

# Track II Dialogue on Forced Migration in the Asia-Pacific



## COMPILATION

This initial briefing pack has been compiled by the CPD Secretariat in preparation for the first meeting of the Track II Dialogue. The pack has been strengthened by information and insights received from: Anne Gallagher, Alice Nah, Sriprapha Petchamersree, Lars Stenger and Febi Yonesta.

We do not wish to overload participants with information before the first meeting, but will work to develop the data and information available to the Dialogue between meetings, following discussions with participants.

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Cover photo: Newland, K. 2015, 'Irregular Maritime Migration in the Bay of Bengal: The Challenges of Protection, Management and Cooperation', *Issue in Brief*, International Organisation of Migration and Migration Policy Institute, issue 13, p. 5

# FORCED MIGRATION: FRAMING THE DIALOGUE

## Introduction

Migration of people is a complex phenomenon, which has always challenged precise labelling and terminology. People move for different reasons and many people move for a combination of reasons.

Most global migratory movements are benign for those involved and relatively easy for governments to manage.

In establishing this dialogue, the Centre for Policy Development (CPD) aims to focus on improved policy responses to those forms of migration within, and into, the Asia-Pacific region, which are proving the most difficult for governments to manage. These migratory movements involve people in the most vulnerable circumstances and often raise the greatest controversy within national communities – the movement of asylum seekers, refugees and trafficked persons.

For the sake of simplicity, CPD has chosen the brief umbrella term "forced migration" as the unifying label.

Recognising the extensive interlinkages, CPD considers that any discussion of "forced migration" must necessarily cover, to a greater or lesser extent, related issues such as protection, durable solutions, irregular migration (whether by land or sea), economic migration, migrant/people smuggling and displacement (including through climate change).

Indeed, any area of discussion which can provide practical and achievable solutions to the core forced migration issues facing our region should form part of our deliberations.

Ultimately, improved policy responses can only come from governments. New responses at the national level require better understanding of, and insights into, the issues. They also require a commitment to better policy and law and some investment in implementation capabilities.

Effective regional responses must flow from a commitment from governments to shared responsibility for dealing with the issues, improved consultative and decision-making mechanisms and, most of all, a sense of mutual trust.

## Glossary

As noted above, there is no settled terminology for forced migration issues. Where terms in this document have been used we have relied on the definitions below. These definitions have been sourced from the IOM (Glossary on Migration), the UNHCR (Global Trends Report) and the November 2014 report from CPD, Australia<sup>21</sup> and the Kaldor Centre, *Beyond the Boats: building an asylum and refugee policy for the long term*.

**Asylum Seeker:** A person who is seeking protection as a refugee but has not yet had their claim determined by an official.

**Country of Origin:** The country that is a source of migratory flows (legal or illegal).

**Country of Transit:** The country through which migratory flows (legal or illegal) move.

**Durable Solutions:** The term used to describe a permanent solution for refugees to allow them to settle and rebuild their lives in dignity and peace. The three durable solutions pursued by states and UNHCR are voluntary repatriation, local integration and resettlement to a third country. The UNHCR estimates that around 800,000 refugees are in need of resettlement each year. There are around 80,000 resettlement places available annually worldwide.

**Forced Labour:** All work or service, which is exacted from any person under the threat of any penalty and for which the said person has not offered himself/herself voluntarily.

**Forced Migration:** A migratory movement in which an element of deception or coercion exists, including human trafficking and threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects).

**Human Trafficking:** The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation.

**Irregular Migrant:** Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country.

**Irregular Migration:** Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. From the perspective of destination countries it is illegal entry, stay or work in a country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.

**Internally Displaced Person (IDP):** A person who has been forced to flee his or her home but remains within the borders of his or her country of origin.

**Maritime Arrival:** An asylum seeker who arrived by boat without a valid visa.

**Migrant:** A person who moves from one country to another for a range of different reasons, including for work, education or to join family members. Migration may be temporary or permanent. Migrants are accepted at the discretion of the state, as opposed to refugees and other persons with protection needs who states may be required to accept as a result of their international legal obligations.

**Migrant Smuggling:** The procurement of the illegal entry of a person into a state, of which the person is not a national or a permanent resident, in order to obtain, directly or indirectly, a financial or other material benefit. Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights.

**Migrant Worker:** A person who is to be engaged, is engaged or has been engaged in a paid activity in a state of which he or she is not a national.

**Non-Refoulement:** The principle of non-refoulement prohibits states from sending a person to a place where they face a real risk of persecution, arbitrary deprivation of life, torture, cruel, inhuman or degrading treatment or punishment, or being subjected to the death penalty.

**People of Concern (to the UNHCR):** This includes persons who are forcibly displaced (refugees, asylum-seekers, IDPs, etc.), those who have found a durable solution (returnees), as well stateless persons, most of whom have never been forcibly displaced. This categorization is neither identical to nor synonymous for the forcibly displaced persons worldwide, a category that not only includes refugees and IDPs beyond UNHCR's mandate but also excludes returnees and stateless persons.

**Protection:** This refers to the protection owed under international law to refugees and others with international protection needs (such as beneficiaries of complementary protection under international human rights law). At a minimum, it requires respect for the principle of non-refoulement, and the safeguarding of basic human rights in accordance with international refugee and human rights law.

**Receiving Country:** Country of destination or a third country. In the case of return or repatriation, also the country of origin. Country that has accepted to receive a certain number of refugees and migrants on a yearly basis by presidential, ministerial or parliamentary decision.

**Refugee Convention:** The 1951 Convention relating to the Status of Refugees, the key legal instrument in international refugee law and protection. The Convention was supplemented by the 1967 Protocol relating to the Status of Refugees, which removed the temporal and geographical limitations of the earlier treaty.

**Refugee Status Determination (RSD):** A process by which a government authority or UNHCR assesses a person's claim for refugee status against the criteria set out in article 1A(2) of the Refugee Convention.

**Refugee:** A person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, and who is unable or unwilling to return to his or her country of nationality or former residence on account of that fear.

**Regular Migration:** Migration that occurs through recognized, legal channels, including with the assistance of a government, governments or an international organisation, as opposed to spontaneous, unregulated migration.

**Stateless Person:** A person who is not considered as a national by any state under the operation of its law. As such, a stateless person lacks those rights attributable to nationality: the diplomatic protection of a state, no inherent right of sojourn in the state of residence and no right of return in case s/he travels.

**Undocumented Migrant Workers:** Migrant workers or members of their families, who are not authorized to enter, to stay or to engage in employment in a state.

# PEOPLE MOVEMENTS

## Overview

Forced migration is a global phenomenon. It is not region specific or uniform in the volume of movement or mode of travel. There is no agreed estimate of the number of people who are involuntarily on the move worldwide. Some estimates put it as high as 200 million.

The International Organization for Migration (IOM) estimates there are roughly 50 million irregular migrants worldwide.<sup>1</sup> The UNHCR has estimated there were a total of 59.5 million people at the end of 2014 who were displaced, an increase of some 8.3 million over the previous year. Among these populations were:

- 19.5 million refugees (including 5.1 million Palestinians),
- 1.8 million asylum seekers, and
- 38.2 million internally displaced persons, of whom the vast majority were displaced as a result of armed conflict.

In addition, there are some 10 million people who are stateless. Stateless people are vulnerable because they lack the protection of citizenship, although they are not necessarily displaced.

At the end of 2014 roughly 27% (or 3.8 million) of all refugees and asylum seekers known to UNHCR were residing in countries in the Asia-Pacific region, with 70% of them (2.4 million) being Afghans.

The scale of the displacement in the Middle East and North Africa has been significantly affected by the conflict in Syria. There are 3.9 million Syrian refugees worldwide. Some 95% of them live in a neighbouring country, while 7.6 million are internally displaced.

Turkey is now the country hosting the largest number of refugees (nearly 1.6 million).

Sub Saharan Africa and Europe host 26% and 22% of the world's refugees and asylum seekers respectively. The Americas region had the smallest share of refugees and asylum seekers (5%), of which Colombians constituted the largest number.

## Types of flows

Refugees and asylum seekers account for a relatively small portion of the global movement of people. Increasingly people are moving from one country or continent to another for reasons that are not asylum-related. As noted by IOM and the Migration Policy Institute (MPI)<sup>2</sup>, recent irregular maritime movements in Asia are driven by economic disparity as well as violence, repression and ethnic

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<sup>1</sup> International Organization for Migration, Global Migration Trends Overview, 2014 available from:

[http://www.iom.int/news/2015/01/irregular-maritime-migration-in-the-bay-of-bengal-the-challenges-of-protection-management-and-cooperation](#), *Issue in Brief*, International Organisation of Migration and Migration Policy Institute, issue 13

discrimination. While comprehensive global data is not available, mixed movements in various parts of the world have highlighted this phenomenon.

In the Mediterranean, for example, it is estimated that well over 100,000 persons have arrived in Europe in the past 6 months. According to media reports there have been over 54,000 sea arrivals to Italy over the same period, as well as some 48,000 arrivals in Greece. More than 8,000 Rohingya have been rescued at sea in the Mediterranean over the past few months.

The Asia-Pacific region is home to the largest number of undocumented flows of migrants (principally undocumented migrant workers) and the largest number of refugees and displaced people in the world.

It is difficult to obtain meaningful data on trafficking. Nevertheless, the 2014 United States Department Trafficking in Persons Report ('2014 Trafficking in Persons Report') revealed that 44,462 people had been identified as victims of trafficking globally in 2014. Of these, 7,856 were from the Asia-Pacific region. The true extent of trafficking, however, remains unclear. The Global Slavery Index estimates there are 35.8 million enslaved people globally. The International Labor Organization estimates there are 21 million victims of forced labour.

### Asia-Pacific Region

There are no agreed, publicly available statistics on movements of people within, and into, the Asia-Pacific region. The following information provides a snapshot of relevant public information on some regional countries.

**Table 2. Major Countries of the South and Southeast Asian Migration System**

Countries of Primarily Migrant Origin	Countries of Primarily Migrant Destination	Countries of Both Origin and Destination
<i>Bangladesh</i>	Brunei	<i>Malaysia</i>
Cambodia	Hong Kong Special Administrative Region of China (SAR)	<i>Thailand</i>
China	Republic of Korea	India
<i>Indonesia</i>	Singapore	
Lao People's Democratic Republic	Taiwan Province of China	
<i>Myanmar</i>	Maldives	
Nepal		
Pakistan		
<i>Philippines</i>		
Sri Lanka		
Vietnam		

Note: Countries most involved in the maritime migration crisis of 2015 are italicized.

Source: Taken from: Newland, K. 2015, 'Irregular Maritime Migration in the Bay of Bengal: The Challenges of Protection, Management and Cooperation', Issue in Brief, International Organisation of Migration and Migration Policy Institute, Issue 13, p. 8, which drew on Hugo, 2015, updated from MPI Data Hub, n.d.-a.

## Malaysia

Malaysia is a popular destination for forced and voluntary migrants from South and Southeast Asia and is a key node in smuggling and trafficking networks. Malaysia was recently upgraded to the Tier 2 Watchlist in the 2014 Trafficking in Persons Report.

Most migrants in Malaysia – both documented and with irregular status – originate from Indonesia<sup>3</sup>. Malaysia is an attractive destination because of its proximity; the ease of travel to Malaysia (by air, land, and sea); the availability of work for ‘semi-skilled’ and ‘unskilled’ workers; the presence of large numbers of migrants from different countries; and the porousness of its borders.

### *Labour Migration*

Malaysia is highly dependent on foreign labour and manages an extensive temporary labour migration programme. Most migrant workers originate from South and Southeast Asia, particularly Indonesia. There are two broad categories of migrant workers – expatriates (‘skilled workers’) and foreign workers (‘semi-skilled’ or ‘unskilled’ workers). Foreign workers come largely from Indonesia, Bangladesh, the Philippines, Nepal, Burma, and other Southeast Asian countries, principally to find greater economic opportunities.

Foreign workers are vulnerable because they do not accrue the right to permanent residence status, their right to work and to reside in Malaysia is tied to their employer, and they have few legal rights. These conditions can lead to regularised foreign workers absconding and working in the shadow economy, with irregular status.

### *Asylum Seekers and Refugees*

Asylum-seeking populations constitute a fraction of the overall migrant population in Malaysia. As of April 2015 there were 152,850 asylum seekers, refugees and stateless persons registered with UNHCR, of which 93% originated from Myanmar<sup>4</sup>. Malaysia is also home to refugees from over 40 countries in Africa, the Middle East, and Asia, many of whom are unregistered.

### *Trafficking in Persons*

Extensive smuggling and trafficking networks bring migrants to Malaysia and through it to other countries. The majority of trafficking victims are documented and undocumented foreign workers in Malaysia<sup>5</sup>.

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<sup>3</sup> The World Bank notes that Indonesia-Malaysia was the 17<sup>th</sup> largest migration corridor in the world in 2010, with the movement of 1.4 million migrants that year. *Migration and Remittances Factbook 2011, The World Bank*. Available from: <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>.

<sup>4</sup> United Nations High Commissioner for Refugees, ‘Malaysia Figures at a Glance’, accessed 29 July 2015.

<sup>5</sup> US State Department’s 2015 Trafficking in Persons report, p.234.

## Thailand

Thailand continues to be a destination country for irregular migrants from bordering countries, including those seeking protection from conflict and discrimination, those seeking work and victims of trafficking. As of December 2014, 644,761 people were registered with UNHCR. This number includes 130,238 refugees, 7,931 cases pending and 506,197 stateless people<sup>6</sup>.

### *Labour Migration*

Precise figures on the number of migrant workers in Thailand are not publicly available. Most estimates put the total between 2-3 million. Undocumented migrants make up the vast majority. Some 90% are from neighbouring Myanmar and the remaining 10% from Laos and Cambodia. They mainly work in low-paying jobs in factories, on farms, construction sites, and fishing boats. Most foreign workers live in highly concentrated areas like Mae Sot, a town on the Burmese border that has become a centre of the Thai garment industry, and Samut Sakhon, 28km southwest of Bangkok, which is a hub of the labour-intensive seafood processing industry.

Migrant workers in Thailand have had to enter a national verification process (NV) involving Thai/Myanmar government officials, in line with a 2003 MOU on Cooperation in Worker Employment. On completion of NV, workers became regularised through issuance of a temporary passport with validity of 6 years, a 2 year Thai visa and a Thai work permit. The 2 year NV visa was extendable only for 2 years prior to a compulsory return to country of origin for at least 3 years (this measure has recently been eased). By August 2013, over 1.7 million migrants had completed the NV process.

### *Asylum Seekers and Refugees*

Refugees and asylum-seekers of more than 40 nationalities have arrived in Thailand in increasing numbers. Most are ethnic minorities from Myanmar, mainly Karen and Karenni, who live in nine camps in four provinces along the Thai-Myanmar border. The Thai government runs all camps, with most assistance provided by non-governmental organisations (NGOs), while the UNHCR focuses on protection activities and programmes to ensure that refugees live in safety and relative security within the camps.

### *Trafficking in Persons*

Thailand remains on the Tier 3 category in the 2014 Trafficking in Persons Report despite the government efforts to address trafficking issues. Since April 2015, Thailand has arrested over 100 people for trafficking, including politicians, police and military officials. Recently, Thailand initiated and hosted a regional meeting on the problem of irregular migrants in the Andaman Sea. In May 2015, the

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<sup>6</sup> The UN General Assembly entrusted UNHCR with a global mandate to work to prevent and reduce statelessness and to protect stateless persons.

Command Centre for Combatting Illegal Fishing was founded in Thailand to address illegal, unregulated and reported (IUU) fishing. Penalties for trafficking have also been increased.

## **Australia**

Australia has a planned, managed migration program which is capped at 190,000 for 2015. This program operates separately to Australia's humanitarian program, detailed below.

### *Labour Migration*

Labour migration both for permanent settlement and temporary migration constitutes the main focus of Australia's planned migration program. The permanent skilled migration program ceiling has been set at 128,550 (67%) of the program. At the end of 2014 there were some 683,000 temporary residents in Australia with work rights (temporary skilled visas, student and graduates) as well as 623,000 New Zealand citizens who receive a special category visa.

Australia's seasonal worker program also provides opportunities for people from Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu to work in Australia for up to six months each year in the agriculture and accommodation industries.

### *Asylum Seekers and Refugees*

Australia is one of the few countries in the region that resettles refugees. It has set the program at 13,750 for 2015/16 and has announced the program will increase to 16,250 in 2017/18 and 18,750 in 2018/9.

Australia continues to receive asylum applications from people who have mainly arrived by air. Processing of the large numbers of asylum applicants who arrived by sea in the period 2010-2014 continues. The Australian government's stated policy is to no longer accept maritime arrivals for refugee status determination or resettlement in Australia. Since December 2013, 20 boats carrying 633 people have been turned back from Australian waters. Some maritime arrivals have been transferred to processing centres and detention facilities in Nauru and Papua New Guinea.

There are approximately 28,000 people living in the Australian community on bridging visas waiting for their protection claims to be assessed. In March 2014, the Minister capped the onshore protection visas for 2013/14 at 2,773 places (the number that had already been granted as at that date) pending the reintroduction of the temporary protection visas (TPVs). This legislation was passed in December 2014. Accurate information is difficult to obtain, although it is understood that no TPVs have been granted to date.

## *Trafficking in Persons*

Since 2003 Australia has had in place a whole-of-government strategy to combat human trafficking and slavery, focusing on prevention and deterrence, detection and investigation, prosecution and compliance, and victim support and protection<sup>7</sup>.

On 2 December 2014 the Minister for Justice launched the National Action Plan to Combat Human Trafficking and Slavery, which sets the strategic aims of the Australian response to human trafficking and slavery over the next five years.

Australia has established a Support for Trafficked People Program (STPP). This program helps people to meet their basic needs for safety and accommodation as well as mental and physical health, wellbeing and skill development. Between 1 July and 31 December 2014 a total of 73 suspected victims of human trafficking and slavery were supported by the STPP.

In 2004, a Human Trafficking Visa Framework was introduced which provides a specific pathway for eligible suspected victims of human trafficking and slavery who are not Australian citizens and do not already hold a valid visa to regularise their immigration status. A total of 18 visas were granted under this Framework between 1 July and 31 December 2014.

## **Indonesia**

The Indonesian archipelago comprises more than 17,000 islands, a combined land/sea territory of some five million square kilometres and a porous coastline of 54,716 kilometres.

## *Labour Migration*

Indonesia's net migration rate, based on a 2015 estimate, is 1.16 migrants for every 1,000 people. This equates to a net migrant population of some 297,000. The number of undocumented migrants is estimated to be 2–4 times higher (ILO). Approximately 75 per cent of all documented Indonesian migrant workers are women, with the vast majority working as domestic workers.

Every year about 700,000 documented Indonesian migrant workers leave home to seek employment abroad. Their primary destinations are the Middle East and Asia, with the two most common destinations being Malaysia and Saudi Arabia. The latest data from the National Agency for the Protection and Placement of Indonesian Migrant Workers (BNP2TKI) in August 2009 stated that there are approximately 4.3 million workers presently working overseas, who contributed US\$6-8.2 billion in remittances to the Indonesian national economy in 2007 and 2008.

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<sup>7</sup> Australian Government Strategy to Combat Human Trafficking and Slavery Whole-of-Government Performance Management Reporting 1 July – 31 December 2014. Accessed 18/08/2015 Available from: <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/AustralianGovernmentStrategyToCombatHumanTraffickingAndSlaveryWholeOfGovernmentPerformanceManagementReporting.pdf>.

Domestic work in itself is not forced labour, but domestic workers disproportionately experience severe forms of labour exploitation, including forced labour and trafficking. The perpetrators of these practices are mostly brokers, recruitment agents, employers and complicit officials.<sup>8</sup>

### *Asylum Seekers and Refugees*

Indonesia acknowledges the right to seek asylum in its constitution. It is not a party to the 1951 Convention nor the 1967 Protocol but the government authorizes UNHCR to carry out its refugee protection mandate in the country as per terms defined in the September 2010 Regulation of the Director General of Immigration. This Regulation ensures that while refugees and asylum seekers have no formal legal status they are granted access to UNHCR for registration and allowed to stay temporarily in the country pending the determination of refugee status and the identification of durable solutions. Further protections are contained in Law No. 39 of 1999.

As of the end of July 2015 Indonesia is host to 13,170 people seeking international protection (5440 refugees and 7730 asylum seekers) including many from Afghanistan (47%), Myanmar (13%), Somalia (8%), Iran (5%), Iraq (5%), Sri Lanka (5%), Palestine (4%), Pakistan (4%), Sudan (2%). In July 2015, the number of refugees that had been resettled was only 590 refugees, with the United States receiving 569 refugees and New Zealand 21.

Asylum seekers and refugees are not allowed to work but may:

- (a) live independently in the community using savings or support provided by family and friends;
- (b) be detained in one of Indonesia's 14 Immigration Detention Centers;
- (c) be placed in Immigration Temporary Detention holding rooms, hostels or office buildings; or
- (d) live in IOM community shelters

Recent estimates suggest around 4,620 persons or 35% of the total active asylum seeker and refugee population are held in Immigration Detention Facilities and other locations across Indonesia. Of these, 1,187 were children. Since the beginning of 2015, around 730 individuals have been released from detention to IOM-run community housing. In the other side, some 744 persons have turned themselves in to the immigration authorities, in order to access accommodation supported by IOM. It is mandatory for asylum seekers to be held in detention if they are registered with the immigration. They can only be released upon approval of the central Immigration Office. Priority for release covers children, women, and elders. No distinction is made between asylum seekers, refugees, or regular migrants.

The detention of refugees and asylum seekers and the widespread location of people of concern remain key protection challenges in Indonesia, particularly for a growing number of children and detainees with specific needs. In 2014, only 44 school-age refugee children were enrolled in public schools.

14,408 Indonesian citizens are registered as refugees and 1,773 are registered as seeking asylum in other nations (16,183 Indonesians in total).

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<sup>8</sup> <http://www.ilo.org/jakarta/areasofwork/labour-migration/lang-en/index.htm>

As of 10 August 2015, UNHCR has been registering around 950 Rohingya people that recently landed in Indonesian shore of Aceh since 10 May 2015, with 521 of them were children. They are placed in five locations; Lhokseumawe, Kuala Langsa, Bayeun, Lhokbani, and Medan.

### *Trafficking in Persons*

Indonesia's anti-trafficking law, passed in 2007, prohibits all forms of trafficking and prescribes penalties of 3-15 years' imprisonment.

Indonesia is listed as a Tier 2 in the 2014 Trafficking in Persons Report. It is a major source country and, to a much lesser extent, a destination and transit country for women, children, and men subjected to trafficking and forced labour. Each of Indonesia's 34 provinces is a source and destination of trafficking. The government estimates 6.2 million Indonesians, many of whom are women, work abroad, mostly in domestic service, construction, factories, or on plantations or fishing vessels. A significant number of Indonesian migrant workers face conditions of forced labor, including through debt bondage, in Asia and the Middle East and on fishing vessels operating in international waters.

Malaysia remains the leading destination for migrant workers from Indonesia, followed by Saudi Arabia, despite the Indonesian government's moratorium on issuing permits for domestic work in Saudi Arabia. The government has reported an increase in foreign and Indonesian fishermen subjected to forced labour on Indonesian and foreign-flagged fishing vessels (many operating out of Thailand's fishing industry) in Indonesian waters.

The government has prosecuted 134 suspected traffickers, convicted 79, provided temporary shelter to an unknown number of victims, and conducted anti-trafficking awareness and training events for members of the public and government officials. The 2014 Trafficking in Persons Report alleged the involvement of a number of Indonesian officials in trafficking. It also noted the Indonesian government is making concerted efforts to comply with minimum standards for the elimination of trafficking. Several Indonesian government departments have been working on combating people/migrant smuggling in collaboration with IOM, supported by the Australian government.

**Table 2. Asia-Pacific States and International Framework**

	1951 Refugee Convention <sup>a</sup>	1974 SOLAS Convention	1978 SOLAS Protocol <sup>b</sup>	1988 SOLAS Protocol <sup>c</sup>	1979 SAR Convention	Bali Process Member	International Organisation for Migration Member	International Maritime Organisation Member	Anti- Smuggling Protocol <sup>d</sup>	Anti- Trafficking Protocol <sup>e</sup>
<b>Bangladesh</b>		X		X	X	X	X	X		
<b>Brunei</b>		X	X			X		X		
<b>Darussalam</b>										
<b>Cambodia</b>	X	X	X	X		X	X	X	X	X
<b>China</b>	X	X	X	X	X	X	Observer	X	X*	X*
<b>Indonesia</b>		X	X	X	X	X	Observer	X	X*	X*
<b>India</b>		X	X	X	X	X	X	X	X	X
<b>Malaysia</b>		X	X	X		X	X	X	X*	X*
<b>Myanmar</b>		X	X			X	X	X	X*	X*
<b>Philippines</b>	X	X				X	X	X	X	X
<b>Singapore</b>		X	X	X	X	X		X		X
<b>Sri Lanka</b>		X				X	X	X		X
<b>Thailand</b>		X				X	X	X	X	X*
<b>Vietnam</b>		X	X	X	X	X	X	X		X*

<sup>a</sup> United Nations Convention relating to the Status of Refugees, 1951.

<sup>b</sup> Amendments to the International Convention for Safety of Life at Sea (SOLAS).

<sup>c</sup> Ibid.

<sup>d</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>e</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>x</sup> With reservation.

Notes: ASEAN members in purple. SOLAS = International Convention for Safety of Life at Sea; SAR = International Convention on Maritime Search and Rescue. Sources: IOM, IMO, UNHCR and UNODC data.

Source: Taken from: Newland, K. 2015, "Irregular Maritime Migration in the Bay of Bengal: The Challenges of Protection, Management and Cooperation", Issue in Brief, International Organisation of Migration and Migration Policy Institute, issue 13, p. 8, which drew on IOM, IMO, UNHCR, UNODC

# HUMAN TRAFFICKING AND MIGRANT SMUGGLING IN ASIA/OCEANIA



## Human Trafficking in Asia / Oceania

Asia / Oceania is a hub of significant human trafficking activity, both within and beyond these regions, given large populations, inequalities between countries, and limited capacity and/or political will to address the lucrative trade in human beings for private profit.

### Defining Human Trafficking

#### Key Elements of the International Legal Definition

**Action:** Recruitment, transportation, transfer, harbouring or receipt of persons.

**Means:** [Through] Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another. (This element omitted in relation to trafficking in children)

**Purpose:** Exploitation (including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs).

#### Key Features of the International Legal Definition

Trafficking affects women, men and children, and involves a range of exploitative practices, including sexual exploitation, forced labour, forced marriage, forcible military recruitment, and child soldiering.

Trafficking does not require the crossing of a border, nor does it always require movement. Maintaining a person in the situation of exploitation through means such as coercion or deception can constitute trafficking.

It is never possible to "consent" to trafficking. The "means" of trafficking in adults will operate to nullify consent.

### Human Trafficking Facts & Figures



**21 million** men, women and children in forced labour, estimated in 2012  
**44,462** victims officially identified worldwide in 2014

Due to the clandestine nature of human trafficking, it is impossible to accurately gauge the numbers of trafficked persons worldwide. This is compounded by difficulties in separating trafficking from irregular migration, migrant sex work and bad/exploitative working conditions. All estimates should therefore be treated with some caution. The figure of 21 million provided above is currently the most robust available but note it relates only to 'forced labour', which may be considered a subset of human trafficking.



**US\$150 billion** recent estimates of total profits from use of forced labour in the private economy

Attempts to estimate annual profits of forced labour worldwide were first made in 2005. At least US\$44 billion were estimated to be generated in annual profits, with over US\$32 billion generated by human trafficking. More recent ILO estimates of global profits from forced labour are significantly higher. Note that a majority of these profits (US\$51.8 billion) are reported to be generated in Asia.



**10,051** prosecutions for trafficking worldwide in 2014  
**4,443** convictions of trafficking worldwide in 2014

Although more than 90% of countries have enacted legislation criminalizing human trafficking since the UN TIP Protocol was adopted fifteen years ago, the number of convictions globally remain extremely low, suggesting persistent high levels of impunity. Between 2010 - 2012, about 40% of countries reported less than 10 convictions per year. In Australia, no convictions were recorded in 2014. Most prosecutions and convictions relate to trafficking for sexual exploitation.

## Facts & Figures (continued)

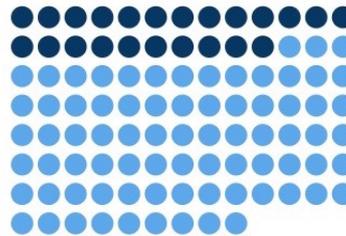
In this part of the world, as in all others, women, men and children from lower income countries and areas are trafficked into exploitation in higher income countries/areas. Asia in particular is a major source of trafficking to other parts of the world including North America, Western Europe and the Middle East (for example, Nepalis trafficked to the Gulf States for exploitation in domestic service and construction). However, there is also substantial trafficking within Asia / Oceania (for example, Indonesian fisherman trafficked onto Korean fishing vessels operating in New Zealand waters).

Forms of Exploitation among Detected Victims in Asia / Oceania



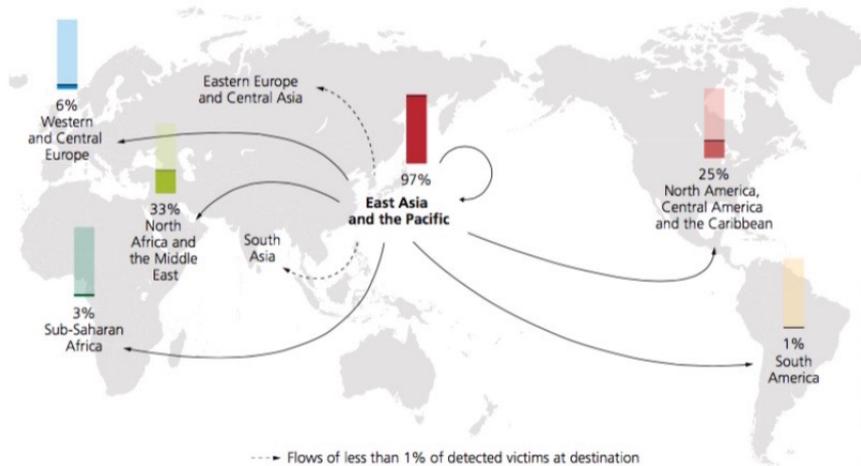
Gender Breakdown of Detected Victims in Asia / Oceania

Gender Breakdown of Detected Victims in Asia / Oceania



Consistent with worldwide figures, 77% of identified victims of trafficking in Asia/Oceania are female (as seen above). This likely reflects a continuing emphasis in national responses on trafficking for purposes of sexual exploitation at the expense of trafficking for purposes of labour exploitation (Note that women are disproportionately trafficked for purposes of sexual exploitation, forced marriage, and domestic work). Globally, one in three identified victims of trafficking are children (defined as under age 18). As with other regions, accurate victim identification remains a significant problem in the Asia/Oceania, likely meaning that a majority of victims remain undetected and thus, unable to exercise their rights to protection and support.

Destinations of Trafficking Victims Originating in Asia / Oceania, 2010 - 2012 (or more recent)



### U.S. Trafficking in Persons Report Rankings (2015)

#### Tier 1

Australia; New Zealand

#### Tier 2 and Tier 2 Watchlist (W/L)

Brunei; Cambodia (W/L); Indonesia; Lao PDR (W/L); Malaysia (W/L); Myanmar (W/L); Philippines; Singapore; Vietnam

#### Tier 3

Thailand

This information brief has been prepared by Anne Gallagher for the Track II Dialogue on Forced Migration. It draws on a range of resources including the U.S. Trafficking in Persons Report (2015); UNODC Global Trafficking Report (2014); UNODC Fact Sheet on Human Trafficking; and ILO report: "Profits and Poverty: the economics of forced labour" (2015).



# Migrant Smuggling in Asia / Oceania

For the millions of people who want or need to move, migration has become progressively more expensive and perilous. Legal access to preferred destinations is now an option for the privileged few. The rest are forced into the arms of those able to help them circumvent ever-increasing controls and deterrents. In Asia/Oceania, increasingly sophisticated networks of smugglers mediate the movement of migrants who seek improved economic opportunities and/or are escaping persecution, conflict and natural disasters.

## Defining Migrant Smuggling

### Key Elements of the International Legal Definition

**Action:** Procurement of the illegal entry of a person into a State of which the person is not a national or permanent resident.

**Purpose:** In order to obtain, directly or indirectly, a financial or other material benefit.

### Migrant Smuggling ----- compared to ----- Human Trafficking

Profits are fees paid by the smuggled individual for his / her illegally facilitated migration.

Source of Profit

The primary source of profit is the exploitation of the victim / victim's labour.

Smuggling always involves two or more countries and entry is always irregular.

Transnational Aspect

Trafficking may occur within a country - as well as across two or more countries. A victim of trafficking may enter the country of exploitation legally.

Smuggling can be 'victimless'. It is often incidentally exploitative - but exploitation is not an essential element.

Victimization

Trafficking is inherently exploitative - there is always a 'victim'.

Smuggled migrants are seen to consent to the fact and conditions of their smuggling.

Consent

Consent either not present or vitiated by means such as force, fraud, coercion, abuse of vulnerability, etc.

### Overlap between Migrant Smuggling and Human Trafficking

In some situations (e.g. Australia), geographical and other factors mean that there is little or no overlap between smuggling and trafficking.

But overlaps are common...

Trafficked persons may be smuggled into the country of destination;

A smuggling situation may morph into one of trafficking - often to compel payment of subsequently inflated transportation debt;

Smugglers may seek to exploit their clients for additional financial gain (e.g. through extortion).

Examples of overlap include:

Smuggled Rohingya asylum seekers held in camps and sold for forced labour on Thai fishing vessels;

Central/South American migrants seeking to enter the United States kidnapped for ransom in Mexico;

Organized criminal networks operating in the East and Horn of Africa exploit smuggled migrants through extortion and torture.

Are governments deliberately conflating the two concepts?

There is some evidence (e.g. in Europe) that governments are conflating smuggling with trafficking in order to shore up public support for military and other action against smugglers.

# Migrant Smuggling Facts & Figures



**59.5 million** men, women and children forcibly displaced as of 2014

**13.9 million** men, women and children newly displaced by conflict, violence and disasters in 2014

**19.5 million** refugees worldwide in 2014 (86% hosted by developing countries)



**214 million** migrants worldwide

**50 million** irregular migrants (of which 11.1 million of irregular migrants are in the U.S.)

**Unknown** number of persons smuggled, believed to be a significant proportion



**4,077** recorded deaths of smuggled migrants between January - September 2014

**100** average number of deaths of smuggled migrants seeking to enter Australia per year, since 2000



Women account for 48% of global migrants.

21.9 million people were displaced by disasters in 2013.

Of these, 87.2% of disaster-induced displacement occurred in Asia.



## Smuggling Routes & Trends in Asia/Oceania



### Key Smuggling Routes

Smuggling of migrants (mostly asylum seekers) from West and South Asia through Southeast Asia to Australia, Western Europe and Canada

Smuggling of migrants from Myanmar (Rohingya asylum seekers) and Bangladesh (Rohingya refugees and Bangladeshi economic migrants) to Thailand and Malaysia.

### Migrant Profile

Across all routes, smuggled economic migrants are typically young, single men. Smuggled asylum seekers are more diverse, often including family groups. Most smuggled migrants seek unskilled, low-skilled employment and/or protection.

### Smuggler Roles & Profiles

Recruiters and organizers typically share the nationality of smuggled migrants. Facilitators (transporters, other service providers) are typically opportunistic nationals of the transit state. Some operations/operators are focused and highly organised. Many more appear to be loose-knit and ad-hoc.

### Methods of Smuggling

Highly variable and rapidly shifting factors influencing methods and routes include: funds available, geography, border controls, availability of transportation, smuggler knowledge, skills and contacts, availability of complicit officials, need for fraudulent documentation.

This information brief has been prepared by Anne Gallagher for the Track II Dialogue on Forced Migration. It draws on a range of resources including the UN Protocol against the Smuggling of Migrants by Land, Air and Sea, UNHCR, "World at War" (2014); UNHCR, "Asylum Trends" (2014); IOM, "Fatal Journeys" (2014); IOM, "Global Migration Trends" (2014); Australian Border Deaths database (2015); UNODC, "Migrant Smuggling in Asia" (2015)

## NATIONAL AND REGIONAL RESPONSES OF GOVERNMENTS

### Overview

Over the last 40 years, governments in Southeast Asia and the Pacific have responded in a variety of ways at the national and regional level to the humanitarian, border management and security challenges of forced migration in the region.

The nature of policy responses has varied depending on the volume and circumstances of people movements over time and which countries are impacted. All affected countries have had to put in place national responses to handle influxes of forced migrants. In some cases these have created points of disagreement and friction with neighbours.

Given the very nature of forced migration, national responses have, in many cases, not been enough to deal with the issues. External cooperation has been essential.

Bilateral or multilateral cooperative arrangements have necessarily supplemented national responses. Wider involvement of partner governments and organisations from outside the region has also been a factor to a greater or lesser extent depending on particular flows over time. The United Nations High Commissioner for Refugees (UNHCR) has played an ongoing role in meeting its protection responsibilities. The IOM has been regularly involved. Civil society has also played an important part.

An underlying complexity in achieving cooperation on forced migration in the region has been that some countries are parties to the 1951 Refugee Convention, but many are not. This has meant that cooperation has been based on widely different starting points in terms of legal obligations. Also, some countries are members of IOM but others are not; this impacts on the practical role that IOM can play.

### The Indochinese refugee situation

The Indochinese refugee situation was a defining forced migration event in that it involved displacement of some 3 million people from Vietnam, Cambodia and Laos to many parts of the Asia Pacific region – Thailand, Malaysia, Indonesia, Singapore, Hong Kong, China and the Philippines. Nearly all countries in the region were affected.

The Indochinese refugee situation, because of its scale and involvement of great powers, was managed in part through arrangements developed with actors outside the region. Arrangements were agreed to manage rapidly escalating numbers of refugees through the 1979 Geneva Conference on Indochinese Refugees. A decade later, a strategy was devised to bring the outflow of people to a conclusion at the 1989 Geneva conference through the Comprehensive Plan of Action (CPA).

Some 2.5 million Indochinese refugees were resettled and some 500,000 repatriated. Overall, cooperative action gave protection to millions and managed a huge flow of people over time to an orderly conclusion. At the same time, some terrible abuses occurred and there were mixed assessments

on the part of governments around the region as to whether responsibilities and burdens were equitably shared.

## After the Indochinese refugee situation

After the winding down of the Indochinese refugee situation, forced migration continued to be an issue within the region although its impact varied from country to country. The major source of forced migrants within the region over a long period has been Myanmar. Sri Lanka has also generated significant numbers. In more recent years, with increasing global mobility, forced migrants from many parts of the world – especially the Middle East and Africa have come into the region. Modes of arrival have included land, air and sea travel.

### National responses

National responses have varied according to the nature and size of inflows of forced migrants, national policies and local needs and circumstances.

Southeast Asian countries have frequently been willing to provide first asylum and deal with immediate humanitarian needs in responses to influxes of asylum seekers. In some cases this has been through the establishment of large refugee camps; in others it has been through permissive stay in the community, although detention in secure facilities has also been involved. In most cases, apart from Australia, refugee determinations have been made by UNHCR.

Thailand and Malaysia have experienced the largest numbers, with a smaller flow of people into Indonesia. Australia has experience of asylum seekers arriving by air and sea and has had particular concerns about sea arrivals.

Countries in the region have developed increased capabilities to institute law, policy and operational responses to forced migrants. They have also upgraded law enforcement and border management regimes. Intelligence, surveillance, maritime patrol and interception capabilities have been boosted in response to forced migration by sea.

Some countries informally permitted long-term stay of refugees in the community. Others have formally integrated people found to be refugees or formally resettled them from other countries. Significant resettlement of refugees to countries outside the region, such as the United States and Canada continues to be important.

Policies and capabilities are also gradually evolving in relation to people trafficking.

## Bilateral responses

Bilateral cooperation between countries in the region has been an important feature of management of flows of forced migrants. For example Australia has pursued extensive bilateral cooperative activity with many countries in the region. However, the totality of such cooperation over a long period is not well documented.

## Regional responses

There have been a number of attempts to get a broadly agreed regional position on various aspects of forced migration, mostly in the last 20 years.

### *Bangkok Principles*

Well before the advent of the Indochinese refugee situation, in 1966 the Asian-African Legal Consultative Organization (AALCO), representing a broad spread of countries in Asia, Africa and the Middle East, adopted a non-binding set of "Principles Concerning the Status and Treatment of Refugees" in Bangkok. The principles have remained under discussion in that forum over several decades; the impact on legal regimes in Southeast Asia is unclear.

### *Manila Process*

The Manila process originated from an IOM seminar in 1996 and brought together 14 regional states, at "official" level, to discuss and consult on managing issues of migrant trafficking and irregular migration in the region. The Manila Process is no longer active.

### *Bangkok Declaration on Irregular Migration*

The 1999 Bangkok Ministerial Declaration, although not a regional process, flowed from an international symposium in Bangkok "Towards Regional Cooperation on Irregular/Undocumented Migration". Its concluding statement by ministers and officials set out a number of approaches to be adopted by participating countries noting that, "migration, particularly irregular migration should be addressed in a comprehensive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin transit and destination".

### *The Intergovernmental Asia-Pacific Consultations on Refugees and Displaced Persons and Migrants, (APC)*

The Australian Government and UNHCR organized a regional officials meeting on refugees and displaced persons in 1996 that was attended by representatives of 24 countries. The scope of the agenda was expanded the following year to include migration, reflecting the priorities in the region. The process then proceeded under the name of Asia Pacific Consultations (APC). The APC continued as a discussion forum for some years, but is no longer active.

### *The Bali Process*

The Bali process on People Smuggling, Trafficking in Persons and Related Transnational Crime, a regional Ministerial process co-chaired by Indonesia and Australia, came into existence in 2002. It includes 45 participating countries. The Bali Process, which remains active, has had its strongest focus on law enforcement against people smuggling and trafficking, but, at times, has also acknowledged the importance of participating states dealing better with refugee protection issues. Following a meeting in March 2011, Ministers agreed to a non-binding "Regional Cooperation Framework" and an underpinning set of principles for participating states cooperating to deal with people smuggling and refugees. The ministers also agreed to set up a regional support office in Bangkok (RSO) to provide an information base for use by participating states.

### *Jakarta Declaration*

Ministers and Officials from 14 "most affected" countries at a Special Conference on the Irregular Movement of Persons in Jakarta in August 2013 issued the "Jakarta Declaration on Addressing Irregular Movement of Persons". The Declaration pledged countries of origin, transit and destination to work together on prevention, detection, protection and prosecution to address irregular movements of persons.

### *ASEAN*

Most, but not all, states in the region are members of the ASEAN. ASEAN is developing a significant agenda on movement of people within the 10 ASEAN member countries. ASEAN Directors General of Immigration Departments and Heads of Consular Affairs Divisions of Foreign Ministries meet annually to review cooperation on movement facilitation and addressing irregular movement.

The 2012 ASEAN Human Rights Declaration states: "Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements".

It also declares "No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs".

In 2004, ASEAN agreed on a Declaration Against Trafficking in Persons Particularly Women and Children. Since 2007, ASEAN has been working on the development of an ASEAN Convention against Trafficking in Persons to achieve a framework for collaboration among ASEAN Member States on investigation and prosecution of trafficking in persons cases as well as on providing assistance to the victims for their safe return, rehabilitation and reintegration.

## One-off regional responses

Past, and continuing, regional processes have had an impact in raising forced migration on the agendas of governments and providing an umbrella for better cooperation. However, it is notable that a one-off process involving 17 regional governments was brought into action to deal with the most recent acute people movement crisis of people from Myanmar and Bangladesh – the "Special Meeting on Irregular Migration in the Indian Ocean" convened in May 2015 by the Royal Thai Government. The meeting exchanged views on a series of proposals and recommendations to better manage the situation.

ASEAN, in July 2015, also convened an emergency Ministerial Meeting on transnational crime concerning irregular movements of persons in Southeast Asia.

## Policy outcomes

Judgements about the extent to which policy responses have succeeded or failed depend on the perspectives from which the judgement is being made – whether it is from the perspective of individual forced migrants, protection, human rights, law enforcement or border management. Over time, millions of people have been able to gain temporary asylum in Southeast Asia and the Pacific and millions resettled. There has been a small amount of local integration. Resettlement to third countries continues. Some forced migrants have returned to countries of origin.

At the same time, there are continuing valid criticisms that forced migrants may face inconsistent reception arrangements, tough detention regimes, a precarious existence and long delays while waiting refugee determination. Those found to be refugees may wait decades in very difficult conditions for a durable solution. Harsh measures have been taken at times to deter the movements of asylum seekers by sea. Victims of trafficking still suffer serious abuses.

There have been positive examples of responsibility and burden sharing. These are, however, often short-lived and priority shifts to uncoordinated national responses.

Some progress has been made in developing national legal systems and capacity is to deal with migrant smuggling and trafficking. However, this is variable throughout the region. Both trafficking and smuggling remain major ongoing problems.

Attempts at regional-based approaches have only been partially successful. The Bali Process has been the most long-lived and has made some gains in raising the profile of issues in the region and providing an umbrella for more active bilateral cooperation. Nevertheless, interest by participating States has waxed and waned. The size of the Bali Process has made it somewhat unwieldy; it has not been seen as the vehicle for consultation on immediate responses to regional forced migration crises.

## Improving national and regional responses

Most assessments would suggest that the challenges of forced migration in the region are likely to increase - global displacement is at record levels, the means of movement is cheaper and easier than at any time in the past and there are many active networks of facilitators.

The question for governments in the region is how best to improve policy responses and outcomes that meet both legitimate protection and border management concerns:

- What are the priorities? Where should governments start?
- What research can be done to get a better understanding of forced migration issues and particular movements?
- What would it take for forced migration issues to receive higher priority and more investment within individual countries?
- Where is it best to invest in improved national policy and operational capabilities?
- What are the right strategies to encourage more orderly migration and to limit scope for smugglers and traffickers?
- What individual strategies are needed to deal with flows of people from particular countries?
- What can be done through foreign policy and development assistance to stabilise populations in, or closer to, source countries?
- What would it take to get stronger regional institutions to achieve better collaboration on forced migration?
- What would stronger regional cooperation mean in practice?
- How can existing national protection regimes be improved in the short term?