Questioning Indonesia's Role in Addressing Rohingya Refugees: 
A Legal, Humanitarian, and State Responsibility Perspective

This article discusses Indonesia's involvement in addressing the plight of the Rohingya refugees, who have been deprived of citizenship, leading to the erosion of their basic human rights. This deprivation has resulted in widespread social exclusion and displacement, forcing many to seek asylum in countries like Indonesia. Therefore, this study aims to: firstly, analyze the legal framework within which international law enables the Indonesian government to responsibly manage refugee situation; and secondly, evaluate the collective efforts of the Indonesian government and the global community in seeking a comprehensive resolution to this crisis. 

The paper focuses on the legal dimensions of the Rohingya refugee situation in Indonesia, employing a normative approach. It offers a descriptive analysis from the perspective of governance and international law. The findings emphasize the need for the Indonesian government to adopt a proactive stance. Key measures include advocating for the Rohingya's right to citizenship, urging the Myanmar government to halt its violence, and calling for active intervention from the United Nations (UN) and the international community. Furthermore, it is recommended that Indonesia continues to offer temporary refuge on humanitarian grounds, ensuring the provision of aid and adhering to the principle of non-refoulement. Effective coordination among local and central governments, as well as international partners, is essential for the strategic management of refugee issues.

Keywords: Bureaucracy; humanitarian aid; non-refoulement principle; state responsibility.

INTRODUCTION

The displacement of the Rohingya ethnic group remains a persistent and unresolved issue in international law. Central to this problem is the Myanmar government's refusal to recognize the Rohingya as citizens, thereby rendering them stateless. This statelessness has subjected the Rohingya to a discriminatory existence. The situation is further exacerbated by the repressive
stance of the Myanmar government, leading to numerous human rights violations and significant loss of life among the Rohingya.\(^1\)

The human rights violations committed by both the society and government of Myanmar have resulted in a substantial influx of Rohingya refugees into other countries. It is undeniable that the growing number of refugees in various nations has begun to raise national security concerns. The increasing influx of refugees into foreign territories places a significant burden on the host countries. Additionally, social conflicts often arise due to economic disputes between the refugees and local populations, potentially triggering security issues for the receiving states.\(^2\)

The situation in Indonesia mirrors a broader, troubling trend. According to the United Nations High Commissioner for Refugees (UNHCR), as of December 10, 2023, Aceh has seen the arrival of 1,543 Rohingya refugees since the middle of November 2023.\(^3\) Their reception within the Indonesian, particularly Acehnese, community has been mixed, with at least 21 instances of local resistance to the influx of Rohingya immigrants from December 2023 to January 2024. This pushback largely arises from security concerns, with suspicions pointing towards the involvement of human trafficking networks. This is underscored by the 24 recorded cases of human trafficking offenses that implicated Rohingya immigrants, leading to the arrest of 45 individuals linked to syndicates orchestrating the movement of Rohingya into Aceh.\(^4\) These incidents underscore the complex legal and humanitarian challenges posed by cross-border migration, particularly when refugees become targets for exploitation by criminal syndicates. Without rigorous intervention, host nations like Indonesia stand to face grave consequences, potentially becoming unwitting accomplices in these criminal activities.

From another perspective, the Indonesian government cannot afford to be indifferent when refugees are in dire need of assistance. Consequently, both central and local governments continue to welcome refugees, in accordance with Indonesia's commitment to adhering to human rights norms.\(^5\) Guided by humanitarian considerations, the Indonesian government recognizes Rohingya refugees as victims of human rights violations and, therefore, deserving of protection. This approach aligns with Indonesia's foreign policy, which prioritizes human rights as a universal value enshrined in the Indonesian Constitution. This commitment to human rights is evident in the preamble of the 1945 Constitution, particularly its fourth paragraph, and throughout the Constitution, further emphasized by its amendments. The focus on human rights has become an integral part of the implementation of foreign policy through mainstreaming efforts undertaken by Indonesia, which include:

1. Implementation of Constitutional Obligations: Given that human rights are universally esteemed and deeply embedded in the Indonesian Constitution, the advancement and

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protection of human rights are recognized as extending beyond national borders to the international stage.

2. Recognition of Human Rights in International Relations: Human rights are seen as a crucial element influencing bilateral, regional, and global interactions.

3. Adaptation of Foreign Policy: Acknowledging that foreign policy must adapt to dynamic developments in the promotion and protection of human rights at the national level.

In view of Indonesian foreign policy, the government is compelled to be proactive in providing human rights protection, including for Rohingya refugees. Despite the debate surrounding the presence of Rohingya refugees, the Indonesian government finds itself in a complex position. On one hand, it is obligated to uphold human rights as mandated by the Constitution; on the other hand, it faces the challenge of managing a growing population due to the influx of refugees. Referring to the fundamental essence of governance, the primary duty of the government is to manage and regulate. Management refers to absolute governmental affairs, concurrent and general administration, which the government must undertake to provide services to the public. Regulation involves legal policies enacted by the government to meet public needs, including those related to foreign refugees.

In this context, the government regulates refugee affairs through Presidential Regulation No. 125 of 2016 on the Management of Foreign Refugees. This regulation underscores that the government cannot ignore the presence of refugees and is responsible for managing refugee issues, including identification, sheltering, security, and immigration supervision.

Therefore, this paper is significant in identifying the role of the international community and the Indonesian government and its bureaucracy in handling Rohingya refugees in a proportionate and just manner. Additionally, the paper will outline Indonesian foreign policy and legal strategies aimed at ensuring the basic rights of Rohingya refugees.

**RESEARCH METHODS**

The methodology employed in the study of “Questioning Indonesia's Role in Addressing Rohingya Refugees: A Legal, Humanitarian, And State Responsibility Perspective” is both comprehensive and multi-dimensional. The research begins with a thorough literature review to establish a foundational understanding of the historical context and the legal framework pertaining to human rights violations in the context of the Rohingya refugee crisis, within the ambit of international legal norms.

This study critically examines three primary dimensions: first, the involvement of the UN and regional responses in upholding the principle of non-refoulement and its ramification; second, the role of the Indonesian government and its administrative apparatus in managing the influx of Rohingya refugees; and third, the significance of international law in delineating state accountability in the crisis involving Myanmar and the receiving countries. The primary focus of this investigation is on the legal issues concerning the Rohingya refugees in Indonesia. It provides a detailed examination of these issues through the lenses of governance law and international law,
aiming to elucidate the initiatives and standards set by the Indonesian government, alongside the international community’s contributions, in tackling the plight of the Rohingya refugees within Indonesian borders.

ANALYSIS AND DISCUSSION

International Legal Perspectives on the Rohingya Refugee Crisis: An Overview and Historical Backdrop

The Rohingya crisis, unfolding in Myanmar, epitomizes a dire humanitarian catastrophe that has notably disturbed Asia in the 21st century. This crisis has inflicted deep-seated suffering, compelling hundreds of thousands, especially from the Rohingya ethnic minority, to seek refuge. This predicament stands as a poignant emblem of the prevailing human rights and refugee crises in contemporary times.8 The roots of this crisis can be traced back to longstanding discrimination and persecution faced by the Rohingya, a Sunni Muslim minority. The crisis was further aggravated by the Myanmar government's 1982 decision, under the dictatorship of General Ne Win, to strip them of their citizenship. This decision ignited a surge in communal violence and political oppression, which was exacerbated by the Myanmar military’s contentious anti-terrorism claims—claims that obscured the grim reality of widespread violence and egregious human rights abuses.9

The human rights situation in Myanmar's Rakhine State, home to the Rohingya ethnic group, highlights the severe economic challenges in a country with a GDP per capita of USD 1,240. Rakhine is among Myanmar’s poorest regions, with nearly half of its population living below the poverty line, in stark contrast to the national average. This dire economic backdrop exacerbates the human rights abuses faced by the Rohingya, including restricted access to economic and social goods and services, as well as exposure to political and civil repression. Movement restrictions are particularly severe; violations can result in imprisonment, enforced disappearances, torture, forced labor, and sexual violence. The Rohingya face significant barriers to accessing healthcare and educational, often hindered by prohibitive costs and discrimination.10

Collective resentment, fueled by threats to existence and political power among ethnic groups, sparks aggressive actions. Efforts at conflict resolution are impeded, diminishing the motivation for reconciliation and peace processes.11

The crisis has triggered a massive exodus of Rohingya refugees into neighboring countries. The most substantial movement occurred in 2017 when over 720,000 Rohingya sought refuge in Bangladesh. Their arrival in Cox's Bazar District, particularly in the sub-district of Ukhiya, led to the emergence of the world’s largest refugee camps, exacerbating an environmental crisis through deforestation in the area.12 The Rohingya crisis has affected several Southeast Asian countries, with

10 Beyrer and Kamarulzaman.
refugees seeking asylum in Malaysia, Brunei, Thailand, Indonesia, as well as Australia, India, and Saudi Arabia. In Indonesia, Rohingya refugees arrive in small boats, often in critical conditions, resulting in numerous fatalities during their journey. As of March 2015, Malaysia had registered 150,000 refugees.13

The international community, including the UN, NGOs, and various national governments has responded to the Rohingya humanitarian crisis. Since the 1990s, the UNHCR has actively established camps and provided assistance in Myanmar, despite challenges such as forced repatriation and governmental resistance. ASEAN countries like Indonesia, Malaysia, and Thailand have offered refuge to the displaced. Thailand, hosting over 120,000 refugees, expresses concern over the potential for escalating insurgencies in its southern region due to the influx of Rohingya refugees. Malaysia, despite its challenges in ratifying international human rights treaties and strict immigration policies, has accommodated between 20,000 and 25,000 Rohingya refugees. The international community, led by Western nations, has condemned Myanmar for human rights violations. Meanwhile, the OIC and Gambia have engaged in international legal advocacy. In 2019, Gambia, with the support of the OIC, initiated a lawsuit against Myanmar at the International Court of Justice (ICJ) for alleged genocide. While the Myanmar government refutes these allegations, the ICJ’s provisional measures are binding, implying political repercussions for non-compliance.14

The Rohingya, an ethnic group from Myanmar, have a rich and tumultuous history stretching back to their initial settlement in Rakhine during the 7th century. The region once thrived under the rule of the Arakan Kingdom from the 15th to 17th centuries, marked by Muslim monarchs who fostered close relations with Chittagong, a key trading hub in Bangladesh, encouraging migration and cultural exchanges.15

By 1785, the Burmese Kingdom had seized Rakhine from the Arakan Kingdom, only for it to fall into British hands after the First Anglo-Burmese War (1824-1826). The British era saw a mass departure of Rakhine's populace to Bengal, driven by oppressive forced labor practices. From 1826 to 1840, under British governance, the region suffered from poor taxation policies and neglect in development, further straining social conditions despite a demographic recovery and limited economic growth through rice agriculture. The late 19th-century escalation of drug addiction further eroded the social structure.16

Achieving independence in 1948, Burma was immediately beset by ethnic strife and political turmoil. The 1962 military coup ushered in a socialist military regime notorious for human rights abuses against the Rohingya, which worsened following the 1982 Citizenship Law. This law stripped the Rohingya of their citizenship, leaving them stateless and curtailing fundamental rights like marriage, property ownership, and free movement, in violation of international norms.

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The shift towards a civilian-led government in 2011, despite a name change to Myanmar, did not alleviate the Rohingya's plight.\(^\text{17}\)

Even with democratic reforms initiated in 2011 and a transition to civilian rule in 2016, the Rohingya’s situation remains critical. The government’s peace process has conspicuously excluded the Rohingya, despite assurances of addressing the Rakhine State’s issues. The lingering military influence within the new civilian bureaucracy hampers meaningful progress. Rohingya within Myanmar face severe mobility restrictions and discriminatory policies, such as the so-called Population Control Activities, infringing upon their reproductive rights.\(^\text{18}\)

The situation took a turn for the worse with the 2021 military coup, underlining the failure of Aung San Suu Kyi’s NLD government to safeguard Rohingya rights. This coup has heightened the political and security chaos, thereby complicating the protection and integration of the Rohingya.\(^\text{19}\)

Ongoing systematic discrimination and bureaucratic hurdles to their movement and basic rights underscore the urgent need for a robust and comprehensive international intervention to resolve Myanmar's longstanding humanitarian crisis.

International legal frameworks, including human rights treaties and refugee protection guidelines, play a critical role in examining the actions of the Myanmar government. This crisis highlights the pressing need for the effective application and enforcement of international law to safeguard the fundamental rights of the Rohingya and to halt further abuses.

**Exploring International Legal Responses to the Rohingya Refugee Crisis: Frameworks and Human Rights Violations**

Within the international law, various instruments are key to dictating state conduct towards refugees and enforcing human rights. These underscore the importance of citizenship as an essential human right, crucial for legal protection, political involvement, and access to basic amenities. The Universal Declaration of Human Rights (1948), alongside numerous international conventions, upholds the right to citizenship and condemns its arbitrary denial or withdrawal.\(^\text{20}\) These legal frameworks instruct countries on their responsibilities to individuals, notably vulnerable populations like the Rohingya in Myanmar.

The inception of international refugee protection followed World War I, led by the League of Nations and the International Committee of the Red Cross (ICRC). This initiative, aimed at addressing refugee crises emanating from Russia and the Ottoman Empire, resulted in the creation of the International Nansen Office and several Intergovernmental Committees for Refugees. The 1933 Convention on the International Status of Refugees laid the groundwork for refugee protection, highlighting the principle of non-refoulement, further elaborated in the 1951 Refugee


Convention. This evolution signifies the transition of refugee protection from an ad hoc response to a comprehensive system underpinned by international law.\(^{21}\)

Crucial instruments in international law, particularly regarding refugee protection, encompass:\(^{22}\)

1. The Universal Declaration of Human Rights, proclaimed in 1948;
2. The 1951 Refugee Convention;
3. The 1967 Protocol Relating to the Status of Refugees, expanding refugee protection beyond original geographic and temporal constraints;
4. The 1954 Convention Relating to the Status of Stateless Persons; and

Moreover, the protection of refugee rights is bolstered by various international legal instruments that establish a framework for safeguarding civil and political rights. These include treaties and conventions that affirm and strengthen the fundamental rights of all individuals, including refugees. Key international legal instruments relevant in this context are:\(^{23}\)

1. The International Covenant on Civil and Political Rights (ICCPR);
2. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966;
3. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965;
4. The Convention on the Elimination of All Form of Discrimination Against Women 1979 (CEDAW); and

Within the domain of international law, refugee law and human rights law (HRL) interact in a complementary yet distinct manner, even though they are sometimes viewed as separate legal frameworks. Refugee law, which is primarily established by the 1951 Refugee Convention, zeroes in on specific protections for refugees, including their definition and the rights they are entitled to. This convention establishes a framework for countries to extend protection and fundamental rights to individuals compelled to flee their home countries due to internationally recognized grounds, such as persecution. Human rights law, which includes a variety of international instruments like the Universal Declaration of Human Rights and international human rights covenants, ensures broader rights that apply to all individuals, refugees included. While refugee law focused on the protection it provides, human rights law offers additional and comprehensive support for refugees, especially in instances where the provisions of refugee law may prove to be inadequate.\(^{24}\)

The crisis faced by the Rohingya ethnic group can be effectively addressed through the application of international human rights law and refugee law. Article 15 of the Universal Declaration of Human Rights affirms that everyone has the right to a nationality and that no one

\(^{23}\) Fitria and Susetyo, “Protection of Legal and Human Rights for Uncitizenship Transit Refugees Under International Law and National Law (Rohingya Refugee Case Study).”
shall be arbitrarily deprived of their nationality or denied the right to change their nationality. This provision is highly relevant for the Rohingya, who have been denied citizenship by Myanmar. Article 33 of the 1951 Refugee Convention clearly prohibits expulsion or forcible return of refugees to countries where they face serious threats to their life or freedom. For the protection of the Rohingya fleeing from Myanmar, the principle of non-refoulement is crucial.

An analysis of human rights violations against the Rohingya in Myanmar reveals patterns of violence, discrimination, and denial of citizenship. Among the most frequently reported forms of violence are arson and sexual assault, with arson being particularly noted for its visibility in various reports from survivor organizations. The year 2017 also saw instances of sexual violence, physical assault, murder, and the creation of mass graves. However, reports on sexual violence and mass graves targeting the Rohingya during that period show some inconsistency, attributed to social stigma and challenges in ascertaining the exact number of victims. These reports commenced in August 2017, when the Tatmadaw, also known as the Myanmar Armed Forces, launched attacks on Rohingya villages, demonstrating a systematic pattern of violence. This occurred despite the Myanmar government's denial of involvement, thereby corroborating evidence of atrocities.

The Roles of the United Nations and Regional Responses in Upholding the Principle of Non-Refoulement: Implications for the Rohingya Crisis

The UN has a long history of engagement with Myanmar, dating back to 1990, focusing primarily on human rights concerns. The UN General Assembly (UNGA) has consistently issued annual resolutions urging Myanmar authorities to improve the country's human rights situation. The UN Human Rights Council (HRC) has also been actively involved, appointing Special Rapporteurs to investigate and report on the human rights violations in Myanmar. The UNHCR, the UN body directly responsible for refugee issues, commenced relief operations in Bangladesh in 1992 to assist Rohingya refugees. However, the UNHCR faces ongoing challenges in improving the welfare of the Rohingya, including food shortages and difficulties cooperating with both the Bangladesh and Myanmar governments on refugee-related policies.

A significant development in the UN's role is the adoption of Human Rights Council Resolution 52/31 on April 4, 2023, concerning the Situation of Human Rights in Myanmar (A/HRC/RES/52/31). This resolution explicitly condemns the military coup and the ongoing human rights violations in Myanmar, including those targeting the Rohingya. It underscores the urgent humanitarian crisis and the necessity for law enforcement and human rights protection, particularly for minorities and children, with a specific focus the Rohingya ethnic group. The resolution calls for accountability for abuses, protection for journalists, and unimpeded access to humanitarian access. It emphasizes Myanmar's obligations under international human rights and humanitarian law, demanding investigations into abuses and justice for victims.

25 “Article 15 of Universal Declaration of Human Rights (UDHR)” (n.d.).
26 “Article 33 1951 Refugees Convention,” n.d.
The principle of non-refoulement, a cornerstone of international refugee law, prohibits states from returning refugees to territories where they would face persecution or threats to life or freedom based on race, religion, nationality, membership in a particular social group, or political opinion. Enshrined in Article 33 of the 1951 Refugee Convention, this principle is universally recognized as both a moral and legal imperative. As a component of international customary law, non-refoulement has attained the status of jus cogens, an inviolable norm in international law that cannot be derogated from or modified by any state. This jus cogens status underscores the principle’s paramount importance within the international refugee protection system, mandating all states to uphold it unequivocally under the international law.

The UN plays a pivotal role in safeguarding Rohingya refugees from forced repatriation through various mechanisms. It achieves this by adopting Human Rights Council Resolutions that emphasize the principle of non-refoulement and by collaborating closely with the UNHCR. Additionally, the UN provides crucial support to countries like Bangladesh, which are experiencing a significant influx of Rohingya refugees, focusing on enhancing their capacity to respond effectively to the humanitarian situations. In 2020, the UN, in conjunction with UNHCR and various NGO partners, launched a Joint Response Plan aimed at raising $877 million to address the humanitarian needs of Rohingya refugees and host communities in Bangladesh. This comprehensive plan prioritizes the provision of essential services such as food, shelter, clean water, and sanitation. It also encompasses infrastructure development, livelihood enhancement, and environmental rehabilitation initiatives. Moreover, the UN is actively working to ensure education for the Myanmar curriculum into their learning experience. This initiative aims to prepare them for a potential safe and dignified return to their homeland when conditions permit, a goal that remains a focal point for the international community.

ASEAN's regional efforts in addressing the Rohingya crisis primarily focus on resolving the underlying political issues in Myanmar and fostering a sustainable democratic transition. Within the framework of the ASEAN Political-Security Community (APSC), the organization strives to implement the principle of Responsibility to Protect (RtoP) in response to the crisis. However, this situation poses a significant challenge to ASEAN's traditional principles of non-intervention and consensus-based diplomacy, leading to internal debates about the most effective strategies for addressing the Rohingya situation in Myanmar. This crisis serves as a crucial test of ASEAN's commitment to upholding human rights and resolving conflicts peacefully. In this context, ASEAN's active engagement in diplomatic efforts and advocacy is paramount to achieving a sustainable resolution for the Rohingya crisis. By urging Myanmar to protect the human rights of the Rohingya and implementing the RtoP, ASEAN plays a vital role in seeking a peaceful resolution and preventing further escalation of the conflict. ASEAN's approach is not only essential

for regional stability but also reinforces its commitment to advancing human rights and democratic values in Southeast Asia.\textsuperscript{34}

The Responsibility to Protect (RtoP) concept, developed by the International Commission on Intervention and State Sovereignty (ICISS), posits that states bear the primary responsibility for protecting their populations from mass atrocities such as genocide, ethnic cleansing, war crimes, and crimes against humanity. Should a state fail to fulfill this responsibility, the international community is obliged to intervene. This principle, endorsed by former UN Secretary-General Kofi Annan and the Canadian government, seeks to reconcile the tension between intervention and state sovereignty, encompassing moral, legal, political, and operational dimensions.\textsuperscript{35} The RtoP framework comprises three pillars: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. It addresses both the root causes and consequences of conflict, while also establishing norms for humanitarian intervention in the 21\textsuperscript{st} century. This concept signifies a shift in the understanding of state sovereignty, emphasizing that it entails not only rights but also the responsibility to safeguard the human rights and security of citizens.\textsuperscript{36}

In contrast to ASEAN's broader initiatives through the APSC and the principle of Responsibility to Protect (RtoP), the responses of several ASEAN nations to the Rohingya crisis reveal a disconnect in the region's adherence to these values. For example, Malaysia, despite ASEAN's call for member states to uphold the human rights of their populations, encounters significant hurdles due to its non-ratification of the 1951 UN Refugee Convention. This status leads to considerable challenges for the Rohingya within its borders,\textsuperscript{37} as Malaysian law—specifically the Federal Constitution of 1957 and the Malaysian Immigration Act of 1959/63—do not offer refugees legal residency rights.\textsuperscript{38} Consequently, refugees face risks of exploitation, as well as arrest and detention. With 103,560 Rohingya among 181,510 registered refugees from Myanmar in Malaysia, the absence of legal recognition subjects them to precarious living conditions. Predominantly located in Selangor, Kuala Lumpur, and Pulau Pinang, these refugees are denied formal employment and public services, forcing them into informal labor that often results in exploitation and unsafe working conditions.\textsuperscript{39} This pronounced disparity emphasizes the necessity for ASEAN not only to champion human rights at the regional level but also to ensure that member states’ domestic policies with are in harmony with these principles to effectively safeguard vulnerable groups like the Rohingya.

Similarly, Thailand also faces notable challenges in managing its refugee population due to the lack of a formal refugee law, resulting in refugees being treated as illegal immigrants, which

\begin{itemize}
  \item \textsuperscript{34} Trihartono.
  \item \textsuperscript{36} Botchway.
  \item \textsuperscript{39} Krishnan et al.
\end{itemize}
exposes them to arrest, detention, and deportation. Despite Thailand's extensive history of hosting refugees from the Indo-China Region, the absence of a consistent legal framework means these individuals are still categorized as “displaced persons fleeing conflict” rather than being formally recognized as refugees. The majority of these refugees, originating from Myanmar, reside in temporary shelters along the Thai-Myanmar border. Although Thailand has ratified several international human rights treaties advocating for protection from torture and the upholding of civil rights, it falls short of fulfilling the 1951 Refugee Convention’s obligations, particularly the principle of non-refoulement, as it is not a signatory. The 2019 initiative to introduce a National Screening Mechanism represents a move towards establishing a formal refugee status determination process. However, the sluggish progress in implementing this mechanism underscores persistent inadequacies and inconsistencies in Thailand's refugee policy, reflecting the broader regional challenges faced by ASEAN, especially akin to the situation in Malaysia. This situation highlights a gap between regional human rights advocacy and the practical implementation of national policies.

**Indonesia’s Approach to the Rohingya Refugee Crisis**

Indonesia, through its foreign diplomatic channels and national capabilities, has pledged to play a significant role in the Rohingya refugee crisis. The Indonesian government's involvement, however, is tailored to match the country’s resources and capacities. Key initiatives undertaken by Indonesia in response to the Rohingya refugee situation are outlined below:

1. **Welcoming Refugees:** Indonesia has opened its door to Rohingya refugees, providing a safe haven for many. Agencies like the National Disaster Management Authority (BNPB), the Ministry of Social Affairs, the Indonesian National Armed Forces, and various local government bodies have been at the forefront, offering essential aid and shelter to those who reach Indonesian shores.

2. **Engagement in Diplomacy:** On the international stage, Indonesia has been active in diplomatic circles, seeking sustainable solutions to the Rohingya crisis. Its engagement spans regional and global discussions, focusing on human rights, refugee protection, and the peaceful resolution of conflicts.

3. **Provision of Humanitarian Assistance:** Beyond its borders, the Indonesian government extends humanitarian aid to Rohingya refugees within its territory. This effort is bolstered by the support from the local and international humanitarian organizations, ensuring that the needs of refugees are met.

4. **Fostering Regional Collaboration:** Recognizing the importance of collective action, Indonesia has sought to work alongside neighboring countries and regional entities. This collaborative approach aims at tackling the underlying causes of the Rohingya crisis and improving the welfare and protection of refugees.

Indonesia, as a host country for refugees, has established regulations under Presidential Regulation Number 125 of 2016 on the Management of Foreign Refugees. This regulation mandates the government to address the Rohingya refugee issue in alignment with existing legal policies.

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41 Al Imran.
Efforts are undertaken through systematic processes, including the discovery, sheltering, security, and immigration supervision of refugees.

Aligned with the principles inherent in Indonesia’s legal philosophy, particularly those derived from Pancasila, the Indonesian government’s handling of Rohingya refugee situation highlights a dedication to humanitarianism and justice as fundamental national values. These actions mirror a wider philosophical directive that accentuates the state’s duty to protect and assist individuals facing severe adversities, going beyond mere simple legal requirements to encompass a moral responsibility. This philosophical underpinning not only informs governmental decisions but also aligns with international legal norms and the country’s constitutional pledges to safeguard human dignity and rights, guaranteeing that all initiatives are deeply rooted in the Indonesian state’s ethical considerations.42

Despite concerted efforts, Indonesia faces significant challenges in managing foreign refugees. These challenges encompass identification, sheltering, security, and immigration oversight, often exacerbated by on-the-ground constraints. The bureaucratic handling of Rohingya refugees presents several specific hurdles:

1. Limited Capacity: Resource constraints plague both central and regional governments, resulting in inadequate shelter facilities, health services, and educational opportunities. Effective refugee management requires substantial budget allocation and resources.
2. Legal Uncertainty: Rohingya refugees frequently find themselves in legal limbo. Their unrecognized refugee status limits their access to basic services and fundamental rights.43
3. Security Issues and Human Trafficking: The refugee crisis is entangled with security and human trafficking concerns. The government struggles to secure borders against smugglers and maintain regional security.44
4. Public Opinion Pressure: Government decisions regarding Rohingya refugees are subject to public opinion, which can be both supportive and critical. Balancing humanitarian duties with internal concerns is a formidable challenge.
5. Conflict in Refugees' Home Countries: Although beyond the Indonesian government’s direct control, conflicts in refugees' home countries significantly affect refugee management. The government has limited capacity to address the root causes of these conflicts.

Addressing these challenges requires strengthening the roles of various stakeholders, including the Indonesian government, ASEAN, the OIC, the UN, and other involved entities, in a coordinated manner. Implementing the Global Compact on Refugees is crucial for ensuring equitable and measurable responsibility-sharing, thereby providing sustainable solutions to the refugee crisis. This strategy positions international institutions as key partners, with clearly defined roles and agreements.

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The policy framework must also consider sector-specific arrangements, particularly in terms of access to healthcare, education, and livelihood opportunities for refugees. Building trust and fostering a sense of belonging among stakeholders can mitigate harmful practices such as transnational crimes and violence within refugee communities.

The Role of International Law in the Rohingya Crisis: State Accountability and Global Justice

The principle of Responsibility to Protect (RtoP) is a cornerstone of international criminal law, mandating states to prevent and address international crimes such as genocide, crimes against humanity, and war crimes. This principle underscores the essential connection between sovereignty and the duty of a state to protect its civilians under the RtoP framework. Historically developed to ensure that sovereignty serves as a proactive commitment to human rights rather than a barrier to external scrutiny, the 2005 World Summit Outcome marked a significant shift. It recognized that sovereign states have the duty to prevent atrocities within their territories and that failure to do so legitimizes international intervention. This evolution reflects a transition from a stance of non-intervention to a recognized international obligation to intervene when necessary.45

The enforcement of duties under international law is crucial, with the International Criminal Court (ICC) and various Ad Hoc International Criminal Tribunals playing pivotal roles. These judicial bodies uphold international law by asserting individual accountability for international crimes, irrespective of the perpetrator's official capacity. This effectively negates any immunity for heads of state or diplomatic representatives. Through legal doctrines such as command responsibility and joint criminal enterprise, leaders who fail to prevent or punish crimes committed by their subordinates are subject to prosecution.46 This approach underscores the universal applicability of international law principles, advocating for a global justice system that prioritizes international law over national immunities and emphasizes the importance of accountability in addressing crimes against humanity, including those committed in the Rohingya crisis.

In Myanmar, the egregious violations of the Fourth Geneva Convention, particularly against the Rohingya population, necessitate international accountability in line with Articles 146-149 of the Convention.47 State that are parties to this convention are obliged to prosecute individuals responsible for grave offenses such as murder, torture, and inhumane treatment during armed conflicts. Furthermore, the Rome Statute's Articles 7 and 8 (1998)48 classify these acts as crimes, respectively, thereby granting the International Criminal Court (ICC) jurisdiction over these perpetrators.49

47 Articles 146-149 of the Fourth Geneva Convention (1949) establish the responsibilities of state parties to prosecute perpetrators of “grave breaches,” which include actions such as murder, torture, hostage-taking, inhumane treatment, and extensive destruction not justified by military necessity.
48 Articles 7 and 8 of the Rome Statute of the International Criminal Court (1998) define crimes against humanity and war crimes, including mass killings, forced displacement, attacks against civilian populations, and the forced recruitment of children under 15 years old into armed conflict as offenses prosecutable before the ICC.
Additionally, Articles 51 and 52 of the Additional Protocol I to the Geneva Conventions (1977) bolsters the protection of civilians and civilian objects in Myanmar. These articles strictly prohibit attacks that do not differentiate between civilian and military targets, including the forced conscription of children under 15 into armed conflicts. The amalgamation of these principles of international law provides the global community with a comprehensive legal framework to underpin law enforcement endeavors, ensuring that those responsible for serious offenses in Myanmar are brought to justice under international humanitarian law.\textsuperscript{50}

In 2019, Myanmar faced increasing international pressure to end the violence against the Rohingya. The Gambia, supported by the 57 member states of the Organization of Islamic Cooperation (OIC), filed a lawsuit at the International Court of Justice (ICJ), accusing Myanmar of committing genocide against the Rohingya. This legal action by The Gambia represented a significant step in the global effort to hold Myanmar accountable for the alleged crimes against the Rohingya ethnic group. Despite Myanmar’s denial of the allegations and the establishment of its own Commission of Inquiry, the ICJ’s provisional orders are binding. This has heightened international pressure and potential political repercussions for Myanmar if it fails to comply with the court's directives. Non-compliance could prompt further actions by the UN and the Security Council under Article 94 of the UN Charter.\textsuperscript{51}

In 2022, the International Court of Justice (ICJ) overruled Myanmar's preliminary objections, validating The Gambia's right to initiate legal action. Myanmar was then directed to respond to The Gambia's allegations by August 2023, setting a subsequent deadline for a rejoinder by December 2024. In November 2023, countries including Canada, Denmark, France, Germany, the United Kingdom, and the Maldives announced their intention to intervene, highlighting the crucial role of international cooperation in the prevention and punishment of genocide. While the ICJ does not have the authority to prosecute individuals, focusing instead on disputes between states, UN mechanisms can offer information to The Gambia to aid in justice efforts and the prevention of future atrocities.\textsuperscript{52}

The hesitation of many countries to ratify the Rome Statute underscores the obstacles in applying the principle of individual accountability by the International Criminal Court (ICC). This reluctance is influenced by factors such as the legacies of European colonialism, native cultures, economic pressures, and paths towards modernization, which have all played a role in shaping the region's criminal justice systems. Moreover, concerns about global issues like climate change, reliance on aid and bilateral relationships, and legislative capabilities contribute to the hesitation of Asia-Pacific nations to fully engage with the ICC framework.\textsuperscript{53}

The global criminal justice system is often perceived as burdensome for smaller countries in the Asia-Pacific region. Limited knowledge of the ICC’s operations and apprehensions about the ‘westernization’ of criminal justice models exacerbate this reluctance. In Asia, historical practices

\textsuperscript{50} Dexiang.
\textsuperscript{51} Faye, “A Forced Migration from Myanmar to Bangladesh and beyond: Humanitarian Response to Rohingya Refugee Crisis.”
of immunity and broad executive discretion under regimes of dictatorship or military rule often lead to tolerated impunity, creating a disconnect with the international justice system that emphasizes global accountability.

Moreover, the nascent state of civil society as a political force in the Asia-Pacific complicates efforts to garner support for the ICC. Civil society engagement in the region often stems not from fear of oppression but from a dedication to economic advancement. Promoting the ratification of the Rome Statute necessitates collaborative efforts among civil society, academia, and the media to foster accountability and governance within the ICC framework.

The Rohingya refugee crisis has had a profound impact on host countries like Bangladesh, India, Malaysia, Indonesia, Thailand, and Pakistan. Bangladesh, notably through its Cox's Bazar refugee camp, accommodates the largest number of Rohingya refugees. Other countries such as India, Malaysia, Indonesia, and Thailand also shelter significant Rohingya populations. These host nations confront intricate challenges in managing the refugee influx, particularly in terms of housing, healthcare, education, and food security.

Despite the urgent need for protection and assistance, none of these host countries have ratified the 1951 Refugee Convention or its 1967 Protocol. In Southeast Asia, only the Philippines, Cambodia, and East Timor are signatories to the Convention. This situation raises important questions about their legal obligations, especially in regards to the principle of non-refoulement and the protection of refugee human rights. The circumstances highlight the urgent necessity for these countries to address the plight of Rohingya refugees in accordance with international human rights standards, even in the absence of formal ratification of the Refugee Convention.

In Southeast Asia, the principle of non-refoulement has been notably practiced, particularly during the Indochina refugee crisis. In 1979, regional countries demonstrated their commitment to this fundamental concept of international refugee law, which prohibits the forcible return of refugees to places where they face serious threats to their life or freedom. By agreeing to provide temporary asylum to Vietnamese refugees, these nations took a significant step in refugee protection. Furthermore, in 1989, the adoption of the Comprehensive Plan of Action (CPA) at the International Conference on Indochinese Refugees in Geneva marked a pivotal shift in handling refugees from Vietnam. The CPA introduced new procedures for refugee status determination in regional countries, replacing the previous decade-long approach of automatic resettlement. This change signified a move towards more structured and systematic practices in refugee management among Southeast Asian countries.

These examples illustrate how Southeast Asian countries engage with international refugee protection norms, even though many have not ratified the 1951 Refugee Convention. Their responses to the Indochina refugee crisis and the Rohingya refugees situation demonstrate efforts to accommodate refugees while balancing their own domestic capacities and resources. The presence of Rohingya refugees in host countries such as Bangladesh, India, Malaysia, and Indonesia presents

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significant challenges in resource management and the provision of adequate protection. Despite facing criticism, these countries have offered asylum to many in need of international protection.

CONCLUSION

As part of the global community, Indonesia is inherently driven to condemn human rights abuses occurring in Myanmar. The deep connection felt due to the significant Muslim Rohingya population resonates with the Indonesian government, imposing a moral duty to strive for the cessation of the violent conflict targeting the Rohingya ethnic group. Indonesia steps up by engaging in international diplomatic endeavors and urges global communities and organizations, such as the United Nations (UN), the Association of Southeast Asian Nations (ASEAN), and the Organization of Islamic Cooperation (OIC), to exert pressure on the Myanmar government. Furthermore, it is crucial for both central and local governmental bodies, alongside donor agencies, the UN, and civil society groups, to collaborate and proactively participate in aiding Rohingya refugees. Indonesia’s bureaucratic support is crafted to be a temporary measure, primarily centered around providing shelter as outlined in Presidential Regulation Number 125 of 2016 on the Management of Foreign Refugees. In this context, Indonesia is committed to upholding the principle of non-refoulement, safeguarding the protection of Rohingya refugees while preparing for their secure and respectful repatriation when circumstances allow. Moreover, as an active member of the global community, Indonesia continues its commitment to promoting worldwide security and peace, ensuring that no ethnic minority is subject to discrimination.

REFERENCES


Article 15 of Universal Declaration of Human Rights (UDHR) (n.d.).

“Article 33 1951 Refugees Convention,” n.d.


