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Deutsches Institut für  
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German Development  
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Discussion Paper

29/2018

# (Re)negotiating Refugee Protection in Malaysia

## Implications for Future Policy in Refugee Management

*Katrina Munir-Asen*

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Bonn 2018

Discussion Paper / Deutsches Institut für Entwicklungspolitik  
ISSN (Print) 1860-0441  
ISSN (Online) 2512-8698

Die deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the Internet at <http://dnb.d-nb.de>.

ISBN 978-3-96021-086-3 (printed edition)

DOI:10.23661/dp29.2018

Printed on eco-friendly, certified paper

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*Published with financial support from the Federal Ministry for Economic Cooperation and Development (BMZ)*

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## Foreword

This case study of urban forced migration in Malaysia was commissioned as part of the German Development Institute's (DIE) project titled Reducing Root Causes of Forced Displacement and Managing Migration. This three-year project is funded by the German Federal Ministry of Economic Cooperation and Development (BMZ), and aims to deepen empirical knowledge on drivers of forced displacement and regional migration policy. Katrina Munir-Asen's case study of Malaysian forced migration and refugee policy provides readers with a narrative of how Malaysia has absorbed and managed multiple waves of migrants and refugees, with a particular focus on the role of urban areas in resettlement. As a case study, it delves into the national policy implications for managing forced migration, highlighting both the successes and challenges faced by the Malaysian government over multiple decades of migration and refugee flows. The study provides a comparative case for analysing forced migration, supplementing work currently undertaken by the DIE in Kenya and Colombia. Critically, it provides policy-makers with a tangible example of how a middle-income country has dealt with large flows of refugees, and highlights new directions for research on the role of cities as hubs for sustainably integrating migrants and refugees.

Bonn, November 2018

Charles P. Martin-Shields

## Acknowledgements

This paper is based on both desk research and conversations with organisations and individuals in Kuala Lumpur. Asylum Access Malaysia, delivering legal services to refugees, provided comprehensive responses to key questions pertaining to this research. The International Catholic Migration Commission provided analysis on the protection situation in Malaysia and potential future trajectories. Renuka Balasubramaniam, a lawyer engaged in pro bono support for refugees, provided extensive information regarding the rule of law and how this can be used in widening the protection space in Malaysia. The UNHCR contributed various factsheets and statistics and tangible information on current ways of working. The author is grateful to all those who provided invaluable information to better understand forced migration issues in the Malaysia context.

This author also benefited from the invaluable comments and feedback on previous drafts from Jörn Grävingholt, Jana Kuhnt, Julia Leininger and Irene Schöfberger. Particular thanks goes to Charles Martin-Shields, who provided exceptional support in the editing of this paper. Any errors or omissions remain the responsibility of the author.

Bonn, November 2018

Katrina Munir-Asen

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## Abbreviations

ASEAN	Association of Southeast Asian Nations
CBO	community-based organisation
CBP	community-based protection
KL	Kuala Lumpur
MCP	Malaysian Communist Party
MOHA	Malaysian Ministry of Home Affairs
OHCHR	United Nations Office of the High Commissioner for Human Rights
POC	persons of concern
PK	Pakatan Harapan
RCF	Regional Cooperation Framework
RSD	Refugee Status Determination
SGBV	sexual and gender-based violence
SUHAKAM	Human Rights Commission of Malaysia
UMNO	United Malays National Organisation
UNHCR	United Nations High Commissioner for Refugees

## Executive summary

Malaysia provides an interesting case study of the challenges of refugee integration, and the considerable implications of a country continuing to host refugees outside a refugee law framework and without a consistent refugee policy. The Malaysian government has not signed the 1951 United Nations Convention Relating to the Status of Refugees, nor its 1967 Protocol (hereafter, in unison, the Refugee Convention), and is therefore under no obligation to comply with the substantive provisions of it. It has implemented neither relevant legislation nor consistent policy measures to (a) administer refugee status or (b) adequately meet refugees' protection needs. Consequently, with the tacit agreement of the Malaysian government, the United Nations High Commissioner for Refugees (UNHCR) carries out a significant role in the provision of protection activities in the country, along with civil society groups, non-governmental organisations (NGOs) and community-based organisations (CBOs).

This paper examines the policy context for refugees in Malaysia, unpacking (a) key challenges faced by refugees in the country, (b) the lessons that can be learned from current ways of working with refugees in non-camp/urban settings, and (c) how policy measures can be strengthened to most effectively protect refugees in the medium- to long- term and, essentially, to foster integration.

As of August 2018, over 160,000 “persons of concern” (POCs) were registered with the UNHCR Malaysia, through their offices in Kuala Lumpur (hereafter, KL) (UNHCR, 2018c). The organisation believes a further 20,000 are awaiting registration (UNHCR, 2018b). The vast majority registered are from Myanmar (86 per cent), of which the Rohingya, a stateless minority from Myanmar, are the largest cohort. Refugees reside within the general population, often moving to find employment opportunities and community support, predominantly in urban areas. Seventy-five per cent of those registered with UNHCR lived in either KL and its surrounding state, Selangor, in Pulau Pinang or Johor – all urban or peri-urban centres.

Malaysia's approach to refugees has been ad hoc. In the mid-1970s Malaysia granted asylum both to Vietnamese refugees following the aftermath of the Vietnam War and to those fleeing from Mindanao in the southern Philippines. In both cases, refugees were, at least initially, housed in camps and provided with basic necessities administered by the UNHCR. The Vietnamese were ultimately repatriated, while those from Mindanao were provided residency permits and permitted to stay indefinitely. Similarly, ethnic Chams fleeing Cambodia in the 1970s and Bosnians coming to Malaysia in the 1990s were provided the option of residency, and Acehese fleeing ethnic violence in Indonesia were also provided temporary residence in 2005. Though these are examples of a seemingly generous refugee policy, the application of it has been inconsistent – dependent on social, economic and political factors.

For instance, Rohingya, who began arriving in the early 1990s, were not granted residency rights and are still considered illegal under Malaysian immigration law. Though, the Malaysian government has provided temporary asylum, including work and study rights to 1,000 Syrians, the large majority of refugees in the country do not have access to these rights. In an attempt to ease refugees' position somewhat – and without amending Malaysian immigration law – an Attorney General's Circular in 2005 provided a degree of immunity



from prosecution for illegal entry for all asylum seekers and refugees registered with the UNHCR. Similarly, steps have been taken to prevent detention of asylum seekers and refugees through establishment of an online database of all those registered with UNHCR, consulted, upon making an arrest, by immigration officers. Work rights and residency status for Rohingya have been mooted, though neither have yet materialised. In practice, refugees continue to be at risk of arrest, detention and, in some instances, deportation across the border to Thailand. They cannot access public education institutions, and access to healthcare is limited. Resettlement opportunities to third countries are rare, and irregular movement onward by boat – previously, to Australia – is no longer an option following Australia’s policy of off-shore processing.

Notwithstanding refugees’ lack of legal status and long-term prospects in Malaysia, as well as an inconsistent application of policy measures, refugees continue to arrive and live in the country. Drivers of flight continue unabated: on-going tensions and political instability in Myanmar presenting the most acute current and future refugee integration challenge for Malaysia. Once in Malaysia, the majority live in urban or peri-urban areas, dependent on the informal economy for employment, on the UNHCR and NGOs for widening their protection space, and on their own community organisations for social protection. The relative security Malaysia provides, in comparison with other countries in the region, is a major pull factor. Burgeoning refugee community organisations and a thriving NGO community in the country have widened the protection space – community networks are particularly important for new arrivals in aiding integration. Many see Malaysia as a more viable option for a somewhat temporary though tenable existence – the lack of formalised government-led integration or social security policies compensated for by informal support systems and networks.

As such, UNHCR’s current five-year strategy focuses squarely on increasing the capacities of CBOs, NGOs and other civil society groups (UNHCR Malaysia, 2018b) as resources dwindle and the aid paradigm changes from one of direct assistance to non-material aid (Pascucci, 2017). Community-based protection (CBP) is central to the widening of the protection space, in fostering long-term self-sufficiency, devoid of reliance on UNHCR’s shrinking capacities. Currently, UNHCR focuses on NGO/CBO resourcing, connecting refugee groups to sympathetic members of parliament, and ensuring socio-economic infrastructure is in place, doing so with considerable success. Such successes are particularly commendable given the challenges of refugee management in non-camp settings and/or the urban environment, where it is often difficult to ascertain specific individual needs, prevent exploitation or provide concerted livelihood support due to the scattered nature of settlement (Zetter & Deikun, 2010).

Encouragingly, regularisation of refugees in the country may become a reality, with the newly elected Pakatan Harapan in government. Their election manifesto pledged to ratify the Refugee Convention and separately referred to the plight of the Rohingya as a specific area to which they will direct attention. How and when this becomes a reality is uncertain. Importantly, the development of concrete policy measures to ensure the effective administration and protection of refugees is crucial if the Malaysian government is to provide concerted protection to refugees. The country has the potential to lead the way in refugee management (a) by building on existing protection activities and (b) through current regional frameworks: the Association of Southeast Asian Nations (ASEAN) and the Bali Process on

People Smuggling, Trafficking in Persons and Transnational Crime (Bali Process). The latter has been instrumental in furthering a protection narrative in the region. ASEAN member states have been particularly vocal on the treatment of the Rohingya. However, its challenge has been a lack of consensus in addressing drivers of flight and subsequent management of those forcibly replaced, particularly refugees.

In the development of more robust policy, development practitioners and policy-makers need to be fully informed of (a) the protracted and unabated refugee situation in Malaysia, including persistent drivers of flight from home countries and the treatment of refugees upon arrival, both of which subsequently impact integration, (b) existing protective factors established over the years by various stakeholders, including refugees themselves, and (c) regional and national mechanisms that can be consolidated/utilised in the short- to medium-term to widen the protection space. Subsequently, longer-term policy initiatives stand to be developed, building upon current mechanisms and ways of working that more holistically address forced migration as a cross-cutting issue through cross-cutting solutions.



## 1 Introduction

As countries and regions struggle to manage refugee situations as part of the larger issue of mixed migration, there is an increased focus in policy and research circles on the role of integration of refugees, both socially and economically (IFC, 2018).<sup>1</sup> This can be achieved in a number of ways, and urban integration of refugees is one avenue – indeed, cities can play a unique role as hubs for integration (OECD, 2018). What is needed is a wider range of case studies, both for practical examples and as guides for further empirical research on refugee integration. Case studies provide lessons that can be learned, and reflections on how both informal and formal processes can impact on integration prospects, as well as examples of good practice that can be applied to other refugee contexts. Malaysia is a country that has a long history of hosting refugees, and doing so using ad hoc processes with little fixed regional or domestic policy. This case study provides an illustration of what has and has not worked within Malaysia's ad hoc processes, and highlights how newly arrived refugees have integrated. It points to opportunities to expand on current ways of working to best inform the development of consistent policy measures.

Refugees do not live in camp settings in Malaysia. Instead, they usually live in urban or peri-urban centres, often becoming part of the marginalised host population. The challenges this presents in the provision of a protection space<sup>2</sup> to refugees are immense. Often scattered in the urban environment, it is difficult to ascertain specific individual needs, prevent exploitation or provide concerted livelihood support (Zetter & Deikun, 2010). However, cities also provide a plethora of opportunity for refugees, and are a driving factor in increased refugee settlement to these areas vis-à-vis non-urban or camp settings (Lammers, 2011; Palmgren, 2017). These opportunities can be enhanced with concrete policy measures, the actions of the United Nations High Commissioner for Refugees (UNHCR) and others in Malaysia serving as an excellent example in doing just this.

As of 31 August 2018, 161,146 “persons of concern” (POCs) were registered with the UNHCR Malaysia, through their office in Kuala Lumpur (hereafter, KL) (UNHCR, 2018c). The organisation believes a further 15,000 Rohingya, a minority group from Myanmar, as well as 5,000 people of other nationalities are awaiting registration (UNHCR, 2018b). The vast majority are from Myanmar (86 per cent), of which the Rohingya are the largest cohort. Somalis, Yemenis and Pakistanis also constitute other large refugee group cohorts. Refugees reside within the general population, often moving to where they can find employment opportunities and community support, predominantly to urban areas. As of July 2018, 75 per cent of those registered with UNHCR lived in either KL and its surrounding state, Selangor, in Pulau Pinang or Johor – all urban or peri-urban centres.

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1 Throughout the paper, the term “refugee” is used. It must be noted that refugees form part of mixed migration patterns within a general forced migration context. The paper therefore also refers to “persons of concern” to UNHCR (POCs), and refers to forced displacement when illustrating contextual issues.

2 The protection space refers to the extent to which a conducive environment exists for refugees. Inter alia, this is measured against: threat of *refoulement*, arbitrary detention, harassment; extent of enjoyment of freedom of movement; access to livelihoods; availability of adequate shelter and living conditions; availability of legal and secure residency rights; and harmonious relationship with host population (UNHCR, 2009).

This case study starts with an examination of Malaysian government policy towards refugees by briefly introducing general migration patterns, followed by the historical context of refugee flows to the country, illustrating the ad hoc and inconsistent way in which refugee policy has been applied over the past four decades. It then considers drivers of flight for current refugee cohorts residing in Malaysia, and implications this may have, more generally, on the protracted situation for refugees as a result of on-going persecution. This leads on to detailed analysis of Malaysia's immigration policy and its application to refugees.

The paper then examines the phenomenon of refugee settlement in urban areas, with specific attention to Malaysia's urban refugee context, the protective factors of the urban environment, and key (livelihood) security challenges. With appropriate policy measures and targeted initiatives, cities provide immense opportunities. Malaysia provides an interesting case study of how this opportunity has been fostered thus far – a particular challenge, given refugees' contentious status in the country. Protective factors include UNHCR presence and associated protection programming, a burgeoning NGO space and increasingly self-sufficient communities, all of which contribute to a widening protection space. The section concludes by finding that Malaysia is on a positive trajectory, though not without challenges in moving towards betterment in urban refugee protection specifically, and refugee management more generally.

The concluding section provides micro- and macro- policy recommendations aimed at both the local and regional level, highlighting the need for a better integration of national and regional refugee policies.

## **2 Refugees in Malaysia: History and drivers of flight**

This section outlines the Malaysian case through a brief discussion of migration to Malaysia before providing a historical overview of refugee movement to the country. It then analyses drivers of flight of refugees currently residing in Malaysia. It illustrates the ad hoc nature of Malaysian government policy, despite persistent drivers of flight and frequent new arrivals of refugees.

### **2.1 Malaysia and migration**

Historically, Malaysia has been a labour-importing country. Migrants from China, the British Empire and Java arrived in this resource-rich country as industry boomed in the early 19th century (Tedong, Kadir, Roslan, & Lumayang, 2018; Kaur, 2015). This permanent migration to Malaysia during the time of British colonial presence laid the fabric for a multi-racial country. However, during the “Malayan Emergency”, an ethnically charged conflict fought between the (predominantly Chinese) guerrilla faction of the Malaysian Communist Party (MCP) and the Commonwealth government (1948–1960), many of those considered MCP sympathisers were “repatriated” to China. The period, during which a minority ethnic group was considered a threat to the status quo, left a lasting impact on *permanent* migration to the country (Tedong et al., 2018). Whereas 44% of citizens were foreign born in 1921, only 7% were in 2000 (Reid, 2010).

*Temporary* migration to Malaysia has, however, continued unabated, in line with labour-market demands. During the 1970s, Malaysia experienced significant shortages of labour in manufacturing and production, a pull factor for low- to medium-skilled migrants (Kaur, 2015). This pattern has largely persisted with low-skilled workers in particular, who go to the country to fulfil the sectoral needs for employment predominantly in the “3D” areas: “dirty, difficult and dangerous” (Tedong et al., 2018).

Coupled with these pull factors are the push factors. In Southeast Asia, education levels have risen, providing a medium- to high-skilled migrant pool, encouraging intra-regional movement. Additionally, democratic transitions have led to the presence of more women in the workforce and an increase in female-led migration (Tuccio, 2017). In 2016, migrant labour constituted 13 per cent of the total labour force (Tedong et al., 2018), of whom 70 per cent stemmed from the Association of South East Asian (ASEAN)<sup>3</sup> region, Malaysia being the highest net recipient of migrants in Southeast Asia (APHR, 2017).

Continued, temporary migration to Malaysia has been an important factor in Malaysia’s economic development. The large-scale sanctioned migration of people with various skills within the ASEAN region and to Malaysia has been extensive, with well-established structures available to absorb them. Undocumented migrant flows run parallel to the formalised infrastructure, though they are no less significant. A 2016 estimate put the figure of undocumented workers in Malaysia at 40 per cent of all foreign workers (Lee & Khor, 2018). Refugees are included in this statistic and form part of the mixed migration flows to Malaysia, desired for the cheap labour they provide, particularly in the 3D areas of the informal labour market.

## 2.2 Refugees in Malaysia – a brief history of policy and practice

An ad hoc policy space has been central to Malaysia’s approach to refugee policy and practice. Refugees are not afforded a specific category under Malaysian immigration law and do not have legal status in the country. Though steps have been made in widening the protection space for refugees, they are at risk of being detained, do not have work rights, are unable to access public health services on the same basis as Malaysian nationals, and cannot access the public education system.

UNHCR’s *Statistical yearbook 2016*, reports that Malaysia houses 3 refugees per 1,000 inhabitants, ranking it 48th globally in terms of proportion of refugees to inhabitants in host states. Though not excessively high, the country only just misses the top quartile, and outranks its neighbours, Thailand (1.56:1,000) and Indonesia (0.03:1,000). To put this into context, the following European Union countries’ ratios are: Germany at 8.30:1000, United Kingdom at 1.83:1000 and Italy and Greece at 2.46 and 4.25 respectively (UNHCR, 2016c)

The country is the highest net recipient of refugees amongst ASEAN member states, the majority of refugees being displaced to Malaysia from the region itself (Ahmad, Rahim, & Mohamed, 2016). This has historical roots, with the ad hoc approach to policy response

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3 ASEAN consists of 10 member states: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.

seemingly entrenched. The following section considers examples of Malaysia's historical responses and the motivations behind them. These motivations are not arbitrary; the cases can be categorised according to the principal factor in policy response, though there may be a range of other factors involved. In general, policy response has centred on humanitarian imperatives, religious/cultural affiliation of asylum-seeking populations, and/or demand for labour.

### 2.2.1 Humanitarian imperatives and religious factors in integration

The earliest mass influx of refugees to Malaysia was of the Vietnamese following the end of the Vietnam War in 1975. Though initially rocky, regional consensus paved the way for provision of at least temporary asylum<sup>4</sup> (Barcher, 1992), reaffirmed by the Comprehensive Plan of Action for Indo-Chinese Refugees, signed in Geneva in 1989. Though some boats arriving from Vietnam were redirected from its territories (Helton, 1992; Barcher, 1992) Malaysia, with the assistance of UNHCR, housed refugees in a camp on Pulau Bidong (Bidong island) before moving them to Sungei Besi camp in KL, which has subsequently closed. Between 1975 and 1991, Malaysia provided first asylum to more than 250,000 refugees from Vietnam (UNHCR, 1996), playing a significant role in providing a form of *humanitarian* protection built on regional consensus over a prolonged period.

Though Malaysia has not administered refugee protection in this way since, some parallels can be drawn between this approach in the 1970s and 1980s and more recent approaches to Rohingya in the country. Rohingya have faced a particularly protracted situation in Malaysia since they began to arrive in the early 1990s (Cheung, 2011; Equal Rights Trust, 2014). They have been largely tolerated and able to access informal employment, stabilising their position somewhat vis-à-vis other refugee groups in the country. Over the years, work rights and regularisation of their status has been mooted but has not materialised (Nah, 2007). A recent pilot work programme has been implemented, though there has been limited uptake. The Rohingya example is arguably indicative of Malaysia's ongoing tolerance of refugees – and Rohingya in particular – though without the corollary rights afforded to regular migrants. Paradoxically, the religious affiliation – Rohingya being Muslim – does not carry as much weight as the examples that follow. This is arguably due to them lacking the desired economic and racial attributes preferred by the state (Azis, 2014), leading to their continued marginalisation from mainstream Malaysian society even though they have been in the country for a considerable period.

Cham refugees, escaping the Khmer Rouge in Cambodia, on the other hand, were treated differently, and given two options upon arrival during the same period as the Vietnamese: resettlement to a third country or integration in Malaysia. This difference in treatment to the Vietnamese was generally due to the Cham being more aligned religiously and culturally to ethnic Malays (Idris, 2012; Abdul Hamid, 2006), who form the majority in Malaysia. Similarly, Bosnian Muslims were treated in much the same way. Referred to as “guests” rather than refugees, they did not require a visa to enter Malaysia. By 1996, 258 had arrived

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4 Following the 1979 Conference on Refugees and Displaced Persons in Southeast Asia, so-called first nations of asylum, i.e. Thailand, Malaysia, Hong Kong and Indonesia, reached a consensus with the international community to provide at least temporary asylum to the Indochinese, pending resettlement to a third country.

(Idris, 2012), though figures vary (Karčić, 2014). The prime minister made it clear that they would not have to return until it was safe to do so and was particularly vociferous in his condemnation of the Serbian government. Though the Malaysian approach broadly arose out of the country's outrage at atrocities being committed against Bosnians, and the perceived inaction of Western powers in preventing these atrocities, that Bosnians were Muslims accentuated sympathies (Enh, 2010). Many voluntarily repatriated, although those who wanted to stay – approximately 40 – were able to obtain permanent residence (Karčić, 2014). In the following section, we shall see that a similar approach has been applied to Syrian refugees.

### 2.2.2 Labour shortages and refugees

Filipino refugees from Mindanao arriving in Sabah, Malaysian Borneo, were granted “resettlement”, and permitted to stay in Sabah and Labuan without limitation. Between 1976 and 1985, 73,000 were registered, and 30,000 given work permits from the outset (Borneo Post, 2013; Kassim, 2009). This was arguably due to an economic imperative and labour shortages in Sabah (Kassim, 2009). Initially providing support to refugee communities in partnership with the Sabah state government, UNHCR withdrew assistance in 1987, on the understanding that local government would continue to administer protection for an indefinite period. Indeed, residency visas were provided in 1987 (Kassim, 2009). However, issues with registration, including the prohibitive cost of renewing the visa, led to subsequent refugee generations in Sabah becoming undocumented (Allerton, 2013). Furthermore, the political landscape has changed, along with public sentiment against refugees, resulting in many being left in limbo without recourse to any protection mechanisms or durable solutions (Kassim, 2009).

Acehnese refugees were also ultimately permitted to stay in Malaysia due to, among other factors, labour shortages. On their arrival from Indonesia following the imposition of martial law in Aceh province in 2003, UNHCR registered 3,757 asylum seekers – though it was believed 8,000–9,000 were in the country (Human Rights Watch, 2004). The Malaysian government initially employed a policy of arrest and deportation with particular aggression, at one point arresting Acehnese asylum seekers awaiting registration outside UNHCR offices. The government categorically stated that Acehnese would be sent back whether or not they were claiming to be refugees (Human Rights Watch, 2004). However, this was subsequently reversed in 2005, with Malaysia issuing 30,000 Acehnese with IMM13 cards (temporary residence permits) on “humanitarian grounds”. It has been argued that this was due to labour shortages following extensive immigration crackdowns in 2004, to public sympathy for Asian Tsunami survivors – many of whom were from Aceh, and to a peace accord being signed between the Indonesian government and the Free Aceh Movement – thus, Malaysia could not be accused of meddling in Indonesia's affairs (Nah, 2007).

The above illustrates the ebb and flow of Malaysian government policy towards refugees. On the one hand, it has been a promoter of a humanitarian imperative, though this is dependent on the context of flight, the cohort involved, and the prospects of settlement/integration, particularly with regard to employment and cultural/religious affiliation. On the other hand, it has employed a cautious and, at times, punitive approach, exemplified by the initial policy towards the Acehnese. Throughout all these cases,



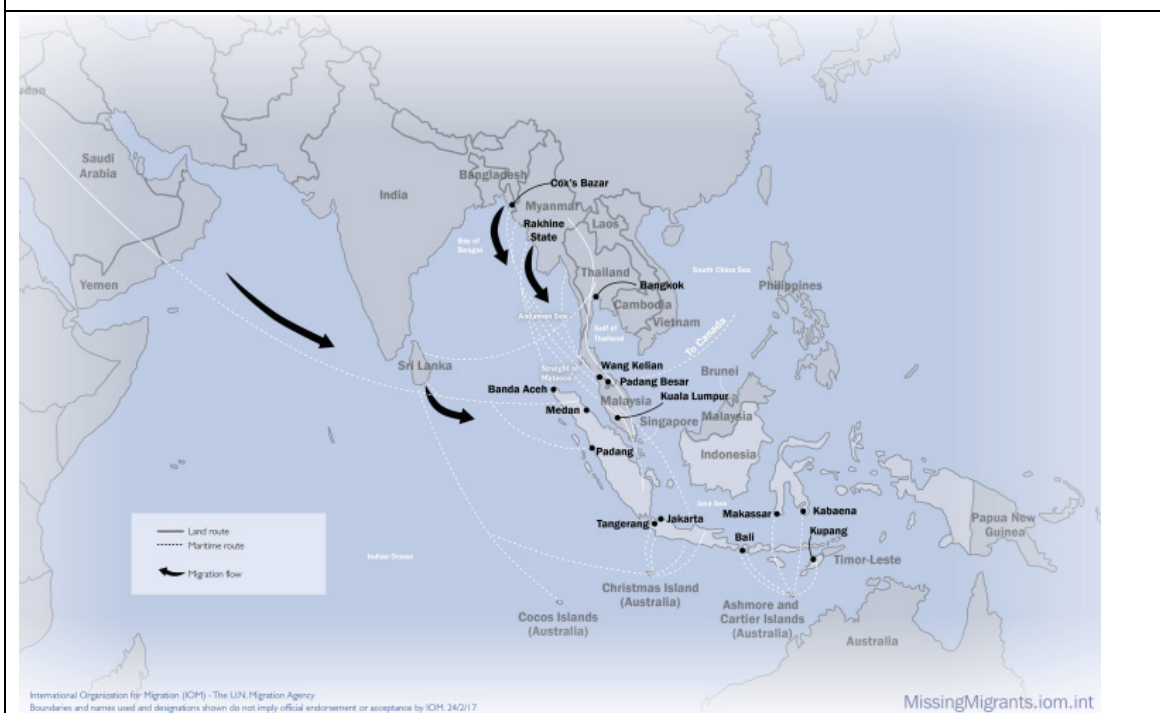
Malaysia was keen to emphasise the temporary nature of settlement, the pervading sentiment echoing its approach to migrants in general.

The drivers of flight for these groups varied, many having fled conflict rooted in ethno-political factors. The following section introduces the current refugee cohorts in Malaysia and contemporary drivers of flight.

### 2.3 Drivers of contemporary flight

Non-international armed conflict or civil war is the predominant driver of forced migration globally (Simeon, 2017). Below, we examine the major source countries of refugees to Malaysia. The root causes of conflict in source countries differ and there are nuances to the reasons for flight, reflective of mixed-migration flows and exclusive of considerations purely based on conflict. Indeed, it has been argued that at times of conflict, and in cases where this conflict is relatively constant, people are more likely to flee when economic opportunity also starts dwindling (Adhikari, 2013).

**Figure 1: Mixed migration flows: Southeast Asia**



Source: IOM 2018

#### 2.3.1 Myanmar: The largest sending country

By far the largest group of refugees and asylum-seekers registered with UNHCR is from Myanmar at 139,743 (UNHCR Malaysia, 2018a). Of this cohort, Rohingya constitute the vast

majority, at 77,133. Chins numbering 29,637 have been recognised by UNHCR,<sup>5</sup> as have 9,819 Myanmar Muslims, and 4,030 Rakhines and Arakanese (UNHCR Malaysia, 2018a).

Myanmar has only recently emerged from more than half a decade of military dictatorship. With the establishment of its first civilian government, the National League for Democracy (NLD) in 2016, some changes did begin to take place. However, the military still retains considerable power, notably over Myanmar's national security and public administration (Kramer, 2010). Ethnic conflict continues to simmer, having increased in northern Shan and Kachin states, leading to mass displacement (Human Rights Watch, 2018b).

In addition to the effects of armed conflict on displacement, whole communities have been forcibly displaced due to commercial and military projects as well as natural disasters (South & Joliffe, 2015; Fink, 2010). A resource-rich country, ethnic minorities and those affected by protracted conflict have not reaped the economic benefits of these resources (Kramer, 2010), with estimates of three-quarters in Chin and half in Shan being multi-dimensionally poor (Mohanty et al., 2018). Social and cultural rights were also decimated following the coup of 1962. Ethnic languages were banned, including publications such as newspapers and books (Kramer, 2010). Religious freedom was also severely curtailed, with many minority groups who were Christian either forcibly converting to Buddhism or being prevented from practising. Particularly severe discrimination was felt by Burmese Muslims in Rhakine state. Anti-Muslim riots there and attacks on property were perceived, at the very least, to be tolerated by the military (Human Rights Watch, 2002a).

A separate, and more protracted, issue is the plight of Myanmar's Rohingya on the Bangladeshi border in Rhakine state. This has remained a pervasive matter, with the Rohingya embroiled in a state of cyclical forced displacement, being ejected from and returning to Myanmar since 1784 (Cheung, 2011). The government refutes the Rohingya's historical claims to have lived in Myanmar for decades, if not centuries. Unable to prove citizenship due to successive downgrading of their residence status, and ultimate exclusion from the national census in 1982, they have effectively been rendered stateless. Successive immigration clampdowns in 1978 and then 1992 led to mass violence and subsequent displacement of Rohingya to Cox's Bazaar in the early 1990s (~ 250,000)<sup>6</sup> as well as a minority going to Malaysia (15,000) (Cheung, 2011).

More recent military crackdowns, resulting from clashes with the Arakan Rohingya Salvation Army, have again led to mass displacement on an unprecedented level (Human Rights Watch, 2018b). Approximately 720,000 have been displaced to Bangladesh since

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5 Due to significant changes and improvements to security and human rights in Chin state, UNHCR is reconsidering the international protection needs for recognised Chin refugees. The start date aimed at for this process was 1 August 2018. Individuals will be offered two options: (1) to undergo individual status determination to present reasons for their continued need for protection or (2) forego this process and instead be issued with a UNHCR card valid until 31 December 2019, after which refugee status will cease. The UNHCR continues to engage the Malaysian government on the status of the Chin in the country, including orderly repatriation (UNHCR, 2018b).

6 Initial mass displacement to Bangladesh led to the government recognising refugees on a prima facie basis before a registration cut-off date in mid-1992. After this time, approximately 200,000 self-settled in the area surrounding the camps (Cheung, 2011).

August 2017, adding to the already 200,000 there<sup>7</sup> (UNHCR, 2018b). Approximately 150,000 have fled to Thailand and Malaysia (Beyrer & Kamarulzaman, 2017). The crisis is believed by some members of the United Nations Security Council as well as numerous human rights bodies to have reached the proportions of ethnic cleansing (United Nations Security Council, SC/1302, 2017).

It is important to note that, in addition to the ethnic conflict and violence, there are socio-economic issues, some associated with and others exclusive of the effects of conflict. Ongoing abject poverty in the country, with continued violence in Rhakine as well as Northern Shan and Kachin states has unfortunately dashed hopes of peace and socio-economic reform since the rise of Myanmar's first civilian government under its de facto leader Aung San Suu Kyi. The ongoing tensions and political instability in Myanmar present the most acute current and future refugee integration challenge for Malaysia.

### 2.3.2 The wider Malaysian refugee community

Other refugee groups in Malaysia constitute 21,403 UNHCR POCs. These cohorts include refugees, listed by refugee population size, from Pakistan, Yemen, Somalia, Syria, Sri Lanka, Afghanistan, Iraq and Palestine. While conflict is a predominant driver of flight for most of these groups, other factors come into play. Collapse of government infrastructure, decline in security, lack of economic security, and environmental shocks are all drivers of flight and must be taken into consideration beyond a simple logic based on conflict, threat to life and subsequent flight.

Somalis, Iraqis and Afghans have been subjected to varying degrees of conflict over the last two, three and four decades respectively. In its most recent manifestation, Islamic State (IS) gained a significant foothold in Iraq. Though they have been defeated by a US-led coalition, their presence resulted in the displacement of over 3 million people across the country and the death of over 67,000 people since 2014 (World Bank, 2018a). Similarly, Afghanistan has become the second-largest source country for refugees, producing 2.6 million refugees in 2017, and in a state of protracted conflict for over four decades, exacerbated by the US-led invasion in 2001. (UNHCR, 2017). Somalia's conflict has led to over 2 million displaced people (UNHCR, 2017). Similarly, Yemen has experienced conflict since 2004, this having escalated significantly recently. The United Nations Human Rights Council has determined that 22 million (out of a population of 29 million) are in need of humanitarian assistance, including 11 million in acute need (OHCHR, 2018b).

The impact on socio-economic indicators in these countries has been significant. In Syria, access to employment in relatively stable government areas depends to a large extent on patronage, and on personal, political or community affiliations to the government (Freedom House, 2018). In Yemen, GDP has contracted by 50 per cent, health indicators are deteriorating, and access to employment is severely curtailed (World Bank, 2018c). Forty per cent of households have reported loss of their primary source of income (World Bank,

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7 This resulted from ethnic violence in 2012 between ethnic Rhakine and Rohingya, the military intervening and subsequently joining in the looting and killing of Rohingya (Mahmood, Wroe, Fuller, & Leaning, 2017). 200,000 became internally displaced and housed in camps (Beyrer & Kamarulzaman, 2017) and more than 159,000 fled by sea to Malaysia and Thailand (Mahmood et al., 2017).

2018c). In Iraq, poverty rose sharply after 2014, doubling to 41 per cent in IS-controlled areas, and jobs declined by 800,000 (World Bank, 2018a). Furthermore, agricultural production decreased by 40 per cent, threatening the food security of millions (World Bank, 2018a). In Afghanistan, under-employment or unemployment was at 38 per cent in 2017, with 80 per cent of jobs categorised as vulnerable employment, lacking job security and poor working conditions (Central Statistics Organization, 2018). While conflict is part of the picture in all these countries, economic and social factors also play a key role in people's decisions to take flight.

Drivers of flight also include persecution on the grounds of religion, as is the case for Pakistan refugees fleeing to Malaysia. Unable to practise their faith, they find themselves politically disenfranchised, at constant risk of prosecution under Pakistan's blasphemy laws<sup>8</sup> (due to the branch of Islam they practise), and subject to widespread discrimination (Human Rights Watch, 2018a; OHCHR, 2018a). Palestinians in the West Bank and Gaza find themselves similarly disenfranchised, limits placed on their movement and subjected to constant security surveillance (UNRWA, 2017; van der Weide, Rijkers, Blankespoor, & Abrahams, 2018). For both these groups, access to economic opportunity is severely curtailed, as a result of persistent government policies of marginalisation.

The above examples of what currently drives people to Malaysia indicates how multi-faceted the drivers of flight are. Those who are successful in getting to Malaysia take advantage of the country's relatively relaxed visa requirements. Obtaining a three-month tourist visa can be quite straightforward, particularly for those coming from Muslim countries. Once in the country, unable to return home, refugees are subjected to a new challenge: an unpredictable policy environment which is constantly being (re)negotiated.

### **3 Refugees in Malaysia: Legislation, policy and practice**

Without legal status in Malaysia, refugees are strictly considered illegal immigrants under Malaysian law. Previous administrations have treated refugee influxes as border management and security issues under the mandate of the Ministry of Home Affairs (MOHA) and the National Security Agency (NSA).<sup>9</sup> Immigration policy and statute does not mention refugees as a group, nor does it constitute them through legal precedence. Malaysia's approach to refugees is premised neither through a protection narrative nor in international refugee law. As previously stated, Malaysia is not a signatory of the Refugee Convention.

It is therefore somewhat disconcerting that refugee policy has been ad hoc. Conversely, as we shall see, the door has opened gradually in provisions for a de facto protection space – though this is somewhat limited and, at times, unpredictable. Below, we briefly discuss the Immigration Act 1959/1963 and Passports Act 1966, and their enforcement, before turning

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8 Pakistan's Criminal Law Amendment Act, 1986 §295C states: "Whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet (peace be on him), shall be punished with death, or imprisonment for life, and shall also be liable to fine."

9 Based on conversations with Asylum Access Malaysia, August 2018.

to the UNHCR's role vis-à-vis these powers. The section then shifts to policy measures taken to improve refugees' social security, particularly the pervading question of work rights and current trajectories given the changed political landscape and the first change of government in over 60 years.

### 3.1 Legislation

Neither Malaysia's Immigration Act (1959/63) nor Passports Act (1966) make any reference to refugees, asylum seekers or other POCs. The Immigration Act details persons permitted entry to the country (i.e. citizens or those with a permit or pass), with any person contravening such measures being "guilty of an offence against Act" (Immigration Act, 1959/1963). It identifies those prohibited from entry which, inter alia, includes anyone "unable to show that he has the means of supporting himself and his dependents", with a "mental disorder [...] or suffering from a contagious or infectious disease", "convicted in any country or state of any offence", or anyone who has "lived on or received the proceeds of prostitution" (Immigration Act, 1959/1963). These exclusion criteria are troubling, given refugees' and other POCs' increased likelihood of falling into at least one of these categories – though at this juncture in legislative development, this is a moot point.

The Immigration Act clearly stipulates the role of immigration officers in administration of arrivals. Failure to make oneself known to them is a contravention of the Act. Any person unlawfully present is subject to removal (Section 33) and may be detained in "any prison, police station, or immigration depot" (Section 34(3)). Furthermore, the Passport Act permits arrests without a warrant of any person if an immigration, police and customs officer "*reasonably believes* [the individual] has committed or is attempting to commit an offence under this Act" (Passports Act, 1966 emphasis added). What constitutes "reasonable belief" is subjective and so, in practice, arrests continue unabated.

Detention facilities reportedly fall below international standards, with overcrowding, lack of access to healthcare, reports of abuse, and insufficient food and water (Equal Rights Trust, 2014). The maximum sentence that can be applied to a person in contravention of the Immigration Act is a RM 10,000 fine or up to five years in prison, or both, as well as whipping (up to six strokes) and subsequent removal (Section 36). Any person arrested or detained under the Immigration Act and who is not subsequently removed within 14 days,<sup>10</sup> must appear before a magistrate's court. Representation of refugees is rare – unlike citizens, they are not entitled to a duty solicitor for remand, bail and mitigation hearings – and the burden of proof is on the accused (Balasubramaniam, 2017). Interpretation services in the language of the accused is not always available so there have been reports of refugees pleading guilty to a charge they do not understand (Equal Rights Trust, 2014). Those convicted under the Immigration Act receive a prison sentence and are subsequently sent to an immigration depot and deported once it is completed (Equal Rights Trust, 2014). UNHCR can only gain access to them once they have completed their prison sentence (Equal Rights Trust, 2014).

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10 Those arrested can be removed without the right to appear before a Magistrate.

As with the Passport Act, the removal itself “may be conducted across the frontier or through placement of the individual on board a suitable vessel by an immigration officer, police officer or officer of custom” (Passports Act, 1966). Expulsions across the border to Thailand continue in practice. Still fearing persecution in their country of origin, many refugees make their way back to Malaysia, where they are at risk of suffering the whole process again.

The Immigration Act states that traffickers, employers, and anyone who harbours those in contravention to the Act can be made liable for the cost of removal as well as other associated costs (Section 48A), with employers also subject to fines per employee illegally employed (Section 55B(1)). In spite of this, demand for cheap labour often over-rides risk of persecution, and immigration officers and the police often turn a blind eye. Once found guilty of contravention of the Immigration Act though, individuals are without prospect of Judicial Review. Given the provisions laid out by both these acts, refugees and other POCs are subsequently at risk of arrest, arbitrary detention, removal, fines, and corporal punishment. Their “illegal” status means a lack of work rights, access to education and limited access to health services.

Even within such punitive legislation, there is scope to expand the protection space by way of Ministerial exemption, the Immigration Minister under the Immigration Act having the power to exempt “any person or class of persons, either absolutely or conditionally” (Section 55(1)). This is particularly pertinent in expanding the protection space and an area where UNHCR’s role is central. It was exercised in 2006 when the government attempted to introduce work permits for Rohingya refugees (Equal Rights Trust, 2014; Cheung 2011). This followed from a broader Attorney General’s Circular in 2005, providing a degree of immunity from prosecution for asylum seekers and refugees registered with the UNHCR, stipulating:

[...] that all persons of concern who were registered with UNHCR prior to their arrest on immigration grounds should not be prosecuted in court, but should be released from all charges pertaining to illegal entry. For those who were registered with UNHCR after their arrest, the relevant court and prosecutor have the discretion whether to release them or not from prosecution and detention. In the meantime, UNHCR will negotiate with authorities for the release of those persons (Malaysian Bar Council, 2008).

### 3.2 Policy and practice

The above circular is illustrative of UNHCR’s unique position in Malaysia. Further administrative instruction has been issued to avoid detention of asylum seekers who can provide proof of status through registration with the UNHCR (UNHCR Malaysia, 2015). Upon arrest, the first-line officer is instructed to proceed with checks on the status of the person through an online database<sup>11</sup> and is also able to contact the UNHCR through a hotline number to determine if the individual is registered with the organisation and, if so, to release them (UNHCR Malaysia, 2015). This is one of many reasons why registration with the organisation is imperative. Additionally, UNHCR has spearheaded a National

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11 This is part of a new ID card and biometric data collection system for asylum seekers and refugees (UNHCR, 2016a). This was particularly important following widespread fraud of UNHCR cards.

Action Plan, in consultation with civil society bodies, the Malaysian Bar Council, the Human Rights Commission of Malaysia (SUHAKAM) and the Prime Minister's Department for Human Rights. This plan constitutes moves to end detention of children, ensure alternatives to detention are available in law and implemented in practice, and ensure conditions of detention meet international standards (UNHCR Malaysia, 2015). Importantly, the Immigration Department and SUHAKAM have established an "Alternatives to Detention" Working Group for unaccompanied children (UNHCR, 2016a).

However, in practice, immigration raids persist, and detention of refugees continues.<sup>12</sup> The *Ikatan Relawan Rakyat*, the People's Volunteer Corp is particularly zealous in immigration enforcement. An auxiliary enforcement unit, they are feared by refugees due to the sheer force with which they conduct raids and the arbitrariness of arrests (Hoffstaedter, 2014). Between January and July 2018, UNHCR carried out 100 visits to detention facilities to either register or release refugees (UNHCR Malaysia, 2018c). Carrying out heightened-risk interviews and Refugee Status Determination (RSD), they processed 1,380 people. In 2015, 5,648 asylum seekers and 2,282 refugees were detained and prosecuted for immigration-related violations (UNHCR, 2016a). At the time of writing, the UNHCR is advocating to the government over access to 56 Rohingya, who continue to be detained following their arrival in April 2018 (UNHCR Malaysia, 2018c).

Those arriving by sea to Malaysia have also come under global media attention in recent months (as well as periodically over the years). "The Andaman Sea Crisis" attracted media attention and international outcry in 2015. Having implemented immigration crackdowns, the governments of Thailand and Malaysia were largely successful in disrupting trafficking routes (Wake & Cheung, 2016; Moretti, 2016), forcing smugglers to land boats on Malaysian shores. Unable to do so, many smugglers abandoned their human cargo at sea, estimated to number 7,000 people (Moretti, 2016). Malaysia initially implemented a policy of "push-back", along with Indonesia and Thailand, prohibiting landing and redirecting them to other countries (OHCHR, 2015). International condemnation led states to acquiesce, permitting temporary asylum on the understanding that the international community resettle or repatriate them within a year (Wake & Cheung, 2016), granting access on "humanitarian grounds" – and pointedly not those stipulated by the Refugee Convention (Moretti, 2016).

Paradoxically, the Malaysian government announced a pilot scheme in 2017 to permit work rights for an initial group of 300 Rohingya to engage in plantation and manufacturing sector employment (UNHCR, 2018a). Additionally, Malaysia committed to provide refuge for 1,000 Syrian refugees a year between 2015 and 2018, with work or student visas given to those who qualify.<sup>13</sup> Echoing previous humanitarian action taken in response to the Bosnians in the early 1990s, while welcome, such a policy appears to create a two-tier system of policy response to refugees depending, inter alia, on country of origin (Mayberry, 2015).

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12 See Renuka Balasubramaniam (2017), who illustrates the legal tensions in administering ad hoc protection in Malaysia as the Malaysian government cannot legally justify this protection. She argues that the Malaysian government has an obligation to its own citizens to legislate its protection activities.

13 Based on conversations with Asylum Access Malaysia, August 2018.

Of most significance, refugees – whether invited or not – do not have any *legal* protection. The above points to a de facto protection space. However, the limits to this are illustrated by the continued arrest and detention of refugees, and the continued (re)negotiation of what the protection space constitutes of (see Balasubramaniam, 2017).

### 3.3. Government change: Future trajectories

Probably of most significance, as far as the policy environment is concerned, is the unprecedented change to the Malaysian political landscape. The current coalition, Pakatan Harapan (PH), voted in on 9 May 2018, ousted the United Malays National Organisation (UMNO), the largest party in the previous Barisan Nasional (BN) coalition. UMNO had run Malaysia since independence in 1957, the victory of PH somewhat emblematic of Malaysia's democratic journey. The cabinet consists of previous civil society leaders and members, diverse in terms of gender and ethnicity, committed to socio-economic progress. PH has pledged to lead efforts to address the Rohingya and Palestinian refugee issue, and has pledged to ratify the Refugee Convention, regularising the status of refugees in the country:

[...] Recognising that Malaysia is hosting more than 150,000 refugees, including Rohingyas and Syrians, the Pakatan Harapan Government will legitimise their status by providing them with UNHCR cards and ensuring their legal right to work. Their labour rights will be at par with locals and this initiative will reduce the country's need for foreign workers and lower the risk of refugees from becoming involved in criminal activities and underground economies. Providing them with jobs will help refugees to build new lives and without subjecting them to oppression. (Buku Harapan, 2018, promises 59 and 35)

Already, the government has announced expedited citizenship for all qualified stateless individuals in the country (UNHCR Malaysia, 2018d). While this applies mainly to stateless ethnic Indians, it will also be applied to general populations in Malaysia who qualify (UNHCR Malaysia, 2018d). Though this may not apply to stateless refugees per se, it is a concerted step towards the recognition of stateless persons and their correlating rights. Furthermore, conversations continue between the MOHA and UNHCR regarding work rights for refugees to which the government appears receptive (UNHCR Malaysia, 2018c).

However, adequate resourcing is required in all areas of government, including human, financial, and structural. Though the government has changed, civil servants have broadly remained the same and would require considerable training, particularly in changing the limited, prevailing refugee narrative. Documenting and registering refugees and gaining a full understanding of the extent of the issue will be challenging insofar as implementing RSD beyond that which the UNHCR has already carried out. Further resourcing by way of databases and administrative systems are also required.

Probably most challenging are the financial implications of implementing an effective protection environment in the country. Ensuring availability of work, access to education (and relevant/appropriate schooling), integration initiatives, appropriate healthcare and community/local council resourcing are all areas of particular importance. Currently, the government's only direct costs associated with forced migration pertain to detention activities. Thus, it is imperative that civil society actors are established as crucial partners if Malaysia is to initiate and implement government-led refugee protection.



Malaysia's unemployment rate is relatively low, at 3.3 per cent, and the economy continues to grow (World Bank, 2018b). However, the previous government left the country in enormous debt (RM 1 trillion) (The Sun Daily, 2018) due to financial mismanagement and purported corruption. Though the current government is continuing to pay social security payments (*Bantuan Sara Hidup*/cost of living aid) it is questionable how far these sorts of payments could be extended to others who are in need of financial support, especially refugees.

The challenges are significant, particularly as the development of consistent refugee policy is just one of numerous government promises. However, there is scope for concerted discussion, advanced by civil society groups and spearheaded by the UNHCR, largely shaping the trajectory of the protection space.

#### **4 Malaysia: Urban refugees and a destination of choice**

Though the policy environment presents numerous challenges, Malaysia continues to be a destination of choice for refugees. As discussed in the previous section, this is partly due to refugees having some sort of de facto status in the country.

However, as we shall see below, it is also due to the relative security Malaysia provides vis-à-vis other countries in the region, the propagation of community-based protection through refugees' own community organisations and structures, an advancement in local NGOs' capacities, and the relative ease with which they can enter the country. This section discusses each of these factors before also considering the challenges faced by refugees. The section then turns to the implications this has for urban refugee policy, and the significant role UNHCR plays in advancing community-based protection (CBP). Capacity building is central to the realisation of CBP, UNHCR's activities considerably impacting on how policy might be further developed in the future. Regional mechanisms can also contribute to policy advances, particularly through the role of the Bali Process on People Smuggling, Trafficking in Persons and Transnational Crime (Bali Process) in advancing a protection narrative, and the role of ASEAN in the development of responses to forced migration, particularly within the region.

##### **4.1 The urban environment: Informal protection and its challenges**

Entering Malaysia is relatively easy, due to porous borders with Thailand. Irregular migrants – including refugees – from Myanmar often enter by land, crossing first into Thailand and being housed there for some time in “agent camps”, before being handed over to another agent to smuggle them across the border to Malaysia. Refugees from other countries arrive by plane, many Muslim countries being able to gain entry on tourist visas. Once in the country, and unable to return home, they outstay their visas and their status subsequently becomes irregular. The vast majority settle in urban areas. Of the 161,146 POCs registered with the UNHCR, 28,800 live in KL and 62,200 live in Selangor, a state which borders the KL Federal Territory (UNHCR Malaysia, 2018c). Other cities/states also have sizeable refugee populations. Pulau Pinang and Johor Bahru are home to 16,700 and 12,200 respectively (UNHCR Malaysia, 2018c).

For the different ethnic groups there are, of course, different reasons for coming to Malaysia, and KL (as well as other urban areas) in particular. However, for the most part it comes down to perceptions of security – or relative security – in finding employment, which is helped by well-developed community support structures, relative freedom of movement and general tolerance to working in jobs for which there is continual demand (Crisp, 2012). According to Asylum Access Malaysia, refugees generally do not experience discrimination from the local population, largely due to religious or cultural affiliation. This said, narratives about migrants constituting a threat to the Malaysian way of life, bringing with them disease and criminality, and representing a threat to job security and health persist (UNHCR Malaysia, 2018c). Refugees of African origin, in particular, receive frequent prejudicial treatment and subsequently find it challenging to secure housing and/or employment.<sup>14</sup>

The relative security Malaysia provides, in comparison with other countries in the region, is another pull factor. The presence of UNHCR in KL, in particular, contributes to this. In speaking to Rohingya refugees in Thailand, Palmgren (2013) found that many had moved to KL because UNHCR had better access to detention facilities and were able to facilitate releases throughout Malaysia. For the Rohingya, punitive restrictions on socio-economic life in Bangladesh led to a dearth of opportunity – and indeed self-sufficiency – for over three-quarters of a million people. Many see Malaysia as a more viable option for a somewhat temporary though tenable existence. At the very least, UNHCR recognition provides a form of protection. Similarly, many refugees irregularly move from Indonesia where, housed in International Organization for Migration residences, their movement is severely restricted. KL therefore is a *relatively* safe option with *relative* access to socio-economic security, particularly the informal economy, in this regional context.

Furthermore, various community groups have been established along national/ethnic lines in urban areas. The Myanmar ethnic groups, in particular, have created strong, highly organised and effective organisations, with many local NGO services catered to their needs, particularly in KL. The more established ones have clear communication channels with the UNHCR on issues such as detention, sexual and gender-based violence (SGBV), and child protection. Similar communication channels have also been established with non-Myanmar organisations. Some organisations have formed either formal or informal coalitions, the Coalition of Burmese Ethnic Malaysia being one – though, paralleling the situation in Myanmar, it does not include Rohingya members. Additionally, Palestinian, Syrian and Yemeni communities each have their own organisations/leaders, who advocate for their needs through a united voice. These groups are highly important in representing the needs of their community members, particularly of those who are newly arrived. They have links with employers, negotiate with immigration authorities over detention, and often have communication channels with UNHCR. Based in KL, as well as having a presence in other urban hubs such as Johor and Pulau Pinang, these community networks are undoubtedly factors in the decision-making processes for refugees, particularly when they first arrive.<sup>15</sup>

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14 Based on conversations with Asylum Access Malaysia, August 2018.

15 One study on Rohingya in Malaysia found that new arrivals depended on kinship and friendships of those who had arrived earlier, often staying with them and depending on them to find jobs. They are implicitly obligated to help new arrivals once they have been in the country for some time (Azis, 2014).

NGOs working on refugee issues have also increased in KL. The author's own experiences working with refugees in the country until 2012, and current experiences relayed by NGOs, combine to paint a promising picture in terms of (a) increasing capacities of local NGOs and (b) more issue-specific organisations compared to the situation six years ago.<sup>16</sup> This is particularly promising, together with new government pledges and prospects for well-resourced approaches in the realisation of effective protection. KL, in particular, houses various services catering for the specific vulnerabilities of forced migrants, e.g. health, SGBV, child protection, legal support. Whilst this is by no means comprehensive, it is better than nothing.

However, refugees continue to live on the margins. Though informal employment opportunities are a pull factor, a survey of 1,097 refugees in the Klang Valley (i.e. KL and parts of central Selangor) found that 70 per cent in Middle Eastern communities are unemployed – compared to a general employment rate of 72 per cent of all refugee men in KL (UNHCR, 2016b). 72 per cent stated that legal status was the main barrier to employment, as well as language barriers (44 per cent) and lack of skills (35 per cent) (UNHCR, 2016b).

Though refugees are able to access public health facilities, they do so at a discounted foreigner rate (recently increased by 100 per cent), which is subsequently prohibitive (UNHCR Malaysia, 2018c). The UNHCR has implemented a health insurance scheme, which is generally a positive achievement, however it does not cover pre-pregnancy check-ups, mental health, optometry, etc.<sup>17</sup> Children are not permitted access to public schools and instead attend CBO- or NGO-supported Alternative Learning Centres for primary and secondary education. Tertiary education opportunities are possible through memorandums of understanding signed between UNHCR and six universities allowing refugees to enrol. However, costs are prohibitive and scholarships limited.<sup>18</sup> Furthermore, though refugees can obtain informal employment, they are vulnerable to abuse and exploitation. Malaysian labour courts have ruled that employers must pay salaries even to those who are “illegal”. However, many are too worried to make reports for fear of losing their jobs and/or fear of arrest.<sup>19</sup>

Resettlement is an option for the very few, though a large majority of the 1,097 surveyed, 78 per cent, preferred this option (compared with 9 per cent who wanted to integrate) (UNHCR, 2016b). Refugees face two options: to wait for a resettlement place or to engage in onward irregular movement (Crisp, 2012). Many prefer the former; the latter routes are in effect closed as a result of Australia's “Pacific Solution”, more on which below. Conversations carried out for this research paper elicited that onward irregular movement is, in practice, non-existent. Consequently, many remain in Malaysia, unable to return home, finding themselves in a situation of stalled migration and quasi-permanent settlement (Palmgren, 2017).

It is imperative that this situation of stalled migration is better understood. Based on the survey mentioned above, refugees (and POCs) themselves see their time in Malaysia as temporary (UNHCR, 2016d). Why they come to Malaysia specifically requires further

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16 Based on conversations with Asylum Access Malaysia, August 2018 and ICMC, August 2018.

17 Based on conversations with Asylum Access Malaysia, August 2018.

18 *ibid*

19 *ibid*

research, particularly as some refugee populations, e.g. Afghans, Palestinians and Somalis, have only relatively recently sought protection in Malaysia, though they have faced persecution and/or in situations of protracted conflict for some time. Thus, the reasons why they move to Malaysia requires much deeper understanding on the micro-level in order to better inform policy measures to address flight as well as to support integration.

## 4.2 Implications for urban refugee policy

Stalled displacement, growing refugee numbers, and dwindling resources have altered the way UNHCR works in Malaysia. Their current five-year strategy therefore focuses squarely on increasing the capacities of CBOs, NGOs and other civil society groups (UNHCR Malaysia, 2018b). CBP is central to the widening of the protection space in fostering long-term self-sufficiency, devoid of reliance on UNHCR's shrinking capacities. Currently in a transition period, the organisation will not be carrying out direct implementation but is rather focusing on NGO/CBO resourcing, connecting refugee groups to sympathetic members of parliament, and ensuring that socio-economic infrastructure is in place. This involves continued advocacy on work rights and regularisation of status.

UNHCR's approach in this regard reflects its global urban refugee policy. Over half the world's refugee population lives in cities. With only one-third in camp settings (UNHCR, 2009), cities becoming central sites in humanitarian response (Guterres, 2010). Concerted policy measures are crucial to ensure this population receives adequate support and effective protection. Though urban refugees are not a new phenomenon, refugee policy is only recently emerging from a more jaundiced approach to the issue (Crisp, 2017) and stands to be improved as more cities become destinations of choice for persons of concern.

UNHCR's first attempts at establishing a form of urban refugee policy in 1997 were littered with references to the urban refugee "problem", to refugees demanding "an often disproportionate amount [...] of the organisation's human and financial resources" and becoming "violent when their needs are not met" (UNHCR, 1997). In its constitution, UNHCR policy focused squarely on the irregular movement of urban refugees who either moved from one urban to another urban setting or left refugee camps for cities. (Crisp, 2017). To critics such as Human Rights Watch, the report represented a policy of denial (Human Rights Watch, 2002b), separating the needs – and rights – of urban refugees from those in camp settings and, in so doing, labelling the two populations as distinctly different: "camp" refugees invariably as "refugees" and urban refugees invariably as irregular migrants. (Marfleet, 2011).

This began to change with the release of UNHCR's 2009 policy document, a seemingly concerted approach to working with refugees in urban areas. It seeks to expand a rights-based protection environment in urban settings – particularly pertinent in situations where UNHCR, instead of the host government, undertakes such activities, – in other words in situations similar to the Malaysian context. The policy resolutely advocates for cross-sectional engagement with civil society: active and sustained engagement with government bodies, support for community organisations (both local and refugee), promotion of the *individual* needs of those registered with the organisation, and promotion of self-reliance through, amongst other things, access to the job market. The enormity of the task at hand cannot be denied – and the policy document does not sugar-coat this by any means.

The holistic approach aspired to by the UNHCR has shifted the aid paradigm from one of direct assistance to one of non-material aid, fostering empowerment, resilience and self-sufficiency (Pascucci, 2017). This is particularly important given UNHCR's limited capacity and declining resources.

UNHCR's approach in Malaysia exemplifies the central components of UNHCR's urban refugee policy. As stated in the introduction, the 2009 policy document went some way to validating what the organisation was *already* doing in the country; the approach that has been taken by UNHCR in the Malaysian context stands to be mirrored elsewhere. Additionally, it requires determined support: internationally, locally – and regionally. Crucially, policy measures are required that fully reflect the challenges faced in realising the new aid paradigm described above. However, as we have already seen, notwithstanding UNHCR-led initiatives, policy has been ad hoc at the local level.

Regional advances have largely mirrored an ad hoc approach to refugee protection and management. ASEAN, an organisation rooted in security and non-interference (ASEAN, 2008) does not have the relevant mechanisms to provide effective protection to growing refugee numbers in the region. An Action Plan on Immigration Matters is in its infancy, though a Convention against Trafficking in Persons, Especially Women and Children has been ratified by Malaysia. A Consensus on the Protection and Promotion of the Rights of Migrant Workers has the potential to include the irregular migrant worker pools used in the region, though this is not the case and, furthermore, the consensus is not legally binding.

Similarly established for regional security, the Bali Process now also employs more protection-led initiatives in addressing mixed migration flows. It has been instrumental in furthering a protection narrative in the region and has established a Regional Coordination Framework with a support office in Bangkok to standardise administration of refugees (and other forcibly displaced persons) in member states. The 2016 Declaration by Bali Process members recognised the importance of the principle of *non-refoulement*, and implored member states to explore viable temporary migration schemes (Bali Process, 2016). Additionally, Bali Process members have been vocal on issues relating to the Rohingya.<sup>20</sup> However, it is left to the UNHCR and other non-state actors to appeal to member states of the Bali Process to enact policies that could be built into Bali Process mechanisms (Kneebone, 2014).

Consensus-building is limited, though the door has been opened some way, through discussions, declarations and meetings on pertinent issues relating to refugees. Policy development stands to be informed by practice at the local level and by lessons learned over a protracted period of time.

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<sup>20</sup> In a similar vein, ASEAN member states have individually condemned Myanmar's actions and have called various meetings on the issue, as well as calling for the country to be sent to the International Criminal Court (Ellis-Peterson, 2018).

## 5 Conclusions: Policy implications and recommendations

This paper has presented key considerations in refugee management in Malaysia, with specific attention to Malaysian government policy, successes in UNHCR-led protection initiatives – specifically regarding urban refugee management – and the associated challenges.

The challenges are significant, not least due to Malaysia's ad hoc approach to refugee protection, the lack of legal status, and the protracted situation refugees find themselves in. Drivers of flight persist, with the likelihood of continued flight to Malaysia high. Without the relevant mechanisms in place to receive and process asylum seekers, the UNHCR's role has hitherto been crucial to affording a protection space. Regional measures to support refugee management at the local level is also lacking, leaving it up to individual states to carve out their own priorities in refugee management. Whilst moves to present a united voice through ASEAN declarations addressing refugee issues (namely the Rohingya one) and the Bali Process are promising, the framework is weak and accountability lacking.

The Malaysian context has presented some successes, with specific lessons that can be learnt, particularly with regard to urban refugee management. ASEAN provides the potential, at least in the first instance, to address humanitarian concerns regarding the Rohingya in Myanmar, and the Bali Process has instigated concerted conversations to standardise RSD processes through its Regional Cooperation Framework. However, there is room for considerable improvement. Policies are needed that address (1) the factors driving flight within (and from outside) the region, and specifically flight to Malaysia, and (2) factors that improve the chances of integration for those seeking protection once they are in (urban) Malaysia.

In order to ensure that policies address the widening of the protection space, significant research is required to more fully understand micro-level drivers of flight to Malaysia and identify/analyse refugees' coping mechanisms and integration prospects once arrived. This will inform more comprehensive policy measures that take into account regional dynamics. It will also improve the efficacy of protection initiatives at both local and regional levels, particularly with regard to urban contexts.

### 5.1 Policy implications and recommendations

Future policy needs to be cognisant of (1) the protracted and unabated refugee situation in Malaysia, (2) existing protective factors established over the years by various stakeholders, including refugees themselves, (3) regional and national mechanisms that can be consolidated/utilised in the short- to medium-term, and (4) longer-term policy initiatives that build upon such mechanisms, and more holistically address forced migration as a cross-cutting issue through cross-cutting solutions. Below, we establish key policy recommendations that will contribute to the current conversation in Malaysia, including key considerations for transitioning from an ad hoc to a consolidated policy environment.

Development practitioners and policy-makers need to conduct significant research into factors driving flight through empirical research with individuals in refugee communities to elicit reasons for them (a) leaving their home country and (b) coming to Malaysia.

Development practitioners need to “take stock” of the facets to refugee management in KL: who is involved, how and by whom refugees are informally or formally supported, and how activities/interventions can be strengthened. Key stakeholders include those currently enhancing the protection environment in Malaysia. A mapping and consultation exercise is central to understanding their strengths for a more consolidated policy approach which takes into account existing protective factors for refugees. Consultation should be had with civil society actors, the UNHCR and other UN bodies, private sector/business, educational institutions, refugee community groups, and Malaysian government and government-affiliated organisations, such as local authorities.

In a similar vein, increasing the capacity of local NGOs engaged in issue-specific service provision is key to widening the protection space in the short- to medium-term. Capacity building for CBOs is also central to encouraging self-sufficiency and enhancing already well-established community infrastructures. UNHCR continues to conduct CBP activities, and such activities must be adequately resourced if self-sufficiency is to be realised.

Though forced migrants are particularly vulnerable, they bring with them skills, experiences and cultures that can be adapted and utilised in host communities. Analysis of skills should be undertaken in tandem with local labour market analysis (inclusive of current refugee engagement with the job market) to most effectively link supply with demand. Partnerships with the private sector will be central to such an exercise. Integration programmes will be key to the realisation of the above. Local authorities therefore require capacity-building exercises and training in refugee neighbourhoods.

Regional and global participation is also key to establishing solid national refugee policies. Comprehensive support needs to be provided to the Malaysian government for the signing and ratification of the Refugee Convention. Crucially, this includes assistance for legislative amendment. Policy-makers should acknowledge that this would take place over a significant time period.

Strengthening of ASEAN’s leadership in the management of migration in general, and forced displacement in particular, is central to ensuring a regional protection environment. There is a growing trend towards addressing refugee concerns, though this is not yet met with formalised responses or consolidated protection mechanisms. Moves to work with Myanmar through diplomatic/humanitarian negotiation are welcome, though more concrete action is required, and existing accountability mechanisms are weak. Concerted steps should be made to codify ASEAN’s approach to forced migration, which would subsequently enhance accountability of ASEAN member states.

ASEAN’s role with regard to regional human security needs to be enhanced, in line with the association’s economic imperatives. Additional mechanisms are also required to improve accountability for human rights violations, including those within the migration paradigm. Involving the ASEAN Economic Community in such conversations, addressing migrants’ (including refugees’) rights through the purview of ASEAN’s economic prerogative, may be a possible avenue, specifically noting the contribution refugees make to ASEAN economies. Policy-makers should seek comparative examples of regional integration to support ASEAN policy-making. These include ongoing efforts among East Africa’s Intergovernmental Authority on Development and the Economic Community of West African States (see Dick & Schraven, 2018).

The opportunities to build upon existing protection frameworks for, and approaches to, refugees in urban areas in Malaysia are vast, due to both formal and informal means of support. It is crucial that protection mechanisms are strengthened through refugee policy rooted in a legal framework with shared understandings and definitions of what constitutes the protection space. Continued (re)negotiation on refugee issues has been protracted and, though it has had its successes, it has resulted in unpredictable policy measures and insufficient protection for refugees. Empirical research emerging from this space is crucial in the development of concrete policy. Refugees' experiences and the lessons learned by policy-makers need to be consolidated, and the fundamentals understood, in order to most effectively protect those with the most limited of choices: the refugees themselves.





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