In safety and dignity: addressing large movements of refugees and migrants*, above n 11, [83].

⁴⁰ Volker Türk, above n 16.

annual targets within six months of referral.⁴¹ UNHCR also calls on states to offer resettlement places to refugees from at least three priority situations as identified by UNHCR.⁴² While such proposals will preserve some of the protection function of resettlement for the most vulnerable, including refugee women and girls at risk, more still needs to be done to triage resettlement caseloads effectively and to develop a robust and purposeful global resettlement programme. There also need to be measures in place to monitor effectively states' compliance with these specific resettlement response times, including greater transparency, gender disaggregated evaluation and accountability regarding states' discretionary approaches to resettlement. This approach should include effective mechanisms, such as the UNHCR Heightened Risk Identification Tool, for identifying those most at risk and in need of urgent resettlement.⁴³

30. In the Asia Pacific region, APRRN is concerned about the decrease in the number of refugees from Asia being identified by UNHCR as in need in of resettlement, and the impact that this will have on the region. This decrease, from 153,358 refugees for 2017 to 100,988 for 2018, is largely due to UNHCR's decision to review all resettlement cases from Pakistan, as well as its prioritisation of local integration and return in the region.⁴⁴ While APRRN agrees with UNHCR that many Asian states now have significant economic and social capacity to locally integrate refugees, APRRN is concerned that a political stalemate - between states unwilling to locally integrate refugees in the region and UNHCR's decision to limit resettlement referrals - will significantly and disproportionately impact a large cohort of refugees with protection needs.
31. In the case of the 1.4 million Afghan refugees that remain in Pakistan,⁴⁵ this is particularly worrying as the Pakistani government indicated in October 2017 that 'local integration is not considered or supported by Pakistan'⁴⁶ and the situation in Afghanistan has reverted to an acute humanitarian crisis.⁴⁷ APRRN believes that all durable solutions and complementary pathways need to be on the table in order properly to address this protracted refugee situation and encourages states and other actors to work together to provide solutions.
32. At the Executive Committee of the High Commissioner's Programme in October 2017, Pakistan indicated that it foresees the Solution Strategy for Afghan Refugees ending in December 2017 and being replaced with a regional approach to the CRRF from 2018.⁴⁸ If implemented, this will likely be the first application of the CRRF in the Asia Pacific region. While the details of this transition are not yet known, Pakistan has indicated that its focus will remain 'on the three

⁴¹ UNHCR, above n 14, 4.

⁴² Ibid.

⁴³ See UNHCR, *The Heightened Risk Identification Tool* (June 2010)

<<http://www.refworld.org/docid/4c46c6860.html>>.

⁴⁴ See Refugee Council of Australia, above n 34, 4.

⁴⁵ UNHCR, above n 4, 14.

⁴⁶ *Statement by Lt Gen (R) Abdul Quadir Baloch*, above n 25.

⁴⁷ See European Civil Protection and Humanitarian Aid Operations, *ECHO Factsheet: Afghanistan* (May 2017)

<http://ec.europa.eu/echo/files/aid/countries/factsheets/afghanistan_en.pdf> 2.

⁴⁸ *Statement by Lt Gen (R) Abdul Quadir Baloch*, above n 25.

pillars that are voluntary repatriation, sustainable reintegration in Afghanistan and support to the host countries'.⁴⁹ Support for host countries under the SSAR includes the possibility of resettlement.⁵⁰

33. Although the Asian region is not commonly considered as a resettlement receiving region, several Asian countries have capacity to offer resettlement places to refugees from both within and outside the region and could benefit from programmes that support emerging resettlement countries. Japan and South Korea have already introduced resettlement programs, although the numbers of persons resettled under these programmes are small and should be scaled up to be commensurate with capacity.⁵¹ Other upper-middle income and high-income states in Asia such as Singapore could also be offering resettlement places to UNHCR-referred refugees.
34. The Philippines, although not offering resettlement places, established an Emergency Transit Mechanism in 2009 that allows for the immediate evacuation of refugees who are at risk of *refoulement* and persecution to the Philippines. Between 2009 and 2015, the Philippines supported 316 people under this mechanism.⁵² Although not many details have been published about the specific application of this mechanism, at the Executive Committee of the High Commissioner's Programme in October 2017 the Philippines indicated that it would continue offering support through this mechanism, despite the 'human and financial challenges due to natural disasters and calamities that hit our country every year'.⁵³ Greater transparency of this programme is needed in order to assess its effectiveness and to consider its potential for scaling up.
35. Finally, in relation to the displacement of Rohingya refugees since 25 August 2017, APRRN is concerned that there has not yet been a concerted effort to resettle or transfer on an emergency basis any of this refugee cohort, despite the desperate lack of adequate services in Cox's Bazar in Bangladesh and the significant pressures already placed on the host community. If there is not greater intervention into this refugee crisis, there is a significant risk of mass loss of life due to deteriorating health and security conditions, as well as dangerous and imminent onward movement. The necessary interventions include not only the provision of resettlement places, but also the provision of all required funding and services under the Humanitarian

⁴⁹ Ibid.

⁵⁰ UNHCR, *International Conference on the Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries* (May 2012) <<http://www.unhcr.org/afghanistan/solutions-strategy.pdf>> 12.

⁵¹ See Oxfam International, *Where There's a Will, There's a Way: Safe havens needed for refugees from Syria* (December 2016) <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-where-theres-a-will-syria-refugees-161216-en.pdf> 9; also Laignee Barron, 'Japan has a labor crisis that refugees could fix—if only its government would let them', *Quartz* (online), 6 July 2017, <<https://qz.com/1014031/japan-has-a-labor-crisis-that-refugees-could-fix-if-only-its-government-would-let-them/>>.

⁵² UNHCR, *Philippines Factsheet* (August 2015) <<http://www.unhcr.org/50001d879.pdf>>.

⁵³ *Philippine Statement* (Sixty-Eight Session of the Executive Committee of the High Commissioner's Programme, Geneva, 4 October 2017) <<http://www.unhcr.org/en-au/59d4d00c7>> 1-2.

Response Plan of October 2018⁵⁴ and UNHCR's Supplementary Appeal.⁵⁵ As APRRN has raised previously, there also needs to be discussion as to whether the CRRF should be triggered in relation to this refugee situation, and how it should be applied on the ground.

V. How can we expand access to complementary pathways for admission?

36. The promotion of complementary pathways for admission through both the GCR and the GCM creates opportunities for refugees to secure protection through other migration channels, particularly by expanding access to labour and education programs, and the growth of family reunification and private and community sponsorship. However, in expanding access to complementary pathways, it is essential that states provide these pathways in addition to general resettlement programs, and not instead of general resettlement. APRRN is concerned that states may utilise complementary pathways to migration as a substitute for general resettlement programs. These complementary pathways must be gender sensitive and analyzed for any potentially negative gender impacts.
37. In terms of private and community sponsorship, APRRN is also concerned about the possible privatisation of the global public good of resettlement, and its implications for the refugee protection regime. While the provision of resettlement in collaboration with individual citizens and community groups can foster greater community engagement and social inclusion, once again there are concerns raised about how states may use this complementary pathway to skirt state-based commitments to the resettlement of refugees. These initiatives must also all include clear safeguards to prevent the sexual exploitation of women and children.
38. In the Asia Pacific region, states have begun exploring new complementary pathways to admission through, for example, the provision of 150 education scholarships for Syrian refugees to study in Japan, the private sponsorship programme led by the Japan Association for Refugees in coordination with universities and municipalities around the country, and the extension of a Community Proposal Pilot in Australia. While the Japanese programme is offered in addition to its small resettlement program, and the private sponsorship programme is in addition to the government program, the Australian pilot of 1000 community-sponsored places per year is to be taken from its humanitarian program. At the Annual Tripartite Consultations on Resettlement, NGOs strongly critiqued the Australian program, noting their concern regarding both the prohibitive up-front costs to be borne by sponsors, as well as its implications for the humanitarian resettlement program.⁵⁶

⁵⁴ UNOCHA, *Humanitarian Response Plan - Rohingya Refugee Crisis: September 2017 - February 2018* (October 2017) <http://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf>.

⁵⁵ UNHCR, *Supplementary Appeal - Myanmar Refugee Emergency in Bangladesh* (September 2017) <<http://www.unhcr.org/59cbf1117.pdf>>.

⁵⁶ Refugee Council of Australia, above n 35, Appendix B: [12].

VI. How can we make local solutions work for refugees and the communities in which they live?

39. In our first submission on the significance of the New York Declaration on Refugees and Migrants for the Asia Pacific region, we highlighted that the GCR should reiterate the ongoing importance of offering local integration as a traditional durable solution for refugees, as well as create opportunities for local integration. While the use of the terminology of ‘local solutions’ in the text of the CRRF identifies opportunities for new migration pathways in host communities, particularly in areas such as labour migration and tertiary study, it is important that these opportunities do not simply replace the pursuit of local integration as a specific durable solution for refugees.⁵⁷
40. APRRN welcomes the ‘identification of solutions’, as proposed by UNHCR in its concept note, ‘for the legal local integration of refugees - including securing durable legal status, residence rights and naturalization’.⁵⁸ This should be pursued in the programme of action.
41. One of the key challenges in the Asia Pacific region is that many states believe that they are not required to offer anything other than temporary protection to refugees and *non-refoulement*. While states in the region have informally hosted millions of refugees over several decades, most refugees in the Asia Pacific are not accorded work rights and they are frequently portrayed as being a burden on the states that receive them. This perspective has contributed to the unwillingness of some states in the region to become party to the 1951 Refugee Convention and the 1967 Protocol.
42. APRRN believes that a key measure that supports both refugees and the communities in which they live is the provision of the right to work. As the World Bank has documented, “when refugees have the right to work,” the World Bank has found “they can fully use their skills and contribute more to the economy (including fiscal resources). Policies that are traditionally seen as more humane and beneficial for forcibly displaced persons also serve the host communities’ own interests: they are not only right, they are also smart.”⁵⁹
43. APRRN notes recent initiatives in Malaysia to pilot the right to work for a small group of Rohingya refugees. Such initiatives, if they enable refugees ‘the ability to gain a living by work freely chosen or accepted’,⁶⁰ are consistent with both the spirit and application of the New York Declaration and should be expanded to apply to all refugees. This is a key element of the concept of self-reliance.

⁵⁷ New York Declaration, above n 1, Annex I: Comprehensive refugee response framework [10].

⁵⁸ UNHCR, above n 14, 8.

⁵⁹ International Bank for Reconstruction and Development/ The World Bank, *Forcibly Displaced: Towards a Development Approach Supporting Refugees, the Internally Displaced and Their Hosts* (2017) 8.

⁶⁰ Penelope Mathew et al, ‘Michigan Guidelines on the Right to Work’ in *Michigan Journal of International Law* 31 (2009) 293

<https://www.law.umich.edu/centersandprograms/refugeeandasyllumlaw/Documents/Michigan_Guidelines_on_the_Right_to_Work.pdf>.

44. APRRN also supports UNHCR's proposals to include refugees in national development programmes and to support host communities through the extended provision of humanitarian and development assistance.⁶¹ This approach supports inclusive policies towards refugees and promotes social cohesion and tolerance between refugees and host communities. Importantly, measures that target countering xenophobia need to be applied in every durable solution conceived and applied in the CRRF.

VII. How can we address the root causes of large movements of refugees?

45. Addressing root causes of large movements of refugees remains one of the most challenging issues in forced migration today. Despite significant attempts to develop a framework for addressing root causes since the early 1980s, there is still no clear guidance as to how states and other actors should address root causes of displacement.⁶²

46. There are several challenges that arise when seeking to address root causes on the ground. Often humanitarian and development actors are unable to deal with the security issues that may be present in the location, and are thus prevented from assisting. States, when not prevented from intervening due to security risks, are often reluctant to intervene directly in the sovereign affairs of another state. And sometimes humanitarian and development actors are expelled or otherwise directly denied access to affected populations by states. Further, there is still a lack of comprehensive data identifying what makes people decide to flee, and what happens to those that stay behind, which makes research-based interventions difficult. Even when measures targeted at addressing root causes may yield some results, they are, as the World Bank indicates, difficult to observe; 'when it is successful, nothing happens - and even more difficult to attribute'.⁶³

47. Although large scale refugee movements are often framed politically as unexpected emergencies, it is frequently the case that such movements of refugees have been effectively forecasted, but the forecasts have either not been taken seriously or they have not led to effective, concerted responses. A prominent example of this in recent years is the large scale movement of Syrian refugees, where, as McAdam states bluntly, 'the writing was on the wall for a good five years before refugees began leaving for Europe, and the lessons of history were there to see ... if only one cared to look.'⁶⁴

⁶¹ See UNHCR, above n 14, 7-8.

⁶² Josep Zapater, 'Prevention of forced displacement: the inconsistencies of a concept' in *UNHCR: New Issues in Refugee Research* 186 (2010) 1
<<https://pdfs.semanticscholar.org/eeb7/df3e18f26b37070a800662ccc5c82dfbaa7.pdf>> 1.

⁶³ International Bank for Reconstruction and Development/ The World Bank, above n 59, 44.

⁶⁴ Jane McAdam, 'The Enduring Relevance of the 1951 Refugee Convention' in *International Journal of Refugee Law* 29 (2017) 1, 4.

48. Recent data analysis provided by the World Bank demonstrates that outflows of forcibly displaced persons peak, on average, 4.1 years after they start.⁶⁵ The data further suggests that “this is because people try to stay home and to manage risks for as long as they can and embark on a perilous journey into exile only once other means of coping have been exhausted.”⁶⁶
49. Prevention should be understood broadly to consist of not only responses made prior to a large movement of refugees, but also efforts taken during the onset of a large movement to mitigate circumstances that lead to further forced displacement. Some measures that may lead to the prevention or mitigation of forced displacement include advocacy efforts to discourage or overturn government policies that induce forced migration; the creation of legal pathways which remove the need for people to undertake dangerous journeys by land or by sea; and the provision of humanitarian and development support to those people who remain behind.
50. In relation to the latter, recent data from the World Bank has indicated that “in any situation of forced displacement most people stay behind. In 2015, more than 90 percent of the population was still in place in 80 percent of the countries of origin. Only in Syria did the share of forcibly displaced exceed 25 percent of the entire population.”⁶⁷
51. Importantly, efforts to mitigate forced displacement cannot prevent people from exercising their right to seek asylum and right to leave their own country.
52. APRRN has advocated for states in the Asia Pacific region to play an increasing role, both bilaterally and through regional forums, in urging states to halt policies which breach international human rights laws and induce forced displacement. Most recently, in response to the mass displacement of Rohingya within and from Myanmar’s Rakhine State over recent months, APRRN has urged ASEAN states and the ASEAN Intergovernmental Commission on Human Rights (AICHR) to “urge the Government of Myanmar to uphold its commitments under the ASEAN Charter, the ASEAN Declaration of Human Rights, and other ASEAN and international human rights instruments to which they are signatory.”⁶⁸ APRRN has also written an open letter to the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) urging it to trigger its emergency consultation mechanism and to convene urgent dialogue among Bali Process members to discuss how the Bali Process may respond.⁶⁹

⁶⁵ International Bank for Reconstruction and Development/ The World Bank, above n 59, 6.

⁶⁶ Ibid.

⁶⁷ Ibid. It is assumed that the ‘entire population’ refers to the entire population of the country of origin, not just the population of a particular group of refugees within that country of origin.

⁶⁸ APRRN and Forum Asia, *Briefing Paper for the ASEAN Intergovernmental Commission on Human Rights (AICHR): “Update on the mass displacement of people from Rakhine State (September 2017)”* <http://aprrn.info/wp-content/uploads/2017/09/Briefing-Paper-on-mass-displacement-of-people-from-Rakhine-State_FORUM-ASIA-APRRN.pdf>.

⁶⁹ Open letter from APRRN Mr Al Farisi and Mr Goledzinowski re: Triggering the Bali Process Consultation Mechanism”, 1 November 2017.

VIII. In what ways can regional institutions contribute to comprehensive refugee responses?

53. The recognition that regional institutions can make a contribution to comprehensive refugee responses can already be seen in the initial roll-out phase of the CRRF. Since the adoption of the New York Declaration in September 2016, two coordinated regional approaches have already been established under the framework. These are the Nairobi Comprehensive Plan of Action for Durable Solutions for Somali Refugees in East Africa,⁷⁰ and the Regional Comprehensive Framework for Protection and Solutions in Central America. The latter of these regional approaches was adopted on 26 October 2017 by the governments of Belize, Costa Rica, Guatemala, Honduras, Mexico and Panama under the San Pedro Sula Declaration.⁷¹
54. There are several reasons why regional approaches to refugee responses may be beneficial. As Penelope Mathew and Tristan Harley note, regional actors may have a more direct concern in addressing localised movements and they may also be 'better equipped to respond in some respects because they have region-specific knowledge and could be more capable of coordinating and tailoring protection programmes to the specific needs of refugees'.⁷² Regional approaches may also have the greater possibility of uniform agreement in the absence of global consensus. Historically, regional arrangements 'have often been sites where greater agreement on norms of refugee protection has been secured than the global level - witness the expanded definitions of refugee status in the Americas and Africa - and they have also served as sites where new concepts, such as refugee aid and development have been trialled'.⁷³
55. At the same time, there is nothing inherently beneficial in regional approaches to refugee protection. Regional approaches can undermine the universal aims of global approaches to refugee protection and can create disparities in treatment within and between regions. APRRN is already concerned that while two regions in the Global South have committed to applying the CRRF in practice, states from the Global North have yet to sign up fully to its implementation. In most regional arrangements historically, success has depended in part on the additional involvement of extra-regional actors.
56. Mathew and Harley suggest that 'minilateral' approaches, which bring together 'the most capable, the most responsible and the most vulnerable' may be a preferable approach to more localised approaches to refugee protection.⁷⁴ These approaches seek to bring to the table the smallest possible number of actors 'needed to have the largest possible impact on solving a particular problem'.⁷⁵ In the refugee context, this could involve bringing together refugee groups

⁷⁰ UNHCR and UK Aid, *Supporting Refugees and Their Host Communities in the Horn and East Africa* (10 May 2017) <<http://crrf.unhcr.org/en/documents/download/25>>.

⁷¹ *San Pedro Sula Declaration as a Regional Contribution to the Global Compact on Refugees* (26 October 2017) <<http://crrf.unhcr.org/en/documents/download/76>>.

⁷² Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Edward Elgar, 2016) 60.

⁷³ *Ibid* 234-5.

⁷⁴ *Ibid* 63.

⁷⁵ Moisés Naím, 'Minilateralism' (2009) (173) *Foreign Policy* 136, 135.

and developing countries as some of the most vulnerable, and developed countries, civil society organisations and international organisation as some of the most capable, given their economic and technical capacity. However, there will be pertinent questions in each refugee situation as to who is the most responsible, and the extent to which countries of origin can be involved.⁷⁶

The Bali Process

57. In the Asia Pacific region, APRRN believes that the Bali Process presents opportunities for greater responsibility-sharing on refugee issues.⁷⁷ The Bali Process is a state-led process, co-chaired by Australia and Indonesia. Since its inception in 2002, its membership has grown to consist of 45 states, as well as three international organisations - UNHCR, IOM and UNODC.⁷⁸ According to its website, it is a 'forum for policy dialogue, information sharing and practical cooperation'.⁷⁹ In 2012, it officially opened a Regional Support Office (RSO) in Bangkok, Thailand to operationalise elements of its agenda.

58. Despite its core focus on people smuggling and transnational crime, Bali Process members have been progressively willing to consider refugee protection issues under its mandate. In 2011, Bali Process members, based on the recommendation of UNHCR, agreed to develop a Regional Cooperation Framework which included, among other things, proposals for the development of more uniform and consistent asylum procedures, and timely durable solutions for refugees to ease pressures on host countries.⁸⁰ In 2016, Bali Process members, in response to the 2015 Andaman Sea Crisis, went further, adopting a declaration that recognises the importance of 'victim-centered and protection-sensitive strategies', strict respect for the principle of *non-refoulement* and the 'need for comprehensive and long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants'.⁸¹

⁷⁶ Mathew and Harley, above n 72, 64.

⁷⁷ This information on the Bali Process and ASEAN was first published in APRRN's submission to the first thematic discussion on 'past and current burden- and responsibility-sharing arrangements'. It has been updated to reflect developments since the time of the previous publication. See APRRN, *Past and present responsibility-sharing arrangements for refugees in the Asia Pacific region* (9 July 2017) <<http://aprrn.info/briefing-paper-past-and-present-responsibility-sharing-arrangements-for-refugees-in-the-asia-pacific-region/>> 8-10.

⁷⁸ The Bali Process, 'Membership' <<http://www.baliprocess.net/membership/>>.

⁷⁹ The Bali Process, 'About the Bali Process' <<http://www.baliprocess.net/>>.

⁸⁰ Foreign Ministers of Indonesia and Australia, *Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 29–30 March 2011* <https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/110330_FINAL_Ministerial_Co-chairs_statement_BRMC_IV.pdf> [16].

⁸¹ *Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime* (adopted at the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016) <http://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%20Co-chairs%20Ministerial%20Statement_with%20Bali%20Declaration%20attached%20-%2023%20March%202016_docx.pdf> ('Bali Declaration').

59. While the Bali Process has been critiqued on occasions as being perceived, primarily, as a ‘talking shop’ and for a lack of transparency, there is increasing evidence to suggest that the forum is playing an important norm-setting role, particularly for states that have been unwilling historically to recognise refugees as a group of persons who have particular protection concerns. Further, as part of its review into its response to the 2015 Andaman Sea crisis, Bali Process members recognised their own deficiencies in responding to the events of May 2015 and committed to overcome these deficiencies by establishing a non-binding Task Force on Planning and Preparedness to develop protocols to ‘harmonise detection, search and rescue, disembarkation and shelter practices’ and to ‘to facilitate timely and proactive consultation to respond to emergency situations’.⁸² APRRN has written an open letter to the Bali Process urging it to trigger its emergency consultation mechanism and to convene urgent dialogue among Bali Process members to discuss how the Bali Process may respond to the Rohingya situation.⁸³

ASEAN

60. Although it is not specifically mentioned in the agenda for the final thematic consultation, APRRN believes that ASEAN is another important regional body that should be engaged more consistently and strategically to strengthen regional protection for refugees. While ASEAN currently lacks any policy, framework or mechanism directly related to displacement, internal or external, ASEAN member states are increasingly engaging on issues of irregular migration. In July 2015, ASEAN held an emergency Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia in response to the 2015 Andaman Sea Crisis, where it pledged to establish a task force and humanitarian trust fund to respond to the irregular movement of migrants and refugees in the region.⁸⁴

61. At the same time, several member states have become increasingly vocal regarding particular refugee situations, and have expressed the importance of addressing root causes that have resulted in a regional refugee crisis. In early 2017, Malaysia spoke out against the treatment of Rohingya in Rakhine State and called for an ASEAN Foreign Minister’s meeting to discuss the crisis.⁸⁵ However, follow-up has been weak in both these cases due to the lack of an official ASEAN mechanism to address irregular migration as well as its root causes. One more positive example is Indonesia, which has recently passed a Presidential Decree on Asylum Seekers and

⁸² Ibid [14].

⁸³ Open letter from APRRN Mr Al Farisi and Mr Goledzinowski re: Triggering the Bali Process Consultation Mechanism”, 1 November 2017.

⁸⁴ ASEAN, *Chairman’s Statement: Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia* (July 2015) <<http://reliefweb.int/sites/reliefweb.int/files/resources/Chairman-Statement-Emergency-ASEAN-Ministers-Meeting-on-Transnational-Crime-2-July-2015-1.pdf>> [6].

⁸⁵ See ‘Malaysian PM sends aid for Muslim Rohingyas in Myanmar’, *Reuters* (online), 3 February 2017 <<http://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN15I14D>>.

Refugees, which will present important opportunities to set precedent of good practice in the region.

62. One important development within ASEAN is that it has over the past decade invested in the creation of a legally-binding regional framework on humanitarian response in disasters. While this framework and operational arrangements are currently limited to ‘natural’ disasters, ASEAN in its Vision 2025 on Disaster Management explicitly recognises the occurrence and risks associated with human-induced disasters and the need for ASEAN to be prepared to respond.⁸⁶ ASEAN’s disaster management capacity holds promise in the area of search and rescue operations. ASEAN’s humanitarian and disaster relief (HADR) capacities include well-coordinated military and civilian capacity, which would be important to engage in the development of any regional search and rescue capacity. This capacity, however, will need to be guided by a political commitment to develop a regional approach and standby arrangements for search, rescue and disembarkation in the region. The Bali Process Planning and Preparedness Task Force’s Table Top Exercise held in May 2017 was an important step in this direction, and ASEAN should be encouraged to engage, work towards the interoperability of search and rescue systems, and develop regional agreements on disembarkation locations and procedures. In APRRN’s view, it is crucial that the Bali Process and ASEAN communicate more closely with respect to their response to humanitarian crises.

IX. How can we ensure a whole-of-society response to large movements of refugees and protracted situations?

63. APRRN has welcomed the clear commitment to adopting a ‘whole of society’ approach to large movements of refugees and believes that the best way to address diverse needs with limited resources is through collaboration, with refugees at the centre. APRRN has also welcomed the inclusion of civil society, refugees, including refugee women and youth, and other actors in discussions relating to the GCR to date, and hopes that this will continue during the drafting phase of the programme of action. It is essential that the strong commitment to gender equality outlined in the NYC and UNHCR’s Age Gender and Diversity policy be fully integrated across the programme of action and implemented in practice by all actors involved in a whole-of-society approach.
64. At the same time, with the broadening and increasing diversification of actors involved in the protection of refugees, there needs to be clear guidelines and leadership as to how a ‘whole of society approach’ to large movements of refugees will be applied over the long term and what this means in practice. Confusion as to operational control may lead to delays, gaps in protection and unnecessary overlap.

⁸⁶ ASEAN, *ASEAN Vision 2025 on Disaster Management* (2015) <http://www.asean.org/wp-content/uploads/2012/05/fa-220416_DM2025_email.pdf>.

65. This is particularly important in relation to the collaboration and working arrangements between international organisations now involved in refugee protection, such as UNHCR, IOM, UNDP, the World Bank, ILO etc. While the Secretary General of the UN outlined at the World Humanitarian Summit the need for a new way of working - based on greater levels of interoperability, cooperation and collective action - it is clear that 'silos created by mandates and financial structures' still remain and there are at times tensions and differences in approach, although these are generally not acknowledged publicly by the organisations involved.⁸⁷
66. The inclusion of faith-based organisations in a 'whole of society approach' is important given the roles that many organisations of this type have played in advancing refugee protection throughout the world. Faith-based motivations for providing protection to refugees can be found in all the world's major religions. This can be seen not only in the 'Welcoming the Stranger' initiative,⁸⁸ but also in the substantial contributions that have been made to refugees over the years. Many faith-based organisations are active members of APRRN.
67. Local government authorities also should play a key implementation role in providing responses to large scale refugee movements and protracted refugee situations, alongside local civil society and refugees themselves, and with additional support from international actors. This should be incorporated within national development plans. Programmes such as the Cities of Solidarity programme in Latin America and the Refugee Welcome Zones in Australia, highlight the increasing desire among local government authorities to engage with refugee issues, whether in support of or opposition to state policies. To date, local government approaches have focused largely on promoting the social inclusion of refugees within specific local areas, through the provision of local services, as well as campaigns to counter xenophobia and intolerance.⁸⁹ However, there is the potential for local government authorities to implement a broader range of rights-protection initiatives in the future under a 'whole of society approach'.
68. APRRN welcomes the proposals put forward by UNHCR regarding the establishment of an advisory committee of city officials to put forward best practice with regards to the protection of refugees in urban centres.⁹⁰ At the same time, it is important that local government authorities are engaged in rural and semi-rural communities as well.
69. In terms of private sector engagement, APRRN is broadly supportive of engaging the private sector to develop additional protection initiatives for refugees, including UNHCR's proposal to

⁸⁷ *One Humanity: Shared Responsibility: Report of the Secretary-General for the World Humanitarian Summit*, UNGAOR, 70th sess, Agenda Item 73(a), UN Doc A/70/709 (2 February 2016) [109].

⁸⁸ UNHCR, *Welcoming the Stranger: Affirmations for Faith Leaders* (2013) <<http://www.unhcr.org/en-au/protection/hcdialogue%20/51b6de419/welcoming-stranger-affirmations-faith-leaders.html>>.

⁸⁹ See Refugee Council of Australia, *Refugee Welcome Zones: Local Councils building a culture of welcome for refugees* (December 2013) <https://www.refugeecouncil.org.au/g/131219_RWZ.pdf>; also Tristan Harley, 'Regional Cooperation and Refugee Protection in Latin America: A 'South-South' Approach', in *International Journal of Refugee Law*, 26 (2014) 1, 34.

⁹⁰ UNHCR, above n 14, 11.

develop a ‘global platform of businesses to invest in refugees’.⁹¹ However, as we stated in our submission to the second and third thematic discussions, it is important that partnerships with the private sector are transparent and consistent with the mandates of humanitarian agencies and international human rights, including strong commitments to gender equality and inclusion. They should also be entered into with “a clear idea of goals, shared and diverging values, and each side’s comparative advantage”.⁹² Private sector engagement should not simply occur because current humanitarian resources are stretched to breaking point.

70. It also needs to be understood that private sector engagement is unlikely to be the primary answer to the lack of protection resources and durable solutions for refugees. The private sector will often refrain from acting if such actions are likely to be interpreted politically or economically as contrary to government policy or public opinion. They are also unlikely to act if there is not broad support from shareholders.
71. There is a risk that, given the lack of research examining the advantages and disadvantages of private sector engagement in the area of refugee protection, unintended consequences, such as the possibility of overwhelming donor control, the erosion of government funding, and technical challenges in terms of implementation, have not been fully considered. A further risk relates to the potential legal implications that may arise when states, in particular, outsource protection obligations to private parties.
72. To this extent, APRRN welcomes the proposal made by Germany at the first thematic dialogue that the GCR should introduce ‘a “protection/human rights impact assessment” for major private sector activities’.⁹³

APRRN is a civil society network dedicated to the advancement of refugee rights in the Asia-Pacific region with over 300 organisational and individual members across 30 countries. The majority of APRRN’s members work at the national level to support refugees and other displaced persons in need of protection. APRRN has developed a core document that shapes its approach to furthering the advancement of refugee protection in the region. This document is known as the APRRN Vision on Refugee Protection, and was developed following extensive consultations among members and other stakeholders between 2012 and 2014.

The views expressed in this document do not necessarily reflect the views of all members of the APRRN network.

⁹¹ Ibid.

⁹² Heba Aly, ‘What future for private sector involvement in humanitarianism?’, *IRIN* (online), 26 August 2013 <<http://www.irinnews.org/analysis/2013/08/26/what-future-private-sector-involvement-humanitarianism>>.

⁹³ *Statement of Germany* (First Thematic Discussion: “Past and current burden- and responsibility-sharing arrangements”, Geneva, 10 July 2017) <<http://www.unhcr.org/en-au/events/conferences/5968c0677/statement-germany-first-thematic-discussion-10-july-2017.html>> 2.