Research Report

Refugee protection, human smuggling, and trafficking in Bangladesh and Southeast Asia

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PRRiA PARTNERS:

ADSP Asia Displacement Solutions Platform

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Protecting Rohingya Refugees in Asia

The 'Protecting Rohingya Refugees in Asia' project brings together the Danish Refugee Council, the Asia Displacement Solutions Platform, the Mixed Migration Centre, Jesuit Refugee Service (JRS) Indonesia, HOST International, and the Geutanyoë Foundation to enhance regional protection responses in support of Rohingya refugees.

Through support from the European Civil Protection and Humanitarian Aid Operations (ECHO), the project aims to identify and address the protection risks and needs of Rohingya refugees in Southeast Asia with a particular focus on Thailand, Malaysia, and Indonesia. It combines evidence-based research with programmatic and advocacy expertise to allow project partners, through their comparative advantages, to explore and advocate through new paths to support Rohingya refugees and the communities hosting them.

For more information on PRRiA, please visit:

https://drc.ngo/our-work/resources/protecting-rohingya-refugees-in-asia/.

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The Mixed Migration Centre (MMC) is a global organisation engaged in data collection, research, analysis, and policy and programmatic development on mixed migration, with regional hubs hosted in Danish Refugee Council (DRC) regional offices in Africa, Asia and the Pacific, Europe and Latin America, and a global team based across Geneva and Brussels. The MMC is a leading source of independent and high-quality data, research, analysis, and expertise on mixed migration. The MMC aims to increase understanding of mixed migration, to positively impact global and regional migration policies, to inform evidence-based protection responses for people on the move and to stimulate forward thinking in public and policy debates on mixed migration. The MMC's overarching focus is on human rights and protection for all people on the move. The MMC is part of, and governed by, the Danish Refugee Council (DRC). While its institutional link to DRC ensures MMC's work is grounded in operational reality, it acts as an independent source of data, research, analysis and policy development on mixed migration for policy makers, practitioners, journalists, and the broader humanitarian sector. The position of the MMC does not necessarily reflect the position of DRC. For more information on MMC visit: www.mixedmigration.org

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Executive Summary

Purpose, objective and audience

This research report is a part of the Protecting Rohingya Refugees in Asia (PRRiA) project. The report critically assesses the risks and needs of Rohingya refugees in Bangladesh and Southeast Asia across three thematic domains: protection, human trafficking, and human smuggling. The research draws from three national contexts: Thailand, Malaysia, and Indonesia.

The research explores the following questions:

What is the regional and national policy landscape for refugee protection, anti-smuggling, and anti-trafficking?	What are the risks and opportunities in these domains?
RQ1.1: What are the drivers of Rohingya exodus from Myanmar and Bangladesh and the risks of smuggling and trafficking that people face?	**RQ2.1:** At the policy level, what is the intersection of refugee protection, anti-smuggling, and anti-trafficking?
RQ1.2: What are the regional Southeast Asian frameworks and mechanisms for anti-smuggling, anti-trafficking, and refugee protection, respectively?	**RQ2.2:** In terms of implementation, what is the coherence of approaches to refugee protection, anti-smuggling, and anti-trafficking at the regional and national levels?
RQ1.3: What are the national-level policies and laws in place in Indonesia, Malaysia, and Thailand, and how accessible are these protections to the Rohingya?	**RQ2.3:** What are key policies/mechanisms that have had mutually reinforcing (complimentary or cumulatively positive) outcomes for Rohingya refugees?
RQ1.4: What is the alignment of these policies and approaches with international/global frameworks and commitments?	**RQ2.4:** What are the barriers, gaps, and redundancies at the policy level that hinder protection access and outcomes for Rohingya refugees?

This report aims to support PRRiA project partners, national and regional governments, UN agencies, non-governmental organisations, civil society actors, and donors in identifying, understanding, and addressing protection risks and needs of Rohingya refugees through various frameworks.

Methodology

This research engaged a qualitative approach involving primary and secondary sources, including a substantial desk review, key informant interviews, and a validation workshop with PRRiA project partners. The RT reviewed 255 secondary documentation sources and completed 11 key informant interviews at regional and national levels across Thailand, Indonesia, and Malaysia. The research employed a combination of analytical approaches drawn from Applied Policy Research (APR). Findings were triangulated and validated across diverse sources to the extent possible to avoid bias in the evaluative judgement.

Conclusions

The research presented 26 findings. Through close consultations between the RT and PRRiA project partners, these findings informed the development of a series of conclusions and recommendations. The primary conclusions are:

Conclusion 1: Smuggling networks enable Rohingya to leave deteriorating living conditions in Myanmar and Bangladesh and seek access to social services and economic opportunities in host countries.

Conclusion 2: An important catalyst in the adoption and architecture of national protection policies are the ASEAN Declaration on the Rights of Children in the Context of Migration, the ASEAN Convention Against Trafficking in Persons, and respective Plans of Action.

Conclusion 3: National governments have the responsibility to address protection needs by establishing clarity between smuggling and trafficking including through stronger policies with consistent messaging, implementation, and enforcement.

Conclusion 4: Civil society actors and stakeholders are limited in advocating for change in national governments due to power imbalances in partnerships, barriers to resources, and lack of political will.

Conclusion 5: The lack of national rights that recognise and safeguard refugee status is a fundamental barrier to protection in Thailand and Malaysia. Across the region, national governments must continue to address restrictions on work for refugees and access to basic services.

Key takeaways

A full set of research recommendations are in the *Recommendations* section. Key research takeaways are as follows:

For Donors:

- Support the design and implementation of multi-year, multi-stakeholder regional responses that include commitments to international protection standards, effective accountability mechanisms, equitable distribution or responsibility, and predictable resources for refugee communities and host governments.
- Increase support to origin country governments (i.e., Bangladesh) and organisations to strengthen refugee management services and mechanisms.
- Encourage the Governments of Thailand, Indonesia, and Malaysia to integrate protections into anti-trafficking policies, codify legal status and work rights for refugees, and improve resourcing to trafficking victim screenings and protection services.

For Host Governments:

- Explore minilateral approaches to refugee protection that promote coordination, resource sharing, protection outcomes, and accountability.
- Engage in a whole-of-society approach comprising civil society organisations, refugee and host communities, donors, and UN agencies, to develop national policies that recognises the legal status of refugees and enables them to access social services and economic opportunities.

For Regional Bodies:

- Prioritise the development of a regional ASEAN refugee protection framework to supersede national protection responses grounded in anti-human trafficking laws, shifting humanitarian policies, migration management, and recognition of international obligations.
- Align anti-human trafficking and refugee response laws, policy frameworks, and approaches to ensure survivors of trafficking, including Rohingya, have effective access to national and international refugee protection mechanisms and available durable solutions.
- Ensure asylum seekers and recognised refugees have effective access to national human trafficking screening processes, protection, and rehabilitative and other support services.

For Civil Society:

- Improve communication and coordination across organisations serving survivors of human trafficking and refugee communities to strengthen mutual recognition of trafficking indicators and refugee claims, scale up referral mechanisms for services available to persons who are both survivors and refugees, harmonise or reinforce advocacy where appropriate, and share best practices.
- Leverage existing ASEAN structures, (e.g., ASEAN Intergovernmental Commission on Human Rights and thematic working groups) to integrate refugee protection into regional discussions. Specific thematic areas to focus on would include human rights, human trafficking and smuggling, transnational crime, irregular migration and labour mobility, and education.

For International Organisations:

- Advocate at the national level with government and private sector actors to promote and recognise legal status and work rights for refugees.
- Support national governments to build capacity at the subnational level on trafficking screening, victim identification, and protection services.
- Invest in partnerships with civil society organisations and ensure there is meaningful participation, balance in decision-making, and equitable sharing of resources.

1. Introduction

Through MMC Asia and the Pacific, DRC commissioned Technical Assistance to Non-Governmental Organizations (TANGO) International, a research and evaluation company, to conduct this research. The research process took four months, between June and September 2022.

1.1 Research Scope

Purpose of the research

The purpose of this research is to support PRRiA project partners and other actors with identifying, understanding, and addressing protection risks and needs of Rohingya refugees in Bangladesh and Southeast Asia. The research explores Bangladesh and Myanmar as origin countries and examines the drivers, risks, and routes of Rohingya movement to Thailand, Indonesia, and Malaysia.

The overall aim of the research is to critically assess the risks and needs of Rohingya refugees in Bangladesh and Southeast Asia across three thematic domains, with particular focus on the national contexts of Thailand, Malaysia, and Indonesia. The three domains are: protection; human trafficking; and human smuggling.

Research objectives and questions

Research Objectives. Four overarching objectives guide this research:

- Objective 1: Clarify the intersection of refugee protection and the smuggling and trafficking of Rohingya refugees in Southeast Asia and Bangladesh.
- Objective 2: Identify and analyse national and regional refugee protection, anti-smuggling and anti-trafficking laws, mechanisms, and frameworks.
- Objective 3: Identify and assess the gaps in knowledge, policy, and responses between Rohingya protection, smuggling and trafficking domains in order to capitalise on mutually reinforcing outcomes.
- Objective 4: Provide recommendations for policy and advocacy messages for key actors, including host governments, regional bodies, civil societies, and international actors, to advance fundamental protection outcomes[1] for Rohingya refugees.

Research Questions. The RT structured the research questions (RQs) into two parts:

Part 1 aims to develop understanding on refugee protection, anti-smuggling and anti-trafficking frameworks and policies for Rohingya refugees in Bangladesh and Southeast Asia. It reviews the policy landscape at the national level i.e., Thailand, Indonesia, and Malaysia.

Part 2 assesses the risks and opportunities emerging from the policies and outcomes detailed in Part 1. It focuses on assessing gaps at the policy and implementation levels, which need to be addressed to improve outcomes of Rohingya refugees in the context of protection, smuggling and trafficking. Both parts and final RQs are below in *Table 1*.

During the inception phase, the RT performed a feasibility assessment to determine the breadth and depth in which it could address the RQs presented in the terms of reference (ToR). The feasibility assessment (see *Appendix 7: Feasibility Assessment*) looked at the availability of secondary information and the resource limitations to primary data collection. The RQs align with those listed in the final inception report (see *Appendix 10: Inception Report*) and ToR. A full research matrix, with corresponding methods and APR category is in *Appendix 2: Research Matrix*.

1 In the context of this research, protection outcomes for Rohingya refugees include access to, and availability of, protection, education, healthcare, shelter, adequate food and nutrition, sustainable livelihoods, and durable solutions.

Table 1. Research parts and questions.

Part 1	What is the regional and national policy landscape for refugee protection, anti-smuggling, and anti-trafficking?
1.1	What are the drivers of Rohingya exodus from Myanmar and Bangladesh and the risks of smuggling and trafficking that people face?
1.2	What are the regional Southeast Asian frameworks and mechanisms for anti-smuggling, anti-trafficking, and refugee protection?
1.3	What are the national-level policies and laws in place in Indonesia, Malaysia, and Thailand, and how accessible are these protections to the Rohingya?
1.4	What is the alignment of these policies and approaches with international/global frameworks and commitments?
Part 2	What are the risks and opportunities in these domains?
2.1	At the policy level, what is the intersection of refugee protection, anti-smuggling, and anti-trafficking?
2.2	In terms of implementation, what is the coherence of approaches to refugee protection, anti-smuggling, and anti-trafficking at the regional and national levels?
2.3	What are key policies/mechanisms that have had mutually reinforcing (complimentary or cumulatively positive) outcomes for Rohingya refugees?
2.4	What are the barriers, gaps, and redundancies at the policy level that hinder protection access and outcomes for Rohingya refugees?

The presentation of research findings in the report follows the key RQs under each part. *Part 1 Findings* aim to build understanding around the refugee protection, anti-smuggling and anti-trafficking frameworks and policies for Rohingya refugees in Bangladesh and Southeast Asia. To this end, it reviews both the national policy landscapes in Thailand, Indonesia and Malaysia and implementation – or lack thereof – of those policies.

Part 2 Findings assesses the risks and opportunities emerging from the policies and outcomes detailed in Part 1. It focuses on identifying and assessing gaps at the policy and implementation levels, which should be addressed to reduce risks of smuggling and human trafficking and improve protection outcomes for Rohingya refugees.

Together, *Part 1 Findings* and *Part 2 Findings* inform the *Conclusions* and *Recommendations* sections. Recommendations focus on developing key policy and advocacy messaging around the research domains, at the policy and implementation levels.

1.2 Methodological Approach

The research followed the inception report methodology, presented in full in *Appendix 10: Inception Report*. Data collection was remote, with emphasis on qualitative data collection and an extensive review of secondary information. The RT analysed and triangulated data with a range of policy, academic and programme documentation. See the *Data collection methods* and *Data analysis* sections for more information.

The research included a combination of employed analytical approaches found in APR, where the RT used qualitative approaches to bridge different objectives. APR divides objectives into four categories: contextual, diagnostic, evaluative and strategic. These four categories helped frame the lines of inquiry used in this research. To keep within the research scope and parameters, the research focused primarily on the contextual and strategic categories and drew, when appropriate, from the diagnostic and evaluative categories. See *Appendix 9: Applied Policy Research Approach* for examples of APR categories and lines of inquiry.

Data collection methods

The RT utilised two methods for this research, namely: document review and key informant interviews (KIIs) (see *Appendix 10: Inception Report*).

Document Review. The RT led a structured review of all available secondary data and analyses. The researchers obtained documents through systematic search functions administered on Scopus, ReliefWeb, Google Scholar, and United Nations (UN) databases. In total, the RT reviewed 255 secondary data sources including organisation and government reports, peer-reviewed literature, UN body reports and briefs, credible media, and internal documentation key informants shared. The RT conducted iterative desk reviews to ensure areas of inquiry and thematic areas were up to date. A breakdown of the desk review is in *Table 2* below; the overall documents cited for this research can be found in *Appendix 11: References*.

Table 2. Breakdown of documentation reviewed.

	Documentation type	Examples of documentation	Number of Documents reviewed
1	Peer-reviewed literature	Academic literature	45
2	Laws and policies	ASEAN, government, UN	30
3	Press releases and news media	Government, private, UN, I/NGO	72
4	Reports	Government, UN, I/NGO	78
5	Websites	UN, I/NGO	30
Total:			**255**

Remote KIIs. The RT used one consolidated topical outline with main topics and sub-topics to explore relevant themes in depth, probe for more information on issues when relevant and focus on topics in which Key Individuals (KIs) were knowledgeable and experienced. Please refer to *Appendix 3: Data Collection Tools* for the full topical outline and corresponding lines of questioning.

The RT conducted 11 remote semi-structured interviews with key informants via Microsoft Teams. KIIs were conducted with country level stakeholders in Thailand (three KIIs), Indonesia (three KIIs), and Malaysia (three KIIs), and at the regional level (two KIIs). National level stakeholders supplied key insight into the regional context of the research domains. Key informants included representatives from UN agencies, international non-governmental organisations (INGOs), civil society organisations (CSOs), and researchers who had knowledge in one or more domains at the national and regional levels. A summary of key informants contacted and interviewed is below in *Table 3*, and a detailed listing of individuals interviewed is in *Appendix 4: Listing of Key Informants*.

Table 3. Summary of primary data collection activities completed.

KII level		Number of Persons contacted	Number of Requests made	Number of KIIs completed
1	Thailand	6	10	3 KIIs
2	Indonesia	8	11	3 KIIs
3	Malaysia	7	12	3 KIIs
4	Regional	2	2	2 KII
Total:		**23 individuals**	**35 requests**	**11 KIIs**

Sampling

During the Inception Phase, the RT consulted national experts to develop a longlist of relevant stakeholders as a preliminary sample frame. The RT initially selected 12 national level stakeholders from this list, selecting an added three stakeholders in Thailand, five in Indonesia, and three in Malaysia as the research progressed. Due to a high non-response rate from stakeholders in Malaysia and at the regional level, MMC developed and shared a new list of key informants from which the RT completed five KIIs.

The RT applied purposive sampling in selecting the key informants. This involved selecting key individuals or stakeholders at the regional and national levels who were knowledgeable about, or had experience with, refugee protection, anti-smuggling frameworks, and/or anti-smuggling frameworks and outcomes specifically for Rohingya refugees. The RT selected individuals based on relevance to research thematic areas, insight at national and regional levels, working knowledge and insight towards answering the RQs, and diversity of representation across the total sample (e.g., diverse institutions, roles).

Data analysis

The qualitative data analysis endeavours to define, categorise, explain, explore, and map. The RT reviewed documents and interview data against the research questions and emerging trends. During regular meetings, the RT discussed progress in analysing data to fine-tune areas of inquiry, assess saturation in thematic areas, and advance the formulation of findings, conclusions, and recommendations.

The following internal analytical approaches were used for this research:

A. **Thematic analysis** of the document review, which was ongoing throughout most of the research timeframe. The RT reviewed documents against pre-identified markers associated with the RQs, the thematic focus areas, and emerging hypotheses.
B. **Matrix-based approach to qualitative analysis.** All data collected through remote KIIs were organised for analysis using a matrix approach, which is a proven method of organising data entry and facilitating analysis of qualitative data. Responses from participants were triangulated between KIIs to cross-check the reliability of information and to identify differences in perception between groups based on roles, functions, and activities the individuals or groups are involved in. Based on the research matrix, themes were found through deductive analysis. Inductive analysis enabled for new or unexpected themes that emerged from the data collection and analysis process.
C. **Triangulation, sense-making, and validation of analysis results.** Triangulation occurred when multiple information sources provided insights on the same theme. From the start of the data collection phase, the RT organised weekly triangulation and sense-making team meetings to review analytical progress and discuss highlights and emerging themes. For every RQ, the RT drew upon findings across the data sources (e.g., KIIs, documentation), and determined where there was agreement in the data versus mixed results. All key findings and conclusions in this report are thus based on triangulated results across data points.

The RT systematically reviewed all known sources pertinent to each RQ and looked to present a robust evidence base for each finding, recommendation, and conclusion presented. Where data and information were sparse, unclear, conflicting, or inconclusive, the team consulted relevant documents and stakeholders to obtain a clearer picture or explain why these data limitations and validity issues may exist.

Research Limitations

This section discusses research limitations and the procedures used to best mitigate those limitations.

Table 4. Limitations to the research.

Limitation	Impact	Mitigation measures
Lack of regional level KIIs	The RT required primary data to connect policies to implementation, and to identify risks and opportunities in implementation. However, they faced challenges in scheduling interviews with stakeholders most knowledgeable on regional-level affairs. Multiple stakeholder candidates with insight on regional bodies i.e., ASEAN were unable to take part in KIIs due to restrictions imposed by supervisors. This resulted in fewer KIIs completed than planned and presented constraints in addressing certain research questions.	During the inception phase, the RT conducted a feasibility assessment on the research scope and determined potential difficulties in scheduling KIIs with regional key informants (see *Appendix 7: Feasibility Assessment*). To this end, the RT deepened its literature review to increase coverage of regional research themes and areas; added extra questions to the topical outline targeting regional themes, employing regional lines of inquiry during all KIIs; expanded KI selection to the extent possible within study parameters; requested a supplementary list of stakeholders from DRC; extended the data collection timeframe by two weeks to conduct additional KIIs; sent numerous requests and reminder messages to KIs; and facilitated a workshop with PRRiA staff to inform the analysis, conclusions, and recommendations.
No KIIs conducted in Myanmar	The research did not conduct KIIs with stakeholders in Myanmar.	The research scope and design explored the Rohingya refugee protection and anti-smuggling/trafficking context through a national review of Thailand, Indonesia, and Malaysia. The RT conducted a literature review on Bangladesh and Myanmar as it relates to these three national level countries. The RT conducted one KII in Bangladesh, and national key informants were knowledgeable of the drivers of Rohingya movement out of Myanmar and Bangladesh, as well as the risks refugees face from the origin to destination countries.
KIs had more insight on protection than AT/AS domains	Most stakeholders interviewed provided greater insights on refugee protection than on anti-trafficking and anti-smuggling.	The RT held consultations with national experts to identify additional candidates with knowledge on anti-trafficking/smuggling, and conducted further review and analysis of secondary documentation, totalling over 250 sources.
Affected population groups not included in KIIs	The RT did not conduct KIIs with affected population groups i.e., Rohingya refugees, or survivors of trafficking and smuggling, resulting in the absence of primary data from these populations.	The research design accounted for the absence of KIIs with affected population groups and focused more on the policy and institutional level. The RT leaned heavily on existing secondary data and information sources from previous/other engagement with these groups.
Broad research scope	The scope of the research was wide and resource limitations hindered a full detailed inquiry into all areas.	As shown in *Appendix 7: Feasibility Assessment*, the RT conducted a feasibility assessment during the inception phase to tailor the proposed scope of the research.
Limited budget and timeframe	While not direct constraints, limited budget and time framed the research design with necessary trade-offs in depth of data collection and analysis.	The RT focused on all research criteria and endeavoured to answer all questions to the extent possible. However, some questions were prioritised and had deeper levels of analysis with others being a light-touch approach.

Ethical considerations

The research prioritised the anonymity and confidentiality of the participants involved in this study. The RT conducted all interviews in confidentiality and with the consent of participants before beginning. Raw data and information from internal analytical processes was anonymised before use and only core TANGO team members could access primary data. After completion of this research, the RT preserved de-identified primary data in an encrypted storage space accessible exclusively to core TANGO staff who worked on this study. Given the continued presence of COVID-19, all data collection activities occurred virtually. Further information on ethical considerations applied throughout the research are in *Appendix 10: Inception Report*.

Photo Credit: Danish Refugee Council, Bangladesh

2. Subject of the Research

2.1 Concepts and Definitions

Since the 1960s, a mix of factors have driven the displacement of over 1.6 million ethnic Rohingya passing through, or settling in, Bangladesh and Southeast Asia.[2, 3] While en route to a destination country, Rohingya protection needs increase amid minimal access to basic services. Risks of arrest, smuggling, and trafficking compound vulnerabilities. When Rohingya reach and enter a country, for temporary or long-term stay, vulnerabilities continue in the absence of legal identity recognition and protection. More than 900,000 Rohingya from Myanmar live in Bangladesh.[4] Key transit and host countries include Thailand, Malaysia, and Indonesia.

As of July 2022, Malaysia hosted over 105,000 (registered) Rohingya.[5, 6] Estimates for the total number of Rohingya residing in Thailand and Indonesia are unavailable, as organisations such as UNHCR and IOM report on the number of refugees by origin country, but do not provide specific counts for the Rohingya. These three nations have diverse socio-political and geographic factors affecting both the acceptance of, and support to, Rohingya refugees, and the role they play as regional and international actors. Their national policies and human rights frameworks can likewise support the needs of Rohingya refugees – or create and reinforce barriers to improved protection outcomes.

Understanding the protection policy landscape in these countries and the intersection between anti-smuggling and anti-trafficking laws, mechanisms, and frameworks outside of national borders is thus crucial to tackling protection issues of Rohingya living in and migrating to these countries. Addressing these gaps are a diverse network of international and governmental actors, NGOs, and civil society organisations (CSOs). Through collaboration and independent operations, these actors engage in legislation, interpretation, and implementation of protection policies for Rohingya refugees.

Refugee protection

International Frameworks. According to the 1948 Universal Declaration of Human Rights, everyone has the right to seek and to enjoy in other countries asylum from persecution.[7] This declaration is soft law, and not legally binding. However, the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol relating to the Status of Refugees (1967 Protocol) legally affirm this right, as well as subsequent protections.

The 1951 Convention defines a refugee as 'someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.'[8] This definition has been the legal standard since articulation. An asylum seeker is an individual who submits a claim to a state or appropriate authority to be recognised as a refugee.[9]

The 1954 Convention relating to the Status of Stateless Persons further filled protection gaps for refugees such as Rohingya, who are not recognised citizens by any sovereign state.

Per the 1951 and 1954 Conventions, a refugee is an individual in need of international protection due to well-founded fear of persecution in the country of origin or habitual residence.[10] However, none of the countries reviewed here is a signatory to these Conventions, and the legal status for refugees falls under state jurisdiction.[11] Refugees in countries that are not party to the 1951 Convention or 1967 Protocol but qualify for protection through the United Nations High Commissioner for Refugees (UNHCR) mandate are known as *mandate refugees*.[12] The term '*refugee*' has greater might in nations that recognise refugees as a political status and grants refugees' access to state rights. International and regional agreements in Southeast Asia and Bangladesh emphasise the need for refugee access to shelter, food, water, medical care, education, and protection from abuse and exploitation.[13]

The 1951 Convention articulates roles that signatory states and UNHCR should play in corporal and legal refugee protection once refugees enter a state. State engagement should result in local integration within the host country; refugee resettlement in a third country; or voluntary repatriation to the refugee's country of origin or habitual residence. In a key provision, the 1951 Convention stipulates that states must refrain from *'refoulement,*' defined as expelling or returning *'a refugee in any manner whatsoever to the*

2 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

3 Danish Refugee Council. 2021. Protecting Rohingya Refugees in Asia. Retrieved from: https://drc.ngo/our-work/resources/protecting-rohingya-refugees-in-asia/

4 Asia Displacement Solutions Platform (ADSP). 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

5 UNHCR Malaysia. 2022. Figures at a Glance in Malaysia. Retrieved from: https://www.unhcr.org/figures-at-a-glance-in-malaysia.html

6 Asia Displacement Solutions Platform (ADSP). 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

7 United Nations. n/d. Convention relating to the Status of Refugees/Protocol relating to the Status of Refugees. Retrieved from: https://legal.un.org/avl/ha/prsr/prsr.html

8 Ibid.

9 International Organization for Migration. n/d. Key Migration Terms. IOM. Retrieved from: https://www.iom.int/key-migration-terms

10 United Nations. 1951. Convention relating to the Status of Refugees/Protocol relating to the Status of Refugees. Retrieved from: https://legal.un.org/avl/ha/prsr/prsr.html

11 International Organization for Migration. n/d. Key Migration Terms. IOM. Retrieved from: https://www.iom.int/key-migration-terms

12 Ibid.

13 UNHCR. n/d. What We Do: Protection. UNHCR. Retrieved from: https://www.unhcr.org/en-us/protection.html

frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.' [14]

The principle of *non-refoulement* acts as international customary law, meaning states that are not party to the 1951 Convention must nevertheless adhere, superseding national legislation.[15, 16] Per customary international law, in cases where refugees choose repatriation, the country of asylum and the country of return must work with UNHCR to ascertain the voluntary nature and safety and dignity of the return.[17, 18]

Neither Bangladesh, Myanmar, Thailand, Malaysia, nor Indonesia are signatory to the 1951 Convention. In these states, national policies dictate protections, or lack thereof, for refugees.

National Policy. National policy surrounding refugees demonstrates mixed outcomes within and between Thailand, Malaysia, and Indonesia. Some policies facilitate levels of protection, rights, and local integration, while others codify a priority of repatriation or resettlement. The state's framing of Rohingya migration as a humanitarian issue, one of national sovereignty or, similarly, an issue of economic and national security further shapes approaches to border governance and refugee protection.

Grounded in their identity as predominantly Muslim nations, Indonesia and Malaysia have taken ad hoc humanitarian stances on the unfolding crises in Myanmar to end state-led conflict and restore democratic principles.[19] Nonetheless, the onset of COVID-19 contributed to an increase in public xenophobia and protectionist policies in these countries. Malaysia, Thailand, and Indonesia are at the forefront of Rohingya reception and management when contrasted with other Association of Southeast Asian Nations (ASEAN) countries.[20] However, all lack legislation on refugee protection or paths to long-term integration of Rohingya.[21]

Bangladesh is a major host of Rohingya but is not a member of ASEAN. Enforcement of ASEAN policy over Bangladesh, as a country of Rohingya departure, is negligible. The lack of legal recognition as refugees also curtails Rohingya protection. Creative terminologies, like 'Forcibly Displaced Myanmar Nationals in Bangladesh', allows for the circumvention of international agreements and procedures. Thailand, similarly, does not provide legal status to Rohingya refugees, although it is notably developing a National Screening Mechanism (NSM) to improve identification of and support to those with 'Protected Person' status, including to some asylum seekers and refugees.[22] The Standard Operating Procedures for the NSM are pending approval from the Thai Cabinet, however. It is unclear whether Rohingya will qualify as Protected Persons under the NSM.[23]

Indonesia, Malaysia, and Thailand have argued against allowing Rohingya to enter, citing national sovereignty and security.[24] While subject to international customary law, sovereignty enables a state to exercise authority over all persons in its territory. This includes granting asylum or expelling individuals seeking it.[25] Framed through a national-security lens, national authorities posit that allowing refugees to stay long term threatens national safety as it may increase pressure on local resources.[26] To this end, emphasis on providing refugees with temporary stay in discourse, policy, and implementation is seen as a way to maintain social cohesion. Governments that enable long-term stay for refugees may risk inciting politicised public backlash and in specific cases, inter-ethnic conflict.[27, 28]

National policy approaches and rhetoric reflect national and regional crises. Unemployment during the 1997 Asian Financial Crisis doubled in Malaysia and Thailand, and tripled in Malaysia, resulting in short term national labour policies that favoured citizens and sought the expulsion of 'irregular' migrants.[29] Some reports suggest that the governments of Malaysia and Thailand blurred the distinction between people qualifying as refugees under international law and irregular migrants, executing crackdowns and

14 International Organization for Migration. n/d. Key Migration Terms. IOM. Retrieved from: https://www.iom.int/key-migration-terms

15 UNHCR. 2007. Advisory Opinion on the Extraterritorial Application of Non-Refoulment Obligations of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. United Nations. Retrieved from: https://www.unhcr.org/4d9486929.pdf

16 Sulaiman, S. et.al. 2021. Non-refoulement and Right of Entry for Asylum-seekers. *Petrinka Journal of Social Sciences & Humanities.* 29(S2), 75-87. Retrieved from: https://doi.org/10.47836/pjssh.29.S2.06

17 UNHCR. 1996. Handbook- Voluntary Repatriation: International Protection. UNHCR Geneva. Retrieved from: https://www.unhcr.org/en-us/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html

18 The University of Melbourne. 2020. The 1961 Convention on the Reduction of Statelessness. Peter McMullin Centre on Statelessness. Retrieved from: https://law.unimelb.edu.au/__data/assets/pdf_file/0006/3489621/1961-Convention_factsheet_Sept_2020.pdf

19 Missbach, A. & Stange, G. 2021. Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia. Social Sciences, 10(5), 166. https://doi.org/10.3390/socsci10050166

20 Ibid.

21 Source: PRRiA written input on draft report (29-09-2022).

22 Amnesty International. 2017. Thailand: Between a Rock and a Hard Place. Amnesty International. Retrieved from: https://www.amnesty.org/en/latest/news/2017/09/refugees-in-thailand-forcibly-returned-to-danger/

23 United Nations Network on Migration. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles. United Nations Network on Migration. Retrieved from: https://idcoalition.org/wp-content/uploads/2022/05/Asia-Pacific-ATD-Report-2022.pdf

24 Dewansyah, B. & Handayani, I. 2018. Reconciling Refugee Protection and Sovereignty in ASEAN Member States: Law and Policy Related to Refugee in Indonesia, Malaysia, and Thailand. The Central European Journal of International and Security Studies (CEJISS), 12(4). Retrieved from: https://ssrn.com/abstract=3308116

25 International Organization for Migration. n/d. Key Migration Terms. IOM. Retrieved from: https://www.iom.int/key-migration-terms

26 Ibid.

27 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816

28 Dewansyah, B. & Handayani, I. 2018. Reconciling Refugee Protection and Sovereignty in ASEAN Member States: Law and Policy Related to Refugee in Indonesia, Malaysia, and Thailand. The Central European Journal of International and Security Studies (CEJISS), 12(4). Retrieved from: https://ssrn.com/abstract=3308116

29 International Organization for Migration. 2009. The Financial Impact of Financial Crises on International Migration: Lessons Learned. International Organization for Migration. No. 37. Retrieved from: https://publications.iom.int/system/files/pdf/mrs37_en.pdf

deportations of both groups.[30, 31, 32] In Thailand, for example, the government called for the return of one million irregular migrants, expelling about 250,000 irregular migrants - mostly from Myanmar - by July 1998.[33] In Malaysia, the government announced the repatriation of nearly one million foreign workers by August 1998. Malaysian law enforcement raids and ID checks increased in frequency, as did the severity of penalties for citizens convicted of helping irregular migrants enter or stay in the country.[34]

National governments have likewise used national sovereignty justifications since the onset of COVID-19 to introduce restrictive migration policies that obstruct the movement of Rohingya. Though boat pushbacks have occurred over several years, the COVID-19 pandemic has served as a basis to increase pushbacks and arrest and detention of undocumented migrants, as well as impose restrictions on assistance.[35]

Xenophobia and misconceptions about refugees grew with the spread of the virus.[36, 37] In Malaysia, the Prime Minister and former Senior Defence Minister, Ismail Sabri, alleged that refugees and undocumented migrants were transmitting COVID-19.[38] Petitions calling for the deportation of refugees flooded Malaysian social media, while online comments in Thailand used racist stereotypes and nationalistic language to attack Rohingya and other Myanmar refugees.[39, 40]

Detention Policies and Procedures. In Thailand, Malaysia, and to a lesser extent, Indonesia, governments recognise Rohingya as irregular migrants, or individuals crossing borders through channels outside the purview of state laws, regulations, or international agreements.[41] As such, they are subject to detention and arrest under immigration policies that treat undocumented individuals as illegal immigrants. Mandate Refugee Status Determination (RSD) procedures are inconsistent and ineffective in these countries.[42] UNHCR in Indonesia and Malaysia conduct screening procedures to identify Rohingya refugees and asylum seekers, however UNHCR cannot access or conduct RSD with individuals in immigration detention centres (IDCs).[43] In Indonesia, Rohingya identified by UNHCR as refugees or asylum seekers receive access to available government, UN, and I/NGO protections and 'Alternatives to Detention (ATD)' - policies and practices that prevent the unnecessary detention of persons for reasons relating to their migration status.[44] As discussed in the *National policy and response* section for *Thailand*, the Thai government does not recognise UNHCR RSD, and only some Rohingya survivors of trafficking receive ATD in victim shelters.

At the national level, the lack of Standard Operating Procedures (SOPs) on screening processes limit access to protections for Rohingya.[45] The Thai government's signing of a 2019 Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres (MOU-ATD), enables child sensitive approaches to detention.[46] In Malaysia, government approval for piloting a small-scale programme to release unaccompanied children from IDCs took place in 2020, but the programme excludes Rohingya and is currently inactive.[47] In Indonesia, there is meanwhile a cessation of the detention of refugee and asylum-seeking children.[48] With approval from the Ministry of Law and Human Rights in Indonesia, refugees and asylum seekers mostly live outside of IDCs.[49] In these countries, there is minimal integration of gender-, age-, and ability-sensitive approaches, to detention. Legal safeguards to review judicial detention decisions are not present in all countries under national review.[50] For further discussion on separate national policy landscapes, please see the National policy and response sections for *Thailand*, *Indonesia*, and *Malaysia*.

30 Castles, S. & Vezzoli, S. 2009. The global economic crisis and migration: temporary interruption or structural change? Paradigmes. Retrieved from: https://www.migrationinstitute.org/files/news/castles-and-vezzoli_the-global-economic-crisis-and-migration.pdf

31 Human Rights Watch. 1998. Bearing the Brunt of the Asian Economic Crisis. The Impact on Labor Rights and Migrant Workers in Asia. Human Rights Watch. Retrieved from: https://www.hrw.org/legacy/reports98/asialbr/

32 Jeong, Y. 2021. Diverging Response to the Rohingya Refugee Crisis since 2017 Military Crackdown: Comparative Analysis of Bangladesh and Malaysia. KJIS 19, 133-165. https://doi.org/10.14731/kjis.2021.04.19.1.133

33 International Women's Rights Action Watch. 1997. Country Reports: Thailand. International Women's Rights Action Watch. Retrieved from: http://hrlibrary.umn.edu/iwraw/publications/countries/thailand.htm#end37

34 International Organization for Migration. 2009. The Financial Impact of Financial Crises on International Migration: Lessons Learned. International Organization for Migration. No. 37. Retrieved from: https://publications.iom.int/system/files/pdf/mrs37_en.pdf

35 Save the Children. 2021. No Safe Haven: The Plight of Rohingya Children Across Asia. Save the Children. Retrieved from: https://resourcecentre.savethechildren.net/document/no-safe-haven-plight-rohingya-children-across-asia/

36 International Organization for Migration. 2021. IOM Thailand Covid-19 Response and Recovery Plan 2021. Retrieved from: https://crisisresponse.iom.int/sites/g/files/tmzbdl1481/files/appeal/documents/IOM%20Thailand%20SRRP%20%202021%20FINAL_0.pdf

37 Zainul, Harris. 2020. Disinformation and xenophobia target Malaysia's Rohingya. East Asia Forum. Retrieved from: https://www.eastasiaforum.org/2020/07/11/disinformation-and-xenophobia-target-malaysias-rohingya/

38 Ibid.

39 Sukumaran, Tashny. 2020. As Malaysia battles the coronavirus, its Rohingya refugees face a torrent of hate. South China Morning Post. Retrieved from: https://www.scmp.com/week-asia/politics/article/3081958/malaysia-battles-coronavirus-its-rohingya-refugees-face-torrent

40 ASEAN Today. 2021. Migrants in Thailand face racism amid new coronavirus outbreak. ASEAN Today. Retrieved from: https://www.aseantoday.com/2021/01/migrants-in-thailand-face-racism-amid-new-coronavirus-outbreak/

41 International Organization for Migration. 2009. The Financial Impact of Financial Crises on International Migration: Lessons Learned. International Organization for Migration. No. 37. Retrieved from: https://publications.iom.int/system/files/pdf/mrs37_en.pdf

42 Dewansyah, B. & Handayani, I. 2018. Reconciling Refugee Protection and Sovereignty in ASEAN Member States: Law and Policy Related to Refugee in Indonesia, Malaysia, and Thailand. The Central European Journal of International and Security Studies (CEJISS), 12(4). Retrieved from: https://ssrn.com/abstract=3308116

43 Source: PRRiA written input on draft report (29-09-2022).

44 International Organization for Migration. n/d. Key Migration Terms. Retrieved from: https://www.iom.int/key-migration-terms

45 United Nations Network on Migration. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles. United Nations Network on Migration. Retrieved from: https://idcoalition.org/wp-content/uploads/2022/05/Asia-Pacific-ATD-Report-2022.pdf

46 International Detention Coalition. 2022. Promising Practices In Alternatives to Detention for Children and their Families: Ideas For Strengthening Protection For Children And Their Families At Risk Of Immigration Detention In Thailand. International Detention Coalition. Retrieved from: https://idcoalition.org/wp-content/uploads/2022/03/IDC-Research-Summary-Promising-Practices-In-Alternatives-To-Detention-ATD-For-Children-And-Their-Families.pdf

47 Source: PRRiA written input on draft report (29-09-2022).

48 United Nations Network on Migration. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles. United Nations Network on Migration. Retrieved from: https://idcoalition.org/wp-content/uploads/2022/05/Asia-Pacific-ATD-Report-2022.pdf

49 Ibid.

50 Ibid.

Distinguishing human smuggling and trafficking

Human smuggling and trafficking are intertwined with irregular migration, exposing Rohingya to risks during their journeys.[51] UNODC defines **human smuggling** as: 'Various activities – paid for or otherwise compensated by refugees and migrants – that facilitate irregular migration. These include irregularly crossing international borders and internal checkpoints, as well as providing documents, transportation, and accommodation.'[52]

The UNODC definition for **human trafficking** is: 'The recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit.'[53] This is regardless of consent. It also considers recruitment, transfer, harbouring, or receipt of a child for the purpose as a violation of human trafficking.

There are three main differences between smuggling and trafficking according to The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also known as the Palermo Protocol.[54] Smuggling entails consent, typically ends at the point of destination, and is always transnational.[55] Trafficking, on the other hand, pinpoints the lack of - or change - in consent. It involves ongoing exploitation of the trafficking victim and can occur within the country of a victim or survivor's origin.

Human smuggling and trafficking are difficult to differentiate at times, such as in the occurrence of aggravated smuggling which endangers or degrades the migrant.[56] The act of smuggling can become trafficking when a smuggler decides to traffick a migrant instead.[57] Yet, some national actors conflate smuggling and trafficking to justify a harsher position and approach to irregular migration, while others misunderstand the distinction between the two concepts.[58]

Due to its consistency with the Palermo Protocol, the US State Department's three tier system, under the Trafficking Victims Protection Reauthorisation Act (TVPA) of 2000 and 2003, functions as a global measurement tool to gauge the extent of government action on smuggling and trafficking.[59, 60] In Tier 1, governments are in full compliance with TVPA's minimum standards – especially as it relates to the prevention of, protection against, and prosecution for smuggling and trafficking.[61] Tier 2 governments, while not meeting the standards for full compliance, are making significant efforts to comply. Governments on the Tier 2 Watch List meet the Tier 2 criteria and one of the following: a) The estimated number of victims of severe forms of trafficking is very significant or is significantly increasing and the country is not taking proportional concrete actions; or b) There is a lack of evidence to suggest an increase in efforts to combat severe forms of trafficking in persons from the previous year. Tier 3 governments do not fully meet minimum standards and are not making significant efforts to do so.[62] Despite Indonesia and Malaysia in 2007, and Thailand in 2008, passing anti-trafficking legislation (and subsequent amendments), Indonesia, Thailand, and Malaysia were ranked Tier 2 Watch List, Tier 2, and Tier 3 in 2022, respectively. None of the countries under national review fully comply with TVPA standards for trafficking protection.[63]

51 Although there is not agreed upon definition of irregular migration, the definitions all cover that this is migration outside of the normal diplomatic and legal migration channels

52 Mixed Migration Centre. 2021. Smuggling and Mixed Migration, Insights and key messages drawn from a decade of MMC research and 4mi data collection. MMC. Retrieved from: https://mixedmigration.org/resource/smuggling-and-mixed-migration/

53 United Nations Office on Drugs and Crime. n/d. Human Trafficking. United Nations Office of Drugs and Crime. Retrieved from: https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html#:~:text=Human%20Trafficking%20is%20the%20recruitment,every%20region%20of%20the%20world

54 Mixed Migration Centre. 2021. Smuggling and Mixed Migration, Insights and key messages drawn from a decade of MMC research and 4mi data collection. MMC. Retrieved from: https://mixedmigration.org/resource/smuggling-and-mixed-migration/

55 Goździak, E & Vogel, K. 2020. Palermo at 20: A Retrospective and Prospective. Journal of Human Trafficking, 6(2) 109-118. Retrieved from: http://doi.org/10.1080/23322705.2020.1690117

56 Mixed Migration Centre. 2021. Smuggling and Mixed Migration, Insights and key messages drawn from a decade of MMC research and 4mi data collection. MMC. Retrieved from: https://mixedmigration.org/resource/smuggling-and-mixed-migration/

57 Ibid.

58 Ibid.

59 Goździak, E & Vogel, K. 2020. Palermo at 20: A Retrospective and Prospective. Journal of Human Trafficking, 6(2) 109-118. Retrieved from: http://doi.org/10.1080/23322705.2020.1690117

60 Rahim, et al. 2015. Combating Smuggling in Persons: A Malaysia Experience. SHS Web of Conferences, 18. Retrieved from: https://doi.org/10.1051/shsconf/20151801004

61 US Department of State. 2021. Report to Congress on 2021 Trafficking in Persons Interim Assessment Pursuant to the Trafficking Victims Protection Act. US Department of State. Retrieved from : https://www.state.gov/report-to-congress-on-2021-trafficking-in-persons-interim-assessment-pursuant-to-the-trafficking-victims-protection-act/

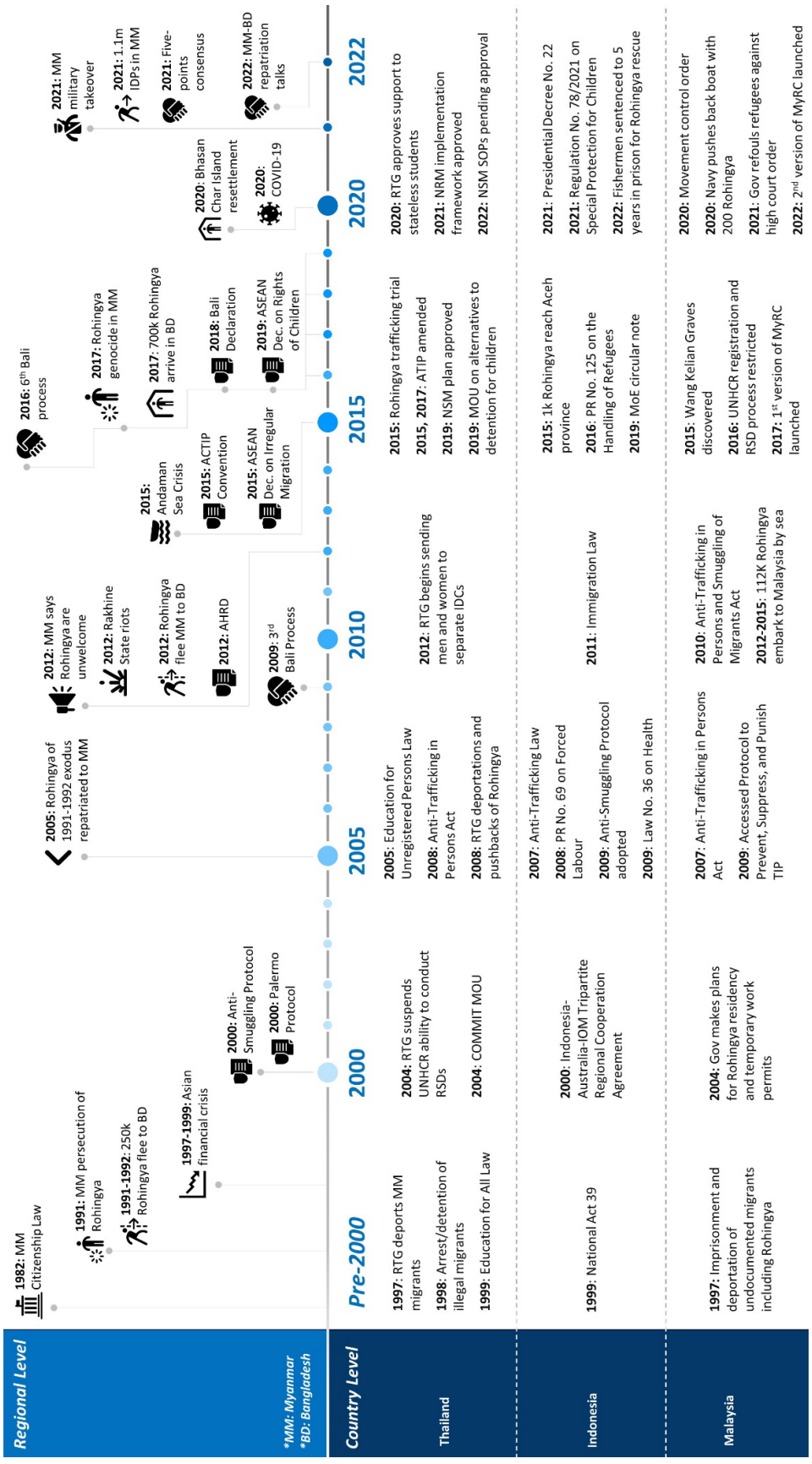
62 Ibid.

63 US State Department. 2022. Trafficking in Persons Report 2022. US State Department. Retrieved from: https://www.state.gov/wpcontent/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf

2.2 Timeline of Regional and National Events

The general timeline of the Rohingya crisis at the regional level since 2000, overlayed with major protection, anti-trafficking, and anti-smuggling events in Thailand, Indonesia, and Malaysia is in *Figure 1* below.

Figure 1. Timeline of key events at regional and national levels.[64]



64 Myanmar and Bangladesh are abbreviated in the timeline visualization to MM and BD, respectively.

2.3 Regional Contexts

History of the Rohingya in Myanmar and Bangladesh

Rohingya persecution begins in Myanmar, following independence from Britain in 1948.[65, 66] Although tension between the Buddhist majority and Muslim minority populations existed prior to 1948, violence against the Rohingya was minimal.[67, 68] Between 1948 and 1960, the Union Citizenship Act recognised Rohingya as Myanmar citizens with the right to vote and hold office.[69] After the military takeover in 1962, extreme nationalism centred around the ethnic majority, Buddhist Bamar, was introduced. Minority groups, including Rohingya, were stripped of their legitimacy before the state.[70, 71]

Antagonism toward the Rohingya intensified during Operation Nagamin in 1978. Under Nagamin, immigration and military authorities led citizenship registration campaigns in Rakhine and Kachin states.[72, 73] Army, police, and immigration officers expelled 'foreigners,' or non-citizens, with a focus on Rohingya in Rakhine. An estimated 200,000 Rohingya fled the country to Bangladesh.[74, 75]

Rohingya refugees fled to neighbouring Bangladesh.[76] While the Government of Bangladesh accepted them, it intended for a quick repatriation of the population.[77] Bangladesh appealed to the international community for support handling the arrivals, leading UNHCR to support the creation of refugee camps - primarily in Cox's Bazar - and fundraising to support the effort.[78, 79]

Following a 1978 agreement between Myanmar and Bangladesh, 187,250 Rohingya were repatriated to Arakan state in Myanmar between 1978 to 1979.[80] The repatriation, although 'voluntary', was met by resistance from Rohingya refugees who feared continued persecution.[81] However, the proportion of Rohingya wishing to repatriate increased as camp conditions in Bangladesh deteriorated and food rations were restricted in an attempt to encourage refugee returns.[82] Despite the 1978 agreement, ongoing persecution drove new waves of Rohingya displacement to Bangladesh.

Myanmar's passage of the 1982 Citizenship Law formally denied citizenship to Rohingya. The law also stripped Rohingya of previously endowed rights, identifying Rohingya as illegal 'Bengali' from Bangladesh. This Citizenship Law acted as a legal justification for human rights abuses committed against the Rohingya.[83, 84] Military campaigns grounded in the Citizenship Law persisted over the years and intensified in the late 1980s. In 1991, an estimated 250,000 Rohingya escaped to Bangladesh following a military (Tatmadaw) crackdown, the first major exodus following the initial displacement driven by Operation Nagamin in 1978-79. [85, 86]

In 2012, disputes in the aftermath of an alleged rape and murder of a Rakhine Buddhist woman by three Muslim suspects in Rakhine

65 Krishna, Nirmala. 2018. The Rohingya Plight: The Role of State and Non-State Actors. The Journal of Defence and Security; Kuala Lumpur, 9(1) 49-68. Retrieved from: https://www.proquest.com/openview/d8b9f5bb7369c68318d88f2f74d3fdb9/1?pq-origsite=gscholar&cbl=1456373

66 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

67 Krishna, Nirmala. 2018. The Rohingya Plight: The Role of State and Non-State Actors. The Journal of Defence and Security; Kuala Lumpur, 9(1) 49-68. Retrieved from: https://www.proquest.com/openview/d8b9f5bb7369c68318d88f2f74d3fdb9/1?pq-origsite=gscholar&cbl=1456373

68 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

69 United States Holocaust Memorial Museum. n/d. Burma's Path to Genocide. Retrieved from: https://exhibitions.ushmm.org/burmas-path-to-genocide/ chapter-2/driving-out-foreigners

70 Ahmed, A. 2012. The Rohingya: Myanmar's outcasts. Al Jazeera. Retrieved from: https://www.aljazeera.com/opinions/2012/1/30/the-rohingya-myanmars-outcasts

71 United States Holocaust Memorial Museum. n/d. Burma's Path to Genocide. Chapter 2: Targeted. Retrieved from: https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-2/driving-out-foreigners

72 Ibid.

73 Human Rights Watch. 2000. Historical Background. Human Rights Watch. Retrieved from: https://www.hrw.org/reports/2000/burma/burm005-01.htm

74 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

75 International Crisis Group. 2022. Avoiding a Return to War in Myanmar's Rakhine State. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/325-avoiding-return-war-myanmars-rakhine-state#:~:text=An%20unofficial%20ceasefire%20has%20kept,avert%20a%20return%20to%20war

76 ACAPS. 2017. Rohingya influx since 1978. ACAPS. Retrieved from: https://reliefweb.int/report/bangladesh/historical-review-rohingya-influx-1978

77 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

78 Ibid.

79 UNHCR. 1979. Report of the United Nations High Commissioner for Refugees. UNHCR. Retrieved from: https://www.unhcr.org/excom/unhcrannual/3ae68c370/report-united-nations-high-commissioner-refugees.html

80 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

81 UNHCR Bangladesh. 1979. Report on the 1978-79 Bangladesh refugee Relief operation. Retrieved from: https://www.networkmyanmar.org/ESW/Files/Lindquist-Report.pdf

82 ACAPS. 2017. Rohingya influx since 1978. ACAPS. Retrieved from: https://reliefweb.int/report/bangladesh/historical-review-rohingya-influx-1978

83 Krishna, Nirmala. 2018. The Rohingya Plight: The Role of State and Non-State Actors. The Journal of Defence and Security; Kuala Lumpur, 9(1) 49-68. Retrieved from: https://www.proquest.com/openview/d8b9f5bb7369c68318d88f2f74d3fdb9/1?pq-origsite=gscholar&cbl=1456373

84 International Crisis Group. 2022. Avoiding a return to war in Myanmar's Rakhine State. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/325-avoiding-return-war-myanmars-rakhine-state#:~:text=An%20unofficial%20ceasefire%20has%20kept,avert%20a%20return%20to%20war

85 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

86 United States Bureau of Citizenship and Immigration Services, *Burma [Myanmar]: Information on Rohingya refugees*, 7 December 1999, MMR00001.ZNK. Retrieved from: https://www.refworld.org/docid/3ae6a6a41c.html

escalated into countrywide anti-Muslim violence.[87] Violence continued over the next five years, resulting in large movements of Rohingya to Bangladesh, India,[88] and Malaysia.[89] In 2016 and 2017, Rohingya militants led attacks on Myanmar police posts, precipitating a renewal of Tatmadaw aggression against Rohingya communities.[90] The military crackdown is responsible for the displacement of over 770,000 Rohingya into Bangladesh and beyond.[91,92]

The now 860,000 Rohingya in Bangladesh live in worsening conditions. Within refugee camps, outbreaks of COVID-19, increased movement restrictions, and escalated gang violence contribute to instability.[93, 94, 95] Trafficking syndicates operate around and within camps with networks stretching into Thailand, Myanmar, and Malaysia. Rohingya residents face harassment from government officials through including the confiscation of goods, suspension of internet access, and destruction of shops.[96] The majority of Rohingya residing in makeshift settlements are also at risk of fires and exposure to cyclones, floods, and landslides.[97]

The discovery of over 140 Rohingya mass graves along the Thai-Malaysia border in 2015 had led to a series of crackdowns on trafficking and smuggling networks by national governments across the region. Due to high risks of arrest, traffickers and smugglers prioritise the recruitment of Rohingya who are able to pay for the voyage up-front.[98] Some traffickers promise to transport Rohingya to host countries such as Malaysia, but instead disembark Rohingya on nearby islands after receiving payment.[99] Traffickers in Bangladeshi camps sell Rohingya girls into prostitution or child marriage after luring them with false promises of work in host countries.[100] Between January 2020 and June 2021, more than 3,000 Rohingya attempted the journey across the Bay of Bengal and Andaman Sea: 2,443 disembarked, 218 died or went missing, and 385 are in unknown locations.[101]

In December 2020, the Government of Bangladesh, citing congestion in Cox's Bazar, unilaterally initiated the relocation of Rohingya refugees to Bhasan Char Island, without coordination with invested actors - including the United Nations. Bhasan Char is afflicted by food shortages, a lack of reliable water sources, minimal access to education and health care, and high exposure to cyclones, storm surges, and floods.[102] Human Rights Watch found that Bhasan Char placed Rohingya at risk, and experts raised concerns over the 'voluntariness' of Rohingya relocation from Cox's Bazar.[103, 104]

The Government of Bangladesh only officially recognises Rohingya refugees who arrived in Bangladesh before 1992. In 1992, the Government of Bangladesh discontinued refugee registration for Rohingya, and currently considers post-1992 arrivals as Forcibly Displaced Myanmar Nationals.[105]

Bangladesh has not ratified the 1951 Convention or its 1967 Protocol but is signatory to several other international laws and instruments that provide a framework for refugee and migrant protection. These include the 2016 Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime, the 1987 Convention against Torture, the 1945 UN Charter, and the 1966 Bangkok Principles on the Status and Treatment of Refugees. In line with the 1951 Convention, Bangladesh's Supreme Court ruled non-refoulment as customary international law, and therefore binding.[106, 107] The Constitution of Bangladesh provides additional safeguards for the legal protection of non-citizens, such as respect for international common law, as long as it does not go against national laws; supporting oppressed people against racism in all parts of the world, protection of life and liberty; and the right

87 International Crisis Group. 2012. Myanmar Conflict Alert: Preventing Communal Bloodshed and Building Better Relations. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-conflict-alert-preventing-communal-bloodshed-and-building-better-relations

88 While Rohingya displacement to India has been recorded and continues, India is not a focus for this research.

89 UNHCR. 2016. Mixed movements in South-East Asia. UNHCR. Retrieved from: https://reporting.unhcr.org/sites/default/files/UNHCR%20-%20Mixed%20Movements%20in%20South-East%20Asia%20-%202016%20--%20April%202017_0.pdf

90 BBC. 2020. Myanmar Rohingya: What you need to know about the crisis. BBC. Retrieved from: https://www.bbc.com/news/world-asia-41566561

91 Mixed Migration Centre. 2021. Mixed Migration review 2021. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/11/Mixed-Migration-Review-2021.pdf

92 UNHCR. 2022. Myanmar Refugees. UNHCR. Retrieved from: https://data.unhcr.org/en/situations/myanmar_refugees

93 Source: PRRiA written input on draft report (29-09-2022).

94 United Nations News. 2022. Number of internally displaced in Myanmar doubles, to 800,000. UN News. Retrieved from: https://news.un.org/en/story/2022/02/1111812#:~:text=Some%20600%2C000%20stateless%20Rohingya%20in,to%20support%20the%20vulnerable%20communities

95 UNICEF. n/d. Rohingya Refugee Crisis. UNICEF. Retrieved from: https://www.unicef.org/bangladesh/en/rohingya-refugee-crisis#:~:text=There%20are%20now%20860%2C000%20Rohingya,further%20humanitarian%20crisis%20was%20averted

96 Human Rights Watch. 2022. Bangladesh: New Restrictions on Rohingya Camps. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2022/04/04/bangladesh-new-restrictions-rohingya-camps

97 Human Rights Watch. 2021. An Island Jail in the Middle of the Sea. Human Rights Watch. Retrieved from: https://www.hrw.org/report/2021/06/07/island-jail-middle-sea/bangladeshs-relocation-rohingya-refugees-bhasan-char

98 Routray, Bibhu. 2019. Onwards Malaysia. Rohingya focused Human Trafficking Networks. Mantraya. Retrieved from: http://mantraya.org/wp-content/uploads/2019/06/Mantraya-Special-Report_Onwards-Malaysia-Rohingya-focused-Human-Trafficking-Networks.pdf

99 Ibid.

100 Ibid.

101 UNHCR. 2021. Left Adrift at Sea. UNHCR. Retrieved from: https://reliefweb.int/report/myanmar/left-adrift-sea-dangerous-journeys-refugees-across-bay-bengal-and-andaman-sea-january

102 Ibid.

103 USAID. 2020. Burma and Bangladesh-Regional Crisis Response. USAID. Retrieved from: https://www.usaid.gov/sites/default/files/documents/2020_12_21_USG_Burma_and_Bangladesh_Regional_Crisis_Response_Fact_Sheet_2.pdf

104 Human Rights Watch. 2021. An Island Jail in the Middle of the Sea. Human Rights Watch. Retrieved from: https://www.hrw.org/report/2021/06/07/island-jail-middle-sea/bangladeshs-relocation-rohingya-refugees-bhasan-char

105 Dempster, et al. 2021. Few Rights and Little Progress: The Rohingya in Bangladesh. Center for Global Development. Retrieved from: https://www.cgdev.org/blog/few-rights-and-little-progress-rohingya-bangladesh

106 Refugee Solidarity Network. 2021. Beyond Refuge Advancing Legal Protections for Rohingya Communities in Bangladesh. Refugee Solidarity Network. Retrieved from: https://refugeesolidaritynetwork.org/reports/beyond-refuge-advancing-legal-protections-for-rohingya-communities-in-bangladesh/

107 Ibid.

to protection of law.[108, 109]

Potential for Repatriation. Myanmar's 1982 Citizenship Law is still in effect and the de facto military authorities, otherwise known as the State Administrative Council (SAC),[110] considers Rohingya as illegal immigrants.[111] The current leader of the SAC, Min Aung Hlaing,[112] was acting general of Myanmar's official armed forces, the Tatmadaw, during the 2016-2017 Rohingya ethnic cleansing. Notwithstanding international condemnation and sanctions, the prospect for improvement in the human rights situation remains low under the current administration. [113]

In 2019 The Gambia filed a case against Myanmar in the International Court of Justice (ICJ) alleging Myanmar's offences against Rohingya violated the Convention on the Prevention and Punishment of the Crime of Genocide.[114] The United States in March 2022 designated the acts as 'genocide.'[115] The ICJ has since issued an injunction against Myanmar and has ordered Myanmar to cease ethnic cleansing against Rohingya. As a signee to the Genocide Convention, an ICJ ruling that sides with The Gambia would – in theory – require Myanmar to abide by the court's decision.[116] However, compliance is often weak due to the lack of enforcement power by the ICJ. Myanmar continues to deny allegations of genocide against the Rohingya and filed objections to the ICJ ruling, which were later rejected.[117]

The Arakan Army (AA) is a Buddhist Rakhine ethnic minority group formed in 2009 to fight for the self-determination of the Arakanese people through the creation of an autonomous government in Rakhine.[118] Since 2021, the AA has consolidated power in Rakhine due to the Tatmadaw's focus on countrywide civil conflict and the informal 2020 ceasefire agreement. The AA also seeks to improve relations with the Rohingya by providing them protection, social services, and positions in local administration.[119, 120]

From February 2021 to December 2021, UNHCR reported minimal movement of Rohingya out of Rakhine to Bangladesh.[121] As of February 2022, the number of Rohingya facing displacement in Rakhine remained low.[122] The slowing of movement out of Rakhine is partly attributable to the AA's non-enforcement of Tatmadaw restrictions, which is enabling access to public services and greater mobility in some Rohingya communities.[123] Factors such as movement restrictions from COVID-19 lockdowns contribute to the slowing of Rohingya leaving Rakhine as well.[124] However, the AA-Tatmadaw ceasefire is tenuous, and the intensity and frequency of clashes between the Myanmar Armed Forces and AA is growing. The political uncertainties may contribute to further displacement in Rakhine or discourage repatriation of Rohingya.

After the large-scale forced displacement of Rohingya refugees in 1978 and 1991, the Bangladeshi government has sought the swift repatriation of Rohingya to Myanmar.[125] Between 1978 and 1979, 187,250 refugees were repatriated to Rakhine.[126] Between 1993 and 1997, a Memorandum of Understanding (MoU) between the Government of Bangladesh and the Government of Myanmar has led to the repatriation of around 236,000 Rohingya with evidence of past residence in Myanmar. However, there are concerns over the extent to which Rohingya repatriation was voluntary.[127]

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108 Hossain, Sanjeeb. 2021. Bangladesh's judicial encounter with the 1951 Refugee Convention. Forced Migration Review. Retrieved from: https://www.fmreview.org/issue67/hossain

109 Refugee Solidarity Network. 2021. Beyond Refuge Advancing Legal Protections for Rohingya Communities in Bangladesh. Refugee Solidarity Network. Retrieved from: https://refugeesolidaritynetwork.org/reports/beyond-refuge-advancing-legal-protections-for-rohingya-communities-in-bangladesh/

110 The majority of the international community does not recognise SAC as the legitimate government.

111 Hossain, Mohammad. 2021. Myanmar junta leader casts doubt on return of Rohingya. 2021. Reuters. Retrieved from: https://www.reuters.com/world/asia-pacific/myanmar-junta-leader-casts-doubt-return-rohingya-2021-05-24/

112 The US and UK issued sanctions against Min Aung Hlaing for human rights violations in 2019 and 2020, respectively.

113 BBC. 2021. Myanmar Coup: Min Aung Hlaing, the general who seized power. BBC. Retrieved from: https://www.bbc.com/news/world-asia-55892489

114 Human Rights Watch. 2022. Developments in Gambia's Case Against Myanmar at the International Court of Justice. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justice

115 US Department of State. 2022. Genocide, Crimes Against Humanity and Ethnic Cleansing of Rohingya in Burma. US Department of State. Retrieved from: https://www.state.gov/burma-genocide/

116 Human Rights Watch. 2022. Developments in Gambia's Case Against Myanmar at the International Court of Justice. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justicee

117 HRW. 2022. World Court Rejects Myanmar Objections to Genocide Case. Retrieved from: https://www.hrw.org/news/2022/07/22/world-court-rejects-myanmar-objections-genocide-case

118 Htusan, Esther. 2020. Briefing: The growing emergency on Myanmar's newest battleground. The New Humanitarian. Retrieved from: https://www.thenewhumanitarian.org/news/2020/02/18/Myanmar-Rakhine-conflict-Arakan-army-displacement-internet-shutdown

119 Hlaing. Kyaw Hsan. 2021. Arakan Army Seeks to Build 'Inclusive' Administration in Rakhine State. The Diplomat. Retrieved from: https://thediplomat.com/2021/08/arakan-army-rebels-seek-inclusive-administration-in-rakhine-state/

120 International Crisis Group. 2022. Avoiding a return to war in Myanmar's Rakhine State. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/325-avoiding-return-war-myanmars-rakhine-state#:~:text=An%20unofficial%20ceasefire%20has%20kept,avert%20a%20return%20to%20war

121 UNHCR. 2022. Myanmar Emergency Update as of 6 July 2022. UNHCR. Retrieved from: https://reporting.unhcr.org/document/2795

122 UNHCR. 2022. Myanmar Emergency Update as of 1 February 2022. UNHCR. Retrieved from: https://data.unhcr.org/en/documents/details/90791

123 International Crisis Group. 2022. Avoiding a return to war in Myanmar's Rakhine State. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/325-avoiding-return-war-myanmars-rakhine-state#:~:text=An%20unofficial%20ceasefire%20has%20kept,avert%20a%20return%20to%20war

124 Source: PRRiA written input on draft report (29-09-2022).

125 Human Rights Watch. 2022. Bangladesh: New Restrictions on Rohingya Camps. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2022/04/04/bangladesh-new-restrictions-rohingya-camps

126 Abrar, C.R. 1994. Repatriation of Rohingya Refugees. Forced Migration Online. Retrieved from: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/Abrar-repatriation.htm

127 Crisp, Jeff. 2018. 'Primitive People': the untold story of UNHCR's historical engagement with Rohingya refugees. Humanitarian Practice Network. Retrieved from: https://odihpn.org/publication/primitive-people-the-untold-story-of-unhcrs-historical-engagement-with-rohingya-refugees/

About one million Rohingya refugees live dependent on aid across 31 camps in Bangladesh.[128] Almost half of the refugee population (450,000) are adolescents, 95 percent of whom are unemployed.[129] However, international attention and funding for Rohingya in Bangladesh continues to decrease. As of August 2022, the Rohingya humanitarian response has received 25 percent of annual funding needed, amounting to 35 cents per refugee per day.[130] The reduction in financing for Bangladesh and partners to host Rohingya and provide basic needs and services further strains Rohingya living conditions.

Despite facing challenges in Bangladeshi camps, many Rohingya do not wish to return to Myanmar. The conditions for safe return are increasingly distant, as the February 2021 military takeover and resulting conflict and insecurity has internally displaced approximately 866,000 people across Myanmar.[131] Negotiations between the governments of Myanmar and Bangladesh aim to repatriate about 700 Rohingya by the end of 2022.[132] Although repatriation to Myanmar has not started,[133] restoration of the process could place Rohingya amid Myanmar's tense and volatile situation, subjecting Rohingya to the risk of human rights abuses that previously catalysed displacement.[134, 135] With 2023 elections in Bangladesh looming, constituent demands for government action on Rohingya return is emerging as a political driver.

International and regional protection

International mechanisms

Of all Southeast Asian nations, only Cambodia and the Philippines are party to the 1951 Convention and its 1967 Protocol. A common explanation for this is that national governments fear that the adoption of legally binding agreements may affect state sovereignty.[136] Most countries argue that national laws are adequate to protect refugees or comply with the '*spirit*' of the 1951 Convention, Indonesia is an example.[137] See *Key takeaways 6: Relevant Policies at the National Level* for a full list of relevant national policies enacted and international frameworks adopted by countries examined at the national level.

Although the three countries under national level examination nominally respect common international law such as non-refoulment, none are signatory to international refugee protection frameworks. Therefore, refugee protection falls onto either regional agreements or national policies. These countries consistently abstain from adopting binding international agreements such as the 1951 Convention or 1967 Protocol, but still offer aspects of protection to refugees.

Non-party states often respect *non-refoulement* as a principle of customary international law. Under its mandate, UNHCR, one of the largest non-state actors in refugee protection, is often tasked with registering and providing identification documentation (ID) to refugees, ensuring protection and supervising the application of international protection instruments.[138] For example, UNHCR issued *Smart Cards* to over 500,000 Rohingya in Bangladesh to help access aid in camps.[139] UNHCR advocates for standardised procedures and the release of individuals from IDCs. Another non-state actor with responsibilities at the state level is the International Organisation for Migration (IOM). The IOM conducts health assessments of refugees while also working with the private and public sector to uphold rights for survivors of human and labour trafficking.

Non-state actors play state-like roles in some of the countries under review. In Indonesia, the IOM shelters more than half of all refugees and UNHCR's status determination interviews are a crux of the immigration process for asylum seekers and refugees. In Bangladesh, the IOM, with the Bangladeshi government, led the development of joint response plans (JRP). The 2022 JRP aims to achieve five objectives: work towards the sustainable repatriation of the Rohingya to Myanmar; strengthen the rights protections for Rohingya refugees; continue to provide the Rohingya with the humanitarian aid needed; mitigate tensions with the refugees and foster the wellbeing of the host areas; and manage disaster risks.[140]

The plight of the predominantly Muslim Rohingya is of concern to the Organisation of Islamic Coordination (OIC), who, since 2012, engages in the response to the Rohingya crises. The OIC launched a major international campaign aiming to eliminate violence against

128 UNHCR. n.d. Bangladesh. Retrieved from: https://www.unhcr.org/en-my/bangladesh.html
129 Norwegian Refugee Council. 2022. 'What About Us? Youth Inclusion in the Rohingya Response. NRC. Retrieved from: https://www.nrc.no/resources/reports/what-about-us/
130 Norwegian Refugee Council. 2022. One million Rohingya refugees are at a point of no return, as crisis marks five years. Norwegian Refugee Council. Retrieved from: https://www.nrc.no/news/2022/august/one-million-rohingya-refugees-are-at-point-of-no-return-as-crisis-marks-five-years/
131 Business-standard. 2022. Over 1.2 mn people remain displaced in Myanmar since Feb 2021: UN. Retrieved from: https://www.business-standard.com/article/international/over-1-2-mn-people-remain-displaced-in-myanmar-since-feb-2021-un-122080200587_1.html
132 Daily Bangladesh. 2022. Myanmar sends letter to Dhaka to take back Rohingyas. Daily Bangladesh. Retrieved from: https://m.daily-bangladesh.com/english/Myanmar-sends-letter-to-Dhaka-to-take-back-Rohingyas/70689
133 Human Rights Watch. 2022. Myanmar: No Justice, No Freedom for Rohingya 5 Years On. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2022/08/24/myanmar-no-justice-no-freedom-rohingya-5-years
134 International Crisis Group. 2022. Avoiding a return to war in Myanmar's Rakhine State. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/325-avoiding-return-war-myanmars-rakhine-state#:~:text=An%20unofficial%20ceasefire%20has%20kept,avert%20a%20return%20to%20war
135 International Crisis Group. 2022. Avoiding a return to war in Myanmar's Rakhine State. International Crisis Group. Retrieved from: https://www.crisisgroup.org/asia/south-east-asia/myanmar/325-avoiding-return-war-myanmars-rakhine-state#:~:text=An%20unofficial%20ceasefire%20has%20kept,avert%20a%20return%20to%20war
136 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816
137 Ibid.
138 Ibid.
139 UNHCR. 2019. More than half a million Rohingya refugees receive identity documents, most for the first time. UNHCR. Retrieved from: https://www.unhcr.org/news/briefing/2019/8/5d4d24cf4/half-million-rohingya-refugees-receive-identity-documents-first-time.html
140 Humanitarian Response. 2022. 2022 Joint Response Plan Rohingya Humanitarian Crisis. Humanitarian Response. Retrieved from: https://reliefweb.int/report/bangladesh/2022-joint-response-plan-rohingya-humanitarian-crisis-january-december-2022

the Rohingya in Myanmar and sought UN help in intervening to prevent genocide. Myanmar Buddhists rejected the OIC's attempt to establish a liaison office in the country.

CSOs and NGOs play critical roles in building relationships with Rohingya refugee communities, conducting research, spearheading direct assistance in communities, and advocating for improved conditions and outcomes for Rohingya. Organisations such as The Border Consortium (TBC) in Thailand organise food and aid provisions for refugees fleeing Myanmar to Thailand. CSOs including Nahdlatul Ulama and Muhammadiyah in Indonesia advocate with the Foreign Ministry on improving protection outcomes for Rohingya. Asylum Access Malaysia offers direct field legal services and trainings for refugees and asylum seekers. Please see the *Appendix 5: Key National and Local Actors at the National Levels* for a detailed account of stakeholders engaging in implementation and advocacy across the countries reviewed at the national level.

Trafficking and Smuggling. In response to '*coerced prostitution*' in the 1990s, there was a concerted push by states signatory to the Palermo Protocol to adopt laws to combat the trafficking of women and children.[141] As time progressed, introduced frameworks identified crimes on coerced sex work, child labour and other types of forced labour.[142] These international and interregional agreements set out to define trafficking and provide anti-trafficking frameworks that countries could adopt through national legislation. While Bangladesh, Indonesia, Malaysia, Myanmar, and Thailand are state parties to the Palermo Protocol,[143] implementation of the Protocol at national levels varies.

The Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention Against Organized Crime came into force in 2004 and focused on the prevention of organised criminal groups that abuse migrants. It requires ratifying countries to enact laws that criminalise smugglers, prevent smuggling in the first place while supporting the rights of the migrant. Indonesia and Myanmar have ratified this Protocol, while Bangladesh, Malaysia, and Thailand have not.[144]. These agreements have evolved to support the identification of when and where human trafficking is happening, prevent or punish human traffickers, and provide protections for the survivors of trafficking.

Regional frameworks for refugee protection

The first regional agreement related to refugee protection is the 1966 Bangkok Principles on the Status and Treatment of Refugees, adopted in 2001.[145] Thailand, Indonesia, Malaysia, Myanmar and Bangladesh are all part of the Asian African Legal Consultive Organisation which adopted this. The principles within are similar to the international agreements discussed above, such as with non-refoulment. Although the principles are non-binding, they provide the first development towards the rights of refugees in this region.

The concept of refugee protection in Southeast Asia (SEA) has roots in the Indochinese refugee crisis of the 1970s, during which three million asylum seekers and refugees were displaced from former French colonies of Indochina and majority were hosted in SEA countries and Hong Kong.[146] A Comprehensive Plan of Action (CPA) for Indochinese Refugees was produced in 1989 by the Steering Committee of the International Conference on Indo-Chinese Refugees that directed states to temporarily protect refugees, with the understanding that UNCHR would process and resettle or repatriate them.[147] Though the CPA formally ended in 1997, the agreement was an acclaimed example of international solidarity and responsibility sharing, contributed to resettlement of 507,000 Indochinese asylum seekers.[148] However, some critics have argued CPA states did not follow refugee screening guidelines and that the binary categorisation of genuine and non-genuine refugees produced a system of bias against asylum seekers.[149, 150]

Thailand, Indonesia, Myanmar and Malaysia are part of ASEAN – a regional grouping of ten Southeast Asian states. The ASEAN Chairmanship rotates annually among the ten member states, as do most ASEAN body chairs, including the chair of the ASEAN Intergovernmental Commission on Human Rights (AICHR). Although the Secretary-General serves a non-renewable five-year term and leads the ASEAN Secretariat in developing plans for approval and implementation, chairs receive one year to shape regional diplomacy and promote dialogue on pressing regional issues across all sectors.[151] The short appointment period inhibits meaningful decision-making on complex and controversial issues, often defaulting to decisions in line with principles of non-interference in internal affairs.[152, 153]

The 2012 adoption of the ASEAN Human Rights Declaration (AHRD) signalled affirmation and promotion of human rights in ASEAN Member States. The declaration asserts, '*the right to seek and receive asylum in another State in accordance with the laws of such State*

141 Kotiswaran, Prabha. 2019. Trafficking: A Development Approach, Current Legal Problems. 72(1) 375–416. Retrieved from: https://doi.org/10.1093/clp/cuz012
142 Ibid.
143 UNODC. 2021. The Protocol for human trafficking. Retrieved from: https://www.unodc.org/unodc/en/human-trafficking/protocol.html
144 UNODC. 2021. The Protocol for Migrant Smuggling. Retrieved from: https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/protocol.html
145 Asian-African Legal Consultative Organization (AALCO). 1966. Bangkok Principles on the Status and Treatment of Refugees ('Bangkok Principles'). Retrieved from: https://www.refworld.org/docid/3de5f2d52.html
146 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816
147 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi *Indonesia, 38(1).* Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
148 Davies, S. E. 2008. Realistic yet humanitarian? The comprehensive plan of action and refugee policy in Southeast Asia. International Relations of the Asia-Pacific, 8(2), 191-217.
149 UNHCR. 1996. Update on Regional Developments in Asia and Oceania. UNHCR. Retrieved from: https://www.unhcr.org/3ae68cf94.pdf
150 Davies, S. E. 2008. Realistic yet humanitarian? The comprehensive plan of action and refugee policy in Southeast Asia. International Relations of the Asia-Pacific, 8(2) 191–217. http://www.jstor.org/stable/26159483
151 ASEAN. n/d. What we do. ASEAN. Retrieved from: https://asean.org/what-we-do#asean-secretariat
152 Association of Southeast Asian Nations. 2008. ASEAN Charter. ASEAN Secretariat. Retrieved from: https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf
153 Council on Foreign Relations. 2022. What Is ASEAN. Council on Foreign Relations. Retrieved from: https://www.cfr.org/backgrounder/what-asean

and applicable international agreements.'[154] Responses to the AHRD adoption are mixed. Human rights advocates at the national, regional, and international levels criticise the AHRD as a declaration of government powers disguised as a declaration of human rights.[155] Proponents of the framework argue its severance from the international human rights landscape is symbolic of ASEAN state sovereignty.[156]

In 2019, the Thai government led ASEAN Member States in adopting the ASEAN Declaration on the Rights of Children in the Context of Migration. Within the children in migration context, the framework commits Member States to protect and fulfil the rights of children; ensure that the best interests of the child are a core consideration in migration policies and practices; develop ATD approaches for children; strengthen and safeguard children's access to protection, education, health, and justice; and increase cooperation on child and gender-sensitive border governance policies.[157] In 2021, ASEAN adopted the Regional Plan of Action on Implementing the Declaration (RPA). The RPA comprises a ten-year implementation timeframe, 23 activities and 41 indicators, and five focus areas, namely: 1) access to child protection services; 2) access to other basic services, such as education and health; 3) capacity development of key actors; 4) evidence generation; and 5) partnerships in implementing the Declaration.[158]

ASEAN does not have a humanitarian mandate. Aside from its Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre), it has limited experience in addressing complex humanitarian crises. ASEAN first worked as a regional body with the support of the international community to address the Indochinese refugee crisis in the 1980s and 1990s.[159] However, appetite for a long-term approach - such as establishing a regional body for refugee management - is low. In recent years, actions taken at both regional and national levels by ASEAN and its member states targeting the internal affairs of Myanmar represents an unprecedented step away from its common adherence to the principle of non-interference.[160, 161, 162]

The AHA Centre delivered humanitarian relief to Rakhine in October and December 2017, but has not supplied direct aid to Rakhine since.[163] In 2018, the Government of Myanmar invited the AHA Centre to conduct a needs assessment in Rakhine to identify potential opportunities for, and to facilitate, the repatriation of Rohingya.[164] While the AHA Centre conducted the Preliminary Needs Assessment (PNA) in 2019, the Comprehensive Needs Assessment was postponed due to growing conflict between the Tatmadaw and Arakan Army.[165]

At the 35th ASEAN Summit in 2019, Foreign Ministers established the Ad-Hoc Support Team of the ASEAN Secretariat to support the implementation of recommendations of the PNA. The three overarching PNA recommendations include seven priority projects (shown in *Table 5*) and focus on the provision of equipment for reception and transit centres in Rakhine, building infrastructure, and strengthening communication between officials and displaced persons to facilitate repatriation.[166]

Table 5. AHA Centre Preliminary Needs Assessment recommendations.[167]

No.	Recommendations of the PNR
1	To enhance the capacity of transit and reception centres, two priority projects: (i) Provision of equipment (e.g., Biometric scanners) at the reception centres and (ii) Establishment of child friendly and women friendly spaces at transit centre will be implemented.
2	For strengthening the information dissemination, another two projects: (i) Social media training for government officials and (ii) Distribution of FM Radios to Rakhine State communities including returnees will be carried out.
3	To achieve the improvement of the provision of basic services, three more projects including: (i) Infrastructure project focusing on roads access to essential services from transit and reception centres to livelihood facilities (e.g., Hospitals, markets), (ii) Provisions of agricultural equipment to facilitate agriculture work (iii) Establishment of fishponds to facilitate fisheries work.

154 Association of Southeast Asian Nations. 2012. ASEAN Human Rights Declaration. Association of Southeast Asian Nations. Retrieved from: https://asean.org/asean-human-rights-declaration/

155 Human Rights Watch. 2012. Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration. https://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration

156 Kvanvig, G. 2019. The Frenemies Within: Sovereignty and Human Rights in ASEAN. Shape SEA. Retrieved from: https://shapesea.com/wp-content/uploads/2019/04/Part-8-The-Frenemies-Within-Sovereignty-and-Human-Rights-in-ASEAN.pdf

157 ASEAN. 2022. ASEAN Framework on Protecting the Rights of Children in the Context of Migration. ASEAN. Retrieved from: https://migrationnetwork.un.org/system/files/event_files/Concept%20Note%20and%20Program%20IMRF%20Side%20Event%20on%20CCM_final.pdf

158 ASEAN. 2021. Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration. ASEAN. Retrieved from: https://asean.org/wp-content/uploads/2021/11/5.-ASEAN-RPA-on-CCM_Final.pdf

159 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816

160 Shukri, S. 2021. The Rohingya Refugee Crisis in Southeast Asia: ASEAN's Role and Way Forward. Journal of International Studies, 17 239-263. Retrieved from: https://doi.org/10.32890/jis2021.17.10

161 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816

162 ASEAN Coordinating Centre for Humanitarian Assistance. 2017. AHA Centre Delivers 80 Tons of Relief Materials to Rakhine State, Myanmar. AHA Centre. Retrieved from: https://ahacentre.org/press-release/aha-centre-delivers-80-tons-of-relief-materials-to-rakhine-state-myanmar/

163 ASEAN Parliamentarian for Human Rights. 2020. Assessing the Regional Response to Atrocities in Myanmar's Rakhine State. APHR. Retrieved from: http://aseanmp.org/wp-content/uploads/2020/11/ASEANs-Rakhine-Crisis_-APHR-Report-1.pdf

164 Ibid.

165 Eurasia Review. 2022. ASEAN And Its Chair Cambodia's Involvement In Rohingya Repatriation. Eurasia Review. Retrieved from: https://www.eurasiareview.com/15062022-asean-and-its-chair-cambodias-involvement-in-rohingya-repatriation-oped/

166 ASEAN Parliamentarian for Human Rights. 2020. Assessing the Regional Response to Atrocities in Myanmar's Rakhine State. APHR. Retrieved from: http://aseanmp.org/wp-content/uploads/2020/11/ASEANs-Rakhine-Crisis_-APHR-Report-1.pdf

167 Ibid.

Indonesia and the ASEAN Secretariat signed an agreement on the Implementation of the Government of Indonesia's Grant for the Repatriation of Displaced Persons to Myanmar. The USD 500,000 grant was intended to support the creation of an Ad-Hoc Support Team of the ASEAN Secretariat to help the Myanmar government in repatriating displaced persons.[168]

In response to the 2021 military takeover in Myanmar, ASEAN established a Five-Point Consensus (*Table 6*). Through the Consensus, ASEAN demanded the cessation of violence in Myanmar and announced its intention to send an envoy to Myanmar to mediate diplomatic discussions and facilitate humanitarian aid.[169] ASEAN has not achieved meaningful outcomes from the Five-Point Consensus, though this endeavour signalled a clear departure from the body's historic adherence to non-interference.[170]

Critics claim regional action plans and bodies are superficial and unfulfilled.[171]

Table 6. ASEAN Five-Point Consensus.[172]

No.	Points
1	Immediate cessation of violence in Myanmar and all parties shall exercise utmost restraint.
2	Constructive dialogue among all parties concerned shall commence to seek a peaceful solution in the interests of the people.
3	A special envoy of the ASEAN Chair shall facilitate mediation of the dialogue process, with the assistance of the Secretary General of ASEAN.
4	ASEAN shall provide humanitarian assistance through the AHA Centre.
5	The special envoy and delegation shall visit Myanmar to meet with all parties concerned.

In May 2022, ASEAN reaffirmed plans for the AHA Centre to consult with the Myanmar Task Force, CSOs, and international partners (e.g., UN agencies, Red Cross and Red Crescent Movement) to identify needs and provide humanitarian assistance in Myanmar states and regions including Kayah, Kagin, Magway, Saigang, and Bago.[173] This plan is explicitly mentioned in the Five-Point Consensus (*Table 6*).

In the absence of signatories to the UN Convention or Protocol in the region, and ASEAN providing little tangible support for refugees, the protection of refugees falls into the hands of governments, UN Agencies, INGOs, and civil society organisations. One of the largest actors in this space is the Asia Pacific Refugee Rights Network (APRRN).[174] Although APRRN's initial focus was on getting nations to sign and ratify the UN Convention and Protocol, they have switched their focus into building other frameworks.[175] This includes advocating and getting national policies passed, knowledge sharing between civil society groups and international organisations, and encouraging states to switch from a security-based approach to a rights-based approach on refugee protection.[176] In an advocacy role, APRRN pushed for the strengthening of language and policy under the Thai government's NSM policy. APRRN's efforts contributed to the Thai government signing its MOU-ATD in 2019, and mediated consultation between refugee representatives and the All-Party Parliamentary Group Malaysia on refugee policy. With over 250 members organisations including advocacy groups, research institutions, law firms, and refugee groups, APRRN plays a key role in coordination through its thematic Working Groups and in conferences i.e., UNHCR's Annual NGO Consultations, on issues such as COVID-19, national policies, and strengthening collaboration.[177,178]

Transnational actors

The Bay of Bengal and Andaman Sea 'Crisis.' Between January and May 2015, more than 8,000 Rohingya asylum seekers and Bangladeshi migrants were found stranded in the Bay of Bengal and Andaman Sea. Smugglers abandoned the boats while maritime authorities in Indonesia, Malaysia, and Thailand initially responded with disapproval towards refugee arrivals.[179] In Indonesia, while Acehnese fishermen conducted rescues and communities welcomed Rohingya, Indonesian maritime officials initially refused entry

168 OHCHR. 2021. Indonesia's National Response in Ensuring Human Rights of Irregular Migrants, especially Refugees and Asylum Seekers. OHCHR. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/IndonesiaSubmission.pdf
169 Association of Southeast Asian Nations. 2021. Chairman's Statement on the ASEAN Leaders' Meeting. ASEAN. Retrieved from: https://asean.org/wp-content/uploads/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf
170 Human Rights Watch. 2022. Myanmar: ASEAN's Failed '5 Point Consensus' a year on. Human Rights watch. Retrieved from: https://www.hrw.org/news/2022/04/22/myanmar-aseans-failed-5-point-consensus-year
171 Ibid.
172 ASEAN. 2021. Chairman's Statement on the ASEAN Leaders' Meeting. Retrieved from: https://asean.org/wp-content/uploads/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf
173 ASEAN. 2022. Press Release on the Outcomes of the Consultative Meeting on ASEAN Humanitarian Assistance to Myanmar, 6 May 2022. ASEAN. Retrieved from: https://reliefweb.int/report/myanmar/press-release-outcomes-consultative-meeting-asean-humanitarian-assistance-myanmar-6
174 Choi, W.G. 2019. Asian Civil Society and Reconfiguration of Refugee Protection in Asia. Human Rights Review, 20 161–179. Retrieved from: https://doi.org/10.1007/s12142-019-0548-4
175 Ibid.
176 Ibid.
177 APRRN. 2020. APRRN Annual report 2020. APRRN. Retrieved from: https://drive.google.com/file/d/1xyyr1JJ-SIi50XhEO-FByAeU_U952BET/view
178 APRRN. 2019. APRRN Annual report 2019. APRRN. Retrieved from: https://drive.google.com/file/d/1LTBShbMNRVILEFADVj2zQuw83g9-1cxj/view
179 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747

and threatened pushback.[180, 181, 182] Though there were reports of a boat towed away from Indonesian waters, the Foreign Ministry emphasised a pushback policy was inexistent.[183, 184, 185] In Malaysia and Thailand, maritime and government officials, including then Malaysian Deputy Home Minister Wan Junaidi Jafaar and Thai Prime Minister Prayut Chan-o-cha defended the right to deny entry to Rohingya and Bangladeshi individuals.[186] Rohingya and Bangladeshis were stranded at sea, with at least 370 dying of starvation and disease.[187] The regional community, including ASEAN, stayed silent during the pushbacks.[188]

International backlash on the state of the humanitarian crisis and pushback policies pressured Indonesia, Malaysia, and Thailand to change their approach.[189] These countries assumed some national responsibility, while placing long-term humanitarian obligation in international and non-state hands. In a joint statement at the Ministerial Meeting on Irregular Movement of People in Southeast Asia 2015, the countries agreed to address the root causes of 'irregular movement' and uphold responsibilities and obligations under international law (and in accordance with national law) regarding protection for asylum seekers.[190] The foreign ministers of all three countries underscored, however, that they had gone beyond their international obligations and regional action was needed for a more sustainable solution.[191] Foreign ministers called on the international community to take responsibility for repatriation and humanitarian support and requested that ASEAN establish a regional framework focused on trafficking and survivor assistance.[192]

As a result of a May 2015 meeting of Malaysia, Thailand, and Indonesia in Putrajaya, Indonesia and Malaysia undertook search and rescue efforts and provided temporary shelter with the expectation that the international community would provide financial support and resettle or repatriate refugees within a year.[193] Thailand refrained from making such commitments on temporary shelter but supported rescue efforts.[194]

Addressing Rohingya protection needs became more imperative in 2015, with the discovery of mass graves linked to smuggling and trafficking along the Thai and Malaysia border in May of the same year. Malaysia called for an ASEAN meeting that led to Myanmar's increased cooperation with ASEAN and increased humanitarian access to Rohingya in Myanmar.[195] In response to the 2015 Andaman Sea Crisis, ASEAN adopted the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).[196] Using the same definitions set out in the Palermo Protocol, this agreement created a legal instrument within ASEAN to coordinate efforts against trafficking in persons, with a special focus on protecting women and child survivors of trafficking. This agreement did not support the establishment of an effective regional mechanism on maritime movement, however.

The Bali Process, created in 2002, is voluntary, inclusive, and non-binding. It has six main goals: intelligence sharing, cooperation among law enforcement, increasing public awareness to discourage trafficking, enactment of national legislation to criminalise smuggling and trafficking, protection for trafficking survivors, and developing best practices for asylum management. Critics have claimed The Bali Process is excessively security oriented, which makes mobility difficult for refugees and asylum seekers.[197] All countries discussed in this report are members of the Bali Process: Indonesia (along with Australia) is one of two co-chairs, and Thailand and Indonesia lead the steering group, along with New Zealand and Australia.

The Andaman Sea Crisis highlighted the need for regional coordination, a way to address protection of refugees, and the interconnection between smuggling and trafficking that traverse borders.[198] Following ASEAN's Sixth Ministerial Conference in March 2016, the Bali Process co-chairs led a review on the Andaman Sea Crisis which noted uncoordinated response to the crises. The

180 Ibid.
181 United Nations. 2015. UN voices alarm over 'pushbacks' of boats carrying migrants in Southeast Asia. https://news.un.org/en/story/2015/05/498622-un-voices-alarm-over-pushbacks-boats-carrying-migrants-southeast-asia
182 Human Rights Watch. 2015. Southeast Asia: End Rohingya Boat Pushbacks. Retrieved from: https://www.hrw.org/news/2015/05/14/southeast-asia-end-rohingya-boat-pushbacks
183 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
184 United Nations. 2015. UN voices alarm over 'pushbacks' of boats carrying migrants in Southeast Asia. https://news.un.org/en/story/2015/05/498622-un-voices-alarm-over-pushbacks-boats-carrying-migrants-southeast-asia
185 Human Rights Watch. 2015. Southeast Asia: End Rohingya Boat Pushbacks. https://www.hrw.org/news/2015/05/14/southeast-asia-end-rohingya-boat-pushbacks
186 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
187 Heiduk, F. & Missbach, A. 2020. Risking Another Rohingya Refugee Crisis in the Andaman Sea. Stiftung Wissenschaft und Politik. 30, 1-4. Retrieved from: https://nbn-resolving.org/urn:nbn:de:0168-ssoar-68835-0
188 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
189 Ibid.
190 Reliefweb. 2015. Joint statement: Ministerial meeting on irregular movement of people in Southeast Asia. Retrieved from: https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia
191 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
192 Reliefweb. 2015. Joint statement: Ministerial meeting on irregular movement of people in Southeast Asia. Retrieved from: https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia
193 Source: PRRiA written input on draft report (29-09-2022).
194 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
195 Shukri, S. 2021. The Rohingya Refugee Crisis in Southeast Asia: ASEAN's Role and Way Forward. Journal of International Studies 17 239-263. Retrieved from: https://doi.org/10.32890/jis2021.17.10
196 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
197 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816.
198 Shukri, S. 2021. The Rohingya Refugee Crisis in Southeast Asia: ASEAN's Role and Way Forward. Journal of International Studies, 17 239-263. Retrieved from: https://doi.org/10.32890/jis2021.17.10

Conference highlighted the need for a regional mechanism which would lead to accountability and contingency planning at the national to sub-regional levels to handle mass displacement.[199]

Led by Indonesia and Australia, the Bali Process developed the Bali Declaration in 2016 and the Task Force on Planning and Preparedness in 2017.[200] Framed in state-centric language with a focus on voluntary, nonbinding agreement, both reaffirmed regional and international commitments to addressing the needs of Rohingya refugees. It reiterated the Bali Process objectives and importantly gave the permanent co-chairs the ability to meet and respond to urgent issues.[201] It explicitly mentioned refugees and increased focus on the survivors of trafficking.[202] However, in 2017, during the displacement of hundreds of thousands of Rohingya from Myanmar, the Bali Process lacked the policy and operational capacity necessary to respond effectively and played little to no role in crisis response.[203]

2.4 National Contexts

Thailand

Defining refugees

Despite hosting close to 100,000 refugees,[204] the Thailand does not have a national legal framework for refugees and does not provide legal status to refugees.[205, 206] Under the Immigration Act of 1979, the Thai government considers asylum seekers and refugees 'illegal immigrants.'[207, 208] While the Thai government places non-Rohingya refugees from Myanmar in government-operated shelters along the Thailand-Myanmar border, it does not allow Rohingya refugees to stay in these camps. Instead, Rohingya refugees live in urban areas or are held in IDCs and closed shelters indefinitely.[209] As of June 2022, it was estimated that the Thailand holds over 470 Rohingya in IDCs.[210] In the absence of a mechanism to identify and monitor Rohingya refugees and asylum seekers in Thailand, the exact number of Rohingya in Thailand is difficult to determine.

Connection to regional and international frameworks

Thailand is neither a party to the 1951 Convention nor its 1967 Protocol. However, it is a signatory to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Palermo Protocol, and seven other core international human rights instruments.[211] Both the CAT and the ICCPR enshrine the principle of *non-refoulment*, but apart from refugees in formal shelters, the Thai government inconsistently respects *non-refoulment* vis-a-vis Rohingya refugees and has returned Rohingya. Between 2015 and 2020, the Thai government committed twelve known cases of*refoulement*.[212,213]

During a review of its obligations under the ICCPR in 2017, Thailand reaffirmed its commitment to '*humanitarianism and to take care of various groups of irregular migrants*.'[214] The following year, the Thai government adopted the Global Compact for Safe, Orderly and Regular Migration (GCM) and endorsed the Global Compact on Refugees (GCR).[215] The Thai government made commitments around both compacts (see *Table 8* for an overview of the Thai government's GCR commitments).

In 2018 Thailand became the first nation in Southeast Asia to ratify the International Labour Organisation's (ILO) Forced Labour

199 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747
200 Ibid.
201 Ibid.
202 Moretti, S. 2022. The Protection of Refugees in Southeast Asia: A Legal Fiction? (1st ed.). Routledge. Retrieved from: https://doi.org/10.4324/9781003243816.
203 UNSW Sydney. 2020. Andaman Sea Crisis: Is the region really better off in 2020? Andrew & Renata Kaldor Centre for International Refugee Law, UNSW Sydney. Retrieved from: https://www.kaldorcentre.unsw.edu.au/publication/andaman-sea-crisis-region-really-better-2020
204 UNHCR. n.d. Thailand. Retrieved from: https://www.unhcr.org/en-my/thailand.html
205 UNHCR. 2022. Thailand Factsheet (31 March 2022). UNHCR. Retrieved from: https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022-1.pdf
206 Amnesty International. 2017. Thailand: Between a Rock and a Hard Place. Amnesty International. Retrieved from: https://www.amnesty.org/en/latest/news/2017/09/refugees-in-thailand-forcibly-returned-to-danger/
207 Thanawattho, et al. 2021. Advancing refugee rights in non-signatory States: the role of civil society in Thailand. Forced Migration Review. Retrieved from: https://www.fmreview.org/issue67/thanawattho-rungthong-arnoldfernandez
208 US Commission on International Religious Freedom. 2020. Factsheet: Rohingya Refugees [October 2020]. USCIRF. Retrieved from: https://www.uscirf.gov/publication/factsheet-rohingya-refugees
209 Human Rights Watch. 2015. Unwanted and Unprotected. Human Rights Watch. Retrieved from: https://www.hrw.org/legacy/reports98/thai/Thai989-02.htm
210 Human Rights Watch. 2022. Thailand: Allow Newly Arrived Rohingya Access to Asylum. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2022/06/07/thailand-allow-newly-arrived-rohingya-access-asylum
211 UN Declaration on Human Rights; Protocol against the Smuggling of Migrants by Land, Sea, and Air; The International Covenant on Economic, Social and Cultural Rights; The Convention on the Elimination of All Forms of Discrimination against Women; The Convention on the Rights of the Child; The Convention on the Elimination of All Forms of Racial Discrimination; and The Convention on the Rights of Persons with Disabilities.
212 UNHCR. 2020. Submission by UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report. Universal Periodic Review: 3rd Cycle, 39th Session.
213 Equal Rights Trust. 2014. The Human Rights of Stateless Rohingya in Thailand. Equal Rights Trust. Retrieved from: https://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf
214 Amnesty, APRRN, Asylum Access. 2019. Ensure New Refugee Regulation Meets International Standards. Joint Secretariat. Retrieved from: https://reliefweb.int/report/thailand/ensure-new-refugee-regulation-meets-international-standards
215 Ibid.

Protocol, which requires signatory states to engage in prevention and suppression of forced labour activities, and protect, rehabilitate, and provide survivors regardless of legal status with access to support and remedies.[216] In 2019, Thailand was the first country in the region to ratify the ILO Convention on Work in Fishing, which establishes acceptable minimum standards that protect working conditions of fishers and aims to reduce trafficking and labour abuses.[217] This coincided with the European Commission's decision to revoke its 'yellow card' from Thailand - a status applied in 2015 that signalled the Thai government's failure in combatting illegal, unreported, and unregulated fishing.[218]

Thailand has implemented regional legal mechanisms, including the 2004 MoU on Cooperation Against Trafficking in the Greater Mekong Sub-Region and the 2017 Coordinated Mekong Ministerial Initiative against Human Trafficking.[219] Thailand adopted the AHRD in 2012.[220, 221] It is also a member of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), which advocates for protecting refugee rights within ASEAN member states.[222]

National policy and response

Protection. National policies toward refugees have fluctuated since the 1990s. The Cabinet of Thailand adopted resolutions between 1992 and 1999 that supported registration of undocumented migrants including refugees to supply demands for unskilled labour.[223] Faced with an economic crisis in 1997, the Thai government withdrew the policies and initiated deportations of Myanmar refugees. The Thai government doubled down on its strict measures toward refugees in 1998 with the enactment of a policy to arrest and detain undocumented migrants under the guise of protecting national security.[224] In 2004, the Thai government suspended UNHCR's permission to conduct officially recognised RSD interviews, preventing newly arrived refugees from registration.[225, 226]

In line with its commitment to the Convention on the Rights of the Child, the Thai Cabinet expanded on its 1999 Education for All Policy and passed the 2005 Resolution on Education for Unregistered Persons. The 2005 Resolutions allows stateless persons access to basic education.[227]

In 2008, Thailand facilitated mass deportations and introduced its 'pushback' policy, which saw the Ministry of Foreign Affairs (MoFA) authorise the Royal Thai Navy to give minimal supplies to nearby refugee boats before forcing the vessels back to sea.[228, 229, 230] Under the 'help-on' policy, the Thai government continually violated the principle of *non-refoulment and* held some Rohingya in IDCs for up to six months.[231] In recent years, the Thai government and Royal Thai Navy have detained and prosecuted journalists who report on Rohingya push back practices.[232]

In response to the rise of Rohingya entry into Thailand following the escalated violence in Rakhine in 2012, the Thai government set forth 'temporary protection' policy that places Rohingya in IDCs and shelters based on age and sex. The Thai government places men and boys in IDCs, while women and girls live in closed shelters managed by the Ministry of Social Development and Human Security (MSDHS).[233] This policy separates families, places unaccompanied boys with incarcerated adult men. Many Rohingya who escape IDCs

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216 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf

217 ILO. 2007. C188 - Work in Fishing Convention, 2007 (No. 188). ILO. Retrieved from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

218 European Commission. 2019. Commission lifts 'yellow card' from Thailand for its actions against illegal fishing. European Commission. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61

219 Chantavanich, S. 2020. Thailand's Challenges in Implementing Anti- Trafficking Legislation: The Case of the Rohingya. Journal of Human Trafficking, 6(2) 234-243. Retrieved from: http://doi.org/10.1080/23322705.2020.1691825

220 Association of Southeast Asian Nations. 2012. ASEAN Human Rights Declaration. ASEAN. Retrieved from: https://asean.org/asean-human-rights-declaration/

221 Doyle, Nicholas. 2014. The ASEAN Human Rights Declaration and The Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting. The International and Comparative Law Quarterly, 63(1) 67-101. Retrieved from: http://www.jstor.org/stable/43301967

222 Association of Southeast Asian Nations. 2018. The ASEAN Commission on The Promotion and Protection of The Rights of Women and Children (ACWC) Work Plan 2016-2020. Association of Southeast Asian Nations. Retrieved from: https://asean.org/wp-content/uploads/2018/12/37.-December-2018-The-ASEAN-Commission-on-the-Promotion-and-Protection-of-the-Rights-of-Women-and-Children-ACWC-Work-Plan-2016-20-20.pdf

223 Yesmin, Sultana. 2016. Policy Towards Rohingya Refugees: A Comparative Analysis of Bangladesh, Malaysia, and Thailand. Journal of the Asiatic Society of Bangladesh (Hum.) 61(1). Retrieved from: http://cgsdu.org/wp-content/uploads/2019/03/4-H_883.pdf

224 Ibid.

225 Committee for Coordination of Services to Displaced Persons in Thailand. 2022. CCSDPT About. Committee for Coordination of Services to Displaced Persons in Thailand. Retrieved from: http://www.ccsdpt.org/#about

226 Human Rights Watch. 2012. Ad Hoc and Inadequate. Human Rights Watch. Retrieved from: https://www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers

227 Chandran, Rita. 2018. No name, no rights: the long road to Thai citizenship. Thomson Reuters Foundation. Retrieved from: https://www.reuters.com/article/us-thailand-refugees-rights/no-name-no-rights-the-long-road-to-thai-citizenship-idUSKCN1MD035

228 BBC. 2015. Migrants rescued from sinking boat off Indonesia's Aceh. BBC. Retrieved from: https://www.bbc.com/news/world-asia-32747616

229 Fortify Rights. 2019. Thailand: Prevent the Detention of Rohingya Refugees and Survivors of Human Trafficking. Fortify Rights. Retrieved from: https://www.fortifyrights.org/tha-inv-2019-06-12/

230 Human Rights Watch. 2017. Thailand: Implement Commitments to Protect Refugee Rights. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2017/07/06/thailand-implement-commitments-protect-refugee-rights#:~:text=Thailand%20has%20implemented%20a%20%E2%80%9Chelp,of%20people%20out%20to%20sea

231 Yesmin, Sultana. 2016. Policy Towards Rohingya Refugees: A Comparative Analysis of Bangladesh, Malaysia, and Thailand. Journal of the Asiatic Society of Bangladesh (Hum.) 61(1). Retrieved from: http://cgsdu.org/wp-content/uploads/2019/03/4-H_883.pdf

232 Lefevre, Amy. 2014. Reporters charged with defamation remanded on bail in Thailand. Reuters. Retrieved from: https://www.reuters.com/article/thailand-rohingya-journalists-idINL3N0N90X620140417

233 Human Rights Watch. 2014. Thailand: Protect Rohingya Boat Children. Human Rights Watch. Retrieved from: https://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children

and closed shelters fall victim to trafficking and smuggling rings.[234]

The governments of Thailand and Myanmar, with support from UNHCR, developed the Facilitated Voluntary Return (FVR) programme in 2016 to help willing Myanmar refugees repatriate. However, Rohingya refugees are not eligible for FVR services due to the Myanmar government's refusal to recognise the citizenship of Rohingya.[235]

The Thai Cabinet in 2019 approved the establishment of a NSM. The design of the NSM enables the determination of refugee and asylum claims but avoids commitment to uphold the international definition of a refugee. Due to exclusions for certain demographic groups in clause 15 of the NSM, refugee organisations speculate that the Thai government will deem Rohingya as a national security threat and prohibit access to the NSM.[236] Clause 15 of the NSM states:[237] '…if the competent official or government official discovers an alien claiming to have a reasonable ground to be a Protected Person, the repatriation of such alien shall be deferred, except where national security is threatened.' The Thai government invited CSOs to help train government officials on conducting NSM status determinations. However, delays to the implementation of the NSM make its impact as yet unknown.[238, 239]

Anti-Trafficking/Smuggling. The Thai government adopted the Measures in Prevention and Suppression of Trafficking in Women and Children Act (MPSTWCA) in 1997, replacing the Trafficking in Women and Girls Act of 1928. The 1997 Act prohibited the buying, selling, sending, receiving, or detaining any woman or child.[240] It also criminalised the arrangement of sexual conduct with women and children.[241] Under the MPSTWCA, the Thai police were authorised to inspect and monitor places prone to trafficking, including areas of transport arrival and departure, entertainment venues, factories, and public spaces. The MPSTWCA set a framework to protect, assist, and shelter survivors of trafficking. Individuals found guilty of trafficking were punishable by imprisonment of up to five years and/or a fine of up to 10,000 Thai Baht (USD 280).[242]

Pressured by revelations in a US State Department Trafficking in Persons report demonstrating that Thailand did not achieve minimum standards to reduce human trafficking, the Thai government enacted the Anti-Trafficking in Persons (ATIP) Act in 2008, replacing the 1997 MPSTWCA.[243] The ATIP Act increases the severity of punishment for traffickers with four to ten years imprisonment and fines between 80,000-200,000 Thai Baht (USD 2,200-5,600).[244]

The ATIP Act appoints the MSDHS as the main agency responsible for the implementation of anti-trafficking activities. It also names the MSDHS as the secretariat for the Anti-Trafficking in Persons Committee.[245, 246] The ATIP Act tasks the MSDHS with coordinating the work of *ad hoc* multi-disciplinary teams (MDTs). MDTs include police officers, immigration officers, social workers, attorneys, labour protection officials, and members of civil society organisations.[247, 248] The function of MDTs is to receive incident reports, determine the status of trafficked survivors, participate in rescue operations, and transfer survivors of trafficking to shelters.[249]

Under Chapter 4 of the ATIP Act, survivors of trafficking have access to protection, rehabilitation, medical treatment, compensation, and the right to work.[250] ATIP Act amendments in 2015 and 2017 extended protections to survivors of trafficking, including through placement in shelters instead of IDCs.[251]

234 Szep, J. & Grudgings, S. 2013. Preying on the Rohingya. Reuters. Retrieved from: http://graphics.thomsonreuters.com/13/07/MYANMAR-ROHINGYAS.pdf

235 UNHCR. 2022. Thailand Factsheet (31 March 2022). UNHCR. Retrieved from: https://www.unhcr.org/th/wp-content/uploads/sites/91/2022/04/UNHCR-Thailand-Fact-Sheet_31-March-2022-1.pdf

236 Asia Pacific Refugee Rights Network. 2021. NSM Assessment Report. APRRN. Retrieved from: https://www.ebooksflip.com/Ebook/NSM-EN/files/downloads/NSM-Assessment-Report-EN.pdf

237 Royal Thai Government. 2019. Thailand: Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562. Thai government. Retrieved from: https://www.refworld.org/country,,,LEGISLATION,THA,,5e675a774,0.html

238 Asia Pacific Refugee Rights Network. 2020. Press release: Thailand quietly delays implementation of refugee screening mechanism. Asia Pacific Refugee Rights Network. Retrieved from: https://reliefweb.int/report/thailand/press-release-thailand-quietly-delays-implementation-refugee-screening-mechanism

239 Banerjee, Sreeparna. 2022. The Displacement Challenge Faced by Thailand, Courtesy of Myanmar. Retrieved from: https://www.orfonline.org/expert-speak/the-displacement-challenge-faced-by-thailand-courtesy-myanmar/

240 Children meaning a person whose age is not over eighteen years old.

241 Royal Thai Government. 1997. Measures in the Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997). Thai government. Retrieved from: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=70622

242 Royal Thai Government. 1997. Measures in the Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997). Thai government. Retrieved from: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=70622

243 Chantavanich, S. 2020. Thailand's Challenges in Implementing Anti- Trafficking Legislation: The Case of the Rohingya. Journal of Human Trafficking, 6(2) 234-243. Retrieved from: http://doi.org/10.1080/23322705.2020.1691825

244 Royal Thai Government. 2008. Anti-Trafficking in Persons Act, B.E. 2551. Royal Thai Government. Retrieved from: http://thailaws.com/law/t_laws/tlaw0380.pdf

245 Robinson, et al. 2016. Anti-Trafficking in Thailand: A stakeholder analysis of Thai government efforts, the US TIP report and rankings, and recommendations for action. John Hopkins Bloomberg School of Public Health. Retrieved from: http://hopkinshumanitarianhealth.org/assets/documents/Anti-Trafficking-in-Thailand-30Jun2016.pdf

246 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf

247 Royal Thai Government, Permanent Mission of Thailand to the United Nations. 2008. United Nations General Assembly thematic debate on Human trafficking: enhancing multilateral cooperation to prevent trafficking in persons. New York: Chirachai Punkrasin.

248 Chantavanich, S. 2020. Thailand's Challenges in Implementing Anti- Trafficking Legislation: The Case of the Rohingya. Journal of Human Trafficking, 6(2) 234-243. Retrieved from: http://doi.org/10.1080/23322705.2020.1691825

249 Robinson, et al. 2016. Anti-Trafficking in Thailand: A stakeholder analysis of Thai government efforts, the US TIP report and rankings, and recommendations for action. John Hopkins Bloomberg School of Public Health. Retrieved from: http://hopkinshumanitarianhealth.org/assets/documents/Anti-Trafficking-in-Thailand-30Jun2016.pdf

250 Equal Rights Trust. 2014. The Human Rights of Stateless Rohingya in Thailand. Equal Rights Trust. Retrieved from: https://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf

251 Chantavanich, S. 2020. Thailand's Challenges in Implementing Anti- Trafficking Legislation: The Case of the Rohingya. Journal of Human Trafficking, 6(2) 234-243. Retrieved from: http://doi.org/10.1080/23322705.2020.1691825

The amendments expand the scope of examination for survivor identification, extend protections to whistle-blowers, and increase the number and severity of penalties for trafficking offences.[252, 253] The Human Trafficking Criminal Procedure Act introduced in 2016 expedites the judicial process for trafficking cases and enables pre-trial disposition to occur digitally.[254]

In January 2019, seven Thai government agencies signed the MOU-ATD and developed SOPs to start implementation of ATD in 2020.[255] The principles of the MOU-ATD include requirements for decision-making to be informed by the best interests of the child, and that children are only detained as a last resort. The MOU-ATD allows for the release of mothers who pay bail to be with their children. The MOU does not consider fathers for release.[256]

The SOPs also mandate the development of a Multi-Disciplinary Working Group comprising immigration officials and representatives from UNHCR, IOM, and the United Nations Children's Fund (UNICEF) to develop and help implement individual care plans for each child. However, Rohingya children are excluded from this. Instead, their transfer from an IDC to a closed shelter is supported by a focal point assigned by the Department of Children and Youth. Rohingya children do not receive individual care plans but are placed under the care of a caseworker who are in charge of a group of Rohingya children in the respective shelters.[257]

The Thai government is developing a National Referral Mechanism for Victims of Trafficking in Thailand (NRM), which will function as the Thai government's mechanism for screening, identifying, and providing referrals to Thai and non-Thai survivors of trafficking. [258] The Thai government expects the NRM to operate in coordination with MSDHS, RTP, immigration officials, and the Ministry of Labour. In 2021, the Division of Anti-Trafficking in Persons developed a National Steering Committee to guide NRM development. [259]

In contrast to its iterative anti-trafficking laws, the Thai government does not have any policy specific to anti-smuggling and defers smuggling cases to the Immigration Act of 1979.[260] The Immigration Act requires a valid passport or legitimate document in lieu of a passport for lawful admission into Thailand. A foreigner who enters or stays without documentation is subject to imprisonment of up to two years or a fine of up to 20,000 Thai Baht (USD 560).[261] After completing their prison sentence, the Thai government places undocumented foreigners in IDCs to await deportation, wherein no maximum time limit is established.[262]

Policy implementation and treatment of refugees

Refugee Protection. Rohingya refugees in IDCs and shelters are fully dependent on support for basic needs including health services, shelter, food, education, water, and sanitation.[263, 264] The pandemic is imposing new challenges for Rohingya refugees in IDCs and community shelters to physically distance, maintain proper sanitation, and access medical care and personal protective equipment.[265] Exposure to local outbreaks in living quarters, in addition to prolonged detention, social separation, and suspension of in-person visits impact the mental and physical health of Rohingya refugees.[266]

At present, the Thai government is holding an estimated 100 Rohingya children in IDCs.[267] Most, however, live in shelters under the purview of the MSDHS.[268] In contrast to IDC conditions, MSDHS shelters provide more open space and support. Each MSDHS shelter receives one government-appointed caseworker to care for Rohingya children.[269] MSDHS allows a select few NGOs to visit residents in shelters to provide medical care, some education, vocational training, and livelihood activities.[270] However, language barriers and little to no experience in formal education challenge Rohingya children's use of these services.

The Cabinet Resolution of 2005 guarantees Rohingya refugee children access to enrolment at public schools certified by Ministry of Education. In practice, many certified schools undermine the 2005 Resolution by establishing discretionary policies that require

252 Refugees International. 2016. Rohingya - Field Report November 2016. Refugees International. Retrieved from: http://doi.org/10.1163/2210-7975_HRD-9828-2016007

253 Chantavanich, S. 2020. Thailand's Challenges in Implementing Anti- Trafficking Legislation: The Case of the Rohingya. Journal of Human Trafficking, 6(2) 234-243. Retrieved from: http://doi.org/10.1080/23322705.2020.1691825

254 Ibid.

255 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention

256 Chawarangkul, Chawaratt. 2022. It's Been 3 Years Since the Signing of the ATD-MOU in Thailand: Where Are We Now? International Detention Coalition. Retrieved from: https://idcoalition.org/news/its-been-3-years-since-the-signing-of-the-atd-mou-in-thailand-where-are-we-now/

257 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/system/files/docs/ATD%20FINAL%20COUNTRY%20PROFILES-%20final.pdf

258 Ibid.

259 Ibid.

260 International Organization for Migration. 2012. IOM, Thai Police and Canada Cooperate to Tackle Human Smuggling. IOM. Retrieved from: https://www.iom.int/news/iom-thai-police-and-canada-cooperate-tackle-human-smuggling

261 Royal Thai Government. 1979. Immigration Act of Thailand, B.E. 2552 (1979), Section 12. Thai government.

262 Ibid.

263 Mohr, et al. 2022. Integrated primary health care services in two protracted refugee camp settings at the Thai-Myanmar border 2000-2018: trends on mortality and incidence of infectious diseases. Primary health care research & development, 23(17). https://doi.org/10.1017/S1463423622000044

264 Amnesty, APRRN, Asylum Access. 2019. Ensure New Refugee Regulation Meets International Standards. Joint Secretariat. Retrieved from: https://reliefweb.int/report/thailand/ensure-new-refugee-regulation-meets-international-standards

265 UNHCR. 2022. Thailand Factsheet (31 March 2022). UNHCR. Retrieved from: https://data.unhcr.org/en/documents/details/93917

266 ECHO. 2021. Supporting Stranded Rohingya in Thailand. ECHO. Retrieved from: https://reliefweb.int/report/thailand/supporting-stranded-rohingya-thailand

267 Source: PRRiA written input on draft report (29-09-2022).

268 ECHO. 2021. Supporting Stranded Rohingya in Thailand. ECHO. Retrieved from: https://reliefweb.int/report/thailand/supporting-stranded-rohingya-thailand

269 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention

270 Sullivan, Daniel. 2016. Still Adrift: Failure to Protect Rohingya in Malaysia and Thailand. Refugees International. Retrieved from: https://www.refugeesinternational.org/s/20161117-Rohingya.pdf

applicant birth or citizenship documentation, which effectively excludes Rohingya children from accessing education.[271] In closed shelters, Rohingya children receive some education services from NGOs.[272]

Refugees cannot access Thailand's free public healthcare; however, exceptions exist under several ad hoc policies.[273] In 2010, the Thai Cabinet adopted the National Healthcare Fund for Persons with Legal Status Problems. In 2020, the Cabinet approved financial resources to help over 3,000 refugee students access national health facilities.[274] Refugees who receive financial assistance face problems accessing health care due to several factors, including volatile security situations, language barriers, statelessness, lack of documentation, cultural obstacles, and transportation issues.[275] International donors, UNHCR, CSOs and community-based health organisations are working to address health coverage gaps for Rohingya refugees. These groups offer low cost or free health services including general, maternal and new-born, reproductive, mental health, and psychosocial support (MHPSS).[276, 277]

Refugees in Thailand do not have the right to work and are driven into informal employment vulnerable to police extortion, arrest, and detention.[278] Under the Alien Working Act of 2008, only foreign persons with an employer sponsored work permit can access legal employment in Thailand. The ATIP Act grants work permit to survivors of trafficking who cooperate with pending court cases to work legally during trial and up to two years after the trial's conclusion (wherein trafficking is found). However, the Thai government claims a lack of local opportunities and unsuitable immigration policy impede the issuance of work permits to Rohingya survivors of trafficking.[279]

Anti-Trafficking/Smuggling. Trafficking and smuggling boats that transport Rohingya from Bangladesh and Myanmar to Thailand are often overcrowded and have insufficient food and water. According to Fortify Rights, the experiences of Rohingya who journey to Thailand by boat more often meet the definition of human trafficking.[280] However, it is difficult to quantify this claim due to the lack of recent and robust trafficking and smuggling data on Rohingya in Southeast Asia.[281] Once ashore, the act of trafficking continues, and risks of relocation to clandestine jungle camps rife with exploitation increases for Rohingya survivors. In jungle camps, traffickers hold survivors for ransom, sell Rohingya into forced labour, and absorb them as camp cooks and guards.[282]

In 2015, the discovery of mass graves of Rohingya trafficking victims on the Thailand-Malaysia border culminated in a landmark legal trial. In July 2017, the Thai government convicted over 60 people, including a senior Thai army general, for human trafficking and the murder of 30 Rohingya.[283] According to analysis conducted by Supang Chantavanich at Chulalongkorn University's Institute of Asian Studies, the five main legal instruments used to prosecute the defendants were the ATIP, the Immigration Act of 1979, the Criminal Act of 1956, the Anti-Money Laundering Act, and the Prevention and Suppression of Transnational Organised Crime Act.[284, 285] During the trial, Thai government and military personnel implicated in trafficking offences made threats to witnesses, interpreters, and police investigators, causing a senior police investigator on the case to seek asylum in Australia.[286] Corruption and coercion within the Thai government remain serious issues in Thailand. In 2021, prosecutors accused 33 police officials of smuggling and trafficking persons from Myanmar into Thai jungle camps.[287]

While the 1979 Immigration Act considers undocumented individuals as illegal migrants culpable of criminal offence, the 2008 ATIP Act allows trafficking screenings for 'illegal migrants'. Rohingya identified as victims are mainly placed in either the Welfare Protection

271 Equal Rights Trust. 2014. The Human Rights of Stateless Rohingya in Thailand. Equal Rights Trust. Retrieved from: https://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf

272 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention

273 Ibid.

274 UNHCR. 2020. UNHCR welcomes move to strengthen healthcare for stateless students. UNHCR. Retrieved from: https://www.unhcr.org/th/en/21829-unhcr-welcomes-move-to-strengthen-healthcare-for-stateless-students.html

275 Perera, et al. 2022. Access to community-based reproductive health services and incidence of low birthweight delivery among refugee and displaced mothers: a retrospective study in the Thailand-Myanmar border region. BMJ open, 12(1). Retrieved from: https://doi.org/10.1136/bmjopen-2021-052571

276 Hu, J. 2022. Rohingya Refugee Healthcare in Thailand. Prospect Journal. Retrieved from: https://prospect-journal.org/2022/06/10/rohingya-refugee-healthcare-in-thailand/

277 UNHCR. 2022. Health. UNHCR. Retrieved from: https://www.unhcr.org/th/en/health

278 Equal Rights Trust. 2014. The Human Rights of Stateless Rohingya in Thailand. Equal Rights Trust. Retrieved from: Equal Rights Trust. 2014. The Human Rights of Stateless Rohingya in Thailand. Equal Rights Trust. Retrieved from: https://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf

279 US State Department. 2021. Thailand 2021 Human Rights Report. US State Department. Retrieved from: https://www.state.gov/wp-content/uploads/2022/03/313615_THAILAND-2021-HUMAN-RIGHTS-REPORT.pdf

280 Fortify Rights. 2019. Solid Like Fish: Crimes against humanity, mass graves, and human trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015. Fortify Rights. Retrieved from: https://www.fortifyrights.org/reg-inv-rep-2019-03-27/

281 Source: PRRiA written input on draft report (29-09-2022).

282 UNHCR. 2010. Universal Periodic Review (UPR) Thailand: Joint CSO Submission to the Office of the High Commissioner of Human Rights. UNHCR. Retrieved from: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session12/TH/JS9-JointSubmission9-eng.pdf

283 Holmes, O. 2017. Thailand convicts traffickers after 2015 mass graves discovery. The Guardian. Retrieved from https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery#:~:text=A%20Thai%20judge%20has%20found,migrants%20had%20been%20brutally%20exploited

284 Chantavanich, S. 2020. Thailand's Challenges in Implementing Anti- Trafficking Legislation: The Case of the Rohingya. Journal of Human Trafficking, 6(2) 234-243. Retrieved from: http://doi.org/10.1080/23322705.2020.1691825

285 ATIP of 2008 and its 2015 and 2017 amendments; the Immigration Act of 1979 and its 1980, 1999, and 2017 amendments; the Criminal Act of 1956; the Anti-Money Laundering (AML) Act of 1999; and the Prevention and Suppression of Transnational Organized Crime (PSTOC) Act of 2013.

286 Holmes, O. 2017. Thailand convicts traffickers after 2015 mass graves discovery. The Guardian. Retrieved from https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery#:~:text=A%20Thai%20judge%20has%20found,migrants%20had%20been%20brutally%20exploited

287 The Irrawaddy. 2021. More Than 30 Thai Police Accused of Trafficking Myanmar Migrants. The Irrawaddy. Retrieved from: https://www.irrawaddy.com/news/burma/30-thai-police-accused-trafficking-myanmar-migrants.html

Centres for Victims of Trafficking in Persons or Shelters for Children and Families until the conclusion of court proceedings.[288] The Thai government claims survivors of trafficking receive support in shelters including specialised health services and access to food. Between 2019 and 2020, the number of survivors in shelters receiving assistance decreased from 610 to 148, respectively.[289] A 2022 USAID report found the decrease in survivors receiving assistance was due to COVID-19, which stalled and delayed police investigations, the processing of complains, prosecutions, and court proceedings.[290]

Government and NGO operated trafficking shelters reportedly lack the resources needed to cover food and general expenses for residents and female survivors have accused shelters of denying rights and access to phones and mobility.[291,292] It is common procedure for the Thai government to hold adult women trafficking survivors in shelters until return or resettlement is possible; the former of which is not possible for Rohingya.[293] Male trafficking survivors are less likely than women and children to be identified as trafficking survivors, and categorically less likely to have access to care.[294] USAID found women outnumber men in victim identification because sex worker cases - which make up 84 percent of identified trafficking cases - are easier for officials to determine.[295]

The Thai government takes a different approach to managing Rohingya children: it assigns a designated focal point from the Department of Children and Youth to transfer Rohingya adolescents to closed shelters. Two NGOs support non-Thai children and mothers released under the MOU-ATD: Host International Thailand and Step Ahead, who support reporting requirements and community case management.[296] While the 'Happy Shelter Policy' grants temporary shelter to protect women and children trafficking survivors, in addition to legal aid and medical rehabilitation through the Victim Care Plan, Rohingya are excluded from Victim Care Plans and in lieu are assigned a shelter case worker.[297, 298]

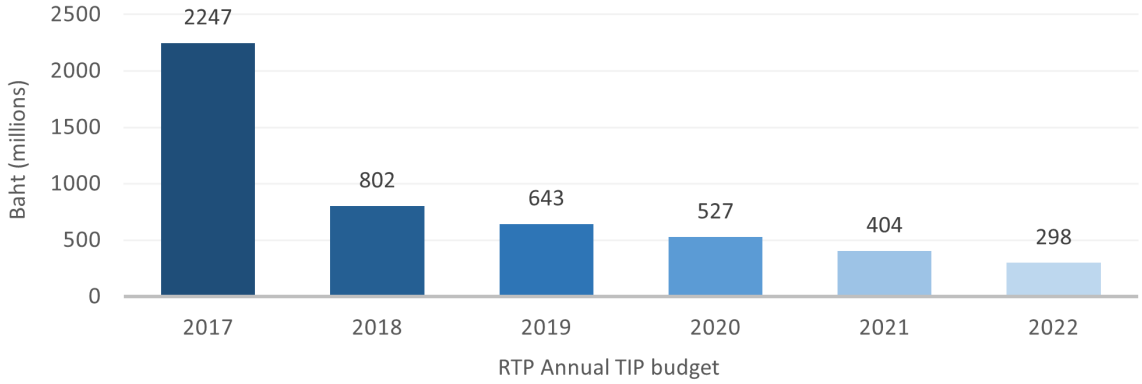
Compounding the lack of resources are government restrictions on non-state actor access to shelters. As detailed in the *Thailand: Key actors* section in *Appendix 5: Key National and Local Actors at the National Levels*, a strong collective of non-state actors support Rohingya refugees in Thailand despite the challenges faced.

Stakeholders in Thailand surveyed by USAID in 2022 found that the lack of relevant policy implementation is the topmost factor restricting efforts to reduce human trafficking in Thailand (reported in 50 of 100 survey responses).[299] Thai government approaches to screening, victim identification, investigation, and prosecution are inconsistent across agencies and geographic locales of Thailand.[300] For example, the Ministry of Interior (MOI) views human trafficking through a security lens and advocate for increased law enforcement, while employers and the Ministry of Labor place value on the economic contribution of undocumented workers.[301]

Both the United States Department of State (DoS) and USAID have attributed gaps in anti-trafficking implementation to a lack of policy awareness among Thai police and immigration officials, poor knowledge of terms and concepts, frequent staff rotation and loss of institutional knowledge on trafficking, and government corruption.[302] The design and development of the NRM aim to systematise the trafficking screening process. CSOs express doubts about the mechanism's propensity to equally prioritise all survivors of trafficking, as the Thai government continues to view non-Thai survivors as illegal immigrants under the 1979 Immigration Act.[303] Among non-Thai survivors, Rohingya are treated differently.

288 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention
289 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf
290 Ibid.
291 Ibid.
292 Ibid.
293 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention
294 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf
295 Ibid.
296 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific. UN Migration Network. Retrieved from https://migrationnetwork.un.org/system/files/docs/ATD%20REPORT-%20Final.pdf
297 Royal Thai Government. 2022. Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (2021). Retrieved from: http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2022/03/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021-1-January-31-December-2021.pdf
298 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention
299 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf
300 Ibid.
301 Ibid.
302 US State Department. 2021. Thailand 2021 Human Rights Report. US State Department. Retrieved from: https://www.state.gov/wp-content/uploads/2022/03/313615_THAILAND-2021-HUMAN-RIGHTS-REPORT.pdf
303 United Nations Migration Network. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region – Country Profiles. UN Migration Network. Retrieved from: https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention

Figure 2. RTP Trafficking in Persons Budget in millions (THB) between 2018-2022.[304]



Official Thai government figures suggest that reported crime rates dropped due to pandemic lockdown measures. Analysis by USAID found the COVID-19 pandemic braked police activity and reduced the number of Thai government trafficking investigations, prosecutions, and convictions from 2019 to 2020.[305, 306] Human trafficking via the use of digital platforms surged during the pandemic, including access to online prostitution and child sexual exploitation, false job advertisements, and recruitment for sex work.[307] As shown in *Figure 2*, the proposed 2022 Thai police Counter Trafficking in Persons budget of 298m Thai Baht (USD 8.4m) is the lowest in six consecutive years, which may restrict efforts against trafficking in persons.[308]

Indonesia

Defining refugees

During the 2015 Andaman Sea crisis, three boats carrying more than 1,800 Rohingya refugees and Bangladeshi nationals from Myanmar and Bangladesh arrived near the coast of Aceh.[309] Scholars suggest that this catalysed the adoption of Presidential Regulation No. 125/2016 (PR No. 125/2016) in 2016.[310] Under PR No. 125/2016, refugees are defined as:

> *a foreigner who resides within the territory of the Republic of Indonesia due to a well-founded fear of persecution due to race, ethnicity, religion, nationality, membership of a particular social group, and different political opinions, and does not wish to avail him/herself of protection from their country of origin and/or has been granted the status of asylum-seeker or refugee by the United Nations through the United Nations High Commissioner for Refugees.*[311]

Indonesia does not offer a pathway to permanent settlement or citizenship for refugees, though short-term asylum is provided to the 13,170 refugees and asylum-seekers registered with UNHCR.[312, 313] An additional 6,000 refugees and asylum seekers live independently in communities throughout Indonesia.[314] As of June 2022, UNHCR reporting shows 902 registered refugees are from Myanmar and two are from Bangladesh; specific data on the total number of Rohingya refugees in Indonesia is unavailable.[315] The majority of Rohingya who arrive in Indonesia do not stay for long periods of time, and most choose to move on to Malaysia.[316]

The central government recognises *non-refoulement* and under its decentralised policy, local governments and organisations are expected to play a primary role in managing and caring for refugees. Even so, policies are grounded on the assumption that refugees and asylum seekers will have a temporary stay, emphasising that durable solutions will materialise outside of Indonesian territory.[317, 318]

304 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf
305 US State Department. 2021. Thailand 2021 Human Rights Report. US State Department. Retrieved from: https://www.state.gov/wp-content/uploads/2022/03/313615_THAILAND-2021-HUMAN-RIGHTS-REPORT.pdf
306 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf
307 Ibid.
308 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf
309 Davies, Caroline. 2015. Migrants on boat rescued off Indonesia recall horrific scenes. 2015. The Guardian. Retrieved from: https://www.theguardian.com/world/2015/may/15/asian-migrant-crisis-grows-as-700-more-boat-people-rescued-off-indonesia
310 Missbach, A. et al. 2018. Stalemate: Refugees in Indonesia – Presidential Regulation No 125 of 2016. Retrieved from: https://law.unimelb.edu.au/__data/assets/file/0006/2777667/CILIS-Paper-14_Missbach-et-al_final.pdf
311 Republic of Indonesia. 2016. Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees. Retrieved from: https://www.refworld.org/docid/58aeee374.html
312 Institute for Policy Analysis of Conflict. 2018. Indonesia and the Rohingya Crisis. Report No.46. Institute for Policy Analysis of Conflict. Retrieved from: http://file.understandingconflict.org/file/2018/06/IPAC_Report_46.pdf
313 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf
314 UNHCR. 2022. Indonesia Factsheet (February 2022). UNHCR. Retrieved from: https://www.unhcr.org/id/wp-content/uploads/sites/42/2022/04/Indonesia-Fact-Sheet-February-2022-FINAL.pdf
315 UNHCR Indonesia. 2022. Monthly Statistical Report June 2022. UNHCR. Retrieved from: https://reporting.unhcr.org/document/3059
316 Source: PRRiA written input on draft report (29-09-2022).
317 Institute for Policy Analysis of Conflict. 2018. Indonesia and the Rohingya Crisis. Report No.46. Institute for Policy Analysis of Conflict. Retrieved from: http://file.understandingconflict.org/file/2018/06/IPAC_Report_46.pdf6
318 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

Connection to regional and international frameworks

Indonesia is not a signatory to the 1951 Convention and its 1967 Protocol, the 1954 Convention on the Status of Stateless Persons, nor the 1961 Convention on Reduction of Statelessness.[319] In 2009, Indonesia signed the Palermo Protocol and Protocol against the Smuggling of Migrants by Land, Sea and Air, and in 2016 it adopted the Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime, which reaffirmed international legal obligations and set guiding principles on irregular movement, protection sensitive strategies, and acknowledged the need to grant protection to survivors in accord with *non-refoulement* principles.[320,321]

In 2000, Indonesia, Australia, and IOM developed a tripartite regional cooperation agreement through which the Australian government agreed to fund the Government of Indonesia in managing asylum seekers and refugees enroute to Australia or New Zealand.[322] Indonesian authorities handed over intercepted asylum seekers and refugees to IOM for case management and care, referring individuals hoping to claim asylum to UNHCR. Between 2001 and 2016, the Government of Australia provided IOM with USD 238million, earmarked for operations in Indonesia. About 95 percent of Australia's total operational funding for IOM Indonesia was allocated to border control and irregular migration activities.[323] By funding Indonesian management of refugees and asylum seekers, the Government of Australia aimed to reduce the number of asylum seeker and refugee arrivals in Australia and New Zealand.[324]

Refugee Protection. The Government of Indonesia does not provide pathways to naturalisation or permanent settlement for Rohingya refugees,[325] but it allows some form of asylum for refugees.[326] Indonesia's Constitution of 1945 has three articles displayed in *Table* 7 which focus on protection: Articles 28A,[327] Article 28G,[328] and Article 28I.[329] The right to legal counsel for refugees is guaranteed through five Indonesian laws,[330] which apply to everyone regardless of citizenship status, entitling refugees to legal counsel either from a paid lawyer or a free legal service.[331]

Table 7. Indonesian constitution articles related to protection.[332]

Article	Article text
28A	Every person shall have the right to live and to defend his/her life and existence.
28G	1. Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right. 2. Every person shall have the right to be free from torture or inhumane and degrading treatment and shall have the right to obtain political asylum from another country.
28I	1. The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances. 2. Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment. 3. The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations. 4. The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government. 5. For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated, and set forth in laws and regulations.

319 UNHCR. 2022. Indonesia Factsheet (February 2022). UNHCR. Retrieved from: https://www.unhcr.org/id/wp-content/uploads/sites/42/2022/04/Indonesia-Fact-Sheet-February-2022-FINAL.pdf

320 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

321 Gleeson, M. 2017. Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea 'Crisis.' Antropologi Indonesia, 38(1). Retrieved from: https://doi.org/10.7454/ai.v38i1.8747

322 Nethery, et al. 2013. Exporting Detention: Australia-funded Immigration Detention in Indonesia. Journal of Refugee Studies, 26(1) 88–109. Retrieved from: https://doi.org/10.1093/jrs/fes027

323 Hirsch, A & Doig, C. 2018. Outsourcing control: the International Organization for Migration in Indonesia, The International Journal of Human Rights, 22(5) 681-708. Retrieved from: http://doi.org/10.1080/13642987.2017.1417261

324 Nethery, et al. 2013. Exporting Detention: Australia-funded Immigration Detention in Indonesia. Journal of Refugee Studies, 26(1) 88–109. Retrieved from: https://doi.org/10.1093/jrs/fes027

325 Institute for Policy Analysis of Conflict. 2018. Indonesia and the Rohingya Crisis. Report No.46. Institute for Policy Analysis of Conflict. Retrieved from: http://file.understandingconflict.org/file/2018/06/IPAC_Report_46.pdf

326 Mixed Migration Centre. 2021. Indonesia: Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

327 *'The protection, promotion, enforcement and fulfilment of human rights is the responsibility of the state, especially the government.'*

328 *'Everyone has the right to personal protection, family, honour, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.'*

329 *'The protection, promotion, enforcement and fulfilment of human rights is the responsibility of the state, especially the government.'*

330 Indonesian Constitution (UUD 45) – Art. 28D; Criminal Procedure Code (KUHAP) – Art. 54, 59, 60, 114, and Chapter VII; Advocate Law (UU No.18 of 2003) – Art. 22; Legal Aid Law (UU No.16 of 2011); Judiciary Power Law (UU No.48 of 2009) – Art. 56 & 57.

331 SUAKA. 2018. Know Your Rights: A Handbook for Refugees and Asylum Seekers. SUAKA. Retrieved from: https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf

332 Indonesian Constitution (UUD 45) – Art. 28D; Criminal Procedure Code (KUHAP) – Art. 54, 59, 60, 114, and Chapter VII; Advocate Law (UU No.18 of 2003) – Art. 22; Legal Aid Law (UU No.16 of 2011); Judiciary Power Law (UU No.48 of 2009) – Art. 56 & 57.

National Act No. 39 of 1999 underscores that the protection of human rights and basic freedoms should be available to all without discrimination.[333] The Government of Indonesia recognised asylum for political refugees in 1956 through Article 1 of the Circular Letter of the Prime Minister Number 11/RI/1956 on the Protection of Political Escape.[334] Under National Act No.37 of 1999, granting asylum is a decision which rests with the President as per PR No. 125/2016. National Act No.37 does not differentiate between refugees and asylum seekers, though it does recognise and draw guidance from national and international law, custom, and practice in decision making of refugee handling. The National Act 24 of 2007 also extends protection to refugees under disaster risk reduction and management as stated in Article 6:

> *'Government responsibilities in disaster management include protecting the people from the impact of disasters, ensuring the fulfilment of the rights of communities and refugees affected by disasters fairly and in accordance with minimum service standards.'*

The Aceh government, upon issuing a policy to accept Rohingya refugees landing in Aceh in 2015, took a clear stance on Rohingya refugee protection. This move prompted the then Vice President of Indonesia, Muhammad Jusuf Kalla, to accept Rohingya refugees. These concessions were codified through PR No. 125/2016, which aligns with the 1951 Convention's definition of a refugee and assigns responsibilities to ministries and local institutions to detect, rescue, and provide shelter to refugees.[335, 336]

PR No. 125/2016 explicitly assigns responsibility to the Ministry of Law and Human Rights, Ministry of Foreign Affairs, Coordinating Ministry of Politics, Law and Security, Directorate General of Immigration, and UNHCR, in addition to other undefined international organisations.[337, 338] It instructs local police and immigration officials to provide asylum seekers with shelter in IDCs, and further allows UNHCR to conduct status determination interviews.[339] Under PR No. 125/2016, individuals who UNHCR determines to be of refugee status are able to receive clean water, food, clothing, healthcare, hygiene and religious facilities from international organisations.[340] However, PR No. 125/2016 lacks clarity on which government agency is specifically responsible for tasks delegated, leaving implementation up to ad hoc interpretation.[341] It does not include budgetary support for sub-national governments and lacks specificity on which international organisations will implement actions.

There is limited access to sustainable livelihoods for refugees in Indonesia. Although IOM and UNHCR provide the most affected refugees with monthly stipends to support basic needs, not all refuges receive this support, and refugees cannot access formal employment without a government work permit. However, work permit applications require valid ID (i.e., Indonesian Identity Card, passport, or visa) and do not recognise UNHCR ID cards, excluding most refugees from obtaining a work permit.[342] Research conducted in 2021 found that many refugees in Makassar seek informal income-generating activities, for example as disc jockeys in the entertainment industry, tutors for students attending public schools and universities, and catering for restaurants.[343]

Refugees in Indonesia, to some extent, are allowed to access health services. Articles 130 and 132 of the 2009 Law on Health (Law No. 36/2009) entitles infants and children of refugees to access some health services, including vaccinations at community health clinics known as *puskesmas*.[344] Through PR No. 125/2016, refugees and asylum seekers registered with UNHCR have the right to receive basic medical care in Indonesia, enabling organisations such as IOM to supply health services to refugees. In addition, refugees who live independently and without organisational aid can independently access and pay for medical care.

Under Article 12(3) of the National Education System Law, non-Indonesian persons can enrol in Indonesian educational institutions so long as individuals satisfy language and local legal requirements.[345] The MoE in July 2019 issued Circular Letter No. 75253/A.A4/HK/2019 to help refugee children access free formal education, aiming to provide enrolment to 20 percent of the total number of refugees in

333 Government of Indonesia. 1999. Law No.39 of 1999 on Human Rights. Government of Indonesia: Retrieved from: https://www.komnasham.go.id/files/1475231474-uu-nomor-39-tahun-1999-tentang-%24H9FVDS.pdf

334 Republic of Indonesia. 1956. Indonesia: Circular Letter of the Prime Minister No. 11/R.I./1956 of 1956 on Political Refugees. https://www.refworld.org/docid/3ae6b4e918.html

335 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

336 Dewansyah, B., & Nafisah, R. 2021. The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016. Asian Journal of Law and Society, 8(3) 536-557. Retrieved from: http://doi.org/10.1017/als.2021.8

337 Republic of Indonesia. 2016. Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees. Retrieved from: https://www.refworld.org/docid/58aeee374.html

338 Yessi, O. et al. 2021. Considering Local Integration for Refugees in Indonesia. Jurnal Hubungan Internasional, 9(2) 153-164. Retrieved from: http://doi.org/10.18196/jhi.v9i2.10113

339 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

340 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

341 Republic of Indonesia. 2016. Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees. Retrieved from: https://www.refworld.org/docid/58aeee374.html

342 SUAKA. 2018. Know Your Rights: A Handbook for Refugees and Asylum Seekers. SUAKA. Retrieved from: https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf

343 Missbach, A. & Adiputera, Y. 2021. The Role of Local Governments in Accommodating Refugees in Indonesia: Investigating Best-Case and Worst-Case Scenarios. Asian Journal of Law and Society, 8(3) 490-506. Retrieved from: https://doi.org/10.1017/als.2021.5

344 SUAKA. 2018. Know Your Rights: A Handbook for Refugees and Asylum Seekers. SUAKA. Retrieved from: https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf

345 Requirements include a statement letter from the parents that the student's presence in Indonesia is only for educational purposes and not to work; A statement letter from the parents on the financing of the fees payable to the school; A statement letter from the school in Indonesia; A passport with a validity of at least 18 months; The latest school report; and Passports of the parents/sponsor identity.

Indonesia.[346] As of November 2021, 780 of the 2,693 refugee children registered with UNHCR (29%) are enrolled in accredited national schools.[347] Organisations such as UNHCR and IOM facilitate refugees' access to public schools through coordination with provincial Offices of Education Affairs.[348]

Anti-Trafficking/Smuggling. Prior to 2017, Article 297 of the Criminal Code provided the legal basis for anti-trafficking, which prescribed up to six years' imprisonment for human trafficking offences.[349] This changed when, in 2007, Indonesia passed the Eradication of the Criminal Act of Trafficking in Persons (Law No. 21, Year 2007), which criminalised all forms of labour trafficking and certain cases of sex trafficking with sentences between three- and 15-years imprisonment.[350] In early 2008, Indonesia enacted Government Regulation No. 9 to integrate procedures and mechanisms for managing witnesses and survivors of human trafficking.[351] To improve its protection of trafficking survivors, in 2008 Indonesia issued Presidential Regulation No. 69 catalysing the formation of the Special Task Force to Combat Trafficking in Persons.[352] The task force comprises multiple institutions including the police, the Ministry of Law and Human Rights, the Ministry of Social Affairs, the Ministry of Foreign Affairs, and the Ministry of women's Empowerment and Child Protection. While the budget for the implementation of Task Force activities is provided through the State Revenue and Expenditure Budget, PR. No. 69 is similar to PR No. 125/2016 in that its text is ambiguous and leaves the operationalisation of the Task Force to interpretation.[353]

At the third meeting of the Bali Process in 2009, participant countries and organisations sought to use the anti-smuggling/trafficking platform to address the Rohingya plight.[354, 355] Discussed bi- and multi-laterally, Indonesia, a co-chair to the Process, agreed to create camps in Aceh for Rohingya and Bangladeshis arriving by boat. However, plenary and concluding remarks made no mention of Rohingya refugees, signalling a lack of regional consensus in addressing the issue.

In parallel to the focus on the Rohingya crisis, Indonesia and Australia held bilateral talks at the 2009 Bali Process around the increased movement of asylum seekers and refugees through Indonesia to Australia.[356] Already framed within the Bali Process's smuggling-trafficking discourse, Australia, acting in a capacity-building role, pressured Indonesia to criminalise people smuggling across maritime borders, resulting in the Government of Indonesia's 2011 Immigration Law.[357]

The 2011 Immigration Law stipulated Indonesia would deny entry to individuals in possession of false immigration documents, involved in international crime, or included in prostitution, human trafficking and people smuggling activities.[358] It criminalised stay in Indonesia without a valid travel document and visa by up to five years' imprisonment and a fine of IDR 500 million (USD 33,700).[359] The 2011 Immigration Law does not distinguish asylum seekers and refugees from migrants, and instead enacted a binary classification scheme of survivors of smuggling/trafficking or illegal migrants punishable by deportation.[360] In effect, the 2011 Law considers refugees and asylum seekers as survivors of smuggling/trafficking or illegal migrants subject to punitive charges.[361]

The enactment of PR No. 125/2016 advances the definition of a refugee and provides guidelines on the discovery, protection and supervision of refugees. Though it lacks explicit language on trafficking, it includes one reference to smuggling in Article 41, specifically: *'…at every stage of the refugee handling process, refugees shall be separated from people smuggling groups.'* [362]

The Government of Indonesia in 2017 expanded anti-trafficking measures through passage of the Migrant Protection Law, which prohibited employers from charging migrant workers with placement fees. Under the law, recruitment agencies could be suspended for trafficking-related offences. The 2017 Law on the Protection of Migrant Workers was issued to strengthen policies providing protection for Indonesian Migrant Workers overseas through socio-economic and legal protection social security systems, services at

346 Republic of Indonesia. 2020. Republic of Indonesia Submission. No.: 60/Pol-II/IV/2020. OHCHR. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/CallEndingImmigrationDetentionChildren/Member_States/Republic_of_Indonesia_submission.pdf

347 UNHCR Indonesia. 2021. Figures at a glance. UNHCR. Retrieved from: https://www.unhcr.org/id/en/figures-at-a-glance

348 SUAKA. 2018. Know Your Rights: A Handbook for Refugees and Asylum Seekers. SUAKA. Retrieved from: https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf

349 Sibarani, S. 2020. Policies Adopted by the Government of Indonesia in the Prevention of Trafficking in Persons. The 2nd Tarumanagara International Conference on the Applications of Social Sciences and Humanities. Retrieved from: https://doi.org/10.2991/assehr.k.201209.004

350 US State Department. 2021. Trafficking in Persons Report: Indonesia. US State Department. Retrieved from: https://www.state.gov/reports/2021-trafficking-in-persons-report/indonesia/

351 UN Human Rights Committee. 2012. Consideration of reports submitted by States parties under article 40 of the Covenant. Initial reports of States parties. Indonesia. Retrieved from: https://www.refworld.org/docid/5146f8a22.html

352 Stratsea. 2021. Policy Contradictions to Eradicate Human Trafficking in Indonesia: Problems with the Vision, Strategy or Implementation? Stratsea. Retrieved from: https://stratsea.com/policy-contradictions-to-eradicate-human-trafficking-in-indonesia-problems-with-the-vision-strategy-or-implementation/

353 Republic of Indonesia. 2008. Presidential Regulation on the Task Force for the Prevention and Control of Human Trafficking (Presidential Regulation No. 69/2008). Republic of Indonesia. Retrieved from: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=91241&p_lang=en

354 Institute for Policy Analysis of Conflict. 2018. Indonesia and the Rohingya Crisis. Report No.46. Institute for Policy Analysis of Conflict. Retrieved from: http://file.understandingconflict.org/file/2018/06/IPAC_Report_46.pdf

355 The New Humanitarian. 2009. Myanmar: Key Asian Meeting Fails to Resolve Rohingya Issue. The New Humanitarian. Retrieved from: https://reliefweb.int/report/myanmar/myanmar-key-asian-meeting-fails-resolve-rohingya-issue

356 Kneebone, et al. 2021. The False Promise of Presidential Regulation No. 125 of 2016? Asian Journal of Law and Society, 8(3) 431-450. Retrieved from: http://doi.org/10.1017/als.2021.2

357 Ibid.

358 Nethery, et al. 2013. Exporting Detention: Australia-funded Immigration Detention in Indonesia. Journal of Refugee Studies, 26(1) 88–109. Retrieved from: https://doi.org/10.1093/jrs/fes027

359 Ibid.

360 Kneebone, et al. 2021. The False Promise of Presidential Regulation No. 125 of 2016? Asian Journal of Law and Society, 8(3) 431-450. Retrieved from: http://doi.org/10.1017/als.2021.2

361 Dewansyah, B., & Nafisah, R. 2021. The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016. Asian Journal of Law and Society, 8(3) 536-557. Retrieved from: http://doi.org/10.1017/als.2021.8

362 Government of Indonesia. 2016. Regulation of the President of the Republic of Indonesia Number 125 Year 2015 Concerning the Handling of Foreign Refugees. Government Indonesia. Retrieved from: https://www.refworld.org/pdfid/58aeee374.pdf

any level of governance and a skills improvement program.[363]

While the Ministry of Home Affairs (MoHA) issued a ministerial regulation in April 2018 that mandated regional governments to include anti-trafficking in their policy priorities, the central government did not have an enforcement mechanism.[364] In effect, provincial government approaches toward distributing funding and integrating anti-trafficking into policy are not uniform. Through enactment of Presidential Decree No.22/2021, the Government of Indonesia aims to strengthen the National Anti-Trafficking Task Force by expanding membership, enhancing coordination channels, and outlining the budgetary process.[365] The Task Force, which oversees 32 provincial-level task forces and 242 municipal and district-level task forces, has delayed finalising a national anti-trafficking action plan for 2020-2024.[366] In August 2021, five months after the enactment of Presidential Decree No. 22, the government issued regulation No. 78/2021 on Special Protection for Children to protect and provide services to child trafficking survivors and other categories of threatened children.[367]

Policy implementation and treatment of refugees

Refugee Protection. Local governments, civil society, and INGOs have taken a humanitarian approach to the Rohingya crisis through the delivery of aid and support accessing shelter, health, and education services. During the 2015 crisis, Acehnese and I/NGOs helped 1,000 Rohingya refugees and 800 Bangladesh migrants disembark from boats stranded in the coastal areas of East Aceh and North Aceh. These humanitarian actors provided refugees and migrants with food, water, medical services, education, and shelter.[368] The independent mobilisation of residents who provided support to Rohingya refugees encouraged the Aceh Government and philanthropic organisations, including the District Social Department, to help manage the unfolding situation.

Some Rohingya rights advocates use the commonality of Islam, which is a shared religious ideology among most Rohingya refugees and many Indonesians, to influence the Government of Indonesia to accept Rohingya refugees. The Acehnese have used the Acehnese customary law of the sea (*Hukom Adat Laot*) and their local tradition of honouring guests (*Peumulia Jamee*) to rescue and receive refugees of all religions and nationalities, including Rohingya, Sri Lankan Tamils, Afghans, and others in distress at sea.

In practice, refugee management is often the responsibility of international organisations such as IOM and UNHCR, local governments and task forces.[369] IOM, with funding from the Government of Australia, supports more than half of all refugees with access to community shelters, healthcare, and a monthly allowance.[370] IOM typically provides temporary shelters in coordination with the government, while community houses are provided for refugees through a contract between the house's owner and IOM.[371] In 2018, Australia cut its funding for Indonesian detention centres, resulting in Indonesia's transfer of refugees from IDCs to IOM-operated shelters.[372]

Indonesian immigration officials continue to conduct sporadic raids on Rohingya refugees accused of violating local laws and rules, which results in the detention of Rohingya.[373] In 2022, MMC published survey data that found 69.3 percent of Rohingya refugees in Indonesia consider border guards and immigration officials as the main perpetrators of abuse, followed by the military and police (52 percent), and criminal gangs (44 percent).[374] Please see the *Indonesia: Key actors* section in *Appendix 5: Key National and Local Actors at the National Levels* for additional review of Indonesian local and national stakeholders.

While UNHCR has been conducting refugee status determination in Indonesia since 1979, Immigration Regulation No. IMI-0352. GR.02.07 approved in 2016 formalised the policy related to the treatment of self-declared asylum seekers and refugees and UNHCR's roles and responsibilities.[375, 376, 377] In addition to conducting RSD, UNHCR plays a critical role in registering and issuing identification documentation; and, with partners, helping refugees access education, cash assistance, and low-cost medical treatment at public

363 Government of Indonesia. 2017. Law on Protection of Migrant Workers (No. 18/2017). Government of Indonesia. Retrieved from: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109279&p_count=6&p_classification=17
364 US State Department. 2019. Trafficking in Persons Report 2019: Indonesia. US State Department. Retrieved from: https://id.usembassy.gov/our-relationship/official-reports/2019-trafficking-in-persons-report/
365 US State Department. 2022. Trafficking in Persons Report 2022. US State Department. Retrieved from: https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf
366 Ibid.
367 Ibid.
368 Davies, Caroline. 2015. Migrants on boat rescued off Indonesia recall horrific scenes. 2015. The Guardian. Retrieved from: https://www.theguardian.com/world/2015/may/15/asian-migrant-crisis-grows-as-700-more-boat-people-rescued-off-indonesia
369 Malahayati, M., Rasyid, L., & Iskandar, H. 2018. Minimum protection of Rohingya refugees (A moral approach in Aceh). Padang: European Alliance for Innovation (EAI), 9. Retrieved from: http://dx.doi.org/10.4108/eai.5-9-2018.2280979
370 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf
371 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf
372 Ibid.
373 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf
374 Mixed Migration Centre. 2022. Journeys to Indonesia for Rohingya Refugees: Routes, Risks, Assistance and Needs. Retrieved from: https://mixedmigration.org/wp-content/uploads/2022/06/239_Journeys-to-Indonesia_Rohingya_refugees.pdf
375 Source: PRRiA written input on draft report (29-09-2022).
376 Syahrin, M.A. 2017. The implementation of non-refoulement principle to the asylum seekers and refugees in Indonesia. Sriwijaya Law Review, 1(2) 168. Retrieved from: https://doi.org/10.28946/slrev.vol1.iss2.41.pp168-178
377 Republic of Indonesia. 2016. Regulation of Director General of Immigration No. IMI-0352.gr.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum-seeker or Refugee. Republic of Indonesia. Retrieved from: https://www.refworld.org/docid/58aeef894.html

health facilities.[378, 379, 380] UNHCR gives special attention to refugee children whose rights under the Child Protection Law No. 23/2002 (and subsequent amendments) are at risk, including: the right to education and health insurance, and vulnerability to child marriage and criminal acts of violence and sexual harassment.[381, 382]

Refugee children have rights to access public schools but face obstacles in enrolling and progressing through formal education institutions. National law demands that students in public schools speak Indonesian and bars refugee students from receiving a National Identification Number, a requirement to take national exams.[383] Cases of refugee enrolment in public education are often ad hoc and depend on each school's requirements and flexibility to accommodate supporting documents. The July 2019 MoE circular letter to facilitate refugee child access to public schools is implemented inconsistently, and fails to cover areas including Bogor, Depok, Bekasi, Bali, and Aceh.[384]

In February 2022, UNHCR reported around 862 refugee children were enrolled in accredited public schools. About 1,000 children receive education through UNHCR-, IOM-, or refugee community-organised refugee learning centres.[385] Limited obtainability of internet and devices during the nationwide lockdowns as part of the COVID-19 containment measures compounded challenges in accessing education.[386] Some refugee students in public schools continued studying through school arrangements, while others accessed education through UNHCR and community-developed online learning centres.

Refugees in Indonesia do not have work rights and struggle to find sustainable employment. While some refugees receive monthly allowance, the level of allowance does not correspond to the rising costs of living in Indonesia and has to be complemented by employment income.[387] Pandemic-induced economic turmoil contributed to loss of income for refugees, which compounded their financial insecurities.[388] According to MMC surveys with Rohingya in Indonesia, almost half (48.0%) of all respondents reported needing help accessing work.[389]

Anti-Trafficking/Smuggling. Trafficking and smuggling of refugees is extensive in Indonesia. According to Save the Children, most Rohingya refugees who arrive by boat to Indonesia are likely survivors of trafficking.[390] However, there is minimal data distinguishing between Rohingya survivors of smuggling and trafficking due to the lack of successful prosecutions of traffickers and the clandestine nature of these networks.[391] In 2020, IOM reported significant concerns about the trafficking of Rohingya adults and children in Indonesia.[392] In 2022, at least 67 Rohingya refugees who escaped a temporary camp in Aceh Province were smuggled to Malaysia by a transnational crime syndicate.[393]

Critics have denounced the main anti-trafficking framework in Indonesia, the 2007 Anti-Trafficking Law, as piecemeal due to its narrow recognition of child sex trafficking crimes that require a demonstration of force, fraud, or coercion.[394] In April 2018, the Ministry of Home Affairs issued a ministerial regulation mandating that regional governments integrate anti-trafficking into policy priorities. However, the central government did not have a mechanism to enforce this regulation, allowing provincial governments to comply with central government demands on an ad hoc basis. In effect, provincial governments have taken different and uneven approaches to the allocation of funding and implementation of enforcement on anti-trafficking.[395]

The US Department of State in its 2021 Trafficking in Persons Report on Indonesia stated that law enforcement personnel have low awareness of trafficking crimes and relevant trafficking legislation. Indonesian authorities have prosecuted traffickers under the Law on Migrant Workers Protection, which prescribes penalties less severe than other instituted law.[396] Some officials have received anti-

378 Mohd Hanapi et al. 2021. Public health status of Myanmar refugees in South East Asia: A Malaysia case study. Tropical Biomedicine, 38(4) 594-604. Retrieved from: http://doi.org/10.47665/tb.38.4.103

379 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

380 UNHCR. 2022. Indonesia Factsheet (February 2022). UNHCR. Retrieved from: https://www.unhcr.org/id/wp-content/uploads/sites/42/2022/04/Indonesia-Fact-Sheet-February-2022-FINAL.pdf

381 Republic of Indonesia. 2002. Law on Child Protection (No. 23/2002). Republic of Indonesia. Retrieved from: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=63103&p_lang=en

382 Lembaga Bantuan Hukum Makassar. 2018. Memahami Perlindungan Hukum Bagi Pengungsi/ Understanding Legal Protection for Refugees. Lembaga Bantuan Hukum Makassar. Retrieved from: https://lbhmakassar.org/liputan-kegiatan/memahami-perlindungan-hukum-bagi-pengungsi/

383 SUAKA. 2018. Know Your Rights: A Handbook for Refugees and Asylum Seekers. SUAKA. Retrieved from: https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf

384 UNHCR. 2021. Indonesia Factsheet (September 2021. UNHCR. Retrieved from: https://www.unhcr.org/id/wp-content/uploads/sites/42/2021/11/September-Fact-Sheet-Indonesia-FINAL.pdf

385 Ibid.

386 Ibid.

387 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

388 Ibid.

389 Mixed Migration Centre. 2022. Journeys to Indonesia for Rohingya Refugees: Routes, Risks, Assistance and Needs. Retrieved from: https://mixedmigration.org/wp-content/uploads/2022/06/239_Journeys-to-Indonesia_Rohingya_refugees.pdf

390 Save the Children. 2021. No Safe Haven: The Plight of Rohingya Children Across Asia. Save the Children. Retrieved from: https://resourcecentre.savethechildren.net/document/no-safe-haven-plight-rohingya-children-across-asia/

391 UNHCR. 2021. Left Adrift at Sea. UNHCR. Retrieved from: https://reliefweb.int/report/myanmar/left-adrift-sea-dangerous-journeys-refugees-across-bay-bengal-and-andaman-sea-january

392 International Organization for Migration. 2020. IOM Appeal: Humanitarian Support for Rohingya in Indonesia. IOM. Retrieved from: https://rohingyaconference.org/doc/IOM_Appeal_Humanitarian_Support_Rohingya_Indonesia.pdf

393 Gunawan, Apriadi. 2022. Dozens of Rohingya Escape Aceh Refugee Camp Trafficked to Malaysia. The Jakarta Post. Retrieved from: https://www.thejakartapost.com/indonesia/2022/02/13/dozens-of-rohingya-escape-aceh-refugee-camp-trafficked-to-malaysia-officials.html

394 US State Department. 2021. Trafficking in Persons Report: Indonesia. US State Department. Retrieved from: https://www.state.gov/reports/2021-trafficking-in-persons-report/indonesia/

395 Ibid.

396 Ibid.

trafficking capacity building from the Indonesian government, INGOs, and foreign governments. However, critics claim there is a lack of comprehensive anti-trafficking training for judicial and law enforcement authorities, which fails to address authorities' low awareness of trafficking crimes.

Corruption and official complicity in trafficking are a key concern in Indonesia, and the budget of the National Task Force Coordinating Office, tasked with addressing government corruption, continues to decrease. In 2021, the number of government trafficking investigations declined for the fourth consecutive year; similarly, the number of prosecutions and convictions decreased for the third consecutive year.[397] According to the US Department of State, civil society actors have alleged some law enforcement officials and politicians organised raids on entertainment venues to extort financial kickbacks from adults in commercial sex, which may have included sex trafficking survivors.[398]

Malaysia

Defining refugees

Established community networks, economic prospects, and relative safety are motivations for Rohingya travelling to Malaysia.[399] As of May 2022, UNHCR reported about 182,960 registered refugees and asylum seekers, 60 percent of whom are Rohingya in Kuala Lumpur city and Selangor.[400] This figure does not account for unregistered refugees and asylum seekers, estimated at 500,000 in 2020.[401] Notwithstanding the large Rohingya population, the Government of Malaysia does not grant legal status to Rohingya refugees. Under Immigration Act 1959/63, anyone who enters Malaysia without proper documentation, even if fleeing persecution, is considered an 'illegal immigrant'.[402]

Connection to regional and international frameworks

The Government of Malaysia has neither signed nor ratified international agreements related to refugees. It is not a party to the 1951 Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness. In 2012, as a member of ASEAN, Malaysia signed the AHRD. However, the non-binding framework and ASEAN's principle of non-interference results in a lack of regional intervention in ensuring member states compliance to the framework.[403]

Malaysia adopted the United Nations Convention against Transnational Organized Crime in 2004, and in 2009 it adopted its supplemental Palermo Protocol.[404] While Malaysia is not signatory to the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, it is party to the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. Malaysia is a part of agreements on child and labour exploitation protections relevant to combatting human trafficking: the ILO Convention 182, Elimination of Worst Forms of Child Labour (ratified); its two protocols - Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (acceded) and Protocol to the Rights of the Child in Armed Conflict (acceded); and Convention 29, Forced Labour (ratified).

National response and policy

Refugee Protection. Malaysia has a long history of receiving migrants, driven by its high dependency on lower-skilled foreign workers as part of the national economic development strategy.[405] Most of the migrant workers work in nationally designated sectors of construction, agriculture, manufacturing, services, plantation, and domestic work.[406] The urgency in bridging labour gap in these labour-intensive industries have also benefited undocumented migrants including refugees. In 1992, the Government of Malaysia briefly granted six-month work permits to some Rohingya arrivals.[407] However, domestic pressure in the early 1990s led to the discontinuation of work permit issuance.[408]

In Malaysia, policy for minimal refugee protections exists, but lacks permanence and consistency. In 2006, the Government of Malaysia attempted to regularise undocumented persons in Malaysia through issuance of 'IMM13' permits which allowed Rohingya, among other groups, legal residence and the ability to work. [409] Immigration did not engage UNHCR for the IMM13 registration process but

397 Ibid.
398 Ibid.
399 Mixed Migration Centre. 2020. Kuala Lumpur Case Study. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2020/11/149_urban_case_study_KualaLumpur.pdf
400 UNHCR. 2022. Malaysia at a Glance. UNHCR. Retrieved from: https://www.unhcr.org/en-us/figures-at-a-glance-in-malaysia.html
401 The Diplomat. 2020. The Shifting Politics of Rohingya Refugees in Malaysia. https://thediplomat.com/2020/07/the-shifting-politics-of-rohingya-refugees-in-malaysia/
402 Ibid.
403 Muntarbhorn, V. 2021. 'Towards ASEAN Human Rights Law' in Nehal Bhuta and others (eds) *The Struggle for Human Rights: Essays in honour of Philip Alston.*
404 United Nations. n/d. Treaty Collection: Chapter XVII: Penal Matters. 12. 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Retrieved from: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en
405 Mixed Migration Centre. 2020. Kuala Lumpur Case Study. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2020/11/149_urban_case_study_KualaLumpur.pdf
406 Wahab, A. 2020. The outbreak of Covid-19 in Malaysia: Pushing migrant workers at the margin. Social Sciences & Humanities Open, 2(1). Retrieved from: https://doi.org/10.1016/j.ssaho.2020.100073
407 Human Rights Watch. 2000. Living in Limbo: Burmese Rohingyas in Malaysia, Background. Human Rights Watch. Retrieved from: https://www.hrw.org/legacy/reports/2000/malaysia/maybr008-01.htm#P359_74637
408 Ibid.
409 Source: PRRiA written input on draft report (29-09-2022).

instead worked with several Rohingya community representatives. The lack of transparency and allegations of corruption and fraud led to the end of IMM13 registration 17 days after it started.[410] In 2015, the Syrian Migrant Temporary Placement Program enabled 3,000 Syrians to apply for temporary legal status. Syrians holding this status can access education and healthcare and apply for a work permit. The government has not pursued a similar option for the Rohingya.[411]

An agreement was signed between Australia and Malaysia in 2011 as part of Australia's strategy to combat smuggling and deter asylum seekers from taking irregular routes to Australia. Under the agreement, Malaysia was to accept 800 asylum seekers (previously detained by Australian authorities for irregular travel) from Australia, while Australia would admit 4,000 registered refugees from Malaysia for permanent resettlement over four years.[412] However, Australia ultimately deemed the order unlawful due to Malaysia's lack of signatory status to the 1951 Convention and instituted domestic refugee protection frameworks.[413] More recently, in February 2021, the Malaysian High Court granted a temporary stay on the deportation of 1,200 Myanmar refugees who were previously detained for immigration offences.[414] In spite of a military takeover in Myanmar the same month, the Immigration Department, disobeying the court and *non-refoulement* law, deported the refugees to Myanmar.

In 2016, following conflict in Myanmar, former Prime Minister Najib Razak decried the violence in Myanmar as ethnic cleansing, a step beyond ASEAN's typical non-interference approach.[415] While the Government of Malaysia criticised Myanmar in solidarity with the majority-Muslim Rohingya, calling for responsibility sharing among the international community, the Malaysian Maritime Enforcement Agency had violated *non-refoulement* laws in its pushback of arrivals during the 2015 Andaman Sea Crisis.

The Government of Malaysia does not have an official legal framework for asylum seekers or refugees. Refugees and asylum seekers are managed under the Immigration Act 1959/63 and Passport Act of 1966. Under Malaysia's Immigration Act, anyone entering the country 'illegally' and without appropriate documentation is punishable by detention, a fine of up to 10,000 ringgit (USD 2,200), up to five years in jail, and whipping of up to six strokes.[416] Only state recognised trafficking survivors are exempt from these punishments, while all other groups - including Rohingya children and persons with disabilities - are subject to penalties.[417]

The Immigration Act and Passport Act were used to justify boats pushback policy in 2015 although it was in violation of the principle of *non-refoulement*.[418]

Anti-Trafficking/Smuggling. The Government of Malaysia passed the Anti-Trafficking in Persons and Smuggling of Migrants (ATIPSOM) Act in 2007. The act, which came into force in 2010, closely models the UN Trafficking Protocol and outlines trafficking offences. ATIPSOM initiated criminalisation of labour and sex trafficking and launched the establishment of a Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO).[419] The Act also dictates that trafficked persons are not liable for criminal prosecution under the Immigration Act for their illegal entry and are to receive government shelter and assistance. Unlike trafficked individuals, smuggled persons are liable to prosecution for entry and do not receive protection or aid under the law as trafficked persons do.[420] The amended version - Anti-Trafficking in Persons and Smuggling of Migrants (Amendment) Act 2022 came into effect in February 2022. Some of the amendments include widened definition of human trafficking, increased penalties for smugglers and traffickers, and inclusion of NGO representations in MAPO.[421]

Policy implementation and treatment of refugees

Protection. UNHCR issues identification letters to asylum seekers and cards to refugees. Both are considered 'Persons of Concern' documentation. UNHCR registrants have increased access to services and a limited level of protection against arrest and detention. However, waiting time for registration with UNHCR is long given the backlog of cases. In addition, changes in 2016 to UNHCR RSD procedures restricted Rohingya and other Myanmar asylum seekers from directly registering with UNHCR. Instead, these groups can only register with UNHCR if they were released from an IDC, referred by an NGO, or are already included in the UNHCR database.[422] The latest update by UNHCR, in June 2022, suggests that registration is reopened but prioritised for applications made in or before 2019 and only for vulnerable individuals.[423]

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410 Missbach, A. & Stange, G. 2021. Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia. Social Sciences, 10(5) 166. Retrieved from: https://doi.org/10.3390/socsci10050166

411 United Nations Network on Migration. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles. United Nations Network on Migration. Retrieved from: https://idcoalition.org/publication/immigration-detention-atd-in-the-asia-pacific-region/

412 HRW. 2011. Australia, Malaysia: Refugee Swap Fails Protection Standards. Retrieved from: https://www.hrw.org/news/2011/07/26/australia-malaysia-refugee-swap-fails-protection-standards

413 Davies, Ed. 2011. Australia's High Court rejects Malaysian asylum-seeker deal. Reuters. Retrieved from: https://www.reuters.com/article/uk-australia-malaysia/australias-high-court-rejects-malaysian-asylum-seeker-deal-idUKTRE77U0OD20110831

414 Ananthalakshi, A & Latiff, R. 2021. Defying court order, Malaysia deports more than 1,000 Myanmar Nationals. Reuters. Retrieved from: https://www.reuters.com/article/us-myanmar-politics-malaysia/defying-court-order-malaysia-deports-more-than-1000-myanmar-nationals-idUSKBN2AN09M

415 Latiff, Rozanna. 2016. Malaysian PM urges intervention to stop 'genocide' of Myanmar's Rohingya Muslims. Reuters. Retrieved from: https://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN13T07I

416 RefWorld. 1959. Malaysia: Immigration Act, 1959-1963. Retrieved from: https://www.refworld.org/docid/3ae6b54c0.html

417 Ibid.

418 Ibid.

419 ILO. 2010. Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]. Retrieved from: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=79357&p_country=MYS&p_count=199

420 Lyons, L. & Ford, M. 2014. Trafficking Versus Smuggling: Malaysia's Anti-Trafficking in Persons Act. Human Trafficking in Asia, 53-66. Routledge. Retrieved from: https://core.ac.uk/download/pdf/212688984.pdf

421 Malay Mail. 2022. Home minister: Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022 to come into effect tomorrow | Malay Mail. Retrieved from: https://www.malaymail.com/news/malaysia/2022/02/21/home-minister-anti-trafficking-in-persons-and-anti-smuggling-of-migrants-am/2043011

422 Asia Pacific Refugee Rights Network. 2018. Country Fact Sheet: Malaysia. Asia Pacific Refugee Rights Network. Retrieved from: https://drive.google.com/file/d/1kB677BY8XZRa5u0zzuik4K-CskoEzl6z/view

423 UNHCR. 2022. FAQs on Registration Processing as of 1 June 2022. Retrieved from: https://refugeemalaysia.org/faqs-on-registration-processing-as-of-1-june-2022/

Refugees in Malaysia are vulnerable to protection risks. Rohingya children are unable to attend public schools, but they can access schooling through some private schools or 'alternative learning centres' that NGOs, faith-based organisations, or refugee communities run. However, private school fees are often unaffordable, while these learning centres lack resources and qualified teachers.[424] All refugees cannot attain legal employment in Malaysia.[425]

The lack of legal employment directs Rohingya towards the informal sector for livelihoods. Refugees in these unregulated jobs are exposed to risks of exploitative behaviours like contract violations, debt bondage, or threats of deportation. In Malaysia, amid heightened xenophobia during COVID-19, Rohingya became target of misinformation and hate speech campaigns; and discrimination spread by the public and government officials.[426, 427]

Stateless Rohingya and refugees have minimal access to affordable healthcare. Rohingya who hold UNHCR cards or 'under consideration'[428] letters receive 50 percent subsidies towards non-Malaysian rates at public health facilities. Without UNHCR documentations, individuals must pay full price, at times 100 times higher than Malaysian rates.[429] Those unable to pay a deposit during registration are often denied access to treatment from the provider; and failing to pay fees in cases of death or delivery can result in the withholding of the body or infant.[430, 431] While government hospitals should accept emergency medical cases under Malaysian law, this is not consistently honoured.[432] Under Health Circular 10/2001, health practitioners are obligated to report undocumented patients to immigration, which in some instances, have resulted in survivors of gender-based violence being reported to immigration officials for being undocumented and failing to pay medical treatment costs.[433]

Discourse around irregular migrants has shifted in the past few years – especially since the onset of COVID-19. At the 36th ASEAN Summit in 2020, Muhyiddin Yassin, Malaysia's eighth prime minister, stated, '*We can no longer take more [Rohingya] as our resources and capacity are already stretched, compounded by the COVID-19 pandemic*.'[434] When the Government of Malaysia began initiatives to address the pandemic, migrants were allowed access to free testing and health services for COVID-19 related illness and given assurances that there would be no arrests while seeking treatment.[435] Nevertheless, in May 2020, government raids in areas under Enhanced Movement Control Order[436] led to the arrest of hundreds of undocumented migrant workers and refugees. Advocates criticised officials for abusing lockdown measures to persecute undocumented persons.[437] Immigration raids increased in the following months, and enforcement officials arrested and detained undocumented workers and refugees. The lack of social distancing measures and poor hygiene have turned the overcrowded detention centres into COVID-19 hotspot, with over 400 detainees testing positive for COVID-19 as of June 2020.[438]

Despite these challenges, organisations such as the All-Party Parliamentary Group Malaysia (APPGM) have made progress on bipartisan discourse at the Parliamentary level. Made up of academics, professionals, and NGOs, APPGM Policy on Refugees in Malaysia Committee is a platform to promote discussion, research, and the development of reports and recommendations on refugee protection for Parliament and its committees. APPGM has called for bipartisan cooperation to help Malaysia develop appropriate policies on refugee management and engages with the government to explore ATD approaches for refugees and asylum seekers.[439]

In 2020, the Malaysian cabinet approved an ATD Pilot that will be implemented with two NGOs - SUKA Society and Yayasan Chow Kit - to provide case management support and shelter to children upon release from detention. SOPs were finalised and adopted by relevant government ministries in 2022, though children have not been released into the pilot and Rohingya children do not qualify for this pilot programme.[440]

UNHCR was able access immigration detention facilities and assist with the release of registered refugees and asylum seekers in the past, but UNHCR has been denied access to these facilities since August 2019. The Malaysian Human Rights Commission (SUHAKAM)

424 Asia Pacific Refugee Rights Network. 2018. Country Factsheet: Malaysia. Asia Pacific Refugee Rights Network. Retrieved from: https://drive.google.com/file/d/1kB677BY8XZRa5u0zzuik4K-CskoEzI6z/view

425 US Department of State. 2021. Trafficking in persons 2021: Malaysia. US Department of State. Retrieved from: https://www.state.gov/reports/2021-trafficking-in-persons-report/malaysia/

426 Asia Pacific Refugee Rights Network. 2020. Towards Refugee' Right to Work. Asia Pacific Refugee Rights Network. Retrieved from: https://sites.google.com/view/aprrn-frdp/our-work/reports

427 Kim, Christine H. 2020. Challenges to the Rohingya Population in Malaysia. Center for Strategic and International Studies. https://www.csis.org/blogs/new-perspectives-asia/challenges-rohingya-population-malaysia

428 Source: PRRiA written input on draft report (29-09-2022).

429 Hospital Sungai Buloh. 2022. Caj dan Bayaran. Retrieved from: https://hsgbuloh.moh.gov.my/en/corporate/contact-us/hospital-information/15-pelawat/caj-dan-bayaran.html

430 Source: PRRiA written input on draft report (29-09-2022).

431 Sullivan, Daniel. 2016. Still Adrift: Failure to Protect Rohingya in Malaysia and Thailand. Refugees International. Retrieved from: https://www.refugeesinternational.org/s/20161117-Rohingya.pdf

432 Ibid.

433 United Nations Network on Migration. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles. United Nations Network on Migration. Retrieved from: https://idcoalition.org/wp-content/uploads/2022/05/Asia-Pacific-ATD-Report-2022.pdf

434 Latiff, Rozanna. 2020. Malaysia can't take any more Rohingya refugees. Reuters. Retrieved from: https://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN23X19Y

435 Wahab, A. 2020. The outbreak of Covid-19 in Malaysia: Pushing migrant workers at the margin. Social Sciences & Humanities Open, 2(1). Retrieved from: https://doi.org/10.1016/j.ssaho.2020.100073

436 The order required households under its jurisdiction to observe a stay-at-home lockdown.

437 Amnesty Malaysia. 2020. End mass arrests of migrant workers. Retrieved from: https://www.amnesty.my/2020/05/20/end-mass-arrests-of-migrant-workers/

438 Wahab, A. 2020. The outbreak of Covid-19 in Malaysia: Pushing migrant workers at the margin. Social Sciences & Humanities Open, 2(1). Retrieved from: https://doi.org/10.1016/j.ssaho.2020.100073.

439 Source: PRRiA written input on draft report (29-09-2022).

440 United Nations Network on Migration. 2022. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles. United Nations Network on Migration. Retrieved from: https://idcoalition.org/wp-content/uploads/2022/05/Asia-Pacific-ATD-Report-2022.pdf

can monitor immigration detention facilities but must announce planned monitoring in advance.[441] Please see the *Malaysia: Key actors* section in *Appendix 5: Key National and Local Actors at the National Levels* for further examination of local and national stakeholders in Malaysia.

Anti-Smuggling/Trafficking. Over the past decade, Malaysia has demonstrated weakening compliance with minimum standards for the elimination of trafficking.[442] This is evidenced in government responses to the discovery of Wang Kelian mass graves. In 2015, 139 mass graves and 28 trafficking camps were discovered in Wang Kelian, a small town along the border of Malaysia and Thailand. The graves held the remains of Rohingya and Bangladeshi survivors of human trafficking.

In February 2019, a Royal Commission of Inquiry (RCI) was opened to further investigate and establish accountability in the Wang Kelian case. The report by Fortify Right and SUHAKAM, which is backed by RCI finding, suggested that the incident could have been prevented by the authorities and their negligence have obstructed the investigation process.[443] In 2016, the government convicted four foreign nationals for people smuggling into the camps;[444] however, in the absence of nationally identified perpetrators or violations of law, no trial, charges, or arrests have materialised against Malaysian officials or private citizens for trafficking – as they have in neighbouring Thailand which have convicted 76 people, including nine officials for their crime related to human trafficking.[445]

To address labour exploitation resulting from trafficking, the Government of Malaysia, in March 2017, started phase one of a three-year work pilot scheme targeting 300 UNHCR-registered Rohingya.[446] Phase one of the work pilot in the plantation sector failed, but phase two which involves manufacturing sector is a relative success and continues to date. The low Rohingya retention rate of the work pilot is reportedly due to desire for close proximity to family and community, a lack of access to transportation, and access to higher wages through informal work.[447]

According to the US Department of State, in 2021 the Malaysian government inadequately addressed or pursued credible allegations of labour trafficking; there was similarly a lack of investigations or prosecution of trafficking cases.[448] In contrast, when, in January 2021, the government announced a state of emergency to curb the spread of COVID-19 and led arrests on undocumented persons including Rohingya refugees.

The enforcement of smuggling and trafficking procedures outlined in ATIPSOM (and international conventions) is inconsistent. While trafficking survivors have rights to access health, religious, and social services, and income-generating activities in government and NGO operated shelters, reports from NGOs describe these shelters as detainment-like with limited access to medical care, and communication with family or shelter staff.[449] Trafficking survivors have rights to an Interim Protection Order allowing residence in shelters and ability to seek employment; though, female survivors often have fewer rights and less mobility in these cases.

Officials often conflate acts of trafficking and smuggling and prescribe erroneous penalties. Immigration enforcement authorities do not have a standardised screening process and rely on trafficking survivors to self-identify.[450] The MAPO Council, in coordination with NGOs, in 2020 established trafficking victim identification SOPs, but neither police nor immigration officers have systematically implemented the new procedures.[451] The US Trafficking in Person Report 2022 also reveals corrupt immigration or government officials undermine anti-trafficking efforts by accepting bribes at border crossings or profit from the extortion and exploitation of migrants.[452]

Smuggled persons including Rohingya lack protections under ATIPSOM albeit the considerable risks they face during the journey.[453] A study by MMC found that 94 percent of Rohingya interviewed between March and May of 2021 used smugglers to reach Malaysia – primarily for assistance in crossing borders (51 percent) and attainment of documentation (36 percent).[454] Some of the largest risks reported were detention, physical and sexual violence, and kidnapping.[455]

441 Sullivan, Daniel. 2016. Still Adrift: Failure to Protect Rohingya in Malaysia and Thailand. Refugees International. Retrieved from: https://www.refugeesinternational.org/s/20161117-Rohingya.pdf

442 US Department of State. 2022. 2022 Trafficking in Persons Report. Retrieved from: https://www.state.gov/reports/2022-trafficking-in-persons-report/

443 Zakaria et al. 2019. RCI Report 2019. Retrieved from: https://web.archive.org/web/20220721043651/https:/www.moha.gov.my/images/maklumat_bahagian/UKOM/LAPORAN_RCI_BI_COM.pdf

444 US Department of State. 2019. Trafficking in persons 2019: Malaysia. US Department of State. Retrieved from: https://www.state.gov/reports/2019-trafficking-in-persons-report-2/malaysia/

445 Fortify Rights. 2022. Malaysia: Prosecute Officials Involved in Rohingya Trafficking and Mishandled Investigation. Retrieved from: https://www.fortifyrights.org/mly-inv-2022-10-18/

446 UNHCR. 2018. Universal Periodic Review: 3rd Cycle, 31st Session Malaysia. Retrieved from: https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=5889&file=EnglishTranslation

447 Nungsari, M., & Flanders, S. 2018. A Comprehensive Study of Rohingya Construction Workers in Peninsular Malaysia and Recommendation for a Future Work Pilot Program. Retrieved from: http://www.melatinungsari.com/uploads/2/3/6/3/23631450/finalreport-mnsf.pdf

448 US Department of State. 2021. Trafficking in persons 2021: Malaysia. US Department of State. Retrieved from: https://www.state.gov/reports/2021-trafficking-in-persons-report/malaysia/

449 Ibid.

450 Ibid.

451 Lyons, L. & Ford, M. 2014. Trafficking Versus Smuggling: Malaysia's Anti-Trafficking in Persons Act. Human Trafficking in Asia, 53-66. Routledge. Retrieved from: https://core.ac.uk/download/pdf/212688984.pdf

452 US Department of State. 2022. 2022 TIP Report. Retrieved from: https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf

453 Lyons, L. & Ford, M. 2014. Trafficking Versus Smuggling: Malaysia's Anti-Trafficking in Persons Act. Human Trafficking in Asia, 53-66. Routledge. Retrieved from: https://core.ac.uk/download/pdf/212688984.pdf.

454 Mixed Migration Centre Asia. 2021. Protection risks facing Rohingya refugees en route to Malaysia. MMC. Retrieved from: https://mixedmigration.org/resource/4mi-snapshot-protection-risks-facing-rohingya-refugees-en-route-to-malaysia/

455 Ibid.

Photo Credit: Danish Refugee Council, Bangladesh

3. Part 1 Findings

Part 1: *What is the regional and national policy landscape for refugee protection, anti-smuggling, and anti-trafficking?*

This section presents the findings of the research against the four key RQs under **Part 1**. The key findings per RQ are highlighted in a blue text box, under which evidence on that finding is presented.

RQ1.1: What are the drivers, routes and means of Rohingya exodus from Myanmar and Bangladesh and the risks of smuggling and trafficking that people face?

Key Driver Findings

Finding 1: *In Myanmar, decades of discriminatory government policies and abuses against Rohingya have caused waves of movement out of the country.*

As indicated in the *History of the Rohingya in Myanmar and Bangladesh* section above, secondary data and KIIs with regional- and national-level stakeholders explain how Myanmar's de facto authorities' longstanding and systemic persecution of the Rohingya has driven migration to Bangladesh, Thailand, Indonesia, and Malaysia over generations.[456] Key informants described how decades of government oppression of the Rohingya have resulted in the erosion of Rohingya civil liberties (i.e., removal of citizenship, legal status, and state recognition of Rohingya as an ethnic group) and fuelled public prejudice against the group.

As displayed in the *Timeline of Regional and National Events*, various recent events have compounded instability and threats to Rohingya in Myanmar. These include conflict and persecution of Rohingya peaking in 2012, 2016, and 2017, resulting in over 770,000 Rohingya escaping to Bangladesh, the onset of the COVID-19 pandemic in 2020, causing government lockdowns in Rohingya communities, and the Tatmadaw government takeover in 2021.[457]

Multiple key informants expressed that the repatriation of Rohingya refugees is unlikely to occur in the near future due to the absence of legal status and other fundamental rights for Rohingya in Myanmar. Key informants report that Rohingya refugees continue to express doubts about the likelihood of a safe and dignified future for Rohingya in Myanmar.

Notwithstanding the low refugee resettlement rate, coupled with rising refugee populations worldwide, key informants suggested that, given protracted displacement of Rohingya and dim prospects for their return to Myanmar, the international community must prioritise the resettlement of Rohingya refugees. Since 2009, more than 9,800 Rohingya - mostly from Malaysia - have resettled to the United States. The United States is expected to continue resettling Rohingya from Southeast Asia and is also reportedly negotiating with the Government of Bangladesh to resettle Rohingya refugees from Bangladesh beginning in 2023.[458] The proposed scheme, however, is expected to resettle only a small portion of the more than 900,000 Rohingya in Bangladesh. Key informants expressed concern about resettlement criteria that prioritise Rohingya refugees with high skill levels, which in effect could cause host countries to lose human capital and Rohingya leaders who have significant roles in the Rohingya communities.

Finding 2: *Protection risks in Bangladeshi camps and the exhausted capacity of the government is driving Rohingya movement.*

Primary data illustrates that the presence of more than 900,000 Rohingya refugees in Bangladesh has overwhelmed the government's capacity to effectively manage the situation. KIIs informed that this has resulted in limited availability of basic services, deteriorating living conditions for refugees, and poor relations with host communities. Rohingya face multiple challenges in refugee camps, including overcrowding, dependence on humanitarian assistance, limited economic opportunities, gender based violence, host community harassment, intensified gang violence, exposure to natural hazards (i.e., cyclones, floods, landslides, fires), and minimal

456 Krishna, Nirmala. 2018. The Rohingya Plight: The Role of State and Non-State Actors. The Journal of Defence and Security; Kuala Lumpur, 9(1) 49-68. Retrieved from: https://www.proquest.com/openview/d8b9f5bb7369c68318d88f2f74d3fdb9/1?pq-origsite=gscholar&cbl=1456373

457 Ibid.

458 US State Department. 2022. Report to Congress on Proposed Refugee Admissions for Fiscal Year 2023. US State Department. Retrieved from: https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2023/#eap

protection against COVID-19.[459] Key informants suggest that reductions in financial assistance from the international community for Rohingya in Bangladesh due to economic stagnation and focus on humanitarian crises in Afghanistan and Ukraine have exacerbated the situation. However, KIIs with regional key informants found that the international community, particularly in the Global North, remains keen to create long-term solutions for Rohingya in Bangladesh.

Following an increase in COVID-19 transmission rates in April 2021, the Government of Bangladesh enforced a complete lockdown of five Rohingya camps with the highest number of detected cases, and enacted containment and mitigation measures in the 29 other camps.[460] The camp conditions during the pandemic were reflected in interviews with Rohingya refugees in Cox's Bazar conducted by Burma Human Rights Network, which found 93 percent of respondents did not receive sufficient food, 100 percent perceived their current safety situation negatively, and 81 percent reported criminal activity as a concern in the camps.[461]

Key informants report that the lack of economic opportunities in the camps is aggravating a sense of hopelessness among Rohingya refugees, which is contributing to the rise of gang activity and involvement of some Rohingya in drug trafficking to Myanmar and India. Multiple key informants also explained that Rohingya girls have accepted marriage proposals from men in Malaysia to escape difficult conditions in Bangladesh.

Attempting to alleviate overcrowding in the camps, the Government of Bangladesh's relocation of Rohingya refugees to Bhasan Char Island has been controversial. Secondary documentation indicates Rohingya receive inadequate social services (i.e., education and healthcare) on Bhasan Char. However, the government has prevented many relocated Rohingya from returning to the camps.[462] In response, hundreds, if not more, Rohingya have reportedly fled or attempted to flee the island. To improve conditions on Bhasan Char, the Government of Bangladesh is reportedly developing livelihood activities, such as the Asrayan-3 Project[463] in addition to distributing tools, electrician equipment, and haircutting kits.[464] However, the scale of livelihood activities is small, and KIIs highlighted that refugees on the island face high population density, limited mobility, low availability of services, and risk of natural hazards including storm surges, cyclones, and flooding exacerbated by rising sea levels.

Key Risk Findings

Finding 3: *Movement to Malaysia and to a lesser extent, Indonesia, enables Rohingya to reunite with family and secure better access to shelter, healthcare, and informal employment.*

KIIs at the regional- and national-levels found poor camp conditions in Cox's Bazar and Bhasan Char are driving Rohingya journeys to other countries in search of better work conditions, economic opportunities, and reunification with family. There was disagreement among key informants over whether Indonesia is perceived as a destination country for Rohingya refugees. Primary data shows some Rohingya refugees in Bangladesh and Myanmar view Indonesia as an endpoint because of its geographic proximity, access to protection (i.e., government and I/NGO-provided shelter and basic necessities), family connections, shared Sunni Islam religious identity, and the perception that local Indonesian communities welcome Rohingya. KIIs found that in comparison with other countries in Southeast Asia, the immigration and border policies of Indonesia are more tolerant of refugee arrivals. In other instances, there are reports of Rohingya who transited in Indonesia and consequently undertook trafficking or smuggling routes to Malaysia.[465, 466]

Indonesia is a route for Rohingya refugees aiming to move to Australia and Malaysia. Indonesian key informants report traffickers and smugglers often deceive Rohingya with false promises of travelling to Australia or Malaysia, and instead disembark Rohingya at islands near Bhasan Char or off Thailand's southwest coast. Traffickers and smugglers subject Rohingya passengers to longer-term trafficking arrangements as well. KIIs show traffickers and smugglers untruthfully assure Rohingya that migrating will reconnect them to family, or that the destination country (i.e., Indonesia) harbours a welcoming civil, economic, and legal environment for refugees.

Finding 4: *After the 2015 Andaman Sea Crisis and resultant crackdown, crime syndicates have adapted trafficking and smuggling approaches that bring new risks to Rohingya refugees.*

459 Human Rights Watch. 2021. An Island Jail in the Middle of the Sea. Human Rights Watch. Retrieved from: https://www.hrw.org/report/2021/06/07/island-jail-middle-sea/bangladeshs-relocation-rohingya-refugees-bhasan-char

460 Bangladesh Government. 2021. Regarding Refugee/FDMN camp operation in light of COVID-19. Bangladesh Government. Retrieved from: http://rrrc.gov.bd/sites/default/files/files/rrrc.portal.gov.bd/notices/b95aafe3_6890_4ae1_ae81_2d6fa1095e2e/2021-04-08-04-36-208ab77b8c17e9016cc96dd3b2ce5459.pdf

461 Burma Human Rights Network. 2022. We also have dreams. Burma Human Rights Network. Retrieved from: https://www.bhrn.org.uk/en/report/1191-we-also-have-dreams.html?fbclid=IwAR3hz08CRcxglVBazKtbjOZMwXAQHIV047kZM7zMZZ3F6T3Du2ArTazH-jQ

462 McPherson, P & Paul, Ruma. 2021. U.N deal offers no guarantees of free movement for Rohingya on island – leaked agreement. Retrieved from: https://www.reuters.com/world/asia-pacific/un-deal-offers-no-guarantees-free-movement-rohingya-island-leaked-copy-2021-10-15/?mc_cid=5903388502&mc_eid=a0b6e5d286

463 Some of the initiatives under Asrayan-3 includes provision of agricultural land for farming purposes and distribution of fish fry for fish rearing activities.

464 Islam, et al. Sustainable Livelihood for Displaced Rohingyas and Their Resilience at Bhashan Char in Bangladesh. *Sustainability*. 14(10):6374. Retrieved from: https://doi.org/10.3390/su14106374

465 AFP. 2021. Missing Rohingya refugees in Indonesia trafficked to Malaysia. Retrieved from: https://www.nst.com.my/world/region/2021/02/662431/missing-rohingya-refugees-indonesia-trafficked-malaysia

466 Reuters. 2021. Over 30 Rohingya caught arriving in Malaysia by boat in January: police. Retrieved from: https://www.reuters.com/article/us-malaysia-rohingya-idUSKBN2A709B

As highlighted in the *History of the Rohingya in Myanmar and Bangladesh* section, the crackdown on trafficking and smuggling in Thailand, Indonesia, and Malaysia following the 2015 Andaman Sea Crisis catalysed changes in human trafficking and smuggling operations. Interviews with key informants in Thailand found Thai government's prosecution of 62 traffickers, including Thai officials linked to the discovery of 36 graves in Songkhla province in 2015,[467] signalled an unprecedented effort to address trafficking. In response, crime syndicates have been forced to scale down activities, reducing the number of trafficked persons per operation from several hundred to less than a hundred, according to KIIs.

However, trafficking operations from Myanmar to Malaysia are now more frequently traversing the Thailand-Myanmar border with up to 50-60 Rohingya at a time. Thai key informants report Mae Sot in Tak province has become a new entry point for traffickers and smugglers; organisers then transport Rohingya to Malaysia by train or car. Key informants asserted the uptick in movement of Rohingya through Thailand has increased legal risks to Rohingya (i.e., arrest and indefinite detention). Key informants also reported trafficking syndicates often ensnare Rohingya who escape from Thai IDCs.

KIIs found the pre- and post-2015 risks associated with journeying by boat remain the same. Thai key informants report that Rohingya moving across the Andaman Sea face forced labour, Royal Thai Navy pushbacks, and abandonment on Thai islands. Indonesian key informants corroborated these findings, adding that Rohingya are at risk of trafficker-incurred psychological trauma, sexual abuse, violence, murder, and death. The risk of long-term entrapment through sex work, forced labour and other extended exploitations are prevalent. Before embarkment from Bangladesh and Myanmar, an increasing proportion of traffickers and smugglers require multiple payments to ensure arrival in Malaysia or Indonesia. KIIs found traffickers and smugglers make unforeseen mid-journey demands for additional payment, a robbery tactic that generates debts owed to traffickers and smugglers.

Regional key informants asserted the Thai government's 2015 legal crackdown on trafficking following the discovery of mass graves in Songkhla province[468] and ongoing boat pushbacks have disincentivised traffickers to conduct operations in Thai jungle camps. In exchange, however, key informants report traffickers shifted operations from land to aboard a 'mothership' - a vessel in the Andaman Sea that holds Rohingya refugees for ransom. KIIs found traffickers on the mothership hold Rohingya refugees for up to six months; failure to pay ransom results in traffickers throwing Rohingya overboard. Key informants asserted the Andaman Sea is a mass grave site for trafficked Rohingya.

467 Fortify Rights. 2017. Thailand: Government Officials Convicted of Human Trafficking, Organized Crime. Retrieved from: https://www.fortifyrights.org/tha-inv-2017-07-20/

468 Beh, LY. 2015. Malaysia migrant mass graves: police reveal 139 sites, some with multiple corpses. Retrieved from: https://www.theguardian.com/world/2015/may/25/malaysia-migrant-mass-graves-police-reveal-139-sites-some-with-multiple-corpses

RQ1.2: What are the regional Bangladesh and Southeast Asia frameworks and mechanisms for anti-smuggling, anti-trafficking, and refugee protection, respectively?

Key Refugee Protection Findings

Finding 5: *Refugee protections are not enshrined in regional frameworks or mechanisms*.

The AHRD is the main regional instrument in Southeast Asia that promotes the safeguarding of human rights. The AHRD, however, avoids reference to refugees, asylum seekers, stateless persons, or internally displaced persons.[469] Key informants in Thailand report that the AHRD does not guide or influence national-level refugee protection policies. More broadly, Key informants revealed explained that, because the AHRD is non-binding and has had limited influence on member states with poor human rights records, it is unlikely to be a means of expanding rights or protections for refugees in the region.

Primary data indicated ASEAN does not have explicit policies related to refugee management in the region. With the securitisation of migration issues, refugees are often associated with threats to national borders and sovereignty and hence treated as security issues in policymaking at national level. In addition, some KIIs suggested the principle of non-interference in the ASEAN Charter lead to reluctance of the ASEAN Member States to formalise legally binding regional refugee protection standards that may infringe on national policies.

Key informants recommended member states transition from KIIs found a suggestion for civil society actors to engage coordination across national levels to develop consistent messaging for deployment with relevant national representatives of ASEAN. Key informants suggested that agreement among ASEAN member states could produce solid actions aimed at reprimanding the de facto authorities of Myanmar (i.e., supporting arms embargos on de facto military authorities, economic sanctions), which in turn may pressure the de facto authorities to address the ongoing persecution of Rohingya, and eventually lower Rohingya movement out of Myanmar.

KIIs found the codification of refugee protection in a trans-regional framework between Bangladesh and Southeast Asian key host countries such as Thailand, Indonesia, and Malaysia would increase public and policymaker visibility on Rohingya refugee issues. Several key informants called for ASEAN to develop a legally binding refugee protection regional framework. Key informants recommended Thailand, Indonesia, and Malaysia – key host countries of Rohingya to use the Rohingya refugee crisis as an entry point to call for the development of an ASEAN refugee protection framework that guides national legislation *a la* ACTIP. While advocacy with ASEAN on refugee protection must continue, regional- and national-level key informants encouraged more support for local NGOs and other civil society, who are key actors engaged in sustained advocacy with national policymakers and officials responsible for implementing refugee and migration policies. KIIs indicated this may result in bottom-up transformation of national protection landscapes.

To support bottom-up advocacy from the regional level, key informants pointed to the ACWC and AICHR as bodies that could fund civil society to conduct local research, produce results in local and English languages, and help amplify advocacy messaging and raise awareness of Rohingya refugee issues at community level. All countries reviewed at national level have one appointed representative on the AICHR and two representatives on the ACWC, which actively advocate for protecting refugee rights within ASEAN member states.

Key Anti-Trafficking/Smuggling Findings

Finding 6: *The ASEAN Convention Against Trafficking in Persons (ACTIP) as a regional framework focuses on criminalising human trafficking, with limited focus on prevention or protection to survivors of trafficking.*

The 2015 ACTIP is the main Southeast Asian regional framework for addressing trafficking. Thailand, Malaysia, and Indonesia are parties to the Convention and the 2015 ACTIP Plan of Action. ACTIP guides ASEAN member states on developing national anti-trafficking laws, but key informants report that member states have struggled to define the criteria for survivors of trafficking, in part because ACTIP and the Plan of Action focus on the criminalisation of trafficking with less regard for the impact on survivors, specifications on context, and distinctions between trafficking and smuggling.

Key informants explained that national policies reflect ACTIP's emphasis on criminalisation, which gives less detailed guidance for: distinguishing persons who have been smuggled or trafficked; developing standardised screening mechanisms; and providing appropriate support services to survivors. KIIs highlighted that ACTIP falls short in addressing officials' misunderstanding and conflation of trafficking and smuggling, which affects how survivors are identified and treated. The distinction is consequential. In

469 Association of Southeast Asian Nations. 2012. ASEAN Human Rights Declaration. Association of Southeast Asian Nations. Retrieved from: https://asean.org/asean-human-rights-declaration/

Malaysia, for example, persons who have been smuggled are subject to incarceration, while survivors of human trafficking are eligible for protection and support services. KIIs highlighted that ACTIP's lack of nuance fails to capture the reality of Rohingya movement to Malaysia or Indonesia, which often begins as smuggling but can become trafficking with subsequent acts of exploitation.

Finding 7: *The ASEAN Declaration on the Rights of Children in the Context of Migration and its Regional Plan of Action are guiding the development of national policies on alternatives to detention for refugee children.*

ASEAN Member States are using the ASEAN Declaration on the Rights of Children in the Context of Migration and its Regional Plan of Action to help develop national policies on ATD for children. KIIs found that the Government of Indonesia's release of refugees and asylum seekers from IDCs in 2018, and the Thai government's MOU-ATD reflect objectives of the ASEAN Declaration and Regional Plan, such as providing child survivors with ATD and access to education and healthcare. While key informants reported over 2,200 Rohingya including children are in Malaysian IDCs, KIIs found there is ongoing dialogue led by UNICEF with MOHA and the Ministry of Women, Family and Community Development on developing ATD for children. Key informants report that the government has invited NGOs to participate and give input.

KIIs indicated a need for more nuanced policies that account for journeys within the smuggling-trafficking-refugee nexus. Key informants report that existing regional and national frameworks on anti-trafficking and anti-smuggling lack the elasticity necessary to adjust policy to the social reality of refugee journeys. Citing the ASEAN Declaration and its Regional Action Plan as an example, key informants expressed that an increase in the breadth and depth of future regional protection frameworks can improve refugee outcomes.

Finding 8: *The Bali Process facilitates regional discourse on anti-trafficking but has minimal effect on advancing refugee protection in the region.*

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is a key tool that helps shape regional anti-trafficking and anti-smuggling discourse. With Australia, Indonesia is a co-chair to the process and is one of four countries, including Thailand, which form the Bali Process Steering Group. Thailand, Indonesia, Malaysia, Bangladesh, and Myanmar are among members of the Bali Process Ad Hoc Group. Despite the Bali Process functioning as a major anti-trafficking forum at the regional level, several key informants did not have in-depth knowledge of the Bali Process or its complementary 2016 Declaration, reflecting its limited role to date in regional refugee discourse.

Multiple key informants report that the Bali Process has done little to address the Rohingya issue. KIIs conveyed that the Bali Process, consisting of 49 member states, is slow to respond to current issues surrounding the Rohingya crisis. KIIs show the objectives prioritised by the Bali Process are based on common ground among member states. In effect, Bali Process decisions typically focus on 'least common denominator' issues that remain vague on sensitive issues including Rohingya displacement. Key informants expressed hope that Australia's recently elected Labour Government may work with Co-chair Indonesia to reinvigorate the Bali Process as a forum for influencing regional policy on forced migration and refugee protection, as well as trafficking, smuggling, and transnational crime. While the Bali Process is unlikely to yield significant advances in regional refugee protection policies, key informants suggested it could function as a key forum for: promoting better alignment of national anti-trafficking and refugee response frameworks; improving coordination of protection-oriented responses to forced migration within the region; and sharing best practices.

RQ1.3: What are the national-level policies and law in place in Indonesia, Malaysia, and Thailand, and how accessible are these protections to the Rohingya?

Key Thailand Findings

Finding 9: *In Thailand, the lack of a codified legal status for refugees enables the Thai government to manage Rohingya refugees as 'illegal' migrants.*

As described in the *Thailand* section, the Thai government does not legally recognise refugee status and uses immigration policies to manage refugee populations. KIIs indicated that, although the Thai government has occasionally refouled refugees, it cannot return Rohingya to Myanmar. The Thai government places non-Rohingya Myanmar refugees in government-operated border camps, which receive assistance from UNHCR, IOM, and NGOs, and other civil society groups. In contrast, KIIs found the Thai government treats Rohingya refugees as illegal migrants under the Immigration Act of 1979 and may detain Rohingya in facilities separated by age and sex: the Thai government places Rohingya men in IDCs while women and children are held in closed shelters operated by the MSDHS. KIIs indicated that some Rohingya refugees are aware of the Thai government's different management approaches for Rohingya and non-Rohingya Myanmar refugees. In cases of arrest, some Rohingya deny their ethnicity and declare belonging to a separate Myanmar ethnic group to avoid detention in IDCs and closed shelters.

Primary data indicated the conditions of IDCs and closed shelters are equivalent to Thai prison as detainees live in overcrowded, unsanitary spaces with limited mobility. Rohingya in IDCs and closed shelters receive insufficient sustenance and health care. Contrary to the handling of Myanmar refugees in border camps, key informants reported the Thai government limits civil society organisations' access to IDCs and closed shelters, which makes the total number of Rohingya detained and the quantity and quality of services unknown. Key informants expressed that Rohingya detention is clandestine by design as the Thai government aims to limit domestic and international awareness of the presence of Rohingya in Thailand. In multiple KIIs, Thai key informants recommended foreign governments, I/NGOs, and other civil society actors should pressure Thai Members of Parliament to visit and witness the treatment of Rohingya refugees in IDCs and closed shelters.

Finding 10: *In Thailand, uneven implementation of anti-trafficking policy deprives Rohingya trafficking survivors of legal protection.*

Key informants in Thailand agreed that the Anti-Trafficking in Persons Act of 2008 is the main policy that grants protection to Rohingya survivors of trafficking. Under the Anti-Trafficking in Persons Act of 2008 described in Thailand's *National policy and response* section, Thai authorities and MDTs are required to screen for survivors of trafficking; those determined as survivors are granted access to shelter, legal support services, medical treatment, employment during the proceedings, and reintegration assistance. However, KIIs found there is inconsistent implementation of anti-trafficking policy across Thailand. Key informants reported although verified Rohingya survivors of trafficking are admitted to closed shelters, poorly executed and ad hoc screening procedures, prejudices against ethnic Rohingya, and under-resourced shelters with limited caring capacity have resulted in the rerouting of Rohingya victims to IDCs.

KIIs indicated that the victim screening procedure lacks countrywide standardisation and varies from locale to locale with the screening of trafficking survivors at the discretion of local Thai police officials. KIIs showed there are inconsistencies in Thai police-conducted trafficking screenings due to: inadequate training for enforcement officials; confusion on trafficking and smuggling terms; a lack of standardised procedures; arbitrary decision-making and the screening officer's disposition; and corruption. Multiple KIIs found trafficking screenings are not favourable to undocumented persons. In addition, key informants reported victim screening is a laborious process that deters officials and incentivises them to de facto determine an act of trafficking has not occurred. Consequentially, Rohingya survivors of trafficking are at risk of wrongful identification and placement in IDCs.

The Thai government indefinitely holds Rohingya victims of trafficking in nine closed government shelters, including Welfare Protection Centres for Victims of Trafficking in Persons and Shelters for Children and Families. KIIs found that government officials separate survivors of trafficking into shelters by sex and age. Key informants asserted that victims in shelters have limited mobility, although children can attend outside schools and attendants facilitate occasional outings to local places. However, if the holding capacities of shelters are full, shelter staff coordinate with Thai police officials to redirect victims to IDCs. Trafficking shelters face budget limitations as well, sometimes relying on NGOs to cover the costs of basic items. Attributed to pandemic-induced government lockdowns that delayed trafficking investigations and legal proceedings, the number of trafficking survivors assisted at Thai government shelters decreased between 2019 and 2020 from 610 individuals to 148.

The official number of Rohingya survivors of trafficking is likely lower than the true number of victims, suggesting that some Rohingya are erroneously placed in IDCs and omitted from trafficking protections granted under Thai law. Under immigration law, Thai police are also obligated to arrest and detain undocumented individuals, putting Rohingya trafficking survivors in a precarious situation. KIIs indicated the risks of arrest for being undocumented have discouraged Rohingya women from reporting sexual abuses out of fear of legal recourse when seeking trafficking screenings. Similarly, Rohingya men subjected to labour exploitation and abuse are often reluctant to seek police assistance due to fear of punishment. In effect, the victim screening process has disincentivised Rohingya victims from reporting abuses.

Concerned with its reputation, international attention on the 2015 Andaman Sea Crisis drove the Thai government to crackdown on in-country trafficking, including the 2015-2017 prosecution of officials responsible for the trafficking and mass graves of Rohingya in southern Thailand. Interviews found the Thai government is highly aware of the US State Department's tier rating system highlighted in *Distinguishing human smuggling and trafficking*. In response to Thai government reforms, the US State Department upgraded Thailand to Tier 2 in 2022 from the Tier 2 Watchlist in 2021. Key informants highlighted the European Commission's 'yellow card' – a warning signalling insufficient progress in addressing forced labour – has also incentivised the Thai government to address illegal, unreported, and unregulated (IUU) fishing and related labour exploitation and trafficking in Thailand's seafood industry. In 2019, the European Commission lifted its yellow card on Thailand after the Thai government upgraded its fisheries legal framework in accordance with international commitments.[470]

Key Indonesia Findings

> **Finding 11:** *In Indonesia, PR No. 125/2016 establishes protections for refugees but a lack of funding and detailed guidance splinters approaches to refugee management.*

Interviews with Indonesian key informants and review of secondary documentation show PR No. 125/2016 is the main protection policy for refugees in Indonesia.[471, 472] PR No. 125/2016 defines refugees' basic needs (i.e., food, clean water, shelter, health, and sanitation facilities) and sets criteria for the conditions of refugee shelters. Importantly, it outlines the overall process for refugee search and rescue, handling, and management. PR No. 125/2016 delegates the Indonesian Armed Forces, Indonesian National Police, and Maritime Security Agency to conduct search and rescue operations. Actors tasked to carry out refugee handling and management activities include: the Indonesia Coordinating Minister for Political Legal and Security Affairs; UNHCR and international organisations in areas of migration or humanitarian affairs (i.e., IOM); local immigration offices and IDCs; Indonesia National Police; Minister of Law and Human Rights; and other undefined relevant regency/municipal administrations.[473]

While PR No. 125/2016 specifies government agencies responsible for search and rescue, handling, and management, Indonesian key informants expressed that it is less comprehensive on interagency roles and coordination procedures. This lack of detail allows agencies to latitude to interpret their obligations, which complicates interagency cooperation, reduces operational efficiency, and negatively impacts refugees arriving by irregular means. For example, a 2022 report by SUAKA found that, after 106 Rohingya arrived in Aceh province, the Air and Water Police did not receive response instructions from local police or headquarters, and instead acted under the directive of supervisors and old internal SOPs.[474]

Key informants criticised the absence of federal funding for local governments mandated to implement refugee management, implying financing for activities comes from the reallocation of local government budgets or from donors. For example, the National Refugee Task Force under the Ministry of Politics, Law, and Security coordinates overall refugee handling but does not supply financial or implementation support. Similarly, the Ministry of Home Affairs instructs provincial, district, and municipal government to develop local refugee task forces. However, the central government does not provide funding to provincial or local governments for refugee management. Key informants reported that, in effect, local governments must use existing funding for refugee management, which drains local resources and pressures local administrations to develop approaches that fit within their budget. Key informants reported that this contributes to local government approaches that deviate from PR No. 125/2016's standards. Some local administrations have opted out of refugee management duties altogether.

Even though the Government of Indonesia has adhered to *non-refoulement* principles since 2015, KIIs found concern amongst Indonesian key informants over protections for recent refugee arrivals in Indonesia. Key informants reported the Government of Indonesia recently deported Somali female asylum seekers who came in search of family members with refugee status in Indonesia. Beyond concerns for these women, key informants were worried about the possibility of similar practices extending to other refugee or asylum seeker groups.

Primary data shows the MoE's 2019 Circular Letter authorises refugee children to attend accredited public schools. Yet, KIIs indicated refugee children who complete public school grades are not provided with a recognised diploma, only a testimonial certificate denoting the level of education completed (i.e., primary school, junior high school, or senior high school completion). KIIs found the Government of Indonesia does not have formal policy that enables refugee enrolment at universities. Aside from a few cases of refugees attending Sampoerna University, key informants reported a standard pathway to enrolment in higher education does not exist for refugees.

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470 European Commission. 2019. Commission lifts 'yellow card' from Thailand for its actions against illegal fishing. European Commission. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61

471 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

472 Dewansyah, B., & Nafisah, R. 2021. The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016. Asian Journal of Law and Society, 8(3) 536-557. Retrieved from: http://doi.org/10.1017/als.2021.8

473 Government of Indonesia. 2016. Regulation of the President of the Republic of Indonesia Number 125 Year 2015 Concerning the Handling of Foreign Refugees. Government Indonesia. Retrieved from: https://www.refworld.org/pdfid/58aeee374.pdf

474 SUAKA. 2022. Monitoring Report on the Implementation of Presidential Regulation No. 125 of 2016 concerning Handling Refugees from Overseas in the Context of Handling Rohingya Refugee Boats in Aceh in 2015 and 2020. SUAKA Indonesia. Retrieved from: https://suaka.or.id/2022/06/13/laporan-pemantauan-implementasi-peraturan-presiden-no-125-tahun-2016-tentang-penanganan-pengungsi-dari-luar-negeri-dalam-konteks-penanganan-perahu-pengungsi-rohingya-di-aceh-tahun-2015-dan-2020/

Key Malaysia Findings

Finding 12: *In Malaysia, while UNHCR registered refugees receive limited protection, there are still barriers to protection outcomes.*

Even though the Government of Malaysia has not enacted law recognising refugee status, it does allow temporary protections and stay to refugees registered with UNHCR Malaysia. However, the government assumes unregistered refugees as illegal migrants. Key informants reported Directive No. 23 of the National Security Council grants refugees in possession of UNHCR cards temporary stay and access to public healthcare. Regardless of holding UNHCR cards, all refugees can access I/NGO and privately supplied education despite concerns about quality and recognition of informal education.[475] KIIs with Malaysian key informants found in some communities, Rohingya have developed positive relationships with police and negotiated local protection agreements. Although these arrangements do not protect Rohingya from police mandates (i.e., responding to complaints), KIIs suggested good relations between Rohingya refugees and local police have helped reduce instances of bribery and extortion.

In 2018, the Bar Council Legal Aid Centre and UNHCR launched the joint Refugees and Asylum-Seekers Legal Aid Scheme (RALAS) to conduct awareness raising campaigns and training on relevant laws, legal rights, and obligations, as well as provide free legal consultations to refugees and asylum seekers. During RALAS activities, key informants reported Rohingya often express concern about the lack of legal status in Malaysia. Since 2017, Asylum Access Malaysia has organised Know Your Rights and Know Your Options trainings to provide refugees basic legal and practical information on navigating the RSD process and reduce risk of detention.[476]

Key informants indicated access to healthcare is challenged by financial constraints stem from a lack of work rights, which prohibits refugee engagement in income-generating activities. Primary data showed UNHCR advocacy and collaboration with the Government of Malaysia led to the Ministry of Health allowing registered refugees to receive a 50% off non-Malaysian charges at public hospitals. Still, the discounted medical fees remain unaffordable for many. Without formal entitlement to employment, many Rohingya refugees work informally in labour-intensive sectors highly reliant on migrant workers (i.e., construction and agriculture). Malaysian key informants reported police and immigration raids have led to the arrest and detention of male adults who generated household income, which in some instances, has caused children to seek informal employment to substitute for lost income. Key informants indicated since 2019, the Government of Malaysia has considered amending Directive No. 23 to allow work rights and temporary work permits for registered refugees. However, no progress has been made thus far.

Access to UNHCR registration is a key challenge for undocumented refugees. Key informants reported that since August 2019, the Government of Malaysia has not allowed UNHCR to enter IDCs. In effect, KIIs show Rohingya held in IDCs including children cannot access status determinations that enable receipt of UNHCR cards.[477] KIIs found this is due to MOHA accusations that UNHCR was providing asylum seeker documentation to help release detainees under the pretence of conducting RSD. In September 2022, the National Security Council Director-General, Rodzi Md Saad, indicated plans for the Government of Malaysia to absorb all refugee management responsibilities and shut down UNHCR country operations.[478] Rodzi claimed UNHCR identification and protections appeal to '*undocumented migrant*,' and that removal of UNHCR involvement in refugee management would eliminate external '*interference*' and reduce the number of new arrivals seeking UNHCR protection.[479] Key informants made a recommendation for increasing advocacy on the development of ATD approaches.

Primary data indicates the MoHA and Immigration Department are less tolerant of Rohingya arrivals from Bangladesh, as opposed to Rohingya coming from Myanmar. KIIs found the Government of Malaysia does not acknowledge the refugee status of individuals with UNHCR registration coming from Bangladesh. While UNHCR-registered refugees must re-register their status after moving to a new country, the MOHA and Immigration Department classify asylum seekers and refugees from Bangladesh as economic migrants who abandoned safety and protections previously bestowed. To this end, the MOHA and Immigration Department considers these groups as undocumented migrants who are punishable by incarceration in IDCs. In contrast, KIIs show the MOHA is more lenient and accepting of the smaller number of Rohingya coming from Myanmar. Key informants were doubtful that immigration officials would change its stance on this policy soon.

The 2022 Trafficking Refugees Information System (TRIS) is a government-run mandatory registration scheme that will give a government 'MyRC' ID cards to refugees and asylum seekers living in Malaysia. UNHCR's announcement suggests that it is a unilateral initiative by the Malaysian government that did not involve the UN refugee agency.[480] MyRC is not a new initiative; the first iteration of MyRC launched in 2017 but received poor response. [481] Key informants reported concern that TRIS, which is managed by a private company appointed by the National Security Council and the Ministry of Home Affairs, gives the government too much data on refugees in Malaysia. As a result, a vast array of TRIS data could lead to more government raids and arrests on Rohingya individuals. Conversely, TRIS may help reduce arrest and detention cases because the database will allow quicker verification of registered refugees and asylum seekers. However, the lack of details on the data management and safeguarding protocol as well as high registration fee of RM 500 (USD 107.8) and lack of transparency on the rights and protection afforded to the registrants left many

475 Source: PRRiA written input on draft report (29-09-2022).
476 Asylum Access. n/d. Where we work: Malaysia. Asylum Access. Retrieved from: https://asylumaccess.org/where-we-work/malaysia/
477 Fishbein, E & Hkawng, J. 2020. Fear and Uncertainty for Refugees in Malaysia as Xenophobia Escalates. The New Humanitarian. Retrieved from: https://pulitzercenter.org/fr/node/18080
478 FMT Reporters. 2022. Shut down UNHCR office in Malaysia, says security DG. Free Malaysia Today. Retrieved from: https://www.freemalaysiatoday.com/category/nation/2022/09/06/shut-down-unhcr-office-in-malaysia-says-security-dg/
479 Ibid.
480 UNHCR. 2022. Announcement (29 July 2022). Retrieved from: https://refugeemalaysia.org/announcement-29-july-2022/
481 Malay Mail. 2017. UNHCR cardholders given until Sept 30 to get MyRC card. Malay Mail. Retrieved from: https://www.malaymail.com/news/malaysia/2017/08/02/unhcr-cardholders-given-until-sept-30-to-get-myrc-card/1434479

sceptical about the registration scheme.[482] KIIs found that after UNHCR's loss of access to IDCs and in-person document verification, immigration officials send refugee documentation verification requests via email which could be more time-consuming. KIIs also show immigration officials are less consistent in requesting UNHCR to verify refugee and asylum seeker documentation.

> **Finding 13:** *In Malaysia, inconsistent enforcement of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act curbs access to legal protections for Rohingya survivors of trafficking.*

Under Section 25 of the 2007 ATIPSOM Act and policies issued by the Attorney General and National Security Council, UNHCR-registered refugees and asylum seekers have immunity from trafficking charges. The ATIPSOM Act prevents criminal prosecution of survivors of trafficking regardless of irregular entry into Malaysia; the period of unlawful residence in Malaysia; or procurement/ possession of fraudulent travel or identification documents. Key informants reported the government provides shelter to Rohingya survivors of trafficking; however, the government selectively applies the ATIPSOM Act to charge the trafficker. KIIs found the government uses anti-smuggling law, which understands refugees as illegal migrants, to charge refugees and asylum seekers. Key informants indicated this worsened during the COVID-19 pandemic due to the Government of Malaysia's Movement Control Order, which led to an upsurge of Rohingya refugee arrests and detainment.

Rohingya charged with smuggling offences can rarely afford legal representation and must seek organisations providing pro bono legal services. KIIs found that the government-funded and Bar-managed National Legal Aid Foundation is the most prevalent legal aid scheme in Malaysia. In 2015, it extended free representation to refugees and asylum seekers under the age of 18 in the criminal justice system; however, key informants highlighted coverage did not expand in practice. Without access to the services of the National Legal Aid Foundation, Rohingya refugees can request pro bono services through organisations (i.e., Bar Council Legal Aid), but the lack of compensation for lawyers and frequent need to travel to IDC courts in remote areas is causing a shortage of legal representation for Rohingya.

RQ1.4: What is the alignment of these policies and approaches with international/ global frameworks and commitments?

Key Refugee Protection Findings

> **Finding 14:** *Among the study countries, only Indonesia has codified refugee protections in line with international frameworks.*

Indonesian key informants reported PR No. 125/2016 aligned Indonesian policy with the 1951 Convention. Through MoE Circular Letter No. 75253/A. A4/HK of 2019, Indonesia enshrines some principles of the Convention on the Rights of the Child by allowing refugee children to access public schools. PR No. 125/2016 adopts the definition of a refugee from the 1951 Convention, ended the government's practice of refoulment, and allows UNHCR to carry out refugee handling and management. KIIs and secondary documentation show PR No. 125/2016 contributed to the elimination of refugee detention in 2018, enabling the release of refugees to shelters that IOM and the Government of Indonesia manage.[483, 484]

Interviews with key informants suggested the Government of Indonesia is not prioritising ratification of the 1951 Convention. KIIs found in 2010, 2013, and 2014, the government planned ascension to the 1951 Convention, which was laid out in two five-year legislative plans. Yet the government deescalated its intent to ratify the convention because of a decrease in the number of refugee arrivals to Indonesia. Key informants reported the ratification of the 1951 Convention is no longer a key advocacy goal of UNHCR and partners.

The governments of Thailand and Malaysia have not instituted principles in the 1951 Convention and the 1967 Protocol. Secondary documentation and KIIs asserted that refugee issues were securitised and the precedence of protecting national security has come at the expense of refugee protections, including both countries' intermittent or ad hoc practice of refoulment and deportations.[485, 486] KIIs at regional and national levels found the Thai government and Malaysia oppose adopting the 1951 Convention. This is because

482 Alhadjri, A. 2022. Malaysiakini. 'No basis for refugees tracking system without legal recognition'. Retrieved from: https://www.malaysiakini.com/news/629457

483 Dewansyah, B., & Nafisah, R. 2021. The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016. Asian Journal of Law and Society, 8(3) 536-557. Retrieved from: http://doi.org/10.1017/als.2021.8

484 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

485 Equal Rights Trust. 2014. The Human Rights of Stateless Rohingya in Thailand. Equal Rights Trust. Retrieved from: https://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf

486 Sulaiman, S. et.al. 2021. Non-refoulement and Right of Entry for Asylum-seekers. Petrinka Journal of Social Sciences & Humanities, 29(S2) 75-87. Retrieved from: https://doi.org/10.47836/pjssh.29.S2.06

signatory status would relinquish state autonomy over internal affairs to Global North frameworks. Some key informants raised a critique that states' lack of adoption is not mutually exclusive with the issuance of national policy that enshrines international principles of refugee protection.

Table 8. Government pledges toward GCR objectives by area of focus.

Country	GCR pledge areas					
	Education	Livelihoods	Protection capacity	Responsibility sharing	Solutions	Statelessness
Thailand	1	1	4	n/a	2	7
Indonesia	1	n/a	1	1	2	4
Malaysia	n/a	n/a	n/a	1	n/a	n/a

The countries reviewed at the national level are signatories to non-binding commitments such as the GCR and GCM, but KIIs did not find evidence of the effect these commitments have on national-level policy. Publicly available data on country pledges toward GCR objectives (see *Table 8*) shows the Thai government has made 15 pledges, the Government of Indonesia made nine pledges, and the Government of Malaysia made one pledge. The majority of Thai government pledges suggest a focus on non-Rohingya refugees, including explicit references to the receipt, training, and return of Myanmar refugees. The Government of Malaysia's single pledge broadly states, '*Promote the objectives of the GCR and the 2030 Agenda.*' The Government of Indonesia issued pledges to provide access to basic and secondary education for refugee children, strengthen its National Task Force to better implement PR 2016, enhance cooperation and data sharing with UNHCR, and collaborate with UNHCR and IOM to develop a refugee empowerment programme. However, GCR is a non-binding commitment, and many of the pledges made reflect efforts already underway in Thailand and Indonesia. Please see *Appendix 6: Relevant Policies* for key international and regional policies adopted by each country reviewed at the national level.

Key Anti-Trafficking/Smuggling Findings

Finding 15: *For Thailand, Indonesia, and Malaysia, national policies do not align with international frameworks on anti-trafficking/smuggling.*

Thailand, Indonesia, and Malaysia are party to the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, and Indonesia are party to the 2000 Protocol Against the Smuggling of Migrants by Land, Sea, and Air. The main policies on anti-trafficking across each country reviewed at the national level include: the 2008 Anti-Trafficking in Persons Act in Thailand; the 2007 Anti-Trafficking Law in Indonesia; and the 2007 ATIPSOM Act in Malaysia. Thailand has not enacted anti-smuggling legislation, instead addressing smuggling cases under the Immigration Act of 1979; Indonesia handles smuggling cases under its 2011 Immigration Law; and Malaysia applies the Immigration Act of 1959/63 and ATIPSOM Act. Multiple KIIs and secondary data sources indicated the enforcement of national policies on anti-trafficking/smuggling does not align with the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons or the 2000 Protocol Against the Smuggling of Migrants by Land, Sea, and Air. Please see the *Limitations to the research* section for barriers the RT faced in conducting this research.

Photo Credit: Danish Refugee Council, Bangladesh

4. Part 2 Findings

Part 2: *What are the risks and opportunities in these domains?*

This section presents the findings of the research against the four key RQs under **Part 2**. The key findings per RQ are highlighted in a blue text box, under which evidence on that finding is presented.

RQ2.1: At the policy level, what are the connections between refugee protection, anti-smuggling, and anti-trafficking, across the regional and national levels?

Finding 16: *In Thailand and Malaysia, anti-trafficking policies facilitate elements of protection for Rohingya refugees, but the conflation of smuggling and trafficking is an issue for all countries reviewed at the national level.*

Key informants reported trafficking and smuggling crimes are frequently conflated in Thailand, Indonesia, and Malaysia, making minimal distinction between consent, exploitation, and the transnationality of the crime as clarified in the Palermo Protocol and Smuggling Protocol described in *Distinguishing human smuggling and trafficking*. KIIs suggested national political leaders use the negative connotation of trafficking to politicise irregular movement and influence public discourse. Across all countries examined at the national level, policies which target trafficking is more prevalent and comprehensive than smuggling policy. Consequentially, the lack of distinction between both domains impedes law enforcement and victim identification efforts, which fuels unjust accusations and punishment of Rohingya.

Thailand. As indicated in the *Policy implementation and treatment of refugees* section above, Thailand does not have specific legislation on smuggling, defaulting to the 1979 Immigration Act to impose anti-smuggling offences. KIIs in Thailand found the blurring of the two concepts impedes anti-trafficking law enforcement efforts, victim identification, and protections. KIIs indicated the legal concept of smuggling is new to the Thai government, and its inclination to address trafficking stems from domestic issues (i.e., human and sex trafficking), momentum at the regional level (i.e., ACTIP), and its reputation at the international level (i.e., US Trafficking in Persons Report). Key informants in Thailand indicated the Thai government and INGOs (i.e., USAID) resource anti-trafficking efforts more than anti-smuggling efforts. The Thai government and INGOs provide anti-trafficking trainings and capacity building unevenly countrywide: urban areas receive more training, while rural areas receive less. This is leading to rural-urban gap in terms of level of comprehension on trafficking crimes among law enforcement and immigration officials.

Malaysia. Under the ATIPSOM Act and Immigration Act of 1959/63, smuggling is criminalised in Malaysia in which both the smuggler and the smuggled could be penalised by law. This poses great risk of prosecution to Rohingya who predominantly enter Malaysia through smuggling services as evidenced in MMC survey data – almost all (94%) Rohingya who arrived in Malaysia come with smugglers. Although refugees registered with UNHCR have immunity from trafficking charges, the 2022 TIP Report found Malaysian police insufficiently screen refugees and asylum-seekers for signs of trafficking and KIIs in Malaysia indicated enforcement officials use ATIPSOM to charge Rohingya survivors of trafficking with smuggling crimes.[487] While in detention, the government elicits self-incriminating testimony from detainees to use as evidence against the defendant during trial. Key informants highlighted that Malaysian policies do not account for the journey of Rohingya refugees, which often begin voluntarily and in a smuggling context but change while enroute as organisers subject Rohingya to violence, forced labour and financial entrapment, among other abuses.

Indonesia. Indonesian key informants recounted instances of refugees arrested for smuggling crimes and fishermen prosecuted for aiding Rohingya at sea. For example, in February 2022, the government charged and sentenced three Indonesian fishermen to five years in prison for accepting payment (USD 487) from smugglers to help disembark a boat carrying 120 Rohingya.[488] Although local Indonesians such as fishermen have played a key role in assisting Rohingya to disembark, KIIs found civil society and UNHCR were less engaged in responding to this event, as the former was apprehensive about supporting '*smugglers*' and the latter considered the matter out of scope. Key informants raised concern about this case, fearing it may set a legal precedent and that it may have a cooling effect on civil society's engagement, especially rescue at sea in future crises.

487 Ibid.

488 Radio Free Asia. 2022. Indonesian fisherman seek leniency for 3 jailed over assisting stranded Rohingya. Radio Free Asia. Retrieved from: https://www.rfa.org/english/news/myanmar/indonesia-rohingya-02022022161228.html

RQ2.2: At the implementation level, what is the coherence of approaches of regional bodies, CSOs, and international actors between these spheres, at the regional and national levels?

Finding 17: *Civil society actors in Thailand, Indonesia, and Malaysia aim to fill gaps in protection, but a lack of resources and hierarchical collaborations with INGOs limits impact.*

Thailand. Thai civil society organises empowerment and skill-building activities with Rohingya, delivers social services and legal support (i.e., People Serving People Foundation), conducts local research (i.e., Fortify Rights, CRSP), and advocates through media and engagement with the Thai government on Rohingya protections (i.e., APRRN, People's Empowerment Foundation). Key informants indicated some local NGOs and CSOs have used connections with staff to access IDCs and closed shelters to provide Rohingya refugees with food aid, though outside engagement with detainees in these facilities is rare and unreported.

A lack of funding challenges Thai CSOs, as it constrains operational capacity in advocating for improved protection outcomes, conducting local research, and working with local police, and immigration and shelter staff to build relationships and provide support to detained Rohingya. KIIs indicated CSOs struggle to attain funding from larger organisations (i.e., USAID, EU) because of the complexity of grant proposal requirements. Key informants reported a perception that partnership between CSO and INGOs often has a lopsided power dynamic that subordinates CSO staff in decision-making processes. This often results in diversion of resources to project activities (i.e., capacity building, training, conferences) that may not address the immediate needs of refugees. Key informants recommended INGOs should focus on action to help Rohingya refugees, as opposed to conferences and capacity building. A review of key refugee stakeholders in Thailand is presented in the *Thailand: Key actors* section.

Indonesia. Both Indonesian and regional level key informants agree that Indonesian civil society and local communities are vital to search and rescue at sea, legal support, advocacy, education, healthcare, and psychosocial support. Acehnese fishers, commonly cited as the impetus for Rohingya refugee protection, have guided Rohingya boats to Indonesian shores since 2009.[489] However, KIIs indicated concern about the future role of Acehnese fishers in rescue efforts, citing the Government of Indonesia's 2021 litigation of three Acehnese fishers for helping disembark Rohingya boat arrivals. A key recommendation of the study was the need for more comprehensive policy that safeguards locals involved in humanitarian rescue efforts of refugees arriving by boat. KIIs showed that the current legal environment misconstrues civil society engagement in refugee search and rescue endeavours with smuggling transgressions and violations of immigration law.

Key informants reported HELP provides informal education to Rohingya children and facilitates cultural sensitisation training with Rohingya adults. SUAKA conducts research and advocates for refugee rights with the Government of Indonesia, in addition to supporting all refugees and asylum seekers refugees through legal advice, guidance on navigating the RSD process, and paralegal training for refugees. Across the region, SUAKA maintains communication and discussion with APRRN and stakeholders in Thailand (i.e., Asylum Access Thailand) and Malaysia (i.e., Geutanyoë Foundation). KIIs showed ACT, along with UNHCR and IOM, is a main provider of shelter, food assistance, and aid to Rohingya refugees in Indonesia. Key informants cited the need for more funding to CSOs, as the current flow of financing is light and limits overall implementation. Please see *Indonesia: Key actors* for an additional examination of stakeholders in Indonesia.

Malaysia. Discussions with key informants and secondary documentation showed CSOs engage in refugee protection through advocacy (i.e., Geutanyoë Foundation), help refugees with legal support (i.e., Asylum Access Malaysia, Malaysian Bar Migrants, Refugees and Immigration Affairs Committee), provide Rohingya refugees with education (i.e., JREC, Malaysian Relief Agency), help to access healthcare (i.e., Médecins Sans Frontières, Mercy Malaysia, Malaysian Relief Agency, IMARET), and support to victims of GBV, (i.e., International Catholic Migration Commission, Women's Aid Organisation).[490] Key informants expressed that the uneven distribution of CSOs across Malaysia has left some Rohingya refugee populations with less availability of services. For example, many relevant organisations are based in the greater Kuala Lumpur area, which limits services available to Rohingya residing in other regions of the country.

Primary data indicated some CSOs take a passive approach: providing support to refugees who seek it, as opposed to direct engagement with refugees in raising awareness and providing services in the community. Key informants suggested that CSOs take a more active approach as many Rohingya are not cognisant of existing services or how to access them. While key informants praised the knowledge, endeavours, and impact of local organisations and INGOs in the Rohingya refugee space, there was a recommendation for some organisations to develop communication approaches that strategically engage and build relationships and dialogue with government, instead of using confrontational tactics.

Finding 18: *Within host government parameters, UNHCR provides core functions to refugee protection schemes in Malaysia and Indonesia. In Thailand, UNHCR's access to certain refugee groups, including Rohingya, is more limited.*

489 Source: PRRiA written input on draft report (29-09-2022).
490 Source: PRRiA written input on draft report (29-09-2022).

Per the 1951 Convention, UNHCR facilitates refugee registration and protection in coordination with State partners. At the same time, the coherence of approaches at the national level with those at the regional is dependent on state priorities and capacities. KIIs across countries at the national level found the role of UNHCR in Rohingya refugee protection is relative to the host government's outlook. The role of international actors, such as UNHCR and IOM, can thus differ in each country reviewed at the national level.

Thailand. Key informants reported UNHCR Thailand works exclusively with Rohingya survivors of trafficking and distances itself from Rohingya in a refugee context; doing so implies recognition of Rohingya refugees and contradict the Thai government directives. While the Thai government does not permit UNHCR to register certain refugee groups, including Rohingya refugees, UNHCR engages the Thai government in advocacy on the application of the ATIP Act for Rohingya survivors of trafficking to receive temporary stay, work permits, and welfare services.[491] Secondary documentation shows IOM has more access to Thai government victim shelters than UNHCR. To this end, IOM supports victim protection through capacity building for shelter staff, developing survivors of trafficking training curricula for government staff, holding public hearings on NRM development with the MSDHS and NRM steering Committee, and supporting Thai government and non-governmental actors in the provision of care activities (i.e., psychosocial, medical, and basic needs).[492] [493] In March 2022, UNHCR and IOM trained 40 local officials working in 20 MSDHS facilities to develop understanding of the Rohingya crisis and promote psychosocial support, health, and self-care activities for survivors of trafficking.[494]

Indonesia. KIIs and secondary documentation shows IOM and UNHCR play a major role in protecting Rohingya refugees from arrival to resettlement.[495] The issuance of PR No. 125/2016 explicitly allowed UNHCR to function as an extension of the government in conducting RSD, providing government-recognised identification documents, and managing protection activities including advocacy and partnership with government, education and healthcare services, and research. KIIs in Indonesia showed only UNHCR implementing partners (i.e., Church World Services, Catholic Relief Services, IOM) can provide medical assistance to refugees, which includes access to primary health services at government-operated community health centres and INGO-provided psychosocial care and emergency health assistance.

Through the regional cooperation agreement, detailed in *Connection to regional and international frameworks*, key informants reported the Government of Indonesia authorises IOM to provide shelter and a monthly allowance exclusively to refugees intercepted, arrested, and detained by Indonesian authorities. Due to the strict criteria for accessing IOM care, KIIs found some refugees seek out immigration officials and self-report being in-country illegally to access IOM services. Key informants indicated recent funding restrictions imposed by the Government of Australia barred IOM Indonesia from providing care to 2022 refugee arrivals; IOM received significant funds from EU and US, and provided large-scale emergency relief to 2022 arrivals, however.[496] KIIs show the Government of Australia has immense influence over refugee outcomes, and Australia's decision to disallow the resettlement of refugees in Indonesia after July 2014 has halted the regular processing of refugee resettlement cases between Indonesia and Australia. Currently, key informants highlighted the Government of Australia only considers emergency resettlement cases, as well as a community processing program that allows Australian actors to sponsor refugees who arrive in Indonesia.

For refugees who cannot access IOM support, UNHCR is attempting to use a community mechanism comprising 26 refugee representatives elected by refugees to identify individuals who need support. KIIs indicated this refugee representative body channels concerns from refugees to UNHCR or partners, and to help refugees disseminate information throughout local communities. An additional component of this mechanism is the ability of representatives to speak on behalf of community concerns. Through the semi-independent living care arrangement, KIIs reported UNHCR can arrange for foster parents to care for children of refugees. In some cases, Indonesian nationals can foster refugee children and receive support to help monitor and care for unaccompanied minors.

Malaysia. UNHCR conducts all activities related to refugee registration, documentation, and status determinations. KIIs show that, in August 2019, UNHCR effectively lost access to IDCs following government accusations that UNHCR engaged in unauthorised RSD. Subsequently, the MOHA sought the removal of UNHCR from Malaysia. While UNHCR verifies ID cards of arrested cardholders, the Royal Malaysia Police (RMP) must contact UNHCR to provide this service. However, this requires police officials to contact UNHCR; an engagement that occurs infrequently, according to key informants. In the case that the RMP request UNHCR to verify ID, KIIs show UNHCR's ability to prevent a cardholder's detention is not absolute.

Under National Security Council Directive No. 23, all refugees registered with UNHCR Malaysia can stay temporarily and receive protection in Malaysia. Rohingya in possession of a UNHCR identification card receive a 50% reduction in government hospital fees. KIIs in Malaysia found UNHCR developed the refugees and legal aid scheme, which conducts outreach and legal awareness training for Rohingya and other refugee groups. Key informants described the Government of Malaysia's Joint Task Force as a mechanism for discussing refugee concerns with UNHCR, and functions as a channel through which UNHCR engages the government on advancing a national refugee protection framework. However, the lack of formalisation of UNHCR's role in Malaysia leads to inconsistent level of engagement as evidenced in the recent announcement by the government on its plan to shut down UNHCR.[497]

491 UNHCR. 2020. Thailand Factsheet (March 2020). UNHCR. Retrieved from: https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/06/UNHCR-Thailand-Fact-Sheet_31-March-2020-ENG.pdf
492 IOM. n/a/. Counter-trafficking. IOM. Retrieved from: https://thailand.iom.int/counter-trafficking
493 IOM. 2022. Public hearing on the flowchart for the national referral mechanism for victims of trafficking in Thailand. IOM. Retrieved from: https://thailand.iom.int/news/public-hearing-flowchart-national-referral-mechanism-victims-trafficking-thailand
494 UNHCR. 2022. Thailand Factsheet (31 March 2022). UNHCR. Retrieved from: https://data.unhcr.org/en/documents/details/93917
495 Hirsch, A. & Cameron Doig. 2018. Outsourcing control: the International Organization for Migration in Indonesia. The International Journal of Human Rights. 22(5), 681-708. Retrieved from: http://doi.org/10.1080/13642987.2017.1417261
496 Source: PRRiA written input on draft report (29-09-2022).
497 Peter, Z. 2022. Malaysia Mulls Closing UN Refugee Agency Office, Sparking Refoulement Fears. Retrieved from: https://www.voanews.com/a/malaysia-mulls-closing-un-refugee-agency-office-sparking-refoulement-fears-/6814184.html

RQ2.3: What are key policies/mechanisms that have had mutually reinforcing (complimentary or cumulatively good) outcomes for Rohingya refugees?

Key Thailand Findings

Finding 19: *The Thai government has not enacted reinforcing policies that produce beneficial outcomes for Rohingya refugees.*

Key informants asserted Thai government policies do not contribute to positive outcomes for Rohingya refugees. In comparison with other refugee ethnic groups from Myanmar (i.e., Mon and Karen), the Thai government separates Rohingya refugees from other Myanmar refugees and subjects them to harsher living conditions, less access to health and education services, and restrictions on mobility. KIIs found the Thai government regards Rohingya as '*illegal immigrants*' and has enacted stricter policies for the management of Rohingya refugees (i.e., indefinite detention in IDCs), exclusion from placement in border camps and services including the NSM. Thai key informants indicated the NSM is primarily designed for urban refugees; a term that refers to refugees from countries such as Afghanistan, Somalia, Syria, and Cambodia who live in urban areas of Thailand. Nonetheless, key informants expressed concerns over a draft NSM document that underscores the exclusion of specific nationalities if found to threaten national security or affect international relationships.[498] While the Thai government has not yet implemented the NSM, key informants reported that individuals who hold an MOI-issued '*pink card*' – an identification document for persons with '*alien*' status including Rohingya – will likely be prohibited from using the NSM. However, this is not definitive given the NSM has not been finalised.

Key Indonesia Findings

Finding 20: *In Indonesia, certain government policies have mutually reinforcing outcomes for refugee protection.*

As indicated in *National policy and response* and *RQ1.3* sections, PR No. 125/2016 provides the legal foundation for refugee protection in Indonesia. It includes guidelines for: the search and rescue, handling, and management of refugees; creates standards for shelter conditions; explicitly authorises UNHCR and other organisations to assist in coordination, protection and management; and includes a requirement for removing refugees and asylum seekers from smuggling operations.[499, 500] Key informants suggested PR No. 125/2016 contributed to the Government of Indonesia's 2018 decision to release refugees from IDCs to IOM-, UNHCR-, and government-managed shelters. This eliminated most cases of Rohingya placement in IDCs and enabled Rohingya to access shelters recognised under PR No. 125/2016. The 2018 policy also released children of refugees and asylum seekers. In March 2016, detention facilities held approximately 846 refugee and asylum seeking children.[501]

Access to primary and secondary public education expanded for children under the MoE's 2019 Circular Letter. The Circular Letter built on the stipulation in PR No. 125/2016 that refugees registered with UNHCR can temporarily settle in Indonesia. KIIs show that the protection environment founded in PR No. 125/2016 enables UNHCR, IOM and implementing partners to fund refugee children and help them access public schools, and I/NGO-provided services. Key informants suggested that the 2018 release of refugee adults and children from IDCs allowed a greater number of refugee children to access public education as set forth under the MoE's Circular Letter.

Key Malaysia Findings

Finding 21: *There is evidence that specific national policies in Malaysia produce complimentary outcomes for Rohingya survivors of trafficking.*

Preliminary primary data suggests that the 2007 ATIPSOM Act and National Security Council Directive No. 23 expand access to temporary stay and legal protections. While the ATIPSOM Act penalises victims of smuggling, it grants immunity to survivors of trafficking regardless of irregular entry and unlawful residence, which prevents victims from incarceration in IDCs. This is critical, as UNCHR cannot access IDCs or conduct RSD with detainees. In effect, protection from detention under the ATIPSOM Act enables

498 Royal Thai Government. 2019. กฎหมายสำคัญที่มีความจำเป็นเร่งด่วนที่ต้องเร่งรัดปรับปรุงหรือยกร่างกฎหมายถึงใหม่ (Important laws that are urgently needed to speed up the revision or drafting of new laws). Royal Thai Government. Retrieved from: https://resolution.soc.go.th/PDF_UPLOAD/2562/9933420829.pdf

499 Republic of Indonesia. 2016. Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees. Retrieved from: https://www.refworld.org/docid/58aeee374.html

500 UNHCR. 2020. Indonesia Factsheet (April 2020). UNHCR. Retrieved from: https://www.unhcr.org/id/wp-content/uploads/sites/42/2020/08/Indonesia-Fact-Sheet-April-2020-FINAL.pdf

501 Missbach, A. 2017. Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.' Canada's Journal on Refugees. Vol. 33, No. 2 (2017), pp. 32-44.

undocumented survivors of trafficking to seek and request UNHCR RSD that can produce ID cards authorised by Directive No. 23 to provide temporary stay and legal protection. In practice, however, key informants reported that due to conflation of trafficking and smuggling, RMP officials wrongly charge Rohingya survivors of trafficking with smuggling, which is punishable by up to seven years imprisonment.

At the time of this research, key informants indicated there is progress in government plans to expand Rohingya refugee protection (i.e., amendments to directive no. 23). TRIS registration scheme, which was relaunched in July 2022, may contribute to protection outcomes for refugees. Given the country's dynamic policy landscape, future research should build on the gaps of this research and closely focus on Malaysia. The main limitations and barriers to this research are in the *Limitations to the research* section.

RQ2.4: What are the barriers, gaps, and redundancies at the policy level that hinder protection access and outcomes for Rohingya refugees?

Finding 22: *In Thailand and Malaysia, the lack of legal status for refugees is a key barrier to refugee protection.*

Thai and Malaysian key informants underscored that the primary gap in refugee protection is a lack of a legal definition for refugees. Without a legal definition for refugees, key informants highlighted Thailand and Malaysia will likely continue to practice *refoulement* with refugees arriving by boat. Key informants across both countries agree the Thai government and the Government of Malaysia take a national security approach driven by concerns that granting refugees legal status may cause an influx of arrivals. Key informants recommended advocacy should pressure the Thai government and Government of Malaysia to incorporate a humanitarian approach to the handling of Rohingya refugees.

Thailand. Thailand has intentionally avoided using the term 'refugee' in policy and official remarks, deferring to other terminology and phrasing (i.e., illegal migrants, illegal entries, people who fled their country). Thai key informants reported Thai government's use of the term 'refugee' could signal acknowledgement of international refugee law and refugee rights. Key informants recommended the Thai government should codify the 1951 Convention's definition of a refugee through legislation. Without it, the Thai government will continue to criminalise Rohingya refugees as illegal migrants under the 1979 Immigration Law. The Thai government's practice of selectively excluding refugee groups from protection schemes will continue in the absence of refugee legal status, according to key informants. While key informants reported the NSM is the first policy to address refugees in Thailand, it is unlikely the Thai government will allow Rohingya to access this mechanism. KIIs show the NSM exemplifies how the lack of legal status for refugees enables the Thai government to discriminate against some refugee ethnic groups by refusing protections. Legal recognition of refugees would support a baseline of protections for Rohingya refugees in Thailand, thereby eliminating discriminatory practices of boat pushbacks, indefinite detainment, and exclusion from existing protections for non-Rohingya refugees from Myanmar.

Malaysia. As indicated above in *RQ1.3*, the Government of Malaysia lacks policy that provides all refugees legal recognition, legal status, or legal protection. Key informants reported that Rohingya refugees directly expressed the absence of legal standing is the main challenge to protection, as it gives authorities the discretion to arrest, extort, detain and abuse Rohingya. Difficulties accessing UNHCR RSD, government arrest and detention of Rohingya, use of smuggling crimes to prosecute trafficking survivors, and boat pushbacks are status quo in the absence of substantiative refugee policy. Despite changes made in 2015 that expanded the National Legal Aid Foundation's (NLAF) coverage to refugees, asylum seekers and stateless individuals, key informants reported the Government of Malaysia continues to apply the policy from 2012 which limits access to citizens of Malaysia. In effect, adults without Malaysian citizenship are not entitled to the scheme, which excludes Rohingya refugees from accessing NLAF-provided legal representation in criminal proceedings. KIIs show a need for increased legal representation as the government falsely charges Rohingya refugees with smuggling crimes and legal representation increases the chance of overturning these charges.

Finding 23: *Despite the codification of refugee legal status and protections in Indonesia, Rohingya lack access to higher education and healthcare.*

Discussions with Indonesian key informants found Rohingya refugees do not have access to higher education. Indonesian key informants highlighted some refugees including Rohingya arrive having completed higher education decrees and have skills that can be of benefit to Indonesian society. The 2019 MoE Circular Letter allows refugee children to be included in formal education, yet a lack of government funding for refugee students requires organisations (i.e., IOM), to provide financial support. KIIs found the lack of government support and reliance on organisations for financial assistance limits access to education. Key informants explained that across Indonesia there is a disproportionate presence of organisations, which impacts the availability of financial assistance for education. Key informants reported refugees who complete levels of education do not receive an official diploma. CSOs (i.e., HELP) are working to provide education to Rohingya refugees who are not enrolled in Indonesian public education. Several key informants asserted refugee organisations have not identified good practices for refugee access to higher education. There are, however, several refugees with scholarships attending Sampoerna University in Jakarta.[502]

502 Roshan. 2020. Opening Pathways to Higher Education: Refugee Students in University. Roshan. Retrieved from: https://roshanlearning.org/roshan-stories/opening-pathways-to-higher-education-refugee-students-in-university

Rohingya have limited access to public health services due to a lack of identification documents. KIIs reported COVID-19 presented new challenges to refugee healthcare access. For example, logistical disruptions led to the delayed distribution of UNHCR documentation required for refugees to access health services. UNHCR has adapted the distribution of identification from in-person to using the postal service, but capacity limitations (i.e., remote status determination interviews, document printing, document handover to the postal service) and logistical issues have slowed refugee receipt of identification. KIIs found Rohingya refugees who recently arrived are often in need of medical attention, but barriers to public health services mean Rohingya can only receive medical attention from implementing partners of UNHCR (i.e., Catholic Relief Services).

Finding 24: *Common across all countries reviewed at the national level, the lack of work rights for Rohingya is a significant risk and a barrier to protection outcomes.*

There is consensus across national level KIIs that the absence of work rights for refugees is a key issue. Without it, many Rohingya engage in informal employment to generate income. Multiple KIIs expressed that the illegality of informal work increases risks of exploitation, arrest, and detention, which negates protection outcomes for Rohingya refugees. KIIs highlighted that a lack of work rights and inability to seek assistance from the police or file complaints with respective government agencies has increased informal worker vulnerability to sexual harassment, low/no pay, and forced labour.

Thailand. Key informants conveyed first-hand accounts of Rohingya refugees expressing their desires to work legally. KIIs show that, in practice, there is no pathway to legal employment for Rohingya refugees in Thailand. The need to generate income drives Rohingya engagement in informal work sectors (i.e., construction, restaurants, entertainment) as labourers, food vendors, water delivery drivers, security guards, and housekeepers. Key informants asserted engagement in informal work increases Rohingya's risk of workplace exploitation (i.e., low wages, forced labour, sexual and physical abuse, and gender-based violence). KIIs founds victims of workplace exploitation must file grievances with the Thai police; however, this is not a safe channel for undocumented Rohingya refugees. Key informants highlighted that it is standard for the Thai police to request ID from the claimant, which can cascade risks of interrogation, arrest, and detention for Rohingya.

Indonesia. Primary data highlighted frustration about restrictions on work rights, as monthly allowances from UNHCR and IOM are not enough to cover food, water, and healthcare expenses. While CSOs and INGOs utilise Rohingya for interpretation services, field data collection and gathering feedback from Rohingya communities to share with implementing organisations, key informants expressed that most refugee skillsets are underutilised. Key informants reported identifying refugees with higher education degrees and professional experience in medicine who cannot practice their trade or contribute to their local economy without doing so illegally. KIIs suggested advocacy efforts with government should frame refugee work rights to incur positive economic benefits for Indonesian society.

Key informants reported the Government of Indonesia is reluctant to use the term 'work' for refugees due to the term's association with foreign work; instead, the government prefers 'productivity' or 'empowerment.' KIIs reported the Ministry of Manpower has made a recommendation for relevant ministries to develop a regulation that enables refugee access to productivity activities, including intrapreneurship, internship, apprenticeship, training, and vocational learning. The recommendation produced cautious optimism about a new regulation expected for 2022-2023 allowing refugee engagement in formal 'productivity' activities. Primary data found the governments of Indonesia and Bangladesh are jointly piloting a labour mobility scheme to facilitate work opportunities in third-party countries (i.e., England, Canada, and Australia).

Malaysia. The lack of work rights for refugees in Malaysia is a barrier to generating income needed to access food, clean water, rental homes, education in alternative learning centres, and healthcare.[503] While Rohingya refugees in possession of UNHCR documents receive a 50 percent discount on government hospital fees, key informants reported lack of financial capacity deters Rohingya from seeking medical treatment. KIIs found the government recognises this issue and has formed a joint task force to examine how to grant work rights to refugees. The Government of Malaysia is considering an amendment to Directive No. 23 that would allow refugees with TRIS cards to apply for temporary work permits in specific sectors (i.e., construction, agriculture) highly dependent on migrant workers. Key informants reported the pandemic caused an acute shortage of migrant labour but expressed scepticism about the amendment's implication of transitioning refugees into migrant worker roles.

503 Source: PRRiA written input on draft report (29-09-2022).

Finding 25: *The lack of coordination among government agencies produces fragmented approaches and results in implementation.*

Multiple national-level key informants highlighted poor coordination within government contributes to inconsistent and less effective policy implementation. Indonesian key informants reported engagement with technical ministries is critical to putting policy into practice, citing that technical ministries often give final approval on regulations to enable implementation such as vaccination education, access to work, and access to financial services. For example, discussions within the Government of Indonesia on allowing refugees the right to work would require the Ministry of Manpower, tasked with productivity regulations, to coordinate with the financial regulator in designing a system that enables refugees to open a bank account. In Malaysia, key informants reported RMP officials responsible for arresting Rohingya are at times unaware of which IDC arrestees are held in. In Thailand, primary and secondary data highlighted poor coordination within the Thai government, as the MoI and Thai police view trafficking as a national security issue while the MoPH and MoL recognise trafficking as a human rights issue.[504] Key informants indicated a need for improved coordination between ministries to develop and align consistent approaches toward refugee management.

Finding 26: *In Thailand, Indonesia, and Malaysia, public opinion toward Rohingya refugees significantly influences government policy priorities.*

Thailand. Primary data found the Thai government, local communities, and non-Rohingya refugee communities propagate prejudices grounded in Thailand and Myanmar's history, colourism, and anti-Islamic discrimination. The Thai government uses discriminatory messaging to dehumanise the Rohingya and influence public attitudes, which helps maintain political support for harsh policies toward the Rohingya. Key informants reported some local authorities are sympathetic to the Rohingya, but do not extend help to Rohingya due to fear of retaliation from higher-ups in the Thai government. Key informants suggested that I/NGOs should scale up engagement with media to help dispel public prejudice against Rohingya and raise awareness on the Thai government treatment of Rohingya refugees. At the local level, it was recommended that CSOs, local governments, and refugees work together on protection advocacy efforts, as collaborative approaches could strengthen understanding and coordination between different stakeholder groups, empower refugees to take part in decision-making processes on advocacy and messaging, combat stigma towards Rohingya refugees and make communities safer and more inclusive, and help local governments advocate for increased funding for refugee management.

Indonesia. KIIs found some actors perceive challenges to the management of Rohingya refugees due to a lack of education and respect for cultural norms. Some key informants reported that Rohingya refugees have offended local governments and communities, citing instances of open defecation, sexual harassment, and damaging schools. KIIs found host community attitudes toward Rohingya differ across locales, as some communities are welcoming of new arrivals and help Rohingya integrate; others hold prejudices rooted in racism and colourism, including the perception that the dark skin colouration of Rohingya indicates association with drug use and distribution, as well as other forms of criminality. Key informants asserted that the Government of Indonesia combats stigma surrounding Rohingya refugees through online media campaigns.

Malaysia. The onset of the COVID-19 pandemic coincided with a spike in xenophobia against the Rohingya. The public framed Rohingya as invaders and resource extractors, coronavirus vectors, and a threat to public health, among other inhumane characterisations shared in interviews. Key informants reported the upsurge in prejudicial attitudes paralleled with a reduction in contributions of food and aid to Rohingya refugees, as well as instances of donors stipulating contributions exclude Rohingya populations. Religious solidarity bonds deteriorated, as some mosques erected signs banning Rohingya from entering. KIIs show political authorities are reluctant to spearhead efforts that outwardly seek to improve Rohingya refugee outcomes, as public prejudice against Rohingya makes support politically dangerous.

504 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf

Photo Credit: Danish Refugee Council, Bangladesh

5. Conclusions

The conclusions consider the national-level findings in order to develop a consolidated regional reflection against each research question.

Conclusion 1 - *Smuggling networks enable Rohingya to leave deteriorating living conditions in Myanmar and Bangladesh and seek access to social services and economic opportunities in host countries.*

Decades of Rohingya exodus out of Myanmar to escape government persecution is well-documented. The onset of the COVID-19 pandemic, the failed democratisation process, and the de facto government fanning of Buddhist nationalism are increasing volatility in Rakhine and driving Rohingya movement from Myanmar.

A reduction in international financial assistance is straining the Government of Bangladesh's capacity to provide sufficient availability and access to services for over 900,000 Rohingya refugees. In Cox's Bazar refugee camps, turbulent relations between host and refugee communities, increasing transregional drug and trafficking activity, and limited availability of social services and access to employment compound instability. To alleviate deteriorating conditions in host and refugee communities, the government is relocating Rohingya to Bhasan Char Island. However, camps on the island lack access to protection services and employment opportunities.

In search of increased access to services and better economic and social opportunities, transnational trafficking and smuggling networks facilitate Rohingya journeys to host countries such as Malaysia and, to a lesser extent, Indonesia. Risks relating to movement through these networks contribute to the vulnerabilities of Rohingya refugees. These risks include an act of smuggling escalating to an act of trafficking, as well as: financial exploitation; physical, sexual, and gender-based violence; arrest and detention; refoulement; and death. Crime syndicates are utilising new routes and approaches in response to growing regional and national crackdowns on trafficking and smuggling.

Conclusion 2 - *An important catalyst in the adoption and architecture of national protection policies are the ASEAN Declaration on the Rights of Children in the Context of Migration, the ASEAN Convention Against Trafficking in Persons, and respective Plans of Action.*

Regional frameworks are guiding the development and implementation of national protection policies. While the region lacks specific frameworks on refugee protection, national policies that align with the ASEAN Declaration on the Rights of Children in the Context of Migration and its Plan of Action are improving access to alternatives to detention for refugee and migrant children. For example, the Royal Thai Government in collaboration with civil society established the MOU-ATD, which requires authorities to prioritise alternatives to detention for children and aligns with the Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration. While the MOU-ATD is a significant step toward protecting children of migrants and refugees, it does not grant children absolute protection from detention.

National governments are also aligning policies to the ASEAN Convention on Trafficking in Persons to create a regionally coherent approach to anti-trafficking. The Convention outlines instructions to prevent trafficking in persons, enforce and prosecute anti-trafficking policies, and protect survivors of trafficking, with a particular focus on children. The Convention's Regional Action Plan gives guidance on protecting victims from criminal charges and providing rehabilitative care, but national anti-trafficking policies concentrate on the criminalisation of trafficking. At present, the ASEAN Convention and Regional Action Plan lack protocols for robust victim identification procedures, provide minimal clarity on issues of access and availability of victim protection services, and do not account for the nuances of Rohingya journeys that evolve from smuggling to trafficking.

Conclusion 3 - *National governments have the responsibility to address protection needs by establishing clarity between smuggling and trafficking including through stronger policies with consistent messaging, implementation, and enforcement.*

Across the region, national anti-trafficking policies institute legal protections for survivors of trafficking; however, gaps in implementation reduce access and availability of legal protections. In Thailand, the 2008 Anti-Trafficking Law is the main national policy that affords Rohingya survivors of trafficking protection such as shelter, reintegration assistance, and legal services. Royal Thai Police and immigration officials inconsistently conduct victim identification screenings, and victim shelters lack the capacity to care for new arrivals send survivors of trafficking to immigration detention centres. Trafficking screenings lack standardisation, and officials' failure to positively identify trafficking survivors results in detention for the victim.

The Government of Malaysia grants immunity to survivors of trafficking through the 2007 ATIPSOM Act, but local officials struggle to distinguish acts of trafficking from smuggling during screenings. Victims of trafficking are often screened as smuggled migrants and charged with criminal offences under the Immigration Act of 1959/63. Rohingya refugees charged as smuggled migrants face incarceration in immigration detention centres, which prevents access to UNHCR's RSD process and identification cards that can provide some protection to refugees. Although evidence suggests that the ATIPSOM Act and National Security Council directive no. 23 reinforces positive outcomes for Rohingya refugees by preventing detainment in immigration detention centres, poor victim identification and restrictions on UNHCR RSD procedures in immigration detention centres hinder positive outcomes for Rohingya refugees.

Under PR No. 125/2016, the Government of Indonesia requires separation of refugees from smuggling groups at all stages of the refugee handling process, which initially falls under the jurisdiction of local governments. Without budgetary support, however, there is an expectation that local governments use existing resources to conduct delegated activities. In practice, the lack of funding to local governments leads to ad hoc approaches to refugee handling and management that are inconsistent with standards set in PR No. 125/2016.

Conclusion 4 - *The roles of civil society actors and stakeholders are limited in advocating for change in national governments due to power imbalances in partnerships, barriers to resources, and lack of political will.*

Complex donor application criteria are a barrier to civil society organisations, however collaboration with INGOs offers a channel to secure funding and amplify impact. Still, INGOs, UN agencies, and bilateral partners disproportionately benefit from partnerships with civil society actors. Civil society actors bring deep contextual insight and strong relations with Rohingya refugees, local government officials, and other community groups, yet lack influence in decision-making. In effect, local insights have a smaller role in informing refugee programming, activities, and approaches, which limits overall impact.

While civil society faces significant access to finance constraints and uneven influence in partnerships with larger organisations, its potential, particularly when mobilised as a coordinated collective, is immense in providing direct support to Rohingya refugees and developing dialogue with national and subnational government officials. For example, Thai civil society plays a key role in filling this gap, as local organisations leverage social connections and shared nationality to engage national and subnational actors in Rohingya refugee advocacy, support Rohingya in victim shelters, and assist Rohingya refugees who live independently.

Across refugee protection, anti-trafficking, and anti-smuggling domains, national government parameters dictate the scope of involvement for UN agencies, INGOs, and bilateral partners. In Indonesia, UNHCR and IOM function as a formal extension of the government in registering, managing, and protecting refugees and asylum seekers. In contrast, the Royal Thai Government allows UNHCR and other international organisations to implement programming for Myanmar refugees and '*urban refugees*,' but restricts direct engagement with Rohingya in a refugee context.

UNHCR Malaysia conducts RSD and issues ID cards to refugees and asylum seekers that enable access to limited discounted healthcare services, but MOHA restrictions on UNHCR access to immigration detention centres and intentions for TRIS to absorb RSD responsibilities challenge its operations. Still, discussions among UNICEF, NGOs, and government ministries on alternatives to detention for children, and fora such as APPGM that facilitate multi-stakeholder dialogue with authorities on refugee protection, are advancements to build on.

Conclusion 5 - *The lack of national rights that recognise and safeguard refugee status is a fundamental barrier to protection in Thailand and Malaysia. Across the region, national governments must continue to address restrictions on work for refugees and access to basic services.*

In the absence of legal status, the rights of refugees are unrecognised, and national governments lack accountability for practices of refoulment, discretionary arrests, and indefinite detention, among other violations. National governments without codified legal status manage refugees circumstantially and often through a national security lens, which subjects refugees to ad hoc discrimination and instability, and thus prohibits sustained protection. National legal status for refugees is a precondition to policies that could expand and guarantee access to health care, education, and formal employment.

Despite deficits in national protection policies, there are areas of positive progress and opportunities to engage in Rohingya refugee protection. For example, the MOU-ATD in Thailand demonstrates a significant step toward improved protection outcomes for refugee children. In Malaysia, there is an opportunity to utilise platforms including APPGM to liaise with Members of Parliament on refugee protection issues, and the government's TRIS platform may serve as an entry point for systematising refugee registration and protection.

The lack of work rights for refugees is a key issue that national governments across the region must address. The right to work is a necessity for protection outcomes, as the need to generate income drives refugee engagement in informal employment that increases risks of arrest, extortion, and detention, and hinders access to legal channels for reporting sexual harassment, workplace abuse, forced labour, and low pay. Even in countries where actors such as IOM and UNHCR supply monthly allowances, funding is only available to the most vulnerable refugees and is often insufficient to cover basic needs. Enabling formal access to employment incurs benefits for refugees and host communities through contributions to the local economy, job creation, reductions in government expeitures, and improved social cohesion.

Photo Credit: Danish Refugee Council, Bangladesh

6. Recommendations and Key Takeaways

The recommendations and key takeaways in this section build upon the conclusions and findings of the research.

6.1 Recommendations

Table 9 presents the recommendations of this research, including the stakeholder groups responsible. Each recommendation corresponds to specific findings and conclusions.

Table 9. Recommendations of the research.

No.	Recommendations	Responsible stakeholders
1	**Recommendation 1:** ASEAN should promote responsibility sharing among Member States by increasing support to origin country governments (Bangladesh and Myanmar) and refugees.	ASEAN Member States
2	**Recommendation 2:** ASEAN should prioritise the development of a regional refugee protection framework to supersede the patchwork of national protection responses grounded in anti-human trafficking laws, shifting humanitarian policies, migration management, and qualified recognition of international obligations. An ASEAN framework should be the goal; however, refugee-hosting governments must simultaneously explore minilateral approaches that promote coordination, resource sharing, protection outcomes, and accountability.	ASEAN, Host Governments
3	**Recommendation 3:** Regional and national responses should leverage existing frameworks surrounding anti-trafficking and child protection rights, which may have complementary outcomes for the protection needs of refugees and trafficking survivors. Advocacy should increase focus on reinforcing and improving protections within these existing mechanisms.	ASEAN , Host Governments, Civil Society
4	**Recommendation 4:** The Governments of Thailand, Indonesia, and Malaysia should integrate protections into national anti-trafficking policies, develop refugee protection policies, and improve resourcing to implementation.	Host Governments
5	**Recommendation 5:** ASEAN and Member States should scale up humanitarian support to Rohingya in Myanmar, and leverage sanctions on investment in Myanmar military-controlled enterprises to initiate multi-lateral dialogue.	ASEAN, AHA Centre, ASEAN Member States
6	**Recommendation 6:** ASEAN and civil society actors should leverage existing ASEAN structures, (e.g. ASEAN Intergovernmental Commission on Human Rights and thematic working groups) to integrate refugee protection into regional discussions. Specific thematic areas to focus on would include human rights, human trafficking and smuggling, transnational crime, irregular migration and labour mobility, and education. The ASEAN Chair must also set refugee protection as a standing agenda item for ASEAN Summits.	ASEAN, ASEAN Chair, Civil Society
7	**Recommendation 7:** Recalling the 2016 Bali Declaration, Bali Process co-chairs and member states should reorient the platform to make refugee protection a strategic priority. This would require clarifying the Bali Process mandate to include responses to forced migration, investments in technical capacities, and operationalising existing emergency response mechanisms.	Government of Indonesia, Government of Australia, Bali Process Member States
8	**Recommendation 8:** UN agencies and civil society actors should work with host governments to develop stronger policies informed by their commitments to regional and international frameworks (SDGs, GCR, GCM).	UN Agencies, Civil Society, Host Governments
9	**Recommendation 9:** Donors and relevant UN agencies should support the design and implementation of multi-year, multi-stakeholder regional responses that include commitments to international protection standards, effective accountability mechanisms, equitable distribution or responsibility, and predictable resources for refugee communities and host governments.	Donors, UN Agencies, ASEAN
10	**Recommendation 10:** ASEAN, the Bali Process, and other regional governments and mechanisms should align anti-human trafficking and refugee response laws, policy frameworks, and approaches to ensure survivors of trafficking, including Rohingya, have effective access to national and international refugee protection mechanisms and available durable solutions. Additionally, regional bodies should also ensure asylum seekers and refugees have effective access to national human trafficking screening processes, protection, and rehabilitative and other support services.	ASEAN, Bali Process
11	**Recommendation 11:** UN agencies and donors should extend technical expertise and financing to support and encourage regional bodies and civil society actors to align anti-human trafficking and refugee responses and programming.	UN Agencies, Donors, Regional Bodies, Civil Society

12	**Recommendation 12:** Any regional response needs to be rooted in a whole-of-society approach, which mobilises the technical expertise and resources of host governments, civil society organisations, refugee and host communities, donors, UN agencies and—where appropriate—private sector actors; and commits these stakeholders to differentiated but mutually reinforcing obligations and activities.	Host Governments, Civil Society, Refugee and Host Communities, Donors, UN Agencies, Private Sector
13	**Recommendation 13:** UN agencies, I/NGOs, and bilateral partners should invest in partnerships with local and national civil society organisations and ensure there is meaningful participation, balance in decision-making, and equitable sharing of resources.	UN Agencies, I/NGOs, Bilateral Partners
14	**Recommendation 14:** ASEAN-ACT, IOM, UNHCR, and relevant INGOs and bilateral partners (i.e., USAID, JICA) should support national governments to build capacity at the subnational level on trafficking screening, victim identification, and protection services.	ASEAN-ACT, IOM, UNHCR, INGOs, Bilateral Partners
15	**Recommendation 15:** Civil society should improve communication and coordination across organisations serving survivors of human trafficking and refugee communities to strengthen mutual recognition of trafficking indicators and refugee claims, scale up referral mechanisms for services available to persons who are both survivors and refugees, harmonise or reinforce advocacy where appropriate, and share best practices.	Civil Society
16	**Recommendation 16:** INGOs and NGOs should advocate at the national level with government and private sector to promote and recognise legal status and work rights for refugees.	INGOs, NGOs, Host Governments, Private Sector
17	**Recommendation 17:** Donors should invest in local legal services providers and local organisations advocating for refugees' work rights. INGOs must play a role in linking external donors to local organisations.	Donors, INGOs

6.2 Key Takeaways: Things to Focus on Now

This section presents the key takeaways of this research organised by stakeholder group.

For Donors:

- Support the design and implementation of multi-year, multi-stakeholder regional responses that include commitments to international protection standards, effective accountability mechanisms, equitable distribution or responsibility, and predictable resources for refugee communities and host governments.
- Increase support to origin country governments (i.e., Bangladesh) and organisations to strengthen refugee management services and mechanisms.
- Encourage the Governments of Thailand, Indonesia, and Malaysia to integrate protections into anti-trafficking policies, codify legal status and work rights for refugees, and improve resourcing to trafficking victim screenings and protection services.

For Host Governments:

- Explore minilateral approaches to refugee protection that promote coordination, resource sharing, protection outcomes, and accountability.
- Engage in a whole-of-society approach comprising civil society organisations, refugee and host communities, donors, and UN agencies, to develop national policy that recognises the legal status of refugees and enables refugees to access social services and economic opportunities.

For Regional Bodies:

- Prioritise the development of a regional ASEAN refugee protection framework to supersede national protection responses grounded in anti-human trafficking laws, shifting humanitarian policies, migration management, and qualified recognition of international obligations.
- Align anti-human trafficking and refugee response laws, policy frameworks, and approaches to ensure survivors of trafficking, including Rohingya, have effective access to national and international refugee protection mechanisms and available durable solutions.
- Leverage existing frameworks surrounding anti-trafficking and child protection rights, which may have complementary outcomes for the protection needs of refugees and trafficking survivors.
- Ensure asylum seekers and refugees have effective access to national human trafficking screening processes, protection, and rehabilitative and other support services. Advocate for reinforcing and improving protections within the existing mechanisms.

For Civil Society:

- Improve communication and coordination across organisations serving survivors of human trafficking and refugee communities to strengthen mutual recognition of trafficking indicators and refugee claims, scale up referral mechanisms for services available to persons who are both survivors and refugees, harmonise or reinforce advocacy where appropriate, and share best practices.
- Leverage existing ASEAN structures, (e.g., ASEAN Intergovernmental Commission on Human Rights and thematic working groups) to integrate refugee protection into regional discussions. Specific thematic areas to focus on would include human rights, human trafficking and smuggling, transnational crime, irregular migration and labour mobility, and education.

For International Organisations:

- Advocate at the national level with government and private sector actors to promote and recognise legal status and work rights for refugees.
- Support national governments to build capacity at the subnational level on trafficking screening, victim identification, and protection services.
- Invest in partnerships with civil society organisations and ensure there is meaningful participation, balance in decision-making, and equitable sharing of resources.

7. Appendices

Table 10. List of appendices for this report.

No.	Title
Appendix 1	Acronyms
Appendix 2	Research Matrix
Appendix 3	Data Collection Tools
Appendix 4	Listing Of Key Informants
Appendix 5	Key National and Local Actors
Appendix 6	Relevant Policies at the National Levels
Appendix 7	Feasibility Assessment
Appendix 8	Research Timeline
Appendix 9	Applied Policy Research Approach
Appendix 10	Inception Report
Appendix 11	References

Appendix 1: Acronyms

Table 11. Acronyms of the report.

Acronym	Definition
AA	Arakan Army
ACT	Aksi Cepat Tanggap
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women & Children
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
APR	Applied Policy Research
APRRN	Asia Pacific Refugee Rights Network
ASEAN	Association of Southeast Asian Nations
ATD	Alternatives to Detention
ATIP	Thai Anti-Trafficking in Persons Act (2008)
ATIPSOM	Anti-Trafficking in Persons and Smuggling of Migrants
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPA	Comprehensive Plan of Action for Indochinese Refugees
CRSP	Coalition for the Rights of Refugees and Stateless Persons
CSO	Civil Society Organisation
DoS	United States Department of State
DRC	Danish Refugee Council
FVR	Facilitated Voluntary Return

GBV	Gender-Based Violence
GCM	Global Compact on Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
ICCPR	The International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ID	Identification
IDC	Immigration Detention Centre
ICP	Individual Care Plan
ILO	United Nations International Labour Organisation
IMW	Indonesian Migrant Workers
INGO	International Non-Governmental Organisation
IOM	United Nations International Organization for Migration
JRP	Joint Response Plan
JRS	Jesuit Refugee Services
K	Thousand
KI	Key Informant
KII	Key Informant Interview
M	Million
MAPO	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MDT	Multi-disciplinary Team
MMC	Mixed Migration Centre
MoE	Ministry of Education
MOFA	Ministry of Foreign Affairs
MOHA	Ministry of Home Affairs
MOI	Ministry of Interior
MOL	Ministry of Labour
MOU	Memorandum of Understanding
MOU-ATD	Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres
MPSTWCA	Measures in Prevention and Suppression of Trafficking in Women and Children Act
MSDHS	Thai Ministry of Social Development and Human Security
NGO	Non-Governmental Organisation
NLAF	National Legal Aid Fund
NNGO	National Non-Governmental Organisation
NRM	National Referral Mechanism
NSM	National Screening Mechanism
OIC	Organisation of Islamic Cooperation
PR	Presidential Regulation
PRRiA	Protecting Rohingya Refugees in Asia Project
RALAS	Refugees and Asylum Seekers Legal Aid Scheme
RCI	Royal Commission of Inquiry
RMP	Royal Malaysia Police
RQ	Research Question

RSD	Refugee Status Determination
RT	Research Team
Thai government	Royal Thai Government
RTP	Royal Thai Police
SEA	Southeast Asia
SOP	Standard Operating Procedure
SUAKA	Indonesian Civil Society Association for the Protection of Refugee Rights
TANGO	Technical Assistance to Non-Governmental Organizations
TBC	The Border Consortium
TOR	Terms of Reference
TRIS	Tracking Refugees Information System
TVPA	Trafficking Victims Protection Reauthorisation Act
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
US	United States
USAID	United States Agency for International Development
USD	United States Dollar

Appendix 2: Research Matrix

Table 12. Research matrix and corresponding data sources and methods.

Research questions		APR category	Data sources	Methods
Part 1: What is the regional and national policy landscape for refugee protection, anti-smuggling, and anti-trafficking?				
1.1	What are the regional Southeast Asia frameworks and mechanisms for anti-smuggling, anti-trafficking, and refugee protection, respectively?	Contextual	• Academic articles • Government reports • NGO research reports • KIIs with civil society groups, members of national coordinating bodies, government officials	Document review KIIs
1.2	What are the drivers of Rohingya exodus from Myanmar and Bangladesh and the risks of smuggling and tracking that people face?	Contextual	• MMC documents • Academic articles • Research reports • KIIs with NGOs, civil society groups, MMC staff	Document review KIIs
1.3	What are the national-level policies and law in place in Indonesia, Malaysia, and Thailand and how accessible are these protections to the Rohingya?	Diagnostic	• Government reports • NGO research reports • MMC documents • KIIs with NGOs, MMC staff, civil society groups, members of national coordinating bodies	Document review KIIs
1.4	What is the alignment of these policies and approaches with international/ global frameworks and commitments?	Strategic	• Academic articles • Government reports • KIIs with civil society groups, members of national coordinating bodies, government officials	Document review KIIs
Part 2: What are the risks and opportunities?				
2.1	At the policy level, what are the connectivities between the spheres of refugee protection, anti-smuggling, and anti-trafficking?	Diagnostic	• MMC documents • NGO research reports • KIIs with MMC staff, civil society groups, members of national coordinating bodies, government officials	Document review KIIs
2.2	At the implementation level, what is the coherence of approaches between these spheres, at the regional and national level?	Diagnostic	• NGO research reports • Government reports • KIIs with MMC staff, NGOs, civil society groups, members of national coordinating bodies	Document review KIIs
2.3	What are key policies/ mechanisms that have had mutually reinforcing outcomes for Rohingya refugees	Evaluative, Strategic	• NGO research reports • Academic articles • MMC surveys • KIIs with civil society groups, NGOs, MMC staff, members of national coordinating bodies	Document review KIIs
2.4	What are the barriers, gaps and redundancies at the policy level that hinder protection access and outcomes for Rohingya refugees?	Evaluative, Strategic	• Government reports • NGO research reports • Academic articles • KIIs with MMC staff, civil society groups, members of national coordinating bodies	Document review KIIs

Appendix 3: Data Collection Tools

The following topics provide general guidance for the semi-structured key informant interviews. Not all questions were applicable to all participants. This tool was tailored to the diverse types of key informants/stakeholders as relevant. The corresponding RQs are indicated in the far-right column of the tool. The interviewer used informed discretion to ask the relevant lines of inquiry, based on the participant's background and knowledge. The interviewer explained that the key informant interview would take 45-60 minutes and gained informed consent to begin.

Table 13. Qualitative topical outline.

Question	Probes	RQ
Introduction		
To start, can you please introduce yourself?	• Give a bit of background on your expertise/relevance to refugee protection, anti-smuggling and/or anti-trafficking domains? • Please describe your functions/responsibilities. • Services provided or supported in the relevant domains.	-
Part 1: Policy landscape for refugee protection, anti-smuggling, and anti-trafficking**?**		
How well do you think the main policies/ mechanisms in the region/country are working in the context of supporting Rohingya refugees?	• What have been the most effective policies and laws that support protection for Rohingya refugees? How about for trafficking and smuggling of refugees? • Do national policies and laws distinguish between anti-smuggling and anti-trafficking? What policies, if any, address the smuggling of refugees? • What outcomes do policies and mechanisms prioritise for refugees? How have they been effective? How accessible is the support laid out in these policies? • Are there any intergovernmental programs or mechanisms that help outcomes for refugees/Rohingya/trafficking survivors/smuggling (Probe: informal agreements) • What are the main gaps in protection for Rohingya refugees in the region/country context? How can they be addressed?	*1.1, 1.3*
From your experience, what is driving Rohingya away from their home?	• What smuggling and trafficking risks that Rohingya are exposed to? What are the smuggling/trafficking risks for refugees leaving Indonesia? • What are the key events that shaped policy in accepting or excluding Rohingya? How has this rhetoric changed? • Who are the major government, CSO, donor and private sector stakeholders that work in Bangladesh/Myanmar and Indonesia? What is their role?	*1.2*
What are the outcomes of Rohingya refugees in your national context?	• Who are the major stakeholders that have contributed to these outcomes? (Probe: UNHCR, IOM, CSOs) • To what extent are the policies and frameworks working to support positive outcomes for Rohingya? • What have been the primary challenges faced by Rohingya, with regards to protection access? How about smuggling/trafficking risks? • How can more tangible outcomes be created for refugees? • How is protection policy applied differently at different points of the Rohingya journey, if at all? Who is involved in implementation? Are there distinctions in policy for migration by land/sea? • What are the current mechanisms in place from the local to national level monitoring access to or receipt of government benefits? Is there distinction between refugee groups (Rohingya)?	*1.2,* *1.3,* *2.3*
To what extent is the region and/or countries under review aligned with global commitments to the protection and safeguarding of refugees?	• Which, if any, national policies on protection/trafficking/smuggling align with international frameworks? • What is the alignment of Southeast Asia frameworks to wider commitments? • To what extent are wider stakeholders out of the region active in these domains within the Rohingya context? • What are the external factors influencing policy and implementing decisions? (Probe for broadly and specifics)	*1.4*
Part 2: What are the risks and opportunities in these domains?		

Are there areas/aspects of refugee protection and anti-smuggling/anti-trafficking policies that overlap or intersect?	• If so, can you describe these overlaps? Are they addressing the same issues? • Are there synergies between the policies or implementation of these frameworks? In what ways (if any) are they complimentary (regionally or in the national context). • What are the barriers and gaps at the policy level that hinder protection access and outcomes for Rohingya refugees? • What are the redundancies at the policy level that affect protection access and outcomes for Rohingya refugees?	*2.1, 2.2*
Who are major stakeholders involved in anti-smuggling, anti-trafficking, and refugee protection (regionally and in national context)?	• What is the nature of their involvement and implementation? • Are there stakeholders that work in/across all these domains? • Who are the key civil society organisations involved with Rohingya refugees and refugees? • To what extent are these stakeholders linked with those outside the national/region? • To what extent are approaches, programmes, and implementation 'in sync' with other stakeholders?	*2.2, 2.3*
What are the main factors that need to be considered/changed towards providing positive outcomes of Rohingya refugees in the region?	• What are the main gaps in protection for Rohingya refugees in the region/country context? How can they be addressed? • What opportunities or challenges do you see in bilateral and multilateral action at the regional level? (Probe: Indonesia and Malaysia, Thailand, and Malaysia, etc.) • What have been the main challenges for Rohingya refugees accessing protection policies? How can they be addressed? • Do you have any recommendations for key actors to improve Rohingya policy? (Probe: regional bodies, civil societies, and international actors) • How have regional protections and combatting trafficking changed since the Andaman Sea Crisis?	*2.3, 2.4*
In your opinion, what are the major points of advocacy that the region/ countries need?	• How adequate is financing for the areas of refugee protection, anti-smuggling, and anti-protection? • What have been areas that have seen the most advocacy in terms of the Rohingya context? • What opportunities or challenges do you see in transnational action? (Probe: Indonesia and Malaysia, Thailand, and Malaysia, etc.) • Do you have any recommendations for key actors to improve Rohingya advocacy messages? (Probe: regional bodies, civil societies, and international actors)	*1.3, 2.3, 2.4*

Appendix 4: Listing of Key Informants

Table 14. List of informants for regional level KIIs.

Key informant	Number of Times contacted	Type	Reason for involvement	Outcome
Thailand				
1	1x	INGO	Refugee and human rights advocate	**Completed**
2	1x	CSO	Involved with refugee issues and human rights	**Completed**
3	1x	Researcher	Expert on human trafficking and development issues in Southeast Asia	**Completed**
4	3x	INGO	Refugee and human rights advocate	**No response**
5	2x	Researcher, Journalist	Reports on human trafficking and Rohingya	**No response**
6	2x	Researcher, Historian	Expert in Rohingya history	**No response**
Indonesia				
7	1x	UNHCR	Involved with refugee management and government handling of Rohingya refugees	**Completed**
8	2x	Government	Government actor working on issues related to Rohingya refugee protection	**Completed**
9	1x	CSO	Civil society actor working on legal empowerment/ services for Rohingya refugees	**Completed**
10	2x	IOM	Involved with local/national regulation/policy and refugee camps in Aceh Province	**No response**
11	1x	Government	Directly works with/manages refugees and related issues	**Denied**
12	1x	Government	Involved in human rights and intergovernmental communication.	**Denied**
13	1x	Government	Working on security and ASEAN cooperation	**Denied**
14	2x	CSO	Involved in refugee work, providing legal assistance, and refugee protection advocacy	**Denied**
Malaysia				
15	3x	Researcher	Conducts research on labour and migration in Southeast Asia	**No response**
16	2x	NGO	Works on human trafficking and forced trafficking in Malaysia – National Consultant	**Denied**
17	1x	CSO	Experience in legal issues surrounding refugees and human trafficking	**No response**
18	1x	CSO, Lawyer	Malaysian legal frameworks/ policies; provides legal services for migrants, refugees, and non-citizens.	**No response**
19	1x	CSO, Lawyer	Experience with legal aspect of Rohingya in Malaysia	**Completed**
20	2x	INGO	Rohingya refugee populations in Malaysia, ASEAN	**Completed**
21	2x	INGO	Rohingya refugee populations in Malaysia	**Completed**
Regional				
22	1x	INGO, Researcher	Regional legal frameworks and international refugee law	**Completed**
23	1x	INGO	Director of Bangladesh INGO involved with Rohingya refugees	**Completed**
24	1x	INGO	Rohingya policy specialist for INGO in Bangladesh	**Unavailable**
25	1x	UNODC	Smuggling/trafficking expert involved with UNODC's Global Action against Trafficking in Persons and the Smuggling of Migrants	**No response**
Total number of attempts to schedule national level KIIs:				**37**
Total KIIs completed:				**11**

Appendix 5: Key National and Local Actors at the National Levels

Thailand: Key actors

National Authorities. The MSDHS is the lead anti-trafficking government agency, supporting trafficking survivors, funding NGOs, and coordinating law enforcement and relevant agencies to prosecute human trafficking.[505] In 2021, the Thai government developed the Coordination Centre for Trafficking Victims to strengthen coordination between civil society partners and agencies on how to assist victims in filing Victim Impact Statements to detail the impact of a crime, receive help from public prosecutors, and access other victim protection services.[506] MSDHS worked with the Japan International Cooperation Agency to strengthen the capacity of MDTs made up of social workers, police, and personnel from other groups who collaborate to screen potential victims and provide protection to survivors of trafficking.[507]

The MOL oversees labour rights, migrant registration, and forced labour. The Thai police oversees law enforcement and brings traffickers to justice while the Office of the Attorney General operates as an independent government agency responsible for prosecuting human trafficking cases.[508] The MOI implements refugee policy set by the National Security Council and manages the daily operations of Thai government camps through provincial and district authorities, in collaboration with refugee and camp committees.[509] UNHCR has liaised with the MOI to use its Fast Track Provincial Admission Board mechanism to grant asylum to unregistered persons with serious medical and protection concerns.[510]

UN Agencies. UNHCR conducts status determination interviews, birth and civil registration, health services, cash-based assistance, emergency response, and engages the Thai government in advocacy on access to territory and non-refoulment for persons in need of protection. UNHCR collaborates with partners at I/NGOs and government levels, including IOM, International Rescue Committee, UNICEF, Thai hospitals, the Thai police, One Stop Crises Centres, Provincial Health Offices, Provincial Social and Development and Human Security, prosecutors, and the court system.[511, 512] As noted in the *National policy and response* section, the Thai government does not officially recognise UNHCR status determination interviews or refugee identification cards, which prevents it from providing official protection to refugees.[513]

IOM Thailand operates in-country and throughout the Greater Mekong sub-region to help, detect and assist trafficked persons; collaborate with government and civil society actors in trainings for migrants on life skills, and awareness raising on Rohingya rights; provide emergency medical and humanitarian assistance; and support the Thai government and law enforcement in prosecuting traffickers. For example, in 2021 IOM and the Nightlight Foundation led online trainings to improve the abilities of immigration officers in detecting survivors of trafficking and smuggling at ports of entry.[514] IOM also leads human trafficking and exploitation prevention efforts through outreach and advocacy to strengthen referral pathways at the provincial level for survivors of trafficking.[515]

ILO through its '*TRIANGLE in ASEAN*' program runs awareness and sensitisation campaigns on migrant and refugee protection risks; separately, ILO has provided psychosocial services to Rohingya refugees in shelters and helped the MOL, which oversees labour rights and forced labour, evaluate IDCs.[516, 517] USAID's Counter Trafficking in Persons project brings together nine organisations[518] to weaken incentives for trafficked labour, facilitate rights empowerment activities for at-risk populations, and improve protection systems for survivors.[519]

USAID has partnered with UNICEF and Raks Thai Foundation, a member of CARE International, to carry-out trainings of trainers with migrant health volunteers on COVID-19 prevention and protection, vaccine literacy, health case management, and psychological support.[520]

505 Royal Thai Government. 2022. Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (2021). Retrieved from: http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2022/03/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021-1-January-31-December-2021.pdf

506 Royal Thai Government. 2022. Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (2021). Retrieved from: http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2022/03/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021-1-January-31-December-2021.pdf

507 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf

508 Migrants Refugees. 2022. Country Profiles Thailand. Migrants Refugees. Retrieved from: https://migrants-refugees.va/country-profile/thailand/

509 The Border Consortium. n/d. Where We Work. TBC. Retrieved From: https://www.theborderconsortium.org/where-we-work/

510 UNHCR. 2019. Thailand: Umpiem Temporary Shelter Profile (30 June 2019). UNHCR. Retrieved from: https://reliefweb.int/report/thailand/thailand-umpiem-temporary-shelter-profile-30-june-2019

511 UNHCR. 2022. Thailand Factsheet (31 March 2022). UNHCR. Retrieved from: https://data.unhcr.org/en/documents/details/93917

512 UNHCR. 2022. Thailand Factsheet (31 March 2022). UNHCR. Retrieved from: https://data.unhcr.org/en/documents/details/93917

513 United Nations Network on Migration. 2021. Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. United Nations Network on Migration. Retrieved from: https://migrationnetwork.un.org/system/files/docs/ATD%20FINAL%20COUNTRY%20PROFILES-%20final.pdf

514 Royal Thai Government. 2022. Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (2021). Retrieved from: http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2022/03/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021-1-January-31-December-2021.pdf

515 UNHCR. 2022. Thailand: Myanmar Situation Preparedness & Response plan - July-December 2022. UNHCR. Retrieved from: https://data.unhcr.org/en/documents/details/94465

516 ILO. 2020. Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers. ILO. Retrieved from: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_762346.pdf

517 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf

518 CTIP partners are World Vision, Liberty Shared, Urban Light Foundation, The Freedom Story, Foundation of Child Understanding, Raks Thai Foundation, Diocesan Social Action Centre, Love Frankie, and FairAgora Asia.

519 USAID. 2022. Thailand CTIP Assessment Final Report. USAID. Retrieved from: https://pdf.usaid.gov/pdf_docs/PA00Z966.pdf

520 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform.

Civil Society. Thai civil society, made up of international non-government organisations (INGOs), national non-governmental organisations (NNGOs), and CBOs, is active in refugee advocacy, legal assistance, access to education, livelihoods development and cultural sensitisation.[521] Several local and international NGOs supply services in close cooperation with trained camp residents in order to ensure access to basic needs.[522] Since the 1980s, The Border Consortium (TBC) has played a major role in organising food and other aid to refugees fleeing Myanmar.[523] TBC and 12 other NGOs work together through The Committee for Coordination of Services to Displaced Persons in Thailand, which provides basic services to all nine refugee shelters along the Thailand-Myanmar border.[524]

Actors such as Fortify Rights engage the Thai government and advocate on protection policy and produce reports and publications on Rohingya refugees abuses and deaths.[525] Fortify Rights supports the development of national and regional coordination groups focused on refugee issues, such as the regional coalition and the Coalition for the Rights of Refugees and Stateless Persons (CRSP), which works with the Thai Government to ensure the protection of refugee children after release from IDCs.[526] In 2015, Fortify Rights developed a Thai coalition of organisations involved in advocacy, health, legal protection, and refugee and child protection.[527] The Mae Tao Clinic, a community-based organisation in Thailand provides low-cost primary health care to affected persons from Myanmar and Thailand, including Myanmar and Rohingya refugees.[528]

Asylum Access Thailand provides support to refugee communities in Bangkok to navigate the asylum process and connects refugees with local partners for ongoing assistance.[529] The Bangkok Asylum Seeker and Refugee Assistance Network (BASRAN) comprises of multiple organisations and individuals in Bangkok to coordinate refugee assistance efforts for urban refugees and asylum seekers in Bangkok. [530, 531] A coalition of local staff and international volunteers drive the operations of Catholic Office for Emergency Relief and Refugees (COERR), which operates multiple programmes for refugees in Mae Hong Son, Tak, Kanchanaburi, and Ratchaburi provinces including meal distributions for children in school, vocational training, agricultural training, and healthcare.[532] The WEAVE Foundation focuses on gender equality and empowering disadvantaged and marginalised indigenous women, children and communities in Thailand, Myanmar and some regions in Asia.[533]

Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

521 Asia Displacement Solutions Platform. 2020. Rohingya in Southeast Asia. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

522 Mohr, et al. 2022. Integrated primary health care services in two protracted refugee camp settings at the Thai-Myanmar border 2000-2018: trends on mortality and incidence of infectious diseases. Primary health care research & development, 23(17). Retrieved from: https://doi.org/10.1017/S1463423622000044

523 The Border Consortium. n/d. Who We Are. TBC. Retrieved From: https://www.theborderconsortium.org/about-us/

524 The Border Consortium. n/d. Who We Are. TBC. Retrieved From: https://www.theborderconsortium.org/about-us/

525 Fortify Rights. n/d. About Fortify Rights. Fortify Rights. Retrieved from: https://www.fortifyrights.org/about/

526 Fortify Rights. 2017. Annual Report 2016. Fortify Rights. Retrieved from: https://www.fortifyrights.org/downloads/Fortify_Rights_Annual%20Report_2016.pdf

527 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

528 Mae Tao Clinic. n/d. About. Mae Tao Clinic. Retrieved from: https://maetaoclinic.org/

529 Asylum Access Thailand. 2022. Where We Work: Thailand. Asylum Access Thailand. Retrieved from: https://asylumaccess.org/where-we-work/thailand/

530 UNHCR, Bangkok Refugee Center (BRC), Jesuit Refugee Services (JRS), Asylum Access Thailand (AAT), Asia Pacific Refugee Rights Network (APRRN), BPSOS.

531 BASRAN. n/d. About us. BASRAN. Retrieved from: https://basranbangkok.wordpress.com/about-2/

532 Catholic Office for Emergency Relief and Refugees. n/d. COERR History. Catholic Office for Emergency Relief and Refugees. Retrieved from: https://www.coerr.org/Eng/history.html

533 Weave Women. n/d. Our Goal. Retrieved from https://weave-women.org/

Indonesia: Key actors

Government Authorities. Under the 2016 Presidential Decree, the Coordinating Ministry for Political, Legal, and Security Affairs is tasked to handle refugee issues and facilitate coordination between the Ministry of Law and Human Rights, Ministry of Foreign Affairs, and Ministry of Social Affairs. The Foreign Ministry leads the provision of humanitarian aid, formation of partnerships, and participation in regional coordinating bodies.[534] The local government and authorities, including the Indonesian Police, oversee refugee handling. The division of handling responsibilities aims to mitigate officials' abuse of refugees and asylum seekers (i.e., through detention).[535]

Local governments are tasked to play a key role in refugee management, but a lack of funding and little direct involvement from the central government has resulted in local governments adopting different approaches to address or ignore refugee issues.[536] In 2015, 2018, and 2020, local government and community members in Aceh province rescued Rohingya at sea. *Panglima La'ôt* (Commanders of the Sea), an institution established during the reign of Sultan Iskandar Muda (1583-1636), continues to enforce customary maritime law, *Hukôm Adat La'ôt*, which oblige fishermen to rescue all life at sea, which is not always aligned with the will of the national government.[537] Rescues of Rohingya refugees are both an expression of *Hukôm Adat La'ôt* as well as the Acehnese cultural norm of *Pemulia Jamee*, the welcoming of guests. Though local governments can create task forces, the central government does not allocate funding to local governments for the implementation of refugee management directives.[538]

UN Agencies. UNHCR and IOM play key roles in refugee handling and management, often working with national, sub-national, and local governments to extend key services to refugees. For example, the Government of Indonesia, through PR No. 125/2016, formally authorised UNHCR to help oversee refugee management with the central government, and in practice has included holding status determination interviews, distributing identification documentation and monthly allowances, monitoring camp and shelter conditions, and providing education to children of refugees, among others. IOM supports more than half of all registered in Indonesia with shelter, and it provides monthly allowances and access to health services. Both IOM and UNHCR engage in refugee resettlement and assisted voluntary return.[539] UNICEF in 2021 signed a Blueprint for Joint Action with UNHCR to support the rights and protection of refugee and IDP children in areas of education and water, sanitation, and hygiene.[540]

Civil Society. Indonesian civil society and local communities have been active in addressing Rohingya refugee needs, strengthened by shared religious solidary.[541] Starting in 2015, several philanthropic organisations, such as Dompet Dhuafa, Aksi Cepat Tanggap (ACT), and Community Caring Justice Post have aided Rohingya refugees in North Aceh. Rumah Zakat, Yayasan Geutanyoë, Daarut Tauhid, Rumah Yatim, and Blood for Life Foundation also work with refugees in Indonesia. Jesuit Refugee Services (JRS) Indonesia offers psychosocial support, emergency support, and education to refugees.[542]

Nahdlatul Ulama and Muhammadiyah, Indonesia's two largest Muslim (civil society) organisations, have had an effective role in advocacy against violence towards Muslims, and have directly engaged with the Foreign Ministry to advocate on Rohingya issues. The Indonesian Civil Society Association for the Protection of Refugee Rights (SUAKA), the Human Rights Working Group, and Amnesty International Indonesia have championed advocacy through engagement with the Indonesian government and provided humanitarian assistance to Rohingya arriving by boat.[543] SUAKA provides legal advice to asylum seekers, refugees, and stateless persons, and has produced self-help kits for refugees and partnered with UNHCR, Sandya Institute, and JRS to create a handbook to educate refugees on one's rights in Indonesia.[544]

534 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

535 Government of Indonesia. 1999. Law No.37 of 1999 concerning Foreign Relations. Government of Indonesia. Retrieved from: https://jdih.bumn.go.id/unduh/UU%20Nomor%2037%20Tahun%201999.pdf

536 Missback, A. & Stange, G. 2021. Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia. Social Sciences, 10(5), 166. https://doi.org/10.3390/socsci10050166

537 Institute for Policy Analysis of Conflict. 2020. Rohingya refugees in Aceh: An Update. IPCAC. Retrieved from: http://file.understandingconflict.org/file/2020/09/Report_67.pdf

538 Mixed Migration Centre. 2021. A Transit Country No More: Refugees and Asylum Seekers in Indonesia. MMC. Retrieved from: https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Research_Report.pdf

539 International Organization for Migration. n/d. Resettlement and assisted voluntary return. IOM. Retrieved from: https://indonesia.iom.int/resettlement-and-assisted-voluntary-return

540 UNHCR and UNICEF. 2021. UNHCR and UNICEF Sign Blueprint for Joint Action for Refugee Children in Indonesia. UNICEF. https://www.unicef.org/indonesia/press-releases/unhcr-and-unicef-sign-blueprint-joint-action-refugee-children-indonesia

541 Asia Displacement Solutions Platform. 2020. Rohingya in South East Asia: Opportunities for engagement. Asia Displacement Solutions Platform. Retrieved from: https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_V1.pdf

542 Jesuit Refugee Service. n/d. Our work in Indonesia. JRS. Retrieved from: https://jrs.net/en/country/indonesia/

543 Missback, A. & Stange, G. 2021. Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia. Social Sciences, 10(5) 166. https://doi.org/10.3390/socsci10050166

544 UNHCR. n/d. Are you stateless? Indonesia. UNHCR. Retrieved from: https://www.unhcr.org/ibelong/are-you-stateless/indonesia/

Malaysia: Key actors

Non-State Actors. Malaysia has pursued bilateral agreements as well as called on international support from organisations like the OIC, the United Nations, and ASEAN to subsume greater responsibility over refugees in country. UNHCR and the IOM are two of the biggest non-state actors with state responsibilities. However, UNHCR's relationship with the Government of Malaysia has deteriorated and is denied access to IDCs. In September 2022, the National Security Council urged shut down of the UNHCR office in Malaysia to better manage refugee entry and movement.[545] The proposal comes amidst national authorities' increased challenge, in 2022, to UNHCR identification cards as valid forms of identification. The National Security Council often references UNHCR's disrespect in issuance of identity cards without checking with authorities.[546]

National Authorities. National authorities play an influential role in policy implementation. The Immigration Department enforces Immigration Act and the ATIPSOM Act, engages in the arrest and detainment of undocumented persons. Nationally, The Royal Malaysia Police (RMP) also support enforcement of the Immigration Act and is the main enforcement agency of the ATIPSOM Act. The Attorney General's chamber initiates prosecutions and the National Bar Council takes on cases for trafficked individuals. The Ministry of Home Affairs, which comprise the Immigration Department and RMP, leads the MAPO Council where enforcement bodies, government entities, and NGOs work together to coordinate, strengthen, and cooperate on anti-trafficking efforts under the 2021-2025 National Action Plan. In addition to adoption of victim identification SOPs, MAPO also led and supported government funded trafficking awareness campaigns. Smuggling and trafficking units are in relevant government bodies like the Immigration Department and the Labour Department, under the Ministry of Human Resources.

The Ministry for Women, Family, and Community Development operates trafficking shelters for women and children and has collaborated with other government entities including the Immigration Department to advocate for Rohingya. In April 2020, the government instructed that only the Welfare Department with support from the Malaysian Volunteer Corps Department and the Malaysian Civil Defence could provide humanitarian aid for migrant workers and refugee populations affected by the COVID-19 lockdown, but the policy was reversed later. [547]

Civil Society and NGOs. CSOs and NGOs play a significant role in advocacy of Rohingya rights and provision of support services. Civil society partners engage the All-party Parliamentary Group Malaysia on Refugee Policy, a bipartisan platform comprised of Members of Parliament from 8 political parties, both government and opposition. Geutanyoë Malaysia, which runs a protection and referral hotline for Rohingya refugees and closed-door high-level policy advocacy to government, is the APPGM Secretariat. Asylum Access Malaysia provides direct legal support for refugees and collaborates with different stakeholders through coalitions and engagement to advocate for refugee work rights, and an end to detention of children. Several NGOs, like Tenaganita and Yayasan Chow Kit, additionally cater to the protection needs of Rohingya refugees and trafficked individuals. The Malaysian Red Crescent Society supported specific COVID-19 vaccination interventions for refugees, though it does not currently have a protection programme targeted at Rohingya refugees.

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Appendix 6: Relevant Policies at the National Level

Table 15. Key international, regional, and national policies adopted/enacted by Thailand, Indonesia, and Malaysia.

Country	Protection policies	Anti-trafficking policies
Thailand	• 1948 UN Universal Declaration of Human Rights • 1956 The International Covenant on Civil and Political Rights • 1966 Bangkok Principles on the Status and Treatment of Refugees • 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • 1992-1999 adopted resolutions (unnamed, and not in effect anymore) • 1999 Education for All Policy • 2000 ILO Convention 182, Elimination of Worst Forms of Child Labour • 2004 Thai government removes UNHCR to do RSD interviews • 2005 Resolution on Education for Unregistered Persons • 2008 Pushback Policy • 2011 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children • 2012 ASEAN Human Rights Declaration • 2012 Policy that separated Men and Women and Children from MSDHS • 2016 FVR (not available to Rohingya) • 2019 NSM for protection to non-citizens unable to repatriate • 2019 Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres	• 1930 Forced Labour Protocol • 1956 Criminal Act • 1979 Immigration Act • 1997 Measures in Prevention and Suppression of Trafficking in Women and Children Act • 1999 Anti-Money Laundering Act • 2002 Bali Process • 2003 UN Convention against Transnational Crime Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) • 2004 Memorandum of Understanding (MOU) on Cooperation Against Trafficking in the Greater Mekong Sub-Region • 2008 ATIP • 2007 Convention on Work in Fishing • 2013 Prevention and Suppression of Transnational Organized Crime Act 2016 Human Trafficking Criminal Procedure Act • 2016 Bali Declaration • 2017 ACTIP • 2017 Coordinated Mekong Ministerial Initiative against Human Trafficking • 2021 NRM for Trafficking Victims • Bali Process
Indonesia	• 1945 Indonesian Constitution (articles 28A, 28G and 28I) • 1948 UN Universal Declaration of Human Rights • 1956 The International Covenant on Civil and Political Rights • 1956 Article 1 Circular Letter Number 11/RI/1956 • 1966 Bangkok Principles on the Status and Treatment of Refugees • 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • 1999 National Act No. 39 • 1999 National Act 37 • 2000 ILO Convention 182, Elimination of Worst Forms of Child Labour • 2003 National Education Law Article 12(3) • 2007 National Act 24 Article 6 • 2009 Law No. 36 Article 130 and 132 • 2011 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children • 2012 ASEAN Human Rights Declaration • 2016 PR No. 125/2016 • Ministry of Education Circular Letter No. 75253/A.A4/HK/2019 • Right to legal Counsel (5 different laws, unnamed)	• Pre 2000 Article 297 of the Criminal Code • 2002 Bali Process • 2003 UN Convention against Transnational Crime • 2003 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) • 2007 Law 21 Eradication of the Criminal Act of Trafficking in Persons • 2008 PR No. 69 • 2008 Government Regulation No. 9 • 2011 Immigration Law • 2016 Bali Declaration • 2016 PR No. 125/2016 • 2017 ACTIP • 2017 Migrant Protection law (punishes recruitment agencies for trafficking related offences) • 2021 PD 22 • 2021 Regulation 78 on Special Protection for Children • Bali Process
Malaysia	• 1948 Convention on the Prevention and Punishment of the Crime of Genocide • 1948 UN Universal Declaration of Human Rights • 1959/63 Immigration Act • 1966 Bangkok Principles on the Status and Treatment of Refugees • 1966 Passport Act • 2000 ILO Convention 182, Elimination of Worst Forms of Child Labour • 2011 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children • 2012 ASEAN Human Rights Declaration	• 1930 Forced Labour Protocol (enters force on 21 March 2023) • 2002 Bali Process • 2003 UN Convention against Transnational Crime • 2003 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) • 2007 ATIP • 2010 ATIPSOM • 2016 Bali Declaration • 2017 ACTIP • Bali Process

Appendix 7: Feasibility Assessment

1. During the inception phase, the RT completed a research scope assessment to identify any limitations to thoroughly answering a research question. Status marked as **GREEN** indicates the RT has sufficient access to quality information to answer the corresponding question/line of inquiry. **YELLOW** indicates data may be available but is not currently in the possession of the RT. **RED** indicates the gaps in the information at this stage may be too large to sufficiently answer the question/line of inquiry.

Table 16. Research scope assessment for the RQs.

Part	RQ	Key documents in possession	Feasibility		
			Secondary data availability	Primary data availability	Overall Feasibility
Part 1: Policy landscape for refugee protection, anti-smuggling, and anti-trafficking	**1.1.** What are the regional SEA frameworks and mechanisms for anti-smuggling, anti-trafficking, and refugee protection, respectively?	Peer reviewed articles Government reports	Documents provide details on the roles of ASEAN, state, and non-state actors in addressing refugee protection. **Regional frameworks and mechanisms to address smuggling and trafficking lacking.**	KIIs with civil society groups, members of national coordinating bodies and government officials will help fill in information on the state or lack of mechanisms.	Regional data primarily focuses on ASEAN and on protection; Additional information on regional anti-trafficking and smuggling with KIIs is sufficient.
	1.2. What are the drivers of Rohingya exodus from Myanmar and Bangladesh and the risks of smuggling and trafficking that people face?	MMC key messages on smuggling and MMC mixed migration reviews MMC survey profiles on drivers and risks Peer reviewed articles NGO research reports	Documents provide profiles of drivers out of Myanmar and Bangladesh, risks faced on journey – especially to Malaysia, and quantitative data.	KIIs with NGOs, civil society groups and MMC staff need to expand on risks faced in Indonesia and drivers to Thailand and Indonesia.	Secondary data with KIIs are sufficient to identify main drivers and motivations of Rohingya exodus from Myanmar and Bangladesh.
	1.3. What are the national-level policies and laws in place in Indonesia, Malaysia, and Thailand, and how accessible are these protections to the Rohingya?	MMC study on mobility of and protection support for Rohingya Government profiles on human trafficking policy Peer reviewed articles Royal Thai Government report on Anti-Trafficking Efforts	Documents provide data on refugee protection/ immigration policy in Malaysia, Indonesia, and Thailand. **Need additional information explicitly focused on Rohingya populations and accessibility of protections.**	KIIs with NGOs, MMC staff, civil society groups and members of national coordinating bodies will support understanding of the accessibility of protection to Rohingya refugees.	Additional secondary data with KIIs are sufficient to determine accessibility of protection to Rohingya refugees.
	1.4. What is the alignment of these policies and approaches with international/global frameworks and commitments?	Peer reviewed articles Government profiles on human trafficking policy	Articles lay out policy commitments for Thailand but not alignment. **Limited data on Indonesia and Malaysia country alignment to global frameworks.**	KIIs with civil society groups, members of national coordinating bodies, government officials and regional bodies to fill in gaps on policy and approach alignment.	While KIIs can highlight alignment of policies and approaches with frameworks and commitments, more documentation is needed on country alignment to frameworks.

Part	RQ	Key documents in possession	Feasibility		
			Secondary data availability	Primary data availability	Overall Feasibility
Part 2: Risks and opportunities	**2.1.** At the policy level, what are the connections between the spheres of refugee protection, anti-smuggling, and anti-trafficking?	MMC key messages on smuggling and mixed migration MMC reviews of mixed migration (2020-21)	Information on trafficking and protection is available. **Need more documentation on smuggling and linkages between all three spheres.**	KIIs with MMC staff, civil society groups, members of national coordinating bodies and government officials.	Additional secondary data coupled with KIIs are sufficient.
	2.2. At the implementation level, what is the coherence of approaches between these spheres, at the regional and national level?	NGO research report on human trafficking and rights violations Government reports	**Need additional information on linkages between spheres.**	KIIs with MMC staff, NGOs, civil society groups, members of national coordinating bodies.	Need more documentation on coherence of implementation between spheres at regional and national levels. RT analysis will identify and bridge these gaps.
	2.3. What are key policies/ mechanisms that have had mutually reinforcing protection outcomes for Rohingya refugees?	NGO research report on human trafficking and rights violations Peer reviewed articles MMC surveys	Information on outcomes is available, with limited data on interrelated policies. Documents report recommendations for improving policies to better protection outcomes. **Need more data on mutually reinforcing protection outcomes as linked to policy.**	KIIs with civil society groups, NGOs, MMC staff, members of national coordinating bodies and government officials will help fill in the gaps about outcomes reinforced by policy.	Secondary data coupled with KIIs are sufficient.
	2.4. What are the barriers, gaps and redundancies at the policy level that hinder protection access and outcomes for Rohingya refugees?	Government profiles on human trafficking policy Government reports NGO research reports Peer reviewed articles	Current documents lay out barriers and gaps in protection policy as relates to detention, and immigration policy, non-signatory states and non-state actors. **Lack of data on policy redundancies.**	KIIs with MMC staff, civil society groups, members of national coordinating bodies, government officials on policy barriers/gaps/ redundancies.	Secondary data coupled with KIIs are sufficient.

Appendix 8: Research Timeline

Table 17. Key dates of the research.

Activity	June				July				August				Sept				Oct			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Inception phase																				
Preliminary desk research																				
Inception Report submission			17-Jun																	
Inception Report feedback				27-Jun																
Inception Report finalisation				24-Jun																
Data collection / Research phase																				
Literature review								31-Jul												
Remote KIIs*																				
Last KII								10-Aug												
Validation meeting w/ DRC								TBD												
Analysis, Validation and Reporting phase																				
Analysis of primary & secondary literature																				
Drafting research																				
Validation KIIs with key stakeholders																				
Submission of draft report												22-Aug			19-Sep	30-Sep	7-Oct			
DRC submission of draft feedback													5-Sep			29-Sep	5-Oct	15-Oct		
Recommendations workshop															20-Sep					
Final report submission and finalisation																			17-Oct	
Dissemination presentations																				TBD

*Allocation of 4 weeks is to provide flexibility for key informant availability

Appendix 9: Applied Policy Research Approach

Table 18. Applied policy research categories and questions.[548]

Objective category	Example questions / lines of inquiry
Contextual Identifying the form and nature of what exists	• What are the dimensions of attitudes or perceptions that are held? • What is the nature of people's experiences? • What needs does the population of the study have? • What elements operate within a system?
Diagnostic Examining the reasons for, or causes of, what exists	• What factors underlie particular attitudes or perceptions? • Why are decisions or actions taken, or not taken? • Why do particular needs arise? • Why are services or programmes not being used?
Evaluative Appraising the effectiveness of what exists	• How are objectives achieved? • What affects the successful delivery of programmes or services? • How do experiences affect subsequent behaviours? • What barriers exist to systems operating?
Strategic Identifying new theories, policies, plans or actions	• What types of services are required to meet needs? • What actions are needed to make programmes or services more effective? • How can systems be improved? • What strategies are required to overcome newly defined problems?

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Protecting Rohingya Refugees in Asia

– towards a coordinated regional approach

Protecting Rohingya Refugees in Asia (PRRiA) is a two-year ECHO-funded initiative launched in 2021 to address protection risks and needs of Rohingya refugees in Southeast Asia. The joint project of the Asia Displacement Solutions Platform (ADSP), Danish Refugee Council (DRC), Geutanyoë Foundation Malaysia, HOST International Malaysia, Jesuit Refugee Service (JRS) Indonesia, and Mixed Migration Centre (MMC) combines evidence-based research, programmatic and advocacy expertise to inform integrated regional protection responses in support of Rohingya refugees as the world's largest stateless population. PRRiA targets 54 local, 20 international, and 27 regional organisations with a particular focus on Thailand, Indonesia, and Malaysia.

PRRiA PARTNERS:

ADSP Asia Displacement Solutions Platform

DRC DANISH REFUGEE COUNCIL

GEUTANYOË MALAYSIA

HOST INTERNATIONAL FOSTERING HUMANITY, HOPE & DIGNITY

JRS JESUIT REFUGEE SERVICE INDONESIA

Mixed Migration Centre

PROJECT DONOR:

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