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On the Rohingya, Statelessness and “Trafficking”: Separating the Fundamental from the Sensational¹

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EXECUTIVE SUMMARY

- Reports of Rohingya men and women abandoned on overcrowded boats and buried bodies in smugglers’ camps have inundated international media in the past two months.
- The increasingly difficult conditions that the Rohingya face in Myanmar have prompted more of them to leave. It is estimated that up to 28,500 Rohingya fled on boats in the first quarter of this year, almost double the number over the same period in 2014.
- The media’s framing of the migration operation as trafficking, while effective in garnering much needed attention, is overly simplistic and possibly damaging to the wellbeing of the Rohingya. The outcome of the current investigation into the migration brokers has put the migrants at greater risk.
- The response of the Thai and Malaysian authorities has been to prosecute the migration brokers. This puts the blame for the abuses suffered by the travellers on the migration brokers instead of on the shoulders of the receiving country. In reality, these irregular

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migration brokers serve an economic function: to supply the economy with flexible low-cost labour.

- After some initial resistance, the Thai, Malaysian and Indonesian authorities are now allowing passengers to come onshore but are holding them in temporary shelters. It is likely that many in the shelters will try to leave to join family in other parts of the country.
- Citizenship for the Rohingya in Myanmar is a fundamental issue that needs to be resolved. However, it is unlikely that Myanmar will grant all of them citizenship in this election year.
- Besides citizenship, the structural issue of low economic and human development in countries such as Myanmar and Bangladesh, and unsafe migration routes for the impoverished and disenfranchised need to be addressed at the regional level.

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INTRODUCTION

The plight of the Rohingya has once again hit the headlines. Pictures of bedraggled men and women on overcrowded boats and reports of buried bodies in smugglers' camps have inundated international media and captured the attention of multilateral organisations, human rights groups, world leaders, Nobel laureates and celebrities.

This article argues that the two fundamental issues of citizenship for the Rohingya in Myanmar and safe migration channels need to be addressed by Myanmar and the countries in the region. Before elaborating on this, a summary of the adversity and perils the Rohingya face in Myanmar and on their migration journey is presented. Next, the measures taken by Thailand, Malaysia and Indonesia – prosecuting the traffickers and providing temporary shelter – are considered.

The article contends that the media's framing of the migration operation used by the Rohingya as trafficking, while effective in garnering much needed attention, is simplistic and possibly damaging to the wellbeing of the Rohingya. Further, the Thai and Malaysian authorities' prosecution of the migration brokers puts the blame for the abuses suffered by the travellers on the migration brokers instead of on the shoulders of the receiving country, obscuring the economic and political role played by irregular migration in supplying the economy with flexible low-cost labour.

BETWEEN THE DEVIL...

Caught between the appalling forms of social and political discrimination in Myanmar and a perilous journey to seek work and refuge in neighbouring countries, the Rohingya find themselves having to make difficult decisions about their future.

In Myanmar, their lives are circumscribed by government restrictions on marriage, domestic travel and religion, and they are denied education, employment, and property ownership. This is compounded by impoverishment. As a result, many have decided to seek employment and sanctuary in other countries.

Those who have fled to and stayed in Bangladesh – 200,000 in total – live in harsh conditions in villages and refugee camps in the easternmost part of Bangladesh. It is estimated that tens of thousands live in the Middle East as migrant workers in Malaysia and in Thailand. About a million remain in Myanmar.

The situation has worsened since the sectarian conflict in northern Rakhine State in 2012, when riots erupted between Buddhists and Muslims. This subsequently became a generalised religious conflict in several parts of the country. Consequently, more than 100,000 Rohingya (and other Muslims) have been confined to camps as part of a larger plan to segregate them. The tenuous legal status of the Rohingya in Myanmar was further undermined when

President Thein Sein issued a directive in February this year stating that all temporary identification cards would expire at the end of March. Effectively, this means that the voting rights of approximately 750,000 cardholders, the majority of whom are Rohingya, have been revoked.

Also, these cardholders will have to go through the national verification process to acquire citizenship. This process, which began in 2012 and has experienced several setbacks, is fraught with difficulties for the Rohingya. First, they have to agree to be categorised as Bengali and not Rohingya. They fear that being labelled Bengali will provide the government a legitimate reason for classifying them as migrants and for deporting them.

The precarious situation in Myanmar has prompted more Rohingya to leave. While the exact number who have boarded boats to sail to Thailand and Malaysia is uncertain, the UNHCR's report on Irregular Maritime Movements in South-East Asia estimates that some 25,000 Rohingya and Bangladeshis boarded smugglers' boats between January and March this year, almost double the number over the same period in 2014.² The number is thought to be higher by The Arakan Project, which has long monitored Rohingya movement. It estimates that approximately 28,500 Rohingya fled on boats in the same period.³

... AND THE DEEP BLUE SEA

The Rohingya cross from Rakhine State in Myanmar to the Bay of Bengal in Bangladesh where they join Bangladeshi passengers on boats sailing to Thailand. The sea journey takes place year-round but is most frequent between November and April when conditions on the monsoon-prone Andaman are smooth.

When the boats arrive at Thailand's coast, they no longer come to shore. Instead, those passengers who are able to pay for the sea and overland passage are ferried by fishing or speed boats to shore and taken to inland jungle camps. The UNHCR, through interviews with passengers, found that the most commonly described route involves passengers disembarking in the Ranong area of southern Thailand and travelling a day to smugglers' camps near the Malaysian border.⁴

There, they are held until they obtain the money to pay for the next leg of the journey. If they are unable to pay, they call relatives in Thailand or Malaysia to help them raise the funds.

² UNHCR. *South-East Asia Irregular Maritime Movements January – March 2015*. <http://www.unhcr.org/554c6a746.html> (accessed on 1 June 2015).

³ As cited in Human Rights Watch. "Southeast Asia: End Rohingya Boat Pushbacks. Thailand, Malaysia, Indonesia Should Act Urgently to Save Lives." May 14, 2015 <http://www.hrw.org/news/2015/05/14/southeast-asia-end-rohingya-boat-pushbacks> (accessed on 29 May 2015).

⁴ UNHCR. *South-East Asia Irregular Maritime Movements January – March 2015*. <http://www.unhcr.org/554c6a746.html> (accessed on 1 June 2015).

Failing that, they pledge their labour and the amount owed is deducted from their monthly salaries. The chain of brokers includes Rohingya, Bangladeshis, Thai and Malaysian operators, and officials of the countries that they land in, all of whom take a cut at every point.

The media and civil society groups have been successful in drawing much needed attention to the abuses that the boat passengers have endured by framing the issue as one of human trafficking and humanitarian crisis. This was effective in sounding the alarm at the global level, and bringing pressure to bear on the Thai authorities to investigate the buried bodies in the smugglers' camps and the Thai, Malaysian and Indonesian authorities to stop pushing the boats back out to sea.

However, condemning the migration brokers and operators as exploitative and abusive monsters and the Rohingya as passive victims obfuscates the real reason for the existence of the migration operation and denies the agency of the Rohingya. At this point, it is worthwhile to point out that the unregulated nature of this migration route comes with both benefits and hazards.

Lacking passports, other forms of documentation, and the ability to pay large sums of money upfront, the Rohingya do not have the means to avail themselves of the regular migration agencies in Myanmar. These agencies place high-skilled individuals in overseas employment, are costly, and require documents and personal connections. The only route open to them is to board boats and enter Thailand and Malaysia through informal channels. This enables them to leave their dire circumstances behind on credit without having to produce legal documents. The debt incurred can be paid off with the help of relatives and/or work upon arrival at the destination country. Seen in this light, this migration channel provides a service that is urgently needed.

However, the unregulated nature of the operation also provides ample opportunities for abuse, extortion and ransom. These dangers were vividly portrayed by the international media when more than thirty bodies of Rohingya and Bangladeshi origin were found on a hilltop near Thailand's border with Malaysia at the end of April. The UNHCR has also collected information from migrants who reported that they were held and abused at smugglers' camps, that someone had died in the camp they had been held in, and that beatings were common. There have also been accounts of rape, and high interest rates charged for credit.⁵

In addition, boat passengers find themselves in an extremely vulnerable position. The UNHCR estimated that 300 deaths occurred at sea in the first quarter of this year, and as

⁵ UNHCR. "South-East Asia Irregular Maritime Movements January – March 2015." <http://www.unhcr.org/554c6a746.html> (accessed on 1 June 2015).

many as 620 since October 2014, primarily as a result of starvation, dehydration, and beatings by boat crews.⁶

MEASURES TAKEN: PROSECUTING THE ‘TRAFFICKERS’

The response of the Thai and Malaysian authorities has been to go after the migration brokers. This seems a diversionary tactic, and puts the blame for the abuses suffered by the travellers on the migration brokers instead of on the receiving country. Further, it enables the authorities to appear to be doing something to resolve the issue.

To understand this point, irregular migration needs to be placed within the wider political and economic context of Myanmar, Bangladesh, Thailand and Malaysia. The statelessness, persecution and abuses suffered by the Rohingya have taken centre stage, but little has been said about the Bangladeshis who make up half of the migrants. What unites these two groups is their need to find passage to and employment in wealthier countries. The UNDP has ranked Myanmar and Bangladesh third and sixth respectively in Asia as countries with the lowest human development.⁷ In 2012, the gross national income (GNI) per capita of Bangladesh and Myanmar were US\$822 and US\$1125 respectively, which amounted to about a fifth of Thailand’s GNI.⁸

Irregular migration routes have existed for decades in this region and the authorities have sought to manage rather than eliminate them. This is because these operations will continue as long as there is 1) a demand for undocumented migration, 2) a demand for employment in wealthier countries and 3) a demand for a flexible, cheap and low-skilled workforce.

Malaysia and Thailand require low-cost labour to toil in the low-skill jobs that support their economy. Irregular migrants, such as the Rohingya and the Bangladeshis, are particularly suited to these forms of employment (in the eyes of employers and states) as their precarious legal status enables employers to keep wages and employment costs low. Moreover, their undocumented status is advantageous to the state as they are the ultimate flexible labour force that can be employed or deported as required. Here, we encounter the contradictory policies and practices of states vis-à-vis irregular low-skill labour migration. On one hand, the state condemns irregular migration, while on the other, it permits its existence. The reality is that these irregular migration brokers and their operations serve an economic and political function. They can be used to supply the economy with flexible low-cost labour; and they can be used as scapegoats when politically expedient.

⁶ UNHCR. “South-East Asia Irregular Maritime Movements January – March 2015.” <http://www.unhcr.org/554c6a746.html> (accessed on 1 June 2015).

⁷ HDRO (Human Development Report Office) United Nations Development Programme. *Human Development Report 2014. Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*. <http://hdr.undp.org/en/content/human-development-report-2014> (accessed on 1 June 2015).

⁸ www.data.org (accessed 12 June 2015).

The outcome of the current investigation on the “traffickers” has serious implications for irregular migrants. First, it puts the migrants at greater risk. For instance, as a result of Thailand’s greater surveillance of this migration route, migration brokers changed their modus operandi and began holding passengers on the boats rather than taking them to shore so that there would be less risk of being detected by the authorities. Consequently, they are being held on the overcrowded boats for longer periods of time. Second, the reason that there were 7000 boat passengers stranded on the Andaman Sea is because the Thai authorities began hunting down these operators who then fled and left the passengers to the mercies of the boat crew and the elements.

MEASURES TAKEN: TEMPORARY SHELTER, RESETTLEMENT AND REGIONAL MEETING

Initially, the Thai, Malaysian and Indonesian position on the boat migrants was to refuse them entry. However, faced with international pressure, the authorities of all three countries finally relented and stopped pushing the boats out to sea. Malaysia and Indonesia are now allowing passengers to come onshore but are holding them in shelters for up to a year after which they expect other nations and organisations to find solutions.

Thailand is providing humanitarian assistance to boats adrift on the Andaman Sea. However, it remains adamant that no refugee camps be set up for the boat people. Instead, they will be housed in temporary centres or existing immigration offices and be sent home after they have gone through immigration procedures. These shelters are places of surveillance and control, and it is likely that many will try to leave to join relatives in Thailand and Malaysia, and will probably have to use the irregular migration operations that they were ‘rescued’ from.

These are short-term measures that do not address the fundamental issues: the statelessness of the Rohingya, the poor economic performance and inequitable distribution of income in Myanmar and Bangladesh, and the regional nature of migration. Thus, the regional conference called at the end of May appeared a step forward. However, it ended with no major breakthroughs and with only the agreement that discussions would continue.

RESOLVING THE ISSUE: CITIZENSHIP IN MYANMAR

The Rohingya will continue to leave Myanmar in droves using irregular routes unless the root cause of state discrimination and statelessness is eliminated. The likelihood of this happening this year is low.

There are three different types of citizenship under the 1982 Citizenship Law. The first – full citizenship – is granted to those who belong to the 135 officially recognised ‘national races’ and persons who settled in Myanmar before 1823. If a person cannot provide evidence that

his/her ancestors settled in Myanmar before 1823, they can be awarded associate citizenship if they can prove that their ancestors were resident in Myanmar prior to 4 January 1948 and were granted citizenship before the 1982 Citizenship Law. This citizenship may be revoked, however. The final category – naturalised citizenship – is granted to residents or descendants of residents who lived in Myanmar before 4 January 1948 and applied for citizenship after 1982. Naturalised citizenship can also be revoked.

The Rohingya argue that they are a culturally distinct Muslim community (from that of the Bengalis across the border and those deemed illegal immigrants in Myanmar) with historical roots in Rakhine State.⁹ This follows the logic of ethnic politics in Myanmar. Thus, they claim that they should be counted as a ‘national race’ and therefore awarded citizenship in accordance with the 1982 Citizenship Law.

However, this claim is not recognised by the state and is hotly contested by the Buddhist majority, particularly in Rakhine State. Moreover, the government of Myanmar has always contended that many of the Rohingya are illegal migrants who came from Bangladesh in 1978 and 1992 when Bangladesh repatriated people who had fled from Myanmar’s western border in 1977 and 1991. The numbers are disputed and there is no way of knowing how many came from Myanmar originally. The national verification process that began in late 2014 is part of the process of separating ‘citizens’ from ‘illegal immigrants’, a highly contentious issue.

The alternative route to citizenship is for the Rohingya to register as Bengali, which is recognised as one of the official ethnic categories and the default Muslim classification, during the national verification process, a pilot of which was begun in Myebon camp housing Muslims in north Rakhine State late last year. They have to provide documents showing proof of their and their parents’ birth in Myanmar. In October last year, 40 people were granted full citizenship because they could show that they were born in Myanmar before 1982. This has been the route taken by some individuals (Rohingya and Kaman, another Muslim ethnic group).¹⁰ As a group though, this would mean giving up the political project of a separate Rohingya ethnic identity.

Nevertheless, this route is not without obstacles. First, the process was stalled last year because many refused to register as Bengali. The Irrawaddy also reported that many in the camp had applied for citizenship through the national verification process but failed because

⁹ See Leider, Jacques. Rohingya: the name, the movement and the quest for identity". In *Nation Building in Myanmar*, pp. 204 - 255. Myanmar Egress and the Myanmar Peace Center, with the support of the Federal Department of Foreign Affairs of Switzerland, 2014.

¹⁰ Lawi Weng. “Muslim Citizenship Procedure Angers Arakanese, Some Rohingya See Opportunity”. *The Irrawaddy*. 23 September 2014.
<http://www.irrawaddy.org/burma/muslim-citizenship-procedure-angers-arakanese-rohingya-see-opportunity.html> (accessed on 10 June 2015).

they had lost their identity documents during the sectarian violence.¹¹ The future for these people is uncertain; they will remain in the temporary camps and there are fears that they will be deported to Bangladesh, where they will not be welcomed.

International pressure may be brought to bear on the national verification process and the segregation of the Muslims from the rest of the population. In fact, Myanmar has re-started the process in Myebon camp since the story on the Rohingya broke, but only for those who register as Bengali. However, given the historical and widespread antagonism against the Rohingya (and other Muslims), it is unlikely that the ruling party will recognise them as an ethnic group or award all of them citizenship in an election year, particularly given the practical difficulties of proving residence. Such a move would alienate the Rakhine Buddhists who have had a long-standing conflict with the Rohingya and Muslim community in Rakhine; many influential Buddhist monks; and other sectors of Burmese society that insist that the Rohingya are illegal immigrants from Bangladesh. In fact, President Thein Sein's u-turn on allowing white cardholders (the majority of whom are Rohingya) to vote is indicative of his sensitivity to the mood of the electorate.

Indeed, this issue is so politically sensitive that even Aung San Suu Kyi will not offer a public opinion on it. However, the National League of Democracy, the main opposition party that she heads, has called for the problem to be resolved by amending the law, and for granting them citizenship after one or two generations of residence.

CONCLUSION

The purpose of this article has been to distil two fundamental issues from the morass of blame, moral panic and emotional wrangling that the Rohingya issue has been sucked into. The first concerns citizenship in Myanmar and the second bears upon the irregular migration routes taken by the Rohingya and the Bangladeshis.

As discussed above, it is unlikely that the Rohingya will be recognised as an ethnic group or be awarded citizenship this year. What may help their situation is international pressure placed on the Burmese government to stop their segregation in camps and to lift the restrictions placed on the social, political and economic aspects of their lives.

Nevertheless, even if the Rohingya were to be granted citizenship now, the issue of unsafe irregular migration will remain. They, like their Bangladeshi counterparts, would still need to migrate to find paid work. Until the fundamental structural issues of inequitable economic and human development, highly surveilled regular migration and the appetite for flexible

¹¹ Lawi Weng. "Muslim Citizenship Procedure Angers Arakanese, Some Rohingya See Opportunity". *The Irrawaddy*. 23 September 2014. <http://www.irrawaddy.org/burma/muslim-citizenship-procedure-angers-arakanese-rohingya-see-opportunity.html> (accessed on 10 June 2015).

low-cost labour are addressed by the region's nations, the poor and disenfranchised will continue to take perilous journeys with no guarantees of employment or even survival.

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