THE IRRAWADDY
Covering Burma and Southeast Asia

CONTRIBUTOR

Rohingya Status Needs Careful Definition

By ROSALIA SCIORTINO Monday, January 26, 2009

The perilous flight of the nearly 1,000 Rohingya who made it to Thailand in December before they were sent back to sea is a sign of worsening humanitarian crisis in the region.

Their plight has not always made the news headlines like they have been in recent weeks. But since 2006, more and more Rohingya have attempted to reach Malaysia by transiting through Thailand in search of a more welcoming environment in Muslim countries – other than the traditional destination options of Bangladesh and Saudi Arabia, where increasingly restrictive measures have been implemented.

The Rohingya are a marginalised Muslim ethnic group from the northern Rakhine state of Western Myanmar on the border with Bangladesh.

The Arakan Project, an independent NGO, estimated in June 2008 that in the last two years more than 8,000 Rohingya, 5,000 of them since October 2007, have sailed from the coast of Bangladesh to southern Thailand and then overland to Malaysia, with the support of an extended network of smugglers.

But as Malaysia changed its policy toward the Rohingya and indefinitely postponed the registration process, more of them remain stranded in Thailand for longer periods before eventually managing to enter Malaysia. Confronted with increasing arrivals of Rohingya, in March 2008 then Prime Minister Samak Sundaravej broached the idea of detaining them in a to-be-built "tough" immigration detention centre on a deserted island off the Southern coast in order to discourage others from following.

In the latest incident, as the ‘South China Morning Post’ published photographs of groups of Rohingya held on Koh Sai Daeng, an island near Phuket in Thailand, news started to emerge that an estimated 992 Rohingya who had made it to Thailand after rough sailing through the Andaman Sea, had been arrested, brought to the island and forcibly expatriated.

Allegedly, news reports say, the Thai navy set them back to sea from Koh Sai Daeng on engine-less boats and with scarce supplies. Abandoned in international waters, reports add that about half of them have probably drowned, and the remaining have been found adrift near the Andaman Islands in India and off the coast of Aceh in Indonesia.

In commentaries, different terms have been used to define the Rohingya, including "trafficked victims", "refugees", "forced migrants" and "illegal migrants".

Even if inaccurate, the interchangeable use of terms could be tolerated considering that they all relate to the broad concept of "international migration"—vaguely defined as the crossing of national borders for a determined period of time. As a result, statistics count as "international migrants" anybody living outside their nation of birth, thus clustering together disparate social groups such as students, migrant workers, refugees, and even persons who, without moving, find themselves in a foreign country after the redrawing of national boundaries. Still, in this case, precision has more than semantic value, because the choice of a particular definition has implications for the kind of treatment Rohingya can aspire to.

Dispute centres on whether the Rohingya should be considered refugees – that is, persons who are forced from their countries by war, civil conflict, political strife or gross human rights violations. Such a definition would automatically grant them international protection and allow them to seek asylum from persecution (becoming in this case "asylum seekers").

Indeed, there are strong reasons for arguing that the Rohingya are leaving their villages because of political persecution and abuses. With a history dating back to 7th century when Arab Muslim traders settled in Arakan (Rakhine), the estimated 3 million Rohingya were denied their ethnic minority group status by the Citizenship Act of Burma in 1983 and relegated to statelessness, violence and discrimination.

BETWEEN A CROCODILE AND A SNAKE

Hundreds of thousands have fled across the border to Bangladesh, where they survive in inadequate refugee camps, with more and more seeking a better life further down until the political situation in Burma changes. As a refugee of Nayapara camp put it in a 2002 Medicine Sans Frontiers report: "I was born in Burma, but the Burmese government says I don't belong there. I grew up in Bangladesh, but the Bangladesh government says I cannot stay here. As a Rohingya, I feel I am caught between a crocodile and a snake."

Thailand, however, has no legal provisions for refugees and asylum seekers, or for the determination of their status. It has not signed the 1951 United Nations Convention Relating to the Status of Refugees or its 1967 protocol, which defines who are refugees, their rights, and the legal obligations of states to protect them. Thailand considers "refugees" to be "illegal migrants" who, being in breach of the Immigration Act, are subject to arbitrary arrest, detention, prosecution, and deportation.

Yet many of them have been allowed temporary respite in the country, their deportation delayed as a time-bound exception, and the United Nations High Commissioner for Refugees and other bodies

have been authorised to operate in the country and to offer humanitarian assistance. In the past three decades, Thailand has de facto provided asylum to some 1.2 million refugees from the Greater Mekong Subregion and beyond, and still, somewhat reluctantly, hosts hundred thousands of them. The Rohingya, however, are not one of the selected groups.

Since the start of increased Rohingya influx to Thailand two years ago, the official position has been that they are smuggled labour migrants, if not trafficked victims. It has also been mentioned that Rohingya are a threat to national security because of possible links, so far unproven, with insurgents in the South. As such, they have no standing ground as refugees, do not deserve UNHCR involvement, and cannot make claim to the non-forcible return (refoulment) principle. Consequently, the main approach has been to deport them: as illegal migrants who breached immigration law, they are thought to deserve to be expelled, and if they are trafficked victims they would want to be repatriated.

In the wake of the latest incident, incumbent Prime Minister Abhisit Vejjajiva restated the view that Rohingya as illegal immigrants should be "sent back", although is not clear whether to Burma or to Bangladesh. Hence, the Thai Ministry of Foreign Affairs has called a regional meeting with Myanmar, India, Bangladesh, Indonesia and Malaysia "to solve the problem of illegal immigration across the Andaman Sea". Over the weekend, Indonesia denied asylum to the 193 stranded Rohingya expelled from Thailand because they are "economic migrants, not political asylum seekers".

That economic factors compound Rohingya migration could very well be the case. In addition to political persecution, Rohingya face insecurity also in other aspects of their lives, lacking adequate food and shelter in northern Rakhine state as well as in the refugee camps in Bangladesh.

When abroad, they do take up jobs when available, irrespective of poor work and living conditions. The estimated 20,000 Rohingya now in Ranong, Phuket and other southern locations in Thailand, find unskilled and low-status work in the plantation, construction and tourism sectors to repay the smugglers, and to support themselves and their further travel to Malaysia.

Still, in view of the mixing of political and economic conditions, it ought to be asked whether the Rohingya's hope for better livelihood opportunities can be taken, as authorities do, as a disclaimer of their escaping abuses that compromise their refugee status. More generally, is a migrant who ostensibly escaped famine or forced displacement from politically and economically devastated countries such as Burma in less need of international protection than an asylum seeker and/or refugee who flees conflict?

Even if Rohingya movements are seen as economically driven, discussion is needed on whether labour migrants are of so little value to the destination country that their presence can be easily

dismissed. Thailand has about 2 million migrant workers from the Greater Mekong Region, mainly from Burma, of whom about two-thirds are fully "illegal" and the remaining are registered for work, but still not considered legal from an immigration standpoint.

The cheap labour of these vulnerable, undocumented migrants has been found to enhance the competitiveness of the Thai economy and contribute 1.25 percent or 2 billion of the national GDP (177 billion U.S. dollars in 2005).

Governments in the region may also want to reflect on whether “illegal” status justifies the perpetration and tolerance of human rights abuses against migrants. Are draconian measures the appropriate response to the transgression of borders by powerless people in search of a safer and more productive life? Don’t migrants deserve adequate protection irrespective of their legal status?

Reflections on these issues will hopefully lead to policies based on principles of common humanity and to the recognition that, even if the Rohingya meet the definitional criteria of "economic migrants", they remain political refugees. As it cannot be expected that "conditions for voluntary repatriation of the Rohingya in safety and dignity” can be created in Burma, based on humanitarian principles it is imperative for governments in the region to jointly set the conditions to protect the Rohingya and respect their human rights outside of their homeland, no matter how their status is defined.

Rosalia Sciortino is a cultural anthropologist and development sociologist. Currently, she is working as an associate professor at the Institute for Population and Social Research, Mahidol University, and visiting professor at the Masters in International Development Studies at Chulalongkorn University in Bangkok. She wrote this for IPS Asia-Pacific’s Mekong series (www.newsmekong.org).

Copyright © 2008 Irrawaddy Publishing Group | www.irrawaddy.org