1. INTRODUCTION

1.1. Purpose and Structure of This Report

Burma is not our land anymore though I was born there.¹

 Stateless, discriminated against, treated unequally, excluded and persecuted, the Rohingya are one of the most vulnerable communities in the world. Originating from Myanmar, hundreds of thousands of Rohingya have fled the country in search of safety, security and prosperity - conditions that remain elusive to the majority who have made lives for themselves upon new shores.

The human rights challenges that the Rohingya face originate in Myanmar, but are also prevalent in other countries. Discrimination and unequal treatment are central to the human rights violations suffered by the Rohingya. This report is part of a series which provides an overview and analysis of the human rights situation of stateless Rohingya in various countries.

The purpose of this report is to highlight and analyse the discrimination and inequality faced by the Rohingya in Malaysia and to recommend steps aimed at combating discrimination and promoting equality of the Rohingya. The report explores long-recognised human rights problems, and also seeks to shed light upon some less well-known patterns of discrimination against the Rohingya.

The Equal Rights Trust has been working on the human rights of Rohingya since 2008, approaching the issue from the unified human rights perspective on equality.² In January 2010, we published a short report

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¹ Interview BD 20, with a Rohingya man, Cox’s Bazar, Bangladesh, 4 October 2012. Throughout this report, names and/or personal characteristics of individuals have been withheld either at the request of interviewees or because the research team determined this to be necessary in the interest of the safety and/or privacy of the individuals concerned and/or others who may face reprisal.

² The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust in
entitled *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, in which patterns of detention, trafficking and deportation were described for the first time, based on original testimony. In March 2011, the Trust and the Institute of Human Rights and Peace Studies, Mahidol University (IHRP) began working together on a project aimed at strengthening the human rights of stateless Rohingya both within Myanmar and beyond. Grounded in research conducted in six countries (Bangladesh, Indonesia, Malaysia, Myanmar, Saudi Arabia and Thailand), this project is an endeavour to increase the human rights protection of the Rohingya through advocacy, capacity building and coalition building at national, regional and international levels.

This report comprises four parts. Part 1 sets out the conceptual framework which has guided the authors’ work and the research methodology. It then provides an overview of the Rohingya and concludes with an analysis of some of the common trends, themes and challenges that have emerged from the research in all project countries. Part 2 provides an overview and analysis of the international, regional and national legal and policy framework relevant to the discrimination, inequality and related human rights violations and challenges faced by the Rohingya in Malaysia. Part 3 focuses on patterns of discrimination and inequality affecting the Rohingya in Malaysia. It is important to note that Part 3 focuses on a few select issues, and is not a comprehensive overview of all forms of discrimination and inequality limiting the enjoyment of human rights for the Rohingya in Malaysia. Part 4 presents conclusions and recommendations.

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1.2. Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust in 2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. According to Principle 1 of the Declaration:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*

The Declaration proclaims that the right to equality extends to guarantee equality in all areas of human life normally regulated by law, and should be addressed holistically. This approach recognises the interconnectedness of inequalities arising in different contexts, which makes it necessary to take a comprehensive approach to combat manifestations of discrimination arising in all areas of life.

The unified human rights perspective on equality is central to the Rohingya issue. In Myanmar, the Rohingya are a stateless, ethnic, religious and linguistic minority and in other countries, they are stateless irregular migrants, refugees and often undocumented persons. As such, they are vulnerable to many forms of discrimination, exclusion and human rights abuse.

Another key aspect of the project is its regional focus. The long-term and widespread nature of the Rohingya crisis means that while recognising the

\[\text{Note 2, Principle 1, p. 5.}\]
individual responsibility of states to protect the human rights of all persons within their territories and subject to their jurisdictions, a just and sustainable solution is only likely if the key states demonstrate a collective commitment to protect the Rohingya. The regional nature of the issue presents both opportunities and challenges. The opportunity is that if states act collectively, the burden on each state will be eased and such an unprecedented process would serve as a blueprint for future regional cooperation; the challenge is to address the causes of irregular migration flows and ensure greater coordination among states and an increased willingness to protect the Rohingya.

This report looks at Malaysia’s place in the regional picture of stateless Rohingya displacement and insecurity. It focuses both on recent refugees and the long-staying population. The report is informed by 20 semi-structured interviews and 2 focus-group discussions with stateless Rohingya refugees, including refugee leaders, living in Kuala Lumpur and Penang and the surrounding areas. Interviews with individual experts and with governmental and non-governmental organisations who work on the Rohingya issue also inform this report, as well as on-going and informal discussions with Rohingya refugees over the course of the research. While the majority of interviews took place between July 2012 and December 2012, the report is up-to-date as of June 2014.

Interviews focused on equality and non-discrimination and on patterns of discrimination in relation to five key issues: statelessness and lack of legal status; migration and displacement patterns; liberty and limits to freedom of movement; the right to work and related livelihood issues; and children’s rights. A comprehensive literature review surveying research and information on the Rohingya and on Malaysia’s legal and administrative frameworks relevant to refugees, stateless people and migrants, also informs the report.

A significant research challenge has been the fast evolving situation, driven by political changes in Myanmar; violence against the Rohingya since 2012-2013; and the resultant mass flight of Rohingya refugees. The Equal Rights Trust published an emergency situation report in June 2012
and a follow-up report in November 2012. Furthermore, the researchers responded to the changing context by adapting the research focus and conducting additional research.

1.3. The Rohingya

The Rohingya are an ethno-religious minority group from the Rakhine region, which today is encompassed within the borders of Myanmar and is adjacent to Bangladesh. There is an estimated population of between one and 1.5 million Rohingya in Rakhine State. Much of the population is concentrated in the three townships of North Rakhine State – Maungdaw, Buthidaung and Rathedaung – where the Rohingya are in the majority. Other smaller minority communities of Rohingya are scattered throughout Rakhine State. To a large extent, Rohingya have been contained in Rakhine State, through successive government policies. However, small numbers of Rohingya have settled in Yangon, the capital of Myanmar, and other places in Myanmar.

1.3.1. Ancestral Roots

The Rohingya have historical, linguistic and cultural affiliations with the local populations of Rakhine State, as well as with the Chittagonian people across the border in Bangladesh. The Rohingya are Muslims. They also draw their cultural heritage from diverse Muslim populations from the Persian and Arab world that passed through or settled around the important trading hub along the coast of Rakhine State over the

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7 The Rohingya have long been the majority ethnic group in these three townships, as recorded in Burma’s official Encyclopaedia (1964). The reference is notable as it uses the term Rohingya, which is now officially rejected by the Government of Myanmar.

8 Since the violence of 2012, many Rohingya from these communities have become internally displaced and confined to camps.

9 East Pakistan before Bangladesh’s independence and India before partition.
centuries. The Rohingya trace their ancestral roots in the Rakhine region back several centuries – since long before Myanmar came into existence as the clearly demarcated post-colonial nation-state of today. These roots also go back to long before racial and ethnic categories became settled in accordance with those that are recognised in today’s Myanmar. Despite this, the history of the Rohingya and their Muslim ancestors is today largely rejected in Myanmar. The Rakhine region and its ancient historical sites are of important cultural significance to Myanmar’s Buddhist populations. Historical analyses have, thus, tended to focus primarily on the Rakhine region’s Buddhist past, as opposed to its multi-faith and multi-ethnic past. Histories of the Islamic influences in Rakhine State have largely been viewed with suspicion in Myanmar.

1.3.2. Ethnic Identity

The term Rohingya is derived from the word “Rohang” which is an old name for Rakhine State. Hence the term Rohingya has come to mean

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10 See for example Ba Tha, “Rohingya of Arakan”, Guardian Monthly Rangoon, Vol III no 5, May 1960; and Ba Tha, “Rohingya Fine Arts”, Guardian Monthly Rangoon, Vol VIII, Feb 1961. These articles are significant because they were published in Myanmar’s (then Burma) national magazine and were on the Rohingya in Rakhine (then Arakan) State.

11 There are 135 national ethnic groups that have been recognised by the Government of Myanmar after the promulgation of the 1982 Citizenship Law, based on selective historical records.

12 See, for example, Gutman, P., Ancient Arakan, 1976, available at: http://hdl.handle.net/1885/47122.


Muslim from Rakhine State.\textsuperscript{15} The majority of people in Myanmar and the Government of Myanmar claim that the Rohingya are not from Myanmar but are migrants from Bangladesh.\textsuperscript{16} Thus the term Rohingya has become contentious. The term is neither recognised by the Myanmar government nor much of political society in Myanmar; they instead refer to the population as “Bengali”, a term which suggests the Rohingya are migrants from Bangladesh. “Bengali” is thus strongly rejected by large sections of the Rohingya community. Today, the term Rohingya is not allowed on official documentation including identity cards, household lists and on the census of March 2014.\textsuperscript{17} The international community holds that individuals should have the right to self-identify, including as Rohingya.\textsuperscript{18} But the term “Rohingya” is rejected by the government and population of Myanmar, who associate it with claims to be indigenous, to be recognised as a “national ethnic group” of Myanmar, and consequently to have a right to citizenship.

\begin{footnotesize}
\textsuperscript{15} Interview MYA 8, with a Rohingya activist in Yangon, June 2013.

\textsuperscript{16} For example, speaking at Chatham House in London in July 2013, President Thein Sein stated “we do not have the term Rohingya”. Quoted in Inkey, M., “Thein Sein talks at Chatham House”, \textit{New Mandala}, 17 July 2013.

\textsuperscript{17} Prior to the census of March 2014, the Government of Myanmar agreed in principal that whilst the category “Rohingya” would not be included in the list of Myanmar’s ethnic groups in the census forms, the Rohingya would be permitted to identify as “Other”, and would be allowed to declare their ethnicity to be recorded in the census. A few days before the census, the Government went back on this promise, ostensibly to appease Rakhine protestors, and decided that the Rohingya would neither be allowed to qualify the term “Other” by self-identifying as “Rohingya” in the space provided, nor would they be allowed to leave the term “Other” unqualified. This meant the Rohingya were left with the option of either identifying as “Bengali” or not participating in the census at all. Consequently, the majority of Rohingya did not complete the census. It is unclear what the repercussions of this will be. See UNFPA Myanmar, \textit{Statement: UNFPA concerned about decision not to allow census respondents to self-identify as Rohingya}, 1 April 2014.

\textsuperscript{18} \textit{Ibid.}
\end{footnotesize}
1.3.3. Arbitrary Deprivation of Nationality

The majority of Rohingya in Myanmar today have been deprived of their nationality and are stateless. The arbitrary deprivation of their nationality and the erosion of their legal rights has occurred alongside the denial of their ethnic identity and history in the Rakhine region. This process has taken place over many decades. Following Myanmar's independence from Britain in 1948, the Rohingya were largely allowed to participate in national affairs and contributed both politically and culturally in the nation-building process alongside other citizens of Myanmar. In 1962, Myanmar fell under military rule, which was to last 49 years. During this period, the process of stripping the Rohingya of their identity and rights began. This process continues in the present day.

Whilst the erosion of the rights of the Rohingya is an on-going process, there have been several significant events which have contributed to today's situation in which at least 800,000 Rohingya inside the country have been rendered stateless. The first of these significant events was Operation Nagamin which was launched in Rakhine State in 1978. The stated purpose was to “designat(e) citizens and foreigners in accordance with the law and tak(e) actions against foreigners who have filtered into the country illegally.” During the operation, according to witness' accounts, many Rohingya had their official documentation taken away.

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19 Some examples of this participation in nation-building, evidenced with copies of relevant original documents including lists of Rohingya MPs, Ministers and other political and state actors were compiled by the National Democratic Party for Development for a submission to parliament, entitled Presentation for the native inhabitants (whose faith is Islam) residing in the Rakhine State (Arakan State) as the citizen by law and by natural or birth rights as well as the indigenous national of the Republic of the Union of Myanmar, 4 July 2012 (on file with Equal Rights Trust).


from them by inter-agency teams of inspectors.\textsuperscript{22} There were reports of “brutalities and atrocities waged against the Muslim population.”\textsuperscript{23} The news spread and over 200,000 Rohingya fled the country to newly independent neighbouring Bangladesh.\textsuperscript{24} Mass forced repatriation from Bangladesh followed.\textsuperscript{25} The legal status of the returnees was not reinstated.

Subsequently, the military regime under General Ne Win promulgated the 1982 Citizenship Law depriving the Rohingya of the right to citizenship. Entitlement to citizenship in Myanmar is primarily through membership of the state-defined national races/ethnicities or \textit{Tai Yin Tha}. Prior to 1982, the categories of \textit{Tai Yin Tha} were broadly defined and open-ended. After the 1982 law, a closed list of 135 national races/ethnicities was published and the Rohingya (and a few other minority groups including persons of Indian and Chinese origin) were excluded. Thus they did not acquire citizenship automatically and by right. It must be noted however, that under section 6 of the 1982 Law, persons who were already citizens at the time the law came into force would continue to be so.\textsuperscript{26} Furthermore, the law also provided for “Associate” and “Naturalised” citizenship, the former being for those whose citizenship applications were being processed at the time the 1982 Law was promulgated and the latter being those who are not citizens but can establish that they and their predecessors lived in the country prior to independence. Thus, all

\textsuperscript{22} Interviews MYS 12 and UK 05, with two Rohingya elders living in Rakhine State at the time of Operation Nagamin. Kuala Lumpur, July 2013 and London, March 2014.


\textsuperscript{24} Smith, M., \textit{Muslim “Rohingya” of Burma}, unpublished manuscript, 2005 (on file with the Equal Rights Trust).


Rohingya for whom Myanmar was home should have been able to continue to enjoy/acquire Myanmar nationality either under section 6 of the Act, or as naturalised or associate citizens. However, while most Rohingya would be able to trace their ancestry at least to the colonial period, the lack of adequate documentation, including as a result of previous mass exoduses and discriminatory and arbitrary decision making meant that the vast majority of Rohingya have not been recognised as citizens since. Most significantly, during a nation-wide citizenship scrutiny exercise in 1989, Rohingya who submitted their National Registration Cards (NRC) to the authorities with the hope of receiving new Citizenship Scrutiny Cards (CSC), were denied the new CSCs and their old NRCs were also not returned.

In 1992, the *NaSaKa* was established as an interagency border force by the Ministry of Defence. It was placed under direct control of the military intelligence chief, Khin Nyunt, and was commanded directly from Yangon. With the establishment of the *NaSaKa* came a series of local directives and policies that severely restricted the Rohingya’s movements and rights within North Rakhine State. The Rohingya’s lack of citizenship status in Myanmar became the anchor for an entire framework of discriminatory laws and practices that laid the context for coming decades of abuse and exploitation. These included stringent restrictions of travel outside of North Rakhine State and to neighbouring villages within North Rakhine State, restrictions on marriages and on having children within Rohingya communities, and arbitrary taxation and forced labour. These policies and practices have had a severe impact on both the health and education status of the Rohingya which has disproportionately affected women and children. *NaSaKa* implemented all measures taken towards population control. Fleeing persecution under this law and policy framework, the build-up of military forces in Rakhine State, and the abuses that accompanied them, new waves of Rohingya fled Myanmar.

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27 NRCs were issued under the Residents of Myanmar Registration Act, 1949.

The period following the 2010 election has seen the further erosion of the Rohingya’s rights. Whilst a large proportion of the Rohingya are stateless, the Rohingya have continued to exercise some citizenship rights since independence and before. They have voted in and have had candidates standing in every election since 1936, including the 1990 and 2010 elections. It is unlikely that the Rohingya will be allowed to vote or stand for election in 2015, indicating the further erosion of their rights since the political reforms of 2010.

### 1.3.4. Since the Violence of 2012

The Rohingya have been subject to multiple waves of mass violence since at least 1978. These waves of violence have been perpetrated by a mixture of the Myanmar security forces and groups of civilians, primarily Buddhists from Rakhine State. In June and October 2012, waves of mass violence broke out in Rakhine State, which resulted in death, forced displacement, the destruction of homes and properties, and the loss of livelihoods. More localised outbreaks of violence have continued throughout Rakhine State since 2012. Both Buddhist and Muslim communities in Rakhine State were affected by the violence, but the casualties and victims were overwhelmingly Muslim and mostly Rohingya. Evidence collected by human rights organisations demonstrated that Myanmar security forces took part in the violence and stood by as violence took place.

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29 See above, note 19.

30 Interviews MYA 13 and MYA 15, with Rohingya politicians, Yangon, April 2014.


32 No international investigation into the violence took place. Both government and other figures relating to the violence and related casualties remain under dispute due to the lack of a credible international investigation.

33 See above, note 6.
This violence, together with the economic and social ostracisation of Muslim and Rohingya communities in Rakhine State, lead to the displacement of over 140,000 people into Internally Displaced Person (IDP) camps within Rakhine State. Additionally, there has been a spike in forced migration of Rohingya out of Myanmar, mostly on boats heading for Southeast Asia and beyond. The exact numbers of Rohingya who have undertaken this journey since 2012 are not known, however it is estimated that from June 2011 to May 2012 approximately 9,000 people have travelled in this way; from June 2012 to May 2013, this number is believed to have risen to over 31,000 and it is estimated that during this sailing season, since June 2013, at least 54,000 have undertaken the journey.\footnote{The Arakan Project, \textit{Rohingya Maritime Movements: estimates and trends for departures up to 30 June 2014}, unpublished document, July 2014 (on file with the Equal Rights Trust).} Between June 2012 and May 2014, as many as 2,000 Rohingya are believed to have gone missing at sea.\footnote{Email correspondence with the Director of the Arakan Project, 2014.}

Since 2012, grave concerns have been raised regarding the desperate humanitarian situation for Rohingya and Muslim communities in Myanmar, both within the IDP camps and in their home communities. The health and nutrition status of Rohingya and other Muslim communities is dire. International agencies providing humanitarian assistance to Rohingya have had their efforts hampered by threats and violence against them by local populations, and by restrictions being placed on their activities by the Myanmar government and local authorities.\footnote{See UNOCHA Myanmar, \textit{Humanitarian Lifeline cut following violence against aid agencies in Rakhine}, April 2014.} Since 2012, security grids have been extended to other areas in Rakhine State beyond the three townships of North Rakhine State. Under the state of emergency, restrictions of movement and population control similar to or even worse than those in North Rakhine State have been imposed on other Rohingya populations.\footnote{Interviews MYA 10 – 12 and 14, with UN and INGO staff in Yangon, March and April 2014.} As a result of this escalation in human rights violations targeted at the Rohingya, their widespread and systematic nature, the role...
played by state actors and the impact it has had on the population, the international criminal law framework is emerging as an important and relevant tool through which to address the situation.\textsuperscript{38}

1.3.5. Overseas Rohingya

It is estimated that there are more than one million Rohingya living outside Myanmar, many as migrants or refugees with no legal status. The Rohingya have settled in South and Southeast Asia, the Middle East and beyond. The largest concentrations of Rohingya are found in neighbouring Bangladesh and in Saudi Arabia, with significant numbers in Malaysia, Thailand, India and elsewhere. In addition to the steady flow of Rohingya refugees over several decades, there have been several mass exoduses from Myanmar into Bangladesh and beyond, including in 1978, 1992 and most recently 2012-2013 as a result of mass violence and persecution. Often these Rohingya migrants are not recognised and are not protected as refugees. Instead they are marginalised and excluded. Many live in poverty, often working illegally with no documentation, and are vulnerable to discrimination, violence, arbitrary treatment and exploitation.

1.4. The Rohingya in Malaysia

Although Malaysia is not a party to the 1951 Refugee Convention or its 1967 Protocol, the country has a long history of providing temporary asylum to groups of refugees and asylum seekers.\textsuperscript{39} Such groups include


\textsuperscript{39} Under Article 1 of the 1951 Convention relating to the Status of Refugees, refugees are persons who are unable to return to their country of origin due to a well-founded fear of persecution on the basis of their race, religion, nationality, political opinion or membership of a particular social group. The recognition of refugee status is a declaratory act and the rights of refugees are invoked before their status is formally recognised by a decision-maker. Therefore, we do not view refugees and asylum seekers as two legally distinct categories of person. However in this report the term “refugee” denotes persons who have had their status as a refugee recognised by UNHCR under its mandate (UNHCR conducts refugee status
Filipino refugees from Mindanao during the late 1970s and early 1980s and Cambodian and Vietnamese refugees during the Indo-Chinese refugee crisis in the late 1980s and 1990s. Malaysia also accommodated a small number of Bosnian refugees in the early 1990s, as well as Indonesians from Aceh Province in the early 2000s.

Currently, Malaysia hosts one of the largest urban refugee populations in the world. As of 30 June 2014, some 146,020 refugees and asylum seekers had been registered with the UN High Commissioner for Refugees (UNHCR) in Malaysia: of these, the vast majority (over 135,025) are from Myanmar, of which the two largest groups are ethnic Chins (51,450) and Rohingya (37,850). Other groups include Myanmar Muslims (11,970),\(^{40}\) Arakanese/Rakhine (7,700), Burmese and Bamar (3,600), Mon (5,380), Kachins (4,985), Karen/Kayin (4,645) and Shan (1,634).\(^{41}\) In addition, there are smaller groups of refugees from Sri Lanka, Somalia, Syria, Iraq and Afghanistan.\(^{42}\) Some 70% of registered refugees and asylum seekers are men, and 30% are women; however, this balance appears to be changing with an increase in the number of Rohingya families arriving in Malaysia, as well as Rohingya women coming to marry or join their determination in many countries – particularly those which have not ratified the 1951 Convention), whereas the term “asylum seeker” is used to refer to persons whose claim for refugee status is still pending before UNHCR. This distinction is made only to demonstrate the difference in the experiences and treatment of refugees and asylum seekers in Malaysia in relation to their ability to access basic rights.

\(^{40}\) The category “Myanmar Muslim” includes Muslims from all regions of Myanmar of various ethnic backgrounds, who identify as such. Within this group there are likely to be those who share the same ethnicity as “Rohingya” but who do not identify as “Rohingya”.

\(^{41}\) Interview MYS 20, with UNHCR Malaysia Office, Kuala Lumpur, 12 May 2014 and email correspondence with UNHCR Malaysia Office, 4 June 2014. Note that “Burmese” refers to all persons from Myanmar who have not further identified as belonging to a particular ethnic group, and “Bamar” are those who have identified as belonging to the majority ethnic group of Myanmar.

husbands, particularly since the 2012 violence in Rakhine state.\textsuperscript{43} Children account for approximately 30,850 of the population of registered refugees and asylum seekers.\textsuperscript{44} Of this, as of 31 May 2014, 9,761 were Rohingya children. There have also been an increasing number of unaccompanied minors, including children who entered the country unaccompanied, and those who were separated from their parents as a result of detention.\textsuperscript{45} The breakdown of Rohingya children registered by UNHCR Malaysia is as follows:\textsuperscript{46}

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 5</td>
<td>2,102</td>
<td>2,222</td>
<td>4,324</td>
</tr>
<tr>
<td>6 - 9</td>
<td>829</td>
<td>968</td>
<td>1,797</td>
</tr>
<tr>
<td>10 – 12</td>
<td>514</td>
<td>601</td>
<td>1,115</td>
</tr>
<tr>
<td>13 – 17</td>
<td>749</td>
<td>1,776</td>
<td>2,525</td>
</tr>
<tr>
<td>Total</td>
<td>4,194</td>
<td>5,567</td>
<td>9,761</td>
</tr>
</tbody>
</table>

In addition to the registered population, there is a significant population of refugees and asylum seekers who are yet to be registered with UNHCR. UNHCR estimates this population to be approximately 35,000, of which approximately 15,000 are Rohingya.\textsuperscript{47} However, community based organisations, Rohingya leaders and activists believe that the number is likely to be much higher.

The protection environment for refugees and asylum seekers in Malaysia is made more difficult because of the large number of irregular migrants who have entered Malaysia in search of better economic prospects. It is estimated that there are some four million migrants in the country, of

\textsuperscript{44} See above, note 41.
\textsuperscript{45} Email correspondence with UNHCR Malaysia Office, 26 August 2014.
\textsuperscript{46} Interview MYS 20, with UNHCR Malaysia Office, Kuala Lumpur, 12 May 2014.
\textsuperscript{47} \textit{Ibid.}
which 1.9 million are undocumented and in an irregular situation. Malaysian law does not distinguish between refugees, asylum seekers, and other irregular migrants. Consequently, like other countries in the region, policies towards the Rohingya and other refugees and asylum seekers are focused more on border control, removal and deterrence, and less on protection.

For most Rohingya fleeing persecution and violence, Malaysia is a country of final destination, although some have used the country as a transit point to reach Australia. Rohingya enter Malaysia by land and sea; unlike neighbouring Thailand, Malaysia has generally allowed Rohingya refugees arriving by boat to disembark on its territory. For example, Malaysia’s decision in December 2013 to allow 40 Rohingya asylum seekers who were rescued in the Bay of Bengal by a Vietnamese cargo ship, the MV Nosco Victory, to disembark was commended by the international community. Nevertheless, Rohingya who arrive by boat and are detected by the authorities are subject to mandatory detention until UNHCR is able to access and register them and secure their release.

In addition to these more recent boat arrivals, Malaysia is also home to a large population of informally settled Rohingya who have been in Malaysia for two or three generations. They reside throughout Malaysia, with larger communities in and around Kuala Lumpur, and in other states such as Penang, Johor, Kedah, Kelantan and Terengganu. For years, this population, and particularly those not registered with UNHCR, have been

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49 There is little by way of reliable, comprehensive data on secondary movement from Malaysia.


51 See section 3.2.1 below for further information in this regard.
navigating the insecurities and human rights concerns associated with living and working in a country that considers them to be “illegal immigrants”. Without the right to work and facing significant barriers in accessing health care, education and other basic social services, the Rohingya in Malaysia have been getting by for decades in the informal labour sector, while experiencing constant harassment and the risk of extortion, arrest, detention and in some cases, deportation (which, given the persecution faced by Rohingya in Myanmar, would amount to *refoulement*).\(^5\)

### 1.5. Common Themes and Challenges

One of the advantages of conducting research in several countries has been the ability to identify common trends, themes, issues and challenges. Following are some of the key problems and issues which are faced regionally.

#### 1.5.1. Protracted Statelessness and Lack of a Legal Status

The statelessness and lack of legal status of the Rohingya in all research countries is a common problem; statelessness and discrimination go hand-in-hand and are mutually reinforcing. In Myanmar, the Rohingya have been discriminated against for many decades. The arbitrary deprivation of their nationality as a result of the implementation of the 1982 nationality law and their consequent statelessness was an act of discrimination by

\(^5\) Deportation refers to a state’s removal of a migrant from its territory after the migrant has been refused admission, or if the migrant has lost or otherwise failed to obtain permission to remain on the territory. Deportation is to be distinguished from *refoulement*, which is the act of forcibly returning persons to places where they may face persecution or other serious human rights violations. *Refoulement* also includes the act of sending refugees and asylum seekers to a country that does not guarantee protection for refugees. The principle of non-*refoulement* is a norm of customary international law. In Malaysia, “soft deportations” have been known to take place along the Thai-Malaysia border where refugees, asylum seekers and irregular migrants have been unofficially *refouled*, or deported from Malaysia, often into the hands of smugglers and traffickers. See section 3.2.2 below, for further information in this regard.
Myanmar. Their statelessness has since been used to justify further discrimination both in Myanmar and the countries to which they flee.

None of the countries of flight have ratified the international treaties which protect refugees or stateless persons; thus, the majority of Rohingya who should be recognised and protected as stateless persons and as refugees are not; instead they are treated as irregular, economic migrants. The resulting lack of legal status has a significant impact on their enjoyment of rights including the rights to liberty and security of the person, education, health and an adequate standard of living.

The situation is further compounded by the protracted displacement and statelessness of the Rohingya. With each passing year and each new generation, the disadvantage grows and the impact of malnutrition, illiteracy, lack of access to labour markets and healthcare, vulnerability to arbitrary arrest, violence and abuse, insecurity and forced migration becomes greater. This protracted statelessness significantly impedes their enjoyment of rights, whether in Myanmar or in countries of flight such as Bangladesh, Malaysia and Thailand. While there is general international consensus that Myanmar should grant nationality to the Rohingya and repeal or amend its 1982 Citizenship Law, the international community has been largely silent on the right to a nationality of stateless Rohingya children born in other countries. The extent of this problem is hidden, partly because UNHCR statistics record Rohingya who are in a refugee like situation as “refugees” and not as “stateless persons”, despite the fact that they do not possess a nationality, that their children are born into statelessness and that the majority are not protected either as refugees or stateless persons. The complex disadvantage of the Rohingya has thus been perpetuated over many generations and in multiple countries.

Equally challenging is the impunity with which acute human rights abuses have been inflicted against the Rohingya. Their protracted statelessness and lack of legal status make them easy targets for state and non-state actors alike. The mass violence in Myanmar of 1978, 1992 and 2012-2013, the violent acts committed in the course of the forced repatriation of Rohingya from Bangladesh since 1994, the sometimes fatal Thai “push-
backs”\textsuperscript{53} of Rohingya boat people into the sea in 2009, 2011 and 2013, and past practices in Malaysia of “deporting” Rohingya into the hands of traffickers are all examples of actions undertaken with almost total impunity.

1.5.2. Equality and Non-Discrimination

The pervasive inequality and discrimination faced by the Rohingya is another fundamental challenge that must be addressed both within Myanmar and in other countries. The disadvantage of the Rohingya within Myanmar is entrenched by a system that discriminates against them on the basis of their ethnicity, religion and statelessness. Whilst human rights abuses against many ethnic minorities in Myanmar have been prevalent under military rule and continue until today, the Rohingya have suffered disproportionately. The disadvantage of the Rohingya outside Myanmar stems from their lack of a legal status which is a direct result of, and compounded by, their statelessness. While levels of discrimination suffered by Rohingya in other countries vary both in degree and substance, three factors generally contribute to such discrimination:

- most receiving countries have weak protection frameworks for refugees and often conflate forced migration to escape persecution with economic migration;
- states consistently fail to recognise the Rohingya as stateless, or to respond to their protection needs as stateless persons; and
- states are unwilling to take decisive – or often any - protective action either individually or regionally, as they fear it will become a “pull factor” and result in more Rohingya seeking asylum. This results in a regional “stalemate”.

There is a strong nexus between discrimination and other human rights violations. The majority of human rights abuses against the Rohingya

\textsuperscript{53} “Push-back” refers to the practice of towing boats of refugees and irregular migrants out to sea, often without adequate food and water and in some instances without engines. “Helping on” refers to the similar but more humane practice of intercepting boats at sea, not allowing them to land but moving them on to other countries, often after providing them with supplies.
either have a discriminatory basis or are exacerbated by discrimination. For example, while bonded labour and land grabs were a common practice affecting numbers of people during the Myanmar military regime, the Rohingya of North Rakhine State were and continue to be more vulnerable to these kinds of abuses. Similarly, while poverty is rampant in Cox’s Bazar Bangladesh, the non-registered Rohingya refugees are in a worse position than the general population as they have no legal right to work, and this is exacerbated at times by the Bangladesh government’s refusal to permit the operations of humanitarian actors.

1.5.3. Forced Migration, Trafficking and Smuggling

The majority of Rohingya, lacking documentation and unable to travel freely within Myanmar and internationally, rely on the assistance of smugglers to flee from persecution in Myanmar and also to make the hazardous boat journey from Bangladesh to countries in South East Asia. The smuggling and trafficking networks in the region are one and the same and many Rohingya who start the journey with smugglers end up as victims of trafficking and are forced into bonded labour on Thai and Malaysian plantations and deep sea trawlers. Ties between smuggling/trafficking rings and state authorities (immigration, police etc.) in Thailand and Malaysia in particular have been widely reported.\textsuperscript{54}

It must be noted that as the majority of Rohingya are refugees, the legality of their entry into countries of asylum is irrelevant and consequently, the distinction between trafficking and smuggling should be moot. However, as stated above, the countries concerned do not have strong refugee protection frameworks in place and Rohingya refugees are rarely recognised as such. Consequently, the identification of victims of trafficking has taken on a level of importance in the region which is in itself an indication of the weakness of any existing national refugee protection frameworks.