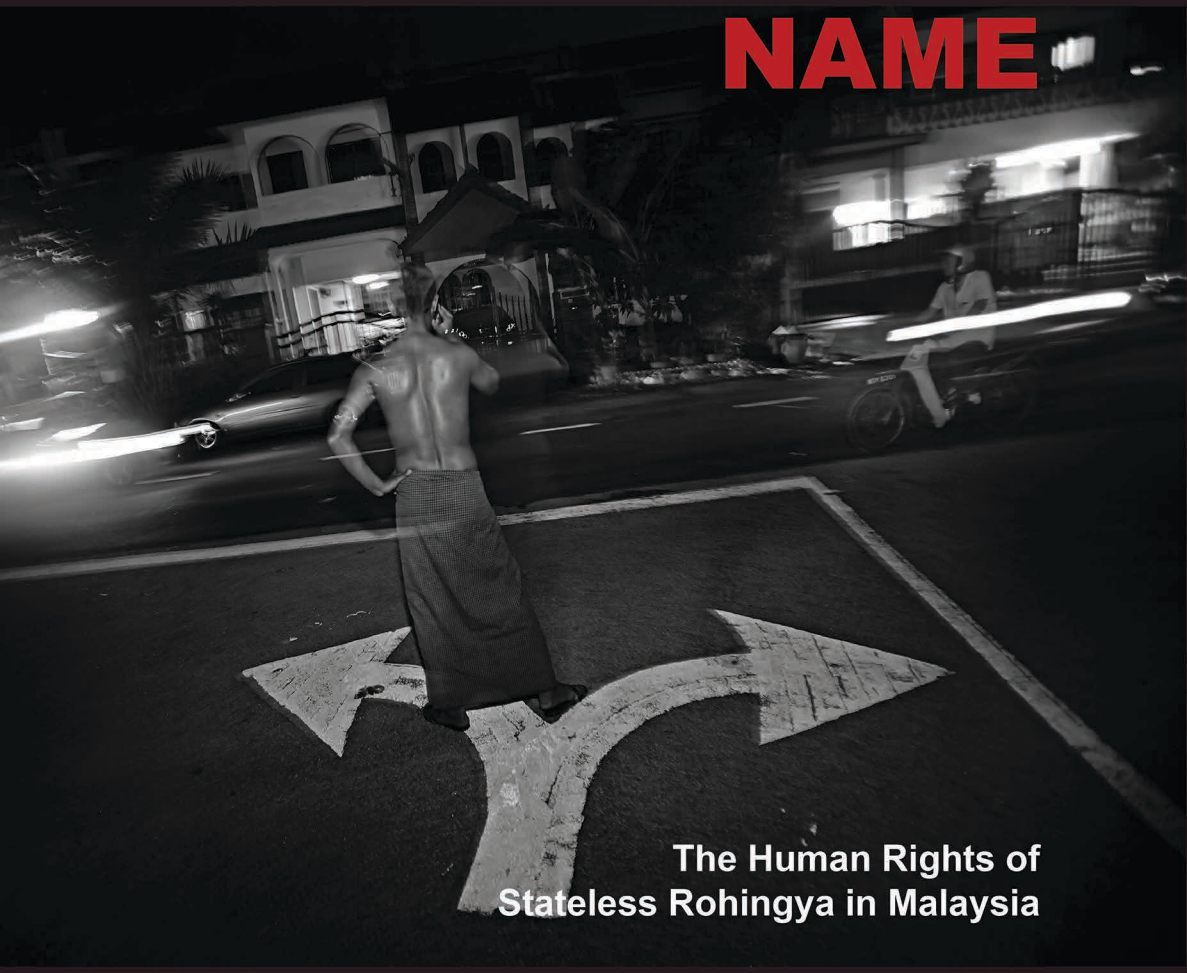
Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**98**
Land:	Burma
Kilde:	Equal Rights Trust
Titel:	Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia
Udgivet:	Oktober 2014
Optaget på baggrundsmaterialet:	28. januar 2015

EQUAL ONLY IN NAME



The Human Rights of Stateless Rohingya in Malaysia

Equal Rights Trust in partnership with the Institute of Human Rights and Peace Studies, Mahidol University

EQUAL RIGHTS TRUST IN PARTNERSHIP WITH
THE INSTITUTE OF HUMAN RIGHTS AND PEACE
STUDIES, MAHIDOL UNIVERSITY

Equal Only in Name

The Human Rights of Stateless Rohingya in Malaysia

London, October 2014

The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. The Trust focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

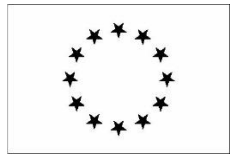
The Institute of Human Rights and Peace Studies (IHRP) was created by a merger between Mahidol University's Center for Human Rights Studies and Social Development (est. 1998) and the Research Center for Peace Building (est. 2004). IHRP is an interdisciplinary institute that strives to redefine the fields of peace, conflict, justice and human rights studies in the Asia Pacific region and beyond.

Design and layout Shantanu Mujamdeer / Counterfoto
Printed in the UK by Stroma Ltd.

ISBN: 978-0-9573458-1-2

Equal Rights Trust
314 - 320 Gray's Inn Road
London WC1X 8DP
United Kingdom
Tel. +44 (0) 207 610 2786
info@equalrightstrust.org
www.equalrightstrust.org

The Equal Rights Trust is a company limited by guarantee incorporated in England, and a registered charity.
Company number 5559173. Charity number 1113288.



This report has been prepared with the financial assistance of the European Union. The contents of this report are the sole responsibility of the Equal Rights Trust and the Institute of Human Rights and Peace Studies, Mahidol University and can in no way be taken to reflect the views of the European Union.

[T]he pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court (…) [E]extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State (…) [T]he deprivation of healthcare is deliberately targeting the Rohingya population, and (…) the increasingly permanent segregation of this population is taking place. Furthermore (…) these human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and privacy.

Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in Myanmar,
Human Rights Council, 25th Session, 2 April 2014,
A/HRC/25/64, Para 51

I believe that Malaysia will recognise refugees (…) I don't know why in my heart I believe in this, but I do.

Sharifah Binti Hussein, Rohingya refugee in Malaysia
Quoted in Jennifer Pak, "Rohingya Muslims want to call Malaysia home", *BBC News,* June 2012

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

This report is published by the Equal Rights Trust, in partnership with the Institute of Human Rights and Peace Studies, Mahidol University (IHRP). It is one of the outputs of a collaboration to engage in multi-country research and advocacy to strengthen the human rights of stateless Rohingya, which began in March 2011 and will continue at least until December 2016.

The multi-country project research team was led by Dr Sriprapha Petcharamesree (IHRP) and Amal de Chickera (Equal Rights Trust) with support from Natalie Brinham and additional advice and guidance from senior project advisor Stefanie Grant and the Equal Rights Trust Executive Director Dr Dimitrina Petrova. The project research team met regularly to identify and agree research areas, to adopt the research methodology and to exchange information, cross-check research and share analysis. Thus, the Malaysia report and the Malaysia research team benefited from and also contributed to the wider research team, who are consequently acknowledged in this report. The key researchers were Ferdousi Akter (Bangladesh), Prof Kamarulzaman Askandar and his team (Malaysia), Natalie Brinham (Malaysia, Myanmar, Thailand and general desk research), Vivienne Chew (Malaysia), Jennifer Clement (Malaysia), Dr Uttam Das (Bangladesh legal research), Ranajit Dastidar (Bangladesh), Cornelia Epuras (Saudi Arabia legal research), Shohan Ekramul Kabir (Bangladesh and Myanmar), Abul Kalam (Bangladesh), Bo Bo Lansin (Myanmar), Libby McVeigh (Bangladesh legal research), Saiful Huq Omi (Bangladesh, Malaysia and general research), Nicole Ostrand (Thailand and general desk research), Pei Palmgren (Thailand), Eric Paulsen (Myanmar and Malaysia), Nimer Sultany (Saudi Arabia), Yanuar Sumarlan (Indonesia) and Veerawit Tianchainan (Thailand legal research). There were additional researchers for Saudi Arabia and Myanmar who remain anonymous for reasons of safety. Special thanks to Nicole Ostrand for her efficient coordination of research team meetings.

All staff of the Equal Rights Trust contributed to the smooth running of the project and the publication of this report. They include Jim Fitzgerald who helped with project related advocacy, Sarah Pickering who helped with launching and disseminating the report and other project outputs,

Joanna Whiteman, Jade Glenister and Richard Wingfield who helped with proof reading and finalisation of this report and Anne Muthee and Jeana Vuma who were responsible for the financial management of the project.

The initial field research for Malaysia was overseen by Dr Sriprapha Petcharamesree and carried out by Prof Kamarulzaman Askandar and his team of researchers from Universiti Sains Malaysia. Additional field research was carried out by Natalie Brinham. The research material produced by Prof Askandar and his team was drafted into this report by Vivienne Chew and Jennifer Clement, who also carried out additional field and desk research, primarily for the purposes of updating the existing research and plugging any gaps. The report was edited and finalised by Natalie Brinham and Amal de Chickera, with a final edit and authorisation for publication coming from Dimitrina Petrova.

The research was reviewed at several stages, including at the final stage, where an in depth review was carried out by Dr Sriprapha Petcharamesree, Stefanie Grant, Chris Lewa of the Arakan Project and others. We are grateful to all reviewers for their feedback which has strengthened this report.

The project team would like to thank the many interns and volunteers who helped with desk research throughout the project. In particular, we would like to thank Coralie Aboulfouioud, Arendse Baggesen, Adele Barzelay, Gayathri Fonseka, Aditi Mittal, Kimberley Ong, Jason Tucker and Jackie Tumwine.

Throughout the project implementation period, the Equal Rights Trust and IHRP have become indebted to many individuals and organisations that have made both the research and publication of this report as well as related project activities possible.

The immense contribution of the Arakan Project, which generously gave of its time, expertise and contacts throughout the project, is gratefully acknowledged. The input of Chris Lewa, Director of the Arakan Project when this project was being conceptualised, her participation in project research meetings and contribution to identifying research issues, the sharing of Rohingya community contacts, being interviewed and sharing

material as part of the research process and the review of report drafts has significantly influenced and improved the project and its outputs. Similarly, the joint advocacy carried out by the Equal Rights Trust and the Arakan Project must also be acknowledged.

Very special thanks also go out to Saiful Huq Omi, for sharing his photographs, for always going beyond what has been required and for proving to be as good a researcher as he is a photographer. The team would also like to thank Shantanu Mujamdeer for the cover design and layout.

The project team is also grateful for the input and generosity of Rohingya community leaders and groups that have helped with the research; in particular, the Rohingya Society of Malaysia (RSM) and the Burmese Rohingya Organisation UK (BROUK). All Malaysian civil society organisations, academics, government representatives and UN agencies that attended the project workshop in February 2014 and shared their expertise are also thanked. Particular thanks go out to Dr Azmi Sharom and the law faculty of University Malaya, who kindly hosted the project workshop and related activities. Jirawat Suriyashotichyangkul, who was responsible for logistics related to the workshop is also acknowledged.

This report is the outcome of a partnership between the Equal Rights Trust and IHRP on a joint project entitled "Strengthening the Human Rights Protection of Stateless Rohingya", funded by the European Union. The partners are very grateful for the support provided for this project. We are particularly grateful to Martha Mendez, the EU programme manager assigned to our project, for her support, advice and flexibility. The contents of this report are the sole responsibility of the Equal Rights Trust and IHRP and can in no way be taken to reflect the views of the European Union.

Finally, we wish to thank all Rohingya who shared their stories with us. This report is dedicated to them and to all Rohingya in Malaysia and elsewhere, who have suffered – and continue to suffer – discrimination and exclusion.

ACRONYMS

ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AICHR	ASEAN Inter-governmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
ATIP	Anti-Trafficking in Persons Unit
ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act
BROUK	Burmese Rohingya Organisation United Kingdom
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSC	Citizenship Scrutiny Card
EU	European Union
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic Social and Cultural Rights
IDC	Immigration Detention Centre
IHRP	Institute of Human Rights and Peace Studies, Mahidol University
ILO	International Labour Organisation
MAPO	Council for Anti-Trafficking in Persons
NGO	Non-Governmental Organisation
NRC	National Registration Card
RELA	Ikatan Relawan Rakyat Malaysia (Malaysia People's Volunteer Corps)

RM	Ringgit (the currency unit in Malaysia)
RSD	Refugee Status Determination
RSM	Rohingya Society of Malaysia
SUHAKAM	National Human Rights Commission of Malaysia
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNTOC	UN Convention against Transnational Organised Crime
USD	United States Dollar
WHO	World Health Organisation

Equal Only in Name

1. INTRODUCTION

1.1. Purpose and Structure of This Report

Burma is not our land anymore though I was born there.[1]

Stateless, discriminated against, treated unequally, excluded and persecuted, the Rohingya are one of the most vulnerable communities in the world. Originating from Myanmar, hundreds of thousands of Rohingya have fled the country in search of safety, security and prosperity - conditions that remain elusive to the majority who have made lives for themselves upon new shores.

The human rights challenges that the Rohingya face originate in Myanmar, but are also prevalent in other countries. Discrimination and unequal treatment are central to the human rights violations suffered by the Rohingya. This report is part of a series which provides an overview and analysis of the human rights situation of stateless Rohingya in various countries.

The purpose of this report is to highlight and analyse the discrimination and inequality faced by the Rohingya in Malaysia and to recommend steps aimed at combating discrimination and promoting equality of the Rohingya. The report explores long-recognised human rights problems, and also seeks to shed light upon some less well-known patterns of discrimination against the Rohingya.

The Equal Rights Trust has been working on the human rights of Rohingya since 2008, approaching the issue from the unified human rights perspective on equality.[2] In January 2010, we published a short report

[1] Interview BD 20, with a Rohingya man, Cox's Bazar, Bangladesh, 4 October 2012. Throughout this report, names and/or personal characteristics of individuals have been withheld either at the request of interviewees or because the research team determined this to be necessary in the interest of the safety and/or privacy of the individuals concerned and/or others who may face reprisal.

[2] The unified human rights perspective on equality is expressed in the *Declaration of Principles on Equality*, developed and launched by the Equal Rights Trust in

entitled *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, in which patterns of detention, trafficking and deportation were described for the first time, based on original testimony.[3] In March 2011, the Trust and the Institute of Human Rights and Peace Studies, Mahidol University (IHRP) began working together on a project aimed at strengthening the human rights of stateless Rohingya both within Myanmar and beyond. Grounded in research conducted in six countries (Bangladesh, Indonesia, Malaysia, Myanmar, Saudi Arabia and Thailand), this project is an endeavour to increase the human rights protection of the Rohingya through advocacy, capacity building and coalition building at national, regional and international levels.[4]

This report comprises four parts. Part 1 sets out the conceptual framework which has guided the authors' work and the research methodology. It then provides an overview of the Rohingya and concludes with an analysis of some of the common trends, themes and challenges that have emerged from the research in all project countries. Part 2 provides an overview and analysis of the international, regional and national legal and policy framework relevant to the discrimination, inequality and related human rights violations and challenges faced by the Rohingya in Malaysia. Part 3 focuses on patterns of discrimination and inequality affecting the Rohingya in Malaysia. It is important to note that Part 3 focuses on a few select issues, and is not a comprehensive overview of all forms of discrimination and inequality limiting the enjoyment of human rights for the Rohingya in Malaysia. Part 4 presents conclusions and recommendations.

2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. See *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

[3] Equal Rights Trust, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, London, 4 January 2010.

[4] For more about the project "Strengthening Human Rights Protection for the Rohingya", visit the Equal Rights Trust website at: http://www.equalrightstrust.org/rohingya/index.htm.

1.2. Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust in 2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. According to Principle 1 of the Declaration:

> *The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*[5]

The Declaration proclaims that the right to equality extends to guarantee equality in all areas of human life normally regulated by law, and should be addressed holistically. This approach recognises the interconnectedness of inequalities arising in different contexts, which makes it necessary to take a comprehensive approach to combat manifestations of discrimination arising in all areas of life.

The unified human rights perspective on equality is central to the Rohingya issue. In Myanmar, the Rohingya are a stateless, ethnic, religious and linguistic minority and in other countries, they are stateless irregular migrants, refugees and often undocumented persons. As such, they are vulnerable to many forms of discrimination, exclusion and human rights abuse.

Another key aspect of the project is its regional focus. The long-term and widespread nature of the Rohingya crisis means that while recognising the

[5] See above, note 2, Principle 1, p. 5.

individual responsibility of states to protect the human rights of all persons within their territories and subject to their jurisdictions, a just and sustainable solution is only likely if the key states demonstrate a collective commitment to protect the Rohingya. The regional nature of the issue presents both opportunities and challenges. The opportunity is that if states act collectively, the burden on each state will be eased and such an unprecedented process would serve as a blueprint for future regional cooperation; the challenge is to address the causes of irregular migration flows and ensure greater coordination among states and an increased willingness to protect the Rohingya.

This report looks at Malaysia's place in the regional picture of stateless Rohingya displacement and insecurity. It focuses both on recent refugees and the long-staying population. The report is informed by 20 semi-structured interviews and 2 focus-group discussions with stateless Rohingya refugees, including refugee leaders, living in Kuala Lumpur and Penang and the surrounding areas. Interviews with individual experts and with governmental and non-governmental organisations who work on the Rohingya issue also inform this report, as well as on-going and informal discussions with Rohingya refugees over the course of the research. While the majority of interviews took place between July 2012 and December 2012, the report is up-to-date as of June 2014.

Interviews focused on equality and non-discrimination and on patterns of discrimination in relation to five key issues: statelessness and lack of legal status; migration and displacement patterns; liberty and limits to freedom of movement; the right to work and related livelihood issues; and children's rights. A comprehensive literature review surveying research and information on the Rohingya and on Malaysia's legal and administrative frameworks relevant to refugees, stateless people and migrants, also informs the report.

A significant research challenge has been the fast evolving situation, driven by political changes in Myanmar; violence against the Rohingya since 2012-2013; and the resultant mass flight of Rohingya refugees. The Equal Rights Trust published an emergency situation report in June 2012

and a follow-up report in November 2012.[6] Furthermore, the researchers responded to the changing context by adapting the research focus and conducting additional research.

1.3. The Rohingya

The Rohingya are an ethno-religious minority group from the Rakhine region, which today is encompassed within the borders of Myanmar and is adjacent to Bangladesh. There is an estimated population of between one and 1.5 million Rohingya in Rakhine State. Much of the population is concentrated in the three townships of North Rakhine State – Maungdaw, Buthidaung and Rathedaung – where the Rohingya are in the majority.[7] Other smaller minority communities of Rohingya are scattered throughout Rakhine State.[8] To a large extent, Rohingya have been contained in Rakhine State, through successive government policies. However, small numbers of Rohingya have settled in Yangon, the capital of Myanmar, and other places in Myanmar.

1.3.1. Ancestral Roots

The Rohingya have historical, linguistic and cultural affiliations with the local populations of Rakhine State, as well as with the Chittagonian people across the border in Bangladesh.[9] The Rohingya are Muslims. They also draw their cultural heritage from diverse Muslim populations from the Persian and Arab world that passed through or settled around the important trading hub along the coast of Rakhine State over the

[6] Equal Right Trust, *Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya and their refoulement from Bangladesh*, London, June 2012.

[7] The Rohingya have long been the majority ethnic group in these three townships, as recorded in Burma's official Encyclopaedia (1964). The reference is notable as it uses the term Rohingya, which is now officially rejected by the Government of Myanmar.

[8] Since the violence of 2012, many Rohingya from these communities have become internally displaced and confined to camps.

[9] East Pakistan before Bangladesh's independence and India before partition.

centuries.[10] The Rohingya trace their ancestral roots in the Rakhine region back several centuries – since long before Myanmar came into existence as the clearly demarcated post-colonial nation-state of today. These roots also go back to long before racial and ethnic categories became settled in accordance with those that are recognised in today's Myanmar.[11] Despite this, the history of the Rohingya and their Muslim ancestors is today largely rejected in Myanmar. The Rakhine region and its ancient historical sites are of important cultural significance to Myanmar's Buddhist populations. Historical analyses have, thus, tended to focus primarily on the Rakhine region's Buddhist past, as opposed to its multi-faith and multi-ethnic past.[12] Histories of the Islamic influences in Rakhine State have largely been viewed with suspicion in Myanmar.[13]

1.3.2. Ethnic Identity

The term Rohingya is derived from the word "Rohang" which is an old name for Rakhine State.[14] Hence the term Rohingya has come to mean

[10] See for example Ba Tha, "Rohingya of Arakan", *Guardian Monthly Rangoon*, Vol III no 5, May 1960; and Ba Tha, "Rohingya Fine Arts", *Guardian Monthly Rangoon,* Vol VIII, Feb 1961. These articles are significant because they were published in Myanmar's (then Burma) national magazine and were on the Rohingya in Rakhine (then Arakan) State.

[11] There are 135 national ethnic groups that have been recognised by the Government of Myanmar after the promulgation of the 1982 Citizenship Law, based on selective historical records.

[12] See, for example, Gutman, P., *Ancient Arakan,* 1976, available at: http://hdl.handle.net/1885/47122.

[13] See, for example, Shwe Zan and Aye Chan*, Influx Viruses, The Illegal Muslims in Arakan*, Arakanese in United States, August 2005, available at: http://www.networkmyanmar.org/images/stories/PDF15/Influx-Virus.pdf.

[14] For analysis of the origins of the term "Rohingya" see Charney, M.W., *Buddhism in Arakan: Theories and Histiography of the Religious Basis of Ethnonyms*, submitted to the Arakan History Conference, Bangkok, 2005, available at: http://www.kaladanpress.org/index.php/scholar-column-mainmenu-36/58-arakan-historical-seminar/718-buddhism-in-arakantheories-and-historiography-of-the-religious-basis-of-ethnonyms.html.

Muslim from Rakhine State.[15] The majority of people in Myanmar and the Government of Myanmar claim that the Rohingya are not from Myanmar but are migrants from Bangladesh.[16] Thus the term Rohingya has become contentious. The term is neither recognised by the Myanmar government nor much of political society in Myanmar; they instead refer to the population as "Bengali", a term which suggests the Rohingya are migrants from Bangladesh. "Bengali" is thus strongly rejected by large sections of the Rohingya community. Today, the term Rohingya is not allowed on official documentation including identity cards, household lists and on the census of March 2014.[17] The international community holds that individuals should have the right to self-identify, including as Rohingya.[18] But the term "Rohingya" is rejected by the government and population of Myanmar, who associate it with claims to be indigenous, to be recognised as a "national ethnic group" of Myanmar, and consequently to have a right to citizenship.

[15] Interview MYA 8, with a Rohingya activist in Yangon, June 2013.

[16] For example, speaking at Chatham House in London in July 2013, President Thein Sein stated "we do not have the term Rohingya". Quoted in Inkey, M., "Thein Sein talks at Chatham House", *New Mandala,* 17 July 2013.

[17] Prior to the census of March 2014, the Government of Myanmar agreed in principal that whilst the category "Rohingya" would not be included in the list of Myanmar's ethnic groups in the census forms, the Rohingya would be permitted to identify as "Other", and would be allowed to declare their ethnicity to be recorded in the census. A few days before the census, the Government went back on this promise, ostensibly to appease Rakhine protestors, and decided that the Rohingya would neither be allowed to qualify the term "Other" by self-identifying as "Rohingya" in the space provided, nor would they be allowed to leave the term "Other" unqualified. This meant the Rohingya were left with the option of either identifying as "Bengali" or not participating in the census at all. Consequently, the majority of Rohingya did not complete the census. It is unclear what the repercussions of this will be. See UNFPA Myanmar, *Statement: UNFPA concerned about decision not to allow census respondents to self-identify as Rohingya,* 1 April 2014.

[18] *Ibid.*

1.3.3. Arbitrary Deprivation of Nationality

The majority of Rohingya in Myanmar today have been deprived of their nationality and are stateless. The arbitrary deprivation of their nationality and the erosion of their legal rights has occurred alongside the denial of their ethnic identity and history in the Rakhine region. This process has taken place over many decades. Following Myanmar's independence from Britain in 1948, the Rohingya were largely allowed to participate in national affairs and contributed both politically and culturally in the nation-building process alongside other citizens of Myanmar.[19] In 1962, Myanmar fell under military rule, which was to last 49 years. During this period, the process of stripping the Rohingya of their identity and rights began. This process continues in the present day.

Whilst the erosion of the rights of the Rohingya is an on-going process, there have been several significant events which have contributed to today's situation in which at least 800,000 Rohingya inside the country have been rendered stateless.[20] The first of these significant events was Operation *Nagamin* which was launched in Rakhine State in 1978. The stated purpose was to "designat(e) citizens and foreigners in accordance with the law and tak(e) actions against foreigners who have filtered into the country illegally."[21] During the operation, according to witness' accounts, many Rohingya had their official documentation taken away

[19] Some examples of this participation in nation-building, evidenced with copies of relevant original documents including lists of Rohingya MPs, Ministers and other political and state actors were compiled by the National Democratic Party for Development for a submission to parliament, entitled *Presentation for the native inhabitants (whose faith is Islam) residing in the Rakhine State (Arakan State) as the citizen by law and by natural or birth rights as well as the indigenous national of the Republic of the Union of Myanmar*, 4 July 2012 (on file with Equal Rights Trust).

[20] UNHCR Myanmar, *2014 UNHCR Country Operations Profile,* available at: http://www. unhcr.org/pages/49e4877d6.html.

[21] Myanmar Ministry for Home and Religious Affairs, "Naga Min Operation", quoted in Human Rights Watch, *Burma: Rohingya Muslims: Ending a Cycle of Exodus?,* 16 November 1977, p. 12.

from them by inter-agency teams of inspectors.[22] There were reports of "brutalities and atrocities waged against the Muslim population."[23] The news spread and over 200,000 Rohingya fled the country to newly independent neighbouring Bangladesh.[24] Mass forced repatriation from Bangladesh followed.[25] The legal status of the returnees was not reinstated.

Subsequently, the military regime under General Ne Win promulgated the 1982 Citizenship Law depriving the Rohingya of the right to citizenship. Entitlement to citizenship in Myanmar is primarily through membership of the state-defined national races/ethnicities or *Tai Yin Tha.* Prior to 1982, the categories of *Tai Yin Tha* were broadly defined and open-ended. After the 1982 law, a closed list of 135 national races/ethnicities was published and the Rohingya (and a few other minority groups including persons of Indian and Chinese origin) were excluded. Thus they did not acquire citizenship automatically and by right. It must be noted however, that under section 6 of the 1982 Law, persons who were already citizens at the time the law came into force would continue to be so.[26] Furthermore, the law also provided for "Associate" and "Naturalised" citizenship, the former being for those whose citizenship applications were being processed at the time the 1982 Law was promulgated and the latter being those who are not citizens but can establish that they and their predecessors lived in the country prior to independence. Thus, all

[22] Interviews MYS 12 and UK 05, with two Rohingya elders living in Rakhine State at the time of Operation Nagamin. Kuala Lumpur, July 2013 and London, March 2014.

[23] Scully, W.L. and Trager, F.N., "A survey of Asia in 1978 Part II (Feb 1979) Burma 1978: The thirteenth year of independence", *Asian Survey,* Vol 19, no 2, 1979, p. 153.

[24] Smith, M., *Muslim "Rohingya" of Burma*, unpublished manuscript, 2005 (on file with the Equal Rights Trust).

[25] Abrar, C.R., *Repatriation of Rohingya Refugees,* 1995, available at: http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo%3A50.

[26] Section 6 Burma Citizenship Law, 1982, available at: http://www.refworld.org/docid/3ae6b4f71b.html.

Rohingya for whom Myanmar was home should have been able to continue to enjoy/acquire Myanmar nationality either under section 6 of the Act, or as naturalised or associate citizens. However, while most Rohingya would be able to trace their ancestry at least to the colonial period, the lack of adequate documentation, including as a result of previous mass exoduses and discriminatory and arbitrary decision making meant that the vast majority of Rohingya have not been recognised as citizens since. Most significantly, during a nation-wide citizenship scrutiny exercise in 1989, Rohingya who submitted their National Registration Cards (NRC) to the authorities with the hope of receiving new Citizenship Scrutiny Cards (CSC), were denied the new CSCs and their old NRCs were also not returned.[27]

In 1992, the *NaSaKa* was established as an interagency border force by the Ministry of Defence. It was placed under direct control of the military intelligence chief, Khin Nyunt, and was commanded directly from Yangon. With the establishment of the *NaSaKa* came a series of local directives and policies that severely restricted the Rohingya's movements and rights within North Rakhine State. The Rohingya's lack of citizenship status in Myanmar became the anchor for an entire framework of discriminatory laws and practices that laid the context for coming decades of abuse and exploitation. These included stringent restrictions of travel outside of North Rakhine State and to neighbouring villages within North Rakhine State, restrictions on marriages and on having children within Rohingya communities, and arbitrary taxation and forced labour. These policies and practices have had a severe impact on both the health and education status of the Rohingya which has disproportionately affected women and children.[28] *NaSaKa* implemented all measures taken towards population control. Fleeing persecution under this law and policy framework, the build-up of military forces in Rakhine State, and the abuses that accompanied them, new waves of Rohingya fled Myanmar.

[27] NRCs were issued under the Residents of Myanmar Registration Act, 1949.

[28] See Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and Protection Needs of Stateless Persons*, London, July 2010, Chapter 4.3.

The period following the 2010 election has seen the further erosion of the Rohingya's rights. Whilst a large proportion of the Rohingya are stateless, the Rohingya have continued to exercise some citizenship rights since independence and before. They have voted in and have had candidates standing in every election since 1936, including the 1990 and 2010 elections.[29] It is unlikely that the Rohingya will be allowed to vote or stand for election in 2015, indicating the further erosion of their rights since the political reforms of 2010.[30]

1.3.4. Since the Violence of 2012

The Rohingya have been subject to multiple waves of mass violence since at least 1978. These waves of violence have been perpetrated by a mixture of the Myanmar security forces and groups of civilians, primarily Buddhists from Rakhine State.[31] In June and October 2012, waves of mass violence broke out in Rakhine State, which resulted in death, forced displacement, the destruction of homes and properties, and the loss of livelihoods.[32] More localised outbreaks of violence have continued throughout Rakhine State since 2012. Both Buddhist and Muslim communities in Rakhine State were affected by the violence, but the casualties and victims were overwhelmingly Muslim and mostly Rohingya. Evidence collected by human rights organisations demonstrated that Myanmar security forces took part in the violence and stood by as violence took place.[33]

[29] See above, note 19.

[30] Interviews MYA 13 and MYA 15, with Rohingya politicians, Yangon, April 2014.

[31] See for example Human Rights Watch, *All you can do is Pray,* 2013, Appendix 1: History of Violence and Abuse against Rohingya, available at: http://www.hrw.org/node/114872/section/16.

[32] No international investigation into the violence took place. Both government and other figures relating to the violence and related casualties remain under dispute due to the lack of a credible international investigation.

[33] See above, note 6.

This violence, together with the economic and social ostracisation of Muslim and Rohingya communities in Rakhine State, lead to the displacement of over 140,000 people into Internally Displaced Person (IDP) camps within Rakhine State. Additionally, there has been a spike in forced migration of Rohingya out of Myanmar, mostly on boats heading for Southeast Asia and beyond. The exact numbers of Rohingya who have undertaken this journey since 2012 are not known, however it is estimated that from June 2011 to May 2012 approximately 9,000 people have travelled in this way; from June 2012 to May 2013, this number is believed to have risen to over 31,000 and it is estimated that during this sailing season, since June 2013, at least 54,000 have undertaken the journey.[34] Between June 2012 and May 2014, as many as 2,000 Rohingya are believed to have gone missing at sea.[35]

Since 2012, grave concerns have been raised regarding the desperate humanitarian situation for Rohingya and Muslim communities in Myanmar, both within the IDP camps and in their home communities. The health and nutrition status of Rohingya and other Muslim communities is dire. International agencies providing humanitarian assistance to Rohingya have had their efforts hampered by threats and violence against them by local populations, and by restrictions being placed on their activities by the Myanmar government and local authorities.[36] Since 2012, security grids have been extended to other areas in Rakhine State beyond the three townships of North Rakhine State. Under the state of emergency, restrictions of movement and population control similar to or even worse than those in North Rakhine State have been imposed on other Rohingya populations.[37] As a result of this escalation in human rights violations targeted at the Rohingya, their widespread and systematic nature, the role

[34] The Arakan Project, *Rohingya Maritime Movements: estimates and trends for departures up to 30 June 2014,* unpublished document, July 2014 (on file with the Equal Rights Trust).

[35] Email correspondence with the Director of the Arakan Project, 2014.

[36] See UNOCHA Myanmar, *Humanitarian Lifeline cut following violence against aid agencies in Rakhine,* April 2014.

[37] Interviews MYA 10 – 12 and 14, with UN and INGO staff in Yangon, March and April 2014.

played by state actors and the impact it has had on the population, the international criminal law framework is emerging as an important and relevant tool through which to address the situation.[38]

1.3.5. Overseas Rohingya

It is estimated that there are more than one million Rohingya living outside Myanmar, many as migrants or refugees with no legal status. The Rohingya have settled in South and Southeast Asia, the Middle East and beyond. The largest concentrations of Rohingya are found in neighbouring Bangladesh and in Saudi Arabia, with significant numbers in Malaysia, Thailand, India and elsewhere. In addition to the steady flow of Rohingya refugees over several decades, there have been several mass exoduses from Myanmar into Bangladesh and beyond, including in 1978, 1992 and most recently 2012-2013 as a result of mass violence and persecution. Often these Rohingya migrants are not recognised and are not protected as refugees. Instead they are marginalised and excluded. Many live in poverty, often working illegally with no documentation, and are vulnerable to discrimination, violence, arbitrary treatment and exploitation.

1.4. The Rohingya in Malaysia

Although Malaysia is not a party to the 1951 Refugee Convention or its 1967 Protocol, the country has a long history of providing temporary asylum to groups of refugees and asylum seekers.[39] Such groups include

[38] See for example, UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana,* Human Rights Council, 25th Session, UN Doc. A/HRC/25/64, 2 April 2014, Para 51.

[39] Under Article 1 of the 1951 Convention relating to the Status of Refugees, refugees are persons who are unable to return to their country of origin due to a well-founded fear of persecution on the basis of their race, religion, nationality, political opinion or membership of a particular social group. The recognition of refugee status is a declaratory act and the rights of refugees are invoked before their status is formally recognised by a decision-maker. Therefore, we do not view refugees and asylum seekers as two legally distinct categories of person. However in this report the term "refugee" denotes persons who have had their status as a refugee recognised by UNHCR under its mandate (UNHCR conducts refugee status

Filipino refugees from Mindanao during the late 1970s and early 1980s and Cambodian and Vietnamese refugees during the Indo-Chinese refugee crisis in the late 1980s and 1990s. Malaysia also accommodated a small number of Bosnian refugees in the early 1990s, as well as Indonesians from Aceh Province in the early 2000s.

Currently, Malaysia hosts one of the largest urban refugee populations in the world. As of 30 June 2014, some 146,020 refugees and asylum seekers had been registered with the UN High Commissioner for Refugees (UNHCR) in Malaysia: of these, the vast majority (over 135,025) are from Myanmar, of which the two largest groups are ethnic Chins (51,450) and Rohingya (37,850). Other groups include Myanmar Muslims (11,970),[40] Arakanese/Rakhine (7,700), Burmese and Bamar (3,600), Mon (5,380), Kachins (4,985), Karen/Kayin (4,645) and Shan (1,634).[41] In addition, there are smaller groups of refugees from Sri Lanka, Somalia, Syria, Iraq and Afghanistan.[42] Some 70% of registered refugees and asylum seekers are men, and 30% are women; however, this balance appears to be changing with an increase in the number of Rohingya families arriving in Malaysia, as well as Rohingya women coming to marry or join their

determination in many countries – particularly those which have not ratified the 1951 Convention), whereas the term "asylum seeker" is used to refer to persons whose claim for refugee status is still pending before UNHCR. This distinction is made only to demonstrate the difference in the experiences and treatment of refugees and asylum seekers in Malaysia in relation to their ability to access basic rights.

[40] The category "Myanmar Muslim" includes Muslims from all regions of Myanmar of various ethnic backgrounds, who identify as such. Within this group there are likely to be those who share the same ethnicity as "Rohingya" but who do not identify as "Rohingya".

[41] Interview MYS 20, with UNHCR Malaysia Office, Kuala Lumpur, 12 May 2014 and email correspondence with UNHCR Malaysia Office, 4 June 2014. Note that "Burmese" refers to all persons from Myanmar who have not further identified as belonging to a particular ethnic group, and "Bamar" are those who have identified as belonging to the majority ethnic group of Myanmar.

[42] UNHCR Malaysia, *Figures at a Glance*, available at: http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx.

husbands, particularly since the 2012 violence in Rakhine state.[43] Children account for approximately 30,850 of the population of registered refugees and asylum seekers.[44] Of this, as of 31 May 2014, 9,761 were Rohingya children. There have also been an increasing number of unaccompanied minors, including children who entered the country unaccompanied, and those who were separated from their parents as a result of detention.[45] The breakdown of Rohingya children registered by UNHCR Malaysia is as follows:[46]

Age Group	Female	Male	Total
Below 5	2,102	2,222	4,324
6 - 9	829	968	1,797
10 – 12	514	601	1,115
13 – 17	749	1,776	2,525
Total	**4,194**	**5,567**	**9,761**

In addition to the registered population, there is a significant population of refugees and asylum seekers who are yet to be registered with UNHCR. UNHCR estimates this population to be approximately 35,000, of which approximately 15,000 are Rohingya.[47] However, community based organisations, Rohingya leaders and activists believe that the number is likely to be much higher.

The protection environment for refugees and asylum seekers in Malaysia is made more difficult because of the large number of irregular migrants who have entered Malaysia in search of better economic prospects. It is estimated that there are some four million migrants in the country, of

[43] UNHCR Policy Development and Evaluation Service, *But When will Our Turn Come? A Review of the Implementation of UNHCR's Urban Refugee Policy in Malaysia*, PDES/2012/02, May 2012, p. 9.

[44] See above, note 41.

[45] Email correspondence with UNHCR Malaysia Office, 26 August 2014.

[46] Interview MYS 20, with UNHCR Malaysia Office, Kuala Lumpur, 12 May 2014.

[47] *Ibid.*

which 1.9 million are undocumented and in an irregular situation.[48] Malaysian law does not distinguish between refugees, asylum seekers, and other irregular migrants. Consequently, like other countries in the region, policies towards the Rohingya and other refugees and asylum seekers are focused more on border control, removal and deterrence, and less on protection.

For most Rohingya fleeing persecution and violence, Malaysia is a country of final destination, although some have used the country as a transit point to reach Australia.[49] Rohingya enter Malaysia by land and sea; unlike neighbouring Thailand, Malaysia has generally allowed Rohingya refugees arriving by boat to disembark on its territory. For example, Malaysia's decision in December 2013 to allow 40 Rohingya asylum seekers who were rescued in the Bay of Bengal by a Vietnamese cargo ship, the MV Nosco Victory, to disembark was commended by the international community.[50] Nevertheless, Rohingya who arrive by boat and are detected by the authorities are subject to mandatory detention until UNHCR is able to access and register them and secure their release.[51]

In addition to these more recent boat arrivals, Malaysia is also home to a large population of informally settled Rohingya who have been in Malaysia for two or three generations. They reside throughout Malaysia, with larger communities in and around Kuala Lumpur, and in other states such as Penang, Johor, Kedah, Kelantan and Terengganu. For years, this population, and particularly those not registered with UNHCR, have been

[48] UNHCR Human Rights Liaison Unit, Division of International Protection, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Malaysia*, March 2013. For a detailed analysis, see The Equal Rights Trust, *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia*, London, November 2012, pp. 155-192.

[49] There is little by way of reliable, comprehensive data on secondary movement from Malaysia.

[50] UNHCR, *UNHCR Lauds Malaysia for Accepting Persons Rescued at Sea*, 19 December 2012.

[51] See section 3.2.1 below for further information in this regard.

navigating the insecurities and human rights concerns associated with living and working in a country that considers them to be "illegal immigrants". Without the right to work and facing significant barriers in accessing health care, education and other basic social services, the Rohingya in Malaysia have been getting by for decades in the informal labour sector, while experiencing constant harassment and the risk of extortion, arrest, detention and in some cases, deportation (which, given the persecution faced by Rohingya in Myanmar, would amount to *refoulement*).[52]

1.5. Common Themes and Challenges

One of the advantages of conducting research in several countries has been the ability to identify common trends, themes, issues and challenges. Following are some of the key problems and issues which are faced regionally.

1.5.1. Protracted Statelessness and Lack of a Legal Status

The statelessness and lack of legal status of the Rohingya in all research countries is a common problem; statelessness and discrimination go hand-in-hand and are mutually reinforcing. In Myanmar, the Rohingya have been discriminated against for many decades. The arbitrary deprivation of their nationality as a result of the implementation of the 1982 nationality law and their consequent statelessness was an act of discrimination by

[52] Deportation refers to a state's removal of a migrant from its territory after the migrant has been refused admission, or if the migrant has lost or otherwise failed to obtain permission to remain on the territory. Deportation is to be distinguished from *refoulement*, which is the act of forcibly returning persons to places where they may face persecution or other serious human rights violations. *Refoulement* also includes the act of sending refugees and asylum seekers to a country that does not guarantee protection for refugees. The principle of *non-refoulement* is a norm of customary international law. In Malaysia, "soft deportations" have been known to take place along the Thai-Malaysia border where refugees, asylum seekers and irregular migrants have been unofficially *refouled*, or deported from Malaysia, often into the hands of smugglers and traffickers. See section 3.2.2 below, for further information in this regard.

Myanmar. Their statelessness has since been used to justify further discrimination both in Myanmar and the countries to which they flee.

None of the countries of flight have ratified the international treaties which protect refugees or stateless persons; thus, the majority of Rohingya who should be recognised and protected as stateless persons and as refugees are not; instead they are treated as irregular, economic migrants. The resulting lack of legal status has a significant impact on their enjoyment of rights including the rights to liberty and security of the person, education, health and an adequate standard of living.

The situation is further compounded by the protracted displacement and statelessness of the Rohingya. With each passing year and each new generation, the disadvantage grows and the impact of malnutrition, illiteracy, lack of access to labour markets and healthcare, vulnerability to arbitrary arrest, violence and abuse, insecurity and forced migration becomes greater. This protracted statelessness significantly impedes their enjoyment of rights, whether in Myanmar or in countries of flight such as Bangladesh, Malaysia and Thailand. While there is general international consensus that Myanmar should grant nationality to the Rohingya and repeal or amend its 1982 Citizenship Law, the international community has been largely silent on the right to a nationality of stateless Rohingya children born in other countries. The extent of this problem is hidden, partly because UNHCR statistics record Rohingya who are in a refugee like situation as "refugees" and not as "stateless persons", despite the fact that they do not possess a nationality, that their children are born into statelessness and that the majority are not protected either as refugees or stateless persons. The complex disadvantage of the Rohingya has thus been perpetuated over many generations and in multiple countries.

Equally challenging is the impunity with which acute human rights abuses have been inflicted against the Rohingya. Their protracted statelessness and lack of legal status make them easy targets for state and non-state actors alike. The mass violence in Myanmar of 1978, 1992 and 2012-2013, the violent acts committed in the course of the forced repatriation of Rohingya from Bangladesh since 1994, the sometimes fatal Thai "push-

backs"[53] of Rohingya boat people into the sea in 2009, 2011 and 2013, and past practices in Malaysia of "deporting" Rohingya into the hands of traffickers are all examples of actions undertaken with almost total impunity.

1.5.2. Equality and Non-Discrimination

The pervasive inequality and discrimination faced by the Rohingya is another fundamental challenge that must be addressed both within Myanmar and in other countries. The disadvantage of the Rohingya within Myanmar is entrenched by a system that discriminates against them on the basis of their ethnicity, religion and statelessness. Whilst human rights abuses against many ethnic minorities in Myanmar have been prevalent under military rule and continue until today, the Rohingya have suffered disproportionately. The disadvantage of the Rohingya outside Myanmar stems from their lack of a legal status which is a direct result of, and compounded by, their statelessness. While levels of discrimination suffered by Rohingya in other countries vary both in degree and substance, three factors generally contribute to such discrimination:

- most receiving countries have weak protection frameworks for refugees and often conflate forced migration to escape persecution with economic migration;
- states consistently fail to recognise the Rohingya as stateless, or to respond to their protection needs as stateless persons; and
- states are unwilling to take decisive – or often any - protective action either individually or regionally, as they fear it will become a "pull factor" and result in more Rohingya seeking asylum. This results in a regional "stalemate".

There is a strong nexus between discrimination and other human rights violations. The majority of human rights abuses against the Rohingya

[53] "Push-back" refers to the practice of towing boats of refugees and irregular migrants out to sea, often without adequate food and water and in some instances without engines. "Helping on" refers to the similar but more humane practice of intercepting boats at sea, not allowing them to land but moving them on to other countries, often after providing them with supplies.

either have a discriminatory basis or are exacerbated by discrimination. For example, while bonded labour and land grabs were a common practice affecting numbers of people during the Myanmar military regime, the Rohingya of North Rakhine State were and continue to be more vulnerable to these kinds of abuses. Similarly, while poverty is rampant in Cox's Bazar Bangladesh, the non-registered Rohingya refugees are in a worse position than the general population as they have no legal right to work, and this is exacerbated at times by the Bangladesh government's refusal to permit the operations of humanitarian actors.

1.5.3. Forced Migration, Trafficking and Smuggling

The majority of Rohingya, lacking documentation and unable to travel freely within Myanmar and internationally, rely on the assistance of smugglers to flee from persecution in Myanmar and also to make the hazardous boat journey from Bangladesh to countries in South East Asia. The smuggling and trafficking networks in the region are one and the same and many Rohingya who start the journey with smugglers end up as victims of trafficking and are forced into bonded labour on Thai and Malaysian plantations and deep sea trawlers. Ties between smuggling/trafficking rings and state authorities (immigration, police etc.) in Thailand and Malaysia in particular have been widely reported.[54]

It must be noted that as the majority of Rohingya are refugees, the legality of their entry into countries of asylum is irrelevant and consequently, the distinction between trafficking and smuggling should be moot. However, as stated above, the countries concerned do not have strong refugee protection frameworks in place and Rohingya refugees are rarely recognised as such. Consequently, the identification of victims of trafficking has taken on a level of importance in the region which is in itself an indication of the weakness of any existing national refugee protection frameworks.

[54] See for example, above note 3; see also Reuters, "Preying on the Rohingya", *Reuters,* July 2013; Reuters, "Thailand's clandestine Rohingya policy uncovered", *Reuters,* December 2013;BBC, "Burmese refugees sold on by Thai officials", *BBC News,* January 2013; Phuket Wan, "Thai Officials Linked to Rohingya Trafficking Networks, Says Torture Report", *Phuket Wan News,* April 2014.

2. THE INTERNATIONAL LEGAL FRAMEWORK

2.1. A Regional Overview

While this report provides an overview of Malaysia's national and international legal obligations relevant to the Rohingya in Malaysia, the international framework is also relevant to all countries. All states have an obligation to protect the human rights of all persons who are in their territory and subject to their jurisdiction. This includes the Rohingya. These obligations are contained in international human rights treaties. As this table shows, these treaties have been ratified to varying degrees by the countries researched under this project (unless specified within the table, the dates referred to are those of accession or ratification).

	Bangladesh	Indonesia	Malaysia	Myanmar	Saudi Arabia	Thailand
ICERD[55]	11/6/1979	25/6/1999			23/9/1997	28/1/2003
ICESCR[56]	5/10/1998	23/2/2006				5/9/1999
ICCPR[57]	6/9/2000	23/2/2006				29/10/1996
CEDAW[58]	6/11/1984	13/9/1984	5/7/1995	22/7/1997	7/9/2000	9/8/1985
CAT[59]	5/10/1998	28/10/1998			23/9/1997	2/10/2007
CRC[60]	3/8/1990	5/9/1990	17/2/1995	15/7/1991	26/1/1996	27/3/1992

[55] International Convention on the Elimination of all Forms of Racial Discrimination, G.A. Res. A/RES/47/133, 1969.

[56] International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI), 1976.

[57] International Covenant on Civil and Political Rights, G. A. Res 2200A (XXI), 1976.

[58] Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. A/RES/34/180, 1979.

[59] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/RES/39/46, 1987.

[60] Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989.

CMW[61]	Signed only 7/10/1998	Signed only 22/9/2004				
CRPD[62]	30/11/2007	Signed only 30/3/2007	19/7/2010	7/12/2011	24/6/2008	29/7/2008
UNTOC[63]	13/7/2011	20/4/2009	24/9/2004	30/3/2004	18/1/2005	17/10/2013
UNTOC Trafficking Protocol[64]		28/9/2009	26/2/2009	30/3/2004	20/7/2007	17/10/2013
UNTOC Smuggling Protocol[65]		28/9/2009		30/3/2004	20/7/2007	Signed only 18/12/2001

In addition to treaty obligations, as member states of the United Nations, all states are obligated by the UN Charter to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".[66] These human rights and fundamental freedoms are specified in the Universal

[61] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U/N/ Doc./A/RES/45/158, 18 December 1990.

[62] Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006.

[63] United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000.

[64] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000.

[65] Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, 2004.

[66] Article 55(c) of the Charter of the United Nations. According to Article 56 of the Charter, it is the obligation of all member states of the UN to take "joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55".

Declaration of Human Rights (UDHR),[67] many of which are also recognised as principles of customary international law.[68]

2.2. Malaysia's Obligations under International Law

As seen in the above table, Malaysia has ratified only three core international human rights treaties, and has maintained reservations in respect of each: (i) the Convention on the Rights of the Child (CRC);[69] (ii) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);[70] and (iii) the Convention on the Rights of Persons with Disabilities (CRPD).[71] In March 2014, Malaysia rejected recommendations to remove its reservations to these three Conventions and to accede to the remaining key human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

[67] Universal Declaration of Human Rights, G.A. Res. 217A (III), 1948.

[68] International Law Commission, "Draft Articles on Diplomatic Protection with Commentaries", 58th session, *Yearbook of the International Law Commission*, Vol. II, Part Two, 2006, p. 49.

[69] Malaysia has made the following reservations to the Convention on the Rights of the Child: Article 2 (non-discrimination); Article 7 (name and nationality); Article 14 (freedom of thought, conscience and religion); Article 28(1)(a) (free and compulsory education at the primary level); and Article 37 (freedom from torture or other cruel, inhuman or degrading treatment or punishment and arbitrary detention). Malaysia has also stated that the application of the CRC at national level is subject to its compatibility with the Federal Constitution.

[70] Malaysia maintains reservations to Article 9(2) (nationality of children); Article 16(1)(a) (right to enter into marriage); Article 16(1)(c) (rights during marriage and dissolution); Article 16(1)(f) (guardianship); Article 16(1)(g) (same personal rights between spouses); and Article 16(1)(h) (same property rights for spouses). Malaysia has also stated that the application of CEDAW in Malaysia is subject to compatibility with the Federal Constitution and Syariah (Islamic) law.

[71] Malaysia maintains reservations to Article 15 (freedom from torture, or cruel, inhuman or degrading treatment or punishment) and Article 18 (freedom of movement and nationality) of the CRPD.

(CAT) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[72]

As a member state of the Association of South East Asian Nations (ASEAN), Malaysia is a signatory state to the 2012 ASEAN Human Rights Declaration, a non-binding document which nonetheless is a reflection of the human rights consensus in the region.[73] Malaysia is also an active member of regional human rights bodies such as the ASEAN Inter-governmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).[74] In 2015, Malaysia will assume the chair of ASEAN.

Under these instruments, Malaysia has a legal duty to protect the rights of refugees and stateless persons on its territory and subject to its jurisdiction. This naturally includes the Rohingya.

2.3. Equality and Non-Discrimination

As stated in Article 1 UDHR, "All human beings are born free and equal in dignity and rights".[75] The rights to equality and non-discrimination are central and foundational principles of international human rights law and are enshrined in all of the core international human rights treaties. The principle of non-discrimination on grounds of race is also a peremptory norm of customary international law.

[72] Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum,* UN Doc. A/HRC/25/10/Add.1, Paras 8-10.

[73] ASEAN Human Rights Declaration, 19 November 2012.

[74] For more information on AICHR, see: http://www.asean.org/communities/asean-political-security-community/category/asean-intergovernmental-commission-on-human-rights-aichr. For more information on ACWC, see: http://www.asean.org/communities/asean-socio-cultural-community/category/acwc.

[75] See above, note 67, Article 1.

The ASEAN Human Rights Declaration also entrenches the right of all persons to equality and non-discrimination.[76] Importantly for the Rohingya, the right to equality is a universal right to which everyone is entitled, regardless of their nationality or lack thereof. While states are permitted to distinguish between citizens and non-citizens in some specific circumstances, as the UN Committee on the Elimination of Racial Discrimination (CERD) has stated, this is to be seen as an exception to the principle of equality and consequently must be narrowly construed "so as to avoid undermining the basic prohibition of discrimination".[77]

Malaysia's domestic legal and policy framework related to non-discrimination and equality remains weak and falls short of international standards.[78] Malaysia's Federal Constitution contains two key provisions relating to non-discrimination and equality - Articles 8 and 12. Article 8(1) states that "All persons are equal before the law and entitled to the equal protection of the law", while Article 8(2) provides that "There shall be no discrimination against *citizens* [emphasis added] on the ground only of religion, race, descent, place of birth or gender." Article 8 therefore protects the right to equality of non-citizens, but not their right to non-discrimination.[79] Article 12 of the Federal Constitution guarantees to all citizens protection from discrimination in respect of education, and Article 5 recognises the right of all citizens to be brought before a magistrate without unreasonable delay and within 24 hours of arrest; non-citizens, on the other hand, may be held for up to 14 days.[80] Further discriminatory

[76] See above, note 73, Articles 1-3.

[77] UN Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against Non Citizens*, UN Doc. CERD/C/64/ Misc.11/rev.3, 01 October 2002.

[78] For a comprehensive analysis of equality and non-discrimination in Malaysia, see Equal Rights Trust, *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia,* Equal Rights Trust Country Report Series: 2, London, November 2012.

[79] *Ibid.,* see pp. 229-241 for a discussion of the other limitations of Article 8 of the Federal Constitution.

[80] See section 3.2 for a further discussion.

provisions against non-citizens can be found in Articles 9 (prohibition on banishment and freedom of movement) and 10 (freedom of speech, assembly and association).

Given Malaysia's weak domestic legal framework related to non-discrimination and equality, it is perhaps unsurprising that the Rohingya and other refugee and asylum seeking groups face pervasive and systematic discrimination and inequality in the country. Additionally, while national laws such as the Child Act 2001 in principle apply to all children, in practice, they have not been extended to non-citizen children.[81]

Discrimination against the Rohingya also exists at societal level; on the one hand, there is a degree of tolerance for refugees and foreign nationals as they help meet the country's demand for cheap labour in industries that Malaysian nationals have traditionally been reluctant to work in, such as construction, palm oil plantations or in factories. On the other hand, refugees and irregular migrants experience discrimination, xenophobia and racism from local communities. Although the Rohingya receive some degree of support and sympathy from local Muslim groups and government actors, discrimination against them nevertheless remains pervasive.

This discriminatory treatment of the Rohingya in Malaysia has a serious impact on their enjoyment of other human rights, including their right to liberty and security of the person, education, work and an adequate standard of living, and the highest attainable standard of health, as further elaborated in subsequent sections of this report.

[81] See section 3.3 for more information on the Child Act.

2.4. Statelessness and Refugee law

> *To be stripped of citizenship is to be stripped of worldliness; (…) A man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man (…) they could live and die without leaving any trace, without having contributed anything to the common world.*[82]

This was written over 60 years ago by the philosopher and writer Hannah Arendt, who was herself stateless. She was speaking about the plight of Europe's stateless in the aftermath of World War Two, but could as easily have been writing about the Rohingya today. In *The Origins of Totalitarianism*, she points to the most grotesque implications of statelessness – both for the stateless individual and for the society that he or she lives in. A few years after the publication of Arendt's seminal book, the 1954 Convention Relating to the Status of Stateless Persons was agreed by the United Nations. The 1954 Statelessness Convention defines a stateless person as someone "who is not considered as a national by any state under the operation of its law".[83] This definition is now part of customary international law,[84] and thus applies to states which have not ratified the 1954 Convention, including Malaysia.[85]

---

[82] Arendt, H., *The Origins of Totalitarianism*, Harcourt, Brace and Company, California, 1951.

[83] United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

[84] See above, note 68, p. 49.

[85] For authoritative and detailed guidance on interpreting the Article 1(1) definition of statelessness, see UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014. This Handbook is essential reading for persons engaged on the issue of statelessness. It resulted from a series of expert consultations conducted by UNHCR. The text on interpreting the Article 1(1) definition of statelessness draws on the UNHCR, Expert Meeting - The Concept of Stateless Persons under International Law, 2010 in Prato, Italy, that the Equal Rights Trust participated in. The Summary Conclusions of this meeting are available at: http://www.unhcr.org/refworld/docid/4ca1ae002.html.

The Malaysian Constitution does provide for the granting of Malaysian nationality to stateless children born in the country. However, this provision has never been implemented with regard to the Rohingya or other stateless populations in the country.[86]

Although Malaysia is not party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol,[87] some of its provisions are principles of customary international law, notably the principle of *non-refoulement* which provides that:

> *[N]o Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened.*[88]

Article 14(1) of the UDHR enshrines the right of everyone to "seek and to enjoy in other countries asylum from persecution." As a member state of the United Nations, Malaysia is obligated by the Charter of the United Nations to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".[89] The human rights and fundamental freedoms referred to in Article 55 (c) of the UN Charter are specified in the UDHR,[90] and include this right. Furthermore, while the UDHR is not a binding document, it is a reflection of the moral consensus of the international community and is the basis for the human rights treaties that followed. For example, Article 22 of the CRC protects the rights of asylum seeking and refugee children, and places a duty on states to protect them and cooperate with the UN in this regard. Lastly, the ASEAN Human Rights Declaration also recognises that "[e]very person has the right to seek and receive

[86] See section 3.3.1 for a discussion on this point.

[87] United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

[88] *Ibid.,* Article 33.

[89] See above, note 66.

[90] See above, note 67.

asylum in another State in accordance with the laws of such State and applicable international agreements";[91] and that:

> *[E]very person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.*[92]

However, despite its obligations under international law, Malaysia has not enacted any domestic legislation or adopted policies for the identification, registration and protection of refugees and stateless persons. In the absence of a domestic refugee law framework, the Immigration Act 1959/1963 serves as the cornerstone of the Malaysian immigration system and emphasises a system of border control and deterrence. Under the Immigration Act, all refugees, asylum seekers and stateless persons are classified as "illegal immigrants",[93] are therefore liable to arrest, prosecution, detention and financial penalties, and may also be subject to whipping (a form of torture, cruel, inhuman, or degrading punishment usually reserved for adult men)[94] and *refoulement.* These punishments can apply to all irregular migrants, regardless of whether they are children, pregnant women, the sick, or the elderly. At the same time, persons who

[91] See above, note 73, Article 16.

[92] *Ibid.,* Article 18.

[93] Immigration Act 1959/1963, Act 153. An "illegal immigrant" is defined in the Immigration Act as someone who: enters or leaves Malaysia through irregular means; remains in Malaysia without legal/official permission; overstays their visa/pass/permit; or who does not abide by the terms of their visa/pass/permit.

[94] *Ibid.,* Section 6(1) provides that entering and staying in Malaysia without a legal pass or permit is punishable by a fine not exceeding RM 10,000 and/or a maximum of 5 years imprisonment, and up to 6 strokes of the cane. Caning is used as a punishment for immigration offences in Malaysia. The Malaysian government confirmed in a written response to a parliamentarian that between 2010 and June 2013, 13,851 foreigners were caned for violating the Immigration Act 1959/63. See DAP Malaysia, "Call for review of judicial caning", *DAPMalaysia.org,* 5 July 2013.

provide employment[95] or housing[96] to "illegal immigrants" and those who harbour them[97] are similarly liable to arrest, prosecution, detention and financial penalties.

But in practice, the situation is less clear cut. Notwithstanding the provisions of the Immigration Act, the Malaysian government for the most part turns a blind eye towards the presence of refugees and asylum seekers in the country, on the condition that the international community, specifically UNHCR, assumes responsibility for their protection and assistance.

> *In this administration based on the elements of humanity, the government allows any illegal immigrants who received recognition from the UNHCR to stay temporarily in Malaysia until resettled to a third country. We do not know the period they can stay in Malaysia for the time being because this involves national security matters. The easiest*

[95] *Ibid.,* Section 55B(1) states that anyone who provides employment to an "illegal immigrant" is liable to a minimum fine of RM 10,000, up to a maximum of RM 50,000 and/or a maximum of 12 months' imprisonment for each employee. Section 55B(3) increases this penalty to a minimum of six months and maximum of five years imprisonment, and up to six strokes of the cane where an individual employs more than five "illegal immigrants" at any one time.

[96] *Ibid.,* Section 55E(1)(2) provides that anyone who permits an "illegal immigrant" to enter or remain at any premises is liable to a minimum fine of RM 5,000, up to a maximum of RM 30,000 and/or a maximum of 12 months imprisonment for each "illegal immigrant" found at the premises. In the case of a second or subsequent conviction, the penalties are increased to a minimum fine of RM 10,000 up to a maximum of RM 60,000.

[97] *Ibid.,* Section 56(1)(d) provides that anyone who harbours a person who s/he knows or has reasonable grounds for believing to be an "illegal immigrant" is liable to a minimum fine of RM 10,000, up to a maximum of RM 50,000 for each person harboured. Where a person has harboured more than five "illegal immigrants", the person will also be liable to imprisonment for a minimum of six months and maximum of five years, as well as six strokes of the cane.

> *thing to say is that the government is "closing one eye" on the matter.*[98]

To this effect, the Malaysian government has allowed refugees and asylum seekers registered with UNHCR to remain in the country pending resettlement to a third country[99] and the principle of *non-refoulement* has generally been respected for this population.[100] Further, there is a tacit acknowledgement that because the Rohingya are stateless, they cannot be deported from Malaysia.[101] Additionally, although the Immigration Act denies their right to work, it is estimated that over 60,000 refugees do work on an irregular basis in Malaysia and although their places of employment are often well known establishments, law enforcement officers turn a blind eye.[102]

This grudging tolerance of refugees and asylum seekers is reflected in policies and practices that offer some limited, *de facto* protection to those registered with UNHCR, but which are either not codified or not made publicly available. As a result, they have not been consistently applied

---

[98] Interview MYS 5, with the Director of Immigration Enforcement Malaysia, Putrajaya, 3 August 2012.

[99] Interview MYS 2, with officers of the National Security Council, Prime Minister's Office of Malaysia, 5 July 2012. Please note that this National Security Directive has not been made publicly available.

[100] However, there have been instances where the Malaysian government has *refouled* refugees recognised by UNHCR or whose asylum claims have been pending before the agency. The most recent example was the *refoulement* of two Sri Lankan refugees and one asylum seeker on 26 May 2014. See Asia Pacific Refugee Rights Network, *APRRN Condemns the Refoulement of Two Sri Lankan Refugees and an Asylum Seeker by Malaysia*, 29 May 2014; and Human Rights Watch, *Sri Lanka: Refugees Returned from Malaysia at Grave Risk*, 28 May 2014.

[101] Interview MYS 1, with Secretary for Crisis Management and National Intelligence, National Security Council (MKN) at the National Security Council office, Putrajaya, 5 July 2012.

[102] See above, note 43, p. 14.

throughout the country, particularly by frontline officers, and may also be easily reversed by the government.[103]

As such, the situation for refugees and asylum-seekers in Malaysia remains extremely precarious and they face constant risk of arrest, detention, financial penalties and judicially imposed caning. Those who have not been able to register with UNHCR are at greater risk of *refoulement*. Refugees and asylum seekers, including the Rohingya, are also vulnerable to extortion by the police and immigration officers. There are also significant barriers in accessing healthcare and children are not permitted to attend government schools.

There have been *ad-hoc* attempts to regularise the presence of Rohingya. Section 55 of the Immigration Act provides for Ministerial discretion to exempt any person or class of persons from the penalties under the Act; this discretion was exercised in 2006, when the Malaysian government attempted to introduce IMM13 permits for Rohingya refugees.[104] However the registration process was extremely problematic, administered without coordination with UNHCR and abandoned after 17 days amid allegations of corruption and fraud.[105] The government subsequently commissioned a study to assess the feasibility of setting up a residence and work permit scheme for Rohingya refugees.[106] However,

[103] See sections 3.2 and 3.3.3 for more information in this regard.

[104] IMM13 permits are a type of temporary residence permit. They can be issued at the discretion of the Minister of Immigration under section 55 of the Immigration Act, and can be utilised to provide the holder with the right to engage in lawful employment and to register their children in government schools. However, they are rarely issued to UNHCR persons of concern in peninsular Malaysia and can also be cancelled at the Minister's discretion. IMM13 permits are issued for a fee of RM 90, and must be renewed annually at an additional cost of RM 90 per renewal. The permit was previously given to Bangsamoro refugees fleeing the armed conflict in Southern Philippines starting from the early 1970s as well as to Acehnese refugees after the tsunami of 2004.

[105] See above, note 78, p. 158.

[106] *Ibid.*

it confirmed in September 2013 that there were no plans to issue IMM13 permits to Rohingya in the near future.[107]

2.5. The Role of the UNHCR

As already noted, Malaysia is not party to the 1951 Refugee Convention and its 1967 Protocol or to the 1954 Statelessness Convention. In the absence of a domestic framework providing for the registration and protection of refugees and stateless persons in Malaysia, UNHCR is responsible for providing registration, status determination, documentation, and facilitating durable solutions for "persons of concern",[108] including the Rohingya. The agency also conducts best interest determinations for children, provides assistance in the areas of health, education and livelihoods, and intervenes to secure the release of refugees and asylum seekers who have been arrested and detained.

Notwithstanding these significant responsibilities and despite its presence in the country since 1975, the agency has no formal agreement with the Malaysian government to conduct its operations in Malaysia and lacks a designated interlocutor in government.[109] Although UNHCR works with the Ministry of Foreign Affairs, Ministry of Home Affairs and Immigration Department on refugee issues, the lack of a specific government agency or body that assumes responsibility for coordinating with UNHCR and other stakeholders on refugee issues has constrained efforts to increase protection space in Malaysia.[110] Notwithstanding this, UNHCR continues to maintain a large office in Kuala Lumpur and the government has continued to accredit UNHCR country representatives. However, tensions do remain; for example, government officials interviewed for this report claimed that UNHCR serves as a "pull factor" for refugees in Malaysia and questioned

[107] Ali, S.A.S., "Isu Pelarian Rohingya; Tidak Rancang Keluar IMM13", *Berita Harian*, 13 September 2013.

[108] "Persons of Concern" are persons whose protection and assistance needs are of concern to the UNHCR.

[109] See above, note 43, p. 9.

[110] See above, note 48.

why the agency was not providing shelter and material support to the refugee population, as well as the slow rate of resettlement of recognised refugees.[111]

Since the end of 2013, asylum seekers as well as recognised refugees are issued a UNHCR card containing their picture and basic bio-data, whereas this was previously only issued to recognised refugees. The cards are identical except that those issued to refugees state that the holder is a "*pelarian*" (refugee) according to UNHCR's mandate, while cards issued to asylum seekers state the holder to be a "*pencarisuaka*" (asylum seeker) whose status is still being assessed/determined by the agency. UHNCR card holders have *de facto* protection against arrest, detention and *refoulement*.[112] Additionally, UNHCR identity card holders generally receive a 50% discount off foreigner healthcare rates at government hospitals.[113]

However, unregistered asylum seekers are in a far more precarious position and often have no documentation, apart from possibly a card issued by a community-based organisation that they belong to. The Rohingya may be unregistered for numerous reasons: while some refugees may have elected not to seek UNHCR registration, others have simply not been able to register with the agency due to practical problems such as physical access to the office in Kuala Lumpur. Indeed, refugee respondents living in other states in Malaysia, particularly those who are unwell or unable to afford the cost of travel, expressed frustration over difficulties in reaching the UNHCR office in Kuala Lumpur, and stressed that their lack of UNHCR registration places them at greater risk of arrest and subsequent detention when travelling.[114]

[111] See above, note 101.

[112] See section 3.2 for further elaboration.

[113] See section 3.3.3 for more information on access to healthcare.

[114] Focus Group Discussion MYS F-2, with Rohingya Society of Malaysia, Penang, 12 August 2012.

One of the key protection issues faced by the Rohingya is the long waiting period for UNHCR registration and refugee status determination (RSD). Some Rohingya refugee respondents reported that those who arrived in Malaysia before 2003 waited for approximately one year, while those who arrived after 2004 experienced significantly greater delays, sometimes several years, to be registered or interviewed for RSD.[115] UNHCR has acknowledged that although registration and the issuance of refugee cards for the Rohingya is "ongoing", it is dependent on its organisational capacity. Rohingya who have been arrested and detained, those with serious medical issues or persons seeking derivative status[116] are prioritised by UNHCR for registration, though there can still be significant delays in this process.[117] UNHCR has pointed out that limitations in their institutional capacity impact their ability to register all asylum seekers: current UNHCR registration waiting times for all nationalities stand at about 2-3 years.[118]

UNHCR also initiated two mobile registration drives in Kuala Lumpur – one in 2009 and the other at the end of 2013 – that the Rohingya were able to access. However, the numbers of Rohingya registered as a result of this drive were limited, due in part to communication difficulties between UNHCR and the communities.[119] The table below shows a breakdown of total numbers of Rohingya registered by UNHCR each year since 2009.

---

[115] *Ibid.,* Focus Group Discussion MYS F-1, with Rohingya Society of Malaysia, Kuala Lumpur, 15 July 2012.

[116] Derivative refugee status is given to family members/dependents of a recognised refugee in accordance with the right to family unification. Individuals who obtain derivative status enjoy the same rights and entitlements as other recognised refugees. For more information on persons eligible for derivative status and UNHCR's procedures for conferring such status, see UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate,* Unit 5, available at: http://www.unhcr.org/43170ff81e.pdf.

[117] See above, note 46.

[118] *Ibid.*

[119] *Ibid.*

Year of Registration	Total Rohingya Persons Registered
2009	3,265
2010	2,900
2011	3,319
2012	4,570
2013	9,720
2014 (As of 15 May 2014)	3,386

The long waiting times, together with difficulties in getting information from UNHCR about the registration and RSD processes, have unsurprisingly led to frustration among the Rohingya community. Rohingya respondents referred to what they perceive as bias on the part of UNHCR, with a general sense among those interviewed that other refugee communities from Myanmar such as the Chin, Mon and Rakhine face shorter waiting times for UNHCR registration, RSD and resettlement.[120] There was also a perception among Rohingya respondents that they have had a lower priority for resettlement than others because of an unwillingness of resettlement countries to accept Muslim refugees after 11 September 2001.[121]

There is some historical merit to the Rohingya perception of differential treatment; throughout the 2000s, UNHCR Malaysia's resettlement strategy was based on the assumption that longer-established Rohingya communities were better suited to local integration, while resettlement was the most appropriate durable solution for the Myanmar Chin population. This approach was "effectively abandoned" at the end of the decade when a senior UNHCR official remarked that different protection services and access to resettlement had "become untenable to justify".[122] UNHCR has also noted, however, that while the majority of Rohingya in Malaysia now regard resettlement as the only viable durable solution,[123] some Rohingya families remain reluctant to be resettled, preferring

[120] See above, notes 114 and 115.

[121] *Ibid.*

[122] See above, note 43, p. 15.

[123] *Ibid.,* p. 16.

instead to remain in Malaysia where they have better established social structures and where Islam is the main religion of the country. Indeed, several but not all, Rohingya respondents stated that if given the chance, they would prefer to remain in Malaysia, provided they were allowed to work and enjoy other fundamental rights. As a Rohingya refugee leader explained:

> *I would prefer to live in Malaysia instead of the United States because the U.S. is not an Islamic country. I've stayed in Malaysia for 16 years and know how to speak, read and write well in the Malay language. I did not get everything that I wanted but still I stayed in Malaysia on Islamic grounds. We also discourage our members from going to non-Muslim third countries.*[124]

UNHCR has been holding community information sessions on the resettlement process and what it means in the hope of encouraging more Rohingya to resettle. In 2013 and up until May 2014, UNHCR submitted a total of 3,211 Rohingya for resettlement, while 624 Rohingya departed for a resettlement country.[125]

[124] See above, note 115.

[125] See above, note 46.

3. PATTERNS OF DISCRIMINATION AND INEQUALITY

The unwillingness to recognise the protection needs of stateless Rohingya in the country has meant that long staying populations and new arrivals continue to face human rights violations, including discrimination. A weak domestic legal framework that does not differentiate between irregular migrants and refugees or asylum seekers means that Rohingya are vulnerable to arrest and detention, have no work rights and face significant challenges accessing other basic social services. Despite Malaysia's accession to the CRC, a reservation to Article 2 continues to undermine Rohingya children's access to education and healthcare.[126]

3.1. Displacement and Migration Patterns of the Rohingya in Malaysia

Malaysia, geographically and politically, plays an integral role in the migration of Rohingya seeking asylum. Malaysia has both long staying Rohingya communities and recent boat arrivals that have either come through Thailand directly to the shores of Malaysia, or as a result of push-backs and denial of entry by Thailand and Singapore.

3.1.1. New Arrivals: The Sea Journeys of Rohingya "Boat People"

In recent years, following the internal violence in Rakhine state in 2012, countries in the region have seen a sharp increase in the number of boat arrivals from Myanmar. Rohingya men, women and children fleeing persecution, mainly from Sittwe and Maungdaw, either arrive on the shores of Malaysia directly (through the northern islands of Penang and Langkawi), or overland from boat arrivals in Thailand. In 2012-2013, there were also an increasing number of boats intercepted by the Malaysian

[126] See above, note 60. According to Article 2 of the Convention on the Rights of the Child, "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

Maritime agencies following push-backs from Thailand and boats arriving directly from Rakhine state.[127]

Rohingya Arriving by Boat to Thailand and Overland to Malaysia

Most Rohingya who arrive by boat come indirectly through Thailand. Their journey most often begins in small fishing boats that leave Sittwe and Maungdaw; from here, they may stay briefly in Bangladesh or transfer directly to larger vessels that carry them across the seas towards Thailand and Malaysia. The exact numbers of Rohingya who have undertaken this journey are not known but estimates are available.[128] Although each journey is different, there exist some common elements:

> *The normal route is from Rakhine where in the hands of agents they go out in a small boat (which can only hold around 20-50 persons) for about two nautical miles, where a big boat waits for them. People are transported to the bigger boat and it can take two to four days to assemble everybody on the bigger boat. Finally, they start the journey. The fastest journey I have come across is four days to Thailand. But in some cases it can take anything between seven to 20 days because they sometimes lose their way (...) If they are arrested by Thai authorities then they are in the jail for a long time. In some cases they are robbed and fall into the hands of traffickers who keep them in the trafficking camps for a long time.*[129]

[127] See section 3.2.1 for a discussion on this issue.

[128] For estimates see section 1.3.4 above. It is important to note, however, that these estimates also include Bangladeshi nationals who have increasingly undertaken the same journey as a result of tightening immigration controls at Kuala Lumpur International Airport, though their numbers are believed to be significantly less than the Rohingya. Skype interview with Chris Lewa, Director of the Arakan Project, 12 May 2014.

[129] Interview MYS 18, with Rohingya Society of Malaysia, Kuala Lumpur, 19 February 2014.

Persons who survive the boat journey, manage to avoid detention in Thailand and are able to pay their smugglers/traffickers, are then taken to Malaysia:

> *After they are released from the traffickers they will be taken by car across the border. But during the journey in some places they have to get down and walk for a few hours to avoid meeting the authorities. People will be waiting there for them and they get into the car again. They bypass the checkpoints; that's why they walk in the jungle. Still in some cases they are arrested. Once they cross the border they usually enter Malaysia through Kedah and Perlis states.*[130]

For those who are detained in Thailand, they remain in detention for prolonged periods and if released, use the same route described above to enter Malaysia once released to brokers.

Boats Arriving Directly on the Shores of Malaysia

The number of boats arriving directly on the shores of Malaysia has been minimal. In 2013, only four boats arrived in Penang, Langkawi[131] and Kuala Selangor (without being intercepted). However, this figure only includes boats that have come to the attention of the authorities, with potentially more boats having arrived undetected.

Rohingya on these boats mainly come from Sittwe and Kyauk Phyu,[132] the coastal town that witnessed extensive violence and destruction in October

---

[130] *Ibid.*

[131] A group of 450 Rohingya landed in northern Malaysia on the shores of Langkawi Island after a two week boat journey. See BBC News Asia, "Hundreds of Rohingya refugees reach Langkawi, Malaysia", *BBC News*, 31 December 2012.

[132] Many of Muslims displaced by the violence and destruction in Kyauk Phyu and surrounding areas identify as "Kaman", some of whom also fled to Malaysia by the same route. It should be noted that many refugees from Kyauk Phyu had first fled to IDP camps in Sittwe in October 2012 and did not sail directly from Kyauk Phyu.

2012 and thereafter.[133] The number of boat departures from Sittwe and Kyauk Phyu decreased in the lead up to the national census in Myanmar in March 2014, likely due to the hopes of the Rohingya that they would be included in the census. However, following an escalation of violence and announcement that the Rohingya would not be allowed to identify as Rohingya in the census,[134] boat movements have picked up again with two new boats from Sittwe arriving in Malaysia. The first boat arrived in Penang on 10 April 2014, carrying 129 people.[135] All persons on board were subsequently arrested by immigration authorities and the case has been transferred to the Anti-Trafficking in Persons (ATIP) Unit.[136] The second arrival was on 9 May 2014 in Kuala Perlis with 101 persons on board.[137] As of 31 May 2014, all persons on board this boat were subsequently arrested by the Malaysian immigration authorities and remain in detention awaiting release by UNHCR.[138]

Following is a description of a boat journey taken in 2012 to reach Malaysia:

> *I paid a Bangladeshi agent and left Teknaf by boat towards Malaysia. However, the boat got lost in the Indian Ocean*

[133] Human Rights Watch identified 811 destroyed structures on the eastern coastal edge of Kyauk Phyu following arson attacks reportedly carried out on 24 October 2012. See Genocide Watch, *Burma: New Violence in Arakan State by Human Rights Watch*, 24 October 2012.

[134] Buncombe, A., "With 'Rohingya' not an option on census forms, Burma's new democracy is facing an identity crisis"*, The Independent*, 2 April 2014.

[135] See above, note 46.

[136] *Ibid.,* UNHCR was given access to detainees in late April 2014. Out of the 129 individuals, 56 were charged at the Butterworth Magistrates Court. The remaining 73 persons are children who, as of May 2014, were detained in the Ajil Immigration Detention Centre. A request has been made by UNHCR for their release. For a further discussion, see section 3.2.2.

[137] *Ibid.*

[138] *Ibid.*

> *and was stopped by the Indian Navy. I was sent to a detention camp on Andaman Island for two months.*
>
> *After two months, I was put on a packed fishing boat that came from Malaysia. There were 297 men and three children aged about 10 years old on the boat. The nonstop journey took five days and four nights. We finally reached Pantai Merdeka in Kedah and waited for agents to bring us down. Unfortunately, we were all arrested by the Malaysian Maritime Enforcement Agency and were sent to the police station in Sungai Petani, Kedah.*
>
> *We were remanded for two months while waiting for the court hearing. I heard that usually the remand is just for two weeks, but this time it was longer due to the fact that some agents were trying to negotiate our release for a sum of money. The negotiations failed and we were finally brought to court, charged with illegally entering the country and sentenced to three months jail. After serving my sentence, I was sent to a detention camp in Melaka. UNHCR sent some people to register me and I was finally released.*[139]

Rohingya persons endure squalid conditions on board these vessels. As a result of a lack of food, unsanitary conditions, violence by brokers and dangerous conditions at sea on board unseaworthy vessels, many Rohingya either do not survive the journey or survive with serious physical health repercussions and severe psychological trauma.[140] As stated by one interviewee:

> *It was an old fishing boat. There were 208 Rohingya on board and around 70 Bangladeshi and one driver. It was*

[139] Interview MYS 9, with Rohingya refugee youth, Penang, 24 October 2012.

[140] Szep, J. and Grudgings, S., "Reuters Special Report: Thai authorities implicated in Rohingya Muslim smuggling network", *Reuters Special Report,* Thailand, 17 July 2013.

> *crammed tight with people on the boat. We were like cattle crammed onto a lorry. There was not enough space to lie down. Just to sit scrunched up. It was difficult even to find enough space to eat. Every two days, we were given a small portion of rice and every day we were given two to three cups of water. It wasn't enough. We brought very light food ourselves to sustain us. Like small packets of sugar and sauce. On board, we were not treated badly and we were never beaten.*[141]

Changing Trends in New Arrivals

Over the course of 2013 and early 2014, there have been noticeable changes in the demographics of new Rohingya arrivals, with women and children now making the journey.[142] It is estimated that women and children make up between 5 to 15% of persons abroad overall.[143] This includes a growing number of unaccompanied minors. Although reasons for this change may be numerous, it is a likely result of the increasing violence in Rakhine state, resulting in women leaving to reunite with their husbands already in Malaysia.[144] Additionally, there have been a number of women and a smaller number of child brides who have arrived by boats through Thailand to enter into marriages arranged by their parents or future husbands, with the latter often paying for their journey to Malaysia.[145] With the increasing number of women making this journey, there have been reports of incidences of rape on board these vessels.[146]

---

[141] Interview MYS 11, with a 25 year old Rohingya man who had recently arrived in Malaysia, Kuala Lumpur, 15 December 2012.

[142] See above, note 140.

[143] The Director of the Arakan Project as quoted in Associated Press, "Desperate Rohingya children flee to horrors and despair", *Taipei Times,* 4 May 2014.

[144] See above, note 128.

[145] See above, note 46.

[146] Lee, Y.K., "Malaysia: Rohingya refugees left with nowhere to go", *Green Left Weekly,* 2 July 2013.

Another significant changing trend is the health implications that arise from the boat journey and conditions in trafficking camps. An increasing number of newly arrived young Rohingya males aged 16-25 now have severe physical health conditions such as "paralysis possibly caused by poor diets and long-term confinement".[147]

Other Means of Arrival

Although boat arrivals are the most common way for Rohingya asylum seekers to get to Malaysia, some are able to access other options including travel by air:

> *I left home because of the constant harassment by the Myanmar authorities and local people. My father initially did not allow me to go but relented and gave me RM 9,000 (USD 2,800) to pay agents in Bangladesh. This was insufficient because the asking fee was RM 13,000 (USD 4,050). However, the agent agreed to allow me to go, disguised as a "son" of another female refugee… From Dhaka we flew to Cambodia. Upon arrival my Bangladeshi passport was taken away and I was separated from the others. From Cambodia I made my way by car to Bangkok, and then onwards towards the Thai - Malaysia border, a journey which took two days and two nights. Then I made my way by foot across the border into Malaysia where a car was waiting for me and took me to Kuala Lumpur. The agents kept me there until they found somebody in Penang who knew my father. The agents demanded RM 600 (USD 186) for my release. After the money was paid by my father's friend, I was released and put on a bus to Penang.*[148]

[147] UNHCR, *In Malaysia, Rohingya arrivals hope to end cycle of abuse, exploitation by smugglers*, 5 May 2014.

[148] Interview MYS 6, with 14 year old Rohingya refugee, Penang, 24 October 2012.

3.1.2. Long-term Population: Overland Routes to Malaysia

Although the long-term Rohingya population in Malaysia may be traced back to the 1980s, a large proportion of the current population made their journey through varying routes in the early to mid-1990s following the exodus in 1991-1992.[149] In December 1993, UNHCR Malaysia registered some 5,100 Rohingya.[150]

Most of the long staying Rohingya refugees who were interviewed for this report were originally from Maungdaw in Rakhine State. Almost all of them came to Malaysia during 1993-1995 and have been living in the country for approximately 20 years.[151] Most made the journey from Bangladesh by air through "brokers" who obtained some form of identification documentation, visa or passport for them:

> *We would board an airplane from Dhaka, Bangladesh to fly to Bangkok and get to the Malaysia airport. We used a Bangladeshi passport. We got the passport by paying an agent in Bangladesh. If we had no identification documents, we were free to do the passport. The entire process including creating a passport, travel documents, visas and flight tickets from Dhaka to Kuala Lumpur cost approximately RM 12, 000 (USD 3,740).*[152]

For those who could not afford the air ticket, they would make the journey overland from Rakhine to Yangon and then through to Thailand and finally Malaysia. The journey, although easier than travelling on the open seas, was often much longer, crossing numerous borders and townships, and not without its own set of challenges:

---

[149] See above, note 3 for more information.

[150] *Ibid.*

[151] See above, notes 114 and 115.

[152] *Ibid.*

> *I came to Malaysia after first trying to live in Thailand. I left my hometown in Maungdaw for Sittwe and then Yangon after the turmoil of 1988. In Yangon I found other Rohingya people wanting to escape Myanmar and we made our way into Thailand with the help of a Rohingya couple. Once in Thailand, I worked as a roti seller for the couple in Bangkok. Things were alright for a while until I was arrested in 1993 and deported back to Myanmar. In 1994 I decided to try my luck again, but this time I decided to make my way to Malaysia. I crossed the border into Malaysia through Padang Besar [north of Malaysia] on 31 December 1994. From there I moved to Alor Setar [Kedah] and then to Butterworth in Penang.*[153]

During the late 1980s and early 1990s, freedom of movement for Rohingya in Myanmar was significantly better, with most being able to obtain some form of documentation to travel overland. Following the establishment of the *NaSaKa* in 1992, this freedom of movement was significantly curtailed, and passports and other documentation was harder to come by.[154] Maritime movements however started picking up in 2006 as Malaysia became a preferred destination (over Saudi Arabia).[155]

Most of the long-staying populations reside all over the country, in urban towns where job opportunities are rampant, such as Penang, Kuala Lumpur and Johor. Having lived in Malaysia for many years, they have picked up the local language and some now set up community-based organisations and schools to assist new arrivals and Rohingya children who have no access to local schools.[156]

Until recently, it has been very uncommon for Rohingya women to leave Myanmar, and the arriving refugee population has been mostly single

[153] Interview MYS 8, with a long staying Rohingya Refugee man, Penang, 22 October 2012.

[154] See above, note 3.

[155] See above, note 128.

[156] See above, note 129.

young men or men with wives and families in Myanmar. Having settled and procured a stable job in Malaysia, some made arrangements for their wives to make the journey from Myanmar; others, having lived more than 15 years in Malaysia, married local Muslim women or Indonesian migrant women. In both instances the presence of second and third generations of Rohingya born and living in Malaysia is significant. These generations, despite being born in Malaysia and having never been to Myanmar, are considered to be "illegal immigrants", and continue to remain in a state of protracted statelessness.

3.2. Arrest, Detention and Deportation

As irregular migrants in a country that does not recognise the rights of refugees and asylum seekers, the Rohingya in Malaysia experience constant threats to their liberty and security when entering, living and working in and travelling through the country. Their very presence is rendered illegal by discriminatory legislation that does not recognise their protection needs. Their vulnerability to punitive measures aimed at controlling immigration, as well as the exploitation of this vulnerability by state authorities, is constant and pervasive. Such punitive measures not only include arrest and prolonged, arbitrary detention, but may also encompass extortion and harassment by law enforcement officials on a regular basis.

The Equal Rights Trust has published detailed *Guidelines to Protect Stateless Persons from Arbitrary Detention*, which are based on principles of international law. Drawing on an analysis of international standards, the Guidelines state that detention would be arbitrary unless it is:

> *(i)[P]rovided for by national law; (ii) carried out in pursuit of a legitimate objective; (iii) non-discriminatory; (iv) necessary; (v) proportionate and reasonable; and (vi) carried out in accordance with the procedural and substantive safeguards of international law.*[157]

[157] Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention,* June 2012, Guideline 25.The Guidelines further elaborate on each of the above elements of the arbitrariness test (Guidelines 26-30), provide guidance on

As noted in section 2.4 above, despite the absence of formal legal recognition of their status under the Malaysian legal system, refugees and asylum seekers who are registered by UNHCR hold a form of *de facto* status that allows them some degree of protection against arrest, detention and *refoulement*, though this is not consistently applied. Such protection is understood to derive from various sources, none of which have been codified into law or made publicly available. These include:

i. written directions issued by the Attorney-General's Chambers in 2005 stating that it would refrain from prosecuting holders of UNHCR documentation;[158] and
ii. written standard operating procedures issued by the immigration department, including a directive that once the authenticity of a UNHCR card has been verified, the card holder may be released.

According to a respondent from the Malaysian immigration department, the effect of these directions and standard operating procedures is that persons registered with UNHCR may only be arrested and detained in order to verify the authenticity of their documents, or if they have committed a criminal offence.[159] However because the directions and standard operating procedures are not codified into legislation, they are not uniformly applied and are subject to change at the government's discretion.[160]

---

the implementation of alternatives to detention (Guidelines 31-36), stipulate the standards that should be adhered to when detaining a person (Guidelines 37-44), and articulate special considerations relating to vulnerable persons and groups (Guideline 45-51). See also UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Paras 112–115.

[158] International Federation for Human Rights (FIDH) and Suaram, *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination,* March 2008, p. 9.

[159] See above, note 98.

[160] See above, note 46. For example, at the time of writing this report, UNHCR has been unable to secure the release of non-Myanmarese UNHCR- registered refugees and asylum seekers from immigration detention depots since November 2013. The reasons for this change in government policy are unknown.

The process through which Rohingya and other refugee and asylum seekers are arrested and detained is complicated, and can be summarised as follows:

- If a police officer comes into contact with a UNHCR registered refugee or asylum seeker, they may release them once a UNHCR card is produced, or may choose to bring them to the police station to verify if their UNHCR cards are genuine.
- If brought to a police station, they will be released if the authenticity of a UNHCR card is confirmed. If confirmation is not provided by UNHCR, or if the individual is not registered with UNHCR, the police officer will usually proceed to arrest them for offences under the Immigration Act. At this point, a police report will be filed, including details of the date of arrest and the name, age and gender of the individual.
- Once arrested and an investigation file opened, the individual will be taken to a police lock-up or transferred directly to one of the country's immigration detention depots. They may then be held for 14 days for investigation before being brought before a Magistrate,[161] or may be detained for removal purposes without the right to be produced before a Magistrate.[162]
- During this period, if necessary, the investigating officer will liaise with UNHCR to verify the authenticity of the UNCHR card. The investigating officer will also refer the case to the Deputy Public Prosecutor (DPP). If the authenticity of UNHCR cards can be verified, the DPP will order the release of the refugee or asylum seeker.
- Unregistered asylum seekers or those whose UNHCR cards cannot be verified will be produced before a Magistrate. Legal representation during court proceedings is rare, and interpretation services in a language understood by the refugee or asylum seeker is not always available; for this reason, refugees and

[161] See above, note 93, section 51(1)(5)(b).

[162] *Ibid.,* section 34.

asylum seekers have reported pleading guilty to immigration offences despite not understanding the charges.[163]

- Those whose UNHCR cards are authenticated before the court proceedings, are given a discharge not amounting to an acquittal and may either be released or sent to immigration detention depots where UNHCR will subsequently apply for their release.
- Those who are not registered with UNHCR are not able to present an asylum application as no government entity is mandated to conduct RSD. They are likely to be convicted under the Immigration Act, sentenced to prison and upon completion of this sentence, transferred to immigration detention centres for deportation. UNHCR will only be able to access them once they have completed their prison sentences.

As evident from the above summary, the ability of registered refugees and asylum seekers to avoid arrest and detention is largely dependent upon law enforcement agencies being able to authenticate registration with UNHCR. In recognition of this, the government and UNHCR have been piloting the use of a database, compiled by UNHCR and shared with enforcement agencies that contains the basic bio-data (identical to the information found on the UNHCR refugee and asylum seeker card) of all registered "persons of concern". The intention is that if enforcement officers are able to conduct their own verification by using the database, registered refugees and asylum seekers would no longer have to wait for enforcement officers to contact UNHCR and for UNHCR to provide verification of their registration.[164] The database is also being utilised by government hospitals before approving the 50% discount for health care costs.[165]

[163] See for example, Amnesty International, *Abused and Abandoned: Refugees Denied Rights in Malaysia*, June 2010, ASA 28/010/2010; and Amnesty International, *A Blow to Humanity: Torture by Judicial Caning in Malaysia*, December 2010, ASA 28/013/2010.

[164] See above, note 46.

[165] *Ibid.*

However, the roll out and use of the database by law enforcement officers has been slow for various reasons including logistical challenges.[166] In the meantime, the government is planning its own biometric data collection exercise, through which it will maintain its own database of refugees and asylum seekers registered with UNHCR. No further details were available at the time of writing as discussions around the mechanics and implications of the initiative were ongoing. However, a government respondent has confirmed that refugees registered under this initiative will not be given any employment or stay rights and, while the database could well be a duplication of UNHCR's efforts, once rolled out, arrests of UNHCR registered refugees and asylum seekers would become unnecessary. The database could also make it more difficult for enforcement officers to engage in extortion of this population.[167] While it is too early to comment on the biometric data collection exercise and database, special care must be taken to ensure that this process protects confidential information, respects the right to privacy and is not subject to fraudulent and corrupt practices.

Once detained, Rohingya and other refugees and asylum seekers face multiple violations of their human rights. There are currently 14 immigration detention depots in Malaysia[168] and conditions are reported to fall far below international standards with overcrowding, poor sanitation, insufficient access to food, water and healthcare, as well as reports of violence and abuse.[169] Once a refugee or asylum seeker is sent to the immigration detention depot, the time it takes for UNHCR to secure

[166] *Ibid.*

[167] Interview MYS 21, with government representative from the Prime Minister's department, Kuala Lumpur, 28 May 2014.

[168] The 14 detention centres are in Ajil, Belantek (closed as of end 2013 for renovations), Bekenu, Bukit Jalil, Juru, Kemayan, Kuala Lumpur International Airport, Langkap, Lenggeng, Machap Umbo, Pekan Nenas, Semenyih, Semuja, and Tanah Merah. There are detention depots in all states except Perlis. (See National Human Rights Commission of Malaysia (SUHAKAM), *Roundtable on Alternatives to Immigration Detention*, 12 November 2013, Kuala Lumpur, p. 6.)

[169] See above, note 158. See also Amnesty International, *Malaysia: Submission to the UN Universal Periodic Review*, October - November 2013.

their release increases considerably. UNHCR has generally good access to immigration detention depots, but has not been allowed access to two of them, resulting in a protection gap. Furthermore, even in the other 12 detention depots, the process of identifying, verifying and then seeking formal approval for the release of refugees and asylum seekers from detention is time consuming.[170] As one respondent during a focus group discussion in Penang explained:

> *Detention camps usually are far from the UNHCR refugee office. Imagine if a Rohingya was detained in Juru, Penang, then the UNHCR officers have to come from Kuala Lumpur to manage the releasing process. But this process is time consuming because UNHCR officers will conduct investigations and interviews in advance and this process cannot be performed once or twice only. They need to commute and this certainly takes time and the Rohingya people had to wait in the detention camp for a long time. In addition, the UNHCR officers also have other commitments and they also need to go to other depots and detention camps in other states to resolve the same issues.*
>
> *The situation arises when a Rohingya has been detained and has to go through the normal legal process because he does not have the card. The court will sentence him to prison and sometimes he will get whipped. Then, this Rohingya will be sent to a detention camp after the sentence has expired. If they have relatives or friends, their relatives outside will tell the RSM (Rohingya Society of Malaysia) about it. RSM will then report this to the UNHCR. The UNHCR will also visit the detention depots from time to time to ensure that no Rohingya are being detained.*
>
> *Usually, the process takes four months or more. Some of the arrested Rohingya would have wives and children and other dependents. If they got arrested for one to four*

[170] See above, note 46.

> *months, who would to bear the cost of living of their families?*[171]

Apart from the mechanisms for release of UNHCR "persons of concern", there are no other alternatives to detention either in law or in practice for refugees or asylum seekers. Thus, the only way out of detention for many is voluntary repatriation, which in the case of the Rohingya would violate the principle of *non-refoulement*. This, coupled with the government's policy of conducting regular immigration raids as a means of reducing the undocumented population in Malaysia, has resulted in immigration detention depots becoming overcrowded and expensive to run. In January 2014, the Ministry of Home Affairs revealed that the daily food, medical and administrative cost of detaining about 68,000 irregular migrants in ten detention centres across Malaysia amounted to nearly RM 5.1 million (approximately USD 1.5 million) per day.[172]

In addition to detention, threats to the Rohingyas' liberty and security also arise in the form of harassment and extortion by law enforcement personnel in Malaysia. As one Rohingya respondent from Kuala Lumpur explained, "these enforcement officials assume that we are outsiders and we do not need to be treated in a good way; they can hit and throw us because no one cares".[173] Respondents also stated that in previous years, members of the Ikatan Relawan Rakyat (RELA), a volunteer police force, were significant perpetrators of abuse and harassment of the Rohingya and other refugee communities. However, in April 2012, after RELA members reportedly beat a Nigerian student to death,[174] Parliament passed the Malaysia Volunteer Corps Bill 2012 which stripped RELA

[171] See above, note 115.

[172] Gangopadhyay, A., "Crackdown on Illegal Immigrants Strains Malaysian Finances", *The Wall Street Journal South East Asia,* 8 January 2014.

[173] See above, note 115.

[174] New Straits Times, "7 RELA Members Remanded over Nigerian Man's Death", *New Straits Times*, 1 April 2012.

members of the power to arrest and carry firearms.[175] Since then, reports of violence and harassment by RELA have declined considerably. However, extortion and harassment by other enforcement officers continues, with refugees (including UNHCR card holders) reportedly being forced to pay bribes to avoid arrest and detention.

3.2.1. Malaysian Responses to Anti-Rohingya Violence in Myanmar since June 2012

Following the increasing incidents of violence in Rakhine state in June 2012, a spike in Rohingya boat arrivals was reported in the region, though mostly to Thailand. In Malaysia, on 9 March 2013, 138 Rohingya men, women and children were rescued from a boat that was on the verge of sinking; in the same month, another 117 Rohingya (including 24 children) were rescued from a sinking boat in that same location.[176] From 1 January 2012 to 31 March 2013, 17 boats with 3,066 persons on board were reportedly intercepted by Malaysian authorities.[177] Of these boats that arrived in Malaysia, almost all were victims of Thailand's "help-on" policy.[178]

In this regard, Malaysia has played a humanitarian role by continuing to accept boats that have been "pushed-back" or "helped-on" by neighbouring countries, providing rescue assistance as well as initial medical services, food and water. At the end of 2012, Malaysia opened its borders and rescued 40 Rohingya men stranded for about one week on board a Vietnamese vessel in the south of Malaysia after Singapore denied entry for the boat to dock; this decision by Malaysia to allow the Rohingya

[175] Free Malaysia Today, "RELA to be Stripped of Guns, Power", *Free Malaysia Today*, 17 April 2012.

[176] Star News Online, "MMEA rescues 117 Rohingyas off Muka Head", *Star Online,* 27 March 2013.

[177] See above, note 46. In 2012, UNHCR Malaysia was notified of six boats carrying 1,064 persons; in 2013, 11 boats carrying 2,002 persons.

[178] See above, note 53 for an explanation on the "push-back" and "help-on" policies.

to disembark was commended by the international community.[179] Although initially detained, all 40 Rohingya on board this vessel have since been released.[180] Similarly, with other boats rescued in 2012-2013, all Rohingya on board, who were registered by UNHCR, were subsequently released from detention;[181] however, detainee access to UNHCR remains tightly controlled by immigration officials in charge of the depots. In some immigration depots, UNHCR are only given access to those who have been pre-identified by the authorities as being Rohingya; it is unclear what screening mechanisms are used to "screen in" Rohingya and to "screen out" those who are of Bangladeshi nationality and what safeguards are in place for those in the latter group. Similarly, respondents interviewed for this report did not have information on any push-backs or *refoulement* of Rohingya boat arrivals since 2012 but were unable to verify that these incidents did not occur.[182]

The Malaysian government has recognised the escalating violence in Rakhine state, the broader systemic, widespread persecution of Rohingya in Myanmar, and their protracted statelessness.[183] However, it has taken a very cautious response to the sudden influx of boat arrivals during this period. Although it is commendable that Malaysia has allowed Rohingya to disembark and access UNHCR,[184] the government response has stopped short of providing any long term solution for this population. Rohingya asylum seekers rescued at sea continue to languish in detention centres serving sentences for violating immigration laws while they wait for UNHCR to register them and secure their release.

---

[179] See above, note 50. See also Star News Online, "Rohingya stranded on vessel brought to Johor", *Star Online,* 20 December 2012.

[180] See above, note 46.

[181] *Ibid.*

[182] *Ibid.*

[183] The Brunei Times, "Malaysia, Indonesia share concerns over Rohingyas", *The Brunei Times*, July 2013.

[184] See Star News Online, "Minister in Prime Minister's office response on the Rohingya situation in Malaysia, Parliament: Malaysia 'most humane' to refugees, says Shahidan", *Star Online*, 8 April 2014.

3.2.2. Human Trafficking and Smuggling

The Anti-Human Trafficking and Smuggling Framework

Human trafficking and smuggling is an issue of concern in the ASEAN region, and there is considerable political support for anti-trafficking action in countries in the region including Malaysia in terms of the ratification of international treaties; the implementation of domestic laws and national plans of action; and international and regional cooperation. Malaysia is party to the UN Convention against Transnational Organised Crime (UNTOC) and its Protocols on Trafficking and Smuggling.[185] Malaysia also has obligations under CEDAW and CRC to take appropriate measures to suppress trafficking in women and children respectively.[186] At a regional level, Malaysia is part of the Bali Process[187], which is an Asia Pacific regional process which addresses human trafficking and smuggling.

According to the UNTOC and its protocols, "trafficking in persons" is defined as:

> *[T]he 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*

[185] See above, notes 63, 64 and 65.

[186] See above, note 58. According to Article 6 of the CEDAW, "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". See also above, note 60. According to Article 35 of the CRC, "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form".

[187] The Bali Process on People Smuggling Trafficking in Persons and Related Transnational Crime is a voluntary forum, and includes members such as the UNHCR, the IOM, the United Nations Office of Drugs and Crime, observer countries and international agencies. For more information about the Bali Process, visit the Bali Process website: http://www.baliprocess.net/.

> *the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include (…) forced labour or services, slavery or practices similar to slavery.*[188]

The "smuggling of migrants" is defined as:

> *[T]he 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.*[189]

While smuggling is considered to be a consensual agreement between the migrant and the smuggler, trafficking involves force or coercion on the part of the trafficker, thus the trafficking frameworks tend to contain wider provision for protective mechanisms.[190] This hierarchical protection system is not necessarily based on levels or experiences of exploitation, but rather on technicalities that exclude large populations of vulnerable migrants. In practice, the categories of trafficking and smuggling overlap and interplay. Migrants who enter into agreements with smugglers are not aware that they will end up being trafficked. Of the migrants using the same irregular migration routes and agents, some will end up trafficked and some will not.

At the national level, Malaysia enacted the Anti-Trafficking in Persons Act 2007, later amended in 2010 to be the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM).[191] This provides penalties for trafficking, as well as measures for the protection and support of victims

[188] See above, note 64, Article 3.

[189] See above, note 65, Article 3.

[190] Bhabha, J. and Zard, M., "Smuggled or Trafficked?" *Forced Migration Review 25,* Refugee Studies Centre, 25 May 2006.

[191] Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670), as amended in 2010.

of trafficking. It also establishes the Council for Anti-Trafficking in Persons (MAPO). ATIPSOM has been criticised for its inadequate definition of human trafficking,[192] and for conflating trafficking and smuggling while failing to ensure that persons who have been smuggled are adequately protected, even if they are refugees.[193] Although there are anecdotal reports that persons involved in trafficking or smuggling of Rohingya have been prosecuted under ATIPSOM, there is no publicly available information on whether such prosecutions have resulted in convictions. There is also no publicly available information on whether Rohingya victims of trafficking have benefited from any of the victim assistance provisions under ATIPSOM.

In 2008, credible reports emerged of immigration officials' involvement in the selling of Burmese refugees, including children, to traffickers along the Thai-Malaysia border.[194] In 2009, the U.S. Senate Committee on Foreign Relations released a report highlighting concern over the "detention and brokering of Burmese and other migrants in Malaysia and along the Thailand-Malaysia border allegedly with the knowledge, if not participation, by some Malaysian Government officials" and the continued extortion by captors for persons in detention in Malaysia.[195] Following these reports and a downgrade to Tier 3 on the U.S. State department trafficking list in 2009, Malaysia intensified efforts to develop a comprehensive legal framework to tackle trafficking. The above practices have since been stopped and according to UNHCR Malaysia, there have been no confirmed reports of forced deportation of asylum seekers from Myanmar to the Malaysia-Thai border since mid-2009.[196]

---

[192] Trafficking under ATIPSOM is defined as situations in which a person is exploited by means of "coercion", which in turn is defined as the use or threats of physical harm and the "abuse of the legal process".

[193] See above, note 78, pp. 266-267 for an analysis of the weaknesses of the Act.

[194] United States Department of State, Human Rights, and Labour, *2008 Human Rights Report: Malaysia*, 25 February 2009.

[195] United States Senate, Committee on Foreign Relations, *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*, 3 April 2009, p. 7.

[196] Email correspondence with UNHCR Malaysia, 6 July 2014.

However, there continue to be reports of complicity by immigration officers in facilitating trafficking, including by allowing vulnerable undocumented migrants across borders.[197] A senior Malaysian civil servant explained:

> *The challenges are in terms of enforcement, especially at border entry points, especially in Bukit Kayu Hitam. There are enforcement officials at the border who cooperate with the agents to bring in these Rohingya refugees. Imagine that for each refugee brought into Malaysia, they will be paid with a commission of between RM 500 - RM 1,500 (USD 155 – USD 465) per person. Imagine if 10 people are brought in in a week? These lucrative deals are enticing the enforcement people to work with the agents. There are even police officials who want to benefit by working with these agents. The element of corruption in enforcement has made it difficult to address this problem.*[198]

As a result of continued non-compliance with minimum standards in elimination of trafficking, Malaysia has again been downgraded to Tier 3 by the U.S. State Department in its 2014 Trafficking in Persons Report.[199]

Smuggling and Trafficking of New Boat Arrivals

Rohingya incur large smuggling debts and the exploitation of such debts once they reach Malaysia has often amounted to situations of trafficking.[200] Due to the lack of a domestic framework for the protection

---

[197] United States Department of State, Office to Monitor and Combat Trafficking in Persons, *2013 Trafficking in Persons Report: Malaysia,* 2013.

[198] Interview MYS 3, with anonymous government official, Kuala Lumpur, July 2012.

[199] See United States Department of State, *2014 Trafficking in Persons Report - Malaysia*, 2014.

[200] See above, note 197. In conducting research for this report, we found that many stakeholders do not perceive Rohingya arrivals in Malaysia to be victims of

of refugees, including legal status or the ability to obtain work permits, the Rohingya and other refugee groups are also made vulnerable to trafficking.

When smuggled to Thailand *en route* to Malaysia, Rohingya are held in camps until the brokers fee is paid off. It is at this point that the line between smuggling and trafficking becomes blurred; smuggled Rohingya refugees fall into the hands of traffickers who hold them hostage in appalling conditions, in trafficking camps mainly in the jungles of Thailand near the Thai-Malaysia border while waiting for the money to be paid by families and relatives. There is limited information on what happens to Rohingya who are unable to pay traffickers. Reports indicate that before June 2012 some were sold to fishing boats in Thailand or rubber plantations to work off their debt,[201] whilst others ended up as cooks or guards at these trafficking camps and women were sold in forced marriages.[202] Here, experiences of abuse and exploitation with no legal recourse have been well documented.[203] After June 2012, it appears Rohingya are less likely to be sold and instead traffickers/brokers hold them until the money is paid by families or friends.[204] An unknown number have perished in the hands of these traffickers.

Conditions in these trafficking camps are a serious cause for concern. Most make-shift camps contain bamboo cages with mud floors that get flooded in the rain. Conditions are inhumane; and as a result of the long stay,

---

trafficking because they have engaged the services of smugglers to bring them into the country. Others, however, argue that some Rohingya, including those who have had to suffer the consequences of being unable to pay brokers' fees, may qualify as victims of trafficking and a more nuanced approach is needed to individually screen and assess arrivals.

[201] *Ibid.* See also notes 128 and 129 above.

[202] See above, note 128. See also Szep, J. and Marshall, A., "Reuters Special Report - Thailand secretly dumps Myanmar refugees into trafficking rings", *Reuters,* 5 December 2013.

[203] *Ibid.*

[204] *Ibid.* See also above, note 129.

Rohingya develop neurological and skin diseases from the cramped, unhygienic conditions and poor nutrition.[205] It has been reported that Rohingya in these camps only receive one meal a day, and that the water is dirty and insufficient. They are forced to squat for long periods of time. Women are especially vulnerable, with reports of rape and gender based violence commonplace. Reports have also emerged of men and young boys being beaten, abused and sometimes killed by the traffickers. Others simply go missing.[206]

Without adequate food and nutrition for three to four months, Rohingya in these trafficking camps starve to death or develop various neurological illnesses.[207] Often family members who pay off these debts after many months have received their loved ones on the verge of death.

> *I just saw a case, a few weeks ago, a man he has a brother here (…) he could not pay the money and for a few months he was held by the traffickers, then finally they manage to raise the money and pay RM 6,000 and he was released in Penang. From there he was brought to RSM and he was very thin and his whole body had pus, and his situation became very bad. They admitted him to the general hospital but he passed away that night itself. You see he only stayed with his brother for one day, he was only free for one day and they had to pay RM 6,000 for that.*[208]

The amount of money demanded by the smugglers/traffickers has increased significantly as a result of recent crackdowns by Thai authorities

[205] See above, note 147.

[206] Grudgings, S., "Exclusive: Trafficking abuse of Myanmar Rohingya spreads to Malaysia", *Reuters,* 5 March 2014.

[207] *Ibid.* See also Marshall, A.R. and Lefevre, A.S., "Reuters Special Report: Flaws found in Thailand's human-trafficking crackdown", *Reuters,* 10 April 2014.

[208] See above, note 129.

and coverage by the international media.[209] In 2006, the amounts demanded were approximately USD 800 per person (which included an embarkation fee of about USD 300); in early 2014, interviews of new arrivals by community leaders reveal that the rate had gone up to about USD 2,000-2,200 per person.[210] Children usually have to pay much less than adults.

As a result of media coverage of these camps and the crackdown on traffickers by the Thai authorities, it appears that traffickers may now be setting up base in the northern states of Malaysia.[211] Several raids by the Malaysian authorities have found Rohingya men living in squalid conditions with their hands bound together by metal chains. These trafficking bases are mainly within apartment buildings. No information was found on whether anyone was arrested and convicted under ATIPSOM as a result of these raids.

Interviews by Reuters revealed "a trafficking network on a far bigger scale than authorities have acknowledged so far".[212] It appears that many of these traffickers are themselves Rohingya, as well as Malaysian and Thai nationals.[213] The porous northern border and lack of enforcement has resulted in Malaysia now potentially being a haven for these trafficking syndicates.

> *Last Friday we received one woman with three of her children. She left Sittwe with her husband and their four children (of 12, eight, two and one year). They came to Thailand by boat. The traffickers asked for money and they didn't have enough money for all of them. So they took their 12 year old son away from them for 10 days. They had no*

[209] See above, note 207. See also Sparks, J., "Nightmare island where traffickers imprison Burma's Rohingya", *Channel 4,* 8 August 2013.

[210] See above, notes 128 and 129.

[211] See above, note 206.

[212] *Ibid.*

[213] See above, note 128.

idea where their son was taken to. After 10 days without their son, the woman, her husband and the remaining three children were taken together to the border. The traffickers separated the woman and her three children from her husband.

The woman and her three small children were taken in a car to Alor Setar, Kedah. They were kept for one week in Alor Setar; only given one meal at around four or five in the morning. The children were fed nothing more. She fainted two or three times. The children cried because they were hungry. She said maybe the traffickers felt bad for them so they released her in Alor Setar after one week. She walked and found a school where the school teachers and some Rohingya members heard her story, collected some money, bought her a bus ticket and sent her to UNHCR. She suffered so much and she still does not know where her husband and son are; whether they are alive or dead. She was crying so much. Their situation is very difficult.[214]

3.3. The Exclusion of Rohingya Children

Malaysia ratified the Convention on the Rights of the Child in February 1995.[215] Of the many principles enshrined in the CRC, five are particularly relevant to this report; namely, the right to non-discrimination (Article 2); that in any action taken, the best interests of the child shall be a primary consideration (Article 3); the right to life, survival and development (Article 6); the right to an identity, including nationality (Article 7); and respect for the views of the child (Article 12). It is significant therefore that Malaysia has made reservations with regard to both Article 2 and 7.[216]

[214] See above, note 129.

[215] Malaysia also ratified the CRC optional protocols on the sale of children, child prostitution, and child pornography and on the involvement of children in armed conflict.

[216] See above, note 69 for a list of Malaysia's reservations to the CRC.

Importantly for the Rohingya, the CRC does not permit significant differences in treatment based on the status (or lack thereof) of a child's parents. Furthermore, as stated above, Article 22 of the CRC entrenches the right of the child to seek asylum and obligates states to protect child asylum seekers and refugees in accordance with principles of human rights and humanitarian law. Article 22 also obligates states to cooperate with the efforts of the UN and other competent INGOs and NGOs in this regard.

After becoming party to the CRC, Malaysia enacted new laws, notably the Child Act 2001 to bring domestic legislation in alignment with the CRC.[217] The Child Act provides for the physical and psychological protection of children and penalises the abuse, neglect, abandonment or exposure of a child to physical and/or emotional injuries.[218] The Child Act recognises in its preamble that:

> *[E]very child is entitled to protection and assistance, in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status.*

However, in practice, the Malaysian government has been reluctant to extend the protection mechanisms contained in the Child Act to non-citizen children.

Malaysia was due to submit a State Party Report to the UN Committee on the Rights of the Child in 2012, but it is yet to do so. During the CRC Committee's last review of Malaysia's compliance with its obligations under the CRC, specific concerns were raised over the lack of protection

[217] Child Act 2001 (Act 611).

[218] *Ibid.* The Act also establishes a National Council for the Protection of Children to monitor and advise on child protection issues, as well as National Child Protection Teams to coordinate services to families and children in need of protection.

for, and discrimination faced by refugee and asylum seeking children in the country.[219]

While Malaysia has several important obligations relevant to Rohingya children, this report looks at three in particular – the right to an identity (including birth registration and nationality), the right to education and the right to the highest attainable standard of health. Though Malaysia has put in place several initiatives that partially address these rights, in practice they have not reached many of the vulnerable children in Malaysia, including refugees, asylum seekers and irregular migrants.

While access to these three sets of rights is relevant to both the long-staying population and new arrivals, the section below focuses primarily on the position of the long-staying Rohingya community. This population has lived in the country for decades and as a result of difficulties accessing such rights, their problems have carried over to new generations who were born in the country.

3.3.1. The Right to an Identity – Birth Registration and Nationality

The 1961 Convention on the Reduction of Statelessness requires states parties to grant their nationality to anyone born on their territory who would otherwise be stateless.[220]

Article 7(1) of the CRC provides a similar though less specific obligation by asserting that every child has a right to birth registration and to acquire a nationality, without saying which state is responsible. Interpreting Articles 3 and 7 of the CRC together, UNHCR has stated that:

> *[A] child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth. The obligations imposed on*

[219] Committee on the Rights of the Child, *Concluding Observations, Malaysia,* UN Doc. CRC/C/MYS/CO/1, June 2007, Paras 32, 83, and 85.

[220] United Nations Convention on the Reduction of Statelessness, U.N.T.S. 989, 1961, Article 1(1).

> *States by the CRC are not only directed to the State of birth of a child, but to all countries with which a child has a relevant link, such as through parentage or residence.*[221]

However Malaysia has entered a reservation to Article 7 of the CRC and in March 2014, the government rejected recommendations by the UN Human Rights Council to remove this reservation. Article 8 of the CRC also obligates all states to protect and assist children who have been illegally deprived of their identity (including nationality), with a view to re-establishing speedily his or her identity – an obligation relevant to Malaysia with regard to stateless Rohingya children born on its territory. Further, the ASEAN Human Rights Declaration recognises the right of every person to a nationality and prohibits the arbitrary deprivation of nationality.[222]

Although Malaysia is not a party to the 1961 Convention, as mentioned in section 2.4, its domestic law contains a protection against statelessness that conforms to the Convention standard. Article 14 of the Federal Constitution, when read with Part II of the Second Schedule of the Constitution, provides that any child who is born within the Malaysian Federation is, by operation of law, a Malaysian citizen if he or she "is not born a citizen of any country" and cannot acquire citizenship of another country by registration within one year of birth. In 2010, the High Court affirmed this constitutional right in the case of *Lee Chin Pon & Anor v Registrar-General of Births and Deaths*.[223] However, this provision has

---

[221] UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, Para 11. See also, UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, UN Doc. A/HRC/13/34, Para 36; and UN Human Rights Council, *Arbitrary deprivation of nationality: report of the Secretary-General*, 26 January 2009, UN Doc. A/HRC/10/34, Para 64.

[222] See above, note 73, Article 18.

[223] Although this case was not reported and therefore is of limited applicability in terms of precedent, lawyers representing the applicants have produced an in-depth case summary and analysis of the decision, noting that "[t]he decision is also authority for the more general and widely applicable principle that any child who

never been implemented to grant Malaysian nationality to stateless Rohingya children born in the country.

The Births and Deaths Registration Act 1957 provides for the registration of every child born in Malaysia. Although the country has made significant progress in improving access to birth registration, children from refugee and asylum seeking communities continue to face challenges. UNHCR card holders are generally able to obtain birth certificates for their new-borns; however some refugee leaders have reported that persons without a UNHCR card can face difficulties in obtaining birth certificates as registration officers sometimes require a UNHCR card to be presented before a birth certificate is issued.[224] Furthermore, the fear of arrest and detention for their irregular status has meant that some refugee parents choose not to register the births of their children.[225] As with Malaysian citizens, birth registration is free if done within 14 days of birth, following which fees for late registration are applicable.[226] The processes and documentation required for "late" registration of births can also be difficult for some refugees and asylum seekers to navigate given language and literacy barriers. Birth certificates issued to non-Malaysian children are stamped with the words "*bukanwarganegara"* (meaning "non-citizen"), therefore rendering them unable to access government schools.

Because Article 14 of the Federal Constitution has not been extended to benefit Rohingya children, the majority of Rohingya children born in

is born in Malaysia on or after Malaysia Day has the constitutional right to be recognised as a citizen of Malaysia, provided he or she is not born a citizen of any other country". (See Mah, R. and Hwa, C.L.Y., *Citizenship for Adopted Children – A Malaysian Perspective*, available at: http://www.mahwengkwai.com/citizenship-for-adopted-children-a-malaysian-perspective/#The_High_Courts_decision.

[224] Child Rights Coalition Malaysia, *Status Report on Children's Rights*, December 2012.

[225] See section 3.3.3 below.

[226] UNHCR, *UNHCR Birth Registration Brochure*, available at: http://www.unhcr.org.my/upload/Brochure_BirthRegistration.pdf.

Malaysia – barring those who have one Malaysian parent[227] - are unable to acquire nationality. As a result, statelessness is perpetuated through the generations and children are left vulnerable to a lifetime of discrimination and exclusion. Significantly, such children are themselves branded "illegal migrants" despite being born in the country. In addition to not being able to assert their fundamental rights including a right to education and the highest attainable standard of health, they are also at risk of being detained and deported under the Immigration Act.

3.3.2. The Right to Education

As stated by Rohingya participants in a focus group discussion, "what we want is for the Rohingya parents to be able to work officially, while children can go to school to secure the future of generations to come".[228]

Article 28 of the CRC guarantees the right of all children to education, and states have an obligation to provide compulsory and free primary education to all (irrespective of legal status),[229] and to take steps to make secondary education free and accessible to all children.[230] However, Malaysia maintains a reservation to Article 28(1)(a) (free and compulsory

[227] Malaysia does not grant citizenship by birth (*jus soli*), but instead uses the concept of *jus sanguinis* (descent) as the foundation for citizenship. Article 14(1)(b) Part II(1)(a) Second Schedule of the Federal Constitution provides that a child born in Malaysia is a citizen by operation of law if at least one of his/her parents is at the time of birth either a citizen or permanently resident in Malaysia. However, if the parents' marriage is unregistered, Part III of the Second Schedule of the Federal Constitution provides that "references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother." Therefore a child born to a Malaysian father and non-Malaysian mother whose marriage has not been legally registered will acquire the citizenship of his/her mother.

[228] See above, note 115.

[229] See above, note 60, Article 28(1)(a).

[230] *Ibid.,* Article 28(1)(b).

education at the primary level). Notably, Article 31 of the ASEAN Human Rights Declaration adopts the same approach as the CRC.[231]

Although Malaysia has attained almost universal primary education for its citizens and is on its way towards achieving universal secondary education, the ability of refugee, asylum seeking and other irregular migrant children to access education in Malaysia is severely limited as they are not allowed to register in government-funded public schools. For children who cannot enrol in government schools and whose parents are unable to afford the cost of private schools, their only option is to access the parallel education system provided through informal learning centres established by refugee communities or NGOs. The Rohingya Society of Malaysia, for example, has established its own *Madrasah* (religious) school in Kuala Lumpur, with the support of PERKIM, a Malaysian Muslim NGO. Although PERKIM has generously donated funds, a van, materials and food to the school, this is insufficient to meet the cost of running the school. UNHCR also provides some financial support for other community learning centres throughout the country. However, these learning centres are generally poorly financed, overcrowded and under-resourced, and are only able to provide basic education for children. Many teachers at the learning centres are refugees or asylum seekers; they are usually provided with only minimal remuneration and do not always have the necessary qualifications and/or experience to teach. There is no recognised certification for students attending these centres.

In June 2010, the Deputy Prime Minister announced that non-Malaysian children, irrespective of race, religion or location, will be given an alternative education. However, he qualified this by saying that this education would not be along the lines of a formal education under the national education system.[232] Unlike Thailand or Indonesia, Malaysia has

[231] See above, note 73, Article 31.

[232] Star News Online, "Govt. to Ensure Stateless Children get Education: DPM", *Star Online,* 20 July 2010.

not implemented any form of Equivalency Programme as an alternative for children who cannot access formal education systems in Malaysia.[233]

3.3.3. The Right to the Highest Attainable Standard of Health

Article 24 of the CRC obligates states to ensure:

> *[T]he right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*[234]

Article 29 of the ASEAN Human Rights Declaration similarly provides:

> *Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.*

The primary healthcare service in Malaysia provides government hospitals in all districts with community and mobile clinics in certain rural areas. A significant number of private healthcare services are also available in most major towns. The government of Malaysia has made significant progress in developing the primary healthcare systems in the country in terms of cost, access and quality. However, refugees, asylum

---

[233] An Equivalency Programme is an alternative form of education that provides learning opportunities of comparable quality to formal education, and is recognised with official certification. For more information on Equivalency Programmes, see UNESCO Bangkok, *Report on the Joint UNESCO and UNICEF Regional Workshop on Equivalency* Programmes *and Alternative Certified Learning*, 2011.

[234] See above, note 60, Article 24(1). In addition to this general duty, Article 24 (2) and (3) specify the obligation to diminish infant and child mortality, develop primary healthcare, combat disease and malnutrition, ensure pre-natal and post-natal care for mothers, provide health education, develop preventative healthcare and abolish traditional practices detrimental to the health of the child.

seekers and undocumented persons, including children, continue to face difficulties in accessing these healthcare services.

In 2007, the UN Committee on the Rights of the Child recommended that "children without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered".[235] Despite this, many refugee and asylum seeking Rohingya children still continue to be deprived of their right of access to such health care services.

Government health care facilities are accessible to non-Malaysian residents at a significantly higher cost.[236] In June 2005, UNHCR Malaysia and the Ministry of Health entered into a formal agreement (a copy of which has not been made publicly available) according to which all refugees recognised by UNHCR were to be given a 50% discount on fees charged to foreigners for healthcare services at government hospitals.[237] In order to obtain these discounted fees, refugees must present their UNHCR cards and in some instances a letter from UNHCR stating that they are "persons of concern" who are eligible for the discount. Even with the 50% discount however, Rohingya refugees are still unable to afford healthcare, especially since they are unable to work legally in the country.

Another problem is that, in theory, the law requires valid documentation recognised by the State to access any government healthcare facilities.

---

[235] See above, note 219.

[236] According to the Malaysian Ministry of Health, a Malaysian citizen is charged only RM 1 (USD 0.32) for outpatient treatment, and a non-Malaysian citizen is charged RM 15 (USD 4.80) for that same treatment. Similarly, an expecting mother who delivers in a government hospital will have to pay RM 3 (USD 0.96) for ward charges, RM 10 (USD 3.20) for a normal delivery charge or RM 100 (USD 32.10) for a caesarean delivery if she is a Malaysian citizen. However, a non-Malaysian citizen will have to pay at the very least RM 40 (USD 12.30) for ward charges, RM 500 (USD 153) for a normal delivery charge or RM 1,000 (USD 306) for a caesarean delivery. For this and more related information, see: http://www.moh.gov.my/index.php/pages/view/163.

[237] See above, note 48.

This, according to a 2006 circular from the Ministry of Health, should also include UNHCR refugee cards.[238] However hospital personnel are legally obliged to report unregistered persons to the police or immigration authorities, who may then arrest and detain such persons upon completion of treatment.[239] As expressed by a Director of a public specialist hospital in Penang:

> *Actually, all these procedures are the same as for other patients. We at the hospital never sided or have bias against anybody. We are indeed responsible for providing health services to all including the needy, especially in emergency cases. Furthermore, we have an understanding with the WHO, UNICEF and UNHCR which means we must accept anyone who comes to us for health care. After that, other normal procedures will be implemented such as checking documents, charging for the treatment and so on.*
>
> *Yes, we have cooperation with both the Immigration Department and the police. For those foreigners who do not have documents, we have to report them to the Immigration Department for further action. We must report, otherwise we will be blamed if anything untoward happened. However, medical treatment must be given to them even if they do not have documents.*[240]

As of late March 2014, there have been reports from NGOs and refugee communities that the personnel of Kuala Lumpur General Hospital (the main government hospital accessed by refugees and asylum seekers in Kuala Lumpur) have been reporting unregistered asylum seekers to the immigration authorities.[241] Unregistered asylum seeking pregnant women

[238] See above, note 46. Note that the circular makes no mention of asylum seekers.

[239] See above, note 93, section 56.

[240] Interview MYS 4, with Hospital Director, Penang, 1 August, 2012.

[241] Health Equity Initiative, *Press statement: Stop the Arrest and Detention of Asylum Seeking Women Accessing Maternal Health Care,* 3 April 2014.

admitted to the hospital were informed that they would be sent to detention upon delivery of their babies despite paying the hospital fees. In some instances these women were sent with their new-born babies to detention centres while in other instances the mother was separated from the child, who remained in the hospital.[242] Despite hospital authorities asserting that these women were given treatment, the implications of separating a new-born from its mother as well as sending new-borns and persons who are in recovery to detention centres may be very harmful to the wellbeing of mothers and children, and violate the principle of the best interest of the child. There were about 15-20 such cases reported by NGOs and community organisations to UNHCR in the span of one month.

However, as reported by UNHCR, Mother and Child clinics do provide services to pregnant Rohingya women, whether documented or not. UNHCR has been able to provide translation services at some of these clinics that are attended by a large number of refugee women. The agency does believe that many Rohingya can access antenatal and postnatal healthcare, but acknowledges that access remains a challenge for those who lack finances or have to travel long distances to clinics.[243]

Not all health care personnel choose to adhere to this law and in some rare cases smaller government clinics accept the community card as a form of documentation, and provide treatment at the full non-citizen rate.[244] However, for many Rohingya communities the fear of arrest and the possibility of detention and deportation is a very real deterrent that impedes access. Accessing private health care services where personnel rarely report undocumented persons to the authorities is also rarely an option due to the exorbitant costs for these services.

The inability to access maternal care and general healthcare has had serious consequences for refugee and asylum-seeking Rohingya children. In assessing the nutritional status of Rohingya children in Kuala Lumpur, researchers found that of 87 children sampled for the study about 27%

[242] *Ibid.*

[243] See above, note 45.

[244] See above, note 129.

were underweight, 11% stunted, 16% thin, 18% had low birth weight and 12% had received no immunisation.[245] Apart from nutritional deficits, fever (68%) and flu (62%) were the most common childhood illnesses reported, with 75% of the children with these illnesses not receiving any medical treatment.[246]

Specifically for new arrivals, communities have reported various stages of paralysis among youth between the ages of 16-18,[247] which they believe was caused by nutritional deficiency and being held in confined spaces during the perilous journey to Malaysia.[248] These cases have since been identified as beriberi, due to poor nutrition, which can easily be treated with intake of vitamin B1 (thiamine).[249] Unfortunately Malaysian hospitals have failed to diagnose this as the disease is no longer apparent in Malaysia.[250] Although generally these youth are receiving treatment from government hospitals, their long-term care has been mostly managed by community members, who lack the resources to do so.

3.4. Denial of the Right to Work and Resulting Vulnerabilities

Article 27 of the ASEAN Human Rights Declaration asserts that:

> *Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.*

In addition, Article 27 also provides for the right for workers to protect their interests in accordance with national laws, including the formation

[245] Mohd Shariff, Z. and Tan, S. T., "Nutritional status of Rohingya children in Kuala Lumpur"*, Malaysian Journal of Medicine and Health Sciences, 7 (1),* 2011,pp. 41-49.

[246] *Ibid.*

[247] See above, note 129.

[248] See above, note 147.

[249] See above, note 128.

[250] *Ibid.*

of trade unions. Malaysia has also ratified all the fundamental ILO Conventions except for the Abolition of Forced Labour Convention and the Freedom of Association Convention.[251]

Foreign migrant workers (as opposed to expatriate workers) from selected countries in Malaysia are only allowed to work in the manufacturing, construction, plantation, service and domestic help sectors.[252] As refugee and asylum seekers have no legal status in Malaysia, they are regarded as having the same legal status as irregular migrants;[253] without any right to work in the country. As noted in section 2.4 above, persons who employ, house or harbour irregular migrants are also subject to severe penalties.

Notwithstanding the legal framework, in practice, refugees and asylum seekers do take up informal employment and authorities have for the most part turned a blind eye to this. However because they have no legal right to work, many Rohingya will turn to informal work that is hazardous, poorly paid and with no protection. The most common forms of employment for men, especially in urban areas, are work on construction sites, restaurants and work within local municipalities where they sweep roads and collect garbage.[254] Some long stay Rohingya men work in the markets where they sell vegetables; whereas most new arrivals work on the paddy fields up north or on fishing boats along the East Coast of Malaysia:[255]

---

[251] Malaysia has ratified 17 ILO Conventions, of which 15 are currently in force, one is to be enforced and one was denounced in 1990. See International Labour Organization, *ILO Ratifications for Malaysia*, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960.

[252] For more information, see Malaysian Investment Development Authority, *Employment of Foreign Workers: Immigration Procedures,* available at: http://www.mida.gov.my/env3/index.php?page=employment-of-foreign-workers.

[253] See above, note 93, section 8(3)(k), under which they are defined as "prohibited immigrants".

[254] See above, note 129.

[255] *Ibid.*

> *We do all kinds of work as general labourers, small traders, and assistants at grocery stores, restaurants, markets and hand phone shops; collecting discarded items and so on. But we prefer to work in construction as a labourer where we may get RM 50 or RM 60 (USD 16-19) a day.*[256]

> *In the construction sector, the skilled Rohingya will earn about RM 50 (USD 16*) *a day and some will even get up to RM 70 (USD 20). Those who are not skilled, for example those who work in the wholesale market and restaurants, will usually get a salary ranging from RM 20 to RM 30 (USD 6 -10) per day.*[257]

Rohingya women on the other hand generally tend not to work; or obtain a small income by selling small household or food items.[258] With the increasing number of women entering Malaysia, this trend may change over time.

Work in these conditions is extremely challenging – the hours are long, conditions are hazardous and unsanitary, with little to no benefit. Rohingya refugees and asylum seekers are vulnerable to arrest and detention at workplaces especially during raids as the law prohibits them from working; this further impedes on earning a wage:

> *They will be happier if they can be allowed to work legally. Payment is either done by the hour or daily. If there is an operation, they will miss out on that day's salary. Sometimes this can be up to one week if there are many operations being carried out during that time. For example, last year, many Rohingya were not able to work for almost*

[256] See above, note 114.

[257] See above, note 115.

[258] See above, note 129.

> *a month at the Selayang wholesale market because of operations being carried out.*[259]

For some Rohingya, employment is either not permanent or they are part-employed with many days without work and pay. The potential to be abused and exploited is very high as they have no legal recourse or complaints mechanisms. Many work below the minimum wage levels, earning below RM 800 (USD 250) a month, whilst others are often cheated by employers who fail to pay their wages. On the job accidents resulting in serious physical injuries and sometimes even death are common as employers fail to put in place any health and safety procedures for refugees, asylum seekers and irregular migrants. These workers are also often dismissed without compensation as they become a liability.[260]

In September 2013, news reports indicated that the Malaysian government was considering allowing registered refugees awaiting resettlement to work legally in the country.[261] The move, announced by the Ministry of Home Affairs, was to address the labour shortage in certain sectors – namely the construction and plantation sectors – and to reduce the number of irregular migrants currently working in the country.[262] Although this move is potentially a step in the right direction, it is important that the appropriate procedures and mechanisms are put in place to ensure that employment is properly regulated and refugees are adequately protected and not exploited in the process. As the law does not clarify their current legal status, this will be a challenging task. At the time of writing however, there have been no further reports of this move. UNHCR has also raised proposals with the Malaysian government on the

---

[259] See above, note 115.

[260] See above, note 78, p. 160. For more information, see also Tenaganita, *Clearing Misconceptions: The Truth About Migrants In Malaysia,* 9 May 2012; and International Rescue Committee, *In Search of Survival and Sanctuary in the City: Refugees from Burma in Kuala Lumpur,* December 2012.

[261] Star News Online, "Getting refugees to fill labour needs", *Star Online,* 15 September 2013.

[262] *Ibid.*

development of a framework to allow refugees the right to work.[263] These proposals, distinct from the IMM13 initiative,[264] urge the Malaysian government to grant registered refugees awaiting resettlement access to legal work. However, the government has yet to respond to these proposals.

During the UN Human Rights Council Universal Periodic Review for Malaysia, it was recommended that Malaysia should "allow refugees and other migrants to seek employment while they await resettlement or other durable solutions."[265] The Malaysian government responded by rejecting this recommendation in its entirety.[266]

3.5. Other Rights

3.5.1. Access to Adequate Housing

Rohingya communities live in various states across the country, mainly situated in areas where there are employment opportunities – largely within urban areas or areas with factories and plantation sites. As a consequence of an inability to work formally, finding adequate housing can be a challenge with communities living in low cost housing areas, in squalid conditions and with many persons living under the same roof. The lack of legal documentation also makes it difficult for refugees to rent houses as landlords often require some identification document and proof of ability to pay.[267] Refugee communities also report that they are often required to pay rentals that are approximately 20 % higher than the usual market rate.[268]

---

[263] See above, note 48.

[264] See above, note 104 for more information on the IMM13 initiative.

[265] Recommendation 146.28 by the United States. For more information see UPR Info, *2RP: Responses to Recommendations and Voluntary Pledges, Malaysia Universal Periodic Review, Second Review,* Session 17, 12 February 2014.

[266] See above, note 72, Para 9.

[267] See above, note 115.

[268] See above, note 43, p. 25.

For new Rohingya arrivals, access to shelter and housing is a main priority and a challenge. New arrivals, having survived the arduous journey, now face the challenge of living in an environment without any legal protection. In general, there are very few shelters in Malaysia, whether government- or privately run. Government-run shelters are generally not accessible to refugees, asylums seekers and other non-citizens, while spaces at NGO shelters are extremely limited. For the most part, there is an over-reliance on community members who assist, where possible, in providing temporary housing for new arrivals. However, this means that living conditions are crowded, unsuitable for new arrivals with severe physical and mental trauma, and there is a heightened risk of violence especially for children and women.

3.5.2. Marriage and Family Life

According to Article 19 of the ASEAN Human Rights Declaration, a person of full age and with consent has the right to marry, start a family and dissolve a marriage, as prescribed by law. The National Registration Department conducts registration of non-Muslim marriages in Malaysia, and the process is largely similar for citizens and non-citizens, except that foreign citizens are required to produce a letter from their government before they are able to marry in Malaysia.[269] Muslim marriages are governed by the Islamic Family Law (Federal Territories) Act 1984 which states that a marriage can only be solemnised in the presence of, or with permission of a Registrar as appointed by the State Ruler (*Yang di-Pertua Agong*), and within a prescribed period of time for late registration.[270]

What this means therefore is that registration of Rohingya marriages is usually done within their communities. Communities assert that they are unaware of any Malaysian local religious authorities who are willing to authorise Rohingya marriages. As until recently, most Rohingya who have

[269] Civil marriages are governed by the Law Reform (Marriage and Divorce) 1976. For more information see the website of the National Registration Department of Malaysia, available at: http://www.jpn.gov.my/en/servicesmarriageordivorce.

[270] Islamic Family Law (Federal Territories) Act 1984, section 28.

made the journey to Malaysia were men, marriages have often taken place between Rohingya men and local Muslim women, or, more commonly, Indonesian migrant workers. According to one group, about 2 000 marriages between Rohingya men and Indonesian migrant women have been registered with the community.[271]

> *I met [my wife] in 2003. She was a factory worker from Medan, Indonesia who had been working in Penang since 2000. After a short romance, we got married in 2004 in Alor Setar, Kedah. We were married by a respected Rohingya ulama*[272] *who is also a hafiz.*[273] *The ceremony was short and followed all the usual religious requirements of a Muslim marriage, except that it did not have any formal registration or legal documentation. My marriage was finally registered in 2007 by the Rohingya Information Centre (RIC) and we were given a marriage certificate issued by the RIC. However, my marriage was not sanctioned by the Malaysian Syariah law as the RIC certificate has no legal standing in Malaysia; my marriage was also not registered with the Indonesian Consulate.*[274]

The consequence of this is that Rohingya marriages are not recognised by the State, resulting in complications when trying to register the births of children. This is further complicated by the fact that migrant workers in Malaysia are not allowed to marry or have children and will be immediately deported upon discovery.[275] As a result, Rohingya men who

---

[271] See above, note 115.

[272] A Muslim scholar.

[273] A person who has completely memorised the Quran.

[274] Interview MYS 7, with 38 year old Rohingya who is married to an Indonesian Migrant worker in Malaysia, Penang, 22 October 2012.

[275] Immigration policy on employment of foreign workers and domestic helpers in Malaysia. For more information see: http://www.imi.gov.my/index.php/en/main-services/foreign-worker.

marry migrant workers are reluctant to register marriages with the State as they fear their wives will be deported.

> *We have two children – boys, ages six and four. Our children have birth certificates, one with a registration number and one without. The birth certificates state that the father is from Myanmar and the mother from Indonesia. Although they are now attending pre-school classes nearby, we are worried that they will have no future in Malaysia, as they are not allowed to attend public schools. The only alternative would be to send them to an NGO run school but they will not obtain any formal certificates. Private school is not an option because it is very expensive. Although I know the process is difficult, I have to migrate to Australia to give my children a better future. I was told by friends that only my wife will be allowed back to Indonesia; not myself nor our children.*[276]

In an exception to this rule, the Selangor State government has provided guidelines under Syariah law on the registration of marriages for Muslim UNHCR cardholders in the state.[277] The guidelines detail the necessary documentation required for registration,[278] the application form and the relevant Islamic Affairs Offices where this registration can be done. A marriage certificate will be issued following proper registration. So far there has been no indication that other states will follow suit.

[276] See above, note 274.

[277] Islamic Family Law (State of Selangor) Enactment 2003 (Enactment 2/2003) for persons residing in the state of Selangor.

[278] *Ibid.* Documentation includes: UNHCR card, conversion certificate if born a non-Muslim, marital consent from UNHCR Malaysia and the Selangor Chief Registrar, HIV test from any government clinic, length of stay verification, verification of parents' marriage, pre-nuptial course certificate if any, and for female applicants death certificate/divorce letter of previous spouse/marriage.

3.5.3. Death and Burial

In general, the local religious authorities (JAKIM) and mosques facilitate a Muslim burial for Rohingya. However, there have been reports that the local village heads and imams have disallowed burials, often without reason.[279] Some communities also ask hospitals to take care of the burials but families would have to pay about RM 1,600 (USD 500) for this to be carried out. Most are unable to afford to pay such high burial costs. The communities get no support from UNHCR or other NGOs in relation to burials.[280]

In instances where no one claims the body, hospital authorities have made arrangements for a burial:

> *On the matter of death, the hospital will deliver the remains to the relatives, if there are any. If no one claims the body, the hospital will inform UNHCR; and if UNHCR does not claim, then the hospital will ask the cooperation of the nearest Islamic Religious Department to perform the prayers and burial services.*[281]

[279] See above, notes 114 and 115.

[280] *Ibid.*

[281] See above, note 240.

4. CONCLUSIONS AND RECOMMENDATIONS

This report provides an insight into the human rights situation of both the long-staying and recently arrived Rohingya population in Malaysia. While the violence in Rakhine State since 2012 has placed more of a spotlight on the multiple human rights violations, including protracted statelessness, experienced by the Rohingya in Myanmar, Malaysia's policies and practices towards them remain for the most part unchanged. Although the government has taken commendable steps to allow Rohingya to enter Malaysia and to access UNHCR, further efforts can and should be taken to achieve a more long-term and durable solution that benefits the country while ensuring that the Rohingya are able to enjoy their fundamental human rights. Malaysia is also striving to achieve developed nation status by 2020 and to meet its targets under the Millennium Development Goals by 2015. Ensuring the rights of non-citizens as well as Malaysian nationals is integral to achieving these goals.

Many of Malaysia's domestic laws and policy initiatives can be strengthened to increase protection for the Rohingya, especially if implemented in an effective and non-discriminatory manner. If Malaysia acts on the recommendations below, it will become a safer destination for Rohingya refugees. Concerns that this will result in an unmanageable increase in new arrivals are legitimate and must be addressed. There is a danger that any one country which – in isolation – strengthens its protection framework for refugees will be disproportionately burdened as a result.

While strengthening protection may bring new challenges, failing to do so comes at a cost as well. The present status quo is damaging and unsustainable. The individual human cost is documented by this report and others. There are also national and regional costs to stability, international relations and reputation. The present regional stalemate only serves to worsen the situation over the long-term. Malaysia is well placed to take a leadership position at the regional level to break this stalemate by championing a rights-based response to the Rohingya issue

and encouraging other states to do so as well. Given the regional dimension of the issue, it is only if states take individual responsibility while also working collectively to protect the Rohingya that effective protection is likely to be achieved.

The Rohingya are a discriminated against stateless community, and the majority of those who have fled Myanmar are refugees and should be recognised as such. The lack of an adequate refugee and/or statelessness protection framework in Malaysia has resulted in the Rohingya being treated as irregular migrants with no access to basic human rights protection. The failure to recognise the vulnerabilities of Rohingya as refugees and stateless persons and to accordingly protect them has a discriminatory impact on the Rohingya and their enjoyment of human rights. Violations of the right to liberty and freedom of movement, as well as the right to work, are everyday concerns for most Rohingya, and fear of police harassment, arrest, detention and deportation affects their lives. Without access to public schools and healthcare, there is also significant concern among the settled Rohingya community that their children have no future. Although Malaysia has for the most part allowed Rohingya boat arrivals to disembark and access UNHCR, they must still endure arrest and prolonged detention in overcrowded and ill-equipped detention facilities which are highly damaging to their physical and mental health, particularly for women, children and those who are already unwell or traumatised.

Despite the human rights challenges in Malaysia, Rohingya do not face the acute discrimination and persecution they experience in Myanmar. Consequently, it is not surprising that of those interviewed, few expressed the desire to go back to Myanmar. Many, particularly long-stayers and those with strong community links, stated that they would prefer to remain in Malaysia, particularly if they had better security and could work without being arrested. Some also reported that remaining in Malaysia was preferable to resettling in a third country such as the United States where Islam is not the main religion. In specific terms, some form of legal stay rights, the right to work and access healthcare, the right to register the births of and educate their children and freedom from exploitation, harassment, extortion, arrest, detention and deportation at the hands of police and other authorities were common requests made by most

interviewees. Many expressed a hope that the government would reinvigorate the IMM13 permit or some other form of legal stay right that would offer more long-term security for them and their children in the country, and which would also allow them to make more effective contributions to the Malaysian labour force and economy.

Ultimately, the Rohingya in Malaysia want recognition as members of a society with the ability to live in dignity and contribute to the communities they live in. If they are unable to receive this in Myanmar, their aspiration is that Malaysia, their adopted country, will offer them such futures. While many accept their plight, they do have aspirations on behalf of their children who they hope will have better, more stable futures.

In light of the information presented in this report, the following **recommendations** are made:

Equality and non-discrimination – Malaysia's domestic legal and policy framework related to non-discrimination and equality remains weak and falls short of international standards. Though the provisions of the Federal Constitution include non-citizens in the constitutional guarantee of equality, they exclude them from the guarantee of non-discrimination as well as other key rights. The inequalities and discrimination faced by the Rohingya in Malaysia have a fundamental impact on the enjoyment of all of their other human rights. Such treatment of the Rohingya is untenable and runs counter to international law.

Malaysia should treat the Rohingya without discrimination and ensure their equal access to the protection and enjoyment of human rights. While this can be achieved in part through the proper implementation of existing laws and policies, it also requires changes to certain laws and policies which are directly or indirectly discriminatory. Actions to strengthen the rights of the Rohingya will also contribute to addressing the historic disadvantage of the community. In particular, it is recommended that Malaysia:

1. Review and repeal all discriminatory laws.
2. Ensure that all laws and policies are implemented in a non-discriminatory manner.

3. Adopt comprehensive and effective national equality legislation, containing the essential elements for such legislation required under international law and summarised in the Declaration of Principles on Equality.

Statelessness and lack of legal status – The statelessness of the Rohingya and their resultant lack of a legal status in Malaysia is a core problem that impacts generally on the enjoyment of their human rights. While the statelessness of the Rohingya is the result of discrimination in Myanmar, the resultant lack of legal status in Malaysia is largely because the country does not have a protection framework in place for stateless persons. Although the punitive provisions of the Immigration Act and the lack of a domestic framework for the protection of refuges and asylum seekers place all persons of concern to UNHCR at risk, the statelessness of the Rohingya places them at an even greater disadvantage:

1. As stateless persons, many long-staying Rohingya have no option but to remain in Malaysia, and thus, while the insecurities and difficulties faced by "economic migrants" maybe temporary, those faced by the Rohingya are potentially life-long and even intergenerational.
2. Stateless Rohingya who are unable to register with UNHCR or whose claims for asylum are rejected are at risk of indefinite detention.

Rohingya children born in Malaysia are also stateless because they have no access to Malaysian nationality. Malaysia has made a reservation to Article 7 of the CRC but still has obligations under Article 8 of the CRC as well as its own Federal Constitution to protect those who have illegally been deprived of their identity and nationality, and to accord nationality to persons born in Malaysia who would not otherwise have a nationality.

Consequently, it is recommended that Malaysia should implement a protective framework for the treatment of stateless Rohingya, provide legal stay rights for stateless Rohingya, ensure that statelessness does not result in further disadvantage and protect the rights of stateless Rohingya children born in its territory, including, ultimately, through access to nationality.

Refugees and asylum seekers – Rohingya arriving in Malaysia should have access to registration and refugee status determination in order to be recognised as refugees. Malaysia has a significant refugee and asylum seeking population with which it is struggling to cope. Although UNHCR Malaysia carries out registration, status determination, documentation, and facilitates durable solutions for the Rohingya, the agency has insufficient institutional capacity which has impacted on its ability to effectively provide these services to the Rohingya and other persons of concern.

Rather than maintain the status quo, a protection-based approach to accommodating refugees will ultimately ease the burden on the system, transforming irregular migrants with no stay rights or associated rights to work into productive members of society who are no longer a burden on the system.

In particular, it is recommended that:

1. UNHCR be granted access to all refugees including the Rohingya in order to conduct RSD and fulfil its protection mandate. Importantly, documentation provided by UNHCR to refugees and asylum seekers should be recognised by all police and other officers of the state as valid protection documents.

2. The Malaysian government should consider reintroducing the IMM13 permits (or an equivalent) for Rohingya and other refugees to allow them to work and grant them residence rights while durable solutions are being sought for them. This would enable a significant number of Rohingya to live a more secured and dignified life in Malaysia and would also allow the country to benefit economically from their presence.

3. Increased resources should be allocated to UNHCR Malaysia to overcome delays in registration and register all Rohingya and other asylum seekers, regardless of their geographic location. Information concerning these processes as well as any initiatives to achieve durable solutions should be made available to the

Rohingya community so they are aware of their rights, obligations and the likely time it will take UNHCR to process their applications.

4. Malaysian refugee and immigration policy should distinguish between refugees, stateless persons and irregular migrants, and respond to each group according to their specific protection needs, within a wider framework of immigration control. In the absence of specific laws recognising the rights and protection needs of refugees and stateless persons, the discretion contained in section 55 of the Immigration Act should be utilised to enhance the stay rights of these groups. In particular, they should benefit from the rights to work and education, which are essential for their long-term survival and development in a manner that is conducive to individual dignity and not burdensome to the state.

5. Durable solutions must be sought for the Rohingya and all refugees in Malaysia. International refugee norms assume three durable solutions: repatriation, local integration, and resettlement. For the Rohingya, repatriation will continue to not be an option as long as the Rohingya suffer persecution in Myanmar. Globally, there are very few opportunities for resettlement with demand far outweighing supply. Only a small number of Rohingya who have been recognised as refugees by UNHCR have been resettled to third countries. Thus, the international community should provide greater resettlement opportunities for Rohingya in Malaysia; this would not only help ease some of the challenges faced by the Malaysian government and UNHCR in managing this population, but would also provide incentive to the Malaysian government to permanently integrate Rohingya for whom resettlement is not the best durable solution. This would include most Rohingya children born in the country.

Liberty and security of the person – The irregular status of the Rohingya in Malaysia has a significant impact on their enjoyment of the right to liberty and security of the person as they are vulnerable to arbitrary arrest and prolonged detention in damaging conditions that fall far below minimum international standards. Although standard operating procedures and directives have been issued clarifying that UNHCR card

holders should not be arrested or detained when the authenticity of their cards have been verified, these are not codified into law and as a result, have not been uniformly or consistently applied. Rohingya and other asylum seekers who are not registered with UNHCR are at particular risk of arrest, prolonged detention and deportation. Of particular concern is that UNHCR does not have access to two of the 14 immigration detention centres in the country.

Consequently, it is recommended that Malaysia's immigration detention policies are reviewed and brought in line with international law. The Immigration Act should be revised to recognise the specific rights and protection needs of refugees, stateless persons and asylum seekers, including the right to liberty and security of the person. The whipping of all irregular migrants should be abolished as a matter of urgency. The government should establish a screening process to ensure that refugees, stateless persons and asylum seekers, including their children, are rapidly identified. Detention should be a measure of last resort and only used where necessary, justified and proportionate, and alternatives to immigration detention should be considered in the first instance. If detention is necessary and justifiable, then it should be for the shortest time possible and in conditions that at the very least meet international minimum standards. The Equal Rights Trust's *Guidelines to Protect Stateless Persons from Arbitrary Detention* which are based on existing international standards may be a useful resource in this regard.

The rights of the child – Rohingya children, particularly those born in Malaysia, are entitled to protection. Malaysia is to be commended for its significant progress towards achieving universal birth registration and access to education for citizen children. Rohingya children should not be left out of this process. Although Malaysian laws provide for all children to be registered at birth, implementation of these laws should be strengthened so that Rohingya parents are able to register their children without impediments such as inability to pay hospital fees or fear of arrest and detention. Malaysia should also ensure that Rohingya children with or without documentation are able to access affordable health care, without fear of arrest and detention as recommended by the Committee on the Rights of the Child. Rohingya children should also have access to free and

formal education, and those attending informal learning centres should have access to official examinations.

Further, Rohingya children should never be detained for immigration purposes, and children and their families should be allowed to remain in community-based alternatives to detention. Children should not be separated from their parents, in line with the right to family unification. In line with Malaysia's obligations under the Convention on the Rights of the Child, it must ensure that the best interests of the child should be a primary consideration and detention is always used as a measure of last resort and then for the shortest time possible. Finally, Malaysia should remove all of its reservations to the CRC, in particular to Articles 2 and 7.

The right to access healthcare – The current cost of health care for foreigners and the requirement for valid documentation to be presented acts as a barrier for Rohingya to access government healthcare facilities. The risk of arrest and detention that irregular migrants seeking treatment at government hospitals face has a serious impact on their mental and physical health and may potentially lead to broader public health concerns if people are deterred from seeking medical assistance when needed.

It is recommended that the Ministry of Home Affairs and the Ministry of Health review current policies on access to health care, so that all refugees, asylum seekers, stateless persons and other irregular migrants are able to seek and obtain affordable medical treatment without fear of arrest and detention. Vulnerable individuals such as children, pregnant women, nursing mothers, the disabled, the elderly, survivors of torture and victims of trafficking, and terminally ill persons must be able to receive medical treatment and should not be placed in detention during or upon completion of treatment, particularly if the reasons for detention are due to their irregular status.

The right to work and an adequate standard of living – The challenges faced by Rohingya in accessing formal labour markets have a significant impact on their lives, including access to basic rights. These challenges have also increased Rohingya vulnerabilities to abuse and exploitation as they are forced to pursue non-formal work as a means of making an income. It is recommended that the Malaysian government effectively

address this by developing a comprehensive labour policy that enables Rohingya and other refugees and asylum seekers to obtain work permits to work legally without fear of arrest and exploitation. This policy should also put in place protective mechanisms that provide for basic labour rights according to international standards, pending a final durable solution to their case. This initiative would also assist Malaysia in addressing its labour shortages and benefit the country in its drive to achieve developed nation status by 2020.

Smuggling and trafficking – Based on recent reports that a number of trafficking and smuggling rings have relocated their camps from southern Thailand to northern Malaysia, it is imperative that the Malaysian authorities step up efforts to address this. It is recommended that Malaysia make use of existing international, regional as well as its national standards and frameworks to enhance protection for victims of trafficking and to also ensure access to such mechanisms for the Rohingya and other victims. Malaysia should ensure that any collusion between traffickers and police and immigration authorities is immediately halted and perpetrators brought to justice.

Response to anti-Rohingya violence - The response of Malaysia to the 2012-2013 boat people has not been adequate. While Malaysia has generally allowed boat arrivals to disembark, its response has not been grounded in a protection framework and the practice of subjecting boat arrivals to mandatory prolonged detention is a violation of international law. It can be difficult for any country to deal with such unpredictable migration flows, and distinguishing Rohingya refugees from Bangladeshi migrants also poses a challenge. However, Malaysia is urged to approach this situation from a humanitarian and human rights perspective, to ensure the integrity of its borders while also protecting the rights of all vulnerable migrants including asylum seekers and stateless persons.

Malaysia is urged to continue to protect its sovereignty and borders in a manner which increasingly also prioritises the human rights protection of vulnerable persons. Such a human rights-based approach to sovereignty is a difficult but achievable goal which will strengthen human rights protection and serve as an example to other nations.

Accession to human rights, statelessness and refugee treaties - A significant step to improving the protection of refugees and stateless people in the country, including the Rohingya, would be to accede to the remaining key human rights treaties – namely, the ICCPR, ICESCR, ICERD, CAT and CMW – but also to the Convention Relating to the Status of Refugees and its Protocol, the Convention Relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness. These conventions require state parties to protect the rights of refugees and stateless persons and to reduce statelessness. Furthermore, they provide the legal basis for UNHCR to exercise its protection mandate. Accession to these treaties and the introduction of domestic law and policy mechanisms for their implementation would be a significant breakthrough in the protection of refugees and stateless persons. This is likely to have a positive impact not only in Malaysia, but also in the ASEAN region, which at present has a poor ratification record of these treaties. In addition to benefiting individual stateless persons, asylum seekers and refugees, accession will also bring benefits to Malaysia as these treaties promote "responsibility sharing", which can help Malaysia handle the perceived burden of handling refugees.

Regional approach – As has been made evident throughout this report, the Rohingya issue is a regional one which concerns a number of countries. It is recommended that states in the region foster more collaboration and seek to collectively address the issue, while also acknowledging their individual responsibility in this regard. Importantly, any regional approach should be grounded in human rights and humanitarian principles of equality, non-discrimination and protection. Malaysia is well placed to take a leadership role in promoting such an approach and should use its place on regional mechanisms including ASEAN, AICHR, ACWC and the Bali Process to good effect in this regard. Strategically, the rights of Rohingya children may be a useful entry-point, and Malaysia is in a position to lead by example by better implementing its existing policies on universal birth registration and access to education, and also giving effect to the provisions in the Federal Constitution that already provide for the acquisition of nationality for stateless Rohingya children born in the country.

BIBLIOGRAPHY

INTERNATIONAL AND REGIONAL TREATIES, AUTHORITATIVE INTERPRETATIONS AND GUIDELINES

United Nations Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/Res39/46, 1987.

Convention on the Elimination of All Forms of Discrimination against Woman, G.A. Res. A/RES/34/180, 1979.

Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006.

Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989.

International Convention on the Elimination of all Forms of Racial Discrimination, G.A. Res. A/RES/47/133, 1969.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U/N/ Doc./A/Res/45/158, 18 December 1990.

International Covenant on Civil and Political Rights, G. A. Res 2200A (XXI), 1976.

International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI), 1976.

Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, 2004.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations.
Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000.

United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000.

United Nations Convention on the Reduction of Statelessness, U.N.T.S. 989, 1961.

United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954.

United Nations, Charter of the United Nations and Statute of the International Court of Justice, 1945.

Universal Declaration of Human Rights, G.A. Res. 217A (III) 1948.

Regional Treaties

ASEAN Human Rights Declaration, 19 November 2012.

General Comments, General Recommendations, Concluding Observations and Concluding Comments

Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against Non Citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 1 October 2002.

Committee on the Rights of the Child, *Concluding Observations, Malaysia,* UN Doc. CRC/C/MYS/CO/1, June 2007.

Special Procedures and Other Reports by International Governmental Organisations

International Law Commission, "Draft Articles on Diplomatic Protection with Commentaries", 58th session, *Yearbook of the International Law Commission*, , Vol. II, Part Two, 2006.

United Nations General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana,* Human Rights Council, 25th Session, UN Doc. A/HRC/25/64, 2 April 2014.

United Nations Human Rights Council, *Arbitrary deprivation of nationality: Report of the Secretary-General*, UN Doc. A/HRC/10/34, 26 January 2009.

United Nations Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, UN Doc. A/HRC/13/34, 14 December 2009.

United Nations Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover,* UN Doc. A/HRC/14/20/Add.1, 2010.

United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum,* UN Doc. A/HRC/25/10/Add.1, 2013.

UNESCO Bangkok, *Report on the Joint UNESCO and UNICEF Regional Workshop on Equivalency* Programmes *and Alternative Certified Learning*, 2011.

UNFPA Myanmar, *Statement: UNFPA concerned about decision not to allow census respondents to self-identify as Rohingya,* 01 April 2014.

UNHCR Human Rights Liaison Unit, Division of International Protection, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Malaysia*, March 2013.

UNHCR Malaysia, *Figures at a Glance*, 2014.

UNHCR Myanmar, *2014 UNHCR Country Operations Profile*, 2014.

UNHCR Policy Development and Evaluation Service, *But When will Our Turn Come? A Review of the Implementation of UNHCR's Urban Refugee Policy in Malaysia*, PDES/2012/02, May 2012.

UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04.

UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014.

UNHCR, *In Malaysia, Rohingya arrivals hope to end cycle of abuse, exploitation by smugglers*, 5 May 2014.

UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate,* Unit 5.

UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights', Universal Periodic Review: Malaysia*, March 2013.

UNHCR, *Summary Conclusions of Expert Meeting - The Concept of Stateless Persons under International Law,* Prato, Italy, 2010.

UNHCR, *UNHCR Birth Registration Brochure*.

UNHCR, *UNHCR Lauds Malaysia for Accepting Persons Rescued at Sea*, December 19, 2012.

UNOCHA Myanmar, *Humanitarian Lifeline cut following violence against aid agencies in Rakhine,* April 2014.

Documents of Best Practice

Declaration of Principles on Equality, Equal Rights Trust, London, 2008.

Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention,* London, June 2012.

NATIONAL LAW

Malaysia

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Act 670, as amended in 2010.

Child Act 2001, Act 611.

Federal Constitution of Malaysia as amended, The Commissioner of Law Revision, Malaysia, in collaboration with Percetakan Nasional Bhd 2006.

Immigration Act 1959/1963, Act 153.

Islamic Family Law (Federal Territories) Act 1984, Act 303.

Islamic Family Law (State of Selangor) Enactment 2/2003.

Law Reform (Marriage and Divorce) Act 1976, Act 164.

Other States

Burma Citizenship Law [MMR-130], 15 October 1982.

NATIONAL POLICIES AND STATE REPORTS

Malaysian Investment Development Authority, *Employment of Foreign Workers: Immigration Procedures*.

National Human Rights Commission of Malaysia (SUHAKAM), *Roundtable on Alternatives to Immigration Detention*, 12 November 2013.

BOOKS, ARTICLES, REPORTS AND STUDIES

Abrar, C.R., *Repatriation of Rohingya Refugees,* 1995.

Amnesty International, *A Blow to Humanity: Torture by Judicial Caning in Malaysia*, ASA 28/013/2010, December 2010.

Amnesty International, *Abused and Abandoned: Refugees Denied Rights in Malaysia*, ASA 28/010/2010, June 2010.

Amnesty International, *Malaysia: Submission to the UN Universal Periodic Review*, October - November 2013.

Arakan Project, *Forced Labour during the Arakan Crisis: an overview of forced labour practices in North Arakan, Burma,* June to August 2012.

Arakan Project, *Rohingya Maritime Movements: estimates and trends for departures up to 30 June 2014,* unpublished document, July 2014. On file with the Equal Rights Trust.

Arendt, H., *The Origins of Totalitarianism*, Harcourt, Brace and Company, California, 1951.

Asia Pacific Refugee Rights Network, *APRRN Condemns the Refoulement of Two Sri Lankan Refugees and an Asylum Seeker by Malaysia*, 29 May 2014.

Ba Tha, "Rohingya Fine Arts", *Guardian Monthly Rangoon,* Vol VIII, Feb 1961.

Ba Tha, "Rohingya of Arakan", *Guardian Monthly Rangoon*, Vol III no 5, May 1960.

Bhabha, J. and Zard, M., "Smuggled or Trafficked?" *Forced Migration Review 25,* Refugee Studies Centre, 25 May 2006.

Charney, M. W., *Buddhism in Arakan: Theories and Histiography of the Religious Basis of Ethnonyms*, submitted to Arakan History Conference, 2005, Bangkok.

Child Rights Coalition Malaysia, *Status Report on Children's Rights,* December 2012.

Equal Right Trust, *Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya and their refoulement from Bangladesh*, London, June 2012.

Equal Rights Trust, *Emergency Report: Urgent Action Essential to Protect Muslims in Myanmar,* London, 2 November 2012.

Equal Rights Trust, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, London, January 2010.

Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and Protection Needs of Stateless Persons*, London, July 2010.

Equal Rights Trust in partnership with Tenaganita, *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia,* Equal Rights Trust Country Report Series: 2, London, November 2012.

Genocide Watch, *Burma: New Violence in Arakan State by Human Rights Watch***,** 24 October 2012.

Gutman, P., *Ancient Arakan,* digital thesis, 1976.

Health Equity Initiative, *Press statement: Stop the Arrest and Detention of Asylum Seeking Women Accessing Maternal Health Care,* 3 April 2014.

Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State,* 22 April 2013.

Human Rights Watch, *Burma: Rohingya Muslims: Ending a Cycle of Exodus?* Nov. 16, 1977.

Human Rights Watch, *Sri Lanka: Refugees Returned from Malaysia at Grave Risk*, 28 May 2014.

International Federation for Human Rights (FIDH) and Suaram, *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination,* March 2008.

International Rescue Committee, *In Search of Survival & Sanctuary in the City: Refugees from Burma in Kuala Lumpur,* December 2012.

Médecins Sans Frontières, *10 years for the Rohingya refugees in Bangladesh: past, present and future,* MSF, March 2002.

Mah, R. and Hwa, C.L.Y., *Citizenship for Adopted Children – A Malaysian Perspective*.

National Democratic Party for Development, *Presentation for the native inhabitants (whose faith is Islam) residing in the Rakhine State (Arakan State) as the citizen by law and by natural or birth rights as well as the indigenous national of the Republic of the Union of Myanmar*, July 4 2012. On file with the Equal Rights Trust.

National University of Ireland Galway, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas,* Irish Centre for Human Rights, 2010.

Shwe Zan and Aye Chan*, Influx Viruses, The Illegal Muslims in Arakan*, Arakanese in United States, August 2005.

Smith, M., *Muslim "Rohingya" of Burma*, 2005, unpublished manuscript. On file with the Equal Rights Trust.

Tenaganita, *Clearing Misconceptions: The Truth About Migrants In Malaysia,* 9 May 2012.

United States Department of State, Human Rights, and Labour, *2008 Human Rights Report: Malaysia*, 25 February 2009.

United States Department of State, Office to Monitor and Combat Trafficking In Persons, *2013 Trafficking in Persons Report: Malaysia,* 2013.

United States Department of State, *2014 Trafficking in Persons Report - Malaysia*, 2014.

United States Senate, Committee on Foreign Relations, *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*, 3 April 2009.

UPR Info, *2RP: Responses to Recommendations and Voluntary Pledges, Malaysia Universal Periodic Review, Second Review,* Session 17, 12 February 2014.

NEWSPAPER, MAGAZINE AND ELECTRONIC MEDIA PUBLICATIONS

Associated Press, "Desperate Rohingya children flee to horrors and despair", *Taipei Times,* 4 May 2014.

BBC, "Hundreds of Rohingya refugees reach Langkawi, Malaysia", *BBC News Asia*, 31 December 2012.

BBC, "Burmese refugees sold on by Thai officials", *BBC News,* January 2013.

Brunei Times, "Malaysia, Indonesia share concerns over Rohingyas", *The Brunei Times*, July 2013.

Buncombe, A., "With 'Rohingya' not an option on census forms, Burma's new democracy is facing an identity crisis", *The Independent*, 2 April 2014.

Free Malaysia Today, "RELA to be Stripped of Guns, Power", *Free Malaysia Today*, 17 April 2012.

Gangopadhyay, A., "Crackdown on Illegal Immigrants Strains Malaysian Finances", *The Wall Street Journal South East Asia,* 8 January 2014.

Grudgings, S., "Exclusive: Trafficking abuse of Myanmar Rohingya spreads to Malaysia", *Reuters,* 5 March 2014.

Inkey M. "Thein Sein talks at Chatham House", *New Mandala* 17 July 2013.

Lee, Y.K., "Malaysia: Rohingya refugees left with nowhere to go", *Green Left Weekly*, 2 July 2013.

Marshall, A.R. and Lefevre, A.S., "Reuters Special Report: Flaws found in Thailand's human-trafficking crackdown", *Reuters,* 10 April 2014.

Mohd Shariff, Z. and Tan, S.T., "Nutritional status of Rohingya children in Kuala Lumpur"*, Malaysian Journal of Medicine and Health Sciences, 7 (1),* 2011.

New Straits Times, "7 RELA Members Remanded over Nigerian Man's Death", *New Straits Times*, 1 April 2012.

Phuket Wan, "Thai Officials Linked to Rohingya Trafficking Networks, Says Torture Report", *Phuket Wan News,* April 2014.

Reuters, "Preying on the Rohingya"*, Reuters,* July 2013.

Reuters, "Thailand's clandestine Rohingya policy uncovered", *Reuters,* December 2013.

Scully, W.L. and Trager, F.N., "A survey of Asia in 1978 Part II (Feb 1979) Burma 1978: The thirteenth year of independence", *Asian Survey,* Vol 19, no 2, p. 153.

Sparks, J., "Nightmare island where traffickers imprison Burma's Rohingya", *Channel 4,* 8 August 2013.

Star News Online, "Minister in Prime Minister's office response on the Rohingya situation in Malaysia, Parliament: Malaysia 'most humane' to refugees, says Shahidan"*, Star Online*, 8 April 2014.

Star News Online, "Rohingya stranded on vessel brought to Johor", *Star Online,* 20 December 2012.

Star News Online, "MMEA rescues 117 Rohingyas off Muka Head"*, Star Online,* 27 March 2013.

Star News Online, "Getting refugees to fill labour needs", *Star Online,* 15 September 2013.

Star News Online, “Govt. to Ensure Stateless Children get Education: DPM”, *Star Online,* 20 July 2010.

Ali, S.A.S., “Isu Pelarian Rohingya; Tidak Rancang Keluar IMM13”, *Berita Harian*, 13 September 2013.

Szep, J. and Grudgings, S., “Myanmar Exodus: Preying on the Rohinyga”, *Reuters Special Report,* Thailand, 17 July 2013.

Szep, J. and Grudgings, S., “Reuters Special Report: Thai authorities implicated in Rohingya Muslim smuggling network”, *Reuters,* Thailand, 17 July 2013.

Szep, J., and Marshall, A.R.C, “Reuters Special Report: Thailand secretly dumps Myanmar refugees into trafficking rings”, *Reuters,* 5 December 2013.

OTHER SOURCES

Project Interview Archives, 2012 – 2014.

Project Email Archives, 2012 – 2014.

The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. The Trust focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

The Institute of Human Rights and Peace Studies (IHRP) was created by a merger between Mahidol University's Center for Human Rights Studies and Social Development (est.1998) and the Research Center for Peace building (est. 2004). IHRP is an inter disciplinary institute that strives to redefine the fields of peace, conflict, justice and human rights studies, in the Asia Pacific region and beyond.

Stateless, discriminated against, excluded and persecuted, the Rohingya are one of the most vulnerable communities in the world. Originating from Myanmar, hundreds of thousands of Rohingya have fled the country in search of safety, security and prosperity - conditions that remain elusive to the majority who have made lives for themselves upon new shores.

This report is part of a series which provides an overview and analysis of the human rights situation of stateless Rohingya in various countries. It highlights the human rights situation of both the long-staying and recently arrived Rohingya population in Malaysia. The failure to recognise the vulnerabilities of Rohingya as refugees and stateless persons and to accordingly protect them has a discriminatory impact on the Rohingya, denying them equal rights.Violations of the rights to liberty and freedom of movement, as well as the right to work, are everyday concerns for most Rohingya, and fear of police harassment, arrest, detention and deportation affects their lives. Without access to public schools and healthcare, there is also significant concern among the settled Rohingya community that their children have no future.

This report has been prepared with the financial assistance of the European Union. The contents of this report are the sole responsibility of the Equal Rights Trust and the Institute of Human Rights and Peace Studies, Mahidol University and can in no way be taken to reflect the views of the European Union.