

THE JOURNEY OF REFUGEE AND ASYLUM-SEEKING CHILDREN ACROSS THE ANDAMAN SEA



Save the Children



Children on the move in South East Asia

Every child has the right to a future. Save the Children works around the world to give children a healthy start in life, and the chance to learn and to be safe. We do whatever it takes to get children the things they need – every day and in times of crisis.

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Cover: Child refugee plays on her own, waiting for her time to be reunited with her family again (Photo: Save the Children)

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Foreword

We are now witnessing an ever-growing movement of children across the globe. Millions are moving for a variety of reasons, and their movements have placed them at risk of inadequate care, poor access to education, abuse, neglect and violence. These are children who have been displaced due to conflict, persecution or disaster; children who have been trafficked; children who have left home and live and/or work on the streets; and children who have migrated from rural to urban areas.

It is estimated that at the end of 2015, more than 65 million people had been forcibly displaced, of which more than half were children. The drivers of migration and the flow of forcibly displaced people are becoming increasingly complex and mixed in nature. This includes children who move to escape conflict or distress and those who are hoping to improve their living conditions. Save the Children has recognised and responded to this complexity by adopting a holistic approach to the protection and support of 'children on the move' in the context of migration.

In Asia, we have actively worked with children and their families, communities, local civil society partners, governments, international organisations and regional bodies to ensure the protection and provision of basic services to children on the move, including refugee and asylum-seeking children.

In May 2015 thousands of refugees and migrants, including children, originating from Bangladesh and Myanmar were abandoned in the Andaman Sea. Through our experiences working closely with communities in their countries of origin, in transit and at their destinations, we know that many men, women and especially children were in precarious situations when journeying across the Andaman Sea and faced risks of exploitation, violence and abuse.

Governments in the South East Asian region, for example Indonesia, Malaysia and Thailand, have hosted, and continue to host, those who have been displaced from their homes. While there has been progress, children continue to face challenges in obtaining birth registration and accessing essential services such as protection, education and healthcare.

Through the lens of children, this research study highlights children's experiences, as well as the risks and vulnerabilities they face at each stage of their journey. This report also highlights the practices and key areas that must be strengthened to ensure that the rights of every child, regardless of their legal status, are realised.

Moving forward, Save the Children reaffirms our continued commitment to work hand-in-hand with communities, governments in the region and other partners to improve protection for children on the move in South East Asia and beyond.

Greg Duly
Regional Director, Asia
Save the Children Asia Regional Office

Executive summary

This report reviews the escalating maritime movements of mixed migrants, focusing on refugee and asylum-seeking children across South East Asia and their experiences in countries of origin, transit and destination. Approximately one-third of all migration in developing regions is irregular and occurs through clandestine channels,¹ leaving children highly vulnerable to exploitation. Yet by attempting to control migration, countries in the region have implemented a number of barriers that have “contributed to making irregular migration treacherous”, and have unwittingly made possible new opportunities for smugglers and traffickers.²

One particular journey that has resulted in 70% of all migrant deaths in the South East Asia region is through the Andaman Sea.³ This begins in Myanmar and Bangladesh where mixed migrants cross the Bay of Bengal and the Andaman Sea to Thailand, where they often continue to destination countries such as Malaysia and Australia. The number of mixed migrants tripled from 2012 to 2014, and continues to increase due to conflict, displacement, food insecurity and climate-induced natural disasters.⁴ In May 2015, smugglers abandoned desperate refugees and migrants in the ocean when the Thai and Malaysian governments were investigating trafficking syndicates. As a deterrent, Thailand, Indonesia and Malaysia pushed boats back out to sea, which resulted in a humanitarian crisis. Up to 8,000 people were stranded without food or water for weeks, with an estimated 550 dying in 2015 before reaching land, mostly from starvation, dehydration, disease, drowning or abuse by people smugglers. International pressure resulted in the Philippines first offering assistance, followed by Indonesia and Malaysia. People were subsequently allowed to disembark and were offered varying degrees of support for up to one year, provided the international community took the lead. Although

the number of movements across the Andaman Sea has declined in the first half of 2016, this report illustrates the challenges children continue to face while on the move in South East Asia.

This qualitative research focuses on the maritime movements of children in Thailand, Indonesia and Malaysia who survived the Andaman Sea Crisis. A total of 178 key stakeholders participated in the research, including governments, UN agencies, international organisations, civil society members, regional representatives and the media. This report first focuses on the experiences of 82 children on the move in countries of transit and destination, and incorporates an analysis of internal and external research, situation reports and needs assessments. The findings reinforce much of the literature regarding patterns of discrimination and inequality that children on the move experience in regard to their legal status, access to education, physical and mental health, housing, food security and livelihoods, as well as issues of violence, abuse and exploitation. The research reveals the need for protection-sensitive interventions in the immediate, medium and longer term. Enhanced transparency, coordination and accountability would contribute to improved information management, data management and other challenges.

One emerging concern regarding the current displacement of children on the move in Thailand and Indonesia is their desire to continue on to Malaysia to be reunited with their families. While some have already left the temporary shelters to embark on this journey, the research shows that they would consider staying and integrating into the local community if they had access to basic services such as healthcare and education and to livelihood opportunities. A significant problem is the smugglers and traffickers who continue to lure irregular migrants. Children are often engaged in

debt bondage to pay for their journey, putting them at huge risk of exploitation. Other issues that arose in the research included arbitrary detention, a lack of funding to address the specific needs of children and specialised capacity to assist them.

While the countries concerned have been commended for supporting this cohort in the past year, the focus of this report is to present children's perspectives on their current situation. Recommendations highlight concrete actions for governments and partners at national, bilateral and regional levels. One priority is to establish child-sensitive, protection-oriented systems to ensure that appropriate screening takes place

and that there is protection for vulnerable groups, especially victims of trafficking and those seeking asylum. It is essential to ensure that children are protected, not detained under any circumstances and are provided with healthcare and education. It is also essential that an independent team allocates a trained guardian for children who are unaccompanied or separated from family. It is extremely important to conduct family tracing and to prioritise family reunification by coordinating with other countries. Durable solutions are vital to ensure children do not live in protracted displacement, particularly given their previous experiences on the move.



PHOTO: SAVE THE CHILDREN

Save the Children Thailand's Education Specialist facilitates education in emergency activity with children at a shelter.

Abbreviations and acronyms

ACTIP	ASEAN Convention against Trafficking in Persons	IDC	immigration detention centre
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children	IDP	internally displaced persons
ADRMW	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers	ILO	International Labour Organization
AHRD	ASEAN Human Rights Declaration	INGO	international non-governmental organisation
AICHR	ASEAN Intergovernmental Commission on Human Rights	IOM	International Organization for Migration
ASEAN	Association of Southeast Asian Nations	NGO	non-governmental organisation
BIA	Best Interests Assessment	RCF	Regional Cooperation Framework
BID	Best Interests Determination	RCM	Regional Cooperation Model
CEDAW	Convention on the Elimination of Discrimination Against Women	RSD	Refugee Status Determination
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	SAR	International Convention on Maritime Search and Rescue
COMMIT	Coordinated Mekong Ministerial Initiative against Human Trafficking	SOLAS	International Convention for Safety of Life at Sea
GMS	Greater Mekong Sub-region	TRC	Temporary Registration Certificates
IASC	Inter-Agency Standing Committee	UASC	unaccompanied and separated children
ICCPR	International Covenant on Civil and Political Rights	UN	United Nations
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	UN-ACT	United Nations Action for Cooperation Against Trafficking in Persons
ICESCR	International Covenant on Economic, Social and Cultural Rights	UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
		UNCRC	UN Convention on the Rights of the Child
		UNHCR	UN High Commissioner for Refugees
		UNICEF	UN Children's Fund
		UNTOC	UN Convention against Transnational Organised Crime

1 Background

1.1 INTRODUCTION

One of the most dangerous migration routes in the world is across the Andaman Sea in South East Asia. This region has recorded the second highest number of dead and missing people in the world after the Mediterranean Sea.⁵ Voyages typically start in Rakhine State, Myanmar, or in Bangladesh; refugees and migrants cross the Bay of Bengal and the Andaman Sea to Thailand, where they often transit and continue to destination countries such as Malaysia and Australia. Over 94,000 people are estimated to have made this crossing from mid-2014 to mid-2015.⁶

In May 2015, an unusual maritime humanitarian crisis arose when smugglers abandoned up to 8,000 people in the Andaman Sea and the Strait of Malacca. In response to international pressure to address the escalation in regional trafficking, Thailand and Malaysia launched an investigation that resulted in a large number of smugglers abandoning covert operations and leaving 8–30 boats at sea.⁷ The unfolding of the crisis is shown in the table on page 2.

Desperate men, women and children were stranded off the coast of Thailand, Malaysia and Indonesia for weeks. Law enforcement authorities from the three countries pushed the boats back into the ocean creating something of a ‘maritime ping-pong’ between the three countries as a means of deterring migration.⁸ Authorities then proceeded to prohibit stranded migrants from disembarking even when the boats began to sink. Fights broke out over remaining water and people died of starvation and preventable disease. After a prolonged period at sea without fresh food or water the situation rapidly escalated into a humanitarian emergency.⁹ The International Organization for Migration (IOM) estimated that 550 refugees and migrants died in 2015 before reaching land, bringing the total to approximately 1,100 who had died on this journey since 2014.¹⁰

The United Nations High Commissioner for Refugees (UNHCR) highlights that approximately 12 out of every 1,000 people who embark on mixed maritime movements from the Bay of Bengal do not survive the boat journey. After significant international pressure, the Philippines was the first country in the region to offer assistance, despite the distance, followed by Indonesia and Malaysia, who permitted the stranded migrants to stay temporarily and offered shelter for one year.

The majority of those who migrated were lured by smugglers from internally displaced persons (IDP) camps in Rakhine State, Myanmar, and refugee camps in Bangladesh. The journey poses significant danger to the lives, health and safety of refugees and migrants. Smuggling is widespread across South East Asia, and those who are stateless, seeking asylum or displaced are especially vulnerable. The phenomenon is prevalent in Bangladesh and remote or bordering areas in Myanmar due to a range of factors including poverty, lack of access to basic services, identification and freedom of movement; smugglers use pull factors such as family reunification, freedom, safety, access to services and livelihood opportunities to lure migrants overseas.

Myanmar has experienced complex protracted humanitarian crises arising from civil war, intra-communal violence, food insecurity and a variety of natural disasters, including cyclones and floods. In the 1980s, the previous government passed a law which has prevented the Rohingya from accessing civil documentation and the right to vote. UNHCR has estimated that as a result there are 1.53 million ‘people of concern’ residing in Myanmar: largely stateless persons, some of whom are internally displaced persons (IDPs) (as of February 2016).¹¹ Those who lack citizenship in Myanmar, such as the Rohingya, are especially at risk of violence, abuse and exploitation. They have limited access to basic services such as education, justice and healthcare, and to work, and experience food insecurity.

TIMELINE: ANDAMAN SEA CRISIS, FROM MAY 2015¹²

Date	Event	Population affected
1–7 May 2015	<ul style="list-style-type: none"> Mass grave with more than 30 bodies uncovered in southern province of Songkhla, Thailand (Malaysia border) 	<ul style="list-style-type: none"> Remains of more than 30 bodies found
9–10 May	<ul style="list-style-type: none"> Arakan Project warned that smugglers have abandoned vessels 	<ul style="list-style-type: none"> 578 people disembark in Indonesia by swimming or floating in cooking pots
11 May	<ul style="list-style-type: none"> Two boats arrive in Langkawi, Malaysia, with 1,107 people who are all relocated to immigration detention centre (IDC) Indonesian authorities tow a grey boat with 800–900 people towards Malaysia 	<ul style="list-style-type: none"> 1,107 people held in IDC in Malaysia 600 Bangladesh nationals repatriated 800–900 people towed back to sea
12 May	<ul style="list-style-type: none"> 116 people are rescued by Bangladeshi authorities 	<ul style="list-style-type: none"> 116 Bangladeshi nationals
13 May	<ul style="list-style-type: none"> Malaysian authorities turn away two vessels with 800 people; the same vessel which Indonesia pushed away on 11 May 	<ul style="list-style-type: none"> The same grey vessel pushed out to sea yet again with 800–900 desperate people on board
14 May	<ul style="list-style-type: none"> Fighting breaks out on grey vessel which starts sinking Thai authorities find 106 people on island in Thailand UN Secretary-General requests governments to uphold rescue at sea and non-refoulement obligations 	<ul style="list-style-type: none"> Approximately 14 people die during fighting over remaining water 106 people placed in IDCs and shelters
15 May	<ul style="list-style-type: none"> 820 people remaining from grey vessel rescued by Indonesian fishermen Thai authorities repair and tow green boat towards Malaysia Indonesian authorities prevent another boat reaching shore which remains unaccounted for 	<ul style="list-style-type: none"> Unknown numbers die from drowning, fighting and starvation on board the grey vessel
16–17 May	<ul style="list-style-type: none"> Green vessel towed out by Thai authorities Malaysian authorities intercept and tow green vessel towards Indonesia 	<ul style="list-style-type: none"> 700 people disembarked in Rakhine State, Myanmar
18 May	<ul style="list-style-type: none"> Up to six boats off the coast of Bangladesh and Myanmar 	<ul style="list-style-type: none"> Over 2,000 people stranded in the ocean
19 May	<ul style="list-style-type: none"> UNHCR, OHCHR, IOM and UN Secretary-General for International Migration and Development urge countries to undertake search and rescue 	<ul style="list-style-type: none"> Up to 8,000 people stranded on boats Philippines first country to offer international assistance for refugees
20 May	<ul style="list-style-type: none"> Indonesian fishermen rescue people from green vessel Indonesian and Malaysian ministers announce they will no longer push the boats out to sea 	<ul style="list-style-type: none"> 409 people rescued, 300 remain in shelters, ten die Temporary shelter for stranded people for up to one year (Malaysia/Indonesia)
21 May	<ul style="list-style-type: none"> Special Foreign Minister meeting in Myanmar Myanmar authorities rescue boat carrying 208 people Dozens of bodies wash up along coast of Rakhine State 	<ul style="list-style-type: none"> The international community – Qatar, Saudi Arabia, Japan, Turkey, Gambia and the US – offer support
26 May	<ul style="list-style-type: none"> Malaysian police find mass graves and over two dozen abandoned jungle camps in Malaysia near Thai border Police officials detained 	<ul style="list-style-type: none"> Remains of 140 bodies found and allegedly more camps still to be investigated
29 May	<ul style="list-style-type: none"> Thai government convene special regional meeting (15 countries and key organisations), discuss immediate protection, prevention and contingency plan Regional meeting held in Thailand Myanmar authorities rescue 733 people 	<ul style="list-style-type: none"> 1,800 people disembark from three boats in Indonesia 1,100 people disembark from two boats in Malaysia Over 1,000 people unaccounted for 70 people die on ships from dehydration, exposure, drowned, starvation, and abuse
June	<ul style="list-style-type: none"> ASEAN reforms including adoption of Convention against Trafficking in Persons Myanmar authorities find survivors stranded on island 	<ul style="list-style-type: none"> Formal review of Andaman Sea Crisis to draw on lessons learned, contingency planning 102 people rescued from island for one month
2 July	<ul style="list-style-type: none"> ASEAN ministers meeting 	<ul style="list-style-type: none"> Agenda – Irregular Movement of Persons¹³
March 2016	<ul style="list-style-type: none"> Bali Process ministers meeting March 2016 	<ul style="list-style-type: none"> Formal review of Andaman Sea Crisis

While these push factors can drive those who do not have legal status to move and seek asylum, without official documentation their only option is through irregular and unsafe channels – usually with the assistance of people smugglers to bypass immigration systems.

Being trafficked, exploited or kidnapped for extortion now seem to be the norm rather than the exception for refugees and migrants from Myanmar and Bangladesh. The gravity of the situation is evidenced by the mass graves unearthed along the Malaysia–Thailand border, revealing the remains of over 200 refugees and migrants¹⁴ who had been held and killed in jungle camps. More than 50 Thai law enforcement officials were reported to be implicated in trafficking people across borders.¹⁵

These factors account for the specific demographic characteristics, patterns and push factors for children migrating across the Andaman Sea. The number of irregular migrants has tripled since 2014.¹⁶ However, in 2015 this decreased substantially from 31,000 in the first half of the year to 1,600 in the second half of the year following the crisis itself. The dramatic change was the result of crackdowns by the Malaysian and Thai authorities on trafficking and smuggling activities, along with heightened border control along the coast.¹⁷ In the first half of 2016, maritime movements across the Andaman Sea have declined due to intensified interdiction efforts, greater awareness of the risks, and lack of legal status in destination countries.¹⁸

Currently in Malaysia there are 151,000 refugees and asylum seekers registered with UNHCR, including 137,000 from Myanmar. In Thailand, there are 106,000 verified refugees living in nine refugee camps on the Thailand–Myanmar border, the majority of whom are from Myanmar, and approximately 10,000 refugees and asylum-seekers living in urban areas.¹⁹ In Indonesia, there are 14,000 ‘people of concern’ formally registered, with 1,000 from Myanmar.²⁰ In Bangladesh there are 233,000 ‘people of concern’ from Myanmar, including 33,000 Rohingya from Myanmar who are accepted as refugees.²¹ These 33,000 refugees live in two refugee camps in Cox’s Bazar District. There are an additional 200,000 to 500,000 Rohingya in Bangladesh who are without legal status.²²

1.2 OBJECTIVE OF THE REPORT

The principal purpose of this research is to identify strategic areas for development and improvement in relation to protecting children on the move in South East Asia. The research will identify migration patterns, protection concerns and challenges in response to the influx of children moving from Bangladesh and Myanmar to Indonesia, Malaysia and Thailand. It will also map national and regional legal frameworks, mechanisms and actors and pose recommendations for the future. This work will inform Save the Children’s advocacy and programme work on the protection of the rights of ‘children on the move’ in South East Asia.



PHOTO: SAVE THE CHILDREN

This three-year-old boy from Myanmar was separated from his family and is under the care of Phang Nga shelter. Given paper and a pencil, he enjoys imaginative writing.

DEATHS IN THE BAY OF BENGAL AND ANDAMAN SEA



1.3 DEFINITION OF KEY TERMS

Children on the move

Save the Children defines ‘children on the move’ as: “Children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movements, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect, and violence.”²³ The definition includes children:

- who have been trafficked
- who are seeking asylum or are refugees
- who migrate (eg, to pursue better life opportunities, look for work or education or to escape exploitative or abusive situations at home)
- who are displaced by conflict or natural disasters or by environmental degradation that impacts on their ability to survive.²⁴

While this report has a strong focus on children who migrate irregularly across the Andaman Sea, with Rohingya being the majority, it has to be recognised that there are other categories of refugees and migrants. For example in Thailand, in addition to Rohingya refugees and asylum seekers, there are also refugees living in camps along the Thailand–Myanmar border and those living in urban areas such as Bangkok. In addition, there are different type of migrants, including economic migrants in both rural and urban settings and those who are victims of human trafficking. Each of these groups is treated differently under the law and experience a range of challenges in accessing basic services. While certain sections of this report will briefly touch on the general experiences of refugees and migrants in each country, as much as possible it aims to distinguish each of these groups and not to conflate the issues of Rohingya with those of other categories.

Unaccompanied and separated children (UASC)

‘Unaccompanied children (or unaccompanied minors)’ are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for them.²⁵ Alternatively, ‘separated children’ are children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members. Many children have been separated when parents were in detention, for instance.

Refugee and seeking asylum

The term ‘refugee’ refers to any person whose refugee claim has been recognised by UNHCR or through state-level asylum processes. The term ‘seeking asylum’ is used to refer to any person waiting for adjudication for refugee status.

Irregular migration

Irregular migration is a commonly used term to refer collectively to various forms of movement through informal channels. According to the IOM, the most common forms of irregular migration from Myanmar include smuggled migrants, trafficked persons, unaccompanied and separated children, stranded migrants and victims of exploitation and abuse, as well as refugees and people seeking asylum, among others.²⁶ This term also refers to internally displaced persons (IDP) who are forced to relocate within their own country. UNHCR and IOM recommend the use of the term ‘mixed migrants’ to refer to people who migrate according to the 10-Point Plan in Action outlining protection for this cohort.²⁷

1.4 CHILD PROTECTION PRINCIPLES IN HUMANITARIAN ACTION

There are a number of minimum standards that act as the universal benchmark to govern the protection of children during and after a humanitarian crisis. They are grounded in international legal frameworks and morally binding principles, including the UN Convention on the Rights of the Child (1989), which can be used as a guide to upholding responsibilities to children when responding to emergencies. These principles include:

- **survival and development**, pertaining to “the effects of the emergency and response on the physical, psychological, emotional, social and spiritual development of children” and protection of their right to life
- **non-discrimination**, preventing the marginalisation of children already at risk of discrimination by identifying, monitoring and addressing existing or new patterns of discrimination and power dynamics (which can be exacerbated in emergencies)
- **child participation**, ensuring boys and girls are provided with the space and time to meaningfully participate, share perspectives and participate in all possible stages of the response in developmentally appropriate ways
- ensuring the **best interests of the child**, which should be the primary consideration in all actions, especially humanitarian programmes and interventions.²⁸



PHOTO: SONGPORN LEEAKITCHOK/SAVE THE CHILDREN

Women at the Surat shelter work on handcraft pieces as a form of livelihood.

2 Methodology

This section outlines the research design, data collection methods and limitations.

This study took a qualitative, child-centred approach. Field research was participatory in nature. It was conducted in Indonesia, Malaysia and Thailand throughout January and February 2016 with people who were involved in the Andaman Sea Crisis and those involved in the response.

In Indonesia, the main participants were Rohingya from Rakhine State in Myanmar (and a few participants from Bangladesh) who were residing in four camps across Aceh. Interviews were conducted with local non-governmental organisations (NGOs) that were implementing services in the camps; representatives of local government, international organisations and UN agencies at local and national levels; and with the Indonesian government representative to the Association of Southeast Asian Nations (ASEAN) Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

In Thailand, fieldwork was carried out through participation in a large consultation group. The group's participants were mostly refugee and asylum-seeking children and young people from South and South East Asia (ie, Cambodia, Vietnam and Sri Lanka) who had been living with their families in urban settings in Thailand. This study was not able to interview Rohingya children living in government-run shelters and protection centres in the south of Thailand. Interviews were conducted with representatives from governments, UN agencies, law enforcement authorities, international organisations and local civil society networks. Thai government representatives to regional mechanisms including ASEAN were also interviewed.

In Malaysia, research participants included Rohingya children and adults who had been living in refugee communities in urban settings.

2.1 DOCUMENT REVIEW AND ANALYSIS

Document analysis was conducted to map out national, regional and international legislation and policies related to the protection of children on the move in countries of origin, transit and destination, as well as at regional level. This included mapping the key actors and players including national agencies, international institutions, NGOs, civil society, donors in the region and their current approaches and interventions related to the protection of children on the move. Through analysis, the current policies and procedures on resettlement of refugees were identified, and the existing mechanisms for transnational coordination and cooperation between countries – eg, bilateral agreements and multilateral agreements – were recorded and evaluated. It was therefore possible to identify strengths, areas for development, and gaps in national and regional policies and legislation regarding immigration, trafficking and asylum seekers. Entitlements to basic services, social protection and provision of care for unaccompanied and separated children and their families were assessed.

2.2 INTERVIEWS AND FOCUS GROUP DISCUSSIONS

Interviews and focus group discussions were conducted with 178 respondents, including 82 children, across Indonesia, Malaysia and Thailand. Primary research was conducted throughout January and February 2016. Separate semi-structured interviews were conducted with children, their families and key stakeholders, including representatives of government, international organisations and civil society. Focus group discussions were conducted in a variety of small, medium and large groups.

Altogether, 22 adults and 82 children and young people seeking asylum took part in the research. Key informant interviews were also conducted with 22 representatives from several UN agencies and international organisations, 36 international and local NGO participants, 13 national and regional government representatives; several journalists from the media were also interviewed.

Of the 45 children interviewed in Indonesia, there were three times more boys than girls. There were 23 participants aged 16–18 years (15 boys), 19 who are 15 years of age and under (two girls) and three boys aged 19–22. In Malaysia, 23 adults (19 female) and nine children were interviewed, of whom seven were boys aged 12–18 and two were girls under 15. In Thailand, 19 adults were interviewed. Separate interviews were conducted with 30 young people participating in a Bangkok Refugee Forum – 16 girls and 14 boys, who all considered themselves children, although five were under 18 and the rest under 25.

2.3 LIMITATIONS

A major limitation of this research was lack of access to primary data from countries of origin, including Bangladesh and Myanmar, due to the irregular nature of migration. In addition to the nature of the research, there were a number of challenges in geographical coverage and access to primary target groups. Furthermore, access to government ministries, especially law enforcement, was limited. As such, the focus of this report is the experience of children journeying across the Andaman Sea and the gaps in protection and basic services in countries of transit and destination.



PHOTO: SAVE THE CHILDREN

A Rohingya boy in Phang Nga shelter going through his friends' drawings as part of Save the Children Thailand's psychosocial first aid activity.

3 Experiences of children: reasons for leaving Myanmar and Bangladesh

3.1 INTRODUCTION

The migration flows of children on the move across the Andaman Sea are diverse and complex. The majority of children who take this journey, and all of those crossing during the May 2015 crisis, are from Rakhine State, Myanmar, and Bangladesh. Children accounted for 55% of Andaman Sea survivors who landed in Aceh, Indonesia, and who identified as Rohingya.²⁹ Between 2014 and 2015, approximately one-third of all arrivals reaching Thailand and Malaysia by boat were under 18 years of age (with one in ten being younger than 16).³⁰ Approximately 40–60% of people who departed from the Bay of Bengal originated in Rakhine State, Myanmar, although many embarked on their maritime journey from Bangladesh.³¹ The other passengers on the journey were Bangladeshi.

To understand push factors, the historical context of Myanmar needs to be examined in relation to minority groups who have experienced internal displacement, conflict and statelessness for decades. Rohingya predominately living in Rakhine State, Myanmar, have experienced many years of persecution and discrimination. Myanmar's Citizenship Law of 1982 subjects those who are stateless to numerous legal restrictions, including the right to own property, travel or have more than two children in some areas.³² The United Nations High Commissioner for Human Rights has reported on arbitrary arrests and torture and other ill treatment of these groups in detention, as well as deaths in custody.³³ In 2015, there were an estimated 230,000 internally displaced people in Myanmar, including 130,000 people – mostly Rohingya – in Rakhine State displaced since violence erupted in 2012. In February 2015, prior to the Andaman Sea Crisis, the president announced the revocation of all temporary registration cards, leaving many without any form of identity document and disallowing the right to vote, to freedom of movement and to basic services.³⁴

Furthermore, prior to the recent increase in maritime migration, four new laws were passed in Myanmar, known as the 'Race and Religion Protection Laws', with an aim of "protecting race and religion".³⁵ These include the Monogamy Law, Buddhist Women's Special Marriage Law, Religious Conversion and Interfaith Marriage Law, and the Population Control Healthcare Law. These laws have been controversial, as they do not adhere to the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) or the UN Convention on the Rights of the Child (UNCRC), which Myanmar is obliged to uphold. They risk heightening existing tensions and denying basic human rights, including "freedom of thought, conscience and religion, the right to privacy, children's rights and the right to freedom of expression to citizens and those they consider stateless".³⁶ According to the UN Special Rapporteur, the laws risk "deepening discrimination against minorities and setting back women's rights" in Myanmar.³⁷ However in August 2016, the government led by Aung San Suu Kyi announced the formation of an advisory commission on Rakhine State that will be chaired by former UN chief general secretary Kofi Annan, and focus on "finding lasting solutions to the complex and delicate issues in the Rakhine State".³⁸

The findings of this report support the literature showing the main push factors for migration as including persecution and discrimination of the Rohingya, restrictions on freedom of movement and a resulting lack of access to basic services or livelihoods. The violence and ethnic conflict in 2012 and the relocation of many Rohingya to IDP camps highlighted these issues.

Without citizenship, children and adults seeking to leave Myanmar were unable to obtain passports or other travel documentation, and thus were unable to use regular routes by plane or overland through Thailand. Therefore, by being undocumented in-country or travelling undocumented, vulnerability

to exploitation is increased. Combined with restrictions on movement placed on Rohingya, this pushes children and their families to resort to unsafe migration, which results in exploitation, trafficking and death. Irregular migrants from Bangladesh have been driven not only by economic reasons but also by multidimensional poverty, family reunion, arranged child marriages and trafficking, as well as by inducements offered by smugglers.

The following sections present anecdotes from children, mostly originating from Myanmar, who described their reasons for leaving their home country by crossing the Andaman Sea. Pseudonyms are used to protect their identity.

3.2 HUMAN TRAFFICKING

Trafficking is a significant concern along the Andaman Sea migratory route. Amnesty International highlighted that it “is likely that many – if not most – of the Rohingya who reached Aceh in May 2015 were trafficking victims”.³⁹ Based on media reports, the heavily forested Malaysia–Thailand border has been a transit point for smugglers and traffickers bringing people to South East Asia by boat from Myanmar and Bangladesh.⁴⁰ In May 2015, authorities found 139 graves around 28 transit camps abandoned by human trafficking syndicates.⁴¹

3.3 ECONOMIC OPPORTUNITIES

The minority Muslim population (mostly but not only Rohingya) who live in Rakhine State in Myanmar do not have citizenship cards but instead hold Temporary Registration Certificates (TRCs, known as ‘white cards’). Since TRCs do not confer citizenship, these people are effectively rendered stateless, even though many have lived in Myanmar for several generations. Denied citizenship, this population suffers discrimination, poor access to justice and curtailed freedom of movement that further results in limited access to basic services and livelihoods. This was further exacerbated by communal violence in 2012 when some 140,000 people were displaced and three years on many still remain segregated in camps relying on humanitarian assistance. There has been widespread impunity for perpetrators of communal violence and human rights abuses. Large numbers of the stateless population have attempted to migrate out of Rakhine State, usually by sea, falling into the hands of smugglers and traffickers.

HALIMA AND HER SISTER, INTERVIEWED IN MALAYSIA

One respondent, Halima, was 15 when she left Rakhine State for Malaysia three years ago with her 17-year-old sister. They had lost their parents in the 2012 intra-communal violence and were lured by traffickers with promises of employment and marriage opportunities in Malaysia. Following many other girls their age desperate to escape the escalated violence, Halima and her sister embarked on the dangerous journey to Malaysia. She reported that she could not:

“...remember anything during those few months of the boat journey as I used to feel dizzy all the time. They would push injections into us and if we refused to take injections, they would mix drugs in rice and force us to eat that rice.”

But their exploitation did not end with the journey, and she related ongoing abuse and debt bondage:

“The first two years were extremely painful for us. We had to experience lots of abuse including sexual abuse. Initially, we had few contacts, [we] could not save money here because we did not pay the smugglers in advance in Myanmar. So we could not escape their hands.”

Eventually, Halima and her sister were able to develop networks with Myanmar communities in Malaysia. Halima met a Myanmar customer at the restaurant where she worked, and got married last year, while an elderly Myanmar woman helped her sister find better employment and shelter.

ALAM, INTERVIEWED IN ACEH, INDONESIA

Alam is one of many unaccompanied boys who survived the Andaman Sea Crisis and is now residing in a temporary refugee camp in Aceh, Indonesia. He has been displaced for most of his life, fleeing his home in Myanmar several times to seek safety in IDP camps, and then to a refugee camp in Cox's Bazar in Bangladesh. Alam had four brothers and one sister, who died in Myanmar. They moved to a refugee camp in Cox's Bazar when he was very young but UNHCR asked them to return to Myanmar when the situation was "supposed to be better for the Rohingya people". This only lasted a few years before they had to go back to the refugee camp in Bangladesh. Alam's father worked as a bus driver in Bangladesh, but was killed in an accident when Alam was only eight. His mother then died of a heart attack when he was 11. Alam was only able to attend three years of school inside the camp, after which he worked in a local garment factory in Cox's Bazar, for poor remuneration. After seven to eight months, he lost his job when his refugee identity was revealed to the factory management. After that Alam was not able to find any other work, so he decided to travel to Malaysia:

"There was no hope for a better life inside the camp or outside the camp. There was no way that I could go back to Myanmar for a life either. The Dalals [brokers] are very dhokabaz [deceitful]. There are Bangladeshi brokers everywhere inside the camp, as well as outside the camp in Cox's Bazar."

Alam sold his deceased parents' rations and saved all he could. He also borrowed money

from his neighbours for the voyage to Malaysia with the hope that he would be able to quickly pay it back once he started work. Alam had to pay the broker a large sum before embarking on the boat, and a second amount when they reached a huge, 3-storey boat called *Receive Ghor*, in the Andaman Sea. However, once he was on board, he was beaten every day for more money, and was held for ransom, as were most of the others on board. He was forced to call his friend at the refugee camp in Cox's Bazar and beg to borrow additional money to be transferred to the broker's account in Bangladesh. As he reflected on his journey, Alam was still traumatised by the experience:

"There were Bangladeshi people from all over the districts on that ship so I was able to get some information from them. But one day before the Dalals [brokers] left the ship with a speed boat. They announced, 'there are problems in Malaysia and the navy is patrolling the sea. So, take responsibility for your life and escape from the ship.' All of a sudden, women, children and we all started mourning and crying. The seniors started azan [the Muslim summons to prayer] as if we were destined to death. I may never be able to overcome the fear and trauma of that sense of dying."

Alam is waiting for UNHCR's decision regarding resettlement in a third country. Most of his peers have already left the camps to find their loved ones in Malaysia. Alternatively, Alam would like to be integrated into the local community in Indonesia.

3.4 KIDNAPPING

UNHCR has documented cases of kidnapping and abduction of children in Bangladesh and Myanmar.⁴² The lack – and, in some reported cases, complicity – of law enforcement at embarkation points has given rise to a zone of impunity in which competing

smugglers are under pressure to deliver on promised passenger quotas.⁴³ In this environment, some individuals, including children, have reported being abducted by smugglers off the street or while fishing and forced against their will to board boats departing from both Bangladesh and Myanmar.⁴⁴

SAHEED, INTERVIEWED IN ACEH, INDONESIA

One boy who is seeking asylum, Saheed, disclosed his experience of being kidnapped. During the interview in Aceh, he described being attacked by young people when he was working in an agricultural field until he was “bleeding and became almost senseless. They kidnapped me from the field and pushed me into a small boat. My parents did not know what had happened to me.” He said these locals claimed that Myanmar “is our country, the country for Mogs [Buddhists]; your country is across the sea”. However, this was not the first time Saheed experienced such abuse. He stated that “Rohingya boys are routinely attacked and tortured by Buddhist young people in public” in their locality. As a minority group, he said, they were continually persecuted and had no one they could report this abuse to. Various international NGO (INGO) participants reported this in a similar vein:

“...children were best friends one day, then killing each other the next. It was incredibly confusing for them.”

Saheed was put onto a Malaysian-bound boat with other minority young people from both Bangladesh and Myanmar who had had similar experiences. After three transfers from one small boat to another, Saheed was taken to a large boat called *Receive Ghor*, where he was regularly beaten up by the boat crew and held for ransom, which he was unable to arrange. After four months, Saheed finally disembarked and is now waiting to find out his fate in Indonesia. He feels extremely guilty for neglecting to provide for his parents in Myanmar; as he lamented, “Here, there is no point of only eating and sleeping myself. Who is going to look after my parents?”

3.5 CHILD MARRIAGE

The marriage of children under the age of 18 is a fundamental violation of human rights that can compromise children’s development. A range of factors can increase children’s susceptibility to early marriage, including poverty, family honour, social norms and customary or religious laws condoning the practice, inadequate legislative frameworks,

and civil registration systems. One important factor is the perception that marriage will provide ‘protection’ – a view prevalent throughout the research findings. Some of the effects of early marriage that hinder development include early pregnancy, social isolation, interrupted education, limited vocational progression and increased risk of domestic violence.

WOMEN AND GIRLS, INTERVIEWED IN ACEH, INDONESIA

Participants in focus group discussions in the Aceh camp reflected on unaccompanied journeys for arranged marriage. Of the 16 women and girls interviewed, more than half were under 18 (overall age range 13–29 years) and from Myanmar. They noted having had either no formal education or only a few years of enrolment. One 15-year-old girl had migrated twice and came from the refugee camp in Tekhnaf in Bangladesh. They all reported

paying 14,000–16,000 Malaysian Ringgit (US\$3,600–4,100) to brokers, with at least half of the agreed amount having to be paid prior to the four-month journey by family in Myanmar, Bangladesh or Malaysia. Most of the girls did not have any close relatives in Malaysia, so brokers in Myanmar, Bangladesh and Malaysia organised the deal, making it even more risky, with the majority of the girls unaware of whom they were going to marry, and without family support.

3.6 REUNITING WITH FAMILY

Reuniting with family is a major reason why children embark on unsafe migration. Due to restrictive migration control, lack of civil documentation and

restricted movement, there are no formal channels for these minority groups. Thus, children and family members have no other option but to access irregular channels in order to be with their family.

HARUN, INTERVIEWED IN MALAYSIA

One participant interviewed in Malaysia, Harun, travelled unaccompanied from Myanmar to Malaysia when he was only eight years old, “alone at sea”, relating that he “cried hard and was desperate to survive. I am still traumatised.” He reported travelling with his mother and siblings to live with their father in Malaysia. However, the smuggler forced them to live in a jungle camp in Thailand in a large group for several weeks where he was separated from his

mother and got lost. They had been deceived and could not go to Malaysia unless they paid more extortion money; “My father saved every Ringgit throughout his life in Malaysia. All the money went to the people to take us to Malaysia.” When they eventually arrived, he was so sick that his parents took him to the Tzu Chi Clinic for treatment, which was the only place that would treat him. They also enrolled him into an informal school.



PHOTO: SAVE THE CHILDREN

Two brothers playing at Phang Nga shelter in Thailand.

4 Experiences of children: arriving in Indonesia, Malaysia and Thailand

4.1 INTRODUCTION

This chapter provides an overview of the various concerns for children seeking asylum in Indonesia, Malaysia and Thailand. The three countries are not party to the 1951 Refugee Convention or its 1967 Protocol and hence are not legally obliged to adhere to the provisions of the treaty. Given that no domestic legislation on the protection of refugees and asylum-seeking people have been implemented, UNHCR, IOM and non-governmental organisations have largely been responsible for providing assistance. Despite the absence of national frameworks, Indonesia, Malaysia and Thailand have hosted refugees and asylum seekers since the 1970s in response to the Indochinese refugee problem.

The three countries continue to host more than 820,000 persons of concern to UNHCR, of whom the majority resides in Malaysia and Thailand.

The current protracted displacement of children on the move increases their vulnerability to danger, including exploitation, abuse, violence and further unsafe migration, as the majority lack legal status or access to protective services. Most have already been displaced multiple times, from IDP camps in Myanmar to refugee camps in Bangladesh. Various factors impede the swift resolution of their status, including the lengthy process of refugee status determination, financial constraints, limited organisational capacity and a lack of durable solutions.

LEGAL FRAMEWORKS IN INDONESIA, MALAYSIA AND THAILAND

INDONESIA

There is a disparate collection of laws governing, to some extent, the treatment of asylum-seekers and refugees. The most relevant legal instrument is the 2010 Regulation of the Indonesian Director-General of Immigration Regarding the Handling of Irregular Migrants.⁴⁵ It allows 'irregular migrants' to register as people seeking asylum with the local UNHCR office and to stay in the country on a temporary basis while their claim is processed. It states that costs incurred will be borne entirely by UNHCR. Indonesia ratified the UNCRC and passed it into domestic law to regulate the protection of Indonesian children.⁴⁶ Refugee and asylum-seeking children are not adequately covered under the regulation and face difficulties accessing protection and basic services.

The Draft Presidential Decree on Handling Asylum-Seekers and Refugees is expected to

be finalised, but it remains to be seen whether the decree will reach minimum international standards, including standard procedures for the identification, assessment, registration and protection of children on the move, especially those unaccompanied or separated. The decree is awaiting the president's signature, which will be a commendable first step.

MALAYSIA

Malaysia does not have domestic or administrative frameworks governing refugees. Refugees do not have access to fundamental rights such as safe and lawful employment or formal education in public schools, and are at constant risk of arrest, detention and exploitation. Those with UNHCR documentation are protected, to some extent, from arrest and detention. Such protection is premised on a

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LEGAL FRAMEWORKS IN INDONESIA, MALAYSIA AND THAILAND

continued

number of directions by the Malaysian government, which have not been codified into law or made available to public. These are: i) written directions issued by the Attorney-General's Chambers in 2005 stating that it would refrain from prosecuting holders of UNHCR documentation; ii) written standard operating procedures issued by the immigration department, including a directive that once the authenticity of a UNHCR card has been verified, the card holder may be released.⁴⁷ Because the directions and standard operating procedures are not codified into legislation, they are not uniformly applied.

THAILAND

Like Indonesia and Malaysia, Thailand currently does not have domestic refugee laws or formalised asylum procedures. UNHCR in Thailand conducts refugee status determinations under its mandate for all urban asylum-seekers,

with the exception of those from Myanmar, for whom a camp-based Government-led procedure is in place.⁴⁸ Admission to the nine refugee camps in Thailand is governed by Thailand's Provincial Admissions Board, which has not been functional since 2006.⁴⁹ However, in 2012 the Thai Government initiated a fast-track procedure that provides access to the Board for unregistered camp residents, if they are immediate family members of registered individuals already resettled or in the process of being so, to facilitate their eventual resettlement and reunion with family members.⁵⁰

It has to be acknowledged that Thailand has taken steps to assist refugee and asylum-seeking children. The Education for All policy is one such example, which enables all children irrespective of legal status to access 15-years of free education in public schools. Nonetheless, there are still challenges to be addressed.

4.2 DEPORTATION AND NON-REFOULEMENT

During the Andaman Sea Crisis, Indonesia, Malaysia and Thailand all pushed boats back, violating numerous international laws and treaties, including non-refoulement norms. At the initial stage of the crisis, there were inadequate search and rescue efforts. Boats were provided with food and water before being towed back further into the sea.⁵¹ Amnesty International documented testimonies from interviewees in Aceh, Indonesia where during the actual crisis as many as 30 overcrowded boats were sighted floating at sea,⁵² while UNHCR documented at least eight boats with over 5,000 people left stranded and 370 deaths in 2015.⁵³

Subsequently, the authorities in Indonesia, Malaysia and Thailand allowed boats to disembark on their shores. Later, both Indonesia and Thailand

deported irregular migrants from Bangladesh, in close coordination with UNHCR, IOM and the Bangladesh embassy. IOM supported in the identification of victims of human trafficking and provided the necessary interventions. In Indonesia, Amnesty International did not find any arrivals from Rakhine State being returned to Myanmar.⁵⁴ This would fulfil Indonesia's customary international law obligation to respect the principle of non-refoulement, which prohibits the transfer of individuals to another country or jurisdiction where they face a real risk of serious human rights violations or abuses.⁵⁵ In Thailand and Malaysia, Save the Children did not find any cases of deportation of refugees and asylum seeking people from Rakhine state. However, the majority of them are kept in detention centres or shelters where movement is restricted.

4.3 DISEMBARKATION, SCREENING AND RECEPTION

Indonesia, Malaysia and Thailand lack clear processes for the disembarkation, identification, screening or reception of irregular migrants arriving by boat. Broadly, these people, including children, were regarded in the same way as ‘illegal immigrants’ and most responsibilities in terms of protection, registration and provision of basic services were deferred to UNHCR, IOM and non-governmental organisations. Despite their hosting refugee and asylum-seeking children for decades, there is now an urgent need for host countries to establish protection-sensitive processes and facilities.

In Indonesia, the government permitted 1,800 people from the crisis to reside in five camps rather than in immigration detention centres (IDCs), which was an exception to the regulations. While the Indonesian government generally uses detention and arrest to deter irregular migrants from attempting to enter or leave the country, it has to be acknowledged that during the crisis the Indonesian officials in Aceh donated land and built integrated shelters for refugees and asylum seeking people from Rakhine State.⁵⁶ In Malaysia, the initial screening was conducted by UNHCR, although they have very limited capacity to screen all the Andaman Sea survivors or people seeking asylum due to the sheer number of applicants. In Thailand the government oversees the processes for Myanmar refugees. An interviewee explains that UNHCR does not conduct refugee status determination for refugees from Myanmar. As such there is “no clear policy on how to deal with the Rohingya, as they cannot go back to their country”. The interviewee added that the staff of police and social welfare departments are not trained on how to conduct screening or how to deal with people from different cultures, speaking different languages and with different political circumstances, such as the Rohingya.

4.4 DETENTION

Children should never be held in detention, regardless of the circumstances. However, research clearly illustrates that in all three countries, children are subject to arbitrary arrest, punishment and detention, which directly violates UNCRC obligations to protect children. This includes children in immigration detention centres (IDCs), prisons or other shelters that limit freedom of movement or access to basic rights.⁵⁷ Additionally, if children are forced to leave their country, they are entitled to specific protection measures to assist and safeguard them from actions that are harmful to their welfare and development, such as detention, which specifically:

“Undermines their psychological and physical health and compromises their development. Children are at risk of suffering depression and anxiety, as well as symptoms such as insomnia, nightmares and bed-wetting. Feelings of helplessness and frustration can manifest as acts of violence against self or others.”⁵⁸

Detention not only separates children from their carers, removing their primary form of protection, but often places them with unrelated adults, putting them at significant risk of sexual, verbal or physical abuse. The longer any family member is separated by detention, the more likely that is to affect family relationships.⁵⁹

INDONESIA

Vital safeguards to ensure protection, transparency and accountability include independent monitoring and complaint mechanisms.⁶⁰ However, in Indonesia these have not been put in place, making it difficult to challenge mistreatment and arbitrary detention, or to enable representation.⁶¹ Without these preventive mechanisms, there is a significant risk of ill treatments. In the absence of a national refugee protection framework, no distinction is made between irregular migrants, refugees or people seeking asylum. The government uses detention as a deterrence strategy to control irregular maritime movements.⁶² There are more than 4,000 ‘persons of concern’ detained in 13 long-term IDCs and 20 temporary facilities.⁶³

Since the crisis in May 2015, the government has placed 1,800 refugees and migrants in shelters and IDCs.⁶⁴ IOM facilitated the return of

764 Bangladeshis. In a year, the number of people from Rakhine State who disembarked in Aceh has decreased from approximately 1,000 to 253 (as of July 2016).⁶⁵ Given that there is limited resettlement capacity, this huge drop reflects the number of people embarking on onward irregular journeys to destinations such as Malaysia, possibly with the assistance of people smugglers.

Indonesian immigration law regards people seeking asylum as irregular migrants.⁶⁶ However, the government has developed a Draft Presidential Decree on irregular migration which, if confirmed, will provide a basic framework and is a commendable first step. As a government official related:

“There is no complete law to regulate refugees. Since the government does not have any laws, how can we handle and manage this refugee crisis? They are illegal migrants, and that is why the government draws on regulations from detention houses to control them.”

In IDCs, there is limited access to education or health services, and in addition to poor living conditions there is restricted movement and no access to legal representation or guardianship.⁶⁷ Indonesian immigration law requires any ‘alien’ to have a valid visa to enter the country and as a result, anyone without official documents is considered irregular and is at risk of being detained and deported (Article 83). Furthermore, if there are difficulties in the deportation process, ‘illegal’ migrants can be detained for up to ten years (Article 85). It is difficult to challenge a detention decision or access legal representation.

It is laudable that the government has provided temporary assistance to survivors of the Andaman Sea Crisis, but representatives interviewed assert that the decision to accommodate them was only an exception to current policies.

MALAYSIA

According to the Global Detention Project, about 68,000 people, including 1,200 children, were detained in Malaysia’s immigration detention centres.⁶⁸ UNHCR reported that 7,000 to 9,000 Rohingya are detained annually in Malaysia.⁶⁹ Both refugees and asylum seekers are at risk of arrest and detention by the authorities in Malaysia, but refugees registered with UNHCR have more leverage to negotiate with the police and avoid

arrest. In relation to the crisis, about 1,100 irregular migrants who disembarked in Malaysia were held in IDCs and shelters.⁷⁰ While IOM assisted 660 Bangladeshis with their return,⁷¹ UNHCR noted that 371 Rohingya who landed in Malaysia were detained and only released in July 2016.⁷²

The Malaysian Immigration Act does not differentiate refugees and asylum seeking people as a special category who need international protection.⁷³ And although the Immigration (Administration and Management of Immigration Depots) Regulations 2003 provide that a child under the age of 12 may remain with any of his/her parents (Regulation 11), there are no provisions for the protection of unaccompanied children and adolescents.⁷⁴ A research participant stated, “All detainees, including children... are detained in detention centres, which resemble prisons in Malaysia.”

While Section 35 of the Immigration Act 1959/63 allows for a person to be detained for a period “not exceeding thirty days pending a decision as to whether an order for his removal should be made”, in practice, non-citizens spend much longer periods of time awaiting removal. Once detained in one of Malaysia’s immigration depots, it can take, at the very least, three months for a refugee or asylum seeking child to be released.⁷⁵ Conditions in immigration depots are generally appalling: children are detained with adults and there are no provisions for the protection of children, including unaccompanied children.⁷⁶ Similarly, pregnant women and babies are not afforded special care in detention centres. Formerly detained refugee children reveal that they were held with adults and provided with insufficient water and food.⁷⁷

THAILAND

As of 2014, 4,000 children are detained in Thailand’s detention centres.⁷⁸ Detention facilities are known for severe overcrowding, with unsanitary and violent conditions that are reportedly abysmal.⁷⁹ During the Andaman Sea Crisis, about 1,000 refugees and migrants disembarked in the south of Thailand in May 2015; as of July 2016, there were about 340 remaining.⁸⁰ They are currently residing in seven IDCs, five Shelters for Children and Families, and five Welfare Protection Centres for Victims of Trafficking.⁸¹ There are still 144 children residing in these centres.⁸²

Official cell size regulations in Thailand for detention centres are a minimum of 1.19 metres per person, but according to Amnesty, “this does not allow detainees enough room to lie down to sleep”.⁸³ In 2013 there were “276 Rohingya men living in extremely cramped conditions in two cells resembling large cages, each designed to hold only 15 men, where they barely had enough room to sit. The men said they have not been let out of the cells in five months.”⁸⁴ Refugees and asylum seekers who are arrested and detained can experience very long detention periods. According to a media representative:

“Indefinite periods of stay in detention or shelter centres are extremely injurious for both adults and children... They are not equipped for accommodating women and children. Neither are they equipped to deal with victims of trafficking, or people with another language or culture.”

Thai immigration law has yet to take into account the specific needs of children.⁸⁵ When immigration officials do not follow standard procedures to determine the age and specific concerns of the child, and if the determination is not done by a multidisciplinary independent team, the risk increases. In particular, for separated and unaccompanied children guardians need to be appointed to look out for their safety and well-being. However, this has not happened.⁸⁶ As one law enforcement official admitted:

“The government has limited capacity. There is limited space in the detention and shelter centres. How many can you accommodate in the detention or shelter centres? Besides, some of the law informant officials are involved in corrupt practices of extortion and harassment.”

Of particular concern is the number of asylum-seeking children ‘escaping’ from the shelters and becoming victims of trafficking in the hope of reuniting with family in Malaysia. Those that are caught are put back into shelters or IDCs indefinitely, while those who leave in hope of going to Malaysia are at heightened risk of being exploited, trafficked or harmed, and may not be heard of again.

4.5 IDENTIFICATION

Both the 1989 UNCRC and the 1961 Convention on the Reduction of Statelessness recognise children’s rights to an identity through birth registration and acquiring a nationality. UNHCR Guidelines on Statelessness also stress the obligation of states to grant the nationality of a child irrespective of the state of birth.⁸⁷ Nevertheless, the three respective countries have yet to fully address the gaps in providing identity documentation for children born to refugees or asylum seekers – thereby contributing to their statelessness.

INDONESIA

In Indonesia, attaining civil documentation remains a challenge. Article 9 of the Indonesian Law of 2006 on Citizenship illustrates the requirements to obtain Indonesian citizenship. Criteria include: being either over 18 years of age or married; being an Indonesian resident for five consecutive years or ten intermittently; being able to speak Bahasa Indonesia; not having been detained (for over a year); and having a steady income.⁸⁸ Especially for children, these requirements are hard to satisfy and this leads to their ineligibility for citizenship. Although Indonesia ratified the UNCRC without reservations, significant gaps remain in terms of its implementation. For instance, Indonesia’s Law No. 23 on Child Protection in 2002 (amended in 2014) provides protection for Indonesian children.⁸⁹

There is no mention that refugee and asylum seeking children are covered under this legislation. While the Child Protection Law stipulates that the protection of children shall be based on the principle of non-discrimination and that every child must be given an identity from birth, there are challenges in implementing this in practice. For example, the Indonesian authorities did not register births in Aceh’s refugee camps. Similarly, children from various minority groups born to refugee parents who have been living in Indonesia were not granted a nationality and were thereby rendered stateless. As one asylum-seeking mother (from Rakhine State) residing in a camp in Aceh described: “We are illegal here; so are our children... nobody registered the birth of my child. Who is going to register the birth of an illegal child?”

MALAYSIA

Statelessness is an ongoing concern in Malaysia. Children of irregular migrants born in Malaysia have experienced challenges in attaining identity cards and access to services. According to the UNCRC, states are obliged to protect and assist children who have been deprived of their identity, including their nationality. Moreover, Malaysia's Federal Constitution has a provision which states that any child born within the Malaysian Federation and not born a citizen of any country is, by law, a Malaysian citizen.⁹⁰ However, this provision has not been applied to stateless children born in the country, particularly those from Rakhine State minority groups. Malaysia continues to maintain reservations on Article 7 of the UNCRC concerning children's rights to birth registration, name and nationality.⁹¹ Although the 1957 Births and Death Registration Act provides for the registration of every child born in Malaysia, this does not automatically entitle registered child refugees to access to public services. The words *bukan warga negara* (non-citizen) are stamped on birth certificates issued to non-Malaysian children, and this excludes them from access to provisions accorded to nationals such as education, public healthcare and other social services. A 15-year-old boy, with three out of his six siblings in the same situation, recounted:

“Although I was born here and consider Malaysia as my country, legally I do not have any nationality... Due to my illegal status, I could not attend public school... Children like me who do not have any legal identity attend this Madrasa [Islamic Religious Institution]. I am happy here as I have been able to complete memorising the Quran to become a Hafiz [religious leader]. The only problem is that it does not have consistent and required funding.”

THAILAND

All children born in Thailand are entitled to birth registration, regardless of their immigration status or the nationality of their parents. This is stipulated in the 2008 amendment to the Civil Registration Act.⁹² However, research found that the lack of understanding and knowledge prevented its effective implementation.⁹³ As a 17-year-old girl from the Refugee Youth Consultation in Bangkok reflected:

“Even though many of us were born here and have reached our adolescence... Yet we are considered as illegal migrants. Many of us do not have a country of our own, we are stateless.”

There is also a lack of awareness regarding the process of attaining civil registration and the rights that it confers. Moreover, due to their irregular identity, many irregular migrants fear that registering the birth of a child with the authorities might result in their own arrest and detention. One 16-year-old girl, representing young people at the consultation, summarised the collective experience of asylum-seeking and refugee children living without a legal status for extended periods of time: “We are dying here, this is true.” This reflects the impact that such discrimination has on children, from their perspective.

4.6 ACCESS TO EDUCATION

Article 28 of the UNCRC obliges states to ensure compulsory and free primary education for all, irrespective of legal status, as well as to take necessary measures to make secondary education free and accessible to all children. However, stateless, refugee and asylum-seeking children in these three countries face challenges in accessing formal education. In addition, many have to find employment to repay their debt to smugglers, which often results in exploitative conditions. One way to protect children in relation to vulnerability and the risks they may face, including hazardous labour, is to engage them in, or retain their participation in, some form of education.

INDONESIA

Indonesia has ratified the UNCRC with no reservations. However, the Ministry of National Education requires non-national children to produce documentation in order to be enrolled into Indonesian public schools. This poses a barrier for involuntary migrant children, such as those seeking asylum, as they often do not have the necessary papers.⁹⁴ It is evident that Indonesian domestic law has yet to be fully harmonised with the UNCRC and continues to exclude refugee and asylum-seeking children from basic education.

In response to the 2015 Andaman Sea Crisis, Save the Children conducted an Education Needs Assessment with 123 registered Rohingya children.⁹⁵ Overall, only 63% of adolescents had been to school previously, and an enormous 60% of these had had less than two years schooling in total, showing that they had been out of school for most of their life. Only 42% of girls had any schooling, indicating

that their education had not been prioritised. The lack of access children had to education shows the discrimination they faced in Rakhine State, discrimination which many are experiencing again in Indonesia. In particular, Rohingya girls are often expected to marry early through arranged marriages and are currently at risk of being recruited and smuggled to Malaysia.

The girls scored considerably lower than boys across numerical skills. This is a gendered concern that would need to be incorporated into current education options.

The children showed a strong preference to learn English (76%), followed by 10% wanting to learn Arabic and 5% who wanted to learn Bahasa. Interestingly, none of the children identified their preferred country as Indonesia: most of them stated the USA, Australia, Malaysia and Myanmar, among others. As a number of children prioritised life skills and employment, integrating English into the school curriculum would encourage children to attend school.

THAILAND

According to the 1999 National Education Act (amended 2002) and the 2005 Royal Thai Government Cabinet Resolution for Unregistered Persons, all children irrespective of legal status have the right to 15 years of free basic primary and secondary education. However, research shows that the majority of children on the move are not in school.⁹⁶ This is largely due to the associated costs and fear of arrest, with only 34% of migrant children, including refugee and asylum-seeking children, attending government schools – the vast majority enrolled at elementary level.⁹⁷ Research shows that there is a ‘crisis in access to education’, with 97% of migrant children in Thai public schools only enrolled in kindergarten or primary levels and only 3% in secondary levels.⁹⁸ Civil society organisations unanimously expressed concerns regarding this issue. During the Refugee Youth Consultation, children stated that:

“Although it is free, issues such as language, cultural differences, associated high costs, and fear of being arrested and detained are barriers for us, the asylum seekers and refugee children, to access to education.”⁹⁹

Currently, there are 144 children residing in seven IDCs, five welfare shelters and five centres for

children and families.¹⁰⁰ The majority of children in official shelters, as well as those residing undocumented in the community, do not have access to public schools. However, this is slowly changing. Rohingya children living in shelters are now able to attend preparatory classes in public schools near the shelters or attend classes in migrant learning centres. A case study of good practice is the Bang Khun Tian Model, which specifically catered to migrant children in unsafe factory areas who were at risk of abuse and exploitation, and not developing socially and cognitively;¹⁰¹ the rate of student engagement increased by 75%. The model is based on three pillars of engagement – community, school and policy – and incorporates Thai language. It actively profiles children, integrates and enrolls students who are undocumented, and strengthens practical implementation of the education policy at school level, which is an extremely positive approach.

4.7 ACCESS TO HEALTH SERVICES

Article 24 of the UNCRC gives children the right to quality healthcare. Nevertheless, asylum-seeking and refugee children have limited access to healthcare services and support. Two-thirds of families experiencing health, nutrition and education barriers are from minority ethnic groups.¹⁰² According to the recent Inter-Regional Roundtable Discussion on health risks for large migration flows, the most pertinent issues include “starvation, dehydration, physical and psychological trauma, contracting communicable diseases, lack of basic sanitation and risk of contracting common water-borne diseases in overcrowded vessels and shelters”.¹⁰³

INDONESIA

In response to the Andaman Sea Crisis, in collaboration with the Indonesian government, IOM provided primary healthcare services to migrants and refugees across all shelters in Aceh.¹⁰⁴ Yet there are gaps, as stated by a representative of an international organisation:

“We have been working in the emergency medical field for a long time across the world. We know that refugees and asylum seekers, especially children, need very high quality and customised psychosocial support, which is not being provided in camp residences.”

Some of the research participants in Aceh shelters reported that “a midwife comes to visit our camp to offer some basic treatment”. Other than the need for general healthcare, there is a greater need to address mental health, which is not adequately treated. Children in camps receive some psychosocial support, but there is limited provision of formal and comprehensive psychosocial support or therapy.

MALAYSIA

Access to healthcare is challenging for asylum-seeking and refugee children in Malaysia. Only registered refugees are permitted to access public health services,¹⁰⁵ they are entitled only to a 50% discount on foreigner fees at government hospitals, and associated health costs are often not feasible. Circumstances are worse for involuntary migrant children and those seeking asylum, who do not have access to that discount. Since 2016, medical fees for non-citizens have risen by 70% as the Malaysian government has ended subsidies for foreigners.¹⁰⁶ This has made medical costs more expensive and unaffordable for refugees, asylum seekers and undocumented migrants. This situation is further exacerbated by the fact that refugees and asylum seekers have no right to work in Malaysia. A community health clinic representative questioned how “asylum seekers and refugees can afford such health costs”. However, UNHCR in Malaysia has recently collaborated with an insurance company, RHB Insurance Bhd, to develop a new health insurance scheme specifically for refugees. The Refugee Medical Insurance Scheme (Remedi) is fixed at RM164.30 (US\$40) annually per refugee; for hospitalisation and surgical cover it is RM10,000 (US\$2,400).¹⁰⁷

Due to the irregular nature of jobs undertaken by migrants and asylum seekers in informal sectors, particularly in construction, the prevalence of work-related injuries is very high. If they are injured and require medical treatment, migrants have a significant fear of arrest, detention, exploitation and harassment by law enforcement authorities. This is worse for children in IDCs, where government health screening is uncommon and ad hoc. Offers by UNHCR and NGOs to provide health support are highly regulated. As a community health provider reflected: “Detention centres are like jail. Other than the high level of malnutrition, children suffer from infectious diseases and their mental health is completely unaddressed.” Various NGO health

professionals interviewed for the research raised similar concerns:

“The general health support for asylum-seekers and refugees is inadequate. The mental health needs of refugees and asylum-seeking children are largely unaddressed. It is not only due to their lack of easy access to health care, but also a lack of mental health professionals to [give] customised care to the needs of this group of children. We were not allowed to conduct psychosocial training for the children in Detention Centres.”

THAILAND

While asylum seekers and refugees have access to affordable healthcare through Thailand’s health security system, care under the universal healthcare system is typically limited to certain government hospitals and is available only in emergency situations.¹⁰⁸ As a result, civil society organisations have found that many asylum seekers and refugees, particularly those in urban areas, cannot access public healthcare services.¹⁰⁹ In some cases, asylum seekers and refugees seeking treatment are rejected or face discrimination from public healthcare providers.¹¹⁰ Additionally, there is no Public Voluntary Health Insurance available for unregistered migrants, including refugees and asylum seekers, due to their illegal status and the lack of a legal framework to enable the Ministry of Public Health and Provincial Health Office to implement such a programme.¹¹¹ As such, many of them must depend on limited services provided by NGOs. As expressed in the statement of an unaccompanied refugee child from Myanmar:

“...We cannot avail ourselves of health support as and when we need it. It is challenging for us to get medical treatment if we are sick and need treatment or medicine especially at night.”

One civil society member respondent added:

“Asylum seekers and refugees are afraid of seeking health services due to fear of arrest and detention. Only a few NGOs offer health support for urban refugees. There is a government-sponsored health insurance scheme available in Thailand for 2,100 Baht [about US\$60]¹¹² per year for migrant adults and 365 Baht [US\$11]¹¹³ for migrant children. However, hospitals do not sell this to asylum-seekers and refugees. One of the reasons being they are already sick and it would not be profitable to sell insurance to them. Due to difficulties in communication, many

refugees do not seek health support and health professionals find it challenging to provide services due to language problems. There is also a serious need to address mental health.”

International organisations are very concerned with the psychosocial health of these children, with a number of them experiencing post-traumatic stress disorder (PTSD). Unfortunately, while a number of children experiencing symptoms of PTSD were identified, these children have not been able to access the care required. Of particular concern are the children in detention who have experienced trauma in countries of origin, on the voyage and again when arrested upon disembarkation. The majority said they had witnessed violence and death on the boats, and a large number of young boys had been beaten.¹¹⁴ According to a shelter centre manager in one of the Thai provinces:

“The IDC is a kind of prison... Children are highly malnourished, cannot walk properly, [are] inactive, and both physically and mentally sick.”

IDCs have a severe immediate and long-term impact on children’s mental health, and exacerbate previous traumas such as persecution in countries of origin, or violence, deprivation and threats while being smuggled.¹¹⁵ It is well documented that trauma can cause lasting depression and anxiety, and that lack of access to healthcare or education can stunt social and intellectual development.

4.8 MEETING BASIC NEEDS

According to Article 26 of the UNCRC, children have the right to adequate social security either directly or through their guardians. However, asylum-seeking and refugee children experience very limited provision of basic needs such as food security and adequate housing.

INDONESIA

Initially, survivors of the 2015 Andaman Sea Crisis in Aceh lived in camp-like conditions. Improvements to living conditions are evident, as a child in one of the Aceh shelters reported: “Now we do not have to sleep in tents on wet grounds any longer.” They are now accommodated in semi-permanent buildings in Aceh Province, although there have been ongoing issues from the start with electricity, water and sanitation conditions in the shelters, especially with sewage. In March 2016, 42 males were moved to a shelter that was still being constructed – there were shortcomings in accessing clean water, functioning drainage systems, usable toilets and bathing facilities.¹¹⁶ There were also 127 vulnerable individuals living in the shelters, including 11 with medical concerns, 26 requiring specialist medical care, one hospitalisation and 49 requiring maternal healthcare (pregnant women, lactating mothers and children under five years old).¹¹⁷ As of March 2016, IOM documented 63 unaccompanied children with special needs.¹¹⁸



PHOTO: SAVE THE CHILDREN

Drawing and colouring are among the activities supported by Save the Children at Phang Nga shelter in Thailand

Children's basic needs are still not being adequately met, as reflected by an interviewee from Aceh: "But we cannot eat their food." Accessing fresh food is difficult: premade packaged food is supplied by sub-contractors or prepared onsite in one of the camps. Research participants in all shelters unanimously expressed dissatisfaction with the quality of food and the fact that they were not consulted about the type of food they were given. As expressed in the following statement of one respondent:

"What can we do? We cannot eat their food. In the past the NGOs gave us money and we were able to do some shopping but now they stopped giving us money. Sometimes, we call our relatives to send some money for us so that we can somehow survive."

MALAYSIA

Asylum seekers and refugees in Malaysia live predominantly in urban areas, in privately rented low-cost housing areas, and in overcrowded conditions.¹¹⁹ As a mother of two children commented:

"My husband died in the Buddhist-Muslim conflict in Myanmar. I am a Myanmar Muslim, have a Bachelors degree in economics and a diploma in computer software. I lost my job once I got pregnant. After my husband's death it was impossible for me to live there; there was no job as a Muslim, [and] no security. My cousin in Penang advised me to come here. With the help of a smuggler I took [the] risk, survived the arduous journey and came here last year with my two little children, a girl six years and a boy 11 years old... I have not got a UNHCR card yet. In the meantime, I have been stopped by police. Here, I am living in this six by eight feet room with my two children. You cannot enter my room without being dipped by sewerage water. Yet, I am happier in this condition than what I had experienced in Myanmar."

THAILAND

Rohingya who survived the Andaman Sea Crisis are residing in a range of IDCs, government-run shelters and protection centres in the south of Thailand. IDCs are continually reported to have "wretched conditions that place children in filthy, overcrowded cells without adequate nutrition, education, or exercise space".¹²⁰ Save the Children's assessment of 34 children from the Andaman Sea Crisis who are

living in the regular shelters and centres shows that 53% are dissatisfied with their situation, including provision of food, clothes, accommodation, activity and study.¹²¹

4.9 ACCESS TO EMPLOYMENT

The International Labour Organization (ILO) Convention concerning Minimum Age for Admission to Employment states that "the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years".¹²² However, the Convention also makes exception for youth to work from age 16 on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.¹²³ Currently in Indonesia, Malaysia and Thailand, there are no provisions to allow refugees and asylum seeking people, including youths, to work or to be legally employed. As a result, asylum-seeking and refugee children, young people and adults resort to the informal sector and are exposed to hazardous and exploitative conditions. To support the elimination of child labour, it is critical to ensure that children have access to education and are attending school; however, refugee and asylum-seeking children have limited opportunities to do so.

INDONESIA

In Indonesia the age of admission to employment is set at 15 under Law No. 23 on Child Protection in 2002 (amended in 2014), and the government has put in place legal provisions with regard to admission to employment, light work and hazardous work. Nevertheless, Article 3 of the child protection law makes reference to Indonesian children. By not including refugee and asylum-seeking children in the legislation, they are made vulnerable to exploitative child labour. As a result, adolescent boys in camps in Aceh have expressed frustration, like this 16-year-old:

"We are youth; have lots of energy and strength, and would like to work to earn a living. But we are idly sitting, eating and sleeping. We have

requested the NGOs so many times to arrange some work opportunities for us but nobody pays any attention to what we need, and how we feel about our circumstances.”

MALAYSIA

Malaysia does not have any legal provision allowing refugees and asylum seekers to take up employment.¹²⁴ Moreover, under Malaysia’s Immigration Act any person who employs, houses or harbours illegal migrants is liable to arrest, prosecution, detention and financial penalties.¹²⁵ In practice, refugees and asylum seekers take up informal employment and authorities have for the most part turned a blind eye to this.¹²⁶ Yet, as irregular migrants, they are unable to seek assistance should they experience hazardous or exploitative conditions. As a 16-year-old respondent stated:

“When we are not legal, we are open to exploitation. Malaysia capitalises on our hard labour in the informal sector; they enjoy the benefit of our work that they themselves are reluctant to do such as in construction and restaurant. The informal economy of Malaysia is dependent on cheap labour of the illegal migrants.”

THAILAND

As per the Thai Immigrant Act, asylum seekers and refugees do not have the right to work. As a result, many work in the informal sector and experience various hazards and abuses due to a lack of legal protection. Although those living in refugee camps along the Thailand–Myanmar border are restricted in their movements, many refugees attempt to leave in search of work to supplement the insufficient food provided; this puts them at risk of arrest and exploitation.¹²⁷ The majority of youths residing in government-run shelters are not permitted to freely leave and re-enter the premises, hence, they are restricted in obtaining employment. An NGO representative claimed that a significant number of youths and children who escape the shelters are at risk of being recruited by smugglers or traffickers.

4.10 ACCESS TO PROTECTION

Article 19 of the UNCRC ensures the child’s right to be protected from all forms of violence, abuse and exploitation from parents or anyone else who is looking after them. Yet the experiences of children and their families, as well as the views of stakeholders, reveal that the rights to protection of refugee and asylum-seeking children (and their families), in all three countries, are limited.

In Aceh, Indonesia, the overall safety and protection mechanisms in refugee and migrant camps are weak. There is no access to Women and Children’s Help Desk, which is a humanitarian imperative, to referral pathways or to local child protection mechanisms. NGOs have raised concerns regarding gender-based violence. There have been several reports of sexual assault to which NGOs responded immediately, working together to provide appropriate assistance. According to one shelter volunteer, quite a large number of people are leaving the camp: “They escaped in big numbers; no managers, no guards, nobody responds and cares about them.” This is due to onward movement of refugees and asylum seekers to Thailand or Malaysia. Male participants also reported physical violence in one camp.

There were repeated incidences of theft in all five camps, where people lost things they had received from NGOs as donations. Respondents from the camps also reported confiscation of mobile phones on a number of occasions by law enforcement authorities. Asylum seekers are not in a position to purchase phones on their own to communicate with their families, as one respondent disclosed:

“The government thinks that if we have mobile phones then we will communicate with the smugglers or the smugglers will communicate with asylum seekers to take us to Malaysia. But the main reason we need mobile phones is to communicate with our families. Initially NGOs gave us money. Now they have stopped giving us money. Providing food is not all... we do have other needs to fulfil too.”

Like those seeking asylum in Indonesia, refugees and asylum seekers in Malaysia and Thailand also experience different forms of violence at the hands of brokers and law enforcement officials.¹²⁸ As a shelter manager in Thailand commented:

“There is an unholy relationship between brokers and police. There were examples in Thailand of some

women escaping from the Shelter Centres with the help of brokers and police, and were sexually abused by them. The news came out in the national media.”

In Malaysia, protection rules which should come with UNHCR cards are not being applied, as evidenced by a 16-year-old boy who is seeking asylum in Malaysia:

“Since we do not have legal documents in this country, we live in constant fear of arrest and detention. Despite having a UNHCR card, I experienced at least six arrests over the last year. Last time, they took my watch and mobile phone, as I did not have enough money with me while returning from work at night. Police can arrest us at any time, without any reason. They threaten to take us to the police station and then put us in detention. Sometimes they block the entire area where we, the Rohingya refugee and asylum-seeker community, live in urban settings. They set checkpoints at various entrances to arrest children and youth in order to collect extortion money. Last week, 30 boys were arrested and accused of being involved in a fight with the Malay. The local Rohingya community sought help from UNHCR and the Tzu Chi Clinic to release them from the police station before they were sent to the detention centre.”

4.11 UNACCOMPANIED AND SEPARATED CHILDREN

Of particular concern are unaccompanied and separated children. While unaccompanied children travel independently (whether voluntarily or involuntarily), separated children are those who have been unintentionally separated from their family members while on the move. Unaccompanied and separated children (UASC) are vulnerable and have specific needs, as they do not have ‘protective benefits’ from a primary caregiver or other source of protection and comfort. They are vulnerable not only due to the risks of irregular migration but also because of their “stage in development, and societal or cultural limitations on their ability to assert their rights”.¹²⁹

In this study, there were cases of unrelated members of the community looking after children who were separated, either throughout the journey or upon being arrested in the host country. As an NGO respondent reported, while this shows a fantastic sense of community, it also puts more pressure on adults who may be experiencing their own trauma.

Some adults have lost their own children prior to migrating or on the journey, and this could impede their ability to take on the additional responsibility of looking after other children. Therefore it is vital to adhere to minimum standards and appoint an interim guardian or primary caregiver to all UASC, ensuring that their basic needs are met and their rights upheld. Due to their “physical, emotional and cognitive development, children are often unable to advocate for their own rights and best interests”.¹³⁰

The lack of civil documentation from countries of origin and the challenge of accessing formal registration processes are two factors that make UASC vulnerable to law enforcement authorities.¹³¹ Despite having registered with UNHCR, unaccompanied children and young people who hold a UNHCR card are still not exempt from arrest and detention. In Malaysia, the uncertainty and constant fear among unaccompanied children is revealed in this 16-year-old unaccompanied boy’s statement:

“The police can arrest me and put me into detention at any time. When I go out for work I do not know whether I will be able to come back home safely. In absence of a family or any legal guardian, who is going to release me from jail or detention centre if they arrest me?”

Unaccompanied and separated children have the right to guardianship, legal representation, and alternative care and accommodation. While community-based solutions are preferable, UASC are usually held in IDCs together with unrelated adults, which puts them at risk of harm.

4.12 DURABLE SOLUTIONS

There are still no concrete, durable solutions for Rohingya refugees now residing in Indonesia, Thailand and Malaysia. The lead refugee agency, UNHCR, advocates globally for three durable solutions for refugees.¹³² One is voluntary repatriation, where people are helped to return to their country of origin; another is local integration in the country where people are seeking asylum. If these two options are not possible, an attempt should be made to resettle refugees in ‘a third country’ where they would have legal and physical protection, and access to civil, political, economic, social and cultural rights.¹³³ Despite being aware of the risks of irregular migration, children stated that taking this unsafe journey is often seen as preferable

to their current situation. Globally, refugees from Myanmar represented one of the largest populations of refugees, with 19,500 people benefiting from resettlement.¹³⁴ Second to the largest global humanitarian displacement in Turkey, Malaysia had the highest number of new requests for asylum, with 22,100 new claims being made in 2015.¹³⁵

Rohingya are not able to return to Myanmar, as they have no legal status. In addition, returning them would violate the principles of non-refoulement. While Bangladeshi migrants from the Andaman Sea Crisis were repatriated with the support of IOM and the Bangladeshi Embassy, the return of those from Rakhine State was not possible, as described by an interviewee:

“When our government contacted the Bangladesh embassy regarding the repatriation of recently arrived illegal migrants, we got an instant response and [offers of] support to take the Bangladeshi back. But when we contacted the Myanmar embassy, they were not responsive and commented that ‘it is not our problem, they are not our citizens, and they are Bangladeshi’. So, we cannot take any action in this regard.”

Additionally, “there is a lack of political will [for refugees] to be absorbed into the [host] community”.¹³⁶ The possibility of resettlement in a third country, UNHCR’s third option, is limited and some “refugees from Rakhine state have been waiting for over 12 years”.¹³⁷ Opportunities for resettlement are decreasing annually: “Out of 150,000 UNHCR-registered people in Malaysia, less than 5% can be resettled.”¹³⁸

Situations are more perilous for unaccompanied and separated Rohingya children. Family tracing and reunification is the number one priority. Some organisations advocate for intercountry adoption, which is contested as unaccompanied children may already have family and thus adoption may not be in their best interests. In Thailand, there is currently no systematic approach at national level to assist refugee and asylum-seeking children with family tracing and reunification, or to ensure the safe return of UASC.¹³⁹ Moreover, there are no provisions in Thai domestic legislation to reintegrate UASC into Thai society. However, there is a legal provision for intercountry adoption, which includes unaccompanied children. This is a complex situation as undocumented, stateless children are unable to obtain consent from families, nor be connected with family in other countries. In Malaysia, research participants expressed frustrations, including: “For UASC there are no legal provisions or policies in Malaysia concerning the implementation of durable solutions, and the existing Adoption Act and adoption provisions are vague.” It is evident that stronger bilateral coordination is required in the immediate and longer term to overcome this political bind that unnecessarily puts children at risk and prevents durable solutions.

5 Emerging issues and recommendations

This chapter outlines emerging issues, challenges and recommendations for governments, UN agencies, international organisations, civil society and the international community. In the absence of a coordinated approach, the response to the Andaman Sea Crisis was ad hoc, fragmented and unstructured. While some countries have ratified international human rights laws, they have not incorporated them into their domestic laws or implemented policies to protect refugees and asylum seekers. Regional approaches are vital to governing refugee policy.¹⁴⁰ Child protection mechanisms must be in place to “ensure that migration is safe, orderly, dignified and humane”.¹⁴¹ The increasing number of children who travel without a parent or guardian is a growing concern. In the Mediterranean maritime crisis, the proportion of children on the move increased from one in ten migrants in 2014 to one in three during 2015, and represented 30% of migrant deaths.¹⁴² The Economist Intelligence Unit claims that migration governance in South East Asia needs improvement in institutional capacity, migrant rights, safe and orderly migration, labour migration management, and regional and international cooperation.¹⁴³

5.1 ADDRESSING ROOT CAUSES

Communal conflicts, discrimination, violations of rights and lack of opportunities have triggered irregular migration flows of Rohingya from Rakhine State in Myanmar usually to Malaysia via Thailand and Indonesia, in the same boats as irregular migrants from Bangladesh. Trafficking and smuggling networks have facilitated these flows. Over 94,000 people – mostly Rohingya but also Bangladeshis – are believed to have crossed the Andaman Sea since early 2014, with a peak of 31,000 in the first half of 2015. Addressing the root causes is critical to finding an effective solution.

THE GOVERNMENT OF MYANMAR SHOULD:

1. Register and provide full documentation to all unregistered Rohingya children
2. Ensure that all Rohingya children born in Myanmar from now onwards are registered at birth
3. Ensure that all Rohingya children are protected from abuse and violence
4. Accord access to basic services such as healthcare and education for all Rohingya children

5.2 DEPORTATION AND NON-REFOULEMENT

Transit and destination countries violated international norms, including non-refoulement. Boats were pushed back which put asylum-seeking children at risk of deportation.¹⁴⁴ Harsh immigration strategies are used to deter unsafe migration, which makes irregular migration more dangerous. Children are not adequately screened, which places them at risk of arrest, punishment, exploitation, trafficking or debt bondage.

GOVERNMENTS IN THE REGION SHOULD:

1. Ratify, adhere to and implement human rights treaties and legal frameworks including:
 - a. Convention and Protocol Relating to the Status of Refugees
 - b. Convention on Status of Stateless Persons and Reduction of Statelessness
 - c. Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (UNCAT)
 - d. International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (CMW)
 - e. United Nations Convention against Transnational Organised Crime and Protocols:
 - i. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
 - ii. Protocol against the Smuggling of Migrants by Land, Sea and Air
2. Adhere to international obligations, including International Law of the Sea, International Convention for Safety of Life at Sea (SOLAS) and International Convention on Maritime Search and Rescue (SAR)
3. Adhere to regional commitments for disembarkation of boats and establish policies and procedures for safe disembarkation that are child-sensitive, effective, predictable and follow guidelines, ie, *A Policy Guide on Irregular Movements at Sea*
4. Develop and implement impartial comprehensive screening by trained immigration officials according to minimum international standards, using a multidisciplinary team and involving government and independent civil society experts

5.3 INDEFINITE AND ARBITRARY DETENTION

Children on the move are arbitrarily and indefinitely placed in detention. They are denied basic rights and are put in risky environments (often with unrelated adults), and are witness to traumatic incidents (violence, self-harm and suicide). According to minimum standards in child protection, it is the government's duty to give legal assistance to asylum-seeking children and victims of trafficking.¹⁴⁵ Irrespective of the conditions, detention has a "profound and negative impact on children".¹⁴⁶

HOST GOVERNMENTS SUCH AS INDONESIA, MALAYSIA AND THAILAND SHOULD:

1. Legislate for 'zero tolerance' towards detaining of children and invest in and expand child-friendly alternatives to detention
2. Immediately release all children under 18 from detention and coordinate with partners to provide alternatives to keep children and families together, outside detention or detention-like environments
3. Ensure all children have independent legal representation and guardianship particularly for unaccompanied and separated children
4. Identify all children in detention – their whereabouts, status and treatment
5. Ensure transparency, information sharing, data management and monitoring mechanisms for all children who have been detained or still being detention
6. Set up teams of front-line workers including doctors, nurses, psychosocial counsellors and protection officers to ensure children who are not yet released have access to healthcare and protection services

5.4 LEGAL STATUS AND CIVIL DOCUMENTATION

If children do not have birth certificates or civil documentation, they often cannot access certain basic rights and are likely to face discrimination. With no document to prove how old they are – or even who they are – unregistered child does not have the minimal protection that a birth certificate provides against early marriage, child labour, or detention as an adult. Without being able to document the number of children, it can be difficult to conduct research, attain funding or develop targeted interventions, policies or programmes.¹⁴⁷

THE GOVERNMENTS OF INDONESIA, MALAYSIA AND THAILAND SHOULD:

1. Register all children born in host countries at birth, and provide asylum-seeking and refugee children, especially if they have been classified as stateless, with legal status that ensures their rights to unconditional access to basic services: formal education, standardised healthcare, an adequate standard of living and work permits according to the country's minimum age for labour and legal assistance
2. Support all refugee and asylum-seeking children in their registration with UNHCR and allow them to stay in their country of residency until they are processed by UNHCR and have been resettled or voluntarily repatriated
3. Assist children to claim their rights, through information and documentation assistance such as promotion of birth registration and efforts to secure or replace lost documents¹⁴⁸

UNHCR AND GOVERNMENTS SHOULD:

1. Clarify procedures, processes and timelines to acquire documentation and adjudicate asylum claims

5.5 CHILD PROTECTION AND SECURITY

The most essential minimum standard to protect vulnerable children is “access to basic services and protection”. Children on the move in host countries lack access to protection mechanisms and security such as child protection support mechanisms and legal assistance. They are also not protected from harassment, arrest or extortion. In addition, children on the move face significant risk of being trafficked or exploited, often agreeing to debt bondage to pay for their journey.

THE GOVERNMENTS OF INDONESIA, MALAYSIA AND THAILAND SHOULD:

1. Revise national laws, mandate child safeguarding policies and provide training to prevent the arbitrary harassment, arrest and extortion of refugee and asylum-seeking children by law enforcement
2. Formulate a national coordination body to identify and administer child protection needs as well as to monitor the effective implementation of protection services
3. Train immigration officials, education providers and health providers to identify, support and refer girls at risk of child marriage, trafficking or sexual exploitation in a child-sensitive, culturally appropriate manner
4. Ensure that durable solutions for child victims of trafficking are based on Best Interests Determination processes and prevent re-trafficking
5. Establish accessible Women and Children's Help Desks in all relevant areas and camps to provide intervention and assistance
6. Strengthen cross-sectoral child protection systems through developing strong referral mechanisms in schools, hospitals and NGOs to ensure protection for girls and boys including from gender-based violence

5.6 FAMILY REUNIFICATION

Family members are often separated prior to moving or while on the move. According to international standards, unaccompanied and separated children (UASC) have the right to an independent guardian or legal representative; however, this does not always happen. There is a need to prioritise the specific needs and rights of vulnerable children.

GOVERNMENTS, UN AGENCIES AND CIVIL SOCIETIES IN INDONESIA, MALAYSIA AND THAILAND SHOULD:

1. Follow international guidelines on minimum standards for policy, response and service provision:
 - a. Inter-Agency Guidelines on UASC
 - b. Guidelines for the Alternative Care of Children
2. Conduct family tracing and share information between government and NGOs
3. Ensure that family separation is prevented and that UASC are cared for and protected¹⁴⁹
4. Monitor safety of UASC; appoint legal guardians; provide child-sensitive accommodation
5. Attempt to trace family members by international guidelines before adoption is considered¹⁵⁰
6. Ensure that “inter-country adoption is only used when tracing efforts are fruitless and where stable in-country solutions are not available”¹⁵¹
7. Ensure permanent family placement is in the child’s best interests
8. Develop bilateral and regional agreements to facilitate family reunification

5.7 EDUCATION, VOCATIONAL TRAINING AND AWARENESS RAISING

Refugee and asylum-seeking children face barriers accessing public education in host countries. Most cannot access secondary or higher education opportunities. Many young refugees also face limited opportunities in vocational and skills training.

THE GOVERNMENTS OF INDONESIA, MALAYSIA AND THAILAND SHOULD:

1. Implement an education-for-all policy to allow, at minimum, access to primary and secondary education for all children regardless of legal status
2. Ensure that no refugee and asylum-seeking child is out of school for more than one month
3. Develop inclusive policies at local, provincial and national levels to support teachers to respond to the needs of students from diverse backgrounds and meet the needs of all children through age-appropriate and relevant curricula
4. Simplify public school enrolment processes for children on the move and educate children and their parents on how to register for schools
5. Provide sexual and reproductive education to children, including arranged marriage and the risks of unsafe migration
6. Expand vocational, language and life skills training to increase employment opportunities for young refugees
7. Create awareness around the value of education for children and their families, in particular for young girls

5.8 MENTAL WELLBEING AND HEALTH

Children on the move are continuing to experience significant barriers accessing basic healthcare and psychosocial care in addition to their previous experiences of exclusion, trauma and discrimination.¹⁵² As well as seeking asylum, children on the move need urgent medical and psychological attention.¹⁵³ Children who have experienced stressful situations have strong reactions including sleeping problems, nightmares, withdrawal, problems concentrating and guilt. Research shows that discrimination, exclusion and undignified treatment have negative implications and can lead to long-term psychological damage: “Internalising inequality, believing they are inherently ‘worth less’ than others.”¹⁵⁴

THE GOVERNMENTS OF INDONESIA, MALAYSIA AND THAILAND SHOULD:

1. Provide free healthcare to all children on the move including access to hospitals, insurance, medicine and counselling
2. Coordinate with NGOs, schools, IDCs and shelter/camp managers to provide hospital referrals and provide interpreters where required
3. Ensure that psychosocial support and specialised counselling are provided to vulnerable groups who may be traumatised
4. Allow psychiatrists, psychologists, counsellors and medical practitioners to regularly visit IDCs and speak with refugees experiencing post-traumatic stress disorder and anxiety

5.9 REGIONAL PROTECTION MECHANISMS

Regional strategies are needed to strengthen cooperation, collaboration and monitoring mechanisms among governments and other actors. The main challenge with regional mechanisms is the lack of political will and the inability to prioritise and coordinate responses to sensitive issues affecting children on the move in their region. At the moment, there are no effective regional human rights mechanisms or cross-border partnerships to effectively support children on the move.

RECOMMENDATIONS FOR THE MEMBER STATES OF ASEAN AND BALI PROCESS TO:

1. Establish a regional protection framework for asylum seekers and refugees and fulfil commitments to provide protection to the most vulnerable groups of migrants, asylum seekers and refugees, particularly children, under regional frameworks such as March 2016 Bali Process Ministerial Declaration
2. Mainstream child protection for all children in regional frameworks for cross-border irregular migration, and ensure they are child-sensitive
3. Develop, implement, and monitor coordinated search and rescue operations in the Bay of Bengal and Andaman Sea, with procedures for safe, predictable and protection-sensitive disembarkation
4. Strengthen human rights mechanisms with practical measures such as developing independent regional mechanisms for information sharing and accountability
5. Develop an independent human rights body to invite and receive complaints from independent sources; challenge and investigate government reports; and proactively address of rights violations¹⁵⁵
6. Develop effective and coordinated measures to combat trafficking and protect people from traffickers and smugglers. Ensure that any action against smugglers and traffickers is addressed through law enforcement measures, is governed by international human rights law and standards, and does not endanger the lives of refugees and migrants at sea

7. Strengthen and expand collaboration with NGOs towards the development of joint initiatives aimed at protecting and promoting the rights of migrants, asylum seekers, refugees and victims of trafficking, including children
8. Eliminate the practice of child immigration detention through the adoption of adequate laws and policies and through the development and implementation of a comprehensive range of child-sensitive alternatives to detention
9. Conduct thematic research on pertinent issues in the ASEAN region including migration

FOR THE JAKARTA DECLARATION TO:

1. Develop a secretariat to coordinate inter-ministerial initiatives and regular meetings with clear agendas and documentation of outcomes
2. Realign strategy to ensure protection first and foremost, in addition to security
3. Develop measures for contingency planning for crises, and implementation of agreements

5.10 REGIONAL AND INTERNATIONAL SUPPORT

There are significant gaps in technical capacity, funding and reporting of refugee issues in the media.

DONORS, CORPORATIONS, UN AGENCIES, CIVIL SOCIETIES AND PARTNERS SHOULD:

1. Develop coordinated strategies for advocacy in:
 - developing, changing, accommodating or enacting new policies
 - recognising refugees and or asylum-seekers as legal entities
 - freedom from arbitrary arrest, detention and deportation
 - alternatives to detention
 - freedom from refoulement
 - granting the right to a fair trial and access to free legal assistance
 - guaranteeing the rights of trafficking survivors through access to appropriate screening, services and necessary protection, as well as punishing perpetrators
2. Increase funding to implement child-centred systems and programmes for children on the move in Asia
3. Invest in research to generate evidence on triggers and impacts of migration in Asia and successful measures to better protect children on the move in countries of origin, transit and destination
4. Engage the private sector to take ownership of and support initiatives such as family tracing through smartphone applications, business initiatives and technology
5. Facilitate an international, regional and national summit on the regional migration crisis for partners, donors and the private sector
6. Engage with the international community and governments to increase the number of resettlement places
7. Provide training for media representatives in appropriate reporting on vulnerable groups, ensuring that language is framed positively to prevent xenophobia and protect refugees, asylum-seeking people and victims of trafficking

Annex: Regional mechanisms

This section presents an overview of existing regional mechanisms and frameworks relating to the protection of the rights of refugees and people seeking asylum in South East Asia. These include: the Association of Southeast Asian Nations (ASEAN), the Bali process on People Smuggling, Trafficking in Persons and related Transnational Crime (Bali Process), the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT) and

the Jakarta Declaration on Addressing Irregular Movement of Persons (Jakarta Declaration). There were regional meetings to discuss irregular migration during and after the Crisis, including the Special Meeting on Irregular Migration in the Indian Ocean. This section will review the commitments of these mechanisms, and identify how the protection of rights of refugees and those seeking asylum in South East Asia can be improved.

ASIA PACIFIC REGIONAL MECHANISMS AND MEMBERSHIP

Framework	Bangladesh	Myanmar	Indonesia	Thailand	Malaysia
Bali Process member	✓	✓	✓	✓	✓
International Organization for Migration member	✓	✓	Observer	✓	X
International Maritime Organization member	✓	✓	✓	✓	✓
ASEAN member state	✓	✓	✓	✓	✓
COMMIT process	X	✓	✓	✓	X
Jakarta Declaration on Addressing Irregular Movement of Persons (2013)	✓	✓	✓	✓	✓

✓ = Membership to Regional Mechanism X = Not member of Mechanism

MARITIME INTERNATIONAL FRAMEWORKS

Year	Convention	Bangladesh	Myanmar	Indonesia	Thailand	Malaysia
1974	SOLAS Convention (<i>International convention for safety of life at sea</i>)	X	✓	✓	✓	✓
1978	SOLAS Protocol – Amendments	X	✓	✓	X	✓
1988	SOLAS Protocol – Further Amendments	✓	X	X	X	✓
1979	SAR Convention (<i>International convention on maritime search and rescue</i>)	✓	X	✓	X	X
2000	United Nations Convention against Transnational Organised Crime		✓	✓	✓	✓
2000	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	X	✓	✓	✓	✓
2004	Protocol against the Smuggling of Migrants by Land, Sea and Air	X	✓	✓	✓	X

✓ = Ratified protocol/convention X = Not ratified

1 ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN), 1967

ASEAN was established in 1967 and has ten member states, namely Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Vietnam, Lao PDR, Myanmar and Cambodia. ASEAN has a number of frameworks to protect the rights of asylum seekers, refugees and involuntary migrants. Many of these frameworks have been weakened by ASEAN's strict adherence to its general working principles of respecting state sovereignty, non-interference in the internal affairs of member states, and consultation and consensus in resolving issues that are enshrined in the ASEAN Charter. To recognise the refugee status of a group, the persecution of the state concerned must be acknowledged, which directly conflicts with their principles. To illustrate these challenges, for instance, in 2013 the Brunei representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Chair of the AICHR attempted to raise the human rights violations of Rohingya in Rakhine State as a discussion point. This was opposed by some representatives arguing it was an internal issue that should be addressed at national level.¹⁵⁶ This shows that ASEAN principles of sovereignty and non-interference in the internal affairs of member states weaken the potential to uphold human rights. However, given the recent developments in Myanmar this may change.

2 ASEAN CONVENTION AGAINST TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN (ACTIP), 2015

A significant milestone in the history of ASEAN is the adoption of the 2015 ASEAN Convention Against Trafficking in Persons, especially Women and Children (ACTIP).¹⁵⁷ This legal document represents the political commitment of ASEAN states to address the gravity of trafficking issues in the region. Thailand ratified the ACTIP in July 2016, following Cambodia and Singapore, which brings them closer to 'entry into force', a point when six member states successfully ratify the agreement.¹⁵⁸ The agreement aims to ensure the rights of the victims are protected by establishing

policies, programmes, educational, social and cultural measures to prevent and combat trafficking, especially of women and children, as well as ensuring that traffickers are punished. It also stresses the importance of considering the age, gender, special needs and rights of vulnerable groups such as children. ASEAN has now established a legal framework to prevent trafficking in persons, protect victims and prosecute perpetrators in the region.¹⁵⁹ Nevertheless, ASEAN member states need to immediately implement their regional commitments at domestic level in order to better protect the needs and rights of irregular migrants who are often vulnerable to risks of trafficking.

3 ASEAN COMMISSION ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN AND CHILDREN (ACWC), 2010

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) is an intergovernmental consultative body formally launched to ensure equitable development for women and children.¹⁶⁰ ACWC's Work Plan 2012–2016 has a focus on the promotion and protection of child migrants through its integrative child protection system covering victims of abuse and neglect, trafficked children, child labourers, children affected by statelessness, undocumented migrant children, children in the juvenile justice system, and children affected by HIV and AIDS, natural disasters and conflicts.¹⁶¹ However, there is no reference to child refugees and asylum seekers, nor to unaccompanied and separated children.¹⁶² ACWC is mandated to "advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage ASEAN Member States to improve their situation", which should include children on the move.

ACWC's protection mandate is constrained by the principles of non-interference in the internal affairs of member states and delayed by the principles of consultation and consensus.¹⁶³ The 2010 Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children also reaffirms the need to strengthen the ability of ASEAN member states to fulfil their commitments to CEDAW and the UNCRC.¹⁶⁴

4 ASEAN DECLARATION ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF MIGRANT WORKERS (ADRMW), 2007

In 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ADRMW). In same year, ASEAN also set up the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). The rights-based approach to the ADRMW Declaration recognises “the sovereignty of states in determining their migration policy relating to migrant workers”. A truly integrated labour market requires a unification of laws, regulations and labour-related institutions, yet there is a lack of regional labour policies and protection for irregular workers and migrant workers’ rights.¹⁶⁵

5 ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR), 2009

Established in 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) is an intergovernmental, consultative body.¹⁶⁶ It was never intended to be an independent watchdog.¹⁶⁷ Its primary function is to promote and protect human rights in the ASEAN region.¹⁶⁸ AICHR is mandated to protect all groups and populations within the ASEAN region, including labour and migrant workers, which should include irregular migrants and those seeking asylum.¹⁶⁹ It also serves as an advisory body to act as a bridge between ASEAN and the UN.¹⁷⁰ AICHR is guided by the principle of “respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States”, “the principle of non-interference in the internal affairs of ASEAN Member States”, and “the right of every state to lead its affairs free from external interference, subversion or coercion”. Consequently, AICHR does not accept petitions or communications about violations of human rights against member states from individuals, states, NGOs or civil society members. As such, it is unlike other regional bodies such as the Council of Europe Commissioner for Human Rights and the Inter-American Commission of Human Rights.

6 ASEAN HUMAN RIGHTS DECLARATION (AHRD), 2012

The adoption of the ASEAN Human Rights Declaration (AHRD) in 2012 was an important step for ASEAN.¹⁷¹ Since its inception, the most notable activity of the ASEAN Intergovernmental Commission of Human Rights (AICHR) is the adoption of the AHRD, which mostly follows the content of the Universal Declaration of Human Rights. The following general principles are symbolic for refugees, asylum-seekers and stateless people: “Everyone has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements” (Article 16), and “Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality” (Article 18).

However, the nature of protection for asylum and right to a nationality is provisional to ASEAN member states’ domestic laws, which generally consider refugee and asylum seekers as illegal and deny citizenship to stateless people. Nevertheless, Article 34 under economic, social and cultural rights of the AHRD offers potential for children on the move to be entitled to universal human rights provisions considering that “States may determine the extent to which they would guarantee economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organisation and resources of their respective national economies.” Now it is the responsibility of the AICHR to use its discretion to apply necessary measures to ensure respective ASEAN member states conform to AHRD commitments and respect the rights of irregular and involuntary migrants.¹⁷² There is potential in the ASEAN human rights regimes to creatively and liberally translate necessary provisions into protection measures to better protect the rights of asylum seekers, refugees and irregular migrants, including children on the move.

7 ASEAN REGIONAL PLAN OF ACTION ON ELIMINATION OF VIOLENCE AGAINST CHILDREN, 2015

The ASEAN Regional Plan of Action on Elimination of Violence against Children was adopted by ASEAN in November 2015.¹⁷³ It aims to eliminate violence against children in the ASEAN region by institutionalising policies and ensuring effective protection services that are supported by national legal frameworks. The plan expects members to adopt actions in areas such as protection, response, legal reform, capacity building and data collection. It also specifies actions to ensure management, monitoring, evaluation, partnership, collaboration and communication. Members are all expected to promote the implementation of international instruments. The plan also specifically aims to support children who are “potentially vulnerable or exposed to violence”, including those unaccompanied, not registered at birth, living on the street or homeless, and children in the justice system. It also looks at child labourers or those in forced marriage and “children living in emergencies”.¹⁷⁴ This is progressive with participatory, child-centred, rights-based and gender-sensitive guiding principles, and a multisectoral and multidisciplinary approach.

8 BALI PROCESS ON PEOPLE SMUGGLING, TRAFFICKING IN PERSONS AND RELATED TRANSNATIONAL CRIME, 2002

The Bali Process is informal and non-binding, comprising 42 member states, including all ten ASEAN nations, three international organisations (UNHCR, IOM and UNODC), 17 countries with observer status (UK, Italy and EC) and ten international agencies who are permitted to observe.¹⁷⁵ While the Bali Process provides a valuable regional platform to share and promote dialogue among parties on sensitive issues such as transnational crime and migrant smuggling in the Asia-Pacific region, it still prioritises national sovereignty. Discussions on refugee protection could be considered a great step forward, considering the differing cultural and political contexts.

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime was founded in 2002 to address the issues of people smuggling and trafficking, to identify and prevent irregular movements and to support countries to adopt best practices regarding asylum management, through the implementation of an inclusive non-binding regional cooperation framework to reduce movements across the Asia Pacific region.¹⁷⁶ The second impetus of the Bali Process came from the bilateral Regional Cooperation Model (RCM) between the co-chairs Australia and Indonesia to support refugees and asylum seekers.¹⁷⁷ Therefore, the Bali Process is, on the one hand, a bilateral process between Australia and Indonesia and, on the other hand, a multilateral regional process led by the Australian government to enhance regional cooperation against people smuggling and trafficking in persons.¹⁷⁸ A major accomplishment of the Bali Process is that it includes one of the largest consultative processes in the world, offering a platform for sharing ideas and using ‘soft diplomacy’ to approach other parties.¹⁷⁹ It is arguable whether the meetings have yielded expected outcomes in addressing the smuggling problem.¹⁸⁰ Notable accomplishments include Model Laws to combat people smuggling, where an Ad Hoc Expert Group aimed to harmonise national laws regarding minimum standards in the region.¹⁸¹ Also, guidelines were established for cooperation, including streamlining verification and document examination procedures in the region, especially in countries such as Bangladesh.¹⁸²

The Regional Cooperation Framework (RCF) is another notable accomplishment of the Bali Process, endorsed in the fourth Regional Ministerial Conference in 2011. UNHCR presented a proposal that contains “a set of common understandings for dealing with irregular and involuntary movement in a protection-sensitive manner”. Many states in the Asia-Pacific region are not a party to the Palermo Convention or the Smuggling Protocol and lack domestic regulations on people smuggling.¹⁸³ Despite being adopted, the final agreed arrangements emphasise border control and migration management.¹⁸⁴ Success is dependent on pending multilateral arrangements and the non-binding nature, and on the political will of respective member states.¹⁸⁵

In March 2016, a Ministerial Declaration on irregular migration was adopted at the 6th Regional Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and related Transnational Crime and focused on the irregular movements of people and forced migration.¹⁸⁶ It encourages states to expand safe, affordable and legal migration pathways, including employment for refugees, protection to the most vulnerable and identification of alternatives to immigration detention. A consultation mechanism was also established during the conference giving co-chairs authority to convene ad hoc meetings to find solutions in times of crisis.

9 COORDINATED MEKONG MINISTERIAL INITIATIVE AGAINST HUMAN TRAFFICKING (COMMIT), 2004

The Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT), established in 2004, is a government-led process to combat trafficking. Membership is made up of six countries in the Greater Mekong Sub-region (GMS): Cambodia, China, Laos, Myanmar, Thailand and Vietnam. UN-ACT (UN Action for Cooperation against Trafficking in Persons) currently enhances the capacity of member states governance and coordination.¹⁸⁷ The COMMIT process is consultative and collaborative, and involves key stakeholders such as civil society, victim support agencies, international organisations and trafficked persons, including children and young people. Yet gaps exist, including emphasising national action and bilateral partnerships rather than regional ones, and prioritising prosecution and the criminal justice element over victim support or preventive strategies such as reducing economic, social and legal vulnerabilities or introducing labour laws.¹⁸⁸

10 JAKARTA DECLARATION ON ADDRESSING IRREGULAR MOVEMENT OF PERSONS, 2013

This declaration was adopted in 2013 by 13 countries. It identifies four distinct areas of committed cooperation and coordination to address the irregular movement of persons: prevention, early detection, protection and prosecution.¹⁸⁹ The Indonesian government and UNHCR jointly organised an international workshop on the ‘Protection of Irregular Movements of Persons at Sea’ in 2014, which was attended by all 13 countries and by representatives from Iraq and Fiji, as well as the UNODC as observers.¹⁹⁰ It aimed to follow up the implementation of the Jakarta Declaration focusing on the four areas, looking specifically at protection and practical ways to implement a protective-sensitive migration system. One of the challenges was identifying safe places for disembarkation and finding solutions for those rescued. Another area was to find ways to prevent loss of life at sea. It also stressed the significance of cooperation and coordination at all levels. The meeting also discussed the post-rescue challenges of identifying solutions for victims,¹⁹¹ pooling resources to manage irregular migration, and ensuring victim protection such as full protection of the rights of people rescued and intercepted at sea. Regional agreements, coordination and cooperation were discussed among member countries. Following the meeting, recommendations were shared with the Bali Process Steering Group and Ad Hoc Group to strengthen regional initiatives for a regional response to irregular movement of people in the region.

The Jakarta Declaration has achieved unanimous endorsement by the most affected countries – countries of origin, transit and destination. It has also gained strong support from other key actors, such as the UNHCR and the IOM.¹⁹² The declaration recognises asylum seekers and refugees as distinct groups in dealing with the irregular movement of people. It focuses on addressing the root causes of irregular or involuntary movement and makes a commitment to develop strategies and programmes. The declaration’s protection-sensitive regional approach offers the potential to address irregular movement issues in line with the Global Refugee

Policy. Furthermore, by recognising the significance of sharing responsibilities and taking collective duties in tackling the challenges of irregular migrant issues, the declaration appeals for greater collaboration and coordination in the region. Finally, by taking a four-pillar and protection-sensitive regional approach, the declaration goes beyond the narrow definition of addressing irregular movement in terms of only border control and national security.

11 ANDAMAN SEA CRISIS: SPECIAL MEETINGS ON IRREGULAR MIGRATION

A number of ministerial meetings were held throughout the region in response to the 2015 Andaman Sea Crisis. The five countries directly affected – Bangladesh, Indonesia, Malaysia, Myanmar and Thailand – along with 12 other countries in the region, participated in a Special Meeting on Irregular Migration in the Indian Ocean (Bangkok Special Meeting) on 29 May 2015. The governments of Indonesia, Malaysia and Thailand issued a joint statement outlining 17 concrete proposals in the following three areas:

- providing immediate response and protection to stranded migrants
- preventing irregular migration, human smuggling and trafficking
- addressing the root causes of such migration in countries of origin.¹⁹³

This included expanding their search and rescue operations, exploring predicted disembarkation and reception options and ensuring that the IOM and UNHCR had access to migrants. Actions include identifying protection needs through effective screening processes, protecting vulnerable groups and developing information-sharing mechanisms to support future search and rescue operations. Other actions include establishing a joint task force to support resettlement and mobilising resources of the international community to support emergency responses. In the short term, they outlined ways to protect people stranded at sea through a regional response.

In order to prevent irregular migration and transnational crime, governments pledged to:

- utilise international tools and frameworks (protocols of the UN Convention against Transnational Organised Crime)

- strengthen national law enforcement to cooperate with investigations, mutual legal assistance and cooperation
- identify national focal points to coordinate and exchange information to enable early detection and facilitate prompt response.

Other targeted actions include:

- strengthening operations, curbing transnational criminal networks
- establishing an investigation taskforce
- strengthening data collection, analysis and information sharing on irregular maritime migration with UNHCR, UNODC and IOM.

Actions to protect at-risk communities in countries of origin include:

- ensuring transparent recruitment and employment processes
- engaging the private sector
- developing regional multimedia communication campaigns to counter trafficking
- deterring irregular maritime migration
- communicating with diaspora communities.

It is also important to enhance legal, affordable and safe migration channels by promoting opportunities through national mechanisms and bilateral employment agreements.

The third main priority was to address root causes, improve livelihoods and enhance the capacity of local communities in at-risk areas. Actions include providing economic incentives, promoting trade and development assistance, providing skills training, enhancing security and promoting full respect for human rights and basic services. The meeting prioritised the security aspect of the transit and destination countries. Although it is important that unsafe channels are monitored, access to other channels should be available to those who are seeking asylum, to stateless people or to those who may not have documentation. The outcome of these commitments is indeterminate and no significant progress has been made in implementing them. Moreover, after the Second Special Meeting on Irregular Migration in the Indian Ocean in December 2015, actors could not agree on an agenda for action. The meeting was perceived as a 'pre-emptive platform' for immediate, tangible and sustainable measures against human trafficking regionally. To translate commitments into concrete actions, it is essential to ensure national, bilateral and regional cooperation between governments and partners.

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THE JOURNEY OF REFUGEE AND ASYLUM-SEEKING CHILDREN ACROSS THE ANDAMAN SEA

Children on the move in South East Asia

This report reviews the escalating maritime movements of mixed migrants, focusing on refugee and asylum-seeking children across South East Asia and their experiences in countries of origin, transit and destination. One particular journey that has resulted in 70% of all migrant deaths in the South East Asia region is through the Andaman Sea. This begins in Myanmar and Bangladesh where mixed migrants cross the Bay of Bengal and the Andaman Sea to Thailand, where they often continue to destination countries such as Malaysia and Australia.

In May 2015, smugglers abandoned desperate refugees and migrants in the ocean when the Thai and Malaysian governments were investigating trafficking syndicates. As a deterrent, Thailand, Indonesia and Malaysia pushed boats back out to sea, which resulted in a humanitarian crisis. Up to 8,000 people were stranded without food or water for weeks, with an estimated 550 dying in 2015 before reaching land, mostly from starvation, dehydration, disease, drowning or abuse by people smugglers. International pressure resulted in the Philippines first offering assistance, followed by Indonesia and Malaysia. People were subsequently allowed to disembark and were offered varying degrees of support for up to one year, provided the international community took the lead. Although the number of movements across the Andaman Sea has declined in the first half of 2016, this report illustrates the challenges children continue to face while on the move in South East Asia.