

Asylum seekers: The way forward

For too long, the debate regarding Australia's response to asylum seekers has been hampered by an intense focus on boat arrivals and our own borders. It has worked on the misconception that the process of seeking protection from persecution and safety from war and insecurity can be an orderly one.

Oxfam believes it is time to broaden Australia's response. An effective asylum seeker policy is one that considers the full set of regional and global challenges that affect the flow of people around the world. It recognises that Australia has a responsibility to process the claims of asylum seekers who reach Australian territory. It is built on a true regional solution that provides refugees and asylum seekers with genuine alternatives to having to undertake risky boat journeys in a desperate attempt to achieve lasting safety.



Oxfam Australia in action

Oxfam Australia is part of a global movement of dedicated people striving to overcome poverty and injustice.

To achieve this, we work in three ways:

1. Investing in long-term projects

Giving communities the tools and resources to achieve their basic human rights, including education, enough food, clean water and the chance to earn a living.

2. Responding to emergencies

Acting quickly to save lives when disaster strikes, delivering essentials like clean water, shelter and food, and helping communities rebuild and prepare for any future crises.

3. Campaigning for change

Urging world leaders, companies and organisations to change the regulations and practices that keep people in poverty, and supporting communities in calling for justice.



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A framework for strengthening refugee protection across the region

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A true regional solution includes:

- A comprehensive regional protection framework, that involves countries of origin, transit and destination and is sanctioned by and includes a central role for the United Nations High Commissioner for Refugees (UNHCR).
- Ensuring that all asylum seekers have the opportunity to have their claims fairly and swiftly assessed, no matter what country they are in.
- Supporting developing countries in our region with properly targeted aid, so that they can house and support asylum seekers while their claims are being processed, and so that refugees can have access to essential services and an income while they wait for a durable solution, such as resettlement.
- Australia fully upholding its international protection obligations, including a responsibility to process the claims of asylum seekers who reach Australian territory.
- A genuine focus on achieving durable solutions, including resettlement, for all who are found to require protection.

The Current Situation

Around 80 per cent of the world's refugees are hosted by developing countries. Over half of the world's refugees now reside in urban areas, whereas a third are located in camps.

The Asia Pacific region hosts 3.9 million refugees (37% of the world's refugees population), many of whom are in 'protracted' situations.¹ Pakistan, the highest refugee-hosting country in the world, hosts almost half of the overall regional refugee population. Thailand and Malaysia also host significant numbers of refugees, stateless persons and asylum seekers.²

Last year saw a significant decrease in the number of refugees who were able to access durable solutions to their situation. The UNHCR has identified three 'durable solutions' for refugees. These are: voluntary repatriation; local integration into a host country; and resettlement to a third country. During 2009, 3.4 per cent of the world's refugees achieved a durable solution, and only 0.74 per cent of refugees were provided with resettlement.

The inaccessibility of durable solutions leaves refugees living in developing countries neighbouring Australia in very insecure positions. While they wait, refugees are often unable to earn a living and access basic services such as education for their children. Asylum seekers will often wait for a long time, in dire circumstances, to have their refugee claims processed.

In 2009, 0.6 per cent of the world's reported asylum claims were made in Australia. The number of asylum seekers who arrived by boat to Australia was equivalent to 1.5 per cent of Australia's overall permanent migration, while the refugee and humanitarian program comprised under 8 percent of permanent migration to Australia. It is clear that Australia, as a wealthy country, has the capacity and responsibility to do more.

Developing a sustainable, effective regional protection framework

An effective regional protection framework would aim to give asylum seekers genuine and safe alternatives to trying to reach Australia by boat. It would include genuine partnerships with other countries in our region and build on the strength of work done through initiatives such as the UNHCR's Refugee Protection and Mixed Migration 10 Point Plan of Action³, and recent protection developments under the Bali Process. Above all, it would require Australia to commit to upholding its own international protection obligations.

Principles for an effective regional protection framework must:

- **Be a UNHCR-sanctioned or led initiative, that involves countries of origin, transit and destination, as well as resettlement countries from outside the region.** Relevant UN and other international bodies and NGOs should also be involved in the design, implementation and monitoring of initiatives. The experiences and views of those requiring protection and members of host communities must also be incorporated.
- **Aim to ensure that all asylum seekers are able to access territories where their claims will be fairly and swiftly assessed.** It must also include guarantees against refoulement (involuntary return to a country where persecution will be faced) and opportunities for review of decisions.
- **Provide humane standards of reception for people seeking asylum and access to timely durable solutions for people assessed to be refugees.** People waiting for a durable solution, including resettlement, should have the opportunity to seek work and access essential services and other human rights protections. Where people are assessed as not having a need for protection they should only be returned in conditions of safety and dignity, with assurances of sustainable reintegration and external monitoring of the conditions they are being returned to.
- **Incorporate well-targeted development assistance to support the strengthening of protection across the region.** This needs to include appropriate support for host communities.
- **Focus on improving prospects for durable solutions for refugees.** This needs to include an increase in resettlement places and more strategic targeting of resettlement places⁴ for those who require them.
- **Recognise legitimate sovereign interests relating to security and border management, while also safeguarding the human rights of all people seeking asylum and other vulnerable people.**

A regional processing centre?

As recently noted by the UNHCR, a regional processing arrangement cannot be a substitute for strong national systems for processing asylum seekers. The transferral offshore or to third countries for processing of all asylum seekers who try to reach Australia by boat is highly problematic, not least because it breaches Australia's international obligations by treating one category of asylum seeker less favourably than others, based upon their mode of arrival.

At the very least under current circumstances, people who reach Australia's territory should be brought to the mainland for processing of their claims once identity, security and health checks have been completed. As a wealthy country in our region, Australia should not be offloading its responsibilities for asylum seekers onto poorer countries. Instead, the focus of a regional protection framework should be on providing refugees and asylum seekers with viable alternatives to undertaking risky journeys in an effort to achieve lasting protection.

A regional processing centre, or a series of processing and reception centres across the region could be part of a regional solution. However, centres will only work if they are part of a broader regional framework. If they are to be part of a genuine regional solution, they should:

- **Involve multilateral, UNHCR, NGO and civil society groups in their design, implementation and monitoring and be responsive to the legitimate interests of all relevant stakeholders.**
- **Be located in a country that is not only a signatory to the Refugee Convention and its Protocol, but that is willing to meet the obligations set out in the Convention and has the resources to do so.** PNG, for instance, has posed a number of reservations to its adherence to the Protocol, and other signatory states may lack the capacity and/or will to meet their associated responsibilities, particularly where they struggle to meet the humanitarian protection needs of their existing populations.

1. The UNHCR defines a 'protracted situation' as one in which 25 000 or more refugees of the same nationality have been in exile for 5 years or longer in a given asylum country. UNHCR, 2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, 15 June 2010 <http://www.unhcr.org/4c11f0be9.pdf>. It is now estimated that the average period of time spent in exile by refugees worldwide is approaching 20 years – up from 9 years in the early 1990s. Prof. G. Loescher, 'Human Rights and Refugees: The Global Crisis of Protracted Displacement'. Sergio Vieira de Mello Lecture, 26 March 2009, p.6 at <http://www.rsc.ox.ac.uk/PDFs/Sergio%20Vieira%20de%20Mello%20Lecture.pdf>

2. UNHCR reports that, at the end of 2009: Thailand hosted 105 300 refugees, 10 255 asylum seekers and a further 3.5 million stateless persons; Malaysia hosted 65 350 refugees (up from 36 000 the previous year), 10 267 asylum seekers and 40 stateless persons; and Indonesia hosted 370 refugees and 1 769 asylum seekers. UNHCR, 2010 Op.Cit.

3. <http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>

4. UNHCR, Strategic Use of Resettlement, 4 June 2010, <http://www.unhcr.org/refworld/docid/4c0d10ac2.html>

- **Be clearly aligned with the needs and interests of any host community.** Timor Leste, nominated by the Australian Government as its preferred country for a regional processing centre, is a young country that is facing immense post-conflict reconstruction and rehabilitation as well as broader developmental challenges. Any agreement related to the location of a regional processing centre must incorporate clear measures to ensure that associated aid is effectively targeted to further the welfare and other interests of host communities, and that it is in no way a catalyst for instability.
- **Be established in locations that have had a positive development assessment.** Such a process would assess the economic, social and environmental impacts that any centre would be likely to have on the development prospects of the country it is located in.
- **Provide humane standards of treatment, process claims fairly and quickly, allow independent monitoring of conditions, and be integrated with measures to achieve durable solutions for those requiring protection.** Australia must commit to dedicating funds and other resources, for the duration required, to ensure that any centre is administered in a manner consistent with international laws and standards, and that durable solutions are swiftly achieved for those requiring international protection. Independent monitoring of conditions and outcomes will be crucial for credibility. People being processed in such a centre will also have access to independent legal advice.

Targeting aid to strengthen refugee protection throughout the region

A properly targeted, appropriate and transparent increase in aid will be crucial to the success of a regional protection framework.

In order to ensure the integrity of Australia's international aid program, all initiatives that use aid money must be clearly oriented towards refugee and humanitarian protection in the region. Aid should not, under any circumstances, be used to fund detention centres, as has occurred in the past, or to develop non-protection-sensitive measures to combat people-smuggling or trafficking. Initiatives should not distort the aid budget from a focus on poverty reduction and, in this context, protection.

Australia currently operates an extremely modest Displaced Persons Program, which aims to strengthen protection and durable solutions for populations in 'protracted situations' and respond to the urgent humanitarian needs of those displaced by conflict.

The carefully managed expansion of this program could be a useful measure to strengthen the appropriate targeting of aid towards a regional protection framework.

Effectively targeted aid initiatives could include:

- **Tackling the causes of asylum seekers' flight** through conflict-prevention, peace building and post-conflict recovery initiatives.
- **Ensuring border management systems and rescue at sea operations are sensitive to protection obligations** through capacity-building, technical support and the development of independent monitoring mechanisms.
- **Strengthening the scope, rigour and consistency of refugee status determination systems** by encouraging and supporting regional governments' accession to the Refugees Convention and Protocol and/or the development of domestic infrastructure to facilitate the establishment of asylum systems.

- **Supporting the establishment of humane reception arrangements for asylum seekers** including access to psychosocial and medical care, and strengthened use of community-based alternatives to detention.
- **Strengthening protection for refugees awaiting durable solutions and the welfare of local host communities** through livelihood, shelter and peace-building initiatives.
- **Supporting the achievement of durable solutions for refugees**, including by strengthening prospects for voluntary repatriation through post-conflict reconstruction, shelter and livelihoods initiatives as well as independent monitoring of safety following returns.

Oxfam Australia recommends

- A bipartisan commitment to end political point scoring with the lives of people in need of protection.
- A commitment to bipartisan support for a UNHCR-sanctioned, multilateral regional protection framework and reframed, fact-driven debate regarding Australia's response to asylum seekers and refugees.
- Dedication of increased, sustained and appropriately targeted aid to strengthen protection for those who require it throughout the region.
- Australia increase its allocation of resettlement places from across the region, without compromising its commitment to resettlement from other areas of the world. Australia take a lead role in encouraging other countries to increase their allocation of resettlement places. A revision of Australia's domestic policies relating to asylum seekers and refugees to ensure alignment with our international obligations.
- Immediately following the election, the Australian Government establish a multidisciplinary expert taskforce comprising government, UNHCR, NGO and civil society members to advise it in relation to the development of an effective regional protection framework.