

HPG Working Paper

‘Turning a blind eye’

The policy response to Rohingya refugees in Malaysia

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1 Introduction

In October and November 2016, violence and unrest in Rakhine State, Myanmar flared up, testing Myanmar's fragile democracy and causing hundreds of Rohingya people to flee. In 2015, Rohingya asylum-seekers fleeing Myanmar made international headlines when a crackdown on human trafficking camps in Thailand led traffickers to abandon thousands of Rohingya asylum-seekers (and migrants from Bangladesh) on boats in the Andaman Sea, and mass graves of Rohingya were discovered in Thailand and Malaysia. Yet the roots of these events can be found in decades of persecution in Myanmar, and the displacement of hundreds of thousands of Rohingya to countries in South-east Asia. In Malaysia, the Rohingya population – with over 53,000 registered by the UN High Commissioner for Refugees (UNHCR)¹ and tens of thousands more unregistered – consists of a mix of new arrivals and first- and second-generation refugees living in protracted displacement. Most are stateless because Myanmar's 1982 Citizenship Law denies them the right to citizenship (ERT, 2014), and refugees born in Malaysia are not granted Malaysian citizenship.

This HPG Working Paper considers the institutions, organisations and policies that affect the lives and livelihoods of refugees in Malaysia. It begins by describing the stakeholders involved with refugees in Malaysia: their roles, constraints, interactions and key policies (such as registration) as they pertain to Rohingya refugees. Subsequent themes explored in the paper include refugees and employment (including potential advantages and concerns regarding the possible introduction of work permits for refugees), and interactions between refugee community-based organisations, aid actors and Malaysians.

This study is part of a broader programme of work considering the livelihoods of refugees in protracted

displacement (ODI, 2016), with a focus on refugees living outside of camps. In addition to Rohingya refugees in Malaysia (specifically Kuala Lumpur), it includes case studies on Central African Republic refugees in Cameroon and Syrian refugees in Turkey and Jordan.

1.1 Scope and methodology

The study was undertaken in two phases. Based on 'displacement life history' interviews with Rohingya refugees (Wake and Cheung, 2016), Phase 1 explored refugees' livelihoods. It considered the priorities of refugees in protracted displacement, the strategies they use to meet them and how these change over the course of displacement, as well as the institutions that shape their lives in Malaysia. Phase 2, presented in this companion report, develops a broader critical analysis of the institutions, organisations and policies that affect the livelihoods of refugees in Malaysia.

The methodology for this study included key informant interviews and a review of relevant documents, including academic literature related to refugees and grey literature (primarily from NGOs and the UN) on refugees in Malaysia and the regional context. It is important to note that data collection took place exclusively in Kuala Lumpur (the capital of Malaysia), as it is the location with the highest concentration of refugees in the country.²

The study draws on 28 interviews with 35 individuals representing a diverse range of people, including:

- senior officials at UNHCR;
- Rohingya community-based organisations;
- Malaysian authorities;
- Malaysians who employ Rohingya refugees;
- Malaysian and Rohingya job brokers who liaise between refugees and employers;

1 As of August 2016, there were 150,200 refugees and asylum-seekers registered with UNHCR in Malaysia (UNHCR, 2016a). This report focuses specifically on Rohingya refugees. The Rohingya comprise the largest group of refugees in Malaysia. Other refugees include other ethnic groups from Myanmar (Chin, Myanmar Muslims, Rakhines and others) as well as refugees from Sri Lanka, Pakistan, Somalia, Syria, Yemen, Iraq, Afghanistan, Palestine and other countries.

2 While there may be some similarities in the experiences of Rohingya refugees living in Kuala Lumpur and those in other parts of Malaysia, there are also notable differences (including their interactions with local communities and authorities and NGOs), and as such the analysis contained in this paper is primarily focused on refugees in and around Kuala Lumpur.

- local Malaysian politicians;
- an Imam;
- a staff member at a Malaysian company that employs and engages with refugees;
- a regional expert; and
- staff at national and international NGOs that work with refugees in Malaysia.

One challenge to, and potential limitation of, this study was the reluctance of some individuals and organisations to participate in interviews, with the notable exception of refugee community leaders. While willingness to participate in policy research on most topics is highly variable, reluctance to participate in a study about refugees in Malaysia is likely indicative of the fact that the topic is extremely sensitive. Many of those who engage with refugees (including employers and NGOs) try to maintain a low profile, wary of jeopardising their ability to continue such engagement.

No Malaysian companies that hire a large number of refugees agreed to be interviewed. It is also possible that employers who did agree to be interviewed were more likely to treat their refugee employees (or purport to treat them) relatively well, as it is unlikely that companies that exploit refugees would speak openly about this to researchers. Several NGOs did not reply to multiple interview requests, while others declined to participate and redirected us to UNHCR. One NGO explicitly acknowledged that they were constrained in their ability to speak openly about refugees. Numerous people told us that employers would not speak with us, even if given full anonymity, because of fear of potential legal consequences; as one job broker explained, ‘employers do not want to talk to the media or NGOs, they feel they are at risk because, if the government finds out they hire foreigners, they will revoke their business licence’ (HPG interview). Those who did agree to be interviewed for this study spoke

relatively openly, on condition of anonymity. Given the potential repercussions of statements quoted in this study being attributed to particular individuals or organisations, interviewees are referenced by a generic title or organisational affiliation rather than by name, and no distinction is made between international and national NGO respondents.

Lastly, while studies exploring the perspectives of refugees alongside those of local and international organisations and members of the host environment will identify a range of differing views, it is striking how divergent – and in some instances opposed – interviewees’ opinions and perspectives were in Malaysia. Consistent themes to emerge from the interviews include challenges that are prevalent in many refugee responses, such as actual and perceived constraints stemming from restrictive refugee policies and insufficient human and monetary resources. However, more underlying issues also emerged, including self-censorship, lack of transparency and a pervasive, vague mistrust affecting stakeholders’ relationships with each other. Issues such as these strongly shape the way individuals and organisations behave and interact with each other, and they inform and are reflected in the analysis throughout this report.

1.2 Outline

Chapter 2 introduces and situates key stakeholders involved with refugees in Malaysia. The following two chapters discuss key issues of policy relevance for refugees in the country: Chapter 3 considers issues surrounding refugees and employment, and Chapter 4 explores Rohingya refugees’ communities and engagement with the host environment. Chapter 5 concludes the study by considering future policy opportunities nationally and regionally.

2 Interacting with and responding to refugees in Malaysia: the configuration of state and non-state actors

The configuration of state and non-state actors that interact (whether formally or informally) with refugees in any country strongly affects how refugee policy is developed, interpreted and enacted, and the support and services refugees can potentially access. This chapter introduces and situates key actors involved with refugees in Malaysia, including the Malaysian government, UNHCR, NGOs and members of the host environment.³ Employers and Rohingya community-based organisations (CBOs), also key stakeholders, are discussed in Chapters 3 and 4.

While describing these actors and their roles is a key step towards mapping the institutional landscape of refugees in Malaysia, it is done with the caveat that none can be seen as united, cohesive units. Rather, each represents loose networks of people with various roles, perspectives, motivations and incentives. This is evident in interviews with NGO staff, current and former UNHCR employees and members of the government, all of whom held different – and sometimes contradictory – views on the role of their organisation and others.

2.1 The Malaysian government

Malaysia has not signed the 1951 Refugee Convention, and its official policy is that refugees in Malaysia are ‘illegal’ migrants, and subject to

detention.⁴ It also lacks an administrative framework for responding to asylum-seekers and refugees. There is limited explicit policy regarding refugees, and national laws that could potentially be invoked for refugee protection are applied in an ad hoc way. While Rohingya refugees are generally not at risk of large-scale *refoulement*,⁵ refugees in Malaysia do face arrest and detention and are unable to work legally.

In the absence of a coherent, whole-of-government policy, reactions tend to be ad hoc, inconsistent and often subjective. There is, to a certain extent, tacit acknowledgement from state actors that there are populations in Malaysia who have fled persecution and require temporary protection; previous research (ERT, 2014) quotes an interview with the Director of Immigration Enforcement at the time: ‘In this administration based on the elements of humanity, the government allows any illegal immigrants who received recognition from the UNHCR to stay temporarily in Malaysia until resettled to a third country ... The easiest thing to say is that the government is “closing one eye” on the matter’ (ERT, 2014: 29–30). It was striking how many people interviewed for this study described the Malaysian government’s response to refugees in a similar way – as ‘turning a blind eye’ or having ‘one eye open, one eye closed’ (HPG interviews). Findings from earlier research (Wake and Cheung, 2016) indicate that Rohingya refugees recognise and are appreciative of

3 The term ‘host environment’ is used to refer to Malaysians who formally and informally interact with refugees, including but not limited to Malaysians who live in the same neighbourhoods as refugees, religious leaders and Malaysians who regularly serve refugees in their professional capacity (e.g. nurses and doctors at public hospitals). The word ‘environment’ is used instead of ‘community’ because the categories of people it denotes represent a diverse range of individuals and communities.

4 This is the norm in South-east Asia, where only three countries, Cambodia, the Philippines and Timor-Leste, have signed the Convention (UNHCR, 2015a).

5 According to UNHCR, the core principle of the 1951 Refugee Convention ‘is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This is now considered a rule of customary international law’ (UNHCR, 2016b).

Box 1: Dilemmas in addressing protracted displacement

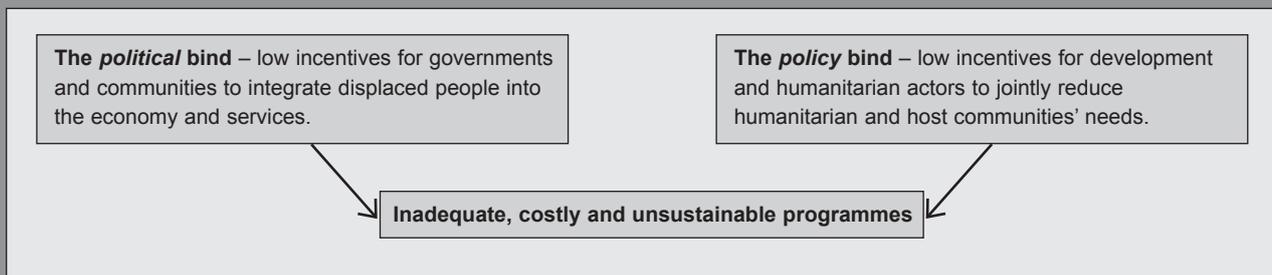
Recent analysis suggests there is a ‘double-bind’ dilemma on political and policy levels when it comes to addressing prolonged displacement (Center on International Cooperation (CIC) et al., 2015).

On a political level, refugees are commonly seen as takers rather than contributors, there is often public opposition to long-term solutions, and there are few perceived benefits for governments and host communities in integrating refugees (*ibid.*). This creates an incentive for political leaders to frame the problem as temporary and to separate displaced people from local social and economic development, even when evidence shows that displacement is usually long-term, and that the social and economic contributions refugees make can be considerable (*ibid.*: 6).

The policy bind stems from low incentives and scarce opportunities for humanitarian and development actors to collaborate effectively to address both humanitarian and host community needs. Ultimately, the result is unsatisfactory conditions for all stakeholders; as the CIC report puts it:

everyone loses under the business-as-usual model. Host communities carry a heavy burden and are under-supported; the displaced subsist on aid and in the shadows of the informal economy; governments carry costs of crisis, but do not receive more aid or tax revenues; and humanitarian aid actors are stretched to meet protracted demand and respond to new crises (ibid.: 6).

A ‘double bind’ creates unsustainable humanitarian dependency for the displaced and their



Source: CIC (2015: 5).

the leniency shown by some authorities.⁶ Indeed, in addition to help from Malaysian friends, neighbours and employers, refugees often rely on the police and other authorities’ lenient interpretation of policy to survive in Malaysia (though this in no way negates the fact that some authorities exploit refugees, for instance by coercing refugees and undocumented asylum-seekers to pay bribes, as detailed in Wake and Cheung (2016)).

A distinction can be made between de jure and de facto integration of refugees – the former being official

recognition (i.e. through political or legal means), and the latter being more informal integration at individual or community levels.⁷ Many refugees have achieved some degree of de facto integration: most Rohingya refugees work in the informal sector, rent accommodation, access health care at government facilities and pray at Malaysian mosques. Yet many spend years, decades and even generations living in limbo, lacking the prospect of a formal durable solution (de jure integration, resettlement or repatriation). In the meantime, the controversy and illegality associated with refugees mean that few politicians or members of Malaysian civil society

⁶ In this paper, the term ‘authorities’ is used to refer to a range of authorities refugees may come into contact with, including the police, Special Branch (a police branch undertaking intelligence work) and RELA (from the Malaysian Ikatan Relawan Rakyat), a volunteer civilian force.

⁷ For further analysis of historical and conceptual issues surrounding local integration and settlement of refugees see Crisp, 2004.

are willing to champion their rights, and there is little political will to fundamentally change the government's position.

The Malaysian stance towards refugees is, on the one hand, one of tacit and limited acceptance, and on the other formal abdication of any responsibility for responding to the needs of people seeking asylum in Malaysia. The formal response has ostensibly been delegated to UNHCR, whose work is simultaneously made more difficult by state policies (such as detention) aimed at deterrence and exclusion, and the hostility of the state towards the notion of Malaysia as a final destination country for refugees (see Lokman, 2016).

The state's tacit acceptance is based on it situating itself as a transit country, with resettlement as the primary durable solution. The presence of some Rohingya refugees in Malaysia for over 30 years illustrates the extent to which this fails to reflect reality. While historically resettlement has been a viable durable solution for refugees in Malaysia, global demand for resettlement places and the changing demographics of the refugee population in Malaysia⁸ mean that it is unlikely to be the foremost durable solution for Rohingya refugees in future. While Malaysia has been a final destination country for refugees from select groups (Bosnians, Filipino Muslims from Mindanao, Muslim Chams from Cambodia and Syrians),⁹ it has not taken similar action towards *de jure* integration for the Rohingya.

State policy tends to be ad hoc, reactive, and influenced by a number of factors. Refugees comprise one small part of the broader mixed migration issues confronting the state, which is concerned that a more liberal refugee response framework could act as a 'pull' factor for refugees and migrants. The government has not developed an administrative framework for responding to refugees, nor has it ratified key treaties or conventions (primarily

the 1951 Refugee Convention), both of which would commit it to doing more to protect and support refugees in the long term. Current policy prevents refugees from accessing social services or security comparable to the host population, and undermines efforts to support refugees through long-term programming (such as sustainable livelihood interventions). Most assistance therefore takes the form of short- and medium-term humanitarian interventions (medical care, non-formal education), despite the fact that 'handling protracted displacement through temporary and ring-fenced humanitarian programmes impedes opportunities for more equitable and productive investments that assist both refugees and host communities' (CIC, 2015: 6. See also Crawford et al. (2015), which considers livelihoods and interventions in protracted displacement).

Despite the restrictive policy context, Malaysia – through its history of turning a blind eye, and the action of individuals and institutions in the host environment – has provided refuge to thousands of Rohingya asylum-seekers. One refugee CBO leader interviewed at a tea shop in Kuala Lumpur said that he appreciated the Malaysian government and society for understanding the problems facing the Rohingya. When asked if he truly felt that they understood the situation of the Rohingya, he said 'This is their understanding. They are allowing us to sit here' (HPG interview), suggesting that the restrictive formal policies belied a level of acceptance and understanding. This perspective – a refugee who does not take for granted being allowed to sit in a tea shop – provides a stark and important reminder of the human rights violations and restrictions confronting Rohingya people in Myanmar, and the extent to which some Rohingya refugees use their own state as a reference point in their attitudes towards the situation in Malaysia. While some Rohingya refugees in Malaysia had low expectations of the Malaysian state, they had higher expectations of the international community.

8 Historically, most refugees resettled from Malaysia were Chin, as part of a group resettlement programme to the United States.

9 In 2015, the Malaysian government announced it would accept 3,000 Syrian refugees for resettlement. The first group arrived in 2016. Reports indicate Syrians resettled to Malaysia would be given temporary residence passes and the right to work and to access certain social services (like education). These are not granted to Syrian refugees who sought asylum in Malaysia outside of this particular resettlement scheme, and who are under the protection of UNHCR (AFP, 2016).

A regional and historical perspective is helpful in understanding the Malaysian government's stance towards refugees. Present-day policies towards refugees are rooted in the Indochina refugee crisis (1975–95) and the Comprehensive Plan of Action (CPA) developed in response to the crisis. The CPA was, amongst other things, a mechanism of 'burden-sharing', in which UNHCR played a driving role and Malaysia and other countries agreed to accept asylum-seekers temporarily with the understanding that most

would be repatriated or permanently resettled outside the region (Robinson, 2004; McConnahie, 2014).¹⁰ Drawing on Davies (2006), McConnahie (2014: 632) writes that, ‘Regionally, the success of the “asylum for resettlement” bargaining strategy arguably consolidated South-East Asia as a region outside the global refugee regime and entrenched the belief among those nations that the global refugee regime was not in their regional interests’. As such, while the CPA was a qualified success as a response to the Indochina refugee crisis, ‘if it is to be judged by the depth and breadth of ongoing regional commitments to asylum in Asia, the marks deserve to be much lower’ (Robinson, 2004: 324).

One Malaysian interviewee in the humanitarian sector expressed the view that many South-east Asian countries, Malaysia included, still have pressing internal political, social and economic issues to resolve; this, combined with a lack of rights and protection for refugees in the region, contributes to limited political or economic incentives to respond to refugees in a way that is aligned with international standards. As Lego (2012: 92) asserts, in Malaysia ‘the use of the term “humanitarianism” appropriates a noble role for the Malaysian government while simultaneously distancing itself from the language of human rights or the rights of refugees and any obligation that the language of rights invokes’. Within the region, Australia’s restrictive policies towards refugees have arguably set a negative example for countries such as Indonesia and Malaysia, and undermined arguments from Western governments and NGOs that South-east Asia should adopt more liberal refugee policies (Hargrave, Pantuliano and Idris, 2016).

2.2 UNHCR

UNHCR has operated in Malaysia since 1975. In 2015, it had one office in the country, in Kuala Lumpur, with 185 staff¹¹ (UNHCR, 2015b) and an expenditure of \$9 million (UNHCR, 2016c). There is limited operational engagement from the UN country team on issues related to refugees. UNHCR has no formal cooperation agreement with the Malaysian

government, and receives no financial support from the state for its operations in the country. In line with UNHCR’s 2009 Urban Refugee policy, the UNHCR office in Malaysia has moved away from individual support towards a community-based approach (Crisp, Obi and Ulmas, 2012). In Malaysia, this entails UNHCR supporting refugee CBOs and engaging refugee groups in a variety of ways, including those related to self-help and livelihoods projects, information dissemination (about detention, protection issues, etc.) and refugee learning centres (*ibid.*). UNHCR’s overarching strategy for the next five years is focused on the empowerment of vulnerable populations, including Rohingya refugees, with the intention of creating a stronger ‘community ecosystem’ of support, including CBOs, grass-roots civil society organisations and, where possible, the government. This differs from the previous model, which was highly centralised.

UNHCR’s work in Malaysia includes:

- registering asylum-seekers and providing them with documentation (UNHCR cards);
- refugee status determination;
- supporting learning centres for refugees (they cannot attend Malaysian schools);
- providing livelihood and vocational skills linked to labour/employment opportunities;
- limited financial assistance;
- forming partnerships with the private sector (e.g. the International Medical University, Qualitas Medical Group and Uniqlo) to support refugees;
- supporting access to health care through health insurance and individual assistance;
- detention monitoring and intervention;¹²
- developing ‘case referral’ mechanisms to address the protection needs of acutely vulnerable groups and individuals; and
- facilitating resettlement and, to a limited extent, voluntary returns.

Since 2005, UNHCR has resettled over 100,000 refugees from Malaysia (UNHCR, 2015c) to third countries, primarily the United States (see Figure

¹⁰ For detailed analysis of the CPA, see Robinson, 2004.

¹¹ Comprising 55 national staff, 11 international staff, two deployees and 117 staff under UN Office for Project Services (UNOPS) workforce arrangements.

¹² Detention monitoring and intervention is of particular importance as refugees and asylum-seekers, especially those waiting to be registered by UNHCR, are at risk of being detained. UNHCR arranged the release of 9,653 persons of concern from detention in 2015 (UNHCR, 2016d). As of 31 December 2015 2,498 Rohingya remained in detention in Malaysia (UNHCR, 2016d).

Figure 1: Key figures

2015 end-year results	
22,032	people of concern were registered
1,241	refugee status determination (RSD) cases were adjudicated
7,147	individuals were submitted for resettlement
9,653	persons of concern were released from immigration detention
792	extremely vulnerable individuals received financial assistance
2,069	people were assisted through livelihoods interventions
295	individuals continued to receive access to HIV/AIDS treatment
32,000	medical consultations were provided
18,000	people of concern were covered under the health insurance scheme

1 (UNHCR, 2016c), which lists key 2015 end of year results from UNHCR Malaysia). In recent years, UNHCR Malaysia has undergone an active ‘recalibration’ of its programmes and policies. While initial phases involved investing time and resources to address issues associated with registration fraud (which UNHCR says are now resolved), latterly the organisation says that it has become more ‘outward looking’. Factors influencing UNHCR’s planning include the changing situation in parts of Myanmar, which has meant that some groups of refugees, such as the Chin, are no longer prioritised among those in need of international protection. Conversely, limited change in Rakhine State in Myanmar and growing global demand for resettlement places have increased recognition that repatriation or resettlement are unlikely to provide durable solutions for a large proportion of the Rohingya refugees in Malaysia. This has led to greater focus on the Rohingya, including livelihoods, a concerted effort to find mechanisms to allow refugees to work legally and the five-year strategy towards supporting stronger and more resilient refugee communities.

Interviews for this study, conducted with a diverse range of people, consistently identified UNHCR as being at the centre of the response to refugees in Malaysia. As one CBO put it, ‘Without UNHCR [our organisation] cannot do anything – it is not recognised by the government’ (HPG interview). Officials at UNHCR stated that they would ultimately like to move away from being the primary response provider,

towards being one element of a matrix of responders and partners supporting refugees (HPG interview). In such a scenario, UNHCR’s role could be focused more on providing advice, training, monitoring and facilitating; this would require partnerships and capacity with national actors to be strengthened and scaled up. For now, however, UNHCR remains firmly at the centre of the response.

Officials at UNHCR emphasised their extensive efforts to communicate and engage with NGOs, refugee communities and other stakeholders, including through briefings, a group chat and blog (created to help answer questions from the community), networking events, the Community Based Protection Initiative and thematic working groups, where information exchange and cooperation are central features. However, despite these efforts, numerous CBOs, NGOs and international NGOs – including those who worked as implementing or operating partners of UNHCR – cited concerns around what they perceived to be a lack of transparency about registration and resettlement, and inadequate communication and engagement. As a result, there was what one interviewee regarded as ‘a complete lack of understanding among refugees of UNHCR processes’ (HPG interview), including refugees not understanding the difference in status between asylum-seekers and refugees and asylum-seekers going undocumented because they could not obtain UNHCR registration. NGOs and CBOs described the challenges associated with providing assistance to unregistered/undocumented or extremely vulnerable refugees without what they regarded as adequate cooperation or support from UNHCR.

There is a tacit admission within UNHCR that the organisation is in a position it shouldn’t be in after 40 years in Malaysia. An evaluation of the implementation of UNHCR’s Urban Refugee policy acknowledged that the situation in Malaysia ‘is in many respects the very opposite of the one envisaged in UNHCR’s new urban refugee policy, which is based on the principle that states should assume their fair share of responsibility for refugees, and that persons of concern to the organization should be granted equitable access to the services available to nationals’ (Crisp et al., 2012: 17). At the same time, while they were critical of UNHCR, NGOs and refugee CBOs interviewed for this study also clearly recognised the challenging position UNHCR is in – the constrained space it has to operate in Malaysia, as well as its

limited funding and concomitant challenges, including insufficient staff numbers in relation to the level of work and responsibility, as well as staff burnout. As the head of one NGO put it: ‘UNHCR, they have a big role, and I don’t envy them. Maybe they can see the light at the end of the tunnel, but the tunnel is very long’ (HPG interview). Several leaders of refugee CBOs, though critical of UNHCR, recognised that the organisation’s response to Rohingya refugees had improved in recent years; one cited marked improvements in detention release, financial assistance and education provision (HPG interview).

2.2.1 Registration

As of August 2016, 150,200 refugees and asylum-seekers were registered with UNHCR in Malaysia. In 2014, UNHCR estimated that there were 35,000 unregistered asylum-seekers in the country (UNHCR, 2014), though Rohingya community leaders consulted for this study thought the figure was significantly higher.

In recent years, and following allegations of corruption,¹³ UNHCR’s registration process has been overhauled.¹⁴ The recalibrated registration procedures, now operational, include new anti-fraud measures (including cards with state-of-the-art biometric data collection (UNHCR, 2016e)),¹⁵ in part to address allegations of corruption, but also to demonstrate to the government that registration and ID cards are issued only to those requiring international protection. Much of the investment in integrity measures has been aimed at reducing the risk of UNHCR processes being exploited by criminals and profiteers, some of whom may be from the Rohingya community.

13 Public accusations of corruption – including fraud associated with registration – have been levelled at UNHCR Malaysia, most prominently in an investigative report by Al Jazeera (2014). UNHCR launched a formal investigation into the accusations, and conveyed during an interview for this study that issues surrounding fraud had been resolved. UNHCR also outlined a number of steps it had taken to enhance the integrity of its processing and in the procedures of partner organisations.

14 It is beyond the scope of this paper to consider how this is working in practice, as it happened after the field research took place.

15 While collecting biometric data from refugees has numerous operational advantages (e.g. fraud reduction), it is controversial (Currion, 2015). It raises issues surrounding data security, ownership and protection, and although it may increase UNHCR’s upwards accountability (to donors and governments, for example), it does not increase accountability to refugees (most of whom have no idea where their data is stored, what it is used for and who it may be shared with).

In the current system, upon arriving in Malaysia to seek asylum a Rohingya person cannot approach UNHCR directly to seek registration (and in 2016 the government formally instructed UNHCR to suspend ‘walk-ins’ for spontaneous/unknown new cases at its Kuala Lumpur office). Instead, registration occurs via other channels that prioritise the most vulnerable: those who are detained for being undocumented can be registered by UNHCR to facilitate their release; those assessed as having an acute vulnerability (such as a serious health condition, or unaccompanied or separated children) can be referred to UNHCR by NGO partners; and those with an already scheduled appointment can be registered (to clear the backlog). In the future, should further resources and capacity become available, other registration procedures, such as community/mobile registration (an approach employed historically but not currently in Malaysia), will be considered. As explained by UNHCR, the rationale behind the current system is to prioritise those with acute vulnerabilities and needs, create better links with NGO partners (with the aim of establishing a more credible and effective network of cooperation and engagement at the community level), and provide a fast track for integrated case management, including referrals for assistance and resettlement.

UNHCR has trialled and revised its processes, and carried through a communications strategy to disseminate information to a range of stakeholders, including the government. However, our interviews highlighted disagreement between UNHCR and refugees, community leaders and NGOs on the extent to which these evolving registration processes were understood. UNHCR officials state that they have been open and transparent in their briefings with CBOs, NGOs and the government, and told us that their NGO partners were well aware of UNHCR processes. For their part, these same NGOs said that they were not clear about the new registration process, and doubted that procedures would be communicated well to refugees or NGOs.

Registration policies have long been a challenging issue in Malaysia, and are emblematic of the state and UNHCR’s roles. In theory Malaysia – a stable, middle-income UN member state – should be capable of developing and implementing a rights-based, state-led response to refugees, including registration. Yet for reasons outlined elsewhere in this report, government policies have been ad hoc and applied on a case-by-case basis to various groups of refugees, rather than

as part of a human rights-based framework that would create a legal duty to act in accordance with international standards. In the absence of a state-led response, UNHCR has stepped in to undertake refugee registration, which by necessity (given the fragile asylum space, insufficient resources and high risks of fraud) prioritises those refugees the organisations assesses to be the most vulnerable.

In addition, historical and recent actions by the Malaysian government indicate that increases in the number of registered refugees can prompt negative responses (such as the arrest of refugees outside the UNHCR office and restrictions on registration of people who approach the office directly as ‘walk-ins’). UNHCR says that it takes seriously concerns within the government regarding increasing numbers of registered refugees, and faces additional constraints related to resources and capacity. Furthermore, UNHCR does not accept that all Rohingya need UNHCR registration to secure protection, noting a high degree of integration between non-registered Rohingya and Malaysian communities, particularly on Malaysia’s east coast.¹⁶ Yet in a country where having a UNHCR card provides a critical form of protection and facilitates access to essential services such as health care, a registration policy that prioritises those with acute needs or vulnerabilities has potentially serious implications for large numbers of asylum-seekers deemed to fall outside of these categories.

2.3 National and international NGOs

While there are, in addition to UNHCR, a number of local and international NGOs serving refugees in Malaysia, the overall aid landscape is fragmented and constrained by state policy, which limits the registration of international NGOs, and the operation of registered NGOs/INGOs more broadly. A limited number of NGOs provide services to refugees in Malaysia, but those interviewed for this study described the environment in which they work as ‘sensitive’ and

‘narrow’ (HPG interviews). The provision of health and education services is the primary focus of most NGO programmes for refugees, though NGOs also provide legal support (e.g. for refugees who are detained or are trying to register with UNHCR), shelter and support services related to sexual and gender-based violence. There are particular gaps in services addressing the psychosocial and protection needs of refugees, and few NGOs operate programmes related to livelihoods, for a number of reasons: NGOs are constrained by limited resources (some receive a small proportion of their funding from UNHCR, but the majority comes from fundraising, private donations or sources abroad); few have mandate or expertise in this area; and NGOs are already at capacity running programming to fill other priority areas (e.g. those related to health and education).

More broadly, NGOs highlighted the challenges of protecting and advocating for the needs of a community that is not officially recognised by the government. Laws ‘illegalising’ the employment of refugees challenge, and in many cases undermine, the potential for livelihoods programming. As a senior official at one NGO explained, while they have been running health and education programmes for refugees in Malaysia for over a decade the NGO does not do livelihood programming because it believes ‘the government would not allow it’ (HPG interview). Another NGO noted that, as refugees are considered ‘illegal’, NGOs have no legal basis to provide them with assistance, and there is limited scope for large-scale, structured programmes. The head of one NGO noted that local NGOs may ‘enjoy a better space’ to serve refugees because they are seen by the authorities as providing a social service, and the government may be more accepting of them, in part because they are perceived to be less likely to speak openly or critically about the situation of refugees in international fora. Many NGOs serving refugees try to maintain a low profile, focused on service provision rather than advocacy, and make a clear and purposeful distinction between their role and that of UNHCR or the government.

2.4 The host environment

Refugees interact with a wide range of Malaysians, including neighbours, religious figures, members of the private sector, staff at government facilities such as hospitals and employers (discussed in Chapter

¹⁶ While this paper is not suggesting that *all* Rohingya in Malaysia – particularly those who may have achieved what they assess to be a satisfactory level of de facto integration without it – want or need registration, findings from this study strongly indicate that registration provides an important form of documentation and protection (from arrest and detention) for refugees in Kuala Lumpur, and that attaining it is a key priority for many.

3). Awareness of refugees has increased among Malaysians in recent years, particularly with the high-profile boat crisis in 2015, and Malaysians have basic awareness of refugees and sympathy towards them (see examples in Chapters 3 and 4). That said, one interviewee noted that a segment of the population remains wary and generally uninformed about who refugees are (HPG interview), and another suggested that Malaysians often fail to differentiate refugees from economic migrants:

There are a large number of migrants and refugees in Malaysia, and most Malaysians don't know the difference. The media, which uses the terms interchangeably, doesn't help. This makes it difficult, refugees are considered illegal migrants and this sentiment filters down to the lower/basic levels of authorities (HPG interview).

While interviewees identified numerous ways in which refugees are exploited – including in employment and having to pay excessive fees to service providers such as bus drivers or bribes to authorities – many recognised that Malaysians try to help refugees. Sympathy or pity and examples of de facto integration permeated our interviews. According to a local politician who had publicly spoken in defence of the rights of Rohingya refugees: ‘The police are OK. They are used to seeing a lot of Myanmar people ... They also know the Rohingya are Muslim, and they respect this’ (HPG interview). In another example, a staff member in a private sector company involved in a programme to assist refugees said that, while this involvement was initially a business decision (i.e. it was a programme that could potentially generate a profit), over time the company had come to understand the difficult situation refugees faced in Malaysia, and its involvement had now become part of the company’s corporate social responsibility and a way of giving back to society.

Refugees in Malaysia do not occupy a visible, clearly demarcated space – they are not in camps, nor do

they have large numbers of vocal Malaysians publicly advocating on their behalf. Yet they have, to varying degrees, achieved some form of informal (de facto) integration, living and working amongst Malaysians, accessing formal public services such as health care to the extent they can, and engaging regularly with religious institutions. Although there are documented examples of abuse and exploitation (see Amnesty International, 2010; Wake and Cheung, 2016), the environment they live in can also provide material, psychosocial and spiritual support.

2.5 Conclusion

The stakeholders discussed in this chapter are key figures in the institutional landscape of refugees in Malaysia. It is an environment in which those trying to assist refugees feel restricted by state policy, and many are constrained in fulfilling their roles, potential and – in some instances – obligations to refugees. The state is ultimately responsible for defining the parameters in which the UN, NGOs and different branches of the government can work, and while some manage to manoeuvre within the ‘grey space’ of the government’s ‘unwritten’ policy towards refugees, finding ways to provide employment or assistance while the government turns a blind eye, this creates a tense, challenging environment, both for refugees and for the institutions that engage with them.

In its current role at the centre of the response, UNHCR provides essential – albeit limited – protection and support for refugees in Malaysia. While it has, particularly of late, undergone a recalibration process to increase its effectiveness and impact, it is unclear if this will result in substantial changes to the status quo, or if it will fundamentally alter the relationship between the Malaysian government and UNHCR. The following two chapters of this paper explore key policy issues in depth – employment and refugee communities’ engagement with the host environment – and the implication of these issues for the situation of Rohingya refugees.

3 Refugees and employment

As in many countries, in Malaysia the topic of foreign workers is contentious, and refugees are often conflated into the same category as undocumented or foreign workers. In the early 1990s, when large numbers of Rohingya refugees first started coming to Malaysia, the government provided some with six-month work permits (Human Rights Watch, 2000); these were non-renewable, however, and since then no work permit schemes for refugees have been successfully implemented. Previous efforts to regularise the status of the Rohingya have failed amidst accusations of fraud and corruption, including an attempt in 2006 to issue IMM13 permits (a type of temporary residence permit that the Minister of Immigration can authorise at their discretion) to Rohingya refugees.¹⁷ UNHCR has increasingly advocated for work permits for refugees in Malaysia (UNHCR, 2016e), and in recent years the Malaysian government has considered – and in numerous instances initiated the process of – issuing work permits to refugees; most recently, a high-level government committee was formed to consider the issue (Lokman, 2016).

The current position is that refugees are not allowed to work lawfully in Malaysia, and few receive assistance: in a study by the International Rescue Committee, 92% of refugee respondents said that neither they nor a member of their household had received humanitarian aid or services during the previous year (Smith, 2012: 61).¹⁸ This is in stark contrast to, for example, Jordan, where UNHCR estimates that 94% of urban refugees received cash assistance in 2014. As such, refugees often resort to working ‘3D’ jobs (jobs that are dangerous, dirty and difficult) in the informal sector, and the illegality

of their status renders them at increased risk of exploitation by employers.

Refugee rights surrounding employment cannot be considered in isolation, as they are linked with issues related to mixed migration flows (foreign workers, undocumented economic migrants and refugees) and the political economy of the labour market. With 150,200 refugees registered with UNHCR in Malaysia as of August 2016, refugees comprise a very small proportion of the non-Malaysians engaged in the Malaysian labour market. In 2015, there were an estimated 2.1 million registered immigrants in Malaysia¹⁹ (World Bank, 2015: 31). The World Bank, in its 2015 Economic Monitor of Immigrant Labour in Malaysia, cites a Ministry of Home Affairs estimate that one in every four immigrants is undocumented, while the Ministry of Human Resources has made an (arguably conservative) estimate that ‘there are approximately 2 million undocumented workers’ in the country (World Bank, 2015: 58).²⁰ Numerous sectors, including construction, plantation work and the service sector, rely heavily on foreign labour. The report also argues that, at approximately 3%, Malaysia has relatively low unemployment rates, and that ‘low-skilled sectors remain important to the Malaysian economy, creating workforce gaps at the lower end of the skill spectrum’ (*ibid.*: 29). Malaysians interviewed for this study consistently disagreed with the idea that, if refugees were granted channels for legal employment, they would be taking jobs away from Malaysians.²¹ Employers in particular noted that Malaysians did not want to do ‘3D’ jobs for the salary offered. One stall owner at a large wholesale produce

17 ERT (2014: 32–33) states that the 2006 registration of Rohingya ‘was extremely problematic, administered without coordination with UNHCR and abandoned after 17 days amid allegations of corruption and fraud. The government subsequently commissioned a study to assess the feasibility of setting up a residence and work permit scheme for Rohingya refugees. However, it confirmed in September 2013 that there were no plans to issue IMM13 permits to Rohingya in the near future’.

18 This may not include one-time handouts, which many Rohingya refugees receive on an ad hoc basis during religious holidays.

19 This estimate is based on the number of foreign workers registered in the 2015 Foreign Worker Compensation Scheme.

20 Since 2011, the Malaysian government has attempted to regulate the number of irregular migrants through the 6P programme, which involves various stages including registration, legalisation, amnesty, monitoring, enforcement and deportation (Government of Malaysia, 2016).

21 These comments are in line with findings from a World Bank (2015: 2) study, which indicated that low-skilled immigrants ‘fill workforce gaps, reduce production costs and expand output and exports. As a result, unskilled employment increases and profits rise which increases investment and the demand for higher skilled Malaysians’.

Box 2: The legal framework

A range of national laws and international declarations and conventions provide legal grounds that can be invoked to protect the rights of refugees in Malaysia, including (but not limited to) the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the ILO Conventions Malaysia has signed (Reynolds and Hollingsworth, 2015); numerous Articles of the Federal Constitution of Malaysia, including Article 8 (1), which states that all persons are equal before the law and entitled to the equal protection of the law; and the Malaysian Employment Act 1955 and Industrial Relations Act 1967. The latter were invoked in a precedent-setting 2012 legal case (in *Ali Salih Khalaf v. Taj Mahal Hotel*) decided by the Industrial Court in Kuala Lumpur, in which a UNHCR-registered refugee successfully won a case of unlawful dismissal against the Malaysian hotel at which he had been employed. Indeed, in that case,²² the Industrial Court applied the rights of workers enshrined in the 1955 and 1967 Acts through the lens of Article 8 of the Constitution. In doing so, the Court declined to discriminate between a documented worker and an undocumented migrant worker, proceeding to both recognise and enforce the employment rights of a UNHCR refugee in a claim for unlawful dismissal. While this case stands and has been quoted in other cases, the majority of refugees are not willing or able to take employers to court over unlawful or exploitative practices.

market said that Malaysians did not work there, that all the workers were foreigners and that, if there were no foreign workers, the market would struggle to function (HPG interview).

3.1 Employers' perspectives

The companion report written for this study (Wake and Cheung, 2016) considers, from the perspective of Rohingya refugees, their livelihood options, goals, constraints and successes. The second phase of research, presented in this report, explores refugee

livelihoods from the perspective of employers, job brokers and NGOs. Overall, there are significant parallels between how individuals and institutions that interact with refugees perceive refugee livelihoods, and how refugees themselves described their livelihoods. Both recognise the importance of UNHCR cards (for instance in securing employment and managing risks associated with the authorities, such as being asked for bribes or being detained), and recognise that refugees often do difficult jobs for low pay, and are at risk of various forms of exploitation. Staff at NGOs that work with refugees and members of civil society described the range of employment that refugees in Malaysia undertake, including manual labour (e.g. construction, agriculture); odd jobs (e.g. collecting recyclable goods); selling food and service roles; NGO work; and working for international fast food and retail chains. Of those discussed, some were small companies that hire one or two refugee employees, others were large firms that allegedly hire hundreds.

For employers, legally hiring foreign workers can be a long and complicated process, requiring them to pay costs associated with sponsorship and maintenance, and adhere to frequently changing criteria regarding source countries and the sectors into which foreign workers can be recruited. Some employers take what is arguably the quicker, cheaper – albeit riskier – option of hiring refugees already in the country. Employers interviewed for this study described numerous ways to mitigate associated risks, including hiring refugees on a voluntary or trainee basis and paying them a stipend or transportation costs rather than a salary; negotiating with the police or paying bribes to prevent the refugees from being detained. Generally, the authorities seem to turn a blind eye. One interviewee described a company that hired hundreds of refugees, and which could only do so because it had 'informal approval' from the Malaysian government; another described a municipality that contracted Malaysian companies to do city maintenance work – they in turn hired contractors, who hired refugees and other foreign workers. A police officer noted that there were Rohingya men working in a car repair shop nearby: 'although we know they are there, the police don't arrest them. They even take their cars to be serviced at that shop. I feel sorry for them when I see them. We can see they really suffered a lot' (HPG interview).

Employers' motivations for hiring refugees combined positive incentives, negative incentives and personal values. A key positive incentive for employers is that

²² Case No: 22(27)/4-1580/12.

Box 3: An employer's perspective

In the companion report (Wake and Cheung, 2016), we interviewed Rohingya refugee Abdul. In the second phase of the research, we interviewed his employers.

Jim and his wife Sue run a recycling business: they pay employees and freelance workers to collect recyclable goods (such as plastic, metal and glass), which they sell to another company for profit. They employ nine staff – three Malaysians, four foreign workers from India (with work permits, hired through a recruitment agency) and two Rohingya refugees. From an employment perspective, they have no standard preference for hiring migrant or refugee workers: it depends on the individual. They hire a mix of workers because they cannot find enough Malaysians who want to do this kind of work – Jim said Malaysians have some level of education and do not want to do arduous work in a hot climate.

The refugees they employ have UN cards (Jim and Sue say they will not employ undocumented refugees), but as the UN card is not recognised as a valid ID their refugee employees cannot purchase a motorcycle, get a driving licence or obtain the business licence technically required to collect

recycled goods. Jim has helped Abdul overcome some of these challenges by buying a motorcycle for him (and allowing Abdul to repay him in instalments) and lending Abdul his business licence in case he is stopped by the authorities. Jim is very aware of the risk his business is taking employing refugees; although he called the UN to ask if there was any way he could employ refugees legally, he was told (correctly) that this is not currently possible.

Jim and Abdul have had various encounters with the authorities (the police sometimes pay a visit to check on Jim's business and the status of his employees); Jim tells the police he does not pay the refugees, but gives them food in exchange for helping out. Occasionally they have to bribe the police or pay fines, particularly if Abdul is stopped by the traffic police, but generally the police are understanding.

Jim has gone out of his way to help Abdul. When asked why, he said 'because all people are people – we took pity on him' (HPG interview). Both Jim and his wife are originally from poor families, and say that they empathise with the refugees because they know what it is like to be poor.

they can pay refugees less (numerous employers said they paid refugees less than Malaysians or migrant workers with permits), and do not have to pay fees to the government or private agencies, as they would do in order to hire migrant workers. Another incentive is that refugees work hard; as one employer put it, 'refugees are very nice, very honest people. Very hardworking. They want to work hard for their families' (HPG interview). A similar point was made by numerous NGOs – refugees are not inherently better workers, they just have fewer employment options; as one member of Malaysian civil society said, 'It is not necessarily work ethic that makes refugees better workers – they are desperate' (HPG interview). One head of an NGO noted that, when Rohingya refugees do not secure employment, they can suffer exploitation or fall victim to low-paying syndicates: 'when people are desperate, they'll do anything' (HPG interview).

Negative incentives included a perception that refugees may be less reliable than other workers (e.g. they may

move or be resettled, and because they do not have a work visa tied to a particular employment they can switch employers without risk), and the risk of being caught employing refugees. Policy barriers to employing refugees – and how employers overcome them – are discussed in the second half of this chapter. Lastly, beyond tangible incentives, personal values compelled some employers to hire refugees. Numerous employers interviewed had sympathy for refugees, and the difficult situation they were in; as one Malaysian business manager noted, 'If they don't work, how can they survive?' (HPG interview).

3.2 Job brokers

Several refugees mentioned job brokers as key figures helping Rohingya find employment. We interviewed two – one Malaysian and one Rohingya – who shared their perspective on how job brokers in Malaysia operate. Both have personal connections to

organisations working with Rohingya refugees, and both situated themselves as intermediaries between refugees and Malaysian employers. Rohingya refugees could approach a CBO if they were looking for work, and add their name to a running list the CBO kept and shared when brokers contacted them with job opportunities. It used to be a requirement that refugees had a UNHCR card, but now brokers are also willing to refer refugees with a CBO letter (a personalised membership document, which can be critical for unregistered asylum-seekers with no passport or identity documents) to employers.

The brokers interviewed for this study worked collegially, not in competition, to connect refugees with employers, and the Rohingya broker also helped to find Rohingya refugees seeking employment. Sometimes they approached employers and encouraged them to hire refugees – in one example, this involved persuading a company that hired foreign workers to hire refugees instead. Alternatively, employers looking to hire refugees may contact them. The brokers asserted that they could send 30–100 employees at a time to a given employer, and that in the past two years they had connected nearly 1,000 refugees with just one company.

Beyond making the initial connection between refugees and employers, the Malaysian broker also negotiated conditions of employment on behalf of refugees. Depending on the job, this could include a better salary and working hours, accommodation and leave; if the employer did not offer adequate conditions, he would refuse to send refugee employees to the company. Other roles include liaising with the authorities on behalf of employers, for instance if refugee employees were detained by the authorities.

The brokers asserted that employers, not refugees, pay to use their services. One broker said that he gets a few hundred Malaysian Ringgit (RM) for expenses such as transportation related to finding refugee employees; the other said he charges employers RM 500 (\$124) for each refugee successfully employed after a ten-day trial period; if for some reason the arrangement does not work, he does not get the service fee. The Malaysian broker interviewed acknowledged that some brokers were untrustworthy, charging refugees for their services and not having their best interests at heart. He presented himself as working with and for refugee communities, putting ‘heart first, not business first’ because he understood

refugees and wanted to help them. He said ‘When you see they [refugees] can work, then we’re happy. Win-win. Refugees win, employers win’ (HPG interview).

Based on available information, it is difficult to assess the extent to which refugee employment brokers – anonymous, unregulated and unmonitored by the government or the UN – pose additional risks of exploitation or provide a valuable service to refugees. Two refugee community leaders interviewed for this study suggested the latter, noting that brokers helped facilitate jobs with decent salaries and working conditions. Nevertheless, it is important to recognise that functions such as brokering are a response to the tenuous status of refugees and their inability to obtain lawful employment, issues which the state is ultimately responsible for addressing.

3.3 Policy implications and ways forward

There is a strong humanitarian, economic and security rationale for allowing refugees in Malaysia to work lawfully. UNHCR has proposed a ‘compact of solidarity’ enabling refugees to work legally through a regulated scheme. It argues that this would have three positive effects. First, it could ‘address the legitimate concerns of the government concerning security, law and order, and criminality that currently pervades parts of the unregulated labour market economy’ (Towle, 2016). Second, it could

provide a ready source of willing and reliable labour to support the Malaysian economy and increase national productivity ... UNHCR estimates that monetary contributions generated by a legalised refugee workforce could amount to RM152 million in annual revenue for Malaysia, based on the same levy rates as legal foreign workers. This means that the cost of hosting refugees in Malaysia would be more than offset by their positive contributions (ibid.).

Finally, it could have positive implications for the lives of individual refugees and the host state, for instance by increasing refugees’ self-sufficiency, improving protection, reducing the burden on host state services and increasing refugees’ transferable skills, facilitating their potential repatriation. UNHCR ‘is convinced that this new approach would present a compact for closer

cooperation with the government. It is a win-win for the people of Malaysia, for its security and economy, and for refugees who live here temporarily’.

UNHCR has developed a five-year country strategy that includes an advocacy component based on the elements identified above. Key partners in this strategy include refugees, corporate/business interests and research/academic institutions, each with interests that converge around a more regulated, legalised work environment. The government has agreed to a pilot project that allows 300 Rohingya to work legally in Malaysia, and at the time of publication, the pilot scheme had just been announced in the media, which quoted Deputy Prime Minister Ahmad Zahid Hamidi speaking about it in parliament on 14 November (P. Kumar, 2016). The pilot project, expected to last three years, would allow 300 Rohingya refugees to work primarily in the plantation and manufacturing sectors. The agency hopes that the scheme will be expanded in due course.

In the view of senior officials at UNHCR, the right to work is linked to a more fundamental right of lawful temporary stay. If this can be secured and implemented with appropriate oversight mechanisms, then a more solid platform may be created to introduce arguments for other protections and rights (freedom from arrest; employers assuming responsibility for health care; children’s education). A special programme for the Rohingya that provides for lawful stay, including work and other rights and protections, could also potentially improve relations between refugees and civil society, leading to greater generosity and engagement by the host community.

Any progress on the protection and advancement of refugees’ rights is clearly a positive step. That said, labour rights are part of a complex and interconnected set of challenges, and caution is required in assuming

that progress in specific areas such as labour rights will necessarily lead to progress in others (such as access to education and healthcare). In addition, while the compact represents a constructive, ambitious way forward, implementing it in a sustainable way may require addressing incentive structures that may inhibit buy-in from various actors: for example, if refugees are hired instead of foreign workers, there may be a potential loss of financial profit associated with foreign workers’ sponsorship (recently controversy was sparked when a politician was accused of nepotism related to contracts for potential foreign worker schemes) (K. Kumar, 2016). If the scheme were expanded beyond a small pilot, efforts may also be needed to assuage broader political concerns surrounding issues such as national public perception, or that such a compact might act as a ‘pull’ factor, drawing more refugees to Malaysia.

While it is imperative to increase the rights and protection space available to refugees in Malaysia (and for that matter in many other countries), a work permit scheme for refugees is not, in itself, a silver bullet. Rather, it would be a partial answer in circumstances where a comprehensive solution (the basis of which would entail refugees being able to actualise their full rights) is unlikely. The perspectives of all stakeholders, foremost among them refugees themselves, should be considered in weighing the limitations and opportunities associated with it. As with all policies, the devil is in the detail, and key details that will determine its impact are: the maximum number of work permits to be issued (which could leave those who do not get a permit worse off than before); whether procedures are equitable and transparent; whether permits would be limited to specific sectors; their duration and possibilities for renewal; and what rights and services (related to employment, health, residency, education) would be offered concomitantly.

4 Interactions between community-based organisations, aid actors and Malaysians

This chapter is divided into two parts. The first considers Rohingya CBOs and the important role they play in supporting and protecting refugees in Malaysia. The second half of the chapter considers interactions between CBOs, aid actors and Malaysians.

4.1 Community-based organisations

Rohingya CBOs in Malaysia constitute an important form of community self-organisation, assistance and protection. As highlighted during interviews with refugees in Phase 1 of this study (Wake and Cheung, 2016), Rohingya CBOs undertake various roles, including:

- providing documentation (e.g. a membership document, which can be critical for unregistered asylum-seekers with no passport or identity documents; marriage certificates);
- liaising with local institutions (e.g. negotiating with hospital staff to facilitate admission and treatment);
- verifying the identity of members who have been stopped by the authorities;
- facilitating the release of cadavers from the morgue;
- education (operating community-based learning centres for refugee children);
- assistance (providing in-kind donations to refugees, distributing donations from NGOs, the private sector or host community);
- providing shelter and/or basic care for ill or vulnerable refugees; and
- livelihood support (connecting unemployed refugees with employers).

This list illustrates the scope of the work undertaken by refugee CBOs in providing services that should

be provided by the state (and, potentially, the aid sector). While some CBOs liaise with and receive donations from local politicians and members of the host community, they are not licenced or registered with the authorities and are financed primarily by membership fees, private donations and some project-based UNHCR funding. Numerous CBOs mentioned that funding limited the number of refugees they could assist and the work they could do.

A significant point of synergy amongst Rohingya CBOs is their individual and joint efforts to engage members of the national and international community (including politicians, activists and the media) on issues related to the rights of Rohingya people, both in Myanmar and Malaysia. During interviews, CBO leaders' language was precise and firmly grounded in a rights-based discourse – citing pertinent international conventions and regional and international entities (ASEAN, the Organisation for Islamic Cooperation, UN agencies, influential states) that could help improve the situation for the Rohingya, and refugees more generally.²³

UNHCR says it has an open policy to engage in constructive dialogue with CBOs and NGOs. Some CBO leaders and NGOs interviewed for this study did not view engagement between UNHCR and refugees so positively. While the leaders interviewed for this study framed UNHCR as a dominant organisation with regard to refugees in Malaysia, and noted its increasing efforts to improve the situation for Rohingya refugees, they felt that UNHCR treated

²³ One prominent example of Rohingya voice and advocacy raised by community leaders is Rohingya Vision, an independent media channel started by Rohingya people to 'disseminate and document Rohingya news, events and issues and to empower Rohingya youth' (RVision, 2016). It is registered in the UK, is a member of the Foreign Correspondents Club of Malaysia and collaborates with both local and international media.

them in a way that was not constructive and which deterred them from further engagement. While acknowledging the limited resources and staffing at UNHCR, one NGO employee noted reports from refugees about the poor treatment they receive (being made to wait long periods at the UNHCR office, appointments being postponed by weeks or months, insufficient explanation regarding processes or individual cases) (HPG interview). These observations chime with those made by Rohingya refugees interviewed in phase one of this research (Wake and Cheung, 2016), and reported in Nah (2010) several years earlier.

The protection and assistance roles played by refugee communities should not be underestimated, but nor should they be accepted as an unqualified good (Omata, 2013): it cannot be assumed that the work of CBOs and their refugee members signifies community solidarity or self-sufficiency. While Rohingya leaders believe that there are over 15 Rohingya CBOs, only a handful are consistently active, while others only emerge in response to funding announcements. One community leader alleged that, following increased attention towards the Rohingya after conflict in Rakhine State in Myanmar in 2012 (Human Rights Watch, 2013), opportunists claiming to represent the Rohingya people were actually using the Rohingya cause to make money.

There is also evident competition and mistrust between CBO leaders in Kuala Lumpur. During interviews (with five people in leadership roles at three CBOs), it was alleged that other Rohingya leaders were corrupt (e.g. diverting aid donations), were informers for the Malaysian authorities or were manipulating the Rohingya community (trying to deter them from resettlement, or exploiting/making money from refugees within the community).²⁴ It is not surprising that there are tensions, given that many CBO leaders were activists in Myanmar, have ties to influential actors in Malaysia and undertake roles serving refugees in a challenging protection context. Some of these tensions can perhaps be linked to issues in Myanmar that continue to affect the Rohingya community in Malaysia – for example, one leader said refugees identify strongly with their place of origin

²⁴ Interviews from Phase 1 and 2 also exposed other issues linked to mistrust, including the possibility that members of Rohingya communities had links to human smugglers, and accusations of corruption at UNHCR.

Box 4: The Rohingya name

Interviews with refugees and Malaysians highlighted issues surrounding the differentiation of Rohingya refugees from other refugee and migrant groups in Malaysia. Rohingya leaders noted the prominence of the Rohingya name – particularly after the 2012 violence in Rakhine State in Myanmar and the 2015 boat crisis, the Rohingya became increasingly known worldwide as a persecuted minority. Rohingya leaders felt some ‘opportunists’, including other refugee groups in Malaysia, took advantage of this by claiming to be Rohingya, using the Rohingya name to attract sympathy, or blaming refugee–host community tensions on the Rohingya. The latter is particularly evident in one area on the outskirts of Kuala Lumpur where a significant number of refugees live and work, and organised crime sometimes flares up. Rohingya refugees are often implicated in the public narrative, and affected by subsequent tensions between the community and refugees, yet they assert that there are actually a relatively small number of Rohingya refugees in an area dominated by other refugees and migrant workers (including other refugees from Myanmar, among them non-Rohingya Muslims, as well as migrant workers from Bangladesh, Nepal and elsewhere). Interviews with Malaysians suggest that some do indeed conflate distinct groups of people under the Rohingya refugee label; this creates potential risks in a tense policy context such as Malaysia and suggests a need for better recognition of and nuanced discussion around distinct refugee and migrant groups.

(Sittwe, Maungdaw, Buthidaung) and wanted their CBO president to be from there.

More than that, it is important to acknowledge the desperate situation they are in in Malaysia. As groups often compelled to compete for very limited resources (in the form of membership fees, project funding or donations), they are regularly pitted against each other, and their survival sometimes depends on ensuring that others do not get access to influential individuals or organisations (politicians, authorities, UNHCR and other aid actors, and their community members). How much can reasonably be expected of these groups, given the varied roles they undertake and the pressures

they face, and what negotiations and concessions they have to make in order to maintain their access and status, must be considered when trying to understand intra-community dynamics. While CBOs serve an important role, the risks associated with over-reliance on CBOs without ensuring they have sufficient resources, capacity and level of engagement with other actors may strain the resources and dynamics of refugee communities.

4.2 NGOs and the host community

Overall, Malaysians interviewed for this study had a relatively accurate broad understanding of the lives of refugees in Malaysia,²⁵ including the types of jobs they do (ad hoc, '3D'), the risks they face (detention, extortion, difficulty registering with the UN), and their goals and aspirations (to provide for their families in Myanmar and Malaysia, to educate and improve the lives of their children, to find a lasting solution to their situation).

NGOs (both national and international) had a more nuanced understanding than other members of the host environment with regard to differentiating between various refugee communities. Their perceptions of the Rohingya were essentially dualistic. On the one hand they recognised that the Rohingya were in a vulnerable position and in need of assistance, and cited positive engagement with individual Rohingya. On the other hand, the Rohingya were perceived to be a 'difficult' community: less organised than other groups, with frequently changing leadership and leaders who did not want to accept or distribute aid or engage with some NGOs. Rohingya

community leaders from one CBO told us that they avoided NGOs associated with the Malaysian political opposition, for fear that this could jeopardise their relationships with Malaysian officials. One CBO leader noted a negative experience with a Malaysian NGO over discrepancies concerning the amount of aid the NGO claimed to have delivered to Rohingya people in Myanmar.

Individuals and organisations with no mandate to help refugees still interact with them and, in many instances, can have a profound impact on refugees' lives. For example, we interviewed an imam in an area heavily populated with Rohingya refugees. The imam noted that, while the presence of refugees in Malaysia was considered illegal, and they were sometimes discriminated against, they were welcome at his mosque. He invited refugees to pray, performed funeral rights for refugees, provided food, shelter and care for one elderly Rohingya refugee and channelled donations from local NGOs and even the local government, which donated a cow to the Rohingya community on the occasion of a religious holiday. In his position as a religious leader, the imam appeared to have the inclination and the space to interact with and assist refugees.

The perspectives of CBOs, NGOs and Malaysians who interact with refugees provide insight into how each individual and institution – including those with an explicit objective to assist refugees and those without – is operating within its own beliefs, assumptions, mandates and constraints. Teasing out the roles, motivations and access of different actors, despite its challenges, helps to identify areas of tension, effective collaboration and potential intervention. In particular, the fact that the various individuals and organisations who engage with refugees in Malaysia perceive their roles, those of others and their interactions differently suggests there are potentially untapped opportunities through which individuals and organisations can leverage their various positions to improve the lives and circumstances of refugees.

²⁵ This can be linked to the selection criteria for the study, which targeted key informants and members of the host environment who had direct knowledge of/interaction with refugees. Were a study of perceptions on refugees to be conducted with a representative sample of the Malaysian general population, their level of understanding of refugees would likely be quite different.

5 Conclusion

Building on initial research exploring the perspectives of urban Rohingya refugees in Kuala Lumpur (Wake and Cheung, 2016), the analysis presented in this report has considered the roles and perspectives of the individuals, organisations and institutions shaping the lives of Rohingya refugees. It has described the tense institutional landscape in which NGOs and Malaysians engage with refugees, situated refugees in the broader context of mixed migration in Malaysia and considered how individuals and institutions that interact with refugees perceive refugee livelihoods, compared with how refugees themselves described their livelihoods.

This report has also highlighted the need for better engagement between UNHCR and refugee communities; more nuanced understanding of the various actors in the host environment that engage with refugees (including employers and religious leaders), and the space they have to do so; and greater critical attention towards UNHCR's refugee response in Malaysia, particularly with regard to registration. Lastly, the report has examined the role of the Malaysian state, the primary duty-bearer, whose response to Rohingya refugees has been and continues to be inadequate. Its policy of 'closing one eye' towards refugees has created a context in which aid agencies struggle to protect and meet refugees' needs.

In the absence of a state willing to take responsibility for refugees in Malaysia, UNHCR has assumed the role of partial protector and provider. This is a very large mandate to take on for an organisation in a challenging and tenuous position. Greater effort on the part of UNHCR to better manage expectations would go a long way towards closing the gap between what it is able to do and what refugees, NGOs and other stakeholders hope and expect of it. Ultimately, however, UNHCR's position highlights the need for greater state responsibility. The government has, to date, missed a number of opportunities to change both the narrative around and policies towards refugees; ideally, a way forward would take the form of a rights-based, state-led response to refugees, but at the very least the state should create a more enabling policy and practice environment to allow UNHCR to better fulfil its role.

Numerous arguments could be made as to why the policies of a range of stakeholders in Malaysia should be amended to improve the rights and protection of refugees. The rationale for such arguments includes the humanitarian imperative (e.g. to reduce suffering and exploitation and improve access to essential services), the actualisation of human rights; international opinion (e.g. to improve the international community's perception of Malaysia's refugee response); security (e.g. to ensure that refugees in the country are identified, registered and documented); and economic (e.g. to maximise the contribution refugees could potentially make if they were lawfully able to work). While the tenets of these arguments are compelling (albeit to varying extents, depending on the stakeholder), none has carried sufficient weight to spur meaningful policy change by the Malaysian government, and it is difficult to envisage a fundamental shift in state policy in the foreseeable future.

Far more likely are reactive crackdowns, and/or the introduction of partial, temporary solutions – such as work permits. While there are clear potential benefits to such policy developments, particularly if they are part of a broader legalisation/regularisation effort (work permits in particular would better enable refugees to support themselves and make demonstrable contributions to the Malaysian economy), there are also potential limitations – foremost among them the trade-offs that come with ad hoc policies in sectors that benefit the host state, without corresponding improvements in other rights and access to services. Care must also be taken to learn from previous unsuccessful attempts at legalising the status of refugees in Malaysia.

In Malaysia, the reality is that integration is the most likely option for many Rohingya refugees. While Malaysian policy does not support de jure integration, there are many examples of their de facto integration. As Zetter and Long (2012: 35) argue, some degree of de facto integration is inevitable even when de jure integration is not possible, and as such it would 'be advisable for government actors to acknowledge this reality and formulate proactive policy responses in relation to it in order to better reflect the dynamics

of interactions between the displaced and the host community'. This research – which explored the dynamics, interactions and support mechanisms between refugees and the Malaysian host environment – strongly supports this assertion.

There is room for improvement in the policy and practice of humanitarian actors in Malaysia, yet it is evident that the solution has to be political. Who should advocate on contentious issues such as refugee policy is a critical question. The benefits of maintaining a positive relationship with the Malaysian state must be weighed against the extent to which reluctance to speak out undermines humanitarian principles and the ability to better support refugees. More unified and cohesive policy and advocacy efforts among NGOs and UN agencies – including greater transparency, information sharing and collaboration – is one possible strategy for increasing policy influence while mitigating the negative impacts on individual organisations. Underpinning more unified advocacy efforts is a need for greater consensus on what advocacy efforts are most likely to improve the situation for refugees in Malaysia. While one point of advocacy could be for Malaysia to sign the 1951 Refugee Convention, this is unlikely given Malaysia's steadfast refusal to do so up to now, and the low accession to the Convention in the region. Moreover, while the Convention provides an internationally recognised framework and standards to inform appropriate policy development, there are no mechanisms for international actors to enforce Convention rights, and the state would still be required to develop and enforce domestic asylum laws.

Developing a rights-based domestic framework that responds to refugees in accordance with international standards is perhaps where current advocacy should focus.

Given the interrelated nature of refugee and migrant movements in South-east Asia, Malaysia cannot be considered in isolation. Regional organisations are one avenue through which to explicitly consider policy, particularly as a growing number of stakeholders are vocally concerned about – and potential champions of – the refugee cause (ASEAN Parliamentarians for Human Rights, 2015). That said, this would likely result in incremental rather than ambitious policy developments given ASEAN's founding principle of non-interference in the sovereign affairs of its members and the organisation's consensus-based decision-making process. ASEAN can, however, be an important mechanism through which countries in the region highlight the situation of the Rohingya (*ibid.*). To date, while a small number of vocal advocates and researchers have drawn attention to the situation of refugees in Malaysia (cf. ERT, Fortify Rights), responses from states in the region and internationally have been reactive and lacklustre; as Reynolds and Hollingsworth assert (2015): 'It is past time for the international community to demand more from both Myanmar and neighbouring countries, as well as the UN agencies mandated to protect the Rohingya'. The international community – donor countries and trade partners in particular – has a critical role to play in advocating for improved policies pertaining to refugees in Malaysia and the region.

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