RESEARCH REPORT

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MARITIME PEOPLE SMUGGLING AND ITS INTERSECTION WITH HUMAN TRAFFICKING IN SOUTH AND SOUTH EAST ASIA

Trends and issues

BODEAN HEDWARDS | LUCIA BIRD | PERKHA TRAXL

MARCH 2023

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Cover: An Indonesian policeman monitors migrants from Sri Lanka aboard a boat off the coast of Banda Aceh. © *Chaideer Mahyuddin/AFP via Getty Images*
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CONTENTS

EXECUTIVE SUMMARY

Rescuers search amid the wreckage of a partly submerged people smuggler's boat off the coast of Java, Indonesia.

Although data on maritime migration is limited, it is well established that it is the most dangerous form of irregular migration; globally, thousands of people die at sea each year. The International Organization for Migration (IOM) reported that, between 2014 and 2018, over 30 000 people died while attempting to irregularly migrate, and 19 000 of these deaths were recorded as drownings in the Mediterranean Sea, the Rio Grande and the Bay of Bengal, among others.[1] In recent years, maritime irregular migration has claimed even more lives across a range of routes. In the first half of 2021, the number of fatalities on the Mediterranean increased by 130 per cent compared to 2020.[2] Across the same time period, fatalities increased by 500 per cent on the Atlantic route to the Canary Islands.[3] Yet, with an estimated two thirds of deaths at sea going unreported, these figures are a dramatic undercount.[4]

According to the United Nations High Commissioner for Refugees (UNHCR), in South East Asia one in every 69 people who embarked on a maritime migration journey lost their life or went missing at sea in 2018/19.[5] Sea journeys in the Bay of Bengal undertaken in 2020 were over eight times deadlier than those undertaken in 2019, and the deadliest then on record.[6] Reflecting this, in 2020/21, 218 people who embarked on a maritime smuggling journey across the Bay of Bengal and the Andaman Sea died or went missing at sea.[7] The dangers that underpin this significant number of deaths are in large part due to the use of unseaworthy vessels, insufficient supplies, violence at the hands of smugglers and, as is being increasingly reported in the wake of the COVID-19 pandemic, the inability to disembark safely.[8]

This report analyzes recent trends in maritime people smuggling from South and South East Asia on journeys towards Asia-Pacific, focusing on four case study countries: Indonesia, Malaysia, India and Sri Lanka. These were chosen to provide a cross-section of source, transit and destination countries in the region, with Sri Lanka and Indonesia being well-established departure countries toward Oceania. The paper considers key trends, the impact of the COVID-19 pandemic and intersections with human trafficking. It is important to note that maritime migration does not occur in isolation but typically forms part of what is usually a longer migration journey that involves land border crossings as well as air routes.

The inaccessibility of regular travel pathways within and outside of South and South East Asia drives the proliferation of a burgeoning people-smuggling economy.[9] This inaccessibility means that the irregularity of the migration can occur in a myriad of ways: by purposefully crossing a national border without authorization, crossing without authorization unknowingly, and entering a country with authorization but becoming irregular afterwards (e.g. when a visa expires). It is the irregularity of their migration journey, and often their status upon arrival at a destination, that makes migrants and refugees particularly vulnerable to exploitation and trafficking.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC), defines the smuggling of migrants as 'the procurement, in order to obtain, directly or indirectly, financial or other material benefits, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'.[10] This often involves a series of associated criminal acts, including the production of fraudulent documents that enable border crossings, corruption, bribery and money laundering. Although the majority of smuggler–client relationships end once the journey is complete, in some cases migrants are sold or transferred on for the purposes of exploitation, creating a complex intersection of people smuggling and human trafficking.

Yet the distinction between people smuggling and human trafficking is key to underscore. Human trafficking consists of three elements: (i) an 'action', being recruitment, transportation, transfer, harbouring or receipt of persons; (ii) a 'means' by which that action is achieved (threat or use of force, or other forms of coercion, e.g. abduction, fraud, deception, abuse of power or a position of vulnerability) and the giving or receiving of payments or benefits to achieve consent; and (iii) a 'purpose' – namely, to exploit.[11] Although human smuggling and trafficking are defined as separate phenomena, in practice they are widely recognized as existing on a continuum, with migrants moving between dynamics that have characteristics of each while on a single trip. However, the elements of each crime differ, as do the policy responses required to meet them. This report focuses on maritime people smuggling, but also considers where these dynamics can evolve into trafficking contexts.

The smuggling of migrants in South and South East Asia is shaped by a history of cross-border labour migration. At the same time, the Australian response to maritime migration has played an important role in shaping these migrant flows since the late 1990s. While in the past there were significant irregular maritime migration flows from South and South East Asia toward Australia and the Pacific, Australian policy such as the government's 2001 Pacific Solution and its contemporary, the 2013 Operation Sovereign Borders (or the Pacific Solution Mark II),[12] has to a significant extent closed off the maritime pathways to Australia. These policies are characterized in large part by the turning back of asylum-seeker boats and the offshore detention regime for those attempting to reach Australia by boat.[13] While Operation Sovereign Borders has drastically reduced the number of unlawful maritime arrivals to Australian shores or waters, critics argue that departures from across the region never actually stopped. Where this report refers to Australian maritime routes being closed, it refers to the inability for irregular migrants to settle in Australia if they arrive by boat.

In addition to labour migration, irregular maritime migration in South and South East Asia has been driven by wars, conflict and persecution. Since the first decade of this millennium, the dangers of irregular migration in the region were brought to the forefront of political discourse as thousands of largely Rohingya refugees and asylum seekers fled increasing violence in Myanmar. Media coverage of Rohingya refugees fleeing via the Bay of Bengal culminated

in May 2015, when it was reported that thousands of Rohingya and Bengali migrants were stranded at sea after having been pushed back by Thai, Indonesian and Malaysian authorities.[14] In 2015, the fatality rate among migrants along the Andaman Sea was reportedly three times higher than in the Mediterranean Sea.[15]

The combination of ongoing conflict, high demand for unskilled labour and increasingly securitized borders has meant that demand for people-smuggling services across the region remains significant, exacerbated since 2020 by the COVID-19 pandemic. Sri Lanka's 2022 economic collapse has driven a surge in demand for maritime-smuggling services, disrupted pre-existing flows from India and driven a slight reopening of maritime routes towards Asia-Pacific.

This report examines these trends in the smuggling of migrants across maritime pathways in South and South East Asia, with a particular focus on journeys towards the Asia-Pacific region. The paper provides insight into the conditions that compel migrants to choose people smuggling – and particularly maritime smuggling – as a means of migration and details the reasons that influence migrants' decisions in relation to destination and migration routes. It explores the factors that make irregular migrants vulnerable to trafficking during their journey and examines the nature of maritime people-smuggling models and operations around the region, looking at, among other factors, recruitment, payment, and border crossing and immigration arrangements.

Finally, drawing on what is known about people-smuggling dynamics and experiences across South and South East Asia, the report explores emerging responses identified during interviews that are thought to be having an impact on the various intersections of people smuggling and human trafficking.

Methodology

Research for the report drew on a mixed methodology approach that collated existing knowledge and data on maritime people smuggling in South and South East Asia, with a focus on movements towards the Indo-Pacific, to advise our understanding of the contemporary issues and inform insights into emerging trends. The methodology included four key components: a review of academic and grey literature collected through public and academic databases; a secondary thematic analysis of primary qualitative data to ensure that the research and findings centred on the experience of irregular migrants; key stakeholder interviews with experts across the region, such as officials from international organizations, academics, local NGOs and civil society organizations, together with some government representatives in the region;[16] and a discourse analysis of social media. Interviews took place between June 2021 and January 2022, with a supplementary literature review conducted in June 2022.

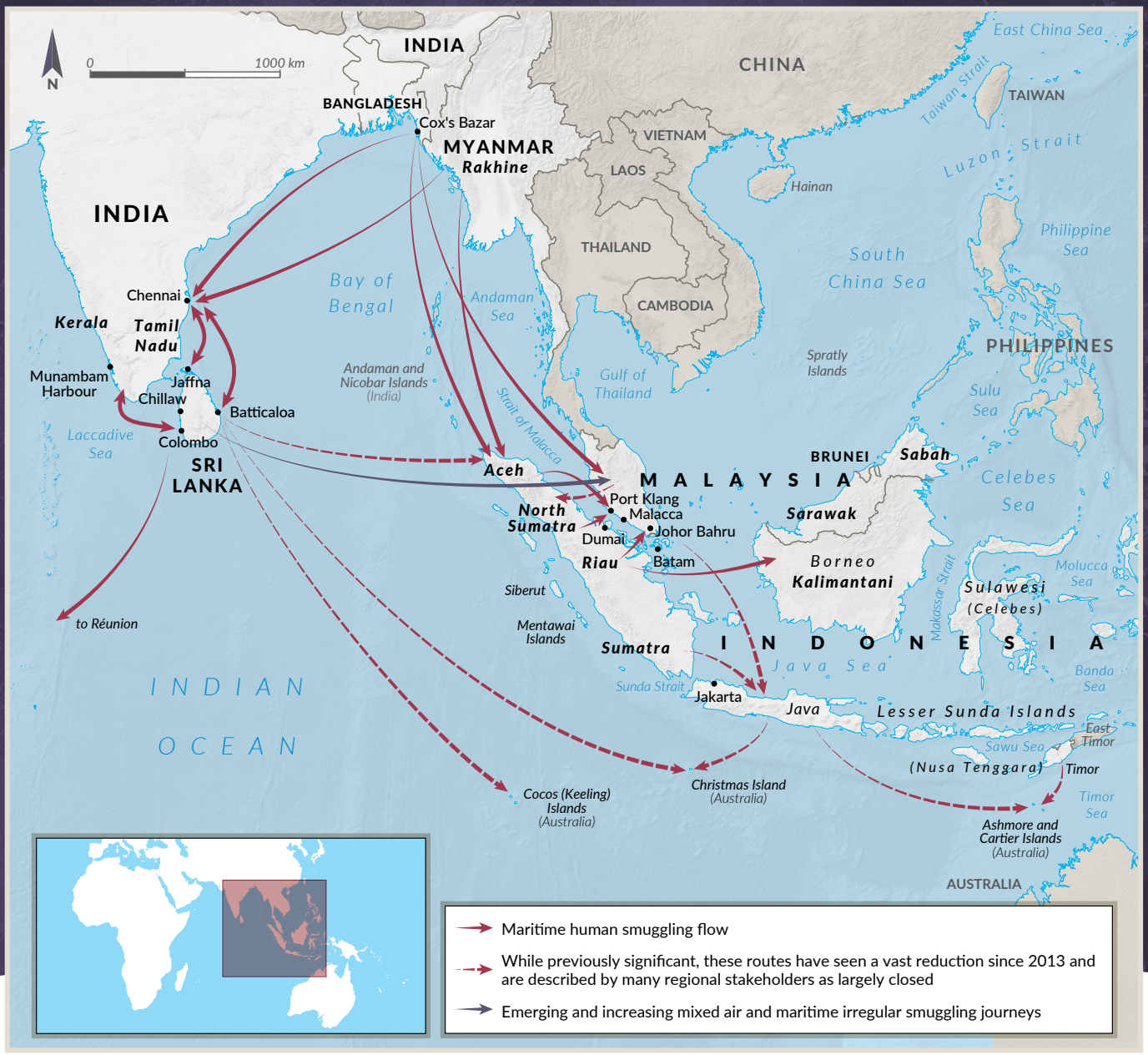


FIGURE 1 Key regional trends in irregular maritime migration.

Key findings

Sri Lanka's economic collapse in 2022 has driven a surge in irregular maritime emigration

Since Sri Lanka defaulted on its foreign debt in May 2022, the economy has plunged into steep decline. In turn, this has triggered a spike in attempts to leave Sri Lanka irregularly, including via maritime routes. Interceptions of irregular maritime journeys seeking to leave Sri Lanka spiked in 2022, with numbers apprehended far exceeding previous levels. An increase in demand for smuggling services, together with economic pressures on fishing communities arising from fuel shortages and eye-watering price hikes, drove many fishing families to provide smuggling services instead. Prices surged in line with demand increases. Boats departing Sri Lanka in 2022 were reportedly seeking to reach either India or Australia, and drove a slight reopening of maritime routes towards the Asia-Pacific region.

There was a perceived decline in maritime people smuggling and migration in the region between 2015 and 2022

Although reliable data on the scale of irregular maritime migration is limited, interviews broadly suggested that there has been an overall decline in maritime migration within the region and towards Oceania.[17] The reasons for this decline are two-fold. First, the closing of the Australian borders to asylum seekers under Operation Sovereign Borders, an Australian government military-led border security operation established in 2013, which involves turning back unauthorized arrivals to their point of departure or home country, or transferring them to a third country.[18] Those unable to return home are placed in immigration detention, a programme that has involved the island nations of Nauru and Christmas Island. This policy was accompanied by an international communications campaign that sought to ensure that potential migrants in key source countries knew that they would not be able to settle in Australia if they arrived by boat. The campaign was spread widely throughout the region, becoming what was described in some interviews as an 'effective deterrent' for potential migrants seeking to travel to Australia by boat.

The second reason for the decline in maritime migration in the region is the democratization of air travel, which has facilitated the use of safer air routes among migrants or refugees able to afford such journeys. Although the inability to access formal travel documents acts to some degree as a barrier to air travel, it has also created growing markets in the provision of fraudulent travel documents. Not all groups have experienced increased access to air travel; for example, the Rohingya refugee population are less likely to use such routes and continue moving predominantly by land and sea.

Discrepancies exist between the criminalization of smuggling in law and the legitimacy of smuggling among 'agents' and communities

As is well established in the literature, there are different perceptions about what constitutes people smuggling and, more specifically, a limited understanding of the legal concept of the issue. In South and South East Asia, people smuggling is largely criminalized by all countries in the region, yet many communities do not see what they are doing as criminal. Irregular migrants and 'agents' (the word commonly used in the region to describe those who arrange the journey) perceive the facilitation of irregular migration journeys as simply helping people. In many cases, 'agents' who would be legally considered people smugglers have multiple forms of employment and only facilitate irregular migration journeys upon demand.

Migrant smuggling and human trafficking are often conflated

Despite well-established international definitions of human trafficking and the smuggling of migrants, the two issues are often conflated in public and political discourses and associated criminal justice responses. This is in large part due to the fact that victims of trafficking and smuggled migrants often use similar irregular migration routes and services, but it is also symptomatic of the risks associated with trafficking during the irregular migration process.[19] Furthermore, human trafficking is by far a greater focus than people smuggling for regional civil society, with the latter often considered through a trafficking lens.

Some smuggling journeys result in contexts of trafficking

Interviews reinforced a long-standing narrative across the region that migrants seeking to be smuggled are being trafficked into situations of forced labour and debt bondage abroad. Many migrants and refugees continue to be indebted to their smugglers following completion of the journey.

COVID-19 has shaped maritime people-smuggling services and experiences, and made maritime journeys more dangerous

While interviewees unanimously pointed to the impacts of COVID-19 on maritime people smuggling, they raised two distinct theories regarding the nature of the impact. The majority of stakeholders suggested that damage to livelihoods due to lockdowns and travel restrictions would be a probable driver of

increased migration for labour in the short to medium term. This emigration was envisaged to be largely irregular due to the enhanced border controls associated with COVID-19. This context was also thought to increase the need for people smugglers.

A smaller group of stakeholders suggested that there may also be a decline in the number of potential migrants, given it was such a challenge to get home after they lost their jobs at the outbreak of the pandemic. All felt that demand for smugglers would remain stable or increase, with some interviewees noting the use of smugglers to support migrants returning home and others highlighting the heightened demand for migrant labour in destination countries – such as Malaysia and across India – as being a driving factor for ongoing smuggling.

Research indicates that maritime smuggling journeys in the region following the outbreak of COVID-19 have become even more dangerous, partly because migrants and refugees are spending longer at sea due to difficulties disembarking.[20]

Populations of concern have remained the same

Rohingya

Rohingya flows from Myanmar are those of highest concern, with the significant risk of abuse through aggravated smuggling practices, and risks of human trafficking or bonded labour upon arrival in Malaysia. Although the scale has reduced since the height of the migration crisis in 2015, refugees' lack of security and options in destination countries are concerning, as is the resurgence in movement since 2018.[21] This is also reflected in official reports, with UNHCR noting that Rohingya refugees still account for the majority of those migrating by boat across the region.[22] The ongoing conflict and the military takeover in February 2021 has reportedly underpinned the sustained exodus from Rakhine State toward other parts of Myanmar, where refugees then travel abroad via land routes or into neighbouring Bangladesh.[23] A total of 66 per cent of Rohingya moving by sea are thought to be women and children.[24]

Afghans

Interviewees expressed concerns regarding possible increased arrival of Afghanistan asylum seekers into the region through irregular migration routes as a result of the Taliban occupation, but were unsure as to what increased movement may look like in terms of composition or direction.[25] Some stakeholders noted that protracted Afghan refugee populations in the case study countries, who have been waiting almost 10 years for resettlement, may perceive their chances of resettlement to dwindle further following the new wave of Afghan refugees. This may drive secondary movement from these long-term populations in the region, although the lack of funds available for onward travel among protracted refugee populations may be an obstacle to secondary movements.[26]

Although the scale of the projected exodus was unclear, participants did not believe that it would trigger increased movement towards Asia-Pacific, positing instead that the majority would remain in neighbouring countries.[27] The shift in Australian refugee policy and increased number of places for Afghans in the humanitarian intake may be relevant. Although the government of Australia adjusted its permanent migration planning levels downward in 2019 (from 190 000 to 160 000 annually), this move was reversed in September 2022, in reaction to labour shortages.[28] In the wake of the Taliban takeover of Afghanistan, in late 2021, Australian Prime Minister Scott Morrison also indicated that 3 000 humanitarian visas would be allocated to Afghan refugees.[29] This announcement has been accompanied by an increase in advertisements about the risks of migration to Australia by boat in transit countries. For example, the Australian government recently launched a short-film competition in Sri Lanka called 'Zero Chance', which invites filmmakers to submit a film that shows how 'there is zero chance of successfully travelling by boat to Australia'.[30]

Sri Lankans

The 2019 presidential election in Sri Lanka and the associated policy failures appear to have triggered an increase in regular and irregular departures. The rapid and exponential increase in the cost of living, coupled with lack of job opportunities and

flailing economy, particularly in the wake of the COVID-19 pandemic and the 2022 economic crash, have pushed people to consider migration, including those who had never considered it before. State responses reflect sensitivity to this potential increase in demand for smuggling services; for example, there has been a reported increase in advertisements from the Australian and Sri Lankan governments warning about the risks of attempting to migrate by boat to Australia in particular.

Technology is increasingly being used to facilitate migration and associated payments

The understanding of how social media is used during the smuggling process is limited, as communication typically occurs through WhatsApp or similar encrypted messaging services. Nevertheless, platforms such as Facebook (specifically, Facebook groups) are used to promote job opportunities and recruit migrant workers. However, information about whether this involves maritime smuggling routes is largely limited. Social media has become a mechanism for disseminating shifts in policies at potential destination countries that may influence migration decisions. For example, interviews highlighted a relatively recent 'self-promotion' trend among potential migrants where changes to sponsorship laws in countries such as Canada and New Zealand[31] have led to migrants promoting themselves as 'good migrants' in platforms such as Facebook and Instagram with the aim of improving their chances of being sponsored.

In Indonesia and Sri Lanka, payment is either made through in-person cash transfers throughout the migration journey, or electronically by those with a Western Union account or leveraging other financial-transfer technologies available on mobile phones. Refugees and migrants are loath to carry cash, given the risks of being robbed, preferring instead to facilitate electronic financial transfers between family members and smuggling network intermediaries.

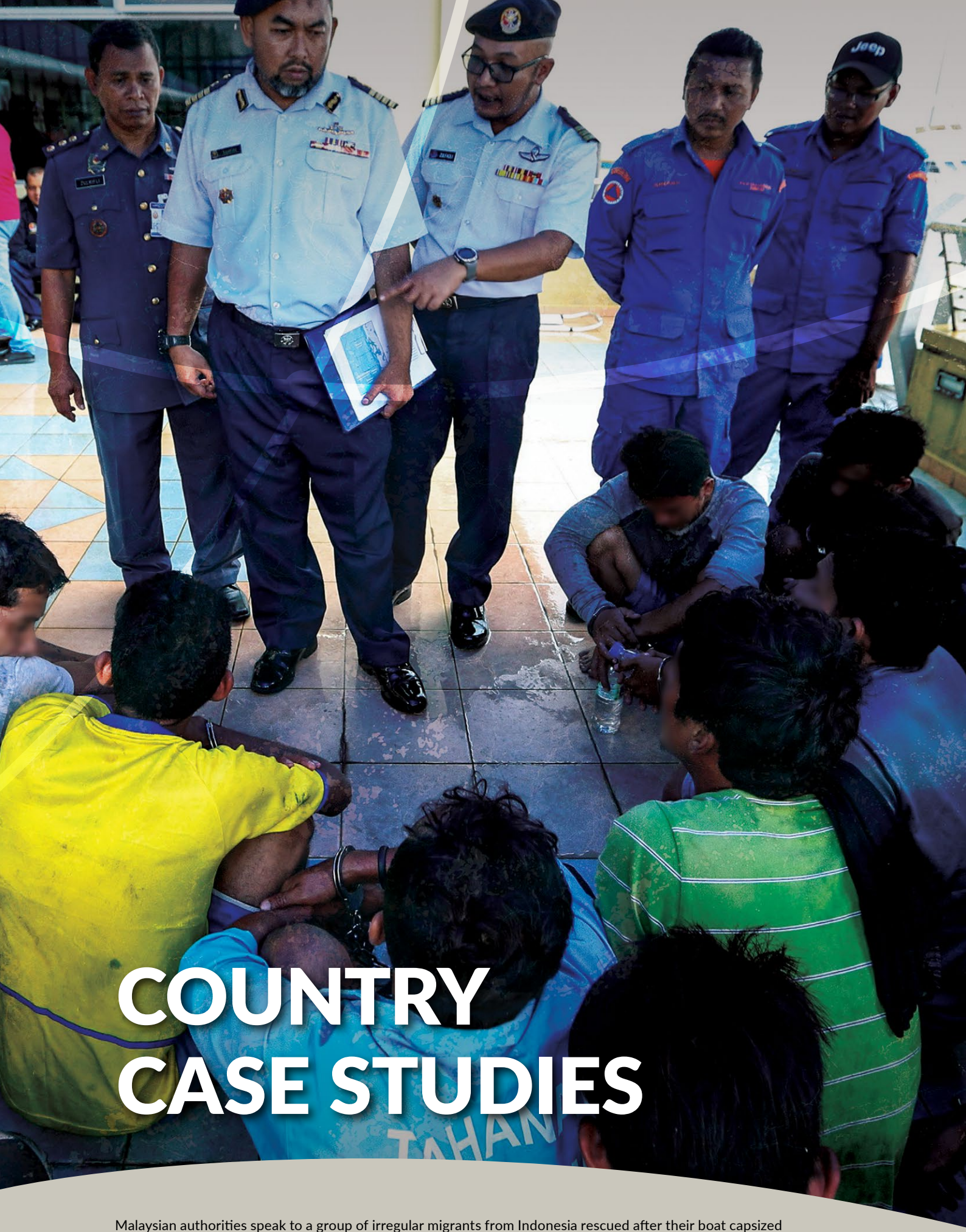
The structure of smuggling networks is stable

People-smuggling models and networks around South and South East Asia have long been characterized as informal, unorganized and non-hierarchical. By mapping the journey of migrants, their experiences and the ways in which smugglers facilitate the journey, this report highlights a series of markers that point to a significant degree of coordination across the entirety of the journey in some smuggling organizations, such as the payment modalities and structures, the profile of migrants, characteristics of the journey and the levels of violence. Although these features should not be examined in isolation, they provide a framework to test existing assumptions about the nature of people-smuggling models operating on maritime journeys, and how this may shape irregular migration flows and migrant experiences.

Violence is a driver of migration and use of violence is dynamic, geographically determined and shaped by the profile of those using smuggling services

Violence is a key driver of irregular migration among flows of concern, such as the Rohingya refugee population and new Afghan refugees. The risks of violence in Afghanistan after the takeover of the Taliban in mid-2021 have contributed to an increased flow of migrants into the region. Research with unaccompanied minors from Afghanistan in 2017 highlighted that the risk of violence was a key consideration in the decision to flee to Australia. 'Before coming to Australia, I [only] lived in Pakistan … [b]ecause Pakistan and Iran are the countries where most Hazara people go to when they abandon Afghanistan. But, unfortunately, in those countries … we are [also] targeted and killed every single day,' explained a young Afghan refugee.[32]

Violence also occurs during transit at the hands of smugglers. Aggravated smuggling practices, kidnapping for ransom and exploitation ultimately constituting trafficking were most commonly reported as part of the experiences of migrants crossing the Bay of Bengal and the Andaman Sea.[33] Although some interviewees reported instances of violence on the journey from Indonesia to Malaysia, this was not to the same extent. Refugees were often highlighted as being particularly vulnerable to abuse by smuggling networks and other actors during the migration journey.



COUNTRY CASE STUDIES

Malaysian authorities speak to a group of irregular migrants from Indonesia rescued after their boat capsized in the South China Sea. *© Mohd Rasfan/AFP via Getty Images*

Malaysia

Malaysia is well established as both a transit and destination country for the smuggling of migrants and asylum seekers. Data collected for this report indicated that Malaysia continues to be an important destination country for migrant workers, asylum seekers and refugees, although the arrival locations and scale of arrivals have slightly shifted. Although key populations' migration experiences have similar aspects, there are existing and emerging differences in the ethnic and gendered composition of flows.

Key populations: Migrant workers

Formal migration channels for migrant workers are limited, costly and complicated, resulting in many choosing informal agents (smugglers) to facilitate their access into Malaysia.[34] Because of its status as an upper-middle-income country, irregular labour migrants travel to Malaysia to work mainly in the agriculture, manufacturing and fishing industries.[35] There has also been a reported increase in women migrating for work as domestic workers, and in the hospitality and entertainment industries.

Irregular labour migrants from Bangladesh and Indonesia in particular have propped up much of Malaysia's low-skilled workforce since the 1980s. Despite many formal bilateral labour agreements ending, migrants from across the region have continued to seek employment opportunities in Malaysia. Foreign workers make up around 15 to 20 per cent of the total labour force in Malaysia,[36] and with the number of migrant workers increasing from 1.7 million in 2010 to 2.2 million in 2017, it is estimated that the number of undocumented workers also increased (with approximates being between 2 and 4 million at the end of 2018).[37] Interviews for this report suggested that this number may have continued to increase.

The COVID-19 pandemic had a significant impact on irregular labour migration into Malaysia. The Malaysian Maritime Enforcement Agency (MMEA) reported an increase in smuggling attempts into Malaysia's territorial waters since April 2022. The report indicates that attempts were largely at night (between 8 p.m. and 4 a.m.) and, while boats were mostly heading toward southern states, there had been some reports of migrants seeking to enter Penang. It is thought that the increase is due to the opening of the borders and the economy, and the ongoing demand for labour in the plantation and services sectors.[38] Interviews reported an increase of Sri Lankan migrants arriving

FIGURE 2 Key maritime people smuggling flows into, and out of, Malaysia.

in Malaysia for work since 2019/20, whereas previously this population used Malaysia largely as a transit point on the way to Australia to seek asylum (see Sri Lanka case study for more details). There has also been a reported increase in the number of Nepali and South East Asian nationals, including Cambodian and Laotians, arriving for work by both air and maritime routes.[39] Indonesian migrant workers have continued to make up a significant proportion of the irregular migrant worker population, arriving largely through the porous border of East Malaysia, with maritime routes playing a central role.[40]

Labour shortages associated with the pandemic also increased demand for foreign migrant labour; however, border restrictions and domestic migration policy changes have pushed migrant workers into informal migration pathways. When international travel came to a halt in response to the global pandemic, thousands of migrant workers were left stranded and, as time passed, their visas expired and ultimately made them irregular. In response, the Malaysian government implemented a two-part recalibration plan that allows employers in specific industries to recruit irregular migrant workers.[41] These largely include the construction,

manufacturing and agriculture sectors, often described as the '3D' industries – dangerous, difficult and dirty.[42] The other part of this policy allowed migrant workers living illegally in Malaysia to return home during a specific amnesty period.[43]

While some experts interviewed suggested that this was a positive policy practice,[44] others noted that it has been manipulated by employers and has created a flow of irregular workers across the border, regardless of border closures.[45] Migrant workers who had found employment in Malaysia were reported to be recruiting irregular workers into the country for a commission. Practices such as this are acting as an incentive to smuggle more workers into the country.

Other key trends raised included Vietnamese and Chinese women being recruited into the sex industry.[46] Interviews suggested that some women were willingly migrating to work in the industry while others ended up in situations of forced labour. Importantly, it is not only the sex industry that is associated with forced labour – there have been reports of forced labour and severe exploitation of migrant workers in the glove manufacturing industry as well.[47]

Key populations: Refugees and asylum seekers

Malaysia also has a long history as a destination country for asylum seekers and refugees. Irregular maritime migration of asylum seekers largely from Myanmar and Bangladesh is thought to have peaked between 2015 and 2017 at the height of what was most commonly referred to as the 'migrant crisis'. Following the discovery of hundreds of mass graves in the jungles along the Thai–Malaysia border, people smugglers transporting irregular migrants and asylum seekers diverted their route to dangerous sea corridors to access Malaysian shores. It is estimated that approximately 8 000 people were stranded on boats in the ocean when local authorities from Indonesia, Malaysia and Thailand prevented them from disembarking and, as a result, over 350 people died during this period.[48] Although current attempts to make it to Malaysia by boat remain far below this peak, between May to June 2020, Malaysian authorities reported turning away 27 boats carrying Rohingya asylum seekers.[49]

Rohingya refugees were consistently reported as a population of concern, and migration to Malaysia has continued in ebbs and flows over the last five years. Although departures remained far below their peak in 2015, there have been increased departures since 2018. Rohingya asylum seekers and refugee flows are currently primarily made up of women and children, in contrast with previous movements. Interviews with Rohingyas in Malaysia in September 2021 highlighted violence, insecurity and conflict as the main reasons for leaving Myanmar, followed by lack of rights and freedoms.[50] Recent studies consistently highlight the role of marriage as a reason for Rohingya women travelling to Malaysia. A report by the Mixed Migration Centre indicates that migration for the purpose of marriage was also considered a 'pathway to help women and girls escape from harsh conditions in their homes or in exile, as well as a means to support their families through remittances'.[51] Between 2020 and June 2021, 66 per cent of those on the move were women and children,[52] with interviews suggesting that many are migrating to Malaysia for marriage.[53]

Rohingya and Bangladeshi men now based in Malaysia are reportedly paying agents to help smuggle women into the country to be married and women are departing Indonesia having married Rohingya men in Malaysia. Although this was noted as a relatively recent trend, research with Rohingya refugees in Malaysia in 2017 already suggested that marriage played a role in women's decisions to migrate irregularly to Malaysia.[54]

Reports on intercepted boats carrying Rohingya into Malaysia in recent months have included the involvement of local Malaysians as well as Indonesians in their smuggling experience.[55] In one incident, a boat intercepted in May 2022 was found carrying 119 Rohingyas and was manned by four Malaysians, including two civil servants.[56] Another scheme discovered in 2022 involved a crime syndicate in Bangladesh that was targeting young and unemployed Rohingyas in Cox's Bazar and Banskhali. The scheme offered young people help to get to Malaysia for approximately AU$3 000, which included a passport. The passports were reportedly arranged by a leader of the Cox's Bazar's Rajakhali

Union, who used his party role to facilitate access to required documentation.[57]

Climate and environmental threats are also push factors for migration to Malaysia. In 2020, the Mixed Migration Centre highlighted that a significant proportion of regular and irregular migrants from Bangladesh arriving in Malaysia were citing climate and environmental changes as a driving factor.[58] An interviewed expert noted that migration among Indigenous communities from the Nusa Tarangina Islands is an emerging trend, reporting climate change, cyclones and droughts as influencing factors.[59]

Irregular maritime migration routes

There are a number of migration corridors between Indonesia and Malaysia, in particular, as both are transit routes and well-established destinations for irregular labour migrants and asylum seekers. The most common irregular crossings from Indonesia to Malaysia are in north Sumatra and the Riau province; however, refugees are also increasingly using the Sarawak border entry.

One of the most popular border crossings, in Riau province, Indonesia, is porous despite the heavy international maritime military presence established. Reports indicated that it takes about 20 minutes by speedboat to travel from the province's main island, Batam Island, to Johor, Malaysia. The city of Dumai in Sumatra is also a hotspot from where largely Indonesian migrants enter Malaysia through Malacca and Port Klang.[60] There is an extensive network of private jetties that receive commodities (such as coffee) and local fishing boats, which are thought to be loosely controlled (when identified by authorities, the jetties usually move a few hundred metres away)[61] and are a lucrative disembarkation site for smugglers bringing in irregular migrant workers in particular.

Migrants that use the maritime route to East Malaysia often travel to the border via Nunukan, in Indonesia's north, where there is an open border with Sabah, Malaysia. On arrival, migrants are required to pay the immigration officer around 2 000 Malaysian ringgit (MYR) – approximately US$480.[62] From here, migrants travel by road to Kota Kinabalu, the capital of the Sabah province, and then take one of the numerous daily flights to Kuala Lumpur (which cost circa US$10–US$20), where they seek employment.[63]

Indonesia

Indonesia has long operated as both a source and transit country in irregular maritime migration journeys. However, increased complexities of onwards journeys and delays in resettlement systems have swollen the involuntarily immobile population, meaning Indonesia operates as a de facto destination state.[64] The country's unique geography – with over 17 000 islands and a coastline of over 55 000 kilometres – makes its borders extremely porous and maritime journeys pivotal to travel to, within and from Indonesia.

However, the near closure of the route towards Australia via Indonesia, and the drop in Rohingya arrivals since its peak between 2013 and 2015, has driven a significant decrease in maritime people smuggling into and from Indonesia, with current figures being a mere fraction of the movement seen in 2011. The key populations using the services of smugglers in Indonesia are asylum seekers (largely Rohingya) and Indonesian nationals predominantly migrating for labour opportunities.[65]

Key populations: Economic migrants

Indonesian nationals steadily migrate irregularly to Malaysia in search of employment and, to a lesser extent, towards Japan, Hong Kong and Singapore. Many use irregular channels given the expense and time involved in obtaining identity documents, with a significant proportion using maritime routes. Indonesian nationals migrating to Malaysia for labour opportunities often do so on a cyclical basis: men often work on plantations seasonally, before

returning to Indonesia, while women are more frequently employed in the domestic sector.

The COVID-19 pandemic triggered an increase in unemployment and poverty levels in Indonesia.[66] Although reduced in part through government support schemes in 2021, were this to continue in the medium term, it may act as a driver for Indonesian nationals migrating for work.[67] In 2022, there was a reported increase in maritime people smuggling to Malaysia as the country reopened and sought to respond to labour shortages in industries that have typically relied on migrant workers from other parts of South East Asia.[68]

Key populations: Refugees and asylum seekers

Previously, particularly between 2011 and 2013, Indonesia operated as a transit country on journeys towards Australia, including for refugees from Afghanistan, Syria, Pakistan and Sri Lanka.[69] The closure of the route towards Australia since late 2013, when Operation Sovereign Borders was launched and Australia significantly stepped up enforcement efforts, resulted in a large population of Afghan refugees remaining in Indonesia.

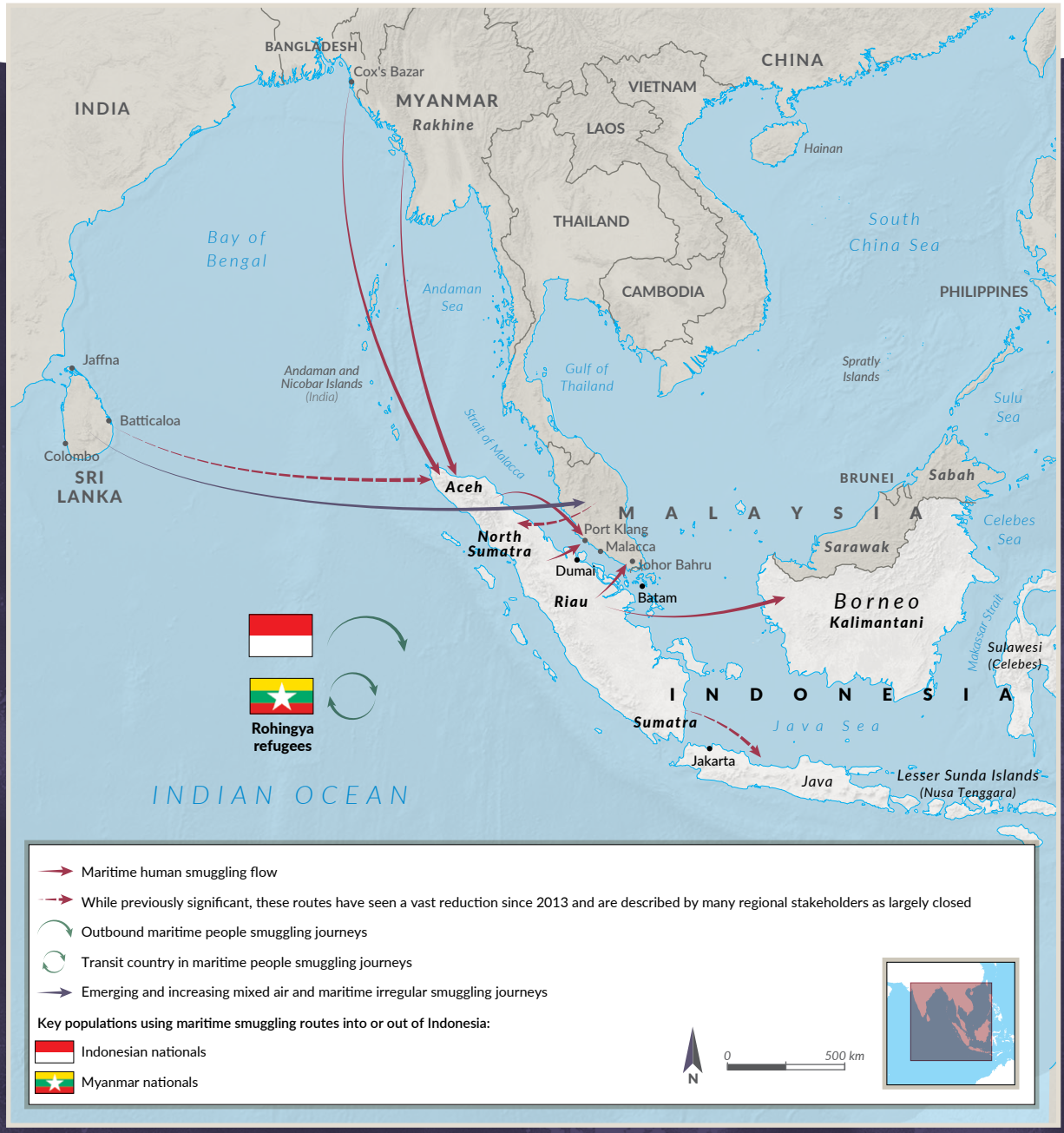


FIGURE 3 Key maritime people smuggling flows into, and out of, Indonesia.

Fishermen help rescue Rohingya migrants in Lancok, North Aceh, Indonesia. *© Zikri Maulana/ZUMA Wire/Alamy Live News*

As of July 2021, around 8 000 Afghan refugees were registered with the UNHCR in Indonesia awaiting resettlement.[70] This population is reportedly largely immobile, unable to fund secondary irregular movements.

Currently, Indonesia operates as a transit country primarily for Rohingya refugees, although to a lesser extent than in the peak between 2013 and 2015. The number of Rohingya using maritime routes to flee Myanmar and Bangladesh has, however, been increasing since 2018, and a significant proportion transit through Indonesia.[71] Although Bangladesh and Thailand remain the most common transit countries, Indonesia has gained prominence, particularly since the first quarter of 2020, when Malaysia implemented a strict arrivals policy as part of its COVID-19 response, further complicating disembarkations in Malaysia.[72] Many Rohingya in refugee camps in Indonesia have been rescued at sea to the north of Indonesia, close to Aceh province, as a result of unsuccessful sea journeys to Malaysia.

Rohingya arrivals in Indonesia are increasingly from populations that reached Bangladesh after 2017, contrasting to previous arrivals who were typically longer-term residents of Bangladeshi refugee camps. This points to a growing awareness that alternative options to the Bangladeshi camps are needed.[73] Women and children represent a growing proportion of Rohingya arriving in Indonesia on journeys towards Malaysia.

As of July 2021, circa 700 Rohingya refugees were registered with the UNHCR in Indonesia awaiting resettlement.[74] However, Indonesia is rarely a destination for the Rohingya, operating almost exclusively as a transit point on journeys to Malaysia. Stakeholders working with refugees in Aceh province reported that the majority, if not all, will seek to move irregularly to Malaysia, despite awareness-raising initiatives regarding the dangers of the journey.[75]

Irregular maritime migration routes

Routes to Malaysia

The borders between Malaysia and Indonesia are porous and there are a number of irregular maritime migration and smuggling routes between the two countries. Despite the historical use of these border crossings, it is still a dangerous route. In December 2021, at least 18 Indonesians died and another 18 went missing when a boat capsized trying to reach Malaysia.[76]

The Eastern Malaysia route, predominantly used by Indonesian nationals, transits the shared border in Borneo Island, particularly the border of North Kalimantan province. Nunukan Island operates as the key gateway for migrants moving from Indonesia into Malaysia across this border. Indonesian nationals and Rohingya refugees both use Western Malaysia routes that cross the Strait of Malacca, with some smuggling networks offering services to both groups.[77] These are well-established routes and networks – servicing Indonesians for decades and Rohingya since 2009 – that have continued to operate through the pandemic and ensuing countermeasures.[78]

Sumatra Island, due to its proximity to Malaysia and the Strait of Malacca, has been characterized as 'a key corridor of movement' with a network of smugglers facilitating flows across this route.[79] North Sumatra province, in particular the port area of Belawan near the city of Medan, operates as a key embarkation point for maritime smuggling journeys to Malaysia.

Rohingya refugees typically move southwards from refugee camps in Aceh to North Sumatra, often staying in safe houses along the journey, including near embarkation points. The length of the trip between the camp and safe houses varies, with some refugees reporting 12- to 48-hour journeys from the meeting point to the first safe house, reflecting the varying departure locations or routes taken. Several port areas in Sumatra are believed to be used as embarkation points for Rohingya refugees using maritime-smuggling routes to Malaysia, namely the port of Tanjung Balai, the port of Belawan and the port of Tanjung Pinang.[80]

Some smuggling boats moving to Malaysia from Indonesia are composed of a mixture of Rohingya and Indonesian nationals.[81] Similarly, some networks facilitating movement on this route are composed of both Indonesian nationals and Rohingya. Typically, Rohingya are tasked with recruitment of Rohingya clients while Indonesian nationals more commonly coordinate the networks or fulfil guiding and transporting roles, as they tend to know the terrain better.[82]

Rohingya refugees, and in some cases Indonesian nationals, await favourable journey conditions in safe houses in areas close to embarkation points: for example, for refugees embarking near Belawan port, safe houses are often situated near the city of Medan. As the boats traversing the Malacca straits are typically small, in part to facilitate evasion of patrols, the dynamic seen in other contexts, where migrants are kept in safe houses to wait until the boat is full of passengers, is not as relevant.[83]

Routes towards the Asia-Pacific region

Until 2013, when Indonesia operated as a transit point on journeys towards Australia, most asylum seekers transited Thailand or Malaysia en route to Indonesia,[84] largely using irregular boat travel across the Strait of Malacca into Indonesia. Movement on the route to Australia peaked in 2012, with the arrival of 17 202 refugees and migrants on 278 boats,[85] but diminished substantially from September 2013 with the launch of Operation Sovereign Borders and the forcible return of boats bearing asylum seekers to nearby countries, including Indonesia, Vietnam and Sri Lanka.

Australia continues to be cited as a desired destination country by protracted South Asian refugee populations in Indonesia, most prominently Afghan Hazaras, but also Pakistani and Syrian nationals.[86] Resettlement opportunities shrank further following Australia's decision in November 2014 not to offer permanent resettlement to any refugees who registered in Jakarta after 2014, regardless of their refugee status. Growing desperation among protracted Afghan populations in Indonesia, who perceive their already scant resettlement opportunities shrink further in the wake of the new exodus of Afghan refugees following the Taliban takeover, has reportedly resulted in renewed discussions about irregular maritime migration to Australia.[87] However, currently the irregular migration route remains inactive.

FIGURE 4 Key maritime people smuggling flows into, and out of, India.

India

India is a significant transit, destination and origin country for irregular migration. The routes in and out of India are mainly via land and air. However, embarkations by sea do occur from India, particularly from the southern states of Tamil Nadu and Kerala.

Key populations: Economic migrants

India is a transit and destination country for irregular economic migrants from neighbouring countries, particularly Bangladesh, Nepal and, to a lesser extent, Sri Lanka.[88] Smuggled migrants from Bangladesh and Nepal largely enter India through land crossings along the countries' shared, porous borders. Smuggled migrants from Bangladesh also enter India via sea routes. However, the use of maritime routes has reportedly decreased.[89] Meanwhile, Sri Lankan nationals of Tamil background occasionally travel to Chennai by sea, where they acquire fraudulent documents before continuing to Europe or the Gulf by air.

Most economic migrants originate from the Indian states of Punjab in the north-west and Tamil Nadu in the south.[90] Although, in the past, both streams involved some degree of maritime migration, particularly to neighbouring Sri Lanka or countries in South East Asia, these have been largely replaced by air routes. One study found that migrants from Punjab were less willing to take risky journeys, in part due to campaigns about the dangers of irregular migration.[91]

Interviews revealed that it is not uncommon for irregular migrants in India to also have false or inaccurate information about the opportunities and social services available in destination countries. Similarly, it is not uncommon for members of the diaspora to embellish their standards of living in the destination country. Several interviews confirmed that social media and its ability to allow individuals to share altered realities have exacerbated this phenomenon.[92] One stakeholder noted that this has also shifted migrants' motivations from 'desperation' to 'aspiration'.[93]

Key populations: Refugees and asylum seekers

India is not a signatory to the 1951 UN Refugee Convention and does not have a domestic refugee law. Nevertheless, it has a long history of serving as a destination country for groups fleeing war and persecution in the region.

Rohingya refugees from Myanmar use smuggling services to reach India.[94] Between February and October 2021, an estimated 22 000 Myanmar citizens, including Rohingya, fled to neighbouring countries, mainly India and Thailand.[95] Although these refugees have largely relied on land routes, there have been reports of Rohingya using sea routes to enter India, albeit at a much smaller scale.[96] However, Rohingya have experienced a deterioration of protections under India's ruling party, the Bharatiya Janata Party, as some of its policies are unfavourable to the broader Muslim population,[97] which has resulted in some reverse migration by Rohingya from India back to Bangladesh.[98] Similarly, although India has a long history of being both a transit and destination country for Afghan refugees,[99] more recently, Muslim Afghans in particular have been deterred from perceiving India as a destination country due to the government's policies and attitudes towards Muslim refugees.[100]

Tamil refugees from Sri Lanka have migrated to the Indian state of Tamil Nadu in large numbers since the 1980s, often using sea routes. Although these refugee migration flows have largely ceased since the end of the Sri Lankan civil war in 2009, migration for economic reasons continues along these same routes with India as a transit and destination country. For a period, Sri Lankan refugees were seeking to return to Sri Lanka due to the poor conditions at refugee camps.[101] However, since the beginning of 2022, there has been a reported increase in maritime arrivals to India from Sri Lanka, with many relying on smugglers.[102] In some cases, smugglers left migrants and refugees stranded mid-journey.[103] In one incident, migrants and refugees had paid up to 50 000 Indian rupees (approximately US$630) to the smugglers and travelled in a plastic boat only to be dropped near Rameswaram – an island located between peninsular India and Sri Lanka.[104]

Many of the Sri Lankans arriving in Tamil Nadu since May 2022 had reportedly only recently returned to Sri Lanka from refugee camps in India. An Indian support agency explained that the opportunities Sri Lankan nationals had returned for, namely employment and to rebuild their lives, were non-existent. The lack of opportunity for returned refugees has been exacerbated by Sri Lanka's financial crisis.[105] This has triggered a notable change in the demographics of the refugees seeking to enter India, with a greater proportion from 'lower-middle and middle class' Sri Lanka. These newly arrived Sri Lankans are reportedly facing additional administrative challenges in trying to seek asylum in India. This is in part due to the fact they are fleeing economic hardship as opposed to conflict and due to the security concerns held by Indian authorities regarding the entry of possible Tamil separatists. The latter has also resulted in increased surveillance along coastal Tamil Nadu.[106]

Sri Lankan refugees in India have also sought destinations elsewhere, including a departure from Kerala in 2019.[107] According to media reports, relatives of those on board said that the migrants were struggling with chronic unemployment and had been

promised work in New Zealand, having been inspired by successful stories of Indian migrants, particularly in Australia.[108] One man whose son had boarded the boat with his family said: 'People who go to Australia get put in camps for three months [...] After that, they get given proper housing. Everything is taken care of.'[109] He also noted that the community is well aware of the dangers of taking such a boat journey. 'But it is more dangerous to live here than it is to go,' he added.[110]

Reports in January 2022 highlighted the role that climate change was playing in increased rates of irregular migration in the Bay of Bengal region[111] and internal displacement among all South Asian countries, most prominently in India.[112]

Irregular maritime migration routes

Despite India's vast coastline, the replacement of maritime smuggling in and out of India with air routes is thought to be in large part due to the democratization of air travel, the introduction of more liberal visa policies for Indian travellers (before the COVID-19 pandemic) and a greater awareness about the risks associated with maritime smuggling.[113]

The primary maritime smuggling routes that continue to be used are between India and Sri Lanka and, to lesser degrees, to Bangladesh, Indonesia and Malaysia. Maritime migration between India and Sri Lanka typically involves destination and departure points in the southern Indian state of Tamil Nadu. However, the state of Kerala has also emerged as a key departure point due to 'easy availability' of fishing boats and a lack of 'foolproof registration mechanisms'.[114]

Outside Sri Lanka, the primary maritime routes from India are often towards South East Asia or the Caribbean and are typically at the latter part of the journey. This component follows a flight or land journey where migrants have entered a transit country legally as tourists, workers or students.[115] Interviews with academics explained that these 'legal' entries often rely on obtaining fraudulent documents in the pursuit of tourist, worker or student visas.[116] There is limited evidence to suggest that these documents are being used as part of maritime migration journeys, as the scale of irregular maritime migration into and out of India is thought to be relatively small compared to air and land routes.

Sri Lanka

Sri Lanka is largely a source country for irregular migration, with significant portions of irregular emigration involving maritime routes. Migrants smuggled out of Sri Lanka are largely moving towards the Middle East, Europe and North America, and, until 2012, Australia was also a popular destination.[117] Sri Lanka has also been a transit country for nationals from the South Asian Association for Regional Cooperation countries, who travelled through the country en route to Europe and Australia.[118]

Sri Lankans were identified as a population of concern for maritime migration towards South East Asia and Oceania during research for this report.

Interviews revealed that the political and economic tensions that have emerged in the country since 2020 due to the return of Mahinda Rajapaksa as prime minister (whose tenure ended in May 2022), coupled with the COVID-19 pandemic and the 2022 economic collapse, have escalated the desire among Sri Lankans across ethnic and religious lines to emigrate, both regularly and irregularly. The July 2022 appointment of a new president, Ranil Wickremesinghe, brought an end to the Rajapaksa family's grip on power. However, the political and economic crisis that engulfed the country will take longer to resolve, with food price inflation continuing to remain above 60 per cent in the last quarter of 2022.[119]

Key populations: Refugees and asylum seekers

Given Sri Lanka's history of conflict, irregular migration flows from the country have historically largely been made up of ethnic Tamil refugees and asylum seekers headed toward Tamil Nadu and the south of India. From Tamil Nadu, some Tamils will travel to the state capital, Chennai, to acquire fraudulent documents for onward air travel to destinations in the Gulf, North America, Western Europe, South East Asia and Oceania.[120] Canada is largely cited as a principal destination country.[121]

Irregular migration journeys from Sri Lanka to India are thought to have largely declined when India stopped recognizing Sri Lankan Tamils as a priority refugee group for resettlement. This, combined with deteriorating conditions in refugee camps, prompted a return flow of Tamils back to Sri Lanka until 2022.[122] This flow grew after 2019, when it was announced that India's Citizenship Amendment Act would not include the right of citizenship for Sri Lankan refugees.[123] However, the deteriorating economic situation in Sri Lanka has reversed these trends, as explored further below.[124]

FIGURE 5 Key maritime people smuggling flows into, and out of, Sri Lanka.

Australia was also a principal destination for Tamil refugees and asylum seekers, perceived by some Tamil people as a country that would not deport them and where, according to one migrant, 'most people are eating well, there is no problem with the journey and the Australian navy takes all people safely to Christmas Island'.[125] However, since 2013, there has been a decline of Tamils seeking to reach Australia via maritime routes due to the Australian government's policy of turning back boats carrying smuggled migrants. However, interviews suggested that there may be an emerging interest in this route: following the Easter bombings on hotels and churches in 2019, Australian authorities reported a slight increase in the number of Sri Lankans attempting to travel to Australia to seek asylum.[126] Although Sri Lanka is not typically a transit country, there have been isolated reports of Afghan refugees being smuggled to Australia via Sri Lanka.[127]

Key populations: Economic migrants

The opening of Sri Lanka's economy and renewed labour demand from the Middle East during the 1970s birthed Sri Lanka's 'migration industry'.[128] Since then, the country has required licensing of overseas recruitment agencies and made significant efforts to establish an institutional framework for labour migration. However, a significant proportion of Sri Lankan migrants prefer to organize their migration through informal channels.[129]

Since the end of the civil war in Sri Lanka, there has been a further rise in economic migration from the country, which has included its majority Sinhalese population. This was especially notable during the surge in irregular migration in 2012 from Sri Lanka to Australia, which included an increase in irregular maritime arrivals by the Sinhalese from 0 to 11 per cent,[130] with motivation to migrate combining economic and humanitarian reasons.[131] There has also been an increase in irregular migrants from Sri Lanka travelling to Malaysia for employment, rather than to only seek asylum.[132]

The deteriorating economic situation in the 2020s has been swelling the population of irregular economic migrants. By late 2021, a Sri Lankan think tank reported that passport lines were full with Sri Lankans – regardless of ethnicity or religion – seeking to leave the country following limited job opportunities and the impact of the pandemic.[133] The ensuing economic crisis, which has engulfed Sri Lanka since May 2022, where the country defaulted on its foreign debt and the overseas currency reserve plunged, has triggered a significant spike in irregular emigration attempts, including via maritime routes.[134] In the first half of 2022, approximately 250 people were apprehended trying to depart the country by boat. This represents a significant spike from earlier rates: previously, the navy reported intercepting around five boats per year. During one 45-day period over the summer of 2022, three separate boats were intercepted attempting to depart Sri Lanka.[135]

Elevated departures, including leveraging maritime routes, continued into the second half of 2022, as the economic crisis kept driving movement.[136] Boats departing Sri Lanka in 2022 were reportedly predominantly seeking to reach either India or Australia. In 2022, Australia intercepted and returned a number of Sri Lankans seeking to make the maritime voyage,[137] and publicly reiterated their commitment to support the Sri Lankan government in taking action to stop maritime human smuggling.[138]

Historically, Sri Lankans trying to depart irregularly have been from poor backgrounds and from the Tamil minority seeking asylum from persecution at home. The recent departures, however, triggered by the deteriorating economic context, include people from both Tamil and Sinhalese communities and a wide range of economic backgrounds.[139]

Irregular maritime migration routes

A number of coastal fishing communities serve as departure points from Sri Lanka. However, the most popular ones are in the provinces where there are significant Tamil populations, including the Northern Province (such as Jaffna and Mannar) and Eastern Province (Batticaloa and Trincomalee). There are also key departure points in the Western Province (Colombo and Chilaw).[140]

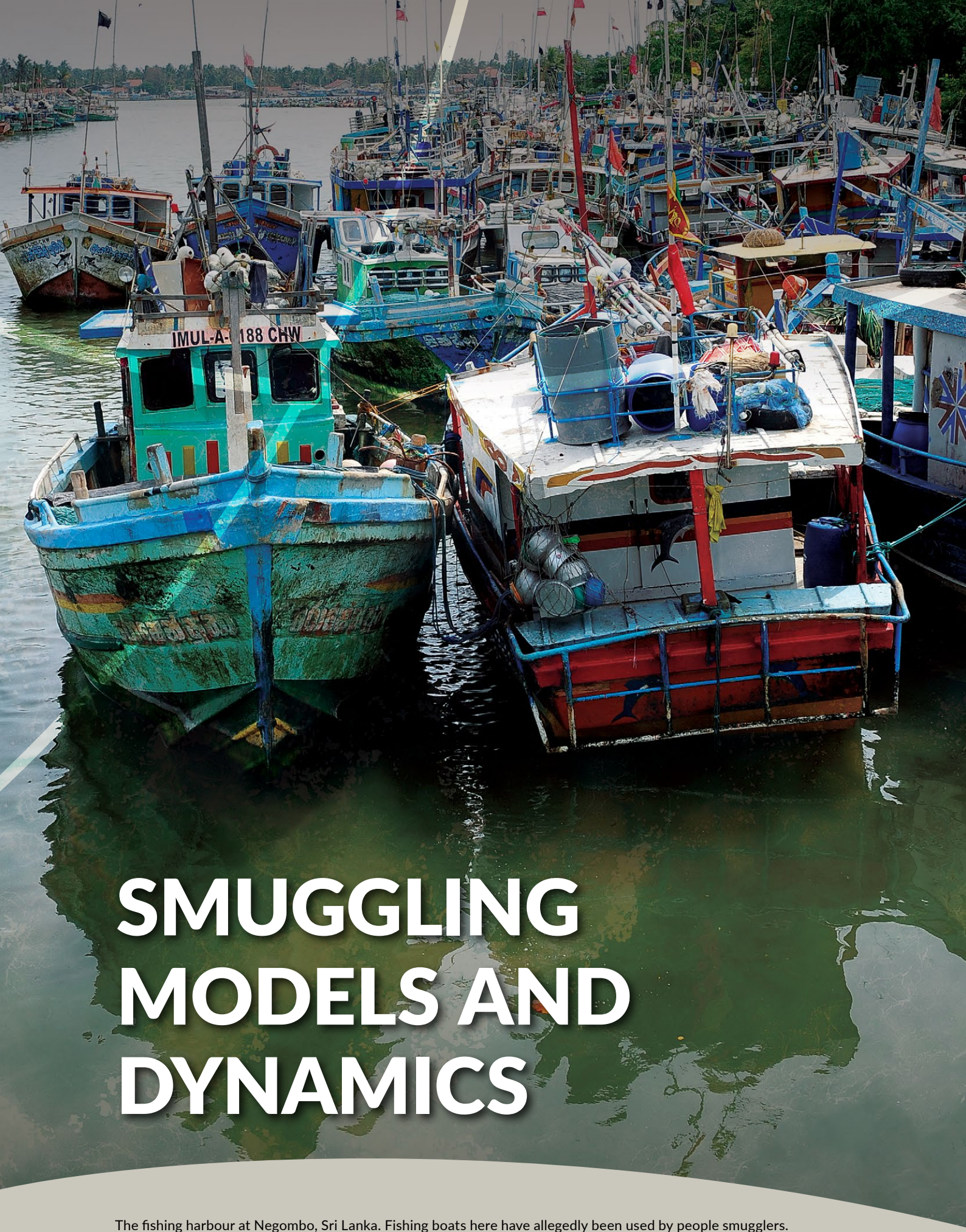
There have been some reported incidents of Sri Lankans migrating by sea directly to North

America.[141] However, these incidents are infrequent and most irregular migrants from Sri Lanka arrive by land and air.[142] Similarly, although Sri Lankans have used sea routes through the Red Sea and the Mediterranean, with Italy previously being a significant destination country, smuggling by air has become more popular since circa 2009. This is in large part due to the efforts of the Italian government to address irregular maritime migration by introducing new immigration laws that offered a path to regularization, and the establishment of bilateral agreements to curb irregular migratory flows, which have included technical assistance to prevent irregular embarkations in Sri Lanka.[143]

Until late 2013, Sri Lankan nationals were smuggled to Australia along two main routes.[144] The first, in line with the route used by most South Asians, involved travelling by air to major international airports in South East Asia (Sri Lankans typically travelled to Malaysia and Thailand on tourist visas). From there, land and sea routes were taken to key maritime embarkation points in Indonesia for journeys towards Australia or one of its offshore territories. The second route involved sea routes from a number of ports along the Sri Lankan coast directly to the Australian mainland or one its offshore territories, particularly the Cocos (Keeling) Islands, which are midway between Australia and Sri Lanka. In addition to these two main routes, there have also been reports of Sri Lankans using fishing boats to reach Aceh in Indonesia, at the north-west tip of Sumatra, and then travelling by land and sea to take sea routes to Australia or its offshore territories.[145]

The crackdown on routes toward Australia has led to the emergence of new routes from Sri Lanka to Réunion and, to a lesser extent, Mayotte – French overseas territories off the eastern coast of Africa.[146] Between 2018 and early 2020, reportedly over 290 Sri Lankans tried to reach Réunion,[147] and between 2016 to 2018, the country received 105 asylum applications, predominantly from Sri Lankans.[148] This surge was reportedly linked to the constitutional crisis that unfolded in Sri Lanka in 2018, when former president Rajapaksa was appointed as prime minister, raising fears among those connected to the Tamil rebellion as well as minorities.[149] Moreover, Réunion's religious pluralism is also one of its attractions among asylum seekers from Sri Lanka.[150] However, cooperation between French and Sri Lankan authorities, together with the deportation of the vast majority of Sri Lankan arrivals, quickly led to the closure of this route.

Since the 2022 economic crisis, maritime departures from Sri Lanka towards Australia have experienced a degree of resurgence, although remaining far below levels in the early 2010s. Australia has continued to apply a zero-tolerance policy, returning intercepted individuals quickly back to Sri Lanka. The economic pressures in Sri Lanka have also driven the development of a broader range of maritime routes, although these largely appear to be a small number of attempts rather than well-tested routes. For example, in November 2022, a boat carrying Sri Lankan nationals was intercepted having reportedly disembarked from Myanmar and seeking to arrive in Canada.[151]



SMUGGLING MODELS AND DYNAMICS

The fishing harbour at Negombo, Sri Lanka. Fishing boats here have allegedly been used by people smugglers.
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Smuggling networks: Roles and profiles

Smuggling networks comprise a number of roles, including people working as recruiters, facilitators, transporters, money collectors, security providers, organizers and, in some cases, intelligence providers.

Recruiters are typically of the same nationality as the migrants and refugees being smuggled, as ethnic and community ties facilitate the recruitment process (although they may work for a number of organizers to maximize profits).[152] For example, in Indonesia, Rohingya recruit other Rohingya clients, including within camps in Aceh and North Sumatra. Over the last five years, the profile of recruiters in smuggling networks operating across this route has shifted to reflect the make-up of their clients, with stakeholders reporting the growing prominence of women as recruiters. In Sri Lanka, recruiters and smugglers are often known members of the community or neighbouring communities and people who have attempted the journey often share the names of reliable recruiters and smugglers.[153]

Differences in nationality between migrants and smugglers may have cost implications. For example, Bangladeshi smugglers who smuggle Rohingya to Malaysia often charge more than other Rohingya smugglers for their services.[154] This could be a marker of the stability of the migration flow, as it could be evidence of others attempting to capitalize on the associated profits since demand is considered stable.

Facilitators and transporters tend to be of the nationality of the country through which transit is being organized; for example, Indonesians typically support transit through Indonesia. This is not always consistent; in some cases, those that facilitate transit are also the same nationality as the migrants, or share family or community ties with them. For example, in past maritime-smuggling journeys from Sri Lanka to Australia, Sri Lankans played key facilitator roles in transit countries, and those who had been smuggled to Australia and currently lived there[155] provided information on Australia's immigration and asylum system, including false information.[156] This enabled a significant degree of information about Australia's shifting policy landscape to reach prospective migrants before departure. One Sri Lankan migrant said:
'I thought the Australian government wanted me to go. But I knew it was illegal (to leave Sri Lanka on the boat). They had announced 20 000 new jobs were available in Australia. That was the only reason that I left. All my friends were saying to go.'[157]

Transporters are the most visible element of the people-smuggling chain and, consequently, those who most often face sanctions.[158] However, in loosely affiliated organizations such as those across South and South East Asia, each element of the smuggling network is easily replaceable, limiting the impact of sanctions on people-smuggling operations as a whole.

At the head of some smuggling networks within Indonesia and Malaysia are individuals who can be most accurately described as professional 'brokers', who coordinate a range of logistics and services, are typically from the middle socio-economic demographic and often have contacts within law enforcement networks to ensure uninterrupted operations.[159]

In India, many smuggling networks work across different modalities (land, air and sea routes) and are highly professional, family-based and loosely organized in a non-hierarchical structure.[160] Particularly in Punjab and Tamil Nadu, they often operate visibly as travel or recruitment agencies, which facilitates purchasing of flight tickets and other logistics of the journey. Most chief agents are middle-aged men (between 31 and 50 years old) while younger men are often lower-ranking officers who recruit young clients.[161] Some cases have also involved women as facilitators, usually as part of husband–wife duos who work together as agents.[162]

The smuggling industry is extremely flexible, and a surge in demand for smuggling services will typically trigger fast-paced changes in the market. For example, the 2022 surge in demand for irregular maritime journeys leaving Sri Lanka, together with the economic pressures on the fishing community due to the high fuel prices and shortages, drew many fishing families into the business, and many of the recent boats helping people leave Sri Lanka were owned by fishing families.[163]

Smuggling fees

Smuggling fees are set by a range of factors, including demand, supply and the risks involved. Changes in costs of smuggling services can yield insights into shifting demand and risk, the stage in the process in which payments are expected and the existence of 'packages' or schemes that are used to promote irregular migration. Demand can fluctuate in relation to the risks of the journey but is also dictated by the population on the move. The demand from those moving for humanitarian reasons, or forcibly displaced, is typically less elastic, as proven by the ongoing demand for smuggling services by Rohingya refugees throughout the COVID-19 pandemic.

One grassroots organization working with Rohingya refugees in Aceh, Indonesia, reported that, as of September 2021, fees for Rohingya refugees smuggled from Aceh to Malaysia totalled around MYR6 000 to MYR8 000 (US$1 400–US$1 900).[164] The smuggling journey from departure points in Myanmar or Bangladesh to Malaysia via Indonesia is significantly more expensive than direct journeys to Malaysia (which are reportedly circa MYR7 000–MYR8 000 or US$1 600–US$1 900), as transits through Indonesia typically occur following a failed journey to Malaysia after the price has been paid in full.[165] Fees depend on the profile and bargaining power of the migrants or refugees. Migrant workers travelling from Indonesia to Malaysia may pay more than Rohingya refugees when a job opportunity is included as part of the smuggling package.[166]

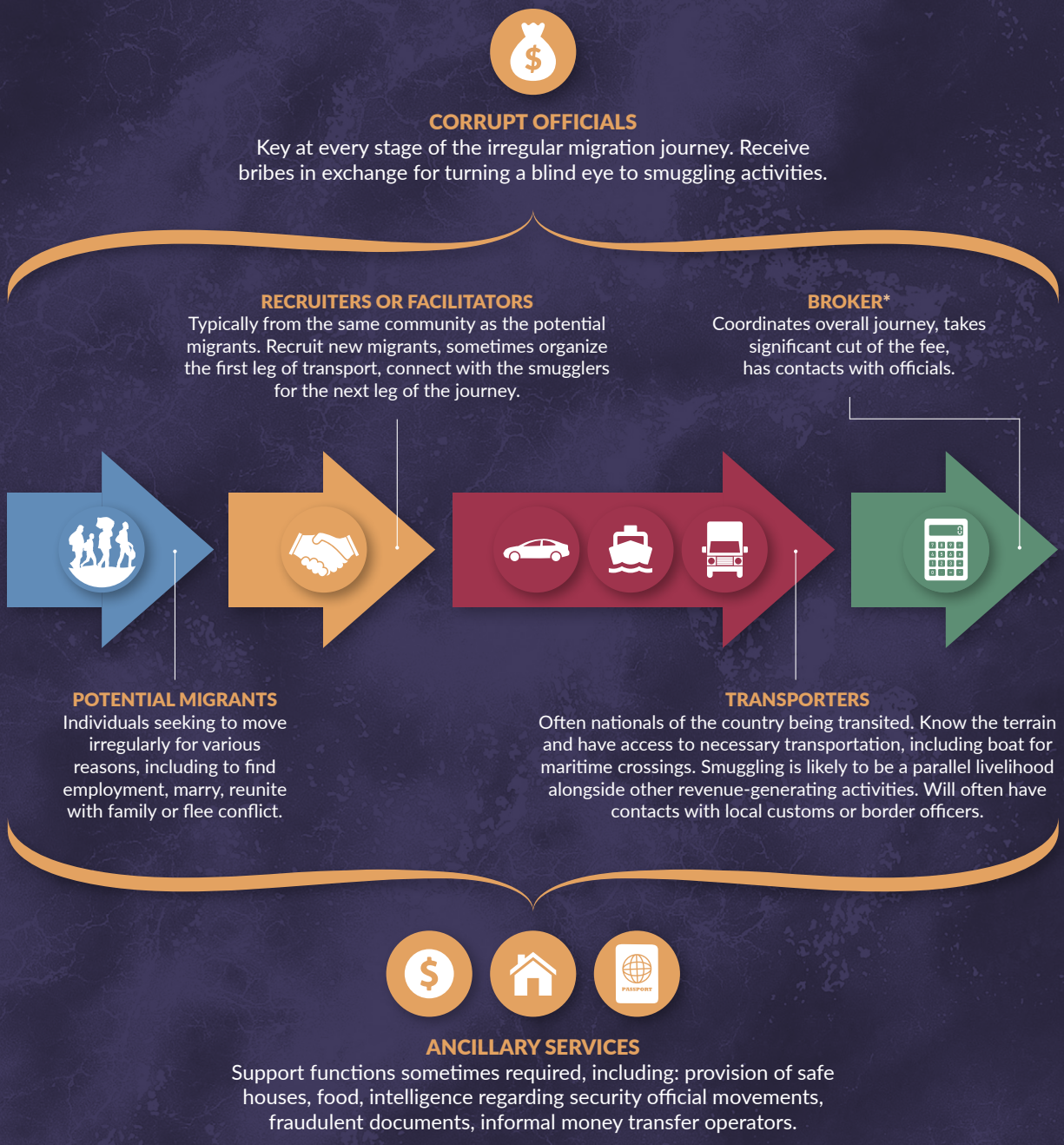


FIGURE 6 Roles in human smuggling operations.

NOTE: *In some operations there may not be an overarching coordinator, and instead each step will solely rely on personal connections.

There has been a reported increase in smuggling fees from Indonesia to Malaysia since the beginning of the pandemic, as maritime journeys become more challenging due to increased surveillance, particularly in Malaysia.[167] This is in line with typical smuggling market dynamics, which often see price increases when demand is steady but risks are higher.

While some routes across the region have shown an increase in costs of smuggling services (see above), this research suggests that smuggling services from Sri Lanka have decreased. In 2022, interviews with Sri Lankans on boats reportedly destined for

Australia reported paying 1 million Sri Lankan rupees or LKR (approximately US$2 700).[168] In 2013, a survey reported that Sri Lankans seeking passage to Australia paid US$9 200.[169] This potential decrease in price is despite the growing proportion of middle-class Sri Lankans seeking to depart through irregular maritime journeys. The demographic composition of departures remains mixed, and prices may reflect this to some extent. For example, some Sri Lankans departing in 2022 were from poor backgrounds and had to use their property to pay for the journey, with some reporting an upfront payment of between LKR200 000 and LKR300 000 (between US$540 and US$810). There is no information to clarify whether this was only the first of a few payments or whether this was as part of a group; however, a Tamil fisherman who had been recently returned from Australia reported that they paid the 'mafia' LKR900 000 (US$2 400) for passage to Australia,[170] suggesting that some migrants are making multiple payments at different stages of the journey.

Payment modalities

The way payments are made, at what point in the journey are payments made and by/to whom, and changes or differences in smuggling fees help understand the power balance between smuggling networks and clients, the degree of protection enjoyed by the clients and the networks' modus operandi.

In Indonesia, one civil society organization working with refugees in Aceh noted that each leg of the journey has a separate price (see Figure 7). The smuggling fee for Rohingya moving from Indonesia to Malaysia is often paid by family already in Malaysia and electronically transferred to an intermediary in Indonesia prior to embarkation.[171] However, over the last five years, migrant workers travelling to Malaysia have gravitated towards structures where part of the payment to the 'head' smuggler is contingent on the migrant's safe arrival to Malaysia.[172] Half of the smuggling fee is reportedly paid at the beginning of the journey to the recruiter or local agent (as there are a number of intermediaries that require payment over the course of the journey, including fishermen, trawler owners, drivers and immigration officials) and the remainder is paid upon safe arrival in the destination country.[173] The latter payment, which was estimated to be between 20 and 40 per cent of the total fee, is made to the 'head' of the network.

This points to a degree of organization across these networks, with the same 'head' of the network involved from beginning to end of the journey, rather than the journey being coordinated by independent – albeit connected – groups facilitating each leg separately. It also increases the protections afforded to migrants from abuses by smuggling networks, reducing the level of violence migrants are subjected to throughout the journey given that smugglers are not paid if the migrants do not arrive.[174] However, if the migrant or refugee is not able to pay the remaining fee upon completion of the journey, this can lead to debt bondage and trafficking.

Data collected through interviews with largely Rohingya refugees in Malaysia between 2019 and 2021 supports this changing dynamic, indicating that 35 per cent of Rohingya survey respondents reported making payments in instalments throughout the journey; 28 per cent reported paying in full at the destination; and 16 per cent paid before departure.[175] Some families sell homes or land to finance the journey, or take loans from third parties. Sri Lankans usually pay fully in advance to agents in Sri Lanka.[176]

In South Asia, it is also common for smugglers to offer financial guarantees that smuggled migrants will reach their destination country. Thus, when a smuggling attempt is unsuccessful, the migrant will receive all or a portion of their money back, depending on the agreement between the two parties. This practice reportedly helps reduce potential conflicts between migrants and smugglers, and deters smuggled migrants from reporting smugglers to the authorities if they fail to reach their destination country.[177]

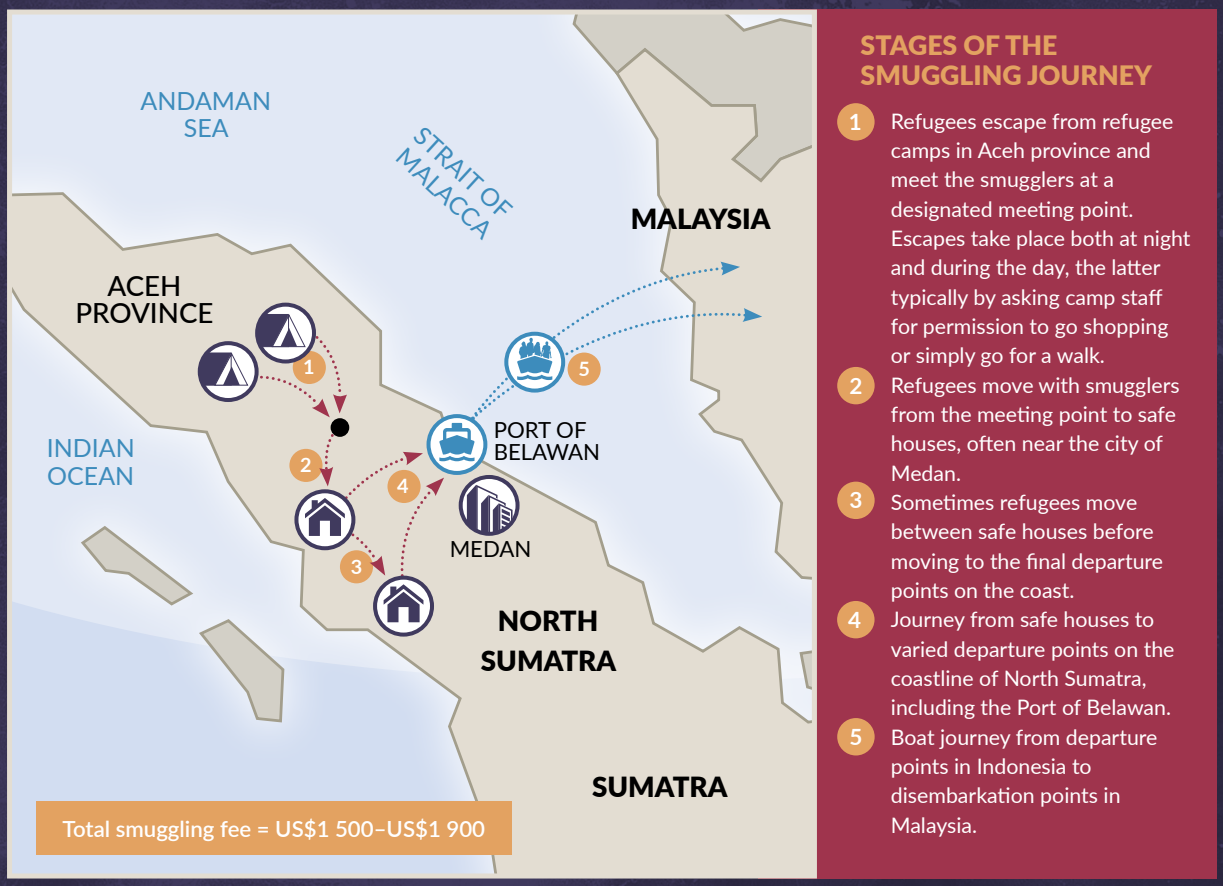


FIGURE 7 Rohingya refugee journeys from Aceh province, Indonesia, to Malaysia.

The payment modalities carrying the greatest risk to the migrant or refugee are the 'pay as you go', where migrants work along the journey to pay the smuggling fee, and 'travel now, pay later' schemes, where the migrant or refugee commences the journey indebted to the smuggling network, with the debt to be worked off either during or after the journey. This often leads to situations of debt bondage and makes the migrant or refugee extremely vulnerable to abuse, including exploitation and trafficking.[178] 'Pay as you go' modalities are typically chosen by migrants and refugees unable to pay for their journeys at the outset, especially protracted refugee populations who often lack livelihoods and are unable to raise funds. The impact of the pandemic on livelihoods has also worsened the financial situation of many prospective migrants and refugees. This may make 'pay as you go' and 'travel now, pay later' schemes more common.

Between 2019 and 2021, the Mixed Migration Centre found that, when asked about how they funded their journey, 22 per cent of respondents in Malaysia reported that they had agreed to pay later.[179] Rohingya journeys from Myanmar and Bangladesh are well evidenced to result in contexts of trafficking and of kidnap for ransom. The visibility of trafficking dynamics has decreased following the discovery of shallow graves of asylum seekers and refugees unable to pay for the onward journey in 'jungle camps' along the border in 2015 and 2016, but Rohingya vulnerability to exploitation is still concerning, including by smuggling networks, due to cycles of indebtedness that persist after disembarkation in Malaysia.[180]

Levels of violence

Violence is a persistent feature of irregular migration journeys in the region. It can occur against migrants at the hands of smugglers and their intermediaries, between smuggling groups or competitors, and as part of criminal practices involved in smuggling, such as kidnapping or extortion. Violence is often leveraged as a tool for coercion and control by smugglers against their clients. Violence is particularly prevalent during sea journeys of Rohingya from Myanmar and Bangladesh, and is often inflicted by smugglers. In 2020, a Rohingya refugee smuggled to Malaysia detailed his experience:

'[There] were about 250 Rohingya … in an obsolete fishing boat and it was overcrowded. We were heading from Sittwe (Myanmar) to Malaysia. [There] were at least five agents on the boat. After seven days … we were still sailing and [there was] a lack of food and drinking water. Rohingya on the boat were panicking and some attempted to request food from the agents … One of the agents [fired shots] and three Rohingya were [killed] … After that, the agents cut off the food supply and … a few other Rohingyas died due to malnutrition … Several Rohingya men were physically tortured because they fought with the agents … Only approximately 200 of us [were] rescued by the Malaysian navy when our boat [was] intercepted. The agents successfully escaped a day before we were intercepted.'[181]

Gender also shapes migrants' experiences of violence. Although women experience elevated risks of sexual violence during irregular migration journeys, family units may offer a degree of protection from certain types of violence. A woman who travelled from Myanmar to Malaysia by boat explained that she saw 'beatings to the men, but they didn't beat the women'.[182] Another woman said: '[I] heard somewhere there [were] risks to other people, but … [I] had my family with [me] and some of the men, that's why [I] didn't face any difficulties.'[183] Given the growing proportion of women in Rohingya migration pathways, the vulnerabilities faced by women on the move are of concern.

Reports of kidnapping for ransom and extortion of migrants in transit were most prevalent in relation to the smuggling of Rohingya refugees from Myanmar or Bangladesh to Indonesia and Malaysia. One civil society organization working with Rohingya refugees in Aceh, Indonesia, reported that agents sometimes demand additional fees in the middle of the journey from Indonesia to Malaysia. This bears signs of extortion and a more systematized use of violence to exert criminal control, an indicator of concern potentially pointing to rising levels of criminality in the smuggling networks facilitating Rohingya movement from Indonesia to Malaysia.

A small number of cases of women being kidnapped from outside refugee camps in Aceh and held in safe houses until ransoms are paid by family in Malaysia is of significant concern, but it is unclear whether these incidents are perpetrated by smuggling networks or distinct sets of actors.[184] Violence between smuggling networks operating in the case study countries was not reported during research for this report.

Corruption

People smuggling should broadly be perceived as a state-enabled economy. Not only do state policies often shape conditions driving emigration, but people smuggling itself is typically predicated on collusion by a range of state officials. Much of the literature on smuggling models in South and South East Asia draws attention to the role of corruption and bribery at key stages throughout the smuggling process. As the Global Initiative Against Transnational Organized Crime has reported in previous analysis, 'while smugglers rely on corrupt state officials to perpetuate their business, officials in state institutions may come to rely upon the bribes received to enable smuggling to happen.'[185]

In some contexts, irregular migration can align with certain interests of the state, which can dilute political will to prevent it. Irregular emigration can

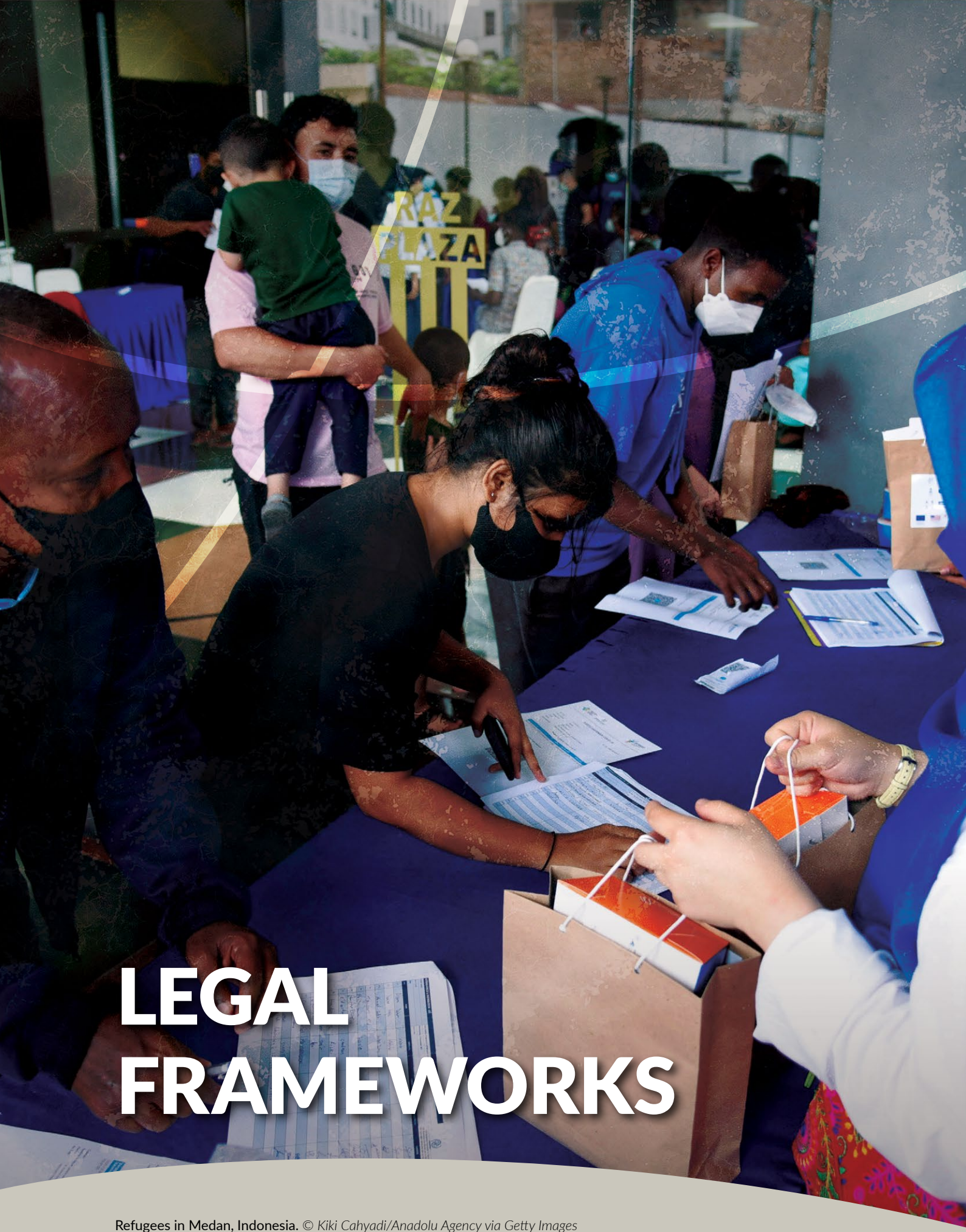
reduce unemployment and lead to remittance payments – which constitute a significant proportion of the GDP of some countries in South and South East Asia – and irregular immigration can meet the demands of the labour market.

Interviews with experts across the case study countries consistently highlighted corruption of state officials as integral to migrant smuggling and human trafficking. This is not new in the region, and there is substantial reference in the literature to government officials at all levels being involved in smuggling and trafficking processes. For example, members of the Indonesian military and police officers featured in the composition of individuals convicted of people smuggling offences in Indonesia between 2011 and 2014.[186] Similarly, a 2018 study of deported Indonesian migrants from Malaysia suggests that the sheer number of undocumented migrant workers in Malaysia 'would not be possible without some degree of complicity on the part of the authorities'.[187]

Corruption at a destination country's border is thought to play a role in pushing migrants into informal channels to leave the country. In Malaysia, migrants travelling legally are required to pay a MYR500 fee (US$119) on departure under the country's Recalibration Policy, and they are required to pay by credit or debit card.[188] Officials have reportedly been charging an extra MYR500 to process the payment with their personal cards, as many migrants do not have a bank card. In contrast, a ferry ride out of the country organized by a smuggler costs around MYR145 (US$35). This lower cost incentivizes migrants to use informal channels.[189]

In India, interviews noted that many agents who work primarily to facilitate smuggling journeys by air may have links to visa-issuing authorities.[190] A study reviewing cases of irregular migration from Punjab and Haryana noted that 'an agent who arranged forged Canadian visas had earlier worked as visa officer in the Canadian High Commission'.[191] Several interviews noted a range of structural issues that may create an environment conducive to bribery and corruption, including low salaries of front-line immigration officials.[192]

In Sri Lanka, reports also suggest that bribery of government officials for travel documents is common.[193] One study of people trying to leave Sri Lanka on boats found that there was 'a widespread belief that the navy and the government either operate the smuggling or condone it'.[194] In incidents in which the navy intercepts a boat, people believe it is because the agents did not adequately pay the navy.[195] Although there is no confirmed evidence of this dynamic, the study concluded that migrants believe there is a 'safe passage to Australia' as long as those boats are approved by the navy.[196]



LEGAL FRAMEWORKS

Refugees in Medan, Indonesia. © *Kiki Cahyadi/Anadolu Agency via Getty Images*

Regional frameworks

The smuggling of migrants was first criminalized under international law by the Protocol against the Smuggling of Migrants by Land, Sea and Air (henceforth 'smuggling protocol'), one of the three protocols adopted by the UN in 2000 to supplement the UNTOC.[197] The smuggling protocol came into force in 2004 and catalyzed a trickle of legislative reform globally, with countries translating the provisions of the protocol (albeit with varying degrees of fidelity, including regarding the definition of 'smuggling of migrants') into domestic legal frameworks. Ratification of the protocol and the adoption of domestic legislation are patchy across South and South East Asia. Of the case study countries, Indonesia and India have ratified it, Sri Lanka has signed but not yet ratified and Malaysia is not a party to it.

The smuggling protocol has attracted significant criticism, primarily from activists and academics keen to see a greater emphasis on the protection of the rights of smuggled migrants. Interviewees echoed the need to better protect smuggled and exploited migrants and centre human rights in the development of policies and practices highlighted across all case study countries. Although such critique is well founded, the protocol should be perceived as a result of state compromise and as a primarily criminal justice instrument, designed to address the organized crime elements of migrant smuggling.[198]

Indonesia

Indonesia ratified the smuggling protocol in 2009,[199] in a period of increasing numbers of migrants, refugees and asylum seekers transiting Indonesia on irregular smuggling journeys, particularly towards Australia, and a consequent drive to criminalize smuggling practices. National legislation implementing the criminalization of smuggling was passed in 2011, broadly in line with the definition set out in the smuggling protocol, as an amendment to the existing immigration law.[200]

Penalties for the offence of people smuggling range between five and 15 years' imprisonment and fines of between 500 million and 1 500 million rupiah (US$35 000–US$105 000).[201] Analysis of people smuggling convictions in Indonesia,

dating back to cases between 2011 and 2014, reflected little differentiation in sanctions for the differing roles within networks.[202] Furthermore, they pointed to judges either ascribing the minimum penalties permitted or issuing sanctions below the minimum permitted by law.[203] This is likely to reflect the fact that smuggling is largely not perceived as criminal in Indonesia, and may show awareness by law enforcement and the judiciary that those most commonly convicted constitute only the lower rungs in the smuggling network.

Indonesia has received extensive support from Australia in actions taken to counter maritime people smuggling, including provision of financing, equipment and personnel to law enforcement units and the financing of awareness-raising campaigns targeting fishermen.[204] However, most migrants and refugees prevented from continuing their journey through Indonesia became stuck there and reliant on support from international organizations, the Indonesian state and civil society, disincentivizing actions to block onward transit.[205] Furthermore, unilateral actions taken by Australia from 2013 onwards damaged bilateral relations and diluted cooperation.[206]

More recently, smuggling offences have been leveraged against Acehnese fishermen, who have long played a role in rescuing Rohingya stranded at sea in Indonesian waters or slightly beyond them. (Between June 2020 and June 2021, Acehnese fishermen rescued around 470 Rohingya at sea.) Although some search and rescue operations are purely humanitarian, in other contexts the fishermen have been paid by smuggling networks to rescue the Rohingya.[207] Due to the risk of being prosecuted, cases of Indonesian fishermen directly rescuing Rohingya refugees at sea have reportedly decreased.[208] Awareness-raising campaigns in Aceh province have targeted fishermen, advising them not to take any financial payment in return for coordinating rescues, as this increases the risk of prosecution for smuggling offences.

India

Although India ratified the smuggling protocol in 2011, it has not enacted federal laws translating the provisions of the protocol into national law.[209] The 1983 Emigration Act, which regulates recruitment agencies sending workers abroad, and provisions in the Indian penal code are typically used to charge travel agencies that facilitate irregular migration.[210]

In 2018, India's lower house of parliament approved an anti-trafficking bill, which was criticized by UN experts for 'conflat[ing] trafficking and smuggling of migrants by adding the aggravated circumstance of "encouraging or abetting any person to migrate illegally into India, or Indians to some other country"'.[211] UN experts feared this may lead to 'the criminalization of all irregular migrants, including victims of trafficking'.[212] The 2018 bill was ultimately not presented in the upper house, but a 2021 draft of the bill retained similar inclusion of aggravating offences relating to the facilitation of unlawful migration.[213] The 2021 draft was passed in the lower house but remained in draft form, pending approval by the upper house, at the close of 2022.[214] Conflation of provisions criminalizing smuggling and trafficking in local laws – with a lack of clear distinction between the phenomena – is common in legislation globally and has significant impacts on migrants and victims of trafficking alike.

At the state level, only the state of Punjab has a law specifically addressing smuggling of migrants. The Punjab Prevention of Human Smuggling Act 2012 seeks to regulate the work of travel agencies in the state 'with a view to check and curb their illegal and fraudulent activities'.[215] The legislation requires travel agents to be licensed and registered on a public platform.

Sri Lanka

Although Sri Lanka has signed but not ratified the smuggling protocol, some elements of smuggling of migrants are criminalized under the 1948 Immigration and Emigration Act No. 20[216] as amended most recently in 2021.[217] However, smuggling of migrants is not explicitly defined in the legislation, and the criminalization provisions lack clarity – some critics attribute low conviction rates in part to this legislative weakness.[218]

Notably, the focus of the criminalization of smuggling under the act relates to smuggling of people out of Sri Lanka, which is punishable by a minimum of one year and a maximum of five years' imprisonment.[219] This contrasts with the smuggling protocol, which addresses the facilitation of 'illegal entry' but makes no mention of 'illegal exit', which respects the right, under international law, of a person to leave a country, including their own, while observing state sovereignty in deciding the procedures for entering a country.[220] The criminalization of facilitated emigration is widespread, particularly in countries that have primarily operated as source and transit countries for irregular migration.[221] While in some contexts this appears to reflect a fear of 'brain drain', in others, the focus on criminalizing unlawful exit appears to be a result of policy pressure from key destination countries.[222]

Section 45C of the act, which criminalizes the facilitation of unlawful emigration in Sri Lanka, was enacted in 2006 following a period of significant engagement between Sri Lanka and key destination countries with regards to irregular migration flows from the country. For example, while Italy was previously a key destination for smuggled migrants from Sri Lanka, this changed in 2002, when bilateral agreements between Italy and Sri Lanka were negotiated to address irregular migratory flows.[223] These included quotas for Sri Lankan migrants in Italy and provided the framework for Italian logistical and financial support to Sri Lankan law enforcement agencies at departure points.[224] Sri Lanka and Australia have also engaged in anti-smuggling efforts, with Australia gifting Sri Lankan police five drones to monitor people smuggling between the two countries in April 2021.[225] Underscoring this cooperative mindset, Australia's commander of the Joint Agency Task Force Operation Sovereign Borders, rear Admiral Mark Hill, said: 'Working together, Australia and Sri Lanka send a strong message that people smugglers and potential illegal immigrants considering illegal travel to Australia by boat have zero chance of success.'[226] Australia has stepped up support to Sri Lanka on preventing people smuggling since maritime departures spiked in the wake of Sri Lanka's May 2022 political and economic crisis.

Malaysia

Malaysia has not ratified the smuggling protocol, but the country has enacted wide-ranging legislation criminalizing the smuggling of migrants, largely through 2010 amendments to the 2007 Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act.[227] The amending act that brought into force the smuggling provisions stated that these were enacted to address the 'current influx of illegal migrants from conflict countries who are seeking better life either in Malaysia or third countries and who, in particular, are using Malaysia as a transit point while they await their onward journey to possible countries'.[228] Notably, the adopted definition of 'smuggling of migrants' incorporates both facilitation of unlawful entry and of unlawful exit. However, the definition lacks any reference to the facilitation being for 'financial or material benefit', a key feature of the smuggling protocol.[229] Importantly, the government of Malaysia ratified the 2014 Protocol to the Forced Labour Convention (1930) with the Director-General of the International Labour Organization. This makes Malaysia the 58th country in the world and the second member state of the Association of Southeast Asian Nations to ratify the protocol.[230]

Malaysia's role as a transit country, including for journeys towards Australia, was in large part premised on its relatively open visa regime. Changes to this regime, limiting the visa-free entry of a range of nationals including those from Pakistan, Afghanistan, Iraq and Sri Lanka, were implemented in part as

a result of pressure from Australia.[231] In addition, during the COVID-19 pandemic, the Malaysian government adopted a strong policy of deterrence in an effort to curb illegal entry of migrants and asylum seekers, with reports of Rohingya arrivals being taken directly to detention centres. There are reports that the language and approach used are reflective of the Australian government's turn-back policy, and interviews suggested that there was increased cooperation between Malaysia and Australia on the development of an information campaign that would support this policy approach.[232]

In 2020, the Malaysian government sought to reform existing immigration laws and policies in the Holistic Plan on Enforcement Against Illegal Immigrants, which includes five key strategies associated with border security, the management of foreign workers and the media. Officials explained that the objective of the plan was 'to create an uncomfortable ecosystem for illegal immigrants to continue with their daily lives by empowering existing enforcement and regulatory agencies, including increasing strategic cooperation and awareness among the local community'.[233]

Interviews suggested there had been a growth in disembarkation in Indonesia as a result of much harder-line policies on illegal arrivals in Malaysia.[234] This approach is not entirely new, however, with research suggesting that Malaysia's border practices are applied internally as a way to control illegal migrants once they enter the country by limiting access to formal employment opportunities and the associated protections, an approach that preserves 'a cheap, flexible labour force'.[235]

Regional refugee protection frameworks

Maritime smuggling flows within South and South East Asia are mixed migration flows, with refugees and asylum seekers, predominantly Rohingya and Afghan refugees, making up significant populations in the case study countries. Refugee policies in the case study countries are thus pivotal in shaping maritime-smuggling flows, as well as core to the respect of human rights of refugees onshore.

Stakeholders focusing on Indonesia emphasized the role of the country's refugee policy framework in shaping the involvement of refugees and asylum seekers in the people-smuggling market, as clients and as part of smuggling networks.[236] As mentioned above, Indonesia is not signatory to the 1951 Refugee Convention nor the 1967 Protocol Relating to the Status of Refugees.[237] While a 2016 law sets out the overarching legal framework for refugee treatment in Indonesia, it does not provide asylum seekers and refugees with the legal right to work, and pathways to permanent settlement in Indonesia are lengthy and requires individuals to abandon claims for resettlement elsewhere.[238]

The absence of these rights acts as a driver for onward movement, and the lack of formal livelihood opportunities makes asylum seekers and refugees vulnerable to employment by people-smuggling networks as recruiters. Notably, refugees in Malaysia operate in the same legally tenuous context, but many seek to stay and find employment in the informal economy.[239] This inability to earn a formal livelihood also makes refugees highly vulnerable to trafficking.

Similarly, in Malaysia, stakeholders reported a level of 'confusion' in relation to the identification and protection of asylum seekers, particularly in the context of Rohingya refugees, with the broader narrative conflating asylum seekers with irregular labour migrants. This is leading to a denial of protection outlined in regional frameworks and international law (although Malaysia is not a signatory to key international protocols enshrining the rights of refugees).

The conflation of smuggling and trafficking by national and local stakeholders in South and South East Asia, and across the case study countries, was repeatedly cited by interviewees. As outlined above, Malaysia incorporates smuggling provisions in the same legislative framework as counter-trafficking provisions, further driving confusion between the two phenomena. Stakeholders in Malaysia reported low awareness of the practices in the smuggling market that make people vulnerable to exploitation, including in contexts constituting trafficking.

Australia's Operation Sovereign Borders, a military-led border security operation, was launched in 2013 to control flows of irregular migrants reaching Australia. *© William West/AFP via Getty Images*

Operation Sovereign Borders

The most significant external policy enactment shaping maritime-smuggling flows across the case study countries was the 2013 launch of the Australian government's military-led border security intervention, Operation Sovereign Borders. This initiative involves turning back unauthorized arrivals to their point of departure or home country, or transferring them to a third country. Those who are unable to be returned home are placed in immigration detention, a programme that has involved the establishment of immigration detention facilities on the island nations of Nauru and Christmas Island and has been criticized on human rights grounds.

This policy was accompanied by an international communications campaign that sought to make sure potential migrants in key source countries knew that they would not be able to settle in Australia if they arrived by boat. This information campaign was pervasive throughout the region and reportedly served as an effective deterrent for potential migrants seeking to travel to Australia by boat.

In response to the increase in irregular migration from Sri Lanka, Australia's new labour government sent Home Affairs Minister Clare O'Neil there in June 2022. During the visit, O'Neil announced significant financial support for the country, part of which was given to the UN World Food Programme.[240] Furthermore, Minister O'Neil and Sri Lankan Fisheries Minister Douglas Devananda opened a new fisheries-monitoring centre in Colombo. As part of this, an estimated 4 000 boats will be installed with a vessel-monitoring system whereby the location of the large fleet will be monitored, and those that remove or disable the trackers will be penalized.[241] A significant reason for the trip was for the Australian government to reinforce their immigration policy. O'Neil stated: 'Here in Sri Lanka I have a very simple message: If you attempt to enter Australia by boat you will be immediately sent back. Australia's border protection policies have not changed.'[242] This is in response to reports that smugglers were using the change in government as an incentive for potential irregular migrants, with people on intercepted boats reporting that they were told they would be allowed to settle in Australia under the new government.[243]

KEY INSIGHTS

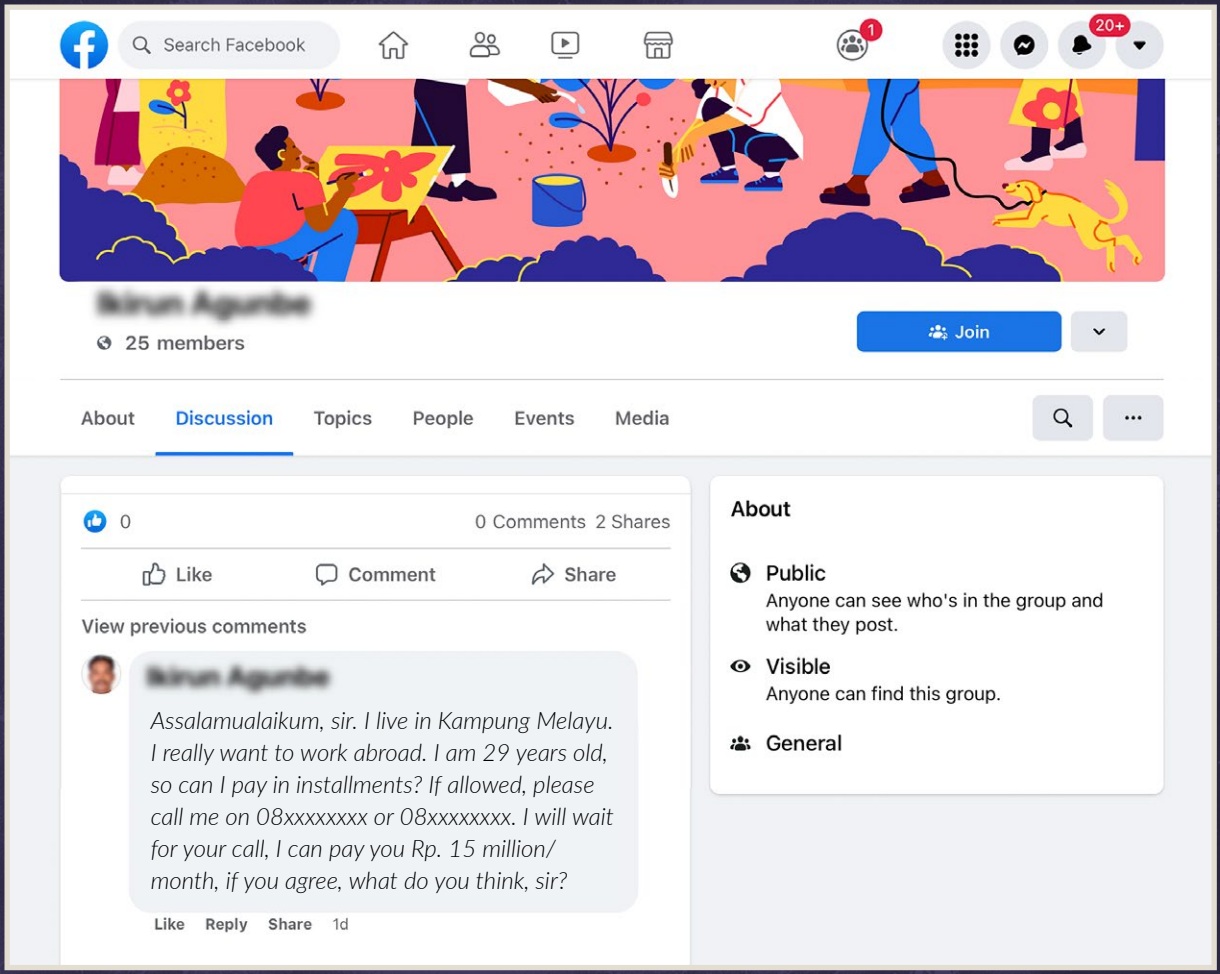
A view of Colombo, Sri Lanka, which is a well-established departure country for irregular migrants attempting to reach Australia. © *Tashiya de Mel/Bloomberg via Getty Images*

Social media

The Asia-Pacific region has one of the highest penetrations of social media in the world, with Facebook and YouTube being the most used platforms. Use of messaging platforms such as WhatsApp, WeChat, Telegram, Viber and Signal is increasing, and information is shared widely on them. Among undocumented migrants and asylum seekers, the use of social media and the internet is widespread for maintaining social and family connections, finding work and accommodation along the way, and staying up to date with changes to migration routes.[244] There is also growing evidence that social media and messaging apps are key tools in the recruitment of irregular migrants in the region and as a way for smugglers or agents to establish their credibility and trust as potential facilitators.[245]

Facebook is the primary source of interaction between potential migrants and agents or diaspora members in destination countries, to find information about how and where to travel. In Indonesia and Malaysia in particular, conversations on Facebook are often the primary interaction, with communication moving to WhatsApp or a similar messaging app to obtain more information. As they are harder for authorities to track, encrypted messaging platforms play a crucial role in the smuggling process, including through texting, calls and video chats.[246] For example, in Indonesia, there are several Facebook groups with posts about jobs abroad. The posts are typically in Bahasa Indonesian although there are also some in English. Comments to posts are often questions about arrangements or specific requests for jobs, following which a phone number is shared for people to get in touch. Similarly, interviews with a researcher at a Sri Lankan think tank noted that the majority of conversations relating to migration, and particularly irregular migration, are occurring in private Facebook groups.[247] The pages are thought to be hosted by informal recruitment agents that promote job opportunities abroad and undercut formal job and education agents that facilitate legal travel.[248]

On social media platforms in India, users largely share stories, in Hindi and English, about previous attempts to leave India by boat. Although posts specific to maritime migration are limited, an interview with an expert on migrant smuggling and human trafficking in South Asia suggested that potential migrants were highly influenced by diaspora communities in destination countries.[249] Migrants who have travelled abroad depict their lives on social media as largely positive, regardless of reality.



Response to job advertisement on an Indonesian Facebook page for work in Singapore.
SOURCE: Facebook

Changing migration and refugee policies have shaped discussions about potential destinations. For example, social media is being used by potential migrants to promote themselves as 'good migrants' or 'good refugees' in an effort to enhance their chances of being privately sponsored. In an interview with an academic with expertise in irregular migration and smuggling in Indonesia, it was suggested that social media is being increasingly used to target private settlement opportunities, primarily aimed at Canada.[250] This was also noted by a civil society organization in Malaysia, where Europe and Australia were identified as commonly cited destinations, although Australia does not have a private sponsorship programme for refugees (but was considering the Canadian model in 2021).[251]

Impact of COVID-19

In 2020, the unprecedented restrictions on movement imposed around the world, including in the focus countries, to curb the spread of COVID-19, posed new challenges and protection risks for migrants and refugees.[252] At the early stages of the pandemic, many migrant workers from South and South East Asia lost their jobs and many returned home, some using the services of smugglers to do so. In many contexts, including Indonesia, authorities were initially unsure how to respond – the use of smuggling services by nationals to return to their countries of origin does not fall within the definition of smuggling. In the case of Indonesia, the state largely turned a blind eye to this dynamic.[253]

The closure of legal migration routes forced migrants and refugees still needing to travel into irregular movement and heightened the need for smugglers to navigate tightened border controls.[254] Although a second wave of COVID-19 across much of South and South East Asia reduced labour migration almost to a standstill, irregular maritime movement of Rohingya refugees and Indonesian nationals from Indonesia to Malaysia continued throughout 2021.[255]

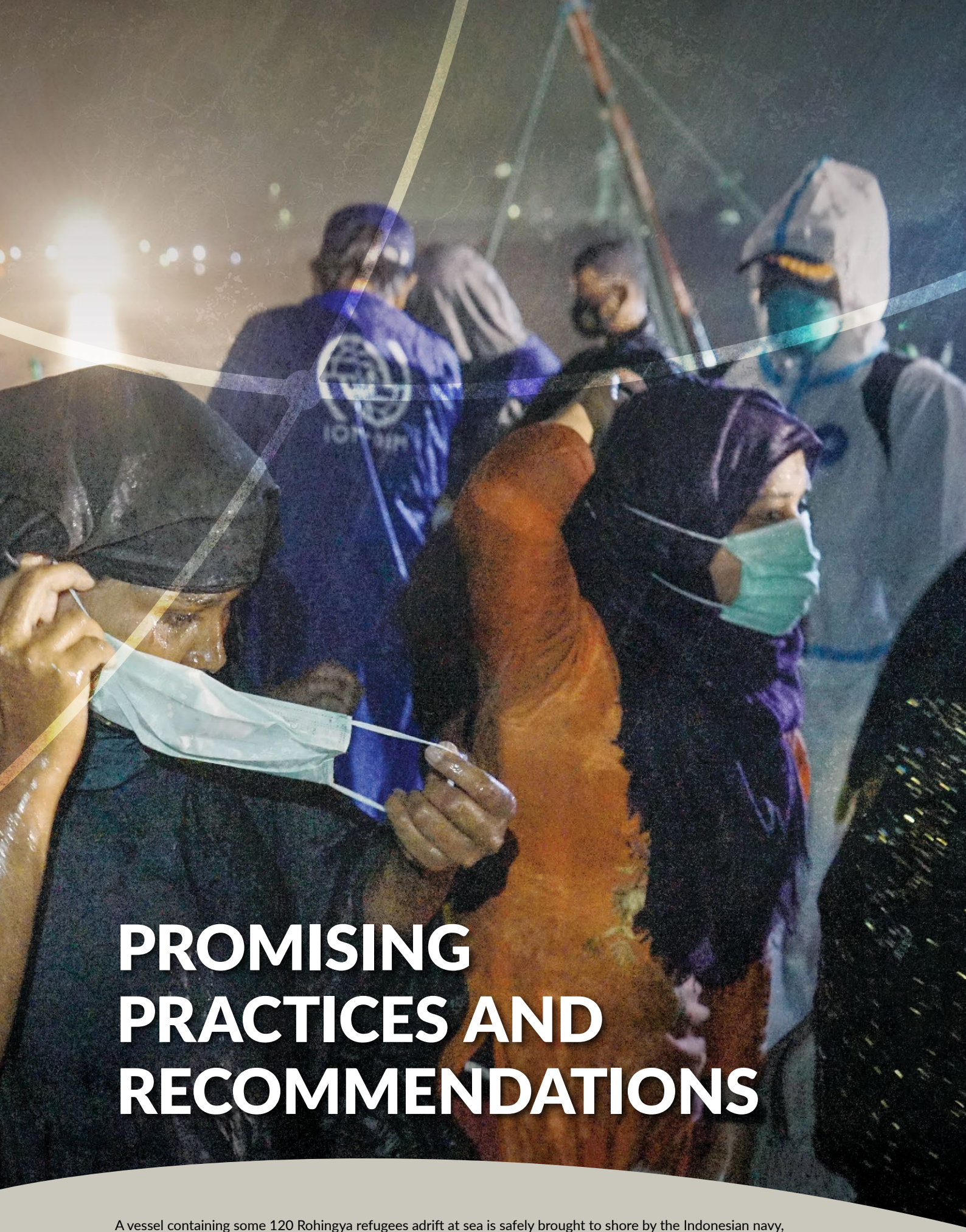
The drivers for movement in the case study countries and across the region have remained unchanged or been exacerbated through the loss of livelihoods and drop in remittances due to COVID-19. The decimation of the tourism sector by the pandemic has had severe impacts on livelihoods across the case study countries, particularly in Indonesia and Sri Lanka. The full recovery of the tourism sector is predicted to be slow, with far-reaching medium- and long-term consequences for unemployment. This points to increased drivers for labour migration.

COVID-19 also appears to have made maritime-smuggling journeys more dangerous. UNHCR data found that sea journeys in the Bay of Bengal in 2020, with many seeking to end in Indonesia or Malaysia, were over eight times deadlier than those undertaken in 2019.[256] The increase in prevalence of deaths on the journey is attributable to the fact that refugees are spending longer periods unable to disembark, which heightens the danger of the journey and often means that boats run out of supplies (food, water or fuel).

Search and rescue operations, already rare across the case study countries prior to the pandemic,[257] dwindled further as states tightened borders in response to COVID-19, leading to the highest number of refugees stranded at sea since 2015.[258] Pushback operations coordinated by the navies of some countries in the region, including Malaysia, posed a further obstacle to safe disembarkations.[259]

Across the focus countries, refugee populations experienced severe restrictions on mobility due to COVID-19 measures. While these posed an obstacle to onward movement in the short term, for some such restrictions also operated as a driver for onward movement as soon as it became feasible.[260] For example, the relocation of around 80 000 Rohingya to Bhashan Char Island off the coast of Bangladesh operated as a driver of growing exodus, as evidenced by numerous tragedies of refugees seeking to leave the island towards Malaysia, including via Indonesia.[261]

The pandemic highlighted how the narrowing of legal avenues for migration and concurrent tightening of borders meant that smugglers retained a central role in migration dynamics.



PROMISING PRACTICES AND RECOMMENDATIONS

A vessel containing some 120 Rohingya refugees adrift at sea is safely brought to shore by the Indonesian navy, 31 December 2021. © *Khalis Surry/Anadolu Agency via Getty Images*

There are few case studies of promising practices adopted by states in South and South East Asia in response to maritime people smuggling.[262] The high risk of criminalization of irregular migrants and refugees using the services of smugglers, rather than focusing on core drivers of irregular migration, is a point of concern in the policy approaches adopted by the case study countries. Furthermore, the increase in detention of irregular migrants and refugees, and securitization of maritime borders (including through the use of pushbacks) are all policy trends that heighten the risks faced on irregular migrant journeys.

The health risks posed by COVID-19 may well have distracted governments from ancillary risks and challenges that have emerged as a result of the pandemic and the associated travel restrictions, including surrounding irregular movement. There is a lack of preparedness across the region to deal with significant changes to irregular flows of migrants and an ongoing need for capacity building and multi-stakeholder cooperation. Any capacity building would need to assist governments and international organizations in responding to the complexity of the issues and help reduce the risks associated with the conflation of smuggling and trafficking of migrants.

As maritime migration is one the most dangerous forms of irregular migration, it is key that policy approaches centre on harm reduction. Initiatives such as New Zealand's reflagging of fishing vessels in national waters to respond to human rights abuses and risks of exploitation have been considered good practice.[263] The initiative was in response to concerns about the exploitation of people of foreign-flagged fishing vessels and meant that foreign fishing vessels in New Zealand waters became subject to domestic law on the working conditions on fishing boats and human rights more broadly.

Opportunities for engagement of international stakeholders in the region

There is a need to shift the narrative away from a securitized border and immigration approach to one that is centred on humanitarian principles. Australia's Operation Sovereign Borders and the associated narrative regarding irregular maritime migration is dominant across the region. This policy has been criticized internationally for its

perceived harsh approach to refugees and asylum seekers and, while recognizing the benefits associated with the communications campaign in preventing irregular maritime departures, shifting the securitized narrative that underpins the approach would be a key opportunity in the region and would need strong leadership.

Identifying and understanding opportunities for stronger collaboration among frontline responders would also strengthen regional responses to maritime people smuggling. Key to this is improving monitoring and data collection to enable stakeholders to predict large-scale irregular movements or changes in existing irregular migration patterns. This would enable greater preparedness ahead of significant irregular migration trends. There is also a need to better monitor market indicators that may offer insight into an increase in maritime departures. For example, monitoring the availability, price and location of the sale of vessels.

Irregular migration is often portrayed negatively by the media in a range of destination countries, and irregular maritime journeys typically receive significant media attention, with those undertaking them often depicted pejoratively. More balanced media coverage of these journeys in source, transit and destination countries is key to shaping attitudes that adopt a less punitive approach and create space for more humanitarian policies.

Opportunities for regional governments

It is not the intention of this section to provide recommendations to governments about their response to maritime people smuggling. Rather, the following are opportunities for stronger engagement as identified through the report.

- Enhance ratification of international protocols enshrining the protection of rights of refugees and promote their adherence in practice.
- Abide by commitments made in the 2016 Bali Declaration regarding safe disembarkation; enact and implement regional mechanisms in South and South East Asia to ensure safe disembarkation of refugees and migrants at sea.
- Expand and simplify pathways towards regularity, avoiding protracted statelessness that enhances vulnerabilities, often eroding human rights.
- Enact legislative frameworks that enable refugees to seek formal employment and earn a livelihood, mitigating exposure to illicit markets, including people smuggling.
- Facilitate regular migration pathways by simplifying processes (ranging from the procurement of identity documents to visas and cross-border procedures) and reducing expenses.
- Address the structural factors that create an environment conducive to corruption of officials. Increasing the salary of frontline immigration officials or instituting more senior officials at the borders, as well as regulating official migration and employment agencies, could reduce corruption.
- Enhance collaboration between states in South and South East Asia to coordinate responses and better mitigate the risks associated with maritime people smuggling.

NOTES

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