

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	129
Land:	Burma
Kilde:	Amnesty International
Titel:	Deadly Journeys The Refugee and Trafficking Crisis in Southeast Asia
Udgivet:	20. oktober 2015
Optaget på baggrundsmaterialet:	4. januar 2016



DEADLY JOURNEYS

THE REFUGEE AND TRAFFICKING CRISIS IN SOUTHEAST ASIA

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First published in 2015
by Amnesty International Ltd
Peter Benenson House, 1 Easton
Street, London WC1X 0DW, UK

Index: ASA 21/2574/2015
Original language: English
Printed by Amnesty International,
International Secretariat, UK

amnesty.org



Cover photo: Rohingya migrants pass food supplies dropped by a Thai army helicopter to others aboard a boat drifting in Thai waters off the southern island of Koh Lipe in the Andaman sea on May 14, 2015. A boat crammed with scores of Rohingya migrants -- including many young children -- was found drifting in Thai waters on May 14, with passengers saying several people had died over the last few days. AFP PHOTO / Christophe ARCHAMBAULT
Credit: © CHRISTOPHE ARCHAMBAULT/AFP/Getty Images

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CONTENTS

EXECUTIVE SUMMARY	5
METHODOLOGY	7
CHAPTER 1: BACKGROUND TO THE MAY 2015 CRISIS	9
CHAPTER 2: FLEEING HORROR IN MYANMAR	11
WIDESPREAD PERSECUTION AND VIOLENCE	12
CONCLUSION	14
CHAPTER 3: ABUSED AND STRANDED AT SEA	15
JOURNEY PATTERNS	15
GRAVE ABUSES ON BOATS	17
Held Hostage, Beaten and Killed for Ransom	17
Killings	18
Beatings and Other Ill-Treatment	18
Inhuman and Degrading Conditions	19
TRAFFICKING OF ROHINGYA	21
Proximity and Prevalence of Trafficking Networks	22
Exploitation	23
Low Cost or Free Journeys	23
Abduction	23
Well-Organized Crews	24
TRAFFICKING OF BANGLADESHIS	25
PUSHED BACK AT SEA	26
INADEQUATE SEARCH AND RESCUE	27
CONCLUSION	28
CHAPTER 4: TEMPORARY SHELTER IN INDONESIA	29
ADMIRABLE INITIAL RESPONSE	29
LONGER TERM CONCERNS	31
INADEQUACY OF REGIONAL AND INTERNATIONAL SUPPORT	35
CONCLUSION	35
CONCLUSION AND RECOMMENDATIONS	36
CONCLUSION	36
RECOMMENDATIONS	37
To the Government of Myanmar	37
To the Government of Indonesia	37
To the Governments of Indonesia, Malaysia and Thailand	37
To the Government of Bangladesh	38
To the Government of Australia	38
TO IOM and UNHCR	38
To ASEAN	38
To the International Community	39

EXECUTIVE SUMMARY

“We felt so sorry whenever we saw the people dead and thrown to the sea. The people are dying on the ground in Myanmar [...] and they are dying in the sea too.”

15-year old Rohingya girl, Aceh, 12 August 2015

In May 2015 three boats carrying 1,800 women, men and children landed in Aceh, Indonesia. All those who arrived were weak with fear, hunger, and exhaustion. They had endured weeks or months at sea, in boats controlled by ruthless traffickers or abusive people-smugglers. The boats that reached Aceh were among dozens of vessels that had been abandoned at sea by their crews after the authorities in Thailand announced a crackdown on human trafficking.

After the crews left the boats stranded at sea, Indonesia, Malaysia and Thailand initially pushed overcrowded vessels back from their shores and prevented thousands of desperate people from disembarking. Despite multiple reports by NGOs and media about boats in distress, governments in the region were very slow in setting up search and rescue operations. The events in the Bay of Bengal and Andaman Sea and the plight of those on the boats drew global media attention. Following international criticism, Indonesia and Malaysia permitted people to land, but made it clear that they would only accommodate them temporarily. The decision to let the boats land was welcome, but according to UNHCR hundreds of people may have died at sea during this time. However, with no means of tracking the boats, it is impossible to know for certain and there are concerns that the numbers may be much higher.

This report is based on interviews with 179 asylum-seekers, as well as dozens of other interviews with local residents, civil society organizations, government officials and international agencies. Amnesty International carried out interviews in August 2015. The report also draws on data from a number of UN, governmental and non-governmental sources about irregular boat traffic in the Bay of Bengal and Andaman Sea.

Most of the people who reached Indonesia in May 2015 were Muslim Rohingya, a religious and ethnic minority from predominantly Buddhist Myanmar. The Myanmar authorities deny the existence of the Rohingya – referring to them as Bengalis – and have enacted discriminatory legislation that effectively renders the vast majority of the Rohingya stateless. These people have been subject to abuses by state and non-state actors for decades, including in 2012 when vicious sectarian violence erupted in Rakhine state in Western Myanmar, which is where the majority of Rohingya live. More than 125,000 Rohingya and other Muslims were displaced.

The testimonies of the Rohingya interviewed in Aceh paint a harrowing picture of mob attacks, deaths and disappearances. A teacher told Amnesty International that 25 of his students died trying to protect him from a mob; he cried while explaining that one of them had his arm severed by a long

knife. Given the scale and severity of the human rights violations in Myanmar, Amnesty International considers that most Rohingya outside their country are likely refugees.

But those who fled Myanmar by boat in 2015 only exchanged one nightmare for another. The Rohingya interviewed by Amnesty International described the shocking conditions they endured at sea for weeks or sometimes months on end. People said they were beaten repeatedly until their families paid a ransom to release them onto a different ship. Amnesty International interviewed a 15-year old girl who described how the crew called her family, made them listen to her cries as they beat her, and ordered the family to pay them a ransom. Interviewees said that those who could not pay were shot or thrown overboard.

Virtually every Rohingya – women, men and children – who spoke with Amnesty International said that they had either been beaten by the boat crews or had witnessed other passengers being beaten. People were beaten for moving, for begging for food or water, and for asking to use the toilet. Children were beaten for crying. Amnesty International spoke to one person who was beaten so viciously that they lost consciousness for several hours, and still suffer from the beating's physical and psychological effects. All the interviewees described conditions on the boats that qualify as inhuman and degrading, and Indonesian people who rescued passengers from one boat said the stench was so bad they could not board.

These types of horrific abuses transform what may have begun as a smuggling journey – in which desperate people seeking safety willingly board boats in exchange for a fee – into trafficking for the purpose of exploitation. NGOs and journalists have reported on human trafficking in the Southeast Asian region for a number of years, although detailed information about the mechanics of the trade are scarce. The victims of trafficking include refugees from Myanmar as well as people escaping crushing poverty in countries such as Bangladesh.

The people whom Amnesty International interviewed in Indonesia had been abandoned by the people transporting them. As their journey was interrupted while they were in transit to their intended destination (usually Malaysia), it is not possible to say for certain they were being trafficked to situations of forced labour or other forms of exploitation. However, because of several factors, including cruel beatings to extract money, Amnesty International considers that many – if not most – of the Rohingya who reached Aceh in May 2015 were victims of human trafficking.

The approximately 1,000 Rohingya in Aceh are now facing an uncertain future. Indonesia has provided much-needed support – devoting national and local Acehese resources, and cooperating with local civil society and international agencies to help meet their basic needs. However, the Rohingya still do not know if they will be permitted to stay past their anticipated departure date of May 2016, or if they will be resettled in another country. Indonesia has not ratified the United Nations Convention Relating to the Status of Refugees, and lacks a clear and operational legal framework for refugees and asylum-seekers. The UN Refugee Agency – UNHCR – is responsible for all refugee status determination procedures in Indonesia, and is presently understaffed and underfunded.

Southeast Asia's sailing season began as this report was being finalized in October 2015, after the monsoon ended. Traffickers and smugglers will undoubtedly resume their trade and grave human rights abuses will again be perpetrated on the seas of Southeast Asia.

Amnesty International is calling for urgent action to address Southeast Asia's refugee and trafficking crisis. Governments in the region – in particular Indonesia, Malaysia and Thailand – must cooperate to put in place effective measures to combat human trafficking and protect people from human rights abuses by traffickers and smugglers. And while states must investigate and bring to justice in fair trials those involved in trafficking, governments must also ensure that law enforcement measures do not endanger lives at sea, or trap people in Myanmar and Bangladesh without any means of escape.

An essential component of any law enforcement effort against those involved in human trafficking in the Bay of Bengal and Andaman Sea must be the implementation of coordinated search and rescue

operations, coupled with safe and predictable disembarkation procedures. It is imperative that states in Southeast Asia learn from the May 2015 crisis in order to avert another human rights disaster at sea.

The international community must provide technical assistance with maritime search and rescue, as well as funding to ensure the humane reception of recently disembarked people and to help refugees and host populations meet their basic needs.

METHODOLOGY

This report is based on research conducted by an Amnesty International delegation in Indonesia in August 2015, as well as desk research and follow-up communication by phone and email. Delegates travelled to Blang Adoe and Kuala Cankoi (North Aceh district), Bayeun (East Aceh district), Kuala Langsa (Langsa District), and Gampong Peuntet and Lhokseumawe in Aceh province.

Researchers met with 115 Rohingya who arrived in Aceh in May 2015: interviews in small groups with 75 Rohingya; and an additional 40 individual interviews with 12 men, 14 women, 10 boys, and four girls. Amnesty International also interviewed seven Bangladeshis who had arrived in Aceh in May 2015. In Cisarua and Jakarta, the organization conducted 34 in-depth interviews with refugees and asylum-seekers who had been in Indonesia for between several months and several years. They came from a range of countries, including Afghanistan, Ethiopia, Iran, Myanmar, Pakistan, and Somalia. In Kupang, delegates conducted group interviews with 30 Afghan men, and individual interviews with two Afghan men. The names of all interviewees – and in some cases, other details – have been withheld for their protection.

Amnesty International met with officials at various levels of government, including local government representatives in Kuala Cankoi, Langsa and Lhokseumawe in Aceh province. Researchers also spoke with Indonesia's Directorate General of Immigration (Kantor Imigrasi), Ministry of Foreign Affairs, National Human Rights Commission (Komisi Nasional Hak Asasi Manusia), and National Commission on Violence against Women (Komisi Nasional Anti-Kekerasan Terhadap Perempuan).

Delegates met with the staff of over a dozen local civil society organizations in Aceh and Jakarta, as well as international civil society organizations and humanitarian groups. In Kuala Cankoi, the organization spoke to local people who had helped rescue the Rohingya in May 2015, as well as medical staff who had treated them shortly after their arrival. In addition, Amnesty International met with local and national staff of the International Organization for Migration (IOM) as well as the United Nations High Commissioner for Refugees (UNHCR).

Amnesty International would like to thank all those who assisted with this research, in particular local civil society partners who provided tremendous support and expertise, and refugees and migrants who were so generous with their time and testimonies.



CHAPTER 1: BACKGROUND TO THE MAY 2015 CRISIS

In recent years, tens of thousands of people from Myanmar and Bangladesh have undertaken treacherous boat journeys in an attempt to escape persecution or poverty. The United Nations High Commissioner for Refugees (UNHCR) estimates that in the first six months of 2015, 31,000 people left the Bay of Bengal on irregular journeys by boat.¹ The passengers consisted of Rohingya asylum-seekers – a persecuted Muslim population living mainly in Rakhine state in Myanmar – as well as people fleeing destitution in Bangladesh. In 2014 approximately 63,000 people had made irregular and dangerous journeys by boat in the Bay of Bengal and Andam Sea.²

These boat journeys are arranged by well-organized networks of people smugglers and traffickers. The UN Special Rapporteur on the Situation of Human Rights in Myanmar has said that human rights violations in Myanmar “are generating large numbers of asylum seekers and are encouraging people smuggling and trafficking.”³ Following the Special Rapporteur’s visit to the country in early 2015, she said that Rohingya had two options: “stay and die or leave by boat.”⁴

In early 2015, these dangerous boat journeys were made more hazardous in the aftermath of a regional crackdown on trafficking. At the beginning of May 2015, the graves of dozens of Rohingya and Bangladeshis were discovered in Thailand, close to the Malaysian border⁵ (later in the month, graves were also found on the Malaysian side of the border).⁶ The graves were found at sites the authorities stated were camps used by traffickers. On 7 May, Thai Prime Minister Prayut Chan-o-cha ordered an investigation into trafficking networks, demanding that all camps and graves be found within 10 days.⁷ The traffickers responded quickly, and on 9 May they began abandoning boats full of people in the open water.⁸

The harrowing events in the weeks that followed hit global headlines, as thousands of refugees and migrants were stranded at sea and in dire need of food, water and medical care.⁹ Only three states in Southeast Asia – Cambodia, the Philippines and Timor-Leste – have ratified the *United Nations*

1 UNHCR, “UNHCR Urges States to Help Avert Bay of Bengal Boat Crisis in Coming Weeks,” 28 August 2015, available at <http://www.unhcr.org/55e063359.html>.

2 UNHCR, IOM and UNODC, *Bay of Bengal and Andaman Sea: Proposals for Action*, May 2015, available at <http://www.unhcr.org/55682d3b6.html>, p. 1.

3 UN Special Rapporteur on the Situation of Human Rights in Myanmar, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Yanghee Lee, UN Doc. A/HRC/28/72, 23 March 2015, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_72_en.doc, para. 48.

4 UN News Centre, “UN Rights Expert Urges Myanmar Authorities to Address Signs of Backtracking,” 18 March 2015, available at http://www.un.org/apps/news/story.asp?NewsID=50364#_Vg-gifVhBd.

5 Human Rights Watch, *Thailand: Mass Graves of Rohingya Found in Trafficking Camp*, 1 May 2015, available at <https://www.hrw.org/news/2015/05/01/thailand-mass-graves-rohingya-found-trafficking-camp>; Emanuel Stoakes, “Thailand human trafficking death toll far greater than feared, claims rights group,” *The Guardian*, 6 May 2015, available at <http://www.theguardian.com/global-development/2015/may/06/thailand-human-trafficking-mass-grave-burma-rohingya-people>.

6 Todd Pitman and Jocelyn Gecker, “Malaysia migrant graves reveal 139 human skeletons at site where Rohingya Muslims ‘Kept by traffickers,’” *The Independent*, 25 May 2015, available at <http://www.independent.co.uk/news/world/asia/malaysia-migrant-graves-reveal-139-human-skeletons-at-site-where-rohingya-muslims-kept-by-10273915.html>.

7 The Nation, “Ten-Day Deadline to Find Migrant Camps,” 7 May 2015, available at <http://www.nationmultimedia.com/national/Ten-day-deadline-to-find-migrant-camps-30259476.html>.

8 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 3.

9 International Organization for Migration, “IOM Appeals for USD 26 million for Migrants in SE Asian Boat Crisis,” 26 May 2015, available at <http://www.iom.int/news/iom-appeals-usd-26-million-migrants-se-asian-boat-crisis>.

Convention Relating to the Status of Refugees (Refugee Convention),¹⁰ and most governments in the region were reluctant to assist the people stranded in boats. Initially, Indonesia, Malaysia and Thailand engaged in a series of “pushback”¹¹ operations, in which authorities prevented vessels from landing and sometimes escorted them out of the state’s territorial waters.¹² The scale of the humanitarian disaster was shocking. In a figure deemed credible by the International Organization for Migration, 8,000 people were estimated to have been stranded at sea in May 2015.¹³

Following regional and international criticism (including from Amnesty International),¹⁴ on 20 May the governments of Indonesia, Malaysia and Thailand changed their approach, and Indonesia and Malaysia offered “temporary shelter” to up to 7,000 people, on the condition that by May 2016, the asylum-seekers would be resettled (a process in which third countries accept refugees)¹⁵ and the migrants repatriated.¹⁶ Between 10 and 20 May, 1,800 people disembarked from three boats in Indonesia, and on 11 May, 1,100 passengers disembarked from two boats in Malaysia.¹⁷

Many people lost their lives during this crisis. In mid-2015, UNHCR estimated that over 1,100 people died in the Bay of Bengal and Andaman Sea since 2014, including 370 deaths between January and June 2015.¹⁸ Over 1,000 people on boats along the route remain unaccounted for.¹⁹ Hundreds, and perhaps thousands, of people may have died from exposure, abuse, hunger, or drowning. Given the difficulty in measuring deaths at sea,²⁰ the full scale of the tragedy will never be known.

At the time this report was being finalized in mid-October 2015, the monsoon season had ended, which will likely allow thousands more people to attempt dangerous boat journeys in the Bay of Bengal. There is a serious risk of another humanitarian disaster unfolding at sea in late 2015.

10 *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, [1969] Can. T.S. No. 6 [*Refugee Convention*].

11 These are sometimes euphemistically called “help-on” operations.

12 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 3-5.

13 International Organization for Migration, “*IOM Appeals for USD 26 million for Migrants in SE Asian Boat Crisis*,” 26 May 2015, available at <http://www.iom.int/news/iom-appeals-usd-26-million-migrants-se-asian-boat-crisis>.

14 See for instance Amnesty International, “*South East Asia: Immediately Step Up Efforts to Rescue Thousands at Grave Risk at Sea*,” 13 May 2015, available at <https://www.amnesty.org/en/latest/news/2015/05/south-east-asia-immediately-step-up-efforts-to-rescue-thousands-at-grave-risk-at-sea/>.

15 “Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country.” UNHCR, *UNHCR Resettlement Handbook*, 2011, available at www.unhcr.org/46f7c0ee2.pdf.

16 Ministers of Foreign Affairs of Malaysia, Indonesia and Thailand, *Joint Statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia*, 20 May 2015, available at <http://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia>.

17 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 6.

18 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 2.

19 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 1.

20 IOM, *Fatal Journeys: Tracking Lives Lost during Migration*, 2014, available at http://publications.iom.int/bookstore/free/FatalJourneys_CountingtheUnaccounted.pdf, p. 11.

CHAPTER 2: FLEEING HORROR IN MYANMAR

“The Buddhist government says no Muslims should live in Myanmar. They say ‘Go to another place.’ I say ‘I’m going.’ They say ‘Go to the sea.’”

Rohingya woman, Aceh, Indonesia, 14 August 2015

In May 2015 three boats carrying 1,800 women, men and children grounded in Aceh in Indonesia. The vessels were among the many boats that had been abandoned by their crews following the regional crackdown on trafficking, leaving thousands of passengers stranded at sea for weeks. The majority of those on the boats were Rohingya who had fled Myanmar. All those who arrived at Aceh were weak with hunger, exhaustion and fear. They had endured weeks or months at sea, in boats controlled by ruthless people traffickers or abusive smugglers. This chapter discusses the conditions they were fleeing in Myanmar.



One of the three boats to reach Aceh in May 2015. It carried 578 Rohingya and Bangladeshi passengers, who were rescued by local fishermen.

WIDESPREAD PERSECUTION AND VIOLENCE

The Rohingya, who are Muslim, are a religious and ethnic minority from predominantly Buddhist Myanmar. They mostly live in Myanmar's Rakhine state. Government authorities deny their existence, and refer to them as Bengalis, implying that they are migrants from neighbouring Bangladesh.

Most of the Rohingya are stateless. Myanmar's 1982 *Citizenship Law* stripped the citizenship of all but 40,000 of the country's 1.33 million Rohingya. According to this law, only individuals belonging to eight "national" and 135 "ethnic" groups can acquire full citizenship.²¹

The Rohingya have been subject to violence by state and non-state actors for decades. Particularly brutal episodes include the violent forcible displacement led by the Myanmar military in 1978 and 1991, after which 250,000 Rohingya fled to Bangladesh,²² and Rakhine Buddhist mob attacks on Rohingya mosques and schools in 2001.²³ The UN Special Rapporteur on the Situation of Human Rights in Myanmar has stated: "the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the *Rome Statute of the International Criminal Court*."²⁴

In June and October 2012, vicious sectarian violence erupted between Buddhists and Rohingya (as well as other Muslims) in Rakhine state, triggered by the reported rape and murder on 28 May of an ethnic Burmese woman by three Muslim men.²⁵ Attacks against the Rohingya were led largely by civilians, the local Buddhist monkhood, and state security forces.²⁶ Over 125,000 Rohingya and other Muslims were forced from their homes and displaced into overcrowded and poorly serviced internally displaced people (IDP) camps.²⁷ The authorities have not conducted an adequate investigation into the violence, or brought those responsible to justice.²⁸

The 2012 violence displaced thousands of people, including many of the interviewees whom Amnesty International met in Indonesia in August 2015. Interviewees described the terror of the June 2012 violence, from which some people displayed ongoing signs of trauma. Two teenage sisters and their brother told Amnesty International researchers: "In front of us the houses were burning and the girls were taken out by the border guards from road blocks and the Rakhine mob for sexual violence at gunpoint." The younger sister, 15 years old, said: "If the villagers do not follow the rule of the border guard they would insult us, saying *kala* [derogatory term meaning foreigner], and kick us with their boots. They kicked me uncountable times."²⁹ A 25-year old man from Sittwe told Amnesty International that he was warned by a Buddhist monk who was his friend that "a problem will occur very soon, in two days' time." The Rohingya man, who was a teacher at the local *madrassa* (religious school), immediately rang the bell of his school and discussed with students and staff what to do. But the warning did not give them enough time to prepare. He said: "villages started burning that very day. After the mob attacked, the police shot in the air, and then started shooting the Rohingya." When recounting the events, the teacher broke down in tears, explaining that nearly 25 of his students died trying to protect him from the mob, and one of them had his arm severed by a long knife.³⁰

21 Amnesty International, *Myanmar: The Rohingya Minority: Fundamental Rights Denied*, ASA 16/005/2004, 19 May 2004, available at <https://www.amnesty.org/en/documents/ASA16/005/2004/en/>.

22 UNHCR, *UNHCR Global Appeal 2012-2013: Bangladesh*, available at <http://www.unhcr.org/4ec231060.html>, p. 208.

23 Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 2013, available at https://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf, p. 16.

24 *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Tomás Ojea Quintana, 2 April 2014, UN Doc A/HRC/25/64, available at <http://www.refworld.org/docid/532068854.html>, para. 51.

25 Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 2013, available at https://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf, p. 7.

26 Fortify Rights, *Testimony of Matthew Smith: House Committee on Foreign Affairs*, 22 April 2015, available at http://www.fortifyrights.org/downloads/FR_TIP_Testimony_April_2015.pdf, p. 3.

27 Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 2013, available at https://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf, p. 6.

28 Amnesty International, *Myanmar Must Look Beyond 'Flawed' Report to Stop Cycle of Buddhist-Muslim Violence*, 20 April 2013, available at <https://www.amnesty.org/en/latest/news/2013/04/myanmar-government-report-will-not-stop-cycle-buddhist-muslim-violence/>.

29 Aceh Interview, 12 August 2015.

30 Aceh Interview, 13 August 2015.



A Rohingya man showing a scar he said he sustained from a knife attack that took place in Myanmar in 2012.

Several interviewees said that their family members were killed and/or disappeared during the 2012 violence. A Rohingya businessman from Molek told Amnesty International that his 50-year old aunt was killed by police in June 2012; an eye-witness told him that she was stabbed with a knife in her side, and her body was taken to the monastery but never released to her family. At around the same time, his two teenage nephews were captured by a mob and never seen again. He called the police to inquire about his nephews' whereabouts, but the officer told him: "*Kala*, I cannot do anything for you."³¹ A 19-year old woman from Sakki village said that in June 2012 her husband received knife wounds during the attacks, and she believes he died: "We cannot find his dead body. It disappeared."³² A woman from Santolli village told Amnesty International that her eight- and seven-year old children disappeared during the June 2012 violence; she fears that they are dead, saying: "I never saw their bodies."³³

During the June 2012 violence, human rights organizations reported that although some security forces acted to minimize harm to the Rohingya – for instance by escorting communities to safer locations – others contributed to the destruction of mosques, blocked Rohingyas' access to humanitarian aid, and conducted violent mass arrests.³⁴ This was borne out in testimonies collected by Amnesty International in Aceh; interviewees said that at times the police and army protected people from mob violence, whereas at other moments they took part.

Following the 2012 violence, the government of Myanmar continued to persecute the Rohingya. In 2014, the Ministry of Information instructed all Rohingya to register as Bengalis, effectively excluding them from the national census.³⁵ In February 2015, President Thein Sein announced the revocation of all Temporary Registration Certificates, denying the vast majority of Rohingya any form of identity documents and effectively preventing them from being able to vote in the upcoming November 2015 elections.³⁶ Recently the authorities have also enacted four discriminatory "race and religion" laws, under pressure from the hardline Buddhist nationalist organization known as the *Ma Ba Tha* (Association for the Protection of Race and Religion).³⁷

31 Aceh Interview, 11 August 2015.

32 Aceh Interview, 12 August 2015.

33 Aceh Interview, 13 August 2015.

34 Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 2013, available at: https://www.hrw.org/sites/default/files/reports/burma0413webcover_0.pdf, p. 35.

35 Amnesty International, *Annual Report 2014/15: Myanmar, 2015*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/>.

36 Amnesty International, "Why are the Rohingya Fleeing Myanmar?," 28 May 2015, available at <https://www.amnesty.org/en/latest/news/2015/05/why-are-the-rohingya-fleeing-myanmar/>.

37 Amnesty International and the International Commission for Jurists, *Myanmar: Parliament Must Reject Discriminatory 'Race and Religion' Laws*, ASA 16/1107/2015, 3 March 2015, available at <https://www.amnesty.org/en/documents/asa16/1107/2015/my/>.

Presently, the humanitarian situation for Rohingya in Myanmar is grim. The UN estimates that in Rakhine State some 416,600 people are affected by conflict or inter-communal violence and in serious need of humanitarian assistance,³⁸ including 140,000 people in Rakhine state IDP camps as well as others living in dismal conditions and with restricted freedom of movement.³⁹ As of September 2015, more than 98,000 people were living in 21 IDP sites in Sittwe township (Rakhine state) alone.⁴⁰

Beyond the persecuted Rohingya in Myanmar, thousands of Rohingya also live in Bangladesh in very poor conditions. In 2012 the UN estimates that over 29,000 Rohingya refugees were living in Bangladesh, concentrated mainly in the two camps of Kutupalong and Nayapara, in the Cox's Bazar district.⁴¹ UNHCR has said that the refugees' living conditions in these camps do not meet minimum international standards, with 17% of children aged six months to five years, and 15% of pregnant women, suffering from acute malnutrition.⁴² In addition, the Government of Bangladesh estimates that it is hosting 200,000 unregistered "people of concern"⁴³ from Myanmar – many of whom are likely to be Rohingya.⁴⁴ Most of the people living in these informal settlements receive no humanitarian assistance.⁴⁵ While in Aceh, Amnesty International met several Rohingya whose point of departure had been Bangladesh, including a 23-year old man from Buthidaung town who had been living in Teknaf, Bangladesh for 10 years. He said he fled because "there was no freedom [...] it was the same as Myanmar."⁴⁶

CONCLUSION

Persecution and violence against the Rohingya are widespread in Myanmar. Given the scale and severity of the human rights violations in Myanmar, the majority of Rohingya outside the country are likely refugees. As noted above, only three states in Southeast Asia – Cambodia, the Philippines and Timor-Leste – have ratified the *Refugee Convention*; this instrument establishes the world's international protection system for refugees, and should be ratified by the remaining countries in the region.

In the interim, regardless of whether a state has ratified the *Refugee Convention*, it is nonetheless bound by the principle of *non-refoulement*.⁴⁷ This is an international legal principle that prohibits the transfer of individuals to another country or jurisdiction where they would face a real risk of serious human rights violations or abuses.⁴⁸ The prohibition on refoulement to torture and other ill-treatment has achieved the status of customary international law, meaning that it is binding upon all states, regardless of whether they have ratified the relevant international instruments.⁴⁹

38 UN Office for the Coordination of Humanitarian Affairs, 2015 *Humanitarian Response Plan: Myanmar*, 12 December 2014, available at <http://reliefweb.int/report/myanmar/myanmar-humanitarian-response-plan-2015>.

39 UN Office for the Coordination of Humanitarian Affairs, *Myanmar: Crisis Overview*, 2015, available at <http://www.unocha.org/myanmar/about-ocha-myanmar/crisis-overview-0>.

40 UN Office for the Coordination of Humanitarian Affairs, *Myanmar: Internal Displacement in Rakhine State* (Aug 2015), 8 September 2015, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Affected_Map_IDP_Sites_Rakhine_OCHA_Aug2015_A4.pdf.

41 UNHCR, *UNHCR Global Appeal 2012-2013: Bangladesh*, available at <http://www.unhcr.org/4ec231060.html>, p. 208.

42 UNHCR, *UNHCR Global Appeal 2012-2013: Bangladesh*, available at <http://www.unhcr.org/4ec231060.html>, p. 209.

43 Persons of concern "consist generally of five categories of people who are within the competence of the High Commissioner. These groups are (a) those who fall under the Statute/1951 Convention definition and thus are entitled to benefit from the full range of the Office's functions; (b) those who belong to a broader category but have been recognized by States as being entitled to both the protection and assistance of the Office; (c) those to whom the High Commissioner extends her 'good offices', mainly but not exclusively to facilitate humanitarian assistance; (d) returning refugees, for whom the High Commissioner may provide reintegration assistance and a certain protection; and (e) non-refugee stateless persons whom UNHCR has a limited mandate to assist." UNHCR, *Protection of Persons of Concern to UNHCR Who Fall Outside the 1951 Convention: A Discussion Note*, 1992, available at <http://www.unhcr.org/3ae58cc518.html>, para. 11.

44 Cited in UNHCR, *UNHCR Global Appeal 2012-2013: Bangladesh*, available at <http://www.unhcr.org/4ec231060.html>, p. 208.

45 Refugees International, "Where We Work: Bangladesh," 2015, available at <https://www.refintl.org/where-we-work/asia/bangladesh>.

46 Aceh Interview, 13 August 2015.

47 UNHCR, IOM and UNODC, *Bay of Bengal and Andaman Sea: Proposals for Action*, May 2015, available at <http://www.unhcr.org/55682d3b6.html>, p. 4-5.

48 *Refugee Convention*, Art. 33(1); *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, [1987] 1465 U.N.T.S. 113, p.85, Art. 3(1); *International Convention for the Protection of All Persons from Enforced Disappearance*, Art. 16(1).

49 UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 15; *Conclusion No. 6 (XXVIII) Non-refoulement*, ExCom, UNHCR, 28th Session, 1977, para. (a); Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion," in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003), para. 216.

CHAPTER 3: ABUSED AND STRANDED AT SEA

“I was beaten for money. I was beaten five times every morning. I was lucky.”

15-year old Rohingya girl describing abuses suffered at sea, 16 August 2015

JOURNEY PATTERNS

Amnesty International collected testimonies from Rohingya interviewees (women, men and children), who came from various locations in Myanmar or Bangladesh, and who had spent time on a variety of different boats before eventually reaching Indonesia. Despite the fact that people travelled in different boats with diverse crews, they relayed similar accounts about how they came to be on the boats, as well as the human rights abuses they experienced at the hands of the crews in the course of their journeys.

In Myanmar or Bangladesh, most of the Rohingya were approached by local people who offered to take them to Malaysia. Often the fees for the journey were small, and sometimes people travelled for free. The Rohingya all began their journeys on very small boats, accommodating a few to a couple dozen passengers, and were then transferred to larger vessels waiting further out to sea, accommodating several hundred passengers. Most interviewees were transferred multiple times, across many different boats; it was not clear why these transfers took place, or if money changed hands between crews. According to interviewees, the crew members on these vessels were from Bangladesh, Myanmar and Thailand. Virtually all the Rohingya told Amnesty International that they saw or experienced horrific abuses at sea, including killings and beatings (these cases are described in detail below). Many interviewees said that over the course of their journey they saw numerous other boats similar to theirs, each containing hundreds of people.

The Rohingya in Aceh had spent between several weeks and several months at sea. Based on interviews with 600 Rohingya who reached Indonesia in May 2015, UNHCR calculated that they had spent an average of 76 days at sea.⁵⁰ Rohingya interviewees who had been together on one ship that reached Indonesia told Amnesty International they had spent between two and four months on that final boat, though they may have been at sea for much longer periods.⁵¹

Although a few Rohingya told Amnesty International that they fled Myanmar without a clear idea of where to go, everyone with an intended destination told delegates that they wanted to reach Malaysia. This country is one of the main destination countries in Southeast Asia – much of this migration is irregular, and the country hosts between 1.9 and 5 million irregular migrant workers.⁵²

50 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 5.

51 Aceh Interviews, 12 August 2015, 14 August 2015.

52 UN Office on Drugs and Crime, *Migrant Smuggling in Asia: Current Trends and Challenges*, April 2015, available at https://www.unodc.org/documents/southeastasiapacific/Publications/2015/som/Current_Trends_and_Related_Challenges_web.pdf, p. 57.

Amnesty International spoke with a number of unaccompanied children trying to reach Malaysia in order to work. Some were the sole breadwinners for their families in Myanmar and were hoping to join members of their extended family who were working in Malaysia. An unaccompanied 15-year old boy was trying to reach his 16-year old cousin. The wages he was hoping to earn were meant to support his family in Maungdaw (Rakhine state): his parents, five brothers and six sisters.⁵³ A group of Rohingya women told Amnesty International that they were trying to join their husbands or fiancés. One woman said: “We were afraid that we would be put in jail when we first arrived [in Indonesia]. We didn’t know where we were. But right now the feeling is: when can we join our family, our husbands?”⁵⁴

DISCOVERY OF TRAFFICKING CAMPS AND GRAVES IN THAILAND AND MALAYSIA IN MAY 2015

An investigation by the news agency Reuters revealed that on 1 May 2015 a Rohingya trafficking⁵⁵ survivor led a Thai military-police taskforce to a camp used by people traffickers in Southern Thailand, a few hundred metres from the Malaysian border.⁵⁶ The police discovered at least 30 bodies buried in shallow graves, as well as makeshift bamboo cages, evidence of people being held captive in those cages and signs that the camp had been evacuated a few days previously.⁵⁷ Two more camps were discovered within four days, and Thai authorities and locals found a few survivors in very poor health. Information gathered from the survivors indicated that Rohingya from Myanmar and Bangladesh, as well as Bangladeshis, had been trafficked and held captive and abused until their families could pay a ransom for their release. However, survivors said that many people died of starvation, disease or beatings while waiting for their relatives to pay.⁵⁸ On **4 May 2015**, Thai Police arrested three Thai officials for their alleged involvement in human trafficking, and charges were brought against the broker alleged to be in charge of operating the trafficking camp.⁵⁹

The Arakan Project, an NGO that monitors boat crossings in the Bay of Bengal and Andaman Sea, stated on **5 May 2015** that as raids by police looking for traffickers had increased, traffickers were moving their camps and abandoning those who were too ill to travel. Chris Lewa from the Arakan Project told the media that there was a “huge bottleneck at sea” creating an even more dangerous situation, as traffickers had switched to keeping thousands of people on boats in international waters rather than risk bringing them to Thailand.⁶⁰

On **7 May 2015**, Thai Prime Minister Prayut Chan-o-cha ordered local authorities in all provinces to “eliminate” all Rohingya camps and related activities in their areas within 10 days.⁶¹ On 9 May 2015, the Arakan Project reported that traffickers had abandoned several boats, leaving potentially thousands stranded at sea.⁶²

Police-General Somyot Poompanmuang, head of the Royal Thai Police, announced on **25 May 2015** that 50 police officers had been “transferred” because of their suspected links to human trafficking networks.⁶³

53 Aceh Interview, 14 August 2015.

54 Aceh Interview, 14 August 2015.

55 A discussion about trafficking, and the distinction between trafficking and smuggling, follows later in this chapter.

56 Amy Sawitta Lefevere and Andrew Marshall, “Special Report - Inside Thailand’s Trafficking Crackdown,” Reuters, 9 July 2015, available at www.reuters.com/article/2015/07/09/uk-thailand-trafficking-specialreport-idUKKCN0P13V20150709.

57 ABC News, “Mass Grave Believed to Belong to Migrants Found in Southern Thailand, Officials Say,” 1 May 2015, available at www.abc.net.au/news/2015-05-01/mass-grave-of-migrants-found-in-south-thailand-rescuer-says/6439028; Human Rights Watch, “Thailand: Mass Graves of Rohingya Found in Trafficking Camp,” 1 May 2015, available at www.hrw.org/news/2015/05/01/thailand-mass-graves-rohingya-found-trafficking-camp.

58 Bangkok Post, “Thailand Trafficking Death Camp ‘Just the Tip of the Iceberg’,” 4 May 2015, available at www.ucanews.com/news/thailand-trafficking-death-camp-just-the-tip-of-the-iceberg/73507; Al Jazeera America, “Thai Police Find New Human Trafficking Camps,” 5 May 2015, available at <http://america.aljazeera.com/articles/2015/5/5/thai-police-find-new-human-trafficker-camps.html>; Terry Fredrickson, “Border Camp Horrors Revealed, Official Arrested (Updated),” Bangkok Post, 4 May 2015, available at <http://www.bangkokpost.com/learning/learning-from-news/549355/suspected-migrant-graveyard-discovered-in-songkhla>.

59 Al Jazeera America, “Thai Police Arrest Man Suspected of Running Deadly Jungle Camp,” 4 May 2015, available at <http://america.aljazeera.com/articles/2015/5/4/thai-police-arrest-rohingya-man-suspected-of-running-deadly-jungle-camp.html>.

60 Jerome Taylor, “Thai People Smuggling Crackdown Creates Fresh Dangers,” AFP, 5 May 2015, available at <http://www.ucanews.com/news/thai-people-smuggling-crackdown-creates-fresh-dangers/73518>.

61 Bangkok Post, “PM Orders Camp Cleanup,” 7 May 2015, available at www.bangkokpost.com/news/politics/553247/pm-orders-camp-cleanup.

62 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.unhcr.org/554c6a746.html>.

63 ABC News, “Over 50 Thai Police Officers Punished Over Suspected Links to Human Trafficking Networks,” 25 May 2015, available at www.abc.net.au/news/2015-05-07/over-50-thai-police-punished-over-links-to-human-trafficking/6453326.

Malaysian authorities took reporters to an abandoned camp in Northern Malaysia (bordering Thailand) on **26 May 2015**, which contained what appeared to be a holding pen with barbed wire, a watchtower and large water tank – all indicating that people may have been held captive there. The authorities exhumed bodies from 37 shallow graves discovered near the camp. This site is one of several where Malaysian authorities had, as of May 2015, identified 139 graves believed to hold the bodies of migrants and asylum-seekers, including Rohingya.⁶⁴ The Malaysian authorities told reporters that some of the approximately 28 camps that they had discovered along a 50 km stretch near the Thai border had been occupied since 2013, and two of the camps had been abandoned between two and three weeks previously (around the time Thailand launched a crackdown on people trafficking). On **27 May 2015**, Malaysia detained 12 police officials on suspicion of involvement in trafficking.⁶⁵

GRAVE ABUSES ON BOATS

Rohingya interviewees in Aceh told Amnesty International about the horrific abuses that they had endured and witnessed at sea.

HELD HOSTAGE, BEATEN AND KILLED FOR RANSOM

Some Rohingya told Amnesty International that in the course of their journey they were taken to a very large vessel, many storeys high, and beaten repeatedly until their relatives paid a sum to release them – either onto another boat where the abuses were less severe or frequent, and on which they hoped to reach their intended destination, or directly on shore in Malaysia. It is not clear if there was more than one large boat where these beatings for ransom took place, and if so how many there were.

A 20-year old Rohingya man from Nagir Para said that he spent eight months on a very large ship anchored off the coast of Thailand, along with 1,500 Rohingya and Bangladeshis. He told Amnesty International that he was beaten many times with short plastic pipes with metal inside, and showed delegates a number of scars. The traffickers demanded 7,500 Malaysian Ringgit (about 1,700 USD), which his family paid by wiring to a bank account number, after borrowing the sum from other villagers. He was then taken away by speedboat along with two other young men and transferred to another ship, which eventually reached Indonesia in May 2015.

The two young men accompanying him had paid the same ransom to get off the same large boat, and described similar experiences to Amnesty International.⁶⁶

A 15-year old Rohingya girl said the crew demanded an identical sum for her release from a large boat where she was beaten frequently; she said the crew called her father in Kutupalong refugee camp in Bangladesh, made him listen to her cries while they beat her, and told him to pay them 7,500 Malaysian Ringgit.⁶⁷

A 22-year old Rohingya man from Paiké Therani village said that he was beaten and held for ransom on a large boat for six months,⁶⁸ as did an 18-year old man who was beaten many times on a large boat, until his uncle paid to free him.⁶⁹

64 Chris Buckley and Thomas Fuller, "Jungle Camp in Malaysia Yields Graves and Signs of Migrant Abuse," *New York Times*, 26 May 2015, available at www.nytimes.com/2015/05/27/world/asia/jungle-camp-in-malaysia-yields-graves-and-signs-of-migrant-abuse.html.

65 ABC News, "Malaysian Police Begin Exhuming Bodies at Jungle Camps Near Thai Border; Air, Sea Operation Launched to Rescue Abandoned Migrants," 27 May 2015, available at www.abc.net.au/news/2015-05-26/malaysian-police-begin-exhuming-bodies-at-jungle-camps/6498930; ABC News, "Malaysia Detains 12 Police Officials in Thai Border People-Smuggling Camps Probe," 27 May 2015, available at <http://www.abc.net.au/news/2015-05-27/malaysia-detains-12-police-in-people-smuggling-camps-probe/6502596>.

66 Aceh Interview, 11 August 2015.

67 Aceh Interview, 16 August 2015.

68 Aceh Interview, 11 August 2015.

69 Aceh Interview, 14 August 2015.

A 23-year old Rohingya man from Bangladesh said that he was held captive on a large ship in Thai waters for one and a half months; his family had to pay 150,000 Myanmar Kyat (about 110 USD) in order for him to be transferred onto another boat.⁷⁰

A 17-year old Rohingya boy from the Nayapara camp in Bangladesh said that he saw a man shot and thrown into the sea, after the man's family was unable to pay a ransom within the month deadline set by the crew.⁷¹

KILLINGS

Several Rohingya who spent time on different boats told Amnesty International that they saw crew members killing passengers. A 22-year old man from Paiké Therani village told Amnesty International: "If people are sick or if they cannot pay [a ransom], they are killed – sometimes they are shot first, sometimes they are just thrown overboard."⁷² A 15-year old Rohingya boy from Myanmar and a 35-year old Rohingya woman from Musoni refugee camp in Bangladesh, interviewed separately, told Amnesty International that they saw people thrown into the sea on multiple occasions; the victims were brought back on board after two or three hours – while some survived, others drowned.⁷³ It was not clear why people were thrown overboard.

Other passengers reportedly died from lack of water. A 15-year old Rohingya girl said: "I saw people die of dehydration. Whenever a person died they were given a ceremony by the other people on the boat and were then thrown into the sea by the boat driver."⁷⁴ Her brother, who was travelling with her, told Amnesty International that they saw four or five people die. It was not evident why some people died whereas others survived.

BEATINGS AND OTHER ILL-TREATMENT

Virtually every Rohingya – women, men and children – who spoke with Amnesty International said that they had either been beaten by the boat crews or had witnessed other passengers being beaten. People were beaten for moving, for begging for food or water, and for asking to use the toilet. Children were beaten for crying. One girl's aunt, who suffers from a mental illness, was beaten for not staying silent.⁷⁵ The beatings were carried out with plastic or metal sticks, as well as strips of rubber cut from tires.

It was shocking how many beatings took place in a routine, almost mechanical manner. A 15-year old girl told Amnesty International that the crew hit her five times every morning,⁷⁶ as did a young mother who was held captive on a large boat for six months.⁷⁷ Similarly, a 15-year old unaccompanied boy said: "In the morning you were hit three times. In the afternoon you were hit three times. At night you were hit nine times."⁷⁸ This boy told Amnesty International that over a period of one month, the crew threw him into the sea 15 times, for several hours at a time: "They threw us in the sea. We had to swim for hours – if we tried to hold on to the ship they would beat us. When we were nearly drowned they would take us back on the ship and beat us."⁷⁹

This physical abuse left some people with long-term health problems. Many interviewees showed Amnesty International scars that they said were the result of beatings by crew members (see photo).

70 Aceh Interview, 13 August 2015.

71 Aceh Interview, 14 August 2015.

72 Aceh Interview, 11 August 2015.

73 Aceh Interviews, 15 August 2015, 16 August 2015.

74 Aceh Interview, 11 August 2015.

75 Aceh Interview, 11 August 2015.

76 Aceh Interview, 16 August 2015.

77 Aceh Interview, 16 August 2015.

78 Aceh Interview, 15 August 2015.

79 Aceh Interview, 15 August 2015.

A 15-year old boy said that he still has pain in his hip and chest from the beatings he had endured.⁸⁰ An 18-year old man said: “The scars are gone, but it still hurts my back every time I stand up.”⁸¹ Amnesty International heard of a particularly vicious beating, independently confirmed by two witnesses, in which crew members beat a passenger to the point of losing consciousness for several hours. The victim, who spoke with delegates, still suffers from the beating’s physical and psychological effects.⁸²

Furthermore, based on some of the information that interviewees revealed about physical abuse and pregnancies, Amnesty International is also concerned that some women on board may have been subjected to rape and other forms of sexualized violence. However, it was not possible to ask detailed questions about this issue because of the circumstances of the interviews.

INHUMAN AND DEGRADING CONDITIONS

The conditions on all of the boats described by the Rohingya qualify as inhuman and degrading. The lower decks, where the men were housed, were extremely hot, airless and overcrowded. The top decks, where women and children tended to be kept, had no protection from the elements. Severe overcrowding was unanimously reported; people were not permitted to stand, but instead forced to sit in a cramped position with their legs crossed and their knees high (see photo).⁸³ A 25-year old woman from Maungdaw, Myanmar said that her two toddlers had to sit on her knees for the entire journey, which lasted at least several weeks.⁸⁴ The boats were very dirty; a local man who helped rescue the boat that landed in Aceh on 10 May said that it smelled so badly that rescuers could not board, explaining: “The smell was from lots of people without access to toilet or shower.”⁸⁵ A 15-year old Rohingya boy said of this boat: “We couldn’t go to the toilet when we needed to.”⁸⁶ There were only two toilets on this vessel, which held nearly 600 passengers.⁸⁷

According to all the Rohingya interviewed in Aceh, the food and water provided on the various boats on which they travelled were completely inadequate. Interviewees from one boat consistently told Amnesty International that they were given food once a day – or occasionally twice – and this generally consisted of a small portion of rice and half a glass of water. A 23-year old man said of the food: “After three bites, it was gone.”⁸⁸ A 19-year old woman who was heavily pregnant on board (and who has since given birth) said that she was given the same small amount of water and food as the other passengers, except on two occasions during the months she was at sea, when she received slightly more food than her fellow passengers.⁸⁹

Staff of the hospital in Kuala Cankoi who treated the people who arrived on 10 May 2015 confirmed the arrivals’ very poor health. A medical worker told Amnesty International that the Rohingya and Bangladeshis were suffering from dehydration, malnourishment, bronchitis, and flu. Many of them had difficulty walking and had to be carried off the boat.⁹⁰ A 15-year old Rohingya boy told Amnesty International that when his boat grounded in Aceh, some people were unconscious and others were dehydrated; he said a doctor treated them.⁹¹ Local civil society organizations showed Amnesty International photos of the Rohingya and Bangladeshis, taken shortly after their arrival, which show dozens of emaciated people, as well as several people hooked up to intravenous drips.

80 Aceh Interview, 15 August 2015.

81 Aceh Interview, 14 August 2015.

82 Further details about the attack are withheld to protect the interviewees. Aceh Interviews, 13 August 2015.

83 Aceh Interviews, 11 August 2015, 12 August 2015.

84 Aceh Interview, 12 August 2015.

85 Aceh Interview, 13 August 2015.

86 Aceh Interview, 15 August 2015.

87 Aceh Interview, 12 August 2015.

88 Aceh Interview, 13 August 2015.

89 Aceh Interview, 12 August 2015.

90 Aceh Interview, 13 August 2015. Medical workers said the difficulty walking was caused by being cramped for weeks or months on end, but UNHCR said that it was caused by malnutrition and the resulting deficiency in vitamin B1.

91 Aceh Interview, 15 August 2015.



Rohingya men demonstrating how closely together the passengers had to sit on their boat.

TRAFFICKING VS. SMUGGLING

The widespread persecution and violence from which Rohingya are fleeing, as discussed in Chapter 2, has created a large market for people smugglers and rendered the Rohingya highly vulnerable to traffickers.

Trafficking and smuggling are both transnational crimes, prohibited by the *United Nations Convention Against Transnational Organized Crime (Transnational Crime Convention)*, which has been ratified by most countries in Southeast Asia, including Indonesia, Malaysia, and Thailand.⁹² Trafficking and smuggling are covered by two different protocols to the *Transnational Crime Convention*, and – though sometimes difficult to distinguish in practice – are defined as distinct phenomena.⁹³

As defined in Article 3 of the *Trafficking Protocol*, “trafficking in persons” consists of:

- (a) The action of: recruitment, transportation, transfer, harbouring or receipt of persons;

⁹² *United Nations Convention Against Transnational Organized Crime*, G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force 29 September 2003.

⁹³ *Protocol Against the Smuggling of Migrants by Land, Sea and Air*, G.A. Res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force 28 January 2004 [*Smuggling Protocol*]; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), entered into force 25 December 2003 [*Trafficking Protocol*].

(b) By means of: the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;

(c) The purpose of exploitation, which include, at a minimum: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹⁴

Under the *Trafficking Protocol*, States Parties are obliged to criminalize human trafficking and establish comprehensive measures to prevent and combat it, as well as to protect people from re-victimization.⁹⁵ The *Trafficking Protocol* also requires States Parties to “consider implementing measures to provide for the physical, psychological and social recovery of victims.”⁹⁶

People smuggling, on the other hand, is understood as a consensual transaction; the *Smuggling Protocol* defines it as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national.”⁹⁷ Those fleeing conflict and persecution in different parts of the world often resort to paying people smugglers to cross borders irregularly, when they cannot find any legal route to reach safe countries.⁹⁸ Scholars have recognized that “most asylum-seekers require smugglers at some, if not all, stages of their journey.”⁹⁹ The *Smuggling Protocol* obliges states to prevent and combat people-smuggling while protecting the rights of smuggled persons.¹⁰⁰

Smuggling is not in and of itself a human rights abuse, though it may involve abuses. The UN Office on Drugs and Crime recognizes that trafficking and smuggling can overlap and that the distinctions between the two are often subtle. The key legal criteria for distinguishing smuggling from trafficking is that smuggling involves consent even when undertaken in dangerous or degrading conditions, and is not for the purpose of exploitation.¹⁰¹

Neither trafficked persons nor smuggled persons are criminals.

TRAFFICKING OF ROHINGYA

The people that Amnesty International interviewed in Indonesia had been abandoned by the people transporting them. As their journey was interrupted while they were still in transit from their country of departure (Myanmar or Bangladesh) to their destination, it is not possible to say for certain they were being trafficked to situations of forced labour or other forms of exploitation. However, the five factors discussed below suggest that many – if not most – of the Rohingya who arrived in Aceh in May 2015 were victims of human trafficking. As discussed below, Amnesty International also has concerns that there may have been victims of trafficking among the Bangladeshi passengers.

94 UN Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocol Thereto*, 2004, p. 268.

95 *Trafficking Protocol*, Arts. 5, 9.

96 *Trafficking Protocol*, Art. 6(3).

97 *Smuggling Protocol*, Art. 3.

98 In the context of the Mediterranean refugee crisis, for instance, Amnesty International considers that the large majority of people using boats to reach Europe are smuggled. See Amnesty International, *Libya is Full of Cruelty: Stories of Abduction, Sexual Violence and Abuse from Migrants and Refugees*, MDE 19/1578/2015, 2015, available at <https://www.amnesty.org/en/documents/mde19/1578/2015/en/>, p. 12.

99 Sharon Pickering, “*Transnational Crime and Refugee Protection*,” *Social Justice* Vol. 34, No. 2 (2007) available at http://www.socialjusticejournal.org/archive/108_34_2/108_05Pickering.pdf, p. 53.

100 *Smuggling Protocol*, Art. 2.

101 UN Office on Drugs and Crime, “*Migrant Smuggling FAQs*,” available at https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html#Overlaps_and_differences.

PROXIMITY AND PREVALENCE OF TRAFFICKING NETWORKS

First, the proximity and prevalence of trafficking networks in this part of Southeast Asia give rise to concerns that those who took the Rohingya on boats, did so to traffic them into exploitative labour on land or at sea.

For several years, the Thai fishing industry has been implicated in widespread exploitation and abuse, including forced labour and human trafficking.¹⁰² Trafficked workers in this industry are predominantly men from Myanmar and Cambodia.¹⁰³ The Labour Rights Promotion Network estimates that 80% to 90% of Myanmarese working in the seafood processing sector in Thailand's Samut Sakhon Province are in exploitative debt bondage situations.¹⁰⁴ For the last few years, investigative journalists have uncovered evidence of Rohingya men being sold by traffickers to Thai fishing boats for forced labour, especially if their families were unable to pay the ransom that the traffickers demanded.¹⁰⁵ Journalists have pointed to the involvement of Thai officials who allegedly facilitate or turn a blind eye to the trafficking in return for payments.¹⁰⁶ The large number of graves of Rohingya and Bangladeshi discovered at trafficking camps near the Thai-Malaysian border in May 2015 provide further evidence of the scale of the trafficking networks in this part of Southeast Asia.¹⁰⁷

Testimony from the Rohingya in Aceh suggests that many of them spent extended periods in Malaysian or Thai waters near the forced labour camps where mass graves were discovered in May 2015. Several interviewees said that they travelled to and from an island several times, which some people identified as Langkawi. Langkawi is the name of the largest island in a Malaysian archipelago in the state of Kedah, not far from the mainland border between Malaysia and Thailand where the mass graves of trafficking victims were found in May 2015. One Rohingya man who spoke the Burmese language asked the boat captain the name of the island, and the captain told him it was Langkawi. The man said to Amnesty International: "We spent seven days at Langkawi – it belongs to Malaysia, and is close to Thailand. The Burmese captain told me that we can't go to Malaysia and Thailand because the Malaysian and Thai governments are arguing with each other."¹⁰⁸ This happened in April or May 2015, according to the man. Similarly, a 16-year old boy on the same boat said the boat's captain told the passengers: "We cannot go to the [Malaysian]-Thai border. There are a lot of problems. We're in trouble."¹⁰⁹ These reported statements by the crew appear to refer to the regional crackdown on trafficking, beginning around 9 May (as described in the boxed text above).

A group of women also told Amnesty International that they were kept in a boat anchored off Langkawi during a similar time period, although it was not clear if this was the same vessel or a different one from the other interviewees. The women said that they saw approximately 50 other boats about the same size as theirs (each containing several hundred people), as well as a very large boat, several storeys high, all near the island. In the end, they said, all the boats left Langkawi in early May except for the large boat, which they believe stayed near the island.¹¹⁰

Media reports from June 2015 seem to corroborate what interviewees in Aceh told Amnesty Interna-

102 International Labour Organization, *Employment Practices and Working Conditions in Thailand's Fishing Sector*, 2013, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_220596.pdf, p. ix.

103 International Labour Organization, *Employment Practices and Working Conditions in Thailand's Fishing Sector*, 2013, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_220596.pdf, p. 30.

104 Cited in International Labour Organization, *Employment Practices and Working Conditions in Thailand's Fishing Sector*, 2013, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_220596.pdf, p. 29.

105 Jason Szep and Stuart Grudgings, "Special Report: Thai Authorities Implicated in Rohingya Muslim Smuggling Network," Reuters, 17 July 2013, available at <http://www.reuters.com/article/2013/07/17/us-myanmar-exodus-specialreport-idUSBRE96G02520130717>; Jason Szep and Andrew R.C. Marshall, "Special Report – Thailand Secretly Dumps Myanmar Refugees into Trafficking Rings," 5 December 2013, available at <http://uk.reuters.com/article/2013/12/05/uk-thailand-rohingya-special-report-idUKBRE96400920131205>; Emanuel Stoakes, Chris Kelly, Annie Kelly, "Sold from a Jungle Camp to Thailand's Fishing Industry: 'I Saw 13 People Die'," The Guardian, 20 July 2015, available at www.theguardian.com/global-development/2015/jul/20/sold-from-jungle-camp-thailand-fishing-industry-trafficking.

106 Jason Szep and Stuart Grudgings, "Special Report: Thai Authorities Implicated in Rohingya Muslim Smuggling Network," Reuters, 17 July 2013, available at <http://www.reuters.com/article/2013/07/17/us-myanmar-exodus-specialreport-idUSBRE96G02520130717>.

107 Emanuel Stoakes, "Thailand Human Trafficking Death Toll Far Greater than Feared, Claims Rights Group," The Guardian, 6 May 2015, available at <http://www.theguardian.com/global-development/2015/may/06/thailand-human-trafficking-mass-grave-burma-rohingya-people>.

108 Aceh Interview, 14 August 2015.

109 Aceh Interview, 13 August 2015.

110 Aceh Interview, 16 August 2015.

tional about a very large vessel that stayed at Langkawi after other boats had left. A Malaysian police official told the media that a vessel containing 1,158 Bangladeshis and Rohingya had landed at Langkawi on 10 May.¹¹¹ This is one day after several Rohingya told Amnesty International that they had left a very large boat near Langkawi.

EXPLOITATION

An exploitative purpose is a second indicator of trafficking. The Trafficking Protocol does not provide an exhaustive list of all exploitative purposes, but rather an open-ended list, detailing what states must, at a minimum, treat as exploitation.¹¹² Beatings or death threats in order to obtain a ransom could be considered to be a form of exploitation in and of itself. The fact that passengers were beaten or killed for ransom suggests that the purpose of taking people onto the boats was not to facilitate irregular entry into a country in return for payment, but to extract ransom money. The inference that the financial benefit to crews was not from procuring irregular entry but from exploiting the vulnerability of passengers is also supported by evidence (collected by governments, UN agencies and journalists) of boat crews selling some people, including those who were unable to pay ransoms, into situations of forced labour. Furthermore, the almost routine beatings that the interviewees described at the hands of their crews suggest that the crews may have been preparing people to be sold into situations of forced labour.

LOW COST OR FREE JOURNEYS

A third indication that the Rohingya were being trafficked is the low cost of many journeys. Although some people told Amnesty International that they gave sums ranging from 150,000 Myanmar Kyat (116 USD)¹¹³ for a mother and daughter to 7,000 Malaysian Ringgit (1,650 USD)¹¹⁴ for a single passenger, other people's journeys were free. Some Rohingya paid nothing upfront, on the understanding that they would pay in Malaysia, whereas other Rohingya paid nothing at all, and were told the journey was free. These low cost or free journeys suggest that the crews would recover the cost of the transportation (including the vessel, equipment, fuel, and rations), and make profits in other ways, potentially by selling people to work in forced labour situations or by beating passengers until their families paid money to release them.

UNHCR's interviews with several hundred passengers corroborate these testimonies: "Initial boarding fees are often low and in some cases people are given free-passage on condition that they repay the debt with future earnings in Malaysia. There may be false promises of work and even small cash incentives offered. Those who change their minds and ask to be let off the boats are forced to remain. We heard of children being abducted off the streets or while fishing, and forced onto boats. People are unaware that money will be extorted from them later in the journey and what started with being smuggled soon turns into trafficking in persons."¹¹⁵

ABDUCTION

Being taken by force is a fourth indicator of trafficking. Human rights organizations have documented several cases of kidnap among the Rohingya who were stranded at sea in May 2015.¹¹⁶ In Aceh, Amnesty International heard of three cases of alleged kidnap – one Rohingya and two Bangladeshis.

111 The Malaysian Insider, "Boat Used to Smuggle Rohingya to Langkawi Owned by Local Man, Say Police," 25 June 2015, available at <http://www.themalaysianinsider.com/malaysia/article/boat-used-to-smuggle-rohingya-to-langkawi-owned-by-local-man-say-police>.

112 Article 3(a) states: "... Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

113 Aceh Interview, 12 August 2015.

114 Aceh Interview, 14 August 2015.

115 UNHCR, "Some 25,000 Risk Sea Crossings in Bay of Bengal over First Quarter, Almost Double from Year Earlier," 8 May 2015, available at <http://www.unhcr.org/554c9fae9.html>.

116 Human Rights Watch, *Southeast Asia: Accounts from Rohingya Boat People*, 27 May 2015, available at <http://www.refworld.org/docid/556868b94.html>.

A 17-year old Rohingya boy who lived near the Sittwe airport in Myanmar told Amnesty International that he was on his way to visit relatives in the Sittwe IDP camp when five men took him by force to a remote coconut grove. They beat him when he tried to escape and forced him onto a small boat, which took him to a large vessel where he was held for ransom. He was kidnapped sometime after early March 2015, reaching Indonesia in May.¹¹⁷ Also, as discussed below, two Bangladeshi migrants told Amnesty International that they were kidnapped from Teknaf.¹¹⁸

WELL-ORGANIZED CREWS

A fifth factor suggesting that the Rohingya were victims of trafficking networks is the well-organized nature of the crews. The testimonies gathered by Amnesty International indicate that the vessels on which the Rohingya travelled were run by crews who were well-organized, well-funded and provided with good communication devices and navigation equipment.

The crew's ability to evade navy ships was striking. A 20-year old man from Nagir Para said that a navy ship approached close enough for him to see that it was flying the Thai flag, but that his vessel nonetheless evaded capture.¹¹⁹ Similarly, a 48-year old man said that at various points, his boat was close to three different navy ships; he accurately described them as large, grey, and made of metal, and bearing satellite equipment. The interviewee was able to identify the flags of the navy ships – Thai and Indonesian. He did not see a Malaysian navy ship, but at one point his boat changed direction for 15 days and the crew told him that they were avoiding capture by the Malaysian navy.¹²⁰ Many others told Amnesty International of evasive action carried out by their crew, including changing direction and heading out to sea for weeks, multiple journeys to and from an island near the border with Thailand and Malaysia (potentially Langkawi), as well as forcing all passengers below decks when navy ships were nearby.

It is possible that the crews' ability to avoid government detection is partly linked to corruption, acquiescence or complicity on the part of state authorities. As discussed earlier, in May 2015, a number of Thai and Malaysian officials had been arrested or punished for their alleged involvement in human trafficking.¹²¹

Further evidence that the boat crews are well-organized is provided by descriptions of the rapid abandonment of vessels at sea. Dozens of Rohingya who were together on one boat provided consistent testimony on how their boat's crew abandoned the vessel somewhere in the waters between Malaysia and Indonesia, just two days after Thailand announced a crackdown on traffickers.¹²² During the day on 9 May 2015, speedboats came to the vessel, and men with guns – wearing civilian clothes – came on board. Some interviewees said that the men shouted in Thai and shot their guns in the air. The men removed all the boat's equipment, including the lights, rope, anchor, and navigation equipment, and delivered the passengers' final rations. The men then left by speedboat. After the sun had set, the speedboats returned and departed with the crew. The crew's departure caused panic among the passengers. Before leaving, according to some people, the crew tied the steering wheel in place and pointed the boat in the direction of Indonesia. On the morning of 10 May, the boat grounded about 100 metres from the shore, near the village of Kuala Cankoi in North Aceh.

117 Aceh Interview, 14 August 2015.

118 Aceh Interviews, 15 August 2015.

119 Aceh Interview, 11 August 2015.

120 Aceh Interview, 14 August 2015.

121 ABC News, "Malaysia Detains 12 Police Officials in Thai Border People-Smuggling Camps Probe," 27 May 2015, available at <http://www.abc.net.au/news/2015-05-27/malaysia-detains-12-police-in-people-smuggling-camps-probe/6502596>; Al Jazeera America, "Thai Police Arrest Man Suspected of Running Deadly Jungle Camp," 4 May 2015, available at <http://america.aljazeera.com/articles/2015/5/4/thai-police-arrest-rohingya-man-suspected-of-running-deadly-jungle-camp.html>

122 The Nation, "Ten-Day Deadline to Find Migrant Camps," 7 May 2015, available at <http://www.nationmultimedia.com/national/Ten-day-deadline-to-find-migrant-camps-30259476.html>.

TRAFFICKING OF BANGLADESHIS

Of the estimated 1,800 people who landed in Aceh in May 2015, nearly half – approximately 800 – were Bangladeshi,¹²³ and had been on the same boats as the Rohingya. The Bangladeshi were given an opportunity to apply to UNHCR for international protection, but did not express an interest in doing so. In late August 2015, the International Organization for Migration told Amnesty International that over 600 of the Bangladeshi had been repatriated, and the remaining 200 or so would follow by the end of 2015.¹²⁴

The Bangladeshi in Aceh were housed separately from the Rohingya, and although Amnesty International had difficulty gaining full access to them, the organization did collect testimonies from seven¹²⁵ of the 56 people remaining at the site (about 280 others had already been repatriated).

The interviewees told Amnesty International about the abuses that they had suffered *en route* to Indonesia.

Two of the seven people interviewed said that they were kidnapped from Bangladesh. A 32-year old man said that he was with three of his friends walking in the streets of Teknaf, when about 15 people with revolvers and long knives forced him into a house and later, onto a boat. A 35-year old man told a similar story: he was in a market in Teknaf when two people with guns and five others with long knives kidnapped him, took him to a house, and then to a larger boat.

Another Bangladeshi man, a 21-year old from Dakka, said he was beaten severely for ransom while on board a large vessel. He was walking on a beach when he was approached by a man who offered to take him to Malaysia. After discussing with his parents, he agreed to pay 230,000 Bangladeshi Taka (about 2,500 USD) once he reached Malaysia. He travelled to Cox's Bazaar, and stayed in a house run by four *dalal* (agents). He was taken to a small boat, where he waited with 21 other people for four days, and was subsequently taken to a larger ship near Myanmar, which travelled to the Thai coast. He said that the boat stayed near Thailand for seven months.

During that time, he said: "Some *dalal* started to beat passengers to force them to make payment. They were beating passengers two times a day, in the morning and afternoon." He told Amnesty International that people whose families paid the ransom were taken by speedboat to Malaysia, though it was unclear what happened to them once they were ashore.

He was instructed to call his parents; the *dalal* told his parents to quickly wire the money, otherwise he would be beaten every day. He told Amnesty International: "I cannot stand the beatings. Once I tried to jump off the boat – I thought it was better to jump and be eaten by fish and then die, rather than to suffer the beatings every day. The *dalal* tried to shoot me, but they missed." After he was taken back on board, he was hung upside down with his hands tied behind his back, and beaten for one hour. The man showed Amnesty International scars on his back (see photo) and stomach.

Ultimately, he was transferred to another large ship with around 1,100 passengers, which intended to land in Malaysia, but after 21 days the vessel returned to the Thai coast. The crew subsequently abandoned the boat, which eventually reached Indonesia in May 2015.

Based on these testimonies, as well as the evidence provided by Rohingya who were on the same boats that came ashore in Indonesia, Amnesty International is concerned that some of the Bangladeshi passengers were also victims of human trafficking.

123 UNHCR Indonesia, *Monthly Statistical Report: July 2015*, p. 3.

124 Jakarta Interview, 24 August 2015.

125 Unless otherwise indicated, this section is derived from Aceh Interviews, 15 August 2015.



A 21-year old Bangladeshi man showing a scar he said he sustained from severe beatings on board a large vessel that stayed near the Thai coast for seven months.

PUSHED BACK AT SEA

Between 9 May – when the Arakan Project reported that smugglers had abandoned several vessels, leaving thousands stranded at sea – and 20 May – when the governments of Indonesia and Malaysia agreed to offer temporary shelter to up to 7,000 people – journalists, UN agencies and human rights organizations highlighted that the Indonesian, Malaysian and Thai governments were engaged in “maritime ping-pong” with human lives, pushing back boats from their shores.¹²⁶ Binding *non-refoulement* obligations, discussed earlier in this report, preclude states from engaging in these types of “push-backs,” because these operations carry an inherent risk of people being sent to a place where they might suffer serious human rights violations.

On 10 May 2015, a boat ran aground in North Aceh, and the 578 people were rescued by local fishermen. On 11 May, two boats arrived in Langkawi, Malaysia. However, from 11 May onwards,

¹²⁶ Aubrey Belford and Reza Munawir, “Migrants in ‘Maritime Ping-Pong’ as Asian Nations Turn Them Back,” Reuters, 16 May 2015, available at www.reuters.com/article/2015/05/16/us-asia-migrants-idUSKBN00105H20150516.

news reports indicated that Indonesia, Malaysia and Thailand were towing boats out of their waters or turning them away. For example, on 15 May, journalists reported that a green boat was towed out of Thai waters by Thai authorities only to be intercepted by Malaysian authorities, who then towed the boat towards Indonesia.¹²⁷ The Indonesian navy was also accused of towing out to sea a boat with approximately 400 Rohingya, off the coast of Aceh.¹²⁸

One Rohingya in Aceh told Amnesty International that his boat was turned away by a government ship. A 17-year old boy said that in May 2015 his boat was intercepted by the Indonesian navy, who gave them food and towed them towards Malaysia, but they were then apprehended by the Malaysian navy, which towed them back towards Indonesia.¹²⁹ He was likely on a boat carrying 800-900 passengers that UNHCR reports as following an identical trajectory: interception by Indonesia, provision of food and water, being towed towards Malaysia, and then turned away by Malaysian authorities.¹³⁰ This boat eventually reached Aceh on 15 May 2015, where local fishermen rescued its 820 passengers.¹³¹

INADEQUATE SEARCH AND RESCUE

Available information about the search and rescue operations that took place in the Bay of Bengal and Andaman Sea in May and June 2015 suggests that these were inadequate, although the scarcity of publicly available information makes a full and independent assessment challenging. UNHCR reports that the Bangladesh and Myanmar navies rescued hundreds of passengers on the 12, 21 and 29 of May. The US conducted joint aerial surveillance missions over the Andaman Sea with Malaysia (between 25 May and 13 June) and Thailand (between 30 May and 11 June). Other countries provided assistance; for instance a Turkish ship joined search and rescue efforts.¹³² However, UNHCR does not record *any* rescues at sea by the governments of Indonesia, Malaysia and Thailand.¹³³

The Rohingya who spoke with Amnesty International were not rescued by a government ship but rather by Acehnese fishermen. Many interviewees had arrived on a vessel that transported 578 Rohingya and Bangladeshis (photographed by delegates in August 2015, see photo), and which reached Aceh on 10 May.¹³⁴

Given that there were only a total of five confirmed landings of boats in Indonesia and Malaysia in May 2015, Amnesty International is concerned that many more lives were lost at sea in 2015 than UNHCR's estimate of 370.¹³⁵ The Rohingya who spoke with Amnesty International said that they saw many other boats full of migrants and asylum-seekers. A 25-year old man from Sittwe attested to seeing 30 such boats crossing his boat's path in the final two days of the journey in May.¹³⁶ A 16-year old boy from Maungdaw said that he was on a vessel that travelled together with 11 other boats, and that he also saw other vessels, sometimes two per day.¹³⁷ A 15-year old boy told Amnesty International that his boat travelled together with eight other boats, all of which were very overcrowded.¹³⁸

127 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 4.

128 Amnesty International, "South East Asia: Immediately Step up Efforts to Rescue Thousands at Grave Risk at Sea," 13 May 2015, available at <https://www.amnesty.org/en/latest/news/2015/05/south-east-asia-immediately-step-up-efforts-to-rescue-thousands-at-grave-risk-at-sea/>.

129 Aceh Interview, 14 August 2015.

130 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 3.

131 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 4.

132 Hurriyet Daily News, "Turkish Military Ship Joins Efforts to Reach Rohingya Muslims," 19 May 2015, available at http://www.hurriyetdailynews.com/turkish-military-ship-joins-efforts-to-reach-rohingya-muslims.aspx?PageID=238&NID=82639&NewsCatID=510&sm_au=IVVqDWZr7wV0sk0Q.

133 Unless otherwise indicated, this paragraph draws on UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 3-6.

134 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 3.

135 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 1, 6.

136 Aceh Interview, 13 August 2015.

137 Aceh Interview, 13 August 2015.

138 Aceh Interview, 15 August 2015.

CONCLUSION

Given the evidence detailed in this chapter, it is likely that many – if not most – of the Rohingya who reached Aceh in May 2015 were trafficking victims.

Southeast Asian governments must cooperate to put in place effective measures to combat trafficking and protect people from human rights abuses by traffickers and smugglers. This requires, amongst other things, that governments continuously monitor and search for boats and camps where people may be trafficked, held for ransom and subjected to serious human rights abuses. Southeast Asian states should also assist with the physical and psychosocial recovery of Rohingya and Bangladeshi trafficking victims.¹³⁹

While Southeast Asian states must investigate and bring to justice in fair trials those complicit in trafficking, they must also ensure that initiatives against traffickers do not endanger the lives of people at sea, and do not trap people in Myanmar and Bangladesh without any means of escape. This is crucial, given the evidence from May 2015 that the traffickers abandoned their passengers at sea as soon as law enforcement measures were announced. Ensuring that action against traffickers does expose people to further risks will require coordination between governments to ensure that measures adopted in one place do not lead to people being put at risk in another. Indeed, all states in Southeast Asia are legally obliged ensure that measures against trafficking do not deliberately or inadvertently violate established human rights.¹⁴⁰

In this respect, an essential component of an effective anti-trafficking response in Southeast Asia is coordinated search and rescue operations, combined with effective mechanisms for rapidly identifying safe disembarkation places. Search and rescue is not only a humanitarian imperative; it is also an international legal obligation under the *United Nations Convention on the Law of the Sea*, to which Bangladesh, Indonesia, Malaysia and Thailand are states parties.¹⁴¹ To be effective, rescue must be followed by safe and predictable disembarkation.¹⁴² Given the absence of precise data on the loss of life during the May 2015 crisis, states in the region should also establish an accountability mechanism to promote and scrutinize compliance with search and rescue obligations, as well a method of tracking and identifying people who die or are lost at sea.

Southeast Asia's sailing season began as this report was being finalized in October 2015, after the monsoon ended. UNHCR issued a warning in August that maritime departures were expected to resume once the weather improved. Considering the international attention on trafficking, it is likely that traffickers will change their patterns and use new routes to escape scrutiny.

139 *Trafficking Protocol*, Arts. 6, 9.

140 Anne T. Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, 2010, p. 455-456.

141 *UN Convention on the Law of the Sea*, UN Doc. A/CONF.62/122, Art. 98(2): "Every coastal state shall 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 neighbouring States for this purpose."

142 UNHCR, *The Treatment of Persons Rescued at Sea: Conclusions and Recommendations From Recent Meetings and Expert Roundtables Convened by UNHCR*, 28 November 2007, available at <http://www.refworld.org/docid/4782500d2.html>, p. 3-4; UNHCR, "IMO Maritime Safety Committee, 95th Session: Remarks by José Riera, Special Adviser Reporting to the Assistant High Commissioner for Protection," 9 June 2015, available at <http://www.imo.org/en/MediaCentre/HotTopics/seamigration/Documents/UNHCR%20final%20%20Riera.pdf>.

CHAPTER 4: TEMPORARY SHELTER IN INDONESIA

“We give what we have.”

Indonesian man describing local treatment of Rohingya rescued near Kuala Cankoi on 10 May 2015

In May 2015, Indonesia permitted the disembarkation of approximately 1,800 people in Aceh who had been stranded at sea in three boats. Of this group, UNHCR registered about 1,000 Rohingya asylum-seekers from Myanmar,¹⁴³ 115 of whom spoke with Amnesty International. The remaining passengers were determined to be Bangladeshi migrants, and their gradual repatriation is being carried out with the assistance of IOM. As of 10 August 2015, the recently arrived Rohingya were being housed in five locations in Aceh and North Sumatra provinces: 315 in Lhokseumawe, 102 in Kuala Langsa, 159 in Lhok Bani, 331 in Bayeun, and 43 in Medan.¹⁴⁴



A Rohingya man and child at a shelter in Aceh.



A Rohingya girl practising her embroidery at a shelter in Aceh.

ADMIRABLE INITIAL RESPONSE

Indonesia should be recognized for the role it has played in accommodating hundreds of vulnerable Rohingya who arrived in May 2015.

143 UNHCR Indonesia, *Monthly Statistical Report: July 2015*, p. 3.

144 UNHCR, *Current Population of Rohingya Boat Arrivals in Aceh and North Sumatra*, 10 August 2015. On 20 October 2015, UNHCR informed Amnesty International that of the approximately 1,000 Rohingya who came to Aceh, only 640 remained.

To Amnesty International's knowledge none of these arrivals has been returned to Myanmar. This would fulfil Indonesia's customary international law obligation to respect the principle of *non-refoulement*, which prohibits the transfer of individuals to another country or jurisdiction where they face a real risk serious human rights violations or abuses. Furthermore, the central government has committed to hosting the Rohingya until May 2016, and has devoted resources to accommodating them and helping meet their basic needs.

In particular, the local Acehese response has been commendable in several respects. Local people rescued the Rohingya and provided them with shelter, food and dry clothes. Government officials in Aceh have assisted with the humanitarian response, and some local authorities are taking additional steps. For instance, officials in Lhokseumawe donated land to house hundreds of arrivals in an integrated community shelter in Blang Adoe, which was built to house the Rohingya. Also, numerous civil society organizations across the region are working to meet the Rohingyas' basic needs, such as housing, food, water, medical care and education.

Furthermore, although the Indonesian central government only permitted boats to land beginning on 20 May, local officials in Aceh allowed 578 people to disembark on 10 May (with the assistance of local residents), and Acehese fishermen rescued 820 passengers on 15 May and 409 people on 20 May.¹⁴⁵ In Kuala Cankoi, local people who assisted with the rescue on 10 May said that about ten fishermen's boats were used to ferry people to shore: "We helped them based on humanity, not on religion. We saw them in very bad condition,"¹⁴⁶ they said. Staff at an Indonesian civil society organization praised the local response that they had witnessed in Kuala Cankoi, saying: "Local people helped refugees like they helped their own family."¹⁴⁷ The staff said that several friendships were formed between the Rohingya and the residents of Kuala Cankoi, where the Rohingya were sheltered for several weeks.

Indeed, several Rohingya interviewees expressed their gratitude for the way they were treated upon their arrival in Aceh, one woman saying: "They did a lot of things for us – they gave us clothes, food, and water. How can I express my appreciation for this? They didn't even know us."¹⁴⁸ A 17-year old boy from Sittwe said that when their boat first grounded near the shore, they were afraid of the local people, but "[t]hey showed us hospitality, we were so happy – they helped us so much." A woman from Kuala Cankoi continues to visit him at the Blang Adoe shelter, bringing gifts such as lychee fruit: "I call her 'mum,'" he said.¹⁴⁹

The response of the Acehese is striking given the local context. The area was racked by a devastating conflict between 1989 and 2004, in which the Indonesian authorities conducted military operations to suppress claims for separatism; between 10,000 and 30,000 people were killed during the conflict, many of them civilians.¹⁵⁰ Aceh was also ravaged by the December 2004 tsunami, in which hundreds of thousands of people died, disappeared or were displaced.¹⁵¹ Eleven years later, Aceh continues to be one the poorest provinces in Indonesia, with high rates of school dropout and youth unemployment.¹⁵² A civil society organization estimated local unemployment in Aceh at 40%, with many Acehese leaving Indonesia to seek employment in Malaysia.¹⁵³

145 UNHCR, *South-East Asia: Mixed Maritime Movements, June 2015*, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 3-5.

146 Aceh Interview, 13 August 2015.

147 Aceh Interview, 14 August 2015.

148 Aceh Interview, 14 August 2015.

149 Aceh Interview, 14 August 2015.

150 Amnesty International, *Time to Face the Past: Justice for Past Abuses in Indonesia's Aceh Province*, ASA 21/001/2013, available at <https://www.amnesty.org/en/documents/ASA21/001/2013/en/>, p. 9.

151 Abdur Rofi, Shannon Doocy, and Courtland Robinson, "Tsunami Mortality and Displacement in Aceh Province, Indonesia," *Disasters* 30.3 (2006): p. 340.

152 UN Indonesia, "Where We Work: Aceh," 2015, available at <http://www.un.or.id/en/where-we-work/geographic-focus/aceh>.

153 Aceh Interview, 13 August 2015.

LONGER TERM CONCERNS

In the long term, Amnesty International has concerns about the situation of the Rohingya in Aceh.

The central government has not yet confirmed whether the Rohingya arrivals from May 2015 will be permitted to stay past the anticipated departure date of May 2016, even though the determination of their asylum claims and resettlement applications will likely take years. Under the principle of *non-refoulement*, the dire situation in Myanmar may require Indonesia to offer longer term protection to the Rohingya.

Furthermore, the accommodation of the Rohingya in Aceh is still being conceptualized as a reactive, emergency response. In August 2015, local officials said that they found it challenging to make plans for the Rohingya population because the central government had not yet informed them of the timeframe.¹⁵⁴ Furthermore, although there is a multi-stakeholder taskforce in the area,¹⁵⁵ one highly placed official told Amnesty International on condition of anonymity that there is very little coordination of roles and responsibilities.

This lack of clarity may be partly due to the absence of a clear and operational legal framework for refugees and asylum-seekers in Indonesia. The country's constitution recognizes the right to claim asylum,¹⁵⁶ and since 2011, authorities have been developing a Presidential Regulation on asylum-seekers and refugees.¹⁵⁷ Reputable sources who have read the most recent draft, from April 2015, say that it is positive.¹⁵⁸ In the meantime, however, all those who work with refugees in the country are operating under a 2010 Directive, in which all refugees and asylum-seekers are presumptively treated as "illegal migrants" and subject to an initial period of mandatory detention.¹⁵⁹

The capacity of UNHCR, which determines the pace of resettlement and refugee status determination (RSD), is another cause for concern. In Indonesia, which has not ratified the *Refugee Convention*, UNHCR is entirely responsible for RSD; this is a country with a population of 250 million spread out over thousands of islands, and which is currently host to 13,170 "persons of concern"¹⁶⁰ to UNHCR.¹⁶¹ The agency must do so with a budget of 4.2 million USD (for 2015), and a staff of 68 people.¹⁶² The average time for the completion of an RSD procedure in 2012 was calculated at 34-47 months.¹⁶³ There is no publicly available data on the average time between a positive RSD decision and departure for a resettlement country, but UNHCR reported that 898 people left Indonesia for resettlement in 2013, and 838 departed in 2014.¹⁶⁴

154 Aceh Interview, 11 August 2015.

155 *Keputusan Bupati Aceh Utara* [North Aceh Regent's Decree] No. 100/855/2015. on the Establishment of the Taskforce Dealing with Asylum Seekers in North Aceh District.

156 Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia, As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002* (Unofficial translation), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=200129, Art. 28(G).

157 Suaka, "Legal Framework and Role of UNHCR to RSD," 9 July 2015, available at <http://suaka.or.id/2015/07/09/legal-framework-and-role-of-unhcr-to-rsd/#more-474>.

158 These sources spoke under condition of anonymity. Jakarta Interviews, 22 and 24 August 2015.

159 Republic of Indonesia, *Indonesia: Regulation of the Director General of Immigration No. IMI.1489.UM.08.05 Year 2010 Regarding Handling of Irregular Migrants*, 17 September 2010, available at <http://www.refworld.org/docid/3ed8eb5d4.html>.

160 Persons of concern "consist generally of five categories of people who are within the competence of the High Commissioner. These groups are (a) those who fall under the Statute/1951 Convention definition and thus are entitled to benefit from the full range of the Office's functions; (b) those who belong to a broader category but have been recognized by States as being entitled to both the protection and assistance of the Office; (c) those to whom the High Commissioner extends her "good offices", mainly but not exclusively to facilitate humanitarian assistance; (d) returning refugees, for whom the High Commissioner may provide reintegration assistance and a certain protection; and (e) non-refugee stateless persons whom UNHCR has a limited mandate to assist." UNHCR, *Protection of Persons of Concern to UNHCR Who Fall Outside the 1951 Convention: A Discussion Note*, 2 April 1992, available at http://www.unhcr.org/3ae68cc518.html#_ftn1, para. 11.

161 UNHCR Indonesia, *Monthly Statistical Report: July 2015*, p. 1.

162 Jakarta Interview, 24 August 2015.

163 Jesuit Refugee Services, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines*, 2012, available at http://www.jrs.net/Assets/Regions/APR/media/files/The_Search.pdf, p. 34.

164 UNHCR Indonesia, *Monthly Statistical Report: July 2015*, p. 5.

LIVES ON HOLD

In addition to its investigations in Aceh, Amnesty International conducted research in other parties of Indonesia. Delegates met with 34 refugees and asylum-seekers in Cisarua and Jakarta who had been in Indonesia for between several months and several years, and who were living in shelters run by humanitarian agencies. They originated from a range of countries, including Afghanistan, Ethiopia, Iran, Myanmar, Pakistan, and Somalia. In Kupang, delegates also conducted group interviews with 30 Afghan men, and an additional two in-depth interviews with Afghan men.

These testimonies attest to the suffering experienced by those whose lives are on hold in Indonesia while they wait for refugee status determination (RSD) decisions and resettlement, since they are not permitted to work and do not receive social benefits.¹⁶⁵

Interviewees frequently expressed despair at the many months - and sometimes years - that they had to endure while waiting for their RSD and resettlement decisions. An Afghan man who received death threats from the Taliban left for Indonesia in 2012. He told delegates: "I escaped instant death, but here I am dying every day."¹⁶⁶ He received a positive RSD decision, but a month after his resettlement interview at the Australian embassy, embassy staff called him to say he was rejected. He told Amnesty International: "I still don't know why." Another Afghan man, a 30-year old shepherd, likewise said that his application for resettlement had been rejected by Australia for reasons that were not clear to him. He said he received a letter with the number of a law, nothing more.¹⁶⁷ These men believe that their resettlement applications will be submitted to other embassies, and are awaiting the results.

The wait is gruelling for all asylum-seekers, but seems particularly unbearable for young people. A 17-year old Afghan boy who grew up in Quetta, Pakistan told Amnesty International: "At this time in our life we should make our skill, we should make our education but all we can do is eat and sleep. [...] Everything is stopped. The only thing that's passing is my life."¹⁶⁸ A 30-year old woman who had been an accountant said: "For me, it's like starting in grade zero. I've lost all my energy and potential. We can't continue our studies."¹⁶⁹ A young Afghan man in Kupang expressed his and his friends' frustration with their enforced idleness; there is nothing for them to do at the place where they live, and they are not permitted to leave: "We feel depressed and very sad - we cannot go out, there are no activities."¹⁷⁰

In particular, Amnesty International is concerned about the psychosocial needs of child refugees and asylum-seekers living in the shelters run by humanitarian agencies. Delegates met a number of children whose mental health seemed extremely fragile. For instance, delegates spoke with an unaccompanied 15-year old boy from Mogadishu, Somalia. In 2012 his family fled to Yemen after two of his uncles were killed by Al Shabab. In March 2014 he returned from his work washing cars to find his home destroyed; no one knew what had happened to his family. He said that smugglers took him to Indonesia via Malaysia. He told delegates: "At night I just cry and have nightmares."¹⁷¹

Another unaccompanied Somali boy, 15 years old, said that he was homeless for three months when he first arrived in Indonesia, until he heard about a shelter run by a humanitarian agency. He said: "I have been in the shelter for two weeks and it is much better than before, but I still keep thinking about the past, I can't get it out of my mind." When asked about his future he said: "I have lost hope."¹⁷² When asked the same question, an orphaned 15-year old Tamil boy from Sri Lanka merely shook his head, saying: "My mother, my father." He had seen his parents killed in 2009 when a bomb destroyed their home.¹⁷³

165 Suaka, "Refugees and Asylum Seekers in Indonesia," 6 July 2015, available at <http://suaka.or.id/2015/07/06/refugees-and-asylum-seekers-in-indonesia/#more-415>.

166 Cisarua Interview, 19 August 2015.

167 Kupang Interview, 18 August 2015.

168 Jakarta Interview, 20 August 2015.

169 Jakarta Interview, 19 August 2015.

170 Kupang Interview, 22 August 2015.

171 Jakarta Interview, 20 August 2015.

172 Jakarta Interview, 21 August 2015.

173 Jakarta Interview, 20 August 2015.

Another cause for concern is meeting the needs of the recently arrived Rohingya in Aceh, until they are resettled. On the one hand, as the Rohingya are aware, Aceh has a high unemployment rate. A few interviewees told Amnesty International that they are worried that even if they are permitted to work, they will not be able to support themselves. One 22-year old man said: “I am grateful for living in Indonesia. But local people themselves leave for Malaysia to work, so I don’t feel that I can support my family.”¹⁷⁴ On the other hand, if the Rohingya continue to be housed and fed, local residents may become resentful. One Acehese woman reportedly complained to an NGO worker that the standard of living in the Blang Adoe Integrated Community Shelter was better than that of local people.¹⁷⁵

Amnesty International has concerns that the basic needs of Rohingya in several locations in Aceh are not being met. Delegates observed poor standards of sanitation, insufficient protection from the elements, as well as unsanitary cooking facilities. Rohingya at some sites complained to delegates about the quality of the food. Psychosocial support appears minimal, particularly for men and boys, and an absence of interpreters makes provision of these services difficult.

A large proportion of the recently arrived Rohingya are children; of a population of 950 people, 521 – or 55% – are children, and 328 – or 34% – are unaccompanied or separated.¹⁷⁶ Although the sites where the Rohingya are living in Aceh are not officially called detention facilities, in practice the residents’ movements are often restricted and they could be understood as being detained. Amnesty International is concerned at the ongoing detention of any children, as detention is never in their best interests.¹⁷⁷ The long-term effects of immigration detention on children are well known; in one recent study, a third of children detained by Australia were suffering from a mental health disorder requiring psychiatric support.¹⁷⁸



Three Rohingya boys at a shelter in Aceh.

174 Aceh Interview, 14 August 2015.

175 Aceh Interview, 13 August 2015.

176 UNHCR, *Current Population of Rohingya Boat Arrivals in Aceh and North Sumatera*, 10 August 2015.

177 *Convention on the Rights of the Child*, UNTS, vol. 1577, p. 3 (20 November 1989), Art. 3(1); UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, February 2013, para. 78, available at www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf.

178 Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, available at https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

Amnesty International is also concerned about the safety of the Rohingya in Aceh. A Rohingya man told Amnesty International that local gangs had entered some of the sites to rob and beat the Rohingya.¹⁷⁹ Many people have complained about security staff at the sites where the Rohingya are accommodated. Security guards have been accused of abuse and intimidation, and local male police officers have been accused of inappropriate pat-downs of female Rohingya asylum-seekers.¹⁸⁰ Moreover, people living at the sites Amnesty International visited do not appear adequately protected from smugglers or traffickers wishing to profit from residents' frustration with their living conditions and impatience to reach Malaysia.

Several weeks after Amnesty International's research at the Blang Adoe shelter in Aceh, there were media reports about the beating and rape of the Rohingya by local residents. Following the alleged rapes, including of a 14-year old girl, more than 200 Rohingya left the shelter but eventually returned. At the time that this report was being finalized in mid-October 2015, local police said that they were investigating these reports.¹⁸¹



The hallway of the women's quarters at a shelter for Rohingya asylum-seekers in Aceh.

179 Aceh Interview, 14 August 2015.

180 Jakarta Interview, 24 August 2015.

181 Associated Press, "Alleged Rapes Spur Rohingya Upheaval in Indonesia Camp," The Irrawaddy, 30 September 2015, available at <http://www.irrawaddy.org/asia/alleged-rapes-spur-rohingya-upheaval-in-indonesia-camp.html>.

INADEQUACY OF REGIONAL AND INTERNATIONAL SUPPORT

The regional and international support during and after the May 2015 crisis at sea was inadequate. The Association of Southeast Asian Nations (ASEAN) held several multilateral meetings during and after the crisis, but failed to take prompt and coherent action.¹⁸² UNHCR launched an appeal for 13 million USD to deal with the crisis, but as of the end of August 2015, the appeal was only 20% funded.¹⁸³ Although Australia gave 749,000 USD to UNHCR's appeal,¹⁸⁴ it did not deploy any of its considerable naval resources to assist with search and rescue. Furthermore, Australia refused to resettle any of the Rohingya who arrived in Indonesia in May 2015,¹⁸⁵ or reverse its policy that had ended the resettlement of all refugees who registered with UNHCR-Indonesia after 1 July 2014.¹⁸⁶ Likewise India, whose navy has been involved in rescue operations of Rohingya in the Bay of Bengal in the past,¹⁸⁷ did not play a role in the May 2015 crisis. Neither did China, which has been building up its naval presence in the Bay of Bengal and Andaman Sea.¹⁸⁸

CONCLUSION

Indonesia deserves recognition for its response to the arrival of the Rohingya in May 2015. As discussed in this chapter, Indonesian authorities have devoted their own resources and cooperated with IOM, UNHCR and civil society to work at respecting human rights and meeting people's basic needs.

For an adequate long-term response, however, the international community must adhere to the principle of responsibility-sharing embodied in the *Refugee Convention*, and provide sufficient funding to enable host communities (such as Aceh) and international agencies to meet the needs of the Rohingya as well as local people. As part of an adequate response, UNHCR's regional appeal for 13 million USD should be fully funded. Additionally, the international community must increase resettlement spaces for Rohingya refugees, including unaccompanied minors, and Australia should permit the resettlement of refugees registered with UNHCR-Indonesia. ASEAN and Asia-Pacific states – such as Australia, China, and India – as well as the US, which has already committed resources – should provide technical assistance to assist with search and rescue, as well as funding to ensure the humane reception of recently disembarked people.

In turn, Indonesia should clarify that the Rohingya in Aceh will be permitted to stay past May 2016, in order to give adequate time to process their asylum and resettlement applications. Indonesia should also continue developing a clear and operational legal framework for all refugees and asylum-seekers in the country.

IOM and UNHCR should continue working with the Indonesian authorities to provide alternatives to detention to the recently arrived Rohingya in Aceh, including for unaccompanied minors. These agencies should also ensure the security of the Rohingya in Aceh, including by ensuring appropriate training and oversight of security staff and police, investigating allegations of wrongdoing, and increasing the numbers of female security staff.

182 Amnesty International, "South East Asia: Inaction Paves the Way for Future Refugee Disaster," 2 July 2015, available at <https://www.amnesty.org/en/latest/news/2015/07/south-east-asia-inaction-paves-the-way-for-future-refugee-disaster/>; Mong Palatino, "ASEAN's Response to Rohingya Crisis Falls Short," *The Diplomat*, 2 June 2015, available at http://thediplomat.com/2015/06/aseans-response-to-rohingya-crisis-falls-short/?_sm_au_=iVV9zrkprV9LjbDP.

183 UNHCR, "UNHCR Urges States to Help Avert Bay of Bengal Boat Crisis in Coming Weeks," 28 August 2015, available at <http://www.unhcr.org/55e063359.html>.

184 UNHCR, *South-East Asia: Mixed Maritime Movements*, June 2015, available at <http://www.refworld.org/docid/55e6c1994.html>, p. 7.

185 Shalailah Medhora, "'Nope, Nope, Nope': Tony Abbott Says Australia Will Take No Rohingya Refugees," *The Guardian*, 21 May 2015, available at <http://www.theguardian.com/world/2015/may/21/nope-nope-nope-tony-abbott-says-australia-will-take-no-rohingya-refugees>.

186 Australian Embassy Thailand, "Changes to Resettlement Another Blow to People Smugglers," 18 November 2014, available at http://thailand.embassy.gov.au/bkok/PR2014_resettlement_people_smugglers.html.

187 K. Yhome, "Rohingyas Adrift, Far From the Shores of Asia's Conscience," *The Wire*, 21 May 2015, available at <http://thewire.in/2015/05/21/rohingyas-adrift-far-from-the-shores-of-asias-conscience-2149/>.

188 Namrata Goswami, "China's Second Coast: Implications for Northeast India," *Institute for Defence Studies and Analysis*, 19 June 2014, available at http://www.idsa.in/idsacomments/ChinasSecondCoast_ngoswami_190614.html.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

In recent years, tens of thousands of desperate people have undertaken treacherous boat journeys in the Bay of Bengal and the Andaman Sea. Many of the people fleeing are Rohingya, a persecuted Muslim population from Myanmar, who continue to experience discrimination and widespread human rights violations. Given the scale and severity of the human rights violations in Myanmar, Amnesty International considers that most Rohingya outside their country are likely refugees.

Abusive smugglers and traffickers have been able to exploit the Rohingyas' vulnerability and desperation. Many of those who escaped Myanmar by boat in 2015 only exchanged one nightmare for another. They were subjected to horrific abuse at the hands of boat crews – including killings, severe beatings, and beatings for ransom – and were kept for weeks or months in inhuman and degrading conditions.

These terrifying journeys were rendered even more dangerous in May 2015 when, following the Thai authorities' crackdown on trafficking, crews abandoned boats in the open water. Thousands of refugees and migrants were stranded at sea for weeks, and were eventually granted temporary shelter by Indonesia and Malaysia.

With the end of the monsoon season and anticipated departure of people on dangerous boat journeys beginning again in October 2015, Amnesty International is calling for governments to take urgent action to address Southeast Asia's refugee and trafficking crisis. Myanmar must stop discriminating against the Rohingya and grant them equal access to citizenship rights and equal protection under the law. Southeast Asian governments – in particular Bangladesh, Indonesia, Malaysia and Thailand – must cooperate to put in place effective measures to combat trafficking and protect people from human rights abuses by traffickers and smugglers. It is imperative that Southeast Asia governments learn from the May 2015 crisis in order to avert another human rights crisis at sea. They must also ensure that initiatives against traffickers do not endanger the lives of people at sea, and do not trap people in Myanmar and Bangladesh without any means of escape. Amnesty International is calling on Southeast Asian countries to ensure that in any law enforcement efforts against traffickers, governments include continuous monitoring and identification to rescue victims of trafficking, and effective search and rescue operations coupled with safe and predictable disembarkation procedures. All victims of trafficking must be provided with appropriate support.

Host countries, including Indonesia, must respect the prohibition on non-refoulement and not transfer individuals to another country or jurisdiction where they would face a real risk of serious human rights violations or abuses. Indonesia must continue developing a clear and operational legal framework for all refugees and asylum-seekers in the country and cooperate with international agencies and civil society to meet their basic needs. Amnesty International also urges the international community to provide to Southeast Asian states meaningful levels of technical assistance, funding support and resettlement commitments.

RECOMMENDATIONS

TO THE GOVERNMENT OF MYANMAR

- Stop violence against Rohingya by state security forces and protect the Rohingya from abuses by non-state actors such as the monkhood;
- Ensure the Rohingya have equal access to citizenship rights based on objective criteria that comply with the principle of non-discrimination, including by amending the 1982 *Citizenship Act*;
- Ensure that the Rohingya have equal protection of the law without discrimination and remove all discriminatory restrictions on freedom of movement in Rakhine state;
- Conduct independent, impartial and effective investigations into all incidents of sectarian violence, including the 2012 violence in Rakhine state, and hold to account in fair trials all those suspected of criminal responsibility for violence or for advocating racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
- Repeal the *Buddhist Women's Special Marriage Law* and the *Religious Conversion Law* and amend the *Population Control Healthcare Law* and the *Monogamy Law* to bring them in line with international human rights law and standards;

TO THE GOVERNMENT OF INDONESIA

- Allow the Rohingya to remain in the country until their asylum and resettlement applications have been processed;
- Publish and implement the draft Presidential Regulation on asylum-seekers and refugees and develop a clear operational legal framework for asylum-seekers and refugees;
- Provide appropriate support to all asylum-seekers and refugees to ensure that their basic needs are met;
- Thoroughly investigate allegations of rapes and beatings at the Blang Adoe shelter for Rohingya;

TO THE GOVERNMENTS OF INDONESIA, MALAYSIA AND THAILAND

- Respect the principle of *non-refoulement*;
- Ratify the *Refugee Convention* and ensure access to refugee status determination procedures;
- Ensure that individuals are not criminalized, detained or otherwise punished solely for their method of arrival in a country;
- Consider expanding access to regular migration channels, such as migration for family reunification purposes and to fulfil labour market needs;
- Cooperate to put in place effective measures to combat trafficking and protect people from human rights abuses by traffickers and smugglers. This requires, among other things, systems for monitoring boats in territorial waters and in the high seas, to identify and rescue victims of trafficking or other people who are being subjected to serious human rights abuses;
- Develop coordinated search and rescue operations in the Bay of Bengal and Andaman Sea, with safe and predictable disembarkation procedures, and cooperate with international agencies and

humanitarian organizations to ensure the humane reception of recently disembarked people;

- Establish an accountability mechanism to promote and scrutinize compliance with search and rescue obligations, and commit to carry out impartial and independent inquiries for any failure to protect lives at sea and to cooperate with any such inquiry;
- Investigate and bring to justice in fair trials those responsible for, who engage in, or facilitate trafficking, and assist with the physical and psychosocial recovery of trafficking victims;
- Ensure that any action against smugglers and traffickers is addressed through law enforcement measures, governed by international human rights law and standards, and that it does not endanger the lives of refugees and migrants at sea, or trap people in Myanmar and Bangladesh without any means of escape;
- Cooperate to develop systems for the tracking and identification of refugees and migrants who die or are lost at sea;

TO THE GOVERNMENT OF BANGLADESH

- Respect the principle of *non-refoulement*;
- Provide appropriate support to repatriated victims of trafficking;
- Cooperate with international agencies and humanitarian organizations to ensure that the basic needs of Rohingya are being met;

TO THE GOVERNMENT OF AUSTRALIA

- Reverse policy on non-resettlement of refugees who registered with UNHCR-Indonesia after 1 July 2014;

TO IOM AND UNHCR

- Ensure appropriate training and oversight of security staff and police in Indonesia;
- Thoroughly investigate allegations of wrongdoing by security staff and police and ensure adequate numbers of female security staff at detention facilities in Indonesia;
- Continue working with the Indonesian authorities to provide alternatives to detention, including for unaccompanied minors, while ensuring their safety;

TO ASEAN

- Support states in putting together effective and coordinated measures to combat trafficking and protect people from human rights abuses by traffickers and smugglers. Ensure that any action against smugglers and traffickers is addressed through law enforcement measures, governed by international human rights law and standards, and that it does not endanger the lives of refugees and migrants at sea;
- Support states in developing coordinated search and rescue operations in the Bay of Bengal and Andaman Sea, with safe and predictable disembarkation procedures;


TO THE INTERNATIONAL COMMUNITY


- Provide technical assistance and equipment to assist with search and rescue operations in the Bay of Bengal and Andaman Sea;
- Increase funding for UNHCR, including by fulfilling the regional appeal for 13 million USD to respond to and seek solutions for the recent maritime crisis;
- Increase funding to support both refugees and local host communities in meeting their basic needs for shelter, food, water, education, and healthcare;
- Provide adequate funding to Indonesia, Malaysia and Thailand to ensure the humane reception of recently disembarked people; and
- Increase numbers of spaces for resettlement of refugees from Indonesia – in particular for unaccompanied minors.



**IT IS BETTER
TO LIGHT A CANDLE
THAN TO CURSE
THE DARKNESS**

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DEADLY JOURNEYS

THE REFUGEE AND TRAFFICKING CRISIS IN SOUTHEAST ASIA

In May 2015 three boats carrying 1,800 women, men and children landed in Aceh, Indonesia. Most of the passengers were Muslim Rohingya, a persecuted religious and ethnic minority from Myanmar.

All those who arrived had endured weeks or months at sea, in overcrowded boats controlled by ruthless traffickers or abusive people-smugglers. The report includes testimonies from the Rohingya on the shocking conditions and human rights abuses they suffered on the boats for weeks or sometimes months on end, including killings and beatings while they were held hostage for ransom.

The boats that reached Aceh were among dozens of vessels that had been abandoned at sea by their crews after Thailand announced a crackdown on human trafficking in early May 2015. Following international criticism, Indonesia and Malaysia permitted people to land, but only on a temporary basis until May 2016. Indonesia has provided much-needed support and cooperated with local civil society and international agencies to help meet the Rohingyas' basic needs, but their future remains uncertain.

Southeast Asia's sailing season began as this report was being finalized in October 2015, after the monsoon ended. Governments, in particular Indonesia, Malaysia and Thailand, must act urgently to address Southeast Asia's refugee and trafficking crisis. Governments in the region must take coordinated action against human trafficking in a way that does not put people's lives or human rights at risk. The international community must provide meaningful levels of technical assistance, funding support and resettlement commitments.