

ON
**FORCED
MIGRATION**



BRIEFING PAPERS



Paper 1: Review of the Activation of Consultation Mechanism

Summary

In September 2017, the Bali Process Co-Chairs triggered the emergency Consultation Mechanism (CM) in response to the humanitarian and security crisis in Myanmar and Bangladesh. This was the first activation of the CM, which was established by Bali Process ministers in March 2016 and developed further by Bali Process senior officials in Colombo in November 2016, after a review of regional responses to the Andaman Sea crisis of May 2015. The ADFM provided input for each of these developments.

The ADFM welcomes the opportunity to evaluate the first activation of the CM at our next meeting in Sydney. The purpose of the ADFM's discussion is two-fold: to take stock of what was achieved by the first activation and how the CM can be used more effectively in the future; and to consider whether there is an ongoing role for the CM to improve regional responses to the situation in Myanmar and Bangladesh.

This paper proceeds in three parts. First, it details what happened when the CM was put into action. Next, it considers these events and outcomes against what was intended by Bali Process ministers and senior officials when establishing the CM, and by the ADFM's proposed toolkit for its use. Lastly, it proposes what should be done next to make the CM more effective in the future.

The CM is among the most promising developments the Bali Process has agreed to. If developed and deployed properly the CM can help to ensure agile and timely responses by Bali Process members to sudden displacement, which can in turn generate more dignified, durable and effective responses to forced migration. The ADFM's provisional advice below is offered solely as a starting point for the discussion and is based on informal conversations to date with ADFM members:

1. The Bali Process Ministerial Meeting in August 2018 should reaffirm the CM's importance to regional architecture on forced migration and encourage senior officials to improve its effectiveness.
2. As the CM evolves, the Bali Process SOM Co-Chairs should prioritise:
 - a. Strengthening its supporting infrastructure, especially the Joint Operational Task Force on Planning & Preparedness (TFPP) and scenario planning.
 - b. Deepening the involvement of ASEAN members from the Bali Process Ad Hoc Group in the CM and its supporting infrastructure.
 - c. Focussing CM deliberations equally on policy and operational matters.
3. The Bali Process SOM Co-Chairs should continue to monitor and hold informal consultations on the situation in Bangladesh and Myanmar with those who attended the first CM meeting, including on how the risk of onward movement can be minimised, further assistance

required by Bangladesh and key agencies to support the displaced population, and how the CM can help to create conditions for safe, voluntary repatriation and reintegration.

4. The Bali Process SOM Co-Chairs should ensure they have access to timely updates on the situation in Bangladesh and Myanmar, instruct the TFPP to prioritise the development of contingency plans for certain medium-term scenarios, and encourage Bali Process members to assist further with capacity building and humanitarian relief.

Activation of Consultation Mechanism (September-October 2017)

On 12 September 2017, following ADFM discussions in Manila, the ADFM Secretariat wrote to the Bali Process SOM Co-Chairs to recommend the CM be activated in respect of the ongoing situation in Myanmar and Bangladesh. The ADFM previously agreed to provide advice on the toolkit required for the CM to be used most effectively. It became clear in the lead-up to the Manila meeting that this toolkit could not be considered in the abstract. The ADFM was told approximately 300,000 people had already crossed the border into Bangladesh from Myanmar since violence broke out in Rakhine State on 25 August 2017.

The key points in the ADFM Secretariat's letter were as follows:

- (i) The ADFM's strong view was that the CM should be activated in response to what was clearly an emergency irregular migration event. In the first instance this may involve discussions with Steering Group officials and affected states about the role the Bali Process should play. A special meeting of the Ad Hoc Group officials could then be held.
- (ii) Activating the CM could achieve several objectives:
 - a. It would ensure there is an 'honest broker' with existing authority and legitimacy to share information and coordinate policy responses in the region.
 - b. It would facilitate an exploration of graduated responses by Bali Process members to medium-term scenarios that could arise, including ongoing conflict in Rakhine State, further assistance required by Bangladesh authorities and international agencies, onward maritime movements, exploitation by people smuggling and human trafficking networks, Myanmar's willingness to allow those displaced to return, and resettlement options for those permanently displaced.
 - c. It would deliver on the promise made by Bali Process ministers in March 2016 that the Bali Process' inaction on sudden mass displacement during the Andaman Sea crisis of May 2015 would not be repeated, and give greater confidence to other regional structures like ASEAN to take appropriate action.
- (iii) The ADFM offered its ongoing assistance as the Bali Process considered how to use the new authority most effectively.

Informal discussions took place between Bali Process Ministerial and SOM Co-Chairs the next week, alongside the UN General Assembly sessions in New York, following this input from the ADFM and other sources. Between 24-26 September, the Bali Process SOM Co-Chairs formally sought the views of Bali

Process Steering Group senior officials about activating the CM, and received strong support. The Co-Chairs then decided to hold the first Bali Process Consultation Mechanism meeting in Jakarta on 13 October 2017.

A media release was issued by the foreign ministers of Indonesia and Australia on 23 October 2017 about the CM meeting. It stated:

- (i) Indonesia and Australia co-chaired the first Bali Process CM meeting on 13 October 2017 in Jakarta, Indonesia, to discuss the urgent irregular migration crisis in the Myanmar-Bangladesh border region.
- (ii) In addition to the Co-Chairs, the meeting was attended by senior officials from the Bali Process Steering Group – comprising Thailand, New Zealand, the International Organization for Migration (IOM), and the United Nations High Commissioner for Refugees (UNHCR) – and Bangladesh and Myanmar, as the two most affected countries.
- (iii) The meeting facilitated constructive dialogue between members of the Steering Group and affected countries. Informal consultations are ongoing. As agreed by all participants, the discussions will remain confidential.
- (iv) The convening of the CM highlights the commitment of member countries to ensure that the Bali Process stands ready to work together and assist the region in responding to irregular migration crises.

What did the activation of Consultation Mechanism achieve?

Before taking stock of what was achieved by the CM's first activation, it should be acknowledged that the Bali Process was not the only regional or international institution asked to respond to the crisis in Myanmar and Bangladesh. Moreover, the irregular migration crisis the CM was activated for remains acute. In its six-month progress report (25 August 2017 to 25 February 2018) IOM described the situation as "the fastest growing refugee crisis in the world". The Inter Sector Coordination Group has reported 671,000 new arrivals as at 15 February 2018, with 1.07 million people registered by the Bangladesh Immigration and Passports Department through biometric registration by 25 February 2018. Preparation for the cyclone and monsoon season is described as "a priority". Population movements "remain fluid" within Cox's Bazar. There is ongoing uncertainty about the prospect for safe, voluntary repatriation and reintegration to Myanmar, notwithstanding the agreement reached between the Myanmar and Bangladesh governments. The refugees who have fled to Bangladesh are extremely vulnerable. An extraordinary humanitarian response is required over an extended period to ensure they can rebuild their lives with dignity.

What follows should not be read as diminishing the difficult challenges that lie ahead, or the help that Bangladesh will require to continue their generous support for the displaced population. Instead, it should be understood as an initial appraisal of a new piece of regional architecture which was deployed for the first time much faster than anticipated. The special circumstances that led to the first activation may of course not be a helpful precedent for future activations, given that the CM was designed with a range of possible scenarios in mind.

Although the discussions at the first CM meeting were confidential, several preliminary observations can be made about what the CM's first activation has achieved thus far. These are based on what the ADFM has been told in confidence following our formal request of 12 September 2017, and include the following observations:

- (i) A forum was created with an enabling environment for affected states to speak about the issues with Bali Process members in a constructive fashion.
- (ii) Myanmar and Bangladesh took part voluntarily and at a senior level.
- (iii) The meeting had ministerial support.
- (iv) Critical information was shared so all key parties knew what was happening.
- (v) Specific proposals were made and some were accepted.
- (vi) The Bali Process deployed its authority and committed to ongoing consultations.

These are not insignificant achievements. In May 2015, the Bali Process was mute during the Andaman Sea crisis. Two years on, in response to a much greater sudden displacement, it acted. The response occurred because of advice from joined-up expertise in the region, requested after the Bali Process Review of the 2015 Andaman Sea crisis.

What were the limitations?

As the CM and its supporting infrastructure evolve under new Bali Process SOM Co-Chairs, it is important that its first activation be assessed for strengths and limitations. Five limitations merit consideration so that the CM can be deployed more effectively next time around.

(i) Speed and Authority

Bali Process ministers created the Consultation Mechanism in March 2016 for "more agile, timely responses by Bali Process members to regional circumstances, including through a voluntary, non-binding mechanism to authorise the Co-Chairs to consult and convene meetings, as necessary, to discuss urgent irregular migration events in the region".

Although informal consultations between senior officials took place through September 2017, the first CM meeting did not take place until seven weeks after the urgent irregular migration events began. A desire to have ministerial backing for the meeting may have ensured the activation was not as timely or as flexible as initially envisaged. Given the complexity and sensitivities of the issues at hand, ministerial backing may have been prudent on the first activation. The ADFM's toolkit paper in September 2017 contemplated this:

"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."

Seeking ministerial support every time may run against the stated desire for agile and timely responses and should not become a precedent for senior officials for activating the CM. Nevertheless, securing ministerial buy-in is essential for the CM to generate effective policy and operational outcomes. This can take several forms, some of which are suggested above. The lightest (and most efficient) would be for the Bali Process SOM Co-Chairs and colleagues to brief ministers and ask for guidance and inputs in advance of CM meetings. More extensive (but necessarily slower) ministerial involvement would involve presenting ministers with CM findings and actions and convening a ministerial-level meeting.

(ii) Supporting Infrastructure

The CM meeting facilitated new dialogue between affected states and international agencies, and led to a visit by Myanmar to the Regional Support Office for the Bali Process. However, overall expertise, contingency plans, and coordination was lacking. This is largely because the CM's initial activation occurred before the supporting infrastructure for the consultation mechanism, especially the Joint Task Force on Planning and Preparedness (TFPP), was suitably developed.

The "toolkit" paper for the ADFM's meeting in Manila, which was overtaken by events on the ground in Myanmar and Bangladesh, stated that four core capabilities would be necessary for the CM to be deployed effectively and improve upon each use:

- (i) Preparedness and response.
- (ii) Capacity building and knowledge management.
- (iii) Resource mobilisation and communications.
- (iv) Management and administration.

Each of those capabilities requires further strategic development. One lesson from the CM's first activation is that the TFPP has not had the time or resources to build a solid foundation the CM can draw upon once activated. Consistency of membership, meetings, and resources, an agreed work plan and clear strategy would help to remedy this.

(iii) Familiarity with the Bali Process and involvement of ASEAN member states.

As this was the CM's first activation, all the participants were navigating new terrain. Given the circumstances, it is likely that several of the participants in the CM meeting were also new to the Bali Process, not just its new authority. There will have been little time to build trust with these officials, provide pre-briefings and canvass views, which may have limited the options available to the group during the formal meeting and prevented a more focussed discussion. A "good offices" visit to the affected states by the Bali Process Ministerial or SOM Co-Chairs before or after the first meeting, for example, may have generated a more productive outcome and helped to identify follow-up consultations and actions.

The relatively small number of countries involved in first meeting (Indonesia, Australia, New Zealand, Thailand, Myanmar and Bangladesh) may have also reduced the options available for discussion. Expanding the attendance to include other members of the Bali Process Ad Hoc Group who are also members of ASEAN, such as Malaysia, Vietnam, and the Philippines, may have lifted the prospects of greater regional coordination, including the potential of acting in conjunction with ASEAN. A medium-term strategy on how to get more ASEAN members involved in the CM and its supporting infrastructure

is worth prioritising given the overlap in Bali Process and ASEAN membership when dealing with displacement events in the region.

(iv) Policy and Operational Objectives

It is unclear whether clear policy and operational objectives were established by the Bali Process Co-Chairs in advance of, or during, the CM meeting. The ADFM's toolkit paper suggested the Co-Chairs should decide on reasonable policy and operational objectives they wish to achieve by activating the CM. For example, operational objectives could include:

- (i) Prevention or mitigation of a new flow of irregular migration.
- (ii) Responding to and ending an ongoing flow of irregular migration.
- (iii) Responding quickly to the immediate humanitarian circumstances of the people involved in the irregular movements and developing long-term solutions for them.
- (iv) Energising cooperative action by regional states, extra-regional states, international organisations and civil society.
- (v) Reinforcing the responses of other parties.
- (vi) Gaining broad support for solutions.
- (vii) Following through to ensure commitments of all parties are implemented.
- (viii) Some combination of the above.

Without public disclosure of the objectives, it is difficult to evaluate whether these were appropriate and whether any were achieved. Agreeing on and achieving operational objectives is likely to be even more difficult in the absence of agreement or consensus at the policy level. For this reason, the ADFM has previously advised that the CM should also focus on policy discussion, and not only on operational issues.

(v) Follow Up

Apart from the press release and a brief discussion reported at the scheduled Bali Process Ad Hoc Group meeting in Kuala Lumpur on 31 October 2017, there have been no public announcements of follow-up consultations or meetings, informal or otherwise, from the Bali Process since the initial CM meeting on 13 October 2017.

Given the gravity of the situation, it is important that CM's first meeting not be a "one-off". The Bali Process SOM Co-Chairs are best placed to assess the merits of further private or public consultations with their colleagues. It suffices to say that other actions contemplated by the ADFM's toolkit paper because of the CM's activation included: "good offices" visits to affected countries by the Co-Chairs; acting indirectly through partners and intermediaries; calling on assistance from outside the region; mapping or setting up key resources in advance; linking to the TFPP; working with other regional organisations and governments; and raising public information and awareness. On this last point, the toolkit paper also stated that "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".

To the extent it has not already occurred, ongoing use of the CM in respect of the situation in Myanmar and Bangladesh may be prudent to minimise onward movement, facilitate further assistance to Bangladesh and key agencies, and help to create conditions for safe, voluntary repatriation and reintegration.

Did the activation of the Consultation Mechanism meet expectations?

On balance, one might say the activation exceeded the expectations of individuals directly involved for four reasons: (i) the “newness” of the CM and the improbability of a collective response by the Bali Process in previous years; (ii) the importance of bringing affected countries already part of the Bali Process to the table voluntarily, which other regional and international institutions could not do; (iii) specific offers were made and accepted; and (iv) discussions remain ongoing.

While the situation remains acute, one cannot be satisfied with what the activation has achieved. There is clear scope for an ongoing role for the CM in respect of the situation in Bangladesh and Myanmar, and to make the mechanism more effective in the future.

Consolidating the Consultation Mechanism

The ADFM advises that consideration should be given to the following recommendations to consolidate the CM for future use and ensure it can facilitate more dignified, durable and effective responses to the situation it has already been activated for.

1. The Bali Process Ministerial Meeting in August 2018 should reaffirm the CM's importance to regional architecture on forced migration and encourage senior officials to improve its effectiveness.
2. As the CM evolves, the Bali Process SOM Co-Chairs should prioritise:
 - a. Strengthening its supporting infrastructure, especially the Joint Operational Task Force on Planning & Preparedness (TFPP) and scenario planning.
 - b. Deepening the involvement of ASEAN members from the Bali Process Ad Hoc Group in the CM and its supporting infrastructure.
 - c. Focussing CM deliberations equally on policy and operational matters.
3. The Bali Process SOM Co-Chairs should continue to monitor and hold informal consultations on the situation in Bangladesh and Myanmar with those who attended the first CM meeting, including on how the risk of onward movement can be minimised, further assistance required by Bangladesh and key agencies to support the displaced population, and how the CM can help to create conditions for safe, voluntary repatriation and reintegration.
4. The Bali Process SOM Co-Chairs should ensure they have access to timely updates on the situation in Bangladesh and Myanmar, instruct the TFPP to prioritise the development of contingency plans for certain medium-term scenarios, and encourage Bali Process members to assist further with capacity building and humanitarian relief.

Paper 2: Priorities for Regional Investments and ACTIP Implementation to Combat Trafficking in Persons

Summary:

There is growing momentum in the region, among government, civil society and business, to tackle trafficking in persons, forced labour and slavery. This momentum is stimulated by trends including: prominence of the issues within the Sustainable Development Goals; growing focus on the role and responsibility of business in the fight; new legislation mandating transparency of supply chains and operations; and high profile industry-specific cases, for example in fisheries and rubber production. These are all creating both pressure and opportunity for change.

In ASEAN, we have seen political commitments, and legislative and policy reforms pressing ASEAN Member States to prevent trafficking, exploitation and mistreatment of the region's people for private profit, as well as other forms of trafficking in persons. Focus has been on the implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), after it came into force in March 2017. The *ASEAN Consensus on the Protection and Promotion on the Rights of Migrant Workers* was adopted by ASEAN leaders in November 2017.

The Bali Process has focused on policy and practice based cooperation between its members in combatting trafficking in persons (TIP), and engaging the region's business community, through its Working Groups, the Regional Support Office and the new Government and Business Forum.

In September 2017, the ADFM recommended to the ASEAN Ministers Meeting on Transnational Crime (AMMTC) that they pursue collaboration with the Bali Process on trafficking in persons. The Senior Officials Meeting on Transnational Crime (SOMTC) is now actively progressing that recommendation, and plans to consult the Bali Process on the establishment of a focal point system of ACTIP representatives. Regional donors have shown interest in supporting consultation and collaboration between the two bodies.

With the growing regional momentum behind combatting trafficking in persons and the interest of both ASEAN and the Bali Process in collaborating more effectively, the central question of this paper for the ADFM is: How can the Bali Process and ASEAN best collaborate to maximise synergies and accelerate action on trafficking, forced labour and slavery in the Asia-Pacific?

Following consultation with ADFM members, this paper proposes that:

1. The Bali Process Working Group Co-Chairs and SOMTC TIP Working Group Chair convene an Initial Consultation in the first half of 2018; and
2. Discussions at the Initial Consultation cover, at a minimum:
 - Sharing interests, priority activities and their complementarity

- Establishment of the focal point system of ACTIP representatives and how to best leverage links and resources of existing groups
- Further BP/ASEAN collaboration opportunities
- Support and resources needed from other parties to aid collaboration

Should this recommendation be adopted, the Co-Chairs may decide to invite others to participate in this Initial Consultation, such as representatives of the Government and Business Forum. A successful Initial Consultation may pave the way for further ASEAN/Bali Process collaboration, including:

- Supporting ASEAN Member States to implement ACTIP, drawing on the coordinated resources and expertise of relevant ASEAN and Bali Process bodies and mechanisms;
- Focussing attention on an industry sector (in tandem with the relevant industry peak body) and collaborating on joint periods of action to identify and prevent exploitation, improve supply chain transparency, develop ethical employment standards, bolster complaints and redress mechanisms, or some combination thereof; and
- Building greater awareness across government and business in the region about the nature of trafficking, forced labour and slavery, legal and regulatory responses, and the practical improvements necessary to address it.

The primary purpose of this paper is to highlight the existing activity of each of the relevant working groups and forums. It does this to assist in identifying synergies that could be harnessed by greater collaboration between ASEAN and the Bali Process in their next phase of investment and action to combat trafficking in persons, forced labour and slavery in the region.

TIP in the region

Despite difficulties with estimation, there are strong indications the Asia-Pacific is a major source of victims of trafficking and that women, men and children are trafficked *to* and *through* the Asia-Pacific in large numbers.¹ Trafficking for forced labour appears to be endemic in some parts of the region and within certain industries.

Law and policy responding to trafficking in persons has been transformed in most countries in the Asia-Pacific over the past two decades. For instance, most countries now have specialised institutions and units, national action plans, laws, and inter-agency task forces to coordinate national responses.²

Despite this strong progress, the prevention of trafficking, protection of victims and prosecution of perpetrators remains challenging and uneven. The number of persons formally identified as victims is extremely low relative to the presumed size of the problem. For example, the United States reported that in 2016, just over 66,000 trafficked persons were identified worldwide.³ Most of these were victims of trafficking for sexual exploitation, despite the high probability that other forms of trafficking

¹ Global Estimates of Modern Slavery, ILO and Walk Free Foundation, 2016. Available here:

http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

² Combatting Trafficking in Persons: Regional Opportunities, Anne T. Gallagher, Fourth ADFM Meeting Briefing Paper, 2 March 2017, p.1. Available here: <https://cpd.org.au/wp-content/uploads/2017/03/ADFM-Fourth-Meeting-Briefing-Papers.pdf>.

³ United States Department of State, Trafficking in Persons Report (2017). Available here: <https://www.state.gov/j/tip/rls/tiprpt/2017/>.

– such as for forced labour exploitation – are much more prevalent. The numbers of convictions for trafficking remain stubbornly low. In 2016, there were 14,897 reported prosecutions for trafficking worldwide and only 9,071 convictions. Fewer than 10% of both figures related to trafficking for forced labour.⁴

Part 1: ASEAN

ASEAN and its Member States have, in many ways, led the anti-trafficking response in the wider region and even outside of this region. ASEAN is the only region, outside of Europe, to have developed its own specialist legal instrument on trafficking. On other measures – for example, in relation to criminal justice responses – the structures and processes in place within ASEAN are world-class.

1.1 Legislative and policy momentum

Within ASEAN, recent attention has focused on the ACTIP and its implementation. The relevant instruments, procedures and bodies are briefly set out below.

The **ASEAN Convention on Trafficking in Persons, Especially Women and Children** (ACTIP) entered into force in March 2017. ACTIP is a major achievement in the fight against trafficking in persons in the region. As at March 2018, nine ASEAN Member States had ratified ACTIP, with only Brunei remaining. The Convention reinforces standards set out elsewhere in the areas of criminalisation; prevention; victim protection; and international cooperation. In some aspects, it goes further than current international standards, for example by affirming the need to ensure victims are not detained or prosecuted for status-related offences such as illegal entry and illegal work. At the same time ACTIP was adopted, ASEAN Member States agreed to an **ASEAN Plan of Action** that identified specific areas and activities for attention.

ACTIP was developed under the auspices of ASEAN's Senior Officials Meeting on Transnational Crime (SOMTC). ACTIP affirms SOMTC has primary responsibility for overseeing its implementation, but does not specify in any detail what this should entail. SOMTC has been considering options for structuring its role under ACTIP and recently endorsed a proposal to explore the possibility of **establishing a network of national ACTIP focal points** that would be responsible for reporting to SOMTC on implementation of ACTIP and providing other required support.

The Philippines, as Lead Shepherd for TIP within SOMTC and Chair of the SOMTC Working Group on TIP, is taking the ACTIP focal points proposal forward, initially through a series of workshops aimed at determining how such a system could be established and sustained. The Australian and United States governments – already major supporters of ASEAN's work on trafficking – have expressed interest in assisting SOMTC to take this initiative forward.

Other activities the SOMTC Working Group on TIP will prioritise in 2018 include: a table-top exercise for ASEAN Plus Three Law Enforcers and Prosecutors to Enhance Cross-Border Joint Investigations and Operations on Trafficking in Persons Related Cases; and an ASEAN-Australia Immigration Training on Advanced Document Examination with the ASEAN Directors General of Immigration and Consular Affairs Divisions of the Ministries of Foreign Affairs (DGICM). The 18th SOMTC will take place in May 2018 and the 12th AMMTC will take place in September 2018.

⁴ Ibid.

In 2017 SOMTC worked with other ASEAN functional Sectoral Bodies to develop an ASEAN-wide work plan to promote ACTIP's implementation. The **Bohol Work Plan** (Work Plan), was endorsed by the AMMTC in September 2017.

The Work Plan is ambitious, covering most major areas of the Convention with particular focus on prevention and victim support. It should be welcomed as an important first step in promoting cross-ASEAN support for and involvement in anti-trafficking efforts. The Work Plan also has the potential to provide a foundation on which efforts to assess change in the region could be measured. For those seeking to work with ASEAN on this issue, the work plan provides a useful entry point with the added advantage of setting out priorities that donors and other partners can seek to support. In that regard, it is important to note that the Work Plan specifically envisages ASEAN working with other bodies in the region, including the Bali Process, to take forward the commitments made under the ACTIP.

The strengths of the Work Plan should not be overstated. As currently drafted, much of the document is a collection of good ideas for promoting greater regional cohesion and competence around this issue and building capacity at the national level to identify trafficking and respond appropriately. In relation to some areas, where plans and funding are in place, the likelihood of successful implementation is high. But most activities set out in the Work Plan are *not* presently funded or otherwise supported.

In the section of the Work Plan on Regional and International Cooperation and Coordination, the need to cooperate with the Bali Process and other regional mechanisms is noted, specifically in the area of conducting capacity building activities on international legal cooperation.⁵

Within ASEAN, several other policy and related developments are also worth noting. For example, there has been substantial movement on the issue of migrant worker rights. After lengthy negotiation, led by the Philippines, the **ASEAN Consensus on the Protection and Promotion on the Rights of Migrant Workers**⁶ was adopted by ASEAN leaders in November 2017. Although non-binding on Member States, this instrument nevertheless represents an affirmation of the contribution of migrant workers to the growth and development of the region and an in-principle commitment to protection of their rights. It will prove useful in efforts to promote effective implementation of the ACTIP – most particularly in relation to prevention of trafficking.

In March 2018 (16-18th), the **ASEAN-Australia Special Summit** will take place. Australia has been a longstanding supporter of ASEAN's anti-trafficking efforts, most particularly in relation to criminal justice responses. The Australia-Asia Program to Combat Trafficking in Persons (AAPTIP), a flagship program, which commenced in 2003 and continues to this day, has been credited with bolstering the region's capacity and reputation on these issues. The Summit will include discussion of the ASEAN-Australian partnership and mutual investment in combatting trafficking in persons in the region.

1.2 Priorities for investment and action

The priority now is threefold: enforcement of the existing law and implementation of policy at the national level and in a coordinated way across borders; translating legislative and policy reforms to

⁵ Bohol TIP Work Plan 2017-2020, ASEAN SOMTC, p.28.

⁶ Available here: <http://asean.org/storage/2017/11/ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf>

protections for victims of trafficking and effective punishment of traffickers; and engaging more effectively with civil society and the private sector in these efforts. These priorities require ACTIP's implementation to be suitably supported via a framework for its promotion and enforcement, preferably in the form of a focal point system of ACTIP representatives.

Part 2: The Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) is a forum for policy dialogue, information sharing and practical cooperation to help the region address the challenges of people smuggling, trafficking in persons and related transnational crime. The Bali Process is co-chaired by Australia and Indonesia and has more than 48 members, including the UNHCR, IOM and UNODC, as well as a number of observer countries, and relevant international organisations.⁷ The Bali Process Ad Hoc Group brings together most affected member countries, including six ASEAN Member States, and relevant international organisations to address specific related issues in the region.⁸

2.1 Relevant Bali Process Working Groups

Under the auspices of its Ad Hoc Group, the Bali Process convenes two *Working Groups*, on Trafficking in Persons (TIP Working Group) and on Disruption of People Smuggling and Trafficking in Persons Criminal Networks (Disruption Working Group)

The **TIP Working Group**, co-chaired by Australia and Indonesia, aims to promote more effective and coordinated law and justice responses to combat trafficking in persons in the Asia-Pacific region. It brings together a network of experts on trafficking in persons from the fifteen states and three international organisations that comprise the Ad Hoc Group. It provides a mechanism for sharing information, best practice and emerging trends, and identifying opportunities for international cooperation and capacity building in responding to trafficking in persons. The working group has overseen the development of guides and training packages on criminalising TIP, identifying and protecting victims and 'following the money' (investigating the financing of TIP).

The TIP Working Group Terms of Reference specifically note the working group's intention to "identify ways in which the Bali Process can complement, draw from and coordinate with the efforts of other fora/organisations or programs working to address trafficking in persons".⁹

The TIP Working Group Forward Work Plan 2017-2019 focuses on: sharing of information; engagement with the private sector and CSOs to prevent and combat TIP and protect and assist victims; promoting existing policy guides, particularly in the area of 'following the money'; combating trafficking for purposes of labour and sexual exploitation; tackling corruption as a facilitator of TIP; and strengthening international cooperation in TIP case investigation. The forward work plan signals engagement with the private sector to prevent and combat TIP, protect and assist victims, and to use money trails to detect and investigate trafficking in persons.

⁷ More available here: <http://www.baliprocess.net/>

⁸ Ad Hoc Group members currently include Afghanistan, Australia, Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, New Zealand, Pakistan, Philippines, Sri Lanka, UAE, Thailand, USA and Viet Nam.

⁹ Bali Process Working Group on Trafficking in Persons (TIP) Forward Work Plan: 2017-19, p.1. Available here: [http://www.baliprocess.net/UserFiles/baliprocess/File/Bali Process Trafficking in Persons Working Group - Forward Work Plan 2017-19 \(002\).pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Trafficking%20in%20Persons%20Working%20Group%20-%20Forward%20Work%20Plan%202017-19%20(002).pdf)

A specific activity of the TIP working group will be to promote the development of partnerships between the public and private sector in Bali Process member countries to use money trails to detect and investigate trafficking in persons.¹⁰

The **Disruption Working Group** focuses on concrete, action-oriented activities for enhancing coordination to disrupt and dismantle criminal networks involved in people smuggling and trafficking in persons in the Asia-Pacific region. The Working Group is co-chaired by New Zealand and Malaysia and brings together a network of law enforcement and immigration officials from ten countries. Its flagship initiative is an annual Joint Period of Action, which involves two or more investigation teams simultaneously targeting the same people smuggling or trafficking syndicate(s) through coordination.

The working group has carried out three Joint Periods of Action since 2015. Under the 3rd Joint Period of Action, law enforcement and immigration agencies from ten countries (Australia, Bangladesh, Indonesia, Malaysia, the Maldives, New Zealand, the Philippines, Sri Lanka, Thailand and the USA) carried out nine joint operations aimed at dismantling smuggling and trafficking networks. Criminal networks involved in the online commercial sexual exploitation of children were also targeted.

Results of the third period of action, conducted between March and August 2017, included: 72 persons being convicted of trafficking and people smuggling offences; six trafficking victim rescues; ten arrests; nine new investigations launched; and awareness-raising and training activities.

Activities within the joint periods of action contributed to the conviction of notorious people smuggler Abraham Louhenapessy, and the conviction of 62 people in Thailand's largest human trafficking trial arising from the May 2015 discovery of mass graves along the Thailand-Malaysia border.¹¹

The Disruption Working Group will soon conduct a Fourth Joint Period of Action to strengthen cooperation on law enforcement between members. A planning workshop will be held in May 2018.

The TIP and Disruption Working Groups will hold a joint workshop in May 2018. The workshop will be scenario-based and look at some of the traditional barriers to cooperation. It will explore how informal (police-to-police) cooperation can increase efficiencies, and how to manage mutual legal requests better. The joint meeting provides an opportunity for further information sharing and collaboration between the Working Groups. It will also assist the members of the Disruption Working Group in preparing for, and carrying out, the fourth Joint Period of Action.

The **Bali Process Regional Support Office** has also been closely involved in efforts to end trafficking in persons. Their activities have included development of policy and operational guides and effective practice briefs, training programs, official exchanges and roundtables. For instance:

- The RSO-CIFAL Partnership, with CIFAL-Jeju (South Korea) that provides training to a mix of local NGO and government actors through the Asia-Pacific aimed at Enhancing a Victim Centred Approach: Identification, Assistance, and Protection of Trafficking Victims in the Asia-Pacific Region; and

¹⁰ Ibid p.3.

¹¹ Co-chairs' Statement, 3rd Joint Period of Action Debrief Workshop, Bali Process Working Group on the Disruption of People Smuggling and Trafficking in Persons Networks, Bangkok, Thailand, 14 September 2017, p.1. Available here: [http://www.baliprocess.net/UserFiles/baliprocess/File/3rdJPoA_DebriefWorkshopCo-ChairstatementFINAL\(1\).pdf](http://www.baliprocess.net/UserFiles/baliprocess/File/3rdJPoA_DebriefWorkshopCo-ChairstatementFINAL(1).pdf)

- The Policy Guides on the Identification and Protection of Victims of Trafficking, providing an overview of applicable international and regional standards, drawing on good practice from Bali Process member countries.

There are several ways in which the activities of both the Working Groups and the RSO can and do support ASEAN Member States (all of whom are Bali Process members) to implement ACTIP.

2.2 Engaging Business

Recognition of the private sector as a key catalyst for action on trafficking and related exploitation has risen in recent years. Private sector actors, from small businesses to major corporations, can be directly or indirectly involved in trafficking. Their participation is vital in identifying and responding to trafficking, particularly in complex supply chains. Private sector actors also bring vital skills, capacities and resources that enhance and complement the work of governments, institutions and civil society.

The passage of national legislation to address trafficking in persons, forced labour and slavery raises the stakes for the private sector. The United States, the United Kingdom, and several European states have imposed reporting obligations on corporations aimed at encouraging greater transparency and action to reduce modern slavery in supply chains. Australia is set to follow suit in 2018. Evidence of systemic exploitation in particular sectors (e.g. the Thai fishing industry and electronics manufacturing in Malaysia) has also contributed to sector-specific initiatives that are often led by business.

In August 2017 Bali Process Co-chairs launched the **Government and Business Forum** as permanent track of the Bali Process in Perth, Australia. It brings together Bali Process Ministers and Business Leaders to consider ways to prevent and combat human trafficking and related exploitation. Business leaders advise governments on policy approaches to tackling these crimes, and share experiences on best practice. A twelve-month work plan was adopted at the first meeting. Its goal is to guide the development of practical and innovative recommendations on priority areas: ethical employment, transparency in supply chains, and safeguards and redress mechanisms. The plan does not create binding legal obligations or commitments for either business or government.¹²

There is now an opportunity for policy and private sector efforts to be mutually reinforcing. The Working Groups can leverage private sector experience, capacity and linkages from the Bali Process Government and Business Forum to improve policy and operational responses. Similarly, business representatives can draw on policy experience and the networks offered by the Working Groups to stimulate more effective responses across industries and corporations in the region. Collectively, these efforts add momentum to standard setting, policy and legislative reform, and the translation of that reform into improved business practices to combat trafficking, forced labour and slavery within operations and supply chains.

Bolstering Collaboration

Activity and investment at the national and regional levels across the Bali Process and ASEAN is growing. One criticism, however, is that much of this activity is happening in parallel without sufficient coordination.

¹² Co-chairs' Statement, Bali Process Government and Business Forum, Perth, Australia, 25 August 2017, p.2.

Paper 3: Voluntary Repatriation and Reintegration

Summary

Despite being the ‘preferred’ durable solution for many refugees and states, comparatively little fresh thinking has gone into making voluntary repatriation a viable durable solution. Yet voluntary repatriation has become a key issue in the region warranting the attention of regional states. At present, some 15,000 refugees from South East Myanmar have spontaneously returned from the camps in Thailand since 2012, while about 93,000 have opted to ‘wait it out’ in the nine camps along the border. These camps will soon be unviable as aid is withdrawn and refugees face the real prospect of having to choose between being starved into returning with little support, becoming illegal migrants, or disappearing amongst Thailand’s hill tribes. More suitable return arrangements however could have a considerable impact. Similarly, some 133,000 refugees from Myanmar also remain in Malaysia,¹ many of whom may opt for return if suitable arrangements were developed (Rohingya and Kachin being exceptions). As the number of refugees in urban areas across Asia continues to rise, working out arrangements to enable the voluntary repatriation of smaller caseloads of Afghans, Sri Lankans, Somalis and other nationalities spread out across the region has also become a priority.

The proposed repatriation of Rohingya refugees poses a different set of challenges. Conditions for return are not present, but if fears are not allayed, the prospect of forced return may prompt secondary movement, particularly given the chaotic and overcrowded state of the camps, and the imminent prospect of monsoonal floods, landslides and a predicted cholera epidemic. This situation, although urgent, is not the focus of this paper. The ADFM will discuss the situation in Myanmar and Bangladesh at its Sydney meeting.

Amidst such challenges, and with growing interest among states in the region on return and reintegration, the Bali Process Ad Hoc Group will be convening a second roundtable on return and reintegration in April 2018, co-chaired by Australia and the Philippines. Governments in the region will also be continuing negotiations on the Global Compact on Refugees and the Global Compact on Migration, each of which cover key issues in the return and reintegration of refugees and migrants. UNHCR and IOM are also engaged in a wide range of operations throughout the Asia-Pacific, with UNHCR leading on voluntary repatriation and reintegration (VRR)² operations and IOM leading on Assisted Voluntary Return and Reintegration (AVRR) programs.³ Mahidol University is also undertaking a review of historical return and reintegration situations in the region for the RSO.

The aim of this paper is to prompt fresh thinking on possible arrangements to make voluntary repatriation a viable durable solution for refugees in South East Asia. The first part of the paper focuses on global developments and the state of play in the region in regards to return and reintegration,

¹ Although there are 133,000 refugees registered with UNHCR, many refugees are unregistered, so the total population may be up to 300,000.

² Voluntary repatriation refers to voluntary return of refugee to the country of origin and is one of the three durable solutions traditionally identified for refugees.

³ For IOM, AVRR is an indispensable part of a comprehensive approach to migration management aiming at orderly and humane return and reintegration of migrants who are unable or unwilling to remain in host or transit countries and wish to return voluntarily to their countries of origin. AVRR often includes the return of those not granted asylum in destination countries.

encouraging a re-think of current discourse and voluntary repatriation arrangements. The second part of the paper focuses on real-time prospects for innovative policy and alternative arrangements to enable the voluntary repatriation and reintegration of refugees from Myanmar presently residing in Thailand and Malaysia.

There is a strong imperative for governments in the region, along with ASEAN and the Bali Process, to enhance policy dialogue and collaboration with relevant stakeholders. Without well-synchronized relief, recovery and development initiatives, the return of refugees and IDPs ceases to be a 'durable solution' and can instead re-ignite conflict, generate new tensions, put severe strain on conflict-affected receiving communities and government, and fuel irregular migration, smuggling and trafficking. Whereas when voluntary repatriation and reintegration is effective, the sustainable return and reintegration of displaced populations brings lasting benefits to a wide range of stakeholders: countries of origin, host countries, donors, returnees and receiving communities.

Global and Regional Context

Over the past 5 years, global displacement figures have skyrocketed, along with the number of protracted conflicts, disasters and displacement contexts. The humanitarian system, despite a massive global scale-up, is buckling under the weight, and donor funds, despite increasing, have continued to fall well short of global needs, resulting in the chronic underfunding of most humanitarian appeals. At the same time, global refugee resettlement places are in long-term decline, host states have become increasingly hostile to the idea of local integration and hosting large camps, and asylum/destination countries are increasingly enacting tough border controls. As global and regional refugee numbers continue to grow, and refugees increasingly move in search of the own solutions, the time for regional engagement and revisiting prospects for voluntary repatriation has never been more apparent.

In order for South East Asian governments to fully engage in discussions around making voluntary repatriation a viable durable solution, however, a number of key prevailing assumptions must be questioned. First, for most states in the region, the implicit assumption has been that refugees are an international responsibility, and accordingly that resettlement is the appropriate durable solution. This assumption, which is a legacy of the Comprehensive Plan of Action, no longer reflects the reality that global resettlement has been in long-term decline, despite global efforts to reverse the trend. So strong has been the expectation that resettlement would provide the solution that states have not properly considered scope for voluntary repatriation and reintegration being a sustainable alternate durable solution.

Second, the expectation that traditional donors will continue to foot the bill for refugee 'care and maintenance' programs in protracted encampment situations with no end in sight, and that host states merely need to grant access to their territory for refugees to be 'temporarily sheltered' until they return or resettle, needs to be re-examined. While such burden-sharing arrangements were the norm in the 1980s and 1990s, numerous factors have undermined the encampment model. Not least amongst these is the now-widespread recognition that camps breed dependency and entrench protracted situations, making them even harder to resolve. This is the main reason why UNHCR developed its recent Alternatives to Camps Policy, which stipulates that camps should be 'a last resort', literally for life saving emergencies and mass influxes. International donor trends also make it very clear that with the number of global crises, traditional donors will increasingly prioritise larger emergencies closer to

home, and states in the region will need to develop solutions to refugee challenges within the region. Moreover, refugees are voting with their feet and increasingly opting to avoid camps and move to urban areas in search of livelihoods. .

Third, the assumption that returns happen when conflicts end, peace agreements are signed, and conditions for return safety and dignity are present, tends to result in inaction when such threshold criteria are not met. Moreover, it overlooks the fact that preparing the ground for repatriation and reintegration in post-war contexts takes time, as does refugee preparedness and building resilience for return. Rather than wait for the ideal conditions that enable large-scale organised return, states in the region should be working toward the progressive realisation of voluntary repatriation as a durable solution, and more importantly, working in advance to prepare the ground for future repatriation (such as resolving civil documentation and housing, land and property issues for refugees while they still in camps through mobile civil documentation clinics and other means). Otherwise, the result is likely to be more refugees spontaneously returning with little assistance, further stagnation in camps, and refugees opting to move to urban areas or make onward movements.

Fourth, the doctrine of non-interference often inhibits scope for bilateral and multilateral engagement with countries of origin on measures to facilitate voluntary repatriation and reintegration, as regional governments do not wish to be seen as meddling in the internal affairs of refugee producing countries. Exceptions, however, needs to be made for humanitarian dialogue and support for measures to enable refugees to return and reintegrate.

Given these realities, it is important to reconsider what scope there is within the Asia-Pacific region for voluntary repatriation in safety and dignity, and what role regional governments, the Bali Process, ASEAN and other institutions should play in facilitating and supporting repatriation and reintegration. For this to occur, the nature, dynamics and objectives of voluntary repatriation must be carefully considered, as repatriation is not just about physically moving refugees from host states territories.

Understanding Voluntary Repatriation and Reintegration

UNHCR defines reintegration as a process that should result in the disappearance of differences in legal rights and duties between returnees and their compatriots and the equal access of returnees to services, productive assets and opportunities; and one that should lead to a sustainable return – in other words, the ability of returning refugees to secure the political, economic, legal and social conditions needed to maintain life, livelihood and dignity.

Viewed from this perspective, return and reintegration is not simply a matter of reversing displacement. In most cases, refugees have been displaced for prolonged periods, often decades, and have not only changed as a result of having adapted to their new context in camps or urban and rural areas, but have been estranged from their homeland. In the Sri Lankan refugee camps in India and Myanmarese camps in Thailand, several generations have even been born and raised in exile and have never even known their homeland. Women have been empowered, taking on new roles as breadwinners and heads of household, and refugees have absorbed a range of cultural influences viewed as ‘foreign’ by receiving communities. Youth may not want to return to poor rural areas, farmers may have lost land, traders and small business owners may have been deskilled or their vocations made obsolete.

Accordingly, reintegration must be seen as a far more complex process than refugees merely moving back to their place of origin and starting from where they left off. Indeed, such is the change brought about by conflict, persecution and displacement, that returning and resuming former lives and livelihoods is rarely possible. Rapid and unplanned urbanisation, a common feature in many societies emerging from conflict, may be underway, transforming homelands, markets, livelihoods and employment opportunities. Conflict dynamics may have generated new political economies, and/or severely weakened or transformed local communities. Refugees who have experienced urban or semi-urban living during displacement may also seek to move to towns and cities upon return. Reintegration processes occur within such changing contexts and need to be considered in reintegration processes.

Voluntary Repatriation in Context: Considerations and Challenges

‘Voluntary repatriation in safety and dignity’ is one of the most widely-accepted and instantly-recognisable principles in international refugee protection and held in high regard as the natural corollary of the principle of non-refoulement. It is also the preferred solution for most refugees and the international community. Despite its importance, however, surprisingly little research has been done, or work to develop formal standards for reintegration and guidance tailored to the needs of key stakeholders other than UNCHR.⁴ Research tends to focus on macro conditions for return, analysis of return intentions and changing policies, and barriers to repatriation due to security and socio-economic conditions. Relatively few studies attempt to identify best practice and lessons learned, compare and contrast return and reintegration processes, or consider the adaptability of different types of repatriation and reintegration programming.⁵ This is of particular concern as far as states are concerned as there are no internationally-recognised standards that set out the responsibilities of countries of origin or host states or accompanying guidance to help governments navigate the complex challenges of voluntary repatriation and reintegration. A gap also exists in specific guidance for humanitarian, development and peace-building actors, who need to be more engaged, and engaged earlier to enable preparedness.⁶

From this perspective, voluntary repatriation is very much an under-developed and under-utilized solution; a space ripe for innovation.

Preparedness for Voluntary Repatriation and Reintegration

One of the key gaps in current voluntary repatriation and reintegration practice is the absence of a strong focus on effective refugee preparedness and clear strategies to build resilience. Yet it is widely recognised that refugees, who on average now spend 17 years in exile, have often been totally estranged from their homeland, including from family, community, culture, political dynamics, legal systems and markets, all of which they must reacquire themselves with in order to reintegrate. Often, one or two generations have also been born in the camps, and know little of their ‘home country’. Restrictions in camps on refugee movement, livelihoods, communicating with relations back home, accessing information, and organising also have the effect of deskilling refugees and creating dependence, which entrenches aid-reliant survival strategies. Unsurprisingly, refugees can be quite

⁴ The Handbook for Repatriation and Reintegration Activities, which was aimed at operationalising UNHCR’s Durable Solutions Policy through the ‘4Rs’ approach, was completed in 2004. UNHCR Policy was completed in 2008 and there is a Handbook for Reintegration, which was completed in 2014, although much of the handbook refers to internal UNHCR checklists.

⁵ UNHCR’s review of voluntary repatriation is one of the few exceptions in this regard.

⁶ For instance, humanitarian agencies in camps can mainstream consideration of possible return/repatriation through (such as more compatible education programs and transferable livelihoods).

resistant to the idea of trading their existing security – based on coping strategies learnt during displacement – for an uncertain predicament back home.

Helping refugees to anticipate the impact of losing access to aid, camp governance structures, camp security, and family and social networks in the camps, while at the same time preparing for new risks, challenges and opportunities, thus needs to be a key part of return and reintegration programming if it is to be sustainable and not lead to cycles of displacement and onward movements.

A wide range of practices are being developed in the region to address such challenges, including: basic law training; ‘go and see’ visits; country orientation for youth born in the camps; Skype calls between refugee and home communities to reunite family, form bonds, and build returnee trust among locals and government officials in return areas; ‘farewell groups’ in camps that support return preparedness, and; self-help orientated ‘welcome groups’ (composed of returning IDPs, refugees and conflict affected and non-displaced populations) that help introduce returnees – within the local area, access government services and livelihoods support, and provide local advice.

Similarly, programs that help raise refugees’ awareness of the bigger forces shaping their lives (the politics of aid, resettlement, return, reintegration, camp closures or other matters) and help them to identify and assess risks will mean refugees are better able to judge whether to return or stay, and to develop more realistic contingency plans, rather than being resistant to change or oblivious to the changing dynamics affecting their lives. Such efforts to enhance refugee preparedness and resilience can have a marked effect in reducing the burden on families, communities and government authorities in return areas. They also tend to reduce the potential for secondary problems such as conflict over scarce resources, exploitation of returnees by opportunists ranging from loans sharks to smugglers and traffickers, and stories of failed reintegration and hardship deterring other would-be returnees.

Facilitating Reintegration

Although UNHCR’s role does envisage facilitating reintegration, it is not expected to play the main role in reintegration. The ‘heavy lifting’ is meant to be done by development actors in coordination with the state, which has the responsibility for providing assistance and protection. In practice, however, countries of origin often fail to deliver and development actors are often focused on larger issues and not sensitive to the needs of reintegrating refugees.⁷ The underlying problem has been that refugee repatriation and reintegration has never fitted neatly into the mandates, priorities and approaches of humanitarian, development and peace-building actors. For decades, it was largely seen as UNHCR’s sole responsibility, but reintegration requires the early and sustained focus of all three sets of actors. While UNHCR’s role is primarily voluntary repatriation and ‘initial’ reintegration, with the assumption that UNHCR and humanitarian actors would ‘hand over’ to development and peace-building actors in country, the transition in practice has rarely been effective.

Numerous attempts have been made to bring development actors into the space – both earlier in the return and reintegration process, and in a more targeted and substantial manner – through initiatives such as ‘the 4Rs approach’ (linking repatriation, reintegration, rehabilitation and reconstruction), including returnees in national development plans, and more recently by the Solutions Alliance and the World Bank, but with mixed success. The UNSG has also attempted to resolve the problem with the

⁷ Development programs frequently focus on infrastructure and larger-scale livelihood and employment programs that returned refugees are unable to access.

introduction in 2011 of the UNSG's *Framework for Ending Displacement in the Aftermath of Conflict*, which sets-out nominal roles and responsibilities for UN agencies in the return and reintegration of refugees and IDPs, but a key factor that has been missing at the country level is donor and receiving government prioritisation.

The formation of the Somalia Returns Consortium provides an interesting example of efforts to engage respective governments and humanitarian, development and peace-building actors. The Consortium commenced by conducting a return intentions survey, a survey of reintegration areas and a needs assessment. This helped ensure an evidenced-based approach to the development of a common return and reintegration strategy, the design of an integrated program drawing on the strengths of each actor, and the necessary buy-in of a range of stakeholders.

Another challenge stems from the fact that the conditions for voluntary repatriation in safety and dignity are often not fully met and return numbers are not sufficient to justify large-scale organised voluntary repatriation programs. In the absence of larger-scale and more well-resourced programs, key stakeholders often do not see voluntary repatriation as a priority, including receiving governments, and humanitarian, development and peace-building actors. The *de facto* strategy often then becomes 'facilitating' individual spontaneous returnees (e.g. travel assistance, modest initial reintegration support etc.), rather than addressing bigger systemic challenges such as reforming housing, land and property restitution systems and complicated procedures for obtaining civil documents.

With the focus often on macro conditions for return, tri-partied agreements, and the nature and timing of a large-scale organised return process (or options to facilitate individual returnees in the interim), the role of refugees in return preparedness and reintegration, as well as in peace processes and reconciliation and peace-building, often gets overlooked. Yet mobilising refugee communities to support return preparedness, and mobilising host-community support for reintegration, can have enormous value, and be crucial for the sustainability of reintegration. In this context, the Australian Department of Home Affairs-funded Sri Lankan Refugee Return and Reintegration Program provides an innovative approach. In this case there was recognition that merely assisting individual spontaneous returnees was insufficient, and that there was no road map for return, a tripartite agreement, or much interest among humanitarian actors. Moreover, the return flow was characterised by small numbers going to diverse resettlement areas in Sri Lanka. Accordingly, the program was designed specifically to mobilise refugee support in the camps in India for return preparedness, and support from the host community in Sri Lanka, which includes conflict-affected and returned IDPs, to provide mutual support for local reintegration, livelihoods and protection. Through better preparedness – including the ability to anticipate risks, challenges and opportunities and address them – the program has demonstrated increased refugee self-reliance and resilience, and a reduced burden on host family, community and government services. A similar approach is now being piloted in the camps in Thailand.

Difficulty in accessing civil documents can be a major deterrent for would-be returnees, and can severely limit reintegration potential if returnees cannot open business, take out loans, reclaim land, and access legal protection, particularly in protracted displacement situations where births, deaths and marriages have not been recorded. For receiving governments, often beset with a vast array of challenges in addition to reintegrating refugees, dealing with complicated cases of verifying identity and issuing civil documents and citizenship or reforming procedures is rarely a priority. Here, technical

assistance and advice from regional states and/or bodies such as the RSO could have a considerable impact.

Recognising that registration and documentation is a prerequisite for return, the RSO has been developing its capacity to assist member states in addressing gaps in their civil registration systems. The focus, however, has been on assisted voluntary return of migrants and asylum seekers not owed protection from developed countries, as opposed to the larger number of refugees in camps and urban areas in the region (e.g. in Thailand, Malaysia and India), many of whom may wish to return, but lack adequate documentation or have encountered procedural barriers trying obtaining documents. For refugees, lack of civil documents combined with inaccessible, cumbersome or fraught procedures to obtain birth, death and marriage certificates, certificates recognising education and vocational attainments, and housing, land and property titles often pose considerable barrier to return. This may also lead to extreme hardship for those who do return and then cannot enrol in school, apply for formal employment, reclaim land and housing, and access government services, including legal protection.⁸ Extending greater technical assistance to states to facilitate voluntary repatriation would ease the burden of reintegrating returnees over the longer term by markedly increasing the ability of refugees to reintegrate and become self-reliant.

Fines for overstaying visas, penalty fees for late application for civil documents and other such measures can also pose a considerable barrier to return. Indeed, the combination of these factors has often resulted in protracted stay, or worse still has becoming a push factor for irregular migration, for instance, in the past from the Sri Lankan refugee camps to Australia. In this context, it is recommended that when the RRWG convenes in April 2018, and considers the establishment of a Technical Experts Group to explore best practice,⁹ the group consider extending its focus to include key common challenges in the voluntary repatriation and reintegration of refugees from within the region.

There are a range of practical challenges in voluntary repatriation from urban areas. Firstly, small numbers of different refugee nationalities scattered across the region or urban areas within countries makes coordinated programs challenging. Often the numbers are also too small to warrant the attention of international actors, such as the 5,000 or so Sri Lankans in Malaysia or African refugees in South East Asian capitals. This also makes it difficult to ‘reach out’ and identify refugees who wish to return, and help refugees make informed decisions and support their preparedness. Urban refugees also often face barriers to return such as having to pay penalties for overstaying visas, re-entry visas fees or for late applications for civil documents. Refugees with rural/agricultural backgrounds may have also developed new skills and livelihoods in urban areas and may need additional support to return to a new urban area.

Case Studies

1. Repatriating and Reintegrating Myanmar Refugees from the Camps in Thailand

After decades of protracted conflict and displacement in South East Myanmar, prospects for the sustainable return of over 93,000 refugees in the camps in Thailand are greater than ever. However, a

⁸ For example, many Sri Lankan refugees married in India have no marriage certificates and around 20,000 children have been born in the camps without civil documents.

⁹ Co-Chairs Summary of the Bali Process Ad Hoc Group Roundtable on Returns and Reintegration (Manila, 3-4 December, 2015)

wide range of challenges exist, including the absence of humanitarian funds and suitable return arrangements, and a lack of flexibility in disbursing development and peace-building funds in return areas, which limit available reintegration options.

A series of bilateral ceasefires signed in 2011-13 and the 2015 Nationwide Ceasefire Agreement have brought relative stability, with a decrease in armed conflict and greater freedom of movement. Stakeholders, including the Government of the Union of Myanmar (GoUM), UNHCR and the ethnic armed organisations (EAOs), agree that conditions in the South East are not conducive to large-scale refugee return. The peace process has not yet produced a political settlement, which addresses the causes of conflict and displacement, and troops have not withdrawn from contested areas, which are potential return areas. These factors, along with a paucity of infrastructure and services in South East Myanmar, contribute to low confidence among refugees in the potential of return, despite there no longer being protection reasons for many to remain displaced.

Concurrently funding to assist refugees in the camps in Thailand has been reducing for years, largely as a result of scarce resources.¹⁰ At first, cuts targeted non-essentials, but in recent years there have been cuts to basic assistance such as food, shelter and health. Without food and other basics, the camps will become uninhabitable, potentially by early 2019, and the Royal Thai Government (RTG) is unlikely step in to support the camps. Humanitarian agencies working in the camps are preparing for the worst, including The Border Consortium, which supplies food to the nine camps along the border. While many agencies have already pulled out,¹¹ those remaining are all preparing to phase out.

In the absence of progress in Myanmar's peace process, national, sub-national and international authorities are unable or unwilling to promote a large-scale organised return process. Refugees are thus stuck between two difficult situations: spontaneously returning with little support; or remaining in camps with decreasing support.

It is generally recognised that an incremental, voluntary and dispersed return process will be more sustainable than sudden, coerced and concentrated repatriation. UNHCR, in collaboration with the Myanmar and Thai governments, has introduced a facilitated return process to support refugees who choose to return despite the risks. However, to date only 71 of the some 15,000 refugees (or up to 18,000) who have returned from the camps in Thailand since 2012 (less than 1%) have gone through the UNHCR process.¹² The key reasons for this is the inefficiency of the GoUM's screening process, which is required under the UNHCR repatriation process, for those refugees who have registered their interest. Some refugees who have chosen not to use the scheme have expressed weariness to go through the GoUM screening process due to residual distrust. The result is that the majority of the 15,000 refugees who have returned, despite having little or no income and assets, have had to self-fund and negotiate their own arrangements without any real support.

Developing alternative repatriation and initial reintegration support programs, to support spontaneous returnees, would have an enormous impact. However, government and multi-lateral donors in Myanmar

¹⁰ With far greater unmet needs in Yemen, Syria, Iraq and now Bangladesh, along with more urgent humanitarian needs in Kachin, northern Shan and Rakhine states in Myanmar, donors would find it hard to justify continued assistance to encamped refugees, many of whom they believe no longer require international protection.

¹¹ In the largest of the nine camps, Mae La, which hosts 40,000 refugees, the number of NGOs operating programs for refugees has dropped from 21 to just 10 in two years.

¹² Another 386 have registered with UNHCR for return, but have been waiting over one year for GOUM clearance.

have consistently opposed the use of peace-building and/or development funds to support resettlement and initial reintegration. Peace-building donors have expressed interest in strengthening the linkages between return planning and the peace dialogue process and developing return monitoring mechanisms. Similarly, development donors are expanding their reach in areas of potential return and promoting market-driven approaches for sustainable livelihoods. However, just as reducing chronic poverty in local communities is a long-term challenge, it is unrealistic to expect returnees to be self-reliant within a few months.

In this context, UNHCR's voluntary repatriation program, which supports refugees spontaneously returning, remains the mechanism that provides the most support for returnees (approx. US\$300 per person) and needs to be continued. Some urgent attention to this program from the RTG and GoUM could assist to make it more efficient and effective. Also, greater support for preparedness, travel assistance and reintegration needs to be provided for the majority of refugees spontaneously returning outside the UNHCR-GoUM process.

Given the challenges of accessing land and livelihoods in South East Myanmar, the extreme paucity of infrastructure and services, and the uncertain state of existing communities, who compose both returned internally displaced persons and conflict-affected civilians, failure to provide adequate reintegration assistance will be highly counter-productive. The absorption capacity of host communities will be quickly eroded, resulting in increased tensions and further rejections of new returnees. Returnee hardship stories will quickly spread in the camps and discourage other would-be returnees. Without being able to survive in the camps, refugees will be pushed into ever-more risky options, feeding irregular migration and exposing the vulnerable to exploitative employers, smugglers and trafficking networks.

The initial reintegration support could supplement existing community-driven approaches to return planning and preparedness, which are already underway. Refugee leaders are already consulting with local villagers, authorities and civil society organisations and conducting non-technical surveys about access to protection, land, livelihoods and social services in areas of potential return. The findings from these "Go and See" visits are distributed amongst the refugee population to promote more informed decisions about return.

Ideas for action in response to this case include:

1. Donors prioritise support to voluntary repatriation and reintegration support in South East Myanmar, for the majority of refugees returning spontaneously, without assistance.
2. To enable encamped refugees to return, encourage issuance of Certificates of Identity (travel documents) to prospective returnees registered or verified by RTG and UNHCR (noting around 100,000 hold biometric identity cards) and improve refugee access to consular services.¹³
3. Donors to refrain from making further funding cuts to basic assistance in the camps given that conditions for large-scale organised repatriation are not yet present, and an incremental, voluntary and dispersed return process will be more sustainable than sudden, coerced and concentrated repatriation.

¹³This could be done by introducing mobile civil documentation clinics in the camps or a remote citizenship application process.

4. Expand the use of Peace Funds for reintegration in all return areas in South East Myanmar.

2. Repatriating and Reintegrating Refugees from Urban Areas in Malaysia

The refugee situation in Malaysia continues to be influenced by developments in Myanmar as nearly 90% of the refugees originate from there (133,077 of 152,326 registered persons of concern as of 31 December 2017). The democratization process in Myanmar, coupled with reports on the improvement of the human rights situation and emerging voluntary repatriation from the camps in Thailand, suggests that refugees of Chin ethnicity and other similarly-situated groups such as Burmese, Rakhine, and Karen, may no longer require international protection provided under UNHCR's mandate.

Situation in Myanmar: In August 2016, Aung San Suu Kyi said Myanmar would welcome back refugees who wish to return voluntarily to the country. The Government further declared that with the collaboration of the Thai Government it would start repatriating refugees located in refugee camps along the Myanmar-Thailand border. Voluntary repatriation centres were set up in those camps to assist those who wanted to return to Myanmar and to be formally processed according to Thai regulations.

In relation to Chin refugees, objective conditions in Chin State have improved steadily to the extent that previous assumptions about their need for refugee protection no longer prevail. Reports indicate that Chin State remains one of the least developed areas of Myanmar and that the poverty rate is extremely high. However, there are some promising indications of social and infrastructural improvements. For example, a Norwegian telecommunications company has begun construction to plant mobile phone towers in the southern part of Chin State; authorities have opened a new hydro-electric plant to increase the hours of power supply and the Government of Chin State announced a new plan to provide social services that would benefit children and women. The Comprehensive Development Plan for Chin State (CDP) and accompanying Local Social Plan (LSP) includes project proposals selected and prioritized by the people in Chin State and the Chin State Government on the basis of identified needs such as social protection, agriculture, livestock, technical vocational education training and road infrastructure.

The new Government has also prioritised the important issue of restitution of lands previously confiscated by the army or the government itself. Myanmar lawmakers and NLD Party members have taken up the cause of farmers and villagers who were victims of 'land-grabs' in several areas of the country. Despite these efforts, the issue remains a reason why refugees choose not to return.

The Myanmar Minister of Labour, Immigration and Population has stated that the Union will bring back 3,000 migrant workers currently detained in Malaysian detention centres. While the refugees that return with Government official programmes will receive official assistance, those who return informally and illegally will not be assisted.

With these changes in mind, UNHCR has explored a voluntary return 'facilitation' in Malaysia for all Chin persons of concern since 2010. Since the start of facilitated voluntary repatriation procedures, only a handful of people have expressed any interest to return. However anecdotal evidence suggests that many Chin and other ethnic minorities have returned from Malaysia to Myanmar informally by their own means without UNHCR assistance. In many cases, returnees have secured national passports or other

travel documentation through the embassy in Kuala Lumpur, even whilst holding UNHCR status and identity documents. Anecdotes also indicate regular ‘circular’ migration patterns between Myanmar, Malaysia and other countries in the region, including via regular/irregular migration paths.

For its part, UNHCR provides regular information on voluntary repatriation options available to registered persons of concern, including: reducing prospects for resettlement; limited local regularisation possibilities; the content of voluntary repatriation packages; capacity of UNHCR and partners to monitor returns; prospects for the Government of Malaysia to provide identity cards for travel purposes.

Solutions, including repatriation and in-situ regularisation:

In the long term, resettlement is unlikely for the majority of ethnic minorities from Myanmar due to the dramatic reduction of global places and existing and future resettlement places being reserved for individuals with heightened risk/vulnerabilities and for whom local or return solutions are not appropriate.

Although there has been an increase in the number of refugees and asylum seekers from Myanmar expressing an interest to return, the numbers remain small as there is still little confidence among refugees that it is viable to return due to the lack of livelihood opportunities, lack of educational opportunities and limited access to basic services. Many refugees from Myanmar have acquired education, skills and work/income opportunities in Malaysia. Many young people have been born and raised in the modern context of the major conurbation of Kuala Lumpur. For these people, the prospect of ‘return’ to developmentally-challenged and remote rural areas of Myanmar, with which they have little contemporary connection is not attractive.

As in other situations, voluntary repatriation in Malaysia often looks only at the ‘macro’ elements of bilateral return arrangements, including conditions in the country of return and the modalities of that return. Insufficient attention is often paid to the socioeconomic, community and other factors in the hosting state itself. Voluntary return programmes that are disconnected and irrelevant to the needs and socio-economic aspirations of the affected refugee population are unlikely to gain traction.

Currently, prospects for regularising the status of refugees in Malaysia are also limited. Refugees are regarded as illegal migrants within the current legal frameworks in Malaysia. Limited *de facto* protection is achieved for refugees registered with and holding UNHCR documentation. This provides some immunity from arrest and dispensations to health and education opportunities but these are limited in scale and quality. Refugees are not legally entitled to work, although most who are fit to do so find employment in the informal, unregulated labour market where conditions are poor and exploitation high. A Government-initiated work pilot scheme for 300 Rohingya refugees in the manufacturing and plantation sectors was tested although unsuccessful. The Government is also set to launch its own Registration Scheme (TRIS) which will result in Government Identity cards for UNHCR-registered refugees, although currently they would not grant any status or rights. Discussions with the Government of Malaysia on the possible local integration options for ethnic Chin (temporary or long term), including work permits, have yet to achieve positive results.

A more regulated environment for refugees in Malaysia would have many benefits: addressing law and order and security concerns through better biometric data collection and registration; employers and

the Malaysian economy would benefit from a lawful work pool of willing refugees; and the refugee communities would benefit from greater security, stability and disposable income – which would translate into better health and education outcomes. Regularising refugees also creates opportunities for durable solutions such as voluntary repatriation when circumstances in the home country permit, by increasing earnings, skills, and capacity for self-reliant income generation and community self-esteem.

Ideas for action in response to this case, include:

- Trialling schemes to assist preparation for return via livelihood opportunities, including in-situ regularisation of would-be returnees through issuing temporary return preparedness work permits.
- A joint review between the Malaysian Government, UNCHR and IOM, to assess the impact of procedural barriers and enablers (exit permit, fees for re-entry etc.) on would-be returnees, with a view to improving the accessibility of voluntary repatriation.
- To facilitate integration, it is recommended that consideration be given to innovative financing options for refugees returning such as sponsorship arrangements

Conclusion and Recommendations

There is considerable scope for revitalising voluntary repatriation and reintegration as a safe and dignified durable solution. It is therefore timely for states in the region to reach-out and work with a wider array of actors to identify and address the multitude of barriers to voluntary repatriation. They can also explore good practice and innovative ways of enabling reintegration, including through the ‘whole of government’ and ‘whole of society’ approaches UN member states committed to in the 2016 New York Declaration on Refugees and Migrants and its Comprehensive Refugee Response Framework.

The re-convening of the Bali Process Return Working Group in 2018 provides an opportunity for Bali Process member countries, in partnership with UNHCR, IOM and the Regional Support Office, to galvanise efforts to enhance voluntary repatriation and reintegration as a safe and accessible durable solution in Asia-Pacific.

The following areas of work merit consideration for the Working Group’s forward agenda:

- The development of more detailed standards, indicators and guidance for countries of origin and host countries on good practice for voluntary repatriation and reintegration, drawing on existing and emerging international standards, with an emphasis on preparedness and reintegration considerations;
- Practical project work with select affected governments on the removal of procedural barriers to voluntary repatriation, particularly re-entry procedures, accessing civil documents and citizenship, and the recognition of educational and vocational qualifications. There are clear synergies here with the RSO’s work to assist states on civil registration and vital statistics;

- Action-orientated research to identify innovative practice and learning with a focus on preparedness for repatriation and reintegration as a means of building resilience and reducing the burden on host families, communities and government in return areas;
- Consultation with the development community regarding prioritising voluntary repatriation and reintegration support into national development plans, and UN country strategies, operational planning and programs.
- Research and pilot projects into ‘access to livelihoods’ for potential returnees, including regularisation of status via temporary return preparedness work permits, to enable the accumulation of savings, skills development and preparation for return.

If members of the Working Group agree that these are the priority themes, they could be included in forthcoming consultations on the Global Compact for Refugees, and developed concurrently under the auspices of the ADFM.¹⁴

¹⁴ In addition to supporting existing calls in the GCR Zero Draft to scale-up support to states, relevant stakeholders and countries of origin (p12, para 66), and include repatriation and reintegration in political settlements, peace agreements and crisis recovery strategies (para 68).