



A BETTER PLAN

HUMAN RIGHTS-BASED POLICIES FOR THE PROTECTION OF REFUGEES AND PEOPLE SEEKING ASYLUM

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A Rohingya woman looks out of a makeshift shelter. Bangladesh, September 2017.
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Amnesty International calls on Australia to enhance protection for people seeking asylum and refugees through strengthened regional and global responsibility-sharing

EXECUTIVE SUMMARY

Amnesty International Australia presents a human rights-based approach to reducing dangerous sea journeys by refugees and people seeking asylum. This policy paper provides assurance to Australian policy-makers that it is possible to avoid costly and punitive deterrence measures and ensure greater adherence to the rights of refugees in the Asia-Pacific region.

Amnesty International Australia's Better Plan is a human rights-based approach and alternative solution to the current bipartisan immigration and border protection policies which successive Australian governments have applied to those seeking to enter Australia to escape conflict, poverty and natural disasters in their countries of origin.

If the measures below are implemented as a comprehensive package of reform, Australia will be ensuring greater respect for refugee rights in the Asia-Pacific region and move towards repairing our tattered international human rights record.

The Australian Government has rightly acknowledged that worldwide borders are being challenged by unprecedented global mobility. There is a need to protect the rights of people who migrate without discrimination, as well addressing the root causes of conflict, climate change, natural disasters and persecution. Globally, resettlement places for those recognised as in need of protection are rare and in high demand.

The Australian Government unfortunately seeks to punish and deter people forced to flee persecution, hunger, violence and climate disasters, seeking safety for themselves and for their families, through its law enforcement agencies. This approach must be discarded in favour of a protection-based approach that links humanitarian assistance and foreign aid with domestic migration and refugee programs.

The Better Plan seeks to have a more humane response which balances the government's legitimate state interests in border control, complies with its obligations towards refugees and migrants, while also drawing on the capacity of the Asia Pacific region to respond in more effective ways. Australia has a reputation for solving regional and global challenges and this underpins our standing as an influential and successful nation.

Amnesty International's Better Plan calls for the Australian Government to:

1. Immediately end offshore processing, and bring all refugees and asylum seekers transferred to PNG and Nauru to Australia, or a third safe country.
2. Make sure that the most vulnerable people are resettled, in Australia, our region and globally.
3. Ensure refugees have access to other visas categories, in addition to the existing humanitarian visa intake.
4. Support the prompt, fair and effective assessment of refugee applications in the region.
5. Run effective search and rescue operations.
6. Adapt Australia's foreign policy settings to recognise the need for a coordinated regional response, including boosting Australia's aid program to help neighbouring countries support refugees better and by providing humanitarian assistance when necessary.

An effective, efficient and humanitarian response to global migration requires a multifaceted response. The Better Plan should be viewed as parts of a whole of government strategy which must be implemented comprehensively. Elements of the Better Plan can be funded through a redirection of the \$430 million per annum (over the forward estimates 2018-21) which is budgeted to be spent on the management of asylum seekers offshore.¹

¹ For the cost of Australia's asylum policy, see: <http://www.homeaffairs.gov.au/ReportsandPublications/Documents/budget/2017-18-pbs-full.pdf> and <http://www.kaldorcentre.unsw.edu.au/publication/cost-australias-asylum-policy>

RECOMMENDATIONS

Australia needs to discard its deterrence-focused strategy and instead adopt a protection-based approach and work to more effectively engage the region on issues relating to protection, in order to mitigate the risks of people making dangerous onward journeys by sea and have a rights respecting framework to receive and process those who are forced to do so. What is needed is greater coordination of existing and additional initiatives that combine unconditional aid, diplomatic efforts and humanitarian assistance in a comprehensive way.

Amnesty recommends the following measures are adopted by the Australian Government as a package of reforms:

1. Immediately ending offshore processing, and bringing all refugees and asylum seekers transferred to PNG and Nauru to Australia, or a third safe country

- Immediately close down the offshore processing operation and bring all asylum-seekers and refugees on Nauru and in PNG to Australia.
- Allow recognized refugees the right to settle in Australia, and ensure those seeking asylum have their claims assessed in a timely, fair and effective manner.
- End the mandatory and indefinite detention of people waiting for their asylum claims to be assessed.

2. Making sure that the most vulnerable people are resettled in Australia, within our region and globally

- Specifically, Australia needs to:
 - Increase our humanitarian program to at least 30,000, including making multi-year resettlement commitments.
 - Ensure a more strategic use of resettlement, including increased coordination with other resettlement countries, with specific targets for protection dividends from resettlement.²
 - Adjust the composition of the resettlement program, including the resumption of resettlement from Indonesia (for those arriving post July 2014) that does not exclude particular national or ethnic groups.
 - Reform and expand the Community Support Program so that it adds to (rather than takes places from within) the humanitarian overall program and more closely reflects the current Canadian private sponsorship program.
 - Ensure greater responsibility sharing, by working closely with New Zealand, the USA, Canada, Japan, South Korea and others who can meet the protection needs of refugees to also increase their humanitarian intake.

3. Including refugees in our existing visa programs

- In addition to our core humanitarian resettlement program, Australia should recognise the skills and qualifications of many refugees by considering them when allocating student, work and family reunion visas within the migration program.

² See <http://www.unhcr.org/en-au/protection/resettlement/4fbcfd739/unhcr-position-paper-strategic-use-resettlement.html>

- Open avenues under Australia’s current migration program to ensure those people in need of protection can be proactively identified, and remove barriers to providing protection. For instance:
 - Increase opportunities for safe departure, for those still at risk within their own country (eg, in-country visas).
 - Remove barriers (such as cost, lengthy documentation, and eligibility) to skilled and family migration pathways.
 - Provide access to student visas (eg, Japan has recently initiated a pilot for Syrian refugee students).

4. Supporting the assessment of refugee applications in the region within a defined time period

- Leverage Australia’s diplomatic and humanitarian assistance efforts to support agencies and governments in the Asia Pacific region to assess refugee applications in a fair and efficient manner and within a certain and reasonable time period.
- When people know they’ll be assessed in a fair, efficient, orderly and timely way, which then provides security, they are less likely to make dangerous onward journeys.

5. Running effective search and rescue operations

- Instead of operating a policy of hazardous boat push-backs³ at sea, better utilize Australia’s maritime resources to run proper search and rescue operations.

6. Adapting foreign policy settings, including boosting humanitarian assistance

- Adapt Australia’s Foreign Policy to recognise the need for a coordinated regional solution.
- When people are legally recognised with rights to residence, have access to adequate housing, can access education, fair work and health services and live in safety and dignity, they will not be forced to make dangerous journeys to Australia.
- Restore and expand Australian aid to key countries in the region affected by displacement to ensure the basic needs of refugees and asylum seekers are met and to mitigate the need for people to make dangerous onward journeys in search of safety and security.
- Increase Australia’s unconditional assistance in humanitarian situations including natural disasters, so that people are able to rebuild their lives in safety and dignity.

To implement these recommendations, Australia should clearly articulate an officially recognised, holistic strategy to guide a whole of government approach to effectively engage countries in the region in efforts to increase the protection of people on the move. This policy should guide Australia’s continued engagement in the Bali Process and its role in both the development of the Global Compact on Refugees and the Global Compact on Migration.

³ Boat push backs, as are currently being done by Australia, force people back to a place of danger and in some cases has resulted in returning them to places where they have no right to reside (Indonesia) or may face criminal charges and imprisonment on return. Boat push backs should not be used by Australia to shirk its responsibilities to refugees and deny them a fair assessment process in Australia. For further details on Amnesty International’s concerns with Australia’s push-back policy see: “By Hook or by Crook” <https://www.amnesty.org.au/wp-content/uploads/2016/02/Amnesty-report-Australia-abuse-of-asylum-seekers-at-sea.pdf>

PRINCIPLES OF GREATER REGIONAL COOPERATION

When discussing what greater regional cooperation would look like and how Australia could contribute to a more effective and equitable regional response, recent writers have sought to identify the nature of the protection to be afforded and asked how states in the region can cooperate to achieve it.

A number of basic principles have already been identified through international law, the Bali Process and civil society initiatives such as the Asia Pacific Refugee Rights Network's Vision for Regional Protection. Many of these key principles were again reiterated in the September 2016 New York Declaration on Refugees and Migrants (NYD) (see Appendix 1).

These principles include:

- guaranteed safe entry to countries of asylum for those fleeing directly from persecution and other serious harm;
- stabilizing people's situations in countries of first asylum or transit as quickly as possible, and meeting their humanitarian needs;
- fair and efficient asylum procedures, linked to durable solutions for those in need of them;
- special support and procedures for particularly vulnerable groups, including unaccompanied minors, stateless people and victims of human trafficking; and
- safeguards to ensure refugees are not vulnerable to exploitative labour practices.

An Expert Roundtable on regional cooperation and refugee protection in the Asia-Pacific, convened by the Andrew and Renata Kaldor Centre for International Refugee Law at the University of New South Wales in September 2016⁴, also identified a number of key elements that would be needed to achieve this type of regional protection. These included:

a commitment to genuine responsibility-sharing (taking into account the respective capacities and situations of different states); enhance the overall protection space in individual countries and the region generally; be sustainable and informed by what is politically, socially, and economically realistic in the region; ensure refugee status determination and temporary stay arrangements are linked with work rights and durable solutions for those in need; be subject to effective oversight and quality assurance mechanisms, including possibly by the U.N. High Commissioner for Refugees (UNHCR); and strike an appropriate balance between predictable and established protection mechanisms, on the one hand, and flexibility to respond to emergency situations, on the other.⁵

⁴

See: http://www.kaldorcentre.unsw.edu.au/expert_roundtable_regional_cooperation

The Expert Roundtable identified that there are no shortage of ideas and initiatives, however they all largely depend on political will which has historically been lacking across the region.

Following the Andaman Sea crisis in 2015 and the New York Declaration (NYD) in 2016 a number of countries across the region have made policy shifts toward greater regional protection. Australia has an opportunity to build on these early indications of political will to lead the region towards genuine cooperation on protection.

AUSTRALIA'S CURRENT APPROACH

Australia's current deterrence-based response to those attempting to reach safety by boat, which includes push-backs and offshore processing on Manus and Nauru, is both abusive and unsustainable and therefore must end. It has seen:

- a number of avoidable deaths (including nine on Manus and Nauru);
- the serious and worsening physical and mental health impacts of detention on the approximately 2,000 people warehoused on Manus and Nauru;
- the deteriorating security and safety of those continuing to be detained there;
- asylum-seekers being forcibly returned to their countries of origin and then becoming victims of persecution, violence, torture and death⁶;
- extraordinarily high financial costs (\$AUD 5 billion over the last four years)⁷ ; and
- continuing damage to Australia's international relationships and reputation.

Australia's current policy framework also ignores the fact that one of the key causes of people continuing to attempt to travel to Australia is the lack of safety for refugees in the Asia-Pacific region. As noted by UNSW's Kaldor Centre for International Refugee Law:

Despite being the location of a large and enduring portion of the world's displaced population, many countries in the Asia-Pacific region are not parties to the Refugee Convention or Protocol, and do not have the legal frameworks and/or technical and financial capacity to provide protection to refugees. Typically, these countries do not draw a distinction between refugees and illegal immigrants. Consequently, people seeking protection in these countries commonly find themselves in a 'state of limbo' – unable to work legally, unable to access education for their children, and liable to arrest and punishment for breach of immigration laws.⁸

⁵ See: <http://www.kaldorcentre.unsw.edu.au/publication/regional-cooperation-refugee-protection-unanswered-questions>

⁶ Amnesty International's human rights concerns with offshore processing have been documented in a number of reports, including: *Deported to Danger* https://www.amnesty.org.au/wp-content/uploads/2016/09/Amnesty_International_Manus_Island_report-1.pdf; *Island of Despair* <https://www.amnesty.org/download/Documents/ASA1249342016ENGLISH.PDF>; *Punishment Not Protection* <https://www.amnesty.org.au/wp-content/uploads/2018/02/Manus-briefing-FINAL4.pdf>

⁷ Parliament of Australia, *Lifetime Costs of Offshore Processing in Manus and Nauru- Programme 1.6: Regional Cooperation, Budget Estimates Hearing- Immigration and Border Protection Portfolio, (BE17/210), 22 May 2017.*

Without these protections people will continue to move until they reach safety.

Officially the current approach by the Australian government to irregular migration in the region is underpinned by the Coalition's August 2013 election "Policy for a Regional Deterrence Framework to Combat People Smuggling". This approach is driven by a single minded focus on deterrence and is premised on the false belief that: "The current regional problem with irregular people movement is imported - it is not regionally sourced."⁹

Following the Andaman sea crisis Australia has endeavoured to engage with the region, principally through the re-energised Bali Process (see Appendix 2). Australia's more recent engagement has focused on increasing protection, creating mechanisms for search and rescue, engaging business to ensure alternative legal pathways to migration and tackling issues relating to human trafficking.

Prior to 2016 the focus of the Bali Process was on measures to combat people smuggling and trafficking, with little or no attempt to directly address issues either causing refugee movements or facing refugees in the region. While refugee protection has now been explicitly articulated, following the adoption of the Bali Declaration¹⁰, further work can be done by Australia to ensure it is a genuine mechanism to address refugee issues more directly.

Australia also actively participated in the September 2016 UN Summit on Refugees, resulting in the NYD, which was unanimously endorsed by 193 UN member states. The key protection principles Australia has committed to under the NYD are listed in Appendix 1. Significantly, following the adoption of the NYD, negotiations have begun for the development of two Global Compacts: one for safe, orderly and regular migration and the other for refugees.

Writers have noted: "there is a general consensus that the Global Compacts present a unique opportunity to make significant and far-reaching improvements in the global governance of migration and refugees, especially through the introduction of the International Organization for Migration (IOM) into the UN system. And there are compelling reasons for Australia to engage proactively, particularly in any serious effort to reform the international protection regime."¹¹

Through the development of the Global Compact on Refugees, underpinned by the Comprehensive Refugee Response Framework (CRRF), a number of initiatives have been identified that Australia could engage in to improve the global protection regime. These include doing more to protect refugee rights in Australia, providing technical and financial support to new resettlement countries; promoting complementary pathways for refugees; and capacity development with regional partners.

This capacity development would include strengthening inter-state cooperation in responding to the protection dimension of rescue at sea and reforming the Bali Process to greater align it to the international protection regime.

⁸ <http://www.kaldorcentre.unsw.edu.au/publication/regional-cooperation>

⁹ See: http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/2686733/upload_binary/2686733.pdf;fileType=application%2Fpdf#search=%22library/partypol/2686733%22

¹⁰ See: [https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20\(1\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20(1).pdf)

¹¹ See, for instance: Khalid Koser, <https://www.lowyinstitute.org/publications/global-compact-refugees-role-australia>

Foreign policy strategy

Australia's potential shift away from an approach solely focused on deterrence and punishment to one that is more nuanced and clearly reflecting the priorities and issues facing others in the region and globally is welcomed.

What is needed now is greater coordination of both existing and additional initiatives that combine aid, diplomatic efforts and humanitarian assistance in a more holistic approach.

This must also include Australia reforming its own deterrence-based asylum policies, including offshore processing, mandatory detention and moratoriums on resettling particular groups, to restore credibility to its efforts to influence the policies and actions of others in the region. It is also vital for Australia's credibility in the region that any plan be framed as part of a genuine commitment to collaborate and is not seen as a hypocritical attempt by Australia to externalise its borders at the expense of its regional neighbours.

Any form of regional cooperation does not negate Australia's own responsibilities and obligations to accept asylum seekers, however they arrive.

The recently released Foreign Policy White Paper¹² is a starting point for the prioritisation and reshaping of our foreign policy to bring a better approach. For example, the White Paper commits the government to an increase in humanitarian assistance and other support for crises and conflicts to \$500 million per annum.¹³

The White Paper also identifies some of the drivers of the migration and people flows:

- Worldwide, borders are being challenged by unprecedented global mobility. Conflict, climate change and natural disasters are major drivers, but millions of people are now on the move each year seeking opportunity and better lives elsewhere.
- This massive growth in irregular migration is being enabled by digital communication, cheap transport and, in some cases, people smuggling syndicates. In an era of smartphones and social media, people smugglers find it easier to market their services than ever before.

The White Paper disappointingly continues to commit the government to a defensive border protection stance including restatements of its belief that punitive measures are necessary to combat people smuggling and irregular migration. In response to these global trends, the paper commits Australia to:

1. continuing to protect our borders to prevent irregular people movement to Australia
2. maintaining our permanent refugee resettlement program
3. helping regional partners improve their border management capacity and strengthen our cooperation, including to disrupt people smuggling, and
4. supporting people displaced by conflict or natural disasters through our aid program by providing assistance as close to their homes as possible.

Each of these elements are able to be reshaped and redirected towards the implementation of the Better Plan.

¹² <https://www.fpwhitepaper.gov.au/>

¹³ See <https://www.fpwhitepaper.gov.au/> Pp 71-73

A BETTER PLAN

Rather than spending billions of dollars abusing the rights of a small number of people in offshore processing centres, Australia needs to adopt a protection-based whole of government approach and work to more effectively engage the region on issues relating to protection.

The Asia-Pacific region faces a complex range of migration concerns, beyond the movement of refugees and people seeking asylum. As such, Australia needs to broaden its focus and work with the region to provide a more comprehensive and integrated response to the various migration-related concerns of its neighbours, which also addresses the complex needs of forcibly displaced people.

Genuine regional cooperation will be more effective than a one-size-fits-all deterrence approach. Australia must focus on both bilateral measures (see Appendix 3 for opportunities in specific countries), regional initiatives such as the Bali Process and through the NYD processes.

Coordination between these mechanisms is necessary to ensure concerns by States relating to “pull-factors” can be addressed. This will help reassure countries fearing that if they are the first to provide greater protections, then refugees and those seeking asylum will move to them. A coordinated approach that works to ensure similar processing procedures and timeframes across the region, as well as guaranteeing that basic rights and protections are met, coupled with multi-year commitments by Australia to increasing aid and resettlement, will assist in overcoming potential reticence to making reforms.

1. Immediately ending offshore processing, and bringing all refugees and asylum seekers transferred to PNG and Nauru to Australia, or a third safe country.

Recommendations to the Australian Government

- Immediately close down the offshore processing operation and bring all asylum-seekers and refugees on Nauru and in PNG to Australia.
- Allow recognized refugees the right to settle in Australia, and ensure those seeking asylum have their claims assessed in a timely, fair and effective manner.
- End the mandatory and indefinite detention of people waiting for their asylum claims to be assessed.

The Australian Government claims that the policy of offshore processing deters people-smugglers and protects people who might otherwise undertake the hazardous boat crossing to Australia. While it has been widely promoted by successive of Australian governments as a demonstration of Australia securing its borders, it has been internationally criticized as being deliberately cruel, inhumane and degrading.¹⁴

¹⁴ See, for instance: Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development- Report of the Special Rapporteur on the Human Rights of Migrants on His Mission to Australia and the Regional Processing Centres in Nauru, 35TH sess, Agenda Item 3, UN Doc A/HRC/35/25/Add.3 (23 June 2017); Human Rights Committee, Concluding Observations on the Sixth Periodic Report of Australia, 121st sess, Agenda Item 5, UN Doc CCPR/C/AUS/CO/6 (9 November 2017) [8]; and Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development- Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 37th sess, Agenda Item 3, UN Doc A/HRC/37/50 (26 February 2018).

It is misleading to characterize the policies as aimed at “saving lives,” as some Australian officials have attempted to do in recent years. The twin goals of any country’s refugee policies should be to maximize protection and minimize harm. Australia’s policies fail to do this. Although no one should be forced to risk their lives in perilous boat journeys, it is impossible – and indeed unlawful – to block them from doing so. People have the right to leave any country and the right to seek and enjoy asylum from persecution.

From the evidence presented in numerous reports by Amnesty International, it is clear that the Australian Government’s refugee policies have been explicitly designed to inflict incalculable damage on hundreds of women, men and children on Nauru and Papua New Guinea.

Australia’s focus on deterrence has caused incalculable harm: causing severe and sometimes irreversible damage to thousands of asylum-seekers and refugees, demolishing Australia’s international reputation, costing billions of dollars and undermining the international refugee protection system established after the horrors of the Second World War. The current status quo is not just untenable but unlawful, immoral and must end.

2. Making sure that the most vulnerable people are resettled in Australia, our region and globally

Expanding opportunities for safe and legal entry to Australia has been consistently identified as a way for Australia to engage in an alternative, human rights-based policy response to flight by sea. These opportunities include Australia taking on a greater share of settlement and working with others in the region to ensure all countries are working towards increased settlement.

Recommendations to the Australian Government

- Increase our humanitarian program to at least 30,000, including making multi-year resettlement commitments.
- Ensure a more strategic use of resettlement, including increased coordination with other resettlement countries, with specific targets for protection dividends from resettlement.
- Adjust the composition of the resettlement program, including the resumption of resettlement from Indonesia (for those arriving post July 2014) that does not exclude particular national or ethnic groups.
- Reform and expand the Community Support Program so that it adds to (rather than takes places from within) the humanitarian overall program and more closely reflects the current Canadian private sponsorship program.
- Ensure greater responsibility sharing, by working closely with New Zealand, the USA, Canada, Japan, South Korea and others who can meet the protection needs of refugees to also increase their humanitarian intake.

Increasing the size of the resettlement program

Australia has committed to increase its humanitarian program to 18,750 places per annum as of financial year 2018-19 (from the official quota of 16,250 for financial year 2017-18). However, with the additional quota of 12,000 Syrian and Iraqi refugees over the last two years Australia's program was close to 22,000 places in the FY16-17. Given the clear capacity of settlement service agencies to settle 22,000 people in a year Australia undoubtedly has the capacity to do much more than the 18,750 promised for FY 18-19.

With UNHCR stating the current global resettlement need to be close to 1.2 million people now is the time for Australia to step up and sustain an expanded resettlement program.

Amnesty International recommends that Australia increase its overall humanitarian program to 30,000 places and develop a private sponsorship program that is in addition to the current humanitarian program (and not taken from within the existing quota).

Adjusting the composition of the resettlement program

While Amnesty International has consistently advocated for Australia to have a globally balanced resettlement program, this must include a commitment to settling all people identified by the UNHCR, through their key resettlement criteria,¹⁵ and regardless of their nationality and the time they arrived in a particular country. This would include removing the restrictions on resettling refugees in Indonesia who arrive after July 2014, as well as restrictions based on nationality and ethnicity.

Expanding options for private and community sponsorship

Community support program

Amnesty International welcomed the discussion paper, produced by the Department of Immigration and Border Protection (DIBP) in June 2015, seeking public input on a proposed model for a Community Support Program (CSP) which highlighted the development of a private sponsorship model for Australia. At the time however, as well as highlighting a number of specific concerns with the then Community Proposal Pilot (CPP), we strongly advocated for further community/private sponsorship programs that would enable those with capacity to also sponsor refugees.

Amnesty International welcomed the announcement in New York in September 2016 (at the two summits), by Australia's Prime Minister, that Australia would be expanding its private sponsorship program (the CSP) to 1,000 places and that opportunities would be made for business engagement in the program, providing places for skilled refugees. At the time we again expressed our concern that the program needed to be in addition to Australia's humanitarian program and not used as a cost saving measure, taking places from the existing program. Unfortunately, the 2017-18 Budget announced that the 1,000 CSP places would not be additional but included in the existing quota of 16,250 places (predominantly out of the Special Humanitarian Program (SHP) quota).

¹⁵ <http://www.unhcr.org/558bff849.pdf>

In addition to the inclusion of the private sponsorship places within the existing humanitarian program quota, Amnesty International raised the following concerns about the implementation of the CSP:

- The high cost of the application and visas (approximately three times the amount of the Canadian program).
- Applications prioritised for processing, over other humanitarian visas, regardless of the urgency of their protection needs.

As noted in greater detail below, both the Bali Declaration and the New York Declaration have highlighted the need to encourage the private sector to work with governments to ensure complementary legal pathways for skilled refugees (with the assumption that this would be in addition to existing programs).

Over the past 12 months Amnesty International has worked closely with supportive businesses, community organisations and academic institutions, as well as meeting with Immigration officials, to explore ways businesses could engage in providing complementary pathways for skilled refugees.

Unfortunately rather than looking at ways businesses could complement other sponsorship programs (and the current humanitarian program), the Australian Government is going to prioritise young, healthy, qualified, work ready, refugees over those with acute protection needs or close family links in Australia.

In promoting the new program the Australian government noted that private sponsorship would allow businesses to make ‘corporate social responsibility obligations matter’ in respect to humanitarian entrants and refugees.

However, as the current model ensures that any refugee they sponsor will come from within the current program and as such will be at the expense of others who previously could sponsor a vulnerable family, it will be extremely difficult to convince a business it is demonstrating corporate social responsibility if in effect a business is being asked to “take” the place of a vulnerable refugee, including a torture survivor, a woman at risk, an unaccompanied child, or someone’s close family member.

As reiterated previously by Immigration, the layers of support needed for the most vulnerable refugees make it likely that restrictions will be put in place (under the CSP) for those that require more intensive support. Hence people with medical conditions, torture and trauma survivors, etc, will be excluded from the CSP at the expense of those with less compelling protection needs, including those with skills that are attractive to businesses.

Again, it is difficult to argue with the view that priority is being taken from those most in need of resettlement (as a specific durable solution) and given to those who are willing and able to pay. Further, as highlighted in our previous Humanitarian Intake Submission, it is also difficult to understand why the government is asking communities and businesses to pay for something it has already said it would pay for, with less settlement support and at great expense to individual proposers.

The CSP needs to be redeveloped, more in keeping with the current Canadian private sponsorship program, to ensure:

- the places do not come from within the existing humanitarian program or existing visa allocations;
- it is not too costly for refugees or their sponsors (currently sponsors need to put up nearly three times the amount of those in Canada to bring in a family of five);
- that it is equally open to community, family and businesses to bring in refugees;
- that it appropriately supports those resettled and protects them from exploitation.

The Canadian Private Sponsorship Model

A number of other organisations, including the Refugee Council of Australia (RCOA), have highlighted the benefits of Australia adopting a model similar to Canada's private sponsorship program. While Amnesty International acknowledges some of the challenges with the Canadian system, we support the recommendations of the RCOA that Australia look at this system as a way to strengthen and improve Australia's current community sponsorship program.

The benefits of a system like Canada's include:

- ensuring a significant increase to resettlement numbers can be achieved, with the numbers in addition to the government funded program;
- improving the chance of meaningful integration of new arrivals, due to increased social capital and network support from private sponsors;
- ensuring that private sponsorship acts as a community-building exercise for all those involved;
- having a positive effect on national refugee and immigration policies more broadly, with networks of private sponsors having a personal stake in the issues.

While there are significant benefits to private sponsorship programs there is still a need to ensure such programs meet certain parameters of the international protection framework.

Strategic use of resettlement

The Australian Human Rights Commission has identified the strategic use of resettlement as a way Australia could build bridges to greater cooperation with other countries.

With established resettlement programs in a number of countries in the region, Australia could begin to use resettlement more strategically to foster regional cooperation on refugee issues and achieve protection outcomes for refugees who will not have the opportunity to resettle. As noted by UNHCR the strategic use of resettlement¹⁶ can have a number of benefits including:

- mitigating the potential for secondary movement
- reducing the influence of traffickers
- achieving a more equitable sharing of responsibility
- generating interest in strengthening refugee protection.

¹⁶ See <http://www.unhcr.org/en-au/protection/resettlement/4fbcf739/unhcr-position-paper-strategic-use-resettlement.html>

Strategies to help Australia leverage its resettlement program effectively to achieve improved protections in the region include:

- multi-year resettlement commitments
- coordination with other resettlement countries, with specific targets for protection dividends from resettlement
- resuming resettlement from Indonesia (for those arriving post July 2014) that does not exclude particular national or ethnic groups.

Australia's resettlement program needs to be part of a coherent, clearly articulated policy approach to improving overall protections in the region.

3. Including refugees in Australia's other existing visa programs

Australia's current visa framework has the capacity to provide greater protection to those seeking asylum in the region. We propose Australia adapt existing visa programs to utilize the skills and qualifications held by refugees and provide additional, alternative pathways for people seeking protection.

Recommendations to the Australian Government

- In addition to our core humanitarian resettlement program, Australia should recognise the skills and qualifications of many refugees by considering them when allocating student, work and family reunion visas within the migration program.
- Open avenues under Australia's current migration program to ensure people in need of protection can be proactively identified, and remove barriers for providing protection. For instance:
 - Increase opportunities for safe departure, for those still at risk within their own country (eg, in-country visas).
 - Address barriers (such as cost, documentation, and eligibility) to skilled and family migration pathways.
 - Provide access to student visas (for example, Japan has recently initiated a pilot for Syrian refugee students).

Australia can consider refugees when allocating student, work and family reunion visas through developing 'protection-sensitive' migration criteria in addition to existing criteria.

'Protection-sensitive' migration has been described by the Australian Human Rights Commission as:

Protection-sensitive migration aims to facilitate refugees' access to non-humanitarian migration pathways as a means of enhancing protection or providing durable solutions. It involves addressing barriers which may inadvertently exclude people fleeing persecution from migration opportunities (such as documentation requirements, visa fees and carrier sanctions); implementing proactive strategies to extend a wider range of migration options to forcibly displaced people; and providing additional safeguards (such as protection against refoulement) for refugees migrating through non-humanitarian pathways.¹⁷

¹⁷ Australian Human Rights Commission, Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea, Report (2016), P34, http://www.humanrights.gov.au/sites/default/files/20160913_Pathways_to_Protection.pdf

UNHCR has previously flagged the use of non-humanitarian pathways for admission as a possible 'fourth durable solution', including in March 2016 in a background note for the high-level meeting to address the crisis facing Syrian refugees. Utilising non-humanitarian pathways was identified as a way to expand or create opportunities for Syrian refugees to access safety and protection. UNHCR identified the admission of relatives, labour mobility schemes, academic scholarships and apprenticeship programs as potential migration pathways that could be modified to target vulnerable Syrian refugees.

There are a number of possible avenues open to Australia under its current migration program that could be modified to ensure those in need of protection can either be proactively identified or, at a minimum, barriers for those in need of protection could be removed. These include:

- increasing opportunities for safe departure, for those still at risk within their own country (eg in-country visas)
- addressing barriers to skilled and family migration (addressing barriers such as cost, documentation, and eligibility).
- accessing student visas (eg, Japan has recently initiated a pilot for Syrian refugee students).

While Australia does have a specific humanitarian visa for those at risk who are still in-country, (the sub-class 201 visa) it is seldom used and Australia's experience with in-country visas, in the past, has at best been mixed. However, while controversy surrounds one of Australia's current programs - its engagement with the USA/Costa Rica initiative, given the perception it was part of a swap for the USA taking refugees off Manus Island - the initiative itself does demonstrate a unique approach to protecting people at the source. Under this initiative vulnerable individuals at risk in El Salvador are taken to Costa Rica, processed by UNHCR and then resettled from Costa Rica, to countries like the USA or Australia. As such it provides a useful example for initiatives Australia could develop in this region and elsewhere.

Australia does have a well-established migration program for skilled migrants and family migration, with a number of different visa options in each category. As noted above, a number of barriers currently exist for those with protection needs accessing these categories. These include: high costs; documentation and eligibility requirements; processing times; access to entitlements and challenges to securing permanent residency. However, potential measures could be implemented to address these barriers. For example differentiated documentation requirements, similar to those under the Special Humanitarian Program, could be introduced for those in situations of displacement.

Amnesty International Australia encourages the Australian Government to further investigate and develop approaches to address barriers and enhance protection-sensitive opportunities. While the Australian Human Rights Commission has provided a comprehensive overview¹⁸ of the ways existing visas can be adapted to be more protection sensitive, they also note that expanding pathways will only provide solutions for a limited number of individuals and as such, must be coupled with initiatives that provide appropriate, rights-based protections for those still in the region.

¹⁸ Australian Human Rights Commission, Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea, Report (2016)

4. Assessing refugee applications within a prompt, effective and fair time period

Australia can reduce the incidence of dangerous journeys by making sure refugee claims can be processed in an efficient, fair and timely way in countries across Asia. Australia should leverage diplomatic and humanitarian efforts to encourage countries across the region to process refugee applications within a defined time period.

Recommendations to the Australian Government

- Leverage Australia's diplomatic and humanitarian assistance efforts to support agencies and governments in the Asia-Pacific region to assess refugee applications in a fair and efficient manner and within a certain and reasonable time period.
- When people know they'll be assessed in a fair, efficient, orderly and timely way, which then provides security, they are less likely to make a dangerous onward journeys.

As UNHCR has noted, as of 31 July 2017 there were approximately 3.7 million refugees in the Asia-Pacific region¹⁹ with the majority coming from Afghanistan and Myanmar.²⁰

However, very few countries in the region have signed the 1951 Refugee Convention, or the 1967 Protocol. This situation has meant that UNHCR has often had to take a de facto state role, with regards to operational responsibilities, such as refugee status determination (RSD), community support and resettlement. However, without the resources of states, or the ability to provide those granted refugee status with an official legal status, the capacity for UNHCR to provide formal protection to refugees in the region remains extremely limited.

Historically those seeking protection in the South East Asia region have not been accorded any official legal status, and instead are considered illegal immigrants at risk of abuse, exploitation, detention or refoulement. UNHCR has had to negotiate non-legally binding agreements to ensure those with a UNHCR refugee document are not subject to detention or removal.

While a letter from UNHCR, stating that someone is registered with them (awaiting RSD), can provide some form of protection, often it is only when someone has finally been found to be a refugee that they receive (in theory) the fully negotiated level of protection.²¹ Consequently, any delays in registration or processing can have a serious impact on the safety of those seeking protection. In countries such as Thailand and Malaysia both the registration and the RSD process can take years, creating a serious protection risk for individuals and families.²²

Even when granted refugee status by UNHCR, refugees lacking a legal status in the country where they are present still cannot enjoy their rights.

This situation is likely to be compounded by UNHCR's recent signal that they are keen to work with all actors to implement a shift away from third country resettlement to implementing protection within the Asia-Pacific.

¹⁹ <http://www.unhcr.org/59c288937.pdf>

²⁰ See: <http://www.unhcr.org/59c288937.pdf>

²¹ See, for instance, UNHCR Projected Global Resettlement Needs 2018, Geneva 12-14 June 2017, p150

²² See, for instance, Amnesty International, *Between a Rock and a Hard Place: Thailand's refugee policies and violations of the principle of non-refoulement*, Report (2017) <https://www.amnesty.org.au/wp-content/uploads/2017/09/EMBARGOED-Between-a-Rock-and-a-Hard-Place-.pdf>

According to UNHCR, resettlement will still be used to address the needs of individuals with specific protection priorities, acute vulnerabilities or family links. However in the spirit of the Bali Process and NYD, UNHCR will be shifting its focus to offer support to governments in joint approaches to processes such as registration and RSD, as well as the promotion of temporary stay arrangements with work rights and access to national health and education services.²³

Until governments in the Asia-Pacific region implement these reforms, UNHCR's move away from resettlement will leave refugees in the region subject to even further delays, placing enormous stress on those refugees, who remain vulnerable to arrest, detention and exploitation. This will leave refugees little choice but to either return to their country of origin, where they will face human rights abuses, or make dangerous onward journeys.

While Amnesty International remains critical of Australia's current "Fast Track" processing for boat arrivals²⁴, historically Australia has had well developed RSD processes (still in place for those arriving by plane) and should leverage its diplomatic and humanitarian assistance efforts to support initiatives that provide greater rights and protections in regional countries, including by providing technical assistance to help these countries develop their own registration and rights-based asylum processes.

Importantly though, as these approaches are being developed (and even after they are implemented), the ability of those seeking protection to get timely determinations will continue to play a crucial role in their ongoing safety and stability in countries of first asylum. As such Australia needs to continue to engage with governments in the Asia-Pacific region to ensure refugee applications are assessed through a fair, effective and timely process.

Primary countries for Australia to support in the establishment of these processes include Thailand, Indonesia, Bangladesh and Malaysia.

5. Running timely search and rescue operations

Australia must not turn its back on the security and safety of those lost at sea. The Better Plan delivers Australia's existing commitments to search and rescue operations to save lives and prevent future emergencies.

Recommendations to the Australian Government

- End hazardous boat push-backs at sea²⁵ and instead utilize Australia's maritime capabilities to run proper search and rescue operations.

There are a number of important initiatives Australia is already undertaking that could support greater regional preparedness to respond to future emergencies. One clear example is capacity building specifically focusing on regional protocols around rescue at sea.

Significantly Australia has already begun to work with the region to improve coordination in search and rescue operations, most particularly through the Bali Declaration, adopted by the Bali Process (see Appendix 2) members at the March 2016 Ministerial meeting.

²³ See, UNHCR Global Resettlement Needs 2018, Geneva 12-14 June 2017, p134

²⁴ See, for example, 'Government sets impossible deadline for asylum applications', Amnesty International (Media Release, 13 March 2017), <https://www.amnesty.org.au/unrealistic-deadlines-imposed-on-people-seeking-asylum/>

²⁵ For further details on Amnesty International's concerns with Australia's push-back policy see: "By Hook or by Crook" <https://www.amnesty.org.au/wp-content/uploads/2016/02/Amnesty-report-Australia-abuse-of-asylum-seekers-at-sea.pdf>

While countries in the region have been slow to operationalise commitments made in the Bali Declaration, as part of its review of the Andaman Sea crisis Bali Process members did recognise their own deficiencies by establishing a non-binding Task Force on Planning and Preparedness. Its role is to develop protocols to ‘harmonise detection, search and rescue, disembarkation and shelter practices.’

The Task Force’s Table Top Exercise,²⁶ held in May 2017, was an important first step in developing a harmonised regional approach to search and rescue. Next steps, which will involve developing protocols around disembarkation, registration and reception conditions for those rescued, are crucial in ensuring a protection based approach is an established part of a regional search and rescue system. Importantly, if people are rescued they must be allowed to safely disembark at nearest safe port, wherever that might be, including in Australia.

6. Adapting foreign policy settings, including through aid and humanitarian assistance

There is a great deal of scope for adapting Australia’s foreign policy settings to recognise the need for a coordinated regional solution, including boosting Australia’s aid program to help neighbouring countries support refugees better and by providing humanitarian assistance when needed.

Recommendations to the Australian Government

- Adapt Australia’s Foreign Policy to recognise the need for a coordinated regional solution.
- When people are legally recognised with rights to residence, have access to adequate housing, can access education, fair work and health services and live in safety and dignity, they will not be forced to make dangerous journeys to Australia.
- Restore and expand Australian aid to key countries in the region affected by displacement to ensure the basic needs of refugees and asylum seekers are met and to mitigate the need for people to make dangerous onward journeys in search of safety and security.
- Increase Australia’s unconditional assistance in humanitarian situations including natural disasters, so that people are able to rebuild their lives in safety and dignity.

As one of the 193 countries that unanimously adopted the NYD, Australia has reaffirmed its commitment that protecting those who are forced to flee, and supporting the countries that shelter them, are shared international responsibilities that must be borne more equitably and predictably. This includes both:

- Addressing the root causes of forced displacement, including movements caused by poverty, instability, marginalization and exclusion and the lack of development and economic opportunities, with particular reference to the most vulnerable populations; and
- Easing pressure on host countries.

²⁶ See: The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, ‘Second meeting for the Task Force on Planning and Preparedness’ (Co-Chairs’ Statement, Bali, Indonesia, 18 – 19 May 2017), [https://www.baliprocess.net/UserFiles/baliprocess/File/TTX%20Co%20chairs%20statement%20May%202017%20\(2\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/TTX%20Co%20chairs%20statement%20May%202017%20(2).pdf)

While Australia has already engaged in a number of important regional initiatives, what is needed is greater coordination of both existing and additional initiatives that combine aid, diplomatic efforts and humanitarian assistance in a more holistic approach.

A critical area requiring greater strategic focus is Australia's international development assistance. While Amnesty International Australia acknowledges the important role Australia's aid program already plays, the Australian Human Rights Commission highlighted in its September 2016 report 'Pathways to Protection: An alternative response to flight by sea', that "there is significant potential for Australia to use official development assistance more strategically to address displacement in the Asia-Pacific region."²⁷

Measures should include:

- Restoring funding that has been trending downward to historic lows (as a share of national income), since 2013, to ensure it is commensurate with Australia's SDG commitments.
- Providing multi-year funding to countries affected by major displacement.
- Developing a holistic strategy for utilising aid, ensuring that aid is granted unconditionally and untied to migration outcomes.
- Exploring options to provide aid to countries that host large refugee populations that may be middle income countries.

Australia's aid program needs to be more closely linked to a strategy that improves the circumstances currently facing refugees in the region. Unfortunately, rather than a holistic policy that links aid to initiatives targeting displacement, it would appear that where aid allocations are provided to countries in the region there is very little focus on targeting displacement.

As noted by the Australian Human Rights Commission, with the exception of initiatives in Myanmar that target the root causes of displacement, "Australian aid programs for the Asia-Pacific region appear to lack a specific strategy for responding to the needs of forcibly displaced people, addressing the root causes of displacement and preventing further displacement."²⁸

As highlighted by the Australian Human Rights Commission, it is also vital that Australia restore and expand aid to countries affected by displacement. Unfortunately the aid allocation to major countries of refugee origin and asylum has decreased dramatically over the last five years and overall aid declined to its lowest level ever (as a ratio of Gross National Income) in 2016-17.

The Australian Council for International Development (ACFID) has noted, in its 2017-18 Federal Budget Analysis, that funding for "East Asia"²⁹ will decline by \$10 million to \$883 million under the current budget, a significant decrease from the \$1,413 million Australia was investing in the region only three years ago.³⁰

²⁷ Australian Human Rights Commission, Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea, Report (2016) 58, http://www.humanrights.gov.au/sites/default/files/20160913_Pathways_to_Protection.pdf

²⁸ Ibid

²⁹ As defined by ACFID in reviewing Australia's aid budget, this region includes the region from Mongolia to Indonesia.

³⁰ Australian Council For International Development, ACFID Analysis of the 2017-18 Federal Budget, Report (2017), p24, <https://acfid.asn.au/sites/site.acfid/files/ACFID%20Analysis%20of%2017-18%20Federal%20Budget.pdf>

Addressing root causes

Myanmar

Since the Myanmar military's brutal campaign of violence against the Rohingya population from August 2017, Australia has committed an additional \$31.5 million in aid, primarily to support the relief effort in Bangladesh, which is home to the world's fastest growing refugee crisis. While welcome, it is deeply concerning that outside this emergency response, Myanmar will see the largest cuts for South East Asia in Australia's aid budget this year, falling by almost 15%, despite there being hundreds of thousands of people internally displaced by conflict and violence and in need of humanitarian aid and assistance.

Myanmar faces a myriad of human rights, humanitarian and development challenges, many of them rooted in discrimination and impunity. In order for there to be long-term, sustained progress, including structural and legal reforms, Australia needs to engage with the Myanmar authorities and push them to address these root causes. It is essential that humanitarian, financial and development assistance is clearly conditioned on non-discrimination, equality and for the benefit of all communities. Failure to do so could have devastating and long-lasting implications, in particular in Rakhine State, where it could further entrench the apartheid regime in Rakhine and cement the exclusion and marginalization of the Rohingya.

It is also essential for Australia to couple any humanitarian and development assistance with robust engagement with the Myanmar authorities. Specifically, Australia must be far more forthright in calling on Myanmar to address the human rights violations and discriminatory practices that have led to the significant displacement from and within Myanmar to date. Without action to stop military abuses and ensure those responsible are held to account, we will continue to see people leaving Myanmar, and refugee populations outside the country will be reluctant to return. (See Appendix 3 for further recommendations).

South Asia

Similarly, when looking at Australia's commitments to South Asia, diplomatic efforts to support legislative and policy reform to address root causes will be critical. Again, however, these diplomatic efforts need to be matched with an ongoing commitment to development assistance and it is difficult to understand the proposed decrease in aid to both Afghanistan and Sri Lanka when considering displacement from these countries.

For the FY14-15 Australia's aid to Afghanistan was \$139.9 million, compared to the current budget allocation of \$80.9 million³¹. By helping to ensure greater safety and stability in Afghanistan this will both help mitigate against future flight but will also increase the likelihood of voluntary return for Afghan refugees in neighbouring countries.

The vast majority of the 2.7 million Afghan refugees reside in Iran and Pakistan (where their safety and rights are far from guaranteed). Without safety and stability at home and with continuing uncertainty in these countries, many are choosing to again move in search of greater safety, rather than consider voluntary return. For Afghanistan UNHCR noted that more than 192,000 people were forced to flee their homes in the first eight months of 2017.³²

³¹ Australian Council For International Development, ACFID Analysis of the 2017-18 Federal Budget, Report (2017), p25, <https://acfid.asn.au/sites/site.acfid/files/ACFID%20Analysis%20of%2017-18%20Federal%20Budget.pdf>

³² <http://www.unhcr.org/59c288937.pdf>

For Sri Lanka, Australia's aid has dropped from \$42.8 million in FY14-15 to \$27.7 million in FY17-18. Sri Lanka, like Myanmar, provides a very real opportunity for voluntary return, if suitable/safe conditions can be created.³³ With over 100,000 Sri Lankan refugees of concern to UNHCR (the majority of whom are in the South and South East Asia region) and approximately 40,000 IDPs, a targeted aid program could greatly assist in providing durable solutions for this group.³⁴

Supporting host countries

Policies limiting the provision of Australian aid to middle income countries are undermining Australia's ability to assist several key asylum hosting countries in the region, specifically, Iran, Malaysia and Thailand. These countries combined host approximately 1.2 million refugees and 65,000 people seeking asylum.³⁵ Targeted assistance to these countries, to directly assist refugee populations, could play an important role in ensuring their basic needs are met, mitigating the need for them to make dangerous onward journeys.

Strategic utilisation of Australian aid to Indonesia could also ease pressures. Indonesia accounts for 40% of Australia's aid budget for the South East Asia region, with the focus on education and governance. However there is very little coordination with the funding Australia provides IOM, in Indonesia, which focuses on refugees and people seeking asylum. Greater linkages between these two initiatives is clearly needed, given the ongoing destitution facing refugees in Indonesia.

³³ Australian Council For International Development, ACFID Analysis of the 2017-18 Federal Budget, Report (2017), p25, <https://acfid.asn.au/sites/site.acfid/files/ACFID%20Analysis%20of%2017-18%20Federal%20Budget.pdf>

³⁴ See 'UNHCR Statistical Yearbook' (2016), UNHCR Statistical Yearbook 2016, 15, 38 and <http://www.internal-displacement.org/countries/sri-lanka>

³⁵ This includes; in Malaysia 154,400 refugees and asylum seekers (<http://www.unhcr.org/en-au/figures-at-a-glance-in-malaysia.html>); in Thailand 111,457 (<http://reporting.unhcr.org/node/2552>); and Iran 979,400 (<http://reporting.unhcr.org/node/2527>)

Conclusion

Australia's current regional deterrence approach coupled with its policy of offshore processing is not only abusive but unsustainable. This approach has seen over 2,000 refugees warehoused on Manus Island (PNG) and Nauru for nearly five years. It has caused untold psychological and physical damage to those detained there; has undermined Australia's diplomatic relations with regional neighbours and its reputation as a country that respects international law; and it has come at a financial cost of hundreds of millions, if not billions of dollars. In spite of a recent agreement with the USA to take some of these refugees off Australia's hands, hundreds of refugees are likely to be left behind with no solution in sight.

It also fails to recognise the current regional reality, with the overwhelming majority of refugees in the South East Asia region sourced from one country, Myanmar. These refugees are clearly "regionally sourced" and not "imported" as Australia's deterrence policy is predicated on. Significantly, since the adoption of Australia's deterrence policy in 2013 there have been two significant refugee crises in our region, the Andaman Sea crisis in 2015; and the recent crackdown on the Rohingya, beginning in August 2017, that has seen over 670,000 refugees fleeing into Bangladesh.

In order to respond to these crises and to provide genuine protection solutions, Australia has had to adopt a more regional rights-based approach to work more effectively, engaging the region on issues relating to refugee protection. Significantly, following the Andaman Sea crisis, Australia has begun to take initiatives, primarily through the Bali Process, that have started to look at collaborative protection based approaches that could form the basis of a regional protection model. At the same time, countries within the region, who are not signatories to the 1951 Convention, have also started to adopt policies that provide greater recognition and rights to refugees and asylum seekers (particularly following the NYD in 2016).

What is lacking from Australia is a coordinated and clearly articulated foreign policy position combining diplomatic engagement, aid and humanitarian assistance in a comprehensive way. There are a number of measures Australia needs to adopt, within a clearly articulated foreign policy framework that would provide a genuine alternative to Australia's current costly, damaging approach. These include: ending offshore processing; increasing Australia's resettlement program, and using resettlement more strategically; building initiatives that would enable skilled and other refugees easier access to existing visa programs in addition to our existing refugee intake; supporting UNHCR and regional governments through funding and expertise to ensure timely, fair and efficient refugee status determinations; running effective search and rescue operations that include safe and orderly disembarkation; and boosting humanitarian and development assistance to help ensure the basic needs of refugees and asylum seekers are met.

Ultimately, it is only by ensuring refugees are safe, with access to genuine durable solutions, that Australia will be able to mitigate the risks of people making dangerous onward journeys by sea.

Appendix 1

September 2016 UN Summit on Refugees Declaration:

States signing the New York Declaration for Refugees and Migrants (NYD), including Australia, made the following commitments:

- Reaffirmed the importance of adhering to the international protection regime (the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as international human rights law and international humanitarian law).
- Acknowledged that protection of refugees and assistance to host states must be in line with respect for human rights and fundamental freedoms, and are a shared international responsibility.
- Committed to increase efforts to address root causes of displacement through preventive diplomacy and increased support to countries of origin.
- Invited multi-stakeholder participation in implementing commitments made in this declaration, including civil society, private sector, and migrant and refugee organisations.
- Pledged to strengthen and facilitate a well-funded emergency response and a smooth transition to sustainable approaches that invest in resilience of both refugees and local communities.
- Emphasised the obligation for states to take steps against xenophobia; and implement measures to ensure access to opportunities and improve inclusion.
- Committed to provide additional and predictable humanitarian funding and development support, making explicit reference to including refugees and migrants in the 2030 Agenda for Sustainable Development.
- Acknowledged the rights of states to manage and control borders, but in conformity with international law, and with reaffirmation of the principle of non-refoulement.
- Acknowledged and made specific commitments to refugee and migrant women and girls, children, and others with specific needs and vulnerabilities.
- Affirmed the need to review policies that criminalise cross-border movement and pursue alternatives to detention, particularly child detention.
- Committed to wider avenues for refugees to be admitted to third countries, including through increased resettlement and complementary pathways (through labour mobility, family reunion, private sponsorship and education pathways).
- Affirmed the importance of providing access to education at all levels, from early childhood, primary and secondary education to tertiary, skilled and vocational training.

- Pledged to support comprehensive refugee responses for large-scale refugee movements, including protracted situations, with UNHCR as the lead but with multi-stakeholder involvement that include national and local authorities, international organisations, international financial institutions, civil society partners (including faith-based organisations, diaspora organisations and academia), the private sector, the media and refugees themselves.
- Committed to working towards the adoption of a Global Compact on refugees in 2018.

The NYD calls for the development of a Global Compact on Refugees (GCR), led by UNHCR, and a Global Compact on Safe, Orderly and Regular Migration (GCM), led by the International Organisation for Migration (IOM). Core to the development of the Global Compact on Refugees is the Comprehensive Refugee Response Framework (CRRF) which is being trialed in a number of countries in Africa and the Americas in the lead up to the formation of the GCR in late 2018.

The CRRF has four ‘overarching goals’:

- i. Easing pressures on host countries
- ii. Enhancing refugee self-reliance
- iii. Expanding third-country solutions
- iv. Supporting conditions in countries of origin for return in safety and dignity.

And four ‘key pillars’:

- i. Reception and admission
- ii. Support for immediate and ongoing needs
- iii. Support for host countries and communities
- iv. Durable solutions.

For Australia, the Department of Home Affairs is taking the lead on the development of the GCM and DIBP and the Department of Foreign Affairs and Trade (DFAT) are leading on the development of the GCR.

Appendix 2

Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) was established in 2002. It is co-chaired by Australia and Indonesia and led at Ministerial level by the Indonesian and Australian Foreign Ministers. It consists of 45 States, plus UNHCR, the International Organisation for Migration (IOM) and UNODC. A further 27 countries and international organisations and agencies participate as observers.

Bali Process:

Despite the initial failure of Australia and the Bali Process to respond effectively to the 2015 Andaman Sea crisis, Australia took a leading role in re-invigorating the Bali Process (the 2016 Ministerial meeting was the first to be held since the Coalition was elected to government in September 2013) and facilitating both the Bali Declaration and the subsequent review of the Andaman Sea crisis.

The Bali Declaration was adopted by Bali Process members at the March 2016 Ministerial meeting. The Declaration recognises the importance of ‘victim-centred and protection sensitive strategies’, strict respect for the principle of non-refoulement and the ‘need for comprehensive and long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants.’ While the Bali Declaration is non-binding the Bali Process can be seen as playing an important norm-setting role for the region.

Further, the Bali Process Regional Support Office’s ‘Pathways to Employment’ cross-sector roundtable in September 2016 offered a positive opportunity for civil society to engage in dialogue with states, IGOs and the corporate sector on a shared proposition which could also strengthen protection for refugees. These initiatives will be further developed at a Bali Process Government and Business Forum in Perth August 2017, to be attended by key regional governments and businesses.

Australia’s engagement in the Bali Process is led by the Ambassador for People Smuggling and Human Trafficking, Dr Geoffrey Shaw, as Australia’s senior official co-chair.

APPENDIX 3

Opportunities for Australia to engage with host countries in the Asia region

While the sheer scale of the current global refugee crisis makes the search for solutions extremely difficult, following the High Commissioner's Dialogue on Protection Challenges in December 2015, the Refugee Council of Australia (RCOA) concluded that many of the causes and most of the answers to displacement are local, national and regional, rather than global. One region where durable solutions could be possible is South East Asia.³⁶

When looking at opportunities for change in South East Asia RCOA believes:

"It is possible to imagine how all three durable solutions [voluntary repatriation, resettlement and integration] could be available in South East Asia to enable the majority of refugees in the region to find a safer and more secure future. While the situation of Rohingya refugees is dire and getting worse, it is possible to imagine the circumstances under which tens of thousands of refugees from other ethnic minorities in Myanmar might actively choose to return home. It is possible to construct practical and sound arguments for why the governments of Thailand, Malaysia and Indonesia would be better off with the refugees living and working within their countries having legal permission to do so. It is possible to imagine how resettlement states like Australia, New Zealand, Canada and USA might remain engaged in resettlement from the region at some level and use this more effectively to advocate for durable solutions for refugees who will never be resettled."³⁷

Unfortunately, to date, Australian political paranoia about the movement of refugees has had a direct and very negative impact in the region - in particular, Australia's focus on a regional deterrence policy. Rather than exporting policies simply designed to deter those who need protection, the longer-term answers lie in finding every avenue possible to increase better protection for refugees as close to their country of origin as possible.

As noted by the RCOA, "of the refugees and people seeking asylum in South-East Asia, about 182,300 (or 66%) are from non-Rohingya ethnic minorities in Myanmar, 57,400 (21%) are Rohingya and 34,700 (13%) are from other countries, including Afghanistan, Iran, Iraq, Nigeria, Palestine, Pakistan, Somalia, Sri Lanka, Syria, Vietnam and Yemen. It is useful then to look at how durable solutions can be achieved for these three groups: the Karen, Chin and other non-Rohingya ethnic minorities from Myanmar; the Rohingya; and the much smaller group of refugees from other countries."³⁸

Through its diplomatic efforts Australia must:

- provide direct support to host nations and host societies receiving refugees;
- promote the benefits of better integration of refugees in those societies;

³⁶ See, Power, P. "Hope in the midst of crisis: opportunities for improving refugee protection in South-East Asia", 18 July 2017, <https://reliefweb.int/report/malaysia/hope-midst-crisis-opportunities-improving-refugee-protection-south-east-asia>

³⁷ <https://reliefweb.int/report/malaysia/hope-midst-crisis-opportunities-improving-refugee-protection-south-east-asia>

³⁸ <https://reliefweb.int/report/malaysia/hope-midst-crisis-opportunities-improving-refugee-protection-south-east-asia>

- increase support through refugee resettlement and encourage other resettlement nations to do the same; and
- pursue every opportunity to promote peace and reconciliation in refugees' countries of origin.

Amnesty International Australia suggests that while Australia can and should pursue these efforts through regional forums, there are also bilateral opportunities where Australia can begin to work closely with its neighbours to improve protection.

Thailand

Thailand is currently host to approximately 111,000 people seeking asylum and refugees, the vast majority of whom (approximately 103,000 people) are forced migrants from Myanmar, who live in nine camps or 'temporary shelters' along the Thai/Myanmar border. The balance of the people seeking asylum and refugee population includes approximately 8,200 'urban refugees', typically from non-neighbouring countries such as Pakistan and Somalia who reside in and around Bangkok, as well as several hundred other individuals (including approximately 261 Rohingya refugees) in the government shelters in Southern Thailand.

Currently, Thailand lacks a legal framework to assess asylum claims and fails to provide formal legal status to refugees in the country, heightening the risk of other human rights violations, including arbitrary and indefinite detention, refoulement, and human trafficking. On 10 January, 2017, however, Thailand adopted Cabinet Resolution 10/01, B.E. 2560, which created a "Committee for the Management of Undocumented Migrants and Refugees" to develop policies concerning the screening and management of undocumented migrants and refugees.

This is a potentially positive step towards providing domestic legal status and basic rights to refugee and people seeking asylum as well as ensuring the right to asylum as guaranteed by Article 14 of the Universal Declaration of Human Rights. While this Resolution lays the groundwork for developing effective procedures to identify and manage undocumented migrants and refugees, a screening mechanism that employs discriminatory or overly restrictive criteria could entrench rather than resolve outstanding concerns regarding asylum protections in Thailand.

Australia's current and future engagement

- There are a number of ways Australia can support Thailand to develop its screening mechanism. This includes through the Bali Process Regional Support Office (RSO), which has developed policy guidelines on various issues relating to protection to assist members in developing protection sensitive programs. Australia should encourage Thailand to utilise these resources to ensure the systems developed are able to identify groups and individuals with protection needs, while also offering directly, or through assisting UNHCR, expertise on protection sensitive screening mechanisms.
- Australia already has had a significant resettlement program in Thailand, predominantly for refugees from the Myanmar minorities on the Thai-Burma border. By maintaining a focus in Thailand, Australia should also look at urban refugees in Bangkok, ensuring nationalities are not excluded and that the Thai government can develop alternatives to detention (in line with its commitments to the NYD), knowing that durable solutions will be shared.

- As noted above Australia's aid program has not included assistance to Thailand, as a middle-income economy, however assistance has been given along the Thai-Burma border. Australia needs to look at ways its aid program can be extended to include assistance for other refugees, possibly through increased funding for UNHCR or NGO partners who are working with other refugee populations.

Indonesia

Despite not being a signatory to the 1951 Refugee Convention Indonesia is another regional country where significant steps have recently been taken to recognise refugees.

Indonesia is home to roughly 14,410 people seeking asylum and refugees. Approximately half of all people seeking asylum are from Afghanistan, followed by Somalia (10%), Iraq (6.4%), Myanmar (6.4%) and Nigeria (5.5%).

Following a drafting process extending more than four years, the much-awaited Presidential Decree 125 of 2016 Concerning the Handling of Foreign Refugees was passed in December 2016. The decree provides a definition of who is a refugee in accordance with international standards, but does not offer legal pathways for protection in Indonesia, such as local integration.

Unfortunately, the Presidential Decree formalises Indonesia's position that the only options offered to refugees are resettlement or repatriation. The decree does not set out new rights for people seeking asylum and refugees, instead focusing on technical guidelines for their reception and management.

One positive development is that according to the new Presidential Decree, search and rescue operations must be initiated when a boat suspected of carrying people seeking asylum issues an emergency call. This should rule out future push backs by the Indonesian Navy (as seen during the 2015 Andaman Sea Crisis).

According to the Presidential Decree, once people seeking asylum are identified they are to be taken to the nearest detention centre or immigration office. However, the decree does spell out options for accommodation for people seeking asylum and refugees outside detention, with special consideration given to women, children, the elderly and sick.

Many points remain vague, including responsibility for funding these alternatives after initial reception. Most costs are likely to be borne by IOM, as in the past, whose largest donor is Australia. Currently IOM provides both accommodation and a monthly financial support for refugees in the community.

Australia's current and future engagement

- Australia's aid allocation to Indonesia is its most significant program in East Asia yet there remains very few links between the aid budget and the money DIBP provides to IOM for refugees. The Australian government announced in the 2017 budget that \$52.6 million will be provided to IOM to continue support of the Regional Cooperation Arrangements in Indonesia, which assists regional partners to manage asylum seeker populations in their countries.

- As noted above, IOM funding provides alternatives for refugees released from detention. However, IOM also runs a number of programs within detention centres and has also been contracted to redevelop detention facilities. With Australia so engaged with the detention regime (and its alternatives) in Indonesia, it is important that it uses the opportunity to work with Indonesia as it develops policy around the Presidential Decree to promote sustainable alternatives to detention. However given Australia's current fractured relationship with Indonesia, specifically on these issues, supporting local civil society groups to help develop alternatives could be a more productive way forward.
- Resettlement: As noted, for those recognised as refugees in Indonesia, resettlement remains the key durable solution. However, with global resettlement places likely to fall, the numbers accepted from Indonesia are also likely to decline. Australia needs to maintain a significant and predictable resettlement program out of Indonesia and restrictions placed by Australia, including on resettling those who arrived after July 2014 as well as specific national groups, must be lifted to ensure that those identified as most vulnerable by UNHCR can be referred to Australia. At the same time, ensuring cooperation from other resettlement countries such as New Zealand and the USA will also be important.

Malaysia

Malaysia is home to an estimated 2 to 4 million undocumented migrants, many of whom travel to Malaysia from countries in the region to seek work. As at the end of February 2018 there were approximately 154,400 refugees and people seeking asylum registered with UNHCR in Malaysia, with an estimated 45,000 still awaiting registration. Of those registered with UNHCR, approximately 87% (134,802) come from Myanmar, including some 68,510 Rohingya, 33,460 ethnic Chin, and 9,810 Myanmar Muslims.³⁹ The balance of roughly 19,600 refugees and people seeking asylum come from other countries including Pakistan, Sri Lanka, Yemen, Syria, Somalia, Iraq, Afghanistan, Palestine and elsewhere.

Like Indonesia and Thailand, Malaysia has not signed the 1951 Refugee Convention and does not have a clear protocol or system in place for the reception or processing of people seeking asylum. UNHCR is responsible for identification, registration and refugee status determination (RSD). Refugees are still considered "illegal immigrants". According to UNHCR refugees are essentially forced to work in a 'grey-zone' where they are placed at risk of rights violations, abuse and exploitation. Refugee children are denied access to formal education.

Detention facilities in Malaysia can best be described as challenging physical environments. As of 1 January 2018 there were 411 registered refugees and 628 people seeking asylum in detention. Recent reports documented that over 100 people have died in detention centres over the last two years, from diseases and unknown causes.

Recently, UNHCR has established a Joint Task Force with the Government of Malaysia which covers issues such as protection and programme areas including health, education, labour migration and RSD. Significantly in 2016, Malaysia announced a three-year work pilot project allowing 300 Rohingya refugees to legally work in Malaysia (in two employment sectors). It is important that advocacy is undertaken to extend the pilot to the entire refugee population.

³⁹

<http://www.unhcr.org/en-au/figures-at-a-glance-in-malaysia.html>

Australia's current and future engagement

- Voluntary return: A significant number of those currently recognised as refugees in Malaysia belong to minority groups from Myanmar who would appear to be benefiting from the improved political and human rights situation in that country. While the situation is still being monitored UNHCR is looking to develop a strategy of return for certain minority groups. Australian assistance could include working with Malaysia to ensure return is safe, voluntary and sustainable.
- Resettlement will remain an important protection tool for individuals who are particularly vulnerable. It is also important that Australia continues to engage with Malaysia through resettlement, demonstrating solidarity in order to support Malaysia to promote local protection initiatives. Australia must again ensure that all populations can be referred by UNHCR.
- Australia's aid budget should be re-examined for ways it can support a middle income country like Malaysia, specifically targeting NGOs who are working with refugee communities. With Malaysia increasingly willing to allow unaccompanied children out of detention, support for NGO-run shelters would increase capacity, facilitating the release of greater numbers.

Myanmar

As the country that produces the largest number of refugees in the South East Asia region, addressing root causes – ongoing human rights violations, discriminatory practices and an entrenched climate of impunity for members of the security forces -- must be a priority. The political and economic reforms of recent years have largely stalled, despite the election of the National League for Democracy (NLD) in 2015. Instead, the human rights situation across the country has deteriorated rapidly.

The most recent crisis has been in northern Rakhine State, where a brutal military campaign of violence against the Rohingya population has seen, since August 2017, more than 670,000 refugees flee to neighbouring Bangladesh. An unknown number have been killed, women and girls have been raped, and entire villages have been burnt to the ground in what amounts to crimes against humanity. This comes in the context of a longstanding state-sponsored apartheid regime against the Rohingya in Rakhine State which systematically denies them their rights to a nationality, freedom of movement, and access to healthcare, education and livelihood opportunities.

The Rohingya have the inalienable right to return to Myanmar, however current plans for repatriation are premature and illegal as long as the systematic discrimination and ongoing abuses against them continue. While the governments of Bangladesh and Myanmar signed a repatriation arrangement in late November 2017 and agreed a “physical arrangement” on returns in January 2018, to date there has been no consultation with Rohingya themselves. Meanwhile, access to Rakhine State, including humanitarian access, remains severely restricted. It is essential that any repatriation process includes UN oversight and monitoring.

In other parts of the country, the human rights situation also remains serious and there are many issues to be tackled before more than a small number of refugees can feel safe to return. Conflicts between the Myanmar military and armed ethnic groups continue, in particular in northern Myanmar where the Myanmar military has committed wide-ranging human rights violations including arbitrary arrests, torture, killings, disappearances and indiscriminate shelling of civilian areas. Armed ethnic groups have also been responsible for abductions, forced recruitment and forced taxation.

Many of these current abuses are representative of those that forced tens of thousands of people to flee Myanmar in earlier decades, including to neighbouring Thailand. For these populations, ongoing conflicts and instability, coupled with a continuing lack of accountability for human rights violations is a major factor in their choosing not to return to Myanmar. Other concerns include the presence of landmines in many areas; confiscation of refugee land during their absence from the country and the subsequent limitations of compensation measures that are hindering assistance; and difficulties accessing livelihoods.

Prior to the current crisis in Rakhine State, in order to help improve the situation in Myanmar, the Australian Government stated:

It is in Australia's interest for Myanmar to continue its democratic transition and move towards prosperity. The objectives of Australia's aid program in Myanmar are to:

- *enhance human development by improving access to quality education*
- *promote peace and stability through support to the peace process and democratic institutions and the provision of humanitarian assistance*
- *promote inclusive economic growth and government management.* ⁴⁰

DFAT further notes that: "Australia continues to provide humanitarian assistance, including in Rakhine State and on the Thai-Myanmar border. This includes supporting people to return to Myanmar when appropriate, and addressing the root causes of conflict and displacement."

It is essential that Australia ensures that any aid and assistance – including humanitarian and development – to Myanmar is explicitly conditioned on non-discrimination and equality, and is for the benefit of all. In particular, the government must ensure that any support to Rakhine State does not further entrench the exclusion of the Rohingya population and prop up an apartheid regime. Also essential is for Australia to couple any humanitarian and development assistance with robust engagement with the Myanmar authorities. Without more pressure on the military to halt human rights violations in Rakhine, Kachin and Shan States, the cycle of violence will continue and further displacement is likely. Australia must also engage with the Myanmar authorities and international partners to ensure that crimes against humanity and other human rights violations do not go unpunished. Failure to do so would further entrench impunity, force more people to flee and make it much less likely for refugees to return.

Australia's current and future engagement:

- Immediately suspend all cooperation with the Myanmar military, including the provision of training and other military and security assistance.
- Support international efforts to ensure accountability for crimes under international law in Myanmar.
- Ensure that any international aid, development projects or financial assistance to Myanmar, in particular Rakhine State, are explicitly and specifically conditioned on non-discrimination, non-segregation and equality. Conduct rigorous and ongoing assessments of all projects and assistance to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation.
- Prioritize financial and other support to civil society and interfaith actors working to counter racial and religious discrimination and build a more tolerant and inclusive society.

⁴⁰ <http://dfat.gov.au/geo/myanmar/development-assistance/Pages/development-assistance-in-myanmar.aspx>