

This is the original English version of the paper which was translated into Japanese for publication. To cite to this document please use the following citation: Brian Barbour, *Protection in Practice: The Situation of Refugees in East Asia*, 2 Nanmin Kenkyu Journal [Refugee Studies Journal] 81 (2012) (Published in Japanese; English original available at: <http://www.refugeestudies.jp/>)

Protection in Practice:

The Situation of Refugees in East Asia

Brian Barbour, East Asia Chair, Asia Pacific Refugee Rights Network¹

I. Introduction

In refugee protection, there are two goals which must be pursued simultaneously: protection in law and protection in practice. Without the law, refugees lack legal status, lack basic human rights, and are vulnerable to exploitation. They are trafficked, subject to arbitrary arrest and detention, left destitute and homeless, and on top of it all, are vilified as "illegal immigrants". Without the law there is no solution and refugees are left in indefinite limbo; forced to be dependent on charity; re-traumatized and desperate; and eventually are forcibly returned to situations of atrocity, torture, and possibly death. For these reasons, we must push for the adoption of a meaningful, comprehensive, domestic legal framework that is consistent with international standards and ensures refugees are actually protected. And we must do this not only because it is the right thing to do, but also because it is cheaper, more effective, and more efficient than what we are currently doing. Having legal processes that lead to timely and fair decisions; while ensuring legal, social, and economic rights are respected throughout this process not only prevents destitution and the exploitation of refugees; but it also makes the process more efficient for the government, and lowers the human and financial costs governments incur by ignoring the problem such as through prolonged immigration detention, protracted displacement in camps, or the expense of social welfare and medical care where refugees are left in destitution.

Meanwhile, in the Asia Pacific refugees are in fact here in greater numbers than in any other region, and need help now, whether there is law for it or not. Much can be done in practice even where governments refuse to meet their legal obligations, even where governments are antagonistic to refugee protection, even where law and policy are completely absent. It requires creativity, bravery, and perseverance, but it is already happening by 100s of NGOs, lawyers, and other individuals who find ways to save lives in the face of seemingly insurmountable odds.

In 2008, over 100 non-governmental organizations ("NGOs") and individuals working for refugee protection in the Asia Pacific gathered to discuss the challenges facing refugees in the region, and to begin searching for solutions.² The result was the creation and launch of a regional civil society network called the Asia Pacific

¹ Brian is currently serving on the Steering Committee of the Asia Pacific Refugee Rights Network as Chair of the East Asia Working Group; and as Director of External Relations at the Japan Association for Refugees. He has worked on refugee protection in East Asia for the past four years and travelled extensively throughout the Asia Pacific region.

² See *About Us*, Asia Pacific Refugee Rights Network, <http://www.aprrn.info/1/index.php/about-us> (last visited November 30, 2012).

Refugee Rights Network (“APRRN”).³ APRRN is led by a Steering Committee made up of sub-regional representatives from South Asia, South-East Asia, East Asia, and Australia and the Pacific; and thematic representatives in the areas of immigration detention, legal aid and advocacy, women and girls at risk, the right to health, and statelessness. In an extremely short period of time APRRN has set a precedent for collaboration, demonstrating that the best way to address diverse needs with limited resources is collaboration; working together with partners in order to share information, jointly build capacity, and be more effective in advocacy and awareness-raising by speaking with a louder and more unified voice.

This paper will seek to set the context of refugee protection in the Asia Pacific, with a particular focus on East Asia, and will identify some of the unique challenges and potential solutions that are currently being pursued. Section II will introduce the broader regional context, and the breakdown of sub-regions. Section III will look in detail at the countries of East Asia and the recent developments that have taken place there.

II. Refugee Protection in the Asia Pacific

1. Overview

Somewhere between 1/3 and 1/2 of the world’s refugees are in Asia.⁴ The countries of origin of around half of the world’s refugees are in Asia, and Asia also hosts around half of the world’s refugees.⁵ It is of course important to remind ourselves, that the actual number of refugees is unknown as many remain unregistered or misclassified as “illegal” or “economic” migrants.⁶

Despite the problems that have resulted in forced migration in the region, and the magnitude of the population seeking protection, only 15 of the 47 countries in the region have signed the Refugee Convention⁷, even fewer have taken the further step of implementing the Convention⁸, and even among those signatory countries that have implemented the Convention to some degree, few have effective, fair, and comprehensive law and policy designed

³ Asia Pacific Refugee Rights Network, Annual Report 2011, available at <http://www.aprrn.info/1/index.php/resources/reports/115-aprrn-annual-report-2011>

⁴ “By the end of 2010, ...Asia hosted over half of the global refugee population (54%)...” *Ten Years of Statistics*, 2010 United Nations High Commissioner for Refugees [UNHCR] Stat. Y.B. p.6.

⁵ “Table 1: Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by country/territory of asylum | end-2010.” UNHCR, *60 Years and Still Counting*, UNHCR Global Trends 2010 38-41.; and “Table 2: Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by origin | end-2010.” *Id.* at 42-46.

⁶ “Refugees may enter a country of asylum at numerous different points along a border. They may arrive in such large numbers that they can scarcely be counted. The influx may take place in an area where UNHCR has no access, due to insecurity or governmental obstruction. Some refugees may prefer not to be identified or counted. And UNHCR and its partners may well consider that their limited resources are best spent on the provision of life-saving assistance, rather than on counting the potential beneficiaries.” Jeff Crisp, “*Who has Counted the Refugees?*”: *UNHCR and the Politics of Numbers* 6-7 (United Nations High Commissioner for Refugees, Working Paper No. 12, 1999), available at <http://reliefweb.int/sites/reliefweb.int/files/resources/ED9302CE174AB751C1256DAD0037FB44-hcr-count-jun99.pdf>

⁷ UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (Apr. 1, 2011), available at <http://www.unhcr.org/3b73b0d63.html>.

⁸ Migration Act, 1958 (Austl.); Shutsunyukoku kanri oyobi nanmin ninteihō [Immigration Control and Refugee Recognition Act], Law No. 319 of 1951 (Japan); Lei n.º 1/2004, Regime de reconhecimento e perda do estatuto de refugiado, Decreto-Lei n.º 43201, Aprova, para adesão, a Convenção Relativa ao Estatuto dos Refugiados, assinada em Genebra a 28 de Julho de 1951 (Macau); Immigration Act 2009, 2009 S.N.Z. No. 51(N.Z.); Immigration and Asylum Law (LIA) 2003 (law No. 09/2003) (Timor-Leste).

to protect refugees. In this context, asylum-seekers and refugees are frequently subjected to human rights violations such as: forcible return back to persecution (refoulement); arbitrary and prolonged detention; lack of access to healthcare, education, and livelihood; sex and gender-based violence; trafficking; and torture.⁹ In most of the countries in the region, because governments are not meeting their responsibility with regard to refugees on their territory, UNHCR is registering refugees, conducting refugee status determination, and resettling them elsewhere.¹⁰

In this context, there are at least four fundamental barriers to effective refugee protection in host countries: (a.) the lack of legal and procedural foundations, (b.) the lack of compliance with legal standards, (c.) preconceptions and misconceptions about refugees and refugee protection, and (d.) a lack of cooperation and coordination among States and civil society.

With regard to the lack of legal and procedural foundations, as noted above there are many non-signatory countries and there is a lack of comprehensive legislation in the region. There is also a lack of procedural due process in refugee status determination: often lawyers are not allowed; there is insufficient training for lawyers and decision-makers; rejection reasons are often not given (or where they are, they are brief, standardized and vague); limited resources mean long waiting periods; and there is inconsistency and the appearance of arbitrariness to outcomes. Asylum-seekers are usually granted no legal status throughout the process (and in most countries neither are recognized refugees). As a result they are subject to arbitrary and prolonged detention, lack the right to work, and are prevented from local integration.

Furthermore, there is a lack of compliance with legal standards in the Asia Pacific. This is apparent in the adoption of restrictive laws aimed at reducing the number of asylum-seekers reaching the border¹¹; and an increasing use of harsh detention practices¹². There is a tendency to interpret the Refugee Convention definition narrowly, and recognition rates throughout Asia are extremely low.¹³ Moreover, there are many legal and practical limitations on local integration that make resettlement the only possible durable solution for many, and in some cases leave the person in perpetual limbo with no available durable solution.

Public perception about refugees also creates a significant barrier to refugee protection in Asia. Among the general public there is little understanding of what a refugee is and generally no distinction is made between the words: refugee, asylum-seeker, economic migrant or illegal

⁹ Alex Pagliaro, *Refoulement in the Asia Pacific*, Amnesty Int'l (Jan. 18, 2010), <http://www.amnesty.org.au/refugees/comments/22395/>; Bill Frelick, *Refugees Are Not Bargaining Chips*, Human Rights Watch (Jan. 6, 2010), <http://www.hrw.org/en/news/2010/01/06/refugees-are-not-bargaining-chips>.

¹⁰ *Asia and the Pacific*, UNHCR, <http://www.unhcr.org/pages/4a02d8ec6.html> (last visited June 22, 2012).

¹¹ GLOBALTIMES "Australian Lower House of Parliament passes new laws on asylum seekers" <http://www.globaltimes.cn/content/727062.shtml> (last visited September 7, 2012)

¹² International Detention Coalition, *IDC Year in Summary*, June 2012, Section 4.1 on Asia.

¹³ See, for example, the sections below on Japan and Korea

immigrant. Unfortunately, the same can often be said for the media and even the policy-makers discussing the issue.¹⁴ There is little understanding of what a refugee is and why they need help, and little interest in raising awareness about refugees. Refugees are simply viewed as a burden.

Consideration of refugee protection issues and cooperation at the regional level in Asia is critical, but is not currently happening among States. States are consulting to a limited degree about prevention of trafficking and immigration enforcement through the “Bali process”, but protection has for the most part not been included in these discussions or at best has been an afterthought. In this regard, it is exciting to see that civil society is taking the lead on regional strategy and collaboration through the APRRN Network. APRRN works under regional, sub-regional, and national strategies. There are similarities in challenges and opportunities that make collaboration at the sub-regional level important (South Asia, South-East Asia, East Asia, and Australia and the Pacific):

2. South Asia

South Asia is defined differently by different bodies, but for purposes of APRRN, it includes: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. South Asia is extremely diverse with a number of different ethnicities and languages.

South Asia includes several major refugee producing countries (Afghanistan, Sri Lanka, Nepal, Pakistan, Bhutan). Not surprisingly, almost none of the countries in this sub-region have signed the Refugee Convention. In fact, only one country has signed the Refugee Convention, and ironically, that country is also the country of origin of the largest number of refugees in the world: Afghanistan.¹⁵

3. South East Asia

South East Asia also has very few signatories to the Refugee Convention (only the Philippines, Cambodia, and Timor-Leste). South East Asia is also defined differently by different bodies, but for purposes of APRRN includes: Brunei Darussalam, Cambodia, Indonesia, People’s Democratic Republic of Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste, and Viet Nam. The countries surrounding Myanmar in particular host large numbers of displaced people from that country, sometimes in camps, sometimes in urban environments, and sometimes in detention.¹⁶ Many from Myanmar have had their citizenship denied and are stateless.¹⁷

¹⁴ Barclay Crawford, Reopen Refugee Camps, Say South Asians, Sunday Morning Post, 8 March 2009; Written replies by the Hong Kong Special Administrative Region to the list of issues (CAT/C/HKG/Q/4) to be taken up in connection with the consideration of the fourth periodic report of HONG KONG (CAT/C/HKG/4) and HK reply to Torture committee, “Hong Kong is small in size and has a dense population. Our unique situation, set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses if the Convention were to be extended to Hong Kong.”

¹⁵ UNHCR, *supra* note 6 (for Afghanistan’s place on the list of signatories) and UNHCR, *supra* note 4 (for its place as the country-of-origin of the most refugees).

¹⁶ Human Rights Watch, Unwanted and Unprotected: Burmese Refugees in Thailand (Sept. 1998), <http://www.hrw.org/legacy/reports/reports98/thai/> (refugees in Thailand) ; Refugees in Malaysia Arrested, Abused and Denied Right to Work, Amnesty Int’l (June 16, 2010), <http://www.amnesty.org/en/news-and-updates/report/refugees-malaysia-arrested-abused-and-denied-right-work-2010-06>

Large numbers of the refugees in this region, as is also true in South Asia, remain unregistered and therefore invisible.¹⁸ One of the reasons that many remain unregistered is the risk of arrest, detention, and possibly even expulsion from the country forcing many to remain in hiding or at least avoid the capital cities where UNHCR's offices are often located.¹⁹ In this environment, a positive development and innovative one, is the initiation of "mobile registration" which involves UNHCR traveling to places where asylum-seekers are located to register them there.²⁰

4. Australia and the Pacific

Australia and the Pacific, includes the countries of: Polynesia, Micronesia, and Melanesia in addition to Australia, New Zealand and Papua New Guinea. Australia exerts a tremendous political influence in this sub-region, and on the region as a whole. This can be seen in such areas as: the Australia-Malaysia refugee swap, the Bali Process, and discussions around off-shore processing or regional processing centers.²¹ The Australia-Malaysia swap was an attempt by Australia to swap people seeking asylum in Australia for people recognized as refugees by the UNHCR in Malaysia.²² The Australian Court overruled this arrangement as a violation of international law, because Malaysia is not a signatory to the Refugee Convention and does not adequately respect the human rights of asylum-seekers or refugees.²³ The Bali Process is a multi-lateral platform involving governments, UNHCR, and IOM established to work on practical measures to help combat people smuggling, trafficking in persons and related transnational crime in the Asia-Pacific region.²⁴ Furthermore, the Australian Courts have heard a number of cases involving refugee issues and this has resulted in precedents that may have an impact throughout the region.

III. Refugee Protection in East Asia

East Asia includes: China, Hong Kong S.A.R., Japan, Korea, Macau S.A.R., Mongolia, North Korea, and Taiwan. This sub-region is for the most part economically well-developed, and these countries play a strong role internationally. It is said that these countries have generally more "homogenous" populations although this is not

-16 (refugees in Malaysia); *Bangladesh*, UNHCR, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487546> (last visited June 22, 2012) (refugees in Bangladesh); Farid Ahmed, *Bangladesh Turns Back Refugees Amid Sectarian Violence in Myanmar*, CNN (June 14, 2012),

<http://edition.cnn.com/2012/06/13/world/bangladesh-myanmar-refugees/index.html>.

¹⁷ Amnesty Int'l, *Myanmar: The Rohingya Minority: Fundamental Rights Denied* (May 2004), <http://www.amnesty.org/en/library/info/ASA16/005/2004> (follow "PDF" hyperlink); The International Observatory on Statelessness, *Burma/Myanmar*, available at: <http://www.nationalityforall.org/burma-myanmar>

¹⁸ UNHCR, *supra* note 4 at 15; *Id.* at 41.

¹⁹ *Refugees in Malaysia Arrested, Abused and Denied Right to Work*, *supra* note 14; Arrest of refugees is so common in some places that community groups have formed, and have developed some practical initiatives to protect themselves.

²⁰ UNHCR, Policy Dev. & Evaluation Serv., *But when will our turn come? A Review of the Implementation of UNHCR's Urban Refugee Policy in Malaysia*, U.N. Doc. PDES/2012/02 (May 2012) (prepared by Jeff Crisp, Naoko Obi & Liz Umlas), available at <http://www.unhcr.org/4faa1e6e9.html>.

²¹ See 7. *What is the 'Pacific Solution'?*, subheading to *Face the Facts 2005*, Austl. Human Rights Commission, http://www.humanrights.gov.au/racial_discrimination/face_facts_05/refugee.html#q7 (last visited June 22, 2012).

²² *Australia Court Rules Out Refugee 'Swap' with Malaysia*, BBC News (Aug. 31, 2011), <http://www.bbc.co.uk/news/world-asia-pacific-14727471>

²³ *Plaintiff M70/2011 v. Minister for Immigration and Citizenship* [2011] HCA 32 (Austl.)

²⁴ See *BaliProcess.net*, <http://www.baliprocess.net/> (last visited June 22, 2012)

entirely true.²⁵ Compared to the rest of the region, there are several signatories to the Refugee Convention including: China, Japan, and Korea²⁶ (China has done nothing except sign the treaty, but more about this below).

These countries tend to be very exclusive. This can be seen in the extremely low recognition rates among those who seek asylum here.²⁷ Nevertheless there is potential for change in this sub-region given the relative strength of the rule of law.²⁸

One interesting characteristic of this sub-region involves terminology. The word refugee has been translated as “nanmin” (in Chinese, Japanese, and Korean) using the Chinese characters for “difficult persons”.²⁹ Therefore, there is already some negative connotation to the word itself, making awareness-raising all the more important so that people do not simply think of refugees as a burden.

1. China

We begin with the most complicated national context: China. As noted above, although China is a signatory of the Refugee Convention, it has no legal system for the protection of refugees.³⁰ Furthermore, it is in the top 10 of refugee producing countries in the world.³¹ Because China does not process refugee claims, the UNHCR Beijing Office engages in RSD.³² However, it should come as no surprise given the size of China that accessing this office can be extremely costly and difficult. Distance and cost aside, it is also dangerous for refugees to seek protection in China. For example, it is well known that China regularly deports North Korean refugees back to North Korea claiming them to be “economic migrants”.³³ Getting assistance to refugee populations in China is also an issue for UNHCR and other international humanitarian agencies as they are often denied access to these populations, such as is happening at the border of Myanmar.³⁴ Moreover, aside from UNHCR, there are few NGOs in China, even fewer that are independent, and none that we are aware of that are able to openly serve refugee populations.³⁵

On 30 July 2012, China passed a new Exit-Entry Administration Law which includes a provision in Article 46 that

²⁵ John Lie, *Multiethnic Japan* (2001).

²⁶ Crisp, J, *supra* note 6.

²⁷ 平成 23 年における難民認定者数等について[Concerning Refugee Recognition numbers in 2011], 法務省[Japan Ministry of Justice] (Feb. 24, 2012), http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00085.html.

²⁸ See, e.g., *Secretary for Security v. Prabakar*, [2005] 1 H.K.L.R.D. 289 (C.A.) (H.K.); *FB v. Dir. of Immigration*, [2008] 2 H.K.L.R.D. 346 (C.A.) (H.K.); *A v. Dir. of Immigration*, [2008] 4 H.K.L.R.D. 752 (C.A.) (H.K.).

²⁹ *Refugees Int'l Japan, 2009/2010 Annual Review* 3 (2010),

http://refugeesinternationaljapan.org/docs/RIJ_AR_2010.pdf.

³⁰ UNHCR, *supra* note 6; See also *China*, UNHCR, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487cd6> (last visited June 22, 2012).

³¹ UNHCR, *supra* note 4 at Figure 6, 15.

³² *Asia and the Pacific*, *supra* note 10

³³ Mike Kim, *Escaping North Korea: Defiance and Hope in the World's Most Repressive Country* 75 (2008); *South Korea Passes Resolution on North Korea Refugees*, BBC News (Feb. 28, 2012), <http://www.bbc.co.uk/news/world-asia-17187469>.

³⁴ USCRI World Refugee Survey 2009: China, Law and Policy (“China also denies UNHCR...”)

<http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-wrs-country-updates/china.html> (last visited September 7, 2012)

³⁵ Kim, *supra* note 28.

would recognize refugees and provide them with legal status and permission to remain.³⁶ We have yet to see whether regulations or further legislation will follow.

China is further complicated by the idea of one country, two systems³⁷ resulting in the Hong Kong Special Administrative Region, and the Macau Special Administrative Region. The Refugee Convention has been extended to Macau who has recently developed a national system,³⁸ but has not been extended to Hong Kong where UNHCR still engages in RSD and resettles refugees elsewhere³⁹. China also claims sovereignty over Taiwan, but has never in fact exercised any control over Taiwan, and this has left Taiwan in a vacuum with regard to its status internationally.⁴⁰ Let's look at each of these contexts in turn.

2. Hong Kong S.A.R.

Hong Kong was a colony of the United Kingdom (UK) from 1842-1997. At the time of the handover, China declared that all treaties that had been extended to Hong Kong by the UK, and only those treaties, would remain extended.⁴¹ This did not include the Refugee Convention which the British had never extended to Hong Kong. However, the Convention Against Torture (CAT)⁴² was extended to Hong Kong, and under Article 3 of that Convention a person cannot be deported to a country where they are at serious risk of torture. The Hong Kong Court has ruled that Hong Kong is therefore obligated to screen potential deportees to ensure there is no risk of torture upon deportation.⁴³

In this context, UNHCR's Hong Kong sub-office engages in refugee status determination and must seek resettlement to a safe third country as the only durable solution available for identified refugees in Hong Kong.⁴⁴ Meanwhile, the Hong Kong Government engages in torture screening to determine whether protection is warranted under CAT.⁴⁵ Only one person has ever been protected under CAT by the Hong Kong Government⁴⁶; and although a successful CAT claimant will not be deported, they are not recognized by any legal status or given

³⁶ Chapter III, Article 46. Aliens who apply for status of refugees may stay in China with temporary ID certificate issued by the public security organs during the discrimination for status of refugees; aliens who are assessed as refugees may stay and reside in China with refugee identity certificate issued by the public security organs.

³⁷ The meaning of "one country, two systems" and its implications are somewhat ambiguous, particularly with regard to international law and extension or non-extension of treaties. See Xianggang Jiben Fa art. 153 (H.K.), available at http://www.basiclaw.gov.hk/en/basiclawtext/chapter_7.html; Kelley Loper, *Human Rights, Non-refoulement and the Protection of Refugees in Hong Kong*, 22 Int'l J. Refugee L. 404 (2010).

³⁸ Lei n.º 1/2004, Regime de reconhecimento e perda do estatuto de refugiado, available at <http://bo.io.gov.mo/bo/i/2004/08/lei01.asp> (Macau).

³⁹ *China*, supra note 25; Loper, supra note 30.

⁴⁰ Restoration of the Lawful Rights of the People's Republic of China in the United Nations, G.A. Res. 2758, U.N. GAOR, 26th Sess., U.N. Doc. A/8429 (Oct. 25, 1971), available at <http://www.un.org/documents/ga/res/26/ares26.htm> (follow "2758 (XXVI)").

⁴¹ Sino-British Joint Declaration, China-U.K., Annex I, art. XI, available at <http://www.emab.gov.hk/en/issues/jd3b.htm#foreign>.

⁴² Convention Against Torture (<http://www.hrweb.org/legal/cat.html>).

⁴³ Prabakar, supra note 23.

⁴⁴ *China*, supra note 25.

⁴⁵ *Annual Report 2009-2010*, Immigration Department, http://www.immd.gov.hk/a_report_09-10/eng/ch4/index.htm (last visited June 22, 2012).

⁴⁶ Mark Daly, *Refugee Law in Hong Kong: Building the Legal Infrastructure*, Hong Kong Lawyer (Sept. 7, 2009, 2:39 AM), <http://law.lexisnexis.com/webcenters/hk/Refugee-law-in-Hong-Kong-building-the-legal-infrastructure>.

any additional rights.⁴⁷ Furthermore, it would appear that those protected under CAT may still be deported later, if it is determined that there is no longer a risk of torture.⁴⁸

Despite its complicated system, Hong Kong has three positive lessons to teach other jurisdictions: (1) the importance of an independent judiciary and strong rule of law; (2) the importance of a strong civil society; and (3) the potential for Government and NGOs to work together.

First, most of the positive developments that have taken place in Hong Kong have come from the judiciary, and strategic litigation by the law firm Barnes and Daly.⁴⁹ The court is willing to hear cases involving international law issues, is willing to say whether the Government's actions are in accordance with domestic and international law, and the Government respects the decisions of the courts and acts in accordance with its decisions.

Second, Hong Kong has a strong civil society, and many NGOs are working to fill gaps and address challenges by providing: *pro bono* legal aid, training and expertise, financial and material assistance, counseling, adult education, recreation, and advocacy to promote further development to refugee law and policy in Hong Kong.⁵⁰

With regard to Government and NGO collaboration, it was following the settlement of a court case about the government's obligations to torture claimants forced into destitution, that the Government responded and sought bids from NGOs to provide basic needs in-kind to asylum-seekers and torture claimants.⁵¹ An NGO, International Social Service (ISS), was chosen to be the implementing service provider funded by the HKSAR Government, and provides social counseling, and in-kind food, shelter, and basic needs.⁵² As a Government and UNHCR implementing partner, ISS has the ear of the Government and UNHCR alike to raise the pressing needs of the beneficiary population, and what has developed is a truly consolidated program with each institution playing a part in the services.

3. Macau S.A.R.

The Refugee Convention has been extended to Macau, which is now the only part of China that has developed a legal system for refugee status determination. It is still early in Macau's legal development in this area. Macau law provides for the possibility of a Macau ID Card being granted to a recognized refugee,⁵³ nevertheless, to date

⁴⁷ Loper, *supra* note 30 at note 143.

⁴⁸ Legislative Council Panel on Security, Background Brief Prepared by the Legislative Council Secretariat for the Special Meeting on 29 September 2009 Review of the Torture Claim Screening Mechanism (Sept. 23, 2009), available at <http://www.legco.gov.hk/yr08-09/english/panels/se/papers/se0929cb2-2514-2-e.pdf>.

⁴⁹ Daly, *supra* notes: 28, 43, 46.

⁵⁰ For example, in addition to the ongoing work of the United Nations High Commissioner for Refugees (<http://www.unhcr.org.hk>); Christian Action Chungking Mansions Service Centre (<http://www.christian-action.org.hk>); Hong Kong Refugee Advice Centre (HKRAC) (www.hkrac.org); International Social Service (ISS) (www.isshk.org); Society for Community Organization (SoCO) (www.soco.org.hk); Vision First (<http://www.visionfirstnow.org/>).

⁵¹ Daly, *supra* note 40 (see Bag of Rice Cases).

⁵² See *Migrants Programme*, International Social Service, http://www.isshk.org/e/customize/migrants_assistance.asp (last visited June 22, 2012).

⁵³ "Pursuant to the stipulations of Administrative Regulation No. 9/2010 'The Regulation of Macao Special Administrative Region Refugee Identity Card', the Identification Services Bureau will issue the Refugee Identity Card to persons who are qualified as refugee in accordance with Law No. 1/2004 'The Regime of Recognition and Loss of

no one has yet been granted refugee status in Macau.⁵⁴ In 2011, the first civil society organization with a mandate for refugees was launched in Macau known as the Association for Refugees' Welfare.⁵⁵

4. Taiwan

Taiwan is perhaps the most complicated jurisdiction in East Asia. Taiwan is not a signatory to the Refugee Convention, and the UN would not accept Taiwan's signature on this treaty as it is not recognized as a State or UN Member.⁵⁶ Taiwan could, however, go ahead and promulgate a national law implementing the Refugee Convention, and they currently have such a law pending with the Legislative Yuan after passing the Executive Yuan.⁵⁷ There are some issues that remain with regard to the law, such as: the law provides for recognition as a refugee without much focus on rights, and it remains unclear whether the Refugee Act would apply to those from Mainland China, Hong Kong, and Macau.⁵⁸

Political complications aside, there are a number of people in refugee-like situations in Taiwan that are already being protected by Taiwan through special provisions in the immigration law.⁵⁹

5. Mongolia⁶⁰

Mongolia is also not a signatory to the Refugee Convention. Therefore, UNHCR has an arrangement with the Mongolian government to engage in RSD and Resettlement. There will be no deportation or detention throughout this process. Unfortunately, UNHCR had to close its office in Mongolia in March 2012 because of funding cuts. Nevertheless, UNHCR maintains a contractual presence, and one staff member remains stationed in Mongolia to facilitate RSD through the Office in Beijing. The number of asylum-seekers approaching UNHCR is small, but there may be many who are just not registered or known, particularly from: North Korea and China (Inner-Mongolia). In addition, there are around 300 stateless Kazaks in Western Mongolia⁶¹, ethnic Mongolians who renounced their nationality in the early 1990s in order to acquire Kazakh nationality but were subsequently unable to do so.

6. North Korea

North Korea is widely recognized as one of the most repressive and closed countries in the world. The politics

Refugee Status? *Refugee Identity Card*, Government Information Bureau (Apr. 26, 2010, 18:55), <http://www.gcs.gov.mo/showNews.php?DataUcn=44503&PageLang=E>.

⁵⁴ *No Refugee Status Ever Granted*, Macau Daily Times (Sept. 29, 2011, 21:29),

<http://www.macaudailytimes.com.mo/macau/30055-no-refugee-status-ever-granted.html>.

⁵⁵ *Caritas Macau Sets Up Association for Refugees' Welfare*, Macau News (Sept. 16, 2011),

<http://www.macaunews.com.mo/content/view/1462/lang.english/>.

⁵⁶ Restoration of the Lawful Rights of the People's Republic of China in the United Nations, *supra* note 34.

⁵⁷ *Refugee Draft Bill Passed*, China Post (Dec. 31, 2009),

<http://www.chinapost.com.tw/taiwan/national/national-news/2009/12/31/238854/Refugee-draft.htm>; Shih Hsiu-chan,

Cabinet Passes Draft Refugee Legislation, Taipei Times (Jan. 1, 2010),

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

⁵⁸ Based on author interviews.

⁵⁹ Shih Hsiu-chan, *supra* note 52, and author interviews

⁶⁰ The information we have on Mongolia is based on a field visit and mapping exercise conducted by the Japan Association for Refugees and APRRN.

⁶¹ U.S. Department of State, Trafficking in Persons Report 2011, <http://www.state.gov/g/tip/rls/tiprpt/2011/164232.htm> (last visited September 11, 2012)

of the surrounding countries makes their protection both more and less complicated. North Korean's are 'citizens' in South Korea if they can make it there, whereas in China they are called 'economic migrants' and are regularly deported back to horrific treatment in North Korea. Many North Korean women are trafficked, some refugees remain in China and attempt to blend in, and many travel long escape routes through China to other Asian countries where they either seek asylum or make their way to the South Korean consulate. In recent years, the Chinese government has tightened the security and increased the number of police outside the consulates, making it more and more difficult for North Korean refugees to seek safety and avoid deportation.⁶²

7. South Korea

South Korea became a signatory of the Refugee Convention in 1991, but in 20 years has only recognized 268 out of over 4,011 applications for asylum for an 8% recognition rate.⁶³ Concerns remain about non-refoulement, access to asylum, prolonged detention, and due process, particularly at the border. At the same time, over 10,000 North Koreans have been admitted, not as refugees, but as citizens and are provided with basic job training, healthcare, and financial subsidies.⁶⁴

South Korea is currently constructing a refugee reception center.⁶⁵ It is to include language training, vocational counseling, training for social integration, and medical care. It will be located near the airport on an island far on the outskirts of Seoul which has resulted in concerns about segregation, limiting freedom of movement, and putting barriers on integration.

One of the most recent and most exciting developments in the entire Asia Pacific region is the passing of a Refugee Bill on 29 December 2011.⁶⁶ This Bill was the result of collaboration between NGOs, lawyers, the Ministry of Justice, the National Assembly, the National Human Rights Commission, and UNHCR, and is comprehensive legislation independent from the immigration law. The Bill will not go into effect until July of 2013, and may be adapted prior to that. However, the law in its current form covers: RSD procedures, reception procedures at the airport and seaports, information guides, interpretation/translation, legal aid, NGO presence at interviews, video and audio recording of interviews, and copies of interview transcripts among other things.

8. Japan

Along with the Philippines, Japan was one of the first countries in Asia to sign the Refugee Convention. Continuing as a precedent setter, Japan has also now become the first country in Asia to serve as a resettlement country for refugees elsewhere without a durable solution.⁶⁷ Japan has national RSD procedures, and has been

⁶² Mike Kim, *supra* note 29.

⁶³ Advocates for Public Interest Law (APIL), NGO Submission, Universal Periodic Review (UPR) on the Republic of Korea (2012).

⁶⁴ Brad Adams, *Korea Needs to Open its Doors*, Human Rights Watch (Aug. 22, 2007), <http://www.hrw.org/news/2007/08/20/korea-needs-open-its-doors>.

⁶⁵ APIL, *supra* note 57; *see also Republic of Korea*, UNHCR, <http://www.unhcr.org/pages/49e489036.html> (last visited June 25, 2012).

⁶⁶ Refugee Act, Act No. 11298, Feb. 10, 2012 (S. Kor.), *available at* <http://www.unhcr.org/refworld/docid/4fd5cd5a2.html>.

⁶⁷ *Welcome to Japan: First Asian Country Joins UNHCR's Resettlement Programme*, UNHCR (Sept. 28, 2012),

recognizing refugees since 1981. However, its recognition rate is extremely low. Over 10,000 people have applied for refugee protection in Japan in 30 years, but Japan maintains only a 5% overall recognition rate among those applications, with only 0.7% of applications being granted last year.⁶⁸ Following a regional campaign around finding alternatives to immigration detention, Japan has also recently conducted national workshops and consultations.⁶⁹ These consultations along with other factors have led to the creation of a detention monitoring committee; and the conclusion of an MoU between the Ministry of Justice (MOJ), the Forum for Refugees Japan (National NGO Network), and the Japan Federation of Bar Associations establishing a cooperative framework to improve the asylum process and expand the use of alternatives to detention.⁷⁰ The hope is that these talks will lead to practical changes in law and practice.

IV. Conclusion

In the Asia Pacific region, we are far from achieving either protection in law or protection in practice. Most governments in Asia lack any law or policy, and many might be said to fall into the category of antagonistic to refugee protection. As to be expected in such an environment, the number of refugees is profound and the indignities and abuses they suffer are dramatic. As a result, protection in practice is given particular importance among the NGOs working in this region. Finding realistic and practical solutions; effective or clever solutions, to the challenges the refugees we work with face is the essence of refugee protection in Asia.

It is easy to feel disheartened and overwhelmed when one looks at the magnitude of the problem, but when you step back and look at all that has been accomplished in a relatively short period of time, you realize that years from now, if we continue to pursue these practical initiatives, the situation will be dramatically improved. Despite the challenges, there is reason to be optimistic. The changes we are seeing in the region are as dramatic as the problems. The leadership and strength among civil society is growing and having an impact. Those who devote time, energy and sometimes their careers to refugee protection are beginning to realize that the burden is on them to find solutions, but that they have the knowledge, expertise, and capacity to do so.

<http://www.unhcr.org/4ca1d8e66.html>.

68 Japan Ministry of Justice, *supra* note 22.

69 Grant Mitchell, Expanding alternatives to immigration detention in Japan, International Detention Coalition (Oct. 18, 2011), <http://idcoalition.org/expanding-alternatives-to-immigration-detention-in-japan/>.

70 シンポジウム「入管収容の収容代替措置を考えるー外国人の収容を回避するために」ー, Japan Association for Refugees, <http://www.refugee.or.jp/event/2011/10/15-0000.shtml> (last visited June 25, 2012).