



# THE SEARCH

PROTECTION SPACE IN MALAYSIA, THAILAND, INDONESIA, CAMBODIA AND THE PHILIPPINES



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# Table of contents

<b>Foreword</b> Fr Bernard Hyacinth Arputhasamy SJ.....	1
<b>List of terms</b> Abbreviations used in this text.....	3
<b>Introduction</b> Rationale and key findings.....	6
<b>Chapter one</b> Protection concerns.....	9
<b>Chapter two</b> Convention obligations, domestic frameworks and other regional instruments.....	23
<b>Chapter three</b> Refugee Status Determination.....	31
<b>Chapter four</b> Durable solutions.....	47
<b>Chapter five</b> Life in.....	55
<b>Conclusion</b> Concluding remarks and observations.....	63
<b>Resources</b> .....	64
<b>Index</b> .....	67

# Foreword

By Bernard Hyacinth  
Arputhasamy, SJ  
Regional Director  
JRS Asia Pacific

“When I was 3 years old, I was displaced. Now, my son is 3 years old, and he is displaced. His mother died on our journey from Sri Lanka by boat. I am doing this for his children, so they won’t have to be displaced.” – Kasun, Sri Lanka

“Why would someone leave one’s own home, land, family and country to go to another?” A group of primary school students were asked during a recent trip to Australia. Many enthusiastic hands were raised with answers like these: because they want to run away from violence and war, it is not safe in their own country, it is dangerous and life-threatening, to seek a better life, because of poverty, there is no education and chance to work, to start a new life, and the like. “Would you do the same?” “Yes” they answered emphatically.

The students seem to understand the stories of people forced to flee life-threatening situations in its myriad forms.

History has seen many flee Europe by boat to reach the shores of other lands in search of protection. Escaping war, famine and poverty they went on to establish for themselves and their families a new and better life, to build new roots that are nourished by a safe and free environment. Their posterity flourished. Persons from Eastern Europe whose fathers escaped through ‘smugglers’ or ‘traffickers’ (concepts now heavy with legal and political weight) arrived safely in countries such as Australia and their stories have been adopted to form part of the national narrative.

The tide has turned now with people from many countries in the southern hemisphere in search of a better life, trying to reach the shores of safety. Their stories of fear and persecution are exactly the same! Except so much has changed; there are barriers to be broken and Himalayan hurdles to be traversed formed by new concepts and realities like nation-states, sovereignty, political-economic expediencies, security, socio-cultural differences and international instruments. The doors to safety are narrowed, if not shut completely, and many perish in long perilous journeys.

Kasun is one among the thousands or millions who courageously and desperately took to one of these rickety boats leaving a life-threatening situation and risking everything in search of safety and a better life. He was desperate enough to act in hope of a promising future, not for himself only but for his children and their children “so they won’t have to be displaced.”

JRS accompanies or journeys with people like Kasun, listening attentively to their stories to understand their forced displacement in order to respond in a direct and personal way through the provision of services and advocate for a just solution for them. Their voices and perspectives are highlighted while recognizing the need and place to engage various levels of government and international agencies and instruments to offer them protection space. Our legal representation and advocacy is dependent on the effectiveness of decision makers, be it the responsible government or non-government agency or international agency entrusted with the care and protection of people fleeing from life-threatening situations.

Their daily plight is marred by the constant fear of being arrested for not possessing documents and being placed in indefinite detention. They are unable to access gainful employment which drives them into poverty, and possible intimidation or exploitation. There is little or no access to low-cost medical services and accommodation, or regular educational opportunities. These

are some of their lived-realities that thousands like Kasun face. “We live like ghosts,” shared one refugee living in Thailand.

We seem to be fortunate to have more international instruments that were non-existent in the earlier waves of boat people from Europe. Given this is so, why do people like Kasun still have to experience long desperate travels and waits in order to be protected? Why is there no safe place or country for many like him to land without being stopped? Perhaps international instruments and governments have taken an approach that uses concepts and definitions that inevitably exclude people in desperate search of a safe place.

Lengthy waiting periods have plunged people fleeing danger into further states of vulnerability. “Hope has grown grey hairs...” (Jesuit poet Gerard M. Hopkins) and the failure to ensure protection in one country has further forced them to seek desperate measures, taking more boats to another place only to face the prospect of being detained in prison-like conditions unfree and unsafe. The cycle of search for safety continues.

A regional cooperation framework is indeed needed to address the plight of the movement of peoples with all its complexities. It needs to address the protection needs of people fleeing life-threatening situation in its myriad forms. However, criminal activities like people smuggling or human trafficking should be distinguished from criminalizing or punishing people seeking protection. To connect this to the punishment of forcibly displaced people seeking solace is indeed a travesty to just humanity. Already they have been battered by the horrors of war and violence, poverty, discrimination, they could do well if we open our doors and promote the ethics of hospitality that creates a welcoming and protection space for them.

Compassion and hospitality are said to be very much part of the cultures and religiosity of people in this region. Is this same compassion and hospitality translated into policies and practices that ensures protection of people in need of them? Uighurs, Rohingyas, Sri Lankans, Hmongs, Afghanistans, Pakistanis and others—they are all people in search of protection space. The Search seeks to highlight the humanity of their stories while appealing to the humanity of ethical laws and practices that puts priority on the protection of people. In The Search, we’d like to explore together with them where there are safe places to go and how to access protection.

Where am I safe? How will reach safety? It is hoped that a small study like this will help us and others to answer these questions and seek for ways to offer protection—practical and concrete—to people who have difficulty believing in the humanity of the human community with its laws and institutions.

A Bengali poet, Rabindranath Tagore, once wrote, “Civilization must be judged and prized not by the amount of power it has developed but by how much it has evolved and given expression to, by its laws and institutions, the love of humanity...for that by which alone man [and woman] is true can be nourished only by love and justice.”

In The Search we continue to work towards expanding and embracing protection space in this region. To the people who have accompanied, served and defended the cause of forcibly displaced people, dedicating their lives daily in a direct and personal encounter, we owe them a deep gratitude. To Nikola Errington and Taya Hunt, present and past JRS lawyers respectively, we express our thanks for the invaluable time spent listening to forcibly displaced people, encouraging them while seeking with them ways to advocate for safe space for them and others whom might share the same journey. Let us hope that the number of people in need of protection decreases.

*Bernard Hyacinth Arputhasamy, SJ*  
*Regional Director JRS Asia Pacific*

# List of terms and abbreviations

**ASEAN:** Association of South-East Asian Nations

**Asylum seeker:** Someone who has not yet been conferred refugee status by a decision maker

**Bali Process:** Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime

**BRC:** Bangkok Refugee Centre (UNHCR implementing partner Thailand)

**Case re-opening:** After a negative decision is handed down, an asylum seeker may request that their case can be re-opened for further consideration under certain circumstances

**CEDAW:** Convention on the Elimination of all forms of Discrimination Against Women

**CWS:** Church World Service (UNHCR implementing partner Indonesia)

**Durable solution:** The long-term prospects for refugees including: voluntary repatriation, local integration, resettlement

**ETA:** Emergency Transit Agreement

**IDC:** Immigration Detention Centre

**IOM:** International Organisation for Migration

**ICESCR:** International Covenant on Economic, Social and Cultural Rights

**JRS:** Jesuit Refugee Service

**Kumpulan ACTS:** A Call to Serve (UNHCR implementing partner Malaysia)

**Local integration:** A durable solution that means a government that is hosting refugees gives permission for them to stay and live permanently in their country

**MOU:** Memorandum of Understanding

**NGO:** Non-governmental Organisation

**Person of Concern:** Someone whose protection and assistance needs are of interest to UNHCR

**Protection space:** In accordance with the UNHCR definition outlined in their urban refugee policy document: "While the notion of protection space does not have a legal definition, it is a concept employed by the Office to denote the extent to which a conducive environment exists for the internationally recognized rights of refugees to be respected and their needs to be met."

**Registration:** Confirms status as a person of concern, or asylum seeker by recording the personal information of those presented.

**Refugee:** For the purposes of this publication a refugee is defined as someone who has been conferred status by a decision maker at the completion of a refugee status determination process. Acknowledgement is made that a refugee is inherently so at the time that they fulfill the requirements of the Refugee Convention, rather than at the completion of the refugee status determination process

**RCF:** Regional Cooperation Framework (under the Bali Process)

**RCM:** Regional Cooperation Model (between the Australian, Indonesian governments and IOM)

**Resettlement:** A durable solution that means a refugee can go to a third country to live

**RSD:** Refugee Status Determination

**RPU:** Refugee Processing Unit (the Philippines)

**RSO:** Regional Support Office (under Bali Process)

**UNHCR:** United Nations High Commissioner for Refugees

**Unaccompanied minor:** A person under the age of 18 who arrives in a country unaccompanied by a legal guardian

**Voluntary repatriation:** A durable solution that means that a refugee has chosen to go back to their own country

# The Search

**Protection Space in Malaysia, Thailand, Indonesia, Cambodia  
and the Philippines**

# POPULATION OF REFUGEES AND ASYLUM SEEKERS

according to UNHCR data

## REFUGEES

**85,900**

Malaysia

**1,110**

Thailand

**1,140**

Indonesia

**243**

Philippines

**64**

Cambodia

## ASYLUM SEEKERS

**10,000\***

Malaysia

**958**

Thailand

**3,781**

Indonesia

**73**

Philippines

**43**

Cambodia

## TOTAL

**95,900\*\***

Malaysia

**2,068\*\*\***

Thailand

**4,921**

Indonesia

**316**

Philippines

**107**

Cambodia

## MAIN COUNTRIES OF ORIGIN



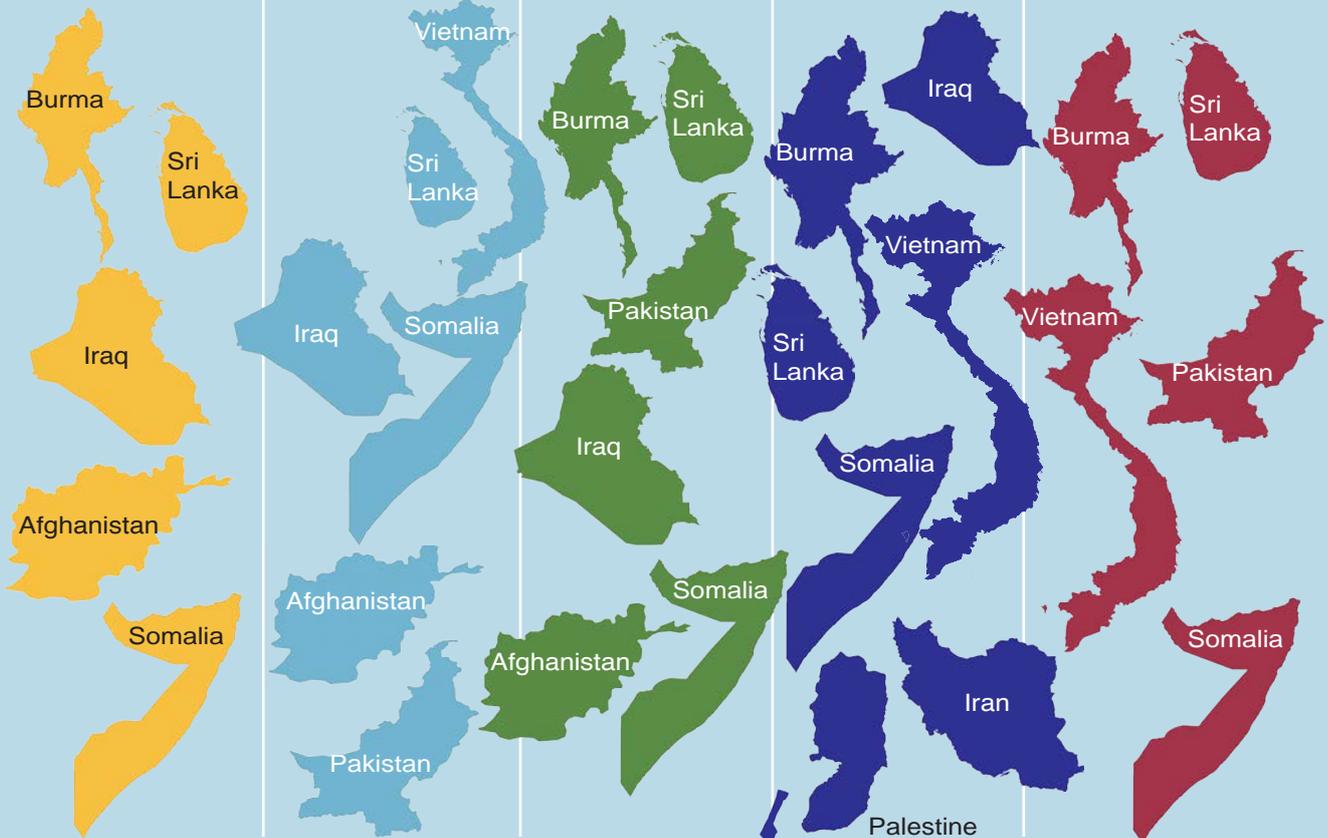
Malaysia

Thailand

Indonesia

Philippines

Cambodia



\* UNHCR acknowledges that there are a large number of unregistered asylum seekers that are unregistered. Whilst their estimates are around 10,000, Burmese community groups estimate this to be as high as 25,000.

\*\* The UNHCR Malaysia country website indicates that as of January 2012 the total number of registered asylum seekers and refugees is "some" 97,000. The UNHCR 2012-2013 planning estimates record the numbers reflected above.

\*\*\* This population is of those living in urban areas only and does not include those living in camp arrangements.

# Introduction and rationale

Every year thousands of refugees and asylum seekers embark on the search for protection in South-East Asia. While the search for asylum has never been easy, changes to the protection landscape in recent years mean that asylum seekers and refugees have to continually assess where in the region is safe. Given the range of challenges within the region, it is essential that those that work with asylum seekers and refugees know as much as possible about the asylum options available in urban areas.

This publication is a practical guide written by two Australian lawyers Nikola Errington and Taya Hunt. Both have spent time working for JRS as refugee legal representatives in countries within South-East Asia. It is their hope that this guide will assist other advocates to provide accurate information to asylum seekers and refugees about the realities of protection space within urban areas in the South-East Asia region.

Those that work with asylum seekers and refugees in the region have seen a shift away from traditional camp settings, as protection space is slowly carved out in urban areas. This shift parallels the global movement of people towards urban areas, with the United Nations High Commissioner for Refugees (UNHCR) stating that only one third of those they serve still live in camp settings. Urban areas present specific challenges to asylum seekers and refugees. Lack of legal protections that recognise the right to asylum is a root cause of the challenges faced. In South-East Asia, only three countries are signatories to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention): Cambodia, the Philippines, and Timor Leste. Only these three countries have established domestic frameworks to implement their obligations.

The adoption of legislation and policy recognising the rights of asylum seekers and refugees does not always guarantee protection. History continues to show that protection is largely determined by international alliances and internal political pressures. To name a few examples: in December 2009, 20 Uighur asylum seekers were taken at gunpoint from a joint UNHCR and Cambodian Government safe-house and returned via chartered airplane to China before their claims for refugee status had been heard. In 2010, Ahmadiyya and Sri Lankan asylum seekers were targeted for round ups and placed in an Immigration Detention Center (IDC) in Bangkok. In 2011, NGOs, asylum seekers and refugees continued to report widespread corruption amongst Malaysian authorities. The payment of bribes being necessary to relieve daily harassment and the threat of arbitrary detention.

The recent past has also seen changes to Refugee Status Determination (RSD) process and practice in the region. In December 2009, the Cambodian Government signed a refugee Sub-decree that transferred decision-making power from UNHCR to the Cambodian Government Refugee Office. Also in 2009, the International Organization for Migration (IOM), UNHCR and the Philippines Government signed a memorandum of understanding, the Emergency Transit Agreement, which allows for refugees, at risk of refoulement in the country in which they are recognised, to be safely transferred to the Philippines until they can be resettled in a third country.

The last few years have seen a rising interest in and support for regional agreements and collaborations between transit and resettlement countries. The Regional Cooperation Model (RCM) signed over ten years ago between the Australian and Indonesian governments and IOM, aimed at stemming the tide of boats transiting through Indonesia continues to be implemented.

With little space for the discussion of refugee rights to be included on the ASEAN agenda, focus has turned to the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) to explore meaningful and productive methods for dealing with the movement of asylum seekers and refugees in the region.



It is essential those who work with refugees know as much as possible about the asylum options available in urban areas...



The Bali Process was established in 2002 with the aim to combat trafficking, people smuggling and related transnational crime in the Asia Pacific region. UNHCR, IOM and the governments of Australia, Indonesia, New Zealand and Thailand are members of the steering committee of the Bali Process. A Regional Cooperation Framework (RCF) was agreed to by Ministers in March 2011 with an aim to reduce irregular movement, and to address concerns for the protection of asylum seekers and refugees arising as a result of mixed migration flows. The Australian Government has argued that their attempts to strike a deal with Malaysia regarding the return of asylum seekers to Malaysian shores in exchange for an increase in resettlement places for those already recognised by UNHCR, is an example of the operationalisation of the RCF.

In October 2011, a proposal for the establishment of a Regional Support Office (RSO) was drafted by UNHCR, as a step towards implementing the RCF, with its focus being on information and technical resource sharing, capacity building and support within member states. It remains to be seen how the RCF, as a regional mechanism will be realised, but what is clear is that it is through a regional lens that the protection needs of asylum seekers and refugees must be addressed.

Burma, a site of rapid political change, remains a focus for advocates in the South-East Asia region. Displaced Burmese, including the stateless Rohingya, represent the largest population of urban asylum seekers and refugees in the region. Undoubtedly, any positive developments that address the root causes of displacement in Burma will influence regional policy and practice by governments and UNHCR.

The information gathered throughout the following chapters was as a result of JRS' work on the ground in Thailand, Indonesia and Cambodia. Research trips were undertaken in Malaysia and the Philippines in 2010, 2011 and early 2012. The research for this guide was collected in a qualitative manner, with individual and group interviews being conducted in urban areas as well as in detention where it was permissible.

The focus of this research has been to emphasise the experience of asylum seekers and refugees, to let them tell their own stories, while at the same time compile the relevant contextual information to present a broad picture of the current situation in South-East Asia. This publication does not attempt to be wholly comprehensive, and has been limited by time and resources.

The information collected for this project was also dependent on the data and access to asylum seekers and refugees that was made available by governments and UNHCR. The information in this publication is accurate at the time of writing but does not purport to be a final word on the state of the region. The issues related to protection for asylum seekers and refugees are inherently dynamic, and it is acknowledged that this is a sphere that is constantly evolving. Those working on the ground level with asylum seekers and refugees are best placed to use this information as relevant and practical.

Each chapter presents a different theme related to the experience of asylum seekers and refugees in South-East Asia. The guide begins, in Chapter One, with a discussion of some of the over-arching [protection concerns](#) manifest in the South-East Asia region. These protection concerns pose what JRS considers to be the most pressing issues regarding refugee protection, and set the scene for further exploration of the relevant policies and procedures discussed further in this guide. Immigration detention, and alternatives to detention, is described, as well as the treatment of asylum seekers and refugees by state authorities. The experiences of specific groups at heightened risk of refoulement, including the Rohingya, Uighurs, Montagnards and the Khmer Krom, are also outlined.

In Chapter Two, the [convention obligations and domestic frameworks](#) are detailed, as

<sup>1</sup> For convenience, all references to Burma/Myanmar are indicated as "Burma". References to those as "Burmese" refers to those coming from Burma, rather than ethnically "Burman".

they relate to each country in the region. This chapter includes an examination of the underlying principles of customary international law to which countries in the region are subject. This chapter also closely examines the Emergency Transit Agreement and the role that it plays in expanding legitimate protection space for refugees in South-East Asia. Also discussed is the Regional Cooperation Model and the role that it has played in the daily lives of asylum seekers and refugees in Indonesia.

Chapter Three explores [Refugee Status Determination \(RSD\) policy and practice](#). This chapter examines the steps required to be taken by asylum seekers to gain refugee status through UNHCR in non-signatory countries; Malaysia, Thailand and Indonesia. Following this is a description of the corollary processes, through domestic frameworks, in the Philippines and Cambodia.

In Chapter Four, [durable solutions](#), the three key pathways of voluntary repatriation, local integration and resettlement are described. In Malaysia, Thailand and Indonesia, the respective governments do not permit local integration, the only remaining options for refugees is to repatriate, or wait to be resettled to a third country. In the Philippines and Cambodia local integration through naturalisation is an option for those who are recognised as refugees by the government.

Chapter Five provides a snap-shot of the daily lives of asylum seekers and refugees. [Life in...](#) explores the reality of trying to achieve self-reliance as an asylum seeker or refugee by looking at employment, housing, education and healthcare.

Our thanks go to those that gave their time throughout the research period, and who consistently showed a deep commitment to the issues that surround refugee protection. Of course, the role of asylum seekers and refugees in the formation of this guide cannot go unacknowledged. This guide is punctuated by stories, quotes and snapshots of the lives of asylum seekers and refugees to reflect the realities that they face in the urban areas of Malaysia, Thailand, Indonesia, The Philippines and Cambodia. All names have been changed to preserve anonymity. Thank you to those asylum seekers and refugees that have willingly shared their stories, opened up their homes and lives in the hope that it may ultimately help others on the same journey: the search for protection.

## KEY

### ISSUES OF CONCERN

- 1 **Onward movement** from the country of first asylum due to protection concerns is common and asylum seekers and refugees in the region do not have adequate **access to information** required to make informed decisions about their futures.
- 2 Protection of asylum seekers and refugees is a **regional issue** which requires cooperation between countries, agencies and NGOs.
- 3 The **right to legal representation** for asylum seekers and refugees is not fully recognised by UNHCR and governments in practice, compromising the integrity of the refugee status determination process.
- 4 There are increasing **delays** for new arrivals to obtain registration documents from UNHCR confirming that they are persons of concern.
- 5 Countries in the region party to the Refugee Convention should not be presumed to provide **protection** for all asylum seekers and refugees simply by virtue of their accession.
- 6 **Detention** of asylum seekers and refugees in non-signatory countries is a protection issue within and of itself; steps to introduce alternatives to detention in the region have improved lives.

# Chapter 1

## Protection concerns



I thought because I was pregnant they would not keep me (in detention). But then the police took notes about me, and they brought me upstairs. Then I knew I wasn't getting out. One day they called me down to the (IDC) office. I didn't know what they wanted, maybe information from me or to give me a message. The officer just said, 'We are going to release you.' At first I didn't believe it. I was so happy, I felt numb. It wasn't until after I walked outside, got into a taxi and was driving away that I really believed that I was free. We are very grateful to those who spoke on our behalf.

*Refugees living in Bangkok detention just days after she gave birth to her daughter and just days before they were resettled. She was released from detention with the assistance of UNHCR.*

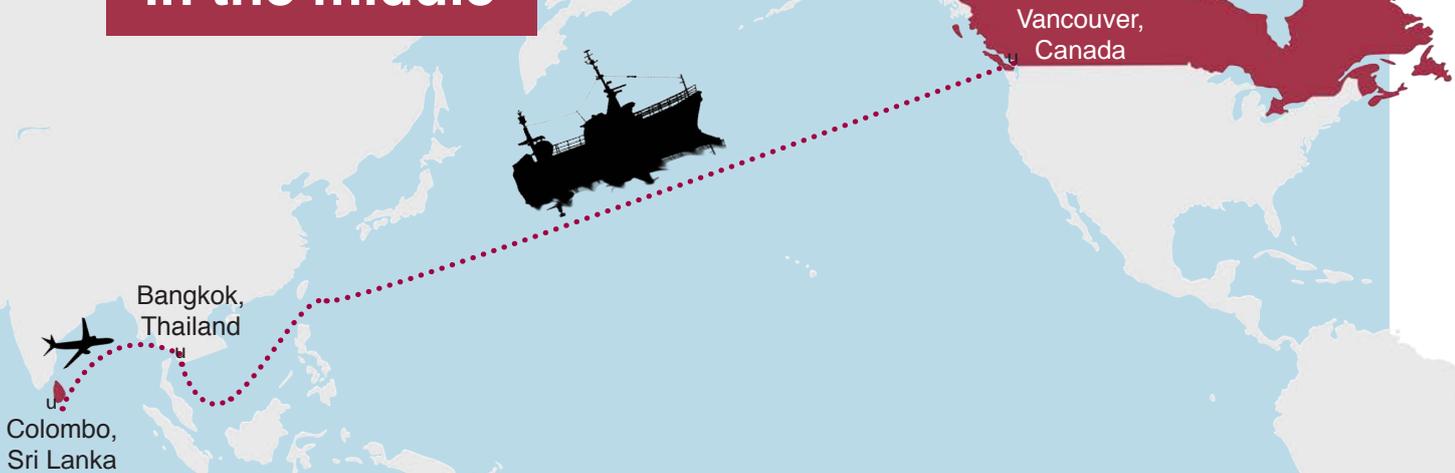


📷 An urban refugee family in Bangkok stands outside after the woman was released from detention. They were resettled days after this photo was taken.



# THE SUNSEA

## and the refugees caught in the middle



In August 2010, the ship 'SunSea' departed from Thailand and arrived in Canada carrying on board 492 Sri Lankan asylum seekers. A fierce political debate in Canada followed, focusing on the Canadian government's ability to stop people smuggling.

In October 2010, 136 Sri Lankans registered with UNHCR were arrested in Bangkok. Those who were among the arrested reported the authorities knocking on doors in the early hours of the morning carrying with them lists of names of the people that were to be charged. Newspapers reported that the arrests had been the result of pressure from Canada to stop the flow of asylum seekers leaving from Thailand via boat to Canada.

In the following months an additional 97 Sri Lankans were arrested and detained within the Bangkok Immigration Detention centre.



### Chronology of arrests of Sri Lankans in Bangkok

**AUGUST 2010:** 492 Sri Lankan asylum seekers board the ship 'SunSea' in Thailand arriving in Canada

**11 OCTOBER 2010:** 136 Sri Lankans registered with UNHCR are arrested in Bangkok and detained including 3 pregnant women and 30 children

**28 OCTOBER 2010:** 61 Sri Lankans registered with UNHCR are arrested in Songkhla and Hat Yai before being transferred to the Suan Phlu immigration detention centre in Bangkok

**8 DECEMBER 2010:** 28 Sri Lankans registered with UNHCR are arrested in Bangkok

In a region where the rule of law and institutions of government are relatively weak, overcoming the constraints of limited protection space is a major challenge for asylum seekers and refugees living in urban areas in South-East Asia.

In [Malaysia](#), [Indonesia](#) and [Thailand](#), asylum seekers and refugees are vulnerable to arrest and detention in conditions that do not meet international standards. In [Cambodia](#), although routine arrests and arbitrary detainment is not practiced, there is no transparency regarding detainees in immigration detention centres (IDCs) and it cannot be said that there is a guarantee of protection for those seeking asylum in the country.

This chapter focuses on a number of vulnerable groups that countries in South-East Asia have routinely failed to provide protection space for. These groups include: the Rohingya, who have endured displacement for decades as a result of their statelessness and persecution at the hands of the Burmese government; Uighurs, who have been forcibly deported from Malaysia, Thailand and Cambodia in the past two years; Montagnards, an ethnic minority from the highlands of Vietnam who were forced to leave after the Cambodian government arbitrarily closed the site that housed them in 2011; and the Khmer Krom who have been placed in a tenuous position as their asylum claims are undermined due to the ineffective state protection of the Cambodian government.

### Detention, Alternatives and Treatment by Government Authorities

Even if asylum seekers enter legally into [Malaysia](#), [Thailand](#) and [Indonesia](#) with valid tourist or business visas, these visas are usually valid for only three to six months. The refugee status determination and resettlement process can take many years, especially if the asylum seeker has applied to appeal or re-open their case. As asylum seekers and refugees in Thailand, Indonesia and Malaysia have no legal status, without valid visas they are considered to be illegal immigrants. For as long as it takes to be recognised as a refugee and for a durable solution to be found, they remain at risk of being charged with illegal stay and sentenced to indefinite detention

#### Malaysia

Amendments to the Immigration Act 1959/1963 by the [Malaysian Parliament](#) in 2002 contain the punishment of whipping for offences, including the offense of illegal entry. Those who remain in Malaysia beyond the expiration of their documentation are also subject to detention, and/or deportation.

## CONTROL OF ENTRY

### INTO MALAYSIA

6.

- (1) **No person** other than a citizen shall enter Malaysia unless—
- (a) he is in possession of a valid Entry Permit lawfully issued to him under section 10;
  - (b) his name is endorsed upon a valid Entry Permit in accordance with section 12, and he is in the company of the holder of the Permit;
  - (c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or
  - (d) he is exempted from this section by an order made under section 55.

- (3) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.

“

I have been **stopped by the police** six times on the street in Kuala Lumpur, sometimes I pay, sometimes they put you in the car and drive away just to pressure you to pay. If you have no money, then they just **dump you on the outskirts of town**. They don't care what document you have, they just want your money.”

Win, Kachin

IDCs in Malaysia are cramped, unhygienic and non-transparent; they leave asylum seekers and refugees left with little understanding of the applicable process for release. Their access to lawyers and medical services is limited and compounds their confusion and frustration. However, UNHCR has indicated that in recent times they have had increasing success with releasing and registering asylum seekers and refugees from IDC.



Two of our members were arrested last year in Kuala Lumpur and they called us to help pay to get them out of **prison**. The police wanted 4,000 ringgit (USD1200) but after we paid it, they didn't release them. They sent us away from the police station and told us to wait, they were **sent to the prison** anyway.

One of them was eventually released and was taken to the **Thai border**, but he just paid some agents to bring him back.

Steven, Karenni

*The police went to the workplace of one of our members and they asked him for his passport, he showed them his Person of Concern letter from UNHCR. The police told him that he can't work, confiscated his documents, and they took him to the local police station. Our member tried to contact someone but couldn't get through to anyone to help him, so they took him to a big lock-up for a week. We told UNHCR what happened and they said they would try and contact the authorities to find out what was happening. They couldn't tell us how long it would take though. We went ourselves to the police station to see if we could negotiate. The cell was very small with 10-12 people squashed together to lie down, there was dirty carpet on the floor and no furniture, blankets or pillows. They gave rice to him twice a day, and water in a small plastic bag. The police asked us for a bribe so we gave them 650 ringgit (USD320) because we didn't want our member stuck in jail for a long time, not knowing what would happen to him. He went back to the same workplace the next day, his wife is pregnant and they have no money, he has to keep working. – Peter, Burma*

Harassment by police, immigration officials, members of the citizen army RELA and even Malaysian citizens, pervades the lives of asylum seekers and refugees in urban Kuala Lumpur. Almost all interviewed had stories of engaging with the authorities, and lived in fear that at any time they may be robbed, arrested, detained, beaten or threatened. Human rights groups also expressed their concern that arrests of asylum seekers and refugees at the Thai border were continuing with people being sent straight to IDC, with no access to UNHCR.

Stories of Malaysian immigration officials complicit in trafficking asylum seekers and refugees back to the Thai border over the past few years are less reported. Many of those who were affected have made their way back to Kuala Lumpur, continuing their journey to protection.

*I was arrested walking home by RELA. I was put into jail for 14 days and then I went to court. I couldn't understand what they were saying, but then I was told by another prisoner that I was being transferred to a big jail for five months.*

*Then we were transferred to somewhere else, like a camp which was filled with foreigners. There was no place to sleep or even sit. Then I was put on a bus to go to the Thai border, and we arrived there at 2am, but I can't remember how long the bus ride was. When we got off the bus, the agents were waiting for us, they knew we were coming. We got off the bus and the immigration officials took off our handcuffs and watched us being lined-up by the agents, they didn't talk in front of us.*

*There were about 10 agents using sticks to move us into lines, I think they were Thai. They took us to a shelter about ten minutes away hidden in the forest. The shelter was made of bamboo with a plastic covering the roof. It was not high enough to stand up in. The agents walked with us all the way there, and the immigration officials went back into the bus. The agents asked us all whether we had relatives or friends in Thailand, and then they told us to call them and ask for money for our ransom.*

*My cousin had to pay 1700 ringgit (USD530). The agent said that if we didn't pay, we would be killed and left at the border. My cousin promised to pay, and then we drove back to Kuala Lumpur. We were piled into a small car, I don't know how*

 A man displays his wounds after being beaten by an Indian gang in Malaysia.



*many were in the car, but we were lying on-top of each other. When we got back to Kuala Lumpur, we met a Malaysian agent and had to spend one day and one night in a different shelter, also like a tent but I don't know where we were. There were 35 people squashed into the tent and we couldn't sit properly.*

*Agents surrounded the shelter all night, and they hit us with sticks to get us into the tent. On the day we met my cousin, I was driven to an empty road and I was left in the car while the agent spoke to him. The agent said that I couldn't get out of the car until he paid, and if he didn't pay, I would be killed. My cousin paid and I came back to his house in Kuala Lumpur. I couldn't report it to the police because I was still unregistered with UNHCR and I was so afraid.*

*The deportation was in 2007, and I was recognised as a refugee by UNHCR in 2009. I haven't had any contact by UNHCR since I was recognised and I don't know what the status of my resettlement is. – Kung, Burma*

### *Biometric Registration: The 6P program*

In addition to the 2 million foreign workers that are documented in Malaysia, there are roughly the same number, 1.9 million undocumented foreign workers also present. The 6P Amnesty program was first introduced in order for the Malaysian government to record the biometric data of undocumented migrant workers, giving them the opportunity to obtain legal permission to stay and work.

In a recent speech to parliament the Malaysian Minister for Home Affairs was quoted as saying, "The 6P Programme is an important part of the Government's agenda to enhance or strengthen the management of foreign workers in the country, and at once address transnational crimes, particularly human trafficking and human smuggling."

Burmese community members reported that the day before the commencement of the program in August 2011, they were notified by UNHCR that asylum seekers and refugees may also go through this registration process in the hope that they may be given permission to stay and work legally. There was not enough time for large numbers to attend the first round, as there were thousands of migrant workers also lining up for registration at the Putrajaya Immigration office. With no system to account for the distinction between migrant workers and asylum seekers and refugees, the outcome of the 6P program was that a majority of asylum seekers and refugees were issued with documents indicating that they were to "return to home country". A second round of recording biometric data for asylum seekers and refugees was re-scheduled in the months following but is yet to take place. Routine sweeps in early 2012 have prompted fears within communities and NGOs that an "informal" crackdown has already begun. Community leaders reported that distrust amongst their members has been persistent since this time; many feeling betrayed by their own people and are now reluctant to continue to engage with organised groups.

#### *Thailand*

Thai immigration law prohibits entrance into Thailand through an unauthorised check-point without a valid travel document and visa. It is also illegal to remain within Thailand after the expiration of a valid passport or visa.

#### *Thai Immigration Act, B.E. 2522*

Section 62: Whoever fails to comply with the provisions of Section 11 (entrance through an authorised checkpoint)... shall be punished by imprisonment not exceeding two years and a fine not exceeding 20,000 Baht.

Section 81: Any alien who stays in the Kingdom without permission or with permission expired or revoked shall be punished with imprisonment not exceeding two years or a fine not exceeding 20,000 Baht or both.

Many asylum seekers and refugees manage to successfully evade the attention of the immigration authorities for years. Traditionally, asylum seekers and refugees are brought to the attention of the Immigration police through complaints lodged by neighbours or community members.

There are a number of IDCs in Thailand, however the largest detention centre, and the detention centre to which all asylum seekers and refugees are eventually sent, is the Suan Phlu Bangkok Immigration Detention Centre in central Bangkok.

After arrest they are taken to court and charged with illegal stay, the punishment being a fine and detention within the IDC until such time as they can be bailed or leave the country. If an asylum seeker or refugee cannot pay the fine set, they will be sent to a prison in Bangkok, after they have served their sentence they are then transferred to the IDC.

The 6P Programme is an important part of the Government's agenda to enhance or strengthen the management of **foreign workers** in the country, and at once address transnational crimes, particularly **human trafficking** and **human smuggling**.

*Malaysian Minister for Home Affairs speech to parliament*

The detained population numbers around 1,500. Most of those detained are not asylum seekers or refugees registered with UNHCR. Many are economic migrants from neighbouring Laos and Cambodia who are usually detained for less than a week before being sent back on Thai Immigration trucks. Those who have overstayed their visas from countries further afield have to buy their own plane tickets home.

Conditions within the IDC are overcrowded and unhygienic. Up to 150 detainees sleep in the same barred cell. There is no furniture so detainees sleep and spend their days on the floor. In some of the cells, the detainees are forced to sleep sitting up or wait for room to sleep as there is not enough room inside the cells for everyone to lie down. There is an open-plan bathroom in each cell with two stalled toilets. Women and men are kept in separate cells and young children remain with their mother. Usually boys aged around 7-8 years old are placed within the men's cell. Unaccompanied minors are sent to refuges managed by IOM.

Meals are served three times daily, usually rice with curry or rice with egg omelette. Detainees can buy additional food brought round by guards and from a small shop within the IDC. JRS supplements this diet for all inmates, and provides additional food for those with medical conditions.

A number of NGOs, international and non-government agencies work within the IDC and provide services to detainees. JRS has a regular presence and manages a clinic, provides detainees with legal services, repatriation and release assistance, and nursing and medical care, with two full time nurses and a part-time doctor. UNHCR has an office within the detention centre and maintains regular access with those that are registered. IOM visits regularly and assists those wishing to voluntarily repatriate.

In Thailand once someone has been arrested, charged and detained within an IDC for illegal stay, they will remain detained until they are bailed, voluntarily return to their country of origin or are resettled to a third country.

#### *Progress towards alternatives to detention: Bail*

Recognised refugees (and particularly vulnerable asylum seekers) may be released from the IDC if bail is paid to the immigration authorities and an undertaking is signed by a Thai national or an organisation that is registered in Thailand. Release is not indefinite and is for a specified period of time determined at the discretion of the Immigration Commissioner. The process for bail begins when a detainee verbally makes a request to immigration officials. Once the requisite funds have been raised, the detainee must write a letter to the Superintendent formally requesting bail. An interview will be conducted by the police to determine whether the detainee is suitable for release, consideration will be given to criminal history and their medical condition. A profile is compiled by the police and submitted to the Immigration Commissioner which includes information on those acting as guarantor. The money should be returned when the detainee returns to the IDC, voluntarily repatriates or is resettled. However, the return of money has been known not to occur.

The amount of the bail to be posted varies and is at the discretion of the immigration authorities. Once approved for bail, the refugee must report regularly to the local police at the specified time and date and inform them as to where they are staying. Once bailed, there is no guarantee that they will not be re-arrested. Once recognised and accepted for resettlement or if the refugee elects to voluntarily return to their country of origin, they will be placed in IDC again for at least two weeks before their departure for the processing of documents to be completed.

In 2011, 385 persons were arrested and transferred to IDC in Bangkok. 177 persons were bailed out with the assistance of NGOs.



Conditions within the IDC are overcrowded and **unhygienic**. Up to 150 detainees sleep in the same barred cell.

With no furniture, detainees sleep and spend their days on the floor. When it's very crowded, detainees sleep sitting up or wait for room to sleep. There are **two toilets**.

Women and men are kept in **separate cells** and young children remain with their mother. Boys aged around 7-8 or older are placed within the men's cell. Unaccompanied minors are sent to refuges managed by IOM.



The legal status of asylum seekers and refugees without the requisite passport and visa is that of an illegal migrant in the eyes of Indonesian government authorities, subject to the control of the immigration law. According to Article 8(2) of the immigration law, foreigners who enter Indonesia must hold a valid passport and visa. Article 83(1) indicates that those foreigners who are not in possession of a valid passport and visa may be detained. At the time of writing there were 996 persons within IDCs in Indonesia.

A policy adopted by the Indonesian authorities relating specifically to the treatment of asylum seekers and refugees is outlined in the Directive of the Director General of Immigration. Significantly, this Directive provides for alternatives for detention for those seeking asylum and in 2011, 785 persons were released from IDC and placed into IOM community housing or CWS shelters.

## INDONESIA: Directive on asylum

“ We were sleeping at home and police and immigration officials suddenly came in, put us in a bus and took us to Jakarta. I did not do anything wrong. Why did they catch us?

*Amiri, Afghanistan*

A Directive of the Director General of Immigration was issued on 17 September 2010 to address the increasing number of asylum seekers/refugees arriving in Indonesia. The directive acknowledges the role of UNHCR as the agency responsible for the protection and assistance of asylum seekers and refugees in Indonesia by virtue of an MoU between UNHCR and the Indonesian government.

Asylum seekers are firstly defined as illegal migrants, and subject to the procedures of the immigration law and regulations/policy. When an illegal migrant wishes to seek asylum, they are then to coordinate with relevant NGOs and UNHCR. The directive allows for illegal migrants to stay in Indonesia temporarily if they have either an Attestation Letter or a letter verifying that they seek asylum with UNHCR, or have received recognition of refugee status from UNHCR.

The directive indicates that it is not mandatory for illegal migrants seeking asylum to be detained provided they are registered with an international organisation or UNHCR and the Directorate General of Immigration is informed by UNHCR of these arrangements.

If an illegal migrant who is seeking asylum comes under the mandate of an international organisation or UNHCR and are living in the community – they are requested to complete a Refugee Declaration of Compliance. They are then subject to the control of the local Immigration Office.

UNHCR has an obligation to report to the Directorate General of Immigration when an application for asylum has been rejected and their case has been closed. After a case has been closed, rejected asylum seekers are then subject to the immigration law and regulations in the same manner as illegal migrants.

Given the discretionary nature of this directive, it is foreseeable that some asylum seekers and refugees living in the community in accordance with the provisions of the directive will still be detained.



📷 A Sri Lankan girl tries on earrings her mother made in Cisarua. Their case is still pending.

### *Dawn Raids in Cisarua*

Systematic raids on the homes of asylum seekers and refugees living in urban areas outside of Jakarta took place in early February 2012. 149 people who were living in the community in cooperation with NGOs and registered with local authorities per the Immigration Directive, were arrested and taken to Immigration offices. Eventually those who held UNHCR documentation were permitted to return home, but those who did not were not released. Other reports were made in areas in central Jakarta such as in Petamburan, Tanah Abang and Jaksa. Indications were made by immigration officials that these types of raids would be more frequent in the future prompting concern for those that are yet to be registered with UNHCR. The backlog for registration in Indonesia is now around 10 months, a time-frame that has changed dramatically from a backlog of only 1 month in September 2011.

The immigration law also allows for alternatives to detention for those who are sick, pregnant or under 18 and can live in alternative accommodation such as hospitals, or anywhere that immigration authorities may monitor their presence. In addition, the Minister may release a detainee after a period of 10 years on the condition that they report periodically.

Conditions in the fourteen IDCs in Indonesia vary throughout the country. Overcrowding, lack of sufficient sanitation and infrastructure have been reported in recent years in various facilities.

In Belawan IDC in Medan, detainees who were present during 2010 reported only being able to leave their 3 metre x 4 metre cells for two hours a day. Flooding was common during the rainy season, with sewage spilling into the cells where they slept four people to a room on mattresses on the floor. Routine inspections of each cell would result in the confiscation of mobile phones and money.

Improvements in 2011 have seen the plumbing and floor repairs completed and many detainees indicated that their primary concern was not with conditions inside IDC, but simply, that they had to be detained while their cases were processed. Detainees are now able to leave their cells from around 7am – 4pm each day. Detainees in Belawan are now able to cook twice a week with the materials supplied by IOM.

Detainees are also given permission to leave the IDC at the discretion of the Superintendent to attend the local swimming pool, or futsal pitch. Aerobics classes are held three times a week for detainees and staff. These activities are facilitated by JRS.

“

There was nothing to do.  
We would sit on the floor.  
We would finish talking,  
and nothing to do. We  
would just stare at each  
other. There was nothing  
to do.

*Zakaria, Burma*

Generally families with children within the IDC are given priority for release within 5 – 6 months. Single men usually are not released until receiving a positive RSD decision. At the time of research, one family with three children and a pregnant woman had been detained for four months. The pregnant woman indicated that she had been able to see a doctor, although there was no female interpreter able to assist. In Belawan, many women reported being scared to leave their cells each day, although it was permissible. There are no separate facilities for men and women within the IDC other than each cell.

Most detainees expressed concern at their inability to contact their families while in IDC. They were unable to access telephones or computers since being detained and this compounded stress levels.

At the time of writing there are around 109 unaccompanied minors who are still in IDCs, awaiting transfer to the shelters in urban areas. Some of those that had already been transferred from IDC reported waits of around 8 – 11 months.

#### *Asylum seeker killed*

In late February 2012, reports of the death of a 28-year old male Afghani asylum seeker who was being held in Pontianak Immigration Detention Centre surfaced indicating that he had been severely beaten following an attempted escape. Amnesty International reported that he was covered in bruises, had cigarette burns on his arms, and had obvious signs of his wrists being tied and of blunt force trauma. Calls have been made by the National Commission of Human Rights, UNHCR, NGOs and civil society for the Justice and Human Rights Ministry to conduct a full investigation into the event to determine culpability. Indonesia, despite not being a signatory to the Refugee Convention, has obligations under CAT, ICCPR and customary international law to prevent torture for those on its shores.

## VULNERABLE GROUPS

#### *Rohingya*

The Rohingya are an ethnic group from the northern Arakan state of Burma. They are stateless people who have been excluded from the 1982 Citizenship Act which only recognizes the national 'races' that were considered to be settled in Arakan state prior to British colonization in 1823.

The Rohingya face oppression from the Burmese government in the form of forced labor, land-grabbing, restrictions to their freedom of movement and freedom to express their Muslim faith through the closures of mosques and madrasas. They are excluded from government services, accessing health-care, education and employment.

The Rohingya have lived in protracted refugee situations in both official and non-official camps in Bangladesh and Thailand for decades, many take to the seas in search of sustainable futures in urban areas in the South-East Asia region. The Rohingya diaspora is now evident in Thailand, Malaysia, Indonesia and Cambodia. They are the common denominator in this region, and are representative of a group of people who, as a result of their legal status as stateless, and their persecution by the Burmese government struggle for durable solutions.

As typical routes by sea often involve transit through Thai, Indonesian and Malaysian waters, the treatment of the Rohingya by authorities has raised concerns about access to asylum space and protection in the region. Reports in the media have covered numerous allegations that the Thai Navy, upon detecting their presence in Thai waters have set them adrift after dismantling engines, leaving the often crowded vessels, sometimes including women and children, to float at sea without food and water.

### *The 'Boat People'*

On February 16, 2011, 129 Rohingya, including two children, were rescued at sea by Indonesian fisherman off the coast of Aceh, Indonesia. They had sailed from Bangladesh, and after 12 days at sea they were intercepted in Thai waters. Their crowded boat was dismantled and they were set adrift for 3 days and nights before Indonesian fisherman found them languishing near Aceh.

*We paid 2000kyat (USD300) to get on a small boat from Burma. When we asked the Captain where we were going, he just said "to another country". I don't think he knew where he was taking us. We were on the boat for 16 days, and then our boat was taken apart. They left us there in the water, just floating there. Some Indonesian fisherman came and found us. They gave us food and then towed us to the land. The Immigration police interviewed us, and they asked us questions about where I came from and why I left my country. I said I don't have a country, I am Rohingya. - Mohammed, Rohingya*

### *Uighurs*

"I would prefer to die than be returned to China" is what one Uighur man said before he was forcibly returned to China on 19 December 2009 from Cambodia.

The Uighur men, women and children arrived in Cambodia in small groups between May and October 2009, seeking asylum from UNHCR and the Cambodian government from the persecution they said that they faced in China. Seeking asylum in a country that is a signatory to the Refugee Convention, they presumed that they would have access to fair and transparent processing of their claims and that they would be safe from forced return.

“  
I would rather die than  
go back to China.”

*One Uighur man forcibly  
returned to China from  
Cambodia 19 December,  
2009*

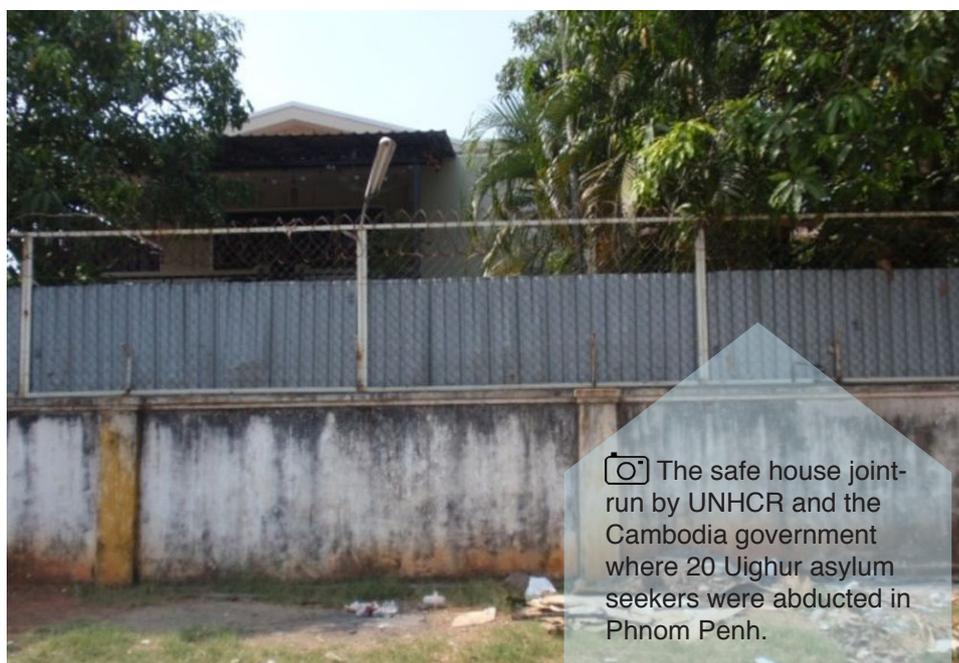
On 18 December 2009, they were abducted at gunpoint from a safe-house, jointly managed by the Cambodia authorities and UNHCR, where they had spent one night. The next day, the 20 Uighur asylum seekers, were deported via chartered plane back to China. The plane, along with the Uighur people, disappeared into the night.

The following day, the Chinese Vice President Xi Jinping, arrived in Cambodia and signed contracts worth over \$1 billion US dollars. It was noted that “China has thanked the government of Cambodia for assisting in sending back these people.”

In February 2012 information was leaked out of China regarding the fate of these Uighurs, with at least three facing life sentences and others sentences spanning more than ten years, confirming advocates worst fears for the futures of this group. Uighurs have also been deported from Thailand and Malaysia in 2011.

### *Montagnards*

Ethnic Montagnard asylum seekers have been coming to Cambodia from the central highlands region in Vietnam since February 2001. At the end of 2001, there were nearly 1000 Montagnards seeking protection in Cambodia. There were widespread reports that Cambodian government officials were deporting Montagnards from Cambodia’s border provinces before the Montagnards had a chance to register with UNHCR offices in Phnom Penh. In order to protect Montagnard asylum seekers from deportation, UNHCR established camps in Mondolkiri and Ratanakiri, as well as ‘safehouses’ in Phnom Penh, which were essentially large properties rented by UNHCR, whose tenants, for their own safety were not allowed to venture outside safehouse compounds.



UNHCR eventually negotiated a Tripartite Agreement with the Cambodian and Vietnamese governments in January 2005, under whose terms Montagnard asylum seekers were allowed to stay in Cambodia (confined within the safehouses) until their claims were heard. After refugee recognition, the Montagnard refugees had the choice of being resettled to a third country, or voluntarily repatriated back to Vietnam; staying in Cambodia was not an option. Rejected asylum seekers were to be sent back to Vietnam. Those waiting resettlement were allowed to remain in Cambodia in the safehouses.

The Tripartite Agreement was enacted to deal with the Montagnards present in Cambodia at the time it was drafted. The Agreement was silent on new arrivals. A small number continued to arrive in Cambodia and processed according to the Agreement. After the Sub-Decree was signed in December 2009, a group of new arrivals came in October/November 2010. They were processed according to the Agreement, despite the Sub-Decree conferring decision-making powers to the Cambodian government.

In November 2010, local newspapers received information that the Cambodian government had written a letter to UNHCR, ordering that the Montagnard safehouse (there was only one safehouse remaining at the time) be shut down on January 1, 2011, and all remaining refugees sent back to Vietnam. This included the new arrivals whose status was unclear, as well as those recognized refugees who were awaiting resettlement to a third country. Deportation of the recognized refugees to Vietnam would have constituted refoulement. Eventually UNHCR was granted an extension to keep the site open until mid February, and by this time most of the Montagnards had accepted an offer from the Canadian government for resettlement and had left for Canada. The offer from Canada prevented the impending deportation of over 50 recognised refugees remaining in Cambodia to their country of origin; a terrible precedent following the Uighur deportation and given that the government had signed its own Sub-Decree affording protection to asylum seekers and refugees within its territory.

### *Khmer Krom*

The Khmer Krom are ethnic Cambodians living in the lower Mekong Delta in Vietnam. Land-grabbing which has devastated opportunities for livelihoods, restrictions on religious expression of Buddhist beliefs and Cambodian culture and language have resulted in the disenfranchisement of many Khmer Krom and sent them seeking asylum in the region. The Cambodian government has repeatedly made public statements that Khmer Krom are recognised as Cambodian citizens and entitled to the same rights as nationals. In reality, Khmer Krom are systematically excluded from exercising their rights as nationals given the arbitrary and ad hoc treatment they are subject to from local authorities in relation to the issuance of identity documents and other civil registration procedures. The Khmer Krom have been identified by some human rights groups as effectively stateless. This issue has complicated asylum claims for Khmer Krom both in Cambodia and for those in Thailand. As nationals of Cambodia, they are entitled to state protection, and not eligible to be determined as refugees. In Thailand, asylum claims are frustrated by the availability of nationality in Cambodia, with no regard given to its ineffectiveness. As a result, in order to claim asylum, fear of persecution must be proven in both countries: Cambodia and Vietnam.

# Chapter 2

Convention obligations, domestic frameworks and other regional instruments



Millions around the globe continue to fight against human rights violations, discrimination and deprivation of their rights. Billions of dollars have been spent on military expenditures, but so little is spent on the weak sections of society such as refugees and asylum seekers...with meager resources and ability, refugees and asylum seekers never run out of steam, we **struggle against all odds** and never lose hope in order to reclaim our fundamental rights.

*Refugees living in Cambodia on International Human Rights Day, 2011*

📷 Rohinya refugee selling roti on the streets of Phnom Penh



# RELEVANT PROTECTIONS RELATED TO REFUGEES

## under international law

	Malaysia	Indonesia	Thailand	Philippines	Cambodia
International law					
Principle of non-refoulement	✓	✓	✓	✓	✓
Refugee Protection					
Refugee convention/protocol	✗	✗	✗	✓	✓
Domestic framework for RSD	✗	✗	✗	✓	✓
Complementary Protection					
Convention against torture	✗	✓	✓	✓	✓
ICCPR	✗	✓	✓	✓	✓
Rights of the child	✓	✓	✓	✓	✓

As a matter of international customary law, all countries, including those that are not signatories to the Refugee Convention are bound by the principle of non-refoulement to ensure that a refugee will not be returned to any country where they may face persecution. The principle of non-refoulement is also enshrined in a suite of conventions, known as 'complementary protection' instruments, which provide international protection outside the scope of the Refugee Convention. These include the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as the CAT Optional Protocol.

In the absence of a domestic framework for conducting Refugee Status Determination (RSD) in [Malaysia](#), [Thailand](#) and [Indonesia](#), asylum seekers and refugees are subject to the relevant domestic laws as they are branded illegal immigrants. They are liable to treatment such as home raids, round-ups, arbitrary detention, whipping and deportation.

[Indonesia](#) has for the second consecutive period put accession to the Refugee Convention on the agenda in the National Human Rights Action Plan. In addition, the right to asylum is explicitly recognized in Article 28G(2) of the Indonesian Constitution, "Each person has the right to be free from torture or inhuman and degrading treatment and shall be entitled to obtain political asylum from another country." A number of domestic laws explicitly recognize the right to asylum, however these laws have little effect, in terms of ensuring protection for asylum seekers and refugees, in the absence of a domestic legislative framework for RSD.

The following section details the domestic frameworks that define the legal status of asylum seekers and refugees in the [Philippines](#) and [Cambodia](#). There are also two regional instruments discussed: the Emergency Transit Agreement signed between the government of the [Philippines](#), UNHCR and IOM to

assist refugees in the region who may be particularly vulnerable and without international protection. And secondly, the Regional Cooperation Model signed between the [Australian](#) government, Indonesian government and IOM, instigated in response to the onward travel of asylum seekers and refugees from [Indonesia](#) to [Australia](#) by boat.

## Domestic frameworks in the Philippines and Cambodia

The [Philippines](#) acceded to the Refugee Convention and Protocol in 1981. Rights conferred on refugees and asylum seekers in the Philippines come from a number of different legal instruments. The rights of refugees in the Philippines were first legally recognised in the Philippine Immigration Act of 1940 Sec. 47(B) which reads:

*Notwithstanding the provisions of this Act, the President is authorised... For humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political or racial reasons, in such classes of cases and under such conditions as he may prescribe.*

In 1998, decision-making power was transferred from UNHCR to the Philippines Government. By Presidential decree the Department of Justice was delegated to form a Refugee Processing Unit (RPU) and fulfill the requirements of refugee decision making as set out in Department Order 94.

Department Order 94 encapsulates many of the basic principles of the Refugee Convention including non-refoulement, family unity and the preclusion of punishment for illegal entry or presence in the Philippines. The Order also sets out refugee status eligibility requirements, again incorporating many of the provisions of the Refugee Convention including the definition of a refugee and cessation grounds.

In recent years, arguments based on the non-refoulement provisions in Article 3 of CAT, were submitted to the Refugee Processing Unit on behalf of two Iraqi asylum seekers on appeal. The two Iraqi asylum seekers were subsequently recognised as refugees by the RPU however no reasons were published to reveal the grounds on which the decision was made. Thus, it is not clear what weight, if any, these Article 3 arguments carried in the decision making process.

[Cambodia](#) acceded to the Refugee Convention in 1992. However, it was not until 2009, that the Cambodian government took over RSD from UNHCR, following the creation of the Refugee Office in 2008. Following this, on December 17, 2009, the Cambodian government enacted the Sub-decree on Procedure for Recognition as a Refugee ('Sub-decree').

With the passing of the Sub-decree, the competent authority performing RSD is the Ministry of Interior (Mol), with the implementation carried out by the Refugee Office. The Sub-decree also gives further guidance on the role of UNHCR, indicating that the Mol will cooperate in order to implement the Sub-decree, Refugee Convention and its Protocol.

A number of criticisms of the Sub-decree have been made, most vocally from Human Rights Watch in their public letter to Hun Sen, Cambodia's Prime Minister in March 2010. Human Rights Watch argued that the Sub-decree does not conform to the Refugee Convention definition of a refugee, arguing that a higher threshold for refugee status has been created by the Cambodian government. The Khmer language translation of a "...well-founded fear of persecution" includes the qualifier that this well-founded fear be based on the prospect of "serious persecution". Ministers are also given wide reaching powers to refuse and expel asylum seekers. This power is particularly concerning as it is not counter-balanced by safeguards to prevent wrongful removal. The Sub-decree addresses the ability for an asylum seeker to raise legal issues in relation to their claim, but gives no positive right of legal representation. Decisions are appealed to the same body that decided the first decision and there is no point at which the decision can be further appealed to a court of law for judicial

“

For every country that signs the [UN refugee] convention, there is normally some transition while they are setting up the legal procedures. Some countries take decades.

*Kitty McKinsey, UNHCR spokeswoman, Cambodia Daily, February 3, 2012*



📷 A motorcycle speeds by a roti stand owned by Rohingya refugees in Cambodia.

review. All of these criticisms were brought into sharp focus three days after the Sub-Decree came into power, when 20 Uighurs were forcibly deported from Cambodia.

### Other Regional instruments

#### *Emergency Transit Agreement*

Of particular importance to refugees in the South-East Asia region and those that work to assist refugees, is the Emergency Transit Agreement signed by the Philippines government, UNHCR and IOM in October 2009. This agreement aims to provide emergency transit facilities for refugees in need of international protection. The agreement allows for the transit and processing of refugees in the Philippines who are at risk of being sent back to countries from which they have fled or those who need to transit in another country pending the processing of their claims and their resettlement to a third country. Before a refugee can be considered for transit to the Philippines, a resettlement country must have agreed to accept or to conduct further resettlement processing of the refugee. This is to mitigate refugees becoming stranded in Manila.

There are minimal public documents available on those that benefit from this agreement as the confidential nature of it is a key component to its effectiveness. The US Department of State stated in their Human Rights Reports of 2010 and 2011 on The Philippines that 216 refugees were transited through the facility in 2010, and 243 in 2011. In many cases, the refugees that this agreement seeks to assist are at risk of being returned to the country they have fled from. The country in which the refugee has sought asylum is usually under intense political pressure to assist in, condone or turn a blind eye to the forced return of the refugee. For a refugee to travel to the Philippines, the country of asylum they are leaving, needs to provide exit papers and, in some cases, allow travel on a temporary passport. If these negotiations became public, conflict could result between the country of origin of the refugee and the first country of asylum. The negotiations between asylum governments, the Philippines, UNHCR and IOM are therefore delicate and confidential. This confidentiality and discretion is essential to ensure that the Emergency Transit Agreement can continue to protect refugees at risk.

Refugees are housed in a number of dwellings within Manila, called 'Emergency Transit Facilities'. These houses are open, they are not detention centers. Refugees can come

The Philippine's Emergency Transit Agreement aims to provide **emergency transit facilities** for refugees in need of international protection.



# EMERGENCY TRANSIT TO THE PHILIPPINES

## The UNHCR Guidance Note

The UNHCR Guidance Note on Emergency Transit Facilities offers the list of examples below that could be considered for transfer to an emergency transit facility subject to a resettlement country's assurance of further processing:

- 1** Refugees at immediate risk of refoulement or facing other acute, life-threatening situations.
- 2** Refugees in detention conditions which warrant resettlement as the most appropriate form of protection, and swift release from detention requires a transfer out of the country.
- 3** Refugees whose cases are particularly sensitive or high profile and face imminent or serious protection problems.
- 4** Refugees for whom resettlement processing cannot be completed in the host country due to inaccessibility to the refugees concerned, such as where resettlement countries are denied entry visas by the asylum country, or where access is restricted due to lack of security.
- 5** Refugees in need of resettlement for whom a resettlement country and/or UNHCR requires that their final destination for resettlement not be disclosed to the asylum country.
- 6** In situations where it is more expedient and incurs lower costs to process the cases even if the refugees concerned are not necessarily at immediate risk.
- 7** Other situations as appropriate.

## BASIC STEPS

### FOR THE TRANSIT PROCESS:

- A** Request for transfer and deciding on suitability for transfer.
- B** Submitting the case to the authorities of the country hosting the Emergency Transit Facility for entry visa.
- C** Preparing for the transfer and counseling the refugees.
- D** Undertaking resettlement processing at the Emergency Transit Facility and pre-resettlement departure formalities.

*When the airplane landed in the Philippines I felt like I could breathe again.*

*I have been afraid most of my life. I wasn't safe in [country name withheld] but I feel safe now and I know when I am resettled I will feel even safer. When you go to a country and ask to be a refugee you think you will be given respect but this didn't happen.*

*I feel like the Philippines respects refugees. They look after me very well. I get all my meals and there is a big television I can watch. I can go outside during the day but I don't want to. I don't have money and I don't speak the language. They have told me that I will be resettled in four weeks.*

and go as they please although there is a curfew. Three meals a day are provided. IOM provides medical screening as well as cultural orientation to assist in the preparation for resettlement.

How long a refugee spends in the Philippines is usually dependent on the specific country they are being resettled to. Some countries take longer than others to carry out the processing and administration required for resettlement. Medical complications that become apparent during the IOM medical screenings can cause further delay.

UNHCR field officers make requests for transfer. Requests for transfer should include the bio data of the refugee(s) involved, as well as background information on the case(s). The request should detail the reasons why a transfer is necessary and the protection risks that the refugee faces.

While the UNHCR Guidance note on Emergency Facilities does not specify the role of NGOs or refugee advocates in this process, those working in the field could bring to the attention of UNHCR refugees at risk and assist in the preparation of these documents.

Decisions should normally be handed down within 24 hours. For sensitive or high profile cases the time-frame may be longer. It will be necessary for UNHCR Field Officers in the Philippines to coordinate with authorities for entry permits to be issued, the decision regarding their issuance should not exceed seven days. Following the confirmation that the refugee may be transferred, coordination of travel documents, exit permits, transportation and travel escorts is done by UNHCR, IOM and ICRC.

After arriving in the Philippines, refugees are then subject to resettlement processing by the resettlement country, including attending an interview. Once the resettlement placement has been finalised by the resettlement country, cultural orientation, language classes and medical checks are then undertaken pre-departure.

Decisions should normally be handed down within 24 hours. For sensitive or high profile cases the time-frame may be longer.



According to IOM, the objectives of the RCM are to “assist irregular migrants to **return voluntarily** or to resettle them in third countries, and to prevent Indonesia and Australia being used as target countries for **people smugglers.**”



### **Regional Cooperation Model**

In around 2001, the Australian government entered into the Regional Cooperation Model with the Indonesian government and the IOM in order to stem the tide of irregular migration through Indonesia, heading for Australia. According to IOM, the objectives of the RCM are to prevent Indonesia and Australia being targeted by people smugglers, and assist those irregular migrants in returning voluntarily to their country of origin or to a third country.

If the Indonesian authorities determine that someone is intending to go to Australia or New Zealand, they are referred to IOM for further management. Under the terms of the agreement, the Indonesian government is the competent authority to make a determination as to the intended destination of those intercepted in Indonesia. Referrals are made to UNHCR for those who wish to make an asylum claim. This means that the Indonesian authorities act as an interlocutor between asylum seekers and UNHCR.

The Australian government funds IOM's operations in Indonesia in relation to the RCM, and the funds have been used to contribute to upgrades to detention facilities, and for residential housing in Medan, Bogor and Makassar.

Those living in residential housing in Medan are free to move around the city and there is no curfew for return each night. Each compound has a security guard stationed at the entrance gate and permission must be given by immigration authorities for guests (including NGOs) to enter the compounds. Those living in the community are given financial support from IOM for living expenses.

# Chapter 3

## Refugee Status Determination

“ We are now living based on UNHCR decisions. We don't talk or plan about the future anymore. When we see each other we just cope with life here. Is there a sickness in your cell? Is everything ok? Are you eating? That sort of thing. Day by day it starts to feel like torture. We are living alone. We cannot do anything.

*Refugee living in Bangkok's Immigration Detention Centre. After four years he and his wife were bailed.*

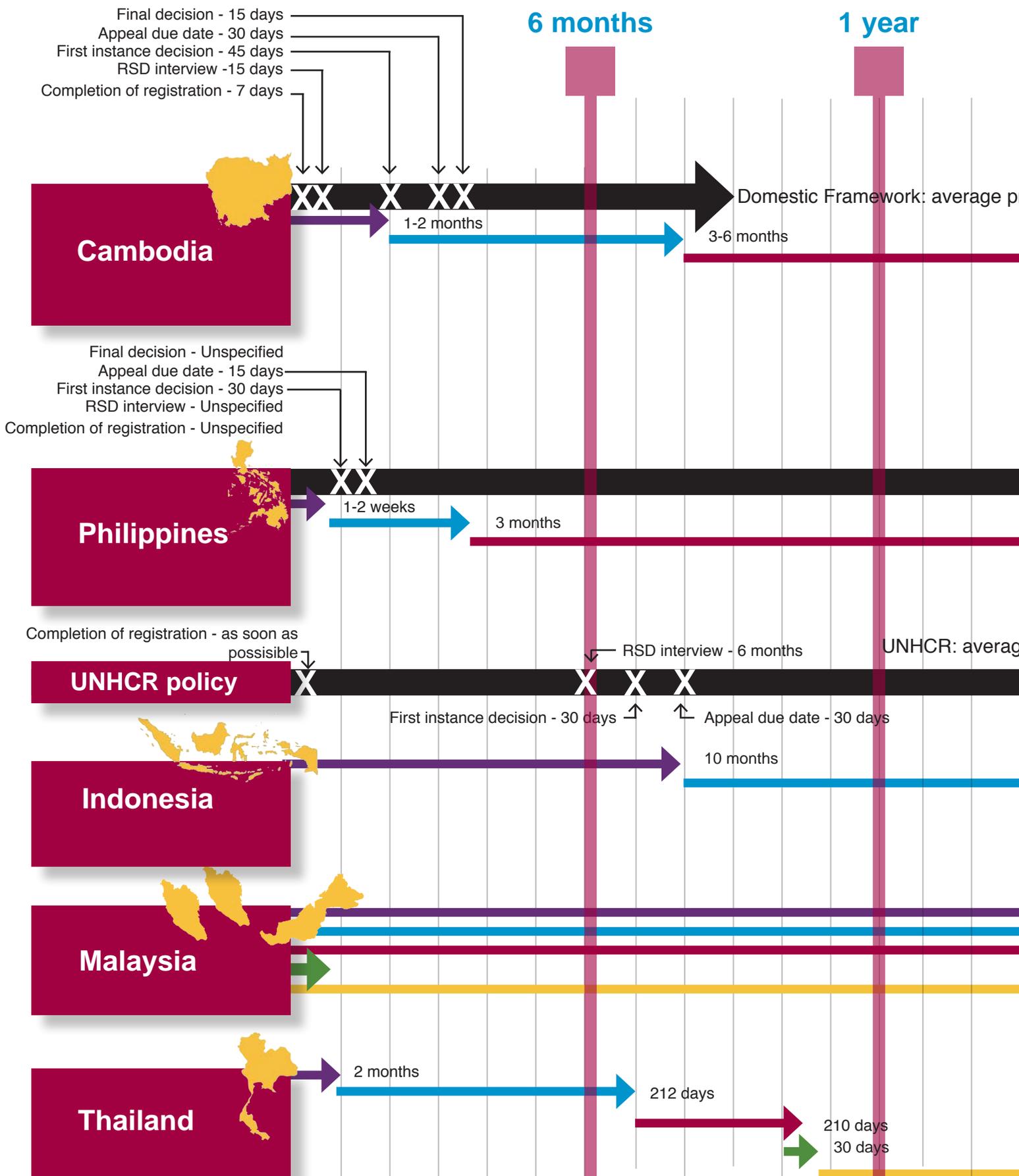


📷 Urban asylum seekers visit the JRS urban refugee team in Bangkok.

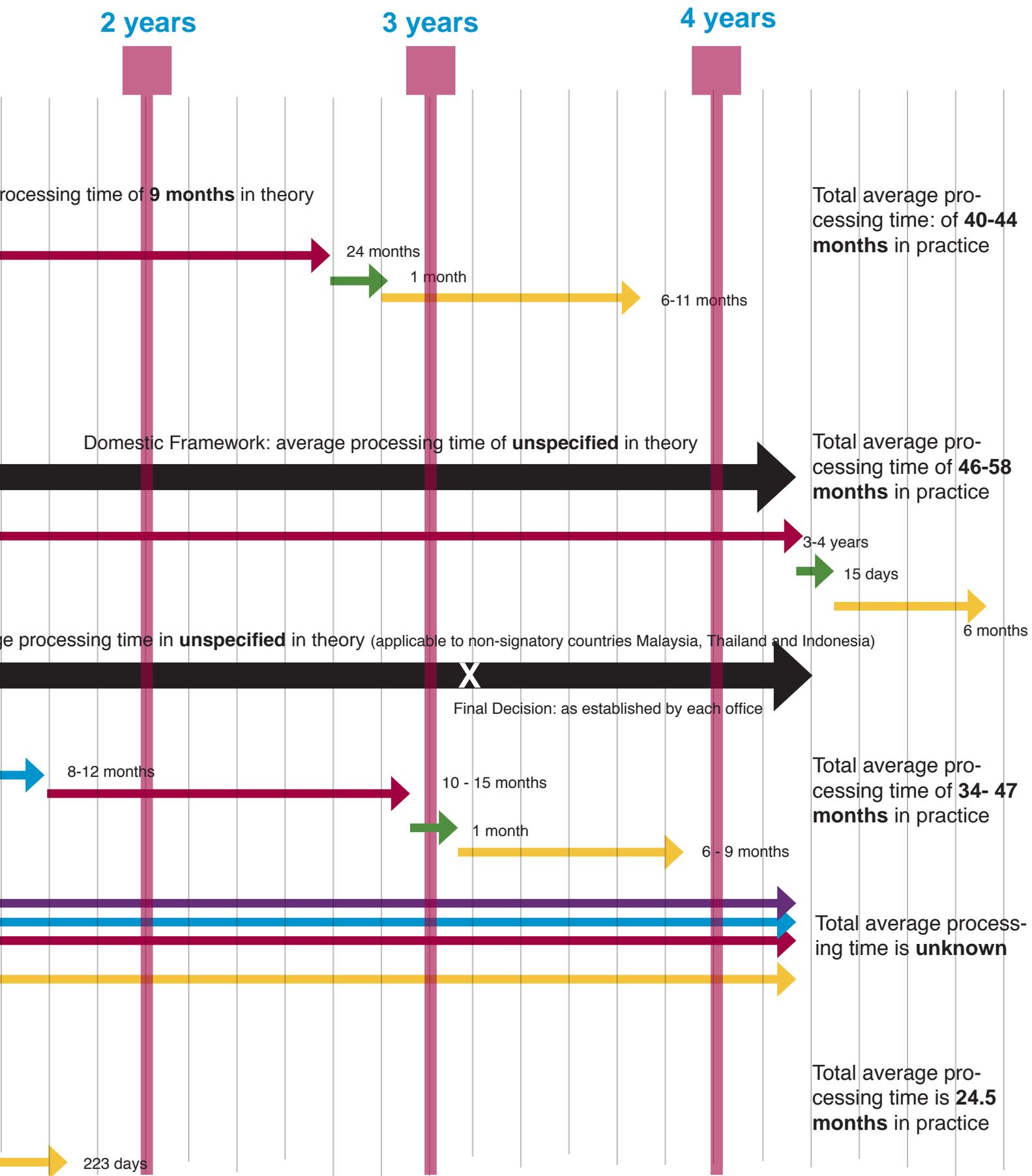


# REFUGEE STATUS DETERMINATION

## Average processing times



- Key:**
-  Average timelines in theory according to domestic frameworks or UNHCR policy.
  -  Completion of registration
  -  RSD interview
  -  First instance decision
  -  Appeal due date
  -  Final decision



Refugee Status Determination (RSD) is the process that asylum seekers must engage with in order to be recognised as a refugee. In [Malaysia](#), [Thailand](#) and [Indonesia](#), RSD is conducted by UNHCR, and in the [Philippines](#) and [Cambodia](#), RSD is conducted by governments in accordance with their domestic frameworks, as discussed in the previous chapter.

The timeline on the previous page indicates the average time that an asylum seeker should expect to wait whilst navigating the RSD system. Where data is incomplete, this reflects the fact that data was not disclosed from UNHCR or the relevant government, and there was a lack of a general consensus on the ground in those countries on average processing for applicants. This was especially observable in [Malaysia](#), where there is minimal involvement by NGOs in terms of accompaniment throughout the RSD process.

In an effort to address deficiencies in RSD process, UNHCR Malaysia has indicated in their objectives for 2012 that access to and quality of RSD procedures will be improved to be consistent with international standards of 90% of Persons of Concern (PoC) having access to RSD. It is unknown what percentage of PoCs currently have access to RSD procedures, but this objective indicates that there is a cognizance that there are some that do not.

The following section outlines the RSD process, and where possible the experiences of asylum seekers as they journey through each stage: registration, interview, handing down of a first instance decision, filing an appeal, and the request to re-open a case.

### Registration with decision-makers

In [Malaysia](#), [Thailand](#) and [Indonesia](#) RSD is conducted by UNHCR. When asylum seekers arrive in these countries, they must find their way to the relevant office in the capital cities of [Kuala Lumpur](#), [Bangkok](#) and [Jakarta](#).

As previously discussed, the governments of the [Philippines](#) and [Cambodia](#) have implemented domestic frameworks by which governments confer refugee status. Asylum seekers must present themselves to the relevant government department: the Refugee Processing Unit (RPU) within the Department of Justice in [Manila](#), and the Refugee Office within the Immigration Department in [Phnom Penh](#).

#### *Registration through UNHCR: A vital tool for protection*

In [Bangkok](#), asylum seekers are initially required to write their names and contact details on a piece of paper to be handed to the UNHCR, and wait to be contacted for registration. The waiting period to be called for an 'initial' register may be up to a month. At the initial registration, the asylum seeker will be given their asylum seeker certificate, confirming that they are a person of concern to UNHCR. After approximately one month, following the initial registration, the asylum seeker will be called to complete 'full registration' and this requires an interview. The statement of the asylum seeker is also submitted at this interview. Registration does not extend to all nationalities within the urban context of Bangkok. The Thai government does not permit UNHCR to conduct RSD for asylum seekers from Burma. This relegates them to lives in one of the nine refugee camps along the Thai-Burma border, or without any form of protection should they choose to live in urban Bangkok.

Burmese asylum seekers in [Malaysia](#) are unable to access the UNHCR in Kuala Lumpur by simply presenting themselves for registration. They are instead referred to their community groups in the first instance, to be added to rapidly

...no refugee or asylum seeker will be prevented from having direct access to UNHCR offices and staff members...

*UNHCR policy on refugee protection and solution in urban areas, September 2009*



📷 Chin refugee children play in Malaysia.

growing lists that are collected from UNHCR on an ad hoc basis. For those from other countries, they will be asked to write their name and contact details and will be given an appointment date to return to complete registration. However, those who have arrived with valid travel documents and visas are told that they will not be registered until the expiration of said documents.

*When I first went to UNHCR my tourist visa was still valid so they told me I had to wait until it had to expire. When it did expire, I went back and I went and filled out a form about my contact details and my family. They didn't ask me anything about my case. They gave me an appointment card to return for an interview about my case. They told me that there were many refugees in Malaysia, like 80,000 or something and that they were under the government. They said the government was in charge, but I could be here temporarily. They told me that I couldn't work, that I couldn't open a bank account, own property, rent property. I could just stay here. They told me it would be at least 6 months. But it was two years.*

- Kumar, Sri Lanka

# COMMUNITY GROUPS

## representing Burmese ethnic minorities in Malaysia

There are around twenty community groups based in Kuala Lumpur that represent the varying ethnic minorities that are seeking asylum. From these groups, Chin, Kachin, Karen, Karenni, Arakan, Mon and Shan are represented in the Coalition of Burma Ethnic Malaysia (COBEM), which advocates for the rights of Burmese asylum seekers and refugees. COBEM is the primary vehicle for bringing the concerns of the Burmese community to the attention of UNHCR.

The scope of their dialogue is limited to general issues that affect a majority of community members, rather than to raise specific issues related to individual cases. Due to an injection of one-off funding, in 2009/2010 “mobile” registration was conducted by UNHCR in order to address massive backlogs of new arrivals from the Burmese community. Since that time, community groups report that they have continued to collect names and issue their own community cards in an effort to record data regarding new arrivals. According to community groups, there may be as many as 25,000 unregistered Burmese living in Malaysia. Following the mobile registration, these lists were to be collected from community groups by UNHCR, but most community leaders claimed that they had not been contacted to submit a new list in around six months or longer.

Each community group charges varying fees for membership ranging from 10-15 ringgit (USD3-5) per month. Whilst most community groups claimed that they had a flexible approach towards timely payments of membership fees, effectively this means that some Burmese asylum seekers must pay their way in order to be registered with UNHCR given that the only way to gain access to a registration process is through a community group. This is in stark conflict with the Procedural Standards for Refugee Status Determination under UNHCR’s Mandate at 1-2 which states, *“Asylum-seekers who approach UNHCR Offices should have appropriate access to UNHCR staff and RSD procedures, and should receive the necessary information and support to present their refugee claims.”* In addition, this process undermines UNHCR’s underlying policy relating to urban refugees that describes the process of registration as “a vital tool of protection”, essential in order to protect against refoulement.

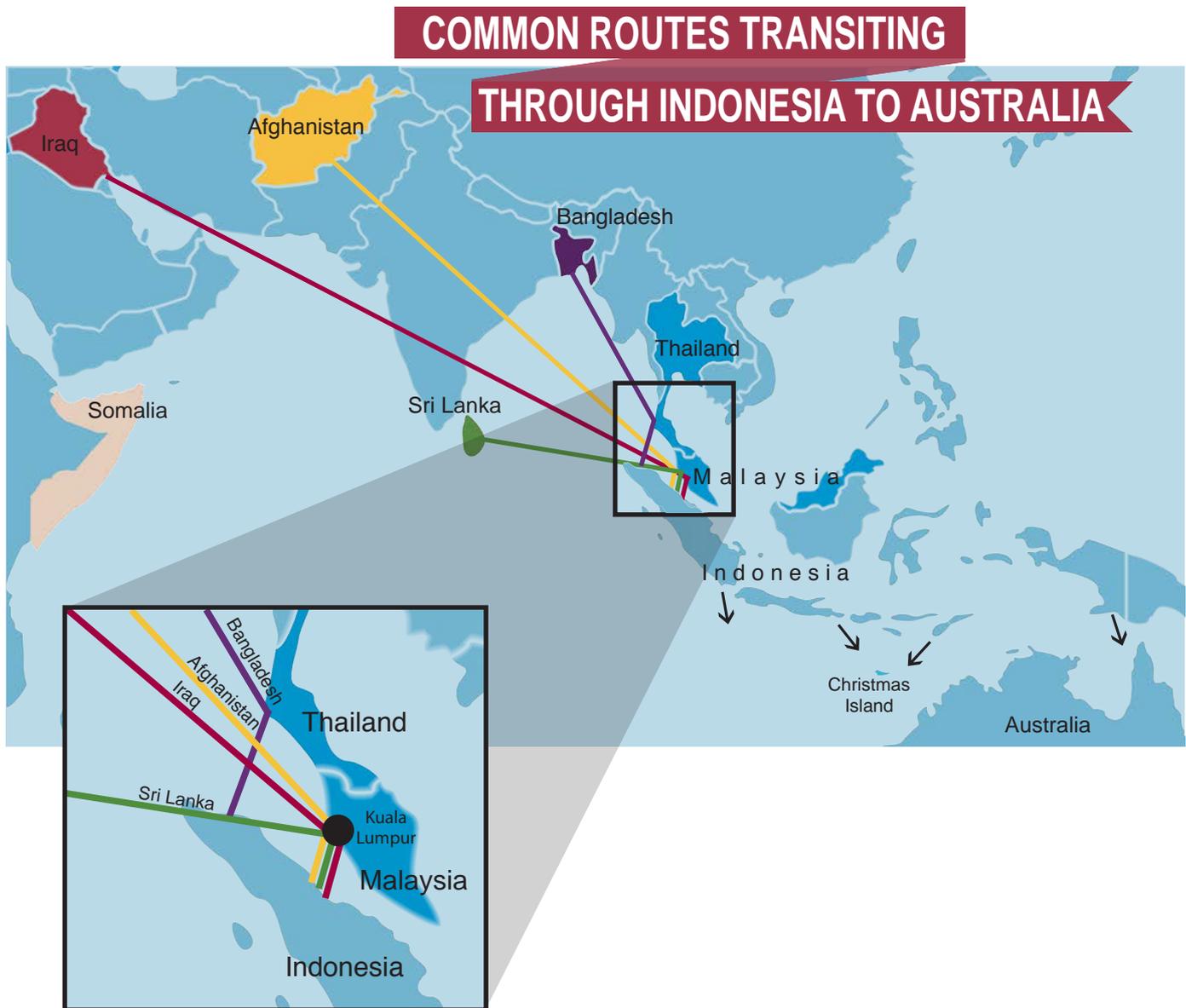
The sense that [Indonesia](#) is a transit country for many asylum seekers and refugees is overwhelming when speaking to those that have arrived there. Often taking risky journeys by boat bound for Australia, many arrive in Indonesia after sustaining prolonged journeys in cramped, unsanitary and dangerous vessels. Many are in transit from Malaysia to Australia and have either been intercepted by boat in Indonesian waters, or were intending to transfer to an alternate boat after reaching the shore of Indonesia for the final leg of the journey. Given that many asylum seekers are not intending to pursue a claim for refugee status in Indonesia when they arrive, they may not seek to register with UNHCR if they remain undetected by Indonesian government authorities. For those who are able to access the UNHCR Jakarta themselves, the first step is to complete registration. Registration at UNHCR Jakarta takes place four times a week on Monday, Tuesday, Wednesday and Thursday and the current backlog for registration for urban refugees is ten months. For this ten-month period before a PoC letter is issued by UNHCR, asylum seekers have no form of documentation

distinguishing them from other illegal migrants.

*I left Sudan and I just wanted to go somewhere safe, and where I could go to UNHCR. I arrived in Kuala Lumpur because I could get a visa on arrival. I wanted to go to UNHCR in Malaysia but I was afraid of other men from Sudan who were the kind of people I was running away from. I was able to get a tourist visa to get to Indonesia, so I flew here because I thought I would be safer. I wasn't trying to get to Australia, anywhere safe is ok. – Ibrahim, Sudan*

In **Kuala Lumpur, Bangkok, and Jakarta**, during the registration process refugees may be given information relating to the refugee status determination process including the definition of a refugee, the interview process and advice on the drafting of the refugee's story, what happened to them in their home country, why they fled and why they fear returning.

Refugees may also be given information about their status in **Malaysia, Thailand, and Indonesia** as illegal immigrants and are warned that they may be detained at any point during the refugee status determination process. Should this happen, UNHCR is constrained by the relevant government in the scope of their intervention, and there may be little that can be done to assist them.



It is critical that asylum seekers are given a document that states that the individual is a person of concern (PoC) to UNCHR as soon as possible. This document is a minimal safe-guard that can aid UNHCR interventions should an asylum seeker engage with the authorities of a state that does not recognise refugees. As stated above, in [Thailand](#) the PoC letter is usually issued at the time of the initial registration, around one month from the time that applicants first approach to the UNHCR office. In [Indonesia](#) it may take up to a month or longer for the issuance of this PoC letter following the completion of registration which currently has a backlog of around 10 months.

Included in the letter is a photograph of the refugee and a unique identification number. In [Bangkok](#), this number is called an "NI" number, in Kuala Lumpur a "Ref" number and in [Jakarta](#) "Case" number. These PoC letters must be periodically renewed depending on the expiration date indicated on the document. There are not uniform periods of validity, rather each document is to be renewed coinciding with an appointment date made at the UNHCR.

*When one person is rejected, we all start to worry and we get stressed. We don't want to go back there. We can't go back there, our families need us to keep going. – Mazher (16), Afghanistan, living in Indonesia*

### Registration through domestic legal frameworks

In both [Cambodia](#) and the [Philippines](#), relevant government departments conduct registration.

Most of the urban refugees in Manila arrive in the [Philippines](#) on student visas and have plans to undertake tertiary studies at one of the many universities in Manila. However while in Manila, conflict occurred in their home country resulting in them not being able to safely return. They subsequently apply to the Government of the Philippines to become refugees.

Asylum seekers in the Philippines usually find their way to the UNHCR headquarters in Manila. UNHCR then refers them to the Refugee Processing Unit (RPU) within the Department of Justice. The Department Order No. 94 provides the right for the applicant to access UNHCR should they request it. Usually within a week or two of the applicant becoming known to the RPU, the applicant is subject to an initial interview by the RPU and asked to complete a registration form. The RPU will make an initial assessment and determine whether the applicant is a genuine asylum seeker and/or if the applicant's case is manifestly unfounded. There is no information publically available which reveals the number of cases, or details of cases, that are determined to be manifestly unfounded. The fact that in 2010 an applicant from France was determined to be a genuine asylum seeker, and has an application for asylum still pending, may indicate that the term genuine is interpreted widely.

For those that indicate an intention to apply for asylum at a port of entry, the asylum seeker is detained and the Bureau of Immigration provides registration forms, which are forwarded to the RPU. Usually within a day or two of receiving the registration forms, the RPU conducts an initial interview with the applicant at the detention centre. If the RPU determines that the applicant is a genuine asylum seeker, the applicant will be released from detention and, according to Section 13 of Department Order 94, subject to no further penalty for illegal entry.

If applicants are found to be genuine asylum seekers, the RPU informs the Bureau of Immigration Commissioner of this and their applications are 'given due course'. The applicant is registered as an asylum seeker and is given a paper on Department of Justice letterhead explaining that the holder of the paper has an asylum application pending. This paper is valid for a three-month period and must be renewed until a decision is handed down.

When I was interviewed by the Indonesian police, they just asked me where I was from and where I was going. They didn't ask why, I just said I was Hazara.

Ali, Afghanistan



📷 One asylum seeker in Thailand has been waiting for her RSD decision for one year.

On their first visit to the Refugee Office in [Cambodia](#), an asylum seeker is asked to fill out a one-page 'Asylum Seeker Registration Form' and their photo is taken. This form is in English and Khmer. It asks for biometric data, former address, country of origin, possession of a travel document, means of transportation to Cambodia, date of entry, point of entry and purpose of entrance. Any details regarding dependents under 18 years are also included on this form, as well as details where the applicant will be staying and phone number. The Sub-decree stipulates that this form must be completed and returned within 7 days. Usually asylum seekers complete this form whilst present at the Refugee Office. According to the Sub-decree, written reasons should be provided on why they left their country, together with their application.

When refugees arrive in Cambodia they will usually present themselves to UNHCR simply due to a lack of knowledge that the Cambodian government now handles RSD. Asylum seekers are advised by UNHCR that the government will make the decision regarding their refugee status, and will sometimes make an appointment for them to present themselves shortly after they have received counseling from UNHCR.

Following registration, there is a registration interview. This is sometimes done at the time the application form is filled out, or at a date set by the Refugee Office.

After around one month, the Refugee Office will issue an asylum seeker with a document titled, 'Preliminary Stay Permission', written in both Khmer and English. This document includes an identification number in the form of "ID#". The document states that the letter is issued for the bearer to use for temporary stay in Cambodia. It then provides details for contacting the Immigration Department. These documents are usually valid for a one-month period, and need to be renewed every month until a first instance decision is made. In practice these documents are renewed on an ad hoc basis, often expiring for well over a month before a renewed version is issued. UNHCR does not issue a PoC letter to asylum seekers and they are not given a separate identification number.

### **Status determination interviews with decision makers**

In [Malaysia](#), there was no consistent timeframe following registration with the waiting period varying dramatically among applicants from each country with several months being common amongst those who were not registered through the mobile registration. In [Thailand](#), the average time-frame for waiting for a refugee status determination interview is around seven months. In [Indonesia](#) most asylum seekers and refugees reported waiting between 8-12 months before their interview.

In the [Philippines](#) applicants are generally interviewed three months after first being registered as asylum seekers. The interviews are conducted by RPU determination officers. UNHCR officers are not present during the RSD interview.

According to the Sub-decree enacted in [Cambodia](#), the applicant should be interviewed within 15 days of registration at the Refugee Office by two officials from the Ministry of Interior, and one official from the Department of Foreign Affairs and International Cooperation. A member of UNHCR staff is also usually present. Since the handover, this time frame has never been observed, with most applicants interviewed 2 - 3 months after registration.

In [Malaysia](#), [Thailand](#) and [Indonesia](#), interpreters are provided during the interview for those for whom it is necessary. Where a suitable interpreter cannot be found, significant delays will be experienced. A qualified interpreter is provided free of charge to the applicant in [Cambodia](#) as well. The length of time between registration with the Refugee Office and interview can be delayed for several months if an appropriate interpreter cannot be found. In the [Philippines](#), the Department Order 94 provides for the right of an interpreter to be present for the interview.

Several Hazara Afghani asylum seekers in [Indonesia](#) expressed their dissatisfaction with interpreters that were ethnically Pashtun and Tajik. In addition to the differences in dialects spoken between them, there are obvious concerns given the historical tensions between these groups. Similar concerns were raised in [Malaysia](#) with Burmese who have been provided an interpreter not proficient in their dialect.

The purpose of an RSD interview with UNHCR is to determine whether an asylum seeker should be recognised as a refugee. An eligibility officer will ask open-ended questions to gain information from the asylum seeker in chronological order. The focus of the RSD interview is not simply to determine whether they meet the definition of a refugee in accordance with the Refugee Convention, but also to assess credibility, whether they fall within UNHCR's extended mandate definition or whether they are to be excluded from international protection.

It is important to note that the standard of proof in assessing refugee claims by UNHCR is that of "benefit of the doubt".

"Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed." UNHCR Note on Burden and Standard of Proof in Refugee Claims 16 December 1998 at paragraph 11

When focusing on credibility, the asylum seeker may be questioned on their home country including such questions as what was the name of the street they lived on and what are the main monuments in their home-town.

To determine whether or not the asylum seekers story satisfies the definition of a refugee according to the Refugee Convention, the eligibility officer will ask questions related to the applicant's fear of persecution and the basis of the persecution they claim to fear suffering under the Refugee Convention ie. race, religion, nationality, membership of a certain social group and/or political opinion. Throughout this process of questioning, information that probes whether an applicant is entitled to extended mandate protection, or should be excluded from international protection will also be recorded and assessed.

At the end of the interview the asylum seeker is asked to sign, attesting to the truth of the document. The interview usually lasts two to three hours. An asylum seeker is not given a copy of their statement in any of the five countries this guide examines.

The [Cambodian](#) Sub-decree outlines the specific purpose of the interview; to obtain information relating to: "identity of the applicant and his/her accompanying family

members, and ... do whatever to ensure that the applicant would submit all existing relevant information." "In the above-mentioned interview, the applicant shall clarify the reasons of applying for refugee status and shall provide documents and other relevant information to support his/her application and shall fully cooperate in this process."

### **Determining Status: The decision**

A decision by UNHCR or the relevant government may result in the asylum seeker being recognised as a refugee, in which case a consideration of the appropriate durable solution will follow. This is discussed in the following chapter. If a negative RSD decision is handed down, then it has been decided that the asylum seeker does not meet the definition of a refugee in accordance with the Refugee Convention or the relevant national framework, or they have been excluded. It may have also been determined that based on the asylum seeker's story they do satisfy the definition however they are deemed not to be telling the truth. The process of handing down decisions varies, but in all countries asylum seekers are processed in timeframes that exceed policy estimates. Lack of detailed reasons for refusal leave asylum seekers ignorant as to the type of information they need to submit to successfully appeal.

The information booklet that is provided by UNHCR to asylum seekers in [Thailand](#) at registration states that a decision on a case can be expected to be handed down within three months of the interview. However, the average time for a decision to be handed down in Thailand is currently around seven months. In [Indonesia](#) asylum seekers are given a timeline that states that they should expect to receive a decision on a case-by-case basis; many reported waits between ten and fifteen months or longer.

In [Malaysia](#), again given the disparate groups it was difficult to ascertain a general length of time that applicants will wait for the handing down of a first instance decision. However, UNHCR Malaysia has indicated in 2012 they will aim for a first instance decision to be handed down within 70 days. Most applicants interviewed in Malaysia who were interviewed in 2010/11 reported waits of at least three to four months.

When an applicant is rejected in [Malaysia](#), [Thailand](#) or [Indonesia](#), they are usually given a piece of paper which will have a simple one or two line standard reason why they have been rejected, not specific to the details of their case. There seems to be no standard response from UNHCR to rejected unaccompanied minors. For example, some unaccompanied minors in Indonesia received detailed written reason reasons for refusal, whilst others received the same brief reasoned rejection as an adult applicant, not specific to the details of his case.

In the [Philippines](#), the applicant must wait for a decision to be announced by the RPU. The Department Order 94, section 16, indicates that a decision will be handed down by the Secretary after thirty days, unless "further inquiry is required". However, an initial decision on an asylum case can take anywhere from three to four years to be handed down.

In [Cambodia](#) the decision will be handed down by the Interior Minister within 45 days. Where a decision cannot be made within this time-frame, the competent officials may provide to the applicant in writing the reasons for the delay, but the issuance of the decision should not exceed 90 days. At the time of writing, the bulk of cases that are pending in [Cambodia](#) have been so for around two years. No applicants have had their decision handed down within 45 days, and no applicants have received written reasons for the delay in the issuance of their decisions.

If a positive decision is made, the applicant is recognised as a refugee by the Cambodian government and a certificate is issued with the refugee's photograph. There is no expiry date on the certificate and there is no requirement to have it renewed.

If a negative decision is issued, this decision is required to be accompanied by written reasons. In practice, the applicant is given a double-sided piece of paper in English and Khmer entitled “The Negative Refugee Status Determination” and has three reasons outlined why the applicant has been rejected. The appropriate box is then ticked according to the grounds of rejection.

There is an opportunity to appeal the first instance decision. Should an applicant elect not to make an appeal, there is no process stipulated for removal from Cambodia.

### Appealing a Negative Decision

In [Malaysia](#), [Thailand](#) and [Indonesia](#) an asylum seeker that has been given a negative decision has 30 days in which he or she can lodge an appeal. The refusal letter comes with an application form that the asylum seeker is to complete and submit within 30 days if he or she wishes to appeal.

Often, those without legal representation will simply prepare the same statement that they submitted on which the first instance decision was based, with little understanding of the reason for the rejection.

*I don't know why I was rejected, I told them my story. They gave me the form to fill out, so I just wrote my story again. All I want is to be out of this prison and in control of my own life again. This is the time that I should be planning for my future, you can call this place a camp or a detention centre, but it is a jail and we are treated like criminals – Musa, Afghanistan*

While UNHCR may invite asylum seekers to attend an appeal interview, this is generally not the case.

In most cases, appeal decisions are based on appeal statements written by the asylum seeker. A different UNHCR officer to the officer who made the first determination handles the appeal decisions. UNHCR does not have an independent tribunal or mechanism for assessing appeals.

For UNHCR in [Thailand](#), [Indonesia](#) and [Malaysia](#) to overturn their initial decision and decide that the asylum seeker should be recognised as a refugee, the asylum seeker must address the reasons for refusal and convince UNHCR that their initial determination was incorrect. This can be very difficult if the asylum seeker is drafting the statement themselves and has little understanding as the legal basis for their rejection. The reasons for refusal are often couched in language not easily understood by people from non-English speaking backgrounds and it is often the case that even appeal stage asylum seekers are still confused about the particulars in their story they should be focusing on in order to demonstrate that they meet the definition of a refugee.

UNHCR [Thailand](#) information booklet says that appeal decisions should be handed down within a three-month period, however like first instance decisions, this is generally not the case. In Thailand the average time that an applicant will wait for a decision on their appeal is seven months. UNHCR [Malaysia](#) has also indicated in their goals for 2012 that they aspire to hand down appeal decisions within 110 days of the submission. Many applicants in Malaysia reported that may have been waiting for over a year for decisions after they have submitted an appeal, often left wondering whether their case is even still pending.

If an appeal decision is a negative decision then an asylum seeker may choose to apply for their case to be re-opened. In order to do this successfully they must satisfy UNHCR that there has been a change in personal circumstances or that there was a serious problem relating to the processing of their claim. Successful re-opening of cases is rare but not impossible.

If an asylum seeker's case is rejected by the RPU in the [Philippines](#), written reasons for refusal are provided to the applicant. The applicant has 15 days in

Rejected Applicants should also receive **sufficient information** regarding the reasons for the **rejection** to permit them to determine whether an appeal is appropriate and to focus their submission on issues that are relevant to the appeal application.

*Procedural Standards for Refugee Status Determination under UNHCR's Mandate at 7.1.2*

which they can file a motion of reconsideration, in order to appeal their decision of the RPU.

At first instance the applicant appeals to the RPU. The appeal application is examined by the same determination officer working within the RPU that handed down the applicant's initial decision. Generally an appeal decision takes six months to be decided and communicated to the applicant.

If an applicant's appeal application is rejected, they may then appeal to the office of the President. Again appeal decisions generally take 6 months to be handed down. If the asylum seekers application for refugee status is again rejected they may appeal to the Courts of Appeal where cases will be decided on the papers. The final court of appeal is the Supreme Court.

If an application is denied and an asylum seeker does not appeal, or can no longer appeal, an immigration case suspended subsequent to their seeking asylum may be reactivated and the applicant may be rearrested and placed in detention.

If a negative decision is issued the applicant has a 30-day period to file an appeal specifying the reasons for their appeal in [Cambodia](#). There is no standard form for an asylum seeker to complete in order to file an appeal. As with the RSD interview, legal representation is not permitted to be present during the handing down of a decision.

A new working group of three different officials from the Immigration Department is created to assess the appeal and a decision on the appeal should be handed down in a 15 day period. In practice, appeals may be pending for up to 11 months. In Cambodia, the decision on appeal is considered the decision of last resort. There is no avenue for judicial review of a decision handed down by the Refugee Office. The failed applicant must remove themselves from [Cambodia](#) within 15 days. Since the passing of the Sub-decree there have been several cases which failed in their appeal and each applicant was left to remove themselves from the country without arrest or force.

In Cambodia, the decision on appeal is considered the decision of last resort. There is no avenue for judicial review of a decision handed down by the Refugee Office.

## Example of Reasons for Rejection:



The harm you fear is not of the nature and/or seriousness as to constitute a form of persecution.



The harm you suffered or fear you have is not related to any of the five Convention grounds listed...;



The events you described to us during your interview do not demonstrate that you have faced or will face treatment as severe as to amount to persecution;



Your testimony was not credible for the following reasons:

- Due to material inconsistencies with your own statements or those provided by persons with related claims;
- Due to material inconsistencies with country of origin information available to the Cambodian official.

# LEGAL REPRESENTATION

## in refugee status determination

Legal representation is not encouraged by UNHCR and in some instances actively discouraged. Advocates in [Malaysia](#) explained that they often felt like their submissions “went into a black hole”. Whilst in [Indonesia](#) there have been small steps made to involve legal representatives, the sentiment that RSD is “slowed down” by advocate participation has been a UNHCR response. In [Thailand](#), JRS and Asylum-Access provide on-going legal aid to both those applicants in urban areas and detention. However, attempts to be present during interviews have failed. In [Cambodia](#), the JRS Legal Officer is able to assist asylum seekers by providing submissions on their cases and the RSD system as implemented by the government, supported by UNHCR. However, the legal officer has been denied permission from government officials to be present during interviews and the handing down of decisions. There is no provision for legal representatives through the RSD process in the [Philippines](#) or in [Cambodia](#) enshrined in the relevant domestic frameworks, and governments have been reluctant to acknowledge the right of an asylum seeker to be assisted by a legal representative.

The assistance of Legal Officers plays a role in supporting not only the applicants, but also assisting decision-makers while strengthening the integrity of the RSD system as a whole.

Legal Officers may provide guidance to their clients for them to tell their story chronologically and as accurately as possible, prepare for interviews, provide realistic advice on the substance of applicant’s claims, clarify RSD procedures and timelines, emphasise the importance of disclosing pertinent information and being honest, dispel myths about the RSD process that might have been given to them by others, gather relevant country of origin information, and provide legal briefs to decision-makers. Furthermore, the presence of Legal Officers in interviews ensures transparency and accountability and the accompaniment through this process allows for monitoring of the treatment of applicant’s through the RSD system.

Many asylum seekers suffer from mental health issues either stemming from or compounded by persecution suffered and the difficult journey they have faced.

These mental health issues impact on asylum seekers ability to communicate and to retain and process information such as the information needed to submit an application for refugee status. A legal representative can assist to explain relevant laws and concepts in accessible language and help to communicate an asylum seekers story to decision makers.

Opportunities for legal representatives to advocate for their clients throughout the RSD can only be meaningful through productive working relationships with UNHCR eligibility officers and government officials.

In the UNHCR policy on refugee protection and solution in urban areas, September 2009, the lack of legal assistance available to urban refugees is explicitly stated as a one of the difficulties faced by UNHCR when undertaking RSD in the absence of domestic processes. The policy goes on to state:

“With regard to legal and social counselling, UNHCR will encourage NGOs, legal networks and human rights organizations to play an active role in such activities”.

In light of the benefits of legal representation mentioned above, it is unfortunate that UNHCR has not encouraged legal representation in any of the countries that this guide examines. One of the consequences, which can now be seen in Cambodia, is that the exclusion of legal representatives from the UNHCR RSD process means exclusion from government RSD when handovers occur.

Legal representation throughout the RSD process is considered a right in many countries. In Australia, all asylum seekers that arrive by boat have access to publically funded representation. Legal representation is also available in America, Canada and the United Kingdom through NGOs or government funded programs.

UNHCR sets an example to host governments. By not encouraging legal counsel involvement in UNHCR RSD, UNHCR is setting a dangerous precedent.

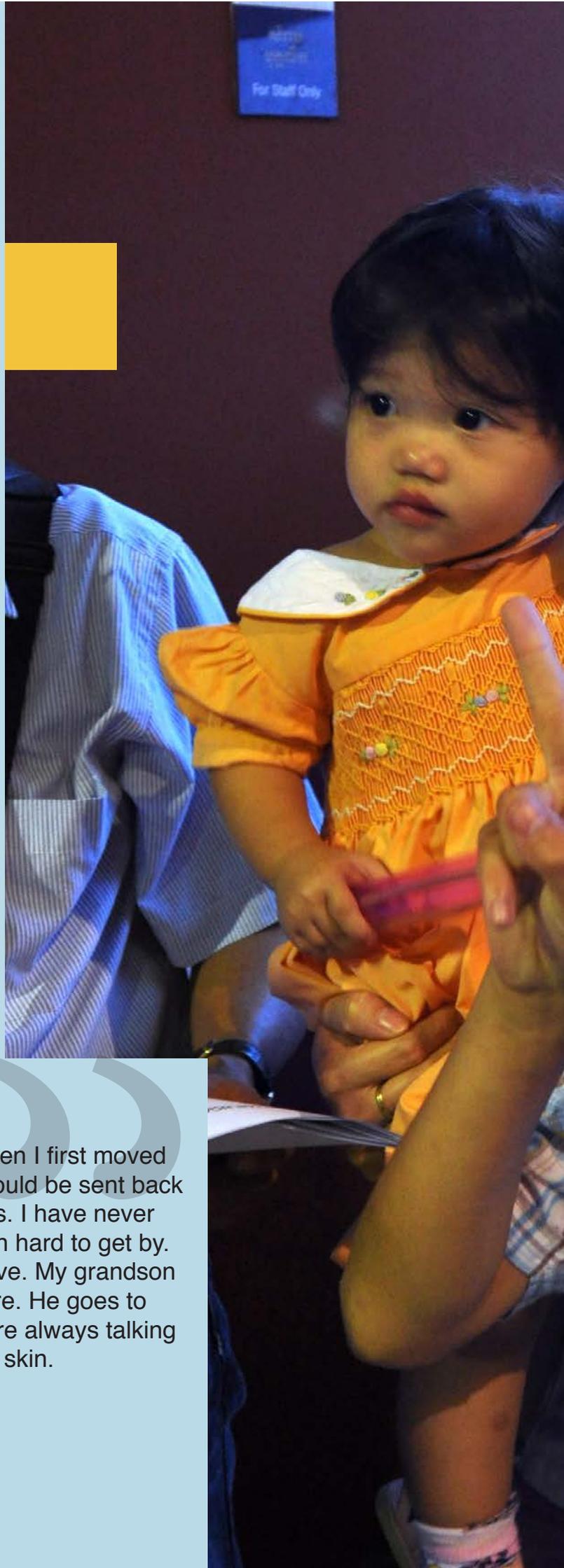
# Chapter 4

## Durable solutions



I have lived in Cambodia for 15 years. When I first moved here, I was very scared all the time that I would be sent back to Vietnam. I still think about it sometimes. I have never had a real job here, and it has always been hard to get by. Things are getting more and more expensive. My grandson lives with me, and I worry about his future. He goes to Khmer school, but he is different. People are always talking about the different colour of our skin.

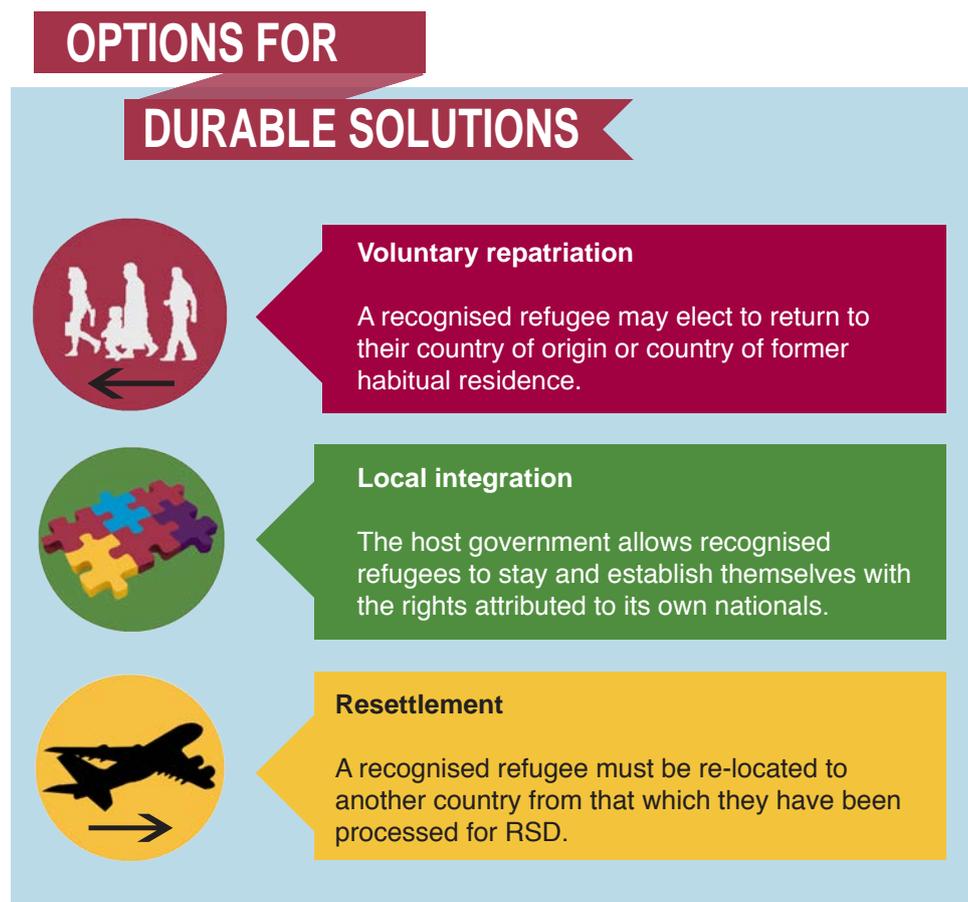
*Ly, Vietnam*



📷 A Vietnamese family heads to the airport in Phnom Penh for resettlement.



The term durable solutions relates to the long-term prospects for refugees following the completion of the RSD process, whereby they have received recognition. The possible durable solutions open to refugees are: voluntary repatriation, local integration, and resettlement.



Cambodia and the Philippines are signatories in to the Refugee Convention and as a result local integration is only available in these countries. Since refugees are not permitted to stay permanently in Malaysia, Thailand or Indonesia the remaining durable solutions are voluntary repatriation and resettlement.

### Voluntary Repatriation

Refugees and asylum seekers may decide to voluntarily repatriate for many reasons. Some cite the fact that they now feel safe to return, given that there may be positive developments afoot, others may want to see ageing family and some may decide to return after learning about the lengthy refugee status determination process and the difficult conditions they will face whilst they are living in the country they have just arrived in.

Urban refugees who want to return to their country of origin can seek the assistance of UNHCR and IOM, who can arrange for their return.

#### *Voluntariness*

There are questions to be answered regarding the voluntariness of decisions to repatriate when refugees are in countries in which they are classed as illegal immigrants and can be indefinitely detained.

In December 2010 when 86 Ahmadiyya asylum seekers and refugees were rounded up and detained within the Suan Phlu Bangkok Immigration Detention Centre, many of the asylum seekers who were still waiting for decisions from UNHCR on their cases, decided to return to Pakistan. While each and every person had their own individual and personal reasons for returning, many

expressed serious concern at the possibility of being detained in cramped and unhygienic conditions for what could be years.

In Indonesia, for the year of 2011, 139 asylum seekers elected to voluntarily repatriate. 102, 73%, of these asylum seekers made this decision to go back to their country of origin while they were detained in an immigration detention centre.

*I would rather be shot than wait for this process to keep going indefinitely with no idea what is happening. I do not want to spend my life in this prison.*

– Mahmoud, Afghanistan

### Local Integration

Local integration through naturalisation and citizenship is possible for refugees in the [Philippines](#) and [Cambodia](#).

Since 2006, the [Philippines](#) has approved citizenship to three Iranian and one Palestinian refugee. However the process is slow and the eligibility requirements include a minimum of 10 years residence in the Philippines. Most of those in the Philippines that have indicated an intention to become naturalised are married to citizens of the Philippines.

## NATURALISATION process for recognised refugees

### PHILIPPINES

- A** He must be not less than twenty-one years of age on the day of the hearing of the petition;
- B** He must have resided in the Philippines for a continuous period of not less than ten years;
- C** He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living.
- D** He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;
- E** He must be able to speak and write English or Spanish and any one of the principal Philippine languages; and
- F** He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where the Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.

# 73%

Of asylum seekers who chose to return home from Indonesia in 2011 were **detained** at an immigration detention centre at the time of their decision.

“I would rather be shot than wait for this process to keep going indefinitely with no idea what is happening. **I do not want to spend my life in this prison.**”

*Mahmoud, Afghanistan*



## CAMBODIA

- A** a paper certifying that they are of good and moral character issued by the local authorities;
- B** no criminal record;
- C** has lived in Cambodia for seven continuous years from the reception of a residency card;
- D** is resident in Cambodia at the time of application;
- E** can speak Khmer, read Khmer and has knowledge of Khmer culture; and
- F** is mentally and physically fit.

Article 15 of the Sub-decree states that a residency card and extension thereof will be provided to refugees in accordance with the Law on Immigration. The Law on Immigration does not include a category for refugees, and it is unclear how such a residency card would be issued. In practice, there have not been any reported cases of applications for residency cards since the passing of the Sub-decree, but when questioned, the Refugee Office has indicated that they can assist in this process.

Many challenges are faced by refugees who live in Cambodia including lack of education and employment opportunities usually exacerbated by lack of Khmer language skills. This is explored further in the following chapter regarding life in Cambodia.

*I am waiting for resettlement now and we have a sponsor, I am just thinking about the future for my children, and my family. I want us to have a good, safe life. I don't want to worry about whether we can survive day-to-day, we have spent so long thinking like this – John, Somalia*

### Resettlement

Worldwide, there are 10.4 million refugees of concern to UNHCR. Of these, approximately 1% will be referred for resettlement by UNHCR. There are many more refugees in need of resettlement than resettlement places offered by safe third countries.

The first step in the resettlement process is for UNHCR to provide individual or family files to embassies that have indicated an interest in receiving urban refugees.

As noted in the previous chapter, most urban refugees arrive in [Thailand](#) with Tourist or Business visas usually valid for three to six months from entry. The refugee status determination process and the resettlement process inevitably take much longer than their visa time-frame and the vast majority of urban refugees spend life in Thailand as illegal immigrants.

Before refugees can depart [Thailand](#) to be resettled they must declare themselves to the Thai Immigration Police. They are charged for overstaying their visas and ordered to pay a fine or if they are unable to afford the fine are sentenced to spend a period of time in the Bangkok Immigration Detention Centre.

The main countries of resettlement for urban refugees in [Bangkok](#) are the United States, The Netherlands, New Zealand, Australia and Canada. From [Indonesia](#) and [Malaysia](#) a vast majority of refugees are resettled to Australia, Canada, Denmark, the United States, Sweden, New Zealand and the Czech Republic. Often refugees may be resettled to countries where they have familial ties.

For those refugees recognised by UNHCR in Bangkok, the average timeframe for departure following the handing down of a positive RSD decision is around 2.5 years.

*I was arrested for illegal fishing in Indonesian waters 10 years ago. I was in a regular prison with other criminals for one year, and then they took me to immigration detention. I didn't know what a refugee was until I was sharing a cell with some Sri Lankans. I have now been recognized as a refugee for four years. I live in the community and I speak Bahasa Indonesia. I know that I have been rejected by some countries for resettlement, but I think they are trying some more. I would be happy to stay in Indonesia legally, if I could work and be independent, I would be very happy. – Tan, Burma*

Resettlement is included as an option for refugees in the [Philippines](#) on the webpage of the implementing partner of UNHCR, CFSI. However no refugees have been resettled from the Philippines to third countries in recent years.

JRS records show that an assessment was made by UNHCR as early as 2001 that [Cambodia](#) was a suitable protection space for recognised refugees to locally integrate, limiting options for those who would like to resettle to third countries. Even since the passing of the Sub-decree in 2009 UNHCR has facilitated resettlement for a very small number of exceptional cases.

### *Trapped*

For refugees in Thailand, the only option is resettlement or voluntary repatriation. What happens to those that are not able to return and cannot be resettled? For a growing number of Sri Lankans detained in the Suan Phlu Bangkok Immigration Detention Centre, this is the problem they face.

They are Sri Lankans with real or perceived links to the Liberation Tigers of Tamil Ealim. Despite being recognised as refugees, they cannot return to Sri Lanka for fear that they will be arrested, detained and subject to inhumane treatment. Third countries will not accept them for resettlement because of their links to what they perceive to be a terrorist organisation. Without the option of integration, they face the prospect of an indefinite time detained in the IDC. One man was detained in Bangkok for over four years. Whilst there may be some options for release on bail, their precarious situation leaves them uncertain futures.

## STEPS TO

## RESETTLEMENT



- 1 UNCHR provides refugee file to an embassy.
- 2 Embassy accepts or rejects refugees for resettlement.
- 3 If accepted IOM assists with medical checks.

UNHCR may advocate for the acceleration of a case if they determine that an individual or family is at particular risk and/or suffering from health concerns. NGO workers or legal representatives may also bring this to the attention of UNHCR.

As well as information detailing the refugees claim, the file also contains a security assessment relating to the Exclusion Clauses contained within the Refugee Convention "Persons considered not to be deserving of international protection". While UNHCR's assessment may not be serious enough to warrant excluding someone from being recognised as a refugee, the assessment may provide reason for an embassy to refuse to accept a refugee for resettlement.

Different embassies conduct their assessments in different ways. Some make determinations based purely on the files provided by UNHCR - the interview conducted by the embassy with the applicant refugee is merely a formality. Other embassies place more weight on the information obtained during their interviews and make a resettlement determination based on this information.

It may be a number of years before a refugee will be accepted by a country for resettlement and there is no guarantee that this will occur, especially when there are real or perceived security considerations relating to a person's file. Once a refugee has been accepted by a country to be resettled it may take many more months before the refugee is actually resettled. In addition, a country can refuse resettlement at any stage throughout the process. This has been known to happen particularly when embassies, find discrepancies in information provided by the refugee either to UNHCR or the embassy itself.

For those refugees recognised by UNHCR in **Bangkok**, the average timeframe for departure following the handing down of a positive RSD decision is around **2.5 years**.

IOM or embassy conducts cultural orientation class.

4

0

IOM in collaboration with the embassy organises for flight to resettlement country.

5

IOM accompanies refugees to airport, and meets refugees at the arrival airport.

6

The International Organisation for Migration (IOM) assists throughout this process, more so for some countries than others. For most countries IOM conducts full medical examinations. If a refugee is found to have medical concerns, this may further delay their departure while they undertake treatment.

IOM or the embassy representatives themselves, also conduct cultural orientation training to assist in the preparation for departure.

Flights to resettlement countries are organised by IOM. Those being resettled are accompanied to the airport by IOM officials and are met by IOM officials at their destination airport.



A recognized Vietnamese refugee living in Cambodia prepares a meal on the floor of his floating home.

# Chapter 5

Life in...



“ We are not Cambodian citizens so we cannot find a job. Lack of opportunity and language skills has made it very difficult for me to find work. I applied at one of the hotels and they told me I could not get a job because I cannot speak Khmer. All the clubs and hotels want Khmer people. I cannot get a job ahead of the local people.

I'm young, I want to study and have a good life. I want to study at university or get a diploma. We have very little income, no job, so how can we study? How can we have good lives?

*Htin, Burma*

 A Burmese refugee leads a reflection on the life of Aung San Suu Kyi on International Women's Day






 Rohingya refugees make a living selling Roti on the street in Phnom Penh.

Many asylum seekers and refugees in urban areas in South-east Asia are living in countries where they cannot earn a livelihood, find accommodation or access medical care and education. People are relegated to living and working on the fringes of society, living in fear of leaving their houses going to see a doctor or sending their children to school as they are vulnerable to harassment of authorities and arrest.

It should be noted that the depth of information provided in this chapter regarding Cambodia, Thailand and Indonesia reflect JRS's longstanding work in these countries. In the Philippines and Malaysia, countries in which JRS does not work with urban refugees, communication with asylum seekers and refugees and other stakeholders about everyday life was limited.

### Employment

As [Malaysia](#), [Thailand](#) and [Indonesia](#) are not signatories to the Refugee Convention, and have not adopted domestic frameworks affording legal recognition to asylum seekers and refugees, they are not legally permitted to work in these countries without valid passports and visas. Many asylum seekers are therefore forced to work illegally, survive on money sent to them from family or rely on food and services provided by NGOs. However, this support varies dramatically in each of these countries, depending on the mandates of NGOs serving refugees.

In [Malaysia](#), many work in restaurants, construction, shops or other businesses as well as outside of urban areas such as the Cameron Highlands working long hours on plantations and farms. Abuse of migrant workers in Malaysia has been well documented, with asylum seekers and refugees subject to the same exploitation and harsh conditions given their lack of legal status.

*I am working at an Iranian restaurant, but I am scared to be amongst people from my country. I ran away from my country because Iranian people hate homosexuals, I don't think I am safe here around Iranian people, but I have no choice, I have to work and I don't know what else to do. – Said, Iran*


  
 We have women members who work in factories in Johor Baru, they work very long hours 10-12 hours per day and are **not paid over-time**. They have one day off per month.

*Michael, Karenni*



There is minimal recourse available to asylum seekers and refugees regarding labour conditions and exploitation in Malaysia given their precarious position as illegal immigrants, vulnerable to harsh penalties should they be caught working. Local human rights groups have taken small steps to improve working conditions by intervening with employers to draft working contracts to instil some safeguards for asylum seekers and refugees. These small businesses may have incentives to comply since essentially they are subject to the Immigration Act by knowingly employing undocumented workers.

In the [Philippines](#) and [Cambodia](#) asylum seekers are not permitted to work whilst their cases are being processed. These protracted situations can lead to destitution given that the timeline that an asylum seeker may wait to receive their refugee status averages around 3 years in both of these countries,

Once an asylum seeker has been granted refugee status in the [Philippines](#) they are eligible to receive an 'Alien Employment Permit' (AEP). The AEP places no restriction on the nature of work that refugees can engage in, further it places no restriction on the duration of employment engaged.

Recognised refugees are entitled to work or operate a business in [Cambodia](#) in accordance with the relevant provisions of the Labour Law. The ethnicity that represents the highest of those employed is the Vietnamese, largely informally doing jobs such as tailors, mechanics or nail technicians. Being able to access the wider Vietnamese community that lives in Cambodia is a distinct advantage for refugees trying to integrate, although many still struggle to find sustainable income.

Asylum seekers, although formally not afforded rights under the Sub-decree, have been able to run their own businesses with minimal interference from local authorities although their ability to earn a profit remains a challenge.

Despite the Sub-decree specifying that recognized refugees have the same legal rights as a "legal foreign immigrant", refugees are unlikely to meet the requirements to become documented workers in accordance with the Labor Law due to prerequisites that are usually impossible for refugees to meet. For example, to obtain a work permit and an employment card from the Ministry in Charge of Labor it is necessary to hold a valid passport and a residency card. Most refugees do not have passports when they arrive, and if they do hold a passport it is subject to expiration over time.

According to the UNHCR, the Immigration Department has agreed that it is not necessary for refugees to obtain additional documentation in order to work. In practice, the Refugee Office often explains that should they have problems with employers, or authorities, then those employers or authorities can contact the Refugee Office directly to clarify their legal status.

The lack of documentation such as a passport and working visa has been identified as an obstacle to gaining employment given that prospective employers do not recognise the documentation that a refugee receives upon recognition of their refugee status. This, however, is certainly not the only barrier in finding employment, the lack of language and technical skills being greater challenges.

“

I just lost my job in the factory because I had to take time off to come to the doctor. I was robbed on my way home when I was wiring my salary from Malaysia back to Burma for my family who is still there.

My family had to spend all the money we had so I could get out.

I have been arrested by police three times, I don't have a UNHCR card and they told me and my friends that they could do what they wanted to us. They stole 200 ringgit from my wallet and my telephone.”

*David, Burma*



 A Sri Lankan family of six has shared a one-room apartment in Bangkok for five years.

*We are not Cambodian citizens so we cannot find a job. Lack of opportunity and language skills has made it very difficult for me to find work. I applied at one of the hotels and they told me I could not get a job because I cannot speak Khmer. All the clubs and hotels want Khmer people. I cannot get a job ahead of the local people. I'm young, I want to study and have a good life. I want to study at university or get a diploma. We have very little income, no job, so how can we study? How can we have good lives? We buy our food, vegetables and rice, from the market. They know we are foreigners; there are no fixed prices, so they charge us more than Cambodians. It's the same with transport. I am also depressed because we stay at home all the time, we have no jobs or friends. Sometimes I think we have no identity. – Htin, Burma*

## Housing

Most urban refugees in [Thailand](#) live in and around Bangkok in rental apartment housing. Accommodation can be difficult to find. Foreign renters are usually required to provide passport identification and proof of legal residence in Thailand. Lack of Thai language skills also makes negotiations difficult. JRS assists refugees to find accommodation and negotiate rental contracts.

If an asylum seeker is living in the community in [Indonesia](#), and is under the care of UNHCR, IOM or another NGO, this organization will usually negotiate house rental on behalf of the asylum seeker or refugee. Housing in Cisarua is usually amongst Indonesian neighbours, and the quality of accommodation whilst modest reflects standards experienced by Indonesian nationals in the same area.

Asylum seekers and refugees in [Malaysia](#) are not assisted in finding housing. They are reliant on family members, and wider community members to share accommodation. The accommodation is often cramped, unsanitary and in unsafe areas where they fear engaging with authorities.

*I live in an apartment with 4 other families, there are 13 people all together in four rooms in Kuala Lumpur. We share one bathroom and a kitchen. We spend so much time in our apartment because we are scared to go out on the street. I have been stopped by police three times. The first time I had to pay 400 ringgit, the second time 10 ringgit. The third time I had no money and the policeman punched me in the face, and kicked me in the stomach, now I can't eat. We are always hearing about the police or RELA coming to refugee houses. Last month RELA did a raid on a friends house and two people we know were arrested, we don't know where they are now. – Kung, Burma*

Asylum seekers and refugees generally do not face problems renting accommodation in [Cambodia](#). Landlords have been open to accepting a 'Preliminary Stay Permission' certificate or Refugee Certificate as proof of identity, and legal status. It is a requirement that landlords register their foreign tenants with local authorities and in instances where this has not happened local authorities may question landlords and asylum seekers/refugees about their legal status.

## Education

Children living in the community in Cisarua, in [Indonesia](#) are able to be enrolled in Indonesian public primary schools. Parents are assisted by NGOs to facilitate the enrolment. Some parents expressed concern that it was not prudent to send their children to Indonesian schools and learn Bahasa Indonesia given that they have no pathway to permanently stay in Indonesia. Some children were therefore enrolled in private English schools as parents consider it be beneficial in the long term.

UNHCR's implementing partner, the Church World Service (CWS) offers various classes at their centre in Cisarua including English, computer skills, Bahasa Indonesian, and handicrafts. There is also a small plot of land adjacent to the centre where a small agriculture project is running and refugees are able to learn farming skills.

### *Unaccompanied minors living in Indonesia*

*We would sneak into a kitchen of a hotel when we knew the owners had left. We just wanted somewhere to sleep. They wouldn't leave though until 2 or 3am and then would come back really early at around 6am. Sometimes we could only sleep for 1 or 2 hours. We were so weak, we didn't know what was going to happen to us. Now, we are here, and there is room for us, so I don't understand why no-one told us about this place. – Ashin (17), Afghanistan*

At the time of researching there were around 60 unaccompanied minors, predominantly all Afgani teenage boys, living in shelters administered by CWS. The shelters are in the form of either a large house with large shared rooms with bunk beds, or a small apartment block, also with shared rooms and bunk beds. The unaccompanied minors are given an allowance by CWS and they are responsible for buying their own clothes, food and essentials. Bottled water is provided free.

There is a curfew for the unaccompanied minors to return to the shelters by 10pm each night, and one night a week at 11pm. The only permanent presence at the shelters is by a security guard contracted by CWS.

Two unaccompanied minors explained that they were not assisted by UNHCR to access the shelters run by CWS, and they arrived themselves after hearing from others that there were other minors living in Cisarua. These two minors spent their first month in Jakarta living in the streets and did not have an appointment to return to UNHCR Jakarta for nine months to complete registration.

The unaccompanied minors are not enrolled in any formal education programs. However, they are able to access English classes, Bahasa Indonesian classes, and other activities like futsal and trips to the local swimming pool, facilitated by CWS.

“

I live in an apartment with 4 other families, there are **13 people all together in four rooms**. We share one bathroom and a kitchen. We spend so much time in our apartment because we are **scared** to go out on the street.”

*Kung, Burma*



📷 An Ahmadi mother and daughter practice English at a community centre before mass arrests forced them to shut it down.

“  
 We would sneak into a kitchen of a hotel when we knew the owners had left. We just wanted somewhere to sleep.”

*Ashin, Afghanistan*

Asylum seeker and refugee children do not have access to the [Malaysian](#) education system. Given the protracted nature of RSD and resettlement this means that school-age children may spend a predominant period of their lives without formal education certification affecting their long-term futures.

The majority of children can access informal education programs in the forms of either community-based centres, or through NGO-UNHCR programs that are established both in Kuala Lumpur and seven other locations within Malaysia. UNHCR reports that only around 1,000 representing 20% of refugee children are attending their programs which are based on the Malaysian curriculum and include English, maths, science and Bahasa.

Community-based schools are run by most of the ethnic Burmese communities and their curriculum will reflect the capacity of teachers who are involved. Most will teach their specific dialect, as well as religious studies, maths, English, science, arts and crafts. Teachers are either community volunteers or volunteers that are provided through UNHCR.

*The biggest problem we have with the children is just that they want to run around. Their homes are so cramped so when they are in a bigger space they just want to run and it's so hard to control them!* – Elizabeth, Karenni volunteer teacher.

In [Thailand](#), asylum seeker and refugee children may also be assisted to enroll in local schools depending on the preference of parents and will be at the discretion of the local school to accept such enrolments. JRS assists in this process. UNHCR's implementing partner, the Bangkok Refugee Centre (BRC), offers English and Thai language, computer, maths and art classes. They also offer vocational training and tailored programs for children with special needs.

Children are able to access public [Cambodian](#) primary schools. Often, a staff member from UNHCR or JRS may accompany a parent wishing to enroll their child in order to explain the legal status of the family and resolve any issues to do with their lack of documentation such as a Cambodian family book. Several children are also attending private English classes, or religious schools which is supported through JRS. Parents of teenage children have been less reluctant to enroll their children in public schools given the lack of language skills.

## Healthcare

Hospitals in [Bangkok](#) generally meet international standards. UNHCR may provide financial assistance for medical care to recognised refugees. Refugees can also attend BRC, for appointments with doctors. Refugees receive basic treatment and care however BRC doctors may write applications to UNHCR when refugees need further treatment, surgery or specialised care. UNHCR decides whether it can meet the financial cost of medical treatment on a case-by-case basis however will not generally meet the expenses of operations or surgery. UNHCR may accelerate the application process for resettlement if a recognised refugee needs medical treatment as a priority. Asylum seekers in Bangkok do not generally receive financial assistance from UNHCR, for medical treatment. JRS can assist asylum seekers on a limited basis by way of providing financial support, or negotiating with public hospitals in emergency cases for reductions in fees.

In [Indonesia](#), those living in the community under the care of an NGO will be assisted to access public Indonesian hospitals, usually having to pay increased fees because of their status as foreigners.

Several of UNHCR's implementing partners in [Malaysia](#) provide healthcare services to asylum seekers and refugees. These include the Buddhist Tzu-Chi Kuala Lumpur Free Clinic which provides medical treatment, family planning, HIV testing and counselling services. Buddhist Tsu-Chi also has two mobile clinics that operate in Kheow Bin and Klang. Kumpulan ACTS provides services solely to asylum seekers and refugees and provides medical treatment, HIV testing, counselling and antenatal care. If asylum seekers and refugees access public facilities they are liable to pay the rate that foreigners are charged, that is, double the local rate, although those with UNHCR cards may be given a 50% discount. Mental health services are also provided by Health Equity Initiatives, and Harvest Child Mental Health Care Clinic.

*I have TB in sputum and in my bones. I was accepted to the US for resettlement but now I have to wait until my medical check is cleared. I have to go to UNHCR everyday to collect my medication, I walk for about 30 minutes from the house one way, but on the weekend they give me enough to take until Monday. – James, Burma*

*My baby was born in a public hospital in Kuala Lumpur, we have UNHCR cards so we only had to pay 50% of the fee, but it was about 900 ringgit (USD300) because my wife was in hospital for two days. We didn't have the money, but our community helped us. – Michael, Burma*

Common medical problems reported included symptoms related to PTSD such as anxiety and stress as well as alcoholism. ACTS also have counselling service and outreach with community leaders to identify vulnerable people. ACTS also operates two convalescence homes in Batu Arung outside of Kuala Lumpur to provide long-term care for those with chronic and terminal illnesses. For those living outside of urban Kuala Lumpur, mobile clinics may also run sporadically at times coordinated between ACTS and the Burmese community groups.

At the time of writing UNHCR directly implements its services in [Cambodia](#), and health insurance is available for asylum seekers and refugees. Individuals may access a list of public hospitals at their choice, with premiums supported by UNHCR and transportation costs may also be covered.

“

My baby was born in a public hospital in Kuala Lumpur, we have UNHCR cards so we only had to pay 50% of the fee...

*Michael, Burma*

# Concluding Remarks & Observations

Protection space for asylum seekers and refugees in South-East Asia is limited and consistently changing. It is in this dynamic environment that asylum seekers and refugees must negotiate complex, protracted and non-transparent processes. It is also in this environment that advocates must work to ensure durable solutions for the people they serve.

By way of conclusion, the key issues of concern for protection in the region are outlined below. They are a distillation of the consistent themes that have permeated our research through talking with asylum seekers, refugees, NGO staff, UNHCR, governments, human rights advocates, caseworkers and volunteers.

These key issues of concern have also been informed by our own work with asylum seekers and refugees, and build upon the oft-repeated recommendations that more efforts should be placed on expediting refugee status determination and resettlement processing.

## KEY

### ISSUES OF CONCERN

- 1** **Onward movement** from the country of first asylum due to protection concerns is common and asylum seekers and refugees in the region do not have adequate **access to information** required to make informed decisions about their futures.
- 2** Protection of asylum seekers and refugees is a **regional issue** which requires cooperation between countries, agencies and NGOs.
- 3** The **right to legal representation** for asylum seekers and refugees is not fully recognised by UNHCR and governments in practice, compromising the integrity of the refugee status determination process.
- 4** There are increasing **delays** for new arrivals to obtain registration documents from UNHCR confirming that they are persons of concern.
- 5** Countries in the region party to the Refugee Convention should not be presumed to provide **protection** for all asylum seekers and refugees simply by virtue of their accession.
- 6** **Detention** of asylum seekers and refugees in non-signatory countries is a protection issue within and of itself; steps to introduce alternatives to detention in the region have improved lives.

## International Law & Instruments

- 1951 Convention relating to the Status of Refugees, 189 U.N.T.S. 137, entered into force 22 April 1954
- 1967 Protocol 1967 Protocol to the Convention relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force 4 October 1967
- International Covenant on Civil and Political Rights 999 U.N.T.S. 171, entered into force Mar. 23, 1976
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S 85 entry into force 26 June 1987 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment entered into force 22 June 2006
- Convention on the Rights of the Child 1577 U.N.T.S 3 entered into force 2 September 1990
- International Covenant on Economic, Social and Cultural Rights 993 U.N.T.S 3 entered into force Jan. 3, 1976
- Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981)

## Domestic Instruments

### Malaysia

- Immigration Act 1959 -1963

### Thailand

- Immigration Act, B.E. 2522

### Indonesia

- Indonesian Immigration Law UU6-2011 Act No. 6 of 2011 on Immigration
- Directive of the Director General of Immigration was issued on 17 September 2010

### Indonesian Constitution

- 2002 Department of Justice and Human Rights directive
- Decision of the MPR No. XVII/1998
- Human Rights No. 39/1999
- Foreign Relations Law no. 37/1999

### The Philippines

- Philippine Immigration Act No. 613 of 1940
- Department Order No. 94/1998, Establishing a Procedure for Processing

### Applications for the Grant of Refugee Status

- Republic of the Philippines Commonwealth Act No. 473 An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization

### Cambodia

- Sub-Decree on Procedures for Examination, Recognition, and Provision of Refugee or Asylum Status for Aliens in the Kingdom of Cambodia, No. 224, signed 17 December 2009.
- Law on Nationality [Cambodia], 9 October 1996
- Law on Immigration [Cambodia], 22 September 1994

## UNHCR documents & Regional instruments

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- UNHCR Note on Burden and Standard of Proof in Refugee Claims 16 December 1998
- Refugee Protection and Mixed Migration: The 10-Point Plan in action, February 2011
- Resettlement Handbook, July 2011
- Framework for Durable Solutions for Refugees and Persons of Concern, 1 May 2003

### The Bali Process

- <http://www.baliprocess.net/>
- The Regional Cooperation Framework: <http://www.baliprocess.net/index.asp?pageID=2145895810>
- Australia and Malaysia sign transfer deal: <http://www.minister.immi.gov.au/media/cb/2011/cb168739.htm>
- Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship [2011] HCA 32 (31 August 2011): <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2011/32.html?stem=0&synonyms=0&query=malaysia%20deal>

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- Immigration Detention Coalition: <http://idcoalition.org/>
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- Thailand: Investigate Departure of Rohingya 'Boat People'
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- <http://www.hrw.org/news/2011/03/30/vietnam-montagnards-harshly-persecuted>
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# Index

## **Cambodia**

appeal, 44  
decision, 42  
detention, 12  
durable solutions, 48  
education, 61  
employment, 58  
health, 62  
housing, 60  
interview, 41  
Khmer Krom, 22  
local integration, 50  
Montagnards, 21  
refugee convention, 26  
Refugee Status Determination, 35  
registration, 39  
resettlement, 52  
Rohingya, 19  
Uighurs, 20  
voluntary repatriation, 49

## **Indonesia**

appeal, 43  
decision, 42  
detention, 12, 17  
durable solutions, 49  
education, 60  
employment, 57  
health, 62  
housing, 59  
human rights action plan, 25  
interview, 40  
local integration, 49  
refugee convention, 35  
refugee status determination, 35  
regional cooperation model, 30  
registration, 52  
resettlement, 52  
voluntary repatriation, 49

## **Malaysia**

appeal, 43  
decision, 42  
detention, 12  
durable solutions, 49  
education, 60  
employment, 57  
health, 62  
housing, 59  
interview, 40  
local integration, 49  
refugee convention, 26

Refugee Status Determination, 100  
registration, 38  
resettlement, 52  
voluntary repatriation, 49

### **Thailand**

appeal, 43  
decision, 42  
detention, 12, 15  
durable solutions, 49  
education, 60  
employment, 57  
health, 62  
housing, 59  
interview, 40  
local integration, 49  
refugee convention, 60  
Refugee Status Determination, 100  
registration, 38  
resettlement, 51  
voluntary repatriation, 49

### **The Philippines**

appeal, 43  
decision, 42  
durable solutions, 49  
education, 60  
Emergency Transit Agreement, 28  
employment, 58  
health, 62  
housing, 59  
interview, 40  
local integration, 50  
refugee convention, 26  
Refugee Status Determination, 100  
registration, 52  
resettlement, 100  
voluntary repatriation, 49



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