

**Strategies to Promote Protection inside and outside of RSD**

Recommendations

*Compiled by:*

Legal Aid and Advocacy Working Group (LAAWG)

Asia Pacific Refugee Rights Network (APRRN)

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## **Our Understanding of the RSD Crisis**

In sum, the numbers are too much to handle, resulting in growing backlogs. In 2014, UNHCR received 243,080 new RSD applications, but was only able to make 96,400 decisions. This was a 27% increase over the previous year, and still fell far short. At this rate, there will be major increases in backlogs in RSD operations with waiting periods that will only get longer over time.

Meanwhile, RSD is resource and time intensive often with limited protection benefits in the host country even after recognition. UNHCR recognized refugees may still be denied legal status, lack access to housing, health care, work or education; and be at risk of exploitation, detention and refoulement.

Many consider that there must be less resource intensive ways to achieve the same or better protection outcomes for a greater number of persons of concern. With this goal in mind, UNHCR's Strategy seeks three things:

1. Move away from RSD responsibly
2. Make efficiency gains in RSD where it is used, and
3. Better engage with States in RSD moving towards greater State responsibility.

From 25-26 April 2016, the Legal Aid and Advocacy Working Group of APRRN held a retreat in Bangkok Thailand<sup>1</sup>: 27 persons from 12 countries across the Asia Pacific Region participated.<sup>2</sup> Recommendations were produced in at the retreat and in consultation with our members.<sup>3</sup> These Recommendations are being shared with UNHCR Headquarters, the Regional Office, and with the National Offices in countries where APRRN has members. Some are directed to UNHCR; others are directed at all relevant partners. Our Members do not believe that UNHCR alone is responsible for refugee protection: addressing the many challenges and diverse needs of persons in need of protection with limited resources means everyone must do their part in a well-coordinated and collaborative network.

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APRRN Legal Aid and Advocacy Working Group Retreat, *Bangkok, Thailand, 25-26 April 2016*

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<sup>1</sup> See Agenda in Appendix 2

<sup>2</sup> Japan, Korea, Hong Kong S.A.R., Thailand, Indonesia, Malaysia, Cambodia, India, Nepal, Pakistan, Sri Lanka, and the UK.

<sup>3</sup> For a list of participants see Appendix 3.

## **Key Principles**

1. **Collaboration:** Whatever the solution, the starting place is collaboration. If UNHCR develops or implements a solution on its own, it will not work. Collaboration from the earliest stages is critical, from brainstorming and design, through to implementation and evaluation.
2. **Context-specific:** We understand that different jurisdictions have different considerations and challenges, so while global standards and guidelines are essential, national standard operating procedures ('SOPs') should also be produced. Civil society networks are ready to engage and assist at all levels, and must be if such a process is to be successful.
3. **Exploring different models:** We encourage the development of different collaborative models at this early stage rather than committing to any particular overhaul while we are unsure of the effect and consequences.
4. **Monitoring & Evaluation:** These models should be considered 'pilots' with strict monitoring and evaluation against shared and agreed upon protection criteria. Be critical and invite constructive criticism. These pilots should be tweaked, revised, or abandoned as necessary based on whether they have significantly improved protection outcomes, without accompanying deterioration of other protection outcomes, as assessed through stringent, ongoing monitoring and evaluation.
5. **Be practical & principled:** We do not have to sacrifice due process for the sake of efficiency. In fact, we believe that the lack of due process is more often the cause of inefficiency. For example, lawyers and legal aid, when serving competently and ethically, provide substantial efficiency benefits while improving outcomes and accuracy of RSD. Coordination through referrals guides and networks help to identify persons and their vulnerabilities and needs in an urban refugee context, and allow service providers to meet diverse needs with limited resources.
6. **Advocacy, Capacity Building, and National Ownership:** While it might seem that there is no time left for advocacy or capacity building of local authorities in the face of the number of immediate needs, unless UNHCR wants to be in the RSD business forever, each office needs to prioritize advocacy on behalf of refugees and outreach and capacity building of local and national actors as the long-term solution. This does not mean engagement with only or even primarily government policy-makers, but should include: schools, hospitals, lawyers, law schools, law students, police, judges, municipalities and communities, social workers and every relevant service provider. Every step by these local actors towards acceptance of responsibility for the refugees and asylum-seekers within their reach, with some accountability and justiciable framework, is progress towards meaningful State protection. Achieving State responsibility will require having a sustained commitment together with a planned and coherent long-term vision of the process of transition
7. **Refugee-focused:** We must not forget the everyday lived reality of refugees who are in need of protection here and now. "Even 1 refugee without hope is too many." We must not reduce our burden just by re-categorizing people as not being 'persons of concern' and failing to count them. Refugee voices must be sought-out and listened to. Protection strategies should be based on genuine, ongoing engagement with refugee communities and civil society.

## **Recommendations to Address the RSD Crisis**

<b>Recommendations:</b>	
1.	Grant <i>prima facie</i> recognition, or automatic extended mandate protection
2.	Triage for RSD: Engage in Early Needs Assessment and Prioritization
3.	Establish National referrals networks with de-centralized case management
4.	Focus on local reception and self-sufficiency programming for those outside of RSD streams
5.	Prioritize trust-building with local actors: build bridges and capacity
6.	Facilitate Legal Representation in every RSD operation
7.	Provide UNHCR Cards
8.	Move Away Responsibly: Better Engagement with States During Transition
9.	Monitor and evaluate pilots strictly and adopt lessons learned for future pilots
10.	Ensure Procedural Standards do not endorse manifestly unfounded procedures as an international norm
11.	Publish translated COI on Refworld
12.	Establish or Improve Systems for quality and ethical interpretation
13.	Share UNHCR’s quantitative data with partners
14.	Translate Decisions for each Applicant
15.	Consistently provide opportunities for debriefing and self-care for decision-makers

### **1. Grant *prima facie* recognition, or automatic extended mandate protection**

For UNHCR to recommend *prima facie* recognition for certain populations as a part of its eligibility guidelines, may politically be unrealistic in most cases. *Prima facie* recognition may be granted more flexibly in a camp setting to all who enter the camp from a certain country without establishing a certain policy or guideline globally. UNHCR should consider this more flexible approach in urban contexts as well, where a particularly large portion of the population of persons of concern are from a similar group or context. It may not be necessary to declare *prima facie* recognition as a matter of global policy. A national office, perhaps through some kind of simple internal approvals system, should be able to decide to grant *prima facie* recognition or automatic extended mandate protection for certain populations where it would result in significant protection and efficiency benefits. UNHCR may also develop standardized positions on certain caseloads across country offices, with a regular review and monitoring by Geneva or Regional Offices including evaluation of acceptance rates for specific caseloads across the region. We have noted sometimes vast differences in acceptance rates across the region for the same population.<sup>4</sup>

### **2. Triage for RSD: Engage in Early Needs Assessment and Prioritization**

Malaysia recently piloted an expedited ‘Status Verification Procedure’ (“SVP”) with the goal of identifying quickly those with priority needs and vulnerabilities and ensuring quicker access to RSD and resettlement for

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<sup>4</sup> This was done in Egypt vis-à-vis all Sudanese refugees. Only those selected for resettlement were interviewed for RSD.

them. Assessments by APRRN members indicated that the pilot was effective in identifying vulnerable persons and quickly referring them to RSD for timely assessment and pursuit of durable solutions. At the same time, a person screened out at this stage was not even considered a ‘person of concern’ to UNHCR. APRRN members support prioritization and needs assessment to serve as a kind of triage system like hospitals perform at reception, where you are identifying those with the greatest protection needs and vulnerabilities and prioritizing them for early registration and RSD. Those who are not identified as a priority are still persons of concern and must be referred for support services, and scheduled for a mainstream RSD process, though they may receive appointment dates in the future. The protection needs and vulnerabilities of a person may change over time, and so this assessment should be revisited periodically, and through referral by a Network Service Provider or Case Manager. The mainstream caseload must be told about the reality up-front, so that false expectations and preconceptions are addressed, while protection must go beyond RSD and extend to the entire caseload of persons of concern. High standards of fairness should be assured by UNHCR in the RSD process including access to all relevant interviews by legal representatives, detailed written reasons for refusal, and access to transcripts/recordings and other information in the file among other procedural standards measured next to UNHCR’s Procedural Standards.

### **3. Establish National Referrals Networks with de-centralized case management**

All relevant service providers are networked into a common referrals system used by all service providers, and referrals are made systematically from service providers to UNHCR, from UNHCR to service providers, and from service provider to service provider. Every service provider has a ‘Referrals Guide’ on their desk. Consolidation of a ‘Referrals Guide’ will require outreach to partners with a set of agreed upon questions and should not only include UNHCR and NGOs, but also hospitals, clinics, reproductive health centers, schools, language schools, child care providers, community-based organizations, city offices, and any number of other civil society actors that provide services or assistance in accessing services. Conducting outreach will also contribute to building trust and the identification of new referrals.

Common referrals forms are available to pull out the critical information needed, and trainings are provided to all service providers on needs, vulnerabilities, and risks assessment (the referrals form from the Malaysia Office, and referrals training serve as excellent models for this kind of effort). Data management systems (databases) that suit the refugee context are developed. This should be done in a way that allows the protection of client information, while also making it accessible, searchable and sortable by a variety of criteria. These databases are shared with all members of the network (access to each service provider’s database does not have to be shared, only the database software). This will allow for better data security to ensure confidentiality than what currently takes place in most places where NGOs are often left to work through hard copy files, Microsoft Access databases, free online databases, or even just Microsoft Excel sheets to maintain client data.

Shared Codes of Conduct, consent forms, and complaints mechanisms are adopted or jointly drafted and voluntarily subscribed to as a prerequisite for participation in the referrals network. ‘The Nairobi Code: Model Rules of Ethics for Legal Advisors in Refugee Cases’ is an excellent example and best practice for the production of shared Codes of Conduct, and this Code should be adopted in the context of legal aid, as is, because it is well-established and ensures harmonization of international practice. Codes of Conduct relevant to a broader range

of service providers should also be produced with the goal of establishing an international best practice model on the level of the Nairobi Code. This is underway in some jurisdictions and by some networks. APRRN for example has already adopted a ‘Code of Conduct’ and ‘Code of Good Practice’ for the Network, and Members are encouraged to adopt it as is, or customize such a code for their local practice. Where not available, going through the process of jointly drafting the Code of Conduct is good for capacity building in the area of ethics, and all Network members should ultimately be asked to sign the Code after receiving training. An accountability framework of some kind (and a ‘complaints mechanism’) should accompany the Code to provide a mechanism for addressing breaches.

Using a case management approach then means that Case Managers serve as points of contact, maintain the interagency referrals system, may provide some counseling, but do not provide services. Case Managers (whether UNHCR staff, NGO staff, or both) each have a big picture understanding of their case load. Case Managers develop a case plan to assist and empower those persons registered to achieve some kind of self-sufficiency, coping strategies, and solutions within the context of their situation. This case management system can be decentralized or semi-decentralized in partnership with some referrals network members. Case Managers maintain the interagency referrals system and know the availability and capacity of relevant service providers so that referrals can be made systematically and regularly within the capacity of each service provider. Gaps are identified where no referrals are available, or where the capacity of available referrals is far exceeded, and these become the focus for outreach to new partners, capacity strengthening of current partners, and advocacy with government and community stakeholders. Overlaps are identified where multiple referrals are available for the same service with more capacity than is necessary to meet the need, and these become the focus of dialogue between stakeholders (service providers and possibly donors) to shift priorities and responsibilities towards gap areas.

### Key Components

- Interagency Referrals network: Service providers are networked into a common referrals system
- Interagency Referrals guide: Every service provider has a ‘referrals guide’ on their desk.
- Referrals Forms: Template referrals forms pull out the critical information needed.
- Shared Data Management Systems
- Shared Code of Conduct and consent forms

#### **4. Focus on local reception and self-sufficiency programming for those outside of RSD streams**

The word ‘integration’ is unfortunately tied in many people’s minds to ‘permanence’. It is associated with ‘durable solutions’ specifically ‘local integration’. Because of this it is difficult to speak of integration when we are speaking of asylum-seekers. Yet, asylum-seekers, even if they are eventually rejected, are often in a location for years while going through the process, and they should still be well integrated during that time. Because we cannot use the word ‘integration’ a number of alternative terms have been created, and each is a little unsatisfying. These include ‘protection space’ and ‘effective protection’, among other terms.

# HOW DO YOU MEASURE PROTECTION?

## Measure of “Protection Space”:

- Threat of refoulement, eviction, arbitrary detention, deportation, harassment, or extortion
- Freedom of movement, association, and expression
- Protection of their family unity
- Access to livelihoods, labor markets, and protection from exploitative treatment
- Adequate shelter and living conditions
- Legal and secure residency rights and documentation
- Access to healthcare and education
- Harmonious relationships with the host population, other refugees, and migrant communities
- Access to durable solutions

## “Core Standards for Due Process”:

- Access to UNHCR staff, RSD procedures, and information
- Procedures to identify and assist vulnerable groups
- Non-discrimination
- Transparent and fair procedures
- Timeliness and efficiency
- Qualified staff, training and supervision
- Individual RSD interviews
- Review of rejections by a different officer
- Consistency on procedures for submission and receipt, interviews, and notification of decisions
- Must be consistent with UNHCR established policy on confidentiality, treatment of vulnerable groups, and gender and age sensitivity

## “Effective protection”

- Persons are able to progressively achieve self-reliance pending the realization of durable solutions
- Access to an adequate standard of living
- Privacy and family unity interests are protected
- No well-founded fear of persecution
- Respect for human rights & international standards:
  - No risk of torture or CIDTP
  - No risk to life
  - No risk of deprivation of liberty without due process.
  - No risk of refoulement
- Access to fair and efficient RSD Procedures



Whatever term is used the goal is the same: “...a conducive environment exists for the internationally recognized rights of refugees to be respected and their needs to be met.” We have to start talking about creating a safe and welcoming environment in which people can thrive and engage in mutual cultural understanding and acceptance in a positive way. The path towards achieving such a goal is difficult, but the 2009 revised Urban Refugee Policy was a first step, as it recognized that protection means more than refugee recognition through an RSD process. The Evaluation 5-years later was also a positive step forward, identifying challenges to protection, and beginning to identify effective methods for overcoming them.

The majority of the refugees in this region are located in non-camp settings, and the trend is towards an increase in the number of urban refugees over those in camps or settlements. Furthermore, policy-makers and humanitarian actors are beginning to recognize that while endeavoring to ensure acceptable standards of protection and assistance to large numbers of persons in camps may be a critical and practical expedient in the short-term, at the same time, restriction to camps or other designated places of residence is far from the ideal state of affairs. In 2009, UNHCR revised its urban refugee policy. The revision was a 180 degree turn from the former policy, and recognizes that urban areas are a legitimate place for refugees to enjoy their rights. This shift in policy represents a fundamental change in the way refugees are viewed and treated, and has implications for state responsibility, the way that donors prioritize resources, and the way that protection and assistance will be provided in practice. It is a recognition that protection is about more than just RSD, and presents a holistic strategy which must be in place to ensure protection.

Some assessments have already been conducted in Asia, after revision of the UNHCR Urban Refugee Policy in 2009.<sup>5</sup> These assessments reveal an increase in the number of urban refugees, and a diversity of needs (from

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<sup>5</sup> UNHCR, *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas*, 2012,

legal, to social, to economic, etc.). They reveal a number of good practices, lessons learned and recommendations:

1. Cooperation with civil society is the key to expanding protection space;<sup>6</sup>
2. Supporting urban refugee self-reliance programs is also critical;<sup>7</sup>
3. Cooperation through networks to achieve broader objectives and meet needs more holistically can have a profound impact;
4. Given the increasing number of urban refugees, and the fact that they are largely dwelling side-by-side with national and local society, it is clear that risk reduction and capacity strengthening at the national and local levels remain key priorities; and
5. Refugees are resilient and possess skills, knowledge and capacities to cope with, respond to, and recover from disaster, maltreatment, neglect, and the substantial challenges of the urban refugee context in the Asia Pacific. They should, therefore, be directly engaged in all aspects of protection and assistance.<sup>8</sup>

##### **5. Prioritize trust-building with local actors: build bridges and capacity**

“It is the relationship with civil society, at large, as opposed to a specific government entity, that is the key to expanding the protection space for refugees and asylum-seekers.”

– *Evaluation of the Urban Refugee Policy Implementation by UNHCR*

APRRN members believe that the best way to address diverse needs with limited resources is through collaboration. Collaboration is only possible with trust. Trust is earned and takes time. Partnership develops and strengthens over time through communication and implementation.

While it might seem that there is no time for outreach to, or capacity strengthening of, local or national actors in the face of the sheer number of people with immediate needs, unless UNHCR wants to be in the RSD business forever, each office needs to prioritize advocacy on behalf of refugees and outreach and capacity building of local and national actors as the long-term solution. This does not mean engagement with only or even primarily government policy-makers, but should include: schools, hospitals, lawyers, law schools, law students, police, judges, municipalities and communities, social workers and every relevant service provider. Every step towards

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available at: <http://www.Refworld.org/docid/51c7fa9e4.html> [accessed 23 July 2014]; UNHCR, *But when will our turn come? A review of the implementation of UNHCR's urban refugee policy in Malaysia*, May 2012, PDES/2012/02, available at: <http://www.Refworld.org/docid/5142ed802.html> [accessed 23 July 2014]; Naoko Obi, *New Issues in Refugee Research: A review of assistance programmes for asylum seekers and refugees in Japan* (July 2013); Eileen Pittaway, *Making Mainstreaming a Reality – Gender and the UNHCR Policy on Refugee Protection and Solutions in Urban Areas: A Refugee Perspective* (November 2009); APRRN, *Urban Refugees in Asia Pacific: Resiliency and Coping Strategies*, (March 2013).

<sup>6</sup> UNHCR, 2009 Urban Refugee Policy at 52 (“...it is the relationship with civil society...as opposed to a specific government entity, that is the key to expanding the protection space for urban refugees and asylum seekers.”)

<sup>7</sup> Id. at 53 (“UNHCR should continue to invest in [and] support refugees’ self-reliance.”)

<sup>8</sup> APRRN, *Urban Refugees in Asia Pacific: Resiliency and Coping Strategies*, (March 2013).



acceptance by these local actors of responsibility for the refugees and asylum-seekers within their reach, with some accountability and justiciable framework, is progress towards meaningful State protection.

### Key Components

- Regular meetings with a well put together agenda and facilitation
- Capacity strengthening of local and national stakeholders
- Trained outreach volunteers to keep daily contact with all segments of refugee community
- Active communications, and referrals systems
- Local community centers, where refugees and locals can socialize, engage in recreation, gain access to information, services, and counselling
- Standard Operating Procedures: Develop and implement SOPs with partner organization to build trust by establishing a clear framework for collaboration.

#### **6. Facilitate Legal representation in every RSD operation**

Legal representatives, when serving competently and ethically, provide substantial efficiency benefits while improving outcomes and accuracy of RSD, at no-cost to UNHCR. UNHCR has already made a commitment to facilitating legal representation with a new chapter in the Procedural Standards. This chapter recognizes a ‘right to legal representation,’ and UNHCR Offices are expected to facilitate the Applicants’ ability to exercise this right. Now it is time to move towards implementation of this chapter in every RSD operation.

Legal Representation contributes to UNHCR’s shared burden of proof. Quality and ethical legal aid is trustworthy, produces corroborated and relevant COI, a clear and chronological account of facts, advises those without protection needs of the reality and their options, and identifies and highlights those who are vulnerable and have particular protection needs. Asylum-seekers are advised of the process and their rights, and are told when they do not satisfy the refugee definition. They are referred to relevant service providers where appropriate. Cases are screened and prioritized. (See Appendix 1).

Legal representation should also be viewed as a capacity building exercise towards the development of State Responsibility for RSD. Legal staff, lawyers and law students who provide the legal aid in UNHCR RSD are often the future policy-makers, decision-makers, or lawyers in a national RSD system. Those who assist will receive practical experience, understanding of the challenges and demands of refugee protection, and develop skills with regard to the law and ethics of refugee protection. The legal profession who engages pro bono will develop a stronger pro bono conscience and culture. Ultimately, legal representation is a part of a long-term strategy towards local ownership and capacity for the practice of international refugee protection.

The UNHCR Hong Kong Office was the first to finalize Standard Operating Procedures (“SOPs”) for legal representatives in RSD. The drafting was conducted collaboratively and took nearly 2 years of back and forth. But during this time trust was also being built as legal representation was already being conducted, and the

drafting was being informed by our experience working together. In the end, the legal representation was considered valuable, and Eligibility Officers expressed relief when they saw that a case was represented. The UNHCR Office in India is the most recent office to finalize a Letter of Understanding (“LOU”), having benefited from the process that Hong Kong and others had gone through, the India Office was able to finalize an LOU in a few months.

In general, UNHCR should facilitate increased opportunities for contact between RSD units and legal representatives. RSD officer exchange visits between countries using legal representatives and those which do not, may also be useful to build trust around legal representation.

## **7. Provide UNHCR Cards**

APRRN Members lean on the side of providing documentation to all applicants in process. Cards do provide some protection from arbitrary arrest and detention. Furthermore, cards are useful not only for protection from authorities, but also for daily life such as when opening a bank account, negotiating with landlords, cell phone companies, or for other purposes. Cards contribute to a more stable existence in the host country. They also provide an avenue for advocacy with the State authorities towards the recognition of these cards. There can be different cards for applicants in process and recognized refugees, but generally, documentation should be provided.

## **8. Move Away Responsibly: Better Engagement with States During Transition**

Hong Kong has recently undergone a transition from UNHCR RSD to Government RSD. Korea has recently begun implementing comprehensive legislation. Both of these outcomes are the result of successful advocacy through strategic litigation and law-making respectively. These protection systems have the potential of serving as models within a region where very few states have assumed RSD responsibility. They therefore can present UNHCR with an opportunity to demonstrate how transition can be successfully managed, and to mutual advantage. But if the RSD transition is not done effectively and responsibly, then equally they could set a dangerous precedent.

Yet APRRN members have expressed concern that UNHCR chose not to commit sufficient resources to manage the process of transition effectively, but rather to withdraw protection-related resources from both offices. If there was a particular plan with regard to systematic hand-over, capacity building, advocacy, or supervision it was not apparent to NGO’s or other civil society actors. Communication about the RSD transition in Hong Kong was also insufficient to the people who had an outstanding protection claim with the UNHCR.

APRRN members recommend a period of time (covering a number of years depending on the specific context or transition) during which UNHCR reallocates (rather than cuts) RSD resources towards capacity-building and advocacy, and commits additional resources to implement a specific

transition plan that is clearly stated and shared with partners. This transition should include building capacity, training, monitoring and oversight along with robust advocacy. Efforts should be made to generate a strong start to the transition process, while ensuring there is sufficient monitoring and evaluation to enable an adaptive approach before bad habits and systemic problems become entrenched.

Here we highlight UNHCR's Policy Development and Evaluation Service (PDES) preliminary review: "Assisting States with the assumption of responsibility for refugee status determination" (<http://www.unhcr.org/53314b7a9.html>), which lays out an excellent plan for transition: from assessment and planning as an office is preparing for transition; to providing substantive input into the configuration of RSD procedures, minimum requirements of due process, promoting a UNHCR role, facilitating a smooth start, good practices in operational support, UNHCR moving to a supervisory role, extending capacity building and partnerships, and sufficient resources to ensure a responsible transition, among other things.

#### **9. Monitor and evaluate pilots strictly, and adopt lessons learned for future pilots**

As new approaches to assessing cases are developed and piloted by UNHCR, it is crucial for UNHCR offices to collaborate with local NGOs when developing and implementing these new systems. This is illustrated by recent changes to the RSD process in UNHCR's Malaysian office.

Whilst the SVP system that was piloted in Malaysia over the past year has had the benefit of prioritizing very vulnerable people and those with strong cases for resettlement, lessons can and must be learned from the problematic aspects of SVP that became evident once the system was implemented.

A lot of confusion and anxiety within communities could have been avoided with a more strategic approach to communicating change in the UNHCR process. NGOs and UNHCR could have worked together to inform and familiarize the communities with the procedural changes. We recommend that clear communication is made a priority for all future pilots and that UNHCR offices work with local NGOs to ensure that up-to-date and reliable information is available to refugee communities.

SVP did succeed in prioritizing highly vulnerable refugees and providing them access to protection within a very short timeframe. We recommend that such prioritization of vulnerable cases continue at registration stage to highlight and refer to other UNHCR units and / or NGOs without delay and their RSD dates to be prioritized. Speedy access to protection for especially vulnerable refugees can be guaranteed in this way, without sacrificing procedural safeguards, as was the case during SVP.

Finally, it is of the utmost importance that any new procedure to effectively and efficiently manage caseloads comply with procedural fairness standards. Negative decisions from SVP interviews were not appealable and no reasons for rejection were given. It is crucial that negative decision that were taken without adequate procedural safeguards during SVP are dealt with in a timely and procedurally fair manner, for instance by re-registering and re-assessing former SVP rejections under the current RSD system. We recommend that any pilots being implemented have clear and regular monitoring and evaluation, with regular tweaking to address problems identified. We recommend that meaningful consultation with stakeholders is conducted as a matter of priority, and is a prerequisite before implementing any new system.

#### **10. Ensure Procedural Standards do not endorse manifestly unfounded procedures as an intl. norm**

UNHCR is a standard setting institution. UNHCR, therefore, has an obligation to consider the legal and practical implications of its guidelines and procedures, particularly for documents such as the “UNHCR Handbook” and the “Procedural Standards for RSD Under UNHCR’s Mandate”.

We understand that the Procedural Standards are currently being revised chapter-by-chapter. The revision of the legal aid chapter is complete. We note that Section 2.7.2 from this chapter has been drafted as follows:

"where the claim is manifestly unfounded or clearly abusive, UNHCR Offices may...implement shorter timelines in accordance with set accelerated RSD procedures. (see § 4.6 – Accelerated RSD Processing)."

This is a direct contradiction of the current Section 4.6 (to which the same sentence in the legal representation chapter also refers the reader) which states the following:

Section 4.6: "Claims that appear to be manifestly unfounded (i.e. clearly fraudulent or manifestly outside of the scope of the refugee definition) should be processed under normal RSD procedures, and should not be referred to Accelerated RSD Processing procedures."

We understand from the RSD Service in Geneva that the Accelerated Procedures section is being revised and that expedited manifestly unfounded procedures are being considered. In principle, we are opposed to such procedures. In fact, our Members appreciate the current content of Section 4.6, and this language has been used, and continues to be used, in advocacy and strategic litigation against States who would impose pre-screening or fast-track rejections.

The reason our members are opposed to manifestly unfounded procedures is not simply out of concerns of fairness and that refugees may be mistakenly screened out, but it is also because such procedures generally do not achieve the efficiency goals they are intended to. Rejecting those who seem to not have a refugee claim becomes the priority caseload, while those more vulnerable cases with higher protection needs are put on the back burner. Appeals of rejections have to be considered as a minimum due process standard, and everyone

rejected in such a process would likely appeal. Therefore, in practice, you end up doing the exact opposite of what you intended. That is, those who seem to have less protection needs are prioritized.

Generally, attempts to impose manifestly unfounded procedures take care to say that a decision in such procedures would have to be made very carefully so that refugees are not screened out. However, the level of care that would be required to ensure access to asylum is not denied to those with international protection needs is very high (particularly for trafficking, SGBV or torture victims; minors; and other vulnerable persons who are less likely to be able to express a claim). So, either ‘manifestly unfounded procedures’ will be abused by the decision-maker such that refugees and others with protection needs are screened out based on a superficial assessment; or manifestly unfounded procedures will be so intensive, and require such significant time and pressure on the decision-maker that it will in essence just be another first instance determination. Instead, UNHCR’s top priority should be needs and vulnerability assessment through registration, and high-quality and efficient determinations on the first instance.

If UNHCR, decides to embody manifestly unfounded procedures in their Procedural Standards anyway, then ‘manifestly’ should be understood in a very narrow sense, legal representation and adequate time for such representation should be permitted, generous appeals mechanisms must be available, and clearly vulnerable categories of asylum-seekers are to be excluded from such processes, including also persons in detention.<sup>9</sup> Any new Guidelines should be shared with NGOs for comments at the earliest possible stage of the drafting process, and not only after the chapter has already been produced.

## **11. Publish translated COI on Refworld**

Publishing translated COI may be the single greatest capacity building tool to facilitate State Responsibility for refugee protection. English is the dominant language in human rights/humanitarian reporting. In countries in Asia, this often makes COI inaccessible to decision-makers. Speaking practically, we can insist that those countries refer to COI as a duty, and engage translation if necessary. But realistically, the result is more likely to be that decision-makers will make decisions without reference to COI, and certainly without deep analysis. Indeed, decision-makers are too busy to conduct extensive COI in a second language and still manage unmanageable caseloads. Furthermore, we can encourage a country to set up a national COI research library or research team who can answer inquiries submitted, but such a research team will require a significant budget that for many countries is low on their list of priorities. Even if a State were to set up such a team, a serious concern would be the capacity of the team and the quality of their work, and the abrogation of the decision-makers responsibility to assess the risk, by leaving it to the COI researcher.

Meanwhile, in many countries, lawyers are representing refugees and are translating COI, applicants are getting

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<sup>9</sup> Many states have engaged in extensive strategic litigation to limit the harm that such accelerate procedures can have with decisions considering how to ensure fair procedural standards are maintained (e.g. <https://www.judiciary.gov.uk/wp-content/uploads/2015/07/lord-chancellor-v-detention-action-judgment.pdf>)

COI translated themselves, NGOs are translating COI, judges and decision-makers are translating COI, and often they are all translating the exact same COI document over-and-over again. Once a case is complete that COI is thrown in a box, a file, or even shredded. Then when the next case comes along, the same COI that was done previously, is done again, and again, and again, because it is not made accessible after it is complete. We need to start collecting COI after it is complete, in a place that conducts quality assurance and then makes it available thereafter for applicants, lawyers, and decision-makers in the future.

UNHCR staff assigned to Refworld are limited (only 3?). Three persons to conduct COI, compile COI, engage in quality control, make it searchable, etc. It is understandable that with these limitations UNHCR would consider its role in COI consolidation to be limited. But there may be no easier way for UNHCR to facilitate quality decision-making and build capacity than by collecting COI in multiple languages on Refworld.

Recommendation: UNHCR National Offices establish a post to be a focal point for the receipt of COI translated into the local language. This person would monitor the quality of translations submitted only, but would not be asked to do any translation themselves (or could be asked in limited and important circumstances). Lawyers, decision-makers, academics, and NGOs who are already compiling and translating COI submit their final work product to this focal point who engages in translation quality-control and if approved then makes the translated COI publicly available by putting it up on Refworld in that language. In terms of quality control of the document itself, as a rule, UNHCR could require that the only COI already on Refworld are accepted.

A disclaimer can make clear that the original language source is controlling, and UNHCR cannot be held responsible for errors in any particular translation, but that this translation is made available in the interest of cost saving and to facilitate quality decision-making.

## **12. Establish or Improve systems for quality and ethical interpretation**

Detailed feedback on the new Interpretation chapter that has been published was provided by Tamber Hilton (Interpreters and Language in Refugee Settings Resource Person and licensed lead trainer for The Community Interpreter™; [tamber.hilton@gmail.com](mailto:tamber.hilton@gmail.com)). This feedback is re-attached here for your reference as Appendix 4. Our Membership is generally supportive of all of the suggestions in this feedback document. APRRN members lay particular emphasis on the comments regarding interpreter ethics reproduced as follows:

“It is suggested that [Section 2.5.6 on Impartiality of UNHCR Interpreters, and 2.5.7 on the Duty of Confidentiality] should be changed to “Ethics for UNHCR interpreters”, and the different ethical topics mentioned under this subheading should be properly placed under the relevant topical sub-headings, for example accuracy, impartiality, confidentiality, maintenance of role boundaries, respect for persons, professionalism, accountability, and continued competence. The accompanying UNHCR Interpreter Undertaking of Confidentiality and Impartiality should be adjusted to include a complete list of interpreter ethics that UNHCR interpreters should understand and adhere to.”

APRRN Members also refer UNHCR to: <http://www.refugeelaidinformation.org/interpreters-and-language->

[refugee-settings](#) for further information, and suggest consultation also with Alice Johnson, Director of the Cairo Community Interpreter Project at the American University of Cairo who has trained hundreds of community interpreters working with APRRN member organizations, as well as partners such as UNHCR and the IRC in community interpretation for the refugee context.

With regard to interpretation, our recommendations go beyond interpretation in RSD, and extend to community interpretation at the offices of service providers and at the community level in hospitals, schools, police stations, detention centers and other relevant locations. Facilitating access to community interpretation is perhaps the greatest tool of empowerment available to local refugee populations, as it can facilitate access to asylum and other protection and assistance services, inform them of their rights and risks, set expectations and address misconceptions, and facilitate communication at many levels. It is also a potential livelihoods opportunity and skills development opportunity for those who are recruited to serve as interpreters. Unfortunately, interpretation is often taken for granted and forgotten about or simply utilized as a support service. APRRN recommends making community interpretation a focus for capacity strengthening efforts beyond the RSD context with the setting up of shared interpreter rosters, training and qualifications including training on interpreter ethics, coordination mechanisms, shared glossaries, and other such tools. Putting such mechanisms in place will facilitate greater State responsibility when the time comes as people with such skills and experience will already be available to work in the State-run system.

### **13. Share UNHCR's quantitative data with partners**

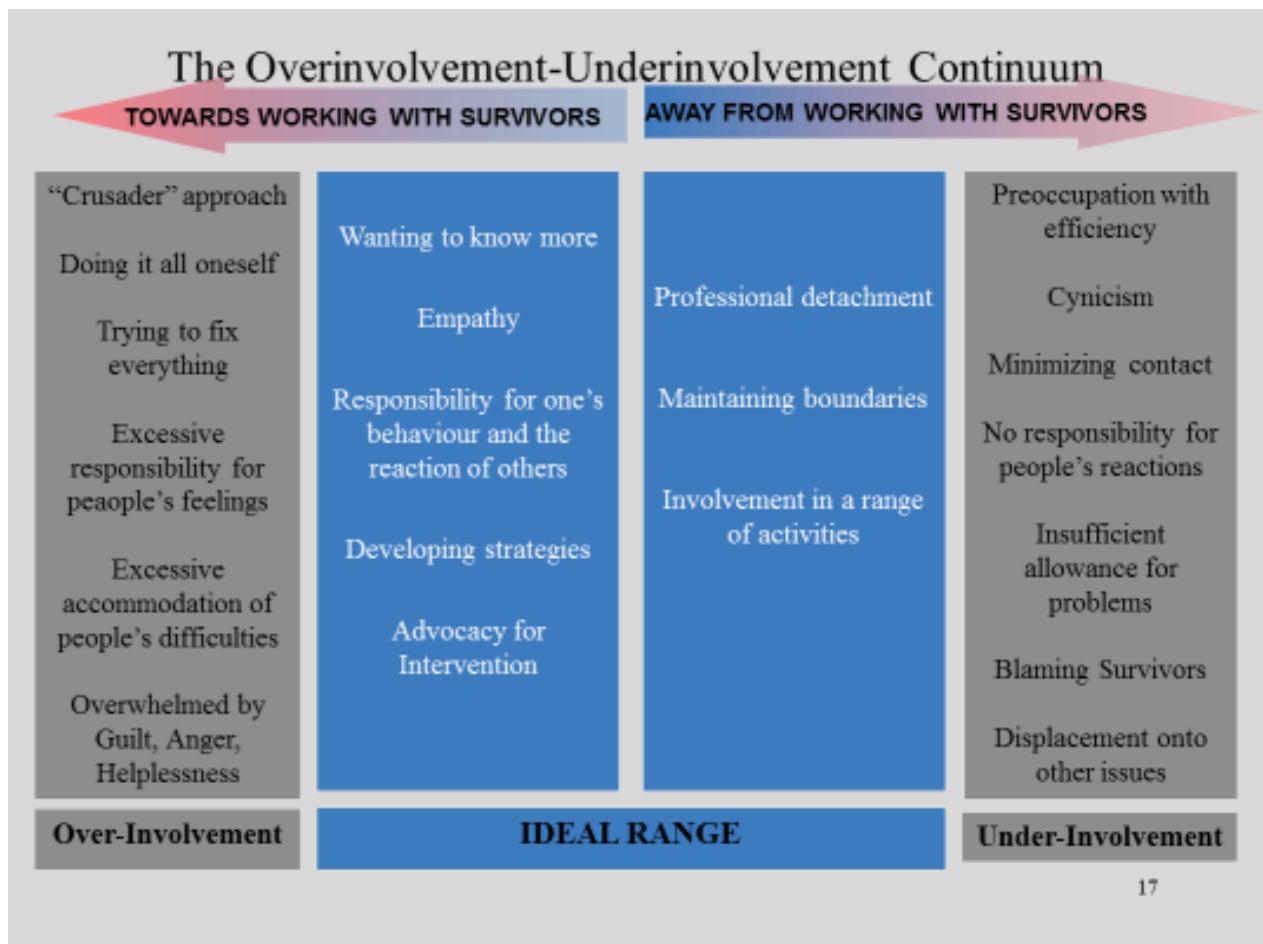
UNHCR should share localized quantitative data on a regular basis, and make these numbers accessible at least to partners if not to the public. (Such as, number of persons approaching each UNHCR office every year, tracked by reception and registration of bio data per month; number of new RSD decisions per month at each stage by office; current backlog at each stage by office at the end of each month; etc.) This is happening in some offices such as in Indonesia, and has resulted in better understanding and mutual trust. Beyond these figures it is also useful to track processing time and capacity issues. Where UNHCR faces real capacity issues, it is better to make these issues transparent to set realistic expectations, and to promote understanding and collaboration. Clear, consistent, disaggregated statistics including numbers of people in detention and length of detention, with regular updates on cases handled, staffing and capacity challenges (number of EOs), and recruitment plans or limitations would provide a shared understanding, set realistic expectations, and engender trust.

### **14. Translate decisions for each Applicant**

Being mindful of the necessity to include sufficient detail in the decision/recognition/rejection/appeal letter, it would make a tremendous difference to setting realistic expectations, improving the quality of decisions, and ensuring appeals speak to the issues of rejection on the first instance, to have decisions translated into the applicant's primary language of comprehension. The roster of translators and interpreters could be utilized to perform this task.

**15. Consistently provide opportunities for debriefing and self-care for decision-makers**

In refugee protection work there is a natural tendency to burn-out or grow cynical in opposite extremes. Decision-makers confront an often traumatized caseload, confront credibility or even fraud issues among applicants, and sometimes deal with mental health issues and heavy emotions. NGOs and legal representatives confront the same things. Decision-makers often have to reject cases, and service providers sometimes have to turn people away. Taking past baggage of past cases into the next case with you does harm to the applicant sitting in front of you who may not have even spoken a word yet. Yet the tendency to burn-out or grow cynical are natural in this line of work, and consideration for self-care must be taken seriously. Debriefing sessions for staff must be mainstreamed into all aspects of work. There may be experts, NGOs, Universities, and consultants who can provide training and debriefing services for staff/caseworkers. Staff need to understand the psychological implications of secondary trauma, and where they may fall on the below overinvolvement-underinvolvement scale themselves.





## **Conclusion**

The LAAWG will continue to engage in consultation around practical and positive solutions-based approaches to refugee protection. These recommendations have been drafted and submitted to UNHCR Headquarters, the regional office in Asia, and several specific national offices. We are committed to collaboration with UNHCR, States, and all stakeholders. We are committed to acting in accordance with principles of professional ethics and human rights, being held accountable primarily to those we mean to protect: refugees and other persons in need of protection. We welcome engagement with UNHCR on these recommendations, on specific chapter revisions of the Procedural Standards, and on an ongoing basis with the goal of establishing a collaborative platform with multiple stakeholders through which we can jointly strengthen capacity and provide a higher quality and more effective protection to more of the people we aim to protect.

**For further information, or to provide feedback, please contact:** Brian Barbour ([barbour@refugee.or.jp](mailto:barbour@refugee.or.jp))

## **Appendix 1: How do legal aid organizations select cases to represent?**

Outside of publicly supported legal aid mechanisms, the capacity of legal aid lawyers and service providers are often quite limited. Because an individual lawyer or an individual legal aid NGO may not have the capacity to represent every asylum-seeker who needs it, lawyers will often accept referrals from a coordinator, NGO, network or other collaborative mechanism (in many of our jurisdictions it is often UNHCR who is making this referral to a legal representative). Those coordinators, NGOs, networks and other mechanisms usually establish priorities based on legal need. That means lawyers are more likely to take the case with the greatest legal support needs.

As an example, consider the following: Two applicants approach a legal aid NGO and ask for representation. The organization only has the capacity to assist one. Let's say the first has a very strong refugee claim. He is a very high profile individual, with horrific past persecution, who just barely escaped his country, and there is ample evidence that if he is sent back to his country he can expect to be detained and possibly disappeared quickly. At the same time, he is highly educated, fluent in English, can explain his case very clearly, and has a number of documentary pieces of evidence. The second applicant's case is also strong, but it is not so obvious. It is clear that she was targeted for repeated SGBV, but the 'social group' that she would fit into requires investigation, and she will not be able to identify her social group herself. She speaks only Oromo and Amharic and is illiterate. She did not share any details about SGBV until her second appointment at the legal aid office, and she is clearly traumatized. She often mistakes dates and times possibly because of the different calendar in her country and possibly because she does not want to remember many of the incidents that happened to her.

The legal aid organization is more likely to take the second case rather than the first. This is because we have faith that UNHCR is likely to recognize the first applicant even without legal representation (though if they do not, we may pick it up on appeal), while it would be very easy for the second applicant to be rejected unless she were represented. Particularly when UNHCR offices are so overwhelmed with heavy caseloads and do not have a lot of time to spend on each case. In addition to this 'legal needs' test, many legal aid service providers will prioritize based on vulnerability as well. Unaccompanied minors will always benefit from the support and guidance that legal assistance provides, as will torture victims, victims of SGBV, and those with mental health impacts like PTSD, among others. Of course each organization firm, network, clinic, or mechanism may vary.

In terms of process, most organizations engage in 'intake' (some organizations call it 'registration') and 'assessment' (some organizations call it 'screening'). They usually have a regular case conference to discuss and prioritize every case. Clients will be referred to others based on needs and vulnerabilities. Clients will be given general legal advice, and customized legal advice based on their specific claim, and those that are prioritized may be provided full representation.

## Appendix 2: LAAWG Retreat Agenda

### LAAWG Retreat

April 25-26

#### Pre-retreat homework:

Please read the attached information in advance of the retreat so you are ready to discuss. Please prepare responses to the following questions in advance. If you do not know the answers to any of the below, you should investigate before you attend the retreat and come ready to present and share on all points.

1. Please list all relevant actors to RSD in your jurisdiction, and what role(s) they play? (i.e. UNHCR, Bar Association/lawyers, NGOs, Government actors, etc.)
2. How does RSD work in your jurisdiction? (i.e. stages of the process, mobile registration, enhanced registration, SVP, resettlement, etc.)
3. Have you seen any changes to the RSD conducted in your jurisdiction, please come prepared to update the group?
4. What are the problems you see with the RSD conducted in your jurisdiction?
5. What are the challenges for you in your legal aid related activities, and/or for your clients in relation to RSD?
6. What suggestions do you have for Improving quality, efficiency and integrity of RSD in your jurisdiction (in every jurisdiction)?
7. What ideas do you have for alternative forms of protection?

#### AGENDA

Monday, 25 April		
9:00-9:30	Understanding the crisis and UNHCR's strategy	Summary presentation
9:30-11:00	<p>What we are seeing at the national, regional, and global levels:</p> <ul style="list-style-type: none"><li>• <b>National Level</b> (Thailand, Malaysia, Indonesia, Cambodia, India, Pakistan, Nepal, Sri Lanka, HK, Japan, Korea)</li><li>• <b>Regional Level:</b> UNHCR Regional Office (APRRN Secretariat)</li><li>• <b>Global Level:</b> Geneva HQs (BB/Martin) procedural standards revision, webinars, and retreat at the annual consultations</li></ul> <p>Improving quality, efficiency &amp; integrity of RSD operations</p> <ol style="list-style-type: none"><li>1. How does RSD work in your jurisdiction? (i.e. stages of the process, mobile registration, enhanced registration, SVP, resettlement, etc.)</li><li>2. Have you seen any changes to the RSD conducted in your jurisdiction, please come prepared to update the group?</li><li>3. What problems do you see with the RSD conducted in your jurisdiction?</li><li>4. What are the challenges for you in your legal aid related activities, and/or for your clients in relation to RSD?</li></ol>	Roundtable format (participants should be ready to share their responses to the above questions)

	<p>5. What suggestions do you have for Improving quality, efficiency and integrity of RSD in your jurisdiction?</p> <p>6. What suggestions do you have for Improving quality, efficiency and integrity of RSD in every jurisdiction?</p>	
11:00-12:30	<p>Measuring protection mechanisms &amp; their impact</p> <ol style="list-style-type: none"> <li>1. What is the goal that RSD is trying to achieve (in each context)?</li> <li>2. Does RSD achieve the goal (in each context)?</li> <li>3. Can RSD achieve the goal (in each context)?</li> <li>4. What criteria do we use to measure protection?</li> <li>5. How do we monitor, evaluate?</li> </ol>	Small group discussion
12:30-1:30	Lunch	
1:30-2:30	Brainstorming Solutions	Open discussion
2:30-4:00	Draft Recommendations	"Discussion draft"
4:00-5:00	Review of the new Legal Rep Chapter, and the Interpretation Chapter (Webinar prep)	Facilitated discussion
<b>Tuesday, 26 April</b>		
9:00-12:00	Draft Recommendations & Brainstorming Solutions	"Discussion Draft"
12:00-1:00	Lunch	
1:00-2:30	Webinar on UNHCR's new legal representation chapter in the Procedural Standards	Asia Regional Webinar (1 <sup>st</sup> of UNHCR Global)
2:30-4:00	<p>Facilitating greater civil society engagement in RSD and non-RSD protection:</p> <ul style="list-style-type: none"> <li>• Procedural Standards (new chapters for legal aid and interpretation) follow up on webinar</li> <li>• SOPs (HK, India, Thailand)</li> <li>• Referrals Networks (Malaysia)</li> </ul> <p>Facilitating greater State engagement in RSD and non-RSD protection:</p> <ul style="list-style-type: none"> <li>• State models (Japan &amp; Korea)</li> <li>• RSD in transition (HK)</li> <li>• State involvement in UNHCR RSD jurisdictions (??)</li> </ul>	<p>Panel presentations and Q&amp;A</p> <p>Sharing models, challenges, and opportunities</p>
4:00-5:00	Draft Recommendations	"Discussion Draft"

**Reading List:**

- UNHCR RSD crisis
- (Discussion Draft) Draft Recommendations of LAAWG to UNHCR
- Procedural Standards for RSD under UNHCR's Mandate (+Legal Rep chapter, Interp. Chapter)
- Letter of Understanding (SOPs in India)
- Network Referrals Form from Malaysia
- UNHCR's 2009 Urban Refugee Policy

**Appendix 3: Retreat Participants**

No.	Name	Organization	Country
1	Ratana Ly	Center for the Study of Humanitarian Law	Cambodia
2	Adam Severson	Justice Centre Hong Kong	Hong Kong SAR
3	Isaac Laban Shaffer	Justice Centre Hong Kong	Hong Kong SAR
4	Roshni Shanker	The Ara Trust	India
5	Gading Gumilang Putra	JRS-Indonesia	Indonesia
6	Veronica Koman	Suaka	Indonesia
7	Brian Barbour	Japan Association for Refugees (JAR)	Japan
8	Saki Zukeran	Japan Association for Refugees (JAR)	Japan
9	Hiroshi Miyauchi	Lawyer, Japan	Japan
10	Deepa Nambiar	Asylum Access	Malaysia
11	Franziska Reif	Asylum Access	Malaysia
12	Sumitha Shaanthinni Kishna	Migration Working Group	Malaysia
13	Laxman Lamichhane	PPR Nepal	Nepal
14	Ali Ahmed Palh	RightsNow Pakistan	Pakistan
15	Syed Liaqat A Shah Banori	Society for Human Rights and Prisoners Aid (SHARP-Pakistan)	Pakistan
16	Pillkyu Hwang	Gonggam Human Rights Law Foundation	South Korea
17	Lakshan Dias	SANRIM	Sri Lanka
18	Caroline Stover	Boat People SOS (BPSOS)	Thailand
19	Ruth Mercer	Boat People SOS (BPSOS)	Thailand
20	Nick Jones	JRS Asia Pacific	Thailand
21	Parinya Boonridrerthaikul (Ann)	Asylum Access	Thailand
22	Rana Refahi	Asylum Access	Thailand
23	Annabelle Craft	Asylum Access	Thailand
24	Yuhanee Jehka	Asylum Access	Thailand
25	Martin Jones	Centre for Applied Human Rights, Southern Refugee Legal Aid Network	UK
26	Helen Brunt	Asia Pacific Refugee Rights Network	Thailand
27	Julia Mayerhofer	Asia Pacific Refugee Rights Network	Thailand