

Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia - Executive Summary

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In 2017, a violent security crackdown in Myanmar's Rakhine State triggered the largest exodus of Rohingya in recent history. At the time, the Malaysian government took a vocal stance against the persecution of the Rohingya, positioning themselves as supportive and sympathetic to their plight. However, as growing numbers of Rohingya have sought irregular means of travelling to Malaysia to reunite with family and community members, levels of public and political tolerance in the country have waned. The Malaysian government has increasingly adopted a securitised and frequently ad-hoc approach in responding to Rohingya and other refugee communities. This has included more boat pushbacks, more frequent immigration enforcement raids, and the immediate, arbitrary, and indefinite immigration detention of many Rohingya in Malaysia.

Previous research has documented the ways in which Malaysia's laws and policies are applied towards Rohingya and other refugees. However, less attention has been paid to the ways in which Rohingyas experience these policies, and the means by which they have responded to corresponding threats to their safety and security. This research focuses on how Rohingya families and communities have been impacted in the immediate and longer-term by Malaysia's harsh and indefinite immigration detention policies. It also provides strategic and relevant recommendations for increasing access to protection and services for Rohingya refugees in Malaysia, not least the need for Alternatives To Detention (ATD) and a refugee-, survivor-centred approach in policies and responses at both national and regional levels, in line with international protection and human rights standards.

The research methodology comprised a multi-method qualitative research approach using desk research, secondary data collection from case intake forms, and semi-structured interviews with key informants from refugee-led organisations (RLOs), Malaysian civil society organisations (CSOs), think tanks, regional CSOs, faith-based organisations (FBOs), and international human rights organisations.

While the research focused primarily on Rohingya in Malaysia, key informants and desk research indicated that many of the findings, especially experiences related to policies and processes of immigration detention, are likely applicable to most refugee communities in Malaysia. Likewise, the recommendations to improve these immigration policies and practices will serve to benefit not only the Rohingya, but other refugee communities too.

Key Findings

- Rohingya refugees in Malaysia are not a homogenous group. Their risk of detention, direct and indirect experiences of detention, and ability to access services and support are shaped by their duration of residence in Malaysia; family origins and status in Myanmar's Rakhine State; and intersectional factors such as gender, age, medical vulnerabilities, socioeconomic background, and documentation status.
- All refugees are at risk of arrest and detention under Malaysian immigration law, which permits arbitrary and indiscriminate arrest and detention. However, Rohingya are at higher risk of arrest and detention than other refugee communities, predominantly due to their visibility as the largest refugee community in Malaysia.
- Rohingya refugees who have travelled to Malaysia from Bangladesh are at increased risk of prolonged detention compared to Rohingya refugees who have travelled directly from Myanmar, or have been living in Malaysia long-term, pursuant to an internal immigration document.
- Malaysia's immigration detention policies have had medium- and long-term impacts on Rohingya families and communities. Rohingya in detention are at significant risk of physical and psychological abuse that can lead to cumulative trauma and mental health challenges. For children specifically, immigration detention can have a detrimental and long-lasting impact on development and physical and mental well-being.
- Family members of detained Rohingya also experience significant psychological distress. This distress is underpinned by concern for their family members' wellbeing, increased fear and anxiety about risk of arrest, and lack of access to United Nations High Commissioner for Refugees (UNHCR) documentation and the protection it provides.
- Detention has a profound impact on family structures by separating or preventing reunification of families, and indirectly causing the breakdown of familial relationships.

- Immigration detention disproportionately affects women as they experience detention in intersecting and gendered ways, due to patriarchal norms within Rohingya communities and the social and economic positions women occupy.
- In response to the detention of a community member, some Rohingya communities mobilise quickly to: a) seek help from UNHCR or relevant NGOs to protect the detained community member and others at high risk of detention; b) engage community networks to warn and safeguard the broader community; c) attempt to secure the release of the detainee; and d) support family members of the detainee to meet their basic needs.
- Malaysia's immigration detention policies and practices demonstrate policy incoherence at a national level, as well as at regional and international levels, which negatively affect Malaysia's international reputation and standing.
- Immigration detention is harmful to individuals, families, and communities, is not an effective deterrence measure, and comes at significant financial cost to Malaysian taxpayers and the Malaysian economy. Further, there is no legal basis to deport stateless persons such as the Rohingya.
- ATD are beneficial to both refugees and governments as they support outcomes such as improved health and wellbeing, fulfilment of human rights principles, and effective migration governance. ATD are also more cost-effective than immigration detention.
- A comprehensive and sustainable approach to responding to Rohingya and other refugee communities requires coordination and collaboration across Malaysian Government ministries, departments, and other government actors. Further, close collaboration with civil society, RLOs, UN agencies, and regional and international CSOs is needed to strengthen the government's response to end harmful immigration detention policies and practices.

Key Recommendations

The above findings inform eight key recommendations that promote a Whole-Of-Government and Whole-Of-Society approach to address immigration detention.

Recommendations	Policy measures	Stakeholders
1. Cease the immigration detention of Rohingya and other refugee communities	<ul style="list-style-type: none"> a. Exempt refugees and people seeking asylum from arrest and detention under the Immigration Act 1959/63 b. Allow UNHCR regular and streamlined access to all people detained in immigration detention centres, for the purpose of identifying, registering, and protecting refugees and people seeking asylum 	<p>The Malaysian government:</p> <ul style="list-style-type: none"> ○ Legal Affairs Division and National Security Council under Prime Minister's Department ○ Immigration Department under Ministry of Home Affairs
2. Lead the development and implementation of community-based ATD	<ul style="list-style-type: none"> a. Implement ongoing ATD initiatives including the proposed plan of releasing children from immigration detention and the ATD pilot programme for unaccompanied and separated children, including Rohingya b. Invest in developing a clear monitoring and evaluation framework that focuses on best interest of the child for ATD initiatives c. Ensure that ATD initiatives include all children in immigration detention and expand ATD to include other people in situations of vulnerability, such as people seeking asylum and people with medical conditions 	<ul style="list-style-type: none"> • The Malaysian government: <ul style="list-style-type: none"> ○ Immigration Department under Ministry of Home Affairs ○ Social Welfare Department under Ministry of Women, Family and Community Development ○ Legal Affairs Division and National Security Council under Prime Minister's Department • Civil society organisations and actors serving refugees, migrants, children, and youth • UN agencies, namely the Office of the UN High Commissioner for Human Rights (OHCHR), United Nations Children's Fund (UNICEF), and UNHCR
3. Develop and implement a transparent and comprehensive refugee policy	<ul style="list-style-type: none"> a. Accelerate the registration process of Rohingya and other refugee communities b. Improve policy coherence on arrest and detention procedures of refugees and people seeking asylum 	<ul style="list-style-type: none"> • The Malaysian government: <ul style="list-style-type: none"> ○ Ministry of Home Affairs ○ Legal Affairs Division and National Security Council under Prime Minister's Department • UNHCR

<p>4. Utilise lessons learned from similarly situated countries, particularly in ASEAN, and continue regional and international engagement to improve coordination and secure additional resources</p>	<p>a. Increase peer-learning efforts by participating in platforms, such as the ATD workstreams by the United National Network on Migration Working Group and the Regional Platform on ATD</p> <p>b. Build regional collaboration to support more rights-based approaches and regional advocacy on the Rohingya displacement, and migration governance</p>	<p>The Malaysian government:</p> <ul style="list-style-type: none"> ○ Ministry of Home Affairs ○ Ministry of Foreign Affairs ○ Legal Affairs Division and National Security Council under Prime Minister's Department ○ Ministry of Women, Family and Community Development
<p>5. Provide work rights to Rohingya and other refugee communities</p>	<p>a. Formalise refugees' right to work and provide them with a legal status or temporary visa</p> <p>b. Develop refugee employment programmes in consultation with refugee communities, RLOs and CSOs, and identify economic sectors that match the skill profiles of Rohingya and other refugee communities</p> <p>c. Ensure that labour protection mechanisms equally apply to Rohingya and other refugee communities</p>	<p>The Malaysian government:</p> <ul style="list-style-type: none"> ○ Ministry of Human Resources ○ Ministry of Investment, Trade and Industry ○ Ministry of Home Affairs
<p>6. Strengthen gender-responsive frameworks and services to Rohingya and other refugee communities</p>	<p>a. Incorporate gender mainstreaming and a gender responsive approach in policies and practices</p> <p>b. Repeal the directive requiring government healthcare staff to report undocumented patients to immigration</p> <p>c. Establish protocols that prevent the police from arresting refugee women who are reporting sexual and gender-based violence (SGBV)</p> <p>d. Provide robust and regular gender-responsive training for government officials</p>	<ul style="list-style-type: none"> ● The Malaysian government: <ul style="list-style-type: none"> ○ Ministry of Home Affairs ○ Ministry of Women, Family and Community Development ○ Ministry of Health ○ Legal Affairs Division and National Security Council under the Prime Minister's Department ● Civil society organisations and actors serving refugees, migrants, women, children, and youth
<p>7. Employ multi-stakeholder partnerships at all levels to ensure greater coordination and collaboration</p>	<p>a. Encourage collaboration and dialogue among the government, civil society, RLOs, the national human rights commission, international organisations, the private sector</p> <p>b. Utilise existing mechanisms including the All Party-Parliamentary Group Malaysia and Parliamentary Special Select Committees</p>	<ul style="list-style-type: none"> ● The Malaysian government ● Civil society ● Refugee-led organisations ● National Human Rights Commission ● UN agencies ● Regional and international organisations ● Private sector
<p>8. Invest in increasing public awareness and understanding of refugee issues, and in counteracting misinformation, disinformation, and hate speech toward refugees</p>	<p>a. Counter misinformation about refugees to address xenophobia against Rohingya refugees</p> <p>b. Organise social cohesion initiatives which promote increased understanding and acceptance between host communities and refugees</p> <p>c. Engage and build relationships with media to promote accurate and progressive reporting on refugees</p>	<ul style="list-style-type: none"> ● The Malaysian government, namely Ministry of Information, Communication and Culture ● Civil society ● Faith-based organisations ● UN agencies ● Regional and international organisations

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