



Rohingya
Refugees in
Malaysia

A ROUNDTABLE ON THE ROHINGYA IN MALAYSIA

Bridging the Gap between Aid and Resettlement

6 March 2018 | Monash University Malaysia

Organised by:



Programme

For decades, Malaysia has been receiving tens of thousands of Rohingya refugees who have been displaced from their homeland in Myanmar. Most have faced a sustained campaign of violence and ethno-religious discrimination and have come to Malaysia in the hopes of a better life. A year ago, Prime Minister Najib Razak described the crisis as ‘ethnic cleansing’ and called for better protection of the Rohingya. Malaysia has become one of the few countries leading the effort to bring awareness to the Rohingya crisis on the international stage but what has it done to protect and provide for the refugees residing within its own borders?

Malaysia is still not a signatory of the 1951 Refugee Convention and the 1967 Protocol; it maintains that Malaysia lacks the resources necessary to host large numbers of refugees for an indefinite period. However historically, the government has allowed refugees and asylum seekers to remain in the country pending resettlement to a third country on humanitarian grounds.

This roundtable aims to take forward recent discussions on the rights of Rohingya and other refugees in Malaysia and provide a platform to discuss practical and sustainable solutions in law and policy to this crisis in Malaysia. It will also discuss the limitations and opportunities within current international refugee policy concerning long-term support for refugees.

Schedule:

2.30pm	<u>Welcome</u> Remarks by Professor Helen Nesadurai , Head of the School of Arts and Social Sciences, Monash University Malaysia and Caroline Cheong , Senior Director, Centre for Public Policy Studies (CPPS)
2.40pm	<u>Opening Address</u> : ‘Moving from Immediate Needs to the Long-Term’ – An Overview of Refugees in Malaysia and Lessons to be Learnt from Abroad by Richard Towle , Representative, UNHCR Malaysia
3.00pm	<u>Presentation</u> by Sharifah Shakira , Co-founder and Director, Rohingya Women Development Network
3.15pm	<u>Presentation</u> : Following Up on ‘Bengkel Kemanusiaan Rohingya’ by Dato’ Dr Ahmad Faizal Mohd Perdaus , President, Mercy Malaysia
3.45pm	<u>Presentation</u> : The Refugee Crisis - Opportunities and Challenges in Malaysian Legislation by Deepa Nambiar , Founding Director, Asylum Access Malaysia
4.10pm	<u>Panel Discussion</u> <ul style="list-style-type: none">• Moderator: Lilianne Fan, International Director, Geutanyoe Foundation / Deputy Chair, Asia Pacific Refugee Rights• Jerald Joseph, Commissioner, Human Rights Commission of Malaysia (SUHAKAM)• Dr Sharuna Verghis, Co-founder and Director, Health Equity Initiatives / Senior Lecturer, Jeffery Cheah School of Medicine and Health Sciences, Monash University Malaysia• Sumitha Saanthini Kishna, Member, Migrants Refugees and Immigration Affairs Committee, Bar Council
5.10pm	End of roundtable

A Roundtable on the Rohingya in Malaysia: Report

In January this year, the UNHCR reported that there are roughly 153,480 registered refugees in Malaysia; of that number, 67,300 are Rohingya. 40,240 are children below the age of 18, and 34% are women. For years, Malaysia has played host to thousands of Rohingya refugees despite not being a signatory of either the 1951 Refugee Convention and 1967 Protocol, maintaining that Malaysia does not have the resources necessary to house large numbers of refugees for an indefinite period. However, the government has allowed refugees to stay temporarily pending resettlement to a third country.

Unfortunately, temporary resettlement is no longer an option for many refugees and neither is it sustainable from the long term. Refugees here lack protection and many basic human rights, including the right to work and the right to education. Without these rights, many refugees end up exploited, working in 4D jobs or on the streets.

Malaysia is facing a refugee crisis as refugees in the country remain unprotected. Understanding this, the Centre for Public Policy Studies (CPPS) and Asylum Access Malaysia organised a roundtable discussion to take forward the discussion on the rights of the Rohingya and other refugees in Malaysia. The roundtable focused on practical and sustainable solutions. The discussion proved extremely fruitful, as speakers and panellists identified several key issues concerning refugees in Malaysia and offered up possible solutions to the refugee crisis.

Refugees are stateless and have no access to citizenship rights

Refugees in Malaysia have trouble procuring identification documents including birth and marriage certificates. A birth certificate is an extremely crucial document that can provide refugees a link to the state and thus a claim for citizenship rights. A marriage certificate is necessary to legalise marriages in Malaysia and must be recognised by the religious authorities. The government does not recognise refugee children who are born in Malaysia as Malaysians, and even the UNHCR refugee identification card is not as respected by authorities as it should be. Without documentation or proof that their children were born in Malaysia, refugee families cannot send their children to national schools but must rely on private education alternatives. Without legal status, refugees remain victimised and unprotected.

The roundtable found that refugees in Malaysia need to have access to citizenship documentation. Solutions suggested include:

1. Refugee children born in Malaysia should be issued birth certificates or some sort of documentation at birth to show that they have been born on Malaysian soil.
2. Older refugees or those newly arrived in Malaysia must be given better access to proper documentation like the UNHCR refugee identification card so that they will be able to file for working permits and driving licences which are essential to live and work in Malaysia.
3. JAKIM should be allowed to certify Rohingya marriages and assist on family matters.
4. Contrary to popular belief, there are laws in the Malaysian federal constitution that safeguard against statelessness, such as the automatic provision of Malaysian citizenship if a person resides in Malaysia for at least one year. Thus, in theory, this law could grant citizenship to Rohingya and children with one Malaysian parent, but this legislation is yet to be enforced on a practical basis.

Malaysia has no legal framework to safeguard refugees

A common argument raised at the roundtable is that the Malaysian government merely 'tolerates' refugees. Malaysian law makes no distinction between refugees and immigrants and Malaysia has not signed either the 1951 Refugee Convention or the 1967 Protocol. Thus, there is no domestic legal framework to safeguard refugee rights or ensure access to basic services such as shelter, healthcare services and education.

In addition, refugees are frequently subjected to detainment and arrest under the 1959/63 Immigration Act. Under the 1959/63 Immigration Act, refugees can be detained for not carrying identification documents. Thus, they are regularly stopped and harassed on the street, held in immigration detention centres, and sometimes taken to court. Malaysian authorities do not recognise the UNHCR card as appropriate identification which is often used as licence for arrest. The existing laws and practices in Malaysia prevent refugees from being able to move and live freely in Malaysia.

In order to provide better safeguards and protection for refugees in Malaysia, speakers at the roundtable suggested:

1. Malaysia should sign both refugee conventions and fully implement the Convention on the Rights of the Child.
2. Authorities should recognise the UNHCR refugee identification card as appropriate identification for refugees and accord cardholders its full protection.
3. The government could implement a regularisation programme to register all refugees in Malaysia and grant them temporary rights to live and work in the country. A programme like this will allow the refugee population to become more visible and allow authorities to be more capable to locate and know the refugee community residing in Malaysia.
4. The government can exempt certain groups from facing penalties of the Immigration Act; this exemption has been used in the past to allow Bosnian refugees to stay in Malaysia. The government can use this special rule to exempt refugees, like the Rohingya, from being unfairly arrested and detained.

Refugees are not allowed to work

Under the 1959/63 Immigration Act, Employment Act 1955 and Employment (Restriction) Act 1968, refugees are prohibited from working in Malaysia. The significant restrictions on work rights leave the Rohingya and other refugees impoverished and vulnerable to exploitation. They have no choice but to find short-term work in '3D jobs' that are dangerous, dirty and difficult. In addition, getting to and from work also presents an increased risk of arrest and detention from police.

All speakers at the roundtable fully advocated giving refugees the right to work.

Allowing refugees to seek legal employment will give them a means of supporting themselves and providing for their family. They will be less dependent on the state for protection and social welfare, and less likely to be exploited by organised crime or human traffickers. By incorporating refugees into the national workforce, refugees can potentially become a benefit to the national economy.

However, the challenge is to match the skills possessed by the refugees to job-market needs. If government-mandated work programmes are to be successful, it would be more beneficial for refugees if we can match their skills accordingly, as placing an inexperienced refugee in a plantation sector is pointless. Most refugees are urban-dwellers who have never worked in rural areas before. Malaysia needs to revisit this issue and see what kind of sectors are Rohingya currently working in and how to legalise this work.

Refugee children have limited access to education

Refugee children have limited access to formal education. Without legal documentation, refugee children are not allowed to be enrolled into public schools.

The only option available for them is to attend informally-run education centres set up by members of the refugee community or sympathetic Malaysians. However, these centres usually have no streamlined syllabus and tend to cater mostly to kindergarten and primary school levels. Only a few of these centres offer secondary school education but none offer tertiary level education, leaving refugee youth and young adults without necessary skills to work.

1. The government should allow Rohingya and refugees full access to the Malaysian education system and vocational training. This will allow refugees to improve the social mobility of Rohingyas as their displacement has also dispossessed them of their self-belief, identity and life skills
2. The same exception used by the government to exempt groups from facing penalties from the Immigration Act can be used to allow freedom of movement from refugees and grant the right to work
3. Young refugees could be equipped with leadership skills via workshops like a Rohingya Youth Leadership Training Programme, collaborations with the Ministry of Youth and Sports, or cultural programmes at Rohingya mosques and madrasahs.

Refugees have limited access to healthcare

While UNHCR cardholders do have access to public healthcare, it usually comes at a very high cost which makes it unaffordable for most.

In addition, there are urgent and acute ongoing problems with maternal and child refugee healthcare especially issues involving deliveries and new-borns. Many refugee women and children do not have access to proper and legal healthcare. There have been cases where mothers giving birth were denied permission to leave the hospital or their children withheld as the mothers were unable to afford post-natal care.

In order to facilitate refugee access to healthcare options in Malaysia, the panel suggested:

1. All refugees should be allowed access to public clinics and hospitals.
2. There needs to be sustainable health insurance schemes made available to refugees which are provided by the government, civil society and UNHCR. These schemes should be recognised by most hospitals in the country.
3. There should be translators available in public hospital to help facilitate refugee patient care.

There is a poor public perception of refugees in Malaysia

The Malaysian public still has a poor understanding of refugees which only reinforces negative refugee stereotypes. For example, many Malaysians see the Rohingya as a threat and the government as too accommodating of the Rohingya refugees. Most view refugees as illegal immigrants who have come here in search for better prospects or are involved in organised crime. The general public discredits refugee stories on prosecution and instead perpetuates stereotypes of 'the lazy refugee who comes here to steal our resources'.

The speakers believed that the government has failed to educate the general public on the differences between migrants and refugees, and instead relies on promoting religious solidarity during

humanitarian crises to generate public concern. However, this is not sustainable. This prejudice has made changing the law to protect refugees more difficult.

1. A comprehensive human rights framework should be incorporated in our education syllabus to create more human rights awareness among Malaysians
2. Judges as well as enforcement and immigration officers must be educated on this issue and be made aware of the distinction between refugees and immigrants.
3. Detainment, which is a common punishment for refugees and the most common solution to a refugee crisis, is actually a waste of resources and further burdens the judicial system. There needs to be new, sustainable ways to tackle the crisis.

What can be done to help?

The roundtable touched on a variety of issues facing the refugee community in Malaysia, highlighting six key issues that speakers believed to be the most critical. Many of the solutions proposed will require more commitment from the government and private sector to implement across the country which is why all speakers called for greater collaboration between government, civil society, public and private sector, and the Malaysian public to solve Malaysia's refugee crisis.

This is not a 'one solution fits all' crisis. Malaysia's refugee population is not homogenous, and neither are the Rohingya. The Rohingya who were born and brought up in Malaysia have very different needs and challenges compared to those who have just arrived. More interdisciplinary research is needed to facilitate better quality policy discussion. We need to spread that research across social media so as to educate the public and made them aware of the benefits that refugees could bring into the country. The refugee crisis will need a multi-pronged approach starting with giving refugees the right to work. By allowing them to work, refugees will be able to earn a living, which eases the welfare burden from the state, and be able to afford healthcare and education for themselves and their family. The main goal is not to steal jobs away from Malaysian citizens, but to allow refugees to become self-sufficient, productive and no longer stateless.

Centre for Public Policy Studies
Asian Strategy & Leadership Institute
1718 Jalan Ledang,
Off Jalan Tuanku Abdul Haim
50480 Kuala Lumpur
Malaysia



Tel: +603 2093 5393 | Email: cpps@cpps.org.my

www.cpps.org.my

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