



## STILL ADRIFT: FAILURE TO PROTECT ROHINGYA IN MALAYSIA AND THAILAND

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*Front cover: Rohingya man in Kedah, Malaysia.*

*This page: Rohingya girl in Learning Center in Kuala Lumpur, Malaysia.*

## Introduction

A year and a half ago, thousands of desperate Rohingya and Bangladeshi migrants and asylum-seekers were abandoned at sea, shocking and horrifying many around the world. But more than a year later, little has changed. Governments and international agencies have fulfilled few promises to better protect Rohingya who, facing persecution in Myanmar, have seen flight as their only survival option. Rohingya asylum-seekers in Malaysia and Thailand, including many women and children who survived the May 2015 boat crisis, continue to face the threat of detention and restricted access to the most basic human rights, including to livelihoods, healthcare, and education. As tensions flare once again within Myanmar, the possibility of another boat crisis remains real, but whether international reaction would be different remains unclear. It is time for regional governments and the UN Refugee Agency (UNHCR) to act.

## Recommendations

- ❑ **Malaysia must protect the human rights of Rohingya refugees and asylum-seekers inside its borders by:**
  - Immediately convening the joint task force on refugee registration with UNHCR which was announced in March 2016;
  - Implementing Rohingya asylum-seeker work permit pilot program in cooperation with UNHCR;
  - Working with UNHCR and local non-governmental organizations (NGOs) to design a program for extending access to education to Rohingya children and accrediting education provided by NGO-run “learning centers”;
  - Fulfilling its commitments under the Convention on the Rights of the Child and its own Child Act of 2001 by ending child detention and providing for the physical and psychosocial protection of child asylum-seekers and refugees.
- ❑ **UNHCR must take urgent steps to better fulfill its refugee protection mandate by:**
  - Appointing one or more dedicated UNHCR officers as the first point of contact for all asylum-seekers approaching the UNHCR office in Kuala Lumpur;
  - Improving the Partner Referral System through outreach and coordination with NGOs and community leaders to develop clear points of contact and information (including public listing of partners) on alternative assistance options for those determined not to be priority cases for UNHCR, with special attention to ensuring pregnant and lactating Rohingya women are not denied life-saving access to medical care;
  - Expanding registration of Rohingya in Malaysia and the issuance of UNHCR identification cards, including by expanding the use of mobile registration options for Rohingya living substantial distances from Kuala Lumpur.
- ❑ **The Government of Thailand should fill protection gaps for Rohingya asylum seekers by:**
  - Rescreening Rohingya for status as victims of human trafficking;
  - Implementing Cabinet Resolution no. 11/B.E.2559 to provide work opportunities and protection for witnesses in human trafficking trials;
  - Extending protections provided to victims of human trafficking to all survivors of the May 2015 boat crisis and eventually full protections to all asylum-seekers in Thailand;
  - Improving conditions in detention centers to meet international standards, ending indefinite detention, and providing UNHCR and NGOs with regular access to detainees;
  - Providing Rohingya interpreters and psychosocial care professionals for Rohingya in shelters.
- ❑ **Members of ASEAN and the Bali Process should take action on solutions discussed for addressing the threat of another regional boat crisis by:**
  - Immediately setting up a task force on mixed movements of refugees and migrants as proposed at the May 29, 2015 Special Meeting on Irregular Migration in the Indian Ocean;
  - Providing funds for the ASEAN Trust Fund to Support Emergency Humanitarian and Relief Efforts in the Event of the Irregular Movement of Persons in Southeast Asia that were pledged at the July 2015 ASEAN Ministerial Meeting;
  - Agreeing to predetermined disembarkation points in the case of future regional boat crises;
  - Addressing the root causes behind the boat crisis by engaging the government of Myanmar on solutions, including granting citizenship to Rohingya in the long-term and freedom of movement in the short-term.
- ❑ **The United States should:**
  - Include assessment of the effects of Malaysia and Thailand’s policies on Rohingya, including rescreening of Rohingya from the May 2015 boat crisis, in its Trafficking in Persons report for 2016.

## Background

Rohingya Muslim minority in western Myanmar has faced decades of persecution and bouts of violence in recent years that have left 120,000 Rohingya cordoned off in displacement camps and another million with severely restricted rights and limited access to humanitarian aid (for a detailed background on the persecution of Rohingya driving their forced migration from Myanmar, see Refugees International's November 2014 report, *Myanmar: A Tipping Point for Rohingya Rights*<sup>1</sup>). In recent weeks, violence has spiked again with a severe crackdown by the Myanmar army blocking international aid and reported rapes, burning of villages, and use of helicopter gunships. But the effects of that violence and persecution have not been limited to Myanmar's borders. More than 100,000 ethnic Rohingya Muslims have taken to sea to escape conditions in Myanmar in recent years, with many falling victim to abuse at the hands of human traffickers.

In May 2015, mass graves of Rohingya and other victims of human trafficking were discovered along the border of Malaysia and Thailand (more than 220 bodies were eventually found) triggering a massive crackdown by government authorities on human trafficking networks.

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**“If people couldn't pay, they would beat them – break their arms or legs.”**

—Former Human Trafficker interviewed by RI near Kuala Lumpur, Malaysia

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Traffickers at sea, unable to unload their human cargo, consolidated them onto large overcrowded ships and left them to drift in the Andaman Sea and Bay of Bengal. Regional governments initially responded by simply providing food, water, and fuel to any ships that approached

their shores then towing them back out to sea. Some ships reached the shores of other countries only to be turned back once again in what has been described as human ping pong. An estimated 5,500 Rohingya and Bangladeshi migrants and asylum-seekers were caught up in the crisis, scores of whom drowned or died of dehydration and exposure.<sup>2</sup> Totally unprepared and lacking any process or procedures for rescue at sea, governments in the region took weeks before responding to the immediate crisis.

Following international outcry, a regional summit on May 29<sup>th</sup> resulted in 17 proposals for immediate response, prevention of future crises, and addressing root causes. Indonesia and Malaysia agreed to take in up to 7,000 people from the boats and Thailand agreed to intensify search and rescue efforts, likely saving hundreds of lives.



A series of further regional meetings throughout 2015 resulted in additional proposals for the formation of a joint task force and trust fund dedicated to responding to regional movements of refugees and migrants. In March 2016, the Sixth Bali Process Ministerial Conference (a regional mechanism set up in 2002 to address people smuggling, human trafficking, and related transnational crime), discussed the failures in responding to the May crisis, and its 48 members granted authority to the co-chairs of the Bali process, Indonesia and Australia, to call a consultative meeting in the case of similar future crises.<sup>3</sup>

A year and a half later, most of the Bangladeshis abandoned at sea have been repatriated to Bangladesh, but Rohingya, being stateless and unrecognized by Myanmar as citizens, have been more complicated to sort out. A small number of Rohingya from the May 2015 crisis have been resettled to third countries like the United States, but most remain either in shelters or detention centers in Indonesia, Malaysia, and Thailand, or in precarious circumstances amid already existing Rohingya communities, mostly in Malaysia.<sup>4</sup>

In September and October of 2016, Refugees International (RI) traveled to Malaysia and Thailand and met with dozens of Rohingya as well as several government and UN officials and local and international non-governmental organizations (NGOs) to look at the lasting effects of the May 2015 boat crisis, the broader dynamics it represents, and the status of regional and international responses to the more than 100,000 Rohingya who have fled Myanmar in recent years.

## Rohingya in Malaysia

### *Forgotten Survivors of the May 2015 Boat Crisis*

Despite international outrage following the May 2015 boat crisis and pledges by governments in the region to do more to protect Rohingya, RI was extremely concerned to find that little has changed. Most of the 371 Rohingya who disembarked in Malaysia during the May 2015 boat crisis spent more than a year in the Belantik Immigration Detention Center (IDC) in northern Malaysia. The IDCs are filled with people picked up by Malaysian authorities and deemed to be illegal immigrants. According to international NGOs and UN officials with whom RI spoke, most are held for weeks or months until they can be deported, or in the case of Rohingya, until UNHCR can intervene on

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**“Faced with many of the same restrictions as in Myanmar—including on access to work, education, healthcare, and freedom of movement—the lives of Rohingya in Malaysia remain better than life in Myanmar only in relative terms.”**

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their behalf. RI met with a mother and her three children who, having narrowly survived abandonment at sea, had only been released from detention two weeks before. Following 39 days at sea, their boat finally drifted ashore on the Malaysian coast where they were immediately detained

by Malaysian police. In detention, the 14-year-old son was separated from his mother and sisters and, other than occasional glimpses of each other from afar, they were unable to communicate directly for the entire 14 months they were held in detention. They described crowded conditions and frequent beatings by guards, even of children. The son told RI he had been beaten five times while in detention. The mother told RI that her children still wake up screaming at night from the memories of the dangerous journey and the all too recent experience of life in detention.

While most of Rohingya detained during the May 2015 crisis have been released and 36 extremely vulnerable cases resettled to third countries, those still in Malaysia now face the challenges of tens of thousands of other Rohingya in the country, including the continued everyday threat of arrest and return to detention.<sup>5</sup>

Amina\*, an unaccompanied 13-year-old girl, with whom RI met, survived days without food and water on a ship crowded with 600 people in May 2015 before reaching the Malaysian island of Langkawi. Once ashore, she was detained in the Belantik Immigration Detention Center for over a year, separated from her family, at times in conditions so crowded she and her fellow detainees had to take turns lying down to sleep. She received insufficient food and when she needed to bathe or use the bathroom, squatting behind a three-foot-high wall proved her only privacy. She was finally released and reunited with her sister just two months before RI met with her. Still facing the risk of detention, she rarely ventures outside.

\* Name changed for protection purposes.

### *More than a Year Later, Little to No Improvement for Rohingya in Malaysia*

A year and a half after the global attention of the May 2015 boat crisis, the poor condition of the tens of thousands of Rohingya in Malaysia remains shockingly stagnant. These restrictions were extensively documented in RI's November 2015 report, *Malaysia: Rohingya Refugees Hope for Little and Receive Less*.<sup>6</sup> In September 2016, a



This Rohingya family spent 14 months in detention after the May 2015 boat crisis. They now live in Ampang, near Kuala Lumpur, Malaysia.

team from RI returned to many of the same areas to interview dozens of Rohingya in and around Kuala Lumpur, Penang, and Kedah. RI was extremely concerned to find that little has changed. Faced with many of the same restrictions as in Myanmar—including on access to work, education, healthcare, and freedom of movement—the lives of Rohingya in Malaysia remain better than life in Myanmar only in relative terms.

### ***Arrest and Detention***

The Government of Malaysia has not signed the 1951 Refugee Convention and has no domestic legal framework for asylum, meaning that while it tolerates the presence of tens of thousands of Rohingya, they are technically considered illegal migrants and face a constant threat of arrest and detention. In most cases, arrest is avoided through payment of bribes, but occasional immigration raids, usually sparked by local complaints, can result in week-long arrests or long-term detentions lasting several months to over a year. Conditions in the detention center were described to RI by

recent detainees and international observers who gained limited access as crowded and dangerous with frequent beatings. The number of Rohingya in detention at any one time varies, but at the end of 2015 had reportedly reached as high as 2,498.<sup>7</sup> Overall, between 7,000 and 9,000 Rohingya are detained annually in Malaysia.<sup>8</sup>

Given limited resources and the difficult political environment, UNHCR has prioritized advocating to the Malaysian government for the release of Rohingya from detention. It is in this area that UNHCR has played perhaps the most impactful role in the protection of Rohingya. Without UNHCR's intervention, Rohingya face indefinite detention. In the 12 months leading up to September 2016, UNHCR estimates that it helped to secure the release of 3,760 Rohingya from IDCs in Malaysia, reducing the total number of Rohingya in detention to 786. This number does not include an unknown number of Rohingya among an estimated 1,000-2,000 detainees not registered with UNHCR, but also does not include cases where UNHCR intervened in arrests to secure release before Rohingya were sent to detention.

Given the constrained legal environment for asylum-seekers in Malaysia, these efforts are to be commended. But they provide only a partial solution, and RI felt that there was more that UNHCR could be doing to meet its protection mandate given the extreme vulnerability of Rohingyas in Malaysia. Nearly every one of the dozens of Rohingya with whom RI spoke have been arrested or detained at some point during their time in Malaysia. Arrest and detention remain an everyday threat for Rohingya in the country.

The continued detention of children, including unaccompanied minors, is of particular concern. The fact that unaccompanied minors and children separated from families from the May 2015 boat crisis were held for more than a year in detention is a clear violation of the Convention on the Rights of the Child, which Malaysia ratified in 1995, as well as Malaysia's Child Rights Act of 2001. These commitments call for Malaysia to provide physical and psychosocial protection for child asylum-seekers and refugees. Children caught up in the May 2015 boat crisis are particularly in need of treatment for trauma. Malaysia should end childhood detention and work with UNHCR and NGOs to ensure better access to psychosocial support.

### ***Rohingya, including Pregnant Mothers and Children, Denied Life-saving Access to Health Care***

Access to affordable health care remains extremely limited for Rohingya in Malaysia. Distance and limited resources leave the vast majority of Rohingya with few options. Rohingya who possess a valid UNHCR registration card can go to government and private hospitals, where they are given a 50 percent subsidy. However, Rohingya who do not have a UNHCR card and who go to private or government hospitals not only have to pay full price but also face the risk of being reported to authorities by hospital personnel, arrested, and thrown into detention. While under Malaysian law government hospitals are supposed to accept emergency cases, Rohingya and NGOs with whom RI spoke reported this often does not hold up in practice.

Even for Rohingya who have UNHCR identification cards and who are eligible for a 50 percent subsidy, medical costs are often too high. This is particularly true of pregnancy-related and childbirth costs which can range from \$1,500 to \$6,000. RI interviews with dozens of Rohingya,

UN officials, and NGOs working with Rohingya revealed the lack of affordable services for pregnant women as one of the greatest challenges faced by the community. NGOs have been stepping in through informal networks to raise money on a case by case basis, but clearly a better system supported by the government and UNHCR is needed.

UNHCR has worked with the government and private sector to provide a health insurance option known as Refugee Medical Insurance (REMEDI). For around \$40 per individual and \$50 for a family a range of services including physician visits, room and board for up to 30 days, and ambulance, surgical, and anesthetic fees can be covered up to around \$2,400 for individuals and \$2,900 for families. But too few know about the health insurance option. REMEDI is only available to UNHCR cardholders and is also limited by the fact that it does not cover some of the most common medical needs of Rohingya women, namely pregnancy, childbirth, and miscarriages.

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**“Wherever we get a safer life, that’s where we want to be.”**

—Rohingya mother in Ampang, Malaysia

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### ***With Limited Access to Education, Rohingya Children Face a Bleak Future***

Refugees in Malaysia continue to have no formal access to education. For Rohingya, the options are limited to unaccredited voluntary “learning centers” run by other Rohingya and sympathetic Malaysians or madrassas that predominantly focus only on teaching the Koran. RI visited a number of “learning centers” set up within Rohingya communities in and around Kuala Lumpur, Penang, and Kedah. The centers depend on private donations and volunteers with limited training and provide varied curricula. UNHCR has provided limited funds, but nowhere near the amount necessary to meet the needs. For most Rohingya children, either the schools are too far away or their working parents are unable to escort them there. Many of the newly arrived children with whom RI met also expressed fear of going outside at all due to fear of arrest and detention or harassment.

Shafikah\*, a 13-year-old girl who survived the boat crisis by treading water for six hours, told RI she never leaves her home because she is so terrified of being detained. Trapped in her two room apartment outside Kuala Lumpur, she said she draws in a coloring book when she is bored. Though the dream of an education was one of the reasons her mother brought her on the dangerous journey to Malaysia, there is little hope that she will ever obtain one.

\* Name changed for protection purposes.

Even if a Rohingya child manages to obtain an education at a “learning center,” most are limited to primary education and none is accredited. While a few Rohingya have been accepted into universities, the current system makes this nearly impossible for most.

RI’s recommendations from November 2015 have only become more urgent.<sup>9</sup> Malaysia should extend access to public education to all school-aged refugee children and UNHCR should explore opportunities to increase financial and technical support to “learning centers.” In the immediate term, working with local NGOs to expand opportunities and to accredit “learning centers” and provide official certificates for students who complete studies could go a long way in addressing the continued gap in access to education. Without more focus on the need and resources to educate Rohingya children, the Malaysian government, the UN, and donors risk undermining their ability to be self-reliant and perpetuating the vulnerability of future generations.

### ***Significant Restrictions on Access to Work Leave Rohingya Impoverished and Vulnerable***

Malaysia has a large migrant labor sector that attracts two million registered foreign workers and at least one million illegal migrant workers from around the region. This provides many work opportunities for Rohingya, but those opportunities are usually short-term and what locals describe as “3D jobs”: dangerous, dirty, and difficult. Construction is one of the most common forms of employment for Rohingya and those who are injured on the job face limited access to medical care and no safety net to help their families. Employment opportunities for women are limited,

with some taking part in street sweeping or garbage collection, but most remain home to take care of families.

The informal nature of the work also leaves Rohingya especially vulnerable to exploitation. Several of Rohingya with whom RI spoke described cases where they were suddenly let go without pay after working several weeks. Their illegal immigrant status prevents them from seeking redress. In other cases, one Rohingya would be tasked with recruiting and overseeing a team of other Rohingya workers then not paid, creating a domino effect of lost livelihoods. Getting to and from work also presents an increased risk of arrest and detention or garnishing of wages to pay bribes. Malaysian police often wait in areas known to be frequented by Rohingya workers on their way to or from work.

UNHCR has worked with the government and private sector to address these concerns. The REMEDI insurance program includes limited Personal Accident Insurance for an additional \$3 a year to help cover work-related injuries. It is also working to develop a pilot work permit program that would involve 300 Rohingya. Private partners have reportedly been identified, but the program is yet to be initiated.

### ***For Rohingya, UNHCR ID Cards Remain the Most Important Form of Protection***

In the absence of government protections for refugees, the task of filling protection gaps has fallen largely on UNHCR in Malaysia. Whether in terms of arrest and detention, healthcare, education, or work, the most sought after source of protection among Rohingya in Malaysia is registration with UNHCR and, in particular, possession of a UNHCR identification card.

Rohingya with whom RI spoke repeatedly emphasized that having a valid card not only makes it much more likely that they will be able to get a job but also offers the only defense against arrest and detention. Having a card is also a requirement for access to the 50 percent health-care subsidy and insurance options. In short, while some observers downplay the importance of UNHCR ID cards, Rohingya state that having a UNHCR card remains the single most important form of protection.





Two Rohingya sisters who made the boat journey to Malaysia.

While UNHCR has prioritized the protection and registration of some 55,000 Rohingya, tens of thousands more are believed to be unregistered and in need of protection. The ability of UNHCR to expand registration is constrained both by resources and the complicated stance of the government. Various officials in the government have both sympathized with Rohingya as persecuted fellow Muslims and feared them as an outside security and economic threat. The government has empowered UNHCR to step in to register and fill protection gaps for Rohingya, but, at the same time, indicated that moving too rapidly would not be welcome.

Prevalence of fake or illegally obtained cards has been part of the tensions. In June 2016, UNHCR began distributing new identification cards that are more difficult to forge. Registration for the new cards involves taking fingerprints and iris scans. The new cards can be scanned through an easily available application for smart phones to reveal biographical information and a photo of the cardholder. As of September, around 20,000 new cards had been distributed, and UNHCR is aiming to have all older cards replaced by 2019.

Other efforts to engage the government of Malaysia include the yet to be implemented work permit pilot program mentioned earlier and a proposed joint task force on refugee registration. The government announced its intention to set up this joint task force with UNHCR in March 2016 and repeated this intention in August 2016. Malaysia's Deputy Prime Minister also referenced the joint task force to focus on registration and issuance of UNHCR cards at the UN Refugee Summit in September 2016.<sup>10</sup>

But beyond government and resource constraints, UNHCR itself currently creates several barriers to Rohingya wishing to access ID cards or other services. The only place to register or renew registration when ID cards expire (currently every three years) is at the UNHCR office in Kuala Lumpur. But many Rohingya live long distances from the office and lack the money to travel there. Pilot mobile registration programs have been tested, but for now, the norm is for Rohingya in many parts of the country to pay their own way to the UNHCR office in Kuala Lumpur, often borrowing money from their communities and traveling via overnight buses.

Reception at and access to the UNHCR compound in Kuala Lumpur has also been problematic, even in the most extreme emergency cases. Rohingya who show up at the UNHCR gated compound in Kuala Lumpur without an appointment rarely see a UNHCR employee beyond security guards instructed to turn them away. Many seeking medical assistance are turned away without any clear alternatives for treatment options. Those who are able to newly register are told that UNHCR will contact them by telephone to provide an appointment. Yet even if they do receive a call, the appointments are often not until a year or more later. In the meantime, many vulnerable Rohingya are never contacted by UNHCR because they have lost their phones or have had to get new numbers (it is the policy of telephone companies to take away a number after several weeks of back payment, something common among the frequently harassed and detained Rohingya population in Malaysia).

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**“We would like to go back. We still have brothers and sisters in Myanmar....But if we returned, we’d definitely be arrested.”**

—Rohingya man in Penang, Malaysia

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### *UNHCR’s Partner Referral System*

UNHCR is aware of these protection gaps and has pursued several creative approaches to try to address them. UNHCR has sought to identify and prioritize the most vulnerable, focusing mostly on Rohingya in detention or those facing medical emergencies. It carries out occasional protection surveys through visits throughout the country by its Community Liaison Office and in September 2015, set up a Partner Referral System to enhance its capacity to identify and reach the most vulnerable.

According to the UNHCR Fact Sheet on the program, 23 organizations considered well placed in refugee communities have been empowered to “identify individuals in need of urgent protection intervention and assistance.” During the first year of the program 764 cases of 1,501 individuals were referred to UNHCR, of which, 650 (87

percent) were endorsed for expedited intervention by UNHCR. Rohingya made up 58 percent of the referrals.

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## **Several emergency cases, particularly among pregnant women, regularly fail to get the attention needed.**

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But the process remains obscure and too many vulnerable cases continue to slip through the cracks. UNHCR has not publicly announced who the partners are and civil society groups working with Rohingya in Malaysia expressed concern that the partners lack a working familiarity with the communities. Several emergency cases, particularly among pregnant women, regularly fail to get the attention needed. Civil society organizations who work with these cases have suggested development of a more formal and transparent referral system and more readily available information about NGOs who can provide alternative assistance in cases that are missed by the system. A Referral Partner Coordination Meeting to review the first year was held in October 2016, but outcomes were not known as of publication of this report.<sup>11</sup>

To address these gaps, UNHCR should place dedicated UNHCR staff, rather than security guards, as the first point of contact for Rohingya seeking emergency assistance. If an individual is determined not to be a priority for UNHCR, they should be provided with information about alternative places to seek assistance, namely through a list of NGOs operating in Malaysia. In addition, given the particular challenges faced by pregnant women, a formal UNHCR-NGO network dedicated to facilitating access to care for pregnancy and childbirth should be a particular priority. Third, UNHCR should continue to engage the government on implementation of the joint task force and the work permit pilot program and expansion of the number of Rohingya provided with UNHCR identification cards. The primary responsibility for protection gaps lies, however, with the Malaysian government, which should implement these programs as well as work to extend education opportunities to refugees, starting with pilot programs and accreditation of “learning centers.”

## Rohingya in Thailand

### *Forgotten Survivors of the May 2015 Boat Crisis*

The International Organization for Migration (IOM) estimates that 153 Rohingya disembarked in Thailand from May to July 2015.<sup>12</sup> But tens of thousands of Rohingya have passed through Thailand on their way to Malaysia and an unknown number were on their way or caught in human trafficking camps at the time of the crisis. Perhaps hundreds are either still in Thailand or have moved on to Malaysia. Between those who had been at sea, those in the jungle camps, and other Rohingya who had been in Thailand before the crisis, a total of 338 Rohingya were being held in IDCs or shelters in Thailand as of September 2016. This includes 56 children held in government run shelters.<sup>13</sup>

The Bangladeshis who arrived during the boat crisis have largely been repatriated to Bangladesh and those Rohingya who have requested asylum have either been resettled or are in the process of being resettled to third countries. But there are also a number of Rohingya who have said they do not want to be resettled, preferring to rejoin family in Thailand or Malaysia. With no obvious place to move them, these Rohingya remain in limbo in the IDCs and shelters.

### *Rohingya in Thailand*

The number of Rohingya in Thailand is much lower than in Malaysia, but tens of thousands have passed through, often via jungle trafficking camps and the policies of the Government of Thailand have had a disproportionate effect on Rohingya in the region. Estimates of the number of Rohingya in Thailand range from 3,000 to over 15,000, and most have lived in the country for more than a decade.<sup>14</sup> Exact numbers are difficult to come by because Rohingya are generally more dispersed among the population throughout Thailand than in Malaysia and because conditions in Thailand discourage open identification as Rohingya. Thailand has a large migrant worker population from Cambodia, Laos, Myanmar, and Vietnam, and Rohingya generally find it easier to mix in among these other groups than to single themselves out. Most Rohingya simply identify as Muslims from Myanmar, and the government is generally happy to view them as such.

Thailand views itself as a transit country for Rohingya. As one longtime observer told RI, the Thai government views Rohingya as a problem that came from elsewhere and on its way to elsewhere. This mentality explains Thailand's long running "push back" policy, under which Thai officials stop boats approaching its shores and send them on toward Malaysia. In some cases, Rohingya in Thailand have been arrested and then sent by corrupt officials back into the hands of human traffickers. It also provides the backdrop to Thailand's reaction to the May 2015 boat crisis, including its reluctance to take in Rohingya and Bangladeshis.

New laws have provided protections for victims of human trafficking, but many asylum-seekers lack protections because Thailand has still not signed the 1951 Refugee Convention. The greatest protection concerns observed by RI during its meetings were with Thailand's detention policy and its human trafficking focused protection approach.

### *Detention and Shelters*

Like Malaysia, Thailand has not signed the 1951 Refugee Convention and has no legal framework for asylum-seekers. Because of this, any Rohingya in Thailand publicly identified as such is considered an illegal migrant and taken into detention. While most other illegal migrants are deported, the options for Rohingya are limited to resettlement to a third country or indefinite detention. RI interviews with Rohingya recently in detention and with UN and NGO officials who had accessed the IDCs revealed dangerous conditions and limited access. The latest U.S. State Department Human Rights Country Report on Thailand described the conditions in IDCs as poor, overcrowded, and unsanitary.<sup>15</sup>

Initially, Thailand's detention policies placed all men, women, and children in these conditions, but the government has since moved most children into shelters run by the Ministry of Social Development and Human Security (MSDHS). The difference in conditions cannot be overemphasized. While those in shelters also face restricted freedom of movement, shelters offer more free space, frequent visits, and supply of food and medical care by NGOs, and some education, professional training, and employment opportunities. There are now 27 Rohingya

children attending Thai schools.<sup>16</sup> But language barriers and uncertainty about the future of Rohingya children in Thailand continue to present challenges.

While access to IDCs remains limited, RI was able to visit and interview Rohingya in a shelter outside of Bangkok as well as meet with the officials who run the center. These interviews and further conversations with UN officials and independent local and international NGOs providing services revealed that the greatest gaps in the shelters are access to psychosocial services and lack of Rohingya interpreters. As one NGO told RI, all children from the boat crisis required psychosocial support at some level and the little they received was sporadic and inadequate. Another observer noted that the social workers at the shelters were doing their best, but were limited by language and experience with Rohingya (effectively “learning by doing”) as well as limited in their capacity to provide one-on-one counselling.

Rohingya in shelters do have regular visits by medical professionals and IOM provides some psychosocial services, but the lack of interpreters limits the ability to provide such services. UNHCR has pursued a promising program offering phone calls for Rohingya in shelters so that they can speak to relatives in Myanmar or Bangladesh. As one person involved with the program told RI, this is perhaps the greatest psychosocial service that can be offered to traumatized children in the shelters. UNHCR should look to expand this program and the government of Thailand should work with IOM and NGOs to expand the number of interpreters and professionals who can provide psychosocial services.

### ***Protections for Victims of Human Trafficking***

One policy that has extended protections to many Rohingya is Thailand’s 2015 Anti-Human Trafficking Law, which ensures that anyone determined to be a victim of human trafficking (through a screening process) ends up in shelters rather than IDCs, with all of the advantages mentioned earlier.<sup>17</sup>

These protections are part of concerted efforts by Thailand in recent years to combat human trafficking. These efforts have both disrupted a nefarious trade that was endangering tens of thousands of Rohingya and effectively

Hassan\*, a 22-year-old Rohingya eyewitness in a high-level human trafficking trial in Thailand, was held for four months in a human trafficking camp in Thailand. As a former religious student, he was tasked with saying Muslim prayers over the graves of those who died in the camps. Hassan recalls saying prayers over 45 dead bodies during the time he was held. He became temporarily paralyzed from the neck down due to the poor health conditions in the camp. When RI met with Hassan, he was waiting to testify in a trial and recounted fears of insufficient protections. A friend and fellow witness had recently been thrown into a windowless van and threatened at gun point, saved only when the abductors were unable to confirm his identity.

*\* Name changed for protection purposes.*

extended refugee protections to many Rohingya in Thailand. There are currently at least eight human trafficking trials ongoing in Thailand involving more than 100 defendants and hundreds of witnesses, many Rohingya. RI traveled to Nakhon Si Thammarat in southern Thailand to meet with several witnesses who had been held in camps and who are now testifying in cases involving politicians, police officers, and a senior army officer.<sup>18</sup>

But Bangkok-based civil society groups observing the trials, including the Human Rights and Development Foundation (HRDF) and Fortify Rights, continue to raise serious concerns with corruption, intimidation of witnesses, and forced recanting of confessions.<sup>19</sup> The lead investigator on the highest profile case in Thailand, Police Major General Paween Pongsirin, fled to Australia earlier this year, citing threats to his life. Several witnesses, including in the most sensitive top-level cases, recounted concerns to RI about lack of protection. Under current law, a witness must first provide proof of a threat in order to be eligible for witness protection.

The Thai government passed Cabinet Resolution No. 11/B.E.2559 that would grant work opportunities and freedom of movement to survivors of human trafficking to stay in Thailand for up to one year with the possibility of extension. The Resolution would also provide witness protection to witnesses in human trafficking cases under

the Ministry of Justice. The Resolution, however, is yet to be implemented.

The extent of protections is also limited by the fact that many Rohingya have not been determined to be victims of human trafficking and therefore remain in IDCs. Given the dominance of human traffickers in controlling the flows of Rohingya leading up to the boat crisis, it is reasonable to believe that nearly all those caught up in the process, whether they originally set out for economic reasons or for reasons of persecution, became victims of human trafficking and should receive the same protections. The initial process for vetting the status of those from the boat crisis as victims of trafficking or economic migrants was littered with problems. This included reports of Rohingya interpreters instructing Rohingya on how to answer and suspicions of the strong networks of human traffickers reaching to those very interpreters. The government of Thailand tacitly acknowledged the sub-standard nature of earlier screenings when it upgraded and expanded the list of questions it uses for the vetting process last year.

The government of Thailand should find it in its own interest to extend its protections of witnesses, but can also be encouraged by the United States. In recent years, Thailand has been listed among the worst countries in the U.S. State Department's annual Trafficking in Persons (TIP) Report. This not only affects Thailand's international standing but also has real economic consequences as it opens Thailand to sanctions and could block its participation in trade agreements. Last year, the U.S. upgraded Thailand to Tier 2 Watch List status, effectively removing it from the blacklist of countries subject to potential sanctions. The United States should encourage Thailand to take further measures to protect witnesses in human trafficking trials and include assessment of those efforts in next year's TIP report.

In the long term, Thailand should be encouraged to sign the Refugee Convention and extend the protections it provides to victims of human trafficking to all asylum-seekers. In the more immediate term, those Rohingya and Bangladeshi determined not to be victims of human trafficking should be re-vetted according to the updated procedure. That procedure should continue to be updated and revised according to best practices. The area in which

Thailand could have the greatest impact is in showing regional leadership, a point to be discussed further in the section that follows.

## Regional Responses

The initial responses to the May 2015 boat crisis were alarmingly inadequate. Despite the many high-level meetings and constructive ideas and commitments, little of substance has been implemented to suggest that the response to any future crisis would be any different. The proposed joint task force is yet to be formed and the trust fund yet to be funded. The declaration at the Bali Process meeting is voluntary and non-binding and only substantively sets the stage for a convening in the case of a future crisis.

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**Despite the many high-level meetings and constructive ideas and commitments, little of substance has been implemented to suggest that the response to any future crisis would be any different.**

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Still, the level and nature of the discussions and the ideas coming out of the series of high-level engagements are significant. As one longtime observer told RI, the conversations about regional coordination and addressing root causes of irregular movements of migrants and asylum-seekers would have been unheard of just a couple of years ago.

In terms of regional discussion of the plight of Rohingya, the May 2015 boat crisis was a watershed moment. Prior to the crisis, despite increasing flows of Rohingya out of Myanmar, Rohingya were understood by Myanmar's neighbors as an internal domestic issue, largely in keeping with ASEAN's non-interference policy. While Myanmar insisted that the word "Rohingya" not be used at the May 29 summit, the fact that it participated in a regional summit to discuss Rohingya was unprecedented.

Though momentum is stalling as the crisis becomes more distant, the conversation is continuing. A review of lessons learned from the May 2015 boat crisis took place at the November 15-16 Senior Officials' meeting of the Bali Process Ad Hoc Group, including Bali Process members as well as UNHCR, IOM, and the United States. This is an opportunity for the many ideas discussed over the past year and a half to be implemented. Perhaps most promising is a proposal to identify and agree upon preselected disembarkation points for those abandoned at sea and formal adoption of a trust fund to provide for designated shared regional resources for those taking on the most migrants and asylum-seekers. RI urges governments in the region to step forward with dedicated funding for the trust fund.

### *Despite Decrease in Refugee Outflow, Root Causes Remain Unaddressed*

While responses on many aspects of prevention and preparation for another boat crisis have been limited to discussion of ideas, there is one area where there has been a definitive change. Following the boat crisis there has been a precipitous decrease in the number of Rohingya and Bangladeshi taking to sea. There was a slight uptick from September and December 2015 when an estimated 1,500 people left Bangladesh and Myanmar by boat, but even this was a sharp decrease from the more than 10,000 from that period in the previous year. Even fewer have taken to sea in 2016.<sup>20</sup>

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**But there is little to no evidence that the root causes—namely persecution and the stateless status of Rohingya—are being effectively addressed.**

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The decrease in outflows of Rohingya from Myanmar can be attributed mainly to the increased surveillance and interdiction efforts of regional governments. Thai, Malaysian, and Myanmar authorities have been much more diligent about monitoring boats departing and arriving, keeping lists of crew members, and requiring justification for ownership and use of larger boats and faster motors.

The ongoing human trafficking trials are also likely playing a part in deterring would-be traffickers.

Within Myanmar, increased awareness of the dangers of the journey mixed with cautious optimism about the new government led by Aung San Suu Kyi have also contributed to stemming the flight of Rohingya. But there is little to no evidence that the root causes—namely persecution and the stateless status of Rohingya—are being effectively addressed. Despite significant reforms and the electoral victory of Aung San Suu Kyi and her National League for Democracy (NLD) party, little has changed for Rohingya in Myanmar. Some 120,000 remain in camps with conditions that have been described as overcrowded and dire.<sup>21</sup> Many of Rohingya interviewed by RI in Malaysia and Thailand say that their friends and family members back in Rakhine State still would like to escape; they are just waiting for the opportunity.

Worse yet, recent events show that the dangers of the kind of spike in violence that could unleash another mass exodus are all too present. In October 2016, an attack on border police, apparently by a group of Rohingya, and the subsequent crackdown by government security forces has led to dozens of deaths and numerous reports of rapes, extra-judicial killings, and burning of villages by security forces. Rumors of boats of Rohingya on their way to the island of Langkawi, where many Rohingya had arrived during the May 2015 crisis, led to the Malaysian navy sending out extra patrols.

For the time being, the increased monitoring efforts and disruption of human smuggling networks appear to have prevented another mass exodus. But as attention to maritime migration fades and the root causes in Myanmar remain simmering and unaddressed, the likelihood of another crisis will increase and, with it, the need for regional preparation and prevention measures.

## Conclusion

The effects of the May 2015 boat crisis continue to be felt, both in the context of unprecedented but yet unfulfilled regional commitments and in the survivors who remain in detention or with limited rights in countries of

would-be refuge. As long as the root causes within Myanmar remain unaddressed, the threat of another boat crisis will remain. Many good ideas for collaboration have been discussed, but more than a year on, few have been implemented. There is an urgent need on all sides for more concerted action and to make good on former promises. Regional governments should be pushing Myanmar to address the root causes, and while there are limits to the access and influence of international actors to address treatment of Rohingya within Myanmar, there is much more that can and should be done to protect the most vulnerable Rohingya who have fled beyond its borders.

*Daniel Sullivan traveled to Malaysia and Thailand in September and October 2016 with RI colleague Alice Thomas and in consultation with Fortify Rights, an independent non-profit human rights organization based in Southeast Asia. The mission assessed the situation for Rohingya refugees and the status of regional efforts to prepare for and prevent any future boat crises. RI would like to extend special thanks to Puttanee Kangkun at Fortify Rights for her assistance and for accompanying RI staff in Thailand.*

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