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A BETTER WAY: REGIONAL COOPERATION

Over the past two decades, Australian policy responses to the arrival of asylum seekers by boat have focused overwhelmingly on deterrence, aiming to discourage asylum seekers from travelling to Australia without authorisation through weakening, or blocking access to, protection in Australia. These deterrence-based policies share a common weakness: they focus narrowly on the assumed impact of Australia's domestic policy on asylum flows rather than the complex factors which compel asylum seekers to undertake dangerous sea journeys. While architects of deterrence policies may like to make bold claims about the effectiveness of their strategies, asylum seeker flows to Australia are most heavily influenced by conditions in countries of origin and asylum. As conditions worsen, asylum seekers' need for protection builds to the point where deterrence measures are ignored by people seeking a place of safety. While protection needs in Asia remain unresolved, no set of unilateral actions by Australia can have a lasting impact. The key to solving the problem lies in tackling its root cause, through working constructively with other countries in the region to promote better conditions and broker solutions for people clearly in need of protection.

THE CHALLENGE OF FINDING PROTECTION IN THE ASIA-PACIFIC REGION

Over a third of the refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR) reside in Asia-Pacific, including those living in some of the largest and longest-standing refugee situations in the world, yet protection standards across much of the region fall well below international benchmarks. Many countries have not signed the Refugee Convention and treat refugees and asylum seekers in the same way as illegal migrants. People seeking protection are typically unable to work legally, own or rent property, access health care or send their children to school. They frequently face violence (including torture and sexual and gender-based violence), harassment, exploitation and abuse and are at risk of being detained and forcibly returned to their country of origin. In some countries of asylum (such as Pakistan and Syria), the security situation has become so volatile in recent times that many refugees fear for their lives. While UNHCR maintains a presence in many countries in the region, it frequently operates under very difficult circumstances and its capacity to provide protection and assistance to refugees and asylum seekers is often limited. Many people seeking protection face serious challenges in accessing UNHCR and formally registering their status. It is estimated that there are more than 3 million unregistered refugees in Asia who have little or no access to international support.

For many refugees in the region, there are few if any solutions likely in the foreseeable future. Conditions in most major countries of origin are not conducive to safe and sustainable return; most countries of asylum remain unwilling to consider local integration as an option and, in some cases, are adopting an increasingly restrictive and hostile attitude towards people seeking protection; and resettlement opportunities remain very limited even for those who have had their status formally registered. The combination of untenable living conditions and lack of access to durable solutions drives many asylum seekers and refugees to seek protection elsewhere in the hopes of finding genuine safety and effective protection – including through undertaking dangerous sea journeys.

REGIONAL COOPERATION: THE ONLY VIABLE LONGER TERM RESPONSE

Any process of regional cooperation on refugee protection should engage nations in working together to improve living conditions and protection standards for refugees and asylum seekers. In working together and sharing responsibility, nations should aim to develop strategies for enhancing access to credible status determination and registration processes, securing durable solutions for refugees within a reasonable timeframe, and ensuring that refugees and asylum seekers receive adequate services and support to ensure a decent standard of living. Steps towards improving protection standards could include: removing barriers to status determination and registration processes, to ensure that asylum seekers and refugees can have their status formally recognised; granting asylum seekers legal permission to remain in their country of

asylum while their status is assessed; developing alternatives to immigration detention; allowing refugees and asylum seekers to work legally so that they can support themselves without fear of arrest or detention; providing access to basic government services, including education and health care; assisting refugees to find durable solutions (returning home if safe to do so, settling permanently in their host country or being resettled to another country); encouraging the development of domestic legislation and processes for assessing asylum claims and protecting refugees; encouraging countries which have not yet done so to sign the Refugee Convention; and building regional consistency in asylum processes so that asylum seekers are not advantaged or disadvantaged by seeking asylum within a particular country in the region.

LEARNING LESSONS OF THE PAST

During the 1970s and 80s, South-East Asia experienced a regional refugee crisis as more than 2.5 million Vietnamese, Laotian and Cambodian asylum seekers sought protection from persecution under communist rule. In response, countries in the region came together to develop the Comprehensive Plan of Action (CPA), which aimed to resolve the crisis through sustained multilateral cooperation. Under the CPA, countries in South-East Asia agreed to offer temporary asylum to refugees on the understanding that they would be progressively resettled in other countries. Regional status determination procedures were established, reintegration assistance was provided to those who returned home and an "Orderly Departure Programme" was developed whereby Vietnamese authorities allowed refugees to be resettled directly from Vietnam to preclude the need for dangerous sea journeys. Between 1975 and 1997, as a result of the CPA and the arrangements which preceded it, 1.95 million Vietnamese, Laotian and Cambodian refugees were resettled, 524,000 displaced people were assisted to return home and the flow of asylum seekers from Indochina came to an end. The CPA was not without its flaws: status determination processes remained inconsistent across the region, the distinction between "voluntary" repatriation programs and forced returns became blurred in some instances, and its focus on temporary asylum pending resettlement provided little incentive for countries of first asylum to develop domestic asylum processes or take ongoing responsibility for refugee protection after the CPA ended. Nonetheless, the CPA offers a practical example of how a major refugee crisis can be successfully addressed through regional cooperation.

POSSIBLE NEXT STEPS FOR AUSTRALIA

As a developed nation with a long history of welcoming refugees and well-established systems for determining refugee status and providing settlement support, Australia is ideally placed to play a lead role in developing a framework for regional cooperation. Below are some examples of practical steps Australia could take to advance regional cooperation and improve protections for refugees and asylum seekers.

In refugee-producing countries: propose international action to support states unable to protect their populations and put international pressure on those unwilling to do so; support aid and development programs (such as basic infrastructure, peace-building and anti-corruption projects) to create conditions conducive to safe and sustainable return for those who wish to repatriate voluntarily; explore greater use of in-country humanitarian visas to provide avenues out of their country of origin for people at great risk.

In countries of asylum: provide training and technical assistance on protection issues to government officials; lobby countries to develop domestic asylum legislation in line with the principles of the Refugee Convention; support NGOs providing vital services to refugees and asylum seekers; provide funding to support UNHCR's work in the region; use Australia's resettlement program to broker solutions (for example, through making a multi-year commitment to resettling refugees from a particular host country on the condition that the host country offer legal status and work rights to refugees); explore the possibility of establishing joint processing of asylum applications in some countries.

In Australia: reform Australia's asylum seeker policies to model protection-centred practices and abandon policies which, if copied elsewhere, would undermine refugee protection (such as offshore processing and indefinite mandatory detention); work with other major resettlement countries to enhance resettlement opportunities in Asia; conduct research to identify protection needs across the region and encourage dialogue on reforms needed to boost refugee protection; develop a coordinated, whole-of-government strategy for responding to the needs of people seeking protection and enhancing multilateral engagement on protection issues, including through the strategic use of overseas aid.

FURTHER READING

- RCOA's submission to the Expert Panel on Asylum Seekers: <http://www.refugeecouncil.org.au/r/sub/1207-Expert-Panel.pdf>
- RCOA's annual intake submissions for 2011-12, 2012-13 and 2013-14, which each include analysis and recommendations relating to regional cooperation: <http://www.refugeecouncil.org.au/r/isub.php>
- Summary of conclusions from 2011 UNHCR Expert Meeting on International Cooperation: <http://unhcr.org.au/unhcr/images/Amman%20Summary%20Conclusions%20FINAL.pdf>
- UNHCR's analysis of the regional response to the Indochinese refugee crisis, including the CPA: <http://www.unhcr.org/3ebf9bad0.html>