

Summary of the Asia Pacific Refugee Rights Network's submissions to the 2017 consultations on the Global Compact on Refugees

ANNEX to Submission of the Asia Pacific Refugee Rights Network to the tenth annual High Commissioner's Dialogue on Protection Challenges on the theme of "Towards a global compact on refugees"

12 and 13 December 2017

Introduction

1. Throughout the course of 2017, the Asia Pacific Refugee Rights Network (APRRN) has actively participated in consultations with states, international organisations, civil society organisations, refugees, and other relevant actors to consider and comment on the development of the Global Compact on Refugees (GCR). This has included, *inter alia*, convening a regional roundtable in Bangkok in May 2017, participating in the UNHCR's annual NGO consultations and five thematic discussions as part of its roadmap towards the GCR, and acting as a member of the UNHCR-NGO-IFRC Comprehensive Refugee Response Framework Reference Group.
2. APRRN has produced several written submissions for these consultations. These submissions have considered the significance and application of the New York Declaration on Refugees and Migrants (New York Declaration)¹ for the Asia Pacific region, as well as some of the preliminary issues, concerns and opportunities that should be taken into account in the development of the GCR. This document provides a summary of these submissions for ease of reference and for ongoing use.

APRRN's initial response to the New York Declaration, including the CRRF

3. APRRN considered the adoption of the New York Declaration, including the CRRF, by all UN General Assembly Member States, including all states in the Asia Pacific region, a significant opportunity for the advancement of refugee rights both universally and in the Asia Pacific region.
4. Although the text is non-binding, the New York Declaration marked a commitment by states to a normative framework for more effective and coordinated responses to refugee issues, as well as other issues relating to forced migration. This commitment had added significance in the Asia Pacific region, given the number of states in the region that are not parties to the 1951 Refugee Convention or its 1967 Protocol.
5. Under the New York Declaration, states have not only reaffirmed the 1951 Refugee Convention and its 1967 Protocol as the 'foundation of the international refugee protection regime', but also committed to the development of 'a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees'.² This commitment is important because effective and predictable protection for refugees in large-scale situations will never be achieved unless states and other actors

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 *Ibid* [11], [68].

develop and agree upon new ways to cooperate with one another and share responsibility for providing such protection.

6. APRRN broadly supported the commitments made by the international community in the New York Declaration, particularly with respect to implementing a whole-of-society approach to refugee issues, as well as the commitments to ease pressures on host countries, enhance refugee self-reliance, expand access to third-country solutions, and support conditions in countries of origin for return in safety and dignity.³
7. At the same time, APRRN remained concerned about the challenges posed in translating the principled commitments made in the New York Declaration into protection gains on the ground. APRRN reiterated 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.⁴
8. APRRN also expressed concern about some of the language included and omitted from the text of the New York Declaration, including the CRRF, and believed that the development of the GCR in 2018 should be seen as an opportunity to build upon the potential of the CRRF, ensuring the implementation of firm commitments from states with regards to refugee protection and enlivening the broader New York Declaration promises of a whole-of-society approach and more equitable and predictable responsibility-sharing.

The Asia Pacific Context in 2017

9. During the course of consultations in 2017, APRRN highlighted the evolving and challenging refugee context in the Asia Pacific region and the significance and implication of the New York Declaration in this context. In June 2017, APRRN documented that the Asia Pacific region hosts some of the world's most protracted refugee situations, including the decades-long displacement of refugees from Afghanistan in Pakistan and Iran, of refugees from Myanmar in Thailand, Bangladesh and other parts of Southeast Asia, and of refugees from Sri Lanka in India.
10. The region is also characterised by the limited provision of livelihood opportunities for refugees. While states in the region have informally hosted millions of refugees over several decades, most refugees in the Asia Pacific region are not accorded work rights or access to healthcare and education.⁵ The lack of status for many refugees in the region exposes them to many human rights violations, including incidences of human trafficking.⁶ The Asia Pacific region, along with the Middle East, has the smallest percentage of states parties to the 1951 Refugee Convention and the 1967 Protocol.⁷

³ UNHCR, 'Towards a global compact on refugees: a roadmap' (17 May 2017) <<http://www.unhcr.org/58e625aa7.pdf>> [9] - [10].

⁴ 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].

⁵ See, for example, Jesuit Refugee Service Asia Pacific, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines* (JRS Asia Pacific, 2012); also Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Edward Elgar, 2016) 49.

⁶ *Ibid.*

⁷ Only nineteen states in the Asia Pacific region are parties to the Refugee Convention and/or the Refugee Protocol. These countries are Afghanistan, Australia, Cambodia, China, Fiji, Japan, Kazakhstan, Kyrgyzstan, Nauru, New Zealand, Papua New Guinea, Philippines, Samoa, Solomon Islands, South Korea, Tajikistan, Timor Leste, Turkmenistan, and Tuvalu.

11. Later in the year, these long term protracted refugee situations were coupled with the largest mass influx of refugees in the region in decades. From 25 August 2017 onwards, over 600,000 Rohingya refugees fled Myanmar and sought refuge in neighbouring Bangladesh.⁸ In its submission to the 2nd and 3rd thematic discussions, APRRN questioned whether the CRRF should be triggered in relation to Rohingya refugee situation and, if so, how it should be applied.
12. APRRN also documented that while the Asia Pacific region used to host the largest numbers of refugees in the world up until 2013,⁹ the rapid growth of the Syrian refugee crisis has meant that the total persons of concern to UNHCR in the Asia Pacific region amounted to only 15 per cent of the global demographic,¹⁰ even though there was an increase of almost two million persons of concern to UNHCR in the Asia Pacific region since 2013.¹¹ This change in global refugee needs has had significant consequences for the Asia Pacific region, by way of decreasing financial support and resettlement places for refugees, as well as a decrease in UNHCR's presence in the region. For example, in 2017, UNHCR's forecasted budget for the Asia Pacific region is \$545 million USD, down from \$671 million USD in 2016.¹² As of 5 December 2017, UNHCR had only received 44% of its forecasted budgeting needs for the Asia Pacific region.¹³
13. Further, out of all the pledges that were made by states to support refugees (in countries other than their own) at the Leaders' Summit on Refugees that took place the day after the adoption of the New York Declaration (known as 'the Obama Summit'), almost all were directed towards addressing and financing refugee movements in Europe, the Middle East and Africa. The only state from outside the Asia Pacific region that made a pledge to assist refugees in the Asia Pacific region specifically was Saudi Arabia, which pledged \$50 million to 'support Rohingya refugees in Indonesia through UN agencies and International NGOs', as well as \$30 million 'to Afghan refugees in Pakistan through UN agencies and International NGOs'.¹⁴

Developments and Opportunities in the Asia Pacific Region

14. APRRN recalled some notable developments with respect to refugees in recent years in the Asia Pacific region. These included the adoption of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration in 2012,¹⁵ the development of the Jakarta Declaration on Addressing Irregular Movement of Persons in 2013,¹⁶ and the endorsement of the Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime in March 2016.¹⁷

⁸ 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>.

⁹ UNHCR, *Global Trends 2013: War's Human Cost* (2014) <<http://www.unhcr.org/en-us/statistics/country/5399a14f9/unhcr-global-trends-2013.html>> 12.

¹⁰ See UNHCR, *Populations* (19 May 2016) <<http://reporting.unhcr.org/population>>.

¹¹ *Ibid.*

¹² UNHCR, *Operations: Asia and the Pacific* (22 May 2017) <<http://reporting.unhcr.org/node/29>>.

¹³ *Ibid.*

¹⁴ 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>.

¹⁵ *ASEAN Human Rights Declaration* (adopted by the Heads of State/ Government of ASEAN Member States at Phnom Penh, Cambodia, 18 November 2012).

¹⁶ *Jakarta Declaration on Addressing Irregular Movement of Persons* (Jakarta, 20 August 2013)

<<http://www.refworld.org/pdfid/530db94f4.pdf>>.

¹⁷ *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) <

15. These developments, albeit non-binding on states, mark an increasing recognition in the Asia Pacific region of the rights of refugees and the need for durable solutions. In particular, the Bali Declaration acknowledges 'the importance of a comprehensive approach to managing irregular migration by land, air and sea, including victim-centered and protection-sensitive strategies'.¹⁸ It also recognises that 'the principle of *non-refoulement* should be strictly respected',¹⁹ and that there is a 'need for comprehensive and long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants'.²⁰
16. There has also been broader interest among states in other areas of forced migration in the Asia Pacific region. This interest is primarily seen in forums such as ASEAN and the Bali Process, as well as the ratification of regional legislative instruments such as the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which entered into force in six Southeast Asian countries in March 2017.²¹ Additionally, it can also be identified in Asia Pacific states' interest in the process relating to the development of the Global Compact for Safe, Orderly and Regular Migration (GCM), which is called for in Annex II of the New York Declaration.²²

Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime

17. With regards to the Bali Process, APRRN stated that the Bali Process presents opportunities for greater responsibility-sharing on refugee issues. The Bali Process is a state-led process, led by the co-chairs 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.²³ According to its website, it is a 'forum for policy dialogue, information sharing and practical cooperation'.²⁴ In 2012, it officially opened a Regional Support Office (RSO) in Bangkok, Thailand to operationalise elements of its agenda.
18. 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.²⁵ 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

<http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20%281%29.pdf> ('Bali Declaration').

¹⁸ Ibid [5].

¹⁹ Ibid.

²⁰ Ibid [9].

²¹ *Convention Against Trafficking in Persons, Especially Women and Children*, opened for signature 21 November 2015, ASEAN (entered into force 8 March 2017).

²² New York Declaration, above n 1, Annex II: Towards a global compact for safe, orderly and regular migration.

²³ The Bali Process, 'Membership' <<http://www.baliprocess.net/membership/>>.

²⁴ The Bali Process, 'About the Bali Process' <<http://www.baliprocess.net/>>.

²⁵ 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].

long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants'.²⁶

19. 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'.²⁷

ASEAN

20. APRRN also proposed 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.²⁸
21. At the same time, several member states have become increasingly vocal towards 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.²⁹ 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 Refugees, which will present important opportunities to set precedent of good practice in the region.
22. One important development within ASEAN is that it has over the past decade invested in the creation of a legally-binding regional framework in humanitarian response in disasters. While these frameworks and operational arrangements are currently limited to 'natural' disasters, ASEAN in its Vision 2025 on Disaster Management explicitly recognised the occurrence and risks associated with human-induced

²⁶ *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-%202023%20March%202016_docx.pdf> ('Bali Declaration').

²⁷ *Ibid* [14].

²⁸ 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].

²⁹ 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>>.

disasters and need for ASEAN to be prepared to respond.³⁰ ASEAN's disaster management capacity holds promise in the area of search and rescue operations.

23. 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 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, 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 the response to humanitarian crises.

Measures to be taken at the onset of a large movement of refugees

24. APRRN stated that at the onset of large scale movements of refugees, *non-refoulement* and access to territory are fundamental and must receive clear and strong endorsement in the Program of Action. Host country governments are central to the creation of enabling environments for refugees to achieve self-reliance. Through local and national laws, policies and practices—i.e. the governance framework – host governments set the parameters for successful short-term and long-term refugee response.
25. During their stay in host countries, refugees should have the ability to safely enter, obtain legal status, move freely, gain employment and access state and private services on an equitable basis with others. Such parameters create an enabling environment for the success of long term development approaches and durable solutions in a timely manner.
26. APRRN proposed that measures need to be taken to develop baseline capacity assessments for states to better determine the national capacity of asylum systems with a view to raising capacities for the identification of persons with international protection needs, and the capacity for effective response to large movements when they occur. Based on baseline assessments, efforts should be made to build new and strengthen existing national asylum systems. This includes establishing or strengthening the institutional capacity of governments, but also other actors to provide protection more collaboratively and holistically, from identification, to the provision of protection and assistance. Such a systematic approach would take a capacity development approach looking at not only individual staff capacity building through training, but also organisational and societal capacity development for a more holistic, effective, and sustainable refugee protection system.
27. APRRN also stated that at the onset of large-scale refugee movements, there needs to be greater clarity in the GCR as to what constitutes a large-scale movement, and most importantly, what will be the trigger point for the implementation of the CRRF. Without clarity as to this trigger point, there is the risk that the CRRF will be either:
 - (a) implemented in all refugee situations, without proper consideration of or respect for other human rights obligations;
 - (b) implemented on a randomised, *ad hoc* basis without any greater consideration as to the equitable distribution of responsibility among states; or

³⁰ ASEAN, *ASEAN Vision 2025 on Disaster Management* (2015) <http://www.asean.org/wp-content/uploads/2012/05/fa-220416_DM2025_email.pdf>.

(c) never implemented.

28. APRRN stated that there needs to be widespread implementation among states of effective firewalls between service provision, including access to justice and immigration enforcement agencies. This is necessary in order to ensure trust in the provision of protection services for refugees, people seeking asylum and migrants, and to encourage refugees, people seeking asylum and migrants to report human rights violations, crime, violence and abuse. As the UN Secretary-General stated in 2014, 'one of the main barriers faced by migrants in an irregular situation is the fear of deportation if they are reported to immigration authorities while seeking public services'.³¹ Consequently, 'public service institutions should not be required to report to or otherwise share data with immigration authorities'.³²

Meeting Needs and Supporting Communities

29. APRRN stated that given the recurrent shortfalls in funding year after year, and an increase in humanitarian crises, the framework for funding refugee service providers, including UNHCR, needs to be addressed. Guy Goodwin-Gill has proposed a substantial revision of the present system of voluntary funding for UNHCR to a system whereby the known costs of existing refugee and displacement situations are guaranteed through payment via the General Assembly, with emergencies only the subject of additional appeals for funds.³³ Such a proposal would amount to a substantial revision of paragraph 20 of UNHCR's mandate, but could be one of the most concrete gains to emerge from the GCR if agreed to and implemented by states.

30. In terms of private sector engagement, APRRN broadly supported engaging the private sector to develop additional protection initiatives for refugees, including UNHCR's proposal to develop a 'global platform of businesses to invest in refugees'.³⁴ However, APRRN stressed that 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".³⁵ Private sector engagement should not simply occur because current humanitarian resources are stretched to breaking point.

31. 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.

32. 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

³¹ *Report of the Secretary-General: Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, UNGAOR, 69th sess, Agenda Item 69(b), UN Doc A/69/277 (7 August 2014) [29].

³² *Ibid* [79](g).

³³ Guy S Goodwin-Gill, 'The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change', 28 *International Journal of Refugee Law*, 4, 679–694, 684.

³⁴ 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>> 11.

³⁵ 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>>.

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.

33. To this extent, APRRN welcomed 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’.³⁶

Measures to be taken in pursuit of solutions

34. APRRN indicated in the thematic discussions that 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.
35. APRRN stated that there still remains significant uncertainty as to how the compact’s two central components, the CRRF and the Programme of Action, will deliver strengthened durable solutions for refugees and a more equitable distribution of responsibility among states and other relevant actors for providing that protection among states and other relevant actors.
36. The developments that we have seen to date, including at the Leaders’ Summit on Refugees³⁷ and the interim application of the CRRF,³⁸ have not been able to meet and keep pace with the 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,³⁹ yet the total amount of refugees locally integrated, as defined by naturalisation, decreased to only 23,000 refugees for the year.⁴⁰ Further, 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.⁴¹
37. APRRN also expressed its deep concern regarding how 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).

³⁶ *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.

³⁷ 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>.

³⁸ 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>>.

³⁹ 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.

⁴⁰ 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 *Ibid*, 28.

⁴¹ 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>>.

38. Reflecting on the Comprehensive Plan of Action for Indochinese Refugees (CPA), APRRN stated that if elements from the CPA were to be adapted for use today, then they would need to be complemented by measures that stimulate the local integration of refugees within asylum states and enable refugees to access basic services and pursue livelihoods while providing benefits to the host communities, both economically and culturally. Some options for further consideration include: the strategic use of resettlement, whereby resettlement places are increased in return for an equal or greater number of local integration places;⁴² the development of labour migration programmes for refugees (as contemplated in both the 2014 Brazil Declaration and Plan of Action and the CRRF); and, at the very least, the provision of lawful status in host states, including livelihood opportunities.⁴³

Voluntary and sustainable return

39. In relation to voluntary and sustainable return, APRRN indicated that 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 the country of origin have not occurred, and refugees have not been consulted as to their individual choices regarding return.

40. 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.

41. 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, APRRN highlighted its grave concerns about the return of over 380,000 Afghan refugees from Pakistan in 2016,⁴⁴ noting that research conducted by Human Rights Watch suggested that some returns may amount to constructive *refoulement*, given the coercive factors being employed by the Pakistani government.⁴⁵ UNHCR's use of cash-based incentives for returnees, which Pakistan recently requested be restored from \$200 to \$400,⁴⁶ 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

⁴² See Keane Shum, 'A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asia through Local and Regional Integration' (2011) 1 (1) *Oxford Monitor of Forced Migration* 60, 66.

⁴³ See Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Edward Elgar, 2016) 241-242.

⁴⁴ UNHCR, above n 39, 26.

⁴⁵ 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.

⁴⁶ *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>>.

not met.⁴⁷ 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.

42. 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.⁴⁸ 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.
43. 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'.⁴⁹ 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'.⁵⁰ APPRN notes that it is essential that any such analysis and monitoring includes age, gender and diversity perspectives.
44. 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 APPRN 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.
45. APPRN welcomed 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.⁵¹ 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.⁵²

⁴⁷ See 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>> 6.

⁴⁸ 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>>.

⁴⁹ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd, 2007) 495.

⁵⁰ *Ibid.*

⁵¹ 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>> 3.

⁵² New York Declaration, above n 1, Annex 1: 12 (c).

Local Solutions

46. APRRN welcomed 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'.⁵³ This should be pursued in the Programme of Action.
47. APRRN stated 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."⁵⁴
48. APRRN noted 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',⁵⁵ 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.
49. APRRN also supported UNHCR's proposals to include refugees in national development programmes and to support host communities through the extended provision of humanitarian and development assistance.⁵⁶ This approach supports inclusive policies towards refugees and promotes social cohesion and tolerance between refugees and host communities.

Resettlement

50. APRRN indicated that 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 UK government's decision to extend its Vulnerable Persons Relocation Scheme to 20,000 Syrians the day after the photograph of the Syrian refugee child Alan Kurdi was published widely in the media.⁵⁷ 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*.⁵⁸
51. APRRN supported the proposal that resettlement should be scaled up to meet the annual resettlement needs identified by UNHCR. However, it expressed concern about the timeframe put forward by

⁵³ 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>>, 8.

⁵⁴ 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.

⁵⁵ 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/refugeeandasylumlaw/Documents/Michigan_Guidelines_on_the_Right_to_Work.pdf>.

⁵⁶ See 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>> 7-8.

⁵⁷ 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.

⁵⁸ *Ibid.*

UNHCR in its concept note, particularly the aim of meeting this target by 2028.⁵⁹ 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 not receiving a resettlement place over the next ten years.

52. here also needs to be measures in place to effectively monitor 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.⁶⁰
53. 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 refugee 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.⁶¹ 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. APRRN believes that all durable solutions and complementary pathways need to be on the table in order to properly address this protracted refugee situation and encourages states and other actors to work together to provide solutions.

Complementary pathways for admission

54. APRRN agreed that 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 also be gender sensitive and analyzed for any potentially negative gender impacts.
55. 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

⁵⁹ 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>>. 4.

⁶⁰ See UNHCR, *The Heightened Risk Identification Tool* (June 2010) <<http://www.refworld.org/docid/4c46c6860.html>>.

⁶¹ See 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> 4.

resettlement of refugees. These initiatives must also all include clear safeguards to prevent the sexual exploitation of women and children.

56. In the Asia Pacific region, states have begun exploring new complementary pathways to admission through, for example, the provision of 150 education scholarships for Syrians 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.⁶²

Addressing root causes

57. 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 still remain no clear guidance as to how states and other actors should address root causes of displacement.⁶³
58. 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. Further, there still is 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’.⁶⁴
59. 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.’⁶⁵
60. Recent data analysis provided by the World Bank demonstrates that outflows of forcibly displaced persons peak, on average, 4.1 years after they start.⁶⁶ The data further suggests that “this is because

⁶² 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> Appendix B: [12].

⁶³ 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/df3e18f26b37070a800662ccc5c82fdfbaa7.pdf>> 1.

⁶⁴ International Bank for Reconstruction and Development/ The World Bank, above n 59, 44.

⁶⁵ Jane McAdam, ‘The Enduring Relevance of the 1951 Refugee Convention’ in *International Journal of Refugee Law* 29 (2017) 1, 4.

⁶⁶ International Bank for Reconstruction and Development/ The World Bank, *Forcibly Displaced: Towards a Development Approach Supporting Refugees, the Internally Displaced and Their Hosts* (2017) 6.

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.”⁶⁷

61. 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 peoples who remain behind.
62. 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.”⁶⁸
63. Importantly, efforts to mitigate forced displacement cannot prevent persons from exercising their right to seek asylum and right to leave their own country.
64. 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 this month, 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.”⁶⁹ APRRN has also 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.⁷⁰

Issues that cut across all four substantive sections of the comprehensive refugee responses, and overarching issues

Unpacking the meaning of ‘whole of society’ approach

65. 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

⁶⁷ Ibid.

⁶⁸ 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.

⁶⁹ 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>.

⁷⁰ Open letter from APRRN Mr Al Farisi and Mr Goledzinowski re: Triggering the Bali Process Consultation Mechanism”, 1 November 2017.

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.

66. 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.
67. 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.⁷¹

Issues of complementarity and convergence between the GCR and the Global Compact on Safe, Orderly and Regular Migration (GCM)

68. 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.
69. 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 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.'⁷²
70. 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.

⁷¹ *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].

⁷² 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>>.

71. 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.⁷³ 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’,⁷⁴ 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.⁷⁵
72. 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.
73. In its submission to the High Commissioner’s Dialogue on Protection Challenges, APRRN proposed that issues of complementarity and convergence be included within the scope of the monitoring, evaluation and learning framework, and each of the mechanisms and groups that may be established within the scope of the Programme of Action (as anticipated in the concept notes prepared for the GCR Thematic Discussions 2-5) be tasked with attending to matters of complementarity and convergence as part of their work. APRRN also proposes that issues of complementarity are identified and addressed during the negotiation phase and that there is periodic information sharing in between the GCR and the GCM processes.

Strengthening the response to women and girls

74. Throughout the course of 2016 and 2017, APRRN and its members have welcomed the strong commitments made by states in the New York Declaration to ensure that responses to large movements of refugees and migrants ‘fully respect and protect the human rights of women and girls’ and ‘promote gender equality and the empowerment of all women and girls’.⁷⁶ Importantly, this includes commitments ‘to combat sexual and gender-based violence’ and to recognise the significant ‘contribution and leadership of women in refugee and migrant communities’.⁷⁷
75. It is essential going forward that, consistent with these commitments, the needs and capacities of women and girls are not sidelined or ignored.⁷⁸ This will involve regular monitoring, evaluation and learning to ensure that all commitments to refugees and migrants are ‘gender-sensitive, with a particular emphasis on the protection and empowerment of women and children’.⁷⁹

⁷³ *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).

⁷⁴ *Ibid.*

⁷⁵ 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>.

⁷⁶ New York Declaration, above n 1, [31].

⁷⁷ *Ibid.*

⁷⁸ See Eileen Pittaway, Charlotte Bell and Linda Bartolomei, *Strengthening the response to refugee women and girls in the Comprehensive Refugee Response Framework* (5 June 2017)

<https://www.arts.unsw.edu.au/media/FASSFile/CRRF_working_document_updated_June_5.pdf>.

⁷⁹ New York Declaration, above n 1, Annex 1: 7(c).

76. As part of this approach, it is important to recognise that women on the move are not vulnerable per se. Rather, it is the circumstances that lead to their displacement, as well as the immigration and asylum policies they encounter, that place women at risk and in situations of vulnerability. Access to resources and work opportunities, and the right to legal employment, will empower their self-reliance. Women are ‘not just passive victims’.⁸⁰ They are advocates for their rights and agents of change.

Promoting and facilitating refugee leadership and participation

77. APRRN stated that it is committed to promoting and facilitating the leadership of people with lived refugee experience and the greater inclusion and participation of refugees in decision making processes that affect them. Participation needs to be meaningful and non-tokenistic. This is an essential component of a properly functioning whole-of-society approach.

78. Various proposals have been put forward on this issue throughout the consultations to date. These proposals include engaging refugee communities in the planning and selection of durable solutions, including ‘refugees and returnees in peace and crisis recovery strategies and national development plans’, employing more persons with lived refugee experience in UNHCR roles, and creating opportunities for refugees to become researchers in academic institutions. In addition, there are also proposals to improve consultation methods with refugee communities. APRRN supports the inclusion of all of these measures in the GCR and is committed to working with refugees, refugee-led organisations and networks, states and other actors to implement and mainstream these measures in practice.

79. Importantly, in order for the voices of refugees to be incorporated effectively into decision-making processes, steps need to be taken to resource and strengthen the capacity of refugee-led organisations and networks. Steps also need to be taken to provide spaces, both physical and virtual, for refugees to meet, plan and discuss policies and proposals without fear of discrimination, political interference, persecution, arrest and detention, deportation, or jeopardy with respect to their protection claims. There also needs to be more holistic consideration as to how refugee participation can become more inclusive of refugee women, women seeking asylum and groups that may face additional challenges to participation, such as youth, older refugees, and people with disability.

Addressing the needs of refugee children and youth, including unaccompanied and separated minors

80. APRRN indicated that it is committed to working with states, international organisations, refugee-led organisations and other relevant actors to address the specific needs of refugee children and youth, including unaccompanied and separated minors. To this extent, APRRN welcomes the multilateral Initiative for Child Rights in the Global Compacts.⁸¹ This initiative sets out key recommendations for

⁸⁰ Eileen Pittaway and Linda Bartolomei, ‘The international protection system is failing refugee women and girls’ *Thomson Reuters Foundation News* (online), 17 November 2017, <<https://news.trust.org/item/20171117153956-kw7l8/>>. As Pittaway and Bartolomei state, ‘in many camps and refugee sites, women run crèches for children, arrange care for orphaned or lost children, provide safe spaces for women who have experienced sexual and gender-based violence, manage scarce rations to ensure that families are fed, run small businesses to provide some meagre additional support their families, run basic schools, and provide protection. They generally do this without funding or external support’.

⁸¹ Jacqueline Bhabha and Mike Dottridge, *Child Rights in the Global Compacts: Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts* (24 June 2017) <<http://www.childrenonthemove.org/wp-content/uploads/2017/02/Working-document-English-11-Nov-2017.pdf>>.

protecting, promoting and implementing the human rights of refugee and migrant children in the Global Compacts.

81. The initiative identifies six key priority issues affecting refugee and migrant children that should be addressed in both the GCR and the GCM. These six issues are: (1) non-discrimination; (2) best interests of the child; (3) child protection; (4) ending child immigration detention; (5) access to services for refugee and migrant children; and (6) sustainable solutions in children's best interests.
82. Importantly, the initiative also documents clear goals, targets and indicators for the monitoring, and evaluation of these rights. These goals, targets and indicators should be actively considered by states and other relevant actors during the consultation phase, and incorporated into a broader monitoring framework that evaluates all the commitments made by states to refugees and migrants in the New York Declaration (see below).
83. Finally, there is also the need to take into account specific issues affecting refugee youth, recognizing that drawing a line between childhood and adulthood is a legal fiction, and in practice we must ensure a flexible approach for youth, giving weight to individualized and sensitive assessment of maturity always taking into account both the wishes and motivations of the individual, as well as what is in their best interests.
84. As the report of the 2016 Global Refugee Youth Consultations indicates, this includes, inter alia, concerns regarding this kind of youth-sensitive, sexual and reproductive health care and psychosocial support, limited youth employment and livelihood opportunities, difficulty of obtaining recognition for existing qualifications and accessing quality learning, and lack of empowerment and engagement opportunities.⁸²

Countering xenophobia, racism and discrimination

85. APRRN outlined that as we work towards the development and implementation of the GCR, more efforts need to be taken to counter the xenophobia, racism and discrimination that many refugees, people seeking asylum and migrants experience around the world, including in the Asia Pacific region. Importantly, measures to counter xenophobia need to occur in all situations where refugees may be present, not just in countries of first asylum.
86. APRRN stated that many host community perceptions of asylum seekers and refugees continue to be influenced and shaped by governments and media that present refugees as a 'deviant social group' who take advantage of government policies and undermine the sovereignty of host states.⁸³ This can be seen in the use of terms such as 'illegal', 'unauthorised migrants', 'bogus' "queue jumpers" and 'economic refugees', among others. These representations, in turn, undermine campaigns that target xenophobia, and influence government policies focused on control, border management and the exclusion of refugees, people seeking asylum and migrants from host communities.

⁸² Women's Refugee Commission, UNCHR and GRYC, *Global Refugee Youth Consultations: Final Report* (November 2016) <<http://www.unhcr.org/57e1126e7.html>> 6.

⁸³ See Sharon Pickering, 'Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia' (2001) 14 *Journal of Refugee Studies* 169 and Fiona H McKay, Samantha L Thomas and Susan Kneebone, "'It Would be Okay If They Came Through the Proper Channels": Community Perceptions and Attitudes toward Asylum Seekers in Australia' (2012) 25 *Journal of Refugee Studies* 113, 128.

Monitoring, evaluation and learning

87. APRRN stated that it is essential that the proposed Programme of Action for the GCR incorporates a monitoring, evaluation and learning framework in order to effectively track and evaluate, on an ongoing basis, the implementation of the commitments made by States to refugees and migrants under the New York Declaration, such as those surrounding the inclusion of refugees in decision-making and programming, and others including, but not limited to those discussed above. This framework should include measurable indicators and goals relating to each of the commitments made in the New York Declaration, and report at specified intervals on the level of implementation and improvement with regards to each indicator and goal. Such an approach will enable ongoing opportunities for learning. Consideration should also be given as to how the contributions of non-State actors can be included, reflected and monitored over time, in keeping with a whole-of-society approach.
88. Given its protection mandate, its lead role in the development of the GCR, and its long supervisory history on refugee issues, APRRN proposes that this framework should be developed and led by UNHCR. However, there should also be consultation and input from all relevant actors as part of a whole-of-society approach. The Sustainable Development Goals framework may provide a useful model for comparison and consideration.

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 with 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.