APRRN Submission to the 2ⁿᵈ and 3ʳᵈ Thematic Consultations:
**Measures to be taken at the onset of a large movement of refugees,
Meeting Needs, and Supporting Communities**

**The Rohingya Refugee Crisis
and Building Capacity for Rapid and Predictable Humanitarian Response**

Asia Pacific Refugee Rights Network[1]
17-18 October 2017

Introduction

1. Since the adoption of the New York Declaration on Refugees and Migrants (New York Declaration)[2] by all 193 Member States of the United Nations General Assembly on 19 September 2016, APRRN has committed to working with states, UNHCR, civil society organisations, refugees and other relevant stakeholders to translate the commitments made in the New York Declaration into meaningful protection gains for refugees in the Asia Pacific region.

2. As part of this commitment, APRRN has participated in several multi-stakeholder dialogues relating to the Comprehensive Refugee Response Framework (CRRF) and Global Compact on Refugees (GCR), is represented on the UNHCR-IFRC-NGO CRRF Reference Group and has made two written submissions. The first of APRRN's written submissions considered the significance of the New York Declaration for the Asia Pacific region broadly,[3] while the second submission examined past and present responsibility-sharing arrangements for refugees in the Asia Pacific region, as a specific contribution to the first thematic discussion of the GCR roadmap in July 2017.[4]

3. This third submission builds upon the two previous submissions and presents a preliminary response to some of the issues and proposals canvassed by UNHCR in its concept note of 9

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[1] APRRN is a civil society network dedicated to the advancement of refugee rights in Asia, with over 300 organisational and individual members across 30 countries. APRRN engages in, consultation around practical and positive solutions-based approaches to refugee protection in the Asia Pacific via its Regional Protection and other working groups. We are committed to collaboration with UNHCR, States, and all relevant 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.

[2] *New York Declaration for Refugees and Migrants*, UNGA, 71st session, Agenda items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) ('New York Declaration') <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E%20>.

[3] APRRN, *Reflections on the significance of the New York Declaration on Refugees and Migrants for the Asia Pacific region* (12 June 2017) <http://aprrn.info/wp-content/uploads/2017/07/APRRN-Reflections-on-the-significance-of-the-New-York-Declaration-on-Refugees-and-Migrants-for-the-Asia-Pacific-region-1.pdf>.

[4] APRRN, *Past and present responsibility-sharing arrangements for refugees in the Asia Pacific region* (9 July 2017) < http://aprrn.info/briefing-paper-past-and-present-responsibility-sharing-arrangements-for-refugees-in-the-asia-pacific-region/>.

October 2017 for thematic discussion two - measures to be taken at the onset of a large movement of refugees - and thematic discussion three - meeting needs and supporting communities.[5]

4. Given the short timeframe between the release of UNHCR's concept note and the thematic discussions, it is beyond the scope of this submission to examine each idea and proposal of the concept note, many of which have significant merit and evidentiary support. Instead, this submission focuses on some of the proposals that have received little attention to date, such as the call for a global refugee response group. This submission also addresses some of the important omissions from the concept note which APRRN believes require urgent attention in order to respond more effectively to large scale refugee situations at the onset, and meet the needs of refugees and host communities alike.

Background

1. This submission is drafted in the context of the evolving Rohingya refugee crisis, involving the large movement of stateless refugees into Bangladesh following the outbreak of extreme violence in Rakhine State of Myanmar on 25 August 2017. Our observations are informed by and responsive to this crisis which highlights the need for far greater capacity for rapid and predictable humanitarian response, at scale, and for strengthened collaboration, responsibility sharing and planning for solutions from the onset of a crisis.

2. The massive influx has occurred rapidly into an area where the pre-influx situation was already fragile with significant insecurity, a lack of adequate water and sanitation, food insecurity, and generally inadequate facilities for health, education, and livelihoods. According to the latest situation reports, an estimated 537,000 Rohingya have poured into Bangladesh since 25 August 2017[6] after violence triggered a mass exodus from Rakhine State. Together with the approximately 300,000 who were already in makeshift settlements or mixed with host communities throughout Bangladesh, the total Rohingya population has swelled to some 800,000. The Humanitarian Response Plan includes the host community and estimates the total population in need is 1.2 million.[7]

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[5] http://www.unhcr.org/59dc8f317
[6] ISCG Situation Report: Cox's Bazar Influx - 15 October 2017
https://reliefweb.int/report/bangladesh/iscg-situation-report-cox-s-bazar-influx-15-october-2017 (in addition to the 300,000 last year, the total refugee population also included 87,000 who arrived between Oct 16 and 24 Aug and 30,000 in official UNHCR assisted camps, which would make a total of some 950,000. According to Cox's Bazar district administrator on 9 Oct, the total number is 926,431.)
[7] Humanitarian Response Plan
https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

Panel 1: Ensuring better preparedness for and rapid responses to large movements of refugees

Creation of a global refugee response group

3. **Is addressing this issue principally at the global level the best approach?** Ultimately capacity needs to be built primarily at the national level in many countries to be better able to cope with large movements of refugees. With this in mind, the Programme of Action should promote capacity assessments for all states to take place as a preparatory measure to determine the national capacity of asylum systems with a view to raising capacities for the identification of persons with international protection needs, and the capacity for effective response to large movements when they occur. Efforts should then be made to engage in building national asylum systems, establishing or strengthening the institutional capacity of Governments and other actors to provide protection more collaboratively and holistically, from identification, to the provision of protection and assistance (reception, registration, RSD, durable solutions, community outreach, healthcare, education, livelihoods, etc.)

4. In terms of contingency planning and preparedness, national level capacity building should begin now, and should be targeted to vulnerable locations first. The situation of the Rohingya has been brewing for decades, had been escalating recently, and was well known, and so there was no reason to be caught unprepared.[8] If this recommendation is adopted, vulnerable locations like Cox's Bazar would be more likely to receive attention and support prior to the escalation into a humanitarian crisis and in some situations, this may help to prevent a crisis from occurring.

5. National actors - governmental and civil society - are often working perpetually at capacity, utilizing all of the resources they have, so that there is little room for standby mechanisms or surge capacity. These actors need support to grow and develop now, and this is where the international community should come in, not to take over or supplant national capacity, but to support it with technical expertise, coordination, and funding directed appropriately to both existing governmental and non-governmental actors, and to fill gaps when and where necessary, but always alongside locally-based actors who will remain after the crisis is over, with a view to building long-term capacity at the national level.

6. At the same time, international and multilateral institutions such as UNHCR have unparalleled access to comparative experience, both through their own offices' experience in many contexts, and through experience shared by states. These organizations are therefore in a position to

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[8] UNICEF Humanitarian Situation Report 8 October 2017 available at: https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Bangladesh.pdf (In Cox's Bazar district, "the pre-influx nutrition situation...was very poor with critical level of acute malnutrition observed in the refugee settlements… There is potential for aggravation of the nutrition situation as a result of poor water and sanitation, limited health care and food insecurity conditions in the Rohingya refugee settlements.")

consolidate comparative practice and experience, coordinate among actors, facilitate global solidarity and responsibility sharing, mobilize funding, and provide technical advice. So while national level capacity is the key to ensuring better preparedness for and rapid response to large movements of refugees, international engagement in coordination on the ground, and leadership in facilitating the global response remains critical as a support function.

Utilize existing mechanisms:

7. In the Asia Pacific region, in the aftermath of the Andaman Sea crisis of May 2015, senior officials and representatives of member states and organisations of the Bali Process conducted a review of the region's response and identified the need to improve "national, regional and subregional contingency planning and preparedness for potential large influxes of irregular migrants in the future".[9] This led to the establishment in November 2016 of a Task Force on Planning and Preparedness, but despite recognition that the movements of mixed populations from Bangladesh and Myanmar were "in large part predictable…longstanding and in the absence of a coordinated response…likely",[10] we are in fact not well-prepared for the large scale displacement now taking place just over two years later.

8. Bali process members have committed to a mechanism "to facilitate timely and proactive consultation to respond to emergency situations." However, while it seems that activation of the consultation mechanism is under consideration in relation to the current displacement of Rohingya, a decision has not yet been made to do so.[11] APRRN believes that the forced displacement of more than 500,000 people since 25 August 2017, with clear regional implications, should trigger the mechanism to facilitate consultation. "Failure to act", as the Asia Dialogue on Forced Migration has indicated, "risks undermining the credibility of the Bali Process and would be inconsistent with important progress made over the past 18 months."[12]

9. Commitments were also made by Myanmar during the ASEAN Foreign Ministers' meeting on the sidelines of the General Assembly last month that the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre) would be allowed to assist in Rakhine State, however, humanitarian access continues to be almost non-existent outside the main towns in northern Rakhine State, where the majority of the affected population remain. It seems clear that Myanmar intends for ASEAN's role to be 'government to government' assistance. Nevertheless, ASEAN can facilitate humanitarian access for the entire humanitarian community, including the United Nations, the Red Cross movement and international and national NGOs, as it did after

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[9] http://www.baliprocess.net/UserFiles/baliprocess/File/Review%20of%20Andaman%20Sea_Final_Bali%20Process%20AHG%20SOM_16%20Nov%202016.pdf [1].

[10] Ibid [2].

[11] *Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime* (adopted at the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016) <http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20%281%29.pdf> ('Bali Declaration') [14].

[12] Asian Dialogue on Forced Migration Secretariat, Press Release, 17 Sep 2017 http://cpd.org.au/wp-content/uploads/2016/03/Asia-Dialogue-on-Forced-Migration-Press-Release-17-September-20171.pdf

Cyclone Nargis, to monitor conditions periodically with the Government and international partners.

Greater clarity is needed on application of the CRRF:

10. In previous submission made by APRRN, we suggested that "there needs to be greater clarity in the GCR as to what constitutes a large-scale movement, and most importantly, what will be the trigger point for the implementation of the CRRF".[13] When does the CRRF apply? Multiple answers to this question have been heard and clarification is needed. On the one hand it has been said that whether a CRRF applies in any given situation is a matter for UNHCR to determine, in close coordination with Member States and in consultation with other stakeholders. The agreement and active engagement of the relevant States in applying a CRRF to a specific situation is a determinant factor. On the other hand, it has been said, that the CRRF should be considered the way that we work now and that it applies automatically and in all situations following the passage of the New York Declaration. With regard to the latter understanding, a number of concerns are then raised in relation to the recent large movement of Rohingya to Bangladesh. It does not appear that the CRRF is being implemented in this situation, nor is it referred to at all in the Humanitarian Response Plan. Although the trigger mechanism for the CRRF has not been publicly canvassed yet, it has been made very clear that the text of the CRRF is fixed and agreed and will be adopted intact within the GCR put forward to UNGA this time next year. If so, consideration needs to be given to whether the CRRF should be triggered in relation to situations such as the recent displacement of Rohingya and, if so, how it should be applied.

Panel 2: Supporting States to receive large numbers of refugees in a safe and dignified manner:

Reception Arrangements: Deployment of resources and personnel

11. Capacity should be developed at the national level as a part of contingency planning and preparedness. The challenges and importance of reception and registration are often underestimated, and these functions are sometimes tasked to low level staff or even volunteers with minimal training or support. Short-cuts may be considered in a large movement, but this has been known to backfire, as it usually shifts the burden further down the line, creates false expectations, leaves questions unanswered, and leaves many needs, vulnerabilities and risks unidentified or misidentified. There is no better opportunity for needs, vulnerability, and risks assessments than at the initial reception and registration stages. It should be conducted with a high-level of quality, by well-trained and supervised staff.

12. If the goal is to ensure a rapid and predictable global response capacity, then UNHCR and its partners, who have a protection mandate, should ideally be involved in supporting reception and registration functions, to accurately identify and prioritize protection needs, understand the assistance required, and coordinate international support for national and local authorities and affected communities.

13. In the context of the current Rohingya refugee crisis for example, the Government of Bangladesh with assistance from UNHCR is conducting basic biometric registration, however, it

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[13]

is not linked to a protected status nor does it facilitate any particular solution, though it does contribute to situation assessment. Challenges include a lack of awareness among the refugee population about the registration, few registration points and limited access to those points, and fear or lack of mobility among the elderly, sick, vulnerable women and girls, among others.

14. At the onset of large scale movements of refugees, non-refoulement and access to territory are fundamental and must receive clear and strong endorsement in the Program of Action.

15. In the context of the current Rohingya refugee crisis and what has been described as "a textbook example of ethnic cleansing" by the U.N. High Commissioner for Human Rights,[14] protection from physical and psychological harm can begin with keeping borders open and preventing refoulement, not only in Bangladesh, but in every country where Rohingya are currently located around the globe.[15] No deportations of Rohingya should take place, any rejections in asylum systems should be reconsidered in light of the escalated circumstances, and new arrivals should be considered for an expedited presumption of eligibility for asylum.

16. A comprehensive refugee response would pursue a harmonization of approach, consensus, and solidarity in all contexts globally. In the context of the Rohingya refugee crisis, onward movement is likely, and so we also need to be looking beyond Bangladesh and considering preparedness for likely onward movement to countries including Malaysia, Indonesia, and Thailand, including the provision of international support to these countries as well if required.

Panel 3: Support receiving States to identify persons in need of international protection

"Digitally-enhanced "ecosystem" for collaboration in the area of identity management"

17. Registration should be seen as a part of a more holistic protection function, that identifies specific needs and vulnerabilities and links registered persons to appropriate assistance, protection, and durable solutions. It should be conducted as early as possible upon arrival for the purpose of accurate situation assessment and continuously updated at every engagement over time. Where possible it should be conducted jointly with national actors.

18. **Transition:** UNHCR can conduct these functions with a view to transitioning them gradually, responsibly, and sustainably to competent state authorities. This transition can include development of integrated data management systems that promote legal and social integration of refugees in a host State, and eventually possibly linked with other government systems and population databases to promote national ownership. Transition does not imply an exit strategy, so long as there are refugees, UNHCR will have a protection mandate and will always have a supervisory role. Transition does not mean handover. There should not be a day where UNHCR stands down, and the Government stands up. It should ideally be a phased and deliberate process implemented according to an agreed upon work plan. The transition should be conditions-based and not timeline-based.

19. (See also the points made above on reception and registration)

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[14] http://www.un.org/apps/news/story.asp?NewsID=57490#.WdzbLWi0NPZ
[15] India's supreme court is considering a case against the deportation of Rohingya refugees in India.http://edition.cnn.com/2017/10/03/asia/india-delhi-rohingya-refugee/index.html

Panel 4: Support receiving States to address specific needs within large-scale refugee situations

Multi-Actor Collaboration: Establishing National Referrals Networks with Decentralized Case Management

20. Multiple and repeated engagements with persons in need of protection by partners well-networked and coordinated will be the key to identification of needs, vulnerabilities, and risks at every level. Well-networked and coordinated partners will be empowered to make all relevant cross referrals to any relevant service provider to have those needs met. Gaps and overlaps in addressing the actual needs, vulnerabilities, and risks facing the population we are working with. With displaced persons increasingly hosted in urban settings, populations requiring assistance may be more dispersed and potentially invisible, making the decentralized national level network all the more important.

21. In identifying and addressing specific needs, all relevant service providers are networked into a common referrals system, and referrals are made systematically from service providers to state authorities, from state authorities to service providers, and from service provider to service provider. Every service provider has a 'Referrals Guide' on their desk, this could also be a more or less sophisticated electronic data management system.

22. Conducting outreach to all relevant service providers in order to consolidate a 'Referrals Guide' would also be a positive action contributing to awareness raising, trust-building, and the identification of gaps and overlaps. "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, [we must] 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 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."[16]

Thematic Discussion Three:

Panel 1: Mobilizing more resources for humanitarian and development assistance

Mobilizing additional humanitarian and development funding

23. Given the recurrent shortfalls in funding year after year, and an increase in humanitarian crises, the framework for funding refugee service providers, including UNHCR, needs to be addressed. Guy Goodwin-Gill has proposed a substantial revision of the present system of voluntary funding for UNHCR to a system whereby the known costs of existing refugee and displacement situations are guaranteed through payment via the General Assembly, with emergencies only

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[16] APRRN Joint Report with LAAWG: Strategies to Promote Protection Inside and Outside of RSD
http://aprrn.info/joint-report-with-laawg-strategies-to-promote-protection-inside-and-outside-of-rsd/

the subject of additional appeals for funds.[17] Such a proposal would amount to a substantial revision of paragraph 20 of UNHCR's mandate, but could be one of the most concrete gains to emerge from the GCR if agreed to and implemented by states.

24. With regards to the Asia Pacific region, the change in global refugee needs has had significant consequences for the region, by way of decreasing financial support and resettlement places for refugees, as well as a decrease in UNHCR's presence in the region. For example, in 2017, UNHCR's forecasted budget for the Asia Pacific region is $545 million USD, down from $671 million USD in 2016. As of 6 October 2017, UNHCR has only received 35% of its forecasted budgeting needs for the Asia Pacific region for the year, not including the emergency funds that will be required for responding effectively to the Rohingya refugee crisis.[18]

25. While APPRN is broadly supportive of promoting greater corporate social responsibility, developing a stronger pro bono culture, seeking and celebrating technical innovations to humanitarian responses from the private sector, and mobilizing private sector in-kind and financial contributions to the humanitarian response, at the same time it is essential that humanitarian response is mission-driven rather than donor-driven, and is accountable primarily to those we mean to assist.

Panel 2: Supporting the inclusion of refugees in national systems and services

Health, education and child protection:

26. **Preparedness through Capacity Development:** In the context of the Rohingya refugee crisis, there is a crisis in Cox's Bazar not because the large movement was unforeseeable, but because Cox's Bazar was not getting the support it required prior to this crisis, and now a precarious situation has escalated into a crisis. In this regard, the importance of capacity development at the national level cannot be overstated as a measure of prevention and contingency planning or preparedness.

27. **Sustainability from the Start:** There is a tendency to speak in terms of temporary measures, including temporary shelters, and leave discussions of access to education or livelihoods off the table at the earliest stage of displacement, but given the protracted nature of most humanitarian emergencies, no services should be left off the table for any period of time initially based on an unrealistic expectation of quick resolution. In the context of the Rohingya refugee crisis, this has been a major challenge for the agencies involved in the humanitarian response, but despite strong public posturing on repatriation, there is reportedly a growing realization that repatriation is unlikely in the short-term. Children should have access to school as soon as possible, shelters should be of an adequately durable standard, camps should be avoided and where used should be temporary with plans established early on for transition to urban living alongside the local population, and access to existing services should be preferred over developing parallel services. Furthermore, group or simplified refugee status determination

[17] Guy S Goodwin-Gill, 'The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change', *International Journal of Refugee Law*, 2016, Vol. 28, No. 4, 679–694, 684

[18] http://reporting.unhcr.org/node/29

processing should be considered with a presumption of inclusion for this population with a view to contributing to better protection outcomes for persons in need of protection such as non-refoulement, resettlement, or simply progressive access to social and economic rights and assistance.

28. **Freedom of Movement:** While camps may be unavoidable in the immediate current context of the Rohingya refugee crisis, APRRN remains deeply concerned that, just as a global compact for refugees is being developed which is to institutionalise a new approach to offering protection to refugees based upon increased responsibility sharing and enhanced refugee self-reliance, we appear to be witnessing the beginning of another protracted refugee camp situation in the Asia region.

29. **Integration from the Start:** "Perhaps the most effective tool for ensuring both security and protection is facilitating integration. Effective integration is achieved when refugees are able to participate fully in the social, cultural, and economic life of their host communities, and when host communities come to know refugees personally and value their presence. Ensuring that individuals have sufficient access to resources, services, and healthcare; realistic prospects for livelihoods and a future; and a sense of belonging in their communities — whether within their countries of origin or their countries of asylum."[19]

30. **Development Assistance targeting the entire community:** Supporting host communities through development assistance, by ensuring that services support both refugees and host communities alike, is recognized widely now as best practice as it can foster and maintain a welcoming environment for refugees from the communities that host them.

Panel 3: Enhance economic inclusion and promote livelihood opportunities in a way that benefits host countries and communities:

Refugees as development assets – the need to make the right to work a reality:

31. Recognition among states in the Asia Pacific that refugees themselves may be development assets is an idea that has yet to be widely adopted. While states in the region have informally hosted millions of refugees over several decades, most refugees in the Asia Pacific are not accorded work rights and they are frequently portrayed as being a burden on the states that receive them. This perspective has contributed to the unwillingness of some states in the region to become party to the 1951 Refugee Convention and the 1967 Protocol.

32. In our submission to the first thematic dialogue, APRRN suggested that the framing of the concept of responsibility sharing as burden sharing contributes to this perspective because it implies that refugees have a negative value and it ignores the growing body of research that demonstrates the benefits that refugees can produce for their host communities.

33. As the World Bank has documented, one of the key determinants for the impact of large scale influxes on host communities is the policy responses adopted by states. "When refugees have the right to work," the World Bank has found, "they can fully use their skills and contribute more to the economy (including fiscal resources). Policies that are traditionally seen as more humane

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[19] Volker Turk, Prospects for Responsibility Sharing in the Refugee Context, Journal on Migration and Human Security, Volume 4, Number 3, 2016

and beneficial for forcibly displaced persons also serve the host communities' own interests: they are not only right, they are also smart."[20]

34. APRRN notes a recent initiative in Malaysia to pilot the right to work for a small group of Rohingya refugees. Where such initiatives are consistent with both the spirit and application of the New York Declaration, they should be expanded to enable all refugees the right to work, in line with international legal instruments and standards. This is a key element of the concept of self-reliance.

Conclusion:

As per the caveat made by UNHCR in its concept note, the above suggestions and observations are not intended to be exhaustive, but rather to contribute to the process of joint reflection which will inform the GCR. Given the limited time available to respond to the concept note, not every proposal made within it is commented upon here, although further discussions are underway amongst our members. For example, among other points, APRRN also believes there needs to be greater consideration as to how refugees may be impacted, both positively and negatively, by developments in relation to the Global Compact on Safe, Orderly and Regular Migration, and therefore, complementarity across compacts should be included in every UNHCR concept note. APRRN intends to make further submissions in consultation with its members. The greatest amount of lead time possible in the release of future concept notes would be greatly appreciated.