ASEAN and the Rohingya Refugees

Policy Brief

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Executive Summary

The main ASEAN (Association of Southeast Asian Nations) countries involved are Myanmar, Thailand, Malaysia and Indonesia. These countries are non-signatories of the 1951 Refugee Convention and they do not have a collective legal framework to deal with the Rohingya refugees. This major humanitarian crisis means that refugees are vulnerable to crimes both from the origin country and 'host' country.

This paper recommends ASEAN to take actions to protect human rights, such as making it compulsory for the countries to be in the 1951 Refugee Convention. Secondly, there should be pressure imposed on Myanmar to eventually allow the Rohingyas to live peacefully, without fear of insecurity and to be part of the 1982 Citizenship Act. Finally, there should be coordinated legal framework for dealing with refugees in the ASEAN countries.

Statement of Purpose

This paper will explore the relationship of the Rohingya refugees with countries in order to prescribe recommendations that ASEAN can take as a regional entity to mitigate this crisis. It will show the hindrances towards problem resolution and the consequences of ASEAN'S actions or rather 'inactions'.

This paper provides suggestions to combat the growing crisis by critically examining the relationship of the Rohingya refugees with particular ASEAN member countries.

Background

The Rohingya Refugee Crisis

The official definition of a refugee according to the 1951 Refugee Convention is:

'Reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'1

Rohingya² is the name of the Sunni Muslim inhabitants of the Rakhine state. This is the area in between Bangladesh and Myanmar.³ In terms of roots, there is evidence of their

¹ "1951 Convention." *Rights in Exile Programme*, www.refugeelegalaidinformation.org/1951-convention. Accessed 18/11/17.

² The term 'Rohingya' will be used to describe the Muslim Rohingyas fleeing from persecution unless stated otherwise.

³ Kiragu, Esther, et al. States of denial: A review of UNHCR's response to the protracted situation of stateless Rohingya refugees in Bangladesh . PDES, 2011, p. 7, States of denial: A review of UNHCR's response to the protracted situation of stateless Rohingya refugees in Bangladesh .

existence in Bangladesh and Myanmar's border since post-colonial times. In Myanmar, Rohingyas are referred to as 'Bengalis' however, other international communities such as ASEAN recognizes 'Rohingyas' as an ethnic group. Furthermore, the Citizenship Act of 1982 denies them citizenship and therefore, the Rohingyas are stateless. The Rohingyas face exploitation and discrimination including forced labour, denial of residency, mass burnings, rape, child labour, extortion and restriction of movement. The result of different forms of oppressions has led Rohingyas to flee the Rakhine state as refugees.

The Rohingya Refugee Crisis from a Domestic Point of View

Whilst it is undeniable that there are crimes against humanity in the Rakhine state and beyond, Chia, a writer for The Diplomat states that the Rohingya refugee issues are not completely understood foreign media and international bodies which further complicate efforts by the Myanmar government to come up with a workable political solution. Generally, the media sees it as persecution of a majority Buddhist against a minority Muslim supported by the state. However, Chia says it is an issue of political dominance and not aptly just a conflict of ethnicity, religion or nationality. The Buddhist Rohingyas are insecure that their political dominance will be threatened by the Muslim Rohingyas, which has sparked off communal strife — they are genuinely afraid of a Muslim takeover. Additionally, noted scholar Rogers stated that Rohingyas are 'Muslims of Bengali ethnic origin'. The media exacerbates the insecurity of the Buddhists and it thus becomes politically unfeasible for the

⁴ Safdar, Anealla. "Myanmar's 2015 election: Who are the Rohingya?" *Asia | Al Jazeera*, Al Jazeera, 28 Oct. 2015, www.aljazeera.com/indepth/features/2015/10/rohingya-151024202611276.html. Accessed 18/11/17.

⁵ Zarni, Maung, and Alice Cowley. "The Slow-Burning Genocide of Myanmar's Rohingya." *Pacific Rim Law & Policy Journal Association*, 2014, p. 687.

⁶ Chia, Jasmine. "The Truth About Myanmar's Rohingya Issue." *The Diplomat*, 5 Mar. 2016, thediplomat.com/2016/03/the-truth-about-myanmars-rohingya-issue/. Accessed 18/11/17.

⁷ Ibid.

⁸ Ibid.

moderate government led by Aung Sang Suu Ki to defend Muslim Rohingyas in a predominantly Buddhist country.

As the refugees flee to neighbouring countries namely Thailand, Malaysia and Indonesia, it creates a strain in the relationship between these affected countries and the Myanmar government. Naturally, it becomes a thorn to ASEAN's spirit of regional cooperation and peaceful resolution.

The Association of Southeast Asian Nations

ASEAN, the Association of Southeast Asian Nations, was domiciled in Bangkok, Thailand in 1967. The founding fathers are: Thailand, Indonesia, Malaysia, Philippines and Singapore.

After which, they were joined by Brunei, Laos, Vietnam, Myanmar and Cambodia. Some of the main goals of ASEAN according to the ASEAN Declaration are:

- The acceleration of economic growth, social progress and cultural development to maintain peace in Southeast Asia.¹⁰
- 2. The promotion of regional peace and security.
- 3. The promotion of collaborative relationships

The following are reinforced by the ASEAN Vision 2020 with ideas such as being 'outward looking', living in harmony, having stability and prosperous growth. Currently, ASEAN countries namely: Malaysia, Indonesia and Thailand, are facing a surge of Rohingya refugees coming in from Myanmar and Bangladesh.¹¹

⁹ "What is Asean?" BBC News, BBC, 13 Nov. 2014, <u>www.bbc.com/news/world-asia-30015680</u>. Accessed 18/11/17.

¹⁰ "Asean Overview." Asean, asean.org/asean/about-asean/overview/. Accessed 18/11/17.

¹¹ ASEAN's Rohingya Challenge . Peace Research Institute Oslo (PRIO), 2015, p. 1, ASEAN's Rohingya Challenge .

Current Status of Issue

This section will detail the relationship of Myanmar, Malaysia, Thailand and Indonesia and the Rohingya refugees.

As none of these countries are signatories of the 1951 Refugee Convention and there is no legal framework to deal with this crisis, the dealings are usually left to ad hoc practices, differing from country to country. This means that there is no adequate protection for refugees. For example, there has been mass graveyards (identified to be bodies of Rohingyas) discovered in the Malaysia-Thailand border, and further evidence pointing to the prevalence of human/gang trafficking.¹²

This crisis only gained media attention in 2015 when refugees in boats were pushed away from the shores of South East Asian countries (known as the Southeast Asian Boat Crisis). Southeast Asian countries were criticised for playing 'human ping pong'¹³ in the Andaman sea as authorities from Malaysia, Thailand and Indonesia refused to allow the refugees on shore.

Myanmar

Despite overwhelming photographic evidence and witness stories of rape and violence, Myanmar has denied any crime against humanity and refuses to allow any external investigations by the United Nations .¹⁴ Evidence by scholar Cowley and Zarni have

¹² Chia, Jasmine. *Op. Cit.*

¹³ Ibid.

¹⁴ "Myanmar's Rohingya Are in Crisis-What You Need to Know." *National Geographic*, National Geographic Society, 29 Sept. 2017, news.nationalgeographic.com/2017/09/rohingya-refugee-crisis-myanmar-burma-spd/. Accessed 18/11/17.

concluded that it is a 'plan' by Myanmar to ethnically cleanse the state of Myanmar from the Muslim Rohingyas. ¹⁵ For example, in 2014, the government makes Rohingya's means of medical care unavailable by expelling the Doctors without Borders (MSF) operation.

The 1982 Citizenship Act ensures that the Rohingyas are not allowed to acquire citizenship as it does not list the Rohingya as an ethnic group. Additionally, it requires proof of historical presence. This therefore renders them stateless. The recent Rakhine State Action Plan was supposed to aid in reconstruction of the Rakhine state however, it refers to their ethnicity as 'Bengalis' and its basis is the 1982 Citizenship Act. Therefore, the Rohingyas are still not considered legitimate citizens of Myanmar.

Malaysia

Under the UNHCR, there are 59,000 registered refugees in Malaysia,¹⁶ however, international organisations estimate 200,000 unregistered Rohingya refugees.¹⁷ Malaysia is the most popular choice for Rohingya due to its geographical proximity, status as an Islamic state and higher pay. An average labourer earns US \$171 – 228 in Malaysia whilst, in Bangladesh they earn \$26-50.¹⁸

¹⁵ Zarni, Maung, and Alice Cowley. Op. Cit.

¹⁶ Bowie, Nile. "Rohingya crisis splits Asean on religious lines." *Asia Times*, 30 Sept. 2017, www.atimes.com/article/rohingya-crisis-splits-asean-religious-lines/. Accessed 18/11/17.

¹⁷ Chan, Xin Ying. "Rohingya refugees in Malaysia: Time for policy rethink." *The Straits Times*, 30 Aug. 2017, www.straitstimes.com/opinion/rohingya-refugees-in-malaysia-time-for-policy-rethink. Accessed 18/11/17.

¹⁸ Cheung, S. *ibid.*, Cheung, S. "Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience." *Journal of Refugee Studies*, vol. 25, no. 1, 2011, p. 62., doi:10.1093/jrs/fer048. Citing the UNHCR and Lewa.

Malaysia usually considers the aiding of refugees a responsibility of the UNHCR hence the solutions are usually short term. ¹⁹ However, recently, Malaysia has been taking a more active role in aiding refugees.

Recently, Prime Minister Najib has condemned Myanmar's dealing with this issue and he calls this an 'insult to Islam'. ²⁰ He has publicly condemned Aung Sang Suu Ki and calls for greater intervention by the UN. He even asks China to reconsider their view of Myanmar's refugee crisis as an internal matter rather a matter of global concern. ²¹ In a practical sense, he has sent food aid of 12 tonnes by Malaysian aircraft to aid Rohingya refugees. ²²

Additionally, the Malaysian Deputy Home Minister has mentioned that Malaysia is open to receiving more refugees. ²³ However, there will be a strong monitoring to ensure that the 'refugees' enter Malaysia out of necessity and are not economic migrants.

Thailand

Thailand has generally been reluctant to accept new refugees. The Thai government has expressed fears saying worrying that Asia will be see 'a new wave of boat people'.²⁴ The

¹⁹ Humanitarian Policy Group Working Paper, 2016, p. 9, *Livelihood strategies of Rohingya refugees in Malaysia* . Citing Crisp et al., 2012.

²⁰ Bowie, Nile. Op. Cit.

²¹ *Ibid.*

²² Timbuong, Jo. "Najib: Malaysia will do all it can to help Rohingya refugees." *The Star Online*, 9 Sept. 2017, https://www.thestar.com.my/news/nation/2017/09/09/najib-malaysia-will-do-all-it-can-to-help-rohingya-refugees/. Accessed 18/11/17.

²³ Shah, Mohd Farhaan. "Nur Jazlan: Malaysia ready to accept more Rohingya refugees." *The Star Online*, 9 Sept. 2017, www.thestar.com.my/news/nation/2017/09/09/nur-jazlan-malaysia-ready-to-accept-more-rohingya-refugees/. Accessed 18/11/17.

²⁴ Murdoch, Lindsay. "Thai plan to push back Rohingya refugees sparks fears of new wave of boat people." *The Sydney Morning Herald*, The Sydney Morning Herald, 25 Sept. 2017, www.smh.com.au/world/thai-plan-to-push-back-rohingya-refugees-sparks-fears-of-new-wave-of-boat-people-20170926-gyou16.html. Accessed 18/11/17.

military has stated that they will push the Rohingya refugees back out to the sea if it reaches their shores.²⁵

The Prime Minister has issued a statement saying that "We will provide them with shelter like in the past ... and send them back when they are ready." ²⁶ The Internal Security Operations Command staff supports this saying that it is only because of 'humanitarian grounds' that they provide food and water. ²⁷ They will, however, still abide by the law that they are not obligated by legal means to recognize refugees.

Internally, refugees have been profit to the human traffickers. In 2015, they found massive graveyards of mainly Rohingya Refugees.²⁸ Thai investigations arrested 102 officials including a senior army general and 21 government officials. This shows that within Thai bureaucracy, human rights issues are prevalent.

Burmese Rohingya Organization (BROUK) expresses worry about the lengthy detention of Rohingya refugees in detention centers. Reports show that Thailand detained 40 refugees for 10 months, of which a dozen are children under 18 without adult accompaniment. ²⁹

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ "Everywhere is Trouble": An Update on the Situation of Rohingya Refugees in Thailand, Malaysia, and Indonesia." *ReliefWeb*, 30 Mar. 2016, reliefweb.int/report/thailand/everywhere-trouble-update-situation-rohingya-refugees-thailand-malaysia-and. Accessed 18/11/17.

Indonesia

In 2015, the number is of Rohingya Refugees in Indonesia was about 1722, thus receiving less Rohingya Refugee than Malaysia or Thailand. ³⁰

Indonesia has shown forms of support however they are said to be in 'limbo'³¹ in regards to dealing with refugees. Recently Indonesian Foreign Minister, Retno Mardi has stated that Indonesia will only provide 'humanitarian' ³² aid, out of necessity due to the dire conditions of Rohingya refugees, not because of legal obligation. Additionally, The European Union Humanitarian Aid funds a project to try to equip Rohingyas to assimilate, by teaching them the Indonesian language and getting them involved in cultural activities.³³

Recently, Indonesia has issued a presidential regulation called Perpres to form a legal basis for dealing with refugees.³⁴ Here it lists specific institutions that are obligated to handle refugees (under the definition of the 1951 Convention) and lists alternatives to detention if the refugee is in a vulnerable position.³⁵ Hence, steps are taken towards the immediate protection of refugees to prevent exploitation.

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³⁰ "Indonesia and Malaysia agree to offer 7,000 migrants temporary shelter." *The Guardian*, 20 May 2015, www.theguardian.com/world/2015/may/20/hundreds-more-migrants-rescued-off-indonesia-as-pope-calls-for-help. Accessed 18/11/17.

³¹ Vaessen, Step. "Rohingya refugees in Indonesia trapped in limbo." *Al Jazeera*, www.aljazeera.com/news/2017/10/rohingya-refugees-indonesia-trapped-limbo-171003075615933.html. ³² "Indonesia ready to provide humanitarian aid to Myanmar." *Malaysiakini*, 7 Dec. 2016, www.malaysiakini.com/news/365568. Accessed 18/11/17.

³³ Topsfield, Jewel. "Most refugees in Indonesia will never be resettled: UN Refugee Agency." *The Sydney Morning Herald*, The Sydney Morning Herald, 31 Oct. 2017, www.smh.com.au/world/most-refugees-in-indonesia-will-never-be-resettled-un-refugee-agency-20171031-gzbzhn.html. Accessed 18/11/17.

³⁴ "President Jokowi Signs Presidential Regulation on Handling of Refugees from Abroad." *Sekretariat Kabinet Republik Indonesia*, setkab.go.id/en/president-jokowi-signs-presidential-regulation-on-handling-of-refugees-from-abroad/. Accessed 18/11/17.

³⁵ Chan, Xin Ying. "Rohingya Refugees In Malaysia: Need For Policy Rethink – South Asia Journal." *South Asia Journal*, southasiajournal.net/rohingya-refugees-in-malaysia-need-for-policy-rethink/. Accessed 18/11/17.

Key Considerations:

i) Non signatories of the 1951 Refugee Convention

Scholars agree that the ASEAN countries (including Malaysia, Thailand and Indonesia) are not signatories of the 1951 Refugee convention and the treatment towards refugees is not by state policies but by 'ad hoc institutional practices;'. ³⁶ The three nations issued a joint statement highlighting that their measures are because of the humanitarian crisis and not because of international commitment – the issue of non-refoulement was not mentioned. ³⁷ There are still no formal legal framework to protect them for detentions and arrest, or allow access to jobs and public welfare like healthcare and institutions. ³⁸ A problem is posed when these issues are treated as regular migration issues rather than a life or death situation, as a lot of refugees arrive in states that require immediate attention. ³⁹

ii) Anti-Muslim sentiments

The anti-Muslim sentiment is prevalent particularly in Myanmar and recently, Thailand. In Myanmar, anti-Islamism has become a propaganda tool for a nationalist discourse. A survey conducted in 5 cities, with 500 respondents, show that many dislike Muslims. 40 When probed deeper, it is because they feared a Muslim takeover. 41Additionally, some

³⁶ Cheung, S. *Op. Cit.*, p. 52.

³⁷ "Joint statement: Ministerial meeting on irregular movement of people in Southeast Asia." *ReliefWeb*, 21 May 2015, reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia. Accessed 18/11/17.

³⁸Cheung, S. Op. Cit.

³⁹ *Ibid.* p 58.

⁴⁰ Chia, Jasmine. *Op. Cit.*

⁴¹ Thomas Fuller And Patrick J. Lyons. "How Myanmar and Its Neighbors Are Responding to the Rohingya Crisis." *The New York Times*, 14 May 2015, www.nytimes.com/interactive/2015/05/13/world/asia/15rohingyaexplainer.html. Accessed 18/11/17.

academic studies have shown plans are carried out to deliberately hurt the refugees.

Academics Zarni and Cowley argues that the state of Myanmar has supported, legalised and initiated the plans of destroying the Rohingya. 42

In Thailand, there has been evidence of rising Islamophobia and the subsequent fear of terrorism.⁴³ Additionally, political science analyst Singh fears that the refugee crisis will lead to a 'a terrorist hotbed' in Southeast Asia for Al-Qaeda and ISIS. ⁴⁴

iii) Political agendas

Currently, there is potentially a political discourse given the upcoming Malaysian elections. Thus, it is not certain that Malaysia's supportive stance of Rohingya refugees are genuine. This is exemplified by being a non-signatory of the 1951 Refugee Convention and its lack of legal framework for refugees. For example, registered refugees still cannot work legally or seek public education in Malaysia.⁴⁵

Likewise, due to the apparent anti-Muslim sentiments in Myanmar, political figures like

Aung Sang Suu Kyi does not speak out to retain her political standing.⁴⁶ In Thailand, officials

have stated that they will try to improve the condition of refugees by anti-torture

⁴²Zarni, Maung, and Alice Cowley. *Op. Cit.*

⁴³ "Rising Islamophobia in Thailand Irrational and Dangerous: Scholars." *Khaosod English*, 2 Oct. 2017, www.khaosodenglish.com/news/2017/10/02/rising-islamophobia-thailand-irrational-dangerous-scholars/. Accessed 18/11/17.

⁴⁴ Bowie, Nile. *Op. Cit.*

⁴⁵ Sukumaran, Tashny. "Support for Rohingya: an election ploy by Najib Razak?" *South China Morning Post*, 7 July 2017, www.scmp.com/week-asia/geopolitics/article/2091627/malaysian-support-rohingya-election-ploy-najib-razak. Accessed 18/11/17.

⁴⁶ Chia, Jasmine. *Op. Cit.*

legislations with a promise of non-refoulment however, it does not take away from the fact that Thailand has been known for its hub of human traffickers.⁴⁷

iv) Economic problems and unequal burden sharing

Thailand has accepted the most refugees (from around the world) in South East Asia amounting to 1 million in 2005.⁴⁸ The number can be said to be more now and this may have led to a 'compassion fatigue'. Local Thais view refugees as 'competitors for jobs, resources; and they perceive Myanmar to be the cause of increased crime and health risks'. ⁴⁹ Likewise other states in ASEAN do not receive equal numbers of Rohingya refugees. For example, most of the Rohingya refugees make their way to Malaysia (approximately 59,000 registered refugees) whilst in 2015, Indonesia only had 1722 registered Rohingya Refugees.⁵⁰ This unequal burden sharing could lead to resentment.

There are also underlying economic problems in the three countries. To resettle a huge number of Refugees requires economic power. This may economically strain countries who have to provide social welfare and education which also causes resentment.

⁴⁷ "Amnesty International." *Thailand: Hard line on refugees leaves thousands vulnerable and at risk*, www.amnesty.org/en/latest/news/2017/09/thailand-hard-line-on-refugees-leaves-thousands-vulnerable-and-at-risk/. Accessed 19/11/17.

⁴⁸ Loescher, Gil, and James Milner. *Protracted Refugee Situations: Domestic and International Security*. Routledge, London, United Kingdom, 2005. p. 56.

⁴⁹ *Ibid.* p. 60.

⁵⁰ "Indonesia and Malaysia agree to offer 7,000 migrants temporary shelter." *Ibid.*

Recommendations

It is not realistic to expect any recommendation to absolve all the problems however, incremental steps can be made to improve this situation.

1. ASEAN states should be signatories of the 1951 Refugee Convention

The ASEAN Charter has stated that a goal of it is to 'protect human rights' — Malaysia, Thailand and Indonesia has evidently violated this. All three nation states should be signatories of the 1951 Refugee Convention. Meanwhile for the existing Rohingya refugees, there should be economic, political and social temporary integration with host countries until resettlement back in the Rakhine is safe and possible.

2. ASEAN states should have a common legal framework to deal with refugees

A more coordinated response and the appropriate legal framework to handle refugees should be formulated by ASEAN so that all countries reach a consensus as to how to deal with refugees. Additionally, there should be framework that separates refugees from normal migrants. This would give them certain entitlements and protection from detainment and mistreatment by the public officials in their host country.

3. Pressure on Myanmar to accommodate Rohingya Refugees

ASEAN should engage with more dialogue to come to a resolution with Myanmar. If Myanmar refuses to take steps to improving the situation, then there must be collective consequences such as economic sanctions or even expulsion from ASEAN. Myanmar should be pressured to include Rohingyas in the 1982 Citizenship Act so that the incentive to flee is removed.

ASEAN should aid Myanmar by providing external expertise on political integration. For example, Thai expertise can share how the Buddhist majority accommodate other religions. Malaysia can be used as a model to show how different ethnicities can share political power and live harmoniously. Singapore can be used to show how special privileges provide security to the minority. In this sense, more mature nation-states can provide mentorship to budding states.

Conclusion

There has been ample evidence to show that Rohingya refugee crisis is a dire violation of human rights and ASEAN is not doing anything substantial about it. The root of the Rohingya Refugee Crisis is complex and does not only involve humanitarian and legal issues, but deep rooted ethnic, historical and cultural issues. The complexity also lies in the opinion disparity of the international community versus Myanmar in regards to the legitimacy of the Rohingya. On an ASEAN point of view, countries lack the legal framework to protect the fundamental needs of refugees. This paper is a call for action to ASEAN to implement coordinated legal framework in ASEAN countries regarding Rohingya refugees and also to

further pressure Myanmar to repeal the 1982 Citizenship Act on the basis of the pressing humanitarian crisis.

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