

Refugees and Maritime Movement in Southeast Asia 2015 - Rohingya, Bangladeshi...

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Refugees in Southeast Asia live in legal limbo and are subject to harassment, arrest, and detention. Especially Rohingya refugees are in indefinite detention and have been forgotten by the international media.

In May and June 2015, the Southeast Asia region experienced a sudden refugee “crisis” when boats of Rohingya refugees and Bangladeshi migrants became stranded in the Andaman Sea. Governments in the region actively engaged in pushback and what was referred to as “maritime ping pong” by human rights groups.[i] In Malaysia, survivors that had been able to disembark were detained in immigration detention centres – they have been held in these centres until today, with limited access being given to UN agencies and NGOs. In Indonesia, the central government had initially taken the position that they would provide assistance at sea if they came across the stranded migrant boats, but they would not allow people to disembark, as it would be a violation of Indonesian law.

However, on May 10, 15, and 20, fishermen from Aceh province rescued three boats and brought them ashore in the north Aceh (Aceh Utara) district, the Langsa municipality, and the east Aceh (Aceh Timur) district, in contravention to national government policy and warnings from the Navy. Thailand, on the other hand, continued its hardline policy and did not allow any boats to disembark on their territory.

On May 20, the three governments held a meeting in Putrajaya, Malaysia, at which the Foreign Ministers of Malaysia, Indonesia, and Thailand agreed on interim measures to tackle the boat crisis, including conducting rescues, allowing disembarkation, as well as providing humanitarian assistance and temporary shelter for up to one year while the international community finds resettlement or repatriation solutions. On May 29, the government of Thailand aimed to tackle the crisis and convened a large summit on “Irregular Migration in the Indian Ocean”. In July, the Association of Southeast Asian Nations (ASEAN) also held an extraordinary ministerial meeting on transnational crime, during which the crisis was discussed and commitments to establish a task force and a humanitarian fund were made.

Although these pledges were welcomed, no concrete progress has been made in advancing the recommendations that were made at the May 29 meeting. By the time the three governments had agreed to conduct search-and-rescue missions and allow disembarkation, there were no more boats at sea. This effectively means that the only search-and-rescue missions conducted were those by the Aceh fishermen. It is also troubling that the Malaysian and Thai governments consider the detainment of refugees in immigration detention conditions to qualify as having provided “temporary shelters”. Lastly, there are also grave concerns about what will happen after the one-year timeframe, as resettlement will only apply to a small number of refugees.

The events unfolded in the context of a crackdown on human trafficking in Thailand. Since Thailand has been downgraded by the US State Department's "Trafficking in Persons" report – from Tier 2 to Tier 3 – superficial efforts have been put into place to combat trafficking and people smuggling. Previously, Rohingya refugees and Bangladeshi migrants who had managed to reach the coast of Thailand by boat were smuggled and trafficked to Malaysia or held in jungle camps until ransoms were paid. Following the discovery of mass graves within suspected trafficking camps on the border in April and May 2015, Thailand and Malaysia tightened its border enforcement and prevented the entry of refugees arriving by boat. Unable to disembark in Thailand or Malaysia, human traffickers abandoned boats carrying hundreds of Rohingya asylum seekers and Bangladeshi migrants at sea in May 2015. At the same time, the discovery of the mass graves highlighted the inhumane conditions and brutality of traffickers and smugglers – a cruel business model that has been going on for many years and with the active involvement of authorities.

The media had mostly reported on the events in May and June as a "crisis", but in fact it is not a recent crisis and it fails to acknowledge that Rohingya refugees have been fleeing Myanmar for many years. Back in 2012, there were 140,000 people who were forced to leave their homes due to violence in the state of Rakhine.[ii] According to the United Nations High Commissioner for Refugees (UNHCR), 54,000 people undertook irregular journeys by boat in 2014.[iii] Although the numbers might have skyrocketed in 2015, the statistics above highlight that this should not be referred to as a recent crisis. The 1982 citizenship law of Myanmar denies equal access to citizenship for Rohingya refugees and has rendered many of them stateless – the Rohingya people have been subject to discrimination and systematic persecution for decades, leading to an increased outflow into other Southeast Asian countries. Recently, one of the rights group called for the UN to conduct an independent investigation into genocide,[iv] pointing to the severe forms of persecution that the Rohingya people experience.

Despite all of this, ASEAN countries have failed to address the situation inside Myanmar and also across the region. Like other regions, the ASEAN region is also characterised by mixed migration, and in reality the boundaries between forced and economic migration are very difficult to define and often overlap. Patterns of migration are usually mixed, with refugees and migrants using the same routes of migration, which are mostly irregular. Providing protection to such diverse migratory populations provides obvious challenges. The example of Rohingya refugees and Bangladeshi migrants using the same mode of travel on unworthy sea vessels is an illustration of that. Adding further complexity in this context is the lack of a legal framework in the region. Southeast Asian countries, with the exception of Cambodia and the Philippines, have not signed the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, nor do they have a national legal framework in place.

In countries such as Thailand, Malaysia, and Indonesia, this means that refugees are considered to be "illegal" and do not have any legal status. This means that they live in legal limbo and are subject to harassment, arrest, and detention – detainees include children, women, the elderly, and the sick. With limited access to basic rights and with the limited durable solutions available to refugees, they might be stuck in places for years without any protection available during that time. Although the Indonesian government has not signed the Refugee Convention, since 2011 there have been efforts to develop a Presidential Regulation on Handling Refugees and Asylum Seekers. The Andaman Sea crisis has strengthened Indonesia's commitment to revise and finalise the draft and have it signed by the president. Currently, in spite of the lack of a domestic legal framework that recognises asylum seekers and refugees, Indonesia does make a distinction between them and has been cooperative with the UNHCR in trying to ensure that measures for enhancing protection for this population are in place. The complex bureaucracy and decentralised nature of the Indonesian government, however, adds to the complications of implementing and coordinating an effective response to

manage refugees and asylum seekers, including on budgetary matters and roles and responsibilities at different levels of government.

Compared to other regions, Southeast Asia also does not have any regional mechanisms in place to manage refugee flows effectively or to provide protection for those in need of it. At the ASEAN level, regional cooperation is compromised by the principle of “non-interference” in the internal affairs of other states – refugee outflows, however, can never be an “internal” issue only, as it impacts an entire region. Although the ASEAN Declaration of Human Rights was adopted in 2012, the protection language is very weak and coupled with a lack of political will and political sensitivity around refugee issues. Discussions on regional cooperation have, to date, focussed on combating people smuggling and trafficking – the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) is one example that has failed to look at the protection elements of addressing regional cooperation.

Furthermore, states in the region continue to look at the issue through a border control and national security lens. In the absence of or inadequacy of safe and legal migration channels, people smugglers and traffickers are provided with fertile ground to exploit people desperate to flee persecution and poverty. States fail to recognise the positive role migration could play and should look increasingly at providing safe labour migration channels – labour that is needed in Thailand and Malaysia anyways. Furthermore, states have failed to address the root causes that have created the desperation to leave in the first place. In this context, what is needed is a solution that looks beyond combating trafficking and people smuggling, which is merely a symptom of a much larger problem. States need to recognise that the root causes of Rohingya fleeing Myanmar are complex and multi-dimensional, and any approach needs to take this into account.

Comprehensive regional cooperation needs to concentrate on prevention and protection – providing protection is the most effective way to combat trafficking. Although ASEAN governments came together in May and July 2015 on a regional level and put forward recommendations, much more needs to happen in terms of following up on these recommendations and moving forward with clear action and strong political will.

Lastly, the focus also needs to be on hosting countries in the ASEAN region – in Thailand and Malaysia, Rohingya refugees remain in indefinite detention and have been forgotten by the international media. Although regional cooperation is one aspect that can lead to protection, effective protection always starts on the national level with effective policies and laws.

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[i] Human Rights Watch, *These Are People Floating Around, Waiting to Die* (New York, Human Rights Watch: 2015); see: <https://www.hrw.org/news/2015/05/20/these-are-people-floating-around-waiting-die> (accessed 13 November 2015).

[ii] UNHCR, *2015 UNHCR Country Operation Profiles – Myanmar* (New York, UNHCR: 2015); see: <http://www.unhcr.org/pages/49e4877d6.html> (accessed 13 November 2015).

[iii] UNHCR, *Southeast Asia, Irregular Maritime Movements* (New York, UNHCR: 2014); see: <http://www.unhcr.org/53f1c5fc9.html> (accessed 27 June 2015).

[iv] Fortify Rights, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State?* (Switzerland: 2015); see: http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf

(accessed 10 November 2015).

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* "IRefugees and Maritime Movement in Southeast Asia 2015". From the Heinrich Böll Stiftung website. 23. Nov. 2015:

<https://www.boell.de/en/2015/11/23/refugees-and-maritime-movement-southeast-asia-2015>