



International Association of Refugee Law Judges – Eleventh World Conference

Athens, Greece – 29 November to 1 December, 2017

ASYLUM AND MIGRATION LAW 20 YEARS LATER

CURRENT REGIONAL ISSUES - ASEAN Community –
"Partnering for Change , Engaging the World "

“ASEAN Perspectives, Realities, and Challenges in Asylum, Surrogate Protection and Human Rights”

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Philippines

Current regional issues -ASEAN

- This session will explore current issues and challenges *within the ASEAN region in the critical area of protection of human rights and application of the rule of law in times of refugee flow and large scale migration/ human displacement.*

Current regional issues -ASEAN

- Present an overview of the current practice of the ASEAN community on large scale refugee flow/forced migration;
- Provide an overview of the Philippine legal framework on refugee and stateless status determination as a model of best practices for the ASEAN community

Current regional issues -ASEAN

- Explore possible durable solutions wherein the JUDICIARY (of the ASEAN region) can participate as a significant stakeholder in addressing refugee flow and statelessness under the forced migration context.

Current regional issues -ASEAN

FIGURES AT A GLIMPSE




2016

Around **65 million** individuals were forcibly displaced worldwide compared to **59.5 million** in 2015

*20 people were forced to flee their homes each minute in 2016, or **one every three seconds***

FIGURES AT A FLIMPSE

- **UNHCR figures as of 2016:**
- 22.5 million refugees (out of around 65 million of total forced migrant population), over half of whom are under the age of 18.

• 	South Sudan	1.4 million
• 	Afghanistan	2.5 million
• 	Syria	5.5 million



Figures at a Glance

10 million stateless people

- denied a nationality
- deprived of access to basic rights
(food/clothing/shelter, work,
healthcare, freedom of movement,
education)



Current regional issues

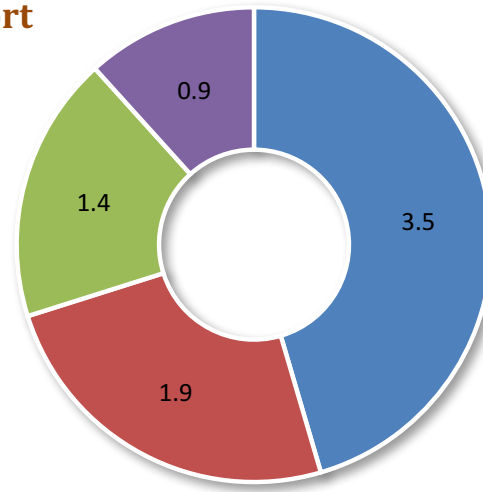
Asia hosts the largest number of refugees in the world.

Turkey	2.9 million
Pakistan	1.4 million
Lebanon	1 million
Iran	979,400 thousand

* Figures from UNHCR Report

Asia Pacific is home to 7.7 million people of concern – Majority from Myanmar and Afghanistan

* **Figures from UNHCR Report**



■ Refugees (3.5 M)

■ Internally Displaced Persons (1.9 M)

■ Stateless People (1.4 M)

■ Others (0.9 M)



Current regional issues - ASEAN

*** Figures from 2015 UNHCR Report**

As of 2015

A total of 284,949 refugees and asylum seekers were recorded in Cambodia, Indonesia, Malaysia, Thailand and the Philippines



Current regional issues - ASEAN

Three (3) major destination and transit countries:

Malaysia

Thailand

Indonesia

Current regional issues – ASEAN. ROHINGYA CRISIS



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Current regional issues – ASEAN. ROHINGYA CRISIS

- World's largest group of stateless persons. Some 620,000 Rohingyas and other ethnic groups have fled Myanmar (Rakhine State) since a violent crackdown on the Rohingya community began a month ago following a series of attacks on security posts including from various ethnic groups in the area fleeing in search of protection from ethnic conflict and violence .



Rohingya crisis

The Thai's efforts to put an end to human smuggling, triggered a regional crisis of exodus.

To evade inland border patrols, smugglers refused to land on shore, effectively holding thousands of Rohingya and Bangladeshi afloat without sanitation, food, water.

Current regional issues – ASEAN

- What is ASEAN?
- ASEAN is short for the Association of Southeast Asian Nations
- → Regional Cooperation of Southeast Asian Nations established on 08 August 1967



Purposes of the ASEAN under its Charter

1. maintain and enhance peace, security and stability
2. preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction
3. create a single market and production base
4. alleviate poverty and narrow the development gap
5. promote sustainable development
6. strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms
7. promote a people-oriented ASEAN



ASEAN Regional Community





Milestones in ASEAN

1988: Declaration of the Advancement of Women in the ASEAN Region

1993: World Conference on Human Rights and Vienna Declaration and Program of Action

→ Human Rights as universal, inherent, interrelated and interdependent

ASEAN foreign ministers ***“agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights”*** in support of the Vienna Declaration and Programme of Action of June 25, 1993.

Milestones in ASEAN

- 1997: “ASEAN Vision 2020” wherein it envisioned “*ASEAN as a concert of Southeast Asian Nations, outward-looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.*”



Milestones in ASEAN

2004: Declaration Against
Trafficking in Persons Particularly
Women and Children

Declaration on the Elimination of
Violence Against Women in the
ASEAN Region.

Milestones in ASEAN

- 2005: ASEAN SOM asked the Working Group to help implement some human rights provisions of the VAP.
 - ❖ The establishment of a commission on the promotion and protection of the rights of women and children;
 - ❖ Elaboration of an ASEAN instrument on the promotion and protection of the rights of migrant workers;
 - ❖ Promoting education and public awareness on human rights in the region; and
 - ❖ Networking among existing national human rights institutions in the region

ASEAN milestones

- All ASEAN countries have ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). And the most recent, the Convention on the Rights of Persons with Disabilities.

ASEAN milestones

- 2005-2007: The Eminent Persons Group (EPG) mention the **need for a human rights mechanism** as part of their recommendations for inclusion in the ASEAN Charter.
- **High Level Task Force (HLTF) on the Drafting of the ASEAN Charter**

ASEAN milestones

ASEAN Charter (Article 14)

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.



ASEAN milestones

2008: ASEAN Charter enters into force

Pursuant to Article 14, ASEAN
formed a High Level Panel on the
ASEAN Human Rights Body

ASEAN milestones

- 2009: ASEAN established the ASEAN Intergovernmental Commission on Human Rights

2010: ASEAN established the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children

Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children



ASEAN milestones

2011: Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community

ASEAN Decade of Persons with Disabilities (2011-2020)

- **2012: ASEAN Human Rights Declaration**

2013: ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children

ASEAN milestones

2015: Declaration on ASEAN Post-2015 Environmental Sustainability and Climate Change Agenda and ASEAN Community Vision 2025

2017: Signing of ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers

Adopting among other documents:

ASEAN Declaration on Culture of Prevention for a Peaceful, Resilient, Healthy and Harmonious Society

ASEAN Areas of Engagement in Human Rights

Awareness-Raising of
HR

Studies on
thematic issues of
HR

Advisory and
Technical
Assistance

Dialogue and
Consultation

Standard-Setting /
Framework for
human rights
cooperation

Strategies for
promotion and
protection of HR

POST - ASEAN Summit 2017

- Building RESILIENCY in ASEAN
- ASEAN Coordinating Center for Humanitarian Assistance in Disaster Management to assist Myanmar in its **humanitarian relief program**
- “**urged**” Myanmar to ensure the safety of civilians and take immediate steps to end violence in Rakhine, restore normal socioeconomic conditions , and **address the refugee problem through verification process**. Expressed support to the Myanmar Government in its efforts to **bring peace, stability, rule of law, harmony and reconciliation** between various communities as well as sustainable and equitable development in Rakhine State.

Only two ASEAN States are parties to the 1951 Refugee Convention and/or Protocol.

https://en.wikipedia.org/wiki/Convention_relating_to_the_Status_of_Stateless_Persons

- **Cambodia** **Philippines.**





SIGNIFICANT REGIONAL INITIATIVES ON REFUGEE PROTECTION NORMS IN THE ASIA- PACIFIC

- Comprehensive Plan of Action (CPA)
- Bangkok Declaration
- Bali Process
(Bali Process on People Smuggling,
Trafficking in Persons and Related
Transnational Crime)

Past Regional Initiatives

- **Comprehensive Plan of Action (CPA)**
 - devised within the context of a specific historical and regional environment, the human fallout triggered by geopolitical war due to decolonization in Southeast Asia (Vietnam).
 - established to prevent a continuing mass exodus by sea (boat people)

Past Regional Initiatives

- **Comprehensive Plan of Action (CPA)**
 - gave rise to the principles and policies of non-refoulement, Orderly Departure Program (ODP), voluntary repatriation

Past Regional Initiatives

- SUCCESS OF THE CPA WAS LARGELY DUE TO:
- Greater international response/ support/commitment by developed countries (US and international organizations);
- Vietnam (country of origin for majority of Indochinese refugees) was not an ASEAN member until 1995.
- Willingness of the affected ASEAN states (first asylum hosts) to assume the risks and burdens on the concept of **shared responsibility**.

Past Regional Initiatives

- **HOWEVER:**

The CPA model cannot be replicated on current trends of forced/large scale migration (e.g., Rohingya movement).

Failed to institutionalize refugee protection norms due to existing ASEAN policy of *state sovereignty* and maintaining *harmony* (among member States).

Past Regional Initiatives

- **BANGKOK DECLARATION**

- Formulated in 1966 by the Asian African Legal Consultative Organization (AALCO) for the protection of refugee rights
- constitutes a progressive and respected set of *principles* of refugee protection within the region. (Inspired the drafting of the OAU Convention)



Past Regional Initiatives

- **BANGKOK DECLARATION**
- **Ironically:**

Inadequate to sustain a set of state-led protection norms within the ASEAN region

Past Regional Initiatives

- **BALI PROCESS**

(Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime)

- an Australia-Indonesia-led initiative which securitizes the issue of forced “irregular” migration (asylum seekers) with emphasis on transnational crimes (human trafficking/human smuggling)
- not directly addressing refugee protection or asylum

Past Regional Initiatives

- **BALI PROCESS**

(Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime)

- involves a two-tiered system which prioritizes the selection of refugees from overseas as part of a managed orderly resettlement program
- provides sanctions to those who flee their countries of origin and arrive on Australian shores applying for asylum



Past Regional Initiatives

- **BALI PROCESS**

(Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime)

- The Bali process was observed to be a prototype of managing asylum and mixed migration flows across the region.

Past Regional Initiatives

- **BALI PROCESS**

FLAW:

Lack of a specific protection mandate

Addressed by the UNHCR through the creation of the Regional Support Office (RSO)

Past Regional Initiatives

- **BALI PROCESS – View:**

Would have been a useful tool for replication of a “regional cooperation” if it had been properly used without the politicization of forced migration issues and not comingling them as incidental issues secondary to transnational crimes.



Past Regional Initiatives

Asylum and forced migration issues are causally linked to human smuggling and human trafficking as we have witnessed in large scale migration like the Rohingya movement and the Syrian crises.

IS THERE A CURRENT ASEAN MANDATE ON REFUGEE PROTECTION ?

- While the ASEAN Charter has led to the incorporation of human rights initiatives in its regional mechanism, *the ASEAN as a rising regional bloc has yet to take the lead to the adoption of a common and collective regional approach on refugee protection or on forced migration issues as a whole.*



Relevant provisions of the AHRD (ASEAN Human Rights Declaration)

- Civil and Political Rights
- 15. Every person has the *freedom of movement and residence* within the borders of each State. Every person has the right to leave any country including his or her own and to return to his or her country.

Relevant provisions of the AHRD

- Civil and Political Rights
- 16. Every person has the *right to seek asylum in another State* in accordance with the laws of such State and *applicable international agreements*.

Relevant provisions of the AHRD

- Civil and Political Rights
- 18. Every person has the *right to nationality as prescribed by law* . No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.

PRINCIPAL ASEAN DOCUMENTS

- ASEAN Intergovernmental Commission on Human Rights (AIHCR)
- ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)
- ASEAN Human Rights Declaration (AHRD)

No specific provision addressing the **protection** of refugee, asylum seeker or forced migrant (nor even statelessness)

ASEAN perspective

- Under the Bali Process and the ASEAN, refugees or *irregular migrants* are framed within a **security/border control** paradigm and NOT as a forced migration human rights issue in itself.



- The Rohingya issue has not as yet been perceived as a forced migration crisis, but merely a *reactionary* response within a humanitarian paradigm.



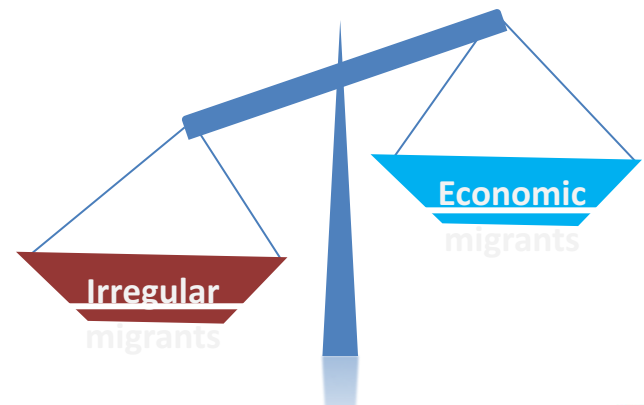
THE DYNAMICS WITHIN THE REGION

*Refugee Flow /Large Scale Forced
Migration = Irregular migration
issue*

- a political euphemism
- a designation which includes both economic and political migrants

ASEAN Perspective

- In practice, the combination of the political and economic nature has become a way for countries in the region to ignore the urgent humanitarian needs of asylum seekers *fleeing conflict and persecution* as opposed to those who have migrated to seek economic opportunity.





The ASEAN community have not as yet demonstrated any serious collective and sustained effort. Only **ad hoc and temporary** solutions, allowing regional governments to avoid collective responsibility.

ASEAN perspective

- Western
- Integration
- Human
- Rights

**state
sovereignty,
national
security and
regional
convergence**

**Migration
(voluntary or
forced)**

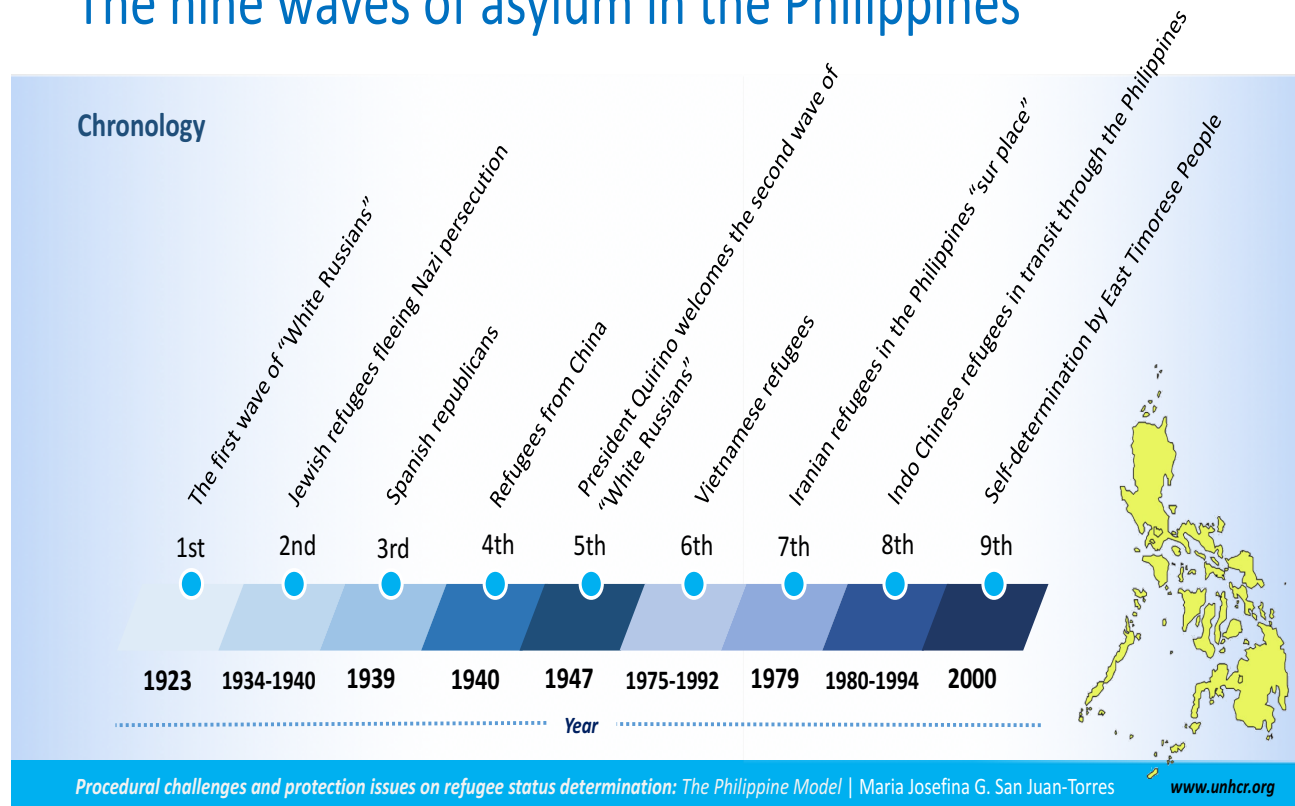
**Uniform
approach/
solidarity on
refugee or
forced
migration
issues**

**Peculiar view
of
sovereignty
Ethnicity
Identity
Religion**

Philippine Perspective

Fact sheet: Timeline and figures

The nine waves of asylum in the Philippines



Procedural challenges and protection issues on refugee status determination: The Philippine Model | Maria Josefina G. San Juan-Torres

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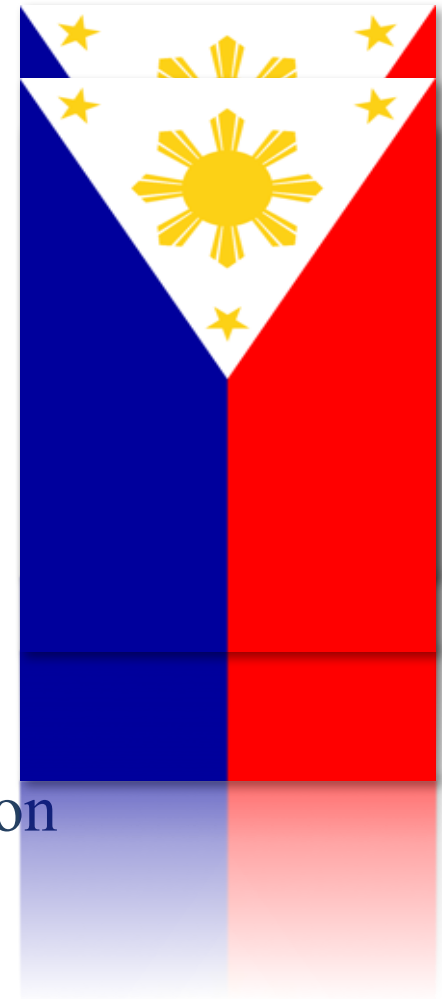
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PHILIPPINE MODEL OF REFUGEE PROTECTION

- *Ratified*
- 1951 Refugee Convention
- 1967 Protocol
- 1954 Convention Relating to the Status of Stateless Persons
- *Pledged to Accede:*
- 1961 Convention on the Reduction of Statelessness



CURRENT NATIONAL LEGAL FRAMEWORK:

The two (2) main government initiatives instituting a refugee determination procedure for the Philippines:

- **Department Circular No. 58** of the Department of Justice, Series of 2012 established the RSPPU.
- (Department Order No. 324, series of 2016, expanded the composition of the RSPPU to 20 members) .
- **Department Order No. 94**, also of the Department of Justice, Series of 1998 established the RPU.



Philippine Perspective

In 2012, the Philippines was cited for having become a state-party to the 1954 UN Convention on Stateless Persons.

It made history as the first and only country to do so in Southeast Asia. (Ratified the Convention in 2011)



Philippine Perspective

Department Circular No. 58
(Establishing the Refugee and Stateless
Status Determination Procedure) -
Instituted a statelessness
determination procedure

Refugee and Stateless Protection Unit (RSPPU) -
established within the Department of Justice.

Key features of Philippine RSSD (Refugee and Stateless Status Determination)

- FAMILY UNITY
- NON-DEPRIVATION
- NON-DETENTION /NO PENALTY OR PUNISHMENT
- NON-REFOULEMENT
- SHARED BURDEN OF PROOF (NON-ADVERSARIAL)
- ACCESS TO JUSTICE
- PRIORITY OF REFUGEE STATUS DETERMINATION
- NO CONTACT WITH AUTHORITIES OF A FOREIGN STATUS
- RIGHT TO RESIDENCE (for persons found to be stateless; includes family members)



As of 30 September 2017

Covered under the Philippines' refugee determination program

477 *recognized refugees* | **247** *asylum seekers*

UNHCR Update

Philippine Initiatives

Initiatives **expanding the protection space** for asylum seekers, refugees and stateless persons (within Philippine territory) and other best practices :

- Establishment in 2015 of the Philippine National Action Plan (NAP) to End Statelessness , adopting the 7 action points from the UNHCR's 10-year Global Action to End Statelessness launched in 2014
- Creation of the TWG on Birth Registration as part of the Philippines' NAP;
- Identification of the Populations at risk of statelessness in the Philippines (2011-2012)
- Initiative/Success of the project for the Registration and Confirmation of Nationality of Persons of Indonesian Descent (PIDs) in Southern Philippines between the **governments of the Philippines and Indonesia (step towards a durable solution to citizenship issues of PIDs.**
- (on March 14, 2016m after years of living in legal limbo, a first group of over 660 PIDs in Mindanao had their citizenship confirmed. The event took place in Glan, Sarangani . Inter-agency Committee for the Protection of Asylum Seekers , Refugees and Stateless Persons in the Philippines). **This is an important step in the global campaign to end statelessness.**

Philippine Experience

- Creation of the Inter-agency Agreement on the Protection of Asylum Seekers, Refugees and Stateless Persons in the Philippines (institutionalize referral system to other government agencies to address socio-economic rights of POCs)
- Creation of the Technical Working Group for Stateless Migrants Residing in the Philippines (facilitated naturalization of stateless persons and refugees)
- Creation of the Technical Working Group On the Right to Nationality (platform to sustain networking among stakeholders in encouraging birth registration as a means to prevent statelessness)

Philippine-Indonesia Initiative to Address Statelessness

- In 2012, the Governments of the Philippines and Indonesia with the support of UNHCR conducted a mapping and identified more than 6,000 persons of Indonesian Descent (PIDs) who were of undetermined citizenship in the Southern Philippines. Given their status, these persons' access to their rights is frequently challenged. As a result of the 6th Joint Commission for Bilateral Cooperation (JCBC) held in Jakarta, Indonesia, on 24 February 2014, both countries agreed on the importance of determining the legal status of the PIDs in the Southern Philippines with a view to providing better legal protection, and a process for the confirmation and registration of citizenship of PIDs was launched in 2014. After four phases of registration, the project has registered 8,745 PIDs.

Philippine-Indonesia Initiative to Address Statelessness

- As of May 2017, a total of 6,353(73%) out of 8,745 PIDs have been provided with durable solutions. Of these, 2,548 are confirmed Filipinos, 2,384 are confirmed Indonesians and 630 are of dual citizenship.



ASEAN PERSPECTIVE

- While all solutions or recommended actions point to New York, the Asia-Pacific rim may be where sustained action on forced migration will be brewing over the next few years.



ASEAN PERSPECTIVE

There is an urgent call for a *coordinated and cohesive* regional policy for refugees and asylum seekers based on *common traditions, shared values*, including the principles of *tolerance and mutual respect*, a *clear commitment to the right of asylum*, and a ***strong will to confront the root of human exodus.***

(minimize if not prevent them from becoming potential hotspots that would breed hostility and resentment which may give rise to security issues)

ASEAN PERSPECTIVE

- It is better to manage and integrate them
- *rather than being oblivious to their presence within the region.*
- *Worth noting are important progress in examining national security concerns arising from forced migration flows -- need for better regional information cooperation, national identification, and efficient registration systems to address statelessness)*

ASEAN Perspective

States will have to either *reexamine the Convention and its 1967 Protocol or develop new methods to facilitate the asylum process or URGE the other member nations to RATIFY the relevant refugee and statelessness instruments.*

** The 1951 Refugee Convention fails to cover all refugee situations - regional peculiarities*



- Monitoring stage
- Legislative stage
- Remedial stage
- Capacity building

- ***Multilateral*** approach to address the nexus of potential flight is through *participatory regionalism* through solidarity in the grassroots level. To be more inclusive .

Preventive Stage

- Use of early warning systems to avert mass migrations.
- Examine the root causes of human exodus
- (for adequate monitoring , to prepare for relief assistance in emergency flight situations , identify potential human movements with sufficient lead time to counteract the cause of flight)
- (supporting development as an effective approach to ameliorate possible grievance of host community/population)

Monitoring stage

- Adoption of a legal database network to anticipate possible refugee flight and human migration with refugee-like situations.
- Responsible and updated use of COI (country of origin information) as an effective tool for credibility assessment of refugee determination and to prevent potential human movement with refugee-like characteristics

Legislative Stage

- Formulation of regional instruments for refugee prevention and protection
- Incorporate and harmonize respective municipal law and international law to provide lasting and durable solutions to refugee and refugee-like phenomenon
- Develop distinctive concept of a refugee, or an expanded and flexible definition to meet the peculiar needs of the region (cultural sensitivity , issue of respect for sovereignty)

Remedial Stage

- Entails implementation of basic legal principles of respect for due process,
- Access to justice as a way of addressing the legal, policy and practical challenges when lawyers and judges are confronted with large numbers of claims and cases
- Synchronization of the diversified degrees and graduated approaches among members states on refugee and asylum cases on the application of the refugee definition, reception and treatment , grant of asylum and status determination, judicial review



Engaging the Judiciary as a durable solution -- Capacity building

- Institutionalize trainings/workshops for Justices/Judges and court personnel on asylum and refugee law - related procedures, civil registration and citizenship/naturalization procedures relevant to these POCs
- Awareness of legal issues/justiciable issues arising from forced migration
- Examine/revisit procedural reforms, if any, on appeals and judicial review, gender-related cases, civil registration procedures, citizenship/naturalization procedures to fit the needs and circumstances of the POCs

Engaging the Judiciary as a durable solution -- Capacity building

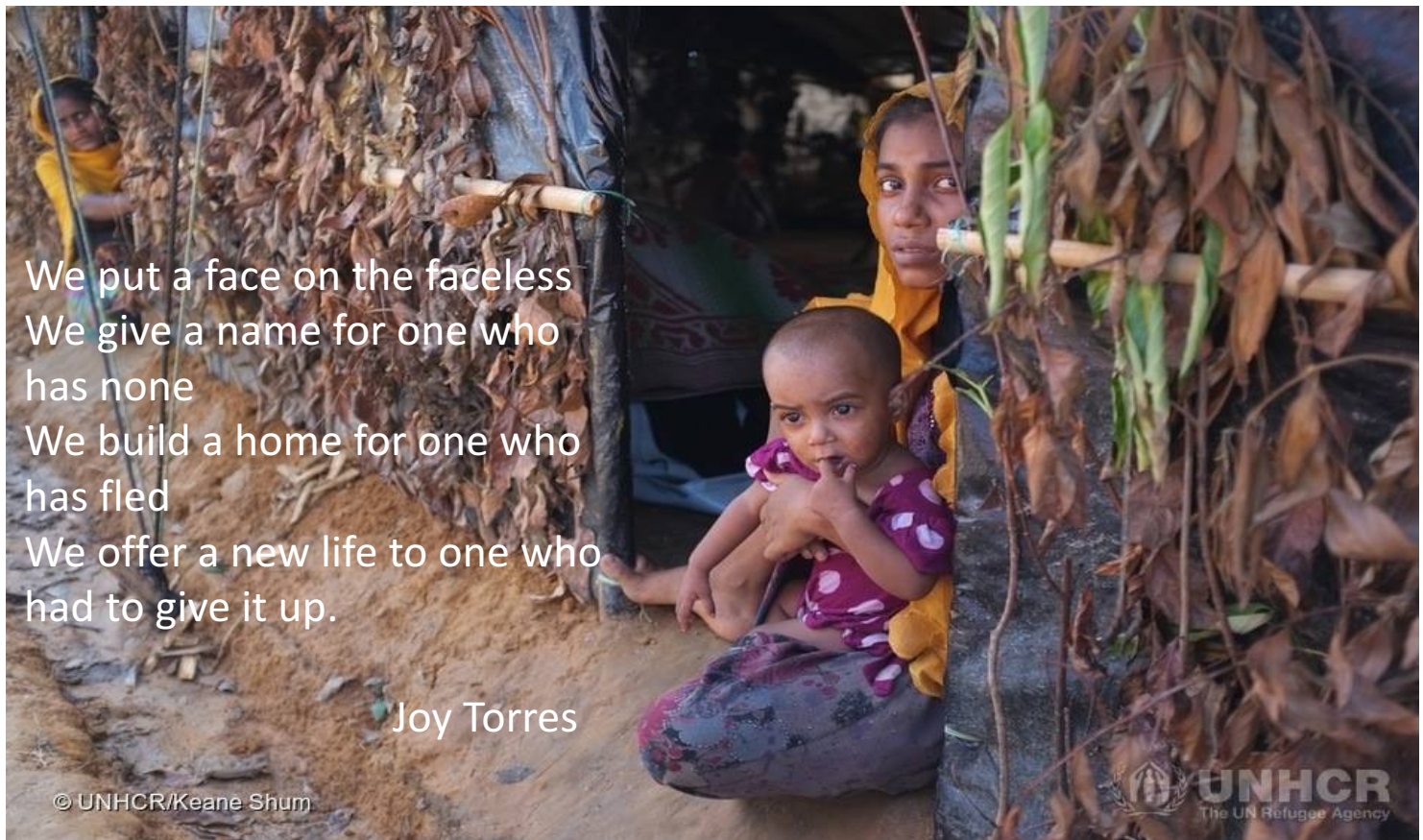
- Explore possible designation of specialized courts to handle cases affecting/involving refugees and other POCs including civil registration for “stateless” persons, unaccompanied minors, citizenship/naturalization proceedings.
- Tracking jurisprudence: improve monitoring and documentation of case law involving claims for asylum, citizenship/naturalization, civil registration, and the use of soft law



Insights on Engaging HR Mechanisms (the ASEAN way)

1. Process is as important as substance.
2. Planting seeds.
3. Changing mindsets – a roller coaster ride
4. Rice Cake Approach
5. Complementarity of Approaches

Go beyond the peripheries....



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ASYLUM AND MIGRATION LAW 20 YEARS LATER





Thank You.....

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Acknowledgments and Sources:

- Department of Justice –Refugee and Stateless Persons Protection Unit (RSPPU)
- International Association of Refugee Law Judges – Asia Pacific Chapter
- United Nations High Commissioner for Refugees (Philippine Office)
- Ateneo Human Rights Center (AHRC) –Ateneo Law School (Secretariat of the Working Group for ASEAN Human Rights Commission)
- Supreme Court – Republic of the Philippines
- Ambassador Rosario G. Manalo –Former Representative to the ASEAN Human Rights Commission)
- Atty. Ray Paolo Santiago - Ateneo Human Rights Center
- Asian Network for Refugee and International Protection (ANRIP)