



ISIS Malaysia
National Interest Analysis

GRANTING REFUGEES PERMISSION TO WORK IN MALAYSIA



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Origin

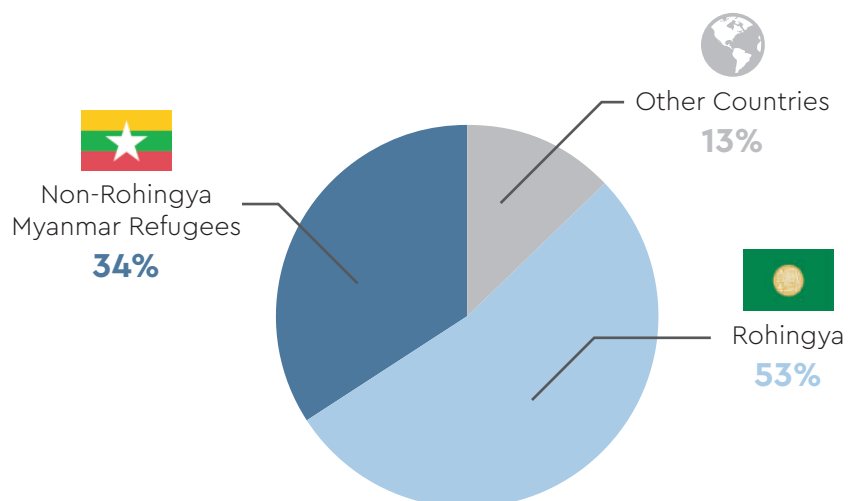


Figure 1. Registered Refugees and Asylum Seekers in Malaysia According to Origin

Gender

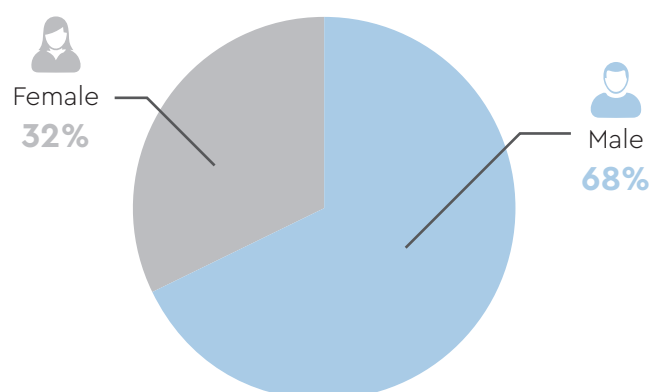


Figure 2. Registered Refugees and Asylum Seekers in Malaysia According to Gender

Working Age

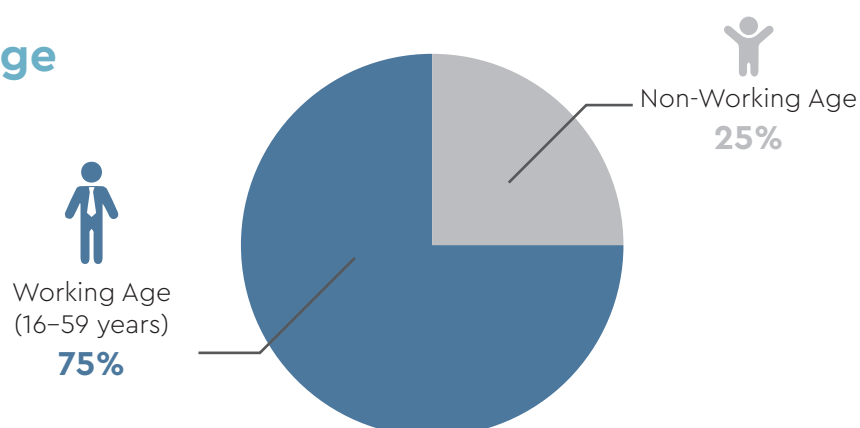


Figure 3. Registered Refugees and Asylum Seekers in Malaysia of Working Age



Acknowledgments

This report is based on a prior study that ISIS Malaysia did for the United Nations High Commissioner for Refugees (UNHCR) Malaysia in 2016–2017. The research team would like to thank UNHCR Malaysia for entrusting it with the initial research on refugees and work rights in Malaysia. UNHCR Malaysia was extremely helpful in providing access to stakeholders and experts, as well as procuring the latest statistics and data during the course of the research.

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About the ISIS Malaysia National Interest Analysis Series

The ISIS Malaysia National Interest Analysis (NIA) Series aims to comprehensively and critically examine key issues impacting the national interests of Malaysia from a policy angle. At its essence, the NIA aims to encapsulate the crux of a particular issue, what it really means to Malaysia, and what we ought to do about it. In a world and region that is more globalised, interactive and interdependent than ever before, these issues are multi-sectoral and can range from a gamut of foreign policy, economic, environmental, social, cultural, security and technological concerns. While the methodologies might differ depending on the issues at hand, its common yardstick is that Malaysia's national interest is taken to broadly be the policies, actions and conditions needed for the nation's diplomatic, security, social and economic prospects.

Abbreviations

ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of Southeast Asian Nations
IOM	International Organisation for Migration
KLIA	Kuala Lumpur International Airport
MEF	Malaysian Employers Federation
MoU	Memorandum of Understanding
MTUC	Malaysian Trades Union Congress
NGO	Non-governmental organisation
NIA	National Interest Analysis
RSD	Refugee status determination
SOLAS Convention	International Convention for the Safety of Life at Sea
TIP	Trafficking In Persons Report
TPP¹	Trans-Pacific Partnership
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly

¹ Or CPTPP (Comprehensive and Progressive Agreement for the Trans-Pacific Partnership) as it is known as today.

Executive Summary

This report seeks to determine whether granting refugees permission to work (through their registration in a national database) is a feasible solution. It aims to explore the risks and benefits of granting registered refugees permission to work from the perspectives of Malaysia's national interest and national security.

The study concludes that, on balance, the Government should consider providing registered refugees permission to work. The following are the key findings:

- »»1 Undocumented foreigners, whether refugees or not, and whether workers or not, are a major security concern for a country even if not a threat. The mere lack of information on the movement of people is an issue, as it undermines measures for ensuring law and order. Regularising refugees and asylum seekers would ultimately benefit the authorities in their management of Malaysia's national security concerns when it comes to forced migration.
- »»2 Granting registered refugees permission to work must be seen in a larger context. The difficulties of reaching Malaysia – given numerous crackdowns on smuggling and trafficking networks – and the strict conditions to qualify as a registered refugee with the UNHCR through its refugee status determination process, will mitigate the floodgates argument.
- »»3 Working-age registered refugees only constitute a small fraction of the foreign worker population in Malaysia, both documented and undocumented. Additionally, refugees and asylum seekers are a visible sub-group within the community, and they come under regular focus from non-governmental organisations (NGOs), the media and even foreign governments. Malaysia risks incurring damage to its national image and prestige if it continues to adopt its "hands off" approach.
- »»4 The macro positives of granting registered refugees permission to work also outweigh the negatives. Workers are needed in Malaysia, and foreign workers continue to be brought in to fulfil this demand. There are also plenty of illegal foreign workers in the country. To not utilise refugees that are already here and registered with the UNHCR is a missed opportunity. More importantly, the relatively small number of registered refugees, and the job sectors that they will most likely be employed in, will not significantly affect job opportunities for Malaysians.
- »»5 Finally, there is a humanitarian and compassionate aspect to consider. Malaysia has long been a transit point for displaced people from various countries. These include Bosnians, Syrians, Acehnese, Vietnamese and Southern Filipinos amongst others. To pick and choose which refugees are welcomed in Malaysia, and to enact policies that will create different classes of refugees, can be interpreted as unjustifiable. This could also give rise to further discontent in refugee communities with long-term negative implications.

Chapter 1 | Introduction

For decades, Malaysia has been a transit state for refugees and asylum seekers. The country has, at various times, hosted Vietnamese, Cambodians, Acehnese and Southern Filipinos, as they sought temporary shelter or passage to third countries. There are also communities of Burmese ethnic and religious minorities who have been living in Malaysia for years. Recently however, Malaysia is increasingly emerging as a frontline state and destination for refugees, especially those that originate from the immediate region like the Rohingya from the Rakhine State in Myanmar. Many are driven from their countries of origin by violence, political and economic instability, and are attracted to the relative peace and prosperity that Malaysia enjoys. They could also be possibly drawn to Malaysia by what they perceive as more favourable socio-cultural and religious prospects.

According to the 1951 Convention Relating to the Status of Refugees, a refugee is someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country." The UNHCR defines an asylum seeker as "someone who says he or she is a refugee, but whose claim has not yet been definitively assessed."

Although it is difficult to determine precisely how many there are in the country, latest figures from the UNHCR in Malaysia indicate that there are currently a total of 170,460 refugees and asylum seekers registered.³ This is significantly smaller than the number of foreign workers in Malaysia, which is estimated to be around six million (including those undocumented).⁴ As shown in Figure 1, 87 per cent of registered refugees and asylum seekers in Malaysia are from Myanmar (with 53 per cent being Rohingya), while the remaining 13 per cent are from Sri Lanka, Pakistan, Yemen, Somalia, Syria, Iraq, Afghanistan and Palestine among other countries.⁵ 68 per cent are men and 32 per cent are women (Figure 2); 26 per cent are below 18 years old. UNHCR Malaysia used to resettle an average of 10,000 refugees per year, which was the third largest resettlement programme in the world and the largest in Southeast Asia.⁶ This number has dropped since 2017 due to the change in refugee acceptance policies in the United States.⁷

It is imperative to note that the 170,460 refugees and asylum seekers do not include the stateless, those in 'refugee-like situations' and 'others of concern.' For example, there were 246,270 people of concern in Malaysia in 2015 – 11,689 were stateless, 136 were in refugee-like situations and some 80,000 were classified 'others of concern.'⁸ The 170,460 refugees and asylum seekers also excludes those in East Malaysia, of which there are some 80,000 Filipino refugees in Sabah as of the end of 2015.⁹ The Malaysian Government does not differentiate between refugees, asylum seekers and undocumented workers, thus all are deemed 'illegal immigrants.' However, according to the UNHCR, there is a distinction to be made – UNHCR-registered individuals have undergone an extensive vetting process, thus only those who truly deserve the UNHCR cards have been granted refugee status.

Given the large number of people of concern, the Government is not obliged nor does it want to bear the burden of recognising and providing social services to this community. As with the majority of the Association of Southeast Asian Nations (ASEAN) member countries, Malaysia does not have an asylum system in place, nor is it a signatory to the 1951 Convention and its 1967 Protocol. Although the number of refugees in Malaysia has plateaued in recent years, there is the potential for an increase, especially given recent developments in Rakhine State and along the Bangladesh-Myanmar border. How can the Government provide continuous humanitarian assistance and support to refugee communities without compromising on its national interest and national security?

This report seeks to determine whether granting registered refugees permission to work (through their registration in a national database) is a feasible solution. Although such permission would mostly be applicable

³ 'Figures at a Glance,' *United Nations High Commissioner for Refugees Malaysia*, last updated February 2019.

⁴ Esther Lee and Ahmad Naqib Idris, "Cover Story: Do we need so many foreign workers?", *The Edge Weekly*, 6 September 2018.

⁵ 170,460 registered refugees and asylum seekers are from Myanmar (90,200 Rohingyas, 24,720 Chins, 9,750 Myanmar Muslims, 4,000 Rakhines & Arakanese amongst other ethnicities) and 22,870 are from other countries (the majority of which are 6,150 Pakistanis, 3,350 Yemenis, 3,090 Somalis, 3,065 Syrians, 1,970 Afghans, 1,720 Sri Lankans, 1,450 Iraqis, 780 Palestinians amongst others).

⁶ UNHCR Malaysia Durable Solutions Unit, interview by ISIS Malaysia, Kuala Lumpur, 22 September 2016 & Bar Council Malaysia, interview by ISIS Malaysia, Kuala Lumpur, 10 August 2016.

⁷ The majority of refugees in Malaysia were resettled in the United States.

⁸ UNHCR Operations Worldwide, 'Malaysia,' *United Nations High Commissioner for Refugees*, last updated 13 January 2016.

⁹ 61% have some form of documentation, while the remaining 39% do not. UNHCR Operations Worldwide, 'Filipino Refugees in Sabah,' *United Nations High Commissioner for Refugees*, last updated 13 January 2016.

to male and female refugees of legal working age only, the registration of refugees in a national database should be open to all UNHCR registered card-holders. This will act as an added incentive for those refugees of legal working age.

The report aims to study the risks and benefits of granting registered refugees permission to work from the perspectives of Malaysia's national interest and national security. These areas of study have not been adequately examined before, as the majority of studies on forced migration focus on the humanitarian responsibilities of governments to forge solutions. In the context of this report, the national interest refers to Malaysia's economic, social and political interests, whereas national security refers to the necessity of balancing the temporary protection of refugee communities with the protection of Malaysians and the country's national interest overall.

Chapters 2 and 3 provide an overview of the current situation in Malaysia. These chapters outline the ways in which irregular migration can be an economic, political and social liability to the Government. They also examine the nexus between forced migration and security in Malaysia, in terms of border control, law and order and terrorism. In Chapter 4, we highlight a third smaller, albeit important, dimension to the report that will look at the reputational risk that Malaysia faces in how it responds to, and manages, the issue of forced migration. The perception of a country's stand and response on refugees and asylum seekers, whether accurate or otherwise, will contribute to the overall national image and reputation of said country.¹⁰ In Chapter 5, this report analyses key concerns and questions regarding the registering of refugees, and the possibility of granting them permission to work legally in Malaysia. Finally, in Chapter 6, it examines the specific implications to Malaysia of providing registered refugees permission to work.

¹⁰ Michael Kunczik, *Image of Nations and International Public Relations* (New Jersey: Lawrence Erlbaum Associates, 1997), p. 47.

Chapter 2 | Outlining Malaysia's National Interest

The concept and definition of the national interest, or interest of a state, broadly refers to a country's goals and ambitions. Nevertheless, exact definitions of the national interest and their applicability remain contentious – both from a theoretical and practical approach.¹¹ In the case of Malaysia, a prior report by ISIS Malaysia on the National Interest Analysis framework of the Trans-Pacific Partnership (TPP) defined the country's national interest as “shaped by the many factors that promote or demote its ability to be and remain viable, capable and influential as a political entity.”¹² In this regard, Malaysia's national interest is seen as the policies, actions and conditions needed for the nation's economic, social and political prospects. Issues outlined in this section include skills shortages in the Malaysian labour market, livelihood options for refugees, social cohesion, demographic concerns, public antagonism and the politicisation of links between forced migration and security.

Economic

It is an open secret that many refugees are already working in Malaysia in order to sustain themselves and their families. Many of these jobs are in the informal sector with little protection or avenues of redress. As a result, refugees ultimately endure risk and hardship, and thus could be driven to venture into illegal and undesirable activities – aspects that will be examined under the discussion on National Security.

From some employers' perspectives, refugees in Malaysia are attractive to employ because they are predominantly more flexible and, in some cases, easily exploitable. They also cost significantly less than hiring foreign workers – in terms of registration, mobility and also statutory minimum wage.¹³ More importantly, there is a demand for cheap labour in the Malaysian economy thus the demand to hire refugees.¹⁴ The UNHCR has often fielded telephone calls by prospective employers, at least five calls a day, regarding the implications of hiring refugees – their illegal status and their availability for hire.¹⁵ Despite the concern that refugees and locals are competing with each other to secure jobs,¹⁶ refugees in Malaysia typically opt for unskilled, low-paid jobs that Malaysians would normally shun away from. This is due to the local social stigma associated with working in sectors or industries that involve manual labour, alternatively known as the 4D sectors – jobs that are deemed dirty, dangerous, difficult and demeaning.¹⁷ According to the UNHCR, the majority of refugees in Malaysia are employed in the food and beverage, construction and repairs (automotive and electronics) sectors.¹⁸

In terms of government policy, there have been instances where granting refugees permission to work seemed possible. In 2013, the Minister of Home Affairs announced that the Government would issue work permits to refugees living in Malaysia.¹⁹ The Minister of Home Affairs stated that plans to provide training and jobs had been devised by the ministry in cooperation with the UNHCR and the Immigration Department. In 2016, there was the announcement of a pilot project for 300 Rohingya to work in the plantation and manufacturing sectors. A decade earlier in 2006, Rohingya refugees were said to be granted IMM13 permits – a temporary residence permit to allow the Rohingya to remain legally in Malaysia and engage in lawful employment, and provide access to education for their children.²⁰ To date, however, Rohingya refugees have not been given permission to work in Malaysia, although the IMM13 have been issued to some of the Acehnese and Filipino refugees in Peninsular Malaysia, as well as in Sabah and Sarawak.

In February 2016, the Malaysian Government signed a Memorandum of Understanding (MoU) with Bangladesh to

¹¹ Scott Burchill, *The National Interest in International Relations Theory* (Gordonsville, VA: Palgrave Macmillan, 2005).

¹² Institute of Strategic and International Studies (ISIS) Malaysia, 'National Interest Analysis of Malaysia's Participation in the Trans-Pacific Partnership,' Ministry of International Trade and Industry (2015), p. 16.

¹³ UNHCR Malaysia Livelihood Unit, interview by ISIS Malaysia, Kuala Lumpur, 21 September 2016.

¹⁴ Malaysian Employers Federation, interview by ISIS Malaysia, Kuala Lumpur, 22 November 2016.

¹⁵ *ibid.*

¹⁶ Yiswaree Palansamy, 'Malaysia will not sign UN convention on refugees, says minister,' *The Malay Mail*, 12 March 2015.

¹⁷ Kamles Kumar, 'Malaysians shun '3D' jobs because of social stigma, not low wages, employers say,' *The Malay Mail*, 17 February 2016 & Professor Dr Azizah Kassim and Ragayah Haji Mat Zin, 'Policy on Irregular Migrants in Malaysia: An Analysis of its Implementation and Effectiveness,' *Philippine Institute for Development Studies*, 2011.

¹⁸ UNHCR Malaysia Livelihood Unit, interview by ISIS Malaysia, Kuala Lumpur, 21 September 2016.

¹⁹ Teoh El Sen, 'Suhakam hails decision to allow refugee to work in Malaysia,' *Astro Awani*, 12 July 2013.

²⁰ UNHCR Malaysia Durable Solutions Unit, interview by ISIS Malaysia, Kuala Lumpur, 22 September 2016.

bring in 1.5 million Bangladeshi workers to work in various sectors. This resulted in a mixed reception from locals – businesses welcomed it, while NGOs and civil society groups argued for jobs to be given to locals instead.²¹ The MoU indicates that there is, in fact, a labour shortage here in Malaysia that refugees can help to alleviate. However, they are currently hindered by their illegal status and by the Government's preference to either bring in foreign workers, or to legalise the undocumented migrants that are already here in Malaysia.

Furthermore, the refugees' ability to contribute to the economy depends partly on their characteristics and also on the policies and institutions of the host country. For instance, a 2016 study by Philippe Legrain stated that 25 per cent of Somali refugees aged 25–64 in Sweden were employed in 2010, whereas 57 per cent were employed in the US.²² The study clearly indicates that refugees were legally incorporated into the American and Swedish job markets. In 2015, out of the 150,669 registered with the UNHCR in Malaysia, about 124,000 were of working age (16–59 years).²³ The number has dropped slightly as of March 2019, with 123,512 of working age out of 170,460 registered refugees as shown in Figure 3.²⁴ Therefore, approximately three quarters of refugee households in Malaysia have at least one person working or looking for work. Furthermore, a study by the World Bank in the Malaysia Economic Monitor 2015 stated that legitimising refugee workers would lead to the creation of more jobs in Malaysia, increased wages for Malaysians and increased GDP overall.

Additionally, there is also the issue of public spending on refugees. While the scale seems insignificant – simply because Malaysia does not incur any expenses for refugee resettlement or welfare payments – there are other local costs that continue to sap government coffers. The bulk of Malaysia's spending on illegal migrants is the costs associated with detention – specifically on detention facilities. Presently, there are 14 detention facilities nationwide – 12 centres in Peninsular Malaysia and two in East Malaysia. These centres are predominantly occupied by refugees and other various immigration offenders which total an estimated 13,700 persons.²⁵ The Malaysian Government, via the Department of Immigration, has reportedly been spending an average of RM55 per person per day, as far as the detention centres in Peninsular Malaysia are concerned.²⁶ Therefore, on average, the Government spends RM753,500 daily on detention facilities. This comes up to roughly RM275,027,500 a year – a significant amount for a developing country like Malaysia.²⁷ It should be re-emphasised that this figure encompasses detention for all persons considered as illegal immigrants, including refugees and asylum seekers.

Social

The social impact of refugees, or rather, the argument that refugees will have a negative, debilitating social impact on host countries, is one of the most emotive yet crucial issues brought up by stakeholders who are fundamentally against accepting, hosting or even resettling refugees. The UNHCR has acknowledged the severe impact that large refugee populations can have on host countries – especially when host countries themselves are still developing or facing internal socio-political problems of their own.²⁸ The most common arguments include refugees contributing to a breakdown of law and order, involving themselves in crime and social vices, causing a strain on public amenities and not being able to integrate because they are too 'different.' Law and order and crime will be examined in the follow chapter. This sub-section looks at the issues of public amenities – specifically healthcare and education – and the wider question of social cohesion and integration within a Malaysian context.

In terms of healthcare, concerns largely stem from the fact that most refugees arriving in Malaysia have had little access to proper healthcare – both in their source countries and on the journey to Malaysia. Many originate from relatively poorer countries where diseases like tuberculosis, hepatitis and other communicable diseases are common. This could pose a threat not just to the wider Malaysian public, but to other groups of refugees already in the country. For instance, there have been sporadic outbreaks of diseases like measles among refugees, which

²¹ 'Malaysia and Bangladesh ink deal to recruit 1.5 million workers,' The Star, 18 February 2016.

²² Philippe Legrain, 'Refugees Work: A Humanitarian Investment That Yields Economic Dividends,' Tent Foundation (2016).

²³ UNHCR Malaysia Livelihood Unit, interview by ISIS Malaysia, Kuala Lumpur, 21 September 2016.

²⁴ UNHCR Malaysia Livelihood Unit (via email), 15 March 2019.

²⁵ UNHCR Malaysia Outreach and Protection Intervention Unit, interview by ISIS Malaysia, Kuala Lumpur, 21 September 2016.

²⁶ *ibid.*

²⁷ Authors' calculation based on the cost of RM55 per day per detainee.

²⁸ UNHCR Standing Committee, 'Social and economic impact of large refugee populations on host developing countries,' *United Nations High Commissioner for Refugees*, 6 January 1997.

originated from new arrivals who were not inoculated.²⁹ The problem is further compounded by the fact that as illegal immigrants under Malaysian law, refugees are not able to seek healthcare in public hospitals (the most affordable of healthcare providers in Malaysia). Many then depend on the limited, basic healthcare services provided by NGOs and volunteers. Moreover, undocumented refugees have been arrested and refused treatment at hospitals because of their status.

Refugees registered with the UNHCR, however, can access public healthcare, and are provided with a health insurance scheme. Known as the Refugee Medical Insurance or 'REMEDI,' registered refugees can obtain general hospitalisation and personal accident cover, which includes their spouses and children below the age of 18 for a relatively low annual premium. It covers a variety of healthcare issues and specialist consultations. Nevertheless, there is no form of medical subsidy or discount. Charges like registration fees and outpatient fees still apply and in the case of more serious treatments, refugees must pay up to 100 per cent of costs and deposit up to RM3,000.³⁰ In other words, healthcare is generally unaffordable to the overwhelming majority of refugees – registered and undocumented – in Malaysia. These factors contribute to refugees avoiding seeking healthcare altogether, thus potentially worsening the associated risks not just to themselves but to the wider community.

Related health risks could also come from substance abuse by refugees – particularly drugs and alcohol. Research has shown that such substance abuses are not uncommon among refugees who use them as coping mechanisms after having suffered harrowing loss, abuse and general uncertainty.³¹ This is further compounded when refugees are maligned, persecuted and left without any real opportunities to provide for themselves or their families in transit and destination countries. This can lead to other social ills, such as antisocial and unlawful activities and abuse of family members.

With regard to education, again, the legal status of refugees presents a challenge by way of them not having access to the Malaysian public education system. Many are educated in various ad-hoc schools or classrooms set up by NGOs and community organisations where resources are scant and only basic skills and religious education are taught. The syllabus is not streamlined and, in many cases, due to the lack of certification, prospective students are unable to sit for public examinations to further their studies.³² While the UNHCR has signed MoUs with several Malaysian public and private tertiary education institutions to provide greater access to refugees, they are again limited to registered refugees. The situation is more critical when it comes to primary and secondary education where many refugee children have very limited opportunities. During our preliminary interviews with UNHCR Malaysia in 2016, it was reported that there are some 33,640 refugee children below the age of 18 registered with the UNHCR, of which approximately 21,880 are of school-going age. However, it was estimated that only approximately 28 per cent of these children have access to any kind of education. This means that over 70 per cent of refugee children of school going age are not in school.³³ In some cases, parents do not allow their children to go to school as they are unable to afford the costs and need their children to help support the family. In the long run, this could have devastating consequences – the current situation is producing a generation of young adult refugees with limited education which, in turn, will impact their capacity to improve their lives and provide for their families in future.

Finally, the social cohesion of refugees and their ability to integrate and interact with Malaysian society at large is another critical issue. While Malaysia is a multi-ethnic and multi-religious society, issues of race and religion remain touchy subjects with communal rivalry and tensions proving to be a real social concern. Most of the refugees in Malaysia live a largely segregated life, ghettoised in their own communities, away from the public. In such conditions, away from being inculcated into mainstream society, there is a risk that refugees could develop a separate subculture that falls beyond the norms and values of mainstream Malaysian society. This includes the practice of child marriages, especially among the Rohingya community where young girls, especially from Bangladesh or the Rakhine State, are sent to Malaysia to be married off for a variety of reasons.³⁴ There are also fears that as foreigners, refugees, especially if they remain in Malaysia for the long-term, could dilute mainstream Malaysian identity. This notion is explored further in the following section on the politics of refugees in Malaysia. Nevertheless, it must be noted that there are groups of refugees who have been in Malaysia for generations who

²⁹ UNHCR Malaysia Healthcare Unit, interview by ISIS Malaysia, Kuala Lumpur, 21 September 2016.

³⁰ *ibid.*

³¹ Emmanuel Streel & Marian Schilperoord, 'Perspectives on alcohol and substance abuse in refugee settings: lessons from the field,' *Intervention*, Vol. 8, 2010, pp. 268–275.

³² UNHCR Malaysia Education Unit, interview by ISIS Malaysia, Kuala Lumpur, 21 September 2016.

³³ 'Education,' *United Nations High Commissioner for Refugees Malaysia*, last updated 2016.

³⁴ Yu Kojima, 'Rohingya Women in Migration: Lost Voices,' *Our World*, 8 December 2015.

fluently speak the national language and are knowledgeable of local customs. Some have even intermarried with locals, though their numbers remain small.³⁵

These cumulative social considerations are important as they impact how Malaysians perceive refugees – both those that are present, as well as new arrivals. While most Malaysians do express sympathy for the plight of refugees, there is still a lack of research on how refugees present in Malaysia are perceived. The ongoing global refugee crisis has proven that when refugees arrive or are visibly present in large numbers in host countries, there is a spike in the negative perception of the intent, actions and impact of refugees – especially when they are culturally different.³⁶ It would not be unreasonable to assume that Malaysia could see a similar trend if there is a sudden and significant spike in the number and prominence of refugees in future. This will, in turn, have real political implications as stated in the following sub-section.

Political

We can look to the rise of right-wing sentiments in regions associated with forced migration as examples of the difficulties of social cohesion for refugees in host countries. A notable example is the extent to which Muslim migrants are perceived as threatening Western values, norms and culture, particularly in the wake of the September 11 2001 terror attacks and subsequent high-profile terrorist attacks in Madrid (2004), London (2005), Mumbai (2006), Boston (2013), Paris (2015), Brussels (2016), Nice (2016) and Manchester (2017). The politicisation of these unfortunate events has further exacerbated xenophobic attitudes in the West. In Europe, the United Kingdom voted to Brexit the European Union in June 2016 largely due to immigration concerns. In the US, Donald Trump campaigned to ban Muslim refugees and as President, has since ordered a controversial temporary ban on the intake of refugees and travellers from seven Muslim-majority countries.³⁷ These examples demonstrate that public actors are capable of politicising links between forced migration and national security to increase the sense of 'threat' that refugees and migrants pose.

In the context of Malaysia, there have been some statements from officials that emphasise the Government's classification of refugees as illegal economic migrants. For example, an official has claimed that illegal immigrants are hiding behind the refugee cards issued by the UNHCR.³⁸ In 2016, a statement made in parliament reiterated the 'floodgates' argument of allowing refugees into Malaysia – "if we open the gates, the waters will gush in and flood the country... the problem is their presence here is a threat to our security"³⁹ – when asked whether the Government would allow refugees access to education in local institutions and/or welfare under humanitarian grounds. There have also been accusations that the UNHCR is pressuring Malaysia into becoming a final destination for refugees, and that the UNHCR has been careless in its issuance of refugee cards.⁴⁰ The UNHCR responded by stating it is not a substitute for Malaysia's responsibilities to deal with refugees, and that tackling Malaysia's refugee problem simply requires a closer degree of cooperation between the agency and the Malaysian Government.⁴¹

The new political leadership in Malaysia, however, have shown indications that they are more amenable and willing to consider permission to work for refugees. This was clearly mentioned in their manifesto under Promise 35: Raising the dignity of workers and creating more quality jobs, where it was stated that the Pakatan Harapan Government will legitimise the status of registered refugees, including Rohingyas and Syrians, by providing them with UNCHR cards and ensuring their legal right to work. The promise further stated that "their labour rights will be at par with locals."⁴² While it has only been a year since this new Government has been sworn in, and it remains to be seen if this promise will translate into concrete action, it should be noted that there is an increase in dialogue between UNHCR Malaysia and multiple government stakeholders such as the Ministry of Home Affairs, the National Security Council, the Deputy Prime Minister's Office and the Ministry of Foreign Affairs.

It is also imperative to examine public opinion on refugees. While specific research on refugee communities is

³⁵ Professor Dr Azizah Kassim, interview by ISIS Malaysia, Kuala Lumpur, 19 October 2016.

³⁶ Ben Doherty, 'Solving the refugee crisis begins by changing the way we see them,' *The Guardian*, 1 June 2015.

³⁷ Office of the Press Secretary, 'Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States,' *The White House*, 6 March 2017.

³⁸ FMT Reporters, 'Shahidan blames UNHCR for immigrant issue in M'sia,' *Free Malaysia Today*, 17 March 2016.

³⁹ 'Refugees not welcome here – Shahidan,' *The Sun Daily*, 16 April 2016.

⁴⁰ Tasnim Lokman, 'Nur Jazlan warns UNHCR: Do not blackmail Malaysia,' *New Straits Times*, 22 June 2016. Nawar Firdaws, 'Nur Jazlan slams UNHCR over issuance of refugee cards,' *Free Malaysia Today*, 23 March 2016.

⁴¹ Sumisha Naidu, 'UNHCR defends registration card system in Malaysia,' *Channel NewsAsia*, 23 March 2016.

⁴² "Promise 35: Raising the dignity of workers and creating more quality jobs," *Buku Harapan: Rebuilding Our Nation, Fulfilling Our Hopes*, 2018, p. 78.

lacking, an observation of sentiments, for instance on social media, op-eds or commentaries, as well as criticisms from trade and civil groups, do give an indication that Malaysians perceive foreign workers negatively. This is attributed to the large number of foreign workers already in Malaysia, which stands at 40 per cent of the workforce.⁴³

The Government was criticised for its MoU with Bangladesh in February 2016 to bring in 1.5 million Bangladeshi workers to address 'critical shortages' in the service, construction, farming, plantation and manufacturing sectors. The Malaysian Trades Union Congress (MTUC) released a memorandum objecting to the MoU, urging the Government to set up a Royal Commission of Inquiry into migrant workers and to cancel the intake altogether.⁴⁴ NGO Tenaganita stated that the Government should legalise the undocumented Bangladeshi workers already here in Malaysia instead of bringing in another 1.5 million.⁴⁵ Pertubuhan Rapat Malaysia, a coalition of NGOs, warned that admitting such a large number of foreign workers would have socio-economic repercussions like terrorism, the spread of disease, rape and loss of business opportunities for locals.⁴⁶ Such viewpoints indicate how local perceptions of refugees could potentially change if the status quo changes via permission to work. Negative sentiments of refugee communities by the Malaysian public, could encourage existing perceptions amongst policymakers, whereby refugees continue to be classified as illegals.

Simla Ramphul, Adviser for Migration at the Asia International Committee of the Red Cross, maintains that resolving forced migration is ultimately a political choice – "it is up to governments on whether they want to address the issue or not, and the extent to which they are addressing the issue."⁴⁷ This ongoing perception that refugees are illegal immigrants could affect the political will or capital needed by local decision makers to kick-start a comprehensive approach to managing refugees in Malaysia. This is especially so given the fact that Malaysia is no longer a transit state but a destination for refugees and asylum seekers. Political space is necessary for two key reasons. First, to prevent the politicisation of refugees or the sense of 'threat' that refugees pose, as we have seen in the United States and Europe. Second, political will is needed to ensure the sustainability of a refugee policy, as long-term measures such as repatriation and resettlement are lengthy processes. Ultimately, domestic solutions to issues of displacement and trafficking will not gain much traction without the political push for action.

⁴³ Malaysian Trades Union Congress, interview by ISIS Malaysia, Kuala Lumpur, 25 October 2016.

⁴⁴ 'MTUC submits memo objecting to Bangladeshi intake,' *The Star*, 18 February 2016.

⁴⁵ D. Kanyakumari, 'Legalise Bangladeshi workers here, says Tenaganita,' *The Star*, 11 February 2016.

⁴⁶ Kamles Kumar, 'Putrajaya's pro-Bangladeshi worker policy will open floodgates to terrorism, rape, groups claim,' *The Malay Mail*, 17 February 2016.

⁴⁷ Simla Ramphul, 'Plenary 5: Human Insecurity: Confronting Displacement and Trafficking,' comments made during 30th Asia-Pacific Roundtable, Kuala Lumpur, 1 June 2016.

Chapter 3 | Malaysia's National Security Considerations

As with the definition of the national interest, there is no single accepted definition of the term 'national security'. Various governments utilise various definitions and it covers different aspects in different countries. While there is no direct reference to how Malaysia defines its national security, the National Security Act 2016 includes the terms 'sovereignty, territorial integrity, defence, socio-political stability, economic stability, strategic resources, national unity and other interests relating to national security' as key interests of Malaysia's national security.⁴⁸

The securitisation of migration is largely examined within "the crossing of state borders and the confronting of 'we' and 'they,' of what is 'ours' and what is 'out there,'" as put forward by Gemma Pinyol-Jimenez.⁴⁹ Those who are not considered citizens of a particular country will often be perceived as a 'threat' to the national security and cohesion of a host society. In this regard, all governments face the difficulties of balancing between behaving in accordance with international law and norms, and addressing the different aspects of state security risks. These include 'real' security risks like border control, and 'perceived' security risks such as law and order and terrorism.

Border control

Concerns relating to Malaysia's border control is analysed in five stages throughout this report – detection, reception, temporary protection, refugee status determination (RSD) and resettlement. With regard to detection, a primary concern is that mass irregular or illegal flows of people could affect the integrity of Malaysian borders, particularly at the main points of entry into the country. The large number of essentially 'anonymous' people, without identities and records, coming into the country could exceed the capacity of border control management and subsequently impact Malaysia's ability to manage mass displacement. This has severe repercussions, as the Andaman Sea crisis in May 2015 highlights – Thai authorities unearthed 30 bodies in the Sadao district of Thailand along the Malaysian border, and Malaysian police found 140 graves from abandoned jungle camps in the northern state of Perlis. Due to the highly publicised incidents of human trafficking, issues pertaining to Malaysian border control can no longer be kept 'below the radar.'

The Andaman Sea crisis underlined a range of challenges for the Malaysian Government – (i) trafficking networks operate across borders (maritime and land), and traffickers are multicultural and regionally diverse often comprising refugees and locals; (ii) trafficking victims are highly vulnerable to exploitation, oppression and violence in Malaysia; (iii) the Government needs to improve intelligence on migration management via tighter border controls, patrolling and surveillance; (iv) the Government lacks a mechanism to facilitate and improve maritime detection, search and rescue; and (v) the need for greater regional cooperation amongst ASEAN member states as the flow of refugees, asylum seekers and displaced persons recognises no borders.

With regard to legal entries into Malaysia, there are concerns that Malaysia's immigration control is not stringent enough. The majority of refugees in the country are from Myanmar, who predominantly enter Malaysia via illegal means as per the Andaman Sea crisis. However, 22,250 of the 170,460 registered refugees in Malaysia are from other countries. Approximately 67 per cent of 22,250 refugees are from countries that do not require visas to enter Malaysia. These include Somalia, Syria, Yemen, Iraq, Iran and Palestine.⁵⁰ Yemenis are granted visa-free entry for up to three months, whereas Somalis, Syrians, Iraqis, Iranians and Palestinians are granted visa-free entry for up to 14 days.⁵¹

Trafficking victims also enter Malaysia 'legally.' The exposure of a passport forgery syndicate in 2016 highlights that corruption is another prime area of concern in relation to Malaysian border control and immigration. In May of the same year, the Minister of Home Affairs stated that approximately 100 people (including immigration officials) were involved in sabotaging Malaysian passport control at Kuala Lumpur International Airport (KLIA) over

⁴⁸ Government of Malaysia, National Security Council Act 2016 (Act 776), Section 4(A).

⁴⁹ Gemma Pinyol-Jimenez, 'The Migration-Security Nexus in Short: Instruments and Actions in the European Union,' *Amsterdam Law Forum*, Vol. 4, 2012, p. 38.

⁵⁰ As of January 2019, a total of 14,940 out of 22,250 registered refugees come from Somalia, Syria, Yemen, Iraq and Palestine.

⁵¹ 'Countries whose citizens need a visa to enter Malaysia,' *VFS Global in India*, last updated 2016.

the last six years.⁵² The myIMMs system, which screens individuals leaving and entering the country, and verifies if a passport has been reported stolen or flagged by other agencies, was disabled.

Upon entry, there are concerns in relation to the reception of refugees and the temporary protection that Malaysia provides. Malaysia does not have any legislation specifically regulating the rights of refugees, nor does the Government intend to set up a refugee registration centre. Therefore, there is a lack of screening processes and documentation issuances within the national system that results in undocumented migrants (instead of registered refugees) with unlawful residential status.

A detention centre itself comes with a list of challenges for the Government that span costs and maintenance, poor living conditions, and disease outbreak and importation. For example, a report by IRIN News a year after the Andaman Sea crisis notes that tuberculosis infections at the Belantik detention camp in Kedah "prolonged the already slow and complicated process of refugee status determinations and then resettlement applications... resettlement countries won't accept a refugee until six months after they complete treatment for the infectious disease."⁵³

As a result, the UNHCR conducts refugee status determination and repatriation on its own, due to the absence of a national asylum system. The challenge here is clear – there needs to be a closer degree of cooperation between the UNHCR and law enforcement officials in Malaysia, in order to prevent UNHCR card forgeries and to ensure that repatriation and resettlement are conducted as quickly as possible. Indeed, the Government has requested the UNHCR to expedite the repatriation process of refugees back to their respective countries, or to parties of the 1951 Convention and its 1967 Protocol (in line with their commitments as member states), who have been criticised for not upholding their end of the deal. In a series of articles on the migration-security nexus in Asia and Australia for *The Interpreter*, Jiyoung Song notes that "only 6.6 per cent (13,768 people) of Australia's entire permanent migration programme were permanently settled on humanitarian grounds in 2014," while "Japan rejected 99 per cent of asylum applications it received" in 2015.⁵⁴

Finally, Malaysian border control is subjected to the principle of non-refoulement. According to the principle, governments are obliged to allow refugees fleeing persecution (like the Rohingya) to enter their country, at least temporarily, to ensure that they are able to undergo the screening processes for refugee status determination to prevent them from returning to persecution. Originally a part of the 1951 Convention, the principle has evolved into a norm of customary international law. Thus all states, whether or not they are party to the 1951 Convention, are legally bound by the prohibition to return "refugees in any manner whatsoever to countries or territories where their lives or freedom may be threatened because of their race, religion, nationality, membership of a particular social group or political opinion."⁵⁵

However, as this report has already indicated, Malaysia is not just a temporary transit country but a destination for some refugees and asylum seekers. The Government is not involved in refugee status determination and permanent resettlement places remain scarce. For instance, UNHCR Malaysia reports that Australia refused to accept any Rohingya refugees that disembarked in Malaysia during the Andaman Sea crisis.⁵⁶ Signatories of the 1951 Convention and 1967 Protocol must therefore be encouraged to measure up to their international obligations in terms of resettlement and mutual assistance. Non-refoulement ultimately affects the discretion of Malaysian ministerial decisions, because it hinders the Government's ability to exercise migration laws and policies it deems necessary in order to protect Malaysia's national interest.

⁵² 'Malaysia's immigration department says computer system sabotaged since 2010,' *Channel NewsAsia*, 26 May 2016.

⁵³ Jonathan Vit, 'Where are the Rohingya boat survivors now?' *IRIN News*, 15 April 2016.

⁵⁴ Jiyoung Song, 'The migration-security nexus in Asia and Australia (part 2),' *The Interpreter*, 6 June 2016.

⁵⁵ Department of International Protection, 'An Introduction to International Protection – Protecting Persons of concern to UNHCR,' *United Nations High Commissioner for Refugees*, 1 August 2005, p. 26.

⁵⁶ Jonathan Vit, 'Where are the Rohingya boat survivors now?' *IRIN News*, 15 April 2016.

Law and order

Whether or not refugees are a security risk for law and order depends on whether they "are treated as a short-term humanitarian problem rather than as a long-term integration challenge,"⁵⁷ as argued by Daniel Byman of Brookings Institution. A key concern is the unlawful residential status of refugees in Malaysia. This results in refugees living in a constant state of limbo, often 'ghettoised' in communities that are 'off the grid' in urban areas around Kuala Lumpur and the surrounding Klang Valley. Living 'off the grid' would subsequently create bleak prospects for refugees – without any means to obtain permission to live legally in the country, refugees will not have access to work, education and health services.

Such circumstances would create a vulnerable environment in which refugees resort to crime in their desperate attempt to survive. These include selling false UNHCR cards to incoming or undocumented refugees, and the illegal occupation of state land such as in Rompin, Pahang by 150 refugee families. Other security risks of the influx of immigrants in Malaysia include the spread of infectious diseases and the disruption of social harmony, public order and stability, as stated by the Ministry of Defence.⁵⁸

The security risks of refugees being marginalised without any opportunities to integrate themselves with host communities are clear. First, there could be instability in refugee communities due to infighting amongst refugees. In Lebanon, for instance, violent battles between extremists recently left residents of the Yarmouk camp in Beirut facing starvation and dehydration for more than a week. In Malaysia itself, 20 factory workers (mostly without documents) were killed in Penang throughout January and September 2014 due to communal clashes between the Rohingya and Buddhists from Myanmar.⁵⁹

Second, security problems in refugee communities could 'spill-over' into host communities. In Germany, with over a million refugees clogging its asylum system, hundreds of sexual assaults, numerous thefts, and at least five rapes were reported in Cologne in the early hours of 2016. In Malaysia, local nationals and Myanmar immigrants (reportedly the Rohingya) were involved in a shooting at Selayang market over a turf war for drug distribution.⁶⁰

Finally, the unlawful residential status of refugees would also increase crimes committed against them, as they are left exposed to the corrupt practices of law enforcement officers. These include arbitrary arrests, bribery, detentions and deportations. The onus is then on the Government to increase policing, the monitoring of crime and anti-social activities, service provisions and local governance for the long term.

Terrorism

In Europe and the United States, there is the fear that incoming refugees could increase the likelihood of terrorism in a country.⁶¹ This is not unique, given recent anti-immigration and nationalist sentiments both exemplified and amplified by Brexit and the election of Donald Trump. Terrorism has been a cause for concern in Malaysia. As of February 2019, authorities have identified 24 terrorist plots, arrested at least 457 suspected Islamic State supporters and, convicted at least 175;⁶² Australia and the UK issued a security alert for Kuala Lumpur in February and July 2016 respectively; and the Islamic State launched their first attack in Malaysia in June 2016.⁶³

There is little evidence to indicate that there are direct links between refugees and terrorism in general, let alone in Malaysia. The extent of the correlation thus far, within the local context, is only a possibility that the Islamic State is believed to actively recruit fighters and families amongst the Rohingya in Malaysia.⁶⁴ There is no hard evidence to suggest that Rohingya communities are responding to the Islamic State. In fact, Rohingya community leaders in Malaysia have rejected such claims.⁶⁵

⁵⁷ Daniel L. Byman, 'Do Syrian refugees pose a terrorism threat?' *Brookings Institution*, 27 October 2015.

⁵⁸ Kementerian Pertahanan Malaysia, 'Dasar Pertahanan Negara' (2010), p. 24.

⁵⁹ S. Aruldas, 'Gruesome Myanmar communal murders grip Penang,' *The Malay Mail*, 18 September 2014.

⁶⁰ V. Shuman, 'Turf war reason behind Selayang shooting,' *Free Malaysia Today*, 22 January 2016.

⁶¹ Richard Wike, Bruce Stokes and Katie Simmons, 'Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs,' *Pew Research Centre*, 11 July 2016.

⁶² Amy Chew, 'Police Official: Some Malaysians Still Hope to Join IS in Mid-East,' *BenarNews*, 25 February 2019.

⁶³ M. Kumar, 'Cops confirm Movida bombing first ever IS attack in Malaysia,' *The Star*, 4 July 2016.

⁶⁴ Jiyoung Song, 'The migration-security nexus in Asia and Australia (part 4),' *The Interpreter*, 6 July 2016.

⁶⁵ Imran Vittachi, 'Islamic State, Other Islamist Groups Exploit Plight of The Rohingya,' *BenarNews*, 11 June 2015.

The attacks by ARSA (Arakan Rohingya Salvation Army) on border police posts and attempted raid on an army camp in August 2017 has led to the group being branded as a terrorist organisation by the Myanmar Government. ARSA itself disputes this and claims they are a liberation separatist group that is more secular than Islamic. While there is no concrete evidence, reports have claimed that ARSA is recruiting amongst the displaced Rohingya.

Moreover, if refugees like the persecuted community of Rohingya Muslims fleeing Myanmar continue to be marginalised in Malaysia and elsewhere, joining terrorist networks like the Islamic State could become an attractive option. A study on the links between terrorism and migration has stated that "diasporas of people from countries experiencing repression, civil war or terrorism at home can become places of conspiracy and plotting of terrorist attacks."⁶⁶ This is a pressing concern, as the Islamic State is looking to expand its operations in Asia with recruitments from Malaysia and Indonesia, and the Rohingya are highly vulnerable as illegals without any prospects to rid themselves of poverty and deprivation.

Furthermore, there is the possible rise of jihadist sentiments in the region given recent atrocities in Rakhine State. According to Singapore-based terror experts Jasminder Singh and Muhammad Haziq Jani, the Rohingya crisis in Rakhine State may fuel a militant Muslim backlash in Southeast Asia.⁶⁷ For instance, their observation of Indonesian social media users reveals a willingness to become suicide bombers in defence of the Rohingya. In January 2017, Malaysian authorities detained an Indonesian – a suspected Islamic State follower – who was planning on carrying out attacks in Myanmar.⁶⁸

There is also the small number of groups claiming to be refugees, involved in terrorism, militancy and radicalism, who use Malaysia as a transit point.⁶⁹ An example is the Uighurs who, according to the Minister of Home Affairs, are legal immigrants carrying passports. The Government was previously reported to be in talks with China about the possibilities of repatriation.

Finally, it should be stated that the Government screens refugees entering the country legally with the help of security and intelligence agencies. For instance, the 3,000 Syrians that will be given temporary residence passes in Malaysia must undergo background checks with Interpol and the UNHCR for links to the Islamic State. As previously mentioned, all UNHCR card-holders have undertaken strenuous background checks and security clearances to ensure there are no 'red-flags' amongst the registered refugees in Malaysia.

⁶⁶ Alex P. Schmid, 'Terrorism and Migration: An Exploration,' *International Centre for Counter-Terrorism (ICCT) Research Paper*, May 2016, p. 4.

⁶⁷ Jasminder Singh and Muhammad Haziq Jani, 'The Rohingya Crisis: Regional Security Implications,' *RSIS Commentary*, 2 December 2016.

⁶⁸ 'Malaysia detains suspected IS supporter planning attacks in Myanmar,' *Channel NewsAsia*, 4 January 2017.

⁶⁹ 'Terrorist' Uighurs are refugees: Malaysia DPM,' *The Straits Times*, 12 April 2016.

Chapter 4 | Reputational Risk to Malaysia

In today's globalised world, the national reputation and image of a nation state is a salient and influential concept. A positive or negative reputation of a country, what it stands for and its actions, can impact a country's international influence, goals and economic interests.⁷⁰ Crucially, the reputation of a country is no longer just tied to how a country manages its relations with other countries and international organisations, but rather how it responds to situations, incidents and events that receive a global and regional audience.

Within this context, the emotive issue of refugees will have – and some argue has had – a significant impact on Malaysia's global reputation. The manner in which Malaysia responds to the growing number of refugees who are heading to its shores, and how it manages the hundreds of thousands that are already here, has and will come under greater public and international scrutiny from various groups such as foreign governments, local NGOs and international organisations – each with their own concerns and agendas. An examination of available literature over the last five years – news articles and documentaries, reports by various international organisations and governments, statements by local NGOs and academic articles – indicate four key issues or focus areas that commonly arise when examining Malaysia's reputation and standing on the subject of refugees.

The 1951 Convention and its 1967 Protocol

The first, and also among the most often repeated criticism of Malaysia's approach to refugees, is that Malaysia is not (and does not intend to be) a signatory to the 1951 Convention and its 1967 Protocol.⁷¹ Therefore, refugees are deemed to be illegal immigrants by law and treated as such. It is worth noting from a regional perspective that Malaysia is not in the minority, as the vast majority of ASEAN member states are also not signatories. Only two member states – the Philippines and Cambodia – are full signatories. From the standpoint of critics, however, not only does this give Malaysia the flexibility to avoid certain responsibilities and obligations when it comes to refugees, it also consigns those that are already in Malaysia to an ambiguous, dangerous status with very little to rely on in terms of recognition or protection.

Global reactions to Malaysia's refugee policy

Second, there is the global reaction to certain decisions taken by Malaysia and this can be clearly seen from the Andaman Sea crisis. The crisis was precipitated by a crackdown by Thai authorities on land smuggling routes which led to the surge of boats packed with Rohingya and Bangladeshi refugees and economic migrants crossing over the Andaman Sea. Many, if not all, were sailing straight for Malaysia. The gripping reports and visuals of abandoned, desperate, emancipated individuals adrift on rickety boats drew international attention. Moves by the governments of Malaysia, Indonesia and Thailand to 'push-back' boats after ensuring their seaworthiness and providing necessary supplies came in for severe criticism by domestic and global audiences and stakeholders. Statements by high-ranking Malaysian officials and a cabinet member that such refugees were unwelcome and that the Government needed to send the 'right message' did not go down well.⁷² It was perceived that the public attention and pressure finally led the governments of Malaysia, Indonesia and Thailand to provide temporary shelter, as well as conduct search and rescue missions for those stranded at sea.⁷³ Malaysia further agreed, along with Indonesia, on humanitarian grounds, to provide shelter for up to 7,000 of the refugees for up to a year while making clear that an external resettlement option will have to be found.⁷⁴

⁷⁰ Dennis F. Kinsey and Myojung Chung, 'National Image of South Korea: Implications for Public Diplomacy,' *The Journal of Public Diplomacy*, Vol. 4, 2013, pp. 1–12.

⁷¹ Mong Palatino, 'Malaysia Accused of Mistreating Refugees,' *The Diplomat*, 3 December 2015.

⁷² Beh Lih Yi, 'Malaysia tells thousands of Rohingya refugees to 'go back to your country'', *The Guardian*, 13 May 2015.

⁷³ Rashaad Ali, 'From ASEAN Chair to UN Security Council: Malaysian Foreign Policy in 2015,' *RSIS Commentary*, 18 December 2015.

⁷⁴ Penelope Mathew, 'Whither Regional Cooperation in Southeast Asia's Refugee Crisis?' *The Diplomat*, 24 August 2015.

Human trafficking and smuggling

The third issue is criticism on the lack of punitive action and prosecutions against Malaysians that are involved in the trafficking and smuggling of humans, and the errant employers who take advantage of, and abuse, foreign workers in the country. The latter has long been a point of contention for several countries that supply foreign workers to Malaysia. Reported cases of abuse have even led to Indonesia and Cambodia imposing temporary bans on domestic workers to Malaysia until the Malaysian Government undertook guarantees to ensure their safety, better terms of contract and working conditions. Both issues have also constantly been highlighted and pursued by the US Government in its engagement with Malaysia during the TPP negotiations and in the 2016 Trafficking in Persons Report (TIP Report).

Here, it is imperative to address the reference and implications to Malaysia. The annual TIP Report, issued by the US State Department's Office to Monitor and Combat Trafficking in Persons, is regarded as one of the most extensive and authoritative reports in its field and is widely quoted and reported among academics, research institutions and the media. Over the last few years, Malaysia's status has gone back and forth between Tier 2 and Tier 2 Watch List of the Report.⁷⁵ It was placed in Tier 3, the lowest rank in the report, for the years 2007, 2009 and 2014.

The focus on Malaysia has grown increasingly detailed over the years, and the 2018 Report has indicated significant shortfalls and issues to address. Although the Report concedes that progress has been made by Malaysia in convicting more traffickers, increasing criminal enforcement of unauthorised passport retention, granting more victims freedom of movement, tripling funding for NGOs, and opening its first trafficking-specific court, it is the lack of prosecution and punishment for law enforcement officials who are complicit in trafficking that comes in for particular scrutiny and criticism.⁷⁶ Additional issues include bureaucratic delays, lack of appropriate staff, and risk-averse and paternalistic attitudes towards victims.⁷⁷

The Report goes on to outline very specific recommendations for Malaysia to improve on. There are a total of 16 specific recommendations which are outlined in detail on page 287 of the Report. They include, but are not limited to, increasing the number of trafficking victims who obtain approval for freedom of movement, improving implementation of regulations for the 2015 amendments to the Anti-Trafficking in Persons and Smuggling of Migrants Act 2007, and publicising the results of investigations involving corrupt officials to increase transparency and deterrence and hold officials criminally accountable when they violate the law.⁷⁸

Prior discussions in 2016 to 2017 between ISIS Malaysia and US diplomats based in Kuala Lumpur indicated that unless there are significant visible and tangible improvements made by Malaysia, its ranking was in severe risk of being demoted to Tier 3. Furthermore, in previous years, there have been lawmakers in the US Congress who feel that Malaysia was undeservedly retained at Tier 2 Watch List to encourage the then likelihood of it acceding to the TPP, and have moved to pass resolutions in the House expressing the view that Malaysia be demoted to Tier 3.⁷⁹ Nonetheless, Malaysia's status in the TIP Report has only continued to fluctuate between Tier 2 and Tier 2 Watch List, despite numerous, consistent deficiencies highlighted in the Report.

Additionally, in her testimony to the Senate Foreign Relations Committee in mid-July 2016, Kamala Shirin Lakhdir, the then nominee for the post of US Ambassador to Malaysia, committed to pressing the Malaysian Government to meet its commitments in tackling human trafficking, dealing with issues of forced labour and effectively implementing laws on victim protection.⁸⁰ The bulk of questions directed to her also largely focused on the perceived dismal efforts and achievements by Malaysia on the wider issue of human trafficking, mistreatments of refugees and foreign workers and how the concerns of the US can be properly conveyed to Malaysians. While Malaysia was identified as a key regional partner to the US, its track record on the abovementioned issues, which is allegedly compounded by the involvement of corrupt officials, is something that the US takes very seriously.⁸¹

⁷⁵ Over the last 10 years, Malaysia has been placed on Tier 2 Watch List in the years, 2008, 2010, 2011, 2012, 2013, 2015 and 2016.

⁷⁶ No Malaysians, including suspected complicit officials, have been prosecuted for possible trafficking crimes.

⁷⁷ 'Malaysia,' 2018 Trafficking in Persons Report, 2019, p. 286-289.

⁷⁸ *ibid.* p. 287.

⁷⁹ US Congress, 'H.Con.Res.65 – Expressing the sense of Congress regarding the upgrading of Malaysia on the 2015 Trafficking In Persons report,' 114th Congress, 28 July 2015. It is also worth noting that the visit of Susan Coppedge, US Ambassador-at-Large for Trafficking in Persons, to Malaysia in late July 2016 was allegedly undertaken because of the country's perceived failings to properly investigate and prosecute responsible parties, and properly implement the detailed recommendations in the 2016 Report.

⁸⁰ US Senate, 'Testimony of Kamala Shirin Lakhdir Nominee for U.S. Ambassador to Malaysia Senate Foreign Relations Committee Wednesday, July 13, 2016,' US Senate Committee on Foreign Relations, 13 July 2016.

⁸¹ US Senate, 'Nominations Podcast,' US Senate Committee on Foreign Relations, 13 July 2016.

Different classes of refugees in Malaysia?

Lastly, there are concerns with the perception that Malaysia has its own preferences when it comes to refugees it wants to admit. This leads to the belief that there are, or could be, different classes of refugees in Malaysia – where some refugees find a lower barrier of entry with fewer restrictions when it comes to movement, availability of and employment options compared to others. This issue has come into light especially since the announcement by the Prime Minister in October 2015, during the 70th session of the United Nations General Assembly (UNGA) that Malaysia would open its doors to 3,000 Syrian migrants over the next three years to help with the current Syrian refugee crisis. Further statements by the Deputy Prime Minister (also Minister of Home Affairs) outlined that the Department of Immigration will arrange the entry of the Syrian refugees under existing immigration regulations and work with the International Organisation for Migration (IOM) and the UNHCR to issue refugee cards with security features to them.⁸² Alongside the offer of refuge, the Government has indicated that this offer includes temporary residence passes, the right to work and schooling for children.⁸³ Many, if not all of these options, have been denied not just to other newly arrived refugees in Malaysia, but also to the thousands of refugees who have been living in the country for decades. The criticism is that this offer to Syrians, if extended and expanded, could create a visible two-tier system of refugees – two classes where one enjoys significantly more benefits and advantages than the other. The potential criticism and perception that could be generated from this issue would have a further negative impact on Malaysia's national image and reputation.

Taken together, it does appear that Malaysia has come under a significant amount of attention and criticism when it comes to the issue of refugees and related areas. As mentioned in the beginning of this section, the way Malaysia and its actions – or lack of actions – is perceived, could conceivably have some impact on the country's international influence, goals and economic interests, whether the Government likes it or not. As a country that is an active member of the international community, committed to the norms and values of the international system with a track record of publicly speaking out on atrocities and humanitarian tragedies, and whose economy is closely linked to the global trade network, Malaysia has to take such views, perceptions and criticisms seriously.

In managing this perception and its impact on her reputation, Malaysia faces the challenge of managing its domestic and national interests. This includes its economic, political, socio-cultural and security considerations which have to be balanced against the global pressure and expectation of nations that are relatively prosperous to provide security and safety to refugees and other vulnerable groups who turn up on their borders on a humanitarian basis. This is by no means a uniquely Malaysian problem given the upswing of refugees around the world from various conflicts, and it must be carefully and strategically managed.

⁸² 'Malaysia to offer shelter, jobs, education to Syrian refugees,' *Astro Awani*, 2 October 2015.

⁸³ Kate Mayberry, 'First-class refugees: Malaysia's two-tier system,' *Al Jazeera*, 27 December 2015.

Chapter 5 | Key Policy Issues and Considerations

This chapter seeks to narrow the focus of this report by highlighting and addressing possible major concerns of policymakers when it comes to the question of granting registered refugees permission to work in Malaysia. The issues covered in this chapter are outlined in the figure below. These concerns are distilled from the wider issues that were explored in Chapters 2 to 4, and also from the issues highlighted during interviews with key stakeholders conducted in the course of the research.

1.	How many refugees, and which refugees, should be allowed to work.
2.	The pull factor or floodgates argument that is commonly associated with granting refugees permission to work legally.
3.	The potential legal obligations and exposure of all parties (especially the Government and prospective employers).
4.	The issue of procedure in regularising and granting refugees the right to work.
5.	The terms and conditions associated with permission to work, should they be granted.
6.	The economic benefits of granting refugees permission to work.
7.	Questions of law and order, safety and security in relation to refugees and asylum seekers.
8.	The impact to Malaysia's national prestige.

Figure 5 Key Policy Issues and Considerations

The right to work for whom?

This is a major issue that needs to be addressed before the onset of any plan or programme that gives permission to work and regularises the status of refugees in Malaysia. Throughout the course of this research, several key stakeholders that were interviewed, including the Malaysian Employers Federation (MEF) and the MTUC repeatedly expressed their interest and concern on which, and how many, refugees would be involved if such a plan or programme was in the works. Among the key concerns highlighted were that blanket employment – which would imply some kind of legal recognition of refugees or a formalisation or regularisation of their status in Malaysia – of all refugees and asylum seekers would have adverse outcomes to the nation. This includes the often quoted floodgates argument, which is addressed in the following section.

While many refugees already work, regularising their status is not a simple matter of just granting them permission to work or legalising their existing vocations as some advocates state. There are various bureaucratic, security, legal and market considerations that have to be taken into account. These, again, will be further addressed in the questions below. From the primary and secondary research carried out in this study, there appears to be a consensus by most stakeholders that only those that are already registered with the UNHCR's office in Kuala Lumpur should be part of any programme that will allow refugees to work legally in Malaysia. It should be stressed again that registered refugees in Malaysia undergo stringent procedures including the UNHCR's refugee status determination process. The new cards issued to registered refugees are also among the most technically advanced and secure UNHCR cards with a variety of safety features. In fact, they are probably the most advanced and secure refugee identification document of its kind in the world.

However, how many of the registered refugees and asylum seekers that fall within the working age that are allowed to work remain to be seen. It could potentially come in the form of a more comprehensive, expanded version of the pilot programme for up to 300 Rohingya to work legally in Malaysia in the plantation sector in 2017. The fact that the programme was an abysmal failure will provide several key indications on ways forward and outstanding issues. Any final outcome concerning this issue should include participation and feedback from all stakeholders – the Government, UNHCR, industry stakeholders and relevant NGOs.

The floodgates argument

The 'pull factor' and floodgates argument associated with granting refugees permission to work is a major concern of the Government and some of the stakeholders interviewed. It is also one of the most common and contested arguments when it comes to any discourse on refugees and asylum seekers. It would be unreasonable for policymakers to not take into account the potential of unintentionally making Malaysia a more attractive destination for migrants, refugees and asylum seekers by granting them permission to work. However, one should also examine the floodgates arguments holistically, without falling victim to misinformed simplifications or exaggerations.

Those who subscribe to the argument are particularly concerned that any shift towards regularising the status of refugees, and allowing them to work legally, will be seen as a softening of Malaysia's stance that could encourage more refugees, asylum seekers and stateless individuals to make their way to the country. Some policymakers are also concerned about inadvertently generating 'push factors' towards Malaysia, whereby neighbouring countries who are also facing their own refugee management problems could 'push' their refugees to Malaysia because of favourable local conditions here. This will only add further to the burdens of the Government in hosting and managing the additional number of potential refugees and asylum seekers. A growing number of such people making Malaysia their destination will also frustrate the Government's efforts to curb syndicates who engage in people smuggling and trafficking.

Additionally, there could be domestic social and political ramifications as well. There is the concern that Malaysians – not unlike citizens in other destination countries – could perceive that job opportunities are being taken away from them and given to such groups. As it stands, Malaysians, especially those in the lower rungs of the workforce, often complain that they are excluded from the job market and that the Government and employers are prioritising the employment of foreigners over locals due to lower wages. Despite some degree of sympathy by Malaysians for the plight of refugees, there is a risk that any official programme to allow refugees to work legally could risk a similar backlash. This becomes more acute if the scale and number of refugees involved are large.

On the other hand, critics of the policy would argue that the floodgates argument is often overused and unjustified. There has always been a steady stream of refugees trickling into Malaysia.⁸⁴ In recent years, most of them have originated from Myanmar. In fact, data from the UNHCR suggests that the number of refugees have plateaued due to positive developments in Myanmar. It is only the Rohingya that continue to flee in significant numbers. Additionally, substantial numbers of registered refugees in Malaysia have been successfully resettled abroad. However, as mentioned in the Introduction, the number of refugees resettled has decreased since 2017.

Despite being deemed illegal and given virtually no protection under the law of the land, many are still attracted to the stability that Malaysia offers and relatively better economic prospects than their home countries and those within the region. The influx of large numbers like those seen in the Andaman Sea crisis normally occur when there are sudden anomalies that serve as a trigger. This can include a sudden crackdown on smuggling networks, as per 2015, or an uptake of violence at the source countries or regions. Additionally, with an existence of such a programme, the vast number of undocumented refugees and asylum seekers in Malaysia could be encouraged to register with the UNHCR. This will greatly help the organisation, and Government, to have a better idea on the number of refugees and asylum seekers who remain unknown and hidden in the country.

Proponents and critics of the argument both have legitimate concerns. Ultimately though, the pull factor or floodgates argument and its link with granting refugees permission to work must be viewed within the larger context. Interviews with the UNHCR have indicated that the overall numbers of registered refugees in Malaysia have remained the same over the last two years, and have actually decreased due to improving conditions in source countries and more resettlements to third countries. As this report articulates, permission to work – which will increase the skills and independence of refugees – is an asset when it comes to the selection of refugees for resettlement to third countries. Furthermore, there are additional mitigating factors against the floodgates argument. These include the difficulties of movement to Malaysia – especially after numerous crackdowns on smuggling and trafficking networks – and the strict conditions to qualify as a registered refugee with the UNHCR. The latter's RSD remains an exhaustive, comprehensive and secure process that utilises state-of-the-art biometric data collection and a new card system.

⁸⁴ Bar Council Malaysia, interview by ISIS Malaysia, Kuala Lumpur, 10 August 2016.

Possible changes to Malaysia's legal obligations

Although the Malaysian Government does not intend to accede to the UN conventions relating to refugees, it has expressed its commitment to practice the principle of *non-refoulement*.⁸⁵ The Government specifically demonstrated its international obligation in the Andaman Sea crisis with its decision to provide temporary refuge to refugees on-board, despite initially refusing to provide assistance. This decision was welcomed by many international organisations, such as the IOM.⁸⁶ It is pragmatic of Malaysia to consistently practice non-refoulement, because it may not only reduce the risk of a blowback against the Government, but it also validates Malaysia's commitment towards refugees.

Existing legislation in Malaysia clearly underline the illegal status of refugees. However, there have been instances when the judiciary has interpreted the laws differently. Based on a few cases, the courts have downplayed the illegality of refugees in the event that they are hired. An example is the Industrial Court case of Ali Salih Khalaf v Taj Mahal Hotel, in which the court ruled that the employer unjustly dismissed the complainant (a refugee) and accordingly granted him compensation.⁸⁷ The court had also affirmed the status of refugees within Article 8(1) of the Federal Constitution⁸⁸ and subsequently ruled that their employment rights are protected under the Industrial Relations Act 1967.

Certain stakeholders that we interviewed are of the view that granting refugees permission to work is in accordance with the Federal Constitution and Employment Act 1955. Conversely, there were also stakeholders who stated that there are currently no laws that allow refugees to work legally.

As the relevant laws currently stand, refugees are deemed illegal under Section 6 of Immigration Act 1955/63, and their status does not fall within any of the interpretation clauses of Employment Act 1955. In other words, refugees are made illegal by laws relating to immigration and employment. Therefore, some provisions in these laws must either be reinterpreted or amended in light of granting refugees permission to work. These include Immigration Act 1955/63, Industrial Relations Act 1967, Employment Act 1955 and Employment (Restriction) Act 1968.

In countries where refugees are allowed to work, the terms and conditions vary from country to country. In Switzerland – a signatory to the 1951 Convention and its 1967 Protocol – the status of a refugee is recognised under national laws and permission to work is restricted to certain sectors. For example, in the canton of Zurich, the legal jobs available to refugees are limited to construction, institutes (nursing and maintenance), food and drink manufacturing, hotels and catering, laundries and mending shops.⁸⁹ In Japan, recognised refugees are accorded work rights similar to permanent residents, foreign spouses of Japanese citizens and settlers, which entitle them to be employed by most businesses and organisations except the civil and public services.⁹⁰ Furthermore, the employment rights of registered refugees in Japan are protected by employment laws such as the Employment Measures Law, Employment Security Law and the Vocational Ability Development and Promotion Law, in line with Article 27 of the Japanese Constitution. In India, a non-signatory of the Convention and a country without any coordinated or legal refugee management mechanisms, the Central Government has no objections in allowing refugees to work. While there are no formal regimes or work schemes for refugees, many are employed in the informal sector with little hindrance from authorities.⁹¹

In Malaysia, current legal provisions do not distinguish refugees from illegal immigrants. Thus amendments are needed to include a conditional exception clause that specifically addresses refugees into Immigration Act 1955/63. A similar approach could also be adopted for other employment legislations. These amendments will protect refugees by acknowledging their status and providing them with recognition, thereby granting them limited constitutional rights.

Although a large degree of political will is required, it is important to incorporate the plight of refugees into Malaysian laws in order to streamline their regularisation of status and permission to work.

⁸⁵ 'Parlimen Ketiga Belas, Penggal Ketiga, Mesyuarat Ketiga,' *Dewan Rakyat*, Vol. 48, 4 November 2015.

⁸⁶ 'IOM Welcomes Decision to Save Lives of Migrants at Sea in Southeast Asia,' *International Organisation for Migration*, 20 May 15.

⁸⁷ Ali Salih Khalaf v Taj Mahal Hotel [2014] 2 Legal Network Series 0245.

⁸⁸ Article 8(1) of Federal Constitution states that "All persons are equal before the law and entitled to the equal protection of the law."

⁸⁹ Office for Economy and Labour, 'Work Permit Unit – Asylum Seekers,' *Canton of Zurich* (2017).

⁹⁰ Osamu Arakaki, *Refugee Law and Practice in Japan* (Hamphshire: Ashgate Publishing Limited, 2008), p. 227.

⁹¹ Sagnik Chowdhury, 'India's 'asylum policy': What it is, who it applies to,' *The Indian Express*, 21 September 2016.

Differences in the terms and conditions for refugees and foreign workers

When it comes to employment, one must take into account that foreign workers who are here on contract can be sent home. Refugees, on the other hand, must remain in the country as per the principle of non-refoulement. As vulnerable people who have been forced to flee their homes, it is imperative that every effort must be made to see that a regulated work scheme for refugees is conducted in a holistic and transparent manner.

Thus, refugees should be treated on as equal terms as possible with regular foreign workers. Reducing any differentials in terms of treatment will help ensure that there are no perceived privileges among refugees, thus de-emphasising the floodgates argument. In addition, it will present fewer human resource management problems to employers. By removing any sense of "entitlement," refugees will have to be as productive as others and have the same benefits. Employers will also not be able to take extra unfair advantage of the position of refugees.

The one area where some consideration may be given is the duration of employment, especially if the resettlement process is unduly long. Furthermore, some refugees and asylum seekers view Malaysia as either a transit or destination country, without any intention of going back to their country of origin. This particularly applies to the Rohingya, who have no real prospects of returning home anytime soon. This, however, can be treated on a case-by-case basis based on employment history and track record.

It should also be said that there have been instances whereby regular foreign workers have been abused or mistreated by local employers. Examples include the retaining of passports, unusually long working hours and unregulated deductions of pay. In order to mitigate this, permission to work for refugees and asylum seekers should include sufficient avenues to seek redress and to hold employers accountable, perhaps via a complaints bureau in the Department of Labour that is specifically tasked to manage the employment of UNHCR cardholders. This will also ensure that refugees and asylum seekers do not constantly shift between jobs, as they currently do in the informal sector.⁹²

Economic benefits of granting refugees permission to work

Permission to work will add value to the livelihood of refugees, with a positive spill-over effect to the Malaysian economy. For (prospective) employers, employing refugees will be a cost-effective, human capital investment as opposed to hiring foreign labour as the latter results in high costs of procurement and retention. In general, with permission to work given to refugees, the economy stands to benefit in terms of aiding productivity while keeping costs low. Besides being a competitive labour pool, refugees will be able to strengthen their skills set and possible integration capacity which, in return, would extricate them from exploitation in undesired activities. Having a more secure form of disposable income in their hands would also provide them with some financial independence, thus a higher chance of them spending in the local economy.

As mentioned earlier in Chapter 2, a study by the World Bank stated that legitimising refugees would lead to the creation of more jobs in Malaysia, increased wages for Malaysians and an increased GDP overall. Take, for instance, the experience of Denmark, where refugees and asylum seekers from the former Yugoslavia, Somalia and Iraq worked in low-skilled jobs during the 1990s and 2000s. There was a boost in productivity and an overall positive cumulative effect on the economy. Instead of competing for the same low-skilled jobs, locals moved up the skills ladder to more specialised professions that were better paid and more productive.⁹³ Instead of taking away local jobs, the introduction of refugees to the jobs market complemented and stimulated local workers and increased their opportunities for advancement and higher wages.

In terms of public costs, the Government could gain in terms of minimising its expenditures on illegal immigrants, including refugees. For example, in 2014, the Government reportedly spent at least RM13 million to repatriate undocumented immigrants in Sabah alone.⁹⁴ Such expenditures could be lowered as registered refugees – provided they are allowed to work legally and are thus somewhat self-sufficient – are removed from the equation.

⁹² Malaysian Employers Federation, interview by ISIS Malaysia, Kuala Lumpur, 22 November 2016.

⁹³ Mette Foged and Giovanni Peri, 'Immigrants' Effect on Native Workers: New Analysis on Longitudinal Data,' *National Bureau of Economic Research (Nber) Working Paper Series*, August 2013, pp. 29–30.

⁹⁴ Assim Hassan, 'RM13j usir PATI di Sabah,' *Utusan Malaysia*, 18 November 2014.

Impact on law, order, safety and security

The regularisation of status and permission to work for refugees will positively impact law and order in Malaysia in three ways. First, possible spill-over effects of problems in refugee communities should be minimised if refugees are registered with proper identification and given opportunities to be self-sufficient. Human behaviour can differ depending on whether or not one is "anonymous" in society. Social ills associated with alienating or marginalising refugee communities, such as criminal activities and anti-social behaviour, should subsequently decrease as a result. This will reduce the chances of refugees turning towards violence or radicalisation in their desperation for a better life.

Second, negative perceptions of refugees or backlash against these individuals by locals would be better managed if they are seen as 'legal' individuals with 'real' identities via their registration in a national database. The notion of 'anonymous' individuals constituting a 'threat' to national security should fade. For instance, a study on Thai public opinions of refugees and migrants from Myanmar indicates that – (i) public opinions tend to be more positive towards 'registered' individuals than those who are 'non-registered'; greater proximity between migrants and community members will lead to an improvement in perceptions; and locals living close to refugee camps are likely to have positive views of refugees.⁹⁵ Furthermore, the regularisation of status and permission to work for refugees will limit the chances of public actors politicising links between forced migration and national security to increase the sense of 'threat' that refugees pose. In other words, xenophobic attitudes or right-wing sentiments of refugees as the 'other' will no longer be encouraged.

Third (and perhaps most importantly), a national database will ensure the proper conduct of law enforcement without the arbitrary arrest, bribery, detention or deportation of refugees. This will benefit Malaysian society at large, as it will improve local confidence in the Government's management of forced migration flows. A cycle will thus ensue due to indications that the public will generally accept refugees if their government demonstrates it is able to control their borders and mitigate potential threats against public safety and security.⁹⁶

There are also clear advantages of knowing precisely who is in Malaysia. Formal employment via registration in a national database will not just provide better protection to refugees, but it will also greatly aid relevant government and international agencies in their data collection. A national registration system of refugees, in close cooperation with the UNHCR, will strengthen intelligence gathering with security checks, character assessments, health screenings and biometric data. The integrity of Malaysian borders and immigration will be protected, as mixed flows of individuals moving irregularly will be monitored through official channels.

The regularisation of status and permission to work for refugees will also help to address the conditions that exacerbate forced migration in the region. It would be more difficult for syndicates such as the UNHCR card forgery scam, smugglers, traffickers and even terrorist networks to exploit the vulnerabilities of refugees, as they will no longer be constrained to the informal economy and the underbelly of society. A national database will enable officials to readily identify and track the identities, location and activities of refugees over time, while simultaneously encouraging a 'clean up' of corrupt practices within the Government itself, as per the hijacking of Malaysian passport control at KLIA the last six years.⁹⁷

Tighter control of Malaysian borders could further discourage individuals from coming to the country in search of stability and better economic prospects. For example, the large crackdown on smuggling trafficking networks last year by Thailand has dramatically reduced the rate of population movements in the region. If the management of forced migration improves in Malaysia, the country will no longer be known as a destination in which it is relatively 'easy' to live and work illegally.

The regularisation of refugees should also ease their repatriation or resettlement. A national registration system will enhance bilateral agreements on the issuance of passports for refugees by their relevant embassies, particularly if they were planning on returning home. Sufficient and reliable information on refugees will help to speed the decision-making processes on issues of security, and thus the probability of resettlement to third countries of final destination. This is particularly important at a time when terrorism is centre stage, and links

⁹⁵ Malee Sunpuwan and Sakkarin Niyomsilpa, 'Perception and Misperception: Thai Public Opinions on Refugees and Migrants from Myanmar,' *Journal of Population and Social Studies*, Vol. 21, July 2012, pp. 47–48.

⁹⁶ David Irvine, 'Security and Forced Migration,' presented at the Asia Dialogue on Forced Migration, Kuala Lumpur, 5–6 September 2016.

⁹⁷ 'Malaysia's immigration department says computer system sabotaged since 2010,' *Channel NewsAsia*, 26 May 2016.

between forced migration and security are politicised.

These benefits aside, however, it must be made clear that the regularisation of status and permission to work for refugees are not tantamount to naturalisation. There is the public perception that refugees will generally become 'permanent settlers' in countries that offer temporary refuge. Indeed, the Malaysian Government explicitly stated that it will not be giving citizenship to the 3,000 Syrian refugees who were expected to arrive throughout 2016 and 2017. As of June 2016, a total of 79 Syrian refugees have arrived in Malaysia. It was expected that another 500 joined them by the end of 2016.⁹⁸

Therefore, more permanent solutions must be sought. These include the type of visas or identification documents that refugees with permission to work will be given (whether humanitarian visas, or as temporary residents or 'guests'), the duration of these visas and the conditions for renewal (taking into account the principle of non-refoulement). An increase in bilateral relations with Myanmar and other source countries should also be factored into the regularisation and work opportunities scheme, in order to facilitate possible repatriation and the legal take-backs of those that do not qualify for refugee status.

Impact on Malaysia's national prestige

As outlined in Chapter 4 of this report, Malaysia's national prestige and reputation has been the subject of no small amount of criticism by both international institutions and NGOs, the media and even several foreign governments. Local NGOs and organisations, including the Bar Council of Malaysia, have also been critical. It is important to note that Malaysia does host, willingly or unwillingly, a large number of refugees and asylum seekers, including those deemed as stateless or 'people of concern.'

Notwithstanding their uncertain legal status, issues of abuse, exploitation and a generally tough life, many do manage to sustain themselves and are employed in the informal sectors of the economy. There is no major crackdown on such groups and they are allowed, albeit illegally, to earn a living. Additionally, despite the Government undertaking that it was not bound by the principle of non-refoulement – despite the fact that it constitutes a rule of customary international law – the Government, to its credit, has not deported or sent back any refugees or asylum seekers with a few small exceptions. These included several Uighur Chinese and Sri Lankan Tamils who were deported to their home countries in 2013 and 2014 respectively upon request by the security forces of their countries of origin.⁹⁹ Additionally, in 2003, the UNHCR expressed strong reservations on the deportation of seven Achenese by Malaysian authorities to what was then still a conflict zone.¹⁰⁰

For a country that is not a signatory to the 1951 Convention and its 1967 Protocol, and classifies refugees and asylum seekers as illegal immigrants, Malaysia does appear to be a lot more tolerant on refugees and asylum seekers than most quarters give it credit for. In fact, it would not be too far a stretch to assert that Malaysia has carried a bigger burden and provided more opportunities to such groups than countries like Australia or Japan, who are, in fact, signatories to the 1951 Convention and its 1967 Protocol but are notorious for their policies on migrants and asylum seekers.

All things considered, a well thought out and implemented programme that grants registered refugees permission to work legally will have a positive impact on Malaysia's national prestige and reputation. It would help alleviate the criticisms and focus that the country has come under in recent years. This, in turn, would have a cascading influence on Malaysia's international standing, goals and economic interests. Allowing registered refugees – especially those that are victims of trafficking – to work legally would also meet one of the key recommendations in the 2016 TIP Report.¹⁰¹

⁹⁸ 'Kami Syukur Sambut Ramadan, Berbuka Puasa Di Malaysia – Pelarian Syria,' *Bernama News Agency*, 17 June 2016. Population and Social Studies, Vol. 21, July 2012, pp. 47–48.

⁹⁹ 'Malaysia accused over deporting Uighur asylum seekers to China,' *The Guardian*, 5 February 2013. 'Malaysia criticised for deporting Sri Lankans,' *Al Jazeera*, 28 May 2014.

¹⁰⁰ 'Malaysia deports asylum seekers to Aceh despite UNHCR appeal,' *United Nations High Commissioner for Refugees*, 5 September 2003.

¹⁰¹ US Department of State, 'Country Narratives – Malaysia,' *Trafficking in Persons Report 2016* (2016), p. 255.

Chapter 6 | Implications to Malaysia of Providing Registered Refugees Permission to Work

This chapter aims to put the possibility of permission to work for refugees in Malaysia into perspective. There are five considerations to note.

The scale of Malaysia's refugee "problem"

First, Malaysia's refugee problem is significantly small in scale in comparison to other countries. More than 65 million people were forced from their homes by conflict or persecution in 2015, and there are 21.3 million refugees living outside their own countries.¹⁰² Amnesty International lists four countries in the Middle East as top refugee-hosting countries – Jordan comes in first (with more than 2.7 million people), followed by Turkey (more than 2.5 million); Lebanon comes in fourth (more than 1.5 million) and Iran in fifth (979,400).¹⁰³

Similarly, five countries in Africa are listed as part of the top ten refugee-hosting countries – Ethiopia (736,100), Kenya (553,900), Uganda (477,200), Democratic Republic of Congo (383,100), and Chad (369,500).¹⁰⁴ In sub-Saharan Africa alone, there are 4.4 million refugees with 19.5 million 'people of concern' to the UNHCR.¹⁰⁵ The Dadaab refugee camp in Kenya is the largest in the world, and its 300,000 occupants are facing displacement as Kenyan authorities are in the midst of shutting it down.¹⁰⁶ Unlike in richer and more peaceful Europe, refugees in Africa are fleeing from one war-torn region to the next, such as from South Sudan to Darfur.

Approximately one million refugees fled Afghanistan, Iraq and Syria, and made their way to Europe in 2015.¹⁰⁷ This resulted in 1,321,560 asylum claims.¹⁰⁸ The IOM estimates the incoming refugee rate in Europe to be 17 per cent higher this year with the death toll of those trying to seek refuge up by more than 15 per cent.

The number of refugees in Malaysia pale in comparison to the situation in the Middle East, Africa and Europe. As established at the beginning of this report, there are currently 170,460 refugees and asylum seekers registered with the UNHCR. As stated in Figure 1, they comprise of three main groups – 90,200 Rohingya (53 per cent), 57,390 non-Rohingya Burmese (34 per cent) and 22,870 of other ethnicities (13 per cent).

Malaysia's numbers are considerably lower than the number of refugees that poorer, undeveloped countries in Africa have to manage. Yet such countries have been more progressive with their asylum policies. Uganda's Refugee Act of 2006 and its Refugee Regulations of 2010 recognise the right of refugees to work, move around the country and live in the community, rather than in special camps, with land provided for refugee settlements. In more advanced Europe, permission to work and interaction with host societies is a priority. In Germany, refugees work in temporary positions or menial jobs arranged by the Government for one euro an hour. In the Netherlands, companies are willing to monitor and skills match refugees in temporary work for more permanent positions in future.

Malaysia's refugee problem is also small in comparison to the number of documented and undocumented migrant workers in the country. Estimated figures now stand at six million, with headlines like 'Malaysia lemas ditimbun pekerja asing' in Malay daily Kosmo and 'Minister says 15pc foreign worker cap possibly exceeded' in The Malay Mail underlining the extent of the situation.¹⁰⁹ Moreover, the MTUC reports that foreign workers make up 40 per cent of the Malaysian workforce with repercussions for locals such as losing out on remittances and

¹⁰² 'Figures at a Glance,' *United Nations High Commissioner for Refugees*, last updated June 2016.

¹⁰³ 'Ten countries host half of world's refugees: Amnesty,' *Middle East Eye*, 4 October 2016.

¹⁰⁴ *ibid.*

¹⁰⁵ 'With 1 human in every 113 affected, forced displacement hits record high,' *United Nations High Commissioner for Refugees*, 20 June 2016.

¹⁰⁶ Patrick Kingsley, 'Fear forces refugees in world's largest camp to return to conflict zones,' *The Guardian*, 15 September 2016.

¹⁰⁷ Susmita Baral, 'Refugee Crisis 2016 In Europe: Death Toll And Migrant Arrival Increases, Statistics Show,' *International Business Times*, 8 October 2016.

¹⁰⁸ 'Migrant crisis: Migration to Europe explained in seven charts,' *BBC News*, 4 March 2016.

¹⁰⁹ Professor Dr Azizah Kassim, 'Foreign Workers and Social Inclusion,' presentation at National Economic Outlook Conference 2016–2017, Kuala Lumpur, 24–25 November 2015.

bargaining salaries.¹¹⁰ In contrast, there is a certain vulnerability that refugees possess as forcibly displaced persons fleeing conflict or persecution. Such susceptibility should make it easier for policymaking purposes, specifically in terms of deciding the limitations or 'Dos and Don'ts' of granting refugees permission to work.

The vast number of foreign workers in Malaysia indicates that there are ample work opportunities in the country – both legally and illegally – in largely 4D sectors. The demand for cheap labour helps to explain why Malaysia has transitioned from a transit to a frontline state for refugees and asylum seekers. Indeed, this report has established that refugees and asylum seekers are already part of the Malaysian workforce. More importantly, such a trend is not new as refugees and asylum seekers have been coming to Malaysia for decades. For instance, there are now third and fourth generation Rohingya in Malaysia. The reality for Malaysia is clear – labour shortage is not a temporary issue; transnational migration is a norm; and refugees and asylum seekers are already immersed in the Malaysian labour force.

Developments in Myanmar and the Rakhine State

During the Union Peace Conference in September 2016, dubbed the '21st Century Panglong' conference, Aung San Suu Kyi hosted ethnic minorities for peace talks with the Government aimed at ending decades of separatist insurgencies. The conference was attended by 17 of the 20 main armed groups, including the Chin, Karen, Kachin, Shan and Wa, along with other stakeholders.¹¹¹ Furthermore, interviews with the UNHCR here in Malaysia indicate that non-Rohingya Burmese will no longer qualify as refugees if positive developments in Myanmar continue.

Therefore, there is an opportunity for the Malaysian Government to facilitate and increase the self-reliance of non-Rohingya Burmese refugees in order to further encourage their return home, in two to three years, once the prospects for peace improve in Myanmar. This is only possible, however, if permission to work is given to these refugees – they will be able to earn a living; they will be able to learn skills that will boost job prospects back home; and they will be able to apply for a Burmese passport if registered in a national database. A bilateral agreement between the Malaysian and Burmese governments is needed to forge closer cooperation to expedite the return of non-Rohingya Burmese refugees, and to enable legal and voluntary take-backs of those that do not qualify for refugee status.

A separate, 'special package' is needed to specifically manage Rohingya refugees in Malaysia. The return or repatriation of the Rohingya back to Myanmar is looking increasingly slim, despite Aung San Suu Kyi recently announcing an advisory commission led by former UN Secretary General Kofi Annan to look at possible solutions for the stand-off in Rakhine State. The new Burmese Government continues to deny citizenship to the Rohingya and to isolate the group from the rest of Myanmar.

Developments since 9 October 2016, particularly the ARSA attacks in August 2017 and the current displacement situation along the Bangladesh-Myanmar border, further reiterate that returning home is not an option for the Rohingya. Ongoing deadly clashes between security forces and the Rohingya are likely to have a serious impact on the political, human rights and humanitarian situation in Rakhine State, with both short-term and longer-term consequences.¹¹² These developments vindicate the argument that after years of persecution and violence, without aid or intervention, there are groups within the Rohingya that have turned to violence out of desperation. If further left unaddressed, this could see a spike in violence in an already ravaged Rakhine State, with the window of opportunity for the Myanmar Government to come to a solution closing.

Indeed, the Andaman Sea crisis underlines the fact that instability in Rakhine State affects neighbouring countries like Malaysia. Dimming prospects for peace and eventual repatriation, along with the threat of new flows into Malaysia, indicate that a sustainable and feasible solution for the plight of Rohingya refugees and their host countries is imperative. In other words, the Rohingya are here to stay and the Malaysian Government should

¹¹⁰ Malaysian Trades Union Congress, interview by ISIS Malaysia, Kuala Lumpur, 25 October 2016.

¹¹¹ 'Aung San Suu Kyi hosts ethnic minorities in Myanmar,' *Al Jazeera*, 31 August 2016.

¹¹² 'Large coordinated attacks hit three Myanmar border police posts in Rakhine State on 9 October 2016, purportedly by Rohingya, killing nine police officers. At least 250 assailants, and perhaps as many as 500–800, were armed mostly with knives and slingshots (as well as about 30 firearm); they fled with at least 50 guns and 10,000 rounds of ammunition. There have since been further deadly clashes between this group and the security forces, with the latter accused of killing non-combatants, burning homes and force hundreds out of their homes into paddy fields.'

subsequently consider long-term solutions such as facilitating and increasing their self-reliance and inclusion in society through work opportunities.

It should be noted that Malaysia is not the only country that hosts significant number of Rohingya. Bangladesh, Saudi Arabia and Thailand are all destination and host countries for Rohingya fleeing Myanmar.¹¹³ None of these countries appear to have any form of regularised work programme for Rohingya refugees and asylum seekers. Should Malaysia's pilot programme be successfully implemented, continued and expanded, Malaysia will be the first country to have any sort of regularised work programme for them.

Previous expressions of commitment

Third, it must be said that granting refugees permission to work is not a new concept to the Government – there have been previous expressions of commitment that date as far back as 2003, as touched upon in Chapter 2 of this report. Despite becoming government policy in 2003, the granting of IMM13 to Rohingya refugees remained unimplemented until November 2004. The process was then only activated on 1 August 2006, whereby some 4,000 Rohingya paid RM90 to register as IMM13 holders.¹¹⁴ However, the granting of IMM13 to these refugees was short-lived, as it only lasted for two weeks due to accusations of bribery and corruption by parties involved in the registration process.

More recently in 2013, the Government announced that it would issue work permits and provide training for refugees living in Malaysia. This transpired again in February 2016, with the announcement of a pilot project for 300 Rohingya to work in the plantation and manufacturing sectors. Since the failure of the pilot in the plantation sector, there were indications of a second pilot in the manufacturing sector as well as a third in the construction sector for 2018 and 2019 respectively.¹¹⁵ It also remains to be seen how the current Pakatan Harapan Government will implement Promise 35 of its electoral manifesto.

The role of ASEAN

The spill-over of developments in Myanmar into neighbouring countries symbolise that forced migration is not unique to Malaysia alone. This is the fourth consideration to note – forced migration in the region is an ASEAN problem, despite only two member states being signatories to the 1951 Convention and 1967 Protocol. Although ASEAN does not have a framework that standardises the management of refugees and asylum seekers, facts on the ground have forced ASEAN member states to recognise the existence and irregular movement of large numbers of refugees and asylum seekers. At the very least, there is a growing demand that such irregular movement and the factors that cause it aren't regarded merely as minor and non-traditional. The protection for refugees and asylum seekers are also highlighted in Articles 15 and 16 of the ASEAN Human Rights Declaration.¹¹⁶ As an ASEAN member state and a transit and destination state for refugees and asylum seekers, Malaysia faces additional pressure to not just live up to its obligations but also lead the way in the management of such people.

The Andaman Sea crisis further highlights that Thailand is also a major transit and recipient country for refugees. Thailand hosts nearly 40,000 people in Mae La, its largest refugee camp, and the country shelters more than 100,000 refugees across nine camps along the Thai-Burma border.¹¹⁷ Like Malaysia, the majority of refugees in Thailand are Burmese (both Rohingya and non-Rohingya). But unlike Malaysia, irregular migrants are (indirectly) able to stay and work in Thailand on a regular basis through a labour scheme.¹¹⁸ The Thai Government has also conducted its first voluntary return or repatriation of Burmese refugees on 25 October 2016, with coordination largely handled between the two governments, the UNHCR, the IOM and the United Nations World Food Programme.¹¹⁹ Further reintegration assistance is provided by Myanmar authorities and other agencies on the ground.

¹¹³ Eleanor Albert, 'The Rohingya Migrant Crisis,' *Council on Foreign Relations*, 12 January 2017.

¹¹⁴ 'Media Statement,' *Aliran*, 19 June 2007.

¹¹⁵ Asylum Access Malaysia, meeting with ISIS Malaysia, Kuala Lumpur, 21 February 2019 and 12 March 2019.

¹¹⁶ 'ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration,' *the Association of Southeast Asian Nations (ASEAN)*, Jakarta: ASEAN Secretariat, February 2013.

¹¹⁷ Ian Bremmer, 'These 5 Different Camps Tell the Story of the Global Refugee Crisis,' *TIME*, 27 October 2016.

¹¹⁸ Sriprapha Petcharamesree, comments made during the Asia Dialogue on Forced Migration, Kuala Lumpur, 5–6 September 2016.

¹¹⁹ 'First Myanmar refugee returns from Thailand under way,' *Office of the United Nations High Commissioner for Refugees*, 25 October 2016.

Malaysia's legal obligations

Not being a signatory to 1951 Convention and its 1967 Protocol does little to prevent refugees from entering the country. On the contrary, refugees and asylum seekers will continue to come to Malaysia for reasons this report has previously explained. Due to a constant flow of refugees and asylum seekers into the country, Malaysia has a 'responsibility to protect' vis-à-vis the principle of non-refoulement and the obligations of the shipmaster as outlined in international maritime law.

As a principle of customary international law, all states – whether or not they are party to the 1951 Convention – have an obligation to ensure that no refugee should be returned to any country where he or she is likely to face persecution or torture. Non-refoulement makes an even stronger case for the Malaysian Government to facilitate and increase refugees' self-reliance and inclusion in society, particularly the Rohingya.

Furthermore, international maritime law codifies the obligation for rescue at sea in a number of instruments. According to the UNHCR, "the shipmaster has an obligation to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found."¹²⁰ This is based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention Art. 98(1)) and the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention Chapter V, Regulation 33(1)). Compliance of these obligations is necessary to preserve the integrity of maritime search and rescue services.

The fact that forced migration is an ASEAN problem and that Malaysia is still bound by international laws despite not being a signatory to the 1951 Convention and its 1967 Protocol indicates that the Malaysian Government has two challenges to address. First, it will have to eventually draw up some form of an asylum policy in order to better manage its refugee problem. This policy should not only facilitate safe and orderly migration to reduce forced migration in Malaysia overall, but it should also address what happens to refugees during the period between refugee status determination and repatriation or resettlement, particularly as certain groups are likely to remain in Malaysia for some time.

Second, the Malaysian Government (and, indeed, ASEAN as a whole) should encourage signatories of the 1951 Convention and 1967 Protocol to measure up to their international obligations, in terms of resettlement and mutual assistance. Forced migration is a borderless, transnational challenge that must be addressed accordingly. All countries, whether or not they are signatories to the relevant conventions, must play a role. The successful repatriation and resettlement of Indochinese refugees in the 1970s and 1980s is testament that durable solutions can be found if governments work collectively with one another.

¹²⁰ International Maritime Organisation and the Office of the United Nations High Commissioner for Refugees, 'Rescue to Sea: A Guide to Principles and Practice as Applied to Migrants and Refugees,' United Nations High Commissioner for Refugees, p. 4.

Chapter 7 | Conclusion

In light of these considerations, the prospects for Malaysia going forward are clear. On balance, the Government should consider providing registered refugees permission to work, which must be seen in a larger context:

1. Despite not being a signatory to the 1951 Convention and 1967 Protocol, refugees and asylum seekers will continue to make their way to Malaysia. The country has long been a transit point and destination for refugees and asylum seekers. Sooner or later, the Government will need to develop an asylum policy that addresses what needs to be done during the period between refugee status determination and repatriation or resettlement.
2. From a national interest perspective, the macro positives of granting registered refugees in Malaysia permission to work outweigh the negatives:
 - a. By virtue of being a net labour importer, permission to work for those that have acquired refugee status with the UNHCR will have positive implications for the economy and national productivity.
 - b. From a political and social interest viewpoint, permission to work for registered refugees could push for greater recognition of their legitimate rights in Malaysia. It will help to dispel notions of refugees as illegal immigrants who prey on the goodwill of Malaysians, as well as help prevent the politicisation of such vulnerable groups.
3. A system of registration is also clearly advantageous from a national security point of view. This is because undocumented foreigners, whether refugees or not, and whether workers or not, are a major security concern for a country, even if not a threat.
4. Regularising the status of refugees, and granting them permission to work, will not only improve Malaysia's national prestige, but also demonstrate Malaysia's regional leadership. Malaysia will be initiating a positive change in the way neighbouring countries and ASEAN approach forced migration in the region, which will pave the way for increased international partnerships.
5. Ultimately, working age registered refugees only consist of a small fraction of the number of illegal immigrants in Malaysia. Additionally, granting registered refugees permission to work is not a new concept to the Government – there have been previous expressions of commitment that date back as far as 2003.

A regularisation of status and permission to work, however, should not be tantamount to naturalisation. More permanent solutions must be sought. Reinterpretations or amendments in legislation relating to immigration and employment must also be considered in order to streamline the regularisation of status and permission to work for refugees.

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'With 1 human in every 113 affected, forced displacement hits record high.' *United Nations High Commissioner for Refugees*. 20 June 2016

Appendix 1

Stakeholder Engagement

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Lo, Daniel

Special Officer, YB Senator Datuk Paul Low
Prime Minister's Office

Olivi, Gabrielle

Refugee Status Determination Officer
UNHCR

Rohingya Society in Malaysia

Sivaraman, Shobna

Protection Officer

UNHCR

Somasundram, Karuppiah

Education Officer / MTUC Migrant Desk

Malaysian Trades Union Congress

Towle, Richard J.

Representative

UNHCR

Yuksel, Ceren

Protection Officer

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