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Research Report

Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia

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1. Executive Summary

In 2017, a violent security crackdown in Myanmar's Rakhine State triggered the largest exodus of Rohingya in recent history. At the time, the Malaysian government took a vocal stance against the persecution of the Rohingya, positioning themselves as supportive and sympathetic to their plight. However, as growing numbers of Rohingya have sought irregular means of travelling to Malaysia to reunite with family and community members, levels of public and political tolerance in the country have waned. The Malaysian government has increasingly adopted a securitised and frequently ad-hoc approach in responding to Rohingya and other refugee communities. This has included more boat pushbacks, more frequent immigration enforcement raids, and the immediate, arbitrary, and indefinite immigration detention of many Rohingya in Malaysia.

Previous research has documented the ways in which Malaysia's laws and policies are applied towards Rohingya and other refugees. However, less attention has been paid to the ways in which Rohingyas experience these policies, and the means by which they have responded to corresponding threats to their safety and security. This research focuses on how Rohingya families and communities have been impacted in the immediate and longer-term by Malaysia's harsh and indefinite immigration detention policies. It also provides strategic and relevant recommendations for increasing access to protection and services for Rohingya refugees in Malaysia, not least the need for Alternatives To Detention (ATD) and a refugee-, survivor-centred approach in policies and responses at both national and regional levels, in line with international protection and human rights standards.

The research methodology comprised a multi-method qualitative research approach using desk research, secondary data collection from case intake forms, and semi-structured interviews with key informants from refugee-led organisations (RLOs), Malaysian civil society organisations (CSOs), think tanks, regional CSOs, faith-based organisations (FBOs), and international human rights organisations.

While the research focused primarily on Rohingya in Malaysia, key informants and desk research indicated that many of the findings, especially experiences related to policies and processes of immigration detention, are likely applicable to most refugee communities in Malaysia. Likewise, the recommendations to improve these immigration policies and practices will serve to benefit not only the Rohingya, but other refugee communities too.

Key Findings

- Rohingya refugees in Malaysia are not a homogenous group. Their risk of detention, direct and indirect experiences of detention, and ability to access services and support are shaped by their duration of residence in Malaysia; family origins and status in Myanmar's Rakhine State; and intersectional factors such as gender, age, medical vulnerabilities, socioeconomic background, and documentation status.
- All refugees are at risk of arrest and detention under Malaysian immigration law, which permits arbitrary and indiscriminate arrest and detention. However, Rohingya are at higher risk of arrest and detention than other refugee communities, predominantly due to their visibility as the largest refugee community in Malaysia.
- Rohingya refugees who have travelled to Malaysia from Bangladesh are at increased risk of prolonged detention compared to Rohingya refugees who have travelled directly from Myanmar, or have been living in Malaysia long-term, pursuant to an internal immigration document.
- Malaysia's immigration detention policies have had medium- and long-term impacts on Rohingya families and communities. Rohingya in detention are at significant risk of physical and psychological abuse that can lead to cumulative trauma and mental health challenges. For children specifically, immigration detention can have a detrimental and long-lasting impact on development and physical and mental well-being.
- Family members of detained Rohingya also experience significant psychological distress. This distress is underpinned by concern

for their family members' wellbeing, increased fear and anxiety about risk of arrest, and lack of access to United Nations High Commissioner for Refugees (UNHCR) documentation and the protection it provides.

- Detention has a profound impact on family structures by separating or preventing reunification of families, and indirectly causing the breakdown of familial relationships.
- Immigration detention disproportionately affects women as they experience detention in intersecting and gendered ways, due to patriarchal norms within Rohingya communities and the social and economic positions women occupy.
- In response to the detention of a community member, some Rohingya communities mobilise quickly to: a) seek help from UNHCR or relevant NGOs to protect the detained community member and others at high risk of detention; b) engage community networks to warn and safeguard the broader community; c) attempt to secure the release of the detainee; and d) support family members of the detainee to meet their basic needs.
- Malaysia's immigration detention policies and practices demonstrate policy incoherence at a national level, as well as at regional and international levels, which negatively affect Malaysia's international reputation and standing.
- Immigration detention is harmful to individuals, families, and communities, is not an effective deterrence measure, and comes at significant financial cost to Malaysian taxpayers and the Malaysian economy. Further, there is no legal basis to deport stateless persons such as the Rohingya.
- ATD are beneficial to both refugees and governments as they support outcomes such as improved health and wellbeing, fulfilment of human rights principles, and effective migration governance. ATD are also more cost-effective than immigration detention.
- A comprehensive and sustainable approach to responding to Rohingya and other refugee communities requires coordination and collaboration across Malaysian Government ministries, departments, and other government actors. Further, close collaboration with civil society, RLOs, UN agencies, and regional and international CSOs is needed to strengthen the government's response to end harmful immigration detention policies and practices.

Key Recommendations

The above findings inform eight key recommendations that promote a Whole-Of-Government and Whole-Of-Society approach to address immigration detention.

Recommendations	Policy measures	Stakeholders
1. Cease the immigration detention of Rohingya and other refugee communities	a. Exempt refugees and people seeking asylum from arrest and detention under the Immigration Act 1959/63 b. Allow UNHCR regular and streamlined access to all people detained in immigration detention centres, for the purpose of identifying, registering, and protecting refugees and people seeking asylum	The Malaysian government: o Legal Affairs Division and National Security Council under Prime Minister's Department o Immigration Department under Ministry of Home Affairs
2. Lead the development and implementation of community-based ATD	a. Implement ongoing ATD initiatives including the proposed plan of releasing children from immigration detention and the ATD pilot programme for unaccompanied and separated children, including Rohingya b. Invest in developing a clear monitoring and evaluation framework that focuses on best interest of the child for ATD initiatives c. Ensure that ATD initiatives include all children in immigration detention and expand ATD to include other people in situations of vulnerability, such as people seeking asylum and people with medical conditions	• The Malaysian government: o Immigration Department under Ministry of Home Affairs o Social Welfare Department under Ministry of Women, Family and Community Development o Legal Affairs Division and National Security Council under Prime Minister's Department • Civil society organisations and actors serving refugees, migrants, children, and youth • UN agencies, namely the Office of the UN High Commissioner for Human Rights (OHCHR), United Nations Children's Fund (UNICEF), and UNHCR

3.	Develop and implement a transparent and comprehensive refugee policy	a. Accelerate the registration process of Rohingya and other refugee communities b. Improve policy coherence on arrest and detention procedures of refugees and people seeking asylum	• The Malaysian government: o Ministry of Home Affairs o Legal Affairs Division and National Security Council under Prime Minister's Department • UNHCR
4.	Utilise lessons learned from similarly situated countries, particularly in ASEAN, and continue regional and international engagement to improve coordination and secure additional resources	a. Increase peer-learning efforts by participating in platforms, such as the ATD workstreams by the United National Network on Migration Working Group and the Regional Platform on ATD b. Build regional collaboration to support more rights-based approaches and regional advocacy on the Rohingya displacement, and migration governance	The Malaysian government: o Ministry of Home Affairs o Ministry of Foreign Affairs o Legal Affairs Division and National Security Council under Prime Minister's Department o Ministry of Women, Family and Community Development
5.	Provide work rights to Rohingya and other refugee communities	a. Formalise refugees' right to work and provide them with a legal status or temporary visa b. Develop refugee employment programmes in consultation with refugee communities, RLOs and CSOs, and identify economic sectors that match the skill profiles of Rohingya and other refugee communities c. Ensure that labour protection mechanisms equally apply to Rohingya and other refugee communities	The Malaysian government: o Ministry of Human Resources o Ministry of Investment, Trade and Industry o Ministry of Home Affairs
6.	Strengthen gender-responsive frameworks and services to Rohingya and other refugee communities	a. Incorporate gender mainstreaming and a gender responsive approach in policies and practices b. Repeal the directive requiring government healthcare staff to report undocumented patients to immigration c. Establish protocols that prevent the police from arresting refugee women who are reporting sexual and gender-based violence (SGBV) d. Provide robust and regular gender-responsive training for government officials	• The Malaysian government: o Ministry of Home Affairs o Ministry of Women, Family and Community Development o Ministry of Health o Legal Affairs Division and National Security Council under the Prime Minister's Department • Civil society organisations and actors serving refugees, migrants, women, children, and youth
7.	Employ multi-stakeholder partnerships at all levels to ensure greater coordination and collaboration	a. Encourage collaboration and dialogue among the government, civil society, RLOs, the national human rights commission, international organisations, the private sector b. Utilise existing mechanisms including the All Party-Parliamentary Group Malaysia and Parliamentary Special Select Committees	• The Malaysian government • Civil society • Refugee-led organisations • National Human Rights Commission • UN agencies • Regional and international organisations • Private sector
8.	Invest in increasing public awareness and understanding of refugee issues, and in counteracting misinformation, disinformation, and hate speech toward refugees	a. Counter misinformation about refugees to address xenophobia against Rohingya refugees b. Organise social cohesion initiatives which promote increased understanding and acceptance between host communities and refugees c. Engage and build relationships with media to promote accurate and progressive reporting on refugees	• The Malaysian government, namely Ministry of Information, Communication and Culture • Civil society • Faith-based organisations • UN agencies • Regional and international organisations

2. Research Objective

This research was undertaken by International Detention Coalition (IDC) for the "Protecting Rohingya Refugees in Asia" (PRRiA) project, an initiative of the Danish Refugee Council, the Asia Displacement Solutions Platform, the Mixed Migration Centre, Jesuit Refugee Service Indonesia, HOST International, and the Geutanyoë Foundation.

The primary research aims were to understand and document the impacts of immigration detention on Rohingya families and their immediate communities, and to formulate strategic recommendations for various stakeholders working at national and regional levels to increase access to protection and services for Rohingya refugees in Malaysia.

3. Methodology

This report employed a multi-method qualitative approach of desk research, semi-structured interviews with key informants selected via purposive sampling, and secondary data collection from case intake forms. Data collection was undertaken between January and March 2023. The findings of the research were validated through triangulation across these methods, and through a peer-review process with key informants and internal reviewers from International Detention Coalition and PRRiA project partners to ensure quality and accuracy of the findings.

The desk research drew on secondary data and publications from multiple sources – from academia, civil society, media, and government. These sources informed a preliminary analysis of current legal and policy frameworks pertaining to the status of Rohingya communities in Malaysia, including access to protection and services, work rights, and immigration detention, as well as the immediate and long-term impact of immigration detention on Rohingya families and communities. The latest policy statements released by government representatives were tracked via media and parliamentary sources.

Secondary data was also obtained from case intake forms from a non-governmental organisation (NGO) engaged in humanitarian aid provision and advocacy in Malaysia. These case intake forms, which were recorded from January 2022 to February 2023, contain narratives of the experiences of Rohingya refugees who had been arrested and detained, as well as the hardships faced by their families and community members who remained outside detention. Informed consent was obtained for the data to be shared with IDC and used for the purposes of this research. The case intake data was anonymised, codified, and analysed for emergent trends and patterns.

The research team conducted semi-structured interviews with 15 representatives from Rohingya-led organisations, Malaysian CSOs and think tanks, regional CSOs, FBOs, and international human rights organisations involved in service provision and advocacy for Rohingya. These interviews provided insights on the realities and challenges facing the Rohingya community in Malaysia, and analyses of the Malaysian government's policy responses towards Rohingya refugees.

A decision was made not to interview Rohingya families and communities about their lived experiences. This is in recognition of the ethical issues that arise when interviewing a community in a position of vulnerability due to their lack of legal status and risk of immigration detention. There is also risk of re-traumatisation amidst a lack of psychosocial support. To incorporate the perspectives of Rohingya directly or indirectly impacted by detention, the research team reviewed information provided in case intake forms, as described above.

Prior to commencing interviews, a research proposal, including an interview guide, information sheet for participants, informed consent form, and research protocol was reviewed and approved by the Ethics Consultative Services for Marginalised Population (ECS-MP), an independent ethics review board at the Medical Humanities and Ethics Unit at University Malaya.

4. Limitations

There were several key limitations to the research.

- As noted, affected Rohingya were not directly interviewed about their experiences of detention. In-depth interviews with representatives of Rohingya-led organisations, NGOs, and FBOs; and data elicited from case intake forms yielded illuminating narratives and common themes. However, because of the profiles and limited number of key informants, more widespread trends on impact of detention could not be explored.
- As the case intake data accessed for this research was collected by a single organisation over the period of one year, these cases do not necessarily represent the entirety of experiences of detention cases in Malaysia. Yet, the data offers extensive insights into the lived realities of Rohingya and allowed the research team to identify patterns across cases. Findings from the case intake data were triangulated and validated through the key informant interviews and desk research to ensure relevance and applicability to the wider Rohingya community.

- Analysis of detention trends and practices was limited by the fact that the Malaysian government does not publish disaggregated data on immigration detention. Data on immigration detention is usually elicited through parliamentary questions and replies, which is sometimes broadly disaggregated by age, gender, nationality, and ethnicity. However, no further disaggregated data on the profiles of refugees detained is accessible, including data about medical vulnerabilities, disabilities, sexual orientation, legal status, employment status, literacy, or socio-economic context.
- The research was similarly limited due to the unwillingness of Malaysian government stakeholders to partake in interviews. Despite several attempts to engage with officials – in particular, from the Immigration Department, Ministry of Home Affairs, Ministry of Women, Family and Community Development, the Ministry of Foreign Affairs, and the National Security Council – all either failed to respond or denied the interview request. Additionally, the majority of informants interviewed requested to remain anonymous, due to concerns that they or Rohingya communities may face backlash from the Malaysian government for their participation.
- The limited time frame, which spanned 10 weeks, also impacted the research, as the scope of data collection and analysis was adjusted to fit the research timeline.

5. Background Context

Recent Statistics

As of the end of March 2023, there were 185,760 recognised refugees and people seeking asylum registered with the UNHCR in Malaysia; of this number, some 107,430 were Rohingya.[1] This does not include refugees and people seeking asylum who have not yet been able to register with UNHCR, estimated at approximately half a million people.[2]

As noted above, the Malaysian government does not publish disaggregated data on the numbers of children, women, and men in immigration detention centres. Data elicited through parliamentary questions or remarks made to the press by government officials indicates that as of 29 January 2023, a total of 15,845 people were in immigration detention, including 11,983 men, 2,683 women, 656 boys, and 523 girls. Of these people detained, 4,424 were Myanmar nationals, including Rohingya.[3] No further breakdown was available to identify the specific number of Rohingya in detention.

There is no independent monitoring or oversight of immigration detention centres in Malaysia. Conditions in detention centres are known to be harsh and life-threatening, as described in the section *"Impacts of Immigration Detention on Rohingya"* below. Between 2014 and mid-2022, 568 deaths were reported in immigration detention centres.[4] In 2022 alone, 153 people, including seven children died in immigration detention, which was almost equivalent to the number of deaths (151) recorded in the three-year period between 2016 and 2019.[5] The government has reported that over the time period of 2015 and mid-2022, Covid-19, tuberculosis, heart disease, kidney disease, pneumonia, and cancer were among the causes of death of people in immigration detention.[6] No further information about the causes of deaths is publicly available.[7]

Legal Framework on Immigration Detention

Malaysia's national laws do not provide specific protections for refugees and people seeking asylum, and Malaysia is not a signatory to the 1951 Refugee Convention or its 1967 Protocol. Malaysia's Immigration Act 1959/63 was revised in 1997 and 2002 to include harsher penalties for immigration offences. There have been no meaningful attempts by the Malaysian government to bring the Immigration Act in line with international human rights law and standards.

Instead, anyone who irregularly enters or remains in Malaysia, including refugees and people seeking asylum, is at risk of a fine not exceeding RM10,000 (€2,081),[8] and/or imprisonment for a term not exceeding five years, as well as no more than six strokes of the cane.[9] Caning is imposed as a sentence for adult males, in addition to imprisonment. This constitutes torture and ill-treatment under international law, and its severe physical and psychological impact on refugees and migrants in Malaysia has been well documented.[10]

1 UNHCR (2023) Figures at a Glance in Malaysia.
2 Sukhani, P. (2020) The Shifting Politics of Rohingya Refugees in Malaysia. The Diplomat.
3 Question No. 14, Notice of Oral Answers in the House of Representatives First Meeting, Second Term, Fifteenth Parliament, 2 March 2023.
4 Question No. 40, Notice of Oral Answers in the House of Representatives Second Meeting, Fifth Term, Fourteenth Parliament, 28 July 2022.
5 Amnesty International Malaysia (2020) Government must be accountable for deaths in detention centres.
6 Question No. 92, Notice of Oral Answers in the House of Representatives Second Meeting, Fifth Term, Fourteenth Parliament, 19 July 2022
7 Question No. 50, Notice of Oral Answers in the House of Representatives First Meeting, Second Term, Fifteenth Parliament, 21 February 2023.
8 This, and all conversion hereafter is based on the exchange rate of 1 Euro = RM 4.80 as of 31 March 2023.
9 Section 6(3) of the Immigration Act 1959/63.
10 Amnesty International (2010) Malaysia: A blow to humanity: Torture by judicial caning in Malaysia

In 2020, there was an instance of domestic pushback against caning of refugees. The Alor Setar High Court in Kedah overturned a lower court decision to impose caning in addition to seven months imprisonment for a group of Rohingya men found guilty of entering Malaysia by boat.[11] In its review, the High Court determined that caning would be inhumane as the men were refugees and did not have any prior history of crime or violence.[12] Despite the positive ruling in this particular case, caning is still permissible under the Immigration Act, and refugee and migrant men in Malaysia remain at risk of caning.

Refugees and people seeking asylum who are registered with UNHCR hold a form of de facto status in Malaysia that provides only precarious and ad hoc protection against arrest, detention, and refoulement. The Attorney General's Circular[13] and National Security Council Directive 23 (MKN 23) are two policies that inform this de facto status of UNHCR card holders. These policies are not publicly available, have not been codified, and are inconsistently applied. Plans to revise MKN 23 have purportedly been underway for several years, with revisions anticipated to be presented to the Malaysian Cabinet for approval. However, with the elections in November 2022 and a newly formed unity government that is still finding its feet, it is uncertain if and when the revisions will be presented or adopted by Cabinet.

UNHCR procedures on registration for refugee status determination (RSD) have changed in recent years. Current UNHCR procedures require people seeking asylum to request RSD registration via an online form on UNHCR's website.[14] Once submitted, this information is added to the UNHCR database and people seeking asylum are given a reference number, which UNHCR advises them to save and show authorities as proof they are waiting for their UNHCR appointment. However, the effectiveness of using this reference number to avoid arrest is unclear. Further, despite the change in system, UNHCR's registration process remains impacted by COVID-19, which has led to a significant backlog of people waiting for either registration or an RSD interview.

The Minister of Home Affairs and Director General of Immigration have the statutory discretion to exempt people from punishment under the Immigration Act. In practice, this has rarely been exercised. In particular, Section 55 of the Immigration Act gives the Minister of Home Affairs discretionary power to exempt any person or class of person from the application of the Act. Under this section, the Minister of Home Affairs can waive enforcement of the Act, particularly for offences in relation to unlawful entry, if prescribed conditions are met. An exemption order comes with the legal right to stay in the country.[15] The Director General of Immigration also has discretionary powers to release a person under Section 27(1)(ii) of the Act whose right to enter Malaysia is pending investigation.

In addition to the inconsistent implementation of Malaysian law and policy, as well as lack of attempt to bring it in line with international humanitarian and human rights law, there are fundamental gaps in the legal framework around the use of immigration detention in Malaysia, and in particular around the detention of refugees, children, and other persons in situations of vulnerability:

- Malaysia's immigration laws do not distinguish between children and adults, and except for recognised trafficking survivors, do not exempt people in vulnerable situations from penalties. There are no formal processes for age assessment in detention centres; instead, age is assessed by appearance and physical stature. Where a distinction is made, the definition of a child is inconsistent: some detention centres consider children to be persons under 18, whereas in others, they are persons under 12.

- Immigration Regulations provide specifically for the detention of children, stating that children under the age of 12 will be detained with either of their parents, often with their mothers. However, once the child reaches the age of 13, if the child is male, they will be separated from their mother and placed in adult facilities with other men who may be unrelated or strangers. Girls who reach the age of 13 will remain in the women's facility. Unaccompanied minors are placed in detention facilities according to their gender with no other specific protections.[16]

- There is currently no maximum period of detention under Immigration law.[17] Instead, persons can be detained "for such period as may be necessary" for their removal from Malaysia.[18] For Rohingya, who are stateless,, there is a significantly higher risk of indefinite detention, especially for those who have not yet registered with UNHCR Malaysia–and factoring in the suspension of UNHCR's regular access to immigration detention since August 2019.

- There are limited administrative or judicial channels that a person can use to challenge their detention under the Immigration Act. Section 59 of the Immigration Act 1959/63 specifically restricts the ability of an individual to be heard by the Minister or Director General in respect of any matter under the Immigration Act, with section 59A restricting judicial review of any acts or decisions except those relating to compliance with a procedural requirement.

11 Reuters (2020) Malaysia spares Rohingya refugees from caning.
12 Another noteworthy case was Tun Naing Oo v PP [2009] 6 CLJ 490, in which the courts stated that the sentence of whipping is reserved only for crimes involving violence and brutality, and it is inhumane and serves no purpose to impose a sentence of whipping upon a refugee or person seeking asylum.
13 The Attorney-General's Chambers Circular of 2005 establishes that those persons registered with UNHCR at the time of arrest should not be prosecuted for immigration offences. (UN High Commissioner for Refugees (UNHCR); UN High Commissioner for Refugees (2018) 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.
14 UNHCR NGO partners are able to make referrals for unregistered refugees who have additional vulnerabilities.
15 Several exemption orders have been issued to exempt certain groups from unlawful entry. These orders include: The Immigration and Passports (Exemption) Order 1997; the Immigration and Passports (Exemption) (No.2) Order 1992; the Immigration (Exemption) (Asylum Seekers) Order of 2011; and the Passport (Exemption) (Asylum Seekers) Order of 2011. The last two orders were created to allow people within a specific class to reside in West Malaysia and be exempted from prosecution under Section 6(1) of the Immigration Act pending resettlement to Australia. However, the orders were never implemented.
16 Regulation 11 of the Immigration Regulations 2003 (Administration and Management of Immigration Depots)
17 Immigration Act 1959/63, Section 34(1)
18 This is against the international principle of non-refoulement, as there is no distinction made under the Malaysian legal framework to identify refugees and people seeking asylum

Access to Rights and Services

Presently, Rohingya and other refugees and people seeking asylum have limited access to affordable and safe healthcare as they are required to pay higher "foreigner" rates at government healthcare facilities. Despite discounts of 50% for persons holding UNHCR documentation, the cost remains unaffordable for most.[19] People who have not yet registered with UNHCR Malaysia must pay full foreigner rates at government healthcare facilities. Other barriers to accessing healthcare include security and protection concerns. In 2001, the Ministry of Health issued a circular directing all government healthcare workers to report undocumented people seeking treatment at government healthcare facilities.[20] As a result of this circular, unregistered refugees and people seeking asylum have been arrested while seeking medical treatment, including women detained immediately after childbirth.[21] Additionally, language barriers and poor health literacy can exacerbate challenges in accessing healthcare.

Refugees and people seeking asylum have no access to legal work in Malaysia; as a result, many work in informal sectors where they are exposed to risks of exploitation from their employers. In March 2017, the Malaysian government initiated a small-scale pilot project to allow Rohingya refugees to work legally in the plantation and manufacturing sectors. However, this pilot was broadly unsuccessful, due to poor retention rates resulting from inadequate consultation with Rohingya communities and other stakeholders.[22]

Rohingya and other refugee and asylum-seeking children have no access to the public education system in Malaysia. Instead, their only education options are to enrol in a parallel system of alternative, informal learning centres or *madrasahs* that are set up by the Rohingya community themselves, or learning centres that are managed by NGOs. These alternative learning centres often are unregistered and lack funding and resources.[23]

Rohingya are largely unable to access government-funded legal aid services, and many rely on pro bono services. However, the lack of compensation for lawyers and the remote locations of immigration courts means that the vast majority of Rohingya have limited access to legal representation in practice.[24]

Organisation of Rohingya Communities in Malaysia

Rohingya communities in Malaysia tend to organise and settle in groups mirroring their community groups in Myanmar. This is due to pre-existing familial relationships and community linkages between the Rohingya communities in Malaysia and Myanmar. The leaders of Rohingya communities are often selected based on several informal criteria. Leaders are almost always an older male who has been in Malaysia for a significant amount of time and has the ability to bridge language barriers. It is not uncommon for the leaders of Rohingya communities to also hold roles as religious authorities such as ustaz or local imams. Notably, a key criterion of a Rohingya community leader is his connections within the community, with NGOs, and with Malaysian enforcement authorities.[25] It is the leaders of the community who communicate with each other and other neighbouring community groups, and who often approach NGOs to ask for support, such as financial aid, education, and healthcare. Key informants also reported that many leaders communicate frequently with Malaysian enforcement authorities, such as the Special Branch, who have regular meetings with them. The secondary data also indicated that those who have established relationships with the authorities can help when a family/community member has been detained, as they can sometimes serve to facilitate communication between the person detained and family members outside detention.

Rohingya refugees in Malaysia are not a homogenous group. The ways in which they are impacted by detention and their ability to access services and support can be shaped by their duration of residence in Malaysia; family origins and status in Rakhine State in Myanmar, and their socioeconomic status.[26] In some communities, they have developed positive relationships with local police which have helped reduce instances of bribery and extortion.[27]

19 A 2006 Circular issued by the Ministry of Health stated that UNHCR recognised refugees should be charged a 50% discount of foreigner fees for healthcare services at government hospitals. In 2018, this was extended to all Persons of Concern holding UNHCR documentation; Ministry of Health (2006) Circulate Letter No. 1 of 2006 – Medical Treatment Charges for Refugees Legally Registered with the United Nations High Commissioner for Refugee Affairs; Ministry of Health (2019) Circulate Letter No. 2 of 2019 - Guidelines for the Implementation of the Fees (Medical) (Cost of Services) Order 2014

20 Ministry of Health, (2001) Circulate Letter No. 10 of 2001 - Guidelines on Reporting Illegal Immigrants seeking Treatment at Government Hospitals and Clinics

21 Loganathan T, Chan Z.X, de Smalen A.W, Pocock N.S. (2020) Migrant Women's Access to Sexual and Reproductive Health Services in Malaysia: A Qualitative Study. International Journal of Environmental Research and Public Health

22 Free Malaysia Today (2022) Govt didn't help Rohingya assimilate with general population, says Kula

23 Interview with HOST International Malaysia, 30 January 2023

24 Danish Refugee Council (2022) Refugee Protection, Human Smuggling, and Trafficking in Bangladesh and Southeast Asia.

25 Interview with HOST International Malaysia, 30 January 2023

26 Pereira, X., Verghis, S., Cheng, K.H., Ahmed, A.Z., Nagiah, S. N., & Fernandez, L. (2019). Mental health of Rohingya refugees and asylum seekers: case studies from Malaysia. Intervention Journal

27 Danish Refugee Council (2022) Refugee Protection, Human Smuggling, and Trafficking in Bangladesh and Southeast Asia.

Key Developments and Increasing Hostilities Towards Rohingya in Malaysia

As noted above, in August 2019, UNHCR's regular access to immigration detention centres was abruptly suspended. UNHCR has since been unable to regain the same level of access to register and request the release of refugees and people seeking asylum from detention. This change in policy was allegedly due to a change in leadership at the Immigration Department in 2019[28] and accusations by the Ministry of Home Affairs that UNHCR was providing documentation to people seeking asylum to help release them from detention under the pretence of conducting RSD.[29] The diminished access for UNHCR has led to a significant increase in the numbers of refugees and people seeking asylum placed in protracted and indefinite detention.[30]

Simultaneously, Rohingya have borne the brunt of what appears to be a systematic campaign against refugees, people seeking asylum, and migrants with irregular status in Malaysia. In 2020 and 2021, xenophobia and hate speech against the Rohingya spiked. Spurred by disinformation from political leaders during the COVID-19 pandemic, petitions were started calling for repatriation of refugees, and social media was awash with false allegations. These included allegations that Rohingya refugees were clashing with enforcement authorities, demanding full citizenship rights, and enjoying benefits at the expense of ordinary Malaysians. Many of the accounts behind these postings were fake, suggesting a coordinated and intentional effort to interfere with public opinion and create a hostile environment for Rohingya refugees.[31] Humanitarian calls for kindness and aid for the refugee community fell on deaf ears for the most part, and inadvertently deepened the scarcity mindset and antipathy against refugees in Malaysia – Rohingya in particular.

The Senior Defence Minister at that time, Ismail Sabri Yaakob, alleged that refugees and undocumented migrants were transmitting COVID-19.[32] There was a clear hardening of policies against refugees, with key informants explaining that laws and policies were applied more arbitrarily and harshly, particularly towards the Rohingya. Similarly, at the 36th ASEAN Summit in June 2020, Former Prime Minister Muhyiddin Yassin stated that Malaysia "can no longer take more [Rohingya] as our resources and capacity are already stretched, compounded by the COVID-19 pandemic". The statement has been viewed by some as paving the way for more punitive measures towards the Rohingya.[33] This included, for example, more frequent immigration enforcement raids, more pushbacks at sea on the premise that Rohingya would bring more COVID-19 cases into the country,[34] and the immediate detention (and unwillingness to release) Rohingya arriving in Malaysia by boat. Immigration authorities encouraged the public to report refugees and people seeking asylum.

Punitive measures have also taken the form of a government crackdown on criticism of immigration detention policies. Notably, enforcement authorities have questioned journalists reporting on arrests of people with irregular status in Malaysia during COVID-19,[35] and questioned and charged activists, such as in the case of Heidy Quah, founder of the Malaysian NGO Refuge for the Refugees. Quah was initially charged in 2021 for a Facebook posting on conditions in Malaysia's immigration detention centres.[36]

In April 2022, over 500 Rohingya refugees escaped an immigration detention centre in Sungai Bakap, Penang. The escape was met with a sweeping clampdown by immigration authorities, who rallied the public to participate in manhunts to arrest those who had escaped. The situation escalated over the following days, as police were stationed outside UNHCR's office to make arrests. In the months following the escape, relocation of people across detention centres became more frequent, complicating already limited access and ongoing registration and release processes. To date, there has been no independent inquiry into the events leading up to and surrounding the incident, nor any attempt to hear directly from the Rohingya involved and impacted by the escape.

In July 2022, the Malaysian government approved the wide-scale adoption of the Tracking Refugees Information System (TRIS), a compulsory registration scheme for all UNHCR cardholders and people seeking asylum.[37] TRIS was started in 2017 and reportedly underwent trials for several years, though no further information on the nature of these trials is publicly accessible.[38] Civil society and refugee communities have consistently raised concerns over TRIS, especially around data privacy and protection, and the potential misuse of the information to track and arrest refugees.[39]

28 Information on file with Asia Pacific Refugee Rights Network
29 Danish Refugee Council (2022) Refugee Protection, Human Smuggling, and Trafficking in Bangladesh and Southeast Asia.
30 UNHCR (2019) Progress Report 2018: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers & Refugees, 2014 - 2019.
31 East Asia Forum (2020) Disinformation and xenophobia target Malaysia's Rohingya.
32 Code Blue (2020) Ismail Sabri Doubles Down On Nabbing Undocumented Immigrants.
33 Interview with ISIS Malaysia, 3 February 2023.
34 South China Morning Post (2020) As Malaysia battles the coronavirus, its Rohingya refugees face a torrent of hate.
35 Al Jazeera (2020) Malaysian police raid Al Jazeera's office, seize computers.
36 Heidy Quah was charged for allegedly using the internet with the intention to offend and annoy, pursuant to Section 233(1)(a) of the Communications and Multimedia Act 1998. Section 233 provides for a maximum fine of RM 50,000 or imprisonment for up to one year, or both. After requesting a trial, Ms Quah was given a discharge not amounting to an acquittal. In February 2023, however, the government decided to bring charges against her again under section 233(1)(a) for the same posting. Although the charge was ultimately dropped, it demonstrated the lengths to which the government has pursued civil society for criticising its detention policies.
37 TRIS MyRC (2020) Tracking Refugees Information System; Free Malaysia Today (2022) Govt approves tracking system for UNHCR cardholders.
38 Free Malaysia Today (2022) Govt approves tracking system for UNHCR cardholders; Malay Mail (2022) UNHCR cardholders must register with refugee tracking system, says home minister.
39 Al Jazeera (2022) Refugees in Malaysia worry government tracking system a 'trap'.

Immigration raids also increased in frequency in 2022,[40] many accompanied by media teams.[41] Hundreds of refugees were detained in each raid. Immigration officials accused UNHCR of issuing cards "arbitrarily"[42] and implicated UNHCR in illegal activity to sell UNHCR cards to refugees.[43] In October 2022, the National Security Council Director-General was quoted suggesting that UNHCR's presence was a "pull factor" for refugees, its offices should be shut down, and that a transition was underway for the government to take over management of refugees in the country "without external interference".[44]

In 2022, Rohingya continued to be subject to hate speech. A viral video in early 2022 of Rohingya children begging garnered little sympathy or compassion; instead, the dominant public narrative was that the children were behaving in an "unbecoming" and "aggressive" manner.[45] A Malaysian ustaz, who achieved TikTok fame for content that frequently disparages Rohingya refugees and spreads misinformation about them, was highlighted as a recent example of targeted xenophobia against Rohingya refugees. Key informants shared that his content has resulted in negative consequences for Rohingya, such as the shutdown of refugee-run businesses and confiscation of vehicles. Further, key informants reported hearing from immigration authorities that raids are conducted in response to public reports, especially in areas where there is a high population of refugees and locals living in close proximity[46] - a demonstration of public opinion directly influencing policy towards Rohingya communities.

The social and political environment remains hostile, with authorities continuing to apply harsh policies and practices towards the Rohingya regardless of vulnerability factors. Key informants observed that deterrence policies are being implemented through the courts as more immigration charges are brought against refugees and people seeking asylum. Some also observed that harsher penalties are being handed down for immigration offences in border states such as Kelantan and Kedah, where prison sentences are lengthier than in the Klang Valley.

Likewise, there has been a shift towards penalising so-called "onward movers", with Rohingya registered with UNHCR Bangladesh or UNHCR Indonesia treated more harshly than those registered solely with UNHCR Malaysia. Several key informants highlighted the Malaysian government's opinion that onward movers from Bangladesh are not refugees, have no claim for asylum, and should be treated as "economic migrants".[47]

More positively, since 2022, over a thousand Rohingya detainees registered with UNHCR Malaysia are believed to have been released. This is understood to be pursuant to an internal document issued in late 2021 by the Malaysian Immigration Department, which permits the release of Rohingya who hold a UNHCR refugee card issued by UNHCR Malaysia. However, Rohingya holding UNHCR cards from other countries such as Bangladesh or Indonesia are not included, nor are people who have not been registered by UNHCR in any country.[48] It is understood that other ethnic groups from Myanmar and refugees of other nationalities are also excluded from release under this internal document, as the Malaysian government believes that they can be repatriated to their home countries, notwithstanding ongoing conflict, violence, and persecution.[49]

There have also been worrying developments regarding arrest and detention of children. In the past, immigration authorities and courts routinely exercised discretion to not prosecute children for immigration offences – especially those registered with UNHCR – after age assessments. Conversely, a recent decision was made to charge an unaccompanied Rohingya girl for violation of the Immigration Act, despite dental records confirming she is 14 years old. Her case was re-registered in the Child Court, and charges have continued. Pro bono counsel for the girl has filed a case in the Shah Alam High Court to challenge the prosecution.[50]

Civil society and UN agencies continue to engage the government on ATD, particularly in relation to children. In April 2021, the Malaysian Cabinet approved an ATD pilot programme, which was launched in February 2022, to be anchored jointly by the Ministry of Home Affairs and Ministry of Women, Family and Community Development. Acknowledging the serious harms that children face in immigration detention, the pilot aims to enable the release of unaccompanied and separated children from immigration detention to temporary shelters. However, because the pilot targets children ostensibly eligible for repatriation to their countries of origin, Rohingya children have been excluded. To date, the ATD pilot has yet to be implemented, with no children released as of April 2023.

Despite the lack of progress on implementation of the ATD pilot, the newly appointed Home Minister, Datuk Seri Saifuddin Nasution, stated publicly in February 2023 that children should not be detained in immigration detention centres, and has initiated plans to release unaccompanied and separated children from detention into the care of child protection NGOs. This initiative, though related in scope and intent to the ATD pilot, has not yet been linked to the pilot programme.[51]

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40 Question No. 14, Notice of Oral Answers in the House Of Representatives First Meeting, Second Term, Fifteenth Parliament, 2 March 2023.
41 Free Malaysia Today (2022) Rohingya paid agents to enter country, obtain UNHCR cards, says immigration DG.
42 Free Malaysia Today (2022) Refugee cards issued based on strict criteria, says UN agency.
43 Free Malaysia Today (2022) Rohingya paid agents to enter country, obtain UNHCR cards, says immigration DG.
44 New Straits Times (2022) UNHCR office here to be shut down, role to be taken over by govt.
45 The Rakyat Post (2022) Child Beggars Caught The Attention Of Netizens After Several Videos Went Viral.
46 Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023
47 Interview with Geutanyoë Foundation, 10 March 2023
48 International Detention Coalition (2022) Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country Profiles
49 The government has argued that people in detention who are Myanmar citizens are "voluntarily" electing to return to Myanmar from immigration detention centres, and that there is therefore no breach of their non-refoulement obligations. Permanent Representative of Malaysia in Geneva. (2022) The Government of Malaysia's Response to the Joint Urgent Appeal from Special Procedures, Office of the High Commission for Human Rights
50 Malaysiakini (2023) Rohingya teen's bid to quash immigration charge set on May 29
51 The Star (2023) Children do not belong in Immigration depots, says Saifuddin.

Photo Credit: Danish Refugee Council, Bangladesh

6. Arrest and Detention of Rohingya

Arrest and Detention Procedures

Rohingya who are arrested and detained in Malaysia typically have either (a) just arrived in Malaysia via land or sea, from Bangladesh, Indonesia, Myanmar, or Thailand; or (b) been residing in Malaysia and have encountered immigration or police during immigration enforcement activities. Malaysian immigration law is applied inconsistently and without regard to intersecting vulnerabilities such as age, gender, or health conditions, placing all Rohingya at risk of detention. This was reflected in the interviews and secondary data, which reported narratives of pregnant women, as well as children and infants being arrested and detained. The research further indicated that Rohingya are at higher risk of arrest and detention than other refugee communities in Malaysia. Such risk is predominantly linked to their visibility as the largest refugee populations in Malaysia. This visibility connected in part to boat arrivals,[52] which the Malaysian government continues to securitise, spurring heightened xenophobia among the public. While it could be inferred that Rohingya face a higher risk of arrest and detention due to the large proportion of Rohingya as compared to other refugee populations in Malaysia, key informants noted patterns of Rohingya being targeted by immigration authorities due to hostile social and political sentiments.

Malaysia's Immigration Act confers wide powers on immigration officers to arrest and detain non-citizens without warrant. Non-citizens can be held in detention for up to 14 days before being brought before a magistrate (in contrast to 24 hours in the case of Malaysian citizens).[53] Upon conclusion of the 14-day period, authorities can request a magistrate to grant remand pending investigation, for a further maximum period of 14 days. In practice, magistrates grant the full 14 days, or sometimes a lesser period of 10 or seven days.[54] During the 14-day remand period, the investigating officer determines whether charges should be brought.

Once charged - typically under Section 6 of the Immigration Act - a person will be placed in remand if bail is not granted. If convicted, they will serve their sentence in a prison, and once completed, will automatically and immediately be transferred to an immigration detention centre. At this point, removal and detention orders will be issued by the Director General of Immigration, pursuant to Sections 32 and 34 of the Immigration Act respectively. Because there are no time limits on immigration or administrative detention, Rohingya and others who are stateless or at risk of statelessness, face a significant risk of prolonged or indefinite detention.

For refugees and people seeking asylum, including the Rohingya, there are opportunities for UNHCR intervention. However, given the absence of a legal framework, intervention is at the discretion of the arresting or investigating officer. Arresting officers can use the UNHCR Verify Plus App to scan the QR code on UNHCR documentation to confirm that the refugee or person seeking asylum is registered with UNHCR, and then may choose to not arrest if the status is verified. However, in practice, status verification is conducted inconsistently by law enforcement officers. In some cases, verification only occurs later, for instance during the period of pre-trial detention pending investigation, that is, before a charge is brought in court.

UNHCR may be able to intervene following the issuance of removal and detention orders to help secure release of persons holding UNHCR documentation. However, this too is at the discretion of law enforcement officers involved. The suspension of UNHCR's regular access to immigration detention since August 2019 has significantly reduced their ability to intervene after someone has been placed in immigration detention. The relocation of people from one detention centre to another also slows down release processes. In some instances, once a person is identified and tracked in one detention centre, it is later learned that they were transferred to another detention centre before intervention. In other cases, the Attorney-General's Circular of 2005 has been interpreted broadly, such that a person who is unregistered at the point of arrest may subsequently be released after UNHCR has been able to access and register them. However, this is at the discretion of prosecuting authorities.

Refugee communities may attempt to inform UNHCR of arrests. However, as detailed below, due to the high number of requests for assistance that UNHCR receives, it can be difficult for refugees to reach UNHCR via their hotline or website, which many refugees reportedly have found challenging to navigate. Thus, many people do not reach UNHCR's attention, further limiting opportunities to secure release.

52 Interview with Geutanyoë Foundation, 10 March 2023
53 Section 35 and 51(5) Immigration Act; Section 117 Criminal Procedure Code
54 Section 117 Criminal Procedure Code

Arrest and Detention Practices

Data indicates that Rohingya are frequently arrested at border areas, upon attempted entry into Malaysia, predominantly in Langkawi, Kedah or at the Kelantan-Thailand border. Arrests at the border are notably more frequent than in other parts of Malaysia, and the punishment is more severe, possibly as a deterrent. Other arrests happened frequently at workplaces (such as construction sites or restaurants), while in transit, or within their residences or villages. There were also instances where immigration officers policed refugee schools and alternative learning centres, asking children whether they had UNHCR cards, taking children to police stations, and harassing and threatening teachers.[55] Rohingya too have been detained during immigration raids conducted as part of "recalibration programs"[56] targeting migrant workers with irregular status in Malaysia.

As discussed above, the Immigration Department reportedly distinguishes between Rohingya in Malaysia who have recently arrived directly from Myanmar, who have been residing in Malaysia and likely hold UNHCR Malaysia cards, and who have arrived from Bangladesh. This latter group are reportedly at a greater risk of prolonged detention pursuant to an internal Immigration document.

The primary reasons for arrest are lack of documentation, followed by breaking COVID-19 Standard Operating Procedures (SOPs), and working without a permit. Secondary data and key informant interviews indicated that UNHCR cardholders were frequently detained despite holding valid documentation - some for supposedly flaunting COVID-19 SOPs and others for working without a permit. A few reported that they were arrested by the police and their UNHCR cards were confiscated without any reason given. Across secondary data and interviews, complaints lodged by locals or even other Rohingya community members to the police were also a reason behind some arrests. Complaints increased during COVID-19, when xenophobia and negative public opinion toward Rohingya refugees was at a peak.

Bribery and extortion are serious risks. There were numerous reports by RLOs and in the secondary data of extortion and corruption, with Rohingya often having to pay between several hundred and several thousand Ringgit Malaysia (RM)[57] to the police or immigration officers to avoid arrest, or to secure the release of family members. Some also reported sending money for monthly expenses to family members in detention centres.

Photo Credit: Danish Refugee Council, Bangladesh

55 Interview with Malaysia Relief Agency (MRA), 27 February 2023

56 The Return Recalibration Programme was created to allow migrants with irregular status and valid travel documents to voluntarily return to their country of origin, while the Labour Recalibration Programme (RTK) was created to regularise migrant workers with irregular status, who can then be hired by eligible employers, subject to stringent conditions determined by the government. Malaysiakini (2022) Minister: 712k migrants register in recalibration programmes; Malay Mail (2021) Minister: More than 200,000 undocumented migrants repatriated under recalibration programme

57 As of 31 March 2023, 1 Euro equals 4.80 Malaysian Ringgit

7. Impacts of Immigration Detention on Rohingya

Data collected for this research report reinforced what numerous global studies have already established: the effects of immigration detention are wide and deeply traumatic. This is true for people who were themselves subject to immigration detention, as well as their families and immediate communities.

Impacts on detainees

The research confirmed that conditions in detention centres in Malaysia are harsh and life-threatening, with severe overcrowding, and inadequate nutrition, sanitation, hygiene and medical care.[58] Skin diseases, respiratory tract infections, tuberculosis, gastrointestinal issues, and malaria are commonly reported.[59] The severity of conditions came to the fore in Malaysia in early 2022, when the escape in Sungai Bakap, in which seven people lost their lives,[60] was reportedly in response to the death of a fellow detainee, who had been denied medical treatment.[61] Civil society and the international human rights community called the conditions of immigration detention into question.[62]

It is reported that people detained have close to zero physical and mental stimulation; they are forced to sit in their cells daily, with only short 30-minute periods where they are allowed out of their cells for exercise. The data also brought forward the experiences of mistreatment and abuse from the authorities in detention. In addition to physical abuse, there are reports of verbal and psychological abuse. One key informant recounted the taunts of immigration officers: "*You will never get out. You will die here, and your kids will die here*". The abuses and other stressors faced by people in detention are compounded by the feelings of hopelessness arising from the knowledge that UNHCR has severely limited access to detention. As a result, the mental health needs of detainees are very high.

Children are at particular risk of harm in immigration detention, especially if they are unaccompanied. According to key informants, the treatment of children differs across immigration detention centres. For example, in some detention centres, children are understood to be persons under 18, whereas in others, they are persons under 12. Sometimes they are assessed by their physical stature and if they are deemed "old enough", they are separated from family members who are of a different gender to them. A key informant cited an example of an eight-year-old boy who was forcibly separated from his mother in detention, detained with unrelated men, and only permitted to see her for a short period of time once a week. The boy was severely traumatised by this experience and cried all the time for his mother. Additionally, the lack of access to play, and to facilities and stimulation for children means that they are at risk of developmental regression.

A key informant spoke of the impacts they had witnessed when Rohingya children were detained: "*The separation is something that is unimaginable. Why am I here… what is wrong with me? Why did they take me here? So you can imagine the emotional impact, the psychological impact on these children when they are in the detention camp where you have strangers around and then you have different races also there and they just don't understand the system of this, that you cannot be allowed to be free. I think it hugely affects their feelings, you know, about how a criminal is defined in society. Or just because you don't have a card, you are a criminal. That separation… will definitely be a permanent mark on the life of that child. Even if he or she would be released at a certain time, but that spot of that chapter [when] I was kept in this place, which I do not understand what [...] I did wrong to deserve this. There will be a permanent thing in the mind, you know. And this is unbearable*".[63]

Mental health services available to Rohingya and other refugees are limited, and the needs of the community outweigh the services offered, in terms of both scope and capacity. When released from detention, Rohingya and other refugees have extremely limited access to services to address their physical and mental health issues arising from their time in immigration detention. RLOs reported that there is little to no support for mental health known to the community - though some NGOs do reportedly provide therapy and facilitate support groups. However, mental health services available are not targeted specifically for those with experience of detention. RLO and NGO informants acknowledged that Rohingya refugees do not seek mental health support for multiple reasons, primarily a lack of familiarity with mental health issues, and the ability to identify their experiences as a mental health issue. This low mental health literacy, potential stigmas around seeking mental health support within the community, and the need to prioritise survival needs such as access to documentation, education, and medical treatment for physical health, pushes mental health needs onto a backburner for the Rohingya community.[64] Nonetheless, it is an important needs, as lack of mental health support can have damaging effects on both the self and the family, as in certain cases it has been reported to result in self-harm, child abuse, and domestic violence.

58 Human Rights Commission of Malaysia (SUHAKAM) (2016, 2017, 2018, 2019) Annual Reports; U.S. Department of State (2021) 2021 Country Reports on Human Rights Practices: Malaysia.
59 Malaysiakini (2019) 151 deaths in immigration depot since 2016; 306 children still detained; Asia Pacific Forum (2017) SUHAKAM raises serious concerns over immigration facility/
60 The Vibes (2022) Coroner's silence over Sg Bakap detainees' deaths disturbing – Madpet
61 The Edge Markets (2022) Malaysian Advisory Group on Myanmar's statement on Sungai Bakap incident and Rohingya refugees in immigration detention.
62 International Detention Coalition (2022) Joint Statement on Immigration Detention Policies & Practices in Malaysia
63 Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023
64 Interview with HOST International Malaysia, 30 January 2023

Mental Health Impacts of Immigration Detention

Studies have shown that people seeking asylum who are in immigration detention have high rates of depression and post-traumatic stress disorder (PTSD); suicidal ideation and self-harm are also common.[65] The extent of mental health issues generally worsen with the duration of detention.[66] People seeking asylum have pre-existing vulnerabilities to mental health problems due to higher exposure to trauma pre-migration, during their journey, and post-migration. Immigration detention can act as a new stressor, which adds to a cumulative effect of exposure to trauma, and in turn leads to an increased likelihood of mental health difficulties.[67]

For children specifically, immigration detention - even of a short duration - can have inherent detrimental, and long-lasting impact on their development and physical and mental well-being.

In Malaysia, there is a lack of in-depth research specifically on the impact of immigration detention on mental health. However, there have been generalised studies on the prevalence of broader mental health disorders among refugee communities in Malaysia. For example, surveys of refugees found the prevalence of mental health disorders was extremely high among the mental health-seeking population, with up to 43% meeting criteria for at least one common mental disorder including depression, generalised anxiety, PTSD, and complicated grief.[68] One publication noted that Rohingya refugees who had sought mental health services reported that their symptoms began when they were in immigration detention in Malaysia, where they had experienced abuse.[69]

Caning

The research yielded limited information about the prevalence and impact of judicially imposed caning. Key informants commented that although they had heard of isolated cases, they did not specifically ask about this in their interactions with Rohingya released from detention, nor was this information likely to be volunteered due to the devastating physical and psychological impacts that caning can have.

However, secondary data provided several examples where Rohingya men, despite being released from detention, were unable to work due to injuries from "the whip…sustained from caning" in detention, which in turn resulted in financial constraints that hindered their children from accessing education.

The research also found instances of loss of life that occurred as a consequence of detention - for example, a Rohingya man who sustained severe injuries while in detention, including from caning, succumbed to his injuries after his release. Due to his injuries, he was unable to work and earn a living, and was thus unable to afford life-saving medical treatment.

Impacts on Families and Communities

Psychological Impacts

Family members experience significant psychological impacts following the detention of their loved ones, with many describing a toll on their mental health. The lack of communication that Rohingya communities, RLOs, and NGOs have with immigration detention authorities lead to a lack of information about the status and wellbeing of their family members. This is compounded by inconsistent articulation of policy and implementation processes across the Immigration Department and detention facilities. In tandem, these create an environment of confusion, inaccessibility, and helplessness for family members who are attempting to locate a loved one in detention, let alone visit them, or secure their release.[70] It can take months to ascertain which detention centre a person is held in, with further delays often arising following the relocation of people across detention centres. This lack of information on the whereabouts of family members has devastating effects. NGO and RLO key informants who offered counselling services described spouses, children, parents, and other family members of detained Rohingya were fearful to the point of tears and pleading for help and information on where their family could be.

65 Robjant K., Hassan R., & Katona C. (2009) Mental health implications of detaining asylum seekers: systematic review. Br J Psychiatry; Green J.P. & Eager K. (2010) The health of people in Australian immigration detention centres

66 Ibid.

67 Schauer M, Neuner F, Karunakara U, Klaschik C, Robert C, Elbert T. (2003) PTSD and the 'building block' effect of psychological trauma among West Nile Africans European Society for Traumatic Stress Studies Bulletin 10; von Werthern M., Robjant K., Chui Z, Schon R., Ottisova L., Mason C., Katona C. (2018) The impact of immigration detention on mental health: a systematic review. BMC Psychiatry

68 Tay A .K., Mohammed M., Khat M.H., Mohammad B., Balasundram S., Morgan K., Parthiban N., & Silove D. (2020) Variations in prevalence and risk profiles for common mental disorders amongst Rohingya, Chin and Kachin refugees from Myanmar. Psychol Med

69 Pereira, X., Verghis, S., Cheng, K.H., Ahmed, A.Z., Nagiah, S. N., & Fernandez, L. (2019). Mental health of Rohingya refugees and asylum seekers: case studies from Malaysia. Intervention

70 Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023; Interview with Geutanyoë Foundation, 10 March 2023

In the event of being able to make contact with their family members, concerns were further exacerbated when learning of the struggles their family members were facing in the harsh conditions of detention, such as developing skin diseases, and becoming weak to the point of losing the ability to walk. Visiting family members in detention is reportedly extremely difficult for Rohingya and other refugees, due to their lack of a valid passport and visa although there have been reports of some visits having been possible.

Spouses are left traumatised at the detention of their partner and children. Some expressed that the levels of stress on their mental health were impairing their ability to work, and even sleep. Others pointed to the indefinite nature of detention as a source of distress, with one sharing "Now, her detention has been four years, how many years will she remain in the detention here in Malaysia?"

Parents whose children had been detained at any age were also deeply affected. "*Currently…[h]is problem and thinking are regarding his [child's] detention. He has been trying for a long time to free his [child] but without a good result*". Elderly parents also reported that the detention of their children was a source of "great sorrow" for them and in some cases the stress and worry took a toll on their physical health resulting in medical issues such as hypertension.

When someone was detained, family and community members also commonly report increased fear and anxiety over their own risk of arrest and indefinite detention. One key informant shared, "*After someone is arrested, the community will talk about it, become more cautious. Anxiety will be higher; they feel pretty insecure. Some will want to move out, find another place*". This intensified fear of arrest further pushes the already marginalised Rohingya into additional situations of vulnerability. For example, key informants shared that when a raid happens in proximity to the community, the community essentially freezes - nobody goes out, even to school or work or clinics - everyone stays home for at least a week, in fear of further arrests.[71] During COVID-19, the increased frequency of raids, and fear of arrests impeded refugees' access to life-saving vaccines.[72] Health crises like COVID-19 demonstrate the importance of including everyone in the safeguarding of public health, and these narratives from refugees illustrate how government policies can counteract each other and become self-defeatist in achieving larger outcomes such as societal health. Key informants also shared narratives of Rohingya families who would often sleep in the forests, in order to avoid raids that were frequently happening at night. The fear of detention is pervading and can take a toll on a person even post-release, restricting their ability to feel safe moving in public, which further impairs their ability to secure work, and a livelihood for themselves and their families. Some Rohingya families have coped with living under this constant state of threat by becoming highly mobile, and often move to a different place, or even a different state to avoid detention. This further takes a toll on psychological well-being of family members, as they are faced with a myriad of stressors of relocation, losing familiarity with people and places, and losing connections they have built with the communities around them.

Further exacerbating the heightened anxiety in the community following the detention of a community member, the lack of UNHCR documents was also reportedly a source of distress among Rohingya communities. Several service providers who regularly interact with Rohingya communities reported that not having a UNHCR card caused significant stress to their clients and patients. Across interviews and secondary data, Rohingya refugees reported frustration when they were unable to engage or contact UNHCR, especially to register family members, which is directly linked to fears of arrest, and not having access to even the limited protection that a UNHCR card offers them. This stress is further compounded by the inability to engage in the UNHCR registration process, as many community leaders shared that refugees struggle to understand and navigate UNHCR's website and online registration form.[73] Key informants further underscored that UNHCR's website and online systems are specifically inaccessible to Rohingya. With a high illiteracy among the Rohingya, the English online registration form presents a barrier for them to utilise it. Further, due to their statelessness, Rohingya refugees are unable to legally purchase SIM cards[74] in Malaysia, and therefore have limited access to internet and mobile networks, and are thus unable to easily access the online registration and complaints mechanism provided by UNHCR.

Additionally, Rohingya women and girls, who are culturally discouraged from public participation, may not have easy access to the internet or mobile phones, and are thus disproportionately disadvantaged in accessing and utilising UNHCR's online services. Even if Rohingya refugees are able to submit their forms, they are only provided with a reference number, without any further information or contact details. This, once again, places them in an indefinite waiting period which heightens feelings of helplessness and uncertainty, and does little to alleviate fears of detention and family separation. The secondary data also highlighted the narrative of how a Rohingya family's mental health struggles following the detention of their son were further compounded by fear that one of their daughters, who was unable to register with UNHCR would soon be detained too.[75]

The key informants highlighted that it is due to the above fear and stressors that refugees adopt negative coping mechanisms in desperate attempts to keep their families together, such as falling susceptible to syndicates that produce and sell fake UNHCR cards to refugees for as low as RM150 (€31).[76] Desk research and interviews further underscored refugees' experiences of fear of detention being exacerbated by lack of UNHCR documentation, as they reported a dramatic reduction in negative mental health symptoms once the refugees were able to register with UNHCR and obtain a refugee card.

71 Interview with Malaysia Relief Agency (MRA), 27 February 2023

72 International Organization for Migration (2021) The Implications of COVID-19 on Health and Protection Risks Among Rohingya Refugees and other Migrant Communities in Malaysia

73 Interview with HOST International Malaysia, 30 January 2023

74 Mobile phone SIM card registration in Malaysia requires some forms of personal identification documents including passport and identity cards. .

75 Interview with HOST International Malaysia, 30 January 2023.

76 Ibid.; The Star (2020) Major blitz to verify UNHCR cards

Disruption of family relationships and structures

Detention has a profound impact on family structures - in terms of preventing family reunification after a prolonged separation, tearing families who were residing in Malaysia apart, and indirectly causing the breakdown of existing familial relationships.

The research found many instances of family reunification being prevented due to arrest of family members upon their arrival in Malaysia. Key informants spoke of Rohingya who had saved for years to pay for their families to travel to Malaysia; however, upon arriving by boat, they were arrested, and many have not yet been released from detention. These narratives were mirrored in the secondary data. The prevention of family reunification due to detention has compounded existing stressors experienced by refugees here, such as psychological stressors of being away from family for a prolonged period, and the financial stressors to have facilitated their family members' journey to Malaysia.

Detention separated many families indiscriminately, without paying attention to specific vulnerabilities, for example, pregnant women who were detained or left without access to family or medical support, and children detained without their parents. The separation of family members was a frequent theme that emerged from both the secondary data and interviews, and was apparent across different familial contexts and structures.

Newly married couples were frequently separated by detention, which also revealed a specific impact of detention - the hindrance of family growth and development. As one expressed keenly, the separation of engaged couples and newlyweds "is quite unacceptable" and unfair, as it was only a few months of starting their new life together before they were separated only because "of [the lack of] a document".

Further examples of the impact of detention on family relationships are seen in the damage to the bonding between parents and children, which evidence shows is critically important for babies' long-term development. This research heard of several cases where parents in detention missed the birth of their babies, or whose babies were repatriated, which undeniably impacts the relationship between parent and child. In one case, a Rohingya-Indonesian family were all detained due to their undocumented status. The mother and baby were eventually repatriated to Indonesia while the Rohingya father remained in immigration detention in Malaysia. Key informants also reported anecdotal cases where Rohingya parents who were trying to make a living after their partner was detained had to place children in day-care, or with a foster family. However, complications arose when the child and foster family bonded well, and the foster family refused to give the child up, even when the other biological parent had been released from detention. In the above examples, this erosion of family relationships has a direct impact on the psychological wellbeing of children as it creates a distortion of who their parents and family are.

The research also found several instances of Rohingya spouses who remarried after their partners were detained. A decision borne from varying psychosocial, and protection needs, remarriage may see the breakdown of traditional family structures, resulting in a distortion of family relationships and even the deterioration of such relationships, for instance when the new family moves location. The marital disruption can have an impact on children's psychological wellbeing, compounding the various displacement-related stressors they already face. Further, the key informants reflected that the practice of remarrying often leads to tension and potential fractures within the community, especially when the spouse in detention is released, only to find that the family unit they were hoping to reunite with no longer exists. Though the decision to remarry is not a direct consequence of immigration detention, it must be noted that the detention of a partner compounds various social, financial, and protection vulnerabilities that Rohingya – particularly women – face in Malaysia, which contribute to the decision to remarry.[77]

Arranged and Forced Marriages

The impact of immigration detention was apparent in the narratives of engaged couples whose fiancées were detained. Many Rohingya women and girls come to Malaysia to meet and wed their fiancés, and are detained upon arrival, which disallows their marriage and subsequent building of a family. Secondary data reported that fiancés experience distress at not being able to begin a family as they had intended.

Rohingya women and girls' migration pathways are shaped in gendered ways. Secondary data and interviews highlight that there is a social pattern of arranged marriages among the Rohingya community to bring women across country borders to marry husbands in Malaysia, with payment of a "dowry" by future husbands to the women and girls' families, or a fee to smugglers or traffickers or both.

This was also reflected in the secondary data, which indicated that some arranged engagements have involved underage girls and highlighted that some women and girls had been smuggled or trafficked from Myanmar or Bangladesh into Malaysia to be wed to Rohingya men living in Malaysia. With reference to forced marriages, the data in this research was predominantly informed by men who were affected, and thus reflected their experiences of stress due to a fiancée being detained. This stress has been compounded by financial hardship where the man had paid money--to smugglers or traffickers, and/or in the form of a dowry--for a bride. To these men, the practice of sending money back for a bride is not necessarily nefarious. They are keen to marry, and due to their low social status in Malaysia, they are unable to find partners there.[78] Thus, they turn to a practice which has been in use in the Rohingya community in Malaysia for decades.[79]

77 Interview with Angkatan Belia Islam Malaysia (ABIM) & Global Peace Mission (GPM), 14 February 2023; Interview with Geutanyoë Foundation, 10 March 2023

78 Al Jazeera (2019) Rohingya women, girls being trafficked to Malaysia for marriage

79 Al Jazeera (2013) Rohingya refugees import 'mail-order' brides

While the data foregrounded men's perspectives and experiences, the experiences of the women and girls must be centred in understanding the reality of these forced marriages. Facing persecution in Myanmar and harsh conditions in Bangladeshi refugee camps, Rohingya women and girls face further situations of vulnerability and risk of gender-based violence in arranged marriages. The decision to marry an unknown man and to make a dangerous journey to Malaysia is often a decision made to survive. It is a decision shaped by cultural norms and financial hardship, where women and girls are rarely consulted. Though they may be fearful, many women and girls are resigned to the choice, believing the option to marry a man in Malaysia presents a viable opportunity to escape difficult living conditions, support their families financially, and access a "life of dignity".[80]

In addition to the dangers of irregular travel, especially by sea, in which hundreds have died, there were also reports of traffickers raping, beating, killing, and depriving refugees of adequate space, food, and water during their journeys. Upon arrival in Malaysia, the horrors continue for many Rohingya women and girls. Some find themselves subjected to domestic violence from their husbands, and for others, their harrowing journey ends in immigration detention. Most of these young women and girls have no support available to them and spend years surviving these abusive realities.

Gendered Impacts of Immigration Detention

Rohingya women face deeply entrenched patriarchal attitudes and social and cultural norms that enforce discrimination against them, and subject them to traditional gender roles. Navigating this patriarchal environment compounds their experiences of having a family member detained. In addition to a lack of legal status, social norms in Rohingya communities discourage women from working, and restrict their freedom of movement to private spaces.[81] Traditional gender roles are distinctly defined in Rohingya society in which women primarily take up care-giving and housekeeping roles, while men are positioned as the breadwinners, expected to work and provide for the family's livelihood. Many key informants shared that this gendered division of labour and access to public services is also enforced by language barriers, as many Rohingya women do not have opportunities to learn to speak Malay or any language that enables them to communicate with host communities.[82] This severely restricts their ability to participate equally as Rohingya men, and has created an economic and cultural dependence on men in Rohingya society to provide a livelihood and protection for women and children. Thus, as Rohingya men are more frequently detained than Rohingya women, the family faces financial constraints, a loss of livelihood, and social insecurity.[83] This was a predominant trend that emerged from interviews, secondary data, and desk research, revealing the cascading impacts that immigration detention has on the family, in particular women.

"[Detention of Rohingya men] takes away so many things at the same time. You're taking away the protector, you're taking away the breadwinner, you're taking away the means of communication, you're taking away their means of mobility. So at that level, it really isolates women. [...] It's almost like you're not detaining one person, you're detaining an entire family - but it's just that one is in detention, and the others are outside, but you're really imprisoning them in some way, cutting off all means of access. A social prison." – Lilianne Fan, Geutanyoë Foundation.

In instances when the breadwinner is detained, the family of the detainee faces the immediate impact of losing their livelihood and some eventually fall into poverty. Many become unable to afford daily expenses such as food and groceries, pay their bills, and rent, let alone finance medical expenses or education. In many cases, children have to cease their education due a lack of income, and family members stopped seeking medical treatment for their illnesses as they could no longer afford it.

Key informants reported seeing how the loss of livelihood impacts children harshly - some reported cases where children were forced to work to support the family, where they were then detained themselves. Further extreme anecdotes that emerged were of parents forced to consider selling their children to people who wanted to "adopt", and a father was contemplating surrendering his children to detention in order to be with their mother, as he felt increasingly unable to provide the care they needed.[84] This example also highlights how the upholding of traditional gender roles within the Rohingya community can compound the impacts of immigration detention – children face an increased, yet avoidable risk of detention, due to Rohingya men's lack of ability and support to adapt into caregiving roles. The impact on girls whose parents are in detention is particularly concerning, as they face increased vulnerabilities and higher risks of exploitation, forced marriage, and prostitution.[85]

80 Reuters (2017) Sold into marriage - how Rohingya girls become child brides in Malaysia; Fortify Rights (2019) Malaysia: End Child Marriage, Protect Rohingya Refugee Girls

81 Interview with HOST International Malaysia, 30 January 2023; Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023; Women's Aid Organisation (WAO) & United Nations High Commissioner for Refugees (UNHCR), (2020) Sexual and Gender-Based Violence Among Refugee Communities in Malaysia

82 Interview with Geutanyoë Foundation, 10 March 2023

83 Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023; International Organization for Migration (2021) The Implications of COVID-19 on Health and Protection Risks Among Rohingya Refugees and other Migrant Communities in Malaysia.

84 Interview with HOST International Malaysia, 30 January 2023

85 Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023

> *"When husbands are arrested, detained, or passed away for example, in that kind of situation we don't know what to do. We just know two alternatives, that are: we either beg or remarry another man in life". - Key informant from an RLO*

Following the detention of their male spouse, who is often the breadwinner of the household, women reach out to their extended family and community members to find livelihood means and support they need to raise and protect their children. However, they often struggle to find means to gain adequate incomes to support their family. This difficulty for women to access work and income is only in part due to their lack of legal status and lack of right to work, as women also contend with prevalent gender norms and social perceptions in both the Rohingya community and the Malaysian host community which restrict the employment opportunities available to women. This reportedly leads to women struggling to secure livelihoods and eventually getting into debt and experiencing eviction from their homes.

This reality that Rohingya women face when their spouse is detained, of a lack of access to livelihood, creates and reinforces an increasing dependence on men, be it other male family members or community members, to offer financial and social support and protection to a woman and her family. Prominent narratives from the interviews and secondary data demonstrate that many Rohingya women would move in with other members of the community who would support their livelihood and provide shelter for them. This type of community support, often borne from kindness and community value, is invaluable in supporting women and their families when the breadwinner of their family had been detained. However, the research found patterns wherein this support came at a cost. The key informants reported that women in this situation were at increased risk of SGBV. Reports show that in some cases, men perpetrated sexual assault and physical violence against women who were in highly vulnerable situations, having lost their homes and husband to detention and had sought support from the community. Further, the interviews and secondary data indicated that some men were also socially and emotionally abusive to women in their homes. For example, in many cases, women's movements were restricted and dictated by the male head of household, which led to arguments and conflict.

The key informants also underscored the dynamics of indebtedness in contributing to Rohingya women's increased vulnerability and risk of violence. Women who sought the support of community members after their spouses were detained, were also faced with societal pressure to repay the debt of kindness shown to them.[86] Key informants identified that because women are often unable to access a steady income and a means to fulfil that obligation on a monetary basis, they are sometimes expected to repay the debt in other ways, primarily through providing sexual favours elicited by male family or community members.

Key informants noted that these experiences of violence were deeply traumatising for not only women, but also their children, who often witnessed the abuse, or were themselves abused too. Women also face limited access to protection and justice mechanisms and support services to cope with SGBV,[87] which exacerbate their difficult experiences in navigating the detention of their spouse. Reports have shown that refugees are frequently denied the ability to utilise protections that are available to them under Malaysian law such as the Domestic Violence Act 1994 and the Penal Code due to inconsistent implementation and xenophobia from implementing government officers.[88] Access to government domestic violence shelters is also determined by the requirement of filing a police report. This is a deterrent for many refugee women, as police in Malaysia have the authority to arrest refugees at any time, creating a high risk that Rohingya women seeking support in coping with SGBV may be detained themselves.[89] For those who access these support mechanisms, they are also faced with the hurdle of language barriers, as most government support hotlines do not provide interpreting services. While there are alternative options for support provided by NGOs, these are limited and due to cultural norms that restrict women's freedom of movement and participation in public, many Rohingya women often do not have a strong awareness or understanding of the support networks available to them.[90] In addition to all the above, Rohingya women also have to navigate prevalent stigma around SGBV, which further discourages them from seeking the support they need.[91]

Immigration detention of a spouse has a disproportionate impact on women and children. The narratives above clearly demonstrate that women experience the impact of detention in intersecting and gendered ways, due to their social and economic positions within the community, and the patriarchal values prevalent in their communities and families. The research highlights that when a woman's spouse is detained, she not only has to reckon with the psychological distress of the detention of their loved one; but she is also faced with structural and unequal power dynamics that further disempower women. Up against these challenges, and faced with constrained choices, the research found that Rohingya women continue to exercise their agency and demonstrate their resilience through persevering through various hardships and lack of structural support to sustain the livelihood and protection of their family and children.

86 Interview with Geutanyoë Foundation, 10 March 2023

87 Women's Aid Organisation (WAO) & United Nations High Commissioner for Refugees (UNHCR), (2020) Sexual and Gender-Based Violence Among Refugee Communities in Malaysia

88 Ibid.

89 Ibid.

90 Ibid.

91 Interview with Geutanyoë Foundation, 10 March 2023; Akhter, S., & Kusakabe, K. (2014). Gender-based violence among documented Rohingya refugees in Bangladesh. Indian Journal of Gender Studies.

Community Mobilisation in Response to Immigration Detention

The research found that, in direct response to the detention of a community member, the Rohingya community would mobilise quickly to look out for each other. This was demonstrated in four different ways: a) Rohingya community members would seek help from UNHCR or established NGOs to protect the detained community member, and those at risk of detention; b) the Rohingya community would engage their community networks to warn others about possible raids and take other measures to safeguard their community; c) Rohingya community members would attempt to secure the release of the detainee; and d) the Rohingya community supports the family members of the detainee with their daily needs.

The data collected showed that the primary way in which the Rohingya community responded to a family or community member being detained was to seek help from UNHCR or established NGOs. From the secondary data, requests for help are twofold, and consistent across almost all cases - (1) to assist with securing the release of the detainee and (2) to help obtain a UNHCR card, for the detainee, and others at risk of detention. Many pointedly expressed their frustration at the delays, and lack of communication and transparency with UNHCR, instead looking to NGOs to bridge this gap and secure a UNHCR card for those at risk.

Further, an important way in which the community responded to immigration raids and detention of a community member was to look out and safeguard others within and adjacent to their communities. Key informants shared that when raids occur, the Rohingya share warnings and information across their networks to be cautious and limit their movement. Key informants shared that some Rohingya communities also adopt proactive coping mechanisms to protect the community, notably through creating placards or notices, and driving community membership through issuing community identification documents. These documents are for identification purposes within the community only, and details collected are also intended to support community members in their claims for refugee status from UNHCR, where possible. These measures are underlined by the community recognising the importance of having documentation and attempting to ensure at least one layer of protection.[92]

There were also instances of community members taking action themselves to coordinate within the community and with authorities to secure release. Key informants reflected that in times when the community learns that releases could happen through informal channels, there is often a scramble to gather funds - often thousands of RM[93] - to pay authorities a bribe in order to get their family members out of detention, despite there being no procedure or guarantee of release. Given the lack of channels for Rohingya to be able to access help to secure the release of their family members, this is often the only conceivable way to get family out, and many save up specifically for this.[94] A further example of Rohingya working towards release of their family or community members, is that some are able to maintain open lines of communication with police and immigration officers, which in some instances also allows them to have contact with the detained family member. Though this practice is not widespread, it points to practices and structures within the community to be explored which enable family and community members' ability to take direct action towards releasing their family members.

Aside from the community mobilising to secure release of the detainee, the research also shed light on how the Rohingya community responds to immigration detention by supporting the family members of the detainee with their livelihood expenses, especially in cases where the family breadwinner has been detained.

> *"Immediate community in the area will support each other - money, food, and consolation so they know they are not left alone. Community may also seek help from outside - link with certain organisations or people they know locally. Also, sometimes local people will help them, or local masjids [will allow them to] stay in the surau, or get support from ustaz or religious teachers"[95] - Mohd Azmi Abdul Hamid, Malaysian Consultative Council of Islamic Organisation (MAPIM)*

Most frequently, community members were reported to provide financial support, some helping with medical expenses such as childbirth costs, and others contributing small amounts as they can spare to help families pay their bills. Other cases indicate that extended family members also often step up to support with financial aid, both near - parents' supporting the finances of their daughters and children, and far - in one case, the brother of a detainee took on responsibility to financially support his brother's family in Bangladesh, who were left without income, despite the strain this caused on sustaining the livelihood of his immediate family based in Malaysia. While a few mentioned that they plan to pay back the borrowed sums once their husbands are out of detention, others gave no indication if that is an underlying expectation of providing financial support to community members in need. Community members also stepped up to support by providing shelter to the family members of people detained - sometimes for several months, and supported with food aid, despite their own financial and resource constraints.[96]

92 Identification documents issued by the refugee-led organisations, while not being recognised by any official bodies including the Malaysian government and UNHCR, may support access to services by NGOs.
93 As of 31 March 2023, 1 Euro equals 4.80 Malaysian Ringgit
94 Interview with Geutanyoë Foundation, 10 March 2023
95 In Bahasa Malaysia, "masjid" and "surau" both refer to mosques. However, a "surau" can also be used to refer to designated prayer rooms, and are commonly smaller than a "masjid".
96 Interview with HOST International Malaysia, 30 January 2023

> *"When they come back to the community, their community accepts them and it's almost like they have no problem of welcoming him to a home. If it is not really burdening them, they say you need to come and stay. So, they provide [for] the person until he can be independent." – Mohd Azmi Abdul Hamid, Malaysian Consultative Council of Islamic Organisation (MAPIM)*

Similarly, there was ample evidence that Rohingya communities give almost unequivocal acceptance and support to community members who were recently released from detention as illustrated in the quote above. In addition to linking them to RLOs and NGOs, the community also recommends jobs for them, and supports them in reuniting with their families and communities.

Impacts on Malaysia's Regional and International Reputation

In addition to the deep harm caused to Rohingya individuals, families, and communities, Malaysia's immigration detention policies and practices also clearly demonstrate policy incoherence both at a national level, as well as on regional and international levels, which affects Malaysia's international reputation and standing.

The Malaysian government has an overwhelming tendency to view the Rohingya and other refugees in Malaysia through a securitised lens. This view, that the group poses a significant national security or societal threat to Malaysia, is driven largely by the Ministry of Home Affairs and the National Security Council. These two agencies primarily dictate policies on the Rohingya and other refugees in Malaysia, with other government ministries deferring to the Ministry of Home Affairs and National Security Council, even if it involves the rights and protection of people within their mandates, such as children or others in situations of vulnerability.[97]

At the same time, Malaysia's approach towards refugees, including the Rohingya, has aptly been described as a "policy of not having a policy".[98] This approach has led to inconsistent and ad hoc practices that have caused confusion and uncertainty, particularly when practices change abruptly with little to no official explanation. The lack of a clear and formal policy has also allowed various government actors to use their own discretion, which has often resulted in harsh and punitive practices. The political instability experienced by Malaysia from 2020 to 2022, further hampered consistent policy direction and implementation, as the government and cabinet changed thrice over this period.

The securitised approach and the "policy of not having a policy" stems from the perception that any softening of the country's stance will open the floodgate and "pull" more refugees towards Malaysia. There is also little political incentive for the government to change its policies, given negative public sentiment towards the Rohingya. However, after years of prioritising a securitised, ad-hoc approach, it is clear that this is not working to deter people from coming to Malaysia as the government intends. Instead, there are hundreds of thousands of refugees arriving and living in Malaysia, severely marginalised and many under the radar due to their irregular status. This is unlikely to change, given the harsh realities Rohingya are escaping in Myanmar and Bangladesh.

Immigration detention and Malaysia's securitised approach towards refugees additionally impacts Malaysia's international reputation and credibility, given the clear disconnect between Malaysia's statements in regional and global forums, and the policies and practices enacted at the national level. Malaysia's political leaders have historically been eager to demonstrate their goodwill and commitment to the welfare of the Rohingya; open support for the Rohingya has been a long-standing commitment and element of Malaysia's global Muslim solidarity agenda in its foreign policy since 2016.[99] Despite the changes in leadership, this international stance has not shifted strongly. These statements, at odds with the increasingly harsh policies towards the Rohingya at the national level, places Malaysia at risk of accusations of hypocrisy, and undermine the government's efforts to work towards a meaningful and sustainable solution for theongoingdisplacementofRohingya.[100]

> *"All of our diplomatic advocacy on the Rohingya regionally are completely diminished and self-sabotaged by how we treat [the Rohingya] here locally" - Thomas Daniel, Institute of Strategic and International Studies (ISIS) Malaysia*

Malaysia's international reputation is also negatively impacted by the fact that it now trails behind many countries in its policies regarding refugees and migrants - including other countries that have also not ratified the 1951 Convention Relating to the Status of Refugees. This includes Malaysia's ASEAN counterparts; Indonesia and Thailand, who, for example, have both taken important steps in recent years to end the immigration detention of refugees and people seeking asylum. In relation to the Organisation of Islamic

97 Interview with ISIS Malaysia, 3 February 2023

98 Daniel T (2016) Clear Refugee Policy Needed Institute of Strategic and International Studies (ISIS) Malaysia; Daniel T (2020) COVID-19 Highlights the Plight of Malaysia's Refugees East Asia Forum

99 Jeffrey A. & Daniel T. (2020) Managing inbound Rohingya: Malaysia's longstanding refugee situation takes on added urgency during the pandemic Institute of Strategic and International Studies (ISIS) Malaysia; Sukhani, P. (2020) The Shifting Politics of Rohingya Refugees in Malaysia. The Diplomat.

100 Jeffrey A. & Daniel T. (2020) Managing inbound Rohingya: Malaysia's longstanding refugee situation takes on added urgency during the pandemic Institute of Strategic and International Studies (ISIS) Malaysia

Cooperation (OIC), Bangladesh and Malaysia are the only two OIC Member States that host significant refugee populations and do not permit refugees to attend public schools, despite the OIC's October 2022 *Kuala Lumpur Declaration on Rights and Access to Education for Refugees* imploring all OIC Member States to "grant refugees the right of access to public educational institutions" and "provide at least primary education for all, including refugees".[101]

Another key area where Malaysia's regional and international reputation has been marred relates to child immigration detention. Over the past decade, a global consensus from UN member states has emerged that child immigration detention should be eliminated in practice. The Committee on the Rights of the Child clearly stated in its 2012 Recommendations[102] and 2017 Joint General Comment[103] that detaining children for migration-related purposes is unlawful. Under Objective 13 of the Global Compact on Safe, Orderly and Regular Migration (GCM), States, including Malaysia, unequivocally agreed to action their commitment by "working to end the practice of child detention in the context of international migration". ASEAN Member States have adopted the ASEAN Declaration on the Rights of the Child in the Context of Migration and its accompanying Regional Plan of Action.[104] Through these, ASEAN Member States have agreed that in order to promote the best interests of the child, they will work to develop "effective procedures and alternatives to child immigration detention….and to ensure, where possible, children are kept together with their families in a non-custodial, and clean andsafeenvironment."[105]

Despite the global consensus on this issue and its international and regional commitments, Malaysia has regressed in its policies and practices with 656 boys and 523 girls remain detained as of January 2023,[106] and the deaths of at least seven children in detention from January to December 2022 alone.[107]

Photo Credit: Danish Refugee Council

101 Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation (OIC-IPHRC) (2022) Kuala Lumpur Declaration on Rights and Access to Education for Refugees

102 Committee on the Rights of the Child (2012) Report Of The 2012 Day Of General Discussion On The Rights Of All Children In The Context Of International Migration.

103 UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) (2017) Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return

104 ASEAN (2019) Declaration on the Rights of Children in the Context of Migration; ASEAN (2021) Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration

105 ASEAN (2019) Declaration on the Rights of Children in the Context of Migration;

106 Question No. 14, Notice of Oral Answers in the House Of Representatives First Meeting, Second Term, Fifteenth Parliament, 2 March 2023

107 Question No. 50, Notice of Oral Answers in the House Of Representatives First Meeting, Second Term, Fifteenth Parliament, 21 February 2023

8. Recommendations

> *"They are human beings, and they have rights - these must be the principles that we have to be firm about… that is our call to the Malaysian government".*[108]

All stakeholders interviewed for this project were unequivocal in their view that Malaysia's immigration detention policies and practices are in urgent need of reform. The use of immigration detention is not only harmful to Rohingya individuals, families and communities, but also threatens societal well-being, safety, and the international reputation of Malaysia. Genocide and ongoing persecution of the Rohingya in Myanmar together with deteriorating conditions in Bangladesh[109] mean that Rohingya will also continue to seek safety elsewhere. Malaysia continues to be a primary destination, given the already established pathways, social networks, and communities that Rohingya have in the country.

> *"We know [there's a risk we could get detained] but at least we have our husbands here. We are aware that our boat could drown in the sea, we may die, we may [be] detained and we are aware of this country's trouble as well. But, we might feel happy after seeing our husband, and our babies will see their dad. That is the reason we are still coming despite [being] aware of all the hardship" - Key informant from an RLO*

The Need for A Whole-Of-Government and Whole-Of-Society Approach

To ensure that migration governance is sustainable, it needs to be addressed as a cross-cutting issue, which is underpinned by coordination and collaboration between several Malaysian government ministries, departments and actors, in particular, the Ministry of Home Affairs, Ministry of Women, Family, and Community Development, Ministry of Foreign Affairs, the Law Ministry and Prime Minister's Office, Ministry of Human Resources, Ministry of Health, Immigration Department, and the Social Welfare Department.

Thus, investing in a whole-of-government approach is key in building internal mechanisms for support and accountability, and ensuring coherence in policy making and implementation across all sectors and levels of government.

Further, in addition to a whole-of-government approach, close collaboration with civil society organisations, refugee and migrant-led organisations, UN agencies, regional and international organisations, and other stakeholders is needed to further meaningful approaches to reducing and ending immigration detention practices, as a whole-of-society approach.

Recommendation 1: Cease Immigration Detention of Rohingya and Other Refugee Groups

Stakeholders: *The Malaysian Government, namely Legal Affairs Division and National Security Council under Prime Minister's Department, Immigration Department under Ministry of Home Affairs*

The research has demonstrated that Malaysia's immigration detention policies are significantly harming Rohingya families and communities. Malaysia cannot afford to ignore these impacts of detention on Rohingya.

In addition to the negative impacts of detention, the Malaysian government should also cease detaining the Rohingya and other refugees for immigration reasons not only because of the irrevocable harm caused to them, but also because detention cannot achieve the intended policy outcomes, namely repatriation and deterrence. The Rohingya are being detained under removal orders, which cannot be carried out because they are stateless and thus have no country to return to. In this vein, it is unclear if detention orders under Section 34 of the Immigration Act 1959/63 are even legally applicable to Rohingya. Various studies have also demonstrated that detention is also not effective as a deterrence measure, and is an ineffective response to large numbers of people in an irregular situation, particularly those with no prospect of safe and voluntary repatriation.[110] Although the government has been sporadically

108 Interview with Malaysian Consultative Council of Islamic Organisation (MAPIM), 6 February 2023

109 In February 2023, the UN World Food Programme (WFP) announced cuts in food aid to Rohingya in Cox's Bazar, and in March 2023, a delegation of Myanmar junta officials visited and interviewed Rohingya refugees at Cox's Bazar as part of a proposed revival of repatriation efforts to return Rohingya to Myanmar. This deterioration of conditions in Bangladesh could potentially lead to increased movement of Rohingya to Malaysia. World Food Programme (2023) Lack of funds forces WFP to cut rations for Rohingya in Bangladesh; Human Rights Watch (2023) Bangladesh: Halt 'Pilot' Plan to Return Rohingya; The Star (2023) Return plan for Rohingya

110 International Detention Coalition (2015) Does Detention Deter?

releasing Rohingya registered in Malaysia pursuant to an internal Immigration directive introduced in late 2021, this approach to releasing only Rohingya registered with UNHCR Malaysia is not sustainable in the long-term as Rohingya who travelled from other countries, predominantly Bangladesh, are also unable to be repatriated, and will be continue to be subject to indefinite detention in Malaysia.

Detention is also an inefficient use of money and detaining Rohingya indefinitely has significant implications on public spending. The government does not release detailed information on the cost of immigration detention, though in April 2021 the Home Ministry told journalists that detention costs about RM30 (€6.25) per person per day.[111] It is not clear if this amount includes staffing and overheads at detention centres. In October 2018, the Immigration Department estimated that housing, electricity, water, and meals per detainee in immigration detention centres per day cost about RM80 (€16.67).[112] Regardless, with 4,424 Myanmar nationals, including Rohingya in detention as of January 2023, even at the cost of RM30 (€6.25) per person, this amounts to a total of RM 132,720 (€27,509) per day and RM 3,981,600 (€829,500) per month. These figures should also be considered against research findings that show the Rohingya are often detained for months, if not years.

Staff at the immigration detention centres have also expressed their frustrations and daily stressors in trying to respond to a group that cannot be repatriated, to several key informants. This is amplified by poor conditions in detention, including overcrowding, poor sanitation and significant mental, and physical health challenges, including COVID-19 outbreaks. Staff at detention centres also regularly express their opinion in meetings and consultations with civil society that children should not be in immigration detention centres.

For the above reasons, Malaysia should enact legal and policy change to cease immigration detention of Rohingya and other refugee groups because a) it is harmful to individuals, families, and communities, b) immigration detention is a clear violation of child rights, c) it is not an effective deterrence measure, d) it comes at a financial cost to Malaysian taxpayers and the Malaysian economy and e) there is no legal basis to deport stateless communities such as the Rohingya.

Recommendation 2: Lead the Development and Implementation of Community-Based Alternatives to Immigration Detention

Stakeholders: The Malaysian Government, namely Immigration Department under Ministry of Home Affairs, Social Welfare Department under Ministry of Women, Family and Community Development, Legal Affair Division and National Security Council under Prime Minister's Department; Civil society organisations and actors serving refugees, migrants, children, and youth; UN agencies, namely OHCHR, UNICEF, and UNHCR

The need for community-based ATD is important for all refugees and people seeking asylum but particularly acute for the Rohingya. Research has demonstrated that ATD is beneficial for both refugees and governments. ATD is proven to improve the health and wellbeing of refugees, respect and fulfil human rights, and have been shown to be effective at achieving migration management objectives, with high compliance rates where migrants are able to meet their basic needs and access legal and social support services.[113] There are also significant cost-savings - for example, community-based ATD for children in Malaysia costs less than RM 9 (€1.88) per day (including utilities, rent, and food) representing a significant cost-saving compared to immigration detention.[114] This is very much in line with data from other countries showing the significant disparity in the costs of immigration detention versus community-based ATD.[115]

As a first step, the Malaysian government should resume progress on ATD for unaccompanied and separated children, and proceed with the release of children from immigration detention. The recent plans the current Home Minister, Datuk Seri Saifuddin Nasution, announced in February 2023 to release unaccompanied and separated children from detention into the care of child protection NGOs[116] is a welcome development in this regard, and should be initiated and streamlined with positive changes reflected in immigration policies and processes. Likewise, there should be no further delay in implementing the ATD Pilot approved by Cabinet in 2021. In addition, the Malaysian government should review the scope and inclusion criteria of the pilot, to include other resolutions apart from repatriation, and ensure all refugee and asylum-seeking children, including Rohingya children are included within the scope of the pilot. The government must also further invest in developing a clear framework for monitoring and evaluation of the ATD pilot that focuses on the best interest of the child, including supporting their developmental milestones, education, medical and psychosocial wellbeing.

ATD should also not be limited to unaccompanied and separated children. Building upon the considerable work already done for ATD, the Malaysian government should also work with civil society and UN agencies to develop and implement community-based ATD for all children and other people in situations of vulnerability, such as people seeking asylum and people with existing medical conditions.

111 Malay Mail (2021) Cover their daily cost if you care so much about undocumented migrants, home minister tells human rights NGOs

112 The Star (2018) More than 1000 children detained in Immigration centres this year

113 International Detention Coalition (2015) There are Alternatives; International Organization for Migration (2021) Advocating for Alternatives to Migration Detention

114 Lighthouse Partnerships & SUKA Society (2019) External Evaluation - SUKA Society Community Placement and Case Management Program

115 International Detention Coalition (2015) There are Alternatives

116 The Star (2023) Children do not belong in Immigration depots, says Saifuddin.

Implementing ATD is also in line with Malaysia's international commitments, especially in relation to the UN Convention on the Rights of the Child (CRC), the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the ASEAN Declaration on the Rights of Children in the Context of Migration. Upholding these commitments by developing and implementing non-custodial, community-based ATD for Rohingya and other refugees and people seeking asylum will also serve to support the elevation of Malaysia's standing and reputation at regional and international levels.

Recommendation 3: Develop and Implement a Transparent and Comprehensive Policy on Refugees

Stakeholders: The Malaysian Government, namely Ministry of Home Affairs, Legal Affairs Division and National Security Council under Prime Minister's Department; UNHCR

The severe impact of Malaysia's immigration detention policies on Rohingya families and communities means that maintaining the status quo is simply untenable. Many key informants articulated the need for Malaysia to act swiftly to address the current ad hoc approach towards refugees and other vulnerable groups. The government's current approach of focusing on national security to the exclusion of other considerations, implementing ad hoc, inconsistent practices, and failing to provide clear policy direction is causing significant harm, not just for Rohingya and other refugee groups, but for the societal well-being, safety, and international reputation of the country. Thus, the government needs to develop and implement a transparent and comprehensive policy on refugees, which centres the human rights of refugees and people seeking asylum and is in-line with international human rights laws and standards.

The government's fears of a pull factor cannot be the reason for inaction; Malaysia's doors have been open for decades.[117] Many key informants pointed to the fact that there are already generations of Rohingya living in all states in Malaysia including those who were born in the country, and many have established relationships with the Malaysian host community, speak Malay, and consider themselves to have stronger connections to Malaysia than anywhere else. For example, Rohingya community leaders, many of whom are ustaz or local Imams, have established close connections with local authorities, and have also formed relationships with Malaysian communities, FBOs, and NGOs, many of whom provide critical support and solidarity to the Rohingya.

As an immediate measure, accelerating the registration of Rohingya (and other refugees) with UNHCR should be prioritised by UNHCR and facilitated by the authorities. Until such time that a clear and transparent policy on refugees and people seeking asylum is formulated, UNHCR must be provided with the access to conduct registration and RSD**.** These are a key protection tool in Malaysia and as discussed in this report, the absence of UNHCR documents is a significant cause of anxiety and stress among Rohingya communities. UNHCR documents not only provide some form of protection against arrest and detention, they also facilitate greater access to healthcare and other services. As an immediate measure, the suspension of UNHCR's regular access to immigration detention centres should be removed, to facilitate their ability to continue registration and RSD.

Pending a clear and transparent policy on refugees and people seeking asylum, key informants also called for greater coherence between the Attorney General's Circular of 2005 and the Immigration Circular of 2021, and arrest and detention procedures. Given these internal policy documents permit the release of Rohingya registered by UNHCR, enforcement authorities should consistently and actively take steps to use the UNHCR Verify Plus App or coordinate with UNHCR to avoid the detention of Rohingya.

Recommendation 4: Utilise and Apply Lessons Learned from Similarly Situated Countries, particularly in ASEAN, and Continue Regional and International Engagement to Secure Further Collaboration and Resources

Stakeholders: The Malaysian Government, namely Ministry of Home Affairs, Ministry of Foreign Affairs, Legal Affairs Division and National Security Council under Prime Minister's Department, Ministry of Women, Family and Community Development

Malaysia lags far behind many countries with regard to policies and practices on refugees and people seeking asylum, particularly children and others in situations of vulnerability. In relation to child immigration detention, Malaysia is a major outlier; while many countries have progressed towards ending child immigration detention, Malaysia has regressed in its policies and practices, lagging its ASEAN neighbours who have made significant progress in recent years towards ending the immigration detention of refugees and people seeking asylum, including children.

Malaysia should look to its ASEAN counterparts and other similarly situated countries to learn about their policies and practices. For example, Thailand, also a non-signatory to the 1951 Convention Relating to the Status of Refugees, hosts large numbers of refugees, people seeking asylum, and migrants with irregular status, like Malaysia. However, Thailand has made important strides towards a National Screening Mechanism (NSM) for persons "unable or unwilling to return to their countries of origin due to potential harm".[118] Thailand has also emerged as a regional and global leader in its efforts to end child immigration detention. In 2019, representatives of 7 Thai Government agencies signed the *Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres (MOU-ATD)*, as well as Standard Operating Procedures (SOPs) to implement the MOU-ATD starting in September 2020. The MOU-ATD was a concrete outcome of a pledge made by Prime Minister Prayut Chan-o-cha during the 2016 Leaders' Summit on Refugees at the United Nations in New York to end the immigration detention of refugee children and children seeking asylum in Thailand. Since January 2019, over 500 children and 150 parents have been released from immigration detention into the Thai community.[119] Though the MOU-ATD does not outline specific provisions for Rohingya

117 Jeffrey A. & Daniel T. (2020) Managing inbound Rohingya: Malaysia's longstanding refugee situation takes on added urgency during the pandemic Institute of Strategic and International Studies (ISIS) Malaysia
118 VOA News (2022) Thailand Sets Long-Awaited Rules for Vetting Asylum Seekers
119 Information on file with International Detention Coalition

refugees, reports indicate that many Rohingya receive protection under the MOU-ATD. Further, Thai government stakeholders are also reportedly leading consultations with Thai civil society, international NGOs, and UN agencies to identify effective ATD models specifically for Rohingya children and their families.[120] The Thai government is a Champion Country[121] under the Global Compact for Migration and has pledged at the International Migration Review Forum (IMRF) in May 2022 to effectively implement ATD for children. In working to fulfil this pledge, Thailand is currently undertaking an independent evaluation of their ATD system and processes for children in families, in collaboration with international agencies and International Detention Coalition.

In Indonesia, the "Circular Note of the Directorate General of Immigration, Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres" 2018, provides that people seeking asylum and refugees are exempted from immigration detention despite having irregularly entered the country.[122] In response to this circular, Indonesia has effectively ceased the immigration detention of refugees and people seeking asylum, despite not being a signatory to the 1951 Refugee Convention or its 1967 Protocol, and despite provisions in their legal framework which continue to permit immigration detention.

Malaysia can also learn from examples of how other governments have adopted a whole of society approach in working collaboratively to respond to refugees and people seeking asylum. Again, in Thailand, civil society, government ministries, UN agencies, and other stakeholders have worked collaboratively to develop the NSM and to implement ATD. In Indonesia a multi-stakeholder working group including government and non-government actors met in 2021 and 2022 to discuss access to education for refugee children, and in 2023, they will convene to discuss access to livelihoods.

There are several mechanisms to support the Malaysian government to learn from ASEAN neighbours and similar situated countries. One good example is the Regional Peer Learning Platform and Program of Learning and Action on Alternatives to Child Immigration Detention (the Regional Platform), co-convened by International Detention Coalition and the Asia Dialogue on Forced Migration Secretariat. Launched in 2019, this Regional Platform has brought together government and civil society ATD implementers from five countries in the region: Australia, Indonesia, Malaysia, New Zealand, and Thailand. Held under the Chatham House Rule, the Regional Platform has provided participants with a space to discuss and share learnings, successes, and challenges in ATD implementation. To date, Malaysian government officials from the Ministry of Women, Family and Community Development, Ministry of Home Affairs, Immigration Department, Social Welfare Department, and National Security Council have participated in the Regional Platform.

Similarly, the United Nations Network on Migration (UNMN) Working Group on ATD, co-led by UNHCR, UNICEF, and IDC, has convened three periodic global peer learning exchanges on ATD attended by representatives from more than 36 governments. These peer learning exchanges bring governments, UN agencies, and key civil society actors from all regions together and provide a space to discuss experiences with implementation of Objective 13 of the GCM, share challenges and concerns, identify promising practices, and explore opportunities for continued multi-stakeholder cooperation and whole-of-society approaches. These exchanges have been sponsored by several governments championing Objective 13, including Colombia, Portugal, and Thailand. Carried out under the Chatham House Rule, exchanges allow for open communication between participants. Summary reports[123] are produced afterward to capture key challenges, learnings, and opportunities for progress. On a regional level, there is an ATD Thematic Workstream of the Regional UNMN for Asia and the Pacific. This workstream complements global UNMN initiatives and aims to support peer-learning and the strengthening of regional advocacy strategies.[124]

There is a need for stronger regional and international support to ensure Malaysia does not bear the economic costs of hosting refugees alone. In the long-term, the Malaysian Government should look to participate in regional activities with neighbouring countries in order to further build regional collaboration among states to support more rights-based approaches and regional advocacy on the Rohingya displacement, and migration governance. This could be also supported by greater ASEAN cooperation on migration, through the Bali Process or via minilateral engagement. The prospect of further engagement with the OIC should also be considered, to foster learning and collaboration with other Muslim countries, leveraging the Kuala Lumpur Declaration on Rights and Access to Education for Refugees to explore a regional mechanism to support Muslim countries hosting Rohingya in the region.[125]

Recommendation 5: Provide Work Rights to the Rohingya and other refugee communities

Stakeholders: The Malaysian Government, namely Ministry of Human Resources, Ministry of Investment, Trade and Industry, and Ministry of Home Affairs

Although there are many organisations providing services to Rohingya in different states throughout Malaysia, resource constraints mean that needs far outweigh services provided, and that services are often concentrated in urban areas, and not equally distributed across states. Although UNHCR and other organisations can provide short-term financial or housing support in a limited number of cases where Rohingya people or families face heightened vulnerabilities, this cannot be sustained in the long-term. As outlined in the

120 Ibid.
121 United Nations Network on Migration (2020) Global Compact For Migration - Champion countries
122 Directorate General of Immigration (DGI) Circular on Restoring the Function of Immigration Detention Centres, 30 July 2018; Permanent Mission of the Republic of Indonesia to the United Nations, WTO, and Other International Organisations in Geneva (2020) Questionnaire of The Special Rapporteur on The Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them
123 United Nation's Network on Migration (2022) Alternatives to Detention Working Group
124 Alternatives to Detention Thematic Workstream of the Regional UN Network on Migration for Asia and the Pacific (2022) Regional Meeting Outcome Paper: Promoting Alternatives to Immigration Detention in the Asia Pacific Region
125 Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation (OIC-IPHRC) (2022) Kuala Lumpur Declaration on Rights and Access to Education for Refugees

section on "Community Mobilisation In Response To Immigration Detention" above, Rohingya communities also strive to support each other using the limited resources they have available. Gaps in service provision are especially acute when it comes to mental health, which is particularly concerning given the trauma that detained Rohingya and their families are likely to have suffered and continue to experience in Malaysia.

As illustrated above, many Rohingya refugees are already taking up informal work to sustain a livelihood for themselves and their families, and face high risks of abuse and exploitation by their employers, with no avenue to seek recourse. Providing Rohingya with a legal status or temporary visa and right to work is instrumental in addressing some of these challenges, including the right to seek redress if exploited by employers. There have been sound arguments made for the right to work, including the economic benefits in the form of increased contributions to annual Gross Domestic Product of over RM3 billion (€625 million) by 2024, the creation of thousands of new jobs for Malaysians, and annual tax contributions equalling millions of RM.[126,127] Malaysia has a high dependency on migrant labour and is facing labour shortage.[128] Thus, granting Rohingya and other refugees the right to work is mutually beneficial for Malaysia as well as refugees themselves, as the Rohingya have been filling in some of these labour needs and could potentially contribute more to the economy. This in turn will also empower Rohingya communities who predominantly have been self-reliant through informal employment. Recognising this, the Malaysian Employers Federation has also called for refugees to be given the right to work and employment.[129] As a first step, the government should initiate the revival of refugee work rights pilot programmes in consultation with refugee communities, RLOs, and CSOs.

Further, as highlighted above, without the right to work, women and girls are particularly vulnerable and at risk of SGBV, such as child marriage, and sex and labour trafficking.[130] Providing the right to work would allow refugee women to access a steady, independent income, and reduces their financial dependency on male community members, and thus reducing their risk of experiencing SGBV. This would also be in line with the CEDAW Committee's Recommendation to Malaysia to "ensure that asylum-seeking and refugee women and girls have access in practice to income-generating opportunities, education, health care, and other basic social services appropriate for their specific needs, as well as to legal assistance."[131]

Recommendation 6: Strengthen Gender-Responsive Frameworks & Services to Rohingya and Other Refugee Communities

Stakeholders: The Malaysian Government, namely Ministry of Home Affairs, Ministry of Women, Family and Community Development, Ministry of Health, Legal Affairs Division and National Security Council under Prime Minister's Department; Civil society organisations and actors serving refugees, migrants, women, children, and youth

The research has clearly demonstrated that immigration detention of a family member has a severe and disproportionate impact on Rohingya women, due to their intersecting vulnerabilities. Without legal status, Rohingya women are at a triple risk of violence - firstly, they are at risk of arrest and detention, secondly, they are pushed into informal work which increases their risk of child marriages and sex trafficking and thirdly, they are also at increased risk of experiencing sexual and gender-based violence within their community, with little public support made available to them. This begets the government to strengthen their policies and processes in a gender-responsive manner, to ensure that Rohingya and other refugee women are specifically protected from harm.

As outlined above, Rohingya women face an increased risk of SGBV when their spouses are detained. Yet, due to their lack of legal status, they face barriers to accessing support and justice mechanisms due to fear of arrest and detention. In order to address this, the Malaysian government should ensure gender mainstreaming in all processes and SOPs pertaining to refugees, with particular attention to revising the arrest and detention processes to ensure that refugee women who seek support for cases of SGBV are not arrested or detained due to their immigration status. In particular, this should include repealing the directive requiring government healthcare staff to report undocumented patients to immigration, and establishing protocols that prevent the police from arresting refugee women who are reporting SGBV.

This effort should also be followed with robust and regular gender-responsive training of immigration officers, police, medical officers, judges, magistrates, and other relevant government officials to ensure they are prepared to respond to refugee women's issues with sensitivity and help mainstream gender in the implementation of immigration policies and processes. Further, the Malaysian Government should consider allocating resources to ensure that language interpreters are available to support and facilitate Rohingya refugee women's access to Malaysian protection mechanisms.

The government should further implement the Committee on the Elimination of All Forms of Discrimination against Women's ("CEDAW Committee's") 2018 recommendation[132] to Malaysia to develop and adopt a comprehensive national asylum framework.[133]

126 As of 31 March 2023, 1 Euro equals 4.80 Malaysian Ringgit
127 Todd L., Amirullah A., & Wan Y. S. (2019) The Economic Impact of Granting Refugees in Malaysia the Right to Work. Institute for Democracy and Economic Affairs
128 Malaysian Employers Federation (MEF) (2022) MEF Appeals for Special Approval to Employ Refugees and Undocumented Foreign Workers to Ease Acute Shortage of Labour
129 Ibid.
130 U.S. Department of State (2022) 2022 Trafficking in Persons Report: Malaysia
131 Committee on the Elimination of Discrimination against Women (CEDAW) (2018) Concluding observations on the combined third to fifth periodic reports of Malaysia
132 Malaysia ratified the United Nations' Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) in 1995
133 Committee on the Elimination of Discrimination against Women (CEDAW) (2018) Concluding observations on the combined third to fifth periodic reports of Malaysia

"...the Committee recommends that the State party [...] Adopt national asylum and refugee legislation and procedures in conformity with international standards, in order to ensure that the specific needs of women and girls are addressed and codify the principle of non-refoulement."

The adoption of a national asylum framework should identify and protect refugee and asylum seekers, providing Rohingya and other refugees specific rights and protection within the Immigration Act, including the right to seek asylum, and the principle of non-refoulement.

Taking these steps will serve to remove the barriers Rohingya and other refugee women face when seeking support to deal with SGBV, and will increase their access to health care, legal assistance, and other services, which is also in line with further CEDAW recommendations.[134]

Recommendation 7: Employ Multi-Stakeholder Partnerships at All Levels to Ensure Greater Coordination and Collaboration

Stakeholders: The Malaysian Government, Civil Society, RLOs, National Human Rights Commission, UN Agencies, Regional and International Organisations, and the Private Sector

A consistent theme that emerged from the research was the need for stakeholders working on Rohingya advocacy and the provision of protection assistance to find ways to meaningfully collaborate and work together. Key informants spoke of how key stakeholders - the government, civil society, refugee-led organisations, the national human rights commission, international organisations, the private sector - have historically worked in silos, rather than with each other.[135]

Key informants spoke of the need for engagement and awareness raising at all levels of government - beyond the Ministerial and Member of Parliament (MP) level, but also with the bureaucracy and staff of relevant government ministries who are responsible for policy implementation and enforcement. State and local authorities, from district-level officers to the state Executive Councils, to the heads of state governments also play a critical role in policy responses to Rohingya. Yet understanding of the issues faced by the Rohingya is poor, and as a result, there is a lack of empathy for the protection challenges they face.

There are many organisations that provide services to Rohingya in different states throughout Malaysia, ranging from FBOs to NGOs, as well as Rohingya-led organisations themselves. NGOs and FBOs interviewed for this research expressed a common sentiment: that they are ready to work with the Malaysian government in responding to the Rohingya. This, however, requires all parties to be willing to bridge the gap and work together, respect the different perspectives and expertise that each stakeholder holds, and to collaborate towards finding solutions.

The All Party-Parliamentary Group Malaysia (APPGM) on Refugee Policy as well as previous Working Groups on ATD for Children are examples of progress on bringing different government ministries, MPs and civil society stakeholders together for bipartisan dialogue and collaboration. In March 2023, APPGMs were reportedly reconstituted, alongside several Parliamentary Special Select Committees (PSSCs), including a PSSC on Women, Family and Community Development, a PSSC on Health, and a PSCC on Human Rights, Elections, and Institutional Reforms. These PSSCs are intended to act as a check-and-balance mechanism for ministries and can thus be strategically engaged on immigration detention issues.[136]

Recommendation 8: Invest in Increasing Public Awareness on Refugee Issues

Stakeholders: The Malaysian Government, namely Ministry of Information, Communication and Culture; Civil Society; FBOs; UN Agencies and Regional and International Organisations

The research highlighted that Malaysians do not understand the lived realities of refugees, their intersecting vulnerabilities, and "what it means to be a survivor of violence, to be a refugee from birth".[137] The key informants underscored that more work needs to be done to increase empathy towards refugees and refugee experiences with the public.

Awareness among the public of refugee issues is low, and a majority of the public - who make up the electoral voting population - are either ambivalent, suspicious, or hostile to refugees and people seeking asylum. Public opinion of refugees is a politicised issue. Some NGO and RLO stakeholders report interactions with politicians who can be sympathetic on a personal level and in private discussions. Yet given the lack of public support, they have little political incentive to address the situation. Key informants highlight that some politicians often play a role in spurring misinformation and xenophobia against refugees, Rohingya particularly, to further their political interests. For example, key informants pointed to a tactic used by politicians and media to use specific negative incidents involving Rohingya refugees in order to paint the entire community negatively. This is used to drum up vitriol amongst the public and then used to justify why Rohingya should not be accepted in Malaysia.

Therefore, addressing the prevalent xenophobia and discrimination against the Rohingya is critical to progressing protection of the

134 Ibid.

135 Daniel T (2020) COVID-19 Highlights the Plight of Malaysia's Refugees East Asia Forum; South China Morning Post (2020) As Malaysia battles the coronavirus, its Rohingya refugees face a torrent of hate.

136 CodeBlue (2023) Health Gets Its Own Parliamentary Special Select Committee

137 Interview with Geutanyoë Foundation, 10 March 2023

Rohingya. The public are the voters - and matters of public interest are matters of political interest. Until public opinion is swayed positively, there can be no substantial or sustained changes at policy level.

The research suggests three critical interventions for public engagement: a) actively countering misinformation about refugees as a first step to addressing the xenophobia against Rohingya refugees; b) social cohesion initiatives which promote increased understanding and acceptance between host communities and refugees; and c) media engagement and relationship building to promote accurate and progressive reporting on refugees. In addressing public engagement, refugees should be consulted, and their lived experience should be centred in public engagement initiatives, with due consideration for their safety.

Protecting Rohingya Refugees in Asia

– towards a coordinated regional approach

PRRiA Partners:

ADSP Asia Displacement Solutions Platform

DRC DANISH REFUGEE COUNCIL

GEUTANYOË

HOST INTERNATIONAL

JRS JESUIT REFUGEE SERVICE INDONESIA

Mixed Migration Centre

Funded by the European Union