MIGRATION DISPLACEMENT AND BRIEFING NOTE SERIES II

STATE OF EVIDENCE HIGH HARM, HIGH VOLUME MIGRATION

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Migration Displacement and Briefing Note - Series II

State of Evidence
High Harm, High Volume Migration

1   EXECUTIVE SUMMARY

Through the Oxfam-Monash Partnership, Oxfam commissioned a series of briefing notes on migration and displacement issues to identify and scope sources of data and information as a means to provide an evidence base around three key migration themes: Women and Irregular Migration; High Harm, High Volume Migration; and Migration: A Positive Driver for Development?

This paper focuses on High Harm, High Volume Migration, with a particular focus on South East Asia. This 'State of Evidence' has been presented across the briefing note series as a platform from which Oxfam International and Oxfam Australia can best determine the policy, campaigning and advocacy work it can contribute in the area of migration and displacement.

2   INTRODUCTION

Migration through the Asia-Pacific accounts for some of the most high-volume migration pathways in the world and also some of the most dangerous. The Asia-Pacific region hosts over 59 million of the world's total 244 million migrants (24%) (estimated by the International Organization for Migration (IOM) in 2015). Most of these migrants are temporary workers and have travelled to neighbouring countries and within the region while some have travelled further afield internationally outside of the region. More than 95 million of the world's migrants (39%) have originated from the region, migrating both within and outside of the region. [1]

Temporary migrant worker flows in the region are hard to quantify given that irregular pathways exist for migrant workers alongside regulated travel and employment opportunities (see Briefing Note 3: 'Migration: A positive driver for development'). However, available estimates show that millions are on the move each year as economies of the region develop. For example, annually, there are nearly two million departures from the Philippines, and more than half a million migrant workers leaving Bangladesh, India, Indonesia and Pakistan for opportunities within the region. [2] Migration into situations of forced labour is also a significant regional issue with the International Labour

Organization (ILO) reporting in 2012 that the Asia-Pacific region accounts for the largest number of forced labourers in the world, with 56% of the global total in the region. [3] More recent figures from United Nations Office on Drugs and Crime (UNODC) in 2014 show that in East Asia, South Asia and the Pacific, 64% of victims of trafficking were in situations of forced labour compared with 40% at the global level. [4]

Regional migration flows can be characterised as mixed, with different kinds of migrants moving through, to and from the region. Whilst there are regular and irregular migration movements, this briefing paper will have a focus on irregular migration journeys and routes, largely for the purpose of labour migration and asylum seeking, which increase migrant exposure to danger and harm. To further contextualise and explain the nature of the high harm, high volume migration issue it is important to acknowledge the levels of conflict and violence in the region resulting from ethnic and political identity politics, urbanisation and development. [5] Known irregular migration movements through the region include forced, trafficked and smuggled migrants, economic migrants and asylum seekers. Journeys can be made via the sea, across borders overland and by air, all with varying degrees of risk.

3 | BACKGROUND TO THE ISSUE

South East Asia's rapid economic growth in the past two decades has seen a causational increase in regional mobility, both within the region and to and from the region[6], which includes a high number of irregular, low skilled labour migrants (see Briefing Note 3: 'Migration: A positive driver for development?'). Many of these migrants are not afforded human and labour rights protections which puts them in vulnerable and precarious migration and employment situations.

Estimates from the ILO in 2013 show that the Asia-Pacific region hosts 17.2% of migrant workers worldwide (25.8 million people).[7] It is estimated that one-third of migrant workers in the Asia-Pacific region have irregular status which demonstrates the large-scale irregular labour migration trend in the region. The region is characterised by relatively porous borders and long established, largely unregulated irregular migration routes. Complex, costly and limited labour recruitment practices and processes for regular migration leave irregular migration as the most efficient, attractive and viable option for many labour migrants in the region.[8]

Migration for domestic servitude is a common labour migration pathway, particularly for women, at both global and regional level. Around 80% of all migrant workers globally and in the region are women.[9] ILO estimates from 2016 show that of the 67.1 million domestic workers worldwide, 17.2% (11.5 million) are migrant domestic workers.[10] In the Asia-Pacific region, there are an estimated 21 million domestic workers. Of all migrant workers in the region, 39% are in domestic service.[11] The domestic servitude sector within the region and outside for those regional migrants traveling internationally to the Middle East for example, has been linked to irregular migration and exploitation, including human trafficking. Regulated migration pathways into domestic servitude also exist however, with regular or irregular migrant status. These workers are often vulnerable to exploitation given that they work in private households, behind closed doors and without adequate labour protections in destination countries (see Briefing note 3: 'Migration: A positive driver for development?').[12]

Trafficking in persons to, within, and from the region for the purposes of sexual and labour exploitation, as well as domestic servitude, is also an irregular migration movement traditionally associated with high harm.[13] Reliable estimates

of trafficked and smuggled migrants remain unknown given the difficulties in collecting quantifiable data on these migrant groups due to their irregular status and lack of law enforcement and criminal justice data from investigations and cases from countries in the region. However, trafficking of persons, including for purposes of sexual and labour exploitation and domestic servitude, remains a well-documented issue.[14]

Recent estimates show that 30 million persons were trafficked in the Asia-Pacific region in 2015, with 2.63 million from within the region.[15] IOM data shows that of 7,000 identified trafficked persons assisted by the organisation in 2015 in the region, 88.4% were trafficked into situations of forced labour (excluding domestic work).[16] Within the region, there is a very large number of forced labourers. In 2012 the ILO estimated that within the region there were 11.7 million forced labourers, or 56% of the global total. This marks the region as having the highest absolute numbers of forced labourers in the world by far.[17]

Large-scale irregular migration has also come about as a result of ethnic and state-based persecution against the Rohingya in Myanmar with people moving through the Andaman Sea route from Bangladesh to Thailand, Indonesia and Malaysia. The May 2015 crisis exposed the dangers and risks associated with this maritime journey. From communal based violence in Rakhine State in 2012 against the stateless Rohingya and other (non-stateless) Muslim ethnic groups such as the Kaman, Amnesty International reports that 125,000 Rohingya were internally displaced[18] while the ASEAN Parliamentarians for Human Rights estimate this number to be up to 140,000.[19] As a result of this violence and displacement, by 2014-2015 it is estimated that 94,000 people, most of whom were Rohingya, took the boat journey from the Bay of Bengal through the Andaman Sea to reach places of safety in Thailand, Malaysia and Indonesia.[20] Additionally, in two months in 2017, over 600,000 Rohingya fled across the border into Bangladesh. Other migrant and refugee ethnic groups from Myanmar have also been affected by decades of conflict, oppression and forced displacement including the Kachin in the North and the Karen and Karenni in the South East.[21]

Following the most recent violence in Rakhine state against the Rohingya in August 2017, there has been another large-scale migration

2012
11.7 MILLION
FORCED LABOURERS IN
THE ASIA PACIFIC

2013
25.8 MILLION
MIGRANT WORKERS IN
THE ASIA PACIFIC

2015
AN ESTIMATED 30 MILLION
PERSONS WERE TRAFFICKED
IN THE ASIA PACIFIC

48%
OF MIGRANTS IN
SOUTH-EAST ASIA
ARE WOMEN

39.2%
OF ALL MIGRANT WORKERS
IN THE REGION ARE
DOMESTIC WORKERS

movement of Rohingya who are crossing from Myanmar to safety in Bangladesh. UNHCR estimates that over 500,000 Rohingya refugees were on the move in a period of less than five weeks from when this recent violence broke out.[22] This scale of movement is the largest the region has seen since the Indochinese crisis in the 1970s. The media has reported over 180 deaths of Rohingya refugees along this route, mostly from boat capsize incidents where refugees crossed the Naf River or skirted the Bay of Bengal to get from Rakhine State to Cox's Bazar.[23]

Other irregular migration pathways facilitated by people smugglers are traveled to and through South East Asia by people from the Middle East and elsewhere seeking asylum. These people are transiting in the region with plans for onwards travel to places of safety in the West.[24] At the end of 2016, UNHCR reported that there were 140,482 asylum seekers (just over 4% of global asylum seeker numbers), nearly 3.2 million refugees, and over 2.7 million internally displaced people in the Asia-Pacific region.[25] The region has the highest numbers of stateless persons of all regions in the world with nearly 1.5 million people reported to be stateless in 2016.[26]

NATURE AND SCALE OF THE ISSUE – WHAT DOES THE EVIDENCE SAY ABOUT THE ISSUE?

South East Asia continues to be a deadly region for irregular migrants. In 2014, IOM estimated that migrants and asylum seeker deaths from South East Asia accounted for an estimated 6% of border-related fatalities globally. However there are concerns that large numbers of deaths go unknown and unreported due to them occurring in geographically remote locations and in the absence of national and regional mechanisms for counting and accounting for border deaths.[27] Irregular migration by its very nature will often expose migrants to some degree of risk or harm during the migration journey. Journeys

within the region can be made by a variety of modes including by sea, overland (car, bus, on foot) and by plane, all of which are associated with particular, but also common risks. Labour migration is often facilitated by people smugglers and informal recruitment channels and these are largely informal networks where smugglers are usually known by the migrants who engage them to facilitate their journey.[28] Although a degree of trust may be developed between migrants and their facilitators, putting their migration journey in the hands of the smugglers will often leave migrants vulnerable.

FLOWS

With regard to labour migration within the region, South East Asia has been characterised as one labour migration system with two groupings of states – emigration and immigration. Emigration states include The Philippines, Cambodia, Myanmar, Lao PDR, Vietnam, and Indonesia whilst immigration states are those that are more developed in the region: Singapore, Brunei, Malaysia and Thailand.[29] Labour migration flows extend out from the region to destinations in the Middle East, Africa and Europe.[30]

Other irregular migration flows to and through the region including people seeking asylum, trafficking, and smuggling routes from the Middle East and the Bay of Bengal into the region, with internal regional journeys through Thailand, Indonesia and Malaysia as points of destination or transit for onwards journeys including to Australia, Canada and the United States for example.[31]

MALAY-THAI BORDER

BAY OF BENGAL

12 OF EVERY 1000 PEOPLE WHO EMBARK ON MIXED MARITIME MOVEMENTS FROM THE BAY OF BENGAL DO NOT SURVIVE THE BOAT JOURNEY

OVERLAND TRAVEL DANGERS

PHYSICAL DIFFICULTIES SUCH AS EXHAUSTION, DEHYDRATION, STARVATION, AS WELL AS THREATS OF EXTORTION AT THE HANDS OF SMUGGLERS TO FACILITATE ONWARD JOURNEYS

PLANE TRAVEL DANGERS

REGULAR ENTRY INTO THE COUNTRY CAN SHIFT WHEN VISAS EXPORE DUE TO UNFORSEEN LENGTHY PERIODS OF TRANSIT

BOAT TRAVEL DANGERS

96% OF BORDER DEATHS BETWEEN INDONESIA AND AUSTRALIA FROM 200 ARE FROM BOAT CAPSIZE AND DROWNING INCIDENTS

UP TO 8000 LEFT STRANDED AT SEA DURING THE ANDAMAN SEA CRISIS

JOURNEY RISKS: OVERLAND, PLANE AND SEA

Known risks and dangers for migrants associated with overland travel include physical difficulties such as exhaustion, dehydration, starvation and exposure to disease as well as threats of extortion at the hands of smugglers to facilitate onward journeys. Smuggler camps discovered along the Thai-Malaysian border in 2015 exposed these camps as holding places for smuggled migrants traveling in to South East Asia from the Andaman Sea route and overland through Thailand towards Malaysia. Whilst held in these camps, smugglers demanded further ransom payments as a condition of onwards travel. Thai and Malaysian authorities found 28 smuggler camps and 139 mass graves in May 2015 at Wang Kelian along its border with Thailand, yet could not identify how many bodies were held in each grave.[32] An additional 24 skeletons were found by Malaysian authorities in 18 more graves in August 2015.[33]

Plane travel may appear to be a relatively risk free mode of transport within the region. The example of Iranian asylum seekers in transit in Indonesia shows how regular entry into the country can shift when visas expire due to unforeseen lengthy periods of transit. Before the Australian Government's Operation Sovereign Borders (OSB) policy to 'stop the boats' of people seeking asylum travelling to Australia came into effect, Indonesia was a known transit point for Iranians seeking asylum in Australia, many of whom arrived in Indonesia by plane on valid visas. However, once OSB took effect from September 2013 and boats were forcibly turned back, this route to Australia was 'closed'. The Australian Government also put in place a policy not to allow resettlement in Australia of refugees who had registered with UNHCR- Indonesia after 1 July 2014. This approach resulted in longer periods of transit in Indonesia whilst people seeking asylum waited for asylum processing in Indonesia via UNHCR, or whilst they planned to continue their journey either to Australia if the route reopened, or to an alternative destination. These conditions meant that many Iranians then overstayed their visas becoming unlawful migrants and living precarious lives in transit because of their now irregular status.[34]

Irregular migrant boat journeys are notoriously dangerous and carry high levels of risk including death.[35] The Australian Border Deaths Database, hosted by the Border Crossing Observatory, provides a regularly updated record of all publicly reported border deaths, including the deaths of people seeking asylum travelling to Australia

by boat from Indonesia from January 2000 to present. To date (June 2017), of the 1,993 deaths recorded, 96% of these deaths have occurred from boat capsizes and drownings of people traveling to Australia by boat from Indonesia or in Australian waters.[36] These are the numbers of known Australian border deaths as reported in the media, through NGO alerts and in coroners' reports. As the data shows, most deaths occur at sea. However, given the irregular mode of travel, verification of information on these border deaths and the true number of those who have died is extremely difficult to record. The number of people drowning at sea is therefore likely to be significantly higher than that recorded by the Australia Border Deaths Database, with many more people presumed to have drowned en route to Australia.

The Andaman Sea crisis in 2015 exposed the dangers of irregular migration by sea within South East Asia from the Bay of Bengal to Thailand, Malaysia and Indonesia. This unregulated maritime route has been used by irregular migrants for decades.[37] However surges in the number of irregular migrants travelling this maritime route began in 2014 leading to the Andaman Sea crisis in May 2015. Over 94,000 irregular migrants, including stateless Rohingya fleeing persecution and violence in Myanmar since 2012 and Bangladeshi irregular migrants, made maritime journeys facilitated by people smugglers on crowded boats. Several Governments in the region were not willing to allow these people to disembark. The IOM reported that 8,000 persons were left stranded at sea during at the peak of the May 2015 crisis period.[38] The UNHCR reported that at least 5,000 persons were left stranded at sea during this time, with an additional 1,000 persons unaccounted for, but who may have unofficially disembarked without the authorities' knowledge.[39]

When high quality and credible data on border deaths and irregular migration trends is collected, it can be used to identify and humanize those who have died as well as impact on government accountability for these deaths and on policy shifts towards safer migration pathways. There is a dearth of rigorous empirical data on border deaths, root causes of irregular migration journeys, the journeys themselves, migrant decision-making, resettlement patterns and related activity in the South East Asia region. Increasing data and analytic capacity at national and regional level can assist in better forecasting

peaks and troughs in regional irregular migrations flows in order to respond to surges in these flows with a humanitarian preparedness.

The UNHCR was the only organisation to report on the number of deaths during the Andaman Sea Crisis, estimating a fatality rate three times higher than that for refugees and asylum seekers travelling through the Mediterranean Sea in the same period.[40] The UNHCR (2016) further reported that 'approximately 12 of every 1,000 people who embark on mixed maritime movements from the Bay of Bengal do not survive the boat journey. This means as many as 2,000 Bangladeshis and Rohingya may have died before ever reaching land in the past four years (since 2012)'.[41]

As well as the risk of death, other boat journey risks include dehydration and disease, cramped conditions, lack of food and water, beatings from smugglers and crew members, and extortion.[42] All of these risks were reported during the Andaman Sea Crisis and have likely been occurring in the decades that this unregulated sea route has been used as an irregular migration pathway within the region.

RISK VULNERABILITIES FOR WOMEN IRREGULAR MIGRANTS

Women are vulnerable to gender based violence which has been documented as occurring both during the sea journey and at the migrant smuggler camps during the Andaman Sea Crisis in May 2015.[43] Women are increasingly taking irregular migration journeys in the region, which has led to the emergence and recognition of gender based conditions of risk and harm experienced by women during irregular migration alongside gender based violence. Examples include pregnancy (which can also be connected to gender based violence), traveling with children and a heightened vulnerability to death, including by drowning at sea (see Briefing Note 1: 'Women and Irregular Migration').[44]

RISKS ON ARRIVAL

Irregular labour migrants face dangers and risks at workplaces in destination countries including exploitation and long working hours, unsafe conditions, underpayment or lack of remuneration and at times, sexual and physical harassment at the hands of their employers. As irregular migrants they are at constant risk of arrest, sometimes extortion, detention and deportation by the authorities.[45]

National and regional labour laws, including the protection of workplace rights, are largely underdeveloped and often do not provide irregular migrant workers with protections in the workplace (see Briefing note 3: 'Migration: A positive driver for development?'). This reflects a lack of integration between labour and migration governance in the region.[46] 'Given the high demand for workers in the region, and the known high number of migrant workers who are irregular, there is a need to strengthen labour regulation at national and regional level for migrant workers to provide protections to temporary migrant workers as well as to control migration and access to employment opportunities.

KEY ISSUES

High harm, high volume migration is a factor of long standing irregular migration trends in the region. A high proportion of migrants in the region have irregular migration status including labour migrants, people seeking asylum, trafficked and smuggled persons, making them vulnerable to risk and exploitation along their migration journey and at destination points.

Irregular migrants are vulnerable to exploitation and high harm migration journeys because of their irregular status. This can occur both during the migration journey and at points of transit and destination. A lack of workplace rights and protections to irregular labour migrants in the region makes them particularly vulnerable to workplace exploitation.

Women irregular migrants are increasingly on the move and therefore exposed to gender related migration vulnerabilities including gender based violence, exploitation and risk of death. Evidence shows that the number of women irregular migrants in the region has increased (see Briefing note 1: Women and irregular migration).

National and regional responses to irregular migration are underdeveloped which has an impact on safer migration pathways. The Andaman Sea Crisis in May 2015 exposed regional inadequacies and abilities to respond to such a situation where existing foundations for a regional approach to people smuggling (and trafficking in persons), including the Bali Process and ASEAN regional cooperation frameworks, failed.[47]

National and regional responses to irregular migration in the region have focused largely on the criminalisation of both trafficking and smuggling where some countries continue to confuse the two.[48] According to UNODC, there are four distinct differences between migrant smuggling and trafficking in persons. These rest on consent, exploitation, transnationality and source of profit as outlined in the definitions provided by the United Nations *Convention against Transnational Organized Crime* and its *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* (Palermo Protocols).[49] Whilst there is a difference between the two, the demarcation is not so clear in real life. Smuggling often occurs within the context of large-scale migration which can present numerous possibilities for abuse. Individuals, most often women and children, may start off as paying clients of human smugglers but end up as trafficking victims.[50] This has created difficulties in law enforcement investigative responses and has arguably had little deterrent impact in terms of prevention. Human rights norms surrounding the protection of irregular migrants are largely absent from any regional and national responses[51] where responses are instead likely to result in the detention or removal of irregular migrants.

The South East Asian response at both Bali Process and ASEAN level has been to try to halt irregular migration and prevent smuggling and trafficking of people across borders. There are opportunities to increase capacity to assess and implement safe migration pathways that can sufficiently respond to current and likely future volume of migrants. With the closing of key South East Asian borders, reliance on the services of smugglers becomes a more likely option for those looking to enter South East Asia when fleeing conflict and seeking economic opportunity.

Regional instruments and norms associated with refugee protection and human rights have not developed at any length or speed to provide effective and humanitarian responses to any future crisis of a similar nature. Attempts to disrupt and criminalise trafficking and smuggling activities have been made, but protection needs for irregular migrants or access to safe migration pathways have not been sufficiently considered or developed. The Bali Process has gone some way towards addressing this through commitments within the Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (March 2016) around protection and establishing an emergency mechanism to respond to crises like the Andaman Sea crisis.

4 | RECENT TRENDS

In this time of rapid economic development in the region, there has been a correlating increase in irregular labour migration, putting a large number of migrants in precarious and vulnerable positions with regard to their migration journey and employment. National and regional labour rights protections have not advanced to protect all migrant workers. As reported by the ASEAN Trade Union Council in December 2016, ASEAN Member States rely on their disparate national labour laws with no concrete initiative to develop a collective, regional and harmonised rights-based labour governance system.[52]

There was an increase in the number of reported border deaths in the region following the Andaman Sea Crisis which highlighted the dangers of irregular maritime journeys through this long established sea route as well as the dangers exposed by the discovery of mass graves at

jungle smuggler camps along the Thai-Malaysian borders in the lead up to the crisis. These dangers include extortion and violence at the hands of smugglers before onward journeys are facilitated, gender based violence and reports of rape against women, starvation, dehydration, disease and death.

There is an increase in the numbers of women irregular migrants in the region. Data from South East Asia supports this evidence and reflects global statistics with a reported increase in the numbers of women migrating in the region showing that women now make up nearly half of all migrants in the region (48%). Women are exposed to heightened gender based vulnerabilities during irregular migration journeys, including death (see Briefing Note 1: 'Women and irregular migration').

Cau Long Biên, Hanoi, Vietnam
Photo: Hoach Le Dinh

5 | RESEARCH, POLICY AND PROGRAM OPPORTUNITIES

Empirically there is an obvious need for compelling data sets as well as the rich detailed migration experience accounts from migrants if we are to build a complex and informed picture of who, where and why women and men are at risk of harm during irregular migration journeys in the region. Even simply counting border deaths provides a foundation for debate and accountability and change. The facticity of numbers is powerful when seeking to move government and inter-governmental regional approaches to managing migration.

More generally, to date, regional responses to irregular migration have focused most on criminalising smugglers and tightening border

control through law enforcement and immigration control. Interlacing humanitarian concerns alongside these security measures is necessary in the development of an effective response to minimise harm during the migration journey and in seeking to create safer migration pathways for irregular migrants in the region.

In addition, further research on why national and regional labour laws including the protection of workplace rights are largely underdeveloped and often do not provide irregular migrant workers with protections in the workplace would be beneficial. The role of and space for civil society in advocating for these frameworks should be further considered.

6 | RECOMMENDATIONS

- Advance safe migration pathways in the region through support for national and regional approaches to irregular migration

- Promote regular labour mobility pathways that provide greater and safer opportunities for women

- Promote the robust and comprehensive collection of data on irregular migration trends in the region

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