

Indonesia's National Response in Ensuring Human Rights of Irregular Migrants, especially Refugees and Asylum Seekers

Indonesia is currently hosting 14.743 refugees and asylum seekers coming from 50 countries, the majority of which came from Afghanistan, Somalia, and Myanmar. As a non-state party to the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and its 1967 Protocol relating to the Status of Refugees (the 1967 Protocol), the Indonesia's policy in receiving the asylum seekers and refugees has been based on the international norms, including the *non-refoulement* and humanitarian principles. The decision to allow a safe embarkation of nearly 400 Rohingyas refugees in Aceh Province in 2020 and during the pandemic was one of concrete examples of Indonesia's policy regarding irregular migrants. Furthermore, Indonesia has been going the extra miles, beyond its international obligation and within its limited capacity, to provide basic needs, access to health services and education for refugees and asylum seekers currently waiting for their solution to their cases.

The following assessment will describe Indonesia's national policy with regard to irregular migrants, particularly refugees and asylum seekers. It will also elaborate on obstacles and challenges faced, such as people smuggling/trafficking in persons activities and pushback practices carried out by other countries in the region.

A. NATIONAL LEGISLATIONS AND POLICIES

As a non-state party to the 1951 Refugee Convention and its 1967 Protocol, Indonesia has no law and regulation that specifically refer to, nor regulates, refugees and asylum seekers since there is no international obligation for Indonesia for having it. Under this circumstance, the obligation and mandate to provide international protection for refugees and asylum seekers in Indonesia, therefore, is **central to UNHCR's responsibilities**.

In the national context, Indonesian Law No. 6/2011 on Immigration stipulates that every foreign national who enter Indonesian territory without proper documents and authorization are considered to be illegal and subject to the enforcement of prevailing laws and regulations.

However, in the context of irregular migration, particularly for asylum seekers, laws and regulations in Indonesia acknowledge the **fundamental rights for every person to seek political asylum**.

- This is clearly stated on the Article 28 of Indonesian Law No. 38/1999 on Human Rights and Law No. 37/1999 on Foreign Relations.
- It is important to note, however, that there are no legislative products in Indonesia that cover refugees and asylum seekers management, such as registration, status determination process, fulfilment of basic needs, etc.

Even so, Indonesia's national position and policies on irregular migration, particularly towards refugees and asylum seekers, go beyond what is reflected in its legislative products.

Evaluating the arrivals of more than 1300 Rohingyas by boats off the coast of Aceh Province in 2015, the President of the Republic of Indonesia issued Presidential Regulation No. 125 in 2016 concerning the Handling of Foreign Refugees.

- This regulation is meant as an **operating and coordination procedures** between Indonesian central agencies/line ministries, Provincial/Municipal governments, and international organization, in **emergency humanitarian situations** in Indonesian waters.
- This covers areas such as search and rescue, shelter arrangement, security, and immigration supervision.

The enactment of Presidential Regulation 125/2016 demonstrates Indonesia's commitment to humanitarian cause and *non-refoulement* principle, starting from emergency rescue operations to refugees

- It is **not intended to substitute Indonesia's ratification** to the 1951 Refugee Convention, **nor is it intended to assume responsibilities from UNHCR**, as its scope and purpose are clearly defined.
- On the other hand, the regulation signifies Indonesian Government's support and facilitation for the full implementation of UNHCR's international protection mandate.

B. NATIONAL EFFORTS TOWARDS REFUGEE RIGHTS

Going the extra miles and beyond obligations is not only manifested through adhering to *non-refoulement* principle, no pushback practices, and humanitarian cause. Indonesia has also taken measures to fulfil the rights of the refugees. These measures include:

- Ensuring **rights to housing**, by providing shelters in the context of emergencies and facilitation of housing in Government's premises, in cooperation with UNHCR and IOM.
- Ensuring **rights to medical services**. This has been demonstrated during the arrivals of Rohingya refugees in 2020 when local health authorities with the support from local NGOs and IOM provided medical services and Covid-19 tests to all disembarking refugees.
- Ensuring **rights to freedom of movement** within the territory, in accordance with the prevailing rules and regulations.
- Ensuring **rights to education**. The issuance of Circular Letter from the Minister of Education and Culture No. 75253/A.A4/HK/2019 has ensured refugee children to gain access to education in public schools with the facilitation from international organizations.
- Ensuring **rights to access to communication** in the effort to restore family links.

Furthermore, with regard to the rights of migrant women and children, the Presidential Regulation No. 125/2016 categorizes refugee women and children as refugees with special needs that could be placed outside of the designated shelter. This measure aims to provide special care such as medical services and care with the best interest of the child in mind.

Additionally, as a response to the Covid-19 pandemic, the Government is currently in the process of establishing a Special Protection Protocol to Refugee Children to ensure protection for refugee children with principles such as protection from violence, non-discrimination, focus on sustaining livelihood, and with the best interest of children in mind. The protocol would further emphasize the essential roles of international organizations to provide protection to refugee children during the pandemic.

C. CHALLENGES IN ENSURING PROTECTION AND RIGHTS OF REFUGEES AND ASYLUM SEEKERS

In the process of ensuring protection to refugees and asylum seekers, and fulfilment of their rights, several challenges have arisen, both in the context of national and regional level:

1. **The need to strengthen the resources of the UNHCR Indonesia to enable them in taking a more leadership role in** the management of refugees and fully implement its international protection mandate in Indonesia.

Reflecting over the years of managing the refugees and asylum seekers in Indonesia, the Indonesian Government has taken notes that the commitment of the international community, particularly the State Parties to the 1951 Convention, has been significantly decreasing. This has been reflected by the continuous significant decrease in the number of resettlements to the third countries as well as support for the livelihood of the refugees and asylum seekers in-waiting in Indonesia.

At the same time, UNHCR, the international organization that has the mandate to provide international protection, which include, provision to provide basic needs to the refugees, has very limited resources. The condition has created more burden in refugees handling to be shifted to the Indonesian Government.

2. **The concern of refugee crises and people smuggling/trafficking in persons activities**

Indonesia is deeply concerned with the fact that some of the refugees had to suffer by **dual ill-fated experience**, by becoming boat refugees and victims of people smuggling and trafficking in persons activities.

Investigations conducted by the Indonesian National Police have found strong indication and evidence of the involvement of people smuggling/trafficking in persons syndicate(s).

- It needs to be underlined that the movement of Rohingya refugees typically is **secondary movement** from refugee camp in Cox's Bazar, Bangladesh. The movements of the refugees by boats have been facilitated by people smuggling/TIPs syndicate(s).
- Often the case, **Indonesia is not the intended final destination** country for these refugees. Many of them are aspired to go to Malaysia and Thailand instead.
- The pushback the boat practices and strict policy towards refugees conducted by some countries in the region (detailed below) have forced the syndicates to adjust their operations and **alter the course of the refugees** through Indonesia.

3. **Pushback practices conducted by neighboring countries**

It has been identified that Indonesia is not the intended destination country for refugees. Most of the refugees were initially heading to other countries in the region.

For the most part of the decade, several countries in the region have been practicing stricter measures on immigration policies, including to refugees and asylum seekers. Some of these measures have been translated into various forms of pushback, especially for refugees arriving by boats. The Covid-19 pandemic has also further stricken the policy to close the borders and to deny entrance for incoming refugees.

The strict immigration and asylum policies of countries in the region have impacted Indonesia. Often, *modus operandi* of the smugglers has changed, and Indonesia has been chosen as a place for refugees to stay temporarily before they would gradually be transferred to other countries in small numbers.

It is our expectation that this study by the Special Rapporteur could lead to further engagement with State Parties to the 1951 Refugee Convention and its 1967 Protocol, in order to meet their commitments and obligations, uphold the principle of burden and responsibility sharing, and refrain from pushback practices that not only endanger refugees/asylum seekers, but also deny them from their fundamental rights.

D. EFFORTS TAKEN BY INDONESIA IN THE REGIONAL CONTEXT

1. Gives more importance in efforts to address the root causes of irregular migration.

Indonesia strongly believes that the most effective solution to address irregular migrations is by addressing the root causes. In this regard, Indonesia through bilateral mechanism and through ASEAN has been very active in supporting the creation of the conducive condition for a voluntary, safe and dignified return of the Rohingya refugees to Myanmar. This includes providing support to the arrangement between the Government of Myanmar and Bangladesh to start the voluntary, safe and dignified repatriation of Rohingya to Rakhine state.

2. Increasing capacities of states in the region to address and prevent the causes of irregular migrations through Bali Process

The main mandate of the Bali Process is to advance regional dialogue and cooperation to address people smuggling, trafficking in persons and related transnational crime. In our region, the Bali Process has been providing avenues for more collaboration and coordination among countries of origin, transit and destination. The Bali Process Working Group on Trafficking in Persons, the Bali Process Working Group on the Disruption of People Smuggling and Trafficking in Persons Networks, and Technical Expert Group on Return and Reintegration, are some of the examples of Bali Process activities that constantly address the issue.

It is now even more urgent for states to address people smuggling and trafficking in persons aspect of irregular migrations. Not only because it crosses boundaries and also placing refugees in a more vulnerable situation, it also contributed negatively to our efforts in addressing the pandemic.

The Bali Process shall serve, and will continue to act, as an important catalyst in enhancing coordinated policy response and mutually beneficial cooperation among its members to address irregular movements of people.

3. Supporting ASEAN efforts in the repatriation of displaced persons in Myanmar

In 2019, Indonesia and the ASEAN Secretariat has signed the 'Agreement between the Government of Indonesia and ASEAN on the Implementation of the Grant for the Repatriation of Displaced Persons to Myanmar'. The USD 500.000 grant is intended to provide financial support to the establishment of an Ad-Hoc Support Team of the ASEAN Secretariat to assist the Myanmar government in implementing the recommendations of the Preliminary Needs Assessment.
