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Meagan Floyd

Michael Zeller

Jason P. Abbott

University of Louisville, jason.abbott@louisville.edu

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LIVING WITHOUT RECOGNITION

A Case Study of Burmese Refugees in Malaysia

Meagan Floyd, Michael Zeller, and Dr. Jason Abbott



CENTER FOR
ASIAN DEMOCRACY

Living Without Recognition *A Case Study of Burmese Refugees in Malaysia*

Meagan Floyd, Michael Zeller, and Dr. Jason Abbott
University of Louisville

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Living Without Recognition: A Case Study of Burmese Refugees in Malaysia

Malaysia is home to one of the largest refugee populations in East Asia. In August 2014 there were 149,000 refugees and asylum seekers registered with the United Nations High Commissioner for Refugees (UNHCR) in the country of which over 90 percent were from Burma/Myanmar¹. However there are estimated to be an additional 100,000 refugees who have yet to be registered, including 40,000 defined by the UNHCR as stateless.² Among these refugees the largest ethnic group (51,000) come from Chin state in Burma. Other notable Burmese ethnic groups include the Rohingya, the Zomi, Kachin and Mon as well as Muslim Bamar (Burmans). For the most part Malaysia is a transit country for many of these refugees who are looking for the opportunity to resettle in the West. However given both the absence of refugee protection in Malaysian law, and the structural weaknesses of UNHCR in the country, most refugees in Malaysia have been residing illegally in the country for several years.

While Malaysia has ratified a number of United Nations Conventions that protect certain human rights for citizens and non-citizens alike, it is not a signatory to the 1951 United Nations Convention relating to the Status of Refugees. This convention not only enforces norms such as the principle of *non-refoulement*, which prohibits a host country from returning a refugee to the state from which he/she fled, but also demands considerable rights and provisions for refugees. Specifically the Convention stipulates that refugees have the right to work, to

¹ UNHCR Malaysia, 2014, 'Figures at a glance', http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx

² UNHCR, 2013, "War's Human Cost: Global Trends 2013", Geneva, <http://www.unhcr.org/5399a14f9.html>

shelter, and to education. Moreover, the extent of a refugee's rights ought to expand the longer a refugee is forced to remain in the host country, providing both an impetus to final resettlement elsewhere and a safeguard for integration into the society of the host country (should settlement elsewhere prove unfeasible).

Since the Malaysian government has not signed the Convention, refugees and asylum seekers are therefore 'lumped together' as illegal immigrants under the 1959/1963 Immigration Law. Countries such as Malaysia who chose not to comply with the Convention effectively condemn refugees to a state of enhanced insecurity and interminable suspension from which there is little hope of extrication. The reality of this precarious position in which most Burmese refugees in Malaysia inhabit a precarious grey zone between legality and illegality provided the impetus for this research project. In particular it sought to address a number of conceptual and descriptive issues including:

- Effects upon refugees in a country that has not signed the 1951 United Nations Convention on Refugees;
- Economic, political, legal, and social conditions of Burmese refugees in Malaysia (and the Chin in particular);
- Challenges faced by urban-based vs. rural-based refugees;
- Strategies adopted by refugees to improve their conditions and the actors that aid them in that process;
- Role of the 'host' government and its impact upon refugee lives and experiences.

In terms of broader applicability, since many refugee populations live in conditions similar to that of the Chin in Malaysia, the strategies used by refugees and NGOs to enhance refugee life in Malaysia may provide salutary lessons and potential solutions or models to groups in similar situations.

Research Project and Initial Findings

The research for this project principally took the form of qualitative interviews with refugee organizations, NGOs involved in providing services to refugees, representatives of UNHCR, representatives of the Malaysian government and Burmese refugees themselves. Snowballing techniques were used to broaden the interview base, with interviews either semi-structured or unstructured. The latter technique was used in many of the refugee interviews in order to develop a rapport between the interviewer and their subjects who often detailed distressing or painful experiences. In total over 40 interviews were conducted by the researchers over a period of three weeks.

The principal institution tasked with addressing refugee affairs/issues in Malaysia is the United Nations High Commissioner for Refugees (UNHCR). The organization's chosen mandate and its exclusive, and largely arcane, relationship with the Malaysian government, positions it as the gatekeeper of refugee affairs. As one representative explained, "we exist here to deal with [refugee] populations because it is needed by the Malaysian government."³ Yet that existence is in absentia of the legal framework traditionally associated with UNHCR's operations: the 1951 Convention relating to the Status of Refugees and the concomitant 1967 Protocol.

³ Senior External Relations Officer, UNHCR Malaysia. Interviewed by Michael Zeller and Meagan Floyd, Kuala Lumpur, 18 July 2013.

Indeed successive Malaysian governments have refused to accede to those documents because of the obligations placed on states that host refugees, including: the right to housing, education, work, and protection from expulsion from the country.⁴ Thus instead of functioning with an amenable state, and the broad mandate of the Convention and Protocol, UNHCR operates in Malaysia by virtue of an unspecified ‘goodwill agreement.’ This agreement began as an ad hoc response to the exodus of Vietnamese from South Vietnam, Cambodia and Laos following the conclusion of the Vietnam War⁵. Confronted by refugees arriving by boat the Malaysian government invited UNHCR to coordinate the resettling of the so-called Vietnamese boat people. However, the ad hoc nature of this agreement remains problematic. As one NGO representative remarked with exasperation, “What is it; is it a gentleman’s agreement; is it written down somewhere? We have no idea.”⁶ Nevertheless, despite the absent legal force of the Convention and Protocol, UNHCR’s Malaysia office still uses the prescriptions of those documents to guide their actions.⁷

The traditional legal framework afforded the UNHCR enshrines refugees’ right to security, education, employment, healthcare, and other provisions. These duties correspond to two categories of UNHCR’s operations: protection and programming.⁸ The first category focuses on resettling refugees and ensuring their security while in the country of transit. This work encompasses principally asylum-seeker registration and conferral of refugee status determination (RSD). RSD grants refugees the protection of UNHCR and benefits such as

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/3b66c2aa10.html>

⁵ Yuk Wah Chan (ed), 2011, *The Chinese/Vietnamese Diaspora: Revisiting the Boat People*, London, Routledge.

⁶ Maliamauy, Katrina Jorene, Interview 2 August 2013.

⁷ Senior External Relations Officer UNHCR Malaysia, Interview 18 July 2013.

⁸ Ibid.

discounted medical treatment. The RSD process, however, is lengthy and sometimes takes years to complete. Asylum-seekers must submit to a detailed interview with an expert on their country of origin, who assesses the validity of their claim to refugee status. The second category of UNHCR operations, programming, aims to service refugees' needs while in the country of transit. In countries party to the 1951 Convention and 1967 Protocol these needs are provided within purpose-built refugee camps. Since the UNHCR in Malaysia is not given the power to create camps, it must assist refugees by partnering with operational NGOs and community organizations, supplying funds, and building capacity within refugee communities in order to "help [refugees] help each other."⁹ The UNHCR uses capacity building projects like the Social Protection Fund (SPF) to facilitate this objective. Driven by applications on the basis of community need, the SPF offers grants of up to 12,000 RM (approximately \$3,000). Since SPF's inception in 2009 over 300 projects throughout Malaysia have received funding, including education centers, computer labs, women's groups and livelihood training initiatives. Since the Malaysian government has effectively renounced any responsibility for refugees, UNHCR in Malaysia has adopted the broadest interpretation of its responsibilities. Thus in addition to its core obligation of registering refugees, UNHCR also functions as a donor and operator organization. Consequently, through its own acquiescence UNHCR in Malaysia bears the massive onus of consummate care for refugees and simultaneously lacks the legal support traditionally concordant with its operation.

The massive task of protecting and providing for all the refugees in Malaysia appears even more unrealistic given that there are close to a quarter of a million of them. With a

⁹ Ibid.

casework staff of only two dozen, UNHCR aims to register one thousand refugees per month.¹⁰ Though daunting, such a rate of registration has been achieved, indeed surpassed, by UNHCR during periods of so-called ‘mobile registration.’ In 2009, realizing the country held roughly equal numbers of registered and unregistered refugees (approximately 45,000), UNHCR conducted a mobile registration exercise. Registration can only occur at a UNHCR facility, which in Malaysia is the somewhat remote headquarters in Kuala Lumpur. However, during mobile registration, UNHCR rented small offices within, or near, major refugee communities and made the process more readily accessible. At the end of the eight-month mobile registration exercise in 2009, more than 40,000 refugees were newly registered and thereby accorded greater security and welfare assistance.

Between 2009 and late 2013 the number of unregistered asylum-seekers rose to nearly 50,000, prompting a new period of mobile registration that caused many CBO and NGO representatives to wonder why mobile registration is not an ongoing operation. As one representative remarked: “I know that UNHCR has got its hands full and there’s a lot of things, but [registering refugees] is your mandate.”¹¹ Some expressed concern that UNHCR is trying to function in too many capacities, especially when independent actors are available to fill those roles. Within UNHCR, some bemoan the notion that all responsibility rests solely with that organization: “It gets harder to advocate [for refugees] when UNHCR is seen as the main agency responsible for [refugee affairs], whereas there’s a state responsibility, and there’s a responsibility for civil society and individuals as well.” Yet it is difficult to argue that the UNHCR did not invite this perception by attempting to fill most of the lacunae created by Malaysia’s non-signatory status.

¹⁰ Senior External Relations Officer UNHCR Malaysia, Interview 18 July 2013.

¹¹ Devaraj, Sarah, Interview 29 July 2013.

The UNHCR is a vital presence in refugee affairs in Malaysia. However, an unbalanced caseworker-to-refugee ratio, compounded by the continuing influx of refugees, the rapid rate of staff turnover, an ambiguous relationship with the Malaysian government, and an immense self-imposed operations assignment, encumber UNHCR's activity, degrades its efficacy, and therefore undermines its credibility with NGOs and refugee populations.

The Role of Non-Governmental Organizations (NGOs) and Community-Based Organizations (CBOs)

Over the past two decades a number of non-governmental organizations (NGOs) formed in Malaysia to address aspects of the plight of the Chin, Burmese, and other refugees in Malaysia. While the purposes of the groups vary widely, with some having refugee affairs as only one facet of their interests, they nonetheless collectively represent the vanguard of refugee advocacy and activism in Malaysia. In the absence of assistance from the government, these organizations are the tools refugees use to strive for security and the protection of their rights, educate themselves and even provide their basic health needs.

We note a couple of important distinctions between NGOs and community-based organizations working with refugees in Malaysia: namely, the manner of their activity, and the basis of their operation. NGOs act in one of two ways: as operator or as donor. Organizations typically work directly with refugee populations, maintaining and staffing offices in-country, or else act as financiers (without directly engaging the displaced populations) of operational NGOs and their efforts to provide for refugees. Operational NGOs are either independent of the refugee communities, staffed by citizens or lawful residents of Malaysia, or else based within

those communities and comprised of refugees and asylum-seekers. This latter type we will refer to hereafter as community-based organizations (CBOs).

In Malaysia, especially in Kuala Lumpur, a collection of operational NGOs and CBOs protect and provide for Chin and other Burmese refugees. Aided and sometimes sustained by donor NGO support, these operators attempt to perform functions traditionally assigned UNHCR, or to the government of the state in which refugees seek asylum. Distilling the successes and identifying the failures and shortcomings of these actors first requires an examination of the specific actors involved, including their assessment of the current refugee situation.

Donor Organizations

The massive transformative potential of civil society, especially when connected to a global advocacy network, is the subject of much academic debate.¹² Since civil society networks are often actuated by ideological or clear policy objectives within specific states, domestic NGOs often busy themselves with activism, whereas international NGOs and foreign governmental agencies adopt the posture of donors (often to the domestic NGOS). A manifestation of this general dynamic surrounds the refugee situation in Malaysia.

Many operational NGOs in Kuala Lumpur receive grants or other assistance from foreign donor organizations. The Open Society Institute, the National Endowment for Democracy (NED), DanChurchAid, various foreign governmental/quasi-governmental

¹² See especially: Keck, Margaret E., and Kathryn Sikkink. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithica: Cornell University Press, 1998.

agencies, and foreign embassies in Malaysia are the most prominent donors to refugee-related projects. The NED, for example, provide \$45,000 a year to *Lawyers for Liberty*, a nonprofit human rights and legal reform advocacy group that has offered legal representation to refugees in detention.¹³ Additionally, foreign donors occasionally provide other forms of assistance, usually in the form of training and efficacy improvement. The International Republican Institute branch in Malaysia, itself a beneficiary of NED funding, conducts programs on improving “communications and messaging strategies to more effectively raise public awareness on issues of national interest.”¹⁴ Several NGOs have utilized such training services, including *Tenaganita*, Malaysia’s foremost labor and migrant rights advocate. Although support from donor NGOs has declined in recent years their resources still sustain several NGOs working with refugees in Malaysia.

Independent Operational Non-Governmental Organizations (NGOs)

Operational non-governmental organizations in Malaysia function with a degree of detachment from refugees and their communities. Casework forms one component of their operations, balanced with advocacy work. Most NGOs working with Burmese refugees in Malaysia were founded with a specific normative agenda or policy concentration, of which refugee needs/rights were naturally related. Approximately twenty organizations in Malaysia devote significant amounts of institutional energy to refugees or refugee affairs. Nearly half of these maintain dedicated operational units for refugees, while others lobby and offer services in the interest of the general population (including refugees). Human rights, migrant labor issues, and healthcare represent the most common concentrations. Among these, *SUARAM*, or Suara

¹³ “Malaysia.” National Endowment for Democracy. <http://www.ned.org/where-we-work/asia/malaysia>.

¹⁴ “Malaysia.” International Republican Institute (IRI). <http://www.iri.org/countries-and-programs/asia/malaysia>.

Rakyat Malaysia ('Voice of the People of Malaysia'), is the country's foremost human rights group; *Tenaganita* is the most prominent labor rights organization; and, *Health Equity Initiatives* (HEI) provides medical care and training to thousands of refugees.

The supplies of resources and funding used by these and other organizations vary. A significant proportion of these NGOs operate on a volunteer basis, which, in conjunction with the aforementioned support from donor organizations, is sufficient for the operation of some NGOs, like *Tenaganita* and *HEI*. SUARAM and other groups, however, employ charity drives to bolster their operating budgets. The ratio of funding between donor organizations and individual donations differs from group to group. In the case of SUARAM, the internal fundraising base is broad and patronized by major political figures and parties. Thus, with a relatively secure funding system, SUARAM can, and does, exert more influence on a broader range of issues.

SUARAM's refugee desk focuses on police harassment and extortion. Within Malaysia there is a widespread perception of the Burmese as troublemakers.¹⁵ This perception, though largely unfounded, is perpetuated by sporadic interethnic brawls and violence among the Burmese. This reputation, in addition to their illegal status, serves as justification for the harsh treatment of refugees by the police. To combat police abuse, SUARAM created an anonymous reporting system for refugees. SUARAM's previous attempts to seek redress, by complaining to police commanders, were rebuffed for a lack of specific and first-hand accounts.¹⁶ Now,

¹⁵ Poh Yang, Yeo, 2007, "Managing the Refugee Issue", *The Malaysian Bar*, February 6, http://www.malaysianbar.org.my/press_statements/press_release_managing_the_refugee_issue.html

¹⁶ Davaraj, Sarah, Interview, 29 July 2013.

CBO officers and community leaders direct refugees to SUARAM, where they can detail their encounters anonymously. SUARAM in turn submits complaints to police. Since its inception in late 2012, the reporting system coincided with small but consistent decreases in police harassment compared with the previous year.¹⁷

In the related legal issue of migrant labor, *Tenaganita's* Refugee Action Program aims to reduce workplace exploitation of refugees. A program officer stressed that the greatest difficulty lies in the dearth of legal structure: “there is no legal framework protecting refugees in Malaysia.”¹⁸ Consequently, refugees either have the thin protection of UNHCR registration, or are completely exposed. *Tenaganita* attempts to bolster refugee communities by working with CBOs, training refugees on their rights, and petitions on their behalf. In their advocacy role, *Tenaganita* aims to “close the distance between [refugee] communities and policy advocates,”¹⁹ and therefore attempts to inform their lobbying agenda with direct input from refugees. Most prominently in 2012, *Tenaganita* advocated the passage of a law that would allow immigrants to work. Since the majority of refugees in detention were arrested for illegal employment, this could significantly decrease the rate of imprisonment and deportation of refugees. *Tenaganita's* labor advocacy thus accords with SUARAM's campaign against police abuse. In this manner there exists a natural complementary overlap of goals among groups working on refugee affairs.

In addition to difficulty with law enforcement, refugees have limited options for their healthcare needs. Essentially, the system in Malaysia expects “people without legal status to be

¹⁷ Ibid.

¹⁸ Maliamauv, Katrina Jorene, Interview 2 August 2013.

¹⁹ Ibid.

self-reliant... to get healthcare when doctors exclude them for their lack of legal status.”²⁰ One of the few organizations servicing refugees’ healthcare needs is Health Equity International (HEI). Although it provides assistance for general healthcare, referring most injury or physical illness cases to two not-for-profit medical clinics in Kuala Lumpur²¹, HEI concentrates on mental health, and is practically the only source of treatment for refugees with mental illnesses. HEI provides counseling and psychiatric care for 3-4,000 patients per year and medical training to community members, NGO employees, and UNHCR caseworkers.²² Every two months, HEI meets with refugee community leaders to share information about current conditions in the country as well as to get feedback about the practical application of their training.

Community-Based Organizations (CBOs)

The actors most closely associated with Burmese refugees in Malaysia are two dozen CBOs that represent the various ethnic groups seeking asylum in the country. The Chin community, which constitutes the single largest refugee group in the country, is serviced by six CBOs: the Alliance of Chin Refugees (ACR), the Chin Refugee Committee (CRC), the Falam Refugee Organization (FRO), the Highland Chin Community (HCC), the Chin Student Organization (CSO), the United Learning Centre (ULC) and the Zomi Association of Malaysia²³. Taken together, the memberships of these CBOs encompass the bulk of the Chin population in Malaysia.

²⁰ Verghis, Sharuna. [Director of Health Equity Initiatives.] Interviewed by Michael Zeller, Kuala Lumpur, 25 July 2013.

²¹ Ho, Wai Ling. [Case Manager – Health Equity Initiatives.] Interviewed by Michael Zeller, Kuala Lumpur, 1 August 2013.

²² Verghis, Sharuna, Interview 25 July 2013.

²³ Although Zomi community leaders stressed that despite historical connections with the Chin state, and frequent inclusion in that ethnic classification, the Zomi are a

Annual membership dues are the primary source of funding for these CBOs, which range from 30 ringgit (approximately \$10) to 100 ringgit (approximately \$31). Discounts are offered for family memberships and the disadvantaged. Most of the CBOs receive additional funds, typically from Chin church communities in resettlement countries, as well as from UNHCR. In the latter case, support is confined to CBO educational programs. For example, UNHCR often provides students with distinctive blue UN backpacks, in effect furnishing them with something that has the somewhat protective ‘UNHCR’ label. Additionally, UNHCR awards CBO schools compensation for teachers on the basis of their enrollment size. For some groups, the limited provisions by UNHCR are the only source of supplemental funding.

Most Chin community groups are divided into a series of operational departments. In the case of the CRC, for example, there are nine departments:²⁴

1. Registration – responsible for enrollment of new members.
2. Information – fact-finding and record keeping regarding police and RELA²⁵ raids and harassment, Chin community life and demographics, etc
3. Healthcare – accompanies members to hospitals and clinics, helps arrange payment of medical fees (sometimes including reimbursement from UNHCR).
4. Protection and Intervention – dealing with arrests of members, often working with the UNHCR to prevent deportation and secure their release.

distinct ethnic group. Khai, Hau Suan. [President of Zomi Association of Malaysia (ZAM).] Interviewed by Michael Zeller, Kuala Lumpur, 30 July 2013

²⁴ Chin Refugee Committee (CRC). *2012 Annual Report*. Simon Sang Hre. Kuala Lumpur: Chin Refugee Committee. 2013

²⁵ RELA is the acronym for Malaysia’s paramilitary civil volunteer force (Katan, Relawan Rakyat Malaysia) whose main duty is to check the documents and immigration permits of foreigners in Malaysia.

5. Embassy and Mission – working with embassies and concerned state agencies of resettlement countries to process the paperwork of eligible refugees, most frequently the U.S. Embassy and Department of Homeland Security, the Australian High Commission, the Royal Norwegian Embassy, and the Royal Danish Embassy
6. Women and Children Care – operate social welfare programs, including daycare, shelters, and job skills workshops for women.
7. Social and Public Relations – liaising with media and community visitors, and organizing inter-community events.
8. Employment – assisting members’ search for employment and negotiating wage disputes.
9. Office Management – providing clerical service and maintaining the proper functioning of the CRC office.

This organizational structure is largely mirrored by the other general-service CBOs. The educational CBOs, in contrast, have more basic structures. CSO has a rudimentary school configuration and is presided over by a small executive committee. One teacher alone operates the ULC. In most of these departments translation services are a major feature since most refugees do not speak Malay and thus cannot access many domestic services themselves. Furthermore, the 56 dialects of the Chin state often make communication between refugees very difficult. CBOs therefore fill a pivotal role in translating for their members.

The areas of life that provide the greatest challenge to the refugee population dictate the work of these CBOs: security, health, and registration. Police, RELA officers, and thieves posing as law enforcement, all of whom prey on refugees’ ignorance of Malaysia and of their own rights, constantly threaten refugees with harassment, extortion, and outright robbery.

Again, refugees have limited legal protection, a situation compounded by the dearth of legal framework for refugees and asylum-seekers in Malaysian law. However arrest, detention, and deportation of refugees in Malaysia often has little to do with the lack of legal status. Instead corrupt officers and state officials take advantage of the legal vacuum to extort money from refugees. Indeed CBOs dedicate entire departments to confronting this recurrent abuse. “They are arresting people, our members every day,” said the Director of CRC.²⁶ Refugees are arrested or accosted by police “because their lack of knowledge and lack of [Malaysian] language.”²⁷ If possible, imperiled refugees call caseworkers from their CBO to intervene as translators, but often to little effect. The Malaysian government’s classification of refugees not registered with UNHCR as “illegal immigrants” deprives many Chin of any defense against police raids which often result in arrest or in the extortion of cash, cell phones, or other valuable possessions.

Both the constant vigilance of avoiding police and robbers and realities such as dangerous and low-wage employment endanger refugees’ physical and mental health. “Daily, sometimes we have four or five or more” members in need of medical treatment, stated the CRC medical coordinator. Each CBO organizes at least one medical service for minor health concerns. ACR, for example, runs a twice-weekly clinic with volunteer doctors and nurses. Major injuries and illnesses are referred to a hospital, where the costs of procedures are typically well beyond the capacity of refugees to finance and where they run the risk of being reported to the police. Representatives from HEI recounted instances of a Kuala Lumpur hospital reporting

²⁶ Thawng, Hniang Cung. [Director of Chin Refugee Committee.] Interviewed by Michael Zeller, Kuala Lumpur, 23 July 2013.

²⁷ Khai, Hau Suan, Interview 30 July 2013.

undocumented refugees to immigration authorities.²⁸ With even the remote possibility of detention and deportation, reluctance of refugees to seek medical care is unsurprising, but nonetheless constitutes a precarious situation for a population with disproportionately poor health.

Although it receives little attention, the significant number of refugees with mental illnesses is unsurprising given the significant stress of their life in Malaysia. A study by HEI found that over two-thirds of Burmese refugees (the Chin most prominent among this population) had symptoms of depression and anxiety.²⁹ Of those surveyed, 14.1 percent and 28 percent exhibited symptoms of severe depression and severe anxiety respectively.³⁰ Chin and other Burmese-ethnic CBOs have come to rely on medical professionals employed by NGOs for mental health services.

To a certain extent the two aforementioned difficulties are a symptom of the third, UNHCR registration. CBO leaders uniformly list UNHCR registration among their greatest challenges. Most CBOs exert a disproportionate amount of resources on unregistered members. This unequal distribution reflects the benefits associated with registration—including a decreased risk of arrest and deportation, discounted medical service, and access to a host of valuable resources—which corresponds to a healthier and more secure life in Malaysia.

²⁸ Verghis, Sharuna, Interview 25 July 2013.

Ho, Wai Ling, Interview 1 August 2013.

²⁹ Health Equity Initiative. *Forced Labor, Human Trafficking, & Mental Health: The Experiences of Refugees and Asylum Seekers in Malaysia*. By Sharuna Verghis, Xavier Pereira, Leo Fernandez, and Avyanthi Azis. Kuala Lumpur: HEI, 2012: 16.

³⁰ Ibid.

Unfortunately, approximately one-third of Chin are not registered with UNHCR³¹. That proportion is consistent with the wider refugee population in Malaysia, representing about 16,000 unregistered Chin and 49,000 unregistered asylum-seekers in the entire country.³² The vast majority of this exposed population has little hope of receiving UNHCR registration. Officers in CBOs reported that, despite their assertions to the contrary, UNHCR was not registering Burmese refugees (except for the Muslim Rohingya) prior to the mobile registration drive in September 2013.³³ A representative from SUARAM offered more detail on the matter: “...what UNHCR is saying now: unless [refugees] are having health issues or they’re arrested, they will not be registered, so everyone will be willingly getting arrested because you know once you get arrested you will be registered...[UNHCR says they are still registering] anyone who comes to Malaysia, but those working with refugees they will tell you ‘no,’” this is not the case.³⁴ These stories of refugees hazarding their lives for the possibility of registration (and thereby some amelioration of the daily pressure they feel) is alarming but predictable, given UNHCR’s unique position. While CBOs in Malaysia have succeeded in filling voids traditionally occupied by UNHCR, it is UNHCR alone which can confer the legal status of refugee on individuals—a status that, despite their non-recognition of relevant international

³¹ Prior to mobile registration in September 2013. Figures true when interviews conducted,

³² “Figures At A Glance.” UNHCR - Malaysia. http://www.unhcr.org.my/About_Us_@-Figures_At_A_Glance.aspx

³³ Thawng, Hniang Cung and Kheng Lawt. [Coordinator and Secretary – Chin Refugee Committee (CRC).] Interviewed by Michael Zeller, Kuala Lumpur, 23 July 2013.

Ngura, Ricky Kap Lian. [Chairman of Alliance of Chin Refugees (ACR).] Interviewed by Michael Zeller, Jason Abbott, and Meagan Floyd, Kuala Lumpur, 16 July 2013.

Executive Committee. [Falam Refugee Organization (FRO).] Interviewed by Michael Zeller, Jason Abbott, and Meagan Floyd, Kuala Lumpur, 17 July 2013.

Khai, Hau Suan, Interview 30 July 2013.

³⁴ Devaraj, Sarah. [Project Coordinator – SUARAM.] Interview by Michael Zeller, Kuala Lumpur, 29 July 2013.

agreements, the governing regime in Malaysia largely acknowledges and accepts as valid. In an environment where non-existent legal norms and allowances have handicapped UNHCR, the CBOs offer essential services traditionally under the purview of the UN and host government.

Collaborative Bodies

In addition to the individual activity of CBOs and NGOs, numerous forums for collaboration exist, such as the Migrant Working Group, the Malaysian Trades Union Congress, and the Asia Pacific Refugee Rights Network. These coalitions typically focus on joint advocacy work and call attention to news relating to refugee, migrant, and labor affairs. Most collaborative bodies have no major operational units. Although they may have potential for more substantive work, most of their activity centers on releasing joint press statements. However, one exception among the several joint ventures is the Coalition of Burmese Ethnic in Malaysia (COBEM).

COBEM is comprised of representatives from several of the major CBOs and has significant operational duties. The constituent ethnicities are derived from Burma's 1947 Panglong Agreement, an agreement between the main ethnic minority groups of Burma and the dominant Bamar ethnic group on autonomy within an independent Burma. Those ethnicities are: Arakan, Chin, Kachin, Karen, Karenni, Mon, and Shan. While this notably excludes the Muslim Rohingya, COBEM representatives are quick to admit they share the same challenges: "Frankly speaking, we face the same problems [as the Rohingya.]"³⁵ Representatives of COBEM expressed a desire to incorporate the Rohingya, but several difficulties, not least the

³⁵ Coalition of Burmese Ethnic in Malaysia (COBEM) representatives. Interviewed by Michael Zeller, Kuala Lumpur, 24 July 2013.

problem of establishing trust between them, have prevented that step.³⁶ Nevertheless, COBEM does undertake action for the general benefit of refugees in Malaysia. Most importantly, COBEM operates as a multi-directional channel of information. The UNHCR and several NGOs interact with this body in order to gather information from, and disseminate information to, the individual CBOs and their communities. In addition to this vital function, COBEM coordinates joint activities among CBOs, most frequently temporary medical clinics and cultural events. Thus, COBEM exemplifies the potential of collaborative bodies.

Though nascent or undeveloped in many ways, the activity of collaborative bodies represents an important aspect of the network of civil society actors servicing refugees in Malaysia. These entities formalize connections between those groups and provide static modes of exchange and cooperation. Searches for more effective means of advocacy and activism may drive civil society actors to these formalized collaboration structures since civil society actors and NGOs provide the overwhelming majority of services accessed by refugees. Individually and in collaborative bodies, they are virtually the only advocates for refugee rights active in Malaysia. Their aggregate services and lobbying capacities play a vital role in the daily lives and long-term subsistence of refugees in Malaysia.

Specific Challenges Facing Refugees in Malaysia: Refugee Voices.

Despite the above, refugee experiences reveal the failure of domestic and international agents to provide lasting security and adequate basic services for refugee communities. The Chin families interviewed for this research consistently identified three areas as the biggest challenges to refugee life in Malaysia: education, security, and UNHCR. While refugees with children were greatly concerned by the lack of any formal education, threats to security posed a pervasive

³⁶ Ibid.

community problem regardless of familial status. Further, while the presumed goal of the Chin living in Malaysia is third-country resettlement, the refugees interviewed identified confusion and distress surrounding UNHCR procedures and the resettlement processes. Through individual refugee experiences and testimony, the models enacted by the Chin to resolve the aforementioned problems and the barriers perpetuating their struggles in the community are explored below.

For Chin refugees, flight to Malaysia requires assimilation into an urban society vastly different than the rural agrarian life left behind. Upon arrival in the secondary country, the Chin must develop new employment skills, attempt to master a new language, and navigate thick layers of UNHCR bureaucracy. This transition is often facilitated by the community-based organizations discussed above which act as liaisons in navigating a path to self-sufficiency in Kuala Lumpur. When asked about organizations (excluding UNHCR) that have assisted refugees since arriving in Malaysia, 86 percent of Chin families interviewed responded solely with a CBO. While most undoubtedly receive aid from other civil society actors, only one interviewee³⁷ could identify an organization other than a CBO that had helped her in Malaysia. Arrays of NGOs are present but it is CBOs the refugees immediately recognizes as their partners in the country.

Most families seeking asylum in Malaysia attempt to register as refugees with UNHCR in a timely manner. Though the Malaysian government does not formally recognize refugee status, a UNHCR card affords a layer of protection from police and immigration forces in the country. One woman detailed the heightened level of threat to her personal security

³⁷ Refugee 4. Interview by Meagan Floyd, Kuala Lumpur, 20 July 2013.

without the internationally recognized documentation explaining, “Without card I am always sneaking and looking.”³⁸

Beyond a perceived layer of protection, the card provides a 50 percent discount on medical treatment in Malaysia. Necessary medical treatment is often unattainable for undocumented Chin refugees. One young mother detailed the harrowing wait for a UNHCR card. Her nine-year-old daughter desperately needed a heart operation but treatment was firmly out of reach without the UN discount.³⁹ Malaysian hospitals, recognizing the financial position of the Chin, reportedly refuse to treat undocumented refugees. One man gingerly presented his broken leg wrapped not in a firm cast, but in layers of dirty gauze. He explained that the hospital turned him away because he had not yet been recognized by UNHCR. With assistance from his CBO, he had been contacting the UN for months but had yet to receive a response.⁴⁰

The path to UN refugee status determination is lengthy and confusing, requiring numerous appointments and detailed interviews. Many Chin families recounted waiting years prior to receiving official recognition as refugees. Of those families interviewed, 76 percent were recognized by UNHCR as refugees. Though the sample size is limited, this statistic is consistent with other published reports placing UNHCR registration of the Chin in Malaysia at 74 percent.⁴¹

³⁸ Refugee 9. Interview by Meagan Floyd, Kuala Lumpur, 20 July 2013.

³⁹ Ibid

⁴⁰ Refugee 20. Interview by Meagan Floyd, Kuala Lumpur, 29 July 2013.

⁴¹ International Rescue Committee. *In Search of Survival and Sanctuary in the City: Refugees from Myanmar/Burma in Kuala Lumpur, Malaysia*. December 2012. p29

The number of registered refugees residing in Malaysia increased substantially from 2009 to 2010. This growth is largely credited to a mobile registration exercise operated by UNHCR discussed above. Of the individuals holding UNHCR cards as of August 2013, 60 percent were registered during mobile registration. At the close of mobile registration in 2010, the Chin cited renewed difficulty registering with the UN. One refugee who fled to Malaysia in 2008 characterized his timing as “lucky.”⁴² He continued, “The UN has not registered since 2011 now.”⁴³ Multiple interviews reported that after 2010 the only Chin allowed to register were those found in legal detention or living with a severe medical condition. Though UNHCR officials in Kuala Lumpur denied such stipulations, the data collected supports aforementioned rumors. A study from the International Rescue Committee reported that 93 percent of Burmese families who arrived in Malaysia in 2012 were not registered by UNHCR.⁴⁴ Of families arriving in Malaysia after March 2010, only three successfully received refugee status determination – one with urgent medical needs and one found in a detention center. In the latter case, the 32-year-old man was arrested crossing the Thai-Malaysia border in November 2010 and transported by authorities to a prison camp. He considered his arrest a fortunate occurrence as UNHCR officials found him in detention and promptly granted him refugee status. “Maybe this was luck. I missed mobile registration.”⁴⁵ Some Chin still without official recognition dismissed the idea of obtaining a UNHCR card altogether. One refugee, a 22-year-old female, explained that she had not attempted to visit the UNHCR because, “It is very hard to get a UN card now. It is not good for time I could be working to stand in the line.”⁴⁶ Her sentiment towards the current registration situation was echoed in numerous interviews. The seemingly

⁴² Refugee 17. Interview by Meagan Floyd, Kuala Lumpur, 23 July 2013.

⁴³ Ibid

⁴⁴ International Rescue Committee. p29

⁴⁵ Refugee 18. Interview by Meagan Floyd, Kuala Lumpur, 23 July 2013.

⁴⁶ Refugee 14. Interview by Meagan Floyd, Kuala Lumpur, 23 July 2013.

futile attempt to gain refugee status determination wastes precious time in the fight for survival in the city.

Many Chin alleged that delays in registration were now due to an ethnic preference towards the Rohingya. One mother reported waiting over two years for the UN to call her and her children for a registration interview; the woman became emotionally distressed discussing UNHCR processes. “Only Rohingya. No Chin, no Kachin, no Karen. 2010 March was last registration... UNHCR will not register. Registration is slow and they do not register Burmese. I cannot think this. I will not think of going to Myanmar.”⁴⁷ With no option to return home and growing anxiety there may be no way forward, “Everyone is psychologically depressed. Resettlement is slow.”⁴⁸

Perched high on a hill on the outskirts of the city, the UNHCR office is located far from the Chin communities of Kuala Lumpur. Accessing the office creates a network of challenges for refugees attempting to gain official recognition or third-country resettlement. The building is unreachable by public transportation and refugees are forced to spend precious resources to hire a taxi. Like other local people, taxi drivers take advantage of the Chin’s lack of legal status in the country. “The UN is confusing. Far away and I do not know what I do now,”⁴⁹ concluded one young woman recounting her traumatic attempt to reach the UNHCR office. Desperate to join her husband in Australia, she worked overtime for weeks to save money for the taxi fare to reach the building and begin the resettlement process. A few miles into the ride, the driver pulled over, locked the doors, and demanded 300RM (approximately

⁴⁷ Refugee 9, Kuala Lumpur, 20 July 2013.

⁴⁸ Refugee 10. Interview by Meagan Floyd, 20 July 2013.

⁴⁹ Refugee 16. Interview by Meagan Floyd, 23 July 2013.

\$100). The woman frantically offered all she had but it was not enough. The driver abandoned her and her infant son on the side of the road. The altercation caused her to miss her appointment and attempts to reschedule were ignored.

Even the Chin living in Malaysia as documented refugees experience stress caused by the extensive maze of UNHCR operations. The Chin Refugee Committee documents sources for anxiety in the community. For registered refugees, interactions with UNHCR – especially those interactions occurring at the UN office, were a frequent source of anxiety.⁵⁰ Documented families posed questions regarding resettlement following official registration; many had completed multiple medical screenings and interviewed with third-country embassies. “All here is confusing and not fair. The UN and excuses are not really right, fair,”⁵¹ explained one man. He had completed multiple interviews in the resettlement process but after two years without further contact he felt no closer to leaving Malaysia. Like thousands of Chin refugees across Malaysia, he continued to wait in distress, unsure of the next step.

As previously mentioned, many Chin families largely rely on community organizations to facilitate navigation through UNHCR processes. When asked how the CBOs helped with life in Malaysia, many mentioned writing letters or placing phone calls to UNHCR. A community leader at the Chin Refugee Committee produced a long list of members requesting assistance to contact UNHCR. While the international operations controlling refugee life in Malaysia confuse and distress refugees, the community organizations are a readily available team to help with daily activities. One elderly Chin woman explained that her CBO contacted the UN to add her children to her UNHCR case when they arrived in Malaysia. The

⁵⁰ Chin Refugee Committee Annual Report, Burma 2012. Page 49.

⁵¹ Refugee 17. Interview by Meagan Floyd, Kuala Lumpur, 23 July 2013.

organization also helped her daughter out of prison camp and escorted her family to medical appointments. “They help everything. They accompany where I need to go. I call with problems and always they help.”⁵²

As a non-signatory to the UN Convention on Refugees, Malaysia classifies even documented refugees as illegal immigrants. While a UNHCR card offers some form of documentation, the Chin population in Malaysia lives without any legal standing. Almost one-third of those interviewed cited security as the biggest challenge facing Chin refugees in Malaysia. Security poses a problem because, while the community groups have successfully organized to aid the Chin, the leaders of CBOs are also refugees living without legal status. Thus, few sustainable models can be implemented without Malaysian government support. This lack of security affects every aspect of a refugee’s life in the country; “Security, life, future is nothing here. Just many fears for security.”⁵³

The Malaysian government, through the police, immigration department, or RELA, is frequently the source of threats to Chin security. Sixty-one percent of families interviewed reported a negative interaction with the Malaysian government. The most commonly cited interaction was police extortion and 62 percent of those who reported a negative government interaction recounted more than one occurrence of police extortion. While many police demand monetary bribes, officers also take cell phones or valuables from refugees. One woman traded her wedding ring in exchange for her daughter’s freedom. Recounting the exchange, the woman explained, “I am widow. But, the ring was the only thing to save her.”⁵⁴ Another man spoke of

⁵² Refugee 22. Interview by Meagan Floyd, Kuala Lumpur, 29 July 2013.

⁵³ Refugee 22, Kuala Lumpur, 29 July 2013.

⁵⁴ Refugee 5. Interview by Meagan Floyd, Kuala Lumpur, 20 July 2013.

repeated police raids at his job; the owner of the restaurant assisted in paying the bribes if he could, but the burden frequently fell to the employees.⁵⁵ Speaking of the struggle to find work illegally, one woman explained, “even if we have a job the money is taken by the police and the officials.”⁵⁶

Some Chin families alter routes to work or community centers in an effort to avoid known police posts. One family reported moving away from their community center and learning center to avoid increased police attention in the area. Chin refugees living outside of Kuala Lumpur experience similar government interactions. Farms and plantations employing Chin refugees in the Cameron Highlands frequently provide housing and food for family members. One man, a father of two, explained his family needed more than what was provided by his employer and he would journey into a nearby town to buy supplies. However, with each trip the police demanded a substantial bribe and the family could no longer afford the bribe to purchase groceries.⁵⁷

Yet, Malaysian government forces are not the only groups taking advantage of the undocumented status of refugees in the country. Local citizens, aware of the lack of legal recourse for the Chin community, perpetuate security struggles for refugee families. Interviews reported that even if police are present at the scene of a crime, the officers act as bystanders not protectors. One community leader presented a large binder of police reports; forty had been filed since January 2013 and not a single one had received a response.⁵⁸ Another woman, after

⁵⁵ Refugee 22, Kuala Lumpur, 29 July 2013.

⁵⁶ Refugee 7. Interview by Meagan Floyd, Kuala Lumpur, 20 July 2013.

⁵⁷ Refugee 19. Interview by Meagan Floyd, Cameron Highlands, 27 July 2013.

⁵⁸ Chin Refugee Committee representative. Interview by Dr. Jason Abbott, Michael Zeller, and Meagan Floyd, Kuala Lumpur, 23 July 2013.

detailing her escape from military action in Chin State, lamented, “I thought police here would protect us.”⁵⁹ Locals benefit from the Chin community’s lack of knowledge about official government procedures and the language barrier that impedes the majority of refugees in Malaysia. One common method of robbery is for locals to act as immigration officials to gain entry to refugee living spaces. One refugee explained how this happened to him and his thirty roommates: “We are simple. You know, country hill people. Locals come to our door and yell ‘Operasi!’⁶⁰ We open the door. We have to. They come in and take everything.”⁶¹ Others reported that thieves hide in elevators at apartment buildings and schools; “They dress clean and nice and target women.”⁶² Multiple refugees reported violent attacks by local citizens. “I have one son killed here. It is not safe to be here,” finished one mother after recounting the harrowing details of a child stabbed to death in the street over a cell phone and 50 ringgits.⁶³ Another mother cited living with constant anxiety after her 13-year-old daughter was beaten and robbed by locals on the street.⁶⁴

Once again, since Malaysia has not acceded to the United Nations Convention on refugees the Malaysian government is under no obligation to provide education to refugees. Furthermore since refugees in Malaysia are not based in refugee camps there is also no formally structured UN school system. As a consequence the Chin in Malaysia have been forced to independently organize and operate educational facilities. Since the Malaysian government prohibits non-citizens from attending schools, the urban refugee community in the country has

⁵⁹ Refugee 14, Kuala Lumpur, 23 July 2013.

⁶⁰ Operasi means operation in Bahasa Malaysia. It is way police announce an immigration raid.

⁶¹ Refugee 18. Interview by Meagan Floyd, Kuala Lumpur, 23 July 2013.

⁶² Refugee 9, Kuala Lumpur, 20 July 2013.

⁶³ Refugee 5, Kuala Lumpur, 20 July 2013.

⁶⁴ Refugee 12, Kuala Lumpur, 23 July 2013.

created an array of learning centers. In 2012, the International Rescue Committee reported over 50 refugee community operated learning centers in Malaysia with the majority operating in Kuala Lumpur.⁶⁵

The Chin community has been relatively successful in offering primary school opportunities for children living in Kuala Lumpur. Of those families interviewed with school-aged children (under 18 years of age), 87 percent had children regularly attending a community-learning center. This is consistent with other reports putting the number of Burmese children in Malaysia enrolled in a community school at 84 percent.⁶⁶ Of those families with children in school, all attended a learning center operated by an NGO or CBO.

However even with a great majority of Chin children attending an educational facility, almost a third cited education as the biggest challenge facing the community in Malaysia. Though CBOs have done what is possible with limited resources, parents still fear for the future of their children. Most refugee education centers operate in apartment buildings and resources are scarce with many lacking adequate desks, books, and writing utensils. While some teachers completed formal training in Burma, many are simply community volunteers. Some schools receive funding from international organizations but the majority comes from tuition or community group resources.

Despite this, the principal complaint from families was not about quality but about the lack of formal recognition. As previously stated, non-citizens are prohibited from attending Malaysian schools. Further, CBOs are not allowed to call their facilities “schools” but must

⁶⁵ International Rescue Committee. P. 42

⁶⁶ International Rescue Committee, p. 41

refer to them as “learning centers.” Chin children will never receive a degree or credit from time spent studying at learning centers. Thus, while the only answer to the Chins’ desire for education is through low-level community organizations, the CBOs are barred by limitations put in place by the Malaysian government. One mother lamented about education in Malaysia, “It is not formal. It does not matter.”⁶⁷

For older children, Malaysia offers no opportunities to finish school. The problem is two-fold. Due to limited space and teaching ability, most learning centers only hold classes until grade 7. For teenagers trapped in Malaysia, anxiously awaiting third-country resettlement, the time for education is running short. One young woman, forced to flee her home and subsequently, her education, said, “I have no hope to ever finish high school.”⁶⁸ Another woman, a mother of four, explained that she brought her family to Malaysia as a temporary solution but after years of waiting she feared the end of educational opportunities for her older daughters. “Now they are growing up but there is nowhere to go.”⁶⁹ Nevertheless, even if classes were available, most teenagers would still be forced from school to find employment and support their families. One 70-year-old man wept explaining that his 14-year-old granddaughter had never attended school and instead worked full-time at a restaurant to pay for his medicine.⁷⁰ Another mother worried about her 17-year-old daughter who had been forced to spend the previous five years without schooling, explaining “Children cannot go to school. Must work here.”⁷¹ Often families reported that teenage children worked to pay tuition for younger siblings. In one family with seven school-aged children, only three attended classes at a

⁶⁷ Refugee 26. Interview by Meagan Floyd, Kuala Lumpur, 1 August 2013.

⁶⁸ Refugee 14, 23 July 2013.

⁶⁹ Refugee 4, Kuala Lumpur, 20 July 2013.

⁷⁰ Refugee 25. Interview by Meagan Floyd, Kuala Lumpur, 1 August 2013.

⁷¹ Refugee 5, Kuala Lumpur, 20 July 2013.

learning center. One of the students worked part-time to pay her tuition and two older siblings used their wages to fund the others' education.⁷²

These challenges cited by the Chin community are not the only aspects of life posing a consistent threat to refugee assimilation and survival in an urban environment.

The lack of legal standing creates an incessant struggle to find housing and employment in Malaysia.

The Chin almost exclusively live in crowded, ramshackle apartments throughout Kuala Lumpur. To afford housing, multiple families share the rent of a single apartment, with each family turning a small bedroom into a living space for five or six people. Of the families interviewed, all reported sharing an apartment with individuals outside of their immediate family. Even by splitting the monthly bills among ten or more working individuals, the Chin still struggle to afford housing in the city. According to one interview, landlords consistently double rent for refugee families. "This [apartment] for locals 1000 ringgit but for foreigners is 3000."⁷³ The same is true for other reoccurring bills; "Electric 50 ringgit locals but us 100."⁷⁴ Most commonly, refugees share a space with three to seven other families resulting in at least thirty people per apartment. In one case, an entire village of sixty people shared an apartment.⁷⁵ Chin refugees without family in Malaysia frequently live together; in one interview, a 26-year-old man demonstrated how thirty individuals would spread mats to sleep across the floor of a studio apartment.⁷⁶

⁷² Refugee 12, Kuala Lumpur, 23 July 2013.

⁷³ Refugee 23. Interview by Meagan Floyd, Kuala Lumpur, 1 August 2013.

⁷⁴ Ibid

⁷⁵ Refugees 23, 24, 25. Interview by Meagan Floyd, Kuala Lumpur, 1 August 2013.

⁷⁶ Refugee 18, Kuala Lumpur, 23 July 2013.

Without the guarantees of the U.N. Convention on Refugees, the Chin are prohibited from legally obtaining work in the country. As a result, most are underpaid and toil long hours in less-than-optimal conditions. “Income affects everything. Income is low. Same job as locals but more hours but less pay.”⁷⁷ Most frequently, the refugees interviewed identified working in restaurants or doing construction work outside of the city. Employers take advantage of the undocumented status of the Chin commonly through inconsistent pay or by withholding earnings altogether; multiple interviews cited instances where they had worked full-time for months without pay. With no legal recourse, the Chin often have no option but to quit and hope for a more honest employer at the next workplace. Refugees interviewed also cited instances of verbal abuse by employers though they seemed neither phased nor surprised by this treatment in the workplace. One man described his boss as “not good, not bad just very mean and hateful.”⁷⁸

The failure of domestic and international agents to protect and advocate for Malaysia’s refugee population is exposed through the experiences of the Chin community. Individual and family testimonies illuminate the situation of refugee life in Malaysia and by extension, those agents supporting and sustaining the community. Having revealed the personal narratives of Chin refugees themselves we move on to address how the Malaysian government itself views the problem.

Refugee policy in absentia of global norms: The view of the Malaysian government

The Malaysian government maintains that, despite the fact it is not a signatory to the 1951 Convention on Refugees, it has both tolerated the presence of refugees and provided an

⁷⁷ Refugee 23, Kuala Lumpur, 1 August 2013.

⁷⁸ Refugee 18, Kuala Lumpur, 23 July 2013.

environment that has facilitated the work of UNHCR in the country. Unlike other non-signatories Malaysia has had a UNHCR office in the country since the mass exodus of Vietnamese in 1978-79. In response to accusations that the Malaysian government does not do enough to aid the plight of refugees in the country the Undersecretary of State for the Home Minister Mohammed Khair Razman replied, “Malaysia is being blamed for not doing enough but we are not under an obligation to do more.” Moreover, he continued, the government “has demonstrated goodwill by allowing the UN to remain in the country since the 1970s and is willing to assist the UN so long as it incurs no financial cost to the Malaysian government.”⁷⁹

When asked why the Malaysian government has not signed the Convention, and whether it had any plans to do so, the Minister remarked that in 2006 the government discussed properly acceding to the Convention. “At that time the number of refugees was approximately 40,000. By 2013 that figure was more than 100,000 plus and we have yet to join... and we still facing influx of irregular migrants. If we accede to the convention we are opening our doors freely.”

From the Malaysian government’s perspective the plight of Burmese refugees is seen as part of the larger problem of foreign workers. In 2011, as part of a program to register foreign workers⁸⁰, the Malaysian government conducted a census of foreign labor, both legal and illegal in the country. It found that in total there were over 2.3 million foreign workers in the country (equivalent to about 8 percent of the total population) of which over half were illegal. This census did not count UNHCR-registered refugees (who are, legally at least, prohibited from

⁷⁹ Mohammed Khair Razman, Undersecretary Home Ministry (International), Dr. Jason Abbott (2nd August 2013).

⁸⁰ The 6P program (named after the 6 processes required to be formally registered as a foreign worker) was introduced in October 2011 and ran until September 2013.

working). The Minister commented that while at one time there was a suggestion of allowing the refugee population the right to work in proscribed sectors of the economy, the presence of so many foreign workers militates against this. Nevertheless the minister did remark that the government had considered adopting a process of formal registration of refugees with UNHCR, similar to the 6P program for foreign labor. The major obstacle to this was who would pay for the program. As the minister explained,

We have discussed with UNHCR to have a program similar to the 6P program. But it will incur financial implications on us... The company that did the 6P agreed to use the program for a UNHCR card but UNHCR are reluctant to pay for this. Wanted the government of Malaysia to incur the cost. If UNHCR agreed to the costs put forward the Malaysian government would be ready to assist and work together with UNHCR.

Discussing the flawed process of UNHCR registration the minister expressed the government's frustration with the length of time it took, "we thought that to complete process from application to completion of resettlement it would last about 12-18 months... rationally/objectively 2 years to complete resettling. In reality some cases have taken up to 20 years". The solution he argued was for UNHCR to do more; the onus was not on Malaysia since the Malaysian government had allowed the country to be a transit country. In addition the minister expressed government frustration with the current method of registration noting that it is the government's view that the UNHCR registration process needs to be improved and expedited. The government is particularly critical of the current UNHCR cards which they describe as being "just a normal card," akin to a "library card." Because they are easily reproduced, "if raided by immigration, by police, and among the group is an individual that has a card, it is difficult to verify if the card is genuine." The Malaysian government, the Minister

reported, had asked UNHCR to upgrade the security features of the card, by adding a photograph and biometric features ostensibly to ensure that cardholders were “not targeted by irresponsible parties looking for money.” Again, however, the stumbling block is financial with the Minister maintaining that the costs of such upgraded registration cards should be borne by UNHCR and not Malaysia.

When challenged about reports from refugees that they had been forced to pay bribes to members of the police, the minister openly admitted that Malaysia has a problem with corruption. However he noted that “corruption happens everywhere in the world. Malaysia is in the process of targeting government involved in corruption.”

The minister concluded the interview by maintaining that “the problem is a mixture of everything, not just an asylum problem,” that it is “a regional problem that requires regional solutions” which should be addressed with greater regional cooperation between Malaysia and the other countries in ASEAN (The Association of Southeast Asian Nations). In particular he noted there should be a “shared responsibility between origin country and transit countries.”

Policy Recommendations

It is clear from our research that in absence of the global norms associated with the United Nations Convention on Refugees, Burmese refugees in Malaysia inhabit a precarious space within the domestic legal framework. Classed as illegal immigrants, the Burmese are nevertheless unable to formally legalize themselves by taking advantage of policies adopted by the Malaysian government to address the broader issue of foreign workers. Equally since the government has not adopted the 1951 Convention, the refugees cannot claim asylum. Instead they are able to survive because a) the Malaysian government has been largely willing to turn a

blind eye to their presence b) UNHCR has played a lead role in both formally registering them thereby enabling them to apply for third-countries resettlement, and in providing them specific educational and other resources and c) because the Burmese (and Chin in particular) have proven to be extremely adept in self-organization, creating a myriad of community organizations that act as a social safety net. Nevertheless, as the many refugees who shared their own personal stories of tragedy and suffering recounted, this state of suspension is one that is extremely fraught and insecure. Consequently, we propose the following policy recommendations as possible solution to many of the enduring challenges faced.

1. We strongly believe that UNHCR should scale back its operations so that its limited resources are focused on registering refugees and processing applications of resettlement. While social fund resources have proven welcome to many community-based organizations expediting resettlement was a repeated complaint among the refugees we interviewed.
2. We believe that strengthening and expanding multi-ethnic and multi-functional community organizations such as COBEM would create more coherent and centralized functional entities to enable concentration of effort, lobbying and resource provision.
3. We recommend that the many community groups focus on finding sustainable sources of funding by adopting more strategic financial planning. While members are the most reliable source of funding, improving logistical skills of community organizations would help them to target foreign and local donor groups that could provide larger sources of finance. This is particularly important because these organizations are the principal ones most refugees have contact with, and trust.

4. We recommend that community based organizations fully utilize and maximize available skills within their community and the broader local community. Some groups have already achieved a commendable degree of service provision that can serve as models for other groups. This can and should prioritize childcare, language training, and vocational skills.
5. Recognizing that currently educational facilities are largely only available at the elementary school and middle school level, CBOs should aim to expand opportunities for high school education, especially since many Burmese have now been in Malaysia for many years.
6. Finally we would call upon the Malaysian government to reconsider its opposition to acceding to the United Nations Convention on Refugees.

Whether taken as a whole or implemented in pieces, we strongly believe that these recommendations offer practical and workable solutions to improving the state of suspension that Burmese refugees currently find themselves inhabiting as they await resettlement from Malaysia. That said we also believe that the role played by Burmese CBOs in Malaysia offers a tangible method of service delivery that can provide valuable resources in other countries where host governments abrogate their responsibilities to provide for refugee populations.

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