

**2014 Trends Analysis:
Protection in the Urban Refugee Context in the Asia Pacific¹**
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There are more refugees located in Asia and the Pacific than anywhere else in the world², and yet despite the magnitude and complexity of the situation, few countries in the region have any law or policy recognizing or protecting refugees.³ The result is protection gaps that result in marginalization of large numbers of refugees, strained capacity among local protection and assistance services, protracted situations, uncounted and invisible populations, and an absence of durable solutions. In a majority of the countries refugees are considered illegal and as such are subject to immigration detention. Refugees also struggle to access basic services such as education, health care (including mental health services), and are not allowed to work, forcing them to engage in the informal work sector and exposing them to protection risks, exploitation, and abuse.

Because States in this region are not meeting their responsibilities for refugee protection, the UNHCR is conducting refugee status determination to identify refugees, and is then resettling them to safe countries outside the region.

Urban Refugees:

The majority of the refugees in this region are located in non-camp settings, and the trend is towards an increase in the number of urban refugees over those in camps or settlements.⁴ This trend is not likely to change in a world of growing urbanization. Furthermore, policy-makers and humanitarian actors are beginning to recognize that while endeavoring to ensure acceptable standards of protection and assistance to large numbers of displaced persons in camps may be a critical and practical expedient in the short-term, at the same time, restriction to camps or other designated places of residence is far from the ideal state of affairs. The change in urban refugee policy recognizes that urban areas are a legitimate place for refugees to enjoy their rights, and this shift in policy represents a fundamental change in the way refugees are viewed and treated, and has implications for state responsibility, the way that donors prioritize resources, and the way that protection and assistance will be provided in practice.

Some assessments have already been conducted in Asia, after revision of the UNHCR Urban Refugee Policy in 2009.⁵ These assessments reveal an increase in the number of urban refugees, and a diversity of needs (from legal, to social, to economic, etc.). They reveal that cooperation with civil society is the key to expanding protection space⁶, and supporting urban refugee self-reliance programs is also critical.⁷ They also reveal the profound impact that cooperation can have through networks that cooperate to achieve broader objectives and meet needs more holistically.

¹ This paper builds on the analysis of the Asia context provided in: Brian Barbour, Protection in Practice: The Situation of Refugees in East Asia, 2 Nanmin Kenkyu Journal [Refugee Studies Journal] 81 (2012) (Published in Japanese; English original available at:

<http://www.refugeestudies.jp/journal/Protection%20in%20Practice%20-%20The%20Situation%20of%20Refugees%20in%20East%20Asia.pdf>)

² UN High Commissioner for Refugees (UNHCR), UNHCR Statistical Yearbook 2012, 12th edition, 10 December 2013, Table 2.1, available at: <http://www.refworld.org/docid/52aad29d4.html>

³ Currently only 17 of the 44 countries in the Asia Pacific are signatories to the Refugee Convention and Protocol. Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, 31 January 1967, 606 U.N.T.S. 267

⁴ UNHCR, Regional Update, Bureau for Asia and the Pacific, March 2014. “The population of urban refugees in the region continues to be on the rise in most refugee-hosting countries in Asia. They represent 63% (or 2.3 million) of the 3.5 million refugees in Asia...” (available at: <http://unhcr.org/5000139a9.html>)

⁵ UNHCR, *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas*, 2012, available at: <http://www.refworld.org/docid/51c7fa9e4.html> [accessed 23 July 2014]; UNHCR, *But when will our turn come? A review of the implementation of UNHCR's urban refugee policy in Malaysia*, May 2012, PDES/2012/02, available at: <http://www.refworld.org/docid/5142ed802.html> [accessed 23 July 2014]; Naoko Obi, *New Issues in Refugee Research: A review of assistance programmes for asylum seekers and refugees in Japan* (July 2013); Eileen Pittaway, *Making Mainstreaming a Reality – Gender and the UNHCR Policy on Refugee Protection and Solutions in Urban Areas: A Refugee Perspective* (November 2009); APRRN, *Urban Refugees in Asia Pacific: Resiliency and Coping Strategies*, (March 2013).

⁶ UNHCR, 2009 Urban Refugee Policy at 52 (“...it is the relationship with civil society...as opposed to a specific government entity, that is the key to expanding the protection space for urban refugees and asylum seekers.”)

⁷ Id. at 53 (“UNHCR should continue to invest in [and] support refugees’ self-reliance.”)

Given the increasing number of urban refugees, and the fact that they are largely dwelling side-by-side with national and local society, it is clear that risk reduction and capacity building at the national and local levels remain key priorities. At the same time, refugees are resilient and possess skills, knowledge and capacities to cope with, respond to, and recover from disaster, maltreatment, neglect, and the substantial challenges of the urban refugee context in the Asia Pacific. They should, therefore, be directly engaged in all aspects of protection and assistance.⁸

Protection in Law:

In Asia there is a lack of legal and procedural foundations. There are many non-signatory countries, and there is a lack of legislation (and certainly comprehensive legislation) in almost every jurisdiction. There is no legal status for asylum-seekers or refugees in most countries. They are subject to detention and have no right to work. There is a lack of legal aid, and there are fundamental problems with procedural fairness in refugee status determination processes in every jurisdiction. Due process concerns include the fact asylum-seekers are not advised of and do not understand their rights or the purpose of the process, legal representatives are often not allowed⁹, there is insufficient training of lawyers and decision-makers, there are extremely long waiting periods¹⁰, rejection reasons are sometimes not given or are inadequate, there is a lack of transparency, and inconsistency and often profoundly low recognition rates reveal decisions that are largely based on unfettered discretion.¹¹

Where law does exist, it often does not translate into protection in practice, because there is increasingly a lack of compliance with legal standards. We are seeing an increase in the adoption of restrictive laws aimed at reducing the number of asylum seekers reaching the border, increasing use of harsh detention practices meant to deter, accelerated procedures that lack any procedural safeguards or consideration of protection needs, 3rd country processing, a tendency to interpret the Refugee definition narrowly or adopt lower standards, and limitations on local integration. We are seeing this most profoundly in Australia where political manipulation of refugee protection has resulted in 3rd country processing, interception at sea, mandatory and indefinite detention, and the general vilification of refugees for political ends.¹²

Protection in Practice:

Protection in law is necessary, but not sufficient to ensure protection in practice for refugees and asylum-seekers. Moreover, the absence of refugee law does not negate the fact that there are more refugees physically present in the Asia Pacific than any other region of the world whether they have recognized status as refugees or not. In the absence of State responsibility in the region NGOs, lawyers, UNHCR, donors, and other civil society actors are filling the gaps in practice.

Recent Developments:

A number of developments have taken place in East Asia in transition towards greater State responsibility for refugee protection since the end of 2012. This briefing note will address only a few.

Korea

The new Refugee Act came into effect in July 2013.¹³ It is the first Refugee Act to be enacted in Asia, and is progressive in its inclusion of details on the treatment of refugees, including: living expenses, housing, healthcare

⁸ APRRN, *Urban Refugees in Asia Pacific: Resiliency and Coping Strategies*, (March 2013).

⁹ This is true in some government RSD such as in first instance adjudications in Japan, and in some UNHCR Offices such as in the Thailand and Malaysia Offices which deny lawyers access to RSD interviews.

¹⁰ For example, the earliest registration dates being given to Pakistani applicants in Thailand is 2018, and in Malaysia, applicants are getting registration appointments in 2019.

¹¹ For example see APRRN Statement, *APRRN Calls for Immediate Review of Japan's Domestic Refugee Protection Systems*, available at:

<http://www.aprrn.info/1/index.php/resources/aprrn-statements/264-aprrn-calls-for-immediate-review-of-japan-s-domestic-refugee-protection-systems>

¹² See for example: Defending borders at the cost of Refugee Protection: APRRN Statement on the Australia -Cambodia refugee deal; and Refugee Council of Australia ENOUGH IS ENOUGH: IT'S TIME FOR A NEW APPROACH Joint statement by Australian non-government organisations on the first anniversary of the report on the Expert Panel on Asylum Seekers 13 August 2013

¹³ Republic of Korea: Law No. 11298 of 2012, Refugee Act [Republic of Korea], 1 July 2013, available at: <http://www.refworld.org/docid/4fd5cd5a2.html> [accessed 18 September 2014]

support, education, and employment. The law also brings Korea's due process standards into closer alignment with international standards with regard to translation and interpretation, legal aid, gender sensitivity, and establishing a specialized agency to handle refugee appeals.

A Refugee Reception Center has been built as a transition for newly arrived refugees. The building includes living facilities, administrative offices, an education Hall, and a number of recreation facilities (tennis court, soccer ground, basketball court, playground, fitness center) that the surrounding community is also welcome to use. The center provides basic housing and livelihood assistance, employment and social adaptation training, and education and training for public servants working in the immigration sector among other services. RSD can be conducted on site. The Center was completed in September 2013, but the opening was delayed due to protests by local residents. This highlights the importance of awareness-raising to combat xenophobia as a critical protection objective.

Section 24 of Korea's new Refugee Act provides for the acceptance of refugees seeking resettlement.¹⁴ Following Japan's pilot resettlement scheme for refugees, Korea is now only the second Asian Nation to begin to share responsibility with the international community and serve as a resettlement destination.

Hong Kong

What previously made Hong Kong somewhat unique in the region was the fact that since 2004, as the result of the court decision in "Prabakar"¹⁵, the Hong Kong Government has assessed claims under Article 3 of the Convention Against Torture (CAT) resulting in the existence of parallel systems in the jurisdiction, the Government assessing torture claims, and UNHCR assessing refugee claims. Hong Kong continues to develop very uniquely, now with a new "unified screening mechanisms" designed to screen for torture; cruel, inhuman and degrading treatment or punishment; and persecution. All based on a "voluntary" domestic policy of not returning to their country of nationality claimants for refugee status whose fear of persecution is well-founded. This policy is subject to judicial review to ensure that decisions made under it are made through "rigorous examination and anxious scrutiny to ensure that the required high standards of fairness have been met."¹⁶ Hong Kong introduced this "unified screening mechanism" in March 2014, again a result of a judicial review decision by the High Court.¹⁷ In response to these developments UNHCR has already begun phasing out their RSD operations although the system that will replace it is still underdeveloped.¹⁸

Taiwan

A draft refugee law was passed by the Executive Yuan in 2009.¹⁹ It has been pending with the Legislative Yuan ever since. In October of 2012, East Asia Consultations brought together a number of experts and civil society representatives in Taipei.²⁰ Following these consultations a statement was produced, and jointly signed by 40 organizations and international experts, and was submitted to the Legislative Yuan encouraging passage of the draft refugee law.²¹ In February 2013, Taiwan invited a panel of independent international experts to conduct the first Review Meeting of the R.O.C.'s initial reports under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The process resulted in a number of specific conclusions by the independent human rights committee of experts, including a recommendation to pass

¹⁴ Id.

¹⁵ Secretary for Security v. Prabakar, [2005] 1 H.K.L.R.D. 289 (C.A.) (H.K.)

¹⁶ C and Others v. Dir. of Immigration and Secretary of Security, [2013] 16 HKCFAR 280 (H.K.)

¹⁷ Id.

¹⁸ Justice Centre Hong Kong, Meeting the Bare Minimum: Hong Kong's New Screening Process for Protection, May 2014 (available at:

<http://www.justicecentre.org.hk/framework/uploads/2014/03/USM-Briefing-Meeting-the-Bare-Minimum-HK-New-Screening-Process-for-Protection.pdf>)

¹⁹ Refugee Draft Bill Passed, China Post (Dec. 31, 2009),

<http://www.chinapost.com.tw/taiwan/national/national-news/2009/12/31/238854/Refugee-draft.htm>; Shih Hsiu-chan, Cabinet Passes Draft Refugee Legislation, Taipei Times (Jan. 1, 2010),

<http://www.taipeitimes.com/News/taiwan/archives/2010/01/01/2003462366>

²⁰ Taiwan Association for Human Rights, 2012 East Asia Symposium(2012 東亞難民會議與培訓工作坊), available at: <http://www.tahr.org.tw/node/1107>

²¹ Taiwan Association for Human Rights, Joint Statement calls the Legislative Yuan to pass Refugee Act and NGO's opinion on the draft of Refugee Act in Taiwan – available at: <http://www.tahr.org.tw/node/1112#sthash.lwGLq6Kc.dpuf>

the refugee law²²:

China

On 30 July 2012, China passed a new Exit-Entry Administration Law which entered into force in July 2013. It includes a provision in Article 46 that would recognize refugees and provide them with legal status and permission to remain.²³ The new law also includes important provisions on detention including provisions not to detain children.²⁴ As a tremendously positive first step, the International Detention Coalition was invited to present to the Government of China on international standards.²⁵

Conclusion:

Despite the presence of such large numbers of people in need of protection, there are few countries in the Asia Pacific region with refugee law. Even among the few countries with legislation in this region, the law often does not translate into the provision of actual protection and assistance in practice. Furthermore, there is often a lack of compliance with legal standards that results in rejection and marginalization of large numbers of refugees in practice. The result is that many of those in need of protection remain in the region, often in protracted situations.

Refugee protection is inherently an international issue that cannot be addressed solely at the national level. It will require responsibility sharing, harmonization of practice, and engagement in high-level policy and advocacy. At the same time, the practice of providing protection and assistance to individuals is something that takes place at the national and local level where refugees are located. Ultimately, therefore, there must be national and local ownership of refugee protection, within an international and regional framework such as has been developed in Europe, Africa, and Latin America. At present, however, states in the Asia Pacific are not actively engaged in collaboration or dialogue about protection, leaving the responsibility for protection to UNHCR, other international organizations, resettlement countries, and civil society actors. Ultimately, refugee protection will require collaboration between all relevant stakeholders if there is any hope of effectively, efficiently, and humanely ensuring protection to all those who need it. The lack of collaboration, principally by States, but also at every level, remains the principle road block to the establishment of an effective, efficient, and fair system founded in law and resulting in meaningful protection in practice in the Asia Pacific.

²² Concluding Observations and Recommendations, Available at: <http://www.humanrights.moj.gov.tw/mp205.html> ("The Experts recommend the speedy adoption of a Refugee Act, which should also include the principle of non-refoulement in accordance with both Article 33 of the Geneva Refugee Convention, Article 7 ICCPR and Article 3 CAT.")

²³ Consulate General of the People's Republic of China in New York, Exit and Entry Administration Law of the People's Republic of China, 28 August 2013: Chapter III, Article 46. "Aliens who apply for status of refugees may stay in China with temporary ID certificate issued by the public security organs during the discrimination for status of refugees; aliens who are assessed as refugees may stay and reside in China with refugee identity certificate issued by the public security organs."

²⁴ Id. at 61

²⁵ International Detention Coalition, Annual Report 2013, available at: <http://idcoalition.org/publications/2013-annual-report/>