Discussion Paper

Promoting Regional Responses to Rohingya Displacement in Southeast Asia

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Executive Summary

Over 1.6 million Rohingya remain in situations of protracted displacement in Bangladesh and the wider Asia region, including in Malaysia, Indonesia and Thailand. Major host countries of Rohingya refugees have resisted accession to the 1951 Refugee Convention and its 1967 Protocol. Concerned about 'pull factors' bringing more Rohingya and other refugees to their territories, and sceptical about equitable and predictable responsibility sharing, host governments have instead preferred responses grounded in immigration and national security law and policy. While Indonesia and Thailand have national refugee regulations, they are nascent and not designed to identify durable solutions for Rohingya refugees at scale.

Regional institutions are similarly inadequate and have not been effectively utilised to respond to the Rohingya crisis. Long term and sustained minilateral or other sub-regional responses have likewise proved elusive in the absence of regional leadership and political will. Conflicting and divergent priorities among regional host governments can disincentivise collective action, and the inertia of long-standing approaches to refugee policy have been difficult to overcome. Domestic political constraints, including growing antipathy toward Rohingya communities, have also stifled opportunities to explore greater coordination.

This status quo poorly serves both Rohingya refugees and their hosts. Rohingya face food scarcity and precarious security conditions in refugee camps in Bangladesh, and live on the margins in host countries in Southeast Asia with inadequate access to protection or basic services. In parallel, persistent conflict and instability in Myanmar make the safe, dignified, voluntary and sustainable return of Rohingya unrealistic in the short- and medium-term, particularly as the root causes of Rohingya displacement remain unaddressed. Since January 2022, there has been a significant increase in irregular movement overland and by sea of Rohingya seeking to leave Myanmar and Bangladesh—a trend that appears set to continue in 2023.

Regressive policy responses and their impacts have received regional and international media attention, reflecting poorly on host governments and deepening frustration among humanitarian actors. In November and December 2022, slow reactions to stranded boats carrying Rohingya in the Bay of Bengal and Andaman Sea recalled the 2015 Andaman Sea Crisis, and renewed scrutiny on pushback and search-and-rescue policies that violate international law. On top of reputational costs, punitive and deterrence measures have been costly and ineffective. Large-scale, prolonged detention of Rohingya, for example, is expensive and has not halted the irregular movement of refugees. For many, the risks of journeys overland and by sea are outweighed by poor living conditions in Myanmar and Bangladesh.

Recognising considerable barriers to achieving regional action, there are nonetheless strong arguments that regional responses could better protect Rohingya refugees and better serve the interests of host countries. Protracted Rohingya displacement is a transnational challenge, and the policies of host governments affect one another, for instance, where authorities push back boats or create conditions that incentivise irregular, onward movement to neighbouring countries. Regional responses hold promise for improving communication between host governments and creating interlocking commitments and fairer responsibility sharing arrangements. Similarly, they present opportunities to mobilise resources from outside the region in the form of technical expertise, multi-year financial assistance, and third country resettlement. Regional responses may also enable creative solutions that speak to a broader set of host government interests, including labour mobility schemes that address critical labour shortages while providing Rohingya temporary protection and safe and dignified work.

This discussion paper examines how humanitarian actors can strategically promote regional responses via global fora and regional institutions—namely the Association of Southeast Asian Nations (ASEAN) and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process)—and in new or under-developed initiatives. It draws on the expertise of humanitarian actors, advocates and researchers to distil lessons from past efforts to promote regional responses, and to suggest recommendations for actions that could be taken both within existing frameworks, and toward new policy initiatives. The objective is to provoke discussion and encourage coordination toward creating a 'political moment' or policy window for meaningful regional action in response to protracted Rohingya displacement.

Recommendations for Humanitarian Actors

Existing policy frameworks

ASEAN

1. Advocate that the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) each be given a specific mandate to examine the regional situation for Rohingya refugees, and to make recommendations regarding ASEAN's role in progressing a regional response.

2. Partner with receptive AICHR and ACWC representatives to spotlight the persistent plight of Rohingya in Myanmar and around the region, risks of future maritime emergencies involving refugees moving irregularly, the inadequacy of current approaches to Rohingya on the move and within host countries, and the need for regional coordination for more humane and effective responses.

The Bali Process

3. Urge the Bali Process Co-Chairs to strengthen their engagement with civil society and provide a sustained platform for consultation, particularly in relation to the activities of the Consultation Mechanism and the Task Force on Planning and Preparedness (TFPP).

4. Advocate for the Bali Process Co-Chairs to use the recent reactivation of the Consultation Mechanism to strengthen commitments to coordinate rapid emergency response efforts and more robust forward-planning and preparedness under the TFPP, including for search and rescue and disembarkation, and longer-term prevention measures such as access to basic rights in host countries and alternatives to detention.

5. Encourage Bali Process Co-Chairs to initiate an evaluation of the Bali Process's impact, and take stock of lessons learned, and institutional and policy barriers to a more comprehensive regional response to Rohingya onward movement. Co-Chairs should mandate evaluators to consult with civil society to capture non-governmental observations, analysis, and other expertise.

New policy processes

An ASEAN refugee protection framework

6. Include promotion of a protection-centred and human rights-based ASEAN framework in coordinated regional strategies pressing for regional responses to maritime emergencies and protracted Rohingya displacement.

7. Ensure donor support for civil society initiatives aimed at improving refugee protection policies and outcomes at the national level, with a view over time to generating conditions at the regional level conducive to development of an ASEAN refugee protection framework.

A regional support platform

8. Urge Japan as co-convener of the 2023 Global Refugee Forum (GRF) to champion multistakeholder pledges to encourage burden and responsibility-sharing.

9. Coordinate regional and national-level engagement with Malaysia, Indonesia and Thailand to encourage a joint GRF pledge to develop a roadmap for a regional support strategy and support platform in conjunction with other joint GRF pledges to increase Rohingya access to legal status, healthcare, education, livelihoods and alternatives to detention in host countries.

10. In parallel, advocate that ASEAN member states develop a GRF pledge, either jointly or individually, to significantly increase support for the Joint Response Plan: Rohingya Humanitarian Crisis.

11. Support resettlement countries and donors to develop GRF pledges to expand third-country pathways for Rohingya and assist development of a regional strategy and support platform.

Third country resettlement & complementary pathways

12. Encourage Australia as incoming co-chair of the Annual Tripartite Consultations on Resettlement to solicit meaningful commitments to expand resettlement and complementary pathways for Rohingya.

13. Coordinate advocacy towards key resettlement countries including the USA, Canada, Australia and New Zealand, as well as countries in Asia and the Pacific, including Japan, Korea and the Philippines to expand resettlement and complementary pathway options for Rohingya.

14. Advocate for Rohingya to access education and work rights in host countries, which can promote social cohesion and better prepare Rohingya to access complementary pathways.

15. Ensure that family unity and the rights of the child are central to all policy decisions regarding resettlement and complementary pathways for Rohingya, including labour mobility pathways.

Cross-cutting strategies for promoting regional responses

16. Keep protracted Rohingya displacement, its regional implications, and the benefits of regional coordination high on the agendas of host governments, donors, ASEAN, ASEAN dialogue partners, the Bali Process, and other initiatives responding to the crisis in Myanmar.

17. Secure funding for humanitarian actors to expand consultations with governmental and non-governmental stakeholders and technical experts to further conceptualise regional responses, build requisite coordination capacity, support advocacy initiatives and resource policy dialogues and technical capacity building activities aimed at increasing regional coordination in response to protracted Rohingya displacement.

18. Support national and local civil society actors to increase their engagement with regional and international human rights instruments and mechanisms, including UN human rights complaints mechanisms and the Universal Periodic Review process; and to support governments at policy and operational levels to increase understanding of and implementation of regional and international human rights and humanitarian principles.

19. Continue to alert regional host governments and institutions to barriers to safe, dignified, voluntary and sustainable return to Myanmar for Rohingya in the short- to medium-term; encourage and support host governments to undertake medium-term planning that enables Rohingya refugees access to temporary legal status, healthcare, education, livelihoods and alternatives to detention; and impress upon them the prospective benefits of regional responses.

20. Counteract securitisation of responses to Rohingya displacement by broadening engagement with national and regional security actors; security-oriented academics, researchers and policy centres; and influential regional, security-themed publications.

Methodology

This discussion paper is informed by research undertaken between 20 March and 9 May 2023, examining prospects for regional responses to protracted Rohingya refugee displacement in Southeast Asia. It builds upon research commissioned by PRRiA partners in 2022, entitled *Refugee Protection, human smuggling, and trafficking in Bangladesh and Southeast Asia*.[1] Research consisted of a desk review and 25 key informant interviews exploring the question: 'How can regional responses to Rohingya refugee protection in Southeast Asia be advanced through existing regional structures and new policy options?' Key informants included intergovernmental bodies, UN agencies, civil society, academia and think tanks, primarily working at the regional level in Asia and the Pacific or sub-regional level in Southeast Asia. The findings and recommendations in this paper draw from information provided in interviews, but do not necessarily reflect the positions of key informants or PRRiA consortium partners. Any omissions or inaccuracies are the sole responsibility of the author.

The Rationale for a Regional Response to Rohingya Displacement

Rohingya are the world's largest stateless population. They have experienced persecution and targeted violence in Myanmar over decades, leading to mass displacement in the 1970s, 1990s, 2012 and 2017. Many Rohingya have stated a desire to return to Myanmar, if the root causes of their displacement are addressed and their safety and dignity can be assured.[2] Key host governments have likewise supported voluntary return to Myanmar as the ultimate durable solution for most Rohingya refugees and called upon international actors and regional governments and institutions to make return a reality.

The situation in Myanmar, however, has deteriorated since the February 2021 military takeover. Armed conflict has precipitated further internal and external displacement, food shortages, and diminished access to essential services. The United Nations High Commissioner for Refugees (UNHCR) indicated in March 2023 that conditions in Rakhine State are not suitable for the voluntary, safe, dignified, and sustainable return of Rohingya refugees.[3] This was confirmed in early May 2023 in the media by a 20-member Rohingya team that accompanied Bangladeshi officials on a 'go and see' visit to areas of northern Rakhine State.[4] Experts warn against history repeating itself, citing the premature repatriation in 1978-1979 that resulted in an estimated 10,000 Rohingya deaths.[5]

Conditions in refugee camps in Bangladesh are simultaneously worsening, as Rohingya face cuts to food rations,[6] violence, and ongoing restrictions on freedom of movement, access to education and livelihoods.[7] Many Rohingya have been driven to undertake dangerous land and sea voyages to neighbouring countries, placing them at risk of human trafficking and other forms of exploitation. In 2022, there was a 'dramatic increase' in the number of Rohingya attempting dangerous Andaman Sea crossings.[8] From January 2022 to May 2023, an estimated 4,884 people embarked on sea journeys and 395 have been reported dead or missing.[9] Of 16 boats departing Myanmar or Bangladesh in late 2022, nearly half of those on board were women and girls.[10]

The responses of receiving governments to Rohingya have been *ad hoc* and inconsistent, increasingly driven by the securitisation of migration.[11] Rohingya face significant protection risks, including pushbacks at land and sea, arrest, detention, refoulement and in some states obstructed access to UNHCR processes, including registration, refugee status determination, and resettlement. Rohingya able to enter host countries have restricted access to basic healthcare, education and livelihoods, and are expected to eventually return to Myanmar or avail themselves of third country solutions.[12]

Following the Andaman Sea Crisis in 2015, during which as many as 8,000 Rohingya refugees and Bangladeshi migrants were stranded on boats at sea,[13] there were widespread calls for a coordinated regional response to the irregular maritime movement of refugees.[14] The governments of Indonesia, Malaysia and Thailand released a joint statement committing to provide shelter through a joint task force, and calling for the international community and ASEAN to support.[15] ASEAN and the Bali Process were heavily criticised at the time for a lack of leadership to press for the rescue and disembarkation of refugees and migrants.

In the years since, there have been renewed calls for regional action,[16] which have drawn on past analysis and prompted new discourse on maritime rescue and regional refugee protection frameworks.[17] But regional responses remain unrealised. The Rohingya crisis is now protracted, and a resolution is a distant prospect. There is urgent need for renewed focus on coordinated regional action that improves protection for Rohingya and more meaningfully addresses national and transnational challenges created by the crisis. Leadership must come from within the region, but the international community must also commit to fair responsibility sharing. Proactive and principled regional responses could not only save lives and preserve human dignity, but could also enable more effective allocation of expertise and resources, and contribute to regional prosperity and stability. Existing regional frameworks and new or underexplored policy responses are examined below.

Existing Policy Frameworks

ASEAN

ASEAN was established on principles of sovereignty and non-interference[18], which have hampered its capacity to advance humanitarian and human rights principles among member states with diverse forms of government and varied human rights records. There is no ASEAN framework directed at the protection of asylum seekers and refugees, though there are ASEAN bodies with human rights mandates. These, however, like other ASEAN structures, work by consensus decision-making and have had minimal impact on human rights challenges in the region.

ASEAN's response to the current crisis in Myanmar has likewise been characterised as ineffectual. The Five-Point Consensus adopted by ASEAN leaders in April 2021[19] and requiring the cessation of violence has gone largely unimplemented.[20] Given the limitations of ASEAN structures and its inability to lead effective responses to conflict within the region, many key informants are sceptical that ASEAN could progress a regional response to Rohingya displacement or broader refugee protection challenges. Some, however, believe that ASEAN bodies can be fora for advancing messaging, identifying allies and building support for coordinated regional action.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009 as a consultative body with an overarching human rights mandate. AICHR drafted the ASEAN Human Rights Declaration adopted by member states in 2012. Although key informants noted that AICHR was the most receptive ASEAN body to refugee issues, engagement relies heavily on individual AICHR representatives with an interest in progressing a specific agenda. AICHR has been criticised for its lack of independence, lack of a protection mandate and ASEAN's overarching principle of non-interference, which tempers any direct censure of member states.[21] Some AICHR representatives have argued that despite the Commission's limiting terms of reference,[22] there is potential to progress human rights protection through its work plans and projects.[23] Some have also encouraged ASEAN to take a principled approach to forced migration.[24] However, AICHR's ability to influence policy is limited, and human rights remain on the margins of most regional discussions.

The influence of the ACWC is similarly limited. It was established in 2010 as a consultative body with a mandate to promote and encourage the protection of the rights of women and children in the region, and to promote the implementation of relevant international and regional instruments, including the ASEAN Convention Against Trafficking in Persons (ACTIP) and the ASEAN Declaration on the Rights of the Child in the Context of Migration.[25] With the recent increase in Rohingya women and children making dangerous land and maritime journeys,[26] there is scope for the ACWC to prioritise the protection of the rights of displaced Rohingya women and children on the move, and for advocates and regional actors to increase targeted engagement with ACWC on this issue.

There are examples, too, of local and national actors in the region engaging with and implementing ASEAN instruments to advance refugee protection. In Thailand, civil society groups and the Thai Department of Children and Youth are working together under a memorandum of understanding that sets out 'coordinated objectives… to implement the [memorandum of understanding on alternatives to detention] in line with the United Nations Convention on the Rights of the Child (UN-CRC) and the Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration.'[27] There has been incremental progress on alternatives to detention (ATD), including recent and serious dialogue on extending ATD to Rohingya children. Continued strategic engagement led by local and national actors holds promise for further implementation of regional and international instruments within Southeast Asia, increasing protection for asylum seekers and refugees.

The ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) was established in 2011 and plays a central role in regional humanitarian action. In line with the principle of non-interference, the AHA Centre has traditionally responded to natural disasters rather than conflict-related crises.[28] Marking a shift, in late 2017, the AHA Centre delivered humanitarian relief in Rakhine State, and in 2019 it conducted a Preliminary Needs Assessment for Rohingya repatriation.[29] The assessment has been criticised for glossing over persistent security concerns and unresolved root causes of Rohingya displacement.[30] Some have advocated for an expanded role for the AHA Centre, for example, in relation to monitoring irregular maritime movements and supporting search and rescue operations. Others argue that this expansion is unlikely, as the AHA Centre is not resourced to deal with complex political situations,[31] referring instead to national search and rescue agencies and the Bali Process as more suitable means of responding to irregular maritime movements.

In its current form, ASEAN is an imperfect body through which to advance regional protection for displaced Rohingya. But there is more that could be done within existing mechanisms, if ASEAN member states had the requisite political will. Many key informants indicated that they were directing their attention to ASEAN member capitals rather than the Secretariat and other ASEAN structures, citing ASEAN's lack of transparency and traction on sensitive issues due to the consensus model. Further, Myanmar's continuing presence in ASEAN forums was noted as a significant barrier to productive discussions about displacement of Rohingya and other communities from Myanmar.

Indonesia is the ASEAN Chair in 2023. Many had hoped that Indonesia would step up leadership on Rohingya displacement, but this has been slow to materialise. Given increasing irregular maritime movement in its territory, Indonesia and Malaysia – who will be ASEAN Chair in 2025 – ostensibly have an interest in progressing regional solutions via ASEAN. As the halfway point of Indonesia's chairmanship approaches, it remains to be seen whether anything meaningful will be achieved.[32]

Recommendations for ASEAN engagement

- Advocate that the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) be given a specific mandate to examine the regional situation for Rohingya refugees, and to make recommendations regarding ASEAN's role in progressing a regional response.

- Partner with receptive AICHR and ACWC representatives to spotlight the persistent plight of Rohingya in Myanmar and around the region, risks of future maritime emergencies involving refugees moving irregularly, the inadequacy of current approaches to Rohingya on the move and within host countries, and the need for regional coordination for more humane and effective responses.

The Bali Process

The Bali Process facilitates regional and multilateral dialogue and engagement on irregular migration in the Asia Pacific region. Bali Process members include UNHCR, the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC) and the International Labour Organization (ILO), as well as 45 member states including Australia and Indonesia as permanent co-chairs and Bangladesh, Malaysia, Myanmar and Thailand. Its broad membership, including source, transit, and destination countries, and key international organisations makes it a potential forum for responding to forced migration within the region. However, its mandate focuses on smuggling, trafficking and transnational crime, rather than human rights and refugee protection; and to date it has not been able to coordinate an effective response to Rohingya displacement.

Like ASEAN, the Bali Process failed to respond adequately to the 2015 Andaman Sea Crisis. Following the tragic loss of life at sea, and a subsequent review of the region's response[33] in March 2016, the Sixth Ministerial Conference adopted the 2016 Bali Declaration on People Smuggling, Trafficking in Persons and related Transnational Crime. The declaration was notable for its recognition of the need for 'a comprehensive regional approach' to irregular migration, 'based on the principles of burden sharing and collective responsibility'; and a protection-based approach to asylum seekers and refugees.[34] At the same conference, the Bali Process Consultation Mechanism (Consultation Mechanism) and the Taskforce on Planning and Preparedness (TFPP) were established. The 2018 Bali Declaration reaffirmed the commitments made in the 2016 Declaration.[35] There was momentum towards more robust regional responses at the time, but this was short-lived.

Bali Process Consultation Mechanism

The voluntary and non-binding Consultation Mechanism was created to facilitate 'more agile, timely responses' to urgent irregular maritime issues and future emergency situations. The mechanism was first activated in October 2017.[36] There were unsuccessful calls to reactivate it in 2020.[37] In February 2023, it was activated for a second time[38], following repeated calls from December 2022 to February 2023 for the Bali Process to act in response to a rise in deadly maritime journeys.[39]

Criticism of the Consultation Mechanism includes that it is has unsatisfactory terms of reference or standard operating procedures, and that it is bureaucratic and slow for an emergency mechanism. However, some key informants explained that its vagueness may create opportunities to broaden its scope. Several saw the Consultation Mechanism as well-placed to support regional coordination relating to maritime movement, search and rescue, and disembarkation.

There is no obligation for Co-Chairs to share information regarding the Consultation Mechanism's workings, and a closed-door meeting of the Bali Process was reportedly convened in April 2023. The Consultation Mechanism guidelines state that, 'in certain circumstances, the Co-Chairs, in consultation with affected countries, may invite representatives of relevant civil society, academia or individuals to attend the meetings' as expert resources and observers.[40] It was reported that some informal consultation did occur with civil society organisations prior to the April meeting, but the discussion and any outcomes of the meeting have remained confidential.

Despite the lack of transparency surrounding the Consultation Mechanism, some key informants saw it as an opportunity for UN agencies and civil society to engage with the Co-Chairs and member states to lobby for a proactive mechanism with adequate infrastructure to effectively prevent and respond to maritime emergencies. Several noted that engagement with the mechanism may also be critical for ensuring responses are reflective of human rights and humanitarian principles, rather than exclusively guided by law enforcement, border management, and other national security interests.

Bali Process Taskforce on Planning and Preparedness (TFPP)

The TFPP was established alongside the Consultation Mechanism, with a mandate to develop early warning capabilities and capacity to coordinate action in the event of the large-scale irregular movement of migrants; and to recommend measures 'to harmonize detection, search and rescue, disembarkation and shelter management through the sharing of best practices of national, bilateral and regional experience in dealing with mass displacements.'[41] The TFPP comprises operational-level governmental officials responsible for dealing with significant transborder movements of migrants and refugees. Participation in the taskforce is voluntary and non-binding. Current stated priorities of the TFPP include continued focus on regional responses to migrants at sea, and ensuring support to address vulnerabilities of women and children.[42]

There is scope within the TFPP's mandate to progress protection of Rohingya refugees, particularly in the maritime context, but momentum—lost in part due to the COVID-19 pandemic—would need to be rebuilt. Key informants explained that the TFPP needs to be re-energised to remain relevant. Instead of simply a forum for exchanging information, the TFPP should plan coordinated responses in preparation for anticipated irregular movements. There is an opportunity with the activation of the Consultation Mechanism to revisit the mandate of the TFPP to ensure it is adequately resourced and fit-for-purpose. The Asia Dialogue on Forced Migration (ADFM) has recommended that the Bali Process ensure the TFPP's 'forward-looking mandate' through activities such as: active mapping of hotspots for future displacement; information sharing on movements detected in coastal states; maintenance of a register of national contact points; creation of a technical experts group to lead on concrete action; and harmonisation of search and rescue efforts.[43]

While the TFPP is well-placed to play a leading role in coordination of maritime search and rescue and emergency responses to large-scale displacement, it was not designed to address root causes of displacement or identify durable solutions. Some have suggested, however, that it could provide additional space for discussions about root causes, particularly with regard to anticipating irregular movement or to develop longer-term prevention strategies by improving circumstances in situ.

Bali Process Regional Support Office (RSO)

The RSO was established in 2012 to support the Bali Process Co-Chairs through coordination, capacity-building, convening and providing institutional memory. The RSO has been increasingly active in recent years; at the same time, member states appear to have become less engaged in the Bali Process. Buy-in and ownership of the Bali Process by member states at the ministerial level is necessary to yield substantive action. There is room for the Co-Chairs to be consultative and inclusive, and encourage member states to contribute more actively to the Bali Process's agenda and increase participation in its workstreams.

Looking to the future

Key informants arguing for greater engagement with existing mechanisms, particularly the Bali Process, reason that the mandates and evolution of these mechanisms at various points have created opportunities to make them more protection-oriented. By reflecting upon lessons learned and strategically engaging with key officials, these mechanisms could be made more effective. Some also point out that the mere existence of these mechanisms is remarkable – similar bodies could not be created in the current political climate.

However, there are substantial barriers, including the rotation of Bali Process representatives, a lack of institutional memory, and a lack of political will to assess the real impact of the platform to date and to undertake reforms. The Bali Process has facilitated years of dialogue, technical capacity and training—and may continue to do so—but it is not on track to fulfil the promise of the 2016 Bali Declaration.

Reform is urgently needed. Increasing violence and declining conditions in Cox's Bazar, not least ration cuts by the World Food Programme[44], may precipitate larger-scale land and maritime movements in 2023. In fulfilling its mandate towards combatting human smuggling and trafficking, the Bali Process should pay more attention to why people are using smuggling routes. Considering the conditions Rohingya face in Myanmar and Bangladesh, many see smugglers as their only option.[45] Bali Process objectives to prevent smuggling and trafficking could be well-served by working to better address the factors that compel people to move, such as violence, insecurity, a lack of legal status, and a lack of access to basic rights including education, healthcare and livelihoods.

Opinions are divided on whether the Bali Process can be an effective platform to address root causes of Rohingya displacement. Most key informants were sceptical, but many agreed that it could, in addition to being a forum for coordinating humane responses to irregular maritime movements, be a space for spotlighting root causes and durable solutions. Positively, in February 2023, the Bali Process committed to the 2023 Adelaide Strategy for Cooperation, which refers to victim-centred approaches and the need for increased engagement with civil society.[46] There has been incremental progress in some areas, and there is scope to progress regional responses to displacement within the current framework if Bali Process ministers can be convinced to make this a priority.

New Policy Responses

ASEAN refugee protection framework

There have been calls from within the region for development of an ASEAN refugee protection framework. However, as major host countries are not signatory to the 1951 Refugee Convention, there has been limited political appetite to advance refugee protection at the regional level. No existing ASEAN instrument directly refers to refugees, and ASEAN's apparent position is that refugees are a bilateral matter between sending and receiving countries. Because of ASEAN consensus decision-making, many are sceptical that an ASEAN refugee protection framework is a realistic prospect in the short- or medium-term. Serious progress towards such a framework will hinge on whether critical member states, including Indonesia, Malaysia and Thailand, step up to lead dialogue on the issue. This is unlikely to happen in the near-term. Several key informants agreed that coordinated action by national civil society actors in key ASEAN capitals will be crucial to create momentum.

There was a general sentiment that limited humanitarian resources might be better spent focussing on how existing ASEAN instruments could be re-oriented or strengthened to achieve protection outcomes. Rather than attempting to influence ASEAN, some advocates have had success taking an 'ASEAN-down' approach, incorporating existing regional instruments and plans of action—for example in relation to children in the context of migration—into national policy frameworks.

Those who were supportive of an ASEAN refugee framework referred to the possibility of a non-binding instrument, such as the Cartagena Declaration in Latin America.[47] Others were concerned about the risk that if ASEAN were to develop a regional framework, it could significantly water-down obligations under the international convention and reflect the 'lowest common denominator' in member state positions, resulting in shrinking protection space for refugees.[48]

Several informants shared that they did not have detailed understandings of ASEAN dynamics, and that it was a difficult body to engage with due to its bureaucracy and its lack of transparency. Some expressed a desire to better understand the way ASEAN operates, while others were undertaking research into how existing ASEAN conventions and declarations were conceived and developed, to inform possible future initiatives.

It was also suggested that there was value in civil society and international actors coordinating research and policy discussions and developing proposals, in the event an ASEAN member state could be identified to champion a regional refugee protection framework. If ASEAN were to consider developing a framework, principles and lessons could be drawn from regional and international instruments to which ASEAN countries are party, as well as current and past good practice, guidance and policy in the region.[49]

- In 1966, the advisory body of the Asian-African Legal Consultative Organization (AALCO) in 1966 adopted the non-binding Bangkok Principles on the Status and Treatment of Refugees[50] ("Bangkok Principles"), which were revised in 2001.[51] The principles contain provisions on, *inter alia*, non-refoulement, minimum standards of treatment, international cooperation on comprehensive solutions, and burden sharing.

- During the Indochinese refugee crisis, the region demonstrated its capability to address refugee issues through a coordinated, albeit flawed, regional approach with the adoption of a Comprehensive Plan of Action for Indochinese refugees (CPA) in 1989.[52]

- The good practice of Aceh fishermen and local civil society groups providing humanitarian assistance to Rohingya boats in distress.[53]

While many key informants were of the view that an ASEAN framework is unlikely in the foreseeable term, there was recognition that it could still be a vision for the future to promote policy cohesion and refugee protection across the region. Without a sea change in regional approaches to refugee protection or a policy window, progress is expected to be slow and incremental.

Recommendations for promoting an ASEAN refugee protection framework

- Include promotion of a protection-centred and human rights-based ASEAN framework in coordinated regional strategies pressing for regional responses to maritime emergencies and protracted Rohingya displacement.

- Ensure donor support for civil society initiatives aimed at improving refugee protection policies and outcomes at the national level, with a view over time to generating conditions at the regional level conducive to development of an ASEAN refugee protection framework.

A regional support platform for Rohingya

The Rohingya crisis primarily affects Asia and the Pacific region. Rohingya displacement has not reached Europe in the way that Afghan, Syrian, Ukrainian or African displacement has. Nor has it reached the United States in the way that displacement from South and Central America has. It is appropriate that solutions for Rohingya are driven from within the Asia Pacific region, and several key informants proposed a regional platform for more coordinated support and pooling of resources to address Rohingya displacement. They referred to the regional support platforms that were proposed at the 2019 Global Refugee Forum (GRF) as models to consider and learn lessons from: the MIRPS platform for Central America and Mexico, the Intergovernmental Authority on Development (IGAD) support platform for the East and Horn of Africa, and the Support Platform for the Solutions Strategy for Afghan Refugees (SSAR).

Each of these platforms was envisaged under the Global Compact on Refugees (GCR) as a 'flexible modality for the provision of situation-specific support from the international community,' led by a group of states and engaging other stakeholders as appropriate. Each was initially conceived as a 'group of friends' working to: galvanise political commitment and advocacy for solutions; mobilise financial, material and technical assistance, and resettlement and complementary pathways; facilitate coherent humanitarian and development responses; and support comprehensive policy initiatives to ease pressure on host countries, build resilience and self-reliance, and find solutions to specific displacement situations.[54]

The current scale of Rohingya displacement, coupled with the likelihood of further movement of Rohingya from Bangladesh and Myanmar, requires mobilisation of resources from both within and outside of the region. A regional support platform for Rohingya could marshal greater international funding, humanitarian coordination relating to land and maritime movements, increased search and rescue capacity, expansion of third country pathways, and support for host countries to provide meaningful temporary protection.[55] It would also provide a forum for key host countries to coordinate to drive the agenda and leverage necessary resources and assistance from the international community.

A cited obstacle to a regional support platform may be waning international interest, and standing or anticipated contributions from key countries to the Bangladesh Joint Response Plan[56] and the Myanmar Humanitarian Response Plan.[57] Some also expressed concerns that negative public perceptions of Rohingya refugees in host countries could limit domestic political *marge de manœuvre*.

To be successful, key informants agreed such an initiative should be led—or at minimum co-led—from within South and Southeast Asia, with the support of other states in the Asia Pacific region including Japan, Korea, Australia and New Zealand, as well as donors and key resettlement countries. The December 2023 GRF could be an opportunity to mobilise multistakeholder pledges to explore a platform or other coordinated process to expand access to solutions for displaced Rohingya.

Recommendations for promoting a regional support platform

- Urge Japan as co-convener of the 2023 Global Refugee Forum (GRF) to champion multistakeholder pledges to encourage burden and responsibility sharing.

- Coordinate regional and national-level engagement with Malaysia, Indonesia and Thailand to encourage a joint GRF pledge to develop a roadmap for a regional support strategy and support platform in conjunction with other joint GRF pledges to increase Rohingya access to temporary legal status, healthcare, education, livelihoods and alternatives to detention in host countries.

- In parallel, advocate that ASEAN member states develop a GRF pledge, either jointly or individually, to significantly increase support for the Joint Response Plan: Rohingya Humanitarian Crisis.

- Support resettlement countries and donors to develop GRF pledges to assist development of a regional strategy and support platform, and expand third-country pathways for Rohingya.

Multilateral cooperation on resettlement and complementary pathways

Key informants explained that an effective regional response, which equitably distributes responsibility, will require commitments to increase resettlement quotas and greater access to complementary pathways for Rohingya. Resettlement countries including Australia, New Zealand, Canada, and the United States are perceived to have capacity to scale up resettlement of Rohingya from Bangladesh, Malaysia, Indonesia, and Thailand. Resettlement and complementary pathways within the Asia Pacific region could also be expanded, including to Japan, Korea, and the Philippines.[58] Sustainable and dignified pathways to Arab states might similarly be explored, noting the existing population of Rohingya in the Middle East.[59]

There are several concrete entry points to advocate for expanded resettlement programs and other third-country pathways. In 2021, the current Australian government made campaign promises to show greater regional leadership on refugee issues and support regional responses.[60] In 2022, the United States launched a new high-level multilateral platform, the Resettlement Diplomacy Network, 'to advance strategic, shared policy priorities for increasing third country solutions for refugees through collective action with other countries,' including through cultivation of new resettlement countries, expanded global resettlement programs, and additional avenues for movement—for example, complementary pathways and humanitarian admissions.[61]

The Annual Tripartite Consultations on Resettlement (ATCR) in Geneva in June 2023 will be chaired by Ireland, with the theme 'Learning in crisis: Building solutions together'.[62] The Australian government and the Refugee Council of Australia will take over as co-chairs of the ATCR for 12 months leading up to the 2024 ATCR. The ATCR presents an opportunity for Australia, the United States and other resettlement countries to demonstrate solidarity with Bangladesh and Southeast Asian host countries, commit to coordinated regional responses bolstered by resettlement and complementary pathways, and leverage improved conditions for Rohingya refugees across the region. These should include consistent access to UNHCR processes, alternatives to detention, temporary legal status, and access to basic rights and services, including healthcare, education and livelihoods. Multilateral cooperation on resettlement would allow for more strategic planning and more equitable responsibility-sharing.

Labour mobility for refugees, too, is a proven solution that can work well when refugees are matched with skills shortages in third countries.[63] This opportunity should be explored by countries within the ASEAN region, including host countries. There is much to be gained when the potential, skills and experience of refugees are recognised, and they are enabled to make meaningful contributions to countries of refuge, even if temporarily.

Allowing Rohingya access to primary, secondary and tertiary education; and work rights in host countries not only benefits individuals and decreases risks of exploitation, but it also benefits host countries by growing workforces and tax bases, reducing illegal work and exploitation in informal sectors, and decreasing refugees' reliance on humanitarian and government aid. Some key informants also suggested that access to public education and employment can decrease marginalisation of Rohingya and other refugees and promote social cohesion with host communities. It also contributes to the success of durable solutions, as refugees accorded basic rights and services are likely to be better placed to access complementary pathways, and better prepared for third country resettlement or voluntary return where possible. Temporary regularisation of status for Rohingya refugees already present in host countries would likewise be a pragmatic approach for supporting refugee resilience and allowing for more orderly and principled migration management.

Further, greater access to resettlement and complementary pathways will in time lead to a larger Rohingya diaspora, which can provide important support, remittances and funding for grassroots and refugee-led initiatives in host countries.[64] Other diaspora groups have proved crucial to opening new complementary pathways including community sponsorship options.

It is reported that much of the secondary movement of Rohingya within the region is motivated by family unity concerns. In facilitating pathways within and outside of the region, it is important to prioritise the principle of family unity and the fundamental rights of children, as enshrined in the Convention on the Rights of the Child, to which all key host countries in the region are party.

Recommendations in relation to third country resettlement & complementary pathways

- Encourage Australia as incoming co-chair of the Annual Tripartite Consultations on Resettlement to solicit meaningful commitments to expand resettlement and complementary pathways for Rohingya.

- Coordinate advocacy towards key resettlement countries including the USA, Canada, Australia and New Zealand, as well as countries in Asia and the Pacific, including Japan, Korea and the Philippines to expand resettlement and complementary pathway options for Rohingya.

- Advocate for Rohingya to access education and work rights in host countries, which can promote social cohesion and better prepare Rohingya to access complementary pathways.

- Ensure that family unity and the rights of the child are central to all policy decisions regarding resettlement and complementary pathways for Rohingya, including labour mobility pathways.

Cross-cutting strategies for promoting regional responses

In conceptualising new responses and developing advocacy strategies to promote them, it is essential to draw on lessons learned from past initiatives. These include the Asia and the Pacific Regional Meeting of the ILO and Bali Process proposals to respond to irregular boat movements and maritime emergencies, which received fanfare but did not result in substantial progress.[65] Another is the 2018-2019 Solidarity Approach developed by UNHCR that struggled to garner regional buy-in.[66]

Several key informants noted that strategies to promote regional responses should be multi-level—with national, regional and global dimensions—to generate political will and mobilise resources. This will require substantial coordination capacity for which many humanitarian actors are not currently resourced. Key informants also commented on the cyclical nature of discussions about regional solutions over many years. Turnover of key personnel and a lack of institutional memory among agencies and bodies, including the Bali Process, has frustrated longer-term reflection and stock-taking of past attempts. It is crucial that the capacity for critical analysis and learning is improved, to ensure that dialogue leads to concrete action for Rohingya refugees, rather than to more talk and repetition of past mistakes. There was broad support that placing national civil society at the centre of strategies for promoting regional responses is important for knowledge retention and efficacy.

There was similarly agreement that regional solutions must be led by governments and civil society within the region, in consultation with Rohingya communities and supported by international humanitarian actors. Incremental progress on refugee rights has been realised by local and national actors who have engaged with national governments and local authorities over years to build trust, create political will and jointly develop solutions. An oft-cited example is Thailand's ATD scheme for refugee and migrant children described above. Given challenges to ASEAN and the Bali Process as bodies dependent on the political will of member states, national-level policy advocacy is believed to be critical to shifting regional receptiveness to Rohingya protection.

While not party to the 1951 Refugee Convention, key host countries are party to regional instruments and international treaties that may be used to progress refugee protection.[67] Understanding and implementation of both regional and international commitments is inconsistent across the region. For example, it was reported that some officials working on refugee issues in Indonesia were not aware that Rohingya are effectively stateless, and how this status distinguishes their situation from other refugees or migrants.

There is scope to strengthen the capacity of national civil society organisations to engage with UN treaty bodies and other international mechanisms, to generate jurisprudence, public reports, and guidance relevant to the situation for displaced people in the region. This can be used to advocate for policy change, and may influence governments to consider an issue more seriously if they face scrutiny in the international arena. For example, Thailand received attention in a 2021 report by the UN Committee on the Elimination of Racial Discrimination, which raised concerns regarding the government's treatment of refugees.[68] This reportedly opened space for increased dialogue on the issue between government agencies and Thai civil society groups.

Positive outcomes on ATD for children have also been observed following technical training and peer learning initiatives involving civil society and government officials in the region. For example, a Regional Peer-Learning Platform and Program of Learning and Action on Alternative Care Arrangements for Children in the Context of Migration in the Asia Pacific has become a forum to share good practice and innovative approaches to detention, and incrementally, has contributed to shifting policy discussions across the region.[69] Some key informants believe there is scope to expand this approach at the operational and policy levels to maritime movements, disembarkation, and safety at sea.[70] Such initiatives could include maritime agencies, UN agencies, subject matter experts and frontline responders—for example , coastal communities, fishermen, and sailors who may be the first to identify boats in distress and provide emergency assistance to passengers.

More broadly, several key informants noted the importance of interfacing with security actors and analysts to influence perspectives on irregular refugee movements, root causes and responses. Securitisation narratives have dominated national and regional discussions on irregular movement and the presence of refugees in host governments. Beyond fuelling regressive refugee policies, these narratives hinder the political will towards more constructive national and regional responses.

Increased engagement with human rights and humanitarian principles may prompt a re-examination of securitised approaches to migration that criminalise irregular migrants and emphasise deterrence, and in turn yield policies that are more protective rather than punitive. Again, the central role of national civil society – as well as academia – to this engagement was highlighted as crucial.

Cross-cutting recommendations

- Keep protracted Rohingya displacement, its regional implications, and the benefits of regional coordination high on the agendas of host governments, donors, ASEAN, ASEAN dialogue partners, the Bali Process, and other initiatives responding to the crisis in Myanmar.

- Secure funding for humanitarian actors to expand consultations with governmental and non-governmental stakeholders and technical experts to further conceptualise regional responses, build requisite coordination capacity, support advocacy initiatives and resource policy dialogues and technical capacity building activities aimed at increasing regional coordination in response to protracted Rohingya displacement.

- Support national and local civil society actors to increase their engagement with regional and international human rights instruments and mechanisms, including UN human rights complaints mechanisms and the Universal Periodic Review process; and to support governments at policy and operational levels to increase understanding of and implementation of regional and international human rights and humanitarian principles.

- Continue to alert regional host governments and institutions to barriers to safe, dignified, voluntary and sustainable return to Myanmar for Rohingya in the short- to medium-term; encourage and support host governments to undertake medium-term planning that enables Rohingya refugees access to temporary legal status, healthcare, education ,livelihoods and alternatives to detention; and impress upon them the prospective benefits of regional responses.

- Counteract securitisation of responses to Rohingya displacement by broadening engagement with national and regional security actors; security-oriented academics, researchers and policy centres; and influential regional, security-themed publications.

Specific opportunities to advance regional responses

- **Indonesia's 2023 ASEAN Chairmanship** creates opportunities to promote ASEAN action. Given the impacts of increasing maritime movement of Rohingya, Indonesia has an interest in progressing discussions about a comprehensive regional response. Indonesia is also well-placed to develop linkages between ASEAN and the Bali Process, given its role as Bali Process Co-Chair.

- The **Bali Process Consultation Mechanism** was activated in February 2023, authorising the Bali Process Co-Chairs to convene meetings to provide the opportunity for relevant member countries to share ideas on potential national, bilateral or regional emergency irregular migration responses, on an 'in confidence' basis.[71] A meeting is reported to have taken place in April 2023, however the discussions and any outcomes remain confidential. Despite the 'closed door' nature of the process, there may be opportunity for civil society and international actors to engage with the Co-Chairs and key member states to provide inputs to for further discussions.

- The **Annual Tripartite Consultations on Resettlement (ATCR) 2023** will take place in Geneva on **26-28 June 2023**. Chaired by the Government of Ireland, the theme is 'Learning in crisis: Building solutions together.' The Australian Government and the Refugee Council of Australia will then be co-chairs of the ATCR process for 12 months leading up to the ATCR in June 2024.

- The **Global Refugee Forum (GRF) 2023** will take place in Geneva between **12-15 December 2023**. During the event, governments and other stakeholders will announce pledges and share good practices to promote responsibility-sharing in support of the objectives of the **Global Compact on Refugees (GCR)**. Where in the past there has been resistance from key host governments to explicitly discuss the Rohingya situation, there may now be more space for dialogue. For example, in 2022, the statement of Thailand's delegation to the UNHCR Executive Committee included a direct reference to the Rohingya situation—this has not happened in previous statements—and reiterated commitment to 'international burden and responsibility sharing.'[72]

- The second **Asia-Pacific Regional Review of Implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM)** is due to take place in 2024. This is an opportunity for member states to discuss opportunities for strengthened regional cooperation on migration; and to formulate recommendations for the 2026 International Migration Review Forum (IMRF). Thailand and Indonesia are both GCM 'champion countries' leading on specific issues under the compact.[73] The first Asia Pacific regional review of the GCM was held in 2021 and mentioned asylum seekers and refugees briefly, but did not specifically discuss Rohingya.[74] The 2024 regional review of the GCM provides an opportunity to press discussion of Rohingya displacement as part of the regional migration picture.

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