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THE RACE AGAINST A RAGING VIRUS



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A Healthy Frame of Mind for National Security

Incorporating security elements in the fight against COVID-19 is essential, but Malaysia's national response should not be constricted to that paradigm alone. While its grand strategy should still be driven chiefly by healthcare considerations, there are some internal and external impediments – borne out of a security mindset – that could complicate achieving this ideal.



BY IZZAH KHAIRINA IBRAHIM

Responses towards the COVID-19 outbreak has been telling of the way healthcare crises can pose a threat to national security. It has given the world an unfortunate peek into how borderless threats like diseases can indiscriminately affect societies, political systems and economies around the world.

Despite health becoming a growing priority in international institutions and foreign policy engagements, it tends to fly under the radar as it does not usually interact with domestic political interests. Yet when it does, achieving a holistic healthcare solution is often sidelined in favour of the political imperatives of the day.

So how should a country protect itself against such a threat?

It is important to recognise the underlying difficulties in reconciling the traditional priorities of national security with emerging non-traditional threats. While not all diseases pose the same severe effects, the response should only be warranted when its existence can pose a potential or additional threat to political, economic and social stability; political, civic and social participation;

economic stability internationally and domestically; and exceeding unilateral control of a country.

Such a focus on a security perspective has supported assumptions that national security measures will involve military power or criminal investigations in attempts to protect their country. It is more evident in Southeast Asia as much of its security forces have predominantly focused on internal threats. Even Malaysia's means to enforce the Movement Control Order (MCO) has involved the deployment of military and civilian security forces to have the numbers able to control the spread of COVID-19.

Regardless of our limited experiences in dealing with such threats, let alone novel pandemics, areas of public policy – such as our economic, healthcare and social components – need to be included. It cannot be abandoned or forced into such a traditional security paradigm like a square peg into a round hole.

This also means that our responses should not be viewed in the same way we do with floods or other natural disasters

we may have been accustomed to. It will require the involvement of specialised powers, investigations and responses.

"This means that health agencies are arguably those best positioned and equipped to lead and coordinate responses to the disease threat."

However, in order to do so, there are key external and internal considerations that need to be taken into account to ensure our future preparedness and avoid knee-jerk reactions for unforeseen developments.

On the one hand, there needs to be internal considerations about the way federal leaders and institutions have reconceptualised the nature of public health emergencies. Labelling it as a national security event can alter how federal, state and local governments respond, ultimately shifting points of authority and accountability. It will pose new practical and legal implications, such as changes to increases of federal influences, resources and powers to coordinate responses and the legal parameters to operate on. Another area in domestic



polycymaking will be tackling issues related to transparency in times of crisis. Ideally, displays of transparency are reflective of the responsiveness and aptitude to communicate risks to the public and relevant institutions. Whether good or bad, the information is necessary in order to respond accordingly to the crisis, its effects and any emotional fallout impacting the country.

Nonetheless, it is easier said than done when security considerations do not include saving face from potentially unflattering information or ineptness. This presents the dilemma of managing inaccurate information and the public demand for a solution. This was evident in the United States and the United Kingdom's mismanagement of the COVID-19 crisis. It exposed clashing vested interests of various stakeholders and the lack of pandemic preparedness as well as an overall social support infrastructure that places their citizens at a greater risk.

On the other hand, the inherently borderless nature of risks, such as diseases, will raise questions. Where do national interests end and global interests begin? How can we determine that the actions being taken are done in the interest of the collective good?

It is undeniable that tensions between global institutions and national interests exist, especially when sensitive issues concerning sovereignty interfere with cooperation on global issues like diseases. Using health interventions by state or non-state actors to achieve further foreign policy objectives is controversial, but an inescapable component, in health diplomacy.

From within the region and beyond, there should be greater resource sharing on multilateral and bilateral engagements. While there have not been much formalised

exchanges, aside from existing standards by the International Health Regulations (IHR), such linkages and communications need to be fostered.

Whether we like it or not, it is a collective action problem, one that needs a solution in the interest of safety for all without limiting itself to securing “national interests”. This will mean ending territoriality between government institutions and working towards adopting uniform decisions.

There are pressures and temptations to produce quick and cost-effective results that should not be done at the expense of comprehensive, long-term goals. While much of these suggestions are not necessarily reinventing the wheel in terms of crisis management, sometimes seeking cooperative and preventive measures are better than a superficial cure.

This article first appeared in *New Straits Times* on 5 March 2020. Izzah Khairina Ibrahim is Researcher in Foreign Policy and Security Studies (FPSS), ISIS Malaysia

A Post-MCO Mental Health Landscape for Malaysia

The MCO has brought lessons and silver linings for the mental health community and beyond. We can start preparing for the “new normal” now, by reflecting on what we would like our future to be.



**BY TENGKU PUTERI IMAN AFZAN
AND PUTERI NOR ARIANE YASMIN**

Malaysia is now in the third phase of the Movement Control Order (MCO) after a second extension from 14 to 28 April. If the first phase of the MCO can be considered relatively “easy” and the second phase “moderate”, perhaps we should expect the third phase to be somewhat “difficult”. As the range of difficulty progresses, so too will the range of emotions and challenges that we experience.

The information that we receive on WhatsApp, the posts and comments that we read on social media, and the news that we watch suggest that mental health issues could (steadily) rise with every extension of the MCO. Furthermore, Prime Minister Muhyiddin Yassin has recently stated that we must come to terms with a “new normal” once the MCO is eventually lifted. We offer some thoughts on how to adjust to this “new normal”.

First, we should differentiate those who contracted COVID-19 from the virus itself.

This virus knows no boundaries

and does not discriminate by race, religion, gender or social class. Yet, there have been reports of Asians being subjected to racism and xenophobia in the West. In Malaysia, the stigma is mostly upon those who attended the *tabligh* gathering in February, as not all have been identified and tested.

Those who have been diagnosed with COVID-19 and recovered have also been ridiculed and rejected, and may even encounter social avoidance once the MCO ends. There have been reports of patients’ identities exposed, which in turn have led to them experiencing cyberbullying as well as threats.

The more we stigmatise the virus and ostracise patients, the more those who do have symptoms or have been in close contact will be less likely to come forward. This is a challenge that the mental health community is all too familiar with. *No one will be left behind* and *#kitajagakita* should resonate with us all as we prepare for what lies ahead in the “new normal”. Further stigmatisation

will only leave us polarised when we need to be united on our road to recovery.

Second, we must be mindful that home is not a safe space for everyone.

During the MCO, we are being instructed to stay home to save lives and “flatten the curve”. This period of prolonged social isolation will challenge us as we adapt to drastic changes to our routines. While some of us are privileged to have a roof over our heads and food on the table, the same cannot be said for everyone. There has been a lot of effort from the Government, non-governmental organisations (NGOs), the private sector and citizens to help those in need, such as the urban poor, homeless, refugees and asylum seekers alike.

We urge that the same attention should be given to those who suffer from mental health issues, those who live alone, or those who may live in an abusive environment whether it be mental or physical.

For instance, Malaysia has seen a spike in domestic violence cases following the MCO. Roughly a week after it was enforced, *Talian Kasih* saw a 57 percent increase in the number of calls, though the nature of these calls was varied. Abuse is often used as a source of control in the midst of uncertainty, such as financial constraints, health issues or feelings of suffocation. If you suspect anyone is in danger or suffering from mental and/or physical abuse, please reach out to the many organisations that offer support and advice, such as the Ministry of Health (MoH) psychosocial hotline, Women’s Aid Organisation (WAO) and Sisters in Islam (SIS).

Indeed, the MCO has reiterated the importance of meaningful engagement and staying connected with our loved ones and peers. After four weeks, we now appreciate the simple gesture of saying “Hello! How are you?” We understand that “social distancing” does not mean we stop staying in touch; we understand that we must be united in a crisis; and most importantly, we understand that we must hold ourselves and one another accountable in order to

move forward better and stronger. And, despite its challenges, the MCO has silver linings for those in the mental health community and beyond.

There has been a lot of coverage on the importance of mental health throughout the MCO, from news and commentary pieces, social media postings and even webinars with political leaders. However unfortunate, the MCO has broken barriers and created more awareness on mental health.

"...'social distancing' does not mean we stop staying in touch... we must hold ourselves and one another accountable in order to move forward better and stronger."

The MCO has also been a platform for those in the mental health space to reach out to those who are unfamiliar with bouts of anger, feelings of helplessness, loss of control, anxiety and mental pressure – all of which are triggers to mental illness later on if left untreated.

These are all key lessons for us to

take into the “new normal” once the MCO is lifted. In some ways, the pandemic has shown us that a win for the mental health community is a win for us all. We must ensure that awareness and conversations on mental health continue in the “new normal”.

COVID-19 is forcing the entire world to reset and rebuild for a better tomorrow. We should use the time we have left in the MCO to pause and reflect as a nation on what we would like our future to be.

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BY TENGKU NUR QISTINA

Locked Down and Locked Up: Domestic Violence during the Pandemic

As the implementation of movement restriction measures disrupts our daily lives, governments are compelled to respond to the high demand for support as domestic violence cases soar in a short period of time. With such measures predicted to last for weeks and even months to come, the urgency to address this issue is unprecedented.

We need to acknowledge that this problem is definitely not a conjuration of fantasy. UN Women, World Health Organization (WHO) and various other international and local organisations have repeatedly raised concerns to highlight and stress the importance of the exacerbation of gender inequality issues, such as gender-based violence, during this trying time.

The correlation between the rise in domestic violence and times of crisis is not new. Evidence has shown that gender-based violence escalate in the wake of emergencies, crisis and conflict. Past health crises, such as the Ebola outbreak in 2014, have highlighted the unique challenges and vulnerabilities women and girls face. During such difficult times, gender inequalities unfortunately compound and are amplified.

During China’s COVID-19 lockdown, reports of domestic violence (which includes physical, psychological, sexual or economic mistreatment of a family member) nearly doubled in the Hubei province, according to a Chinese non-profit organisation based in Jingzhou.

The West African Ebola outbreak in 2014 also confirmed how epidemics leave women vulnerable to violence, as incidences of rape rose drastically. Similarly, in the wake of Hurricane Katrina in the United States, studies recorded a 98 percent increase in physical victimisation. A key reason behind the rise in violence, among others, is the heighten stress in households given the instability and financial strains.

In more extreme cases, domestic violence may lead to fatalities as in France and Turkey, where women have been reported to suffer injuries at the hands of their partners during quarantine.

Women are also less likely to report violence during

quarantine. The victims would not have the option to seek intervention or help with an abuser being constantly present. Where they would ordinarily seek an external intervention when the abuser is not present, such as in Bangladesh during seasonal migration periods, it is now less plausible as lockdowns keep everyone at home. Lockdowns also complicate the efforts of non-governmental organisations (NGOs) to provide support and help to victims, especially in regards to seeking shelter.

In an effort to curb the rise of women’s vulnerabilities during this pandemic, the leadership and meaningful participation of a gendered lens need to be strengthened. The WHO has published an info sheet to help governments guide and assist communities, including ways to mitigate the rise of domestic violence during quarantine.

In Malaysia, the Ministry of Women and Family Development has maintained its hotline, *Talian Kasih*, which has seen an increased traffic by 57 percent since the beginning of the Movement Control Order (MCO). The calls are varied from individuals seeking financial assistance to reporting gender-based violence and elderly as well as child neglect.

To mitigate the rise of domestic violence, the response must be a multilayered one. It involves not just the government and ministries, including law enforcement agencies and medical officers, but communities as well – civil societies, family, friends and community efforts are equally needed. It is without a doubt that governments worldwide are stretched thin in coping with the onset of repercussions that come from curbing COVID-19. However, some nations have adapted to their surroundings and have provided good examples for Malaysia to consider.

Firstly, communities and governments have become innovative in reaching out to victims. In France and Spain, victims are visiting pharmacies to seek help by using a codeword when reporting domestic abuse. This follows the French government’s recognition and response towards the rising numbers of domestic violence in the country, as France records a staggering 32 percent rise in one week of quarantine alone. On top of that, France has also recorded two deaths due to domestic violence since the lockdown began on 17 March. Acknowledging the difficulty for women to reach out for help during quarantine, France’s Gender Equality Minister has made support systems more easily accessible for women.

Another innovative incentive France has done is to have pop-up counselling centres available in grocery stores to advice victims or those in contact with a victim. This would also make it easier for victims to seek help and support in their situation without the presence of the abuser, as it has been previously mentioned that quarantine has made it harder for victims to report cases.

Secondly, governments can work with NGOs that already work on domestic violence to help curb the predicted rise of domestic abuse through financial support. The Canadian government has allocated up to C\$2.7 million to help support victims of domestic violence and other violent crimes by pegging the organisations that support them nationwide to remain in operation. This support would include aggressively raising awareness to women’s vulnerabilities during quarantine.

Meanwhile, France has allocated up to €1 million to fund anti-domestic abuse organisations to help them respond to the increasing demand for services. This includes subsidising up to 20,000 nights of hotel

accommodation to provide victims with shelter away from their abusers.

This is a solution Malaysia should consider, given the limited supply of women’s shelter homes in the country. Even without the rise of domestic abuse cases during the MCO, Malaysia’s supply of shelter homes does not meet the standard requirements set by the Council of Europe – a minimal standard of one family place per 10,000 inhabitants. Data published by the Women’s Aid Organisation (WAO) in 2019 revealed that Malaysia’s capacity is at one family shelter per 725,384 inhabitants, a staggering disparity in meeting the minimal standards. With the MCO, the demand may surpass the supply and strain the availability of shelter for victims who need it the most.

Thirdly, the community can rise up to the occasion by providing a digital alternative to connect victims to support systems. In New Zealand, the NGO “Women’s Refuge” utilises a “shielded” website that

allows private access to information on domestic abuse and support. The benefit is that visits to the website will not show up in the browser’s history to protect victims from being placed in vulnerable positions. The organisation has encouraged the use of this website – which can be found in the form of a shield button appearing in various New Zealand-based websites like online stores. This shows how small businesses are able to also support the cause digitally, especially when a victim’s ability to actively seek help through phone calls or visits to hospital crisis centres and police stations is limited.

Thus, curbing the anticipated rise in domestic violence and providing support to victims is a multilayered effort in which different actors can assist .

While much of the effort can be done by the government for a bigger knock-on effect in the community, grassroots and civil society efforts are equally as important to mitigate the rise of violence.

It is important that Malaysians are aware of the repercussions of an extended MCO in order to reach out to victims so they understand better and are able to seek help. However, efforts should start with the Ministry of Women and Family Development by encouraging other actors to initiate community-based efforts as well as to coordinate them.

We must remember that curbing domestic violence is not the responsibility of one person – it is the responsibility of all.

A version of this article first appeared in *The Star* on 29 March 2020. Tengku Nur Qistina is Senior Researcher in Social Policy and National Integration (SPNI), ISIS Malaysia



Making the Invisible Visible: Faces of Poverty in Malaysia

The COVID-19 crisis has taken a toll on economic activities, jobs and livelihoods of all Malaysians. Yet, even as government assistance attempts to mitigate the pain, large gaps of undocumented communities, poor workers and other vulnerable communities are being left behind.



**BY BRIDGET WELSH
AND CALVIN CHENG**



For many, the Movement Control Order (MCO) is one full of stark choices, even life and death as people go hungry, are being evicted and physically in pain.

Let us start with their stories. Please meet the following people, full names withheld, who are based in the Klang Valley and facing difficult circumstances:

“My name is Mrs CH. I am a 74-year-old Malaysian. I used to rent a hawker stall, but sold it about five years ago. I do not have a regular pension and I do not have children. My only sister passed away last year. I live in a small room in Kajang. I get by through working part-time in a restaurant. It is now closed. In my room, I have a mattress. No window. No kitchen. I use shared bathroom facilities without any privacy. Every day I wake up, my body is in pain. My joints hurt, but most of all, I am weak. I eat noodles when I can, as I can boil my kettle, but I have not eaten any protein, fruit or vegetables in a long time. I have run out of supply. My head hurts all the time. I feel dizzy. I don’t have the energy to move. I wait for someone to call me as I do not have credit on my phone to call anyone. I wait to see if someone will knock on my door with food.”

“My name is M. I am 27 years old. I am a university graduate, but am now homeless. I am originally from Kelantan. I have lived on the streets for three years near Bukit Bintang. I am a drug addict. I go to the shelter for food. I want to stop using drugs, but do not know how to do so. I am confused. I am scared.”

“Meet Mr AD. We are a family of five – my wife, my three children, ages three, five and six, and myself. We live inside our car. We move around, parking our car near apartments at night. We cannot move far as we need to save petrol. We shower in mosques or petrol stations. We access food through a network of friends, but cannot have a hot meal as we do not have a kitchen or cooking facilities. We are refugees from Palestine and have been in Malaysia for five years. I have not been able to find work to feed or house my family. I lost the only part-time job I had at the start of the MCO period. It has been very hard living in a car.”

“Mrs E, living in Chow Kit, contacted an NGO worker on Tuesday at 4am. She was in a small 10 by 8 feet room with two children, ages 12 and 17. She had no food and money and RM8 in her wallet. Her daughter is sick. She is a house cleaner

and cannot work. She is now a caregiver. An NGO provided some dry food, but is still trying to find a way to get medical attention for her daughter.”

“Meet a refugee family of five, a husband Mr A, age 46, his wife and three sons, ages from 12 to 17 years. Originally also from the Middle East, they lived in a house for one and a half years. The husband worked part-time and sometimes the children also found work. Their problems started in January when there was an intensification of the crackdown on migrants around Cyberjaya, limiting their opportunities to work. He rented a house for RM1,200 monthly. He was evicted on 31 March. His community network was able to collect money to find his family temporary shelter, another house for RM1,000. The owner has given them two weeks to pay the deposit. He and his family get food from a food bank.”

“A technical school has closed during the lockdown in Puchong. There are 230 Malaysian students, largely from Sabah and Sarawak, stuck in their hostels. They do not have the funds to get home and are running out of money for food. They have reached out to local authorities who have informed them the food

allocations have already been made for that area. They are reaching out further to the NGO communities.”

“I am Mrs IK, now 65 years old. I used to be a secretary working for a private company. I receive a small pension. It runs out every month, after two weeks. I go without food regularly. I try to eat every other day to get through the month. In this MCO period, I have been cutting back further as I do not know what will happen to my pension if something happens to the company.”

These experiences are only a microcosm of what is being experienced by many people. These individuals are across ethnicities, ages and come from different backgrounds. They are the elderly, single-mother/father households, children and disabled. They share a common feature – facing difficult hardships and in need of help.

Today, as COVID-19 hits hard, the biggest divide in Malaysia is one that cuts the society along class lines, with those that have the resources to survive and others who are not as fortunate. The MCO did not necessarily cause the difficulties, but it has worsened the situation. COVID-19 is not just a health crisis, but one that extends into the economy and society. It will need to be addressed further as the economic costs of this global crisis set in.

Over the past two and a half weeks, Malaysians have stepped up. Hundreds of NGOs have ramped up their efforts to extend basic necessities, thousands from community and religious groups have come together to donate time, resources and money to others, and millions have turned their attention away from themselves to others. *Malaysiakini* has provided links on how individuals can help. Crises bring out the best and the worst – and large numbers of

Malaysians have come together for others, reflecting a deep generous spirit that is part of the core of this society.

The decision to develop a working relationship between NGOs and the government to extend food and assistance to the poor should be lauded, as compassion won out over the desire to maintain control. The sad reality is that if social conditions are allowed to worsen, this will make any recovery from this crisis even harder. It is important to recognise up-front that the COVID-19 crisis will extend for months and the scars it leaves may last even longer.

An important part of this effort is better understanding who the individuals are on the “other” frontline of the crisis – the poor. This allows for thinking through initiatives that can build a sustainable approach to manage the social effects of the crisis, which will continue long after any MCO is lifted and to encourage that resources are spent to go beyond immediate relief to address underlying problems. Beyond the personal stories, this piece brings together available numbers/estimates of the scope of the problem. It closes by laying out a few policy suggestions. Special attention is given to conditions in the Klang Valley.

The debate on poverty in Malaysia is highly contentious as it touches on sensitive issues of race and assessments of governance. Malaysia has been criticised for not following international best practices in measuring poverty and this lack of credibility has stymied effective policy approaches to address core social problems shaping poverty. In recent years, the debate has centred on three areas – the measurement of the poverty line, who to include in assessments of vulnerability (Malaysians or residents) and the policy approaches. From the release of the United Nations

Children's Fund (UNICEF) study in 2018 to the UN special rapporteur Philip Alston’s statement last August, this issue has garnered greater attention.

Drawing from our expertise, interviews conducted over the last week and publicly available statistics, we take a look at poverty across Malaysia. Based on official poverty lines from the Department of Statistics, Malaysia has virtually eliminated poverty.

Official national poverty rates have been hovering close to 0.4 percent as long ago as 2016. Experts have argued that this extremely low figure obscures the plight of many poor families. They hold that the official poverty line of RM960 per household is not realistic in light of actual costs. If one considers that the average household size is 4.1 individuals, we are looking one person living on RM224 a month. Even with this low figure, there are an estimated 27,800 households (about 113,900 persons) living in poverty.

This number is just not credible. Malaysia’s poverty lines should be at least double that, with absolute poverty lines closer to RM2,000 per household per month. Using this more representative measure for the poverty line and government statistics, this brings the “poverty” rate up to about 8.8 percent of the country. That is, over 608,000 households (nearly 2.5 million people) in Malaysia are living below RM2,000 a month. The largest share of poverty of citizens, as shown in Figure 1, is in Kelantan, Kedah and Sabah.

In the Klang Valley, where median incomes and living costs are among the highest in the country, the number of households living under RM2,000 a month is 19,828 households – or about an estimated 85,000 people.

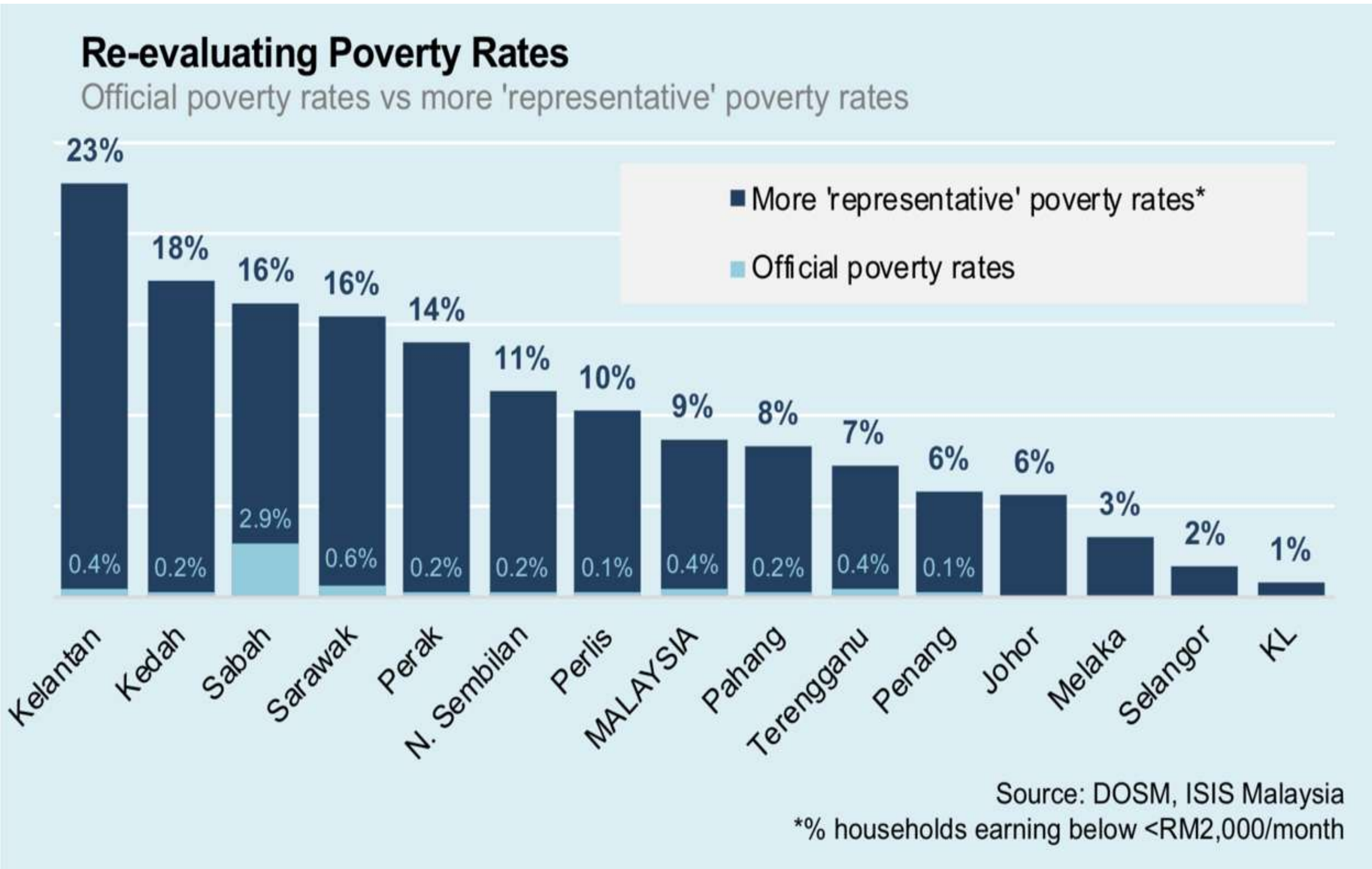


Fig. 1

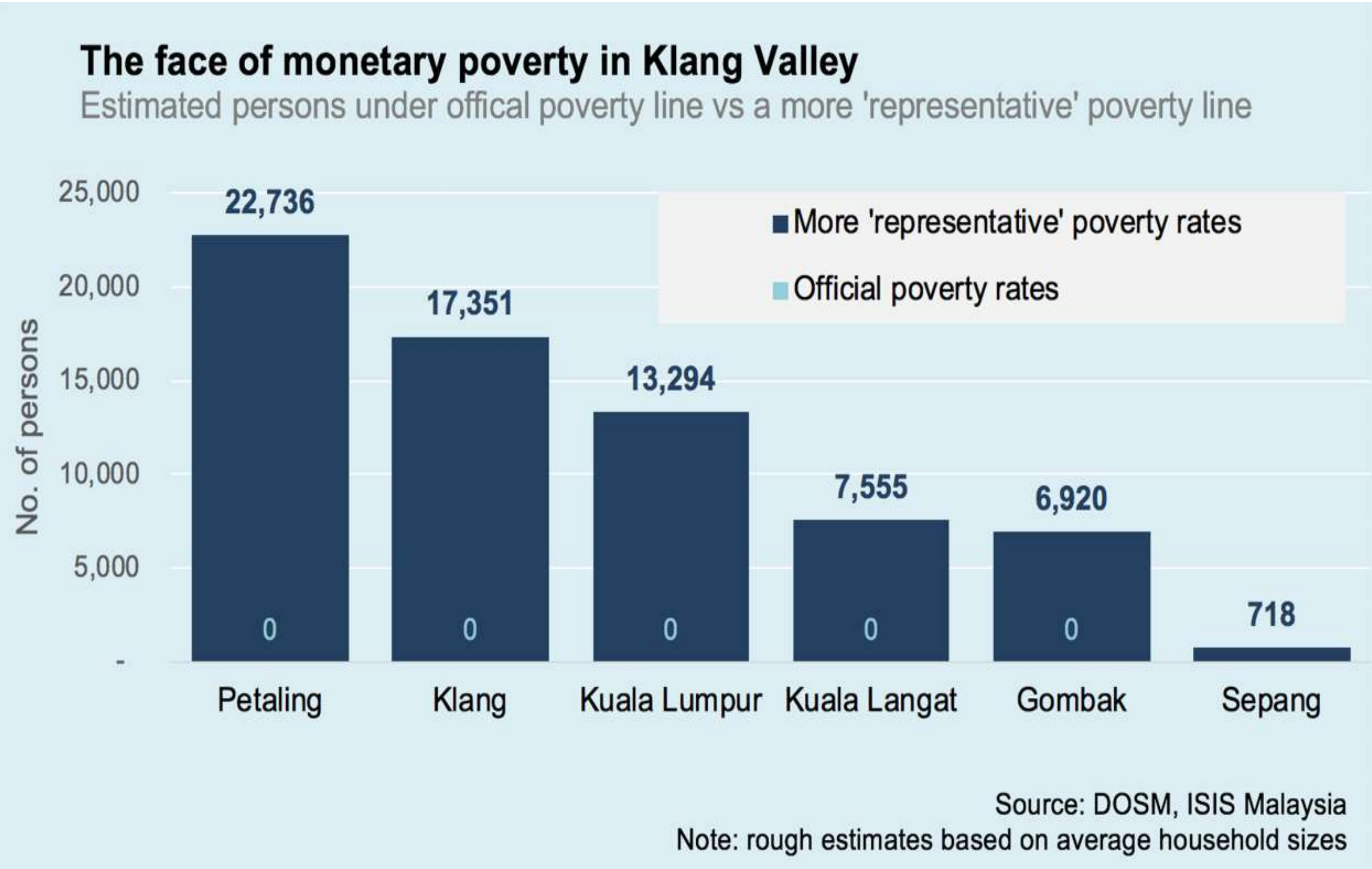


Fig. 2

The poor are concentrated in Kuala Langat and Klang, but stretch across the whole Valley.

Within government, there is a disconnect between what is listed as poor and those who are treated as needing assistance, an acknowledgement of need and vulnerability. Over the past decade, the issue of poverty has been obscured by the introduction of broader cash transfer policies, notably 1Malaysia People’s Aid or BR1M. This has moved the focus away from the official poor to targeting the bottom 40 percent of the household income distribution. The popularity of these cash-based assistance programmes has unfortunately further curtailed already limited discussion of how to address

underlying issues of poverty.

At the same time, these cash assistance measures have highlighted, however, the scope of vulnerability in society. Statistics from the Department of Social Welfare (JKM) indicate that over 479,000 households (estimated at 2 million people) receive some form of JKM financial assistance, not counting in-kind assistance in the form of food or vouchers. Meanwhile, Bantuan Sara Hidup (BSH) or Costs of Living Assistance (formerly BR1M) recipient statistics suggest some 4.2 million-plus households (an estimated 16.8 million people) received the income-targeted cash transfers in 2019.

Similar programmes exist at

the state level and the Bantuan Prihatin Nasional (BPN) programme introduced in the stimulus package is based on a similar model, but is targeted even more broadly to households in the middle 40 percent of the income distribution. We are looking at an estimated 16.8 million people registered in the system through BSH, more than half of the population. Including BPN households, that figure may be closer to more than 21 million recipients. This number excludes others who might be at risk as their circumstances become affected by a sharp contraction in economic growth, which Bank Negara projected to contract by -2.0 percent in 2020.

Moving forward, we suggest there needs to be a distinction between relief measures that cover a broader group of people and initiatives for those who are in dire need and whose circumstances will not be changed without other policy approaches adopted to address underlying issues. Even those deemed vulnerable may require a broader set of measures. A key place to begin is to widen the lens of who is being affected by the crisis and reassess who are actually poor and others who are vulnerable, but may require another set of measures.

Many of the poor, captured in the stories earlier, are not part of those registered to get relief. Some of these are delivery problems – people outside the system or who have not registered. The 2018 UNICEF study found that around a third of those qualified for assistance did not register, but this varied by income level. Many are unregistered due to where they live, the work they do in the informal sector and the limited engagement with administrative departments.

The further challenge is that many who are poor in Malaysia are not included because they lack documents or are left out for a variety of reasons –

from citizenship issues to a more entrenched exclusion. This includes certain indigenous communities, such as the Orang Asli, migrants, stateless or refugees.

The Orang Asli communities are largely left out of government assistance given to other citizens. They come under a special government department, but are also affected by documentation and access issues. Data suggests that there are 198,000 Orang Asli in Peninsular Malaysia, with an additional 126 villages not registered, conservatively estimated to be another 30,000 people. Studies have shown that 92 percent of these communities would be considered poor. In the Klang Valley, there are 74 villages with around a little less than 20,000 people – concentrated in Kuala Langat and Hulu Selangor.

Assessments of migrant workers have long been contested. The Home Ministry estimated 2.1 million documented migrant workers in Malaysia in 2015. An ISEAS report puts that figure higher with a total of 3.85 to 5.3 million migrants in 2018, including undocumented illegal workers. NGO estimates put this number even higher, almost 8 million, with an estimated 2.3 million in the Klang Valley. The changing legal status of workers, requiring permits, has further complicated measurements. The International Labour Organization (ILO) estimates that foreign workers comprise a third of Malaysia’s workforce. As foreigners, they are the largest group in terms of numbers of excluded population not included in the poverty assessments within Malaysia.

Approaches to address migration have been largely law-and-order oriented. The current crisis calls for a reassessment of how to engage this community. Given the health crisis, sending the migrant communities home puts them and regional neighbours at further risk. The reality is

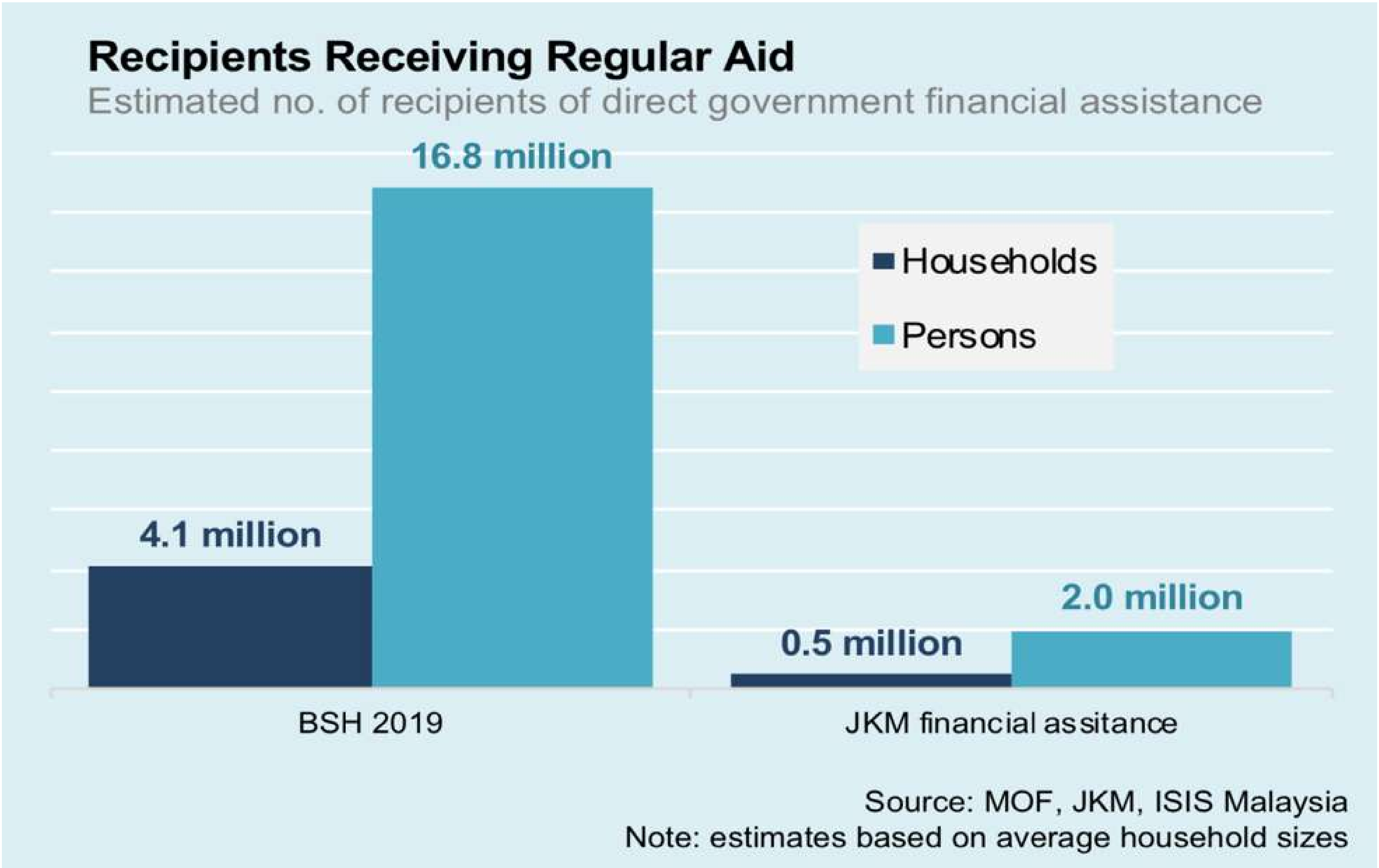


Fig. 3

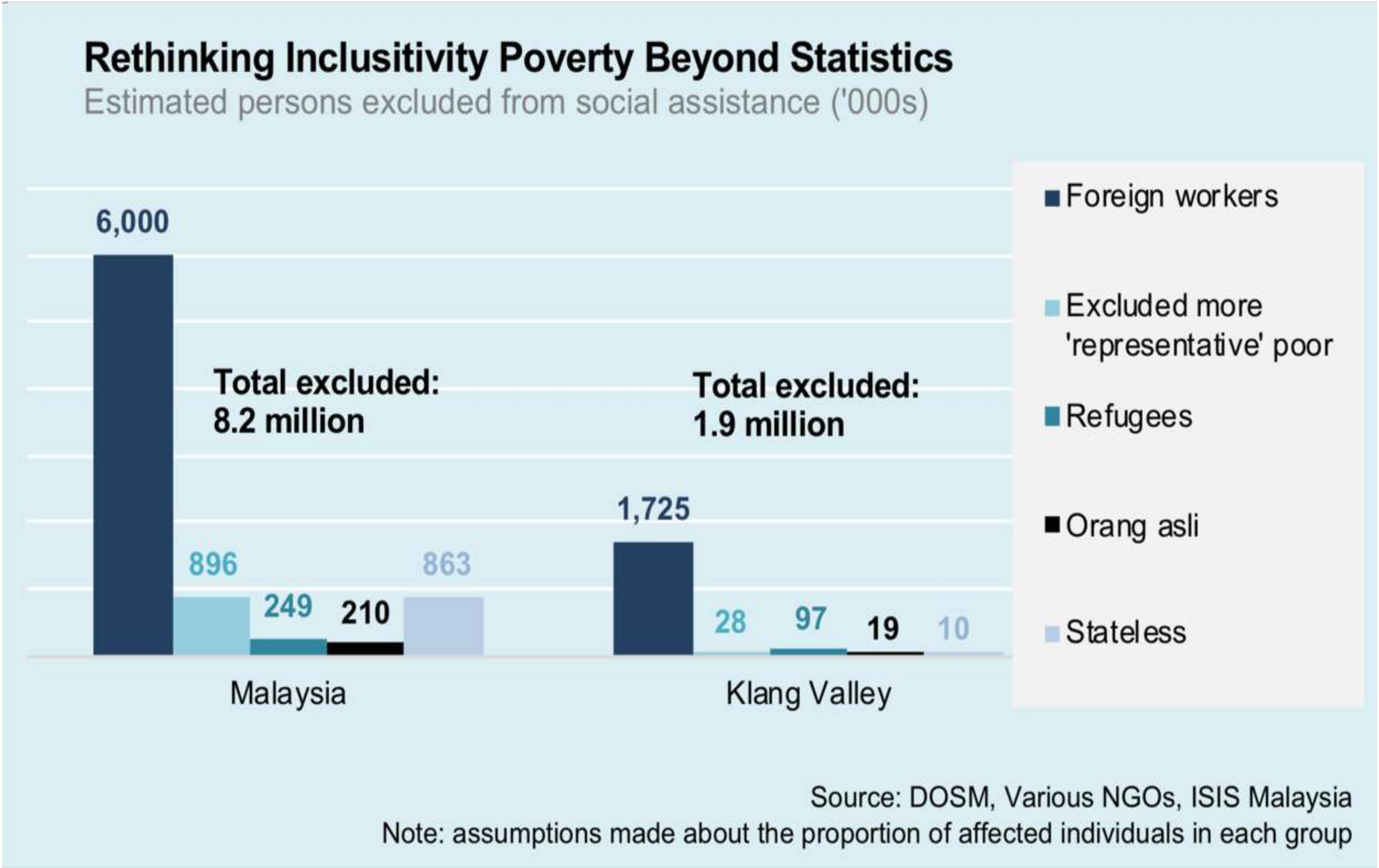


Fig. 4

that foreign workers play a vital role in the economy and will do so in any economic recovery.

Closely linked are the stateless communities. There are two groups, those born in Malaysia without documentation and those coming from neighbouring countries, many of whom have been in the country for years. The largest share of stateless is concentrated in Sabah, which official numbers list at around 510,000 with NGO estimates reaching 1.9 million.

The number of stateless elsewhere is also debated and includes Indians born in Malaysia who have not received citizenship and other individuals from abroad not seeking asylum, but lacking any documentation

whatsoever. Figures here range from 40,000 to 300,000. Based on interviews, we use the conservative estimate of 1.15 million stateless people, with 10,000 of those estimated to be in the Klang Valley. Stateless communities have often lived for years in Malaysia and have no meaningful access to government services.

In terms of refugees, there are an estimated 178,990 formerly recognised, of which 130,000 are of working age in Malaysia. There are others who have yet to register as asylum seekers, but fall under the refugee panel, estimated at another 70,000 not registered. Disproportionately most of these refugees are Rohingya and other Myanmar minority groups, but many

are from the Middle East as well. Over half – estimated 97,000 – are concentrated in the Klang Valley.

If we take what we know about these groups of people, it allows us to see who is being hit by the crisis in a broader way. We estimate that those being excluded from social assistance and among the hardest hit is about 8.2 million, over three times of those who fall within the more representative poverty line of above RM2,000. In the Klang Valley, this is estimated to be 1.9 million people alone.

These numbers highlight the need to rethink approaches towards the poor. While government assistance is widening and rightly focused on citizens, there are large gaps of citizens, long-time communities living in Malaysia being excluded often without documentation and workers and other vulnerable communities who are contributing to the economy being left out altogether.

The invisible need to be considered in measures moving ahead. Ordinary citizens, businesses and NGOs are helping these communities, but these efforts may not be sustainable as the economic costs of COVID-19 set in. The government’s cash assistance can be complemented by better targeting of assistance and other supporting policies.

Over the past few weeks, there have been important steps taken that reflect the government’s compassionate approach to issues of vulnerability. This approach has been supported across the political divide. Despite meaningful gaps in the needs being met and exclusion of communities, including many in small businesses and the informal sector, initiatives to address the social needs in a more inclusive manner have been introduced, largely based on need.

There are also modest efforts

taking place to cooperate and form new partnerships with civil society and businesses in addressing the evolving fallout from the crisis. Even some of the silos within the government in engaging communities are coming down, although this is very much in the early stages.

Moving ahead, a serious rethink of how to address vulnerabilities and the poor is needed, beyond cash transfers of assistance and other immediate relief measures. The poor as a whole need to be recognised and disaggregated, with more attention on how to treat those facing the most serious hardships. A key step is to start getting the numbers right and to stop leaving out the many different groups being affected.

Practically, a task force can be set up to look at different sets of policies that are more holistic in addressing needs and causes along the various dimensions, with greater collaboration with NGOs, academics and international organisations, notably the United Nations High Commissioner for Refugees (UNHCR). This will allow for better targeting of available limited resources, offer opportunities to find new resources and, more importantly, allow for the framing of sound policies that will not just ameliorate problems caused by COVID-19, but also work to address the underlying social conditions that will inevitably worsen as the economy contracts.

A crucial part of the way forward is to make the reality of poverty more visible. In closing this piece, we would like to thank the many individuals who shared their expertise and caution readers that the numbers are based on estimates from interviews and available data. There is a need for further research and debate. In writing this piece, the aim is to further discussion and promote understanding, with the hope that as many people as possible can get through this difficult

period, that available resources are maximised and that those suffering the hardships described in the personal stories are given a face.

A version of this article first appeared in *Malaysiakini* on 4 April 2020. Bridget Welsh is currently Honorary Research Associate of the University of Nottingham, Malaysia’s Asia Research Institute (UNARI) based in Kuala Lumpur; and Calvin Cheng is Analyst in Economics, Trade and Regional Integration (ETRI), ISIS Malaysia





Health Insecurity and Its Impact on Refugees in Malaysia

Refugees and asylum seekers in Malaysia have always struggled with a lack of identification and healthcare. How have these issues impacted the Government's response to COVID-19? What are some of the challenges that will still need to be addressed beyond the MCO?



**BY TENGKU ILISHA AMEERA AND
PUTERI NOR ARIANE YASMIN**

In the face of a borderless pandemic that has consumed Malaysia and the rest of the world, concerns surrounding undocumented refugees and asylum seekers have surfaced as we attempt to grapple with the spike of COVID-19 cases following the *tabligh* gathering in Sri Petaling from 27 February to 1 March.

In such dire circumstances, the health-security matter is one that warrants grave attention given the risks and consequences Malaysia faces today. In a quasi-lockdown, Malaysia has 3,662 COVID-19 cases with 61

: reported deaths as of 6 April. Of
: these, 1,253 confirmed cases
: have been linked to the gathering
: that was attended by some
: 16,000 people including an
: estimated 2,000 untraceable
: Rohingya refugees. On 4 April,
: the Director-General of the
: Ministry of Health (MoH) stated
: that 3,000 *tabligh* participants
: have yet to be screened. Datuk
: Dr Noor Hisham also stressed
: that the gathering – which has
: already resulted in a fifth-
: generation cluster of cases –
: could lead to 40,000 people
: infected.

: This presents a number of

problems for the Government in their efforts to carry out a swift and effective response against the pandemic.

First, the unofficial and mostly illegal status of refugees and asylum seekers would likely make them reluctant to come forward and identify themselves for testing. The fear of possible arrests from authorities and amounting suspicion from the public serve as a hindrance for the undocumented.

Moreover, contact tracing will be too arduous, if not impossible, to carry out. Under the Movement Control Order (MCO), contact tracing is a key tool in breaking the chain of transmission. The process necessitates identifying, assessing and monitoring people who have been exposed to the virus.

The absence of documentation compromises such measures, highlighting some of the challenges in trying to track those amongst marginalised communities. The overall success of the MCO comes down to the strict compliance of people and this could be severely undermined by those the Government is unable to track.

As highlighted during the World Health Organization’s (WHO) press briefing in the last week of March, the fight is not over unless we know where each COVID-19 case is. This is why considerable efforts have been made to disseminate information to the 2,000 untraceable refugees and asylum seekers to come forward without penalisation. For example, the MoH is working with the United Nations High Commissioner for Refugees (UNHCR) and other non-governmental organisations (NGOs) to contact these attendees.

There have also been communication efforts on a broader scale that include public announcements on various media platforms, social media accounts

and well-established newspapers. It is critical that these avoid “scare-mongering” language methods that will only deter them from coming forward.

The COVID-19 pandemic reinforces the urgent need to regularise refugees and asylum seekers into a national database that provides basic documentation and biometric data. It is simply in the country’s national security and interest to do so.

New arrivals of 250 Rohingya refugees near the Ritz Carlton in Langkawi in the early hours of 5 April indicate that these groups of people will continue to make their way to Malaysia, pandemic or not. It is crystal clear that we are a final destination for some refugees and asylum seekers. No longer are we merely a transit state. This has been the status quo for Malaysia for several years now and is one that policymakers took a long time to come to grips with.

Second, refugees and asylum seekers are in a position of increased ambiguity where healthcare is concerned. Prior to the outbreak, they had little to no access to adequate healthcare nor could they afford it. However, in present conditions, it seems that the Government can no longer

disregard healthcare policies on refugees and asylum seekers.

The COVID-19 pandemic has shown that the health of every individual is linked to the health of the most marginalised. In the case of Portugal, the Government has granted provisional citizenship rights to migrants, asylum seekers and refugees, whether legal or not, which will in turn grant them full access to healthcare during this pandemic. According to the Portuguese Council of Ministers, these groups are “in a situation of regular permanence in National Territory” until 30 June.

In Malaysia, there is no discrimination against refugees and asylum seekers in the fight against COVID-19. Testing and treatment are free to all – Malaysians, foreigners and the undocumented. Indeed, diseases do not distinguish if one is a citizen or not. There have also been reports that a small number of refugees have been given temporary shelter at the Alam Damai hall in Cheras. While commendable and necessary, it is difficult to ascertain whether these initiatives will be translated into broader action on the ground.

From the perspective of the Rohingya refugees, there are





deep-rooted legacy issues that stem from years of discrimination and mistreatment at the hands of unscrupulous Malaysians, including those in law enforcement. This sense of untrustworthiness could prevent refugees and asylum seekers from accepting help and protection altogether, particularly now that our streets are flooded with uniformed personnel to enforce the MCO.

On the other hand, recent reports of refugees being arrested for violating the MCO highlight the perspective of those in law enforcement. Three refugees were arrested, detained for three nights and fined a total of RM3,000 for finding food for their families. Law enforcement officers have no choice, but to follow what the law dictates, thus a gap between the initiatives that the Government has put in place and their implementation. As previously argued by ISIS Malaysia, policymakers must work in unison with not only the UNHCR, but also refugee-related NGOs and refugee community groups.

- Most importantly, such initiatives
- are only a temporary solution to
- address the issue of
- undocumented refugees and
- asylum seekers while we are in a
- public health crisis. There is still
- the question of what happens to
- the undocumented post-MCO.
-
- Their regularisation and
- registration in a national database
- aside, refugees and asylum
- seekers should be given
- compulsory health screening with
- the coverage of healthcare costs
- borne by companies and
- individuals that employ them.
- Once regularised, there should
- also be stricter measures or
- penalties for companies who
- continue to hire undocumented
- refugees and asylum seekers.
- This provides a more compelling
- incentive for refugees to register
- themselves and attain
- documentation and proper work
- rights.
-
- A comprehensive contingency
- plan that takes into account more
- vulnerable groups is essential.
- While the recently-announced
- RM250 billion stimulus package
- is encouraging,

- it falls short in providing aid
- to the more marginalised groups
- that, at the very least, should
- have access to or equal
- distribution of healthcare
- services.
-
- While the pandemic could lead to
- fear, insecurity and increased
- fragmentation, a strong and
- united front is desperately needed
- for an effective response. It also
- means that principles of
- inclusivity must be adopted to
- support those who are more
- vulnerable in such circumstances.
-
- Prime Minister Muhyiddin
- Yassin has mentioned throughout
- his speeches that “no one is left
- behind” under this Government.
- It is time that refugees and
- asylum seekers are included in
- these plans for tangible action to
- be taken, and better policies to be
- formulated to tackle the
- pandemic.

A shorter version of this article first appeared in *New Straits Times* on 2 April 2020. Tengku Ilisha Ameera is Researcher in Social Policy and National Integration (SPNI); and Puteri Nor Ariane Yasmin is Analyst in Foreign Policy and Security Studies (FPSS), ISIS Malaysia

The Pandemic, the Constitution and the Laws



Citizens may censure freely, but must obey promptly. The Government on its part must remember that from the constitutional and rule-of-law point of view, an executive order, policy, directive, instruction or scheme has no force of “law” simply because of its expediency, workability or reasonableness. It must be anchored in and derived from legislation or subsidiary legislation. Despite the dire circumstances we are in, there is a need to show fidelity to the Constitution and the laws.



BY SHAD SALEEM FARUQI

Due to the devastating effect of the pandemic, the Government has announced a number of bold measures among them a stay-home order; ban on gatherings except for small size funerals; restrictions on movement except for special purposes, essential activities and services as defined by the 2020 Regulations; and requirement to undergo health examination for those returning from abroad. People suspected of suffering from any infectious disease may be quarantined.

These orders have resulted in the shuttering of thousands of businesses and professions, loss of jobs, incomes and livelihood, shutting down of schools, markets and restaurants, and drastic reduction of the means of transportation. Millions have been thrown out of work and the bulk of the population is forced to stay at home. Anyone violating the stay-home order without lawful excuse is subject to fine, arrest and imprisonment. Despite their severity, these exceptional measures are absolutely necessary and unavoidable.

"Although as citizens we have a constitutional right to censure freely, we must obey the rules promulgated promptly."

We must also do whatever we can to assist our fellow citizens whose lives are devastated because of this pandemic.

On its part, the Government has a duty to listen to constructive criticisms and to be consultative. It must draw on the rich talent of non-governmental organisations and individuals to understand and tackle this crisis in its manifold dimensions. The political executive and the bureaucracy must remember that systems in which people participate are systems they are likely to internalise and respect.

Those in positions of authority

must also remain cognisant of the human rights and rule of law dimension of this crisis. Under our supreme Constitution, every citizen (and in some cases every person) is entitled to some fundamental liberties. Among these are personal liberty (Article 5), freedom of movement (Article 9), freedom of religion (Article 11) and right to property (Article 13).

However, these rights are not absolute and can be restricted or deprived under the authority of law. The expression “law” has a prescribed meaning under Article 160(2) of the Constitution. The definitional clause states that “law” includes:

- “Written law” (Acts of Parliament, Emergency Ordinances under Article 150(1), State Enactments, and federal and state subsidiary legislation;
- Judge-made rules of common law; and
- Customs, to the extent recognised.

It is noteworthy that executive orders, instructions, directives, policies, plans and schemes do not amount to law unless derived from and authorised by a law. This means that the power of the executive is not inherent. It must be backed by some law and its exercise must remain within the four corners of the enabling legislation. From the constitutional and rule-of-law point of view, an executive order, policy, directive, instruction or scheme has no force of “law” just because of its expediency, workability or reasonableness. It must be anchored in and derived from legislation or subsidiary legislation.

In turn, the legislation and subsidiary legislation must be grounded in the supreme Federal Constitution, which confers legislative, executive and judicial authority on all functionaries of the state at both the federal and state levels.

Despite the dire circumstances

we are in, there is a need to show fidelity to the Constitution and the laws. It will be in the spirit of constitutionalism if every authority issuing an order were to disclose the legal fountain from which the power derives.

For instance, Bank Negara Malaysia has ordered a six-month freeze on specified loan payments. The Ministry of Human Resources has said employers cannot withhold or cut salaries and allowances of workers who could not report for work in the Restricted Period due to the Movement Control Order.

Beneficent and beneficial though these orders are, it will enhance their legality and legitimacy if there was clear mention of the provisions of the law under which they were issued.

If due to our health crisis, new provisions are drafted, which clash with other existing laws, then these conflicts need to be resolved first before the orders are issued. For instance, the courageous and considerate instruction to employers to refrain from cutting wages or allowances is based on a piece of subsidiary legislation – the Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020. Can a piece of subsidiary legislation override primary laws, like the Contracts Act 1950 (Act 136), the Employment Act 1955 (Act 265) and the Industrial Relations Act 1967 (Act 177), which regulate employer-employee relationships?

In normal circumstances, any conflict between a primary and a secondary law must be resolved in favour of the primary law. However, the Government could argue that the Regulations of 2020 were authorised by a primary legislation – the Prevention and Control of Infectious Diseases Act 1988, which is later in time to the 1950, 1955 and 1967 laws.

In case of conflict between later and former legislation, if harmonious construction is not possible, then “later overrides former”. The 1988 Act and its derivative legislation should, therefore, override any conflicting provisions in the earlier laws on workers’ rights and duties.

In several other areas, we need urgent legislation to protect the swathes of our population devastated by this stay-home order. There are businesses whose sources of supply have dried up and who are unable to fulfil their contracts. Parliament should pass new laws to give them the shield of the legal doctrines of “frustration” or “*force majeure*”.

Daily wage earners, part-time workers, hawkers, taxi drivers, refugees, migrant workers and vegetable farmers face bleak times. There is a human rights dimension to their plight. Let us note that the constitutional right to “life” in Article 5(1) includes the right to livelihood and to the necessities of life.

Price control is also badly needed. Public hospital facilities for testing for the COVID-19 virus are so overstrained that thousands of people who wish to be examined are being turned away or asked to go to private hospitals, where the fees are exorbitant and profiteering is rampant. If the price of essential goods can be controlled, the price of essential services should likewise be regulated.

We also need innovative laws and policies to meet the worsening health and economic crisis. Regrettably, Parliament is not being summoned expeditiously to deliberate and legislate despite the exceptional circumstances. Under Article 55(1), no more than six months can elapse between the last sitting on 5 December 2019 and the first meeting in the next session, which is scheduled for 18 May 2020.

Some fear that on the authority of the Prevention and Control of Infectious Diseases Act 1988, the convening of Parliament can be further postponed.

It is submitted that an ordinary Act of Parliament cannot violate the commands of Article 55(1). The Speaker of the Dewan Rakyat has to find some innovative way, such as video conferencing, to enable Parliament to sit and deliberate before the six months expire.

On 27 March 2020, YAB Tan Sri Muhyiddin Yassin, the Prime Minister of Malaysia (PM) announced a generous economic stimulus package of RM250 billion. A closer look indicates that only 10-20 percent of the package involves expenditure from the Government. The rest is about such concessions as rent and loan deferrals, and early EPF withdrawals by account holders from their own accounts. It is worth noting that in late February, the then Interim Prime Minister Tun Mahathir Mohamad had announced an economic stimulus package of RM20 billion without any parliamentary authority. The constitutional issue is – where will the monies that the Government had intended and intends to spend come from?

First, the money could be raised as a negotiated loan from abroad or domestically, which is authorised in Schedule 9, Federal List, Item 7(c). However, there is no indication that such a loan is being raised.

Second, the Minister of Finance could dip into the Contingencies Fund set up by the Constitution under Article 103. It is not known whether the Contingencies Fund has enough balance to support the extraordinary expenses announced by the PM. Article 103(1) states that “Parliament may by law provide for the creation of a Contingencies Fund and for authorising the Minister charged with responsibility for

finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Contingencies Fund to meet that need”. The spending is then retrospectively ratified by Parliament by way of a supplementary estimate and a Supply Bill to replace the amount so spent. Though Parliament is not in session at the time of writing, it can retrospectively ratify this expenditure when it convenes.

Third, owing to the magnitude of our problem and its urgency, Parliament should utilise its special powers under Article 102 of the Constitution to authorise extraordinary expenditure by or for our frontline agencies and personnel. Article 102 authorises expenditure for unspecified, urgent purposes even before the Supply Bill is passed. Regrettably, Parliament is not in session to make use of Article 102.

Fourth, could this money come from the Supply Act passed last year for the year 2020 under Article 104(1)(b)? During the budget session last year, Parliament passed a Supply Act 2020 (Act A1608) of RM297 billion for all the relevant ministries, government departments and statutory bodies. Of this, RM241 billion was for operating expenses and RM56 billion for development expenditure. The Ministry of Health was allocated RM29.7 billion for year 2020.

Due to the health crisis, could allocations approved by Parliament for one Ministry be transferred to another agency or another purpose by the executive on its sole authority? It is submitted that the law does not permit the executive to resort to such reallocation. Article 101 specifies that if an appropriation is insufficient, or if no appropriation was made, or if expenditure exceeds the money allocated, then the executive

must go back to Parliament with a supplementary estimate and a Supply Bill. Parliament's intervention is needed.	Constitution and to the role and function of the legislature as the keeper of the purse in a parliamentary democracy. The relevant Standing Order states:	should be allowed by the Speaker. If the “social distancing” consideration is seen as a hurdle to the convening of Parliament, then video conferencing can be resorted to. Alternatively, the “quorum rule” could be utilised.
It appears, therefore, that despite very noble intentions, the Government cannot withdraw any money for the stimulus package from the Consolidated Fund. What can be done to tackle the issue? From the constitutional point of view, three courses of action may be adopted to legalise the stimulus package.	<i>If, during an adjournment of the House, it is represented to Tuan Yang di-Pertua by the Prime Minister that the public interest requires that the House should meet at an earlier date than that to which the House was adjourned, Tuan Yang di-Pertua shall give notice thereof forthwith and the House shall meet at the time stated in such notice. The business set down for that day shall be appointed by the Prime Minister and notice thereof shall be circulated not later than the time of the meeting.</i>	Under Standing Order 13 of the Dewan Rakyat, the quorum for the business of each sitting is 26! The Government and the opposition could work out a deal to reduce the number of MPs required to attend the sitting. Fifty or so MPs could be picked to attend, and the numbers could be divided 25 to 25 between the Government and the opposition. This will permit a meaningful debate as well as maintain the necessary social distancing in the House of 222 MPs.
First, the PM should rely on the Dewan Rakyat’s Standing Order 11(3) to convene an urgent, one-day meeting of the Dewan Rakyat to deliberate on the content and the efficacy of the stimulus package and to obtain a Resolution. Making promises of such magnitude to desperate people without parliamentary authority is an affront to the	In this special session, no other issue including a vote of confidence or no-confidence	Second, if the PM is reluctant to summon an urgent meeting of

<p>In Stephen Kalong Ningkan v Government of Malaysia [1968] 2 MLJ 238, Lord MacDermott of the Privy Council opined that emergency is not confined to threats to the security or the economic life of the nation, but also includes such diverse events as wars, famines, earthquakes, floods, epidemics and the collapse of civil government. The COVID-19 pandemic is without doubt an emergency under Article 150(1).</p> <p>Prevention and Control of Infectious Diseases Act 1988: Section 5 of the above Act enables the health authorities to seek assistance from other government departments. Under this section, “Police, customs and immigration officers and officers from <i>other government departments and agencies</i> shall render such assistance as any authorized officer may request for the purpose of enabling him to exercise the powers vested in him by this Act or the regulations made under this Act”. It is, therefore, possible for the health authorities to seek help from the police and the army.</p> <p>National Security Council Act: Under section 5(a) of the Act, the National Security Council (NSC) can control and coordinate “Government Entities” on operations concerning national security. A “government entity” includes any authority established by law: section 5(2).</p> <p>Under section 18(1) the expression “security in any area” is defined very broadly to include any threat by any person, <i>matter or thing</i> likely to cause <i>serious harm to the people, economy or any other interest</i> of Malaysia. This means that the NSC’s powers are not limited to wars, insurrections or riots, but extend to economic threats.</p> <p>Section 19(1) states that upon a declaration being made, the NSC may issue an executive order to the Director of Operations <i>or such Government Entities</i> as the NSC</p>	<ul style="list-style-type: none">: deems necessary in relation to the security area in the interest of national security.: The executive order issued by the Council may include the <i>deployment of any Security Forces or any other relevant Government Entities to the security area.</i>: Under section 24(1), the Director of Operations may direct any member of the Security Forces in the security area to control or prohibit the use of any road or water-way in, or air space above, any security area by any person or any vehicle, vessel, aircraft or conveyance; or to close any road or water-way in the security area.: Under section 24(2), if a member of the Security Forces in the security area believes on reasonable grounds that a dangerous thing is in or on any vehicle, vessel, aircraft or conveyance in the security area, the member of the Security Forces may do anything necessary to stop the vehicle, vessel, aircraft or conveyance, including erecting barriers or other structures.: The power of the NSC relates to Security Forces and not just the police.: Under section 42(1), the Prime Minister may make regulations for the purposes of carrying out or giving effect to the provisions of this Act. The Prime Minister may make regulation to control the movement of persons, vehicles, vessels, aircrafts and conveyance in any security area; to prescribe any prohibited action and activities during the period of the declaration made under section 18; and to control the movement of any person or any vehicle, vessel, aircraft or conveyance in and out of the security area, including to direct to leave the security area and to refuse entry into the security area.
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Parliament, then he can rely on Article 101 to prepare a supplementary estimate showing the sums required or spent and lay a Supply Bill in the Dewan Rakyat when Parliament meets in May.

Third – and this is not a recommendation – the Yang di-Pertuan Agong, acting on the advice of the prime minister, could proclaim an emergency under Article 150 and then promulgate such Emergency Ordinances under Article 150(2B) as circumstances appear to him to require to meet the health and financial emergency. It is noteworthy that “emergency” under Article 150(1) covers a threat to the “security or the *economic life*, or public order in the Federation”.

Whatever path is chosen, the Constitution must prevail in times of stability as well as crisis.

The Armed Forces have been called out to assist the Police to enforce the Prevention and Control of Infectious Diseases Act 1988. Some people are questioning whether it is legally justifiable to recruit the armed forces to enforce such orders. It is submitted that though there are no clear-cut provisions in the Armed Forces Act, it is possible to justify the recruitment of the Armed Forces to assist the police under the Prevention and Control of Infectious Diseases Act 1988 (Section 5) and the National Security Council Act Sections 5(a), 18(1), 19(1), 24(1), 24(2) and 42(1).

Critics have wondered whether the federally passed Prevention and Control of Infectious Diseases Act can interfere with people’s freedom of religion to congregate for prayers and pilgrimages. It is submitted that freedom of religion is subject by Article 11(5) to “any general law relating to public order, public health or morality”. The Prevention and Control of Infectious Diseases Act is such a law and it authorises

constitutionally permissible restrictions on the exercise of freedom of religion. Another issue raised by some commentators is that, except in relation to the Federal Territories, Islam is a matter within state jurisdiction and, therefore, the ban on Friday prayer and *tabligh* gatherings must be issued by state Islamic authorities and not the Federal Government. The answer to this objection is found, firstly, in Article 11(5), which applies to all religions; secondly, to the federal power over medicine and health in Schedule 9, List I, Para 14; and thirdly, the concurrent power over public health and prevention of diseases in Schedule 9, List III, Para 7. In case of conflict between a federal law and a state law, Article 75 mandates that federal law prevails if any state law is inconsistent with a federal law.

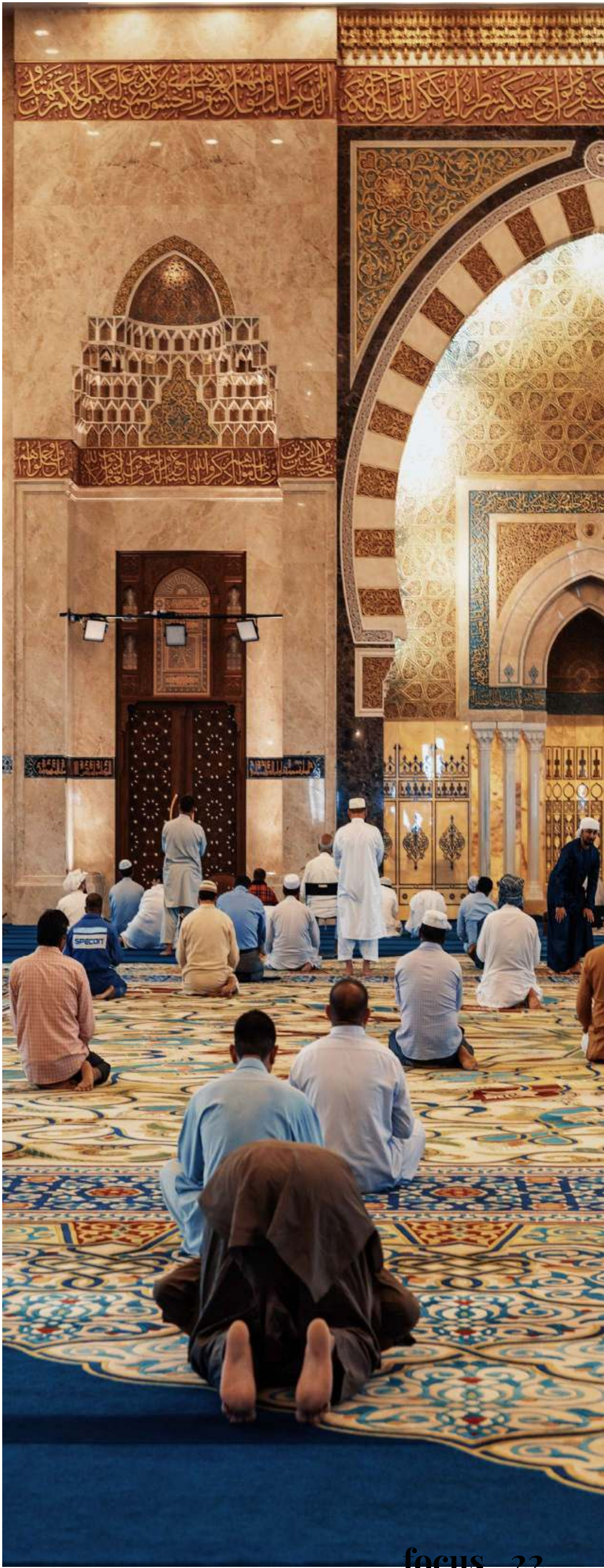
According to Article 80(1), the authority of the executive is co-terminus with the authority of the legislature so that whatever is within the legislative power is also within the power of the executive. Further note may be taken of Article 81 that the executive authority of every State shall be so exercised as to ensure compliance with any federal law applying to that State; and as not to impede or prejudice the exercise of the executive authority of the Federation. It follows that the power of the States over Islam must not be exercised to thwart or defeat any of the provisions of the Prevention and Control of Infectious Diseases Act 1988.

If there is any further doubt, then the Conference of Rulers must summon an urgent meeting to resolve the issue by exercising the royal power of the Sultans under Article 38(2) to deliberate on any matter they think fit and issue instructions to their religious officials to postpone all Muslim religious gatherings till further notice.

In addition, Article 3(2) permits the Sultans to authorise the Yang

di-Pertuan Agong to represent them on any matter of Islam. Due to the approaching Ramadan, there is the likelihood of large gatherings at nightly Ramadan bazaars. Many of the faithful may also wish to perform nightly *terawih* prayers at their neighbourhood mosques. As head of the religion of Islam in their territories, Their Majesties need to instruct mosques and local authorities to take the necessary precautions and keep the shutters down. Islam permits faith and reason to go hand in hand.

This article was adapted from “Reflecting on the Law”, *The Star*, 26 March 2020. Shad Saleem Faruqi is Holder of the Tun Hussein Onn Chair, ISIS Malaysia



Preparing for a New Normal

Governments around the world have had to scramble to find ways to manage an unprecedented crisis with varying levels of success. While Malaysia has done well compared to its peers, do we have the institutional capacity to manage present and future crises to come?



BY RYAN CHUA

The scale and pace of how COVID-19 has evolved from a localised public health crisis into a full-blown global pandemic has caused major reverberations and even upheavals throughout the world. The situation has clearly outpaced the 2003 SARS outbreak, leaving governments scrambling to save lives, economies and struggling healthcare systems.

Judging from their reactions so far, it is fair to say that many policymakers did not expect such a quick deterioration of conditions from an outbreak that only four months ago seemed well contained in Wuhan specifically and China broadly.

Various measures have been taken globally to “flatten the curve” of exponential transmission rates so as to not overwhelm healthcare systems. These range across stay-home notices, partial lockdowns and outright travel bans.

Malaysia’s initial two-week Movement Control Order (MCO), which began on 18 March 2020, restricted interstate and international travels; it has since been extended until 14 April 2020 following continued increase in cases.

While full credit should go to our first responders and frontliners – from both the public and private sectors – we need to reflect upon our institutional capacity to manage current and future crises.

We have reached an inflection point, where disruptions due to COVID-19 threaten to become our new normal.

Can we handle this crisis and the next one? The current crisis has certainly demonstrated the best our institutions have to offer, namely the tremendous efforts of our Ministry of Health. Albeit some hiccups at the start, the MCO has been relatively successfully implemented and the RM250 billion stimulus package was well-received.

As a whole, it seems that Malaysia has done better in managing this pandemic compared to some more developed Western countries. However, as many countries are struggling to best manage a crisis of this scale, Malaysia is no different. Actions thus far have been largely reactive to the issues as they come.

The discovery of the Sri Petaling *tabligh* cluster in early March is one such instance – where the scope of proactive government action only broadened after case numbers spiked even though we received our first COVID-19 case in late January.

From a macro perspective, Malaysia has been stagnating at a crossroads for numerous years, where solid economic growth has not led to concurrent growth in the nation’s technological and institutional capacities. Perhaps this global pandemic will force us to recognise and make the changes necessary, especially in institutional reforms.

Let us be clear, however, as important as institutional reform is, it is also an overused phrase – often employed without meaningful appreciation for the exact type of reforms to be undertaken. We end up engaging in repetitive surface level discourse without doing more to broaden and deepen institutional capacities. As this pandemic is likely to continue dominating

the headlines in the weeks and perhaps months to come, the government must prepare its institutions and the civil service to deal with continued and long-term disruptions. We must ensure that our institutions are resilient and adaptive enough to handle current and emerging crises. Hence, there needs to be an overhaul in how institutions think, plan and act.

As Malaysia practices a parliamentary democracy, elected politicians play a role in lending legitimacy and accountability to the decision-making processes of the executive. However, we cannot rely solely on politicians, who are usually measured by their ability, to be elected and re-elected. This needs to be balanced with institutions – led by competent technocrats – that craft policies based on scientific and empirical evidence.

Given how COVID-19 has played out following the political crisis that led to the formation of the ruling Perikatan Nasional coalition, there is a heightened perception that experts should lead the way in these uncertain times because a government is more than just its political leaders. Despite what some may have thought, the peaceful transition of power in the government has become an accepted norm.

The next steps in reform that must take place need to be less political and focus instead on competence. The broad thinking and policies that guide strategic issues, such as public health and internal security, ought to outlast political cycles that typically run for four to five years.

Institutional capacity must be enhanced to ensure that policies are being developed in view of the long-term instead of the sensational; to be proactive rather than reactive; to adapt to new needs of the times.

Malaysia used to excel in this

through its five-year Malaysia Plans, Vision 2020 and Multimedia Super Corridor. However, countries like China, South Korea, Taiwan and Singapore have leapfrogged us through greater advancements in technology and competence.

For example, Singapore utilises future studies through the Centre for Strategic Futures within their Prime Minister’s Office to build capacities, develop insights into emerging trends and communicate projections to decision-makers for informed policy planning.

Future studies is not the same as gazing into a crystal ball. It is based on empirical methods studying various emerging trends to gain insights on potential and probable futures that lie ahead. There is a need for a similar setup within our own government, which will better prepare us for the possibilities to take advantage of and build resilience against different risks.

For example, it may have allowed the government to take heed of the warnings of scientists that had tracked the “re-emergence of SARS and other novel viruses from animals or laboratories” way back in 2007.

Future studies has the potential to encourage technocracy and technology as central tenets of policymaking and governance. It highlights the need for better predictive capabilities to enable our institutions to foresee trends and draw up evidence-based plans in time for the next big thing to come, be they pandemics or new technologies.

The COVID-19 pandemic has also highlighted how quickly and easily a public health issue can overlap with internal security and law enforcement.

This further underscores the need for a whole-of-government approach to ensure that “government agencies [work]

together across borders to share the organisation’s portfolio of actions to resolve specific issues”, as stated by the Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) in its website. In simpler terms, it means collaborating together to act as a whole entity instead of separated silos to resolve policy issues.

For example, in this current COVID-19 crisis, the Ministry of Health has to work in tandem – through deeply integrated policy processes – with the law enforcement under the Ministry of Home Affairs, as well as with other relevant portfolios, such as defence, and communications and multimedia.

Crucially, it is not about the individual priorities of separate ministries and agencies, but the collective mission of serving the people’s best interests and catalysing holistic sustainable development.

This requires a clear hierarchy for decision-making balanced with appropriate flexibility and

interlinkages from different domains.

It also needs a clear reporting structure and culture to support error reporting and the identification of potential issues – delivering feedback that is needed at all levels to make informed decisions especially in times of crisis.

Altogether, institutions across the board need to walk the government’s talk to build a systematic approach to address risks and threats to the nation.

The old ways of working in silos are no longer tenable. Public health issues must now also be framed as a security issue for consideration, as is food security and climate change.

"In the face of a global pandemic, it has become imperative to ask ourselves: What is the role of government and institutions today and tomorrow?"

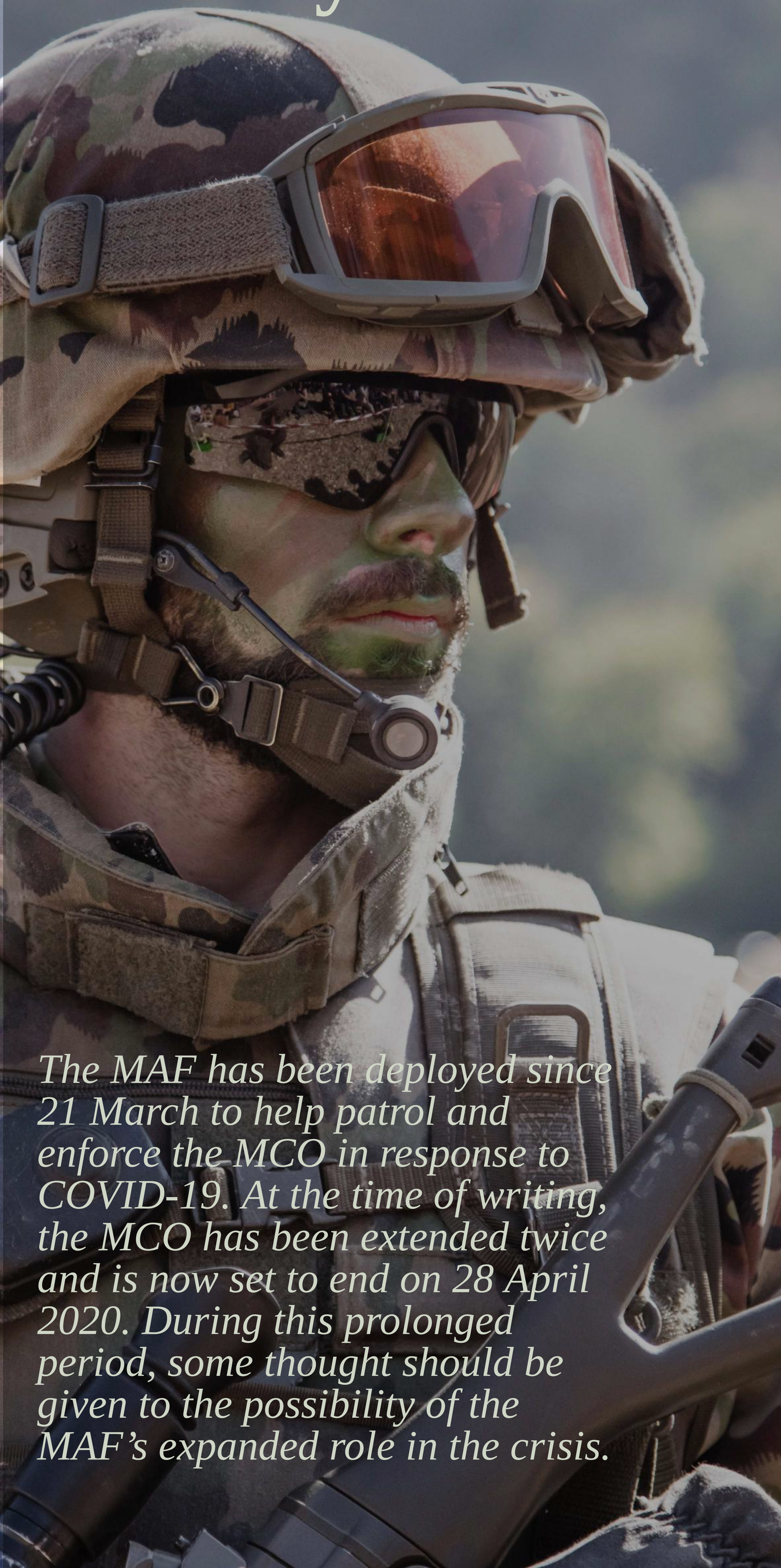
More questions will be asked of the government, for instance, whether the rules of today will become our new normal, whether technology will be utilised for mass testing or if the technology developed could be an invasion of privacy. These issues need to be on the mind of our policymakers and institutions, where ultimately, it is not about what institutions do, but rather the impact they have on the people.

The *rakyat* rely on institutions to guard against new hazards and provide opportunities for prosperity. Therefore, it is high time to reinvent the wheel of government that better reflects the needs and trends of the present and future times.

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Expanding the Military's Role?



The MAF has been deployed since 21 March to help patrol and enforce the MCO in response to COVID-19. At the time of writing, the MCO has been extended twice and is now set to end on 28 April 2020. During this prolonged period, some thought should be given to the possibility of the MAF's expanded role in the crisis.



**BY PUTERI NOR ARIANE
YASMIN, MUHAMMAD
SINATRA AND THOMAS
DANIEL**

There are two issues to consider. First, there is the role that the Malaysian Armed Forces (MAF) can play in a public health crisis. Its magnitude would largely depend on its healthcare capacity and capabilities. Second, whether or not there is sufficient space for a military operation within the wider context of a public health crisis. This includes the justification and objective of the operation, as well as civilian cooperation.

To begin with, policymakers could explore the conditions that necessitate the deployment of the MAF's medical assets. The following questions are worth asking: (1) Is the current situation considered urgent enough for such a course of action?; (2) Are the MAF's assets the right sources to tap on?; and (3) Will a more visible and expanded role for the military cause any discomfort for the public?

If the answer is “yes” to the first two questions, then the government must communicate the reasons for the deployment to allay any potential fears that could develop among the general public. Most Malaysians are not accustomed to seeing troops – armed and in camouflage – operationally deployed, especially in towns and cities. Only older Malaysians remember the security restrictions of the Emergency and the aftermath of the 13 May riots – the last time troops were out in force.

The sight of the military being deployed on social media, television and in newspapers could inadvertently lead to more panic buying and hoarding – something that the country does not need.

Transparency is crucial in order to avoid panic. Further deployment of the MAF’s assets will mean more public exposure. It follows that information about said assets will become public. However, this is not necessarily a cause for concern because there is a clear difference between being transparent and informative on the capacity and functions of the military, and disclosing military secrets or sensitive technical data.

Another potential complication comes from the lack of information within the defence budget beyond the broad categories of operational and development expenditure. There is no information, for example, on the specific allocation to the military health service, which would then give us an idea of the resources that are currently available and what is needed.

Sources indicate that while the MAF does have technical capacity and expertise, it falls short on quantity particularly if they have to be deployed on a nationwide scale. For example, while the 12 Squadron Rejimen Askar Jurutera Diraja (RAJD) are trained and equipped to manage Chemical, Biological, Radiological, Nuclear and Explosive (CBRNe) threats, supplies of personal protective equipment (PPE) are, however, limited. In terms of resources, the MAF must dip into the same pool as civilian agencies. This might have changed since the Movement Control Order (MCO) has come into force and more resources are allocated to procure such equipment.

It is also unclear if the field hospitals that Kor Kesihatan Diraja can set up are equipped to

manage infectious disease outbreaks. As with other militaries elsewhere, field hospitals are mostly tailored to support those wounded in combat or humanitarian missions. Nevertheless, military doctors, medical assistants and nurses can provide a valuable service in alleviating the workload of their Ministry of Health (MoH) counterparts.

The practices in other countries provide examples. In the United States, US Naval Hospital Ship Comfort has been deployed in New York Harbour to provide an additional 1,000 beds. In China, military scientists have started clinical trials for a vaccine, while in Russia, military medics and supplies have been sent to help Serbia’s response to COVID-19.

Besides its role in medical and health services, there are other capacities in which the military could be of assistance during the MCO. Both the current Defence Minister and former Deputy Defence Minister have highlighted a number of these. They include disinfection efforts, setting up tents for healthcare workers to rest in, flying patients to intensive care centres, assisting the *rakyat* if the MCO shifts to a more extreme “lockdown” and logistics support. Indeed, the MAF is already doing a number of these.

Perhaps where the MAF could be most effective is in helping to ease the burden of the police in enforcing the MCO, so that the latter is freed up to assist the MoH in contact tracing for those who have tested positive or are suspected of contracting the virus. This remains a major challenge in Malaysia’s response to COVID-19 given the numbers of the *tabligh* gathering in Sri Petaling and other emerging clusters. According to Health Director-General Datuk Dr Noor Hisham, as of 3 April, the *tabligh* gathering itself has led to a fifth-generation cluster of infections, with 3,000

participants yet to be tested and a possible infection rate of up to 40,000 people.

Another possible role for the MAF is to assist in identifying, testing and quarantining undocumented refugees, asylum seekers and migrants. The experience is already there given recent MAF humanitarian missions for the Rohingya refugees in Cox’s Bazar. However, some thought must be given to the lack of trust in these groups of people towards anyone in uniform offering help and protection during the MCO. This calls for greater cooperation with the United Nations High Commissioner for Refugees (UNHCR), non-governmental organisations (NGOs) and refugee community groups. The new arrivals of the Rohingya refugees in Langkawi on 5 April also indicate that MAF personnel are needed to enforce tighter security of our land and sea borders in order to confront the likely risk of more refugees taking advantage of the pandemic and making their way to Malaysia.

In any conversation about the role of the MAF, however, an important issue that needs to be addressed is the “securitisation” of the COVID-19 response. This is imperative to avoid overlooking and overwhelming both the health and economic aspects in managing a public health emergency, to ensure that all response measures are not just legal, but constitutionally sound, and to also protect the MAF as well as other law enforcement officials from contracting the virus.

For a classic example of what happens when a public health crisis is dealt with through a security lens, look no further than the Polis Diraja Malaysia’s (PDRM) restrictions on interstate travel, which led to large gatherings at police stations to obtain a travel permit.



At a time when health authorities were advising social distancing and staying in place to flatten the curve, this and the subsequent exodus of city dwellers and students back to their hometowns and villages before travel restrictions were imposed created optimal conditions for the further spread of the virus. Moreover, conflicting narratives between the National Security Council (NSC) and the MoH on masks led to conflicting standards of procedure for those in essential services and further confusion among the public.

It should also be made clear that participation of the security sector, both the military and police, is to assist the security aspects of the government’s pandemic response based on the advice of the MoH. Managing a pandemic is not, and should not, be a military or police operation. In other words, the MoH must continue to be the lead ministry in Malaysia’s response, with the MAF largely playing a

supporting role. Securitising Malaysia’s response risks the sidelining of medical, scientific and socio-cultural imperatives in favour of policies that only make sense in a security mindset.

The procedural and hierarchical nature of the wider Malaysian bureaucracy in the management of this pandemic is another issue that needs to be paid attention to. The response to this pandemic necessitates a whole-of-government response and, unfortunately, this is where the Achilles heel of most bureaucracies come to the fore – in terms of a lack of inter-agency communication as well as agencies working in silos. This was a clear problem in the first weeks of the MCO and is still an issue, though much reduced.

Navigating the power dynamics among agencies involved is essential in ensuring the efficiency and efficacy of the entire operation. How the government will achieve this,

especially in light of some glaring policy inconsistencies, will be something to anticipate as we press on further into the MCO period and beyond.

"...the MoH must continue to be the lead ministry in Malaysia’s response, with the MAF largely playing a supporting role."

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Digital Trade: A Boon During the MCO and Beyond

Throughout the COVID-19 MCO, digital trade has been a boon in not only connecting businesses to consumers, but also serving as a lifeline for MSMEs and informal workers. Given that digital trade is beneficial in maintaining employment and livelihood in crucial times of emergency, on top of its benefits during “ordinary” times, the government needs to rethink – or better yet, strike while the iron is hot – on how to further encourage digital trade among MSME entrepreneurs in the country.



**BY JUITA MOHAMAD
AND FARLINA SAID**

More than three weeks into the Movement Control Order (MCO), digital trade – generally referred to as digitally-enabled transactions for goods and services delivered physically or digitally – has played a significant role in connecting businesses to consumers. Despite the restriction on movement in place, goods and services remain largely accessible, with payments being able to be made with little to no contact. This puts digital trade adopters at ease with its reliability and efficiency.

As a whole, digital trade during the MCO has been a boon for Malaysia. According to FMT on 18 March, the first day of the MCO, companies like GrabFood and Foodpanda – whose digital platforms connect food and beverage outlets to customers – recorded more than a 30 percent increase in orders. There were also spikes in registrations for marts and restaurants to get listed on similar platforms. For example, a competitor, DeliverEat.my, observed a 300 percent increase in the number of restaurants wanting to register on its platform.

This uptick in demand benefits not just the food and beverage outlets, but the wider ecosystem as well. Emblematic of this is how – in response to the increase in orders on its digital platform – GrabFood had to fortify its delivery logistics chain by including GrabCar drivers alongside its existing motorcycle riders. What this means is that drivers and riders alike – often considered as part of the gig economy – who would otherwise be at a loss due to the MCO, are able to make an income, albeit with additional risks.

During the lockdown, other companies are following suit by increasing their use of digital tools as a means to reach and maintain customers. The bookstore MPH Malaysia is offering free delivery for books bought online, although with some delay in delivery.

According to *The Star* on 7 April, four restaurants have diversified their services into delivering fresh vegetables to their customers in Klang Valley during the MCO. Benefiting from their supplier network of small-time farmers located in Bentong and Cameron Highlands, the restaurants started delivering fresh vegetables and meat to meet the high demand of these products from their current customer base. These customers can place their order and make payment through bank transfers a day before delivery.

Additionally, online shopping platforms have also stepped in to help the farmers in Cameron Highlands who were cut off from their consumers, leading to wasted produce. Here, Lazada had stepped in to market their produce online and have since connected these farmers with consumers through their delivery service. Through this act of digitalisation, wastage has been curbed and the livelihoods of farmers secured.

Smaller sundry shops have also begun to join the digitalisation bandwagon by accepting both online orders and payments through bank transfers from their customers. To cater to customers who want to reduce contact with others during grocery shopping, these sundry shops also offer free delivery services to their immediate community during the MCO. Uniquely, due to the smaller nature of sundry shop businesses, orders can even be made directly through WhatsApp with minimal operating costs.

Given that digital trade is beneficial in maintaining employment and livelihood in crucial times of emergency, along with its benefits during ordinary times, the government needs to rethink how to further encourage digital trade. Making this point is how while there are 28.7 million Malaysians online, the World Bank’s 2018 Report on Malaysia’s Digital Economy highlights that tech adoption by

Malaysia’s industries can be selective.

Slightly more than 70 percent of business establishments with an Internet connection would send or receive email while Malaysia’s manufacturing sector would utilise cyberspace for communication and banking purposes.

To that end, businesses need to see digitalisation as the way forward. However, there are barriers to digitalisation which will need to be overcome by the different stakeholders at play, including those in the public and private sectors.

Firstly, digital trade would best be facilitated by access. As mentioned above, more than 28.7 million Malaysians are online, with the most number of fixed broadband connections being in Kuala Lumpur (265 percent) while Sabah being the least connected (82 percent). The limitation of access to adequate Internet bandwidth would be an inhibitor for participation in digital trade, thus providing unequal opportunities to digitally enabled wealth.

On the aspect of digital access, it would only make sense if businesses and consumers are able to digitalise accordingly. The success of businesses adopting new technologies would be dependent on the ability to transform brick-and-mortar processes and the ability to secure the talents needed for systems to function with a high degree of security, and the resources to ensure these transformations can be realised.

Further to the point of digitalising accordingly, there must also be a questioning of past advice. Early programmes of Malaysia Digital Economy Corporation (MDEC) tended to focus on e-commerce adoption, which resulted in the increase in digital transformations towards client-facing systems over internal operations and

management structures. This is ill-suited today following the emergence of COVID-19 as processes commonly done in the office, or through physical interactions, are significantly reduced for non-essential services.

Meanwhile, according to the 2018 Malaysian Communications and Multimedia Commission (MCMC) e-commerce survey that looked at consumer concerns about online purchases, among the main concerns were related to preference and trust of the systems. While figures post-MCO may indicate a growth in e-commerce consumers, the protection of users online should remain imperative. Inculcating trust either through certified bodies, greater regulation and awareness campaigns would be useful in preparing the ecosystem for digital trade.

Additionally, Internet access coupled with competition law will make the playing field among businesses more even, especially between formal establishments and the former informal enterprises participating in digital trade. By imposing rules for players online, the government has introduced a certain set of standards and norms that govern the digital trade arena.

These rules can be changed

and upgraded at any time. An important component of digital trade includes how tax is calculated for these enterprises and how data is shared within the ecosystem which is inclusive of data shared with the authorities and players beyond the national border. In this case, the issue concerning data transfer and data localisation needs to be revisited especially when Malaysia has restrictions on data sharing beyond its borders.

When the rules and regulations concerning digital trade are highlighted clearly, coupled with a strong foundation in the e-commerce blueprint, it can also provide guidance to micro, small and medium enterprises (MSMEs) if they wish to be incorporated into regional value chains. Such an effort has already taken place in October 2017 with the establishment of Alibaba's Digital Free Trade Zone (DFTZ) in Malaysia, the first of its kind outside China, where it aims to assist SMEs in their exporting activities.

The DFTZ also nurtures a thriving ecosystem that drives innovation in the e-commerce and Internet economy in ASEAN. The Ministry of International Trade and Industry (MITI) projected that such an infrastructure can propel growth of e-commerce from a mere 11 percent to 20 percent in 2020.

Such platforms, when used collectively and widely, can provide local MSMEs with more opportunities and access to a bigger market beyond Malaysia, both in ordinary and emergency times.

"In conclusion, the promise of a digital future is most hopeful not only for Malaysians to find economic, psychological or social solace in times of physical distancing, but also for there to be growth in new economic frontiers."

Hopefully the momentum can be sustained and greater ingenuity be considered for more efficient processes and better delivery of services.

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Has the Pandemic Accelerated the Growth of Technology?

The global health crisis has opened the door for a bigger role of technology, assisting efforts in fighting COVID-19 and helping citizens adapt to a new way of life. As opportunities unfold, technology – being a double-edged sword – is also acting as a conduit for those wanting to take advantage of the crisis. Moving forward, cautious steps are vital as technological emergency measures could also expose citizens to vulnerabilities that violate human rights and privacy.



BY MOONYATI YATID



When China first alerted the World Health Organization (WHO) about the novel coronavirus, COVID-19, on 31 December 2019, it was already spreading at an alarming rate. Wuhan, the centre of the epidemic, and soon the rest of China, struggled in the battle to fight the virus – as the world watched. Four months later, COVID-19 has spread to 210 countries and territories, infected more than 2 million people and caused the deaths of more than 130,000 patients.

Countries globally are putting various measures to combat the health crisis, which the WHO declared a pandemic on 11 March. China leveraged on its advanced technology capacity especially the artificial intelligence (AI) sector to assist the efforts to combat COVID-19. For instance, infectious disease models were developed to assess measures, provide suggestions and offer early warning signals, while deep learning models were used to predict potential virus hosts, and machine learning was used to support drug discovery.

China also used its advanced surveillance tools via automated temperature monitoring and tracking devices to analyse 300 people every minute, and identified those who were without facemasks through algorithms and facial recognition technology. A health check application using quick response (QR) code was deployed in more than 200 cities; the system determines whether one is healthy and safe to be around others or not.

Through its system, the Chinese government could track users who have been alerted as needing to be quarantined, and whether the quarantine requirements were violated. China also used robots together with automated dialogue systems to minimise physical interactions between patients and healthcare workers. Similarly in Thailand, “ninja robot”

machines facilitate communications between doctors and coronavirus patients through video chat functions to reduce the risk of infection.

Meanwhile, South Korea employed a tracking system that is more social-centric, in which users are informed of nearby infection cases to allow them to take early precaution measures. They have also used drones to spray disinfectants in coronavirus hot spots.

In Taiwan, its digital policing approach leverages on big data analytics – integrating its national health insurance database with immigration and customs databases. This integrated system provides real-time alerts on patients that match specific travel history and clinical symptom criteria to assist case identification. Taiwan also deployed the QR code tracking system to identify those needing home quarantine, as well as to monitor their location during quarantine.

In Malaysia, the government implemented the Movement Control Order (MCO) to combat the spread of COVID-19. Announced by Prime Minister Muhyiddin Yassin on the night of 16 March, and to last for two weeks in the initial phase, the restriction on travels and compelling most to stay at home caught many by surprise.

Notably during this period where a majority of Malaysians are staying home, the growing role of technology in daily lives is observable. This includes the usage of conference calls to carry out otherwise ordinary work-related and social interactions, the use of e-learning to ensure continuity of students’ education, and even the live streaming of performances by artists and home workouts by instructors for online viewers, which are all fast becoming a norm.

While some say that this crisis is

forcing citizens to rely on technology much more than usual, others see technology as a means to continue their daily tasks amidst the disruption faced. For instance, while it was first announced that courts would be closed for the duration of the MCO, its subsequent extension has encouraged the Malaysian judiciary to take the bold step of conducting virtual hearings.

A pilot programme to curb the spread of COVID-19 – a mobile app called *MySejahtera* – has been launched for citizens to carry out health self-assessments; this includes a tracing exercise. The application also helps citizens identify nearby hospitals and clinics for COVID-19 testing and treatment as well as guides them on what to do if they contract the virus.

Surveillance technology is also being adopted to enforce the MCO with drones being deployed to assist the law enforcement frontliners to monitor public compliance. Equipped with heat-sensing technology and speakers, the drones are used during both day and night to monitor public movement in town centres and red zone areas, as well as to convey information to citizens.

Meanwhile, Sarawak has rolled out a digital surveillance system that requires those being monitored to wear a QR-coded wristband. Using these tracking devices, Sarawak aims to monitor and control the spread of COVID-19 at all its Points of Entry (POE). Further, according to Khairy Jamaluddin, Minister of Science, Technology and Innovation (MOSTI), an application is being developed to assist with contact tracing especially after the MCO is lifted.

All that said, it is worth remembering that parallel to how technology is being used to address the COVID-19 pandemic, it is also serving as a

conduit for those wanting to take advantage of the crisis.

Cyber-attacks exploiting COVID-19 fears have been observed in various locations, including India, Czech Republic and Italy. A study by Cynet discovered a correlation between the increasing COVID-19 infection cases in Italy and the rise of cyber-attack cases targeting work-from-home employees – where 35 percent of personal emails encountered cyber-attacks. WHO has also raised the alarm that cyber-criminals are using its name in phishing emails to target employees working from home in an attempt to compromise the individual’s accounts and networks.

In Malaysia, just a week into the MCO, the police had opened 393 investigation papers on scammers using social media to trick citizens regarding government aid and sales of face masks with total losses incurred reaching RM3 million so far. Further, cases of disinformation and misinformation, which have always been an issue in Malaysia, have been higher during the pandemic, putting additional strain on efforts to combat the coronavirus. Financial damage, promoting misleading and dangerous guidelines, causing public panic and elevating racial discrimination are some of the impacts of false information observed thus far. As of 10 April, a total of 207 investigation papers related to COVID-19 have been opened, of which 23 cases have been taken to court and the individuals charged.

As Malaysia follows the footsteps of countries like China and Singapore to ramp up the use of tracking devices, we must also bear in mind the ethical and privacy concerns that come with it. While it may be common for businesses to track the online behaviour of consumers, the use of tracking devices by states

demonstrates an interest to perceive one’s offline behaviour as well. Among others, this could include body temperature, blood-pressure levels, current and past locations, and who we have crossed paths with. If implemented without the necessary safeguards, this pandemic could mark the start of an Orwellian surveillance system that invades the privacy and human rights of citizens and, if left unchecked, could be abused by irresponsible parties.

Moving forward, to further leverage on technology to combat COVID-19, collaborations and coordination between various ministries and government agencies are needed more than ever. This means that any relevant ministries need to cooperate with the Ministry of Health (MoH), while the latter leverages on its respective in-house experts to conduct internal and external collaborations.

So far, cooperation among the Ministries of Science, Technology and Innovation, Higher Education, International Trade and Industry, and Communications and Multimedia with the MoH is giving birth to initiatives such as an application to map COVID-19 transmission areas, speeding up the diagnostic test kit evaluation process, increasing daily testing of the coronavirus, as well as the development of screening booths to protect frontliners.

Domestic collaborations and cooperation should also involve the technology-related private sector, academia, non-governmental organisations (NGOs) and members of the public. Within the first week of the MCO, involvement of the public included the Malaysian 3D printing and design communities collaborating to produce face shields for frontliners. Several weeks later, Huawei Malaysia donated four technology solutions that allow healthcare experts to carry out

remote online consultations with patients and increase the effectiveness of diagnosis and treatment.

These efforts are very much welcomed. In fact, greater involvement by the private sector is needed as they have the resources and are more agile to mobilise implementation compared to the government, which is encumbered by bureaucracy. This makes the case for the private sector to step up and play a more active role. As to how COVID-19 is indiscriminate in who it affects, responsibility in the fight against the novel virus requires a whole-of-society participation rather than just government action.

Collaboration and cooperation among countries are also important as COVID-19 is a global fight – a struggle between humans and an invisible enemy. Even though there are tensions as countries struggle to secure medical supplies, food and general healthcare to protect their citizens, there are many ways that we can help each other in this difficult time. Singapore, for instance, has allowed the world to access the code of their contact tracing app for free, allowing the international community to adapt it to their own needs. These international collaborations will increase the efficiency of countries combating the deadly virus.

Times of crisis such as now also encourage innovative thinking. In the past, crises stemming from World Wars resulted in various important inventions, such as the first digital computer, rocket technology and radar systems. Not too dissimilar, during this pandemic, there is an urgent call for innovation and out-of-the-box thinking; Malaysia should seize the opportunity to create a wealth of new prototypes.

Next, with physical movements now limited, the few means of connecting with the “outside

world” is through the Internet. This will highlight the vast difference between offline and online businesses in terms of customer reach and, ultimately, business survival. That said, this pandemic may also serve as a catalyst for the massive crossover from an offline to online business and a wake-up call for businesses to adopt new technology. Over 98.5 percent of business establishments in Malaysia are Small and Medium Enterprises (SMEs) and, in the past, their digital adoption and desire to implement technological solutions were low. Moving forward, Malaysian businesses should ensure an online presence at the earliest viable opportunity while adopting relevant emerging technologies under the Fourth Industrial Revolution (4IR) umbrella to ensure long-term sustainability.

To address the increasing cyber-attacks and misinformation during this time of crisis, while the government continues to be diligent in handling the issues, the public must play its role too. Concerning cyber-attacks, the public must be aware of the trends of phishing emails and online scams as well as how to protect themselves and their organisations from having important information stolen or incurring losses. Similarly, to tackle the issue of increasing misinformation – besides the government's role in heightening the accountability of social media platforms, creating robust fact-checking mechanisms and putting appropriate legislation in place – the public’s digital literacy must be enhanced. The public needs to know how to check facts and detect misinformation, as well as understand the impacts of the spread of false information.

Lastly, the implementation of new technology during times of crisis would also mean that there are increasing vulnerabilities that need to be considered.

Surveillance technologies, such as the use of contact tracing, exposes citizens to an increased risk of privacy violations. Iran and China have deployed state-level intelligence gathering tools to track its population in their efforts to combat the coronavirus. Meanwhile, Israel has utilised surveillance technology – typically reserved for combating terrorists – to track COVID-19 patients. The extent to which intelligence gathering tools are being used in these states is an indication that a more intrusive level of citizen tracking could also be implemented elsewhere.

As Malaysia enforces surveillance technologies during the MCO period – and develops other types – the design and implementation of these systems should be conscious of the rights of citizens. Although public health is a priority, data protection and transparency of how these technologies will be adopted are some issues that need to be communicated to the public adequately.

When the fight against COVID-19 ends, one might wonder how much change we need to adapt, endure and embrace. Professor Yuval Noah Harari argues in his article *The World After Coronavirus* that “...the storm will pass, humankind will survive, most of us will still be alive – but we will inhabit a different world.”

Thus, when this global public health crisis ends, would we be immersing in the use of technology as much as we do now during isolation? Will we continue to minimise human contact? Will we allow ourselves to be monitored through high-tech surveillance systems? Will Virtual Reality (VR) potentially substitute mass gatherings?

Moving forward past this pandemic, we need to anticipate the change in the technology landscape and think hard on what policies ought to be put in

place. In a nutshell, while it is a good opportunity to increase digital adoption and ramp up the 4IR technological efforts, mitigating security threats from new technologies should also come hand-in-hand.

With each passing day in our battle against the coronavirus, we are witnessing the economy suffer and social issues increase. Technology adoption is no longer optional – it is now the needed solution to cushion the devastating impact of the pandemic.

In this, Malaysia has no room for technophobia. We simply cannot afford it. But moving forward, cautious steps are vital as technological emergency measures could also expose citizens to vulnerabilities that violate human rights and privacy.

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Media Freedom and Fake News During the Pandemic

The likening of the fight against COVID-19 to a war should neither be a rationale for war-time measures nor a free hand to muzzle the media and impinge on individual free speech. The new normal must include a free media coupled with better protected free speech rights.



BY HARRIS ZAINUL



False information and rumours thrive on fear and uncertainty, and the COVID-19 pandemic offers plenty of both. Among others, these false information and rumours have pertained to the source of COVID-19, how it spreads, how to treat it, as well as the plethora of conspiracy theories around it.

Hinting at the extent of the problem in Malaysia is that as of 12 April 2020, the government-linked fact-checking website Sebenarnya.my has debunked and clarified 279 pieces of false information and rumours related to COVID-19.

Amidst this deluge of false information and rumours, the role and responsibility of the media to disseminate authoritative and credible information in a timely manner cannot be understated.

Considering this, it is remiss that the National Security Council had instructed the Royal Malaysian Police and the Malaysian Communications and Multimedia Commission to take “stern action” against online media that misreports news.

While the government’s response could be explained by the alleged instances of

of misreporting, as the Centre for Independent Journalism noted in its press statement, “these are sporadic, and often the error is corrected by the media outlet or through facts and clarification as shared by the public official”.

If that much is true, then there is the question of whether the instruction to take stern action against the media is disproportionate.

Regardless, this call for action to be taken against the media is unsettling as direct, or even indirect threats, or pressure by the government could lead to

self-censorship in newsrooms, affecting the media’s capability to act as a watchdog for public interest.

In the same vein, as the media is often the rights bearer and bellwether for free speech, any restriction on media freedom often precede the erosion of other fundamental rights. Relatedly, the government’s treatment of the media tends to portray its actual understanding and appreciation of wider free speech rights.

That said, the decision to take stern action is counterproductive to ensuring the media holds itself to higher standards. To meet this goal, and reduce incidents of misreporting, the formalisation of an independent Media Council is pivotal.

As an industry regulator, an independent Media Council ought to be mandated to determine professional standards for its members, with sanctions to reprimand members who fail to meet these standards.

By reducing government overreach into the media industry, the latter will be more resilient towards the ebbs and flows of political machinations and interference. This will only be a positive for those who subscribe to democratic and human rights norms.

Meanwhile, in an attempt to educate the public on the impacts of fake news, CyberSecurity Malaysia had created an infographic to categorise the various types of fake news and its purported impacts. Possibly done with good intentions, this has led to multiple problems.

Firstly, CyberSecurity Malaysia’s reliance on the term "fake news" obfuscates the already incredibly vague and politically-charged term. This is a disservice to the growing literature that more accurately categorises the typology of falsehoods, such as those published by First Draft.

With the government taking action against those who spread fake news, these differences are not mere semantics.

Secondly, it is worrying that “instilling hatred towards the government and leaders” was listed among the six categories of fake news in the infographic. Would this mean that legitimate criticism or dissent against the government – which theoretically could instil hatred – then be considered fake news, and potentially be punishable by law?

The above seems absurd and contrary to the functioning of a healthy democracy, where those holding public office ought to be more open to criticism and dissent than the ordinary person.

On that note, and fully acknowledging the legitimate need for regulation, a new legislation that is specifically applicable to COVID-19 false information ought to be introduced as argued in my policy paper titled “Malaysia’s Infodemic and Policy Response”.

It is worth remembering that Malaysia’s improvement in its media freedom and human rights scores in 2019 is not the be-all and end-all, and the risk of these hard-won freedoms backsliding can never be ruled out.

It needs to be underscored that the relatively freer environment for the media and speech was a result of administrative decisions by Pakatan Harapan, rather than a wholesale repeal or amendment of the plethora of legislations that could curtail media freedom and free speech.

With the exception of the Anti-Fake News Act 2018, which was repealed in December 2019, these remaining legislations, among others, are the Sedition Act 1948, Printing Presses and Publications Act 1984, and the Communications and Multimedia Act 1998.

With scientists now warning that the COVID-19 pandemic would lead to a new normal, this must include a free media coupled with better protected free speech rights.

While some have likened the fight against COVID-19 to a war, this should be taken as a message to instil urgency to act, rather than a rationale for wartime measures. It must be emphasised that what is essentially a public health crisis does not, and should not, grant the government a free hand to either muzzle the media or impinge on individual free speech.

To close, in 2015, I had the opportunity to meet Tan Sri Muhyiddin Yassin at his private residence some time after his sacking as Deputy Prime Minister. At this closed-door meeting (one of the many he had, I am sure), I had asked Tan Sri Muhyiddin for his opinions on free speech, relevant then as he was sacked from his Cabinet position for voicing out criticisms relating to 1MDB.

While I cannot recall the answer given to me back then, perhaps what matters more is his answer as Prime Minister today.

This article first appeared in *Malaysiakini* on 13 April 2020. Harris Zainul is Analyst in Economics, Trade and Regional Integration (ETRI), ISIS Malaysia

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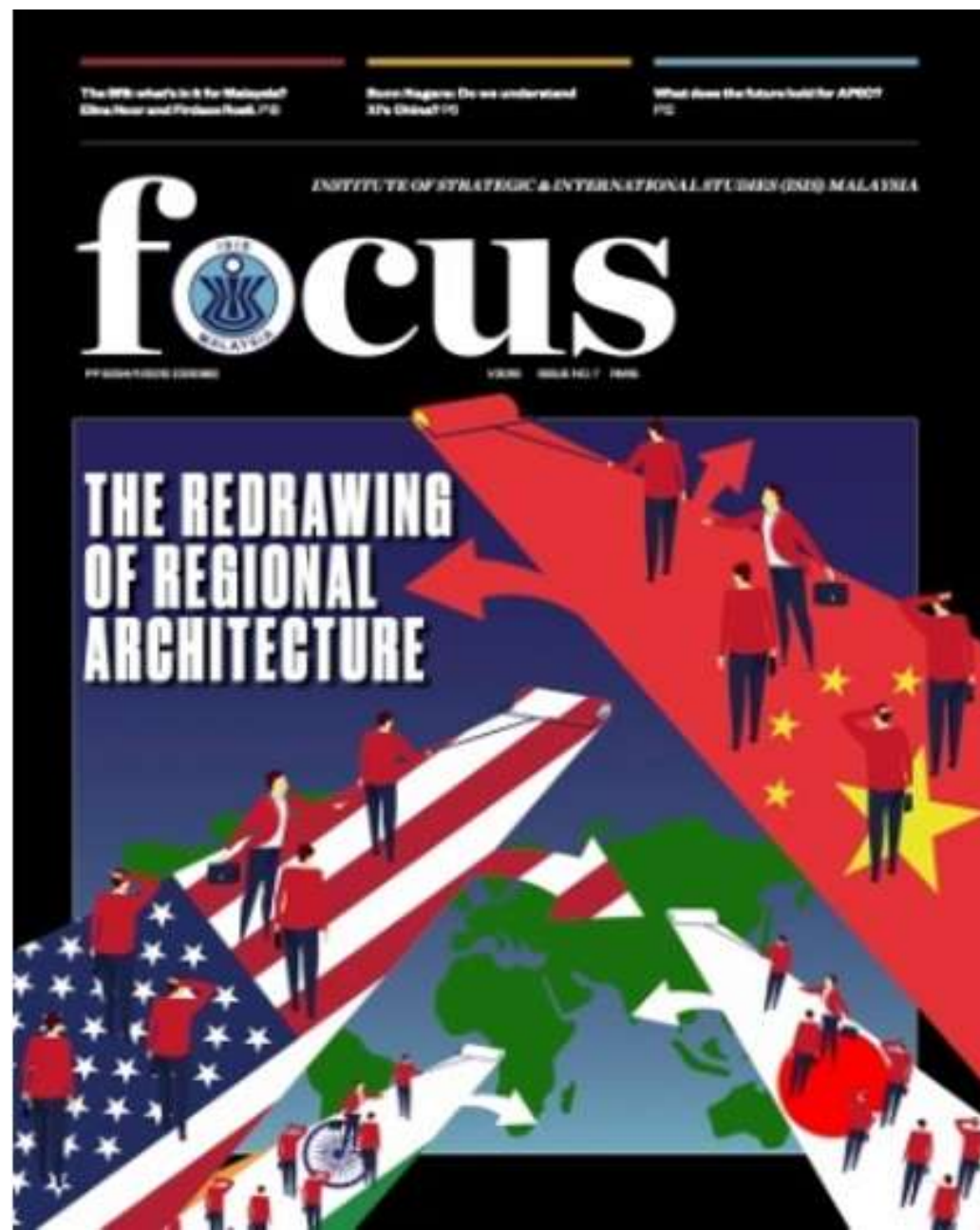
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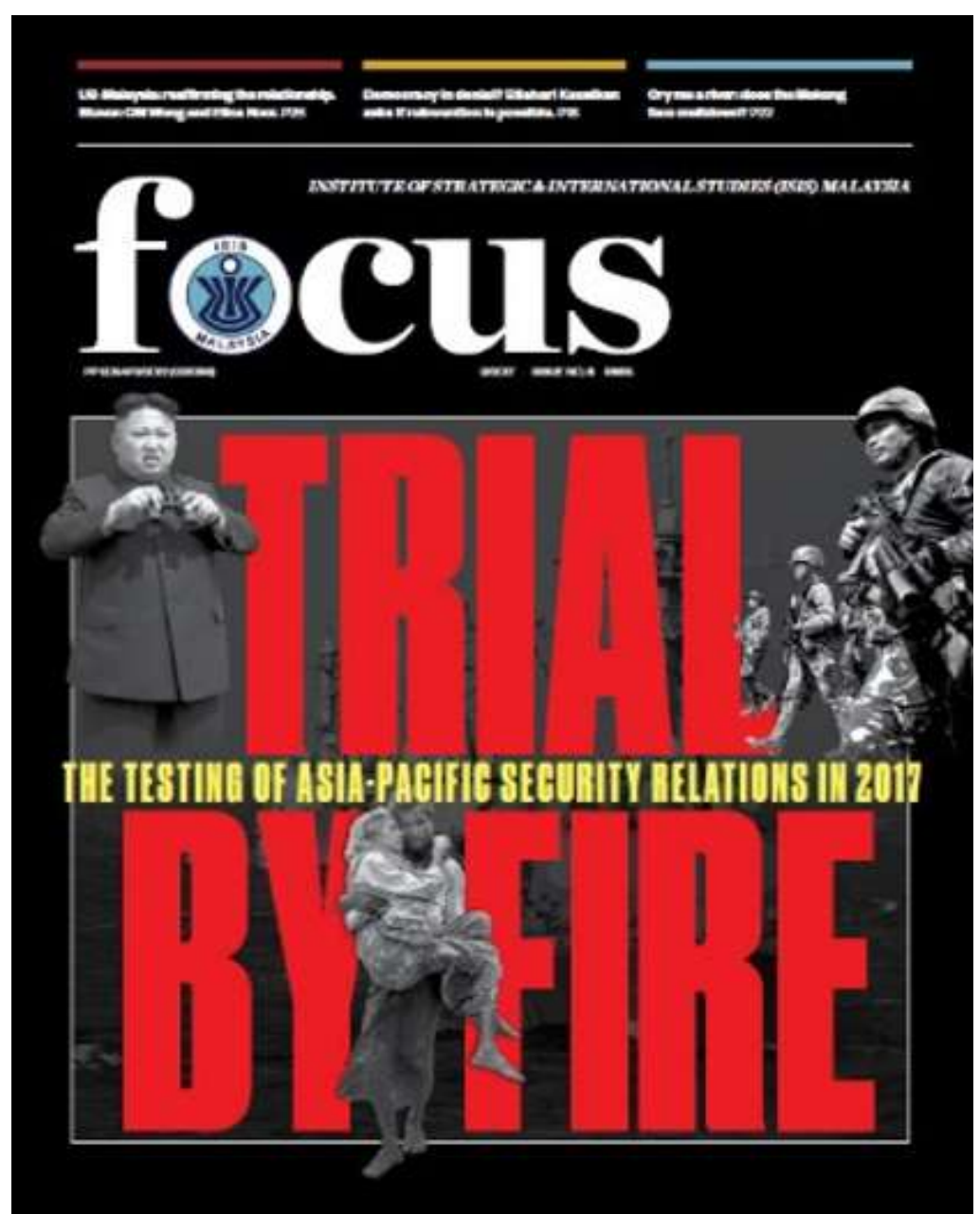
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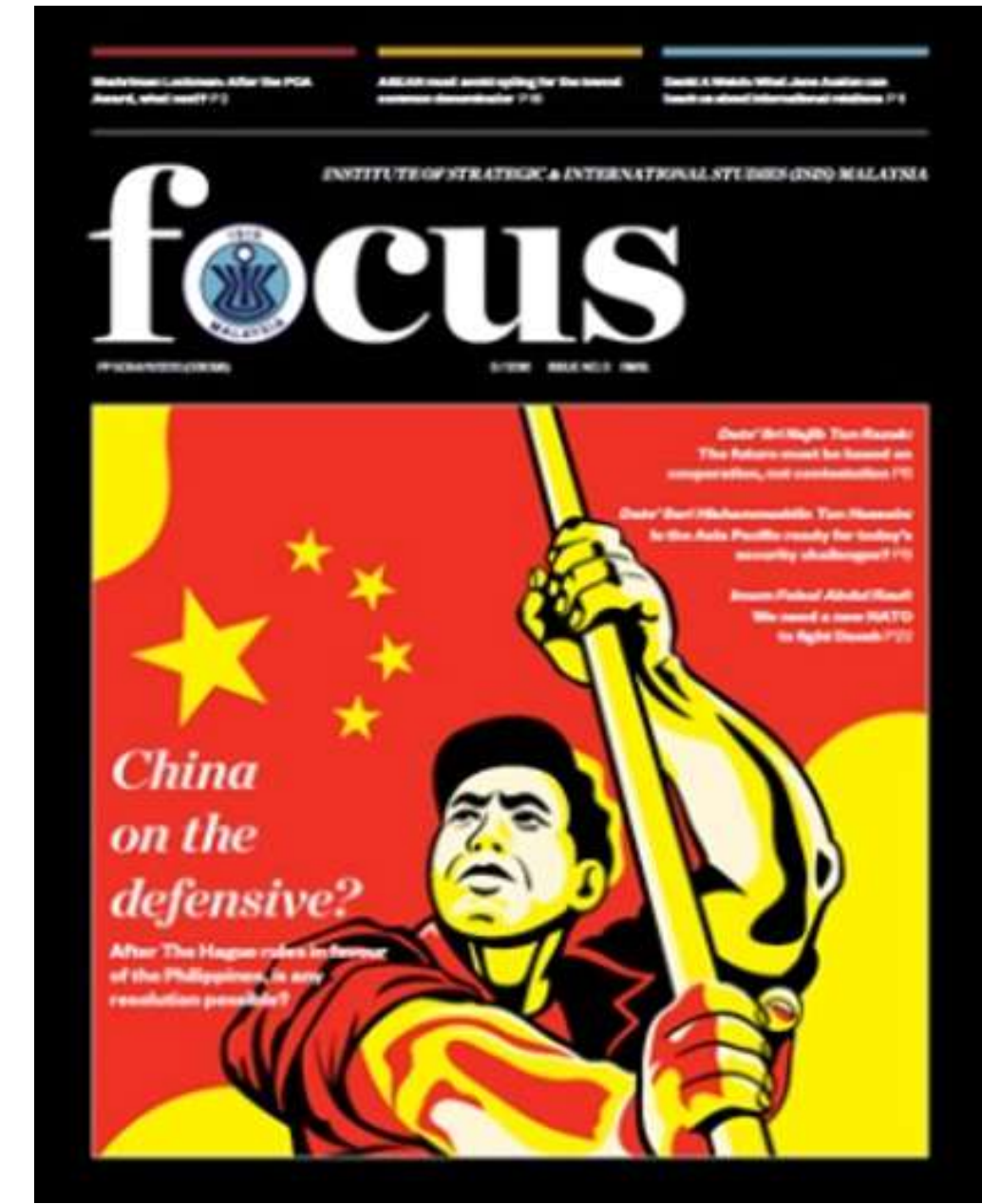
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