

1. INTRODUCTION

1.1. Purpose and Structure of this Report

Burma is not our land anymore though I was born there.¹

Stateless, discriminated against, treated unequally, excluded and persecuted, the Rohingya are one of the most vulnerable communities in the world. Originating from Myanmar, hundreds of thousands of Rohingya have fled the country in search of safety, security and prosperity - conditions that remain elusive to the majority who have made lives for themselves upon new shores.

The human rights challenges that the Rohingya face originate in Myanmar, but are also prevalent in other countries. Discrimination and unequal treatment are central to the human rights violations suffered by the Rohingya. This report is part of a series which provides an overview and analysis of the human rights situation of stateless Rohingya in various countries.

The purpose of this report is to highlight and analyse the discrimination and inequality faced by the Rohingya in Thailand and to recommend steps aimed at combating discrimination and promoting equality of the Rohingya. The report explores long-recognised human rights problems, and also seeks to shed light upon some less well-known patterns of discrimination against the Rohingya.

The Equal Rights Trust has been working on the human rights of Rohingya since 2008, approaching the issue from the unified human rights

¹ Interview BD 20, with a Rohingya man, Cox's Bazar, Bangladesh, 4 October 2012. Throughout this report, names and/or personal characteristics of individuals have been withheld either at the request of interviewees or because the research team determined this to be necessary in the interest of the safety and/or privacy of the individuals concerned and/or others who may face reprisal.

perspective on equality.² In January 2010, we published a short report entitled *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, in which patterns of detention, trafficking and deportation were described for the first time, based on original testimony.³ In March 2011, the Trust and the Institute of Human Rights and Peace Studies, Mahidol University (IHRP) began working together on a project aimed at strengthening the human rights of stateless Rohingya both within Myanmar and beyond. Grounded in research conducted in six countries (Bangladesh, Indonesia, Malaysia, Myanmar, Saudi Arabia and Thailand), this project is an endeavour to increase the human rights protection of the Rohingya through advocacy, capacity building and coalition building at national, regional and international levels.⁴

This report comprises four parts. Part 1 sets out the conceptual framework which has guided the authors' work and the research methodology. It then provides an overview of the Rohingya and concludes with an analysis and review of some of the common trends, themes and challenges that have emerged from the research in all project countries. Part 2 provides an overview and analysis of the international, regional and national legal and policy framework relevant to the discrimination, inequality and related human rights violations and challenges faced by the Rohingya in Thailand. Part 3 focuses on patterns of discrimination and inequality affecting the Rohingya in Thailand. It is important to note that Part 3 focuses on a few select issues, and is not a comprehensive overview of all forms of discrimination and inequality limiting the enjoyment of

² The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust in 2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. See *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

³ Equal Rights Trust, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, London, 4 January 2010.

⁴ For more about the project "Strengthening Human Rights Protection for the Rohingya", visit the Equal Rights Trust website at: <http://www.equalrightstrust.org/rohingya/index.htm>.

human rights for the Rohingya in Thailand. Part 4 presents conclusions and recommendations.

1.2. Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust in 2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. According to Principle 1 of the Declaration:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.⁵

The Declaration proclaims that the right to equality extends to guarantee equality in all areas of human life normally regulated by law, and should be addressed holistically. This approach recognises the interconnectedness of inequalities arising in different contexts, which makes it necessary to take a comprehensive approach to combat manifestations of discrimination arising in all areas of life.

The unified human rights perspective on equality is central to the Rohingya issue. In Myanmar, the Rohingya are a stateless, ethnic, religious and linguistic minority and in other countries, they are stateless irregular migrants, refugees and often undocumented persons. As such, they are vulnerable to many forms of discrimination, exclusion and human rights abuse.

⁵ See above, note 2, Principle 1, p. 5.

Another key aspect of the project is its regional focus. The long-term and widespread nature of the Rohingya crisis means that while recognising the individual responsibility of states to protect the human rights of all persons within their territories and subject to their jurisdictions, a just and sustainable solution is only likely if the key states demonstrate a collective commitment to protect the Rohingya. The regional nature of the issue presents both opportunities and challenges. The opportunity is that if states act collectively, the burden on each state will be eased and such an unprecedented process would serve as a blueprint for future regional cooperation; the challenge is to address the causes of irregular migration flows and ensure greater coordination among states and an increased willingness to protect the Rohingya.

This report looks at Thailand's place in the regional picture of stateless Rohingya displacement and insecurity. It focuses both on recent refugees and the long-staying population. The report is informed by semi-structured individual interviews with over 20 stateless Rohingya refugees living in Bangkok and the surrounding area and six Rohingya men who arrived in Kuala Lumpur, Malaysia, via Thailand in December 2012. It is informed also by meetings and interviews with experts and those working on the Rohingya issue, and by ongoing and informal discussions with Rohingya refugees at various meetings over the course of the research.

Interviews focused on the following key themes: equality and non-discrimination, statelessness and lack of legal status, migration and displacement patterns, liberty and freedom of movement, the right to work and livelihood issues and children's rights. A comprehensive literature review and survey of existing research, news and information on the Rohingya and Thailand's legal and administrative frameworks relevant to refugees, stateless people and migrants also informed the report.

A significant research challenge has been the fast evolving situation, driven by political changes in Myanmar; violence against the Rohingya since 2012-2013; and the resultant mass flight of Rohingya refugees. The Equal Rights Trust published an emergency situation report in June 2012

and a follow-up report in November 2012.⁶ Furthermore, the researchers responded to the changing context by adapting the research focus and conducting additional research.

1.3. The Rohingya

The Rohingya are an ethno-religious minority group from the Rakhine region, which today is encompassed within the borders of Myanmar and is adjacent to Bangladesh. There is an estimated population of between one and 1.5 million Rohingya in Rakhine State. Much of the population is concentrated in the three townships of North Rakhine State – Maungdaw, Buthidaung and Rathedaung – where the Rohingya are in the majority.⁷ Other smaller minority communities of Rohingya are scattered throughout Rakhine State.⁸ To a large extent, Rohingya have been contained in Rakhine State, through successive government policies. However, small numbers of Rohingya have settled in Yangon, the capital of Myanmar, and other places in Myanmar.

1.3.1. Ancestral Roots

The Rohingya have historical, linguistic and cultural affiliations with the local populations of Rakhine State, as well as with the Chittagonian people across the border in Bangladesh.⁹ The Rohingya are Muslims. They also draw their cultural heritage from diverse Muslim populations from the Persian and Arab world that passed through or settled around the

⁶ Equal Right Trust, *Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya and their refoulement from Bangladesh*, London, June 2012.

⁷ The Rohingya have long been the majority ethnic group in these three townships, as recorded in Burma's official Encyclopaedia (1964). The reference is notable as it uses the term Rohingya, which is now officially rejected by the Government of Myanmar.

⁸ Since the violence of 2012, many Rohingya from these communities have become internally displaced and confined to camps.

⁹ East Pakistan before Bangladesh's independence and India before partition.

important trading hub along the coast of Rakhine State over the centuries.¹⁰ The Rohingya trace their ancestral roots in the Rakhine region back several centuries – since long before Myanmar came into existence as the clearly demarcated post-colonial nation-state of today. These roots also go back to long before racial and ethnic categories became settled in accordance with those that are recognised in today's Myanmar.¹¹ Despite this, the history of the Rohingya and their Muslim ancestors is today largely rejected in Myanmar. The Rakhine region and its ancient historical sites are of important cultural significance to Myanmar's Buddhist populations. Historical analyses have, thus, tended to focus primarily on the Rakhine region's Buddhist past, as opposed to its multi-faith and multi-ethnic past.¹² Histories of the Islamic influences in Rakhine State have largely been viewed with suspicion in Myanmar.¹³

1.3.2. Ethnic Identity

The term Rohingya is derived from the word "Rohang" which is an old name for Rakhine State.¹⁴ Hence the term Rohingya has come to mean

¹⁰ See for example Ba Tha, "Rohingya of Arakan", *Guardian Monthly Rangoon*, Vol. III No. 5, May 1960; and Ba Tha, "Rohingya Fine Arts", *Guardian Monthly Rangoon*, Vol. VIII, Feb 1961. These articles are significant because they were published in Myanmar's (then Burma) national magazine and were on the Rohingya in Rakhine (then Arakan) State.

¹¹ There are 135 national ethnic groups that have been recognised by the Government of Myanmar after the promulgation of the 1982 citizenship law, based on selective historical records.

¹² See, for example, Gutman, P., *Ancient Arakan*, 1976, available at: <http://hdl.handle.net/1885/47122>.

¹³ See, for example, Shwe Zan and Aye Chan, *Influx Viruses, The Illegal Muslims in Arakan*, Arakanese in United States, August 2005, available at: <http://www.networkmyanmar.org/images/stories/PDF15/Influx-Virus.pdf>.

¹⁴ For analysis of the origins of the term "Rohingya" see Charney, M.W., *Buddhism in Arakan: Theories and Histiography of the Religious Basis of Ethnonyms*, submitted to the Arakan History Conference, Bangkok, 2005, available at: <http://www.kaladanpress.org/index.php/scholar-column-mainmenu-36/58-arakan->

Muslim from Rakhine State.¹⁵ The majority of people in Myanmar and the Government of Myanmar claim that the Rohingya are not from Myanmar but are migrants from Bangladesh.¹⁶ Thus the term Rohingya has become contentious. The term is neither recognised by the Myanmar government nor much of political society in Myanmar; they instead refer to the population as “Bengali”, a term which suggests the Rohingya are migrants from Bangladesh. “Bengali” is thus strongly rejected by large sections of the Rohingya community. Today, the term Rohingya is not allowed on official documentation including identity cards, household lists and on the census of March 2014.¹⁷ The international community holds that individuals should have the right to self-identify, including as Rohingya.¹⁸ But the term “Rohingya” is rejected by the government and population of Myanmar, who associate it with claims to be indigenous, to be recognised

historical-seminar/718-buddhism-in-arakantheories-and-historiography-of-the-religious-basis-of-ethnonyms.html.

¹⁵ Interview MYA 8, with a Rohingya activist in Yangon, June 2013.

¹⁶ For example, speaking at Chatham House in London in July 2013, President Thein Sein stated “we do not have the term Rohingya”. Quoted in Inkey, M., “Thein Sein talks at Chatham House”, *New Mandala*, 17 July 2013.

¹⁷ Prior to the census of March 2014, the Government of Myanmar agreed in principle that whilst the category “Rohingya” would not be included in the list of Myanmar’s ethnic groups in the census forms, the Rohingya would be permitted to identify as “Other”, and would be allowed to declare their ethnicity to be recorded in the census. A few days before the census, the Government went back on this promise, ostensibly to appease Rakhine protestors, and decided that the Rohingya would neither be allowed to qualify the term “Other” by self-identifying as “Rohingya” in the space provided, nor would they be allowed to leave the term “Other” unqualified. This meant the Rohingya were left with the option of either identifying as “Bengali” or not participating in the census at all. Consequently, the majority of Rohingya did not complete the census. It is unclear what the repercussions of this will be. See UNFPA Myanmar, *Statement: UNFPA concerned about decision not to allow census respondents to self-identify as Rohingya*, 1 April 2014.

¹⁸ *Ibid.*

as a “national ethnic group” of Myanmar, and consequently to have a right to citizenship.

1.3.3. Arbitrary Deprivation of Nationality

The majority of Rohingya in Myanmar today have been deprived of their nationality and are stateless. The arbitrary deprivation of their nationality and the erosion of their legal rights has occurred alongside the denial of their ethnic identity and history in the Rakhine region. This process has taken place over many decades. Following Myanmar’s independence from Britain in 1948, the Rohingya were largely allowed to participate in national affairs and contributed both politically and culturally in the nation-building process alongside other citizens of Myanmar.¹⁹ In 1962, Myanmar fell under military rule, which was to last 49 years. During this period, the process of stripping the Rohingya of their identity and rights began. This process continues in the present day.

Whilst the erosion of the rights of the Rohingya is an on-going process, there have been several significant events which have contributed to today’s situation in which at least 800,000 Rohingya inside the country have been rendered stateless.²⁰ The first of these significant events was Operation *Nagamin* which was launched in Rakhine State in 1978. The stated purpose was to “designat(e) citizens and foreigners in accordance with the law and tak(e) actions against foreigners who have filtered into

¹⁹ Some examples of this participation in nation-building, evidenced with copies of relevant original documents including lists of Rohingya MPs, Ministers and other political and state actors were compiled by the National Democratic Party for Development for a submission to parliament, entitled “*Presentation for the native inhabitants (whose faith is Islam) residing in the Rakhine State (Arakan State) as the citizen by law and by natural or birth rights as well as the indigenous national of the Republic of the Union of Myanmar*”, 4 July 2012 (on file with the Equal Rights Trust).

²⁰ UNHCR Myanmar, *2014 UNHCR Country Operations Profile*, available at: <http://www.unhcr.org/pages/49e4877d6.html>.

the country illegally”.²¹ During the operation, according to witness’ accounts, many Rohingya had their official documentation taken away from them by inter-agency teams of inspectors.²² There were reports of “brutalities and atrocities waged against the Muslim population”.²³ The news spread and over 200,000 Rohingya fled the country to newly independent neighbouring Bangladesh.²⁴ Mass forced repatriation from Bangladesh followed.²⁵ The legal status of the returnees was not reinstated.

Subsequently, the military regime under General Ne Win promulgated the 1982 Citizenship Law depriving the Rohingya of the right to citizenship. Entitlement to citizenship in Myanmar is primarily through membership of the state-defined national races/ethnicities or *Tai Yin Tha*. Prior to 1982, the categories of *Tai Yin Tha* were broadly defined and open-ended. After the 1982 law, a closed list of 135 national races/ethnicities was published and the Rohingya (and a few other minority groups including persons of Indian and Chinese origin) were excluded. Thus they did not acquire citizenship automatically and by right. It must be noted however, that under section 6 of the 1982 Law, persons who were already citizens at the

²¹ Myanmar Ministry for Home and Religious Affairs, “Naga Min Operation”, quoted in Human Rights Watch, *Burma: Rohingya Muslims: Ending a Cycle of Exodus?*, 16 November 1977, p. 12.

²² Interviews MYS 12 and UK 05, with two Rohingya elders living in Rakhine State at the time of Operation Nagamin, Kuala Lumpur, July 2013 and London, March 2014.

²³ Scully, W.L. and Trager, F.N., “A survey of Asia in 1978 Part II (Feb 1979) Burma 1978: The thirteenth year of independence”, *Asian Survey*, Vol. 19, No. 2, 1979, p. 153.

²⁴ Smith, M., *Muslim “Rohingya” of Burma*, unpublished manuscript, 2005 (on file with the Equal Rights Trust).

²⁵ Abrar, C.R., *Repatriation of Rohingya Refugees*, 1995, available at: http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo%3A50.

time the law came into force would continue to be so.²⁶ Furthermore, the law also provided for “Associate” and “Naturalised” citizenship, the former being for those whose citizenship applications were being processed at the time the 1982 Law was promulgated and the latter being those who are not citizens but can establish that they and their predecessors lived in the country prior to independence. Thus, all Rohingya for whom Myanmar was home should have been able to continue to enjoy/acquire Myanmar nationality either under section 6 of the Act, or as naturalised or associate citizens. However, while most Rohingya would be able to trace their ancestry at least to the colonial period, the lack of adequate documentation including as a result of previous mass exoduses and discriminatory and arbitrary decision making meant that the vast majority of Rohingya have not been recognised as citizens since. Most significantly, during a nationwide citizenship scrutiny exercise in 1989, Rohingya who submitted their National Registration Cards (NRC)²⁷ to the authorities with the hope of receiving new Citizenship Scrutiny Cards (CSC), were denied the new CSCs and their old NRCs were also not returned.

In 1992, the NaSaKa was established as an interagency border force by the Ministry of Defence. It was placed under direct control of the military intelligence chief, Khin Nyunt, and was commanded directly from Yangon. With the establishment of the NaSaKa came a series of local directives and policies that severely restricted the Rohingya’s movements and rights within North Rakhine State. The Rohingya’s lack of citizenship status in Myanmar became the anchor for an entire framework of discriminatory laws and practices that laid the context for coming decades of abuse and exploitation. These included stringent restrictions of travel outside of North Rakhine State and to neighbouring villages within North Rakhine State, restrictions on marriages and on having children within Rohingya communities, and arbitrary taxation and forced labour. These policies and practices have had a severe impact on both the health and education status of the Rohingya which has disproportionately affected women and

²⁶ Burma Citizenship Law, Section 6, 1982, available at: <http://www.refworld.org/docid/3ae6b4f71b.html>.

²⁷ NRCs were issued under the Residents of Myanmar Registration Act, 1949.

children.²⁸ NaSaKa implemented all measures taken towards population control. Fleeing persecution under this law and policy framework, the build-up of military forces in Rakhine State, and the abuses that accompanied them, new waves of Rohingya fled Myanmar.

The period following the 2010 election has seen the further erosion of the Rohingya's rights. Whilst a large proportion of the Rohingya are stateless, the Rohingya have continued to exercise some citizenship rights since independence and before. They have voted in and have had candidates standing in every election since 1936, including the 1990 and 2010 elections.²⁹ It is unlikely that the Rohingya will be allowed to vote or stand for election in 2015, indicating the further erosion of their rights since the political reforms of 2010.³⁰

1.3.4. Since the Violence of 2012

The Rohingya have been subject to multiple waves of mass violence since at least 1978. These waves of violence have been perpetrated by a mixture of the Myanmar security forces and groups of civilians, primarily Buddhists from Rakhine State.³¹ In June and October 2012, waves of mass violence broke out in Rakhine State, which resulted in death, forced displacement, the destruction of homes and properties, and the loss of livelihoods.³² More localised outbreaks of violence have continued throughout Rakhine State since 2012. Both Buddhist and Muslim

²⁸ See Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and Protection Needs of Stateless Persons*, July 2010, Chapter 4.3.

²⁹ See above, note 19.

³⁰ Interviews MYA 13 and MYA 15, with Rohingya politicians, Yangon, April 2014.

³¹ See for example Human Rights Watch, *All you can do is Pray*, 2013, Appendix 1: History of Violence and Abuse against Rohingya, available at: <http://www.hrw.org/node/114872/section/16>.

³² No international investigation into the violence took place. Both government and other figures relating to the violence and related casualties remain under dispute due to the lack of a credible international investigation.

communities in Rakhine State were affected by the violence, but the casualties and victims were overwhelmingly Muslim and mostly Rohingya. Evidence collected by human rights organisations demonstrated that Myanmar security forces took part in the violence and stood by as violence took place.³³ This violence, together with the economic and social ostracisation of Muslim and Rohingya communities in Rakhine State, lead to the displacement of over 140,000 people into Internally Displaced Person (IDP) camps within Rakhine State. Additionally, there has been a spike in forced migration of Rohingya out of Myanmar, mostly on boats heading for Southeast Asia and beyond. The exact numbers of Rohingya who have undertaken this journey since 2012 are not known, however it is estimated that from June 2011 to May 2012 approximately 9,000 people have travelled in this way; from June 2012 to May 2013, this number is believed to have risen to over 31,000 and it is estimated that during this sailing season, since June 2013, at least 54,000 have undertaken the journey.³⁴ Between June 2012 and May 2014, as many as 2,000 Rohingya are believed to have gone missing at sea.³⁵ Since 2012, grave concerns have been raised regarding the desperate humanitarian situation for Rohingya and Muslim communities in Myanmar, both within the IDP camps and in their home communities. The health and nutrition status of Rohingya and other Muslim communities is dire. International agencies providing humanitarian assistance to Rohingya have had their efforts hampered by threats and violence against them by local populations, and by restrictions being placed on their activities by the Myanmar government and local authorities.³⁶ Since 2012, security grids have been extended to other areas in Rakhine State beyond the three townships of North Rakhine State. Under the state of emergency, restrictions of movement and population control similar to or even worse than those in North Rakhine State have

³³ See above, note 6.

³⁴ The Arakan Project, *Rohingya Maritime Movements: estimates and trends for departures up to 30 June 2014*, unpublished document, July 2014 (on file with Equal Rights Trust).

³⁵ Email correspondence with the Director of the Arakan Project, 2014.

³⁶ See UNOCHA Myanmar, *Humanitarian Lifeline cut following violence against aid agencies in Rakhine*, April 2014.

been imposed on other Rohingya populations.³⁷ As a result of this escalation in human rights violations targeted at the Rohingya, their widespread and systematic nature, the role played by state actors and the impact it has had on the population, the international criminal law framework is emerging as an important and relevant tool through which to address the situation.³⁸

1.3.5. Overseas Rohingya

It is estimated that there are more than one million Rohingya living outside Myanmar, many as migrants or refugees with no legal status. The Rohingya have settled in South and Southeast Asia, the Middle East and beyond. The largest concentrations of Rohingya are found in neighbouring Bangladesh and in Saudi Arabia, with significant numbers in Malaysia, Thailand, India and elsewhere. In addition to the steady flow of Rohingya refugees over several decades, there have been several mass exoduses from Myanmar into Bangladesh and beyond, including in 1978, 1992 and most recently 2012-2013 as a result of mass violence and persecution. Often these Rohingya migrants are not recognised and are not protected as refugees. Instead they are marginalised and excluded. Many live in poverty, often working illegally with no documentation, and are vulnerable to discrimination, violence, arbitrary treatment and exploitation.

1.4. The Rohingya in Thailand

For many decades, Thailand has played an important role in the South-East Asian region as a place of refuge for those fleeing violence and persecution – be they refugees from Cambodia, Laos and Vietnam post-1975 or those fleeing conflict and political persecution in Myanmar since the 1980s. Thailand is also home to hundreds of thousands of economic migrants,

³⁷ Interviews MYA 10–12 and 14, with UN and INGO staff in Yangon, March and April 2014.

³⁸ See, for example, UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Tomás Ojea Quintana, Human Rights Council, 25th Session, UN Doc. A/HRC/25/64, 2 April 2014, Para 51.

regular and irregular. Migration flows into the country are complex. Many migrants arrive in Thailand for a variety of reasons including economic concerns, persecution and experiences of human rights abuse. Policies which distinguish between camp-based refugees³⁹ and urban-based migrant workers often neglect the protection needs of refugees in non-camp based environments, such as the Rohingya who generally flee persecution, including structurally-imposed acute poverty. Thailand has been faced with the challenging and delicate task of controlling its porous borders while also offering protection to victims of persecution. The law and policy framework in Thailand and the entire region appears to focus more on border control and less on protection. Consequently, refugees are not always identified as such, do not always receive protection and remain vulnerable to human rights abuse. Many Rohingya suffer as a result of these protection gaps.

Rohingya have entered Thailand both by sea and across land. The sea routes are currently more widely accessible to Rohingya. While some Rohingya refugees treat Thailand as their final destination, the majority use it as a transit country on the journey from either Myanmar or Bangladesh to Malaysia and beyond. The treatment of the Rohingya arriving in Thailand by boat has raised human rights concerns. In early 2009, the Royal Thai Navy was publicly criticised for multiple human rights violations against Rohingya migrants, including their arbitrary detention and cruel, inhuman or degrading treatment prior to “pushing” them back out to the sea without petrol or food, putting their lives at risk.⁴⁰ A number of similar incidents have come to public attention since then. In

³⁹ The Thai government has never formally recognised the refugee status of any persons from Myanmar except those who fled the country after the 1988 “student uprising”. Consequently, Thai policy does not use the term “refugee”, but “displaced person”; and it does not use the term “camp”, but “temporary shelter”. The terms used by the Thai authorities reflect the intended temporary nature of the refugee protection framework in Thailand. This report uses the terms “refugee” and “camp” to reflect the reality on the ground and international standards, rather than the official Thai terminology.

⁴⁰ Equal Rights Trust, *ERT Urges Thai PM to Rescue 126 Rohingya Pushed Out to Sea by Thai Military*, January 2009.

2013, while an unprecedented number of boats of Rohingya fleeing violence in Myanmar's Rakhine state entered Thailand, several were not allowed to land in the country and were "pushed back" or "helped on" to Malaysia by sea.⁴¹ Other groups which landed were delivered to brokers who facilitated the onward journey to Malaysia through Thailand. These groups were generally gathered in make-shift camps in the jungle on the Thailand-Malaysia border, where the brokers would contact the relatives in Malaysia, Myanmar or elsewhere for payment after which they would be released or assisted with their onward journey. As part of this process, many became subject to physical and psychological abuse for delayed payment or non-payment. Some Rohingya that were intercepted by state authorities in Thailand were taken to the Thai/Myanmar border first in order to make contact with brokers to facilitate the onward journey to Malaysia or elsewhere.⁴² This process is sometimes known as "informal" deportation and has been an established practice for state authorities in Thailand dealing with irregular migrants from Myanmar and other countries in the Mekong sub-region for decades. From an international law perspective, where such practices involve forcibly returning persons to places where they may face persecution or other serious human rights violations, it is considered to be *refoulement*, a violation of the customary international law principle of *non-refoulement*.⁴³ From the perspective of some Thai authorities dealing with Rohingya arrivals, this practice is a

⁴¹ "Push back" refers to the practice of towing out into sea boats of refugees and irregular migrants, often without adequate food and water and in some instances without engines. "Helping on" refers to the similar but more humane practice of intercepting boats in the sea, not allowing them land but moving them on to other countries, often after providing them with supplies. See, for example, Human Rights Watch, *Thailand: Release and Protect Rohingya 'Boat People'*, 20 August 2013.

⁴² Interviews MYS 11, 12, 16 and 17 with newly arrived Rohingya in Kuala Lumpur, Malaysia, between December 2012 and August 2013.

⁴³ *Refoulement* also includes the act of sending refugees and asylum seekers to a country that does not guarantee protection for refugees. In addition to its obligation under customary international law, as a state party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Thailand is bound by the principle of *non-refoulement* enshrined in Article 3 of the Convention.

pragmatic and humane way to circumvent the official Thai policy of mandatory detention of Rohingya persons that arrive on Thai soil. However, it is also a source of corruption, a means of extracting payment and earning extra money through the illegal practices of colluding with human smuggling networks.

Approximately 2000 Rohingya were officially allowed entry into the country in 2013, but were detained in immigration detention centres (IDCs) and/or shelters as “illegal immigrants”. The overcrowded conditions in the IDCs were widely criticised. These Rohingya were granted “temporary refuge/protection” by the Royal Thai Government for six months in January 2013, which provided them with a grace period before deportation. It is understood that all persons from this group have since “escaped”, been informally released or informally deported from IDCs without official handover between authorities. Many found themselves in the hands of brokers from human smuggling networks. Many of the Rohingya whose travel was facilitated, either with or without prior periods of detention in Thailand, became acutely vulnerable to exploitation and abuse by these networks, some of which had links with their villages of origin in Rakhine State, Myanmar, as well as with the destination country, Malaysia.⁴⁴ As a result, some Rohingya were arbitrarily detained on multiple occasions, first in IDCs in Thailand, then in smuggling/trafficking camps, before being intercepted in Malaysia by state authorities and detained for illegal entry into Malaysia for several months before being released.⁴⁵

These practices of detention and abuse of Rohingya in smuggling/trafficking camps came to light in the national and

⁴⁴ See for example, Szep J. and Marshall A., “Thailand secretly dumps Myanmar refugees into trafficking rings”, *Reuters Special Report*, 5 December 2013; Szep J. and Grudgings S., “Thai authorities implicated in Rohingya Muslim smuggling network”, *Reuters Special Report*, 17 July 2013; and Sidasathian C. and Morison A., “Captive Rohingya being sold by Thai officials”, *Phuketwan*, 21 October 2013.

⁴⁵ Interview MYS 26, with Rohingya refugees in Malaysia, Kuala Lumpur, 3 February 2014.

international media. In particular, award-winning Reuters and Phuketwan reports emphasised the role of the Thai authorities in this process. In response, a criminal defamation case was filed against two reporters from Phuketwan; a development that has been widely criticised, including by the UN.⁴⁶

In addition to the boat arrivals, Thailand is home to a relatively small yet significant population of informally-settled Rohingya, many of whom have lived in the country for over twenty years. It is difficult to estimate the number of Rohingya living in Thailand, given their irregular status and undocumented existence. Past government estimates placed the population at around 20,000, but more recent estimates by community leaders, NGOs and a 2008 survey by the Thai National Human Rights Commission place the number at approximately 3,000, most of whom are believed to live in Bangkok with others living in Mae Sot, Ranong and the southern provinces.⁴⁷ For years, this settled population has been navigating its own set of insecurities and human rights concerns associated with residing and working in a country that considers them to be “illegal” economic migrants, with the added insecurity of being stateless and having escaped persecution in Myanmar. Without the right of stay, they are unable in many cases to legally work, register the births of their children and access education and healthcare on their behalf. Being deprived of access to basic social services, the settled Rohingya in Thailand have been subsisting for decades in the informal labour sector, frequently risking extortion, arrest, detention and deportation. Their situation is akin to that of many irregular migrants in Thailand. However, their unique protection needs as stateless persons and their specific motivations for fleeing Myanmar have thus far rendered them unable to benefit from the

⁴⁶ Brown S. and Olarn K., “U.N. condemns Thai court case against journalists over people trafficking report”, *CNN*, 15 April 2014.

⁴⁷ Thai Action Committee for Democracy in Burma and Sub-Committee on the Human Rights, Stateless Persons and Migrant Workers, Lawyer Council of Thailand, *Rohingyas: Stateless & Forgotten People: Fact-finding Report and Recommendations from the Roundtable Discussion on the Inhumane Push-Back of the Rohingya Boat People*, March 2009.

protection regime relating to refugees in Thailand or the changes in policy and practice relating to irregular migrant workers in Thailand.

1.5. Common Themes and Challenges

One of the advantages of conducting research in several countries has been the ability to identify common trends, themes, issues and challenges. Following are some of the key problems and issues which are faced regionally:

1.5.1. Protracted Statelessness and Lack of a Legal Status

The statelessness and lack of legal status of the Rohingya in all research countries is a common problem; statelessness and discrimination go hand-in-hand and are mutually reinforcing. In Myanmar, the Rohingya have been discriminated against for many decades. The arbitrary deprivation of their nationality as a result of the implementation of the 1982 nationality law and their consequent statelessness was an act of discrimination by Myanmar. Their statelessness has since been used to justify further discrimination both in Myanmar and the countries to which they flee.

None of the countries of flight have ratified the international treaties which protect refugees or stateless persons; thus, the majority of Rohingya who should be recognised and protected as stateless persons and as refugees are not; instead they are treated as irregular, economic migrants. The resulting lack of legal status has a significant impact on their enjoyment of rights including the rights to liberty and security of the person, education, health and an adequate standard of living.

The situation is further compounded by the protracted displacement and statelessness of the Rohingya. With each passing year and each new generation, the disadvantage grows and the impact of malnutrition, illiteracy, lack of access to labour markets and healthcare, vulnerability to arbitrary arrest, violence and abuse, insecurity and forced migration becomes greater. This protracted statelessness significantly impedes their enjoyment of rights, whether in Myanmar or in countries of flight such as Bangladesh, Malaysia and Thailand. While there is general international consensus that Myanmar should grant nationality to the Rohingya and

repeal or amend its 1982 citizenship law, the international community has been largely silent on the right to a nationality of stateless Rohingya children born in other countries. The extent of this problem is hidden, partly because UNHCR statistics record Rohingya who are in a refugee like situation as “refugees” and not as “stateless persons”, despite the fact that they do not possess a nationality, that their children are born into statelessness and that the majority are not protected either as refugees or stateless persons. The complex disadvantage of the Rohingya has thus been perpetuated over many generations and in multiple countries.

Equally challenging is the impunity with which acute human rights abuses have been inflicted against the Rohingya. Their protracted statelessness and lack of legal status make them easy targets for state and non-state actors alike. The mass violence in Myanmar of 1978, 1992 and 2012/13, the violent acts committed in the course of the forced repatriation of Rohingya from Bangladesh since 1994, the sometimes fatal Thai “push-backs” of Rohingya boat people into the sea in 2009, 2011 and 2013, and past practices in Malaysia of “deporting” Rohingya into the hands of traffickers are all examples of actions undertaken with almost total impunity.

1.5.2. Equality and Non-Discrimination

The pervasive inequality and discrimination faced by the Rohingya is another fundamental challenge that must be addressed both within Myanmar and in other countries. The disadvantage of the Rohingya within Myanmar is entrenched by a system that discriminates against them on the basis of their ethnicity, religion and statelessness. Whilst human rights abuses against many ethnic minorities in Myanmar have been prevalent under military rule and continue until today, the Rohingya have suffered disproportionately. The disadvantage of the Rohingya outside Myanmar stems from their lack of a legal status which is a direct result of, and compounded by, their statelessness. While levels of discrimination suffered by Rohingya in other countries vary both in degree and substance, three factors generally contribute to such discrimination:

- Most receiving countries have weak protection frameworks for refugees and often conflate forced migration to escape persecution with economic migration.
- States consistently fail to recognise the Rohingya as stateless, or to respond to their protection needs as stateless persons.
- States are unwilling to take decisive – or often any - protective action either individually or regionally, as they fear it will become a “pull factor” and result in more Rohingya seeking asylum. This results in a regional “stalemate”.

There is a strong nexus between discrimination and other human rights violations. The majority of human rights abuses against the Rohingya either have a discriminatory basis or are exacerbated by discrimination. For example, while bonded labour and land grabs were a common practice affecting numbers of people during the Myanmar military regime, the Rohingya of North Rakhine State were and continue to be more vulnerable to these kinds of abuses. Similarly, while poverty is rampant in Cox’s Bazar Bangladesh, the non-registered Rohingya refugees are in a worse position than the general population as they have no legal right to work, and this is exacerbated at times by the Bangladesh government’s refusal to permit the operations of humanitarian actors.

1.5.3. Forced Migration, Trafficking and Smuggling

The majority of Rohingya, lacking documentation and unable to travel freely within Myanmar and internationally, rely on the assistance of smugglers to flee from persecution in Myanmar and also to make the hazardous boat journey from Bangladesh to countries in South East Asia. The smuggling and trafficking networks in the region are one and the same and many Rohingya who start the journey with smugglers end up as victims of trafficking and are forced into bonded labour on Thai and Malaysian plantations and deep sea trawlers. Ties between smuggling/trafficking rings and state authorities (immigration, police etc.) in Thailand and Malaysia in particular have been widely reported.⁴⁸

⁴⁸ See, for example, above, note 3; see also Reuters, “Preying on the Rohingya”, *Reuters*, July 2013; Reuters, “Thailand’s clandestine Rohingya policy uncovered”,

It must be noted that as the majority of Rohingya are refugees, the legality of their entry into countries of asylum is irrelevant and consequently, the distinction between trafficking and smuggling should be moot. However, as stated above, the countries concerned do not have strong refugee protection frameworks in place and Rohingya refugees are rarely recognised as such. Consequently, the identification of victims of trafficking has taken on a level of importance in the region which is in itself an indication of the weakness of any existing national refugee protection frameworks.

Reuters, December 2013; BBC, “Burmese refugees sold on by Thai officials”, *BBC News*, January 2013; Phuket Wan, “Thai Officials Linked to Rohingya Trafficking Networks, Says Torture Report”, *Phuket Wan News*, April 2014.