

Managing inbound Rohingya: Malaysia's longstanding refugee situation takes on added urgency during the pandemic

By:

Puteri Nor Ariane Yasmin & Thomas Daniel

Foreign Policy and Security Studies

Institute of Strategic and International Studies (ISIS) Malaysia

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Malaysia is once again bracing for an apparent surge of displaced Rohingya arriving by boat.

A [Reuters report](#) dated 16 April 2020 detailed the Bangladeshi Coastguard rescue of up to 396 Rohingya on a boat originally bound for Malaysia. Another two dozen on board had already died. [Further reports](#) from Bangladeshi news organisations and other wire agencies indicate that this particular boat had been turned back from Malaysian waters three times, and that there are at least another three boats out there.

Also on 16 April 2020, the Royal Malaysia Air Force posted a [Facebook update](#) detailing the detection, interception, and turnback of yet another boat load of Rohingya some 70 nautical miles off Langkawi. They were given food and water on a humanitarian basis, before being escorted out of Malaysian territorial waters by the navy.

Earlier in April, a further 202 Rohingya, including 5 children, were [detained by the Malaysian Maritime Enforcement Agency](#) after they arrived close to a luxury resort in the northern coast of Langkawi. They are currently being held at the Agency's lockup on the mainland before they are handed over to the Immigration Department, which has its own detention facilities, for entering the country illegally. Authorities believe that since March 2020, at least twice that number have already entered Malaysia through undetected landings across the states of Kedah and Perlis. Many are thought to have come from displaced refugee camps outside Cox's Bazar and from other settlements on both the Bangladesh and Myanmar sides of the Naf River.

While the desire for a better life and employment has been the primary driver for the Rohingya in making their way to Malaysia, this could change because of the COVID-19 pandemic. There are fears that the following factors will exponentially increase the push factors:

- The period between February and May are believed to be the preferred time for smugglers to make the voyage because of favourable wind conditions.
- Conditions in the camps and settlements are believed to have been [deteriorating](#) long before the onset of this pandemic. Many of the displaced have been stuck there since late 2017 and discontent is thought to be on the rise.
- Pledges of aid to Bangladesh have not been met and international aid agencies are having trouble securing necessary funding. Attempts to find a political solution with Myanmar have stalled.

- This in turn has forced the Bangladeshi authorities to [edge closer](#) to a decision to relocate up to 100,000 Rohingya to Bhashan Char, an island in the estuary just off the Bay of Bengal - a decision that is [hugely unpopular](#) with many of the displaced.
- There have been [reports of positive cases](#) of COVID-19 detected among some of the displaced outside Cox's Bazar. In Bangladesh itself positive cases have been reported in Cox's Bazar.
- Many international aid workers, including Malaysian military personnel manning a field hospital, have been pulled out. Their withdrawal, even temporarily, makes an already bad situation worse.

Some aid agencies have warned that a widespread breakout of the pandemic in these camps and settlements is not a matter of if, or even when, but rather - to what extent. It will add fuel to an already raging fire of desperation. Desperate people will do what they must to survive, even if it means risking an increasingly dangerous journey to Malaysia.

As things stand, Bangladesh is under a strict lockdown of its own and controls on the perimeter of the camps and associated movements have been further strengthened. Given the risks, the government in Dhaka is rightfully concerned about an explosion of infections within the camps and settlements, and its potential impact on Bangladeshi citizens.

The unfortunate reality for Malaysia is that under present circumstances, Bangladeshi authorities will be less concerned about stopping those who attempt to sail to Malaysia. The same goes for enforcement agencies from Myanmar and our neighbouring countries, Thailand and Indonesia. They know that Malaysia, not their own country, is the preferred destination of the Rohingya. If past experience is anything to go by, unless forced to rescue a boat in dire conditions, they will be more than happy to point them in our direction.

Malaysian policymakers are well aware of the above, including the fact that Malaysia is no longer a transit country but a final destination for some refugees and asylum seekers. Especially when it comes to the Rohingya. Malaysian intelligence and security agencies are believed to be tracking chatter and movements of boats to Malaysia, including from clusters of Rohingya already in neighbouring countries. A coterie of ministers, bureaucrats and security officials have announced that there will be [increased patrols](#) for the expected increase in the movement of boats toward Malaysia.

Malaysia's responses thus far seem to centre on two approaches:

- For boats that are intercepted close to shore or onshore, their occupants are detained.
- For those intercepted further out at sea, they are turned around and escorted out of territorial waters.

The current context bids the question of how Malaysia should manage inbound Rohingya during a pandemic.

There can only be two options for policymakers to consider, and they centre on whether the principle of non-refoulement should be upheld in times of crisis. If the answer is no, then Option

One is simple - refugee boats will be pushed back out to sea, as highlighted in the news reports above. If the answer is yes, then some thought must be given to Option Two - formulating a workable “pandemic policy” on the Rohingya.

Let’s analyse Option One in some detail. At the outset, it certainly seems like the easier decision for Malaysian policymakers. The country is under a “lockdown” officially called the Movement Control Order (MCO). Multiple security agencies are stretched as they try to enforce the restriction. Resources are also spread thin and will be for a while - not just during the lockdown, but also in trying to stimulate spending and keeping the economy afloat once restrictions end.

Politically, it might also be the easier choice. This pandemic has brought out the worst in some with open displays of xenophobia against outsiders who are perceived to be the cause of the virus. While not as widespread as other countries, Malaysia has not been immune to such strains, whether directed against Chinese tourists or foreign workers that are essential to the Malaysian economy. A cursory survey of comments on news websites and social media on the issue of Rohingya boats indicate that generally, Malaysians are against allowing the Rohingya to reach our shores. Their main concerns include:

- If we were to start accepting some boats now, it would lead to a flood of other boats coming to Malaysia.
- Malaysia at present does not have the resources to spare on refugees and asylum seekers. Malaysians must come first.
- Taking in additional refugees and asylum seekers now will add to the healthcare burden and risk of the pandemic to Malaysia. The Rohingya could contribute to the clusters of infected in Malaysia.

Here, it is imperative to state what the principle of non-refoulement actually entails. As an “essential protection under international human rights, refugee, humanitarian and customary law”, the principle “guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.” Furthermore, the principle applies “to all migrants at all times, irrespective of migration status.”

In other words, despite not being a signatory to the 1951 Refugee Convention and its 1967 Protocol, Malaysia is still compelled to adhere to the principle. Non-refoulement encompasses international norms and customary law that, if not fulfilled, could lead to a great deal of controversy for the country. Various non-governmental and international organisations have also stated that the COVID-19 pandemic is no excuse for turning the Rohingya away.

Indeed, Malaysia has been at the receiving end because of non-compliance during the Andaman Sea Crisis in 2015. Malaysia was accused of playing a “three-way game of human ping-pong” with Indonesia and Thailand - pushing refugee boats back and forth, which ultimately lead to many deaths. Collectively, their actions were deemed irresponsible and, following much international scrutiny and criticism, these countries eventually took the stranded boats in.

Forcing refugee boats back out to sea, especially during a crisis like the COVID-19 pandemic, will likely draw international attention, opprobrium and pressure. It will also most likely result in Malaysia once again being forced to reverse course and accept the boats, which is exactly what policymakers were trying to avoid in the first place - allowing boats to land.

Additionally, vigilance alone is not a deterrent. There is the likelihood that refugee boats will keep on coming despite the pandemic, and despite those before them being turned away. The push factors prompting the Rohingya to make their way here seem to outweigh any deterrence that Malaysia can employ, at least legally. Literature reviews of deterrence measures against forced migration around the world indicate that no matter how tough and brutal they are, those who are desperate enough will still risk the journey.

While there is merit in the “floodgates” argument, its proponents nevertheless discount the fact that Malaysia’s “floodgates” have been open for decades. Thus the presence of third and fourth generation of Rohingya and other refugee groups in the country. Refugee boats heading for Malaysia are by no means a new phenomenon. If the number of boats (and therefore the number of people) drifting at sea awaiting landing permission for weeks continue to rise, will it still be “easy” for law enforcement officials to block them from coming?

With that being said, if Malaysian policymakers deem that Malaysia can withstand international scrutiny and pressure, then Option One is up for consideration.

However, if there is anything to be learnt from this pandemic, it is that our compassion and humanity must prevail. Ordinary Malaysians have done an impeccable job of reaching out and assisting the most vulnerable in our society. Most of us understand the need to look after one another and hold each other accountable to flatten the curve. It is crucial to remember that “Malaysian first” does not and should not mean throwing the less fortunate non-Malaysians under the bus. If this is something that policymakers wish to emulate, then Option Two - a “pandemic policy” on the Rohingya - warrants some consideration.

Upholding the principle of non-refoulement is an opportunity for Malaysia, particularly its political leaders, to demonstrate its goodwill and commitment to the welfare of the Rohingya. Open support for the Rohingya has been a constant commitment of the Malaysian government since 2016. Any pushback policy would only serve to highlight the inconsistencies of Malaysia’s declared position, imply discriminatory and arbitrary practices on the right to life principle, and open up the country to accusations of hypocrisy. It would undermine further Malaysian efforts to highlight the plight of the Rohingya and work towards a meaningful, sustainable solution for the refugee crisis.

It is also worth highlighting that values of the principle of non-refoulement are also espoused in Islam. Indeed, the “Muslim card” was played often when Prime Ministers Najib Razak and Mahathir Mohamad expressed their support for the Rohingya over the years. Malaysians themselves have participated in shows of solidarity for the Rohingya, oftentimes after Friday prayers. Today, Malaysia has what is widely perceived to be a “Malay and Muslim first” ruling

coalition in Perikatan Nasional. One could argue that assisting inbound Rohingya during a crisis is simply the Islamic thing to do, unless one has no qualms with religion being used arbitrarily.

Not upholding the principle would further reflect badly on Malaysia since some Malaysians themselves were recipients of aid and generosity from a neighbouring country not too long ago. In the early days of the MCO, tens of thousands of Malaysians who lived in the state of Johor but worked in Singapore had no choice but to stay over in Singapore to avoid the travel restrictions imposed on Malaysians. Many had no place to stay. The government of Singapore together with the private sector, worked to fund accommodation and necessities for many of them until a more sustainable solution could be found.

Suffice to say, there are no easy options for Malaysia here.

What, then, can a “pandemic policy” on the Rohingya entail?

First, resources will have to be allocated to preparing for and housing incoming boatloads of Rohingya. Policymakers could also consider the setting up of detention centres - as opposed to camps - for quarantine purposes. Quarantine centres have already been set up across the country for returning Malaysians from overseas, and the government is providing food and healthcare to foreign workers in the Masjid India area of Kuala Lumpur that has been cordoned off for being a red zone. The government should consider expanding its programmes meant to support the low-income Malaysians (from the B40 segment), including those done in partnership with the private sector and various foundations, to include vulnerable refugee communities, including new arrivals.

Furthermore, arrivals would have to be screened for health and security checks. This would also enable the authorities to separate genuine refugees and asylum seekers from other illegal immigrants right off the bat. The former could be placed in purpose built facilities, while the latter detained according to immigration laws. It must be made clear that those detained will be deported as soon as it is viable to do so. As for the Rohingya, it must be made clear that privileges accorded to them such as healthcare, are not permanent nor tantamount to naturalisation.

Having proper standard operating procedures such as COVID-19 testing, quarantine centres, refugee status determination and registration in a government database could actually deter the Rohingya from coming if Malaysia is seen to be “hard” on their arrival. It is worth stressing that deterrence is not set in stone. If there is even a sliver of hope that they would slip through the cracks and reach Malaysian shores, they will take the chance especially since this is how they have been entering the country for decades.

Second, government ministries and agencies should engage with refugee associations, non-government organisations (NGOs) as well as international organisations that have a base here to assist with planning, preparedness and implementation. These include the United Nations High Commissioner for Refugees (UNHCR), International Organisation for Migration (IOM) and Doctors Without Borders. The government already has a similar arrangement with NGOs to provide the urban poor with food and basic necessities.

Third, Malaysia needs to increase its efforts to push for burden-sharing amongst ASEAN member states as a means of coping with the refugee crisis. In particular, we need to work with Thailand and Indonesia to share the burden of rescuing and detaining intercepted boats. ASEAN needs to take on a more proactive stance in dealing with the issue of refugees and displaced people broadly, and the Rohingya specifically. ASEAN can also study the successes and failures of the European Union's efforts to forge common ground among its member states on evolving issues of asylum and migration in Europe and the Mediterranean.

Admittedly, these are by no means perfect solutions. At the end of the day, any course of action will depend on the political will to do so.

In the same way that COVID-19 has shed a light on Malaysia's urban poor, it has also done so on refugees and asylum seekers. The pandemic highlights the urgency for Malaysia to come up with a formalised refugee and Rohingya policy, something that successive governments have failed to do. A policy of not having a policy is just not sustainable for Malaysia. Even if Option One is adopted and boats are constantly being pushed back out to sea, there are still the Rohingya who are here. As of February 2020, this number stands at 101,010 officially registered Rohingya with the UNHCR. Unregistered numbers are unknown and are believed to easily double that.

Something must be done about the Rohingya and pushing them back out to sea should not be an option. This pandemic and the MCO cannot be used to renege on the principle of non-refoulement. Instead, the pandemic should be used as a catalyst to formulate a policy on refugees and asylum seekers that will bring positive security and economic implications for Malaysia in the long-run.

As unpalatable as it might sound to some Malaysians and as politically risky as it might be to some political leaders and policymakers, there must be a serious conversation about preparing for and housing these desperate people.

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