

Covid-19 Pandemic: A Demand for Malaysia to Support Refugees under International and Domestic Law*

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The WHO reported the Covid-19 outbreak infected 486,761,597 people, involving 6,142,735 deaths worldwide as of 1 April 2022. This contagious disease has spread rapidly throughout the world, including Malaysia. Since the outbreak in Malaysia began in March 2020, the Movement Control Order (MCO) has been implemented nationwide, leaving a significant impact on its citizens, non-citizens, as well as refugees. There is some exploitation of refugees, where enforcement officers are targeting them for criminal offences. Stakeholders claimed the Malaysian government did not provide any assistance to refugees during the pandemic, including health care and economy. This article examines Malaysia's responsibilities as a host country to refugees during the Covid-19 outbreak. The Malaysian government is proposed to continuously support refugees on humanitarian grounds based on the country's economic development capabilities. This paper will look into the current situation of the Refugees in Malaysia; discuss the challenges that the Refugees in Malaysia are facing; analyse the legal

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framework governing the status of refugees; and check the responsibility Malaysia should assume as a host country.

Keywords

Covid-19, Refugees, 1951 Refugee Convention, 1967 Protocol, Malaysia, MCO

1. Introduction

The Coronavirus Pandemic (Covid-19) has created a tremendous challenge and adversity for all countries globally and brought the most severe economic crisis in this century to all, including Malaysia. Malaysia was expected to start treating Covid-19 as an endemic disease at the end of October 2021 when more than 75 percent of Malaysia's adult population would have been fully vaccinated. Unfortunately, the reported cases show that Malaysia is not ready for the endemic transition, as the process would take longer than expected. At the same time, Malaysia has been planning public health responses in preparation for the simulated fourth wave of the pandemic.

Like other countries in the world, the Covid-19 pandemic has put Malaysia in a severe debt problem, financial constraints, plummeting oil prices and knock-on effects on trade and tourism for the global shutdown. Malaysia has quickly offered the best assistance to its citizens through several economic stimulus measures to “preserve citizens welfare, support businesses and strengthen the economy.”¹ The assistance includes *Prihatin Rakyat* (Caring for People) as the then Prime Minister emphasised: “no one would be left behind.”² There is also some additional stimulus package aimed at supporting for small and medium-sized enterprises (SMEs) and micro-businesses.³ In spite of its efforts against the pandemic, the Malaysian government has not fully paid attention to non-citizens living in the country such as refugees. Therefore, non-governmental organisations and individuals have urged the government to assist refugees in health care and economic welfare during the pandemic.⁴

¹ Ain Umaira Md Shah et al., *COVID-19 Outbreak in Malaysia: Actions Taken by the Malaysian Government*, 97 INT'L J. INFECTIOUS DISEASES 108-16 (2020).

² Lin Lean Lim, *The socioeconomic impacts of COVID-19 in Malaysia: Policy review and guidance for protecting the most vulnerable and supporting enterprises*, ILO (Nov. 10, 2021), http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_751600.pdf.

³ *Id.*

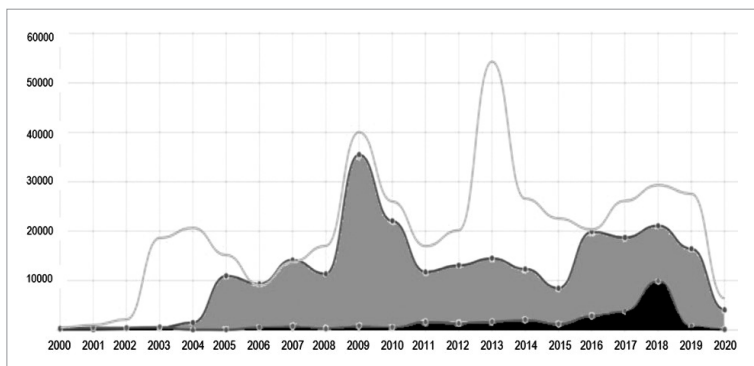
⁴ Hemamalani Kunapalan et al., *The Roles of Non-Governmental Organisations (NGOs) in Assisting Refugees: From*

In this article, the authors will highlight the protection of the refugees in Malaysia during the Covid-19 pandemic under international and domestic law. This paper is composed of six parts including Introduction and Conclusion. Part two will look into the current situation of the Refugees in Malaysia. Part three will discuss the challenges that the Refugees in Malaysia are facing during Covid-19. Part four will analyse the legal framework governing the status of refugees. Part five will check which responsibility Malaysia should assume as a host country.

2. The Refugees in Malaysia

As of mid-2021, there are 26.4 million refugees globally.⁵ The previous global record between 2018 and 2020 shows that an average of between 290,000 and 340,000 children were born into a refugee life per year.⁶ More than two-thirds of the world's refugees are from five countries, namely Somalia, Myanmar, Afghanistan, Syria, and South Sudan.⁷ Every year, Malaysia receives thousands of applications for asylum from refugees. Figure 1 shows the statistics of the applications from the incoming asylum seekers in Malaysia from 2000 to 2020.

Figure 1: Incoming asylum seekers in Malaysia from 2000 to 2020⁸



Malaysia Context, 5 MALAY. J. SOCIAL SCI. & HUMAN. 89-94 (2020).

⁵ UNHCR, Refugee and Migrants Health (July 29, 2021), <https://www.unhcr.org/refugee-statistics>

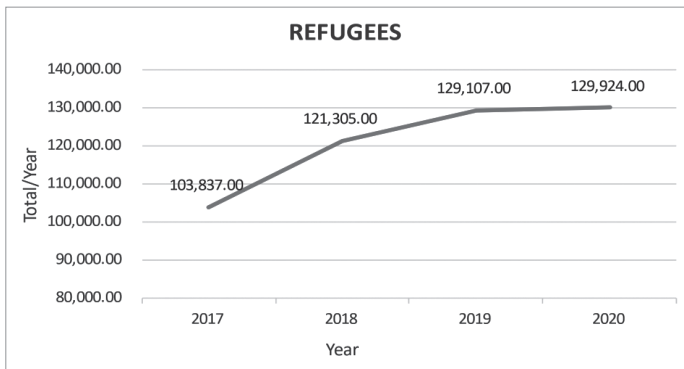
⁶ *Id.*

⁷ Rashvinjeet Bedi, *Refugees urged to register for jobs to improve herd immunity odds*, STAR, May 28, 2021, <https://www.thestar.com.my/news/nation/2021/05/28/refugees-urged-to-register-for-jobs-to-improve-herd-immunity-odds>.

⁸ Top 50 host countries, WorldData.info (Dec. 5, 2021), <https://www.worlddata.info/refugees-by-country.php>.

The top line shows the total number of asylum applications (first applications and reviews). Besides, the space shaded with grey represents the number of recognised refugees, while the space shaded with black represents the rejected applications. In 2018, there were 23,743 applications for asylum in Malaysia,⁹ most of whom were from Pakistan, Burma, and Somalia. Among them, about 78 percent of applications were accepted, while 22 percent were rejected. The record shows that the refugees of Yemen and Syria could most successfully get the asylum.¹⁰ It is also noted that 170,460 refugees and asylum seekers had been registered at the United Nations High Commissioner for Refugees (UNHCR) in Malaysia until April 2019. A total of 147,590 refugees (87 percent of the 2019 data) were from Myanmar. The remaining numbers were from Yemen, Pakistan, Syria, Somalia, Sri Lanka, Afghanistan, Palestine, Iraq, and others.¹¹ In 2020, 6,411 asylum applications by refugees were received in Malaysia.¹² Almost every year, the statistics show an increasing number of refugees in Malaysia. (Figures 2 & 3)

Figure 2: Malaysia Refugee Statistics from 2017 to 2021¹³



⁹ Top 50 host countries, WorldData.info (July. 10, 2020), <https://www.worlddata.info/refugees-by-country.php>.

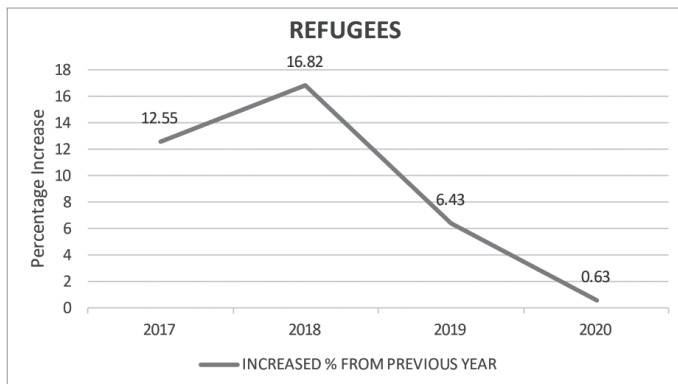
¹⁰ *Id.*

¹¹ Bedi, *supra* note 7.

¹² Asylum applications and refugees in Malaysia, WorldData.info (Apr. 6, 2022), <https://www.worlddata.info/asia/malaysia/asylum.php#:~:text=6%2C411%20asylum%20applications%20by%20refugees,been%20made%20on%20initial%20applications.>

¹³ Malaysia Refugee Statistics 1977-2021, Macrotrends Website (Nov. 29, 2021), [https://www.macrotrends.net/countries/MYS/malaysia/refugee-statistics.](https://www.macrotrends.net/countries/MYS/malaysia/refugee-statistics)

Figure 3: The Increased Percentage from 2017 to 2020¹⁴



As of the end of October 2021, about 179,830 refugees and asylum-seekers were registered with the UNHCR in Malaysia.¹⁵ Among them, 155,030 were from Myanmar including 103,090 Rohingyas; 22,540 from China, and 29,330 from other ethnic groups from conflict-affected areas or who fled from persecution in Myanmar. The remaining individuals were identified with the estimated number of 24,800 refugees and asylum-seekers from 50 countries fleeing war and persecution, including 6,690 Pakistanis, 3,700 Yemenis, 3,280 Syrians, 3,200 Somalis, 2,730 Afghans, 1,680 Sri Lankans, 1,200 Iraqis, 770 Palestinians, and others. 68 percent of refugees and asylum-seekers are men, while 32 percent are women, with 45,870 of them are children below age of 18.¹⁶ Malaysia is one of the top 50 host countries for refugees as well as one of the top 50 refugee countries. As of 2018, 11,384 Malaysian asylum seekers were accepted to other countries¹⁷ including the US and the UK.¹⁸

3. Challenges of the Refugees in Malaysia during Covid-19

Group of refugees with minimal resources and safety nets have been most vulnerable

¹⁴ *Id.*

¹⁵ *See Govt sheds light on refugees, overcrowded depots*, MALAY. RESERVE, July. 27, 2022, <https://themalaysianreserve.com/2020/07/27/govt-sheds-light-on-refugees-overcrowded-depots>.

¹⁶ *Id.*

¹⁷ *Countries of origin and destination of refugees*, WorldData.info (July 12, 2021), <https://www.worlddata.info/refugees-by-country.php>.

¹⁸ *Asylum applications and refugees in Malaysia*, *supra* note 13.

due to the pandemic and the nationwide Movement Control Order (MCO). Other than assistance from Malaysian non-governmental organisations, the UNHCR has reportedly mobilised RM3 million for the Covid-19 in response to refugees' emergency and urgent needs. The UNHCR has offered various necessary helps, including one-time financial assistance to about 5,700 families, thereby benefiting over 20,400 most vulnerable refugees.¹⁹ However, the assistance received is insufficient due to a large number of refugees in Malaysia. The refugees are exposed to other problems such like human trafficking, forced labour, and receiving poor health care.

A. Human Trafficking

During the pandemic, refugees are more difficult to live in Malaysia. Because the 1967 Protocol to the 1951 Convention relating to the Status of Refugees (hereinafter 1951 Convention) has yet to be acceded by Malaysia and there is no domestic legal framework for recognising the status of refugees, refugees used to be subjected to exploitation, related to human trafficking. According to the Council of Europe experts, Covid-19 has made human trafficking worsening.²⁰ The UK-based Modern Slavery and Human Rights Policy and Evidence Center research reported the pulled from surveys with some 1,500 workers found the pandemic has exacerbated the conditions.²¹ The effects of the pandemic have made refugees and asylum seekers even more vulnerable to becoming the victims of human trafficking.²²

Trafficking in persons or human trafficking involves recruiting, transporting, transferring, harbouring or receiving for exploitation of a person, which often occurs across international borders and within a single country's borders. Human trafficking is a widespread abuse that affects developing, transitional, and industrialised market economies.²³ Therefore, managing cross-border migration and the issues of labour, refugee and human trafficking has become a big concern in Malaysia and

¹⁹ UNHCR, WITH YOU: THE NEWSLETTER FOR MALAYSIANS SUPPORTING THE UN REFUGEE AGENCY 6 (Apr. 6, 2022), <https://www.unhcr.org/en-my/5ff297c34.pdf>.

²⁰ Zsombor Peter, *Forced Labor Rising in Malaysia's Rubber Glove Factories, Study Shows*, VOA, July 7, 2021, https://www.voanews.com/a/east-asia-pacific_forced-labor-rising-malaysias-rubber-glove-factories-study-shows/6207942.html.

²¹ *Id.*

²² Council of Europe, Covid-19 is worsening human trafficking-states should take action, warn Council of Europe experts (Nov. 24, 2021), <https://www.coe.int/en/web/portal/-/covid-19-is-worsening-human-trafficking-states-should-take-action-warn-council-of-europe-experts>.

²³ UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, HUMAN TRAFFICKING AND BUSINESS: GOOD PRACTICES TO PREVENT AND COMBAT HUMAN TRAFFICKING 7 (2010), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf.

its international contemporaries.²⁴ The principal law governing human trafficking in Malaysia is the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). Section 2 of ATIPSOM 2007 defines the ‘exploitation,’ as six types of offences including forced labour, sexual exploitation, slavery, servitude, any illegal activity, or the removal of organs. There is no statutory definition given to forced labour in Malaysia.²⁵ Malaysia has opted to adopt the definition given by the International Labour Organisation (ILO) in Article 1 of the Forced Labour Convention 1930 (No. 29), which defines “forced labour” as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

During Covid-19, some employers force refugee employees to work for salaries below the standard wage, take unpaid leave, or resign because of their refugee status. Many refugees who have lost their jobs due to the pandemic, were exploited by their employers and became forced labour victims in the end. Since the first lockdown in 2020, the Malaysian Trades Union Congress (MTUC) has recorded the abuses of migrant workers’ rights by their employers, including unjust termination, unpaid wages, and poor living conditions. Refugee workers, who were laid off by their companies would have lost their work permits too, thereby forcing them to become undocumented and even at risk of imprisonment.²⁶ It was reported that the Malaysian government did not adequately screen asylum seekers and refugees for indicators of trafficking.²⁷ The identification of labour trafficking victims often relied on reports of abuse from embassies or workers’ complaints of non-payment of wages and other violations rather than proactive screening efforts.

In the past decade, the migration pattern was more prevalent as there were opportunities and facilities for refugees from Rohingya and Bangladesh to travel to Saudi Arabia and Gulf countries. However, today’s situation is becoming more complicated due to lack of movement to the Middle East on various factors such as geographical/political instability, challenging routes, and the expensive cost

²⁴ MohdHazmi MohdRusli et al., *Securing Malaysia’s Borders from Covid-19: Legal Considerations to the Influx of Rohingya Migrants*, 14 J. EAST ASIA & INT’L L. 115-30 (2021).

²⁵ Interviewed by the author, Department of Labour Peninsular Malaysia, Putrajaya (Feb. 21, 2014). As of 6 December 2021, the authors’ finding shows that no definition of forced labour is given in Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007 (Act No. 2 of 2007), <https://www.theedgemarkets.com/article/state-nation-malaysias-ratification-ilo-protocol-2014-good-start-combating-forced-labour>.

²⁶ Florida Sandanasamy, MarjaPaavilainen & NilimBaruah, COVID-19: Impact on migrant workers and country response in Malaysia, ILO (May. 8, 2020), https://www.ilo.org/wcmsp5/groups/public/bangkok/documents/briefingnote/wcms_741512.pdf.

²⁷ Stakeholder Consultation on Forced Labour Issues in the Construction Industry, Suhakam (Nov. 25, 2021), <http://bem.org.my/documents/20181/188817/Letter+SUHAKAM.pdf>.

of delivery by middlemen. Recent trends show that there is an active movement to the east, such as Malaysia and Indonesia.²⁸ Based on the latest statistics from the Malaysian Ministry of Home Affairs, there are 101,584 UNHCR cardholders among the Rohingyas in Malaysia and 139,00 in Indonesia.²⁹ As such, they already have a large social network which makes them convenient to live in Malaysia. Some other reasons include Malaysia being an Islamic country and the kindness of Malaysian police officers.³⁰

B. Health Benefit

Covid-19 is spreading from person to person directly or indirectly, caused by pathogenic organisms such as bacteria, viruses, parasites, and fungi.³¹ Like other countries, Malaysia aims to be freed from Covid-19. Therefore, Malaysia needs to ensure that all those within its borders are accessible to Covid-19 vaccines. As of April 6, 2022, about 79.1 percent or 25,842,177 of the Malaysian population have been fully vaccinated.³² In order to speed up the process and achieve herd immunity more quickly, the Malaysian government encourages refugees, asylum seeker and illegal migrants to register for vaccination. In March 2020, the Malaysian government declared that all migrants, including refugees would receive free Covid-19 testing and treatment. The government has offered assurances on numerous occasions that migrants would neither be detained nor asked to leave the country.³³ The government guaranteed that they would not arrest anyone who sought Covid-19 testing or treatment based on their immigration status.³⁴ The government also announced that all foreigners' screening and treatment would be provided by free of charge during the MCO. Foreigners are welcome to have access to health services and assistance

²⁸ IntanSuriaHamzah, SityDaud & Nor Azizan Idris, *Rohingya refugees and contemporary issues in Malaysia* [PelarianRohingyadaniisu-isukontemporari di Malaysia], 12(9) MALAY. J. SOC'Y & SPACE 11-23 (2016).

²⁹ Mohd Iskandar Ibrahim, *Malaysia does not recognise Rohingya refugee status* [Malaysia takiktiraf status pelarianRohingya] BH ONLINE (Apr. 30, 2020), <https://www.bharian.com.my/berita/nasional/2020/04/683606/malaysia-tak-iktiraf-status-pelarian-rohingya>. See also LarasatiDyahUtami, *World Refugee Day: Number of International Refugees in Indonesia Reaches 13,900* [Hari PengungsiSedunia: JumlahPengungsiInternasional di Indonesia Capai 13.900], TRIBUNNEWS.COM, June 20, 2020, <https://www.tribunnews.com/nasional/2020/06/20/hari-pengungsi-sedunia-jumlah-pengungsi-internasional-di-indonesia-capai-13900>.

³⁰ *Supra* note 28, at 20.

³¹ WHO, Infectious Diseases (July 15, 2020), https://www.who.int/topics/infectious_diseases/en.

³² Malaysian Ministry of Health, Covidnow (Apr. 6, 2022), <https://covidnow.moh.gov.my/vaccinations>.

³³ See *Covid-19: Illegal migrants at tabligh event can test without fear*, STAR, Mar. 22, 2020, <https://www.thestar.com.my/news/nation/2020/03/22/covid-19-illegal-migrants-attabligh-event-can-test-without-fear>.

³⁴ Emily Fishbein & Jaw TuHkawng, *Fear of arrest among undocumented risks Malaysia vaccine push*, AL JAZEERA, Aug. 6, 2021, <https://www.aljazeera.com/news/2021/8/6/mixed-messaging-in-malaysia-leaves-migrants>.

without fear of negative repercussions. The government also opened a walk-in centre for undocumented migrants. However, many of the refugees are still worried that they will be arrested. Their worry increased even more after several cases of arrests and outbursts of anti-foreigner rhetoric happened.³⁵

Even worse, as the Malaysian government does not provide clear information about the vaccination programme, refugees would face difficulties in using the existing system. For vaccine registration, specific documents are required. Technically, refugees need to register their identifications via the MySejahtera application or the Special Committee on Vaccine Supply Access Guarantee (JKJAV) website, but few of them understand Malay or English languages well.³⁶ Actually, refugees do not have passports. Besides, there are also no clear policies and information on vaccines accessible to all refugees.

C. Other Challenges

Refugees officially recognised by the UNHCR receive a “de facto status” in Malaysia. The Malaysian government has granted the UNHCR permission to manage the reception, registration, documentation and determination of a refugee’s status.³⁷ In addition, there is a written directive from the Attorney General’s Chamber of Malaysia in 2005, which rules that the UNHCR cardholders will be protected from arrest, detention and prosecution.³⁸ Unfortunately, however, there are some refugees who are not benefited from legal protection and are thus exposed to arrest, detention, and refoulement.³⁹ The enforcement officers are targeting the refugees since they do not have any legal documentation to stay and work in Malaysia. Some refugees are even detained at police stations for several days for investigation. At the same time, refugees are frequently regarded as illegal immigrants even if they hold the authentic UNHCR refugee cards or documents.

³⁵ *Id.*

³⁶ Bedi, *supra* note 7.

³⁷ Zuraini Ab Hamid et al., *Legalising refugee status whilst protecting the security of Malaysia*, in *FAMILY LAW IN MALAYSIA AND BEYOND* 207-14 (Majdah Zawawi et.al eds., 2021).

³⁸ *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination* (International Federation for Human (FIDH) and Suara Rakyat Malaysia (SUARAM), 2008).

³⁹ *Supra* note 27.

4. Legal Framework Governing Refugees

After World War II, the United Nations High Commissioner for Refugees (UNHCR) was established in 1950 to assist millions of Europeans who had fled or lost their homes. Around 70 years later, the organisation is still working tirelessly to protect and aid refugees all over the world.⁴⁰ The mandate of the UNHCR is to ensure the entry and easy integration of refugees into the host country and ensure successful coordination of steps is taken to solve the refugee problem.⁴¹ Article 1.A(2) of the 1951 Convention defines the refugee as:

an individual who as a result of events before 1 January 1951 is outside of his country's nationality or habitual residence; has a well-founded fear of being persecuted because of his race, religion, nationality, membership of a particular social group or political opinion and is unable or unwilling to avail himself of the protection of that country, or to return there, for fear of persecution.⁴²

The 1951 Refugee Convention, which entered into force on April 22, 1954, restricted the protection of refugees to those in Europe only. The 1967 Protocol, however, abolished the geographical and temporal limits of the 1951 Convention. The refugee laws are important as a means to protect and control the refugees.⁴³ Migrants who have come to Malaysia due to wars, political tensions, armed conflicts, and persecution in their own countries need to be approached as refugees and asylum seekers by the UNHCR for formal recognition. After undertaking various and lengthy procedures to decide whether they are legitimate refugees with valid status claims, they may be recognised as refugees by the UNHCR.⁴⁴ In Malaysia, having the UNHCR card does not guarantee their full rights as refugees, as for the time being, refugees and asylum seekers are lumped together as illegal immigrants. They are vulnerable to be arrested

⁴⁰ UNHCR, History of UNHCR (Apr. 6, 2022), <https://www.unhcr.org/en-my/history-of-unhcr.html>.

⁴¹ Abdul Rawuf Hussein, Using A Career Guidance Intervention to Promote the Psychosocial Adjustment of Somali Youth Refugees in Malaysia, 16 (2011) (unpublished Masters dissertation, International Islamic University Malaysia), <http://merr.utm.my/3639>.

⁴² UNHCR, HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, U.N. Doc. HCR/IP/4/Eng/REV.1 (1992), <https://www.unhcr.org/4d944dfc9.pdf>. See also Iman Osman Mukhtar Ahmed, Using Drawings to Explore Future Orientation and Hope among Adolescent Refugees: A Case Study of Syrian Refugees in Malaysia 33-5 (2013) (unpublished Ph.D. dissertation, IIUM), <http://studentrepo.iium.edu.my/handle/123456789/4283>.

⁴³ S. Behrman, *Refugee Law as a Means of Control*, 32 J. REFUGEE STUD. 42-5 (2019).

⁴⁴ MOHAMMAD NAQIB ISHAN JAN & ET AL., INTERNATIONAL REFUGEE LAW: PRACTICE AND PROCEDURE 164 (2017)

for immigration offences under Section 6 of the Immigration Act 1959/63 which provides: “Any person who is found guilty under the provision shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.”⁴⁵

NGOs and the UNHCR have urged the Malaysian government to become a State party to the 1951 Refugee Convention and its 1967 Protocol. In fact, if Malaysia decides to have commitments towards refugees under international law, it will have to comply with the 1967 Protocol. Under Article 1, State parties to the 1967 Protocol should undertake to apply the 1951 Convention as well, even if they are not parties to it. Nevertheless, it is not that easy for Malaysia to simply accede to the 1967 Protocol without considering its repercussion on national security. The South Asia and Southeast Asian regions can produce more refugees than the total Malaysian population. There is thus a risk that illegal immigrants who come for economic reasons to Malaysia may abuse the rights of refugees. In this regard, the former Minister of Justice of Malaysia Tan Sri Syed Hamid Albaronce remarkably said that if Malaysia recognised refugees, it could open the floodgates and encourage illegal immigrants to come here to escape economic hardship in their own country.⁴⁶ Malaysia has opted not to become a party to the 1967 Protocol mainly because Malaysia is not financially capable of meeting the needs of refugees, including well-being, healthcare, education, etc.⁴⁷ In particular, acceding to the 1967 Protocol indirectly means opening the door for more refugees to come to Malaysia, which would certainly lead to a rise in the number of illegal immigrants and foreign workers. The Malaysian government is afraid that these refugees are causing socio-economic problems, as many locals do not have enough jobs for them.⁴⁸ Based on humanitarian assistance and solidarity with Muslims, the country has agreed to allow this influx of migrants temporarily.⁴⁹ Therefore, the Malaysian government has agreed to deal with and consider the

⁴⁵ Immigration Act 1959/1963 (Act 155), §6(1). It reads: “No person other than a citizen shall enter Malaysia unless ... (c) he is in possession of a valid Pass lawfully issued to him. Sub (3) further states that any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.”

⁴⁶ Aston Philip Paiva, *Rejected at Every Turn*, Malaysian Bar Website (Apr. 6, 2022), <https://www.malaysianbar.org.my/article/about-us/committees/national-young-lawyers-and-pupils/rejected-at-every-turn>.

⁴⁷ D. Supaat, *Refugee Children under the Malaysian Legal Framework*, 4 UUM J. LEGAL STUD. 118-48 (2014).

⁴⁸ Zuhour Ali Hezam Saleh Al- Gudari, *Strategies and Approaches of Malaysia Life Line For Syria*, 8 GLOBAL SCI. J. 26-7 (2019), https://www.globalscientificjournal.com/researchpaper/STRATEGIES_AND_APPROACHES_OF_MALAYSIA_LIFE_LINE_FOR_SYRIA_MLLFS_.pdf.

⁴⁹ A. Idris, *Malaysia and Forced Migration*, 20 INTELL. DISCOURSE 31-54 (2012), https://www.researchgate.net/publication/277214425_Malaysia_and_forced_migration.

problem of migration on a case-by-case basis rather than via direct communication with the UNHCR.⁵⁰

The Malaysian government treats the presence of migrants as an economic strain because the country needs to create and operate multiple institutions to support them. Besides, Malaysia assumes that many migrants would be a danger to Malaysia's national security, and any tolerance for migrants' acceptance would allow more to come to Malaysia.⁵¹ It is reported that the refugees were considered as one of the contributing factors of the increased crime rates in the country.⁵² Refugees were perceived to steal job opportunities from local Malaysians and the reason behind the significant seepage of Malaysian currency. Influxes of refugees were seen as threats which, if not curbed, would cause instability within Malaysia's sensitive demographic blueprint. That is why Malaysia's role in the file of migrants is defined by the government's policies and procedures for encouraging or tightening rules against them.⁵³ For instance, Malaysia deals with Palestinian refugees well based on the universality of Islamic faith and a compassionate understanding of the Palestinian issue, rather than receiving them as a refugee resettlement community.⁵⁴ Also, there are geographical reasons why Malaysia has not adopted the 1967 Protocol. Malaysia used to be the final destination and preference due to its strategic geographical location for many illegal immigrants.⁵⁵ This situation creates many social problems for the local people and negatively impacts Malaysia's economy. Furthermore, Malaysia may not agree with one particular condition set in the 1951 Refugee Convention that refugees must be given equal privileges as local people.⁵⁶

5. Responsibility of Malaysia as a Host Country

Malaysia is one of the top 50 host countries for refugees. The 1951 Refugee Convention

⁵⁰ Iyad Muhammad Eid, General Image of Palestinian Families In Transition: A Case Study Of The Palestinians In Malaysia, 209-210 (2018) (unpublished Ph.D. dissertation, IIUM), <https://studentrepo.iium.edu.my/handle/123456789/6494>.

⁵¹ *Id.* at 210.

⁵² Sulaiman Kamarudin, Asylum in the Islamic Tradition: Possible Application in the Malaysian Situation (IIUM, 2019), at 53-4, <https://lib.iium.edu.my/mom/services/mom/document/getFile/3W4KbdvSV2sG9wTmWddk1snRtNr26T320130927155944945>.

⁵³ Idris, *supra* note 49.

⁵⁴ Iyad Muhammad Eid, *supra* note 50.

⁵⁵ Zuhour Ali Hezam Saleh Al- Gudari, *supra* note 48.

⁵⁶ Myint Thein Abdus Salaam, The Problem of Muslim National Identity in Myanmar 307 (unpublished Ph.D. dissertation, IIUM, 2018).

and its 1967 Protocol grant the rights to refugees under international law. Malaysia has neither acceded to the 1967 Protocol, nor maintained an asylum system regulating the status and rights of refugees.⁵⁷ However, it has been de facto accepting refugees.⁵⁸ In this case, Malaysia would have several costs for hosting refugees. Firstly, the refugee hosting States have to bear substantial financial costs for refugee-related tasks. Secondly, a wide range of economic, infrastructural, and environmental costs are borne by the refugee hosting country, as neighboring countries may raise consumer prices, while local incomes may decrease, leading to deforestation or water source pollution, among others. Last but not least, the refugee hosting countries are incurring costs in terms of their security, politics, and relationship with other countries.⁵⁹

Although Malaysia has chosen not to accede to the 1967 Protocol, Malaysia still renders better treatment to refugees as compared to many other countries.⁶⁰ Malaysia is reported to provide refugees under the UNHCR with shelter, access to public clinics and hospitals with a 50 percent discount, and free vaccination for their children. The refugees can also access their society-based private schools, any NGOs,⁶¹ or the UNHCR volunteer unit. However, these schools are lack of basic facilities such as proper classrooms, laboratories, playgrounds, textbooks, and teachers. Refugee communities mainly fund the schools, while the teachers are volunteers from NGOs and the UNHCR, and the goal of these schools is to give adequate education to the refugees' children.⁶² Malaysia still helps and protects the refugees from an humanitarian perspective. Absent a legal framework, however, refugees can be a cause of other issues in Malaysia. Indeed, it is difficult to deal with more than 3.4 million migrants in Malaysia without a suitable legal ground.⁶³ The Malaysian government tends to use ad hoc policies and there is no formal strategy and plans to deal with these immigrants.⁶⁴

Although Malaysia has decided not to become a party to the 1967 Protocol it has

⁵⁷ Number of immigrants in Malaysia from 2005 to 2019, Statista (Aug. 8, 2020), <https://www.statista.com/statistics/697812/malaysia-number-of-immigrants>.

⁵⁸ Iyad Muhammad Eid, *supra* note 50.

⁵⁹ UNHCR, The role of host countries: the cost and impact of hosting refugees, for Executive Committee of the High Commissioner's Programme, Standing Committee 51st meeting, on May 31, 2011, U.N. Doc. EC/62/SC/CRP.18, <https://www.unhcr.org/excom/standcom/4de4f7959/role-host-countries-cost-impact-hosting-refugees.html>.

⁶⁰ Siti Noor Fadzilah Bt Abd Rahim, Exploring Children's Motivation In Learning: A Case Study of Rohingya Children in Kuala Lumpur 29 (2016) (unpublished Masters thesis, IIUM), <https://lib.iium.edu.my/mom/services/mom/document/getFile/47uEnhAsEK3qM1yIFV5FS4TCWWP9pK112016114144324848>.

⁶¹ Zuhour Ali Hezam Saleh Al- Gudari, *supra* note 48, at 26.

⁶² Sulaiman Kamarudin, *supra* note 52, at 50.

⁶³ Iyad Muhammad Eid, *supra* note 50.

⁶⁴ Zuhour Ali Hezam Saleh Al- Gudari, *supra* note 48.

adopted the principles and ideology established by the Universal Declaration of Human Rights 1948, which is essential in stimulating and promoting the international protection of human rights and significantly impacts subsequent treaties on human rights, including the rights of refugees.⁶⁵ In addition, the UNHCR has become the instrumental in assisting migrant groups in Malaysia since 1975. Yet, the Malaysian government does not officially accept the UNHCR. Rather, Malaysia gives an internal authorisation for the UNHCR to operate in Malaysia.⁶⁶

The Malaysian government's experience of handling the refugee issues started in 1975 when Malaysia accepted thousands of Vietnamese refugees affected by the Vietnam War and put them in Pulau Bidong refugee camps, Terengganu. With the aid of the UNHCR and the adoption of the 1978 Comprehensive Plan of Action (CPA), many of the Vietnamese refugees were able to return home. As a result, the Terengganu refugee camps were officially closed in 1990.⁶⁷ This refugee friendly national policy was based on the elements and concepts of human rights which have been incorporated in the Federal Constitution since the Proclamation of Independence.⁶⁸ Malaysia's first Prime Minister, Tunku Abdul Rahman, declared on the Independence Day: "The nation shall be founded upon the principle of liberty and justice and ever seeking the welfare and happiness of the people."⁶⁹

The Federal Constitution of Malaysia provides for the fundamental freedom that comprise the personal liberty,⁷⁰ prohibition of forced labour and slavery,⁷¹ protection against retrospective criminal laws and repeated trials,⁷² and equality.⁷³ This constitutional formulation is chosen over the international one. In addition, all entitlements enshrined in the Federal Constitution or implicit therein would be characterised as human rights.⁷⁴ Indirectly, the rights available in the Federal Constitution is in line with the 1967 Protocol and universally relevant for refugees.

⁶⁵ ABDUL GHAFUR HAMID, *PUBLIC INTERNATIONAL LAW: A PRACTICAL APPROACH* 304 (2019).

⁶⁶ Supaat, *supra* note 47, at 118-48.

⁶⁷ Siti Noor Fadzilah, *supra* note 60.

⁶⁸ Rohaido Nordin, *Malaysian Perspective on Human Rights*, 14 *JURNAL UNDANG-UNDANG* 54-6 (2010).

⁶⁹ Speech at the Proclamation of Independence, in T.S. JEW, *PUBLIC INTERNATIONAL LAW: A MALAYSIAN PERSPECTIVE* (vol. I), liiv (1996).

⁷⁰ MALAY. CONST. art. 5(1)a.

⁷¹ *Id.* art. 6.

⁷² *Id.* art. 7.

⁷³ *Id.* art. 8.

⁷⁴ SHAD SALEEM FARUQI, *DOCUMENT OF DESTINY: THE CONSTITUTION OF THE FEDERATION OF MALAYSIA* 393 (2008).

6. Conclusion

Malaysia has proved its willingness to accommodate and help the refugees even though it is not a party to the 1967 Protocol. Malaysia is generous to migrants when it opens the gates and accepts refugees and provides them with shelter, education, and health care treatment. As Covid-19 is spreading widely and endangering the global society as a whole, however, the Malaysian government cannot but prioritise its citizens. All necessary steps should be taken to seal its frontiers to curb further unwarranted importation of this deadly virus. Hence, all frontliners, especially the Royal Malaysian Police and the Malaysian Maritime Enforcement Agency have been working tirelessly to safeguard the nation's frontiers through Ops Benteng. In this course, security at the gazetted points of entry and exit all over Malaysia has been enhanced.⁷⁵

As a leading country in Southeast Asia, however, Malaysia should be responsible for the global and humanitarian issues like the protection of refugees worldwide. To be a developed country, Malaysia is required to cooperate in providing refugees with the assistance and services necessary.⁷⁶ As a non-party to the 1967 Protocol, Malaysia could not fully support the refugees during the pandemic like what they have given to local citizens. All relevant stakeholders, including NGOs, understand Malaysia's economic, political, and social ability to help them. As a consequence, Malaysia is required to consider acceding to the 1967 Protocol in line with general trend of international law.

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⁷⁵ Rusli, *supra* note 24.

⁷⁶ Siti Noor Fadzilah, *supra* note 60.

