



Rohingya in South East Asia: Opportunities for engagement



TABLE OF CONTENTS

EXECUTIVE SUMMARY	3	OVERVIEW OF CSO ENGAGEMENT IN CASE STUDY COUNTRIES	25
INTRODUCTION, AIMS AND OBJECTIVES	5	Australia	25
METHODS	6	Bangladesh	26
ROHINGYA: A SHORT BACKGROUND	7	Malaysia	27
SYNTHESIS OF FINDINGS AND CONCLUSIONS – CONTEXTUAL MAPPING OF POLICY MAKING ENVIRONMENT	8	Indonesia	28
ROHINGYA REFUGEES	8	Thailand	29
Number and Distribution	8	RECOMMENDATIONS	30
Settlement Policies for Rohingya	9	Generic and bangladesh-focussed recommendations	31
PROTECTION AND RIGHTS DEFICITS	10	Country-specific recommendations	32
Inadequate national and regional protection frameworks	10	ANNEX	
Protection, rights and the ambiguous status of Rohingya	11	KEY INFORMANTS' INTERVIEWS	33
RIGHTS DEFICITS – THE IMPLICATIONS FOR SOCIO-ECONOMIC WELL-BEING	14	Schedule of Key Informants' Interviews	33
Right to work , Freedom of movement and livelihoods	14	A note on the KII questionnaire survey instrument	34
Social welfare and assistance	15	Key informants' Interview Instrument	35
PROGRESS ON SECURING RIGHTS FOR ROHINGYA	16		
CONCLUSIONS	17		
SYNTHESIS OF FINDINGS AND CONCLUSIONS – INTERESTS AND CAPACITIES OF CSOs	18		
POLITICAL DYNAMICS AND POLICY IMPLICATIONS FOR ADSP	18		
Navigating the balance between repatriation and advocacy	18		
'Localisation': support and collaboration	19		
Humanitarian or development programming?	22		
CSO CAPACITIES AND PROGRAMME NEEDS	23		
Host Country CSOs	23		
Rohingya Civil Society	24		
CONCLUSIONS	24		

Date of production

October 2020

Acknowledgements

The study was commissioned using funding from DANIDA and the European Union's Civil Protection and Humanitarian Aid department. The views set out in this report are those of the authors and do not reflect the official opinion of DANIDA, the EU, ADSP or its members.

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EXECUTIVE SUMMARY

With a documented total of almost 1.2 million refugees originating from Myanmar – overwhelmingly Rohingya – this constitutes the world's fourth largest refugee group by country of origin in 2018. Rohingya also form the world's largest stateless population. The distinctive settlement policies for Rohingya across the region, varying from encampment to relatively unconstrained urban settlement, necessitate varied programming responses in each country.

Including Australia, Bangladesh, Malaysia, Indonesia and Thailand, this report maps the policy making environment and institutional architecture of Asian civil society organisations (CSOs) and communities engaged in issues of Rohingya statelessness and in supporting Rohingya refugees. The report documents and assesses the interests and capacities of these CSOs, and provides conclusions and recommendations to support development of stronger and more representative ADSP policy engagement and regional advocacy strategy.

The methodology comprised a desk study review of literature, secondary data and websites for each country, and 23 key informant interviews (KIIs) with region- and country- based CSOs and other actors.

At both national and regional levels, Rohingya refugees experience wide-ranging protection and rights deficits, very significant insecurity, extensive restrictions and obstacles to socio-economic wellbeing, livelihood precarity and destitution, and vulnerability to smuggling and trafficking. The lack of durable solutions within the region exacerbates these deficits.

Underscoring their protection and rights deficits and vulnerability are: the non-signatory status of four of the host countries to the 1951 Geneva Convention on Refugees; Rohingya statelessness; their lack of documentation; and the host countries' strong commitment to early repatriation. Significant limitations to a range of functional rights – notably freedom of movement, right to work and livelihoods – and limited access to social welfare and assistance, severely weaken the refugees' socio-economic well-being.

These rights and protection deficits bear heavily on the mandates, roles, capacities, and strategies of CSOs.

Despite these inauspicious conditions, a vibrant CSO community exists in the sub-region, forming a large, diverse and very active constituency engaged with Rohingya refugees. This is predominantly, but not exclusively, led by host country civil society not Rohingya. The CSOs vary from very small scale informal Rohingya grass roots community groups involved in the Bangladesh refugee camps for example, to well organised and established host country CSOs/NGOs. Although generally small scale, host-country CSOs have strong advocacy capacity, and they are effectively networked.

Advocacy for their rights and protection is the dominant focus of the CSOs, whilst, on the other hand, they have limited capacity and resources for delivering much needed physical and technical services and humanitarian assistance. However, the intensely politicised context governing the response to Rohingya in the host countries constitutes a major challenge for CSOs (and, indeed all NGOs and INGOs) working with Rohingya refugees. This has important implications for how, and the extent to which, ADSP members and non-governmental organisations could develop a stronger and more representative policy engagement and regional advocacy strategy.

The host countries' focus on repatriation overwhelmingly drives and shapes CSO priorities, those of other humanitarian actors and, potentially, ADSP. This means that humanitarian actors must be attentive to the complexity of political factors when defining their advocacy positions and methods, carefully navigating the impact of host governments' priorities on their precepts.

Whilst humanitarian actors, such as ADSP, must navigate their host governments' commitment to repatriation, at lower levels of government (closer to the Rohingya populations themselves), other factors define potential advocacy priorities and methods - and potentially also greater acceptance and allies. Amongst these factors the localisation of CSOs and the establishment of CSO platforms, which place a high premium on collaborative working, are significant. However, unresolved tensions remain between local and national CSOs on the one hand, and NGOs and INGOs, on the other, with the sense that considerable 'localised' expertise and capacity has not been fully recognised or exploited when the latter scaled up after the 2017 crisis. Conversely, these developments and increasing engagement by local CSOs do not seem to include the embryonic Rohingya-led CSOs. Nevertheless, the increasing possibilities for the formalised acceptance of refugees, which are in some ways shaped by the advocacy of the CSOs and public attitudes toward the refugees in each country, reinforce the potential for engagement.

Rohingya civil society remains organisationally very weak in all the countries but is gradually emerging. Only very limited and patchy collaboration exists between Rohingya CSOs and local CSOs and also NGOs/INGOs.

The report highlights these characteristics in short summaries of case study countries

The report makes 14 generic and country-based recommendations enabling ADSP members and other non-governmental organisations to develop stronger and more representative policy engagement and regional advocacy strategy related to Rohingya refugees and CSOs. These recommendations include: scaling up its presence in advocacy and service delivery across the region; collaborating with developing sustainable partnership and support for local CSO actors and existing country 'platforms'; developing an ADSP 'dual mandate' in host countries and in Myanmar; strengthening adherence to international protection norms; enhancing advocacy; supporting and empowering Rohingya CSOs and facilitating bottom-up Rohingya community development; expanding service delivery in areas such as education and women and children, and shelter and infrastructure; undertaking research on Rohingya cultural norms, and governance.

INTRODUCTION, AIMS AND OBJECTIVES

With a documented total approaching 1.2 million persons¹, refugees originating from Myanmar – overwhelmingly Rohingya – now constitute the world's fourth largest population group by country of origin in 2018. There is, in addition, a substantial population of undocumented Rohingya refugees. At just under four million, Rohingya also comprise the world's largest stateless population.

Predominantly hosted within the South Eastern (SE) Asia sub-region, Rohingya have been in exile since at least the early 1960s, with their number progressively increasing in subsequent decades. The extremely violent Myanmar military security operations in Rakhine State in 2017 precipitated an enormous and rapid exodus of Rohingya, mainly to Bangladesh, more than doubling the number of refugees to its current level. Although not fully acknowledged as a protracted refugee crisis, the 2017 exodus highlighted the fact that there remain no prospects that the refugee situation will be resolved by a durable solution, despite tough government rhetoric in the region, most notably from Bangladesh, that speedy return is essential.

Against this background, and the extensive documentation and analysis that is already available on the Rohingya refugees in the host countries, this report has been commissioned by the Asia Displacement Solutions Platform (ADSP) with the **specific aims** to:

- document and assess the interests and capacities of Asian civil society organisations (CSOs) and communities² who are engaged in issues of Rohingya statelessness and, more generally, their role in supporting Rohingya refugees in Australia, Bangladesh Malaysia, Indonesia, and Thailand; and
- provide a contextual mapping and analysis of the policy making environment and institutional architecture and how this factors condition the role and scope of operations of the CSOs.

The **objective** of the study is to provide:

- conclusions and recommendations to support development of stronger and more representative NGO policy engagement and regional advocacy strategy.

The structure of the report comprises five sections, an Annex and a second volume. A short discussion of the research methods (Section 1) is followed by an overview of the Rohingya population and the origins of their displacement (Section 2). The third and fourth sections of the report provide, respectively, a synthesis of the findings and conclusions drawn from the five country profiles on the Contextual Mapping of Policy Making Environment (Section 3), and the Interests and Capacities of CSOs (Section 4). Section 5 provides a summary of the case study country conditions drawn from Volume 2, whilst the recommendations conclude the report (Section 6). Annex 1 comprises a schedule of the key informants and the key informants' interview instrument. Forming the backcloth to this synthesis report, a second

¹ UNHCR (2019) Global Trends 2018, Geneva: UNHCR. <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

² Civil Society Organisations (CSOs), sometimes also termed Community Based Organisations (CBOs), are not defined in the ToR and we do not elaborate a lengthy definition here. We have broadly interpreted CSOs to be actors, mainly but not exclusively, formally institutionalised, and which are particularly demarcated by close relationships to local communities which they serve – ie local 'ownership' – and from which they usually originate. NGOs and IGOs are also discussed in the report. We designate these as formally institutionalised national and international organisations having a recognised mandate, organisational structure and professional cadres of staff.

volume contains five host country profiles – Australia, Bangladesh Malaysia, Indonesia, and Thailand; this volume maps and analyses refugee law and the conditions of protection and rights for the Rohingya in each country, the national and international actors and policy responses, and the role and capacity of civil society organisations engaged with Rohingya.

The report only considers the five countries hosting Rohingya refugees; it does not survey the situation in Myanmar, but it does acknowledge, where relevant, how conditions in Myanmar mediate the situation of the refugees and the stance of host countries to the refugees and their potential repatriation.

METHODS

The methodology for the study comprised two processes:

- A **desk study review** of a wide range of literature, secondary data and websites for each country comprising³ :
 - Government legislation, policies and reports
 - Reports, policy documents, and evaluations by and of CSOs and NGOs/INGOs
 - Reports, policy documents, and evaluations of national, regional and international actors such as UNHCR, IOM, OHCHR, ILO
 - General and country specific academic, research and think-tank literature and reports related to the topic
- **Key informant interviews** (KIIs) were held with a sample of 23 CSOs and related actors in the region and in each country including individual CSOs and co-ordinating networks and platforms. The KIIs provided information and data complementary to the documentary mapping and analysis of their activities. The sample was based on a snowball method and conducted by Skype. Annex 1 provides details of the key informants interviewed, an explanation of how the survey instrument was adapted during this stage, and the open-ended questionnaire survey instrument.

³ The literature review only covers English language documents, with very few exceptions in the Indonesian case study.

ROHINGYA: A SHORT BACKGROUND⁴

Concentrated in the north western region of Rakhine State in Myanmar (one of the poorest of the country's states), Rohingya constitute a distinct ethnic, religious, and linguistic population in a country that has a multiplicity of ethnic groups. The current size of the Rohingya population still living in Myanmar is hard to verify. In 2014 there were an estimated 1.0-1.5 million, concentrated in Rakhine State, although there had been no census for 30 years and, in any case, persecution would have made self-identification problematic.⁵ Assuming that included in this total were the more than 650,000 who fled the violence in 2017 and became refugees, the current population is now likely to be under one million, potentially substantially so. In Rakhine State there are estimates that 128,000 Rohingya and other Muslims have been confined to camps with no freedom of movement for the last seven years.⁶

The ethno-historic origins and presence of the Rohingya in Myanmar are disputed and heavily polarised. Substantial evidence exists that this indigenous group has been present in what is now Myanmar for many centuries. But there is also a contention that Rohingya were a more recently arrived migrant group in the early part of the 19th Century under British colonial rule. As a Muslim minority (4% of the national population of 54 million), in a predominantly and strongly Buddhist country (90% of the population), Rohingya have been severely and systematically persecuted and oppressed for many decades. Persecution is triple fold: deprivation of nationality; social and economic discrimination and exclusion; and through increasingly violent and extensive physical persecution.

First, Myanmar's 1982 Citizenship Law deprived Rohingya of nationality – they are not one of the 135 recognised ethnic groups – thereby denying them citizenship and rendering them stateless. This denial of fundamental rights not only intensely impacts their lives within their country: it has profound consequences for how host states consider their claims for refugee status.

Second, Rohingya experience extensive social and economic discrimination, arbitrary controls, and exploitation that render them severely marginalised. This is evident, for example, through: forced labour and extortion; limited access to employment, and education and health services; draconian restrictions on movement; prohibition from building

⁴ For more details on the background to the Rohingya in Myanmar see, inter alia:

Asian Foundation (2017) *The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development*, San Francisco: The Asia Foundation. Centre for Migration Studies (nd) 'The Stateless Rohingya in Thailand',

<https://cmsny.org/the-stateless-rohingya-in-thailand/>

Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar* (2014), http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf

Holliday, I. (2010) 'Ethnicity and Democratization in Myanmar', *Asian Journal of Political Science*, 18(2), pps. 111-128.

Holliday, I. (2014) 'Addressing Myanmar's Citizenship Crisis', *Journal of Contemporary Asia* 44(3), pps. 404-421.

National University of Ireland, Galway (2010) *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, Irish Centre for Human Rights, http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf

UNHCR (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.

Wade, F. (2017) *Myanmar's Enemy Within: Buddhist Violence and the Making of a Muslim 'other'*, USA: Zed Books.

Ware, A., and Laoutides, C. (2019) 'Myanmar's 'Rohingya' Conflict: Misconceptions and Complexity', *Journal of Asian Affairs*, 50(1), pps 1-20.

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

See also 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. 11, <https://www.unhcr.org/5bbc6f014.pdf>

⁶ IRC (2018) *Statement of '42 NGOs warn that the return of refugees to Myanmar now would be dangerous and premature'*, Yangon:IRC, Nov. 9, <https://www.rescue.org/press-release/42-ngos-including-irc-warn-return-refugees-myanmar-now-would-be-dangerous-and>

permanent structures and land confiscation. Rohingya who leave Myanmar cannot re-enter the country – in effect their former presence is erased and they risk imprisonment if detained on re-entry.

Finally, there has been a long history of periodic physical persecution, since the military coup in 1962: most notably waves of persecution against the Rohingya occurred in 1978 (the Nagamin (Dragon King) operation), 1982, 1991-1992 (the Pyi Thaya (Prosperous Country) campaign), and more recently, following the 2012 Rakhine State riots. Often coinciding with new legislative restrictions to their rights and status and demarcated by significant spikes in refugee exodus, such persecution became most internationally visible in 2017 with extremely violent and widespread terrorising of Rohingya by the Myanmar security forces with the probable, though unstated, aim of driving them out of the country. An independent UN mission concluded the events of 2016/17 constituted serious crimes under international law.⁷

SYNTHESIS OF FINDINGS AND CONCLUSIONS – CONTEXTUAL MAPPING OF POLICY MAKING ENVIRONMENT

This section of the synthesis report provides, as specified in the ToR, ‘a contextual mapping and analysis of the policy making environment and institutional architecture and how these factors condition the role and scope of operations of the CSOs.’

ROHINGYA REFUGEES⁸

The overall number and distribution of Rohingya refugees have important implications for CSOs and other actors in relation to their scale of operations and capacity, the geographical location of their activity, and how they co-ordinate with each other.

Number and Distribution

Totalling 1.2 million documented refugees, Rohingya constituted the world's fourth largest refugee population group by country of origin in 2018.

Rohingya refugees first started to arrive in small numbers in countries neighbouring Myanmar in the early 1960s. Since then numbers have grown with periodic arrival, repatriation to Myanmar, and then repeated return to exile demarcated by different episodes of legal restriction, persecution, and violence in Myanmar. By the end of 2018, the global

⁷ 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

⁸ As explained later in this section, most host countries do not recognise Rohingya as refugees under their national (or, indeed, international) legal and normative frameworks that deal with immigration. However, in this study we use the term refugee as shorthand for all forcibly displaced Rohingya whatever their status.

refugee population from Myanmar was approaching 1.2 million⁹, undoubtedly an underestimate, with Bangladesh hosting 906,600 – about 80% of the total. Other countries with significant numbers of Myanmar refugees are Malaysia (114,200), and Thailand (97,600); in the two other countries of this study, Australia hosted almost 10,000 whilst Indonesia hosted just over 800 documented Rohingya refugees.

Difficult though it is to align different estimates and to determine, from available UNHCR and other data, the ethnic breakdown of refugees from Myanmar, the overwhelming majority are Rohingya: for example over 85% in Malaysia and as many as 890,000, or over 98% of the Myanmar refugees in Bangladesh.¹⁰ Whilst, as these data show, Rohingya are largely contained within the South and South East Asian region, including India and Pakistan, there are significant Rohingya populations in Australia, Saudi Arabia, the UEA and very much smaller diaspora in the United Kingdom, the United States, and Canada.

Settlement Policies for Rohingya

Each study country has a distinctive settlement policy for Rohingya ranging from encampment to relatively unconstrained urban settlement. This diversity necessitates varied programming responses in each country.

Turning to the distribution of Rohingya refugees in the case study countries, this varies between camps and urban areas. Bangladesh stands apart from the other countries because national policies have for years rigorously contained the vast majority of the Rohingya refugees in crowded, rural, refugee camps in the south east of the country close to the Myanmar border and Rakhine state. This policy has been rigorously reinforced since the 2017 exodus. Nevertheless, a small number of Rohingya, particularly those who arrived many years ago when there were less restrictions on movement and settlement, are established in urban areas. Others have moved away from the camps but face great insecurity.

Thailand has also, for years, accommodated refugees from Myanmar, including the Rohingya, in camps – so called “temporary shelters” – along the Thai-Myanmar border. However, this policy is less stringent than in Bangladesh and significant numbers have also migrated to settle spontaneously in urban areas. In Indonesia, a similar ‘dual’ policy exists: some Rohingya live independently whilst others live in community houses, temporary shelters, or Immigration Detention Centres (IDCs). Malaysia stands in contrast to these three other countries; it does not have refugee camps and Rohingya refugees mainly reside informally in urban areas. In Australia, Rohingya who have been formally resettled live in urban areas. However, as with all asylum seekers spontaneously arriving in Australia, some Rohingya are incarcerated in the country’s offshore processing centres on Nauru and Papua New Guinea (PNG).

⁹ UNHCR (2019) Global Trends 2018, Geneva: UNHCR,

<https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

There is some statistical confusion on the total of refugees from Myanmar. Whereas Annex Table 2, p. 72 of the UNHCR Global Report actually documents 1.145 refugees (and 30,464 and asylum seekers) from Myanmar and 370,876 IDPs and others of concern, the global total cited on page 15 is 1.1 million, although confusingly, the actual total for the four countries cited in the text is 1.137 million. This total excludes both other countries in this study, such as Australia and Indonesia, bringing the total of Myanmar refugees in the five study countries to 1.119 million, and also other Myanmar/Rohingya refugees hosted outside the region in countries such as Canada, the USA and the UK. Part of the confusion lies in two factors as section 4.2 explains. Many countries hosting Rohingya are not signatories to the 1951 Geneva Convention on the status of refugees and the 1967 Protocol and thus use different status determination criteria: in addition the main host countries treat the Rohingya as stateless not refugees.

¹⁰ UNHCR (2018) Bangladesh Refugee Emergency Population Factsheet, August 2018,

<https://data2.unhcr.org/en/documents/download/65384>

Regardless of the locations where they settle and whether they are dependent on humanitarian assistance or their own resources, precarity dominates the lives of Rohingya refugees.

The distribution of Rohingya and the conditions in which they live necessitate, but also offer, a range of opportunities for different types of intervention and programming.

PROTECTION AND RIGHTS DEFICITS

The overwhelming conclusion from the case study evidence is that Rohingya refugees experience wide-ranging protection and rights deficits, very significant insecurity, extensive restrictions and obstacles to socio-economic wellbeing, livelihood precarity and destitution, and vulnerability to smuggling and trafficking. The lack of durable solutions for Rohingya displacement within the region exacerbates these deficits.

Inadequate national and regional protection frameworks

At both national and regional levels, comprehensive protection apparatus - law, policy and practice – is lacking to support Rohingya refugees.

At the **national level**, in common with countries in the Indian sub-continent and most countries in S.E. Asia but with the exception of Australia, four of the five case study countries are non-signatory states party to the 1951 Geneva Convention on the status of refugees and the 1967 Protocol (1951 GCR)^{11,12,13} Moreover, in the absence of national legislation providing specific provisions for refugees, the governments rely on their general immigration legal provisions. Although some of the countries are party to several of the international instruments which convey rights to some types of protection against persecution and discrimination, these tend to carry far less weight than refugee protection.¹⁴ As in other aspects of the study, Australia is somewhat of an outlier as a state party to the 1951 GCR. Yet the off-shore detention and processing of all asylum seekers and refugees by that country have drawn extensive national and international criticism about its protection standards.

Whilst adoption of the 1951 Convention is not a guarantee of better refugee protection per se, these governments also lack asylum systems and dedicated domestic law and policy to regulate the status and rights of refugees and the administration of refugee affairs. Thus, in general, the countries of this study lack comprehensive and coherent policy frameworks for the protection of Rohingya refugees. Rather, the predominant disposition is to deny rights and maintain the strong contention that Rohingya refugees are temporary and must be repatriated (or resettled). This stance is mediated by concessions when particular circumstances make these conditions untenable and demand a pragmatic

¹¹ 1951 Geneva Convention on the status of refugees and the 1967 Protocol, herein after termed 1951 GCR

¹² Bangladesh, Indonesia, Malaysia, Thailand.

¹³ Various reasons are advanced for the notable absence of 1951 GCR signatory states in these regions. As well as specific historic and national reasons, one contention is that this reluctance is based on the belief that accession to the 1951 GCR would attract more refugees and require the grant of more rights to them. Such concerns have not prevented African states – hosting much greater numbers of refugees than in SE Asia – in fact rather the reverse. Another contention is that signing the convention also implies acknowledging the responsibility of states that create refugees, a stance running counter to the ASEAN “good neighborliness” policy.

¹⁴ E.g. the 1976 International Covenant on Civil and Political Rights; 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1990 Convention on the Rights of the Child; 2003 Convention on the Rights of Migrant Workers and Their Families.

response. Examples are: the 2015 agreement between Indonesia, Thailand, and Malaysia to provide humanitarian assistance to 7,000 irregular migrants who were “still at sea” and a crackdown on people smuggling in Thailand; and the large scale and rapid arrival of over 655,000 Rohingya in Bangladesh in 2017 which threatened to overwhelm the capacity of the country to sustain its containment policy without international NGO support to maintain the greatly expanded camps.

In addition, an overarching **regional framework** on refugee management, for example under the auspices of ASEAN, is lacking. This makes responsibility sharing and the search for comprehensive solutions to Rohingya displacement across the region very difficult to achieve.

Irrespective of their status as refugees or stateless persons, there is no real prospect, currently, that voluntary return to Myanmar, and Rakhine State in particular, in conditions of ‘dignity and safety’ is a feasible durable solution for Rohingya. Nevertheless, return is still advocated as the preferred durable solution. Thus, host governments, notably Bangladesh but also other countries, are making efforts to buttress strong national policies to promote repatriation with discrete international diplomatic efforts that encourage Myanmar to allow Rohingya return. However, current conditions are certainly not conducive to repatriation that will secure rights, safety, and citizenship for returnees as advocated by the Advisory Committee on Rakhine State, for example.¹⁵ Indeed, the UNHCR has repeatedly stated that repatriation is not currently possible and would be a fundamental violation of the principle of non-refoulement where the security and rights of Rohingya are at great risk and existential human rights violations remain widespread.

Equally, longer term sustainable development strategies for the refugees and their hosts in the countries of refuge, under the auspices of the Global Compact for Refugees (incorporating the ‘New Way of Working’¹⁶ and the widely promoted ‘humanitarian-development nexus’¹⁷), are unfeasible given the strong position that all the host countries’ adopt on the temporariness of Rohingya refugee displacement. Nor is third country resettlement a realistic or feasible solution to this impasse for more than a minute fraction of Rohingya. Although Australia has accepted some Rohingya, in general, the Rohingya cling to resettlement, painfully so in the case of those in Indonesia, despite it being a lost cause. Indeed, Bangladesh does not even promote resettlement on the assumption that this would attract more Rohingya from Myanmar.

Protection, rights and the ambiguous status of Rohingya – refugees, statelessness, undocumentedness, repatriation

The lack of national and regional frameworks is reflected in the ambiguous status of Rohingya refugees which compounds the severe deficits in their protection and rights and underscores their vulnerability. Four specific factors compound their vulnerability - the ‘non-signatory’ status of four of the countries, Rohingya statelessness, the undocumentedness, host countries’ stance on repatriation

¹⁵ See recommendations of Advisory Commission on Rakhine State (2017) Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine, Final Report of the Advisory Commission on Rakhine State, http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf

¹⁶ OCHA (2017) New Way of Working New York, Policy Development and Studies Branch, (PDSB)

¹⁷ Zetter, R (2020) ‘From humanitarianism to development: reconfiguring the international refugee response regime’, Ch. 32, pps, 353-362 in the Routledge Handbook of Migration and Development, edited by Bastia, T., and Skeldon, R., London: Routledge.

Non-signatory status. As noted above, four of the five study countries are non-signatory states to the 1951 GCR, and most do not have national legal structures to determine refugee status. Accordingly, Rohingya may not actually be designated as refugees and cannot thus avail themselves of the protection norms which that status, under the 1951 GCR, would confer. Bangladesh, for example, refers to them as ‘forcibly displaced Myanmar nationals’.¹⁸ In Saudi Arabia – also not a party to the 1951 GCR – it is estimated that there are 256,000 Rohingya; they are not designated refugees but deemed a persecuted group on religious grounds and entitled to four-year residency visas.¹⁹ In effect a temporary, although renewable, status, this does not provide the same level of protection which Rohingya with full refugee status would enjoy.²⁰

Statelessness. Many of the protection challenges the Rohingya face in their host countries and in transit are intimately bound up with their statelessness. Myanmar does not recognise Rohingya as nationals of that country, in effect rendering them stateless. Numbering almost four million, Rohingya constitute the world’s largest stateless population.²¹ Their statelessness, and thus far weaker provision for protection and rights, compounds their lack of refugee status²² and emphasises the double bind this presents under international law, and any longer term resolution to their forced displacement – are they refugees or stateless, or both?

Deprived of nationality and thus identity, this makes migration through legal channels very difficult, thereby enabling receiving states more easily to declare that they are illegal or irregular migrants rather than refugees and thus detain and forcibly return them. This happened with the episodes of push back of Rohingya boat people by Thailand in 2009 and 2013, for example. Thailand still considers settled Rohingya as “illegal” economic migrants. Significantly, on the issue of statelessness, in 2019 the UNHCR changed its designation of 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’, (emphasis added).²³

Undocumentedness. A third aspect of their uncertain status is that, inevitably, a significant number of Rohingya refugees remain completely undocumented, whether due to their statelessness or other designations such as the

¹⁸ 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

¹⁹ Rohingya in Saudi Arabia and smaller numbers in UAE are not included in the UNHCR 1.2 million global total of Rohingya refugees.

²⁰ For more detail on the status of Rohingya in Saudi Arabia see 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. 16, <https://www.unhcr.org/5bbc6f014.pdf>

²¹ Thus UNHCR (2019), Annex Table 1 documents the total of 906,635 in Bangladesh as both refugees and stateless making those of origin from Myanmar the largest group of the global stateless population of 3,851,983, even excluding the stateless designation of Myanmar displaced people in other countries such as Malaysia and Thailand. UNHCR (2019) Global Trends 2018, Geneva: UNHCR, page 65, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

²² The Universal Declaration of Human Rights affirms that “everyone has the right to a nationality”, reinforced by the 1954 Convention relating to the Status of Stateless Persons. However, the majority of countries are not signatories to this Convention and many people never acquire or are explicitly deprived of their nationality - notably the Rohingya – leaving them vulnerable, because they lack the bond of nationality, and in need of protection to ensure that they are able to exercise their rights. Obligations on states that receive stateless people to protect them under international law and norms are far more limited than for refugees. A particular concern for stateless persons is the difficulty that they face in obtaining identity and travel documents, which impedes many aspects of their lives, not least the ability to claim refugee status. Thus, while some stateless persons are also refugees at the same time (under the 1951 Refugee Convention), most, including Rohingya, are not. For further details, see UNHCR (2014) Protecting the Rights of Stateless People, Geneva: UNHCR, <https://www.refworld.org/pdfid/4cad88292.pdf>

²³ UNHCR (2019) Global Trends 2018, Geneva: UNHCR, page 69, footnote 14, <https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

‘religious persecuted’ in Saudi Arabia. As with most refugee populations, they are reluctant to declare themselves and be documented for a variety of reasons, not least because their tenuous statuses, and thus lack of protection and rights in host countries, compounds their risk of deportation or forced return: yet, equally, non-declaration also intensifies these risks. Others, as we have noted in the case studies, are in transit, usually by irregular means and thus undocumented. Moreover, as noted above, other countries may not apply appropriate refugee status determination procedures. No reliable estimates exist for undocumented Rohingya refugees. But, for example, a significant number exist in Pakistan where one unofficial estimate in 2015 suggests there were 400,000 Rohingya in Karachi alone in 2015.²⁴ Whereas UNHCR records 18,000 Rohingya in India, other sources suggest that there may be as many as 40,000 present.²⁵

Repatriation. Despite the lack of national and regional frameworks for coordinating and managing the displacement of Rohingya, the one consistent policy across all the case study countries is their contention of the temporariness of Rohingya displacement, their strong commitment to the prompt repatriation of Rohingya to Myanmar, and thus the corollary of preventing local integration or long term development strategies. Bangladesh twice sought (unsuccessfully) in 2019 to organise quite large-scale repatriation exercises. Similarly, visits to Myanmar by the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre), as well as its discussion with the Myanmar government, have not resulted in significant progress on increasing the potential for voluntary repatriation.

Whilst Bangladesh, with its enormous caseload, is at the forefront of this policy stance, Thailand’s ‘push back’ policies have long failed to respect the principle of non-refoulement, also the case in Australia with regard to spontaneous arrivals. Indonesia maintains this stance although without implementing refoulement. In Malaysia there is some evidence of a relaxation of the policy. In all the countries there are policies and practices which significantly contravene the principle of non-refoulement – episodic forced repatriation, push-back for arrivals by sea – which greatly endanger the lives of Rohingya refugees. Although, as we have seen in Section 3.2.1., repatriation is not currently a durable solution for the Rohingya, the fact that these countries appear to actively promote such policies, further underscores the precarity for Rohingya and uncertainty about their long term future. A tangible concern exists, amongst a number of advocacy organisations in the region, that there are real risks that refoulement could happen.

²⁴ Rehman, Z. U. (2015) ‘Bengali and Rohingya leaders gearing up for LG polls’, 9 August, The International News, <http://www.thenews.com.pk/Todays-News-4-333213-Bengali-and-Rohingya-leaders-gearing-up-for-LG-polls>

²⁵ Reuters (2017) ‘India in talks with Myanmar, Bangladesh to deport 40,000 Rohingya’, August 11, <https://www.reuters.com/article/us-myanmar-rohingya-india-idUSKBN1AROMH>

RIGHTS DEFICITS – THE IMPLICATIONS FOR SOCIO-ECONOMIC WELL-BEING

The fundamental protection and rights deficits experienced by Rohingya refugees are reproduced in significant limitations to a range of functional rights which refugees normally generally enjoy in other jurisdictions. Since four of the case study countries are non-signatory states to the 1951 GCR, which determines these rights, domestic legal instruments – generally inferior to those of the 1951 GCR – are used to regulate them instead.

Right to work, freedom of movement, and livelihoods²⁶

The right to work and freedom of movement, established in the 1951 GCR, are often derogated by host states for a variety of reasons: on security grounds; to restrict access to labour markets; to limit out of camp settlement in the hope of preventing local integration. This situation predominates in the case study countries, facilitated by their non-signatory status of the 1951 GCR.

Freedom of movement²⁷ is restricted to varying degrees in all the case study countries, whether or not they are signatory states to the 1951 GCR. This results in socio-economic isolation and exclusion, and potentially severe consequences – abuse, extortion, detention and possible repatriation – if detected.

Freedom of movement in Australia, a signatory state to the 1951 GCR, is very effectively curtailed by the country's policy of offshore processing, and the increasing severity of the immigration detention policies and practices. Although there is no formal law requiring encampment in Bangladesh, its strict policy on containing Rohingya in camps, in effect, constitutes a form of de facto restriction on freedom of movement of Rohingya who must seek permission before leaving the camps. Nevertheless some Rohingya have established themselves in urban areas.

Malaysia is an exception to restrictions on freedom of movement. In the absence of any camps, refugees in effect possess some freedom of movement and have settled in urban areas. However, some are still being detained in internal detention centres (IDCs). On freedom of movement, Thailand is placed between Bangladesh and Malaysia. Encampment of Rohingya (and other ethnic groups of refugees from Myanmar) on the Thai-Myanmar border and detention or push back of Rohingya arriving by boat stand in contrast to the significant number who have migrated to urban areas suggesting that de facto there is freedom of movement. Similarly, in Indonesia, most refugees live in community houses, although some are still being detained in IDCs.

Rohingya lack the right to work without an established legal status and because they are hosted in four states which are non-signatory to the 1951 GCR with its provisions for the right to work. They are prevented from accessing the formal labour market in the case study countries – very strictly so in the camps in Bangladesh, for example. This restriction has the effect of also preventing access to employment related facilities and resources such as credit and markets, and business ownership. There are only a few small exceptions, often regulated by administrative and legal constraints; and sometimes work in the formal sector is obtained with the tacit approval from local community leaders

²⁶ The 1951 GCR enshrines the right to work (Articles 17-19), and the right of freedom of movement (Article 26), although in practice many signatory states derogate these rights.

²⁷ Since four of the countries are non-signatory states of the 1951 GCR restrictions on movement are enacted through domestic legislation dealing with foreigners and migrants and thus, de facto, Rohingya refugees.

and authorities. In Australia, a signatory state to the 1951 GCR, the right to work under the Convention for Rohingya is contingent on the kind of visa they possess. However, the granting of work rights is a relatively lengthy process and the gap between granting work rights and getting work remains very significant. In addition, there are many institutional and bureaucratic barriers to obtaining employment where this is permitted.

Illiteracy²⁸ and lack of skills also make it difficult for Rohingya to find jobs in all the countries.

These prevailing conditions yield two outcomes.

First, prohibition confines Rohingya to working illegally in the informal sector and there is extensive anecdotal evidence across the region that they do so. But the evidence also confirms that this renders them highly vulnerable to employment-related abuse, exploitation, and harassment including sexual harassment without redress since they have no access to national labour laws.

Second, without access to regular employment, the overwhelming majority of Rohingya households live in destitution: their precarity renders them highly dependent on humanitarian assistance, denies them capacity for sustainable livelihoods, and exposes them to trafficking and smuggling.

Social welfare and assistance

The Rohingya also face significant barriers in accessing education, health and other welfare services which compound their destitution, precarity, and fragile social wellbeing.

Rohingya are often prevented from accessing these public services in the host countries, such as schools in Bangladesh and Malaysia, although there is evidence that they are sometimes tacitly allowed to attend, for example in Bangladesh and Indonesia. Accordingly, there is a very low level of education enrolment of Rohingya children, dependent as they are on informal education provision or schools of very variable quality, and informal assistance by NGOs in camps in Thailand and in Bangladesh: in the latter case, service providers are still struggling to cope with the impact of the enormous influx of 2017. Where attendance is allowed in host country schools, Rohingya children face many barriers to accessing due to their status: for example, in Thailand, Rohingya children lacking birth registration and/or citizenship documents struggle to enrol in schools where documentation requirements for applicants are imposed at the discretion of each school. Other consequences of their unclear status and controlled registration is that they may not receive graduation certificates in Indonesia for example, which constrains access to higher levels of education, other forms of training, or even employment where this is permitted. The overall outcome of these restrictions is that Rohingya children struggle to get education, and all these constraints compound the already high illiteracy levels found amongst Rohingya.

Similar regulatory limitations and complexities related to documentation and status constrain the access of Rohingya refugees to health services. Where Rohingya can access health services this is often at a prohibitive cost given the high levels of destitution of many refugee households.

²⁸ Rohingya do not have a written language.

PROGRESS ON SECURING RIGHTS FOR ROHINGYA

Although seemingly intractable, there are some glimpses that the severe rights and protection deficits experienced by Rohingya may be reducing.

The 2015 tripartite agreement between Indonesia, Malaysia and Thailand on Rohingya stranded at sea suggested a possible relaxation of the hard-line stance.

More recently, partly the result of the advocacy of NGOs, CSOs, and rights-based organisations, Malaysia has been making efforts to promote a refugee law and policy including relaxing restrictions on the refugees' right to work and promoting access to education. Outspoken criticisms of Myanmar for genocide in Rakhine state, made by the Prime Minister of Malaysia at the UNGA in September 2019, a call for more effective international action to assist Rohingya refugees, and the call for more effective international action to assist Rohingya refugees and the promotion of voluntary repatriation, are further evidence of a changing political discourse.²⁹

Australia as a signatory of the 1951 GCR is, on the face of it, an exception to these prevailing narratives of severe protection and rights deficits. Nevertheless it exemplifies other shortfalls typical of the regime embedded in high income countries such as in Europe: a definable shift away from protection towards deterrence; extensive use of interception and protracted detention; increasing use of temporary protection instruments which leaves asylum seeking Rohingya in limbo and also limiting access to social and welfare services.

²⁹ The Daily Star (2019) "End Rohingya crisis now, Dr Mahathir tells international community", speaking at a High-level side event on the 'Rohingya Crisis - a Way Forward', September 24, reported on October 1, <https://www.thedailystar.net/rohingya-crisis/news/end-rohingya-crisis-now-says-dr-mahathir-unga-1805065>

CONCLUSIONS

Drawing these factors together underscores the vulnerability and the severe lack of rights protection and socio-economic precarity to which Rohingya refugees are subject. These conditions also reflect the intensely politicised context which governs their reception and recognition in the host countries and the complex political dynamics within which the CSOs, and indeed all NGOs and INGOs, operate, elaborated in Section 4.

These protection and rights issues for Rohingya bear heavily on the roles, capacities, and strategies of CSOs, the collaboration between them and the potential and scope for NGO engagement. The lack of adequate national and regional protection for Rohingya refugees shifts protection responsibilities from the governments to other actors such as the UNHCR, CSOs and NGOs in these countries.

Likewise, the stance that the Rohingya refugees are temporary, and the lack of durable solutions which underpin the reluctance of the host countries to provide long term assistance and the encampment policies in Bangladesh and Thailand, also have implications for CSOs and how ADSP might engage.

These conditions highlight the important role that CSOs and the other actors play in: advocacy for effective protection frameworks and rights (including the right to work); the provision of social and welfare services and physical assets such as shelter and infrastructure where there are enormous gaps; ensuring solidarity and justice for Rohingya; and giving voice to the refugees' rights. There are significant implications for CSOs in relation to their capacity, their mandates, the scope and scale of their programmes, their assistance priorities, resource requirements, partnerships, and mechanisms for co-ordination. These considerations, and their implications for NGO policy engagement are explored in Section 4 and underpin relevant Recommendations in Section 6.

SYNTHESIS OF FINDINGS AND CONCLUSIONS – INTERESTS AND CAPACITIES OF CSOs³⁰

This Section considers the second main objective of the ToR, 'the interests and capacities of Asian civil society organisations (CSOs) and communities who are engaged in issues of Rohingya statelessness and, more generally, their role in supporting Rohingya refugees'; these interests and capacities are explored from the perspective of NGO policy engagement.

POLITICAL DYNAMICS AND POLICY IMPLICATIONS FOR NGOS

A vibrant CSO community exists in the sub-region, forming a large, diverse, and very active constituency engaged with Rohingya refugees. Advocacy for their rights and protection is the dominant focus of the CSOs, whilst, on the other hand, they have limited capacity and resources for delivering much needed services and humanitarian assistance. However, the intensely politicised context governing the response to Rohingya in the host countries constitutes a major challenge for CSOs (and, indeed all NGOs and INGOs) working with Rohingya refugees and has important implications for how, and the extent to which, NGOs can 'develop a stronger and more representative policy engagement and regional advocacy strategy', noted in the ToR. This section of the report elaborates these implications.

Navigating the balance between repatriation and advocacy for protection

The host countries' focus on repatriation overwhelmingly drives and shapes CSO priorities, those of other humanitarian actors and, potentially, ADSP. This means that humanitarian actors must be attentive to the complexity of political factors when defining advocacy priorities and methods, carefully navigating the impact of host governments' priorities on their precepts.

Consistent with their repatriation agenda, host country governments in the region tread a complicated line between a non-intervention agenda in Myanmar (in line with ASEAN's public non-intervention strategy), yet discretely promoting an 'accountability and justice' agenda in that country as the principal means to improve prospects for Rohingya refugee return without refoulement. At the same time, this position creates difficulties for how the host countries cope with the refugees: necessarily but reluctantly taking overall control over refugee affairs, but shifting the 'burden' of refugee assistance and programme management toward humanitarian actors such as INGOs, NGOs and CSOs, while simultaneously limiting the rights and protection for Rohingya as only 'temporary' refugees.

For the CSOs, a significant number of whom are engaged in advocacy, and for other humanitarian actors such as ADSP if it were to enhance its engagement, this poses challenges and dilemmas for the advocacy of Rohingya refugee rights –

³⁰ Based, as the other sections of the Synthesis Report, on the Case Study Country Profiles in Volume 2, this section also includes substantial cross cutting information and analysis based on the KIs.

justice, protection, rights as refugees, non-refoulement and Myanmar 'accountability'. The question is how they position themselves vis à vis the host governments' commitment to repatriation and reluctance to extend protection, rights and sustainable assistance for Rohingya refugees. Pushing a strong 'rights and protection agenda', CSOs risk sacrificing or having restrictions placed on their mandates; denying their precepts and *raison d'être* to advocate on behalf of vulnerable refugees, CSOs risk co-optation into the governments' policy agendas of limited rights, protection and longer term development assistance.

Believing that it may tend to sustain Rohingya displacement, host governments prefer to contain a CSO discourse advocating refugee protection and protection. CSOs and other humanitarian actors face difficulties obtaining government mandates for rights and protection advocacy for Rohingya refugees, notably in Bangladesh and to a lesser extent, Indonesia; they may be subject to more persistent government control, mandates may be time limited, and prone to complex bureaucratic procedures and delay. These regulatory conditions narrow the space for, and diminish CSO capacity to, engage their governments with rights protection agendas for refugees in the host countries. Nevertheless, one explanation advanced for the persistence of CSOs focusing on rights advocacy is that they are more familiar with the political dynamics governing their activity and are prepared to take on this politically more 'risky' territory, whereas INGOs are notably absent, focusing instead on the politically more 'risk free', service delivery of humanitarian assistance.

For the ADSP's aim to develop a 'stronger and more representative policy engagement and regional advocacy strategy', these conditions provide both practical challenges for consolidating and/or extending its existing mandates. More substantive questions are also posed: whether, and how to, bridge a 'dual' mandate for enhanced protection and potential development assistance in the host countries with advocacy for 'accountability and justice' in Myanmar with the risk that this might potentially accelerate the drive for repatriation which fails to safeguard Rohingya security, protection, and citizenship.

'Localisation' – tension, support and collaboration

Whilst humanitarian actors must navigate their host governments' commitment to repatriation, at lower levels of government (closer to the Rohingya populations themselves), other factors define potential advocacy priorities and methods – and potentially also greater acceptance and allies. Amongst these factors, the localisation of CSOs and the establishment of CSO platforms, which place a high premium on collaborative working, are significant. However, unresolved tensions remain between local and national CSOs and NGOs, and INGOs who scaled up after the 2017 crisis with the sense that considerable 'localised' expertise and capacity has not been fully recognised or exploited. At the same time, these developments and increasing engagement by local CSOs do not seem to include the embryonic Rohingya-led CSOs. Nevertheless, the increasing possibilities for the formalised acceptance of refugees, which are in some ways shaped by the advocacy of the CSOs and public attitudes toward the refugees in each country, reinforce the potential for engagement.

Localisation. CSOs are often concerned about the tendency for INGOs to dominate refugee assistance programmes and management. Yet, in Bangladesh, for example, a strong 'localisation' agenda reflects the fact that CSOs have substantial capacity and are a deeply embedded feature of that country's governance of social, economic and environmental action. This is also true in Indonesia, albeit to a lesser extent.

The huge influx of INGOs and the scaling up of NGOs that accompanied the 2017 escalation in the Rohingya refugee crisis in Bangladesh, accentuated debate about CSO capacity to respond to the crisis, and thus the balance (or competition) between 'localisation' and national/international capabilities. This problematic tension, and continuing

sensitivity, has been played out in the limited types and effectiveness of partnerships that have so far developed, as well as the role of the government in determining the mandates NGOs and INGOs. In many ways this situation is a familiar reprise of other refugee crises where the perception from CSOs and national NGO actors frequently occurs that INGOs are imposing or taking on response roles that could and should be led by national and local actors.

This distrust is unfortunate because most INGOs are generally committed to the localisation agenda, working through partners and committed to capacity building. But the scale and speed of the response, particularly after 2016/17, inevitably precluded the gradual process of building these relationships and finding the mutual areas of work that can lead to complementarity.

On the other hand, it is the case that a vibrant and well embedded CSO community predated the 2016-17 Rohingya crisis in many countries in the region. These CSOs possess a clear understanding of the complex political realities within which they operate and their room for manoeuvre, often reflecting their political affiliation and partisanship. In addition they tend to possess more detailed knowledge of the legal and normative frameworks, than their international counterparts, that define their fields of action in rights and protection for Rohingya refugees. This considerable 'localised' expertise and capacity has not been fully recognised or exploited.

Evidence suggests that 'localisation' has supported, albeit at a very small scale, the slow emergence of Rohingya civil society capacity whilst being sensitive to cultural norms and religious precepts – for example initiatives for women's rights, and also Rohingya leadership development in Bangladesh, and education programmes in Bangladesh and Malaysia. In any case, some host governments are wary of allowing the development of Rohingya civil society, citing radicalisation and security concerns.

At this stage, it is too soon to establish whether 'localisation' is actually leading to a more effective rights and protection outcome than externally generated engagement. Whilst there is a strong commitment by local CSOs to develop strategies to strengthen protection policies and instruments for Rohingya refugees, in general, their expertise lies in exploiting existing domestic law, regulating immigration and foreign nationals, to protect refugee rights. On the whole, these instruments provide less effective protection than the 1951 GCR.

Equally, it is clear that beyond their undoubted advocacy capacity and expertise, local actors do not have the capacity and resources to respond to the huge demand for material and livelihood needs of Rohingya refugees – discussed in Section 4.2.

With these circumstances in mind, a high premium is placed on local CSOs working collaboratively. To this end several in-country networks and 'platforms' have been established, although, significantly, these platforms do not seem to include the embryonic Rohingya-led CSOs.

Examples are: the Bangladesh Rohingya Response NGO Platform (BRRNP), established in mid-2018 and comprising over 100 local, national and international NGOs; the Cox's Bazaar, CSO-NGO Forum with over 40 member organisations serving different refugee camps in Cox's Bazar in Bangladesh; the Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT), which consists of 13 NGOs working in nine refugee camps along the Thailand/Myanmar border; and the KNSR (National Committee for Solidarity with Rohingya), a network consisting of 79 Indonesian organisations specifically to assist the Rohingya refugees. These 'platforms' provide the basis for partnership and for establishing a consensus on advocacy positioning; this assists in consolidating and maximising their influence on governments' policies for rights protection for Rohingya refugees.

The huge influx of Rohingya into Bangladesh in 2017 heightened tensions between host communities and the refugees.

Nevertheless, there is some limited evidence of CSOs working towards community cohesion between refugees and local host communities. Initial steps have been made through the 2019 Joint Response Plan in Bangladesh³¹ for example. In the other countries, where the impact has been less marked, there is wider evidence of informal good practice: in Indonesia, some CSO activity is based on shared religious community solidarity with Rohingya: CSOs employ Rohingya and encourage their involvement in religious activities; in Thailand, CSOs have raised awareness through public forums on the Rohingya; in Malaysia, CSOs often draw on local volunteers to serve as tutors or medical staff for their services to Rohingya refugees, as well as local companies or religious based organisations for funding. Working with refugees from many countries, Australian refugee CSOs and NGOs use advocacy and informal methods to raise awareness with host communities against the background of that country's hostile policies towards refugee reception and recognition.

Regional collaboration. These national and sub-national approaches to partnership are underpinned, at a sub-regional level, by the Asia Pacific Refugee Rights Network (APRRN), an established and influential advocacy actor in the region which co-ordinates and manages various cross cutting Thematic³² and Geographical working groups, and with high level access to some governments and to ASEAN.

Co-ordinating a recently established Rohingya Working Group, it has taken the lead in promoting an extensive network of country-based, mainly local CSO partners, helping to co-ordinate and strengthen their legal and rights advocacy capacity for Rohingya refugees through joint advocacy, training for capacity strengthening, and resource/knowledge sharing and outreach.³³ Sub-regional advocacy has helped to establish solidarity and consistency of messaging and action by CSOs. At the same time, consistent advocacy can help to spread positive achievements on Rohingya rights and protection from one government to others in the sub-region. For example, a priority for APRRN has been to establish a strategy that promotes host government policies for Rohingya refugee access to education, such as in Malaysia, and supporting local CSOs to provide educational services. It is important to emphasise that APRRN's remit is rights' advocacy, not service programming, physical resources for refugees, or the delivery of humanitarian assistance.

Formalised acceptance of refugees. Another factor mediating potential advocacy priorities and methods is the slow but discernible trend that, de facto at least, appears to formalise the presence of Rohingya refugees in several host countries such as Thailand, Malaysia, and Indonesia. In contrast to these governments' overall commitment to repatriation, this slow, piecemeal relaxation of policies poses both opportunities and challenges for CSOs and other humanitarian actors such as ADSP. For example, Malaysia has made a commitment to ratify the 1951 GCR and refugees' right to work. In Indonesia, marriage between refugees and locals is tolerated on a religious basis, while refugee children in some cities have been able to access local education. Similarly, there has been progress in promoting education provision for Rohingya refugees in Malaysia. Thailand has its National Verification process and a newly drafted national screening mechanism. This might potentially overcome some of the challenges faced by undocumented Rohingya, although this process currently excludes Rohingya and is perceived by some actors to still fall short of meeting international standards. These trends, however, indicate some efforts that go beyond what is outlined under domestic law and that mirror some of the norms, if not the express requirements, of the 1951 GCR. The extent to which they open up the possibility of longer term, more

³¹ 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>

³² E.g. durable solutions; immigration detention; legal aid and advocacy; refugee leadership and participation; regional protection; women, gender, and diversity; and youth.

³³ Asia Pacific Refugee Rights Network (APRRN) (2019) Report: 7th Asia Pacific Consultation on Refugee Rights (APCRR7), Workshop Session on Rohingya, pps. 16-18, <http://aprrn.info/wp-content/uploads/2019/09/APCRR7-Report-.pdf>

developmentally orientated, assistance to Rohingya refugees remains very limited for the present. For the ADSP, these developments suggest three courses of action.

First, the strong collaborative arrangements already in place provide an important expression of the existing capacity of the host country CSOs with implications for ASDP entry and the role it seeks to develop. This indicates that strong partnership with local CSO actors who lead on Rohingya rights and protection, and have great familiarity with their national legal apparatus, would be a desirable route if such engagement was pursued. Specific entry points on rights and protection advocacy would be: concerted support for the development of Rohingya-led CSOs, notably strengthening leadership capacity – this is a key priority; enhancing the promotion of gender-based rights; and advancing the ‘dual mandate’ for Rohingya refugee protection in the host countries and ‘accountability and justice’ advocacy in Myanmar: the two go hand in hand and would likely receive government acknowledgement.

At the same time, the value added of ADSP engagement, alongside other INGOs, could be to encourage host governments to adopt international legal and normative frameworks for refugee rights and protection, thereby enhancing the application of domestic legal apparatus that has been promoted by local CSOs.

Local partners can also provide valuable entry points for scaling up and delivering technical and material services and assistance. This is a major need for the humanitarian programmes in the four main countries; there are multiple opportunities, discussed in Section 4.2., because local partners have very limited resources and expertise.

Second, the presence of APRRN as an established sub-regional advocacy platform on refugee rights – not just Rohingya – poses the question of what space and scope there is for other actors, such as ADSP, to develop ‘policy engagement and regional advocacy strategy’, and how this might align with APRRN’s current lead in coordinating an advocacy agenda amongst its many partner organisations. Conversely, ADSP’s partners/member agencies are all large INGOs with significant constituency in the region and with different entry points and expertise to the majority of APRRN’s country/locally-based members. It will be important for NGOs to align with, and where possible play a collaborative and supportive role with APRRN’s advocacy for rights and protection, mindful of its priority areas such as rights to education. Yet there is scope to expand and strengthen other rights and advocacy priorities, exemplified above. APRRN also provides a valuable entry point for collaboration on rights and protection advocacy with local CSOs and CSO platforms.

Third, combined with partnership and collaboration with local partners, CSOs and other humanitarian actors, ADSP can benefit from the increasing possibilities for engagement opened up by these piecemeal policy shifts towards a level of acceptance of Rohingya refugees. In this context, there is extensive scope to expand assistance programmes for Rohingya in all the countries – elaborated in Section 4.2. – particularly for physical and material assistance since this lies outside APRRN’s remit.

Humanitarian or development programming?

Scaling up its operations, would require ADSP to accommodate the host governments’ commitment to the twin objectives of the temporariness of Rohingya displacement and repatriation (and potential refoulement), a commitment which predicates - possibly deliberately - short-term, emergency humanitarian programming over longer term programmes for sustainable assistance and livelihood support.

This policy stance has two interconnected implications for CSOs working with Rohingya which would also apply to ADSP’s potential expansion of its mandates, funding priorities, programme design and sustainability. First, retaining

the circumstances of Rohingya refugee displacement as a humanitarian emergency, underscores the responsibility of humanitarian actors, more than the governments, for the care and support of Rohingya refugees, at the same time as the governments seek to retain robust overall management and scope of assistance policies and programmes to promote these twin objectives. Second, acceding to a programme framed by governments as a humanitarian emergency to serve these policy objectives, constrains the extent to which ADSP could advocate on the rights and protection deficits and promote longer term socio-economic development needs of Rohingya elaborated in Section 3. Thus, by precluding humanitarian actors, such as ADSP, from development programming, and limiting them to providing emergency assistance for what is manifestly a protracted refugee situation, the governments can more easily control the extent to which they can engage.

Whilst the case of Australia sits somewhat apart from the other four countries, detention and the socio-economic marginalisation of Rohingya allowed into the country remain significant challenges to CSOs.

CSO CAPACITIES AND PROGRAMME NEEDS

A plethora of CSOs exists in the host countries engaged with Rohingya refugees, predominantly, but not exclusively, led by host country civil society not Rohingya. They vary from very small scale informal Rohingya grass roots community groups involved in the Bangladesh refugee camps for example, to well organised and established host country CSOs/NGOs.

Host Country CSOs

Although generally small scale, host-country CSOs have more substantial capacity, and they are effectively networked.

Typically, host country CSO engagement with Rohingya may be an extension of their original remit serving their own marginalised communities, or other refugee groups, particularly in the case of Australia, Thailand, Malaysia, and Indonesia. This reality sometimes colours a general perception that helping refugees is prioritised over the marginalised local population, as evident in the case of Indonesia, or the more specific view that 'Rohingya' constitutes a sensitive issue, notably in Thailand. Collaboration, partnership and networking are generally strong between the host country CSOs as discussed above.

The main focus of CSO activity, discussed in section 4.1., is on rights advocacy, which is partly delivered by monitoring the impacts and consequences of frequently evolving government policies or by lobbying government actors, or through legal advice and individual casework, notably in Australia. There is also a very limited number of service delivery CSOs which are small scale and piecemeal. They provide education services (mainly learning centres, language and vocational training, as well as adult learning and women's literacy). There are also nascent women's groups that are also very small scale but quite widespread; women's rights are a culturally very sensitive area especially when concerned with sexual and domestic violence. Some CSOs also assist in improving refugees' access to health and legal services, as evident in the case of Indonesia and Malaysia. Far less evident are CSOs delivering physical services and resources – shelter, and infrastructure, for example. These services are more limited for several reasons: they demand much greater financial resources; government restrictions on programmes which appear to be 'developmental' rather than humanitarian - in order to prevent permanent settlement - may also apply (e.g. in Bangladesh).

Rohingya Civil Society

Rohingya civil society remains organisationally very weak in all the countries but is gradually emerging. Only very limited and patchy collaboration exists between Rohingya CSOs and local CSOs and also NGOs/INGOs.

Rohingya community leaders are starting to explore ways of organising and building civic capacity to provide for their needs, for example in Bangladesh, and through semi-formal CSOs in Australia. Although the social and economic contexts in the five study countries are very different, the main capacity constraints are quite comparable. There is little or no funding available from outside or within the generally impoverished Rohingya communities. Just as important are the existential conditions of Rohingya, whether in Bangladesh camps or in an Australian city. Their precarity and vulnerability leave them focused on day-to-day survival needs; their often traumatic survival conditions also preclude them from undertaking civil society activities. These conditions drain Rohingya of material and emotional resources required to establish even basic community support structures. In Australia for example, lack of a 'critical mass' of Rohingya, pernicious asylum systems, and high levels of illiteracy compound these challenges. Rohingya who have been in Thailand for extended periods of time (e.g. 20 years) are informally accepted by the host communities, yet Rohingya identity can be problematic for recent arrivals rendering Rohingya reluctant to make themselves visible through community organisations. In contrast, in Indonesia and Malaysia, Rohingya Muslim identity has been a source for the host communities to establish solidarity with the refugees.

There is minimal evidence of partnership between host country and Rohingya CSOs in the refugee camps or with urban settled Rohingya communities in other case study countries. Support for the development of Rohingya civil society capacity is very patchy and a significant gap, until recently, in the assistance programmes of the larger national and international non-governmental organisations. Denying opportunities and potential to build Rohingya civil society capacity, social cohesion, and leadership not only deprives them of the capability of supporting their communities in exile; it also prevents the development of critical resources if repatriation were ever to take place. The voice of the Rohingya refugees has yet to be heard.

Weak partnership between host country CSOs and Rohingya civil society is mirrored in the limited connectivity and interaction between individual CSOs and NGOs/INGOs and their respective networks. The lack of connectivity is most noticeable in Bangladesh where INGO preoccupation with humanitarian needs together with restrictive government policies have led to neglect, until recently, of community and civil society development. Echoing the localisation debate discussed earlier, it remains to be seen whether a recently developed, top-down strategy by international actors in Bangladesh³⁴ to promote social cohesion and peaceful co-existence both within the Rohingya refugee community and, also, between it and Bangladeshi host community, actually takes off. The same applies to the contexts of Indonesia and Malaysia, where the impact of nascent efforts to improve community partnerships between refugees and locals has yet to be seen.

Conclusions

Interests and capacities of CSOs and ways forward for ADSP and other NGO actors

The ToR request to examine 'the interests and capacities of Asian civil society organisations (CSOs) and communities

³⁴ 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

who are engaged in issues of Rohingya statelessness and, more generally, their role in supporting Rohingya refugees', has revealed a complex landscape of constraints, challenges and opportunities which govern current CSO activity and the potential for enhancing ADSP and broader NGO engagement. The dominant feature is the resistance of host governments to permit expansion of humanitarian assistance or more sustainable support for Rohingya refugees. On the other hand, a vibrant and active CSO environment provides an entry point and a platform for collaborative engagement by ADSP. Equally, there is an enormous shortfall in rights advocacy, service provision and empowerment strategies for Rohingya refugees, the outcome of government resistance and the inevitable lack of CSO capacity, which ADSP and its member agencies are well placed to address.

These conclusions constitutes the basis for recommendations in Section 5.

OVERVIEW OF CSO ENGAGEMENT IN CASE STUDY COUNTRIES³⁵

Australia

Australia's strict border protection policies, its pressure to facilitate repatriation of Rohingya refugees, and the repressive socio-economic conditions in country render Rohingya amongst the most deprived of all refugee groups in Australia. Consequently, they are heavily reliant on the extensive and well organised network of asylum seeker and refugee support NGOs/CSOs in Australia. Based mainly at state level, the NGOs/CSOs predominantly provide legal aid and support for visa and RSD claims, advocacy, signposting/advice, and some welfare services. The Refugee Council of Australia provides a federal (i.e. national) voice.

Organisations offering legal advice and other assistance experience a disproportionately high demand for their services from Rohingya, although this population is relatively small compared with other asylum-seeking groups. Factors underpinning this demand are: the particularly pernicious impacts of Australia's asylum system for those arriving by boat – the case for the overwhelming majority of Rohingya; and language and illiteracy issues which make accessing the legal apparatus particularly difficult without professional advice and knowledge. Reliance on Australian CSOs is further reinforced by the small size and the relative dispersal of the Rohingya population. These constraints on the development of their own community-based organisations are underscored by their socio-economic marginality which severely restricts the funds available for social organisation, leaves little time for social or community engagement or welfare services, and precludes the development of professional capacities.

Nevertheless, despite these capacity constraints, a small number of Burmese or single ethnic group CSOs (including Rohingya), indicate that they are gradually becoming more organised and established in the main cities in Australia, notably in Sydney, Melbourne and Adelaide. These are volunteer-led membership organisations combining political advocacy for democratic rights in Myanmar, with the building of community networks and cultural solidarity for the refugees in Australia.

³⁵ This section draws on the detailed Country Case Study Profiles in Volume 2, in particular the section for each country on Mapping and Analysis of Asian Civil Society Organizations (CSOs) Engaged with the Rohingya.

Bangladesh

The backcloth of Bangladesh's restrictive legal apparatus for recognising Rohingya refugees, and the highly politicised space which its refugee administrative and policy frameworks occupy, strictly mediates the roles, mandates and functions of CSOs. Operating in a context of patronage and partisan allegiance underscores the complicated inter-organisational dynamics that civil society actors have to navigate.

There is an extensive range 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.

The presence and capacity of Rohingya-led civil society are gradually strengthening after the very turbulent post-2017 situation. Yet, it remains organisationally very weak, in part due to resistance by the Bangladesh government, and obviously suffers from extreme deficiency of resources. But Rohingya civil society actors are starting to explore ways of organising their community and 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, constitute the building blocks.

Although also generally small scale, the host-country CSOs have more substantial capacity, dominate the CSO scene with respect to Rohingya refugees, and they are effectively networked. Like Bangladesh's civil society organisations as a whole, they are deeply embedded in the country's 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. The mandates of CSOs also extend to public service delivery for the refugees, such as education services and women's groups, although these activities remain limited. The severe lack of financial resources limits the scope for CSOs to deliver more costly service delivery programmes, and shelter and infrastructure development in the camps.

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 apparent. Despite the work of the CSOs, significant rights deficits exist and there are also significant gaps in CSO service delivery.

Bangladesh CSOs are well networked: there are several existing and emerging 'platforms' at different levels, which enable information sharing and coordination; promote humanitarian/rights advocacy; and capacity building (especially for strengthening and enhancing NGO partnerships and accountability). There are also links to international human rights organisations, for example the Asia Justice Coalition, and APRRN, stimulated by the global momentum for justice and accountability for the Rohingya in Myanmar

There is some evidence of partnerships beginning to be initiated between Bangladeshi and Rohingya CSOs and support for the development of their own civil society advocacy and service delivery capacity. Lack of knowledge about Rohingya community, its organisation and governance, and its cultural characteristics militates against such engagement and partnership. The voice of the Rohingya refugees has yet to be heard.

Weak connectivity between Bangladeshi CSOs and Rohingya civil society is mirrored in little if any connectivity between these CSOs and the humanitarian NGOs/INGOs. This has denied opportunities and potential to build civil society capacity and Rohingya leadership. Nevertheless, under the government's leadership CSOs and NGOs are increasingly prioritising programmes and strategies to promote social cohesion and peaceful co-existence within the Rohingya refugee community and also between it and Bangladeshi host community.

Even so, a strong 'localisation' agenda is promoted by some Bangladeshi CSOs and NGOs, reflecting the deeply embedded role of CSOs in Bangladesh and the ambition to extend this to refugee assistance in order to counter the huge scaling up of INGOs (and resources) that accompanied the 2017 Rohingya refugee 'crisis'. Tension has been played out in: the lack of effective partnership between the two sets of actors; and continuing disconnect between humanitarian programming and building civil society capacity.

Malaysia

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 the Muslim community. CSOs are well networked, collaborative, and generally provide a coherent approach to programming in these areas.

Although Rohingya are scattered across different parts of Malaysia, they tend to be 'localised', making it easier for CSOs to deliver their programmes. Assistance provided by CSOs is often the extension of, or involves the host country's indigenous groups, urban poor, and disabled or senior citizens. However, some also target their efforts toward Rohingya specifically. Some provide legal services, while others 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, Malaysia Relief Agency (MRA) sent medical practitioners to assist in Malaysian Field Hospital (MFH) in Cox's Bazaar.

Like some other countries in this report, refugees are registered under the UNHCR, yet they are not legally recognised by the government. However, refugees can work informally. CSO representatives claim that the Rohingya do not now get apprehended by the police as often as they used to, a fact that can be partly attributed to rising government and public awareness of the Rohingya issue. Other CSOs also work with the UNHCR to secure release of refugees who get caught and detained by the police. Generally, working relations between the UNHCR and CSOs have been good. Usually, the UNHCR provides coordination (e.g. arranging coordination meetings between CSOs). Their cooperation also often extends beyond this. For example, while the UNHCR provides training for teachers, CSOs will provide the learning space (e.g. schools). In other cases, when the UNHCR conducts programmes for mothers, CSOs will provide medical teams. This, however, 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.

Generally, there has been positive collaboration between CSOs. CSOs share information with one another in regard to issues such as refugees' education and health. International agencies work with NGOs with different capabilities, and as such, tension between the two is not as pronounced in the Malaysian case.

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. 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.

Indonesia

The case of Indonesia is generally comparable to the situation in Malaysia. CSO activity is quite progressive and to a large extent, often religiously driven, although there are both Muslim and non-Muslim CSOs engaged with providing assistance toward Rohingya refugees. However, this level of activity is not yet matched by equally pronounced government's commitment to the issue.

As in the other countries, CSOs assist in providing education, language, and vocational training for refugees. These programmes are often delivered through collaboration with international agencies and simultaneously targeted to also benefit the host communities. 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 bodies such as YLBHI (Indonesia Legal Aid Foundation) also provide legal assistance for refugees.

Decentralisation has resulted in different regions have varying levels of social acceptance and thus policies vis-à-vis the refugees. However, the religious basis of the local community solidarity with Rohingya significantly creates some space for religious-based CSO advocacy. In some cases, CSO actors employ members from the Rohingya community to do paid work or even assist in their marriage processes on a religious basis. This has allowed a generally positive collaboration between CSOs, as reflected in the creation of KNSR (National Committee for Solidarity with Rohingya), a network consisting of 79 organisations to specifically assist Rohingya refugees.

Comparable to the situation in Bangladesh, however, there is a scope for enhancing CSOs' collaboration with international agencies. In some cases, 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.

Thailand

Unresolved gaps between international humanitarian organisations' priorities and the Thai government's policies over the years have created uncertainties in terms of the refugees' status determination and thus, their right to work and livelihoods. More specifically, however, the presence of Rohingya refugees in Thailand constitutes a uniquely sensitive issue at the government level, in large part due to ASEAN's non-interference mandate and security concerns. Notably, although the UNHCR operates in Thailand and provides some degree of protection to urban refugees from different nationalities, it cannot screen individuals from Myanmar, including many Rohingya, for RSD. The key role of CSOs in the country has therefore been to address these gaps. They focus on refugees' rights to live in or at least stay temporarily, move freely, work, and access education in the host country.

CSOs in Thailand are very active in urban areas, in large part due to the fact that many refugees have lived in these areas, rather than camps, for years. Some seek to investigate and strengthen the capacity of refugees by engaging with the host governments and other actors such as the UN, producing advocacy plans, and supporting the refugees themselves (e.g. searching for emergency funds, connecting them with influencers or the media). Some CSOs also work directly with refugees. They promote community empowerment by working with refugee communities, conducting needs assessment and capacity building, and implementing livelihood or education projects. For example, by collaborating with international agencies, some provide English lessons and assist women to learn handicrafts (e.g. making bags or t-shirts) and help them sell their products. Still, the extent to which these apply to the Rohingya population is unclear, since those who do not possess a migrant worker status live without a clear refugee status and are often reluctant to disclose their identity as Rohingya.

CSOs are heavily engaged in advocacy. One key area of CSO advocacy that applies broadly for all refugees 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.

Another key area is especially significant for the Rohingya; it pertains to creating secure legal status, recognition by law, and protection for refugees. To that extent, CSO representatives accept that they cannot deny 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 business development. However, some CSOs also work directly to provide individual assistance for refugees in this regard. For example, legal teams 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. Again, CSOs' engagement with the Rohingya community in this area is still rather limited compared to, for example, that in the Malaysian context.

A final key CSO advocacy area – one that is also crucial for the Rohingya – 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, although some have expressed their concern that the latest draft has yet to comply with international standards.

CSOs in Thailand have worked collaboratively over the years. 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. Another notable national network is CCSDPT, which has nonetheless focused on the possibility for refugees' safe repatriation. In the process, CSOs have attempted to raise awareness through public forums on the Rohingya. Given the relative sensitivity of the issue, however, the collaborative work has not been geared specifically toward the community.

RECOMMENDATIONS

The final section of the report turns to the main objective which is to provide recommendations to 'support development of stronger and more representative ADSP and NGO policy engagement and regional advocacy strategy related to Rohingya refugees'. Specifically, these recommendations are geared to support 'the interests and capacities of Asian civil society organisations (CSOs) and communities who are engaged in issues of Rohingya statelessness and, more generally, their role in supporting Rohingya refugees'.³⁶

There are two sets of recommendations: generic recommendations that apply to all the case study countries but which, simultaneously, have particular relevance and application for Bangladesh given the unique size of the Rohingya refugee caseload; and a series of country-specific recommendations.

Generic and Bangladesh-focused recommendations

1. Expanding ADSP and member agencies' presence and programming in the region. The principal recommendation is to propose the expansion of ADSP and other NGOs presence across the region in supporting Rohingya refugees beyond its current engagement in Bangladesh. Significant opportunities exist where the expertise and resources of ADSP and its member agencies can add substantial capacity, funding resources and leverage to existing CSO/NGO/INGO activity, as well as direct programme engagement, in both camps and urban settings. This would include: reinforcing advocacy to enhance Rohingya refugees' rights (freedom of movement, right to work, stronger protection from potential refoulement and arbitrary treatment; supporting substantial scaling up of assistance to what are currently relatively small scale and piecemeal services in most of the study countries (education provision for children and adults, programmes for women and children, vocational training, and substantial scaling up of physical assistance for shelter and infrastructure); enhancing the development and capacity of Rohingya-led CSOs; advocating and resourcing longer term strategies and programmes, as opportunities become available, for promoting more sustainable livelihood opportunities.

In expanding its engagement, ADSP and other NGOs will need to navigate the politically complex environment of a restrictive governance framework imposed by the host countries and, at the same time, collaborating with well-established CSOs who provide important entry point and potential partnerships.

³⁶ As specified in the ToR.

2. **Enhancing global, regional and national advocacy on rights and protection for Rohingya** Although other actors are better placed to mainstream advocacy, where appropriate ADSP and other NGOs are recommended to support joint global, regional, and national advocacy strategies by
 - supporting regional/international actors and platforms that are building solidarity and strengthening global advocacy on accountability and justice for Rohingya in Myanmar;
 - supporting and working with existing and firmly established regional networks, notably APRRN;
 - developing sustainable partnership and support for local CSO actors and existing country 'platforms' promoting Rohingya protection and that possess greater familiarity with their national legal apparatus.
 3. **Enhancing understanding of the politicised space of operations** Noting that the political dynamics and context, as much as capacity constraints, constitute major challenges for CSOs (and these other actors) working with Rohingya refugees, ADSP and other NGOs are recommended to analyse further, and develop its understanding of, the highly politicised space in which CSOs operate in the host countries – space that is defined by governments but also the political agendas and interests of the CSOs themselves, for example the 'localisation' agendas.
 4. **Strengthening adherence to international protection norms** Given the non-signatory status of four of the case study countries, NGOs should advocate for stronger host country adherence to international legal and normative principles for refugee protection embodied in the 1951 GCR, for example for protection from refoulement, right to work and freedom of movement, whilst recognising the political sensitivity of these rights.
 5. **Developing a dual mandate for ADSP** In developing stronger and more representative policy engagement and regional advocacy strategy, should explore further the means by which it can bridge a 'dual' mandate of consolidating and/or extending its existing mandates (notably for protection) in the host countries and 'accountability and justice' advocacy in Myanmar (as the means to promote Rohingya return). A dual mandate would potentially draw stronger host country acknowledgment than a single mandate for refugee assistance. Such an approach requires careful navigation of the broader commitment of host governments to repatriation but also increasing the possibilities for the more formalised acceptance of refugees and promoting longer term development programming and service delivery.
 6. **Expanding service delivery** There are significant gaps in service delivery relating to shelter and infrastructure provision in the Rohingya refugee camps in Bangladesh. Expanding these services is outside direct ADSP control since, like all actors, it operates under strict government conditions and within nationally led camp management governance arrangements. Nevertheless, these are priority sectors where ADSP should continue to advocate scaling up operations and, where successful, collaborate with local and Rohingya-led CSOs, develop and implement programmes for shelter and infrastructure.
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7. **Enhancing services for education and women and children** Supporting CSOs and stakeholders already active in the field, ADSP is recommended to assist extant but under resourced education services and services for women and children in all the case study countries.
 8. **Supporting research on Rohingya** ADSP is recommended to support research into the cultural precepts, organisation, internal dynamics, and governance of Rohingya civil society; lack of knowledge has militated against effective engagement and partnership by CSOs, NGOs and INGOs.

- 9. Facilitating bottom-up Rohingya community development** Policy engagement by ADSP and/or its individual member agencies, should facilitate bottom-up, grass roots community development, empowerment, leadership and civic engagement within the Rohingya refugee populations in the host countries, where relevant in partnership with local CSOs. This will enable them to play a more central role in addressing the multiple political and social challenges they confront and a discourse from which they have been largely excluded to date. It should be deployed as a means of ensuring that Rohingya voices are heard more effectively, and to ensure that advocacy is not perceived to be something that only is 'done' by international actors.
- 10. Promoting social cohesion** Where the opportunities exist, ADSP should seek to promote social cohesion and build dialogue between Rohingya and host communities in collaboration with CSOs already engaged with these objectives, following good practices identified in Indonesia, Thailand and Malaysia.

Country-specific recommendations

- 11. Supporting Rohingya CSOs in Australia** ADSP and/or its individual member agencies, are recommended to support emerging 'semi-formal' Rohingya civil society organisations and their civic engagement in Australia. This could be promoted by: modest funding of Rohingya CSOs that exist in Sydney and Queensland and networks in other cities, for example, to strengthen their organisational and administrative capacity and programme of civic activities; supporting Australian CSOs that advocate and provide legal advice for Rohingya refugees. More generally, advocacy should also be directed toward ending detention centres in the country.
- 12. Supporting progress in Rohingya recognition in Malaysia and service provision** ADSP and/or its individual member agencies are recommended to lend support to the positive developments in the government's expanded commitment to Rohingya refugees in Malaysia, through advocacy with government agencies, and collaborating with local partners: to expand the currently small scale health, education and vocational training services; and to strengthen the organisational and administrative capacity of emerging Rohingya-led CSOs and their programmes of civic activities.
- 13. Enhancing advocacy and service delivery in Indonesia** ADSP and/or its individual member agencies are recommended to collaborate with local, mainly religious-based, CSOs in Indonesia working with Rohingya refugees to enhance advocacy and scale up service provision. Attention should be particularly given to achieving equal or at least comparable levels of access to service provision, especially education, across the country's provinces.
- 14. Monitoring policy changes in Thailand and scaling up service delivery** In collaboration with other actors, ADSP and/or its individual member agencies, should monitor and promote the progress on Thailand's proposed national screening mechanism in ways that ensure inclusivity of Rohingya refugees alongside those from different nationalities and protection against vulnerability. In addition, they should also seek to scale up vocational training and livelihood programming.

ANNEX

Schedule of Key Informants

Wan Nur Alia	Teacher of Rohingya Community School (RCS), Malaysian Relief Agency (MRA), Kuala Lumpur, Malaysia
Brian Barbour	Regional Refugee Protection Advisor, Act for Peace (ACT), Australia
Sarah Dale	Centre Director & Principal Solicitor, Refugee Advice & Casework Service, Australia
Lilianne Fann	Rohingya Working Group Chair, Asia Pacific Refugee Rights Network (APRRN) and Geutanyoe Foundation, Malaysia
Hajah Fauziah	Manager, Malaysian Relief Agency (MRA), Kuala Lumpur, Malaysia
Dr Carolyn Graydon	Principal Solicitor and Manager Human Rights Law Program, Asylum Seeker Resource Centre, Melbourne, Australia
Moonmoon Gulshan	National Co-ordinator, Cox's Bazaar CSO/NGO Forum
Ahsan Ul Haque	Acting President Burmese Rohingya Community in Australia (BRCA)
Jihad Hasan	RSD Legal Advisor, Malaysian Social Research Institute (MSRI)
Sara Hossain	Honorary Executive Director of Bangladesh Legal Aid Services Trust (BLAST) and Bangladesh Supreme Court Advocate
Shireen Huq	NARIPOKKHO (Pro-women), Bangladesh
Md. Touhidul Islam	Department of Peace and Conflict Studies, University of Dhaka, Bangladesh
Puttanee Kangkun	Senior Thailand Human Rights Specialist, Fortify Rights, Bangkok, Thailand
Chris Lewa	Deputy Chair Rohingya Working Group, Asia Pacific Refugee Rights Network (APRRN), Bangkok, Thailand
Temme Lee	Focal Point Rohingya Refugees, Asia Pacific Refugee Rights Network (APRRN), Bangkok, Thailand
Themba Lewis	Secretary General, Asia Pacific Refugee Rights Network (APRRN), Bangkok, Thailand
Nick Newlands	Solicitor, Human Rights Law Program, Asylum Seeker Resource Centre, Melbourne, Australia
Jessica Olney	Independent Consultant/Asia Foundation
Zico Pestalozzi	Legal Advisor, SUAKA, Jakarta, Indonesia
Rizka Rachmah	International Program Officer, LBH Jakarta, Indonesia
Paul Power	CEO, Refugee Council of Australia
Naiyana Thanawattho	Executive Director, Asylum Access, Bangkok, Thailand
Dan Tyler	Regional Protection and Advocacy Adviser Asia/Europe – Norwegian Refugee Council

A note on the KII questionnaire survey instrument

The key informants' interviews, using skype, have played a crucial part in developing the knowledge base and analysis of the CSOs. The interview method started with the design of a detailed questionnaire for CSOs and organisations that were working with CSOs. The aim of the questionnaire was to support a research inquiry that was inductive and empirical and did not start from a defined conceptual or analytical frame.

It rapidly became clear that the questionnaire was too prescriptive and formulaic for these purposes in the face to face skype interviews. Nor did CSOs have the time or resources to complete the survey as a written survey instrument. It also rapidly became clear that the context within which the CSOs were working was, in many ways, more important in defining and understanding their capacity, than their internal characteristics, organisational structures and the services they provided.

Accordingly, the questionnaire was adapted as an open ended series of questions, used in a flexible way as the basis for semi-structured interviews with key informants – usually the CEO or senior manager in the organisation. Some interviews were group interviews. Invariably the interviewees were very open and informative, and the flexibility of the semi-structured approach worked very well.

We did not have a sample size or pre-determined sample frame. Instead we started with some potential KIs and used this to snowball other CSOs and KIs in each case study country.

We did not perceive any ethical issues arising. Nevertheless, anonymity has been protected in presenting the CSO analysis in the case studies. In the end the sample was probably smaller than we envisaged but the information gathered from the interviews offered consistent, triangulated messages.

An additional and important source of information was the International *Conclave on Justice and Accountability for Rohingya*, at The Hague, The Netherlands on 18 October 2019 organised by the International Institute of Social Studies, BRAC University Centre for Peace Justice and the Asia Justice Coalition. This was attended by Dan Dyonisius.

Key Informants' Interview Instrument

Asia Displacement Solutions Platform (DRC/NRC/IRC)

Rohingya in South East Asia: opportunities for engagement

Consultants

Emeritus Professor Roger Zetter and Daniel Dyonisius

Key Informant's (KI) Interview Schedule – Open Ended Discussion Questions

PROJECT OBJECTIVES

The main objectives of the project for Asia Displacement Solutions Platform (ADSP) – as outlined in the brief ToR overview already sent

- 'Document and assess the interests and capacities of Asian civil society organisations (CSOs) and communities who are engaged in issues of Rohingya statelessness and, more generally, their role in supporting Rohingya refugees'.
THIS IS THE MAIN FOCUS OF THE INTERVIEW
- 'Map and analyse the policy making environment and architecture and assess how this conditions the role and scope of operations of the CSOs

INTERVIEW PROTOCOLS

- Interviews will not be recorded
- Interviews and their contents will be held in confidence and will not be divulged to the commissioning or any other organisations
- Any quotations will be non-attributed unless the consent of the interviewee has been obtained in advance
- A schedule of interviewees and their organisations will be presented in the final report unless the interviewee wishes to remain anonymous

ORIENTATION

The interview will normally start with a brief inquiry into the KI's role and that of her/his agency and then specifically in relation to Rohingya and extent to which they may be able to help country by country: Bangladesh, Indonesia, Australia, Thailand, and Malaysia.

Questions will be adapted to the role of the KI and her/his CSO

1. SITUATION REPORT/INFORMATION - To the extent possible for each country of which you have knowledge can you give a brief overview of the current situation related to the Rohingya refugees in that country?

- Protection issues and RSD (Refugee Status Determination)
- Distribution of Rohingya refugees
- Socio-economic and welfare conditions and provision, employment, settlement policies Political situation and public attitudes
- Role of international actors e.g. UNHCR, IOM, OHCHR.

2. In general, what are the capacities, strengths and limitations of the CSOs across the region and/or in particular countries in relation to Rohingya needs?
3. What do you consider to be the three or four main challenges confronting CSOs working with the Rohingya in SE Asia and/or specific countries?
 - Are these challenges longstanding or evolving or relatively recent?
 - What are three or four priorities for CSOs (e.g. developing advocacy, coordinating coms solidarity development, women and children involving and voice of refugees)?
 - How can support for and strengthening of CSOs be expanded and in what areas of activity?
4. For your CSO working with Rohingya, what is/are
 - the main mandate/responsibility of each CSO (e.g. advocacy, protection, assistance provision, resettlement)
 - level of activity – i.e. national or local organisation
 - links to NGOs/INGOs
 - your assessment of the impacts of the CSO on policy formulation and implementation and outcomes for Rohingya refugees
5. How are Rohingya refugees involved in the operation and management of your CSO? And how are the needs of the Rohingya assessed in relation to your CSO's objectives and mandate?
6. What types of interaction and partnership are there between CSOs/your CSO and NGOs/INGOs? How effective are they? How could they be improved/strengthened?
7. How would you assess the interaction between CSOs/your CSO and the government in terms of the impacts of the CSOs on policy formulation and implementation and outcomes for Rohingya refugees? How could this be strengthened/improved and what is the political scope for this to happen?
8. Can you give an overview of any regional networks of CSOs working with Rohingya in SE Asia, their roles, capacities and effectiveness and:
 - objectives of networks
 - links with INGOs
 - assessment of capacities and impacts of networks
 - names/co-ordinates of networks and brief organisational details as relevant
9. Can you supply basic co-ordinates/contact details for other relevant CSOs you know working with Rohingya in the five countries
 - Names of CSOs
 - Contact person/focal point/web address if known

10. Can you give details of reports, evaluations, grey literature, etc. on CSOs working with Rohingya refugees that might be useful for our study?

Thanks we will notify you when the report is published

ASDP is proposing an information sharing event on Rohingya refugees in SE Asia in February 2020. Would you be interested in having details and/or participating?



ADSP

Asia Displacement Solutions Platform

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COUNCIL



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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.