

Submission to the ASEAN Intergovernmental Commission on Human Rights (AICHR) on:

## **Maritime movements of the Rohingya and recommendations to improve human rights protection for Rohingya refugees**

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## Introduction

### a. The Asia Pacific Refugee Rights Network

The Asia Pacific Refugee Rights Network (APRRN) is an open and growing network of over 250 civil society organisations and individual members from 26 countries, aiming to advance the rights of refugees in the Asia Pacific region. As a network, APRRN supports the work of its members through capacity strengthening programmes, resource and information sharing, joint advocacy and outreach activities. Founded in 2008, APRRN fosters collaboration between local NGOs, legal service providers, human rights advocacy groups, research institutions and refugees themselves, as they work together towards a common goal of increased refugee rights and improved protection in the Asia Pacific region.

### b. Statement of Purpose

APRRN welcomes the opportunity to present this submission, in partnership with ALTSEAN Burma, Burma Partnership, FORUM-Asia, and the Institute on Statelessness and Inclusion, to the ASEAN Intergovernmental Commission on Human Rights (AICHR). The purpose of this submission is to provide decision-makers with a situational analysis of maritime movements by Rohingya refugees in the Bay of Bengal and Andaman Sea and urge them to address the situation by strengthening human rights protections. This submission will focus solely on the maritime movements of the Rohingya.

We urge the governments of Indonesia, Malaysia, Myanmar and Thailand to follow the recommendations provided in this submission to address root causes of forced displacement and improve refugee protection mechanisms in transit and host countries.

## Background

### c. Maritime movements in the Asia Pacific region

Maritime movements have for many years been the primary mode of migration for Rohingya refugees travelling from Myanmar to Malaysia via Thailand. This movement across waters is not new, with increasing numbers of refugees departing from the Bay of Bengal since 2012. The United Nations High Commissioner for Refugees (UNHCR) estimates that a total of over 150,000 Rohingya and Bangladeshis have left Myanmar on boats since 2012.<sup>1</sup>

The number of people departing by sea drastically increased in 2015, with 25,000 Rohingya and Bangladeshis departing in the first quarter of 2015 alone.<sup>2</sup> Of these 25,000 people, approximately 40-60% were originally from Rakhine State in Myanmar, with the remainder from Bangladesh.<sup>3</sup> It should be noted that many of the people coming from Bangladesh were Rohingya coming from camps in Bangladesh.

These maritime movements received worldwide media attention during May 2015 when several boats carrying a total of over 5,000 passengers,<sup>4</sup> were abandoned by smugglers due to fears related to the increase in crackdowns on human trafficking in the region following the discovery of mass graves close to the border of Thailand and Malaysia. The boats were left adrift and without adequate food or water for the people on board.<sup>5</sup> However, the governments of Indonesia, Malaysia

<sup>1</sup>See <http://www.unhcr.org/5396de0f9.html> and <http://www.unhcr.org/555aee739.html>

<sup>2</sup>*Bay of Bengal and Andaman Sea: Proposals for Action*. Rep. UNHCR, May 2015. Web. 15 Oct. 2015. <http://www.unhcr.org/55682d3b6.html>

<sup>3</sup>*South-east Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>

<sup>4</sup>Amnesty International. *South East Asia: Inaction Paves the Way for Future Refugee Disaster*. News: Asia and the Pacific. Amnesty International, 1 July 2015. Web. 16 Oct. 2015. <https://www.amnesty.org/en/latest/news/2015/07/south-east-asia-inaction-paves-the-way-for-future-refugee-disaster/>

<sup>5</sup>*South-East Asia, Mixed- Maritime Movements*. Rep. UNHCR, Spring 2015. Web. 15 Oct. 2015. <http://www.unhcr.org/53f1c5fc9.html>

and Thailand initially refused to allow disembarkation. Between 10 and 20 May 2015, close to 2,000 survivors were rescued by fishermen off the east coast of Aceh, Indonesia. Following these rescues, on 21 May the governments of Indonesia and Malaysia agreed to provide 7,000 people still at sea with temporary protection, under the condition that refugees be resettled elsewhere within twelve months.<sup>6</sup>

Those refugees who were intercepted in Thailand or Indonesia, or who arrived in Malaysia, are currently being held in immigration detention centres or temporary shelters. Despite the risks involved in the journey and the difficulties faced by refugees after landing, at least a few hundred Rohingya have paid smugglers within the last few months, to transport them in hope of finding better living conditions, livelihoods, and safety and protection from the persecution they face in Myanmar.

#### d. Legal frameworks for refugee protection in transit and host countries

Indonesia, Malaysia and Thailand are the three primary host countries in the ASEAN region for Rohingya refugees from Myanmar. None are signatories to the 1951 UN Convention relating to the Status of Refugees (hereafter referred to as the 1951 Convention)<sup>7</sup> and its 1967 Protocol Relating to the Status of Refugees (hereafter referred to as the 1967 Protocol),<sup>8</sup> nor the 1954 Convention on the Status of Stateless Persons.<sup>9</sup>

These countries lack comprehensive national legislative frameworks regarding refugee protection. Additionally, refugees are considered to be ‘illegal immigrants/aliens’ under national immigration laws in all three countries. As such, refugees and asylum seekers do not have any legal status. This increases their vulnerability to arrest, immigration detention and deportation (in violation of the principle of *non-refoulement*), and also restricts their access to fundamental rights such as healthcare and education services, as well as the right to work.

Nevertheless, Indonesia and Thailand are all signatories to the 1976 International Covenant on Civil and Political Rights (ICCPR), the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR), and the 1987 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>10</sup> As such, these states agree to ensure that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>11</sup>

Indonesia, Malaysia, Myanmar and Thailand are also all states parties to the 1982 UN Convention on the Law of the Sea which requires every coastal state to “promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighboring States for this purpose.”<sup>12</sup> Further, all four countries are states parties to the 1989 UN Convention on the Rights of the Child (CRC) which provides that “no child shall be subjected to

<sup>6</sup> Amnesty International. *South East Asia: Inaction Paves the Way for Future Refugee Disaster. News: Asia and the Pacific*. Amnesty International, 1 July 2015. Web. 16 Oct. 2015. <<https://www.amnesty.org/en/latest/news/2015/07/south-east-asia-inaction-paves-the-way-for-future-refugee-disaster/>>

<sup>7</sup> UN Convention Relating to the Status of Refugees, *Treaty Series*, vol. 189, p. 137.

<sup>8</sup> UN Protocol Relating to the Status of Refugees, *Treaty Series*, vol. 606, p. 267.

<sup>9</sup> UN Convention on the Status of Stateless Persons, *Treaty Series*, vol. 360, p.117.

<sup>10</sup> Equal Rights Trust & IHRP (2014). *Equal Only in Name: The Human Rights of Stateless Rohingya*, London. <http://goo.gl/BiVkyg>

<sup>11</sup> UN International Covenant on Civil and Political Rights, *Treaty Series*, vol. 999, p. 183

<sup>12</sup> *Bay of Bengal and Andaman Sea: Proposals for Action*. Rep. UNHCR, May 2015. Web. 15 Oct. 2015. <<http://www.unhcr.org/55682d3b6.html>>

torture or other cruel, inhuman or degrading treatment or punishment”, although Malaysia holds a reservation to this article.<sup>13</sup>

Finally, Indonesia and Thailand have signed, and Indonesia has ratified, the 2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the UN Convention against Transnational Organized Crime.<sup>14</sup> The purpose of this Protocol is “to prevent and combat the smuggling of migrants, as well as to promote cooperation among state actors to that end, while protecting the rights of smuggled migrants.”<sup>15</sup>

## Issues of concern

### e. Root causes: Situation inside Myanmar

The Rohingya are among the most vulnerable people in the world. Originating from western Myanmar, the Rohingya are a largely stateless ethno-religious Muslim minority who have for decades suffered brutal oppression, systematic persecution, segregation, exclusion, discrimination and other serious human rights violations. Since the early 1960s, the Rohingya have been subjected to an erosion of their ethnic identity and arbitrarily deprived of their nationality, rendering the majority stateless.<sup>16</sup> Hundreds of thousands of Rohingya have fled Myanmar in search of safety, security and sustainable livelihoods – they often live in a precarious state of limbo in countries where they seek refuge.<sup>17</sup> Those who remain in Myanmar are disenfranchised and face dire humanitarian conditions due to a denial of basic rights and lack of access to basic services and livelihoods; those who were victims of the violence in Rakhine State in June 2012 are internally displaced and confined to camps.

### i. Discriminatory citizenship and nationality laws

Of the 1.33 million Rohingya in Myanmar, 1.28 million have been rendered stateless by the 1982 *Burma Citizenship Law*, which purposefully excludes Rohingya from citizenship and the rights citizenship entails.<sup>18</sup> Under the current framework, Rohingya can only access naturalised citizenship, which is discretionary and guarantees fewer rights. Furthermore, the majority of Rohingya have no practical access to obtain naturalised citizenship. Arbitrary deprivation of their citizenship continues to be part of the systematic persecution and exclusion they have endured for decades, providing an impetus for people to place their lives in the hands of smugglers.

### ii. Restricted movement and access to livelihoods

Around 95% of the internally displaced people (IDPs) in Rakhine State are Rohingya.<sup>19</sup> As of December 2015, around 140,000 IDPs are still living in camps Rakhine State.<sup>20</sup> Therefore, around

<sup>13</sup> Malaysia has declared that provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia."

<sup>14</sup> *Protocol against the Smuggling of Migrants by Land, Sea and Air*, New York, 15 November 2000, United Nations, *Treaty Series*, vol 2241, No. 39574, pg. 507. <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&lang=en)>.

<sup>15</sup> UN Protocol against the Smuggling of Migrants by Land, Sea and Air, *Treaty Series*, vol. 2241, p. 542; Doc. A/55/383

<sup>16</sup> Article 1(1) of the 1954 Statelessness Convention defines a stateless person as someone “who is not considered as a national by any state under the operation of its law”. This definition is now part of customary international law, and thus applies to states which have not ratified the 1954 Convention.

<sup>17</sup> Equal Rights Trust & IHRP (2014). *Equal Only in Name: The Human Rights of Stateless Rohingya*, London. <http://goo.gl/BiVkyg>

<sup>18</sup> *Policies of Persecution*. Rep. Fortify Rights, 25 Feb. 2015. Web. 17 Oct. 2015.

<[http://www.fortifyrights.org/downloads/Policies\\_of\\_Persecution\\_Feb\\_25\\_Fortify\\_Rights.pdf](http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf)>

<sup>19</sup> *2016 Humanitarian Needs Overview*. Rep. United Nations, Nov. 2015. Web. 20 Jan. 2016.

<[http://reliefweb.int/sites/reliefweb.int/files/resources/Ref\\_Doc\\_Humanitarian\\_Needs\\_Overview\\_HCT\\_2016.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Ref_Doc_Humanitarian_Needs_Overview_HCT_2016.pdf)>

<sup>20</sup> *Myanmar: Snapshot of Humanitarian Issues*. OCHA, Dec. 2015. Web. 22 Jan. 2016.

<[http://themimu.info/sites/themimu.info/files/documents/Snapshot\\_Humanitarian\\_OCHA\\_11Dec2015.pdf](http://themimu.info/sites/themimu.info/files/documents/Snapshot_Humanitarian_OCHA_11Dec2015.pdf)>

133,000 Rohingya are estimated to still be living in these IDP camps. The Rohingya living in these camps lack access to adequate services and livelihood opportunities.<sup>21</sup>

Up to 800,000 Rohingya living in Rakhine State similarly lack access to their livelihoods and basic services.<sup>22</sup> The UN Special Rapporteur on the situation of human rights in Myanmar reported that the Myanmar government and military restrict the movement of Rohingya people from both leaving IDP camps and moving from one village to another, even for medical care.<sup>23</sup> This severe restriction of movement prevents Rohingya from accessing livelihoods and employment opportunities to support themselves.

### iii. Systemic persecution through rights violations

The government of Myanmar views the Rohingya as ‘illegal Bengali immigrants’ and as a threat to Buddhist culture - these views are the basis for the government-initiated, restrictive policies that legalise the rights violations the Rohingya face every day. The government of Myanmar has implemented policies aimed at controlling marriage, movement, education, building construction, and access to healthcare and employment opportunities by the Rohingya. Regional orders clearly outline how Myanmar officials are instructed to implement restrictive policies.<sup>24</sup>

Many Rohingya also faced disenfranchisement during the Myanmar general election in November 2015, after the temporary registration cards, with which they were able to vote in the 2011 and 2012 elections, were revoked in early 2015.<sup>25</sup> The Myanmar Union Election Commission also rejected all Rohingya national parliament candidates, in addition to rejecting several Muslim and Rohingya state parliament candidates.<sup>26</sup> Disenfranchisement of both Rohingya voters and political candidates is a systematic strategy to restrict the rights of Rohingya in Myanmar.

After a mission to Myanmar in 2015, the UN Special Rapporteur confirmed the existence four bills concerning religious conversion, inter-faith marriage, monogamy and population control.<sup>27</sup> She expressed concern regarding the inter-faith marriage bill, stating that, “she is concerned regarding the language of the bill, which indicates that it is directed towards minority faiths and is discriminatory in intent.”<sup>28</sup> The potential for these bills to support systematic persecution against the Rohingya is another cause for concern.

<sup>21</sup> *Submission to the United Nations Universal Period Review: Myanmar*. Rep. Fortify Rights, Nov. 2015. Web. 17 Oct. 2015.

<[http://www.fortifyrights.org/downloads/FR\\_UPR%20Submission\\_September\\_2015.pdf](http://www.fortifyrights.org/downloads/FR_UPR%20Submission_September_2015.pdf)>

<sup>22</sup> Burma Campaign UK. *International NGOs Urge Ban Ki-Moon to Negotiate Aid Access to Rakhine State, Myanmar (Burma)*. N.p., 20 May 2015. Web. 17 Oct. 2015. <<http://burmacampaign.org.uk/international-ngos-urge-ban-ki-moon-to-negotiate-aid-access-to-rakhine-state-myanmar-burma/>>

<sup>23</sup> *Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee* (Human Rights Council, 28<sup>th</sup> Session, Agenda item 4, Human rights situations that require the Council’s attention, 23 March 2015) available at:

<[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_72\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_72_en.doc)>

<sup>24</sup> *Policies of Persecution*. Rep. Fortify Rights, 25 Feb. 2015. Web. 17 Oct. 2015.

<[http://www.fortifyrights.org/downloads/Policies\\_of\\_Persecution\\_Feb\\_25\\_Fortify\\_Rights.pdf](http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf)>

<sup>25</sup> “Myanmar: Elections Marred by Growing Repression and Rohingya Disenfranchisement.” *Amnesty International*. N.p., 15 Nov. 2015.

Web. 28 Jan. 2016. <<https://www.amnesty.org/en/latest/news/2015/11/myanmar-elections-marred-by-growing-repression-and-rohingya-disenfranchisement/>>

<sup>26</sup> *No Hope For Rohingya From Burma Election*. Rep. Burma Campaign, Nov. 2015. Web. 28 Jan. 2016.

<<http://burmacampaign.org.uk/media/BROUK-Rohingya-Election-Briefing.pdf>>

<sup>27</sup> These bills have since been passed and signed into law. See: <http://www.loc.gov/law/foreign-news/article/burma-four-race-and-religion-protection-laws-adopted/>

<sup>28</sup> *Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee* (Human Rights Council, 28<sup>th</sup> Session, Agenda item 4, Human rights situations that require the Council’s attention, 23 March 2015) available at:

<[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_72\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_72_en.doc)>



**f. At sea**

As a result of conditions in Myanmar and in the absence of legal alternatives to migration, thousands of desperate Rohingya refugees were forced to rely on people smugglers to flee Myanmar. Boats traveled from the coast of Myanmar into the Bay of Bengal and then the Andaman Sea to Indonesia, Malaysia and Thailand.

**i. Malnutrition, sexual violence and death**

Refugees faced abuse at the hands of smugglers as a means of control; malnutrition and starvation were common, as meager meals of rice and occasional dried fish cannot provide adequate nutrition over the course of months at sea. Women reported regular sexual violence at the hands of smugglers on board; even more common is rape at the hands of smugglers in Thailand.<sup>29</sup> UNHCR documented over 1,000 deaths at sea from January 2014 to May 2015, with 300 deaths recorded during the first three months of 2015.<sup>30</sup> Survivors interviewed by UNHCR also told of boats sinking, however these accounts cannot be confirmed by UNHCR.<sup>31</sup>

**ii. Search and rescue operations and disembarkation**

When in May 2015, around 5,000 people were abandoned by smugglers on boats in the Andaman Sea, the governments of Indonesia, Malaysia and Thailand not only failed to conduct search and rescue operations, but also towed boats back to sea, in direct violation of international law.<sup>32</sup> Of the boats reportedly towed back to sea, one (which was towed back by the Indonesian navy) remains unaccounted for.<sup>33</sup> Some boats eventually managed to land in Malaysia or were brought to shore by Acehese fisherman in three separate rescue efforts between 10 and 20 May 2015.

**g. Transit and host countries****i. Trafficking camps on the Thailand-Malaysia border**

Malaysia is the preferred final destination for most Rohingya refugees as Islam is the official state religion and there is already a significant Rohingya community in Malaysia.<sup>34</sup> Thus, Rohingya refugees fleeing Myanmar do not aim to land in Thailand, but are brought there by smugglers. Many smugglers who bring people by ship to the Thai coast sell their human cargo to smugglers in Thailand, who then hold people captive until family members can pay the ransom for their release into Malaysia.<sup>35</sup>

People interviewed by UNHCR reported high incidences of being transferred directly from smugglers' boats into camps along the Thailand-Malaysia border. Individuals arriving in Thailand after October 2014 reported an average of 318 people per camp, with over half reporting deaths in the camp from sickness and abuse. Once in the camp, traffickers demanded up to USD 2,000<sup>36</sup> for their release, leaving many refugees dependent on Rohingya community members in Malaysia to pay for their release. Others performed manual labour to pay off their debt.<sup>37</sup>

<sup>29</sup> *South-east Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

<sup>30</sup> *Bay of Bengal and Andaman Sea: Proposals for Action*. Rep. UNHCR, May 2015. Web. 15 Oct. 2015.

<<http://www.unhcr.org/55682d3b6.html>>

<sup>31</sup> *South-east Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

<sup>32</sup> Fortify Rights. *Thailand, Malaysia, Indonesia: Coordinate Sea Rescues, Protect Asylum Seekers and Trafficking Survivors*. Fortify Rights, 13 May 2015. Web. 15 Oct. 2015. <<http://www.fortifyrights.org/publication-20150513.html>>

<sup>33</sup> *South-East Asia, Mixed- Maritime Movements*. Rep. UNHCR, Spring 2015. Web. 15 Oct. 2015. <<http://www.unhcr.org/53f1c5fc9.html>>

<sup>34</sup> *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*. Rep. Equal Rights Trust, Oct. 2014. Web. 10 Nov. 2015.

<sup>35</sup> *South-east Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

<sup>36</sup> Ransoms are typically paid in local currencies; usually THB or MYR

<sup>37</sup> *South-east Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

Media attention on the Rohingya crisis intensified in May 2015. After the discovery of trafficking camps along the Thailand-Malaysia border, worldwide media coverage increased pressure on host countries to take action, leading to a crackdown on the presence of these camps in both Thailand and Malaysia. The Thai government responded immediately by arresting several local officials and conducting raids on trafficking camps. On 7 May 2015, the Prime Minister of Thailand, General Prayut Chanochat, ordered the elimination of all camps as part of crackdown on trafficking in Thailand.<sup>38</sup> In Malaysia, the authorities discovered 28 camps along the border with Thailand and have since detained 12 police officers suspected of involvement in human trafficking activities.<sup>39</sup> Due to these recent crackdowns, the number and size of camps is reducing, with some refugees being taken directly overland into Malaysia.<sup>40</sup>

## ii. Detention in Indonesia, Malaysia and Thailand

### *Indonesia*

In Indonesia, UNHCR works with the government to verify the status of asylum seekers through a standardised refugee status determination (RSD) process. Rohingya who arrive in Sumatra via boat are housed in shelters in Aceh and Medan, where they have access to food, healthcare, psychological support, educational classes and skills development programmes. Resettlement sites have been developed and efforts are underway to better integrate the refugees in their host communities. Both civil society and the private sector have initiated good practices in providing aid to Rohingya who arrive by boat.

However, there is growing concern over a lack of public awareness, including amongst NGO staff at the shelters, about refugee rights and the context of the history and culture of the Rohingya. While local NGOs have organised workshops to raise awareness about refugee rights and Rohingya culture, there is still confusion and cultural misunderstanding within the camps. Nevertheless, efforts are ongoing to better integrate the refugees in their host communities.

At the same time, the government of Indonesia has yet to clarify whether or not Rohingya refugees will be allowed to stay beyond June 2016 and, along with Malaysia and Thailand, continues to treat all refugees as 'illegal immigrants' subject to immigration detention. A presidential decree regarding this framework exists, but has not yet been passed or made available for public comment. Despite this, the local governments of Langsa and Aceh Timur, who are hosting Rohingya refugees in temporary shelters, initiated the development of guidelines for managing asylum seekers and refugees. At the national level, this response recently resulted in renewed commitment to revise and finalise the draft of the Presidential Regulation on Asylum Seekers and Refugees. These processes should be supported and could serve as models for the region in refugee protection and in managing refugee populations.

### *Malaysia*

Despite a history of decades of work in Malaysia, UNHCR lacks any formal agreement with the government of Malaysia on mechanisms for processing asylum seekers and refugees in the country. As such, UNHCR bears sole responsibility for the processing of all asylum seekers and refugees in Malaysia.

While Rohingya arriving in Malaysia by boat in May and June 2015 were allowed to disembark, this disembarkation was only permitted on the condition of resettlement or voluntary assisted

<sup>38</sup> *The Refugee and Trafficking Crisis in Southeast Asia*. Rep. Amnesty International, Oct. 2015. Web. 10 Nov. 2015.

<sup>39</sup> *Ibid.*

<sup>40</sup> *South-East Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

repatriation within twelve months.<sup>41</sup> All refugees arriving via boat are subject to mandatory detention until UNHCR can assess their refugee claim.<sup>42</sup> Due to the large number of migrants who enter Malaysia for better economic opportunities, stringent processing and interview requirements are used to identify the most vulnerable individuals; these include unaccompanied and separated children, most of whom are housed in shelters for vulnerable women and children.

#### *Thailand*

UNHCR and the government of Thailand work together to address refugee protection issues. In general, UNHCR conducts Refugee Status Determination (RSD) interviews and places women and children in shelters, whereas men are held in immigration detention centres.<sup>43</sup> However, the fate of refugees intercepted at sea by authorities has not been consistent. In January 2015, Thai authorities intercepted two groups of migrants: the first group comprised of Rohingyas and Bangladeshis were categorised as 'illegal migrants', whereas the second group was identified as 'victims of trafficking.'<sup>44</sup> This inconsistent approach by government authorities further undermines the protection spaces available and has serious implications for how refugees arriving via boat will be screened.

#### **iv. Access to services and the right to work**

Refugees in Indonesia, Malaysia and Thailand do not have the right to work. The extent to which authorities in each country turn a blind eye to refugees and asylum seekers working in the informal sector varies. In Aceh however, the local governments are encouraging livelihoods and skills development of the refugee population in the hope that they will become more independent and to encourage integration with host communities. In Malaysia, refugees and migrants provide a cheap labour force in a variety of sectors, whereas in Thailand finding work without papers and evading arrest is more challenging.

In all three countries, the lack of a right to work further increases vulnerability to exploitation. Refugees are reliant on UNHCR, NGOs, faith-based organisations, community support and others for health and education services. The level of medical care and educational opportunities available varies greatly depending on where a refugee resides.

### **Recommendations**

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is tasked with the development of regional cooperation and strategies for the promotion and protection of human rights.<sup>45</sup>

As such, the Asia Pacific Refugee Rights Network (APRRN), ALTSEAN Burma, Burma Partnership, FORUM-Asia and the Institute on Statelessness and Inclusion request that AICHR urge ASEAN states to implement the following recommendations to improve protection and access to rights for the Rohingya in Southeast Asia:

#### **1. Instigate effective search and rescue operations**

We call upon Indonesia, Malaysia and Thailand to extend their legally mandated search and rescue operations for all maritime movements within their territorial waters. We urge these states to go beyond ad hoc interception at sea, and set in place regular search and rescue operations. This

<sup>41</sup> *South-East Asia, Mixed- Maritime Movements*. Rep. UNHCR, Spring 2015. Web. 15 Oct. 2015. <<http://www.unhcr.org/53f1c5fc9.html>>

<sup>42</sup> *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*. Rep. Equal Rights Trust, Oct. 2014. Web. 10 Nov. 2015.

<sup>43</sup> "2015 UNHCR Country Operations Profile - Thailand." UNHCR 2015. Web. 24 Nov. 2015.

<<http://www.unhcr.org/pages/49e489646.html>>

<sup>44</sup> *South-East Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015.

<<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

<sup>45</sup> *AICHR: What You Need to Know*. Rep. The ASEAN Secretariat, Jakarta, Oct. 2012. Web. 15 Jan. 2016.



recommendation is in line with the response goals set out by the Ministry of Foreign Affairs of the Kingdom of Thailand during the ‘Special Meeting on Irregular Migration in the Indian Ocean’ held in Bangkok on 29 May 2015.<sup>46</sup>

## 2. Allow safe disembarkation

We urge Indonesia, Malaysia, Myanmar and Thailand - all states parties to the 1982 UN Convention on the Law of the Sea - to adhere to their obligations. We urge these states to follow customary international law, which requires allowing refugees rescued at sea to disembark safely. Effective search and rescue operations require safe disembarkation. Towing boats in need of rescue back into international waters is in violation of customary international law.

We advocate to governments to ensure a complete and safe disembarkation process for all, and the safe transfer of all rescued people to temporary official government holding shelters. Agreements should be made in anticipation of arriving boats to ensure that all countries share the responsibility of providing safe disembarkation to arriving refugees and migrants.

## 3. Adhere to UNHCR standards for screening and reception procedures

We prompt states to follow UNHCR guidelines to not repatriate anyone in need of protection. Such repatriation is in direct violation of the principle of *non-refoulement*, which is regarded as a part of customary international law, regardless of whether or not states are parties to the 1951 Refugee Convention or its 1967 Protocol. *Non-refoulement* is also a human rights principle, thus states signatory to CAT and ICCPR also have obligations to avoid *refoulement*.

We understand that up to 50% of people migrating via boat from the Bay of Bengal in the beginning of 2015 were Bangladeshis.<sup>47</sup> These mixed migration flows highlight the need for effective screening mechanisms to identify the most vulnerable individuals, including/in particular women, all children and especially unaccompanied and separated children, people seeking international refugee protection, and victims of trafficking in need of international protection.

## 4. End detention

We call upon governments to follow through on the commitments they made at a multi-stakeholder Roundtable meeting to protect human rights and end the indefinite detention of children, held in Bangkok in November 2015. We ask these governments to expand upon these commitments and work towards ending the indefinite detention of Rohingya refugees as well. If temporary and non-arbitrary detention is deemed necessary only as a measure of last resort during the screening process, then we also implore governments to improve detention facility standards and not allow detention to impede access to health services.

## 5. Create regional task force to improve regional mechanisms

We commend the government of Thailand for organising the ‘Special Meeting on Irregular Migration in the Indian Ocean’ held in Bangkok on 29 May 2015, and a follow-up second meeting on 3-4 December 2015. We are especially supportive of the focus on regional cooperation and commitment towards establishing a joint task force to provide humanitarian support.<sup>48</sup> Additionally, we recognise the recent signing of the ASEAN Convention against Trafficking in Persons, Especially Women and

<sup>46</sup>Ministry of Foreign Affairs of the Kingdom of Thailand. Media Center. Summary *Special Meeting on Irregular Migration in the Indian Ocean*. MFA, 29 May 2015. Web. 15 Oct. 2015.

<sup>47</sup> *South-East Asia: Irregular Maritime Movements*. Rep. UNHCR, Winter 2015. Web. 16 Oct. 2015. <<http://reporting.unhcr.org/sites/default/files/Irregular%20Maritime%20Movements%20-%20Jan-Mar%202015.pdf>>

<sup>48</sup>Ministry of Foreign Affairs of the Kingdom of Thailand. Media Center. Summary *Special Meeting on Irregular Migration in the Indian Ocean*. MFA, 29 May 2015. Web. 15 Oct. 2015. <<http://www.mfa.go.th/main/en/media-center/14/56880-Summary-Special-Meeting-on-Irregular-Migration-in.html>>

Children, and progress within the Bali Process working groups as important steps towards improved protection for refugees.<sup>49</sup>

We also commend the establishment of the ASEAN Trust Fund to “assist those affected by irregular migration,” as an important first step in creating a regional task force. However, as of today, it is our understanding that this task force has yet to be convened. The government of Thailand has yet to provide any update on the actual creation of such a task force, even after a follow-up ‘2<sup>nd</sup> Special Meeting on Irregular Migration in the Indian Ocean’.<sup>50</sup>

Therefore, we call upon the governments of Indonesia, Malaysia and Thailand to expeditiously move forward and create the joint task force that was committed to during the meeting on 29 May 2015.

## 6. Focus on providing protection

We encourage states to shift their focus from addressing human trafficking to also providing protection. For Rohingya refugees, this means addressing the drivers and root causes of their displacement from Rakhine state in Myanmar, since trafficking in this case is a symptom of systematic and widespread persecution and discriminatory policies in Myanmar.

We acknowledge ASEAN’s focus on reducing human trafficking and commend ASEAN’s commitment to protecting victims of trafficking. However, we believe that looking beyond trafficking and holistically addressing refugees’ protection needs aligns with ASEAN’s goals of providing protection for vulnerable populations as well.

When states respond to refugee movements by ‘combatting human trafficking,’ this approach can result in crackdowns (as witnessed in May 2015) that lead traffickers to abandon their cargo at sea in order to avoid possible arrest or confrontation with local authorities during disembarkation. Yet, while there is an absence of legal alternatives, and people are desperate to leave persecutory situations, the business of smuggling and trafficking in people will continue. Therefore, addressing the maritime migration of the Rohingya must shift to include providing protection both in Myanmar and in host and transit countries.

We urge AICHR and UNHCR to exhaust all possible means and use any mechanisms available to protect refugees in danger of *refoulement*. An example can be found in the Emergency Transit Mechanism (ETM) agreement between UNHCR, the government of the Philippines, and the International Organization for Migration. This ETM allows refugees who are unable to remain in their country of first asylum, and who are at risk of *refoulement* or persecution, to stay in the Philippines while awaiting resettlement. This type of agreement could be used to improve protection mechanisms in other ASEAN countries as well.

We also recommend states explore alternative legal migration options, such as labour migration schemes, as an effective way to combat trafficking.

## 7. Establish the right to work as a part of local integration measures

We encourage states to recognise that preventing refugees from working for the duration of their processing period only prevents them from being able to support themselves. We urge states to

<sup>49</sup> Ministry of Foreign Affairs of the Kingdom of Thailand. Media Center. *Result of the 2<sup>nd</sup> Special Meeting on Irregular Migration in the Indian Ocean*. MFA, 4 Dec 2015. Web. 16 Dec. 2015. < <http://www.mfa.go.th/main/en/media-center/28/62757-Result-of-the-2nd-Special-Meeting-on-Irregular-Mig.html>.>

<sup>50</sup> *Ibid.*



grant refugees the right to work during the duration of their stay in the host country, allowing them to be self-reliant, preserve their dignity and make meaningful contributions to host communities.

#### **8. Address the root causes of maritime movements**

We strongly urge ASEAN states to address the discriminatory and exclusionary policies and practices affecting the Rohingya in Myanmar. As long as the Rohingya are subject to systematic and widespread persecution and discriminatory policies, including severe restrictions on access to citizenship both inside IDP camps and in the general community, they will continue to risk their lives in an attempt to reach places of relative safety.

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