

# BOFAXE

## Between Policy and Reality

### ON THE CHALLENGES OF BEING A REFUGEE IN ASIA

Since the [violent events of August 2017](#), which triggered one of the most recent mass exoduses of Rohingyas from Rakhine state in Myanmar, the Rohingya diaspora continues to rise. Many are [still stranded in Bangladesh](#), some have managed to risk their lives on boats and [journeyed across the seas](#) to reach Indonesia, Malaysia, and Thailand, while others have attempted to flee to Australia, only to be [trapped on Manus Island](#). This Bofax highlights some of the deficiencies in the legal framework that characterize the approach of states in the Asia Pacific (APAC) region.

Unlike Europe, [the APAC region lacks a robust legal framework in refugee protection](#). Governments in the region deny having any obligations and less than half of APAC countries have acceded to the 1951 Refugee Convention and its protocol. Among the 10 Association of South East Asian Nations (ASEAN) countries, only the Philippines and Cambodia are party to said convention. There is also no such regional instrument relating to the protection of refugees. At sub-regional level, the [ASEAN Human Rights Declaration](#), which was adopted in 2012 is non-legally binding. Although its Article 16 contains an explicit right to asylum, it is subordinated to the laws of the respective States and international agreements, most of which are inapplicable given the absence of APAC states from such instruments. [The ASEAN human rights system is also weak in terms of administering cases or implementing measures](#) as there is no human rights court and the ASEAN Intergovernmental Commission on Human Rights (AICHR) does not have mandate to receive complaints or conduct investigations. As such, many refugees, including the Rohingyas, slip between the cracks and, considered [illegal immigrants](#), fall into ["no man's land of human and legal rights"](#).

Policies and procedures are often developed with good intentions. This can clearly be seen at an international level when we look at all the efforts, thus far, to address the issue of [refugee protection](#). However, for the Rohingya refugees, simply having good intentions is not enough. Having endured systemic violence and persecution for decades long, placing them in a state of protracted displacement; it is untenable to have good policies made ineffective by poor implementation practices. An example of this is the lack of standardized procedure in order to be registered under UNHCR, leaving many Rohingya refugees left unregistered.

Consider the example of the Rohingyas seeking refuge in Malaysia, subject of a detailed [Humanitarian Policy Group report](#), who have been systematically denied access to many of the services that they need to ensure their livelihood. They were also subjected to various human rights abuses such as trafficking, and arbitrary arrest and detention, even if they are in possession of refugee cards issued by the Office of the United Nations High Commissioner for Refugees (UNHCR). Bribery of authorities is also common to avoid these arrests. Unfortunately for those Rohingyas remaining in Malaysia, the situation remains bleak.

Livelihood conditions are not guaranteed to be any better in other Asian states given the lack of laws for the protection of refugees. [Many are denied refugee status](#) (such as in Bangladesh) or simply remain unregistered, which means that they are pushed to the fringes and being forced to take up employment in informal sectors to sustain a livelihood, albeit one without protection of the law.

Given the ongoing plight of refugees and asylum seekers in the APAC region, two conclusions can be drawn:

1. The APAC region desperately needs a normative framework, one that provides refugees with the protection they need including protection from falling prey to the various consequences stemming from being illegal immigrants in APAC countries. Regardless of whether this would be a regional set up or a national change of laws, something needs to be done urgently otherwise refugees remain vulnerable and at risk. At present, [ASEAN has remained shamefully silent](#) on the issue, but the [AICHR Terms of Reference](#) can be strengthened to protect human rights across the region.
2. A standardized procedure is also desperately needed in order to facilitate and expedite the process for refugees and asylum seekers to obtain registration under UNHCR, and for them to obtain the UNHCR card, which enables them access to various services, which in turn, help them secure a livelihood, even if it is temporary.

Current efforts to combat related crime (human smuggling and trafficking) through the Bali Process help, but have been criticized as only a superficial effort that does not address the heart of the matter. As [mixed migration](#) continues to plague the region, policies both at national and regional level needs to be strengthened and regional cooperation becomes even more important to ensure refugees and asylum seekers are protected.

**VERANTWORTUNG** Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, Massenbergrasse 9b, 44787 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208, Web: <http://www.ruhr-uni-bochum.de/ifhv/>. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: [ifhv-publications@rub.de](mailto:ifhv-publications@rub.de).

**FÜR DEN INHALT IST DER JEWEILIGE VERFASSER ALLEIN VERANTWORTLICH.** All content on this website provided by Völkerrechtsblog, and all posts by our authors, are subject to the license [Creative Commons BY SA 4.0](#).