



# Rohingya in South East Asia: Opportunities for engagement



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# Australia

- Party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; The Migration Act 1958 incorporates article 1A(2) of the Convention
- 56,933 stateless persons/refugees, which make up 0.23% of the total population of concern (25.20 million)<sup>1</sup>
- In 2015, there were 9,738 Myanmar refugees in Australia, making it one of the top countries of origins for refugees in the country<sup>2</sup>
- There are about 7,000 Rohingya in Australia and about 500 in Melbourne<sup>3</sup>

## CONTEXT AND OVERVIEW OF THE ROHINGYA DIASPORA IN AUSTRALIA

Some 56,933 stateless persons/refugees make up 0.23% of Australia's total population (about 25 million). Recent data suggests that the number of Rohingya is estimated to be about 3,000 in Australia. Like the United States and Canada, Australia has resettled tens of thousands of refugees since World War II: according to UNCHR, in 2018, Australia resettled 12,700 refugees. This policy was symptomatic of a generally and traditionally positive approach toward refugees, both those who arrived spontaneously as well as those who were resettled. In recent years, however, the country has increasingly adopted a much harsher approach to asylum seekers traveling by boat to its coastline who sought refugee status.<sup>4</sup> The government detains asylum seekers in "offshore processing" centres of the tiny Pacific island of Nauru. Asylum seekers were also detained Manus' offshore processing centre, before it closed down in 2017.

In 2013, the Australian government showed its hardline approach by declaring that asylum seekers who were intercepted at sea – Rohingya are one of the populations that almost entirely arrive by sea - would be detained on the Pacific islands and, if found to be refugees, would be settled there, never to be granted a new life in Australia. Stateless Rohingya were among those detained on Nauru and Manus, and, reportedly, Australia was promising thousands of dollars to Rohingya refugees who agree to return to Myanmar despite the ongoing persecution against them there.<sup>5</sup>

<sup>1</sup> For consistency of sources in this report this is the total recorded in UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 65, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>. Australia's figures for asylum-seekers are based on the number of applications lodged for protection visas. See also World Population Review (2019) 'Australia Population', <http://worldpopulationreview.com/countries/australia-population/>

<sup>2</sup> Parliament of Australia (2016) 'Refugee Resettlement to Australia: What are the Facts?' [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/RefugeeResettlement](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/RefugeeResettlement)

<sup>3</sup> This estimate is provided from interview evidence: NSW c4000, Queensland c2000, Victoria c1000, NT small number. But see also an estimate of 3000 in SBS (2019) 'Discover Melbourne's Rohingya Community, the Most "Unwanted Community" in the World', <https://www.sbs.com.au/topics/life/culture/feature/faces-rohingya>

<sup>4</sup> Kaldor Centre for International Refugee Law (2017) 'The Refugees Australia Tried to Offshore are Still Its Responsibility', <http://www.kaldorcentre.unsw.edu.au/publication/refugees-australia-tried-offshore-are-still-its-responsibility>

<sup>5</sup> Holmes, O., and Doherty, B. (2017) 'Australia Offers to Pay Rohingya Refugees to Return to Myanmar', The Guardian, <https://www.theguardian.com/world/2017/sep/19/australia-offers-pay-rohingya-refugees-return-myanmar>

In 2015, there were dramatic changes implemented in regard to Australia's asylum policy, which covered the refugee status determination (RSD), the introduction of Temporary Protection Visas (TPV), and the removal of government-funded legal assistance.<sup>6</sup> Most of the old problems remained, including the vanishing prospects for family reunification, low access to education and employment, and the absence of suitable housing options. However, the changes introduced new issues, including protracted delays in the granting of citizenship and the denial of access to further or higher education for those on Temporary Protection Visas.

In 2017, the detention centre on Manus was closed and those who remained there, most of whom were refugees, were moved to alternative accommodation in the local community and settled in Papua New Guinea. However, many refugees, including Rohingya, were unwilling to resettle as they feared for their safety outside the centres.

According to Refugee Council of Australia, as of early 2019, 838 people were still subject to offshore processing to their country of origin, 547 to Papua New Guinea (PNG), 508 to the US, 359 to Nauru, and 7 to Cambodia.<sup>7</sup> Overall, since August 2012, 4,177 people have been sent to Nauru or PNG.<sup>8</sup> As many as 3,127 were sent following the Prime Minister's decision in 2013 that refugees would no longer be resettled to Australia). As of August 2019, 288 people were left in Nauru and 306 in PNG, while 53 were detained by PNG. Mainland detention still persists as well.

The impact of Australia's generally harsh treatment<sup>9</sup> of asylum seekers who arrive in the country via maritime routes has been especially felt by the Rohingya population, since this is their predominant route of arrival. Nevertheless, the country does have a reasonably generous (per capita) refugee resettlement program, which is currently set at 18,750 people per annum.<sup>10</sup> For 2017-2018, just over 2,000 refugee resettlement visas were granted to people from Myanmar.<sup>11</sup> Whilst Australia can expand its resettlement programme to take in an increased number of, for example, Syrians and Iraqis (as was the case in 2015), since most are educated professionals with ready-made skills to offer and well-established community groups and employment networks in Australian cities, the same is not the case for Rohingya. The oppression that they faced in Myanmar, or their lives in transit, have resulted in generally very low levels of education, skill development, poor health outcomes and little or no exposure to English language. Their poor socio-economic status renders them much less likely to be resettled. This also explains why the country's priority is still to pressure for safe repatriation of the refugees to Myanmar and manage the distribution of aid to the refugee camps in Cox's Bazar in Bangladesh.

<sup>6</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 4, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

<sup>7</sup> BBC (2019) 'Manus Island: Refugee 'Suicide Attempts' in Wake of Australia Election', <https://www.bbc.co.uk/news/world-australia-48375120>

<sup>8</sup> Refugee Council Australia (2019) 'Offshore Processing Statistics', <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>.

<sup>9</sup> Loughnan, Claire (2019) 'Australia's Harsh Immigration Policy,' The Diplomat, <https://thediplomat.com/2019/08/australias-harsh-immigration-policy/?platform=hootsuite>

<sup>10</sup> Wyeth, G. (2019) 'Australia and the Case of the Rohingya', The Diplomat, <https://thediplomat.com/2019/09/australia-and-the-case-of-the-rohingya/>

<sup>11</sup> Australian Government Department of Home Affairs (2018) 'Australia's Offshore Humanitarian Program: 2017-18,' <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2017-18.pdf>

## REFUGEE LAW AND PROTECTION

### National Legislation

Australia is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Migration Act 1958 incorporates article 1A(2) of the Convention, which contains the definition of a refugee, into Australian domestic law, and gives effect to Australia's obligation of non-refoulement.<sup>12</sup>

### Access to Protection

The ultimate decision to grant refugee status rests with Australia's Immigration Department. Under Australia's Special Humanitarian Programme (SHP), there are two types of refugee visas: 1) Offshore Resettlement visa and 2) Onshore Protection Visa.<sup>13</sup> There are four offshore refugee category visas, which apply for those found to be refugees and others with an acknowledged need for protection before their arrival to Australia: Refugee (visa subclass 200), In-Country Special Humanitarian (visa subclass 201), Emergency Rescue (visa subclass 203), and Woman at Risk (visa subclass 204).<sup>14</sup> Refugees seeking to enter Australia on a Refugee visa (subclass 200) must satisfy numerous criteria that are more onerous than onshore Protection visas, as outlined in Section 36(2) of the Migration Act. For instance, in addition to being subject to persecution and meeting health, character and national security requirements, the Minister must identify 'compelling reasons for giving special consideration to granting the visa, having regard to the degree or severity of persecution to which they are subject, their connection with Australia, whether another country can provide for the applicant's settlement and protection from persecution, and the capacity of the Australian community to provide for their permanent settlement.

Alternatively, people can be registered as refugees once they are already in Australia by satisfying the Refugee Convention definition of "refugee" and then applying for a Protection Visa (PV).<sup>15</sup> Permanent Protection Visa (PPV) is intended for people who arrive in Australia with a valid temporary visa (e.g. tourist or student visa) and found to be refugees whom Australia is obliged to protect under the Convention. Upon lodging a PPV application, applicants receive a bridging visa, which allows them to remain lawfully in the community until the PPV application is completed.

In December 2014, the Australian Government reintroduced temporary protection for people seeking asylum who had arrived by boat without a valid visa, a key route of entry for Rohingya.<sup>16</sup> Two new classes of temporary visas were introduced: Temporary Protection Visa (TPV) is valid for three years and the Safe Haven Enterprise Visa (SHEV) is valid for five years. Both visas deny access to family reunion. A key difference between the visas is that, if the person holding the SHEV visa meets certain requirements, including working or living in a designated regional area without access to certain welfare payments for a specified period, the person can apply for a migration visa, although not a PPV. The temporary nature of TPV and SHEV creates uncertainty that hinders people from focusing on settlement issues, as many have ongoing trauma relating to their uncertain status. Moreover, renewal of both visas is mandatory at the end

<sup>12</sup> Australian Law Reform Commission (2011) 'Refugee Law in Australia', <https://www.alrc.gov.au/publication/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117/22-refugee-law-2/refugee-law-in-australia-2/>

<sup>13</sup> GoToCourt (2019) 'Refugee Visas', <https://www.gotocourt.com.au/immigration/refugee-visas/>

<sup>14</sup> Parliament of Australia (2016) 'Refugee Resettlement to Australia: What are the Facts?' [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/RefugeeResettlement](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/RefugeeResettlement)

<sup>15</sup> Australian Human Rights Commission (2005) 'Questions and Answers About Refugees & Asylum Seekers', in Face the Fact 2005, <https://www.humanrights.gov.au/our-work/questions-and-answers-about-refugees-asylum-seekers#q2>

<sup>16</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 66, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

of the designated period (three or five years respectively), even if a decision has not been reached on granting the visa. Failure to reapply results in withdrawal of the visa and thus potential refoulement.

The statelessness of Rohingya means that they may be eligible for TPV and, because they are stateless, cannot de facto be returned to Myanmar. On the other hand, the TPV has negative impacts on their situation as noted above and below. Another divisive outcome is that although Rohingya children, if born in Australia, can apply for citizenship although with many restrictions on eligibility, their parents cannot. Moreover, even with a PPV visa Rohingya are relegated to the lowest priority for citizenship applications.

Despite the aforementioned options, recurring themes in Australia's protection regime in recent years have included: the clear shift away from protection towards deterrence and punishment; the failure to live up to Australia's obligations; the failure to appreciate the global picture and the drivers of forced migration; and the increasing secrecy shrouding Australia's asylum policies.<sup>17</sup>

More broadly, despite its relatively benign policy, the Australian government continues to deny that resettlement is the right way to seek protection; it claims that refugees have no right to be resettled and countries like Australia are not legally obligated under the 1951 Refugee Convention or any other international instrument to accept refugees for resettlement.<sup>18</sup> As such, under this outlook, refugee resettlement is merely seen as voluntary scheme coordinated by the UNHCR to facilitate burden and responsibility sharing among countries that are party to the Convention.

Some 3,000 Rohingya refugees in Australia are on either PPV or TPV.<sup>19</sup> Many are still waiting for their protection interviews and assessments. And without status determination they are prevented from the right to sponsor family members on visas to Australia, or visit family members in the refugee camps of Cox's Bazar, Bangladesh.

Amongst Australia's asylum seeker and refugee populations, Rohingya face acute protection (and socio-economic) vulnerability. This is because high levels of illiteracy and the lack of a written language<sup>20</sup> make it particularly difficult to translate the legal apparatus of asylum and visa documentation. This renders Rohingya very dependent on the support and advice of legal aid centres, who nevertheless face the same difficulty, and precludes the scope for developing relevant capacity within their community.

## Freedom of movement

Freedom of movement is curtailed by the country's policy of offshore processing, which has been constantly challenged and opposed due to its high human and financial cost, as well as consequences for refugees' mental health.<sup>21</sup>

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<sup>17</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 54, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

<sup>18</sup> Parliament of Australia (2016) 'Refugee Resettlement to Australia: What are the Facts?' [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/RefugeeResettlement](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/RefugeeResettlement)

<sup>19</sup> Arraf, R. (2018) 'Australia Has an Obligation to the Rohingya People: So Why Is the Federal Government Prevaricating?' ABC. <https://www.abc.net.au/religion/australias-obligation-to-rohingya/10334312>

<sup>20</sup> The fact that Rohingya have no written language, accentuates the impacts of their illiteracy in terms of, for example, being able to translate and verify legal documents pertaining to asylum and refugee claims.

<sup>21</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 55, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

A significant concern in recent years relates to the increasing severity of the policy and practice of immigration detention, including in offshore detention. While there were significant changes in the practice of detention between 2014-2015, with a substantial decrease in the use of community detention and reductions in the numbers of children and people in closed detention, the average length of detention in Australian centres has remained high (i.e. over a year).

There are also concerns surrounding the practice of re-detaining people, including pregnant women and children, within the refugee community due to minor offences. Other issues include access to healthcare in detention, especially psychiatric care. Reportedly, some Rohingya have been detained in Australia's offshore detention centres.<sup>22</sup>

## Right to work and livelihoods – refugee and labour and employment law

As noted above, the bridging visa is temporary visa that allows people to stay in Australia after their current substantive visa ceases and while their new substantive visa application is being processed.<sup>23</sup> In late 2014, the policy preventing those on bridging visas from working was reversed, a change in government policy that was widely welcomed.<sup>24</sup> At least, this policy shift has allowed some Rohingya, especially those with bridging visas, to work daily for community organisations, helping around 3,000 refugees from their community, and earn as welders or construction workers.<sup>25</sup> Some also managed to earn a living by opening cafés, farming, and providing teaching support at local schools.<sup>26</sup>

However, the granting of work rights is a relatively lengthy process and that the gap between granting work rights and getting work remained significant.<sup>27</sup> In addition, those with work rights might not be able to work due to reasons such as physical/mental health issues or being single parents with an infant, while many were still undertaking training or job searching. Barriers may also result from government policy. For example, people were often unprepared for work because they had been excluded from education and employment for years. Many bridging visas were being renewed only for three months. Other issues included limited access to employment services, the barrier of work experience regulations, and the lack of clarity on work rights and visas, which required employers to verify work rights themselves, poor administration, poverty, cultural differences, and the lack of interpersonal networks.

There are some barriers to education. First, children, especially those in detention, suffered stresses as a result of seeking asylum, affecting their ability to engage with education.<sup>28</sup> Additionally, those on bridging visas were eligible only for a limited curriculum which excluded any references to settlement, undermining the purpose of the Adult Migrant

<sup>22</sup> Arraf, R. (2018) 'Australia Has an Obligation to the Rohingya People: So Why Is the Federal Government Prevaricating?' ABC. <https://www.abc.net.au/religion/australias-obligation-to-rohingya/10334312>

<sup>23</sup> Australian Government Department of Home Affairs (2019) 'Bridging Visa A (BVA)', <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/bridging-visa-a-010>.

<sup>24</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 58, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

<sup>25</sup> Alcorn, G. (2019) 'The Land Where We Lived Has Gone' – the Life Story of a Rohingya Refugee', The Guardian, <https://www.theguardian.com/world/2019/aug/04/rohingya-refugee-myanmar-australia-oppression-suffering>

<sup>26</sup> SBS (2019) 'Discover Melbourne's Rohingya Community, the Most "Unwanted Community" in the World', <https://www.sbs.com.au/topics/life/culture/feature/faces-rohingya>

<sup>27</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 58, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

<sup>28</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 58, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

English Program (AMEP).<sup>29</sup> TPV and SHEV holders will have access to 510 hours of the AMEP, as well as the Skills for Education and Employment (SEE) programme and Complex Case Support (CCS).<sup>30</sup> Nonetheless, neither temporary visa holders nor people seeking asylum (such as those on bridging visas) are eligible for Federal Government programmes that assist students with financing tertiary study, including higher education loans schemes. Meanwhile, some 18-year-old refugees are being told they are no longer eligible to attend secondary school and that they need to complete their secondary education through a Technical and Further Education (TAFE) provider, despite the policy in many states that young people are allowed to remain in schools until they turn 21.<sup>31</sup> This creates significant problems as people are unable to afford to continue their studies at a TAFE provider.

There is another concern regarding affordability and adequate housing space for large families and difficulties for single people attempting to access affordable housing.<sup>32</sup> There have been reported ongoing issues with discrimination and racism among housing providers, as well as the lack of tenancy education for newly arrived refugee and humanitarian entrants.

Of the Rohingya community more specifically, some refugees are vulnerable to workplace exploitation. In Melbourne, for example, there are complaints that Rohingya labourers are being paid poorly, leading some to join the National Union of Workers.<sup>33</sup>

Finally, access to healthcare is an issue especially for those in offshore detention centres. To get medical treatment, a total of 1,419 people were transferred from Manus Island (236) and Nauru (1,183) to Australia between November 2012 and July 2019.<sup>34</sup> In 2018, the government introduced the Medevac Bill, which was designed to ensure timely and life-saving medical care is provided to people in offshore detention. It specifically governs that when a refugee or person seeking asylum requires urgent medical assistance, two independent Australian doctors can recommend their temporary transfer to Australia.<sup>35</sup> As a result, from July 2018 to July 2019 alone, 485 people were transferred from Manus Island (93) and Nauru (392).<sup>36</sup>

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<sup>29</sup> This program provides English language tuition to eligible migrants and humanitarian entrants to assist them learn basic English language and settlement skills in preparation for their social and economic participation in Australian society. See Australian Government Department of Education (2019) 'Adult Migrant English Program', <https://www.education.gov.au/adult-migrant-english-program-0>

<sup>30</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 58, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

<sup>31</sup> TAFE institutes are government-owned providers of Vocational Education and Training (VET) courses, which offer complete courses to international students ranging from certificate to postgraduate level. See Studies in Australia (2019) 'Technical and Further Education', <https://www.studiesinaustralia.com/studying-in-australia/what-to-study-in-australia/types-of-education/technical-and-further-education>

<sup>32</sup> Refugee Council of Australia (2016) 'Australia's Response to a World in Crisis: Community Views on Planning for the 2016-17 Refugee and Humanitarian Program', March, p. 58, <https://reliefweb.int/report/australia/australias-response-world-crisis-community-views-planning-2016-17-refugee-and>

<sup>33</sup> SBS (2019) 'Discover Melbourne's Rohingya Community, the Most "Unwanted Community" in the World', <https://www.sbs.com.au/topics/life/culture/feature/faces-rohingya>

<sup>34</sup> Asylum Insights (2019) 'Statistics', [https://www.asyluminsight.com/statistics#.XXd\\_NS2ZO8W](https://www.asyluminsight.com/statistics#.XXd_NS2ZO8W)

<sup>35</sup> Refugee Council Australia (2019) 'Medevac Bill: The Facts', <https://www.refugeecouncil.org.au/umt-bill-facts/>

<sup>36</sup> Asylum Insights (2019) 'Statistics', [https://www.asyluminsight.com/statistics#.XXd\\_NS2ZO8W](https://www.asyluminsight.com/statistics#.XXd_NS2ZO8W)

## MAPPING OF NATIONAL AND INTERNATIONAL ACTORS AND POLICY RESPONSES

The UNHCR plays a key role in maintaining the international refugee protection regime, yet other actors especially the states, have been able to shape the debate in pursuit of their own interest.<sup>37</sup> This has been the case in the context of Australian policies towards asylum seekers and refugees, especially irregular maritime arrivals (IMAs), as outlined above.

However, there have been recent attempts to address some of the current policies. For example, the Australian government partnered with the Australian Red Cross, Australia for UNHCR, CARE Australia, Caritas Australia, Oxfam Australia, Plan International Australia, Save the Children Australia, and World Vision Australia to provide assistance towards vulnerable Rohingya in Myanmar and in Bangladesh.<sup>38</sup>

In 2017, a wide range of actors from across the Australian refugee sector and movement worked together to articulate a platform for advocate reform of Australian refugee policy in 2018 and beyond.<sup>39</sup> The contributors included people from refugee backgrounds, NGOs, community groups, academics and grassroots organisations. These included: the Council of Australia, Academics for Refugees, Amnesty International Australia, Asylum Seeker Advocacy Group, Caritas Australia, ChildFund Australia, International Alliance Against Mandatory Detention, Jesuit Refugee Services, Australian Women in Support of Women on Nauru, Refugee Advocacy Network, and the Humanitarian Group, among many others. The actors focused on five key policy areas: 1) the permanent end to offshore processing, 2) a fair process for claiming asylum, 3) reform of the immigration detention system, 4) a larger and more responsive Refugee and Humanitarian Program, 5) Australia's improved engagement in Asia.

Another example is how Refugee Council of Australia, Save the Children Australia, Amnesty International Australia, Welcoming Australia, Rural Australians for Refugees, and the Australian Churches Refugee Taskforce jointly established the Community Refugee Sponsorship (CRSI), which aims to secure a scheme that would allow ordinary Australian people and community groups to work together to financially sponsor the permanent migration of a refugee or refugee family to Australia and then provide them with practical support during their first year in the country.<sup>40</sup> Sponsors would help refugees with finding and setting up a home, enrolling children in school, opening bank accounts, accessing medical treatment, gaining a driver's license, learning English, securing qualifications, and finding work or starting a business. Sponsorship often evolves into long-lasting friendships, with sponsors providing emotional support as well. It is hoped that community sponsorship could be used to expand Australia's national response.

<sup>37</sup> Luxford, C. (2014) 'Losing Control: UNHCR and Australia's Contestation of the International Refugee Regime', <http://www.internationalaffairs.org.au/news-item/losing-control-unhcr-and-australias-contestation-of-the-international-refugee-regime/>

<sup>38</sup> Ahmad, S. T. (2018) 'The Australian Government Partnered with Eight Humanitarian Agencies to Help Rohingya', SBS, <https://www.sbs.com.au/language/english/the-australian-government-partnered-with-eight-humanitarian-agencies-to-help-rohingya>

<sup>39</sup> Refugee Council of Australia (2018) 'A Platform for Change: Joint Statement from Australia's Refugee Sector', p. 1, 8, <https://www.refugeecouncil.org.au/platform-change/>

<sup>40</sup> Refugee Council of Australia (2019) 'A New Model for Community Refugee Sponsorship in Australia', <https://www.refugeecouncil.org.au/new-model-community-sponsorship/>

## MAPPING AND ANALYSIS OF CIVIL SOCIETY ORGANISATIONS (CSOs) ENGAGED WITH THE ROHINGYA

Not surprisingly, there is an extensive and well organised network of asylum seeker and refugee support NGOs/CSOs in Australia, based at state, usually the capital city level. For example, there are almost three dozen such organisations affiliated to the Asia-Pacific Refugee Rights Network (APRRN).<sup>41</sup> An APRRN convened Australia, New Zealand and the Pacific Working Group highlight issues that Australia and New Zealand should put forward through the Bali Process<sup>42</sup> and the media.

The predominant CSO activities are legal aid, advocacy, and signposting/advice, with less capacity in service delivery, social support and settlement services. Meanwhile, the Refugee Council of Australia provides a federal (ie national) voice.

Whilst the Rohingya refugee and asylum seeker population in Australia is relatively small compared with other groups, organisations offering legal advice and other assistance experience a disproportionately high demand for their services from Rohingya, estimated by some organisations to be about 15% of the case load.<sup>43</sup> There are two reasons for this. First, this is because the complexity of Australia's asylum system has particularly pernicious impacts for asylum seekers arriving by boat; since this is the case for the overwhelming majority of Rohingya they need special legal advice and assistance. Second, in any case, language and illiteracy issues, noted above make accessing the legal apparatus particularly difficult for them without professional advice. These two factors combine in posing a significant demand for translators of which there is a shortfall. Few Rohingya have the fluency to undertake translations related to legal documentation, and those that do tend to move on in their professional lives and away from this informal work.

More generally, it appears that Rohingya (and possibly other Myanmar refugee groups as well), remain reliant on Australian, rather than their own, community-based organisations and social capital. There are several reasons for this. The small size of the Rohingya community, and its relative dispersal, are reflected in its weak resource base: this fragmentation and lack of a 'critical mass' acts as a constraint on the development of their own CSOs and certainly makes developing a federal (ie national) level capacity impossible. The fact that Rohingya are not long established in Australia (at least in significant numbers), combined with severe restrictions on travel outside Australia for those on TPVs and SHEVs, militate against the establishment of a self-supporting diasporic community built on previous generations. In contrast, the pressure to work to generate remittance income to family in Myanmar or in other host countries in the region leaves little time for social or community engagement or funds for social organisation. However, the main capacity constraints are the precarity and vulnerability of Rohingya refugees themselves, as discussed earlier. The pernicious asylum system with its severe limitations on accessing basic needs - health care, social welfare, employment, and especially housing - consign most Rohingya to existential survival. Coping with life in absence of family left behind or killed in Myanmar or in refugee camps in Bangladesh, for example, exerts a heavy emotional toll.

<sup>41</sup> Asia Pacific Refugee Rights Network (2019) 'Current Members', <https://aprrn.info/members/current-members/>. See also Asia Pacific Refugee Rights Network (2019) 'Australia, New Zealand & the Pacific', <https://aprrn.info/our-work/geographic-working-groups/australia-new-zealand-the-pacific/> and Asia Pacific Refugee Rights Network (2019) 'Thematic Working Groups', <http://aprrn.info/our-work/thematic-working-groups/> See Volume 1 Section 4.1.2.

<sup>42</sup> An official international forum on people smuggling, trafficking in persons and related transnational crime See <https://www.baliprocess.net>

<sup>43</sup> e.g Refugee Advice and Casework Service, [https://www.racs.org.au/wp-content/uploads/2019/04/RACS-annual-report\\_v8-compressed.pdf](https://www.racs.org.au/wp-content/uploads/2019/04/RACS-annual-report_v8-compressed.pdf) and Asylum Seeker Resource Centre Melbourne, <https://www.asrc.org.au/>

Without time or financial resources it is extremely difficult to develop social organisations beyond a rudimentary and informal level. High levels of illiteracy, as discussed above, which make it very difficult to engage the country's asylum process compound their precarity, as well as making it hard to get a footing in Australian society. These circumstances place great stress on the emotional wellbeing of Rohingya families. 'Cultural leakage', the loss of educated Rohingya to their communities as they assimilate and lose the mother tongue and their social identity, also contributes to a loss of social capital and continuity necessary to establish community based organisations. However, the counter to this is that Rohingya are now into the third generation with better knowledge of Australia and thus better capacity for better advocacy. Nevertheless, taken together, these conditions drain Rohingya of the material and emotion resources required to establish basic community support structures.

There is, nevertheless, a small number of Burmese or single ethnic group CSOs<sup>44</sup>, and interview evidence suggests that more recently arrived Rohingya are gradually becoming more organised and established in the main cities in Australia where they have settled and notably in Sydney, Melbourne and Adelaide. Given the size of Australia, these CSOs tend to be based in specific cities, rather than national entities. These communities now have membership organisations but they are all volunteer-led, with informal management structures and organisation. They may receive occasional small grants from RCA. They support mosques and football teams and informal groupings of co-villagers from Myanmar. The organisations support new arrivals, assist in building community networks, hold cultural events, and raise awareness of issues and developments in Myanmar.<sup>45</sup> They include some organisations that work specifically to represent the Rohingya community, for example the Burmese Rohingya Community in Australia (BRCA), (established in 1999)<sup>46</sup>, the Burmese Rohingya Association in Queensland Australia (BRAQA), as well as several Karen and Chin CSOs<sup>47</sup>, and also CSOs for the Burmese/Myanmar community as a whole.<sup>48</sup>

The Burmese Rohingya Community in Australia (BRCA), based in Sydney is perhaps the best established Rohingya CSO in Australia. It has an avowedly political advocacy mission to "work towards the realization of the national democratic rights of the Rohingya in solidarity with national democratic movements and the organization of the Rohingyas in Burma," as well as other ethnic minority organisations seeking to establish the recognitions of their citizenship rights in Burma.<sup>49</sup> Yet it has also hosted a range of community cultural events and welfare support. However, because of resource limitations (staff and finances), it has scaled back community service activities and now largely focuses on advocacy, developing solidarity and unity. Because of its longstanding presence, BRCA sometime acts a validating organisation for establishing the bona fides, with the Immigration Authorities, of Rohingya seeking TPV and SHEV. It has lobbied for quota resettlement, which has taken place in Queensland, and has encouraged this new Rohingya community to establish its own CSO the BRAQA.

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<sup>44</sup> For example the Burmese Association of Western Australia was incorporated in 1969, <https://www.bawa.org.au/index.html>

<sup>45</sup> Refugee Council of Australia (2017) 'Key Issues for Refugees from Myanmar (Burma)', <https://www.refugeecouncil.org.au/myanmar-burma/>

<sup>46</sup> See <http://brca.org.au/>

<sup>47</sup> e.g. Australian Karen Organization, Australian Karen Foundation, Karen Culture and Social Support Foundation, Kachin Association of Australia, Australia Chin Community, Chin Community Victoria, and also Zo Community Australia

<sup>48</sup> e.g. Australia-Burma Society, Burmese Association of Western Australia

<sup>49</sup> Burmese Rohingya Community in Australia (2019) <http://brca.org.au>

## SUMMARY AND CONCLUSION

Australia has traditionally been a resettlement country for refugees. In recent years, it has implemented strict border protection policies, most notably offshore processing of refugees. Currently, the country's main priority is still to facilitate safe repatriation of Rohingya refugees to their country of origin. Although this is infeasible, it sets the tone for the repressive and punitive conditions to which they are subjected by the country's refugee policies. Consequently Rohingya are amongst the most deprived of all refugee groups in Australia.

Countering these harsh conditions, an extensive network of Australian NGOs provides legal assistance for asylum and visa claims and a range of social support services to Rohingya and other refugees. A handful of small, Rohingya volunteer-led CSOs is gradually emerging. But this is heavily constrained by a very weak resource base, the lack of 'critical mass', the precarity of Rohingya. As a result the CSOs focus on political advocacy work and not the more expensive service and welfare functions.

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# Bangladesh

- Not party to either the 1951 Convention relating to the Status of Refugees or its 1967 Protocol; no national legislation to deal with refugee issues
- 906,690<sup>1</sup> stateless persons/refugees = 0.53 percent of total estimated population of 168.3 million
- The overwhelming majority of the protracted refugee population are Rohingya, from Rakhine State of Myanmar.
- Rohingya registered before 1992 are living in two camps in southern Bangladesh while the remainder are nonregistered and live in settlements (makeshift sites outside the camps) and slums in the districts of Cox's Bazar, Chittagong, and Chittagong Hill Tracts.

## CONTEXT AND OVERVIEW OF THE ROHINGYA DIASPORA IN BANGLADESH

The overwhelming majority of refugees in Bangladesh are Rohingya from Myanmar. Now totalling 906,690 this constitutes about 76% of all registered Rohingya refugees world-wide, and 80% of all refugees from Myanmar, rendering Bangladesh the eighth largest refugee hosting country in 2018.<sup>2</sup>

The Rohingya population in Bangladesh is longstanding with episodic arrival, repatriation to Myanmar but repeated return to exile; their presence is demarcated in two distinct phases – pre- and post- 2017.<sup>3</sup>

About 30,000 Rohingya refugees registered by the United Nations High Commissioner for Refugees (UNHCR) before 1992 have been given temporary asylum by the government of Bangladesh and receive assistance in camps. The Rohingya who arrived subsequently were not registered as refugees and live in informal settlements near the camps or in towns and cities.<sup>4</sup> After the outbreak of renewed violence against the Rohingya in Myanmar beginning in June 2012, many fled their homeland again, but Bangladesh did not allow them in.<sup>5</sup>

<sup>1</sup> For consistency of sources in this report this is the total recorded in UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 65 <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>. However, the current number of Rohingya in Bangladesh in July 2019 was 912,373 UNHCR (2019) Operational Portal, Refugee Response in Bangladesh, as at 14/08/2019 [https://data2.unhcr.org/en/situations/myanmar\\_refugees](https://data2.unhcr.org/en/situations/myanmar_refugees)

<sup>2</sup> UNHCR (2019) Global Trends 2018, Geneva: UNHCR, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

<sup>3</sup> See e.g. UNHCR (2018) Culture, Context and Mental Health of Rohingya Refugees A review for staff in mental health and psychosocial support programmes for Rohingya refugees, Geneva: UNHCR p. 13-15, <https://www.unhcr.org/5bbc6f014.pdf>

<sup>4</sup> Many of the registered Rohingya (ie those arriving before 1992), have relatives living outside the camps, which results in a close network between some of the camp residents and those outside. Danish Immigration Services (2011), 'Rohingya Refugees in Bangladesh and Thailand, Fact Finding Mission to Bangladesh and Thailand'. [www.nyidanmark.dk/NR/rdonlyres/B08D8B44-5322-4C2F-9604-44F6C340167A/0/FactfindingrapportRohingya180411.pdf](http://www.nyidanmark.dk/NR/rdonlyres/B08D8B44-5322-4C2F-9604-44F6C340167A/0/FactfindingrapportRohingya180411.pdf)

<sup>5</sup> Ashraf, A., and J. Fareha (2013) 'Durable Solutions to the Protracted Refugee Situation: The Case of Rohingyas in Bangladesh', Journal of Indian Research Vol. 1, No. 4, [www.academia.edu/5886047/Durable\\_Solutions\\_to\\_the\\_Protracted\\_Refugee\\_Situation\\_the\\_Case\\_of\\_Rohingyas\\_in\\_Bangladesh](http://www.academia.edu/5886047/Durable_Solutions_to_the_Protracted_Refugee_Situation_the_Case_of_Rohingyas_in_Bangladesh)

By 2017 the Rohingya population had plateaued at about 230,000.

Defining a second dramatic phase of their presence in Bangladesh, in late August 2017, large scale and extremely violent Myanmar military security operations in Rakhine State, which an independent UN mission concluded were serious crimes under international law<sup>6</sup>, precipitated an enormous and rapid exodus of Rohingya to Bangladesh. Over 655,500 refugees arrived by the end of that year, the largest and fastest refugee influx seen in the region for over two decades. Rohingya refugees continued to flee Myanmar and seek protection in Bangladesh but, now, at a much slower pace.<sup>7</sup> With subsequent arrivals this took the Rohingya refugee population in that country to over 912,000 in mid-2019.

Under Myanmar's nationality law, the Rohingya are not considered citizens of Myanmar; as stateless persons, their extreme vulnerability under international law<sup>8</sup> is compounded by the fact that Bangladesh does not recognise them as refugees either but as illegal migrants, referring to them as 'forcibly displaced Myanmar nationals'.<sup>9</sup> Whilst keeping open its borders, thus allowing the Rohingya to access the country, nevertheless Bangladesh maintains a firm stance on their temporary status, their encampment, and pressure on the refugees and the international community for their repatriation.<sup>10</sup> However since 2019, Bangladesh has not accepted new refugees inside its territory with many thousands trapped in the no man's land between the Myanmar and Bangladesh border.<sup>11</sup>

Despite the contested nature of their statelessness<sup>12</sup>, significantly, in 2019 the UNHCR changed its designation of the Rohingya in Bangladesh. 'Due to the extraordinary size of the newly displaced stateless population in Bangladesh, UNHCR considered it important to reflect, on an exceptional basis, the dual status that this population group possesses as both refugees and stateless persons'<sup>13</sup>, (emphasis added).

Irrespective of their status, there is virtually no prospect that the refugee situation in Bangladesh will be resolved by a durable solution. The government of Bangladesh considers repatriation to be the imperative and only solution.<sup>14</sup> Yet clearly this is neither a feasible nor viable option especially after the extreme violence of 2017, the continuing volatile situation in Rakhine State and the lack of political will of the government of Myanmar to provide the Rohingya with meaningful paths to citizenship. At the same time Bangladesh continues to reject local integration: for example it has put restrictions on mixed marriages between Rohingya refugees and Bangladeshi citizens through government orders

6 A/HRC/39/64, 2018, Report of the Independent International Fact-Finding Mission on Myanmar, p. 16, paragraph 88. [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A\\_HRC\\_39\\_64.docx](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.docx)

7 UNHCR (2018) Global Trends 2017, Geneva: UNHCR, pps. 24-25, <https://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>

8 de Chickera, A. (2018) 'Statelessness and identity in the Rohingya refugee crisis' in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73, pps. 7-10, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)

9 Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

10 IRIN Analysis (2013) 'How Bangladesh Aid Restrictions Impact Rohingyas', [www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas](http://www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas)

11 Lynn, N. (2018) 'Myanmar, Bangladesh to verify 'zero line' refugees, says MOFA official', <https://frontiermyanmar.net/en/myanmar-bangladesh-to-verify-zero-line-refugees-says-mofa-official>

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13 UNHCR (2019) Global Trends 2018, Geneva: UNHCR, page 69, footnote 14, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

14 Bowen, M. (2018) 'Rohingya refugees in Bangladesh: the humanitarian response The current context to the Rohingya crisis in Bangladesh', in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 pps. 5-6, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)

and letters to the administrative authorities, allegedly to prevent Rohingya from using marriage certificates to acquire citizenship and passports.<sup>15</sup> Finally, the resettlement door from Bangladesh – the third durable solution - is also closed. Under the assumption that the resettlement programme would attract an influx of people from Myanmar, in 2010 the government of Bangladesh suspended all resettlement activities.<sup>16</sup>

A recent development, which may be of potentially great significance, is the rising profile of China. It has become more involved in pursuing solutions to the Rohingya displacement through diplomatic activity with the various state parties, and logistical/development assistance to facilitate return

Because of the living conditions in Bangladesh, thousands of Rohingya travel by sea through irregular means toward Australia, Malaysia, and Thailand. Smugglers and traffickers have also sent Rohingya to India, Pakistan, Saudi Arabia, and the United Arab Emirates.<sup>17</sup> Often traveling without proper documentation, they are at high risk of extortion, exploitation, and of being trafficked, and many have perished at sea.

## REFUGEE LAW AND PROTECTION

### National legislation

Bangladesh is party to neither the 1951 Refugee Convention nor its 1967 Protocol.<sup>18</sup> Bangladesh is, however, party to several of the international instruments which convey rights to some types of protection but which carry little or no weight for refugees; these include the International Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Rights of the Child, and, since 2014, the Convention on the Rights of Migrant Workers and Their Families, which all include rights against discrimination and for protection from persecution.<sup>19</sup> The Constitution is silent on the rights of refugees and stateless people,<sup>20</sup> and there is no domestic law to regulate the administration of refugee affairs or to guarantee refugee rights.<sup>21</sup> In the absence of national legislation with specific provisions for refugees, the government relies on the Foreigners Act 1946 for all refugee-related matters.

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<sup>15</sup> In 2014, a government order issued by the Inspector General of the Registration of Marriages not only banned union between Bangladeshi nationals and Rohingya but also, retrospectively, marriage between Rohingya themselves, meaning registered marriages stand void; these restrictions are a violation of universal rights to marry and form a family as enshrined in major international instruments that Bangladesh has ratified.

<sup>16</sup> Resettlement was not available for Rohingya refugees in Bangladesh until 2006 and stopped in 2010, and thus only operational for five years. In 2013 the government of Bangladesh indicated the possibility of reviewing its position on resettlement, but no changes have occurred through to the present day.

<sup>17</sup> Lewa, C. (2008) 'Asia's New Boat People,' in 'Burma's Displaced People,' Forced Migration Review 30, pps. 40-41, [www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR30/40-41.pdf](http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR30/40-41.pdf)

<sup>18</sup> Foreigners Act (1946) [http://bdlaws.minlaw.gov.bd/pdf/216\\_\\_\\_.pdf](http://bdlaws.minlaw.gov.bd/pdf/216___.pdf)

<sup>19</sup> Some of these conventions have been domesticated. For example, in line with the Convention on the Rights of the Child, Bangladesh enacted the Children Act 2013. In line with the Convention on the Elimination of all forms of Discrimination Against Women, there is also a domestic law on Prevention of Women and Children Repression Act 2000. In practice, some domestic laws are applicable to any person in the territory, whereas others are limited to citizens. For the protection of refugees, the UNHCR largely relies on the constitutional provisions that allow protection for all and a few other domestic laws that are not limited to citizens.

<sup>20</sup> Azad, A., and A. J. Tazrin (2013) 'Employment and Integration of the Stateless: The Case of Rohingyas in Cox's Bazar,' The Chittagong University Journal of Social Sciences, Vol. XXVIII, [www.academia.edu/5847821/Employment\\_and\\_Integration\\_of\\_the\\_Stateless\\_the\\_Case\\_of\\_Rohingyas\\_in\\_Coxs\\_Bazar](http://www.academia.edu/5847821/Employment_and_Integration_of_the_Stateless_the_Case_of_Rohingyas_in_Coxs_Bazar)

<sup>21</sup> Phiri, P. (2008) 'Rohingyas and Refugee Status in Bangladesh,' in 'Burma's Displaced People,' Forced Migration Review 30, pps. 34-36, <https://www.fmreview.org/burma/phiri>

## Access to protection

Although the Constitution in Article 31 provides for the 'protection of all persons on its territory',<sup>22</sup> in reality registered and unregistered refugees are two populations having different status. The protection of the small number of registered pre-1992 Rohingya refugees relies on constitutional provisions and some domestic laws that are applicable to any person in the territory and not limited to citizens; for example, registered refugees in the camps have access to the court for extreme violations of their rights. The rights granted to them are, however, limited and do not always comply with international standards. On the other hand, unregistered or undocumented refugees – the overwhelming majority of Rohingya – have no access to protection at all given that the government of Bangladesh does not recognize them as refugees and treats them as illegal immigrants under the Foreigners Act 1946. Because of this 'illegal' immigrant status, there is constant fear of arrest with potential detention for up to five years for illegal entry into Bangladesh; this situation bars them from seeking redress from any legal authority, for example when crime is committed against them. Therefore, in practice this population is de facto deprived of its rights.<sup>23</sup>

For the government of Bangladesh, Rohingya repatriation has always been its core policy objective which further underpins the precarious conditions of their protection. There are many reports (pre-2017), that the Bangladeshi authorities were turning Rohingya back at the border, in violation of the entrenched non-refoulement principle of customary international law<sup>24</sup>, and large numbers were involuntarily returned in the 1970s and 1990s.<sup>25</sup> Since 2017 emergency the government has substantially ramped up its rhetoric on repatriation. For example, further evidence of the pressure which Bangladesh sustains is a Memorandum of Understanding (MoU) finalised between the Government of Bangladesh and the UNHCR in April 2018, setting out, inter alia, protocols for the voluntary return of Rohingya refugees, albeit contingent on the requirement that conditions in Myanmar are conducive to return and the recognition that such conditions do not pertain.<sup>26</sup> This stance sits alongside countless 'failed' exercises of voluntary repatriation.<sup>27</sup>

Nevertheless, and despite this stance, by July 2019, over 374,271 Rohingya – some 43% of the estimated total population – had received identity cards through the ongoing joint government of Bangladesh-UNHCR registration exercise.<sup>28</sup>

With the exception of the very small number of pre-1992 registered Rohingya refugees living outside camps, all the Rohingya are confined to refugee camps – some 30,000 from earlier influxes in the two government camps of Nayapara and Kutupalong in Cox's Bazaar. These two main camps are now surrounded by new spontaneous

<sup>22</sup> The 1972 Constitution of the People's Republic of Bangladesh, [www1.umn.edu/humanrts/research/bangladesh-constitution.pdf](http://www1.umn.edu/humanrts/research/bangladesh-constitution.pdf)

<sup>23</sup> UNHCR (2012) 'Submission for the Office of the High Commissioner for Human Rights' Compilation Report—Universal Periodic Review for Bangladesh,' Geneva: UNHCR, [www.refworld.org/pdfid/508640242.pdf](http://www.refworld.org/pdfid/508640242.pdf)

<sup>24</sup> The Equal Rights Trust (2012) 'Burning Homes, Sinking Lives, A Situation Report on Violence against Stateless Rohingya in Myanmar and Their Refoulement from Bangladesh,' [www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20-%20Burning%20Homes%20Sinking%20Lives.pdf](http://www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20-%20Burning%20Homes%20Sinking%20Lives.pdf)

<sup>25</sup> Crisp, J. (2018) 'Primitive people': the untold story of UNHCR's historical engagement with Rohingya refugees', in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 pps. 13-16, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)

<sup>26</sup> See e.g. UNHCR (2018) 'Bangladesh and UNHCR agree on voluntary returns framework for when refugees decide conditions are right', <https://www.unhcr.org/uk/news/press/2018/4/5ad061d54/bangladesh-unhcr-agree-voluntary-returns-framework-refugees-decide-conditions.html>

<sup>27</sup> UNHCR Refworld (2018) 'Bangladesh: Rohingya repatriation fails amid protests', <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5c2cc3ad11&skip=0&query=bangladesh&querysi=rohingya&searchin=fulltext&sort=relevance>

<sup>28</sup> See e.g. (UNHCR 2017) 'Bangladesh: Thousands of Rohingya escape refugee camps in search of jobs', <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5a9427c84&skip=0&query=bangladesh&querysi=rohingya&searchin=fulltext&sort=relevance>

settlements of post-2017 arrivals. The Kutupalong refugee settlement is the largest of its kind in the world, with more than 600,000 people living in an area of just 13 square kilometres.

Refugee women have faced serious protection issues in Bangladesh over many years, and undocumented refugee women and girls are particularly vulnerable to sexual and physical attacks. Women-headed households are forced to engage in begging and sex work to survive. Refugee children and young girls are also often used, and sometimes trafficked, for domestic work. Alongside the prevailing impossibility to gain legal redress, refugee women are often reluctant to report sexual violence, and their lack of access to the police or justice system increases the risk of abuse.<sup>29</sup>

Since 2017, the protection of women and children has been a core element of the international Joint Response Plan (JRP) for Rohingya Humanitarian Crisis.<sup>30</sup> Nevertheless security concerns for women persist.<sup>31</sup>

Perhaps indicative of the protection challenges posed by the government of Bangladesh's uncompromising attitude are its controversial proposals to relocate up to 100,000 Rohingya from the camps at Cox' Bazar to the flood- and cyclone-prone silt island of Bhasan Char in the Meghna river estuary, 30 miles from the mainland and accessible only by boat.<sup>32</sup> Ostensibly to relieve pressure on the densely overpopulated and environmentally degraded locations where most refugees are encamped in Cox's Bazar, parallels with Australia's offshore immigration detention and processing centre in Naru are inescapable.

In general a hardening of attitudes to the Rohingya by the Government of Bangladesh is evident. The UN OHCHR has recently expressed serious concerns about tight restrictions and an increased military presence at Rohingya refugee camps as well as the ban or suspension of a number of NGOs.<sup>33</sup>

## Freedom of movement

Although there is no law, regulation, or formal policy, registered refugees are arbitrarily confined to camps and must seek permission before leaving the camps;<sup>34</sup> only movement between camps is tolerated.<sup>35</sup> The Foreigners Act (1946) allows for the arrest and detention of foreigners, without exception for refugees, for security reasons and based on national immigration considerations. These movement restrictions and prohibitions severely limit the opportunities to

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29 Refugees International (2011) 'Bangladesh: The Silent Crisis, Field Report,' [http://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/569e68cc89a60a34ab7edebf/1453222093514/041911\\_Bangladesh\\_The\\_Silent.pdf](http://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/569e68cc89a60a34ab7edebf/1453222093514/041911_Bangladesh_The_Silent.pdf)

30 Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, pps 56-59, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

31 IOM (2019) 'Women Refugees Speak Up in Bangladesh's Rohingya Camps', Sept 6, [https://www.iom.int/news/women-refugees-speak-bangladeshs-rohingya-camps?utm\\_source=IOM+External+Mailing+List&utm\\_campaign=06645ed76b-EMAIL\\_CAMPAIGN\\_2019\\_09\\_06\\_07\\_37&utm\\_medium=email&utm\\_term=0\\_9968056566-06645ed76b-43573589](https://www.iom.int/news/women-refugees-speak-bangladeshs-rohingya-camps?utm_source=IOM+External+Mailing+List&utm_campaign=06645ed76b-EMAIL_CAMPAIGN_2019_09_06_07_37&utm_medium=email&utm_term=0_9968056566-06645ed76b-43573589)

32 The Guardian (2019) Bangladesh prepares to move Rohingya to island at risk of floods and cyclones, July 19, <https://www.theguardian.com/global-development/2019/jul/19/bangladesh-prepares-to-move-rohingya-to-island-at-risk-of-floods-and-cyclones> and Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, p. 12, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

33 OHCHR (2019) 'Bangladesh: UN experts concerned by crackdown at Rohingya refugee camps', Sept 16, <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24994&LangID=E>

34 Kiragu, E., Li Rosi, A., and Morris, T. (2011) 'States of Denial, A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh', UNHCR Policy Development and Evaluation Service, Geneva: UNHCR, [www.unhcr.org/4ee754c19.pdf](http://www.unhcr.org/4ee754c19.pdf)

35 United States Committee for Refugees and Immigrants (2009) World Refugee Survey, 'Bangladesh', [www.refworld.org/docid/4a40d29f7f.html](http://www.refworld.org/docid/4a40d29f7f.html)

take up work outside the camps, putting registered refugees who work illegally in danger of abuse and arrest.<sup>36</sup>

For the most part the Rohingya remain socially isolated both from Bangladeshi society and because of their concentration and encampment in the Cox's Bazar area. Nevertheless, a small number of wealthier Rohingya have settled in Chittagong city and reportedly hire other Rohingya.<sup>37</sup>

## Right to work and livelihoods – refugee and labour and employment law

In line with its stance on refugee repatriation and temporariness, the government's policy has always been to prevent refugees' access to labour markets,<sup>38</sup> and remains so post the 2017 emergency.

Even refugees registered before 1992 have no formal right to work in Bangladesh and are not covered by any Bangladeshi labour protection law; they are denied access to local markets and to credit from Bangladesh's micro-finance institutions.<sup>39</sup> Nevertheless, anecdotal evidence suggests that many thousands of Rohingya have been working illegally in the informal sector<sup>40</sup>, often received tacit approval from local community leaders and authorities to access livelihood activities.<sup>41</sup> Yet this renders them highly vulnerable to exploitation, rights abuse and subsistence wages. Even so, at various junctures registered refugees have been provided with training opportunities to start up small businesses in the camps in attempts to promote self-reliance.<sup>42 43</sup> However, this training offered limited prospects and these strategies have never been effectively implemented because the government authorities halted or suspended projects and activities that could enable the refugees to earn an income and acquire skills. By 2011, with the exception of rickshaw repair, income-generating activities within the camps were banned; the authorities also closed the majority of small shops run by the refugees and allowed only limited skills-development and training opportunities to continue.<sup>44</sup>

<sup>36</sup> United States Committee for Refugees and Immigrants (2009) World Refugee Survey 'Bangladesh', [www.refworld.org/docid/4a40d29f7f.html](http://www.refworld.org/docid/4a40d29f7f.html) and IRIN Analysis (2013) 'How Bangladesh Aid Restrictions Impact Rohingyas', [www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas](http://www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas)

<sup>37</sup> Imtiaz, A. (2010) 'The Plight of the Stateless Rohingyas: Responses of the State, Society & the International Community', University Press Limited

<sup>38</sup> UNHCR and WFP (2013) 'The Contribution of Food Assistance to Durable Solutions in Protracted Refugee Situations; Its Impact and Role in Bangladesh: A Mixed Method Impact Evaluation', [www.unhcr.org/510fceb9.pdf](http://www.unhcr.org/510fceb9.pdf)

<sup>39</sup> UNHCR and WFP (2013) 'The Contribution of Food Assistance to Durable Solutions in Protracted Refugee Situations; its Impact and Role in Bangladesh: A Mixed Method Impact Evaluation', [www.unhcr.org/510fceb9.pdf](http://www.unhcr.org/510fceb9.pdf)

<sup>40</sup> IRIN, (2008) 'Bangladesh: Rohingya refugee camps improved', <https://www.refworld.org/docid/491946b8c.html>

<sup>41</sup> UNHCR and WFP (2013) 'The Contribution of Food Assistance to Durable Solutions in Protracted Refugee Situations; Its Impact and Role in Bangladesh: A Mixed Method Impact Evaluation', [www.unhcr.org/510fceb9.pdf](http://www.unhcr.org/510fceb9.pdf) This assessment found that 'both registered and non-registered refugees were economically active...while unregistered Rohingyas who are largely without assistance had to work to meet their basic needs, despite the legal restrictions, and their implications, for both groups'.

<sup>42</sup> BRAC, Save the Children, UNHCR, World Vision, and World Food Programme (2018) 'Self Reliance Strategy for Rohingya Refugees and the Host Community, Cox's Bazar District, Bangladesh, 2010-2013', [https://fscluster.org/sites/default/files/documents/self\\_reliance\\_assessment\\_report-final.pdf](https://fscluster.org/sites/default/files/documents/self_reliance_assessment_report-final.pdf)

<sup>43</sup> European Commission, 'Protection, Essential Services and Durable Solutions for Refugees in Bangladesh, Action Document', [https://ec.europa.eu/europeaid/protection-essential-services-and-durable-solutions-refugees-bangladesh-phase-iv-action-document\\_e](https://ec.europa.eu/europeaid/protection-essential-services-and-durable-solutions-refugees-bangladesh-phase-iv-action-document_e)

<sup>44</sup> In Kutupalong camp, some 75 refugee hawkers (micro-vendors) were forced to abandon their businesses while several training courses were suspended. Kiragu, E., A. Li Rosi, T. Morris (2011) 'States of Denial, A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh', UNHCR Policy Development and Evaluation Service, Geneva: UNHCR, [www.refworld.org/docid/4a40d29f7f.html](http://www.refworld.org/docid/4a40d29f7f.html)

Bangladesh's stance on refugee employment has not changed since the 2017 emergency. Continuing the limited traction for refugee employment noted in a recent draft ILO report<sup>45</sup>, the JRP is focused solely on an 'orthodox' humanitarian multi-sectoral response not sustainable livelihoods. Despite a small section in the JRP on the humanitarian development nexus (HDN)<sup>46</sup>, the 2019 JRP for Rohingya Humanitarian Crisis<sup>47</sup> remains completely silent on employment, income generation and livelihoods for refugees and their hosts. The refugees have not benefited from the wider economic growth in the country.<sup>48 49</sup>, This default is consistent with the government of Bangladesh's long-standing and hard line policy that prevents the Rohingya refugees from working.

In addition to the robust legal constraints, illiteracy and lack of skills have also made it difficult for Rohingya to find jobs.<sup>50</sup>

Rohingya children are not allowed to attend public schools in Bangladesh – ironically echoing the situation in Myanmar where they were also denied access to education further reinforcing the high levels of Rohingya illiteracy.<sup>51</sup> Although they have been tacitly enrolled for many years, the Government tightened controls after the 2017 influx leading to the expulsion of many Rohingya children. Without public provision, instead a range of International humanitarian agencies and community based organisations deliver education of varying quality (CBO) in schools and informal 'learning centres' in the camps; these are not allowed to teach the Bangladesh curriculum – a policy implicitly intended to thwart social interchange and integration. UNICEF estimates that there are about 500,000 children under the age of 18 living in the camps, with about 300,000 aged 3 to 14.<sup>52</sup> More than 145,000 children already attend UNICEF provided facilities with plans to expand capacity to 260,000 children in 2019 through an extended network of 2,500 Learning Centres.

## MAPPING OF NATIONAL AND INTERNATIONAL ACTORS AND POLICY RESPONSES

Within the government of Bangladesh the Ministry of Foreign Affairs leads the coordination of the government's humanitarian response and the modalities of international coordination, first established in a 'National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals' in 2013. The Ministry of Food and Disaster Management is the lead Ministry mandated with the operational co-ordination and administration of refugee affairs under which the

<sup>45</sup> ILO (2019) 'Crisis Migration: Country Brief Bangladesh (April 2019)', draft unpublished, Geneva: ILO.

<sup>46</sup> HDN is the core transformative element now embodied in almost all international refugee response programmes and the Comprehensive Refugee Response Framework (CRRF) apparatus.

<sup>47</sup> Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, pps 23, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

<sup>48</sup> Bangladesh has one of the fastest growing world economies, averaging more than 6% pa over recent years - International Monetary Fund (2019), 'Bangladesh Economic and Financial Indicators', <https://www.imf.org/en/Countries/ResRep/BGD>

<sup>49</sup> Ashraful, A., and J. Fareha (2013) "Durable Solutions to the Protracted Refugee Situation: The Case of Rohingyas in Bangladesh," Journal of Indian Research Vol. 1, No. 4.

<sup>50</sup> Imtiaz, A. (2010) 'The Plight of the Stateless Rohingyas: Responses of the State, Society & the International Community', University Press Limited.

<sup>51</sup> Burmese Rohingya Organisation UK (BROUK) (2018) The Right to Education Denied for Rohingya Refugees in Bangladesh, London, <https://burmacampaign.org.uk/media/The-Right-to-Education-Denied-for-Rohingya-Refugees-in-Bangladesh.pdf>

<sup>52</sup> UNICEF (2019) 'More than 145,000 Rohingya refugee children return to school in Bangladesh refugee camps as new school year starts', January 24, <https://www.unicef.org/press-releases/more-145000-rohingya-refugee-children-return-school-bangladesh-refugee-camps-new>

Office of the Refugee Relief and Repatriation Commissioner (RRRC) oversees camp administration.<sup>53</sup>

The UNHCR's legal status in the country is based solely on a Memorandum of Understanding concluded in 1993 (and extended on an annual basis since then which 'provides for an ad hoc environment of cooperation with Government institutions and, [consequently] an insecure and unpredictable environment for refugees as well as for other groups of Rohingya from Rakhine State living in Bangladesh'.<sup>54</sup> Voluntary repatriation has the main focus of the MoU at least until 2017.

Under this MoU the UNHCR has provided a broad range of protection activities (including registration, child protection, protection from sexual and other forms of gender-based violence, identification and response, legal protection), and life-sustaining assistance (education, health, livelihood, and so on), but only to refugees residing in the two official camps.<sup>55</sup>

Accordingly, while the UNHCR considered the larger group of undocumented Rohingya to be of concern to the Office, based on their need for international protection and refugee-like situation, it was not, however, permitted to register newly arriving Rohingya since 1992 and was not allowed to support them with material assistance.<sup>56</sup> Some NGOs provided assistance to undocumented Rohingya, and their programmes included the local Bangladeshi population as well as the Rohingya.<sup>57</sup> However, in July 2012, the government of Bangladesh issued an order barring NGOs from assisting unregistered refugees.<sup>58</sup>

Despite their international protection needs as refugees based on the UNHCR's global mandate, the government of Bangladesh had mandated the IOM to implement some of the activities in the 'National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals in Bangladesh,' on the basis that the 300,000–500,000 undocumented Rohingya were all economic migrants.<sup>59</sup>

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<sup>53</sup> Bowen, M. (2018) 'Rohingya refugees in Bangladesh: the humanitarian response The current context to the Rohingya crisis in Bangladesh', in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 pps. 5-6, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf) and United States Committee for Refugees and Immigrants (2009) World Refugee Survey 'Bangladesh', [www.refworld.org/docid/4a40d29f7f.html](http://www.refworld.org/docid/4a40d29f7f.html) and UNHCR (2019) UNHCR Bangladesh - Operational Update External - 30 June 2019 Operational Update <https://data2.unhcr.org/en/documents/details/70365>

<sup>54</sup> UNHCR (2012) 'Submission for the Office of the High Commissioner for Human Rights' Compilation Report—Universal Periodic Review for Bangladesh,' Geneva: UNHCR, p. 3, [www.refworld.org/pdfid/508640242.pdf](http://www.refworld.org/pdfid/508640242.pdf)

<sup>55</sup> UNHCR (2015) "Global Focus Operations—South-East Asia-Bangladesh," [www.unhcr.org/pages/49e487546.html](http://www.unhcr.org/pages/49e487546.html)

<sup>56</sup> The UNHCR, however, advocated for the prevention of statelessness, more self-reliance opportunities, and durable solutions for these undocumented Rohingya. UNHCR (2015) 'Global Focus Operations —South-East Asia-Bangladesh', [www.unhcr.org/pages/49e487546.html](http://www.unhcr.org/pages/49e487546.html)

<sup>57</sup> IOM has been coordinating support to the undocumented population, <https://www.iom.int/news/iom-provide-humanitarian-assistance-undocumented-myanmar-nationals-bangladesh>

<sup>58</sup> Refugees International (2012) 'Rohingya in Bangladesh: Maintaining the Status Quo; Squandering a Rare Opportunity', [http://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/56ab848ea12f44cab8e9cca/1454081167142/103012\\_Rohingya\\_In\\_Bangladesh+letterhead.pdf](http://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/56ab848ea12f44cab8e9cca/1454081167142/103012_Rohingya_In_Bangladesh+letterhead.pdf)

<sup>59</sup> In 2013 the Bangladesh cabinet approved the National Strategy Paper on addressing the issue of Myanmar Refugees and undocumented Myanmar Nationals in Bangladesh. This strategy paper deals with four key elements: (1) listing of the undocumented Myanmar nationals, (2) meeting the basic needs of the listed individuals, (3) strengthening Bangladesh-Myanmar border management, and (4) sustaining diplomatic engagement with the government of Myanmar at bilateral and multilateral levels. Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh (2014) 'National Strategy Paper on Myanmar Refugees and Undocumented Myanmar Nationals in Bangladesh', <https://assets.documentcloud.org/documents/1363897/un-hr-bangladesh.pdf>

While the strategy placed an emphasis on border security and its ultimate objective is to ‘facilitate their voluntary repatriation to Myanmar’, it also aims to ensure ‘enhanced coordination in the work of the Government, NGOs [nongovernmental organizations] and international organisations in addressing this protracted situation’. The government also acknowledges the importance of addressing in relevant international forums ‘the need for undocumented Myanmar nationals to receive basic humanitarian relief in Bangladesh pending their repatriation’.<sup>60</sup>

The daily arrival of thousands of Rohingya from August 2017 created a severe international refugee emergency necessitating the UNHCR and other intergovernmental and non-governmental actors to rapidly scale up an emergency response in Cox’s Bazar, an environmentally vulnerable, remote and impoverished location in south-eastern Bangladesh, where most of the refugees were concentrated, placing an acute strain on host communities and a natural disaster prone environment. Constituting the largest and most densely populated refugee settlement in the world, the overcrowded and generally inaccessible location compounds the vulnerability and protection risks the Rohingya face. In response the UNHCR launched a joint response plan with a projected budget of almost US\$ 1 billion from March-December 2018 and US\$ 920.5 million for 2019 which was 33% funded midyear.

Since 2017, new response modalities have been put in place. Initially IOM assumed operational responsibility, in effect continuing its pre-crisis role noted above, until it was replaced by the Strategic Executive Group (SEG) co-chaired by UNHCR, the UN Resident Coordinator and IOM, in parallel with the scaling up of the massive assistance programme by UNHCR. The delivery of assistance and operational co-ordination is executed through an Inter Sector Coordination Group (ISCG) which comprises departments of the government of Bangladesh, UN agencies and operational NGOs structured around eight sectoral working groups.<sup>61</sup> The UNHCR leads on the protection response for all refugees. It also conducts refugee status determination on the minute number of non-Rohingya asylum applicants and, as of 2015, it provided support to some 96 refugees of various nationalities.<sup>62</sup>

Despite these co-ordination structures, the interface between the international relief effort and the government of Bangladesh remains problematic: it is reported that ‘[the Government’s] emergency structures have focused on local government and the Bangladesh army, and are not well aligned with international coordination structures such as the cluster/sectoral approach of the Humanitarian Country Task Team, nor is there the necessary civil–military coordination structure in place to ensure effective engagement with the military, which is responsible for supervising the importation and logistics of relief supplies’.<sup>63</sup>

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<sup>60</sup> Ministry of Foreign Affairs, Government of the People’s Republic of Bangladesh (2014) ‘National Strategy Paper on Myanmar Refugees and Undocumented Myanmar Nationals in Bangladesh’, <https://assets.documentcloud.org/documents/1363897/un-hr-bangladesh.pdf>

<sup>61</sup> Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January–December, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf) and Bowen, M. (2018) ‘Rohingya refugees in Bangladesh: the humanitarian response: The current context to the Rohingya crisis in Bangladesh’, in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 pps. 5-6, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)  
IRIN Analysis (2013) ‘How Bangladesh Aid Restrictions Impact Rohingyas’, [www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas](http://www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas)

<sup>62</sup> UNHCR ‘Bangladesh fact Sheet 2015’, [www.unhcr.org/50001ae09.html](http://www.unhcr.org/50001ae09.html)

<sup>63</sup> Bowen, M. (2018) ‘Rohingya refugees in Bangladesh: the humanitarian response: The current context to the Rohingya crisis in Bangladesh’, in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 pps. 5-6, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)

Moreover the government of Bangladesh's imperative policy of repatriation and that accordingly the refugees are temporary, 'limits longer-term planning and infrastructural investment and creates mounting challenges to the protection and wellbeing of the Rohingya population in Bangladesh'.<sup>64</sup>

## MAPPING AND ANALYSIS OF ASIAN CIVIL SOCIETY ORGANIZATIONS (CSOs) ENGAGED WITH THE ROHINGYA

Turning to the mapping of CSOs engaged with Rohingya refugees, against the backcloth of Bangladesh's limited legal apparatus for refugees, the highly politicised space which its refugee administrative and policy frameworks occupy, strictly mediates their roles, mandates and functions.

Bangladesh's dual political imperatives – ensuring the temporariness and the prompt repatriation of Rohingya – inevitably play a significant part in determining the field of operations of the CSOs. This context underpins increasing control and limitations on the role and influence of international organisations, and INGOs and CSOs in general and in the camps where the humanitarian relief programme is concentrated. For example, the Foreign Donations (voluntary activities) Regulation Act of 2016 'introduced tighter controls on financing and enhanced processes for the registration of NGOs, delaying project approvals, slowing down implementation and severely restricting international engagement with local civil society organisations'.<sup>65</sup> Following the massive 2017 increase in Rohingya refugees, further government restrictions have been imposed, similarly impacting CSOs. Interview evidence reports more registration and mandate constraints, notably for organisations working in the camps, and protracted (arguably obstructive) bureaucratic control for the approval process. There have been banning orders withdrawing mandates from some organisations and there are periodic government clamp downs on internet use.

There is a plethora of CSOs in Bangladesh varying from a few, very small and largely informal Rohingya grass roots community groups in the refugee camps to more established host country CSOs/NGOs. The CSOs are very predominantly Bangladeshi- not Rohingya- led.

Interview evidence indicates that the presence and capacity of Rohingya civil society is gradually strengthening after the very turbulent post-2017 situation. It remains organisationally very weak; but, within the Rohingya community, civil society actors are starting to explore ways of organising their community and the means for building capacity to provide for their needs. Amongst other constituencies, some civil society networks, religious leaders, and the UN pilot scheme of elected camp governance committees (although the remit is a technical one limited to camp management not wider civil society functions), constitute the building blocks.<sup>66</sup>

Although also generally small scale, the host-country CSOs have more substantial capacity, and they are effectively networked. Like Bangladesh's civil society organisations as a whole, they are deeply embedded in the country's

<sup>64</sup> Bowen, M. (2018) 'Rohingya refugees in Bangladesh: the humanitarian response: The current context to the Rohingya crisis in Bangladesh', in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 p. 5, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)

<sup>65</sup> Bowen, M. (2018) 'Rohingya refugees in Bangladesh: the humanitarian response: The current context to the Rohingya crisis in Bangladesh', in Rohingya refugees in Bangladesh: the humanitarian response, Humanitarian Exchange 73: 2018 p. 6, [https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)

<sup>66</sup> Olney, J. (2019) Civil society, governance and security dynamics amongst Rohingya refugees in Cox's Bazar, Briefing Paper, XBorder Local Research Network.

governance of social, economic and environmental action and service provision.

The most prominent role of Bangladesh CSOs engaged with Rohingya is advocacy for rights and protection for the refugees and, especially, campaigns for Myanmar government accountability and justice for gross violations of international human rights law. Typically, their representation of Rohingya rights and interests is not ab initio, but an extension of their original remit of serving rights-deprived and marginalised Bangladesh populations: including tackling domestic violence against women, youth programmes, pro-poor advocacy and poverty alleviation. The mandates of CSOs also extend to public service delivery for the refugees, although this is far more limited.

One explanation for the CSOs' rights focus is that they are prepared to take on this politically risky territory, whereas INGOs are notably absent, focusing instead on the politically 'risk free', service delivery of humanitarian assistance. At the same time the enormous demand for humanitarian assistance has precluded INGOs and the larger service delivery NGOs from engaging in longer term support for community and civil society development. A lack of connectivity between these two axes of engagement is very apparent.

Another reason for the focus on rights and justice is the severe lack of financial resources to undertake more costly service delivery programmes and infrastructure development in the camps. There is little or no funding for CSOs to provide material services such as HLP/shelter. These capacity limits are even more extreme for Rohingya; in any case, their day to day survival needs preclude them from undertaking these roles. This is major constraint on their potential capacity, underpinned by the reluctance of the Government to allow assistance for sectors which appear to be developmental rather than humanitarian.

Nevertheless, the provision of education services (offering a substantial number of community-based education services and 'learning centres') is a notable Bangladesh CSO focus, and there are nascent, and as yet very small scale, women's groups in the camps promoted by Bangladeshi CSOs.

Despite their involvement, significant rights deficits and capacity gaps exist are evident in the work of CSOs: access to justice needs strengthening, as does government protection; clarification and capacity building around refugee status and other rights is also needed, since Bangladesh is not a signatory state to the 1951 GCR the legal rights that apply through the convention are not well articulated in the country; lack of freedom of movement which prevents Rohingya from accessing assistance and services including medical care, education and trainings. There are also significant gaps in CSO service delivery, notably: enhanced support for women, children and youth; psychosocial awareness and skills; health and educational services; shelter provisions, timely and adequate distribution and for the issuance of marriage and birth certificates.<sup>67</sup>

Several factors mediate the activity and capacity of CSOs.

One factor is the networking capacity of Bangladesh CSOs. There are several existing and emerging 'platforms' and networks of different groupings of CSOs and NGOs, at different levels of action and with somewhat overlapping memberships, objectives and missions. The main functions of these networks, inter alia, are to: enable information sharing and coordination; promote humanitarian/rights advocacy; and capacity building (especially for strengthening and enhancing NGO partnerships and accountability). Of these networks, the Bangladesh Rohingya Response NGO

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<sup>67</sup> Asia Pacific Refugee Rights Network (APRRN) (2019) Report: 7th Asia Pacific Consultation on Refugee Rights (APCRR7), Workshop Session on Rohingya, pp. 18, <http://aprrn.info/wp-content/uploads/2019/09/APCRR7-Report-.pdf>

Platform<sup>68</sup> (BRRNP), a membership organisation established in mid-2018, is the most prominent, comprising over 100 local, national and international NGOs active in the humanitarian response in Cox's Bazar. The BRRNP, more national in its locus, is mirrored by the more locally based Cox's Bazaar, CSO-NGO Forum<sup>69</sup>, (CCNF) another membership organisation with over 40 members serving different refugee camps in Cox's Bazar. Both these networks promote a localisation agenda (discussed below in more detail).

In general, the main focus of these CSOs and their networks comprises justice and rights advocacy. On the one hand, they tend to be connected to, or mobilised by, research and academic rights-based organisations in Bangladesh. Given the global momentum behind justice and accountability for Rohingya in Myanmar they are linked, on the other hand, to international human rights organisations, for example the Asia Justice Coalition<sup>70</sup>, and APRRN. Although these CSOs advocate for justice and accountability for Rohingya, they are not necessarily so proactive for strengthening Rohingya refugee rights or civil society within Bangladesh.

Collaboration, partnership and networks are the essential currency of CSOs, and this has undoubtedly delivered strong national and, especially, international advocacy of justice, accountability and rights for Rohingya. Less clear is the extent to which there has been partnership between Bangladeshi and Rohingya CSOs and support for the development of their own civil society advocacy and service delivery capacity. The voice of the Rohingya refugees has yet to be heard.

Overall, the outcome of these dynamics is the dominance of Bangladesh-led, not Rohingya CSOs. Evidence of the extent to which these Bangladesh CSOs (or indeed the larger national and international non-governmental organisations), engage and partner with the camp population and emerging Rohingya civil society is minimal. And significant knowledge gaps about Rohingya community, its organisation and governance, militate against such engagement and partnership. As yet, perhaps lacking sufficient in-depth knowledge of the internal dynamics of Rohingya civil society and cultural sensitivity, nevertheless they are developing means of engagement, albeit at a very small scale.

Weak connectivity between Bangladeshi CSOs and Rohingya civil society is mirrored in the relationship between CSOs and NGOs/INGOs. Seemingly existing in separate worlds, there is little if any connectivity between this plethora of Bangladesh CSOs (and their networks) and the humanitarian NGOs/INGOs (and their co-ordination mechanisms discussed in earlier sections, such as the Strategic Executive Group and co-ordination for the Joint Response Plan). The lack of community engagement and relationship building between these humanitarian agencies and local civil society actors (both Bangladeshi and Rohingya) has denied opportunities and potential to build civil society capacity and Rohingya leadership necessary not just to support their communities in exile<sup>71</sup>, but also a critical resource if repatriation were ever to take place.

Nevertheless, under the government's leadership CSOs and NGOs are starting to develop programmes and strategies to promote social cohesion within the Rohingya refugee community and also to build dialogue between it and

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<sup>68</sup> See <http://bd-cso-ngo.net/>

<sup>69</sup> See <http://www.cxb-cso-ngo.org/>

<sup>70</sup> See e.g. International Conclave on Justice and Accountability for Rohingya, October 18, 2019, <https://www.bracu.ac.bd/event/international-conclave-justice-and-accountability-rohingya>

<sup>71</sup> Olney, J. (2019) Civil society, governance and security dynamics amongst Rohingya refugees in Cox's Bazar, Briefing Paper, XBorder Local Research Network.

Bangladeshi host community.<sup>72</sup> This is an important priority in the 2019 JRF for Rohingya Humanitarian Crisis. The purpose is to counter the tension and violence within the camps, but also to tackle the discrimination and hostility towards the Rohingya by Bangladeshis<sup>73</sup> and the antagonistic relationship between refugees and hosts 'exacerbated by contextual circumstances such as extremely congested conditions in the camps and limited opportunities for education and skills development'.<sup>74</sup> <sup>75</sup> Yet it is unclear how this, on the face of it 'top down', strategy will be implemented and, in particular how it will engage Bangladesh and Rohingya civil society actors.

Extensive networking but lack of connectivity bears on another mediating factor in the development of CSO capacity in Bangladesh. A strong 'localisation' agenda is promoted by some Bangladeshi CSOs and NGOs. This reflects the deeply embedded role of CSOs in Bangladesh and the ambition to extend this to refugee assistance. It is also a response to the huge influx and scaling up of INGOs (and resources) that accompanied the 2017 Rohingya refugee 'crisis'. This accentuated debate about Bangladesh CSO/NGO capacity to respond to the crisis, and thus calls to 'decentralise' humanitarian funding directly to Bangladeshi actors. This tension and animosity has been played out in: the lack of effective partnership between the two sets of actors; a continuing disconnect between humanitarian programming and building civil society capacity; and, in the background, the role of the government in determining the mandates of INGOs to support its own agenda of limiting the influence of international actors. What seems clear in all this is that localisation cannot be interpreted as better engagement of the main refugee beneficiary population.

Another factor mediating the capacity of CSOs is the highly politicised space which Bangladesh CSOs occupy, many of which are informally aligned with, or under the patronage of different political parties and different ministries. In this context Cox's Bazaar is perceived to be a politically and social conservative district which is challenging for CSOs seeking to promote progressive social rights. Operating in this partisan context introduces another layer of complicated inter-organisational dynamics and requires civil society actors to navigate the everyday politics of their 'patrons'; at the same time this provides the government with the means to exert informal control over the mandates of CSOs. This may partly explain why the CSOs tend to push a 'justice and accountability' with respect Myanmar's treatment of Rohingya inside that country, whilst playing down the rights and protection agenda of the Rohingya refugee which the government would likely prevent.

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<sup>72</sup> Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, pps. 12-13 and 62-64, 68, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

<sup>73</sup> See e.g. Danish Immigration Services (2011), 'Rohingya Refugees in Bangladesh and Thailand, Fact Finding Mission to Bangladesh and Thailand', <https://www.refworld.org/docid/4dd0d6f72.html>

<sup>74</sup> Strategic Executive Group and Partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, pps. 12-13, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

<sup>75</sup> It should also be noted that the 2019 JRF also prioritises host community support and the promotion of social cohesion in line with an ongoing Multi-Sectoral Needs Assessment. The main targets include mitigating environmental degradation, improving access to services (such as health and education opportunities), skills development and strengthening livelihoods – interestingly for hosts but not refugees, Strategic Executive Group and partners UNRC-UNHCR-IOM (2019) Joint Response Plan for Rohingya Humanitarian Crisis – January-December, pps. 12-13, 62-64, [http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp\\_.pdf](http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf)

## SUMMARY AND CONCLUSION

Rohingya refugees in Bangladesh confront enormous challenges to their survival and dignity. Living conditions are severe, exacerbated by containment in overcrowded camps, prospects for independent livelihoods and self-sufficiency from assistance are virtually non-existent, and lack of effective protection and security remain persistent issues. These circumstances have become more prominent with the hardening attitude of the Government of Bangladesh to the presence of the refugees and mounting pressure for their return to Myanmar. Within this highly politicised context, strongly networked Bangladesh-based CSOs play a prominent role in rights and justice advocacy on behalf of the Rohingya refugees, but a smaller role in service delivery. By contrast, the presence and capacity of Rohingya civil society remains organisationally very weak although it is gradually strengthening after the very turbulent post-2017 situation. Poor connectivity between CSOs and larger national NGOs and INGOs militates against coherent strategy and programming.

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# Indonesia

- Indonesia is not party to the 1951 Refugee Convention nor its 1967 Protocol; it has established a national legal framework for refugee management.<sup>1</sup>
- Indonesia hosts around 10,793 refugees, which constitute only a tiny portion (0.004%) of the country's total estimated population of 270.63 million.<sup>2</sup>
- As of September 2018, there were a total of 805 Rohingya in Indonesia, with 633 living under IOM care.<sup>3</sup>

## CONTEXT AND OVERVIEW OF THE ROHINGYA DIASPORA IN INDONESIA

Like most of its neighbours, Indonesia is not a State Party to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol. As such, the country does not have a comprehensive legal regime for hosting refugees and asylum seekers.

Indonesia has a very small number of documented Rohingya refugees, and their presence is relatively recent compared with countries directly neighbouring Myanmar. Other significant groups of refugees come from Afghanistan, Somalia, Myanmar, and Sri Lanka. Several groups of Rohingya made their way to Indonesia in 2009, 2012, and most notably 2015.<sup>4</sup> Following the arrival of about 1,000 Rohingya in Indonesia in that year, the government released a Perpres (Presidential Decree) 125/2016 on the Handling of Foreign Refugees. This decree guarantees refugees' access to basic social protections, although not necessarily access to formal work, education, and legal protections.<sup>5</sup>

Some of the refugees in Indonesia are categorised as independent refugees. These are refugees who do not receive their monthly allowance from IOM and thus do not live under "IOM care." Others can be found in accommodation/ community houses, temporary shelters, or Immigration Detention Centres (IDCs).<sup>6</sup> Temporary shelters are generally

<sup>1</sup> Adiputera, Y. and Prabandari, A. (2018) Addressing Challenges and Identifying Opportunities for Refugee Access to Employment in Indonesia, p.1, Yogyakarta: Institute of International Studies, Department of International Relations, Universitas Gadjah Mada, [http://hi.fisipol.ugm.ac.id/en/policy\\_paper/addressing-challenges-and-identifying-opportunities-for-refugee-access-to-employment-in-indonesia/](http://hi.fisipol.ugm.ac.id/en/policy_paper/addressing-challenges-and-identifying-opportunities-for-refugee-access-to-employment-in-indonesia/)

<sup>2</sup> For consistency of sources in this report this is the total recorded in UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 66, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>. See also World Population Review (2019) 'Indonesia Population.' <http://worldpopulationreview.com/countries/indonesia-population/>

<sup>3</sup> UNHCR Indonesia (2018), text message to author, October 28, and IOM Indonesia (2018), text message to author, October 31.

<sup>4</sup> Rachmah, R. A. and Pestalozzi, Z. E. (2016) Barely Living: Research on Living Conditions of Rohingya Refugees in Indonesia (SUAKA), p. 8, Jakarta: Lembaga Bantuan Hukum (LBH), <https://suakaindonesia.files.wordpress.com/2016/12/suaka-laporan-penelitian-pengungsi-rohingya-2016-eng.pdf>

<sup>5</sup> Gordyn, C. (2017) 'Assessing Indonesia's New Decree on Refugees', New Mandala, February 9, <http://www.newmandala.org/assessing-indonesias-new-decree-refugees/>

<sup>6</sup> Ditjenim (2018) 'Data Pencari Suaka & Pengungsi di Seluruh Indonesia Periode Agustus 2018,' Jakarta: Directorate General of Immigration.

provided by IOM in coordination with the government upon refugees' arrival, while community houses are usually provided for refugees through a contract between their owners and IOM. Refugees living in community houses receive monthly allowances from IOM. Meanwhile, refugees who commit some violation according to the Indonesian law are detained in IDCs and do not receive monthly allowances from IOM.

A documented total of approximately 805 Rohingya refugees lived in Indonesia as of September 2018,<sup>7</sup> 633 of them under IOM care and assistance.<sup>8</sup> Following the Bay of Bengal/Andaman Sea Crisis in 2015, and a stay of over one year in Aceh, they were relocated to Medan.<sup>9</sup>

There is a notable distinction between Rohingya refugees who arrived in 2015 and prior to 2015. A number of the 2015 are being processed for resettlement to the US, partly the outcome of the Putrajaya agreement between the governments of Indonesia, Malaysia, and Thailand. This agreement, in effect, prioritised Indonesia's humanitarian assistance, along with the largely unsatisfied conditionality of resettlement within a period of one year to "irregular migrants" who "were adrift at sea" in the 2015 crisis.<sup>10</sup> A large number of these refugees made their way from Indonesia to Malaysia to reunite with family or community members.

## REFUGEE LAW AND PROTECTION

### National Legislation

Like most of its neighbours, it is not a State Party to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol. It did not have any legal regime or policy framework for hosting refugees and asylum seekers until recently: for instance, the Immigration Law 6/2011, which does not distinguish between refugees and other categories, still treats refugees and asylum seekers as illegal migrants.<sup>11</sup> Meanwhile, the Regulation of the Director General of Immigration No. IMI-1489.UM.08.05/2010 and its replacement, DGI Regulation No. 0352.GR.02.07/2016 on the Handling of Illegal Immigrants Declaring to be Asylum Seeker or Refugee, give a basis for the government not to impose "immigration actions" (i.e. detention in IDCs) against those receiving attestation letters as asylum seekers or refugees from the UNHCR if they do not violate any national laws or regulations.

In 2015, nearly 1,000 Rohingya arrived off Aceh province, Indonesia, after being left by smugglers on sinking boats in the Andaman Sea; following this Bay of Bengal/Andaman Sea Crisis, they were relocated to areas like Medan.<sup>12</sup> On May 20, 2015, the governments of Indonesia, Malaysia, and Thailand held a ministerial meeting in Putrajaya, Malaysia; they

<sup>7</sup> UNHCR official (2018), text message to author, October 28.

<sup>8</sup> IOM official (2018), text message to author, October 31.

<sup>9</sup> Rachmah, R. A. and Z. E. Pestalozzi (2016) Barely Living: Research on Living Conditions of Rohingya Refugees in Indonesia (SUAKA), p. 13, Jakarta: Lembaga Bantuan Hukum (LBH), <https://suakaindonesia.files.wordpress.com/2016/12/suaka-laporan-penelitian-pengungsi-rohingya-2016-eng.pdf>

<sup>10</sup> ReliefWeb (2015) 'Joint Statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia', May 20, <https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia>. See also Rachmah, R. A. and Pestalozzi, Z.E. (2016) Barely Living: Research on Living Conditions of Rohingya Refugees in Indonesia (SUAKA), p. 14, Jakarta: Lembaga Bantuan Hukum (LBH), <https://suakaindonesia.files.wordpress.com/2016/12/suaka-laporan-penelitian-pengungsi-rohingya-2016-eng.pdf>

<sup>11</sup> Adiputera, Y. and Prabandari, A. (2018) Addressing Challenges and Identifying Opportunities for Refugee Access to Employment in Indonesia, p.1, Yogyakarta: Institute of International Studies, Department of International Relations, Universitas Gadjah Mada, [http://hi.fisipol.ugm.ac.id/en/policy\\_paper/addressing-challenges-and-identifying-opportunities-for-refugee-access-to-employment-in-indonesia/](http://hi.fisipol.ugm.ac.id/en/policy_paper/addressing-challenges-and-identifying-opportunities-for-refugee-access-to-employment-in-indonesia/)

<sup>12</sup> Rachmah, R. A. and Z. E. Pestalozzi (2016) Barely Living: Research on Living Conditions of Rohingya Refugees in Indonesia (SUAKA), p.8, 13, Jakarta: Lembaga Bantuan Hukum (LBH), <https://suakaindonesia.files.wordpress.com/2016/12/suaka-laporan-penelitian-pengungsi-rohingya-2016-eng.pdf>

declared their willingness to maintain their “responsibilities and obligations under international law and in accordance with their respective domestic laws,” which entail “the provision of humanitarian assistance to the irregular migrants.”<sup>13</sup> Indonesia and Malaysia also agreed to provide humanitarian assistance to 7,000 irregular migrants who were “still at sea” and temporary shelter, with a condition that the international community would conduct their resettlement and repatriation “within a period of one year.”

This resettlement condition remains unsatisfied, yet on 31 December, 2016, Indonesia’s President Joko Widodo signed the Presidential Decree 125/2016 on the Handling of Foreign Refugees, which formalised mechanisms to guarantee their access to basic social protections.<sup>14</sup>

## Access to Protection

Refugee management has never been considered a priority agenda in Indonesia’s national policies. The single reason to accommodate the recent influx of refugees is merely a perceived necessity of the government to respond to a humanitarian emergency.<sup>15</sup>

Full protection for refugees is therefore not a guarantee. Notably, the Presidential Decree 125/2016 provides those registered under the UNHCR (i.e. those with UNHCR cards and refugee status under the UNHCR) with access to basic social protections. However, it only specifies the mandates of government bodies vis-à-vis refugees’ basic rights such as shelter, security, monitoring, and funding, without listing their wider rights, for example, to participate in any income-generating activities.<sup>16</sup> As a result, refugees sometimes still bribe government officials and security officers to get minimum protection. For example, some refugees bribe their way into detention to ensure they receive food and basic medical treatment.<sup>17</sup> This situation makes them constantly vulnerable to exploitation.

## Freedom of movement

With regard to the fundamental right to freedom of movement, Indonesia has made significant progress in recent years.<sup>18</sup> In 2016, there were over 4,200 individuals, which included women and children, who were detained in IDCs. The overcrowded and inadequate condition in these IDCs had drawn criticism of Indonesia’s standards for hosting refugees.<sup>19</sup> In contrast, as of December 2018, there were only 1% of the total refugees in transit in the country (around

<sup>13</sup> ReliefWeb (2015) ‘Joint Statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia’, May 20, <https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia>

<sup>14</sup> Adiputera, Y. and A. Prabandari (2018) Addressing Challenges and Identifying Opportunities for Refugee Access to Employment in Indonesia, p.1-2, Yogyakarta: Institute of International Studies, Department of International Relations, Universitas Gadjah Mada, [http://hi.fisipol.ugm.ac.id/en/policy\\_paper/addressing-challenges-and-identifying-opportunities-for-refugee-access-to-employment-in-indonesia/](http://hi.fisipol.ugm.ac.id/en/policy_paper/addressing-challenges-and-identifying-opportunities-for-refugee-access-to-employment-in-indonesia/)

<sup>15</sup> Dyonisius, Daniel (2017) ‘Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia’, p. 71, Oxford: Oxford Department of International Development, University of Oxford.

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<sup>17</sup> Smith, D.M. (2014) ‘Indonesia’s Asylum Hub, Where Desperate, Hungry People Try to Bribe Their Way Into Detention’, The Guardian, July 21, <https://www.theguardian.com/world/2014/jul/21-sp-indonesias-asylum-hub-where-desperate-hungry-people-try-to-bribe-their-way-into-detention>

<sup>18</sup> Tobing, D. H. (2019) ‘Indonesia Refugee Policy is on Right Track’, The Jakarta Post, January 24, <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>

<sup>19</sup> Tobing, D. H. (2019) ‘Indonesia Refugee Policy is on Right Track’, The Jakarta Post, January 24, <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>. See also Dyonisius, Daniel (2017) ‘Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia’, p. 72, Oxford: Oxford Department of International Development, University of Oxford.

120 people) remained in IDCs, as many have been released to community houses throughout the years. Refugees living in community houses do have some freedom of movement. In cities like Medan, for instance, refugees are allowed to go out and interact with the locals between 8 am and 9 pm.<sup>20</sup> They are allowed to use public transportation or even in some cases, electric bikes, and travel within the range of 60 km. In addition, returning past curfew is often tolerated. This is true despite the fact that access to community houses is still mediated by security officers and refugees often have to resort to bribery in order to negotiate rules and regulations within community houses.

### Right to work and livelihoods – refugee and labour and employment law

Refugees are still barred from formal work, education, and any concrete legal protections.<sup>21</sup> The formal right to local employment for refugees is still non-existent.<sup>22</sup> The process of formalising this is still a distant prospect, since public authorities and local people are concerned that refugees might take local jobs. As a result, refugees are still restricted to informal economic activities such as opening small shops within community houses and farming, either for their own consumption or for commercial purposes.<sup>23</sup>

The most notable progress over the past few years is perhaps evident in improved access for refugee children to local education. The right to education is not mentioned in the 2016 Presidential Decree, yet IOM noted how some cities such as Jakarta, Medan, and Makassar have admitted child refugees to public schools.<sup>24</sup> Whilst most children are not registered in residential family cards and therefore do not get certificates of graduation, according to the UNHCR, around 320 out of 2,835 school-age children refugees are currently enrolled in national schools.

In the area of housing, Article 26 of the 2016 Decree specifies that the provision of refugee shelter, as well as basic necessities such as clean water, food, clothing, healthcare, hygiene, and religious facilities, can be sought from international organisations.<sup>25</sup> However, access to basic health for refugees is sometimes limited: some refugees claimed that IOM would only provide health assistance in emergency cases.<sup>26</sup>

## MAPPING OF NATIONAL AND INTERNATIONAL ACTORS AND POLICY RESPONSES

The 2016 Presidential Decree declares that government ministries/agencies should coordinate with municipal/district governments to administer services relating to refugees and asylum seekers, such as allocating national

<sup>20</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 71, Oxford: Oxford Department of International Development, University of Oxford.

<sup>21</sup> Hutton, J. (2017) 'Rohingya or Afghan? In Indonesia, a Tale of Two Refugee Groups', South China Morning Post, December 2, <http://www.scmp.com/week-asia/geopolitics/article/2122502/rohingya-or-afghan-indonesia-tale-two-refugee-groups>

<sup>22</sup> Tobing, D. H. (2019) 'Indonesia Refugee Policy is on Right Track', The Jakarta Post, January 24, <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>

<sup>23</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 38, Oxford: Oxford Department of International Development, University of Oxford.

<sup>24</sup> Tobing, D. H. (2019) 'Indonesia Refugee Policy is on Right Track', The Jakarta Post, January 24, <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>

<sup>25</sup> Ministry of Law and Human Rights (2016) 'Peraturan Presiden Republik Indonesia Nomor 125 Tentang Penanganan Pengungsi dari Luar Negeri', Section 3 Article 26, <http://ditjenpp.kemenumham.go.id/arsip/ln/2016/ps125-2016.pdf>

<sup>26</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 84, Oxford: Oxford Department of International Development, University of Oxford.

and local budgets for refugee management purposes.<sup>27</sup> The Coordinating Ministry for Political, Legal, and Security, the Directorate General of Immigration under the Ministry of Law and Human Rights, the Ministry of Home Affairs, and the Ministry of Foreign Affairs are some of the main government bodies responsible for dealing with refugee issues at the national level. Nonetheless, the practice of decentralisation in the country often results in discrepancies and contradictory regulations vis-à-vis the refugees at the local levels: some regions are more welcoming and accommodating toward them while others are less so.<sup>28</sup>

The UNHCR and IOM have cooperated with the government to promote programmes supporting refugees' livelihoods and independence. For example, the UNHCR has been promoting a "Solidarity Approach" pilot programme to expand the ways refugees can improve their lives, prepare for future opportunities, and contribute to the host communities by sharing their knowledge and skills with local people.<sup>29</sup> Under this scheme, refugees will join vocational training programmes initiated by the UNHCR and its partners, such as Dompot Dhuafa and PMI (Indonesian Red Cross Society). This programme also encompasses online university courses for refugees and entrepreneurship activities with the ILO (International Labour Organisation). Project proposals are selected and start-up grants are provided for local entrepreneurs, who will then link up with refugees who have special skills to start their businesses.

Similarly, IOM cooperates with the local governments to provide cultural orientations for refugees.<sup>30</sup> IOM also initiates capacity building programmes, such as woodworking, painting, haircutting, language classes, nursing, carpentry, barbering, as well as mutual cooperation activities with the locals. One prominent issue in recent years, however, is the impact, in March 2018, of Australia's decision to terminate its funding for refugee assistance, which had been previously channelled through IOM.<sup>31</sup> This accentuated Indonesia's burden in refugee assistance in the midst of uncertain political commitment among both national and international actors.

## MAPPING AND ANALYSIS OF ASIAN CIVIL SOCIETY ORGANIZATIONS (ACSOs) ENGAGED WITH THE ROHINGYA

Local and International organisations that are currently engaged with the Rohingya refugees can be traced back to those who assisted with the 2015 arrivals in the province of Aceh. Some INGOs include MSF (Médecins Sans Frontières) and Save the Children. Some Muslim Religious Based Organisations (FBOs) include Dompot Dhuafa, Peduli Muslim, Majelis Taklim Assunni, ACT (Act for Humanity), and PKPU Human Initiative (Pos Keadilan Peduli Umat).<sup>32</sup> There are also some non-Muslim FBOs, however, such as JRS (Jesuit Refugee Service) and Yayasan Buddha Tzu Chi. Other local NGOs include SHEEP Indonesia (Society for Health, Education, Environment, and Peace) and Geutanyoe Foundation.

As in the other countries, CSOs assist in providing education, language, and vocational training for refugees. In 2017,

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<sup>27</sup> Ministry of Law and Human Rights (2016) 'Peraturan Presiden Republik Indonesia Nomor 125 Tentang Penanganan Pengungsi dari Luar Negeri', Section 2 Article 7, <http://ditjenpp.kemenkumham.go.id/arsip/ln/2016/ps125-2016.pdf>

<sup>28</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 76, Oxford: Oxford Department of International Development, University of Oxford.

<sup>29</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 74, Oxford: Oxford Department of International Development, University of Oxford.

<sup>30</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 75, Oxford: Oxford Department of International Development, University of Oxford.

<sup>31</sup> Tobing, D. H. (2019) 'Indonesia Refugee Policy is on Right Track', The Jakarta Post, January 24, <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>

<sup>32</sup> Dyonisius, Daniel (2017) 'Negotiating Inclusion: A Case Study of Rohingya Refugees in Indonesia,' p. 86, Oxford: Oxford Department of International Development, University of Oxford.

YPI (Yayasan Pusaka Indonesia) worked with CRS (Catholic Relief Services) to administer vocational and capacity building training, as well as psychosocial support to Rohingya refugees in Medan.<sup>33</sup> Meanwhile, SUAKA (Indonesian Civil Society Network for Refugee Rights Protection) is a CSO that became a legal entity in 2018, consisting of LBH Jakarta (Legal Aid Jakarta) and HRWG (Human Rights Working Group).<sup>34</sup> LBH Jakarta itself is a part of YLBHI (Indonesia Legal Aid Foundation), an organisation providing legal aid for the poor and victims of human rights violation.<sup>35</sup> Together, these organisations provide legal aid, advice, and information to asylum seekers and refugees. Due to the government's general commitment to repatriation, which like in other cases is mostly driven by security concerns, these capacity building programmes are mostly implemented with a view to preparing the refugees for lives after repatriation or resettlement. Some of these CSOs are also members of APRRN.<sup>36</sup>

Despite the varying levels of social acceptance of refugees and thus policies vis-à-vis the refugees due to decentralisation, CSO activity is quite progressive. In addition, CSO activity is to a large extent, often religiously based, although there are both Muslim and non-Muslim CSOs engaged with providing assistance to Rohingya refugees. Sometimes, CSO actors employ members from the Rohingya community to do paid work or even, for example, assist in their marriage processes on a religious basis. Collaboration between CSOs has contributed to the creation of a network to specifically assist the Rohingya refugees: 79 organisations formed a national committee in solidarity with the Rohingya called KNSR (National Committee for Solidarity with Rohingya).<sup>37</sup> A proposal for the formation of ICRS (International Committee for Rohingya Solidarity) has reportedly been discussed with Amnesty International and the United Nations, although still at an early stage.

Comparable to the situation in Bangladesh, however, there is a scope for enhancing CSOs' collaboration with international agencies. In some cases, especially at the regional level, prior arrangements or agreements between government and INGOs to assist the refugees are interpreted as measures to exclude some CSOs' participation. This has limited the scope for improving CSOs' capacity in the country. As such, better collaborative work between INGOs and CSOs is needed, especially in the current situation where the former's funding is increasingly restricted by donor countries.

## SUMMARY AND CONCLUSION

While it is not a party to the 1951 Refugee Convention or its 1967 Protocols, Indonesia has recently begun to roll out some legal and policy frameworks to deal with refugee issues, the most notable of which is the Presidential Decree 125/2016. This policy allows refugees to access basic livelihood support. Such support is primarily provided by international organisations and partly by government bodies at the national and local levels.

Access to formal work is not yet guaranteed, but there has been significant progress made in recent years with respect to granting refugee children access to public schools. The official government policy has not acknowledged the

<sup>33</sup> YPI. 2017. *Merajut Asa Memeluk Rohingya*, edited by Yulia. R., Medan, Sumatera Utara: Pusaka Indonesia.

<sup>34</sup> SUAKA (2019) 'About Suaka', <https://suaka.or.id/about/>

<sup>35</sup> YLBHI (2019) 'Yayasan Lembaga Bantuan Hukum Indonesia', <https://ylbhi.or.id>

<sup>36</sup> These members include Human Rights Working Group, JAPPSI – Indonesian Refugees and Asylum Seekers Advocacy Network, LBH Jakarta, People's Crisis Centre, Roshan Learning Centre, SUAKA – Indonesian Civil Society Network for Refugee Rights Protection, World Relief, Yayasan KKSP (Kelompok Kerja Sosial Perkotaan), Yayasan Geutanyoe (The Geutanyoe Foundation). See Asia Pacific Refugee Rights Network (2019) 'Current Members', <https://aprrn.info/members/current-members/>

<sup>37</sup> KNSR (2018) 'Komite Nasional untuk Solidaritas Rohingya (KNSR): Toward International Committee for Rohingya Solidarity (ICRS).

possibility of refugees' local integration, with the priority still being either their repatriation or resettlement to a third country. There are also gaps and discrepancies between policies at the national and regional levels.

Despite some notable restriction and limitation in terms of funding, there are positive signs that UNHCR and IOM, INGOs, and local CSOs will continue to work toward building refugees' independence and capacity.

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# Malaysia

- Not party to either the 1951 Convention relating to the Status of Refugees or its 1967 Protocol; no national legislation to regulate the status and rights of refugees<sup>1</sup>
- 120,235 refugees (0.38%) out of a total estimated population of 31.95 million.<sup>2</sup> As many as 114,200 refugees are from Myanmar<sup>3</sup> with an estimated 97,750 Rohingya in 2019
- There are no refugee camps in Malaysia, refugees are entirely located in urban areas<sup>4</sup>

## CONTEXT AND OVERVIEW OF THE ROHINGYA DIASPORA IN MALAYSIA

Malaysia has a long history of providing temporary asylum to refugees and asylum seekers despite not being a party to the 1951 Refugee Convention or its 1967 Protocol, including Filipino refugees from Mindanao in the 1970s-80s, Cambodia and Vietnamese refugees during the Indo-Chinese refugee crisis in the 1980s-90s, a small number of Bosnian refugees in the early 1990s, and Indonesians from Aceh in the early 2000s.<sup>5</sup> Currently, it hosts one of the largest urban refugee populations in the world.

Malaysia is both a destination and transit country for Rohingya refugees. It currently hosts the second largest number in the region after Bangladesh. Most recent data suggest there are currently approximately 177,690 refugees and asylum-seekers registered with UNHCR Malaysia.<sup>6</sup> Nonetheless, there is a significant population of refugees and asylum seekers who are yet to be registered with UNHCR: approximately 35,000, of which approximately 15,000 are Rohingya.<sup>7</sup> Taken together, as many as 153,770 people are from Myanmar, with some 97,750 Rohingya. With no refugee camps, refugees in Malaysia are primarily located in urban and peri-urban areas, with the majority concentrated around Kuala Lumpur.

In relation to transit of refugees, on May 20, 2015, the governments of Indonesia, Malaysia, and Thailand held a ministerial meeting in Putrajaya, Malaysia; they declared their willingness to maintain their “responsibilities and

<sup>1</sup> UNHCR (2008) ‘Malaysia’, p. 212 in UNHCR Global Appeal 2012-2013. <https://www.unhcr.org/4ec23106b.pdf>

<sup>2</sup> For consistency of sources in this report this is the total recorded in UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 15, 66. <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>. See also World Population Review (2019) ‘Malaysia Population.’ <http://worldpopulationreview.com/countries/malaysia-population/>

<sup>3</sup> For consistency of sources in this report this is the total recorded in UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 65 <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>. The current number of Rohingya in Bangladesh in July 2019 was 912,373 UNHCR (2019) Operational Portal, Refugee Response in Bangladesh, as at 14/08/2019 [https://data2.unhcr.org/en/situations/myanmar\\_refugees](https://data2.unhcr.org/en/situations/myanmar_refugees)

<sup>4</sup> Wake, C., and Cheung T. (2016) Livelihood Strategies of Rohingya Refugees in Malaysia: ‘We Want to Live in Dignity.’ HPG Working Paper, June, p. 6. <https://www.refworld.org/pdfid/57922bbb4.pdf>

<sup>5</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p.13-4, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>6</sup> UNHCR (2019) ‘Figures at a Glance in Malaysia’, <https://www.unhcr.org/uk/figures-at-a-glance-in-malaysia.html>

<sup>7</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p.15, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

obligations under international law and in accordance with their respective domestic laws,” which entail “the provision of humanitarian assistance to the irregular migrants”.<sup>8</sup> Indonesia and Malaysia agreed to provide humanitarian assistance to 7,000 irregular migrants who were “still at sea”, and temporary shelter, with a condition that the international community would conduct their resettlement and repatriation “within a period of one year.” Whilst, this goal was clearly unachievable, it helped the three governments to protect their international reputation while not changing their policies on refugees in a substantive way.

This policy provided the backcloth to a crackdown on people smuggling in Thailand, as smugglers abandoned the ships and transit camps that they used to transport the Rohingya from Myanmar to Malaysia via Thailand, although there have been a few direct arrivals of boats on the shores of Malaysia.<sup>9</sup>

Unlike Thailand, however, Malaysia has generally allowed Rohingya refugees arriving by boat to enter its territory.<sup>10</sup> Apart from the more recent boat arrivals of Rohingya, the country is also home to a significant population of informally settled Rohingya, many of whom have been in the country for two or three generations and can be found in Kuala Lumpur and other states such as Penang, Johor, Kedah, Kelantan, and Terengganu.

Still, Malaysia does not have a legal, policy, or administrative framework to deal with refugees. Thus, it does not receive, register, document, or conduct refugee status determination (RSD) for them. The government does not provide direct protection or assistance to refugees on its territory. As discussed below, the UNHCR undertakes many of these essential registration and protection functions.

## REFUGEE LAW AND PROTECTION

### National Legislation

As a non-party to the 1951 Refugee Convention or its Protocol, Malaysia lacks any legal framework regulating the status and rights of refugees. Malaysia’s Federal Constitution only contains two key provisions relating to non-discrimination and equality under Articles 8 and 12.<sup>11</sup> However, the country makes no distinction between refugees, asylum seekers, and other irregular or undocumented migrants.<sup>12</sup> As such policies towards refugees and asylum seekers are oriented more towards border control, removal, and deterrence, rather than protection.

In the absence of a clear legal framework, refugees are bound by the Immigration Act 1959/63 (Act 155). Section 6 of the Act states that no person other than a citizen of Malaysia should enter the country without a valid Entry Permit on which his name is endorsed, or a valid Pass lawfully issued to him to enter Malaysia.<sup>13</sup> In addition, Section 8 provide

<sup>8</sup> ReliefWeb (2015) ‘Joint Statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia’, May 20, <https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia>

<sup>9</sup> Amnesty International (2015) Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia, <https://www.amnesty.org/en/documents/ASA21/2574/2015/en/>

<sup>10</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p.16, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>11</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 25, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>12</sup> UNHCR (2008) ‘Malaysia’, p. 212 in UNHCR Global Appeal 2012-2013, <https://www.unhcr.org/4ec23106b.pdf>

<sup>13</sup> Immigration Act 1959/63 (Act 155) (2006) [Malaysia], part II section 6 & 8. <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20155.pdf>

definitions of “prohibited immigrants.” Any person who is unable to show that s/he has the means of supporting her/himself and her/his dependants or has definite employment or who is likely to become a pauper or a charge on the public constitutes a member of “the prohibited classes.” These “prohibited classes” also include those who have been convicted in any state of any offence or are deemed by the Director General to be an undesirable immigrant. These regulations demarcate a potentially restrictive policy environment towards refugees.

## Access to Protection

As “illegal immigrants” under the Immigration Act 1959/63, the Rohingya, including children, pregnant women, the sick, or the elderly, are potentially subject to arrest, prosecution, detention, and financial penalties, as well as whipping and refoulement.<sup>14</sup>

In practice, however, the government mostly turns a blind eye towards the presence of refugees and asylum seekers. Despite the absence of a clear refugee policy framework and a generally restrictive regulatory framework, the Malaysian government has protected a significant number of refugees on humanitarian grounds.<sup>15</sup> The government has worked with the UNHCR Malaysia office to register refugees who need international protection by providing them with UNHCR cards. A UNHCR card, however, only functions as identification documentation for the refugees; it functions neither as a status determination nor a valid Pass or Entry Permit document. However, it helps to reduce the risk of arrest and allow access to health services, as well as education and other essential support services provided by UNHCR, its implementing partners and other NGOs. On the flip side, those not registered with the UNHCR have struggled with navigating insecurities associated with the lack of right to work and barriers in accessing health care, education, and other basic social services, in addition to the risk of extortion, arrest, detention, and even deportation.<sup>16</sup>

There have been some attempts to regularise the presence of Rohingya.<sup>17</sup> For instance, Section 55 of the Immigration Act 1959/63 gives Ministerial discretion to exempt any person from the penalties under the Act, a discretion which was exercised in 2006, when the government tried to introduce IMM13 permits<sup>18</sup> for the Rohingya refugees. Nonetheless, the registration process was problematic; it was administered without coordination with UNHCR and terminated after 17 days due to allegations of corruption and fraud. As of now, there has not been any further plan to issue a similar permit to the Rohingya.

Overall, Malaysia still considers the task of providing protection and assistance for refugees to be the responsibility of international community in general and UNHCR in particular.<sup>19</sup> To this end, the UNHCR's Protection Unit regularly engages with relevant Ministries, the Judiciary and legal community, the Immigration Department, Police Department, Maritime Enforcement Agency, and other stakeholders to address various legal and protection issues, especially

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<sup>14</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p.29, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>15</sup> Chia, S. Y. (2018) 'Refugee Law in Malaysia', Chia, Lee & Associates, <http://www.chialee.com.my/knowledge-hub/refugee-law-in-malaysia/>

<sup>16</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 17, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>17</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 32, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>18</sup> IMM13 permits are a type of temporary residence permit that provide the holder with the right to formal employment and register their children in government schools

<sup>19</sup> Crisp, J., Obi, N., and Umlas, L. (2012) But When Will Our Turn Come? A Review of the Implementation of UNHCR's Urban Refugee Policy in Malaysia, Policy Development and Evaluation Service, Geneva: UNHCR, <https://www.unhcr.org/uk/research/evalreports/4faa1e6e9/turn-review-implementation-unhcrs-urban-refugee-policy-malaysia-jeff-crisp.html>

those relating to the prevention and response to detention of refugees and asylum seekers in Malaysia.<sup>20</sup> In terms of support for the refugees, the Protection Unit, inter alia: 1) provides assistance for refugees in areas such as healthcare, education, financial support for vulnerable individuals, shelter, counselling, and other welfare needs; 2) provides outreach and community development support to refugee communities; 3) carries out detention monitoring and intervention; 4) provides legal representation in court for offences under the Immigration Act; 5) conducts advocacy, capacity-building, training with the refugees, Government, media and civil society partners; 6) mobilises resources including corporate and public fundraising; and 7) supports durable solutions for refugees, including resettlement to countries.<sup>21</sup>

## Freedom of movement

Rohingya arriving by boats and detected by the Malaysian authorities are subject to mandatory detention, although they will be released after they are registered under the UNHCR.<sup>22</sup> Broadly speaking, refugees registered by the UNHCR hold a form of de facto status that allows them some degree of protection against arrest, detention, and refoulement, although this is neither consistently applied nor codified into national law.

Refugees in Malaysia form an entirely urban population, since there are no refugee camps in the country.<sup>23</sup> The majority of refugees are concentrated around Kuala Lumpur, the capital, and the surrounding Klang Valley, although sizeable populations can be found in other areas of the country. This implies that they have some freedom of movement.

However, Malaysian laws (including the Federal Constitution of 1957 and Immigration Act 1959/63) do not provide refugees a legal right to remain in the country, so refugees are always at risk of exploitation, arrest and detention. Those from Myanmar used to be at higher risk of deportation/refoulement, yet this has decreased markedly since 2009, partly as a result of advocacy efforts by national and international organisations.<sup>24</sup> Still, some refugees remain in detention: for example, as of 31 December 2015, 2,498 Rohingya were in detention in Malaysia, 53% more than the 1,634 detained at the end of 2014.<sup>25</sup> According to the Malaysian government's Enforcement Agency Integrity Commission (EAIC), 86,795 persons were placed in immigration detention in 2016, mainly from South East Asia.<sup>26</sup> Therefore, although the government does, de facto, allow recognised refugees some freedom of movement, cardholders are often subject to random document checks and arbitrary arrest and detention.<sup>27</sup>

<sup>20</sup> UNHCR (2018) 'Protection in Malaysia', <https://www.unhcr.org/uk/protection-in-malaysia-591401344.html>

<sup>21</sup> UNHCR (2018) 'Protection in Malaysia', <https://www.unhcr.org/uk/protection-in-malaysia-591401344.html>

<sup>22</sup> Equal Rights Trust (2014) *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, p.16, 48, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>23</sup> Wake, C., and T. Cheung (2016) *Livelihood Strategies of Rohingya Refugees in Malaysia: 'We Want to Live in Dignity'*, HPG Working Paper, June, p. 6-7, <https://www.refworld.org/pdfid/57922bbb4.pdf>

<sup>24</sup> Amnesty International (2010) *Abused and Abandoned: Refugees Denied Rights in Malaysia*, <https://www.amnesty.org/en/documents/ASA28/010/2010/en/>

<sup>25</sup> UNHCR (2016) 'Mixed Maritime Movements in South-East Asia In 2015', <http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20Mixed%20Maritime%20Movements%20in%20South-East%20Asia%20-%202015.pdf>

<sup>26</sup> Global Detention Project (2017) 'Malaysia', Pre-Sessional Working Group for the 69th Session (24-28 July 2017), <https://www.globaldetentionproject.org/wp-content/uploads/2017/06/GDP-Submission-CEDAW-Malaysia.pdf>

<sup>27</sup> Asia Pacific Refugee Rights Network (2018) 'Country Factsheet: Malaysia', p. 1, <http://aprrn.info/wp-content/uploads/2018/09/APRRN-Country-Factsheet-Malaysia-4-Sept-2018.pdf>

Currently, there are 14 immigration detention depots in Malaysia and the conditions are reportedly overcrowded, with poor sanitation, insufficient access to food, water, and healthcare, as well as potential violence and abuse.<sup>28</sup> Similar to other Southeast Asian countries, the Rohingya are also vulnerable to trafficking. Conditions in trafficking camps are concerning; they contain bamboo cages, with mud floors that get flooded in the rain, and refugees suffer from unhygienic conditions, diseases, poor nutrition, inadequate food/water, in addition to rape, gender based violence, beating, and abuses by traffickers.

In short, the Rohingya in Malaysia experience regular threats to liberty and security when they enter, live, work in, or travel through the country.<sup>29</sup> Punitive measures by state authorities and/or law enforcement officials do not only include arrest and arbitrary detention, but also extortion and harassment on a regular basis, in addition to constant vulnerability to human trafficking.

### Right to work and livelihoods – refugee and labour and employment law

Without any legal status in Malaysia, refugees and asylum seekers are prevented from accessing the labour market and basic services, including affordable healthcare and education. Yet, in late 2015, the Malaysian government considered and even publically announced the creation of temporary work permits enabling Rohingya to undertake legal employment in Malaysia.<sup>30</sup> However, these schemes have yet to be adopted and implemented. Currently, the tenuous legal status of refugees in Malaysia still confines them to informal work and renders them vulnerable to employment-related abuse and exploitation, including non- and partial payment of wages, verbal abuse, arbitrary dismissal, physical abuse, sexual harassment, and workplace raids.<sup>31</sup> Refugees have little recourse to address these problems, and most incidents go unreported.

One exception to this prevailing situation is that in March 2017, the Malaysian government conducted a pilot project that enabled 300 Rohingya refugees who had UNHCR cards to work legally in the plantation and manufacturing sectors, providing them training on certain survival skills for the future.<sup>32</sup> However, some concerns have been raised by civil society organisations, which include the lack of consultation before the pilot was initiated and the potential for labour exploitation. Additionally, enrolment for the scheme has been relatively low due to less than ideal working conditions.<sup>33</sup>

At societal level, there is a degree of tolerance for refugees due to the support by local Muslim groups and government actors, as well as their potential role in fulfilling the country's demand for cheap labour in industries that Malaysian citizens are generally reluctant to engage in, such as construction, palm oil plantations, or in factories.<sup>34</sup> Some also

<sup>28</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 51, 60-1, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>29</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p.47, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>30</sup> Kumar, P. (2015) 'Malaysia Mulls Opening Jobs Sector For Rohingya Refugees', Malaysian Reserve, 18 November <https://www.google.com/search?client=safari&rls=en&q=Malaysia+Mulls+Opening+Jobs+Sector+For+Rohingya+Refugees&ie=UTF-8&oe=UTF-8>

<sup>31</sup> Smith, A. (2012) In Search of Survival and Sanctuary in the City: Refugees from Myanmar/Burma in Kuala Lumpur, Malaysia, New York: International Rescue Committee, <https://www.alnap.org/help-library/in-search-of-survival-and-sanctuary-in-the-city-refugees-from-myanmar-burma-in-kuala>

<sup>32</sup> Asia Pacific Refugee Rights Network (2018) 'Country Factsheet: Malaysia', p. 6, <http://aprrn.info/wp-content/uploads/2018/09/APRRN-Country-Factsheet-Malaysia-4-Sept-2018.pdf>

<sup>33</sup> Asia Pacific Refugee Rights Network (2018) 'Country Factsheet: Malaysia', p. 6, <http://aprrn.info/wp-content/uploads/2018/09/APRRN-Country-Factsheet-Malaysia-4-Sept-2018.pdf>

<sup>34</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 26, 75-6, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

work in restaurants or within local municipalities, where they usually sweep roads and collect garbage. Others sell vegetables in the markets, work on the paddy fields, fish along the East Coast of Malaysia, or especially for women, obtain a small income by selling small household or food items. However, refugees and irregular migrants still experience some discrimination, xenophobia, and racism from local communities.

Refugees also struggle to access health and education. Malaysia ratified the Convention on the Rights of the Child in 1995 and enacted new domestic legislations, notably the Child Act 2001, yet in practice, it has been reluctant to extend the protection mechanisms in the act to non-citizen children.<sup>35</sup> Under Article 14 of Malaysia's Federal Constitution, any child who is born within the Malaysian Federation is a Malaysian citizen if he or she "is not born a citizen of any country" and cannot acquire citizenship of another country within the period of one year after birth. However, this provision has never been implemented to grant nationality to stateless Rohingya children in the country, except for those who have one Malaysian parent.

According to the UNHCR, only 40% of refugee children have access to any form of education.<sup>36</sup> Since refugee children are prohibited from attending government schools, most education is provided through informal learning centres supported by UNHCR, NGOs, FBOs, and the refugees themselves.

Refugees with UNHCR cards are able to receive treatment at government health facilities, yet the cost is often very high, despite the fact that they are eligible for a 50% discount on health care fees charged to foreigners at government hospitals under a formal between the UNHCR Malaysia and the Ministry of Health in 2005.<sup>37</sup> Those without UNHCR cards have extremely limited options for accessing secondary care. Additionally, hospital personnel are legally required to report unregistered persons to the police or immigration authorities, who may potentially arrest and detain such persons upon their treatment's completion.

In regard to housing, Rohingya communities mainly live in areas with employment opportunities (i.e. urban areas or areas with factories and plantation sites).<sup>38</sup> They usually rely on members of the host community to get assistance, due to the absence of housing provided by the government or NGOs. However, the lack of documentation subjects them to difficulties in finding and renting houses: some landlords often require some identification document and proof of ability to pay, while others often charge them rental fees that are higher than the usual market rate.

## MAPPING OF NATIONAL AND INTERNATIONAL ACTORS AND POLICY RESPONSES

With limited NGO and state involvement, the UNHCR has remained as the most prominent and influential formal institution in ensuring refugees' protection and livelihoods.<sup>39</sup> It serves not only as the gatekeeper to RSD and

<sup>35</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 63-4, 66-8, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>36</sup> Wake, C. and Cheung, T. (2016) Livelihood Strategies of Rohingya Refugees in Malaysia: 'We Want to Live in Dignity', HPG Working Paper, June, p. 7, <https://www.refworld.org/pdfid/57922bbb4.pdf>

<sup>37</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 50, 71, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>38</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 78, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>39</sup> Wake, C. and Cheung, T. (2016) Livelihood Strategies of Rohingya Refugees in Malaysia: 'We Want to Live in Dignity', HPG Working Paper, June, p. 9, <https://www.refworld.org/pdfid/57922bbb4.pdf>

resettlement, but also the most visible potential provider of financial, livelihoods, protection, and health support. Under its mandate, UNHCR registers newcomers and other asylum-seekers, and more recently has focused on registering asylum-seekers in immigration detention centres (IDCs) and seeking their release. Notably, several thousand persons of concern were released from immigration detention in 2015. Nonetheless, financial and other resource constraints still limit the degree and quality of its assistance.<sup>40</sup>

Additionally, the UNHCR has no formal agreement with the Malaysian government in regard to conducting its operations in the country.<sup>41</sup> The agency works with the Ministry of Foreign Affairs, Ministry of Home Affairs, and Immigration Department on refugee issues, yet there is no government body that assumes responsibility for coordinating with the UNHCR and other stakeholders. Some tensions also remain, as government officials often claim that UNHCR serves as a “pull factor” for refugees in Malaysia, as well as question the absence of shelter and material support for the refugees in addition to their slow rate of resettlement.

IOM’s mandate in Malaysia, overlaps to some extent with UNHCR; it includes refugee resettlement, health, cultural orientation, assisted voluntary return of victims of trafficking and vulnerable migrants, immigration and border management, labour migration and human development, as well as migration law, policy, and public information.<sup>42</sup>

Another policy response is evident in how the new Malaysian government, which was elected in May 2018, has promised to ratify the Refugee Convention and allow refugees to work in the country.<sup>43</sup> Ratifying the Convention can be extremely difficult in this context, given the potential political backlash that the new government may face. However, a study conducted by the Institute for Democracy and Economic Affairs (IDEAS) claims that granting the right to work for refugees in Malaysia has several positive economic implications: 1) refugees’ contribution to annual GDP growth of over RM3 billion by 2024; 2) potential creation of over 4,000 jobs for Malaysians; and 3) refugees’ tax contribution of over RM50 million each year by 2024. <sup>44</sup> The study further adds that refugees’ contributions to GDP could increase to over RM6.5 billion each year by 2040 with annual contribution in taxes of over RM250 million.

## MAPPING AND ANALYSIS OF ASIAN CIVIL SOCIETY ORGANIZATIONS (ACSOs) ENGAGED WITH THE ROHINGYA

In some ways, Malaysia offers the most ‘progressive’ example of CSO activity in the region supported, on the one hand, by a government which is adopting an increasingly proactive stance to the needs of Rohingya refugees, for example in relation to education provision for refugee children, the right to work for refugees, and broader advocacy across the region; and, on the other hand, by solidarity with a Muslim community. CSOs are well networked, collaborative, and generally provide a coherent approach to programming in these areas.

<sup>40</sup> Wake, C. and Cheung, T. (2016) Livelihood Strategies of Rohingya Refugees in Malaysia: ‘We Want to Live in Dignit’, HPG Working Paper, June, p. 9, <https://www.refworld.org/pdfid/57922bbb4.pdf>

<sup>41</sup> Equal Rights Trust (2014) Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia, p. 33-4, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>42</sup> IOM (2019) ‘Malaysia’, [https://www.iom.int/sites/default/files/country/docs/malaysia/iom\\_malaysia\\_infosheet\\_may2019.pdf](https://www.iom.int/sites/default/files/country/docs/malaysia/iom_malaysia_infosheet_may2019.pdf)

<sup>43</sup> Jalil, A. A. ‘The Right to Work Can Empower Refugees in Malaysia’, The Conversation. <http://theconversation.com/the-right-to-work-can-empower-refugees-in-malaysia-119666>

<sup>44</sup> Todd, L., Amirullah, A., and Shin, W. Y. (2019) ‘The Economic Impact of Granting Refugees in Malaysia the Right to Work’, p.3, IDEAS, [http://www.ideas.org.my/wp-content/uploads/2019/05/P60\\_Refugee-V6.pdf](http://www.ideas.org.my/wp-content/uploads/2019/05/P60_Refugee-V6.pdf)

Although Rohingya are scattered across different parts of Malaysia, they tend to be 'localised', making it easier for CSOs to deliver their programmes. There are many, well-coordinated fields of cooperation between CSOs. Some, such as Asylum Access and Malaysian Social Research Institute (MSRI), provide legal services, while others, such as MERCY Malaysia, Malaysia Relief Agency (MRA), and Islamic Medical Association of Malaysia (IMARET), focus on the area of education (e.g. establishing schools and providing lessons such as Malay, English, Myanmar languages, maths, extracurricular activities) and health (e.g. establishing static and mobile clinics, as well as medical check-ups for refugees). Some CSOs also focus on women at risk and unaccompanied or separated children. To support these activities, CSOs often draw from volunteers, who will then serve as tutors or medical staff, as well as companies or religious based organisations for funding. In some cases, CSOs' attempts often go beyond the context of Malaysia. For example, MRA sent medical practitioners to assist in Malaysian Field Hospital (MFH) in Cox's Bazaar. Some CSOs, such as Tenaganita, attempt to address women at risk and unaccompanied or separated children. To support these activities, CSOs often draw from volunteers, who will then serve as tutors or medical staff, as well as companies or religious based organisations for funding. In some cases, CSOs' attempts often go beyond the context of Malaysia. For example, MRA sent medical practitioners to assist in Malaysian Field Hospital (MFH) in Cox's Bazaar.

Assistance is often the extension of, or involves the host country's indigenous groups, urban poor, and disabled or senior citizens. However, some CSOs target their efforts toward Rohingya more specifically.<sup>45</sup> For example, Angkatan Belia Islam Malaysia (ABIM) or the Muslim Youth Movement of Malaysia was founded in 1971 and its support for Rohingya people dates back to the late 1990s.<sup>46</sup> The Rohingya credited ABIM with helping their registration with UNHCR in the early 2000s. The Taiwanese Buddhist Tzu Chi Foundation, which runs a free health clinic (among other programmes), which is used by some Rohingya refugees. MRA, which has on several occasions provided refugees with rice, oil, and other home essentials, as well as paying for refugee children to attend school. Geutanyoe Foundation engages in advocacy on refugee policy, serves as the Secretariat to the All Party Parliamentary Group on Refugee Policy, advises the Refugee Coalition of Malaysia, and also assists the Rohingya to access education and healthcare services. Elom Empowerment has built a community centre to provide life skills to Rohingya refugees in Malaysia through English and computer classes, programmes focusing on the refugees' vocational training, health education, social integration, budgeting and financial management, religion and culture, community outreach, and employment, as well as lobbying and advocacy to promote their basic rights.<sup>47</sup>

Local CSOs also work collaboratively with international organisations. Generally, working relations between the UNHCR and CSOs have been positive. Usually, the UNHCR provides coordination (e.g. arranging coordination meetings between CSOs). Their cooperation, however, extends beyond this. The UNHCR currently works with some NGOs, such as A Call To Serve (ACTS), Buddhist Tzu Chi Foundation, and Malaysian Social Research Institute (MSRI), to provide voluntary healthcare services for refugees and asylum seekers.<sup>48</sup> There have been pilot projects provided by CSOs, including language and vocational training, which aim to prepare the necessary skills for refugees following their resettlement. Sometimes, CSOs work with the UNHCR to secure release of refugees who get detained by the police. In some cases, while the UNHCR provides training for teachers, CSOs will provide the learning space (e.g. schools). Similarly, when the UNHCR conducts programmes for mothers, CSOs will provide medical teams. This is not without challenges. For example, the UNHCR wanted CSOs to open local schools for all refugee children, yet the government prevented this. Hence, CSOs had to find a middle ground to open learning centers registered under the Ministry of Education.

<sup>45</sup> Wake, C. and Cheung, T. (2016) Livelihood Strategies of Rohingya Refugees in Malaysia: 'We Want to Live in Dignity.' HPG Working Paper, June, p. 6-7, <https://www.refworld.org/pdfid/57922bbb4.pdf>

<sup>46</sup> Utusan Online (1998) 'ABIM to Continue Humanitarian Aid Despite Economic Slowdown', 3 July.

<sup>47</sup> Elom Empowerment (2019) 'About Us', <http://elomempowerment.blogspot.com/p/about-us.html>

<sup>48</sup> Chia, S.Y. (2018) 'Refugee Law in Malaysia.' Chia, Lee & Associates. <http://www.chialee.com.my/knowledge-hub/refugee-law-in-malaysia/>

Generally, there has been positive collaboration between CSOs. CSOs share information with one another in regard to issues such as refugees' education and health. Notably, the UNHCR's Partner Referral Network allows CSOs to identify individuals who need expedited protection intervention or assistance and refer them to the UNHCR.<sup>49</sup> There are some regional and Malaysian CSOs currently represented as members of the APRRN.<sup>50</sup> The network's South East Asia (SEA) Working Group engages in three areas: joint advocacy, capacity strengthening, and resource/knowledge sharing and outreach. In the process, it also engages directly with ASEAN governments, including Malaysia, sensitises the local/regional media about refugee issues, participates in the development, implementation, and monitoring of Universal Periodic Review (UPR) recommendations and process for SEA countries, and assembles its members for sharing refugee protection practices and challenges within the region.<sup>51</sup>

In Malaysia, refugees including Rohingya are more integrated in CSO work. Some receive an allowance by working as volunteers for CSOs. They often work as teachers, focal points linking the CSOs and the UNHCR, or community leaders, all of which are important for building trust between CSOs and the Rohingya community. The Rohingya also have their own community networks, the biggest of which is Rohingya Society in Malaysia (RSM). Their presence is also supported by religious networks.

The more positive outlook in the Malaysian case is also supported through the government's more progressive commitment to policies for refugees. Whilst acceptance of Rohingya by the host communities is by no means unanimous, yet the backlash has been minimal. In 2020, unfortunately, the tide changed with Malaysia witnessing a rise in xenophobic and anti-refugee sentiment. Still, the long-term commitment of both the Malaysian government and CSOs has revolved around safe repatriation. Similar to the Indonesian case, trainings provided by CSOs are still seen as a way to ensure Rohingya survival once they are repatriated or resettled to a third country. Overall, efforts to foster greater government, community, and civil society support for refugee communities is currently ongoing.

## SUMMARY AND CONCLUSION

As a non-party to the 1951 Refugee Convention and its 1967 Protocols, Malaysia lacks a clear legal and policy framework to deal with refugees. The tasks for ensuring protection have been mostly carried out by the UNHCR, instead of the government. In the absence of any camps, refugees possess some freedom of movement. However, some are still being detained in IDCs and to a lesser extent, trafficking camps. In addition, refugees still face significant barriers to work, health, and education. However, various efforts to promote a refugee law and policy are still ongoing and some progress has been made in recent years. CSO activity is widespread and well-coordinated.

<sup>49</sup> UNHCR UK (2017) 'Community-based Protection in Malaysia', <https://www.unhcr.org/uk/community-based-protection-in-malaysia.html>

<sup>50</sup> These members are CARAM Asia, Development of Human Resources For Rural Areas (DHRRA), Federation of Reproductive Health Associations Malaysia, Good Shepherd Services, Health Equity Initiatives (HEI), Malaysian Social Research Institute, Mercy Malaysia (Malaysian Medical Relief Society), Migration Working Group, Penang Stop Human Trafficking Campaign, Rohingya Project, Suara Rakyat Malaysia (SUARAM), SUKA Society, Tenaganita, Voice of the Children, PKPKM Sabah, and Yayasan Chow Kit. See Asia Pacific Refugee Rights Network (2019) 'Current Members', <https://aprrn.info/members/current-members/>

<sup>51</sup> Asia Pacific Refugee Rights Network (2019) 'South East Asia', <http://aprrn.info/our-work/geographic-working-groups/south-east-asia/>

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# Thailand

- Not party to either the 1951 Convention relating to the Status of Refugees or its 1967 Protocol
- Immigration Act 1979 regulates refugee affairs
- 53,328 refugees, 0.08% of the total population of 69.63 million.<sup>1</sup>
- 478,843 persons under UNHCR's statelessness mandate, of which about 97,600 are from Myanmar<sup>2</sup>

## CONTEXT AND OVERVIEW OF THE ROHINGYA DIASPORA IN THAILAND

Although it is not a party to the 1951 Refugee Convention, Thailand has, over the last few decades, provided asylum to some 1.2 million refugees.<sup>3</sup> Thailand functions as both a destination and transit country for Rohingya on their way to third countries.<sup>4</sup> While a significant number of the refugees use it as a transit route to reach Malaysia and Australia, there is a small but significant population residing in Thailand, many of whom have lived in the country for over 20 years.<sup>5</sup> The exact number of Rohingya refugees in the country is difficult to estimate, yet recent estimates by community leaders, NGOs, and a survey by the Thai National Human Rights Commission suggested around 3,000 in the country, most of whom can be found in Bangkok, with others living in Mae Sot, Ranong, and the southern provinces. The UNHCR suggests a higher number: about 5,000 Rohingya are currently living in Thailand.<sup>6</sup> On the other hand, since Rohingya are ineligible for refugee status in Thailand (discussed in the next section), the large number of stateless persons undoubtedly includes a proportion of Rohingya.

Since Thailand is not a signatory to the 1951 Convention relating to the Status of Refugees nor its 1976 Protocol, both the settled Rohingya in Thailand and those travelling through it have faced insecurities and concerns related to human rights, as the country considers them as “illegal” economic migrants, with the additional insecurity of being stateless and past persecution in Myanmar.<sup>7</sup> As stateless persons, the Rohingya do not hold proof of legal identity. Since documentation of nationality is a requirement to travel and acquire immigration status, they are essentially incapable of relying on legal channels of migration.

<sup>1</sup> For consistency of sources in this report this is the total recorded in UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 67, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>. See also World Population Review (2019) ‘Thailand Population’, <http://worldpopulationreview.com/countries/thailand-population/>

<sup>2</sup> UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 15, 67, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

<sup>3</sup> UNHCR (2008) ‘Thailand.’ p. 251-5 in UNHCR Global Appeal 2008-2009, <https://www.unhcr.org/en-my/474ac8df0.pdf>

<sup>4</sup> Center for Migration Studies (2014) ‘The Stateless Rohingya in Thailand’, <https://cmsny.org/the-stateless-rohingya-in-thailand/>

<sup>5</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) ‘The Human Rights of Stateless Rohingya in Thailand’, p. 17, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>6</sup> BBC (2018) ‘Myanmar Rohingya: What You Need to Know About the Crisis.’ <https://www.bbc.co.uk/news/world-asia-41566561>

<sup>7</sup> Center for Migration Studies (2014) ‘The Stateless Rohingya in Thailand’, <https://cmsny.org/the-stateless-rohingya-in-thailand/>

## REFUGEE LAW AND PROTECTION

### National Legislation

Thailand is not a signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, nor to the 1954 Convention relating to the Status of Stateless Persons.<sup>8</sup> Because Thailand has no formal refugee legal framework, its Immigration Act 1979 regulates all foreigners entering the state's territory, including refugees. The Immigration Act rules that a valid passport (or document used in lieu of a passport) is required for lawful admission<sup>9</sup> and any foreigner who enters or stays in Thailand without lawful admission is subject to deportation.<sup>10</sup> On this note, the Thai Provincial Admissions Board (PAB) is the agency responsible for refugee status determination for all asylum seekers.

### Access to Protection

The treatment of the Rohingya who arrived in Thailand by boat has raised human rights concerns.<sup>11</sup> For example, the Royal Thai Navy was publicly criticised for multiple human rights violations against Rohingya migrants in 2009, which included their arbitrary detention and cruel, inhuman or degrading treatment prior to their push-back to the sea without petrol or food.<sup>12</sup> In 2013, several boats of Rohingya entering Thailand were not allowed to land in the country and were “pushed back” or “helped on” to Malaysia by sea.<sup>13</sup>

There are difficulties in regard to refugees' access to protection following their arrival in Thailand. Thailand has for decades accommodated refugees and stateless persons from Myanmar in “temporary shelters” or camps along the Thai-Myanmar border. However, according to Human Rights Watch,<sup>14</sup> PAB, the agency responsible for refugee status determination for all asylum seekers from Myanmar, does not recognise the Rohingya's need for protection in the camps either. The lack of effective protection in camps has the effect of encouraging refugees to move away from this restrictive environment. Yet at the same time, Thailand does not formally recognise those living outside these camps as refugees or “displaced persons”.<sup>15</sup> As such, the current policies instead attempt to ensure that refugees or “displaced persons” are contained in camps located in border areas and that protection policies are not extended to those unable or unwilling to reside in the refugee camps. As a result, urban refugees and refugees outside the camps are regarded as “illegal immigrants” and are therefore subject to arrest, detention, and deportation under the Immigration Act. In January 2004, the Thai government revoked UNHCR's ability to screen individuals from Myanmar for refugee status

<sup>8</sup> Center for Migration Studies (2014) 'The Stateless Rohingya in Thailand', <https://cmsny.org/the-stateless-rohingya-in-thailand/>

<sup>9</sup> Immigration Act, B.E. 2522 (1979) [Thailand], chapter 2 section 12, <https://www.refworld.org/docid/46b2f9f42.html>

<sup>10</sup> Immigration Act, B.E. 2522 (1979) [Thailand], chapter 6 section 54, <http://www.refworld.org/docid/46b2f9f42.html>

<sup>11</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) 'The Human Rights of Stateless Rohingya in Thailand', p. 14, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>12</sup> Equal Rights Trust (2009) 'ERT Urges Thai PM to Rescue 126 Rohingya Pushed Out to Sea by Thai Military', January. <https://www.equalrightstrust.org/news/ert-urges-thai-pm-rescue-126-rohingya-pushed-out-sea-thai-military>

<sup>13</sup> “Push back” is the practice of towing out into sea boats of refugees and irregular migrants, often without adequate food and water and in some instances without engines., while “helping on” refers to the similar but more humane practice of intercepting boats in the sea, not allowing them to land but moving them on to other countries, often after providing them with supplies. See, for example, Human Rights Watch (2013) 'Thailand: Release and Protect Rohingya 'Boat People'', August 20, <https://www.hrw.org/news/2013/08/20/thailand-release-and-protect-rohingya-boat-people>

<sup>14</sup> Human Rights Watch (2012) 'Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers', p. 1, 91, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>

<sup>15</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) 'The Human Rights of Stateless Rohingya in Thailand', p. 32, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

determination interviews.<sup>16</sup> This might explain why the number of officially registered refugees is comparably lower than that of stateless persons in Thailand.<sup>17</sup> As such, although the UNHCR operates in Thailand and provides some degree of protection to urban refugees from nationalities other than Myanmar, many Rohingya and refugees from Myanmar are unable to access this protection. These include Rohingya children born in Thailand, who remain stateless and similarly vulnerable to deportation because they are not conferred Thai nationality or legal status in the country.

An important exception applies to Rohingya who arrived between 2014 and 2015 who are considered as trafficking victims. Upon their arrival, they were sent to government shelters and the UNHCR was allowed to conduct RSD and resettlement for them through coordination with IOM. In contrast, those who arrived later were seen as illegal entries, who were then sent back to the border of Myanmar.

Taken together, this situation effectively places the Rohingya in a protection gap, excluding them from protection by both the UNHCR and the Thai PAB. As unauthorised migrants, they are subject to arrest, detention, and expulsion under the Immigration Act.

## Freedom of movement

Reportedly, there are nine temporary shelters built along the Thai-Myanmar border for displaced persons from Myanmar, which have existed for more than 30 years.<sup>18</sup> Around 97,000 stateless people from Myanmar can all be found in these camps, although the overwhelming number of them are from the Karen and Karenni ethnic groups. In fact, the camps only have around 10-15% Muslim population, of which most are Burmese Muslims (a separate category from the Rohingya). However, some Rohingya live in these camps by pretending to be Burmese, non-Rohingya Muslims because according to APRRN, the camp authorities would not allow them to stay in the camps after 2009.<sup>19</sup> Reportedly, refugees are not allowed to work or leave the camps except for specified reasons.<sup>20</sup>

Freedom of movement for refugees in Thailand's immigration detention centres (IDCs) is even more restricted. Approximately 2,000 Rohingya were officially allowed entry into the country in 2013, but were detained in and/or shelters as "illegal immigrants".<sup>21</sup> The overcrowded conditions in the IDCs have been widely criticised. Even children are routinely detained in overcrowded conditions without access to sufficient health care, food, and recreation.<sup>22</sup>

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<sup>16</sup> Human Rights Watch (2012) Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers, p. 1, 91, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>. See also Human Rights Watch (2013) "Thailand: End Inhumane Detention of Rohingya: Provide Asylum Seekers Access to UN Refugee Agency", <https://www.hrw.org/news/2013/06/03/thailand-end-inhumane-detention-rohingya>

<sup>17</sup> UNHCR (2019) Global Trends 2018, Geneva: UNHCR, p. 67, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

<sup>18</sup> Danish Immigration Service (2011) Rohingya Refugees in Bangladesh and Thailand, p.48, <https://www.refworld.org/docid/4dd0d6f72.html>

<sup>19</sup> In 2009, the Thai authorities began to develop suspicion toward Muslims due to the Muslim insurgencies in the southern provinces of the country. This led to a more restrictive policy to reduce the "pull factor" for Burmese Muslims, especially the Rohingya, to come to Thailand. See Bhabha, J. et al (2016) Children on the Move: An Urgent Human Rights and Child Protection Priority. Boston: Harvard FXB Center for Health and Human Rights, p. 48, [https://cdn2.sph.harvard.edu/wp-content/uploads/sites/114/2017/12/ChildOnMove\\_Rohingya.pdf](https://cdn2.sph.harvard.edu/wp-content/uploads/sites/114/2017/12/ChildOnMove_Rohingya.pdf)

<sup>20</sup> Chandran, R. (2019) 'Too Scared to Return Home, Myanmar Refugees in Thai Camps Face an Uncertain Future', ReliefWeb, January 14, <https://reliefweb.int/report/thailand/too-scared-return-home-myanmar-refugees-thai-camps-face-uncertain-future>

<sup>21</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 16, 41, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>22</sup> Bhabha, J. et al (2016) Children on the Move: An Urgent Human Rights and Child Protection Priority. Boston: Harvard FXB Center for Health and Human Rights, p. 48, [https://cdn2.sph.harvard.edu/wp-content/uploads/sites/114/2017/12/ChildOnMove\\_Rohingya.pdf](https://cdn2.sph.harvard.edu/wp-content/uploads/sites/114/2017/12/ChildOnMove_Rohingya.pdf)

These children are often unaccompanied and detained with unrelated adults. Meanwhile, family members are often separated upon arrival in IDCs, due to the detention centres' policy of holding males in one cell and females in another, without regular chances to visit (e.g. approximately once or twice per month).<sup>23</sup>

The 2,000 Rohingya who arrived in 2013 were granted “temporary refuge/protection” by the Royal Thai Government for six months in January 2013, providing them with a grace period before deportation, yet everyone from this group has since “escaped”; they have been informally released or informally deported from the IDCs without official handover between authorities.<sup>24</sup> Being “released” from IDCs does not necessarily guarantee more freedom of movement for refugees. First, refugees often suffer from corrupt practices among law enforcement officers, including extortion, harassment, and collusion with traffickers and smugglers. Furthermore, many found themselves in the hands of brokers from human smuggling networks, making them vulnerable to exploitation and abuse. As a result, some were arbitrarily detained on multiple occasions: first in IDCs in Thailand, then in smuggling/trafficking camps, before getting intercepted in Malaysia by state authorities, and finally detained for illegal entry into Malaysia for several months prior to being released.

According to the Ministry of Foreign Affairs, the legal regime does not allow for urban refugees and thus treats them as illegal.<sup>25</sup> On a day-to-day basis, many de facto refugees and migrants living outside refugee camps are stopped on the street by the Thai police and made to pay fines/bribes, often in intimidating ways. Police apprehending improperly documented Burmese on the street usually demand payments, ranging from several hundred baht up to 1,000 baht (US\$30) or more. A person unable to pay on the street and taken to a police station will normally pay between several hundreds to several thousands in order to be released. When they are taken to an Immigration Detention Centre (IDC) or to the border, the payment usually rises to 1,000 to 4,000 baht (about US\$30 to \$120), but can go considerably higher depending on the perceived ability of the person to pay.<sup>26</sup> Thus, refugees' protection and freedom of movement are restricted through extortion.

## Right to work and livelihoods – refugee and labour and employment law

Without the right to stay, the Rohingya are unable in many cases to work legally, register the births of their children, and access education and healthcare on their behalf.<sup>27</sup> Additionally, being deprived of access to basic social services, the settled Rohingya in Thailand have been surviving for decades through their participation in the informal labour sector, again often risking extortion, arrest, detention and deportation.

Like all irregular migrants, the Rohingya have no right to work in Thailand: Section 9 of the Alien Working Act (2008) rules that foreigners require a work permit and can only be employed in accordance with the Ministry of Labour's regulations.<sup>28</sup> Thus, a migrant applying for a work permit must either be a resident or authorised to enter the country, a stipulation that excludes most irregular migrants and therefore the Rohingya.

<sup>23</sup> Human Rights Watch (2014) Two Years with No Moon: Immigration Detention of Children in Thailand, <https://www.hrw.org/report/2014/09/01/two-years-no-moon/immigration-detention-children-thailand>

<sup>24</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 16, 41, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>25</sup> Human Rights Watch (2012) Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers, p. 99, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>

<sup>26</sup> Human Rights Watch (2012) Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers, p. 20, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>

<sup>27</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 17, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>28</sup> Alien Working Act, B.E. 2551 (2008) [Thailand], section 9, [http://thailaws.com/law/t\\_laws/tlaw0366.pdf](http://thailaws.com/law/t_laws/tlaw0366.pdf)

Prior to the National Verification process, which was introduced in 2008, some Rohingya were able to take advantage of earlier migrant worker registration schemes to obtain temporary work permits, which allowed them to work legally in certain districts.<sup>29</sup> Conversely, following a Thai cabinet decision in 2008, all migrant workers must now go through the Nationality Verification process in order to get a work permit. This verification effectively excludes Rohingya due to their stateless status.

In 2009, a bilateral MOU between the Thai Government and three neighbouring countries attempted to address the legal status problems of large numbers of irregular migrants from Cambodia, Lao PDR, and Myanmar. As a result, irregular migrants from Myanmar were, potentially, able to regularise their status, obtain work permits, and improve their access to rights. However, as this process again required individuals to have their nationality verified by relevant state authorities, the practice effectively excluded stateless Rohingya.

Most workers from Myanmar in Thailand work in factories. In contrast, the inability to obtain work permits confine Rohingya to jobs in the informal labour sector, such as selling roti (a fried South Asian bread) or second hand clothes, leaving them susceptible to extortion by both employers and police.<sup>30</sup> In the absence of a legal right to work, Rohingya cannot seek protection from workplace abuse. Police authority often detain, deport, and fine unauthorised migrants, putting the Rohingya in vulnerable positions where they can be forced to pay bribes in order to avoid these actions.

In this problematic situation, some stateless Rohingya become susceptible to being trafficked or forced labour.<sup>31</sup> The lack of documentation compels some to rely on smugglers to travel outside Myanmar, leaving the Rohingya susceptible to trafficking and forced labour. This problem was illustrated by raids conducted by the Thai government in January 2013 on temporary shelters believed to be smuggling camps in Songkhla province, in which nearly 800 Rohingya were apprehended and several trafficking suspects were arrested.

Thailand has a duty to guarantee the right to education for all children under the 1990 Convention on the Rights of the Child and the 1966 International Covenant on Economic, Social and Cultural Rights by implementing the Education for All policy in 1999, which allows every child in the country to access primary and secondary education for free.<sup>32</sup> The 2005 Cabinet Resolution on Education for Unregistered Persons allows children without legal status to enrol at public schools certified by the Ministry of Education. However, Rohingya children lacking birth registration and/or citizenship continue to struggle in accessing education, since despite this policy, asylum seeker and refugee children can only enrol at the discretion of local schools, which often impose documentation requirements on applicants. Thus, whilst some students have successfully attended primary and secondary schooling, access is inconsistent and usually obtained through NGOs' intervention and financial assistance.

Thailand has a healthcare coverage scheme, which grants free medical treatment for most diseases to all Thai nationals, and a special budget to ensure healthcare for people with unclear status.<sup>33</sup> Nonetheless, in practice, refugees

<sup>29</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 70, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>30</sup> Center for Migration Studies (2014) 'The Stateless Rohingya in Thailand', <https://cmsny.org/the-stateless-rohingya-in-thailand/>

<sup>31</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 15, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>32</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 65-6, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

<sup>33</sup> Equal Rights Trust and Institute of Human Rights and Peace Studies (2014) The Human Rights of Stateless Rohingya in Thailand, p. 67-8, <https://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>

such as the Rohingya have faced difficulties in accessing healthcare. The main cause of poor access to healthcare is the fear of being arrested upon admission to hospital. Most of the time, sick refugees rely on pharmacy treatment or pay for private health services. Some NGOs and the UNHCR, through a partner organisation in Bangkok, also provide some health assistance to refugees and asylum seekers.

Overall, a weak domestic legal framework that does not differentiate between irregular migrants, refugees/asylum seekers, and stateless people means that the Rohingya are vulnerable to arrest and detention, have no work rights, and face significant challenges accessing other basic social services. Arbitrary detention is allowed under Section 54 of the Thai Immigration Act, in contravention of Thailand's obligation under international law to protect the liberty and security of all persons, as prescribed in Article 9(4) of the ICCPR.<sup>34</sup>

## MAPPING OF NATIONAL AND INTERNATIONAL ACTORS AND POLICY RESPONSES

The Thai Ministry of Interior, National Security Council, and Ministry of Foreign Affairs are the main government agencies responsible for refugee affairs.<sup>35</sup> As a whole, the Royal Thai government still asserts that residents of refugee camps who are not screened are illegally resident in Thailand, yet there is no effective mechanism to assure the credibility of asylum claims and the government has never conducted RSD that meets international standards.<sup>36</sup> The Ministry of Interior's attempt to govern admission to the camps through the establishment of the PAB has been partial and interrupted since its establishment. Although the UNHCR recognises those who were registered by the PAB as refugees, the government only recognises them as displaced people who are allowed to live in temporary shelters pending deportation.

National security agencies such as the National Security Council have continued to retain their focus in maintaining rules and structures to closely control migrants and their rights.<sup>37</sup> The Internal Security Operations Command (ISOC), which is chaired by current Thai Prime Minister Prayuth Chan-ocha, outlined an action plan for the Thai navy to intercept arriving Rohingya boats; it essentially constitutes a "push-back" policy by allowing the navy to either provide them with fuel, food, water, and other supplies if they agree to travel to Malaysia or Indonesia, or seize them if they land on Thai shores.<sup>38</sup>

The role of the UNHCR has, arguably, been marginalised in Thailand and its Bangkok office appears to have limited influence with the Thai authorities.<sup>39</sup> First, the Thai government does not allow the UNHCR to provide assistance to the nine Burmese refugee camps on the Thai-Burma border or to register refugees or asylum seekers in the camps. Instead, assistance is provided by NGOs who also conduct their own registration and verification exercises to ensure

<sup>34</sup> See also International Covenant on Civil and Political Rights (1976) G. A. Res 2200A (XXI), Article 9, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_2200A\(XXI\)\\_civil.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A(XXI)_civil.pdf)

<sup>35</sup> Human Rights Watch (2012) Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers, p. 87-89, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>

<sup>36</sup> Human Rights Watch (2010) From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand, pg. 68-74, [https://www.hrw.org/sites/default/files/reports/thailand0210\\_insert\\_low.pdf](https://www.hrw.org/sites/default/files/reports/thailand0210_insert_low.pdf)

<sup>37</sup> Human Rights Watch (2010) From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand, pg. 6, [https://www.hrw.org/sites/default/files/reports/thailand0210\\_insert\\_low.pdf](https://www.hrw.org/sites/default/files/reports/thailand0210_insert_low.pdf)

<sup>38</sup> Phasuk, S. (2019) 'Thailand Offers Persecuted Rohingya Little Hope', Human Rights Watch, July 31, <https://www.hrw.org/news/2019/07/31/thailand-offers-persecuted-rohingya-little-hope>

<sup>39</sup> Human Rights Watch (2012) Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers, p. 87-89, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>

proper ration distributions. Furthermore, the UNHCR is not allowed to conduct RSDs for certain nationalities (Burmese, Lao Hmong, or North Koreans) and its access to IDCs outside Bangkok is “conditional”: it must be for visits only, not for purposes of registration or conducting Refugee Status Determination, and preceded by an official request. In this context, the UNHCR office in Bangkok has often been unwilling or unable to act assertively to monitor or intervene during push-backs and deportations, in addition to being slow or unresponsive to specific refugees and asylum seekers in camps, urban centres, or detention, who are in need of protection.

Meanwhile, IOM Thailand has been responsible for the resettlement of refugees from Thailand since 1999.<sup>40</sup> While there is a big resettlement programme for refugees from Lao PDR and Burma in Thailand, reportedly, only refugees registered before 2005 are entitled to resettlement.

## MAPPING AND ANALYSIS OF ASIAN CIVIL SOCIETY ORGANIZATIONS (ACSOs) ENGAGED WITH THE ROHINGYA

Many NGOs and CSOs are engaged with the refugee/asylum seeker population, including the Rohingya, in Thailand. CSOs in Thailand are especially active in urban areas, in large part due to the fact that many refugees, including Rohingya have lived in these areas, rather than camps, for years. Some CSOs seek to investigate, engage with, and strengthen the capacity of refugees in the country using an evidence-based research approach.

They engage with the host governments and other actors such as the UN, produce advocacy plans, and support the refugees (e.g. search for emergency funds, connect them with other advocates or the media). Some CSOs also work directly with refugees. They promote community empowerment by working with the refugee communities, conducting needs assessment and capacity building, and implementing livelihood or education projects. By collaborating with international agencies, some provide English lessons and assist women refugees to learn handicrafts (e.g. making bags or t-shirt) and help them sell their products. Some notable ACSOs in this regard are Fortify Rights and Fortify Rights, as well as Burmese Rohingya Association of Thailand, Human Rights Education Institute of Burma, and Thai Committee for Refugees Foundation (TCR).<sup>41</sup>

CSOs are also heavily engaged in advocacy. One key area is with regard to creating secure legal status, recognition by law, and protection for Rohingya. To that extent, CSO representatives accept that they cannot challenge the role of the government, with its commitment to repatriation; they have collaborated with government bodies, such as the National Human Rights Commission of Thailand and the Ministry of Interior. Some CSOs also argue that international pressure is equally important because Thailand needs to gain positive international recognition on rights issues as a quid pro quo for international business development. However, some CSOs also work directly to provide individual assistance for refugees in this regard. For example, the legal team in CSOs such as Asylum Access assist refugees entering country and seeking refugee status, connect them with UNHCR, and provide lawyers who can explain legal procedures to refugees and help them prepare their applications. CSOs also help with refugee screening and explain to government actors the background to asylum claims.

<sup>40</sup> Danish Immigration Service (2011) Rohingya Refugees in Bangladesh and Thailand, p.48, <https://www.refworld.org/docid/4dd0d6f72.html>. See also IOM Thailand (2018) Refugee Resettlement, <https://thailand.iom.int/sites/default/files/Infosheets/IOM%20Infosheet%20-%20Refugee%20Resettlement.pdf>

<sup>41</sup> Minority Rights Group (2013) ‘One Year After the Violence Began: Civil Society Organizations Deeply Concerned by the Human Rights and Humanitarian Situation of Stateless Rohingya’, <https://reliefweb.int/report/myanmar/one-year-after-violence-began-civil-society-organizations-deeply-concerned-human>

Another key area of CSO advocacy revolves around the Prime Minister's commitment to eliminate refugee detention in the country. As a result, the government no longer detains children, and mothers with children will also be released from detention. Refugee groups will be received in a government shelter provided by the Ministry of Social Development and Human Security. To that extent, CSOs have worked on training programmes for assistance to mothers and children following their release from detention.

A final key CSO advocacy area relates to impending changes to the national screening mechanism - the National Verification Process - which applies to all migrants but operates with inconsistent and pernicious consequences for Rohingya. For example, it includes verification of claims by Myanmar authorities which effectively excludes Rohingya, and maintains the distinction between UNHCR RSD and the government's denial of refugee status in the absence of specific laws on refugees. CSOs have been campaigning for the newly drafted national screening mechanism to solve these gaps and inconsistencies.

Rohingya constitute a sensitive issue at the government level, in large part due to ASEAN's non-interference mandate and security concerns, and as such, CSOs' engagement with the community is still rather limited. On this note, CSOs also work toward raising awareness through public forums on the Rohingya.

There are a few examples of collaborative work among CSOs and between them and international agencies. In 2011, the UNHCR developed a National Action Plans (NAP) and established an inter-agency Task Force on Detention (DTF) in an attempt to end the detention of asylum-seekers and refugees. The task force comprises of UNICEF, OHCHR, IOM, Jesuit Refugee Services (JRS), Catholic Office for Emergency Relief and Refugees/Bangkok Refugee Center (COERR/BRC), Thai Committee for Refugees (TCR), Asylum Access Thailand (AAT), UNHCR, and, as observers, the Asia-Pacific Refugee Rights Network and the ICRC.<sup>42</sup>

Sometimes the coalitions are initiated by individual CSOs. For example, in 2015, Fortify Rights built a Thai coalition of activist for refugees and stateless persons, which consists of organisations working on advocacy, care management, legal protection, and refugees and child protection, as well as some groups from the Islamic communities.

The Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT) serves as a communication network for non-governmental organizations (NGOs), representing the membership's interest to the Royal Thai Government, international organisations, and embassies.<sup>43</sup> In 2019, its members include Agency for Technical Cooperation and Development (ACTED), Adventist Development and Relief Agency (ADRA), COERR Foundation, DARE Network, Humanity & Inclusion (Handicap International), International Rescue Committee (IRC), Jesuit Refugee Service (JRS Asia Pacific), Malteser International (MI), Right To Play (RTP), Save The Children (SCI), Shanti Volunteer Association (SVA), the Border Consortium (TBC), and Women's Education for Advancement and Empowerment (WEAVE). In addition there are many CSOs that are member organisations of APRRN.<sup>44</sup> In the Thailand context, APRRN's SEA Working Group works to support CBOs on Thailand-Myanmar border in their advocacy on voluntary repatriation.<sup>45</sup>

<sup>42</sup> UNHCR (2015) 'National Action Plan Thailand', <https://www.refworld.org/pdfid/57dff79316.pdf>

<sup>43</sup> Committee for Coordination of Services to Displaced Persons in Thailand (2019) 'Our Members', <http://www.ccsdpt.org/#our-members>

<sup>44</sup> These are: ALTSEAN-Burma, Asian Forum for Human Rights and Development (FORUM-ASIA), Asylum Access, Burma Link, Caritas Thailand, Center for Asylum Protection, Coalition for the Rights of Refugees and Stateless Persons, Courageous Kitchen, Fortify Rights, Human Security Alliance (HSA), Karenni Social Development Center, Jesuit Refugee Service Asia Pacific, People's Empowerment Foundation, The Arakan Project, The Branch Foundation. See Asia Pacific Refugee Rights Network (2019) 'Current Members', <https://aprrn.info/members/current-members/>

<sup>45</sup> Asia Pacific Refugee Rights Network (2019) 'South East Asia', <http://aprrn.info/our-work/geographic-working-groups/south-east-asia/>

## SUMMARY AND CONCLUSION

An overview of the handling of refugees and asylum seekers, including the Rohingya, in Thailand has revealed significant issues in terms of their protection and access to livelihoods. Although many actors and CSOs are engaging with the Rohingya community in Thailand, unresolved gaps between the UNHCR's priorities and the government's policy developments over the years have created uncertainties in terms of the refugees' status determination and thus, their right to work and livelihoods. As such, many are forced to rely on informal channels for their survival in the host country without any clear legal status. It appears that the focus on preserving national security has led the Thai government to maintain these gaps and ambiguities surrounding the Rohingya's status as stateless people.

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# ADSP

Asia Displacement Solutions Platform



NORWEGIAN  
REFUGEE COUNCIL



The Asia Displacement Solutions Platform is a joint initiative of the Danish Refugee Council, International Rescue Committee, Norwegian Refugee Council and Relief International, which aims to contribute to the development of comprehensive solutions for Afghans and Rohingya affected by displacement. Drawing upon its members' operational presence in the region, the ADSP engages in constructive dialogue and evidence-based advocacy initiatives to support improved outcomes for displaced Afghans and Rohingya.