

Opportunities For Refugee Access To Work In Malaysia¹

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Introduction

Malaysia houses a large number of refugees and asylum seekers, as it is both a transit and final destination for those seeking relief from persecution and violence. In April 2019, there were a total of 170,460 refugees and asylum seekers registered with UNHCR.² This excludes those who are unregistered (with estimates indicating another 100,000 at least), the stateless, those in "refugee-like-situations" and "others of concern". Although the vast majority of refugees enter illegally and work informally in Malaysia, their status is indeterminate and they are susceptible to discretionary harassment, detention and deportation. This policy brief will demonstrate that formalising a work programme for refugees not only grants them greater security, but it is also positive for the security of the host state.

Key benefits of refugees in workforce³

For a net labour importer like Malaysia, including refugees in the workforce will have positive effects for the economy and national productivity.⁴ Refugees will be self-reliant and able to fund their own healthcare and education, and boost the local economy by paying taxes and spending domestically. Refugee participation in the workforce will also formally address demand for cheap labour without affecting jobs for locals.

From a political and social interest viewpoint, the notion of refugees as "illegals" will be dispelled if they are recognised formally. Providing refugees with a "fixed" status – one that allows them to formally live and work in Malaysia – will reduce negative perceptions or backlash against refugees as

¹ This policy brief was originally prepared for the eighth Asia Dialogue on Forced Migration, Jakarta, June 2019.

² There are 90,200 Rohingya, 24,720 Chins, 9,750 Myanmar Muslims, 4,000 Rakhines and Arakanese amongst other ethnicities from Myanmar. There are 22,870 refugees and asylum seekers from other countries such as Pakistan, Yemen, Somalia, Syria, Afghanistan, Sri Lanka, Iraq and Palestine.

³ These findings were taken from ISIS Malaysia's analysis of granting refugees opportunities to work from the perspectives of Malaysia's national interests (economic, political and social) and national security in 2017.

⁴ Institute for Democracy and Economic Affairs (IDEAS), "The Economic Impact of Granting Refugees in Malaysia the Right to Work," Policy Ideas No. 60, April 2019.

they will be seen as "legal" individuals with "real" identities. This will result in better social cohesion between refugees and locals.

A national database for refugees is advantageous from a national security point of view in terms of providing identities to refugees. Undocumented foreigners, whether refugees or not, and whether workers or not, are a major security concern for a country even if not a threat. A national database will strengthen intelligence gathering with security checks, character assessments, health screenings and biometric data, and mixed flows of individuals moving irregularly will be monitored through official channels. The regularisation of refugees will also help to address the conditions that exacerbate forced migration in the region, such as trafficking, smuggling and exploitation. Authorities will be able to better manage forced migration security concerns – by identifying and tracking the identities, location and activities of refugees – and a tighter control of borders could further reduce incentives for refugees to move and secure work.

Previous efforts by the Malaysian Government

Large numbers of refugees already live and work informally in Malaysia, particularly the Rohingya. Thus far the Malaysian Government has tried the following initiatives:

1. 2006 – Rohingya refugees were said to be granted IMM13 permits, although it was halted after 17 days.⁵
2. 2013 – the Ministry of Home Affairs (in cooperation with UNHCR and Immigration) announced that the Government would issue work permits to refugees living in Malaysia.
3. 2016 – the Ministry of Home Affairs announced a pilot project for 300 Rohingya registered with the UNHCR to work in the plantation and manufacturing sectors. This project ultimately failed because it did not take into account the conditions that led to low take-up rates amongst refugees.

The Government also previously initiated a separate temporary residence and work rights programme for up to 3,000 Syrians.⁶ They were given IMM13 permits for the entire family, their children were given access to schools and they received a 50 percent discount at public hospitals. Unlike the Rohingya, they were not restricted to the sectors in which refugees are allowed to work.

⁵ While the IMM13 is a temporary residence permit that allows refugees to remain legally in Malaysia, engage in lawful employment and provide their children access to education, it is unclear if Rohingya children actually had any access to education during the 17 days.

⁶ This scheme was supposed to run from 2015 to 2018 and was managed entirely by the Malaysian Government without the involvement of the UNHCR.



Key government concerns

Nonetheless research has indicated that Malaysian authorities, like those elsewhere, remain concerned about two key issues. Opportunities for refugees to work or a work permit programme must have conditions in place to allay these fears:

1. Opportunities to work for refugees will be seen as a soft stance that will encourage the "opening of the floodgates" and result in more security concerns for the Government simply because more will make their way to Malaysia.
2. The Government will have to spend more on remittances and social services for refugees.

It should be noted that the absence of permission to work has not deterred refugees arriving or working informally in Malaysia – it has only deprived Malaysia of the benefits mentioned in the previous section. It is not a matter of adopting good practices of refugee work rights elsewhere but of formalising the status quo or what is already happening and/or permissible in the country. Doing so would provide Malaysia with a broader tax base, an ability to know who is doing what in its territory, and an ability to exercise control over its workforce and labour standards. Indeed, the change of government in Malaysia over the last year has brought about new opportunities on refugee access to work.⁷ Updates from UNHCR indicate ongoing communication with key ministers such as the Deputy Prime Minister, the Minister of Home Affairs and the Minister of Human Resources.

Areas for regional cooperation

Given developments in Rakhine State since the Andaman Sea crisis in May 2015 and camp conditions along the Bangladesh-Myanmar border, boat movements have already begun (many of which are Malaysia-bound). Existing mechanisms and/or processes should be utilised to formalise a work programme for countries in the region.

With regards to the United Nations (UN) instruments, opportunities for refugees to work are in line with the Global Compacts for Migration and Refugees. Both compacts aim to lessen the burdens of host countries and support conditions for return and repatriation by enhancing refugee self-reliance. Commitments on providing employment opportunities for refugees were also previously made in the 2016 New York Declaration as well as the Sustainable Development Goals. Regional countries should be encouraged to make pledges on opportunities for refugee access to work at the upcoming Global Refugee Forum in December 2019.

⁷ With regards to implementing the Government's electoral promise 35 to "legitimise the status of refugees by providing them with UNHCR cards and ensuring their legal right to work". 'Promise 35: Raising the dignity of workers and creating more quality jobs,' Pakatan Harapan Election Manifesto, p. 78, 2018.

There are also opportunities for regional cooperation via the Bali Process and ASEAN. There was a commitment on providing employment opportunities in the 2016 Bali Process Declaration by engaging constructively "with the private sector to expand legal and legitimate opportunities for labour migration and to combat human trafficking and related exploitation".⁸ The Bali Government and Business Forum, now in its third year, is the avenue to reaffirm this commitment and to take stock on progress made. Business and government leaders could endorse recommendations on opportunities for refugee access to work in this Forum. The ASEAN Responsible Business Forum (ARBF) could also be utilised in the same way. Malaysia aside, there are other labour importing countries in ASEAN such as Thailand, Singapore and Brunei. These countries could explore incorporating refugees in ethical business at the Forum.

Regional considerations for ADFM members

While opportunities for refugee access to work is still in the policymaking phase, the Malaysian experience can still offer some considerations for the region. These include:

1. Refugee work opportunities should only be formally extended to those who have passed UNHCR's Refugee Status Determination process and subsequently qualify for refugee status. Work opportunities cannot be extended to those who have not registered with UNHCR and/or are ineligible to be accorded refugee status (the latter must be treated as per domestic law).
2. Additional measures to address the floodgates concern of attracting more refugees could include proposing a phased introduction of work opportunities with pilots to test/adjust policy settings, or only extending work opportunities to refugees who have arrived before a certain date.
3. Refugee work opportunities should be designed with ease and minimum conditionalities in order for it to work. A work programme for refugees should accord them labour rights under domestic law and yet be flexible enough to accommodate their needs. Failure to do so will encourage them to continue opting for the status quo (i.e. working informally). The work programme should also include proper stakeholder consultation with local NGOs and community groups and/or organisations in order to appeal to refugees.
4. It must be made clear that work opportunities for refugees are not a pathway to naturalisation. This is imperative given the different classes of refugees – the stateless will be in the country for the foreseeable future and/or an unlimited time (like the Rohingya); and those who have a higher chance of return and repatriation could be given *in situ* legal access to work (like the Chins).⁹

⁸ 'The Bali Declaration,' the Sixth Ministerial Conference of the Bali Process of People, Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016.

⁹ A previous ADFM paper highlighted the possibility of "*in situ* legal access to work" which refers to the "process of legalising the stay of individuals already in a host country who do not hold a status legally permitting them to be there." UNHCR, 'Employment opportunities for refugees in Southeast Asia', fifth meeting of the Asia Dialogue on Forced Migration, Manila, 10–12 September 2017.



It is recommended that a separate policy on the Rohingya altogether is needed for countries of final destination like Malaysia. These include the type of visas or identification documents that they will be given (whether humanitarian visas, as temporary residents or 'guests') and the duration of these visas and the conditions for renewal (taking into account the principle of *non-refoulement*). More thought must also be given to the status of their families as a whole – the entire family should be regularised as opposed to only those of working age and access to education for their children. Such conditions – regularising entire families, opportunities to work for those of working age, access to education for those below working age – should eventually assist and strengthen their preparedness for eventual repatriation and/or resettlement. An increase in bilateral relations with Myanmar should also be factored into a separate policy on the Rohingya, in order to facilitate repatriation and the legal take-backs of those that do not qualify for refugee status.

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