ASIA DIALOGUE

ON

FORCED
MIGRATION

CPD CENTRE FOR POLICY DEVELOPMENT

ISIS MALAYSIA

Institute of Human Rights and Peace Studies

LIPI

BRIEFING PAPERS

Regional Strategies for Forced Migration

Context

The Asia Pacific is hosting 9.5 million people of concern to UNHCR as of figures from mid-2018. This number includes 4.2 million refugees, 2.7 million internally displaced persons and 2.2 million stateless people. All of these numbers have increased since the previous year. Many states in the region are making great efforts to host refugees and displaced persons, and have provided protection in challenging circumstances. For example, Bangladesh kept its borders open when over 700,000 stateless Rohingya refugees crossed the border from Rakhine State in Myanmar. Indonesia is hosting 13,840 refugees from 49 different countries, and Malaysia hosts nearly 165,000 refugees and asylum seekers that are registered with UNHCR.

All states in the region have joined the Global Compact on Refugees (GCR), and most have also acceded to the Global Compact on Migration (GCM), which provides a new collaborative context within which to work. States in the region have taken a number of positive steps lately in the governance and management of refugees and migrants at risk. These developments are the building blocks upon which states seek to implement the GCR and GCM.

For example, the 2016 Indonesian Presidential Decree makes a commitment to non-refoulement and unifies the perspective of agencies within the Indonesian Government towards refugees and asylum seekers. The Thai Government has pledged to end statelessness by 2024, and has taken practical steps towards achieving this goal through the 2010 Civil Registration Act, which allows for the birth registration of children of parents who are refugees. Malaysia too has also taken steps towards providing greater opportunities for refugees to access legitimate work. A number of states in the region have made progress in avoiding the detention of children, with seven Thai Government Departments signing an MoU on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres in January 2019.

In its 2016 Declaration, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) reinforced the need for members to "provide safety and protection to migrants, victims of human trafficking, smuggled persons, asylum seekers and refugees, whilst addressing the needs of vulnerable groups including women and children and taking into account prevailing national laws and circumstances." The Declaration also recognised "the need to grant protection for those entitled to it, consistent with relevant international legal instruments and in all cases, the principle of non-refoulement should be strictly respected." This commitment was reaffirmed by the Bali Process in its 2018 Declaration.

The Bali Process has responded proactively to the displacement crisis in Bangladesh and Myanmar and ASEAN has advanced regional and national responses to trafficking in persons. These regional fora have made positive moves towards coordinating their efforts in managing shared regional challenges posed by the movements of refugees and migrants at risk.

All of these steps have created a more favourable environment than has existed previously, within which to advance the protection of refugees and migrants at risk. The ADFM seeks to capitalise on this environment. This paper highlights key steps taken thus far and introduces proposals on what can be done next to spur more ambitious and effective regional cooperation on these issues.

Overview of ADFM goals and actions to date

Since its establishment in August, the Asia Dialogue on Forced Migration (ADFM) has pursued more effective, dignified and sustainable approaches to forced migration in the Asia Pacific. Over seven ADFM meetings, the following issues have been covered.

<u>Options for active and resilient regional architecture</u>

In the wake of the May 2015 crisis in the Andaman Sea, the ADFM proposed a Bali Process Consultation Mechanism and Task Force on Planning and Preparedness. Bali Process members subsequently adopted these recommendations in 2016. The ADFM then advised the activation of the Consultation Mechanism in response to the Rohingya displacement in August 2017. The mechanism was activated in October 2017 and the response of the Bali Process included a 'good offices' outreach by the co-chairs with Myanmar and Bangladesh in May 2018. Bali Process Co-Chairs have signalled their willingness to do more with this authority and responsibility. Much more can be done to assist regional countries to address the protection needs of refugees and migrants at risk more effectively.

The ADFM has also proposed ideas for how ASEAN could play a more proactive role in migration governance in the region, building on the work of ASEAN on protections for migrant workers, to displacement, and tackling trafficking in persons.

In 2016, ADFM discussions were held on the links between national security and forced migration, and how the private sector could be engaged more effectively. Private sector engagement can be a strong lever for change. The Bali Process Government and Business Forum – itself a landmark achievement – and the ASEAN Responsible Business Forum could combine efforts on the issue of private sector involvement, or choose respective issues of focus. One of these issues could be addressing corruption or complicity of officials in human trafficking operations, for example.

The signing of the two Global Compacts in late 2018 provides fresh inspiration and guidance for closer cooperation and practical progress in the region. The Global Refugee Forum will be held on 17-18 December 2019. This is a key opportunity to make tangible and symbolic progress for refugees and migrants at risk. States in the region may wish to consider not only pledging what they can, but also opportunities to come together to develop good practice exchanges.[1] In the long term, these Forum meetings every two years will play an important accountability role in tracking the implementation of national and group pledges. *This ADFM meeting will again consider how this enhanced cooperation could happen in practice. Also, how the region can make the most of the opportunities provided by the GCM, GCR and upcoming Global Refugee Forum in December 2019, to advance the regional response to the shared protection challenges concerning refugees and migrants at risk.*

<u>Advancing the anti-trafficking agenda</u>

Wherever there are vulnerable communities, the risks of human trafficking exist. Asia is a major source region for human trafficking, not only within the region but also to other parts of the world. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), and related work of the ASEAN Ministers' Meeting on Transnational Crime, is a significant contribution to anti-trafficking in the region, as are new commitments to the ASEAN-Australia Counter-Trafficking Program. In 2017, the ADFM provided advice on the effective implementation of ACTIP. As a result of its sixth meeting in Sydney in 2018, the ADFM conducted a trafficking risk assessment of the situation in Cox's Bazar, Bangladesh, and presented the results at the ADFM's seventh meeting in Bangkok. The assessment found that much had to be done if a 'crisis within a crisis' was to be avoided. *Addressing the trafficking risks arising from the situation in*

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[1] Pledges can be financial or otherwise (i.e. increased visa places, or introducing community sponsorship programs). In addition to pledges, countries will have the option to develop 'national action plans' on refugees, which could look towards the long term.

Cox's Bazar will be covered during the ADFM meeting, and should form part of the strategy to address the displacement in Cox's Bazar and Rakhine State.

Current and future challenges of mass displacement in the region

Areas of concern regarding current and future displacement include Afghanistan and Syria. Afghanistan currently has 1.9 million IDPs, and Pakistan is hosting 1.4 million Afghan refugees. More than half of all Syrians have been displaced by the war: 5.6 million are refugees and 6.6 are internally displaced. Another situation of note for the region is increased boat movements leaving Sri Lanka, where the situation appears volatile.

All ADFM meetings to date have had a focus on regional and national responses to displacement of Rohingya refugees from Rakhine State in Myanmar. In 2015, the ADFM was invited to contribute to the Bali Process Review of the Region's Response to the May Andaman Sea situation. The ADFM recommended this Review ahead of the 2016 Bali Process Ministerial Meeting. Subsequently, in late 2016 and 2017, the ADFM issued statements expressing grave concerns about deteriorating conditions in Rakhine and, unfortunately, about even greater displacement that ultimately occurred. *At this eighth meeting, we want to explore concrete proposals for action that would address this displacement crisis.*

The Asia Pacific is considered to be one of the most vulnerable regions in the world to climate change, with the Asian Development Bank estimating that around 42 million people were displaced between 2010 and 2011 due to "sudden-onset climate related and extreme weather events."[2] This situation will pose more of a challenge as the effects of climate change worsen. *This is a subject that the ADFM plans to do more on in future*.

Other significant issues

In early 2017, the ADFM addressed the subject of return and reintegration, which must be a part of any comprehensive response to the movements of refugees and migrants at risk. On this issue more than most, a uniform approach across the region is important as is agreement on regional standards of practice, in keeping with international standards and aspirations. *At this eighth meeting, coordinated practice among states on this issue, including the important principle of non-refoulement, will again be part of our discussions.*

High on the ADFM's agenda are alternatives to the detention of children, and the development of a regional platform and program of learning and action to share good practice. This matter is critically important, as a high proportion of forced migrants are children. For instance, more than 50% of the 900,000 plus displaced persons in Cox's Bazar are under the age of 18. A specific roundtable is planned on this issue, to be convened by the ADFM and the International Detention Coalition (IDC) in the second half of 2019.

In addition, some countries are attempting to make work and livelihood opportunities available to refugees and migrants at risk; something the ADFM has discussed in the past. *At this meeting we will discuss opportunities for work and livelihoods to assist in the stabilisation of vulnerable displaced populations and to assist with sustainable return and reintegration.*

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

Aim of the eighth ADFM meeting: reinvigorate regional leadership and governance, respond proactively to displacement crises, and take practical steps towards a stronger regional protection system.

There is now a significant opportunity for states and institutions to coordinate their efforts to advance the regional protection system for refugees and migrants at risk. The ADFM sees this as an opportune time to renew faith in regional approaches through a number of key, timely announcements and actions.

The GCM and GCR received strong support in the region (see Table A). Although not legally binding, these two compacts provide a good basis for renewed regional coordination and leadership on critical issues concerning refugees and migrants at risk.

Both the GCR and the GCM recognise the value of regional groups and processes and how important it is to build on existing mechanisms, platforms and frameworks. GCM objectives on trafficking, alternatives to detention, addressing border security and regularisation of status, and documentation processes (objectives, 10, 11, 12 and 13), among others, are complementary to the ADFM's work, and the challenges facing the region. These aspirations are also in line with Sustainable Development Goal 10.7 to "facilitate orderly, safe, regular and responsible migration and mobility of people including through the implementation of planned and well-managed migration policies."

The primary actors in responding to the protection needs of refugees and migrants at risk are the region's nation states. They alone have the legitimate political power and fiat to facilitate resolution of issues. Many states in the region, as noted above, are making good progress on these issues. The Global Compacts provide the opportunity for states to leverage support from each other and from regional and international support platforms.

There is an opportunity to make practical progress on four key protection challenges for the region:
- Alternatives to the detention of children.
- Displacement crises and stabilising known, vulnerable populations.
- Tackling trafficking in persons, forced labour and slavery.
- Return and reintegration of refugees and migrants at risk, including ensuring the principle of non-refoulement is strictly respected.

For effective responses to these issues, it is imperative that states approach these issues collectively. The Bali Process has been making strong strides in its support to member states. In the Bali Process Review of the 2015 Andaman Sea crisis, countries agreed that "there was little functioning capability to deal with root causes of displacement in the affected countries, and there was little functioning capability to deal with the consequences for the region when mass displacement occurs." The latter has improved but more needs to be done, going beyond dialogue and consultation.

In August 2018, when the Bali Process Ministers reaffirmed their commitment to implementing the 2016 Bali Declaration, ministers also supported "increasing links between the Bali Process and other related regional and international consultative processes, including ASEAN." They noted "the development of the Global Compacts on Refugees and for Safe, Orderly and Regular Migration as frameworks for international cooperation which seek to address displacement and promote well-managed migration."

Now is the moment for regional and national actors to coordinate their efforts to build a stronger regional protection system for refugees and migrants at risk in the Asia Pacific. ASEAN and the Bali Process can draw on the collective aspirations and objectives of the GCR and GCM to assist their member states with the protection challenges they face. This would demonstrate tangible steps toward implementing the Global Compacts in the region, the 2016 Bali Declaration and subsequent commitments, as well as ASEAN agreements on trafficking in persons and migrant workers, among others.

The July 2019 Bali Process Ad Hoc Group Senior Officials' Meeting is an excellent opportunity to signal reinvigorated commitments. The meeting should be seen as the start of a one-year road-map to the 2020 Bali Process Ministerial Conference, during which time momentum can gather. The Global Refugee Forum in December 2019 will be a good half-way point to check in on the progress being made by states and regional fora.

These opportunities are explored more in the four policy briefs that follow this paper. Consolidated proposals to seize these opportunities at the regional and global milestones ahead are presented in the table overleaf.

Annex

Table A: Comparative adoption of the two Global Compacts

	Global support	ASEAN country support	Bali Process country support
Global Compact on Refugees (UNGA, Dec 2018)	181 countries (3 abstained, 2 voted against)[3]	10/10	44/45
Global Compact for Safe, Orderly and Regular Migration (Morocco, Dec 2018)	152 countries (12 abstained, 5 voted against, 24 did not vote)[4]	8/10	36/45

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[3] Andrew & Renata Kaldor Centre for International Refugee Law (2019) *The Global Compacts on Refugees and Migration Factsheet,* January.
[4] https://digitallibrary.un.org/record/1656414?ln=es

Regional strategies – consolidated proposals

	<u>Overarching Proposal</u> <u>Build Stronger Regional Protection System for Refugees and Migrants at Risk</u> Leverage the aspirations and objectives of the Global Compacts on Refugees and Migration and make practical progress on key regional protection challenges, through national and regional level initiatives that focus on: • developing and trialling good practice **alternatives to the detention of children**, and building a regional platform and program of learning and action around these good practices; • forward-looking responses to **displacement crises and stabilising known, vulnerable populations**, including through opportunities for education, work and livelihoods; • advancing efforts in the region to tackle **trafficking in persons**, forced labour and slavery, particularly through innovative private sector and government collaboration; and • developing good practice in the **voluntary, safe, dignified and sustainable return and reintegration** of refugees and migrants at risk, with engagement of government and non-government stakeholders, including ensuring the principle of non-refoulement is strictly respected. Proposed national and regional actions set out below in steps A to F.
A.	<u>National Initiatives and Pledges</u> Building on the positive steps already taken in countries, and focusing on the four priority themes above, states could: • implement good practice national initiatives; • share and learn in regional forums; • ensure resettlement opportunities focus on refugees most at risk in the region; and • make pledges at the Global Refugee Forum in December 2019, and any commensurate GCM forums, as a way of signalling their priorities and intentions. One concrete example of such a positive step would be the creation of a regional platform and program of learning and action on alternatives to child detention, as outlined in *Policy Brief 4.*
B.	<u>Bali Process Reinvigorated Vision</u> Use the opportunity of the July 2019 Ad Hoc Group Senior Officials' Meeting and the 2020 Ministerial Conference to reinvigorate the Bali Process protection mandate and remit. As part of this, the Bali Process Co-Chairs could elevate a strategic intention of the Bali Process to assist member states to strengthen the regional protection system for refugees and migrants at risk, in line with the 2016 Bali Declaration, and leverage the aspirations and objectives of the Global Compacts on Refugees and Migration. This can include an enhanced focus on displacement crises in the region, through: • the Consultation Mechanism 'good offices' outreach with the involvement of Bali Process Ministerial Co-Chairs; • the ongoing monitoring of displacement situations and development of operational responses through the Taskforce on Planning and Preparedness; and • new proposals and initiatives of support to affected countries, identified through the above.

C.	ASEAN Strengthened Position
	Present a coordinated and comprehensive ASEAN position on migration, to assist members states to build a stronger regional protection system for refugees and migrants at risk, and to meet the aspirations and objectives of the Global Compacts on Refugees and Migration.
	As part of this, ensure ASEAN and its entities, particularly the AHA Centre, have the necessary capacity and partnerships to conduct comprehensive needs assessments for vulnerable, displaced populations, including with respect to their protection related issues.
D.	Bali Process and ASEAN Coordination
	Continue to advance concrete opportunities for Bali Process and ASEAN cooperation on protection of refugees and migrants as risk, with a focus on:
	- coordinating technical assistance and capacity-building support to the trafficking prevention and counter-trafficking efforts of countries affected by known displaced and vulnerable populations; - combining efforts on the issue of private sector involvement in countering and preventing trafficking in persons, forced labour and slavery, via cooperation of the Bali Process Government and Business Forum and the ASEAN Responsible Business Forum; and - stabilising vulnerable populations, including through expanding education, work and livelihoods opportunities.
E.	International Conference on the Displacement Crisis in Myanmar and Bangladesh
	Myanmar and Bangladesh (along with other interested countries) to call for an International Conference to renew support for the Joint Response Plan (currently only 18% funded) and invite new proposals, plans and expressions of interest to assist with durable solutions for those displaced. This is in line with the GCR's provision for affected countries to call for a support platform.
F.	Naf River Development Initiative
	Support inclusive development on both sides of the Bangladesh-Myanmar border through something similar to a *Naf River Development Initiative (NRDI)*, benefiting both the displaced and local communities. An NRDI that responds to the needs and wellbeing of residents should be conceptualised, developed and, if feasible, planned and implemented. Apart from economic activities, this will include infrastructure, health, education, protection and other social and community services, benefiting local, displaced and refugee populations.
	All development should be undertaken sensitively and in consultation with all affected stakeholders, in such a way that does not inhibit repatriation or further incentivise exclusion or persecution of the Rohingya in Rakhine State.

Policy Brief 1: Update on Regional Response to Situation in Rakhine State & Cox's Bazar *(from Nov 2018 – June 2019)*

This policy brief presents an update on the displacement crisis in Cox's Bazar and Rakhine State in the months since the ADFM Secretariat conducted its assessment of the risk of human trafficking, migrant smuggling and related exploitation between March and November 2018 (ADFM Risk Assessment). The brief outlines what developments and progress have been made on both sides of the border and among regional actors. A summary of the ADFM Risk Assessment, *Avoiding a Crisis Within a Crisis,* is also enclosed.

Context

Eighteen months on from the mass exodus of Rohingya from Rakhine State that commenced on 25 August 2017, the situation has begun to stagnate. The repatriation attempt of November 2018 failed when no refugee volunteered to go back to Rakhine State. Inter-Sector Coordination Group (ISCG) data from April 2019 indicates there are 911,359 Rohingya refugees living in Cox's Bazar, and 242,649 have so far been registered through the Government-UNHCR joint registration exercise. The USD $920.5 million Joint Response Plan is currently only 18% funded, and the protection stream is only 14% funded. Rohingya continue to arrive in Cox's Bazar from both Myanmar and increasingly from India. The UNHCR Transit Centre received 219 new arrivals in the month of March 2019.[5] The shrinking protection environment for Rohingya residents living in India and Saudi Arabia has pushed more into Bangladesh, where conditions are increasingly crowded. Media reporting indicates boat movements are continuing to be intercepted, originating from Bangladesh and Myanmar. The majority are en route to Malaysia, which is already host to a large population of Rohingya. These irregular and often unsafe movements are cause for concern for the region as a whole. There is also a fear that idleness in the camps in Cox's Bazar and lack of hope for the future, and the growing prevalence of trafficking in persons and related exploitation, could lead to further security risks among the camp residents and in the broader population.

Update on Rakhine State/Myanmar

The ADFM recognises that the resolution to the current crisis lies in the voluntary, safe, dignified and durable repatriation of the Rohingya to their former homes in Rakhine State. The Government of Myanmar should significantly accelerate its work to create conditions in Rakhine State that are conducive to this goal, respecting the landmark agreements made with the Government of Bangladesh, and ensuring the full realisation of the rights of the Rohingya.

One factor at play on the Myanmar side of the border is the rise of the Arakan Army. The ethnic Rakhine group reportedly attacked four separate police posts in northern Rakhine State on Myanmar's Independence Day – 4 January 2019. In response, the Myanmar military launched 'clearance operations' which has led to instability, and the suspension of aid to some areas.[6] This situation makes the voluntary repatriation, in safety and dignity, of Rohingya more difficult. National elections in Myanmar are scheduled to take place in 2020, which may also disrupt repatriation plans.

Update on Cox's Bazar/Bangladesh

As suggested in the future risk scenarios in the ADFM Risk Assessment, the situation for refugees living in Cox's Bazar has stagnated, with no resolution in sight. The relocation camp on the island of Bhasan Char is still being built, however

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[5] ISCG (2019) *Situation Report Rohingya Refugee Crisis, Cox's Bazar,* April.
[6] ICG (2019) 'A new dimension of violence in Myanmar's Rakhine State' *Crisis Group Asia Briefing no. 154,* 24 January.

no announcements have been made about progressing this alternative as yet. In March 2019, media reported Rohingya students who had been studying in local Bangladeshi schools for years were being expelled under directives from a government investigation.[7] The Government of Bangladesh has maintained its position regarding access to education and livelihoods for the Rohingya - namely that it is the responsibility of the Government of Myanmar to provide these, and that access will remain restricted to 'learning centres' for those under 14, and legitimate livelihoods only supported for those who can access the limited 'cash for work' programs offered by humanitarian agencies within the camps.

Update on Regional Response

ASEAN and the Bali Process have both responded to the displacement crisis. The ASEAN Coordinating Centre for Humanitarian Affairs (AHA Centre) has undertaken a Preliminary Needs Assessment (PNA) of repatriation to Rakhine State, as requested by the Government of Myanmar last November at the 33rd ASEAN Summit in Singapore. The findings of the PNA will be complemented by a Comprehensive Needs Assessment at a future date. The Bali Process Consultation Mechanism was activated in response to initial August 2017 displacement, leading to one emergency meeting and 'good offices' visits from senior official co-chairs to Cox's Bazar and Rakhine State in 2018. In January 2019, Australia proposed the Bali Process Co-Chairs make a second 'good offices' visit, which is expected to occur in mid-2019, ahead of the Bali Process Ad Hoc Group Senior Officials Meeting in July. As both a member of ASEAN and a Co-Chair of the Bali Process, Indonesia is in a unique leadership position, particularly given its membership of the UN Security Council until the end of 2020.

There has been sustained civil society advocacy around the issue, and conferences, side events and forums have been held in Dhaka, Yangon, New York, Kuala Lumpur and elsewhere. In March 2019, Fortify Rights and the Human Rights Commission of Malaysia (SUHAKAUM) published a joint report investigating mass graves, human trafficking and crimes against humanity against Rohingya Muslims and Bangladeshi nationals along the Thai-Malaysia border. An investigation into these crimes is currently being undertaken by the Malaysian Government.[8]

It has been the ADFM's position since its inception that a coordinated regional response is critical to addressing the displacement crisis. As the Global Compact on Refugees reaffirms, regional are a more effective platform to facilitate responsibility-sharing and sustainable solutions.

For Consideration by ADFM members

Priorities for action remain which were recommended in the ADFM Risk Assessment, namely:

1. Secure a durable solution in Myanmar.

The Government of Myanmar should work towards the voluntary, sustainable and dignified return and reintegration of the Rohingya to their former homes in Rakhine State, Myanmar and the full realisation of their human rights, respecting and implementing the landmark agreements between Bangladesh and Myanmar. It is important this process not be rushed, and that it addresses the root causes of the crisis, in consultation with the Rohingya displaced in Cox's Bazar. Tangible progress in addressing the root causes of the crisis would include providing documentation, ensuring freedom of movement, and ending discriminatory policies that deny access to services including education and healthcare.

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[7] Poppy McPherson, Ruma Paul (2019) 'Rohingya 'lost generation' struggle to study in Bangladesh camps' *Reuters,* 18 March, https://www.reuters.com/article/us-myanmar-rohingya-education/rohingya-lost-generation-struggle-to-study-in-bangladesh-camps-idUSKCN1QZ0EA?utm_source=twitter&utm_medium=Social.

[8] SUHAKAM and Fortify Rights (2019) "*Sold Like Fish": Crimes Against Humanity, Mass Graves and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012-2015,* March.

2. Support development on both sides of the border through something like a *Naf River Development Initiative (NRDI)*, benefiting both the displaced and local communities.

Other organisations have echoed the ADFM's argument for a development plan addressing the needs of refugee and host communities in Bangladesh, and Rohingya, ethnic Rakhine and other residents in Myanmar. These plans should encompass infrastructure concerns (roads, bridges, water treatment facilities) as well as education services, which would have a significant on the ground impact, alleviate the burden on the host community in Cox's Bazar and prepare conditions in Rakhine State for safe, durable, voluntary and dignified repatriation. All development should be undertaken sensitively and in consultation with all affected stakeholders, in such a way that does not inhibit repatriation or further incentivise exclusion or persecution of the Rohingya in Rakhine State.

3. Renew support for the humanitarian response through an International Solidarity Conference and lift the tempo of regional engagement.

Solidarity conferences at the national and regional level can help to lift funding for the ISCG's Joint Response Plan. One way to reinvigorate the regional response to the crisis is through an international conference, which would focus on a multi-year strategy to address the crisis, including responsibility-sharing and voluntary repatriation, in safety and dignity. Myanmar and Bangladesh (along with other interested countries) are best placed to call for an International Solidarity Conference to renew support for the Joint Response Plan and invite new proposals, plans and expressions of interest. This is in line with the GCR's provision for source/affected countries to call for a support platform. Efforts to energise support from the region would be enhanced by a steady tempo of good offices visits to affected states by the Bali Process Co-Chairs and proactive engagement by ASEAN bodies.

4. Strengthen counter-trafficking efforts on both sides of the border.

Protection concerns in general and counter-trafficking specifically remains under supported in the response to the crisis to date. Greater counter-trafficking assistance, resources and coordination in the camps would produce immediate benefits, as outlined in the ADFM Risk Assessment. Support to the Government of Bangladesh in implementing its newly agreed National Plan of Action on trafficking (2018-2022) would also yield significant results, particularly ahead of the mid-term review of its implementation in 2020.

ASIA DIALOGUE ON FORCED MIGRATION

SUMMARY & POLICY BRIEF

AVOIDING A CRISIS WITHIN A CRISIS

Addressing the risks of human trafficking, migrant smuggling and related exploitation arising from the situation in Cox's Bazar

March 2019

Summary

- Bangladesh and its international partners have delivered a generous and effective response to the humanitarian crisis in Cox's Bazar so far. More needs to be done now to support them to address protection concerns.
- The durable solution to this crisis lies in the safe, dignified, voluntary and sustainable repatriation of the Rohingya to Rakhine State in Myanmar. The Government of Myanmar must continue to work towards this goal.
- This ADFM summary and policy brief summarises the findings of the ADFM's assessment of the risks of human trafficking, migrant smuggling and related exploitation arising from the Rohingya displacement in Cox's Bazar, carried out between March and November 2018.
- This assessment found that the conditions for high levels of trafficking, smuggling and related exploitation are present and they will only intensify with time, impacting both the local and refugee populations.
- This summary and policy brief presents the assessment's four recommended directions for action:
  - Secure a durable solution in Myanmar;
  - Support development in Cox's Bazar and Rakhine;
  - Strengthen counter-trafficking efforts on both sides of the border;
  - Improve living conditions for the Rohingya, and the ability of actors on the ground to respond effectively.
- As movements of people increase, the whole region will be affected, reinforcing the need for a regional response. Active involvement and coordination of regional actors - such as ASEAN and the Bali Process - in tackling this challenge will make a significant difference to the response on the ground.

BACKGROUND

The influx of Rohingya refugees to Cox's Bazar in Bangladesh is the largest forced migration issue facing the region. The Rohingya have long faced discrimination and exclusion from mainstream Myanmar society. Years of escalating tensions culminated in the crisis of 25 August 2017, where violence caused over 700,000 Rohingya to cross the border from Rakhine State, around 500,000 arriving within the first month. This group joined Rohingya already living in official and unofficial camps in Cox's Bazar, bringing the total number to around one million at the time of writing.

Even prior to the influx, Bangladesh was a source, transit and destination country for human trafficking, with the population in Cox's Bazar particularly at risk due to high levels of poverty and its coastal location. As with any large population of displaced people faced with few alternatives, the Rohingya are attractive targets for criminal networks facilitating human trafficking and migrant smuggling. What makes this situation distinct from other conflict and refugee situations is the statelessness of the Rohingya. Underlying this is ongoing conflict and security concerns in Rakhine State.

THE RISK ASSESSMENT

This policy brief is a summary of the findings of a risk assessment conducted by the ADFM Secretariat between March and November 2018. The research team spoke with around 180 individuals, including members of the Bangladesh national government and local administration, police, coast guard and those involved in refugee management; international and national non-government organisations; and Bangladeshi and Rohingya individuals living in and around the camps in Teknaf and Ukhia sub-districts. Researchers identified key risk factors present and risk scenarios over the coming 6 to 24 months in order to inform a more effective regional response.

While this assessment fills some of the gaps in our understanding of the situation on the Bangladesh side of the border, one significant remaining gap is a corresponding assessment of the risks on the Myanmar side. Further research into and assessment of the current and future risks of human trafficking, migrant smuggling and related exploitation for Rohingya and other populations in Rakhine State, including internally displaced persons (IDPs), is much needed.

CONTEXT

The Bay of Bengal has a history of human trafficking, with hundreds of thousands of people attempting to make the journey by boat in the last decade. In 2015 as many as 8,000 Rohingya and Bangladeshi people were stranded in the Andaman Sea by smugglers, prompting international outcry. In response, a law enforcement crackdown successfully disbanded many existing criminal networks, however they did not disappear entirely.

Since the August 2017 influx, the Government of Bangladesh and its international partners have done a laudable job of responding to the humanitarian needs of the Rohingya in Cox's Bazar. Home to nearly 160 million people, Bangladesh is already one of the most densely populated nations on the planet and now is also supporting the largest refugee camp in the world at Kutupalong-Balukhali.

The governments of Bangladesh and Myanmar have agreed to work towards repatriation of refugees to Rakhine, however a first attempt in November 2018 failed as refugees felt it was not yet safe to return. At the time of writing, the United Nations still does not consider circumstances in Rakhine conducive for safe return, and more concrete plans to begin repatriation are yet to be publicly announced. There is no indication this crisis will be resolved soon.

HOW AND WHERE

Concern about trafficking and exploitation is high among the population living in the camps, and awareness-raising work appears to be prevalent. Despite this concern, connections to brokers also appear common. Many spoke of knowing people who had left the camps to find work or get married, usually through a broker or agent. Even for those fully cognisant of the risks, brokers are seen as a viable option for seeking a better life. Criminal networks can exploit this. Men and boys are particularly vulnerable to forced labour on construction sites, on fishing boats and in factories, while women and girls are more vulnerable to sex work and forced domestic labour.

Cox's Bazar, Chittagong and Dhaka were all named as transit stops for work-related movement, however in some cases those who believed they were destined to leave the country did not end up getting any further than these internal hubs. Travel outside Bangladesh usually takes place using forged or illegally obtained Bangladeshi documents. Due to their shared border, India is often a transit country for movement, although many refugees aimed to travel further to countries with large diaspora populations.

Since the 2015 crackdown, land movements appear to be easier to facilitate, however there are indications small boat movements have started again. These are some of the recent boat movements reported in the media since the dry season began in October 2018:

> **1 March 2019:** 35 Rohingya (incl 9 children) landed on a beach in Malaysia after being abandoned by smugglers.
>
> **10 February 2019:** A boat carrying 22 Rohingya was intercepted by the Border Guard Bangladesh. Each passenger had reportedly paid $1,200 to smugglers to take them to Malaysia.
>
> **3 December 2018:** A boat carrying 10 Rohingya was intercepted by the Bangladesh Rapid Action Battalion before departing from Cox's Bazar to Malaysia.
>
> **25 November 2018:** A boat carrying 93 Rohingya leaving an IDP camp in Sittwe bound for Malaysia was intercepted by the Myanmar navy.

Both men and women reportedly work as brokers (although women and girls are usually recruited by a woman), and both Bangladeshi and Rohingya brokers are known to be active in the camps; usually working in small networks. The absence of humanitarian workers in the camps overnight and poor lighting makes it easier for brokers to recruit at night. The Government of Bangladesh and international agencies have responded by pledging to build more lighting and increasing the number of night-time patrols, which will mitigate these risks to an extent.

Increased border enforcement is unlikely to be an effective response to this issue. Research in similar contexts has shown that harsh border policies often result in greater desperation, pushing refugees into the arms of brokers who promise that they can facilitate dangerous or risky movements.

"A CRISIS WITHIN A CRISIS"

Protection concerns were regularly raised by humanitarian responders as receiving insufficient attention in the crisis response so far. At present there is no hard data on the prevalence and scale of exploitation affecting Rohingya. However, this assessment and others have found clear indications that practices such as trafficking and smuggling are taking place and that risk factors for future exploitation are high. History tells us that Bangladeshi nationals can be caught up in these movements and the exploitation within them. More than eighteen months on from the initial crisis, now is a good time for key actors to review the response to date and start planning for the medium-term.

Risk Factors		
Environmental Factors	**Security Factors**	**Individual Factors**
• Increasing idleness • Traditional acceptance of relocating for employment • Traditional acceptance of child, early and forced marriage • Fear of forced repatriation and lack of hope for the future	• Rifts between and within communities • Presence of established criminal networks • Location of camps and level of border security • Capacity and resources of the Government of Bangladesh	• Connections to diaspora communities • High proportion of women and children • Disruption of existing social protection mechanisms • Disincentives to reporting cases of trafficking

The ADFM risk assessment identified three types of factors - environmental, security and individual - affecting the likelihood of human trafficking, migrant smuggling and related exploitation. Below are some examples.

ENVIRONMENTAL RISK FACTORS
As one humanitarian actor put it: *"Idleness is the enemy of any refugee situation."* In the absence of viable plans for safe, dignified and voluntary repatriation of the majority of the camp population to Myanmar, the likelihood of the current situation stagnating is medium to high. Now that the population has withstood the busy monsoon and cyclone season, activity in the camps is slowing down and **idleness** is setting in.

Refugees' limited access to employment and livelihood opportunities mean many working age adults have nothing to do all day and are almost entirely dependent on aid. Further, limited formal education opportunities means that children - who make up more than half of the refugee population - are not gaining skills and qualifications for the future. If alternatives are not found for **access to livelihoods and education**, refugees will become increasingly desperate to make changes for themselves and their children, regardless of the risks. This desperation can easily be exploited by criminal networks keen to grow their business. Any increase in criminal activity within and around the camps will have knock-on effects in the local community, who are already competing for the limited livelihood options available.

SECURITY RISK FACTORS
Another important risk factor identified by the assessment is growing **tension between and within communities**. Internal tensions within the camps are reportedly rising between the newly arrived and more long-term refugees. There are also indications that the previously positive relations between the local community, long-term refugee residents and newer arrivals are beginning to fray. Primary concerns among the local population about the refugee influx included

decreased wages and access to resources and increased cost of living.

Further, the Government of Bangladesh is limited in its ability to respond effectively to the protection concerns due to a **lack of resources and technical capacity**. The Bangladeshi criminal justice system as a whole is over-stretched. In discussions with us, refugees identified the Bangladesh government and Bangladesh army as among their most trusted actors on the ground in the camps. Bolstering the capacity of these actors to counteract the causes of trafficking could thus have a far-reaching positive impact. There appears to be a strong desire on the part of the government to do more on this issue, but it is not currently matched by available resources or support.

INDIVIDUAL RISK FACTORS
Approaching a broker is often the only way for refugees to search for livelihood opportunities, even when fully aware of the potential risks. This stark reality works as a strong **disincentive to report** bad experiences with brokers, making it difficult for authorities to track down and dismantle criminal networks. There is also a perceived fear that those who report exploitation of some kind could be blamed for their part in the process. Those who have been involved in the sex industry also face stigma that makes them less likely to report exploitation.

Forced displacement **disrupts existing social protection mechanisms**, making individuals more likely to engage in high-risk behaviours. Indeed, protection officers working in the field reported higher rates of insecurity in the more newly established camps where social connections were weaker. Further, **population growth** coupled with **no birth registration** are significant protection concerns in the camps. UNICEF estimates 60 babies are born every day, but without a formal system of birth registration these children are left vulnerable to exploitation. The stalled birth registration is also affecting local Bangladeshi children, adding to their own vulnerability to exploitation.

MORE CAN BE DONE

The risk factors and vulnerabilities outlined above will only intensify over the next 24 months unless steps are taken. Fortunately, researchers identified an appetite on the ground to do more to address protection concerns in Cox's Bazar, while continuing to work towards a durable solution in Myanmar. Addressing the risks should respond to the needs of both the host and refugee communities, while also preparing Rohingya for repatriation when conditions are conducive.

The assessment identified four key policy directions to pursue in order to address the current high risk of human trafficking, migrant smuggling and related exploitation for both the local and refugee populations in Cox's Bazar. Taking up these ideas would both mitigate against risk and improve conditions for both communities for the medium to long term.

1. Secure a durable solution in Myanmar

The most effective way to reduce trafficking risk among refugee communities is to secure a long-term solution to their situation. Myanmar should therefore continue to work towards safe, dignified, voluntary and sustainable repatriation of the Rohingya, and the full realisation of their human rights, respecting and implementing the landmark agreements reached with the Government of Bangladesh. It is important that process not be rushed, and that it addresses the root causes of the crisis, in consultation with the Rohingya displaced in Cox's Bazar. The international community, including bilateral donors and regional agencies, should continue to support Myanmar in its realisation of this goal.

2. Support development in Cox's Bazar and Rakhine State

Bangladesh has made laudable efforts to accommodate the Rohingya within its territory while also facing its own development challenges. Cox's Bazar was already one of the poorest districts in Bangladesh and existing infrastructure is struggling to cope with the increased numbers of international and local humanitarian workers now based in the area. Due to its coastal location, the district is particularly vulnerable to climate-induced displacement. It also has the lowest net education enrolment rate in Bangladesh, indicating that the area

could benefit from a dedicated investment in education. Medium-to-long term investment in infrastructure would improve outcomes for both locals and refugees living there, and mitigate the risks associated with humanitarian donor fatigue. Development needs are also prevalent in Rakhine State and should be addressed as part of any regional response. Any development in Rakhine State should be handled sensitively and inclusively, and in such a way that does not prohibit repatriation or further incentivise persecution of the Rohingya.

3. Strengthen counter-trafficking efforts on both sides of the border

Capacity building and technical support for the counter-trafficking response in both Bangladesh and Myanmar would benefit host and displaced communities alike. As with many developing countries, there is the will to improve, but technical support and resources are inadequate to address the scale of the problem. Regional actors have a strong incentive to provide such support to both Bangladesh and Myanmar; if movements of people do increase as we predict, the entire region will be affected. ASEAN and Bali Process resources and expertise can be brought to bear, as well as those of other bilateral and multilateral actors.

4. Improve living conditions for the Rohingya, and the ability of actors on the ground to respond effectively

Finally, international partners and donors, in partnership with the Government of Bangladesh, should take steps to improve conditions, alleviate idleness in the camps, and assist people to prepare for repatriation by creating opportunities for the Rohingya to access legitimate livelihood, income generation and education opportunities, remove formal restrictions on access to SIM cards and ensure formal birth registration recommences in Cox's Bazar.

Further, to our knowledge, there is no coordinated data collection between government and key international agencies in Cox's Bazar, particularly UNHCR and IOM. Sharing indicators of exploitation and making them public should be resolved as a matter of urgency in order to identify trends and respond effectively.

CENTRE FOR POLICY DEVELOPMENT

LIPI

ISIS MALAYSIA

Institute of Human Rights and Peace Studies

Policy Brief 2: Opportunities for Refugee Access to Work in Malaysia

Introduction

Malaysia houses a large number of refugees and asylum seekers, as it is both a transit and final destination for those seeking relief from persecution and violence. In April 2019, there were a total of 170,460 refugees and asylum seekers registered with UNHCR.[1] This excludes those who are unregistered (with estimates indicating another 100,000 at least), the stateless, those in "refugee-like-situations" and "others of concern". Although the vast majority of refugees enter illegally and work informally in Malaysia, their status is indeterminate and they are susceptible to discretionary harassment, detention and deportation. This policy brief will demonstrate that formalising a work programme for refugees not only grants them greater security, but it is also positive for the security of the host state.

Key benefits of refugees in the workforce[2]

For a net labour importer like Malaysia, including refugees in the workforce will have positive effects for the economy and national productivity.[3] Refugees will be self-reliant and able to fund their own healthcare and education, and boost the local economy by paying taxes and spending domestically. Refugee participation in the workforce will also formally address demand for cheap labour without affecting jobs for locals.

From a political and social interest viewpoint, the notion of refugees as "illegals" will be dispelled if they are recognised formally. Providing refugees with a "fixed" status – one that allows them to formally live and work in Malaysia – will reduce negative perceptions or backlash against refugees as they will be seen as "legal" individuals with "real" identities. This will result in better social cohesion between refugees and locals.

A national database for refugees is advantageous from a national security point of view in terms of providing identities to refugees. Undocumented foreigners, whether refugees or not, and whether workers or not, are a major security concern for a country even if not a threat. A national database will strengthen intelligence gathering with security checks, character assessments, health screenings and biometric data, and mixed flows of individuals moving irregularly will be monitored through official channels. The regularisation of refugees will also help to address the conditions that exacerbate forced migration in the region, such as trafficking, smuggling and exploitation. Authorities will be able to better manage forced migration security concerns – by identifying and tracking the identities, location and activities of refugees – and a tighter control of borders could further reduce incentives for refugees to move and secure work.

Previous efforts by the Malaysian Government

Large numbers of refugees already live and work informally in Malaysia, particularly the Rohingya. Thus far the Malaysian Government has tried the following initiatives:

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[1] There are 90,200 Rohingya, 24,720 Chins, 9,750 Myanmar Muslims, 4,000 Rakhines and Arakanese amongst other ethnicities from Myanmar. There are 22,870 refugees and asylum seekers from other countries such as Pakistan, Yemen, Somalia, Syria, Afghanistan, Sri Lanka, Iraq and Palestine.

[2] These findings were taken from ISIS Malaysia's analysis of granting refugees opportunities to work from the perspectives of Malaysia's national interests (economic, political and social) and national security in 2017.

[3] Institute for Democracy and Economic Affairs (IDEAS), "The Economic Impact of Granting Refugees in Malaysia the Right to Work," *Policy Ideas No. 60*, April 2019.

1. 2006 – Rohingya refugees were said to be granted IMM13 permits, although it was halted after 17 days.[4]
2. 2013 – the Ministry of Home Affairs (in cooperation with UNHCR and Immigration) announced that the Government would issue work permits to refugees living in Malaysia.
3. 2016 – the Ministry of Home Affairs announced a pilot project for 300 Rohingya registered with the UNHCR to work in the plantation and manufacturing sectors. This project ultimately failed because it did not take into account the conditions that led to low take-up rates amongst refugees.

The Government also previously initiated a separate temporary residence and work rights programme for up to 3,000 Syrians.[5] They were given IMM13 permits for the entire family, their children were given access to schools and they received a 50 percent discount at public hospitals. Unlike the Rohingya, they were not restricted to the sectors in which refugees are allowed to work.

Key government concerns

Research has indicated that Malaysian authorities, like those elsewhere, remain concerned about two key issues. Opportunities for refugees to work or a work permit programme must have conditions in place to allay these fears:

1. Opportunities to work for refugees will be seen as a soft stance that will encourage the "opening of the floodgates" and result in more security concerns for the Government simply because more will make their way to Malaysia.
2. The Government will have to spend more on remittances and social services for refugees.

It should be noted that the absence of permission to work has not deterred refugees arriving or working informally in Malaysia – it has only deprived Malaysia of the benefits mentioned in the previous section. It is not a matter of adopting good practices of refugee work rights elsewhere but of formalising the status quo or what is already happening and/or permissible in the country. Doing so would provide Malaysia with a broader tax base, an ability to know who is doing what in its territory, and an ability to exercise control over its workforce and labour standards. Indeed, the change of government in Malaysia over the last year has brought about new opportunities on refugee access to work.[6] Updates from UNHCR indicate ongoing communication with key ministers such as the Deputy Prime Minister, the Minister of Home Affairs and the Minister of Human Resources.

Areas for regional cooperation

Given developments in Rakhine State since the Andaman Sea crisis in May 2015 and camp conditions along the Bangladesh-Myanmar border, boat movements have already begun (many of which are Malaysia-bound). Existing mechanisms and/or processes should be utilised to formalise a work programme for countries in the region.

With regards to the United Nations (UN) instruments, opportunities for refugees to work are in line with the Global Compacts for Migration and Refugees. Both compacts aim to lessen the burdens of host countries and support conditions for return and repatriation by enhancing refugee self-reliance. Commitments on providing employment opportunities for refugees were also previously made in the 2016 New York Declaration as well as the Sustainable Development Goals. Regional countries should be encouraged to make pledges on opportunities for refugee access to work at the upcoming Global Refugee Forum in December 2019.

There are also opportunities for regional cooperation via the Bali Process and ASEAN. There was a commitment on providing employment opportunities in the 2016 Bali Process Declaration by engaging constructively "with the private

[4] While the IMM13 is a temporary residence permit that allows refugees to remain legally in Malaysia, engage in lawful employment and provide their children access to education, it is unclear if Rohingya children actually had any access to education during the 17 days.
[5] This scheme was supposed to run from 2015 to 2018 and was managed entirely by the Malaysian Government without the involvement of the UNHCR.
[6] With regards to implementing the Government's electoral promise 35 to "legitimise the status of refugees by providing them with UNHCR cards and ensuring their legal right to work". 'Promise 35: Raising the dignity of workers and creating more quality jobs,' Pakatan Harapan Election Manifesto, p. 78, 2018.

sector to expand legal and legitimate opportunities for labour migration and to combat human trafficking and related exploitation".[7] The Bali Government and Business Forum, now in its third year, is the avenue to reaffirm this commitment and to take stock on progress made. Business and government leaders could endorse recommendations on opportunities for refugee access to work in this Forum. The ASEAN Responsible Business Forum (ARBF) could also be utilised in the same way. Malaysia aside, there are other labour importing countries in ASEAN such as Thailand, Singapore and Brunei. These countries could explore incorporating refugees in ethical business at the Forum.

Regional considerations

While opportunities for refugee access to work is still in the policymaking phase, the Malaysian experience can still offer some considerations for the region. These include:

1. Refugee work opportunities should only be formally extended to those who have passed UNHCR's Refugee Status Determination process and subsequently qualify for refugee status. Work opportunities cannot be extended to those who have not registered with UNHCR and/or are ineligible to be accorded refugee status (the latter must be treated as per domestic law).
2. Additional measures to address the floodgates concern of attracting more refugees could include proposing a phased introduction of work opportunities with pilots to test/adjust policy settings, or only extending work opportunities to refugees who have arrived before a certain date.
3. Refugee work opportunities should be designed with ease and minimum conditionalities in order for it to work. A work programme for refugees should accord them labour rights under domestic law and yet be flexible enough to accommodate their needs. Failure to do so will encourage them to continue opting for the status quo (i.e. working informally). The work programme should also include proper stakeholder consultation with local NGOs and community groups and/or organisations in order to appeal to refugees.
4. It must be made clear that work opportunities for refugees are not a pathway to naturalisation. This is imperative given the different classes of refugees – the stateless will be in the country for the foreseeable future and/or an unlimited time (like the Rohingya); and those who have a higher chance of return and repatriation could be given *in situ* legal access to work (like the Chins).[8]

It is recommended that a separate policy on the Rohingya altogether is needed for countries of final destination like Malaysia. These include the type of visas or identification documents that they will be given (whether humanitarian visas, as temporary residents or 'guests') and the duration of these visas and the conditions for renewal (taking into account the principle of *non-refoulement*). More thought must also be given to the status of their families as a whole – the entire family should be regularised as opposed to only those of working age and access to education for their children. Such conditions – regularising entire families, opportunities to work for those of working age, access to education for those below working age – should eventually assist and strengthen their preparedness for eventual repatriation and/or resettlement. An increase in bilateral relations with Myanmar should also be factored into a separate policy on the Rohingya, in order to facilitate repatriation and the legal take-backs of those that do not qualify for refugee status.

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[7] 'The Bali Declaration,' the Sixth Ministerial Conference of the Bali Process of People, Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016.
[8] A previous ADFM paper highlighted the possibility of "*in situ* legal access to work" which 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." UNHCR, 'Employment opportunities for refugees in Southeast Asia', fifth meeting of the Asia Dialogue on Forced Migration, Manila, 10-12 September 2017.

Policy Brief 3: Return & Reintegration

Context and background

The region is facing unprecedented levels of displacement. As the numbers of refugees and migrants at risk continue to grow, the need for regional engagement on attaining durable solutions has never been greater. Resettlement is one option for durable solutions, but we know there are only a small fraction of the necessary places available in resettlement programs. When voluntary, return and reintegration of refugees and displaced people in safety and dignity can bring considerable long-term benefits not only to those displaced, but also to countries of origin and host countries.

To be sure, there are several challenges associated with achieving successful voluntary return and reintegration. When poorly planned or unsupported, returning refugees to their country of origin can generate new tensions or re-ignite conflict. Further, in situations of protracted displacement, many may be estranged from their 'home countries' and require considerable preparation before reintegration is possible. Successful return and reintegration policy requires the cooperation of a broad range of actors, including governments of relevant countries (host, transit and origin), civil society, the displaced person or migrant themselves, and sometimes regional or international actors.

The largest forced displacement crisis facing the region is the displacement of Rohingya in Cox's Bazar, Bangladesh. Within ASEAN countries there are also large short-term and long-term refugee populations in Malaysia, Thailand and Indonesia, as highlighted in the Regional Strategies Paper. Beyond the ASEAN region, every year UNHCR assists hundreds of Sri Lankan refugees wishing to return home from India. Around 4.5 million Afghan refugees have returned voluntarily from Pakistan to Afghanistan since 2002, with around 200,000 returning from Iran and Pakistan since 1 January 2019.

The ADFM discussed voluntary return and reintegration at its sixth meeting in Sydney. This policy brief provides some suggestions for key elements of effective return and reintegration policy and reinforced the need for effective implementation of a policy guide on this topic.

Key elements of effective return and reintegration policy

When designing policy on return and reintegration, it is critical that the fundamental principle of voluntariness is respected. Policy should also broaden the mindset of migration management that is often based on control and restrictive border management, to human rights and victim-centred approaches. Different migrants – either voluntary or forced – are protected by different legal standards based on their different needs. Policies around return and reintegration should be sensitive to these distinctions and the associated protection needs, to make sure policies are relevant for all groups, including migrant workers, victims of trafficking, failed asylum seekers and refugees who are no longer in need of international protection.

Existing policy guides

Surprisingly (considering it is theoretically the most desirable durable solution in most displacement scenarios), until recently there had been relatively little research into effective return and reintegration policy and practice.[9] The Global Compacts on Refugees and Migrants both cover issues related to return and reintegration. UNHCR produced a Handbook for Repatriation and Reintegration Activities in 2004, and IOM has also produced a Framework for Assisted Voluntary Return and Reintegration. It is within this context that the Bali Process has been working toward developing a policy guide on the topic.

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[9] See paper from ADFM Meeting in Sydney in March 2018.

Building on the outcomes of a 2015 Bali Process Ad Hoc Group Roundtable on Returns and Reintegration, a Technical Experts Group was established to "exchange best practices with respect to returns and reintegration." The roundtable also agreed that "model readmission agreements would also be developed for use by interested member states".[10] The recommendation was further reaffirmed by the Seventh Bali Process Ministerial Conference of 2018.

The issue was also included in the Bali Process Strategy for Cooperation.[11] The Strategy on Returns and Reintegration aimed to "(i) build cooperation through the Bali Process Technical Experts Group on Returns and Reintegration, and prepare a policy guide on Returns and Reintegration, and (ii) encourage countries of origin to undertake the voluntary return and repatriation of persons found not to be in need of protection, including through the Bali Process Assisted Voluntary Returns and Reintegration (AVRR) project."[12]

Efforts in the region to build good return and reintegration policy and practice could assist states to implement Objective 21 of the Global Compact for Safe, Orderly and Regular Migration, which seeks "cooperation in facilitating safe and dignified return and readmission, as well as sustainable reintegration," with clear actions to be taken by the states. It could also support one of the solutions proposed by the Global Compact on Refugees, to "support countries of origin and voluntary repatriation." These documents create a new landscape and set of tools for states in developing and maintaining a framework that encourages collaborative, sustainable and humane approaches to migration, including return and reintegration, respecting the principle of non-refoulement.

Suggestions for implementation

The draft Bali Process Policy Guide is a good starting point upon which the region can build a stronger normative framework on return and reintegration. As states develop their separate policies on this issue, their practical experiences will be able to inform further iterations and improvements to the Policy Guide. If the Policy Guide is endorsed by the Bali Process in July, the following **6 Es formula** may be useful for member states as they go about policy development and practical application of the guide:

- <u>Enable</u>: Create enabling conditions within member states hosting large populations of migrants. Piloting the Policy Guide is one way to demonstrate how it could be practically applied in different situations.
- <u>Encourage</u>: Further encourage the implementation of the Policy Guide via national dialogues to discuss distinct migration challenges faced by different member states.
- <u>Enact</u>: States should enact relevant policies and mechanisms recommended in the Policy Guide, and develop a comprehensive framework for effectively implementing return and reintegration in practice.
- <u>Engage</u>: Engage with stakeholders at the international, regional and national level to discuss diverse experiences with return and reintegration. This will improve both the policy formulation and implementation process.
- <u>Engender</u>: Develop further resources on vulnerable groups (particularly female migrants/refugees, asylum seekers and victims of trafficking) to assist states develop gender-sensitive policies on return and reintegration.
- <u>Enrich</u>: Continued research and development of case studies would enrich future iterations of the Policy Guide and make sure it remains useful and up to date for member states.

The Policy Guide could be considered a living document which can evolve over time as it is trialled and implemented. States can share information, experience and practices with each other and with the Bali Process through regional and national level dialogues. Further research or advice from the Expert Group would also benefit future iterations of the Guide. The dialogue between those states and organisations seeking to exchange experiences on return and reintegration in practice.

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[10] Co-Chairs' Statement, 23 March 2016, https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%20Co-chairs%20Ministerial%20Statement_with%20Bali%20Declaration%20attached%20-%2023%20March%202016_ docx.pdf
[11] Strategy for Cooperation-Update –Seventh Ministerial Conference,7 August 2018, https://www.baliprocess.net/ UserFiles/baliprocess/File/Bali%20Process%20Strategy%20for%20Cooperation-final_.pdf
[12] Ibid [emphasis added].

Policy Brief 4: Alternatives to Detention Platform and Program of Learning and Action

Introduction

This policy brief reviews the regional context on child immigration detention and advances proposals for a regional platform and program of learning and action. It builds on the paper presented at the seventh ADFM meeting on developing community care and placement options for children in the context of international migration in the Asia Pacific Region. Further, it provides points for discussion ahead of a regional workshop on alternatives to child detention to be held later in the year.

Regional context

In the Asia-Pacific region, thousands of children are held in immigration detention every year. It is well known that immigration detention, even for short periods of time, can cause significant harm to a child's physical, mental, and psychosocial well-being. Increasing awareness of these negative impacts has led to growing momentum globally to end child immigration detention and implement community-based alternatives ("alternatives") that provide appropriate care, protection and support to children and their families.

In this region, there is increasing discomfort amongst many governments and stakeholders about the ongoing immigration detention of children. This has led to some positive developments including high-level political commitments to end child detention, the release of children and their families from detention into alternatives, and improved systems that avoid child detention in the first instance. The piloting and expansion of alternatives - including shelters, foster care, and kinship care - has grown, boosting confidence in the ability of non-custodial policies to achieve the legitimate government aim of resolving the migration status of non-citizens while meeting community expectations regarding the treatment of children.

Commitments in the Global Compacts

The GCR and GCM create a new set of opportunities and resources for states in developing and maintaining non-binding normative frameworks that encourage collaborative, sustainable and humane approaches to migration. Objective 13(h) of the GCM clearly states the core policy option for states looking to implement their commitment to work towards ending child detention by "ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements."

In line with Objective 13(h), the International Detention Coalition (IDC), together with UNICEF, is working at the global level to bring together a group of states that are committed to developing alternatives to detention for children as part of their GCM implementation work. The initiative will create a space of transnational and transregional collaboration for states to learn from each other through the sharing of good practices, and to encourage mutual support to overcome challenges. In the first instance, this is being explored with regional workshops that bring together interested states to review the current status of their work to end child detention including existing efforts and system strengths, opportunities arising, as well as opportunities to learn from other states.

The initiative may enable participating states to ultimately access capacity-building support from the UN Migration Network. A key element of this support will be provided by the UN Network Trust Fund, which will be directing funding to states that are working with UN agencies and civil society on the implementation of GCM goals.

Regional program of learning and action

An Asia-Pacific program of learning and action aimed at working with states to develop practical solutions, in line with GCM commitments, would be well positioned to leverage the opportunities created through the Global Compacts implementation phase such as those noted above.

i. Program of learning on alternatives to detention for children

A program of learning can be developed around the GCM commitment to ensure "availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements."

This could include learning and action on:

- Child-sensitive screening, assessment and referral mechanisms
- Identification and expansion of non-custodial contexts including community-based care, kinship care, fostering and other non-institutional accommodation options
- Care arrangements including best interests determinations, child-sensitive case management, legal advice, and meeting basic needs
- Guardianship and alternative care for unaccompanied and separated children
- Case resolution in a child's best interests

ii. Building upon existing plans

A number of existing opportunities can be used to build a regional program of learning and action on alternatives to detention for children.

At its seventh meeting, there was strong support for the ADFM convening a workshop on alternatives to child detention in mid to late 2019. Potential locations were discussed, including Malaysia, and the Australian Government indicated their commitment to support such an event. The workshop will be a key step in the development of a regional learning platform. It will enable participants to learn from a core group of countries about the 'how to' of implementing alternatives to detention for children, including both positive developments as well as how challenges have been tackled. It will also enable participants to identify policies or practices that are most applicable to their national contexts, and to identify areas for further exploration for adoption in their national context.

This regional workshop will be complemented with national-level workshops with governments that have expressed interest in exploring a particular element of implementation in detail. These national workshops will develop in line with the needs and interests of each country.

Combined, these two layers of work will form a foundation for a regional peer-learning and action group on alternatives for children to develop in the second half of 2019.

iii. Regional peer-learning and action group

A regional peer-learning group of interested governments will be a vehicle for officials to explore effective alternatives for children, alongside relevant UN bodies and civil society organisations. Participating governments will be encouraged to conduct an initial mapping or "stock take" of how well their migration systems respond to the needs of children. The initial mapping will create a baseline of current status, and assist in matching states for peer learning according to their needs and strengths. Peer learning visits will be facilitated, for governments to study the solutions developed in similarly situated countries, and to obtain advice from their government counterparts when tackling key challenges. Peer learning meetings will facilitate sharing of good practices and build mutual support between states to overcome challenges and

blocks. The self-assessment and program of learning will also provide a framework for states in tracking their progress on their GCM commitments and provide a focus for implementation reporting.

UN bodies and civil society groups in the region will be important partners in the development and implementation of alternatives to detention of children. Civil society organisations can share their experience and expertise working with children who lack legal residency in the domestic context, while the national offices of international bodies such as UNICEF will also be able to provide subject-matter and country-specific expertise.

iv.   National learning and action

National working groups will be an important mechanism for governments to develop and strengthen alternatives to immigration detention at the national level. Working groups involving UN agencies and civil society can facilitate greater government understanding of on-the-ground challenges, as well as deepening knowledge of the alternatives in operation that are funded and operated by civil society groups.

Regional bodies

Regional bodies can play an important role in encouraging and supporting governments to develop and strengthen their systems for the care and protection of children in the context of international migration. For example, the Council of Europe and the Inter-American Commission on Human Rights have each made statements condemning child immigration detention, and promoting the benefits of alternatives.[13]

Institutes in the region - such as the Bali Process and ASEAN - have an opportunity to make use of the political, human and financial resources arising from the Compacts' implementation processes to strengthen the region's approach to the governance of migration.

i.   ASEAN Intergovernmental Commission on Human Rights (AICHR) / ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

ASEAN bodies could deepen regional understanding of alternatives for children by developing regional knowledge and advice on alternatives for children. Potential avenues include to:
- Develop tailored regional guidance for states on the care and protection of children that takes into account the issues and concerns specific to the region
- Review regional application of CRC/CMW Joint General Comment No. 4, with a view to highlighting states that are protecting the rights of children in the context of migration
- Disseminate findings of the Global Study on Children Deprived of their Liberty when published later in 2019
- Extend the call to strengthen alternatives to detention for children in conflict with the law – as set out in the Regional Plan of Action on the Elimination of Violence against Children – to include alternatives for children in immigration detention (and other administrative proceedings)
- Support the development of proposals by states and civil society for expanding alternatives to detention for children

ii.   Bali Process

The Bali Process may also prove an important mechanism for the facilitation of GCM implementation, oversight and reporting in the region. Potential options include:
- Periodic reporting from states on GCM implementation
- Facilitated peer-to-peer exchange

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[13] IAWG Child Detention Standards