

Joint Submission to the
Special Rapporteur on Trafficking
in Persons, especially women and
children



Rohingya Women Development Network
Free Rohingya Coalition
Institute on Statelessness and Inclusion



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Joint Submission on trafficking in persons and international protection of refugees, stateless persons and internally displaced persons (IDPs):

Stateless Rohingya refugees and IDPs in Asia-Pacific

Introduction

1. Rohingya Women Development Network (RWDN), Free Rohingya Coalition (FRC), the Institute on Statelessness and Inclusion (ISI) and three independent Rohingya and Burmese women researchers, Raziya Sultana, Halima Akter, and Kathy Win, make this joint submission to the Special Rapporteur on Trafficking in Persons, especially Women and Children.
2. Rohingya Women Development Network (RWDN) is a Rohingya women-led community organisation based in Malaysia that works to strengthen and develop Rohingya communities through advocacy, education and training. Their work includes supporting survivors of trafficking and gender-based violence. Free Rohingya Coalition (FRC) is a global network of Rohingya activists and friends of Rohingya who share common concerns about the on-going genocide and the need for Rohingya survivors to play an active role in seeking a viable future for their group. The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level.
3. This submission focuses on the risks of trafficking and protection of stateless Rohingya refugees and IDPs. Specifically, it considers the following areas in the Special Rapporteur's call for information: statelessness and the nexus with trafficking in persons for all purposes of exploitation; prevention of trafficking in persons among refugees, IDPs and stateless persons with a focus on socio-economic rights, movement restrictions and other risk factors; trafficking in persons for all purposes of exploitation as a form of persecution; identification and protection of refugees, asylum-seekers and stateless persons who are victims of trafficking; non-refoulement obligations; detention and non-penalisation of refugee, asylum-seeker and stateless victims of trafficking.
4. This submission draws on the experiences of Rohingya practitioners, and activists working to protect survivors and/or prevent trafficking in communities with high risks and prevalence of trafficking. This includes those working in Bangladesh, Malaysia and Myanmar. Additionally, it draws on data from the Institute on Statelessness and Inclusion's Rohingya research projects including human rights research conducted in four different regions of Rakhine State over a period of nine months in 2022, and qualitative research including semi-structured interviews with key informants including Rohingya women and community workers and leaders in Bangladesh and Myanmar in 2022 and 2023.

Background: Rohingya and the nexus between statelessness, forced displacement, and trafficking in persons.

5. Rohingya communities have been arbitrarily deprived of their nationality and persecuted in Myanmar, while also being denied adequate protection as refugees and

stateless people in neighbouring countries. At the centre of their insecurities and vulnerabilities, is the denial of their legal status as citizens in Myanmar, and as refugees and stateless people elsewhere. Rohingyas are excluded from full citizenship in Myanmar under the discriminatory 1982 Citizenship Law and oppressive state registration procedures.¹ Since Min Aung Hlaing's coup in Myanmar on 1 February 2021,² which installed the State Administration Council (SAC) regime, Rohingya communities have been further negatively impacted by increased militarisation, conflict, and power struggles between SAC and Ethnic Armed Organisations (EAOs) including Arakan Army (AA). Greater restrictions of movement, checkpoints and administrative costs following the coup, as well as conflict, have created new layers of insecurities for Rohingya households, driving them into poverty and leaving them vulnerable to human rights abuses from state and quasi state bodies. State authorities and informal quasi state authorities control movement into, out of and through Rakhine State. Without citizenship documents, and unable to obtain official permission to travel in Myanmar, Rohingyas have no other option than to use brokers to facilitate travel within Myanmar and across international borders, leaving individuals and families vulnerable to extortion, exploitation and abuse.³

6. Flashpoints in the persecution of Rohingyas in 1978-79, the early 1992-94, 2012-13, and in 2016-17 forced hundreds of thousands of Rohingyas to flee their homelands in Rakhine State. Most fled across the border into Bangladesh. With difficult living conditions in both Bangladesh and Myanmar, some made onwards journeys in search of safety including Southeast Asia, South Asia and the Middle East. In the 1970s and 1990s many Rohingyas were also forcibly repatriated from Bangladesh back to Myanmar.⁴ In 2017 state-led violence, widely acknowledged to amount to genocide, forced approximately three quarters of a million Rohingya to flee into Bangladesh.⁵ They were given shelter in refugee camps along the border. Multiple generations of Rohingya now live in Bangladesh and other countries, in situations of protracted displacement with very limited access to durable solutions such as repatriation, integration and resettlement.
7. With few pathways to regularise their legal status or access citizenship, Rohingya communities are impacted by intergenerational statelessness in multiple national contexts including Bangladesh, Malaysia, Pakistan, Saudi Arabia, Thailand, Indonesia and elsewhere. None of these countries are signatories to the 1951 Refugee Convention and do not officially recognise Rohingyas as refugees. As such, they lack formal refugee protections and are often treated as 'irregular migrants' without

¹ Myanmar Citizenship Law, 15 October 1982, Available at: <https://www.refworld.org/docid/3ae6b4f71b.html> [accessed 28 February 2023] For more information see: Institute on Statelessness and Inclusion, 'Navigating with a faulty map: access to citizenship and citizenship documents in Myanmar', 2021, Available at: https://files.institutesi.org/Access_to_Citizenship_in_Myanmar_Report.pdf [accessed 28 February 2023]

² Reuters, 'Myanmar's year of turmoil since the military took power in a coup', (2022) available online: <https://www.reuters.com/world/asia-pacific/myanmars-year-turmoil-since-military-took-power-coup-2022-01-25/> [accessed 28 February 2023]

³ See Institute on Statelessness and Inclusion, *Dangerous Journeys through Myanmar: Insecurities and Immobilities for Rohingya Women in Post-coup Myanmar*, 2022, Available at: https://files.institutesi.org/Rohingya_Women_in_Post-Coup_Myanmar.pdf [accessed 28 February 2023]

⁴ J. Crisp, 'Primitive people': the untold story of UNHCR's historical engagement with Rohingya refugees', Humanitarian Peace Network (October 2018) available at: <https://odihpn.org/publication/primitive-people-the-untold-story-of-unhcrs-historical-engagement-with-rohingya-refugees/> [accessed 28 February 2023]

⁵ O P. Green, T. McManus, & A. de la Cour Venning, 'Genocide achieved, genocide continues: Myanmar's annihilation of the Rohingya' (2018) available at: <http://statecrime.org/data/2018/04/ISCI-Rohingya-Report-II-PUBLISHEDVERSION-revised-compressed.pdf> [accessed 13/11/2020]; See also UNHRC, 'Report of the independent international fact-finding mission on Myanmar' (2018) available at: <https://www.ohchr.org/en/hrbodies/hrc/myanmarFFM/Pages/ReportoftheMyanmarFFM.aspx> [accessed 28 February 2023]

permission to work or access services. This lack of legal status, combined with a lack of citizenship in Myanmar, leaves them vulnerable to both indefinite detention and *refoulement*.⁶ Unable to obtain travel documents, different generations of stateless Rohingyas often have no other options open to them but to travel irregularly through networks of brokers, which can expose them to the risks of abuse and exploitation in transit and in the destination country. Unable to obtain visas or work permits, they are forced to work in the informal economy and often need to secure work through informal networks and consortiums. They often end up in unregulated, low status jobs where they can encounter unsafe working conditions, unpaid wages, and other forms of labour exploitation. Additionally, a lack of legal status leaves them excluded from formal banking and financial systems, making them dependent on informal and unregulated money lenders and transfer systems that leave them vulnerable to exploitation, extortion and abuse.⁷

8. The vast majority of Rohingya children born into situations of protracted displacement outside Myanmar are unable to access formal education or training. With socio-economic pressures on households, children are often required to contribute to household income by working in often unsafe conditions. Socio-economic pressures combined with demographic change due to sustained forced migration of young men from Myanmar, and dowry systems changed by social upheaval, also contribute to incidents of early (child) marriage, and trafficking in girls across international borders. For example, from ISI's research Rohingya women and girls attempt the journey to Malaysia from Myanmar and Bangladesh, for the purposes of marriage, to join other family members, and/or to access income earning opportunities.⁸
9. Since the mass exodus of Rohingya from Myanmar to Bangladesh in 2017, more restrictions on movement and livelihoods have been placed on Rohingyas living in the camps of Bangladesh. The presence of cross-border armed gangs, including but not limited to ARSA, have increased violence in the camps. This includes frequent shootings and gun battles, assassinations, arson, abductions and enforced disappearances. These insecurities and deteriorating living conditions in Bangladesh cause Rohingyas to take onwards journeys. As such both Myanmar and Bangladesh are source countries for smuggling and trafficking of Rohingyas.
10. There are currently two main routes from Bangladesh and Myanmar to other countries of Southeast Asia and beyond: by boat across the Andaman Sea to Malaysia, Indonesia and elsewhere; and by land through Myanmar, across the Myanmar-Thai border and onwards to Malaysia and elsewhere. According to UNHCR, more than 3,500 Rohingyas attempted sea crossings in the Andaman Sea and the Bay of Bengal in 2022. This figure represents a 360 per cent increase and signals increasing desperation compared to 2021 when around 700 individuals made similar journeys. Regarding the death toll, around 348 individuals are believed to have died or gone missing at sea making 2022 one of the deadliest years since 2014. Nearly 45 per cent of those rescued were women and children.⁹

⁶ Supra note 3, See also: Institute on Statelessness and Inclusion, Failure to Protect: The Denial Of Status, Detention and Refoulement of Rohingya Refugees in India, 2021, Available at: https://files.institutesi.org/Rohingya_Refugees_in_India_Briefing_Paper.pdf [accessed 28 February 2023]

⁷ Supra note 3

⁸ See more on the Gendered Drivers of Forced Migration in supra note 2

⁹ UNHCR, Protection at Sea in South East Asia - 2022 in Review, 2023, Available at: https://data.unhcr.org/en/documents/details/98170#_ga=2.182629350.197735219.1677585555-819883162.1668779857, [accessed 28 February 2023]

11. Brokers often state that the journey will take a few weeks, but for some it can take months. In other situations, travellers never reach their destination. They may be arrested, abandoned, or die on route. Others are abused or exploited on route. In cases where women and girls travelling for marriage become pregnant as a result of rape on route, they are sometimes rejected for marriage on arrival at their destination, which also leaves the family in debt or financial difficulty.

Experiences of abuse and exploitation on route include:

- Extortion from brokers such as:
 - A four or five-fold rise of transportation fees after departure or demands of extra payments for passengers to be able to disembark the boats or make the full journey.
 - Threats, violence and sometimes abduction of family members located in different countries to recover debts or extra costs.
- Violence, torture and rape by brokers and security forces
- Being 'sold on' to other syndicates on route for the purposes of extortion.
- Forced labour on route, including portering for brokers.
- Food and water shortages, ill-equipped, over-crowded vehicles and unseaworthy boats.
- Injury and death as a result of abuse and inhumane conditions.

Experiences of exploitation at the destination include:

- early marriage
- forced/abusive marriage
- commercial sexual exploitation
- domestic servitude
- child labour
- unsafe and unregulated work
- unpaid wages/wage theft

Rights violations and abuses by State security forces on route and at destination include:

- Failure to provide humanitarian assistance to travellers in distress at sea.
- 'Push-backs' of boats even into high seas.
- Failure to allow passengers to disembark.
- Lack of access to asylum procedures or identification of trafficking victims and stateless people
- Detention upon arrival, no access to UNHCR screening in detention, indefinite detention, torture and abuse in custody, inhumane conditions in detention for example in Malaysia and India.¹⁰
- *Refoulement* to Myanmar following 'rescue' at sea, even in cases of refugees registered in Bangladesh.
- Arrest and detention of travellers on route through Myanmar, preventing their access to legal assistance. Sentences of 2 to 5 years for immigration offenses to Rohingyas due to lack of Myanmar identity documentation.

¹⁰ Reuters, Malaysia pressed to probe deaths of 150 foreigners in detention last year, 2023, Available at: <https://www.reuters.com/world/asia-pacific/malaysia-pressed-probe-deaths-150-foreigners-detention-last-year-2023-02-23/>, [accessed 28 February 2023]

- Lack of social support and re-integration services for separated children (often of imprisoned adults), survivors of sexual violence, and other trafficking survivors.
- Failure to provide household registration to returnees, leading to ongoing abuse and vulnerabilities.

Prevention of trafficking among Rohingya refugees, IDPs and stateless people

12. Exposure to violence and experiences of increasing movement restrictions and deteriorating living conditions in both Myanmar and Bangladesh cause Rohingyas to leave out of desperation and with inadequate funds and preparations, further increasing the risks of exploitation. Whilst some Rohingya are ‘tricked’ by brokers or given a false sense of hope regarding safety and access to livelihoods in other countries such as Malaysia, others undertake dangerous journeys with knowledge of the risks.

“Many families know the journey to another country has huge risks, but they try it anyway. People think if they are lucky on their journey, their families in Rakhine will have support to survive. The risk of being arrested on the route and sentenced to two to five years in prison does not stop them. The risk of rape does not stop them. Even the risk of death does not stop families from making these decisions. It’s the limitations and restrictions here in Rakhine that makes them take the risks.”

A Rohingya women teacher in Sittwe, 2022.¹¹

13. For over 30 years, Rohingyas in Myanmar have been subject to oppressive registration and administrative systems, discriminatory policies and systems of impunity, which have imposed severe restrictions on movement, segregated Rohingyas in pockets of Rakhine State, and severely limited Rohingyas’ access to livelihoods and income earning opportunities. This has created food insecurities and poverty, leaving Rohingya households vulnerable to external shocks, including conflict, disease, and political upheaval.¹² Restrictions on movement and livelihoods are replicated by the Bangladesh government for Rohingya refugees in the camps. Rohingya households in Rakhine State and in the refugee camps of Bangladesh are often dependent on remissions from family members working overseas – most of whom work in informal economies and themselves lack travel documents, legal status and the right to work. This limits access to safe and decent work and leaves family members working overseas at increased risk of labour exploitation. Rohingya households are often heavily indebted.¹³
14. These financial pressures on Rohingya households and intersectional forms of discrimination mean that Rohingya women and girls are particularly at risk. ISI’s recent report on dangerous journeys from and through Myanmar for Rohingyas¹⁴, identified some of the gendered drivers of forced migration in Myanmar and Bangladesh. These include:

¹¹ Quote taken from ISI’s Dangerous Journeys report, supra note 3

¹² Supra note 3

¹³ The Asia Foundation and BRAC University, Navigating at the Margins: Family, Mobility and Livelihoods Amongst Rohingya Refugees in Bangladesh, 2020, Available at: https://asiafoundation.org/wp-content/uploads/2020/09/Navigating-the-Margins_Family-Mobility-and-Livelihoods-Amongst-Rohingya-in-Bangladesh.pdf [accessed 28 February 2023]

¹⁴ Supra note 3

- Lack of access for women and girls to education and decent work.
 - Lack of safety and security for women and girls combined with a lack of recourse to support services and legal remedies for cases of sexual and gender-based violence.
 - Lack of legal status and safe or regular migration options for Rohingya women.
 - Lack of status and decision-making powers within the household.
15. Increased vulnerabilities for Rohingya women and girls compel them to leave their homes in Rakhine State to seek security and stability in countries such as Malaysia, Thailand and elsewhere in Southeast Asia. Compounded by the precariousness of their situations at home or in Bangladesh, experiences of forced migration can quickly turn to violence, exploitation and extortion during the journey or at the destination.
16. Children in IDP and refugee camps are also vulnerable to exploitation due to their living conditions and lack of development opportunities. One IDP woman in Rakhine State explained:
- “Brokers shared misinformation to children aged around 13, 14 and 15 years old. Children do not want to live in camp and the brokers ask them to come with them. They did not need to pay money to brokers. At the half-way point, the brokers asked them to call their family to transfer money. Then they started threatening the family until they transfer money.”¹⁵*
17. Trafficking prevention activities in Bangladesh and elsewhere have often focused on risk-awareness and community-level initiatives that challenge social norms relating to, for example, dowry systems, early marriage and gender-based violence. These initiatives only address part of the problem. The socio-economic conditions for Rohingya men, women and children in Bangladesh and Myanmar that result from deprivation of citizenship and experiences of displacement and dispossession drive onwards migration, and desperation drives risk. Holistic measures that address a lack of legal status, exclusion from economic activities, poverty, inequality, and depletion of rights are a vital missing component in anti-trafficking initiatives for stateless people and refugees.

Trafficking as a form of persecution

18. In 2017, Rohingyas suffered forms of State violence that are widely accepted to amount to genocide. Since then, they have been unable to return back to their homelands safely.¹⁶ In Rakhine State, they are not simply caught in the crossfire between the Myanmar armed forces and the Arakan Army, they are doubly persecuted by both entities. The pressure and impact for Rohingyas living under formal and informal authorities in Rakhine, both of which effectively treat them as noncitizens, has increased insecurities and financial hardships. It is vital that safe routes out of the country are available to genocide survivors. While routes out of the country are a vital lifeline for some, for others they have become fraught with violence, abuse and risk to life. The deprivation of citizenship and movement restrictions drives a system in which brokers and parallel states gain revenue from

¹⁵ Quote taken from ISI’s Dangerous Journeys report, supra note 3

¹⁶ Supra note 3

facilitating the movement of people. Further, there is a strong link between the deprivation of Rohingyas' citizenship in Myanmar and the denial of the right of return. Since the 1990s, those that leave the country are struck from the household registers, effectively erasing their permanent residence.¹⁷ Thus, a move out of the country, in most cases, is permanent. Many are concerned that the facilitation of travel out of the country assists broader strategies to remove Rohingya from Rakhine State, and at the same time generates revenue for state and quasi state authorities.

"They (Arakan Army) do not want Rohingya in Rakhine and they cannot drive us out. So, many people feel that is why they are helping those human smugglers if the Rohingya want to go outside."

Rohingya man, Buthidaung¹⁸

19. The treatment of Rohingyas on route through Myanmar is also understood by many as a form of persecution due to their ethnicity, religion and lack of legal status. Rohingya researchers estimate that only approximately 20% of Rohingyas attempting to leave Bangladesh or Rakhine across land for Malaysia or elsewhere in Southeast Asia make it as far as the Thai-Myanmar border. Many are either abandoned by brokers or arrested on route. There are more than 3000 Rohingyas in detention in Myanmar due to attempting these routes. Approximately 700 have been charged and sentenced under the immigration rules, receiving sentences of 2-5 years. Those who travel from Bangladesh usually receive the longer sentences as they are charged with crossing an international border illegally.
20. There are widespread reports of torture and ill-treatment in prisons and youth detention centres. CJ Platform, a grassroots media outlet, reported that over 300 young women are detained at the Youth Correctional Training Centre of Women's Care and Development Centre in Twande Township, Yangon. They reported that on 8th February 2023, staff at the training centre took 20 young Rohingya women from their dormitory and forced them to strip naked in a public area visible from the centres gate. They were then made to kneel on stones as a form of punishment.
21. According to community members' testimonies, civil society actors and media outlets, arrivals in Malaysia are held indefinitely in overcrowded and unhygienic detention centres, with no access to adequate food and healthcare, UNHCR services and refugee status, no identification of trafficking victims and no support services except those provided on ad-hoc basis by members of the Rohingya community.¹⁹ In April 2022, 528 members of the Rohingya community attempted to escape a detention center in Kedah, Malaysia, leading to a hunt down mission from the immigration authorities and the death of six individuals including two children in a road accident while fleeing.²⁰
22. On 5th December 2022, 13 Rohingya dead bodies were found on the roadside close to Yangon. The bodies were photographed and bore the signs of severe beatings and torture. The victims had reportedly been abducted while attempting to travel to Southeast Asia by a Buddhist ultranationalist militia group connected to the military

¹⁷ Supra note 3

¹⁸ Quote taken from ISI's Dangerous Journeys report, supra note 3

¹⁹ Supra note 7

²⁰ Free Malaysia Today, 6 of 528 Rohingya detainees fleeing immigration depot die in accident, 2022, Available at: <https://www.freemalaysiatoday.com/category/nation/2022/04/20/528-rohingya-detainees-escape-from-sungai-bakap-immigration-depot/>, [accessed 28 February 2023]

government, called Pyu Saw Htee. When brokers failed to pay the ransom, they were reportedly beaten to death. The bodies were not released till after post-mortem and were not given an Islamic funeral.

23. Returnees to Myanmar are also subjected to further persecution. In December 2022, 154 Rohingya who left from Bangladesh including 40 women and 31 children were rescued after a week floating at sea by the Vietnamese Navy.²¹ They were handed over to the Myanmar Navy and a few days later they were transferred to Sittwe in Rakhine State. Since then, Rohingya community members have been unable to locate them. It is presumed that they have been detained and held on immigration charges.

Recommendations

Based on the information above, we would like to recommend that anti-trafficking prevention and protection initiatives are more inclusive of stateless people and should be targeted to their specific needs and vulnerabilities. For example, prevention activities should focus on ensuring access to basic rights and socio-economic rights for stateless people. Additionally, preventing trafficking in refugee and IDP situations, and protecting survivors of trafficking from refugee and IDP backgrounds, requires measures that are situated within a broader framework that factors in the need for protection not just from criminal syndicates, but also from perpetrating states and state actors. For example:

- I. Promote the right to work for stateless people and refugees; provide access to livelihoods and decent working conditions.
- II. Increase access for stateless refugees to durable solutions such as resettlement, integration, and safe and voluntary repatriation, including by providing specific pathways and routes to overcome the barriers encountered by stateless people.
- III. For Rohingyas, promote access to citizenship in Myanmar as an integral component of securing safe repatriations.
- IV. Provide access to safe and regular migration routes for stateless people, including by bypassing the role of the state of origin in proving identity
- V. Increase access to family reunion and reunification through safe and regular routes for stateless people, including by reducing the evidentiary requirements.
- VI. Promote access to civil registration, including birth registration, in countries of refuge with a view to providing pathways to regularise legal status and citizenship for those experiencing intergenerational statelessness.
- VII. For stateless children, provide access to formal education, accreditation, and development opportunities to enable them to access decent work in the future and lift themselves out of the cycles of poverty and exploitation.
- VIII. Incorporate refugee protections into search and rescue operations including providing access to UNHCR, ensuring the right to apply for asylum and *non-refoulement*.

²¹ Reuters, Vietnam vessel saves 154 Rohingya from sinking boat, transfers to Myanmar navy, 2022, <https://www.reuters.com/world/asia-pacific/vietnam-vessel-saves-154-rohingya-sinking-boat-transfers-myanmar-navy-2022-12-09/>, [accessed 28 February 2023]

- IX. Improve the identification of refugees, victims of trafficking and stateless people. Provide them with appropriate protection services and provide alternatives to detention.
- X. Work with UNHCR and State authorities to ensure UNHCR's timely access to detention centres.

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