



BRIEFING PAPERS



FIFTH MEETING

Manila, the Philippines

10-12 September 2017

Paper 1: Inputs on the implementation of ACTIP and development of the focal point system of national ACTIP representatives

INTRODUCTION

The Asia Dialogue on Forced Migration (ADFM)¹ welcomes this opportunity to provide inputs on the implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and the ASEAN Plan of Action Against Trafficking in Persons (APA).

Having done work for the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process), the ADFM follows progress on the implementation of ACTIP and the Focal Point System of National ACTIP Representatives (FPS of ACTIP Representatives) with great interest.

As external observers, the ADFM lacks the insights on all the process and specific technical details. The inputs that it offers for consideration are more general perspectives and approaches, which it hopes will still be useful.

TRAFFICKING IN PERSONS AND ACTIP/APA IMPLEMENTATION LANDSCAPE

The ASEAN Ministers Meeting on Transnational Crime (AMMTC) is acknowledged to be the principal body responsible for transnational crime, of which trafficking in persons (TIP) is just one component. The remit of the AMMTC includes cybercrime, drug matters, immigration and consular affairs, illicit trade of wildlife and timber, money laundering, organised crime, people and weapons smuggling, piracy, victims of irregular movement of persons, radicalisation and violent extremism.

In this relatively crowded and competitive space, the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) directly supports the AMMTC. The AMMTC and SOMTC comprise largely ministers and officials of Ministries of Home Affairs and Departments of the Interior. The SOMTC must therefore co-operate and co-ordinate with ASEAN functional bodies that are outside its span of control but integral to the drafting of declarations, execution of plans of actions and implementation of legal instruments.

The SOMTC Working Group on TIP (SOMTC-WG TIP), which reports to the SOMTC, has been doing commendable work in trying to progress the Bohol Trafficking in Persons (TIP) Work Plan 2017-2020 (Bohol Work Plan) and the ACTIP and APA implementation. The cross-sectoral nature of TIP implementation work, that is, working with other ASEAN functional bodies, is going to be absolutely critical if these efforts are to move forward. These other bodies include law (ASLOM) and labour (SLOM) officials.

The SOMTC has also approved the establishment of a FPS of ACTIP Representatives, an initiative that can greatly assist in ACTIP implementation. It is not yet clear to us exactly where the FPS of ACTIP Representatives will be positioned and how it will function vis-à-vis the SOMTC-WG TIP, SOMTC and other existing ASEAN mechanisms. The ADFM feels it is imperative for careful thought to be given to how these three mechanisms relate to each other.

¹ The Asian Dialogue on Forced Migration is a Track Two network with the following conveners: (1) Centre for Policy Development, Australia; (2) Indonesian Institute of Sciences (LIPI), (3) Institute of Strategic and International Studies (ISIS) Malaysia and (4) the Centre of Human Rights and Peace Studies, Mahidol University, Thailand.

GENERAL PERSPECTIVES AND INPUTS

1. The ACTIP is among the most significant legal instruments that the ASEAN Summit has agreed to. Comprehensive implementation is of the utmost importance to eradicate the transnational crime of TIP, and its attendant human suffering, and to demonstrate ASEAN's credibility and determination in dealing with this issue.
2. From 2017, the AMMTC will formally be held annually instead of every two years. This is a very positive development but will mean that more work will have to be done within a shorter timeframe. It will be imperative that institutional mechanisms, both within the AMMTC and across sectors, will need to be as efficient as possible.
3. While cross-sectoral co-ordination among ASEAN Law Ministers and Attorneys-General, Ministers of Labour, Finance and Education, Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs (DGICM) and Senior Officials Meeting on Social Welfare and Development (SOMWD), is of utmost priority, the ADFM believes that this may realistically have to be undertaken progressively. Functional bodies have their own momentum, priorities and work plans, and it will take time to implement as relationships and collaborations are built amongst signatories, the relevant ASEAN bodies, dialogue partners and multilateral organisations.
4. The SOMTC's Bohol Work Plan, the first-ever ASEAN cross-sectoral Work Plan of its kind, is a highly innovative and comprehensive approach to TIP. The ADFM believes that there is a need for strong endorsement by ASEAN leaders at the 31st ASEAN Summit in November 2017, as this will give the Bohol Work Plan much-needed political legitimacy and facilitate cross-sectoral cooperation.
5. Even as the SOMTC strives to create the necessary co-ordination linkages with other functional bodies, it should revitalise those already within its span of control, namely the Head of Specialist Trafficking Units (HSU). As a group of law enforcement agencies, the HSU knows what is happening on the ground and this is critical for informing policy and providing feedback.
6. As structures and mechanisms for ACTIP implementation evolve, it is essential that careful thought be given to ensuring the roles played by the SOMTC, SOMTC-WG TIP and the establishment of the FPS of ACTIP Representatives.
 - a. The SOMTC-WG TIP could be restructured and named the SOMTC Executive Secretariat (Trafficking in Persons), to reflect the role that it is already playing in this area. Being a direct arm of the SOMTC will give higher priority to all TIP issues, including cross-sectoral cooperation with other functional officials, driving the Bohol Work Plan and overseeing the HSU.

The proposed FPS of ACTIP Representatives should be the body specifically responsible for implementing ACTIP. The FPS of ACTIP Representatives will report to the SOMTC via the SOMTC Executive Secretariat (TIP), which is responsible for coordinating the Bohol Work Plan.

- b. The FPS of ACTIP Representatives should share information, best practices and challenges on ACTIP implementation. Given that ACTIP signatories have different systems and abilities, the FPS of ACTIP Representatives could be offered technical capacity building by ASEAN members and dialogue partners such as the United Nations Office on Drugs and Crime (UNODC), the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) and the Bali Process.

7. Under the current system, there will already be regular internal reporting by the FPS of ACTIP Representatives to the SOMTC. The ADFM feels that it is important for a public document on the Bohol Work Plan, including ACTIP implementation, to be prepared by 2018, three years after ACTIP was signed. Thereafter, such reports should be made available every two years.
8. The SOMTC Executive Secretariat (TIP) could undertake fund raising from Member States for implementation activities individually and/or collectively. In the event that third party donors are involved and wish to contribute, a regional cooperation fund could be set up for this purpose in the ASEAN Secretariat.
9. The ADFM advises that consideration be given to collaboration between the FPS of ACTIP Representatives and the Bali Process Working Group on Trafficking in Persons (WG TIP) and the Working Group on Disruption of Criminal Networks Involved in People Smuggling and Trafficking in Persons (WG Criminal Networks). WG TIP is comprised of experts from the fifteen states (six of them ASEAN member states) and three international organisations of the Bali Process Ad Hoc Group.² The purpose of the WG TIP is to “share information on key initiatives, trends and issues related to trafficking in persons, and identify opportunities for cooperation and capacity building needs”.³ WG Criminal Networks brings together officials involved in aspects of national security, law enforcement, and border control from the countries of the Ad Hoc Group.⁴ It focuses on concrete, action oriented activities for enhancing coordination to disrupt and dismantle criminal networks. With such similar purposes and compositions, it may be most effective to recruit members of both working groups into the FPS of ACTIP Representatives. A set of special meetings between working group members and SOMTC WG TIP (Secretariat) and other relevant functional ASEAN bodies would be a productive beginning to the collaboration.

Prepared by: Steven C.M. Wong & Puteri Nor Ariane Yasmin for discussion at the ADFM Meeting in Manila, 10-12 September 2017

² The six ASEAN member states on the Bali Process Ad Hoc Group are Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Vietnam.

³ Bali Process Working Group on Trafficking in Persons (TiP) Forward Work Plan: 2015-17 p.1. Available at [http://www.baliprocess.net/UserFiles/baliprocess/File/Bali Process TIP Working Group Forward Work Plan 2015-17 \(2\)\(1\)\(1\).pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20TIP%20Working%20Group%20Forward%20Work%20Plan%202015-17%20(2)(1)(1).pdf)

⁴ More information is available at <http://www.baliprocess.net/ad-hoc-group/working-group-on-disruption-of-criminal-networks-with-people-smuggling-and-trafficking-in-persons/>

Paper 2: Bali Process: "Toolkit" to assist co-chairs to use the Bali process consultation mechanism effectively

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OVERVIEW

The decision by Bali Process Ministers in March 2016 to set up a "Consultation Mechanism", which would authorise Co-Chairs to convene meetings of Bali Process members in response to emergency irregular migration in the region gives new authority to the official Co-Chairs. It opens a wide range of possibilities for using that authority.

More detail on the intended use of a Consultation Mechanism and the accompanying Task Force on Planning and Preparedness is contained in "Background" below.

This paper sets out some thoughts on when and how the Co-Chairs might use that new authority in order to achieve better responses to forced migration in the region.

WHEN TO USE THE AUTHORITY

The **minimum circumstances** which enliven the authority of the Bali Process Co-Chairs are set out in the Bali Process November 2016 Concept Note on the Mechanism.

"The Co-Chairs would consider initiating meetings in circumstances based on the following criteria:

- *circumstances must be related to urgent irregular migration issues;*
- *more than one member country is affected; and*
- *significantly affected countries are members of the Bali Process."*

Emergency irregular migration means a sudden and massive influx of irregular migrants affecting members of the Bali Process which requires immediate response.

When these circumstances exist, and it is clear that the Bali Process Consultation Mechanism has the best capability to respond effectively to an emerging or actual irregular migration situation (or could at least add significant value), then the Co-Chairs should activate the Consultation Mechanism.

The Co-Chairs should be prepared to take action as soon as they have sufficient information to realise that the situation is serious. The motivation for activating the Consultation Mechanism should be even greater when: there is no indication that any other regional body intends to take timely action; a judgement is made that the Bali Process would be more effective than other stakeholders; or other regional groupings of countries involved would welcome Bali Process involvement.

A decision on the precise **timing** of when to use the Consultation Mechanism authority would be assisted by information and reporting from government sources (whether or not Bali Process participants), international organisations, and civil society. In some circumstances, the Bali Process should be prepared to activate the Consultation Mechanism to minimise the chances of a new surge of irregular migration before it occurs, or, before a new surge of migration occurs as part of an ongoing problem.

Information and reporting to inform decision-making

Bali Process Co-Chairs should gather and draw upon all relevant available information and reporting from governments, international organisations and non-government organisations to inform good decision-making in using the Consultation Mechanism.

Co-chairs should establish a mechanism now that would enable them to have ready access to existing information, reporting, monitoring and analysis to inform use of the Consultation Mechanism. A pre-existing "expert group" set up to monitor a potential trouble spot could be one source of such detailed information and reporting. Such a group could assist Co-Chairs in getting a quick understanding of political, social and economic and demographic factors in any irregular movements, especially complex mixed flows of people.

HOW TO USE THE AUTHORITY

Action to be tailored to specific situations

Once a decision is taken to use the Consultation Mechanism, decisions are required on how best to use the authority to achieve an effective improvement in the irregular migration problem concerned.

This should take into account whether the irregular migration flow is new, ongoing or a resurgence of a previous movement and whether it is by sea, by land, or both.

It should also take into account the scale of the problem, geopolitical circumstances relating to the movement and whether or not other regional groupings or countries are taking action and, if so, how best the Bali Process can complement that action.

The nature of the intervention and the tools used should be tailored to what will achieve the best result in the specific situation being addressed.

Policy and operational objectives to be set

Before making a final choice on the tools to be used, the Co-Chairs should quickly reach a conclusion on reasonable policy and operational objectives they wish to achieve by activating the Consultation Mechanism. For example:

- prevention or mitigation of a new flow of irregular migration;
- responding to and ending an ongoing flow of irregular migration;
- supporting humanitarian agencies and States to coordinate quick responses to the immediate humanitarian circumstances of the people involved in the irregular movements and developing long-term solutions for them;

- energising cooperative action by regional states, extra-regional states, international organisations and civil society;
- reinforcing the responses of other parties;
- gaining broad support for solutions;
- following through to ensure commitments of all parties are implemented, or
- some combination of the above.

Strategy to be decided

Guided by defined policy objectives, Bali Process Co-Chairs should decide on a strategy to be pursued, drawing on the tools and approaches set out below. As always, strategies may have to be adjusted as events develop.

What to consult on

The core things about which the Consultation Mechanism should be consulting and seeking agreement are:

- getting states to agree on policy issues such as rescue and disembarkation (in the case of maritime movements), assistance and solutions for the irregular migrants/refugees;
- what engagement to have with source country (or countries);
- the roles and actions to be taken by individual states; and
- specific guidance to be given to operational agencies.

Level of action to be decided

Official Co-Chairs will need to decide at the outset whether Ministerial or official action is warranted or some combination of both. This should be tailored to the specific situation.

Depending on circumstances, the official Co-Chairs could decide to bring in Ministerial Co-Chairs as the lead actors at the beginning of the process, to sponsor Ministerial meetings, or to conduct action at the officials level initially, to bring in ministers as lead actors at a later stage in the process or not to bring ministers into the action process at all.

Action by Bali Process alone or action in conjunction with other regional bodies

At the outset, Co-Chairs will need to decide whether the Bali Process will take lead responsibility for involvement in a particular situation or whether it will act in conjunction with other regional bodies (e.g. ASEAN). Particular sensitivity will be needed where another regional body or grouping of countries have already initiated some action in the past or in relation to the immediate situation. The co-chairs, with the support of other key affected members if appropriate, will liaise closely with the chairs or secretariats of other regional bodies to inform this assessment.

The decision on how to become involved should be based on an assessment of which process is likely to result in the best outcome.

If the Bali Process decides to take the lead action alone, it will, of course, need to liaise with and brief other interested parties such as regional organisations, UNHCR and IOM, which have legitimate interests in the outcome of the irregular migration situation.

Options for direct action by Bali Process

If the Co-Chairs decide that the Bali Process will take the lead, the actions taken will need to be tailored to the specific situation being addressed.

This may involve actions in relation to affected countries as a group, or separate actions in relation to source and destination countries, or a combination of both.

The co-chairs could use existing Bali Process structures (e.g. Bali Process Senior Officials Meeting, Ad Hoc Group or Steering Group).

Alternatively, the Co-Chairs could seek to convene a meeting of affected countries as a special "Consultative Mechanism Meeting" to seek better understanding of the problem and to arrive at preferred solutions (e.g. along the lines of the meetings called by the Thai government at the time of the 2015 Andaman Sea crisis). The development of contact groups could also be considered.

Another option, especially in relation to the usually more sensitive source-country situations, would be for Co-Chairs to make a "good offices" visit to a source country or countries to discuss the irregular flow and possible solutions. "Good offices" visits to other countries may also be a relevant option depending on the circumstances.

Acting indirectly through partners and intermediaries

If the Bali Process Co-Chairs decide to take the lead role, there may be opportunities to act through other partners and intermediaries to make the action more effective. For example, depending on circumstances, the Co-Chairs could seek to involve the UN Secretary-General, other senior UN officials, governments of countries that may have influence over a source country, influential political figures in relevant countries, or any other person/institution capable of having a beneficial influence on the situation.

UN organisations may also be able to provide funding or other resources which could add to solutions.

Calling on assistance from outside the membership

Depending on the situation being addressed, there is scope for Bali Process Co-Chairs to call for political or funding assistance from outside the membership, if it would hasten a solution to the problem being addressed.

Mapping or setting up key resources in advance

The Co-Chairs should map key resources in advance and/or set up any necessary new capacities so that they can be drawn upon quickly as required. For example:

- a mechanism to have quick access to existing information, reporting and analysis capacity on irregular movements;
- a pre-identified list of nominees from countries which might be called upon to attend a consultation;
- establishment of expert groups to monitor and advise on specific situations; and
- a catalogue of existing capacities (government, international organisations and non-government) that can be drawn upon to support any response.

Wherever possible, it is desirable to use existing resources rather than duplicating what is already there.

Linkages to Task Force on Planning and Preparedness

A blueprint on preparedness should be developed and put into place by the Task Force as an asset to the Bali Process (and affected member governments) in responding quickly to the immediate human consequences of any irregular migration situation.

If the Bali Process takes a lead role in a particular situation, and has a process in place for activating quick and cooperative, national decision-making on policy issues by affected countries and guidance to operational agencies, it could reasonably be expected that speedy and cooperative action by relevant search and rescue, law enforcement and humanitarian response agencies would flow from this, based on their own pre-planning.

Working with other regional organisations and governments

In the case of a decision by the Bali Process to leave the lead role to other regional organisations and governments, there is still scope for the Bali Process to be supportive by adding weight to the efforts of those organisations. Depending on the circumstances, this could be done using any of the tools at the Bali Process' disposal.

Public information and awareness

Whether the Bali Process Co-Chairs decide to take a lead role in resolving a particular situation or to work in support of other regional organisations, it is important that the Bali Process provides adequate public information on its activities so that the public in relevant countries is aware of its role and contribution. Public awareness of action may also be helpful in promoting solutions. There may be limited circumstances where the Bali Process Co-Chairs choose not to publicise their role if it would have a negative effect on achieving solutions.

THE CONSULTATION MECHANISM IN ACTION

Four core capabilities are necessary for the Consultation Mechanism to be deployed effectively and improve upon each use:

- (i) preparedness and response;
- (ii) capacity building and knowledge management;
- (iii) resource mobilisation and communications; and
- (iv) management and administration.

These capabilities mirror the priorities of ASEAN's Coordinating Centre for Humanitarian Assistance on disaster management. The Bali Process Review of the Andaman Sea Situation of May 2015 recommended the Co-Chairs meet with the AHA Centre "to identify complementarities and shared interests in issues of irregular migration, with a longer-term view to working together in response to future influxes". The AHA Centre's Work Plan 2020 and ASEAN Vision 2025 on Disaster Management are two such complementarities. The RSO, Task Force and ADFM are three entities who can assist to build these capabilities.

Case studies

This paper is not intended to be an operational manual for the Consultation Mechanism. Nevertheless, given this new authority was established as a response to the 2015 Andaman Sea crisis, it is worth outlining the actions it could prompt if a similar crisis was to eventuate. Possible actions are outlined in the table overleaf.

We propose that the Task Force continues to workshop possible scenarios, and considers conducting a joint table top exercise with the AHA Centre, and/or another appropriate ASEAN body, focussed on people smuggling, human trafficking and mass displacement. There are several scenarios where internal or international displacement is ongoing or the risk of sudden internal or international displacement is elevated. One such scenario is the ongoing conflict in Rakhine State and the flow of residents who self-identify as Rohingya into Bangladesh. IOM reported that more than 18,000 people fled Myanmar and entered Bangladesh in a six-day period from 25 August 2017, with other estimates suggesting a much higher number. The Indonesian Foreign Minister, Retno Marsudi, visited Myanmar State Counsellor Aung San Suu Kyi and Commander of the Armed Forces of Myanmar, Senior General U Min Aung Hlaing on 4 September. Foreign Minister Marsudi emphasised the priority of de-escalating the situation in the Rakhine State and proposed a plan aimed at ensuring the humanitarian and security crisis does not worsen.

The situation in Myanmar and Bangladesh is made more difficult by recent natural disasters. The IDMC estimated that 851,000 people across Bangladesh, Myanmar and India were displaced in May and June 2017 due to tropical cyclone Mora. The UN Office for the Coordination of Humanitarian Affairs has estimated that as of 24 August 2017, as a result of torrential monsoon rains, almost 41 million people have been affected by flooding and landslides in Bangladesh, India and Nepal.

Another potential scenario concerns the ongoing conflict in Marawi City, Southern Philippines. Estimates of those internally displaced by the conflict vary considerably. The Internal Displacement Monitoring Centre (IDMC) estimated that more than 350,000 people have been displaced in the city and surrounding region in the first half of 2017. By comparison, it is worth noting that IDMC estimated 563,000 people were displaced due to flooding in the Philippines in the first half of 2017 (the Visayas, Mindanao and Maguindanao floods).

We raise these scenarios in this paper due to the ADFM's concern for the potential cross-border movements that threaten the security of states and impact the livelihoods, safety and wellbeing of those people forced to move.

A trial run

The authority given to the Co-Chairs takes the Bali Process to a new level in dealing with irregular migration issues. Given the current and potential situations in several areas of direct concern to the Bali Process membership, the Co-Chairs may wish to test the Consultation Mechanism by conducting a trial run. This would enable an accurate test of the effectiveness of different options and processes. Any lessons learnt could lead to more robust future approaches. This would provide all parties with greater confidence in activating the consultation mechanism as and when required.

| What | When | How |
|--|--|--|
| <p>1. Co-Chairs consult, discuss policy and operational objectives, decide on provisional strategy, and activate authority. Policy and operational objectives may include:</p> <ul style="list-style-type: none"> • prevention or mitigation of a new flow of irregular migration; • responding to and ending an ongoing flow of irregular migration; • responding quickly to the immediate humanitarian circumstances of the people involved in the irregular movements and developing long-term solutions for them; • energising cooperative action by regional states, extra-regional states, international organisations and civil society; • reinforcing the responses of other parties; • gaining broad support for solutions; • following through to ensure commitments of all parties are implemented; or • some combination of the above. | <p>Sufficient information that the situation is serious (such as the reports in early 2015 from UNHCR and the Arakan Project of unusually large movements of people across the Bay of Bengal and the Andaman Sea).</p> | <p>Ongoing “Monitoring Mechanism” coordinated by RSO, with updates provided to the Co-Chairs on a quarterly basis, or immediately in the event of an emergency. This can be adapted or collated from the monitoring system IOM and UNHCR already have supplemented by intelligence from the Task Force, the AHA Centre’s Disaster Monitoring and Response System (DMRS), and intelligence sources.</p> <p>Joint Operational Task Force on Planning and Preparedness “Response Plan” (TFRP) (catalogue of existing government and non-government capacities, possible partnerships, proposed SOPs, key contacts, and proposed responses to identified scenarios).</p> |
| <p>2. Ministerial Co-Chairs alerted authority has been activated and that an emergency Ad Hoc Group meeting will be convened.</p> | <p>Situation shows no sign of abating.</p> | <p>Ad Hoc SOM teleconference called.</p> |
| <p>3. A “good offices” visit to key affected countries.</p> | <p>To avoid escalation of the situation.</p> | <p>Can be conducted by either or both Ministerial Co-Chairs, or through partners and intermediaries.</p> |

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| | | <p>https://www.rederi.no/en/DownloadFile/?file=63311</p> <p>The Regional Biometric Data Exchange Solution, produced under RSO auspices and hosted through IOM, can be used for joint registration and identification.</p> |
| <p>5. Political authority sought for proposed policy objectives by Ad Hoc Group members and affected parties. Ad Hoc Group Co-Chairs begin to mobilise resources and secure involvement of other regional bodies and agencies.</p> | <p>Immediately following (4).</p> | |
| <p>6. Further meeting of Ad Hoc Group with affected parties. Agreement on policy responses with respect to:</p> <ul style="list-style-type: none"> • search and rescue; • safe disembarkation sites; • local assistance, including UNHCR and IOM access; • regional rescue coordinating centre; • hotline between search and rescue, and interested agencies like UNHCR and IOM; • screening processes for identifying those with protection needs; • special arrangements for vulnerable groups; • roles and responsibilities of affected states; • engagement to have with country of origin; • role of the individual states; and • involvement of other regional bodies. | <p>Immediately following (5).</p> | <p>By teleconference or in person.</p> |
| <p>7. Activation of search and rescue, disembarkation and local assistance capabilities and protocols.</p> | <p>Immediately following (6).</p> | <p>Pursuant to TFPF blueprint, subject to any alterations pursuant to (4)-(6), perhaps in coordination with AHA</p> |

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| <p>8. Supply of humanitarian aid and other resources mobilised for affected countries.</p> | <p>Concurrently with (7), delivered by nominated government or non-government agencies.</p> | <p>Centre if ASEAN states primarily affected.</p> |
| <p>9. Temporary stay and resettlement of those with protection needs and repatriation of others.</p> | <p>In conjunction with affected states, UNHCR and IOM.</p> | <p>As above, with a focus on civil-military coordination and development of an Endowment Fund for responses under this authority to sudden displacement. This fund could draw on ASEAN's Trust Fund to Support Emergency Humanitarian and Relief Efforts in the Event of Irregular Movement of Persons in Southeast Asia, which was established in 2015.</p> |
| <p>10. Independent evaluation of response to capture key lessons, identify areas for improvement and build institutional capacity and knowledge.</p> | <p>Once the situation is resolved.</p> | <p>As negotiated by Co-Chairs pursuant to (6). By the RSO or suitable independent group.</p> |

Prepared by: Peter Hughes & Janet Lim for discussion at the ADFM Meeting in Manila, 10-12 September 2017

BACKGROUND

Extract from Bali Process Concept Note on Consultation Mechanism, November 2016

“Purpose

- To authorise the Co-Chairs (at senior official level) to convene meetings of members in response to emergency irregular migration⁵ involving Bali Process members. These would not replace the regular Steering Group or Ad Hoc Group senior official meetings (SOMs).
- If deemed necessary, a meeting could be convened at the level of Ministers with the consent of member States.

These meetings would:

- enable an exchange of latest information on emergency irregular migration situations amongst relevant members;
- facilitate timely and proactive consultation and coordination of appropriate Bali Process and/or other regional support to help address emergency issue(s)/situation(s);
- provide the opportunity for relevant member countries to share ideas on potential national, bilateral or regional emergency irregular migration responses/policies; and
- generate recommendations for urgent action on the part of member states, international organisations or other relevant entities.

GUIDELINES

The Consultation Mechanism is **consistent with the primary role of the Bali Process** as a voluntary, inclusive, non-binding forum for policy dialogue, information sharing, improving coordination of states’ efforts, and medium-longer term capacity-building.

Decisions to convene a consultation or meeting under the mechanism would be made by the Co-Chairs; although any member may request the Co-Chairs to do so.

Discussions would be **informal**, and **would not impose binding commitments** on participating members. They would allow members to share views and their plans/policies regarding emergency issues/situations on an ‘in confidence’ basis.

Decisions on convening a meeting or initiating a teleconference under the mechanism will be made by the Co-Chairs (at ministerial or senior official level, as appropriate to the circumstances).

The Co-Chairs would consider initiating meetings in circumstances based on the following criteria:

- circumstances must be related to urgent irregular migration issues;
- more than one member country is affected; and
- significantly affected countries are members of the Bali Process.”

⁵ Emergency irregular migration means a sudden and massive influx of irregular migrants affecting members of the Bali Process which requires immediate response.

Extract from Bali Process Andaman Sea Review relating to a Task Force on Planning and Preparedness,
November 2016

"Future action at operational level

12. We reaffirm that in order to improve national planning and preparedness for potential large influxes of irregular migrants in the future, each country requires:

- i. a register of national contact points of operational officials involved in responding to migrants and refugees;
- ii. a register of international agency and civil society contact points who are locally based;
- iii. established procedures for detection, search and rescue;
- iv. identified places for disembarkation and provision for shelter and support;
- v. functional joint identification, screening and registration systems; and
- vi. organisations which can provide post-disembarkation emergency assistance.

13. We agree that in order to improve subregional planning and preparedness for potential large influxes of irregular migrants in the future, the Bali Process requires a Task Force on Planning and Preparedness, comprising operational level governmental officials who are responsible at a national level for the actions identified above. These officials are in a better position to standardise various national approaches, develop early warning capabilities and coordinate action in the events of a large influx of irregular migrants. They can also develop an inventory of capability in the region that can be deployed by states in the event of a crisis and refine protocols for its use.

14. We, therefore, decide to establish such a Task Force on Planning and Preparedness (TFPP), participation in which will be voluntary and non-binding. We have agreed to task this Task Force with developing protocols to harmonise detection, search and rescue, disembarkation and shelter practices. Members of the Task Force will share operating procedures at national and bilateral level. They will work to harmonise these arrangements at a subregional and regional level to ensure predictable and functional responses in the event of another mass displacement. This Task Force will operate under the framework of Bali Process Consultation Mechanism and the direction of the Co-Chairs.

15. We note a number of areas where concerted action would provide benefits to individuals and assurances to governments concerning real or perceived security challenges posed by irregular migrants in their territories. The most important is joint registration and identification of irregular migrants at the earliest point of interception and where displacement occurs. Protocols to advance this objective would be another appropriate priority for the Task Force on Planning and Preparedness, including by using and refining the Regional Biometric Data Exchange Solution, produced under the auspices of the Bali Process Regional Support Office (RSO) and hosted through IOM."

Paper 3: Climate change and mobility in the Asia-Pacific

CLIMATE CHANGE: AN UNAVOIDABLE REALITY

The onset of climate-change is of manifest concern to the international community.

The COP 21 Paris conference was a clear demonstration of the wide acceptance that *climate change is occurring* and that there is, equally, *a high risk of it becoming more impactful*.

Three broad climate change threats are foreseen:

- An increase in the frequency and intensity of extreme weather events, including droughts, floods, hurricanes, and heatwaves;
- Continuing processes of environmental degradation such as desertification, rising sea levels and coastal erosion; and
- Continuing destruction of ecosystems and corresponding loss of biodiversity.

The impact of those phenomena on mobility is the subject of much research and policy debate.

CLIMATE CHANGE AND MOBILITY: A COMPLEX AND UNPREDICTABLE RELATIONSHIP

In its first assessment report on climate change in 1990, the Intergovernmental Panel on Climate Change posited that impact on human settlement would rank among the “most significant” possible effects of climate change.⁶

Climate change tends not to directly displace people or cause them to move; but it produces environmental effects that make it difficult, and eventually impossible, for people to survive where they are. In most cases, however, it is not an easy task to establish a clear cause-and-effect relationship between climate-induced environmental deterioration/impoverishment and displacement.

In broad terms, it is useful to make a distinction between extreme weather *events* that produce *sudden-onset movements* (typically of limited magnitude but requiring urgent attention), and change *processes* that may end up producing much larger migratory *slow onset* outflows, over a longer period.

The research literature offers several additional binary dimensions which can help to characterize and understand the nature of the displacements: *forced versus voluntary movement; permanent versus temporary movement; survival versus adaptation; internal versus international movement; and pro-active versus reactive movement*.^{7 8}

Two additional realities need to be kept in mind in understanding the impact of climate change on human mobility. First, climate and environmental factors rarely, if ever, operate in isolation from social, economic and political variables. Demographic trends, gender, levels of economic development, and the absence or presence of conflict can all play a part in the initiation of movement. Second, human beings – whether acting alone or as

⁶ Intergovernmental Panel on Climate Change, 'Human Settlement: the energy, transport and industrial sectors; human health; air quality; and changes in ultraviolet-B radiation', Working Group II: Impacts Assessment of Climate Change, 1990 p.5.

⁷ Bonnie Docherty and Tyler Giannini, 'Confronting a Rising Tide: A Proposal For a Convention on Climate Change Refugees', Harvard Environmental Law Review 33, 2009.

⁸ Dina Ionesco, Daria Mokhnacheva and François Gemenne, The Atlas of Environmental Migration, IOM, 2016

part of a community – always retain some capacity to determine and shape their personal decisions. Hence forecasts of mobility remain subject to the proviso that people affected by climate change retain agency over their lives in deciding whether or not to move. That said, it is worth noting that research is suggesting certain places will be uninhabitable by 2050, thereby stripping away personal and collective agency.

All the above considerations help explain why estimates of the numbers of people likely to be displaced by climate change differ enormously. There are no agreed estimates of people movements today, nor in response to future climate-induced environmental changes. The global figures range from 25 million to 1 billion.⁹ For migration policy makers, however, the first concern is not constantly revising such estimates in a bid for greater accuracy. It is to establish whether a sufficiently high probability of movement exists, or will likely exist in the near future, and to prepare suitable policy responses in advance of incoming trends.

Evidence from past and recent events shows that weather-related disasters have resulted in significant levels of population displacement worldwide. Considering the impact of sudden-onset, weather-related hazards alone, a global average of at least 22.5 million people have been displaced each year from 2008 to 2014, and disaster displacement since the 1970s is on the rise.¹⁰ Since 2008, close to 175 million people who live in developing countries have been displaced by disasters, accounting for 95 percent of the global total.¹¹

ASPECTS OF LEGAL AND POLICY FRAMEWORKS

All migrants are protected by international human rights law. In addition, persons displaced within their country due to natural, human or man-made disasters are covered by provisions in the Guiding Principles on Internal Displacement (an international non-binding instrument that has been incorporated very selectively into normative frameworks at the regional or national level).

Those crossing international borders for environmental reasons would not normally qualify as refugees under the terms of the 1951 Refugee Convention. Some states, however, have made provision for environmental migration. In Finland and Sweden, for example, persons who have left their country and are unable to return due to an environmental disaster qualify as persons in need of protection. This legal cover is still seldom provided across the globe. The USA grants “Temporary Protection Status” to persons already in the USA and unable to return home in the aftermath of an environmental disaster. This was applied, for example, after Hurricane Mitch in Honduras and Nicaragua in 1998.

Several proposals for new global international legal instruments have been put forward, with emphasis on solutions to forced displacement rather than on migration as a form of adaptation, but there is, so far, no strong consensus on the direction that should be taken, although it has been argued that the principle of *non-refoulement* may provide a basis for consideration.

In many regions of the world, there are well-established binding instruments protecting human rights among signatory countries but most of them do not address, in specific terms, the situation or needs of environmental migrants. In this regard the African Union is ahead of other regional bodies through the 2009 Kampala Convention, which offers explicit protection to people displaced by natural disasters.

⁹ Various sources provide a range of estimates on climate-induced displacement. See, for example, International Displacement Monitoring Centre and Norwegian Refugee Council, *Global Estimates 2015: people displaced by disasters*, 2015, p.8; Recommendations from the Advisory Group on Climate Change and Human Mobility, *Human Mobility: In the Context of Climate Change UNFCCC – Paris COP-21*, November 2015.

¹⁰ International Displacement Monitoring Centre and Norwegian Refugee Council, *Global Estimates*, 2015, p.22.

¹¹ International Displacement Monitoring Centre and Norwegian Refugee Council, *Global Estimates*, 2015, p.9.

CLIMATE-CHANGE RELATED MOBILITY IN THE ASIA-PACIFIC

The Asia-Pacific region is widely considered the most vulnerable region to climate change in the world.

In general terms, Asia is acutely vulnerable on account of both its exposure to climatic risks and the size and density of its populations occupying low-lying areas prone to floods, droughts and hurricanes. It is highly exposed to climate impacts, and is home to highly vulnerable population groups, who are disproportionately poor and marginalized.¹² Seven out of 10 of the world's countries most vulnerable to climate change are in the region.¹³ Asia has more than 90% of the world's exposure to tropical cyclones.¹⁴ Globally, the top 5 nations in coastal, low-lying areas, classified by population are all in Asia: Bangladesh, China, Vietnam, India and Indonesia. The Asian Development Bank (ADB) has estimated that approximately 42 million people were displaced between 2010 and 2011 due to "sudden-onset climate related and extreme weather events".¹⁵ Displacement risk is spread unequally in that high-income countries like Brunei and Singapore have only small populations exposed to hazards.¹⁶

In the Pacific, many small island states are extremely susceptible to the gradual encroachment of the sea on their living and arable spaces, and, equally, to increasingly frequent and violent storm surges. So vulnerable are these States, that the United Nations High Commissioner for Refugees (UNHCR) – in partnership with other agencies – formed the Pacific Humanitarian Protection group, to "map and analyse" protection in response to increased frequencies of natural disasters.¹⁷ These susceptibilities have occasionally been referred to, as the "canaries" of climate change, early indicators of what could be much larger eventual displacements at the global level.

Bangladesh is one of the countries most vulnerable, with its government estimating by 2050 that one out of every seven people in Bangladesh will be displaced by climate change.¹⁸ Most people affected by climate change move internally and cannot move internationally. The mixed flows of people moving by sea from Myanmar and Bangladesh, across the Bay of Bengal and Andaman Sea, to Thailand and Malaysia offer an indication of how climate related displacement is already exacerbating forced migration flows. The Foreign Secretary of Bangladesh estimated that one third of these maritime flows in 2015 consisted of Bangladeshi nationals.¹⁹ Years earlier, poor Bangladeshis had been securing the services of people smugglers, who were already facilitating the movement of Rohingyas, to pursue work opportunities in Malaysia. Smugglers and human traffickers have been targeting people from parts of Bangladesh that had previously not been exposed to short-term international contract migration, with climate-affected regions being a major catchment area. Many of the Bangladeshi aspirant migrants fell victim to human trafficking, were held in large vessels and in camps, were

¹² ADB, Addressing Climate Change and Migration in Asia and the Pacific, 2012,

<https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf>

¹³ Bindu N. Lohani, 'Asia-Pacific's Vulnerability to Climate Change', Asian Development Bank, 2012, available here

<http://www.adb.org/news/op-ed/asia-pacifics-vulnerability-climate-change-bindu-n-lohani>.

¹⁴ Intergovernmental Panel on Climate Change, 'Climate Change 2014 – Impacts, Adaptation and Vulnerability: Regional Aspects', 2014, p. 1346.

¹⁵ Robert Sturrock and Dr. Peter Ferguson, 'The Longest Conflict: Australia's Climate Security Challenge', Centre for Policy Development, 2015, p. 20.

¹⁶ Ibid.

¹⁷ Ben Farrell, 'Pacific islanders face the reality of climate change... and of relocation', UNHCR, 2009,

<http://www.unhcr.org/4b264c836.html#.S>

¹⁸ The News Today, 2015 referenced in Paper 4: Climate change affected Bangladeshis: Mixed migration and vulnerability to trafficking, Asia Dialogue on Forced Migration Briefing Papers, Meeting Four, Jakarta, March 2017

¹⁹ New York Times, 29 May 2015 referenced in Paper 4: Climate change affected Bangladeshis: Mixed migration and vulnerability to trafficking, Asia Dialogue on Forced Migration Briefing Papers, Meeting Four, Jakarta, March 2017

held to ransom mid journey and were sold into slavery. Some were caught up in the Andaman Sea crisis of May 2015, in which a large number of people died after being abandoned at sea by traffickers.

The challenge for policymakers is to obtain a sufficiently clear idea of what *may* happen in order to develop possible responses. In the absence of highly accurate and reliable figures the temptation is strong to defer planning until sufficiently solid data can be fed into modelling instruments.

There are three broad scenarios that may realistically generate sizable forced migration flows in the Asia-Pacific. They are presented here in increasing order of duration and severity:

Scenario 1: Storm surge in the Pacific (e.g. level 5 cyclonic activity)

Immediately after the storm, the most pressing need would be the relocation of those affected to temporary shelters/community centres. This would be “standard mode” intervention following on the activation of state emergency services. The expectation would be that all such movement would initially be internal. At a further point in time, consideration may have to be given to the relocation of persons who cannot return to their place of origin due to permanent land/shelter degradation. Safe places would have to be found, made viable for habitation, and suitable settlements built.

Scenario 2: Coastal flooding in Southeast Asia

Many parts of Southeast Asia have been identified as being highly vulnerable to coastal flooding linked to weather events accompanied by high precipitation. Areas identified as being highly vulnerable include the Mekong, Red, and Irrawaddy river deltas, which already experience regular cyclonic activity. Several major cities situated at, or close to, sea level in the region—including Bangkok, Ho Chi Minh City, Jakarta – are all at risk.

According to the Natural Hazards Risk Atlas, of the 100 cities with the greatest exposure to natural hazards, 21 are located in the Philippines.²⁰

Severe coastal floods would result in the degradation of cities, in turn reducing economic activity and disrupting essential services and local livelihoods.

The mobility impacts, however, are more difficult to predict but it is highly conceivable that international relief may be necessary.

Scenario 3: Global sea level rise

Sea-level rise is considered to be the one climate threat most likely to cause future displacement.²¹ Low-lying coral islands in the Asia-Pacific are particularly vulnerable. Even relatively slow but steady encroachment by the sea may result in the waterlogging of arable areas, the loss of liveable spaces and the eventual destruction of settlements.

The actual impacts of such changes will depend largely on preventive measures and on resilience building through pre-emptive international cooperation and preparedness.

CLIMATE RELATED DISPLACEMENT AND ASEAN

²⁰ Verisk Maplecroft, '56% of 100 cities most exposed to natural hazards found in Philippines, Japan, China, Bangladesh', Natural Hazards Risk Atlas, March 2015.

²¹ Dina Ionesco, Daria Mokhnacheva and François Gemenne, The Atlas of Environmental Migration, IOM, 2016

Aware of the risks and endeavouring to pursue sustainable development, the ASEAN Vision 2025, under its Socio-Cultural Community, has identified key areas and corresponding measures for cooperation. They include conservation and sustainable management of biodiversity and natural resources, environmentally sustainable cities, and sustainable climate.²² To build resilient communities, ASEAN identified other key areas and strategic measures, which include: a disaster resilient ASEAN that is able to anticipate, respond, cope, adapt, and build back better, smarter, and faster; and a climate adaptive ASEAN with enhanced institutional and human capacities to adapt to the impacts of climate change. Measures identified include capacity building, promoting policy coherence and inter-linkages, ensuring unity in actions, promoting humanitarian actions and sustainable development, expanding regional cross-sectoral platforms and establishing shared strategies to respond to the impacts of climate change.²³ However, the ASEAN Socio-Cultural Blueprint is silent on issues of climate related displacement.

In addition to ASEAN policies reflected in the ASEAN Vision 2025, ASEAN has adopted a few non-binding frameworks for cooperation. In 2015, ASEAN adopted the ASEAN Declaration on Institutionalising the Resilience of ASEAN and its Communities and Peoples to Disasters and Climate Change.²⁴ The Declaration recognises the rising exposure of ASEAN's peoples and communities to various natural hazards, vulnerability to extreme weather events and intensifying climate change, which leads to growing frequency and severity of disasters, and impacts on economic, social, cultural, physical, and environmental capital of countries and communities.²⁵ ASEAN agrees to enhance cooperation and collaboration among member states to support the implementation of this Declaration and develop a cross-pillar and cross-sectoral collaborative work programme for resilience building in the context of disaster risk management, climate change adaptation and sustainable development. It assigns the ASEAN Committee on Disaster Management (ACDM) as the focal point for cross-sectoral cooperation on resilience building at regional level, with the support of other relevant sectoral bodies.²⁶

In 2005, ASEAN adopted the ASEAN Agreement on Disaster Management and Emergency Response which provides for the establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre) to receive, analyse, share information and data and facilitate joint emergency response and disaster management. The AHA Centre was established in 2011 and has since enacted emergency responses to disasters across the region, as well as provided preparedness and assessment services.²⁷ The AHA work plan 2020 aims to build the sustainability and effectiveness of the Centre and to meet the needs of the ASEAN Member States and the wider ASEAN Community. The AHA Centre envisions becoming the trusted coordinating agency in the region for disaster management and emergency response, and aims to make ASEAN a global leader in this area by 2025. It seeks to realise its vision and mission through the implementation of four priorities: preparedness and response; capacity building & knowledge management; resource mobilisation & communications; and management & administration.

The ASEAN Declaration on One ASEAN, One Response was adopted and signed by ASEAN leaders on 6 September 2016 during the 28th and 29th ASEAN Summits in Vientiane, Lao PDR. The Declaration aims to enhance the speed, scope and coordination of ASEAN's collective response to communities affected by disasters. The declaration affirms that the AHA Centre "is the primary ASEAN regional coordinating agency on

²² ASEAN Secretariat, ASEAN 2025: Forging Ahead Together, 2016, pp.257-261.

²³ Ibid, pp.265-267.

²⁴ ASEAN Secretariat, ASEAN Declaration on Institutionalising the Resilience of ASEAN and its Communities and Peoples to Disasters and Climate Change, available at: http://www.asean.org/storage/images/2015/april/26th_asean_summit/DECLARATION_ON_INSTITUTIONALISING_Final.pdf

²⁵ Ibid.

²⁶ Ibid.

²⁷ The AHA Centre Work Plan 2020, Executive Summary, Overview, pp. 5-21, available at <http://ahacentre.org/wp-content/uploads/2017/02/AHA-Centre-Work-Plan-2020.pdf>.

disaster management and emergency response” and tasks the AHA Centre to operationalise the vision of One ASEAN, One Response.²⁸

In 2009 ASEAN established ASEAN Working Group on Climate Change (AWGCC) to implement the ASEAN Climate Change Initiative (ACCI), which is a consultative platform to enhance region’s capability in implementing mitigation and adaptation measures.²⁹ ASEAN has also adopted the ASEAN Action Plan on Joint Response to Climate Change, and the ASEAN Declaration on Environmental Sustainability.

The ASEAN Regional Forum (ARF) Workshop on Climate Change Adaptation and Disaster Management was held on 31 May to 1 June 2016 in Bangkok, Thailand. Eighty (80) participants from 16 countries participated with the key objectives of building capacity in disaster preparedness and risk reduction, and capturing and building on shared experiences and lessons learned among ARF participants.³⁰

Participants reflected on the importance of multilateral cooperation within the UN framework on addressing the impacts of climate change, as well as the need to develop mechanisms to foster cooperation and collaboration between stakeholders in addressing impacts. The meeting emphasised the importance of engaging with the private sector, civil society and local communities to develop robust and comprehensive mechanisms to assess, address and mitigate the effects of climate change related events and their social and economic impacts.

ASEAN is not lacking policies, frameworks and institutions to address environmental issues, emergency response, disaster management and climate change impacts. However, ASEAN falls short of recognising the related migration issues. This continues to be a gap in ASEAN’s policy frameworks and institutional arrangements.

CLIMATE RELATED DISPLACEMENT AND THE BALI PROCESS

Bali Process forums, meetings and declarations do not specifically address climate related displacement. They do however recognise the increasingly mixed nature of migration in the Asia-Pacific region and the importance of strengthening coordination between its members and other stakeholders to respond effectively to urgent displacement events.

Following the Bali Process Ministerial Conference of March 2016, in both the Bali Declaration 2016 and the Co-Chairs Statement, Ministers noted the growing scale and complexity of irregular migration in the region and the tragic loss of life and exploitation involved. They called for more agile, timely responses to urgent displacement events. Ministers created a Consultation Mechanism for co-chairs to consult and convene meetings with affected states to address mass displacement.

The 11th Bali Process Ad Hoc Group (AHG) Senior Officials’ Meeting was held in Colombo on 16 November 2016. The meeting re-affirmed the key priorities of identifying key causes of irregular migration, developing capacity for more effective responses to urgent displacement events and strengthening regional cooperation, including

²⁸ ASEAN Declaration on one ASEAN, One Response: ASEAN Responding to Disasters As One In The Region And Outside The Region, signed 6 September 2016, available at <http://asean.org/storage/2016/09/Declaration-on-One-ASEAN-One-Response.pdf>.

²⁹ Fina Astriana, The Habibie Center, <https://thcasean.org/read/blog/118/ASEANs-Response-to-Climate-Change>

³⁰ Co-Chair’s Summary Report of the ASEAN Regional Forum Workshop on Climate Change Adaptation and Disaster Management, 31 May – 1 June 2016, Bangkok, Thailand, pp.1 available at http://aseanregionalforum.asean.org/files/library/ARF_Chairman's_Statements_and_Reports/The_Twentythird_ASEAN_Regional_Forum,_2015-2016/03_-_Co-Chairs'_Summary_Report_-_ARF_Workshop_on_Climate_Change_Adaptation_and_Disaster_Management

with the private sector. The meeting also recognised the developing complexity of irregular migration patterns as well as the increasing diversity and enhanced vulnerability of mixed migration flows.³¹

At the Colombo meeting, in response to the findings of the Bali Process Review of the Region's Response to the Andaman Sea Situation of May 2015, senior officials agreed further operating details of the Consultation Mechanism and established the Task Force on Planning and Preparedness (TFPP). The TFPP comprises operational-level government officials, and is tasked with coordinating and harmonising the development of operational systems for responding to mass displacement. Senior officials also undertook to coordinate with relevant ASEAN bodies with a view to coordinated responses in the future.

The TFPP met in Bangkok on 27 January 2017 and identified a lack of understanding of the push-pull factors leading to irregular migration as flows become increasingly mixed, and a lack of policy and legal frameworks to address urgent migration events. The meeting also identified deficiencies in co-ordination within the region both in its capacity to predict migration trends and in the provision of early-warning systems. The meeting called for increased information and data sharing between partners and their authorities on the ground to strengthen the region's capacity not only to manage irregular migration events but also to predict future trends. Further, the meeting advocated for improvements in infrastructure and equipment to more effectively handle migrant flows, comprehensively assess their needs, and effectively respond to migrants' exposure to risk.³²

CONCLUSIONS AND RECOMMENDATIONS

1. The ADFM advises the Bali Process Ad Hoc Senior Officials Meeting (Ad Hoc SOM) that displacement related to the effects of climate change will likely become permanent in many locations in the region. Although this displacement will be predominantly internal in the first instance, there is a real risk of escalating displacement across international borders, sudden displacement from extreme weather events and exacerbation of forced migration flows and related transnational crimes.
2. The Bali Process Consultation Mechanism and Task Force on Planning and Preparedness (TFPP) forward workplans, as well as the AADMER Work Programme 2016-2020, are silent on responding to climate related displacement. Both the workplans of the Bali Process and of AADMER need to recognise that responding to climate related displacement is a core part of building resilient and adaptive essential infrastructure, essential services and communities. It would be beneficial if those two bodies recognised the significance of climate related displacement and collaborated in response.
3. The ADFM recommends the commencement of formal cooperation between ASEAN and the Bali Process on responding to mass displacement. As an initial step it is recommended that the Bali Process TFPP and the AHA Centre undertake a joint table-top exercise focused on responding to scenario 2 outlined in this paper – coastal flooding in Southeast Asia. There are probable overlaps between the Bali Process Consultation Mechanism and the AADMER Work Programme 2016-2020 and the AHA Centre Work Plan 2020 in this scenario. This could be done in consultation with coordinating centres of military humanitarian assistance and disaster relief operations. The table-top exercise should result in a

³¹ Bali Process Ad Hoc Group Senior Officials' Meeting, Colombo, Sri Lanka, 16 November 2016 Co-Chairs' Statement, available at [http://www.baliprocess.net/UserFiles/baliprocess/File/Bali Process 11th AHG SOM - Co-Chairs' Statement 16 Nov 2016 FINAL.pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%2011th%20AHG%20SOM%20-%20Co-Chairs%27%20Statement%2016%20Nov%202016%20FINAL.pdf).

³² The Bali Process Task Force on Planning and Preparedness (in support of the Consultation Mechanism), Bangkok, Thailand, January 27 2017, 'Planning and Preparedness- Lessons learned', available at [http://www.baliprocess.net/UserFiles/baliprocess/File/IOM UNHCR UNODC Consolidated Notes Bali Process Task Force FINAL \(2\)\(2\).pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/IOM%20UNHCR%20UNODC%20Consolidated%20Notes%20Bali%20Process%20Task%20Force%20FINAL%20(2)(2).pdf).

forward work agenda for Bali Process and AADMER/AHA Centre collaboration on mass displacement events.

Prepared by: Sriprapha Petchamesree & Gervais Appave for discussion at the ADFM Meeting in Manila, 10-12 September 2017

Paper 4: Employment opportunities for refugees in Southeast Asia

OVERVIEW

This paper explores temporary employment solutions for refugees in South East Asia, in particular the provision of opportunities for refugees to work *in situ* and to travel for work.

As is detailed in this paper, facilitating opportunities for refugees to access legal employment can offer significant benefits to states and to refugees themselves. There is considerable momentum globally on the issue of providing employment opportunities for refugees. This is evidenced by the commitments made by states in the context of the 2016 New York Declaration, the 2016 Bali Process Declaration and the Sustainable Development Goals.³³

This paper sets out the regional context for forced and irregular migration and refugees' access to work. It goes on to outline the benefits of facilitating access to work for refugees. It then sets out how states, along with private sector partners and international organisations, could take steps to provide refugees with access to legal employment, firstly through permitting access to *in situ* employment and, secondly, through the development of travel-to-work opportunities. The paper concludes with a number of recommendations to advance work opportunities for refugees in Southeast Asia.

THE REGIONAL CONTEXT

According to the most recent estimates, there are over 230 million international migrants globally (ILO 2013). Of these, around 150 million are classified as migrant workers, with formalised rights to residency and employment in destination countries. The prevalence of undocumented, irregular and forced migration means that millions more are participating outside or in the margins of formal destination country labour markets.

The Asia-Pacific region is a major source and destination for regular migration. According to ILO estimates, ASEAN countries alone are home to over 10 million migrants, of which almost 7 million were from other ASEAN countries (ILO/World Bank 2015).

From ASEAN, the largest source country for migrants is the Philippines, with over 6 million nationals living overseas. The largest source countries for intra-ASEAN flows are Myanmar, Indonesia and Malaysia. Thailand (3.6 million), Malaysia (1.7 million) and Singapore (1.2 million) are the most prominent destination countries for people moving within ASEAN. These flows are dominated by large, established patterns of migration between certain countries: from Indonesia and the Philippines to Malaysia, from Malaysia to Singapore, and from Cambodia, Laos and Myanmar to Thailand.

These estimates are likely to significantly understate total migrant flows due to the difficulties of measuring undocumented migration. In particular, many migrant workers remain undocumented, meaning that formal measures are likely to significantly understate their numbers. On some estimates, Malaysia alone hosts as many as six million undocumented migrants. The prevalence of undocumented labour-related migration

³³ The Declaration of the 2030 Agenda for Sustainable Development, for example, states that "... that [the] Goals and targets will be met for all nations and peoples and all segments of society" and that "[t]hose whose needs are reflected in the Agenda include all... refugees and internally displaced persons and migrants...". Of particular note are goals relating to poverty reduction (SDG 1) and livelihoods (SDG 8).

alongside formal migration compounds associated issues of irregular movement, trafficking in persons, smuggling, corruption, exploitation and forced labour.

While significant, the number of refugees and asylum seekers in the region, and particularly within ASEAN, is very small compared to the total number of individuals residing outside their countries of origin, including migrant workers. As of the end of 2016, ASEAN states hosted 207,000 refugees or people in refugee-like situations, with a further 68,000 people seeking asylum.³⁴ Of these, the vast majority are in Malaysia (92,000 refugees and 56,000 asylum seekers) and Thailand (106,000 refugees and 5,000 asylum seekers). In both cases, Myanmar is the predominant country of origin, accounting for 94 per cent and 96 per cent of the total populations respectively.

BENEFITS OF PROVIDING EMPLOYMENT OPPORTUNITIES TO REFUGEES

Providing recognised refugees with opportunities to work offers major benefits to host communities, governments and to refugees themselves.

Refugees have been found to have a net positive economic impact on their host communities as workers, taxpayers and consumers (CPD 2016). These benefits are particularly prominent in the long term and in communities and economies that prioritise effective resettlement and labour market integration. Fears that labour market access for refugees negatively impacts employment and wages for the local population have not been borne out (IMF 2016).

Refugee access to employment has been found to bring specific economic benefits such as tax contributions, employment levies/fees, eliminating market inefficiencies caused by corruption, spending in host communities, job creation for local populations and meeting unmet labour demand. Enabling refugees to become more self-reliant also makes them less dependent on the assistance of host governments, NGOs and international organisations.

Such an approach can also offer wider community and security benefits. Regular, recognised pathways for refugees to acquire work can help reduce incentives to move and secure work irregularly (Collete, Clewett, Fratzke 2016). This can therefore act as an effective anti-trafficking measure.

Permitting refugees work opportunities can also align with security priorities for host governments, given opportunities to build in more reliable security (including biometric) and character assessment processes. This improved information can help mitigate broader security concerns associated with mixed flows of refugees and undocumented migrants. In addition, improved security outcomes result from bringing people out of the “shadows”, including a heightened willingness to cooperate with authorities.

Affording refugees pathways to gain employment can also positively influence community perceptions and social cohesion. In particular, formal employment pathways provide a more stable socio-economic foundation for harmonious relationships between refugees and host communities, provide greater stability and help reduce the anxieties, tensions and risks associated with informal work or unemployment (CPD 2016).

The reputational and political benefits from upholding commitments and pledges to fair labour standards and to refugees are likely to be significant, especially at a time when global momentum for employment-focused

³⁴ There are also significant populations in the region that fall into the UNHCR’s other categories of concern, including stateless persons (488,000 in Thailand and 926,000 in Myanmar) and internally displaced persons (375,000 in Myanmar).

solutions for refugees is growing. Pragmatically, in some circumstances, permitting *in situ* refugee groups opportunities to work is likely to be more efficient than bringing in new migrant labour.

REFUGEE ACCESS TO IN SITU WORK OPPORTUNITIES

Despite these benefits and some notable examples of progress, current refugee access to labour markets and work opportunities in their host countries in the region remains very restricted.

In situ legal access to work refers to the process of legalising the stay of individuals already in a host country who do not hold a status legally permitting them to be there, usually on a time-limited basis. This is a tool which has been used extensively, and effectively, in the region for employment-related purposes, though it has rarely formally included refugee populations.

In the Asia-Pacific there have been some employment-centric initiatives designed to provide work opportunities to recognised refugees in their host countries. For example, a program was introduced in Malaysia earlier this year that aimed to provide up to 300 recognised Rohingya refugees with the legal status to work, and therefore, provide for a temporary legal stay.³⁵ In India, refugees have access to a “Long Term Visa (LTV)” which, among other things, permits them to work, attend higher-level educational institutions and open bank accounts. In Iran, the government introduced an Alternative Stay Arrangement in 2011, giving refugees from Afghanistan access to a residence permit providing legal stay and some employment access.

On top of this refugee-specific experience, lessons can also be gleaned from the experience of countries in the region in providing *in situ* legal access to work for undocumented workers. In Thailand, for example, by 2015 and in just a few years, the government had registered millions of previously undocumented migrant workers and provided them legal access, typically through “one stop shops”.³⁶ In Malaysia, the provision of legal access to work for undocumented populations has largely taken place through amnesty programs. Since 1992, at least 10 such programs have been launched.³⁷ The largest was the 2011 “6P” programme. Overall, millions of previously undocumented workers in Malaysia have received documents through these programs.

The economic, security and social benefits of legal access to work are outlined in section three, above. A further benefit for governments in the region of providing legal access to work is that it is relatively straightforward. As described above, governments and other key actors in the region, particularly the private sector, have extensive experience with providing legal access to work. Moreover, other actors, such as international organisations, have the necessary background to assist in accommodating and/or addressing the needs of specific populations, such as refugees.

In order to maximise the positive impact of providing work opportunities to refugees it would be useful to map economic needs at national and sub-national levels to identify where there may be demand for refugee labour. Pilots of *in situ* access to work opportunities that could be undertaken include the following examples:

- Enabling refugees to be employed by refugee-oriented organisations as interpreters, social workers, etc.

³⁵ See, for example: <http://www.channelnewsasia.com/news/asiapacific/rohingya-refugees-to-be-allowed-to-work-in-malaysia-from-march-7538444>

³⁶ U.S. States Department, ‘Trafficking in Persons Report’, Thailand Country Narrative, July 2015 pp. 333-334. See also http://www.migrationcenter.mahidol.ac.th/download_newsletter/mmc-news-130954-e2.pdf

³⁷ ILO Regional Office for Asia and the Pacific, ‘Review of labour migration policy in Malaysia’, 2016 pp.16, citing ILMIA, 2013. Available here http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_447687.pdf

- Permitting refugees to work in “home industries” such as online sales, handicrafts, developing and selling electronic technologies, etc.
- Permitting refugees to work at/run businesses that support local communities (through employment, spending, etc.) where they are able to bring a skill set not found in the local population (translations to particular languages; culinary and artistic backgrounds etc.).
- Providing access to employment in sectors in which the supply of local workers is consistently insufficient.

OPPORTUNITIES FOR REFUGEES TO TRAVEL TO WORK

This paper discusses existing and potential avenues for refugees to contribute to the economies of countries in Southeast Asia through two primary approaches: *in situ* opportunities (as described above) and safe, legal and affordable migration pathways that could enable recognised refugees to travel from a host country to a third country in the region for employment. This section focuses on the latter approach.

Refugees residing in countries with more limited demand for employment, or who have specialised skills not in demand in a particular jurisdiction, could be less well positioned to access *in situ* opportunities. They may, however, be well suited to pursue temporary employment opportunities in third countries. Providing these opportunities would not only bring about a number of the benefits outlined in section three above, but would also provide additional benefits, such as those associated with remittances sent from the third country to the original host country.

The difficulty is that refugees are usually not able to travel to take up employment opportunities because they do not have access to these opportunities and/or the requisite legal status and/or documentation.³⁸

Fortunately, Southeast Asia is a region in which governments and other actors have significant experience and expertise with all aspects of establishing, coordinating and monitoring labour migration regimes (through bilateral agreements, MOUs, special economic zones, seasonal work, etc.), including on both the sending and receiving side, as described in more detail in section two.

Third countries would not be overburdened by such an approach, because only a modest number of recognised refugees—those who cannot meet a demand for labour within their host countries—would be eligible, and only if they meet a demand for labour in the third country. For example, in Malaysia and Thailand, both of which host millions of migrant workers, there is more than enough labour demand to sustain *in situ* opportunities for the relatively small number of refugees (i.e. 50,000-100,000) able to seek employment, so almost no refugees already in those countries would be eligible for third country employment opportunities. Instead, labour-importing countries in the region, such as Brunei Darussalam, Singapore, Malaysia and Thailand, could consider admitting small numbers of refugees currently hosted in labour-exporting countries, such as Indonesia, who could help meet their labour demand.

For example, if (a) a particular labour need was identified in a labour-importing country that was not being addressed by the existing labour force and (b) there was evidence that members of the refugee population in another country had the relevant skillset to address that need, then that labour-importing country could consider admitting refugees, on a time-limited basis, to take up employment opportunities. The nature of the employment would be, of course, at the discretion of the third country. It could be that refugees are brought

³⁸ It should be noted that, in some cases, with the cooperation of the country of origin in procuring documentation, it may be possible for refugees to access labour migration schemes. This paper addresses the situations where that is not the case.

into existing schemes (seasonal work, special economic zones, etc.) or that refugee-specific employment opportunities are identified in collaboration with potential employers.

Considerations relevant to the development of such opportunities would include:

- **The beneficiaries:** These opportunities would be available only to recognised refugees, meaning that they would have already provided extensive personal data and biometric information to UNHCR and/or government agencies.
- **Roles of host and third party government:** The primary responsibility of governments would be to not do anything that would risk *refoulement* to a refugee's country of origin while they are in need of international protection. The role of host governments would be limited to permitting refugees to legally exit the country to pursue employment in a third country, and to enable them to re-enter when that employment concludes. The role of third countries would be limited to simply permitting refugees to access existing labour migration schemes or modify existing programs to enable refugees to access them (i.e. accepting alternate documentation, etc.). Of course, governments would maintain the autonomy and authority to mandate restrictions on refugees' stays, including in relation to timing and the industries in which they could work.
- **Documentation:** Refugees would be provided with documentation issued by either the host country, the third country or a third party organisation. This could be a standardised document that includes its holders' biometric data. The new, high-tech identification card with extensive security/biometric features being rolled out in the region by UNHCR could be a valuable reference/precedent for such documentation.
- **Conclusion of employment:** When a term of employment comes to an end, is not re-extended and a refugee does not secure another position (depending on the requirements of the third country), they would return to their host country.
- **Costs:** The costs to administer such a program could be borne by a number of actors, but may not fall to the states involved. Instead, they could be taken on by employers, donors and international organisations. This would include the costs associated with the issuance of any necessary documentation. Because this initiative would be consistent with the New York Declaration and the Sustainable Development Goals, it is anticipated that there would be significant interest from donor states and international organisations.
- **Assessment of economic needs and refugee skill sets:** Any employment opportunities would be provided on an evidence-based economic basis. This would require a mapping of national and regional labour market demands and the skills required to meet those demands, a mapping of refugee skill sets/backgrounds and an analysis of national regulations on existing work programs.
- **Relationship to 'durable solutions':** These opportunities would not replace traditional durable solutions, including resettlement and repatriation. Instead, they would be a temporary measure that would complement these durable solutions by enabling refugees to enhance self-reliance, make positive contributions to their communities and build valuable skills during the period in which they are waiting for a durable solution.

RECOMMENDATIONS

An effective regional approach to facilitating refugee work opportunities would slowly build up *in situ* opportunities for refugees to work and would involve the sharing of experiences between countries so as to maximise benefits. As opportunities arise and evidence builds, states could also pilot travel-for-work opportunities for refugees to meet regional labour demands.

It is recommended that:

- 1) States, international organisations and academic institutions work together to conduct data collection, collation and analysis on labour demands and refugee skill sets.
- 2) Based on these findings, and in keeping with national economic development plans and strategies, states and other actors, including the private sector, develop pilot programs, which provide refugees *in situ* work opportunities.
- 3) Within the most relevant ASEAN platform or other regional fora, states and others create space for (a) the discussion and sharing of experiences in providing refugees with *in situ* work opportunities, and, as appropriate, (b) the identification of bi-lateral or multi-lateral opportunities for refugees to travel for work.

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