4. **CONCLUSIONS AND RECOMMENDATIONS**

This report provides an insight into the human rights situation of both the long-staying and recently arrived Rohingya population in Malaysia. While the violence in Rakhine State since 2012 has placed more of a spotlight on the multiple human rights violations, including protracted statelessness, experienced by the Rohingya in Myanmar, Malaysia’s policies and practices towards them remain for the most part unchanged. Although the government has taken commendable steps to allow Rohingya to enter Malaysia and to access UNHCR, further efforts can and should be taken to achieve a more long-term and durable solution that benefits the country while ensuring that the Rohingya are able to enjoy their fundamental human rights. Malaysia is also striving to achieve developed nation status by 2020 and to meet its targets under the Millennium Development Goals by 2015. Ensuring the rights of non-citizens as well as Malaysian nationals is integral to achieving these goals.

Many of Malaysia’s domestic laws and policy initiatives can be strengthened to increase protection for the Rohingya, especially if implemented in an effective and non-discriminatory manner. If Malaysia acts on the recommendations below, it will become a safer destination for Rohingya refugees. Concerns that this will result in an unmanageable increase in new arrivals are legitimate and must be addressed. There is a danger that any one country which – in isolation – strengthens its protection framework for refugees will be disproportionately burdened as a result.

While strengthening protection may bring new challenges, failing to do so comes at a cost as well. The present status quo is damaging and unsustainable. The individual human cost is documented by this report and others. There are also national and regional costs to stability, international relations and reputation. The present regional stalemate only serves to worsen the situation over the long-term. Malaysia is well placed to take a leadership position at the regional level to break this stalemate by championing a rights-based response to the Rohingya issue.
and encouraging other states to do so as well. Given the regional
dimension of the issue, it is only if states take individual responsibility
while also working collectively to protect the Rohingya that effective
protection is likely to be achieved.

The Rohingya are a discriminated against stateless community, and the
majority of those who have fled Myanmar are refugees and should be
recognised as such. The lack of an adequate refugee and/or statelessness
protection framework in Malaysia has resulted in the Rohingya being
treated as irregular migrants with no access to basic human rights
protection. The failure to recognise the vulnerabilities of Rohingya as
refugees and stateless persons and to accordingly protect them has a
discriminatory impact on the Rohingya and their enjoyment of human
rights. Violations of the right to liberty and freedom of movement, as well
as the right to work, are everyday concerns for most Rohingya, and fear of
police harassment, arrest, detention and deportation affects their lives.
Without access to public schools and healthcare, there is also significant
concern among the settled Rohingya community that their children have
no future. Although Malaysia has for the most part allowed Rohingya boat
arrivals to disembark and access UNHCR, they must still endure arrest and
prolonged detention in overcrowded and ill-equipped detention facilities
which are highly damaging to their physical and mental health,
particularly for women, children and those who are already unwell or
traumatised.

Despite the human rights challenges in Malaysia, Rohingya do not face the
acute discrimination and persecution they experience in Myanmar.
Consequently, it is not surprising that of those interviewed, few expressed
the desire to go back to Myanmar. Many, particularly long-stayers and
those with strong community links, stated that they would prefer to
remain in Malaysia, particularly if they had better security and could work
without being arrested. Some also reported that remaining in Malaysia
was preferable to resettling in a third country such as the United States
where Islam is not the main religion. In specific terms, some form of legal
stay rights, the right to work and access healthcare, the right to register
the births of and educate their children and freedom from exploitation,
harassment, extortion, arrest, detention and deportation at the hands of
police and other authorities were common requests made by most
Conclusions And Recommendations

Interviewees. Many expressed a hope that the government would reinvigorate the IMM13 permit or some other form of legal stay right that would offer more long-term security for them and their children in the country, and which would also allow them to make more effective contributions to the Malaysian labour force and economy.

Ultimately, the Rohingya in Malaysia want recognition as members of a society with the ability to live in dignity and contribute to the communities they live in. If they are unable to receive this in Myanmar, their aspiration is that Malaysia, their adopted country, will offer them such futures. While many accept their plight, they do have aspirations on behalf of their children who they hope will have better, more stable futures.

In light of the information presented in this report, the following recommendations are made:

**Equality and non-discrimination** – Malaysia’s domestic legal and policy framework related to non-discrimination and equality remains weak and falls short of international standards. Though the provisions of the Federal Constitution include non-citizens in the constitutional guarantee of equality, they exclude them from the guarantee of non-discrimination as well as other key rights. The inequalities and discrimination faced by the Rohingya in Malaysia have a fundamental impact on the enjoyment of all of their other human rights. Such treatment of the Rohingya is untenable and runs counter to international law.

Malaysia should treat the Rohingya without discrimination and ensure their equal access to the protection and enjoyment of human rights. While this can be achieved in part through the proper implementation of existing laws and policies, it also requires changes to certain laws and policies which are directly or indirectly discriminatory. Actions to strengthen the rights of the Rohingya will also contribute to addressing the historic disadvantage of the community. In particular, it is recommended that Malaysia:

1. Review and repeal all discriminatory laws.
2. Ensure that all laws and policies are implemented in a non-discriminatory manner.
3. Adopt comprehensive and effective national equality legislation, containing the essential elements for such legislation required under international law and summarised in the Declaration of Principles on Equality.

**Statelessness and lack of legal status** – The statelessness of the Rohingya and their resultant lack of a legal status in Malaysia is a core problem that impacts generally on the enjoyment of their human rights. While the statelessness of the Rohingya is the result of discrimination in Myanmar, the resultant lack of legal status in Malaysia is largely because the country does not have a protection framework in place for stateless persons. Although the punitive provisions of the Immigration Act and the lack of a domestic framework for the protection of refugees and asylum seekers place all persons of concern to UNHCR at risk, the statelessness of the Rohingya places them at an even greater disadvantage:

1. As stateless persons, many long-staying Rohingya have no option but to remain in Malaysia, and thus, while the insecurities and difficulties faced by “economic migrants” maybe temporary, those faced by the Rohingya are potentially life-long and even intergenerational.
2. Stateless Rohingya who are unable to register with UNHCR or whose claims for asylum are rejected are at risk of indefinite detention.

Rohingya children born in Malaysia are also stateless because they have no access to Malaysian nationality. Malaysia has made a reservation to Article 7 of the CRC but still has obligations under Article 8 of the CRC as well as its own Federal Constitution to protect those who have illegally been deprived of their identity and nationality, and to accord nationality to persons born in Malaysia who would not otherwise have a nationality.

Consequently, it is recommended that Malaysia should implement a protective framework for the treatment of stateless Rohingya, provide legal stay rights for stateless Rohingya, ensure that statelessness does not result in further disadvantage and protect the rights of stateless Rohingya children born in its territory, including, ultimately, through access to nationality.
**Refugees and asylum seekers** – Rohingya arriving in Malaysia should have access to registration and refugee status determination in order to be recognised as refugees. Malaysia has a significant refugee and asylum seeking population with which it is struggling to cope. Although UNHCR Malaysia carries out registration, status determination, documentation, and facilitates durable solutions for the Rohingya, the agency has insufficient institutional capacity which has impacted on its ability to effectively provide these services to the Rohingya and other persons of concern.

Rather than maintain the status quo, a protection-based approach to accommodating refugees will ultimately ease the burden on the system, transforming irregular migrants with no stay rights or associated rights to work into productive members of society who are no longer a burden on the system.

In particular, it is recommended that:

1. UNHCR be granted access to all refugees including the Rohingya in order to conduct RSD and fulfil its protection mandate. Importantly, documentation provided by UNHCR to refugees and asylum seekers should be recognised by all police and other officers of the state as valid protection documents.

2. The Malaysian government should consider reintroducing the IMM13 permits (or an equivalent) for Rohingya and other refugees to allow them to work and grant them residence rights while durable solutions are being sought for them. This would enable a significant number of Rohingya to live a more secured and dignified life in Malaysia and would also allow the country to benefit economically from their presence.

3. Increased resources should be allocated to UNHCR Malaysia to overcome delays in registration and register all Rohingya and other asylum seekers, regardless of their geographic location. Information concerning these processes as well as any initiatives to achieve durable solutions should be made available to the
Rohingya community so they are aware of their rights, obligations and the likely time it will take UNHCR to process their applications.

4. Malaysian refugee and immigration policy should distinguish between refugees, stateless persons and irregular migrants, and respond to each group according to their specific protection needs, within a wider framework of immigration control. In the absence of specific laws recognising the rights and protection needs of refugees and stateless persons, the discretion contained in section 55 of the Immigration Act should be utilised to enhance the stay rights of these groups. In particular, they should benefit from the rights to work and education, which are essential for their long-term survival and development in a manner that is conducive to individual dignity and not burdensome to the state.

5. Durable solutions must be sought for the Rohingya and all refugees in Malaysia. International refugee norms assume three durable solutions: repatriation, local integration, and resettlement. For the Rohingya, repatriation will continue to not be an option as long as the Rohingya suffer persecution in Myanmar. Globally, there are very few opportunities for resettlement with demand far outweighing supply. Only a small number of Rohingya who have been recognised as refugees by UNHCR have been resettled to third countries. Thus, the international community should provide greater resettlement opportunities for Rohingya in Malaysia; this would not only help ease some of the challenges faced by the Malaysian government and UNHCR in managing this population, but would also provide incentive to the Malaysian government to permanently integrate Rohingya for whom resettlement is not the best durable solution. This would include most Rohingya children born in the country.

**Liberty and security of the person** – The irregular status of the Rohingya in Malaysia has a significant impact on their enjoyment of the right to liberty and security of the person as they are vulnerable to arbitrary arrest and prolonged detention in damaging conditions that fall far below minimum international standards. Although standard operating procedures and directives have been issued clarifying that UNHCR card
holders should not be arrested or detained when the authenticity of their cards have been verified, these are not codified into law and as a result, have not been uniformly or consistently applied. Rohingya and other asylum seekers who are not registered with UNHCR are at particular risk of arrest, prolonged detention and deportation. Of particular concern is that UNHCR does not have access to two of the 14 immigration detention centres in the country.

Consequently, it is recommended that Malaysia's immigration detention policies are reviewed and brought in line with international law. The Immigration Act should be revised to recognise the specific rights and protection needs of refugees, stateless persons and asylum seekers, including the right to liberty and security of the person. The whipping of all irregular migrants should be abolished as a matter of urgency. The government should establish a screening process to ensure that refugees, stateless persons and asylum seekers, including their children, are rapidly identified. Detention should be a measure of last resort and only used where necessary, justified and proportionate, and alternatives to immigration detention should be considered in the first instance. If detention is necessary and justifiable, then it should be for the shortest time possible and in conditions that at the very least meet international minimum standards. The Equal Rights Trust's Guidelines to Protect Stateless Persons from Arbitrary Detention which are based on existing international standards may be a useful resource in this regard.

**The rights of the child** – Rohingya children, particularly those born in Malaysia, are entitled to protection. Malaysia is to be commended for its significant progress towards achieving universal birth registration and access to education for citizen children. Rohingya children should not be left out of this process. Although Malaysian laws provide for all children to be registered at birth, implementation of these laws should be strengthened so that Rohingya parents are able to register their children without impediments such as inability to pay hospital fees or fear of arrest and detention. Malaysia should also ensure that Rohingya children with or without documentation are able to access affordable health care, without fear of arrest and detention as recommended by the Committee on the Rights of the Child. Rohingya children should also have access to free and
formal education, and those attending informal learning centres should have access to official examinations.

Further, Rohingya children should never be detained for immigration purposes, and children and their families should be allowed to remain in community-based alternatives to detention. Children should not be separated from their parents, in line with the right to family unification. In line with Malaysia’s obligations under the Convention on the Rights of the Child, it must ensure that the best interests of the child should be a primary consideration and detention is always used as a measure of last resort and then for the shortest time possible. Finally, Malaysia should remove all of its reservations to the CRC, in particular to Articles 2 and 7.

The right to access healthcare – The current cost of health care for foreigners and the requirement for valid documentation to be presented acts as a barrier for Rohingya to access government healthcare facilities. The risk of arrest and detention that irregular migrants seeking treatment at government hospitals face has a serious impact on their mental and physical health and may potentially lead to broader public health concerns if people are deterred from seeking medical assistance when needed.

It is recommended that the Ministry of Home Affairs and the Ministry of Health review current policies on access to health care, so that all refugees, asylum seekers, stateless persons and other irregular migrants are able to seek and obtain affordable medical treatment without fear of arrest and detention. Vulnerable individuals such as children, pregnant women, nursing mothers, the disabled, the elderly, survivors of torture and victims of trafficking, and terminally ill persons must be able to receive medical treatment and should not be placed in detention during or upon completion of treatment, particularly if the reasons for detention are due to their irregular status.

The right to work and an adequate standard of living – The challenges faced by Rohingya in accessing formal labour markets have a significant impact on their lives, including access to basic rights. These challenges have also increased Rohingya vulnerabilities to abuse and exploitation as they are forced to pursue non-formal work as a means of making an income. It is recommended that the Malaysian government effectively
address this by developing a comprehensive labour policy that enables Rohingya and other refugees and asylum seekers to obtain work permits to work legally without fear of arrest and exploitation. This policy should also put in place protective mechanisms that provide for basic labour rights according to international standards, pending a final durable solution to their case. This initiative would also assist Malaysia in addressing its labour shortages and benefit the country in its drive to achieve developed nation status by 2020.

**Smuggling and trafficking** – Based on recent reports that a number of trafficking and smuggling rings have relocated their camps from southern Thailand to northern Malaysia, it is imperative that the Malaysian authorities step up efforts to address this. It is recommended that Malaysia make use of existing international, regional as well as its national standards and frameworks to enhance protection for victims of trafficking and to also ensure access to such mechanisms for the Rohingya and other victims. Malaysia should ensure that any collusion between traffickers and police and immigration authorities is immediately halted and perpetrators brought to justice.

**Response to anti-Rohingya violence** - The response of Malaysia to the 2012-2013 boat people has not been adequate. While Malaysia has generally allowed boat arrivals to disembark, its response has not been grounded in a protection framework and the practice of subjecting boat arrivals to mandatory prolonged detention is a violation of international law. It can be difficult for any country to deal with such unpredictable migration flows, and distinguishing Rohingya refugees from Bangladeshi migrants also poses a challenge. However, Malaysia is urged to approach this situation from a humanitarian and human rights perspective, to ensure the integrity of its borders while also protecting the rights of all vulnerable migrants including asylum seekers and stateless persons.

Malaysia is urged to continue to protect its sovereignty and borders in a manner which increasingly also prioritises the human rights protection of vulnerable persons. Such a human rights-based approach to sovereignty is a difficult but achievable goal which will strengthen human rights protection and serve as an example to other nations.
Accesion to human rights, statelessness and refugee treaties - A significant step to improving the protection of refugees and stateless people in the country, including the Rohingya, would be to accede to the remaining key human rights treaties – namely, the ICCPR, ICESCR, ICERD, CAT and CMW – but also to the Convention Relating to the Status of Refugees and its Protocol, the Convention Relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness. These conventions require state parties to protect the rights of refugees and stateless persons and to reduce statelessness. Furthermore, they provide the legal basis for UNHCR to exercise its protection mandate. Accession to these treaties and the introduction of domestic law and policy mechanisms for their implementation would be a significant breakthrough in the protection of refugees and stateless persons. This is likely to have a positive impact not only in Malaysia, but also in the ASEAN region, which at present has a poor ratification record of these treaties. In addition to benefiting individual stateless persons, asylum seekers and refugees, accession will also bring benefits to Malaysia as these treaties promote “responsibility sharing”, which can help Malaysia handle the perceived burden of handling refugees.

Regional approach – As has been made evident throughout this report, the Rohingya issue is a regional one which concerns a number of countries. It is recommended that states in the region foster more collaboration and seek to collectively address the issue, while also acknowledging their individual responsibility in this regard. Importantly, any regional approach should be grounded in human rights and humanitarian principles of equality, non-discrimination and protection. Malaysia is well placed to take a leadership role in promoting such an approach and should use its place on regional mechanisms including ASEAN, AICHR, ACWC and the Bali Process to good effect in this regard. Strategically, the rights of Rohingya children may be a useful entry-point, and Malaysia is in a position to lead by example by better implementing its existing policies on universal birth registration and access to education, and also giving effect to the provisions in the Federal Constitution that already provide for the acquisition of nationality for stateless Rohingya children born in the country.