

# "SOLD LIKE FISH"

**Crimes Against  
Humanity, Mass Graves,  
and Human Trafficking  
from Myanmar and  
Bangladesh to Malaysia  
from 2012 to 2015**

**MARCH 2019**





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### Cover:

A boat under construction on the coast of Rakhine State, Myanmar. Residents told Fortify Rights the boat would transport Rohingya to larger ships in international waters operated by human traffickers.

©Fortify Rights, Sittwe Township, Rakhine State, Myanmar, 2015



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# HUMAN TRAFFICKING ROUTE FROM MYANMAR AND BANGLADESH TO THAILAND AND MALAYSIA, 2012-2015





*A Rohingya refugee mother, 25, and her two-week-old son in Johor Bahru, Malaysia. Rohingya survivors of trafficking and refugees in Malaysia have difficulty accessing legal status and basic protections such as health care. "My baby was born with an operation. Now he has a fever, and I can't take him the doctor. A smaller hospital didn't accept us, because they said we're foreigners. They said we had to go to the big hospital, but we had already been to the big hospital."*

©Fortify Rights, Johor State, Malaysia, August 15, 2014









*Fishing boats at low tide, Sittwe Township, Rakhine State, Myanmar. Traffickers commonly ferried Rohingya on smaller boats out to larger ships waiting in international waters.*

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A Rohingya man confined to an internment camp in Myanmar's Rakhine State displays his "white card"—an identification document revoked by former Myanmar President Thein Sein. Myanmar revoked Rohingya citizenship rights in 1982, contributing to their risk of being trafficked.

©Fortify Rights, Sittwe Township, Rakhine State, Myanmar, 2015



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## SUMMARY

*“People are being sold like fish, from one hand to another. That’s why the price [of release from captivity] is increasing.”*

—Human trafficker, Selangor State, Malaysia, September 27, 2014

On April 30, 2015, Thai authorities announced the discovery of a mass grave in a makeshift camp in a forested area near the Malaysian border. The grave contained more than 30 bodies of suspected victims of human trafficking believed to be Rohingya Muslims and Bangladeshi nationals. Less than one month later, on May 25, the Royal Malaysian Police announced the discovery of 139 graves and 28 suspected human-trafficking camps in Wang Kelian, Perlis State, Malaysia.

Rohingya Muslims have faced military-led attacks and severe persecution in Myanmar for decades. Fortify Rights, the United Nations, and other organizations determined that there are reasonable grounds to believe that the Myanmar authorities committed genocide against Rohingya—a crime that continues to today. These crimes forced hundreds of thousands of Rohingya refugees to flee the country in recent years. Most fled with hopes of finding sanctuary in Bangladesh and Malaysia, the nearest predominantly Muslim countries. This report documents how a transnational criminal syndicate—a

group of individuals or organizations working together for common criminal interests—in Myanmar, Bangladesh, Thailand, and Malaysia preyed on Rohingya refugees, deceiving them into boarding ships supposedly bound for Malaysia.

Motivated by profit, between 2012 and 2015, a transnational criminal syndicate held Rohingya as well as Bangladeshis at sea and in human-trafficking camps on the Malaysia-Thailand border. Traffickers provided their captives with three options: raise upwards of 7,000 Malaysian Ringgit (US\$2,000) in exchange for release, be sold into further exploitation, or die in the camps. Members of a syndicate tortured, killed, raped, and otherwise abused untold numbers of men, women, and children, buying and selling them systematically in many cases, in concert with government officials.

Days after the mass-grave discovery in Thailand in 2015, Thai authorities arrested a Rohingya man from Myanmar named Anwar, also known as Soe Naing, for alleged involvement in a human-trafficking ring. Thai authorities went on to arrest 102 other suspects, including senior Thai government officials.

Thai authorities then began the largest human-trafficking trial in the history of Southeast Asia. On July 19, 2017, a newly established, specialized human-trafficking court in Bangkok convicted 62 defendants for crimes related to the trafficking of Rohingya and Bangladeshis to Malaysia via Thailand. Those found guilty included nine Thai government officials, including Lieutenant General Manas Kongpaen, a military general who reportedly received approximately US\$1 million (3.49 million Malaysian Ringgit) in profits from the trafficking trade, including payments amounting to more than US\$400,000 (1.39 million Malaysian Ringgit) in just over one month alone.

In contrast, since 2015, Malaysian courts convicted only four individuals of trafficking-related offenses connected to the mass graves discovered at Wang Kelian. All those convicted were foreigners, including one Thai national, two individuals from Myanmar, and a Bangladeshi national. The Royal Malaysian Police reportedly arrested 12 police officers but eventually released them due to a lack of evidence.

The United Nations High Commissioner for Refugees (UNHCR)—the agency mandated to protect refugees—estimates that more than 170,000 people boarded ships from Myanmar and Bangladesh bound for Thailand and Malaysia from 2012 to 2015 and that the criminal syndicate organizing the vessels generated between US\$50 million (174.5 million Malaysian Ringgit) and US\$100 million (349 million Malaysian Ringgit) annually. Each ship reportedly earned traffickers an estimated US\$60,000 (209,400 Malaysian Ringgit) in profits, according to UNHCR. The majority of people trafficked during this period were Rohingya Muslims; however, in late 2014 and 2015, the syndicate began targeting Bangladeshi nationals as well.

This is a joint report by the Human Rights Commission of Malaysia (SUHAKAM, referred to in this report as “the Commission”) and Fortify Rights. It documents human rights violations perpetrated against Rohingya Muslims trafficked from Myanmar and Bangladesh to Thailand and Malaysia from 2012 to 2015, the discovery of mass graves in Wang Kelian in Malaysia’s Perlis State, and the Malaysian authorities’ response to the discovery of the mass graves. It analyzes the violence against Rohingya within the framework of relevant international law.

Chapter I documents abuses against captives held at sea by human traffickers. Fortify Rights and the Commission documented how traffickers in Myanmar and Bangladesh deceived men, women, and children to board ships and how members of a criminal syndicate killed, raped, and tortured them at sea. Traffickers piled hundreds and thousands of people into



*Rohingya children receive religious education in an internment camp, Sittwe Township, Rakhine State, Myanmar. The camps lack adequate resources, including food, medicine, shelter, and education, driving many Rohingya families to flee the country.*

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repurposed fishing vessels and deprived them of adequate food, water, and space. Many victims died at sea at the hands of the traffickers or by suicide, jumping into open waters to escape the pain and suffering inflicted by their captors.

Chapter II documents human traffickers' abuses in human-trafficking camps along the Malaysia-Thailand border, including in Wang Kelian and in human-trafficking houses in Malaysian and Thai towns and cities. Traffickers killed and buried the bodies of trafficked victims in mass graves; in some cases, forcing captives to bury the bodies. Traffickers also inflicted pain and suffering on their captives using pipes, bats and clubs, belts, wires, tasers, nails, threats and intimidation, and other means.

“When I was unable to pay the money to the men, they poured boiling water on my head and body,” said “Rahim Ullah,” a Rohingya Muslim from Myanmar’s Rakhine State, who was 16-years old when traffickers tortured him in a camp on the Malaysia-Thailand border in 2014. “They did this every day . . . My legs are no longer conscious. They are numb, and there is not enough circulation.”

Traffickers in the camps denied their captives access to adequate food, water, and space, resulting in deaths, illness, and injury—including paralysis—particularly of those unable pay the money demanded by the traffickers to obtain their release.





“After two months, the people who couldn’t give money—the people who were still there started dying,” said “Abdul,” a 17-year-old Rohingya survivor of the human-trafficking camps.

“People died every day,” said “Noor Begum,” a 20-year-old Rohingya woman who fled Sittwe in Rakhine State, Myanmar in September 2013. “Some days more, some days less, but people died every day.”

Traffickers also systematically sold untold numbers of women and girls into forced marriages and situations of domestic servitude in Malaysia.

Chapter III of this report is based on Malaysian officials’ testimonies about the discovery of the mass graves and the human-trafficking camp at Wang Kelian. It finds that Malaysian authorities discovered a suspected human-trafficking campsite in Wang Kelian on January 19, 2015, which included “cages” constructed with wood and plastic tarpaulin surrounded by barbed wire and outfitted with lookout posts and canopy walkways. Officials testified in statements to the Commission that they also discovered a mass gravesite near the jail-like compound in the camp on January 20, 2015.

According to the findings of this report, the day following the discovery of the campsite, a senior police officer ordered the compound destroyed, thus diminishing potential physical evidence that might have aided a police investigation. Moreover, the authorities did not publicly reveal any information about the site until May 25, 2015, more than four months after the initial discovery of the campsite and mass graves. A forensic team also confirmed on March 6, 2015 that the suspected gravesite was indeed a mass grave, but Malaysian authorities did not order the exhumation of the bodies until May 2015.

Forensic specialists testified for this report that their post-mortem examinations of the remains exhumed from the site were inconclusive with regard to the cause of death due to excessive decomposition of the bodies. The four-month delay in investigating the gravesite delayed the exhumation of remains from the site, which, in turn, hampered forensic specialists from identifying the causes of their death. This may constitute obstruction of justice.

Chapter IV of this report focuses on eyewitness testimony suggesting official complicity or direct involvement of government officials in the mass human trafficking that took place from 2012 to 2015 from Myanmar and Bangladesh to Thailand and Malaysia. Eyewitness testimonies build on information established in human-trafficking trials in Thailand and indicate the complicity or, in some cases, direct involvement of government authorities in this complex criminal syndicate.

Survivors' testimonies in this report reveal that Thai authorities extrajudicially transferred Rohingya from state custody to traffickers and, in some cases, to human-trafficking camps on the Malaysia-Thailand border or in Malaysian territory. According to survivors, Thai authorities sold Rohingya in their custody to traffickers and were directly involved in the trade of Rohingya.

Further investigation is required to determine the extent Malaysian authorities were responsible or involved in the trafficking of Rohingya and Bangladeshis from 2012 to 2015. However, available evidence indicates the authorities in Malaysia and Thailand have not investigated or held perpetrators to account for the full extent of the crimes related to the trafficking of Rohingya and Bangladeshis.



*Rohingya refugees and trafficking survivors from Myanmar detained in a jail in Southern Thailand.*

©Fortify Rights, 2015





*Noor Begum, 20, fled persecution in Myanmar in 2014 only to be held in captivity for two months in a human-trafficking camp in Thailand.*

*"I saw many people die [in the camp]. When they died, the dallals put them in a common grave."*

*©Fortify Rights, Pahang State, Malaysia, August 13, 2014*



*Malaysian officials remove bodies from a mass grave in Wang Kelian, Perlis State, May 26, 2015. The Royal Malaysian Police discovered the site on January 19 but did not exhume bodies until May 2015, which may constitute obstruction of justice.*

©Asia Reports, May 2015.



Lastly, Chapter V of this report employs treaty-based and customary law frameworks of international human rights law and international criminal law to examine the legal implications of the violence perpetrated against the men, women, and children trafficked from Myanmar and Bangladesh from 2012 to 2015. The criminal dimensions are evaluated based on standards set forth in the Rome Statute of the International Criminal Court (ICC)—to which the Government of Malaysia acceded in March 2019—as well as *ad hoc* tribunals established by the U.N. Security Council, such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

Under Article 7 of the Rome Statute, a crime against humanity is committed when one or more prohibited criminal acts enumerated by the Statute are “committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” This report finds reasonable grounds to believe that a criminal organization committed the crimes of murder, extermination, enslavement, deportation or forcible transfer, imprisonment, torture, and rape, as part of a widespread and systematic attack directed against Rohingya civilians from Myanmar and Bangladesh, and they did so with knowledge of the widespread and systematic attack underway.

The Commission and Fortify Rights therefore have reasonable grounds to believe that human-trafficking networks committed crimes against humanity at sea and in camps in Malaysia and Thailand against Rohingya civilians from 2012 to 2015.

An organized criminal network has yet to be prosecuted for crimes against humanity in any court, but there are sound arguments why some could be, provided all the elements of the crimes are met. Many of these are the same reasons why the U.N. originally established the ICC and other *ad hoc* tribunals, such as to ensure a venue to prosecute the most grievous crimes where there is no domestic court with the ability or will to do so. The preamble of the Rome Statute reads, “[T]he most serious crimes of concern to the international community as a whole must not go unpunished.” Many criminal syndicates throughout the world operate in precisely such conditions—with relative impunity and low probability that they will face punishment for their crimes. Despite some measures towards accountability for the trafficking of Rohingya and Bangladeshis, considerable work remains to ensure justice for and prevent a recurrence of the crimes documented in this report.

On February 28, Malaysian Home Minister Tan Sri Muhyiddin Yassin announced that Former Chief Justice Tun Arifin Zakaria would lead a Royal Commission of Inquiry (RCI) to investigate and ensure accountability for the human trafficking and mass graves in Wang Kelian. The seven-member RCI includes the former Inspector-General of Police Tan Sri Norian Mai and other former government and elected officials. The establishment of the RCI signals fresh political will by the Government of Malaysia to account for the crimes perpetrated by traffickers against Rohingya and Bangladeshis from 2012 to 2015.

The Commission and Fortify Rights recommend that the RCI aim to establish the facts and circumstances surrounding the human trafficking, deaths, mass graves, and government responses at Wang Kelian. The RCI should analyze relevant facts under Malaysian and international law to identify all violations of law. Where possible, it should identify those responsible and provide concrete recommendations to prevent future violations, protect the rights of survivors, and ensure accountability.

The Government of Malaysia should also be prepared to fully implement the recommendations of the RCI, protect the rights of survivors of human trafficking and refugees in Malaysia, and put into place measures to prevent such crimes from occurring again.



*Foyas, 20, and Ula Mya, 43, fled internment camps in Myanmar in 2013, boarding a ship they believed would take them to Malaysia. Thai authorities raided their group and detained them for nine months before transferring them to human traffickers. Traffickers, in turn, enslaved and tortured them for approximately three weeks in a remote camp in Thailand, demanding 6,800 Ringgit (US\$2,000) for their release.*

©Fortify Rights, Pahang State, Malaysia, August 13, 2014







This report is based on a multi-year independent investigation by the Commission and Fortify Rights. It includes previously unpublished evidence of human rights violations, drawing on hundreds of interviews. The Commission recorded statements from more than 126 witnesses, including survivors, government and elected officials, and members of state security forces. Fortify Rights interviewed more than 144 eyewitnesses, survivors of human trafficking, members of a human-trafficking syndicate and known human traffickers, and others.

As part of the research for this report, the Commission visited Wang Kelian in Perlis State, Rohingya communities in Alor Setar in Kedah State, and the Belantik Immigration Detention Center in Kedah State. Fortify Rights also conducted site visits to internment camps in Myanmar, refugee camps in Bangladesh, immigration detention centers and government-run shelters in Thailand, refugee camps in Indonesia, and refugee communities in numerous locations in Malaysia and near the Malaysia-Thailand border. The majority of survivors interviewed for this report were Rohingya Muslims.



The experiences of most Rohingya and Bangladeshis arriving in Thailand and Malaysia by sea between 2012 and 2015 from Myanmar and Bangladesh meet the definition of human trafficking—not human smuggling. As such, the Commission and Fortify Rights note that survivors deserve protection under Malaysian law as survivors of trafficking. In the case of the Rohingya, survivors should also be protected as refugees.

Ultimately, the Commission and Fortify Rights urge the Malaysian authorities to identify and prosecute all those responsible for crimes against humanity in the human trafficking of Rohingya and Bangladeshis from Myanmar and Bangladesh to Malaysia from 2012 to 2015. The state has the primary obligation to ensure justice for victims and hold perpetrators accountable.



*Survivors of human trafficking stranded at sea following a regional crackdown by governments in Southeast Asia, May 14, 2015. Traffickers abandoned 5,000 to 6,000 Rohingya and Bangladeshis at sea as governments refused to let them disembark for weeks, putting lives at grave risk.*

©Asia Reports, May 2015.



A Rohingya trafficking survivor in Malaysia shows a receipt for money paid to a human-trafficking syndicate for the release of a family member. Many Rohingya went into debt or indentured servitude to pay upwards of US\$2,000 (7,000 Malaysian Ringgit) to ensure the release of friends and family from trafficking camps on the Malaysia-Thailand border.

©Fortify Rights, Johor State, Malaysia, 2015

**Maybank**

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# METHODOLOGY

The Commission and Fortify Rights, in collaboration with teams of interpreters, translators, fixers, and legal researchers, researched and wrote this report. In total, the Commission and Fortify Rights conducted 270 interviews for this report from 2013 to 2019.

The Commission conducted 126 interviews with Rohingya survivors and witnesses of human trafficking, Malaysian government officials—including members of the Royal Malaysian Police and General Operations Force—and residents of Wang Kelian. The Commission collected most of the statements for this report in 2015, 2017, and 2018.

Fortify Rights conducted 144 interviews from 2013 to 2019 with eyewitnesses, survivors of human rights violations, members of a human-trafficking syndicate, government officials, aid workers, and others. Fortify Rights conducted most interviews during the height of the human-trafficking crisis in Southeast Asia between 2013 to 2015. Fortify Rights conducted interviews in Malaysia, Thailand, Myanmar, Bangladesh, and Indonesia and conducted site visits to Rohingya internment camps in Myanmar, Rohingya refugee camps in Bangladesh, immigration detention centers and government-run shelters in Thailand, refugee camps and temporary shelters in Indonesia, and refugee communities in numerous locations in Malaysia and near the Malaysia-Thailand border.

Fortify Rights also observed and monitored the human-trafficking trials in Thailand from 2015 to the day of the verdict on July 19, 2017.

After the Royal Malaysian Police detained Rohingya survivors in the Belantik Immigration Detention Centre in Sik, Kedah State, the Commission planned a visit to the center on May 26, 2015. The Commission sent a notice to relevant officials of the planned visit on May 22, 2015 in accordance with the 1999 Act of the Human Rights Commission of Malaysia. Although the authorities denied the Commission access to the center without providing a reason on May 22, the authorities granted permission on September 3, 2015. During its visit, the Commission interviewed four Rohingya.

From November 10 to 12, 2016, with the assistance of members of the Rohingya community, the Commission recorded statements from 19 witnesses, ranging in age from 16 to 55, in Alor Setar, Kedah State. The Commission categorized as refugees five of the witnesses who arrived in Malaysia after being stranded at sea when human traffickers abandoned the vessels. The Commission categorized the remaining 14 witnesses as survivors from the Wang Kelian human-trafficking camp.

The Commission and Fortify Rights interviewed survivors and eyewitnesses in Rohingya language with English, Thai, or Bahasa Malay interpretation. No one interviewed for this report received compensation, and the investigation teams informed all interviewees of the purpose of the interview, its voluntary nature, and the ways that the information shared might be used. In some cases, the Commission

and Fortify Rights provided nominal funds to interviewees to cover travel costs and other expenditures to participate in the research. All of those interviewed consented to be interviewed. To protect the security of people who spoke with the investigation teams, the Commission and Fortify Rights have withheld the names of interviewees and other identifying information.

The Commission and Fortify Rights found that many survivors of human trafficking and other abuses lacked geographical knowledge about where they had been held, including in what country. This was likely due to extreme duress experienced in the custody of human traffickers, an unfamiliarity with the geographical areas of Malaysia and Thailand, and because traffickers forcibly transported their captives from location to location during nighttime hours and without communicating geographic details.

All currency conversion rates noted in this report are based on the rate of conversion at the time of the interview.

Fortify Rights obtained and analyzed photographs and videos taken by amateur and professional photographers and videographers from 2013 to 2015, depicting material relevant to the human-trafficking crisis. Fortify Rights also collected audio recordings of phone interviews as well as audio recordings of phone calls between Rohingya men and members of a human-trafficking syndicate. The persons placing the call provided consent to record the call. This documentation is on file with Fortify Rights.



# I. AT SEA: ABUSES ON HUMAN-TRAFFICKING SHIPS IN THE BAY OF BENGAL

Tens of thousands of Rohingya and Bangladeshi nationals boarded ships off the coast of Myanmar and Bangladesh from 2012 to 2015 believing they would be transported directly to Malaysia. Human traffickers working as part of a transnational criminal syndicate promised security, lucrative employment opportunities, and other benefits to lure men, women, and children onto the ships. Instead of transporting people to Malaysia and fulfilling their promises, traffickers confined “passengers” on overcrowded ships in deplorable conditions and under threat of death. Many Rohingya died or suffered serious abuse at the hands of human traffickers at sea.

Traffickers repurposed large, medium, and small-sized fishing vessels in order to transport Rohingya and, later, Bangladeshis across the Bay of Bengal from Myanmar and Bangladesh to Thailand and Malaysia.<sup>1</sup> Survivors and witnesses described to the Commission and Fortify Rights that traffickers operating the vessels were primarily Burmese, Rohingya, Rakhine, Thai, and Malay. Thailand’s criminal court also identified Thai, Myanmar, Bangladeshi nationals as well as Rohingya traffickers.<sup>2</sup> In May 2015, traffickers abandoned an estimated 5,000 to 6,000 survivors of trafficking on ships at sea when governments in Southeast Asia cracked down on the trafficking trade and refused to allow “passengers” to disembark, indicating the magnitude of the trade at the time.<sup>3</sup>

## DECEPTION

*“We were supposed to be going to Malaysia, not Thailand.”*

—“Noor Wai,” 15-year-old Rohingya woman, Penang State, Malaysia, October 2014

From at least 2012 to 2015, traffickers in Myanmar’s Rakhine State and Bangladesh worked as members of a transnational criminal syndicate in Malaysia and Thailand to deceive men, women, and children into boarding ships. Rohingya survivors of trafficking believed they would be transported to

1 Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 12, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013–2015.

2 *Ibid.*

3 Fortify Rights interviews with eyewitnesses and survivors, 2013–2015. The Commission interviews with eyewitnesses and survivors, 2017. *See also*, United Nations High Commissioner for Refugees (UNHCR) Regional Office for Southeast Asia, *Mixed Maritime Movements in Southeast Asia*, 2015, <https://unhcr.atavist.com/mmm2015> (accessed on March 24, 2019); “Malaysia and Thailand Turn Away Hundreds on Migrant Boats,” *The Guardian*, May 14, 2015, <https://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard> (accessed in March 22, 2019).

Malaysia for a single fee or, in many cases, no fee. Some onshore traffickers promised lucrative jobs and legal status in Malaysia as well as lump-sum payments to family members remaining in Myanmar's Rakhine State or Bangladesh.<sup>4</sup> Traffickers deceived Rohingya about how much money they would have to pay for the journey, the conditions, treatment, and liberties provided during the trip, and what awaited them in Thailand and Malaysia.

Traffickers and witnesses testified that ships needed to transport at least 300 to 400 "passengers" in order to be profitable and cover costs, including fuel.<sup>5</sup> Traffickers financially incentivized onshore brokers in Rakhine State, Myanmar and Cox's Bazar District, Bangladesh to quickly "recruit" masses of "passengers." Many survivors reported traveling on ships carrying more than 400 "passengers"; and some survivors reported larger vessels carrying several thousand people.<sup>6</sup>

A Rohingya trafficker in Sittwe in Myanmar's Rakhine State deceived "Mohammed Yunus," 26, to board a ship the trafficker said was headed for Malaysia: "The *dallal* said that, if I reached Malaysia, my life would develop so much." An alleged trafficker in southern Thailand told Fortify Rights, "[Rohingya in Myanmar] are told the government [of Malaysia] will give them an ID, that they can work there, and they believe that and so they come."<sup>8</sup>

Upon boarding ships in international waters, armed traffickers held Rohingya in deplorable and overcrowded conditions. On most ships, traffickers distributed color-coded wristbands to Rohingya, with each color representing the boss who "owned" the wristband wearer. Fortify Rights documented the distribution of black, white, yellow, and red wristbands between 2012 and 2015.

"Fatima," 20, was seven-months pregnant when she, her husband, and their one-year-old child boarded a human-trafficking ship. She decided to flee their home in Aung Mingalar village in Myanmar's Rakhine State, fearing she or her child would die in childbirth due to the government's denial of access to adequate health care. She and her family spent more than one month at sea on a ship operated by human traffickers, waiting for the ship to fill with "passengers" before departing. She told Fortify Rights:

Before we got on the big boat, we were each given a red plastic bracelet. I don't know what this bracelet was for, but everyone on the boat had one, and they were all the same color. The boat had two levels. Altogether, there were 500 people on the boat, mostly Rohingya and Bengali.<sup>9</sup>

"Mohammed Yunus," 26, also told Fortify Rights of traffickers providing different color wristbands to their shipboard captives:

There were three kinds of bracelets—black, white, and red. Our *dallal* was the white bracelet. When they put it on our hands, we asked, 'What is that?' They told us that people had bought us. At that time, I was crying. After that, they checked our whole body, and if we had anything, they took it—our belts, knives, everything.<sup>10</sup>

4 Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, 2016.

5 *Ibid.*

6 UNHCR Regional Office for Southeast Asia, *Mixed Maritime Movements in Southeast Asia*, 2015.

7 In this context, a "*dallal*" is an intermediary involved in the trafficking business. Generally, the term is used in reference to local intermediaries who are often associated with unlawful behavior. Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 26, 2015.

8 Fortify Rights interview with #118, Songkhla Province, Thailand, May 8, 2015.

9 Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014. *See also*, Fortify Rights interviews with #23, #55, #67, #74, #77, #78, and #113 in Malaysia, Myanmar, and Thailand, August 15, 2014 – March 6, 2015.

10 Fortify Rights interview with #121, Sittwe, Rakhine State, Myanmar, May 26, 2015.

Weeping, Mohammed Yunus said, “I didn’t know about these risks before I went.”<sup>11</sup>

“Raheem,” 27, spent nearly five weeks at sea on a ship operated by Thai and Rohingya traffickers and carrying more than 200 “passengers” after fleeing from his home in Aung Mingalar village in Sittwe Township in Myanmar’s Rakhine State in 2014. He told Fortify Rights:

[The traffickers] used bracelets to split us into groups. There were two [name redacted] groups, and one [name redacted] group. [The trafficker’s] boss’s name is [redacted]. He is from Thailand. There was a small agent who said we belonged to [name redacted] . . . [Mine] was a yellow plastic bracelet.<sup>12</sup>

A Rohingya woman, 65, who fled from Buthidaung Township in Myanmar’s Rakhine State in 2012, told Fortify Rights about the wristband the traffickers gave her, saying: “I had a bracelet from the *dallal*. I know what the bracelet means. It’s from the *dallal*, and it shows what *dallal* bought me and owned me . . . The *dallals* were Rohingya, Bangladeshi, and Burmese and spoke different languages.”<sup>13</sup>

Witnesses in a trial against alleged human traffickers in Thailand likewise testified in court in 2016 about how traffickers used color-coded wristbands to signify traffickers’ ownership over Rohingya captives.<sup>14</sup>

Members of a trafficking syndicate also deceived Rohingya into thinking they would not have to pay additional funds for transport to Malaysia. “Fatima,” 20, told Fortify Rights:

We were so surprised when the *dallals* demanded additional money in Thailand. We thought we had paid already to get to Malaysia. They told us, “You contact your friend, your parents, your neighbor and tell them to raise the money immediately.” We didn’t know anyone in Malaysia who could pay for our release, so we got in contact with people in Myanmar to find someone in Malaysia who could help us.<sup>15</sup>

“Abdul Haman,” 17, fled his home in Du Char Yar Tan village (also known as *Duchiridan* or *Kilidarn*), Maungdaw Township in Myanmar’s Rakhine State in January 2014 after Myanmar state security officers killed residents and burned down several homes following the disappearance of a police officer. He told Fortify Rights: “Everyone had to pay 50,000 Myanmar Kyat (US\$51; 145 Malaysian Ringgit) to get to Thailand . . . Only when I arrived in Thailand did I learn that I would have to pay 6,000 Malaysian Ringgit (US\$1,700) to get to Malaysia.”<sup>16</sup>

“Mohammed Kasem,” 26, fled from Maungdaw Township, Rakhine State, Myanmar in April 2014 and paid to board a human-trafficking ship:

I had to pay 50,000 Myanmar Kyat (US\$51; 145 Malaysian Ringgit) to get on the boat. I paid it to one person in another village [in northern Rakhine State] called Kun Kar Para. That was to get on the boat. When we started traveling, I didn’t know I would have to pay more to come to Malaysia. When I arrived in the mountain camps [somewhere on the Malaysia-Thailand border], I had to call my friend to pay 6,000 Malaysian Ringgit (US\$1,700) for me.<sup>17</sup>

<sup>11</sup> *Ibid.*

<sup>12</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2015.

<sup>13</sup> Fortify Rights interview with #140, Kuala Lumpur, Malaysia, February 2, 2019.

<sup>14</sup> Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 12, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013–2015.

<sup>15</sup> Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>16</sup> Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

<sup>17</sup> Fortify Rights interview with #54, Kuala Lumpur, Malaysia, September 27, 2014.



A mid-level Rohingya human trafficker operating out of Malaysia told Fortify Rights:

People don't know how much it will cost to travel from Rakhine to Malaysia. They think that their brother will help them, their friend will help them, their neighbor will help them. Then they get on the boat, and only when they arrive in Thailand and reach the camp, do they know about the situation. All the people are able to get on the boat, but not all are able to arrive in Thailand. Many people die on the boat. Only after they arrive at the mountain camp, do they know the situation and what really has happened to them.<sup>18</sup>

Traffickers not only deceived potential captives with regard to payments, they deceived many to believe the conditions on ships would be humane and comfortable. "Yusuf," 19, fled his home in Maungdaw Township in Myanmar's Rakhine State in October 2013 due in part to longstanding restrictions imposed on his community by the Myanmar authorities, including restrictions on the right to freedom of movement. He told Fortify Rights:

I didn't know about the risk, but the broker promised me they would take me on a big ship [to Malaysia] that would hold 2,000 people, but they said they'd only take 500 people. In reality, it was a small boat with around 250 occupancy . . . The agents [on board] had knives and slingshots.<sup>19</sup>

Onshore Rohingya traffickers also marketed free travel to Malaysia, particularly targeting women, who could be sold for higher prices. "Wai Roshum," 50, is a Rohingya woman from Bhumi village in Sittwe Township, Rakhine State, Myanmar. She told Fortify Rights:

After staying in the [internment] camp [in Myanmar] for a year and a half, I no longer wanted to remain in Myanmar. My parents were gone, my daughter had her own family, and I didn't have any friends left. I decided I should take my chances to try to reunite with my husband in America . . . I explained to the *dallal* my situation that I wanted to join my husband but didn't have any money to pay to get to Malaysia. The *dallal* took pity on me and said that there was no need for me to pay. We left later that day. I didn't bring anything with me other than the clothes on my back.<sup>20</sup>

When Wai Roshum reached Thai waters, Thai authorities took her and many others into custody and then transported the group overland to a human-trafficking camp, where traffickers demanded 7,000 Malaysian Ringgit (approximately US\$2,000) to be released.<sup>21</sup>

A mid-level Rohingya human trafficker operating in Malaysia, explained to Fortify Rights:

When *dallals* collect people from Myanmar, they sometimes tell the people they don't need to give any money. "We will find a job for you in Malaysia, and then you can pay us back very easily," they say. As soon as they get on the boat, the situation changes, and when they arrive in Thailand, [the traffickers] are in control of these people. If you can pay 6,000 Malaysian Ringgit (US\$1,700), they say, "You can go to Malaysia." So many people have died in Thailand. If they cannot pay, they have to stay in the camps sometimes for one month, two months, or six months, and then they die. So many people have died already.<sup>22</sup>

Onshore traffickers had an economic incentive to deceive Rohingya onto ships. Supervisors paid onshore traffickers a commission based on the quantity of people "recruited" to board ships. This incentivized coercion and deception.

<sup>18</sup> Fortify Rights interview with group of human traffickers, #74, Selangor State, Malaysia, September 27, 2014.

<sup>19</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>20</sup> Fortify Rights interview with #78, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>21</sup> *Ibid.* See also, Chapter IV. Testimony Suggesting Official Complicity in Human Trafficking.

<sup>22</sup> Fortify Rights interview with #60, Kuala Lumpur, Malaysia, September 28, 2014.

Rohingya women traffickers targeted women and children with tales of prosperity in Malaysia, while Rohingya men traffickers likewise targeted men. “Aung Kyaw Thura,” a middle-aged Rohingya community leader in Myanmar’s Rakhine State, explained:

The main [trafficking] company is in Malaysia. [The head of the syndicate] needs, let’s say, 1,000 people from Myanmar or Bangladesh in order to send the ship. He hires someone from [Rakhine State, Myanmar]. The main trafficker in Malaysia is from our [Rohingya] community . . . There are big traffickers on the ship. They will call the onshore brokers and say, “If you can send ten people, you will get two-million Myanmar Kyat (US\$2,000; 7,000 Malaysian Ringgit) so try to find the people.” [The onshore trafficker] is the agent of the traffickers. He doesn’t know anything. He really needs two-million Myanmar Kyat, so he will persuade them any way he can.<sup>23</sup>

Aung Kyaw Thura also explained how traffickers deceived Rohingya in Myanmar’s Rakhine State:

Let’s say there is a young person who is responsible for managing cows. He only knows about cows. The trafficker goes to him and says, “What are you doing for a living? What is your salary? Do you want to go with me? You will get two million Myanmar Kyat (US\$2,000; 7,000 Malaysian Ringgit) per month. You will go on a ship. As soon as you go on the ship, your family will get money, 500,000 Myanmar Kyat (US\$520; 1,800 Malaysian Ringgit), and when you get to Malaysia, you will have great opportunities. My uncle has a big project and needs thousands of workers.” This boy in Sittwe [in Myanmar’s Rakhine State] gets 20,000 Myanmar Kyat (US\$21; 73 Malaysian Ringgit) per month, and in Malaysia, he thinks he will get two million, so he thinks, “Okay, I am going.”<sup>24</sup>

“Mohammed Yunus,” 26, told Fortify Rights:

A *dallal* named [redacted] visited Aung Mingalar [in Myanmar’s Rakhine State]. It was nighttime, and I was in a teashop. He said to me, “Would you like to go to Malaysia?” I thought he might be a good guy and that he was trying to rescue my life from here. I heard that people got rich in Malaysia and that the U.N. [United Nations] also rescued people. I asked him if there would be any difficulties for me if I travelled. He said there would be no difficulties.<sup>25</sup>

On the day before his departure, Mohammed Yunus walked to the *dallal*’s home, where the *dallal* told him that the authorities would arrest him if he were discovered, instilling fear. He told Fortify Rights:

When we prepared a small boat [to travel to the larger boat waiting out at sea], the *dallal* said, “Please, give me your shoes. You cannot bring your shoes. If you bring your shoes, the *dallals* will beat you.” When I heard that, I said, “Sorry, I cannot go with you. When I was in Aung Mingalar, you didn’t say that they would beat us.” He said, “No, no, not like that. It’s just that you can’t wear shoes,” so the *dallal* took my shoes. We had to walk two hours from Ohn Daw Gyi [internment camp in Sittwe Township, Rakhine State] to the boat. When we arrived there, the boat came to us. The boat owner picked us up. [The *dallal*] was nowhere to be seen. He left us at Ohn Daw Gyi.<sup>26</sup>

Mohammed Yunus spent a total of 57 days at sea on board a human-trafficking ship before being sold back into his community in Myanmar’s Rakhine State after the ship could not disembark in Thailand or Malaysia following the regional “crackdown” on human trafficking in 2015.<sup>27</sup>

Some Rohingya knew the risks of departing Myanmar by sea but recognized the lack of other options.

<sup>23</sup> Fortify Rights interview with #119, Rakhine State, Myanmar, May 20, 2015.

<sup>24</sup> *Ibid.*

<sup>25</sup> Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 26, 2015.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

A 27-year-old Rohingya widow and mother of five children, who was confined to an internment camp in Myanmar, told Fortify Rights:

For about two months, I faced many difficulties [in Myanmar], so I had no choice but to try to go to Malaysia or die in the sea. I heard that Malaysia is a very difficult place, that the *dallals* are cruel to people, and that they sometimes kill people. I heard many rumors about the traffickers. I trusted Allah and thought that it would be better to die in the sea than be alive here [in Myanmar]. Death is better than life because of the difficulties I face here.<sup>28</sup>

In some cases, traffickers abducted Rohingya and forcibly transported them onto ships bound for Thailand and Malaysia. One Rohingya survivor told the Commission that traffickers abducted him in Myanmar and then beaten him because he was unable to pay for his freedom.<sup>29</sup> The traffickers sold him to a third party in Malaysia.<sup>30</sup> Rohingya witnesses in a human-trafficking trial in a Bangkok court in 2016 similarly testified that traffickers abducted them and forced them onto a small boat, which transported them to larger ships waiting at sea and operated by human traffickers.<sup>31</sup>

## KILLINGS, DEATHS FROM DEPRIVATIONS, AND SUICIDES

*“Every day, someone died.”*

—“Rahim Ullah,” 16, Rohingya trafficking survivor, Kuala Lumpur, Malaysia, 2014

The Commission and Fortify Rights documented testimony from Rohingya survivors and eyewitness about killings and deaths at sea. Fortify Rights interviewed dozens of survivors from 11 separate journeys by sea from Myanmar to Thailand between 2014 and 2015, who told Fortify Rights of more than 112 deaths—including killings, deaths from deprivations of food and water, and preventable suicides—on board ships operated by a transnational criminal syndicate. In all cases, traffickers threw dead bodies overboard. Similarly, survivors testified to the Commission that traffickers beat and starved people to death at sea, throwing the dead bodies into the sea.<sup>32</sup> One survivor told the Commission that he witnessed traffickers beat to death eight people at sea.<sup>33</sup>

### Killings and Deaths from Deprivations

“Abdul Yasin,” 17, fled Myanmar in February 2014 and boarded a ship he was told would take him to Malaysia. He witnessed shipboard traffickers commit multiple killings at sea, telling Fortify Rights:

Some people didn’t have proper food or water and got very mad. When that happened, the *dallals* stabbed them and threw them in the sea. Six people were killed and thrown in the sea . . . There were men, women, and children on board. All the people who were killed were men. All six managers were from Alay Than Kyaw [a village in Myanmar’s Rakhine State]. The knives were maybe eight inches long.<sup>34</sup>

“Begum B.,” 50, spent 13 days at sea and witnessed armed traffickers throw overboard four Rohingya men who had boarded the ship in Bangladesh:

<sup>28</sup> Fortify Rights interview with #122, Sittwe Township, Rakhine State, Myanmar, May 20, 2015.

<sup>29</sup> The Commission interview with W9.

<sup>30</sup> The Commission interview with W9.

<sup>31</sup> See, Fortify Rights, internal report on human trafficking case, testimony of 14-years-old witness, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 12, 2016.

<sup>32</sup> The Commission interviews with W3 and W8.

<sup>33</sup> The Commission interview with W8.

<sup>34</sup> Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014.



Four [Rohingya] from Bangladesh were thrown into the sea. They all disappeared. They took them to the back of the boat near the toilet and pushed them into the water. They treated us very bad, beating everyone. I was unable to eat. There was no food.<sup>35</sup>

“Abdul Haman,” 17, told Fortify Rights:

Two people were very hungry and asked for water [while on the ship], and then the *dallals* beat them for several hours. Afterwards, these people became crazy and the *dallals* threw them overboard . . . The *dallals* took the people by the arms and legs, and they threw them overboard. I saw this with my own eyes. Everybody saw this. No one tried to stop them, because everyone was scared.<sup>36</sup>

“Rahim Ullah,” a 16-year-old Rohingya boy, who fled his home in Sittwe in Myanmar’s Rakhine State in May 2014, witnessed killings at sea and deaths from deprivations of food and water while on board a human-trafficking ship captained by a Thai-Malay man. He said:

About 12 people died on our journey. When they were beaten [by traffickers], they were in a lot of pain, and there was a shortage of water and food. We prayed and cried for rain, so we could get some water to drink. One of the 12 people, the traffickers knew he would die, so the men threw his body overboard while he was still alive. He was an older man . . . Every day, someone died. It was because of thirst—the old men died from that—and the beatings. There was only a little rice.<sup>37</sup>

A 65-year-old Rohingya man who fled from the refugee camps in Bangladesh told Fortify Rights: “Many people came from the refugee camp. There were 300 to 500 people on our ship. At least seven people died—from malaria, diarrhea, dysentery, swelling, beatings.”<sup>38</sup>

“Mohammed Ishmael,” 20, fled an internment camp outside Sittwe, Rakhine State, Myanmar in February 2014, and said traffickers ferried him to an overcrowded ship in the Bay of Bengal, carrying an estimated 400 people. He said:

I got on the fishing boat and then was taken to the Bay of Bengal. The ship was waiting there for us. There were over 400 people on the big boat. On the boat, we were beaten very brutally by guards [from Myanmar]. Many people died on the boat . . . The guards threw some people in the water. The guards threw seven people in the water. At least 20 to 30 people died on the boat, including the seven people thrown into the water. They couldn’t get proper food and water.<sup>39</sup>

A 20-year-old Rohingya woman, who fled Sittwe Township in Rakhine State, Myanmar in June 2014, told Fortify Rights:

Sixteen men died on the boat. Although we were in the lower hold of the boat, we knew when someone died because we could hear the men crying and could look out from the hold to see the body. When someone died, the *dallals* threw their bodies overboard. I saw with my own eyes 12 bodies thrown overboard.<sup>40</sup>

“Kaledah,” an 18-year-old Rohingya woman from Maungdaw Township in Rakhine State, who fled Myanmar in 2014, told Fortify Rights: “So many people were sick on the boat. One person died on the boat. I saw the *dallals* throw his body into the water.”<sup>41</sup>

<sup>35</sup> Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014.

<sup>36</sup> Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

<sup>37</sup> Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014.

<sup>38</sup> Fortify Rights interview with #11, Kuala Lumpur, Malaysia, August 12, 2014.

<sup>39</sup> Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

<sup>40</sup> Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>41</sup> Fortify Rights interview with #83, Penang State, Malaysia, September 16, 2014.

“Ebadullah,” 25, from Maungdaw Township in Rakhine State, who fled Myanmar in 2014 to escape forced labor by the Myanmar Army.<sup>42</sup> He witnessed one killing at sea: “One man was killed from being beaten. I saw the blood all over his head. A Thai man beat him with a stick. He was asking for rice and water, and that’s why he was beaten.”<sup>43</sup>

## Suicides at Sea

“Abdul Yasin,” 17, witnessed traffickers kill six people, telling Fortify Rights, “[S]ome people got so upset, they just jumped in the water.” He added:

At least 25 people jumped into the sea, all men, young ages, in their twenties. It was very hot on the boat. We had to stay on the lower deck and suffered a lot. We had no water. They said they couldn’t suffer anymore and jumped into the sea. The young people who were stronger were kept at the bottom of the boat.<sup>44</sup>

“Mohammed Khan,” a 25-year-old Bangladeshi man trafficked from Bangladesh to Thailand in August 2013, also witnessed suicide and death at sea. He told Fortify Rights:

A number people died at sea. Without the rainwater, all the people would have died. The five Thais who managed the trip, ate food and drank water. They provided us with rice only once in five days. There was a lack of water too. They did not provide water. The people became crazy and tried to move here and there. A man jumped into the sea and nobody saved his life. The one who jumped into the sea was a man around 35-years old. He jumped because he was thirsty and became crazy. He had a photo of two of his children, and he cried when he looked at the photo. Finally, he jumped into the sea.<sup>45</sup>

“Noor Waï,” 15, is a Rohingya girl from Aung Mingalar village in Sittwe Township, Myanmar, who spent 19 days at sea. She told Fortify Rights:

[The traffickers] were regularly beating people, especially the men and boys. Sometimes, they wouldn’t give us food for two or three days. About five people died on the boat and three other people jumped into the sea. They couldn’t face more trouble in the sea than what we faced on the boat. Three people jumped, and then they saved two people, but one person wasn’t found. He died.<sup>46</sup>

A 17-year-old Rohingya girl from Maungdaw Township in Myanmar’s Rakhine State told Fortify Rights:

It took eight days to reach Thailand. During the journey, three men went crazy, because they didn’t have enough food. One man jumped off the boat. This man was an old man with white hair. After the one man jumped off the boat, the *dallals* bound the hands and ankles of the other two men to prevent them from jumping. They only unbound their hands to allow them to eat. Other people on the boat tried to take care of these men.<sup>47</sup>

This girl fled Myanmar in August 2014 after Myanmar Army soldiers broke down the door to her home, arrested residents in her village, and raped her aunt.<sup>48</sup>

<sup>42</sup> Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014. Fortify Rights has information about several thousand cases of forced labor in northern Rakhine State by the Myanmar Army in 2014 as well as eyewitness and survivor testimony. See, Testimony of Matthew Smith, Executive Director of Fortify Rights, the United States House Committee on Foreign Affairs, April 21, 2015, [http://www.fortifyrights.org/downloads/FR\\_TIP\\_Testimony\\_April\\_2015.pdf](http://www.fortifyrights.org/downloads/FR_TIP_Testimony_April_2015.pdf) (accessed July 8, 2015). See also, Aubrey Belford and Soe Zeya Tun, “Forced Labor Shows Back-Breaking Lack of Reform in Myanmar Military,” *Reuters*, July 2, 2015, <http://www.reuters.com/article/2015/07/02/us-myanmar-rohingya-forcedlabour-idUSKCN0PC2L720150702> (accessed July 8, 2015).

<sup>43</sup> Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>44</sup> Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014.

<sup>45</sup> Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

<sup>46</sup> Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

<sup>47</sup> Fortify Rights interview with #82, Kuala Lumpur, Malaysia, September 16, 2014.

<sup>48</sup> *Ibid.*

## RAPE

Armed traffickers on board ships kept Rohingya women and girls in separate quarters from men and boys. Three survivors testified to the Commission that they saw men rape women on a ship at sea, in a camp, and on their way to the border of Malaysia.<sup>49</sup> “Passengers” on two separate ships told Fortify Rights of traffickers raping Rohingya women and girls on board the ship.

“Begum B.,” 50, spent time on a small boat before boarding a ship in international waters, where she witnessed traffickers rape women at sea:

On the small boat, we were okay, but when we moved to the larger ship, we had problems. There were some Rakhine and Burmese Buddhists on the boat, and there were a lot of young women with me. The [traffickers] were trying to rape them. When I told them they shouldn’t do it, they beat me. I saw two women raped [at sea]. One was 15-years old and one was 12-years old. A Rakhine man and a Burman man raped them. [The 12-year old later] died in the mountain camp in Thailand. When I left the camp, the 15-year old was still there.<sup>50</sup>

“Raheem,” 27, also witnessed armed traffickers rape women and girls on board a ship from Myanmar to Thailand. He told Fortify Rights:

The girls were scared, so they agreed to sleep with the men. I saw it happen, but I was unable to speak about it. When we asked for water, they beat us, so how could we speak up about that? The women were aged 15 to 20.<sup>51</sup>

## TORTURE AND ILL-TREATMENT

Armed traffickers at sea violently inflicted pain and suffering on their captives using pipes, bats, clubs, belts, wires, tasers, nails, threats and intimidation, and other means.

Two Rohingya survivors testified to the Commission that crew members of the trafficking ship beat them, and six survivors testified that they witnessed onboard traffickers severely beat others on their respective vessels.<sup>52</sup> Two survivors testified that the traffickers forced them to sit for protracted periods in a bended position on the ship and traffickers hit those who refused to do so.<sup>53</sup>

“Ebadullah,” 25, told Fortify Rights that traffickers beat him and others with heavy sticks: “If someone tried to move in the boat, they would beat us. Those who didn’t move were beaten too.”<sup>54</sup>

“Yusuf,” 19, told Fortify Rights: “There were some Rohingya people who treated us well. We didn’t interact with the Thais. They beat us. They beat almost every person on the boat. They used plastic pipes.”<sup>55</sup>

Fortify Rights noted wounds on his leg and backside.<sup>56</sup>

“Raheem,” 27, told Fortify Rights: “I couldn’t request anything of [the traffickers], or they’d beat me. They used many things—bats, wooden sticks, hands, feet.”<sup>57</sup>

“Mohammed Khan,” 25, told Fortify Rights that the traffickers used thick belts to beat him and others on the ship and that he suspected the traffickers on board the ships had firearms:

<sup>49</sup> The Commission interviews with W1, W2, and, W10.

<sup>50</sup> Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014.

<sup>51</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.

<sup>52</sup> The Commission interviews with W1, W2, W3, W7, W10, W13, W16, and W18.

<sup>53</sup> The Commission interviews with W2 and W3.

<sup>54</sup> Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>55</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>56</sup> *Ibid.*

<sup>57</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.



Almost all the people [on the boat] were beaten . . . [The traffickers] put numbers on our backs like we were animals. They separated us into small groups—ten per group—and forced [the men] to go and sit at the bottom of the boat . . . The guards beat me. If anyone went to the toilet, they had to return quickly to the bottom of the boat. If anyone took too long in the toilet, the guards beat him. The beatings were harsh . . . When we could no longer stay inside, we tried to go to the upper deck to get comfortable space to breathe. But the guards beat us to force us back down to the bottom of the boat again. Sometimes, the others on the boat would beat each other, because they tended to fall down on each other when the guard beat them. We could not breathe very well inside, and it was also very hot. We tried to go up to breathe, and they beat us again. We had many difficulties there. The people suffered injuries and swelling.<sup>58</sup>

“Mohammed Ishmael,” 20, showed Fortify Rights numerous scars on his body from beatings by the traffickers. He said:

Some [traffickers] got mad when we struggled for food and water. The Burmese guards urinated on the faces and in the mouths of some who complained. They beat them for half an hour and then urinated in their mouths . . . I was beaten on the boat by the guards. They had a taser gun. If someone spoke up or complained, they touched him with the taser gun . . . They had a plastic pipe, and in the middle, they put an iron rod. They beat us with that, and they had a thick rope.<sup>59</sup>

The traffickers did not spare children from the beatings. A Rohingya widow, 27, and her five children from Sittwe Township in Myanmar’s Rakhine State boarded a ship operated by human traffickers in March 2015. The family was at sea for an estimated 50 days:

Sometimes, the crew would beat the children. My children were beaten. Whenever the children cried, they would be beaten. At lunchtime, when the children started to get hungry, they’d cry; at this time, the crew would beat them. The beating wasn’t very forceful, but the children would be in pain for a couple of days. Their skin bruised and became swollen.<sup>60</sup>

Unprompted, her eight-year-old daughter told Fortify Rights: “They beat me with the wire. They used the wire and beat us with it. It would hurt for three or four days after they beat me.”<sup>61</sup>

A 14-year-old Rohingya boy, who spent 12 days at sea on board a human-trafficking ship before traffickers sold him back to his community in Rakhine State when his ship was unable to disembark in Thailand or Malaysia, insisted on speaking with Fortify Rights to describe his experience at sea:

When we arrived at the big boat, we had to sit in one place. We could not go to the toilet or get drinking water. [The traffickers] beat us. A Burmese man was the captain, and the other men were Rakhine, and they would beat us if we moved from one place to another . . . I saw many people getting sick in the boat. They would get dizzy, fevers, and diarrhea. The Rakhine [traffickers] would beat people if they cried. They would beat us anytime we asked for drinking water. They would kick and hit us . . . Sometimes, they would hit people in the face and blood would come out their nose . . . Once when I got sick on the boat, I wanted to go to the Burmese captain to ask for some medicine, but Rakhine [traffickers] stopped me and beat me on my back. They used a rope to beat me. I now continue to have pain from where I was hit and kicked by the traffickers. I think the injury is internal. I can’t carry anything without being in a lot of pain. I also can’t afford to see a doctor.<sup>62</sup>

58 Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

59 Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

60 Fortify Rights interview with #122, Rakhine State, Myanmar, May 2015.

61 *Ibid.* This girl offered this unsolicited information while her mother was sharing her experience with Fortify Rights. Fortify Rights did not formally interview the girl.

62 Fortify Rights interview with #120, Rakhine State, Myanmar, May 2015.

“Rahim Ullah,” 16, told Fortify Rights:

I travelled on the cargo ship. I was very scared. The ship was shaking, and the waves were large . . . The [Malay] captain of the boat beat most of us. He was continuously beating us with a [wooden] bat for no reason. He did it every day. The captain was with seven other men. Four were Rohingya. Two were Rakhine. They beat us with belts too. They hit me with a belt on my forehead . . . The orders were to not move around. But we sat very cramped on the journey, and sometimes, we were very tired. We’d try to shake our legs and hands and the crew would be unhappy. They would continuously beat us with a belt.<sup>63</sup>

“Mohammed Yunus,” 26, explained to Fortify Rights the conditions on the ship on which he was confined:

[My friend] had so many injuries. [The traffickers] stuck a nail in his arm so many times, and they hit him with the rope many times. They held a nail in their hands and stabbed him with it many times. We had to stay all together, side by side. If we tried to leave from there, the *dallal* would come and beat us so much. I was crying for nearly five days for my parents . . . “If you cannot pay 1,000 Malaysian Ringgit (US\$300), we will sell you to another boat,” they said. Someone had a gun, threatening to shoot us, but they didn’t do that. They didn’t shoot us.<sup>64</sup>

Fortify Rights spoke with several women and girls who witnessed traffickers beat men and boys at sea. “Fatima,” 20, said traffickers beat her husband while they were at sea:

The *dallals* beat people who asked for more food or water, including my husband. The *dallals* beat my husband at least five times. They hit him with a stick, and he suffered some bleeding and injuries. Some people were so thirsty, they started drinking seawater.<sup>65</sup>

“Rohima,” 19, fled Myanmar’s Maungdaw Township in 2014 and spent eight days at sea before reaching the Malaysia-Thailand border. She also witnessed beatings:

Sometimes people would ask for water, and the *dallals* would beat them with pieces of wire and long pipes. One Rohingya man was bleeding from the head after a *dallal* hit him across the head with a pipe. Three other Rohingya men had injuries on their arms and back from being beaten by the *dallals*. One Rohingya man was beaten so badly that he couldn’t speak. There were seven *dallals* on the boat, including five Thais and two Rohingya.<sup>66</sup>

“Anuya,” 19, and her husband fled Rakhine State after Myanmar state security forces and local extremists razed her village in Sittwe Township in 2012. She told Fortify Rights how traffickers threatened women on the ships, saying:

The *dallal* took us to a small boat [in Rakhine State]. There were 30 of us on the boat. We were all Rohingya and only six of us were women. After sailing for five hours in the small boat, we came to a bigger boat. We waited for 13 days on this boat while the *dallals* collected more passengers. Once there were about 360 people on board, we finally started to move. It took us five days to reach Thailand. The *dallals* on the boat were all Shan [an ethnic group from Myanmar]. We were not allowed to move freely on the boat. They told us, “If you move, we will beat you.” The *dallal* kicked and hit the men with a big plastic stick. They also yelled at the women, and some women were beaten.<sup>67</sup>

“Kaledah,” 18, saw traffickers beat men as they disembarked from the ship onto smaller boats after arriving in Thai waters. She told Fortify Rights:

<sup>63</sup> Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014.

<sup>64</sup> Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 26, 2015.

<sup>65</sup> Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>66</sup> Fortify Rights interview with #77, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>67</sup> Fortify Rights interview with #79, Kuala Lumpur, Malaysia, September 28, 2014.

When we were being transferred from the big boat to the small boat [to disembark in Thailand], I saw two *dallals* beating many of the men who were getting on the small boat. They would punch them and hit them with ropes. Some of the men started bleeding. The *dallal's* only beat the men, not the women.<sup>68</sup>

“Naw Begum,” 40, fled an internment camp outside Sittwe in Myanmar’s Rakhine State in January 2013, and witnessed shipboard beatings by the traffickers. She told Fortify Rights: “[The traffickers] had plastic pipes to beat the people, but they didn’t beat the women, only the men. If the people moved around or shouted, they went down and beat them.”<sup>69</sup>

## DEPRIVATION OF FOOD, WATER, AND PHYSICAL SPACE

*“We only had skin and bones.”*

—Rohingya woman, 25, from Aung Mingalar, Sittwe

The traffickers at sea deprived Rohingya “passengers” of adequate food, water, and physical space. These deprivations weakened those held captive physically and mentally and, in some cases, caused death.<sup>70</sup> All of the survivors interviewed by Fortify Rights and the Commission testified that traffickers onboard ships denied them adequate food or, in some cases, any food.

“Mohammed Khan,” 25, told Fortify Rights:

We couldn’t eat anything and couldn’t drink water, and many became crazy. When we tried to go [to the upper deck of the ship] for comfortable space, the Thai [traffickers] on the boat beat us very roughly to force us back down to the bottom [of the ship]. We had to sit like this in the bottom of the boat [motions his knees to his chest]. Eight people managed the boat. They used belts to beat the people.<sup>71</sup>

“Mohammed Yunus,” 26, said:

[The traffickers] just provided a small amount of rice and two chilies. If we put out our hand, they would provide us a little bit of salt. Lunch was at 11 a.m. and dinner was at 5 p.m. Sometimes they would give us a small noodle packet, but not always.<sup>72</sup>

“Ebadullah,” 25, experienced severe paralysis after traffickers nutritionally deprived him, confined him to a cramped space, and restricted his ability to stretch his legs or walk for a prolonged period at sea and on land. While recovering in Kuala Lumpur, he told Fortify Rights: “On the boat, we had to sit in a squatting position. There were a lot of people, and we couldn’t extend our legs. [The traffickers] gave us two meals of mashed rice per day.”<sup>73</sup>

Several survivors testified that the traffickers provided no food during their journey, only water. “Habiba,” a 42-year-old Rohingya woman who fled from Kyauk Pyu village in Rakhine State, Myanmar in 2012 following clashes between Muslims and Buddhists and widespread violence by Myanmar state security forces and local extremists against Muslim residents, told Fortify Rights: “[The traffickers] only provided water to me, no food. I was on the boat for 11 days.”<sup>74</sup>

68 Fortify Rights interview with #83, Kuala Lumpur, Malaysia, September 16, 2014.

69 Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014.

70 See, Section on “Killings, Deaths from Deprivations, and Suicides.”

71 Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

72 Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 26, 2015.

73 Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014.

74 Fortify Rights interview with #6, Kuala Lumpur, Malaysia, August 11, 2014.



“Rashida Begum,” 18, fled Narzi Quarter in Sittwe Township, Rakhine State, Myanmar in December 2013. Speaking about her experience on board a human-trafficking ship, she said: “There was no rice and no food, only water. [The traffickers] gave us one bottle [of water] in the morning and one in the evening.”<sup>75</sup>

“Raheem,” 27, told Fortify Rights: “[The traffickers] provided only very little food . . . Sometimes we used water from the sea to survive. Sometimes, we drank the seawater. There was a pipe and [sea] water came through the pipe. That’s what they used to clean the latrine.”<sup>76</sup>

“Mohammed Khan,” 25, described the large ship he boarded as “a very crowded place” operated by six armed Thai traffickers. He said:

We could not lay down there and could not eat regular foods. There was only one drinking water tank and some dried sticky rice to eat. It took eight days to arrive to Thailand. [The traffickers] did not allow us to go out from the bottom of the boat. They beat us, and we could not sleep [well].<sup>77</sup>

“Mohammed Ishmael,” 20, spent 37 days on a human-trafficking ship with approximately 400 other people, mostly Rohingya. He told Fortify Rights that he witnessed several people die at sea because they “couldn’t get proper food and water.” He added: “[The traffickers] provided very little water and sometimes some noodles. They put the noodles in water. Sometimes, it rained, and we used our clothes to collect rainwater, and then we put it in a cup to drink.”<sup>78</sup>

“Mohammed Kasem,” 26, fled Myanmar’s Maungdaw Township in Rakhine State in February 2014. Describing his experience on board a human-trafficking ship, he said:

There was one Rohingya man on the boat and three others, who spoke the Thai language. They were in charge. We couldn’t talk, we couldn’t move, and they provided food only once per day. There was some space on the boat, but we couldn’t lay down, because it was too crowded.<sup>79</sup>

“Abdul Haman,” 17, described the treatment he experienced on the human-trafficking ship, saying:

It was a medium-sized boat with an open deck. There was not enough food on the boat, and people became almost paralyzed. After three days on the boat, the Thai [traffickers] gave us some rice. Sometimes, they gave us potatoes. The Thai [traffickers] would beat people who spoke. There were six Thai [traffickers] on the boat, but I don’t know who the boat drivers were and who were the *dallals*. The Thai crew could go anywhere in the boat. They carried long knives. If someone said, “Please, please I am hungry. Can I have more water?” the *dallals* would beat them.<sup>80</sup>

In May 2015, when traffickers abandoned ships at sea, stranding several thousand Rohingya and Bangladeshi nationals on board following a regional human-trafficking “crackdown,” several Thai citizens sprung to action to deliver aid to the survivors on the abandoned ships, witnessing the conditions of the survivors on the ships.

Chaiwut Chusakun, a 46-year-old Thai tour-boat operator, boarded a ship to deliver water to trafficking survivors on May 14, 2015. He told Fortify Rights:

<sup>75</sup> Fortify Rights interview with #18, Pahang State, Malaysia, August 14, 2014.

<sup>76</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.

<sup>77</sup> Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

<sup>78</sup> Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

<sup>79</sup> Fortify Rights interview with #54, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>80</sup> Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

When I got to the boat, I saw emaciated children and saw their hunger and saw how the parents of these kids couldn't feed them. When it is dinnertime, they have nothing. This made me feel great sorrow. They were drinking their urine and, for three months, didn't bathe. They pantomimed that they were drinking their own urine. The kids showed me with their hands that they were drinking their urine.<sup>81</sup>

In this case, Thai authorities allowed Chaiwut Chusakun and others to deliver food and water to the survivors on board before towing the ship out to sea.<sup>82</sup> The Thai authorities did not allow the ship to disembark in Thailand, escort the survivors to safety, or provide proper medical and humanitarian support to the survivors.<sup>83</sup> The Thai authorities also did not appear to investigate whether human traffickers remained on board the ship.<sup>84</sup>

As the scale of human trafficking from Myanmar to Malaysia increased in 2014 and 2015, Fortify Rights documented how traffickers outfitted some ships with seawater-desalination systems to convert seawater to drinking water, enabling traffickers to keep their captives alive at sea for longer periods of time.<sup>85</sup>

"Arifah," 27, and her five children spent 50 days confined to limited space on board a human-trafficking ship with minimal rations of food and de-salinized water after traffickers were forced to return to Myanmar following the regional human-trafficking "crackdown."<sup>86</sup> She told Fortify Rights:

They would give us a very little amount of food with two green chilies. They also gave the men two small dried fish, but the women refused to eat the fish, because it smelled very bad, so they stopped giving it to us . . . I purchased 15 water bottles [to bring with me on the journey], but when I arrived, the crew took all the bottles. However, on the boat, they treated the salt water to fresh water, so there wasn't any problem in getting water.<sup>87</sup>

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<sup>81</sup> Fortify Rights interview with Chaiwut Chusakun, Songkhla Province, Thailand, May 17, 2015.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> Fortify Rights interview with #122, Rakhine State, Myanmar, May 20, 2015.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

## II. ON LAND: ABUSES AT HUMAN-TRAFFICKING CAMPS AND HOUSES IN THAILAND AND MALAYSIA

*“Every day, they counted us.”*

—“Jama,” 22, a Rohingya survivor of human trafficking, Penang State, Malaysia, September 28, 2014

*“They counted us regularly, every day, five to six times per day. We would line up—standing sometimes, sitting sometimes. If the numbers weren’t right, then they would beat us. I think they were afraid we would run away. They would beat us if we talked with each other.”*

—Foyas, 20, a Rohingya survivor of human trafficking, Pahang State, Malaysia, August 13, 2014

Members of a transnational criminal syndicate—including in some cases government officials—conceived, managed, supported, and operated camps in Thailand and Malaysia where traffickers deprived Rohingya men, women, and children of their liberty and treated them as chattel.

Traffickers, often armed, in on-shore camps counted their human cargo aloud multiple times daily, enabling survivors interviewed for this report to recall the number of captives in the camps.<sup>88</sup> In 2014 and early 2015, Fortify Rights estimates that traffickers held thousands of people in several camps in Thailand and Malaysia at any given time.<sup>89</sup> Traffickers transported captives in and out of camps on a daily basis—particularly during the “sailing season” from November to April when the seas in Southeast Asia are more navigable.

Survivors explained that the traffickers in the camps typically separated women and children from the men.<sup>90</sup>

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<sup>88</sup> See, for example, Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014; Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014.

<sup>89</sup> Fortify Rights interviews with eyewitnesses and survivors, 2013–2015. The Commission interviews with eyewitnesses and survivors, 2017. In May 2015, there were an estimated 5,000 to 6,000 Rohingya on ships in the Bay of Bengal awaiting disembarkation. UNHCR Regional Office for Southeast Asia, “Mixed Maritime Movements in Southeast Asia.” See also, “Malaysia and Thailand Turn Away Hundreds on Migrant Boats,” *The Guardian*.

<sup>90</sup> See, for example, Fortify Rights interview with #05 and #06, Kuala Lumpur, Malaysia, August 10–11, 2014.



Similar to the situation on the human-trafficking ships, traffickers on land often identified the ownership of Rohingya and Bangladeshi captives by color-coded wristbands. According to Thai court testimonies and testimonies provided by survivors to Fortify Rights, traffickers divided captives by colored wristbands.<sup>91</sup> For example, “Rohima,” 19, told Fortify Rights: “We were brought to an island when we arrived in Thailand and given a white-colored wristband.”<sup>92</sup>

In some cases, traffickers marked their captives’ hands or skin with permanent markers to denote ownership. “Abdul R.,” who fled Buthidaung Township in Myanmar’s Rakhine State in 2014 and survived ten months and ten days in a human-trafficking camp on the Malaysia-Thailand border, described traffickers marking their captives:

When we arrived [at the camp], there were over 900 people there already. [The traffickers] seated us together and put marks on our hands with a marker and divided us by groups according to which broker we belonged to. It was just a number [on my arm]. They always counted [aloud] the balance. It was an inventory system. We couldn’t move freely, and they counted us daily.<sup>93</sup>

Witness testimony during a 2016 human-trafficking trial in Thailand suggested traffickers referred to their captives as “black chicken” and referred to the human-trafficking camps as “pens” or “stables.”<sup>94</sup>

Fortify Rights and the Commission documented a variety of camps on the Malaysia-Thailand border from 2012 to 2015 located in mountainous areas, jungles, plantations, and islands near the border as well as in residential homes and warehouses.<sup>95</sup> The camps comprised makeshift to semi-permanent infrastructure capable of holding dozens to several thousand captives at any given time.<sup>96</sup>

Without knowing the exact location, Fortify Rights documented camps equipped with iron fences, concrete toilets, and sizable canvas tents built specifically for the purpose of confining large numbers of people.<sup>97</sup> Survivors also described camps with permanent structures, including warehouses that held several hundred captives at any given time, as well as residential homes, where traffickers confined large numbers of Rohingya and Bangladeshi nationals in overcrowded and locked rooms.<sup>98</sup>

“Rahim Ullah,” 16, said traffickers drove him and others in a truck for 12 hours to a remote campsite on the Malaysia-Thailand border after arriving in Thailand. He described the camp, saying: “The area was a valley. [The camp] only had flimsy plastic for a floor, and the roof was plastic too. The water was coming off the mountain, so it was very wet.”<sup>99</sup>

“Abdul R.” described a mountain human-trafficking camp where traffickers held him on the Malaysia-Thailand border in 2013: “It was a big mountain area, a very high mountain. [The traffickers] took us there and started beating us and torturing us and demanding money.”<sup>100</sup>

91 Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013-2015.

92 Fortify Rights interview with #77, Kuala Lumpur, Malaysia, September 27, 2014.

93 Abdul R. believes he is anywhere from 20 to 25 years old—it is not uncommon for Rohingya from Myanmar to be unsure of their age and birthday. Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014.

94 Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013-2015.

95 *See, for example*, the Commission interviews with W6, W7, W8, W11, W13, W14, W15, W16, W17, W18, and W19, Penang State, Malaysia, May 22-23, 2017, *See also*, Fortify Rights interviews with #5, #6, #10, #17, and #19, Malaysia, 2015.

96 *Ibid.*

97 *See, for example*, Fortify Rights interviews with #5, #6, #10, and #17, Malaysia, 2015.

98 *See, for example*, Fortify Rights interviews with #17 and #19, Pahang State, Malaysia, August 13, 2014.

99 Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014.

100 Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014.

The Commission recorded testimony of survivors from the human-trafficking camp in Wang Kelian, whose descriptions of the camp matched the physical characteristics of the area discovered by Malaysian police, including tents of bamboo and plastic tarp and areas where armed traffickers oversaw the camp.<sup>101</sup> Survivors described traffickers holding 50 to several hundred men, women, and children in the camp at any given time.<sup>102</sup> Survivors, who believed they were held in the camp in Wang Kelian, described armed Thai men overseeing the camp.<sup>103</sup>

One woman was confined in the human-trafficking camp in Wang Kelian just before the Malaysian authorities raided the camp in January 2015. She said that the traffickers forced her and other captives to evacuate the camp ahead of the raid. She walked in the forest for five days before reaching Padang Besar in Perlis State on the Malaysia-Thailand border. She estimated that the traffickers held at least 200 people in the Wang Kelian camp when she was there in 2015.<sup>104</sup>

Following the military coup in Thailand in 2014, many of the human-trafficking camps reportedly moved deeper into the jungle and closer to the Malaysian border—in some cases, over the border into Malaysian territory.<sup>105</sup> For example, a 48-year-old Rohingya trafficker living in Thailand's Songkhla Province told Fortify Rights in September 2014:

After the military coup [in Thailand], the camps moved farther to the border. Right now, [the traffickers] don't keep the people for more than a few months. In the past, they kept them for four months or six months. Now they keep them just a few weeks and then move them to the Malaysian side. There are camps on the Malaysian side too. There, they are also kept in houses. In one house, there could be up to ten people.<sup>106</sup>

It is unknown precisely how many human-trafficking camps existed in Malaysia and Thailand since 2012—eyewitness testimony collected by Fortify Rights described what appeared to be at least dozens of disparate locations on both sides of the border.

Survivors, who provided testimony for this report from 2013 to 2015, described how traffickers confined them not only in remote jungle camps but also in private homes in Malaysian towns and villages, depriving them of their liberty. In addition to the testimony of survivors, members of a human-trafficking syndicate and community-based aid workers interviewed for this report also confirmed that traffickers held Rohingya in such houses in Malaysian towns and cities, including in Kuala Lumpur.

Members of a transnational syndicate typically held trafficked persons in remote camps on the Malaysia-Thailand border for several weeks and months, subjecting them to torture and other ill-treatment. If the captives failed to raise enough money to buy their release or the traffickers could not otherwise sell them, then the traffickers transferred or sold them to a trafficker in a Malaysian town or city. Traffickers on the Malaysian side of the border then held the captives in houses until they were again sold or otherwise released.

In some cases, traffickers brought Rohingya who purchased their release from the human-trafficking camps to houses while the captives awaited transport to their final destination. In those cases, Rohingya and traffickers referred to the houses as “receiving houses.” Seventeen-year-old “Abdul Haman” described being brought to one of these houses. He said:

<sup>101</sup> The Commission interviews with W6, W7, W8, W11, W13, W14, W15, W16, W17, W18, and W19, Penang State, Malaysia, May 22–23, 2017.

<sup>102</sup> *Ibid.*

<sup>103</sup> The Commission interviews with W1, W2, W3, W4, W5, W6, W7, W8, W11, W13, W14, W15, W16, W17, W18, and W19, Penang State, Malaysia, May 22–23, 2017.

<sup>104</sup> The Commission interview with W18, Penang State, Malaysia, May 23, 2017.

<sup>105</sup> Fortify Rights interview with #42, Songkhla Province, Thailand, September 17, 2014.

<sup>106</sup> *Ibid.*

It took seven to eight hours to get to Penang [in Malaysia]. We were brought to a house. The only people at the house were 35 people from the camp. The person in charge of the house was Indian Malaysian . . . The *dallal* called my father and told him that his son had arrived. He said, “Go to the Maybank in Penang, and your son will come after ten minutes.”<sup>107</sup>

After spending 18 days in a human-trafficking camp, the traffickers transferred Wai Roshum, 50, to a house in Malaysia. She recalled:

A woman and man who stayed at the house gave us food and water. I was in this house for two days when a woman from my village came to visit the house owner and recognized me. She was surprised to see me there and helped find and contact my nephew in Ampang [in Malaysia]. My nephew paid 800 Malaysian Ringgit (US\$230) to the house owners so I could join him in Ampang.<sup>108</sup>

“Raheem,” 27, also described traffickers holding him in a house in Malaysia for approximately one week after spending one-and-a-half months in a human-trafficking camp on the Malaysia-Thailand border. He told Fortify Rights:

There were two rooms [in the house in Malaysia]. One room was for [the trafficker’s] family, and in another room, they put us together. I was there for one week. Sometimes, they provided food. There were a lot of mosquitos. In the night, they would lock the room. They were scared we would escape from there. Every day, they demanded money. Whenever we were unable to pay money, they beat us. First, they demanded 7,000 Malaysian Ringgit (US\$2,000) when I was in the mountain camps. After I arrived in Penang [in Malaysia], they reduced the money to 2,000 Malaysian Ringgit (US\$570) . . . I would recognize the house, but I don’t know the name of the village. It is near a main road beside a mountainside. There are a lot of row houses. There was only one window in the front of the home. There were no windows in the room I was in.<sup>109</sup>

The Commission and Fortify Rights are unaware of any official investigation into these houses in Malaysia.

Filmmakers Jason Motlagh and James Hall also documented the use of houses in Thailand as part of the trafficking business, filming a hidden basement in a Thai home used to hold trafficked persons. A local resident interviewed in a film the pair made for *Al Jazeera* claimed, “Out of 100 people in this village, I’d say 70 are in the trafficking business.”<sup>110</sup>

## KILLINGS AND PREVENTABLE DEATHS

The complete scale of death in the human-trafficking camps in Malaysia and Thailand from 2012 to 2015 is unknown. Survivors of human-trafficking camps in Malaysia and Thailand interviewed by Fortify Rights during a three-year period reported witnessing more than 700 deaths in different camps on the Malaysia-Thailand border in 2014 alone.

Several survivors testified to the Commission that they witnessed numerous deaths in the camp in Wang Kelian.<sup>111</sup> One witness testified to the Commission that he saw an estimated 200 people die in the Wang Kelian camp due to starvation, injuries from beatings, and untreated illness.<sup>112</sup> He told the

<sup>107</sup> Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

<sup>108</sup> Fortify Rights interview with #78, Kuala Lumpur, Malaysia, September 2014.

<sup>109</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.

<sup>110</sup> Motlagh and James Hall, “Outcast: Adrift with Burma’s Rohingya,” *Al Jazeera*, November 6, 2014, <https://www.aljazeera.com/programmes/peopleandpower/2014/11/outcast-adrift-with-burma-rohingya-2014115134923802388.html> (accessed March 25, 2019).

<sup>111</sup> The Commission interviews with W10 and W12, Alor Setar, Kedah State, November 2016.

<sup>112</sup> The Commission interview with W6, Alor Setar, Kedah State, November 2016.



Commission that the traffickers moved the bodies of victims away from the camp to areas unknown to him.<sup>113</sup> Likewise, witnesses in the mass human-trafficking trial in Thailand testified that people in the camps died daily and camp guards would take the dead bodies outside of the camps.<sup>114</sup>

“Ebadullah” 25, who spend three months in a human-trafficking camp on the Malaysia-Thailand border in 2014, described seeing many people die in captivity in the camps:

Approximately 200 people died during my stay. One night, beside me, five people died. How many days can someone stay in a squatting position without enough food? Because of this, people were dying. We prayed over the dead bodies, and then the bodies were carried to a car, and we don’t know where they went. On one night, five died. On another night, seven died and so on . . . There were 400 in my group at sea. There were many more people in the camp [onshore] and more just kept coming and coming.<sup>115</sup>

A Rohingya woman, 20, from Sittwe Township in Rakhine State, Myanmar, who spent four months in a human-trafficking camp in Thailand from May to September 2014, told Fortify Rights about children dying in the camps:

I saw six men and two children die in the camp. One child was five-years old and another was three-years old. Before they died, their bodies swelled up. Some of the children were sick and coughing with a fever. They would stop eating and get swollen.<sup>116</sup>

“Begum B.,” 50, spent 45 days in a primitive human-trafficking camp and described to Fortify Rights how traffickers killed one boy. She said:

The camp was made of canvas. There was only a roof. [The traffickers] beat us every day and treated us very bad. One boy was injured, and they killed him with poison. He was sick and not dying. [The traffickers] brought him a bottle filled with some kind of syrup, and he drank it and then suddenly vomited and then died.<sup>117</sup>

“Anuya” 19, and her husband spent less than one week in a human-trafficking camp in Thailand but reported witnessing several deaths of captives in the camps. She said:

We were not given enough food or water, and some people were sick. They were coughing and vomiting and had diarrhea. We only stayed in the camp for five days, but during our time there, I saw at least nine people die. All of the people who died were Rohingya men. They swelled up and died.<sup>118</sup>

“Noor Begum,” a 20-year-old Rohingya woman who fled avoidable deprivations of food and shelter in Myanmar, reported many deaths in the human-trafficking camp where traffickers held her for two-months on the Malaysia-Thailand border:

I saw many people die [in the camp] . . . About 20 percent of the people from the camp were dead. Sometimes, five and sometimes six died at a time. There were almost 2,000 people there when we first arrived . . . [The *dallals*] treated the men very bad. They beat them . . . and they provided only a little food. Another cause of death was diarrhea and dysentery.

<sup>113</sup> *Ibid.*

<sup>114</sup> Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 12, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, Malaysia, Thailand, and Myanmar, 2013–2015.

<sup>115</sup> Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>116</sup> Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>117</sup> Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014.

<sup>118</sup> Fortify Rights interview with #79, Kuala Lumpur, Malaysia, September 28, 2014.

“Yusuf,” 19, told Fortify Rights: “I saw two people die in the camp. They couldn’t get proper food. The *dallals* took them in the car and buried them after the prayers.”<sup>119</sup>

A 26-year-old Rohingya man from Buthidaung Township in Myanmar’s Rakhine State, who spent 11 months detained in a Thai immigration detention center before being handed over to human traffickers, described witnessing 17 deaths in the human-trafficking camps on the Malaysia-Thailand border in 2014:

The first two months in the camp, nobody died, but in the last month, 17 people died. For about ten minutes, they said they had pain in their chests, and then they just died. Their bodies shook before they died. If someone said they had pains and their bodies shook, we knew they would die within minutes. Some couldn’t move their bodies or walk. Some couldn’t urinate. Some had bad chest pains. For these reasons, people were dying. When 17 people died, the brokers decided to move to another place, so we were moved not far from here, and people died there too.<sup>120</sup>

“Mohammed T.,” 18, who fled his home in Sittwe in Myanmar’s Rakhine State in late 2012, witnessed more than 25 people die in the same two camps. He told Fortify Rights:

In the camp, 17 people died during our last few weeks [in the camp]. At the time, I was very weak. [The people who died] got different diseases, because they couldn’t eat enough food and water and couldn’t bathe. Also, the weather was rough. Sometimes, they would have pains and just die. When we moved to the new camp, more people died. We stayed in the new camp for one-and-a-half months. Within a month-and-a-half, 12 or 13 more people died.<sup>121</sup>

“Noor Waï,” 15, spent four months in a human-trafficking camp from May through September 2014 and told Fortify Rights:

Every day, three or four people died. Many people died. The situation was very bad. They died for many different reasons. The main reason is because they could not move around. They had to stay in the same place, and then they would die.<sup>122</sup>

“Abdul R.” spent several months in a human-trafficking camp in 2013, but, unlike most, only witnessed one death during his time in the camp:

We weren’t allowed to talk to each other. If we talked to each other, we were beaten. We couldn’t speak at all. If we spoke, they beat us with a stick. There were many people unable to walk, unable to move, but I only saw one person die during my stay. I saw a man die because of swelling.<sup>123</sup>

Twenty-year-old Foyas said he witnessed dozens of deaths during his three-week period of confinement in a makeshift human-trafficking camp on the Malaysia-Thailand border in early 2014: “The rain caused many problems. Many people died. Many people were swelling. At least 30 people died.”<sup>124</sup>

The traffickers released Foyas after his family made a wire payment of more than 6,000 Malaysian Ringgit (approximately US\$1,700) into a Maybank bank account in Malaysia.<sup>125</sup> Fortify Rights

<sup>119</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>120</sup> Fortify Rights interview with #45, Songkhla Province, Thailand, September 17, 2014.

<sup>121</sup> Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014.

<sup>122</sup> Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

<sup>123</sup> Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>124</sup> Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014.

<sup>125</sup> Fortify Rights transcript of recorded telephone call between Rohingya community leader and human trafficker, Bangkok, Thailand, October 29, 2013.

recorded telephone conversations between Foyas' family and low-level traffickers holding Foyas, documenting the negotiation and "sale" of Foyas back to his family. Based on the negotiation, the traffickers transported Foyas from the human-trafficking camp to a construction company in Kuantan in Pahang State, Malaysia, where he worked for several months without wages.<sup>126</sup>

A Rohingya woman, 37, originally from Sittwe in Rakhine State, Myanmar told Fortify Rights in Kuala Lumpur, Malaysia in 2018 how traffickers killed her brother-in-law in 2015 after the family failed to send the traffickers payment in time to secure his release. She said:

I have a brother-in-law who was coming from Sittwe. We were late to send the money, and my brother-in-law was killed. He was killed three years ago [2015] . . . I sent 3,500 Malaysian Ringgit (US\$1,000), and after, I found out he was killed by the *dallals* . . . First, the agent asked for 5,000 Malaysian Ringgit (US\$1,430). We sent 3,500 Malaysian Ringgit (US\$1,000). Two days later, we found out he was killed, and we didn't send the rest of the money.<sup>127</sup>

"Raheem," 27, fled Rakhine State, Myanmar with his brother, but they became separated during the journey. Raheem made it to Malaysia, but his brother did not. In Malaysia, Raheem told Fortify Rights:

Yesterday, I spoke with [the traffickers]. They were very angry with me for not paying for the release of my brother. Last night when I spoke with them, they said they would only give me one day. They said if I cannot pay, then maybe I would not get news about my brother . . . I tried to call today, and they cut the phone. The number no longer works. I feel my brother is unsafe.<sup>128</sup>

At the time of writing, the whereabouts of Raheem's brother remains unknown.

A middle-aged Rohingya human trafficker based in Kuala Lumpur, Malaysia, described the system plainly, saying: "If you pay money, tomorrow you will be released. If you don't pay, you will stay there until you die."<sup>129</sup>

A known mid-level ethnic-Rohingya human trafficker based in Malaysia confirmed the process, saying: "The clear fact is that people who can pay money can be released from the camp. If they cannot pay, they must live in the camp, whether they live or die. If they die, they die. If they live, they live."<sup>130</sup>

Another known mid-level ethnic-Rohingya trafficker in Malaysia told Fortify Rights:

Some people live in the camps for months, and they become familiar with the area, so they can escape. If people are smart, they can escape. If they can pay money, then they can be released. But if they are not smart and cannot pay money, they have to stay in the jungle and some die.<sup>131</sup>

There is a long history of human trafficking on the Malaysia-Thailand border. For instance, a Rohingya man from Buthidaung Township in Rakhine State, Myanmar told Fortify Rights how he fled his native land by sea in 2007 when he was only 14-years old. When his boat landed in Thailand, Thai authorities promptly detained him. More than one month later, Thai authorities handed him over to human traffickers, who, in turn, held him captive in a remote jungle camp. Describing his experience in the camp, he told Fortify Rights: "I saw many, many people dying. People were dying every day. When they died, we buried them. If we couldn't pay money, they beat us."<sup>132</sup>

<sup>126</sup> Fortify Rights did not document the involvement of the company in the trafficking of Foyas. Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014.

<sup>127</sup> Fortify Rights interview with #141, Kuala Lumpur, Malaysia, March 9, 2018.

<sup>128</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.

<sup>129</sup> Fortify Rights interview with #61, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>130</sup> Fortify Rights interview with group of human traffickers, #74, Selangor State, Malaysia, September 27, 2014.

<sup>131</sup> *Ibid.*

<sup>132</sup> Fortify Rights interview with #63, Kuala Lumpur, Malaysia, September 28, 2014.



Unable to secure payment for his release, the traffickers sold him to a Thai-operated fishing boat captain who used him as slave labor at sea for more than five years before he escaped.<sup>133</sup> He now lives precariously as a refugee in Malaysia.

Likewise, witnesses during a 2016 human-trafficking trial in Thailand testified that the trade in Rohingya dated back to at least 2007.<sup>134</sup> Using a hidden camera, filmmakers Jason Motlagh and James Hall also documented testimony from a human trafficker in Thailand who claimed about the trade in Rohingya, “This has been going on for ten years, but no one has been paying any attention.”<sup>135</sup>

Alleged human traffickers and Rohingya community members in Malaysia helping to raise money for the release of captives also told Fortify Rights about deaths in camps in Thailand and Malaysia. A mid-level Rohingya trafficker in Malaysia, 40, explained to Fortify Rights how he personally knew people who died in the camps:

Recently, I helped two brothers. One man, I didn’t know he was coming to Malaysia. My relatives called me and said he was with [the traffickers] and told me to pay money. We couldn’t pay the money, and he died. What could we do? We collected as much money as we could. If the people reach the mountain, we have to pay to release them, or they will die. I know at least six people who have died . . . So many people are missing. Many have died, and many are missing. I know people are coming from the camp. There are people dying every day in the camps. They’re being buried in the mountain.<sup>136</sup>

Members of a human-trafficking syndicate in Malaysia also allegedly killed Rohingya who attempted to work with the police to combat human trafficking.<sup>137</sup> For example, a 25-year-old Rohingya man and survivor of human trafficking told Fortify Rights he witnessed armed men—believed to be members of a human-trafficking syndicate—abduct two Rohingya men in two separate incidents in Malaysia in late 2013. He said the victims were believed to be engaging with Malaysian police. He said:

[The traffickers] already killed many people [in Malaysia]. They killed three people here who tried to expose them. A man named [redacted] was trying to help the police find the brokers. He was taken from the mosque and was killed. No one found his body. I was there when [he] was taken. It was the month of Ramadan, on the 26th. I was at the mosque, and we were providing food to others when six or seven people arrived, showed ID cards saying they were officials, and took him. They had guns but weren’t wearing uniforms . . . Another man who was killed was [name redacted]. He was taken five months ago. The people came and showed ID cards, saying they were from the police department. It was in Suprajaya at the Sunway hotel.<sup>138</sup>

## Mass Graves on the Malaysia-Thailand Border

*“The journey from Sittwe to Thailand was hell. Then it got worse.”*

—Rohingya boy, 16, Kuala Lumpur, Malaysia, August 2014

*“People died every day. Some days more, some days less, but people died every day.”*

—“Noor Begum,” 20, Rohingya woman, August 2014

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<sup>133</sup> *Ibid.*

<sup>134</sup> Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013–2015.

<sup>135</sup> “Outcast: Adrift with Burma’s Rohingya,” *Al Jazeera*.

<sup>136</sup> Fortify Rights interview with #60, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>137</sup> Aubrey Belford, “Rohingya Refugees Say Traffickers in Malaysia Abuse and Kill,” *Reuters*, January 29, 2015, <https://www.reuters.com/article/us-myanmar-malaysia-rohingya/rohingya-refugees-say-traffickers-in-malaysia-abuse-and-kill-idUSKBN0L12NF20150129> (accessed March 25, 2019).

<sup>138</sup> Fortify Rights interview with #68, Penang State, Malaysia, September 28, 2014.

On April 30, 2015, Thai authorities announced they had discovered a mass grave in a remote camp near the Malaysian border containing 36 bodies, presumed to be victims of human trafficking.<sup>139</sup> Less than one month later, Malaysian authorities announced the discovery of 139 graves in 28 suspected human-trafficking camps in Wang Kelian, Malaysia.<sup>140</sup>

In addition to the uncovered graves, Fortify Rights visited alleged unmarked gravesites in Songkhla Province in southern Thailand believed to contain bodies of trafficking victims.<sup>141</sup> At least one alleged gravesite visited by Fortify Rights appeared to be a burgeoning construction site.<sup>142</sup>

Witnesses testified to the Commission that they saw bodies thrown into large holes in an area believed to be in Wang Kelian.<sup>143</sup> Survivors of human trafficking interviewed by Fortify Rights also described the existence of numerous different mass gravesites in human-trafficking camps in Thailand and Malaysia between 2013 and 2015. For example, “Noor Begum,” 20, told Fortify Rights of mass graves nearby the human-trafficking camp where she was held: “When [people in the camps] died, the *dallals* put them in a common grave . . . The bodies were put in one large grave beside the mountain.<sup>144</sup>

In some cases, traffickers buried the bodies, and in other cases, the traffickers forced other captives to bury the bodies.

“Mohammed T.,” 18, described his involvement in burying bodies in the camps. He said:

If one [person] died, we buried one. If two died, we buried them together. We’d bury the dead bodies in the morning, and sometimes when we came back, another [group of people] would have died. In one-and-a-half months, during the first twenty days, no one died, but then they started to die. I buried dead bodies in both camps. I buried two dead bodies close to the border. The *dallal* told me to go [bury the bodies]. Three or four came with me, the *dallals* and guards. There were some Thai guards who had pistols.<sup>145</sup>

Mohammad T. said he buried Rohingya men ranging in age from 30 to 40 from Sittwe, Maungdaw, and Buthidaung townships in Myanmar’s Rakhine State. He shared with Fortify Rights the names, ages, and other bio data of some of the deceased he buried, which is on file with Fortify Rights.<sup>146</sup>

“Abdul Yasin,” 17, also described burying bodies in the human-trafficking camps:

Thirty-one people died at sea [on the journey from Myanmar to Thailand]. Seven people died in the camp. Two people died just beside me, [age 25 and 19 from Rakhine State’s Maungdaw Township, Myanmar] . . . They had pains in their chests, and then they died. We washed the dead bodies, and after that, we wrapped the bodies with a little bit of white cloth that we could find and then buried the bodies, two in the same grave. It was difficult to dig because there were rocks, so we just dug a little bit and covered the bodies.<sup>147</sup>

<sup>139</sup> Testimony of Matthew Smith, Executive Director of Fortify Rights, House Committee on Foreign Affairs. *See also*, Fortify Rights, “Thailand: Government Officials Convicted of Human Trafficking, Organized Crime,” news release, July 20, 2017, <https://www.fortifyrights.org/publication-20170720.htm> (accessed March 25, 2019).

<sup>140</sup> Beh Lih Yi and agencies in Wang Kelian, “Malaysia Migrant Mass Graves: Police Reveal 28 sites, Some with Multiple Corpses,” *The Guardian*, May 25, 2015, <https://www.theguardian.com/world/2015/may/25/malaysia-migrant-mass-graves-police-reveal-139-sites-some-with-multiple-corpses> (accessed March 25, 2019).

<sup>141</sup> Fortify Rights site visits, Songkhla Province, Thailand, 2014 and 2015.

<sup>142</sup> *Ibid.*

<sup>143</sup> *See, for example*, the Commission interview with W19, Penang State, Malaysia, May 23, 2017.

<sup>144</sup> Fortify Rights interview with “Noor Begum,” #18, Pahang State, Malaysia, August 13, 2014. *See also*, subsequent interview with Noor Begum, #20, Pahang State, Malaysia, August 14, 2014.

<sup>145</sup> Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014.

<sup>146</sup> *Ibid.*

<sup>147</sup> Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014.

A 26-year-old Rohingya man who witnessed 17 deaths in the human-trafficking camps told Fortify Rights: “The guards and *dallals* buried the people in the mountain in the first camp. They were afraid we’d escape.”<sup>148</sup>

“Mohammed Ishmael,” 20, told Fortify Rights that traffickers buried some sick captives alive:

Some people became sick in the camps after we were there for a long time. Some were so sick but were still alive, but they were still thrown into the mountain area [mass grave]. Some people were sick, and the Thai [traffickers] took them, saying they would take them to the hospital in Malaysia, but then they would throw their bodies away. I stayed for five months in the camp . . . When people died, the guards also forced us to throw the bodies in the mountain area. I saw others do this. It was a big mountain and very high, so the people brought the bodies up the mountain and left them there [in a mass grave].<sup>149</sup>

In some cases, trafficking victims died in Thai hospitals or just prior to their arrival at the hospital after escaping the human-trafficking camps or following raids on the camps by Thai authorities.

“Abdul Yasin,” 17, told Fortify Rights that traffickers left him for dead with four others in the jungle. Eventually a Thai man and woman found him and two others, brought them food, and took them to the Hat Yai Hospital in Thailand. The two Rohingya men with Abdul died in the hospital, and the local Muslim community in Thailand buried them in unmarked graves in a makeshift local cemetery.<sup>150</sup>

Fortify Rights visited a government-operated hospital in southern Thailand that systematically released unidentified bodies of human trafficking victims to members of the Rohingya and Muslim communities in southern Thailand. Members of the Rohingya community in Thailand told Fortify Rights that in most cases, Thai hospitals systematically referred to all victims of trafficking as “Rohingya,” grouping Bangladeshi and Rohingya together.<sup>151</sup> Local Rohingya community leaders told Fortify Rights the hospital did not attempt to establish the identities of the deceased. A Rohingya man who helped bury the bodies locally said: “They are the nameless. They are the nameless Rohingya.”<sup>152</sup>

## TORTURE AND ILL-TREATMENT

Members of a transnational criminal syndicate operating in Malaysia and Thailand beat and tortured nearly all Rohingya and Bangladeshi men held captive in the human-trafficking camps, according to eyewitness and survivor testimonies collected by the Commission and Fortify Rights from 2013 to 2015. The Commission collected testimony from three Rohingya survivors who witnessed men beat captive Rohingya in the camp in Wang Kelian.<sup>153</sup> Fortify Rights also received evidence of sexual violence and the rape of women in human-trafficking camps.<sup>154</sup>

Traffickers applied abusive tactics to exert pressure on captives to obtain money from families, friends, or others in order to escape from the abuse. For example, “Rahim Ullah,” 16, described being tortured when he was unable to secure US\$2,000 (approximately 7,000 Malaysian Ringgit) from friends and family for his release:

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<sup>148</sup> Fortify Rights interview with #45, Songkhla Province, Thailand, September 17, 2014.

<sup>149</sup> Fortify Rights interview with #50, Songkhla Province, Thailand, September 17, 2014.

<sup>150</sup> Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014.

<sup>151</sup> See, for example, Fortify Rights interview with “A. Said,” Songkhla Province, Thailand, September 17, 2014.

<sup>152</sup> *Ibid.*

<sup>153</sup> The Commission interview with W6, W17, and W19, Alor Setar, Kedah State, November 2016.

<sup>154</sup> Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014. Mobile phone footage obtained and interpreted by Fortify Rights, 2014.



When I was unable to pay the money to the men, they poured boiling water on my head and body. I have wounds and scars. Then they took green chilies and rubbed them under my eyes. I saw they had pistols. There were seven Shan security guards with guns. They had us all lie down, side-by-side in a long row and they walked on our necks. Sometimes when people were noisy, they would fire their guns in the sky. Of all the abuse, the worst was when they poured boiling water on my body. They did this every day. The reason they did it was because I didn't pay the money to the agent. That's why they beat and tortured me. My legs are no longer conscious. They are numb, and there is not enough circulation.<sup>155</sup>

Several Rohingya who survived different camps described how traffickers poured boiling water on their bodies. "Mohammed Ishmael," 20, also told Fortify Rights: "[Traffickers] poured boiling water on my skin."<sup>156</sup>

"Naw Begum," 40, spent six months in a human-trafficking camp in Thailand before her son was able to pay the traffickers to obtain her release as well as the release of her two sons, daughter, and her son's 16-year-old wife. While confined to the camp, she witnessed traffickers commit horrific acts of torture and sexual violence. She told Fortify Rights:

We called our relatives, and the [traffickers] would beat us and tell us to ask for money. They had pliers and pulled on our ears and breasts. They pulled on the men's penises. If any babies cried, they would take the baby and the woman aside, hold the woman's breasts and force the baby to eat. I saw how they abused the men. When [the men] asked for more rice, they threw the rice in their face and made them run around for hours with no clothes. The guards made us watch them abuse the men with no clothes. They pulled their penises with pliers and forced them to ask for money. I saw them do that to five or six men. The men would shout terribly when they pulled. The guards forced them to call their relatives and ask for money. When men arrived [at the camp], as soon as they arrived, the guards beat them all. They kicked them and kneed them. The men were beaten brutally. Some [of the guards] were Thai-Malay Muslims, and some were Thai Buddhists in the camp.<sup>157</sup>

Fortify Rights obtained mobile-phone video footage of an apparent gang rape of a young Rohingya woman by two young Rohingya men. In the film, a man pins down a Rohingya woman while another man rapes her while smiling. Another unseen person is filming the crime. Thai authorities received the footage. The footage appears to have been taken with a mobile phone and may have been filmed in a human-trafficking camp on the Malaysia-Thailand border.<sup>158</sup> The young woman and men in the film are speaking the Rohingya language.<sup>159</sup>

Other women told Fortify Rights of traffickers beating them in the camp. For example, "Noor Wai," 15, said:

[In] Thailand, I had to stay in a [human-trafficking] camp and that was a very difficult time for me, because most of the time, [the traffickers] beat us. When we called our families or relatives to ask for money, they beat us. When they were demanding money, they beat us. If someone didn't want to talk, they beat us. They beat me . . . I got these [bruises] when they beat me with a stick. They were *dallals* from Maungdaw [in Rakhine State, Myanmar]. I got the bruises in Thailand . . . They beat me many times . . . They used a bamboo stick.<sup>160</sup>

<sup>155</sup> Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014.

<sup>156</sup> Fortify Rights interview with #50, Songkhla Province, Thailand, September 17, 2014.

<sup>157</sup> Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014.

<sup>158</sup> Mobile phone footage obtained and interpreted by Fortify Rights, 2014.

<sup>159</sup> *Ibid.*

<sup>160</sup> Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

Traffickers held 20-year-old “Fatima,” her husband and their one-year-old child for four months in a human-trafficking camp in Thailand in 2014 while Fatima was pregnant. She told Fortify Rights:

[The traffickers] demanded an additional 7,000 Malaysian Ringgit (US\$2,000) per person. The *dallals* beat people who couldn’t pay. I saw so many people beaten by the *dallals* in the camp because they couldn’t pay. The *dallals* beat me two times in the camp because we couldn’t pay. They hit me with sticks on my back. My husband was also beaten. The *dallals* forced the women and children to stand outside the plastic sheet when it rained as a form of punishment.<sup>161</sup>

According to survivors, traffickers commonly carried knives, sticks, pipes, and other weapons—including guns—which they used to beat and threaten their captives.<sup>162</sup>

A 28-year-old Rohingya man from Myanmar’s Maungdaw Township in Rakhine State told Fortify Rights how traffickers beat him with a rod after trafficking him from Cox’s Bazar, Bangladesh to Thailand. He said:

It took 28-days [to get to Thailand] by boat. Many people were beaten by the *dallal*. In Thailand, I was in a camp for more than a month. The *dallal* beat me, until I could pay them. They beat me with a rod. I was beat until I was bloody. I had to pay the *dallal* 8,000 Malaysian Ringgit (about US\$2,200) to get released . . . My family paid for my release.<sup>163</sup>

“Abdul Haman,” 17, told Fortify Rights:

People who couldn’t pay the money were beaten. If they told the *dallals*, “I can put the money into the account tomorrow,” then the *dallals* said, “You are lying,” and they would beat them. Some people were beaten in the back or on their head. Three people were hit in the head and were bleeding . . . Before I heard from my father, I didn’t have any contact with anyone and the *dallals* beat me.<sup>164</sup>

A middle-aged Rohingya man, “Anwar,” told Fortify Rights in 2017 of lasting injuries from beatings he experienced in human-trafficking camps in late 2014:

After we got to Thailand, I could not pay ransom money to the *dallal* in the camp. The *dallal* beat me with a wood stick on my chest and my back. After the beating, I was coughing, and blood came out. My whole body was swollen . . . Since I was beaten by the *dallal*, the pain stays . . . I cannot work because I have pain in my whole body. I sometimes can’t pay rent, and my leg is unstable.<sup>165</sup>

Fifteen-year-old “Noor Wai” told Fortify Rights: “The men were all abused. [The traffickers would] tie their hands and beat them very bad. Some people tried to escape, and [the traffickers] would catch them and bring them back and handcuff them and beat them again very badly.”<sup>166</sup>

Traffickers punished anyone who attempted to escape from captivity with particularly severe beatings. Nineteen-year-old “Yusuf” witnessed several attempted escapes during his three-and-a-half months in a human-trafficking camp in Thailand. He told Fortify Rights:

Three people from Buthidaung [in Rakhine State, Myanmar] tried to escape. They tried to get a car, and the *dallals* captured them and brought them back to the camp and beat them. The *dallals* captured them near the car. The Thais brought them to the middle of a circle, and

<sup>161</sup> Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>162</sup> See, for example, Fortify Rights interview with #77, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>163</sup> Fortify Rights interview with #142, Kuala Lumpur, Malaysia, February 2, 2019.

<sup>164</sup> Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

<sup>165</sup> Fortify Rights interview with #143 Selangor, Malaysia June 15, 2017.

<sup>166</sup> Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

all the people in the camp were made to surround them. They said, “We are beating them, because they tried to escape.” I saw this happen four or five times. They tied their hands and feet and then beat them from the back and the front. After they were beaten, [the traffickers] put some medicine on them and told them, “Don’t do this. We invested in you, so we can earn money. Don’t do this again.”<sup>167</sup>

He went on to say: “We felt very scared. We sat [in a crouching position]. The [guards] had guns. We were very scared. Sometimes, they used the guns to warn us.”<sup>168</sup>

Ula Mya, 43, similarly told Fortify Rights of the traffickers abusing a captive that tried to escape, saying: “One person tried to escape and the *dallals* cut him on his hand and feet. He tried to escape, and they followed and caught him. They [*dallals*] were Shan people.”<sup>169</sup>

Foyas, 20, witnessed the same incident in 2014:

One person tried to escape, and [the traffickers] cut his hand and feet. I saw that happen. They had knives and pistols and wooden sticks. If someone tried to escape and they saw them, they’d beat them very hard . . . There were 20–30 [armed] guards.<sup>170</sup>

“Sayad,” 27, who spent one month in a human-trafficking camp, also described how the traffickers punished captives who tried to escape, saying:

Some people tried to escape from the camp, but they couldn’t, and they were captured and brought back and beaten. I saw this. Some Thai people were guarding outside the fence. They were residents from the village. Inside the camp, the guards were Rohingya from Maungdaw [in Rakhine State, Myanmar]. There were many people coming and going, maybe 350 people total.<sup>171</sup>

“Mohammed Kasem,” 26, described how two boys tried to escape from the human-trafficking camp where he was held in Thailand in early 2014, saying:

The [traffickers] said the police were coming, and they were transferring us to another place. Two boys escaped from the group. They brought them back to the group and beat them severely . . . with their hands and with sticks. They had some injuries.<sup>172</sup>

“Mohammed Khan,” 25, described efforts by traffickers to prevent escapes in the camps where traffickers held him, saying:

There were four Thai guards. They watched the people. They built a small hut, like a military camp, and stayed there. They did not allow us to even go to the toilet . . . They would catch and beat the people so much if they tried to escape from that place.<sup>173</sup>

He witnessed multiple retributive beatings by traffickers who recaptured detainees who attempted to escape the human-trafficking camp where he was confined. He said: “Four people tried to escape from [the human-trafficking camp] and were brutally beaten. [The traffickers] injured their legs and both hands, and the guards tied them to the trees. They were alive.”<sup>174</sup>

<sup>167</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>168</sup> *Ibid.* See also, for example, Fortify Rights interviews with #04, #18, and #49, Kuala Lumpur and Pahang, Malaysia and Bangkok, Thailand, August 10, 13 and September 23, 2014.

<sup>169</sup> Fortify Rights interview with #17, Pahang State, Malaysia, August 13, 2014.

<sup>170</sup> Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014. See also, Jane Perlez, “For Myanmar Muslim Minority, No Escape from Brutality,” *New York Times*, March 14, 2014, [http://www.nytimes.com/2014/03/15/world/asia/trapped-between-home-and-refuge-burmese-muslims-are-brutalized.html?\\_r=0](http://www.nytimes.com/2014/03/15/world/asia/trapped-between-home-and-refuge-burmese-muslims-are-brutalized.html?_r=0) (accessed March 23, 2019).

<sup>171</sup> Fortify Rights interview with #58, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>172</sup> Fortify Rights interview with #54, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>173</sup> Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

<sup>174</sup> *Ibid.*



Despite witnessing such punishments, Mohammed Khan himself later attempted and successfully escaped from the camp in 2013:

The brokers asked for 7,000 Malaysian Ringgit (US\$2,000) from us by beating and torturing us. We refused to give [money] by saying that we had lost everything. They said, “If you don’t have money to pay, you have to work in Malaysia and have to give the money up.” They beat and forced us to make phone calls to our families. When we could no longer stand the torture, we ran away from that place. We swam and crossed small streams, got on a small boat, and went to a pier . . . A car picked us up and sent us to a place. The driver told us not to walk on the road and said the police may arrest us. We walked until the evening and slept in the plantation. We entered a Thai house and asked for help and were refused. We walked again, and we did not stay near that house because they may arrest us. After that, we arrived here. The owner of this house understood the situation and gave us shelter. We arrived on Thursday and now have been here three days.<sup>175</sup>

Members of the criminal syndicate also threatened families, friends, and associates of the captives with violence. For example, “Abdul Mahid,” a 50-year-old Rohingya man living as a refugee in Malaysia, received a threatening call from traffickers demanding payment of 6,200 Malaysian Ringgit (approximately US\$2,000) for the release of 24-year-old “Abdul Rahman,” an associate of Abdul Mahid. Abdul Mahid told Fortify Rights: “[The traffickers] said, ‘It is easy for us to kill you. We will also kill the boy in our custody.’ He was crying and they were beating him.”<sup>176</sup>

Rohingya families in Myanmar explained to Fortify Rights how they received phone calls from traffickers and loved ones held captive in trafficking camps in Thailand and Malaysia requesting money. A 40-year-old Rohingya man in Sittwe Township, Rakhine State, Myanmar explained to Fortify Rights how traffickers were holding his son captive in a camp in Thailand in 2015:

After two or three days, [traffickers] called us and told us to transfer money to an account in Western Union bank. “We can’t send money to the bank,” we said. “We’re just trying to find someone who can rescue my son,” we said. My son told me he was going to die. We asked one of my relatives in Malaysia to rescue my son from this. We didn’t pay any money. We asked our relatives to rescue him. [My son] explained to me a little bit about his suffering. When they arrived in Thailand, the brokers kept him in a jail. They built it with wood in the mountains, and they gave him some rice—once every three or four days—and a little water. They beat them badly. They were trying to get money from others and us in exchange for his freedom.<sup>177</sup>

A prominent member of the Rohingya community in Myanmar told Fortify Rights how he made several payments to traffickers to obtain the release family members and others from the human-trafficking camps in Thailand:

When I call them, my relatives say the brokers always torture them very brutally. They are in a difficult situation. They asked me to free them from the hands of the brokers by giving money. They said the broker was beating them severely and often didn’t provide food. They said they were starving and in a difficult situation. They said the broker keeps them in a room surrounded by iron fences and, in the middle, there are iron chains. Twenty people were taken to Malaysia [from the human-trafficking camps] yesterday [October 28, 2013] after their relatives transferred money.<sup>178</sup>

Fortify Rights recorded phone calls between those being held captive in Thailand and their family members. During these calls, those in captivity described to their family members various acts of

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<sup>175</sup> *Ibid.*

<sup>176</sup> Fortify Rights interview with #21, Johor State, Malaysia, August 15, 2014.

<sup>177</sup> Fortify Rights interview with #98, Rakhine State, Myanmar, March 4, 2015.

<sup>178</sup> Fortify Rights interview with #32, Yangon, Myanmar, October 29, 2013.

torture perpetrated by the traffickers against them.<sup>179</sup> Fortify Rights located several of these same men in Malaysia after traffickers in Thailand released them and confirmed the abuses they suffered at the hands of traffickers.<sup>180</sup>

## Deprivations of Food, Water, Physical Space, and Shelter

The Commission and Fortify Rights documented how members of a transnational criminal syndicate operating human-trafficking camps in Thailand and Malaysia denied captives adequate food, water, shelter, and space. Traffickers in some camps provided small amounts of rice and water twice daily; in other camps, traffickers fed captives once per day. Traffickers generally guarded over their captives, confining them to a defined space often with inadequate protection from weather. In many cases documented by Fortify Rights, these deprivations led to death or paralysis.<sup>181</sup>

All witnesses interviewed by the Commission who survived the human-trafficking camp at Wang Kelian testified that their captors gave them only small portions of food; three witnesses said they were given rice and pepper only, and one testified that he received no food at all from the traffickers.<sup>182</sup>

A 26-year-old Rohingya man, who survived three months of captivity in two separate human-trafficking camps, described conditions in the camps, saying: “There was tarpaulin on the ground and roof. We couldn’t move around, couldn’t have a shower, and didn’t have enough space. They provided only tiny amounts of water. We had to eat rice that smelled bad and dried fish.”<sup>183</sup>

“Mohammed Ishmael,” 20, described similar conditions in the human-trafficking camp where traffickers held him after he arrived in Thailand:

[The traffickers] put tarpaulin on the ground, and the roof was tarpaulin too. They constructed bamboo fences and kept us inside. We were locked inside. Whenever they received two million Myanmar Kyat (US\$2,000; 7,000 Malaysian Ringgit), then they would release someone. There were two [nearby] camps like this with 150 [people] in each camp. We had to sleep on top of each other.<sup>184</sup>

“Naw Begum,” 40, described multiple camps in a mountain location on the Malaysia-Thailand border where traffickers confined her for six months:

There were three camps. There were different levels because it was on a mountain. In the upper camp, there were three to four hundred people. The other two camps were empty when we arrived. There were 170 in our group. They separated the men and women. We had to sleep very close to each other. The toilets were a hole with cement. They built it. They covered it with leaves. They provided a small amount of rice, sometimes with chicken or dried fish . . . If we had to stay longer in the camp, we would have died . . . Just before we left the camp to come to Bangkok [in June 2013], 350 people arrived four days earlier.<sup>185</sup>

<sup>179</sup> See, for example, Fortify Rights audio recording #34, October 29, 2013. See also, “For Myanmar Muslim Minority, No Escape from Brutality,” *New York Times*; “Atrocities in Myanmar,” *Public Broadcasting Service*, April 18, 2014, <http://www.pbs.org/wnet/religionandethics/2014/04/18/april-18-2014-atrocities-in-myanmar/22768/> (accessed on March 25, 2019).

<sup>180</sup> See, for example, Fortify Rights interview with #17 and #19 in Pahang State, Malaysia, August 13, 2014.

<sup>181</sup> On testimonies alleging deaths of Rohingya in trafficking camps in Thailand from 2012–2015, see, Chapter II. Section, “Killings and Preventable Deaths.”

<sup>182</sup> The Commission interviews with W2, W3, W7, and W12, Kedah State, Malaysia, November 10–12, 2016.

<sup>183</sup> Fortify Rights interview with #45, Songkhla Province, Thailand, September 17, 2014.

<sup>184</sup> Fortify Rights interview with #50, Songkhla Province, Thailand, September 17, 2014.

<sup>185</sup> Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014.

“Yusuf,” 19, also described being held in a mountain camp with other camps nearby:

[The camp shelter] was made of bamboo and canvas. It was red inside and yellow outside. We weren’t allowed to walk. We couldn’t go outside. There were 80 people in my tent. Most of them were older than me. In our camp, there were no women, but in another camp, there were women in another area on the mountain. It was very uncomfortable because we lived near the water canal. People went to the toilet there, and we ate there.<sup>186</sup>

“Habiba,” 42, told Fortify Rights: “[The traffickers] gave us rice and fish. It wasn’t enough food for us . . . There were at least three other camps. The camp I was in was all women and children younger than 12.”<sup>187</sup>

“Mohammed Kasem,” 26, described being held in a human-trafficking camp on a farm after arriving in Thailand by ship. Describing the camp, he said:

It was a rubber farm . . . We were covered by canvas in a small tent. They gave us food only once per day. There was a fence outside the tent, and we couldn’t go outside the fence. There were some Shan and some Rohingya people guarding the fence, so we weren’t able to leave.<sup>188</sup>

“Mohammed Kahn,” 25, described being held by traffickers on an island camp in Thailand, which he managed to escape from in 2013:

When we arrived in a river in Thailand, a small boat went there to bring us. There were 80 of us, and we had to get on that boat, and [the traffickers] brought us to a mountain [island] surrounded by the sea. They carried the people in two groups. We stayed there for eight days. We were transferred to another place and provided good food two times, but the rest of the days, they only provided very little rice and [once] a small piece of chicken in a plastic bag . . . We could not eat food regularly in the camp. A meal was provided only once per day. We also couldn’t eat food on the boat for ten days . . . After we arrived on that island, we saw there were no houses and could not see even birds. We only saw the jungle. There were some plastic tarpaulins to provide cover as a roof when it rained . . . Sometimes, [the traffickers] did not bring water, and then we would drink water from the stream. The food was very little.<sup>189</sup>

Many survivors described inadequate shelters in the human-trafficking camps, which was particularly problematic during the monsoon season. For example, “Noor Wai,” 15, told Fortify Rights: “In the mountain, the camp [shelter] was only made of canvas. There was no roof, and it was raining, and the water would run through the camp . . . There were many kinds of health problems there, affecting everyone, including me.”<sup>190</sup>

Foyas, 20, described deprivations in a primitive mountainside human-trafficking camp where he spent three weeks:

There was no camp in the mountain, no roof. We slept on the floor. It was very congested. We spent about 20 days in that camp. There were 700 people there. There was no roof and no floor. We were on the grass. They provided very little food and water and it was very hot.<sup>191</sup>

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<sup>186</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>187</sup> Fortify Rights interview with #06, Kuala Lumpur, Malaysia, August 11, 2014.

<sup>188</sup> Fortify Rights interview with #54, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>189</sup> Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

<sup>190</sup> Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

<sup>191</sup> Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014.



## Paralysis of Captives

*“Some men could no longer walk from being in the camp. There were seven of them. I also became paralyzed.”*

—Rohingya boy, 16, who survived torture and deprivations, Kuala Lumpur, Malaysia, August 2014

Severe nutritional and space deprivations in the human-trafficking camps left many captives with paralysis. Medical professionals told Fortify Rights that most cases of paralysis among survivors of the human-trafficking camps were likely due to beriberi, a highly preventable disease that affects the nervous system and can lead to heart failure and death if untreated.<sup>192</sup> Beriberi is caused by a nutritional deficiency of vitamin B1. Survivors described symptoms consistent with those of beriberi—deprivations in physical space and being denied the ability to stretch legs would have also likely contributed to cases of paralysis.

“Mohammed T.” was 16 when he fled Myanmar in 2012. He experienced paralysis along with others confined to a human-trafficking camp for a protracted period without access to adequate food or nutrients:

In this camp, there were 400 people and then 90 and then 45 people. Those who transferred money to [the trafficker’s] bank accounts were sent to Malaysia. Twenty-five of the last 45 people couldn’t walk. We were paralyzed. I could walk a little bit, and we escaped from the camp. Some couldn’t walk. Their bodies were carried by the brokers and thrown beside the road in the rubber plantation. They got new people, people coming from boats, and they were throwing [those who couldn’t pay] out. Some Thai Muslims took the bodies and brought them here [to a mosque in Sadao in southern Thailand].<sup>193</sup>

When Fortify Rights spoke to “Ebadullah” 25, a Rohingya man from Buthidaung Township, Myanmar, he had noticeably thin legs and was just beginning to regain strength at a community-led refugee shelter in Kuala Lumpur, Malaysia. He had been paralyzed from the waist down after traffickers confined him for several months with minimal food in a human-trafficking camp in Thailand. He told Fortify Rights:

The most difficult situation I faced was in the [human-trafficking] camp in Thailand. We had to stay in one place, and we couldn’t move anywhere. They provided us two meals of rice per day. It was too crowded. We couldn’t extend our legs . . . Upon my payment [to the traffickers], I was brought to Malaysia. Those who could pay were brought to the Malaysian–Thai border by car. Two of us could not walk. We were paralyzed. I asked a guy who was healthy, “When the van comes, please take us with you.”<sup>194</sup>

Traffickers in Thailand left “Abdul,” a 17-year-old Rohingya boy who fled Myanmar in April 2014, for dead after he became paralyzed. He said: “Five of us [captives] were paralyzed and couldn’t move, so they [traffickers] left us behind. For five days, we didn’t have any food or drink. During the night, I saw a light from very far away. I shouted but no one came.”<sup>195</sup>

Eventually a Thai man and woman happened upon Abdul and the two other survivors: “In the morning, a [Thai] man and woman saw us and told us to wait. They returned with some rice and food and took us to a road and then called an ambulance.”<sup>196</sup>

<sup>192</sup> Fortify Rights meeting with medical doctor, Kuala Lumpur, Malaysia, September 2014.

<sup>193</sup> Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014.

<sup>194</sup> Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>195</sup> Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014.

<sup>196</sup> *Ibid.*

He was eventually taken to a local Muslim community. The two others were taken to the Hat Yai hospital and died.

“Yusuf,” 19, described the onset of paralysis, saying: “After three months in the camp, my legs started to hurt. At first, I couldn’t eat food. I didn’t feel hungry, and if I ate, I’d vomit. Gradually, my legs became affected.”<sup>197</sup>

Foyas, 20, reported experiencing problems after being released from the human-trafficking camp in 2014. He told Fortify Rights: “After I was released, there were many problems. [The traffickers] took me in a car to Malaysia. After I left from the camp, I was unable to walk.”<sup>198</sup>

“Noor Begum,” 20, told Fortify Rights of seeing captives paralyzed in the human-trafficking camp where traffickers held her for two months. She said:

I lived in the mountain camp for two months. People who paid earlier were released earlier. People who couldn’t pay stayed longer and faced many problems and some died. . . . The *dallals* beat them [captives who could not provide payments] and provided [them with] very little food, and they were unable to walk. Some were paralyzed and swollen, and then they died.<sup>199</sup>

“Rayna,” a 19-year-old Rohingya woman from Maungdaw Township, Myanmar, who survived a human-trafficking camp in 2014, told Fortify Rights: “I did see some people in the jungle areas that were being held by other *dallals*, who had been waiting for a long time and couldn’t pay the money. They were sick and couldn’t walk.”<sup>200</sup>

“Mohammed Kasem,” 26, told Fortify Rights: “When we arrived [at the human-trafficking camp], I saw eight to ten Rohingya people who were very sick. Most of them had swollen legs and couldn’t stand. There were two Shan people who were in charge there.”<sup>201</sup>

## FORCED MARRIAGES AND DOMESTIC SERVITUDE OF WOMEN AND GIRLS

*“Some women are sold to men as wives from the camp.”*

—Mid-level human trafficker, Selangor State, Malaysia, September 27, 2014

Members of a transnational criminal syndicate trafficked Rohingya women and girls from Myanmar and Bangladesh to Malaysia via Thailand and into forced marriages and domestic servitude. Fortify Rights interviewed Rohingya women and girls sold into forced marriages, men who purchased women and girls, and eyewitnesses to the trafficking of Rohingya women and girls. Fortify Rights also obtained recorded phone calls of human traffickers negotiating the sale of Rohingya women and girl with potential buyers.

Many unmarried women and girls held in captivity by human traffickers contacted family members, who, in turn, contacted potential husbands to pay for the release of the woman or girl. In other cases, traffickers directly arranged for the sale of women and girls into marriages or situations of domestic servitude. In all situations, trafficked women and girls generally lack agency and were forcibly transported from one abusive situation into another.

<sup>197</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>198</sup> Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014.

<sup>199</sup> Fortify Rights interview with #18, Pahang State, Malaysia, August 13, 2014. *See also*, Fortify Rights interview with #20, Pahang State, Malaysia, August 14, 2014.

<sup>200</sup> Fortify Rights interview with #84, Penang State, Malaysia, September 16, 2014.

<sup>201</sup> Fortify Rights interview with #54, Kuala Lumpur, Malaysia, September 27, 2014.

A mid-level Rohingya trafficker, 48, living in southern Thailand explained the business of bride-selling to Fortify Rights:

The women who can't pay [for their release from traffickers] are sent to the people who want women. If there is a daughter and the father can't give money, she is sold to another man. They are sold like cattle. The people who haven't married, sometimes they buy the girls, and some people buy them for jobs and for work. Whatever [type of work] they want, they just buy them from the broker. Some people are old age, and they want a young girl, so they buy a young girl.<sup>202</sup>

A recording obtained by Fortify Rights in 2014 of a phone call between two Rohingya traffickers in Bangkok and a Rohingya trafficker overseeing a human-trafficking camp in southern Thailand further clarified the process.<sup>203</sup> On the call, the Bangkok-based traffickers negotiated for the purchase of two women from the camp. At the outset of the call, the trafficker in the camp explained that he worked for a Rohingya human-trafficker from Sittwe, Rakhine State, Myanmar, who managed a camp in southern Thailand's Satun Province. The camp held several hundred captives, including 16 women.

The Bangkok-based traffickers initially offered 25,000 Thai Baht (US\$780; 2,700 Malaysian Ringgit) for a Rohingya woman referred to as "Zaida," and the camp-based trafficker replied with a non-negotiable counteroffer of 30,000 Thai Baht (US\$937; 3,270 Malaysian Ringgit), citing his boss as the authority on pricing.<sup>204</sup> At one point, the Bangkok-based traffickers asked the camp-based trafficker if another woman they spoke to, "Is [she] beautiful or not?" The Rohingya guard replies: "You can see them first. If you want to take one or two, that is your decision. She is very beautiful, very beautiful. A Thai guard [in the human-trafficking camp] wants to marry her."<sup>205</sup>

At one point, the Bangkok-based traffickers speak directly to "Zaida." She said: "We have not had any food since the morning. I am just crying. We are usually not provided food in the morning, and there is nothing to cook. They will not provide food to us in the evening either."<sup>206</sup>

Another woman is handed the phone and asked by the Bangkok-based traffickers if she would marry a Mullah (an Islamic religious leader) originally from Minbya Township, Rakhine State, Myanmar. She replied: "Yes, I shall marry if it is the order of Allah. Would you please try to take us within two or three days? We are in a very difficult situation. We cannot get food, water, and clothes and cannot take a bath. We are in a very difficult situation."<sup>207</sup>

The traffickers eventually sold into marriage or domestic servitude all of the women and girls in the camp—some as young as 12-years old—and transported them to Malaysia.<sup>208</sup>

Fortify Rights spoke to Rohingya women who witnessed traffickers taking women and girls out of the human-trafficking camp, presumably to be sold. For example, "Noor Begum," 20, described seeing traffickers take women and girls away during her time in the camp.<sup>209</sup> She said:

[The traffickers] took some girls away from [the human-trafficking camp], and we thought they were selling them. We realized they were taking the women because they wanted to sell them. If women stayed for a long time, they took them away. I don't know where they took them. I realized that [the women in the camp] were unable to pay money . . . I didn't see anyone from outside come, but the [camp] supervisors came and took them away.<sup>210</sup>

<sup>202</sup> Fortify Rights interview with #42, Songkhla Province, Thailand, September 17, 2014.

<sup>203</sup> Fortify Rights, transcript of recorded telephone call between two Rohingya men and trafficking-camp guard, #51, Bangkok, Thailand, September 22, 2014.

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

<sup>207</sup> *Ibid.*

<sup>208</sup> Fortify Rights communication with trafficker of Rohingya descent, July 13, 2015.

<sup>209</sup> Fortify Rights interview with #20, Pahang State, Malaysia, August 14, 2014.

<sup>210</sup> *Ibid.*



Fortify Rights also spoke to Rohingya women who faced threats from traffickers or were sold by traffickers in the human-trafficking camp. “Naw Begum,” 40, described how traffickers threatened to marry her when she was confined in a human-trafficking camp in 2014: “One *dallal* said that if we couldn’t give money, he would take me to be his wife. He said on the phone [to my son], ‘If you cannot give money, I will take her.’”<sup>211</sup>

The woman’s son “Jabar,” 23, previously fled Myanmar in 2007 and was living in Bangkok as a roti seller in 2014.<sup>212</sup> He arranged for his mother, sister, and two brothers to travel to Thailand, initially paying US\$250 (870 Malaysian Ringgit) for the four family members to flee Rakhine State. Jabar then paid another 155,000 Thai Baht (US\$4,840; 1,385 Malaysian Ringgit) to obtain their release as well as the release of a 16-year-old Rohingya girl from the human-trafficking camp.<sup>213</sup> Jabar’s mother arranged for Jabar to purchase the girl after meeting and caring for her in the human-trafficking camp.

Jabar told Fortify Rights how he arranged for the payment of his four family members and the young girl, whom he later married, saying:

I borrowed the money from an Indian [man] and from him [pointing to nearby Rohingya businessman]. I have to pay a monthly interest payment of 10,000 Thai Baht (US\$312; 1,080 Malaysian Ringgit) to the Indian man. The Indian man knows what the money he lent me was used for. I explained to him about my family. I call him my father and humbly asked him for help, and he agreed to help.<sup>214</sup>

Like the girl purchased by Jabar, traffickers sold “Noor Wai,” 15, to a young Rohingya man in Malaysia for 3,500 Malaysian Ringgit (approximately US\$1,000) in October 2014.

Noor Wai fled her home in Sittwe Town in Myanmar’s Rakhine State after the Myanmar security forces and extremists razed her house and forced her and her family into an internment camp in 2012.<sup>215</sup> She described to Fortify Rights her reasons for fleeing:

I was living in the [Myanmar internment] camps, and it was very difficult, and I had a very hard time, and that’s why I realized I had to leave the country . . . I wanted to leave Rakhine State because of hunger. I was in Ba Du Ba [internment] camp. The [U.N. World Food Program] provided for one person only a cup of rice and a little oil. We also had only half rations because we needed the rest to buy other things, like fuel. When I knew people were leaving for Malaysia from the camps, I asked them what to do. When I decided to go, there were four brokers . . . There was one man named [redacted] in Sittwe. He helped me get on the boat. He was a *dallal*.<sup>216</sup>

Although the traffickers promised Noor Wai that they would bring her to Malaysia, she arrived in Thailand after spending seven days on the ship in Myanmar waiting for it to depart and 12 days at sea:

We were supposed to be going to Malaysia, not Thailand. When I got off the boat [near Ranong, Thailand], [the traffickers] put me in a car, and after an eight-hour drive, we reached the mountain area. The first time I arrived in the [human-trafficking] camp, it was empty. There were no people there.<sup>217</sup>

<sup>211</sup> Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014.

<sup>212</sup> Fortify Rights interview with #47, Bangkok, Thailand, September 23, 2014. See, Chapter IV. “Testimony Suggesting Official Complicity in Human Trafficking.”

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> She told Fortify Rights: “My house was burned down and so all the people went to the camp. It was about three years ago. [Myanmar riot police] started shooting, and then we all went out of our homes and went to the water—there was a lot of water there—and then more [Rakhine] people came to our village and burned the houses. They used petrol to burn the houses.” Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*

Noor Wai spent four months in a human-trafficking camp in Thailand. When Noor Wai's family learned of her situation, they contacted "Abdul," 22, a Rohingya man who fled Myanmar earlier and had been living in Malaysia since 2013. Fortify Rights spoke to Abdul about Noor Wai before he arranged for her release. He said: "She is from near my home. Her parents called me to help her. I have been [in Malaysia for] one year. I spoke with the girl about four or five times. She cries but doesn't say much. When they call, the *dallals* are right there with her."<sup>218</sup>

On September 30, 2014, Fortify Rights recorded a phone call between Abdul and a human trafficker holding Noor Wai captive.<sup>219</sup> At one point, Noor Wai was put on the phone for proof-of-life: "Will you come tomorrow with the money?" she asked before the trafficker abruptly took back the phone.<sup>220</sup>

Noor Wai identified one of her captors as a Rohingya man and described how he threatened to sell her if Abdul did not pay. She said:

[Name redacted] is a *dallal* and [Abdul] called him and said he would give money to him, and so [name redacted] brought me here [to Malaysia]. When [Abdul] was unable to pay [immediately], [name redacted] said to me, "He will not rescue you, he will not pay money for you, so I will sell you to others." He knows the men who buy the women, and he said he would sell me to them . . . Many people called him for the girls. [The traffickers] don't care about anything. They say, "We want money," and if someone pays money, we would have to go to them. They don't care about us. In the Thailand camp, they said the same thing many times. "If you don't pay, I will sell you here [in Thailand] or sell you in Malaysia."<sup>221</sup>

Noor Wai spent 11 days confined to a human-trafficking house in Malaysia awaiting the payment by Abdul.

On September 30, 2014, Abdul transferred 3,500 Malaysian Ringgit (US\$1,000) to the human traffickers holding Noor Wai. The traffickers instructed him to travel to a location in Butterworth in Penang State, Malaysia and await instructions. The traffickers led Abdul from location to location, eventually concluding the journey at a Maybank in Butterworth, where—under cover of darkness—a car quickly dropped off Noor Wai and sped away.

Fortify Rights met with Noor Wai in Penang shortly after the traffickers released her. She told Fortify Rights privately that she was comfortable to stay with Abdul. She said she had known Abdul for many years and felt safe; however, she said she had no intention of marrying him.

Weeks later, the two were married.

"Naeem" a Rohingya man in his 20s similarly described how he paid traffickers to release a Rohingya woman from a human-trafficking camp in order to marry her. He said:

I have been married for three months. Someone from my family called me and asked me if I wanted to marry a girl who is in Penang [in Malaysia]. "She is unable to pay and if you bring her to you, you can marry her," they said. I paid 6,000 Malaysian Ringgit (US\$1,720) for her. It was in July [2014].<sup>222</sup>

<sup>218</sup> Fortify Rights interview with "#67, Penang State, Malaysia, September 28, 2014.

<sup>219</sup> Fortify Rights, transcript of recorded telephone call between "Abdul" and human trafficker, Kuala Lumpur, Malaysia, September 30, 2014.

<sup>220</sup> The speakers on the call continued: *Abdul*: "I will come with the money tomorrow." *Trafficker*: "Why don't you come today?" *Abdul*: "I don't have the money in hand. If I had the money, I would come now." *Trafficker*: "You told me before you already had the money, what happened with that money?" *Abdul*: "I came with money many times before to you, but you didn't bring her. We are very close to our Eid festival [October 6], so I had to send money to my home." *Ibid*.

<sup>221</sup> Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014.

<sup>222</sup> Fortify Rights interview with #59, Kuala Lumpur, Malaysia, September 28, 2014.

Rohingya women and girls are also forced into marriage to cover the costs of their travel to Malaysia. For example, “Rohima,” 19, fled her home in Maungdaw Township after Myanmar Army soldiers detained ten women from her village in 2014, seven of whom returned a month later recounting experiences of rape and abuse and three others were found dead. She told Fortify Rights:

I knew I needed to leave [Myanmar] . . . My brother was in Malaysia when the women from my village were being arrested by the military. He told his friend about me and the problems in our village. His friend agreed to pay for my travel arrangements to Malaysia and take me as his wife. He contacted and paid the *dallal* 6,000 Malaysian Ringgit (US\$1,720) to bring me to Malaysia. In addition to paying for my travel, he also agreed to give me 17 grams of gold.<sup>223</sup>

To get to Malaysia, she stayed at a local trafficker’s house in Myanmar for three days, where she was given a red-colored wristband and waited to be brought to the ship.<sup>224</sup> She said there were 133 people on the ship, including 20 women: “Only one woman [of 20 on the ship] was [Bangladeshi]. The rest of us were Rohingya . . . We sailed for eight days before reaching Thailand.”<sup>225</sup>

In Thailand, the traffickers transported her to a human-trafficking camp, where she remained for three days before the traffickers brought her to Malaysia—first by car then by foot for several hours. Upon arrival, she met her brother and stayed with him for ten days before meeting her soon-to-be husband for the first time. She described that meeting, saying:

About 30 minutes after arriving to his house, we got married by agreeing in accordance with our tradition. My only hope now for the future is that my husband and I can stay together for a long time.<sup>226</sup>

“Rayna,” a 19-year-old Rohingya woman, similarly married a man to cover her travel costs from Myanmar’s Maungdaw Township in Rakhine State. She explained her reasons for fleeing Myanmar, saying:

My father left Rakhine State eight years ago and had been living in Malaysia. Two years ago, he tried to go to Australia by boat, but he was arrested. Now, he’s in a camp in Australia. Before, he would send money to support our family in Myanmar. There are seven members in my family. After my father was arrested, life became very difficult for us.<sup>227</sup>

When a Rohingya woman in Rayna’s village approached Rayna’s mother offering to pay for Rayna’s travel costs to go to Malaysia to marry the woman’s son, Rayna’s mother agreed:

According to our Rohingya culture, we follow the wishes of our parents . . . My mother and mother-in-law made the travel arrangements for me to come to Malaysia. My brother-in-law and uncle met with the *dallal* [in Maungdaw Township] . . . My mother and younger brother both went to the *dallal*’s house . . . My younger brother also decided to leave Malaysia at the same time as me because of all the problems in our village after the violence in 2012. My mother sold some gold and one cow to pay for my younger brother to go to Malaysia.<sup>228</sup>

Rayna and her brother joined a group of approximately 300 to 400 people, including 44 women, at a local mosque before being transported by car to boats that took them to a larger ship. She described her journey, saying:

<sup>223</sup> Fortify Rights interview with #77, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>224</sup> See, Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016. See also, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013–2015.

<sup>225</sup> Fortify Rights interview with #77, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>226</sup> *Ibid.*

<sup>227</sup> Fortify Rights interview with #84, Kuala Lumpur, Malaysia, September 16, 2014.

<sup>228</sup> *Ibid.*

Altogether, it took me 14 days to reach Malaysia from Myanmar—eight days on the boat, three days traveling by boat, and three days walking and driving to Malaysia . . . My husband paid 6,500 Malaysian Ringgit (US\$2,000) for all my travel. The mother-in-law also agreed to give 55 grams in gold, but I only received 20 grams in gold when I got here. When my husband earns some money in Malaysia, he should give me the rest of the gold.<sup>229</sup>

“Kaledah,” 18, traveled to Malaysia after her family arranged for her to marry a Rohingya man who agreed to pay part of her travel costs. She fled her home in Maungdaw Township in Myanmar’s Rakhine State after the Myanmar authorities confiscated her father’s land and severely beat one of her relatives. She told Fortify Rights that she feared Myanmar soldiers might rape her.<sup>230</sup> She said:

I love my home in Rakhine, but it was difficult to survive there . . . My parents thought it would be better for me to join my brother here in Malaysia. They told me that my brother would find someone for me to marry in Malaysia . . . I didn’t have a choice other than to go to Malaysia.<sup>231</sup>

When the ship finally disembarked in Thailand, the traffickers transported Kaledah directly to Malaysia and dropped her off in front of a Maybank, where her brother picked her up. She told Fortify Rights:

I arrived in Malaysia a week ago [in September 2014]. Before I arrived, my brother arranged for me to marry a friend of his who he met [in Malaysia]. I married my husband on September 14, two days ago. He is 27-years-old and is from the same village as my family. I hadn’t met him before coming to Malaysia. My husband agreed to pay a total of 20 grams of gold for the marriage. He gave me two grams of gold already and still owes 18 grams of gold. He also paid 4,000 Malaysian Ringgit (US\$1,200) for my trip, and my brother paid 3,000 Malaysian Ringgit (US\$860). Many women from Rakhine are now coming to Malaysia for marriage.<sup>232</sup>

A Rohingya refugee community leader in Malaysia explained the trend and challenges of marriage within the Rohingya community, saying:

There is an increase in women coming for arranged marriages and to escape the situation [in Myanmar’s Rakhine State]. It’s too expensive for Rohingya to get married in Myanmar. Men have to pay to get married. In Myanmar, they have to pay one-million Myanmar Kyat (US\$1,000; 3,490 Malaysian Ringgit). Getting permission [from the authorities] to marry in Myanmar is another problem. In Bangladesh, there is a refugee camp that is home mostly to couples that have married or had a child without permission [from Myanmar authorities]. Ninety out of 100 people in this camp are there for that reason. Many times, women don’t want to marry, but divorce is not common. Ninety percent of Rohingya marriages are not for love but are arranged marriages.<sup>233</sup>

<sup>229</sup> *Ibid.*

<sup>230</sup> Fortify Rights interview with #83, Kuala Lumpur, Malaysia, September 16, 2014.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

<sup>233</sup> Fortify Rights interview with #73, Kuala Lumpur, Malaysia, September 14, 2014.





# III. THE DISCOVERY OF THE WANG KELIAN MASS GRAVES AND HUMAN-TRAFFICKING CAMP: MALAYSIAN OFFICIALS’ TESTIMONY

In 2015, the Commission received a memorandum submitted by the Bar Council of Malaysia and the Human Rights Society of Malaysia (HAKAM) requesting that it conduct an investigation focused on the authorities’ investigation of the mass graves discovered at Wang Kelian, Perlis State, Malaysia.

In 2017, the Commission planned to interview the officers of the General Operations Force (GOF)—the light infantry arm of the Royal Malaysian Police, who were in charge of the posts in Wang Kelian. However, the GOF informed the Commission that it was not possible to identify who was in charge at the particular time of the incident since the rotation of the GOF occurred once per month to maintain integrity among the officers. Given that the GOF could not identify the officers in charge at the time of the incident, the Commission’s cancelled the interviews.

In 2018, the Commission recorded 39 statements from the GOF, the Royal Malaysian Police, the Immigration Department of Malaysia, the Forestry Department of Perlis State, and residents living in the foothills of Wang Burma—the area in Wang Kelian where the authorities discovered mass graves—to support the investigation into the human trafficking and mass graves conducted by Malaysian authorities, particularly the Royal Malaysian Police.

Below are summarized statements from key witnesses, including law enforcement agencies, such as the GOF, Immigration Department of Malaysia, and the Forestry Department of Perlis State, and Wang Burma residents in Wang Kelian, Perlis State, Malaysia.

## STATEMENT OF THE GENERAL OPERATIONS FORCE

### Statement of “Person A,” Senior Officer, Battalion 3 of GOF, Bidor, Perak State

“Person A” was a Commander of Company B, Battalion 3, GOF of Bidor, Perak State. He was stationed in Padang Besar, Perlis State from January 1 to January 31, 2015. According to him, Battalion 3 of the GOF was commanded to execute enforcement operations known as *Ops Wawasan* at the border of Malaysia–Thailand border in Perlis State. On September 11, 2017, the Commission recorded

the statement of a Deputy Superintendent and Head Investigator of the Anti-Trafficking in Persons and Smuggling of Migrants agency. He stated that the Royal Malaysian Police had initiated a task force known as *Ops Wawasan* to investigate the Wang Kelian case.

Person A elaborated that Battalion 3 of the GOF executes two functions: to guard the Immigration, Customs, Quarantine and Security Complex in Padang Besar, Perlis State and to patrol along the *Ops Wawasan* designated region. He further explained that GOF is responsible for detaining “undocumented foreign migrants” around the *Ops Wawasan* region and preventing illegal items, such as firearms and drugs, from being smuggled from Thailand to Malaysia.

Person A said that GOF posts are placed along the *Ops Wawasan* designated region.<sup>234</sup> He further stated that Wang Kelian was not previously a part of the *Ops Wawasan* designated region. However, he said he took initiative to include Wang Kelian into the GOF’s operational area and to seek information about smuggling activities. According to Person A, his plan to include Wang Kelian into GOF’s operational area was tabled in an operational meeting and the Commander of Battalion 3 of the GOF in Bidor, Perak State approved it.

Person A said that the Wang Burma hill in Wang Kelian, where the mass graves and camp were discovered, falls under the authority of the Forestry Department of Perlis State. According to him, Wang Burma hill is located in the forest reserve, and it is a patrol area of the Forestry Department of Perlis State.

### The Discovery of the Wang Kelian Camp, Perlis State

Person A told the Commission that he received a phone call from “Corporal B” from the Wang Kelian Post of *Ops Wawasan*, on January 19, 2015 at 11:45 a.m. Person A stated that he was informed that “Corporal C” discovered an observing post behind the Forest Reserve of Perlis State while patrolling with Corporal B. Further, Person A stated that he was informed by Corporal B about a trail starting from the observation post behind the forest reserve. Both Corporal B and Corporal C followed the trail, which led them to the top of Wang Burma hill. Person A was told that Corporal B and Corporal C discovered six tents in the form of cages covered with ponchos and plastic tarp in a camp surrounded with barbed wire and that they could see human movements in those tents. According to them, there were approximately 40 to 50 persons believed to be “undocumented foreign migrants” in those tents.

After the conversation between Person A and Corporal B, Person A planned an operation to raid and detain “undocumented foreign migrants” on Wang Burma hill. He arranged the operation in three groups:

1. Team one: nine GOF police officers led by an inspector were sent to Wang Burma hill to survey, raid, and detain everyone in the camp;
2. Team two: Stationed at the foothill of Wang Burma and around the Perlis State Park to intercept “undocumented foreign migrants” if they escaped the raid conducted by the first team; and
3. Team three: Dispatched to support both teams above and to provide assistance.

### Raid of Wang Burma Hill in Wang Kelian, Perlis State

On January 19, 2015 at 12:30 p.m., Person A informed Person D, Senior Officer of Tactical Headquarters of Bukit Kayu Hitam in Kedah State, on the information with regards to the discovery of a suspicious camp in Wang Burma hill and his plan to conduct a raid on the camp. Person D approved the plan and

<sup>234</sup> Post 15 – Post 20 are divided into Kedah State and Perlis State, Malaysia.

the operation. He recommended to equip the teams with firearms, handcuffs, and other equipment deemed necessary for the operation. The team executed the operation on January 19, 2015.

Overview of the operation in Wang Burma hill:

Time	Action
2 p.m.	A team of nine GOF police officers and led by "Inspector E" move to Wang Burma hill.
5 p.m.	The team arrived at Wang Burma hill, they heard people shouting, "Police! Police! Police!" As a result, people in the camp scattered and attempted to escape. The raiding team said it detained six men suspected of being "undocumented foreign migrants."  At the same time, the cut-off team stationed at the foothills of Wang Burma detained 32 men suspected of being "undocumented foreign migrants."
10:15 p.m.	GOF police officers brought the suspected "undocumented foreign migrants" to the Wang Kelian Post for documentation. Person A filed a police report on the raid he conducted at the District Police Headquarters of Padang Besar, Perlis State. About 38 detainees suspected as "undocumented foreign migrants" were handed over to the District Police Headquarters of Padang Besar for further action.

## POST-RAID OF WANG BURMA IN WANG KELIAN, PERLIS STATE

Person A told the Commission that he attended an inter-agency meeting between enforcement authorities on January 20, 2015 held at the Contingent Police Headquarters of Perlis State in Kangar. According to Person A, "Person F," Senior Police Officer of Perlis State, chaired the meeting and he updated the members of meeting about following matters:<sup>235</sup>

1. The discovery of a camp believed to be inhabited by "undocumented foreign migrants" on the top of Wang Burma hill in Wang Kelian, Perlis State;
2. The raid and operations were conducted on the suspected camp on the same day; and
3. Thirty-eight men believed to be "undocumented foreign migrants" were detained during the raid and transferred to the Padang Besar Police Station for further action.

He further informed the Commission that he presented photographs of the scene during the raid on January 19, 2015. Person A told the Commission further that the Senior Officer of Perlis State issued an order on January 20 to destroy the camp.

### Discovery of Mass Graves in Wang Burma Hill, Wang Kelian, Perlis State

Person A told the Commission that the GOF, led by "Person D," Deputy Commander of 3rd Battalion, went to Wang Burma hill for an operation to destroy the camp they suspected to be a settlement of "undocumented foreign migrants" on January 21, 2015 at 5 p.m. Person A informed the Commission that he discovered an area that appeared to be grave sites approximately 100 meters (328 feet) from the camp while the team was destroying the camp. He immediately informed Person D on the matter and ordered the process to stop immediately. Person A said that after the operation to destroy the camp, he never returned to the site. Person A later filed two police reports on January 22, 2015 regarding the destruction of the camp and the discovery of grave sites approximately 100 meters (328 feet) from the destroyed camp.

<sup>235</sup> Person D, Senior Officer of Battalion 3, GOF in Bidor, Perak State, commanded Person A to report these matters to the members of meeting.



## Statement of GOF Personnel

The Commission recorded statements from 10 GOF personnel, who were on duty in Battalion 3 in 2015, to understand events on the ground and operational levels.

Below is an overview of the operations carried out in Wang Burma hill based on the statements provided by GOF personnel. Upon deliberation, only three of the ten GOF personnel played significant roles during the events on January 19, 2015.

Date	Time	Statements
January 19, 2015	10 a.m.	Corporal B informed the Commission that he and Corporal C patrolled and conducted a survey from Kaki Bukit to Wang Burma hill in Wang Kelian, Perlis State. They found a campsite with several tents in the form of cages covered with ponchos and plastic tarps. The camp was surrounded with barbed wire. The observation lasted for approximately one minute before they decided to leave the place for security reasons. Corporal B stated that he immediately made a phone call to Person A and reported the discovery.
	2:30 p.m.	Corporal B in his statement to the Commission stated that he received an order in the afternoon from Person A to raid the suspicious campsite. During the raid, the authorities detained 38 men suspected to be “undocumented foreign migrants” believed to be from Myanmar and Bangladesh. The team also discovered observation posts in the forest.
	6:30 p.m.	The police brought all 38 “undocumented foreign migrants” to the GOF’s post in Wang Kelian. Subsequently, the detainees were transferred to the District Police Headquarters of Padang Besar in Perlis State in a “Black Maria” truck. The detainees seemed exhausted and the personnel gave them food and drinks once they arrived in the District Police Headquarters of Padang Besar, Perlis State.  Person A filed a police report as the head of operation.
	11:30 p.m.	All 38 detainees were sent to the Smuggling Prevention Unit Complex in Padang Besar in Perlis State from the District Police Headquarters of Padang Besar, Perlis State.
January 20, 2015	2 p.m.	Corporal B in his statement stated that Person A commanded the 3rd Battalion of the GOF to destroy the camp on Wang Burma hill.  In the process, GOF personnel noticed a site that resembled a gravesite on the Wang Burma hill. The distance between the suspected site and the camp was approximately 30 to 50 meters (98 to 164 feet).  According to Inspector E, Corporal C pointed him toward a site resembling a gravesite on Wang Burma hill. Inspector E later returned to Kaki Bukit and informed Person A and Person D on this matter. Neither Person A nor Person D issued any order for him to file a report to the police about the discovery of the site resembling a gravesite on the Wang Burma hill.

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## STATEMENT OF THE ROYAL MALAYSIAN POLICE

### Order to Demolish the Camp in Wang Kelian, Perlis State

Person F served at the Contingent Police Headquarters of Perlis State in Kangar until August 15, 2015, when he was transferred to the District Police Headquarters of Kuala Muda in Kedah State until his retirement on October 23, 2017.

In his statement to the Commission, Person F confirmed that he chaired a monthly inter-agency meeting on behalf of the Perlis State Police Chief with the Head of Departments, Chiefs of District Police, and relevant agencies and their representatives. The meeting on the discovery of the camp in Wang Burma hill was held on January 20, 2015 in Perlis State.

According to Person F, Person A briefed the meeting about the arrest of “undocumented foreign migrants” by GOF and the discovery of a “foreign migrants camp” within Wang Burma hill. The briefing was presented through a Power Point presentation with pictures of the scene. Person F stated that he was informed by “Person G”, the Senior Officer of Padang Besar District Police in Perlis State, that the arrest of “undocumented foreign migrants” took place under Section 6(1) of the Immigration Act 1953/63 (Act 155).

Person F informed the Commission that Person A asked him on further action concerning the camp. Person F stated that he issued an order for the camp to be destroyed on the following grounds:

1. The camp would be used for illegal purposes by other parties;
2. The case had been investigated under Section 6(1) of the Immigration Act 155;
3. Photos of the camp had been taken, recorded, and documented and would be used as primary evidence in the Court; and
4. The camp was illegally erected within the GOF area;

According to Person F, who has previous experience working with the Special Branch of Royal Malaysian Police, the authorities destroyed criminal scenes after they recorded photographs of the scene.

### The Discovery of an Area Resembling a Gravesite

Person F informed the Commission that Person A had briefed him on January 20, 2015 that the GOF discovered an area that resembled gravesites near the campsite. Person F stated that he ordered the Senior Police Officer of Padang Besar in Perlis State, Forensic Division of the Criminal Investigation Department of Contingent Police Headquarters of Perlis State, and GOF personnel to investigate of the suspected gravesite.

However, Person F in his statement stated that he was not informed on the status of the investigation. He believes that the Senior Police Officer of Padang Besar in Perlis State reported directly the status of the investigation to the Perlis State Police Chief.

He further informed the Commission that the task to classify each police report is the responsibility of the Chief Police of District based on the Inspector General Standing Order. The Head of District Criminal Investigation classifies cases on behalf of the Chief Police of the District.

## Notification of the Meeting Decision to Perlis State Police Chief

Person F in his statement to the Commission informed that he notified the Perlis State Chief Police on the briefing that took place on January 20, 2015. He further informed the Perlis State Chief Police on his order to destroy the camp and investigate the site believed to be a gravesite near the camp in Wang Burma hill. Person A stated that the Perlis State Chief Police did not object to the order.

Subsequently, Person F stated that the decision to destroy the camp was agreed by the members of the meeting, as the focus of the meeting was in the context of “undocumented foreign migrants” and the camp. He stressed to the Commission that the decision to destroy the camp was made in good faith. When he was asked about the delay in informing members of the public about the discovery of the gravesite, Person F stated that the Police had to conduct combing and cleaning operations as the place was used for Communist activities previously.

## STATEMENT OF SENIOR OFFICER OF DISTRICT POLICE HEADQUARTERS OF PADANG BESAR, PERLIS STATE

In his statement to the Commission, “Person H,” Senior Officer in the District Police Headquarters of Padang Besar in Perlis State, confirmed that he was the Investigating Officer for the police report.<sup>236</sup> He confirmed details on the discovery of the camp on Wang Burma hill in Wang Kelian, Perlis State and informed the Commission that the police initiated a Police Inquiry Paper (KEP) to enable an investigation by the order of Person G, Padang Besar Chief Police in Perlis State.

### Action of Investigating Officer Regarding the Case

Person H stated to the Commission that he recorded statements from 38 “undocumented foreign migrants” detained by GOF personnel on January 22, 2015 in Kangar in Perlis State. Four police officers assisted Person H in recording the statements, namely: “Inspector J,” “Major-Sergeant J,” “Inspector K,” and an officer whose name he could not recall.

Person H said that the session ended late in the evening, and the statements of the 38 detainees showed that they were new cases of “undocumented foreign migrants.” Person H was ordered by “Superintendent G” to conduct a site visit to Wang Kelian on January 23, 2015.

Phase I visit was conducted on January 23, 2015 as a part of the investigation. Twenty police officers and personnel went to Wang Burma hill and took photographs and drew rough diagrams of the location.

The team discovered a temporary campsite built on the Wang Burma hill.

Person H stated that he saw guard posts among the trees and cages on the ground believed to hold “undocumented foreign migrants” at the scene. He estimated that the camp could hold approximately 50 persons. He observed remains of tents destroyed by the GOF on January 21, 2015. Further, he saw leaves suspiciously piled at a site approximately 50 to 100 meters (164 to 328 feet) from the campsite, and it looked as if the leaves had been used to cover up the ground. He said he did not inspect the site but took note of the matter. He concluded that the site was used to hold “undocumented foreign migrants” before they were released or handed to someone or handed to a syndicate in Malaysia.

The Commission noted that while the police concluded that the campsite was used for criminal purposes—namely, human trafficking; however, the authorities failed to change the classification of the cases of the 38 detained individuals from “undocumented foreign migrants” to victims of human trafficking. This is contrary to Malaysia’s obligations under international human rights standards, which call for the protection of victims of human trafficking from prosecution for immigration-related offenses.

<sup>236</sup> Repot Polis KAKIBUKIT/000089/15.

Person H received an order from the Padang Besar Chief of Police in Perlis State to conduct a Phase II visit to Wang Burma hill. The visit was conducted on March 6, 2015 to confirm whether the site was in fact a gravesite. The visit was conducted together with the Forensic Unit of Perlis State Police Headquarters, and it was confirmed that it was a gravesite.

## Classification of the Wang Kelian Case

The Commission recorded the statement of “Person G,” Senior Officer from Padang Besar Police District in Perlis State on the classification of the Wang Kelian case. According to Person G, the classification of the case was not under the jurisdiction of the District Police Chief but rather the Investigating Officer himself. Nevertheless, the Investigating Officer should refer the case to the Head of the Criminal Investigation Department for further advice and instructions. Person H. Person H informed him that the detained individuals from the Wang Burma hill were charged under Immigration Act 155—again, despite the authorities’ reasonable and immediate suspicion that the site was used for human trafficking.

## STATEMENT OF “DR. L,” FORENSIC SPECIALIST

### Post-Mortem of the Remains

In his statement to the Commission, “Dr. L,” said that he was informed by “Dr. N,” Head of Forensics, that the Royal Malaysian Police found a site believed to be a gravesite on Wang Burma hill in Wang Kelian, Perlis State.

According to Dr. L, the Forensic Department dug up the graves and exhumed remains systematically. He further said that the Sultanah Bahiyah Hospital in Kedah State started to receive those remains from May 25, 2015, and the hospital initiated a Disaster Victim Identification.<sup>237</sup>

Dr. L described that there were two phases involved in the post-mortem processing of the remains:

#### Phase I

In Phase I, which took place was from June 7 to July 1, 2015, police divided the gravesite on the Wang Burma hill into eight areas. The Forensic team exhumed bodies in body bags from six out of the eight gravesite areas. Three forensic teams were involved in the post-mortem examinations of the exhumed remains. The process was conducted during regular office hours and according to the rotation schedule. Three to four remains were examined in the post-mortem, according to Dr. L.

According to Dr. L, he and his team visited the scene on Wang Burma hill after the remains were exhumed and transported from the hill on June 15, 2015. Two other teams from the General Hospital of Kuala Lumpur and the Johor Hospital visited the scene on June 13 and 14, 2015.

During the visit, Dr. L observed two locations: the campsite and the gravesite. According to Dr. L, the gravesite looked well-arranged and remains were roughly buried in the site according to the *qiblat* direction.<sup>238</sup> The distance between the campsite and the gravesite was approximately 100 to 200 meters (328 to 656 feet).

Dr. L informed the Commission that they exhumed approximately 132 remains from Wang Burma hill. However, the hospital identified 152 remains after the post-mortem examinations, and an Investigating Officer interviewed by the Commission in 2017 stated that 136 remains were exhumed,

<sup>237</sup> The Disaster Victim Identification operation is an operation concerning disasters, and the operational teams rotate in handling the situation. Post-mortem of all remains were conducted in the Sultanah Bahiyah Hospital and involved departments such as radiology, forensic pathology, odontology, and chemistry.

<sup>238</sup> The direction of Mecca and Kaaba where Muslims turn their face while conducting prayers.



including 108 bodies in “Sector 1” and 28 bodies in “Sector 2.”<sup>239</sup> A Deputy Superintendent in charge of anti-trafficking told the Commission on September 11, 2017 that 106 remains were exhumed from 139 graves located at the Wang Kelian site.<sup>240</sup>

The post-mortem reports were completed and submitted to the police on March 3, 2016.

## Phase II

Phase I was from September 1 to 4, 2015. The Commission was told that the post-mortem reports of Phase II have yet to be completed due to a technical issue in the DNA reports of the remains.

## Observation of the Forensic Team

Dr. L stated that the remains received by the hospital underwent a boning process, and most of the remains had lost their soft tissues and internal organs. He said that the graves unearthed by the authorities also contained bits of human tissue. Dr. L stated that the hospital could only manage to identify the factors of death for three remains, finding those factors to be: coronary-related disease, a stab wound or injury at the hip, and pneumonia. Factors of death for the other 147 remains remain undetermined.

Dr. L said that the period of death of the remains ranged from a few months to a few years. The Forensic Department could not pinpoint a specific period of death of the remains because the remains had undergone the decomposition process. He further explained to the Commission that some remains with tissues intact would have died more recently than those with no tissues at all.

Dr. L explained that the decomposition of remains in Wang Burma hill happened in phases. During the early phase, decomposition of a remain may include bloating, peeled skin, and softening organs. During the next phase, the remain may experience loss of tissues due to animal activities or natural decomposition. Environmental factors such as stagnant water and the type of soil where the remains were buried may influence the decomposition process.

Dr. L informed the Commission that his team conducted DNA reports of remains found on the Wang Kelian hill, and those reports suggest the examined remains were of South Asian or Indian descent; however, the reports do not pinpoint any specific ethnicity.

## STATEMENT OF IMMIGRATION DEPARTMENT, KANGAR, PERLIS STATE

### Job Scope of Enforcement Division, Immigration Department

“Person N” was the Head of the Lock Up and Deportation Unit in the Immigration Department of Perlis State in 2015. He explained to the Commission that the scope of duties of the Lockup and Deportation Unit of the Enforcement Division of Immigration Department are to receive “undocumented foreign migrants” who commit an offense under the Immigration Act and manage the deportation of those migrants after receiving orders from the Deputy Public Prosecutor or a court order. He further explained that “undocumented foreign migrants” who had served their sentence in prison would be sent either to the immigration detention center or deported to their country of origin.

<sup>239</sup> The Commission interview with hospital staff, 2018. The Commission, “A Report on the Investigation of the Discovery of Wang Kelian Mass-Graves, Wang Kelian, Perlis State,” internal report, 2017, on file with the Commission and Fortify Rights.

<sup>240</sup> *Ibid.*

## Entry of Foreigners in Perlis State

Person N informed the Commission that he did not receive any information with regard to foreigners' movements from Thailand to Perlis State in Malaysia. He also informed the Commission that the Immigration Department only tracks the movement of foreigners and citizens at specific points-of-entry between Malaysia and Thailand. Points-of-entry between Malaysia and Thailand under the purview of the Immigration Department are located at the Immigration Office of Wang Kelian and the Immigration Complex in Padang Besar, Perlis State.

Person N stated that information or complaints about “undocumented foreign migrants,” the case are referred to the Enforcement Division of the Immigration Department for review and further action. The Immigration Department then establishes whether there is a basis for further action, such as conducting a raid or making arrests.

Person N also stated that the Perlis State Immigration Department has no specific responsibility to monitor and control the region of Wang Burma hill in Wang Kelian. He stated that he was unsure which agency is responsible for monitoring and controlling the region.

## Foreign Detainees in Wang Burma Hill, Wang Kelian, Perlis State

In his statement to the Commission, Person N said that he was alerted to the discovery of the camp in Wang Burma hill in 2015 through media reports. He stated further that the 38 men arrested by the GOF were transferred to the Enforcement Unit in the Immigration Complex of Padang Besar in Perlis State together with a police report by the GOF. Person N informed the Commission that he had no further details about the location of the men detained by the GOF.

Person N later elaborated to the Commission that the 38 “undocumented foreign migrants” were handed over to the Immigration Department and were detained in the lock up of the Immigration Department in the Perlis State Ministry of Home Affairs Complex in Kangar under Section 6(1)(c) of the Immigration Act due to their failure to provide valid travel documents to the authority.

No one who provided a statement to the Commission acknowledged that survivors of human trafficking should not be charged with immigration-related offenses under Malaysian law.

Person N stated that the Enforcement Unit of the Immigration Complex of Padang Besar in Perlis State conducted an investigation with regard to the 38 “undocumented foreign migrants.” However, he could not recall the identity of the Investigating Officer from the Immigration Department, and he only had details about the movements of the men in lock up from the lock up register in the Enforcement Unit at the Perlis State Ministry of Home Affairs Complex.

Person N stated that according to the details from the lock up register, 29 out of 38 detainees were brought to the Court on January 28, 2015 and charged under Section 6(1)(c) of the Immigration Act 1959/63 (Amendment 2002) for failure to provide valid travel documents. The police transferred the remaining nine detainees to the Langkap Immigration Detention Center in Perak State because they were underage.<sup>241</sup>

Despite evidence of human trafficking, the authorities did not screen or treat any of the detainees as survivors of human trafficking in accordance with the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007.

<sup>241</sup> Person O in his statement stated that the child detainees were possibly transferred to the Immigration Detention Center in Langkap, Perak State on January 29, 2015.

## STATEMENT OF THE PERLIS STATE FORESTRY DEPARTMENT

The Commission recorded the statement of “Person O,” Senior Officer from Perlis State Forestry Department. According to him, the Perlis State Park, measuring approximately 10,615.43 hectares (26,231 acres), is under the supervision of the Perlis State Forestry Department. He stated that the forest reserve is divided into seven areas, and there are no observation posts or stations to monitor those areas. He informed the Commission that there is an office of the Perlis State Forestry Department in the Perlis State Park with a forest ranger and three clerical staff. They are responsible for supervising and monitoring the areas in Perlis State Park to ensure the safety and security of tourists.

### Human Movements in Perlis State Park

Person O in his statement said that since the end of 2014, the Perlis State Forestry Department tracked human movements in the Perlis State Park in Wang Kelian. They informed this matter to the Border Control Agency and the GOF. According to Person O, the Perlis State Forestry Department discovered the existence of the camp while joining a visit to the location on Wang Burma hill with the police on January 28, 2015.

Person O informed the Commission the Perlis State Forestry Department had fully cooperated with the Royal Malaysian Police to detect the exact location of the scene. The Perlis State Forestry Department first noted the existence of the camp on January 28, 2015 while searching the location together with the Royal Malaysian Police. However, the Royal Malaysian Police reminded the Perlis State Forestry Department not to disclose any details to the media until the Royal Malaysian Police itself conducts a press release. Following the visit with the Royal Malaysian Police, the Perlis State Forestry Department closed Perlis State Park to allow police to conduct an investigation.

## STATEMENT OF WANG KELIAN RESIDENTS IN PERLIS STATE

The Commission recorded statements from two residents of Kampung Wang Kelian in Perlis State. They are “Person P,” Imam of the Nurul Husna Mosque and “Person Q,” Chair of the Kampung Wang Kelian Safety and Development Committee.

Kampung Wang Kelian is a village located in the Sub-district of Kaki Bukit, District of Padang Besar in Perlis State. This area is bordered by Thailand’s Satun Province. The distance between Kampung Wang Kelian and Wang Burma hill is approximately two kilometers (1.24 miles). The population of Kampung Wang Kelian is estimated to be approximately 270 people. However, on any given day the population decreases by approximately 150 to 160 people as residents move out of the area for their livelihoods.

### Movement of “Foreigners”

In his statement to the Commission, “Person P” said that residents of Wang Kelian saw one or two “foreign” men per month around their neighborhood starting around 2013 and prior to the discovery of the camp and mass graves on Wang Burma hill. Those “foreign” men usually visited the Nurul Husna Mosque in Wang Kelian, and on several occasions, local residents called the Smuggling Prevention Unit who came and took the men away. Person P said residents also saw “foreign” men walking along the roads near the mosque. Those men wore short pants, and on several occasions, residents gave them food, drinks, and clean shirts. Person P further said the men were unable to converse in Malay, but some spoke basic English. According to another statement to

the Commission by Person Q, some residents in Kampung Wang Kelian reported that some of the “foreign” men, who entered the town from Wang Burma hill, could converse in Malay, suggesting they may have previously been in Malaysia or interacted with Malaysians.

According to Person P, no one from the Kampung Wang Kelian noticed the existence of a camp on Wang Burma hill until the information circulated in the news media in 2015. Person P further said that residents were not sure about the ethnicity of the “foreign” men who walked through their neighborhood.

## Investigation of the Discovery of Mass Graves on Wang Burma Hill, Perlis State

Person Q informed the Commission that he gave a statement to seven Royal Malaysian Police personnel on his knowledge about the existence of a “foreign migrant camp” on Wang Burma hill. He informed the Commission that he told the police he had no knowledge about the camp on the hill. According to Person Q, to his knowledge, local residents were also unaware of the existence of the camp as it is highly unusual for local residents to climb the hill. He said local residents would have to apply for a permit from the Perlis State Forestry Department before climbing Wang Burma hill.

## Action Taken by Authorities

According to both Person P and Person Q, the Smuggling Prevention Unit apprehended foreign men in the town only when they received a call from residents. The authorities took no further action, including taking statements or questioning residents with regard to the presence of “foreign” men in their neighborhood. Person P and Person Q said that prior to the discovery of the campsite, the authorities did not venture onto Wang Burma hill to investigate if there was a settlement.

Person P said that he and other residents never considered expressing concerns about the presence of “foreign” men in Kampung Wang Kelian during programs between residents and government servants. He said no one was interested in their neighborhood or village before the discovery of the campsite. He said that foreign journalists interviewed residents after the discovery.

Person Q told the Commission that “Tuan R,” an investigator of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants agency from Bukit Aman in Kuala Lumpur, recorded his statement after the discovery of mass graves on Wang Burma hill.

Person Q informed the Commission that the GOF assists to guard immigration posts on the hill connecting Wang Kelian in Perlis State with Wang Prachan in Thailand’s Satun Province. He also stated that the Royal Malaysian Army controlled the zone along *Ops Wawasan*, but the role had been transferred to the GOF. Person Q said that he is not sure whether the GOF patrolled along the difficult-to-reach regions bordering Thailand, such as on Wang Burma hill.

## Allegations against Residents of Kampung Wang Kelian, Perlis State

Person Q in his statement to the Commission expressed his disagreement with the allegation that residents of Wang Kelian were involved in human-trafficking activities.<sup>242</sup> He said the camp was discovered by outsiders; if local residents were involved in the camp, they would have destroyed all evidence once it had been discovered; and local residents of Wang Kelian were not willing to climb up the steep hill of Wang Burma nor had any capacity to do so.

<sup>242</sup> Statement to the Commission of Person D, Assistant of Commander, Battalion 3, GOF Camp, Bidor, Perak State. Person D mentioned that after the arrest of the 38 migrants by GOF on January 19, 2015, an individual who claimed to be a resident in Wang Kelian had provided information about the involvement of residents in human trafficking activities in Wang Kelian. Person D had included this information in his report and submitted it to the Commander of Northern Brigade, GOF, Commander of the 3rd Battalion of GOF Bidor, Perlis State Chief Police, Kedah State Chief Police, National Security Council and Intelligence Unit of Kedah State and Perlis State based in Bukit Kayu Hitam, Kedah State.



## Post-Discovery of the Human-Trafficking Camp in Wang Kelian, Perlis State

The authorities closed the Free Movement Zone in Wang Kelian in Perlis State on April 1, 2015 upon the discovery of the human-trafficking camp in Wang Burma hill. The Commission recorded statements from residents of Wang Kelian, who indicated that several layers of enforcement agencies monitored the region, but these agencies overlooked the human-trafficking camp on Wang Burma hill. The Free Movement Zone is located in an open area in contrast to the area where the camp was discovered, which is in a forested area on a hill. There are no posts for Malaysian enforcement authorities to monitor the surrounding area on Wang Burma hill, while there is an immigration post in the Free Movement Zone. According to residents, the closure of the Free Movement Zone adversely affected the local economy and economic activities.<sup>243</sup>

### KEY ISSUES

The Commission collected statements suggesting that the region of Wang Burma hill was not under the operational area of *Ops Wawasan* but was included in the GOF's operational area after receiving complaints about "foreigners'" movements in and out of Wang Burma hill and reports of music coming from the hill.<sup>244</sup>

According to the Royal Malaysian Police, *Ops Wawasan* is a region beyond their responsibility and duty. The Royal Malaysian Police have data on foreigners entering Malaysia through arrests in respective regions under their supervision and information from the Special Branch, who record the statements of detainees. In its internal meetings, the Royal Malaysian Police raised information about arrests or issues for further action by relevant agencies.

Further, the statement to the Commission from the Immigration Department said that their authority and control in Perlis State is bounded around the Immigration, Customs, Quarantine and Security Complex of Padang Besar in Perlis State and around the Immigration Border Control Post in Wang Kelian, which are key entry points into Malaysia. Other tasks handled by the Immigration Department includes receiving foreigners suspected to be "undocumented foreign migrants" by other enforcement agencies, such as the GOF who arrest migrants who lack valid travel documents.

## The Destruction of the Wang Kelian Human-Trafficking Camp in Perlis State

The Royal Malaysian Police justified the destruction of the camp on Wang Burma hill in January 2015 as reasonable on the grounds that if it were not destroyed it may foreigners or subversive agents may have misused it. The Royal Malaysian Police says it recorded photos of the camp and its tents.

A statement recorded from "Person R," Senior Officer of Perlis State Contingent Headquarters with regard to the demolition of the camp provided the Commission with two conclusions:

1. If the area was an active crime scene, then the police should not have destroyed it until the investigation concluded.
2. If the area had the potential to be misused by criminals to commit other crimes, then it could have been destroyed after the investigation was conducted.

Person R said that if the chair of the meeting held on January 20, 2015 was aware about an area suspected to be a mass gravesite at the scene, then his order for the camp to be destroyed could be considered an extermination of evidence, which could amount to an obstruction of justice.

<sup>243</sup> See, "Tears Flow Over Entry Ban," *The Star Online*, July 17, 2015, <https://www.thestar.com.my/news/nation/2015/07/17/tears-flow-over-free-entry-ban-town-now-bereft-of-visitors-and-trade/> (accessed on March 25, 2019).

<sup>244</sup> GOF tactically patrolled over the region.

“Person S,” Senior Officer from Perlis State Contingent Headquarters who attended the meeting on January 20, 2015, informed the Commission that Person A notified the meeting about a site that looked like a gravesite near the camp, saying that they did not touch it. Person S informed the Commission further that the chair of meeting asked the Forensic Unit of the Perlis State Criminal Investigation Department to collect information about the suspicious site near the camp and to report directly to the Perlis State Chief Police and notify the Commander of the Northern Brigade of GOF.

## Classification of the Charges on the Detained Foreigners

According to Person R, any enforcement agency may arrest and detain an individual or a group of individuals under the Immigration Act of 1959/63 if they fail to provide a valid travel document when asked. If the authorities arrest an individual or a group of individuals with a local trafficker or guardian, the investigation would be conducted under the Anti-Human Trafficking and Anti-Smuggling of Migrants Act of 2017.

## Investigation of the Gravesite, Wang Burma Hill, Perlis State

“Person T,” from the Criminal Investigation Department of Perlis State Police Headquarters, told the Commission that the Head of the Criminal Investigation Department of Perlis State ordered him to visit the scene on March 7, 2015 with the Padang Besar Chief of Police in Perlis State to dig up the site believed to be a gravesite and to confirm whether or not the mounds of earth covered with piles of leaves were graves. The Commission noted that this order came nearly months after Malaysian authorities first reported to superior officers a possible mass grave in the area.

According to Person T, the Forensic Unit of Perlis State found that the gravesite had long been there based on their observation of remains exhumed from the gravesite. There were remains that lacked flesh and were only skeletons. Person T suggested that the remains exhumed from the ground had undergone decomposition. He further explained to the Commission that he had informed the Perlis State Chief Police that they confirmed that the site was a gravesite. Person H, as an Investigating Officer, prepared a report about the confirmation process.

Person T further stated that the Royal Malaysian Police required considerable time to dig out the suspected gravesite and to confirm that it was a gravesite due to safety concerns. He elaborated that the area around Wang Burma hill has no clear structures to identify the location of the border between Malaysia and Thailand. He also noted that the Royal Malaysian Police needed to acquire approval and clearance from various stakeholders and relevant authorities to investigate the case.

## Findings

Based on statements recorded and evidence presented in this report, the following are the findings of the Commission:

1. The authorities discovered the campsite and a possible mass gravesite on January 19, 2015. The police were ordered to destroy the camp, which would have been useful to assist in the investigation and prosecution of the crimes. The Commission also noted that the authorities were made aware on January 19, 2015 that there was an area that appeared to be a gravesite but the authorities did not conduct a forensic examination of the area until two months later, in March 2015.
2. The Forensic Specialist of the Sultanah Bahiyah Hospital, Alor Setar, Kedah State and the Forensic Unit of the Perlis State Police Headquarters said it was difficult to determine the victims’ cause of the death because the remains had undergone decomposition and their tissue was largely damaged due to environmental factors.

3. The Commission also noted that the Royal Malaysian Police discovered a possible mass grave site on Wang Burma hill on January 19, 2015, but police only investigated the site properly in March 2015. The Commission believes that the delay in investigating the gravesite delayed the exhumation of remains (in May 2015) from the site, which, in turn, hampered forensic specialists from identifying the causes of their death. This may constitute obstruction of justice.
4. While conducting its investigation, the Commission noted that there are intelligence units in various enforcement agencies at the border, such as the Border Intelligence Unit, Bukit Aman, Special Branch of the Padang Besar Police Headquarters, the Intelligence Unit of General Operations Force; and the Intelligence Unit of the Malaysian Immigration Department. The Commission observed that these units' function to collect information and data of suspicious activities and crimes along the border between Malaysia and Thailand.
5. In 2013 and 2014, approximately 750 "undocumented foreign migrants" were arrested at the Kaki Bukit Police Station in Perlis State for illegal entry into Wang Kelian. These cases were investigated for immigration offenses and not as human-trafficking cases. The authorities could have detected suspicious activities and discovered the human-trafficking camp in Wang Kelian earlier if the information above and available data about "undocumented foreign migrants" had been well distributed and coordinated among the relevant agencies.
6. Through its interviews with two community leaders of Wang Kelian, the Commission found that local residents often encountered or had at least seen the movement of South Asian-looking foreigners in their village. They noted that those foreigners looked scared, skinny, and some of them had burned marks as if they were splashed with hot water. The Commission noted that residents notified police of "foreigners" in their village and that police often apprehended the foreigners but failed to conduct further investigations, which raises questions regarding the authorities' response.
7. The Commission found that the Royal Malaysian Police arrested and detained 38 individuals during the raid on Wang Burma hill on January 19, 2015 and charged them under the Immigration Act 1959/63 instead of protecting them under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007. This happened despite the Investigating Officer of the case concluding that the camp was a site to hold foreigners before they were released or handed to someone or to a syndicate in Malaysia.
8. It was found that the Royal Malaysian Police informed the Commission that Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007 would have been applied if the authorities had apprehended the men together with their "tekong" or agents.<sup>245</sup>

## CONCLUSION

Lastly, the discovery of mass graves and the human-trafficking camp on Wang Burma hill indicates that the border of Malaysia is still susceptible to human trafficking due in part to geographical factors, such as steep hills. The topography of the area made it difficult for authorities to access and patrol the region.

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<sup>245</sup> The Commission was informed that the authorities convicted four persons allegedly involved in human trafficking related to the camp site and mass graves in Wang Kelian. They were convicted under Section 26A of the Anti-Trafficking in Persons and Anti-Smuggling Act of 2007 (Act 670). The police were searching for another 10 suspects, nine of whom are believed to be Thai and one a Bangladeshi. The Commission was also informed that the Attorney General issued extradition requests of suspects believed to be in the custody of Thai authorities.

## IV. TESTIMONY SUGGESTING OFFICIAL COMPLICITY IN HUMAN TRAFFICKING

*“You can look at this issue in two ways. You can look at it as brokers who might force the Rohingya to pay money to go to Malaysia or do something to abuse their rights. Or you can look at it the other way—they want to go to Malaysia. They are happy to go and to pay the broker to go to Malaysia. They run away from a violent place, from death.”<sup>246</sup>*

—Thai Police Chief to Fortify Rights, Songkhla Province, Thailand, October 2013

*“Those taking money are not Rohingya. They’re Thai or Malay authorities.”*

—Rohingya community-based aid worker, Kuala Lumpur, Malaysia, August 2014

Following the discovery of a mass-grave site containing 36 bodies believed to be Rohingya and Bangladeshi victims of human trafficking in Songkhla Province, Thailand on May 1, 2015, Thai authorities began an unprecedented criminal investigation. Days after the discovery in Thailand, Thai authorities arrested a Rohingya man named Anwar for alleged involvement in a human-trafficking ring.<sup>247</sup>

The investigation into human trafficking in Thailand led to the largest ever human-trafficking trial in the country.<sup>248</sup> The Thai court tried 103 defendants for trafficking-related crimes, including several high-level government officials. The authorities accused the defendants of involvement in transporting more than 100 Rohingya Muslims and Bangladeshis from Myanmar and Bangladesh to Thailand, holding them in illicit camps under abusive conditions, and requiring exorbitant payments from their captives to facilitate their release and onward movement to Malaysia.<sup>249</sup>

<sup>246</sup> Fortify Rights interview with Songkhla Police Chief, Songkhla Province, Thailand, October 7, 2013.

<sup>247</sup> Amy Sawitta Lefevre and Aubrey Belford, “Thai Police Arrest Rohingya Man Suspected of Running Deadly Jungle Camp,” *Reuters*, May 4, 2015, <https://www.reuters.com/article/us-thailand-rohingya-trafficking-insight/thai-police-arrest-rohingya-man-suspected-of-running-deadly-jungle-camp-idUSKBN0NP0BL20150504> (accessed March 25, 2019).

<sup>248</sup> Panu Wongcha-um, Patpicha Tanakasempipat, Aukkarapon Niyomyat, “Thai General, Provincial Politicians Found Guilty in Trafficking Trial,” *Reuters*, July 19, 2017, <https://www.reuters.com/article/us-thailand-trafficking/thai-general-provincial-politicians-found-guilty-in-trafficking-trial-idUSKBN1A405O> (accessed March 25, 2019).

<sup>249</sup> The defendants faced charges for violating the 2013 Anti-Participation in Organized Crime Act, the 2008 Anti-Trafficking in Persons Act, the 1979 Immigration Act, the 1947 Firearms,



The trial led to the conviction of 62 traffickers.<sup>250</sup> While the court convicted nine government officials, survivor and eyewitness testimony indicates broader involvement or complicity by Thai authorities in the trafficking of Rohingya and Bangladeshis through Thailand to Malaysia from 2012 to 2015.

Testimony collected by Fortify Rights also suggests that at least some Thai authorities were aware of mass graves well before the authorities' May 1 announcement about the existence of a mass gravesite. For example, a low-level Rohingya human trafficker, 42, who also worked closely with Thai authorities to combat trafficking, told Fortify Rights he had discovered graves alongside Thai authorities in 2013:

Last year [in 2013], [Thai authorities] arrested a group of people, over 800 people, and they found 12 people were paralyzed. We saw the graves of the people who died. There were 30 to 35 graves. They were separate, individual graves. I went with the Thai [state agency redacted] and [name redacted] and [name redacted].<sup>251</sup>

The authorities did not publicize these earlier discoveries of graves, and there is no knowledge of any exhumation of the bodies or investigation into or accountability for the crimes committed in relation to these graves in Thailand.

Likewise, an investigation by the Commission found that Malaysian authorities—specifically the General Operations Force—discovered what appeared to be a mass gravesite in Wang Kelian on January 20, 2015, more than four months before the authorities announced the discovery of the gravesite on May 25, 2015.<sup>252</sup>

In April 2015, Fortify Rights privately shared information about mass graves with senior Thai officials from the Foreign Ministry, and on April 22, Fortify Rights testified before U.S. Congress on human trafficking in Thailand, Malaysia, and other countries.<sup>253</sup>

Despite some measure of justice served through Thailand's mass human-trafficking trial, many who were reportedly involved in the trafficking of Rohingya and Bangladeshis remain free or at large in the region and protections for survivors of human trafficking remain limited.

From 2012 to 2015 and continuing to today, Thailand and Malaysia regard Rohingya as undocumented and unauthorized migrants who are in violation of immigration law and subject to arrest and detention. Neither country recognizes refugees by law or in practice. As a result, Thailand and Malaysia have detained thousands of Rohingya in immigration detention centers over the years.<sup>254</sup> In order to facilitate deportation, a government of origin would have to agree to accept deportees. Myanmar does not recognize Rohingya as citizens, rendering Rohingya in Myanmar stateless. Without legal status or protection options in Thailand or Malaysia, Rohingya who are arrested are at risk of indefinite detention.

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Ammunition, Explosive Articles and Fireworks and Imitation of Firearms Act, and the Criminal Code, which could result in a maximum sentence of death or life imprisonment. The evidence in the case included 80 Rohingya and Bangladeshi survivors of human trafficking, 36 unidentified bodies exhumed from mass graves near human trafficking jungle camps, and more than 500 witnesses.

<sup>250</sup> "Thai General, Provincial Politicians Found Guilty in Trafficking Trial," *Reuters*.

<sup>251</sup> Fortify Rights interview with #39, Pattani Province, Thailand, September 16, 2014.

<sup>252</sup> "Malaysia Migrant Mass Graves: Police Reveal 28 Sites, Some with Multiple Corpses," *The Guardian*.

<sup>253</sup> Testimony of Mr. Matthew Smith, Executive Director of Fortify Rights, House Committee on Foreign Affairs.

<sup>254</sup> Fortify Rights and Burmese Rohingya Organization U.K., *Everywhere is Trouble: An Update on the Situation of Rohingya Refugees in Thailand, Malaysia, and Indonesia*, March 2016, <http://www.fortifyrights.org/downloads/EverywhereisTrouble.pdf> (accessed on March 25, 2019).

Testimony collected for this report reveals a widespread and systematic pattern of Thai authorities transferring Rohingya refugees from immigration detention centers and government-run shelters to a transnational criminal syndicate involved in human trafficking. Consistent testimony suggests that the practice of selling Rohingya refugees to traffickers *en masse* took place for several consecutive years.<sup>255</sup>

For example, “Mohammed T.” told Fortify Rights about his experience in a Thai immigration detention center in Ranong Province when he was 18-years old after Thai authorities arrested him and others from a human-trafficking camp on a mountain island in January 2013:

At first, some local Muslims provided some good food [for us in detention] but later that stopped. When the local Muslims didn’t provide food, we suffered a lot. In one room, there were 70 to 100 people. There were metal bars on all four sides. The wall was approximately two and a half feet tall and then metal bars. We couldn’t go outside. I was there for 11 months.<sup>256</sup>

Less than a year after arriving in the immigration detention center, Mohammed T. said that Thai authorities handed him and others over to human traffickers. He recalled: “[The Thai authorities] had weapons but no uniforms when they handed us over to the *dallals*.”<sup>257</sup>

Mohammed T. spent several months in a human-trafficking camp on the Malaysia-Thailand border, where he witnessed multiple deaths, buried victims in mass graves under the direction of his captors, and eventually suffered paralysis, apparently due to nutritional deficiencies.<sup>258</sup> He eventually escaped and recovered in a mosque in southern Thailand.

Similarly, Foyas, 20, recalled his experience in a Thai immigration detention center in 2013 after Thai authorities raided a warehouse where traffickers held him for seven days following his arrival to Thailand:

After nine months [in Thai immigration detention in Songkhla Province in southern Thailand], local communities came and requested that we be released. After that, the [state agency redacted] said they would release us. They sent us to another [detention center] in Ranong [in southern Thailand]. They said they would send us to Myanmar. After that, a group of traffickers arrived. We were there along with 50 [Rohingya] people. They took us in a car at midnight from the detention center. Then at 9 a.m., we arrived to Ranong. After we arrived in Ranong, they took us to another [detention center] and provided us some food. Then they took us on a boat. Then a big boat arrived, and we all got on the bigger boat. The Thai [state agency redacted] put us on a small boat operated by Thai, Shan, and Burmese [traffickers]. The boat was empty when we got on it. From 8 p.m. to 6 p.m. we were on that boat. During that time, it was raining heavily. [The traffickers] took us to the mountains.<sup>259</sup>

Foyas spent more than 20 days in a mountainside human-trafficking camp, where the traffickers tortured him and demanded US\$2,000 (approximately 6,800 Malaysian Ringgit) in exchange for his release from the camp.<sup>260</sup> In a recorded phone call between a Rohingya man in Yangon, Myanmar negotiating for Foyas’ release and an armed Rohingya trafficker holding Foyas captive, the camp-

<sup>255</sup> See, for example, Fortify Rights interviews with #05 and #50, Bangkok, Thailand and Kuala Lumpur, Malaysia, August 10 and September 23, 2014. Using a hidden camera, filmmakers Jason Motlagh and James Hall also documented testimony from a human trafficker in Thailand who spoke about making payments to Thailand authorities. “They used to demand 2,000 Thai Baht (US\$65) per person or 100,000 Thai Baht (US\$3,200) for a lump sum payment, so my bosses just paid a lump sum.” “Outcast: Adrift with Burma’s Rohingya,” *Al Jazeera*.

<sup>256</sup> Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014.

<sup>257</sup> *Ibid.*

<sup>258</sup> *Ibid.*

<sup>259</sup> Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014.

<sup>260</sup> *Ibid.*

based trafficker said: “The boss is Thai. We are just working for the Thais . . . The Thai boss bought them from Thai [state agency redacted].”<sup>261</sup>

In 2014, a known Rohingya human trafficker working with a syndicate in Thailand’s Songkhla Province explained the involvement of some Thai officials in the human-trafficking trade at the time, saying:

Some *dallals* bring the people from Rakhine State or Bangladesh and then sell them to other brokers when they arrive in Ranong [in southern Thailand] or other locations. Sometimes, the [Thai] government arrests the people, and then they hand [the people they arrest] over to the brokers. Mostly [the authorities] hand over the people to the [the traffickers]. They bring them in cars and transfer them to the brokers. The brokers and [authorities] have a connection. The [authorities] sell people [to traffickers] for 6,000 Thai Baht (US\$200; 700 Malaysian Ringgit) per head. They transfer the money from bank to bank.<sup>262</sup>

Another known human trafficker in Songkhla Province, Thailand explained further:

If the people are arrested [by Thai authorities], they’re kept in the IDC [immigration detention center] for four or six months, and then they are sent to the border. The brokers can easily buy them again. If [traffickers] charged 60,000 Thai Baht (US\$2,000; 7,000 Malaysian Ringgit) originally, and then the captives were bought from the authorities, they would then charge 70,000 Thai Baht (US\$2,200; 7,670 Malaysian Ringgit) the second time. From Ranong [in southern Thailand] to the camp it costs 10,000 Thai Baht (US\$300; 1,050 Malaysian Ringgit). They have to pay to the [state agency redacted]. This includes the boat fee and transport, everything. It includes many costs, and in total, it is 10,000 Thai Baht (US\$300; 1,170 Malaysian Ringgit).<sup>263</sup>

From 2012 to 2015, Thai authorities conducted “raids” on human-trafficking camps in Thai territory, in some cases publicizing the raids as exercises in crime-fighting or crackdowns. Survivors present during raids allege that the authorities informed the traffickers in advance to ensure the escape of more senior traffickers.<sup>264</sup> Sometimes, traffickers left their captives behind; other times, they forced their captives to transfer to new or different camps.<sup>265</sup> If the traffickers left people behind, the Thai authorities often detained the survivors. The traffickers would then negotiate with the Thai authorities to re-purchase them.

Ula Mya, a 43-year-old Rohingya father of four children from Minbya Township in Myanmar’s Rakhine State, recalled how the Thai authorities “rescued” him from human traffickers only to detain and resell him to another group of human traffickers. When he first arrived in Thailand, traffickers took him and others to a house. He said:

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<sup>261</sup> Fortify Rights audio recording #34, Yangon, Myanmar, October 29, 2013. *See also*, “For Myanmar Muslim Minority, No Escape from Brutality,” *New York Times*.

<sup>262</sup> Fortify Rights interview with #38, Songkhla Province, Thailand, September 16, 2014.

<sup>263</sup> Fortify Rights interview with #42, Songkhla Province, Thailand, September 17, 2014.

<sup>264</sup> One witness testified that traffickers transferred him to three different camps after receiving word that the police might raid their location. Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013–2015.

<sup>265</sup> One witness—Mohammad, 13—testified in Thai court that traffickers transferred him to three different camps after receiving word that the [state agency redacted] might raid their location. Another witness—Asi Sul Huq, 16—testified that traffickers confined him to camps for more than one year and transferred him to at least ten different campsites. *See*, Fortify Rights, internal report on human trafficking case, testimony of Mohammad, 13, and Asi Sul Huq, 16, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 10, 2016. *See also*, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013–2015.

The house was built with bricks, and then we moved to another older house. [The traffickers] were two Rohingya men from Maungdaw [Township in Myanmar]. I don't know their names. We couldn't move inside the house, and we couldn't go outside. They forced us to call our relatives to ask for 7,000 Malaysian Ringgit (US\$2,000). If we didn't call, they beat us. We were forced to call once at 12 p.m. in the daytime and once at 1 a.m. in the nighttime. We called every day. There were 350 people in the house.<sup>266</sup>

After being held captive by human traffickers for eight days in a house in Thailand, Thai [state agency redacted] raided the house and took Ula Mya into custody. He said: "First, the [state agency redacted] arrested us and then sent us to the detention center. The *dallals* escaped. The [state agency redacted] broke the door down and came inside and then lined us up and put us in trucks. I felt happy when I saw the [state agency redacted]."<sup>267</sup>

The Thai authorities then detained him and 185 other survivors in an overcrowded cell for almost a year. He described the conditions of detention to Fortify Rights, saying:

It was very congested. We couldn't sleep flat. We only had a small space to sleep. There was no space to walk around. We had to crawl over each other. I couldn't see the floor, only piles of human flesh. We got one small package of rice and a little vegetables and beans. There was no sunlight, no windows. There were only metal bars.<sup>268</sup>

After nearly nine months in detention, Ula Mya and the other detainees went on a hunger strike. In response, Thai authorities handed Ula Mya and others over to human traffickers:

The [state agency redacted] took us at 12 a.m. to [their] bus. At 8 a.m., we arrived in Ranong [in southern Thailand]. The [state agency redacted] provided us food and took photos of both sides of our face. Then we took another car. They took us to the river. There was a bridge. We sat on the bridge for a while, and they provided some instant food there, and then they took us to a boat. There were three medium-sized boats. The operators looked Burmese or Shan. They didn't talk, and the [authorities] also had a boat. There were three members of [state agency redacted]. They stayed with us until [we got to] the middle of the river. Then the [authorities] took a picture and turned around and left us.<sup>269</sup>

The traffickers then transferred Ula Mya and approximately 270 other Rohingya to two subsequent ships followed by a fleet of vans until ultimately reaching a human-trafficking camp in the mountains. Ula Mya described the camp, saying:

[The traffickers] took us to one big mountain and dropped us [off] there. From that place, we walked for three hours to reach another mountain that was surrounded by an iron fence. They had made some camps there with canvas and bamboo and put us there . . . The Shan and Rohingya operated that camp. There were already many people there, and after us, there were many newcomers. There were around 800 people . . . If we spoke to each other, they would beat us. They would beat us with a wooden stick.<sup>270</sup>

In several cases, the United Nations High Commissioner for Refugees (UNHCR)—the U.N. agency mandated to protect refugees—visited Rohingya in Thai detention whom the Thai authorities later transferred to human traffickers.

For instance, UNHCR representatives visited "Abdul R." in 2013 after he fell ill while detained in an immigration detention center in Ranong, Thailand. He told Fortify Rights:

<sup>266</sup> Fortify Rights interview with #17, Pahang State, Malaysia, August 13, 2014.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

<sup>270</sup> *Ibid.*

When I arrived in Ranong [immigration detention center], after two months, the [abdominal] pain started. [State agency redacted] sent me to the doctor but because I couldn't explain to them properly, I wasn't cured. After another two months, UNHCR visited and I spoke with them about my suffering. Then, [the U.N. officials] sent me again to the doctor. After that, I received some medical care and experienced a little relief. They kept me there for two days and gave me a drip and then sent me back to detention. From UNHCR, it was a man and woman and an interpreter. I spoke to the interpreter. [The UNHCR representatives] were maybe European or American. The doctor was also from UNHCR, I think. I gave them my name and age and other information.<sup>271</sup>

Abdul R. did not meet with UNHCR again. Five months later, Thai authorities transferred him to the custody of human traffickers, who tortured and sold him. He said:

On three separate occasions, the [state agency redacted] came to question me, asking me where I wanted to go. They said they would send me back to Myanmar, but I twice refused. When they came a third time, they said, "You must accept to go back to Myanmar, otherwise we will not release you. If you accept, we will not send you to Myanmar but to Malaysia. If you do not agree, we will not release you from here." I agreed. They made me sign a paper saying that I agreed to go back to Myanmar. Then they sent me to the mountain near the Malaysian border to the *dallals*. [The traffickers] demanded 6,500 Malaysian Ringgit (approximately US\$2,000) from me.<sup>272</sup>

A 26-year-old Rohingya man similarly described meeting with UNHCR in Thai immigration detention in 2014 before the authorities handed him over to traffickers:

UNHCR met us often for six months, and then the [state agency redacted] told us that UNHCR promised they would do something. But UNHCR did nothing. We were informed that UNHCR would do nothing, so [state agency redacted] said we would all be sent back to Myanmar. After that, we were put on a boat and taken by a broker. The brokers were waiting by the boat. They crossed the river and handed us over to another boat. We were taken by the broker from Ranong [in southern Thailand] and transferred from one boat to another boat. Then a car took us to Padang Besar [in Songkhla Province, Thailand]. Then we ended up in the *dallal* camp. The situation there was very bad.<sup>273</sup>

"Mohammed Ishmael," 20, said Thai authorities arrested him and handed him back to human traffickers multiple times. He said:

We were arrested [from the human-trafficking camps] three times by the Thai [state agency redacted]. There were three or four [officers], all wearing ordinary clothes. Whenever the [state agency redacted] raided the camp, the guards were informed and would disappear. Then, we had to run away. The guards negotiated with the [state agency redacted] for our release. The first time, [the traffickers] paid 35,000 Thai Baht (US\$1,090; 3,800 Malaysian Ringgit) and the second time 15,000 Thai Baht (US\$470; 5,444 Malaysian Ringgit) and then third time 13,000 Thai Baht (US\$405; 1,400 Malaysian Ringgit). That was for the entire group.<sup>274</sup>

Mohammed Ishmael said he witnessed Thai state security forces negotiate with human traffickers and take cash payments from traffickers in exchange for custody of him and others arrested during the raids:

When we were arrested, the [state agency redacted] tied our hands together in groups of seven to ten people. They tore *longyis* [clothing traditionally worn by men in Myanmar and

<sup>271</sup> Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>272</sup> *Ibid.*

<sup>273</sup> Fortify Rights interview with #45, Songkhla Province, Thailand, September 17, 2014.

<sup>274</sup> Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.



parts of Thailand] and made a rope and tied us together. Then, we had to walk for a while to a rubber plantation. Then, the [authorities] ordered a car to take us to the [authorities'] station. When the car arrived, the *dallals* negotiated with the [authorities]. The [authorities] said they would take us away unless [the traffickers] paid. After [the traffickers] gave [authorities] money, the [authorities] left. The [authorities'] car was an open-air pickup truck with lights. [The traffickers] handed [authorities] money in front of us. Later the *dallals* told us, "We had to give them 35,000 Thai Baht (US\$1,090; 3,800 Malaysian Ringgit) for your release." Later, when they beat us, they said they had to pay 35,000 Thai Baht (US\$1,090; 3,800 Malaysian Ringgit) for our release. They took us back to the same campsite. We had to walk for half an hour. This happened three times. I was in the camps for five months.<sup>275</sup>

Several Rohingya survivors held in the human-trafficking camps said that Thai authorities would enter the camps and appeared to be in collusion with the operators and armed guards of the camps. For example, "Yusufl", 19, told Fortify Rights:

Sometimes, the [Thai authorities] came to the camp. Two members of [state agency redacted] came to the camp. They came on a motorbike, stayed for 25 minutes and then left. There were three Rohingya people. When [name of trafficker redacted] was there, another agent talked to the [authorities]. They were happy. There is a small house in the camp where the brokers live. The [state agency redacted] came and spoke to them . . . During my stay, I saw the [Thai authorities] four times. The first time I saw them, I was scared. I was scared of harassment. I heard the [state agency redacted] harassed and killed people.<sup>276</sup>

"Mohammed Ishmael", 20, also reported seeing Thai authorities visit the human-trafficking camp where traffickers held him on the Malaysia-Thailand border in 2014. He said: "There was a [state agency redacted] officer who came [to the trafficking camp] often, every week, to see the broker and the situation, and then he would leave. Sometimes he came in uniform, sometimes not. He had a pistol."<sup>277</sup>

Testimony from some Rohingya survivors of human trafficking suggest a more direct involvement of Thai officials in the human-trafficking trade. For example, a Rohingya survivor testified to the Commission that Thai [state agency redacted] sold him and others from Myanmar to the Thai owner of a cow farm in Phang Nga Province in southern Thailand.<sup>278</sup>

Survivors also told Fortify Rights of Thai authorities taking Rohingya into Thai custody from ships at sea or island locations and transporting the captives directly to human-trafficking camps. Wai Roshum, a 50-year-old Rohingya woman, said:

When we arrived in Thailand, a small boat came up to our boat. Then we heard some gunfire and saw another boat in the distance firing at us and coming towards our boat. When the *dallals* saw the other boat, they jumped into a small boat and sped away. Eventually, 30 [Thai] officials [in black uniforms] boarded our boat . . . The officials stayed for about nine hours on the boat. They collected the red wristbands from everyone and gave us water and biscuits. Then they put us onto smaller boats and brought us to shore. When we got to shore, there were cars waiting, and I saw the [Thai authorities] talking to the drivers of the car. The drivers of the car were all Thai. Then the [state agency redacted] called us and crowded us into the cars, saying, "Come! Come! Malaysia! Malaysia! Malaysia!" They said this in English. That was the last time I saw the officials. In my car, there were 13 of us, including the driver and two children. During the drive, people were vomiting, urinating, and having diarrhea. After

<sup>275</sup> *Ibid.*

<sup>276</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 2014.

<sup>277</sup> Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

<sup>278</sup> The Commission interview with W7, Alor Setar, Kedah State, November 2016.

three hours of driving, we arrived to a camp in the jungle. The only people at the camp when we arrived were the *dallals*—two were Shan and six were Bengali. I don't know what happened to the other people from the boat, but I think they were probably sold to different *dallals*.<sup>279</sup>

“Mohammed Hussein” 19, described how traffickers brought him and others to an island near the Malaysian–Thailand border, and the Thai authorities gathered them from the island after spending one night there. He said:

In the morning, the [Thai authorities] gathered all the people, and then the [state agency redacted] brought a big boat. We had to get on the boat. We were detained at a [state agency redacted] station for one night. From the police station, some of the guards took us from there to Padang Besar [in Thailand's Songkhla Province]. It took seven hours. They piled us up in the car and covered us with tarpaulin. They piled us one on top of the other. If one person moved another shouted. They gathered all of us there, and we were moved to the jungle, to the mountain. Some people couldn't walk very well because we were in the car for seven hours . . . It was a big [state agency redacted] truck that brought us from the [state agency redacted] station to another place, and then in the evening, at around 7:30 p.m., we had to get on the pickup trucks. There was one [state agency redacted] truck and two people. They wore [state agency redacted] uniforms. When the [state agency redacted] truck brought us, the [state agency redacted] car was in front. They handed us over to three pick-up trucks.<sup>280</sup>

Plain-clothed Thai men then transported Mohammed Hussein and 58 others overland in a caravan of three pickup trucks. Eventually, the caravan arrived at a remote camp: “When we arrived at the camp in the mountain there were many groups of people around the mountain . . . The guard said, just sleep and do not speak. If anyone speaks, we will beat you.”<sup>281</sup>

“Khun R.,” a wealthy Thai man who worked in concert with Thai authorities and individuals believed to be at the head of a criminal syndicate, acknowledged the role of the Thai authorities in the trafficking of Rohingya. He said:

It is the [state agency redacted] and [state agency redacted] that take care of the Rohingya now. They are helping the Rohingya to go to the third country. Thailand doesn't keep them locked up here. We are finding a way to help them to go to the third country, because if they stay longer in Thailand, we have the costs to feed them. The country is Muslim, that's why they want to go to Malaysia . . . It's going to be good for [Rohingya] to stay with the [state agency redacted] because the [state agency redacted] don't imprison them. They just want them to go to the third country. We have to understand the [state agency redacted]. The [state agency redacted] don't harm them, they just want to take care of them, and as soon as they can, just move them on.<sup>282</sup>

Several known human traffickers testified for this report that members of a transnational criminal syndicate routinely paid Thai officials. In 2014, a mid-level trafficker of Rohingya ethnicity in Malaysia said: “The boats must pay money to the Thais. Give money, you get everything. No money, you get nothing. The Thai bosses talk with the authorities, so we don't know exactly how much they get. The Thai [state agency redacted] supports them to come here [to Malaysia].<sup>283</sup>”

In Bangkok, another known trafficker with a transnational criminal syndicate, himself Rohingya, explained:

<sup>279</sup> Fortify Rights interview with #78, Kuala Lumpur, Malaysia, September 2014.

<sup>280</sup> Fortify Rights interview with #40, Pattani Province, Thailand, September 16, 2014.

<sup>281</sup> *Ibid.*

<sup>282</sup> Fortify Rights interview with #70, southern Thailand, September 2014.

<sup>283</sup> Fortify Rights interview with #61, Kuala Lumpur, Malaysia, September 28, 2015.

[Senior traffickers] have money and passports and can hide easily in other countries. They work together with [state agency redacted] and [state agency redacted]. They are all shareholders. If one is arrested, the others help, and that protects them all. They can pay bribes to [the authorities] and get released quickly.<sup>284</sup>

The potential for corruption was also identified as an issue in Malaysia. For example, a Malaysian representative from the Legislative Assembly of Bukit Kayu Hitam, Kedah State in July 2017 testified to the Commission that potential corruption among Malaysian border-control authority members encourages human-trafficking activities. He said some border agents demand money from vehicles moving back and forth over the border without conducting proper inspections according to their respective agencies. The representative believes human traffickers might rely on this corruption to traffic people to Malaysia in vehicles crossing the border.<sup>285</sup>

An officer-in-charge of the Padang Besar District Police Headquarters in Malaysia's Perlis State also told the Commission in 2017 that there was an issue for Malaysian law enforcement agencies with respect to bribery—and that Thai authorities facilitated the passage of “migrants” to Malaysia to avoid the cost of detaining them in Thailand.<sup>286</sup>

Several known traffickers also explained to Fortify Rights that they often had to negotiate with the Thai authorities to facilitate their business. “Abdul Grey,” a known mid-level trafficker in Malaysia, himself Rohingya, told Fortify Rights:

I also know that some boats have to wait. The problem is sometimes they cannot negotiate with the authorities. They have to wait until they get clearance before people can come on shore. This only happens in Thailand. But sometimes, Malaysia closes the border and people have to wait to enter. The Malaysian border is not easy to cross. It's very common for the Malaysian border to become restricted.<sup>287</sup>

Rohingya survivors also reported waiting on ships at sea until the “right” time to disembark. For example, “Kaledah,” 18, told Fortify Rights:

After six days, we arrived in Thailand. However, the situation in Thailand was not good, and we were told that we had to wait before we could be brought to land. We were waiting for five days in the water before we could go to the shore.<sup>288</sup>

International condemnation and pressure from advocates as well as principled state security officials in 2015 following the discovery of mass graves in Thailand and Malaysia led to a regional crackdown of the human-trafficking networks, largely halting the trade.<sup>289</sup> However, the crackdown led to untold deaths when traffickers abandoned shiploads of Rohingya and Bangladeshis at sea and authorities in the region pushed ships out to international waters rather than allow survivors to disembark and provide protection to them.

Chaiwut Chusakun, a 46-year-old Thai tour operator who brought supplies to survivors on an abandoned trafficking ship, witnessed Thai officials boarding the ship. He told Fortify Rights:

One [Rohingya] English speaker was on board, and he told the army that they all wanted to go to Malaysia, and the soldiers said, “Since they want to go to Malaysia, we will help them go

<sup>284</sup> Fortify Rights interview with #48, Bangkok, Thailand, September 23, 2014.

<sup>285</sup> The Commission interview with local politician from the Legislative Assembly of Bukit Kayu Hitam, Kedah State, July 2017.

<sup>286</sup> The Commission interview with Officer in Charge of Padang Besar District Police Headquarters, 2017.

<sup>287</sup> Fortify Rights interview with #74, Selangor State, Malaysia, September 2014.

<sup>288</sup> Fortify Rights interview with #83, Penang State, Malaysia, September 2014.

<sup>289</sup> Ten survivors interviewed by the Commission were stranded at sea in 2015 from three days (W7) to three months (W19). See, also, Fortify Rights interviews in Malaysia and Indonesia, 2015–2016.

to Malaysia.” At 4 a.m., [the Thai authorities] towed their boat [to sea] and taught the [English speaker] how to drive the boat.<sup>290</sup>

Fortify Rights documented changes in the trafficking trade after 2014. “Abdul Grey,” told Fortify Rights:

I don’t know what will happen in the future. But I know there are more restrictions from the Thai authorities. It’s not the same as it was before. This is making it more difficult. When people are released from the Thailand camps, we must pay more to the Thai authorities to come to Malaysia. This is becoming more restrictive and more costly.<sup>291</sup>

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<sup>290</sup> Fortify Rights interview with #117, Songkhla Province, Thailand, May 17, 2015.

<sup>291</sup> Fortify Rights interview with #74, Selangor State, Malaysia, September 2014.

## V. LEGAL FRAMEWORK AND ANALYSIS

This report employs treaty-based and customary law frameworks of international human rights law and international criminal law to examine the legal implications of the violence perpetrated against Rohingya men, women, and children from 2012 to 2015.<sup>292</sup> The scope of this review includes both international law crimes enforceable by international bodies and international law crimes that have been transposed into domestic law enforceable by the Malaysian authorities.

This chapter first analyzes whether the facts documented in this report constitute crimes against humanity under international law. It then analyzes the facts under the standards set forth in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, which Malaysia, Thailand, and Myanmar have adopted and are enforceable by domestic authorities.

### CRIMES AGAINST HUMANITY

The criminal dimensions of this conduct are evaluated based on standards set forth in the Rome Statute of the International Criminal Court (ICC) as well as *ad hoc* tribunals established by the U.N. Security Council, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Notably, Malaysia acceded to the Rome Statute on March 4, 2019.<sup>293</sup> ICC jurisdiction is limited to when a crime is committed within a country or by a national of a country that is a party to the Rome Statute; when a state agrees to ICC jurisdiction; or when a situation is referred to the Office of the Prosecutor

<sup>292</sup> Notably, Malaysia is a party to the Convention on the Rights of the Child (CRC), adopted September 2, 1990, G.A. Res. 44/25, U.N. Doc. A/44/49 (1990), acceded by Malaysia February 17, 1995; the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted September 3, 1981, G.A. Res. 34/180, U.N. Doc. A/34/46 (1981), acceded by Malaysia July 5, 1995; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted November 15, 2000, G.A. Res. 55/25, U.N. Doc. A/55/383, acceded by Malaysia February 26, 2009. Other international instruments, including International Covenant on Civil and Political Rights (ICCPR), to which Malaysia is not a party, are considered part of customary international law and binding on all states. ICCPR, adopted March 23, 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966).

<sup>293</sup> Malaysia: Accession, Rome Statute of the International Criminal Court, Depository Notification C.N.69.2019.TREATIES-XVIII.10, <https://treaties.un.org/doc/Publication/CN/2019/CN.69.2019-Eng.pdf> (accessed March 25, 2019); Malaysia Ministry of Foreign Affairs, “Malaysia Accedes to the Rome Statute of the International Criminal Court,” press release, March 4, 2019, <http://www.kln.gov.my/web/guest/-/press-release-malaysia-accedes-to-the-rome-statute-of-the-international-criminal-court> (accessed March 25, 2019).



by the U.N. Security Council.<sup>294</sup> Thus, the prosecution of crimes committed in Malaysia or by a national of Malaysia after March 4, 2019 is within the jurisdiction of the ICC. Crimes committed in Malaysia prior to March 4, 2019 would be within the jurisdiction of the court if Malaysia agreed to ICC jurisdiction or if the U.N. Security Council referred the situation to the Court.

Under Article 7 of the Rome Statute, a crime against humanity is committed when one or more prohibited criminal acts enumerated by the Statute are “committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>295</sup> This section examines the possibility that: (1) a transnational criminal syndicate committed the crimes of murder, extermination, enslavement, deportation or forcible transfer, imprisonment, torture, and rape, (2) as part of a widespread and systematic attack directed against the Rohingya civilian population displaced from Rakhine State, Myanmar, and (3) with knowledge of the widespread and systematic attack.

In order to convict under Article 7 for crimes against humanity, as in all crimes before the ICC, the court must be convinced beyond reasonable doubt.<sup>296</sup> For the purposes of issuing a warrant for the arrest of an individual for alleged criminal responsibility in the commission of crimes against humanity, the prosecutor must show that “evidence provides reasonable—not conclusive or definitive—grounds to believe that the person committed a crime within the jurisdiction of the Court.”<sup>297</sup>

Ultimately, the Commission and Fortify Rights conclude that there are reasonable grounds to believe that a transnational criminal syndicate involved in mass human trafficking of Rohingya in Southeast Asia between 2012 and 2015 committed crimes against humanity under the ICC Statute. Those crimes include murder, extermination, enslavement, forcible transfer, torture, and rape/sexual slavery as part of a widespread or systematic attack directed against a civilian population pursuant to or in furtherance of the syndicate’s organizational policy to commit such attack and with knowledge of the attack.

Given that the Malaysian government appears serious about investigating the crimes that resulted in the mass graves at Wang Kelian, neither the Commission nor Fortify Rights advocates that these crimes be referred to the ICC. Moreover, the ICC would not accept jurisdiction given that Article 17(1)(a) of the Rome Statute makes clear that a case is inadmissible to the ICC where it is, “being investigated or prosecuted by a State which has jurisdiction over it . . . .”<sup>298</sup> However, Article 17(1)(a) continues that a case is admissible where “the State is unwilling or unable genuinely to carry out the investigation or prosecution[.]” Thus, if the RCI and Malaysian authorities do not carry out a thorough and genuine investigation, the Commission and Fortify would advocate for ICC referral of the crimes documented in this report.

## Prohibited Acts of Crimes Against Humanity

A crime against humanity involves the commission of one or more of the following prohibited criminal acts: murder, extermination, enslavement, deportation or forcible transfer, imprisonment, torture, rape and other forms of sexual violence, persecution, enforced disappearance, apartheid,

<sup>294</sup> See, Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9, 2002, arts. 5(2), 12(b), 12(3), 13(b).

<sup>295</sup> *Id.* at art. 7(1).

<sup>296</sup> *Id.* at art. 66(3).

<sup>297</sup> *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, ICC, Case No. ICC-02/05-01/09-OA, Decision (Appeal) February 3, 2010, para. 17 (finding that, “at this preliminary [pre-trial, warrant seeking] stage, it does not have to be certain that that person committed the alleged offence. Certainty as to the commission of the crime is required only at the trial stage of the proceedings (see article 66 (3) of the Statute), when the Prosecutor has had a chance to submit more evidence.”)

<sup>298</sup> Rome Statute, art. 17, Issues of Admissibility.

or other inhumane acts.<sup>299</sup> Any one of the 11 acts is sufficient to establish a crime against humanity, provided that the other elements of the crime are satisfied. This section will examine the legal elements of the seven prohibited acts most likely to be applicable to the conduct described in this report: namely, murder, extermination, enslavement, deportation or forcible transfer, imprisonment, rape, and torture. This section will subsequently analyze whether a transnational criminal syndicate committed such acts.

## Murder

Murder requires that a perpetrator killed—that is—caused the death of, one or more persons through his acts or omissions.<sup>300</sup> Although neither the Rome Statute nor the ICC’s *Elements of Crimes* “provide a particular mental element for murder constituting a crime against humanity,” ICC case law has generally required a demonstration that either the perpetrator(s) “(i) meant to kill or to cause the death of one or more persons or (ii) were aware that the death(s) would occur in the ordinary course of events.”<sup>301</sup> Thus, murder requires a showing that the perpetrator killed with either an intent to kill or awareness that death would ordinarily occur. For example, the *Katanga* tribunal found that the proximity required by a machete attack demonstrated intent.<sup>302</sup> Similarly, in *Kovčka*, the Appeals Chamber confirmed that where perpetrators purposefully established a system of ill-treatment in a detention camp, murder could be proved where “the death of the victim was the result of what happened in [the] camp, be it inhumane conditions, beatings or ill-treatment.”<sup>303</sup> In addition, a perpetrator may be found guilty of murder for a victim’s suicide where he knew that the “suicide was a likely and foreseeable result of the act or omission.”<sup>304</sup> Murder can be proven by circumstantial evidence, even where a body has not been recovered, if “the victim’s death is the only reasonable conclusion that can be drawn.”<sup>305</sup> Further, murder can be proven without ascertaining “the specific identify of the victim or the perpetrator.”<sup>306</sup>

This report documents numerous intentional killings on ships and in camps on the Malaysia-Thailand border, including at Wang Kelian in Malaysia’s Perlis State. Of the more than 112 deaths at sea documented in this report, eyewitnesses saw traffickers intentionally kill at least 29 men.<sup>307</sup> Traffickers killed by using knives to stab and sticks to beat men who asked for water and food.<sup>308</sup> Several eyewitnesses also saw traffickers throw injured or sick men into the sea alive.<sup>309</sup>

<sup>299</sup> *Id.* at art. 7 (listing murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity; persecution; enforced disappearance; apartheid; and other inhumane acts).

<sup>300</sup> Rome Statute of the ICC, *Elements of Crimes*, 2011, art. 7(1)(a)(1) & n. 7. *Prosecutor v. Germain Katanga*, ICC, Case No. ICC-01/04-01/07, Judgment, March 7, 2014, para 766-67.

<sup>301</sup> *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC, Case No. ICC-01/05-01/08, Judgment, March 21, 2016, para. 89-90. *See also*, *Katanga*, Case No. ICC-01/04-01/07, para. 781; *Prosecutor v. Kupreskic*, ICTY, Case No. IT-95-16-T, Judgment, January 14, 2000, para. 560-61; *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-4-T, Judgment (Trial), September 2, 1998, para. 587-89. There is some debate as to whether premeditation is required. *Compare Akayesu*, Case No. ICTR-96-4-T, para. 587-89 (not expressly requiring premeditation), *with Prosecutor v. Kayishema and Ruzindana*, ICTR, Case No. ICTR-95-1-A, Judgment (Appeal), June 1, 2001, para. 139-40 (requiring premeditation).

<sup>302</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 858.

<sup>303</sup> *Prosecutor v. Kvočka*, ICTY, Case No. IT-98-30/1-A, Appeals Judgment, February 28, 2005, para. 262.

<sup>304</sup> *Prosecutor v. Krnojelac*, ICTY, Case No. IT-97-25-T, Judgment, March 12, 200, para. 329 (finding no liability for murder conflicting evidence alternatively described the cause of the suicide as the result of severe beatings or depression over a family situation).

<sup>305</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 768.

<sup>306</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 88.

<sup>307</sup> *See*, Chapter I. Section, “Killings, Deaths from Deprivations, and Suicides;” Chapter II. Section, “Killings and Preventable Deaths.”

<sup>308</sup> *Ibid.* The Commission interview with W8. Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014. Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

<sup>309</sup> *See*, Chapter I. Section, “Killings, Deaths from Deprivations, and Suicides;” Chapter II, Section “Killings and

In the camps, witnesses saw traffickers beat to death numerous individuals who were sick or could not provide sufficient payments to traffickers.<sup>310</sup> One witness recounted watching traffickers poison a sick child in a camp along the border.<sup>311</sup>

This report also documents hundreds of instances where traffickers imposed conditions that would lead to death, such as deprivation of food, shelter, and mobility.<sup>312</sup> Known traffickers interviewed for the report acknowledged that people held in these conditions would die if they were not released, which demonstrates that the traffickers knew the conditions they imposed would cause death in “the ordinary course of events.”<sup>313</sup>

The stabbings, beatings, and throwing of people overboard detailed in this report required a similar proximity as those in *Katanga* and thus also demonstrate those killings were intentional. Further, the traffickers’ imposition of conditions in the camps that routinely led to the death of captives is similar to the conditions documented in the *Kovčeka* case. Thus, there are reasonable grounds to believe that the killings described in this report qualify as “murder” for the purposes of establishing a crime against humanity.

## Extermination

Extermination involves the “mass destruction of life” which is “directed against a group of individuals.”<sup>314</sup> Extermination differs from murder in that the perpetrator’s act of killing must constitute or be part of a mass killing.<sup>315</sup> A mass killing includes killings where a “substantial” or a “large number” of people are killed.<sup>316</sup> The “massive” element may be established by accumulating “separate and unrelated incidents, meaning on an aggregated basis.”<sup>317</sup> The ICC’s *Elements of Crimes* expressly includes not only acts that would qualify as murder, but also “inflicting conditions of life calculated to bring about the destruction of part of a population,” such as “the deprivation of access to food and medicine.”<sup>318</sup> Further, extermination does not require evidence of “a plan or policy to carry out the underlying act.”<sup>319</sup> In the *Brdanin* case, the tribunal found the element of “massiveness” satisfied where multiple killings were aggregated, including one instance where perpetrators caused 20 deaths by forcing prisoners to stand in “extremely cramped conditions and were not provided with sufficient water to drink during the nine hour journey, despite the hot weather.”<sup>320</sup>

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Preventable Deaths.” Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014; Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014; Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014.

<sup>310</sup> Commission interview with W6, W8, W10, and W12, Alor Setar, Kedah State, November 2016.

<sup>311</sup> Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014.

<sup>312</sup> Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014. Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014. Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014. The Commission interviews with W1-W18, Alor Setar, Kedah State, November 2016.

<sup>313</sup> Fortify Rights interview with group of human traffickers, #74, Selangor State, Malaysia, September 27, 2014. Fortify Rights interview with #60, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>314</sup> See, *Prosecutor v. Seromba*, ICTR, Case No. ICTR-2001-66-I, Judgment (Trial), December 13, 2006, para. 361; *Akayesu*, Case No. ICTR-96-4-T, para. 591.

<sup>315</sup> ICC, *Elements of Crimes*, art. 7(1)(b)(2); *Semanza*, Case No. ICTR-97-20-T, para. 340.

<sup>316</sup> *Semanza*, ICTR, Case No. ICTR-97-20-T, para. 340; *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 146.

<sup>317</sup> *Prosecutor v. Brdanin*, ICTY, Case No. ICTY-99-36-T, Judgment (Trial), September 1, 2004, para 391.

<sup>318</sup> ICC, *Elements of Crimes*, art. 7(1)(b) & n.9. See also, *Prosecutor v. Blagojevic and Jokic*, ICTY, Case No. ICTY-02-60-T, Judgment, January 17, 2005, para. 574 n. 1916 (listing deprivation of food and medicine).

<sup>319</sup> *Blagojevic*, Case No. ICTY-02-60-T, para. 576; *Krstic* Appeal Judgement, para. 225.

<sup>320</sup> *Brdanin*. ICTY, Case No. ICTY-99-36-T, para. 452.

This report documents over 800 deaths of victims in the custody of traffickers. Traffickers deprived the men, women, and children in their custody of food, water, shelter, and mobility.<sup>321</sup> On the ships, witnesses interviewed for this non-exhaustive report saw more than 112 people die from both intentional killings and the deprivation of food and water.<sup>322</sup> Traffickers limited food to a small amount of rice and did not provide water for many of the victims.<sup>323</sup> A tour-boat operator who offered water to a ship of trafficking survivors observed children explain that they had resorted to drinking urine.<sup>324</sup>

In the camps, including in Wang Kelian, witnesses saw more than 700 men, women, and children die in the custody of traffickers who withheld food, water, and shelter.<sup>325</sup> One man who witnessed more than 25 deaths in the camps recalled deaths occurring so frequently that when he buried bodies in the morning he would find additional people had died by the time he returned to the camp.<sup>326</sup> At Wang Kelian, witnesses saw bodies of those who died in the camps in a large hole or mass grave.<sup>327</sup>

Traffickers knew that victims held in these conditions would die. Known traffickers interviewed for this report acknowledged that people could not survive the conditions on the ships and in the camps for extended periods of time.<sup>328</sup> One trafficker told Fortify Rights, “If they cannot pay, they have to stay in the camps, sometimes one month, two months, or six months, and then they die.”<sup>329</sup>

This mass destruction of life is similar to multiple situations where the ICC and *ad hoc* tribunals have found extermination. This report documents hundreds of deaths due to the conditions imposed by the traffickers. Further, the statements by the traffickers interviewed for this report combined with eyewitness reports of traffickers beating to death those who could not pay provide reasonable grounds to believe that the traffickers created conditions intended to kill those who could not provide sufficient payments to the traffickers. Given the facts of this case and that the *Akayesu* tribunal found that perpetrators committed extermination based on the killing of 16 people, there are reasonable grounds to believe that the killings of at least hundreds of men, women, and children by the trafficking syndicate qualify as extermination.<sup>330</sup>

<sup>321</sup> See, Chapter I. Section, “Deprivation of Food, Water, and Physical Space.” Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014; Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014; Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014. The Commissioner interviews with W1-W18, Alor Setar, Kedah State, November 2016.

<sup>322</sup> See, Chapter I. Section, “Killings, Deaths from Deprivations, and Suicides;” Chapter II. Section, “Killings and Preventable Deaths.” Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014; Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014.

<sup>323</sup> See, Chapter I. Section, “Deprivation of Food, Water, and Physical Space.”

<sup>324</sup> *Ibid.* Fortify Rights interview with #117, Chaiwut Chusakun, Songkhla Province, Thailand, May 17, 2015.

<sup>325</sup> See, Chapter II. On Land: Abuses at Human-Trafficking Camps and Houses in Thailand and Malaysia.

<sup>326</sup> See, Chapter II. Section, “Mass Graves on the Malaysia-Thailand Border.” Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014.

<sup>327</sup> The Forensic Department of Sultanah Bahiyah Hospital determined that 152 remains were exhumed from the mass graves discovered on Wang Burma hill near 28 trafficking camps. See, Chapter II. Section “Mass Graves on the Malaysia-Thailand Border.” The Commission interview with W19. See also, the Commission interview with hospital staff, 2018. See also, Chapter III. Section, “Statement of ‘Dr. L,’ Head of Forensic Department, Sultanah Bahiyah Hospital of Alor Setar, Kedah State.”

<sup>328</sup> See, Chapter I. Section, “Deception.” Fortify Rights interview with group of human traffickers, #74, Selangor State, Malaysia, September 27, 2014. Fortify Rights interview with #60, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>329</sup> Fortify Rights interview with #60, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>330</sup> *Akayesu*, Case No. ICTR-96-4-T, para. 735-44. However, many cases do discuss far higher numbers. See, for example, *Prosecutor v. Seromba*, ICTR, Case No. ICTR-2001-66-I, Judgment (Trial), December 13, 2006, para. 365 (finding that “the destruction of [a] church, which resulted in the death of 1,500 Tutsi refugees, constitutes the crime of extermination.”)

## Enslavement

Enslavement under the Rome Statute is “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”<sup>331</sup> The ICC’s *Elements of Crimes* provides that the primary means of enslavement are through “the purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.”<sup>332</sup> Such deprivation of liberty is not limited to forced labor and includes debt bondage, serfdom, and the purchase of wives.<sup>333</sup> The ICTY in *Kunarac* discussed control of someone’s movement, control of physical environment, measures taken to prevent or deter escape, and buying, selling, trading, or inheriting a person as factors in identifying enslavement.<sup>334</sup> That tribunal found enslavement occurred where women were “treated as personal property” and had “no realistic option whatsoever to flee . . . or escape their assailants.”<sup>335</sup>

This report documents systems used to track ownership of Rohingya men, women, and children. Upon boarding or in advance of boarding ships, traffickers gave many trafficked persons colored wristbands or wrote numbers on their bodies.<sup>336</sup> When people asked what these were for, the traffickers told them that they had been purchased.<sup>337</sup> Fortify also recorded the sale of women and girls as brides.<sup>338</sup>

The Commission and Fortify Rights also documented deprivations of liberty, including the use of cages and fences to limit mobility of those being held against their will.<sup>339</sup> Traffickers returned and severely beat those caught trying to escape from camps on the Malaysia-Thailand border.<sup>340</sup>

This report documents the exercise of power of ownership over the victims, including the sale of men, women, and children. There are hundreds of instances where traffickers limited and controlled the movements of people, failed to provide adequate shelter, attempted to deter escapes through beatings and intimidations, and the buying and selling of men, women, and children.<sup>341</sup> Just as in *Kunarac*, traffickers treated Rohingya men, women, and children as personal property, who had no realistic option to escape. There are, thus, reasonable grounds to believe the traffickers committed the prohibited act of enslavement.

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<sup>331</sup> Rome Statute, art. 7(2)(c).

<sup>332</sup> ICC, *Elements of Crimes*, art. 7(1)(c).

<sup>333</sup> ICC, *Elements of Crimes*, art. 7(1)(c) (stating that deprivation of liberty includes “reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956). Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, adopted September 7, 1956, 226 U.N.T.S. 3, acceded by Malaysia November 18, 1957.

<sup>334</sup> *Prosecutor v. Kunarac, Kovac, and Vukovic*, ICTY, Case No. IT-96-23-T and IT-96-23/1-T, Judgment (Trial), February 22, 2001, para. 543.

<sup>335</sup> *Id.* at para. 742.

<sup>336</sup> Fortify Rights interviews with #23, #27, #55, #67, #74, #75, #77, #78, and #113, Myanmar, Thailand, and Malaysia, August 2014 – March 2015.

<sup>337</sup> See, Chapter I. Section, “Deception.” Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 2015.

<sup>338</sup> See, Chapter II. Section, “Forced Marriage and Domestic Servitude of Women and Girls.”

<sup>339</sup> Fortify Rights interview with #50, Songkhla Province, Thailand, September 17, 2014; Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014; Fortify Rights interview with #54, Kuala Lumpur, Malaysia, September 27, 2014; The Commission interview with Person A, a Commander of Company B, Battalion 3 stationed in Padang Besar, Perlis State from January 1, 2015 to January 31, 2015.

<sup>340</sup> Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014.

<sup>341</sup> See, Chapter I. At Sea: Abuses on Human-Trafficking Ships in the Bay of Bengal; Chapter II. On Land: Abuses at Human-Trafficking Camps and Houses in Thailand and Malaysia.



## Deportation or Forcible Transfer

The crime of deportation or forcible transfer occurs when persons are moved from an area where they are lawfully present by expulsion or other coercive acts, and the transfer is impermissible under international law.<sup>342</sup> Commentators agree that the lawfulness of the victims' presence in a particular area is assessed not just under domestic law but also according to the standards provided by international law.<sup>343</sup> "Forcibly" refers not only to physical force but also to "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power . . . or by taking advantage of a coercive environment."<sup>344</sup> In other words, the victims are "not faced with a genuine choice as to whether to leave or to remain."<sup>345</sup> Deportation refers to movement from one country to another, whereas forcible transfer encompasses transfers within one country.<sup>346</sup> While forcible movement for safety or "imperative military reasons" may be permissible, the ICTY has noted that "recourse to such measures would only be lawful in the gravest of circumstances and only as measures of last resort."<sup>347</sup>

Although the Myanmar government claims that Rohingya are in the country illegally, there is substantial evidence that the Rohingya are indigenous to what is now Rakhine State.<sup>348</sup> Previous Myanmar governments allowed Rohingya to form political parties and vote in multiparty elections in 1990 and 2010 as well as the constitutional referendum in 2008, and the authorities have also maintained lists of Rohingya families for several decades, which the Myanmar government does for all residents.<sup>349</sup> The ICTY has found that the "lawfully present" standard encompasses all persons who "have, for whatever reason, come to 'live' in the community."<sup>350</sup> The terms "exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally."<sup>351</sup> Thus, it is likely that the Rohingya are lawfully present in Rakhine State under international law, even if Myanmar domestic law is not clear.<sup>352</sup>

This report and testimony at trafficking trials in Thailand demonstrate that perpetrators coerced or forcibly abducted Rohingya men, women and children from Rakhine State and Bangladesh.<sup>353</sup> For example, one Rohingya survivor told the Commission that traffickers abducted him in Myanmar and beat him for failing to pay for his release.<sup>354</sup> The traffickers then sold him to a third party in

<sup>342</sup> Rome Statute art. 7(2)(d); ICC, *Elements of Crimes*, art. 7(1)(d).

<sup>343</sup> See, Vincent Chetail, "Is There any Blood on my Hands: Deportation as a Crime of International Law," *Leiden Journal of International Law*, Vol. 29, Iss. 917, 2016, p. 925.

<sup>344</sup> ICC, *Elements of Crimes*, art. 7(1)(d) n.12. See also, *Prosecutor v. Krnojelac*, ICTY, Case No. IT-97-25-T, Judgment, March 15, 2001, para. 179.

<sup>345</sup> *Prosecutor v. Radislav Krstić*, ICTY, Case No. IT-98-33-T, Judgment (Trial), August 2, 2001, para. 147.

<sup>346</sup> *Id.* at 521.

<sup>347</sup> *Prosecutor v. Simic, Tadic, and Zaric*, ICTY, Case No. ICTY-95-9-T, Judgment (Trial), October 17, 2003, para. 125, n. 218.

<sup>348</sup> See, Maung Zarni et. al., "The Slow-Burning Genocide of Myanmar's Rohingya," *Pacific Rim Law & Policy Journal*, Vol. 23, No. 3, June 2014 (listing several historical sources, including Buchanan, *A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire* (noting in 1799 that the "Rooinga" had "long settled" in Rakhine State)).

<sup>349</sup> See, Benjamin Zawacki, "Defining Myanmar's Rohingya Problem," *Human Rights Brief*, Vol. 20, No. 3, 2013, p. 18-25.

<sup>350</sup> *Prosecutor v. Popovic*, ICTY, Case No. IT-05-88-T, Judgment, June 10, 2010, para. 900.

<sup>351</sup> *Ibid.* See also, *Prosecutor v. Dordevic*, ICTY, Case No. IT-05-87/1-T, February 23, 2011, para. 1616 ("Inhabitants or residents of an area can be accepted readily as lawfully present in it.")

<sup>352</sup> See, Chetail, "Is There any Blood on my Hands: Deportation as a Crime of International Law," *Leiden Journal of International Law*, p. 925-26 (noting that even undocumented persons can be lawfully present when "their undocumented status results from arbitrary deprivation of nationality.")

<sup>353</sup> Fortify Rights, internal report on human trafficking case, testimony of M. Salim, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 10, 2016. Fortify Rights, internal report on human trafficking case, testimony of Umarsoleeha, trial monitoring notes, May 12, 2016.

<sup>354</sup> The Commission interview with W9.

Malaysia.<sup>355</sup> Rohingya witnesses in Thailand’s mass human-trafficking trial in 2016 similarly testified that traffickers abducted them from a beach in Myanmar’s Rakhine State and forced them onto a small boat, which transported them to a ship operated by human traffickers waiting at sea.<sup>356</sup>

On these facts, there are reasonable grounds to believe that the traffickers committed the prohibited act of deportation or forcible transfer.

### Imprisonment and Other Severe Deprivations of Physical Liberty

The ICC’s *Elements of Crime* provide that imprisonment is established where (1) a perpetrator imprisoned or “otherwise severely deprived one or more persons of physical liberty,” (2) the gravity of the conduct “was in violation of fundamental rules of international law,” and (3) the perpetrator was aware of the factual circumstances that established the gravity of the conduct.<sup>357</sup> The ICTY has explained that imprisonments violate international law when they are “arbitrary,” meaning that they are imposed “without due process of law,” such that there is “no legal basis . . . to justify the initial deprivation of liberty.”<sup>358</sup> Further, even an initially justified arrest may later become a prohibited act if “the initial legal basis ceases to apply.”<sup>359</sup> The *Krnjelac* tribunal discussed factors of valid arrests that comply with the standards of international law, including the use of arrest warrants, providing reasons for the arrest and detention, and lodging charges against those arrested.<sup>360</sup>

This report describes the mass detainment of Rohingya men, women, and children without legal justification. Traffickers, aided by Thai and possibly Malaysian officials, maintained camps, fences, and cages to deprive people of their liberty and to seek a profit.<sup>361</sup>

Traffickers deprived people of their liberty on the ships, in the camps, and at human-trafficking houses in Malaysia. On the ships, traffickers did not allow their captives to move, forcing some to stay in a squatting position for days at a time.<sup>362</sup> In the camps, witnesses described fences of bamboo and barbed wire as well as semi-permanent camps with iron fences that traffickers used to hold large numbers of people and patrolled by guards carrying guns, knives, sticks, and other weapons.<sup>363</sup>

Traffickers often moved their captives at night, and Thai and Malaysian authorities occasionally raided camps.<sup>364</sup> Further, traffickers tried to avoid or pay authorities, indicating awareness that their actions were not lawful.<sup>365</sup>

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<sup>355</sup> *Ibid.*

<sup>356</sup> Fortify Rights, internal report on human trafficking case, testimony of Umarsoleeha, trial monitoring notes, May 12, 2016.

<sup>357</sup> ICC, *Elements of Crimes*, art. 7(1)(e).

<sup>358</sup> *Krnjelac*, Case No. IT-97-25-T, para. 111-15 (noting that if national law is put forward as the basis, that law is a valid defense only if it is consistent with international law). Note that *Krnjelac* disagreed with *Prosecutor v. Kordic*, ICTY, Case No. ICTY-95-14/2-T, Judgment (Trial), February 26, 2001, para. 303, which had earlier held that only detentions that constituted grave breaches of the Geneva Conventions qualify.

<sup>359</sup> *Id.* at para. 114. See also, *Kordic*, Case No. ICTY-95-14/2-T, para. 286-91 (discussing the procedural safeguards that must be adhered to during an imprisonment).

<sup>360</sup> *Krnjelac*, Case No. IT-97-25-T, para. 119-21.

<sup>361</sup> See, Chapter II. Section, “Torture and Ill-treatment.”

<sup>362</sup> See, Chapter I. Section, “Deprivation of Food, Water, and Physical Space.”

<sup>363</sup> See, Chapter II. On Land: Abuses at Human-Trafficking Camps and Houses.

<sup>364</sup> See, Chapter II. Section, “Forced Marriages and Domestic Servitude of Women and Girls.”

<sup>365</sup> See, “Guilty Verdicts for Rohingya Trafficking Deaths,” *Al Jazeera*, July 19, 2017, <https://www.aljazeera.com/news/2017/07/thai-court-deliver-verdict-people-smuggling-case-170719024750630.html> (accessed March 25, 2019). Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014.

Unlike the factors set forth by the *Krnojelac* tribunal, it appears that these detentions, which often involved hundreds of persons at a time, lacked any legal justification and were not official detention centers operated by the relevant state. Under these facts, there are reasonable grounds to believe that traffickers committed the prohibited act of imprisonment.

## Sexual Slavery and Rape

The Rome Statute provides that, in addition to rape, sexual slavery can constitute a crime against humanity.<sup>366</sup> The ICC’s *Elements of Crimes* defines sexual slavery as enslavement with the additional element of the perpetrator causing such enslaved persons “to engage in one or more acts of a sexual nature.”<sup>367</sup> Further, the definition of servitude in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 qualifies as enslavement.<sup>368</sup> The Supplementary Convention includes in its definition of servitude any practice where “a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group.”<sup>369</sup>

Rape under the Rome Statute is defined as the invasion “of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”<sup>370</sup> Rape also requires a showing that the perpetrator committed the act either: “(i) by force; (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; (iii) by taking advantage of a coercive environment; or (iv) against a person incapable of giving genuine consent.”<sup>371</sup>

Evidence of physical force is not necessary to demonstrate coercive circumstances.<sup>372</sup> Rather, “[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or . . . military presence [among the civilian population].”<sup>373</sup> The ICC has further noted that, beyond a military presence, there are “other coercive environments of which a perpetrator may take advantage to commit rape,” such as when the rape is “committed together with other crimes.”<sup>374</sup> Further, a person can be considered “incapable of giving genuine consent if affected by natural, induced or age-related incapacity,” even in non-forcible situations.<sup>375</sup> According to the ICC, the perpetrator must have acted deliberately and with knowledge of the “forcible nature of the situation, or of the incapacity of the victim to give genuine consent.”<sup>376</sup>

Fortify Rights documented numerous sales of Rohingya women for marriage, including women as young as 16.<sup>377</sup> Further, testimonies described traffickers raping girls in their captivity and as young

<sup>366</sup> Rome Statute art. 7(1)(g).

<sup>367</sup> ICC, *Elements of Crimes*, art. 7(1)(g)2.

<sup>368</sup> *Id.* at art. 7(1)(c) n. 11.

<sup>369</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, art. 1(c)(i), September 7, 1956, 266 U.N.T.S. 3.

<sup>370</sup> ICC, *Elements of Crimes*, art. 7(1)(g)-1(1); *Katanga*, Case No. ICC-01/04-01/07, para. 962.

<sup>371</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 102. *See also*, *Katanga*, Case No. ICC-01/04-01/07, para. 962; ICC, *Elements of Crimes*, art. 7(1)(g)-1(2).

<sup>372</sup> *Akayesu*, Case No. ICTR-96-4-T, para. 688.

<sup>373</sup> *Ibid.* *See also*, *Bemba*, Case No. ICC-01/05-01/08, para. 103.

<sup>374</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 104.

<sup>375</sup> ICC, *Elements of Crimes*, art. 7(1)(g)-1(2) n.16.

<sup>376</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 970.

<sup>377</sup> *See*, Chapter II. Section, “Forced Marriages and Domestic Servitude of Women and Girls.” Fortify Rights interview with #18, Pahang State, Malaysia, August 13, 2014; Fortify Rights interview with #42, Songkhla Province, Thailand, September 17, 2014; Fortify Rights interview with #47, Bangkok, Thailand, September 24, 2014.

as 12-years old on the human-trafficking ships.<sup>378</sup> Fortify Rights also obtained video footage that appears to depict the gang-rape of a young Rohingya woman that may have occurred in a human-trafficking camp along the Malaysia-Thailand border.<sup>379</sup> The Commission documented testimony of at least one witness who saw traffickers rape captives at Wang Kelian.<sup>380</sup>

Under these facts, there are reasonable grounds to believe that the acts documented in this report meet the requirements of the crime against humanity of rape and sexual enslavement.

## Torture

Under the Rome Statute, torture entails the intentional infliction of severe physical or mental pain or suffering upon a person, where that person was in the perpetrator's custody or control.<sup>381</sup> Pain or suffering caused in connection with lawful sanctions is not considered torture.<sup>382</sup> While the ICTR and ICTY have limited the understanding of torture to pain or suffering inflicted for particular purposes, including to obtain information, punish, or coerce, the Rome Statute and the ICC *Elements of Crimes* notably omit a purpose requirement.<sup>383</sup>

When discussing the severity of the pain and suffering inflicted, tribunals take into account both the objective harshness of the actions and the subjective effect on the particular victim, including "the victim's age, sex, or state of health."<sup>384</sup> All surrounding circumstances are relevant, including the victim's position of subordination, the time period of mistreatment, and the institutionalization of the mistreatment.<sup>385</sup> Nevertheless, permanent injury is not necessary.<sup>386</sup> Rape, which necessarily involves extreme pain and suffering, qualifies as torture when all other elements are met.<sup>387</sup> In the case of *Furundzija*, the ICTY found that torture occurred where perpetrators beat a man and then forced him to watch the sexual assault of his friend.<sup>388</sup>

This report documents numerous instances of torture inflicted upon men, women, and children younger than eight years old.<sup>389</sup> Survivors recounted the various ways traffickers inflicted pain and suffering, including the use of pipes, bats, clubs, belts, wires, tasers, and nails, on those in captivity

<sup>378</sup> See, Chapter 1. Section, "Rape."

<sup>379</sup> *Ibid.* Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014; Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.

<sup>380</sup> The Commission interview with W10, Alor Setar, Kedah State, November 2016.

<sup>381</sup> Rome Statute, art. 7(2)(e); ICC, *Elements of Crimes*, art. 7(1)(f).

<sup>382</sup> *Ibid.* The lawfulness of the sanction likely depends on whether they have been imposed in accordance with minimum standards set forth by international law, such as those in the ICCPR. See, Kai Ambos and Steffen Wirth, "The Current Law of Crimes against Humanity: An Analysis of UNTAET Regulation 15/2000," *Criminal Law Forum*, Vol. 13, Iss. 1, 2002, p. 28.

<sup>383</sup> Rome Statute, art. 7(2)(e); ICC, *Elements of Crimes*, art. 7(1)(f) n.14 (stating that "no specific purpose need be proved"). See also, *Akayesu*, Case No. ICTR-96-4-T, para. 593-94; *Prosecutor v. Kunarac, Kovac, and Vukovic*, ICTY, Case No. IT-96-23-T and IT-96-23/1-T, Judgment (Trial), February 22, 2001, para. 497; *Krnjelac*, Case No. IT-97-25-T, para. 179. These purposes "need not be the predominant or sole purpose," and the list of prohibited purposes is not exhaustive. *Prosecutor v. Mucic, et al.*, ICTY, Case No. IT-96-21-T, Judgment (Trial), para. 470.

<sup>384</sup> *Prosecutor v. Kvocka*, ICTY, Case No. IT-98-30/1-T, Judgment (Trial), November 2, 2011, para. 143.

<sup>385</sup> *Krnjelac*, Case No. IT-97-25-T, para. 182.

<sup>386</sup> *Kvocka*, Case No. IT-98-30/1-T, para. 148.

<sup>387</sup> See, for example, *Kunarac, et al.*, Case No. IT-96-23-T and IT-96-23/1-T, para. 150-51 ("Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.")

<sup>388</sup> *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgment (Trial), December 10, 1998, para. 267.

<sup>389</sup> See, Chapter I. Section, "Torture and Ill-treatment." Fortify Rights interview with #122, Rakhine State, Myanmar, May 2015.

on the human-trafficking ships.<sup>390</sup> Traffickers also used threats and intimidation, including carrying firearms, to ensure trafficking victims did not attempt to move while confined on the ships.<sup>391</sup> One man recalls witnessing traffickers beat people who complained about the conditions on the ship and then urinate in their mouths and on their faces.<sup>392</sup> Nutritional deficiency and being forced to sit in a squatting position for days and weeks left multiple survivors paralyzed.<sup>393</sup>

Traffickers continued to inflict torture in the camps, where trafficked persons could be held for months. This report demonstrates that traffickers routinely beat people who were unable to arrange payment and when calling family members of trafficked persons in order to demonstrate that the lives of those being trafficked were at risk. Several survivors recounted instances of having boiling water poured on them in the camps when they were unable to raise money for their release.<sup>394</sup> One survivor described the traffickers using pliers to “pull on our ears and breasts” as well as “on the men’s penises.”<sup>395</sup> Additionally, traffickers badly beat people who tried to escape, including in some instances cutting their feet with knives.<sup>396</sup>

Even if a purpose requirement is read into torture, this report establishes numerous acts of torture committed to punish and incentivize payment. Similar events to *Furundzija* described in this report qualify as torture. Traffickers beat and restrained persons while other traffickers killed, beat, and physically and sexually abused other prisoners, including children, in front of them. Thus, there are reasonable grounds to believe that the acts documented in this report meet the requirements of the crime against humanity of torture.<sup>397</sup>

## The Contextual Element of Crimes Against Humanity

The prohibited acts described above must be committed within a certain context to be considered crimes against humanity as defined by Article 7 of the Rome Statute. Specifically, Article 7(1) requires that one or more of the prohibited acts must be (1) “directed against any civilian population,” (2) as part of a “widespread or systematic attack,” (3) “with knowledge of the attack.”<sup>398</sup>

### The Attack was Directed at a Civilian Population

Under Article 7(2)(a) of the Rome Statute “an attack directed at any civilian population” requires a demonstration that: (1) there was a course of conduct involving the multiple commission of prohibited acts; (2) against any civilian population; and (3) carried out pursuant to or in furtherance of a state or organizational policy.<sup>399</sup>

<sup>390</sup> See, Chapter I. Section, “Torture and Ill-treatment.” Fortify Rights interview with #4, Kuala Lumpur, Malaysia, August 10, 2014; Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014.

<sup>391</sup> *Ibid.*; Fortify Rights interview with #26, Songkhla, Thailand, October 6, 2013.

<sup>392</sup> *Ibid.*; Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

<sup>393</sup> See, Chapter I. Section, “Deprivation of Food, Water and Physical Space;” Chapter II. Section, “Paralysis of Captives.”

<sup>394</sup> Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014; Fortify Rights interview with #50, Songkhla Province, Thailand, September 17, 2014. Residents of Wang Kelian also stated to the Commission that foreigners seen walking through Wang Kelian at various times looked scared, skinny, and some of them had burned marks as if they had been splashed with hot water.

<sup>395</sup> Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014.

<sup>396</sup> Fortify Rights interview with #17 and #19, Pahang State, Malaysia, August 13, 2014. See also, “For Myanmar Muslim Minority, No Escape from Brutality,” *New York Times*.

<sup>397</sup> The Commission interviews with W1, W2, W6, W10, W17, and W19, Alor Setar, Kedah State, November 2016.

<sup>398</sup> Rome Statute, art. 7.

<sup>399</sup> See, ICC, *Elements of Crimes*, art. 7. See also, *Katanga*, Case No. ICC-01/04-01/07; *Bemba*, Case No. ICC-01/05-01/08, para. 148.



## Course of Conduct

The requirement that the attack occur within the context of a “course of conduct” underscores that crimes against humanity are not designed to capture “single isolated events” but rather a series of linked events or actions directed at a civilian population.<sup>400</sup> The ICC has interpreted a “course of conduct” as “a campaign, an operation or a series of actions.”<sup>401</sup> Those actions should share common features “in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations.”<sup>402</sup> Notably, an attack need not involve armed conflict; crimes against humanity can occur during peacetime.<sup>403</sup>

The attacks by the transnational criminal syndicate against Rohingya trafficked men, women, and children share common features. The aim was to extort desperate Rohingya through violence and, in the process, traffickers murdered, tortured, raped, enslaved, and imprisoned people. Statements by traffickers to Fortify Rights confirm that the aim of the traffickers’ action was extortion. For example, one human trafficker based in Kuala Lumpur, Malaysia, told Fortify Rights: “If you pay money, tomorrow you will be released. If you don’t pay, you will stay there until you die.”<sup>404</sup> Another trafficker similarly said, “If you can pay 6,000 [Ringgit], they say, ‘You can go to Malaysia’ . . . If they cannot pay, they have to stay in the camps, sometimes for one month, two months, or six months, and then they die.”<sup>405</sup>

Indeed, the prohibited acts were a key component of the extortion process. Numerous statements from witnesses told of being tortured until they could raise the required payment amounts—typically about US\$2,000 (7,000 Malaysian Ringgit). For example, survivors reported that “[w]henver we were unable to pay money, they beat us;” “[t]he reason they [poured boiling water on my body] was because I didn’t pay the money to the agent;” and “[w]e called our relatives and they would beat us and tell us to ask for money.”<sup>406</sup> A 14-year-old boy similarly testified in the Thai trafficking trial that while imprisoned in a jungle camp, traffickers forced him to call his family for payment and that “during the phone conversation a guard was hurting him at the same time . . . [t]he guard who hurt him was Mr. Usen. Usen threatened the witness’s father that unless he sent the money, the witness would die.”<sup>407</sup>

The locations of the attacks occurred in a consistent though broad geographic area along the Malaysia-Thailand border and at sea *en route* to Thailand and Malaysia. Numerous witnesses interviewed by the Commission and Fortify Rights and those who testified in Thailand’s human-trafficking trials described nearly identical patterns of killings, torture, rape, and imprisonment aboard human-trafficking ships.<sup>408</sup> Similarly, survivors consistently described similar acts of

<sup>400</sup> See, *Bemba*, Case No. ICC-01/05-01/08, para. 149. See also, *Katanga*, Case No. ICC-01/04-01/07, para. 1101.

<sup>401</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1101.

<sup>402</sup> *Prosecutor v. Gbagbo*, ICC, ICC-02/11-01/11, Pretrial Chamber 1, June 12, 2014, para. 212.

<sup>403</sup> *Prosecutor v. Tadic*, Case No. IT-94-1-A, Judgment, July 15, 1999, para. 251.

<sup>404</sup> Fortify Rights interview with #61, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>405</sup> Fortify Rights interview with #60, Kuala Lumpur, Malaysia, September 28, 2014.

<sup>406</sup> Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014; Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014; Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014.

<sup>407</sup> Fortify Rights, internal report on human trafficking case, testimony of 14-year-old boy [name redacted], trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 12, 2016.

<sup>408</sup> See, for example, the Commission interviews with W1, W2, W3, W7, W10, W13, W16, and W18 (“Two Rohingya survivors testified to the Commission that they were beaten by men who operated the ships transporting them, and six survivors testified that they witnessed ship operators severely beat others on their respective vessels.”); Fortify Rights interview with #05, Kuala Lumpur, Malaysia, August 10, 2014; Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014. See, for example, Fortify Rights interview with #44, Songkhla Province, Thailand, September 17, 2014; Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014. See, for example, Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014. Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014.

murder, torture, rape, imprisonment, and enslavement in human-trafficking camps along the Malaysia-Thailand border.<sup>409</sup>

Traffickers targeted or, in some cases, abducted for profit Rohingya men, women, and children who were largely fleeing dire situations in Myanmar. Specifically, numerous witnesses reported fleeing internment camps in Myanmar, refugee camps in Bangladesh, and abuses by Myanmar security forces.<sup>410</sup> Rohingya witnesses also described being abducted and forcibly put on ships by Myanmar-based traffickers.<sup>411</sup>

The perpetrators were not random individuals, but rather operated as links in a chain of a criminal syndicate, from onshore trafficking recruiters in Myanmar and Bangladesh to shipboard traffickers to guards in human-trafficking camps located along the Thailand-Malaysia border to syndicate leaders. For example, according to testimony from one police commander, the trafficking organization included a “Source Group” responsible for trafficking at sea, a “Midway Group” that took individuals from ships for onward trafficking, and a third group called the “Destination Group,” which sent trafficked persons overland to different locations along the Thailand-Malaysia border, including to Padang Besar in Perlis State, Malaysia.<sup>412</sup>

These linked events must involve “multiple commissions” of prohibited acts as enumerated by Article 7(1) of the Rome Statute. The *Bemba* tribunal determined that this “indicates a quantitative threshold requiring ‘more than a few,’ ‘several’ or ‘many’ acts.”<sup>413</sup> However, the tribunal also found that the “number of the individual types of acts . . . [is] irrelevant provided that each of the acts fall within the course of conduct and cumulatively satisfy the required quantitative threshold.”<sup>414</sup>

In finding that multiple prohibited attacks occurred against the Hema ethnic group in Bogoro, Democratic Republic of Congo, the *Katanga* tribunal stressed that combatants “intentionally caused the death of numerous civilians” and that the multiple commission threshold was met “even though the only definitive breakdown of the death toll [established] was 33 civilian deaths.”<sup>415</sup> Moreover, in *Kupreskic*, the tribunal found the killing of 116 women and children, wounding of 24 people, and destruction of 169 houses and two mosques constituted multiple commissions of prohibited acts.<sup>416</sup>

<sup>409</sup> See, for example, Fortify Rights interview with #69, Penang State, Malaysia, October 1, 2014; Fortify Rights interview with #17, Pahang State, Malaysia, August 13, 2014. See, for example, The Commission interviews with W6 (“[Witness W6] saw an estimated 200 people die in Wang Kelian due to starvation, injuries from beatings, and untreated illness”); Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014; Fortify Rights interview with #79, Kuala Lumpur, Malaysia, September 28, 2014; Fortify Rights interview with #43, Songkhla Province, Thailand, September 17, 2014. See, for example, Fortify Rights interview with #26, Songkhla, Thailand, October 6, 2013; Fortify Rights interview with #19, Pahang State, Malaysia, August 13, 2014. See, for example, Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2015. Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>410</sup> See, for example, Fortify Rights interview with #78, Kuala Lumpur, Malaysia, September 28, 2014; Fortify Rights interview with #49, Bangkok, Thailand, September 23, 2014; Fortify Rights interview with #75, Kuala Lumpur, Malaysia, September 27, 2014. See, for example, Fortify Rights interview with #11, Kuala Lumpur, Malaysia, August 12, 2014. Fortify Rights interview with #04, Kuala Lumpur, Malaysia, August 10, 2014; Fortify Rights interview with #81, Penang State, Malaysia, September 15, 2014; Fortify Rights interview with #6, Kuala Lumpur, Malaysia, August 11, 2014; Fortify Rights interview with #82, Kuala Lumpur, Malaysia, September 16, 2014.

<sup>411</sup> See, for example, Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 26, 2015; Fortify Rights interview with #119, Rakhine State, Myanmar, May 20, 2015. See, for example, The Commission interview with W9; Fortify Rights, internal report on human trafficking case, testimony of 14-year-old boy [name redacted], trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 12, 2016.

<sup>412</sup> Fortify Rights internal report on human trafficking case, testimony of Pol. Lt. Col. from Nakhon Sri Thammarat Immigration Office, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, June 22, 2016.

<sup>413</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 150.

<sup>414</sup> *Ibid.*

<sup>415</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1137.

<sup>416</sup> *Prosecutor v. Kupreskic*, ICTY, Case No. IT-95-16-T, Judgment, January 14, 2000, para. 749.

By this standard, there are reasonable grounds to believe that the acts described above also constitute multiple commissions of prohibited acts. As highlighted above, the Commission and Fortify Rights documented thousands of instances of imprisonment, more than 100 murders during numerous boat trips from Myanmar and Bangladesh to Thailand and Malaysia, more than 700 murders on the Malaysia–Thailand border in the human–trafficking camps, and numerous instances of torture and rape.

### Directed Against Any Civilian Population

The attack must also be “directed against any civilian population,” underscoring that crimes against humanity are committed against a collective of civilians rather than individuals.<sup>417</sup> Under the crimes against humanity framework, a civilian population comprises all “persons who are civilians;” meaning that the nationality, ethnic group, or “any other distinguishing feature” is “immaterial.”<sup>418</sup> Although the entire population in an area does not need to be targeted, civilians must be targeted in sufficient number or in such a manner to demonstrate that the attack was directed against the civilian population rather than “a limited group of randomly selected persons.”<sup>419</sup> The targeted group for the trafficking network is Rohingya refugees fleeing Myanmar.<sup>420</sup>

Factors considered to determine whether an attack was primarily directed at civilians include the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, and the resistance to the assailants at the time. Where there is no armed conflict, civilians “includes all persons except those who have the duty to maintain public order and have the legitimate means to exercise force.”<sup>421</sup>

The *Katanga* tribunal stressed the civilian character of the population by highlighting that the village residents whom perpetrators killed “had no part in combat” and highlighted the status of the victims, which included “women, elderly people and children, together with babies.”<sup>422</sup> The court also stressed the number of confirmed civilian deaths as 33 deaths, 13 of whom were children.<sup>423</sup> Similarly, Rohingya targeted by traffickers consisted of men, women, and children, who were shopkeepers, day laborers, fishermen, educators, and mothers before being trafficked.<sup>424</sup> There is no evidence to indicate those being trafficked were members of any security or military force or

<sup>417</sup> Rome Statute, art. 7(1); ICC, *Elements of Crimes*, art. 7. See also, *Katanga*, Case No. ICC-01/04-01/07, para. 1105; *Kunarac, et al.*, Case No. IT-96-23 and IT-96-23/1-A, Judgement (Appeal), June 12, 2001, para. 90.

<sup>418</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1102.

<sup>419</sup> *Kunarac, et al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 90.

<sup>420</sup> The documentation by the Commission and Fortify Rights focuses on abuses against Rohingya Muslims and does not comprehensively cover abuses experienced by Bangladeshi nationals at the hands of traffickers during the mass trafficking trade from Bangladesh to Thailand and Malaysia between 2012 and 2015. However, it is well documented that thousands of Bangladeshis were trafficked alongside Rohingya refugees and in increasing numbers by 2014 and 2015. Although there is no indication that traffickers treated Bangladeshis better or differently than Rohingya, further documentation is necessary to determine if the crimes committed against trafficked Rohingya were also committed against Bangladeshis.

<sup>421</sup> *Prosecutor v. Kayishema*, Case No. ICTR-95-1-T, Judgment, May 21, 1999, para. 127.

<sup>422</sup> *Katanga*, ICC, Case No. ICC-01/04-01/07, para. 1138.

<sup>423</sup> *Id.* at para. 1137.

<sup>424</sup> Fortify Rights, internal report on human trafficking case, testimony of Asi Sul Hug, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, May 11, 2016. Fortify Rights, internal report on human trafficking case, testimony of unnamed 26-year-old woman, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, April 27, 2016. Fortify Rights, internal report on human trafficking case, testimony of Ong Ong Wing, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, May 13, 2016. Fortify Rights internal report on human trafficking case, unnamed 25 year-old male, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, April 26, 2016. Fortify Rights interview with #122, Sittwe Township, Rakhine State, Myanmar, May 20, 2015.

resisted the attacks, other than instances of trying to escape.<sup>425</sup> Multiple child witnesses testified that traffickers imprisoned, beat, and abducted them, and others reported witnessing traffickers rape girls.<sup>426</sup>

Based on the facts available, there are reasonable grounds to believe that the population targeted was civilian in nature.

### Pursuant to or in furtherance of a State or organizational policy

Attacks must be committed “pursuant to or in furtherance of a State or organizational policy to commit such attack.”<sup>427</sup> This requires showing that (a) the group that committed the attack qualifies as an organization, and (b) that it was operating under a set policy.

#### *The Group Constitutes an Organization*

Courts and scholars agree that non-state actors such as militias that control territory or people can satisfy the organizational element.<sup>428</sup> Moreover, the ICTY has expressly acknowledged that an attack constituting a crime against humanity can emanate from “a terrorist group or organization.”<sup>429</sup> That said, no international criminal tribunal has ever prosecuted a terrorist organization, such as Al-Qaeda, under international criminal law. Additionally, no international criminal tribunal has ever assessed whether a criminal network could qualify as an organization.<sup>430</sup>

Certain scholars argue that the organizational element should only apply to states and quasi-state entities, to the exclusion of criminal syndicates.<sup>431</sup> However, limited scholarship has assessed the applicability of crimes against humanity and, in particular, the organizational element to transnational criminal organizations. Authors have applied the Rome Statute and ICC, ICTY, and ICTR case law to find that transnational criminal organizations, such as the Yakuza of Japan, MS-13 of El Salvador, and Los Zetos of Mexico, constitute an organization for purposes of crimes against humanity analysis.<sup>432</sup>

<sup>425</sup> See, for example, Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014; Fortify Rights interview with #26, Songkhla Province, Thailand, October 6, 2013.

<sup>426</sup> Fortify Rights interview with #15, Kuala Lumpur, Malaysia, August 12, 2014; Fortify Rights interview with #23, Johor State, Malaysia, August 15, 2014; Fortify Rights internal report on human trafficking case, testimony of Muhammad Salim, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, May 10, 2016.

<sup>427</sup> ICC, *Elements of Crimes*, art. 7.

<sup>428</sup> See, for example, William A. Schabas, “Punishment of Non-State Actors in Non-International Armed Conflict,” *Fordham International Law Journal*, Vol. 26, 2003, p. 907, 922 (“It is now beyond any doubt that war crimes and crimes against humanity are punishable as crimes of international law when committed in non-international armed conflict. Non-State actors, who may be members of guerrilla movements, armed bands, and even provisional governments, are subject to prosecution on this basis.”)

<sup>429</sup> *Prosecutor v. Tadic*, Case No. IT-94-1-A, Judgment, July 15, 1999, para. 653.

<sup>430</sup> Schabas, “Punishment of Non-State Actors in Non-International Armed Conflict,” p. 907, 929 (“Whether crimes against humanity also reach into the vast realm of crimes that are more than “random or isolated acts” committed by organized groups like Al-Qaeda, the Red Brigades, the Baader-Meinhof gang, the Irish Republican Army, the Ulster Volunteer Force, and for that matter--why not?--the Hell’s Angels, can hardly be considered to be settled as a matter of law.”)

<sup>431</sup> See, for example, Claus Kress, “On the Outer Limits of Crimes against Humanity: The Concept of Organization within the Policy Requirement: Some Reflections on the March 2010 ICC,” *Leiden Journal of International Law*, 2010, p. 855, 871 (“contrary to a number of bold jurisprudential assertions since the *Kunarac* judgment, the customary definition of crimes against humanity includes the requirement of a policy by a state or a state-like organization and that Article 7(2)(a) of the Statute should also therefore be construed accordingly.”)

<sup>432</sup> See, Jennifer M. Smith, “An International Hit Job: Prosecuting Organized Crime Acts as Crimes Against Humanity,” *Georgetown Law Journal*, 2009, p. 1111; Elissa Bookbinder, “Crimes Committed against Civilian Population by Transnational Criminal Organizations Should Be Considered Crimes against Humanity and Leaders Prosecuted by ICC,” *Willamette Journal of International Law & Dispute Resolution*, Vol. 23, 2016, p. 255.

Indeed, precedent on the organizational element does allow for such an analysis. In the *Republic of Kenya* case, the ICC Pre-Trial Chamber II found reasonable grounds to believe that gangs of young men with varied forms of support from leaders of and businesspersons associated with the main political parties constituted an organization. In making that determination, the court held that “[w]hereas some have argued that only State-like organizations may qualify, the Chamber opines that the formal nature of a group and the level of its organization should not be the defining criterion” of whether that group qualifies as an organization.<sup>433</sup> The Pre-Trial Chamber stressed, rather, that the defining characteristic should be whether the group has “the capability to perform acts which infringe on basic human values.”<sup>434</sup> One author notes that this approach constitutes a “victim-centered approach,” which “favors liberality in terms of the recognition of the types of entity that may be responsible.”<sup>435</sup>

Similarly in *Katanga*, the Chamber sought to ensure that the organization requirement would not “exclude any entities” that satisfied the “widespread or systematic operation involving the multiple commission of acts” elements on the sole ground that they are insufficiently hierarchical to be considered an organization.<sup>436</sup> The Chamber stressed that, “by no means can it be ruled out . . . that an attack against a civilian population may also be the doing of a private entity consisting of a group of persons pursuing the objective of attacking a civilian population.”<sup>437</sup> The *Katanga* Trial Chamber ultimately held that to be an organization under the Rome Statute, it suffices only to have a “set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population.”<sup>438</sup> The Chamber further stressed that “no further requirement [is] necessary” to satisfy the organizational element once it is proven that the group has “sufficient means to promote or encourage the attack.”<sup>439</sup>

In addition to articulating the liberal standard described above, the *Republic of Kenya* case offers factors to consider in making the assessment as to whether a group constitutes an organization under the Rome Statute. Commentators have highlighted the inconsistency of adopting a victim-centered approach, followed by a seemingly separate and distinct articulation of factors, some of which were not relied on by the court in its own assessment.<sup>440</sup> Nonetheless, the factors do provide a more structured framework to approach the analysis, which requires a higher threshold than the victim-centered test.

According to the *Republic of Kenya* case, relevant factors to consider to determine whether a group constitutes an organization are: (i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group directed its criminal activities against the civilian population as a primary purpose; (iv) whether the group exercises control over part of the territory of the State; and (v) whether the group is part of a larger group, which fulfils some or all of the abovementioned criteria.<sup>441</sup> Importantly, these factors “do not constitute a rigid legal definition and do not need to be exhaustively fulfilled.”<sup>442</sup>

<sup>433</sup> *Situation in the Republic of Kenya*, Pre-Trial Chamber II, International Criminal Court, Case No. ICC-01/09, March 31, 2010, para. 90.

<sup>434</sup> *Situation in the Republic of Kenya*, Pre-Trial Chamber II.

<sup>435</sup> Christopher Roberts, “On the Definition of Crimes against Humanity and Other Widespread or Systematic Human Rights Violations,” *University of Pennsylvania Journal of Law & Social Change*, Vol. 20, 2017, p. 1.

<sup>436</sup> *Katanga*, ICC, Case No. ICC-01/04-01/07, para. 1119.

<sup>437</sup> *Ibid.*

<sup>438</sup> *Ibid.*

<sup>439</sup> *Ibid.*

<sup>440</sup> Kress, “On the Outer Limits of Crimes against Humanity,” p. 858–858.

<sup>441</sup> *Ibid.*

<sup>442</sup> *Situation in the Republic of Kenya*, Pre-Trial Chamber II, para. 93.



*Under a responsible command or hierarchy*

The precise contours of the hierarchy of the transnational criminal syndicate responsible for mass trafficking activities in Southeast Asia between 2012 and 2015 are poorly defined. Based on evidence uncovered to date, neither the Commission nor Fortify Rights can say with certainty whether all trafficking activities funnel up to one overarching leader, or instead, whether the group consists of multiple trafficking rings that work in concert with one another to meet its objectives. While substantial details need to be further investigated, the work of the Commission to date, testimony from Thailand’s mass human-trafficking trial, and interviews conducted by Fortify Rights provide sufficient information to confirm the existence of a hierarchy.

Interviews conducted by Fortify Rights with human traffickers revealed the existence of traffickers who are “shareholders” in the trafficking network, and that the shareholders protect one another from arrest.<sup>443</sup> A separate witness closely aligned to traffickers described “team leaders” and “financiers” above the individuals involved in interacting with trafficked persons, whom the prosecution in Thailand’s human-trafficking trial named or prosecuted.<sup>444</sup>

According to testimony from one police commander, the network includes “Source Group” responsible for trafficking at sea, a “Midway Group” that takes individuals from boats for onward trafficking, and a third group called the “Destination Group,” which sends individuals overland to different locations along the Malaysia-Thailand border, including to Padang Besar.<sup>445</sup> According to the same testimony, these groups and sub-groups “coordinate and support each other” by providing vehicles to transport trafficked persons.<sup>446</sup> Moreover, the Destination Group was able to make requests up the chain to the “Source Group” for additional trafficking victims.<sup>447</sup>

Witness testimony from a Rohingya community leader in Rakhine State corroborates the existence of this hierarchical framework and suggests high-level leadership based in Malaysia. The witness stated:

The main trafficker in Malaysia is from our [Rohingya] community . . . There are big traffickers on the ship. They will call the onshore brokers and say, “If you can send ten people, you will get two-million Myanmar Kyat (US\$2,000; 7,000 Malaysian Ringgit) so try to find the people.” [The onshore trafficker] is the agent of the traffickers. He doesn’t know anything.<sup>448</sup>

Evidence provided in Thailand’s human-trafficking trial corroborated the existence of a high-ranking trafficking leader of Rohingya descent. In May 2015, Thai police arrested an individual named Anwar, aka Soe Naing, who police described as “a big guy; a top guy.”<sup>449</sup> Police also said that “[p]hone records, financial transactions and witness testimony point to Anwar, a Rohingya living in the southern Thai province of Songkhla, allegedly playing a central role in the operation.”<sup>450</sup> According to news reports covering the trial, Anwar ran human-trafficking camps on the Malaysia-Thailand border.<sup>451</sup> The Court ultimately sentenced him to 94 years in prison—the longest sentence given to a member of the trafficking network—for his leadership role in the trafficking network.<sup>452</sup>

<sup>443</sup> Fortify Rights interview with #48, Bangkok, Thailand, September 23, 2014.

<sup>444</sup> Pakpanang Court, Testimony of Mr. Thammasorn (aka Vee) Charoenrung, Case no. 784/2558, Nakhon Si Thammarat Province, Thailand May 12, 2016 (Huasai case suing against drivers smuggling).

<sup>445</sup> Fortify Rights internal report on human trafficking case, testimony of Pol. Lt. Col. from Nakhon Sri Thammarat Immigration Office, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, June 22, 2016.

<sup>446</sup> *Ibid.*

<sup>447</sup> *Ibid.*

<sup>448</sup> Fortify Rights interview with #119, Rakhine State, Myanmar, May 20, 2015.

<sup>449</sup> “Thai Police Arrest Rohingya Man Suspected of Running Deadly Jungle Camp,” *Reuters*.

<sup>450</sup> *Ibid.*

<sup>451</sup> Thai General, Cops, Politicians Jailed for Human Trafficking, *Agence France-Presse*, July 20, 2017, <https://news.abc-cbn.com/overseas/07/19/17/thai-general-cops-politicians-jailed-for-human-trafficking> (accessed March 25, 2019).

<sup>452</sup> *Ibid.*

A Thai police colonel also testified that his investigation into the trafficking network identified a “commander” overseeing trafficking operations named Pajjuban Aungkachotephan, aka Ko Tong, described as a “prominent businessman and former politician in the [Thai] southern province of Satun,” who was a “kingpin” and “mastermind” in the trade.<sup>453</sup> According to news reports, police accused Ko Tong of using private resorts he owned on Andaman Sea islands to “shift boatloads of migrants to the mainland, where they were packed into lorries and taken to the fetid camps straddling the Malaysia border.”<sup>454</sup> The Court also found Ko Tong to be responsible for paying off a key Thai general— Lieutenant-General Manas Kongpaen, who was in charge of the Thai government’s “push-back” policy to turn back ships of Rohingya refugees fleeing persecution in Myanmar.<sup>455</sup>

According to press reports, General Manas abused his position and re-routed ships to members of the syndicate for onward movement to the human-trafficking camps along the Malaysia-Thailand border.<sup>456</sup> According to one report, General Manas’ conviction was based on evidence that he received financial kickbacks from Ko Tong. Separate reporting states that General Manas received at least US\$1 million (4 million Malaysian Ringgit) in payments.<sup>457</sup> The Court ultimately convicted General Manas of human trafficking and other crimes and sentenced him to 27 years in prison.<sup>458</sup> For his payments to General Manas and role in facilitating the trafficking network, Ko Tong reportedly received a sentence of 78 years.<sup>459</sup>

The mayor of Padang Besar in Thailand’s Songkhla Province, Banjong Pongphon, also appears to have held a leadership role in the trafficking network.<sup>460</sup> Indeed, the verdict sentencing Banjong found that he “controlled the network.” Padang Besar is a border town between Thailand and Malaysia and only 25 kilometers (15.5 miles) from Wang Kelian in Malaysia’s Perlis State. Padang Besar is also where Thai authorities discovered the mass grave of 36 suspected trafficking victims. Thai police described Banjong as a “key suspect” who “wielded great influence in the area.”<sup>461</sup> According to reports from Ko Tong’s testimony, phone records show Ko Tong and Banjong communicated regularly via telephone.<sup>462</sup>

The Thai court found that Banjong “facilitated [the trafficked persons] transfer to relatives in Malaysia or Myanmar after a payment of between 30,000 Thai Baht (US\$892) and 150,000 Thai Baht (US\$4,465).”<sup>463</sup> The court went on to note that “many who were unable to pay the fee were tortured

<sup>453</sup> Fortify Rights internal report on human trafficking case, testimony of the former Superintendent of Satun Police Station, Pol. Col. Sakesan, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, June 22, 2016. *See also*, “Guilty Verdicts for Rohingya Trafficking Deaths,” *Al Jazeera*.

<sup>454</sup> “Thai General, Cops, Politicians Jailed for Human Trafficking,” *Agence France-Presse*.

<sup>455</sup> *See*, “Guilty Verdicts for Rohingya Trafficking Deaths,” *Al Jazeera*.

<sup>456</sup> “Rise and Fall of General Manas: Thailand’s Top Trafficker,” *Straits Times*, July 23, 2017.

<sup>457</sup> *Ibid*.

<sup>458</sup> Tan Hui Yee, “Thai General Gets 27 Years’ Jail for Human Trafficking,” *Straits Times*, July 20, 2017, <https://www.straitstimes.com/Asia/Se-Asia/Thai-General-Gets-27-Years-Jail-For-Human-Trafficking> (accessed March 25, 2019).

<sup>459</sup> “Thailand: Ex-General, Dozens Convicted in Landmark Human Trafficking Case,” *Radio Free Asia*, July 19, 2017, <https://www.Rfa.Org/English/News/Myanmar/Thailand-Trafficking-07192017170855.Html> (accessed March 25, 2019).

<sup>460</sup> “Thai General Gets 27 Years’ Jail for Human Trafficking,” *Straits Times*.

<sup>461</sup> *Ibid*.

<sup>462</sup> Nontarat Phaicharoen, “Thailand: Defense Phase Under Way In Landmark Human Trafficking Trial,” *Benar News*, January 25, 2017, <https://www.Benarnews.Org/English/News/Thai/Human-Trafficking-01252017171423.Html> (accessed March 25, 2019) (“Banjong called me when his friend visited my neighborhood, asking for recommendations for sight-seeing, Pajjuban said, adding that any phone calls between them were in no way linked to the 13 trafficking charges against him.”)

<sup>463</sup> “Thailand: Ex-General, Dozens Convicted in Landmark Human Trafficking Case,” *Radio Free Asia*.

or killed.”<sup>464</sup> The court convicted Banjong of human trafficking and other crimes and sentenced him to 79 years in prison.<sup>465</sup>

In sum, we know the following about the hierarchy of the transnational criminal syndicate responsible for mass trafficking activities in Southeast Asia between 2012 and 2015: Ko Tong appears to have procured men, women, and children with the aid of General Manas and arranged for their movement to human-trafficking camps; Anwar oversaw at least some of the camps; and Banjong arranged the payments and movement of trafficked persons from the camps to Malaysia. Testimony demonstrates that Ko Tong and Banjong communicated with one another and also “coordinated and supported each other,” for example by “providing vehicles” and helping to source and transport trafficked persons.<sup>466</sup> Testimony further indicates that the Source Group, Midway Group, and Destination Group carried out the physical handling of individuals from Myanmar and Bangladesh to Thailand and Malaysia with support from Ko Tong, Banjong, and others.<sup>467</sup>

What we know of the trafficking structure bears similarities to the structure found in the *Republic of Kenya* case. In the case of the *Republic of Kenya*, the Pre-Trial Chamber found that attacks were “planned, directed or organized by various groups including local leaders, businessmen and politicians associated with the two leading political parties, as well as by members of the police force.”<sup>468</sup> It also noted that “youths were paid for participating in violence” and that politicians and businesspeople “financed the violence or supplied weapons, vehicles and petrol.”<sup>469</sup> In the case of the trafficking network described above, prominent local-government leaders and a wealthy businessperson appear to have funded and directed activities of at least one network with support from Thai authorities. Low-ranking criminals then carried out the trafficking, killings, torture, deprivations, and other abuses.

Based on the limited investigation into the trafficking network, there are reasonable grounds to believe that it possessed a hierarchical structure sufficient to constitute an organization under the ICC’s jurisprudence.

#### *Capable of committing widespread or systematic attacks*

This second prong examines whether the group was capable of committing widespread or systematic attacks.

In *Katanga*, a key factor in finding that the Ngiti combatants constituted an organization was their capability of “conceiving and executing large-scale attacks.” The court highlighted that “despite the discord that may have existed among some commanders, they united and joined forces to prepare to wage the battle against their common enemy . . . .”<sup>470</sup> The *Katanga* court found that the ultimate attack was widespread as it “cost around 200 civilian lives.”<sup>471</sup>

Similarly, the criminal syndicate responsible for mass trafficking activities in Southeast Asia between 2012 and 2015 “united and joined forces” to inflict attacks on a widespread scale against trafficking victims. As evidence of the widespread nature of the attacks, the syndicate committed thousands of instances of imprisonment, at least 800 murders, and numerous instances of torture and rape.<sup>472</sup>

<sup>464</sup> *Ibid.*

<sup>465</sup> *Ibid.*

<sup>466</sup> Fortify Rights internal report on human trafficking case, testimony of Pol. Lt. Col. from Nakhon Sri Thammarat Immigration Office, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, June 22, 2016. *See also*, Thailand: Defense Phase Under Way in Landmark Human Trafficking Trial, *Benar News*.

<sup>467</sup> *Ibid.*

<sup>468</sup> *Situation in the Republic of Kenya*, Pre-Trial Chamber II, para. 117.

<sup>469</sup> *Ibid.*

<sup>470</sup> *Ibid.*

<sup>471</sup> *Id.* at 1127.

<sup>472</sup> *See*, Chapter I. At Sea: Abuses on Human-Trafficking Ships in the Bay of Bengal; Chapter II. On Land: Abuses at Human-Trafficking Camps and Houses in Thailand and Malaysia.

In the *Republic of Kenya* case, the Pre-Trial Chamber examined the systematic nature of the attacks to determine that an organization existed within the meaning of the Rome Statute. The Pre-Trial Chamber focused on the “strategy and method,” noting that the attacks were “well organized” and “regimented.”<sup>473</sup>

As highlighted above, trafficking of Rohingya was similarly well organized, regimented, and financed—from the traffickers in Myanmar and Bangladesh coordinating the movement of Rohingya onto boats, to shipboard traffickers involved in transporting, confining, and torturing captives *en route* to Thailand and Malaysia, to the Midway group who passed the captives off to the Destination Group for eventual placement in human-trafficking camps. The fact that individuals in the chain could request additional victims from others lower down the chain helps demonstrate the organized nature of the operation.<sup>474</sup> At least one wealthy financier made the trafficking activities and prohibited acts associated with them possible by paying off a key Thai general and a local powerbroker.

A more holistic analysis of the widespread and systematic nature of the attacks is set out below.<sup>475</sup>

#### Primary Purpose

The next prong is “whether the group directed its criminal activities against the civilian population as a primary purpose.” This prong has not been expressly tested, though in the *Republic of Kenya* case, the chamber identified facts that arguably point to such a primary purpose. There the chamber stressed that despite accounts of “opportunistic crime which accompanied the general situation of lawlessness” the “violence was not a mere accumulation of spontaneous or isolated acts.”<sup>476</sup> To demonstrate this, the chamber cited evidence of meetings when attacks were coordinated and funding organized.<sup>477</sup>

The violence perpetrated against trafficked Rohingya was “not a mere accumulation of spontaneous or isolated acts;” rather, the violence inflicted in the course of the prohibited acts—in particular, imprisonment, killings, and torture—was a key component of the extortion process.<sup>478</sup> The syndicate existed to engage in for-profit, coercive violence against trafficked persons. Thus, despite the limited information currently known about the internal dynamics and the unclear case law on this point, there are reasonable grounds to believe that the transnational criminal syndicate directed its criminal activities against Rohingya refugees as a primary purpose.

#### Control over territory

It is well established that the enumerated acts “do not even have to be directed or instigated by a group in permanent control of territory” for that group to be considered an organization.<sup>479</sup> Indeed, under international law, “control over the territory was rejected to be a requirement for the existence of an organized armed group.” That said, a factor weighing in favor of finding that a group constitutes an organization is its having “*de facto* control over, or [ability] to move freely within, [a] defined territory.”

The transnational criminal syndicate never had complete control over territory, though its members appear to have had substantial freedom of movement on islands in the Andaman Sea off the coast of Thailand and in the areas along the Malaysia-Thailand border until the regional crackdown on human-trafficking activities in 2015.<sup>480</sup>

<sup>473</sup> *Situation in the Republic of Kenya*, Pre-Trial Chamber II, para. 126.

<sup>474</sup> *Ibid.*

<sup>475</sup> See, Chapter V. Section, “The Contextual Element of Crimes Against Humanity.”

<sup>476</sup> *Situation in the Republic of Kenya*, Pre-Trial Chamber II, para. 117.

<sup>477</sup> *Ibid.*

<sup>478</sup> See, Chapter V. Section, “The Contextual Element of Crimes Against Humanity.”

<sup>479</sup> *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion & Judgment, May 7, 1997, para. 654.

<sup>480</sup> See, for example, “Rise and Fall of General Manas: Thailand’s Top Trafficker,” *The Straits Times* (“The discovery [of a

For example, Ko Tong was accused of “using private Andaman Sea islands” in his receipt to further the trafficking of men, women, and children, indicating *de facto* control over some private islands.<sup>481</sup> Additionally, traffickers had substantial freedom of movement on the Malaysia–Thailand border to establish numerous human–trafficking camps containing hundreds of individuals. In these camps, traffickers had the monopoly of force over trafficked persons and were able to engage in prohibited acts.<sup>482</sup> Moreover, Banjong, as the mayor of a border town where large swaths of jungle housed some of these camps, appears to have been a key leader of the network, helping provide the syndicate with *de facto* control of some of key territory.<sup>483</sup> While the criminal syndicate was under occasional threat from certain state security forces, Fortify Rights documented that traffickers were often tipped off in advance, enabling them to escape and re–purchase their captives from the Thai authorities.<sup>484</sup>

*Part of a larger group, which fulfils some or all of the abovementioned criteria*

Despite the leadership roles of the identified Thai individuals, and the description of the roles of the hands–on traffickers, the precise contours of the transnational criminal syndicate involved in trafficking Rohingya remain opaque. For example, the extent of involvement of Malaysian government officials in the syndicate is unknown. Additionally, there are indications of multiple syndicates, suggesting the existence of a broader human–trafficking cartel, though the number of networks and the identities of the individuals that run them are not known.<sup>485</sup> Without more data, a determination whether the transnational criminal syndicate identified here is part of a larger group is not currently possible, though such a determination is certainly not required. This prong likely exists to help make a determination that a sub–group of a larger organization that itself meets the criteria of an organization, indicates the sub–group may qualify as an organization.

In sum, there are reasonable grounds to believe that a transnational criminal syndicate involved in the trafficking of Rohingya had a hierarchy, was capable of committing widespread and systematic attacks, directed criminal activities against Rohingya refugees as a primary purpose, and enjoyed substantial freedom of movement. Thus, under the standards articulated in the *Republic of Kenya*, there are reasonable grounds to believe that those responsible for the crimes described in this report constitute an organization or organizations for the purposes of the Rome Statute.

*Pursuant to a policy*

Finally, the organization must have conducted the attack “pursuant to or in furtherance of a State or organizational policy to commit such attack.”<sup>486</sup> Thus, the Rome Statute requires proving the existence of a policy. According to the ICC’s *Elements of the Crimes*, this means “that the State or organisation actively promotes or encourages the attack against a civilian population.”<sup>487</sup> ICC jurisprudence recognizes that it is rare for an organization to adopt and disseminate a pre–established design or plan.<sup>488</sup> Rather, precedent allows that a state or organizational policy may

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mass grave in 2015] exposed Thailand’s horrifying role in a criminal operation that shifted victims from Myanmar to Malaysia and forced the ruling junta to launch a belated crackdown.”)

481 “Thai General, Cops, Politicians Jailed for Human Trafficking,” *Agence France Presse*.

482 Fortify Rights interviewed multiple trafficking victims who reported being confined to camps with approximately “900,” “800,” “700” other victims. See, Fortify Rights interviews with eyewitnesses and survivors, 2013–2015.

483 Thai General Gets 27 Years’ Jail for Human Trafficking, *Straits Times*. Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

484 Fortify Rights interview with #50, Bangkok, Thailand, September 23, 2014.

485 See, for example, Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 2015.

486 Rome Statute, Article 7(2)(a).

487 ICC, *Elements of the Crimes*, Article 7, Crimes Against Humanity, p. 5.

488 *Katanga*, Case No. ICC–01/04–01/07, para. 1109. See also, *Bemba*, Case No. ICC–01/05–01/08, para. 160.



“crystallise and develop as actions are set in train and undertaken by the perpetrators.”<sup>489</sup> According to *Katanga*, “policy”— within the meaning of Article 7(2)(a) of the Rome Statute—refers “essentially to the fact that a State or organisation intends to carry out an attack against a civilian population, whether through action or deliberate failure to take action.”

The organization’s policy can be inferred from factors including: (1) that the attack was planned, directed or organized; (2) a recurrent pattern of violence; (3) the involvement of the state or organizational forces in the commission of crimes; (4) an underlying motive; (5) the use of public or private resources to further the policy; and/or (6) statements, instructions or documentation attributable to the state or the organization condoning or encouraging the commission of crimes.<sup>490</sup> Further, as mentioned above, the state or organizational policy may “crystallise and develop as actions are set in train and undertaken by the perpetrators.”<sup>491</sup>

Multiple pieces of evidence indicate that the attack was planned, directed or organized. First, the traffickers organized themselves into three groups, (1) the Source Group, (2) the Midway Group, and (3) the Destination Group.<sup>492</sup> Within both the Source and Midway Groups, traffickers used color-coded wristbands to separate trafficked persons according to their owner.<sup>493</sup> Traffickers built camps in advance of the arrival of trafficked persons, including ones that had semi-permanent structures, demonstrating planning and organization.<sup>494</sup> Additionally, senior leaders of at least one syndicate appear to have specific and complementary roles: (1) Ko Tong was responsible for collecting trafficked persons from ships and paying off General Manas; (2) Anwar was in charge of the human-trafficking camps; and (3) Banjong was in charge of coordinating payments and release of trafficked persons.<sup>495</sup>

As described above, there was also a recurrent pattern of violence, beginning with imprisonment, in some cases murder, torture, and rape on human-trafficking ships, followed by imprisonment, murder, torture, and rape in human-trafficking camps.<sup>496</sup> The uniformity of experiences among individuals interviewed by the Commission, Fortify Rights, and those who testified in the Thailand mass human-trafficking trial is telling.

The requirement that there be “involvement of the state or organizational forces in the commission of crimes” is met by way of individuals belonging to the Source, Midway, and Destination Groups, and senior leadership’s involvement in the commissions of the crimes. The requirement of an underlying motivation is also satisfied here. As described in detail above, the motivation of the transnational criminal syndicate was to obtain financial profit through the violent extortion of the trafficked persons.

As for the other two prongs, there is information on the use of the syndicate’s funds to further the policy, namely Ko Tong’s payments to General Manas, though statements, instructions, or documentation attributable to the syndicate condoning or encouraging the commission of crimes are not available to the Commission or Fortify Rights.

<sup>489</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1110 (“Otherwise stated, the State or organisational policy be part of an ongoing process whose every aspect is not always predetermined before the operation or course of conduct pursued against the targeted civilian population has commenced or even once it has started.”)

<sup>490</sup> *Id.* at 1109. See also, *Bemba*, Case No. ICC-01/05-01/08, para. 160.

<sup>491</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1110.

<sup>492</sup> See, Chapter V. Section, “The Contextual Element of Crimes Against Humanity.”

<sup>493</sup> Fortify Rights interview with #27, Kuala Lumpur, September 27, 2014. See also, Fortify Rights interviews with #23, #55, #67, #74, #75, #77, #78, and #113, Myanmar, Thailand, and Malaysia, 2014–2015.

<sup>494</sup> See, for example, Fortify Rights interviews with #5, 6, 10, and 17, Malaysia, 2015.

<sup>495</sup> *Ibid.*

<sup>496</sup> See, Chapter V. Section, “The Contextual Element of Crimes Against Humanity.”

Finally, there must also be a demonstration that the perpetrators committed the attacks, i.e., the “course of conduct” described above, “pursuant to or in furtherance of” the identified policy.<sup>497</sup> In *Bemba*, the court found that perpetrators conducted attacks in furtherance of an organizational policy, where militia forces: (1) acted consistently with evidence of motives and a method; (2) were aware of the attack; and (3) were soldiers of the organization and acting on behalf of the organization at the relevant time.<sup>498</sup>

The syndicate’s motive, as discussed above, is to gain financial profit through violent extortion. Additionally, as discussed above, the various elements of the transnational criminal syndicate were involved in the commission of the crime and acted on behalf of the syndicate.

As to the second prong, being “aware of the attack,” in *Bemba*, the court found that knowledge should be assumed because the attack directed against a civilian population lasted four months, there were a large number of victims, and the attacks occurred over a large geographical area, indicating knowledge should be assumed given the scale.<sup>499</sup> Here, the trafficking activities conducted by the syndicate lasted several years, involved thousands of victims, and occurred over the span of three countries.<sup>500</sup> Given the scale, as in *Bemba*, knowledge should be assumed.

With all three elements met—an organization, a policy, and conduct pursuant to or in furtherance of that policy—there are reasonable grounds to believe that the attacks were conducted pursuant to or in furtherance of an organizational policy.

Thus, all three elements required to show that acts were directed against a civilian population have been met: (1) there was a course of conduct involving the multiple commission of prohibited acts; (2) against the Rohingya refugee population; (3) which were carried out pursuant to or in furtherance of the trafficking organization’s policy.

### The Attack was “Widespread” or “Systematic”

In addition to demonstrating that the enumerated acts were “directed against a civilian population,” it must be shown that the organization’s attack was either “widespread” and/or “systematic.”<sup>501</sup> Moreover, only the attack must be widespread or systematic—not the individual acts of the perpetrators.<sup>502</sup>

#### Widespread

According to ICC jurisprudence, “widespread” refers to “the large-scale nature of the attack and the number of targeted persons.”<sup>503</sup> Widespread attacks are generally “massive, frequent, [and] carried out collectively” against many people.<sup>504</sup> For example, in the *Bosco Ntaganda* case, the ICC found that attacks against the non-Hema civilian population were widespread because they “resulted in a large number of civilian victims” (more than 300 murders) across a “broad geographical area”

<sup>497</sup> See, *Bemba*, Case No. ICC-01/05-01/08, para. 161. See also, *Katanga*, Case No. ICC-01/04-01/07, para. 1115.

<sup>498</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 161.

<sup>499</sup> *Id.* at para. 691.

<sup>500</sup> See, Chapter V. Section, “The Contextual Element of Crimes Against Humanity.”

<sup>501</sup> *Prosecutor v. Gbagbo*, ICC, ICC-02/11-14-Corr, para. 52 (confirming that an attack need only be widespread or systematic under customary international law). See, *Prosecutor v. Tadi*, ICTY, Case No. IT-94-1-T, Judgment (Trial), May 7, 1997, para. 648; *Prosecutor v. Tadi*, Case No. IT-94-1-A, Judgement (Appeal), July 15, 1999, para. 248.

<sup>502</sup> See, *Bemba*, Case No. ICC-01/05-01/08, para. 162; *Katanga*, Case No. ICC-01/04-01/07, para. 1112; *Kunarac, et. al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 96.

<sup>503</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1113.

<sup>504</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 83.

and were conducted over a period of more than nine months.<sup>505</sup> In *Katanga*, the court found that the attacks were widespread in part because they “cost around 200 civilian lives.”<sup>506</sup>

The acts against the trafficked men, women, and children described in this report were committed “on a large scale” and targeted a large number of individuals. The U.N. reports that more than 170,000 people traveled by sea from the Myanmar and Bangladesh to Thailand and Malaysia from 2012 to 2015.<sup>507</sup> In 2014 and early 2015, Fortify Rights estimates that traffickers were holding several thousand individuals in deplorable conditions on human-trafficking ships at sea and in human-trafficking camps on the Malaysia-Thailand border at any given time.<sup>508</sup> Witnesses also described traffickers confining 700 to 900 people to camps and committing abuses against their captives.<sup>509</sup> Survivors interviewed by Fortify Rights reported witnessing more than 700 murders in human-trafficking camps on the Malaysia-Thailand border from 2012 to 2015.<sup>510</sup>

The attacks also were conducted over a large geographic area. Forcible transfers and imprisonment occurred in Myanmar with abductions of trafficking victims; murder, torture, enslavement, imprisonment, and rape at sea; and further murder, torture, enslavement, imprisonment, rape, and extermination at camps along the Malaysia-Thailand border.<sup>511</sup>

The attacks also took place over multiple years and occurred with regularity. Survivors interviewed by the Commission and Fortify Rights described experiencing and witnessing prohibited acts in the period stretching from 2012 through 2015.

Thus, there are reasonable grounds to believe that the attacks against the trafficked persons were widespread.

### Systematic

The ICC has held that “systematic” refers to the “organized nature of the acts of violence and the improbability of their random occurrence.”<sup>512</sup> When determining whether an attack is “systematic,” international tribunals consider the “pattern of crimes” and the “non-accidental repetition of similar criminal conduct on a regular basis.”<sup>513</sup> In *Ntaganda*, the tribunal found that the attacks, which included killings, arbitrary arrests, rapes, and forceful expulsion of non-Hema civilians from their homes, were systematic as they “followed a recurrent *modus operandi*.”<sup>514</sup> The court based its finding on the perpetrators’ “regular erection of roadblocks, the laying of land mines, and the

<sup>505</sup> *Prosecutor v. Ntaganda*, ICC, ICC-01/04-02/-6, Decision, June 9, 2014, para. 24.

<sup>506</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1127.

<sup>507</sup> United Nations Office on Drugs and Crime, *Global Study on Smuggling of Migrants*, 2018, p. 128, [https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM\\_2018\\_Asia\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_Asia_web_small.pdf) (accessed March 25, 2019).

<sup>508</sup> Fortify Rights interviewed multiple trafficking victims who reported being confined to camps with approximately “900,” “800,” “700” other victims. See, Fortify Rights interviews with eyewitnesses and survivors, 2013–2015. See also, the Commission interviews with eyewitnesses and survivors, 2017. In May 2015, there were an estimated 5,000 to 6,000 Rohingya on ships in the Bay of Bengal awaiting disembarkation. UNHCR Regional Office for Southeast Asia, “Mixed Maritime Movements in Southeast Asia.”

<sup>509</sup> Fortify Rights interview with #17 and #19, Pahang State, Malaysia, August 13, 2014. Fortify Rights interview with #55, Kuala Lumpur, Malaysia, September 27, 2014.

<sup>510</sup> See, Chapter I. Section, “Killings, Deaths from Deprivations, and Suicides;” Chapter II. Section, “Killings and Preventable Deaths.”

<sup>511</sup> See, Chapter V. Section, “Prohibited Acts of Crimes Against Humanity;” Chapter V. Section, “The Contextual Element of Crimes.”

<sup>512</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1123 (citing *Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*, ICC, ICC-02/05-01/07-1-Corr, Decision (Pre-Trial), April 27, 2007, para. 62.

<sup>513</sup> *Id.* at para. 1123.

<sup>514</sup> *Id.* at para. 1124.

coordinated commission of the unlawful acts . . . [including that the perpetrators] (i) carried out arbitrary arrests; (ii) raped non-Hema women; (iii) forcibly expelled non-Hema civilians from their homes; and (iv) destroyed their property.”<sup>515</sup>

Moreover, the *Katanga* court considered in its analysis of the systematic nature of the charged offenses whether there existed “identical acts or similarities in criminal practices, continual repetition of a same *modus operandi*, similar treatment meted out to victims or consistency in such treatment across a wide geographic area.”

Interviews from witnesses describe a consistent and recurrent *modus operandi* that traffickers followed in the attacks. This included sourcing of individuals by deception and, in some cases, by abduction; holding trafficked persons in captivity at sea and depriving them of food, water, and space while also threatening and committing torture and murders; and further imprisonment, torture, rape, murder, and deprivations in camps along the Malaysia-Thailand border.<sup>516</sup> The uniformity of experiences among the many witnesses interviewed by the Commission, Fortify Rights, and those who testified in Thailand’s mass human-trafficking trial is indicative of a systematic attack.

The systematic nature of the attack is further confirmed by the use of wristbands to divide up and designate trafficked persons to specific members of the criminal syndicate. On most ships, traffickers gave color-coded wristbands to their captives, signifying who “owned” them. Fortify Rights documented black, white, yellow, and red-colored wristbands. This color-coded representation is a clear example of a syndicate adhering to an established *modus operandi*.<sup>517</sup>

Based on the facts above, there are reasonable grounds to believe that the forced deportation, imprisonment, torture, enslavement, rape, murder, and, extermination traffickers perpetrated against Rohingya refugees at sea and in Thailand and Malaysia from 2012 to 2015 constitutes an “attack” that was both widespread and systematic.

### Perpetrators had Knowledge About the Attack

The final requirement for a finding of any crime against humanity is that the accused must have acted “with knowledge of the attack.” International courts and tribunals have interpreted this requirement loosely. The perpetrators need not share a purpose; in fact, they may each commit their respective acts for “purely personal reasons.”<sup>518</sup> The accused party need not even have intended to commit the offense, as long as “his acts comprise part of that attack [on the civilian population].”<sup>519</sup> Indeed, the *Elements of Crimes* clarifies that this requirement of knowledge “should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization.”<sup>520</sup> Instead, the perpetrator only needs to know “that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.”<sup>521</sup> The perpetrator’s motive for committing the prohibited acts is “irrelevant.”<sup>522</sup>

With respect to the knowledge requirement, the *Katanga* tribunal found that “the perpetrators of the acts were members of the militia . . . and they committed the murders, rapes and sexual

<sup>515</sup> *Ibid.*

<sup>516</sup> See, Chapter V. Section, “The Contextual Element of Crimes.”

<sup>517</sup> See, for example, Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 2015 (“The *dallal* said that if I reached Malaysia my life would develop so much.”)

<sup>518</sup> *Kunarac, et. al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 103.

<sup>519</sup> *Id.* at 434; *Prosecutor v. Kunarac*, Case No. IT-96-23, Appeal Judgment, June 12, 2002, para. 102.

<sup>520</sup> ICC, *Elements of Crimes*, art. 7(2).

<sup>521</sup> See, for example, ICC, *Elements of Crimes*, art. 7(1)(a)(3), 7(1)(b)(4), 7(1)(c)(3), 7(1)(d)(5), and 7(1)(e)(5).

<sup>522</sup> *Kunarac, et. al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 103.

slavery in the knowledge of that attack and that their acts formed part of it.”<sup>523</sup> In finding that the militia in question had requisite knowledge of the attack in the *Bemba* case, the tribunal stressed that the attack directed against a civilian population lasted four months, there were a large number of victims, and the attacks occurred over a large geographical area, indicating knowledge should be assumed given the scale.<sup>524</sup>

Since at least 2012, many individuals participated in trafficking Rohingya, spanning three countries, routinely committed acts of enslavement, murder, torture, and rape of trafficked men, women, and children. Leaders of the criminal syndicate, including Ko Tong, Banjong, and Anwar, worked together to direct the procurement of trafficked persons, oversee their sites of captivity, arrange payments for release, and move survivors out of the camps.<sup>525</sup> For example, the judgment in the Thai trafficking case described Banjong as having “controlled” the syndicate and as the “big boss” of one of the human-trafficking camps, which demonstrates his knowledge of the overall operation.<sup>526</sup>

Further, testimony documented in this report demonstrates that Source Group recruiters or traffickers on shore in Rakhine State, Myanmar and Cox’s Bazar District, Bangladesh were in contact with the Destination Group and were aware of the treatment that would occur on the ships.<sup>527</sup> The traffickers in the camps referred to Rohingya as “black chickens” and could see the volume of captives and their Rohingya ethnicity.<sup>528</sup> The volume of this extortion was such that one high-level financier was able to pay the Thai Lieutenant General at least US\$1 million (4 million Malaysian Ringgit), while payments for one survivor were often around US\$2,000 (7,000 Malaysian Ringgit). Indeed, estimates indicate that the trafficking ring in total generated US\$250 million (more than 1 billion Malaysian Ringgit) from 2012 to 2015.<sup>529</sup>

Just as in *Bemba*, where the scale of victims, the large geographical area, and the period of time over which the acts occurred established knowledge of the attack, the traffickers involved in the syndicate could see the scale of the business, were aware that they were working in tandem with individuals in multiple countries, and committed these acts over a period of multiple years. Thus, there are reasonable grounds to believe that the transnational criminal syndicate had knowledge of the attack.

The analysis above demonstrates that there are reasonable grounds to believe that a transnational criminal syndicate committed prohibited acts of murder, extermination, enslavement, deportation or forcible transfer, imprisonment, rape, and torture with the necessary knowledge of widespread and systematic attacks that directly targeted the civilian Rohingya population in Myanmar and Bangladesh. With all those factors satisfied, there are reasonable grounds to believe that the elements for crimes against humanity have been met.

<sup>523</sup> *Katanga*, Case No. ICC-01/04-01/07, para. 1166.

<sup>524</sup> *Bemba*, Case No. ICC-01/05-01/08, para. 691.

<sup>525</sup> See, Chapter V. Section, “The Contextual Element of Crimes Against Humanity.”

<sup>526</sup> “Press Release,” Information and Public Relations Division Office of the Judiciary, July 19, 2017, p. 228.

<sup>527</sup> Fortify Rights interview with #119, Rakhine State, Myanmar, May 20, 2015. Fortify Rights internal report on human trafficking case, testimony of Pol. Lt. Col. from Nakhon Sri Thammarat Immigration Office, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, June 22, 2016. Fortify Rights interview with group of human traffickers, #74, Selangor State, Malaysia, September 27, 2014.

<sup>528</sup> Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016. See also, Fortify Rights interviews with human traffickers and human trafficking survivors, 2013-2015.

<sup>529</sup> Lindsay Murdoch, “Human Traffickers ‘Killing Rohingya and Bangladesh Refugees’ On Bay Of Bengal Route,” *Sydney Morning Herald*, May 12, 2015, <https://www.smh.com.au/world/human-traffickers-killing-rohingya-and-bangladesh-refugees-on-bay-of-bengal-route-20150512-ggzoxl.html> (accessed on March 25, 2019).



## THE CRIME OF HUMAN TRAFFICKING

As supplements to the U.N. Convention Against Transnational Organized Crime, States adopted three additional protocols, two of which are relevant to this report: the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the “Protocol to Prevent Trafficking”) and the Protocol Against the Smuggling of Migrants by Land, Sea, and Air (“Protocol Against Smuggling of Migrants”).<sup>530</sup> States adopted the Protocols to establish “comprehensive international approach[es]” to the prevention of trafficking in persons and the smuggling of migrants.<sup>531</sup>

This section will examine the difference between trafficking and smuggling and the commitments Malaysia, Thailand, and Myanmar have made under one or both Protocols. Although the Convention and its Protocols provide no enforcement mechanisms, they require States to adopt “such legislative and other measures as may be necessary to establish as criminal offenses the conduct set forth in . . . [the] Protocol[s].”<sup>532</sup> Accordingly, Malaysia, Thailand, and Myanmar have each adopted domestic legislation prohibiting trafficking.<sup>533</sup> To give effect to this legislation, it is incumbent upon Malaysia, Thailand, and Myanmar to prosecute violations and offer protection and assistance to trafficked persons.

### Trafficking in Persons Distinguished

Trafficking and smuggling are distinct legal concepts. The offense of trafficking in persons under the Protocol to Prevent Trafficking has three elements: 1) the act of “recruitment, transportation, transfer, harbouring or receipt of persons;” 2) through the means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or the giving or receiving of payments or benefits “to achieve the consent of a person having control over another person;” and 3) a purpose of exploitation, including sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.<sup>534</sup>

In contrast, the offense of smuggling of migrants under the Protocol Against Smuggling of Migrants has only two elements: 1) the procurement “of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;” and 2) for the purpose of obtaining “directly or indirectly, a financial or other material benefit.”<sup>535</sup> Thus, the crime of trafficking contains two elements not present in smuggling: a prohibited *means* of gaining control over a migrant and an *exploitative purpose* for doing so.<sup>536</sup> In contrast, smuggling is simply aiding, for profit, a migrant to cross an international border without authorization.

<sup>530</sup> Notably, Malaysia, Thailand, Myanmar, and Bangladesh are parties to the U.N. Convention Against Transnational Organized Crime, adopted November 15, 2000, G.A. Res. 55/25, U.N. Doc. A/55/383, ratified by Malaysia September 24, 2004, ratified by Thailand October 17, 2013, acceded to by Myanmar March 30, 2004, and acceded to by Bangladesh on July 13, 2011. Malaysia, Thailand, and Myanmar are also parties to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Protocol to Prevent Trafficking”), November 15, 2000, G.A. Res. 55/25, U.N. Doc. A/55/383, acceded to by Malaysia February 26, 2009, ratified by Thailand October 17, 2013, and acceded to by Myanmar March 30, 2004. Thailand has signed and Myanmar is party to the Protocol Against the Smuggling of Migrants by Land, Sea, and Air (“Protocol Against Smuggling of Migrants”) November 15, 2000, G.A. Res. 55/25, U.N. Doc. A/55/383, acceded to by Myanmar March 30, 2004 and signed by Thailand December 18, 2001.

<sup>531</sup> Protocol to Prevent Trafficking, pmb. para. 1; Protocol Against Smuggling of Migrants, pmb. para. 1.

<sup>532</sup> Protocol to Prevent Trafficking, art. 5(1); Protocol Against Smuggling of Migrants, art. 6(1).

<sup>533</sup> See, figure 1, setting forth the text of Malaysia’s Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (2007), Thailand’s Anti-Trafficking in Persons Act, B.E 2551 (2008), and Myanmar’s State Peace and Development Council Law No. 5/2005.

<sup>534</sup> Protocol to Prevent Trafficking, art. 3(a).

<sup>535</sup> Protocol Against Smuggling of Migrants, art. 3(a).

<sup>536</sup> Protocol to Prevent Trafficking, art. 3(a).

Importantly, the Protocol to Prevent Trafficking explicitly provides that a person's consent does not negate the element of exploitation so long as the trafficker employs one of the enumerated means.<sup>537</sup> Thus, even where individuals begin their journey as smuggled migrants, paying smugglers an agreed-upon sum for their services, they become victims of trafficking if they are forced into an exploitative relationship by the journey's end through the perpetrator's use or threat of force, coercion, abduction, fraud, or abuse of power.<sup>538</sup>

Further, under the Protocol to Prevent Trafficking, the element of exploitation requires an intent to exploit only, not that exploitation actually occur.<sup>539</sup> For example, trafficking has occurred if a perpetrator transported a migrant or refugee through the use of coercion with *intent* to exploit the person.<sup>540</sup> It remains trafficking even if law enforcement intervenes to prevent the contemplated exploitation from actually occurring or if the trafficked person escapes.<sup>541</sup>

This report demonstrates that all three elements of the crime of human trafficking—(1) the act, (2) the means, and (3) the purpose—as defined under the Protocol to Prevent Trafficking occurred during the movement of men, women, and children from Myanmar and Bangladesh to Thailand and Malaysia between 2012 and 2015.

### The Act

The first element of human trafficking is the act of “recruitment, transportation, transfer, harboring or receipt of persons.” The Protocol to Prevent trafficking does not include definitions or examples of these five specific acts. However, in a joint study on trafficking in organs, the European Union and United Nations drafted definitions for each one.<sup>542</sup> These definitions are not codified in international law but are helpful guidance in evaluating whether an element is met. Following each definition below is a brief account of how those responsible for mass trafficking activities in Southeast Asia between 2012 and 2015 meet each act.

“Recruitment is to be understood in a broad sense, meaning any activity leading from the commitment or engagement of another individual to his or her exploitation. It is not confined to the use of certain means and therefore also includes the use of modern information technologies.”<sup>543</sup> Perpetrators who deceived people into boarding ships in Myanmar and Bangladesh under the false pretense that better opportunities awaited them in Malaysia or who accepted payments fulfilled the “recruitment” requirement.<sup>544</sup>

“Transportation is also a general term and does not define any particular means or kinds of transportation. The act of transporting a person from one place to another constitutes this element . . . it is not necessary for the victim to have crossed any borders, nor is it necessary for the victim to be present illegally in a state's territory. The offence therefore includes transnational and national trafficking.”<sup>545</sup> Perpetrators who transported Rohingya men, women, and children within, into or out of Myanmar, Bangladesh, Thailand, or Malaysia fulfilled the “act” requirement of “transportation.”<sup>546</sup>

<sup>537</sup> *Id.* at art. 3(b).

<sup>538</sup> *Ibid.*

<sup>539</sup> United Nations Office on Drugs and Crime, *Legislative Guide for the Trafficking in Persons Protocol*, para. 33.

<sup>540</sup> Anna Gekht, “Shared but Differentiated Responsibility: Integration of International Obligations in Fight Against Trafficking in Human Beings,” *Denver Journal of International Law and Policy*, Vol. 37, Iss. 29, 2008, p. 30 n. 2.

<sup>541</sup> *Ibid.*

<sup>542</sup> See, Council of Europe and United Nations, *Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs*, 2009, p. 78.

<sup>543</sup> *Ibid.*

<sup>544</sup> See, Chapter I. Section, “Deception.” Fortify Rights interview with #118, Songkhla Province, Thailand, May 8, 2015; Fortify Rights interview with #121, Sittwe Township, Rakhine State, Myanmar, May 26, 2015.

<sup>545</sup> *Ibid.*

<sup>546</sup> See, Chapter I. Section, “Deception.” Fortify Rights Interview with #60, Kuala Lumpur, Malaysia, September 28, 2014. Fortify Rights interview with #17, Pahang State, Malaysia, August 13, 2014.

“The transfer of a person includes any kind of handing over or transmission of a person to another person . . . As the term and the scope of the offence are broad, the explicit or implied offering of a person for transfer is sufficient; the offer does not have to be accepted for the offence of trafficking in human beings to be constituted if the other elements are also present.”<sup>547</sup> Perpetrators who handed over individuals to ships destined for Thailand, passed people off to the Midway Groups or the Destination Groups, and Thai officials who transferred people from Thai government custody to traffickers committed the act of “transferring.”<sup>548</sup>

“The harbouring of persons means accommodating or housing persons in whatever way, whether during their journey to their final destination or at the place of the exploitation.”<sup>549</sup> Perpetrators who held people on human-trafficking ships at sea and human-trafficking camps and houses on the Malaysia-Thailand border committed the act of “harboring.”<sup>550</sup>

The receipt of persons is not limited to receiving them at the place where the exploitation takes place, but also means meeting trafficked persons at agreed places on their journey to give them further information on where to go or what to do. This element seems nearly identical to “transfer of a person” and was met under similar circumstances as described above.

## The Means

Eyewitness and survivor testimonies documented by the Commission and Fortify Rights reveal numerous instances of traffickers gaining control over trafficked persons through the use of deception, threats and use of force, and abuse of power towards those in positions of vulnerability, and coercion, thereby satisfying the means element of the Protocol to Prevent Trafficking.

Traffickers deceived Rohingya refugee men, women, and children by misrepresenting the cost and conditions of transportation as well as the destination.<sup>551</sup>

The widespread practice of using and threatening to use force against trafficked persons constitutes a separate ground for satisfying the means element of human trafficking. Nearly all survivors interviewed by the Commission and Fortify Rights whom traffickers transported via ships or confined to human-trafficking camps described instances in which armed perpetrators killed, beat, tortured, or otherwise abused them or other captives.<sup>552</sup>

Perpetrators also violated the means element by abusing the power they wielded over desperate Rohingya.<sup>553</sup> During every step of the journey from Myanmar or Bangladesh, the perpetrators took advantage of their unrelenting power over their captives: initially preying on desperation to escape Myanmar and/or Bangladesh, then holding, beating, torturing, and otherwise abusing “passengers” on board purposeful ships while also depriving them of food, water, and space, and committing further abuses against victims while confining them to human-trafficking camps. The traffickers put the Rohingya in positions in which they had “no real and acceptable alternative but to submit to the abuse involved.”

<sup>547</sup> *Ibid.*

<sup>548</sup> Fortify Rights interview with #10, Kuala Lumpur, Malaysia, August 11, 2014.

<sup>549</sup> *Ibid.*

<sup>550</sup> See, Chapter I. At Sea: Abuses on Human-Trafficking Ships in the Bay of Bengal; Chapter II On Land: Abuses at Human-Trafficking Camps and Houses in Thailand and Malaysia.

<sup>551</sup> See, for example, Fortify Rights Interview with #75, #81, #19, #54, #05, and #69, Malaysia between August and October 2014.

<sup>552</sup> Fortify Rights interview with #44, #10, #120, #81, and #50, Malaysia, Thailand, and Myanmar in 2014 and 2015.

<sup>553</sup> Protocol to Prevent Trafficking, art. 3(a). See also, United Nations Office on Drugs and Crime, *Legislative Guide for the Trafficking in Persons Protocol*, para. 34 (“The reference to the words “abuse of a position of vulnerability” is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”)

## The Purpose

The perpetrators conduct constitutes exploitation under the Protocol's definition because they subjected the refugees to conditions that amount to "slavery or practices similar to slavery."<sup>554</sup>

Under international law, slavery takes place when a "perpetrator exercise[s] any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."<sup>555</sup> By identifying Rohingya refugees as their property, depriving them of their liberty, and selling or threatening to sell them to others, the perpetrators "exercised any or all of the powers attaching to the right of ownership" over their captives and therefore engaged in the practice of slavery or, at a minimum, "practices similar to slavery." Moreover, when women under the control of the traffickers could not generate the money to secure their release, traffickers sold them into marriages or as domestic servants.<sup>556</sup> Selling women into marriage or labor is a "practice[] similar to slavery" under international law.<sup>557</sup>

There are reasonable grounds to believe that the actions taken by the trafficking networks satisfies the Protocol to Prevent Trafficking.

## Resulting Obligations

The distinction between smuggling and trafficking is not merely semantic. Article 5 of the Protocol Against Smuggling provides that "migrants shall not become liable for criminal prosecution" for being the object of the acts of smuggling that States criminalize pursuant to the Protocol. This protection against criminal prosecution for smuggled migrants is quite different than the assistance State Parties to the Protocol to Prevent Trafficking commit to offer to survivors of trafficking.

Article 6 of the Protocol to Prevent Trafficking enumerates several protections States are obligated to offer to survivors of trafficking: including ensuring that a State Party's "domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."<sup>558</sup> Further, in appropriate circumstances, States should endeavor to provide trafficked persons housing, counseling and information, medical, psychological, and material assistance, and employment, educational, and training opportunities.<sup>559</sup>

<sup>554</sup> *Ibid.*

<sup>555</sup> ICC Statute, Art. 7(1)(c). *See also*, Convention to Suppress the Slave Trade and Slavery, 60 LNTS 253, Sept. 25, 1926, entered into force Mar. 9, 1927, at Art. 1; *Prosecutor v. Krnojelac*, ICTY, Case IT-97-25-T, Trial Chamber Judgment, para. 350, Mar. 15, 2002.

<sup>556</sup> *See*, Chapter II. Section, "Forced Marriages and Domestic Servitude of Women and Girls."

<sup>557</sup> Supplementary Slave Convention, Art. 1 ("[P]ractices similar to slavery" include "any . . . practice whereby [a] woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to . . . [any] person or group."). Although some women and girls sold into marriage or domestic service gave their consent, their consent was not given freely. *See* Legislative Guide for the Trafficking in Persons Protocol, para. 33, ("Once it is established that deception, coercion, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence.")

<sup>558</sup> Protocol to Prevent Trafficking, art. 6(6), 6(3)(a)-(d).

<sup>559</sup> *Ibid.*

## Domestic Trafficking Legislation in Key States Compared to the U.N. Protocol to Prevent Trafficking

	United Nations	Malaysia	Thailand	Myanmar
<b>Act</b>	U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons (2003)	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (2007)	Anti-Trafficking in Persons Act, B.E 2551 (2008)	State Peace and Development Council Law No. 5/2005
	"recruitment, transportation, transfer, harbouring or receipt of persons," art. 3(a).	"recruiting, transporting, transferring, harbouring, providing or receiving of a person," §2.	"procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person," ch. 1 § 6	"recruitment, transportation, transfer, sale, purchase, lending, hiring, harboring or receipt of persons," ch. 1 § 3.
	"threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person," art. 3(a).	"threat; use of force or other forms of coercion; abduction; fraud; deception; abuse of power; abuse of the position of vulnerability of a person to an act of trafficking in persons; or the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person," §13.	"threat or use of force, abduction, fraud, deception, abuse of power, of the giving money or receiving of benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control," ch. 1 § 6	"threat, use of force or other form of coercion; abduction; fraud; deception; abuse of power or of position taking advantage of the vulnerability of a person; and giving or receiving of money or benefit to obtain the consent of the person having control over another person," ch. 1 § 3.
<b>Purpose</b>	"for the purpose of exploitation," art. 3(a).	for "the purpose of exploitation." §2.	"with the purpose of exploitation," ch. 1 § 6	"for the purpose of exploitation of a person with or without his consent," ch. 1 § 3.





# RECOMMENDATIONS

## TO THE GOVERNMENT OF MALAYSIA

- **ENSURE** the Royal Malaysian Police take immediate action to investigate and obtain evidence in cases involving human trafficking. The Police should avoid unnecessary delays that would affect evidence.
- **IDENTIFY** and prosecute all those responsible for crimes against humanity in the human trafficking of Rohingya and Bangladeshis from Myanmar and Bangladesh to Malaysia from 2012 to 2015.
- **TAKE** action against personnel from the enforcement agencies if it is proven that delays in the investigation into Wang Kelian were deliberate and intentional to destroy evidence. Disciplinary action must also be initiated against personnel who did not carry out a thorough investigation according to standard operating procedure and guidelines.
- **RELEASE** immediately human-trafficking survivors detained in immigration detention facilities, including government-run shelters, and drop immigration-related charges.
- **ENSURE** all enforcement agencies have proper guidelines and procedures in identifying “undocumented foreign migrants” to ensure that those who may be categorized as “victims of human trafficking” or smuggling or any other criminal activities are identified and not processed under general immigration law.
- **ENSURE** compulsory trainings for all officers of enforcement agencies dealing with human trafficking and smuggling of migrants to identify survivors of human trafficking in line with international standards.
- **ENSURE** human-trafficking survivors and refugees have access to legal status and protections in line with international human rights law, including access to employment, education, and health care opportunities. Provide full and effective reparations to survivors of human trafficking, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
- **SUPPORT** the work of the Royal Commission of Inquiry by ensuring it is fully resourced, has access to supplemental technical expertise, and is allowed time-extensions if needed to facilitate a comprehensive and effective investigation into the mass graves and human trafficking in Wang Kelian with a view towards accountability. Fully implement recommendations resulting from the Royal Commission of Inquiry.
- **ENSURE** various relevant law enforcement agencies enhance coordination and information-sharing to prevent human trafficking. Border-control agencies should improve coordination mechanisms and hold frequent meetings to analyze the data of people’s movements in the border area. The information provided by local residents should not be used only to effect an arrest but also to identify and ensure protection for survivors of trafficking.
- **ENSURE** the National Strategic Office of Anti-Trafficking and Anti-Smuggling of Migrants coordinates more effectively with relevant agencies in prosecuting human traffickers, protecting survivors, and preventing human-trafficking from happening in the future.
- **ENGAGE** in meaningful consultation with various stakeholders, such as non-governmental organizations and civil society organizations, to develop proper procedures to identify and protect survivors of human trafficking and ensure National Strategic Office of Anti-Trafficking and Anti-Smuggling of Migrants and relevant authorities do the same.

- **AMEND** Malaysia’s Anti-Trafficking in Persons and Smuggling of Migrants Act to bring it in line with the Palermo Protocol and international human rights law, particularly by expanding its definition of “trafficking in persons” and separating the law’s treatment of the crimes of smuggling and trafficking.
- **CLARIFY** that “serious offences” under the Anti-Money Laundering Act include offenses related to human trafficking. Use the existing anti-money laundering framework to identify proceeds from human trafficking and to use asset seizures in prosecutions and convictions.
- **RATIFY** the 1951 Refugee Convention and its 1967 Protocol and develop a domestic legal framework to regulate the status and protection of refugees.
- **CONTINUE** to work with the international community to support current and future international efforts to hold accountable perpetrators of genocide and crimes against humanity against Rohingya Muslims and other ethnic and religious minorities in Myanmar.
- **ENGAGE** the Association of Southeast Asian Nations and the wider international community to ensure Myanmar authorities:
  - Allow free and unfettered access for humanitarian aid organizations, journalists, and human rights monitors to all areas of Rakhine State.
  - Abolish all discriminatory policies and practices in Rakhine State that violate human rights, including restrictions on the right to nationality and freedom of movement, marriage, childbirth, and other basic rights.
  - Ensure equal access to full citizenship rights regardless of ethnic identity and in line with international standards.
  - Ensure safe, dignified, and voluntary returns for all displaced Rohingya in accordance with international standards.

## TO THE ROYAL COMMISSION OF INQUIRY

- **ENSURE** the work of the Royal Commission of Inquiry is transparent, accessible, and to the extent possible and at the appropriate time, open to the public.
- **ESTABLISH** the facts and circumstances surrounding the human trafficking, deaths, mass graves, and government response at Wang Kelian and mass human trafficking to Malaysia from 2012 to 2015.
- **ASSESS** collected facts under Malaysian and international law for all violations of law. With respect to international law, consider a “reasonable grounds to believe” standard of proof and consider the Rome Statute’s definition and elements of crimes against humanity, in addition to the definition of “trafficking in persons” provided by the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons as well as under Malaysian law.
- **IDENTIFY**, where possible, those responsible for the human trafficking and mass graves in Wang Kelian and provide concrete recommendations to prevent future violations, protect the rights of survivors of violations, and ensure accountability for violations.
- **ENSURE** recommendations include reparations for survivors of trafficking, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

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From 2012 to 2015, more than 170,000 Rohingya Muslims and Bangladeshis fled Myanmar and Bangladesh by sea, boarding ships bound for Thailand and Malaysia. Preying largely on the desperation of Rohingya to escape persecution in Myanmar, traffickers lured men, women, and children onto ships with promises of safety and security in Malaysia. Instead of finding safety and security, traffickers held people captive in deplorable conditions on human-trafficking ships at sea and in human-trafficking camps on the Malaysia-Thailand border. Traffickers gave their captives three options: buy their release, be sold into further exploitation, or die.

In May 2015, Thailand and then Malaysian authorities discovered mass graves in remote camps along the countries' shared border, exhuming scores of remains believed to be victims of human trafficking.

*The report finds reasonable grounds to believe that a transnational criminal syndicate committed crimes against humanity against trafficked persons, including acts of murder, extermination, enslavement, forcible transfer, torture, and rape/sexual slavery.*

**"Sold Like Fish"** is based on a multi-year investigation by the Human Rights Commission of Malaysia (SUHAKAM) and Fortify Rights. It sheds new light on the mass human trafficking from Myanmar and Bangladesh to Thailand and Malaysia from 2012 to 2015.

The report is intended to support the work of the newly-established Royal Commission of Inquiry into mass graves at Wang Kelian, Perlis State in Malaysia as well as the Government of Malaysia in their respective efforts to establish the truth and hold perpetrators accountable. It provides detailed information that may be used to finally ensure justice and accountability for crimes perpetrated against the untold numbers of trafficking victims and survivors.