Introduction

Refugee flows continue to increase unabated. In 2014 the number of forcibly displaced persons worldwide exceeded 50 million people for the first time since the Second World War (UNHCR 2015a). Ongoing and emerging violent conflicts, as well as discrimination and persecution of minorities in Asia and outside the region, are the primary drivers of displacement. South and Southeast Asia host a large number of the world’s refugees and are also the site of some of the world’s most acute and protracted refugee situations. Despite the fact that South and Southeast Asian states are hosting such a high number of refugees, the majority of them do not provide adequate protection or access to the most basic rights.

Refugees from Afghanistan residing in Pakistan and Iran represent one of the most protracted refugee situations in the world. Of the 2.6 million Afghan refugees worldwide, 2.5 million can be found in Iran and Pakistan alone (UNHCR 2014a). The continuing political instability in Afghanistan suggests that the situation for refugees is unlikely to improve anytime soon. Bangladesh hosts one of the largest stateless populations in the world with over 200,000 Rohingya refugees living largely in the southeastern district of Cox’s Bazar. A further estimated 300,000 to 500,000 unregistered and undocumented live in Bangladesh (UNHCR 2015b). Most are living in a state of limbo, unable to seek legal employment, heavily reliant on humanitarian assistance and with no durable solutions in sight. India is home to a rising number of urban refugees from various countries, with the majority living around New Delhi, though sizable populations can also be found in other cities. India also hosts Sri Lankan Tamils in camps in the south of the country, and Tibetan refugees in different parts of India. In 2013, 272,000 refugees lived in the country, including 150,000 Tibetans and more than 68,000 Sri Lankans in 112 refugee camps, with 32,000 located outside the camps (US Bureau of Democracy, Human Rights and Labor 2014). While Nepal has a small urban refugee population, there are 24,000 Bhutanese refugees remaining in two camps (92,000 have been resettled since 2007) as well as 15,000 Tibetans who are spread throughout the country (UNHCR 2014b).

In Southeast Asia, refugees from Myanmar continue to be the largest refugee group; also constituting a protracted situation—as many have been displaced for over two decades. In Malaysia, refugees from Myanmar live largely in the urban areas surrounding Kuala Lumpur,
whereas in Thailand, the majority of refugees from Myanmar are living in nine ‘temporary’ camps along the Thailand–Myanmar border. Since 2012, there have been some signs of political change inside Myanmar with on-going talks between the government and various ethnic groups. However, many refugees are reluctant to return to Myanmar due to the ongoing conflict and rights abuses, as well as the absence of key safeguards that need to be in place before refugees can return. Additionally, there are over 400,000 Internally Displaced Persons (IDPs) inside Myanmar, the majority of whom are in Kachin and Rakhine states (UNHCR 2015c). In Thailand, Malaysia and Indonesia, the number of urban refugees from countries such as Pakistan, Afghanistan, Sri Lanka, Syria, Iran, Iraq, Somalia and Vietnam continues to grow. Among the ASEAN member states, the Philippines and Cambodia are the only two countries that have signed the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (UNHCR 2015f), and both host a comparatively small number of refugees.

The South and Southeast Asian sub-regions are characterised by three trends. First, as with other populations moving to urban areas, refugees too are increasingly moving towards urban centres. It is estimated that more than half of the world’s refugees now reside in cities rather than in refugee camps (UNHCR 2015d). In comparison to closed camps, cities present obvious opportunities for people seeking asylum to remain inconspicuous, make money and build a better future. However, they also present dangers and new challenges. Refugees often do not hold legally recognised or respected documentation, are vulnerable to exploitation, arrest and detention, and are exposed to discrimination and xenophobia. In addition, the anonymity afforded by urban situations provides considerable challenges for service provision, particularly in reaching out and accessing different communities.

The second trend in the region is that of mixed migration. In addition to refugees, other vulnerable groups, such as asylum seekers, internally displaced persons (IDPs), stateless persons, victims of trafficking and those displaced by natural disasters and climate change, are often also in need of international protection. In reality, the boundaries between forced and economic migration in this region are difficult to define and overlap. Patterns of migration are usually mixed with refugees and migrants using the same routes of migration which are mostly irregular. Providing protection to such diverse migratory populations provides obvious challenges.

Third, the Southeast Asia region, in the context of mixed migration, is characterised by complex maritime movements. According to the UNHCR (2014c), 54,000 people undertook irregular journeys by boat in 2014. In the absence or inadequacy of safe migration channels, people smugglers and traffickers are provided with a fertile ground to exploit people desperate to flee persecution. The ongoing plight of Rohingya refugees who originate from Myanmar and are trying to reach Malaysia or Indonesia in small, unseaworthy vessels floundering in the Andaman Sea was highlighted in May 2015. While the Rohingya have fled from persecution and gross human rights violations in Myanmar for many years, numbers skyrocketed throughout 2015. In the first quarter of 2015, the United Nations High Commissioner for Refugees (UNHCR 2015e) estimated that 25,000 people had departed by sea from Bangladesh and Myanmar trying to reach Southeast Asian nations. Many have lost their lives at sea and those who manage to reach the coast of Thailand may then be smuggled to Malaysia or held in jungle camps by smugglers and traffickers until a ransom is paid. In April and May 2015, mass graves of Rohingya were discovered in southern Thailand and northern Malaysia (Human Rights Watch 2015a), highlighting that it is not a recent crisis but Rohingya refugees have been subject to human rights violations in jungle camps for years. In May 2015, thousands of stateless Rohingya refugees, other migrants and human trafficking victims were stranded on boats at sea, unable to safely disembark, while governments in the region actively engaged in a process to push boats back out to sea. Public outpouring of support for the stranded people encouraged Indonesia and
Malaysia to revise their initial policy and engage in search and rescue operations, as well as allow disembarkation and provide temporary shelter. Nevertheless, Thailand continues to pursue its policy of not allowing boats to disembark within its territory.

Despite these rising numbers and the above outlined adverse measures, to date, there has been a tendency for debates to focus on refugee protection through the lens of national security and border control, instead of guaranteeing access to rights. For example, Australia’s refugee policies have raised significant concern amongst human rights defenders. These changes include the re-introduction of off-shore processing of asylum seekers who attempted to reach Australia by boat, instead transferring them to detention centres on Manus Island, Papua New Guinea and the Republic of Nauru, bilateral agreements (for example the Australia–Cambodia refugee ‘deal’), incidences of refoulement, indefinite detention, military control over asylum operations and other restrictive measures. All of these developments have set a dangerous precedent for refugee protection, and have resulted in further shrinking protection spaces affecting the entire region. The portrayal of refugees and asylum seekers in mainstream and social media also perpetuates negative stereotypes and perceptions, for example that refugees are a ‘burden’ on host communities. This has further added to the challenges facing refugees, as well as those advocating for refugee rights.

Legal context and protection gaps

International instruments

The key instruments of international refugee law are the 1951 Convention relating to the Status of Refugees (‘Refugee Convention’) and its 1967 Protocol (UNHCR 2015f). In South Asia, only Afghanistan and Iran have acceded to the 1951 Refugee Convention. In Southeast Asia, only the Philippines, Cambodia and Timor-Leste are signatories. International refugee law also intersects with international human rights law and international humanitarian law. Some countries in the region are parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Many of these treaties include language which refers to refugee rights. The principle of non-refoulement is considered to be part of international customary law and, as such, is binding on any state; although in reality it is often not respected. Throughout the Asia Pacific region, there have been a number of cases of refoulement—as recently observed in the crisis in the Andaman Sea. It is a matter of serious concern when countries like Australia, a signatory to the Refugee Convention, do not respect their international obligations, refoule refugees and push boats back on several instances.

As argued by academics such as Davies (2006) and Chowdhury (2001), international refugee law is rejected in Asia because it is considered to be ‘Eurocentric’ and was framed as a response to persons displaced in Europe after the Second World War and did not take the situation in Asia into account. Others argue that states are apprehensive to sign on to international instruments because of the related obligations (especially financial obligations). Research has highlighted that countries such as Malaysia and Thailand are reluctant because they believe it would act as a pull factor and that there are associated security risks (Mathew & Harley 2014: 1). Chowdhury (2001: 22) also argues that in South Asia, states have hosted refugees as a matter of hospitality and have already been ‘generous’, and therefore feel there is no need to sign onto the 1951 Convention because it would not necessarily improve conditions for refugees (Chowdhury 2001: 22).
Regional frameworks

Other regions, such as Europe and Africa, have developed comprehensive regional frameworks to deal with refugees. Yet there is no such framework in place for South Asia, Southeast Asia or the wider Asia-Pacific region. There have been regional agreements in the past such as the Comprehensive Plan of Action (CPA) for Indochinese refugees (adopted in 1989) that brought together countries of origin, countries of asylum and countries of resettlement to address the issue of ‘boat people’ out of Indochina. The plan ended in March 1996, when all refugee camps under the CPA in Indonesia, Philippines, Hong Kong, Thailand and Malaysia were deemed closed. The Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles) were adopted by the Asian-African Legal Consultative Organization (AALCO) in 1966. The principles, however, only serve as a guide; they are not legally binding, and there is no enforcement in place.

In Southeast Asia, the Association of South East Asian Nations (ASEAN) does have the potential to lead the development of regional protection mechanisms. ASEAN is an intergovernmental organisation with ten member states (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam). Despite the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in October 2009 and the adoption of the ASEAN Human Rights Declaration (AHRD) in 2012, economic interests have very much taken precedence over discussions on human rights amongst ASEAN member states. With regards to the rights of refugees, there appears to be a lack of political will to discuss regional approaches, although there is some protection language provided in the AHRD, such as non-refoulement and the right to asylum (Kneebone 2015). Refugees are often considered to be a politically sensitive topic, with debates frequently compromised by ASEAN’s principle of non-interference in internal affairs of member states. Regardless, refugee issues in ASEAN are not only an ‘internal affair’ but also a regional issue, affecting neighbouring countries. The South Asian Association for Regional Cooperation (SAARC), comprising Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka as members, has been similarly critiqued by human rights groups.

Recent discussions on ‘regional cooperation’ have very much focused on the securitisation of national borders, as well as combatting the trafficking and smuggling of people rather than the adoption of a rights-based perspective to refugee protection. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) was incepted in 2002 and is co-chaired by the governments of Australia and Indonesia. In March 2011, Bali Process ministers adopted the Regional Cooperation Framework (RCF) in consultation with UNHCR and the International Labour Organization (IOM). The framework was created with the purpose of:

enabl[ing] interested Bali Process members to establish practical arrangements aimed at enhancing the region’s response to irregular movement through consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those not owed protection and targeting of people smuggling enterprises.

(Bali Process 2015)

In September 2012, the Bali Process Regional Support Office (RSO) was then established to operationalise the RCF. While the establishment of the RCF and RSO was initially met with great enthusiasm, little progress has been made and a lack of engagement with civil society actors has been observed, highlighting the reluctance of states to look at protection elements and look at regional cooperation through a border control lens.
National legislation

In Southeast Asia and South Asia, the majority of countries do not have national legislation in place to protect refugees. Furthermore, in most countries, any foreigner who does not have recognised documentation is treated similarly under immigration law and usually considered to be an ‘illegal alien/immigrant’. States generally do not have any protection mechanisms or processes to draw upon in order to provide differentiated protection to refugees or asylum seekers.

Since most countries are not signatories of the 1951 Refugee Convention, the mandate of recognising refugees falls on the UNHCR. Even Cambodia, which has signed the Refugee Convention, has not fully incorporated international instruments into its domestic laws. Nevertheless, there are some positive examples in the region, such as the Philippines, which now has functioning national laws that could serve as a model for other countries to follow. Civil society in the region has also been advocating for the development of national laws that would provide protection to refugees and are based on relevant international law and guiding principles while taking into account the regional context. Groups in Thailand and Nepal have drafted domestic refugee laws; however, the progress made is limited because of a lack of political will and obstacles such as political instability. In India, the status of refugees is governed through political and administrative decisions, and no progress has been made on the Indian Act on Refugee and Asylum Seeker Protection (Asia Pacific Refugee Rights Network 2013a: 7).

Filling the gaps

With governments in the region reluctant to take on their responsibilities and international agencies operating with limited resources and in constrained spaces, the role of civil society is becoming increasingly important. National NGOs as well as community-based organisations (CBOs) provide essential services such as health, education, shelter, cultural orientation, legal aid, counselling etc. In Malaysia for example, the government provides no access to education and refugees are reliant on NGO or CBO-led schools. NGOs also provide essential health services such as support with hospital costs, mobile clinics, community programmes, counselling and other psychosocial support. NGOs also provide crucial legal advice, which is important as refugees often struggle to understand complex international law and their rights, as well as how to claim asylum. National NGOs can also play an important role in advocacy with governments. In both South and Southeast Asia, governments are more reluctant to engage with international NGOs and UN agencies because they are perceived as having a ‘Western perspective’ and as trying to interfere with domestic politics. In this context, national civil society cannot be so easily dismissed as wanting to ‘interfere’ and the idea that refugee protection is a Western construct becomes more difficult to defend (Sukumaran 2011). South Korea passed a Refugee Act in July 2013 after several years of persistent and effective advocacy conducted by national actors. National NGOs in Thailand, Nepal, India and other countries are also on the forefront of advocacy on changing national laws. However, overall civil society advocating for refugee rights in this region continues to be weak and much more needs to be done to strengthen national civil society and create stronger movements at the national level.

Protection challenges

In an environment where governments disregard the rights of refugees and protection is inadequate, refugees are exposed to a number of protection challenges in their host countries. The following section provides an overview of these challenges.
Access to legal status, safety and security

Because refugees are mostly undocumented or have overstayed their visas and are thus considered as 'illegal aliens/immigrants', refugees in both South Asia and Southeast Asia are often subject to arbitrary detention, deportation, discrimination, harassment, different forms of violence and immigration detention. In most countries, refugee protection is temporary, ad hoc and also differentiated, resulting in different policies for some groups. Across the region, the lack of a legal status is a barrier for refugees to access even the most basic commodities such as health and education services, opening of bank accounts, rental of secure private accommodation, registration of SIM cards as well as travel documents. There are also significant challenges in registering and documenting refugees, for instance, in urban centres many refugees are in hiding and remain very difficult to access. In most countries, UNHCR only operate an office in the capital city, making it difficult to register those staying outside these urban areas. In Iran for example, access to the field sites requires going through different layers of government approval.

Adding further complexity, there is also a lack of accurate data for refugee populations. In Afghanistan the lack of accurate data assessment coupled with an overlap of information creates an information imbalance—either information is entirely missing or information is duplicated. The operational reality in Afghanistan is characterised by NGOs coming together with different data and figures that often do not match, creating obstacles to proper interventions and coordination. Lack of data and lack of access create a cyclical problem of: how do you capture data on refugees when you don’t have access and how do you access refugees when you don’t have data demonstrating the need?

Without any documentation or legal status, governments across the Asia-Pacific region also increasingly use immigration detention as a migration/border management tool and means to deal with refugees, asylum seekers, stateless persons and irregular migrants. Without national protective legislation, police and government officials often do not screen-out refugees or asylum seekers during immigration raids, putting such individuals at risk of arbitrary detention, often in conditions that fall well short of international standards. Research has shown that immigration detention is costly, ineffective and psychologically damaging (International Detention Coalition 2015: 1). International law also stipulates that the use of immigration detention should be proportional, necessary and a measure of last resort, which is often not the case in the detention of refugees (International Detention Coalition 2015: 71).

Detention is often applied in a blanket, arbitrary manner, and alternatives to detention (ATD) are still not commonplace. While immigration detention is less of an issue in South Asian countries, it is increasingly used in Southeast Asian states, such as Thailand, Malaysia and Indonesia. Detainees do not only include adults but also children and unaccompanied minors. For individuals, the effects can be particularly devastating; immigration detention violates children rights’, risks their health and wellbeing and affects their normal development. In 2012 the Committee for the Rights of the Child asked governments to ‘expeditiously and completely cease the detention of children on the basis of their immigration status’ (Committee on the Rights of the Child 2012: 18). In Thailand, despite being a signatory to the CRC, immigration detention of children can be arbitrary and indefinite. Reports demonstrate that children lack access to education, social and intellectual development opportunities, adequate nutrition, medical services and physical exercise. This is exacerbated by bad sanitary conditions, overcrowded cells and exposure to violence/abuse (Human Rights Watch 2015b: 3).

In some countries, however, positive policies can be observed. In India, for example, UNHCR recognised that refugees can now apply for long-term residency visas and work permits (awarded for one year at a time) that are renewable for up to five years. Prior to 2012,
Residency and work permits were only available to specific refugee ethnicities and for very short periods of time. This decision is a step forward for refugee protection but much more needs to be done to ensure tangible benefits from this policy. Another example is the Proof of Registration card (POR card) in Pakistan, which is an identity document that provides temporary legal status and also allows refugees to obtain a drivers licence, open a bank account and purchase mobile SIM cards.

The Philippines is perhaps one of the most advanced countries in the region on this issue, having acceded to the 1951 Refugee Convention and its 1967 Protocol in 1981. The Philippines traces its refugee law as far back as 1937. In October 2012, the Department of Justice of the Philippines issued Department Circular No. 058, ‘the rules on Establishing the Refugee and Stateless Status Determination Procedure’ (Republic of the Philippines, Department of Justice 2012). As part of the Circular No. 058, the Philippines has become the only state in the ASEAN region to have a mechanism to identify and provide protection to stateless persons along with refugees.

**Access to justice**

In Southeast and South Asia, refugee status determination (RSD) is mostly conducted by UNHCR. Even though UNHCR has developed procedural guidelines, there are significant challenges in UNCHR’s process. Firstly, RSD may take a number of years to be completed; in some cases first instance interviews are given four years from registration. Once recognised, it may take several additional months or years for recognised refugees to be resettled in a country capable and willing to provide a durable solution. During this time and while refugees are waiting to be resettled, UNHCR provides registration cards but these cards are not recognised by all governments and may not protect against arrest and immigration detention by authorities. During this time refugees receive UNHCR registration cards but, in particular in Southeast Asian countries, those cards do not protect refugees from arrest and detention by authorities. Second, it has also been found that RSD can be discriminatory against certain nationalities; in Thailand for example Pakistani refugees are given first instance interview dates three to four years from their initial registration. Somali or Syrian refugees on the other can be recognised within a two-year timeframe. Third, practices of the national UNHCR offices in the different countries also vary. In some countries refugees do not receive sufficient explanation in their rejection letters, preventing refugees from submitting targeted appeals in response to the specific reasons for rejection. Guidelines issued by UNHCR also spell out the right of asylum seekers to be informed of their right to legal counsel. Legal representation, however, continues to be a challenge and is currently not allowed by UNHCR in countries such as Thailand and Malaysia.

In this context legal aid is crucial. Generally speaking, refugee law is complicated, and refugees rarely have a good understanding of refugee law. In addition to navigating the complexities of refugee law, refugees also experience communication difficulties as they often have to speak with officers through interpreters. As is common when working through interpreters, miscommunication and misunderstandings prevent refugees from accurately and clearly conveying their stories in their own language. With all of these challenges, the consequences are significant; the rights that are at stake could not be more serious. A rejection on the wrong grounds could mean deportation back to a setting of persecution or much worse.

Refugees may often be subject to harassment, abuse or violence in host countries but are unable to access domestic legal remedies for fear of retribution by locals or detention by officials due to a lack of legal status. For example, if undocumented or out-of-status refugees experience
harassment or discrimination at work, they often do not feel safe reporting such violations in case they are then reported by the perpetrator to immigration for deportation. But even in countries with some legal protections in place, there is often a lack of implementation combined with a lack of awareness among local police officers. Additionally, refugees are often also not aware of their own rights and opportunities for redress. Other barriers include language, financial constraints, community pressure and feelings of shame associated with different forms of violence including sexual and gender-based violence (SGBV). On the Thai–Myanmar border, ‘fear, uncertainty, and a feeling of powerlessness contribute to a fatalistic attitude among camp refugees about whether justice is available to them’ (Human Rights Watch 2012).

Access to health

Refugees across the region struggle to access health services, given the high costs involved. This is often perceived by refugees as one of the biggest challenges, especially in the urban context since refugees may not be able to access local government hospitals without documentation and often rely on NGOs and UNHCR for support. The real and perceived fear of being arrested may also make refugees reluctant to seek medical services from hospitals. In Malaysia, for example, a case was reported were a refugee mother and her new-born child were sent to immigration detention from the hospital after the mother gave birth (Health Equity Initiatives 2014). In refugee camps, the situation is slightly better since at least basic health services are provided by NGOs and are more easily accessible.

The health needs of refugees are complex and may require special considerations because of the often traumatic events to which they have been exposed. Specific groups such as unaccompanied minors, children, orphans, former child soldiers, women and girls as well as survivors of torture and sexual harassment are particularly prone to develop mental health problems. ‘Clinical and research literature in mental health also indicate that refugees and asylum seekers experience a significant degree of psychological distress and physical and psychological dysfunction arising due to uprooting and adjustment difficulties and symptoms of somatization, depression and post traumatic stress disorder (PTSD), which may be evidenced even five years after resettlement’ (Verghis & Pereira 2009: 1). This is compounded by the distress that refugees feel as foreigners in an unstable situation. In Southeast Asia, the constant fear of arrest and immigration detention, paired with a lengthy refugee status determination process, dire living conditions and an unknown future, puts severe distress on those who may already be traumatised. Furthermore, in many countries mental health needs are often not recognised and even if they are, service providers often lack the skills and experience to handle them adequately, as well as having limited options for referral to a specialist physician.

Among refugee communities there is also a lack of education on reproductive and sexual health (Asia Pacific Refugee Rights Network 2013b: 14). Stigma and shame contribute to the lack of education and services relating to sexual health, as well as gender inequality. Lack of knowledge makes it difficult to protect oneself and seek out appropriate services. Furthermore, there are significant gaps in post-natal care and delivery services. Maternal and infant mortality are significant consequences of a lack of reproductive healthcare. Early or underage pregnancy and the spread of disease can also be seen as the result of a lack of access to appropriate sexual and reproductive services. In Pakistan and Afghanistan, health services are sporadic—for example, gynaecological services are frequently inadequate and basic needs, such as adequate cloth and washing facilities for menstruating women, are overlooked. Serious problems, such as infections and cervical cancer, as well as harmful practices such as female circumcision, go all but undetected. The first set of UNHCR guidelines mentioning the importance of birth-spacing was
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drafted over 20 years ago; however, contraceptive services have failed to become an integral part of the primary healthcare services offered to many refugees, despite broad awareness of the high fertility levels and poor health status of many refugee women, such as in Pakistan, Afghanistan and Iran. There is also a lack of official support for family planning and sex education and legal abortion options are limited or completely prohibited, resulting in clandestine and risky abortions. In addition, there is also a lack of AIDS education and prevention, the diagnosis and treatment of other sexually transmitted diseases and gynaecologic conditions, rape prevention and counselling or programmes to assist the victims of sexual abuse.

Sexual and gender-based violence

UNHCR has documented that about 50% of refugee, internally displaced and stateless communities are composed of women and girls (UNHCR 2013: 9). This group suffers heightened vulnerability to different forms of violence including sexual and gender-based violence (SGBV), sexual exploitation, domestic violence and abuse. Additionally, the lack of appropriate official response to SGBV and the common social stigma attached to SGBV increases the risk of SGBV for men, young boys and individuals who identify, or are perceived to identify, as LGBTI.

Incidence of rape and other forms of sexual violence are common within refugee communities and can result in internal injuries, children of rape, complications from pregnancy and other health-related impacts. Rape survivors experience depression, anxiety and diminished self-esteem and confidence. Survivors of sexual violence are often unable or unwilling to seek formal justice for the crimes committed against them because of a number of hurdles. In communities where the likelihood of community shaming of victims is high, survivors are unable to seek proper redress against their attackers and often fear that there will be social consequences if the trauma they experienced is widely known. For example, women who have been raped may face fewer marriage opportunities, which can have a significant impact on their futures and their families’ abilities to provide for them. Such complications increase their vulnerability to traffickers and other exploitation. In South and Southeast Asia, additional barriers to seeking help after sexual violence include a lack of support by police or other law agents and inadequate or absent health services that respond to sexual violence, including a lack of female doctors or proper rape documentation kits. In many South Asian countries SGBV is also not understood as human rights violations, but rather as cultural or private issues that are best left alone.

In situations of armed conflict, the risk of SGBV against women and girls is heightened but many governments in South Asia have yet to ratify the international commitments designed to protect the rights of women and girls during and after armed conflict. Furthermore, during armed conflict, forced displacement and SGBV are often deliberate strategies of war that destabilise families and communities. Physical and sexual violence, particularly towards women and children, occur with greater regularity during and after armed conflict. Women experience rape and forced pregnancy, forced sex work and sexual slavery often at the hands of peace keepers, police or occupying forces, as occurred in Afghanistan. In Eastern Myanmar it has also been documented that rape has been used as a systematic weapon of war to traumatisé whole communities (Burma Campaign UK 2014: 1). However, these victims often do not and cannot get sufficient medical, mental, or physical support because of the chaos of conflict.

Access to education

Access to primary and secondary education is an obstacle in both South and Southeast Asia, particularly outside of refugee camps. In some countries in Southeast Asia, refugee children may in
theory be allowed to enrol in local schools; however, there are a lot of practical challenges such as language, transportation, discrimination from the other students, fees for school materials and uniforms as well as school administrators that might refuse to enrol refugee children. In other countries such as Malaysia, refugee children do not have access to the national education system at all (Jesuit Refugee Services 2012: 61). As a result, refugee children in urban settings and also camps often rely on classes and schooling provided by NGOs and CBOs, which are limited and also not formally recognised. In cases were refugees can access the national schooling system, such as Pakistan, there is a need to sensitisie stakeholders to ensure that the education provided also fulfils the needs of refugees and prepares them with useful skills.

Access to further education and skills development is another significant gap in the refugee protection framework. There are often very limited further education opportunities available, mostly because of the lack of legal documentation that prevents refugees from attending university. Finances, language, community pressure and invalid visas are other barriers. In Thailand for example, even if refugees have the financial resources to study at a university, they would not be able to do so because they would need a valid student visa (which is almost impossible for refugees to obtain).

Access to livelihoods

Research has shown that allowing refugees employment and self-employment is beneficial to hosting countries (Arnold-Fernández & Pollock 2013: 92). However in none of the Southeast Asian countries are refugees allowed to work without valid visas and work permits. Thailand has benefited from the employment of Burmese migrant workers; many of them in fact being refugees residing outside of refugee camps. However there is no political will to consider providing camp-based or urban refugees a formal right to work—the argument often provided by governments is that the right to work would act as a pull factor, attracting more refugees.

Many refugees are therefore forced to work illegally, which makes them more vulnerable to exploitation and abuse. This is particularly the case for women who may engage in prostitution to make ends meet or may become victims of trafficking. Working conditions are also often poor with little pay. In Malaysia, abuse of migrants and refugees has been well documented and researched (Jesuit Refugee Services 2012: 57). The constant fear of arrest also reduces mobility to travel and restricts job opportunities.

The most obvious impact of a lack of access to employment is the lack of sufficient income. This lack of income means basic needs cannot be met. For refugee women, a lack of income may also mean a lack of financial independence, which may lead to other issues such as women staying in unsafe domestic settings and increased vulnerability. Refugee children are also at increased risk of engaging in child labour, as well as sexual exploitation and trafficking. Forced into early adulthood by the need to work, these children are subsequently not accessing education.

In the refugee camps on the Thai–Myanmar border, many of the refugees have been in these camps for over 20 years and many more are born there. After all these years, refugees have not been allowed to work, making them dependent on humanitarian aid (Human Rights Watch 2012). Some risk sneaking out of refugee camps on a daily basis to earn money as day labourers, placing them at additional risk of exploitation and arrest.

Access to durable solutions

While refugees in the Philippines and Cambodia have some options for local integration, there is a lack of durable solutions available to refugees in Thailand, Malaysia and Indonesia. With
countries resistant to allow for local integration, resettlement often remains the only option but is only available for a small percentage of the refugee population. As a result many refugees remain stuck in limbo for years.

Voluntary repatriation is currently in discussion for Burmese refugees on the Thai–Myanmar border due to some positive political developments inside Myanmar. However, peace inside Myanmar is still fragile and certain preconditions need to be in place to ensure that refugees can return in safety and dignity. Specific concerns include the on-going presence of Burmese military troops, reports of human rights violations, thousands of uncleared landmines, oppressive laws, landownership issues, the lack of healthcare and education services, the lack of assistance for vulnerable people, livelihood issues, re-integration issues with local communities and limited or no citizenship/nationality rights. Refugee communities have also raised the concern that no consultation has taken place with them and only very limited information has been received which has resulted in anxiety and the spread of rumour.

For refugees in Pakistan, insecurity, disputes, intimidation and extortions, mines and unexploded ordinances are among the key factors that affect the physical safety and well-being of Afghan returnees. Recognition of their identity is also a challenge for returnees who are faced with obstacles to obtain proper legal documentation—in part due to the difficulty in going back to the area of origin to obtain identity cards. The lack of official identity documentation leads to severe challenges in accessing basic services for children, political representation and social inclusion. For Afghan refugees much more could be done to prepare them for return and more effective information sharing should be implemented to enable refugees to make an informed decision about their opportunities to return.

**Conclusion**

While refugee flows are increasing and becoming more complex, states are increasingly reluctant to provide asylum and protection for those in need. Protection on all levels (international, regional and national) is weak, inadequate and does not allow refugees to access their fundamental rights. Only a small number of states have acceded to international instruments and the majority do not have national laws in place nor is there any regional framework that provides protection to those in need of it. Even countries which have acceded to international refugee law instruments (such as Australia) do not fully respect their international obligations. This frequently leaves refugees in a ‘legal limbo’, desperately in search of protection, and forced to seek other migration channels with people smugglers and traffickers who thrive on the desperation of others. This legal limbo and the lack of legal status prevents refugees from accessing their rights, such as education, health and livelihoods.

Refugee protection starts at the national level, it starts with states developing national laws that are in line with international standards but it also starts with providing the access to rights outlined in such laws. In the context of mixed migration and irregular maritime movements, a rights-based regional response is desperately needed that addresses root causes and explores different models of responsibility sharing.

**Notes**

1 Edited by Anoop Sukumaran, Helen Brunt, Hina Tabassum and Michelle Ferns.
2 For this chapter, South Asia includes the following countries: Afghanistan, Bangladesh, Bhutan, India, Iran, Nepal, Pakistan and Sri Lanka.
3 For this chapter, Southeast Asia includes the following countries: Cambodia, Brunei, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand, Timor-Leste and Vietnam.
4 When a refugee population is in exile for over five years, and exceeds a population of 25,000, it is considered as to be in a ‘protracted’ situation.

5 This figure is what UNHCR describes as people from Myanmar in refugee-like situations.

6 UNHCR’s ‘Framework for Durable Solutions for Refugees and Persons of Concern’ identifies three durable solutions: resettlement to a third country, voluntary repatriation or local integration (UNHCR 2003: 5).

7 An asylum seeker is someone who is outside their country of origin and has a well-founded fear of persecution due to race, religion, nationality, membership of a particular social group, or political opinion and is unable or unwilling to return to that country, but whose status as a ‘refugee’ has not yet had their claim assessed by the relevant status determination body.

8 According to Article 33 of the 1951 Refugee Convention, ‘no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.

9 AALCO is an intergovernmental body with 47 members.

10 Since its independence in 2002, Timor-Leste has held ‘observer’ status in ASEAN, pending the country formally becoming a member.

References


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