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# Rohingya in Indonesia, Malaysia and Thailand

## Refugee protection, human smuggling and trafficking

## Protecting Rohingya Refugees in Asia

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

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

For more information on PRRiA, please visit: <https://drc.ngo/our-work/resources/protecting-rohingya-refugees-in-asia/>

## About this paper

This briefing paper highlights the key findings from the Research Report, "Refugee Protection, Human Smuggling, and Trafficking in Bangladesh and Southeast Asia". The research aims to assess the risks and needs of Rohingya refugees in Bangladesh and Southeast Asia across three thematic domains, with particular focus on the national contexts of Thailand, Malaysia, and Indonesia. The three domains are: protection; human trafficking; and human smuggling. The full report is accessible here: <https://mixedmigration.org/resource/refugee-protection-smuggling-trafficking/>

Rohingya are exposed to in Indonesia, as well as Malaysia and Thailand in the absence of legal identity recognition and protection.

Indonesia, Malaysia and Thailand are not signatories to the 1951 Refugee Convention and its 1967 Protocol. All three countries have diverse national policies on undocumented migrants and refugees and human rights frameworks; some support the needs of Rohingya, while others create and reinforce barriers to protection. Understanding the protection policy landscape in Indonesia, Malaysia and Thailand, and the intersection between national anti-smuggling and anti-trafficking laws, mechanisms, and frameworks is thus crucial to tackling protection issues of Rohingya migrating to and living in these three countries.

## Introduction

As of June 2020, over 1.6 million Rohingya have been displaced from Myanmar to countries in the Asia and the Pacific region.<sup>1</sup> The vast majority are in Bangladesh (954,707)<sup>2</sup> and Malaysia (106,500) with smaller (registered) numbers in Indonesia (902), and Thailand (470).<sup>3</sup> Protection needs of Rohingya increase while en route to destination countries. 4Mi data collected by the Mixed Migration Centre (MMC) in 2022 found that Rohingya en route to Indonesia are most exposed to protection risks such as physical violence, injury or ill-health from harsh conditions, and bribery or extortion.<sup>4</sup> Risks associated with being arrested, smuggled, and trafficked compound the vulnerabilities

For this purpose, MMC and its partners under the PRRiA project undertook a research study titled "Refugee Protection, Human Smuggling, and Trafficking in Bangladesh and Southeast Asia".<sup>5</sup> The research sought to assess risks and needs of Rohingya across three thematic domains: protection, human trafficking and migrant smuggling, with a particular focus on the national contexts of Indonesia, Malaysia, and Thailand. This brief highlights key findings from the research.

1 UNHCR (2021) [The Displaced and Stateless of Myanmar in the Asia-Pacific Region](#).

2 Data as of 31 January 2023 - [Joint Government of Bangladesh - UNHCR Population Factsheet as of January 2023](#).

3 According to [UNHCR - Figures at a glance](#), there were 106,500 Rohingya in Malaysia as of 31 Jan 2023. There is no publicly available data on the number of Rohingya in Indonesia and Thailand. [Jakarta Post](#) (2022) reported 902 Rohingya in Indonesia as of June 2022, and [Human Rights Watch](#) reported in June 2022 that there were 470 Rohingya detained in IDCs in Thailand.

4 Mixed Migration Centre (2022) [Journeys to Indonesia for Rohingya refugees: Routes, risks, assistance and needs](#).

5 See the full research report here: Danish Refugee Council (2023) [Refugee protection, human smuggling, and trafficking in Bangladesh and Southeast Asia](#).

# Research methodology

The qualitative research was conducted between June and September 2022. The research team reviewed 255 secondary documentation sources and completed 11 key informant interviews with representatives from UN agencies, international non-governmental organisations, civil society organisations, and researchers at the regional and national level across Indonesia, Malaysia, and Thailand.

## Indonesia

### Background

As of June 2022, according to the UNHCR, there are 902 registered Rohingya in Indonesia.<sup>6</sup> Majority of Rohingya who arrive in Indonesia do not stay for a prolonged period of time, often moving onward to Malaysia.<sup>7</sup> According to key informants, Rohingya travel to Indonesia for three possible reasons; because traffickers and smugglers promise them onward journeys to Australia or Malaysia, to reunite with family members who are already in Indonesia, or because they are misinformed that Indonesia harbours a welcoming civil, economic, and legal environment for refugees.

Indonesia is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, and does not offer Rohingya a formal pathway to naturalisation or permanent settlement.<sup>8</sup> However, Rohingya are entitled to limited forms of temporary protection under the Presidential Regulation No. 125/2016 on the Treatment of Refugees from Overseas (PR No. 125/2016). This regulation codifies the definition of refugees in alignment with the 1951 Convention and provides guidelines on the rescue, registration, protection and monitoring of refugees.<sup>9</sup> Under the PR No. 125/2016, Rohingya identified by UNHCR as refugees or asylum seekers are entitled to protection assistance, including shelter as an alternative to detention, basic necessities such

as food, water and healthcare services, provided from combined support by the Government of Indonesia, the UN, and international and national civil society organisations. In practice, however, not all refugees and asylum seekers are released from detention despite receiving the refugee status from UNHCR.<sup>10</sup>

Children of Rohingya refugees have access to formal education, according to the Circular Letter No. 75253/A. A4/HK/2019 issued by the Ministry of Education in 2019.<sup>11</sup> However, the Circular Letter does not extend to higher education level and access to education remains restricted by other barriers such as financial constraints. IOM and UNHCR provide the most affected refugees with monthly stipends to support basic needs, but not all refugees receive this support, and the allowance does not correspond to rising costs of living in Indonesia. Rohingya are forced to complement this allowance with employment income to get by.<sup>12</sup> However, finding work is a challenge for Rohingya as they do not have work rights in Indonesia. Rohingya engage in informal income-generating activities whenever possible. For example, in the Makassar district in Indonesia, many Rohingya are employed informally in the services sector.<sup>13</sup> 4Mi data collected among Rohingya in Indonesia between 2021-2022 demonstrates that almost half (48%) of all respondents reported needing assistance accessing work.<sup>14</sup>

### National policies on human trafficking and smuggling

In 2007, Indonesia passed Law No. 21 on the Eradication of the Criminal Act of Trafficking in Persons, which defines trafficking in person in alignment with Palermo Protocol. The law criminalises human trafficking and outlines protection mechanisms for victims of trafficking. The protection of smuggling and trafficking victims is also outlined under the 2011 Immigration Law. While Rohingya who entered the country without valid documents are subject to five years' imprisonment and a fine of IDR 500 million (USD 33,700),<sup>15</sup> the immigration law considers victims of human trafficking and smuggling as an exception.<sup>16</sup> Victims of human trafficking and smuggling are placed temporarily in immigration detention centres (IDCs) or other shelters, to be eventually returned to their country of origin.<sup>17</sup> However, as Rohingya are not recognised as citizens of Myanmar, the return of Rohingya

6 Jakarta Post (2022) [Indonesia, Bangladesh reaffirm commitment to Rohingya refugees.](#)

7 Missbach, A. (2017) [Facets of Hospitality: Rohingya Refugees' Temporary Stay in Aceh.](#)

8 Institute for Policy Analysis of Conflict (2018) [Indonesia and the Rohingya Crisis. Report No.46. Institute for Policy Analysis of Conflict.](#)

9 Republic of Indonesia (2016) [Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees;](#) UNHCR (2020) [Indonesia Factsheet \(April 2020\).](#)

10 UNHCR (2017) [Global Strategy – Beyond Detention 2014-2019.](#) McNevin, A. & Missbach, A. (2018) ['People Smuggling in Indonesia: Complexities, \(Mis\)conceptions and Their Consequences for Sentencing.](#)

11 UNHCR (2020) [Indonesia Fact Sheet December 2020.](#)

12 Mixed Migration Centre (2021) [A Transit Country No More: Refugees and Asylum Seekers in Indonesia.](#)

13 Missbach, A. & Adiputera, Y. (2021) [The Role of Local Governments in Accommodating Refugees in Indonesia: Investigating Best-Case and Worst-Case Scenarios.](#) Asian Journal of Law and Society, 8(3) 490-506.

14 Mixed Migration Centre (2022) [Journeys to Indonesia for Rohingya Refugees: Routes, Risks, Assistance and Needs.](#)

15 Nethery, et al. (2013) [Exporting Detention: Australia-funded Immigration Detention in Indonesia.](#) Journal of Refugee Studies, 26(1) 88-109.

16 Kneebone, et al. (2021) [The False Promise of Presidential Regulation No. 125 of 2016?](#) Asian Journal of Law and Society.

17 U.S. Embassy & Consulates in Indonesia (2021) [2020 Trafficking in Persons Report.](#)

who are identified as victims of human trafficking and smuggling becomes unlikely.

While the 2011 Immigration Law does not distinguish asylum seekers and refugees and criminalises all migrants for unlawful entry, under the Regulation of Director General of Immigration No. IMI-0352.gr.02.07 in 2016 on the Handling of Illegal Migrant Claiming to be Asylum-seeker or Refugee<sup>18</sup> and the enactment of PR No. 125/2016, Rohingya seeking asylum, including victims of trafficking and smuggling, are entitled to protection. Under the same regulation, Rohingya are exempted from the Indonesian immigration law's punitive provisions for unlawful entry and receive assistance including shelter, food, and healthcare from the Government of Indonesia and international organisations. However, in practice, inadequate implementation of the anti-trafficking law, immigration law and PR No. 125/2016 has led to instances of asylum seekers or victim of human trafficking and smuggling being treated as 'illegal migrants' and being convicted under the immigration law.<sup>19</sup>

### Gaps in policy responses to refugee protection, human smuggling and trafficking

The PR No. 125/2016 establishes protection mechanisms for refugees in Indonesia. But a lack of funding and detailed guidance has splintered approaches to refugee management in the country. While PR No. 125/2016 specifies that government agencies are responsible for search and rescue, handling, and management of incoming refugees, it is less clear on interagency roles and coordination procedures. In practice, this has resulted in agencies interpreting obligations at their discretion, further complicating interagency cooperation, reducing operational efficiency, and negatively impacting refugees arriving by irregular means.

Rohingya refugees identified as victims of smuggling or trafficking are eligible for protection under the 2007 Anti-trafficking Law and 2011 Immigration Law. However, in practice, efforts in protection of victims of smuggling and trafficking are inadequate. The lack of SOPs and anti-trafficking infrastructure have hindered the identification of victims overall. In addition, implementation of refugee protection and anti-trafficking measures at local or provincial government levels is inconsistent due to the lack of enforcement mechanism by the central government. There is also no official comprehensive data collected on the number of Rohingya

victims of smuggling and trafficking identified.<sup>20</sup> In 2022, three Acehese fishermen were sentenced to five-year imprisonment on smuggling offences under 2011 Immigration Law for accepting payment of approximately USD 487 from smugglers to assist with disembarking Rohingya stranded at sea.<sup>21</sup> Prior to this, rescues of Rohingya are deemed an obligation of Acehese fishermen to rescue people in distress at sea under the customary law, Hukum Adat Laot, as well as a part of Acehese cultural norm of Pemulia Jamee - the welcoming of guests. The prosecution of 'rescuers' was unprecedented and may set a legal precedent that deters the fishermen from engaging in search and rescue of Rohingya drifted at sea, which in turn would weaken protection for refugees as well as victims of trafficking and smuggling in Indonesia.

## Malaysia

### Background

As of March 2023, according to the UNHCR there were 185,760 registered refugees and asylum seekers in Malaysia, 58 percent (107,430) of whom are Rohingya.<sup>22</sup> Malaysia is not a signatory to the 1951 Refugee Convention and its 1967 Protocol and does not legally recognise refugees. Refugees and asylum seekers are managed under the Immigration Act 1959/63 and the Passport Act of 1966 which criminalises anyone entering the country 'illegally' without appropriate documentation, even if they are fleeing persecution.<sup>23</sup> In the absence of a national policy surrounding refugee protection, UNHCR conducts all activities related to Refugee Status Determination (RSD).

Refugees and asylum seekers registered with UNHCR<sup>24</sup> have better access to public services and are safeguarded from arrest and detention to a limited extent as compared to those who are not registered. Refugees who possess UNHCR documentation receive a 50 percent reduction in fees at public healthcare facilities, while those without UNHCR documentation must pay the full price for accessing healthcare services, often 100 times higher than rates for Malaysian nationals.<sup>25</sup> As health practitioners in Malaysia are obligated to report undocumented patients to the immigration officials under the Health Circular 10/2001, this exposes undocumented Rohingya to a risk of arrest while seeking health care.<sup>26</sup>

18 Indonesia (2016) [Regulation of Director General of Immigration No. IMI-0352.gr.02.07 \(2016\) on the Handling of Illegal Migrant Claiming to be Asylum-seeker or Refugee.](#)

19 Kneebone, et al. (2021) [The False Promise of Presidential Regulation No. 125 of 2016? Asian Journal of Law and Society.](#)

20 UNHCR (2021) [Left Adrift at Sea: Dangerous Journeys of Refugees Across the Bay of Bengal and Andaman Sea.](#)

21 Radio Free Asia (2022) [Indonesian fisherman seek leniency for 3 jailed over assisting stranded Rohingya.](#) Radio Free Asia.

22 UNHCR (2023) [Malaysia Figures at a Glance.](#)

23 [Malaysia: Immigration Act, 1959-1963.](#)

24 Once registered with UNHCR, people seeking asylum would receive appointment card or under consideration letter, while individuals granted refugee status would receive a UNHCR card.

25 Hospital Sungai Buloh (2022) [Caj dan Bayaran.](#)

26 United Nations Network on Migration (2022) [Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles.](#)

Children of Rohingya refugees are not allowed to attend public schools, but can access education through private schools or 'alternative learning centres' that NGOs, faith-based organisations, and refugee communities run. However, private school fees are often unaffordable for Rohingya in Malaysia, while informal learning centres lack resources and qualified teachers.<sup>27</sup>

In 2006, the Government of Malaysia attempted to regularise undocumented persons in Malaysia through the issuance of 'IMM13' permits which allowed Rohingya, among other groups, legal residence and the ability to work. However, a lack of transparency, and allegations of corruption and fraud led to the end of IMM13 registration 17 days after it started.<sup>28</sup> In 2017, though the Government of Malaysia started a three-year work pilot scheme in the plantation and manufacturing sectors targeting 300 UNHCR-registered Rohingya, it failed due to poor response and retention rates among Rohingya.<sup>29</sup> A lack of formal employment alternatives leave Rohingya with little alternatives other than the informal sector, particularly in construction, as street sweepers or in restaurants, which in turn increases their exposure to risks of exploitation.<sup>30</sup>

### **National policies on human trafficking and smuggling**

Although human trafficking is a persistent problem in the country, Malaysia has exhibited weakening compliance with minimum standards for the elimination of human trafficking.<sup>31</sup> In 2015, 139 mass graves of Rohingya and Bangladeshi victims of human trafficking and 28 trafficking camps were discovered in Wang Kelian, a small town along the border of Malaysia and Thailand.<sup>32</sup> In Malaysia, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022 (ATIPSOM) outlines the definition of trafficking in persons in line with Palermo Protocol, as well as the enforcement procedures. Under this act, Rohingya who are identified as victims of human trafficking cannot be prosecuted under the Immigration Act for their entry via irregular means. In addition, they are to receive access to government shelters, food, healthcare and the permission to work. However, the ATIPSOM act criminalises smuggling. This not only results in smugglers being penalised, but persons who used smuggling services are excluded from protection assistance provided to victims of human trafficking. Instead, persons who used smuggling services are deemed 'illegal' migrants, subject to prosecution under the Immigration Act. This poses

great risk of prosecution to Rohingya who predominantly enter Malaysia seeking protection through smuggling routes as this is often their only option given the lack of regular channels to move to Malaysia seeking asylum. As evidenced in a study conducted by MMC in 2021 in Malaysia – almost all Rohingya (94%) arrived in Malaysia with the assistance of smugglers.<sup>33</sup>

### **Gaps in policy responses to refugee protection, human smuggling and trafficking**

The lack of recognition of refugee status is a key barrier to refugee protection in Malaysia. Rohingya face difficulties accessing RSD by UNHCR and are exposed to arrests and detention by the authorities, are prosecuted for the use of smuggling services, and face pushbacks at sea in the absence of a substantive refugee policy.

Inconsistencies in the enforcement of the ATIPSOM curbs access to legal protections for Rohingya who are identified as victims of human trafficking. While victims of human trafficking have rights to healthcare, access to social services, and income-generating activities in government and NGO operated shelters, reports from NGOs describe these shelters as detention-like, with limited access to medical care, and communication with family or shelter staff. Anti-trafficking policies do offer limited scope of protection assistance for Rohingya refugees. However, in practice, the conflation of smuggling and trafficking by the implementing authorities and inadequate screening processes prevent Rohingya identified as victims of human trafficking from receiving protection assistance. Malaysia's policy on trafficking does not account for the possibility that in the case of Rohingya, journeys often begin voluntarily as they pay for smuggling services, but this might change en route as smugglers subject Rohingya to physical and sexual violence, extortion, among other abuses as reflected in 4Mi surveys conducted in Malaysia.<sup>34</sup>

27 Asia Pacific Refugee Rights Network (2018) [Country Factsheet: Malaysia, Asia Pacific Refugee Rights Network](#).

28 Missbach, A. & Stange, G. (2021) [Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia](#). Social Sciences, 10(5) 166.

29 UNHCR. (2018) [Universal Periodic Review: 3rd Cycle](#), 31st Session Malaysia.

30 APRR (2020) [Towards Refugees' Right to Work An Analysis of Employment Trends for Refugees in Thailand and Malaysia](#).

31 Malaysia was ranked Tier 3 by the US Department of State in the [2022 Trafficking in Persons Report](#).

32 The trafficking camps 'comprised makeshift to semi-permanent infrastructure capable of holding dozens to several thousand captives at any given time.' Victims of trafficking are subject to abuse and torture until payment is made to secure their release. See Fortify Rights (2022) [Malaysia: Prosecute Officials Involved in Rohingya Trafficking and Mishandled Investigation](#).

33 Mixed Migration Centre (2021) [Protection risks facing Rohingya refugees en route to Malaysia](#).

34 Ibid.

# Thailand

## Background

Thailand is not a signatory to the 1951 Refugee Convention and its 1967 Protocol and does not have a national legal framework for refugee management.<sup>35</sup> Rohingya are considered 'illegal immigrants' under the country's Immigration Act 1979.<sup>36</sup> Moreover, Thailand applies different management approaches for Rohingya and non-Rohingya refugees from Myanmar. Non-Rohingya refugees from Myanmar are placed in government-operated border camps and are entitled to temporary shelter. Rohingya live in urban areas and are considered 'illegal' subjecting them to risks of arrest and detention in IDCs and closed shelters indefinitely.<sup>37</sup> As of June 2022, it is estimated that there were 470 Rohingya in IDCs in Thailand.<sup>38</sup> In the absence of a mechanism to identify and monitor Rohingya refugees and asylum seekers in Thailand, the exact number of Rohingya in the country is difficult to determine.

UNHCR plays a key role in refugee protection and assistance in Thailand by undertaking RSD for urban refugees including Rohingya and providing support in terms of food, healthcare, education, and livelihoods, both in the camps and urban areas. Refugees including Rohingya cannot access free public healthcare.<sup>39</sup> The gap in access to public healthcare services is addressed by UNHCR, CSOs and community-based health organisations which offer low cost or free health services.<sup>40</sup> In terms of livelihoods, Rohingya living in urban areas often engage in informal employment, as refugees in Thailand, including those with the UNHCR refugee status, do not have the right to work. This results in Rohingya being exposed to exploitation at work, police extortion, arrest, and detention.<sup>41</sup>

The Cabinet Resolution of 2005 guarantees all children, including Rohingya, access to enrolment at public schools certified by the Ministry of Education in Thailand. In practice, however, many certified schools undermine

the policy by establishing discretionary rules that require the applicant's proof of documentation, which effectively results in children of Rohingya refugees being excluded from accessing formal education.<sup>42</sup> While the Thai Cabinet approved the establishment of the National Screening Mechanism (NSM) for people in need of protection in 2019, there remains a lack of clarity around the definition and rights of people who will be granted 'protected person status'. As certain demographic groups are excluded in clause 15 of the NSM and due to delays in its implementation, it remains unclear whether Rohingya will qualify as Protected Persons under the NSM.<sup>43</sup>

## National policies on human trafficking and smuggling

Though the 1979 Immigration Act considers undocumented individuals as 'illegal migrants' culpable of criminal offence, the 2008 Anti-Trafficking in Persons (ATIP) Act which encompasses the definition of trafficking in persons under Palermo Protocol, allows trafficking screening for 'illegal migrants'. Under ATIP act, Rohingya who are identified as victims of human trafficking are provided with access to food, shelter, rehabilitation, medical treatment, ability to initiate legal proceedings to claim compensation, and the right to work.<sup>44</sup> Victims of human trafficking also have access to government or NGO-operated shelters. Furthermore, in March 2022, the Government of Thailand approved the National Referral Mechanism for Victims of Trafficking in Thailand to strengthen the screening process and referral practices for victims of human trafficking.<sup>45</sup> However, in practice, Rohingya identified victims of human trafficking residing in shelters have restricted movement and are prohibited from seeking employment like other non-Thai residents.<sup>46</sup>

The Thai government does not have a clear policy on human smuggling and defers smuggling cases to the 1979 Immigration Act.<sup>47</sup> Rohingya who enter or stay in Thailand without documentation are subject to imprisonment for up to two years or a fine of up to 20,000 THB (USD 560).<sup>48</sup> Upon the completion of the prison sentence, undocumented persons are indefinitely held

35 UNHCR (2022) [Thailand Factsheet](#) (31 March 2022); Amnesty International (2017) [Thailand: Between a Rock and a Hard Place](#).

36 Thanawattho, et al. (2021) [Advancing refugee rights in non-signatory States: the role of civil society in Thailand](#). Forced Migration Review; US Commission on International Religious Freedom (2020) [Factsheet: Rohingya Refugees](#) [October 2020].

37 Mohr, et al. (2022) Integrated primary health care services in two protracted refugee camp settings at the Thai-Myanmar border 2000-2018: trends on mortality and incidence of infectious diseases. Primary health care research & development, 23(17); Amnesty, APRRN, Asylum Access (2019) [Ensure New Refugee Regulation Meets International Standards](#). Joint Secretariat; Human Rights Watch (2015) [Unwanted and Unprotected](#); UNHCR (2022) [Thailand factsheet | Global Focus](#).

38 Human Rights Watch (2022) [Thailand: Allow Newly Arrived Rohingya Access to Asylum](#).

39 Ibid.

40 Hu, J. (2022) [Rohingya Refugee Healthcare in Thailand](#). Prospect Journal; UNHCR (2022) [Health](#).

41 Equal Rights Trust (2014) [The Human Rights of Stateless Rohingya in Thailand](#); Asia Pacific Refugee Rights Network (2020) [Towards refugees' right to work](#).

42 Equal Rights Trust (2014) [The Human Rights of Stateless Rohingya in Thailand](#).

43 United Nations Network on Migration (2022) [Immigration Detention and Alternatives to Detention in the Asia-Pacific Region: Country Profiles](#); Asia Pacific Refugee Rights Network (2020) [Press release: Thailand quietly delays implementation of refugee screening mechanism](#); Banerjee, S. (2022) [The Displacement Challenge Faced by Thailand, Courtesy of Myanmar](#).

44 Equal Rights Trust (2014) [The Human Rights of Stateless Rohingya in Thailand](#).

45 Ibid.

46 United States Department of State (2023) [2022 Trafficking in Persons Report: Thailand](#).

47 International Organization for Migration (2012) [IOM, Thai Police and Canada Cooperate to Tackle Human Smuggling](#).

48 Royal Thai Government (1979) [Immigration Act of Thailand, B.E. 2552 \(1979\)](#).

in the IDCs awaiting deportation.<sup>49</sup> However, given that Myanmar refuses to recognise the citizenship of Rohingya or accept Rohingya returnees or deportees, Rohingya are likely to remain in indefinite detention in Thailand.

### **Gaps in policy responses to refugee protection, human smuggling and trafficking**

A lack of codified legal status for refugees results in the Government of Thailand approaching Rohingya refugees as 'illegal' migrants under the Immigration Act of 1979. The terms 'illegal migrants', 'illegal entries', 'people who fled their country' are used in national policies and official remarks in Thailand, instead of the term 'refugee'.

The government's approach to screening, victim identification, investigation, and prosecution is inconsistent across agencies and geographic locales of Thailand – depriving Rohingya victims of human trafficking the legal protection they are eligible for.<sup>50</sup> Overall, gaps in the implementation of anti-trafficking interventions are attributed to a lack of policy awareness among Thai police and immigration officials, poor knowledge of terms and concepts, frequent staff rotation and loss of institutional knowledge on handling trafficking cases, and corruption.<sup>51</sup> Adding to it, poorly executed and ad hoc screening procedures, prejudices against ethnic Rohingya, and under-resourced shelters with limited caring capacity have resulted in the rerouting of Rohingya identified victims of human trafficking to IDCs in Thailand. The conflation of human trafficking and smuggling often impedes anti-trafficking law enforcement efforts, victim identification, and protections. As the country does not have a specific legislation on smuggling, victims of smuggling are subject to penalties for entering Thailand via 'illegal' means under the 1979 Immigration Act.

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49 Ibid.

50 Ibid.

51 US State Department (2021) [Thailand 2021 Human Rights Report](#); Johns Hopkins Bloomberg School of Public Health (2016) [Anti Human Trafficking in Thailand](#).

# Conclusions and recommendations

## **Codifying legal status for refugees in Malaysia and Thailand**

Malaysia and Thailand should grant and codify refugee status instead of managing refugees circumstantially or through a national security lens. Criminalising Rohingya as ‘illegal’ migrants under the immigration laws impairs efforts at providing protection assistance. National legal status for refugees should be a precondition to policies as this will expand and guarantee Rohingya access to health care, education, and formal employment. Legal recognition of refugees would ensure baseline protections for Rohingya, thereby eliminating discriminatory practices of indefinite detention, boat pushbacks, and exclusion from existing protections for non-Rohingya refugees from Myanmar in Thailand.

## **Establishing clarity between smuggling and trafficking in policy frameworks by improving contextual understanding of migration dynamics in the region**

Indonesia, Malaysia and Thailand should aim to address protection needs by establishing clarity between smuggling and trafficking. Currently, national policies which target human trafficking are more prevalent and comprehensive than policies on human smuggling in all three countries. Often, crimes associated with human trafficking and human smuggling are conflated by authorities and the lack of distinction between both domains impedes victim identification efforts and consequentially hinders positive protection outcomes for Rohingya. Most importantly, national governments should aim to frame policies with consistent messaging, implementation, and enforcement that account for nuances in the journeys Rohingya undertake to find protection, which often begin with them paying for smuggling services but can change to a case of human trafficking with subsequent acts of exploitation.

## **Improving capacity in trafficking victim screenings and protection services**

Indonesia, Malaysia and Thailand should improve internal screening and victim identification processes, and provision of protection assistance to Rohingya victims of human trafficking. Currently, national anti-trafficking policies in all three countries institute legal protections for Rohingya victims of human trafficking. However, gaps in implementation reduce the access and availability of legal protections. In Indonesia, increase in federal funding for the local governments is needed to support implementation and enforcement procedures that align with the standards set in the Presidential Regulation (PR No. 125/2016). In Malaysia, developing a standardised screening mechanism could contribute to more effective and consistent victim identification process. Improving the capacity of existing shelters in Thailand to house new arrivals could prevent victims of human trafficking from being sent to immigration detention centres.

## **Advocating for the development of multilateral refugee protection framework in the region**

An ASEAN framework for Rohingya refugee management in the region is required to supersede the patchwork of national protection responses grounded in anti-human trafficking laws, shifting humanitarian policies, migration management, and qualified recognition of international obligations. Simultaneously, Indonesia, Malaysia and Thailand should explore mini-lateral approaches that promote coordination, resource sharing, protection outcomes, and accountability among the three key Rohingya-refugee receiving countries.

## **Further reading**

More detailed findings are included in the full report on which this briefing paper is based, which can be accessed [here](#).





MMC is a global network engaged in data collection, research, analysis, and policy and programmatic development on mixed migration, with regional hubs hosted in Danish Refugee Council regional offices in Africa, Asia and the Pacific, Europe and Latin America, and a global team based across Copenhagen, Geneva and Brussels.

MMC is a leading source for independent and high-quality data, research, analysis and expertise. MMC aims to increase understanding of mixed migration, to positively impact global and regional migration policies, to inform evidence-based protection responses for people on the move and to stimulate forward thinking in public and policy debates on mixed migration. MMC's overarching focus is on human rights and protection for all people on the move.

MMC is part of the Danish Refugee Council (DRC).

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