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Forced migrations in South-East Asia

The role of Malaysia

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ABSTRACT

The movement of people across borders and within their own territories has been a characteristic of international relations and domestic policies even before the birth of the modern State. It is important to consider though, that whether the causes are economic, political, ethnical, religious or environmental, the defining element of migration is the willingness of the choice.

Being unable to choose, people fleeing persecution in their home Countries clearly deserve protection beyond the concept of citizenship, since the very reason of the escape is the inability or unwillingness of the State to grant them the right to life and safety.

In 2014, the majority of States in South-East Asia has not yet developed a systematic and effective asylum system although the area hosts more refugees than any other region in the world.

From the historical point of view, the causes of forced migration flows derived from the conflicts that arose after World War II following the shocking process of decolonization and the creation of new boundaries. Even today, the region is torn by ethnic and religious divides, suffers huge disparities between rich and underdeveloped Countries and between areas which are integrated in the international market and other confined into a condition of extreme poverty.

However, forced displacement does not origin only from conflict. People around the globe feel forced to abandon their houses for protracted discrimination in vital fields such as education, political representation, access to the labour market and health care system. Moreover, the area is prone to suffer from natural disasters such as earthquakes, tsunamis, droughts and disease breakouts.

New migration flows triggered by poverty, despair and persecution collide with a legal system too green to handle them. Left without protection, refugees fall into the hands of human traffickers and exploiters, they are imprisoned as criminals or die during their perilous journey.

The first chapter of this dissertation will give an overview on the legal framework created by the International Community to assist refugees.

The codification of refugees' rights has its roots in the general idea of protection from injuries of aliens that originated from the willingness of States to promote the entry of skilled foreign workers and to ease the establishment of trade agreements with other States. The acceptance of a minimum standard of treatment for aliens and the negotiations of some forms of immunity for merchants was a way to expand the economic scope through foreign trade.

A further step was taken after the First World War with the Minorities Treaties. The Great Powers decided to implement a system of bilateral treaties between the Countries that lost the war and the League of Nations to provide protection to those groups of people whose safety could have not been guaranteed by the host State.

The great importance of this system was in the fact that, besides limiting the sovereignty in favour of the respect of basic human rights, it shifted the focus to people in harm themselves.

The First World War forced States to recognize that the legal provisions applied to aliens were ineffective in mass forced migrations, since they were based on reciprocity and on the existence of a Country of Nationality that could provide protection.

However, the watershed in refugee protection came as a consequence of the tragedies of the Second World War, which led to the pillar of our present international human rights law: on 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights, a document that for the first time *inherently* entitled every human being with rights.

On those foundations, the 1951 Convention Relating to the Status of Refugees was meant to represent the binding legal structure of a common international system of protection of asylum seekers. The Convention has proved to be flexible enough to be an effective tool for determining refugee status for over sixty years. Moreover, the Convention's provisions expand any previous attempt to build a comprehensive legal framework for international protection and reach much further by addressing many aspects of refugees' life from the arrival in the hosting Country to his resettlement or naturalization.

The operating arm of the Convention was the United Nations High Commissioner for Refugees (UNHCR), whose mandate has been expanded by The General Assembly (GA) and the Economic and Social Council (EcoSoC) resolutions over the years to extend protection to those groups left outside the scope of the 1951 Convention and subsequent Protocols. Returnees, stateless persons, IDPs, and other people deserving humanitarian protection especially in the territory of those States that are not parties to the 1951 Convention or its 1967 Protocol (known as "mandate" refugees), are today under the umbrella of UNHCR operations.

The second chapter will discuss the main patterns of forced displacement in South-East Asia, showing how important the flexibility of the UNHCR is.

From India to East Timor, from 1947 until 2002, every State in the region obtained full independence with new ruling elites forced to face the consequences of the colonialist strategy of "divide and rule". Indochina was the area where the fight for independence and the superpower interests hit the hardest. Those Countries like Indonesia, which tried to escape from the apocalyptic dualism of the Cold War, attempted to turn to a secularist and nationalist conception of the State, fuelling the danger of ethnic and religious minorities.

Malaysia is one of the main ports of arrival and transit for thousands of vulnerable persons. However, the path chosen by the Government to deal with undocumented migrants is a reactive one. Malaysian law does not provide special protection for asylum seekers, refugees or stateless persons, nor takes the Government part in status determination procedures. As undocumented immigrants, people at risk are not allowed to work, own property, enrol for the public education system, nor are they granted full access to the national healthcare. The fact that they are considered illegal immigrants exposes them to arrest and often-prolonged detention for immigration offences, the punishment of which includes forms of physical torture such as whipping and caning.

Given the lack of a national legal framework that could address the problems of asylum seekers, the third chapter seeks to highlight the shortcomings of the Malaysian case by telling the stories, tragically true, of refugees. The discussion will focus on three stages of their odyssey: the journey, the arrival and the survival in the State, covering issues such as human trafficking, detention conditions, exploitation and the role of NGOs.

The fourth and final chapter will try to propose a legal solution for Malaysia, providing a refugee status determination mechanism which could prove effective and efficient, post-recognition policies and a possible regional system for protection.

Facing an increase in the sheer number of applications in emergency-like situations in Countries that have no established legal framework for status recognition, UNHCR decision-making capacity is bound to drop. In Malaysia, where asylum seekers waiting for their claims to be assessed do not live in physically and mentally safe conditions, the lack of efficiency of RSD procedures only contributes to make them more vulnerable. The number of UNHCR pending applications is correlated with the length of applicants' waiting period: a rise in the backlog leads to longer exposition to possible raids and harsher conditions, but in contrast, a decline in the former doesn't automatically mean an enhanced decision making efficiency.

To solve, or at least to reduce the impact of this problem, and keeping in mind the best interest of asylum seekers, Malaysian Government should consider implementing joint RSD procedures. In this respect the Italian case will be taken as a *starting* point. As to specific rights, family unity, health, employment, education and social protection, they will be further clarified keeping in mind the durable solution of integration.

At the regional level, this paper proposes a cooperation under the umbrella of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the South East Asia National Human Rights Institutions Forum (SEANF), concerning information sharing, professional training and in general the role of harmonizing the asylum legislations in the Member States. Moreover, it hints to a system for resettlement based on labour demand by other States in South-East Asia, connected to Malaysia through Memoranda of Understanding (MOUs) and assisted by follow-up activities by UNHCR.

However, the aim of this dissertation is to show that, given the enormous difference between a legal system (which is necessarily objective and rigid) and its enforcement (which is dynamic and can contribute to evolve it), the biggest effort should be put into education and professional training. The constant evolution of the patterns of forced migrations requires that the society of a Country which is demanded to play a vital role in the lives of millions of vulnerable people, first of all by history and geography, should be able to understand immigration beyond the National Security concern.

There is a qualitative difference between tolerance and understanding, between cooperation and sharing, between assimilation and integration. The most effective and efficient asylum system in Malaysia will need to be supported by legitimization at every level, from the persons in charge of the Malaysian Human Rights Commission to the students sharing their desks with non-national classmates.

GLOSSARY

AALCO Asian-African Legal Consultative Organization

AFPFL Anti-Fascist People Freedom League

AICHR ASEAN Intergovernmental Commission on Human Rights

AMM Aceh Monitoring Mission

APP Aceh Peace Program

APRRN Asia Pacific Refugees Rights Network

ARMM Autonomous Region of Muslim Mindanao

ASEAN Association of South-East Asian Nations

ISA Internal Security Act

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CDU Community Development Unit

CEDAW Convention on the Elimination of All Forms of Discrimination against Women

CHRP Commission on Human Rights of the Philippines

CMIG Malaysia Human Rights Commission Complaints, Monitoring and Inquiries Group

COBEM Coalition of Burma Ethnic Malaysia

CPED International Convention for the Protection of All Persons from Enforced Disappearance

CRC Convention on the Rights of the Child

CRPD Convention on the Rights of Persons with Disabilities

CSM Consiglio Superiore della Magistratura, Italian Superior Council of the Magistrature

EAIC Enforcement Agency Integrity Commission

ECtHR European Court of Human Rights

FAO Food and Agriculture Organization

FIDH International Federation for Human Rights

FRONTEX European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

FTA Free trade Agreements

GAM Gerakan Aceh Merdeka, Free Aceh Movement

HIU U.S. Department of State, Humanitarian Information Unit

HRW Human Rights Watch

ICCPR International Covenant on Civil and Political Rights

ICCPR-OP 1 Optional Protocol to ICCPR

ICCPR-OP 2 Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR International Covenant on Economic, Social and Cultural Rights

ICIRD International Conference on International Relations and Development

ICRC International Committee of the Red Cross

ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

IDMC Internal Displacement Monitoring Centre

IDP Internally Displaced Person

ILO International Labour Organization

IMF International Monetary Fund

IOM International Organization for Migration

IRIN Integrated Regional Information Networks

LTTE Liberation Tigers of Tamil Eelam

Komnas HAM Komisi Nasional Hak Asasi Manusia, Indonesia National Commission on Human Rights

MACC Malaysian Anti-Corruption Commission

MENA Middle-East and North Africa region

MILF Moro Islamic Liberation Front

MNHRC Myanmar National Human Rights Commission

MOU Memorandum of Understanding

NEZ New Economic Zones

NGO Non-Governmental Organization

NHRCT National Human Rights Commission of Thailand

OP-CAT Optional Protocol to CAT

OP-CEDAW Optional Protocol to CEDAW

OP-CRC-IC Optional Protocol to CRC on a communications procedure

OP-CRC-IC Optional Protocol to CRC on a communications procedure

OP-CRC-AC Optional Protocol to CRC on the involvement of children in armed conflict

OP-CRC-SC Optional Protocol to CRC on the sale of children, child prostitution and child pornography

OP-CRPD Optional Protocol to CRPD

OPI Outreach, Protection and Intervention unit

OP-ICESCR Optional Protocol to ICESCR

PCA Prevention of Crime Act 1959

PDHJ Provedor de Direitos Humanos e Justica, National Human Rights Commission of Timor Leste

RARC Rohingya Arakanese Refugee Committee

RELA Ikatan Relawan Rakyat Malaysia, Malaysian People's Volunteer Corps

RM Ringitt Malaysia, Malaysian currency

RMP Royal Malaysia Police

RSD Refugee Status Determination

SEANF South East Asia National Human Rights Institutions Forum

SIREN Strategic Information Response Network

SPF Social Protection Fund

SUARAM Suara Rakyat Malaysia

SUHAKAM Suruhanjaya Hak Asasi Malaysia , Malaysian Human Rights Commission

UMNO United Malay National Organization

UNESCO United Nations Educational, Scientific and Cultural Organization

UNHCR United Nations High Commissioner for Refugees

UNRRA United Nations Relief and Rehabilitation Administration

UNRWA United Nations Relief and Works Agency for Palestine Refugees in the Near East

UPR Universal Periodic Review

WHO World Health Organization

WTO World Trade Organization

INTRODUCTION

Every year, the 20th of June, the World Refugees Day takes place. It has been established in 2000 by a special resolution of the United Nation General Assembly 50 years after the creation of the United Nations High Commissioner for Refugees (UNHCR). At that time, the world was leaving behind the tragedies of the war and more than 40 million refugees in Europe alone¹.

Today, millions are still forced to leave their houses fleeing persecution, violence, discrimination, poverty and destruction. The most recent comprehensive data by UNHCR show a dramatic picture of displaced persons in almost every region of the planet. The figures represented in Table 1 are taken from the UNHCR Statistical Online Population Database², refer up to 31 December 2012 and represent the total number of people of concern worldwide:

TABLE 1

REFUGEES, ASYLUM-SEEKERS, INTERNALLY DISPLACED PERSONS (IDPs), RETURNEES (REFUGEES AND IDPs), STATELESS PERSONS, AND OTHERS OF CONCERN TO UNHCR, 2003-2012

END-YEAR	REFUGEES	ASYLUM-SEEKERS (PENDING CASES)	RETURNED REFUGEES	IDPS PROTECTED/ ASSISTED BY UNHCR	RETURNED IDPS	PERSONS UNDER UNHCR'S STATELESSNESS MANDATE	OTHERS OF CONCERN	TOTAL
2003	9.592.800	997.600	1.094.900	4.181.700	237.800	-	905.300	17.010.100
2004	9.574.800	885.200	1.434.400	5.426.500	146.500	1.455.900	597.000	19.520.300
2005	8.662.000	802.100	1.105.600	6.616.800	519.400	2.383.700	960.400	21.050.000
2006	9.877.700	743.900	733.700	12.794.300	1.864.200	5.806.000	1.045.500	32.865.300
2007	11.391.000	740.100	730.600	13.740.200	2.070.100	2.937.300	68.700	31.678.000
2008	10.489.800	825.800	603.800	14.442.200	1.361.400	6.572.200	166.900	34.462.100
2009	10.396.500	983.900	251.500	15.628.100	2.229.500	6.559.600	411.700	36.460.800
2010	10.549.700	837.500	197.700	14.697.900	2.923.300	3.463.000	1.255.600	33.924.700
2011	10.404.800	895.300	531.900	15.473.400	3.245.800	3.477.100	1.411.800	35.440.100
2012	10.498.000	928.200	525.900	17.670.400	1.545.400	3.335.800	1.329.700	35.833.400

UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 05/03/2014 (Due to change in classification and estimation methodology in a number of Countries, figures as from 2007 are not fully comparable with pre-2007)

The data are generally provided by Governments, based on their own definitions and methods of data collection.

A dash ("-") indicates that the value is zero, not available or not applicable.

¹ A.K. Isaacs, *Immigration and Emigration in Historical Perspective*, Edizioni Plus, 2007, p. 42

² United Nations High Commissioner for Refugees (UNHCR), *UNHCR Statistical Online Population Database*, Data extracted: 05/03/2014. Link to the web page: www.unhcr.org/statistics/populationdatabase

Yet if we look at the regional level, it appears clear that some areas of the world suffer more pressure than others from the influx of forced migrants. Table 2 shows the total number of people of concern shown in the previous table regarding 2012 but divided by macro-regions:

TABLE 2

REFUGEES, ASYLUM-SEEKERS, INTERNALLY DISPLACED PERSONS (IDPs), RETURNEES (REFUGEES AND IDPs), STATELESS PERSONS, AND OTHERS OF CONCERN TO UNHCR BY COUNTRY/TERRITORY OF ASYLUM, END-2012

COUNTRY/TERRITORY OF ASYLUM	TOTAL REFUGEES AND PEOPLE IN REFUGEE-LIKE SITUATIONS	ASYLUM-SEEKERS (PENDING CASES)	RETURNED REFUGEES	IDPS PROTECTED/ ASSISTED BY UNHCR, INCL. PEOPLE IN IDP-LIKE SITUATIONS	RETURNEE D IDPS ⁷	PERSONS UNDER UNHCR'S STATELESSNESS MANDATE ⁸	VARIOUS ⁹	TOTAL POPULATION OF CONCERN
CENTRAL AFRICA-GREAT LAKES	479.256	21.383	121.328	2.799.696	340.029	1.302	235.759	3.998.753
EAST AND HORN OF AFRICA	1.892.721	90.333	23.555	3.853.933	136.742	20.000	4.986	6.022.270
SOUTHERN AFRICA	134.736	272.454	19.748	57.926	-	-	24.016	508.880
WESTERN AFRICA	267.758	8.825	102.439	272.930	96.010	700.000	1.938	1.449.900
ASIA AND PACIFIC	3.525.512	61.435	100.132	1.937.935	459.236	1.427.952	963.566	8.475.768
MIDDLE EAST AND NORTH AFRICA	1.593.857	53.871	158.119	3.593.055	503.120	505.274	1	6.407.297
EUROPE	1.797.600	346.190	583	1.211.384	10.349	681.225	93.759	4.141.090
AMERICAS	806.517	73.735	11	3.943.509	-	24	5.582	4.829.378
VARIOUS/UNKNOWN	-	-	26	-	-	-	-	26
TOTAL	10.497.957	928.226	525.941	17.670.368	1.545.486	3.335.777	1.329.607	35.833.362

UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 05/03/2014

The data are generally provided by Governments, based on their own definitions and methods of data collection.

A dash ("-") indicates that the value is zero, not available or not applicable.

Partial data from the first half of 2013 show the total population of concern increased to 38.7 million, by June 2013, almost three million more than just six months earlier. This is due to a number of crisis such as those in the Syrian Arab Republic, Central African Republic, Democratic Republic of the Congo, Mali and South-Sudan, which will probably push the number to new unacceptable high levels. Table 3 gives this alarming picture:

³ United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global Trend 2013 Report, Mid-Year trends 2013*, Data extracted: 05/03/2014. Available at: <http://www.unhcr.org/52af08d26.html>

TABLE 3

REFUGEES, ASYLUM-SEEKERS, INTERNALLY DISPLACED PERSONS (IDPs), RETURNEES (REFUGEES AND IDPs), STATELESS PERSONS, AND OTHERS OF CONCERN TO UNHCR BY COUNTRY/TERRITORY OF ASYLUM, MID-2013 (OR LATEST AVAILABLE ESTIMATES)

COUNTRY/TERRITORY OF ASYLUM	TOTAL REFUGEES AND PEOPLE IN REFUGEE-LIKE SITUATIONS	ASYLUM-SEEKERS (PENDING CASES)	RETURNED REFUGEES	IDPS PROTECTED/ ASSISTED BY UNHCR, INCL. PEOPLE IN IDP-LIKE SITUATIONS	RETURNED IDPS ⁷	PERSONS UNDER UNHCR'S STATELESSNESS MANDATE ⁸	VARIOUS ⁹	TOTAL POPULATION OF CONCERN
- CENTRAL AFRICA-GREAT LAKES	593.073	21.895	46.059	2.892.355	421.547	1.302	229.419	4.205.650
- EAST AND HORN OF AFRICA	1.974.444	94.993	16.687	3.487.292	24.215	20.000	54.935	5.672.566
- SOUTHERN AFRICA	136.397	275.688	27	57.926	-	-	24.300	494.338
- WESTERN AFRICA	271.363	9.557	10.402	377.455	21.000	700.000	6.188	1.395.965
AFRICA TOTAL	2.975.277	402.133	73.175	6.815.028	466.762	721.302	314.842	11.768.519
ASIA AND PACIFIC	3.500.257	84.880	27.625	2.450.926	99.898	1.430.429	963.534	8.557.549
MIDDLE EAST AND NORTH AFRICA	2.208.807	68.375	87.958	5.613.904	121.297	444.274	6.861	8.551.476
EUROPE	1.616.309	354.820	498	1.213.419	239	686.061	94.748	3.966.094
AMERICAS	807.092	77.247	14	4.744.096	-	210.023	6.076	5.844.548
VARIOUS/UNKNOWN	-	-	-	-	-	-	-	-
TOTAL	11.107.742	987.455	189.270	20.837.373	688.196	3.492.089	1.386.061	38.688.186

The data are generally provided by Governments, based on their own definitions and methods of data collection.

A dash ("-") indicates that the value is zero, not available or not applicable.

The figures tell that at the end of 2012, the region labeled as “Asia and the Pacific” accounted, alone, for an astounding 23.65% of the total population of concern with more than 8 million people who, for different reasons, were forced to abandon their houses.

In 2013, with the number increased by almost 100.000 people, one particular area continues to lack an organic and effective protection system towards forced migrants despite hosting the largest number of displaced people of any other region in the world: South-East Asia. Historically, the main causes of forced migration flows throughout the region related to conflict during the cold war period triggered by the process of decolonization.

We have a stark example in the Indo-Chinese refugees’ crises, so massive an exodus it required a regional action plan to be solved⁴. After three decades, the region as a whole is suffering from ethnic and religious divides; it is experiencing wide gaps between rich and

⁴ A. Betts (Evaluation and Policy Analysis Unit, United Nations High Commissioner for Refugees), *Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA*, Jan. 2006. Available at: <http://www.unhcr.org/43eb6a152.html>

For further details on the CPA see the dedicated paragraph in this paper, at page 65

extremely poor areas across and within State borders; and moreover, it also suffers from severe natural disasters due to its geographical position and to the impact of climate change.

New waves of migration triggered by poverty, desperation and persecution clash against a legal framework too green to handle them. In the worst cases, without protection, migrants enter the loop of exploitation in the hands of human traffickers.

The first chapter of this dissertation aims at giving a picture of the refugee issue in international law, focusing on the main legal instruments for protection.

In particular, it will provide a panoramic view on the main legal instruments created by the international community, starting with the origins and evolution of the concept of refugee protection; continuing with the institution of the United Nation High Commissioner for Refugees (UNHCR) and the Convention Relating to the Status of Refugees (1951); and concluding with the efforts to go beyond their provisions in front of the new patterns of displacement.

The second chapter will offer an overview on the main waves of forced migrations in South-East Asia, taking into consideration the Countries of origin, therefore the push factors, and the main routes taken by asylum seekers.

In the third part, the analysis will shift to one of the Countries of destination and passage of migrants in the region: Malaysia. Given the geographical position and the lack of an established asylum system, UHPCR operations in Malaysia remain one of the most extensive in the world with over 100,000 asylum seekers and refugees and approximately 70,000 stateless people, residing mainly in urban areas.

To highlight the shortcoming of Malaysian legal framework, real life episodes will be used. Taking into consideration three aspects of the odyssey of a forced migrant: the travel, the arrival and the stay, the analysis will touch issues such as human trafficking and pushbacks at sea, imprisonment and exploitation, discrimination and the role of NGOs.

The episodes used in this chapter comes from a publication of Tenaganita, a local NGO based in Kuala Lumpur, where two acquaintance of mine worked at the time of my first travel in the Country. I was struck by the fact that every day they received hundreds of visits by vulnerable people, not only refugees but asylum seekers, stateless person, undocumented immigrants, victim of abuses in the workplace and victims of human trafficking. In their report they managed to collect those stories, not only to expose the dark side of immigration but because the victims themselves wanted to contribute destroying the existing exploitation system. Their organization as many others in that field, despite the immense amount of work it faces every day, does not have the means to be effective but in few cases. The frustration is extremely clear in those days when someone walks in in despair because a relative has been imprisoned and sentenced to expulsion, or worse when they had received a call from a human trafficker asking for ransom. They keep coming every day hoping to hear the good news, but most of all to speak with someone because out of the office they are alone, amid a society for the most part indifferent about and in some cases manifestly averse to their claims.

Given the cruelty of Tenaganita's accounts, this chapter is meant to be the pivot point of this dissertation. After having shown the "ideal" legal framework built through the years by the International Community and the dire need of such a system in South-East Asia, the third chapter shows the true face of forced displacement.

Therefore, the final chapter of this work tries to propose a new legal solution for Malaysia, from an effective status recognition system to post-recognition policies, from bilateral agreements with its neighborhoods to a regional protection mechanism.

It is important to make clear from the beginning though, that even if legal instruments at the international, regional and domestic level to address the protection of refugees exist, they just represent a post-event reaction, sometimes based on the best intention, but always limited by compromise. What is vital for a person who is forced to leave his or her house by events that go beyond his or her capability to handle them, are the actions taken by local, regional or international operators on the field.

They must anticipate the legal framework meant to lead their operations, since it will always be vulnerable to the most distorting interpretations.

CHAPTER I THE PROTECTION OF REFUGEES UNDER INTERNATIONAL LAW

The movement of people across borders and within their own territories has been a characteristic of international relations and domestic policies even before the birth of the modern State. It is important to consider though, that whether the causes are economic, political, ethnical, religious or environmental, the defining element of migration is the willingness of the choice. People either choose to relocate, are forced to move or feel a strong pressure to do so. Voluntary migration occurs when the choice is free and based on pull factors, so when the Country or area of destination has some characteristics that motivate the movement. Improved living conditions, the access to a good health care system, better employment prospects and higher wages were the pull factors for many workers from East Europe migrating to Britain, thanks to the legal framework of the European Union (and raising concern in the Home Secretary Theresa May⁵).

On the contrary, when there is no choice or when it is totally based on push factors, then we are looking at forced migration. The recent civil war in Syria (ongoing at the time of writing) displaced millions internally and internationally⁶.

Being unable to choose, people fleeing violence clearly deserve protection beyond the concept of citizenship, since the very reason of the escape is the inability or unwillingness of the home Country to grant them the right to life and safety.

Forced displacement does not origin only from war. People around the globe feel forced to abandon their houses for protracted discrimination in vital fields such as education, political representation, access to the labour market and health care system.

Violence does not come only from conflict but also from the environment in which we live. Natural disasters and illness outbreaks coupled with a situation of poverty and of poor state response can equally lead to mass exodus. Droughts, crops or livestock diseases, bad management of food and water supplies, and even the commodities prices set by the world markets are all causes of insecurity in populations at risk.

The biggest challenge for States today, is to be able to respond at various levels to all the contemporary patterns of displacement. Unfortunately effective measures for granting protection often clash with States interest, and even if the era of globalization suggest the idea of more porous borders, ideological barriers still exist everywhere. The duty to protect is often seen as a burden with governments complaining about the imbalance in responsibility sharing,

⁵ D. Barret, *Cap numbers of immigrants from European Union, says Theresa May*, The Telegraph (online version), Dec. 2013, Available at: <http://www.telegraph.co.uk/news/uknews/immigration/10495965/Cap-numbers-of-immigrants-from-European-Union-says-Theresa-May.html> [accessed 06 March 2014]

⁶ UHNCR Emergency Information Sharing Web Portal, United Nations High Commissioner for Refugees (UNHCR), available at: <http://data.unhcr.org/syrianrefugees/regional.php> [accessed 7 March 2014]

more often than not trying to ride the wave of economical unrest in period of world market crisis to ensure political approval.

It is clear how the politicization of the asylum issue, taking advantage of and fuelling racism and xenophobia, will not hurt the refugees only, but also the States themselves. Barriers to entry or integration cannot tackle the root causes of forced migration but will advantage human traffickers and smugglers, not to mention the black market, which often does not differ much from slavery. It is true though, that States face onerous cost in dealing with large waves of migrants. Not only economical costs related to the structures for reception, but security concerns and inter-State tensions too.

What is demanded to the international community is to find the right balance in pursuing state's interest without negating protection to people at risk, but most of all, governments must cooperate to remove the very causes of violence and poverty.

To understand how the international community addresses the protection of forcibly displaced people today, it is useful to go briefly through the evolution of the concept of refugees' rights through the years.

a. The origins of Refugee protection

This concept is deeply linked to international human rights law and thus emerging from the ashes of the Second World War. The institution of an international human rights regime took place fairly recently starting from the Universal Declaration of Human Rights in 1948 and it is a process ever evolving⁷. Yet, is worth noting that the codification of refugees' rights has its roots in earlier attempts which refer to the general idea of protection from injuries of aliens and the subsequent League of Nations system for the protection of national minorities.

The former contribution comes from the willingness of States to promote the entry of skilled foreign workers and to ease the establishment of trade agreements. The acceptance of a minimum standard of treatment for aliens and the negotiations of some forms of immunity for merchants⁸ was a way to expand the economic scope through foreign trade. The always increasingly common habit of introducing domestic laws granting basic rights such as the respect for life and physical integrity, contributed to build a first form of international human rights system in the general principles of law. Naturally, governments were keen to ensure more rights to aliens to pursue the same level of protection for their own citizens abroad.

Therefore, even though the geographical expansion of trade in the nineteenth century led to the institution of several new bilateral agreements, no state was willing to create a broad international system of rights since that would have meant their respect even towards citizens of States of poor commercial interest or with no influence at all.

⁷ Generally see: C. Focarelli, *Lezioni di diritto internazionale*, Volume I, Il sistema degli Stati e i valori comuni dell'umanità. CEDAM, Milano, 2008, p 325-364;

L. Pineschi, *La tutela internazionale dei diritti umani. Norme, garanzie, prassi*, Giuffrè Editore, 2006

⁸ See J.C. Hathaway, *The rights of refugees Under International Law*, Cambridge University Press, Cambridge, 2005, p.76

They choose a mixed path instead, by agreeing on few general principles of law and negotiating additional entitlements case by case. Within this system, even when the rights were recognised as general principles of law, it was the state and not the person who was entitled to.

A further step was taken after the First World War with the Minorities Treaties. The Great Powers decided to implement a system of bilateral treaties between the Countries that lost the war and the League of Nations to provide protection to those groups of people whose safety could have not been guaranteed by the host state.

The great importance of this system was in the fact that, besides limiting the sovereignty in favour of the respect of basic human rights, it shifted the focus to people in harm themselves. Furthermore, it established an international enforcement mechanism according to which petitions could be sent to the Council from any source and in the case that the accused state and the League could not reach a compromise the solution was referred to the just-established Permanent Court of Justice. Even though the system was unequal and not truly universal, since it applied only to those States forced to accept the peace conditions, it reflected the revolutionary idea of the collectivisation of responsibility⁹.

When the international community had to face the unstoppable waves of refugees fleeing death and desperation in the years following the First World War, a new legal system was built upon those two previous experiences. Both the recognition of special rights to people outside their own Country by the alien law and the concept of universal accountability contributed to the creation of special measures for the protection of refugees. Even though refugees such as the Russians escaping the revolution or the Armenians fleeing Turkey were still not entitled with rights themselves, the international community recognized the anomaly of their status, stating that a refugee “*is an alien in any and every Country to which he may go. He does not have the last resort which is always open to the ‘normal alien’ – return to his own Country. The man who is everywhere an alien has to live in unusually difficult material and psychological conditions.*”¹⁰

It was admitted that the legal provisions applied to aliens were ineffective, since they were based on reciprocity and on the existence of a Country of nationality. As a matter of fact, many had lost their nationality¹¹ and being unable to show a valid document they were rejected and the ones that managed to avoid border controls were condemned to live in a limbo.

⁹ See *supra* note 8, Hathaway, p 81-83;

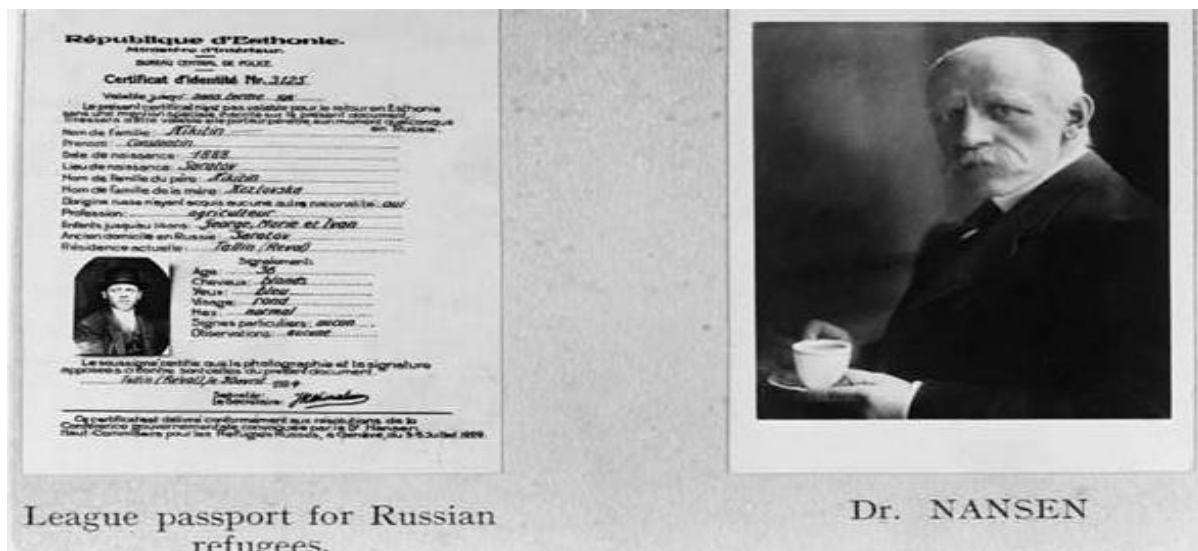
See also: F.Francioni (Ed), M. Gestri (Ed), N. Ronzitti (Ed) and T. Scovazzi (Ed), *Accesso alla giustizia dell'individuo nel diritto internazionale e dell'Unione Europea*, Giuffr  Editore, 2008, p. 117-123

¹⁰ “Communication from the International Refugee Organization to the Economic and Social Council”, UN Doc. E/1392, July 11, 1949, at App.I.

¹¹ The redrawing of European borders after the First World War left millions without a clear legal status. With the collapse of the Russian Empire in 1921 and the Bolshevik revolution, more than one million Russians who attempted to escape from the civil war were denationalized by the new rulers; the new Turkish Nation exterminated the Armenians through death marches and concentration camps in an ill effort to build a new society from the ashes of the ottoman empire; Jewish were driven out of Austria, Romania and Poland. Moreover, national citizenship laws were a cause for Statelessness themselves, providing States with the right to denaturalize its own

On those bases, the League of Nations established the office of the High Commission for Refugees and created the so-called Nansen Passport, named after the first High Commissioner for Russian Refugees Fridtjof Nansen.

FIGURE 1: LEAGUE PASSPORT FOR RUSSIAN REFUGEES, DR. NANSEN



<http://www.amazon.com/Historic-Print-passport-Russian-refugees/dp/B003HQVHNI>

This document provided the right to travel for a twelve-month period and established the holder's nationality. Therefore, the League was empowered to introduced substitute documentation and a parallel system of protection to fill the gaps in the national legal framework but by no means States were given specific responsibilities beside the recognition of the League of Nations passports. This means that the attempts to build a standard for refugees' rights (protection against expulsion and discrimination, access to labor market, to the welfare and education systems, to the court, provisions on labor conditions) had to rely on cooperation.

Two agreements, the 1926 Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees¹² and the 1928 Arrangement relating to the Legal Status of Russian and Armenian Refugees¹³ reflected the great impulse given to the matter by the League of Nations but the economic crisis following the American stock market crash of 1929 and the subsequent rise of the shadow of nationalism and xenophobic hostility was too dry a ground for the blooming of cooperation. Nevertheless, the 1933 Convention Relating to the

citizen and creating 'legal limbos' such as in the case of women and children whose nationality was based on the principle of 'derivative citizenship'.

¹² League of Nations, Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees, 12 May 1926, League of Nations, Treaty Series Vol. LXXXIX, No. 2004, available at: <http://www.refworld.org/docid/3dd8b5802.html> [accessed 22 March 2014]

¹³ League of Nations, Arrangement Relating to the Legal Status of Russian and Armenian Refugees, 30 June 1928, League of Nations Treaty Series, Vol. LXXXIX, No. 2005, available at: <http://www.refworld.org/docid/3dd8cde56.html> [accessed 22 March 2014]

International Status of Refugees¹⁴ managed to set a new milestone. For the first time the concept of non-refoulement was enshrined in a convention, setting the stage for a key principle of refugee law to become a peremptory norm of international law in the following years. Article 3 States:

“Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorised to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

It undertakes in any case not to refuse entry to refugees at the frontiers of their Countries of origin.

It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorisations and visas permitting them to proceed to another Country.”

All these experiences and attempts between the two Great Wars to provide a comprehensive legal mechanism of protection for people escaping from death were bound to give birth to the current modern system of refugee rights.

The catastrophic consequences of the Second World War while not erasing all the progress made in the previous years, forced the major powers to double the effort. Faced with an estimated 64 million displaced people the just-born United Nations established the Relief and Rehabilitation Agency (UNRRA), which has been operational for 4 years, from 1943 to 1947.

Switching the focus from repatriation to resettlement, 1946 saw the birth of the United Nations International Refugee Organization, later superseded (in 1952) by what is today the main operating office of the United Nations regarding all people suffering forced displacement: the United Nation High Commissioner for Refugees (UHNCR).

However, the war also led to the pillar of our present international human rights law: in 1946, the United Nations Commission on Human Rights drafted a document that for the first time *inherently* entitled every human being with rights. After two years, on 10 December 1948, the General assembly adopted the Universal Declaration of Human Rights¹⁵:

¹⁴ League of Nations, Convention Relating to the International Status of Refugees, 28 October 1933, League of Nations, Treaty Series Vol. CLIX No. 3663, available at: <http://www.refworld.org/docid/3dd8cf374.html> [accessed 22 March 2014]

¹⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 24 March 2014]

“PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

For the purposes of this paper, it is worth noting that articles 2, 13, 14 and 15 were of paramount importance at the time for the recognition of refugee rights, stating that everyone is inherently entitled without distinctions of any kind to the right of freedom of movement, to seek asylum from persecution in another Country and to have a nationality:

“Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the Country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any Country, including his own, and to return to his Country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other Countries asylum from persecution.

[...]

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

b. The 1951 Convention

Building from the tragedies of two world wars and having the 1933 Convention and the Universal Declaration of Human Rights in its foundations, the 1951 Convention Relating to the Status of Refugees (from now on referred to as the ‘Convention’) was meant to represent the binding legal structure of a common international system of protection of asylum seekers¹⁶.

¹⁶ For more in-depth analyses of the document see also:

UN General Assembly, Note on international protection, 13 September 2001, A/AC.96/951, available at: <http://www.refworld.org/docid/3bb1c6cc4.html> [accessed 24 March 2014] ;

P. Weis, *The Refugees Convention, 1951: The Travaux Préparatoires Analysed with a Commentary* by Dr. Paul Weis, Cambridge University Press, 1995;

UN High Commissioner for Refugees (UNHCR), *Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html> [accessed 24 March 2014]

The document was later amended by the 1967 protocol to remove its geographical and temporal restrictions and together they provide a definition of who is a refugee, the rights he is entitled to, his obligations towards the Country of arrival, and the restrictions on the status recognition. Being a cornerstone of refugee protection still today, the convention deserves an analysis of its most important provisions¹⁷.

However, before starting with the definition of the term “refugee”, as stated in article 1, it must be understood that the convention is just an instrument to recognize the refugee status.

As UNHCR points out in its Handbook on Procedures and Criteria for Determining Refugee Status¹⁸, the refugee character of a person, which is the need for protection deriving from his situation, it is not given but it is recognised.

The preamble itself makes clear that the contracting parties recognised that both the Charter of the United Nations and the Universal Declaration “have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination”, and therefore any technical failure in the status recognition procedures will not deprive the person of his rights.

“Article 1. Definition of the term “refugee”

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

The first paragraph recognizes the previous attempts to grant refugees protection, but as aforementioned, it points out that people who did not fulfil the conditions of eligibility in the previous legal regime do not lose their refugee character and can still be recognized under the new system.

¹⁷ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 24 March 2014]
 UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html> [accessed 24 March 2014]

¹⁸ The Handbook was first published in 1979 and was meant to guide government officials, courts and the UNHCR staff through the assessment of asylum seekers’ claims. It builds on the first 25 years of operations of the Office and cooperation with the States parties to the convention: UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 31 March 2014]

(2) *As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the Country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that Country; or who, not having a nationality and being outside the Country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the Country of his nationality” shall mean each of the Countries of which he is a national, and a person shall not be deemed to be lacking the protection of the Country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the Countries of which he is a national.”*

Well-founded fear could be hard to define. Fear is an emotion, and can vary dramatically depending on the person’s character and previous experiences. Still, a legal mechanism for status determination needed an objective base, hence the use of the words “*well-founded*”. The two elements should be considered in a complementary way and not in exclusion, given that in some cases the causes of fear might appear strikingly evident even if it is difficult to assess the emotional aspect, while in other cases the person’s background, belief system and traditions could justify a fear whose causes do not appear as severe.

There is also a cultural divide between the asylum seeker and the official determining his status which requires a study of the situation in the Country of origin concerning justice, law, order and customs not only on the formal level but rather substantially, and a strong knowledge of the intimate situation based on age, gender and beliefs¹⁹.

The asylum seeker fears *persecution*, which is left without a legal definition. Leaving the concept open to refinement and future development can also expose it to limitations by some States. The concepts of recurrence and persistence of discrimination and the distinction between lawful prosecution of offence and persecution²⁰, could be easily restrictively interpreted.

The UNHCR Handbook on Procedures and Criteria for Determining Refugees Status provides the comprehensive look of the office, for example regarding borderline cases such as the conscientious objectors²¹. To resume, to distinguish persecution under the convention and ordinary prosecutions the handbook suggest to take into consideration whether there are

¹⁹ From the jurisprudence, see for example the case: Refugee Appeal No. 2039/93 Re MN, New Zealand: Refugee Status Appeals Authority, 12 February 1996, available at: <http://www.refworld.org/docid/3ae6b741c.html> [accessed 31 March 2014]

²⁰ See UNHCR Handbook paragraphs 55 to 60 and 167 to 174

²¹ See paragraph 1 and 8-10 of: UN High Commissioner for Refugees (UNHCR), *Deserters and Persons Avoiding Military Service Originating From the Federal Republic of Yugoslavia in Countries of Asylum: Relevant Considerations*, 1 October 1999, available at: <http://www.refworld.org/docid/3ae6b33bc.html> [accessed 31 March 2014]

discriminatory basis (religious, political, ethnic or gender related) or when there is a violation of human rights standards (for example in the case of punishment involving torture or cruel, inhuman or degrading treatment).

Another restriction posed by States is considering only the State itself or its agents as valid persecutors under the convention. It is generally recognised though, that since the scope of the document is the protection from the act of persecution, its source should be of little relevance²².

A big flaw in the 1951 convention remains the case of conflicts which are not based on the discriminatory basis described in article 1A(2). People fleeing indiscriminate violence and the devastation of war might not meet the requirements set out in this convention but still deserves protection under other instruments. UNHCR addresses these situations with what is called “*complementary protection*” which will be considered in the next paragraphs.

The article then gives 5 grounds on which the persecution might be perpetrated: *reasons of race, religion, nationality, membership of a particular social group or political opinion*. It is important to point out that even when those reasons do not occur but are solely perceived by the persecutor, the victim should be still granted protection, since the will of the perpetrator puts the person or group at risk.

The word *nationality* is often used as a synonym of ethnicity but it is worth noticing that stateless people, who do not have any bond of citizenship with any Country, can fall under the Convention for the reason that their stateless character itself could be the cause of severe discrimination.

Membership of a particular social group proved to be a tricky definition to interpret and the jurisprudence shows a divide between a conception of social group as an innate characteristic such as sex, gender or sexual orientation²³, and an attitude, such as a vocation for a specific job²⁴. A comprehensive approach should address both providing protection to those who would not be able to change their being and those who should not be forced to.

Moving to the next requirement, the text requires the asylum seeker to be *outside the Country of his nationality* or, if stateless, *outside the Country of his former habitual residence*. This condition is mostly noncontroversial, with the exception of Internally Displaced Persons (IDPs) which is analysed later in this paper. Nonetheless, UNHCR makes clear in the

²² See for example, *Horvath v. Secretary of State for the Home Department*, United Kingdom: House of Lords (Judicial Committee), 6 July 2000, available at:

<http://www.refworld.org/docid/3ae6b6e04.html> [accessed 1 April 2014];

And the position of UNHCR in: UN High Commissioner for Refugees (UNHCR), *Opinion of UNHCR Regarding the Question of "Non-State Persecution"*, As Discussed With the Committee on Human Rights and Humanitarian Aid of the German Parliament (Lower House) on 29 November 1999, 29 November 1999, available at: <http://www.refworld.org/docid/3df755477.html> [accessed 1 April 2014]

²³ See for instance, CE, SSR, 23 juin 1997, 171858, Ourbih, 171858, France: Conseil d'Etat, 23 June 1997, available at:

<http://www.refworld.org/docid/3ae6b67c14.html> [accessed 1 April 2014]

²⁴ See CRR, 12 Juliet 1985, 26971 and 5 Decembre 1985, 30819, France: Commission des Recours des Réfugiés (CRR); see also: <http://www.refugee.org.nz/Reference/Iarljfrench.htm>

Notebook²⁵ that the so called *refugees sur place*, are already outside of their Country of origin or former habitual residence when a well-founded fear of persecution arises, and in that respect the refugee is not required by the Convention to have left his Country *for* fear of persecution on the Convention grounds.

Moreover, when determining refugee status it should be considered whether the persecution is a consequence of his or her actions or if it is unrelated to his or her own behaviour. This is important especially in the former case, when beside the severity of the possible harm based on the five Convention grounds, the likelihood of the persecution occurring should be carefully assessed too.

This means that both how the allegedly persecutor views the person's actions and how likely he or her could come to know about them are of paramount importance²⁶.

One last element to consider is whether the refugee *is unable or unwilling to avail himself of the protection* of the Country of origin. The point of debate here is if the sentence refers to the so called *external protection* (the diplomatic or consular protection granted to the citizen of a State outside its borders) or protection within its territory.

It seems that, at least at the time of drafting, the meaning was the former since in the next sentence regarding the stateless refugee who is *unable or, owing to such fear, is unwilling to return to it*, there is in contrast no reference to the possibility to be granted protection outside the state of residence. Nevertheless, despite textual analysis, courts seem prone to consider also the effectiveness of internal protection, mainly in those cases of non-state agents' persecution²⁷.

In those circumstances, in effect, as Antonio Fortin explains it²⁸, "*the refugees' unwillingness to avail themselves of the diplomatic protection of their Country of nationality needs not be associated to a fear of being persecuted by those authorities, but to a fear of being exposed to expulsion to their Country of nationality and, as a result, of becoming target for persecution by non-State agents*". In any case, the fact that a state is unable or unwilling to provide protection against persecution constitutes an objective element of fear and therefore has to be considered in the first 'test'.

Moving to paragraph C, the convention lays out the conditions for cessation of the refugee status:

"C. This Convention shall cease to apply to any person falling under the terms of section A if:

²⁵ See UNHCR Handbook paragraph 94 to 96

²⁶ From the jurisprudence see for example: Swiss Asylum Appeals Commission (AAC), EMARK, 1999 No. 29, available at: <http://www.ark-cra.ch/emark/1999/29.htm> [accessed 1 April 2014]

²⁷ See for example: R v. Secretary of State for the Home Department, Ex parte Adan and Others, United Kingdom: Court of Appeal (England and Wales), 23 July 1999, available at: <http://www.refworld.org/docid/3ae6b6ad14.html> [accessed 1 April 2014]

²⁸ A.Fortin, *The Meaning of 'Protection' in the Refugee Definition*, in International Journal of Refugee Law, 2001, p. 576

(1) He has voluntarily re-availed himself of the protection of the Country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the Country of his new nationality; or

(4) He has voluntarily re-established himself in the Country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the Country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the Country of nationality;”

(6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the Country of his former habitual residence;

The requirements set in this paragraph are straightforward but should be applied carefully when the surrogate protection is truly no longer needed. Even if the actions of the refugee must be voluntary, the national protection has to prove effective and durable. With respect to the changes in circumstances in the Country of origin they should follow the reasons granting the status as they are written in article 1A(2). There is one exception though:

“[...] this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the Country of his former habitual residence.”

Even if it refers only to those refugees recognised before the adoption of the 1951 Convention, it reflects a principle of humanity and respect of the psychological integrity of those people who suffered such atrocious events that cannot be forced to come back.

For this reason, not only UHNCR but also some States tend to apply the exception to any refugee²⁹.

When determining whether an asylum seeker does not need or deserve protection under the convention, the clauses listed in section D, E and F should be interpreted with care

²⁹ From the jurisprudence, see for example the case: CRR, 4 juin 1997, 300063, Bizimungu, 300063, France: Commission des Recours des Réfugiés (CRR), 4 June 1997, available at: <http://www.refworld.org/docid/3ae6b67940.html> [accessed 31 March 2014]

especially when deciding on the undeserving aspect. A cautious approach is needed indeed in view of the possible consequences for the person.

The exclusion clauses are stated as follows:

“D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.”

Currently, Section D could only refer to persons who are receiving protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)³⁰ since is the only other agency with a refugee protection or assistance mandate.

“E. This Convention shall not apply to a person who is recognized by the competent authorities of the Country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that Country.”

As UHNCR emphasizes in the Handbook³¹, the rights and obligations must be truly enjoyed and in particular, the person should by no means risk to be deported or expelled.

“F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the Country of refuge prior to his admission to that Country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

The application of Article 1F can prove difficult to interpret since it lists a number of crimes so serious to make the person unworthy of receiving protection even if he or she has a

³⁰ See UNRWA official website: <http://www.unrwa.org/> [accessed 1 April 2014]

³¹ See UNHCR Handbook, paragraph 145

well-founded fear of persecution, but it does not provide the exact degree of proof needed to consider the person guilty of those acts.

The words *serious reasons for considering* could vary from the formal indictment by an international court to an alleged association with a person or organization known to have committed the crimes listed in paragraphs (a), (b) and (c).

The complexity of the provision of section F is beyond the scope of this paper and for an in-depth analysis and guide on interpretation, the main reference should be the UNHCR Exclusion Guidelines³², but there are a few details worth noting here.

Paragraph (a) links crimes against peace, humanity and war crimes to the international instruments *drawn up to make provision in respect of such crimes*. This ensures that to the evolution of those instruments will follow also the evolution of the exclusion clauses of the Convention.

Paragraph (b) refers to non-political crimes such as those committed for personal reasons but also to crimes committed for political ends when they are so harmful or their effects so disproportionate to overshadow the aim. In any case, the action has to be proved not to be the *only* way to avoid persecution by an institutional actor.

The last exclusion provision apply to any person *who has been guilty of acts contrary to the purposes and principles of the United Nations* which are enshrined in the Charter, specifically in articles 1 and 2³³.

Article 1 of the Convention has proved to be flexible enough to be an effective tool for determining refugee status for over sixty years. Moreover, the Convention's provisions expand any previous attempt to build a comprehensive legal framework for international protection and reach much further by addressing many aspects of refugees' life from the arrival in the hosting Country to his resettlement or naturalization. As stated in Article 3, all the provisions must be applied *without discrimination as to race, religion or Country of origin* and cover a wide array of topics. Under *general provisions* (Art.1 to 11), the Convention enlists: general obligations (Art.2), religion (Art.4), rights granted apart from the convention (Art.5), exemption from reciprocity (Art.7), exemption from exceptional measures (Art.8), continuity of residence (Art.10) and refugee seamen (Art.11).

³² UN High Commissioner for Refugees (UNHCR), The Exclusion Clauses: Guidelines on their Application, 2 December 1996, available at: <http://www.refworld.org/docid/3ae6b31d9f.html> [accessed 1 April 2014]

³³ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: <http://www.refworld.org/docid/3ae6b3930.html> [accessed 1 April 2014]

The Charter was signed at San Francisco on 26 June 1945. The amendments included here are: Amendments to Articles 23, 27 and 61, 557 UNTS 143, adopted by the General Assembly Resolutions 1991A and B (XVIII) of 17 December 1963, entered into force on 31 August 1965 for all Members; - Amendment to Article 109, 638 UNTS 308, adopted by the General Assembly Resolution 2101 (XX) of 20 December 1965, entered into force on 12 June 1968 for all Members; Amendment to Article 61, 892 UNTS 119, adopted by the General Assembly Resolution 2847 (XXVI) of 20 December 1971, entered into force on 24 September 1973 for all Members.

Under Chapter II regarding *juridical status* (Art.12 to 16), the provisions cover: personal status (Art.12), movable and immovable property (Art.13), artistic rights and industrial property (Art.14), right of association (Art.15) and access to courts (Art.16).

The third Chapter (Art.17 to 19) regulates the aspects of *gainful employment* such as wage-earning employment (Art.17), self-employment (Art.18) and liberal professions (Art.19).

Welfare falls under Chapter IV (Art.20 to 24): rationing (Art.20), housing (Art.21), public education (Art.22), public relief (Art.23), labour legislation and social security (Art.24).

All *administrative measures* are listed in Chapter V (Art.24 to 34) comprising: administrative assistance (Art.25), freedom of movement (Art.26), identity papers (Art.27), travel documents (Art.28), fiscal charges (Art.29), transfer of assets (Art.30), refugees unlawfully in the Country of refugee (Art.31), expulsion (Art.32), prohibition of expulsion or return (“*refoulement*”) (Art.33) and naturalization (Art.34).

Finally, Chapters VI and VII address respectively *executory and transitory provisions* and *final* clauses.

The Convention ensures that basic rights, such as the right to be protected from *refoulement*, apply to all refugees but it reflect the rationale that the longer a refugee stays in the host Country the more rights he should be entitled to.

The responsibility to protect is ultimately upon States. Therefore, the mechanisms for recognition of refugee status are not prescribed by the Convention, but it is clear that the procedures must be efficient and indiscriminately safeguard the person safety, including the right to appeal to any decision.

Nonetheless, the Contracting States “*have the duty to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention*”, as stated in Art.35.

c. United Nations High Commissioner for Refugees

With Resolution 428(V) of 14 December 1950, the General Assembly adopted the Statute of the High Commissioner for Refugees calling upon Governments to cooperate by:

- (a) *Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps of implementation under such conventions;*
- (b) *Entering into special agreements with the High Commissioner for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;*
- (c) *Admitting refugees to their territories, not excluding those in the most destitute categories;*

(d) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;

(e) Promoting the assimilation of refugees, especially by facilitating their naturalization;

(f) Providing refugees with travel and other documents such as would normally be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement;”³⁴.

The same will is expressed in the Preamble to the Convention, which recognizes that “*the effective coordination of measures taken to deal with this problem depends upon the cooperation of States with the High Commissioner*”. Under Article 35, the cooperation is no longer a wish or a recommendation but a contractual obligation to which, fortunately, no Contracting Party had made reservation on.

Counting on this collaboration the mandate of the High Commissioner aims not only to respond to emergencies but also provides long-term solutions, trying to permanently tackle refugees’ problems. Under paragraph 8 of his statute, the UNHCR is mandated with the following activities:

“(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

³⁴ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html> [accessed 2 April 2014]

(g) *Keeping in close touch with the Governments and inter-governmental organizations concerned;*

(h) *Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;*

(i) *Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.”*

All those activities operate both at the international level as sub-paragraphs (a), (b) indicate, with the promotion of international refugee agreements and the monitoring of their compliance by governments; but also at the national level, cooperating with State and non-State actors such as border guards, governmental officials, NGOs, lawyers or journalists.

UNHCR staff works also on the field as outlined in its Handbook for Emergencies³⁵, with a wide range of operations spanning from providing community services and education, population estimation and registration, selection of shelter and accommodation sites and visiting detention centres, to commodity distribution; from health, nutrition, food and water supplies management, to environmental sanitation. After the immediate response, the High Commissioner also assists with voluntary repatriation, reunites separated families and keeps refugees informed about the events in their home Country. As to resettlement or integration, UNHCR follows the resettlement to a third Country of asylum; gives advice to governments on refugee policies and contributes to programs aimed to the alleviation of desperation as happened in Lebanon recently³⁶.

Doubts could be raised about UNHCR effectiveness in the challenge posed by the tremendous growth of displacement in both sheer numbers and complexity during the years. As the Office itself poses the question: “*is the Convention still relevant for the new millennium?*”³⁷ the problem arises from the fact that the Statute replicates almost identically the definition of refugee expressed in Art.1(A) which even if holistically interpreted cannot provide protection those people fleeing “*natural disasters, climate change, economic and other*

³⁵ UN High Commissioner for Refugees (UNHCR), *Handbook for Emergencies*, February 2007, Third edition, available at: <http://www.refworld.org/docid/46a9e29a2.html> [accessed 2 April 2014]

³⁶ To reduce the sufferance and give a hope to many women Syrian refugee in Lebanon, UNHCR and a local restaurant in Beirut managed to realize a successful project starting with a cooking workshop in August 2013. Hoping to replicate this success involving many others among the 880,000 Syrian refugees in Lebanon (of which more than 75 per cent are women and children), Danya Kattan, a community services assistant at UNHCR, said: "we hoped to introduce the notion of entrepreneurship to talented women who never previously thought of making use of their skills, of taking an initiative that would help them improve their livelihoods and become independent, but the results of this project go beyond the financial gains. These women are eager to move this project forward and we will do our best to help them." The full story can be read at: <http://www.unhcr.org/52ebc4c89.html> [accessed 2 April 2014]

³⁷ R. Wilkinson (editor), *The Wall Behind which Refugees Can Shelter: 50th Anniversary ; the 1951 Geneva Convention*, UNHCR, 2001, p.16

man-made calamities, gang violence, and vulnerability arising from the uncertainty of post-conflict situations”³⁸.

There is one provision though, in UNHCR Statute, that granted it the flexibility needed to expand from a very specialized office born after the War and with the persecution concept in mind, to an efficient organization operating in more than 120 Countries in the world.

The General Assembly (GA) and the Economic and Social Council (EcoSoC) resolutions have expanded UNHCR’s mandate over the years to extend protection to those groups left outside the scope of the 1951 Convention and subsequent Protocols. Returnees, stateless persons, IDPs, and other people deserving humanitarian protection especially in the territory of those States that are not parties to the 1951 Convention or its 1967 Protocol (known as “mandate” refugees), are today under the umbrella of UNHCR operations.

The legal medium to permit this is found in Paragraphs 3 and 9 of the Statute, which respectively state:

“3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.”

Thanks to those two provisions, UNHCR's populations of concern, beside those who are recognised refugees under the Convention and its Protocols, now includes the following categories³⁹:

³⁸ Those are the words used in 2010 by the High Commissioner Antonio Guterres, during the annual High Commissioner's Dialogue, few days before UNHCR's 60th anniversary, speaking about the "protection gaps" in the international refugee protection system. See more at: <http://www.unhcr.org/4cff85049.html> [accessed 2 April 2014].

³⁹ A detailed analysis is beyond the scope of this paper but for a comprehensive look on the expansion of the High Commissioner mandate for people of concern see the following documents:

UN High Commissioner for Refugees (UNHCR), *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html> [accessed 2 April 2014]

UNHCR's Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations, 36th Meeting of the Standing Committee, 8 June 2006 (EC/57/SC/CRP.18), available at: <http://www.unhcr.org/44892fc82.html> [accessed 2 April 2014]

Real-time evaluations of UNHCR's involvement in operations for internally displaced persons and the cluster approach: Analysis of findings, 29 August 2007 (EC/58/SC/CRP.23), available at: <http://www.unhcr.org/46d586782.html> [accessed 2 April 2014]

UNHCR's Role in Support of the Return and Reintegration of Displaced Populations: Policy Framework and Implementation Strategy, 11 February 2008 (EC/59/SC/CRP.5), available at: <http://www.unhcr.org/47b06de42.html> [accessed 2 April 2014]

Progress on Mainstreaming IDP Issues in UNHCR and Global Work Plan for IDP Operations, 2 June 2008 (EC/59/SC/CRP.16), available at: <http://www.unhcr.org/484515592.html> [accessed 2 April 2014]

– Returnees⁴⁰

Once refugees, they have either voluntarily returned to their Country of origin but could not be fully integrated, or they had to return following the verification of the cessation clauses included in the Convention or equivalent regional instruments (provided that safety could be guaranteed)⁴¹. The High Commissioner's mandate concerning the consequences of the repatriation has been extended, from an initial scope ending when refugees crossed the border into their Country of origin, to providing assistance inside the territory by following the process of reintegration and monitoring their treatment⁴².

– Stateless persons

Both UNHCR Statute and the Convention refer to stateless persons respectively in paragraph 6(A)(II) and Article 1A(2). However, the Assembly designated the Office of the High Commissioner as the examination body for Stateless persons under Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness⁴³. A further expansion came in 1995 when the Executive Committee Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons, gave mandate also over non refugee stateless and, moreover, went beyond the reactive role of UNHCR (protection) asking for a preventive function⁴⁴. Indeed, both these two contributions managed to expand and refine the original mandate covering identification, prevention and reduction of statelessness and the protection of stateless persons⁴⁵.

– Internally displaced⁴⁶

Internally displaced persons, or IDPs, escape death or persecution for the same reasons as refugees recognized under the Convention, but unlike them, have remained inside their Country of origin. Therefore, legally, they might remain under the protection of the same apparatus that is persecuting them, or which cannot grant them safety against a third agent.

⁴⁰ UNHCR, *UN High Commissioner for Refugees (UNHCR), Handbook - Voluntary Repatriation: International Protection*, January 1996, available at: <http://www.refworld.org/docid/3ae6b3510.html> [accessed 2 April 2014]

⁴¹ See Art. 1C(5) and (6) of 1951 Convention; Art. 1(4) of OAU Convention.

⁴² See ExCom Concls. Nos. 18 (XXXI) (1980); 40 (XXXVI) (1986); 74 (XLV) (1994); and 101 (LV) (2004)

⁴³ See GA resolutions 3274 (XXIX) available at: <http://www.unhcr.org/3dc8dca44.html> [accessed 2 April 2014]

and 31/36, 30 November 1976 available at: <http://www.unhcr.org/42bc04ac2.html> [accessed 2 April 2014]

⁴⁴ See ExCom Concl. No. 78 (XLVI) (1995); GA res. 50/152, 21 December 1995, paras. 14-16.

⁴⁵ See GA res. 61/137, 19 December 2006, para. 4, and subsequent resolutions; And ExCom Concl. No. 106 (LVII) (2006) on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons.

⁴⁶ For more details see: UN High Commissioner for Refugees (UNHCR), *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees*, 6 March 2000, available at: <http://www.refworld.org/docid/3ae6b33a0.html> [accessed 2 April 2014]

Although UNHCR's original mandate does not specifically cover IDPs, the General Assembly recognised a relation between UNHCR operations and IDPs in 1972 considering its activities in Sudan⁴⁷. A second recognition came twenty years later⁴⁸ but the formal act with which it acknowledged and disciplined the Office's activities in favour of IDPs was resolution 28/116⁴⁹. At the time, the documents set some requirements for the High Commissioner to be fulfilled such as a specific request or authorization by the Secretary General or another competent principal organ of the United Nations; the previous consent of the State or other entities concerned; the actual access to the group or person and assurance of availability of adequate resources (material and immaterial such as expertise) and of staff safety⁵⁰.

More recently, in 2005, the United Nations issued a new agenda to reform the international humanitarian coordination, known as the Humanitarian Reform Agenda introducing the so-called "Cluster Approach". The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) defines clusters as "*groups of humanitarian organizations, both UN and non-UN, in each of the main sectors of humanitarian action, e.g. water, health and logistics. They are designated by the Inter-Agency Standing Committee (IASC) and have clear responsibilities for coordination. [...] All clusters have focal points, known as Cluster Lead Agencies, which operate at the global and Country level. Globally, Cluster Leads are responsible for strengthening system-wide preparedness and coordinating technical capacity to respond to humanitarian emergencies in their respective sector*"⁵¹. Under this approach, UNHCR provides protection of conflict-related IDPs, giving them shelter as well as coordinating and managing the camps. UNHCR competence extends also to people displaced by natural disasters and takes care of HIV and AIDS amongst displaced populations on behalf of the UNAIDS⁵².

⁴⁷ See GA res. 2958 (XXVII), 12 December 1972 available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2958\(XXVII\)&Lang=E&Area=RESOLUTION](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2958(XXVII)&Lang=E&Area=RESOLUTION) [accessed 2 April 2014]

⁴⁸ See GA res. 47/105, 16 December 1992, para. 14, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/47/105&Lang=E&Area=RESOLUTION [accessed 2 April 2014]

⁴⁹ See GA res. 48/116, 20 December 1993, para. 12 available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/116&Lang=E&Area=RESOLUTION [accessed 2 April 2014]

⁵⁰ See note 49 above and GA res. 49/169, 23 December 1994, para. 10, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/49/169&Lang=E [accessed 2 April 2014]

See also ExCom Concls. Nos. 75 (XLV) (1994) and No. 87 (L) (1999), (t)

⁵¹ See: OCHA on Message: The Cluster Approach, available at: https://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CEIQFjAC&url=https%3A%2Fdocs.unocha.org%2Fsites%2Fdocs%2FDocuments%2F120320_OOM-ClusterApproach_eng.pdf&ei=wVQ9U-OmGKHG0AX_0IDgCg&usg=AFQjCNEcshxAF1fe9I0OvLK-USVyqYKjog [accessed 2 April 2014]

⁵² See: UN High Commissioner for Refugees (UNHCR), UNHCR's Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement. Policy Framework and Implementation Strategy, 4 June 2007, EC/58/SC/CRP.18, available at: <http://www.refworld.org/docid/4693775c2.html> [accessed 2 April 2014]

– Good offices

Several GA resolutions made possible for the High Commissioner to reach beyond its original functions, extending his “good offices”, therefore using his competences, expertise and presence on the territory, to provide humanitarian relief in particular situations, as happened for the first time with the operations for Chinese refugees in Hong Kong in 1959⁵³. Recently the destruction brought by the Indian Ocean Earthquake, urged the Secretary General to request the operational involvement of UHNCR, at the end of December 2004, to assist those affected by the tsunami in Sri Lanka, the Indonesian province of Aceh and in the Horn of Africa, in Somalia.

As the Office noted: “*UNHCR’s response to this catastrophe was an exceptional measure. The Office is not traditionally involved in natural disasters, but given the sheer magnitude of the devastation, the fact that UNHCR was present on the ground and had emergency capacities to respond swiftly, the organization responded to the UN Secretary-General’s call for all agencies to assist and to the request of the UN Country Teams*⁵⁴”.

d. Other instruments

The Convention remains the cornerstone of international refugee protection and has been ratified by 145 States as of 4 April 2014. However, many more universal and regional instruments address the asylum seekers issue. Some of them are binding for the Contracting Parties, others represent only a mere, though significant, declaration of intents⁵⁵.

The first recognition of the responsibility to protect people affected by international and national conflict, born by the practices of States and raised to customary law status, was codified in the fourth Geneva Convention of 1949, which refers to refugees and displaced persons in Art. 44, 45, 49, 70; and its two additional Protocols of 1977, respectively in Art. 73,85 and Art. 17.

Not limited to War time, but *ratione personae*, other conventions directly or indirectly address specific groups of potential refugees whose status could aggravate their conditions in case of forced displacement. For instance, the Convention Relating to the Status of Stateless Persons of 28 September 1954 covers stateless persons. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Art 6 rules that “*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in*

⁵³ See GA res. 1388 (XIV), 20 November 1959, in relation to Hong Kong, available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1388\(XIV\)&Lang=E&Area=RESOLUTION](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1388(XIV)&Lang=E&Area=RESOLUTION) [accessed 03 April 2014]

⁵⁴ The whole Statement about the tsunami emergency, can be found at: http://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CC4QFjAA&url=http%3A%2F%2Fwww.unhcr.org%2F4492678911.pdf&ei=tm49U_mJHr9yWP5nIC4Bw&usg=AFQjCNGz7ZdeLe4DiO9PxeRDu151WaMusg, p.1, [accessed 03 April 2014]

⁵⁵ For the purposes of this chapter, only the principle of non-refoulement will be analysed, leaving the European protection system and other considerations on regional instruments to the last section of this paper. For all the documents cited in this chapter, though, please refer to the resource section.

women and exploitation of prostitution of women". Of paramount importance is also the Convention on the Rights of the Child of 1989 and its Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography of 2000. The 1989 Convention, after making sure in Art.3 that "*in all actions concerning children*" States must pursue first the interest of the child, explicitly States: "*a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present convention and in other international human rights or humanitarian instruments to which the said States are parties*" (Art 22.1).

It is worth noting that the specific needs of children and women have been taken into consideration by UNHCR by the adoption of *ad-hoc* policies with the Guidelines on Refugee Children in 1988⁵⁶ and the Handbook for the Protection of Women and Girls in 2008⁵⁷.

In addition, *ratione materiae*, for example, the International Labour Organization (ILO) drafted the, Migration for Employment Convention, in 1949, which is a further source of rights for those refugees already recognized under the 1951 Convention.

Moreover, being in a precarious situation refugees are often victims of organized crime, especially of human traffickers who take advantage of their desperation to *use* them for sexual exploitation, forced or bonded labour; domestic servitude and forced marriage, organ removal, begging and warfare. The problem has been addressed universally by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, which declares:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used.

A universal instrument in human rights law, the UN International Covenant on Civil and Political Rights of 1966, proved to be applicable to refugee situations especially concerning

⁵⁶ See: UN High Commissioner for Refugees (UNHCR), *Refugee Children: Guidelines on Protection and Care*, 1994, available at: <http://www.refworld.org/docid/3ae6b3470.html> [accessed 4 April 2014]

⁵⁷ The Handbook replaces UNHCR's 1991 Guidelines on the Protection of Refugee Women, See: UN High Commissioner for Refugees (UNHCR), *UNHCR Handbook for the Protection of Women and Girls*, January 2008, available at: <http://www.refworld.org/docid/47cfc2962.html> [accessed 4 April 2014]

the prohibition of torture or cruel, inhuman or degrading treatment or punishment under Art. 7, and arbitrary detention and human treatment of persons deprived of their liberty under Art. 9 and 10⁵⁸.

At the regional level, in the European Union, specific directives and regulations set standards in different aspects of asylum seekers status recognition. For example Directive 2013/33/EU of the European Parliament and Council of 26 June 2013⁵⁹ sets the standards for the reception of applicants for international protection; Directive 2013/32/EU of 26 June 2013⁶⁰ establish common procedures for granting and withdrawing international protection; Regulation (EU) No 604/2013 of 26 June 2013⁶¹ lays down the criteria and mechanisms for determining the Member State responsible for examining an application (also known as Dublin III); Directive 2011/95/EU of 13 December 2011⁶² sets the standards for the qualification of third-Country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; Regulation No 439/2010 of 19 May 2010⁶³ establish a European

⁵⁸ For example see the case: *C. v. Australia*, HRC, Views of 28 October 2002, no. 900/1999, (lengthy detention causing mental illness of applicant and deportation to Iran constitutes a violation of Arts 7 and 9), available at: http://www.en.refugeelawreader.org/index.php?option=com_docman&task=doc_view&lang=en&gid=316&level=1&ml=5&mlt=system&tmpl=component [accessed 4 April 2014]

See also the Human Rights Committee General Comment No. 21: Art. 10. (Humane treatment of persons deprived of their liberty) of 10 April 1992, available at:

http://www.en.refugeelawreader.org/index.php?option=com_docman&task=doc_view&lang=en&gid=154&level=1&ml=5&mlt=system&tmpl=component [accessed 4 April 2014]

⁵⁹ European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html> [accessed 1 June 2014]

⁶⁰ European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html> [accessed 1 June 2014]

⁶¹ European Union: Council of the European Union, Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-Country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), 29 June 2013, OJ L 180/1-180/30; 29.6.2013, (EU)2003/86, available at: <http://www.refworld.org/docid/51d296724.html> [accessed 1 June 2014]

⁶² European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-Country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26, available at: <http://www.refworld.org/docid/4f197df02.html> [accessed 1 June 2014]

⁶³ European Union, Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, 19 May 2010, OJ L.132/11-132/28; 29.5.2010, (EU)No 439/2010, available at: <http://www.refworld.org/docid/4c075a202.html> [accessed 1 June 2014]

Asylum Support Office; Directive 2008/115/EC of 16 December 2008⁶⁴ regulates the procedures in Member States for returning illegally staying third-Country nationals; Council Directive 2003/109/EC of 25 November 2003⁶⁵ concerns the status of third-Country nationals who are long-term residents; Council Directive 2003/86/EC of 22 September 2003⁶⁶ sets rules to the right to family reunification.

In some regions, the Convention was used as a starting point to build a more specialized framework. For example, the Organization of African Unity (OAU) drafted the Convention governing the Specific Aspects of Refugee Problems in Africa in 1969, and Central American States, Mexico and Panama agreed on the Cartagena Declaration in 1984. Both instruments recognize the need for protection also to people escaping from generalized violence or other events severely disturbing public order. The African Union, in 2009, established the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (also known as the Kampala Convention) particularly important for the fact that it represented the first regional agreement that bonded governments to provide legal protection for IDPs also against natural disasters.

In the Middle-East and North Africa region (MENA) most Arab Countries have not ratified the 1951 Convention and its 1967 Protocol, but regional initiatives such as the Declaration on the Protection of Refugees and Displaced Persons in the Arab World of 1992; and the Arab Convention on Regulating the Status of Refugees in the Arab Countries, adopted in 1994, have been developed.

For many Countries in South-East Asia, the Bangkok Principles of 1966 concerning the treatment of refugees are the only regional non-binding instrument addressing refugees' protection. In 2001, the Asian-African Legal Consultative Organization (AALCO) reaffirmed that effort by adopting the Bangkok principles in its 40th session. More recently, in 2012, the Association of Southeast Asian Nations (ASEAN), issued the ASEAN Human Rights Declaration, which, among other provisions, in Art.16 established: "*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.*"

This brief panoramic on the main international and regional systems of refugee protection of the last 60 years still leaves one question open: can Countries which have not ratified the relevant conventions refuse to admit asylum seekers?

⁶⁴ European Union: Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-Country nationals, 16 December 2008, OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC, available at: <http://www.refworld.org/docid/496c641098.html> [accessed 1 June 2014]

⁶⁵ European Union: Council of the European Union, *Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who are Long-Term Residents*, 23 January 2004, OJ L. 16-44; 23. 1. 2004, 2003/109/EC, available at: <http://www.refworld.org/docid/4156e6bd4.html> [accessed 1 June 2014]

⁶⁶ European Union: Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, available at: <http://www.refworld.org/docid/3f8bb4a10.html> [accessed 1 June 2014]

This is particularly the case of those Countries that not only have not ratified the 1951 Convention but are neither part to any major binding Human Rights Treaty. Countries like Malaysia.

States are free to admit foreigners or to reject their requests for admissions, however, as a customary norm, the prohibition of torture could explain how an asylum seeker fleeing persecution should still be protected against forced repatriation to the Country of origin, outside the legal framework of international treaty law and even against national law⁶⁷.

This notion has been widely considered a founding element of International Humanitarian law since the end of nineteenth century, constituting a fundamental aspect of several Conventions⁶⁸ and ultimately of the four Geneva Conventions⁶⁹. At a later stage, the foundation of Human Rights law, known as the “International Bill of Human Rights” which includes the Universal Declaration, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and cultural Rights, decrees the prohibition of torture in each of its instruments.

Of those two pillars, on the latter the International Community built the current corpus of declarations, recommendations, conventions and treaties restating the prohibition of torture or cruel, inhuman or degrading treatment or punishment. The practice of States prohibiting

⁶⁷ This is the view of The European Court of Human Rights (ECHR) which, ruling on the European Convention of Human Rights grounds and departing from Art. 3 which declares the prohibition of torture, built a consistent jurisprudence that widened the scope of the provision to the principle of *non-refoulement*, which is not subject to any exception, derogation or limitation. See for example:

ECtHR, *Soering v. the UK*, Judgement of 7 July 1989, Appl. No. 14038/88, para. 91;

ECtHR, *Cruz Varas and Others v. Sweden*, Judgement of 20 March 1991, Appl. No. 15576/89, paras. 69-70;

ECtHR, *Vilvarajah and Others v. United Kingdom*, Judgement of 30 October 1991, Appl. Nos. 13164/87, 13447/87, 13448/87, par. 103;

ECtHR, *Chahal v. UK*, Judgement of 15 November 1996, Appl. No. 22414/93, paras. 73-74;

ECtHR, *Saadi v. Italy*, Judgement of 28 February 2008, Appl. No. 37201/06

ECtHR, *Othman (Abu Qatada) v. The United Kingdom*, 17 January 2012, Application no. 8139/09

⁶⁸ See for example the Convention Relative to the Treatment of Prisoners of War art. 2, July 27, 1929, 118 L.N.T.S. 343, 356, 47 Stat. 2021, 2031 (“*Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity.*”); or the Convention II Respecting the Laws and Customs of War on Land art. 4, July 29, 1899, 187 Consol. T.S. 429, 436, 32 Stat. 1803, 1812 (“*Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them. They must be humanely treated*”).

⁶⁹ Article 3, common to the four Geneva Conventions of 1949, applies to both international armed conflicts as to non-international armed conflicts, and States: “*the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples*”.

torture is so vast that the norm is considered a norm of *jus cogens*, a view supported by the absence of *authorization* for torture in all States' domestic law⁷⁰.

The principal instrument on the matter is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984. Even if the definition set out in Art.1 of the Convention was the result of compromise, and has its limits, what is of paramount importance for an asylum seeker is the principle of *non-refoulement* expressed in Art.3 as follow:

"no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture"

The same principle has been defined in a number of universal and regional instruments. Article 33 (1) of the 1951 Convention relating to the Status of Refugees, States that:

"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

To highlight the importance of the provision the Convention permits no reservation to it.

At the regional level the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 includes the principle in Article II (3):

"No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2."

Moreover, Article 22 (8) of the American Human Rights Convention adopted in November 1969 establishes that:

"In no case may an alien be deported or returned to a Country, regardless of whether or not it is his Country of origin, if in that Country his right to life or personal freedom

⁷⁰ See for example: Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, from page 51, available at: <http://www.refworld.org/docid/40276a8a4.html> [accessed 4 April 2014]

See also: C. M. Grosso, *International Law in the Domestic Arena: The Case of Torture in Israel*, 86 Iowa L. Rev. 305 (2000-2001), Also available at: <http://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC4QFjAA&url=http%3A%2F%2Fdigitalcommons.law.msu.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1204%26context%3Dfacpubs&ei=9tw-U6P2MKPNygOXsoL4AQ&usg=AFQjCNHI0ljUAfioZnpeOvdtLMGj3SLDpw> [accessed 4 April 2014]

is in danger of being violated because of his race, nationality, religion, social status or political opinions."

To conclude, even if not binding, Article III (3) of the Principles concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee (the Bangkok Principles of 1966) declares that:

"No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory."

It is extremely debated whether this notion belongs or not to customary law or *jus cogens*, even in front of its widespread adoption, across the board approval, its tight correlation to the universal prohibition of torture and most of all the fact that every Country is part at least to one of the conventions enshrining the principle of *non-refoulement* in their provisions.

It is beyond the scope of this paper to investigate the reasons behind the debate⁷¹, but if on one hand it is clear that the principle is under attack and suffers from the pressure of the National Security concern, on the other it is the *raison d'être* of any effective asylum system and the fundamental condition for any other rights to follow⁷².

From the point of view of refugees, more than any other right concerning their dignity, they seek freedom from fear of being sent back to the devastation they did *everything* to leave behind.

⁷¹ See *supra* note 8, Hathaway, p.363

⁷² See for example: The Redress Trust and ILPA, *Non-Refoulement Under Threat: Proceedings of a Seminar Held Jointly by The Redress Trust and ILPA*, November 2006, available at: <http://www.ilpa.org.uk/resources.php/13269/non-refoulement-under-threat> [accessed 1 June 2014];

L. Zagato (Ed), S. De Vido (Ed), *Il divieto di tortura e altri comportamenti inumani o degradanti nelle migrazioni*, CEDAM, 2013;

For the border-line cases concerning the expulsion of allegedly terrorists, beside *supra* note 67, see also:

Ocalan v. Turkey, 46221/99, Council of Europe: European Court of Human Rights, 12 March 2003, available at: <http://www.refworld.org/docid/3e71a9d84.html> [accessed 1 June 2014];

Attorney-General v. Zaoui and Others (No. 2), [2005] 1 NZLR 690, New Zealand: Court of Appeal, 30 September 2004, available at: <http://www.refworld.org/docid/49997af11a.html> [accessed 1 June 2014];

Ahmed Hussein Mustafa Kamil Agiza v. Sweden, CAT/C/34/D/233/2003, UN Committee Against Torture (CAT), 24 May 2005, available at: <http://www.refworld.org/docid/42ce734a2.html> [accessed 1 June 2014];

CHAPTER II MAIN WAVES OF FORCED MIGRATION IN SOUTH-EAST ASIA

South-East Asia is a sub-region part of the Asian Continent that stretches from the sub Indian continent on the west, to Papua New Guinea on the East, it shares its northern border with China and lays north of Australia. Set between the Indian and the Pacific Ocean it is characterized by two different regions: a continental area called Indochina, hosting Myanmar, Thailand, Lao People’s Democratic Republic, Cambodia, Vietnam and peninsular Malaysia; and a maritime part, including East Malaysia, Singapore, Brunei, Indonesia, Philippines and Timor-Leste.

FIGURE 2: MAP OF SOUTH-EAST ASIA



<http://www.un.org/depts/Cartographic/map/profile/seasia.pdf>

In the past century, forced displacement in South-East Asia related to conflicts triggered by the Second World War and the subsequent process of decolonization. The Japanese expansion in the region starting from the invasion of Manchuria in 1937 that caused a mass exodus to the southern neighbourhood States, created waves of refugees escaping death, destruction and the worst war crimes such as the Sandakan Death Marches in Sabah⁷³.

⁷³ For an account of the unbelievable atrocities perpetrated by the Japanese as the War came to an end see: P. Ham, *Sandakan: The Untold story of the Sandakan Death Marches*, Second Edition, Random House Australia, 2013.

Everywhere in the region, the end of the war and the process of decolonization saw the dissolution of previous ruling systems and the creation of new States most of the time by force and ignoring the cultural reality of the territories.

From India to East Timor, from 1947 until 2002, every State in the region obtained full independence with new ruling elites forced to face the consequences of the colonialist strategy of “divide and rule”. Imperialist Powers used it not only to weaken oppositions inside their colonies, but also to fight either the communist or the capitalist threat in the region during their ideological cold war.

Indochina was the area where the fight for independence and the superpower interests hit the hardest. Those Countries like Indonesia, which tried to escape from the apocalyptic dualism of the Cold War, attempted to turn to a secularist and nationalist conception of the State, fuelling the danger of ethnic and religious minorities.

Myanmar encompass more than 100 different ethnic groups with conflicts among the minorities of Karen, Karenni, Mon, Shan, Chin, Rakhine and Rohingya; Cambodia was fragmented between Cham people, Khmer Loeu, ethnic Chinese and Vietnamese minorities; Laos Hmong people were recruited by France and United States to fight against invading communist forces from North Vietnam and Pathet Lao insurgents; in Vietnam the Montagnard (or Degar) guerrillas from Central Highlands continued a separatist campaign until the early 1990s; Acehnese people and East Timorese groups fought for independence within and against Indonesia; in the Philippine the resources-rich south still sees the fight of the Moro Muslim ethno-linguistic minority against the central government of Manila.

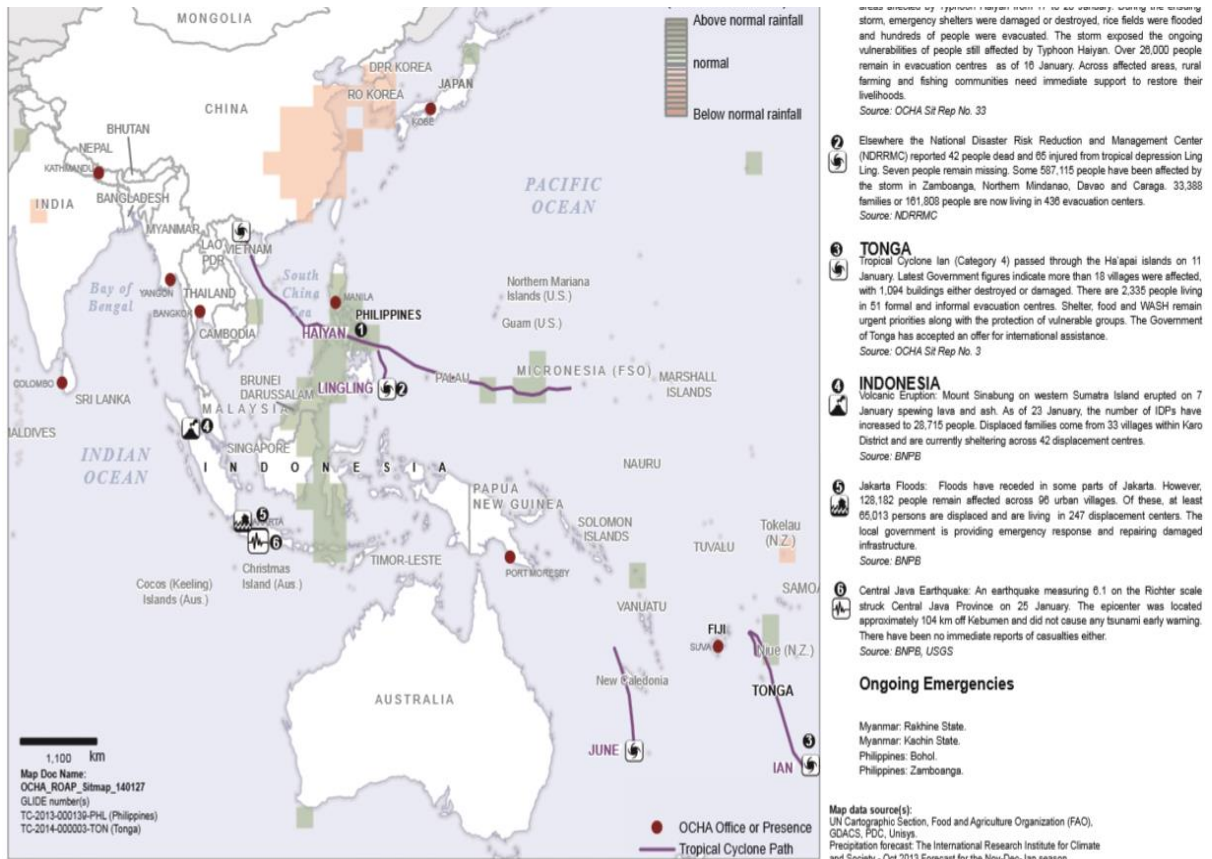
Part of the region faces also problems related to its geological composition and climatic belt: flooding, volcano eruptions, typhoons, earthquakes, tsunami, severe droughts, and diseases outbreaks, not to mention the very disappearance of an entire Nation due to its inevitable drowning into the Ocean⁷⁴.

A glance at the Weekly Regional Humanitarian Snapshot from the OCHA Regional Office in Asia and the Pacific, concerning *just* the last week of January 2014, can give an idea about how severe the environmental issue is, as displayed in Figure 3.

In this scenario, all the instruments listed in the previous chapter to grant refugees protection fell short of effectiveness. In effect, only the Philippines and Cambodia are signatories of the 1951 Convention and Indonesia seems willing to consider its adoption, while most Countries in South-East Asia do not have any legislation regulating the rights of asylum-seekers and refugees, accepting but not facilitating UNHCR role in determining refugee status in their territories.

⁷⁴ Kiribati government is currently studying solutions to the sinking of the island which will force the 100.000 inhabitants to relocate within 2050. For more on the matter of environmental security see for example: R. Floyd, *Climate Change, Environmental Security Studies and the Morality of Climate Security*, Jan 20 2012, available at: <http://www.e-ir.info/2012/01/20/climate-change-environmental-security-studies-and-the-morality-of-climate-security/> [accessed 07 April 2014]

FIGURE 3: ASIA PACIFIC REGION 21-27 JANUARY, 2014 WEEKLY REGIONAL HUMANITARIAN SNAPSHOT



http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_ROAP_Sitmap_270113.pdf

Regarding statelessness, only the Philippines has signed the 1954 Convention relating to the Status of Stateless Persons and no Country in the region has accessed to the 1961 Convention on the Reduction of Statelessness.

The two main Countries of asylum (Thailand and Malaysia) accept they have some kind of obligations towards refugees⁷⁵, a view confirmed by the fact that they contributed to draft Art.16 of the Human Right Declaration of the Association of South-East Asian Nations⁷⁶ (criticised by many for its non-binding character⁷⁷).

Despite that, it seems that they fear that the adoption of such measures as allowing refugees to be effectively recognized and lawfully work would lead to a mass influx of

⁷⁵ According to P.Mathew, T.Harley, *Refugee Protection and Regional Cooperation in Southeast Asia – A Fieldwork Report*, part of the Australian National University Funded research Project, Regionalism, Responsibility and Refugees (Discovery Project 120102224), March 2014, available at: <http://freilich.anu.edu.au/sites/freilich.anu.edu.au/files/images/Fieldwork%20Report%20on%20Refugee%20Protection%20and%20Regional%20Cooperation%20in%20Southeast%20Asia.pdf> [accessed 07 April 2014]

⁷⁶ Article 16 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”.

⁷⁷ As reported by Human Rights Watch in this article: *Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration*, 2012, available at: <http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration> [accessed 07 April 2014]

immigrants causing security concerns and heavy financial burden for shelter, food education and healthcare.

Consequently, in the majority of the States refugees and stateless people are considered illegal immigrants, which exposes them to arbitrary detention (often leading degrading treatment), expulsion, and refoulement. They cannot integrate in the society not being allowed to fully access to public education, healthcare system and lawful employment, ultimately arising social unrest in the host Country for *perceived* danger.

As we will demonstrate in chapter III of this paper, in this situation, human-trafficking networks found a fertile ground to flourish, connecting people who often do not have the privilege of choice to shameless employers who exploit them in the plantations, constructions or fishing industry, which all demand high number of low-specialized workforce. The weakest among them, namely woman and children, are easily victim of abuses and many end up in the sex industry, which exposes them to the risk of deadly illnesses.

A regional effort to address these issues was initiated with the Bali Process in 2002, which established a Regional Cooperation Framework and the Regional Support Office to raise awareness and build State capacity on the matter. The problem of this initiative, which includes UNHCR, IOM and UNODC among other 43 participants, is its voluntary forum character. As UNHCR Assistant High Commissioner for Protection Erika Felker noted at the 5th Ministerial Meeting, the Process must “*move beyond the language of cooperation to practical and concrete action*”.⁷⁸

The following paragraphs will present the main forced displacement patterns in the region, most of them involving the passage or the arrival in Malaysia, a Country that given its geographical position and despite the goal of reaching Status of Developed Nation (SDN) by 2020, plays unwillingly its fundamental role in asylum seekers migrations.

a. India and Sri Lanka: the Tamils

The partition of British India in 1947 created artificial divides solely based on religious differences, which still fuel today devastating border conflicts.

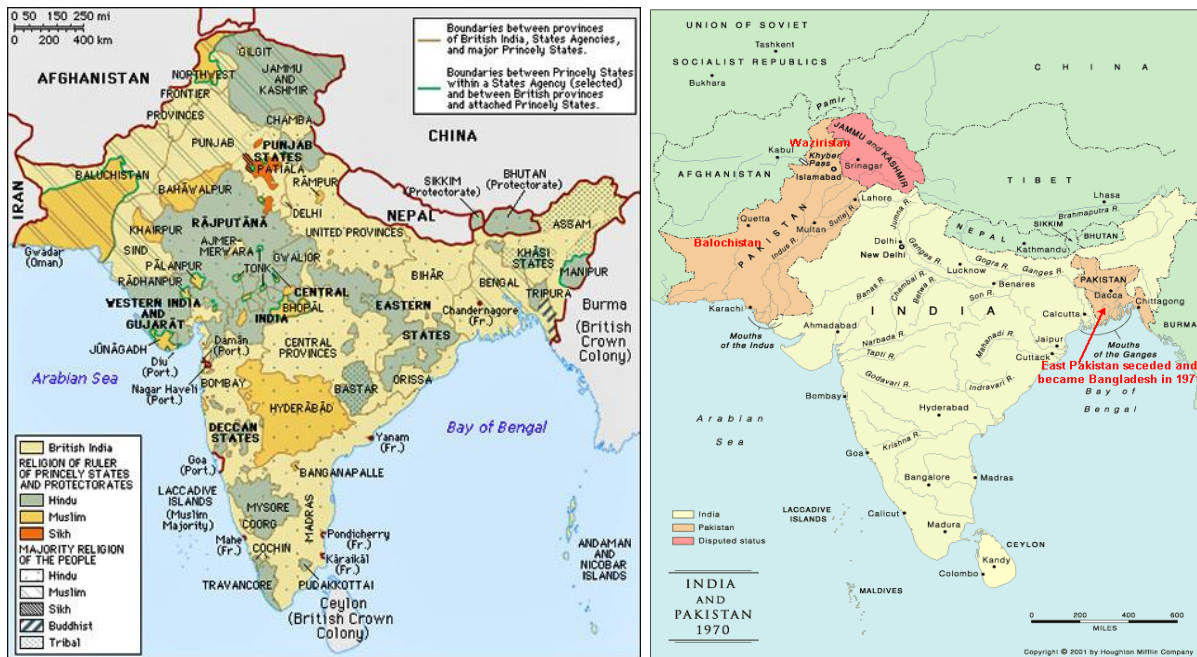
As the new boundaries had been drawn, Muslims fled from India to Pakistan while Hindus and Sikhs entered the newly independent Hindu Country. As in most of developing realities, the inexperienced institutions could not handle the mass migration resulting in a tremendous tragedy: both with regard to the exodus itself, which was accompanied with violence by both parties, and to the post-crisis management, which resulted in millions of displaced people on both sides.

Tamils suffered from the dissolution of the British Empire too. Once part of an empire stretching its influence from the southern regions of India to the tip of peninsular Malaysia,

⁷⁸ The article “*UNHCR calls for concrete steps to protect refugees through Bali Process*”, 2 April 2013, available at: <http://www.unhcr.org/515af0d56.html> [accessed 07 April 2014]

Tamils were one of the biggest stateless group in the world⁷⁹, and today count some 40.000 in Malaysia alone.

FIGURE 4: THE SUB-CONTINENT BEFORE AND AFTER 1947



<http://www.ctevans.net/Nvcc/Campus/HIS135/Notes/SouthAsia.html>
<http://www.generationaldynamics.com/ww2010/india1970a.gif>

Since India and Sri Lanka independence, respectively in 1947 and 1948, the problem of stateless persons of Tamil origin has been addressed by several agreements, such as the Sirimavo-Shastri Pact of 1964 and Sirimavo–Indira Gandhi Pact of 1974⁸⁰ and again in 1988 and 2003⁸¹, laying out the conditions to and the programs for resettlement and for granting them citizenship. Facing discrimination by the Sinhalese majority in the island, a movement for an autonomous Tamil Country began to set foot in the 70s with the name of Liberation Tigers of Tamil Eelam (LTTE) leading to the explosion of the civil war the 23rd of July 1983⁸². In 2009, after 27 years and a short-living ceasefire in 2002, the Tamil tigers were defeated leaving behind an estimated 100,000 victims and the shadows of war crimes⁸³. Despite the end

⁷⁹ See for example: United Nations High Commissioner for Refugees (UNHCR), *Refugees Magazine Issue 147: The Excluded: The strange hidden world of the Stateless*, September 2007, available at: <http://www.unhcr.org/46d2e8dc2.html> [accessed 27 March 2014]

⁸⁰ R. S. Pillai, *Indo-Sri Lankan Pact of 1964 and the problem of Statelessness – a critique*, Afro Asian Journal of Social Sciences, Volume 3, No. 3.1, Quarter I, 2012., Available also at: http://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CDAQFjAA&url=http%3A%2F%2Fwww.onlineresearchjournals.com%2Faajoss%2Fart%2F82.pdf&ei=Cow0U9D8HMiY4wSrxoHQCw&usq=AFQjCNG9yKunsc97fRKbn9wdXuiy_znL1A [accessed 27 March 2014]

⁸¹ The last Act passed by Sri Lanka government in 2003, the “Grant of Citizenship to Persons of Indian Origin Act”, contributed in almost halving the Stateless population of the island. See *supra* note 79, page 21

⁸² For more information on the Tamil-Sinhalese conflict see: K. DeRouen (Editor), U. Heo (Editor), *Civil Wars of the World: Major Conflicts since World War II*, Vol. I, ABC-CLIO, 1 edition, March 28, 2007, from p.715.

⁸³ See: <http://www.aljazeera.com/news/southasia/2014/03/un-approves-sri-lanka-war-crimes-inquiry-201432773150513279.html>, [accessed 27 March 2014]

of the war, the conflict never really ceased, and an ongoing crisis is harming the Tamils residing in Sri Lanka and preventing the ones who fled the civil war from returning home⁸⁴.

Most of the present-day stateless people of Indian origin are second and third generations of descendants of the workers employed in plantations and construction in every corner of the British Empire. According to the figures provided by the Singhvi Committee Report on the Indian Diaspora⁸⁵, the biggest group resides in Myanmar (400,000), followed by Kuwait (295,000), Italy (71,500) Jamaica (61,500), Malaysia (40,000), with many others staying in Japan, Jordan, Kenya, Lebanon, Libya and the Philippines.

In Malaysia, they concentrate mainly in the plantation regions, on the west side of the peninsula. Most of them are of Tamil extraction, constituting a close community that preserves its customs, practicing Hindu, speaking Tamil instead of the official Bahasa Malay and with little intermixture with the main racial group. Economically and politically, the group has improved little since the colonial rule, as they are reported⁸⁶ to be among the poorest sectors of society and to suffer political under-representation. Unsurprisingly this is due not only to a sense of belonging to a specific cultural group, but also to the bias and discrimination by the Malay society and by the restriction of the law.

If ethnic Indians continue to be among Malaysia's most disadvantaged groups, the stateless among them are inevitably bound to live a life of precariousness. As Dr. Hartini Zainudin, an activist for stateless children and babies, said, they have "*no right to work, cannot leave the Country, get married or even get a proper education because technically they do not exist... they are completely invisible under the law.*"⁸⁷

b. Myanmar⁸⁸: the Rohingyas

Asylum seekers from Myanmar (or Burma⁸⁹) are the largest forcibly displaced population in the whole region.

⁸⁴ See: <http://www.theguardian.com/world/2014/mar/21/sri-lanka-tamils-subjected-to-horrific-abuse-after-2009-civil-war-says-report>, [accessed 27 March 2014]

The opposite problem occurred too, when alleged terrorist affiliated with separatist groups in Sri Lanka have been expelled from their Country of asylum or residence. See for example:

Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1, Canada: Supreme Court, 11 January 2002, available at: <http://www.refworld.org/docid/3c42bdfa0.html> [accessed 1 June 2014]

⁸⁵ The report can be found at: <http://indiandiaspora.nic.in/pressrelease.htm>, [accessed 27 March 2014]

⁸⁶ United States Department of State, 2013 Country Reports on Human Rights Practices - Malaysia, 19 April 2013, available at: <http://www.State.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, [accessed 27 March 2014]

⁸⁷ See more at: Brenda Ch'ng, *Stateless future*, Selangor Times, January 25, 2013, available at: <http://www.selangortimes.com/index.php?section=insight&permalink=20130124124920-Stateless-future#sthash.qLqjPLNQ.dpuf>, [accessed 27 March 2014]

⁸⁸ For an extensive look at Myanmar minorities see the Minority Rights Group International Report: *Minorities in Burma*, 2007, also available at: <http://www.minorityrights.org/download.php?id=424> [accessed 07 April 2014]

⁸⁹ Generally, the term *Burma* refers to the ethnic majority of the Country while *Myanmar* is deprived of any ethnic characterization. For a comprehensive historical account refer to: D. M Seekins, *Historical Dictionary of Burma (Myanmar)*, Scarecrow Press, Aug 21, 2006

Inside the current borders, during the centuries, different Kingdoms representing Burmese and other ethnic groups who came there through migrations fought for the territory, until they lost it to the British, who were seeking to exploit the resources-rich Country and to better link India to Singapore. When in the 19th century Burma became part of the British Indian Empire (first as a province of India and after 1937 as a separated colony of the Crown) the administration of the territory was divided between Ministerial Burma and Frontier Areas, which today represent the majority of States within the Country, yet composed by the ethnic minorities.

The British used the classic divide-and-rule strategy, allowing each minority to rule upon their own territory but with all profits from the resources exploitation driven outside. Indian workers were employed in the rice fields to cover the workforce shortage, which only deepened anti-British and nationalist movements.

After the second world War when the British and the Anti-Fascist People Freedom League (AFPFL) managed to push back Japanese forces in 1945, independence became a central topic with Aung San (the leader of AFPFL and father of the Nobel Prize for Peace San Suu Kyi) leading the talks. During his transitional government he was assassinated by his political opponents, among whom there was U Nu who had served as Prime Minister before the war and who saw the birth of the independent Union of Burma in 1948, again as Prime Minister.

From that moment, the Country began to crumble under the pressure from the ethnic minorities' demand for a Federal State and the violent repression perpetrated by the central government. In 1962, General Ne Win organized a coup imposing a military junta on the Country, a dictatorship that repressed in blood every protest, from the student peaceful demonstration in Rangoon University of July 1962, to the 8888 Uprising of August 1988, when the military killed thousands and imposed the martial law. The next year another coup overthrew the junta leading to the elections of 1990 in which the constituent assembly would have been demanded to revise the constitution. But the results (won by the National League for Democracy, LND, led by San Suu Kyi) were not recognized, Aung San's daughter was arrested and the elections deferred. Under the pressure of US and European Countries sanctions, she was released in 1995 but she lived a life of persecution forced to house arrest again in 2000, 2003 and finally free in 2010.

The current government led by Thein Sein of the Union Solidarity and Development Party (USDP) who won alleged flawed elections in November 2010, managed to reopen the peace talks started in the 90s with armed groups and aims at a chair in the Association of Southeast Asian Nations (ASEAN) this year, but the human rights record remains appalling.

According to D. Murphy⁹⁰, Burma is *“a resource-rich Country with a dismal economy. It is estimated that for decades the junta spent 25 to 40% of the national budget on the Tatmadaw (Myanmar armed forces, Ed.)- this year, expenditure stands at 14.4%, a 60% real*

⁹⁰ D. Murphy, A British Legacy? Forced Migration, Displacement and Conflict in Eastern Burma, Oxford Monitor of Forced Migration Volume 3, Number 1 May 2013, p73

increase on 2011 to 2012 (McCartan 2012). At its zenith, the Tatmadaw may have been the 12th largest military in the world. This juxtaposes with Burma's expenditure on health (as a percentage of GDP) and under-five mortality rate which are 90% and 40% lower/higher, respectively, than LDC averages".

The everlasting power struggle shown by those figures is the picture of a fragmented reality that traps the populations between brutal crackdowns and an underdeveloped future. In 2014, the Report of the UN's Special Rapporteur on Human Rights in Myanmar⁹¹ revealed ongoing military operations in the North-Eastern States of Kaching and Shan that lead to human rights violations, with more than 100 women and girls allegedly raped by army soldiers since 2010.

FIGURE 5: MAP OF THE DIFFERENT STATES WITHIN MYANMAR BORDERS



http://www.ecoi.net/file_upload/470_1279797103_txu-oclc-124072555-burma-admin-2007.jpg

In their latest report on Myanmar ethnic situation⁹², the Integrated Regional Information Networks (IRIN), while waiting for the conclusion of the long-awaited 2014 official Census⁹³

⁹¹ See: Report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/25/64), available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-64_en.doc [accessed 10 April 2014]

⁹² IRIN, *in-depth: What next for Myanmar?*, March 2012, available at: http://www.irinnews.org/pdf/IRINnews_InDepth_What_next_for_Myanmar.pdf [accessed 10 April 2014]

⁹³ See the United Nation Population Found (UNFPA) webpage on Myanmar at: http://Countryoffice.unfpa.org/myanmar/2014/04/10/9434/myanmar_census_counts_most_of_the_Country_despite_problems/ [accessed 10 April 2014]

(the first after thirty years), shows that at least 26,56% of Burma’s population is represented by minorities:

TABLE 4
MAIN ETHNIC GROUPS⁹⁴

ETHNIC GROUP	SHAN	KAREN	RHAKINE	CHIN
PROPORTION OF POPULATION	9%	7%	3,5%	2,5%
LOCATION	Shan State, bordering Thailand	Kayin State in eastern Myanmar bordering Thailand	Rakhine State in western Myanmar	Chin State in western Myanmar, bordering India
RELIGION	Theravada Buddhism mixed with Brahmanism and Animism	Christian Baptist, Buddhism and Animism	Buddhism	Christian Baptist, Theravada Buddhism, and traditional tribal religions
INFORMATION	Most of Shan refugees sought refuge in Thailand where are regarded as illegal immigrants and exploited as cheap labour. Some militias are still clashing with the governmental force today.	Karen suffered gross human rights violations from the State Peace and Development Council (SPDC) rule, such as extrajudicial executions, forced labour, confiscation of land and rape.	Shortly after its institution, the Arakan Liberation Army collapsed with almost all the members of its leadership arrested. The group re-emerged in the 70s.	The majority are Christians which lead to the conflict with the authorities .Most Chin refugees have settled in India and Malaysia
ETHNIC GROUP	MON	KACHIN	KARENNI	WA
PROPORTION OF POPULATION	2%	1,5%	0,75%	0,16%
LOCATION	Mon State in southern Myanmar	Kachin State in the north, bordering China	Kayah State, on the border with Thailand	Wa Special Region, on the border with China
RELIGION	Theravada Buddhism	Christian Baptist, Animism and Buddhism	Christian Baptist and Animism	Animism
INFORMATION	In 1995 a peace agreement was signed but the cease-fire did not hold everywhere still causing Mon villagers to migrate to Thailand	The marginalized Christian majority lives in poverty, with continuing reports of human rights abuses. In October 2013, the Kachin Independence Army (KIA) sponsored a meeting of the major ethnic groups to discuss the government proposal for a Nationwide Ceasefire Conference	Despite some cease-fire in mid 90s today The Kayah state is one of the most impoverished an militarized regions in the Country	The United Wa State Army (UWSA) is Myanmar’s largest non-state armed group and was known for its drug trade in South-East Asia

However, in the Northern Rakhine State lives an ethnic group discriminated, oppressed and persecuted more than any other minority in the Country, and whose people the government does not even recognize as citizens of Myanmar.

Rohingyas Muslims number is estimated at 800.000, which is about 90% of the total population of the area, but they were not included in the list of 135 official ethnic minorities of

⁹⁴ Information taken also from the 02/2012 issue of the Norwegian Refugee Council (NRC) magazine *Perspective*, available also at: http://www.nrc.no/arch/_img/9667049.pdf [accessed 10 April 2014]

Burma, which accompanied the 1982 nationality law⁹⁵, and after 32 years, they are still excluded from the 2014 official Census.

Discrimination against Rohingyas may have started with and been sustained by the decision of making them stateless by the late dictator Ne Win's (status confirmed in the 2008 Constitution⁹⁶), but their marginalization got worse following many policies of exclusion and restriction. Moreover, they suffer a generalized sentiment of mistrust and despise by the main Buddhist Rakhine community backed and fuelled by Government statements⁹⁷.

By law, Rohingya couples from Northern Rakhine State must obtain an official permission from the local authorities to get married and are not allowed to have more than two children. The permissions are issued after the payment of an always higher fee and often after a bribe. Since the non-compliance with those two rules could lead to imprisonment, many pregnant women who were unable to get the certificate were forced to abort or fled to Bangladesh in order to be able to have a family⁹⁸.

By law, unregistered children (born from an unlawful marriage or outside the two child policy) will not be able to access the healthcare system, to get travel permission, to attend school and in the future to be employed⁹⁹.

By law, all Rohingyas must apply for a travel pass for every movement involving the crossing of their village borders but always within Northern Rakhine State. If they manage to "escape", they are not granted the right to return¹⁰⁰.

Confined to their villages, victims of land confiscation, arbitrary arrest and raids, suffering high levels of illiteracy, unable to easily obtain medical assistance, forced to an everlasting food insecurity status, discriminated in every aspect of their everyday life and living in a natural disaster-prone area, Rohingyas Muslims are considered one of the most persecuted minorities on Earth¹⁰¹.

⁹⁵ The 1982 Nationality Law can be found at: <http://www.ibiblio.org/obl/docs/Citizenship%20Law.htm> [accessed 22 April 2014]; the list of officially recognised ethnic minorities is available at: <http://www.embassyofmyanmar.be/ABOUT/ethnicgroups.htm> [accessed 22 April 2014]

⁹⁶ The 2008 Constitution can be accessed at: http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf [accessed 22 April 2014]

⁹⁷ According to the 2012 Arkan Project report "Submission to the committee on the rights of the child - Issues to be raised concerning the situation of Stateless Rohingya children in Myanmar (Burma)", on 9 February 2009, Ye Myint Aung, the Myanmar Consul in Hong Kong, in a letter to diplomatic missions and the media described the Rohingyas as: "*Neither 'Myanmar People' nor Myanmar's ethnic group. You will see in the photos that their complexion is 'dark brown'. The complexion of Myanmar people is fair and soft, good looking as well. (My complexion is a typical genuine one of a Myanmar gentleman and you will accept that how handsome your colleague Mr. Ye is.) It is quite different from what you have seen and read in the papers. (They are as ugly as ogres.)*".

The whole report is available at <http://www.burmalibrary.org/docs12/AP-CRCMyanmar-12-01.pdf> [accessed 22 April 2014]

⁹⁸ See supra note 97, Arkan Project, p 6

⁹⁹ See supra note 97, Arkan Project, p 6-7

¹⁰⁰ See supra note 97, Arkan Project, p 8

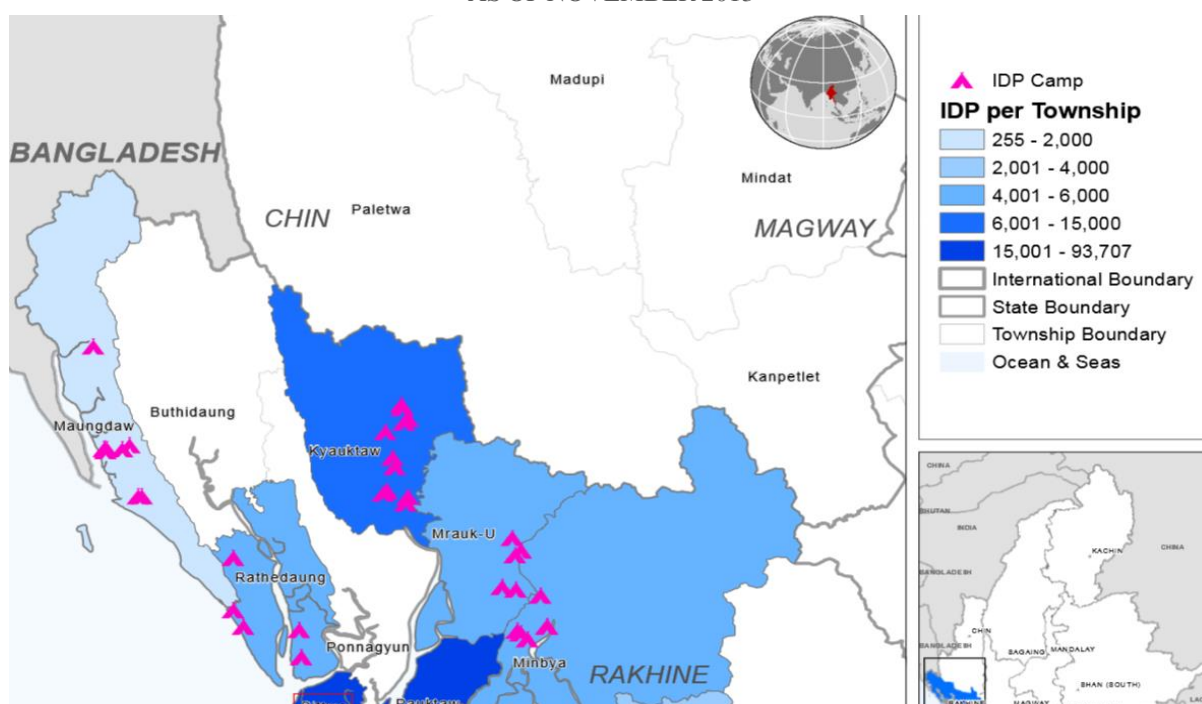
¹⁰¹ See for example:

Trying to flee these abhorrent policies, refugees sought refuge in Bangladesh in 1978 and again in 1991-92. These were the first two big outflows of Rohingyas Muslims from Myanmar but the exodus did not stop as its causes have never been effectively tackled.

The latest outburst of violence began in June 2012 with the massacre of ten Muslims, a reaction to the rape and murder of a Buddhist woman. The following attacks targeted the Rohingya communities, raiding their villages, killing hundreds¹⁰² and forcing them to flee to the neighbour States, mainly to Bangladesh, Thailand and Malaysia.

According to OCHA, as of November 2013 the total number of IDPs in the Rakhine State amounted to 138.833 people:

FIGURE 6: (CONTINUES ON THE NEXT PAGE) MYANMAR: INTERNAL DISPLACEMENT IN RAKHINE STATE AS OF NOVEMBER 2013



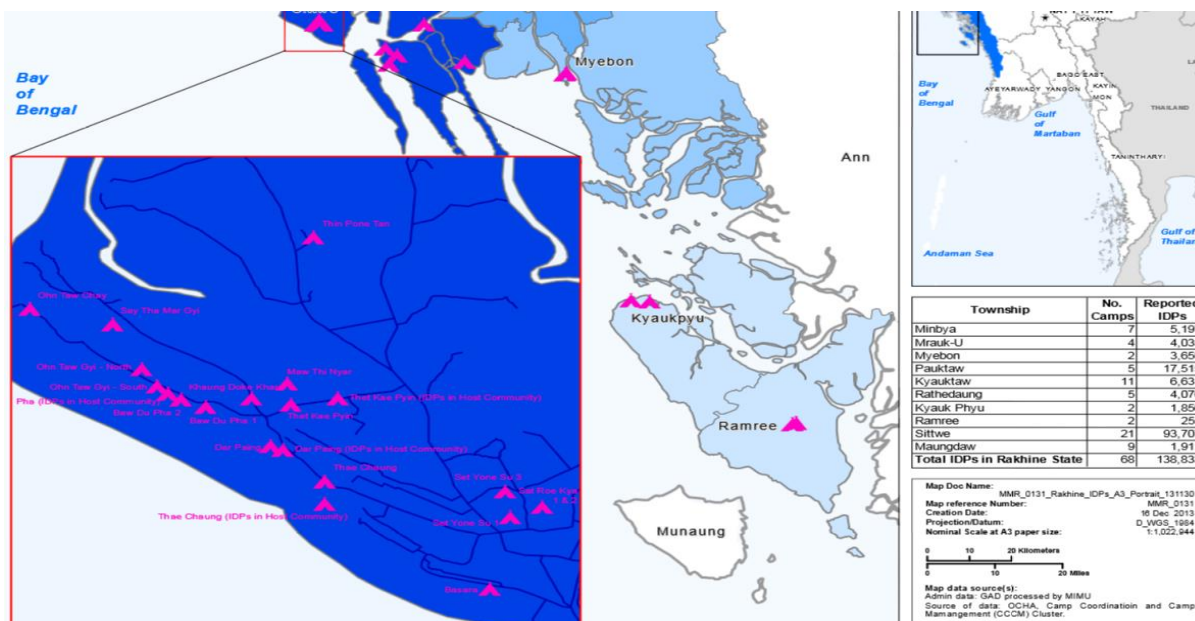
For chronic malnutrition: European Commission Humanitarian Aid & Civil Protection (ECHO), *Humanitarian Implementation Plan, Myanmar, 2011*, available at: <http://ec.europa.eu/echo/files/funding/decisions/2011/HIPs/burma-myanmar-thailand.pdf> [accessed 22 April 2014]

For the access to sanitation: WFP, *Food Security Assessment in Northern Rakhine State, Myanmar*, February 2011, Annex 6 available at: <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp234781.pdf> [accessed 22 April 2014]

For the access to healthcare: Chris Lewa, *Northern Arakan/Rakhine State: a chronic emergency*, *European Institute for Asian Studies*, 29 March 2006, available at: <http://www.eias.org/conferences/2006/burma290306/lewa.pdf> [accessed 22 April 2014]

For illiteracy rates: Arkan Project, Submission to the committee on the rights of the child - Issues to be raised concerning the situation of Stateless Rohingya children in Myanmar (Burma), 9 February 2009, p. 11, available at: <http://www.burmalibrary.org/docs12/AP-CRCMyanmar-12-01.pdf> [accessed 22 April 2014]

¹⁰² Hanna Hindstrom, *Burmese authorities targeting Rohingyas, UK parliament told*, 28 June 2012, article available at: <http://www.dvb.no/news/burmese-authorities-targeting-rohingyas-uk-parliament-told/22676> [accessed 22 April 2014]



http://reliefweb.int/sites/reliefweb.int/files/resources/IDPMap_OCHA_MMR_0131_Rakhine_IDP_locations_A3_30Nov2013.pdf

Among the figures provided by UNHCR referring to all people of concern originating from Myanmar up to mid-2013¹⁰³, 230,674 were hosted in Bangladesh, 92,435 reached Malaysia and 96,777 stayed in Thailand by the end of 2012¹⁰⁴.

Confronting these data with the number of Rohingyas living in official and unofficial camps in Bangladesh provided by Minority Rights Group International¹⁰⁵ (about 200,000), in Thailand border camps (IRIN quotes unconfirmed estimates which place the number from 3,000 to 20,000 as no official reports exist¹⁰⁶) and Malaysia (with more than 35,000 people, they are the second biggest group from Myanmar according to UNHCR¹⁰⁷), it is clear that they represent the biggest displaced group among all Burma’s minorities forced to flee abroad.

ORIGINATING FROM MYANMAR

REFUGEES	415,373
ASYLUM SEEKERS	28,245
RETURNED REFUGEES	0
INTERNALLY DISPLACED PERSONS (IDPS)	632,000
RETURNED IDPS	0
VARIOUS	0
TOTAL POPULATION OF CONCERN	1,075,618

¹⁰³ 2014 UNHCR Country operations profile - Myanmar , page available at: <http://www.unhcr.org/pages/49e4877d6.html> [accessed 22 April 2014]

¹⁰⁴ UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted 22/04/2014, link to the database http://popstats.unhcr.org/PSQ_POC.aspx

¹⁰⁵ Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2013 - Bangladesh*, 24 September 2013, available at: <http://www.refworld.org/docid/526fb75a4e.html> [accessed 22 April 2014]

¹⁰⁶ See: Integrated Regional Information Networks (IRIN), Hell is real for the Rohingyas in Thailand, 28 February 2014, available at: <http://www.irinnews.org/report/99717/hell-is-real-for-the-rohingyas-in-thailand> [accessed 22 April 2014]

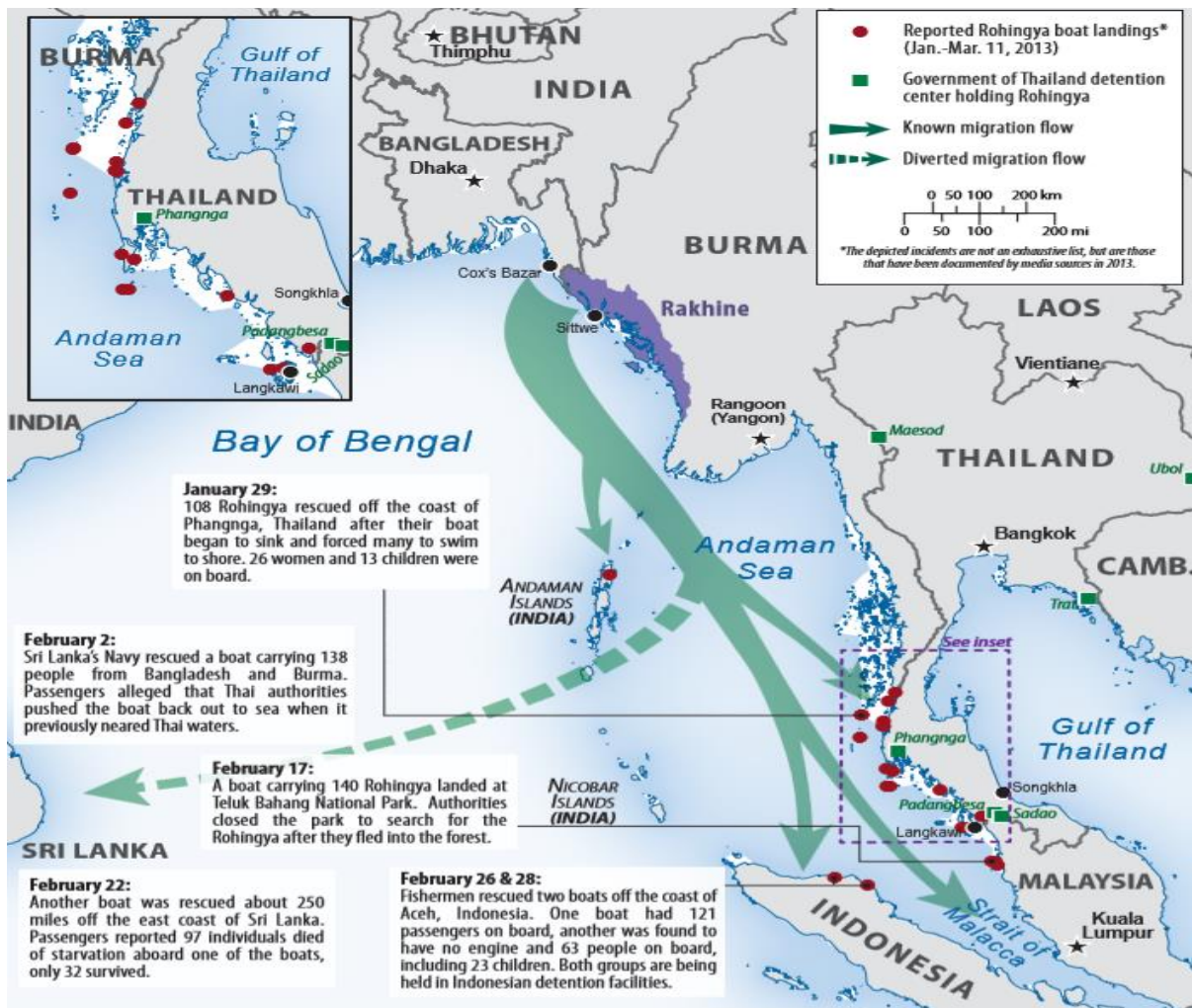
¹⁰⁷ As of the end of March 2014, the 133,070 refugees from Myanmar comprised some 51,845 Chins, 35,563 Rohingyas, 11,764 Myanmar Muslims, 7,828 Rakhine, 3,623 Burmese & Bamars, 5,396 Mon and 5,218 Kachins

In their desperate travel to a better future too many die at sea, as thousands of “boat people” jump aboard overloaded boats and cross the Bay of Bengal to reach the fastest developing Country with a Muslim majority in the region: Malaysia.

The 22nd of February 2013, after the new waves of violence swept the Rakhine State, UNHCR spokesperson Andrej Mahecic at the press briefing at the Palais des Nations in Geneva, said: “We estimate that of the 13,000 people who left on smugglers' boats in 2012, close to 500 died at sea when their boats broke down or capsized. While UNHCR is still gathering data from 2012 on deaths at sea, it is clear that the Indian Ocean has become for people fleeing their Countries one of the deadliest stretches of water in the world¹⁰⁸”.

In 2013, the situation did not show any amelioration, the forced migration continued along the same routes:

FIGURE 7: ROHINGYAS ASYLUM SEEKERS - FLOWS & BOAT LANDINGS IN 2013 (JAN.-MAR.)



U.S. Department of State, Humanitarian Information Unit (HIU)

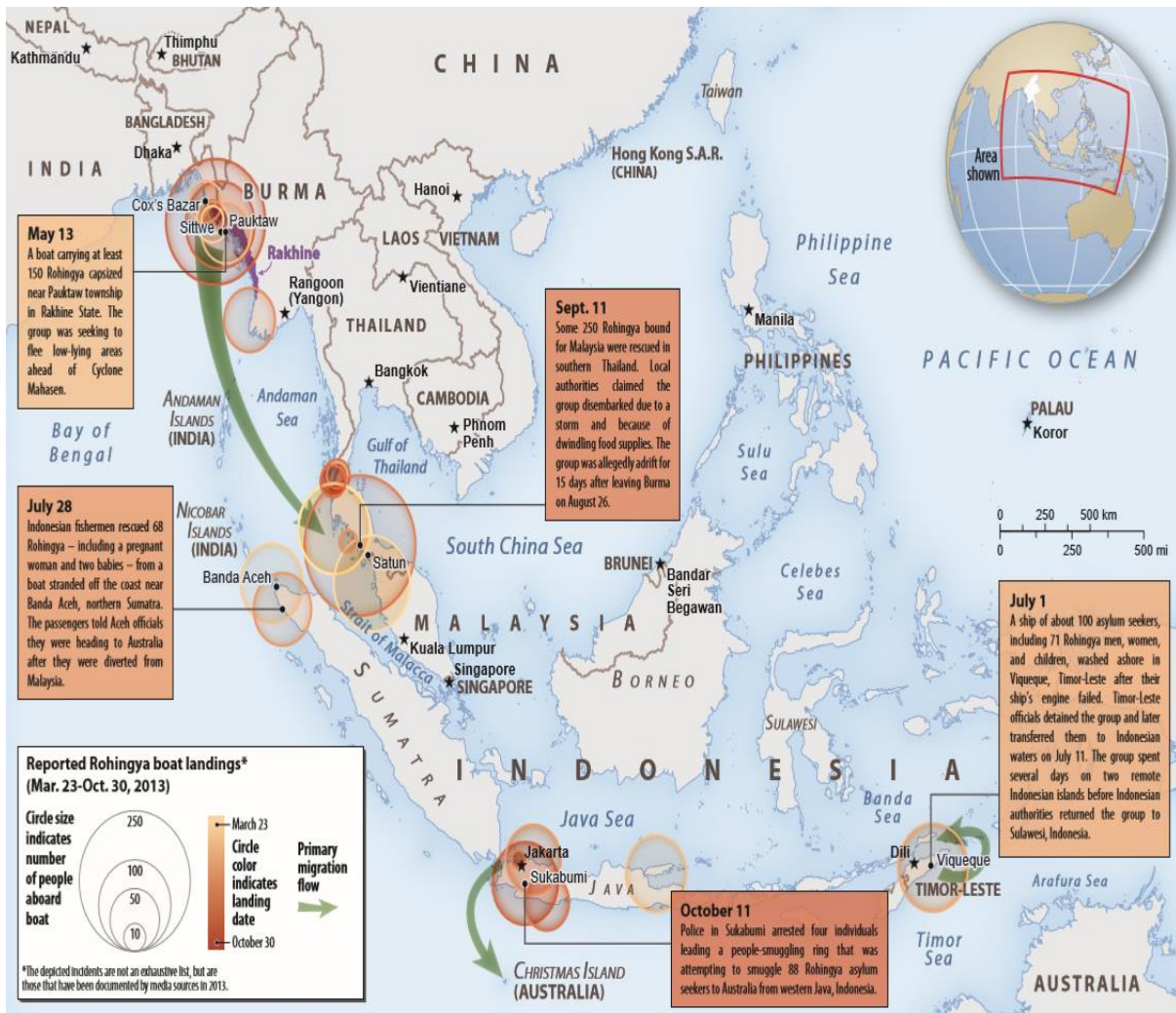
hiu_info@state.gov

<http://hiu.state.gov>

and other ethnic groups. See: UNHCR, *Figure at glance - Malaysia*, 1 December 2013, available at: [http://www.unhcr.org/my/About Us-@-Figures At A Glance.aspx](http://www.unhcr.org/my/About%20Us-@-Figures%20At%20A%20Glance.aspx) [accessed 22 April 2014]

¹⁰⁸ UNHCR, *UNHCR calls for urgent action to prevent Rohingya boat tragedies*, Briefing Notes, 22 February 2013, available at: <http://www.unhcr.org/512756df9.html> [accessed 22 April 2014]

FIGURE 8: SOUTHEAST ASIA: ROHINGYA MARITIME MIGRATION UPDATE (MAR.-OCT. 2013)



U.S. Department of State, Humanitarian Information Unit (HIU)
hiu_info@state.gov
<http://hiu.state.gov>

In Kuala Lumpur the Burmese community is represented by many minorities groups and through the Coalition of Burma Ethnic Malaysia (COBEM) they can bring general issues to UNHCR attention. COBEM is the umbrella organization for the communities of the 7 States of Myanmar, comprising: the Kachin Refugee Committee; Chin Refugee Community; Arakan Refugee Relief Community; Shan Refugee Organization; Mon Refugee Organization; Malaysian Karen Organization; Karenni Community; Alliance of Chin Refugee

Rohingyas Muslim most organized association is probably the Rohingya Arakanese Refugee Committee (RARC), founded in 2007 and still fighting today to ensure the rights and provide facilities and services to Muslim Burmese refugees.

c. Cambodia¹⁰⁹: poverty and forced labour

Emerging from a bloody past under the foolish Khmer Rouge ultra-socialist regime, Cambodia ranks today 138th out of 186 ranked Countries on the United Nations Human Development Index¹¹⁰, being one of the poorest Countries in its region. Rural areas and the fishing villages destroyed by the globalization of the fishing industry are the most affected, leading to an impressive economic migration mostly to Thailand and Malaysia.

According to the World Bank¹¹¹, in seven years, from 2003 to 2010, remittances from Cambodian workers abroad more than doubled to \$364 million reflecting a changing in the push and pull factors.

In effect, the global economic crisis of 2008 stroke hard on low income sectors such as the garment industry¹¹², while the globalization through the liberalization of the market economy in the agricultural and fishing sectors, left farmers and fishermen unable to stand multinational competition¹¹³. Unemployment, low education rates and the incessant work of recruitment agencies pushed many to leave.

In 2009, the pull factor came from the sudden high demand of domestic workers from Malaysia. The Country was previously relying on Indonesian and Filipino woman, but due to several cases of abuse of Indonesian domestic workers, Jakarta imposed a ban to new recruitment¹¹⁴. Facing a shortage, agencies turned to Cambodia from which the outflow of domestic workers in 2010 became three times higher than two years before.

“My employer slapped me on my face, kicked me and pulled my hair, and threw shoes at me. Sometimes they hit me with [a] stick. They said I was too slow. I worked all the time. I had no rest day. Sometimes they would give me dinner but I would not get

¹⁰⁹ For an extensive look at Cambodian minorities see the Minority Rights Group International Report: *Minorities in Cambodia*, 1995, also available at: <http://www.minorityrights.org/download.php?id=418> [accessed 07 April 2014]

¹¹⁰ See the United Nations Human Rights Index table from the 2013 Human Development Report, available at: <http://data.unpd.org/dataset/Table-1-Human-Development-Index-and-its-components/wxub-qc5k> [accessed 16 April 2014]

¹¹¹ World Bank, *Migration and Remittances Factbook 2011*, 2011, p. 84, available at: <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf> [accessed 16 April 2014].

¹¹² World Bank, *Swimming Against the Tide: How Developing Countries are Coping with the Global Crisis*, 2009, available at: <http://www.un.org/ga/president/63/PDFs/WorldBankreport.pdf> [accessed 16 April 2014].

¹¹³ The effects of the globalization of fisheries on Myanmar, Thailand but especially Cambodia's fishermen communities has been effectively analysed by the Kuala Lumpur-based NGO Tenaganita in its report on human trafficking of fishermen in South-East Asia: Tenaganita, *The Global Catch – Stop Trafficking in Persons*, Kuala Lumpur, 2009.

¹¹⁴ Malaysian government signed in 2012 a bilateral Memorandum of Understanding (MOU) with Bangladesh, Indonesia and the Philippines to grant some protection to domestic workers.

See: Human Rights Watch news release, *Indonesia/Malaysia: New Pact Shortchanges Domestic Workers*, May 31, 2011, <http://www.hrw.org/news/2011/05/31/indonesiamalaysia-new-pact-shortchanges-domestic-workers> [accessed 16 April 2014]

lunch. I went to bed without food sometimes. My neighbours saw this and they used to give me bread. One day, I jumped from the fence and ran away”.

This was the situation of many of the nearly 25000 Cambodian domestic workers in Malaysia, representing more than half of the 40000 Cambodians who reached the Country to seek better employment from 2008 to 2011, as reported by Human Rights Watch¹¹⁵.

Most of them are woman who face abuses and restriction to their liberty from the moment they reach the recruitment agencies’ training camps in Cambodia to the day they are caught by Malaysian police after having escaped from their employer’s house.

Deceived with the prospect of a high salary, woman among whom many are underage, are first imprisoned (they are not allowed to communicate with families or to go out) in the training centre in Phnom Pehn, where they have to train for their future activities such as cooking and washing dishes for the whole staff. The same thing happens once they reach the recruiter’s office in Malaysia.

However, the real abuses come in the hands of the employers. Forced in a slavery-like situation, many woman suffered from unbelievable working hours (sometimes more than 20 per day); were provided with an inadequate sleeping surface; scarce food portions, no access to medical treatment and denied to communicate with their families or neighbours.

Moreover, verbal, physical and in the worst cases sexual abuse is a common characteristic of female workers exploitation.

Despite Cambodian Labour Code and Anti trafficking Law, some Recruitment Agencies still deceive families members, especially those from the poorest areas, and force them to work to pay off their debts: a debt bondage that begins with the high recruitment fees for which workers will have to destine up to six or seven months’ worth of salary.

HRW report goes much further finding that women and girls “*signed two or three documents with the agent in Cambodia: i) an employment contract; ii) an agreement to live in the training centre until departure to Malaysia and not to leave the centre; and iii) a loan contract. Agents also ask families to verify that the prospective migrant is above 18 years of age, the minimum age for migration in Cambodia, and that they agree to send her to Malaysia. Once in Malaysia, many workers we spoke to were obliged to sign a new employment contract, different from the one they signed in Cambodia. They were also obliged to sign a statement agreeing not to return home, leave or escape from the employer’s home before the completion of their employment contract, to not marry Malaysian citizens, change employers, or engage in “immoral behaviours.”*¹¹⁶”

¹¹⁵ Human Rights Watch, *They Deceived Us at Every Step, Abuse of Cambodian Domestic Workers Migrating to Malaysia*, November 1, 2011, available also at: <http://www.hrw.org/sites/default/files/reports/cambodia1111webcover.pdf> [accessed 16 April 2014]

¹¹⁶ See *supra* note 115, HRW, p. 29

Predictably, the age limit imposed by Cambodian Law was not respected, since brokers provided false passports and documents to girls as young as 13¹¹⁷.

Cambodian domestic workers under Malaysia Employment Act are excluded from compensation for workplace injuries, do not have any limit to weekly working hours nor any rest day, they don't have the right to receive overtime payment and their salary can be unlimitedly deducted.

They do not possess any copy of the documents they signed and even worse, their employers hold the passport. Therefore, when they try to escape from violence and are not able to reach a local NGO or the Cambodian embassy (none were instructed about where to seek help), they fell as undocumented immigrants in the hands of the police.

As reported in the 2013 US State Department Trafficking in Persons Report¹¹⁸, most victims stayed in government facilities “*for three to six months, and some were detained for more than a year. Victims continued to be locked inside facilities, and were only permitted to leave for hospital visits or court appearances under the custody of the police; [...] Victims were provided limited, if any, access to legal or psychological assistance by the government or NGOs.*”

To respond to this situation the Cambodian government in 2011 finally decided to ban the sending of domestic migrant workers to Malaysia following the same path chosen by Bangladesh, Indonesia and the Philippine before. However, beside the fact that the ban enforcement proved to be easier said than done, an official Memorandum of Understanding (MOU) with Kuala Lumpur is yet to be finalised, although at the time of writing it is in its final stages¹¹⁹.

Another pattern of migration triggered by poverty and ending in exploitation is the trafficking of fishermen.

According to the Food and Agricultural Organization of the United Nations (FAO) Fisheries and Aquaculture Country Profile on Cambodia,¹²⁰ fisheries take a big share of Cambodian economy, contributing about 7% to the national GDP and 21.5 % of the total output of goods and services in the agriculture, fisheries and forestry sectors, as of 2008.

However, fishing communities living in the Kampot Province are among the poorest in the Country, while Sihangukville and Koh Kong Provinces fare slightly better, relying on fishing grounds that are more productive. Together they represent 6.6% of the total population.

¹¹⁷ Integrated Regional Information Networks (IRIN), *Cambodia: Trafficking domestic workers to Malaysia*, March 17, 2011, available at: <http://www.unhcr.org/refworld/docid/4d82fb10e.html> [accessed 16 April 2014]

¹¹⁸ US State Department, *Trafficking in Persons Report, Malaysia*, 2013, par. 11, available at: <http://www.state.gov/j/tip/rls/tiprpt/Countries/2013/215511.htm> [accessed 16 April 2014]

¹¹⁹ See The Cambodia Daily article: *Cambodia to meet Malaysia over maids MoU*, March 6, 2014, available at: <http://www.cambodiadaily.com/news/cambodia-to-meet-malaysia-over-maids-mou-53635> [accessed 16 April 2014]

¹²⁰ The document is available at: <http://www.fao.org/fishery/facp/KHM/en#CountrySector-SectorSocioEcoContribution> [accessed 16 April 2014]

Ever-growing demand for fish is leading to an unsustainable fishing industry, pushing the big trawlers always farther and deeper in international waters. Moreover, the liberalization of the fish trade through the World Trade Organization (WTO) and bilateral free trade agreements (FTA) is causing a dip in prices that local communities cannot afford¹²¹.

An expansive fishing industry in Thailand, paired with the fact that few local fishers are willing to move onto the trawlers that stay months away from their coastal communities, provided the pull factor for many vulnerable families from Cambodia poorest Provinces and Burmese refugees.

FIGURE 9: CAMBODIA PROVINCES



<http://www.nationsonline.org/oneworld/map/cambodia-administrative-map.htm>

As the late Irene Fernandez (founder of the Kuala Lumpur-based NGO Tenaganita) explained in her introduction to the report on trafficking of fishermen *The Global Catch – Stop Trafficking in Persons*¹²²: the fishing industries had to rely on foreign labour, “often that of men who are trafficked onto boats and forced to work out at sea. The men are kept in a bonded situation, at times threatened with death should they not perform. [...] Through our investigations, we discovered that men, sometimes refugees who were sold a t the Thai-

¹²¹ See *supra* note 113, TENAGANITA

¹²² See *supra*, note 113, TENAGANITA

Malaysia border by enforcement officials, were then trafficked onto trawler boats, at times for up to three years or more”.

A 2009 fact finding mission on the exploitation of Cambodian men at sea by the Strategic Information Response Network (SIREN) reached out 49 Cambodian men and boys sold by Khmer and Thai brokers to work on Thai fishing boats¹²³.

The path exposed by the research is similar to the one experienced by domestic workers: A local Khmer broker recruits men in the poorest villages and drives them to Poipet or Malai, on the border, where he lend them to a Thai transporter. He takes them to the destination port towns where another broker has a relationship with local boat owners.

Once sold to the captain they have to work for free for months until they pay off their debt. In effect, they own the captain the amount of money he spent to buy them. They belong to him.

On the boats, away from home for years, workers experience or, in the best scenario only witness, violence, threats to life, inhumane working conditions and hours, almost starving and with no medical assistance. Their situation is so degrading that as soon as the boat docks in Malaysian waters many try to jump ship.

Both Tenaganita fact-finding mission in Sarawak and SIREN report found that the luckiest among them one who managed to escape were recognised as victims of trafficking under Malaysian Anti-Trafficking in Persons Act. Some were helped by locals, other found non-exploitative work in plantations assisted by other Cambodians.

In the other cases, some have been arrested as illegal immigrants and sentenced under Malaysian Immigration Act to be fined or to caning, and in the end deported. Others were chased down by the brokers, as soon as they tried to escape or later, found in the forest or in their hideouts and exploited again in plantations, also by Malaysian brokers. In some cases, the agents who found them called the families or friends in Cambodia for ransom.

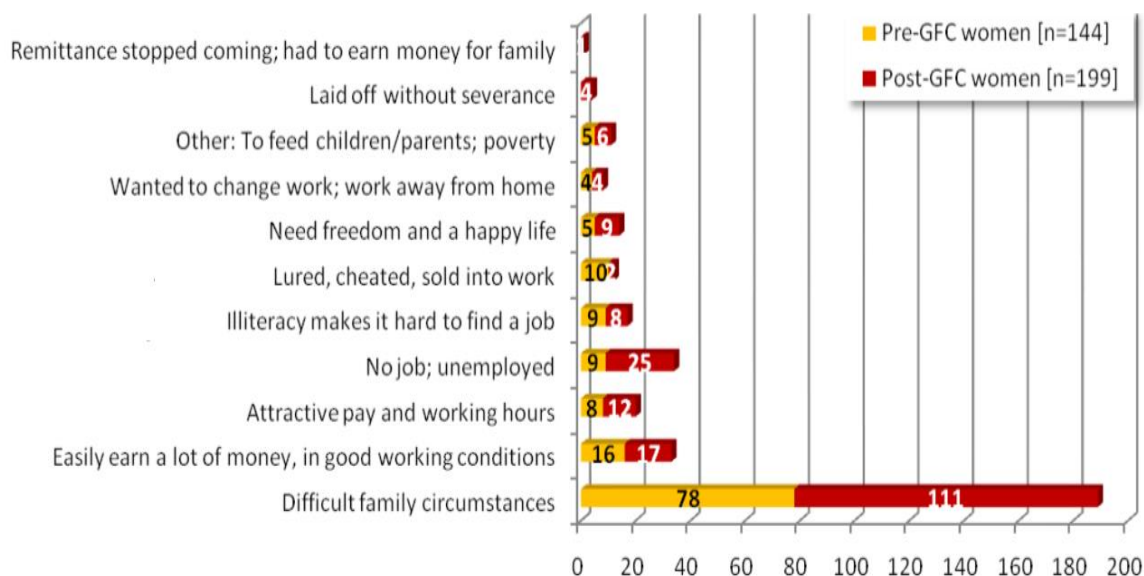
The global economic crisis, striking hard especially on women employed in the garment sector, drove many into the sex trade too. Employed in massage centres, karaoke clubs or as direct sex workers many end up surviving to long working hours, low salary, and violence in the workplace.

A second report by SIREN, focused on the effects of the global financial crisis on women in Cambodia¹²⁴ gives a picture common also to the other realities addressed in this paragraph:

¹²³ Strategic Information Response Network (SIREN), United Nations Inter-Agency Project on Human Trafficking (UNIAP): phase III, *Exploitation of Cambodian Men at Sea - Facts About the Trafficking of Cambodian Men Onto Thai Fishing Boats*, April 2009, available at: http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf [accessed 16 April 2014]

¹²⁴ Strategic Information Response Network (SIREN), United Nations Inter-Agency Project on Human Trafficking (UNIAP): phase III, *Cambodia: exodus to the sex trade? Effects of the global financial crisis on women's working conditions and opportunities*, July 2009, available at: http://www.no-trafficking.org/reports_docs/siren/siren_cb-04.pdf [accessed 16 April 2014]

FIGURE 10: WHY ENTER THE SEX TRADE



GFC: Global Financial Crisis

N: Total number

Under “family circumstances”, many woman who did not want to give more details may have referred to the other reasons.

Nonetheless, Cambodia experienced a more traditional pattern of forced migration, with millions of refugees who fled civil war and the Khmer Rouge rule in the 70s.

The civil war started in 1970 seeing the American-supported Lon Nol government against the communist forces of Pol Pot Khmer Rouge and North Vietnamese soldiers. When in 1975 Pol Pot regime took power, they persecuted and slaughtered Cham, Vietnamese and Chinese ethnic groups in the attempt of creating a fully independent, purely agrarian-based society ruled by ethnic Khmers. The tremendous outcomes for the whole Country are too well known¹²⁵.

In four years the Khmer Rouge regime displaced Cambodian citizens from their towns to the Countryside collectivized labour camps, abolished the currency, prevented anyone to practice their religion and executed any opposition.

UNHCR estimates ¹²⁶ that at the beginning of the great exodus known as the Indochinese refugee crises, 34,000 Cambodians sought refuge in Thailand while 20,000 escaped to Laos and 170,000 to Vietnam. But after Vietnam invasion in 1979, Thailand received another 164,000 Cambodian and Laotian refugees who were hosted in camps at the border.

The pressure on the Country was so high to determine a backlash with mass deportation back to Cambodia, which eventually lead to the 1979 Genève Conference on

¹²⁵ Generally see: B. Kiernan, *The Pol Pot Regime Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*, Third Edition, Yale University Press, 2008.

¹²⁶ UNHCR, *The State of The World's Refugees 2000: Fifty Years of Humanitarian Action*, 1 January, 2000, available at: <http://www.unhcr.org/3ebf9bad0.html> [accessed 16 April 2014]

resettlement, to the 1989 Comprehensive Plan of Action, and ultimately, to the 1991 Paris Peace Agreements¹²⁷.

UNHCR began its operations in Malaysia in 1975 following the outburst of the crisis, where after 1979 several thousand Muslim Chams have been settled with the help of the Office, privileged among all the others for ethnic and religious reasons¹²⁸.

d. Laos and Vietnam: Hmong and Vietnamese “Boat People”

The Indochinese refugee crisis saw three big phases characterized by different exodus and subsequent responses.

The first outflow of people escaping conflict originated in 1975 when all the west-backed governments in Indochina collapsed under the pressure of communist forces. The fall of Saigon, Phom Pehn and Viangchan put at risk the lives of those who opposed to the new rulers during the conflict.

Beside the Khmer Rouge’s massacres mentioned in the previous paragraph, thousands of refugees crossed the Mekong River into Thailand leaving behind the Pathet Lao’s crackdowns against the hill tribes groups known as Hmong or Meo.

Chased down for having fought the communist forces in Laos and backed by CIA, Hmong and other minorities along with lowland Laotians poured into the neighbor Country numbering more than 100,000 by the end of the year¹²⁹.

In the first 24 months of the Lao People’s Democratic Republic, an estimated 150,000 Laotian refugees crossed the border¹³⁰ where UNHCR established a regional office in 1977, through an agreement known as an *accord de siege*¹³¹.

¹²⁷ United Nations, Department of Public Information, *Agreements on a Comprehensive Political Settlement of the Cambodia Conflict: Paris, 23 October 1991*, January 1992, 7-40. Available at: http://www.usip.org/files/file/resources/collections/peace_agreements/agree_comppol_10231991.pdf [accessed 8 May 2014]

¹²⁸ Danny Wong Tze Ken, *Vietnam-Champa Relations and the Malay-Islam Regional Network in the 17th–19th Centuries*, 2004, available at: http://kyotoreview.cseas.kyoto-u.ac.jp/issue/issue4/article_353.html [accessed 16 April 2014]

¹²⁹ The Central Intelligence Agency-run Operation Momentum began in 1961 training an army that could stop North Vietnamese troops along the Ho Chi Min Trail. Hmong combatants and civilians were destroyed by the war: as many as 20,000 soldiers died on the field and almost 50,000 civilians were killed or wounded. Half of the total Hmong population in Laos was displaced by 1973. When in spring 1975 the defeat was certain US forces and Hmong survivors sought refuge in Thailand.

See C. Robinson, *Terms of Refuge: The Indochinese Exodus & the International Response*, Zed Books October 15, 1998, p. 12-14

¹³⁰ See Barry Wain, *The Indochina refugee Crisis*, Foreign Affairs, Fall 1979 Issue, available at: <http://www.foreignaffairs.com/articles/32979/barry-wain/the-indochina-refugee-crisis> [accessed 8 May 2014]

¹³¹ Human Rights Watch, *Unwanted and Unprotected: Burmese Refugees in Thailand*, September 1, 1998, available at: <http://www.refworld.org/docid/3ae6a7efc.html> [accessed 8 May 2014]

In Vietnam, when at the end of April 1975 the People's Army conquered Saigon, two US-led operations drove out of the Country to the Philippines and Guam bases about 65,000 Vietnamese, with the same number of people escaping on their own¹³².

In Malaysia, the initial flow of "boat people" rose from the first 47 refugees landed in Pulau Bidong in 1975, to more than 5000 in 1977¹³³, but the forced migration spread across the whole region from Thailand to Japan, from Australia to Hong Kong.

In the beginning, the international reaction acted through a consortium of international organizations such as UNHCR, UNICEF, ICRC, the WFP and other Agencies, with a focus on voluntary repatriation and providing food, clothes, shelter and medicines in Cambodia, Laos, Vietnam and refugee camps in hosting Countries.

However, as soon as other events made more difficult or impossible to carry out repatriation projects and the outflow kept increasing, the system collapsed.

After the reunification of Vietnam in July 1976, the Provisional Revolutionary Government established the New Economic Zones (NEZs), where to (forcibly) relocate any person related to the old regime, relatives of those sent to the re-educational courses, ethnic and religious minorities (such as the indigenous population from the central Highlands known as Degar or Montagnard), beside former peasants and skilled machinery workers. In the NEZs, the extreme conditions of living pushed many to escape.

Boat departures began to rise. This was due also to new conflicts that involved ethnic minorities: Pol-Pot's ethnic cleansing were ousting hundreds of thousands of Vietnamese triggering the reaction of Vietnam, whose decision to invade Cambodia in turn caused the brief border war with China known as the Sino-Vietnamese war of February-March 1979. But before that, Chinese communities were already fleeing following crackdowns on what the Government called a "*strong capitalist heart*"¹³⁴ within the socialist body of the Country.

Big Freighters carrying thousands of Vietnamese refugees began to appear in every major port in the region.

The *Southern Cross* at an inhabited Indonesian island (19 September 1978); the *Hai Hong* in Malaysia (October 1978); the *Tung Han* in Manila Bay (December 1978); the *Huey Fong* in Hong Kong (19 December 1978).

By the end of the year 61,729 boat refugees who had been refused to dock for weeks by coastal States, where hosted by nine different Countries in the region, with more than 70% staying in Malaysian camps¹³⁵. Deaths at sea were uncountable, in only 11 days more than 400 people disappeared along with their sinking boats before reaching Thai or Malaysian coasts¹³⁶.

¹³² See *supra* note 130, Barry Wain, p. 18

¹³³ Martin Woollacott, *The Boat People*, The Guardian, Saturday 3 December 1977, available at: <http://www.theguardian.com/century/1970-1979/Story/0,6051,106868,00.html> [accessed 8 May 2014]

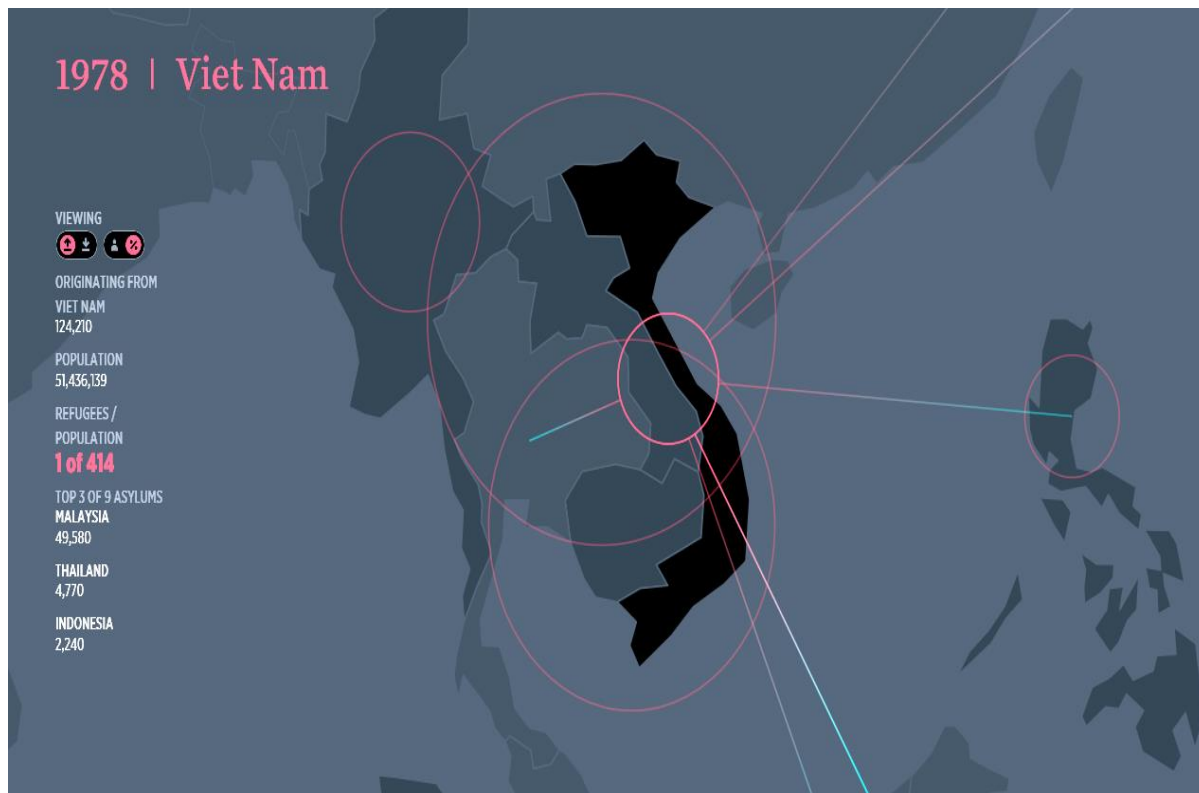
¹³⁴ See *supra* note 130, Barry Wain, p. 29

¹³⁵ See *supra* note 130, Barry Wain, p. 32

¹³⁶ L. C. Thompson, *Refugee Workers in the Indochina Exodus, 1975-1982*, Mcfarland&Company, Incorporated Publishers, April 2010, p. 151

The shocking scheme that emerged later, was a Government-organized exodus based on agreements between the ship owners and Vietnamese official to make profit from the smuggling¹³⁷.

FIGURE 11: VIETNAMESE "BOAT PEOPLE" EXODUS MAP



Map taken from “the “Refugee Project” website, available at: <http://www.therefugeeproject.org/#/1978/VNM> [accessed 8 May 2014]

In this scenario, none of the Countries of first asylum in Southeast Asia were willing to settle them permanently and given the dire conditions in their home Countries (not to mention the push-backs, piracy, the shooting on approaching boats, the refusal to rescue people dying on the high seas), repatriation was not an option for the time being. Governments in Thailand, Malaysia and Indonesia, which were suffering the most from the inflow pressure, thought it was convenient for them to push other Countries in the International Community to share the burden by refusing to host the thousands starving on board the overcrowded ships.

Forced to find a way to make sure that South-East Asian Countries maintained the refugee camps the United Nations met in Geneva in June 1979, where they convened on the principle “an open door for an open shore”.

Western States and UNHCR accepted to recognise all “boat people” as refugees *prima facie*, therefore exchanging their commitment to *automatically* resettle all those waiting in UNHCR camps in a third Country of asylum, for Thailand, Malaysia and Indonesia’s assurance to provide temporary protection.

¹³⁷ See *supra* note 136, L. C. Thompson

In parallel, the Orderly Departure Program (ODP), a MoU between Vietnam and UNHCR, allowed near half a million people to leave the Country in a safer and legal way compared to the risky sea option¹³⁸.

Together, these two mechanisms permitted the resettlement of more than one million Vietnamese with approximately 600,000 from the ODP and 450,000 under the Geneva Conference program, drastically reducing the camps size and pressure on neighbour Countries throughout the 1980s¹³⁹.

However, after a decade, the Vietnamese government suspended the Program, smuggling rose once more and South East Asian Governments (with the exception of the Philippines) began trashing again human life, only because whenever they pushed back another boat, or life in the detention camps became unsustainable, then, Western Countries turned their heads towards their problems¹⁴⁰.

A new conference was called and a new mechanism under the name of “Comprehensive Plan of Action” (CPA) was implemented.

Under the renovated regime, which also re-established the ODP, asylum seekers had first to be screened by Government Officials under UNHCR guidelines to determine their refugee status, and depending on the outcome it would lead either to resettlement in Western Countries or to voluntary/forced repatriation to Vietnam.

From 14 march 1989 the CPA came into force and outlined in eight sections how the asylum seekers issue should be dealt with.

The first two sections: *Clandestine Departure* and *Regular Departure Programme* were intended to prevent illegal smuggling and to promote the ODP among the governments of Laos and Vietnam.

The third and fourth sections regulated the *Reception of New Arrivals* and the *Refugee Status* and were intended to grant respectively equal treatment to any asylum seekers regardless of their mode of arrival including UNHCR full and rapid access to them and the procedures for status recognition. These were particularly interesting because for the first time in the region was established a common method based on the UNHCR Handbook on Procedures and Criteria for Determining refugee status, but applied by specifically trained ASEAN officials.

The fifth section, about *Resettlement*, third States had to grant multi-year commitment to accept all those recognized as refugees on the Convention grounds.

¹³⁸ See Judith Kumin, *Orderly Departure from Vietnam: Cold War Anomaly or Humanitarian Innovation?*, *Refugee Survey Quarterly*, 2008 available also at: <http://rsq.oxfordjournals.org/content/27/1/104.full.pdf+html> [accessed 8 may 2014]

¹³⁹ Keane Shum , *A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asia through Local and Regional Integration*, *Oxford Monitor of Forced Migration* Volume 1, Number 1, p. 63-64, available at: <http://oxmofm.com/wp-content/uploads/2010/08/12-SHUM-OxMo-vol-1-no-1.pdf> [accessed 8 may 2014]

¹⁴⁰ See S.E. Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia*, Martinus Nijhoff, *Refugees and human rights*, v. 13 1387-6031, 2008, p. 187

Repatriation/Plan of repatriation clarified that those who had been determined not to be people of concern had to be repatriated, possibly voluntarily, and required the Country of Origin to grant them freedom from retaliation or persecution.

The last two sections focused respectively on *Laotian asylum seekers* and the *Implementation and review procedures*¹⁴¹.

According to UNHCR, “during its seven year life span, the CPA provided temporary refuge for some 112,000 asylum-seekers from Viet Nam and the Lao People’s Democratic Republic, reduced clandestine departures, expanded legal departure possibilities and introduced region-wide refugee status determination procedures which helped stem the flow of asylum-seekers. The CPA facilitated the recognition and subsequent resettlement of over 74,000 Vietnamese refugees, and supported the repatriation to their Country of origin and subsequent reintegration of over 88,000 Vietnamese who did not fulfil internationally recognized refugee criteria. The CPA also facilitated the resettlement of some 51,000 Lao and supported the voluntary repatriation and reintegration in their Country of origin of some 22,400 Lao, most of whom were recognized as *prima facie* refugees¹⁴².”

The first Malaysian camp, the Pulau Bidong camp, closed in 1990, while the last one to be shut down was the one in Sungai Besi, in 1996, when UNHCR considered the emergency ended and the CPA came to an end.

In August 2005, after 30 years and some 250,000 Vietnamese “boat people” who came on rusty boats, landed on its eastern shores and left to better places, Malaysia saw the last Vietnamese refugee leaving to his home Country¹⁴³.

e. Indonesia¹⁴⁴: Conflict in Aceh

When Sukarno after the surrender of Japan in August 1945 guided Indonesia through independence, the natural resources-rich Archipelago was a mixture of ethnic groups with a Muslim Javanese majority under the national motto, “*Bhinneka Tunggal Ika*” (literally, “many, yet one”).

The most traditional Muslims communities lived in Aceh, one of the poorest Province of Indonesia but among the richest in natural gas and oil, which lies at the northern tip of Sumatra Island, west of the Melaka Strait.

¹⁴¹ See *supra* note 140, S.E.Davies, p.194-198

¹⁴² Executive Committee Of The High Commissioner's Programme, Standing Committee, 4th Meeting, *Update On Regional Developments In Asia And Oceania*, 19 August 1996, available at: [accessed 8 May 2014]

¹⁴³ UNHCR, *Last Vietnamese boat refugee leaves Malaysia*, August 30, 2005, available at: <http://www.unhcr.org/43141e9d4.html> [accessed 8 May 2014]

¹⁴⁴ For an extensive look at the Acehese minority in Indonesia see the Minority Rights Group International Report: *Aceh: Then and Now*, 2005, also available at: <http://www.minorityrights.org/download.php?id=136> [accessed 07 April 2014]

FIGURE 12: INDONESIA PROVINCES MAP



http://upload.wikimedia.org/wikipedia/commons/thumb/6/63/Indonesia%2C_administrative_divisions_-_en_-_monochrome.svg/800px-Indonesia%2C_administrative_divisions_-_en_-_monochrome.svg.png

After the corrupted New Order administration of General Suharto (who took the reins of the Country in 1968) set the stage for a more secular future¹⁴⁵, the separatist underground sentiment that emerged in the 1950s with the Darul Islam rebellion, flourished once again.

The Free Aceh Movement (“*Gerakan Aceh Merdeka*“, GAM), formed in 1976 by Hasan di Tiro, unilaterally declared the independence of the Province from the Central Government of Jakarta the same year.

The secessionist group and the Indonesian Military clashed for more than thirty years, reaching a peak of violence in the period between 1989 and 1998, when the Government imposed a Military Operations Zone in the area¹⁴⁶.

After the fall of Suharto in the wake of the 1997 economic crisis, Indonesia went through stark reforms, in an attempt to leave behind the Dictatorial era, but the referendums in East Timor and Aceh of 1999 were still drowned in blood¹⁴⁷.

¹⁴⁵ Generally refer to: S. Eklöf, *The Long Fall of Suharto, 1996-1998*, Studies in Contemporary Asia Series (Book 1), Nordic Inst of Asian Studies (September 1, 1998), p. 18

¹⁴⁶ Amnesty International, *Time To Face The Past*, 2013, p.14, available at: <http://www.amnesty.org/en/library/asset/ASA21/001/2013/en/5a7956bb-be04-494a-85e2-0c02d555b58e/asa210012013en.pdf> [accessed 23 April 2014]

¹⁴⁷ Angilee Shah, *Records of East Timor, 1999*, September 21 2006, available at: <http://www.international.ucla.edu/article.asp?parentid=53444> [accessed 22 April 2014]; Jakarta Post, *Impunity increasingly a habit in Aceh*, January 11 2000, available at: <https://www.mail-archive.com/indonews@indo-news.com/msg05945.html> [accessed 22 April 2014]

At the end of the year, the moderate Muslim President Abdurrah-man Wahid managed to establish a peace dialogue with GAM helped by the Henri Dunant Centre for Humanitarian Dialogue (HDC). New draft laws sought to give the two outmost Provinces of Aceh and West Papua larger control on their natural resources profits¹⁴⁸.

However, talks collapsed in 2003, and the Province plunged again into chaos as the government decided to establish the martial law.

No one can tell how things could have deteriorated if a natural disaster such as the devastating tsunami of 2004 had not destroyed the western coastal area and at the same time forced the opposite sides to reconsider a truce.

In 2005, the government and GAM met in Helsinki, Finland and finally reached an historical agreement to end violence. The Memorandum of Understanding did not granted Aceh independence but recognized its autonomy in exchange for GAM disarmament¹⁴⁹.

After thirty years of conflict, under Article 1.1.2 paragraph (a) of the MoU, Aceh would have exercised “*authority within all sectors of public affairs, which will be administered in conjunction with its civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution*”.

Moreover, the Province was entitled to retain 70% of the revenues from the exploitation of its natural resources.

To ensure that the peace process led to a definite solution, the European Union, Norway, Switzerland and five Countries from ASEAN (Thailand, Malaysia, Brunei, Philippines and Singapore), monitored the application of the agreement provisions through the Aceh Monitoring Mission (AMM) which formally ended in 2012¹⁵⁰.

In 2010, the situation pictured in FIGURE 13 showed that five years after the Helsinki agreement, of the 600.000 people displaced since 1999, about 146.000 still needed assistance within the province of Aceh¹⁵¹.

¹⁴⁸ Michael Richardson, Indonesians Warn Against Aceh Referendum, November 11, 1999, available at: <http://www.nytimes.com/1999/11/11/news/11iht-indo.2.t.7.html> [accessed 22 April 2014]

¹⁴⁹ *MoU between the Government of the Republic of Indonesia and the Free Aceh Movement*, full text available at: https://peaceaccords.nd.edu/site_media/media/accords/Aceh-Indonesia_Memorandum_of_Understanding_2005.pdf [accessed 22 April 2014]

¹⁵⁰ Hotli Simanjuntak, *EU ends peace monitoring program in Aceh*, The Jakarta Post, May 25 2012, available at: <http://www.thejakartapost.com/news/2012/05/25/eu-ends-peace-monitoring-program-aceh.html> [accessed 22 April 2014]

¹⁵¹ Refer to the report by the Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), *Aceh/Indonesia: IDPs and returnees still face significant recovery and reintegration needs*, 8 September 2010, available at: <http://www.refworld.org/docid/4c8f4a872.html> [accessed 24 April 2014]

FIGURE 13: INDONESIA: CONFLICT AND DISPLACEMENT IN ACEH, SEPTEMBER 2010



<http://www.internal-displacement.org/south-and-south-east-asia/indonesia/2010/indonesia-conflict-and-displacement-in-aceh>

Among those Acehnese who managed to flee violence abroad, Malaysia was the first Country of asylum, but also a base for GAM members (for few years the group had an operational headquarter in Kuala Lumpur in the 1980s), and a centre for peace talks¹⁵².

The Country hosted in 2005 about 19.153¹⁵³ refugees from Indonesia, the highest figure from 2000 to 2012:

TABLE 4
TIME SERIES – PERSONS OF CONCERN TO UNHCR

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
REFUGEES	149	83	144	3,198	15,181	19,153	15,174	1,887	497	747	814	858	901
ASYLUM SEEKERS	1	82	1,170	1,799	446	598	529	167	32	6	6	11	
OTHERS OF CONCERN										2			

¹⁵² Through its Aceh Peace Programme (APP), the Universiti Sains Malaysia’s Research and Education for Peace (REPUSM) unit in Penang, provided financial, institutional, intellectual and moral support to the peace talks. See more at: <http://www.c-r.org/accord-article/aceh-refugees-and-conflict-transformation#sthash.n7hRISa9.dpuf> [accessed 22 April 2014]

¹⁵³ UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted 25/04/2014, link to the database http://popstats.unhcr.org/PSQ_TMS.aspx

However, mass deportation of undocumented Indonesian workers and raids on their settlements have been a standard behaviour for Malaysian authorities throughout the years. According to the U.S. Committee for Refugees World Refugee Survey of 1999¹⁵⁴, on March 26, 1998, “*Malaysia forcibly deported 545 Acehnese who had been in four detention centers (Semenyih, Macap Umboo, Linggeng, and Juru), some for as long as three years. This was the first known forcible return of Acehnese*”.

In August 2003 in a crackdown targeting specifically Acehnese asylum seekers, Malaysian police arrested more than 400 people waiting outside the UNHCR office in Kuala Lumpur for their audition¹⁵⁵. The event was a watershed for asylum seekers as after the news spread, they avoided UNHCR assistance afraid of being captured¹⁵⁶.

Despite the criticism of UNHCR and the international pressure on Malaysian government to stop indiscriminate deportation to the Aceh Province, raids on Indonesian settlement areas continued¹⁵⁷. Indonesian undocumented workers, asylum seekers and even UNHCR cardholders constantly lived in the fear of being arrested and brought back.

The danger was real not only for all the Acehnese people who fled the conflict in their villages, but also to all those Indonesians from the North Sumatra Province who were already in Malaysia when the civil war started. Those refugees *sur place*, risked to be treated as GAM members once deported to their Country of origin as many interviews carried out by HRW demonstrated¹⁵⁸.

However, as the root causes of displacement in Indonesia related to President Suharto's policy of relocating large groups of people to under-populated areas, the Archipelago suffered from religious and ethnic conflicts, and land disputes, beyond Aceh Province.

¹⁵⁴ United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 1999 - Malaysia*, 1 January 1999, available at: <http://www.refworld.org/docid/3ae6a8a22c.html> [accessed 24 April 2014]

¹⁵⁵ UNHCR, *UNHCR protests arrests of Acehnese in Kuala Lumpur*, August 26 2003, available at: <http://www.unhcr.org/3f4b7b6e4.html> [accessed 24 April 2014]

¹⁵⁶ Human Rights Watch (HRW), *Aceh Under Martial Law: Problems Faced by Acehnese Refugees in Malaysia*, April 2004, Vol. 16, No. 5 (C), p.13, available at: <http://www.hrw.org/reports/2004/03/31/aceh-under-martial-law-problems-faced-acehnese-refugees-malaysia-0> [accessed 18 April 2014]

¹⁵⁷ In the months after the mass arrest in front of UHNCR office in Kuala Lumpur and consequent meeting between the UNHCR delegation and Malaysian government, there were still several reports of ongoing arrest and deportation operations. See for example:

Yoon Szu-Mae, *Police move in on Acehnese immigrants again*, Malaysiakini, September 16. 2003 available at <http://www.malaysiakini.com/news/1709> [accessed 18 April 2014];

Malaysian Police Raid Illegal Camp For Indonesian Workers, Associated Press, September 17, 2003, available at <http://www.highbeam.com/doc/1P1-80340383.html> [accessed 18 April 2014];

Susan Loone, *Police raid homes, arrest Acehnese in Penang*, Malaysiakini, October 18, 2003, available at <http://www.malaysiakini.com/news/17513> [accessed 18 April 2014];

Yap Mun Ching, *More Acehnese allegedly arrested in dawn raid*, Malaysiakini, January 27, 2004, available at <http://www.malaysiakini.com/news/18481> [accessed 18 April 2014];

¹⁵⁸ Human Rights Watch (HRW), *Aceh Under Martial Law: Problems Faced by Acehnese Refugees in Malaysia*, April 2004, Vol. 16, No. 5 (C), p.6, available at: <http://www.hrw.org/reports/2004/03/31/aceh-under-martial-law-problems-faced-acehnese-refugees-malaysia-0> [accessed 18 April 2014]

Killing and bombings occurred on religious grounds between Christian and Muslims in North Maluku, Maluku and Sulawesi; while Manduese and Daykas ethnic groups fought each other in central Kalimantan.

In its 2004 survey on refugees in Indonesia¹⁵⁹, US Committee for Refugees and Immigrants estimated that “*Maluku hosted over 200,000 (IDPs, Ed.), and East Java and Central Sulawesi hosted well over 100,000 each. North Sulawesi, North Maluku, North Sumatra, Central Sulawesi each had displaced populations between 13,000 and 35,000. [...] Thousands more were displaced in the archipelago including in Papua and Nusa Tenggara*”.

This fracture did not disappear in recent years, as religious minorities were victims of 216 violent attacks in 2010, 244 in 2011, and 264 in 2012¹⁶⁰.

f. Philippine: separatist groups in Mindanao¹⁶¹

On March 27, 2014 after about 45 years of conflict and 17 years of negotiations, the Philippines government and the largest separatist Muslim rebel group, the Moro Islamic Liberation Front (MILF), signed a final peace pact¹⁶².

The historical event came after a year of devastation for the archipelago, hit by typhoon Bopha in December 2012, Bohol earthquake in October 2013 and typhoon Haiyan in November 2013, which, according to the Internal Displacement Monitoring Centre (IDMC), internally displaced almost 8 million people¹⁶³.

With the peace agreement, the Parties established the Comprehensive Agreement on Bangsamoro finally creating a new territorial entity in the southern island of Mindanao, which will replace the Autonomous Region of Muslim Mindanao (ARMM) by 2016.

Beside the acceptance of claims for autonomy by the government, the annex to the agreement also tries to achieve normalization in the region addressing issues in several fields: law enforcement and maintenance of peace, decommissioning of armed groups and weapons, a Socio-economic Development Program and confidence building measures have all been ratified in front of a Malaysian facilitator¹⁶⁴.

¹⁵⁹ United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2004 - Indonesia*, 25 May 2004, available at: <http://www.refworld.org/docid/40b4593d4.html> [accessed 25 April 2014]

¹⁶⁰ See HRW report: *In Religion's Name - Abuses against Religious Minorities in Indonesia*, February 28, 2013, available at:

http://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf [accessed 25 April 2014]

¹⁶¹ For more information on the topics treated in this paragraph, see for example: Azizah Kassim, *Filipino Refugees in Sabah: State Responses, Public Stereotypes and the Dilemma over Their Future*, Southeast Asia Studies, Vol. 47, No. 1 Jun 2009, available at: <http://ci.nii.ac.jp/lognavi?name=nels&lang=en&type=pdf&id=ART0009304773> [accessed 08 April 2014]

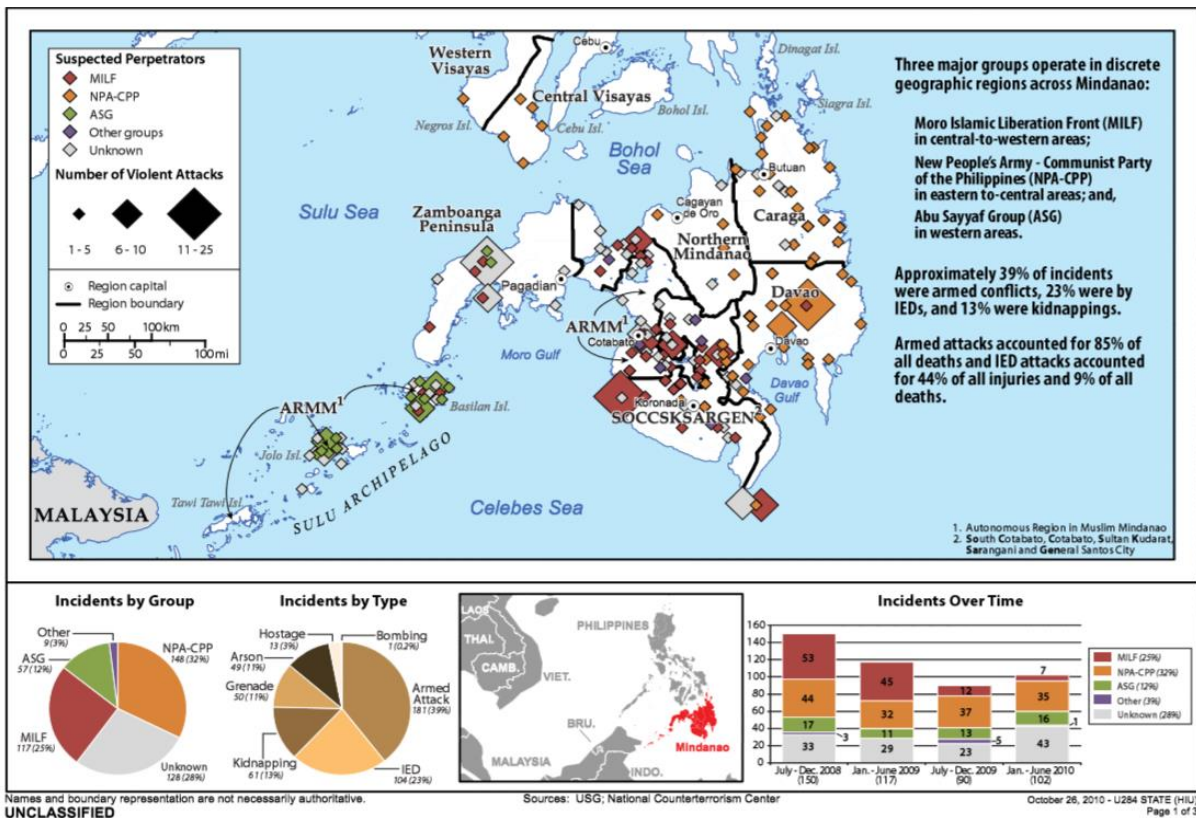
¹⁶² Available at: <http://www.trust.org/item/20140327110827-mur&u/?source=search> [accessed 08 April 2014]

¹⁶³ See IDMC article “*Comprehensive response to wave of displacement crises needed*”, 9 December 2013, available at: <http://www.internal-displacement.org/asia-pacific/philippines/2013/comprehensive-response-to-wave-of-displacement-crises-needed/> [accessed 08 April 2014]

¹⁶⁴ The *Annex On Normalization* can be consulted at: http://opapp.gov.ph/sites/default/files/Annex%20on%20Normalization_0.pdf [accessed 08 April 2014]

As IDMC noted¹⁶⁵, the agreement is a “major step forward for Mindanao’s IDPs. It will contribute to preventing new displacement, improve humanitarian access to conflict-affected areas and address the recovery needs of those who have been displaced in the past. In addition, it seeks to address past injustices and human rights violations suffered by the Moro people thanks to the creation of a Transitional Justice and Reconciliation Commission (TJRC)”.

FIGURE 14: MINDANAO, PHILIPPINES: REPORTED CONFLICT INCIDENTS (JULY 2008 - JUNE 2010)



<http://reliefweb.int/sites/reliefweb.int/files/resources/B5A79F6FEF2C4635C12577D1005D31E2-map.pdf>

Since the conflict started in 1970s, thousands of people from the Autonomous Region of Muslim Mindanao sought refuge in the eastern part of Northern Borneo, in the Malaysian State of Sabah where the Federal government of Malaysia with the help of UNHCR established 34 resettlement villages among which only five were officially recognized: the Telipok and Kinarut settlements in Kota Kinabalu (the state’s capital), Kampung Bahagia in Sandakan, Kampung Selamat in Sempoerna and the Hidayah settlement in Tawau.

Issuing a special pass (HIF22), the government granted them lawful access to the labour market of Sabah and free access to primary and secondary schools. In 1987, UNHCR closed its office in the area, considering the status of those refugees comparable to the locals’ one. However, as soon as new waves of irregular economic immigrants came from Indonesia and

¹⁶⁵ See IDMC article “Can Mindanao’s new peace agreement help end displacement?”, 2 April 2014, available at: <http://www.internal-displacement.org/blog/2014/can-mindanaos-new-peace-agreement-help-end-displacement> [accessed 08 April 2014]

the Philippines starting from 1989, the Federal Government tried to reorganize the competences towards the refugees' settlements dividing the responsibilities between Sabah and the federal institutions, which more often than not left the refugee population without proper infrastructural support.

Starting from 1995 parents had to pay for their children to attend primary and secondary education and had to sustain higher fees for the healthcare system compared to locals. The situation deteriorated when in 2002 became compulsory for alien children to present a birth certificate when enrolling to attend public schools.

The problem arises from the fact that Malaysia does not recognize the principle of *jus soli* and grants citizenship solely based on the nationality of one of the parents. Under Malaysian law, non-citizens can register their children within 14 days of birth and only for the *Orang-asing* birth certificate, which means they are foreigners and does not allow them to attend public schools in Sabah. They could still apply for private schools, but the cost is predictably unaffordable for most families.

In the worst cases, when children lost one or both their parents or are not able to trace them back, obtaining a birth certificate is almost impossible, since they are asked to present a valid passport or travel documents for each of them.

Consequently, according to UN Children's Fund (UNICEF), there were more than 44,000 stateless children in Sabah in 2011¹⁶⁶.

Moreover, according to Refugees International¹⁶⁷ "*there is strong local resentment of undocumented migrants in Sabah, and the street children are portrayed as a criminal element by authorities and the media. The children working at the fish markets are wary of outsiders and are under constant threat of raids by police. In 2006, the police arrested about 160 street children who were placed in detention*".

The stories of the Muslim Filipino refugees in Sabah are sadly entwined to those of the most extremist militias initially constituting the MILF and to late Sultan of Sulu Jamalul Kiram III claims on Sabah¹⁶⁸. The Al Qaeda linked¹⁶⁹ Islamist extremist group Abu Sayyaf is deemed responsible for more than 2000 raids across the border with Malaysia on Sipadan Island, just offshore from Semporna, where they managed to kidnap foreigners for ransom¹⁷⁰. The most recent guerrilla fought by Malaysian forces against the supporters of the Sultan began in February 2013 in Tanduo village, Lahad Datu, with the death toll reaching 60 in less than one month.

¹⁶⁶ UN Children's Fund (UNICEF), *State of the World's Children 2011, Adolescence – an age of opportunity*, 2011, available at: [http://www.unicef.org/Malaysia/SOWC-2011-Adolescence-Malaysia-Web-\(Final\).pdf](http://www.unicef.org/Malaysia/SOWC-2011-Adolescence-Malaysia-Web-(Final).pdf) [accessed 8 April 2014]

¹⁶⁷ Refugee International, *Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness*, 06 April 2007, available at: http://www.refintl.org/sites/default/files/Malay_Stateless0614.pdf [accessed 08 April 2014]

¹⁶⁸ <http://newsinfo.inquirer.net/510943/sulu-sultan-dies-sabah-claim-lives-on> [accessed 08 April 2014]

¹⁶⁹ <http://abcnews.go.com/International/story?id=79205&page=1&page=1> [accessed 08 April 2014]

¹⁷⁰ <http://www.emirates247.com/news/pom-pom-island-tourist-killed-wife-kidnapped-2013-11-16-1.528227> [accessed 08 April 2014]

FIGURE 15: MIGRATION ROUTES FROM THE PHILIPPINES AND INDONESIA INTO SABAH



<http://repository.kulib.kyoto-u.ac.jp/dspace/bitstream/2433/108377/1/470103.pdf>, p. 54

Malaysia refused to accept the ceasefire proposed by Kiram in March continuing its operations against the militants and its raids against alleged supporters among the Filipino immigrants in the area. They were the main victims of the conflict, forced to flee from persecution in Sabah back to the Philippines fearing violent crackdowns by Malaysian police¹⁷¹.

Reports of police operations are appalling. Imprisoned Filipino were allegedly beaten and “*even Filipinos with proper documents are being rounded up in Sabah and taken to detention centres where they are forced to admit that they are illegal workers*”¹⁷²; families have been separated¹⁷³ woman might have been be raped¹⁷⁴.

On the 4th of April, the last pushback at the time of writing deported about 200 people¹⁷⁵, among who there were also children and elderly persons, in Tawi-Tawi Island. The

¹⁷¹ <http://www.ucanews.com/news/filipino-refugees-still-fleeing-sabah/67762> [accessed 08 April 2014]

¹⁷² See for example:

<http://www.freemalaysiatoday.com/category/nation/2014/01/28/manila-monitors-inhumane-sabah-crackdown-on-illegals/>, [accessed 08 April 2014], and:

¹⁷³ <http://www.aljazeera.com/video/asia-pacific/2013/03/20133203254428749.html>

[accessed 08 April 2014], and:

¹⁷⁴ <http://globalnation.inquirer.net/97535/abuse-of-filipino-illegals-in-sabah-probed>

[accessed 08 April 2014]

¹⁷⁵ See: <http://www.gmanetwork.com/news/story/355552/news/regions/200-filipinos-deported-from-sabah-arrive-in-tawi-tawi> [accessed 08 April 2014]

same routes used years ago to reach Sabah seeking refuge are now taking them back to a land which most of them do not call home anymore, and that could hardly offer a better future.

Civil conflict and natural disasters left behind a fertile ground for Human traffickers to smuggle people from the poorest areas of the Philippines to Malaysia through deception and debt bondage, as clearly shown in the final report of the United Nation Office for Drug Control and Crime Prevention (UNODOC) for the project *Coalitions against Trafficking in Human Beings in the Philippines - Phase 1*¹⁷⁶ which investigated their modes of recruitment, transportation and exploitation, often in collusion with local agents.

An important element that emerges from a parallel research on the trafficking of Filipino women to Malaysia is that unlike in Kuala Lumpur where both the Philippine embassy and NGOs such as Tenaganita can offer assistance, in Sabah victims' vulnerability is much higher¹⁷⁷.

¹⁷⁶ United Nation Office for Drug Control and Crime Prevention (UNODOC), Trafficking in human beings from the Philippines: examining the experiences and perspectives of victims and non-governmental organisations: executive summary, United Nations Global Programme against Trafficking in Human Beings. Coalitions against Trafficking in Human Beings in the Philippines - Phase 1, Available at: http://www.unodc.org/pdf/crime/human_trafficking/coalitions_trafficking.pdf [accessed 08 April 2014]

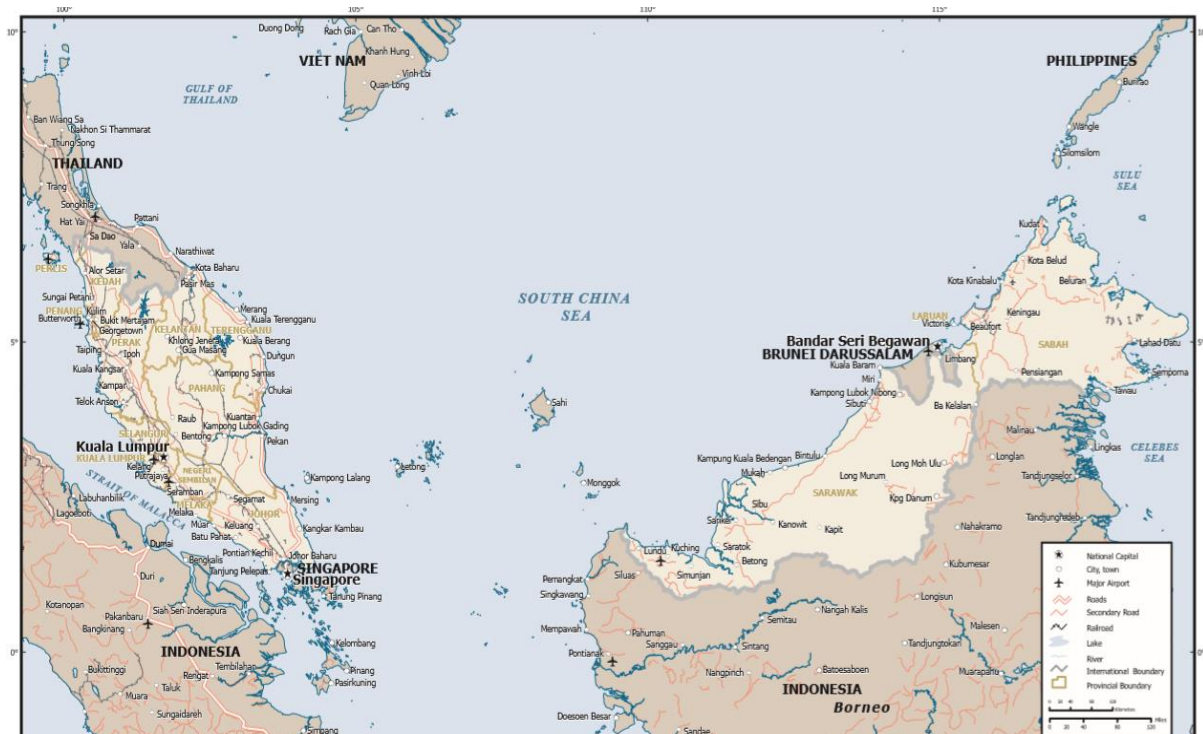
¹⁷⁷ United Nation Office for Drug Control and Crime Prevention (UNODOC), Trafficking of Filipino women to Malaysia: examining the experiences and perspectives of victims, governmental and NGO experts: executive summary, United Nations Global Programme against Trafficking in Human Beings. Coalitions against Trafficking in Human Beings in the Philippines - Phase 1, p. 11, Available at: http://www.unodc.org/pdf/crime/human_trafficking/Exec_Summary_IKMAS.pdf [accessed 08 April 2014]

CHAPTER III THE CASE OF MALAYSIA

“Other human rights problems included deaths during police apprehension and while in police custody; the persistence of laws that allow detention without trial; caning as a form of punishment imposed by criminal and sharia courts; bans on religious groups; restrictions on proselytizing and on the freedom to change one’s religion; official corruption; violence and discrimination against women; discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons; and restrictions on the rights of migrants, including migrant workers, refugees, and victims of human trafficking. Longstanding government policies gave preferences to ethnic Malays in many areas. The government restricted union and collective- bargaining activity, and government policies created vulnerabilities and worsened child labor and forced labor problems, especially for migrant workers.”

This was the gloomy picture of Malaysia given by the United States Department of State Bureau of Democracy, Human Rights and Labor in its latest report on human rights practices¹⁷⁸.

FIGURE 16: MAP OF MALAYSIA



¹⁷⁸ United States Department of State Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013 – Malaysia*, Report available at: <http://www.State.gov/documents/organization/220419.pdf> [accessed 28 April 2014]

A former British colony, Malaysia became a Federal State in 1957 but established its current borders only in 1965 after the territories of Sarawak and Sabah in the Northern Borneo Island joined the federation and Singapore became independent.

With a population of 30 million¹⁷⁹ divided in 13 States and 3 Federal Territories, Malaysia is a multicultural and multi-ethnic Country. The major religions are Islam, Buddhism, Taoism, Hinduism, Christianity and Sikhism reflecting a diverse population of ethnic Malays (50.4%), Chinese (23.7%), indigenous people (11%), Indians (7.1%), and others (7.8%).

Its strategic location along the Strait of Malacca, between the Indian Ocean and The South China Sea, situated in one of the most busy trade hubs in the world, is a place of transit and arrival for millions of migrants in the region.

For Malaysia, 2013 was the year of the second Universal Periodic Review, a fairly recent procedure managed by the Human Rights Council, which currently represents the only universal instrument to assess human rights practices in all the 193 Countries part of the United Nations¹⁸⁰.

The second UPR shows¹⁸¹ that Malaysia is still not a party to most of the key international human rights treaties:

¹⁷⁹ Data taken from CIA World Factbook. Malaysia, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> [accessed 29 April 2014]

¹⁸⁰ The Universal Periodic Review (UPR) was established with General Assembly resolution 60/251 of 3 April 2006 and started its first 4-year cycle in 2008. The importance of this mechanism comes also from the fact that it bases its review on information provided by the State under review, by UN documentation (such as Special Procedures reports and human rights treaty body reports), and by NHRIs, NGOs and other Civil Society actors. For more information visit the page on UPR: <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> [accessed 28 April 2014]

¹⁸¹ For the National report see: Human Rights Council Working Group on the Universal Periodic Review Seventeenth session Geneva, 21 October–1 November 2013, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Malaysia*, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/17/MYS/1&Lang=E> [accessed 28 April 2014]

For the Compilation of UN information see: Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/17/MYS/2&Lang=E> [accessed 28 April 2014]

For the Summary of stakeholders' information see: Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/17/MYS/3&Lang=E> [accessed 28 April 2014]

TABLE 5: STATUS OF INTERNATIONAL HUMAN RIGHTS TREATIES

	ratified	not ratified
Ratification, accession or succession	CEDAW (1995)	ICERD
	CRC (1995)	ICESR
	CRPD (2010)	ICCPR
	OP-CRC-AC (2012)	ICCPR-OP1
	OP-CRC-SC (2012)	ICPR-OP2
		CAT
		OP-CAT
		ICRMW
		CPED
	Reservations, declarations and/or understandings	CEDAW (withdrawal of reservations to arts. 5 (a), 7 (b) and 16, para. 2, 2010)
CRC (declaration, art. 28, para. 1 (a), 2010)		
OP-CRC-AC (declaration, art. 3, para. 2, age of recruitment seventeen and a half years, 2012)		
OP-CRC-SC (reservations, arts. 2 (c), and 3, para. 1 (a)(ii), 2012)		
CRPD (reservations, arts. 3 (b), 3 (e), 5, para. 2, 15, 18 and 30, 2010)		

Among them, the Government ratified only two instruments: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), both acceded in 1995. However, it has not lifted its reservations on core articles of CRC covering non-discrimination (Art.2), name and nationality (Art.7), freedom of thought, conscience and religion (Art.14), free and compulsory education at primary level (Article 28(1)(a)) and torture and deprivation of liberty (Art.37). Therefore excluding provisions that are of paramount importance for undocumented children as mentioned in the previous chapter.

Irregular workers fall short of protection too. Despite relying heavily on foreign unskilled workforce, the Country has no consistent immigration policy, with no quotas on entries and no effective protection against exploitation, trafficking and abuse.

Mostly employed in the so called '3D jobs' (Dirty, Dangerous, Demanding), millions of immigrants from Nepal, Bangladesh, Sri Lanka Myanmar, Thailand, Vietnam, Cambodia, China, Indonesia and the Philippines provide cheap labour in construction, manufacturing and plantation industries.

Official figures estimates the number of legal foreign workforce at about 1,7 million¹⁸², but this was probably a conservative estimate as 2,2 million legal and about the same number of undocumented workers were calculated by Amnesty International¹⁸³. For sure, it is an outdated one since Deputy Human Resource Minister Datuk Ismail Abd Muttalib declared in July 2013¹⁸⁴ that Malaysia has registered 2.1 million foreign workers and hosts an estimated 1.3 million illegal ones. Those numbers clash starkly with the Government effort to reduce the Country dependence on foreign workforce¹⁸⁵.

Notwithstanding, as demonstrated in 2010 by an ILO research on the Malaysian experience in curbing irregular immigration, the path chosen by the Government was a reactive one. A punitive approach according to which “*instead of downsizing irregular migration through polices to speed up productivity-based growth, Malaysia has moved towards a strategy of attrition through tough enforcement. [...] The management of migrant labour is seen more as a security issue rather than a labour market issue*”¹⁸⁶.

The fact that the Government was forced to sign Memoranda of Understanding (MoU) with the Countries that contribute the most with foreign workforce, is telling of this attitude¹⁸⁷.

Undocumented immigrants live in the fear of police and RELA (a paramilitary civilian volunteer force) raids. Brutal crackdowns are perpetrated every two or three years against their settlements.

Detained, they go through corporal punishment and humiliation in the prisons and detention centers where they wait to be deported.

¹⁸² The number is based on 2012 figures of Malaysian total working age population (20,017,000), total labour force (13,119,600) and percentage distribution of employed persons by ethnic group (foreigners accounted for 13,5 of the total labour force).

Data extracted from the Department of Statistic Malaysia official webpage. Available at: http://www.statistics.gov.my/portal/download_Labour/download.php?file=labour_force/Labour_Force_Survey_Report_Malaysia_2012.pdf [accessed 29 April 2014]

¹⁸³ Amnesty International, *Malaysia: Trapped: The exploitation of migrant workers in Malaysia*, 24 March 2010, available at: <http://www.amnesty.org/en/library/info/ASA28/002/2010> [accessed 29 April 2014]

¹⁸⁴ See: *Malaysia is 'heaven on earth' to migrant workers, says HR minister*, MalayMailOnline, December 14, 2013, available at: <http://www.themalaymailonline.com/malaysia/article/malaysia-is-heaven-on-earth-to-migrant-workers-says-hr-minister#sthash.5UVv8TpU.dpuf> [accessed 29 April 2014]

¹⁸⁵ Zarina Zakariah, *2.8 million legal, illegal foreign workers in Msia*, New Straits Times, 11 July 2013, available at: <http://www.nst.com.my/latest/2-8-million-legal-illegal-foreign-workers-in-msia-1.317515#ixzz30HgU5ZGd> [accessed 29 April 2014]

For example, one of the latest measures was a ban on foreign workers employment in the fast food sector: Jennifer Pak, *Malaysian fast-food restaurants face foreign worker ban*, BBC News, 14 January 2014 available at: <http://www.bbc.com/news/business-25725310> [accessed 29 April 2014]

¹⁸⁶ Vijayakumari Kanapathy, *Controlling Irregular Migration: The Malaysian Experience*, ILO Asian Regional Programme on Governance of Labour Migration Working Paper No.14, 01 July 2008, p.14, available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_160587.pdf accessed [28 April 2014]

¹⁸⁷ A further proof is the latest huge crackdown on illegal immigrants, started in January 2014 after the end of a 2 year amnesty program. See: Jason Ng, *Malaysia Gets Tough on Illegal Immigrants As Amnesty Program Expires*, January 21 2014, available at: <http://blogs.wsj.com/searealtime/2014/01/21/malaysia-gets-tough-on-illegal-immigrants-as-amnesty-program-expires/> [accessed 29 April 2014]

Malaysia is not party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW), an instrument meant to set the standards for treatment of both undocumented and legal migrant workers.

The Government still refuses to ratify the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It has acceded to but not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, nor the Protocol against the Smuggling of Migrants by Land, Sea and Air.

However, On 24 April 2007, the Parliament passed the Anti- Trafficking in Persons Bill, amended in 2010, which proved to be a step in the right direction, but remains unable to provide adequate protection to the victims¹⁸⁸.

The cornerstone of Malaysian immigration system is the Immigration Act, passed in 1959, and amended in 2001 as many other Countries did following the 9/11 events. Under the law, anyone entering the Country without appropriate documentation is considered illegal and faces a *“fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding five years or to both and shall also be liable to whipping of not more than six strokes, and shall, in addition to any penalty for the offence, be removed or again removed, as the case may be, from Malaysia”*.

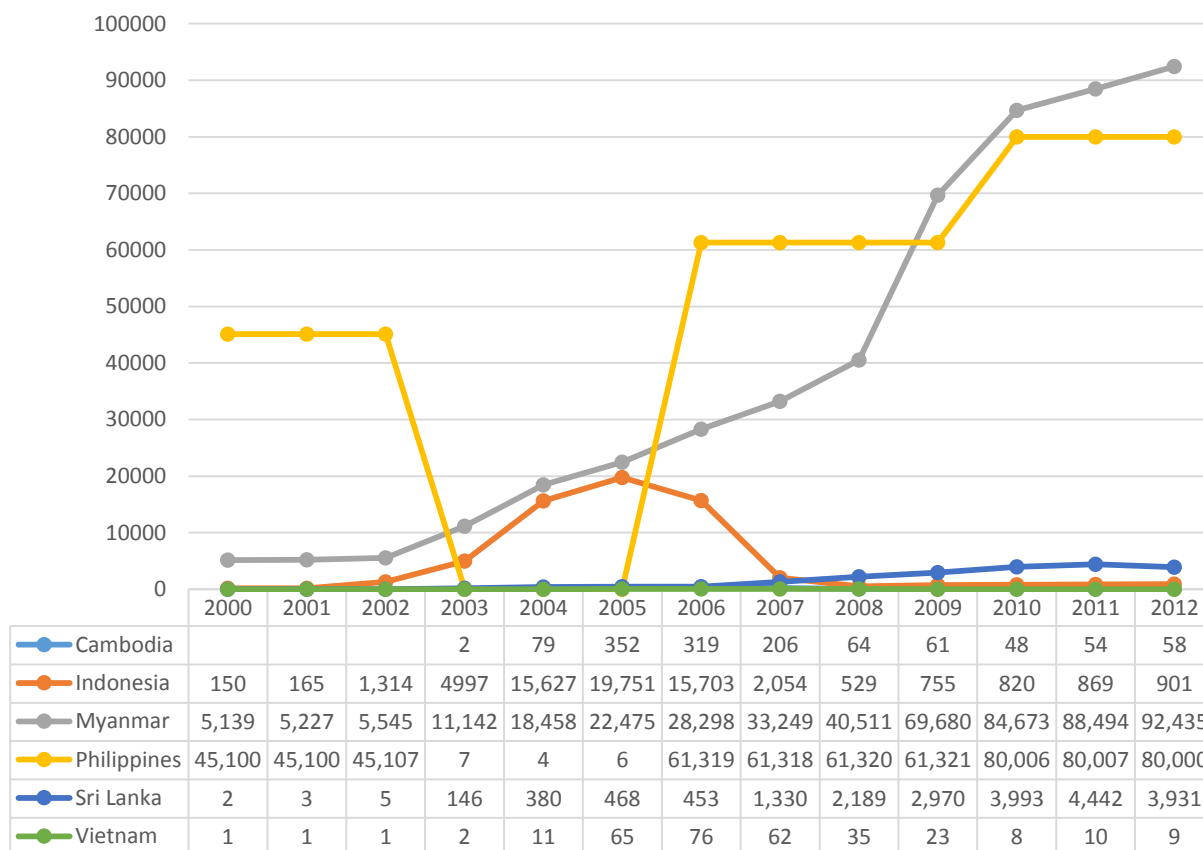
Therefore, illegal immigrants are also affected by regulations relating to detention facilities such as the Prisons Act (1995), the Prisons Regulations (2000) and the Immigration (Administration and Management of Immigration Depots) Regulations (2003).

All this instruments (or the lack of them) affect the life of *any* undocumented immigrant, without distinction, therefore including those who were forcibly displaced, because like many other Countries of South-East Asia, Malaysia lacks an established asylum system to regulate their status determination and rights.

¹⁸⁸ This and all the legal instruments mentioned this chapter can be found under the “Sources” section.

As of the end of 2012, the situation pictured by UNHCR Statistical Online Population Database comprising the last twelve years of forced migrations originating in South East Asia was the following:

TABLE 5:
PERSONS OF CONCERN TO UNHCR - MALAYSIA



UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted 28//04/2014, link to the database http://popstats.unhcr.org/PSO_POC.aspx

The latest figures from the end of January 2014 provided by UNHCR¹⁸⁹ reported that 97,619 persons were refugees, approximately 95% of whom were from Myanmar, with Chin and Rohingya representing the majority, followed by Rakhine, Kachin, Mon and Karen. The other considerable groups from the region originated from Sri Lanka (1,815), although the Country hosts also refugees from Somalia, Iraq, Pakistan, Iran, and Afghanistan.

Asylum seekers amounted to 44,541 with almost the same proportions. People of concern from Indonesia decreased dramatically since the end of the crisis, in 2005; 80,000 Filipinos considered at risk still reside in the State of Sabah; and the Country currently hosts 40,000 stateless Tamils and an estimated 49,000 unregistered asylum seekers.

Despite a total population of concern of 311,160 (more than 1% of the total population), Malaysia is not part to the Convention Relating to the Status of Refugees (1951) and its

¹⁸⁹ UNHCR, *Malaysia Fact Sheet*, March 2014, Available at: <http://www.unhcr.org/5314928e9.html> [accessed 29 April 2014]

Protocol (1967), nor to the Convention Relating to the Status of Stateless Persons (1954) or the 1961 Convention on the Reduction of Statelessness.

Malaysian law does not provide special protection for asylum seekers, refugees or stateless persons, nor takes the Government part in status determination procedures. This leads to their arrest and often-prolonged detention for immigration offences, the punishment of which includes forms of physical torture such as whipping and caning. Moreover, no special treatment is granted to women or children and particularly alarming in Malaysia is the high rate of sexual violence against female refugees and their exploitation at the hands of both employers and law enforcement personnel¹⁹⁰.

As undocumented immigrants, people at risk are not allowed to work, own property, enrol for the public education system, nor are they granted access to the national healthcare.

Although the Country does not provide formal recognition and protection, UNHCR has an office in Kuala Lumpur from where, since 1975, carries out its operations. Asylum seekers can be recognized *de facto* as refugees on the Convention grounds, but while this might provide them with a special status under international law, they are not always dispensed from the enforcement of Malaysian Immigration Act.

UNHCR can issue both a temporary protection card and a refugee card depending on the situation of the applicant but only an informal declaration by the Attorney General (a written statement in 2005) separates them from arrest and deportation¹⁹¹.

Theoretically, according to the statement, persons holding UNHCR documentation should be protected from prosecution, and in any case the enforcement agencies should operate in coordination with the Office.

In addition, a fact finding mission by FIDH and SUARAM¹⁹² understood that there might be “*a verbal consensus amongst law enforcement authorities that if a person holding UNHCR documentation is arrested, he or she will be handed over to the UNHCR*”. The Office can also be reached anytime through a phone hotline.

It must be noted that Malaysia has a long tradition of hosting displaced persons given its geographical position and the dramatic historical heritage of the whole region. As shown in

¹⁹⁰ A further blow for illegal immigrants and Human Rights Organization came in 2002 when in the case *Mohmad Ezam Mohd Noor V. Ketua Polis Negara & other Appeals* [2002] 4 CLJ 309, the Judge ignored Section 4 (4) of the Malaysian Human Rights Commission Act, which States that the 1948 Universal Declaration of Human Rights must be taken into consideration.

See: Roger Chan Weng Keng, *Legal Positivism and the Nuances of Human Rights Implementation in Malaysia*, KL Bar Blog, 13 October 2009, available at: <http://klbar.blogspot.it/2009/10/legal-positivism-and-nuances-of-human.html> [accessed 29 April 2014]

¹⁹¹ See UN High Commissioner for Refugees (UNHCR), Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights Compilation Report - Universal Periodic Review: Malaysia, March 2013, available at: <http://www.refworld.org/docid/513d9a0e2.html> [accessed 29 April 2014]

¹⁹² International Federation for Human Rights (FIDH) and Suara Rakyat Malaysia (SUARAM), *Undocumented migrants and refugees in Malaysia: Raids, detention and Discrimination*, 19 March 2008, available at: <http://www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf> [accessed 29 April 2014]

the previous chapter, it provided temporary asylum on humanitarian grounds (or religious affinity¹⁹³?) to specific groups of people during the years. Among them, Muslim Filipino refugees from Mindanao landed during the late 1970s and early 1980s, Cambodian and Vietnamese refugees and asylum-seekers during the Indochinese refugees crisis of 1980s and 1990s, and Indonesians from the Province of Aceh in the early 2000s. Moreover, refugees, but not asylum seekers or other people of concern, can access public health services with a 50% discount off the fee applied to foreigners¹⁹⁴. They are allowed to work in the informal sector, namely in the ‘3D jobs’ which, however, often leads to exploitation.

More recently, Malaysia rescued 40 Rohingya asylum-seekers from an overloaded boat that sank in the Bay of Bengal in December 2012¹⁹⁵ and gave them temporary shelter before holding them at Pekan Nenas immigration detention camp.

The legal means through which those people were granted asylum, which is the only mean recognized by Malaysian government today, was Section 55 of the Immigration Act.

The law provided that “*Notwithstanding anything contained in this Act, the Minister may by order exempt any person or class of persons, either absolutely or conditionally, from all or any of the provisions of this Act and may in any such order provide for any presumptions necessary in order to give effect thereto*”.

Under this provision, the Minister issued HIF22 Visas (later changed in IMM13 Visas), a type of temporary residency permit. Which, depending on the condition set, may or may not allow the holder to access to education, to send his/her the children to public school, and to work legally.

Even though the basis of the decisions remain obscure, since founded on unknown criteria, and may carry any kind of restriction, the permit still represents the best option available to refugees outside UNHCR intervention. The precariousness of this system was evident in 2006.

¹⁹³ Beside that consideration, another event shocked the public opinion in recent years, exposing the real intentions hiding behind the “humanitarian” label. On June 1, 2012, the federal government established a Royal Commission of Inquiry to look into Sabah's illegal immigrant situation. The initiative came after several allegations of the issuance of Malaysian identity documents to Muslim illegal immigrants. The scheme, known as Project IC and set up by Political groups such as UMNO, was meant to obtain their vote facing a likely defeat in the State with a Christian majority.

At the time of writing the Commission has not reached a result yet.

See: Luke Rintod, *Where's the RCI report?*, FreeMalaysiatoday, January 21, 2014, available at: <http://www.freemalaysiatoday.com/category/opinion/2014/01/21/wheres-the-rci-report/> [accessed 29 April 2014]

¹⁹⁴ See UNHCR, *Services for Asylum-Seekers and Refugees* on the webpage: <http://www.unhcr.org/my/What We Do--Services for Asylum-Seekers and Refugees.aspx> [accessed 29 April 2014]

¹⁹⁵ Mohd Farhaan Shah, *Rohingya stranded on vessel brought to Johor*, The Star Online, 20 December 2012, available at:

<http://www.thestar.com.my/story.aspx/?file=%2f2012%2f12%2f20%2fnation%2f12483254&sec=nation> [accessed 29 April 2014]

The Government began to issue IMM13 permits to Muslim Rohingya refugees but allegations of a corrupted issuing process stopped the mechanism leaving some 5,000 Rohingyas with only the receipts proving they paid for protection they never enjoyed¹⁹⁶.

As will be shown in the following paragraphs, even though in special circumstances forcibly displaced did find refuge in Malaysia, in most cases the rights of asylum seekers, refugees, stateless persons and victims of human trafficking continue to be trashed.

Each of the paragraphs will focus on specific aspects highlighted in the panoramic of the pervious pages through real stories. The crackdowns on immigrants' houses by the RELA personnel with subsequent arrest and detention and the abuses perpetrated before and during the conviction; the corrupted system that allows vulnerable people to be trafficked and exploited; the difficult integration into Malaysian society.

The following episodes are disturbing, but real. It is difficult to believe that human dignity can be trashed the way these stories tell. The direct experiences of refugees, most of them from Myanmar, arrived in Malaysia show the inhumanity of a system incapable to help them but willing to exploit their fragility. These are episodes of such a cruelty frankly impossible to understand.

Kuala Lumpur-based NGO Tenaganita, in its tremendous effort to promote the right of women and migrant worker in Malaysia, managed to interview some of them who survived detention, abuse, torture, human trafficking or forced labor or all this things, not once but many times over¹⁹⁷.

With no distinction, women, pregnant women, children, the elderly and men fled from persecution and violence in their home Countries only to end in the hands of traffickers or treated as criminals by Malaysian officers. The few of them which could be reached by UNHCR or helped by local NGOs soon enough to be saved from the worst abuses still bears the scars of the fear they felt. And yet, they managed to raise their voices, with a strength fuelled by the anger for what they went through and the hope that no other refugee will have to.

But what about the rest of them? The courage of the refugees who spoke with Tenaganita should force the rest of us not to disengage from their problems. Anyone can raise awareness about their situation just by speaking to family members and friends. Anyone can

¹⁹⁶ A/S Sauerbrey urges Malaysia to educate refugee children and support UNHCR, cable available at Wikileaks: http://www.wikileaks.org/plusd/cables/06KUALALUMPUR1660_a.html [accessed 29 April 2014]

¹⁹⁷ The text of Tenaganita's interviews has been taken and edited from its book: "*The Revolving Door – Modern Day Slavery Refugees*", published in 2008, and the names of the victims are fictional.

The NGO was founded in 1991 by the late Irene Fernandez and focuses on 4 major programs: Migrant Rights Protection; Anti-Trafficking in Persons; Combating Gender Based Violence Among Refugees; and Women, Chemicals and Roundtable on Sustainable Palm Oil. This work takes heavily on her contribution to interviewing and helping thousands of oppressed people that often have no voice. To her, and the Organizations operating in Malaysia goes my gratitude.

See: Douglas Martin, *Irene Fernandez, Champion of the Oppressed in Malaysia, Dies at 67*, The New York Times, April 2, 2014 available at: http://www.nytimes.com/2014/04/02/world/asia/irene-fernandez-champion-of-oppressed-dies-at-67.html?_r=0 [accessed 29 April 2014]

support NGOs activities by donating cloths, books, toys or specific expertise. Some can help refugee communities buying their products or volunteering to provide free medical support or skills training.

It is not a matter of charity. If justice should be driven by conscience, as Gandhi and Solzhenitsyn said¹⁹⁸, lawmakers but most of all its enforcers have the moral duty to respect the dignity of those vulnerable woman and men whose only fault was to be forced to run for their life.

These are their stories.

a. Arrest, detention, abuse: Mariah's story

Mariah is a Burmese woman who fled violence in Myanmar and arrived in Malaysia to look for her sister after having been staying in Mae Sot (Thailand). One night, Rela personnel broke into the apartment in a raid to find illegal immigrants and roughly arrested woman, babies, the elderly and men. Mariah went through detention, degrading treatment and fell in the hands of traffickers where she was repeatedly raped. Luckily, she managed to contact some friends in Kuala Lumpur who paid for her release but she still lives in anguish in Malaysia hoping to find her sister, with no rights, fearing the raids of Rela and unable to face her community anymore.

"We didn't leave our flat in Selayang. We didn't run because we thought why would the police come and arrest us."

It was just after 10pm, when her neighbors came to the apartment she and the other were staying in and told them that enforcement officers in plainclothes were seen going from unit to unit on the lower floors. They were raiding, arresting refugees and migrants.

She sighed: "We dismissed it out of hand, as we thought we wouldn't be so unlucky as to be caught. We also thought the enforcement officers wouldn't come all the way to the floor we were staying."

Only too late, when they heard the loud knocks a few doors away from their apartment, that the police were nearby. "We were really terrified. How could the enforcement officers have moved up so fast?" She and the others in her apartment pulled aside the curtains and saw men in plain clothes with batons in their hands. They pounded on our neighbour's doors. "There was me, and three other women - one was 7 months pregnant with a 2 year old child with her. There were two other men staying with us."

She remembers her fear vividly. " I closed my eyes and wished it was a dream. One of the men told us to remain quiet."The lights were turned off. The men signaled others: keep quiet. "I

¹⁹⁸ "There is a higher court than courts of justice and that is the court of conscience. It supercedes all other courts." Mahatma Gandhi;

"Justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognize the voice of their own conscience usually recognize also the voice of justice." Aleksandr Solzhenitsyn

thought the lady who was expecting and with the two year old child was the luckiest one of us all. She had a UNHCR card, where else I had no documentation that stated I was a refugee."

Someone pounded furiously on their front-door. The door shook and vibrated in the frame. "I thought it was going to come crashing in. There was not a moment to spare - the men gave orders: hide in the ceiling crawlspace." They pulled a table under the ceiling cover and one of the men climbed up into the space first. Then they pulled the other women up into the ceiling while another man pushed Mariah up to the ceiling. Mariah remembers the pregnant woman looking up at them as they prepared to hide themselves in the ceiling.

"We tried to persuade the pregnant women to hide with us. But we knew for sure that because of her late term pregnancy, it would have been impossible to push her up into the ceiling, and there wasn't enough space for her. The next thing that she said, to this very day, still haunts me. She said, 'It's okay, I have an UNHCR card, they won't arrest me.'"

The pregnant woman remained in the living room, her child crying and clutching her leg. Mariah and others were stacked on top of each other in the ceiling crawl space. "It was dark, and the pipes dripped some foul-smelling liquid and the cobwebs clung to our hair, but no one said anything. I kept praying but the first banging on our door made me more aware of our fear. The door was pounded repeatedly but the pregnant lady just stood there. From where we were, I could see she was shaking from fear."

The shouting and the pounding from the door was very loud. The pregnant lady's two year old child was now crying bitterly. Suddenly there was this loud bang from the front door, like someone had slammed it with their body. "Over the shoulder of the man in front of me, and through the slit in the ceiling cover, I could hear the officer clearly now. I was terrified to see so many men come into our apartment."

The screams! Shrill and full of fear! The pregnant woman was shouting and shouting. The men set upon the pregnant woman with a flurry of shouts of their own, but full anger. "SENYAP! MANA ORANG LAIN? MANA DIA ORANG?! MANA! MANA!?" they shouted to her in Bahasa Malaysia.

"I closed my eyes and waited for her to give us away. I only know that my mind was thinking that the woman would not give us away — I wished she would lie, and the men would be their way. Then the lady said 'orang tak ada di sini, saya saja' (people not here, only me here).

"I opened my eyes and saw that she was white in the face. She was scared, but she remained quiet even as the men glowered and stared at her. The police officers tore through the flat. Through the slit in the ceiling, I saw them overturning our furniture and ripping open the cushion. We could hear them throwing our pots and pans in the kitchen."

'Documents! Show us your documents!' the police officers shouted at the pregnant woman. She took out her wallet and showed them her UNHCR card. Mariah saw the police officers laugh, and they sneered at her. 'Ini card? Tak ada guna, sekeping card sahaja (This card? No use, a piece of card!)"

Mariah recalls her utter helplessness when she saw the officers reject the pregnant woman's UNHCR card. "My heart actually sank when I realized these men were laughing at her when she produced the UNHCR card. What chance would I have then? None."

The pregnant lady told the officers that her husband possessed a legitimate passport, but was at work at that moment. Mariah saw the officers push her and her crying child to the kitchen, to the laundry area.

Mariah said: "Like ushering someone, they half coaxed her, pushing her more - into one of laundry room, and locked her outside, saying, 'Go there first, go, go.'"

Then the officers stood in the living room. "What happened next scares me to death thinking about it." A few of the officers looked up at the ceiling. They knew that Mariah and the rest were hiding there! "I saw their eyes sweep across the ceiling cover, and they actually were looking me in the eye"

One of the enforcement officers pulled the same table that the refugees had used to climb up the ceiling. Two officers climbed on it, one of them with a broom in his hand. The second push on the ceiling board, and they found Mariah and others. "They said to us 'ah ha! We found you. Come out of there now.'"

Mariah and others were so afraid, they couldn't move. The officers shouted at them to get down from the ceiling. Mariah remembers what the officers did to force them out of the ceiling crawl space. "We were scared and we couldn't move. Then they started to punch us, as we laid there packed in the crawl space, their fists smacking into our helpless and prone bodies.

Then they use the broom handle to poke us. We shouted and screamed, 'Stop, please'. The men hiding with us remained quiet."

Mariah and the other refugees climbed down from the ceiling; the women were crying and sobbing. The officers shouted at them, 'Stop crying!' but it made them cry all the more.

"One of the officers slapped us, repeatedly. We were screaming and crying our lungs out now. They slapped us even more." One of the refugee men reacted, and started to move to our aid. "The officers snarled at him and kicked them in the leg, thigh and punched them in the head. One of the officers laughed and mimicked a 'Superman pose' to the Burmese man who was now writhing in pain. 'Are you a hero?' the officer said to the Burmese man."

The officers demanded the refugees for their passports. Mariah said: 'The officers shouted at us, 'where are our passports?' We told them we had none. One of the officers turned at us and shouted, 'Without documents, why are you in this Country? Go back to Myanmar!'"

Mariah continues by saying: "One of the Burmese men answered that we were in Malaysia because of persecution and genocide in Burma, and that we didn't have passports because of that. But the officers ignored what said."

The officers brought the pregnant lady and her child in from the laundry room. Mariah and the other women were handcuffed together; the men were handcuffed together. "A plainclothes officer stood guard over us, and they left us alone for 15 minutes.

I looked at the pregnant lady. I realized we were caught. I looked at her for a long time, and I couldn't believe it – the pregnant lady reached out with a handcuffed hand and stroked her child's forehead, telling him not to cry. "She was so brave. I was so scared, so useless."

What went through Mariah's mind the 15 minutes they were handcuffed together? "I felt lost, helpless. I felt a deep sense of hopelessness - I had come to Malaysia to look for my sister, but instead I was arrested. I felt that hope was all lost. I had come to Malaysia, hoping rescue my

sister who was already arrested and reunite with her. But now I'm in this situation, probably she would be the one to rescue me!"

After 15 minutes of being handcuffed and waiting around, officers arrived at the apartment and brought Mariah and others down to the parking lot. They dragged the men out. "I and the other women were in our sleeping clothes, nightgowns and we pleaded with the officers to let us change. They ignored our request and pushed us towards and out the door. The officers also didn't let us take our belongings with us. They also didn't tell us what reason we were being taken away for."

Mariah and others were loaded into a black painted lorry, with the word 'POLIS' at the sides. They were the first to get on board the lorry but soon over 30 people were packed into it. Everyone was handcuffed. There was no room for anyone to sit, so everyone in the lorry were instructed to stand very close to each other.

Some of the men were only 'half-dressed', that is without shirts, presumably because they - like Mariah and the rest - were not given time to change.

Mariah recalls that there was a child amongst them. "There was also a young girl, about 3 years old, who was in the truck with her mother. The young girl was pale in the face, and her eyes were bulging from fear. I wanted to hug her and comfort her - me, the one who was so scared of what was happening!"

There were only Burmese nationals in the lorry. At around 11.30 pm, the lorry left Selayang. The refugees didn't know where they were headed. Everyone was afraid, and unsure. No one spoke, nor asked questions. "I was terrified. It was my first time experiencing something like this 'arrest I was utterly confused, I didn't do anything wrong, but I was hauled away," Mariah said.

They were on the road for about one hour before pulling up in front of a single-storey building. "Suddenly, one of the Burmese men said 'this is Jinjang police station'. The police officers instructed us to get down and walk into the office. Three men in plain clothes were seated around a long table. The men didn't identify themselves, and neither did anyone of us ask them for their identification. Everyone was scared."

The officers separated the men and the women. Then they pulled out each individual and asked them questions and fingerprinted everyone. It was Mariah's turn to be questioned. She didn't understand what was being asked and so she couldn't respond.

"The officers seemed annoyed and shouted at me 'Woi, bodoh? (Stupid)'. I just kept quiet. What could I say; I didn't even understand what was being said."

Mariah saw the refugee men being hit, punched because the officers thought they were being 'uncooperative'. "It's not that we were uncooperative! We didn't understand their questions most of the time! There was no one to translate for us."

Finally, Mariah understood all too well when they fingerprinted her - it sunk into her head that she was criminalized. "I found courage. I opened my mouth. I pleaded with the officers, apologizing and begging them not to arrest me. I wrung my hands in asking for mercy. The officers ignored me."

Mariah and others were instructed to wait and sit on the floor. The refugee's spoke up, and said that they were thirsty, hungry. "I remember the officers response. They said, 'there is nothing to eat in the office. Besides, you come to someone else's Country, you deserve to be hungry.'"

Mariah and Others also urgently needed to go to the toilet, but the officers refused their request. "Bila sampai camp, boleh guna tandas (when you reach the camp, you can use the toilet)' they told us. Some people were also ill, and we told the officers about it. They ignored us."

The process ended around 3 am. After the questioning was over, Mariah and others were haded into the lorries again. This time, men and women travelled in separate lorries. The enforcement officers handcuffed four women together in a group and pushed them into the lorry.

There was a female officer dressed in plainclothes, the only time during the entire arrest Mariah saw a female officer. "There were also two male officers in plainclothes also in the rear of the lorry. All the officers didn't show any identification to us.

For about 45 minutes we travelled but the officers didn't tell us the destination."

Eventually, the lorry stopped in front of another police station. Mariah could only understand the word 'Polis' on the signboard. The lorry was parked outside the police station for at least half an hour. The two female officers exited the lorry and left Mariah and the other women in the lorry - the male officers stayed behind with them.

"Suddenly, the two male officers came towards us and smiled. They lifted our skirts and touched our legs. We struggled, and tried to move our legs, but they grabbed hold of our legs and continued to touch our legs up to our thighs. One of them lifted my dress and put his hand into my brassiere and started to rub and fondle me. 'Please stop, please stop,' we pleaded with them."

Only when the Burmese women threatened to scream out loud for the female officers, did the male officers stop touching the Burmese women.

The officers exited the lorry, locking Mariah and others inside it. They waited for another half an hour before another group of police officers unlocked the lorry rear gate. Under guard, they were brought us into a small room with computers, tables and chairs.

We waited for half an hour, sitting on the floor in the corner of the room. There were two policemen who asked us if we had any belongings with us. We told them 'no!'"

After half an hour, the refugees were taken out of the room and down a corridor. Mariah lamented that the police officers didn't tell them what was happening. "Where were we going? No one told us what was happening. What has going to happen to us? No one told us anything."

At the end of the corridor were cells, and the police officers motioned to the Burmese women to get in. All in all, there were 11 women in the cell, that is 10 Burmese (four from Mariah's group) and one Indonesian woman - she later told Mariah that the police station that they were in was called 'Wangsa Maju' police station.

"Because of the cement floor, it was cold to sleep on it at night. We asked for a blanket, but the policewoman told us that there weren't enough blankets for everyone, and didn't give anyone a blanket."

"They also didn't give us soap to wash, or toothbrush or a towel. They only gave us a change of clothes."

Breakfast was at 9 am, a serving of 'teh-o-panas' (hot tea, Ed.) and a few pieces of biscuits. Lunch was at 1 pm, and dinner was 6 pm. The detainees were given a packet of food each day for lunch and dinner - a handful of rice and a small piece of egg.

Throughout the 14 days in the cell, the food remained the same, although sometimes, they substituted the egg for a piece of fried fish.

Mariah recalls how she lost weight in the 14 days in Wangsa Maju police station. "After my two weeks in the cell I had lost a lot of weight. At the end of my stay, I could barely stand without my knees shaking from the fatigue and lack of energy."

Every morning at 5 am, a police officer would come down to the lock up and bang on the iron bars. It was the detainees 'roll call' - from 5 am, ending at 8 am.

For three hours, the detainees sit cross-legged in a spot, not allowed to move, stand, speak, drink or go to the toilet.

"We were not given any drinking water. Our only source of water - for washing and drinking came from the toilet and shower. Twice daily, from 5am to 7am and from 1pm to 3pm, the water would be turned on."

"Most of the time, roll call starts at 5 am, when the water is turned on for the first time of the day. So we would have to wait until 1pm. Only a few times, the roll call was after 5 am - on those mornings, we would all rush to the toilet, and clean up and drink the water from the shower."

"It was the same with the morning or afternoon slot. Because the opportunity to use the toilet and shower were so far in between, say, if we last used the toilet at 3pm, we would have to wait until 5am, or worse, 1 pm the next day. "Some of the women defecated in their clothes when they couldn't wait any longer.

The women would cry and beg us to forgive them and they just 'let go'. I myself came close sometimes to having to pass motion in the cell, but I held it in." The resulting stench was unbearable.

After two weeks in the cell in Wangsa Maju police station, the detainees were taken to court. The police officers instructed the women to get on a lorry and they were driven to somewhere in Kuala Lumpur. Mariah could see familiar city landmarks along the journey.

Inside the court complexes, the detainees were taken to a fourth floor cell, and handcuffed in pairs. A policewoman came in and wrote a number on their hands with a black marker pen. "The policewoman wrote '9' on my hand. From then on, in the court, we were called by our number."

"I was with three other Burmese women that were arrested along with me in Selayang. There was another Burmese woman, who was an UNHCR card holder. There were also two Indonesian women with us. We waited in the court complex cell for three hours before a policewoman came for us."

"The policewoman handcuffed all of us together except for the woman with the UNHCR card who was handcuffed separately, to the policewoman."

As Mariah and the other women walked to the courtroom, they started crying. "I cried because it was utter anguish - the anguish of having a sentence put on you, when you haven't done

anything wrong. The police officers shouted at us to stop crying. 'Has your mother died? Is that why you are crying?' they yelled at us."

Mariah and the others reached the courtroom. The policewoman instructed them to sit down along a long bench and to remain quiet. "A policeman came over and whispered to us. 'If you cry loudly, the judge will sympathise with you more and give you a lesser sentence,' he said."

The judge proceeded to hear their case and called each of the detainees up, by the number written on hand. When the judge called out 'Nine', it was Mariah's turn.

"The judge asked me a series of questions, most of which I didn't understand. There was no interpreter, or anyone to explain the charges to us. The judge spoke Malay and asked me, 'do you think you did wrong by coming to Malaysia, Salah atau betul? (wrong or right?)' and I nodded 'Yes' in reply".

"When the judge asked me 'what are you doing in this Country', I lied, and answered 'working'."

Why did Mariah answer as she did then; why did she give those replies? "I was scared, my mind was a blank, and so I said the first thing that came in to mind. The judge asked me more questions but I didn't understand any of it," Mariah said.

Before individual sentences were handed down on us, the judge asked the detainees if there was anything they wanted to say. Mariah recalls: "I kept quiet, but one of the women in the group stood up and spoke up, asking the judge for a lighter sentence to be given to us."

"I was sentenced to two months in prison. Maybe the judge said some additional things about my sentence, where I was going, but I don't know for sure - I didn't understand a word that was spoken. I only understood 'dua

bulan' — two months."

"I sat there, alone in my fear - afraid of what would next happen, worried that was going to prison for a long time. I thought I was going to faint in the courtroom, and I felt cold. But above all I felt immense sadness. I was in Malaysia, looking for my beloved sister, but I was now myself arrested. I was a hopeless case. I didn't have relatives or close friends I could rely on. I was alone, lost. I was the one now being locked up, how could I be the one looking for my sister?"

After the sentencing, the detainees were taken back to the cell in the courthouse. They waited until 4 pm before departing for prison. They were not informed where we were being taken to, but Mariah found out from the two Indonesian women (who had been arrested before) that we were being sent to Kajang prison.

When they arrived at Kajang prison, the prison officers instructed the detainees to walk to the prison compound, surrounded by tall fences with barb wires on the top. "The prison officers instructed us to sit down in the middle of the compound, under the hot sun. We sat there for almost forty minutes before the officers instructed us to get up, and queue up".

They were taken inside to the prison block office. A prison officer sat next to a computer and took down their names and addresses. "We were then each given a prison card, a plastic cup and a set of white prison uniform. Another officer told us to wait outside the prison block, and we waited for half an hour before they instructed us to walk to another building," said Mariah.

As Mariah and others were waiting, a prison officer walked by slowly as they looked at him. Suddenly, a female prison officer who was with him ran over to where they were lining up. "She slapped us, each and every one of us, and she screamed at us. Then the prison officer took one of the other Burmese women and kept forcing her to bend at the waist." 'Semua bodoh! Tunduk kepada orang besar, biadap! (Everyone stupid! Bow to the high ranking officer, you are without manners),' the prison officer shouted at them.

An Indonesian woman who was passing by later told Mariah and others what the female prison officer had said.

They also found out that it is a 'procedure' for detainees to bow their heads at high ranking prison officers, who wore a different uniform than lower ranking officers.

Another female officer took them to a building in the middle of the prison and they entered a room with towels hanging off the wall. Four female prison officers were waiting for them. Immediately, one of the prison officers instructed Mariah and the others to strip.

Mariah recalls what the prison officer said: "Don't waste time now, I want you to remove your clothes, everything,' she said. We didn't know if this was proper way of doing things, and we were embarrassed to have to strip. I was very embarrassed, as I was a 'single' woman, and I was brought up with proprieties and modesty. I told the prison officer that, and others murmured their agreement. The officer came up to me and without warning slapped me in the face and the others also."

"She yelled at us, 'Quick! I don't have time to waste, strip now!' Quietly, Mariah and the other detainees took their clothes off. They were about to put on their prison uniform, when the prison officer said, 'What are you doing? No, no, I wanted you naked now.'"

"We stood there in the middle of the room, naked. The officer instructed us to do 'ear-squats'. She demonstrated it by crossing her hands, pulling her ear lobes and squatted. "This is what I want you to do, now!'

"It was so humiliating; what was the use, except to embarrass us? '20 times! I want you do to it 20 times,' the officer barked at them."

Mariah thought the humiliation would end but the officer subjected them to more searches."When we finished the ear-squats, the prison

officer put on a latex glove. I remember looking with horror, as she snapped on the glove. What was she going to do next? She instructed us to stand with our legs apart. 'Put your fingers in your vagina and take out anything in it,' she said to us."

We - I, didn't understand what she wanted us to do; but again, it was humiliating. What did she mean by 'take out anything in 'our vagina?' I was blushing, embarrassed and I didn't want to do what the officer said.

I looked at her as she walked up, and slapped me on the face with the back of her hand." I put my fingers into my vagina and moved my fingers inside, to show them I wasn't hiding anything inside!" Another prison officer went through the detainees articles of clothing.

Suddenly, the officer called out: 'who's panties is these?' She was holding up the panties with a stick, and a piece of sanitary napkin was stuck to it. Mariah told the officer that the panties

belonged to her. "I was having my menstrual period at that time. The officer then instructed me to take my panties from her, take out the sanitary napkin and tear it in front of her."

Mariah was disgusted by the request and refused to tear up her own sanitary napkin. "I stood there, wondering what this officer was up to. Why would anyone want to tear up their own sanitary napkin? I was very disgusted at having to do it. My menses was heavy at that time."

"The officer reached out and slapped me hard on the face. She said I had to do it because I could have hidden things inside the sanitary napkin!"

And so, with trembling hands, Mariah slowly tore apart the soiled sanitary napkin. "It was so disgusting, I was almost retching. Blood trickled down my hands." Mariah threw the torn up sanitary napkin into a bin but there was no tap or sink for her to wash her hands. She had to wipe her hands on her thighs.

The detainees put on their prison uniform and they were brought to the detention block. They climbed four flights of stairs to the top, and reached a small room, where Mariah and 13 other women detainees stayed for a week. "It was so cramped up, the room was so small and it was packed. I couldn't believe that the officers were going to make us stay there."

On the seventh day, a prison officer came and took Mariah and six others to a cell on the bottom floor. Their routine in prison starts with an officer coming into the cell blocks at 5 am, and banging their batons on the bars and shouting, 'Get up!'.

At 7 am, they are instructed to queue up and gather in front of the main detention building to sing the Malaysian anthem.

The 'master call' session was the worst – from 2 am to 5 pm, during the hottest time of the day, they were instructed to gather themselves in a row. "In a row, we sit in the compound, open to the hot sun beating down on us. No shade. The heat was unbearable. We are not allowed to talk, to bring a cup of water with us, or go to the toilet."

Mariah recalls a Burmese woman who spoke during master call. "We could see she was having dizziness due to the heat. She then said something to us, maybe a call for help. Immediately, one of the officers shouted at her. The Burmese woman had to stand for hours, her hands on top of her head."

There were about twenty mothers and children - newborns and children up to 3 years old – at the prison with Mariah. According to Mariah: "The children too had to be present at the master call compound, but in the shaded areas. But even at these long hours, even the children were forbidden to use the restroom or have a drink of water."

Mariah herself fell seriously ill on the end of her first week in Kajang prison. "The day before, I was already feeling dizzy, lightheaded. A slight movement of my head and everything seemed to be spin around. The heat had gotten to me. I was fatigued and my body ached. Then the nausea started and I vomited a few times."

Another of Mariah's friend was also in the same predicament. They both went to sleep and couldn't make it for master call the next morning. "I went to sleep, my body alternating between feeling cold to feeling hot. The next morning, I couldn't get up for master call. I just couldn't. A prison officer came into the cell shouting for us to get up. I lifted my head up - that was what I

could only achieve. I apologized to the officer and told her I was seriously ill. Could I see a doctor, please, I asked her."

Mariah continues her recollection: "The officer ignored my plead, and kicked me in the leg. She said 'would I have to get going on my own, or would she have to beat me and drag my body to the compound?' In the end, Mariah was allowed to sit in the shaded area together with the children. "What went through my mind? I thought that if I, who was seriously ill, was not exempted from master call, who would be? I wondered if only those who fell unconscious due to severe illness would get medical attention."

That episode was not however the end of Mariah's ordeal with master calls and its brutal punishment. In her third week at Kajang prison, Mariah again fell ill. Over a period of four days, she had bouts of nausea, vomiting. "Twice, I asked the prison officer for medicine, to see a doctor. The prison officer in charge of our cell was called 'cikgu'. Every day, 'cikgu' told me that I would have my medicine 'tomorrow'. It never came. Neither did I get to see a doctor," said Mariah.

In recalling the time she was ill and denied her visit to a doctor, Mariah went on to say: "They denied me a doctor; they even denied us the most basic of necessities! What am I talking about? Well, they denied us sanitary napkins when we were having our menstruation!"

The only 'break' from the long hours of master call came from a lunch hour break from 12.30 pm to 1 pm, a period of only 30 minutes. The detainees were marched off to a make-shift dining room in the main detention block. "We would get a serving of plain rice – an amount enough to hold in your palm – and a small piece of fried fish.

On rare occasions, they would include some vegetables. Rarer still, the sometimes give us a piece of chicken neck or wing." The detainees were also given a cup of water. "We would drink this one cup of water sparingly, in sips. We had to make it last until the next meal that is dinner."

For those mothers with children, some additional rice was provided. The mother would share the rice with their children.

On the 28th day, Mariah and the other women who were arrested with her were taken out of their cell and put into a room in a three storey building. "No one told us anything that morning. We were instructed to move to another building.

When we arrived, we were shocked. The size was even smaller than our cell. It was a normal room. They crammed 28 women - 7 Burmese, 21 Indonesians - inside the tiny room." Two of the Indonesian women were elderly, and one Burmese woman was in her late 50s. There wasn't enough room for 28 people to lie down.

"There wasn't enough room for all of us to lie down. So at night, we tried to sleep in a sitting position. But we were packed so tight, it was suffocating in the room." There was no windows and the only door in the room was locked.

Mariah recalls the oppressiveness of the room: "There were no grills, no windows, only a small hole in the wall that served little purpose for ventilation sakes. The nights were the worst. The air was hot, heavy and hanging with an unbearable odour.

The routine was the same, however. Master calls were still carried out. Due to the lack of running water, however, they weren't able to bathe the entire time they stayed in this 'new' room. "Our bodies were so grimy with sweat. We went to the officer called 'cikgu' and asked her if we

could use the shower in our old detention block. She turned to us and said that we were being moved an Immigration detention camp: Semenyih."

'Cikgu' told Mariah and others that 'there was plenty of water and that they could shower in Semenyih'. That was the last day that they would be in Kajang prison. "It was early morning the next day, just after dawn, when we were rounded up, and brought to the compound where we have our Master Call. I saw many others already gathered there."

There were 79 others besides Mariah - six Burmese and 73 Indonesians. "A few officers walked among us and fingerprinted us. Our belongings that we had to surrender when we arrive at the prison were returned to us. Then we waited from for a long time, from 9am to 3 pm. A few Immigration buses arrived and our names were called."

"I was handcuffed to the other six Burmese women and taken to another building. There, the officers verified our identities. After that, we were brought back to the compound. We were then handcuffed in pairs."

They were loaded onto a bus, and when it was filled with detainees, they began their journey. "There was one female officer and four male officers. The men were dressed in blue pants, white shirts and blue jacket with the words 'imigresen' on the back - while the woman wore red-brown pants and a white blouse."

During the journey, the officers harangued the detainees. "They kept saying to us how good they were to us, and yet we had entered Malaysia illegally. Of course, some of the detainees were not like us, refugees. So, when the officers asked them 'what are you doing in this Country', some answered, 'to work'"

The officers then retorted by saying, 'Where's your documents, then? If you don't have any documents, then don't come in. Work in your own Country!'

Some of the Indonesian women, who had been arrested before, and knew the procedures, realized that the buses were headed pass Semenyih. "In fact, an Indonesian woman whispered to us that we were going to Lenggeng Detention Camp," said Mariah.

It was about 4.30 pm, when they reached Lenggeng Camp. They were immediately issued a card with their camp-number on it, and made to walk for about 10 minutes up a slope to the main camp site. They were taken to a big hall, where about 10 women in yellow caps and dark green uniforms were waiting for the 80 detainees. A few other women who wore civilian clothes stood quietly and watched Mariah and the rest file into the hall.

"I later found out that these women were Rela officers." They instructed the detainees to strip down. "This time, when these Rela officers asked us to take off our clothes, we followed their instructions. We had learned our lesson in prison. Here, we were afraid that they would hit us and slap us. So this time, we immediately took off our clothes."

'Perform ear-squats for fifty times, now!' one of the Rela officer shouted. The detainees immediately did as they were instructed. Mariah remembers her first impressions of the Rela officers. "The Rela officers were menacing. They walked up and down as we did the ear-squats. They carried long wooden staffs and would swing it about. I was sure that they would not in the least hesitate to swing it and hit us."

After the ear-squats, the Rela officers issued an order. The women who were wearing the civilian clothes came forward. 'Okay, let these women search you,' the Rela officers told Mariah and the rest.

These women were 'senior' detainees, Mariah later found out. Mariah said: "They closed their eyes as they touched us everywhere! Some of them whispered 'minta maaf' - that is, they ask for our forgiveness, as they searched us. They even searched through our hair."

When they were done, the Rela officers told them to put their clothes back on and took Mariah and the others to the detention block. "We were each given a blanket. Nothing else was given: no toothbrush, no soap. By now, it was 6 pm. We were told it was dinner time. The Rela officers marched us to another building where meals were served."

"When we got there, there was a huge queue. Then an officer came and said to us that we were too late. There were too many people, over 300 people, and simply not enough food for all."

The next day, there was a routine similar to the one they went through in Kajang prison. At 5 am, the detainees were woken up for Master Call until 8.30 am, when breakfast was served: a slice of bread and 'teh-o-panas'.

After breakfast, they'd have a little time to rest, before 'Master Call' was resumed at 11am, continuing till 1pm. Lunch was at 1pm, followed by a 'free period' until 2 pm. Master Call resumed then, until 5 pm, when dinner was served.

Mariah described the food that was served at Lenggeng: "At Kajang prison, we were able to get a meal every time it was served. But in Lenggeng, there wasn't enough food. Often, people would miss a meal or two. When we did get our meals, it was like less than a handful of rice - a small amount to fit in your palm. It was plain white rice without any vegetables or meat. Sometimes, they would give a small piece of salted fish - the length of your small finger."

Mariah described the food that was given to children detainees: "Female detainees who had young children were given food before the others - but the children too had to eat the rice and salted fish. The women with babies were given three or four spoonfuls milk powder and some hot water." A small Cupful of water was provided during meals.

The detainees resorted to drinking tap water, but even the tap water only would run for a short period at a time. When it did run, the detainees would scramble to drink their fill, and collect a cupful of water.

How long was Mariah in Lenggeng Detention Camp? Three days. As she said: "I was only in the camp for three days. But during those three days, I kept thinking that I would surely die if I had to stay here any longer. It was very miserable."

"At prison, it was awful, but I could at least stand it. In the detention camp, I could barely get any food at each meal. I couldn't sleep either, because it was extremely crowded and filthy."

"The walls and floors were made of wooden planks, and they had many cracks in them. Rubbish and smelly black and red insects that looked like 'ticks' filled these cracks. I saw the 'senior detainees' and their children, covered in red splotches and scabs. They were bitten raw by the insects due to the filthy condition."

Mariah got to find out how filthy it was during the first night in Lenggeng. "I woke up, not that I was sleeping soundly - ants, and ticks were crawling all over my body. Suddenly, there was

this awful itchiness in my ear. I dug at my ear, and my hand came away with insects crawling around my fingers, insects coming out of my ear. The next night, I slept outside in the cement floor. Even though it was cold and hard, it was better than inside."

To this day, Mariah's hands and legs are scarred from the insect bites. "The tap water at the camp was filthy and murky. I couldn't bring myself to drink it. I was always extremely thirsty when the meals came. So, even if I couldn't get a meal, I would beg for a few cups of water. Sometimes the officers let me drink more, sometimes, the one cup of water was heaven-sent."

The tap water would only run from about 2 am to 4 am. The detainees would rush to shower, clean themselves - but most importantly, drink their fill from the tap. During the three days she stayed in the detention camp, Mariah only managed to shower once. "I didn't have any soap, so I borrowed a sliver of broken off soap from the others. We women at the camp would help each other in whatever way we could. Otherwise, I doubt we would have survived."

"I didn't have my menstrual period in Lenggeng, thankfully. I heard that they didn't provide sanitary napkins, and that detainees would have to buy them from the camp 'sundry shop'. I know that diapers were also not provided for mothers with babies."

Most of the detainees who were there at the camp for a long period of time were sick. Mariah said that if any detainees asked for medicine, just one piece of Panadol was given - sometimes, rarely, two.

Mariah broke into tears as she recounted someone that she had felt sorrow for: "I look back now. There was someone that I saw that was suffering even worse than all of us. She was a Kachin lady, with a daughter who was suffering from polio. Everyday, the lady would carry her daughter; from the moment we wake up, she would have the daughter in her arms; queuing up for our meals, to carrying the daughter to Master Call. It really breaks your heart to see the mother carrying the daughter to the shower, bathing her, placing her on the toilet. "

"On the third and last day in Lenggeng - during Master Call - a Rela officer came and told me and the other six Burmese women that we would be deported and sent to the Malaysian-Thai border."

The recurrent term "Rela" in Mariah's story is well known and feared among the immigrants.

In an interview¹⁹⁹, Zaidon Asmuni, former Rela's Director-General, justified the aggressive role of the Volunteer Corps saying: "*We have no more Communists at the moment, but we are now facing illegal immigrants. As you know, in Malaysia illegal immigrants are enemy No. 2*".

The Country has three main agencies responsible for enforcing immigration law: the Royal Malaysia Police, the Immigration Department and the infamous Ikatan Relawan Nasional (People's Volunteer Corps also known as Rela police).

¹⁹⁹ Seth Mydans, *A Growing Source of Fear for Migrants in Malaysia*, The New York Times, December 10, 2007, available at: http://www.nytimes.com/2007/12/10/world/asia/10malaysia.html?ex=1354942800&en=9c0af7528f386bc7&ei=5088&partner=rssnyt&emc=rss&_r=0 [accessed 29 April 2014]

This institution was established and evolved through a series of emergency acts.

In 1964 under the Emergency (essential Powers Act) this paramilitary volunteer Corp was meant to help the Country in time of emergency being the ‘eyes and ears’ of the army and in times of peace to focus on community development and security issues. They provide assistance in airports, customs, immigration detention centres and quarantine complexes, strategic sites such as electricity power stations, water reservoirs and government buildings, and they help with fighting smuggling, for example by patrolling petrol stations at the northern border.

In 2005 their powers were greatly expanded as an amendment of the Essential (Ikatan Relawan Rakyat) Regulations allowed Rela officers to:

(a)[...] carry arms, including firearms and ammunition for use, and use the same for the performance of its duties;

(b) where it has reasonable belief that any person is a terrorist, undesirable person, illegal immigrant or an occupier, to stop the person in order to make all such inquiries or to require the production of all such documents or other things as the competent authority may consider necessary;

They could also arrest without the need of a warrant any person stopped on paragraph (b) grounds when he or her:

(i) refuses or fails to comply with any reasonable requirement made to him by the competent authority;

(ii) refuses to answer any question that may be lawfully put to him by the competent authority in the exercise of its power;

(iii) makes any statement or produces any identification document which the competent authority knows or has reason to believe to be false; or

(iv) refuses or fails to produce identification documents or things that may lawfully be required by the competent authority.

Moreover, they are immune from prosecution for crimes committed in in the exercise of their duties as stated in the Public Authorities Protection Act of 1948 to which refers subsection (26) of the latest legal framework that addresses their status: the 2012 Malaysian Volunteer Corps Act.

The new law (on paper) was a huge step forward as they are not allowed to detain or arrest immigrants nor to carry firearms anymore. Previously they were not even required to be

supervised by a police officer²⁰⁰ but the new provisions changed this fact. Moreover, the minimum age to join the Corps was lifted to 18 from the previous 16 for girls and 17 for boys. After 5 years of service, the agent has to be reconfirmed by an authorized officer, and to keep the uniform after resigning from the agency became an offence²⁰¹.

However, abuse of power by the police remained a serious issue with excessive use of force, shooting of suspects, deaths in custody, torture and other ill treatment all evidenced by several reports²⁰².

The situation is aggravated from the lack of an effective independent and external commission that could investigate complaints about enforcement agencies misconduct, given that the Human Rights Commission of Malaysia and the Enforcement Agency Integrity Commission have respectively enjoyed few to none cooperation from the RMP and suffered from the lack of adequate staff and resources²⁰³.

As illegal immigration is seen as a threat to national security, since 2002 Authorities used the policy of alternating amnesty periods during which undocumented persons can “voluntary” go back to their Countries with huge operations to find and deport them by force.

Since the latest crackdown in September 2013, always carried out with disproportionate violence, more than 17,000 undocumented migrants have been arrested amid allegations of refugees and asylum seekers holding UNHCR cards being among them²⁰⁴. Another example

²⁰⁰ As for the need to obtain permission to raid on illegal immigrants Rela Director-General Zaidon Asmuni Stated: “No need. We give them a blanket approval since our core business now is against illegal immigrants. It is Stated in our regulations that operations can be conducted without police or immigration (supervision).” Article available at: <https://mocsarawak.wordpress.com/2012/01/30/did-najib-threaten-us/> [accessed 29 April 2014]

²⁰¹ P. Aruna, *New law refines Rela powers*, The Star Online, May 28 2012, <http://www.thestar.com.my/News/Nation/2012/05/28/New-law-refines-Rela-powers.aspx/> [accessed 29 April 2014]

²⁰² Human Rights Watch, *No Answers, No Apology, Police Abuses and Accountability in Malaysia*, 2 April 2014 available at:

http://www.hrw.org/sites/default/files/reports/malaysia0414_ForUpload.pdf [accessed 29 April 2014]

²⁰³ The Malaysian Human Rights Commission (Suruhanjaya Hak Asasi Malaysia), or SUHAKAM was established in 2001 under the Human Rights Commission of Malaysia Act 1999, Act 597, sections 4 and 12, available at <http://www.suhakam.org.my/act597> [accessed 29 April 2014]. Its role is to collaborate with the government on human rights legislation and policies, receive complaints about human rights violations and subsequently conduct investigations. One of the few points of contact with RMP were human right education training for its members extended also to Rela officers. Hopefully, in the future this activity will obtain better results.

On the other hand, the Enforcement Agency Integrity Commission (EAIC) was established in 2009 to examine the conducts of 21 government agencies, from the Minister of Tourism Enforcement Unit of Licensing Division to the Royal Malaysian Police. A mandate too broad to grant effective action. See for example: Boo Su-Lyn, *Enforcement oversight body has just one officer to investigate 19 agencies, says CEO*, TheMalaysianInsider, June 04, 2013, available at: <http://www.themalaysianinsider.com/malaysia/article/enforcement-oversight-body-has-just-one-officer-to-investigate-19-agencies-says-ceo> [accessed 29 April 2014]

²⁰⁴ See for example: Helen Davidson, *Malaysia accused of arresting asylum seekers and children*, The Guardian, 4 September 2013, available at: <http://www.theguardian.com/world/2013/sep/04/malaysia-accused-arresting-asylum-seekers> [accessed 29 April 2014]; and *10,000 to take part in nationwide Ops Bersepadu*, The Star Online, January 10 2014, available at: <http://www.thestar.com.my/News/Nation/2014/01/10/10000-to-take-part-in-nationwide-Ops-Bersepadu/> [accessed 29 April 2014]

of the scope of these raids is the big operation of September 2006 when The Star reported²⁰⁵ that of the 94,010 persons screened by the RELA forces, 18.8% had been arrested. The majority of them were Indonesian (12076 persons), followed by different ethnic groups from Myanmar (2089), Bangladeshi (923), Indian (693), Thai (402), Chinese (43), and other nationalities (1200).

It is also frightening that the number of RELA agents is estimated to surpass 2,8 million volunteers, a Corp 27 times bigger than the Royal Malaysian Police force²⁰⁶.

Until 2007, under a despicable bounty system, they were rewarded with 80 Ringgit for each allegedly illegal migrant they arrested. This practice resulted in an incentive to step over basic rights just to make some profit. For the same reason, in several cases immigrants had to pay a bribe to avoid detention or as reported in the next paragraph, in some cases enforcement officials sold boys, girls, woman and men to human traffickers at the Thai border. In addition, they have been accused of stealing the belongings of the immigrant whose houses they raid²⁰⁷.

In a Human Rights Watch research carried out in May and June 2008²⁰⁸, victims of Rela Corps told the officers perpetrated abuses “*during the arrest process and in the immigration detention centres. Such abuses included physical assault, intimidation, threats, humiliating treatment, forced entry into living quarters, extortion, theft, restricted communications with friends or family, disregard and destruction of identity or residency papers, and sexual abuse*”.

Following the arrest, immigrants among which there are often asylum-seekers and refugees, including some UNHCR cardholders, are held in detention centres in terrible conditions.

Detention comes in three phases: pre-trial detention; criminal imprisonment for offences under the Immigration Act; and administrative detention prior to deportation. Before the Magistrate will make a decision as to the imprisonment, acquittal or removal (deportation), the person can be held for up to 14 days, but this period can be prolonged for a maximum of 28 days. Moreover, during the hearings migrants are usually unrepresented, uninformed about their rights and often not aware of what is actually happening to them due to the lack of a translator.

²⁰⁵ *Rela arrests 17,700 suspected illegals*, The Star Online, September 29, 2006, available at: <http://www.thestar.com.my/Story/?file=%2F2006%2F9%2F29%2Fnation%2F15566762&sec=natio n> [accessed 29 April 2014]

²⁰⁶ The Royal Malaysian Police (RMP) force amount to 102,000-units.

Data taken from Interpol database: <http://www.interpol.int/Member-Countries/Asia-South-Pacific/Malaysia>

See also: Vanitha Nadara, *Reinventing Rela: Malaysia's Volunteer Corps Moving With The Times*, The Establishment Post, 27 Nov 2013, available at: <http://www.establishmentpost.com/reinventing-rela-malaysias-volunteer-corps-moving-times/> [accessed 29 April 2014]

²⁰⁷ For example see: *Wikileaks: embassy raises Rela role with Malaysian Immigration*, Malaysia Today, October 16 2011, available at: <http://www.malaysia-today.net/wikileaks-embassy-raises-rela-role-with-malaysian-immigration/> [accessed 29 April 2014]; and note 162

²⁰⁸ Human Rights Watch., *Human Rights Watch Letter to the Prime Minister of Malaysia*, April 27 2009, available at: <http://www.hrw.org/news/2009/04/27/human-rights-watch-letter-prime-minister-malaysia> [accessed 29 April 2014]

Even worse, if sentenced to deportation they can be held indefinitely in any police station, immigration detention centre, prison or other places chosen directly by the Director General “for such a period as is necessary in order to make arrangements for his or her removal²⁰⁹”.

UNHCR makes clear in its leaflet “*Basic Information for Asylum Seekers in Malaysia*²¹⁰”, that when brought to the Magistrate Court, an asylum seeker should:

“Inform UNHCR you are being charged in court.

Ask magistrate for permission to contact UNHCR, family/friend.

Ask for interpreter if you don’t understand Bahasa Malaysia.

Inform magistrate you are person of concern to UNHCR.

Do not plead guilty if charged under s.6(1)(c) Immigration Act (“Kes Kosong”).

Do not nod or shake your head under any circumstances-if you don’t understand what is being said ask for an interpreter by saying “UNHCR”. Repeat if need to.”

There are about 17 Detention Sites across the Country²¹¹, but the conditions of those centres do not meet basic human rights standards at all, as they are laid out in two international instruments: the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²¹².

Cells are usually overcrowded, extremely dirty, without adequate sleeping surfaces and often infested by insects, to the point that without being able to lay down together at the same

²⁰⁹ See *supra* note 192, FIDH-SUARAM 2008, p. 14

²¹⁰ Document available at:

http://www.unhcr.org.my/upload/English_AS_Info_Leaflet_BOKL_Feb_2013.pdf [accessed 2 May 2014]

²¹¹ Depot Pendarang Tanpa Izin Ajil; Depot Pendarang Tanpa Izin Juru; Depot Pendarang Tanpa Izin Pekan Nenas; Depot Pendarang Tanpa Izin Semuja; Depot Pendarang Tanpa Izin Tanah Merah; Immigration Depot Belantik - Depoh Imigresen Belantik; Kajang Prison for Women - Penjara Perempuan Kajang; Kemayan Immigration Depot - Imigresen Depoh Kemayan; Kuala Lumpur International Airport (KLIA) Immigration Detention Depot; Langkap Immigration Depot - Depoh Imigresen Langkap; Lenggeng Immigration Depot - Depoh Imigresen Lenggeng; Machap Umboo Immigration Depot - Depoh Imigresen Machap Umboo; Menggatal Temporary Detention Centre - Pusat Tahanan Sementara Menggatal; Sandakan Immigration Depot - Pusat Tahanan Sementara Sandakan; Semenyih Immigration Depot - Depoh Pendarang Tanpa Izin Semenyih; Sungai Buloh Prison - Penjara Sungai Buloh; Tawau Immigration Depot - Pusat Tahanan Sementara Tawau. List and map taken from <http://www.globaldetentionproject.org/Countries/asia-pacific/malaysia/list-of-detention-sites.html> [accessed 2 May 2014]

²¹² United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <http://www.refworld.org/docid/3ae6b36e8.html> [accessed 2 May 2014];

United Nations, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, available at: <http://www.un.org/documents/ga/res/43/a43r173.htm> [accessed 2 May 2014]

time and suffering from serious lack of privacy, tensions among detainees are widespread. No heating or air conditioning are provided. Sanitation is largely inadequate, with toilets often filthy or obstructed and the ability to take a shower severely constrained by defects in the infrastructure.

The same problem applies to drinking water, which, far from being available to any detainee every time she or he asks for it, is limited to one cup or half a bottle once a day. Malnutrition is widespread which only aggravates the fragile health conditions of detainees who often do not even have access to medicines, and only in the most severe cases can benefit from medical treatments²¹³.

Degrading treatment in the form of verbal and physical abuses perpetrated by enforcement officers inside the detention centres is probably the most unacceptable thing. Immigrants are offended, humiliated, kicked, punished (for example by being forced to sit down cross-legged for hours), women suffer pervasive body searches and are obliged to perform “ear-squats” amid denigrating comments and laughs. Sexual harassment in exchange for money (unfortunately needed to buy soaps, sanitary pads or clothes in the prison), and even rape have been reported too²¹⁴.

FIGURE 17: MAP OF DETENTION SITES



<http://www.globaldetentionproject.org/Countries/asia-pacific/malaysia/list-of-detention-sites.html>

²¹³ See *supra* note 192, FIDH-SUARAM 2008, p. 18-19

²¹⁴ For example see Amnesty International report “*Malaysia: There is a way out: Stop abuse of migrants detained in Malaysia*”, published in 2010 and available at: <http://www.amnesty.org/en/library/asset/ASA28/003/2010/en/045f1764-7ad8-434f-b729-2950e5c243a4/asa280032010en.pdf> [accessed 2 May 2014];

And *supra* note 178

For the most vulnerable groups, namely unaccompanied minors, pregnant women and breastfeeding mothers, elderly persons and persons with physical or mental disabilities, the lack of hygiene, a proper diet and medical assistance is even more dangerous. As for babies, in particular, in most cases there are no recreational facilities and milk, diapers or blankets are not provided. Considering the lengthy periods of detention, the lack of education programs, the deficient diet inside depots and the general violence children often witness, their mental health might likely be compromised.

Despite some ameliorations in single detentions sites on that matter, children protection remains broadly inadequate and the government has not adopted any Standard Operating Procedures for unaccompanied and separated children yet²¹⁵.

As of 2013, UNHCR noted²¹⁶ an amelioration in the collaboration between the Government and the Office, with regards to both the recognition of UNHCR cards and the access to detainees. However, at the same time, barriers still exist and the process is not smooth yet.

In effect, as the Agency denounced, the cooperation continues to be based on weak foundations as, “*all such arrangements with UNHCR have remained ad hoc, based on verbal arrangements, and unsupported by any legislative or administrative framework*”.

Moreover, NGOs visits and assistance to detainees are more restricted²¹⁷.

²¹⁵ A good news was celebrated in 2007 when in a rare demonstration of humanity (much more rare in 2007 than today), Malaysian Authorities released 25 persons of concern among whom there were 6 babies: UNHCR, ‘*UNHCR staff celebrate release of babies from detention in Malaysia*’, 23 March 2007, available at <http://www.unhcr.org/print/460400114.html> [accessed 2 May 2014]

As for the inadequacy of Malaysian children protection system, see Child Rights Coalition Malaysia Status Report on children’s rights in Malaysia, December 2012, available at: http://www.crin.org/docs/Report_on_Childrens_Rights_.pdf [accessed 2 May 2014]

Against the practice of detaining unaccompanied minors, see for example: WGAD Report to the Thirteenth Session of the Human Rights Council, para. 60: “*Given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of unaccompanied minors would comply with the requirements of article 37(b), clause 2, of the CRC, according to which detention can only be used as a last resort.*”, available at: <http://www.unhcr.org/refworld/docid/502e0fa62.html> [accessed 2 My 2014];

And: *Mitunga v. Belgium*, (2006), ECtHR, App. No.13178/03, para. 103, available at: <http://www.unhcr.org/refworld/docid/45d5cef72.html>. [accessed 2 May 2014]

²¹⁶ See supra note 191, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights Compilation Report - Universal Periodic Review: Malaysia, p. 3

²¹⁷ In 2009, Amnesty International was “encouraged by the fact that the Malaysian authorities allowed the organization’s researchers to visit the detention centres and speak with those detained”. See supra note 214, Amnesty International report, p.8. However, the Organization received reports by local NGOs whose “visits were often only allowed when accompanying family or friends, and only if they did not identify themselves as belonging to an NGO”. See: Amnesty International, *Abused and Abandoned: Refugees Denied Rights in Malaysia*, 16 June 2010, p. 13, available at: <http://www.refworld.org/docid/4c19d1aa2.html> [accessed 2 May 2014]

b. In the hand of human traffickers: Mariah and Phyu's stories

After her detention, Mariah fell in the hands of human traffickers. Her story, as many other shows how they thrive through the concussion and corruption of some Malaysian enforcement agencies officers.

The next day, at 8 am — during their last Master Call, a Rela officer took back the detention cards from Mariah and the six Burmese women. Their names were checked against a list. At 9 am, 17 Burmese women, 23 Burmese men were handcuffed in pairs and loaded onto a yellow bus.

“There were six men who were dressed in civilian clothes. I think they were Immigration officers, but because they weren't wearing name tags or showed any form of identification to us.” A van, without any logo or identification followed their bus from behind.

“In the bus, we were handcuffed in pairs to the arm rests on the chairs. We were allowed to go to toilets along the way, but four officers followed us. A few hours into our journey, the officers told us that we were being sent to Thailand.”

Once, along the journey, the bus stopped, and the officers allowed the detainees to purchase food. “They said, if we had money with us, we could pass them the money and they would buy food for us. I had no money on me, and so I didn't eat the entire journey to Thailand.”

At about 10 pm, the bus drove into a jungle. There were no buildings or houses within sight. “We were in the middle of a jungle. The officers told us to get out of the bus. There were six men waiting for us - four of them on motorbikes, while two were in a car. They asked the officers, ‘how many people with you?’”

“The officers told us quietly, to get into the car that was waiting for us. We saw that the back seats were removed. We piled into the back, all 29 of us. The men in the car told us again and again: “Keep very quiet!” The men made sure that all 29 Burmese were in the back of the car, and covered them with several layers of cloth. The car then began to move. About 15 minutes passed before the car slowed down again.

“I could hear the men in the car talking with some people outside the car. I think it was police checkpoint. We kept quiet, I daren't even breathe or move a muscle.”

Minutes later, the car began to move again. The police hadn't checked the car. The police hadn't found them. They travelled for another half an hour before stopping. “We got out of the car, and the men took us into a hut. There were five men inside waiting for us. Since getting off the bus, I suspected that these men were human smugglers. I knew for sure when we were in the hut. These men could speak Malay and Thai.”

“We're going for a walk,” they told us. We walked through a jungle trail for two hours. It was tiring and I got cut in my face, legs and arms by the branches. We reached a tent in the middle of the jungle clearing.”

When they arrived the, the women asked for food as they were very hungry. The men said that there was no rice, but gave them some pineapples to eat. “We were so hungry we devoured the pineapples. After eating the pineapples, we quickly fell asleep”.

"We woke up later, when four men came to wake us up. They took three of us youngest and left the elderly women behind. They dragged us out to another tent further away. I and another Burmese lady remained outside while the youngest girl in our group - she was 21 only - was dragged screaming into the tent." "I could hear her screams, shrill and full of panic."

"They raped her, taking their turns. They left her sobbing and crying in the tent and moved to us. They tried to molest us, but we screamed our lungs out, and they stopped."

"The agents started to speak among themselves about how beautiful I and the other woman were. Then they told us that if we had RM2500 each, we would be sent back to Malaysia".

"RM2500? I didn't even have single sen on me and neither did the other woman." The men replied, 'Oh well, then we can sell them for RM5000, they are very beautiful.'

Crying as she recounted her ordeal, Mariah said: "The men just shrugged their shoulders and this time, they dragged the other woman into the tent and raped her. As she screamed, I too screamed my lungs out."

For six days, they stayed in the tent in the middle of the jungle. The agents kept asking for money, but Mariah and the other women said that they didn't have the money. "I told them to please release me, that I wanted to return to Mae Sot, that is Thailand, where I was staying before I made the fateful trip to Malaysia. However, the men said that they didn't have contacts in Thailand, and that I could only be sent to Malaysia."

"For six days we stayed in the jungle. For six days the men raped us, everyone of us!" "Then, it was my turn to be raped."

Here, Mariah doesn't and can't express what she went through. If these pages could say anything, it would be soaked in her years she shed during the interview! Mariah and the other women couldn't take it anymore.

"After hours of calling, we finally managed to contact some friends in Malaysia using the agent's phone. We begged our friends, related our ordeal in the hands of these 'agents'. The money was transferred into the agent's Maybank account." When the money was cleared, the agents started the journey to bring Mariah and others back to Malaysia.

One of the older women and the youngest girl of the group who was the first to be raped - they weren't able to contact anyone who could send them the money. So, when Mariah and the others left the jungle, the elderly lady and this girl was left behind.

"As we left, I could hear the agents telling them both that they would have a week to produce the RM2500, or they would be sold. 'Young girl sell as prostitute! Old lady...maybe sew clothes forever!' they said to them."

"For three days, two of the agents walked me and the other four women through the jungle. During the day, we rest and hide in the jungle. At night, we would continue walking out along the roads." At 5 am, on the third day, they reached a 'highway' in Malaysia where a car was waiting for them. At that point, the two agents left them with the driver of the car.

"In the car, we were instructed to lie down flat in the rear seat. The windows of the car were also covered, so we couldn't see where we were being taken to."

"Around 8 am, we reached a wooden house situated somewhere in a kampong (village, Ed.). The driver drove straight into a garage. Before we could see where we were, he closed the

shutters. 'Call your friend, and tell them to meet us somewhere in Kepong.' There were many men, in the house. Many were high on drugs. While we were there, these men raped me and the other women."

From the house, the agent took them to a place in Kepong, and dropped them off there. Mariah's friend was there, waiting for her.

"Since returning to Kuala Lumpur, I haven't seen the young girl who was left behind. I don't know what has happened to her, but I fear that no one came to her in her hour of need. No one came for her with the RM2500. I fear she has been sold, as the agents said they would do to her if no one came up with the money."

Mariah would like to leave Malaysia, but the whereabouts of her sister remain unknown, and so she cannot leave without finding her sister. She kept telling us that she was truly frightened for her sister's life. "This story is about what had happened to me. I've experienced so many abuses and I was raped. Imagine what has or would happen to my sister. She is so young, only 18."

Mariah feels that she can't return to Mae Sot and live there because the people back home would then find out what has happened to her. The shame is unbearable. She could never let her family know. Although she has asked her friend to not speak of this to anyone, she is afraid that others will find out. "I'm so afraid I will be arrested again. The torture in the detention camp was bad, but compared to the border, I could still stand it. But if I were to be sent to the border again, I will surely have to experience this (being abused and raped). I don't know if I could take that again. It isn't just being arrested that I'm afraid of. In the hands of the traffickers, during those six days, they raped us every day..."

Since returning from the border, Rela personnel raided Mariah's home again, but this time, she managed to hide successfully. She still lives in fear of being arrested again. Mariah feels very ashamed about what has happened. The older women who were deported with her, but who were not raped, has shared what has happened with the others in the community. Mariah now feels that she can no longer stay in the community, because everyone knows what has happened to her and she can't face them anymore. She is currently looking for a job that will enable her to leave the community, and start a new life in a new place.

Phyu's, a 59 years old woman, tells a similar experience: instead of deporting her to Burma, Malaysian Immigration officers sold her to human traffickers. She remembers the brutality of those men, their total despise for human dignity.

She had already be tortured day after day, after the arrest by the Rela police. The officers wanted to know where to find her husband, deemed guilty of possessing and distributing CDs containing San Suu Kyi speeches to his community. Her story is shocking: it reveals there existed a kind of collaboration between the enforcement officers and the military junta.

"After three and a half months, I was to be 'released'. I was told by the judge that I was 'BEBAS' - free to go. However, I was only set free of prison, to be sent to an immigration detention camp for eventual deportation. At the court, there was no lawyer, no legal representation, and no

translator. I was unsure, afraid and overwhelmed by the judge sitting and speaking things I could not understand.

He spoke in English. A Rohingya woman who was there translated it to me. I was asked to plead 'innocent or guilty' - right or wrong. I pleaded guilty, but I didn't know what the charges were. That evening, I wondered how my husband and I would be reunited. On our last day, we were asked to return everything the prison had given us. We were put on a bus - one for women and another for the men.

It was one and a half hours to Lenggeng detention camp. After one and a half months there, I asked to be transferred to Semenyih camp as I and another lady were the only women in Lenggeng. Furthermore, they had more Burmese refugees, so deportations were carried out more often.

In Semenyih, we were given a grimy, bad smelling blanket belonging to someone else before us. There was no water to wash our clothes or bathe; we were given 500ml of drinking water per day.

At 8 am every morning, we would wake up for physical exercise for half an hour. At 9 am, breakfast is served - biscuits and tea. During the day, we are free to do whatever they want to do. Lunch is served at 12 pm, typically consisting of rice ikan bilis and soup. Twice a week meat or fish is served.

During my stay at Semenyih, UN officials came to visit me. When I told the UN officer that I wanted to be interviewed, I was granted one. On the 3rd of March, I was interviewed and I received my UNHCR card number on the 20th of March. The UNHCR officers encouraged me to wait for my turn to be released from camp.

But because of the unsure waiting period, I decided to be deported voluntarily. On the 24th of March 2006, I was deported. We departed Semenyih Camp at 5pm with ten other Burmese women. During the journey, all I could see were trees. We stopped for regular toilet breaks. Twelve midnight: I saw a big gate, the border where there were guards patrolling. We drove pass a gate, and there was a long bridge ahead of us. The bus didn't cross the bridge but entered a 'Kampung' area which was close by a stream.

When the bus stopped, the officials asked us to quietly exit the bus. The officers from the bus then told us to sit down and did a head count. A man emerged and the Malaysian officers handed us over to him. The man spoke in Burmese. He said that he bought us from the Malaysian officers for RM200 per person so we belonged to him now.

He was very dark. He spoke Burmese and had a beard like a Taliban. He asked us to get into a big boat. When we reached the other side of the stream's bank, he told us to sit on the muddy ground again and did another headcount. Then we walked for about 200 meters to an area where there was a tent, and the ground was sandy.

There were around 20 people there carrying rifles and machetes. Nearby, there was a table where we were told to place all our belongings. The dark man said that if we did not place all of our items there, he wouldn't hesitate to kill us.

Then he gave us a phone for us to contact family or people in Kuala Lumpur who would pay RM1400 for us to be sent back safely. I called my husband and he was so scared. He told the man not to harm me and that he had the money.

I shall always remember this: a young girl's mother tried to bargain on the phone with the dark man. She said she couldn't raise the money on such short notice. I later heard his name: Hamid Konaing. He calmly asked her to wait hold the line, turned around and easily lifted up the rifle butt and pointed it to the daughter's face. Until that very moment we thought he was joking. Then, he drew back the rifle and hit her on the jaw. We could actually hear the impact. She was stunned, and so shocked that she could barely whimper. Then the girl was screaming, and she tried to run but two men came from behind and held her arms. He kept hitting her until her face shed blood! I will always remember the sound: the smacking against the face, the thuds. God, pieces of her teeth flew out! The screams and the cries from the phone were shrill and deafening. She begged him to stop and agreed to pay RM1400 for her daughter's release. What could we do?

We cringed. We stood there in fear. He had sent a message to the girl, her mother on the phone and especially us. After everyone had made their calls, we were separated into two groups: those who could pay; and the group that could not pay or contact anyone in KL. The group that could not pay was told that they will be sold to fish trawlers, into prostitution or to be maids. Later, three Thai policemen came. They had the words "Thai Police" written on the back of their shirts.

In the dark, I saw one of the armed men exchanging some items with them. After that, a group of Chinese-looking men came but they spoke in Thai.

Suddenly a young girl walked over to me, turned to me and kept begging me to pose as her mother. The men then asked all the girls to stand up, whether they could pay or couldn't pay. They picked seven girls out of the 11 women, and took them away. Even the girl who asked me to pose as her mother was taken away.

I can remember her screams! 'Please, not me!' her eyes were actually begging me for help. I cried and cried and begged them not to take that girl away. I told him she was my daughter. He told me she was young and pretty. If he sent her back, he'd only get paid RM1400. But if he sold her to the Chinese men, he would get RM3000. We could hear slaps and then whimpers from the girls. The girls who were taken away were screaming and crying into the night.

Shortly after that, those of us who could pay the RM1400 were taken to an abandoned building which looked like a factory. The next day, we were given food. Nightfall, and we crossed the river and ended up in a bush. A few minutes later, a few cars came up to us. Ten of us were placed in the car: five in the boot, the other five in the backseat.

The people in the boot were thumping the boot the entire time, crying that they couldn't breathe. We traveled for almost an hour but had to turn back because of a road block ahead. There was an accident so Thai police were all over the place. The car finally stopped and we were asked to get out of the car and hide in the bushes — for one and a half hours. We were hiding in a decrepit cemetery.

I felt a funny sensation, felt bumps all over my body and when a car passed by and when the lights shone on us, I saw leeches all over my body and I almost screamed seeing so many

leeches on my body. I cried in silence as I was afraid that if I made noise, I would be hurt. I was also scared because I was in a cemetery. I tried pulling the leeches off.

We waited for one and a half hours before moving on by foot. In the darkness, we stumbled, kicking into rocks and tripping. We walked along a long railway track. The straps on my slippers had already broken off and I walked bare footed, until they were blistered and bleeding from kicking the stones. Hungry, tired, we walked until just after dawn.

We hid along the railway tracks until late morning when a car came to pick us up. Again: five in the backseat, five in the boot. The journey took seven hours and the driver was speeding all the way. Some people threw up in the boot; again they were thumping the boot continuously saying that they couldn't breathe.

We finally reached Kuala Lumpur around 5pm. I saw Kota Raya and we stopped in front of Menara Maybank. In broad daylight, my husband walked to the car and handed the driver an envelope. I thus was released. On the 26th of March 2006 my nightmare ended.

My bad dream had finally come to an end. I just hugged my husband and cried unceasingly. People who were walking by were staring at me — maybe because I was in rags, without shoes and crying. But I didn't care. I was crying because of all the suffering I went through and because I was relieved my husband did not leave me.

There was so much of emotion. I cannot say which feeling was stronger. I still get emotionally upset when I talk about it. I can picture every situation exactly, although it's been more than a year now. I cannot forget this experience. And I am still very much afraid; afraid of being caught, beaten up and of being trafficked.

I still have nightmares. But I have my husband's love and support and that helped me through. But even now, though I have my UNHCR card, I am still scared. I never want to experience that again. My husband doesn't let me work - even more so now. He doesn't let me go out; he does the shopping, everything. He fears for my safety. The only time we take walks are when he comes back from work and we go for our evening exercise walk together, for a short while. Then it's back indoors.

The girls - their screams as they were taken into the night. I wanted to share this story because I would like to beg you to save the girls, save other women who have gone through what I have and probably worse.

Deportation puts their lives in danger. When I think of the girls who were taken away, I wonder where they are now. I hope they are not forced to work as sex workers. So please, save the other women.

We left our Country because we feared for our lives. But the dangers here are the same, darker. We are in constant fear and it is depressing.

I hope other women will not have to go through my fate. I cannot stand living in fear. Yet, I've gone through what I can only go through and remain strong and not go mad.”

A recent account by Reuters²¹⁸ helped showing how porous the 500 km-long northern border is in 2014, and what this means for human traffickers operations hidden in their hideouts in the jungle between the two South East Asian States.

Interviewed by the journalist, Chris Lewa, coordinator of the Rohingya advocacy group called "*Arkan Project*", revealed that the phenomenon is increasing, adding: "*in more and more stories I have heard recently they (Rohingya) have been detained in Malaysia.*"

The scheme is the same as the one described by US Senator Richard Lugar in April 2009 in his report to the US Senate Committee on Foreign Relations²¹⁹, where he exposed the collusion between Malaysian Immigration Officials and human traffickers at the Thai border.

Victims are allegedly taken from detention facilities to camps on both side of the border, usually at night and handed over to Thai, Burmese and Malay-speaking people who buy them from Malaysian Officers. They are then divided into groups based on gender and age and human traffickers ask them to contact someone in Malaysia who can pay for their release.

Those who could reach a relative or friend to pay the ransom (usually ranging from 1400 to 2500 Ringitt and paid sometimes through transitions between bank accounts, in other cases in cash by hand) are then smuggled back to Malaysia.

Among the unluckiest, the fate of men and woman is different, with the former sold to brokers with contacts in the Thai fishing industry, factories, farms and plantations while females are forced into domestic servitude or exploited in the sex industry (brothels, karaoke bars, clubs, hotels). Boys and girls are profitable too in the eyes of human traffickers. Teenagers are exploited for sex or prostitution; children under 10 years of age can be used for begging, and even babies have a market, being sold to childless couples²²⁰.

The nightmare they live in the hands of traffickers goes through beatings, torture, sexual harassment and rape, under a constant feel of imminent death.

Among the destinations mentioned in the report, there are the cities of Sungai Golok, bordering Malaysia's Rantau Panjang in the Kelantan State and Padang Besar facing Kaki Bukit in the Perlis State. Other border cities are Sadao(T)/Changloon (M) and Betong (T)/Keroh (M).

²¹⁸ Stuart Grudgings, *Exclusive: Trafficking abuse of Myanmar Rohingya spreads to Malaysia*. Reuters, Mar 5, 2014, available at: <http://www.reuters.com/article/2014/03/06/us-malaysia-rohingya-idUSBREA2504U20140306> [accessed 5 May 2014]

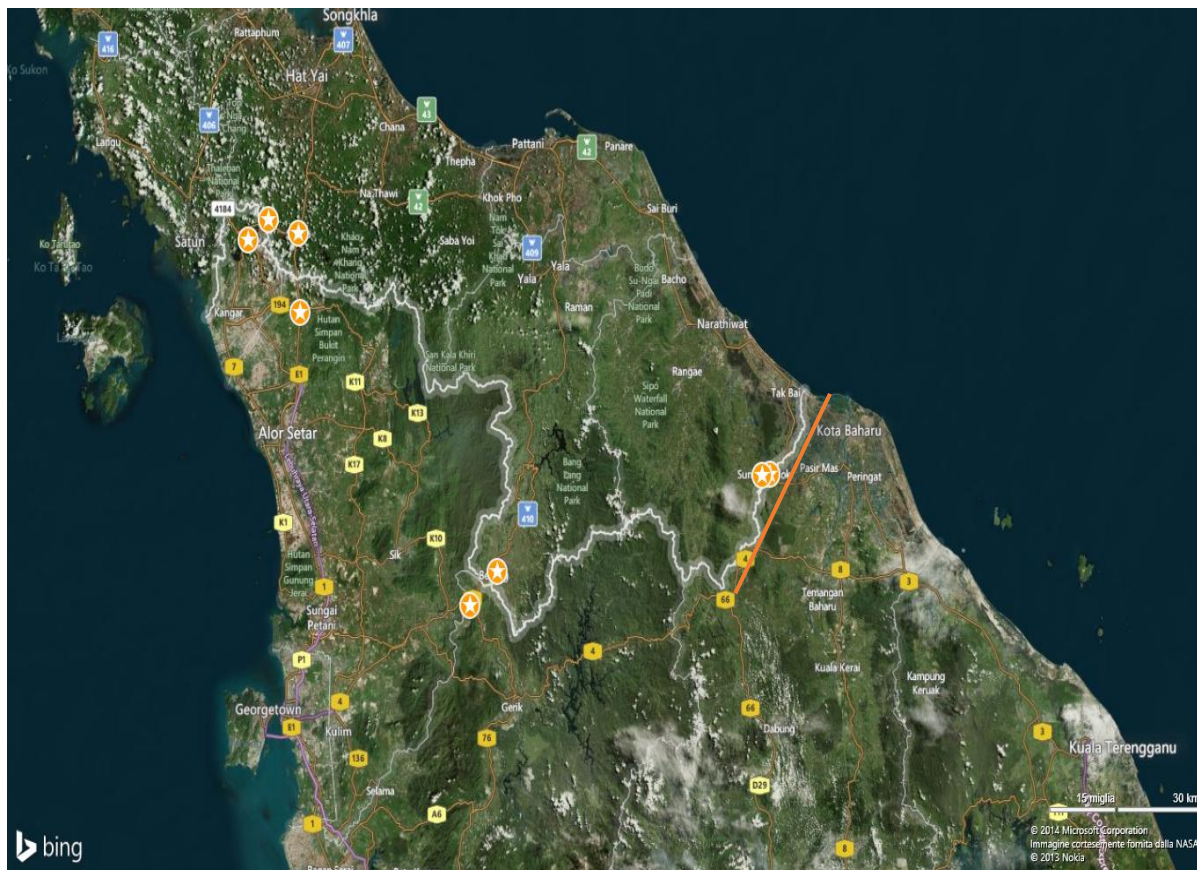
²¹⁹ Richard G. Lugar, *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*. A Report to the Committee on Foreign Relations, United States Senate One Hundred Eleventh Congress First Session, April 3, 2009, available at: <http://www.gpo.gov/fdsys/pkg/CPRT-111SPRT48323/html/CPRT-111SPRT48323.htm> [accessed 5 May 2014]

²²⁰ To learn more about child trafficking in Malaysia visit the website of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, in particular: Kurniawati Kamarudin, *Child Trafficking in Malaysia*, available at: <http://mapo.bernama.com/news.php?id=582786> [accessed 5 May 2014]

Crackdowns on those sites and in remote camps in the jungle are performed on both sides with the latest carried out by Thai police following another Reuters' report of December 2013. In the operation, 531 men, women and children have been rescued²²¹.

In November 2013 Prime Minister Datuk Seri Najib Tun Razak even agreed with the Home Minister's plan to construct a 141 kilometers-long electronic fence which would cover 121km of river boundary and 20km of land boundary from Pengkalan Kubor to Jeli, in the North-East.²²².

FIGURE 18: MALAYSIA-THAILAND BORDER



The icons on the map show the couples of border cities, from the left to the right: Padang Besar(T)/Kaki Bukit(M), Sadao(T)/Changloon(M), Betong (T)/Keroh(M), Sungai Golok(T)/Rantau Panjang(M). The orange line shows the ends of the electronic fence project.

²²¹ Amy Sawitta Lefevre and Andrew R.C. Marshall, Thai police rescue hundreds of Rohingya in raid on suspected traffickers' camp, Reuters, January 27, 2014, available at: <http://www.reuters.com/article/2014/01/27/us-thailand-rohingya-idUSBREA0Q0IU20140127> [accessed 5 May 2014]

²²² Zahid Hamidi: 141km-long electric fence planned along M'sia-Thai border, The Star Online, November 30, 2013, available at: <http://www.thestar.com.my/News/Nation/2013/11/30/zahid-electric-fence-thai-msia/> [accessed 5 May 2014]

Phyu's story dates back to 2006, one year before Malaysia plunged into Tier 3 of U.S. State Department's annual "*Trafficking in Persons Report*²²³". The same year in June, the Government passed the Anti-Trafficking in Persons Act, which came into force in 2009 when the Country exited the black list.

In 2014, in the aftermath of Obama historic visit to the Federal State, Malaysia seems to be bound to be downgraded again, along with the other States that do not meet anti-trafficking standards and do not make any significant effort to do so²²⁴. Was the law a bluff? Where are the defects in the protection system?

For asylum seekers and refugees in Malaysia, the act of trafficking, as demonstrated by the victims' accounts, occurs more often during the process of removal from the Country rather than during their "hidden" stay.

First of all, the fact itself that asylum seekers and in some cases refugees registered with UNHCR in Kuala Lumpur²²⁵ are subjected to *refoulement* is ethically wrong and most probably unlawful under customary law²²⁶.

In effect, the root cause of their vulnerability in Malaysia, which consequently fuels trafficking activities, is the fact that they are left with no official protection. This, paired with the fact the support that might come from UNHCR or local NGOs is often limited, opens only to two possible scenarios: to survive until Immigration Officers find and prosecute them under the Immigration Act, or until a shameless employer exploits them.

In one case, the connection with the traffickers are the Enforcement Officers in charge of deporting them back to their home Countries or to a third Country of asylum. In the other case, the broker role is played by labor recruitment agencies, and at the other end there is an employer who confiscates their travel documents.

The problem of falling in the hands of human traffickers or being trapped in forced labour does not arise from the law itself, since the policy is essentially in line with the international standards on the matter enshrined in the two Palermo protocols supplementing the United Nations Convention against Transnational Organized Crime²²⁷ (although Malaysia

²²³ U.S. adds 7 Nations to list of Human Traffickers, Associated Press, June 12, 2006, available at: http://www.nbcnews.com/id/19190524/ns/world_news/t/us-adds-nations-list-human-traffickers/#.U2etwZVZrIU [accessed 5 May 2014]

²²⁴ US lawmakers want Malaysia and others punished for failing to act on human trafficking, Themalaysianinsider, April 30, 2014, available at: <http://www.themalaysianinsider.com/malaysia/article/us-lawmakers-press-obama-administration-on-human-trafficking> [accessed 5 May 2014]

²²⁵ For example, in February 2013 Malaysia was accused to have deported to China six ethnic Uighurs Chinese, a Muslim minority from the western region of Xinjiang, considered as terrorists by the Chinese Government. See: *Malaysia accused over deporting Uighur asylum seekers to China*, The Guardian, February 5, 2013, available at: <http://www.theguardian.com/world/2013/feb/05/malaysia-uighur-asylum-seekers-china> [accessed 5 May 2014]

²²⁶ See for example, UNHCR opinion in: UN High Commissioner for Refugees (UNHCR), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, 2003, p. 141, available at: <http://www.refworld.org/docid/4bed15822.html> [accessed 5 May 2014]

²²⁷ For a comparison between Malaysian legal provisions for victims of trafficking and the standards set out in Article 3 tp8 of the Palermo Protocol, see: United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Comparing Legal Definitions & Frameworks Against the United Nations Protocol on Human Trafficking*

has yet to ratify them): the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air of 2000.

According Article 3 of the first protocol, trafficking in persons shall mean:

“[...]the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;”

In addition, the Anti-Trafficking in Persons Act covers the three possible scenarios a vulnerable person might face: voluntary repatriation, resettlement to a third Country of asylum and integration.

Article 3 States that Malaysia must guarantee that they do not fall in the hands of traffickers or exploiters whether:

“(a) Malaysia is the receiving Country or the exploitation occurs in Malaysia;

or

(b) The receiving Country is a foreign Country but the trafficking in persons starts in Malaysia or transits Malaysia.”

Where the system falls short of effectiveness is the lack of accountability for corrupted enforcement agencies.

This is mainly due to the fact that *proactive* procedures for identifying, interviewing and assisting potential victims are not standardized and there is scarce understanding by front-line Officials of the issues gravitating around human trafficking. Therefore, the identification of victims is hindered by the lack of proper training, which could be provided by both International Organizations and local NGOs, showing little interest on the Government side on that matter.

As with the immigration policies, the action of the State remains *reactive*, limiting itself to the prosecution of cases brought up by the victims themselves.

But also in those cases, following an official protection order under the law, recognized victims are *detained* in government facilities in most case for long periods of time. Instead of accessing to NGOs expertise and shelters and despite an increase in the number of prosecutions

Cambodia, People's Republic of China, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam, available at: http://www.no-trafficking.org/reports_docs/legal_prov_vics.pdf [accessed 5 May 2014]

and convictions under the Anti-Trafficking in Persons Act, the Government chose not to follow a victim-centered approach. Instead, it locks them inside the detention facilities until they are deported to their home Countries following a path not so dissimilar from the one experienced by undocumented immigrants.

Although some of the facilities are operated directly by the Ministry of Women, Family, and Community Development and The Ministry of Home Affairs, the effort is focused on providing high levels of security to the victims, completely forgetting their needs. This is reported also in the U.S. State Department report on human trafficking²²⁸ where it States that *“the facilities did not employ medical officers or trained psychologists. Employees, assigned on a temporary basis, did not receive adequate, if any, training for working with trafficking victims or managing the facilities; a lack of interpretation services meant that some victims were unable to communicate with staff”*.

It is clear that since in some occasion foreign embassies decided to provide a shelter and faster and safe repatriation rather than leaving their citizens trapped in Malaysian detention centers, only few cases could be brought to the competent authorities.

Lengthy court proceedings along with restriction to the freedom of movement, lack of information about the length of their detention and no access to lawful employment during the duration of the trial, are all factors that contribute to push victims to leave the Country as soon as possible, providing a strong incentive to abort the prosecution of criminals.

Recently, the Government seems to have recognized the need of rethinking about this attitude, opening to NGOs collaboration and to the possibility of allowing human trafficking victims to work while waiting to testify in court.

However, the effort comes solely from the fear of the economic sanctions that might come with a blacklisting by the US State Department.

If the mentality behind illegal immigration remains the one showed by Deputy Home Minister Datuk Wan Junaidi Tuanku Jaafar on March 19 when he said:

“Malaysia may be swamped by illegal immigrants if the government allows victims of human trafficking to gain lawful employment in the Country”²²⁹

then it is hard to foresee any durable solution.

At the regional level, a framework for cooperation to combat human trafficking involves all the 10 members States of the Association of Southeast Asian Nations through bilateral MoUs and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (which as mentioned before suffers from being a non-binding institution).

²²⁸ See *supra*, note 118

²²⁹ Boo Su-Lyn, *Illegal immigrants may swarm Malaysia if trafficking victims hired, says deputy minister*, Malaymailonline, March 19, 2014, Available at: <http://www.themalaymailonline.com/malaysia/article/illegal-immigrants-may-swarm-malaysia-if-trafficking-victims-hired-says-dep#sthash.UNH3Poks.dpuf> [accessed 5 May 2014]

In theory the process, helped by the existence of anti-trafficking legislation in almost every Country in the region (with the exception of Laos and Singapore), is a step in the right direction and could provide great exchange of information and intelligence between the States.

In practice however, this cooperation is held back by many factors. There is a strong cultural divide which hinders trust and that comes from a past of conflicts, especially in the Indochina sub-region. Moreover, as happens in Malaysia, the issue is generally not considered of paramount importance by governments, thus making difficult to raise funds for big scale operations and shared projects.

Technical problems relating to unexperienced enforcement agencies prevent the implementation of effective coordinated operations as well. As Martin Reeve, a regional adviser on trafficking for UNDOC in Bangkok noticed, regional “*intelligence-led policing is immature or non-existent, so the offenders arrested are less likely to be those organizing the trafficking, and police-to-police cooperation remains weak.*”²³⁰

c. The role of the communities and NGOs: Mya’s story

Mya, an ethnic Chin woman five months pregnant and with two young children, shared the same humiliation many other woman arrested and imprisoned experienced. Separated from her husband and fearing every day for her sons’ life she managed to resist 18 days in Semenyih detention camp when she was *saved* by a UNHCR officer.

“Our 18th day, our last day at Semenyih detention camp came out of the blue. In the morning, a UNHCR officer came to visit me. I couldn't care if I thought the officer was late in coming to see us. She was there, and that was what mattered. I could only cry and cry as she told me she was trying her best to get us released. She gave me bars of chocolates for my children and again told me she was trying to have us released - but it will take two to three days. I was already feeling better, knowing that there was then a chance to leave the detention camp.

We were getting ready to settle down for the evening when the UNHCR officer came back. I stood there, and the lady had to repeat herself: ‘I managed to get you out, you are released now. Mya, your family is free to go.’ Furthermore, the lady who was staying with us in the flat was also released. We cried as we packed our stuff.

Then I realized that our camp leader was not with us. In the car, the UNHCR officer told us he had chosen to be deported as his case was not considered vulnerable and he would have waited a long time for UNHCR to intervene in his case.

We were driven straight to the UNHCR office and given a replacement card the Rela officers had taken from us. We were given RM50 each and the kind officer even drove us to the Zomi office in Kuala Lumpur.

²³⁰ Integrated Regional Information Networks (IRIN), *Analysis: Southeast Asia’s human trafficking conundrum*, May 6, 2013, available at: <http://www.irinnews.org/report/97979/southeast-asia-s-human-trafficking-conundrum> [accessed 5 May 2014]

We stayed there for a few days, as others took care of us, as we gathered back our strength. After a few days, my husband and I decided to go back to the Putrajaya camp site to stay. We would never return to the flats.

The Zomi leaders told us that our case was quite common: families that went through arrest and detention would need lots of prayer and counselling, which we attended for a few times. There, a lady told me that pregnant women, mothers undergo severe depression during detention - as they worried not only for themselves but the well-being of their children. In time, my relationship with my husband grew stronger.

One and a half months after I gave birth to my baby girl, the Putrajaya camp that we were staying was raided. I had already sent my sons to a make-shift school nearby. On my way back, a group from the camp told us that Rela was going through the Putrajaya area to arrest refugees and that our camp-site was next.

I ran back with my baby, slung on my sarong. There was money that we had saved, which I kept hidden inside my pillow. They were already there, and I could see them ransacking our camp. They tore through everything. Our money was as good as gone. There was nothing for us to do. Our lives were more important, so we ran into the hillside. Another lady joined up with me and we helped each other as we walked through the steep and slippery terrain.

I cried out, suddenly realizing that Rela would surely go for the make-shift school.

The fastest but more importantly, most safest way was through the jungle. We ran, walked I was oblivious to the branches and thorns hitting me in the face, as I shielded my baby from it.

We stopped on the hill side, looking down at the school. My baby was sleeping, angelic looking as I wept at everything that was happening again. Would it never ever stop? The lady and I started crying as we thought of our children arrested as they were in school.

After all that I had gone through, I knew I would rather let myself be caught than my children be arrested again. When we reached the school, some of the adults met us and told us they had hidden our children. My children were safe. When they emerged from the jungle, I ran and fell on my knees, and hugged them and cried my lungs out. Our money was missing, but that was nothing compared to escaping Rela's arrest.

Hours later, my husband came back and we were told to move up higher into the jungle. Some leaders contacted UNHCR and asked for protection but there was no reply.

They also informed NGOs for help. At 12 midnight, when we thought that we would have to spend the rest of the night - or even some days or weeks in the deep jungle, our leaders told us that an NGO would come and transport us to their temporary shelter.

We stayed there for a month. I think we will always be running, as there are no places that are safe for refugees in Malaysia. As I feared, my baby wakes up crying in the night, as though she is startled.

The 18 days that I spent in the camp were indescribable. As a result of it, I'm very afraid of detention. I will think twice about moving about, but Rela can always come and raid this place at anytime. There's nowhere that we're safe.

We are now in the process of resettlement but until we are safe in a third Country, and until then, I pray that we are kept safe for one day after the next — until we leave Malaysia.

Refugee population in Malaysia, clustered in urban areas by ethnicity and religion, reside for its majority (almost 90%) in the Klang Valley (the wide area comprising the capital city and its suburbs), with the rest staying in the cities of Penang and Johor, respectively five hours north and south of Kuala Lumpur where the only UNHCR Branch Office is situated.

The complete lack of National policies towards refugees' reception and integration in the Country left UNHCR with the responsibility for every aspect of their protection, which, given the rise in the population of concern size in recent years, proved to be unsustainable.

The Office collaborates with various local associations to provide shelter, healthcare services, education to children and adequate employment for adults, but facing an unbearable situation, in 2009 the Agency chose a community-based approach. The new strategy tried to further decentralize the responsibility and share the burden through two different mechanisms of communities empowerment: a Community Development Unit (CDU) and a Social Protection Fund (SPF).

In the words of UNHCR *“the CDU engages in a variety of different activities, including home visits, focus group meetings, maintaining a dialogue with community leaders, associations and women, preparing regular Participatory Assessments with each of the different refugee communities and monitoring the messages received from them.”*²³¹

For instance, members from the CDU meet asylum seekers through a system of Mobile Information Hubs, to answer their doubts and issues during both weekdays and weekends. However, the main aim of the program is to build a skillful community leadership and a common vision through training and courses. These activities focus on eliminating or at least reduce the possibility of corruption and abuse among the community leaders, an essential prerequisite given their importance in the UNHCR community-based strategy.

Since 2011, UNHCR through its Social Protection Fund (SPF) supported refugees' associations by assessing their project proposals and founding the noteworthy ones, through direct money inflow, training and capacity building and follow-up assessments.

Refugees showed satisfaction for the program and truly benefited from its action being able to open bank accounts, find employment, establish make shift schools, in general rebuilding their life in the Host Country.

For instance, UNHCR has worked with a Chin community in Kuala Lumpur to fight the prejudice and the stereotype that pictures immigrants as disrespectful, loud, and dangerous persons. Refugees helped rebuild peaceful co-existence through a neighbor clean-up project and establishing night watches to curb the problem of drunkenness and fights.²³²

Another example are the 50 schools managed by the communities but founded and supported by the UN Office (beside the ones run by local NGOs and Churches). It provided

²³¹ See UN High Commissioner for Refugees (UNHCR), *But when will our turn come? A review of the implementation of UNHCR's urban refugee policy in Malaysia*, May 2012, p.36, available at: <http://www.unhcr.org/4faa1e6e9.html> [accessed 12 May 2014]

²³² See for example: UNHCR, *Refugee project seeks to sweep Malaysians off their feet*, April 4, 2013, available at: <http://www.unhcr.org/515d8bbb9.html> [accessed 12 May 2014]

books, teacher training, an income for refugees teachers and employed professional and high qualified volunteers through its Volunteer Program.

To protect the schools and students from raids and crackdown of the police the Agency issued letters of attestation in addition to uniforms and backpacks that clearly display the UNHCR logo²³³.

Healthcare too is provided by both local NGOs and community workers. For example, the problem of communication in hospitals has been solved in some cases by the presence of refugee nurses. For affordable medical treatment, two static clinics are run by the NGO ACTS (A Call To Serve) and the Taiwan Buddhist Tzu Chi Foundation and mobile clinics aims at helping refugees who are unable to reach the facilities²³⁴.

UNHCR trained some of the refugee themselves, who now help the Organization to reach all the others. Some others have been hired by Malaysian Care (a non-profit Christian social work Organization founded 35 years ago, in 1979) to provide counseling and support to other members of their communities.

The importance of transparent and efficient communities it is even clearer in the case of Refugee Status Determination (RSD). When the number of requests overcame the Office capacity, a community run “filter” proved to be effective, helping easing UNHCR role by submitting a list of members eligible for individual interviews. However, as the Branch Office pointed out in its 2010 year-end report: *“this partnership with refugee community organizations needs to be closely monitored, particularly when the integrity of the leadership of many of these organizations is questionable”*²³⁵.

UNHCR also has a second legal division beside the RSD one, which provides further protection to all vulnerable people under its mandate: the Outreach, Protection and Intervention unit (OPI).

OPI operates through walk-in interviews with claimants and manages issues ranging from the denial of wages from employers to extortions by authorities. Particularly important is the role of the unit in collaboration with NGOs when they reach out people of concern who have been arrested or are detained.

The team of lawyers as well as international interns intervene in a case of arrest or detention after a family member, a community association or the enforcement agencies alert them. For this purpose since 2005, a telephone hotline has been providing a faster, direct contact between refugees and the Office, from 8am to 11pm, seven days a week, running a service that has proven to be extremely useful over the years.

Moreover, since 2010, the unit collaborated with the authorities through trainings on human rights law, refugee law and in general on the role of the UN Agency on the territory²³⁶.

²³³ See *supra* note 231, UNHCR, p. 19 and 26

²³⁴ See *supra* note 231, UNHCR, p. 18;

See also: UNHCR, *Czech mission funds mobile health care project for refugees in Malaysia*, June 25, 2007, available at: <http://www.unhcr.org/467fc54b4.html> [accessed 12 May 2014]

²³⁵ See *supra* note 231, UNHCR, p. 22

²³⁶ See *supra* note 231, UNHCR, p. 19

CHAPTER IV A POSSIBLE SOLUTION

It has been shown how, in general, the life of a person who seeks refuge in Malaysia is trashed. Asylum seekers are not effectively granted the means to have their claims assessed in the first place. Those reached by UNHCR and registered with the Office are forced into a legal limbo, trapped between uncertain non-written agreements between the Agency and the government and violent crackdowns. The others, as illegal immigrants, face detention, humiliation, degrading treatment and deportation. When the system works, the expulsion is coordinated with their embassy and they are returned to their Countries of origin; when the mechanism fails, smugglers and human traffickers are in charge of their lives.

Surviving in Malaysia, beside the constant fear of being harassed and seeing their houses raided, proves to be difficult, sometimes inhuman. They are not allowed to lawfully seek employment but it is tolerated that they work in *low-visibility locations* in the informal sector of the “3D jobs” with the risk of ending up in the forced labour net. They can access the national healthcare system but not for free, and only Refugees holding UNHCR cards can get a 50% discount off the foreigners fee (yet often unaffordable), and enjoy access to public maternal and child health clinics.

Families are forbidden to live with dignity and assure a future to the children as no access to public schools is permitted and private education comes at high cost.

In this context, life in the community is the only option, highly separated from a population sometimes intolerant, most of the time indifferent about their condition. The communities leaders, NGOs and UNHCR staff role is vital for their survival, but refugees will never achieve and enjoy proper integration as long as the government keeps erecting a barrier between undocumented migrants and its people.

In Malaysia, UNHCR office is allowed to function, NGOs services are tolerated and Muslim refugees are more easily accepted than others, but always under a case-by-case policy and on humanitarian grounds, never engaging a wider human rights discourse. This system is largely inadequate.

The following paragraphs will try to propose a legal framework that could better serve asylum seekers, covering the different point of contacts between Malaysia and them, from status recognition procedures to post-recognition policies.

a. Status recognition

To have an idea on how last decade mass forced migrations negatively affected the efficiency of Refugee Status Determination mechanisms (RSD), it is useful to have a look at UNHCR 2012 Statistical Yearbook²³⁷.

UNHCR scope had to widen to cover a greater number of Countries, registering, between 2003 and 2012, some 900,000 individual asylum applications. Over the past ten years, the majority of applications registered with the Office were filed in Malaysia (197,600), followed by Kenya (191,100), Turkey (95,000), Egypt (50,600), and Jordan (32,800). These figures show that in that period the Federal State was one of the major Country of asylum and the principal field of work for the UN Agency, accounting for 21,95% of all applications worldwide²³⁸.

Facing an increase in the sheer number of applications in emergency-like situations in Countries that have no established legal framework for status recognition, UNHCR decision-making capacity experienced a drop in the latest years²³⁹.

In Malaysia, where asylum seekers waiting for their claims to be assessed do not live in physically and mentally safe conditions, the lack of efficiency of RSD procedures only contributes to make them more vulnerable. The number of UNHCR pending applications is correlated with the length of applicants' waiting period: a rise in the backlog leads to longer exposition to possible raids and harsher conditions, but in contrast, a decline in the former doesn't automatically mean an enhanced decision making efficiency.

To solve, or at least to reduce the impact of this problem, and keeping in mind the best interest of asylum seekers, Malaysian Government should consider implementing joint RSD procedures.

UNHCR involvement in Refugee Status Determination can vary from having no formal role such as in the United States, to be entirely responsible for the procedures as happens in Cambodia. However, given the stark difference in Total Recognition Rate (TRR) between UNHCR and States' procedures, the third way represented by jointly-conducted RSD (adopted for instance by Italy where the UN Agency has a role in almost every step of the status determination path), could best synthesize both States and asylum seekers' priorities.

²³⁷ United Nations High Commissioner for Refugees (UNHCR)., *Statistical Yearbook 2012*, available at: http://www.unhcr.org/static/statistical_yearbook/2012/2012-12_SYB12_FULLBOOK_low.zip [accessed 12 May 2014]

²³⁸ See *supra* note 237, UNHCR Statistical Yearbook, p.49

²³⁹ The decision-making capacity ratio decreased from 63% in 2010 to 47% in 2012. This ratio is calculated by dividing the total number of substantial decisions rendered (protection granted on the Convention grounds, complementary protection and rejected cases) by the total number of registered asylum claims. This is different from the Refugee Recognition Rate (RRR), which shows the proportion of persons granted refugee status on the total number of substantial decisions, and from the Total Recognition Rate (TRR), which divides the number of asylum-seekers granted Convention refugee status or a complementary protection by the total number of substantive decisions.

See *supra* note 237, UNHCR Statistical Yearbook

TABLE 6
TOTAL RECOGNITION RATES, 2003-2012 (%)

RESPONSIBLE FOR RSD	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
UNHCR	65.7	73.1	83.3	77.0	76.7	77.7	84.9	80.4	77.8	77.6
STATES	24.8	25.2	30.3	33.6	37.7	33.6	39.3	33.2	32.7	32.4
GLOBAL	27.3	28.7	36.1	38.5	44.5	40.3	46.5	38.5	37.5	37.4

Includes RSD conducted jointly by UNHCR and governments.
Data taken from UNHCR Statistical Yearbook 2012

In this aspect, the Italian case is interesting and worth considering as a parallel with Malaysian situation given its geographical role.

Historically, the Middle-East and North Africa (MENA) region underwent a similar path of domination by western powers which exploited their cultural and religious heterogenic composition to weaken and rule them. Upon independence those fractures have only been exacerbated by conventional borders cutting through pre-existing identity clusters. Ongoing crisis from Mali to Afghanistan, from Syria to Somalia push people to cross the Mediterranean Sea and seek refuge in Europe, where family members, friends and members of their diaspora already live, symbols of an immensely diverse and culturally entwined reality such as the Mediterranean basin.

Both Italy and Malaysia receive them by the thousands; they share a similar coastline length; they are both surrounded by Countries with no national asylum system²⁴⁰.

– At the State level

As hinted before, in Italy RSD procedures are conducted jointly with the help of UNHCR²⁴¹.

First of all, the Italian government recognizes three forms of protection: refugee status recognition on the Convention grounds, subsidiary protection and temporary protection on humanitarian grounds²⁴².

²⁴⁰ Malaysia and Italy's coastline length is respectively 9323 and 9226 kilometres. Data extracted from the World Resources Institute website, available at: [accessed 18 May 2014];

Among North-African States Morocco, Mauritania, Algeria and Tunisia expressed their interest in collaborating with UNHCR to build an effective legal framework for asylum seekers but along with Libya and Egypt they don't have any consistent national asylum procedures or institutions. In the Middle-East, only Israel and Turkey have ratified the Convention, and again no national protection system is available.

²⁴¹ For a comprehensive analysis of the Italian asylum system see: Asylum Information Database (AIDA), *National Country Report- Italy*, 2013, available at: http://cir-onlus.org/images/pdf/italy_aida_report_first_update_final_dec13.pdf [accessed 1 June 2014]]

²⁴² Subsidiary protection is defined in art.14 D.Lgs 251/07 (implementing the European Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted), which covers persons which might face severe harm upon return to their home Country

The procedure²⁴³, which is the same for every case, articulates in three phases: the access, for which the competent agents are Police officers in frontier offices and police stations; the status determination, carried out by Territorial Commissions; and the possible revocation or cessation of protection administered by the National Commissions for the Right of Asylum.

As for the first phase, the asylum seeker must be put in condition to present the claim at the moment of arrival, at the police stations of the place of his/her habitual residence but also in the controversial case of arrival by sea. In fact, when stopped or *saved* in international waters, the *de facto* jurisdiction over their boat carries the duty for the Navy officers to grant them the fundamental right to seek asylum²⁴⁴.

At the moment of the request filing, the officer provides informative documentation as for the incoming procedural *iter*, rights and duty of the applicant, and the address and contacts of UNHCR office and other institutions addressing international protection.

This points are particularly important for the fact that they recognize the right to seek asylum as inherently belonging to a person: they provide assistance regardless of his/her capability to ask for it, beyond the practical limitation in the access to a lawyer (which requires money) and of ignorance (meaning the lack of knowledge about his/her rights).

The law then establishes two mechanisms. According to the standard procedure (concerning claimants already in the Italian territory and with regular travel documents), the waiting period can last up to 35 days from the moment the police officer sends the documentation to the Territorial Commission (within 2 days since the applicant files his/her claim) to the day the Commission schedules the interview (within 30 days since it received the application), until it reaches a final decision (after maximum 3 days).

However, the asylum seeker is temporarily held in reception centres when he/she: (a) do not have any travel document or identity card or when these documents are fake; (b) when

or, in the case of Stateless persons, their habitual Country of residence. Severe harm includes: the sentencing or execution of death penalty; torture and other cruel, inhuman or degrading treatment or punishment; the danger originating from indiscriminate violence in case of civil or international conflict.

Protection on humanitarian grounds is granted under art. 20 D.Lgs 286/98 (and in D.Lgs 85/03) according to which the Prime Minister together with the Ministers of foreign and domestic affairs can grant temporary protection under exceptional circumstances, such as conflict or natural disasters. Moreover, art. 19 States that the expulsion or the push-back of an undocumented immigrant (except for the cases in which national security or public order could be severely disrupted) is forbidden towards: unaccompanied minors; foreigners up to the 4th degree of kinship with a Italian citizen or whose spouse is an Italian citizen; pregnant women or breast-feeding women up to six month from birth. In any case the principle of non-*refoulement* is absolute in case the person could be persecuted under discriminatory grounds in his/her Country of origin, the Country of habitual residence or to any third Country where he/she could be subjected to *refoulement*.

²⁴³ As defined in D.Lgs 25/08 which conforms Italian law to the European Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status.

²⁴⁴ See for example: *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, paragraph 76-82, available at: <http://www.refworld.org/docid/4f4507942.html> [accessed 22 May 2014]

stopped after having evaded frontier immigration checks; (c) when caught after having stayed irregularly in the National territory; or (d) when waiting for the enforcement of a push-back or deportation order.

The waiting period may vary from the necessary time to identify the person and in any case to maximum 20 days (case a), to the moment the territorial commission examines the claim, which might require up to 35 days (in the other cases). If no decision is made within these time frames the applicant is provided with a temporary residency permit valid for 30 days and renewable until the final verdict of the commission.

It is beyond the purpose of this paper to investigate all the practical weak points of Italian legislation but from a general point of view the first phase of this system could be applied, ameliorating it, to Malaysia²⁴⁵.

First of all, professional training should be provided for all the officers involved in the *iter*. The courses could be annual and organized by the Malaysian Human Rights Commission. Moreover, in critical places of first reception (frontier areas, airports, harbours, first assistance centres) should be granted UNHCR staff presence or at least established a fast and direct contact with the Office.

Reception facilities should not be considered as detention centres and asylum seekers shouldn't be *forcibly* confined save for the case in which the person is subject to an expulsion order because he/she committed a crime or because considered dangerous for public order or National security.

The reception system could be divided in first assistance centres and reception for asylum seekers centres. The former, established in frontier areas and near the main airports and harbours must be equipped to provide first aid and assistance as to the right to seek asylum, and consists in a structure of passage. The latter, as aforementioned, can hosts claimants waiting for their claim to be assessed by a Territorial Commission who could not find a better accommodation.

Beside the fact that those Government-run facilities could be paired with other non-State-actors-run reception centres (for example by local NGOs or minority communities), it is clear that the central government must guarantee an harmonization of the different hosting sites as to hygiene, nutrition and sanitation standards and granting access anytime to UNHCR staff, lawyers, friends and family members. Moreover, every structure must be equipped to satisfy special needs, for instance regarding pregnant women, breastfeeding mothers, the elderly, physically or mentally damaged persons and minors (which in no case can be separated from their parents or tutors).

The facilities should be officially reviewed every year by commissaries from the competent Ministries, and given the stressful and difficult job of workers and volunteers operating in these structures, their qualifications and skills must be carefully assessed.

²⁴⁵ For a recent review of the gaps to be filled in the Italian asylum system see: United Nations High Commissioner for Refugees (UNHCR), *UNHCR Recommendations On Important Aspects Of Refugee Protection In Italy*, July 2013, available at: <http://www.refworld.org/pdfid/522f0efe4.pdf> [accessed 1 June 2014]

As for asylum seekers' rights and duties in this phase, the Italian law²⁴⁶ while demanding collaboration with the authorities in every step of the procedure, grants access to the national healthcare system and, for minor asylum seekers and minor children of asylum seekers to the public scholastic system of any level. Moreover, if no decision is validated within 6 months from the application filing (when the delay is not caused by the applicant's actions), a six-month temporary residency permit is issued, which allows them to seek lawful employment until the procedure comes to an end.

On this aspect, Malaysia should extend access to the public healthcare system and instruction also to asylum seekers and allow them to find dependent employment under the temporary residency permit for asylum, with the duty to communicate any change in their residence.

In the second phase, singular interviews are held by the Territorial Commissions. In Malaysia, given the significantly higher number of asylum seekers' claims compared to Italy²⁴⁷, to grant the shortest waiting period possible more Commissions are needed²⁴⁸.

The States with the highest number of refugees Beside Selangor are Sabah, Sarawak, Penang and Johor, and these are the territorial entities that should host the Commissions, possibly up to 15 in total.

As to their four-member composition, UNHCR should be granted a seat, beside a magistrate as president, a representative of Malaysia Human Rights Commission Complaints, Monitoring and Inquiries Group (CMIG), and a Foreign Service officer. They should be subordinated to periodic professional training courses carried out by a National Commission for the Right of Asylum, and in any case their task should last up to three years after which it can be renovated.

The interview is carried out in the presence of members of the Commission and, if necessary, support staff (translator, psychologist, social worker, etc.) in the case of vulnerable persons and, if the applicant has it, a lawyer. The interview of the unaccompanied minor must be held in the presence of the tutor. Asylum seekers should be granted personal interviews with one or part of the members of the commission if they wish so, and can justify their decision²⁴⁹.

²⁴⁶ D.Lgs 140/05 implementing European Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, 2003

²⁴⁷ See for example the proportion between the two States at UNHCR Statistical Online Population Database: http://popstats.unhcr.org/PSQ_POC.aspx [accessed 20 May 2014]

²⁴⁸ There are 10 territorial Commissions in Italy, a highly inadequate number to provide quick and effective procedures.

²⁴⁹ For instance, this might be the case of a woman who suffered sexual or gender-based violence, who might find it easier and more comfortable to speak with another woman. This is even truer in the case of South-East Asia where rape victims blaming is common within ethnic communities and sexual harassment is culturally related to the relation and hierarchy between man and woman. This example shows the importance of cultural knowledge and open-mindedness for people working in the Commissions. See for example: Rachel Jewkes, Emma Fulu, Tim Roselli, Claudia Garcia-Moreno, on behalf of the UN Multi-Country Cross-sectional Study on Men and Violence research team, *Prevalence of and factors associated with non-partner rape perpetration: findings from the UN*

The final decision has to be taken by at least three out of the four members and in case of stalemate, the president's opinion prevails.

Concerning the procedures on which the assessment of the applicant's claim is based, reference has to be made to UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, as happened before under the CPA during the "boat people" crisis.

It is clear in this phase how the competence, experience, sensibility and pragmatism of the commission members is of paramount importance. In addition, any substantial difference in the decision capacity and in the expertise between the different judging panels must be reduced to almost a perfect parity through a coordinating action of a National Commission.

In regard to this aspect, before moving onto the revocation or cessation of the protection, it is useful to state the usefulness of a National Commission for the Right of Asylum. For instance, it could manage the continuous updating of a documentation center on the socio-economic policies of the Countries of origin of asylum seekers; or monitor forced migration flows in order to anticipate mass influx situations and propose the institution of new Territorial Commissions or first assistance and reception centers accordingly; as for the domestic situation, it could manage a digital database containing the necessary information to monitor the phenomenon of asylum in the Country; moreover, help identifying guidelines for the assessment of asylum applications; or cooperate in matters of competence, with other institutional bodies as well as with similar organizations of the member Countries of the ASEAN; finally, organize regular training and refresher courses for the members of the Territorial Commissions.

The National Commission should be competent as pertaining to the revocation and cessation of international protection and temporary protection on humanitarian grounds.

In Italy the Commission is headed by a magistrate and is made by other four persons coming from the Presidency of the Council of Ministers, the diplomatic service, the Department for Civil Liberties and Immigration and the Department of Public Security of the Ministry of the Interior. Their duty last for three years and is renewable. Any decision is validated by the affirmative vote of at least three components. In this case, UNHCR has an advisory role, attending the meetings but without the right to vote.

Translating this into the Malaysian context, the Commission could be composed by the same number of members but as follows: a magistrate heading the panel, a person coming from the diplomatic service, one from the Department of Immigration, one from the ministry of Home Affairs and a representative on UNHCR in Malaysia.

Multi-Country Cross-sectional Study on Men and Violence in Asia and the Pacific, The Lancet Global Health - 1 October 2013 (Vol. 1, Issue 4, Pages e208-e218), DOI: 10.1016/S2214-109X(13)70069-X, available at: <http://download.thelancet.com/pdfs/journals/langlo/PIIS2214109X1370069X.pdf?id=aaaaKmSHV0hTW4fxtMGyu> [accessed 20 May 2014]

The procedure should follow the guidelines established by UNHCR in their handbook on cessation clauses²⁵⁰.

The asylum seeker must have the right to appeal against any decision of both the Territorial and the National Commissions and to be assisted by a lawyer in doing so.

The Italian law²⁵¹ prescribes three status of litigation, in which the Court of First Instance and the Court of Appeal may decide on the merit, while the Supreme Court can decide only on matters of law.

An applicant who has received a total or partial refusal by the Territorial Commission or a revocation or cessation decision by the National Commission may file legal action before an ordinary court. Territorial competence for the matter is conferred to the Single-Judge Court of First Instance of the capital of the District where the headquarters of the Territorial Commission or in which the center in which it is received or retained the applicant are situated. The deadline to file the appeal may vary from 15 to 30 days from the notification of the decision. This period is lifted to 60 days when the applicant resides abroad and the action can be filed through an Italian diplomatic or consular representation.

The appeal suspends the effectiveness of an expulsion measure, but this happens only in the case of a positive decision by the Commission (which the applicant does not consider adequate) when the asylum seeker did not file its first claim after having been caught as staying irregularly in the territory or when he/she tried to avoid frontier immigration controls. For all the other cases, since the deferring effect is not automatic, it depends on a specific decision by the judge at the request of the parties or where there is an imminent threat of serious and irreparable harm for the claimant.

In case the suspension condition are met, the applicant is issued a temporary residency permit for asylum.

A polished version of this mechanism should grant the same procedure (as for the number of appeals and the issuing of the temporary permit) but with the automatic suspension clause for every case, with the only difference of treatment between a claimant who is appealing against a positive decision and a claimant questioning the rejection of his claim or the decision on revocation or cessation of protection. Only the latter should be held in the reception centres provided he/she is allowed to work during the day (or attend school).

In Italy, during this judicial phase, UNHCR does not directly participate in litigation but in recent years has increased contacts with the Italian judiciary by promoting discussion forums on international protection in the courts and has organized seminars for judges of local courts, with the support of the Superior Council of Magistracy (CSM). This collaboration is

²⁵⁰ UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), 10 February 2003, available at: <http://www.refworld.org/docid/3e50de6b4.html> [accessed 22 May 2014]

²⁵¹ D.Lgs 150/11, art. 19

the base for an appropriate and efficient legal framework which should evolve at the same pace as forced migration patterns.

Malaysia should follow the same path, with initiatives led by the Human Rights Commission also aimed at the creation of a network for the exchange of information on Countries of origin, on national and international law and further training initiatives for the progressive specialization of the judiciary apparatus.

– At the regional level

Since the patterns of forced migrations involve at least two States, extending the national procedures for granting the *basic* right to seek asylum to the Country of origin or, in case this proves to be difficult or impossible, to the Country/ies of passage, through diplomatic outposts and based on bilateral agreements can be an option. However, this system must have the sole aim of reducing the pressure on reception centres in the State's territory but by no means has to restrict their right to seek asylum. Two examples, in the Mediterranean and South-East Asia regions show the precarious equilibrium of this choice.

During the hearings at Grand Chamber of the of the European Court of Human Rights for the case *Hirsi Jamaa and Others v. Italy* on 22 June 2011, the Italian Government justified the push-back to Libya of immigrants (from Somalia and Eritrea) on the high seas on the fact that the two Countries had an agreement to manage illegal immigration, forgetting the fact that Colonel Muammar Gaddafi's regime was not a signatory to the 1951 Convention. The Italian government renovated the agreement after his fall, with a Country torn by ongoing internal conflict, without any capacity to grant the right to seek asylum.

Brought back to Libya, immigrants faced deportation to their home Countries or ill treatment in Libyan detention centers, for which reasons Italy has been condemned on the basis of article 3 of the European Convention on Human Rights, given that its collective expulsion of aliens represented a breach of the principle of *non-refoulements*²⁵².

Australia tried to beat the same path when on July 2011 signed an agreement with Malaysia according to which the next 800 asylum seekers intercepted on the sea would have been sent to Malaysia where they could file their claims. In turn, 4,000 refugees already certified by UNHCR could have been resettled in the Island (1,000 every year). The policy was then brought to the High Court of Australia by refugee lawyer David Manne which sentenced as follows: "*If Australia decides not to process claimants to refugee status onshore, it must tell the other States who are parties to the Refugees Convention that it will process claimants offshore in places where the same standards apply. The same standards include not only the right of non-refoulement pursuant to Art 33 but many other rights such as what were described as "basic survival and dignity rights, including rights to property, work and access to a social*

²⁵² See supra note 244, *Hirsi Jamaa and Others v. Italy*;

See also: Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, available at: <http://www.refworld.org/docid/3ae6b3b04.html> [accessed 22 May 2014]

safety net", rights not to be discriminated against, and rights to be guaranteed religious freedom. It followed that the Minister had to be sure as a matter of fact that Malaysia was complying with all those standards²⁵³". This was not the case and the policy was ruled out.

A much more useful cooperation could arise under the umbrella of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the South East Asia National Human Rights Institutions Forum (SEANF). This institution gathers the six existing National Human Rights Commissions in South East Asia²⁵⁴ and both should play a more crucial role in harmonizing human rights provisions throughout the region.

In the specific case of the first reception of asylum seekers and of status recognition policies, two examples coming from the European Union could be taken as a starting point: the Operation "*Mare Nostrum*" and Directive 2011/95/EU on "*standards for the qualification of third-Country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*".

Starting from the latter, a similar approach within the AICHR or even limited in the form of a discussion forum within the SEANF, could help reducing the movement of applicants for international protection only to specific ASEAN States, in cases where such movements are purely caused by differences in legal frameworks. Therefore reflecting the responsibility and burden-share attitude showed during the Indochina crisis.

On more practical and humanitarian grounds the operation "*Mare Nostrum*" has been set up in the southern Mediterranean Sea to ensure the safety for immigrants escaping by sea, and to bring to justice those who profit from their smuggling. However, the effectiveness of this operation can be assured only by curbing its potential shortcomings:

- Top priority must be given to immigrants' physical and mental conditions, establishing first aid post on the vessels;
- Good coordination between ship captains and local authorities and organizations in charge of reception is needed to avoid those cases in which they are notified of arrivals with very short notice (a few hours), and with little information about the number of people in need of assistance;
- On board, the crew should be integrated with a member of UNHCR and cultural-linguistic mediators (CLM).

Founding should be shared by the Nations participating to the program, and a common fund could be established under the AICHR.

²⁵³ See: Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship, [2011] HCA 32, High Court of Australia, 31 August 2011, paragraph 157, available at: <http://www.austlii.edu.au/au/cases/cth/HCA/2011/32.html> [accessed 20 May 2014]

²⁵⁴ *Suruhanjaya Hak Asasi Manusia* (SUHAKAM) of Malaysia; *Komisi Nasional Hak Asasi Manusia* (Komnas HAM) of Indonesia; Myanmar National Human Rights Commission (MNHRC); Commission on Human Rights of the Philippines (CHRP); National Human Rights Commission of Thailand (NHRCT); and, *Provedor de Direitos Humanos e Justica* (PDHJ) of Timor Leste

Beside that, the Organization could also act in a similar way as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), with regard to (and adapting it to the specific case of asylum seekers) assisting Member States in the training of immigration officers; and developing a common database with information about the control and surveillance of external borders.

b. Post-recognition policies

The Territorial Commission may adopt one of the following decisions: a) recognizes the status of refugee; b) grants subsidiary protection; c) rejects the application but, on humanitarian grounds, allows the issuance of a temporary permit for humanitarian reasons; d) rejects the application because it does not satisfy the requirements for granting international protection or because it meets the exclusion clauses; e) declares the inadmissibility of the application for manifest groundlessness.

In the first three cases it is important that the host Country ensures an adequate standard of living to the person it is protecting. Moreover, as mentioned before, an applicant should be granted similar treatment during its temporary permanence on the territory while waiting for the end of a litigation process against a commission's decision as well²⁵⁵.

This measures, beside the mere fact of respect for human dignity, represent the foundations of a long-term solution towards integration.

– Integration²⁵⁶

In general, the recognition of refugee status should lead to the issuing of a residency permit that lasts five years and entitles the person with the same rights and duties of a citizen of the host Country. The same degree of protection should be applied to asylum seekers granted subsidiary protection with the sole difference of duration, reduced to three years. As for temporary protection for humanitarian reasons the permit should last one year and carry some limitations compared to the other two.

The residency permits should be renewable after the positive opinion of the Territorial Commission that assessed the claim, upon verification of the existence of the conditions that led to the recognition of refugee status, subsidiary or temporary protection.

²⁵⁵ In Europe this aspect is regulated (laying down only minimum standards and leaving the Member States free to apply better conditions) by Directive 2013/33/UE of June 26, 2013.

²⁵⁶ A comprehensive analysis of refugees' integration policies in Europe, which served as source for the information contained in this paragraph, has been concluded and published in September 2013 by UNHCR. The report, founded by the European Union and carried out under the UN Office Refugee Integration Capacity and Evaluation project (RICE), examines the development of policies for the integration of refugees, to highlight the integration indicators already used and to highlight the barriers and facilitators that influence their outcomes. See: United Nations High Commissioner for Refugees (UNHCR), *A New Beginning: Refugee Integration in Europe*, September 11, 2013, available at: <http://www.integrazionemigranti.gov.it/archiviodocumenti/protezione-internazionale/Documents/a%20new%20beginning%20unhcr.pdf> [accessed 26 May 2014]

Moving on to specific rights, family unity, health, employment, education and social protection, deserve further clarification.

Family separation affects the everyday life of a person already put in the dire situation of rebuilding his/her life, impacting on the refugee physical and emotional health. In effect, family reunification is often the top priority for forcibly displaced upon receiving refugee status, and it is recognized as a fundamental right of the person²⁵⁷.

In the Italian legal framework, family reunification is covered by the *Testo Unico sull' Immigrazione* in Title IV (Articles 28-32), as amended by Legislative Decree 5/2007.

The legislation applies in general to all foreigners with valid residency permit but provides more favourable conditions for refugees. Unlike other migrants and beneficiaries of subsidiary protection, refugees are not required to demonstrate the availability of an income and adequate housing.

Moreover, refugees can demonstrate the blood bond through other means of proof when official certificates are not available. This more favourable treatment is also applied to those granted subsidiary protection. However, people that obtained temporary protection for humanitarian reasons are not entitled with this right.

In an ideal Malaysian system, family reunification should be granted to any vulnerable person, but keeping the income and housing requirement for the temporary protection case.

Refugees should be able to reunite with:

- The spouse of age;
- Minor children (including the spouse's ones or children born out of wedlock) not married. Provided that the other parent, if alive, has given his consent;
- Adult disable dependent children;
- Dependent parents if they have no other children in the Country of origin or provenance;
- Parents over 65 years of age when other children are unable to support them for documented severe health reasons.

The same right but limited to the first three cases should be granted to persons with residency permit for subsidiary or temporary protection. This distinction reflects the different typology of danger (time wise) asylum seekers face and (persecution wise) their family members could be subjected to in the Country of origin.

As to the right to work, refugees or persons enjoying subsidiary protection should be granted access to employment, public employment, self-employment, enrolment to obtain professional certificates, to professional training and to apprenticeship in the workplace, under

²⁵⁷ The principle is enshrined at the universal level in the Human Rights Bill: in the Universal Declaration of Human Rights of 1948 (art. 16, para 3); in the International Covenant on Civil and Political Rights 1966 (art. 23, paragraph 1); and the International Covenant on Economic, social and Cultural Rights 1966 (Article 10 paragraph 1). In addition, most of the international human rights instruments contain provisions for the protection of the family unit.

the same terms as citizens. The third category should be able to seek employment and self-employment as well.

Health is both a barrier and facilitator to integration, and of course the first source of concern for asylum seekers throughout their odyssey, from the safety of their family members during the travel, to the precarious waiting period after the claim, until the psychological distress caused by the uncertainty over their future, which can be summed up with the question: will I be able to provide for my family?

People granted international and temporary protection should *all* be granted access to the National healthcare system at the same conditions as citizens, with no limitation of any kind.

In 2009, the Special Rapporteur on the Right to Education recommended that Malaysia granted all children on the State territory the access to the public education system at the same conditions as locals, therefore including: refugee children, asylum seekers, stateless children, children of (legal and illegal) migrant workers, and street children²⁵⁸.

The right to enjoy education in the host State does not only include the standard school system but also professional courses and culture/languages classes for adults. This reflects the importance of education to achieve real integration, but it is a system that requires an effort on both sides. Education should not mean cultural assimilation but understanding and tolerance. A society that do not teach the importance of active tolerance will be able to accept, tolerate but not respect a refugee even if he/she speaks the same language or behave like a local. The law would remain effective only on paper, without any actual legitimization.

Given that, it is clear how the third society could help. Communities and NGOs should be facilitated in organizing cultural events in public places to display minorities' culture (through festivals, meetings, film screenings, etc.) and fund raising activities to run training courses. For bigger projects concerning instruction, medical care, job recruitment, housing, it should be instituted a common fund which NGOs and CSOs could draw from, provided that their projects are assessed and approved. Or alternatively, the Government could better support UNHCR and leave to the UN Agency the coordinating role.

In addition, at the State level, if local governments provide social protection services to Malaysian citizens such as family allowances, maternity benefits, social security checks or invalidity benefits, the same should be granted to refugees and persons under subsidiary protection.

All this measures lead to the ultimate goal of integration which is to allow the immigrant who is willing to actively live in the Country to achieve full citizenship.

Under Part III of Malaysian Constitution, a person can obtain Malaysian citizenship either by registration or by naturalization. Asylum seekers, refugees, and subsidiary and temporary protection recipients fall under the latter mechanism. Article 19 States:

²⁵⁸ UN Human Rights Council, *Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia*, 20 March 2009, available at: <http://www.refworld.org/docid/49f06efd2.html> [accessed 26 May 2014]

“[...] the Federal Government may, in such special circumstances as it thinks fit, upon application made by any person of or over the age of twenty-one years who is not a citizen, grant a certificate of naturalisation to that person if satisfied-

(a) that he has resided in the Federation for the required periods and intends, if the certificate is granted, to do so permanently;

(b) that he is of good character; and

(c) that he has an adequate knowledge of the Malay language.

(3) The periods of residence in the Federation or the relevant part of it which are required for the grant of a certificate of naturalisation are periods which amount in the aggregate to not less than ten years in the twelve years immediately preceding the date of the application for the certificate, and which included the twelve months immediately preceding that date.”

It is unlikely that the Constitution could be changed to allow recognized refugees to be naturalized in half the time required for any other foreigner. However, asylum seekers who have been entitled with international protection should be granted permanent residency status after five years of residency and therefore be able to:

- Stay and remain in Malaysia without any time limit;
- Be exempted from all Visa and Immigration requirements to enter and exit Malaysia.

This approach might be more realistic but would have some limitations since under the current law (Immigration Act and Regulations 1959/63) the person would be excluded from involvement in any Political Party and Association, and could be subject to revocation at any time if deemed necessary by the Government.

However a child born stateless in Malaysia (as is the case for many asylum seekers children) should be granted citizenship automatically. As stated in article 14 of the Federal Constitution, but constantly proving difficult to apply²⁵⁹, is to be considered Malaysian by operation of law:

“(e) every person born within the Federation who is not born a citizen of any Country otherwise than by virtue of this paragraph.

²⁵⁹ Jennifer Gomez, *When will Putrajaya take notice of the plight of Stateless children, ask activists*, *The Malaysian Insider*, February 23, 2014, available at: <http://www.themalaysianinsider.com/malaysia/article/when-will-putrajaya-take-notice-of-the-plight-of-Stateless-children-ask-act> [accessed 26 May 2014]

– Voluntary repatriation and resettlement

As already analysed in this paper, article 1, paragraph C of the 1951 Convention covers the cessation clauses to refugee protection and the same *ratio* applies to subsidiary and temporary protection. However, in the best interest of the person, it is needed close cooperation with the embassy and operators of the Country of origin in order to avoid any “inconveniences” (it has been shown how the human traffickers exploited the lack of adequate controls during deportation phases), and the monitoring of the situation in the home Country both before and after the return. Especially in the last phase the role of UNHCR towards “returnees” has proved to be fundamental in the past, and National support for its operations in the region is undoubtedly needed.

Resettlement proved to be the best solution 25 years ago, under the CPA, but in the current context and within a new National asylum system its scope has to be revised.

In Europe, a regional system such as the Dublin Regulation (in its last version of June 2013, known as Dublin III) is still not able to grant freedom of relocation to where asylum seekers already have members of their families, friends or their ethnic or religious communities. On the other hand, a bilateral agreement as the “Malaysian Solution” adopted by Australia has proved to be against the best interests of forced migrants.

There might be a third way: a regional system based on labour demand by other States in South-East Asia, connected to Malaysia through MOUs, could prove the base for resettlement within the region and beyond.

Upon their status determination, if granted a form of international protection, asylum seekers should be informed about the durable solutions (local integration or resettlement to a third Country) available to them. To prevent any kind of abuse, the process should be subordinated to the control of a third actor such as the UNHCR, the International Labour Organization, or (but limited to South-East Asia) a specific office under the ASEAN Intergovernmental Commission on Human Rights.

Countries participating in this system would provide information about the sectors, industries and companies in need of migrant labour and a system of quotas could be established. This “placement” mechanism must be transparent, offer no opportunity for collusion among the operators and could be subjected to the control of a corruption commission.

Persons entitled with international protection in Malaysia would be able to move or work in a third Country where their status will be recognized, within these quotas and with priority given to family reunification and communities clusters (united by language, ethnic or religious ties) for unaccompanied minors or the physically or mentally disabled.

It is clear that since the whole system is structured to provide the best solution to people who are forced to start again in a foreign land, resettlement must stay within certain boundaries: minimum standards of living have to prove no worse than the ones found in first Country of asylum (in this case Malaysia), and by no mean shall a person be relocated against his/her will.

To ensure that this two requirements are met, information about the member States must be free to flow through the different levels of the system: from the panel that could assess the

quality of the reception site and working place, to the persons in charge of informing asylum seekers through info points.

c. Conclusion

Malaysia is a multifaceted reality, with a colonial past and a history of tolerance within his multi-ethnic society, born as a symbol of pluralism in a conflict-torn region.

Colonialism, the Second World War, decolonization, and the cold war left South-East Asian States with the task of building a Nation upon a fragmented territory. David versus Goliath. Violence originated from the effort of unexperienced ruling elites to administrate vastly different ethnic and religious groups. They politicized the differences, divided the society into categories and entitled them to different rights to gain support.

Poverty came as a consequence. In a world where globalization unites people on economical rather than ethical grounds, those who have the means for exploitation gain better access to the territories rich in human and natural resources. Violence, poverty, lack of education, and a weak State apparatus in developing Countries contributed to provide the system with an unlimited workforce basin where to draw from.

Stateless and refugees are among the most vulnerable groups in South-East Asian societies, as they are not allowed to enjoy any kind of protection from their own Government nor from the nearest Countries where they try to flee to. Where the State failed, criminals stepped in, and a network of corrupted State officials, employment agencies, smugglers and human traffickers has been allowed to flourish.

The aim of this paper, first and foremost, was to show how stark is the difference between the ideal system pictured by the international instruments that regulate refugee protection, and the reality of millions of people whose dignity is trashed in their hour of need.

The enormous gap between a legal system (which is necessarily objective and rigid) and its enforcement (which is dynamic and can contribute to evolve it), shows how the biggest effort should be put into education and professional training.

There is a qualitative difference between tolerance and understanding, between cooperation and sharing, between assimilation and integration. The most effective and efficient asylum system in Malaysia will need to be supported by legitimization at every level, from the persons in charge of the Malaysian Human Rights Commission to the students sharing their desks with non-national classmates. If the principle of refugee protection has to be imposed, then it lacks the legitimacy it needs to be effective.

It is telling that Malaysia collaborated and collaborates with UNHCR even though it does not have any established asylum system, and even more telling is the fact that although forbidding by law human trafficking, such activity is still so common.

Education, freedom of information and political participation are the only means Malaysian society needs (but now lacks) to challenge the fateful opinion that immigration is a matter of national security.

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