



MALAYSIA:

ROHINGYA REFUGEES HOPE FOR LITTLE AND RECEIVE LESS

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INTRODUCTION

It's been six months since as many as 1,000 Rohingya fleeing from Myanmar died in the Andaman Sea. And still, neighboring nations remain resistant to recognizing the Rohingya people's rights as refugees. Even after neighboring governments met earlier this year and agreed to protect the Rohingya at sea, no nation has taken a leadership role in permitting them to disembark from boats safely and legally. The absence of a regional plan leaves the Rohingya vulnerable to the challenges of a perilous sea voyage, and further strands those Rohingya who have lived in Malaysia and other regional nations for up to three generations without legal rights or protection. Without a doubt, Myanmar is creating this crisis. But that fact does nothing to negate the rights of Rohingya to remain in neighboring nations while serious threats to their lives exist in Myanmar, and to be treated with dignity and respect. Regional nations, particularly Malaysia, must act now to ensure that Rohingya fleeing persecution can disembark from boats and secure protection, and that those already inside Malaysia can live in safety and without the constant threat of detention and extortion by the police. It is past time for the international community to demand more from both Myanmar and neighboring countries, as well as the UN agencies mandated to protect the Rohingya.



Front cover: A Rohingya mother and daughter in front of homes in Kedah that were burned to the ground two weeks before RI arrived. The families had lived in them for ten years and lost everything.

This page: Young Rohingya girls in Kedah.

RECOMMENDATIONS

- ❑ Malaysia should take on the primary role of refugee protection inside the country with the assistance of the UN Refugee Agency (UNHCR), by:
 - Formulating law and policy that provides individuals and families seeking protection from refoulement with a fair, full, and transparent opportunity before an independent and qualified body;
 - Identifying and regularizing the status of refugees in need of protection, and holding the police and employers accountable for exploiting them, including through bribes, sexual and physical violence, or other criminal acts;
 - Issuing work permits to all refugees and protecting their workplace rights as set forth in the 16 International Labor Organization conventions already ratified by Malaysia;
 - Ensuring that alternatives to detention are made available to refugees, and alternatives to detention – such as conditional release – be considered before resorting to detention;
 - Extending access to public education for refugee children; and
 - Providing refugees with access to affordable health care.
- ❑ In line with Malaysia’s Federal Constitution, the nation should recognize Rohingya children as citizens by operation of law if they were born in the Malaysian Federation and cannot acquire citizenship of another country by registration within one year of birth;
- ❑ Consistent with the May 29 Regional Conference’s resulting agreement, governments in the region, including Bangladesh, Indonesia, Malaysia, Myanmar, and Thailand, should compose a Task Force focused on:
 - Generating political will and strengthening regional cooperation to protect and facilitate the ability of individuals and families to flee situations of persecution, while also combatting human trafficking and smuggling;
 - Addressing the root cause of Rohingya flight by directly challenging the Myanmar government to recognize Rohingya people as citizens; restore their right to vote, freedom of movement, and access to education, health care, and livelihood; and promote their ability to return from displacement camps to their places of origin;
 - Developing affordable, accessible, and safe avenues for migration and improving labor-monitoring standards for all refugees and migrants.
- ❑ ASEAN (Association of Southeast Asian Nations) member states should:
 - Agree on what constitutes a situation of distress at sea, agree on safe ports for disembarkation, and determine how nations with safe ports will be financially and technically supported regionally; and
 - Ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration and combating transnational organized crime, are in accordance with the principle of non-refoulement and the prohibition on arbitrary and collective expulsions.
- ❑ Until the Malaysian government assumes responsibility for refugees, UNHCR should:
 - Broaden its outreach with Rohingya communities, strengthen existing partnerships, and greatly increase the registration of Rohingya refugees across Malaysia;
 - Make greater efforts to identify and support Rohingya people with life-threatening injuries and ailments, and support programs to care for chronic and trauma-related illnesses; and
 - Explore opportunities to increase financial and technical support to “learning centers” so that they can serve all school-aged refugee children and ensure that trained teachers are in classrooms.

BACKGROUND

With at least 1.5 million people in the diaspora, there are already more Rohingya exiled outside Myanmar than living inside. The Rohingya have been fleeing persecution in Myanmar's Rakhine State for decades. The first large exodus occurred in the 1970's, when 250,000 Rohingya were forced out of their homes and into Bangladesh by the Myanmar military. While some returned in the interim, another mass purge occurred in 1991 and 1992. Most of this population was then forcibly returned to Rakhine State with the assistance of the UN Refugee Agency (UNHCR) in the mid-1990s. In the early 2000s, attacks on Muslim places of worship and schools caused new flight, primarily to Bangladesh. During each of these exoduses, some Rohingya went to other regional nations, including Thailand, Malaysia, Indonesia, India, Pakistan, and Saudi Arabia. Most recently, state-orchestrated violence in Myanmar in 2012 forced the displacement of 140,000 people and the death of more than 200 Rohingya. Since then, more than 100,000 Rohingya have fled Rakhine State by boat, and more than 1,000 have died during the journey.

“The Rohingya community is looked at as a “thing”, a situation, not people.”

-CBO worker in Kedah

Refugees International (RI) traveled to Malaysia and Thailand in September and October 2015 to look at both the regional response to the Rohingya population and the situation facing both new arrivals and longstanding Rohingya in Malaysia. RI visited Kuala Lumpur, Penang, and Kedah in Malaysia, meeting with Rohingya refugees, Rohingya community leadership, host communities, community-based organizations (CBOs), and government officials, and then traveled to Bangkok and Phuket in Thailand to discuss the regional response. For detailed background on the persecution of Rohingya driving their forced migration from Myanmar, see RI's November 2014 report Myanmar: A Tipping Point for Rohingya Rights.¹

Currently, as many as 150,000 Rohingya live in Malaysia, where they are considered “illegal” migrants, regardless of whether they are registered with the UNHCR – and most are not. Malaysia is a favored nation of destination for the Rohingya because, among other reasons, they are less likely to be arbitrarily deported after arriving there than in other regional nations. And yet, the conditions are dire and Rohingya families struggle to ensure their children are educated and that they can secure work without constant harassment and danger. The fact that Malaysia is the preferred destination for



Rohingya is a testament to the damning circumstances in which the Rohingya live in Myanmar and elsewhere.

Regionally, none of the nations to which the Rohingya have fled are signatories to the UN Refugee Convention. Like Malaysia, they do not provide them with access to lawful work, health care, education, or protection from police abuse or employer exploitation. Being a signatory to the Refugee Convention, however, is not a prerequisite for protecting refugees and supporting their rights. Indeed, Jordan and Lebanon are not signatories to the Refugee Convention, but both now host millions of Syrian refugees and permit them to access certain social services. Surely Malaysia is equally capable of adopting this approach.

MAY 2015 CRISIS IN THE ANDAMAN SEA

In May 2015, reports of dozens of mass graves in Thailand and Malaysia containing the remains of hundreds of Rohingya people started appearing on televisions across the world. These were the remains of people who had died after being beaten and/or abandoned by smugglers and traffickers, who had held them in makeshift camps until family members paid for their release. Within weeks, there were widespread media images of thousands of Rohingya abandoned by their smugglers at sea and dying of starvation or dehydration.²

The Rohingya were abandoned this year because at the height of the “sailing season,” and because smugglers aboard could



This Rohingya mother and daughter arrived in Malaysia after spending weeks on a boat and then in a Thai camp. They live with other Rohingya families in a small house in Kedah.

not disembark passengers, as Thai smugglers and traffickers on land would no longer assist with disembarkation, being at risk of arrest. The flight of the Rohingya is decades-old, and while this year's exodus was the largest on record, it would not have become visible if the smuggling crackdown had not occurred. Indeed, while the increased numbers were new, the horrors experienced by the Rohingya at sea and in smuggling camps were not.

Despite the widely documented tragedy, for weeks into the crisis the countries closest to the boats, Thailand, Malaysia, and Indonesia, refused to permit the disembarkation of Rohingya and instead towed the boats out of territorial waters. Thailand's official policy was to help boats towards their destination, sometimes after supplying desperately needed clean water and food. Myanmar held fast to the myth that it was not causing the flight – the Minister of Foreign Affairs Wunna Maung Lwin said, "It has been portrayed that discrimination and persecution are causing people to leave Rakhine state, but that is not true."³

It was not until other states offered to take the Rohingya, including the Philippines and Gambia, and Indonesian fishermen started unilaterally rescuing Rohingya in mid-May,

that Malaysia and Indonesia agreed to the safe disembarkation of Rohingya, and even then, only up to 7,000 people and only if they were resettled within one year. Thailand would not join even this agreement, but said it would no longer provide humanitarian assistance.

In each location it visited in Malaysia, RI heard harrowing stories from Rohingya who had survived the journey from Myanmar by boat and land. In Kedah, RI met with a young

Rohingya woman who had spent 18 days on a boat with 320 other people, receiving only a small amount of rice once a day and salty water to drink. She had space only to sit with her legs up and could not sleep. One boy died during the journey after being beaten by agents on board. Once arriving in Thailand, passengers

were forced to walk for two days or more through the jungle despite their weakness. She described her condition at that point as "more dead than alive." Those who could not keep up were left behind, and she saw a woman die during the long walk to the camp. It took weeks for her own health to recover.

On May 29, 2015, a meeting to address events unfolding in the Indian Ocean was held in Bangkok and attended by Malaysia, Indonesia, Bangladesh, Thailand, and Myanmar (which had refused to attend unless governments agreed to

“ I didn't know anything about the boat journey. I didn't even know if I would survive or not. ”

-Rohingya refugee in Kedah

neither blame them for the exodus nor refer to the Rohingya by name). Also participating were other regional governments, UNHCR and the UN Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM), and the United States, Japan, and Switzerland.

At the conclusion of the meeting, the regional governments agreed to act jointly on a series of steps to respond to the immediate humanitarian needs of people stranded at sea; to step up law enforcement to prevent irregular migration, smuggling, and trafficking; and to address the root causes of the migration.⁴ While progress has been made to disrupt irregular maritime migration, no nation has put forth any individual or regional plan to address the ongoing humanitarian needs of the Rohingya, and their situation in Myanmar continues to deteriorate. Consistent with the May 29 Regional Conference's resulting agreement, governments in the region, including Bangladesh, Indonesia, Malaysia, Myanmar, and Thailand, should compose a Task Force focused on generating political will and strengthening regional cooperation to protect and facilitate the ability of individuals and families to flee situations of persecution, while also combatting trafficking and smuggling.

“Malaysia is the largest graveyard of human trafficking.”

-CBO worker in Penang

In October, the “sailing season” quietly recommenced. Boats are already less noticeable because smugglers have changed the passage to avoid the authorities. As a result, journeys will almost certainly become more treacherous and less visible.



RI asked a room of Rohingya to raise their hand if they had arrived by boat in the last year. All of these men had made the treacherous journey.

Already there are reports that smugglers are sending the Rohingya in boats directly to Malaysia, a distance of over 1600 miles. This is comparable to traveling on the Atlantic Ocean from Portland, Maine to Miami, Florida.

The crackdown on smugglers and traffickers continues, and the ongoing persecution of the Rohingya keeps demand for smugglers' services high and lucrative. Without a regional plan to address the root causes of the Rohingya flight or places of safe harbor, the Rohingya people must rely on the mercy of smugglers to survive. Regional nations must jointly develop a system of safe disembarkation, and commit to providing affordable, accessible, and safe avenues for migration for those fleeing persecution.

MALAYSIA IS WELL-PLACED TO LEAD THE REFUGEE RESPONSE

Malaysia is an upper-middle income country with a one percent poverty rate and an average growth of more than seven percent per year for the last 25 years, according to an October 2015 World Bank report.⁵ And yet, Malaysia does not have a legal or administrative framework for refugee protection.

For decades, Malaysia has quietly permitted the entry of refugees on the condition that they be resettled to a third country, but in the meantime treated them as “illegal” migrants without any legal recognition or protection.⁶ While the vast majority of refugees in Malaysia are from Myanmar, there are growing populations of Syrians, Afghans, Iraqis, and others. Regionally, Malaysia is a leader in the pursuit of economic reforms that facilitate international investment,⁷ and it is well-placed now to pursue a national and regional refugee policy that promotes and protects refugee rights. Malaysia should take on the primary role of refugee protection inside the country with the assistance of UNHCR by formulating law and policy that provides individuals and families seeking protection with a fair, full, and transparent opportunity to have their claims heard; identifying and regularizing the status of refugees in need of protection and assistance; and holding the police and

“I have been here since 2004. I have one child in Indonesia, one in Yangon, and three with me here in Malaysia. This is the reality of the Rohingya.”

-Rohingya refugee in Kuala Lumpur



This Rohingya mother is alone with her baby in Kuala Lumpur. She works in a Malaysian household and sometimes cannot pay for her rent, and necessities such as milk and diapers are often out of reach

employers accountable for exploiting them, including through bribes, sexual and physical violence, or other criminal acts. Malaysia is a signatory to the Convention on the Rights of the Child (CRC) and therefore has agreed to protect all children from discrimination regardless of immigration status, among other obligations. And while Malaysia inserted a reservation to Article 7 of the CRC, which obligates states to register new births and confer nationality, Malaysia's Federal Constitution is consistent with this obligation, providing that citizenship be extended to children born in the Malaysian Federation who cannot acquire citizenship of another country by registration within one year of birth.⁸ Yet, there are second and third generation Rohingya who were born in Malaysia, have lived in the country their whole lives, but remain stateless and without access to any of the rights and services provided to citizens, including education and health care. In line with Malaysia's Federal Constitution, the nation should recognize Rohingya children as citizens by operation of law if they were born in the Malaysian Federation and cannot acquire citizenship of another country by registration within one year of birth – which will be applicable in almost all cases of Rohingya births in Malaysia.

Health Care

Refugees have no right to health care in Malaysia and are fully responsible for all fees associated with doctor and hospital visits. For the Rohingya RI met, these costs could be insurmountable and result in refugees making decisions to forego medical treatment, even when an illness or injury was life-threatening. Their circumstances also left refugees extremely vulnerable to exploitation and abuse, even within the medical field. For example, RI met with pregnant mothers and the parents of small children who shared that they had been forced to leave

“Birth certificates cost money that we don't have because we're paying to get the baby out of the hospital. My eight month old still does not have a birth certificate.”

-Rohingya refugee in Kedah

Voices of t

BANGLADESH
Up to 500,000 Rohingya

MYANMAR
1.3 million Rohingya

"We had g
students, but in
finishing our st
-Young Rohingya ref

"I became a refugee in Bangladesh when I was five years old. I was arrested five times and then got on a boat."
-Rohingya refugee in Penang

"I was on the boat for 18 days. One man died after being beaten with sticks."
-Rohingya refugee in Penang

"Five or six people died on the boat. We were kept in the jungle camp for a month, and more died there."
-Young Rohingya refugee in Penang

"In March 2014, we heard that the police were arresting Rohingya, so we ran for the forest and stayed there a few days."
-Rohingya refugee in Penang

"I was in an Indonesian jail for eight or nine months when I was 16 years-old. I was trying to meet my dad in Australia. Now I'm 18 years-old and alone in Malaysia."
-Rohingya refugee in Penang

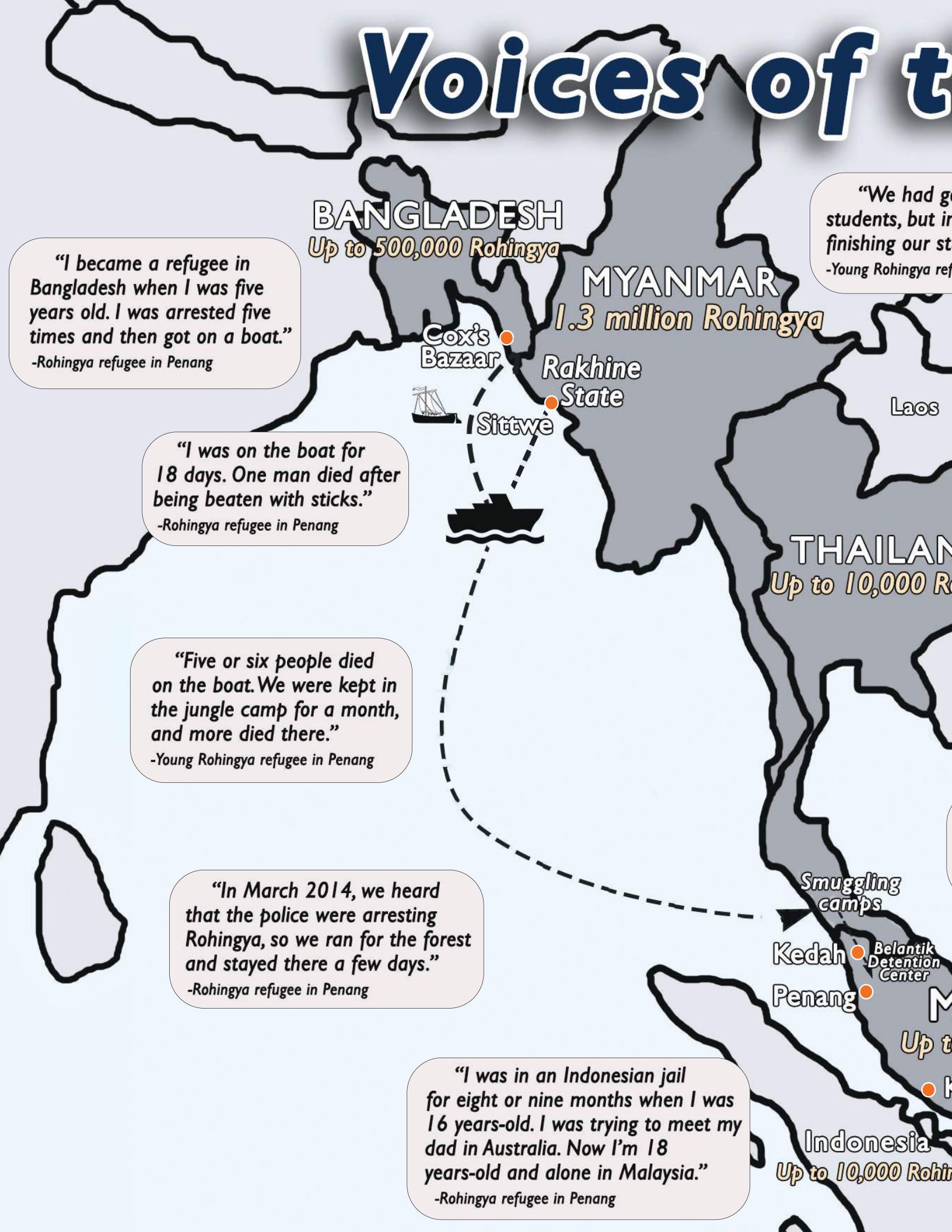
Cox's Bazaar
Rakhine State
Sittwe



THAILAND
Up to 10,000 R

Smuggling camps
Kedah
Penang
Belantik Detention Center

Indonesia
Up to 10,000 Rohin



The Exiled

goals as university
in 2012 they changed from
studies to staying alive.”
-Refugee in Penang

Vietnam

“We are a nation
scattered geographically.”
-Rohingya refugee in Kuala Lumpur

ND
Rohingya

Cambodia

“If I don’t have the money to
pay the police, they call my boss
and he cuts it from my salary.”
-Rohingya refugee in Kedah

“When I got off the boat I
was half-dead. I still had to walk
two days to the jungle camp.”
-Young Rohingya refugee in Penang

“I was arrested by the
police in 2003. For the first 1.5
years, I was held in a room
alongside 200 other people.”
-Rohingya refugee in Kuala Lumpur

MALAYSIA
150,000 Rohingya
Kuala Lumpur

“I walk down alleys to
avoid the police. If I can’t
pay them a bribe, they’ll take
me to a police station.”
-Rohingya refugee in Kuala Lumpur

ngya

their newborns in the hospital until they could pay for their labor and delivery, which cost between \$1500 and \$6000. One pregnant woman who arrived in Malaysia in 2015 told RI that a doctor had said she was six months pregnant, so had three months to raise \$1300, and she had no idea how she and her husband would be able to do so.

The ransoming of Rohingya babies (and perhaps other refugee newborns) by hospitals was neither surprising nor disputed by local and national non-governmental agencies (NGOs) with whom RI shared this information. Rohingya said they had documented and reported this abuse to agencies so that they could get help, but their pleas had not resulted in any changes and the practice had been going on for years. RI was informed that the police blamed the Rohingya for the situation because they were “illegal” migrants, and thus the police were not willing to intervene.

Rohingya families told RI that, when possible, they contribute to the medical fees of family members and friends. In one community, RI was told that Rohingya borrowed money from a “loan shark,” but this had just occurred so they did not know

the terms of repayment. In another community, there were a few Malaysian people who would act as “guarantors” for the hospital costs, and this would permit release of a newborn. The Malaysian people who provided the guarantee did not contribute any money and did not expect anything in return from the Rohingya – they were simply long-term employers and neighbors who helped because they could. These are not sustainable models, however, and the ransoming of babies is a profound violation of the fundamental human right to family life.

For those Rohingya registered with UNHCR, one of the greatest benefits is being afforded a 50 percent health care subsidy that the agency provides for visits to doctors and hospitals. Most of the registered refugees with whom RI spoke said that they were able

to access this subsidy, although there were a few registered refugees who were not. The importance of the 50 percent subsidy could not be overstated, even when health care remained financially out of reach for most refugees. RI was told that for many families, the subsidy made the difference between going to the doctor for an injury and just bearing with the pain and infection until it healed at home. It also ensured that babies and children received timely vaccinations and pregnant mothers

“ I am six months pregnant and the doctor told me that we must pay \$1500 to have the baby at the hospital. I don’t know what we’re going to do. ”

-Rohingya refugee in Kedah



Young Rohingya students coloring at the Penang Learning Center.

accessed prenatal care. And yet, the 50 percent subsidy alone cannot possibly ensure that even registered Rohingya would be able to access care free of exploitation and abuse.

Malaysia must ensure that refugees have access to affordable health care, and that doctors and hospitals are not abusing those families who are unable to pay for medical treatments immediately. In the meantime, UNHCR should make greater efforts to identify and support Rohingya people with life-threatening injuries and ailments, as well as support programs that provide affordable care for chronic and trauma-related illnesses.

Access to Education

Malaysia has an impressive public education system and, through the Millennium Development Goals, is committed to ensuring that all citizens will be able to access public education by the end of 2015. The nation has made incredible progress toward achieving this goal, and while pockets of serious concern remain in rural areas, as of January 2015, almost all Malaysian children were attending school and acquiring literacy.⁹ And yet, refugees and other “illegal” migrants in Malaysia have no right to attend public schools. This prohibition is devastating for Rohingya children who were born and grew up in the country, as well as those who have arrived in the last few years and never had the chance to go to school in Myanmar or Bangladesh. Children who grow up illiterate are at a heightened risk of entering the informal labor market at a young age and suffering exploitation by adults for drug and sex work. This risk increases exponentially if the children are also stateless. All of the Rohingya adults with whom RI spoke identified access to education as a primary concern.

In the absence of access to public schools, local Malaysian people and faith-based organizations have stepped in to try to provide some educational support to Rohingya children. They have developed facilities loosely referred to as “learning centers.” These centers cannot provide any certification to students, and are staffed primarily by people with goodwill but without formal training as teachers.

More than 100 learning centers across the country and are limited by a lack of resources and technical expertise. Those who run them recognize these inherent deficiencies, but organizers rely almost entirely on charitable donations made by individuals in the community. This model does not afford

them the opportunity to hire trained teachers and develop curriculum in advance of the school year. Coordinators at the learning centers told RI that UNHCR provides small funds to assist in the payment of instructors at some of the learning centers, but it is not enough to build any stability. Even when a learning center is in place, some families cannot afford the small tuition or the bus fare necessary to send their children to the learning centers, and others cannot escort their children to school and arrive for work on time, so children can’t attend.

It is appalling that this parallel education system exists in a nation that rightfully prides itself on academic

access for children. Even if all school-aged refugee children were to be integrated into the Malaysian education system, it would represent a tiny fraction of the entire school-aged population of the country. There are 31 million people in Malaysia, and just 150,000 total registered refugees and another likely 150,000 unregistered.

As a signatory to the Convention on the Rights of the Child and a nation committed to eradicating illiteracy, Malaysia cannot sustain this discriminatory prohibition on access to public education. It should extend access to public education to all school-aged refugee children. In the meantime, UNHCR should explore opportunities to increase financial and technical support to “learning centers” so that they can reach and better serve all school-aged refugee children.

Work Permits

The Rohingya living in Malaysia are not permitted to work legally, even if registered with UNHCR, however, some employers only hired Rohingya with UNHCR cards. This leaves them ceaselessly destitute and exceptionally vulnerable to exploitation. RI met with Rohingya who were street cleaners, domestic workers, and laborers on construction sites. If they were badly hurt on the job or denied their wages, they had no recourse and no safety net. Many of

these Rohingya were born in and had lived in Malaysia their whole lives. There was no avenue through which they could regularize their status and acquire the stability that permission to work would provide.

When RI met with Rohingya refugees, it was usually in their homes. These Rohingya were living with four or more families to a home and sharing the cost of rent and other expenses.

“My twelve-year old wants to be a doctor. My ten-year old wants to be a teacher, but they have never been to school.”

-Rohingya refugee mother in Kedah

“We charge 50 Ringgit (\$11.50) per year, and less if a family does not have the money, but some still can’t afford transportation.”

-Learning Center Coordinator in Kedah



These Rohingya children live in Penang with their families. Their families cannot afford to send them to a learning center.

Rohingya working in the informal market make between 25 and 50 Ringgit per day (about \$5 to \$10), but work is irregular. And while some companies will only hire those Rohingya with a UNHCR card, this does not necessarily correlate with better work conditions or pay. This preference does reinforce the importance of being registered with UNHCR.

“Worker exploitation is constant for refugees.”

-Rohingya refugee in Kuala Lumpur

Rohingya were paying between 500 and 800 Ringgit per month (\$150 to \$180) for rent alone, and they faced huge financial challenges to meet their basic living expenses. Most Rohingya with whom RI spoke were also sending money back to family members in Rakhine state and Bangladesh, an additional financial strain, but remittances their families relied on to survive. While families with whom RI spoke were generally eking out a bare living, their vulnerabilities increased astronomically when a crisis or urgent medical issue superseded their primary needs.

Malaysia’s economy is on an uphill trajectory despite recent fluctuations, with an expected unemployment rate of about



A Rohingya girl in Kedah. Her family is unable to afford education for her and she rarely leaves home because the family fears harrassment by police.

three percent through 2017.¹⁰ Up to six million legal and unregistered migrants work in the country. Offering work permits to 100,000 or so Rohingya who are of employment age as well as another 100,000 refugees from other nations would not put an unmanageable burden on the country, and would likely be absorbed easily. There is tentative hope voiced by some CBOs in Malaysia that work rights will move forward, as so many groups and international actors have been rightly pressing this recommendation for some time. Alongside issuing work permits to refugees, Malaysia should commit to protecting their workplace rights as set forth in the 16 International Labor Organization conventions already ratified by the nation.

DETENTION AND REGISTRATION WITH THE UNHCR

All Rohingya intercepted by Malaysian law enforcement at sea or on land are immediately detained unless they are registered with UNHCR. Conditions in detention are miserable. Rohingya told RI that their jail cells were so overcrowded that they could only stand or crouch, but never lie down; food was irregular and insufficient, consisting primarily of rice and water; and



This Rohingya man suffered third degree burns when he rescued his neighbor from a burning house. He was the primary breadwinner to a family of seven, and his family does not know how they will be able to pay rent, let alone pay for the needed medical care.



This Rohingya elder in Kedah struggles to find work and support his family.

“We don’t go out at all. Just this house or across the street – that’s it.”

-Rohingya refugee in Penang

prison guards could beat and abuse them with impunity. Malaysia should ensure that alternatives to detention are made available to refugees, and alternatives to detention – such as conditional release – should always be considered before resorting to detention.

As previously discussed, large numbers of Rohingya began arriving in Langkawi, Malaysia, after being abandoned in May, but UNHCR was not permitted to see them until August. This means that except in the most exceptional circumstances (payment of large bribes or life-threatening illness), Rohingya who arrived in May or after this year are still in detention centers, and Malaysia has said they will only be released if the UNHCR has found a resettlement place for them in another country.

Acquisition of a UNHCR card does not provide the Rohingya (or other refugees) with any domestic rights in Malaysia – they are still treated as illegal migrants – but it does assist the Rohingya in three critical ways. First, if they are stopped by

the police or another law enforcement body they will still have to pay a bribe, but they probably won’t be placed in detention because they are registered with UNHCR. Second, they should receive a 50 percent discount at hospitals, which RI was told often occurs, third, they may be considered for resettlement to a third country, and finally, they can access some employment that would otherwise be unavailable. Each of these benefits are vital to the Rohingya, and every single Rohingya person with whom RI spoke said that being registered with UNHCR was their highest priority in Malaysia.

And yet, there are likely more unregistered than registered Rohingya in Malaysia because those who successfully enter the country avoid detention, and therefore are unlikely to interact with UNHCR unless they are arrested and detained at a later date, or come to the attention of the agency because of dire circumstances. While UNHCR does reportedly visit some states with large Rohingya populations around the country, RI met with dozens of Rohingya refugees in two of the most

“Almost everyone has been arrested in our community, many multiple times.”

-Rohingya refugee in Kedah

“Police harassment never stops, even when I got the card. Before I was brought to detention, now I have to give money.”

-Rohingya refugee in Penang

populous states, Penang and Kedah, and only one of them had been able to undergo a registration process without first being in detention. Conversely, Rohingya described spending significant amounts of money to go to the UNHCR office in Kuala Lumpur, only to be turned away because they did not have an appointment. Others described sending multiple faxes to the UNHCR office explaining their circumstances and asking for an appointment, only to receive no response. RI was able to view many of these faxes and verify that they were being sent to the fax number noted on the official documentation of registered refugees.

UNHCR must broaden its outreach with Rohingya communities and strengthen partnerships. RI was struck by how even Rohingya leaders within longstanding refugee communities were unaware of the limited available resources, particularly regarding health care. For example, while visiting one CBO, RI was provided with a robust and detailed list of free weekly medical clinics available to all refugees in the area, but targeted to serving the Rohingya population. Rohingya leadership in the community had not seen the list until RI shared it with them, and expressed surprise and comfort in learning scheduled free clinics existed.

UNHCR has focused resources on addressing a concern that the Malaysian UNHCR office has permitted the proliferation of fake UNHCR cards. Without a doubt, the office has had its challenges. In 2014, there were reports that some UNHCR officers were providing access to refugee registration on the basis of bribes and engaging in fraud in some cases, it was not as clear whether the refugees themselves understood that they may have received fake cards. To thwart fraud in the system, UNHCR is developing a new registration card that may include biometrics and make fraudulent replication very difficult. It is expected that the issuance of new cards to current cardholders will take about two years. While decreasing the risk of fraud is an important task and may lead to more trust and good will between UNHCR and the Malaysian government, it also raises concerns about the arbitrary detention, extortion, and other abuse of refugees who are registered and have not been issued the new card, as well as those who are not registered at all.

It is crucial that alongside the implementation of a new UNHCR card, the agency broadens its outreach and greatly increases the registration of Rohingya refugees across Malaysia, and particularly in locations with large concentrations, including Kuala Lumpur, Kedah, Penang, and Johor Bahru. UNHCR must also increase its information and educational outreach, both through partnerships with community-based organizations and UNHCR staff visits. Rohingya need to be informed of UNHCR's role in refugee protection, existing mechanisms to report instances of abuse or exploitation by police and medical staff, and programs already available that help refugees secure access to medical and educational programs.

ASEAN, A FORMAL MECHANISM TO SAFEGUARD LIVES AND IMPROVE COOPERATION

ASEAN (the Association of Southeast Asian Nations) was founded in 1967 “to strengthen further the existing bonds of regional solidarity and cooperation.”¹¹ It includes 10 member states, with Malaysia currently serving as the Chair. ASEAN's founding principle of “non-interference” and its consensus-based decision-making process leaves many skeptical of the role ASEAN can and is willing to take on regarding Rohingya living inside Myanmar as well as those seeking refuge outside. That said, the November 2015 ASEAN summit affords an important opportunity to discuss the human rights and humanitarian emergency facing the Rohingya and make progress toward protection of their rights both inside Myanmar and as regional refugees.

Association of Southeast Asian Nations (ASEAN) Parliamentarians for Human Rights wrote in April 2015 that “the longstanding persecution of Rohingya has led to the highest outflow of asylum seekers by sea [in the region] since the U.S. war in Vietnam.”¹²

Myanmar continues to have leverage within ASEAN. In several interviews in the region, RI asked interviewees why more regional pressure was not being exerted on the Myanmar government to safeguard the rights of the Rohingya in Myanmar. There was a shared view that as Myanmar is an emerging marketplace, regional actors feared jeopardizing future investment

opportunities in the country. And yet, CBOs and activists told RI that select political leaders within ASEAN now had a better understanding of not only the plight of the Rohingya community but also the treacherous experience of being a refugee.

“If thousands of Rohingya are stranded again, nations will still probably act unilaterally. There is still no plan for joint action.”

-NGO worker in Kuala Lumpur

ASEAN must be utilized as not only a visibility opportunity to discuss the plight of the Rohingya, but also as an opportunity for the international community to clearly communicate the plight of the Rohingya as a priority issue. Given the regional impact of the ongoing persecution of Rohingya people, ASEAN member states should agree on what constitutes a situation of distress at sea, agree on safe ports for disembarkation, and determine how nations with safe ports will be financially and technically supported regionally. They should also take on the complexity of refugee and migrant flows through the region and ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration and combating transnational organized crime, are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

Sarnata Reynolds and Ann Hollingsworth traveled to Malaysia and Thailand in September and October 2015 to assess the situation for Rohingya refugees.

ENDNOTES


1. “Myanmar: A Tipping Point for Rohingya Rights.” November 17, 2014. <http://www.refugeesinternational.org/reports/2015/10/4/myanmar-a-tipping-point-for-rohingya-rights>
2. Thousands of Bangladeshi people were also on these boats, having been lured or tricked into believing that they would lead to secure work in Malaysia.
3. “Myanmar denies Rohingya persecution is behind migrant boat crisis.” June 4, 2015. <http://america.aljazeera.com/articles/2015/6/4/myanmar-persecution-not-causing-migrant-crisis.html>.
4. There was (and continues to be) much debate about whether the Rohingya had been trafficked or smuggled. Part of this debate stems from the complexity of boat movements from Myanmar, and the lucrative nature of shipping destitute and desperate people across the sea. When RI spoke to Rohingya in Myanmar IDP camps in 2014 and in Malaysia in 2015, they described their initial experience as one of smuggling – they agreed to board boats under the condition that they and their families would pay for or work off their passage at a later point. They were not always aware that they would be detained in Thai jungle camps until payment of their passage was completed, and at the same time, this smuggling passage was not new. If the terms of their passage changed during flight, then what may have started out as smuggling could have become a situation of trafficking before it ended. Either way, the decision to enter into this passage demonstrates the desperation of the Rohingya in Rakhine state. When some members of the media, advocates, and governments characterized the Rohingya experience as one of trafficking alone, Myanmar was able to immediately deny that the Rohingya were fleeing persecution, and argue that this was a law enforcement issue that Myanmar was willing to participate in ending.
5. Malaysia Overview, The World Bank, <http://www.worldbank.org/en/country/malaysia/overview> (accessed October 29, 2015).
6. Alongside refugees, six million migrants work in Malaysia, split evenly among those who entered with legal permission and those who did not. They are often employed through recruitment agencies that do not protect workers from mistreatment.
7. “Malaysia Among Top 20 Best Economies and First Among Emerging East Asia Economies for Ease of Doing Business.” October 28, 2015. <http://www.worldbank.org/en/news/press-release/2015/10/28/malaysia-among-top-20-best-economies-and-first-among-emerging-east-asia-economies-for-ease-of-doing-business>
8. Malaysia: Federal Constitution Article 14(1)(b), Part II Second Schedule section 1(3) and section 2(3), 31 August 1957, available at: <http://www.refworld.org/docid/3ae6b5e4o.html> [accessed 29 October 2015].
9. <http://knoema.com/WBMDG2015/an/millennium-development-goals-january-2015?country=1000200-malaysia>.
10. Data: Malaysia, The World Bank, <http://data.worldbank.org/country/malaysia> (accessed November 10, 2015).
11. The Asean Declaration (Bangkok Declaration), Bangkok, August 8, 1967, <http://www.asean.org/index.php/news/item/the-asean-declaration-bangkok-declaration> (accessed on November 7, 2015).
12. Open Letter to ASEAN Heads of State, April 22, 2015, <http://www.burmapartnership.org/2015/04/open-letter-to-asean-heads-of-state/>

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