

The Colours of Exploitation: Smuggling of Rohingyas from Myanmar to Malaysia

Warna-Warni Eksploitasi: Penyeludupan Rohingya dari Myanmar ke Malaysia

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ABSTRACT

Irregular migration is inevitable due to a long history of systematic human rights persecutions facing the Rohingyas in Myanmar. Their irregular migration has been made possible by the presence of smuggling networks whose business operations were motivated by multiple factors beyond merely profit seeking. Essentially, smuggling of migrants is often associated with element of mutual benefit between the two parties namely the smuggler and migrant. Additionally, a migrant who has agreed to be smuggled has given his or her consent. Given the various factors that motivate such smuggling service, the question arises, does aspect of exploitation exist in this mutually beneficial transaction? If yes, on what basis does it constitute exploitation? In the event where smuggling service is offered to assist Rohingyas to ensure safe migration and to flee from long human rights persecutions, can this be considered as an act of exploitation? Are there any extreme acts where smugglers commit on physical violence, harassment and various forms of manipulation against the victims? This study seeks to explore on these research inquiries. Despite the existence of elements such as mutual benefit and consent throughout the smuggling of Rohingya victims, this study found that exploitation still exists. In the event where smuggling of Rohingyas were inspired by the spirit of brotherhood and solidarity, the study argues that the failure of smugglers to uphold their prima facie moral obligation not to extract benefit from Rohingyas who cannot reasonably refuse their offers – still account to exploitation. Worse, the use of deception, coercion, forced labour and forced marriage were not uncommon employed by the smugglers in order to intimidate and threaten victims. This suggests that some smuggling activities are likely to turn into trafficking in persons incidents where aspects of mutually beneficial and victims' consent are no longer applied. Findings in this study were derived from a yearlong field work in 2013 by engaging Rohingya refugees, asylum seekers as well as Rohingya community leaders and activists in Peninsular Malaysia.

Keywords: Exploitation; Rohingya; refugees; smuggling of migrants; trafficking in persons

ABSTRAK

Migrasi secara haram berlaku akibat pencabulan hak asasi manusia yang berpanjangan terhadap kaum Rohingya di Myanmar. Migrasi secara haram dapat dilakukan dengan bantuan rangkaian penyeludup yang mana orientasi perniagaan mereka ditentukan oleh pelbagai faktor; merentasi keperluan mengaut keuntungan semata-mata. Umumnya, penyeludupan migran sering dikaitkan dengan elemen "keuntungan bersama" diantara kedua-dua pihak iaitu penyeludup dan migran yang diseludup. Seorang migran yang diseludup juga selalunya telah menyatakan "kerelaan" untuk diseludup. Disebabkan terdapat pelbagai faktor yang mendorong aktiviti penyeludupan migran dilakukan, terdapat persoalan sama ada wujudkah aspek eksploitasi dalam aktiviti penyeludupan migran? Jika ya, apakah asas yang menyatakan kewujudan eksploitasi tersebut? Dalam kes dimana penyeludupan migran dilakukan bagi membantu Rohingya melarikan diri dari pencabulan hak asasi manusia di Myanmar, seterusnya memastikan mereka melalui satu proses migrasi yang selamat, adakah ini dianggap satu tindakan eksploitasi? Wujudkah tindakan eksploitasi secara ekstrem yang melibatkan tindakan seperti keganasan fizikal, penganiayaan dan pelbagai bentuk manipulasi terhadap mangsa Rohingya? Kajian ini dilakukan bagi mengupas persoalan-persoalan tersebut. Walaupun terdapat elemen "keuntungan bersama" dan "kerelaan" dalam penyeludupan Rohingya, kajian

ini mendapati bahawa eksploitasi masih wujud. Dalam konteks dimana penyeludupan Rohingya dilakukan berdasarkan semangat persaudaraan dan solidariti, kajian ini berhujah bahawa penyeludup masih gagal untuk menegakkan tanggungjawab sosial prima facie, dengan tidak mengaut keuntungan daripada Rohingya yang tidak mampu untuk menolak tawaran penyeludupan mereka. Oleh yang demikian, ia masih dianggap sebagai satu bentuk eksploitasi. Sementara itu, tindakan seperti memperdaya, memaksa dan mengeksploitasi mangsa Rohingya bagi tujuan buruh paksa dan kahwin tanpa rela merupakan manifestasi yang jelas sebagai satu bentuk eksploitasi secara melampau. Penemuan kajian ini hasil daripada kajian lapangan yang dilakukan pada 2013 yang melibatkan orang pelarian dan pencari suaka politik Rohingya, ketua-ketua pimpinan serta aktivis Rohingya di semenanjung Malaysia.

Kata kunci: Eksploitasi; Rohingya; pelarian; penyeludupan migran; pemerdagangan orang

INTRODUCTION

Irregular migration is inevitable due to a long history of human rights persecutions facing the Rohingyas in Myanmar (Ullah 2011; Azharudin & Azlinariah 2012; Equal Rights Trust 2014). Since early 1970s, nearly 1 million of Rohingyas have fled their homeland in the Rakhine state of Myanmar, in search of political sanctuary in neighboring countries.

Based on data provided by various aid agencies that operated in Bangladesh, it was estimated that at least 625,000 Rohingyas were currently stranded in Bangladesh, as of September 2017 (Anon. 2017). In the meantime, the Office of the High Commissioner for Human Rights (OHCHR) described the recent human rights persecutions facing the Rohingyas were a textbook example of ethnic cleansing, forcing no less than 300,000 Rohingyas to cross Myanmar-Bangladesh borders between August and September 2017 alone (Office of the High Commissioner for Human Rights 2017).

Rohingyas' irregular migration to Bangladesh, to a certain extent, is just a beginning of their long migration process. Some Rohingyas managed to reach to other countries such as Thailand, Malaysia and Indonesia. As of September 2017, there were a total of 150,000 Rohingya refugees and asylum seekers who reached and are currently stranded in Malaysia (United Nations High Commissioner for Refugees 2017). Their irregular migration has been made possible by the presence of smuggling networks whose business operations were motivated by multiple factors beyond merely profit seeking.

Nevertheless, fewer emphases are given both in academic and policy researches on the smuggling of Rohingyas from Myanmar or any transit country towards Malaysia. Essentially,

smuggling of migrants is often associated with element of mutual benefit between the two parties namely the smuggler and migrant. Additionally, a migrant who has agreed to be smuggled has given his or her consent.

Legally, in Malaysia, the Anti-Trafficking in Persons & Anti-Smuggling of Migrants act (ATIPSOM) defines smuggling of migrants as;

"... arranging, facilitating or organizing, directly or indirectly, a person's unlawful entry into or through, or unlawful exit from, any country of which the person is not a citizen or permanent resident either knowing or having reason to believe that the person's entry or exit is unlawful."

(Federal Government of Malaysia, ATIPSOM (2010))

The ATIPSOM act does recognize aspect of exploitation but as an aggravated offence of smuggling under Section 26[B], with proviso that such exploitation must take place after entry into Malaysia or at a transit country. This means that the smuggling of migrants does not necessarily involve an act of exploitation. Rather, if it does exist, sentence will be heightened.

Given the various factors that motivate the smuggling of Rohingyas, the question arises, does aspect of exploitation exist in this mutually beneficial transaction? If yes, on what basis does it constitutes exploitation? In the event where smuggling service is offered to assist the Rohingyas to ensure safe migration and to flee from long human rights persecutions by the Government of Myanmar, local vigilante and religious extremists, can this be considered as an act of exploitation? Are there any extreme acts where smugglers commit physical violence, harassment and various forms of manipulation against the victims?

Grounded on these research questions, this study aims to explore the many forms of exploitation facing the Rohingyas as victims of smuggling, derived exclusively from their own experiences. In doing that, this study refers to the existing theoretical framework of wrongful exploitation derived heavily from the work of Valdman (2009), and supported by earlier studies undertaken by Wood (1995) and Wertheimer (1996). Existing theory of wrongful exploitation has assisted this study to analyse and explain the relationship between the way in which the Rohingya victims are treated and many forms of exploitation committed by the members of the smuggling networks.

The conduct of this study is timely, provided that Malaysia is currently home to more than 150,000 refugees and asylum-seekers from various countries of origin (United Nations High Commissioner for Refugees 2017). This study would provide an opportunity for the government of Malaysia to revisit its current anti-smuggling regime, taking into account various possibilities and opportunities to improve its anti-smuggling initiatives with a view of providing equal protection to all victims of smuggling regardless of their migration status and nationality. This study is also expected to contribute in the existing knowledge corpus of irregular migration, smuggling of migrants and forced migration in Malaysia and Southeast Asia.

LITERATURE REVIEWS ON SMUGGLING OF MIGRANTS AND EXPLOITATION

Smuggling of migrants is a global phenomenon that has remarkable geographic and organizational diversity (Kyle & Koslowski 2001). Despite the growing literatures stemming from various theoretical approaches, the process of smuggling is still not well understood (Baird 2013). The United Nations' Protocol Against the Smuggling of Migrants by Land, Sea and Air defines smuggling of migrants from the perspective of inter-state institution as

"... procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."

(United Nations 2000a)

Essentially, smuggling of migrants is a crime that occurs between two or more countries. Victims are usually brought or transported by the smuggler from one country to another with a certain amount of fee agreed by both parties (victim and smuggler). Smuggling of migrants is not trafficking in persons. They are distinct in terms of concept and legal definition. Trafficking in persons is legally defined by the United Nations as;

"... recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments."

(United Nations 2000b)

Unlike smuggling of migrants, trafficking in persons is an activity that may occur within a national border or between two or more countries. Victims of trafficking are often exploited by traffickers in many forms such as through deception, coercion, abduction and use of threat and force.

Three elements can be referred in order to make a distinction between trafficking in persons and smuggling of migrants. First, trafficking in persons usually involves "actions" such as transporting, harbouring and recruiting their victims. Second, trafficking in persons always employs methods such as deception, abduction, coercion, force and intimidation against victims. Third, trafficking in persons must involve element of exploitation including physical violence, sexual harassment and abuse against victims.

The inevitable relationship between smuggling of migrants and other transnational crimes such as trafficking in persons, drug and weapon trafficking making it one of the most complex transnational crimes globally. Additionally, smuggling of migrants is often linked to supporting and, or financing terrorist activities, and hence become an issue of national security that has global repercussion (Narli 2003; Neto et al. 2005). Recent empirical evidences in Europe have shown great diversity pertaining to the conduct of migrant smuggling, their root causes and potential consequences to the economy, social, security and political spheres (Lazcko & Thompson 2000).

In contrast to the commonly perceived characteristics of smugglers such as profit-driven and lucrative illegal trade, international gangster syndicates and the use of systematic violence

and corruption - there were empirical evidences indicated otherwise. For instance, Narli (2003) who studied irregular migrants in Turkey found that smuggling networks are rather loose horizontal network and no system of command. Meanwhile, Icduygu and Toktas (2002) discovered that smugglers in Turkey were small-scale networks of individuals, efficient at organizing piece-meal and ad hoc activities, bringing countless immigrants from Middle East countries to the Europe. Zhang and Chin (2008) who studied the smuggling of Chinese nationals to various countries in Europe found that smugglers were among ordinary individuals who exploit their social or familial networks. In a more recent publication, Bilecen (2009) suggests that smugglers were far more cellular in structure, with loose affiliations and less obvious chains of command.

These trends suggest the elasticity of the smugglers' profile and their modes of operation. While smugglers can be high profile, organised and associated with criminal gangs, some other smugglers were network of individuals with no formal bonding and affiliation, operating their smuggling activity as enterprise or family business. Other smugglers make use of their family, relatives and co-ethnic networks, manipulating the trust and solidarity among themselves. Similarly, the actual and potential threats and risks facing victims of smuggling were diverse, determined by various factors such as their social and educational background as well as status of vulnerable population (e.g., refugee, woman or child).

Smuggling of migrants is often referred to as a transaction that is undertaken based on mutual benefit, mutual consent and voluntary exchange. This is grounded on the premise that each smuggled migrant (or refugee - in this case) has gone through bargaining and negotiation process with the smuggler by which the smuggled migrant has given his or her consent. Yet, in reality, this transaction can be exploitative and morally unacceptable.

The word exploitation implies negative connotation. Conceptually, exploitation describes morally problematic transaction between two or more parties, most often constitutes unfair advantage taking. Valdman (2009) however argued that exploitation is not always wrong, and hence its wrongfulness can't be fully explained. This can be best described, as argued by Valdman (2009: 2);

"... for instance, that I fall over the side of a cruise ship and the sole witness demands an exorbitant price for throwing me a life preserver. If I accept his offer, this transaction would be mutually beneficial and, arguably, consensual. Still it would be deeply exploitative and deeply wrong, and our agreement's bindingness would be open to question."

There are examples in which the wrongfulness of exploitation can be clearly explained. These include familiar moral constraints against harming people, coercing them, or intimidating victims in order to benefit from them. Essentially, many prominent scholars including Wood (1995), Wertheimer (1996) and Valdman (2009) argued that even in a consensual and mutually beneficial transaction, there may be an element of exploitation. Some can be fully explained, others are not.

Valdman (2009) in its *Antidote* case argued that the failure of individual (exploiter) to uphold his *prima facie* moral obligation to help people in distress and not to extract excessive benefits from people who cannot reasonably refuse his (exploiter) offers, mean he still commits exploitation. However, the wrongfulness of this transaction cannot be fully explained. Similarly, as explained by Wood (1995), treating victims' vulnerabilities as opportunities to advance the exploiter's interests or projects account to an act of exploitation, but its wrongfulness cannot be fully justified.

Clearly, motivations or factors contributing to any transaction must be considered in order to justify the wrongfulness of exploitation. Apart from profit-seeking, there are other factors that contribute to any transaction between two parties or more. This study aims at explaining the presence of exploitation in the smuggling of Rohingya victims to Malaysia; on what basis such smuggling of migrants is considered exploitation; more importantly, on what reasons such transaction can be explained as wrongful and, or morally acceptable?

RESEARCH METHODOLOGY

Findings of this study were derived partly from a yearlong field work in 2013 engaging Rohingya refugees and asylum seekers as well as Rohingya community leaders and activists in Peninsular Malaysia. Field work was undertaken as part of the

completion of doctoral thesis which was submitted to National University of Malaysia (*Universiti Kebangsaan Malaysia – UKM*) in March 2017. Field work was conducted targeting Rohingyas residing across Klang Valley (Kuala Lumpur and Selangor), the central region of Peninsular Malaysia. Klang Valley is the largest concentration area of Rohingyas (about 30.7 percent) population in Peninsular Malaysia (Azizah 2015). Another rationale for choosing Klang Valley as the field ground was also to enable the researcher to reach out to various Rohingya's community-based organizations (CBOs) as well as Rohingya activists who operated within Klang Valley.

Essentially, the study adopts triangulation research methodology, combining three research techniques namely the survey, in-depth interview and focus group discussion. The use of triangulation enables the study to undertake cross-checking of information and to relate them when discussing and analysing the relationship between the issues of smuggling of Rohingyas and various types of exploitation. However, for the purpose of this study, only findings retrieved from in-depth interviews with respondents and key informant interviews are utilised.

As mentioned previously, this study seeks to explore qualitative experiences faced by the smuggled Rohingya victims throughout their irregular migration to Malaysia. Hence it does not include perspectives from other parties such as government authorities and non-state actors such as non-governmental organizations (NGOs). A brief account of Rohingyas' presence and the non-recognition of their refugee status in Malaysia is discussed in the next section.

ROHINGYA REFUGEES IN MALAYSIA

As a result of the continued persecution and discrimination in Myanmar, Rohingyas persistently risked their lives crossing international borders clandestinely albeit perilous in order to seek asylum in neighbouring countries such as Bangladesh, Thailand and Malaysia (Ullah 2011; Azharudin & Azlinariah 2012; Equal Rights Trust 2014). Despite the diversity of their background such as different dialects, township, locality and ancestry back in Myanmar, there are commonalities among the Rohingyas who managed to migrate to Malaysia (Suan 2006). These include their migration

experience, vulnerability and immigration statuses as refugees and stateless people in Malaysia.

In Malaysia, the historical presence of Rohingyas could be traced as early as 1970s (Azizah 2015). Other studies indicated that the first Rohingyas' arrival may be between late 1970s and early 1980s (Suan 2006; Irish Centre for Human Rights 2010; Letchamanan 2013). Despite their historical presence in Malaysia has been a subject of contestation, the number of Rohingyas in Malaysia increased more than 10-fold over the past 15 years, from 5,151 (2001) to 50,030 (2015) (United Nations High Commissioner for Refugees 2015). This does not include the Rohingyas whose applications were yet to be approved or processed by the UNHCR (as of 2015). It is worth mentioning the difficulty to have the actual number of Rohingya population in Malaysia given the clandestine nature of their existence in the country.

Rohingyas are only found in Peninsular Malaysia and the largest concentration is in the areas surrounding Klang Valley (Azizah 2015: 183). Some other Rohingyas are found in other states such as Penang, Kedah, Johor, Terengganu, Pahang, Kelantan and Perak. For the new arrivals of Rohingyas, they tend to live in an ambulatory lifestyle, moving from one place to another in search of employment or any income generating activities. Rohingyas are not allowed to work in any sectors of economy in Malaysia. However, they persistently entered into informal labor market, undertaking a variety of occupations and income-generating activities. A large proportion of Rohingya refugees are residing urban areas and their participation in labor market and any other economic activities is a "known secret". Many Rohingyas engaged in various informal sectors working as construction workers, restaurant assistants, garbage collectors and general cleaners (Azizah 2015). Majority Rohingyas mainly in urban areas are considered to be urban poor with average daily earnings of RM30-RM40 most often due to exploitation by greedy employers (Azizah 2015).

Malaysia is not a state party to the 1951 Refugee Convention and its 1967 Protocol. Therefore, the term 'refugee' and their fundamental rights stipulated under the convention and its protocol are not recognized. Meanwhile, the Malaysian Immigration Act 1959/63, by definition, does not distinguish refugee and undocumented immigrant and therefore imposes comparable height of punishment including imprisonment,

fine or cane. As mentioned previously, refugee population including the Rohingyas in Malaysia are not permitted to work formally in any sectors of the economy. Likewise, their children are not allowed to enrol in government schools and have limited access to healthcare facilities. Despite these barriers, many Rohingyas decided to migrate to Malaysia viewing Malaysia a moderate Muslim country and for the purpose of family reunification (Azizah 2015).

THE GOOD AND THE BAD EXPLOITATIONS: REFLECTION FROM THE EXPERIENCES OF THE SMUGGLED ROHINGYAS

THE GOOD EXPLOITATION

It is generally understood that exploitation connotes negative interpretation. In other words, no such thing as a decent exploitation. However, in the case of smuggling of Rohingyas to Malaysia, there are cases in which the smuggling of Rohingyas claimed to be; (i) as a typical business operation and; (ii) inspired for a good cause. Additionally, throughout the smuggling process, no harms or any form of physical or mental abuse was committed against the victims. On top of that, the smuggling fee incurred claimed to be fair and affordable (refer *Case 2* below). However, by referring to the Valdman's exploitation theory (2009), such transaction is still considered to be as an act of exploitation due to the failure of the smuggler to uphold their *prima facie* moral obligation not to benefit from people who are vulnerable and desperate, and hence are not in the position to refuse their (smuggler) offers.

Case 1: Smuggling as a business

Interview with a Rohingya refugee named Ahmad who safely arrived in Malaysia in 2009, informed that he used a smuggling service operated by a group of smuggling syndicate who preferred themselves to be known as "travel coordinators". According to Ahmad, the smuggling syndicate operated under a few interlinked travel agencies whose existence is legal under the laws of Malaysia, Thailand and Myanmar.

Ahmad, a Rohingya refugee:

"The syndicate is a group of businessmen who run their smuggling activities behind travel and leisure's industry. As businessmen, the smugglers (and the agents) manage their smuggling activity as purely as a restaurant owner treats his customers. The smugglers through their agents in Arakan state of Myanmar engaged us in a negotiation of the terms of smuggling which include total fees for the smuggling service. There was a bargaining among us although I was in the position to desperately agree any terms imposed by the agents. The smuggling service provided by smugglers is the only means that could permit us to escape the continued persecution we face in our home called the Arakan. So, to be honest, we were lucky that the smugglers were willing to negotiate with us on the cost".

According to Ahmad, he and a group of other Rohingyas managed to reach Malaysia in less than a week, with no unfortunate events took place. Smuggling of Rohingya is a highly profitable business with relatively low risk for smugglers. Hence, these smugglers invest their time and small proportion of their profits ensuring the safe migration of their clients hoping that these clients would spread the words to other Rohingyas remain in the Arakan state of Myanmar to further use their service. Ahmad's smugglers provided them with a huge pump boat, sufficient food, clean water and petrol to ensure the smuggled individuals (including himself) to reach Malaysia without any troubles. Ahmad said that it was a business that was done ethically by the smuggler and he would recommend other Rohingyas who wish to migrate to Malaysia to use the same smuggler.

Ahmad's experiences demonstrate that the smuggling of migrants is a business that can be done with sense of responsibility to ensure safe migration of the smuggled individuals. Smugglers also see their service on a long-term basis, hoping that each service that is provided ethically and responsibly to the Rohingyas would encourage more other Rohingyas remained in Arakan, Myanmar to use their smuggling or what they called as "travel service" in the future.

Case 2: Smuggling inspired by the spirit of brotherhood

In another anecdotal case, the smugglers were deemed to be the saviours of thousands of Rohingyas who continuously face persecution by the government of Myanmar and the Buddhist Rakhine community in the Arakan. It is assumed that without the smugglers, the Rohingyas would not be able to escape Myanmar-Thailand borders which are closely guarded by the Burmese army, or to cross over the Andaman sea with sufficient knowledge of coastal territory, weather and networking to ensure safe migration. A Rohingya refugee known as Suleiman, who was smuggled by a group of smugglers in 2010 - informed that his smugglers were led and teamed up largely by the Rohingyas who were responsible to recruit him in Myanmar, and to provide temporary shelter in between Thailand and Malaysia before handing him over to a local Malaysian to be smuggled from Thailand to Malaysia. The entire smuggling process costs him at relatively low cost (RM1,200 per person) compared to other smugglers which may cost double or triple from this amount.

Importantly, as informed by Suleiman, the smuggling service provided by mostly Rohingyas meant to provide safe passage for Rohingyas to leave persecution in the Arakan state of Myanmar in the spirit of "brotherhood". By providing safe passage to Rohingyas with low cost, they believe that this would be their (smugglers) contribution to the Rohingyas' community. According to Suleiman, most often the smuggled Rohingyas lost contact with their relatives after their arrival in Malaysia. Hence, these smugglers extended their service even after arriving destination point by locating their (smuggled Rohingyas) relatives or "villagers" (Rohingyas who shared the same township with the smuggled Rohingyas). This demonstrates that the smuggling of migrants could go beyond merely excessive profit-seeking activities but rooted in the broader sense of solidarity among the Rohingya smugglers and the smuggled Rohingyas.

As discussed earlier, although the smuggling service provided to Rohingyas may be undertaken ethically and responsibly, the fact that the smugglers offer their services (on some amount of cost) to Rohingyas knowing their vulnerability and desperate situation – that still accounts to exploitative transaction. There is no numerically-agreed cost for smuggling of each Rohingya

that can be considered non-exploitative or to be exploitative. However, the fact that smugglers are generating profits (in any reasonable amount) out of the desperation of Rohingyas and their situation of having not much option but to agree with whatever terms set by the smugglers, that makes any smuggling transaction between the smuggler and Rohingya is an act of exploitation despite the good intention in the spirit of brotherhood.

THE BAD EXPLOITATION

The bad exploitation is a strong manifestation of "exploitative" exploitation. There are three cases that could best justify the bad exploitation following the experiences of the smuggled Rohingyas to Malaysia. First is the use of deception; second is the trade of human beings and forced labour in the fishing industry; and third is forced marriage among Rohingya women and girls. This study refers to these three cases as bad exploitation as they do inflict physical harm, injuries and interlink with other crimes such as human trafficking.

Case 1: Use of deception and false promises

Smuggling of migrants is a highly competitive business activity in the Arakan state of Myanmar. Countless smuggling service providers come from various background, nationality and ethnic group. Some of the service providers are among the Burmese army personnel, entrepreneurs in export and import as well as travel industries, fishermen, farmers and community workers or volunteers who provide their services either on a full-time or part-time basis. Some service providers are also from either the Rakhine or Rohingya communities themselves.

The proliferation of service providers can be evidently seen during monsoon season in between October and December every year, or when conflict between the Rohingya and Buddhist Rakhine communities arises. At this period, the demand for smuggling services may escalate dramatically, so as the appearance of service providers. This stimulates a very high competition among the service providers to persuade the potential clients (Rohingyas) to use their service. To attract the Rohingyas, some smugglers use various forms of deception to manipulate victims in order to use their smuggling service.

Most often deception is used in the offering of smuggling package that includes promise of job opportunity upon arrival in Malaysia, providing flexi payment and short-term loan for the purpose of paying the smuggling fees, fast-track migration and safe travel. However, such promises embedded in the smuggling package are often false. The smuggled Rohingyas are forced to obey to the smugglers' instructions during the smuggling process until their release.

A Rohingya refugee, Mohamed Kasim who used smuggling service to reach Malaysia in 2011 informed that he was a victim of deception by his smugglers. The smugglers offered him a job opportunity upon arrival in Malaysia with relatively low cost of smuggling in comparison to other smuggling service provided by other agents. Mohamed Kasim informed that he was offered a total cost of smuggling of RM2,500 with job opportunity upon arrival in Malaysia. Nevertheless, Mohamed Kasim was not just forced to pay double for the cost of smuggling (estimate RM5,000) but was not given any job upon arrival in Malaysia. Mohamed Kasim, a Rohingya refugee:

"Smuggling agents came to my village and offered me a smuggling package that costs RM2,500 per person to be smuggled to Malaysia. In the smuggling package, I was also assured a job opportunity when I arrive Malaysia and access to UNHCR office in Kuala Lumpur to apply for refugee status. I was attracted to the smuggling package and it was a promising deal. I did not ask further on the smuggling routes to be undertaken and how long the smuggling process would take place because this was the best smuggling package that I came across.

My relatives in Malaysia transferred me the money for me to pay the agents in lump sum (RM2,500) hoping that I would not be in trouble when I arrive in Malaysia. However, when I and other eight smuggled Rohingyas arrived at transit point in Thailand (the exact place was unrecognized), we were forced to pay additional RM2,500. Failing to pay this additional cost would cause as being sold to traffickers. I immediately get the assistance from my relatives in Malaysia to transfer another RM2,500 directly to the smugglers' account before continuing my journey to Malaysia. Upon arrival, there was no job offered to me. I was released immediately upon arrival where I lost contact with the smugglers thereafter".

According to another Rohingya refugee named Safee, he was offered a short-term loan and flexi repayment for the purpose of covering the cost

for his smuggling from Arakan state of Myanmar to Malaysia. Safee informed that he was offered RM4,500 for the entire cost of smuggling to Malaysia with fast-track routes that would take only three days to reach Malaysia. Given his financial constraint, the smugglers offered him a short-term loan with an agreement of repayment of loan within two years and 100% of interest. Safee borrowed a total of RM3,000 from the smugglers and another RM1,500 was paid in cash to the smugglers before they began their journey to Malaysia. However, Safee was deceived and forced to repay the loan (RM 3,000) immediately when he was at transit country (in Thailand) with 200% of interest rather than 100% (amount to repay is RM9,000).

Safee, a Rohingya refugee:

"I borrowed RM3,000 from the smugglers because I did not have enough money to pay the total cost of smuggling. The smugglers agreed to provide me a short-term loan and flexi repayment of loan - with an agreed period of repayment of two years and 100 percent interest. Meaning, I can repay the smugglers within two years for RM6,000 including the interest. However, it was a false promise. When I arrived at the Malaysia-Thailand borders, the other smugglers (agents) forced me to repay the loan amounted to almost RM9,000 immediately. If I did not repay them, they would not allow me to cross the border. I did not dare to argue because these smugglers were dangerous people and they could easily sell us to traffickers or the enforcement personnel.

I managed to get my relatives in Malaysia to collect and transfer money for me to repay the smugglers. I was put in a jungle (in a shelter) for almost a month awaiting for my relatives to transfer the money (RM9,000) for my release. The money was transferred directly to one of the smugglers' account. After receiving the money, I was accompanied by one of the agents to cross Malaysia-Thailand borders immediately".

Case 2: Trade of human beings and forced labour in the fishing industry

Not everyone in the Rohingya community would better differentiate between smuggling of migrants and human trafficking. This study adopted participatory and advocacy approaches especially in conducting fieldwork. Apart from obtaining information and perspectives from the smuggled Rohingyas on their relevant experiences, the study used advocacy strategy by explaining the differences between smuggling of migrants

and human trafficking, enabling the respondents (Rohingyas) to make an informed judgement and response before providing their rejoinders.

Gathering from the experiences of the smuggled Rohingyas, they may not be aware that their smuggling was turned into human trafficking given their limited knowledge on the precise definition of human trafficking. What they could express, in actual terms were they had been sold for high-seas fishing industry especially for men and boys in Thailand, while women and girls were sold to feed the demand for forced-marriage industry mainly in Thailand and Malaysia. This demonstrates that Rohingyas are not only exploited in the form of deception and coercion but also sold for easy and immediate earnings for the smugglers.

According to a very well-known community leader in Selangor named Muhammad, Rohingyas sold for high-seas fishery is not a new issue. Most often the Rohingyas who were sold to the fishermen and involve in high-seas and large-scale fishing industry did not return to their relatives either in Myanmar, Thailand or Malaysia. They either died or continued their involuntary service with the same or other fishermen. Muhammad however informed that there were Rohingyas who managed to escape from such slavery with the help of local community in Thailand.

A Rohingya refugee named Syawal who arrived in Malaysia in 2009 through one of the many irregular entry points in the east coast region of Peninsular Malaysia (Kelantan), informed that he was forced to serve in a high seas fishing boat for a period of almost three years beginning 2006. According to Syawal, nothing could describe his gratefulness to being able to escape from his “master” (owner of the fishing boat) with the help of local community in one of the small islands in Ranong, Thailand. There is no standard period of serving with the “master” and it depends entirely on the negotiation between the agents and “master”.

Syawal’s experience being sold to his “master” began when he was transited in Bangkok as part of his smuggling routes from Myanmar to Malaysia. The agents in Bangkok were different people that he had communicated and made an agreement with when he was recruited back in Arakan state of Myanmar. Syawal was forced to pay an additional cost for his smuggling amounted to RM3,500 though he already made full payment of RM2,800 back in Myanmar. Syawal attempted to get financial support from his relatives and friends in Malaysia to

pay the additional smuggling’s cost, failing which he might be sold to fishing boats, as threatened by the agents in Bangkok. Nevertheless, Syawal did not get financial assistance on time and as a result, he was immediately handed over to another agent in Ranong for him to be sold to a group of high-seas fishermen headed by a Chinese-Thai national whom he called “master”.

Syawal, a Rohingya refugee:

“I was sold to a group of Thai fishermen in Ranong in which I did not know what was the agreement made between the agent and the fishermen. I did not know how long I must serve in the huge but shoddy wooden fishing vessel that travelled far and wide to various directions in the high seas. I was kept in captivity, as a sea slave together with other “slaves” from various nationalities.

My master once told me that if I work hard, I may be released soonest than the rest. I was the only one Rohingya among other slaves whose nationalities include Cambodia and Myanmar (mostly other ethnic groups such as Chin and Mon). We woke up early morning everyday about 3 a.m. and will finish our job late evening 9 p.m. It is a very usual routine everyday and there is no such thing as off-day. We eat a small portion of rice once a day with limited clean water for drinking. No medicine was provided and only the strong men will survive. I have seen slaves were thrown overboard because they were no longer physically fit to work.

We were not allowed to move out from the vessel unless we were instructed to do so. One day I was instructed to buy petrol in one of the floating villages near a small island in Ranong. This was the first time ever I was given the chance to move out from the vessel for almost two and half years serving the fishermen. I had the privilege to meet villagers who were very helpful in assisting me to escape my master and the whole bunch of my slave-colleagues. This was the time that I felt complete freedom, free from the enslavement and exploitation to my body, my mind and my soul. I immediately made the arrangement to move to Hat Yai before continuing my journey to Malaysia in 2009”.

Case 3: Forced marriage of Rohingya women

Family-arranged marriage for young women in the Rohingya community back in the Arakan state of Myanmar is a known culture and norm. Rohingya women (or girls) as young as 16 and 17 years old are often arranged by their family, with their consent, to marry Rohingya men. In this case the Rohingya

women still have the chance to get to know their future husband and would likely to have more say before making decision to agree with the arranged marriage. It is however different to the escalating cases of forced marriage among Rohingya young women who are sold to their prospective husbands in Thailand and Malaysia in order to cover their smuggling's cost. In most cases, Rohingya women are given no choice but to obey with the marriage arranged by smugglers (or their agents) enabling the Rohingya women to be smuggled to Malaysia. For many Rohingya women, forced marriage is the price they have to pay in order to escape the mounting violence and poverty in the Arakan state of Myanmar.

According to Shah, a Rohingya activist in Malaysia, there is a great gender imbalance among the Rohingya population in Malaysia where the number of Rohingya men is much greater than women. Many Rohingya men in Malaysia have relatively stable income albeit working informally in many sectors of economy. However, most of them are either single, divorced or have their wife remain in Myanmar. Most of them are also in their sexually active category of ages, seeking to form a family in Malaysia. A limited number of Rohingya men who already arrived in Malaysia are coupled with administration barriers to pursue their marriage with local women or women with different nationality (e.g., Indonesia) – this creates a pool of demands to bring in Rohingya women from the Arakan state of Myanmar into Malaysia for marriage purposes, with or without their consent.

Throughout a yearlong fieldwork, this study encountered two cases of young women who were brought into Malaysia for marriage purpose but refused to provide details of their cases. However, as an active activist receiving new comers including Rohingya women and girls in recent years, Shah informed that he and a group of like-minded Rohingya activists received escalating reports on Rohingya young women being forcibly smuggled into Malaysia for marriage purpose, where some of them were sexually harassed or raped before being handed over to their future husband, upon receipt of ransom.

According to Shah, there are two ways in which women are smuggled, without their consent, for “forced” marriage in Malaysia. First, her marriage has been initially set up between her relatives and agents before the smuggling for herself from Myanmar to Malaysia began. It is one way to bring

women out from Myanmar provided that most of their relatives having no financial ability to pay for the smuggling cost. In this way, the women may already be aware of her marriage with their future husband in Malaysia but incapable to refuse.

The agents who arranged for the marriage of Rohingya women are often among Rohingya people themselves. These agents will communicate with their counterparts or “leaders” who are stationed in Malaysia. The counterparts or “leaders” in Malaysia are also among Rohingya people who are responsible to look for Rohingya men who wish to marry Rohingya women from Myanmar. The future husbands must be able to pay the cost for his future wife's smuggling and some amount of money as token to be given to the future wife's relatives.

Secondly, women and girls are sold from one agent to another, when they are transited at the Malaysia-Thai borders. Women or girls whose parents are unable to pay the additional cost for their smuggling at the borders are the ones who will be sold for forced marriage. In this case, these women or girls are unaware or not being informed about their future husbands in Malaysia. Their future husband could be any Rohingya man who are able and willing to pay the additional cost imposed to these unfortunate women and girls. In exchange, the Rohingya women and girls are forced to marry the Rohingya men who pay for their additional cost of smuggling. It is a tough decision to make but most Rohingya women and girls ended up marrying the Rohingya men (who paid for their smuggling fee) rather than facing the consequences of being sold for sexual pleasure by their smuggling agent in Thailand. It is the price the Rohingya women and girls have to pay in order to escape escalating persecution in their very own homeland.

CONCLUSION

Despite the presence of elements such as mutual benefit and mutual consent in a number of cases of smuggling of Rohingyas to Malaysia, this study found that exploitations still occur. They are however considered as “good exploitation”. Though smuggling in this case is considered to be ethically operated and motivated by the spirit of solidarity and Rohingya's brotherhood, the fact that the smugglers violated their *prima facie* moral obligation not to extract benefit from Rohingyas who cannot reasonably refuse their

offers due to their desperation and vulnerability - that still accounts to exploitation. However, it should be noted that motivation behind this “good exploitation” is crucial to differentiate it with another form of exploitation namely the “bad exploitation”. Helping the Rohingyas to flee from human rights persecutions – it deserves exception from blanket argument of wrongful exploitation. Hence, this study argues that not all exploitation is bad and morally unacceptable. Imagine if such smuggling service that is motivated by the spirit of brotherhood does not exist? How many more Rohingyas should fall into the hands of dirty and unscrupulous smugglers? How many more will be victims of deception, coercion and physical violence? In contrast, in the context of “bad exploitation”, the absence of mutual consent and mutual benefit, the use of deception, coercion, forced labour and forced marriage by some smugglers are clear manifestation of wrongful and morally unacceptable exploitation. This study also found that such acts of exploitation are often interlinked with other humanitarian crimes including trafficking in persons.

While focusing on the acts of exploitation, this study has also discovered findings that are critical to the existing studies pertaining to the smuggling of migrants particularly in the Southeast Asian region. Among others are – the smuggling of Rohingyas has not always involved organized crime, physical abuse and imposing slavery alike conditions. Additionally, involvement of individual Rohingyas and community-based groups has further coloured the diversity of hierarchal system that exists in the smuggling network across countries such as Myanmar, Thailand and Malaysia. Despite the diversity in the conduct of smuggling of Rohingyas, this study suggests that the anti-smuggling regime in Malaysia and other transit countries in the region should have adequate protection mechanism to protect Rohingya victims from being criminalised under their respective immigration law. This includes having legal and administrative framework that guarantees their right to seek asylum and fair access to legal aid, counselling and temporary shelter.

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