

Towards Refugees' Right to Work

**An Analysis of Employment Trends for Refugees
in Thailand and Malaysia**

31 October 2020

*“The right to work
for refugees is
essential to have
dignified lives”*

Asia Pacific Refugees Rights Network

The Asia Pacific Refugee Rights Network (APRRN) is a network of more than 430 civil society organisations and individuals across 19 countries working in the area of refugee rights. APRRN has a secretariat of seven staff based in Bangkok, Thailand, working in support of its membership. APRRN’s work is carried out in conjunction with member organisations and individuals, via volunteer working groups focused on eight thematic issues and four geographical locations.

For more information, please visit our website: <http://www.aprrn.org>.

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Summary

“Refugees should be included in the communities from the very beginning. When refugees gain access to education and labour markets, they can build their skills and become self-reliant, contributing to local economies and fuelling the development of the communities hosting them.”¹

Despite having hosted asylum seekers for decades, Malaysia and Thailand are not among the 149 United Nations member states that have signed the Convention Relating to the Status of Refugees (the Refugee Convention) and/or its Protocol. In both countries, authorities have alternated between denying responsibility, granting humanitarian exceptions, and closing one eye on the presence of refugees in their territory. Consistently, however, refugees have been forced to seek work in the informal sector, exposing them to detention, arrest, exploitation, and destitution.

Small-and-medium enterprise owners from a wide range of sectors were interviewed for this report. The majority were in favour of granting refugees the right to work, provided that the process for hiring them would not be overly onerous. They recognised the mutual benefits of legally employing refugees already in Malaysia and thus reducing the reliance on hiring foreign workers to do jobs that Malaysians are unwilling to do. Further, under the current system refugees are largely prevented from putting their skills to use.

Refugees left their countries in search for safety from persecution. As COVID-19 highlighted, they bring with them the potential for creativity, hard work, and connection with international networks. Refugee work rights will be best realized in a clear policy framework and implemented through a whole-of-society approach including different levels of government, the private sector, civil society, and refugee associations. This paper provides insights into refugees’ skills, entrepreneurs’ motivations and concerns, legal barriers, political opportunities, and efforts undertaken to allow refugees to work safe from exploitation or arrest.

Introduction

The right to work is clearly stated in the Universal Declaration of Human Rights: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.”² The

¹ UNHCR (2019) *Comprehensive Refugee Response Framework*. Available at <<https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html>> (Accessed: 26 October 2020).

² Universal Declaration of Human Rights (1948), Art. 23(1).

right to work is a foundational right; it enables (or, in its absence, inhibits) other rights, as evidenced by its inclusion in a range of international and regional rights documents.³

The Convention Relating to the Status of Refugees (the 1951 Refugee Convention) is no different: Article 17(1) commits Contracting States to “accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment”, while Articles 18 and 19 deal with self-employment and the practice of “liberal professions”.

However, neither Malaysia nor Thailand are signatories to the 1951 Refugee Convention nor its 1967 Additional Protocol. In the absence of meaningful national frameworks, refugees are treated as undocumented foreigners, threatened with arrest and detention, trying to survive via work in the informal labour market.

This report takes stock of recent developments, assessments, and thinking on refugee and asylum seeker access to work rights and economic inclusion in Thailand and Malaysia. Through reviewing literature and conducting interviews with representatives in civil society, the humanitarian sector, development, and business and refugees, we aim to highlight the current trends, barriers, and opportunities related to refugee employment and work rights in Thailand and Malaysia.

This report seeks to answer three key questions:

1. What are the employment trends for refugees in the current social, economic, and political environment? What barriers and opportunities do refugees experience in these environments?
2. What are refugees’ and asylum seekers’ current and potential contributions to the local economy?
3. To what extent is the private sector, especially small-and-medium-sized enterprises (SMEs), willing to hire refugees and asylum seekers? What are the reasons for these stances?

The report examines Malaysia and Thailand in turn. It briefly describes each country’s general context: population, political system, economy and main industries, as well as information about the general impact of COVID-19, before focussing on the refugee population in the country, exploring skills, barriers, and potentials, and the contributions refugees are already making to the local economy. Entrepreneurs’ willingness to employ refugees is analysed based on interviews and surveys conducted for this report. Past practices of granting work rights to refugees and relevant provisions in the current legal framework will be explored briefly, before mentioning some of the key efforts and avenues to realise refugee work rights. The report ends with conclusions and recommendations.

This report is a snapshot of a moment in time, benefiting greatly from work and reporting done by others and cognizant of ongoing work, future input, and swiftly developing updates. Its main aim is to

³ See International Covenant on Economic, Social and Cultural Rights (1966) Art. 6. See also International Covenant on Civil and Political Rights (1966), Art. 8. See also Convention on the Elimination of All Forms of Discrimination Against Women (1971), Art. 11.

build upon previous work by contributing new evidence regarding private sector motivations, particularly SMEs' willingness to hire refugees. We hope that this wide approach will inspire further discussion and activities towards the granting of full work rights to refugees and asylum seekers in Malaysia and Thailand.

Methodology

A desk review was conducted, drawing from research papers, media articles and editorials, academic journal articles, government publications, publications from NGOs and international organizations, as well as domestic and international laws. Documents were vetted for relevance and quality, based on methodological reliability. Materials available in English and Malay were analysed, as the consultant is able to read both languages. For Thai sources, a combination of official and unofficial translations into English were used. The materials were sourced through online searches and via academics, humanitarian, and development stakeholders for materials not (yet) available to the public.

Next, semi-structured interviews with key informants were conducted in Thailand and Malaysia. Individuals were approached based on desk review findings and recommendations from APRRN members using a snowball approach. Due to travel restrictions related to COVID-19, these interviews were conducted through a combination of virtual teleconferencing and email exchanges. Practitioners, think tanks, and academics were approached to share their knowledge relevant to specific national contexts or on global lessons learned. Interviews focused on testing the findings from desk research, capturing current trends, and identifying and interrogating future opportunities.

The interviews took a semi-structured approach, with a focus on the following:

- 1) current efforts of the individual or organization on refugee work rights, including successes and challenges experienced;
- 2) key stakeholders, coalitions, and networks engaged;
- 3) their future advocacy plans;
- 4) relations between refugees and refugees' employers;
- 5) refugees' relations with the host community;
- 6) refugees' contributions to the local economy;
- 7) entrepreneurs' motivations for or willingness to hire refugees; and
- 8) ideas for partnerships, collaboration, and support to areas of significant concern.

Interviewees were given space to expand upon the issues and experiences most relevant to them. The topics covered in interviews were tailored to the expertise and interests of the individuals interviewed. Two stakeholders preferred to answer the questions in writing due to slow internet connection.

The interviews with SMEs were conducted with members of the extended network from one business association. Other business associations were approached but did not respond to requests for interviews. Interviews with SMEs were semi-structured, exploring:

- 1) motivation to employ refugees,
- 2) successes and challenges employing refugees,
- 3) relationship and contributions to the business,
- 4) trends on refugee employment,
- 5) management of risks, and
- 6) possible impact if right to work would be granted.

Because many SMEs approached for interviews were unable to commit time to a full interview due to the stress of limiting the damage of the COVID-19-related lockdown regulations on their businesses, a short online survey was used to elicit their positions on refugee work rights and their willingness to hire refugees. To encourage candidness, they were given the option of answering anonymously.

Overview of interviews and surveys conducted as of 30 October 2020

Malaysia: In total, 73 surveys or interviews were conducted building the empirical base for this report. A breakdown of interviews and surveys is provided in the table below.

Malaysia	Refugees	SMEs interview	SMEs (Survey)	Academics/ Think Tank	UN/ INGOs	NGOs/ CSOs	TOTAL
Kuala Lumpur	12	3	24	6	3	14	62
North		1				2	3
International		Association Foundation		Academics/ Think Tank	UN	INGO	
		3		2	1	2	8

Thailand: Four international organisations and five local NGOs were interviewed in Thailand.

Malaysia

Overview

Malaysia is internationally known as a friendly host to foreign visitors. In 2019, more than 20 million tourists⁴ visited from around the globe to experience Malaysia's sights, vibrant culture, and mouth-watering food. Malaysian economic success benefits from this contribution, but also from the contribution of other foreigners, who choose to live and work in Malaysia, bringing skills, investment, and entrepreneurial innovation beyond short-term visits.

Malaysia is an upper middle-income country with ambitions to modernise production and upskill local workers.⁵ Nonetheless, Malaysia will for the years to come continue to depend on extra hands to ensure the Malaysian economy grows, as a large number of firms in labour-intensive sectors would not exist without the cost advantages provided by low-cost skilled foreign labour.⁶

Malaysia's population of 32.7 million people⁷ includes over 15 million citizens of working age.⁸ Shortages of workers in Malaysia are addressed by almost two million foreigners brought to the country to ensure Malaysia can cover its need on human resources, including in manufacturing (706,502 migrant workers), construction (429,552 migrant workers), plantation (268,203 migrant workers), agriculture (150,003 migrant workers), and domestic maids (130,450 migrant workers).⁹ Due to a variety of factors, including failures in the process of recruitment and management of migrant workers,¹⁰ an estimated 1.4 million foreign workers¹¹ are undocumented.

⁴ Tourism Malaysia (2020). Malaysia Tourism Statistics in Brief. Available at <<https://www.tourism.gov.my/statistics>> (Accessed: 26 October 2020).

⁵ World Bank (2020). The World Bank in Malaysia: Overview. Available at: <https://www.worldbank.org/en/country/malaysia/overview> (Accessed: 26 October 2020).

⁶ World Bank (2015). Malaysia Economic Monitor: Immigrant Labour. Available at <<http://documents.worldbank.org/curated/en/753511468197095162/pdf/102131-WP-P158456-Box394822B-PUBLIC-final-for-printing.pdf>> (Accessed: 26 October 2020).

⁷ Department of Statistics Malaysia (2020). Demographic Statistics First Quarter 2020, Malaysia. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemedByCat&cat=430&bul_id=aFYzVjJ3anNyQytHZGxzcUZxTG9Ydz09&menu_id=L0pheU43NWJwRWVSZkIWdzQ4TIhUUT09> (Accessed: 26 October 2020).

⁸ Department of Statistics Malaysia (2020). Key Statistics of Labour Force in Malaysia, March 2020. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemedByCat&cat=124&bul_id=Y3NVdE44azFHbzkyeFlaWGF2ZER6Zz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09> (Accessed: 26 October 2020).

⁹ TAY, C. (2019). 'Malaysia has 1.99 million foreign workers registered as at Aug 31', *TheEdgeMarkets.com* [online]. Available at <<https://www.theedgemarkets.com/article/malaysia-has-199-million-foreign-workers-registered-aug-31>> (Accessed: 26 October 2020).

¹⁰ PAUL, J. (2020). 'We should take a closer look at undocumented migrants in Malaysia', *Malay Mail* [online]. Available at <<https://www.malaymail.com/news/what-you-think/2020/05/27/we-should-take-a-closer-look-at-undocumented-migrants-in-malaysia-joseph-pa/1869820>> (Accessed: 26 October 2020).

¹¹ LOH, W.S. et al (2019). 'Malaysia: Estimating the number of foreign workers', World Bank, p.34. Available at <<http://documents.worldbank.org/curated/en/953091562223517841/pdf/Malaysia-Estimating-the-Number-of-Foreign-Workers-A-Report-from-the-Labor-Market-Data-for-Monetary-Policy-Task.pdf>> (Accessed: 26 October 2020).

As a third distinct category of foreigners in the country, refugees encounter many barriers in Malaysia. Malaysia has not acceded to the 1951 Convention Relating to the Status of Refugees nor its 1967 Protocol, which together establish the global norm and provide a framework for the treatment of people in need of international protection. Further, Malaysia’s national legal frameworks fail to capture the specific situation in which refugees find themselves, thus excluding refugees from regular pathways to legal status. UNHCR has taken on the role of identifying people in need of protection outside of formal hosting state systems. However, even in cases in which UNHCR has determined that the person is in need of international protection and cannot return safely to their home country, the person is still excluded from pathways towards stay permits and is prohibited from seeking an income to secure their survival while in Malaysia.

The Bar Council of Malaysia¹² summarized Malaysia’s de facto policy towards refugees and asylum seekers in 2010 as:

- *non-return to countries of origin until conditions are conducive,*
- *allowing refugees to work in the informal sector,*
- *allowing refugees to access health care services,*
- *allowing non-governmental organizations to provide assistance to refugees,*
- *cooperating with UNHCR on a humanitarian basis and allowing UNHCR to register, determine refugee status and extend protection to refugees,*
- *facilitating resettlement of refugees to third countries.*

While much of this characterisation of Malaysia’s *de facto* policy from 10 years ago still applies today, the failure of efforts to formalise this practice in policy over the years has in particular put in question Malaysia’s commitment to acknowledging and allowing refugees to work for their survival. Over the last decade there have been instances where the practice of non-return and even the commitment to cooperation with UNHCR have been undermined in statements and actions.

Table 1: Quick Facts on the Federation of Malaysia

Total Population¹³	32.7 million
Ethnicity¹⁴	Malays (51%); Chinese (20%); Other Bumiputra (11%); Indian (6%); Other (1%); Non-citizens 10%

¹² KHOO, A. (2010). *Developing a Comprehensive Policy Framework for Refugees and Asylum Seekers in Malaysia* (unpublished), quoted in LEGO, J.B.H. (2012) ‘Protecting and Assisting Refugees and Asylum-Seekers in Malaysia: The Role of the UNHCR, Informal Mechanisms, and the ‘Humanitarian Exception’, *Journal of Political Science and Sociology*, No.17, p.91 [online]. Available at <<https://core.ac.uk/download/pdf/145761468.pdf>> (Accessed: 26 October 2020).

¹³ Department of Statistics Malaysia (2020). *Demographic Statistics First Quarter 2020, Malaysia*. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemebycat&cat=430&bul_id=aFYzVjJ3anNyQytHZGxzcUZxTG9Ydz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> (Accessed: 26 October 2020).

¹⁴ Central Intelligence Agency (2020). *The World Factbook: Malaysia* [online]. Available at <<https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>> (Accessed: 26 October 2020).

Labour Force¹⁵	>15 million
Documented Foreign Workers¹⁶	1.99 million migrant workers
Documented Foreign Worker Sectors¹⁷	Manufacturing (706,502); Construction (429,552); Plantation (268,203); Agriculture (150,003); Domestic workers (130,450)
Undocumented Foreign Workers¹⁸	1.4 million irregular migrant workers (estimate)
Refugees¹⁹	178,140 refugees and asylum-seekers

According to the Labour Force Surveys by the Department of Statistics Malaysia (DOSM), foreigners provide around 15% of the total labour needed in Malaysia’s economy, mainly working in low-skilled occupations.²⁰ Refugees are only a small subsection of non-citizens in Malaysia—for every refugee in Malaysia, there are over 20 other non-citizens. Further, the refugee population is a barely perceptible proportion of the total population in Malaysia: the total number of refugees in Malaysia is equivalent to just 0.7% of the Malaysian population of working age.²¹

¹⁵ Department of Statistics Malaysia (2020). *Key Statistics of Labour Force in Malaysia, March 2020* [online]. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemebycat&cat=124&bul_id=Y3NVdE44azFHbzkyeFlaWGF2ZER6Zz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09> (Accessed: 26 October 2020).

¹⁶ TAY, C. (2019). ‘Malaysia has 1.99 million foreign workers registered as at Aug 31’, *TheEdgeMarkets.com* [online]. Available at <<https://www.theedgemarkets.com/article/malaysia-has-199-million-foreign-workers-registered-aug-31>> (Accessed: 26 October 2020).

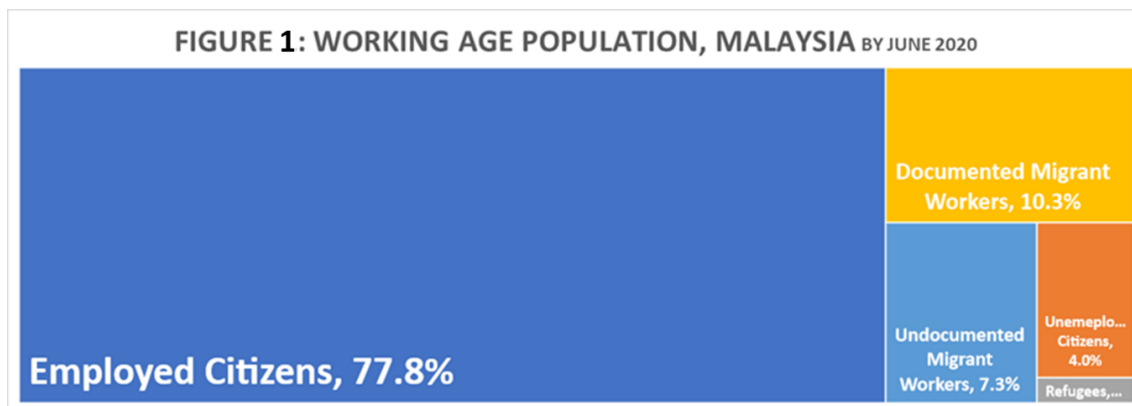
¹⁷ Ibid.

¹⁸ LOH, W.S. et al. (2019) ‘Malaysia: Estimating the number of foreign workers’, *World Bank*, p.34. Available at <<http://documents.worldbank.org/curated/en/953091562223517841/pdf/Malaysia-Estimating-the-Number-of-Foreign-Workers-A-Report-from-the-Labor-Market-Data-for-Monetary-Policy-Task.pdf>> (Accessed: 26 October 2020).

¹⁹ UNHCR (2020), *Figures at a glance in Malaysia, August 2020*. Available at <<https://www.unhcr.org/en-us/figures-at-a-glance-in-malaysia.html#:~:text=As%20of%20end%20August%202020,or%20fleeing%20persecution%20in%20Myanmar>> (Accessed: 26 October 2020).

²⁰ World Bank (2015) *Malaysia Economic Monitor December 2015*. Available at <<https://www.worldbank.org/en/country/malaysia/publication/malaysia-economic-monitor-december-2015-immigrant-labour>> (Accessed: 26 October 2020).

²¹ This calculation by the author is based on available statistics to date and does not include the migrant workers that already left the country before the MCO and those potentially leaving due to slowing economy and health concerns once international travel is possible again.



Economy

With an GDP per capita of over USD 29,000, a diversified, complex economy, and the 19th largest export economy in the world, Malaysia's economic performance has been positive.²² Nonetheless, large segments of the population have expressed concern at the rising cost of living, including food prices.²³ Unemployment rates are low: in March 2020, unemployment was at 3.9%.²⁴ Despite having similar education levels, only 55.2% of Malaysian women participate in the labour market, compared with 80.4% of Malaysian men. Malaysia's industrial sector, including electronics, automotive, and construction sectors, employs over one third of the labour force.²⁵ Manufacturing and palm oil industries are export oriented, and as such are subject to sustainability benchmarks. Malaysia is also one of the world's largest centre of Islamic finance. Tourism and medical tourism are a significant sector of Malaysia's economy.²⁶

²² Observatory of Economic Complexity (2020) *Malaysia*. Available at <<https://oec.world/en/profile/country/mys/>> (Accessed: 26 October 2020).

²³ Organisation for Economic Co-operation and Development (2019) *OECD Economic Surveys: Malaysia 2019*. Available at <<https://www.oecd.org/countries/malaysia/oecd-economic-surveys-malaysia-2019-eaaa4190-en.htm>> (Accessed: 26 October 2020).

²⁴ Department of Statistics Malaysia (2020) *Key Statistics of Labour Force in Malaysia, March 2020*. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bul_id=Y3NVdE44azFHbzkyeFlaWGF2ZER6Zz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09> (Accessed: 26 October 2020).

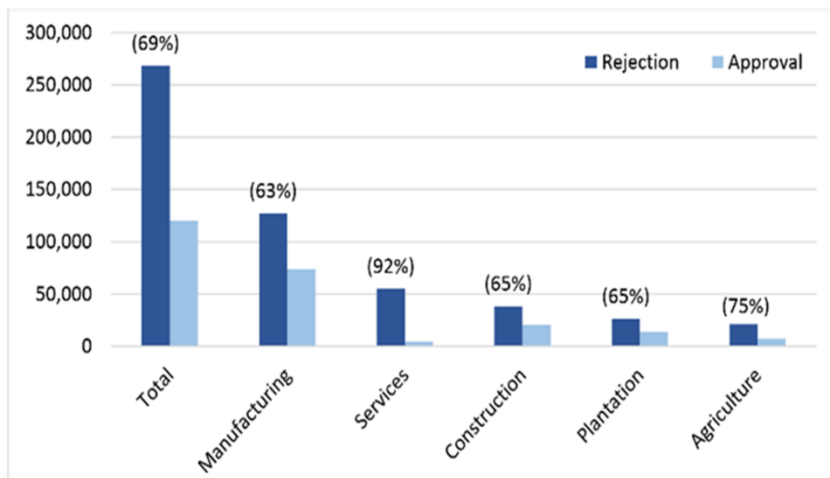
²⁵ Department of Statistics Malaysia (2020) *Employment Statistics First Quarter 2020*. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=439&bul_id=Wmh3ekwrbbkkyClZWVHVfYjI3WkV6UT09&menu_id=Tm8zcnRjdVRNWWlpWjRlBmtlaDk1UT09> (Accessed: 26 October 2020).

²⁶ Department of Statistics Malaysia (2020) *Malaysia Economic Performance 2019*. Available at <https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=153&bul_id=bVN1K0tXtSt1TVRGRFZBRE8yU0JYZz09&menu_id=TE5CRUZCbIh4ZTZMODZlBmk2aWRRQT09> (Accessed: 26 October 2020).

Many of Malaysia’s businesses need additional workers, relying on foreigners to fill local labour gaps. An indicator for the size of this need for additional work force is the number of applications by entrepreneurs for foreign workers.²⁷ As many of the applications are rejected, businesses are likely to rely on workers from an informal labour pool that includes refugees. Data on the number of rejected foreign worker applications by sector in 2018 shown in dark blue in Figure 2 suggests that that at a minimum 450,000 positions were not given the quota for requested foreign workers. Given the procedures and costs involved in securing foreign labour in Malaysia this number is likely to be much higher. Refugees work side by side with other foreign workers and Malaysians in construction, services, and agriculture, enabling businesses to operate.

The economic realities in Malaysia including domestic work force and labour demands by the private sector have to acknowledge that Malaysia’s economic set up still requires additional workers.

Figure 2 : Firms that applied for foreign workers but received rejections or reduced quotas might fill the unmet-demand with irregulars (January 1, 2018 through September 3, 2018, the rejection rate in the total application by sector)



Source: MOHR see World Bank, “Malaysia: Estimating the number of foreign workers,” 2019, p30

COVID-19

Malaysia confirmed its first COVID-19 case on 25 January 2020; by 19 October 2020, it had confirmed 19,627 cases and 180 deaths.²⁸ To reduce transmission, the government issued a Movement Control Order (MCO) starting on 18 March 2020. However, refugees’ and other migrants’ circumstances – cramped and unsanitary living conditions, limited access to healthcare, minimal savings, and, in some cases, inability to understand the MCO – exposed them to greater risk of spread.²⁹ Mixed messages from the government regarding whether foreigners had to pay for testing and treatment aggravated vulnerability and reduced the likelihood that those with symptoms would come forward.³⁰ Further, the

²⁷ LOH, W.S. et al. (2019) ‘Malaysia: Estimating the number of foreign workers’, *World Bank*, p.30. Available at <<http://documents.worldbank.org/curated/en/953091562223517841/pdf/Malaysia-Estimating-the-Number-of-Foreign-Workers-A-Report-from-the-Labor-Market-Data-for-Monetary-Policy-Task.pdf>> (Accessed: 26 October 2020).

²⁸ Johns Hopkins University of Medicine (2020) *Malaysia, Coronavirus Research Center (19 October 2020)*. Available at <<https://coronavirus.jhu.edu/region/malaysia>> (Accessed: 26 October 2020).

²⁹ WAHAB, A. (2020) ‘COVID-19 in Malaysia: Pushing migrant workers further at the margin’ *International Detention Coalition*, p.37. Available at <<https://idcoalition.org/news/covid-19-impacts-on-immigration-detention-global-responses/>> (Accessed: 26 October 2020).

³⁰ Code Blue (2020) ‘Health DG Says Free Covid-19 Tests, Treatment For Foreigners, After PM Says Payments Required’. Available at <<https://codeblue.galencentre.org/2020/03/23/health-dg-says-free-covid-19-tests-treatment-for-foreigners-after-pm-says-payments-required/>> (Accessed: 26 October 2020).

government conducted immigration raids on undocumented migrant workers, which former Health Deputy Director-General Dr Christopher Lee noted was likely to drive migrant workers to hide from authorities and to move locations rather than coming forward if they had symptoms.³¹

Beyond this, the COVID-19 outbreak and the MCOs reduced economic activity in Malaysia, which will further exacerbate refugees' vulnerabilities. Tourism and retail industries have been hurt by lower tourist arrivals.³² Additionally, almost all key economic sectors contracted in Q2 2020: construction contracted by 44%, mining and quarrying by 20%, manufacturing by 18%, and services by 16.2%. Agriculture was the only sector that registered growth in output (1%).³³ Refugees in particular felt the brunt of these measures: in an April 2020 survey with 400 responses, the Refugee Coalition of Malaysia found that over 95% of the refugee respondents were unable to maintain work during the Movement Control Order. Over 90% of respondents were renting their accommodation, with nearly 60% paying between RM500 to RM1000 (120 to 240 USD) for their rental. Over 75% indicated they were only able to pay their rent for the current month (April 2020). Nearly 40% were already threatened with eviction by their landlord. Over 50% of these refugees either did not have a written agreement with their landlord or had a written agreement in someone else's name.³⁴

Since the lifting of some restrictions under the MCO, refugees have found employment again but with lower working hours and lower pay. Issues of unpaid wages are said to be now more common.³⁵ Beyond that, vendors in some markets are not employing refugees any longer, despite having depended on refugee's support and labour through informal arrangements for years.³⁶

Looking at the longer term, COVID-19 has both interrupted the recruitment of foreign workers to Malaysia and has led to many foreign workers (particularly those who lost jobs) to return home as soon as the option arises. Malaysia is likely to continue to need foreign workers in the years to come to sustain, stabilise, and expand economic activity. Given the existing barriers to entry, it would be wise to encourage the hiring of working-age foreign populations already in the country, including to expand the tax base as Malaysia rebuilds.

³¹ Code Blue (2020) 'Immigration Raids Will Expand Malaysia's Covid-19 'Blind Spot': Expert'. Available at <<https://codeblue.galencentre.org/2020/05/12/immigration-raids-will-expand-malaysias-covid-19-blind-spot-expert/>> (Accessed: 26 October 2020).

³² RAAD, F. (2020) 'Malaysia in 2020: Navigating Overlapping Shocks', *World Bank*. Available at <<https://blogs.worldbank.org/eastasiapacific/malaysia-2020-navigating-overlapping-shocks>> (Accessed: 26 October 2020).

³³ ZAHIID, S.J. (2020) 'Hit by Covid-19 curbs, Malaysia posts record low GDP of -17.1pc in second quarter of 2020', *Malay Mail* [online]. Available at <<https://www.malaymail.com/news/money/2020/08/14/hit-by-covid-19-curbs-malaysia-posts-record-low-gdp-of-17.1pc-in-second-qua/1893845>> (Accessed: 26 October 2020).

³⁴ Refugee Coalition of Malaysia (2020), [Facebook]. [Removed] (Accessed: 28 April 2020).

³⁵ OM-My-22092020.

³⁶ Ibid.

Refugee Population

As of late March 2020, 178,140 refugees and asylum-seekers (32% female, 68% male) were registered with UNHCR Malaysia. This number includes around 46,500 children.³⁷ The majority of refugees in Malaysia are from Myanmar, with others from Pakistan, Yemen, Somalia, Syria, Afghanistan, Sri Lanka, and Iraq. (see Figure 3).

Approximately 126,350 refugees of working age live in different parts of Malaysia (see Figure 4). These refugees, consisting of 93,582 men and 32,774 women,³⁸ are currently excluded from legal pathways towards regularising their stay and obtaining a work permit.

The majority of refugees live in urban or peri-urban areas, typically in ethnic groupings within the local community, in

Figure 3: Refugees by Country of Origin

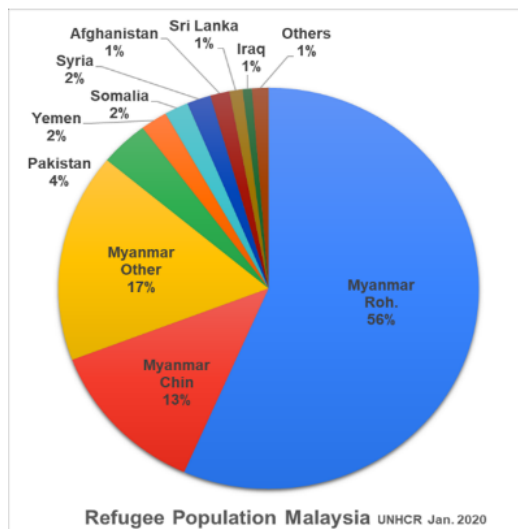
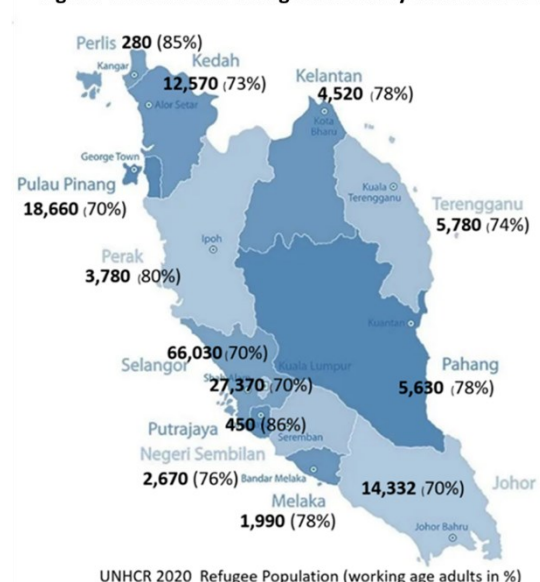


Figure 4: Location of Refugees in Malaysia March 2020



small, overcrowded, low-cost apartments or houses. They tend to rely on their own community organizations for social protection, with community networks particularly important for new arrivals in aiding integration.³⁹

As UNHCR does not have sufficient means to support refugees' basic needs, refugees need to work to survive.⁴⁰ Refugees are not permitted to participate in the formal economy, so are forced to turn to the large Malaysian shadow economy, where they find poorly paid work, are often cheated out of their wages, or worse. When accidents happen, entire families can become destitute overnight as few have health insurance or access to workers' compensation schemes.⁴¹

³⁷ UNHCR, *Figures at a glance in Malaysia, August 2020*. Available at <<https://www.unhcr.org/en-us/figures-at-a-glance-in-malaysia.html>> (Accessed: 26 October 2020).

³⁸ Ibid.

³⁹ MUNIR-ASEN, K. (2018) '(Re)negotiating Refugee Protection in Malaysia: Implications for Future Policy in Refugee Management' *Deutsches Institut für Entwicklungspolitik*, Discussion Paper 29/2018. Available at <https://www.die-gdi.de/uploads/media/DP_29.2018_01.pdf> (Accessed: 26 October 2020).

⁴⁰ UNHCR (2020), *South-East Asia Funding Update, 29 April 2020* [online]. Available at <<https://reporting.unhcr.org/sites/default/files/South-East%20Asia%20Funding%20Update%2029%20April%202020.pdf>> (Accessed: 26 October 2020).

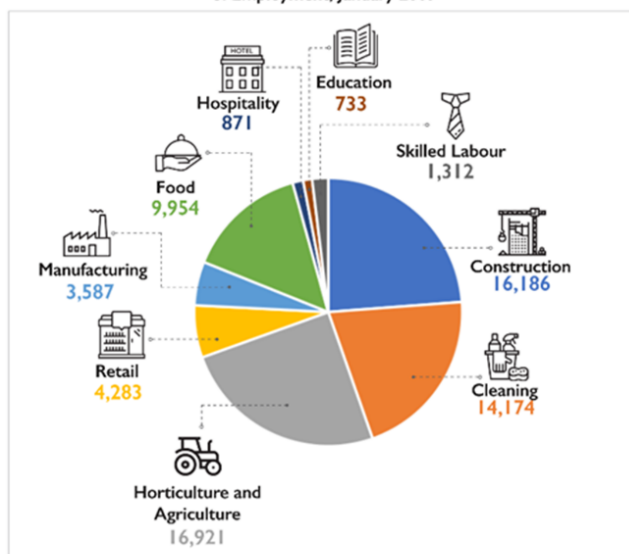
⁴¹ HOFFSTAEDTER, G. (2016) 'Is working legally a win-win for refugees in Malaysia?' *Policy Forum*. Available at <<https://www.policyforum.net/working-legally-win-win-refugees-malaysia/>> (Accessed: 26 October 2020).

Employment

As refugees and asylum seekers are excluded from access to work permits, many work irregularly in restaurants or food stalls, factories, on construction sites or plantations, and in markets. These jobs are often ad hoc, which exacerbates refugees' vulnerability to exploitation. Employment opportunities are dictated by what is available to those working informally, which tends to be low-skilled, labour-intensive jobs. Refugees and asylum seekers possessing higher education or skill levels are mostly unable to use these in employment they can find.⁴² Many refugees feel they have no protection against abuse or exploitation as approaching authorities might lead to arrest and arbitrary detention.⁴³

According to UNHCR, the majority of refugees working in Malaysia are employed in agriculture, construction and cleaning (Figure 5).⁴⁴ Food and Beverage, Retail, and Manufacturing also employed thousands of refugees throughout the country. Only about 3,000 refugees are said to work as skilled workers, in education or in the hospitality sector.⁴⁵

Figure 5: UNHCR Registered Refugees and Asylum Seekers in Malaysia by Sector of Employment, January 2019



Source: UNHCR, (2019)

A 2016 survey by UNHCR found that around half of refugees of working age were unemployed, with a large gender disparity: only 23% of women of working age were employed, compared to 72% of male refugees of working age. Unemployment at the time was highest within Middle Eastern refugee

⁴² TODD, L., AMIRULLAH, A., and SHIN, W.Y. (2019) 'The Economic Impact of Granting Refugees in Malaysia the Right to Work', *Institute for Democracy and Economic Affairs*, p 8 [online]. Available at <<https://www.ideas.org.my/policy-paper-no-60-economic-impact-of-granting-refugees-in-malaysia-the-right-to-work/>> (Accessed: 26 October 2020). However, initiatives to facilitate online work for refugees in other countries in Southeast Asia could be expanded to Malaysia. Partner organisations are examining ways to overcome the barriers that refugees face in receiving payment, given the difficulty of opening a bank account without a passport.

⁴³ Equal Rights Trust (2017) *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, p157 [online]. Available at <<https://www.equalrightstrust.org/content/equal-only-name-malaysia-full-report>> (Accessed: 26 October 2020).

⁴⁴ TODD, L., AMIRULLAH, A., and SHIN, W.Y. (2019) 'The Economic Impact of Granting Refugees in Malaysia the Right to Work', p8.

⁴⁵ Using data generated from UNHCR database in June 2017 "Unlocking Access to Legal Work for Refugees", UNHCR found that "from a sample size of 76,037 employed refugees and asylum-seekers, 45.5% are working in the services sector (food and beverage, cleaning, retail), 24.6% are working in the construction sector, 4.2% are in the agriculture sector and 3.8% are working in the manufacturing sector. The remaining 20% consist of labourers (7.7%), housewives (9.7%) and other services (4.4%)."

communities. The most common form of self-employment among refugees was in the food and beverage sector, which is also said to have the best potential for women-based enterprises.⁴⁶

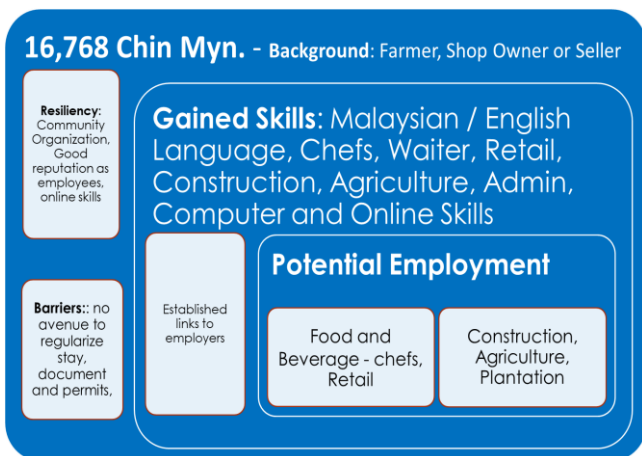
Like other communities, refugee communities in Malaysia are heterogenous – individuals possess a variety of characteristics, skills, education levels, and abilities. Nonetheless, it can be useful to identify trends in the communities.

Through surveys and conversations with refugee community leaders and NGOs, the following employment characteristics for different refugee communities in Malaysia were identified.



The Rohingya refugee community is 60% adult male, with the majority earning an income in the construction sector, street or park cleaning and maintenance, restaurants, or working in markets or retail. Many men speak some Malay. Although few completed formal education, many have learnt skills on the job. The majority of Rohingya women are housewives with only a small minority working in restaurants or factories. The community reports to not experiencing harassment in the past but at times wages have not been paid for work completed. The community sees itself as very flexible towards accepting any work

available to ensure survival.



The Chin refugee community is organised and has established links to entrepreneurs. Around 90% of men and 70% of women earn an income. Women tend to work as waitresses in restaurants, shop assistants and some (non-domestic) cleaners. While in Malaysia women learned some administration, beautician, and computer skills. Men typically work in construction (including wiring), agriculture (including on plantations), or in restaurants as chefs or waiters. The community is known for good work ethics and loyalty and has potential to support the running of SMEs, with administrative and marketing skills. Main barrier to more fully contributing to Malaysian businesses, economy

and society identified by the community is lack of documentation and work permits, and the accompanying threat of arrest and detention.

⁴⁶ UNHCR (2016), *Socioeconomic Baseline Survey, June 2016* (unpublished), on file with author. See also UNHCR (2020), *Livelihoods in Malaysia* [online]. Available at <<https://www.unhcr.org/en-my/livelihoods-in-malaysia.html>> (Accessed: 26 October 2020).

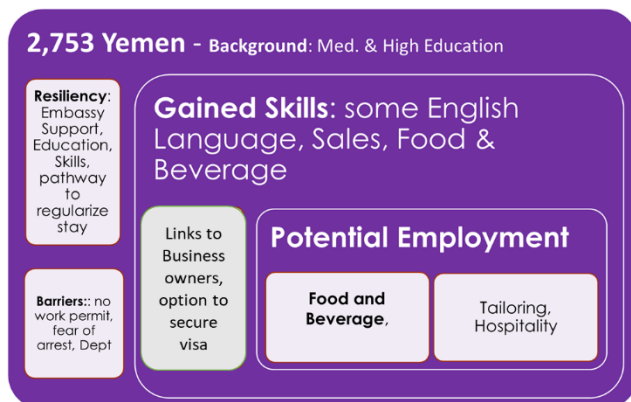


Other refugees from Myanmar are said to have a good reputation as diligent workers. About 50% of men and 30% of women have access to some income from factories, construction, agriculture, rubber tapping, food and beverage (waiters, cooks or cashier). In rural areas, some work in agriculture or fisheries. Many women are skilled in sewing, beauticians, cooking, and in retail. Despite having limited formal education, many men have developed skills in construction, including wiring, air condition servicing, and as motorcar foremen. Men and women often speak some Malay or English. Members of the community

reported experiencing bullying, with women experiencing harassment and men unpaid salaries.



Only about 30% of the Pakistani refugee community were working before the MCO, women as maids or stitching at home due to childcare responsibilities, men as security guards or in restaurants, many completed formal education and are skilled workers, but face language barriers. Many have concerns about their security and potential arrest. The main form of abuse is underpayment of wages. Many in the community dream about opening a food stall or a small shop.



Only one in five Yemeni refugee women gain some small income, in bread production, sewing or making perfumes and incense. Most men worked in restaurants and some in tourism but are unemployed now. Some work for Yemeni shop owners or businesses, for example as guards. The community is educated but hampered by the members' limited Malay and English language skills. Many are interested in IT and business management.



Only one in 10 Somali refugees are able to secure some income. Of these, around 30% work in restaurants, with others working as cleaners, tailors, or making sweets or baking bread. Wages are low and the community experiences discrimination. Many members of the community rely on remittances and depend on local support to meet their basic needs. Despite being skilled and educated, the community identified language skills and community empowerment as necessary to their advancement.



Of Syrian refugees, 50% of men and 15% of women were able to earn an income. Despite being highly skilled and educated, the majority are only able to earn an income through waiting tables or working from home, including by cooking Syrian food and teaching at language centres or online (English or Arabic). Some highly skilled refugees have skills in coding. The community fears detention and experiences exploitation at the workplace.



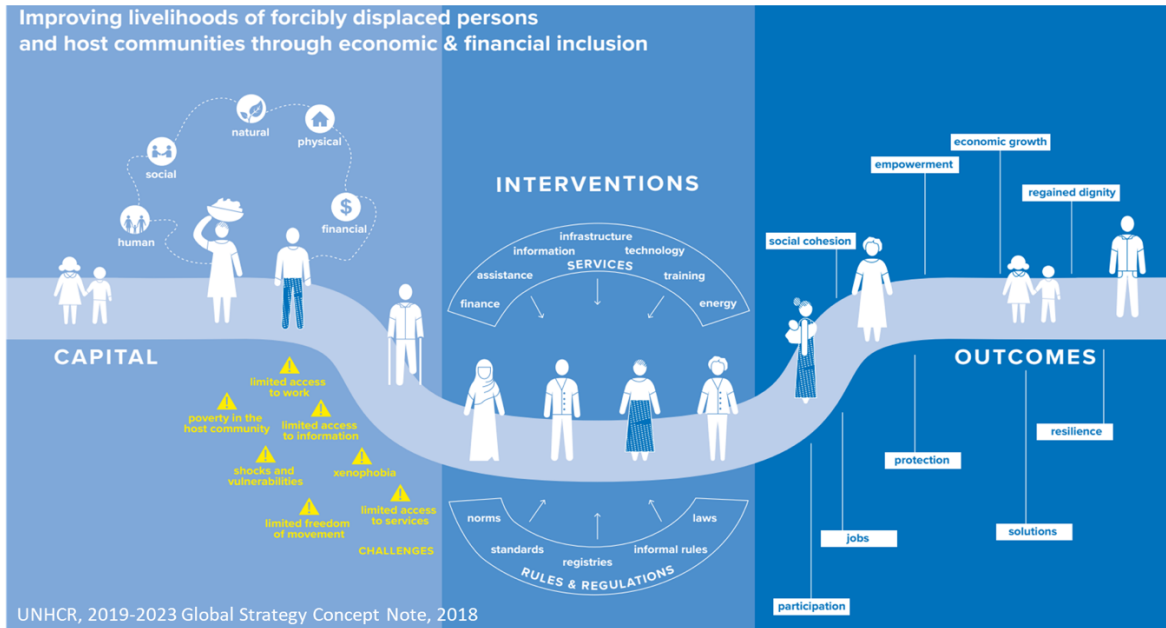
The Afghan community are comparatively new arrivals in Malaysia. While many are educated, only around 20% of men and 10% of women earn an income. Women have skills in handicraft, restaurant, cooking, shop keeping and hairdressing. Some men work part-time in Middle Eastern restaurants, while others have skills in tiling, decoration, carpentry, plaster, car repair cooking, cleaning, salesmanship, car wash and accounting.

On the one hand, it is widely known that refugees are actively contributing to a needed workforce and likely will stay in Malaysia for an extended period of time as they cannot return to their home country. On the other, there has been little material progress in providing them with access to pathways to regularise their presence in Malaysia. As one long-time NGO worker reflects:

“Over the last 15 years there [has] not [been] much significant improvement on the employment situation of refugees. The situation remains similar, we are dealing with the same

issues on the ground. Some small changes include now more employers provide proper documentation. One out of five workers have good prove of employment.”⁴⁷

Figure 6: Capital, Barriers, Interventions and Outcomes of Refugees Economic and Financial Inclusion



Refugees in Malaysia rely on their human capital – vocational skills, languages spoken, creative and soft skills, education, and capacity to work and to adapt when securing livelihoods. Social capital, such as strong and wide social networks with refugee and host communities, as well as cultural and religious networks, were seen as important to get established in their country of asylum, provide support and link to people and opportunities.⁴⁸ Some refugee leaders pointed out that reputation of particular groups of refugees as diligent, loyal and skilled employees enables access to livelihood opportunities.⁴⁹ Access to natural, physical, or financial capital was weak, with the exception of financial support from family, friends, and a number of refugees managing to open bank accounts. Debt was highlighted as one concern in the past but was not explored in detail during surveys or interviews with refugees. A vulnerability to shocks like not finding employment, accidents, or ill health were identified as some of the most significant risks to livelihood.

Barriers to Work

Common barriers identified by refugees and others working with them, include:

⁴⁷ OF-My-11032020.

⁴⁸ BARBELET, V. and WAKE, C. (2017) ‘Livelihoods in displacement’ *Humanitarian Policy Group*, p17 [online]. Available at <<https://www.odi.org/sites/odi.org.uk/files/resource-documents/11729.pdf>> (Accessed: 26 October 2020).

⁴⁹ OM-My-22092020.

Legal Framework:

There is an insufficient legal framework and many inconsistencies between the international human rights instruments, the Constitution, domestic statutes, and regulations. This contributes to the threat of arrest and demands to pay bribes to avoid arrest and detention.

Academics are split on how to define the legal situation of refugees in Malaysia. Alice Nah describes refugee's situation in Malaysia as "a condition of "(il)legality," that is, "an uncertain and unresolved socio-legal location in which they are possibly legal—through practices of exception—but remain illegal by default."⁵⁰ Another academic, Jera Lego, asserts that refugees in Malaysia live in a state of exception.⁵¹ They therefore have to be ever ready to negotiate and navigate threats and demands towards ensuring the very basic means for survival.

Without identity documents proving legal status, some refugees fear leaving the house to engage in employment. This is particularly the case with visibly identifiable refugees, such as African refugees, but also refugees of the same ethnicity or appearance as irregular migrant worker groups, for example from Myanmar.⁵² A humanitarian service provider observed that the UNHCR card has received more recognition from authorities and employers in the last few years.⁵³ This may be because the new card enables authorities to scan a bar code to confirm that the person is in the UNHCR database. Employers cannot scan the code themselves, as they do not have access to the database, and are reluctant to approach the police to check as even UNHCR-recognised refugees and asylum seekers are not permitted to work in Malaysia. Asylum seekers who have not yet registered with UNHCR see themselves as much more vulnerable to arrest and detention than are UNHCR card holders. Some employers will hire refugees only if they have a UNHCR card, thus restricting unregistered refugees to work options like collecting and sorting garbage and selling recyclable materials.⁵⁴

Because refugees lack legal status in Malaysia, employers may perceive refugees to be working outside of the usual employee protections. As such, employers may not feel compelled to provide rest days or to pay the full amount for work done.⁵⁵

The absence of legal status heightens refugees' vulnerability to having to make protection payments, as they would hesitate to seek justice via the authorities. Refugees therefore become easy prey for people seeking to exploit them. In Malaysia, Bank Negara does not formally restrict refugees and asylum-seekers

⁵⁰ NAH, A. (2007) 'Struggling with (Il)Legality: The Indeterminate Functioning of Malaysia's Borders for Asylum Seekers, Refugees, and Stateless Persons', KUMAR RAJARAM, P., GRUNDY, C. and AVIJIT, W.Y., *Borderscape* V29, p37 [online]. Available at <https://archive.org/stream/BORDERSCAPEBYPremKumarRajaramCarlGrundyWarrYAvijitRANAGHAT/BORDERSCAPE%20%20BY%20Prem_Kumar_Rajaram,_Carl_Grundy-WarrY_Avijit_RANAGHAT_djvu.txt (Accessed: 29 October 2020).

⁵¹ LEGO, J.B.H. (2012) 'Protecting and Assisting Refugees and Asylum-Seekers in Malaysia', p77.

⁵² OF-My-02042020. See also OF-My-02042020, AM-My-12032020b.

⁵³ OM-My-27042020.

⁵⁴ OF-My-06032020.

⁵⁵ OM-My-23042020, OF-My-11032020.

from opening a savings account. However, due to the Know Your Customer (KYC) policy practiced by the financial service providers, refugees are de facto blocked from accessing this basic banking service. As of 2018, there were only two local banks with structures in place for refugees to open a savings account, requiring refugees to provide a copy of their UNHCR card, a supporting letter from their employer, and a supporting letter from UNHCR.⁵⁶ Refugees' inability to open a bank account means that they are at times carrying rather large sums of cash earnings, thus further exacerbating their vulnerability to demands and robberies.⁵⁷

Due to their irregular status, refugees are susceptible to being detained by police. Malaysia's 14 immigration depots are overcrowded, and detention can last from three months to many years, with dozens of detainees having died in detention.⁵⁸ The persisting culture of demanding bribes is described both as relief—as for some refugees paying the bribe is less costly than the loss in wages during the time detained—and as a stressor, as it may for others lead to indebtedness and further stress on already meagre means for survival.⁵⁹ Further, refugees cannot simply say no to demands for bribes: in an interview for this report, an academic illustrated this precarity as such:

“Refugees getting stopped by police are now not afraid anymore to say no when asked for money. The new trend is then police saying, “I charge you with the possession of drugs.” Refugees are scared so they borrow money up to 5000 RM to get released. A lawyer stated there are many cases where Rohingya are getting arrested for drug offences but they are not users [and are] not known to be engaged in drugs, so likely [are] just being set up by the police.”⁶⁰

No Right to Work

Working without a work permit contributes to the threat of arrest. “Although you are holding refugee status, you don't have any right to work here. So, you may get arrested at any time by the authorities,

⁵⁶ NUNGSARI, M. and FLANDERS, S. (2018) 'A Comprehensive Study of Rohingya Construction Workers In Peninsular Malaysia And Recommendations For A Future Work Pilot Program' *Asia School of Business*, p18 [online]. Available at <<https://www.melatinungsari.com/uploads/2/3/6/3/23631450/finalreport-mnsf.pdf>> (Accessed: 26 October 2020).

⁵⁷ OF-My-06032020.

⁵⁸ BARRON, L. (2017) 'Refugees Describe Death and Despair in Malaysian Detention Centres', *Guardian* [online]. Available at <<https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals>> (Accessed: 29 October 2020). See also ANANTHALAKSHMI, A. (2017) 'Malaysia Rights Panel Disturbed Over More Than 600 Deaths in Prisons and Detention Centers', *Reuters* [online]. Available at <<https://www.reuters.com/article/us-malaysia-detention-deaths-idUSKBN1710GR>> (Accessed: 26 October 2020). A study of Rohingya construction workers found that the mean amount of bribes paid to police (calculated by multiplying “average bribe amount” by “number of bribes paid” was 489 MYR (118 USD). NUNGSARI, M., Flanders, S. and Chuah, H.Y. (2020) 'Poverty and precarious employment: the case of Rohingya refugee construction workers in Peninsular Malaysia', *Humanities and Social Sciences Communications*, p6 [online]. Available at <https://www.nature.com/articles/s41599-020-00606-8.epdf> (Accessed: 29 October 2020).

⁵⁹ OF-My-06032020.

⁶⁰ AM-My-12032020.

immigration, or police. They have a right to arrest you at any time. Although you are holding a UNHCR card, it does not give you any rights.” - Refugee in Kuala Lumpur⁶¹

The challenges of working without a permit vary by status. By law, employers also face risks when hiring refugees. However, from the literature or interviews, only few cases of employers being charged were mentioned in the past. A parliamentary request on information in mid-July revealed that 250 employers of people with undocumented status had legal action taken against them.⁶²

UNHCR cards provide the benefit of limited protection from arrest, compared to those without. Further, even though a UNHCR card does not convey legal rights, it does reduce barriers to finding work: “local employers are more likely to hire refugees who have cards than those who do not.”⁶³

Nonetheless, all refugees, with or without a UNHCR card, face significant barriers to work. Having no pathway to obtain a work permit weakens refugees’ ability to negotiate for decent employment conditions, including pay, particularly for refugees depending on short term ad-hoc jobs. Negotiations for many are limited to accepting a job offer to certain conditions or rejecting it on the first call, lest they not be called again in the future.⁶⁴

Regardless of skill levels, refugees are mostly limited to low-skilled jobs in the informal sector due to their lack of a pathway to obtain a work permit. By confining skilled refugees to the low-skilled jobs in the irregular sector, Malaysians lose out on refugees’ expertise, experience, and networks.⁶⁵

Given the risks associated with interactions with police and others, refugees try to limit their movement to the minimum extent possible. Refugees during the 2016 UNHCR socio-economic survey indicated that transport to and from work was the time they felt most vulnerable. Some tried to find work close to home, while another interviewee indicated some smaller cities to be safer from raids and arrest than Kuala Lumpur and Klang Valley or border areas.⁶⁶ Nonetheless, no strategy completely insulates refugees from being stopped, arrested or detained.

Language

Refugees who speak no or little Malay or English not only have limited employment options due to job requirements, but also limit the area and ways they seek work, avoiding travel and limit communication

⁶¹ Xchange (2019) *Abroad means difficult - A research project into the irregular migration of Rohingya refugees from Bangladesh to Malaysia* [online]. Available at <<http://xchange.org/reports/RohingyainMalaysia2019.html>> (Accessed: 26 October 2020).

⁶² The Malaysian Reserve (2020) *Govt sheds light on refugees, overcrowded depots* [online]. Available at <<https://themalaysianreserve.com/2020/07/27/govt-sheds-light-on-refugees-overcrowded-depots/>> (Accessed: 26 October 2020).

⁶³ NUNGSARI, M. and FLANDERS, S. (2018) *A Comprehensive Study of Rohingya Construction Workers In Peninsular Malaysia*, p21.

⁶⁴ OF-My-06032020

⁶⁵ OM-My-27042020

⁶⁶ OF-My-06032020

with locals. Literacy also influences refugees' options: many Rohingya expressed a preference for construction work over factory work as they do not need to know how to read at construction sites.⁶⁷

Gender Norms

In the 2016 socio-economic baseline survey from UNHCR, although 50% of women indicated they would like to join the workforce, only 23% are in the workforce. In addition to the barriers that refugee men face, refugee women face cultural barriers to working outside the house, particularly in more traditional families.⁶⁸

As discussed previously, commuting to and from work is a security risk, so many refugee women limit the area for employment to walking distance from where they live. Refugee women with dependents tend to stay home to care for their dependents, which poses a further challenge to their finding employment. Rohingya women are traditionally confined to the domestic domain; if engaging in wage-earning activities, they are more likely to engage in self-employment than working for others. This dependence on one source of income reduces the household's economic resiliency. If the male income earner leaves, either by choice or arrest and detention, or if he loses his job, the women and children are prone to destitution.

Limited Access to Employers

Refugees mainly find employers and work opportunities through friends and community.⁶⁹ On the one hand, this limits the pool of employers. On the other, it enables learning on the job (from friends) and some assurance regarding work conditions. Beyond these informal networks, the general lack of a platform with which to match refugees' skills and employers' needs further limits chances for mutually beneficial employment and likely reduces productivity, skill development, and specialisation.

One interviewed activist envisioned creating a refugee recruitment agency that would provide refugees access to good employers and ensure that employers are abiding by labour standards and providing health insurance. If the agency could get formal or tacit approval from authorities, the agency might reduce the legal precarity for refugees and could, in exchange for fairer conditions, share the risks borne by employers.⁷⁰

Additional Risk: Expenditure Exceeding Income and High Occurrence of Debt

Unemployment or low wages, coupled with the need to pay bribes or protection money, or, in case of illness, high medical costs, all can lead to refugees' expenditures exceeding their income. Refugees from the Middle East usually borrow money from friends and family,⁷¹ whereas refugees from larger local communities (Myanmar) borrow from within the refugee community as a form of collective resiliency.

⁶⁷ NUNGSARI, M. and FLANDERS, S. (2018) 'A Comprehensive Study of Rohingya Construction Workers In Peninsular Malaysia, p21.

⁶⁸ OM-My-27042020

⁶⁹ NUNGSARI, M. and FLANDERS, S. (2018) 'A Comprehensive Study of Rohingya Construction Workers In Peninsular Malaysia, p21.

⁷⁰ OM-My-23042020

⁷¹ UNHCR (2016) *Socio-economic Baseline Survey* (unpublished, on file).

These community mechanisms are vulnerable to disruptions and shocks, like COVID-19 — spikes in unemployment in wide parts of the refugee community can cause these mechanisms to fail, forcing refugees to rely on less scrupulous lenders.

NGOs providing advice and assistance in labour disputes state that sectors where refugees are working as well as the issues experienced by refugees are unchanged over the past few years. They estimate that 90% of the people approaching the NGOs for assistance in labour disputes come because of unpaid salaries, with others reporting they have been badly treated, including some reporting having been beaten up or sexually harassed at work.⁷² Refugees cannot go to the authorities to report the employers for exploitation, because the refugees are not permitted to work. As such, legal status and work rights for refugees are key if authorities want to promote rule of law and reduce exploitation by employers.

An Emerging Barrier: Rising Xenophobia in Malaysia

In 2020, the COVID-19 lockdown and Rohingya boat arrivals have been used to stoke fear of and anger towards 'others'—including refugees—on Malaysian social media. While civil society groups and the National Human Rights Commission have tried to address the wave of hate, other government voices were silent, with some even fuelling the narrative.

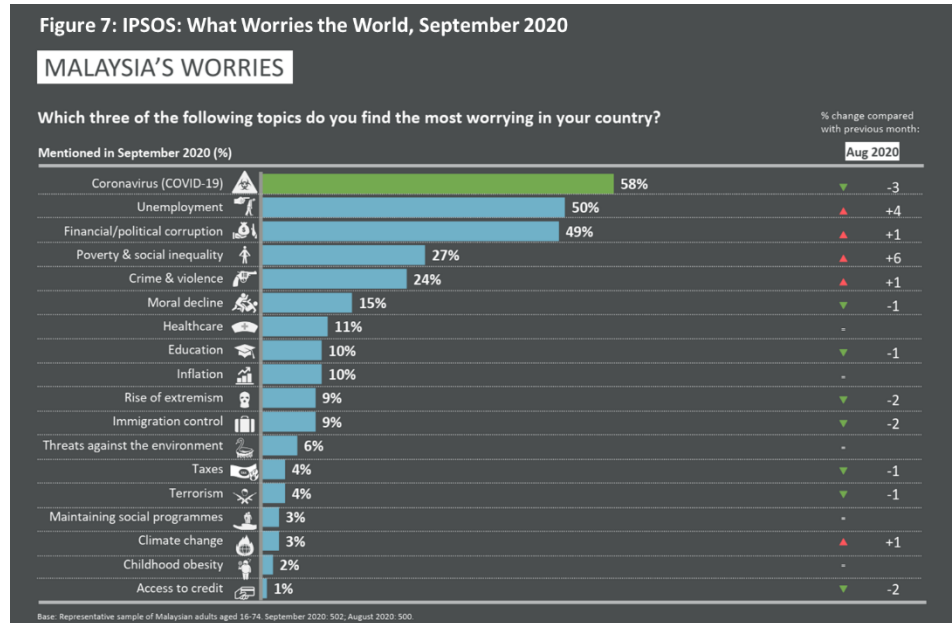
As the coronavirus spread, economic activity slowed reducing livelihoods and increasing uncertainties. Looking for someone to blame, populists and opportunistic politicians turn on some of the most vulnerable including refugees, demanding foreigners "go back to where they came from."

The xenophobia rose in mid-March, after a Facebook post wrongly claimed that activists were demanding citizenship for Rohingya in Malaysia. Within days, racist and threatening comments were spreading across social media. The government arrested 'undocumented' migrants and refugees, under the pretext of stopping foreigners from spreading the virus. Even beyond the xenophobia, advocates are concerned that further demonising refugees will only discourage them from seeking out help or agreeing to critical measures like contact tracing during the COVID 19 response.⁷³

⁷² OF-My-11032020. For an example of NGO support during labour disputes, see ANNEX I.

⁷³ Adam Minter (2020) 'Coronavirus is bringing out the worst in Malaysians', *Bloomberg* [online]. Available at <<https://www.bloomberg.com/opinion/articles/2020-05-15/coronavirus-is-bringing-out-the-worst-in-malaysians>> (Accessed: 26 October 2020).

However, immigration is not at the forefront of Malaysians' minds. As of September 2020, their main concerns were COVID-19, unemployment, and corruption (which has been Malaysians' biggest worry throughout the past years).⁷⁴ Despite having increased during the online xenophobia, concerns about immigration control have returned to pre-COVID-19 levels: In January 2020, 9% of respondents listed immigration control as one of their top three concerns; this rose to 14% in July, around the height of the xenophobic campaigns against foreign workers and refugees started. By September 2020 it had returned to 9%.



By September 2020 it had returned to 9%.

Figure 8: Malaysia Worries according to IPSOS 2018-2020

Worries	Jan-18	Jul-18	Jan-19	Jul-19	Jan-20	Apr-20	Jul-20
Immigration control	11%	11%	8%	10%	9%	5%	14%
Top Worry	Fin/Pol. Corruption 64%	Fin/Pol. Corruption 60%	Fin/Pol. Corruption 52%	Fin/Pol. Corruption 42%	Fin/Pol. Corruption 53%	COVID 85%	COVID 57%
Second Worry	Crime & Violence 38%	Unemployment 43%	Unemployment 35%	Unemployment 36%	Unemployment 42%	Unemployment 43%	Unemployment 51%
Country on the right track	42%	66%	65%	50%	40%	66%	75%

IPSOS Malaysia Worries

That said, Malaysians' perception of refugees is less positive than the global average.⁷⁵ 82% of the surveyed Malaysians support Malaysia closing its borders to refugees and 64% are in favour of not accepting refugees during the COVID-19 pandemic.⁷⁶ 75% of Malaysians surveyed agree with the statement, "Most foreigners who want to get into my country as a refugee really aren't refugees. They just want to come here for economic reasons, or to take advantage of our welfare services."⁷⁷

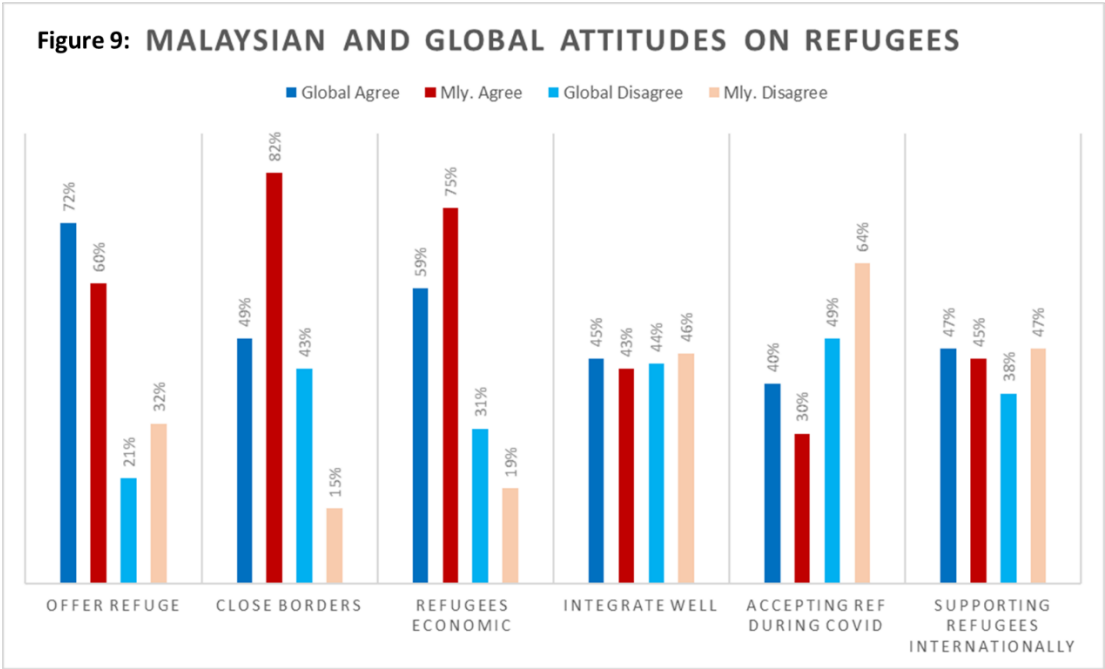
⁷⁴ IPSOS (2020), *What Worries the World: 25 September 2020* [online]. Available at <<https://www.ipsos.com/en/what-worries-world-september-2020>>**Error! Hyperlink reference not valid.** (Accessed: 26 October 2020).

⁷⁵ IPSOS (2020), *World Refugee Day 2020: How attitudes toward refugees have changed since the COVID-19 outbreak* [online]. Available at <<https://www.ipsos.com/en-us/news-polls/World-Refugee-Day-2020-US-release>>**Error! Hyperlink reference not valid.** (Accessed: 29 October 2020).

⁷⁶ Ibid, p8.

⁷⁷ Ibid, p9.

Nonetheless, about half of those surveyed by IPSOS feel that refugees integrate well into Malaysian society and agree that Malaysia should offer support to refugees in general.⁷⁸



Survey results suggest that opposition to granting refugees legal access to employment come from three main concerns: unemployment; stabilisation of economic activities; and the (mis-)perception that many refugees are in Malaysia mainly in search for better income. Increased understanding of refugees, as well as a decrease in worries about COVID-19 and about economic developments, could thus increase support for refugee presence and rights.

Refugees’ Contributions to the Local Economy

Migrant workers, including refugees, are valuable contributors to the Malaysian economy, particularly in the construction, plantation and manufacturing sectors. As Eric Paulsen, the Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights (AICHR) reflects “They serve and cook for us in restaurants, provide security for our buildings and apartments, build our highways and rapid transit system, and grow and harvest our produce, among a variety of other roles. They frequently perform the so-called “3D” jobs - dirty, difficult and dangerous - which are often shunned by locals. But if we expect migrants to do this work, we cannot keep treating them as an inconvenience to put up with in order to get cheap labour. These workers contribute to Malaysia and add considerable value.”⁷⁹

⁷⁸ Ibid, p10.
⁷⁹ PAULSON, E. (2020) ‘The Need to Value, Not Vilify Migrant Workers’, *Free Malaysia Today* [online]. Available at <<https://www.freemalaysiatoday.com/category/opinion/2020/08/03/the-need-to-value-not-vilify-migrant-workers/>> (Accessed: 26 October 2020).

The COVID-19 pandemic has raised the profile of ‘essential workers’: employees within essential industries who must physically show up to their jobs despite the inherent risks. Nurses and doctors are obvious examples, but other essential workers include cleaners, labourers moving freight, stock and material, retail salespersons, and maintenance and repair workers. Some of these frontline occupations overlap with occupations in which a significant number of refugees are occupied in, in which they typically have to settle for the lowest wages despite the centrality of their work.

Refugees and other migrants are a source of security, not insecurity: as economist Prof. Barjoyai Bardai from the National University of Malaysia suggested, “refugees should be allowed to work legally in Malaysia; the country could make use of them to enhance food security.”⁸⁰ According to UNHCR, 16,912 refugees were occupied in the horticulture and agriculture sectors in Malaysia.⁸¹ Refugees and migrant workers fill the gap to ensure local food production for Malaysians, doing jobs that many young Malaysians refuse to do.⁸² For example, Malay Rice Millers Association Malaysia chairman Musonnef Md Radzi stated that many of its members employ refugees from Myanmar to work in rice processing factories, with the work based on verbal agreements. For over seven years, members of the association have employed refugees. Rice mills “tried to hire local workers but not many were able to cope with the situation because they felt uncomfortable and miserable. Unlike foreign workers, who are willing to do the job with a lot of discipline and a sense of responsibility.”⁸³

In 2015, the World Bank researched the economic impact of an increase in migrant workers in Malaysia.⁸⁴ The findings include:

- The majority of foreign workers are significantly less educated than Malaysians.
- The employment of foreign workers leads to increased employment of Malaysians in every major sector.
- The main beneficiaries are Medium Skilled/Educated Malaysians.
- There is no contraction in national employment levels of Malaysian workers.
- Malaysian workers’ wages increase by a small amount. Existing foreign workers’ wages decline considerably.
- Large firms employ the largest share of foreign workers. Foreign workers increase productivity in medium and large firms (50+ workers) in manufacturing and construction, but not in small firms.

⁸⁰ ARIS, N.A. (2020) ‘Allowing refugees to work legally will boost economy say employers’ body, economist’, *Free Malaysia Today* [online]. Available at <<https://www.freemalaysiatoday.com/category/nation/2019/05/01/allowing-refugees-to-work-legally-will-boost-economy-say-employers-body-economist/>> (Accessed: 26 October 2020).

⁸¹ TODD, L, AMIRULLAH, A., and SHIN, W.Y., ‘The Economic Impact of Granting Refugees in Malaysia the Right to Work’, p8.

⁸² HALID, O.S. (2019) ‘Beri pencari suaka politik, pelarian hak bekerja’, *BH Online* [online]. Available at <<https://www.bharian.com.my/berita/nasional/2019/09/609742/beri-pencari-suaka-politik-pelarian-hak-bekerja>> (Accessed: 26 October 2020) (translation from Malaysian by author).

⁸³ Ibid.

⁸⁴ World Bank (2015) *Malaysia Economic Monitor, December 2015: Immigrant Labour* [online]. Available at <<https://openknowledge.worldbank.org/handle/10986/23565>> (Accessed: 29 October 2020).

- Immigration increases economic activity from which Malaysian workers benefit. Foreigners are less likely to conduct criminal activity than are Malaysians.

While the impact on a national scale is limited due to the comparatively small numbers of refugees in the country, specific sectors, individual businesses, and certain local areas employ significant numbers of refugees.

Construction sector (16,186 refugees working in the sector):⁸⁵ A high number of refugees work in this sector as it provides a comparatively attractive salary. Many Rohingya working in construction mainly located in Penang, Johor, and Kelantan. While they are usually illiterate, they are skilled workers. The risk of workplace injuries is balanced by income and career opportunities. Even high earning Rohingya workers, who are likely fairly skilled, make less than the lowest compensated Malaysian workers.⁸⁶

Retail (4,283 refugees working to the sector):⁸⁷ Measures taken in response to COVID-19 exposed seafood wholesalers' reliance upon undocumented workers, including refugees: when the Malaysian government permitted only documented workers to enter the wholesale market, wholesalers protested that up to 90% of their workers are undocumented. "It is very difficult for us to employ local workers as they don't want to work in 3D (dangerous, dirty and difficult) jobs. A fish box weights up to 200kg with ice. Not many are willing to take such smelly and heavy labour as jobs."⁸⁸ Work at the markets also comes with unusual working hours from 2:30am to 2pm.⁸⁹

Education (733): An informal parallel system of 133 community learning centres provides education for refugee children in Malaysia. Run by refugee communities themselves and supported by NGOs, UNHCR, local community, or individuals, 850 teachers, including refugees, work in this sector, often for a small stipend.

Additionally, refugees from their own organisations and initiatives or join NGOs as interpreters, community outreach workers, or other position according to skills and interests. These organisations serve

⁸⁵ UNHCR Socio-Economic Survey (2016)

⁸⁶ NUNGSARI, M. and FLANDERS, S. (2018) 'A Comprehensive Study of Rohingya Construction Workers In Peninsular Malaysia'.

⁸⁷ UNHCR Socio-Economic Survey (2016)

⁸⁸ CHIE, K.G. (2020) 'Wholesalers want gov't to allow undocumented migrant workers at wholesale market', *Malaysiakini* [online]. Available at <https://www.malaysiakini.com/news/523049?mc_cid=6c2bdf5d0b%202/7> (Accessed: 26 October 2020).

⁸⁹ LOHESWAR, R. (2020) 'Annuar Musa wants no foreigners in our markets, but can locals hack it? Here's what migrant workers think', *Malay Mail* [online]. Available at <<https://www.malaymail.com/news/malaysia/2020/05/16/annuar-musa-wants-no-foreigners-in-our-markets-but-can-locals-hack-it-heres/1866605>> (Accessed: 26 October 2020).

refugees and others and by doing so directly and indirectly contribute to the wider community, be it neighbourhoods, cities, or on a national level.⁹⁰

Factors Influencing SMEs’ Willingness to Hire Refugees

On 9 December 2019, 20 businesses (half of which were multinational companies and half of which were local business) wrote to the Malaysian Government to express support for granting refugees the right to work.⁹¹ 10 days later, at the Global Refugee Forum, Malaysia confirmed its commitment to allow Rohingya refugees recognised by UNHCR to work in selected sectors.⁹² The private sector’s support for refugees is not just moral – it makes sense for business too.⁹³

The Business Models of Including Refugees

Private sector initiatives have explored how to include refugees in business models and promote refugees’ inclusion in national development initiatives. We summarize some of the ways that refugees could be included in business models below.

The Business Fights Poverty’s ‘Business and Refugees Challenge’ looks at five key refugee needs that present the greatest potential for scalable, refugee-inclusive business models: education, livelihoods, health and wellbeing, information and communications, and financial inclusion.⁹⁴

Emerging models	Description	Relevant sectors	Beneficiaries	Examples
Formal hiring in operations	Hiring refugees in company-owned operations.	All sectors	Refugees as employees	IKEA; Gardenia Bakery, Mydin, SMEs
Buying from refugee-owned or inclusive enterprises	Sourcing raw or finished goods from refugee entrepreneurs, refugee-owned enterprises, or other businesses that include refugees.	Artisanal/consumer goods sector; food and beverage; light	Refugees as suppliers and producers	Picha Eats, Made51; Preemptive Love; Reflect; the Dress Code; Tatari & Partners

⁹⁰ See also APRRN (2020), *Statement: Virtual donor conference on “Sustaining Support for the Rohingya Refugee Response”* [online]. Available at <https://rohingyaconference.org/doc/rohingya-conference-statement-aprrn.pdf?v=1> (Accessed: 29 October 2020).

⁹¹ IDEAS (2020) *Businesses call on Government to grant refugees the right to work in Malaysia* [online]. Available at <http://www.ideas.org.my/businesses-call-on-government-to-grant-refugees-the-right-to-work-in-malaysia/> (Accessed: 26 October 2020).

⁹² MUHAMAD, A.F. Amb. Dr. (2019) *Statement by Amb. DATO’ DR. AHMAD FAISAL MUHAMAD of Malaysia UN Global refugee Forum, 17 - 18 Dec. 2019*, point 3.iii). Available at <https://www.unhcr.org/5dfa3d294.pdf#zoom=95> (Accessed: 26 October 2020).

⁹³ For more information on global private sector initiatives on refugee see: Tent Partnership for Refugees, Business Refugee Action Network, Business and Refugees Challenge, Made51, Centre for Global Development, and Refugees International

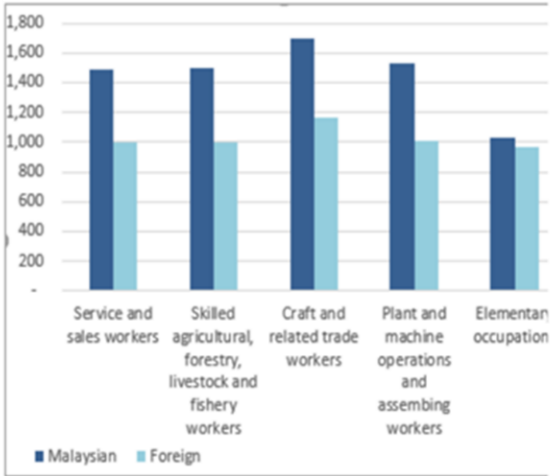
⁹⁴ Business Fights Poverty (2018) *Resilience Through Refugee-Inclusive Business* [online]. Available at <https://businessfightspoverty.org/articles/download-centre-147-register/> (Accessed: 26 October 2020).

		manufacturing		
Selling to refugee-owned enterprises as distributors for local and refugee market	Engaging refugee-owned or operated businesses to distribute goods and services to refugee or local markets.	Consumer goods, services, banking/ investment, telecoms	Refugees as distributors and consumers/ users	Mercy Corps & D.light Solar Micro-retailers
Impact sourcing or freelancing	Engaging refugees as freelancers / subcontractors via mobile platforms that bring together workers and purchasers of their services. This includes crowdsourcing work carried out digitally or on-demand work done locally.	Technology sector; consumer goods, education, service sector	Refugees as employees and suppliers	Re-Coded, Samasource; WeWork; Bilforon (food service); Mrayti (beauty service); Natakallam; UNICEF and Digital Opportunity Trust Lebanon BOT
Apprenticeships and skills development programs	Providing job training by working alongside a company employee for a fixed period of time	All sectors	Refugees as employees	Ben & Jerry's ICE Academy; Intel CORE project; IRC and Citi Foundation Rescuing Futures project

While international efforts have gathered momentum via multinational companies' involvement, SMEs have been employing refugees for a long time in Malaysia.

Many NGO and humanitarian actors see the main motivation for employers to employ refugees in being able to pay less for more

Figure 10: National Employment Returns, ILMIA 2016 Median salary of foreign workers in low-skilled occupations is less than RM1,200 per month (median, RM, 2016)



Source: ILMIA 2016.

work.⁹⁵ In 2013, the World Bank and ILMIA collaborated on a paper in which they found that foreign workers receive a lower salary than Malaysians and that the difference in salary is smallest in the elementary occupations, where salary levels are already very low.⁹⁶

Entrepreneurs' voices:

The Malaysian Entrepreneurs Federation, a representative voice for entrepreneurs, on several occasions in 2019 advocated for refugee employment in Malaysia. The rationale for refugee employment usually includes that Malaysians alone are not satisfying the entrepreneurs' workforce needs.⁹⁷ Young Malaysians tend to be uninterested in jobs that are low social status, are difficult, require hard work, and have limited prospects for career progression.

The refugees in Malaysia would be a cheaper alternative for employers than bringing in foreign workers. The government should look into the possibility of allowing them to be employed legally. - MEF executive director Shamsuddin Bardan

The current migrant worker recruitment system is expensive for entrepreneurs (estimated 10,000 RM), due to many middlemen and recruitment agencies taking a cut. For employers, legally hiring foreign workers from outside Malaysia can be a long and complicated process, with further costs associated with sponsorship and maintenance. An environment of frequently changing criteria regarding source countries and the sector quota for workers from outside the country further explains entrepreneurs' interest in hiring refugees legally. Already, some employers take the quicker, cheaper – albeit riskier – option of hiring refugees already in the country despite laws against it.⁹⁸

Findings of Survey and Interviews

In Malaysia, four in-depth interviews were conducted with entrepreneurs and an online survey received 24 responses. The four in-depth interviews comprised of the following engagement models:

Engagement model	Description	Sector	Refugee as ...
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⁹⁵ WAKE, C. and CHEUNG, T. (2016) 'Livelihood strategies of Rohingya refugees in Malaysia: 'We want to live in dignity'', Humanitarian Policy Group [online]. Available at <<https://www.refworld.org/pdfid/57922bbb4.pdf>> (Accessed: 26 October 2020).

⁹⁶ DEL CARPIO, X. and OZDEN, C. (2013) 'Internal Report to the Ministry of Human Resources of Malaysia: Immigration in Malaysia Assessment of its Economic Effects, and a Review of the Policy and System In collaboration with the National Institute of Labour Market Information and Analysis (ILMIA)', *World Bank* [online]. Accessible at <<https://www.knomad.org/event/immigration-malaysia-assessment-its-economic-effects-and-review-policy-and-system>> (Accessed: 29 October 2020). See also OZDEN, C., DEL CARPIO, X., and TESTAVERDE, M. (2013) 'South-South Migration: Foreign Workers in Malaysia', *World Bank* [online]. Available at <<https://blogs.worldbank.org/peoplemove/south-south-migration-foreign-workers-malaysia>> (Accessed: 26 October 2020).

⁹⁷ Berita RTM (2017) 'Biz Malaysia- Bual Biz :- Kemelut Pekerja Asing [24 January 2017]' [YouTube]. Available at <<https://youtu.be/vr0vrLX2Xfg>> (Accessed: 26 October 2020). See also AIMAN, A. (2018) 'Educated Syrian refugees doing odd jobs in Malaysia' *Free Malaysia Today* [online]. Available at <<https://www.freemalaysiatoday.com/category/nation/2018/12/04/educated-syrian-refugee-ends-up-doing-odd-jobs-in-malaysia/>> (Accessed: 29 October 2020).

⁹⁸ WAKE, C. and CHEUNG, T. (2016) 'Livelihood strategies of Rohingya refugees in Malaysia, p.12.

Hiring in operations	Hiring refugees in existing company operations.	Service	employees
	Employing refugees in social enterprise	Agriculture	employees
Buying from refugee-owned or inclusive enterprises	Sourcing finished goods from refugee entrepreneurs, refugee-owned enterprises, or other businesses that include refugees, partnership model	Food and beverage	suppliers and producers
Apprenticeships and skills development programs	Providing job training by working alongside a company employee for a fixed period of time	Variety	interns

Through the in-depth interviews, the SME owners highlighted several points towards ensuring successful refugee inclusion in an enterprise:

1. **Initial contact with refugees through refugee projects** coordinated by civil society can lead to more refugee skill-based engagement. Once a good employment relationship is formed, satisfied refugee employees encourage other refugees to join and thus connect the employer to a network of potential employees.
2. **Information on refugee experiences and procedures** can help employers to ensure that refugees can contribute in safe and productive ways to their enterprise.
3. **Communication and people management** good practices were requested by one entrepreneur. Entrepreneurs acting as employers focussed more on people management attempts, discipline, and punctuality, while the partnership model highlighted the need for communication in ensuring passion and learning as well as ensuring adjustments to changing markets (e.g. increase in market prices and customers' needs or desires).
4. **Compensation** is generally oriented on minimum wage or other practices (e.g. for apprenticeships), while partnership engagement follows sharing of revenue (50/50), which tends to fluctuate depending on demand and sales.
5. **Loyalty** is prized. Entrepreneurs found it beneficial for employees to stay for longer periods of time, as training and skill development increases productivity; trust building was mentioned as one benefit as well as the peace of mind that comes when entrepreneurs and employees know each other well. Two of the entrepreneurs sustained contact with former refugee employees or partners even after their resettlement and found satisfaction in having played a supporting role and having enabled learning during a vulnerable time in the refugee's life.
6. **Refugee safety** was advanced by engaging only with refugees with a UNHCR card, being in contact with UNHCR, providing letters of employment to reduce the risk of arrest, and by informing UNHCR if an arrest took place. Work from home and in partnership was seen as a safer model than direct employment, as the latter is more explicitly not allowed under Malaysian law and working from home reduces risk of arrest during the refugees' commute.
7. **Employer risk assessments** were conducted by the entrepreneurs, choosing models of engagement that they perceived to be safer, e.g. partnership model, or less scrutinised, e.g. apprenticeship model, or employment could be safeguarded by established practices, e.g.

entrepreneurs' letters, letters from community-based organisations, or UNHCR intervention. Risks were rationalised either by entrepreneurial spirit or by the desire to give people a chance to overcome a difficult and vulnerable situation.

All entrepreneurs spoken to for this study have only employed refugees with a UNHCR card. Three entrepreneurs explained that they engaged refugees in a collaboration with UNHCR, who in the past facilitated refugee trainings as well as employment counselling.⁹⁹

Two interviewed entrepreneurs described their motivation:

"I wanted to help the poor, train them to get jobs, assimilate and be independent. Be a connector, as a lot of them need a job. By helping them grow also grow my company."¹⁰⁰

"At the root there is an ethical part, refugees are human beings that deserve a chance. They have not asked for the problems they are faced with. So, I stick my head on the line to help them, good people, I help, local marginalized people, refugees, everyone that wants to be empowered. No one wants to rely on handouts. What inspires me is my work in the church, this forms my values."¹⁰¹

Two entrepreneurs met refugees while providing trainings or education to refugee children or adults. One business idea was developed based on an entrepreneur encountering the refugees' cooking skills, highlighting the potential value that can be unlocked through informal, open-minded interactions between Malaysians and refugees.

Ethical or moral motivations help to overcome the initial additional investment of time in recruitment and training and to rationalise eventual risks. One entrepreneur related the decision to hire refugees to his own family history, as his grandparents came to Malaysia decades ago. These experiences with discrimination based on being an ethnic minority in Malaysia, having to work extra hard to prove one's capabilities, was related to the entrepreneur's willingness to give others in a more vulnerable position a chance but also placing high expectations on the refugee to work hard and learn for a better future.

Two entrepreneurs shared that a need for committed labour were reasons for considering refugee employees. One admitted to initially being suspicious: "first thing, hiring someone that is not local, people under UNHCR, not government, influences the likability for employment". "I did not know how to hire refugees, now it is clearer, and my business is growing. I am even willing to hire more, as they are creating impact."¹⁰²

⁹⁹ RAVESLOOT, B. and VALLET, M. (2019), 'Decentralized Evaluation of UNHCR's Livelihoods Programme in Malaysia (2015-2018)' *UNHCR*, p14 [online]. Available at <<https://www.unhcr.org/5edf73974.pdf#zoom=95>> (Accessed: 26 October 2020).

¹⁰⁰ SME-F-032020.

¹⁰¹ SME-M-042020.

¹⁰² SME-M-062020.

Loyalty played a role about the positive perception of refugees as employees: “Refugees stay in the job; we all seek a peace of mind. I provide security and further income up to now, ensure they stay longer. Local Malaysian on average stay 3 months only, work requires people to not easily take off or take leave, these 3D jobs some Malaysians are not willing to do that.”¹⁰³

Refugees attitude, availability, and hard work were key topics in three of the interviews. “*Refugees are pleasant people to work with, they work hard, efficient, disciplined, and are living at the farm even during the weekend*’ (provide passive security). Limitations of some refugees were also acknowledged, as one key factor influencing the experiences of employers.

“I employed seven to eight refugees over three-to-four years and there was no problem. I still have great relationships with two resettled refugees, and we are still in touch. On the other hand, some have language problems, they are not fluent in English, but refugees also have to be aware about attitude. If they don’t try to get the right attitude, once trust is gone than that’s it.”¹⁰⁴

Two entrepreneurs hiring refugees in their operations provided compensation for regular work to minimum wage standards and stated they pay for overtime. The entrepreneur using the apprenticeship approach payed compensation according practices also applied to Malaysians.

Entrepreneurs were prepared to provide support should refugees be arrested, providing letters as proof of employment, calling on UNHCR to intervene should there be an arrest and engaging with authorities for the release of their employees.

“Hiring refugees brings some hassle from the government authorities and immigration, who would come to take them in custody. First, I would call UNHCR to get in contact with immigration and it might take 2-3 days till release. This happens 2 times a year, when there are (national) operations’.”¹⁰⁵

Refugees were perceived by two entrepreneurs as an alternative mainly to hiring foreign workers:

“I want to depend less on foreign workers, as this needs so much navigating, due to required documentation process. Then I need to send them back to their home country after the contract is finished and ensure to get a quota (for new employees). Refugees on the other hand are faithful in their work. I hire and train them, and they work for a long time with me. Compared to foreign workers - refugees possibility of leaving is small, so I’d like to employ more.”

¹⁰³ Ibid.

¹⁰⁴ SME-F-032020.

¹⁰⁵ SME-M-062020.

Three out of four entrepreneurs thought about upscaling or continuing their employment of refugees.

Reflecting on other employers' motivation and willingness to hire refugees, entrepreneurs stated that:

1. **Refugees have unique features, skills, and cultural background that amplify businesses that utilise these cultural skills.** Malaysians look up to people from the Middle East. Refugee women from Palestine, Syria, Iran, and Pakistan are hired to cook for Malaysian companies, bringing relatively well-compensated cooking skills.
2. **Around 90% of entrepreneurs who hire refugees do so to reduce business costs.** For example, where one might pay a Malaysian 80RM, one could pay a refugee 50RM.
3. **Major multinational companies cannot hire refugees irregularly,** as these companies are more visible and therefore are more likely than SMEs are to be caught if they were to hire Malaysians and documented foreign workers.

Entrepreneurs report having managed risks to their refugee employees by providing letters explaining that the refugees work for the SME and by going to police stations when refugee employees face issues. On some occasions, refugees are said to have been able to open a bank account after employers and UNHCR provided letters confirming their employment and refugee status.

One entrepreneur requested that UNHCR organise a training on expectations and best practices for employing refugees, while another expected UNHCR to screen for genuinely interested candidates for each industry.

Another entrepreneur suggested:

“We have to educate companies and help them with the paperwork - draft a contract of internship - this can be done for any company. As companies grow, they need manpower, internships are short, can be extended, there is no minimum wage, it is thought to be for the younger generation, who can produce a lot, are hungry to learn and creative. Some owners of companies MNC (Multinationals) agree under its CSR program to help refugees openly, they don't care, are bold about employing refugees.”¹⁰⁶

Ways to take reduce the risk of employing refugees, absent the granting of work rights, were identified:

1. Apprenticeships or internships
2. Hire their services
3. Not putting them on payroll, but working in partnerships (buying and selling goods made by refugees)

Reflections on why other entrepreneurs do not hire refugees included:

1. Concern about illegality of hiring refugees outside of the special schemes
2. Beliefs that locals are humbler, and therefore preferred

¹⁰⁶ Response to Malaysia SME Survey, May 2020

3. Beliefs that refugees are ‘problem people’
4. Beliefs that refugees (particularly Rohingya) are unskilled and unqualified.¹⁰⁷

The short survey on employers' willingness to hire refugees put two questions to the entrepreneurs.

1. *Should a government ensure that refugees can be legally employed?*

The question explored whether there was general support among SME owners for a legal framework that creates legal employment options for refugees, allowing them to work and be hired. Reasons for the answer could be further elaborated by providing a comment.

2. *If legal, would you consider employing refugees in your business? (multiple answers are welcome)*

The second question to entrepreneurs aimed at exploring whether they would consider hiring refugees if it were legal.

24 entrepreneurs answered, representing 13 employment sectors (see Figure 11).

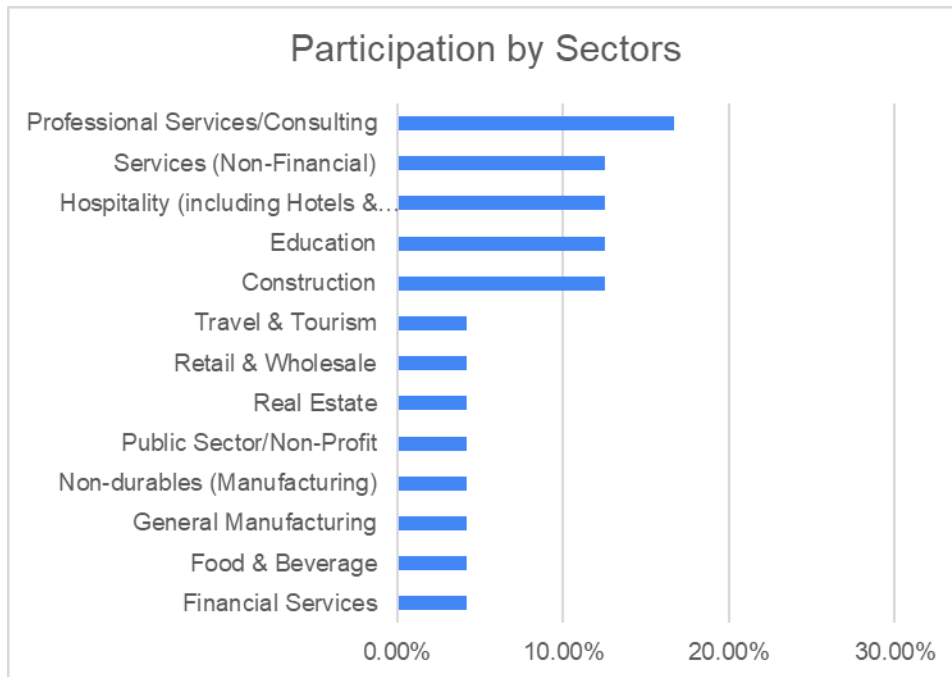


Figure 11: Survey Participation by Sector

¹⁰⁷ Response to Malaysia SME Survey, May 2020

Reducing the answers to a simple yes / no / maybe, 67% of entrepreneurs surveyed would consider employing refugees if it was legal. Another 16% said they might consider employing refugees and only 17% said they would not consider hiring refugees even if this were legal.

Entrepreneurs considering employing refugees if it were legal are highlighted two aspects of refugees:

- a. 50% said they would primarily consider hiring refugees for tasks that not many Malaysians would do. This probably refers jobs with low social status and repetitive, difficult or hard work.
- b. 54% of the entrepreneurs would consider hiring refugees as they bring skills, creativity, new ideas, and connections to the job.

Figure 12 IF LEGAL, WOULD YOU CONSIDER EMPLOYING REFUGEES IN YOUR BUSINESS?

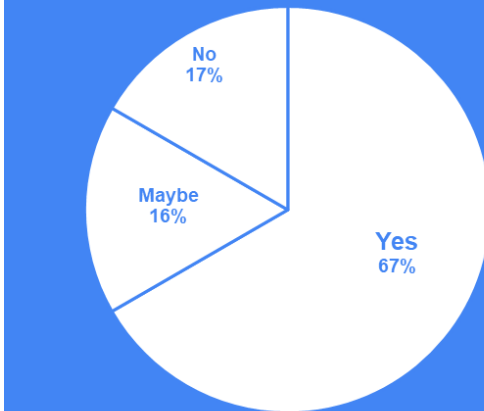
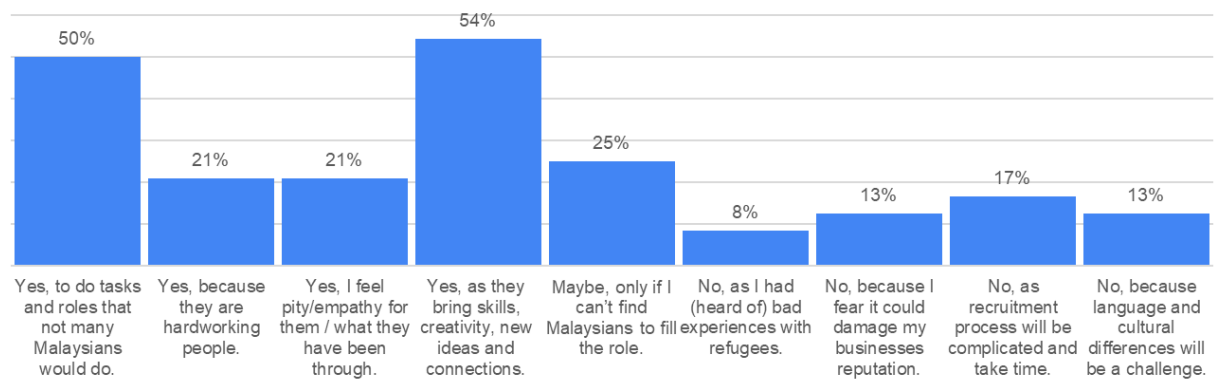


Figure 13

If legal, would you consider employing refugees in your business?

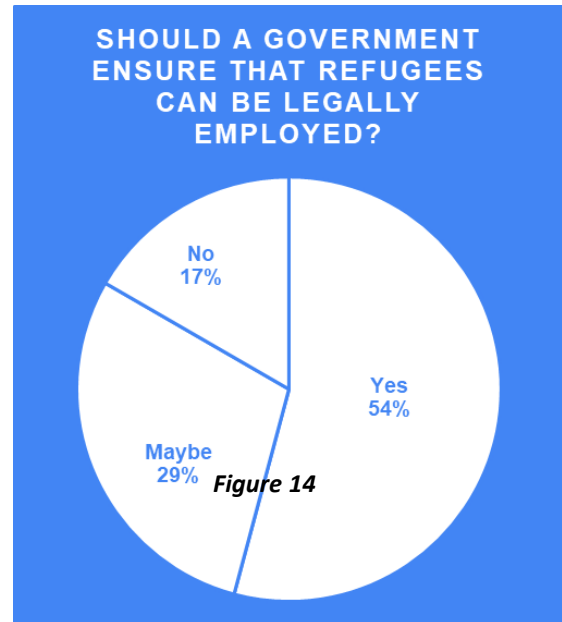


Further, 25% would consider hiring a refugee only if they couldn't find Malaysians to fill the role. One entrepreneur highlighting that while refugees are needed to do jobs Malaysians would not do and that they are hardworking, the process might be too complicated and time consuming, and linguistic and cultural differences might be a challenge.

Entrepreneurs answering 'No' to whether they would consider employing refugees explained that specific procedures and processing need to be undertaken first to ensure that the refugee can gain residency status, including a criminal background assessment, thorough medical tests, and psychological testing and profiling.

54% of entrepreneurs agreed that the government should ensure that refugees can be legally employed. 29% felt that government should consider this option, while 17% of entrepreneurs disagreed with the government taking this step.

Comparing the entrepreneurs' answers of the two questions, six different groups can be identified:



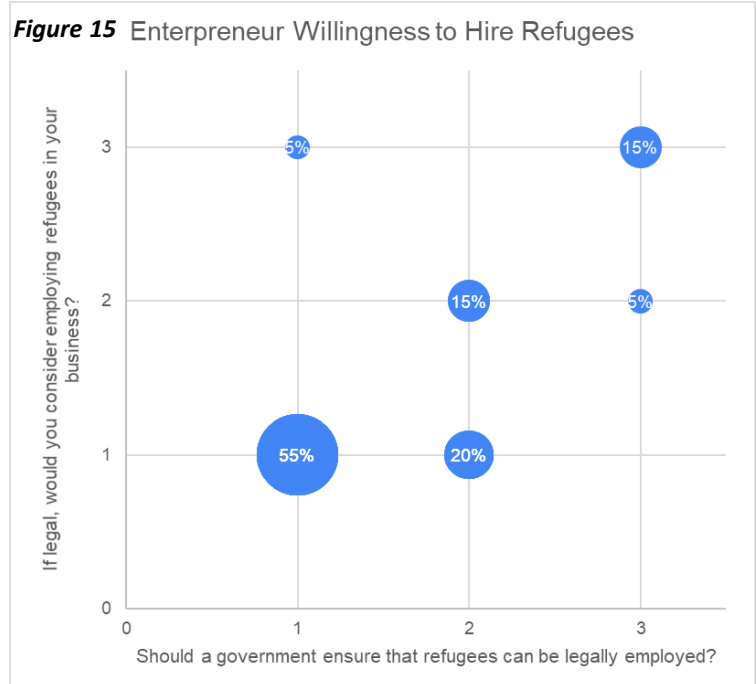
Group One: In favour of the government implementing a refugee employment policy and willing to hire if it does (55%) – Members of this group highlighted that refugees bring skills, creativity, and new ideas and connections. Comments included “Give them a proper income”, “They (*government*) should check suitability and issue documents accordingly”, “If they have legal refugee status, then allow them to self-sustain their life here”. Sectors included: Construction, Services (Non-Financial), Professional Services/Consulting, Education, Hospitality (including Hotels & Restaurants), Professional Services/Consulting, Public Sector/Non-Profit.

Group Two: In favour of the government implementing a refugee employment policy but not considering hiring if it does (5%). Members of this group stated language and cultural differences would be a challenge. Sectors included: Professional Services/Consulting

Group Three: Undecided about the government implementing a refugee employment policy but considering hiring if it does (20%). Members of this group acknowledge that refugees might be needed for tasks and roles that few Malaysians would do and that they potentially bring skills, creativity, new ideas and connections. Considerations included the nationality of the refugee (policy) or signalling that there is a will to “hire based on attitude and required skills just like any other worker, refugee or Malaysian”. Sectors included: Food & Beverage, Professional Services/Consulting, Services (Non-Financial), Financial Services and Education.

Group Four: Undecided about the government implementing a refugee employment policy and undecided about hiring if it does (15%). Members of this group would consider hiring refugees only if they could not find Malaysians to fill the role. One entrepreneur added “Provided they have shown positive behaviour”. Sectors included: Services (Non-Financial) and General Manufacturing

Group Five: Against the government implementing a refugee employment policy but undecided about hiring if it does (5%). Members of this group expressed concerns about Malaysian unemployment due to COVID-19, concerns about Rohingya refugees (“Why do other countries not accept them in the first place?”) and asking to focus on “Malaysian first, aliens second”. They acknowledged that refugees might be needed for tasks and roles that few Malaysians would do and that refugees are hardworking but were concerned that the recruitment process would be complicated and time-consuming, and that language and cultural differences would be a challenge. They suggested legal employment but on contractual terms with yearly renewal. Sector: Real Estate.



Group Six: Against the government implementing a refugee employment policy and unwilling to hire even if it does (15%). Members of this group argued that there would need to be specific procedures and processing to ensure that refugee candidates were able to gain residency status and/or working status with an employer, including criminal background assessment, thorough medical tests, and psychological testing and profiling. As such, they were concerned that a recruitment process would be complicated and time-consuming. The entrepreneurs in this group also mentioned the number of unemployed youth and graduates in Malaysia and foreign workers already in the country. They expressed unwillingness to hire refugees because they were concerned that employing refugees could damage businesses' reputation and they expected that language and cultural differences would be a challenge. Further, they were concerned about the feasibility of hiring refugees given the external compliance and international supplier standards that the companies needed to maintain (Sector: Non-durables Manufacturing). Two entrepreneurs from the construction sector also cited bad experiences with employing refugees as reason for their stances.

On the other hand, entrepreneurs interviewed for this paper expressed great enthusiasm for the prospect of refugees being permitted to work in Malaysia:

"If refugees are granted work rights tomorrow, I wish to be the first they approach for work. My quality as employer will be seen, if they return, as of now they don't have any choice."¹⁰⁸

While the sample is far from representative of entrepreneurs in Malaysia, the expressed opinions from multiple sectors provide insight into entrepreneurs' considerations. The majority of entrepreneurs participating in the survey felt the government should ensure (54%) or consider (29%) legal employment for refugees. 67% expressed willingness to hire refugees for tasks and roles that not many Malaysians would do or expect that refugees' skills, creativity, new ideas, and connections could benefit their businesses.

The 17% of entrepreneurs not in favour of a government policy on employment for refugees were in part concerned that procedures would be too complicated and time-consuming. Resistance also came from concerns about existing and expected unemployment by Malaysian youth due to the COVID-19 pandemic and its economic impact, as well as challenges related to possible linguistic and cultural differences. Further, some were unsure of how hiring refugees would impact their obligations, audits and reviews as part of wider supply chains.

In summary, these finding suggests that a sizable number of Malaysian entrepreneurs would like the government to allow for legal employment of refugees and would then consider hiring refugees.

Past experiments with work rights for refugees and affiliated groups

¹⁰⁸ SME-M-062020

Malaysia has long been host to refugees: Filipinos from Mindanao in the 1970s and early 1980s, Cambodian and Vietnamese in the 1980s and 1990s, Bosnians in the 1990s, and Indonesians from Aceh in the early 2000s. Rohingya first arrived in the late 1980s, closely followed by the Chin and other ethnic groups from Myanmar in the 1990s. Refugees from Middle Eastern countries like Palestine, Syria, Yemen, Iraq started to arrive in the 2000s, and did refugees from Afghanistan, Pakistan, and Iran.

Historically, Malaysia has issued temporary work permits (known as IMM13) under Section 55(1) of the Immigration Act 1959/1963 (Art 155), which gives discretionary power to the Home Affairs Minister to exempt a group of people from being subjected to immigration law.¹⁰⁹

The government has provided large-scale work permits to some selected ‘temporary guests’. The Malaysian government does not use the term refugees in past or present but used the concept of ‘humanitarian exception’, a form of exception¹¹⁰ from the law, and penalties.¹¹¹

Overview of Refugees Granted Work Rights by Malaysia in the past¹¹²

Year	Population	Number granted (estimate)	Location
1972-1984	Moro people, Mindanao, Philippines (HF7 permit)	70,000	Sabah & Labuan, East Malaysia
1990s	Bosnian Muslims	360	Kuala Lumpur and other parts of Malaysia
1992	Rohingya, Myanmar	Attempted (1200), but failed due to corruption, no permit	Across Malaysia
2005	Acehnese people, Indonesia (first arrival 1991)	30,000	Kuala Lumpur and across Malaysia
Since 2016	Syrian	up-to 3,000	Kuala Lumpur and across Malaysia
2017-2019	Rohingya, Myanmar (pilot)	Up-to 300 ¹¹³	Kuala Lumpur and other parts of Malaysia

¹⁰⁹ For a more detailed look at history, see LEGO, J.B.H. (2012) ‘Protecting and Assisting Refugees and Asylum-Seekers in Malaysia’, p75-99.

¹¹⁰ Giorgio Agamben defines the state of exception not as a special kind of law but “a suspension of the juridical order itself” during times of perceived emergency. In the state of exception, one is in “a zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense.” AGAMBEN, G. (1998) ‘Homo Sacer: Sovereign Power and Bare Life’, trans. Heller-Roazen, D (Stanford: Stanford University Press, 1998), 170.

¹¹¹ Alice Nah describes this as “a condition of “(il)legality,” that is, “an uncertain and unresolved socio-legal location in which they are possibly legal—through practices of exception—but remain illegal by default.”, NAH, A. (2007) ‘Struggling with (Il)legality’, p. 37.

¹¹² HOFFSTAEDTER, G. (2016) ‘Is working legally a win-win for refugees in Malaysia?’.

¹¹³ The first part of the three-year pilot in the plantation sector is evaluated by most sources as a failure, due to design without refugee participation and remote work sites with lack of access to infrastructure. Lesson learned being to focus on sectors and locations refugees already are working in. See YASMIN, P.N.A. (2019) ‘Opportunities For Refugee Access To Work In Malaysia’, *ISIS Malaysia* [online]. Accessible at

Trends in the Humanitarian Exception

Malaysia has long tended to display greater tolerance for Muslim refugees compared to those of other beliefs. This exception from the immigration regime is never explicitly declared to be based on concern for Muslims, rather it is based on humanitarianism. Nonetheless, the concern for Muslim refugees is also tempered by other considerations deemed important by the Malaysian government, such as bilateral relations (as in the case of the Thai Muslims and Acehnese refugees). While a humanitarian approach is helpful, the cause of protecting and assisting refugees has to be premised on their rights guaranteed in international law if it is to be meaningful and just.¹¹⁴

Implications

Presently, the only formal mechanism by which a legal status may be afforded to refugees or asylum seekers is via the issuance of temporary residence permits (“IMM13 Permits”). These 12-month permits are granted via section 55 of the Immigration Act, whereby the Ministry of Home Affairs may exercise its discretion to exempt any person or class of persons from the provisions (i.e., restrictions) of immigration legislation. However, this is used very rarely, and legal specialists have pointed out constraints of such executive’s discretion and the confusion it causes among public actors due to absence of clearer provisions in law.¹¹⁵

Two more recent examples on the use of executive discretion for refugees on humanitarian grounds are introduced below. In the absence of any documented formal evaluation of their success, statements below provide a limited view on the implementation and issues encountered.

Temporary Relocation Programme for Syrian Migrants (PPSMS)¹¹⁶

PPSMS is a commitment made by the Government of Malaysia in the United Nations General Assembly in October 2015 to host 3,000 Syrian migrants in Malaysia. The programme aims to provide Syrians with a legal permit to reside in Malaysia as well as safe places to live, with the support of an NGO coalition.

To be covered under the scheme for a permission to work, one must have a letter of endorsement from an employer. Individuals in the scheme are issued Social Visit Passes by the Immigration Department pursuant to Regulation 11(1)(i).¹¹⁷ These provide legal temporary stay and are accompanied by certain rights to access educational and health. To enable work rights, the holder of a Social Visit Pass must apply to have the pass transferred to a Temporary Employment Visit Pass (Regulation 11(1)(ii)).

<<https://www.isis.org.my/2019/08/01/opportunities-for-refugee-access-to-work-in-malaysia/>> (Accessed: 26 October 2020).

¹¹⁴ LEGO, J.B.H. (2012) ‘Protecting and Assisting Refugees and Asylum-Seekers in Malaysia’, p77.

¹¹⁵ BALASUBRAMANIAM, R. T. (2017) ‘Refugee Protection in Malaysia and the Rule of Law’ *Refugee Research Online* [online]. Available at <<http://refugeeresearchonline.org/protection-in-malaysia-and-the-rule-of-law/>> (Accessed: 29 October 2020).

¹¹⁶ Malaysian Humanitarian Aid & Relief (2017) *Temporary Relocation Programme for Syrian Migrants* [online]. Available at <<https://www.ppsms.my/>> (Accessed: 29 October 2020).

¹¹⁷ At the time of this research, plans for a survey with Syrians in the programme were underway, to explore intentions and current issues with the application of IMM13. (OF-My-20032020)

Initially, around 36 Syrian families who were residing in Jordan and Lebanon came to Malaysia under the programme. After three months in Malaysia, they did not receive the documents, even though they were required in order to work legally. In the fifth month, some received the documents, but without the stamp for work permission on it, as they needed to get a letter from the employer first. Without this stamp, they could not work – NGOs had to write a letter to the Home Affairs Ministry to realise permission to work. After some of the initial arrivals returned to Lebanon, the government stopped taking Syrians from Lebanon and instead tried to absorb Syrian refugees who were already in Malaysia. Syrians and Palestinians were granted access to IMM13 temporary residency documents from the government.

Authorities on the ground tend to be unfamiliar with IMM13; the UNHCR card is said to be better known. As a result, some Syrians under the program were even arrested by immigration. One person interviewed felt that the relocation programme was implemented with insufficient regulation and communication to ministries and employers. Given all these challenges in implementing the program some highly qualified Syrians have since regularized their stay through mainstream work visa arrangements, while the majority still find it difficult to gain access to legal employment based on the humanitarian exception.¹¹⁸

Rohingya Work Pilot

In late 2016, UNHCR and the Malaysian government announced a pilot scheme to provide work rights to 300 Rohingya refugees in Malaysia. The pilot, which has seen limited uptake, has provided insights on what works and what does not. Refugees were sponsored by one of two employers, Sime Darby Plantation Berhad in the plantation sector (around 40-50 were employed) and Gardenia Bakeries in the manufacturing sector.¹¹⁹ Four years since the announcement of the pilot, less than half of the places have been taken: around 40-50 were employed by the former and under 100 were employed by the latter.

For both, Temporary Employment Visit Passes pursuant to Regulation 11(1)(ii) were issued. Prior to issuance of the passes, these individuals – all of whom were registered with UNHCR – underwent security and medical checks and were entered into a database. They were issued i-Kads (biometric identity cards issued to foreign nationals) at the time their Temporary Employment Visit Passes was issued. The pass provides those in the scheme with the right to temporary stay in Malaysia as well as the right to work – provided that they continue to be employed by their listed employer.

The plantation part of the pilot encountered many obstacles, as the existing labour migrant model that was used was a poor fit for stateless Rohingya seeking employment. Other issues included distance from the community and social networks and there were protection issues. The pilot was ended early.

¹¹⁸ Information on PPSMS implementation was compiled based on interviews with academics and humanitarian workers in close contact with the Syrian community as well as information available on the PPSMS website.

¹¹⁹ Unilever also expressed openness to hiring refugees as part of the pilot, but the government and UNHCR were slow in following through on the offer. (IF-My-07042020, AM-My-12032020b)

The second part of the pilot, in Gardenia Bakery, was said to have been implemented well. However, the many steps before the Rohingya could be employed slowed the hiring process down such that only a limited number of people could be absorbed in the allotted time.

Lessons Learnt

As the Rohingya work pilots and PPSMS experiences show, even when there appears to be political will at the highest levels, realities on the ground can pose problems to humanitarian exceptions based on executive discretion. For a work rights scheme to be effective,

1. Refugees need to be consulted in the design, especially if the rights granted are limited to specific industries, as their willingness to perform the jobs needs to be accounted for;
2. Clear regulation and communication between authorities is essential – for an identity card to offer protection effectively, the local authorities must be familiar with the cards and the protection that they provide. Failing to do so creates risks for cardholders and wastes police resources;
3. The private sector needs to be made aware of the legality of employment as well as the use of existing documentation including UNHCR cards and work permits for other foreigners, The design of the programme needs to account for refugees' inability to return to their home country, the likely absence of a valid passport, and, in most cases, the inability to approach their embassy.

Local Initiatives

In addition to countrywide schemes, local governments and municipalities have implemented different practices for their territories in regard to refugees' informal employment, ranging from prohibition and actively enforcing Malaysian-only employment in some markets, versus the continuation of practices of humanitarian exception motivated by business or entrepreneurs' interests in continuing to informally employ refugees in their respective area.¹²⁰ The different approaches to refugee informal employment in these local areas indicate that while executive and legislative at national level have yet to provide clearer guidance, on a local scale refugees' presence and employment are contributing to local businesses, economic development, relations between refugee and host community. Here they are discussed as a reality on the ground, responses being localised, temporary and ad hoc – are limited to authorities choosing to make refugee presence an issue for enforcement action or treat it with a mix of humanitarian and pragmatic approach. Nonetheless, this patchwork approach heightens the risk of exploitation and uncertainty for refugees and their employers.

Legal framework

Many of Malaysia's international obligations and commitments already cover aspects relevant to refugee work rights, outlined in the table below.

¹²⁰ Discussion with APRRN members on 3 August 2020.

Malaysia's International and Regional Commitments	Relevant details
CEDAW	Art 11(a) defines the right to work 'as an inalienable right of all human beings'
ASEAN Human Rights Declaration ¹²¹	Art 27(1): Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.
Bali Declaration	“... welcome efforts and initiatives by member states to expand safe, legal and affordable migration pathways and reduce migrant exploitation, including by regulating and legalising labour migration flows, ensuring transparent and fair recruitment processes and exploring viable temporary migration schemes.” ¹²²
Bangkok Principles ¹²³	Art. IV - Minimum standards of treatment: 1. A State shall accord to refugees treatment no less favourable than that generally accorded to aliens in similar circumstances, ... 3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.
1990 Cairo Declaration on Human Rights in Islam ¹²⁴	ARTICLE 12: Every man shall have the right, ..., to free movement and to select his place of residence and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained.
ILO fundamental conventions	C029 - Forced Labour Convention, C098 - Right to Organise and Collective Bargaining C100 - Equal Remuneration Convention, C138 - Minimum Age Convention, C182 - Worst Forms of Child Labour Convention
ASEAN Convention Against Trafficking in Persons	Art 11 (1b): protect victims of trafficking in persons ... from revictimization. Art 12 (e): enabling the legal entry into, exit from and stay in territory.

¹²¹ Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 November 2012, para. 16

¹²² Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (2016) 'Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime', 11. Available at <[https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20\(1\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20(1).pdf)> (Accessed: 26 October 2020).

¹²³ Asian-African Legal Consultative Organization which adopted the 1966 Bangkok Principles on Status and Treatment of Refugees in 2001. These principles recognize that states owe a duty to protect refugees against forced return. Asian-African Legal Consultative Organization (2001) "*Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees*" as adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi. Available at <[http://www.aalco.int/Final text of Bangkok Principles.pdf](http://www.aalco.int/Final%20text%20of%20Bangkok%20Principles.pdf)> (Accessed: 26 October 2020).

¹²⁴ Organization of the Islamic Conference (1990) *Cairo Declaration on Human Rights in Islam*. Available at <<https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf>> (Accessed: 26 October 2020).

In 2019, Asylum Access evaluated the current situation for refugee work rights in Malaysia as: Malaysia does not have a legislative or administrative framework to identify and protect asylum seekers and refugees, so both categories are legally classified as “illegal migrants” and have no rights to formal employment in the country. The government has implemented several work permit schemes for small, select groups of refugees, but so far, its policies have been *ad hoc*. In limited cases, refugees have found some access to justice for employment violations in Malaysian courts.¹²⁵

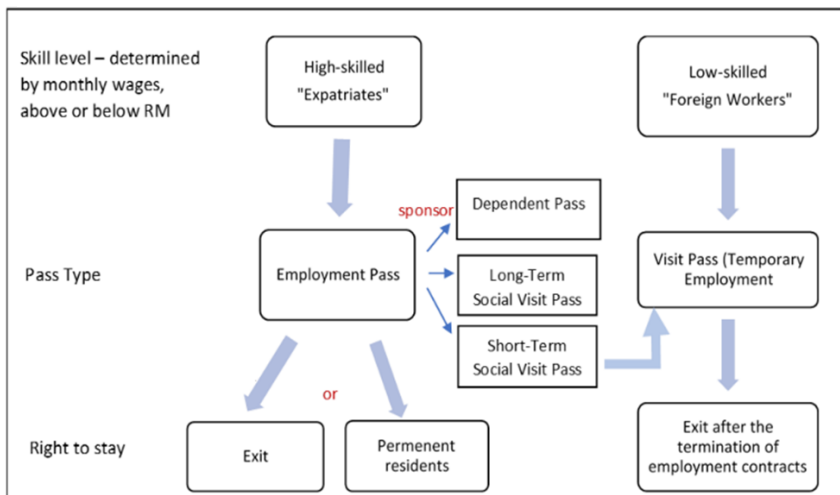
The Acts of Parliament that cover the right to work of non-citizens are the Federal Constitution, the Employment (Restriction) Act 1968, and the Immigration Act 1959/63. The right to fair labour practices, which applies to both citizens and non-citizens, is set out in the Employment Act 1955 and the Industrial Relations Act 1967.¹²⁶

Who is generally permitted to take up employment?

Malaysia has a dual work permit system in place (see Figure 16) to admit and manage foreign labour to respond to labour market needs. It distinguishes foreign labour by skill level: Employment Pass for the high-skilled (classified as “expatriates”)¹²⁷ and Visit Pass (Temporary Employment) for the low-skilled (“foreign workers”).¹²⁸

Other skilled foreigners have the option of obtaining a Professional Visit Pass. While it does not permit holders to take up employment, it allows skilled foreigners to provide services (including training) on behalf of an overseas company on a short-term basis, for up to 12 months.¹²⁹

Figure 16: Malaysia’s Skill based Immigration System



Skill-based immigration system in Malaysia (Source: Worldbank 2019, based on Immigration Department of Malaysia)

¹²⁵ Asylum Access (2019) *Refugee Work Rights Report: Refugee access to fair and lawful work in Asia*, p11 [online]. Available at <https://asylumaccess.org/wp-content/uploads/2019/11/Asia-RWR_FINAL.pdf> (Accessed: 26 October 2020).

¹²⁶ Equal Rights Trust (2016) *Confined Spaces: Legal Protections for Rohingya in Bangladesh, Malaysia and Thailand*, p147 [online]. Available at <<https://www.equalrightstrust.org/resources/confined-spaces-legal-protections-rohingya-bangladesh-malaysia-and-thailand-0>> (Accessed: 29 October 2020).

¹²⁷ Immigration Department of Home Affairs, *Expatriate* [online]. Available at <<https://www.imi.gov.my/portal2017/index.php/en/main-services/ekspatriat.html?id=222>> (Accessed: 26 October 2020).

¹²⁸ Immigration Department of Home Affairs, *Foreign Worker* [online]. Available at <<https://www.imi.gov.my/portal2017/index.php/en/foreign-worker.html>> (Accessed: 26 October 2020).

¹²⁹ Immigration Department of Home Affairs, *Professional Visit Pass* [online]. Available at <<https://esd.imi.gov.my/portal/expatriates/myxpats/key-services/professional-visit-pass/>> (Accessed: 26 October 2020).

Regularising Refugees' Stay in Malaysia

Section 55 of the Immigration Act 1959/1963 provides the basis for exemptions¹³⁰ or the issuance of a Visit Pass and could therefore regularise the presence of refugees in Malaysia.

In 2011, for example, the Minister of Home Affairs issued an order under Section 55 to exempt asylum-seekers transferred from Australia to Malaysia because of an arrangement with Australia. The deal was signed but ultimately was not implemented after it was challenged in Australian court.¹³¹

Immigration Regulations could allow a Visit Pass (including IMM13): "(1) A Visit Pass may be issued by the Controller to any person other than a prohibited immigrant who satisfies the Controller that he wishes to enter the Federation ... (ii) for temporary employment".¹³²

How the government could allow for refugees to be employed:

- A) The government could use its discretionary powers to not consider refugees as "prohibited immigrants" in the context of the Immigration Act and allow for an Employment Pass to be issued.¹³³
- B) The government could use an Exemption Order to lift prohibitions for refugees to be employed, using the powers granted in the Employment (Restriction) Act 1968: the government "*may by order exempt any person or class of persons from any or all of the provisions of this Act*".¹³⁴
- C) Regulation 8 of the Immigration Regulations 1963 provides that an Employment Pass or a Work Pass can be issued at the discretion of the Controller to entitle a person to enter and remain temporarily within the Federation of Malaysia.
- D) In the medium- or long-term, the government could pass, amend, or reinterpret legislation relating to immigration and employment to regulate on status and permission to work for refugees more clearly.

¹³⁰ Malaysia, *Immigration Act 1959-1963*, s55. Available at <<https://www.lawyerment.com/library/legislation/acts/1959/155/cite/?s=55>> (Accessed: 26 October 2020).

¹³¹ Australian Human Rights Commission (2011) *Inquiry into Australia's agreement with Malaysia in relation to asylum seekers* [online]. Available at <<https://humanrights.gov.au/our-work/legal/inquiry-australias-agreement-malaysia-relation-asylum-seekers>> (Accessed: 26 October 2020).

¹³² Regulation 11 as mentioned in Borneo ASEAN Reports (2014), *IMM13 permits are illegal, says SLA* [online]. Available at <<https://borneoaseanreports.wordpress.com/2014/12/12/imm13-permits-are-illegal-says-sla/>> (Accessed: 26 October 2020).

¹³³ Malaysia, *Immigration Regulations 1963*, Regulation 9(1).

¹³⁴ See Section 19(1 (f) & 2) of Malaysia (1968) *Employment (Restriction) Act*, s19(1(f)), s19(2). Available at <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48060/130404/F1765196324/MYS48060%20Eng%202017.pdf>> (Accessed: 26 October 2020).

Employment Conditions

The 1995 Employment Act¹³⁵ provides minimum terms and conditions of services for all workers in West Malaysia and the Federal Territory of Labuan, irrespective of whether the person is a Malaysian citizen or a foreign worker. Section 60L of the Employment Act further supports the notion of equality between foreign and Malaysian workers, by providing all workers with the right to complain about discrimination.

“Normally, I work 12 hours a day like everyone else. The factory where I work makes bread. I work in loading shipments. I have to send [my parents and siblings in Bangladesh] money to survive and I also have to survive myself. I can’t save extra money like that. My income is not enough.” - Rohingya Refugee, 2019

The 1967 Industrial Relations Act provides ways for the settlement of trade disputes between employees and employers.¹³⁶ It contains provisions that protect the rights of workers from unjust dismissal and protects their rights to join trade unions and for collective bargaining. The Act applies to all workers and all migrant workers; and has been interpreted to provide that both documented and undocumented workers have a right to pursue any infringement of their rights through the Industrial Court. Regulations on Anti-Human Trafficking and Anti-Smuggling of Migrants (ATIPSOM) mechanisms and access to civil courts are also applicable to refugees working in Malaysia.¹³⁷

Implications of Right to Work

Micro-Economic Expectations:

Granting refugees the legal right to work could raise incomes and increase productivity, by enabling:

1. **Better job matching.** With access to more job opportunities, refugees could find work that better matches their skills, thereby increasing their productivity.
2. **Better job mobility.** Access to a wider pool of employment opportunities can improve productivity over time.
3. **Reduced mental stress.** Living with the anxiety of working illegally and under the threat of exploitation and detention is likely to reduce the productivity of working refugees.
4. **Incentives to invest in human capital.** With a more certain legal status, employers and refugees themselves would have a greater incentive to invest in their skills and education, which in turn would enable the refugees to be more productive.¹³⁸

Macro-Economic Expectations

¹³⁵ Malaysia (1995), *Employment Act*. Available at <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127612.pdf> (Accessed: 26 October 2020).

¹³⁶ Malaysia (1967), *Industrial Relations Act*. Available at <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf>> (Accessed: 26 October 2020).

¹³⁷ NGOs providing legal aid and representation for refugees include Asylum Access Malaysia, Shan Refugee Organization, and the Migrant and Refugee Clinic of the Bar Council Legal Aid Centre. Yayasan Kemanusiaan Muslim Aid Malaysia assists refugees in developing microenterprises.

¹³⁸ TODD, L., AMIRULLAH, A., and SHIN, W.Y. (2019) ‘The Economic Impact of Granting Refugees in Malaysia the Right to Work’, p14.

IDEAS predicts granting refugees access to legal work will lead to higher participation of refugees in the labour market, which to date is far below the national average due to refugees' exclusion from more-visible and formal work opportunities, threats of arrest and detention, and employers' risk of fines. IDEAS predicts that more refugees working, with higher productivity (see factors above) and able to bargain for better pay, would increase income and spending.¹³⁹

Increasing refugee incomes would enable them to purchase more and higher quality goods and services. This increase in consumer spending would impact positively on the wider economy, stimulating demand for goods and services produced in Malaysia, leading to higher profits and incomes for companies and individuals producing these goods and services. IDEAS projects that allowing refugees to work legally would contribute over RM 3 billion to the annual GDP by 2024, with a potential to creating 4,000 jobs for Malaysians. Further, legalising refugees' employment would enable and require them to pay taxes. IDEAS is predicting refugees annually tax contribution could reach RM 50 million by 2024. At present, their income in the informal sector is not taxed.

IDEAS CEO, Ali Salman, added, "We have shown that refugees can make an important contribution to Malaysia's economy ... However, beyond the economic benefits, legal work rights could help eliminate forced labour and debt bondage, which disproportionately affect the refugee community. This can improve Malaysia's Trafficking in Persons Report (TIP) record, which remains a Tier 2 country on the US state department's watch list in 2019."¹⁴⁰

Recent Efforts to Realise Refugee Work Rights

Malaysia's national commitment to refugee work rights has fluctuated since 2018, when the Pakatan Harapan coalition came into power with a manifesto that promised to ensure refugees' right to work.

PAKATAN HARAPAN MANIFESTO PROMISE 35: RAISING THE DIGNITY OF WORKERS AND CREATING MORE QUALITY JOBS

"Recognizing that Malaysia is hosting more than 150,000 refugees, including Rohingyas and Syrians, the Pakatan Harapan Government will **legitimize their status by providing them with UNHCR cards and ensuring their legal right to work**. Their labour rights will be **at par with locals** and this initiative will reduce the country's need for foreign workers and lower the risk of refugees from becoming involved in criminal activities and underground economies. Providing them with jobs will help refugees to build new lives and without subjecting them to oppression."

In October 2018, the Special Committee on Foreign Worker Management started nationwide consultations and compiled a report and recommendations, aiming to find solutions to issues raised by industry, civil society and other stakeholders on the shortcomings in the policies and procedures relating to employment of foreign workers, including refugees. The findings were presented to the cabinet on 22

¹³⁹ Ibid, p15.

¹⁴⁰ Institute for Democracy and Economic Affairs (2019) *Businesses call on Government to grant refugees the right to work in Malaysia* [online]. Available at <<https://www.ideas.org.my/businesses-call-on-government-to-grant-refugees-the-right-to-work-in-malaysia/>> (Accessed: 26 October 2020).

May 2019 and handed to the government. However, thus far the report is still embargoed by the government and no further actions have been taken.

In March 2019, the Migrant Workers Right to Redress Coalition recommended providing stay permits and work rights to refugees.¹⁴¹ Then, on 24 October 2019, APRRN, the ASEAN Parliamentarians for Human Rights and the Office of the Speaker of the House of Representatives co-hosted a parliamentary briefing that led to the creation of an All-Party Parliamentary Group (APPG) on refugees, which remains active at the time of writing of this report.¹⁴²

While much reflection and work done in the past has the potential to inform and guide ways towards a more appropriate framework allowing and regulating the refugee presence and livelihoods in Malaysia, trust building and discussions towards constructive solutions continue.

A recent article by one of Malaysia's leading think tanks assesses that "the disruption caused by COVID-19 to the lives of refugees and asylum seekers in Malaysia is not just due to the pandemic, but the result of decades' worth of systemic policy gaps, neglect and mismanagement, now being laid bare". These failures further complicate constructive policy responses available to Malaysia.¹⁴³ Any meaningful progress in policy will depend on if the existing trust deficit among multiple stakeholders – the

¹⁴¹ Migrant Workers Right to Redress Coalition (2019) *Towards a Comprehensive National Policy on Labour Migration for Malaysia* [online]. Available at <<https://www.partisosialis.org/wp-content/uploads/2019/01/Towards-A-Comprehensive-National-Policy-on-Labour-Migration-for-Malaysia.pdf>> (Accessed: 26 October 2020).

¹⁴² APRRN and AHR (2019) *Parliamentary Briefing on Legal Framework for Refugees in Malaysia* [online] Available at <<http://aprrn.info/wp-content/uploads/2020/02/24-Oct-19-APRRN-AHR-Refugee-Briefing-Report.pdf>> (Accessed: 26 October 2020). The last activities of the APPG on Refugee Policy include participation in a briefing by the National Security Council and Prime Minister's Advisor, Tan Sri Dr. Jemilah Mahmood beginning of August and a refugee community consultation in Parliament on 17 August, issues discussed included documentation, education, health, work rights and strengthening relations with host communities, accessed at: Geutanyoe Foundation (2020) "Honoured to support the All Party Parliamentary Group Malaysia (APPGM) on Refugee Policy, in our role as the APPGM Secretariat, in last week's briefing by the National Security Council and Prime Minister's Advisor, Tan Sri Dr. Jemilah Mahmood @jem313. Good attendance from MPs from many parties on a highly relevant issue, and constructive discussion. @ Parlimen Malaysia" [Facebook]. Available at <<https://web.facebook.com/yayasangeutanyoe/posts/1513052772235620>> (Accessed: 26 October 2020) and Geutanyoe Foundation (2020) "Last night the Chair of the All Party Parliamentary Group on Refugee Policy, YB Chan Ming Kai (Alor Setar), invited a group of over 25 refugees from 17 communities to a consultation in Parliament. The meeting was opened by the Chair and welcome remarks and reflections were given by Guest of Honour, Cikgu Azmi, President of MAPIM. Issues discussed included documentation, education, health, work rights and strengthening relations with host communities. Thank you YB Chan, Cikgu Azmi, YB Ustaz Tarmizi Sulaiman (Sik), YB Natrah Ismail (Sekijang), and huge appreciation to all who participated and worked so hard to make the consultation a success. We are honoured to support the All Party Parliamentary Group on Refugee Policy in our role as Secretariat." [Facebook] Available at <<https://web.facebook.com/yayasangeutanyoe/posts/1518850604989170>> (Accessed: 26 October 2020).

¹⁴³ DANIEL, T. and YASMIN, P.N.A. (2020) 'The Impact of COVID-19 on Refugees and Asylum Seekers in Malaysia', *ISIS Malaysia* [online]. Available at <<https://blogs.lse.ac.uk/seac/2020/10/08/the-impact-of-covid-19-on-refugees-and-asylum-seekers-in-malaysia/>> (Accessed: 26 October 2020).

government, international organisations, NGOs, the private sector and refugee associations can be overcome. Over the years, government ministries, departments, international organisations, and NGOs have worked in silos. A Malaysian version of the ‘whole of society approach’, possibly translated into ‘*gotong royong*’, towards a realistic, solution-focussed policy framework that addresses protection and security concerns, can improve the current conditions. The Institute for Strategic and International Studies observed, “NGOs and international organisations have been reluctant to share their more comprehensive databases with government agencies given the government’s hard-line position on refugees. The government, on the other hand, is more concerned with Malaysia being ‘flooded’ by more refugees and asylum seekers, and potentially dangerous individuals who could be living off the grid, indirectly facilitated by the aid provided by these NGOs and international organisations”.¹⁴⁴

According to a source, many Malaysian government officials recognise the benefits that registration and regularisation of stay and work would bring in regard to people inside the country, even from a security perspective.¹⁴⁵

Conclusion

Malaysia has hosted refugees for decades. It recently acknowledged that, for the majority of refugees, the possibilities of either resettlement or safe return to Myanmar are remote. The government recognises that large parts of its economy still require a work force from outside the country. A recovery from the economic slowdown due to COVID-19, even after considering newly unemployed Malaysians, will need an additional workforce. Refugees in Malaysia are healthy, able members of the community, many have been in Malaysia for years or decades working informally. Refugees have come to Malaysia to seek international protection from persecution in their home countries, meaning they did not leave because they were unable to find work back home. Refugees bring and gained skills that many of them could, if permitted, use during their stay in Malaysia. While education levels and skills vary between communities and individuals, many of the 126,350 refugees of productive age would embrace the opportunity to regularise their stay and use their potential and skills to provide for their families and contribute community and development.

Regularising refugees’ stay and providing formal permission to work would enable refugees to move from invisibility and the informal labour markets to tax-paying jobs, contributing to the revival of economic activity. Entrepreneurs and business associations have publicly stated their support for refugee work rights, and individual entrepreneurs engaged for this paper expressed overwhelmingly a general willingness to hire refugees and support for a government policy granting refugees access to legal employment. Not only is this the right thing to do under humanitarian considerations, but also it is good for businesses, increases economic activities and strengthening social cohesion and security. All that is needed is the will to take policy forward in an inclusive whole-of-society approach or *gotong royong* that rebuilds trust between stakeholders coming together to realise solutions.

¹⁴⁴ Ibid.

¹⁴⁵ OF-My-16032020 and AMF-My-18032020.

Government actors implicitly acknowledge that the Immigration Act fails to provide sufficient clarity and guidance on the management and treatment of refugees, as evidenced by the practices of humanitarian exceptions via executive discretion, IMM13, or officials exercising discretion not to arrest refugees. The absence of an appropriate policy or law capturing the reality of the presence of refugees is felt not only by refugees themselves but also by public officials with the mandate to implement laws and policies.¹⁴⁶

Refugees are already living inside the country and communities and have been a part of the socio-economic reality in Malaysia for decades. Humanitarian exceptions for selected groups of refugees like under PPSMS, if expanded to refugees more generally, could end the illegalisation of refugee's presence by acknowledging the particular situation in which they find themselves. Granting employers permission to hire refugees could cover labour shortages and help revive economic activity generally, while at the same time provide refugees with the means to survival and opportunities to use their talents and skills while in Malaysia. This would safeguard against abuse and exploitation of refugees. It would benefit citizens, entrepreneurs, landlords, and public officials, providing the guidance and clarity needed when engaging with refugees in daily life. A clear, sensible framework, be it in policy or legislation, supported by improved coordination and communication, could provide the guidance needed towards ensuring social cohesion and lead to more confidence in governance.

Recommendations

To the Government of Malaysia

Acknowledging the reality of refugees' presence in Malaysia, as persons deserving protection from serious human rights violations unable to return to their countries, who's registration and identification is in the national interest and who depend on their creativity, skills and labour to ensure survival while in Malaysia.

Acknowledging Malaysian citizens, neighbours, landlords, employers, businesses, and public officials need for legal certainty and guidance when engaging with refugees in their daily lives and the efforts by multiple stakeholders towards constructive solutions branches of government, international organisations, NGOs, the private sector and refugee associations.

Initiate and sustain a consultative inclusive process towards engagement and trust building between representatives discussing security, economic, social and humanitarian perspectives involving at a minimum representatives from ministries, parliament, judiciary, local municipalities, international organisations, NGOs, the private sector and refugee associations towards the clear aim of realising refugee registration and the provision of stay and work permits. This constructive inclusive process could be held under the Chatham House rule, working in the spirit of the whole-of-society approach or gotong royong, identifying and realising constructive, practical policy and legislative solutions towards the aim.

To Entrepreneurs and Business and Employers' Associations

¹⁴⁶ BALASUBRAMANIAM, R. T. (2017) 'Refugee Protection in Malaysia and the Rule of Law'.

Initiate and sustain engagement with local municipalities, international organisations, NGOs, and refugee associations to ensure refugees are employed under safe and decent conditions and share lessons learned and guidance on how to develop and sustain ethical and constructive employer-refugee employee relationships.

To Refugees and Refugee Community Organisations

Informed, ethical, and accountable refugee leadership will be key in any scenario realising documentation, work permits, and ensuring decent employment. Trust-building between refugee communities and host communities, as well as between refugee groups and other stakeholders like NGOs, international organisations, UNHCR, and Malaysian authorities, requires a committed and informed refugee leadership that can initiate and sustain data collection on refugees skills, livelihoods, capacities, and barriers to more sustainable livelihoods. Engage and share good practices on skill development and empowerment beyond ethnic groups and contribute to constructive relationship-building with entrepreneurs and officials. Seek to represent your entire communities' perspectives during discussions on policy.

To UNHCR

As the lead agency on refugee protection, UNHCR is uniquely placed to initiate and sustain collaboration between refugees, NGOs, the private sector, government, and other international organisations in Malaysia. Given its access to global best practices and experiences around the world, UNHCR should strengthen collaborations and partnerships with refugee community organisations and NGOs, build on accountability and trust, build capacities and support (leading) assessments on economic activity, livelihood gaps and employment readiness of refugees. UNHCR should strive to establish a long-term safety net for refugees providing assistance for vulnerable refugees and asylum seekers. It should further ensure resourcing and coordination of efforts towards employment readiness via basic language trainings (Malay/English), literacy, financial education, and awareness of cultural norms.

As a member of the UN family, its access to the Malaysian government, potential employers, NGOs, and refugee associations, UNHCR is unique positioned to consolidate and share information on developments, opportunities and facilitate processes towards a shared strategic direction, including towards support for refugees and the establishment of a robust, rights-based legal framework for refugees.

As a gatekeeper on access to refugee status, UNHCR should ensure that persons in need of international protection have access to UNHCR procedures and timely RSD, as this increases protection and access to (informal) employment. Further, it ensures that the UNHCR database accurately reflects the number and composition of refugees in Malaysia.

Thailand

Overview

Thailand is internationally known to be a friendly host to foreigners. In 2019, over 39 million tourists visited Thailand.¹⁴⁷ Other foreigners choose to live and work in Thailand, bringing skills, investment, and spending beyond short-term visits. In 2019, IOM estimated that there were 4.7 million to 5.1 million non-Thai residents in Thailand, with migrant workers comprising over 10% of Thailand's total labour force.¹⁴⁸ Thailand's development from a low-income into an upper-income country has been accompanied by significant domestic labour shortages for low-skilled manual labour in sectors like agriculture, manufacturing, food processing, fisheries, construction, domestic work, and, increasingly, in hospitality and services. With Thailand's aging population, these labour shortages are expected to continue.¹⁴⁹

At under 100,000 persons, refugees and asylum seekers in Thailand comprise just 2% of non-Thai residents in Thailand.¹⁵⁰ Because Thailand has yet to accede to the 1951 Refugee Convention and Thai domestic law does not systematically deal with refugees, refugees and asylum seekers are excluded from regular pathways to secure legal status. As such, they are barred from legal means to secure their survival via work, face the constant threat of arrest, detention, and deportation, and face barriers to accessing justice.

Quick Facts: Kingdom of Thailand

Population ¹⁵¹	69 million
Ethnicity ¹⁵²	Thai (97.5%), Burmese (1.3%) Other (1.1%) Unspecified (<0.1%)
Thai Workers ¹⁵³	37.6 million
Migrant Workers ¹⁵⁴	3.9 million documented; estimated 1 million undocumented
Refugees ¹⁵⁵	Approximately 97,000 (91,777 people in border camps; around 5,000 urban refugees)

¹⁴⁷ WORRACHADDEJCHAI, D. (2019) 'Tourist Arrivals Hit Record of 39M', *Bangkok Post* [online]. Available at <<https://www.bangkokpost.com/business/1825404/tourist-arrivals-hit-record-of-39m>> (Accessed: 29 October 2020).

¹⁴⁸ IOM (2019) *Thailand Migration Report 2019*, pXI [online]. Available at <<https://thailand.iom.int/thailand-migration-report-2019-0>> (Accessed: 29 October 2020).

¹⁴⁹ IOM, *Thailand Migration Report 2019*, p. XI.

¹⁵⁰ UNHCR (2020) *Refugees in Thailand* [online]. Available at <<https://www.unhcr.org/th/en>> (Accessed: 29 October 2020).

¹⁵¹ Central Intelligence Agency, *World Factbook: Thailand* [online]. Available at <<https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>> (Accessed: 29 October 2020).

¹⁵² Ibid.

¹⁵³ National Statistics Office Thailand (2018) *Employment Statistics* [online]. Available at <http://www.nso.go.th/sites/2014en/Lists/NewsUpdate/Attachments/36/October_18.pdf> (Accessed: 29 October 2020).

¹⁵⁴ IOM, *Thailand Migration Report 2019*.

¹⁵⁵ UNHCR (2020) *Refugees in Thailand*.

Economy

Thailand's exports include electronics, agricultural commodities, automobiles and parts, and processed foods.¹⁵⁶ The service sector accounts for 59.5% of GDP, followed by industries (32.4%). Although the agricultural sector accounts for just 8.1% of GDP,¹⁵⁷ it employs around one third of the labour force.¹⁵⁸

COVID-19

Compared with other countries, Thailand has managed to limit local transmission of COVID-19: as of 29 October 2020, Thailand had 3,763 confirmed cases and 59 deaths.¹⁵⁹ The major impact has been economic: the National Economic & Social Development Council estimates that COVID-19 may cause the Thai GDP to shrink by up to 6% in 2020, due to reduced tourism, reduced domestic consumption, and disruption of key supply chains.¹⁶⁰ In response, the government has proposed measures to support SMEs, which employ over 14 million people, including imposing quotas on state procurement budgets for the purchase of local products from SMEs.¹⁶¹ In 2020, unemployment is expected to stay between 3-4% throughout the year, with no more than two million unemployed.¹⁶² Informal workers are most likely to be the hardest hit by the economic impact.¹⁶³

Since much of the hospitality sector and other businesses temporarily closed, an estimated 100,000 migrant workers returned from Thailand to Myanmar using formal border crossing points alone.¹⁶⁴ The mass exodus of migrant workers threatens Thailand's already-contracting economy.¹⁶⁵

¹⁵⁶ Central Intelligence Agency (2020) *World Factbook: Thailand*.

¹⁵⁷ Asia Development Bank (2019) *Key Indicators for Asia and the Pacific* [online]. Available at <<https://data.adb.org/media/3706/download>> (Accessed: 29 October 2020).

¹⁵⁸ Central Intelligence Agency (2020) *World Factbook: Thailand*.

¹⁵⁹ Coronavirus Research Center (2020) 'Thailand', *Johns Hopkins University of Medicine*. Available at <<https://coronavirus.jhu.edu/region/thailand>> (Accessed: 29 October 2020).

¹⁶⁰ THANTHONG-KNIGHT, R. (2020) 'Government Extends Emergency Despite Opposition Criticism' *Bloomberg Quint* [online]. Available at <<https://www.bloombergquint.com/politics/thai-government-extends-emergency-despite-opposition-criticism>> (Accessed: 29 October 2020).

¹⁶¹ Ibid.

¹⁶² BANGPRAPA, M. and NANUAM, W. (2020) 'PM Looks to Bolster SMEs,' *Bangkok Post* [online]. Available at <<https://www.bangkokpost.com/thailand/general/1924652/pm-looks-to-bolster-smes>> (Accessed: 29 October 2020).

¹⁶³ World Bank (2020) *East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the Time of COVID-19* [online]. Available at <<https://openknowledge.worldbank.org/handle/10986/33477>> (Accessed: 29 October 2020).

¹⁶⁴ The Border Consortium (2020) *Mid-Year Overview: January to June 2020*, [online]. Available at <<https://www.theborderconsortium.org/wp-content/uploads/2020/10/Mid-Year-Overview-Jan-June-2020.pdf>> (Accessed: 29 October 2020).

¹⁶⁵ LEADHOLD, K. (2020) 'COVID-19 Destroyed Thailand's Economy, and the Livelihoods of Migrant Workers', *Pulitzer Center* [online]. Available at <<https://pulitzercenter.org/reporting/covid-19-destroyed-thailands-economy-and-livelihoods-migrant-workers>> (Accessed: 29 October 2020).

Refugees' experience with COVID-19 in Thailand largely parallels that of the country at large: whereas local transmissions have been low (in June 2020, UNHCR reported that there were two cases of COVID-19 among refugees, not including the 65 cases in the Songkhla immigration detention centre),¹⁶⁶ the economic impact has been considerable. An IOM Rapid Assessment on COVID-19 related vulnerabilities of the non-Thai population, including refugees, identified insufficient income (57%) and unemployment/job loss (16%) as the primary challenges during COVID-19, as well as fear of arrest or detention, and insufficient information.¹⁶⁷ Further, indiscriminate border closures prevented prospective asylum seekers from entering Thailand to seek refuge.

Refugee Population

As of 30 September 2020, Thailand hosts around 97,000 asylum seekers and refugees,¹⁶⁸ of which an estimated 58,000 are of working age.¹⁶⁹ Refugees in the country include 91,777 refugees from Myanmar living in nine camps, officially called 'temporary shelters', along the Thai-Myanmar border.¹⁷⁰ Residents in these camps were all registered by Thai authorities; 49% of them have been registered under observation by UNHCR and therefore are eligible for resettlement submissions.¹⁷¹

¹⁶⁶ TAN, D. and YANKITTIKUL, M. (2020) 'Thailand's Response to COVID-19, Urban Refugees and Asylum Seekers, and Immigration Detention', *International Detention Coalition* [online]. Accessible at <<https://idcoalition.org/news/covid-19-impacts-on-immigration-detention-global-responses/>> (Accessed: 29 October 2020).

¹⁶⁷ IOM (2020) *Rapid Assessment: COVID-19 Related Vulnerabilities and Perceptions of Non-Thai Population in Thailand* [online]. available at <<https://thailand.iom.int/rapid-assessment-covid-19-related-vulnerabilities-and-perceptions-non-thai-population-thailand>> (Accessed: 29 October 2020).

¹⁶⁸ UNHCR (2020) *Refugees in Thailand*.

¹⁶⁹ Calculation done by the author based on data obtained from UNHCR April 2020

¹⁷⁰ UNHCR (2020) *Refugees in Thailand*. While the Thai Government refers to them as "temporary shelters", we use the term "camp" as they have existed for decades and are, functionally, refugee camps.

¹⁷¹ Interview with humanitarian worker in the camps OF-Th-11052020

In addition, there are around 5,000 urban refugees and asylum seekers, living mainly in and around Bangkok with a composition as outlined below.

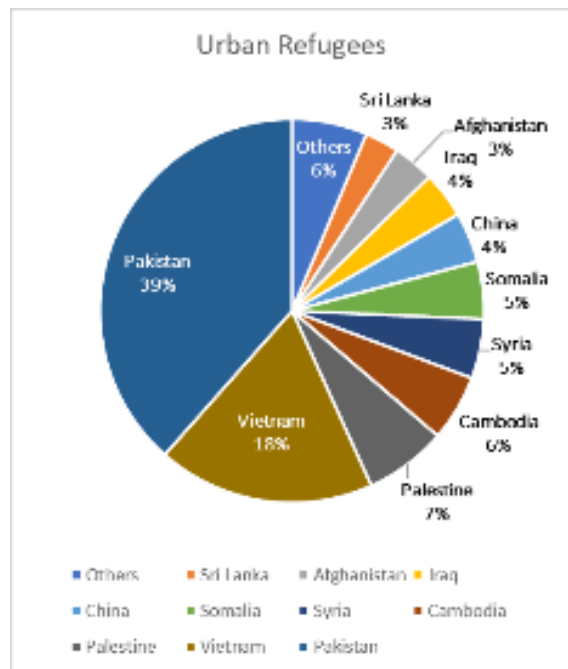


Figure 17: Urban Refugee Population. Data: UNHCR March 2020

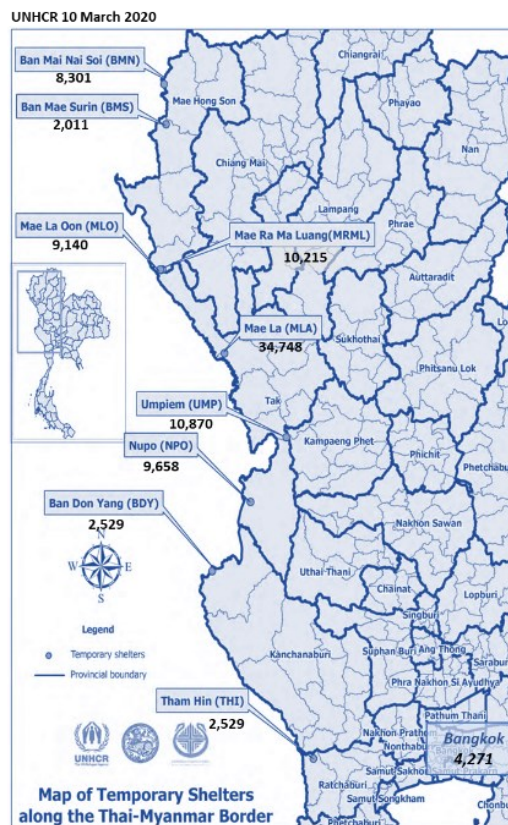


Figure 18: Refugee Population by Location. Data: UNHCR March 2020

Legal framework

Despite not having ratified the 1951 Refugee Convention, Thailand has made several international obligations and commitments relevant to refugees staying in the country including their work rights.

Int'l Commitments	Relevant Provisions
ICESCR	Art 6 recognises the “right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” Art 7 recognises “the right of everyone to the enjoyment of just and favourable conditions of work”
CEDAW	Art 11(a) defines the “right to work as an inalienable right of all human beings” and requires States parties to “take all appropriate measures to eliminate discrimination against women in the field of employment”
ICCPR	Art 8 concerns the freedom from forced labour, servitude and slavery Art 26 holds that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”
ICERD	Art 5 (i) concerns the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration

ASEAN Human Rights Declaration	Art 27(1) provides that every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.
Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime	At the Sixth Ministerial Conference, the ministers stated that they “welcome efforts and initiatives by member states to expand safe, legal and affordable migration pathways and reduce migrant exploitation, including by regulating and legalising labour migration flows, ensuring transparent and fair recruitment processes” ¹⁷²
Bangkok Principles	Art. IV establishes minimum standards of treatment to refugees: “1. A State shall accord to refugees’ treatment no less favourable than that generally accorded to aliens in similar circumstances; ... 3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.”
ILO Fundamental conventions ¹⁷³	Forced Labour Convention (No. 29) + P029 Freedom of Association and Right to Organise (No. 87) Right to Organise Collective Bargaining Convention (No. 98) Equal Remuneration Convention, 1951 (No. 100) Abolition of Forced Labour Convention, 1957 (No. 105) Discrimination (Employment and Occupation), (No. 111) Minimum Age Convention, 1973 (No. 138) Worst Forms of Child Labour Convention, 1999 (No. 182)
ASEAN Convention Against Trafficking in Persons	Art 11(1)(b) provides that Parties “shall establish comprehensive policies, programmes and other measures ... to protect victims of trafficking in persons, especially women and children, from revictimization”

Commitments made by Thailand as mentioned in the table above still have to be reflected in Thai domestic law. At present, domestic law applied to refugees in the country is limited to the 1979 Immigration Act and amendments, which puts refugees and asylum seekers at risk of arrest and detention.¹⁷⁴

At present, UNHCR is responsible for conducting refugee status determination in Thailand. If UNHCR finds that an asylum seeker is eligible for international protection, UNHCR will grant them refugee status and issue a UNHCR card symbolising that the holder is owed or deserving of international protection.’

¹⁷² Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (2016) ‘Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime’, 11.

¹⁷³ International Labour Organization (2017) *Conventions* [online]. Available at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO::P12000_INSTRUMENT_SORT:1> (Accessed: 30 October 2020).

¹⁷⁴ Section 62 and Section 11: illegally or unlawfully entered into the Kingdom; or Section 62 and Section 18, Paragraph 2: enter the kingdom without a visa; or Section 81 residing in the Kingdom without a visa, a visa is either expired or revoked. The 1979 Immigration Act has the following amendments: (1) The Second Immigration Act Amendment (No.2), 1980; (2) The Second Immigration Act Amendment, 1999; (3) Announcement of the National Council for Peace and Order No. 87/2557 Re: Amendment of the competent officials regarding policing authority, dated 10 July 2014; (4) The 2017 Act Amending the criminal liability of juristic person representatives; (5) The Chief of the National Peace and Order Council No. 42/2560 on the Amendment of Immigration law for Thai Citizen Travellers; 6) The 2018 Royal Ordinance amending the 1979 Immigration Act.

However, this does not provide any recognized legal status under Thai law. Nonetheless, they have the right to file complaints when they are victims of a crime, victims of trafficking in persons, or had their rights violated under the labour or the workmen compensation laws.¹⁷⁵

Thailand is taking steps towards nationalising status determinations: on 24 December 2019, the Thai Cabinet approved the establishment of a National Screening Mechanism (NSM) that would identify and legalise persons in need of protection.

Right to Work

The Emergency Decree on the Management of Working Foreigners, B.E.2560 (2017) Section 63 (2) allows foreigners who have entered the Kingdom without permission or stayed without permission under the immigration law “permission to stay in the Kingdom temporarily for the purpose of awaiting deportation from the Kingdom.”¹⁷⁶ The intent is to enable a foreigner, after having been released from detention on bail, to apply for a work permit in occupations permitted by the Cabinet.¹⁷⁷ In making its decision on whether to approve the application, the Director-General of the Department of Employment must consider the stability of the nation, social impact, and humanitarian principles.¹⁷⁸

In practice, Ministry of Labour officials have refused to issue work permits for urban refugees, thus blocking them from legal employment. Even though it is not prohibited by law, the granting of a work permit needs prior approval from a relevant registrar and many officials assume that the law explicitly prohibits work permits to be issued to refugees.¹⁷⁹

On 24 March 2018, the Thai cabinet approved the Emergency Decree on Managing the Work of Aliens B.E. 2561 (No.2) (the “Amended Decree”)¹⁸⁰ to better control the process of bringing foreign workers to Thailand, further promote cooperation with related sectors in the management of foreign workers and make penalties more reasonable. The Amended Decree revisions include broadening the activities not needing work permit in three areas: (1) to organize or attend a meeting, conference; expression of opinion, a lecture, or present at a meeting, training, workshop, or seminar; to perform art and cultural activities; or to participate in sports competition or any activities to be prescribed by the Council of Ministers. (2) establishing a business or investment, or who possess knowledge, ability or a high level of skill (“high level of skills”), which will be beneficial to Thailand’s development, as prescribed by the Council

¹⁷⁵ Refugee Rights Litigation Project (2020) *Legal Rights and Legal Procedures on the Refugees: An Analytical Paper for Refugee Litigation Strategy in Thailand*, p17 [personal communication].

¹⁷⁶ Emergency Decree on the Management of Working Foreigners, B.E.2560 (2017) Sec.63 (2).

¹⁷⁷ OF-Th-21042020

¹⁷⁸ Emergency Decree on the Management of Working Foreigners, B.E.2560 (2017) Sec.63.

¹⁷⁹ Refugee Rights Litigation Project, *Legal Rights and Legal Procedures on the Refugees*, p17.

¹⁸⁰ Royal Prescription (2018) *Management of the work of aliens* [Government gazette Vol135, pt19A]. Available at <<http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/019/29.PDF>> (Accessed: 30 October 2020). [Thai Language]

of Ministers; and (3) representative of a foreign juristic person licensed to operate business under the foreign business law.¹⁸¹

Extortion, Arrest, Detention and Refoulement:

As refugees are perceived by the Thai Government as undocumented foreigners, they are at high risk of being held in one of Thailand's 22 detention centres. Because of this, refugees seldom venture outside of their immediate communities. Immigration, police, officials from the Ministry of Labour, and the Ministry of Social Development all play a role in policing and managing migration.¹⁸²

Over the decades that refugees have sought asylum in Thailand, there have been reports of extortion and rent-seeking enabled by their unclear legal status.¹⁸³ In 2012, Human Rights Watch document practices regarding bribes in detail.¹⁸⁴ Interviews conducted for this paper confirm that the threat of arrest and trends towards rent seeking still persist.¹⁸⁵

Most urban refugees have difficulty finding a place to live, as foreign tenants are usually required to provide passport and proof of legal residence in Thailand.¹⁸⁶ Accommodation is often overcrowded, small, and relatively costly. In many cases, large families share single-room apartments that offer little privacy.¹⁸⁷ The lack of Thai language skills also makes contract and rent negotiations difficult. Evictions are a constant threat, and often happen on short notice. Housing insecurities are exacerbated by the limited work opportunities, which makes it difficult for refugees to pay rent. Ultimately, refugees rely on the financial assistance they receive from UNHCR and NGOs to pay rent.¹⁸⁸

Where Refugees Work

The following table provides an overview of the largest refugee communities in Thailand, the main employment sectors in which they work, and the strengths, weaknesses, opportunities, and threats that

¹⁸¹ KPMG (2018) *Thailand - Revision of Work Permit Law* [online]. Available at <<https://home.kpmg/th/en/home/insights/2018/08/tax-news-flash-issue-44.html>> (Accessed: 30 October 2020).

¹⁸² STEVENS, B. (2018) *The Involuntary Immobility of Bangkok's Urban Refugees*. Policy Report No. 04/05. Barcelona: United Nations University Institute on Globalization, Culture and Mobility (UNU-GCM), p9. Available at <<https://i.unu.edu/media/gcm.unu.edu/publication/4006/The-Involuntary-Immobility-of-Bangkok%E2%80%99s-Urban-Refugees.pdf>> (Accessed: 30 October 2020).

¹⁸³ Trust Law Project (2018) *Summary of Applicable International and Regional Convention Frameworks for Refugees in Asia*, p22 [online]. Available at <<https://www.elrha.org/wp-content/uploads/2018/09/REPORT-ACCESS-TO-SAFE-AND-LAWFUL-EMPLOYMENT-FOR-REFUGEES-IN-ASIA-1.pdf>> (Accessed: 30 October 2020).

¹⁸⁴ Human Rights Watch (2012) *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers* [online]. Available at <<https://www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>> (Accessed: 30 October 2020).

¹⁸⁵ According to interviews conducted with NGO for this study: OMF-Th-17042020.

¹⁸⁶ Jesuit Refugee Service (2012) *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines*, p59. Available at <<https://www.refworld.org/docid/506bfb622.html>> (Accessed: 30 October 2020).

¹⁸⁷ STEVENS, B. (2018) *The Involuntary Immobility of Bangkok's Urban Refugees*, p9.

¹⁸⁸ Ibid.

the refugee communities encounter. It compiles information from literature reviewed and interviews conducted by APRRN.

Like other communities, refugee communities in Thailand are heterogenous – individuals possess a variety of characteristics, skills, education levels, and abilities. Nonetheless, it can be useful to identify trends in the communities.

Through literature review and interviews with NGOs, the following employment characteristics for different refugee communities in Thailand were identified.

984 - Pakistan - Background: Med. & High Edu., Skilled, English Language Skills, Business and Finance

Resiliency: Community Support and organization, Link to Employers

Barriers: Lack of legal status - access to stay and work permits, negative perceptions by host community

Gained Skills: working online, interpreting and translations, tour guides; Men: restaurants, factories; Women: handicrafts, tailoring, domestic cleaning

Potential Employment

- Finance, IT, Tourism, Interpreters and Translators
- Tailors, Artisans, Chefs, Manufacturing, Repairs, Laboring

Thai-Indian, Indian Expat Community, Tourists

Expat Profile

131 - Somalia - Background: Shop Owner or Seller

Resiliency: Some community members speak English; Children learn Thai in school

Barriers: Visibility - discrimination, police harassment, fear of Arrest and Detention, Limited Thai / English skills

Gained Skills: English Language, Chefs, Waiter, Baby sitting, Cleaning

Potential Employment

- Food and Beverage - Chefs
- Retail, Cleaner, Babysitter

Links to Arabic speaking Community

443 Vietnam Background: Low Edu., Farmer, Shop Owner/Seller, embroidery and weaving

Resiliency: Community Support, Church network, Thai Language

Barriers: Low formal education, Food insecurity, Arrests, Abuse and Exploitation, unsafe working conditions

Gained Skills: Thai, Men: Factory, Construction, Aircon service, Street cleaners, Street sellers; Women: Business, Tailoring

Potential Employment

- Retail, Tailor, Artisan, Food & Beverage
- Construction Manufacturing Aircon servicing

Established links to employers and Migrant worker community

159 Cambodia - Background: Low Education, Farming

Resiliency: Community Support,

Barriers: Substantial exploitation, arrests due to no path to status

Gained Skills: Thai Language, Construction, Manufacturing,

Potential Employment

- Food and Beverage, Retail
- Construction, Manufacturing, Labor

Link to Cambodian Migrant workers

91 Afghanistan - Background: Edu. Rural = Low/ Urban = Med.

Resiliency: Urban: English language and IT skills, work experience

Barriers: Rural: Limited Experience and Skills, No Thai, Food insecurity

Gained Skills: Urban = English Language, Handicraft, Food & Beverage, Construction, IT

Potential Employment

- Food and Beverage, Beautician, Artisan
- Construction, Carpentry, IT

Links to Social Enterprises or Tourist Restaurants

108 Iraq - Background: High Education, Skills, University Degree

Resiliency: High education level, Experience, Skills, Access to remittances

Barriers: No Legal Status, Permits, visibility, Weak community Organization, Harassment by Police

Gained Skills: Translators, Movement of Goods

Potential Employment

- Food and Beverage
- Skilled Employment, Translators, Teachers

Online Opportunities, Arabic speaking Expats

168 Syria - Background: High Education and Skills, English

Resiliency: High Education and Skill Level

Gained Skills: English Language

Barriers: No Legal Status, Permits, visibility, Weak community Organization, Harassment by Police

Online opportunities, Arabic speaking Expats

Potential Employment

- Food and Beverage
- Skilled Employment, Translators, Teachers

186 Palestine - Background: High Education, Skilled and English

Resiliency: High Education and Skill Level

Gained Skills: English Language, Translation, Online

Barriers: No Legal Status, Permits, visibility, Weak community Organization, harassment by police

Online opportunities

Potential Employment

- Online work, Translations
- Skilled employment

71 Sri Lanka - Background: Low & Med. Education

Resiliency: Positive Relations with Local Communities and some Employers

Gained Skills: Construction, Manufacturing, SME's, Laboring, Business Training for Women

Barriers: Fear of arrest, negative experience with police, many men detained

Potential Employment

- Construction, Manufacturing
- Roles as Laborer or support SME's

56,080 Myanmar (Camp)- Background: Low & Med Edu., Agriculture, Livestock, Handicraft

Resiliency: Strong Community Support Structures, NGO Cash Assistance, Camp Shops, Remittances

Gained Skills: some English & Thai Language, Agriculture, Livestock/Animal husbandry, Construction, Garment Factories, Hospitality, Handicraft, Teachers, Health workers

Barriers: Border Areas, Unregulated Labour, Pay below Minimum Wage

Long Established Links to Employers

Resettled Refugees order traditional Weaving

Potential Employment

- Agriculture, Livestock, Construction, Manufacturing
- Handicraft, Hospitality, Teachers, Health Workers, Business & Trade

132 Rohingya - Background: Low Education, Farmer, Fishing

Resiliency: Categorized as Victim of Trafficking

Gained Skills: unknown

Barriers: Statelessness, Low formal education level, no avenue to regularize stay, Food insecurity

International Attention and Support

Potential Employment

- Retail, Food and Beverage, Manufacturing
- Construction, Cleaning & Maintenance, Agriculture

While skill levels vary between the different communities, age groups, and gender, most work in low-skilled positions.¹⁸⁹ Harassment or fear of arrest by the police are common, even in communities that look similar to Thai people and speak Thai fluently.¹⁹⁰ To counteract this, urban refugees often seek work near where they live or try to work from home. The opportunity to do so depends on skills, such as IT skills for online work, or employment opportunities near to refugees homes.¹⁹¹ Where transport is necessary and vulnerable to police checks, e.g. traveling to construction sites, refugees rely on Thai speakers to negotiate with the police for release.¹⁹² However, this often leads to becoming indebted to employers and subcontractors.¹⁹³ There were no reports about debt to money lenders, but the risk of borrowing money from sources outside the community should be monitored in the current situation with increasing economic hardship.

Based on the findings from interviews, social capital strengthens refugees' resilience. An organised and interlinked refugee community provides support and identifies opportunities to secure income, as do relations with the members of the host community, or migrant workers or visitors.¹⁹⁴ Opportunities often emerge through language and cultural affiliations, networks, and relations to local Thai population with shared heritage or religion or who live in the same area.¹⁹⁵ The presence of long-term visitors, tourists, and foreign businesspeople in Bangkok enables some refugees to offer their services as guides, maids or cleaners.¹⁹⁶ More recently, some social enterprises have engaged refugees and NGOs have begun to provide capacity building relevant to more sustainable livelihoods.¹⁹⁷

Refugees' Contributions to the Thai Economy

The economic effect of urban refugees already working in Thailand is understudied. Confined to the informal sector, they do not pay tax and their overall numbers are negligible in Bangkok, especially in comparison with the broader foreign population. As some refugee communities live together in specific areas, their economic impact might, on a very local level, sustain certain local small businesses as costumers.¹⁹⁸

The much larger refugee population has lived for decades in nine camps near the Thai-Myanmar border. As the camps are located in less-populated areas, they play a more significant role for some nearby local companies that need workers. Other local businesses are sustained by providing supplies and services to the camps. For the many small businesses, the refugee population is thought to increase costumers and

¹⁸⁹ OMF-Th-17042020.

¹⁹⁰ OF-Th-21042020.

¹⁹¹ IM-Th-20032020.

¹⁹² OF-Th-21042020.

¹⁹³ Ibid.

¹⁹⁴ OMF-Th-17042020.

¹⁹⁵ Ibid.

¹⁹⁶ OMF-Th-17042020.

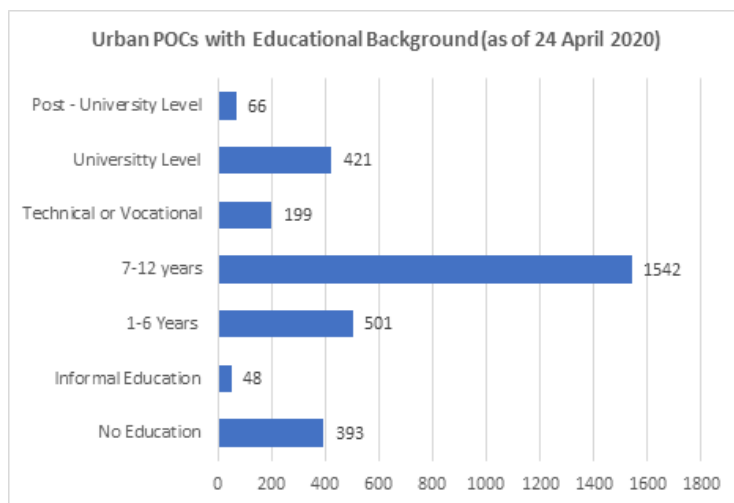
¹⁹⁷ OF-Th-24032020.

¹⁹⁸ OM-Th-16042020.

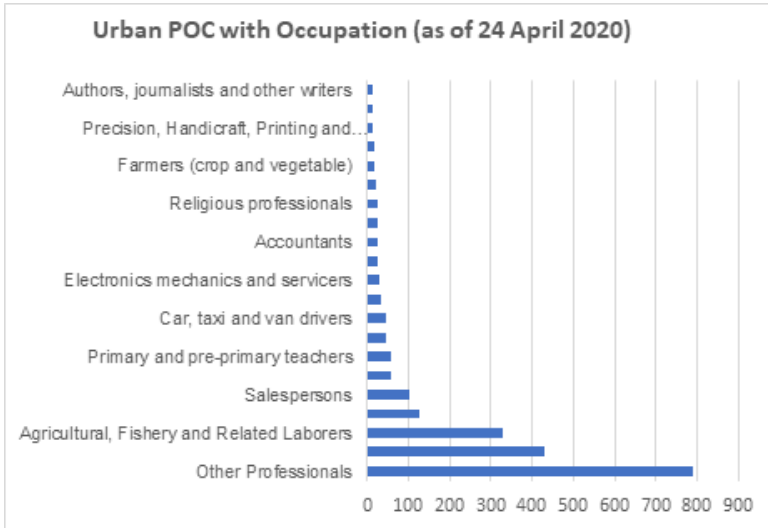
business considerably.¹⁹⁹ So far, no studies are known to have been conducted on the local economic impact of the camps.

Refugees' Skills and Desires

In April 2020, UNHCR provided information on urban refugees' skills levels based on the UNHCR ProGres database. Although the database is not completely up to date, it provides insight into refugees' training. Of the 3,170 refugees of all ages, 2% have post-university education, 13% attended university, 6% received vocational or technical education, nearly half of urban refugees (48.6%) had 7-12 years formal education, 16% attended 1-6 years of school, 1.5% only informal education and 12.5% have had no education at all. Based on the limited data, we can conclude that at least 487 refugees are highly educated. If allowed to work legally, Thailand would gain highly skilled workers and potentially enhance its informal links with other countries. At least 1,741 refugees could provide medium-skilled labour and at least 441 would continue to provide low-skilled labour, assuming training programs are not expanded.



UNHCR's database contains some information on urban refugees' occupational backgrounds, recording over 400 refugees with experience in agriculture, fishery, and related professions, whereas 300 have experience as salespersons and over 100 as primary and pre-primary teachers. Other professional backgrounds include taxi and van drivers, as well as electromechanics and services. Some refugees have experience as accountants, journalists, or writers, precision and handicraft workers. As the majority is listed under other professionals, more research into refugee skills and professional background would be necessary to establish a clearer picture.²⁰⁰



Regarding the camp population, a 2014 UNHCR survey on 92% of the households in the nine camps found that just over half of persons over 15 years old had worked in agriculture or livestock/animal husbandry,

¹⁹⁹ IM-Th-17042020.

²⁰⁰ Note: to our knowledge, no study in Thailand has been conducted so far on urban refugees' occupational desires.

followed by 12% who had engaged in general wage labour, with the remainder having worked in other fields.²⁰¹

The most desired future livelihood largely matched the livelihoods in which they had experience: 1) Agriculture, 2) Livestock/animal husbandry, 3) General wage labour, 4) Business and Training 5) Health Care, Computer and Electrical Services or Garment and Weaving.²⁰²

Factors Influencing SMEs' Willingness to Hire Refugees

Little research has been done on entrepreneurs' perspectives on employing refugees in general. One exception is "Refugees as Employees", a study based on human resource data analysis and interviews with employers from a variety of sectors in the USA in 2018.²⁰³ The study found many benefits to integrating refugees into one's labour force, including "high retention rates, better management skills and a wider potential labo[u]r pool."²⁰⁴ While the experience in Thailand may be different, there is reason to believe that SMEs could reap similar benefits here. Thai language skills are low in many of the refugee communities in Thailand, limiting their opportunities for work; with fewer job opportunities, a scrupulous employer could maintain a loyal core of refugee employees. Further, given that refugees often find employment through word-of-mouth, employers could tap into a positive feedback mechanism whereby treating one's refugee employees well would enable one to hire more going forward. Further, employers would not have to go through the trouble of recruiting migrant workers from overseas as refugees are already in Thailand.

General awareness about refugees is still low among the Thai public—humanitarian workers interviewed for this study encountered many employers not aware that the people working for them are refugees. This may be because refugees shy away from communicating their status, or employers might not understand the difference between migrant worker and refugee.²⁰⁵

That said, some employers are aware of their employees' refugee status, know that refugees need to work to survive, and want to help. Often refugees approach potential employers directly asking for work. An NGO worker who mediates employment disputes recalls asking refugees whether refugees are treated differently than other foreign workers. Many say, it is the same treatment with the exception being that other workers have health insurance, as this is a precondition for their work permit.²⁰⁶

²⁰¹ UNHCR (2014) *Displaced Persons in Temporary Shelters along the Thai-Myanmar Border: Future Hopes and Aspirations*, p28. Available at <<https://reliefweb.int/report/thailand/displaced-persons-temporary-shelters-along-thai-myanmar-border-future-hopes-and>> (Accessed: 30 October 2020).

²⁰² Ibid. p63.

²⁰³ Tent Partnership for Refugees (2018) *Refugees as Employees* [online]. Available at <<http://fiscalpolicy.org/wp-content/uploads/2018/05/Refugees-as-employees.pdf>> (Accessed: 30 October 2020).

²⁰⁴ DYSSEGAARD KALLICK, D. and ROLDAN, C. (2018) 'Refugees as Employees', *Fiscal Policy Institute*. Available at <<http://fiscalpolicy.org/wp-content/uploads/2018/05/Refugees-as-employees.pdf>> (Accessed: 30 October 2020).

²⁰⁵ OM-Th-16042020.

²⁰⁶ OF-Th-21042020.

In 2019, The Border Consortium initiated a scoping study in collaboration with Bloomberg/ McKinsey's initiative of Supporting Refugees in the New Economy. Through multi-stakeholder dialogue, consultations with the private sector and global consulting companies, themes of embracing the digital economy to support refugees were explored. Resulting ideas included edu-tech start-ups to upskill the refugee community with necessary skills pre-identified by private sector companies, digital learning, and peer learning through digital communities to a digital job marketplace platform, with communities evaluating employers. Potential follow-up and realisation will require legal documentation to ensure refugees protection and workers' rights are upheld.²⁰⁷

Past Experiences with Work Rights for Refugees and Affiliated Groups

Although no refugee-specific work pilots are known to have been implemented in Thailand, in 2009 the Royal Thai Government (RTG) instituted a system to regularize undocumented migrant workers from Cambodia, Laos, and Myanmar. Under the system, the applicants would undergo a Nationality Verification process with their own governments to receive temporary passports and receive the right to work in Thailand for up to four years.²⁰⁸ Some refugees availed themselves of the opportunity, while still maintaining that they were refugees.

Cambodians and Laotians could conduct the nationality verification in Thailand, whereas applicants from Myanmar initially needed to be processed in Myanmar. During the first year of the registration process, the registration numbers of Myanmar nationals lagged far behind registration numbers of the other two nationalities. Only after eight locations for national verification were established in Thailand did the number of Burmese migrants registering grow.²⁰⁹

Given decreasing humanitarian funds and the relatively low rate of formal returns to Myanmar for the camp population, discussions between multiple stakeholders started to explore local solutions within Thailand.²¹⁰ Meetings with the RTG have suggested expediting the process of civil documentation that would enable displaced persons to work legally as migrants in Thailand.²¹¹ Nationality verification and documentation process involving return to Myanmar, a so called 'U-Turn option', are not likely to be taken up by most of the ethnic minorities in the camps,²¹² but the Thai Government and the Government of Myanmar are exploring a system of nationality pre-verification for adults that would provide refugees

²⁰⁷ The Border Consortium (2020) *Annual Report 2019*, p21 [online]. Available at <<https://www.theborderconsortium.org/wp-content/uploads/2020/08/TBCAnnualReport2019-for-website.pdf>> (Accessed: 29 October 2020).

²⁰⁸ Human Rights Watch (2012) *Ad Hoc and Inadequate*, p. 80.

²⁰⁹ Ibid.

²¹⁰ The Border Consortium, 'Annual Report 2019', p. 11.

²¹¹ Ibid.

²¹² Migrant Forum in Asia (2019) *Afraid of the Light: Unmasking the Discourse on Irregular Migration and its Implications for Migration Governance in ASEAN* [online]. Available at <<https://th.boell.org/en/2019/09/13/afraid-light-unmasking-discourse-irregular-migration-and-its-implications-migration>> (Accessed: 30 October 2020).

with civil documentation, without them having to return to Myanmar.²¹³ This is envisioned as a transition phase until safe voluntary return to Myanmar is possible.

In order for refugees in the camps to take up this opportunity the maintaining of refugee status would have to be ensured. Some refugees in the camps were born in Thailand and speak Thai, feel more safe here.²¹⁴ As one humanitarian worker stated, people in the camp are a healthy and able population, many of whom have been here since decades, and they want to work.²¹⁵

Apart from the regularisation option via dual status and the U-Turn, some towns or regions have issued their own identification documents to refugees.²¹⁶ As they were issued by local authorities, the documents were valid only within specific towns or regions and thus limited the holder from traveling outside the province they are registered in.²¹⁷ Similarly, some employers and community-based organizations create their own ID cards for refugees to carry, which are also used as ID when stopped by the police.²¹⁸ While local governments cannot make their own regulations on refugees, they have room to decide how strictly to enforce provisions and policy from the central government in their respective territory.²¹⁹ Labour shortages might play a role in some of these decisions for providing cards, but the safety they provide to refugees is fragile.²²⁰

In the border camps, 3,000-5,000 refugee community members receive stipends between 30-35 USD per month from humanitarian agencies for fulfilling roles in administering the camps.²²¹ These roles enable refugees to build their experience as health workers, teachers, and others looking after water and sanitation.

Impact of COVID-19 on Employment

The COVID-19 pandemic has wreaked havoc on refugee employment in Thailand. In a July 2020 Rapid Needs Assessment, 82% of refugees surveyed by UNHCR reported not having a household member engaged in income-generating activities, with 61% reporting that they were earning less income than prior to the pandemic.²²² Of the 67% of respondents who had previously worked, 44% stopped due to business

²¹³ The Border Consortium (2020) *TBC Strategy 2020-2022*, p.7. Available at <<https://www.theborderconsortium.org/wp-content/uploads/2020/05/TBC-Strategy-2020-2022.pdf>> (Accessed: 30 October 2020).

²¹⁴ IFF-Th-24042020.

²¹⁵ OF-Th-11052020.

²¹⁶ Human Rights Watch (2012) *Ad Hoc and Inadequate*, p.81.

²¹⁷ Ibid.

²¹⁸ Ibid, p.82.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ OF-Th-05112020.

²²² UNHCR (2020) *COVID-19 Impact Assessment – Thailand*, p.23. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Thailand%20Urban%20COVID-19%20Impact%20Assessment_July%202020.pdf> (Accessed: 30 October 2020).

closures.²²³ Further, fear of COVID-19 is not the primary reason that refugees are hesitant to return to the labour market: 44% of respondents reported that their main reason for not currently looking for employment was the lack of availability of work.²²⁴

Recent Political Trends Surrounding Refugees

Consistent with its pledge at the 2016 New York Declaration for Refugees and Migrants,²²⁵ on 24 December 2019, the RTG approved a regulation with the aim to establish a National Screening Mechanism to manage ‘aliens’ who cannot return to their country of domicile. Observers of the regulation note that it avoids use of the term ‘refugee’, instead defining a ‘protected person’ as “any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee, and is granted status as a Protected Person under this Regulation.”²²⁶

Those who receive protected person status are expected to be allowed to stay in Thailand on either a special or temporary basis, expanding refugee rights. While the regulation does not explicitly grant a right to work to protected persons, in theory, those who benefit from protection and receive permission to stay in Thailand would be able to apply for a work permit. The regulation also points to health services for those granted protected person status.²²⁷ As an NGO worker suggested, “Once the National Screening Mechanism leads to refugees being recognized, there is a possibility to explore the right to work.”²²⁸

The regulation was set to be implemented in June 2020, with a committee of officials and experts clarifying definitions, criteria, and procedures.²²⁹ Its implementation has been delayed, but the Committee has the power to greatly expand refugees’ access to protection while in Thailand, through regularising their stay

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Thailand pledged to develop an effective screening mechanism to distinguish those with genuine protection needs from economic migrants, ... enhance skill trainings to displaced persons from Burma with possible income earning opportunities.” Beyond the goals of the summit Thailand further pledged: “to enact the Prevention and Suppression of Torture and Enforced Disappearance Act to strengthen the implementation of the principle of non-refoulement; to adhere to non-detention of children in the Immigration Detention Centers, with consideration of the best interests of the child; to provide legal aid and compensation in criminal cases to all groups of irregular migrants, without any discrimination.” Leaders’ Summit on Refugees (2016) *Summary Overview Document*, p.9. Available at

<https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf> (Accessed: 30 October 2020).

²²⁶ Thailand: Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562, December 25, 2019. Available at <<https://www.refworld.org/docid/5e675a774.html>> (Accessed: 30 October 2020).

²²⁷ Waritsara Rungthong (2020) ‘Thailand’s National Screening Mechanism: Key Issues’, *Opinio Juris* [online]. Accessible at <https://opiniojuris.org/2020/01/28/thailands-national-screening-mechanism-key-issues/?fbclid=IwAR3Vz3n5kiRYdUoeXOMvxcSE_rkt-mM6jAC7kXq_kUvebrO1e1Rkbl2WGrc> (Accessed: 30 October 2020).

²²⁸ OF-Th-21042020.

²²⁹ IFF-Th-18052020.

and allowing for safer and more dignified live while in Thailand. Recognising and registering refugees as protected persons unable to return to their home country because of a well-founded fear of persecution does lead to certainty for refugees to being protected while in Thailand and for the Thai government to know who is in its territory. For the process to fulfil its intended mandate and function in good faith, the establishment and implementation of a predictable due process using clearly defined criteria is key. These criteria for identifying protected persons should adhere to the international norms laid out in the 1951 Refugee Convention that 149 member states of the United Nations already have adopted.

In summary, Thailand will continue to depend on foreign labour to support its recovery and economic growth, even after the COVID 19 pandemic and its associated economic impact. Refugees with a variety of education levels and skills are already in Thailand and are healthy and able to contribute. Refugees' return and resettlement to third countries is curtailed by continuing persecution and threat to life as well as stark declining resettlement places globally. In its public pledges, Thailand has recognised the need to acknowledge and adjust to the reality of refugees in its territory. Further, the Thai government has established the National Screening Mechanism providing its committee with the mandate to further define this framework to ensure protection of refugees and prevent refoulement. To do this right, the government would be wise to adopt a whole-of-society approach, including not only experts in international organisations like UNHCR, but also experts from academia and civil society as well as people from other countries with experiences implementing a similar process.

However, it is not sufficient to identify and formally permit protected persons to stay in Thailand. They must also be able to support themselves. At the Leaders' Summit on Refugees in 2016, the Government stated that it "provides education and skills training to ensure [Myanmar refugees'] sustainable livelihood once they return home".²³⁰ If the Government was to go farther and grant refugees the right to work, it would increase refugee protection, increase local and national formal economic activity in Thailand, increase tax revenue in Thailand, increase productivity in Thailand, and enhance social cohesion and security in Thailand. The National Screening Mechanism is expected to prioritise urban refugees in and near Bangkok; income-generating opportunities could be realised using a whole-of-society approach including local government, private sector, NGOs, and host communities, and could so lead to more creative and protection-sensitive solutions. Were this process to be actualised, documented, and evaluated, Thailand would be able to further share it with other countries and position itself as a leader regarding realisation of SDGs and the Global Compact on Refugees.

For the camp population on the Thailand-Myanmar border, national verification processes allowing for a safe, accessible, and affordable in-country verification and access to formal employment or income generating opportunities could provide an avenue out of this protracted situation, by again allowing able and healthy populations to contribute to their host country's economy and become more self-reliant in

²³⁰ Ministry of Foreign Affairs (2016) *Thailand pledged additional assistance to alleviate the plights of displaced persons*. Available at <https://www.mfa.go.th/en/content/5d5bd05815e39c306001eacf?cate=5d5bcb4e15e39c3060006834> (Accessed: 29 October 2020).

securing means to daily survival. This would also better prepare the populations for potentially voluntary return if it were safe to do so, or resettlement to a safe third country. This should be approached as a mutual learning process that allows for participation towards creating and seizing opportunities and tackling challenges together.

Conclusion

Trends: There have been no significant changes over the years regarding refugee employment. Malaysia and Thailand actively seek and depend on foreign labour to sustain and expand the national economy. Nonetheless, refugees are excluded from legal pathways to regularise their stay and work situation, and thus are exposed to the risks of arrest and detention by authorities and exploitation by employers in the informal economy.

Because of lack of legal status in both Malaysia and Thailand, refugees have been limited to *ad hoc*, temporary, and insecure employment in low-skilled professions independent of their skill and education level. To find work, refugees depend on informal networks that are based on linguistic, cultural, or ethnic affiliations. There is no matchmaker between refugees' desires and employers' needs.

The policy of 'no policy' on refugees has persisted for a long time. Malaysia has taken some steps towards regularisation and work permits for selected refugees, but in the absence of a more comprehensive policy or legal framework and a participative whole-of-society consultation, many were too small in scope and were short-lived. However, Thailand may be able to lead the way with the implementation of the NSM, provided that it is set up and implemented in good faith and is amended to provide an avenue to safe and dignified life and work.

Contribution: As a very small percentage of the working age population in Malaysia and Thailand, refugees' contribution on a national scale is limited. Nonetheless, they do support food production and processing in agriculture, markets, and restaurants, building and repairing infrastructure via construction work, and keeping streets and parks clean.

Refugees' impact as consumers and workers are likely felt more in the immediate surrounding community. Thailand's refugee camps, where refugee numbers are a significant proportion of the total population in the area, could be studied as to in how far refugee consumers and workers contribute more significantly to local economic developments.

Regardless of their contribution, Malaysia and Thailand have a legal and moral duty to provide protection to people within their borders who have a well-founded fear of persecution. Regularisation of refugees' presence and work safeguards them and the wider society from exploitation and trafficking and respects their human rights.

Willingness of entrepreneurs to hire refugees: Business owners in Malaysia are generally willing to hire refugees and are supportive of a policy granting work rights for refugees. Employers highlight the need to fill positions with the best available person applying for it, and are interested in the skills, creativity, and networks that refugees could bring to their business. Entrepreneurs are navigating a need for people to tend shops, fields, production, or construction sites on the one hand, while also needing to uphold industry and legal standards. Bringing migrant workers from overseas is an expensive, bureaucratic

process that entrepreneurs would prefer to avoid;²³¹ were the system for hiring refugees more streamlined and without risk, refugees would offer an attractive alternative. Malaysia has shown that if the right signals were to come from the government (e.g. Pakatan Harapan Manifesto Pledge 35), the private sector would be likely to come forward and engage on the issue.

COVID-19: This research has been conducted amidst travel restrictions and physical distancing due to the COVID-19 pandemic. At present, Malaysia and Thailand are still implementing physical distancing, which impacts heavily on the economic sector of these countries. Although the full impact on the economy in both Malaysia and Thailand is uncertain, many refugees are unemployed at this time and worry about their ability to earn an income in the next months or years to ensure the very basics for survival.

Both Malaysia and Thailand have experienced rapid economic growth over the past decade. Migrant labour is a key part of both countries' economies, with refugees accounting for a small percentage of the total foreign population in each country. To continue this growth while avoiding spikes in cost of living, both countries require a mix of skilled labour and unskilled labour—a mix that refugees already in the country can help provide. However, both Thailand and Malaysia have thus far excluded asylum seekers and refugees from formal employment. In both countries, the informal economy is a result of bureaucratic hurdles that serve neither the economy, employers nor the employees. Working conditions are increasingly scrutinized on issues of forced labour, ethical or sustainability audits and trafficking in persons reports, leading to international condemnation and damaging trade prospects and diplomacy.²³²

In Malaysia, some of the groundwork towards refugee work rights has already been done. In 2016-2017, UNHCR conducted a socio-economic baseline study on refugee skills and barriers to employment²³³ and mapped the labour market to explore where refugees would most likely encounter good conditions and prospects.²³⁴ Malaysian civil society has made the case for refugee work rights as an economic win-win²³⁵, multinational companies have openly encouraged the government to grant refugees work rights, and security-based counterarguments have been refuted.²³⁶ In addition, Malaysia has experimented with granting work rights to some refugee communities. These humanitarian exceptions were limited in scope but were carried out by different administrations.

Advocacy: Barriers to progress at the political and administrative level come from concerns about mass arrival and domestic security, leading some trepidation about granting refugees work rights. Therefore, any change in law will need to be effectively communicated down the line, lest labour department officials

²³¹ The current COVID pandemic leading to an exodus of migrant workers and closing of borders is one factor that might lead the governments to reconsider work permits and work rights for refugees already in the country.

²³² IM-Th-17042020, SM-My-30042020.

²³³ UNHCR Malaysia (2016) *Socio-economic Baseline Survey* (unpublished).

²³⁴ UNHCR Malaysia (2016) *Market Survey & Value Chain Analysis Study* (unpublished).

²³⁵ TODD, L., AMIRULLAH, A., and SHIN, W.Y. (2019) 'The Economic Impact of Granting Refugees in Malaysia the Right to Work'.

²³⁶ YASMIN, P. N. A., DANIEL, T. B. and FAUZI, N. (2019) 'Granting Refugees Permission to Work in Malaysia', *Institute of Strategic and International Studies Malaysia*. Available at <<https://www.isis.org.my/book-journal/granting-refugees-permission-to-work-in-malaysia/>> (Accessed: 30 October 2020).

continue to act as if refugees are not permitted to work.²³⁷ Civil servants may resist implementing changes even when there is political commitment towards refugee work rights, when there is a lack of understanding and trust in the adjudication processes by UNHCR. Exposing officials to the practices and standards during the UNHCR process via visits and observations is said to have increased officials' understanding and trust in refugees' UNHCR status.²³⁸ Malaysia also provided a good example of highlighting economic gains from refugees being allowed to take part in the formal labour market. Studies by independent national think tanks using economic arguments rather than normative language is thought to have created a bigger buy-in to the idea that refugees can contribute to development and job creation for Malaysians.

Political will depends on the opinions of politicians and of their constituency on refugee issues. However, the spates of online xenophobia should not be taken to be representative of the broader public, as IPSOS polls showed that concerns about refugees and immigration fell to pre-COVID-19 levels within months. Politicians therefore have an important role in shaping public perceptions.

Given the economic slowdown, two risk factors have to be managed during the next year. As asylum seekers and refugees are unlikely to ensure sufficient means to survive due to loss of employment, efforts to address their basic needs need to be undertaken at scale. This time could also be used to increase employability, such as by offering language and skill trainings to increase women's participation in the labour market.

- 1) Language training and cultural awareness for working-age refugees could be strengthened. Vocabulary and cultural awareness should cover employment and work-related topics with the right balance between work ethics and awareness about employment rights.
- 2) Entrepreneurs' main stated reasons for supporting refugee work rights were refugees' skills, creativity, and networks. This might inform communications and capacity-building initiatives.
- 3) Some of the entrepreneurs who were sceptical of or against hiring refugees had had negative experiences with the migrant worker recruitment process. Any policy on refugee work permits would have to be efficient and simple.
- 4) As businesses can be part of bigger value chains, compliance issues must be anticipated and addressed. A policy encouraging or supporting refugee employment could help to reassure the entrepreneur that by employing refugees they are not violating provisions made under the contract.

²³⁷ OF-My-11032020.

²³⁸ IF-My-07042020.

ANNEX I

Mediation Between Employers and Refugee Employees

Some NGOs in Malaysia conduct mediation between employers and refugee employees. If a refugee seeks legal assistance from the NGO in an employment dispute, the NGO first establishes a chronology of what happened, then explores whether there is proof of employment, then tries to engage the employer to mediate.²³⁹ During mediation, “employers often complain about the employee, stating they only wanted to do good, out of pity for refugees, but the refugee has no good attitude, shows up one day, then not, without letting them know. We usually ask clarifying questions at this point as to what the refugee/employee is entitled to – holidays – pay – contract. If the pay is under 1100 RM (the minimum wage), the employer is asked how he can pay less than the legally required amount. NGOs highlight to the employer the regulations applicable to employment dispute, including how a contract could outline the agreement and so help clarify expectations and processes for both sides, e.g. establishing leave clearly, ensuring that if the refugee has to go to UNHCR or has other appointments s/he can take the leave days they are entitled to.”

OF-My-11032020 shared: “employers usually do not tell refugees what they are entitled to. Employers don’t know about the processes or situations refugees are in. We explain and clarify obligations according to labour law – if the employer admits that they made a mistake, then usually the dispute can be settled by payment of wages.”

When an employer fails to engage, the case can be taken to the Department of Labour at district level by filing a complaint on behalf of the refugee employee—being undocumented, refugees don’t like to engage authorities themselves. Once a complaint has been filed with the Department of Labour, the NGO then calls the employer to enquire about what happened. There are two options: a) The employer denies knowing the refugee and the complaint usually stops; or b) the NGO encourages the Department of Labour staff to bring a labour case to court. However, the refugee’s undocumented status is a barrier to filing a case.

More needs to be done to ensure labour department officials can solve employment disputes between refugees and employers:

1) On a state level, Department of Labour staff could be provided with information on refugees and how the Department can engage employers. An NGO worker proposed assisting the Ministry of Human Resources in adjusting its training modules to include foreign labour and refugees as an initial step.

2) On a district level, officials expressed a need for clear instructions: the Department of Labour does good work and is willing to resolve disputes, but it needs permission to follow through. The Department of Labour’s district officials’ recommendation is to communicate with headquarters and ask for a directive or a clear direction on this from the state, by sending a letter on issues encountered and ask for permission to file a labour case. OF-My-11032020 explained that “[o]ne NGO cannot act alone on this, but needs partnership with others engaged on this issue, those that meet refugees, those taking referrals and those engaged in advocacy. We need to work together and meet together more often, establishing mechanisms and build a network.

²³⁹ OF-My-11032020.