

Managing Refugee Crisis in Southeast Asia

POLICIES, PRACTICES AND CHALLENGES



MOHAMMAD HASAN ANSORI
JOHARI EFENDI
WIRYA ADIWENA

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Jakarta, February 2017
Research Team
The Habibie Center

Foreword

The world is currently facing a refugee crisis. Millions of people had to endure perilous journey across land and sea from conflict ridden areas to seek asylum. While many attentions have been brought forward to refugee crisis in Europe, in our own neighbourhood in Southeast Asia we also encountered our own refugee crisis. Early in 2015, the region faced a large influx of Rohingya refugees who flee persecution to other countries through the sea.

It is with this background that The Sasakawa Peace Foundation launched a project on “the Global Trend of Refugee Issues and Future Vision of Japan and Asia”. Under this framework we initiated cooperation with The Habibie Center to research the responses of the governments and civil societies in facing this issue: what are the constraints? What are the best practices?

We focused our attention to Thailand, Malaysia and Indonesia as these countries are involved in the initial stage of receiving the Rohingya refugees. We note that although most ASEAN member states—like many other ASIAN countries—have not signed the Refugee Convention, and although there are no framework for refugee protection internally and regionally, there are rooms for better protection of refugee rights. Historically, the region has prior experience with regional cooperation in addressing refugee crisis following conflicts in the former French colonies of Indochina. And, in present times, civil society organizations in the region have taken initiative to provide solution when facing the large influx of refugee crisis in 2015.

The Sasakawa Peace Foundation truly appreciates the hard work of The Habibie Center research team in analysing a very complicated issue. Indeed, we believe that the publication of that research into this book is an important first step to ensure that the issue of refugee protection, or human rights protection in general, become a priority in Southeast Asia. We also hope that highlighting the ways that multiple stakeholders are addressing the refugee issue in Southeast Asia will help understand not only the challenges that they face but more importantly the opportunities to promote a more comprehensive and humane framework to manage the issue.

Finally, while it would seem that refugee issues alongside other migration challenges such as human trafficking and people smuggling will continue to be a challenge for the region in the year to come, we are glad to note that

there is hope. Indeed, one of the things that this book shows is that although there are plenty of challenges many stakeholders in the region are resilient, and that there is an abundance of goodwill to solve the issue.

Tokyo, February 2017

Fumiko Okamoto & Akiko Horiba
The Sasakawa Peace Foundation

List of Acronym and Abbreviation

ABIM	: <i>Angkatan Belia Islam Malaysia</i> - The Muslim Youth Movement of Malaysia
AMAN	: The Asian Muslim Action Network
APPRN	: Asia Pacific Refugees Rights Network
ASEAN	: Association of Southeast Asian Nations
ATIPAct	: Anti-Trafficking Act
BASRAN	: Bangkok Asylum Seeker and Refugees Assistance Network
BBCT	: Thai-Burma Border Consortium
BDT	: Bangladeshi Taka
BLK	: <i>Balai Latihan Kerja</i> -Training Center
BPSOS	: Boat People SOS
BRC	: Bangkok Refugee Centre
BROUK	: Burmese Rohingya Organization UK
CAT	: Convention against Torture
CBO	: Community Based- Organizations
CEDAW	: Sustainable Development Goals
CERD	: International Covenant on the Elimination of All Forms of Racial Discrimination
COERR	: Catholic Office for Emergency Relief and Refugees
CPA	: Comprehensive Plan of Action
CRC	: Convention on the Rights of the Child
CRSP	: The Coalition for the Rights of Refugees and Stateless Persons
CSO	: Civil Society Organization
CURN	: Core Urban Refugee Network
D3	: Dirty, Difficult and Dangerous
EU	: European Union
FGN	: Future Global Network
FIDH	: International Federation for Human Rights
GDP	: Gross Domestic Product
Haluan Malaysia	: <i>Himpunan Lepasn Institusi Pendidikan Malaysia</i> -Haluan Malaysia Association of Graduates Malaysia

HRWG	: Human Rights Working Group
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
ICS	: Integrated Community Shelter
IDPs	: Internally Displaced Persons
IDC	: Immigration Detention Center
IDR	: Indonesian Rupiah
IOM	: International Organization for Migration
IRC	: International Rescue Committee
ISIS	: Institute of Strategic and International Studies
ISOC	: Internal Security Operation Command
JRS	: The Jesuit Refugee Service
Kemenkoplhukam	: <i>Kementerian Koordinator Bidang Politik, Hukum dan Keamanan</i> - Coordinating Ministry for Political, Legal and Security Affairs
KNSR	: <i>Komite Nasional Solidaritas Rohingya</i> - National Committee for Rohingya Solidarity
LGBT	: Lesbian, Gay, Bisexual and Trans-sexual
MAI	: <i>Majlis Agama Islam</i> -The Council of Islamic Religion
MOI	: Ministry of Interior
MSF	: Ministry of Social and Family Development
MYR	: Malaysian Ringgit
NGOs	: Non Governmental Organizations
NIC	: Newly Industrialized Countries
NLD	: The National League for Democracy
NSC	: National Security Council
<i>Permen</i>	: <i>Peraturan Menteri</i> -Ministerial Regulation
<i>Perpres</i>	: <i>Peraturan Presiden</i> -Presidential Regulation
PMI	: <i>Palang Merah Indonesia</i> - Indonesian Red Cross
P2MP2S	: <i>Penanganan Penyelundupan Manusia, Pengungsi dan Pencari Suaka</i> -Management of People Smuggling, Refugees, and Asylum Seekers
RELA	: <i>Jabatan Sukarelawan Malaysia</i> – People’s Volunteer Corps
REC	: Rohingya Education Center
RSD	: Refugee Status Determination
SDGs	: Sustainable Development Goals
SEA	: Southeast Asia
SLORC	: State Law and Order Restoration Council
SOM	: Senior Officials Meeting

SOP	: Standard Operating Procedure
SPM	: <i>Sijil Pelajaran Malaysia</i> -Malaysian Certificate of Education
Suhakam	: The Human Rights Commission of Malaysia
SUKA Society	: <i>Persatuan Kebajikan Suara Kanak-kanak Malaysia</i> -The Associated Voice for the Better Livelihood of Malaysian Children
UNDP	: United Nations Development Program
UNHCR	: United Nations High Commissioner for Refugees
USCRI	: The US Committee for Refugees and Immigrants
TIP	: Trafficking in Persons
THB	: Thai Baht
TRC	: Thai Committee for Refugees
UNBRO	: The United Nations Border Relief Operation
WADAH	: <i>Wadah Pencerdasan Umat Malaysia</i> -The Malaysia National Association for <i>Ummah</i> Enlightenment.

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Chapter I:

Introduction

A. PROBLEM STATEMENT

It is widely known that the issue of refugee has grabbed not only the attention of national and regional societies and leaders, but has also increasingly become a global concern, especially when referring to the current massive influx of Syrian refugees in Europe. Being very much concerned with this issue, the newly elected Secretary General of the United Nations (2017-2021), Antonio Guterres, highlighted this issue as one of his double prioritized programs (the other one mainly refers to the problem of gender equality).¹ In addition to the bloody conflict in the Middle East, the refugee issue is still strongly believed to be one of the enduring and challenging crises the world faces in the near future.

The refugee issue has been as long as the existence of human civilization.² However, at the beginning of 2000s, the phenomenon of refugee has turned into a kind of specific trend following the bloody and violent conflicts in the Middle East³ and the emergence of a wide variety of actors and stakeholders involved in addressing the refugee crisis. It has been an agreement among analysts and academics that the post-2000 refugee crisis tends to be related to specific cases of refugees from the Middle East, Central, South and Southeast Asia as well as Africa.⁴ Since the outbreak of conflicts in the Middle East, most of the people in the region have migrated to specifically targeted countries as their destinations, particularly to Australia, Germany, Canada and New Zealand, searching for a more decent and promising life.⁵ However, the war in Afghanistan in the earlier part of the 2000s saw more refugees migrate to Iran and Pakistan, rather than Australia or other countries, because of geographical closeness and cultural/ideological proximity, especially the aspect of the Shiite faith.⁶ Suffice to say, the underlying causes of refugee

1 Kompas, October 15, 2016.

2 Malik Mahmudi, The History of Refugees in Southeast Asia, a paper presented Forum for Muslim Democrats, the anniversary of the Habibie Center, Jakarta, 19 November 2015.

3 Interview with Puja Laksana, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

4 See Antje Missbach, *Troubled transit: asylum seekers stuck in Indonesia*, 2015, p. 5.

5 *Ibid.*

6 Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

movements are underpinned by conflict, state failure and the inequalities of the international political economy.⁷

Currently, the total number of refugees all over the world is estimated, as of September 15, 2015, to be 19.5 millions. In general, the number of refugees in Asia, as of 2014, is estimated to be 9 millions. Six percent out of this number is concentrated in Southeast Asia, which is estimated to hold 500,000 as of 2015.⁸ Compared to other ASEAN countries, Indonesia, Malaysia and Thailand are considered to have more direct concerns with the issue of refugee. That is, most refugees and asylum seekers in ASEAN are concentrated in these countries.⁹ The following table (Table 1) describes the distribution of the latest number of refugees that are concentrated in Asia and Southeast Asia.¹⁰

Table 1: Distribution of refugees in Asia and Southeast Asia

Scale and Country	Year	Estimated Numbers	Description
Global	2015	19.5 millions	
Asia	2015	9 Millions	About half of the total number of global refugees
Southeast Asia	2015	500,000	About 5% of the total number of refugees in Asia
Malaysia	2016	158,510	About one third of the total number of refugees in SEA
Thailand	2016	105,935	About 20 % of the total number of refugees in SEA
Indonesia	2016	13,681	About 4% of the total number of refugees in SEA

The globally increasing trend of refugee is generally characterized by two mainstreams of refugees: Syrian refugees in Europe and Rohingya refugees in Southeast Asia. Relative to Syrian refugees, Rohingya refugees are seen as being more complicated, not only because a Myanmar law enacted in 1982 denies the Rohingya people national citizenship, thus rendering them stateless and vulnerable to discrimination,¹¹ but also most of them are uneducated and

7 Alexander Betts and Gil Loescher, "Refugees in International Relations," in *Refugees in International Relations*, ed. Alexander Betts and Gil Loescher (Oxford: Oxford University Press, 2010), 1–27.

8 UNHCR, Southeast Asia, <http://www.unhcr.org/pages/4b17be9b6.html>, or <http://www.unhcr.org.uk/about-us/key-facts-and-figures.html>

9 Data are derived from different sources, especially from <http://www.unhcr.org/pages/4b17be9b6.html>; Jewel Topsfield, *Refugees in Indonesia go on hunger strike to protest delays in resettlement*. Retrieved from <http://www.smh.com.au/world/refugees-in-indonesia-go-on-hunger-strike-to-protest-delays-in-resettlement-20151015-gka7bs.html>, on November 15, 2015.

10 Derived from diverse sources.

11 Adam Roberts, "More Refugees, Less Asylum: A Regime in Transformation," *Journal of Refugee Studies* 11, no. 4 (1998): 375–95. And See Liza Yosephine, (2016). Incoming government told to lift restrictions on the Rohingyas. Retrieved from <http://www.thejakartapost.com/>

lack skills. Because of the latter reason, most countries are often unwilling to accept them. While they are welcomed in Indonesia, this is mainly because of a religious solidarity factor.¹² Religious solidarity also generally serves as a common reason for Malaysia to accept Rohingya refugees.

Putting it in the broader context of ASEAN, the current condition might serve as a challenge and even an obstacle for ASEAN in dealing with the refugee crisis in the region. As a regional body, ASEAN is responsible for keeping the region stable and peaceful. As was emphasized by UNHCR Southeast Asia, “The lack of asylum laws and diversity of national legal frameworks, as well as government practices and protection environments in the region’s countries, make achieving regional harmonization challenging”.¹³ There is no denying the fact that there are diverse stakeholders highly concerned about this issue. For instance, Gaetano (2015) stated that “the ASEAN region cannot expect to realize the promise of the ASEAN Community without addressing the lack of a legal framework for protecting refugees in ASEAN”.¹⁴ That is, the biggest challenge for ASEAN right now is related to the absence of operational regional framework/instrument or comprehensive regional arrangement and cooperation.

ASEAN as a body and most of the ASEAN countries are seen as not having a strategic instrument for dealing with refugees in the region.¹⁵ For instance, in the very recent case of the Rohingya refugee crisis in the region, ASEAN countries could only make a simple effort of setting up aid funds for the stranded Rohingya Muslims, either from Myanmar or Bangladesh. The humanitarian fund was particularly used to help displaced Rohingya refugees. The trust fund was to be administered by the ASEAN Secretariat based in Jakarta. Unfortunately, we could not find other strategic instruments used by ASEAN and the ASEAN countries in addressing refugee crisis in the region.

B. RESEARCH PURPOSE

Based on the above mentioned problem articulation, some questions are formulated as follows:

news/2016/02/27/incoming-government-told-lift-restrictions-rohingyans.html, on March 23, 2016.

12 Interview with Puja Laksana, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

13 See 2015 UNHCR sub-regional operations profile - South-East Asia. Retrieved from <http://www.unhcr.org/pages/4b17be9b6.html>, on January 12, 2016.

14 Silvia di Gaetano (2015). How to Solve Southeast Asia’s Refugee Crisis: Steps can and should be taken to alleviate the plight of the Rohingya. Retrieved from <http://thedi diplomat.com/2015/09/how-to-solve-southeast-asias-refugee-crisis/> on January 23, 2016.

15 Amanda Puspita Sari, (2015). *ASEAN tak punya instrument untuk atas isu pengungsi*. Retrieved from: cnnindonesia.com/international/20150616183808-106-60405/asean-tak-punya-instrumen-untuk-atasi-isu-pengungsi/ on January 16, 2016.

1. What are ASEAN countries' policies and practices (past, present, and best practices) for addressing refugee crises?
2. What are the challenges and issues facing ASEAN countries in receiving and addressing refugees?
3. What are the roles of CSOs in addressing refugees?
4. To what extent do ASEAN countries collaborate with each other in addressing refugees?

Based on the questions, this research mainly intends to explore the following points:

1. The past, present and best policies and practices of ASEAN countries for addressing refugees.
2. The issues and challenges facing ASEAN countries in addressing refugees.
3. The roles of CSOs in addressing refugees.
4. The degree of regional collaboration and cooperation in addressing refugees in the region.

That is, the questions serve as a guiding pathway to explore some strategic points and information on the degree and way ASEAN plays its role in handling the refugee crisis. Ultimately, all information and data would serve as a foundation to further build a broader understanding, foster collective responsibility and strengthen awareness among ASEAN countries on the refugee issue in the region.

Moreover, since most refugees in ASEAN are currently concentrated in Indonesia, Thailand and Malaysia, this research is specifically designed to focus on these countries. What follows is the general dynamic of these countries related to the issue of refugees (Table 2):¹⁶

Table 2: Dynamic of refugee issue in Indonesia, Thailand and Malaysia

Country	Number	Country of Origin	Status	Transit/ Destination	Receiving/ Sending Labor	Convention Ratification
Indonesia	13,681 (2016)	Afghanistan (49%), Somalia (9%), Myanmar (Rohingya) (8%), and the rest from Pakistan, Iran and Palestine.	Non- signatory	Transit	Sending Labor Country	Does not has political will to ratify the Convention
Malaysia	158,510 (2016)	Myanmar(93%), with the rest from Sri Lanka, Pakistan, Somalia, Syria, Iraq, Iran and Palestine	Non- Signatory	Transit and Destination (to certain extent)	Receiving Labor Country	Does not has political will to ratify the Convention

¹⁶ Derived from diverse sources.

Thailand	105,935 (2016)	Pakistan, Iraq, Syria, Sri Lanka, China, Vietnam, Cambodia, Somalia, Congo and Myanmar (Karen, the Karenni, Rakhine, Kachin, Shan, Chin, and Mon).	Non-Signatory	Transit and Destination (to certain extent)	Receiving Labor Country	Does not has political will to ratify the Convention
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This study generally assumes that, on the one hand, it is unreasonable to solely rely on regional frameworks and collaboration as the real crisis of refugee exists among individual countries that have direct and concrete contact with the issue. On the other hand, addressing refugees cannot be solely dependent on the individual efforts of ASEAN countries since the refugee issue is not a single or isolated crisis; instead, it clearly consists of inter-connected global or regional entities. Taking these two points into consideration, this study is mainly intended to go beyond individual ASEAN countries by getting engaged with the role of ASEAN as a regional body in the region. In doing so, this study intends to explore the framework, practices and policies of ASEAN for addressing refugees in the region and the extent to which ASEAN countries collaborate with each other in dealing with refugee crisis in the region. The following graph (Figure 1) portrays the inter-related efforts of individual ASEAN countries with ASEAN as a regional entity in dealing with the refugee crisis in the region:

Figure 1: Two levels of analysis of refugee crisis in Southeast Asia



Moreover, the concept of refugee applied in this study is defined with a reference to Article 1A of the 1951 Refugee Convention:

[A refugee is referred to as a person who] owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his or her habitual residence, is unable, or, owing to such fear, is unwilling to return to it.¹⁷

According to UNHCR, ‘refugees’ refer to people fleeing war or persecution across an international border - people who have no choice but to run for their lives and are unable to return home. Meanwhile, ‘migrants’ refers to people who chose to move to improve their lives for work, education, family reunification or even hunger.¹⁸ That is, a refugee is defined here as a person who runs away from his/her country across international borders for avoiding war, violent conflict or prosecution in his/her country. The person has no choice but to leave his/her country to secure his/her life. This definition does not only clearly emphasize that while a refugee does not have a choice to return home and a migrant has, but also strengthens the political nuance of the definition. Regarding this, Katy Long (2013) highlighted that “refugee and migrant were fluid identities, with both words used to describe a ‘surplus population’ that included not only refugees but also unemployed nationals”. It is often called as the refugee-migrant nexus.¹⁹

Refugee status according to the 1951 Convention is declaratory. It is not based on adjudication. Therefore, any person who fulfils the definition of a refugee according to the Convention can be called refugees.²⁰ It means “refugees” is not decided by law, but by the situation that fits with the definition of a refugee. As such, although a country may not have a refugee law system or that country has its own definition of refugees, a person has to be acknowledged as a refugee based on declaratory status. For instance, Thailand has not been a party to the Convention and has no operational refugee legal system. However, Thailand without formal acknowledgement, declared that the country has hosted refugees from neighboring countries such as Laos, Cambodia, Vietnam, and Myanmar.

It is broadly recognized that refugees and migrants are often categorized separately particularly by national governments and refugee advocates, espe-

17 Suaka: Indonesian Civil Society Network for Refugee Rights Protection, *How to prepare your RSD interview (I)*. Retrieved from: suaka.or.id/2015/09/how-to-prepare-your-rsd-interview-1/

18 See [thediplomat.com](http://thediplomat.com/authors/refugees-in-crisis/), *is there a difference and does it matter?* Retrieved from <http://thediplomat.com/authors/refugees-in-crisis/>, on November 2015.

19 Katy Long, When refugees stop being migrants: Movement, labor and Humanitarian Protection. In *Migration Studies*, Vol. 1, no. 1, 2013, p. 22. Retrieved from <http://migration.oxfordjournals.org/>, on May 25, 2016

20 Asylum Access. Universal Periodic Review – 2nd Cycle. 21 September 2015.

cially after the regime of the 1951 Refugee Convention was adopted. However, it is undeniably true that both categories often interact with each other in practice or on the ground. Historically, refugees were actually treated as a subcategory of migrants before 1950s. After the period, refugees were then separated from migrants, as is indicated by the regime of the 1951 Refugee Convention. The separation then provides refugees with special rights to across borders and claim asylum (admission). This is essentially tied to the problem of protection for refugees. Previously, treating refugees under the category of migrants, as was the case in the 1920s and 1930s made it difficult to secure protection from prosecution since they were considered as being dependent on economic criteria.²¹

As Long (2013) emphasized, “treating refugees as migrants was, however, a double-edged sword...refugees clearly are not just migrants”.²² In this sense, refugees before the regime of the 1951 Refugee Convention or during the Nansen Passport²³ have generally broad access to immigration and employment; however, they are mostly trapped in a difficult situation claiming humanitarian protection and asylum that are mainly tied with the current refugee regime. As part of the current refugee regime, the UNHCR was established to serve as a social and humanitarian body. Nevertheless, the lack of access to employment and self-reliance for refugees becomes an extensible debated issue for this refugee regime.

C. METHODOLOGY

A qualitative approach is selected for this research since the problem characteristic of the research requires a qualitative approach rather than a quantitative-extensive one. The characteristics of a qualitative approach is believed to be more helpful and reliable in understanding and explaining the issue of refugees raised in this study given the fact that a qualitative approach is considered very suitable for exploring such complex issues in an intensive manner.²⁴ A qualitative approach simply means a non-numerical data col-

²¹ *Ibid.*

²² *Ibid.* p. 9.

²³ Nansen passport is briefly and mostly referred to as travel documents for refugees that could not obtain one from their countries. The word “Nansen” generally refers to Fridtjof Nansen who played a role in High Commissioner for Refugees for the League of Nations (1922). By 1942, they were approved by 52 countries and, approximately 450,000 Nansen Passports were issued to refugees and stateless people. For more detail, look at Katy Long, When refugees stop being migrants: Movement, labor and Humanitarian Protection. In *Migration Studies*, Vol. 1, no. 1, 2013, p. 22. Retrieved from <http://migration.oxfordjournals.org/>, on May 25, 2016.

²⁴ See Norman K. Denzin & Yvonna S. Lincoln (Eds.) (2005). *The Sage handbook of qualitative Research* (3rd ed.); Catherine Marshall & Gretchen B. Rossman. *Designing qualitative research*, p. 43; Jhon W. Creswell. *Research design: Qualitative and Quantitative approaches*, 1994, p. 21; Steinar Kvale. *Interviews: an introduction to qualitative research interviewing*, 1996, p. 179; Kathy Charmaz, *Constructing grounded theory: a practical guide through qualitative research*, 2006; Steinar

lection.²⁵ For this reason, a qualitative approach becomes the basic rationale for adopting interviews as the primary method of data collection. Charmaz (2006) emphasizes that interviews have been long and much used for collecting data in various types of qualitative research.²⁶

The semi-structured data collection method, instead of the structured one, is adopted. While a structured interview generally has a series of formal and limited questions, or previously-structured ones, the semi-structured one tends to be more flexible and extensive. Put simply, it can open new questions raised during an interview as a result of what is told by an interview's subject.²⁷ The traditional perspective of semi-structured interviews will in particular provide an opportunity to obtain rich information on the direct experiences and perspectives of refugees in ASEAN countries, the countries' practices and policies as well as the best practices related to addressing refugees, the role of CSOs and the extent to which ASEAN countries collaborate and cooperate with each other in dealing with refugees. However, it is important to keep in mind that any interview result is a construction of reality, and not the reality itself. Knowledge is constructed through an interaction between an interviewer and the interview's subject. Therefore, an interview is a social product of knowledge.²⁸ In this study's context, it is a social production of knowledge on diverse issues related to refugees in ASEAN countries.

In the interview process, the team digitally recorded all the interviews. Each interview would last for around one hour. The use of a digital recorder during an interview gives a number of benefits, namely the opportunity to get more detailed data and maintain eye-contact, concentration, as well as focus.²⁹ However, the team consistently wrote down important points and reflection as long as this did not disturb the interview process and flow. Besides the primary data of the interview result, the team also used secondary data, including data stored in general data archives, special collections, publishing companies, reports and public documents as well as academic publications.³⁰ Besides that, the team would explore other information or data by exploring local and national newspapers and magazines, both printed and online. Sec-

Kvale & Svend Brinkmann. *Interviews: Learning the craft of qualitative research interviewing*, 2009, p. 1.

25 Norman K. Denzin & Yvonna S. Lincoln (Eds.) (2005). *The Sage handbook of qualitative Research* (3rd ed.).

26 Kathy Charmaz, *Constructing grounded theory: a practical guide through qualitative research*, 2006.

27 Thomas R. Lindlof & Briyan C. Taylor. *Qualitative communication research methods* (second edition). 2002.

28 Steinar Kvale & Svend Brinkmann. *Interviews: Learning the craft of qualitative research interviewing*, 2009, p. 82.

29 *Ibid.*, p. 179.

30 Janet Heaton. *Reworking qualitative data*. 2004.

ondary data can be used as cross validation to support primary data analysis.³¹ Besides that, secondary data significantly contributes to what we can learn directly from the data. More importantly, secondary data gives us stimulus to further explore other issues of refugees as posed in the study purposes.

Non-probability of purposive sampling strategy was used to select informants that can give the best answers to the research questions.³² With such a goal, the team selected informants based on their characteristics and the study's requirement.³³ The team went to Thailand around the middle of July 2016 and spent almost 9 days there. Likewise, the team traveled to Malaysia at the end of July 2016 and spent the same number of days there. The team hired a local research assistant in both countries to assist in collecting data in these countries and, at the same time, to help the team's networking in Thailand and Malaysia. The data collection in Indonesia was conducted between February and July 2016. The primary challenge observed during the data collection was to secure research subjects from the government. This was generally the result of not only the complex and bureaucratic procedures of making an appointment with governmental institutions concerned with refugees, but also the fact that governments tended to avoid discussing refugees as a specific and/or prioritized issue. The case of Malaysia, for instance, indicates the situation where relevant stakeholders, especially CSOs, avoided discussing the practices and policies of the government of Malaysia.

Informants for this study were selected with the consideration that they possess particular characteristics and information that met the research's goal. Besides that, in the informant selection process, the team tried to pay good attention to the distribution of informants, with special consideration on dimensions, including refugees, officials from the General Directorate of Immigration, refugee camp officers, relevant ministries, local NGOs, academicians, international organizations and NGOs, such as UNHCR and IOM, the media, politicians, local administrators, bureaucrats, security officers and many others. In total, more than 35 research subjects were selected and interviewed as primary data sources for this research.

31 Michael Quinn Patton, *Qualitative research and evaluation methods*, 2002, p. 248.

32 Jhon W. Creswell. *Research design: Qualitative and Quantitative approaches*, 1994, p. 48.

33 Michael Quinn Patton, *Qualitative research and evaluation methods*, 2002, p. 45.

Chapter 11:

Malaysia

A. DYNAMIC AND CONDITION OF REFUGEES

Malaysia is an important case when analysing the refugee issue in South-east Asia. While it should be acknowledged that the refugee population in Southeast Asia is not as high as it is in some other parts of the world, Malaysia provides a different setting where the refugee population exists in significant numbers. In general, the Malaysian people call refugee as “*pelarian*”, stemming from the Malay word “*lari*” or running away. Indeed, according to UNHCR data, around 150,700 refugees and asylum-seekers are registered with UNHCR in Malaysia as of the end June 2016. From this, some 136,350 are from Myanmar, comprising some 53,140 Rohingyas, 42,480 Chins, 11,140 Myanmar Muslims, 5,620 Rakhines and Arakanese, and other ethnicities from Myanmar. Moreover, there are around 14,370 registered refugees and asylum-seekers from other countries, such as Sri Lanka, Pakistan, Somalia, Syria, Yemen, Iraq, Afghanistan, and Palestine.¹ The following table (Table 3) portrays the number and composition of refugees in Malaysia:

Table 3: The general composition of refugees in Malaysia

Year	Total Number	Country of Origin (Myanmar-Non Myanmar)
June 2016	150,700 (Registered at UNHCR Malaysia)	1. Myanmar: 136,350 (almost 90%), 53,140 Rohingyas, 42,480 Chins, 11,140 Myanmar Muslims, 5,620 Rakhines & Arakanese, and other ethnicities. 2. Non-Myanmar: Sri Lanka, Pakistan, Somalia, Syria, Yemen, Iraq, Afghanistan, and Palestine; 14,370.

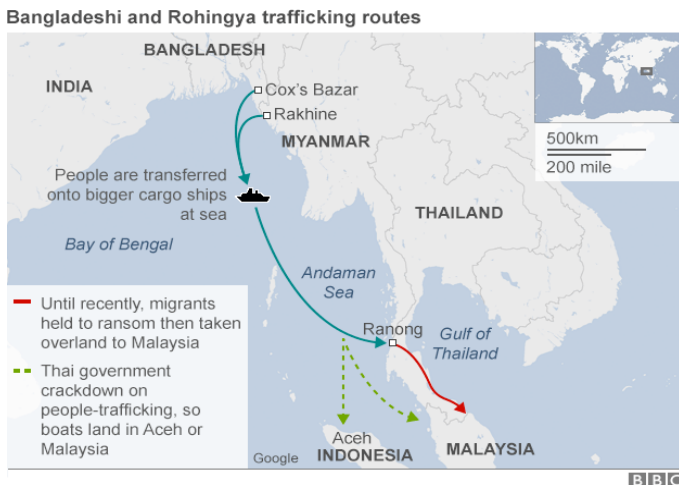
This figure, however, only tells the story of registered or documented refugees and asylum-seekers. Malaysia is also host to many undocumented refugees and asylum-seekers. The nature of undocumented refugees and asylum-seekers makes it so that their exact number would be difficult to procure. However, one estimate by refugee rights activists puts the number to be at least five times the number of documented refugees.²

1 UNHCR Malaysia. 2016. *Figures at a glance*. Retrieved from http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx on September 26, 2016
2 Interview with Jules Rahman Ong, Executive Committee of MyWelfare, Kuala Lumpur, July

In between these numbers, Rohingya and other refugees from Myanmar requires special attention, not only because of their large population but because they have been living in Malaysia for a long period of time. In early 1990s, around 250,000 Rohingyas fled Myanmar following increased suppression of their rights following the post-election Operation *Pyi Thaya*, or Operation Clean and Beautiful Nation.³ Many of them still live in Malaysia even decades after the operation. In some of the interviews conducted for this research, a number of interviewees revealed that they had come from Myanmar since the mid and late 1990s and have since lived in Malaysia as refugees to the extent they have built their own families in their host country.⁴

Rohingya refugees—or even refugees from Myanmar in general—have an established route to go from their home country to Malaysia. They would usually travel through Cox's Bazaar on the Myanmar - Bangladesh border where there are established Rohingya refugee communities there, and then travel via boat before landing around the Malaysian Peninsula. It used to be that the refugees would travel to Thailand and then continued their journey through land to Malaysia, but this changed after the Thai government attempted to clamp down on that trafficking route. The price refugees need to pay to travel this route is well known (Picture 1). According to a Myanmar refugee, the total cost to go to Malaysia from Rakhine state in Myanmar is around MYR 15,000 or approximately US\$ 3,371.⁵

Picture 1: Bangladeshi and Rohingya trafficking routes to Malaysia (BBC 2015)



21, 2016.

3 Samuel Cheung. 2011. "Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience" *Journal of Refugee Studies*, pp. 1-21.

4 Interview with Shamsuddin bin Khobir Ahmad, Myanmar Muslim Refugee, Kuala Lumpur, July 19, 2016; and Interview with Abdul Shukur bin Abdul Munaf, Myanmar Muslim Refugee, Kuala Lumpur, July 19, 2016

5 Interview with Shamsuddin bin Khobir Ahmad, Op. cit.

However, the journey is not safe. In addition to the dangers of travelling through sea on a small boat, the refugees are also under threat from the traffickers themselves. According to a journalist who documented the experience of Rohingya refugees travelling to Malaysia, refugees are often held on the Thailand – Malaysia border until they or their relatives can fully settle the trafficking bill. When they fail to do so, they are often subject to harsh treatment from the traffickers.⁶

Historically, Rohingya refugees were not the first case of a large influx of refugees coming to Malaysia. Much like many other countries in Southeast Asia, Malaysia's first experience with a large influx of refugees came as a result of the Vietnam War. After the fall of the South Vietnamese government in 1975, hundreds of thousands of Vietnamese journeyed to other countries in Southeast Asia, with Malaysia becoming a principal first stop for a while.⁷

Initially, these refugees were placed in camps supervised by the Malaysian Red Crescent Society in coordination with UNHCR. However, starting from 1979 onwards, the number of Vietnamese leaving their country by boats started to increase, and began to arrive in Thailand and Malaysia at an increasing rate. To ensure that this influx of refugees were not turned away—among other issues—the United Nations convened an international conference in Geneva in July 1979 which concluded that Southeast Asian countries would provide temporary asylum in exchange for their later resettlement in Western countries.⁸

Unfortunately, although data showed that the flow of refugees initially decreased when resettlements first commenced, by the late 1980s the refugee camps became increasingly crowded again. The reason for this was Western countries, which faced seemingly unrestrained flow of refugees to their countries, began to reduce resettlements and impose a more selective criterion.⁹ By May 1989, it was recorded that there were more than 20,000 refugee cases in Malaysia, and authorities in the country resumed turning away boats of refugees. In response, a second Geneva conference on Indochinese (including those from Vietnam) refugees was convened in June 1989 and resulted in a Comprehensive Plan of Action adopted by seventy five countries. Under this regime, the previous automatic resettlement system was replaced with temporary asylum-by introducing individual screening for refugee status by government officials monitored by UNHCR. According to Human Rights Watch (2000), during this period, “[p]ersons found not to be refugees would

6 Interview with Mahi Ramakrishnan, Journalist, Kuala Lumpur, July 19, 2016.

7 Human Rights Watch. 2000. “Malaysia’s treatment of undocumented Rohingya”. Retrieved from https://www.hrw.org/reports/2000/malaysia/maybr008-02.htm#P446_99927, on September 1 2016.

8 *Ibid.*

9 Courtland W. Robinson. 2004. “The Comprehensive Plan for Action for Indochinese Refugees, 1989 - 1997: Sharing the Burden and Passing the Buck.” *Journal of Refugee Studies* 17, no. 3 p. 320

be returned voluntarily or by force”.¹⁰ However, despite this arrangement, Human Rights Watch also notes that Malaysia continued to turn away boats. Meanwhile, Robinson argues differently, saying that although “Malaysia never restored asylum”, the number simply declined because “[t]he Vietnamese simply stopped coming.”¹¹

Although the camps for Vietnamese refugees were all closed by mid 1990s, the legacy of this experience still reverberates in Malaysia—and arguably the rest of Southeast Asia. In an analysis of the lives of Burmese refugees in Malaysia—including the Rohingyas—Human Rights Watch notes that,

The CPA’s legacy-Malaysia’s fear of mass refugee influxes and its assumption that refugees should not be resettled in Malaysia but in third countries-lives on. Malaysia’s treatment of different groups of refugees, ungoverned by domestic law, has been uncoordinated and variable, ranging from expulsion to full integration.¹²

In the case of the Rohingya, the differential treatment between refugees resulted in a difficult situation for Rohingya refugees living in Malaysia. The differences of treatment resulted in a more preferential treatment given to some group of refugees, in what Al-Jazeera has dubbed a “two-tier system”, where, for example, the “Malaysian government extends helping hand to Syrian refugees, as thousands of other refugees struggle in illegal limbo.”¹³ This differential treatment was also apparent historically. Human Rights Watch highlighted that,

Filipinos, Cambodians, Vietnamese, Indonesians, and Bosnians have all sought refuge in Malaysia at various moments. About 45,000 Filipino Muslims who fled ethnic strife in Mindanao in 1972 and 1974 have been locally integrated in the eastern Malaysian state of Sabah. About 10,000 of the Cambodian Muslims who fled the Pol Pot regime beginning in 1975 have been permanently resettled in Malaysia, with funding from UNHCR to help with integration. In contrast, Vietnamese refugees were classified as “illegal immigrants,” confined to camps, and eventually resettled to third countries or repatriated to Vietnam. And on and off from late 1977, Malaysia was also towing Vietnamese refugee boats back out to sea... About 400 Bosnian Muslims have also been accepted for resettlement in Malaysia.¹⁴

¹⁰ Human Rights Watch, 2000

¹¹ *Ibid.*

¹² Human Rights Watch. *Op. Cit.*

¹³ Al-Jazeera. 2015. “First-class refugees: Malaysia’s two-tier system”. Retrieved from <http://www.aljazeera.com/indepth/features/2015/12/class-refugees-malaysia-tier-system-151221061627431.html> on September 2, 2016.

¹⁴ Human Rights Watch. *Op. Cit.*

It is not entirely clear the reason for this difference of treatment. However, one expert assumes the possibility of differentiation because the Rohingya refugees, “lack the desired economic and racial attributes preferred by the state.”¹⁵ Meanwhile, other expert underscore the existing preferential treatment by the Malaysian government toward immigrant seeking work in Malaysia on the basis of “...a calculation of their potential contribution to the ‘nation’... giving greater rights to skilled workers, while restricting those of ‘unskilled’ workers.”¹⁶

There is also a negative perception of the Rohingya amongst the general population in Malaysia. A lingering suspicion towards Rohingya refugees seem to exist, where they are portrayed as potential criminals.¹⁷ It is useful to note that this treatment is not limited to Rohingya refugees as a study shows that other immigrant population—in this case Bangladeshi migrant workers—have also been portrayed as criminals by the local media.¹⁸ Finally, as ethnicity occupies an important position in Malaysia’s national discourse, there is an attempt to preserve the current status quo through a ‘don’t rock the boat’ policy.¹⁹ In this regard, a more open and inclusive policy toward the highly numbered and foreign Rohingya refugees can be considered as rocking the current ethnic boat of Malaysia.

Regardless of the case, this differential treatment makes living more difficult for the Rohingyas. While a number of other refugees live in relative security in Malaysia, the Rohingya do not have many means for protection or upward social mobility. Indeed, they do not have clear access to livelihoods, health services, or education. The only means of living that the Rohingyas have are through illegal work since they are not legally permitted to work. Rohingya refugees in Malaysia mostly are able and willing to do menial jobs at markets or on plantations. They are also able to do petty unlicensed trading.²⁰ The jobs are abundant and with better wages compared to those found in Myanmar or Bangladesh—where Rohingya often migrates to from their home country to find work or flee persecution. A relatively recent study highlights the fact that in Malaysia, the average laborer can earn around MYR 601 or approximately US\$ 135 – MYR 800 or approximately US\$ 180 per month in the informal labor market (US\$ 171 – US\$ 228), higher than

15 Avyanthi Azis. 2014. “Urban refugees in a graduated sovereignty: the experiences of the stateless Rohingya in the Klang Valley.” *Citizenship Studies*. Vol. 18, no. 8. pp. 839-854.

16 Alice M. Nah. 2010. Refugees and Space in Urban Areas in Malaysia. *Forced Migration Review*, 34.

17 Interview with Mahi Ramakrishnan, Journalist, Kuala Lumpur, July 19, 2016; Interview with Adli Zakuan, Angkatan Belia Islam Malaysia, Kuala Lumpur, July 20, 2016

18 Amy Gurowitz. 2000. “Migrant Rights and Activism in Malaysia: Opportunities and Constraints.” *The Journal of Asian Studies*, 59, no. 4. p. 866.

19 Ibid. p. 875

20 Interview with Shamsuddin bin Khobir Ahmad. Op. cit.

average labor wage in Bangladesh which hovers around BDT 1,800 – BDT 3,300 or approximately around US\$ 26 – US\$ 50 per month.²¹

Activist noted that the Rohingyas are only doing the jobs that, “the Malaysians don’t want to do... the [dirty, difficult, dangerous] jobs.”²² Furthermore, their lack of legal status puts them in weak bargaining position with employees. In some cases, although there are offers for job with salary, when the time comes for payment the employer refused to provide the rights of the refugee. This is especially so in the case of refugees who do not have a UNHCR card.²³ In a worst case scenario, Rohingya refugees do not have any other means to support themselves or their family, and end up resorting to begging or working as commercial sexual workers to survive. In one of our interviews, one journalist put it succinctly, “...there is even four generation of Rohingya beggars in Malaysia... [there is] no upward mobility, no job mobility.”²⁴

Furthermore, it is worth noting that the refugee population in Malaysia is largely an urban refugee population. Unlike in some other countries, contemporary refugees in Malaysia mostly reside in urban areas with the biggest population living around Kuala Lumpur, the Klang Valley, and Penang. In these places, the Rohingya started to gather and, “establish communities, even though they are absolutely illegal.”²⁵ The existence of these pockets of refugee communities seems to be public knowledge. One of the interviewee even half-jokingly referred to *Pasar Borong* - where there are many Rohingyas and Myanmar Muslims - as ‘Rohingya town’.²⁶

Communal and familial ties seem to be an important factor for Rohingya refugees living in Malaysia. Rohingya refugees have established a system to ensure their livelihoods, however meager it is, around urban refugee communities. As one expert underscores,

The first task refugees undertake upon arrival is to contact relatives or friends in Malaysia. Social support and assistance are more likely to be extended to individuals with kinship ties and who come from the same village and/or region... [Refugees gather in places where] informal work and low-cost accommodation are available, and where relatives, friends and – for those without connections – other people of their own ethnic identity reside.²⁷

21 Samuel Cheung. 2011. Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience, *Journal of Refugee Studies*, p. 12.

22 Interview with Adli Zakuan. Op. Cit.

23 Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

24 Interview with Jules Rahman Ong. Op. Cit

25 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

26 Interview with Sharifuddin Muis, Program Manager of Institut Darul Ehsan, Kuala Lumpur, July 22, 2016

27 Alice M. Nah. Op. Cit.

The Rohingyas are living precariously in these urban communities. The lack of legal status also means that they cannot legally purchase or secure proper housing and have to resort to live in whatever lodging that they can find. For some, this can mean sharing a small flat in between families. The lack of privacy might be a concern, but the lack of health and sanitation is more pressing. In one interview, a journalist recounted the story where she visited a flat that doubled as a brothel, housing multiple women at the same time. The difficult living condition had forced these women to become sexual worker without proper working condition and protection that they were infected with diseases. The journalist mentioned that after she brought the refugees to get medical treatment, "I had to scrub the whole flat with [disinfectant]."²⁸

Nevertheless, although life is difficult for the Rohingyas, many of them still prefer to stay in Malaysia indefinitely. In some cases they understand the difficulties of obtaining citizenship in Malaysia having lived there for around two decades. However, on top of other issues such as familial ties and familiarity of place, Malaysia is more preferable to the Rohingyas in a religious sense as it is a Muslim country. In this understanding, the majority Muslim Rohingya refugees believe that it will be easier for them to practice their faith in Malaysia compared to other Western countries where they might be resettled.²⁹ Moreover, the idea remains that Malaysia will provide a better living for these refugees. For the Rohingyas looking for a way out of their country and poverty, Malaysia continues to be "a Muslim promised land of prosperity and opportunity."³⁰

In spite of all this, Malaysia still has not acknowledged itself as a destination country and instead insists to follow its previous role as a transit country. It does not open the door for local integration as it prefers resettlement policy with Western countries. For example, recently UNHCR tried to 'upgrade' Malaysia status to become a destination country. In response to this, the Malaysian Deputy Home Minister commented that so far,

[Malaysia has] accommodated the refugees based on their (UNHCR's) request, but only on the understanding that Malaysia is a transit country. It is not fair to force Malaysia's hand to take responsibility [the refugees].³¹

28 Interview with Mahi Ramakrishnan. Op. Cit.

29 Interview with Shamsuddin bin Khobir Ahmad, Op. Cit; Interview with Thomas Benjamin Daniel, Op. Cit; Interview with Abdul Shukur bin Abdul Munaf, Op. Cit.

30 Azizur Rahman. 2010. *Rohingya Still Dream of Fleeing Poverty*. Retrieved from <http://www.scmp.com/article/705693/rohingya-still-dream-fleeing-poverty> on September 9, 2016

31 New Straits Times Online. 2016. *Nur Jazlan warns UNHCR: Do not blackmail Malaysia*. Retrieved from <http://www.nst.com.my/news/2016/06/153628/nur-jazlan-warns-unhcr-do-not-blackmail-malaysia> on September 09, 2016

This is not in line with refugee trends or their aspirations. As has been described above, Rohingya refugees, which constitutes Malaysia's largest refugee population, still prefer to move to Malaysia with many preferring to stay there indefinitely. This is regardless of the hardship that they had to endure in their journey to Malaysia or even during their lives there.

Analysts on the refugee issue in Malaysia are more likely to agree that the country does not serve as a transit country any longer, especially for the Rohingyas.³² As was stated by a national think tank analyst:

They're trying to grapple with this fact that Malaysia is no longer a transit country for refugees and asylum seekers. It's become what our boss calls a 'front-line state', it's now a destination. You have huge numbers of refugees, the Rohingyas particularly, who want to come to Malaysia and settle in Malaysia. They don't want to go to a third country, they don't want to go to a Western country, they don't want to go to any country, they just want to come here. This is their destination, and this is a problem for the government especially, because there are now ten or twenty thousand there.³³

Indeed, there are some factors generally assumed to be the main reasons why Malaysia is currently a preferred destination, rather than a transit one. The first reason is the wider job opportunities available in Malaysia compared to other countries in the region and beyond. The second one is related to religious and cultural proximity. The third one refers to the fact that Malaysia very hardly deports refugees. The last one is often tied to the fact that there have been a large number of Rohingya residing in Malaysia.

B. LEGAL FRAMEWORK

This part will explore Malaysia's legal framework to deal with the refugee issue. In this part, Malaysia's legal framework is divided into its domestic and international contexts as both are important instruments to protect the rights of refugees. Domestically, the main legal framework that supervises Malaysia's treatment towards refugees and its wider immigration regime is the Immigration Act 1959/63. While the Act does not recognize the term 'refugee', it does provide criteria of what constitutes a legal migrant and how to legally enter Malaysia. In order to respond to the current dynamic and challenge of illegal migrants, and particularly to establish harsh penalties for them, the Government of Malaysia amended the Act in 1997 and 2002.³⁴

32 Interview with Shaharuddin Badarudin, Director of Institute of Darul Ehsan (IDE) and Professor of Selangor University, Selangor, July 22, 2016, and with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

33 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

34 Migrant Watch 2005, 2.

Moreover, it also provides the framework for action against illegal immigrants, or people unlawfully entering Malaysia. Under section 6 of this law, Malaysia acknowledges a number of ways to enter the country, although none of them make explicit reference to refugees or the documents that refugees should obtain to safely and legally enter Malaysia. Failure to procure legally recognized documents to enter the country may result in terms of imprisonment for immigrants considered illegal not exceeding five years, and also punishment by whipping or canning for not more than six strokes.³⁵ During the enforcement process of this law, at least 34,923 immigrants have been caned between 2002 and 2008, according to the Malaysia's prison department records.³⁶ This amounts to around 6,000 immigrants per year on average. One activist argues this situation is problematic. The lack of legal recognition has sometimes made refugees to be "regarded as criminal right away."³⁷ Refugees are therefore more vulnerable to arrest and detention, even more so for those who come from countries that did not accord them citizenship in the first place, such as is the case with the Rohingya refugees.

In addition to that, Malaysia has a legal framework for the detainment of refugees deemed as illegal immigrants. Section 5 of the Passport Act 1966 provides the legal framework for police or immigration officers to detain immigrants who unlawfully enter Malaysia on board vessels, as long as they are still within Malaysia's territorial waters.³⁸ Moreover, through the Internal Security Act 1960, the government had previously deemed illegal immigrants to be a serious enough threat to national security that it warranted detention without trial for illegal immigrants and smugglers.³⁹ The Internal Security Act has since been replaced by the Security Offences (Special Measures) Act of 2012. Both incarnations of the law has reportedly been used to justify the detainment of illegal immigrants in Malaysia.⁴⁰

This lack of legal framework creates a difficult policy environment with regards to refugees. UNHCR which has become a primary actor concerning the refugee situation in Malaysia operates,

On the courtesy of the government without legal ground...There is no written agreement that authorise the UNHCR. The authority gives the

35 Laws of Malaysia, Act 155, Immigration Act 1959/63, Incorporating all amendments up to 1 January 2006. Retrieved from: <http://jpt.mohe.gov.my/images/InstitusiPengajianTinggi/MengenaiJPT/AKTA/Bil11.aktaimigresen.pdf>, on September 13, 2016.

36 US Department of State. *2010 Human Rights Report: Malaysia*. 2011. Retrieved from <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154391.htm>, on September 13, 2016.

37 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

38 Act 150, Passport Act 1966.

39 Migration News. *Malaysia/Thailand: Detention, Entry, Employment*. 1998. Retrieved from <https://migration.ucdavis.edu/mn/more.php?id=1502>, on September 12, 2016.

40 Inquirer.net. 'We're treated like animals', March 20th, 2013. Retrieved from <http://globalnation.inquirer.net/67981/were-treated-like-animals>, on September 13, 2016.

UNHCR oral permission out of courtesy as a matter of government policy... It can only offer limited assistance and protection to refugees such as the issuance of refugee identity card; material assistance; and collaboration with NGOs in providing healthcare and education.⁴¹

Therefore, although UNHCR attempts to formalize procedures concerning refugees in Malaysia, such as through the provision of the UNHCR card, it does not constitute as definite legal recognition or protection in front of Malaysia's law. This arrangement is also not widely recognized or accepted by the public. Hence in such situations where a refugee might require finding work; they will not be under any legal protection or recognition even when they are a card holder.⁴²

As the refugee issue is closely related to human trafficking, it is also important to underscore Malaysia's legal framework concerning this issue. The primary legal instrument that Malaysia has regarding human trafficking is the Anti Trafficking in Persons Bill 2007, which has been amended to add more focus towards 'smuggling of migrants'.⁴³ Human Rights Watch has expressed concern regarding this amendment, noting that this may, "narrow the legal definition of human trafficking, and by the amended law's failure to include any mechanisms to protect the rights of migrants."⁴⁴

Finally, one of the main instruments to implement Malaysia's refugee/immigrant policies is the Malaysia Volunteer Force Act 2012, replacing the previous RELA law, as the basis for the existence of RELA (People's Voluntary Corps). The voluntary civil law enforcement institution is often involved in controversial raids to detain illegal immigrants in Malaysia, and have sometimes been accused of abusing their powers. Under this law, RELA is currently stripped down from their legal ability to arrest and wield firearms in their duties.⁴⁵

Nevertheless, although legal protection and recognition of refugees in Malaysia does not exist in a formal capacity, it should be highlighted that there are sections in the Immigration Law that can be used to temporarily allow refugees to come to Malaysia legally. In Section 55 of the Immigration

41 Dina Imam Supaat. The UNHCR in Malaysia: the Mandate and Challenges. *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 5, Issue 4, 2014.

42 Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

43 Anti Trafficking in Persons Bill 2007; An Act to amend the Anti-Trafficking in Persons Act 2007

44 Human Rights Watch. 2010. *Malaysia: Letter to the Prime Minister regarding amendments to the Anti-Trafficking in Persons Act*. Retrieved from: <https://www.hrw.org/news/2010/09/08/malaysia-letter-prime-minister-regarding-amendments-anti-trafficking-persons-act>, on September 1, 2016.

45 Equal Rights Trust. *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*. Retrieved from <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>, on September 12, 2016.

Law, it is stated that “notwithstanding anything contained in this Act, the Minister may by order exempt any person or class of persons, either absolutely or conditionally, from all or any of the provisions of this Act and may in any such order provide for any presumptions necessary in order to give effect thereto”.⁴⁶ Furthermore, in Section 56 of the law, there are references to alternative ways to legally enter Malaysia, using ‘any other document accepted by the Director General [of Immigration] as evidence... or any other evidence showing to the satisfaction of the Director General that the defendant is exempted.’⁴⁷

Special exemption is also evident in Section 4 of the Passports Act, where, “The Minister may by order exempt any person or class of persons ... and any such exemption may be subject to such conditions as he may direct and may be permanent or for a limited period.”⁴⁸ These exemptions arguably can serve as a legal framework to protect refugees from the other sections of the Immigration Act.⁴⁹ Under these legal frameworks, senior officials can create policies that allow the safe entry of refugees even when they do not have proper documentations or when they are not able to support their stay.

More fundamentally, the Malaysian Federal Constitution guarantees the rights of the individual, most visibly under Article 5 - 13. One expert argues that this is sufficient to guarantee protection of the rights of refugees, noting that “[t]he fact that the word refugee does not exist in the basic legal instrument of the country does not seize refugees from the protection of the constitution. Where the word ‘person’ is used in the Federal Constitution, it should include citizens and noncitizens.”⁵⁰

Internationally, there are two main international frameworks concerning the status and protection of refugees: the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. However, Malaysia is not a party to either of these instruments. Therefore Malaysia is not legally obligated to acknowledge the status or protect people classified as refugees under these two instruments, nor do they have to oblige with the *non-refoulement* principles enshrined in the convention.

However, it should be noted that although Malaysia is not a party to any international instruments directly related to refugee issues, it is party to a number of international instruments that are committed to protecting human

46 Immigration Act, Section 55

47 Immigration Act, Section 57

48 Passport Act 1996, Retrieved from <http://www.refworld.org/docid/3ae6b5204.html>, on August 23, 2016.

49 Dina Imam Supaat, “Refugee Children under the Malaysian Legal Framework”, *UUM Journal of Legal*

Studies, vol. 4, 2014, pp. 118-148 (128-130).

50 *Ibid.*

rights regardless of a person's citizenship status. One analysis invokes Article 14 of the Universal Declaration of Human Rights, Article 16 of the ASEAN Human Rights Declaration, Article 22 of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as the international framework that requires Malaysia to give protection to refugees.⁵¹ Malaysia is also a party to the Convention on the Rights of Child. However, it has made reservations concerning the principle of non-discrimination, the obligation to make primary education compulsory and available free for all, and the prohibition of torture or other cruel, inhumane or degrading treatment or punishment, as well as arbitrary detention.⁵²

It is also useful to note that Malaysia is fully committed to attain the non-legally binding Sustainable Development Goals (SDGs). During the United Nations Summit for Adaptation of the 2030 Agenda for Sustainable Development, Prime Minister Najib Razak had stressed that Malaysia is committed, "towards providing equal access to quality healthcare, affordable housing, and will be building many more clinics and hospitals and affordable homes over the next few years. We want safer neighbourhoods and public spaces, and improved education."⁵³

In this context, the Sustainable Development Goals do not differentiate based on citizenship status and instead attempts to promote inclusivity. For example, on goal number 4 on education which Prime Minister Razak also mentioned above, the idea is to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all."⁵⁴ This goal is especially important considering that there is a significant children population which requires quality education among the refugee communities in Malaysia. While these goals do not provide a legal obligation for Malaysia, it is a useful tool that can promote a more inclusive protection for refugees in Malaysia.

C. ISSUES AND CHALLENGES

A number of crucial issues facing refugees in Malaysia can be identified. Many of them relate to unreliable income, exploitation at work, particularly

51 Aslam Abdul Jalil. 2015. Malaysia's Refugee Shame. Retrieved from <http://www.newmandala.org/malaysias-refugee-shame/>, on June 12, 2016.

52 International Federation for Human Rights (FIDH) and Suaram (Suara Rakyat Malaysia) Working for Human Rights, *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination*, March 28, No. 489.

53 New Straits Times Online. *Malaysia Committed to meet UN's Sustainable Development agenda*, 2015. Retrieved from <http://www.nst.com.my/news/2015/09/malaysia-committed-meet-un%E2%80%99s-sustainable-development-agenda-pm>, on May 23, 2016.

54 UNDP, *Goal 4: Quality Education*, 2015. Retrieved from <http://www.my.undp.org/content/malaysia/en/home/post-2015/sdg-overview/goal-4.html>, on September 2016.

in the form of unpaid wages, extortion by law enforcement officers, robbery by local gangsters, the high cost of rent, health services and education, the need to support those unable to find work, and many others.⁵⁵ In general, the three biggest challenges are securing a work permit, accessing public education and accessing health service. In the context of health service, for instance, refugees have to pay 50% of the discounted foreigner rate to help make healthcare affordable for them. The condition applies only if they have an UNHCR card. However, since the 50% discount is not from the normal rate but the far higher foreigner rate, it is still regarded as too expensive for them. For those that do not possess an UNHCR card, the case will be different. The majority are rejected or turned away by health service providers or hospitals. One NGO activist concerned with refugees shared his experiences about the difficulty of securing health service for refugees without an UNHCR card:

If they don't have a card, most likely they'll be turned away. We have cases where this woman, she is overdue, her baby cannot come out, and they have to bring her to the hospital. We have to negotiate with the hospital for 6-7 hours, she is going in labor, very difficult, almost dying, and they will not take her in. We eventually had to ask our lawyers, we had to put in a two-thousand Ringgit deposit. They even called the police, who wanted to arrest us, so we had to go in and basically fight for them. 'Look, on a humanitarian basis, please take this woman in, she has got complications.' Finally, when they took her in, the baby came out.⁵⁶

The case not only confirms the lack of access to healthcare for non-UNHCR cardholders, but also indicates the complexity of healthcare access for refugees in general. To a certain extent, the case also reinforces the vulnerability of refugees in Malaysia.

Moreover, it is apparent that the issue of health care for refugees does not stop at the so-called "discounted rate" of health care. In cases where refugees do have sufficient money to pay for their own health care, only a small number of Malaysian healthcare providers are willing to accept and give them health treatment. As was stated by one respondent:

So essentially, this is what you have when refugees are non-entities or even non-persons in Malaysia, these are some of the problems that you deal with. Sometimes, even if these people are willing to pay, even if

55 Alice M. Nah, Refugees and Space in Urban Areas in Malaysia. In *Forced Migration Review*, February 2010, Issue 34. Retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/urban-displacement/29-31.pdf>, on May 24, 2016.

56 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

they have the money to pay, not many Malaysian healthcare providers are willing to treat them. My dad is a general practitioner, and he gets huge numbers of foreign workers, and they travel like an hour just to see him just because most doctors in the town refuse to treat foreign workers. 'These people are dirty, they're different, they're foreigners, we don't want to treat them. If we treat them Malaysian patients won't come.' And that's true, by the way, the impact on my dad treating foreign workers is that some Malaysians don't want to come to patronise this business anymore.⁵⁷

The statement exposes a couple of important points, including that only a few healthcare providers are willing to accept them. This point is very much related to the widespread image and stereotype of refugees as being dirty and wicked. Likewise, most Malaysian healthcare providers are worried that their healthcare-related business will decline or even shut down if they accept refugees. Even worst, as was emphasized by one of ISIS Malaysia researchers, many governmental and private healthcare providers even reject to directly and physically touch a refugee's body during healthcare treatment:

Some healthcare providers, either governmental or private one, refuse to touch foreign workers. It's not a minor incident... It's quite widespread. When you speak to activists and NGOs who deal with these people in Malaysia, you'll hear the exact same thing. It's a very disturbing trend in the society that's supposed to be multicultural and understanding, but it's quite bad.⁵⁸

The question becomes why the Government of Malaysia is unwilling to provide healthcare services to refugees and/or give the 50% discount on foreigners rate to non-UNHCR cardholders. The widespread perception on this issue is very much related to taxes. The Government of Malaysia is perceived as having spent a lot on healthcare using the state budget provided by the Malaysian taxpayer. For this reason, providing free health services to foreigners or even to refugees is considered as unfair and has the potential to upset Malaysian citizens if foreigners and refugees are able to pay the same rate with them despite not paying taxes. Nevertheless, public concern also emphasized that the presence of foreigners including refugees in Malaysia has to some extent contributed to and played a certain role in the development of Malaysia. Regarding this, one of ISIS Malaysia's analyst stated that refugees "work here, they work in the factories, they play a huge role in

⁵⁷ Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

⁵⁸ *Ibid.*

the development of this country, so why shouldn't they be entitled to some form of healthcare? And most people like to complain as a taxpayer.⁵⁹ Also relating to this issue, some doctors in government hospitals who insist on treating foreign workers, refugees and undocumented people who come in on an emergency basis, will receive as sort of warning (*tata tertib*), such as 'why did you treat them?'⁶⁰

Another important challenges facing refugees relates to their access to proper education. Refugees are generally regarded as not having access to enter public schools. However, in certain cases, a couple of Myanmar Muslim refugees that have been living in Malaysia for decades are allowed to send their children to public school at a relatively expensive cost of MYR 400 or approximately US\$ 90 to cover monthly tuition fees.⁶¹ The cost is certainly out of reach for most refugees in Malaysia. However, the government's policy of not allowing refugees to enter public schools does not apply to the children of Syrian refugees. As is indicated by the Malaysian government, Syrian refugees are not only given temporary residence passes and work permit, but also access to public school.⁶²

As a result, a number of NGOs concerned with refugees in Malaysia have concentrated their humanitarian efforts into creating opportunities and access to education for refugees. In other words, refugee children who have access to education attend education projects run by UNHCR and NGOs or community-based education classes that are mostly organized by the refugee community themselves with the support of NGOs, such as faith-based groups. Based on an UNHCR investigation, the school classes are very limited in terms of resources and qualified teachers. Most of the classes are held either in rented or borrowed flats or shop houses that are further changed into many class rooms.⁶³ Frankly speaking, based on the research team's own observation of a Rohingya school in Selangor, the school classes are far from meeting standards for decent and proper school. By only having access to these sorts of schools means denying them proper education, thus inhibiting their opportunities to have a better future. The following picture (Picture 2) is one of the Rohingya schools in Selangor that was established by an NGO.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Interview with Abdus Sukur, one of Myanmar refugees in Malaysia, Kuala Lumpur, July 19, 2016.

⁶² UNHCR Malaysia, *Refugee Children and Education*. Retrieved from <http://www.unhcr.org.my/refugeeMsia.htm#>, on May 24, 2016.

⁶³ *Ibid.*

Picture 2: Rohingya School in Selangor established and run by NGO



In terms of numbers, as recent as 2015 there was approximately 33,000 children aged 17 and below that escaped Myanmar. About 5,000 of them are in dire needs for education. As of now, a number of Rohingya schools have been established in many different places in Malaysia, including in Klang (2010) and Kelantan (2015).⁶⁴ In addition, data indicates that illiteracy among the Rohingya is estimated around 80%, with a higher percentage among females.⁶⁵ What follows is some of the identified Rohingya schools in Malaysia:⁶⁶

- *Maahad* (Islamic Boarding School) *Darul Hijrah* Gombak (Selangor)
- *Madrasah* (Islamic School) *An-Nur* Sg Sekamat Kajang (Selangor)
- *Madrasah* (Islamic School) *Al-Islahiyah* Klang (Selangor)
- *Madrasah* (Islamic School) *As-Saggaf* Selayang (Selangor)
- *Madrasah* (Islamic School) *Hashimiah* Selayang (Selangor)
- Ethnic Rohingya Committee of Arakan(ERCA) Seri Kembangan (Selangor)
- *Maahad* (Islamic Boarding School) *Al-Bukhari* Gombak (Selangor)
- *Madrasah* (Islamic School) Aram Ampang (Selangor)
- *Madrasah* (Islamic School) *Muiin* Meru (Selangor)
- *Pusat Komuniti* (Educational Community Center) Rohingya Ampang (Selangor)
- *Madrasah* (Islamic School) *An-Nur* Nilai (Negeri Sembilan)

In addition to standard school subjects, a number of these schools also teach a wide variety of life-skills, including sewing, gardening and entrepre-

⁶⁴ Interview with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016.

⁶⁵ Abdullah Sudin, *Expanding Islamic Organization Network in Humanitarian Issues*. A paper presented at SEA Conference on Rohingya, 18-19 May, 2016 in IPB International Convention Center, Bogor, Indonesia.

⁶⁶ *Ibid*.

neurship. The UNHCR even suggested that these schools also give refugees other occupational training. However, a problem usually emerges when the children reach the age of 17-18 years old and are at the stage of finishing their education. This is because they cannot pursue further education or enter university, nor can they access formal jobs. The critical question becomes what they will they do and where they are heading. Regarding this, the head of a Rohingya school in Selangor shared her concerns:

They get stuck. we all get stuck because we don't know where to send them...[it doesn't matter when they are at age of] 16-17. They get stuck mostly at age of 18-20. The problem often emerges around this age because they don't have *SPM* (*Sijil Pelajaran Malaysia* - Malaysian Certificate of Education). They cannot continue their study to higher education without SPM. This results in UNHCR's decision of establishing occupational training for children over 17 years of age. Female children mostly get engaged with earlier marriage. The issue becomes complicated when these children that are not allowed to work and pursue their higher education are loitering around or even join with syndicates, particularly syndicate of beggars.⁶⁷

The statement broadly confirms the existence of the spiraling issue with regards to refugee education. The real challenge currently turns into the condition of post-refugee education. On the one hand, they do not have access to higher education and formal jobs; yet on the other hand, almost no durable or certain solution is offered to them, despite the fact a large number of them have been living in Malaysia for decades; with some even born in the country. Moreover, the occupational training designed and proposed by the UNHCR is questionable since the Government of Malaysia does not issue any certification to trainees following the completion of the training.⁶⁸

Another widely emerging issue is related to work-permits for refugees. Refugees in Malaysia, either with or without an UNHCR card, are not allowed to be employed in formal jobs. However, in fact, a large number of them have been working in informal jobs/sectors that are dubbed as D3 jobs (Dirty, Dangerous and Difficult), such as street cleaners, domestic workers, and laborers on construction sites which Malaysian citizens are not interested in filling. It is a fact that a large number of refugees have been trying hard, with a wide variety of ways to get work-permit, either by attending diverse work/skill trainings or gaining Malaysian citizenship. As was emphasized by a respondent:

⁶⁷ Interview with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016.

⁶⁸ *Ibid.*

Malaysians may not like hearing it, some people complain that the government is giving them a chance, but it's true. Many Malaysians do not want to work in jobs that they perceive as dirty, dangerous and low-paying. So there is always a demand for an informal economic sector, which is huge. And these refugees know that when they make it here, they can always find some kind of work. Sure, they will be paid peanuts, they will be abused, but at least no one is trying to kill them here. For some, that is their mindset.⁶⁹

Some employers only hired Rohingyas with UNHCR cards. Meanwhile, refugees have no recourse and no safety net if they are badly treated or denied wages. Rohingyas working in the informal market make between MYR 25 to MYR 50 per day or approximately US\$5 to US\$10, but work is irregular. At the same, while some companies will only hire those Rohingyas with an UNHCR card, this does not necessarily correlate with better work conditions or pay.⁷⁰ This sort of condition or situation has made them oftentimes very susceptible to abuse by the authorities, employers, the private sectors, and criminal gangs.⁷¹ The following picture (Picture 3) portrays activities at Pasar Borong, Selangor, where a large number of refugees living in flats work as petty traders and street cleaners.

Picture 3: A large number of Rohingya Refugees work at this *Pasar Borong* of Selangor



69 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

70 Interviews with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016, with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016, with Shahrudin Badarudin, Professor of Selangor University, Selangor, July 22, 2016; and see also Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

71 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

However, in 2013, the Government of Malaysia through Home Minister Ahmad Zahid Hamidi promised in cooperation with the UNHCR to issue work permits to refugees living in Malaysia and providing them with training and jobs.⁷² It is important to keep in mind that a long time before 2013, precisely in 2004, the government of Malaysia actually did announce that it would regularise the Rohingyas and give them work permits. As it is noted by a respondent:

I'll just say that the Government has actually decided to put a pilot program for a very small number of Rohingyas. It's a really small number and they have sort of provided a list of jobs to try and test for the Rohingyas. But now, apparently there has been a backtrack on it because they have heard that the UNHCR, rightly or wrongly, we don't know, is issuing a lot more cards than they were previously.⁷³

Although it clearly cannot be considered as a best practice or policy by the Government since the planning is just an intended pilot project, at least, it indicates the political will and good intention of the Government to go further by projecting a more promising and strategic solution to refugees. However, the future of such pilot programs has become bleak since the Government unexpectedly demanded UNHCR to stop producing UNHCR cards.⁷⁴

However, it would appear that progress has been slow and the process was initiated only in 2006. During that time, the government also decided to give Acehnese refugees IMM13 visa⁷⁵ for work permits.⁷⁶ There is also a concern among some people in the government that if refugees and asylum seekers are allowed to work legally in Malaysia, that it would be a pull factor and even more people would want to come into the country. Although it is a fact that a lot of them have already worked in the informal sector, granting them the right to work will at least put them under job security.⁷⁷

After taking relatively long time and stalled talks on putting refugees on labor demand and/or reapplication of IM13 for refugees, the Government of Malaysia finally launched the pilot program of providing refugees with work permit and planned to begin it early this year. As an important element of the

72 Aslam Abdul Jalil, Malaysia's Refugee Shame, At New Mandala Online, August 03, 2015. Retrieved from <http://asiapacific.anu.edu.au/newmandala/2015/08/03/malaysias-refugee-shame/> on June 4, 2016.

73 Interview with Mohamad Ramli Abdul Rahim, President of Angkatan Belia Islam Malaysia (ABIM), July 20, 2016.

74 *Ibid.*

75 IMM13 is a visa issued by the Immigration Office of Malaysia. About 98,427 IMM13 documents have been issued since its first introduction in 1999 by the Dewan Rakyat (see Malay Mail Online, October 31, 2013).

76 Amarjit Kaur, Refugees and Refugee Policy in Malaysia, at *UNEAC Asia Papers*, no. 18. 2007.

77 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

program, the Government of Malaysia will grant 300 Rohingya legal work-permits to work in the plantation and manufacturing sectors for a three-year period. If the pilot program satisfies all the stakeholders, particularly the Government and refugees, it will be extended to involve more refugees or all UNHCR card holders and engage diverse sectors.⁷⁸

This effort should be seen as a best practice and generally as an innovative solution to resolving refugee crisis in the region amidst static traditional ways out. It is even considered as a kind of “win-win” solution for refugees, industry and business sectors and the Government. That is, at one hand, it is widely known that refugees want to work and most of them even have been working. At another hand, the Government and industry and business sectors in Malaysia have long relied on foreign labor for low skilled jobs. The lawfulness of refugees’ labors will certainly protect them and release them from any kinds of exploitations at workforce.⁷⁹ This best practice should be furthered to other ASEAN countries hosting refugees and advocated to be precious ASEAN way of addressing refugee crisis in the region.

Ethnic and religious issues occasionally play a part in dealing with refugees in Malaysia. It is broadly known that Malaysia is an ethnically and religiously polarized society, especially in terms of the political domain and between the majority Malays and minority non-Malays (Chinese and Indian). The mass media once in a while likes to publish news that indirectly displays negative images and/or stereotypes of those with Indian descent. This is important because the Rohingya refugees, who make up approximately 90% of the overall number of refugees in Malaysia, are ethnically of the Indian progeny.⁸⁰

Providing excessive treatment to one certain group of refugees can be considered as siding with them, and conversely, it can also be considered as being discriminative against other ethnic groups. That is to say, religious and ethnic polarization often interacts with other socio-political issues in Malaysia, including in the process of addressing refugees. As was emphasized by one NGO activist concerned with refugees:

[The] refugee issue in Malaysia is sensitive in terms of ethnicity. In Malaysia, there are Chinese and Indian ethnic groups. We want to help refugees, but we also don’t want to make a disaster here because of that ethnicity-related issue. People might say that we are an NGO characterized by Islamic values, and thereby we will certainly help Muslim refugees. We

78 Preeti Jha, Can Rohingya refugees finally leave the shadows? In *Foreignpolicy.com*, January 13, 2017. Retrieved from: http://foreignpolicy.com/2017/01/13/rohingya-refugees-can-finally-leave-the-shadows/?utm_content=bufferc01cc&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer, on January 29, 2017.

79 *Ibid.*

80 Interview with Shaharuddin Badarudin, Director of Institute of Darul Ehsan (IDE) and Professor of Selangor University, Selangor, July 22, 2016.

don't want to create an issue between Islam and Buddhism. If we come to Buddhist refugees, there will be many negative comments, or vice versa.⁸¹

There is an unwritten rule among relevant stakeholders concerned with refugees that humanitarian aid should be fairly distributed among refugees regardless of their ethnic and religious backgrounds. In this sense, one NGO activist clearly said that, "If we find help for the Palestinians, Christian group says, 'okay, we donate five thousand, Buddhist group five thousand...' It has to be mutual respect, we are coming from Islamic organisation so somehow it's hard for us. That's why we engage with other religious leaders to make sure they also help us in this matter".⁸²

Another challenge is related to the negative public perception of refugees in Malaysia. In general, the public in Malaysia tend to perceive refugees as sources of criminality and social disorder. More than that, there are in fact a number of Malaysian people that still refuse the influx of refugees in their country, particularly the Rohingyas. As was emphasized by a respondent, "We have identified that they do not have a good feeling of accepted refugees".⁸³ However, the crime index rate indicates that criminal acts committed by refugees are statistically low and accounting for less than 1 out of 100 cases of crime in Malaysia.⁸⁴ As such, the stereotype that refugees are associated with criminality is unfounded.

Nevertheless, such sentiments poses a challenge for stakeholders concerned with refugees, who need to undertake efforts to change such perceptions. Regarding this, many NGOs have conducted voluntarily collaborative works (*Gotong Royong*) involving refugees such as cleaning up neighborhoods. The intention of such works is to show that "refugees are not creating garbage, but they are the ones cleaning it and making sure that the place is habitable". In one incident, the case of a missing child helped to restore the image of refugees. After a couple of days, the missing child was found safe and in the care of a young Rohingya mother. The case made the headlines of national newspapers and it helped to change the perception of the Rohingyas among Malaysians.⁸⁵

One major issue that has attracted the attention from multiple stakeholders in Malaysia is related to the issuance of the UNHCR card, especially

81 Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

82 Interview with Syarifuddin Muis, Program Manager of Institute of Darul Ehsan (IDE), Kuala Lumpur, July 22, 2016.

83 Interview with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016.

84 Interview with Mohamad Ramli Abdul Rahim, President of *Angkatan Belia Islam Malaysia* (ABIM), July 20, 2016.

85 Interview with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016

since the majority of refugees rely on these cards. Several public criticisms pinpoint that the UNHCR card essentially does not provide any thing special for refugees, except temporary identity and documentation. The card in fact does not provide refugees with any access to formal jobs or public education, nor does it assist them with legal issues, such as certification of marriage that would help provide legal certainty regarding their marriage status in court.⁸⁶

For instance, there have been a couple of cases involving pregnant refugees that were about to deliver their babies. In order for them to receive health services at the 50% discount from the rate for foreigners, the pregnant refugees borrowed other people's UNHCR cards. As a result, their babies are consequently registered with the names of people on those cards as opposed to the real mothers.⁸⁷ Another UNHCR card-related issue is the extensive emergence of fake versions of the card. A number of refugees pay certain amounts of money, roughly MYR 1000 or approximately US\$ 238 to acquire fake UNHCR cards.⁸⁸ A Myanmar refugee that has been in Malaysia for just one year surprisingly possessed a UNHCR card, while a large number of refugees that have been in Malaysia for many years have spoken of their difficulties in obtaining the card. The research team was later told that the aforementioned individual was in possession of a fake UNHCR card. Interestingly, there is an unwritten rule among refugees that they are not supposed to compare and/or make distinctions between original and the fake UNHCR cards.

Mainly for this reason, the Government of Malaysian and UNHCR have recently agreed to immediately set up a joint task force to overcome the problem of fake UNHCR cards issued by criminal syndicates. Regarding this, one of the most instrumental measures that should be taken by UNHCR within the framework of the joint task force, as stated by Deputy Prime Minister Ahmad Zahid Hamidi, is the re-registration of the card. This would help to investigate fake cards and to recount the number of genuine ones as well as to add more security features to the card.⁸⁹ The problem becomes complicated however, as the authorities are not capable of distinguishing genuine cards from fake one as they do not have access to the necessary database. This is because refugees are not permitted to legally work under the employment programs sanctioned by the government.⁹⁰

86 *Ibid.* and with Ahmad Fahmi Mohd Samsudin, CEO of Global Peace Mission (GPM) Malaysia, Kuala Lumpur, July 20, 2016.

87 *Ibid.*

88 Interview with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016.

89 See Malaysia Kini Online, UNHCR to form joint task force over fake refugee card, at *Malaysia Kini Online*, March 23, 2016. Retrieved from <https://www.malaysiakini.com/news/334964>, on June 23, 2016.

90 See Tasnim Lokman, Job prospects for refugees, at *New Strait Times Online*, March 18, 2016. Retrieved from <http://www.nst.com.my/news/2016/03/133453/job-prospects-refugees>, on June 26, 2016.

The most updated issue relating to the UNHCR card is the Malaysian government's plan to stop the issuance of more UNHCR cards. The plan has been widely covered by the mass media and has become an issue of public discourse. The newspapers have mainly reported that the UNHCR will not be allowed any longer to offer cards to refugees. According to the government, the number of registered refugees under the UNHCR, which is estimated to be 151,000 (as of July 2016), of which 137,000 of them are Rohingyas, is too many. The government added that they cannot keep registering 150,000 refugees every year. The government's assumption is that if they were to actually provide permission to work for registered refugees, then that number would possibly increase by 150,000 every year. For this reason, the government intends to freeze this pilot program.⁹¹ It would seem that the government sees the issuance of more UNHCR cards would only be a burden for Malaysia in terms of refugee employment. As a result of this decision and policy, almost no refugees can currently get UNHCR card except for fake ones. As was shared by one of the Myanmar refugees:

It is currently difficult to get the UN card. It was easy to get it especially in the 1990s. You can get it whenever you want it. Right now, UN doesn't issue any longer. So if you find somebody with new UNHCR card, I am very convinced that it is a fake one... The practice of issuing the fake version is very common. Police actually knows the practice. It has been more than 3 years, UNHCR doesn't produce the card. The ratio is around 70-30. I mean that almost 30% of current UNHCR cards are fake.⁹²

Another issue is related to the refusal of a number of refugees to be resettled. While resettlement options are becoming more and more limited, a number of refugees consciously reject resettlement options offered by the UNHCR. The refusal of resettlement is mostly triggered by religious issue. For instance, one Myanmar refugee that has been living in Malaysia since the 1990s stated that he had rejected a couple of times to attend the UNHCR's resettlement interviews. He reasoned that resettlement to the USA will mean his children would have to attend non-Islamic schools. He feared his children will forget Islamic tenets as a result of not attending a religious school. More than that, there is a perception among some refugees that the USA is willing to accept refugees only because there is a secret intention to convert them into their religion.⁹³

Nevertheless, a large number of people are willing to accept and even try very hard to get the resettlement option to the USA. The ratio between ac-

91 Interview with Puteri Nor Ariane Yasmin, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

92 Interview with Syamsuddin, one of Myanmar refugees, Selangor, July 19, 2016.

93 *Ibid.*

cepting and rejecting people is estimated to be fifty-fifty or almost equal.⁹⁴ In fact, refugees that tend to reject the resettlement offer are those who have been living in Malaysia for decades, feeling at home and possessing relatively better living conditions with semi-established petty trading or other economic activities. Meanwhile, refugees who accept and even makes hard effort to get resettlement opportunities are those who are not economically stable and or promising enough since they have just arrived in Malaysia for a few years. One of the Myanmar refugees that accepted a resettlement offer to the USA, for instance, based his decision on the education opportunity for his children. He was fairly convinced that living in the USA will provide his three children with a better education. In stark contrast, remaining in Malaysia would mean his children would not have access to proper education.⁹⁵

However, it should be acknowledged that the two cases above are related to Myanmar refugees, and not Rohingya ones. Their settlement option is particularly harder for Rohingya refugees since most of them are not educated. Most resettlement countries (third countries) are only willing to accept educated refugees. This situation becomes complicated as data also shows that illiteracy among Rohingya refugees is the highest, reaching almost 80%.⁹⁶ In addition, the issue of polygamy that is occasionally practiced by Rohingya refugees contributes to their increasingly restricted number of resettlement options available to them as most resettlement countries do not approve the practice.⁹⁷

D. PRACTICES AND POLICIES

As was described in the previous sub-chapter on Malaysia's legal framework on refugees, apart from the Philippines, Timor-Leste and Cambodia, Malaysia, like other Southeast Asian states, does not have an operational legal framework that provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. Nor have they established a system for providing protection to refugees. However, it should be noted that Malaysia does not deport individuals recognized as persons of concern by the UNHCR. Through the Minister in the Prime Minister's Department Datuk Seri Shahidan Kassim, the Government of Malaysia in March 12, 2015, emphasized that Malaysia will not sign the UN Refugee Convention despite widespread of pressure from

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ Abdullah Sudin, *Expanding Islamic Organization Network in Humanitarian Issues*. A paper presented at SEA Conference on Rohingya, 18-19 May, 2016 in IPB International Convention Center, Bogor, Indonesia.

⁹⁷ Interview with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016; and with Ahmad Fahmi Mohd Samsudin, CEO of Global Peace Mission (GPM) Malaysia, Kuala Lumpur, July 20, 2016.

multiple stakeholders. The Minister reasoned that if Malaysia was to become a signatory, "The implication is that we will encourage more foreign workers to come in as refugees and asylum seekers and this will increase the number of illegal immigrants, foreign laborers and refugees".⁹⁸

In general, the politics and direction of Malaysia's policy on refugees can be generally explained by four factors, which became guidance for the initial refugee policy making in Malaysia in the 1970s. The first one concerns the historical legacy and demographic as well as ethnic conditions of Malaysia. The second one refers to the dynamic and development of geopolitical and economic situation in Southeast Asia. Third, still related to the previous factors, Malaysia established a border control regime and its immigration policy was especially related to the nexus of migration-refugee. Finally, the refugee policy of Malaysia is generally made out of the framework of human rights. Of course, this observation does not include the efforts of the UNHCR and other NGOs.⁹⁹

The Government of Malaysia instead maintains cooperation with the UNHCR and normally does not impede other humanitarian organisations or NGOs from assisting refugees and asylum seekers in the country. That is, almost all practices related to refugees have to be seen as an integral part of the government's own policy towards refugees. The practice particularly includes the issuance of UNHCR cards for refugees, the provision of healthcare for UNHCR card holders with a 50% discount on the usual rate for foreigners, withholding work permit for refugees, and impeding access to public schools. However, although the Government of Malaysia in fact does not allow refugees to work, most of them, especially UNHCR card holders, are employed by Malaysian employees in informal sectors. Likewise, while the Government also does not permit refugees to enter public schools; they have allowed NGOs to establish and run schools specifically for refugees.

The issuance of UNHCR cards, despite the aforementioned controversies, should be seen as the typical practice of the Government of Malaysia towards refugees. For refugees, holding the card means having four relative privileges. First, if refugees are raided and even arrested by law enforcement offices such as the police, they will not be sent to detention centers since they are registered with the UNHCR (although there is still the possibility that they are forced to pay bribe). The second one that is commonly known is that it enables refugees to access healthcare with a 50% discount off the rate for foreigners. Third, they can access informal employment since a few Malaysian employers prefer

98 Yiswaree Palansamee, Malaysia will not sign UN Convention on Refugees, says Minister, at *The Malaymail Online*, March 12, 2015. Retrieved from <http://www.themalaymailonline.com/malaysia/article/malaysia-will-not-sign-un-convention-on-refugees-says-minister>, on May 23, 2016.
 99 Amarjit Kaur, Refugees and Refugee Policy in Malaysia, in *UNEAC Asia Papers*, no. 18. 2007.

to recruit refugees with UNHCR cards for informal works over those without any cards. Finally, the card provides them with a bigger opportunity to be resettled to third countries.¹⁰⁰ The following picture (Picture 4) shows one of the Myanmar refugees showing his UNHCR card:

Picture 4: A Myanmar Muslim refugee showing his UNHCR card



Moreover, it seems like that the Government of Malaysia applies a semi-open policy relating the influx of refugees in the country by creating a loose door for refugees to enter the country and very rarely expelling or deporting them although frequently conduct raids and arbitrarily arrest them. This kind of policy is also sometimes referred to as a “silent policy”. That is, the Government of Malaysia is not willing to ratify the 1951 Refugee Convention and/or provide an operational framework for refugees; however, the Government not only allows NGOs and Malaysian communities to assist refugees, but also very rarely attempts to regulate or conduct raids against refugee-related activities conducted by NGOs. As was emphasized by a respondent:

Police is quite concerned, that’s why they call it silent policy. The Government of Malaysia actually doesn’t accept. But we just confirm their coming. We just let NGOs assist them. We often collaborate with other NGOs in dealing with refugees. We then never see them return to sea. That is the narrative...then we mostly call this policy as silent policy. In this regards, we saliently assist them, collaborate among NGOs, accept them, etc. Yes, no formal system, but many concrete practices.¹⁰¹

100 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

101 Interview with Shaharuddin Badarudin, Director of Institute of Darul Ehsan (IDE) and

But I think politician have their priorities and it's not foreigners, but it's difficult for them. But I think they do something about it, but it's not something that they passionate about...I think they just have to prioritize things that they want to focus on. The openness of the society now makes it difficult to grow. I think if they have no internet, people can just ignore, we deal it silently.¹⁰²

From the above it would seem that the Government of Malaysia does not place the issue of refugees as a specific priority or concern. In this regards, since the Government does not provide an operational framework for refugees, they do not feel the need to provide refugees with humanitarian assistance. However, a number of government officials are informally and, to certain extent, actively engaged in assisting refugees. Most of their aids are distributed to NGOs concerned with refugees or to schools established for refugees. Regarding this, one NGO activist shared his experiences and observation:

There are actually government people that contribute to humanitarian aids for refugees. In most of the cases, they salient send their aids to NGOs and are not interested in it being published. They personally use their own money or money of the Government of Malaysia. If we publish it, it will make more other people or refugees come here. We don't really expel them when they come. The government actually expects NGOs to help them since cost of refugee is too high for the government, especially cost of health services. Meanwhile, most of the aids received by NGOs are from the Malaysian people and foreign aids.¹⁰³

The government officials do not only provide aid for refugees, but also strongly encouraged NGOs and communities concerned with refugees to help them. However, the aid offered by government officials is considered as more the generosity of certain individuals as opposed to officially relating to the government. The question becomes why the Government applies this sort of policy and practice. Similarly, why does the Government allow refugees just to enter Malaysia but rejects any calls to provide protective instruments and legal recognition to them? More specifically, what are the interests and objectives of the Government behind such a practice and policy?

However, the above mentioned harmonious - albeit unofficial - relationship between the Government and NGOs and other concerned Malaysian communities is refuted by other groups of NGOs who point out that the Government

Professor of Selangor University, Selangor, July 22, 2016.

102 Interview with Syarifuddin Muis, Program Manager of Institute of Darul Ehsan (IDE), Kuala Lumpur, July 22, 2016.

103 Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

through its law enforcement agencies, such as the police, immigration officers and even RELA frequently conduct raids and arbitrarily arrest refugees. A respondent shared his experiences on this:

When it comes to refugees, the Government don't want to give anything. They don't want to support any NGOs. In fact, you could be in danger for supporting the refugees because there could be a law against abetting in harbouring illegal immigrants. That means if the Government doesn't like me, they don't like the NGO, they can say that the organisation is harbouring illegal immigrants. They could charge you, you could be arrested, I could get arrested... I think the government knows and kind of allows these refugees to come, but still are not giving them legal recognition.¹⁰⁴

The statement emphasizes that people assisting refugees are considered as acting against the law since they are regarded to be harbouring illegal migrants. As a result, those people and NGOs involved with them can be potentially detained by the Government. The question becomes whether the case also applies to UNHCR card-holders.

Within a non-signatory country, such as Malaysia, the UNHCR mostly plays a leading role in dealing with refugees. In fact, the relation between the UNHCR and the Government of Malaysia appears dynamic. In most of cases, the Government of Malaysia endorses cooperation with the UNHCR in addressing refugees in Malaysia, particularly pertaining to the identification and documentation of refugees. In certain cases, the Government of Malaysia occasionally feels unsatisfied and even disappointed with the performance and policy of the UNHCR that seem to be incompatible with the general interest of the Government of Malaysia. One respondent shared her observation on this issue:

I mean, in which country that has a UNHCR office that the Government takes over the role and functions of the UNHCR? I don't think they have the right to ban the UNHCR. They're not under the Government. If you look at it, the UNHCR has always said all kinds of nice things about the Malaysian Government and enforcement (agencies), so that they are scared to actually be forceful with the Government.¹⁰⁵

One issue that has particularly caused tensions between the Government of Malaysia and the UNCHR is with the issuance of the UNHCR cards. The Government is seemingly not happy with the increasing number of UNHCR

104 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

105 Interview with Mahi Ramakrishnan, Film-maker and journalist, focusing on Rohingya refugee life in Malaysia, Kuala Lumpur, July 21, 2016.

cards being issued and have asked the UNHCR to stop producing the card. For the Government, the increasingly replicated cards might cause criminal activities and social problems. Regarding this, other respondents have said that the Government even threatened the UNHCR by telling them to leave.¹⁰⁶

Nevertheless, it can be argued that despite all the above mentioned practices and policies, it does not apply to all the refugees. There are indeed certain policies that are applied to certain refugees, such as refugees from the Southern Philippines, Bosnia and Syria. These refugees are treated differently by the Government of Malaysia in the sense that they are provided with work-permits and housing.¹⁰⁷ This sort of practice and policy has received wide public criticism for creating a “two tier systems for refugees”.¹⁰⁸ One critic of this policy is Lia Syed, who heads the Malaysian Strategic Research Institute, saying that Malaysia creates what I call a ‘gold class’ of refugee. You create one group of people who have more rights than all the other people who have been here for years and waited”.¹⁰⁹ Even Alice Nah, a lecturer in the Centre for Applied Human Rights at the University of York, described the Government’s double standard of practice and policy for refugees as choosing “when and for whom it provides protection”.¹¹⁰

There are also those that disagree with what has been called a discriminative policy or practice. One respondent argued that, “actually not many countries just as friendly and as helpful as Malaysia doing this. Not many countries welcoming the refugees...I don’t think that many countries dare to question “ Why are you so discriminative?”. I just can simply asking “What are you doing then?”¹¹¹ For certain people, the government’s policy and practice of distinguishing refugees in terms of protection and aid provided to them should be viewed externally by comparing with what other countries have done for refugees. That is, the sort of practice that exists in Malaysia should still be seen as something positive relative to the tiny number of countries willing to accept refugees.

A critical question becomes why the Government applies different policies and practices among different refugees. Many reasons are assumed to be behind this practice and policy. First, the Government of Malaysia generally

106 *Ibid.* and Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

107 See also Interview with Puteri Nor Ariane Yasmin, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016; and Amarjit Kaur, Refugees and Refugee Policy in Malaysia, at *UNEAC Asia Papers*, no. 18. 2007.

108 Amarjit Kaur, Refugees and Refugee Policy in Malaysia, at *UNEAC Asia Papers*, no. 18. 2007.

109 Kate Maybery, First Class Refugees: Malaysia’s two tier system, at *Al-Jazeera.com*, December 27, 2015. Retrieved from: <http://www.aljazeera.com/indepth/features/2015/12/class-refugees-malaysia-tier-system-151221061627431.html>, on June 23, 2016.

110 *Ibid.*

111 Interview with Shaharuddin Badarudin, Director of Institute of Darul Ehsan (IDE) and Professor of Selangor University, Selangor, July 22, 2016.

holds that 3,000 Syrian refugees and 5,000 Bosnian ones will return once the condition in their countries becomes normal. It is a fact that most of the Bosnian refugees were voluntary repatriated and only a few of them decided to stay on in Malaysia. In addition, offering humanitarian aid and protection to those refugees is seen as strategically helping furnish Malaysia's international image since the wars that occurred in the the two countries have attracted global attention from world leaders and garnered extensive media coverage. However, the issue relating to Filipino refugees residing in Sabah is more politically nuanced. That is, the civil war occurring in the southern part of the Philippines in the late 1960s resulted in many of its population leaving the country to seek refuge in neighboring Sabah, Malaysia. The well documented Filipino refugees were, on humanitarian grounds, granted permission to stay and work by Tun Mustapha, who was Sabah's Chief Minister in the first half of the 1970s. Economically, the entry of refugees helped overcome labor shortages due partly to the Malaysian state's small population size. Hence, they were welcomed especially by Sabah state administrators and employers.¹¹²

Moreover, almost all Syrian refugees are documented in the sense that they have formal documents, such as passports and other identification cards, when entering Malaysia using airlines for example. Likewise, they have been strictly processed and screened by the Government and UNHCR. Most of these Syrian refugees live in housing provided by the Government in Setia Alam. In contrast, almost all Rohingya refugees who arrived in Malaysia usually via the seas do not have any passport or other documents.¹¹³

It's definitely much easier to sort of be a bit more open to Syrians. And even that is a very small number -- three thousand -- and they come in stages. Like, the first batch arrived in Christmas 2015: five families. And then over a hundred arrived during the fasting months. So it's a small number and they arrive in very slow, smaller stages. And the Government makes sure that although the initial number was three thousand, and there was a small ceremony held to welcome the initial five families, after that it's very quiet.¹¹⁴

112 Azizah Kassim, Filipino Refugees in Sabah: State Response, Public Stereotypes and the Dilemma over Their Future, at *Southeast Asian Studies*, Vol. 47, no. 41, June 2009.

113 Interview with Puteri Nor Ariane Yasmin, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016 and with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016; and Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

114 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016, see also BBC Indonesia, Malaysia Terima Migran Syria. December 10, 2015. Retrieved from: http://internasional.kompas.com/read/2015/12/10/08345511/Malaysia.Terima.Migran.Suriah?utm_source=WP&utm_medium=box&utm_campaign=Kknwp, on June 4, 2016.

In relation to the policies and practice that are differently addressed to Rohingya refugees, the Government of Malaysia mainly presupposes that treating Rohingya refugees with a similar practice and policy to that applied to Syrian and Bosnian refugees will potentially invite more Rohingya people in Rakhine State of Myanmar, which is estimated to be 1.8 millions to come to Malaysia. That is, the Government is worried that it will serve as a sort of pull factor. If this happens, as the Government is strongly convinced, it will have an effect on the demographical and socio-economic conditions of Malaysia.¹¹⁵

Another criticism refers to the position of Malaysia as a country that has ratified the Convention on the Rights of the Child. Although Malaysia has ratified the Convention, it is almost certain that the Government of Malaysia does not provide primary education and free health-services to refugee children, including those born in Malaysia.¹¹⁶ One NGO activist working with refugees expressed his observation and experience on this issue, saying, “In our laws, we have a Child Act. The Child Act says that every child should receive an education and all that. But when it comes to the refugees, the Immigration Act supersedes the Child Act suddenly”.¹¹⁷ That is, when it comes to refugees, the Government often turns a blind eye although it has strong relevance with the ratified Convention of the Rights of Child.

The Government of Malaysia established a zero-tolerance policy with regards to the formal documentation of refugees. In this sense, the Government consistently holds that documenting refugees is limited to the stage of issuing the UNHCR card, and no more than that. Even if refugees have been living long and/or was born in Malaysia and/or even married to a Malaysian citizen, the refugee will not be granted Malaysian citizenship. For refugees born in Malaysia, it is specifically written on their birth certificate that they are “Non Citizen”. By not having Malaysian citizenship means being denied access to public education and work-permits.¹¹⁸ As was shared by some respondents:

Rohingya refugees might try hard to marry Malaysians in order that they can be granted citizenship. They cannot get citizenship. They are still stateless and it is difficult for them to get documentation. In the end, they will only rely on UNHCR card. I don't know until when.¹¹⁹

115 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

116 *Ibid.*

117 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

118 Interviews with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016.

119 Interview with Mahi Ramakrishnan, Film-maker and journalist, focusing on Rohingya refugee life in Malaysia, Kuala Lumpur, July 21, 2016.

In a few cases, a number of refugees were actually granted citizenship, especially approaching or during a general election in Malaysia in return for political support.¹²⁰ As was shared by a refugee, “I registered my children born here to the Government. However, they are not granted citizenship until right now. It is written non-citizen on their birth certificates. I hope the Government will grant my children citizenship.”¹²¹

There are actually a large number of refugees that have been living for a long time in Malaysia, some for more than a decade. A number of their children were even born and grew up in Malaysia, having never stepped foot in their original country. As such, the question becomes why the Government of Malaysia does not grant them Malaysian-born refugees with Malaysian citizenship. The answer is often related to the issue of pull factor, the same thing that applies to the reason behind not providing work permit to refugees. Both issues are arguably connected. However, other sources stated that, in some cases, a number of second and third generation Rohingya refugees have actually been granted citizenship or other relevant identity cards. The case apparently does not apply to fourth generation Rohingya refugees. As a result, a number of the children of these second and third generations of Rohingya refugees in fact are allowed to enter public school.¹²²

Another practice that has extensively attracted public concern and criticism is related to the forced requirement for refugees to pay a certain amount of money for to process certain documents. This practice presumably involves diverse stakeholders or agencies, including government officials. One respondent that used to work in UN Asia related his experience as follows:

The officers on the border are directly involved in terms of human trafficking. You can see clearly there’s a band of the immigration officers that go to the border and send them to the agent and the agent send them back. There’s even a story whereby they are detained, they are released, and they are given a price to be put in detention centres.¹²³

For certain people and even some stakeholders, the presence of refugees is not an issue at all, but another opportunity to generate money. For them, refugees are sources of money and there are diverse ways and methods in which money can be made from them, including the involvement and networking of rogue government officials with agents in human trafficking. For

120 Interview with Mohamad Ramli Abdul Rahim, President of Angkatan Belia Islam Malaysia (ABIM), July 20, 2016.

121 Interview with Syamsuddin, one of Myanmar refugees, Selangor, July 19, 2016.

122 Interview with Shaharuddin Badarudin, Director of Institute of Darul Ehsan (IDE) and Professor of Selangor University, Selangor, July 22, 2016.

123 Interview with Ahmad Fahmi Mohd Samsudin, CEO of Global Peace Mission (GPM) Malaysia, Kuala Lumpur, July 20, 2016.

example, there have been cases whereby refugees are detained by government officials and the only way for refugees to be released from detentions centers is by paying certain amount of money to the officials. There is no denying the fact that the influx of refugees cannot be separated from the issue of human trafficking.

Refugees have testified that, “I am required to pay, that there was a scam in Thailand and they give me two options: you can pay or not”.¹²⁴ Another observation on this issue noted that there is often massive detention of refugees before and during the holy month of *Ramadhan*. The detained refugees will be further sent by officers of immigration centers to agents. For one detained refugee, the agents should be paid MYR 50 or approximately US\$ 11 in order to secure their release. Alternatively, refugees can also directly pay the officers.¹²⁵ Similar cases involving those detained during raids by the police, immigration officers, and/or RELA have also been reported. Detained refugees are requested to directly pay MYR 50 (about US\$ 11) or MYR 100 (about US\$ 22), or face higher demands of around MYR 2000-3000 (about US\$ 450-US\$ 674) when they are taken to a police station.¹²⁶ The above is a demonstration of the vicious circle and political economy involving refugees. Indeed, financial transactions can be found during the entire process from refugees leaving their country of origin to country of transit/destination.

The Government of Malaysia generally applies frequent, and to a certain extent routine, raids and crackdowns against refugees. The practice is mostly conducted by three law enforcement agencies – the Immigration Department, the Royal Malaysian Police and RELA.¹²⁷ Non-UNHCR cardholders and other illegal migrants are subject to detention by these law enforcement agencies. However, there are often cases whereby even refugees holding UNHCR documentations are still arrested by the authorities. In some incidents, UNHCR document holders have been tortured, beaten or otherwise mistreated in custody.¹²⁸ A respondent shared her experience on this routine crackdown or raid while actively involved in helping refugees:

124 Interview with Abdur Rahman, one of Rohingya refugees living in Pasar Gombak, Selangor, July 19, 2016.

125 Interview with Ahmad Fahmi Mohd Samsudin, CEO of Global Peace Mission (GPM) Malaysia, Kuala Lumpur, July 20, 2016.

126 International Federation for Human Rights (FIDH) and Suaram (Suara Rakyat Malaysia) Working for Human Rights, *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination*, March 28, No. 489.

127 Philip S. Robertson, *Migrant Workers in Malaysia: Issues, Concerns and Points for Action*, in *Fair Labor Association, Migrant Workers in Malaysia*, October 2008. Retrieved from: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2223&context=globaldocs>, on May 23, 2016.

128 International Federation for Human Rights (FIDH) and Suaram (Suara Rakyat Malaysia) Working for Human Rights, *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination*, March 28, No. 489.

They [police and RELA] keep raiding refugees around here living in this flat [located around Gombak Market, Selangor]. They enter each flat or room. They are mostly RELA and police. They occasionally beat refugees while raiding them here. Refugees then become upset once they or their families are arrested by them. Arrested refugees are ordered to ride their trucks. However, there are also good police that help refugees a lot.¹²⁹

Related to the frequent raid by law enforcement agencies, is the issue of extensive practices of abuses and tortures towards refugees. The abuses come particularly at the hands of various Malaysian government agencies, especially RELA. Refugees are often vulnerable to arbitrary arrests, detention and persecution on account of the frequent raid and crackdown by RELA.¹³⁰

As a result, RELA has become one of the most feared agencies among refugees and has been widely accused of committing human rights abuses against refugees, migrant workers and foreigners and condemned by groups in the international community.¹³¹ Criticisms against RELA not only come from the international community but can also be found among the Malaysian NGOs and community groups. One such group that is extensively concerned with the behavior and poor record of RELA is the Malaysian Bar Council. On March 17, 2007, it passed a motion at its Annual General Meeting, calling for the repeal of the legislation that established RELA, arguing the powers exercised by RELA without a warrant violates the due process of law. Despite this, the Government of Malaysia plans to make it RELA a permanent government agency with greater authority and financial resources; a move that has received extensive opposition from the international community.¹³² The following picture (Picture 5) portrays RELA members conducting a raid and arresting illegal migrants and refugees at night.¹³³

129 Interviews with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016.

130 Aslam Abdul Jalil, Malaysia's Refugee Shame, At New Mandala Online, August 03, 2015. Retrieved from <http://asiapacific.anu.edu.au/newmandala/2015/08/03/malysias-refugee-shame/> on June 4, 2016.

131 Philip S. Robertson, Migrant Workers in Malaysia: Issues, Concerns and Points for Action, in *Fair Labor Association, Migrant Workers in Malaysia*, October 2008. Retrieved from: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2223&context=globaldocs>, on May 23, 2016.

132 International Federation for Human Rights (FIDH) and Suaram (Suara Rakyat Malaysia) Working for Human Rights, *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination*, March 28, No. 489.

133 The picture is derived from Asian Center for Human Rights; *Mid-night knocks in Malaysia*, March 2, 2005. Retrieved from: <http://www.achrweb.org/Review/2005/62-05.htm>, on October 12, 2016.

Picture 5: RELA Members Razing and Arresting Illegal Migrants



RELA was established by the Police and Immigration Department on 11 January 1972 under the Emergency (Essential Powers) Act 1964 (Security Force)¹³⁴ with significantly delegated power but relatively poor or minimal training. The armed and part-time RELA is particularly tasked with law enforcement and is empowered with the authority to arbitrarily stop, conduct raids and even arrest any person who they believed to be criminals, illegal immigrants, undocumented migrants and/or refugees without a warrant. RELA is also authorized to patrol the streets and conduct immigration raids considering the shortage of staff on the country's borders. Moreover, RELA is equipped with firearms and its senior members are provided with shotguns, especially since the amendment of the Essential Regulations was introduced in 2005. RELA members receive reward of MYR 80 (about US\$21) for each person detained for illegally entering Malaysia including undocumented refugees/migrants.¹³⁵

As a non-signatory, Malaysia does not have an operational legal framework for refugees; and thereby treats refugees under immigration legislations, namely the Immigration Act 1959/1963 that was successively amended in 1997 and 2002. That is to say, refugees who are apprehended and detained by Malaysian law enforcement officials are sent to detention centres unless they are registered with the UNHCR. Currently there are about 47 detention centres in Malaysia, including 28 dedicated prisons. However, following 2005 when widespread allegation of abuse by immigration department officials

¹³⁴ *Ibid.*

¹³⁵ Philip S. Robertson, *Migrant Workers in Malaysia: Issues, Concerns and Points for Action*, in *Fair Labor Association, Migrant Workers in Malaysia*, October 2008. Retrieved from: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2223&context=globaldocs>, on May 23, 2016; International Federation for Human Rights (FIDH) and Suaram (Suara Rakyat Malaysia) Working for Human Rights, *Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination*, March 28, No. 489.

became public, the management of the centres was finally taken over by the Prisons Department from the Immigration Department.¹³⁶ As was told by Rohingya refugees, the condition in jails and detentions centers is not only extremely miserable, but also “so overcrowded that they could only stand or crouch, but never lie down; food was irregular and insufficient, consisting primarily of rice and water; and prison guards could beat and abuse them with impunity”.¹³⁷

Based on the USCRI World Refugee Survey in 1995, the practice or treatment of the Government of Malaysia towards refugees was ranked in the lowest category, scoring an ‘F’ grade for all four performance indicators (whereby a scale of ‘A’ Best to ‘F’ Worst was used). The results particularly originate from the practice of *refoulement*, detention, right to earn livelihood, and freedom of movement and residence. However, in the 2006 survey, although the Government of Malaysia improved its performance in terms of freedom of movement and residence for refugees, it is still placed at C grade (Average) since it had not shown any improved performance in the other categories.¹³⁸ Another important fact is that, based on the 2009 US World Refugee Survey, Malaysia was categorized as one of the worst violators of refugee rights by receiving an F Grade in three aspects, including *refoulement*/physical protection, detention/access to courts, and the right to earn a livelihood. At the same time, Malaysia had not improved in the area of freedom of movement and residence.¹³⁹ The following table (Table 4) summarizes the evaluation history of Malaysia’s practices towards refugees:

Table 4: The survey report of Malaysia’s treatment towards refugees

Evaluation Reference	Year	Grade	Description
USCRI, World Refugee Survey	1995	Scoring F (scale: A to F) or the lowest score available.	Practice of <i>refoulement</i> , detention, right to earn livelihood and freedom of movement and residence
USCRI, World Refugee Survey	2006	Scoring C (scale: A to F) or average	Improvements in freedom of movement and residence for refugees
USCRI, World Refugee Survey	2009	Scoring F (scale: A to F), or the lowest score available	One of the worst violators of refugee rights, including <i>refoulement</i> , detention/access to court, and the right to earn livelihood.

136 Amarjit Kaur, Refugees and Refugee Policy in Malaysia, at *UNEAC Asia Papers*, no. 18. 2007.

137 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

138 Amarjit Kaur, Refugees and Refugee Policy in Malaysia, at *UNEAC Asia Papers*, no. 18. 2007.

139 Aslam Abdul Jalil, Malaysia’s Refugee Shame, At New Mandala Online, August 03, 2015. Retrieved from <http://asiapacific.anu.edu.au/newmandala/2015/08/03/malaysias-refugee-shame/> on June 4, 2016.

Finally, when compared to Thailand, which also has a similar number of refugees/asylum seekers and hosts refugee camps along its borders, Malaysia's admission, treatment and protection of refugees are poorer. Refugees/asylum seekers are frequently raided, arbitrarily arrested, and in some cases even tortured by various law enforcement officials, especially RELA.

Based on the report of the MSF Survey, 26 percent of a total 248 violent incidents against refugees were committed by ordinary Malaysians. Refugees who are victims of such crimes are reluctant to lodge police reports because they fear that they will instead be arrested by law enforcement officials.¹⁴⁰ More than that, the Government of Malaysia is widely considered as having been hostile to human right groups that work with refugees although Malaysia is actually an important regional player in ASEAN to initiate and strengthen regional programs and cooperation concerning the protection of refugees in the region.¹⁴¹

It is widely known that the Government's policy does not allow refugees to work although a number of refugees with UNHCR cards have in fact worked in various informal sectors and even preferably by some Malaysian employers in the irregular informal sector such as street cleaners, domestic workers, laborers on construction sites and many others. It is almost certain that this sort of condition has made them very susceptible to abuse by the authorities, employers, private sectors, and criminal gangs.¹⁴²

One crucial factor enabling the granting of work permits to refugees is the fact that most of them, particularly the Rohingyas, have deeply engaged with the culture of Malaysia and can even speak the Malay language fluently enough. Indeed many of them look more physically like Malay than other Malaysians as they can converse using certain Malay dialects, such as the northern dialect or Kelantanese dialect. This condition is particularly made possible by the fact that a large number of refugees, mostly the Rohingyas, were born and grew up in Malaysia. For instance, most of Rohingya refugees are even not aware with Arakan or Rakhine State, but are instead more familiar with Malaysia. They only know that Malaysia is the place they have lived all their lives and that Malay is the language they speak. As such, the resettlement option usually cannot work for them since they often reject this option.¹⁴³

140 *Ibid.*

141 Philip S. Robertson, Migrant Workers in Malaysia: Issues, Concerns and Points for Action, in *Fair Labor Association, Migrant Workers in Malaysia*, October 2008. Retrieved from: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2223&context=globaldocs>, on May 23, 2016;

142 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

143 Interview with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016

Actually, a number of NGOs and other relevant stakeholders have made a number of efforts to endorse the reapplication of the IMM13 work permit to current refugees. One effort relates to the advocacy of the IMM13 to the Government as the key decision maker for this permit. Unfortunately, the Government has seemingly ignored such ideas and aspirations. Zahid Hamidi, the Minister of Home Affairs, had actually discussed the possibility of reapplying the IMM13 in 2013. The issue of extensive corruption and bribery during the process of issuing the IMM13 in Sabah significantly hinders the efforts of reapplying the IMM13. Certain groups of refugees were granted with the IMM13 permit only after they paid a certain amount of money as requested by corrupt individuals.¹⁴⁴

Historically, the deadly conflict in the Southern Philippines resulted in a massive influx of Muslim Filipinos to the Malaysian state of Sabah in the early 1970s. These Muslim Filipino refugees were then given IMM13 by the Government of Malaysia, allowing them to legally stay and work in Sabah. Based on the number of IMM13 passes being renewed every year, these IMM13 holders are estimated to be 68,000, which is quite a large number. The estimated actual number may possibly be more than that since children less than 12 years are registered on the same pass as of one of their parents.¹⁴⁵

It is reasonable that the Government might have learned many lessons from the previously mentioned cases and as a result have become more cautious about reapplying the IMM13 in terms of rules and procedures. The problem of providing work permits to refugees is apparently more related to the Government's political will, rather than its capacity. However, it can be argued that such a broadly appreciated practice and policy should not be so easily abandoned. The refugees can instead be "possibly employed under a very controlled environment and processes". A high level government committee has even identified five areas where refugees could be employed. The hotel industry is one possible area where refugees can work after being properly trained.¹⁴⁶ It is largely known that Malaysia has been hosting up to six million legal and unregistered migrants. It is then reasonably to say that, "Offering work permits to 100,000 or so Rohingya who are of employment

144 Interview with Mohamad Ramli Abdul Rahim, President of Angkatan Belia Islam Malaysia (ABIM), July 20, 2016.

145 See Mohd Na'iem Ajis, et al., Managing Foreign workers in Southeast Asian Countries, in *Journal of Asia Pacific Studies*, vol. 1, no. 3, pp. 481-505 (2010). Retrieved from <http://www.japss.org/upload/4.%20mohdnaeimajietal.pdf>, on May 12, 2016, and Azizah Kassim, Cross border movement of foreign workers in Malaysia: a comparative analysis, in *Master Builders*, Third Quarter 2015. Retrieved from [http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSS-BORDER\(78-91\).pdf](http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSS-BORDER(78-91).pdf), on June 12, 2016.

146 See Tasnim Lokman, Job prospects for refugees, at *New Strait Times Online*, March 18, 2016. Retrieved from <http://www.nst.com.my/news/2016/03/133453/job-prospects-refugees>, on June 26, 2016.

age as well as another 100,000 refugees from other nations would not put an unmanageable burden on the country, and would likely be absorbed easily".¹⁴⁷

There are, more or less, two major concerns related to the granting of work permits to refugees. The first and primary one is that the Government is particularly afraid that it would be a pull factor for more refugees to come to Malaysia at a time when there are already hundreds of thousands of refugees in Malaysia. As one respondent expressed:

They don't want to make Malaysia attractive to refugees and asylum seekers. There is this fear that 'Look, even as it is right now, we already have this 140,000-150,000 legally registered (migrants), and an equal number, maybe more people who are not registered. What happens if we improve their situation of life here, what happens if we afford them any kind of recognition? It's the whole floodgates theory... We get thousands of analysis that say 'Yes, yes, they want to come here, this is the land of milk and honey for them and they think that as long as they come here it will be okay.'¹⁴⁸

The fear commonly expressed by Government officials certainly deserves careful attention. To address such fears, appropriate and certain measures as well as careful deliberation as to the mechanisms of refugee employment should and can be taken. The measure includes different rule between working refugees and foreign workers that have specific period of job tenure and do not accommodate the employees' dependents.¹⁴⁹

Despite the argument put forward by the Government, NGO activists and academics have opined that the fear of creating a pull factor is not justified. Unfortunately, the two sides – the Government and NGO activists/academics - have at times refrained from talking to one another. As was highlighted by one ISIS Malaysia analyst:

And I think that in order to solve the issue, first you have to get these two sides talking. As it is, when they talk, both sides don't talk *to* each other, they talk *at* each other. You have government folks who don't want to listen and you have people from the NGOs, from the CSOs, from the academics side who also don't want to listen to the concerns of the people from the government, legitimate concerns. So, as a result, nothing is done.¹⁵⁰

147 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

148 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

149 Azizah Kassim, Cross border movement of foreign workers in Malaysia: a comparative analysis, in Master Builders, Third Quarter 2015. Retrieved from [http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER\(78-91\).pdf](http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER(78-91).pdf), on June 12, 2016.

150 Interview with Thomas Benjamin Daniel, Analyst of Institute of Security and International

One source stated that previously the high level government committee used to meet with diverse stakeholders concerned with refugees in the country in order to discuss the issue of giving them work permit.¹⁵¹ Another concern generally refers to the limited number of jobs provided for skilled university graduates, which is taking place at a time when the number of university graduates is significantly increasing ever year in Malaysia. As such, this condition currently makes it harder for fresh graduates to secure jobs that fit with their skills and knowledge. In relation to this, it has sometimes argued that granting work permits to refugees will be an issue as it will increase competition for fresh graduates.¹⁵² That is to say, it will create a sort of social jealousy.

The practice of countries like Lebanon and Jordan can possibly be used by Malaysia and other ASEAN countries as examples of best initiatives for dealing with refugees in the region. Both countries have indicated that being a signatory to the Refugee Convention should not be treated as a prerequisite for protecting refugees and supporting their rights. Although both countries are non-signatories to the Refugee Convention, both have hosted millions of Syrian refugees and permit them to access certain social services.¹⁵³

Allowing refugees to legally work will benefit both the refugees and their dependents and the countries providing them with work permits. From the side of the refugees, working will facilitates them to seek jobs openly, restore their sense of self-dignity, and make them independent from charity sources and the UNHCR.¹⁵⁴ In fact, the Refugee Convention itself suggests the way forward, rejecting a charity-based model in favor of refugee empowerment.¹⁵⁵

Many recent studies indicate that countries that provide refugees with work permits and freedom of movement are often economically advantaged by the presence of refugees.¹⁵⁶ For instance, Angolan refugees in the Western

Studies (ISIS) Malaysia, Kuala Lumpur, July 22, 2016.

151 Tasnim Lokman, Job prospects for refugees, at *New Strait Times Online*, March 18, 2016. Retrieved from <http://www.nst.com.my/news/2016/03/133453/job-prospects-refugees>, on June 26, 2016.

152 Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

153 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

154 Azizah Kassim, Cross border movement of foreign workers in Malaysia: a comparative analysis, in *Master Builders*, Third Quarter 2015. Retrieved from [http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER\(78-91\).pdf](http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER(78-91).pdf), on June 12, 2016.

155 Refugee Council of Australia, Economic, civic and social contribution of refugees and humanitarian entrants: a literature review. A document prepared for the Department of Immigration and Citizenship, February 20.

156 See European Parliament, Directorate General for Internal Policies, *Labor Market Integration of Refugees: Strategies and Good Practices*, Study for the EMPL Committee, March 2016. Retrieved from [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU(2016)578956_EN.pdf), on September 2, 2016; UNHCR Standing Committee, *Social and economic impacts of large refugee population on hosting developing countries*, January 6, 1997. Retrieved from <http://www.unhcr.org/excom/standcom/3ae68d0e10/social-economic-impact-large->

Province of Zambia have since the 1970s contributed to local development, and their repatriation was paralleled by a decline in agricultural productivity in the Western Province.¹⁵⁷ Similar findings on the positive economic impact of refugees are reported from many other countries including Tanzania and Pakistan.¹⁵⁸ In fact, many countries, such as Japan, the USA, and Italy have tacitly used asylum seekers and refugees as a way of meeting their labor demands without publicly admitting the need for unskilled migration.¹⁵⁹

The practice of providing work permits to refugees is arguably very relevant with the reality in Malaysia as one of the labor-receiving countries in the region. More than five million migrant workers have been hosted by Malaysia to meet the country's labor demands. It should be noted that the number of refugees in Malaysia, which stands at about 150,000 is far smaller than the number of migrant workers, which is currently estimated to be more than 5 million. As such giving refugees the right to work would not only help meet the labor demands of Malaysia, but also contribute to its physical-infrastructure and economic developments.

Another best practice is related to the Malaysian Bar Council's initiative of establishing an operational framework for properly managing refugees in Malaysia. As part of this effort, it drafted a proposal on "*Developing a Comprehensive Policy Framework for Refugees and Asylum Seekers*". The draft covers strategic legal instruments and policy frameworks for dealing with refugees. Related to this framework is the practice of administrative instructions issued to avoid the detention of refugees. Upon arrest, law enforcement agencies are urged to confirm the identity and status of the persons through an online database and call centre services, including a hotline service managed by UNHCR Malaysia. If the person is found to be registered with the UNHCR, he/she is to be released.¹⁶⁰ Being very much concerned on this issue, Refugee International in its annual report also strongly highlighted:

Malaysia should take on the primary role of refugee protection inside the country with the assistance of the UNHCR by formulating laws and policies that provide individuals and families seeking protection with a fair, full, and transparent opportunity to have their claims heard; identifying and regularizing the status of refugees in need of protection and assistance;

refugee-populations-host-developing-countries.html, on September 2, 2016.

157 A. Betts: Development assistance and refugees: Towards a North-South grand bargain?, Forced Migration Policy Briefing 2, Refugees Studies Centre, Univ. of Oxford, June 2009, p.7

158 The Centre for study on forced migration: The impact of the presence of refugees in north-western Tanzania, University of Dar es Salaam, 2003; UNHCR: The economic impact of Afghan refugee settlement on the tribal areas of Northwest Pakistan, TSS, mission report 89/27, May 1989

159 Stephen Castles, Towards Sociology of forced migration and social transformation, in *Sociology*, vol. 37, no. 1, pp. 13-34 (2003).

160 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

and holding the police and employers accountable for exploiting them, including through bribes, sexual and physical violence, or other criminal acts. Malaysia is a signatory to the Convention on the Rights of the Child (CRC) and therefore has agreed to protect all children from discrimination regardless of immigration status, among other obligations.¹⁶¹

As noted, Malaysia is a non-signatory country; and therefore does not have an operational legal framework for dealing with refugees and asylum seekers. Nevertheless, the condition that arises from the lack of framework is particularly worsened by the fact a large number of refugees do live in and continue to come to Malaysia, to the extent that it is the largest home to refugees in ASEAN. Complicating the matter is the fact asylum seekers and refugees are often suspected of being economic migrants as it also cannot be denied that economic migrants also enter Malaysia disguised as asylum seekers and apply for refugee status.¹⁶² As such, the effort of building a specific operational framework for dealing refugees should be deemed as one of the best practices that should be replicated in Malaysia and the region and should be strongly furthered as one of the best solutions to the refugee issue.

E. CSO PARTICIPATION

As has already been noted, Malaysia is a non-signatory to the 1951 Refugee Convention; and thereby does not have any operational legal framework and/or system for managing refugees, including refugee status determination, provision of protection, etc. However, Malaysia usually does not deport individuals approved as persons of concern by the UNHCR; instead cooperating with the UNHCR and allowing NGOs and community groups to assist refugees. As was clearly stated by one UNHCR Malaysia officers:

In the absence of the Government doing so, the United Nations High Commissioner for Refugees (UNHCR), performs a range of state functions for protecting and supporting refugees in Malaysia with the assistance of a small number of NGOs and concerned citizens who provide volunteer support. As a result of the current policies, Malaysia presents a challenging and difficult environment for refugees in which basic survival is difficult as they cannot work legally and are at risk of arrest as illegal migrants.¹⁶³

161 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

162 Azizah Kassim, Cross border movement of foreign workers in Malaysia: a comparative analysis, in Master Builders, Third Quarter 2015. Retrieved from [http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER\(78-91\).pdf](http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER(78-91).pdf), on June 12, 2016.

163 Alan Vernon, *The Refugee Situation in Malaysia: Challenges and Opportunities*, May 16, 2012. Retrieved from <http://crice.um.edu.my/the-refugee-situation-in-malaysia-challenges-and-oppor>

As such, the role played by CSOs in Malaysia is very strategic since, in addition to the UNHCR, most protection of refugees is provided and handled by NGOs. Community groups and oftentimes government officials who are willing to help refugees preferably channel their assistance for refugees through NGOs. More than that, the extensive involvement of CSOs in providing protection of refugees is deemed as an appropriate policy by the Government since in its view, it will not invite more people to come to Malaysia. As such, the refugee issue is better handled by CSOs rather than by Government.¹⁶⁴

In general, there are three different types of actors engaged in policy making with regards to the global issue of refugees. While two primary actors includes states and the UNHCR, another actor consists of multiple stakeholders, including NGOs, members of research institutions and advocacy groups, the mass media, epistemic community, concerned public, and many other relevant stakeholders (Figure 2).

Figure 2: Three different types of actors engaging in refugee-related policy making



Although it is undeniably true that states remain the dominant and principal actors with regards to the worldwide refugee issue, other more relevant actors such as international organizations like the UNHCR, have come to play a more influential role in the process of policy making. In addition, the current role of NGOs cannot be overlooked, as they are becoming more and more engaged with influencing the policy making process, mostly in efforts to raise an issue on the policy agenda and in advocating changes to existing policies.¹⁶⁵

tunities.html, on June 4, 2016.

164 Interview with Shaharuddin Badarudin, Director of Institute of Darul Ehsan (IDE) and Professor of Selangor University, Selangor, July 22, 2016.

165 James Milner, Understanding global refugee policy. Introduction: Understanding Global

Generally, faith-based NGOs, representing Muslims, Christians or Buddhists,¹⁶⁶ are actively involved in assisting refugees. However, many other NGOs are not affiliated to a certain faith. One respondent stated:

Not by the Government. But by NGOs, the UN, religious organisations, yes. There is a very active Muslim NGO support for the Rohingyas. I know many churches also do work with the Rohingyas and also the Northern Burmese tribes because most of them are Christians, so the churches are quite involved. There are some organisations like the Pink Triangle, although they mainly deal with transgender and the LGBT (Lesbian, Gay, Bisexual and Transexual community), they also find themselves involved indirectly, like giving tuition classes to refugee children and things like that because they can't go to school.¹⁶⁷

Many NGOs have been identified as having been relatively active in assisting refugees, and these include The Malaysian Bar Council, My Care (Humanitarian Care Malaysia Berhad), Nusantara Care, Suhakam (The Human Rights Commission of Malaysia), *Persatuan Kebajikan Suara Kanak-kanak Malaysia* (SUKA Society-The Associated Voice for the Better Livelikelihood of Malaysian Children), *Himpunan Lulusan Institusi Pendidikan Malaysia* (Halu-an Malaysia-Association of Graduates Malaysia), Tenaganita, Asylum Access Malaysia (AAM), *Angkatan Belia Islam Malaysia* (ABIM-The Muslim Youth Movement of Malaysia), Malaysian Life Line for Syria, Global Peace Mission (GPM), My Welfare, *Wadah Pencerdasan Umat Malaysia* (WADAH-The Malaysia National Association for *Ummah* Enlightenment), Future Global Network (FGN), *Majlis Agama Islam* (MAI-The Council of Islamic Religion), and many others.¹⁶⁸

Their assistance to refugees could take multiple forms, such as assisting in the establishment of temporary detention centers, establishing local schools for Rohingyas, providing education and training (religion, computer skills, healthcare, English, etc.), providing legal assistance especially during the RSD (Refugee Determination Status) process, providing food, establishing the Rohingya Relief Fund/Task Force, developing a Comprehensive Policy Framework for Refugees and Asylum Seekers that includes drafting a legal

Refugee Policy 481, in *Journal of Refugee Studies*, vol. 27, no. 4, October 30, 2014, pp. 477-494. Downloaded from <http://jrs.oxfordjournals.org/> on May 25, 2016.

166 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

167 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

168 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016, with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016, with Ahmad Fahmi Mohd Samsudin, CEO of Global Peace Mission (GPM) Malaysia, Kuala Lumpur, July 20, 2016 and many others.

and administrative framework for dealing with asylum seekers and refugees, running clinics,¹⁶⁹ developing learning centers (more than 100 learning centers), and many others. One of the Myanmar refugees, for instance, expressed his testimony and experiences relating to the humanitarian works of CSOs as such:

They give foods, oils, and many others. If one of the refugees gets problems, such as being pregnant or sick, they also often give money to pay for hospital. A number of Arabs also help the NGOs a lot. For instance, if we go to hospital, we are not allowed because we don't have passport or other relevant identity cards, with their help, the hospitals finally are willing to give us medical treatment.¹⁷⁰

The following table (Table 5) summarizes the list of NGOs/CSOs and their concerned sectors:

Table 5: The list of NGOs in Malaysia concerned with refugees

Name of CSO/NGO	Concerned Sectors
The Malaysian Bar Council	Legal framework and policy making
My Care (Humanitarian Care Malaysia Berhard)	Providing food, education and training
Nusantara Care	Providing food, education and training
The Human Rights Commission of Malaysia (Suhakam)	Protection of refugees' human rights
<i>Persatuan Kebajikan Suara Kanak-kanak Malaysia</i> (Suka Society)	Protecting the rights of women refugees and refugee children, providing education for refugee children and temporary shelters
<i>Himpunan Lepasn Institusi Pendidikan Malaysia</i> (Haluan Malaysia)	Providing food, school kits, education and training
Tenaganita	Protecting and promoting the rights of refugees
Asylum Access Malaysia (AAM)	Legal assistance
<i>Angkatan Belia Islam Malaysia</i> (ABIM)	Education and training, ransoming, school kits and fund-raising, and policymaking
Global Peace Mission (GPM)	Education and training and policymaking
Malaysian Life Line for Syria (consortium)	Providing food and policymaking
May Welfare	Providing food and fundraising
<i>Wadah Pencerdasan Umat Malaysia</i> (WADAH)	Education and training
Future Global Network (FGN)	Education and training
<i>Majlis Agama Islam</i> (MAI)	Education and training and financial supports.

169 See UNHCR, Refugees and Healthcare. Retrieved from <http://www.unhcr.org.my/refugeeM-sia.htm#>, on May 27, 2016.

170 Interview with Syamsuddin, one of Myanmar refugees, Selangor, July 19, 2016.

One of the most commonly humanitarian works conducted by CSOs with regards to the protection and empowerment of refugees is via establishing schools or learning centers that are specifically designed for refugees. This is especially so given that the Government of Malaysia does not give refugees access to public schools. Moreover, NGO's tend to prioritize their focus on providing education for refugees given the salience of education for the future of refugee children. One respondent acting as principal for a Rohingya school in Selangor shared his experiences:

We were really concerned with the large number of Rohingyas that became beggars. Departing from this concern, we then got together and decided to design a school project for Rohingyas in Bukit Mertajam (currently called Penang Island) in 2010 and also in Kelang that is flooded with diverse refugees. Finally, with the help of the UNHCR, FGN, WADAH Selangor and ABIM Klang, we established learning centers for Rohingya children, named Rohingya Education Center in July 15, 2012. As I could remember, the school is located in Batu Belah. The land is actually a *Wakaf* (religious endowment) of Haji Sarah. We finally made up 8 classes. In 2012, we only accepted about 57 children and recruited 7 teachers. Education issue at the time was not a real concern of Rohingya refugees here. However, their number is quickly increasing as they realized the importance of education for their children. As of 2016, more than 211 Rohingya children are registered in this school.¹⁷¹

Refugee education has served as one strategic area where many NGOs in Malaysia are extensively engaged. The case of the Rohingya School in Selangor that was established by FGN in 2011 generally described the challenge and dynamic of NGOs in dealing with education for refugees. The school, whereby 80% of students are Rohingya children and a further small number made up of Pakistani children, is also a concrete example of the effective collaboration between NGOs and the UNHCR. *Majlis Agama Islam Selangor* have supported almost 80% of the school resources.¹⁷²

The school's subjects have also been made to reflect those found in public schools but with an emphasis on additional subjects such as life skills, like sewing. However, NGOs are not allowed to incorporate religious subjects into the schools, especially those that are under the initiation and administration of the UNHCR. As such, when it comes to teaching religious knowledge and Al-Qur'an recitation to Rohingya refugees, a number of faith-based NGOs mostly establish a number of *Madrasah* (Islamic schools).¹⁷³ The salary of the school teachers is also made to be on a par with those teaching in public

171 Interview with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016.

172 *Ibid.*

173 *Ibid.*

schools.¹⁷⁴ More interestingly, NGOs also make efforts to recruit the school teachers from within the Rohingya refugee community by identifying those that are deemed to have the appropriate capacity and skills. However, it is important to note that the local NGO-sponsored schools and/or learning centers remain limited in terms of its numbers as they cannot provide any formal certification for their students.¹⁷⁵

Collaboration and cooperation among NGOs in dealing with refugees is another issue. In general, most NGOs tend to cooperate and collaborate with each other in providing protection for refugees. The establishment and administration of the Rohingya schools is just one case in point. Collaboration takes place not only among NGOs, but also between NGOs and the UNHCR or between NGOs and the community.¹⁷⁶ For instance, one CSO activists shared his observation saying, “we work with a lot of other organisations as well as corporates, and they were the ones who actually enabled us to give food. And public donations, the public is quite generous in giving donations, especially during Ramadan – after that it’s a bit difficult, actually.”¹⁷⁷ The holy month of *Ramadhan* is broadly known as a suitable moment for Muslims to distribute their donations in the form of “*Zakat*” (religious tax) and “*Sedekah*” (religious alms) to the poor and needy. As such, there is always a flood of donations during *Ramadhan*.

While a number of efforts have been made by CSOs to help refugees as outlined in the previous paragraphs, less effort has been prioritized in the area of advocacy on behalf of the refugees.¹⁷⁸ Refugees not only have basic needs such as food and water, but also importantly require legal rights and access to legal assistance. AAM and My Welfare are identified as among the few CSOs that have put much focus on refugee advocacy. AAM for instance, is a Malaysian-registered NGO and part of the Asylum Access family of organizations, and was first launched in 2014 to put more focus on direct legal services for refugees and asylum seekers. In doing so, it is extensively engaged with the UNHCR and other stakeholders in Malaysia’s refugee rights movement. Moreover, its refugee legal aid program generally assists refugees and asylum seekers to successfully navigate the UNHCR Refugee Status Determination (RSD) process, thereby improving their chances of living safely and moving freely in Malaysia.¹⁷⁹

174 *Ibid.*

175 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

176 Interview with Rozmah Binti Tazilah, Director of Rohingya Education Centre (REC) Klang, Kuala Lumpur, July 23, 2016.

177 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

178 *Ibid.*

179 The detail of activities and programs of Asylum Access Malaysia (AAM) are broadly described at its official web: <http://asylumaccess.org/program/malaysia/#sthash.fW2bESjf.dpuf>

More than that, certain CSOs have put greater priority on playing a more dominant role in policy making and the move towards a legal instrument or framework for handling refugees. The Malaysian Bar Council, for instance, in 2011, outlined a proposal on “*Developing a Comprehensive Policy Framework for Refugees and Asylum Seekers*”, which includes drafting a legal and administrative framework for dealing with asylum seekers and refugees. The good news is that the current massive influx of Rohingya refugees into Malaysia has triggered public debate on the adoption and application of a legal and policy framework for refugees.¹⁸⁰

A number of Malaysia-based NGOs even directly send humanitarian aid to Arakan or Rakhine State in Myanmar, to help the Rohingya people that are detained in many camps. It is often not easy for the NGOs since the Government of Myanmar has frequently obstructed the aid from reaching the people in the camps. As one NGO activist shared his experience:

There were many NGOs that went there, not only us. Rohingya people in Rakhine state are not allowed to do farming or crop growing-related activities and working in camps. They just expect humanitarian aid from foreign people and organizations, or from us and other NGOs based in Malaysia. We entered to one camp called Stadium Mitila. People detained in this camp are not only Muslim Rohingya, but also Burmese people that converted to Islam. There are a number of mosques there. Yet Muslim people are not permitted to use the mosques that are daily controlled by Buddhist extremists.¹⁸¹

The aid could take diverse forms, including cash money, food packs, clothes, etc. Although most of them are faith-based NGOs, they base their voluntary work on humanitarian values, rather than religious ones such as *Ukhuwah Islamiyah* (Islamic Brotherhood). Since the Government of Malaysia does not allow the NGOs to go to Myanmar directly, most of them instead send their aid indirectly.¹⁸²

However, another challenge faced by people working with refugees comes from the Government itself and its bad practices of conducting raids, arrests and even extorting money from refugees. Many CSO activist concerned with refugees have heavily complained about the behavior of the Government. While CSO activists try their best to make some good efforts to help refugees, the Government conversely does bad things to them. Many CSO activists have expressed their experiences on this issue:

180 UNHCR, *UNHCR Global Strategy: Beyond Detention 2014-2019: National Action Plan for Refugees in Malaysia*. Retrieved from <http://www.unhcr.org/5660000a9.pdf>, on May 27, 2016.

181 Interview with Amirul Zamani Rosli, Project Executive of MyCare, Kuala Lumpur, July 21, 2016.

182 *Ibid*.

Yes. If they don't come up with stupid rulings like yesterday, and they don't hunt them down using grey-line immigration and leave us to our own devices, then it's ok...It's only when they want to do something valuable, they're making things worse.¹⁸³

We're just helping people. But now we get problems like police arrests, police extortions, detentions. We have kids who are staying at school now because their parents have been detained for 1 year, 2 years. Now they've lost their breadwinner. The Government is making it hard for us to just help the people. Not only are they not doing anything – if they're not doing anything, good, *don't* do anything – but don't cause us more trouble by doing this kind of policy that enables the police to take advantage. I'm just saying the Government don't do anything better.¹⁸⁴

On the one side, CSOs perceive that the Government impedes their humanitarian works by badly treating refugees with raids, detentions and extortions. However, on the other side, the Government might argue that they should be only enforcing the law and acting in the interest of protecting the security of the Malaysian people. It seems like that there is no specific way where CSO activists concerned with refugees and the Government can elegantly cooperate with each other in dealing with refugees, especially in a way that will not attract more refugees to come.

The Government might be very concerned that a perceived tolerance towards refugees might be the prime cause for refugees to come. To a certain extent, the Government even threatened CSO activists that they are “in danger for supporting the refugees because there could be a law against abetting in harbouring illegal immigrants... They could charge you, you could be arrested, I could get arrested”.¹⁸⁵ However, when it comes to the Syrian refugees, there seems to be a different situation. It is widely perceived that the Government actually did not have any planned design or framework for handling Syrian refugees when it announced for the first time at the United Nations General Assembly that they would help 3,000 Syrian refugees. The Minister of Home Affairs then invited many CSOs concerned with refugees, including ABIM, Malaysian Life Line for Syria, Global Peace Mission, and many others, to present their respective expertise and focus related to refugee handling. The Government overtly asked the CSOs to help them deal with Syrian refugees as Malaysia had promised at the UN General Assembly.¹⁸⁶

183 Interview with Mahi Ramakrishnan, Film-maker and journalist, focusing on Rohingya refugee life in Malaysia, Kuala Lumpur, July 21, 2016.

184 Interview with Julius Ong, Executive Committee of MyWelfare, Kuala Lumpur, July 21, 2016.

185 *Ibid.*

186 Interview with Mohamad Ramli Abdul Rahim, President of Angkatan Belia Islam Malaysia

Another occasionally emerging issue of refugee handling has direct connection with the diverse groups of refugees. The example includes a competition among groups of refugees in accessing humanitarian aid. Oftentimes a group of refugee tries to strongly persuade CSOs to give aid to their group rather than another group of refugees. Another group of refugee might complain to CSOs, asking why they provide a certain group of refugees with money or any other kinds of aids, but not to their group.¹⁸⁷ That is, this sort of situation can also be a common phenomenon among refugees in any part of the world.

(ABIM), July 20, 2016.

187 Interview with Ahmad Fahmi Mohd Samsudin, CEO of Global Peace Mission (GPM) Malaysia, Kuala Lumpur, July 20, 2016 and with Adli Zakuan, Researcher of *Angkatan Belia Islam Malaysia* (ABIM), Kuala Lumpur, July 20, 2016.

Chapter III:

Thailand

A. DYNAMIC AND CONDITION OF REFUGEES

Refugee is mostly referred to by Thai people as ผู้ลี้ภัย (escapee). To understand the dynamic of refugee, one needs to begin with the history of refugees from about thirty years ago. This starting point was followed by the period when Thailand emerged as an 'Asian Tiger' in the 1990s, pushed by rapid industrialization and progressive economic development. The conflicts and wars in Southeast Asia during the 1970s were push factors, while Thailand's own industrialization served as a pull factor. In order to develop a strong economy, the Government of Thailand welcomed migrant workers from Myanmar, Laos, Cambodia and other neighboring countries.

Thailand was also developing its tourism industry and required more workers. Other pulling factors was the availability of international organizations (such as the UNHCR and other groups) working to facilitate the refugee process towards third countries. The US, Australia, Japan and others have all accepted refugees originating from Myanmar, Iraq, Pakistan and other countries after they had sought refuge in Thailand. Although Thailand experienced more than thirty years of a refugee influx, its regulations is not able to accommodate all the problems and challenges related to refugees. In addition, the Government failed to overcome the issue of Trafficking in Persons (TIP) which involved individuals from the government and private groups, including high ranking officials in the military and police force.

Thailand has experienced more than thirty years of refugee management, beginning in 1975, when the Indo-China War forced thousands to seek refuge. It has continued in the latest decade, when Rohingya refugees transited in Thailand before leaving towards Malaysia and Indonesia. A further thousand or so refugees have also come to Thailand from Central Asia, the Middle East and Africa. They are usually victims of wars and religious persecutions taking place in their origin countries. International and national NGOs, local organizations and academia have been involved in advocating for the interests of refugees in Thailand.

In general, the refugees are geographically divided into two categories: (1) refugees living near Thailand's border with their origin countries and (2)

urban refugees living in big cities like Bangkok. However, another cohort of refugees that currently asks for refuge in Thailand due to ethno-religious conflicts in their homeland is mostly called “the Rohingya refugees”. The UNHCR officially calls them refugees but the Government of Thailand refers to them as Internally Displaced Persons (IDPs).

As of February 2016, there are 105,935 refugees from Myanmar living in nine camps in Thailand.¹ Refugees from Myanmar make up the majority of the refugee population in Thailand. They have sought refuge since about thirty years ago due to wars and conflicts and are mostly made up of Myanmar’s minority ethnic groups. Among them are the Karen ethnic group which constitute one of the largest ethnic minority groups in Myanmar.² Furthermore, Thailand also hosts about 9,000 urban refugees that mainly come from Pakistan, Iraq, Syria, Sri Lanka, China, Vietnam, Cambodia, Somalia and other countries.³ The following table (Table 6) portrays the general distribution of refugees in Thailand.

Table 6: Refugee distribution in Thailand (February 2016)

Dimension	Thai-Myanmar Border/9 Camps	Urban Refugee	More Recent Rohingya Refugees (2012-2016)
Number	105,935	9000	3000
Country/Ethnicity	Karen, the Karenni, Rakhine, Kachin, Shan, Chin, and Mon	Pakistan, Iraq, Syria, Sri Lanka, China, Vietnam, Cambodia, Somalia and other countries	Rakhine, Myanmar

According to the World Bank, Thailand is currently an upper middle income economy, and its demand for labor is very high. Despite this, Thailand has one of the lowest unemployment rates in the world. The Government of Thailand controls migrant workers through contracts and other regulations. As an upper middle income country, Thailand often faces calls to take on a greater responsibility for refugees. Thai officials refer to the 150,000 asylum-seekers and refugees from Myanmar as “displaced persons” and hold them in temporary shelters. Matthew and Harley stated, “in theory, these camps are closed, but in practice many refugees leave and re-enter these shelters for work because the ration of food assistance is insufficient. Camp life is dif-

1 UNHCR Fact of Refugees in Thailand, 2016.

2 Al Fuertes, “Karen Refugees Describe Peace within the Context of Displacement,” *Conflict Resolution Quarterly*, Volume 33, Issue 3, Spring 2016: 297-312.

3 Asylum Access, Five ways to improve urban refugee lives in Thailand today. Retrieved from: <http://asylumaccess.org/5-ways-to-improve-urban-refugee-lives-in-thailand-today/>, on August 24, 2016.

ficult, as levels of violence are high, teaching is sub-standard, and there is a risk of landslides.”⁴

The refugees have become a priority issue in Thailand following criticism from international human rights organizations and foreign countries towards the Government of Thailand’s policies on refugees, human trafficking and illegal migrants. This was especially the case after 2012 when about 100,000 Rohingya were forced to flee to neighboring countries such as Thailand, Malaysia and Indonesia. Thailand has hosted about 105,935 asylum seekers and refugees in nine shelters across the border of Thailand for more than thirty years since the Indo-China wars of the 1970s. The Government of Thailand provided land in its border areas, allowing the UNHCR to take care of the refugees. The UNHCR began its operation in 1975, helping Thailand to meet the protection needs of refugees coming in from Cambodia, Laos, Vietnam and Myanmar.

The Government of Thailand runs all camps within the country, with assistance provided by NGOs. Meanwhile the UNHCR focuses on protection activities and programs to ensure that refugees live in safety and relative security within the camps.”⁵ It is a fact that most Rohingya refugees prefer to go to Malaysia as their destination country, and only consider Thailand as a transit. Therefore, the majority only stay in Thailand on a temporary basis/. Currently the number of Rohingya refugees who stay in shelter and immigration detention center (IDC) has decreased sharply. About 400 refugees still remain inside shelters and IDCs.

However, the difficulties of life found in the camps cause many refugees return to people smugglers who help find and arrange jobs for them in Bangkok and other cities outside the camps. The Karen Women’s Organization stated that “girls aged 14-15 were most at risk ...and men were more vulnerable since they frequently sought employment beyond the camp walls.”⁶ Furthermore, Seltzer argued, “After being trafficked, men, women, and children can end up in several types of abusive situations, including prostitution, domestic slavery, child begging in urban areas, or working in dangerous labor conditions in textile factories and farms.”⁷

Thailand also host urban refugees who are often from Nepal, Sri Lanka, Laos, Cambodia, Vietnam, Iran, Palestine and the Democratic Republic of Congo. However, Thailand does not recognize Laotian Hmong or Burmese as urban refugees. The Government of Thailand does not allow the UNHCR to

4 Penelope Mathew & Tristan Harley, *Refugee Protection and Regional Cooperation in Southeast Asia*, A Fieldwork Report, the Australian National University, March 2014. Retrieved from: http://www.mcrg.ac.in/WC_2015/Reading/D_RefugeeProtection.pdf, on September 15, 2016.

5 UNHCR, retrieved from <https://www.unhcr.or.th/en/about/thailand>, on September 15, 2016.

6 Alexandra Seltzer, “Human Trafficking: the case of Burmese refugees in Thailand,” *International Journal of Comparative and Applied Criminal Justice*, Vol. 37, no. 4, 2013, p. 286.

7 *Ibid.*

conduct Refugee Status Determination processes for those from the Laotian Hmong or Burmese groups.⁸ As a common requirement for refugee status in Thailand, urban refugees do not have the right to work.

In addition, Asylum Access, Boat People SOS and Conscience Foundation reported that “most urban refugees in Thailand live a precarious existence: unable to work or send their children to school, financially stressed, dependent on ad-hoc charity to survive, at risk of exploitation and constantly worried about being arrested and detained indefinitely in abysmal conditions in immigration detention. Many refugees, particularly Africans, face discrimination, as well as harassment and extortion from Thai authorities.”⁹

The discovery of 26 bodies belonging to Rohingya and Bangladeshi migrants in a camp on the Thai-Malaysian border in May 2016 raised concerns among the international community about the refugee crisis in Southeast Asia. More discoveries were made after Thai authorities began to crack down on smuggling gangs operating trafficking routes from Myanmar to Malaysia via Thailand. The crackdown was seen as a strong response by the Government of Thailand in order to avoid a downgrade by the U.S. Department of State’s influential annual report that ranks states on their anti-trafficking initiatives.¹⁰

The Government of Thailand considers refugees as illegal migrants who are transiting in Thailand on their way to Malaysia. This is despite the fact that some refugees ended up returning to Thailand after spending some time in Malaysia. For example, in 2015, some Rohingya refugees moved back from Malaysia to work in Thailand. In this regards, Suktawee said that “there are even cases of Rohingya escaping from Malaysia to Thailand as well, to work in Thailand. They don’t get money in Malaysia... They work ten hours a day and don’t get. Well, they are happy in Thailand.”¹¹ Nur Muhammad, a Rohingya refugee, who is currently working in Bangkok and acts as a coordinator for Rohingya migrant workers and refugees argued that living in Malaysia is harder than in Thailand. He said that many Rohingya refugees worked in Malaysia but did not receive a proper salary.¹²

Refugees have become an urgent issue in Thailand after the rise in media coverage following the fleeing of tens of thousands of Rohingya from Myanmar and transiting through Thailand between 2012 and 2015. Amnesty International reported that the 2012 conflict displaced over 100,000 Rohingya,

8 Vera den Otter, “Urban Asylum Seekers and Refugees in Thailand,” retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR28/27.pdf>, September 10, 2016.

9 Asylum Access, *UNHCR Protection Challenges for Urban Refugees in Thailand: Reports and Recommendations*, Boat People SOS and Conscience Foundation, April 2009, p. 3.

10 Silvia di Gaetano, “How to Solve Southeast Asia’s Refugee Crisis,” *The Diplomat*, September 28, 2015, retrieved from <http://thediplomat.com/2015/09/how-to-solve-southeast-asias-refugee-crisis/>, on September 10, 2016.

11 Interview with Siwawong Suktawee, Bangkok, July 17, 2016.

12 Interview with Noor Muhammad, Bangkok, July 20, 2016.

forcing them to flee to neighboring countries in Southeast Asia.¹³ According to the Internal Security Operations Command, a national security agency run by the Thai military, by early October 2013, 2,058 Rohingyas were held in 14 IDCs across Thailand. It decreased to about 600 by November 2013, with accusations that many were sold to people traffickers.¹⁴ Reuters investigated the case and reported:

As thousands of Rohingya flee Myanmar to escape religious persecution, a Reuters investigation in three countries has uncovered a clandestine policy to remove Rohingya refugees from Thailand's immigration detention centers and deliver them to human traffickers waiting at sea. The Rohingya are then transported across southern Thailand and held hostage in a series of camps hidden near the border with Malaysia until relatives pay thousands of dollars to release them. Reporters located three such camps - two based on the testimony of Rohingya held there, and a third by trekking to the site, heavily guarded, near a village called Baan Klong Tor.¹⁵

Human trafficking and the exploitation of refugees predate the current military government. This is a serious governance-related issue which affects the international community's perception of Thailand. The Global Slavery Index labels Thailand as a country failing to combat slavery, and places them 44th out of 167 states. In 2014, the U.S. referred Thailand to its tier three blacklist of countries failing to overcome the slave trade.¹⁶

Relative to other refugees, the recent group of Rohingya are in a complicated status. They are not recognized by the Government of Thailand as refugees because when the first wave of Rohingyas entered Thailand about twenty years ago Rohingya, they were recognized like other migrant workers in the sense that they did not live in the refugee camps. Many in Thailand were unaware of their status as Rohingya as many lived and worked in the cities/towns like regular migrant workers. This changed in the last three years, when many Rohingyas came by boat and directly went to the south of Thailand. Most of these refugees "are stuck here in Thailand, and actually our Government do not know what to do with them, because at that

13 Amnesty International, "Report: Southeast Asia's refugee and trafficking crisis," October 21, 2015, retrieved from <http://www.amnesty.org.au/refugees/comments/38269/>, on September 5, 2016.

14 Jason Szep and Andrew R.C. Marshall, "Special Report: Thailand secretly supplies Myanmar refugees to trafficking rings," *Reuters*, December 4, 2013. Retrieved from <http://www.reuters.com/article/us-thailand-rohingya-special-report-idUSBRE9B400320131205>, on August 29, 2016.

15 *Ibid.*

16 Neil Thompson, "Human Trafficking: Thailand's Porous Borders," *The Diplomat*, June 23, 2015. Retrieved from <http://thediplomat.com/2015/06/human-trafficking-thailands-porous-borderlands/>, on September 10, 2016.

time Malaysia and Indonesia agreed to receive them for one year.”¹⁷ Other international organizations are also reluctant to provide proper treatment for Rohingya refugees, including the UNHCR according to some. As was emphasized by one respondent:

[The UNHCR] does not really provide refugee status for them, but just facilitate the process for the US government here in Thailand to get them to the US. But the person that the US government is getting is mostly identified as a trafficked person. Because the government does not really admit Rohingya as a refugee.¹⁸

Moreover, a press release on March 2016 by Fortify Rights and the Burmese Rohingya Organization UK (BROUK) which had monitored the policies of ASEAN countries with regards to Rohingya refugees asserted:

In Thailand, authorities continue to detain several hundred Rohingya in IDCs and government-run shelters. BROUK and Fortify Rights found that Thai Immigration authorities have detained at least 40 Rohingya refugees for more than ten months in squalid facilities at the Songkhla IDC, including reportedly a dozen or more boys under the age of 18. All of the children in the Songkhla IDC are reportedly unaccompanied. Detainees told BROUK and Fortify Rights that they are confined to an overcrowded cell, where they sleep side-by-side on the floor. Detainees in Songkhla said that they lack access to healthcare, mental health services, and opportunities to exercise or be in open air for any period of time.¹⁹

Thailand also has hosted about nine thousand urban refugees. Regarding this, Annaparinya stated:

Urban refugees are those who come and register with the UNHCR to get the asylum seeker. At the moment we have around 9,000 urban refugees who come from around 50 countries. Half of the 9,000 are from one country, Pakistan...urban refugees mean those who are not in the camps. Actually Rohingya are included but because of the way the Government response is different, so they have different challenges. So we just focus on those who are in Bangkok. We have around 5 main organizations working on the urban refugees at the moment. We are not part of the refugee convention; we don't have any policy or any law to do with that, so some

17 Interview with Annaparinya, Bangkok, July 15, 2016.

18 *Ibid.*

19 Fortify Rights, “Press Release: Thailand, Malaysia, Indonesia: End Indefinite Detention of Rohingya Refugees. Retrieved from <http://www.fortifyrights.org/publication-20160311.html>, on September 10, 2016.

of them are illegal aliens according to the Immigration Act. We only have the Immigration Act to deal with foreigners.”²⁰

2,000 out of the 9,000 urban refugees are recognized as refugees already, while the rest are still under process. The urban refugees from Pakistan come from two religious groups. One group is the Ahmadi group who have been prosecuted by the majority Sunni in Pakistan. Ahmadi is not recognized by the Government of Pakistan. Meanwhile the second group is made up of Christians. Their number is about 4,000, and they are mostly victims of religious persecutions.²¹ Another group of urban refugees is made up of those from Vietnam, and number around 1,000. They come from the religiously persecuted groups such as those from the ethnic minorities of Khmer Rom and Hmong. The remainder are from Somalia.²² Urban refugees are under the protection of the UNHCR and are supported by local and national organizations in Thailand. They commonly have certain skills to work and include those with backgrounds as engineers, medical scientists and other skilled and middle class groups.²³

Urban refugees face the risk of being arrested and other unpleasant treatment from the police, especially for those in the process of applying for refugee status but whose passport and/or visas have expired. As was reported by Asylum Access Thailand:

Most urban refugees arrive with a genuine passport and tourist visa, although some arrive on fake passports, with their passage secured by human smugglers. They have usually exhausted most of their savings to come to Thailand. Once their tourist visas expire, they are illegal immigrants under Thai law, and thus at constant risk of arrest and detention, regardless of their UNHCR certificates which indicate that they are recognized refugees. The police often harass and extort money from refugees before release.²⁴

In March 2015, the police raided an apartment housing Pakistani asylum seekers which resulted in the separation of a family made up of a husband, wife, and three children. While the eldest son was soon released and allowed to stay with a relative, the parents and his two younger siblings were detained

20 Interview with Annaparinya, Bangkok, July 15, 2016.

21 *Ibid.*

22 *Ibid.*

23 Courtland Robinson, Charlie Thame, and Casey Branchini, *Anti-Trafficking in Thailand*, 30 June 2016, John Hopkins Bloomberg School of Public Health. Retrieved from <http://www.jhsph.edu/research/centers-and-institutes/center-for-refugee-and-disaster-response/Anti-Trafficking-in-Thailand-30Jun2016.pdf>, on September 10, 2016.

24 Asylum Access, *Urban Refugees in Thailand*. Retrieved from <http://asylumaccess.org/wp-content/uploads/2013/08/Urban-refugees-in-Thailand.pdf>, on September 5, 2016.

for two months. During this period of detention, the two youngest children were separated from their parents for about two weeks. The authorities did not allow the parents to communicate with their children during this period.²⁵

Some countries have committed themselves to welcoming refugees from Thailand and to be the 'third country'. The UNHCR reported that "since resettlement began in 2005, more than 80,000 refugees from Myanmar (and a small number from other countries) have been resettled from Thailand. The United States, Canada and Australia have all committed to accept large numbers of refugees from Thailand. Other resettlement countries are Finland, Great Britain, Ireland, the Netherlands, New Zealand, Norway and Sweden."²⁶

B. LEGAL FRAMEWORK

Like most ASEAN countries, Thailand is a non-signatory to the 1951 Refugee Convention and its 1967 Protocol. Signing this convention would mean accommodating the instruments into a country's national legal framework, such as its laws and regulations. Since Thailand is a non-signatory, it is not obligated to construct a legal system for refugees. This is despite the fact that according to the UNHCR, Thailand ranks as one of the three largest countries in ASEAN that are home to refugees.²⁷ Although Thailand is a non-signatory, it has occasionally applied the principle of "*non-refoulement*" for refugees from Myanmar. However, in other cases, Thailand would appear to practice double standards when it does apply this principle to Uighur ethnic refugees from China in July 2015.²⁸

Thailand is a party to a number of international covenants. In 29 October 1966, Thailand signed the International Covenant on Civil and Political Rights (ICCPR), and this was then followed with the International Covenant on Economic, Social and Cultural Rights (ICESCR) on September 5, 1999, and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on January 28, 2003. Thailand also signed the Convention on the Rights of the Child in March 1992, the Convention on the Elimination of All Forms of Discrimination against Women in June 2000, and the Protocol against the Smuggling of Migrants by Land, Sea and Air; supplementing the United Nations Convention against Transnational

25 United Nations, *Refugee Rights Situation in Thailand*: Submission to the UN Universal Periodic Review, Second Cycle, 25th Session of the UPR Working Group of the Human Rights Council April 2016".

26 UNHCR, retrieved from <https://www.unhcr.org/th/en/about/thailand>, on September 15, 2016.

27 UNHCR Global Report 2014. Retrieved from <http://www.unhcr.org/5575a791b.html>, on September 5, 2016.

28 Matt Schiavenza, *why Thailand forced Uighurs to return to China*, in theatlantic.com, July 12, 2015. Retrieved from <http://www.theatlantic.com/international/archive/2015/07/thailand-china-uighur-refugees/398318/>, on September 12, 2016.

Organized Crime (18 December 2001). As a party to these covenants and protocols, the Government of Thailand arguably has an obligation to also apply them when dealing with refugees.²⁹

Unfortunately, Thailand does not have any domestic legal frameworks relating to refugees. This is reinforced by the fact that even the term “refugee” is not recognized within the broader system of Thailand’s legal system. In dealing with refugees, the Government of Thailand refers to the Immigration Act of 1979. The Act distinguishes between those of Thai nationality and those considered an “alien”. According to this law, aliens can be either legal or illegal migrants. There are eleven criteria of aliens that are classified as illegal migrants according to Article 12 of the Immigration Act. One criteria refers to aliens who enter Thailand without the support of proper documents, passport and/or visa. The law does not differentiate between refugees and asylum seekers with illegal migrants (illegal aliens). As such, asylum seekers and refugees are considered aliens, as the law does not recognize them, to the extent that they are categorized in the same group as illegal migrants.

The absence of a refugee legal framework has resulted in the lack of a concrete government standard and procedure for addressing refugees. All measures relating to refugees, thus, are based on the discretion of the Government, which can be changed at anytime as needed. According to Section five of the Immigration Act, the Minister of Interior is the lead charge of ensuring the implementation of the provisions of the Act. A Commission of Immigration which consist of several government bodies, the Ministry of Interior, Ministry of Foreign Affairs, the police department, Labor Department, Public Prosecution Department, Board of Investment committee, National Security Council, Tourist Organization and Immigration Division, are also tasked with implementing this law (Section 6). However, it is important to underline that this law is more specific about immigration, rather than refugees, but nonetheless demonstrates the way Thailand’s legal framework does not adequately address the issue of refugees.

Another relevant law is the Working of Alien Act 2008. The Act regulates alien or immigrant employment in Thailand. This law is regulated by the Ministry of Labor with many of the legislation dedicated to the issue of work permits. One of the points in this law states that alien people working without permit will be subject to imprisonment up to five years or fine between THB 2,000 (around US\$ 57)-10,000 (around US\$ 286) (section 51). Penalties are applicable not only for alien who work without a permit, but also for employer who employed the said alien who is subject to a fine between THB 10,000 (around US\$ 286) - 100,000 (around US\$ 2,858) (section 54).

29 UNHCR, *Analysis of Gaps in Protection Capacity Thailand*. Retrived from <http://www.unhcr.org/457ed0412.pdf>, on September 1, 2016.

The implementation of the Working of Alien Act has a number of consequences for asylum seeker and refugees in Thailand, namely denying them the right to work. As was noted earlier, asylum seeker and refugees are considered illegal migrants under the aforementioned Immigration Act. Meanwhile the Working of Alien Act clearly mentions that only an alien, i.e. legal alien/migrant, with a work permit can be employed in Thailand and that those that do not have such working permit face imprisonment and fines. Regarding this, it is almost certain that asylum seekers and refugees cannot work in Thailand since they will be considered as illegal migrants working without a work permit in violation of the Working of Alien Act.

A significantly improved practice of addressing refugee crisis in the region should be also referred to Thai Government's recent approval of a framework to enhance the identification and protection of refugees although the detailed draft is still finalized by the Immigration Bureau of the Royal Thai Police, working with a newly-created inter-ministerial committee chaired by the Prime Minister or his deputy and the Council of State to be presented to the Cabinet. The legal framework will comprehensively serve as a screening mechanism for undocumented immigrants and refugees, rather than the Immigration Act that generally categorizes refugees as illegal aliens, making them subject to arrest and detention if they do not have valid documentation. There is no doubt that this should be also deemed as one of innovative and progressive practices of addressing refugee crisis in the region; and thereby becoming an ASEAN way.³⁰

C. ISSUES AND CHALLENGES

The number of people seeking refugee status is rising from 1,120 in 2013 to 7,082 at the end of 2015.³¹ In this sense, it can be argued that the Government of Thailand has to transform its policy towards refugees to fulfill the standard of human rights protection. Other than the factors of conflicts and wars, migration of people into Southeast Asian countries such as Thailand was encouraged by pull factors, namely economic growth and industrialization in the 1980s and 1990s. Tangseefa stated,

Thailand is one among five tigers, Thailand, Taiwan, South Korea, Malaysia and Indonesia. They were called NIC, New Industry Countries. So in the 1990s, Thailand's economy became progressive. For a lot of reasons,

30 The Nation, UNHCR welcomes Thailand's approval of framework for refugee screening mechanism. In *Nationmultimedia.com*, January 16, 2017. Retrieved from: <http://www.nationmultimedia.com/news/breakingnews/30304209#.WH9V2TVmngI.facebook>, on March 1, 2017.

31 European Commission 2016

that economic vibrant, was how a lot of illegal (and legal) migrant workers from Burma came.³²

Despite, the increase in migration including from an influx of refugees and trafficking pulled by the aforementioned new industrial policy of Thailand, the country was not prepared with any national regulations for refugees. CSOs responded to fill this gap by strengthening their participation to advocate for refugees, trafficking victims and migrant workers.

The Government of Thailand responded to international pressure by establishing an independent anti-trafficking team to investigate human trafficking in Thailand. The team found some military and civilian personnel were involved in people smuggling, especially in border areas. The team also investigated the existence of hundreds of Rohingya graves found in the jungle along the border of Malaysia and Thailand. Furthermore, Suktawee claimed that “there are about 150 traffickers in Thailand. Among them are locals, civilians, military and police. However, the Government only arrested 90 of 150.”³³

The arrest of a number of people accused of being involved in human trafficking and people smuggling confirmed that some high ranking officials in the military and police were also involved.³⁴ It should be noted that Thailand introduced the Anti-Trafficking in Person Act (ATIP Act) in 2008, updating a previous legislation passed in 1997. The ATIP Act has been recognized as one of the most advanced of the Palermo Protocol among the six nations that signed up to it (Thailand, Laos, Cambodia, Myanmar, Vietnam and China).³⁵ Like Suktawee, Annaparinya also confirmed that Thailand is a transit country for urban refugees. She said,

This is a transit, not the destination at all. Definitely [it is] not destination because most of them don’t want to stay here. Like Pakistanis, or Vietnamese or Somalis, they have relatives in Europe or America already. So they just come to get the status here. However, because it’s a long process, those who arrived last year (2015), they will get it (their status) in 2019. So after they get interview, it may take another 1 year to get the result, and if you are successful for the first round, it may already take 5 years.³⁶

It has further been noted that urban refugees are at risk of arrest because of their illegal status and that the Government can detain them at any time.

32 Interview with Decha Tangseefa, Bangkok, July 14, 2016.

33 *Ibid.*

34 *Ibid.*

35 Courtland Robinson, Charlie Thame, and Casey Branchini, *Anti-Trafficking in Thailand*, 30 June 2016, John Hopkins Bloomberg School of Public Health, p. 15. Retrieved from <http://www.jhsph.edu/research/centers-and-institutes/center-for-refugee-and-disaster-response/Anti-Trafficking-in-Thailand-30Jun2016.pdf>, on September 10, 2106.

36 Interview with Annaparinya, Thailand, July 2016.

Refugees face having to pay penalties to the Government of Thailand if detained. As was reported,

Even refugees who voluntarily repatriate or who are approved for resettlement, if they are illegal immigrants under Thai law, they must pay an overstay fine of up to THB 20,000 (about US \$500), or spend time in immigration detention. This creates a challenging operating environment for the UNHCR and makes it very difficult for the UNHCR to fulfill its protection mandate.³⁷

Further challenging issues in managing refugees include ensuring coordination among ministries and government bodies. As Annaparinya noted that “those will be able to be identified as a trafficked person, they will be put in the shelter that will be hosted by the Ministry of Social Development and Human Security. This Ministry will be the one who look after the trafficking victims, so they have shelters for men, women and children”.³⁸ Shelters, officially known as Immigration Detention Center (IDC),³⁹ that are prepared by the Government of Thailand are widely regarded to be below standard, and even worse than prisons. Annaparinya confirmed that “our detention center, the situation is worse than prison, because prison keep people for a long time...[Government] put those who are not identified as a trafficked person in the IDC, which has very bad conditions.”⁴⁰

Usually the identification process for refugees takes a few days under international standards. However in Thailand there are those that have been in Thailand for more than twelve months and still their status is not clear. Refugees and trafficked persons in Thailand are under different ministries. Annaparinya noted,

In Thailand the immigration is under the police, but the prison is under the Ministry of Justice. So somehow, it is very difficult. In the past, we worked a lot with the Ministry of Justice to change the condition in the prison but in the IDC, it's so hard because the purpose of the detention centers is to detain people. That's why they don't have budget and all these things. If you see the development, actually in our law, in our Immigration Act, those who were detained in the IDC have to take care of themselves, for food, for everything.⁴¹

³⁷ *Ibid.*

³⁸ Interview with Annaparinya, Bangkok, July 15, 2016.

³⁹ Annaparinya described the bad condition of IDC: “it is very small room, and they put in a room with 50 or 100 people. It has no toilet inside. 100 people just use one or two toilet. People eat inside, everything inside because they don't really have a space.” Annaparinya, interviews in Bangkok, July 15, 2016.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

Miscommunication, frictions and competition among ministries and government bodies in Thailand also affect policies on refugees, trafficked persons and migrants. The military regime in Thailand reportedly threatened an independent anti-trafficking team, forcing a high ranking police officer, a member of the team, to seek refuge in Australia. The Government also treats refugees differently based on their countries of origin. The Rohingyas are discriminated and treated unfairly compared to other refugees from Pakistan or other non-Rohingya from Myanmar. Noor Muhammad, a Rohingya community leader expressed his concerns over how Rohingya refugees have been discriminated in the courts. He said that “the translator in the court, translating from Bengal to Thai before the judges does not translate properly. Many of the statement from Rohingya refugees are translated with a different meaning which affected the result of the judges’ decision.”⁴² Noor Muhammad added that he had voluntarily offered himself to act as a translator, but the courts have refused his offer.

Another challenging issue is the Government of Thailand’s plan to repatriate Burmese refugees living in the border camps. Karen Hargrave argued that distrust among Burmese refugees and displaced persons in the camps rose in response to Thailand’s plan in 2011 to repatriate 100,000 IDPs to back to Myanmar. A 2013 survey conducted by Karen Refugee Committee in Tham Hin camp found that only 27 % of refugees in the camp agreed to return to Myanmar if political stability and peace had been achieved. The survey result suggested that if the Government plans to repatriate refugees or IDPs, it should ensure that it is done on a voluntary basis and and that human rights can be guaranteed in Myanmar. Hargrave argued, “crucially, it is likely that Burma’s displaced persons still fundamentally distrust the Burmese government, and the very nature of this refugee-state distrust suggests that political change may not in itself be sufficient to make Burma’s refugees voluntarily choose to return.”⁴³ Moreover, while Myanmar has recently democratically elected a civilian government, the country does not seem to be able to guarantee thorough protection for all ethnic minorities in the country.

D. PRACTICE AND POLICIES

Thailand has long been known as a home for refugees, especially for those from neighboring countries since the 1970s when it took in refugees from Indochina. However, as has been noted, there are no legal framework in Thailand that specifically regulates refugees. Actions taken by the Government of Thailand are largely based on policies, rather than on an established law. Therefore, Thailand’s policies towards to refugees are dependent on the type of refugees

⁴² Interview with Noor Muhammad, Rohingya community leader, Bangkok, July 20, 2016.

⁴³ Karen Hargrave, *Refugee-state distrust on the Thai-Burma border*, FMR 4, May 2015.

and certain situations. The different classifications of refugees in Thailand affect the type of policies used by the Government of Thailand. As such knowing the different classifications will help understand Thailand policies better.

It previously highlighted that refugees in Thailand are commonly classified in two major groups: refugees living in the border areas of Thailand and urban refugees and one more recently classified cohort of the Rohingyas. Refugees in the border area associated with those who stay in temporary camps along Thailand's western border with Myanmar. Thailand does not use the term "refugee" for people staying in the camps, but instead refers to them as "displaced persons". Tangseefa said that "Thai government never use them for refugees, Thai government has special term 'people fearing fighting'."⁴⁴ Thailand's preference for the terms "displaced persons" or "people fearing fighting" is because it feels that they only come to the country because of conflict and that they will eventually go back to their origin country one day in the future.

Thailand has long experienced dealing with refugees from neighboring countries. In the 1970s, displaced persons from Indochina including Vietnam and Cambodia flooded into the eastern border of Thailand. They were located in several camps in the border area by Thailand. After the Indochina War ended, the situation in Vietnam and Cambodia became more conducive, and saw displaced persons voluntarily be repatriated back to their countries. In the 1990s, the repatriation process for refugees from Vietnam and Cambodia was completed. In 1988 the State Law and Order Restoration Council (SLORC) took power in Myanmar, and this was followed by internal conflicts between the Government of Myanmar with ethnic groups such as the Karen ethnic group.⁴⁵ Since then many Karens moved and settled in Thailand, in areas near the border between Thailand and Myanmar. Currently, they are still living in nine camps along the border. There is no exact number for these refugees, although the UNHCR and NGOs such as the Thai–Burma Border Consortium (TBBC) have own numbers.

Another classification of refugees refers to "urban refugees" and mainly relates to those who reside in big cities, such as Bangkok. Generally, they enter Thailand by boarding a flight and some of them obtained tourism visas initially. After they arrive in Thailand, they then apply as asylum seekers with the UNHCR. The characteristic of this type of refugee differs from those residing in the temporary camps mentioned previously. They are mostly educated persons, such as engineers and doctors and have obtained post-graduate degrees. A number of them stay together and rent a house or apartment. They freely

44 Interview with Decha Tangseefa, Bangkok, July 14, 2016.

45 Asylum Access, 160,000 refugees, nine camps, 28 years, 2014. Retrieved from <http://asylumaccess.org/160000-refugees-nine-camps-28-years/>, on September 12, 2016, and Baek, B. S. (2008). Myanmarese Refugees in Thailand: the Need for Effective Protection. *Cornell Legal Studies Research Paper*.

move around the country as long as the police do not stop and detain them. According to Asylum Access Bangkok, there are about 9,000 asylum seekers in Thailand, who come from about 50 countries with the majority from Pakistan at, 4,000 persons. From total asylum seekers, 2,000 of them are refugees.

A relatively newer classification is what is widely called “Rohingya refugees”. The internal conflict in Rakhine State, Myanmar, that started in 2012, resulting in the irregular migration of Rohingyas to Thailand, Malaysia and Indonesia by boat and became a crisis in May-June 2015 when authorities from the three countries initially refused to accept them. The number of Rohingya in Thailand is always changing for one and another factor. However their number was ever about 3,000 persons. It should be noted that Rohingyas have been entering Thailand even before the 2015 “boat crisis”. The majority entered illegally, and do not possess work permits or forms of identification. One Rohingya leader in Bangkok said that the number of Rohingya in Bangkok is about 2,000 persons, of which only 400 of them have I.D. cards. Some of them work in the informal sector as street vendors selling “*roti martabak*” (traditional bread), meatball, and flowers.⁴⁶ However, only those Rohingyas that entered Thailand during the “boat crisis” of 2015 are often classified by most of Thai’s stakeholders as refugees whilst Rohingyas that entered before Thailand before the “boat crisis” are classified as migrant workers.

Since Thailand does not have an operational system and/or specific policies on refugee, its policies are often made based on the changing situation. One NGO staffs who works on refugee issues explains that the paradigm of the Government of Thailand is that refugees are a burden on the state. For this reason, the policies of the Government of Thailand for addressing refugee issues are generally framed under a security perspective. As was acknowledged by Kamonpetch, the policies of the Government of Thailand towards refugees are based on the paradigm of state sovereignty and national security as well as humanitarian reactions rather than any proactive policies.⁴⁷ Thailand’s policies towards refugees are created by a wide range of government bodies relating to national security: National Security Council (NSC), Ministry of the Interior (MOI) and the military.⁴⁸

Tangseefa explains that the Government of Thailand’s policies towards refugees so far are based on humanitarian concerns.⁴⁹ While the Government of Thailand would like to reject the influx of refugees coming in from neighboring countries, it has little choice other than to accept them tempo-

46 Interview with Noor Muhammad, a Rohingya group leader, Bangkok, July 20, 2016.

47 Kamonpetch Aungkana. Issues in the Thai Government’s Policies on the Repatriation of Refugees. In *Asian Review*, vol. 28, no. 1 2015.

48 UNHCR, Analysis of Gaps in Refugee Protection Capacity. Retrieved from <http://www.unhcr.org/457ed0412.pdf>, on September 13, 2016.

49 Interview with Decha Tangseefa, Bangkok, July 14, 2016.

rarily given the fact many flee internal conflict and violence in the countries surrounding Thailand, such as in Vietnam, Cambodia and Myanmar, in search of security and in order to survival. Although this practice of accepting refugees cannot be considered as fully satisfying, it should be treated as a good practice and initiative of taking care of refugees. Thailand also participated in the UNHCR executive community meetings from 1991 until 2001 and many countries are reluctant to condemn Thailand on the way they handle refugees.⁵⁰

Allowing refugees from neighboring countries to stay in Thailand reflects the implementation of the *non-refoulement* principle. Refugees from Indochina that stayed in the eastern border of Thailand for more than 20 years should be seen as evidence of this principle being applied. Now, about 100,000 refugees from Myanmar are still living in temporary camps in the western border area of Thailand. Although the camps are titled as temporary camps, they have been used for more than 28 years. Almost nobody knows when these camps will be closed down and when the refugees can go back to their home country, Myanmar. These experiences show the willingness of the Government of Thailand to host refugees.

For urban refugees, Thailand also applies the *non-refoulement* principle. Refugees residing in urban areas freely move around as long as they do not work. For those that do take up employment, they will be subject to the Immigration Act, and can be arrested and detained by the police. In many cases, Thailand has forcefully returned refugees, especially those who reside in the western border area, to their home country. One Thai scholar said that “the Thai state has been enduring itself with many achievement of willingness to receive people who fear war. I think that is one of the most important point, even though there is a moment the Thai authorities push people back”.⁵¹ The practice of the *non-refoulement* principle of Thai government has received a lot of attention from the international community when the Government of Thailand forcefully deported refugees from the Uighur ethnic group back to China after Beijing pressured Thailand.⁵² There are concerns that the deported Uighur refugees will face prosecution back in China.

Another refugee-related policy of Thailand is that of repatriation. Local integration is largely seen as not an option for Thailand when dealing with refugees.⁵³ As such, the policy of repatriation is preferred by the Government of Thailand as a solution for the refugees it houses from neighboring coun-

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Matt Schiavenza, *why Thailand forced Uighurs to return to China*, in theatlantic.com, July 12, 2015. Retrieved from <http://www.theatlantic.com/international/archive/2015/07/thailand-china-ughur-refugees/398318/>, on September 12, 2016.

⁵³ *Ibid.*

tries. Thailand has previously used this policy for refugees from Indochina, Cambodia, Laos and Vietnam in 1990s.⁵⁴ There are still some refugees from Indochina, but since 2012 they are no longer recognized as refugees.⁵⁵ Repatriation made the eastern border area of Thailand to be gradually clear from refugee camps and the policy became a successful solution for Thailand to reduce its refugee burden. Voluntary repatriation is embedded in the principle of *non-refoulement*, however, it is not part of the 1951 Convention relating to the Status of Refugees.⁵⁶ During the process of repatriating refugees from Indochina, the Government of Thailand closely worked together with the Indo-Chinese countries of Cambodia, Laos and Vietnam, to assure their safety and dignity. Thailand has tried to address the issue of Myanmar refugees who stayed in temporary camps in Thailand's border areas with a similar repatriation scheme.

Since 2012, Thailand has initiated a policy to repatriate refugees from Myanmar following on from the successful agreement of several cease-fires between the Government of Myanmar and armed ethnic groups. In 2014, there was a meeting that led to an agreement between Myanmar and Thailand to repatriate 10,000 refugees. Although the repatriations have not yet been implemented, it is worth noting that the process not only involves the Government and the Internal Security Operation Command (ISOC), but also the UNHCR and NGOs.⁵⁷ Even though the political situation in Myanmar is changing since the historic elections in 2015 that saw the National League for Democracy (NLD) take power, it is felt that conditions are not conducive enough to repatriate refugees. Interestingly, while Aung San Suu Kyi visited Thailand in June 2016, almost no discussion was made on Rohingya refugees and their repatriation back to Myanmar.⁵⁸

As noted, it is right that Thailand is not a party to the 1951 Refugee Convention, but it does allow the UNHCR, and NGOs to conduct the administration of refugees. This policy helps individuals get refugees status from the UNHCR that is a key for further handling of refugee issues, resettlement or repatriation. Since all foreigners in Thailand are subject to the Immigration Act 1979, which makes no distinction between migrant workers and refugees, the status of refugee from the UNHCR is thus very important. Having a clear status helps the Government of Thailand to make different

54 UNHCR, Flight from Indochina. Retrieved from <http://www.unhcr.org/3ebf9bad0.html>, on August 12, 2016.

55 Interview with Siwawong Suktawee, Bangkok, July 17, 2016.

56 UNHCR, 2006, Hand Book Voluntary Repatriation; International Protection, Geneva: UNHCR.

57 Kamonpetch 2016.

58 Oliver Holmes, Aung San Suu Kyi to discuss Burmese workers' rights on Thailand trip, in *theguardian.com*, June 23, 2016. Retrieved from <https://www.theguardian.com/world/2016/jun/23/aung-san-suu-kyi-to-discuss-burmese-workers-rights-on-thailand-trip>, on September 1, 2016.

policies accordingly. Thailand has past experience of screening people from Laos, to determine whether they were genuine refugees or not. In 1985, the Government of Thailand established the Screening Committee Office under the Immigration Office to conduct screening of Laotians entering Thailand due to conflict back home.⁵⁹ For urban refugees, the Government allows the UNHCR and IOM to administer and register refugees, sometimes working together with local NGOs.

As such, Thailand does not actually register Myanmar refugees in the border areas, instead allowing the UNHCR and NGOs to conduct identification and registration. As there is no single authority conducting identification of refugees, different results are often produced. For instance, the number of Myanmar refugees per July 2016 in the border areas varies from 99,908 according to NGO sources while the UNHCR register indicates 104,149.⁶⁰ This could be attributed to the different systems used to identify refugees in the temporary camps, where for example the UNHCR used a “biometrics” system in June 2015.⁶¹

The same is true for the number of Rohingya refugees. However, the UNHCR estimates 20,000. According to a researcher at Fortify Rights, Rohingya refugees in Thailand are handled directly by the Government and if they came to Thailand as a trafficking victim, they are placed in government shelters. Meanwhile for those that are not victims of trafficking, they are usually put in IDCs under the control of the police.⁶² According to another scholar from Thammasat University, currently there are about 400 Rohingyas being held in four police detentions and six shelters under the Ministry of Social Affairs. Those police detentions and shelters are mostly located in southern Thailand in areas such as Ranong, Panga, Songlah, Surat and Fattantani province.⁶³

One of the basic needs of refugees is related to housing while they wait for a long-term solution. There are various policies and practices regarding this issue implemented by the Government of Thailand. One of the policies is to provide land for sanctuary to refugees from Indochina. When Indochinese refugees flooded Thailand along the eastern border, the Government allowed refugees to stay in refugee camps and after conducting screenings placed them

59 Cutts, M. (2000). *The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action*. Oxford University Press.

60 Taken from <http://www.theborderconsortium.org/media/71671/2016-07-jul-map-tbc-unhcr.pdf>, on August 1, 2016.

61 Vivian Tan, ed., UNHCR's new biometrics system helps verify 10,000 Myanmar refugees in Thailand, in UNHCR, June 30, 2015. Retrieved from <http://www.unhcr.org/news/latest/2015/6/55926d646/unhcrs-new-biometrics-system-helps-verify-110000-myanmar-refugees-thailand.html>, on August 2, 2016.

62 Interview with Puttanee Kangkun, Bangkok, July 2016.

63 Interview with Siwawong Suktawee, Bangkok, July 17, 2016.

in sanctuaries.⁶⁴ Similar policies are also applied for refugees from Myanmar, whereby Thailand provided them land to stay with the UNHCR and some NGOs helping refugees to build camps. There are about nine temporary camps housing Myanmar refugees and also one camp specifically for Shan refugees. Refugees have been staying in the same camps since 1984. It is arguably one of the oldest refugee camps in modern history, and they are placed in far away places so that they are out of sight to the Thai public. Indeed, most of the camps are located in the deep forest along Thailand's border to the extent that the general Thai public are not aware that the country actually hosts a lot of refugees in the western border.⁶⁵

With regards to urban refugees, Thailand does not provide any specific place or housing for them. As has been noted a number of urban refugees have the capacity to afford their own housing, usually renting a home or apartment, and normally stay as a group in order to reduce costs (Picture 6).

Picture 6: Children inside a UNHCR refugee shelter in Bangkok



A special policy is applied by the Government of Thailand for Rohingya refugees who can stay in either a government shelter or an IDC. For Rohingyas that are victims of trafficking, they will be placed in shelters under the Ministry of Social Affairs. Meanwhile, Rohingyas that came to Thailand as

64 Cutts, M. (2000). *The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action*. OxfordUniversity Press.

65 Interview with Decha Tangsheefa, Bangkok, July 14, 2016.

part of the recent “boat people crisis” have been placed in IDCs under the police department. Currently many Rohingya refugees have tried to escape from these shelters and IDCs to go to Malaysia. One respondent who works with Rohingya refugees said that only about 400 remain in shelters and detention centers out of the several thousands of Rohingya refugees originally in the country.⁶⁶

The Government of Thailand allows the UNHCR and NGOs to provide health services for Rohingya refugees and also occasionally gets involved in the health service provision although the initiative to provide health services is mostly taken up by the UNHCR and NGOs. There are several clinics in each camp. These are usually located in the middle of the camps so that everybody can access the service.⁶⁷ As a result, refugees have access to doctors and nurses as well as community health workers. According to a report by the UNHCR in 2009, the ratio between doctor and refugees is 1: 8. This is far better than the standard level of 1 : <50,000.⁶⁸ Moreover, according to the report, there are also people in the camps that work for promoting hygiene and public health-related program, such as nutrition programs and food assistance.⁶⁹ NGOs also provide training programs of nutrition specifically designed for pregnant women and mothers.

The Government of Thailand’s health policy for urban refugees is more obvious compared to the one for Myanmar refugees. Urban refugees can get health services and can freely buy health insurance even though they are not Thai nationals. With the health insurance, they can receive basic health service. However, if they go to hospitals, they still have to pay more. Some NGOs also provide health service to urban refugees. A respondent working on refugee issues said:

In policy, everybody including the stateless people they can buy this insurance. But in health, they only can buy some insurance in several places, not everywhere...for the Thai citizens we have free service in public health, but for migrant they have to pay about THB 2000 (about US\$ 762) per-year.⁷⁰

Although even illegal migrants can buy health insurance, they would still have to go to hospital and pay money. For urban refugees who cannot afford such insurance, they can instead receive health service from the UNHCR in

66 Interview with Siwawong Suktawee, Bangkok, July 17, 2016.

67 Richard Black, putting refugees in camps, in *Forced Migration review*, August 1998. Retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR02/fmr2full.pdf>, on September 2, 2016.

68 UNHCR, retrieved from <http://www.unhcr.org/protection/health/4bff79e49/unhcr-2009-annual-report-public-health-hiv-country-fact-sheet-thailand.html?query=thailand>, on August 1, 2016.

69 The Border Consortium Program Report 2012 -2015.

70 Interview with Siwawong Suktawee, Bangkok, July 17, 2016.

one of their shelters. There is no clear information about the health service policy for Rohingya refugees since everybody can get health access by buying health insurance. That is, principally Rohingya refugees have the same right to buy health insurance as long as they have money. Since Rohingya refugees stay in shelters or IDC that are run by the Government, it is more or less likely that they already receive health service provided by the Government.

In terms of education, Thailand's policy of education for all means that every individual in Thailand can access basic education. In this regards, a respondent said that "for the public health and education in Thailand, we believe the Thailand has the good policy while we called it Education for All. Even you don't have any citizenship; you can go to Thai school".⁷¹ In reality, refugees who stay in camps near the Thai border have limited access to education. Almost all camps have proper school facilities that are run by Community Based Organizations (CBO) with assistance from NGOs up until high school level. Few camps provide higher education, such as Mae Sot and Ranong camps that have schools run by the Australian Catholic University. As a result, for refugee students that wish to continue their studies up to university level, they are forced to move to other camps where such facilities exist. Since the Government of Thailand restricts the movement of refugees in and out of camps, students are afraid to travel to other camps to continue their studies. Moreover, since only a limited number of places are available at these university-level facilities, entrance becomes highly competitive.⁷²

For urban refugees, basic education is accessible through Thai school. Refugee children can enroll to schools near where they live. However, the problem is that not all school have the capacity to provide full access to education to refugee children as the language of instruction is the Thai language. For urban refugees with sufficient financial resources, they have the option of seeking schools where English is the language of instruction. For urban refugees who stay in UNHCR shelters, they can access schools located in these shelters, but these are mostly only pre-school level facilities.

It is a fact that a number of refugees residing in the nine temporary camps often quietly go out of the camps and work in informal sectors, returning to the camps at night.⁷³ In the urban areas of Bangkok, a large number of refugees actually work underground, such as the number of illegal Rohingya migrants in Bangkok working as street vendors of bread.⁷⁴ Work-related poli-

⁷¹ *Ibid.*

⁷² Burmalink, *Refugee camps*. Retrieved from <http://www.burmalink.org/background/thailand-burma-border/displaced-in-thailand/refugee-camps/>, on August 13, 2016.

⁷³ Richard Black, putting refugees in camps, in *Forced Migration review*, August 1998. Retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR02/fmr2full.pdf>, on September 2, 2016.

⁷⁴ Interviews with Siwawong Suktawee, Puttane Kakung and Annaparinya, Bangkok, 16 -17 July, 2016.

cies for refugee appear contradictory with the industrial and farming labor demands in Thailand. While refugees are forbidden to work, some NGOs estimate there are 300,000 migrant workers in Thailand.

The Rohingyas that came to Thailand before the ‘boat crisis’ of May 2015, are mostly migrant workers that were facilitated by agents or brokers.⁷⁵ According to a Rohingya leader in Bangkok, to enter Thailand with brokers, the Rohingya people have to pay about THB 60,000 (about US\$ 22,860) – THB 70,000 (about US\$ 26,670). The goal of most Rohingyas coming to Thailand is simply to transit since their final destination is actually Malaysia. To continue their journey to Malaysia through agents or brokers, they have to pay more, which is about a total of THB 100,000 (about US\$ 38,100) – THB 120,000 (about US\$ 45,720).

However, there are 2,000 Rohingya people working in urban areas, such as Bangkok. About 400 of these Rohingya have work-permit card, and are therefore considered as legal migrant workers. This means that the remainder are illegal.⁷⁶ The number of illegal migrant workers in Thailand changes depending on the work policy conditions. The granting of permits is mostly tied to specific time, sectors and areas. In addition, work permits have to be renewed every year. The cost of work permit renewal also depends on area and sector. For instance, to have a work permit as a farmer in Bangkok for a period of one year, an immigrant has to pay about THB 2,800 (about US\$ 80).

There are a couple of best practices of addressing refugee crisis that can be taken from Thailand. The Government of Thailand benefits from refugees in filling labor shortage in the country, and thereby contributing to the country’s economic growth. As was emphasized by Inge Brees, “Burmese refugees make a significant contribution to the Thai economy. They contribute directly in the form of low cost labor and indirectly, by enlarging the market for local suppliers and attracting international aid.”⁷⁷ The long experiences of dealing with refugees have made the treatment of Thailand towards refugees seem to be much better.

Moreover, a number of NGOs in Thailand has been very much concerned with advocacy for refugees and have intensively coordinated with the Government and international organizations to overcome the refugee crisis. In addition, academics have also been extensively engaged with issues surrounding refugees and migrant workers. They established a grounded research and policy program and made a closer partnership with NGOs and the Govern-

75 Interviews with Siwawong Suktawee, Puttanee Kakung, Annaparinya and Nur Muhammad, Bangkok, 16 – 20 July, 2016.

76 Interview with Noor Muhammad, Bangkok, July 20, 2016.

77 Inge Brees, “Burden or Boon: The Impact of Burmese Refugees on Thailand,” *The Whitehead Journal of Diplomacy and International Relations*, Winter 2010, 11, 1, Social Science Database, p. 41.

ment in managing refugees in Thailand. Likewise, the Thailand provides more spaces for NGOs to design and run programs for asylum seekers and refugees. The active participation of NGOs in Thailand is also a unique case of best practice and experience. They worked actively on the ground, protecting and advocating the rights of refugees and asylum seekers.

BASRAN, a consortium organization working on refugees in Thailand, stated that the best practice they have been working is the openness and diversity of its membership and its partnership with individuals and other CSOs advocating refugees. Regarding this, Jones, Mayerhofer and Testa said that,

The primary stakeholders involved in the formation, development and continued growth and development of BASRAN is extremely varied including; Bangkok Refugee Centre, UNHCR, Asylum Access Thailand, APPRN, faith-based organizations, the Jesuit Refugee Service, interested and active individuals in addition to representatives from international schools. Since the inception of BASRAN, members have grown and become more diverse.⁷⁸

Although the UNHCR is the main international agency working for refugees in Thailand, the Government made a strategic policy of restricting the operation of the UNHCR in managing refugees. That is, as Alexandra Seltzer argued, the Thai authority has “marginalized its operational role in the refugee registration process and daily camp administration, leaving the great majority of refugees without any direct protection from the agency.”⁷⁹ Human Right Watch also criticized the UNHCR as being “unable or unwilling to act assertively and intervene in cases of abuse or deportation and slow or unresponsive to individual refugees in need of protection.”⁸⁰ The UNHCR needs to coordinate with other international and local agencies to pressure the Government of Thailand to seriously cope with the problem of refugees.

Furthermore, although Thailand is a non-signatory country to the 1951 Refugee Convention, the Government often employs the Immigration Act, Anti-Trafficking laws and National Education laws to deal with refugees and asylum seekers. The Immigration Act, categorizing refugees and asylum seekers as alien, pushes refugees to seek informal work and many of them have become migrant workers. The demand for competitive labor from neighbouring countries to maintain food processing and other industries in Thailand makes the Government welcome refugees. However, the Government is challenged by Myanmar’s rising economic and recent developments

78 Evan Jones, Julia Mayerhofer and Amy Testa, *Positive Practises in Refugee Protection in the Asia-Pacific Region*, Research Report, Asia Pacific Refugee Rights Network, December 2015, p. 31.

79 Alexandra Seltzer, “Human Trafficking: the case of Burmese refugees in Thailand,” *International Journal of Comparative and Applied Criminal Justice*, Vol. 37, no. 4, 2013, p. 284.

80 *Ibid.*

since the return of civilian rule to the country. It is predicted that thousands of Myanmar migrant workers and refugees will return to Myanmar to work in newly-appearing industries built by the civilian government in Myanmar.

Another important practice of addressing refugees is related to Thailand's coordination with other member states of ASEAN. Thailand is one of the ASEAN countries that actively encouraged other members to open the borders for refugees from ASEAN members. However, to date, there is no regional agreement that borders should be open for asylum seekers and refugees. It needs a certain process as most members of ASEAN are non-signatories to the 1951 Refugee Convention. The innovative proposal by the Government of Thailand at a ministerial meeting to open the border of ASEAN states was responded negatively by other ASEAN members who cited their political and security national interests. Refugees have been seen as a problem and threat to national security and sovereignty. Petcharamesree argued that "they are vulnerable to whims of their host state, because they are considered to be secondary to citizens and national interests."⁸¹ In addition, Thailand actively invited other members of ASEAN to share the burden of the refugee crisis, especially after tens of thousands of Rohingyas were stranded in the Andaman Sea.

E. CSO PARTICIPATION

The history in Thailand of NGO involvement with refugee issues began precisely at the moment when a large the influx of Indochinese refugees entered the country in the 1970s. The influx saw a wide range of international NGOs come to Thailand with the Government permitting the UNHCR and other concerned NGOs to work with the Indochinese refugees. For instance, International Rescue Committee (IRC) had been working in the camps where refugees from Cambodia were concentrated. The NGO had spent the years between 1976 and 1993, providing medical service, health, water & sanitation, education, special education and culture, and many others.⁸² It is a fact that international NGOs were among the first working with refugees in Thailand, mostly being European, American, and Japanese NGOs. Their backgrounds were diverse and took the form of governmental aid organization, religious-based NGOs, and even profession-based NGOs. International NGOs also play a dominant role in assisting Myanmar refugees along Thailand's border.

The number of international NGOs in Thailand has been decreasing after Thailand became a middle income country. Indeed, KEPA (2011) challenged

81 Sriprapha Petcharamesree, "ASEAN and its approach to forced migration issues," *The International Journal of Human Rights*, Volume 20, 1016, Issue 2, p. 1.

82 RCG, *NGOs on the Thai/Cambodia*, April 5, 2016. Retrieved from <http://www.websitesrcg.com/border/NGO.html>, on August 12, 2016.

the financial sustainability of NGOs working in Thailand, including those that are concerned with refugee advocacy:

CSO financing has been drying up in Thailand for several years, since many international donors withdrew from Thailand when it achieved middle income country status. Many CSOs depend on external funding amounting to 70-90 per cent of their budgets. They have faced difficulties in securing their financial sustainability and many have decided to close down. As critical CSOs have not received funding from the Thai government, public funding resources are not evenly distributed among Thai CSOs.⁸³

There was no exact moment in time when local NGOs started working on refugee issues. Indeed, the involvement of local NGOs in refugee-related issue can be considered as relatively new. Tangseefa noted that, “until about 2008, when you’re talking CSO working refugee issues, most of them foreign NGOs, not Thai NGOs. Issues of refugees have never been widely recognized by the Thai public.”⁸⁴ However, the situation is changing and many local NGOs are beginning to take up the refugee issue. Moreover, a consortium of NGOs, called the Thai Burma Border Consortium (TBBC) consists of 15 local NGOs as members of the consortium and another five are from international NGOs.⁸⁵ Many local NGOs also work with issues relating to migrant workers, which is one of the crucial issues in Thailand. The significantly growing interest of local NGOs has resulted in better services for refugees. Local NGOs are often more knowledgeable about the situation and the real problems faced by refugees on the ground. They also possess better network with the Government and have good working relationships with the community. In many cases, they work better than international NGOs.⁸⁶

The number of NGOs in Thailand is higher than those found in other ASEAN countries. Jones, Mayerhofer and Testa argued that a relatively high number of CSOs and NGOs in Thailand help to protect the rights of refugees in Thailand. They further argued that the number of CSOs and NGOs working for refugees are rising, including URM (Urban Refugee Meeting) consisting of,

The United Nations High Commissioner for Refugees (UNHCR), the Catholic Office for Emergency Relief and Refugees (COERR), the Bangkok Refugee Centre (BRC), Maryknoll (The U.S. Catholic Mission

83 KEPA, *Reflections on Thai Civil Society*, December 2011. Retrieved from <https://www.kepa.fi/tiedostot/reflections-on-thai-civil-society-2011.pdf>, on September 10, 2106.

84 Interview with Decha Tangseefa, Bangkok, July 14, 2016.

85 Interview with Siwawong Suktawee, Bangkok, July 17, 2016.

86 Interview with Decha Tangseefa, Bangkok, July 14, 2016.

Movement), the Asian Muslim Action Network (AMAN), Boat People SOS (BPSOS), the Jesuit Refugee Service (JRS) and Asylum Access Thailand. Over time, it was agreed that there remain a core group that is now CURN – Core Urban Refugee Network (UNHCR, COERR/ BRC, AAT, JRS and BPSOS) – and that they would form another wider, more open group.⁸⁷

CSOs and NGOs have actively served as part of the important stakeholders in the ASEAN Community. APPRN along with the Thai Committee for Refugees (TCR), Asylum Access Thailand, Human Rights Working Group (HRWG) and other NGOs organized a workshop on the stateless, asylum seekers and refugees in Jakarta on May 4, 2011. The panel discussed a wide variety of interesting issues relating to refugees, such as the challenges of dealing with refugees and asylum seekers among ASEAN members. The NGO-based meeting encouraged non-signatory ASEAN countries to sign, ratify and implement the 1951 Refugee Convention and its 1967 protocol and the 1954 Convention on the Status of Stateless persons, as well as the 1961 Convention on the Reduction of Statelessness. During the meeting, ASEAN was strongly encouraged to develop mechanisms for the protection of human rights for refugees and stateless persons in the region.⁸⁸ In line with this discussion, NGOs in Thailand also strongly urged their Government to pioneer the ratification of the 1951 Refugee Convention and provide comprehensive protection for refugees, trafficked persons and stateless people.

In addition to these NGOs, there are CBOs working with Myanmar refugees. That is, refugees organize themselves and create an organization. The CBOs generally help coordinate distribution of aid among refugees and govern the camp as well as conduct registration of members of the camp.⁸⁹ There are also CBOs working with urban refugees, helping the urban refugees connect with NGOs once they need help from NGOs. For instance, when police officers come and arrest refugees in their places of residence, staffs of CBO will call NGOs, requesting legal assistance for the arrested refugees.⁹⁰

Since Thailand is a non-signatory to the 1951 Refugee Convention, the administration and protection of refugees become the duty of the UNHCR. Due to the complexity of refugee-related issues, the UNHCR collaborates

87 Evan Jones, Julia Mayerhofer and Amy Testa, *Positive Practises in Refugee Protection in the Asia-Pacific Region*, Research Report, Asia Pacific Refugee Rights Network, December 2015, p. 30.

88 Anoop Sukumaran, *Report on the 2011 ASEAN Civil Society Conference/ ASEAN People's Forum 2011*, May 10, 2011.

89 Richard Black, putting refugees in camps, in *Forced Migration review*, August 1998. Retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR02/fmr2full.pdf>, on September 2, 2016.

90 Interview with Annaparinya, Bangkok, July 15, 2016.

with NGOs, both national and international ones.⁹¹ The role of NGOs has been very strategic considering the fact that the Government does not recognize refugees and, thereby, does not have an operational and specific structure to deal with refugee issues. The works of NGOs are mostly concerned with providing basic needs, including shelter, health, food, education and many others. Thank to the role of NGO, the Government's burden of refugees is significantly relieved.

However, the role of NGOs in Thailand is only made possible with the Government's policy of allowing NGOs to help refugees. In most cases, before hiring local staffs, international NGOs are staffed by foreigners that have to obtain work permits as immigrant workers. In the case of Myanmar refugees along Thailand's border, the Government mandates certain NGOs with providing various aid covering food, medicines, clothing and education.⁹² The mandate makes NGOs consistently focus on helping refugees. Often for certain reasons, NGOs cooperate with government agencies for performing certain tasks, such as updating identification of refugees with biometric technology. For this purpose, NGOs mostly coordinate with the Ministry of Health Office.⁹³ Furthermore, security is provided by the Government in nine Myanmar refugees camp along the border making NGO staff working with refugees feel safe.⁹⁴

Due to the complexity and inter-connection of refugee issues, NGOs need to collaborate with each other since most NGOs focus on a few specific issues. For instance, the issue of health is related to issues of shelter, sanitation, and food. Collaboration and networking among NGOs are needed to address refugees' complex issues comprehensively. This sort of NGO collaboration actually has long been started since the regime put in place to deal with Indochinese refugees. A number of international organizations worked together under the supervision of the United Nations Border Relief Operation (UNBRO)⁹⁵. There is also collaboration among NGOs in dealing with Myanmar refugees in nine camps located along the border of Thailand, called the Thai Burma Border Consortium (TBBC). The collaboration involves local and international NGOs as well as CBOs existing in each camp. The col-

91 RCG, NGOs on the Thai/Cambodia, April 5, 2016. Retrieved from <http://www.websitesrcg.com/border/NGO.html>, on August 12, 2016.

92 Richard Black, putting refugees in camps, in *Forced Migration review*, August 1998. Retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR02/fmr2full.pdf>, on September 2, 2016.

93 Vivian Tan, ed., UNHCR's new biometrics system helps verify 10,000 Myanmar refugees in Thailand, in UNHCR, June 30, 2015. Retrieved from <http://www.unhcr.org/news/latest/2015/6/55926d646/unhcrs-new-biometrics-system-helps-verify-110000-myanmar-refugees-thailand.html>, on August 2, 2016.

94 Interview with Decha Tangseefa and Siwawong Suktawee

95 RCG, NGOs on the Thai/Cambodia, April 5, 2016. Retrieved from <http://www.websitesrcg.com/border/NGO.html>, on August 12, 2016.

laboration among NGOs can take diverse forms, such as issuing a collective press release in response to Myanmar State Counsellor Aung San Suu Kyi's visit to Thailand in 2016. The collaboration also exists among NGOs, activist and academicians. For instance, the Coalition for the Rights of Refugees and Stateless Persons (CRSP), which is intended to address Rohingya issues in Thailand, involves NGOs activists, lawyers, and also academician.

Asylum Access is one NGO in Thailand which manages an advocacy program for urban refugees. They facilitate consultation and mediation for urban refugees and coordinate with national and international NGOs. Refugees are a weak group because they commonly do not have proper legal documents and are unable to go back home for fear of persecution. Annaparinya, head of Asylum Access Thailand, argued that disagreements over policies between the Government of Thailand and civil society organizations challenged the dynamics of refugee policies in Thailand. As was stated by Annaparinya:

According to international standards they are refugees, but the way Government treating and responding to the situation make the refugees in Thailand split into three areas, three main big groups. One is from Myanmar, who stayed in temporary shelters. Our government does not call it refugee camps. Because our government does not accept refugee rights, we are not part of convention. They just say it 'temporary shelters.' But this temporary shelter is almost thirty years already.⁹⁶

96 Interview with Annaparinya, Asylum Access Thailand, Bangkok, July 15, 2016.

Chapter IV:

Indonesia

A. DYNAMIC AND CONDITION OF REFUGEES

In Indonesian *Bahasa*, the word “refugee” is generally translated as “*pengungsi*”, meaning displaced person or evacuee. It is broadly estimated that as of August 31, 2014, there are 9,581 people registered with the the UNHCR in Indonesia. About 5,450 of them are asylum seekers and 4,131 are refugees.¹ This number shows that Indonesia has less higher refugees and asylum seekers population compared to Malaysia and Thailand. Indonesia’s challenges on managing refugee issues is that the country is increasingly become a popular transit destination for refugees and asylum seekers while having constrained protection efforts toward refugees as well as long resettlement process. So much so, that it has prompted refugees to illegally depart from Indonesia and risk their lives at sea.²

Furthermore, the most recent issue is related to the influx of Rohingya refugees – sometimes referred to as the “boat people”- from Myanmar and Bangladesh that is estimated to number 1,711 people and have been stranded in Aceh province.³ In essence, the composition of refugee and asylum seeker currently in Indonesia is made up of those from Afganistan, which makes up almost 50% of the total, and then successively followed by Somalian refugee (9%) and Myanmar/Rohingnya (8%).⁴ The following table (Table 7) and graph (Graph 1) portray the general refugee dynamics in Indonesia:

1 Sarah Whyte, *Ombudsman slams government for long detention rates*. Retrieved from <http://www.smh.com.au/federal-politics/political-news/ombudsman-slams-government-for-long-detention-rates-20150601-ghe3i9.html>, on November 20, 2015.

2 See Antje Missbach, *Troubled transit: asylum seekers stuck in Indonesia*, 2015

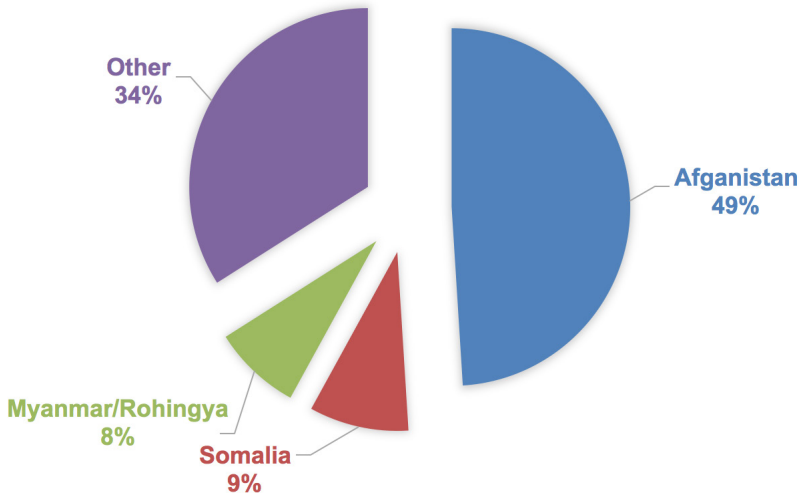
3 Andylala Waluyo, *Pemerintah Indonesia Siapkan Lokasi Baru Pengungsi Rohingya dan Bangladesh*. Retrieved from <http://www.voaindonesia.com/content/pemerintah-indonesia-siapkan-lokasi-baru-pengungsi-rohingya-dan-bangladesh/2808703.html>; The data are also derived from Coordinating Ministry of Politic, Law and Human Right (*Polhukam*), *The role of Management of People Smuggling, Refugee, and Asylum Seeker in Addressing Illegal Immigrant in Indonesia*, Presentation, February 2016.

4 UNHCR Indonesia, see www.unhcr.or.id

Table 7: The number and dynamic of refugee in Indonesia

Number of Refugee/ Asylum Seeker	Country of Origin	Number of Resettled Refugees	Resettlement Countries
13,548 (December 2015)	Afghanistan (49%); Somalia (9%) Myanmar/Rohingya (8%);	About 2,615 refugees (about 19 %) (2012-2015)	• Australia received 1,961 • New Zealand received 260; • USA received 208;

Graph 1: Distribution of refugees and asylum seekers in 2015 (13.548)



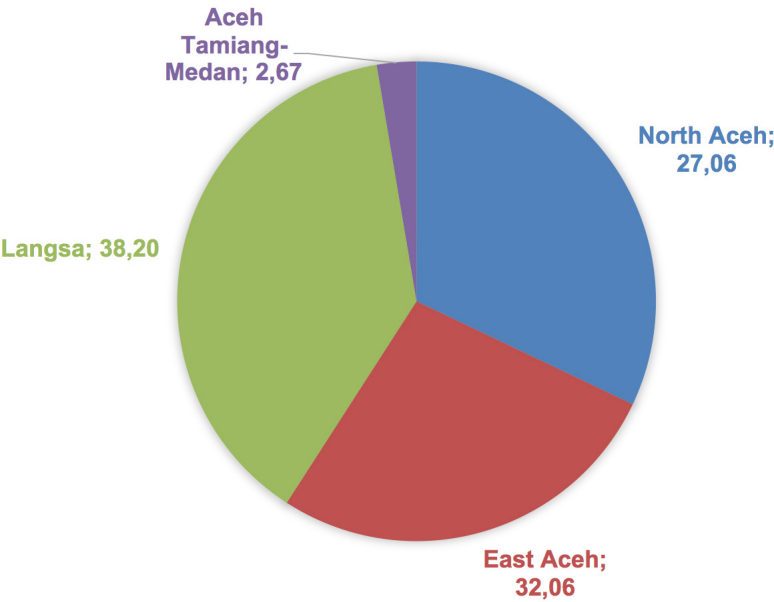
It is widely recognized and even extensively covered by the media that the Rohingya people were rescued by Acehese fishermen after their boats were left stranded at sea for months in May 2015. The massive influx of Rohingyas and Bangladeshis, that is estimated to be around 1,807 stunned most of the Acehese locals including the local government at the time. It is worth noting that the local government officials and security officers from Aceh were astonished and seemed ill-prepared for what they were confronted with. Arguably this was also true for the Acehese locals who were probably experiencing for the first time such large influx onto their shores.⁵ Regarding this, one important lesson has to be related to the initial confusion and uncertainty among local officials in Aceh, which arguably was used by the absence of any operational legal framework and Standard Operating Procedures (SOP). Therefore, their practices of handing refugees appeared spontaneous and reactionary, rather than being well-designed and organized. The following table (Table 8) and graph (Graph 2) illustrates the distribution of Rohingya refugees in May 2015 and the shelters they are currently placed in Indonesia.

⁵ Interview with Amir, Local Government Officer of Aceh Utara District, Aceh, February 6, 2016 and with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016.

Table 8: Distribution of Rohingya Refugees in Aceh (May 2015)

Location /Area	Camp and/or Temporarily-Built Shelter	Number of Refugees
Lhokseumawe (Aceh Utara)	Work Learning Center (Balai Latihan Kerja) -> Moved to ICS	564 people
Bayeun-Bireun (Aceh Timur)	Factory Building (PT. Lontar Papyrus) -> moved to temporarily built shelter	476 people
Lhok bani dan Kuala Langsa (Kota Langsa)	Seaport building (Gedung Pelindo)	672 people
Aceh Tamiang-Medan	Learning Center Building (Sanggar Kegiatan Belajar)	47 people

Graph 2: Percentage of Rohingya Refugees in Aceh (May 2015)



Indonesia is widely seen as having a strategic geographical position in the region, making it a magnet for refugees and asylum seekers. This is mainly due to the fact that Indonesia lies between two continents, Asia and Australia, and between two oceans, the Indian and Pacific Oceans. In this regard, the geographical position of Indonesia makes it an important transit country for refugees and asylum seekers in Southeast Asia.⁶ The countries of origins of refugees and asylum seekers passing and often times stranded in Indonesia are mostly dominated by South Asian countries, such as Afghanistan, Pakistan, Iran and Palestine, Middle East and Africa.

6 Ady, *Indonesia Perlu Ratifikasi Konvensi Tentang Pengungsi*. Retrieved from: <http://www.hukumonline.com/berita/baca/lt4f351aacc4a70/indonesia-perlu-ratifikasi-konvensi-tentang-pengungsi>, on November 6, 2015.

They came because they thought they could find onward passage to Australia.⁷ Many asylum seekers and refugees feel the journey to Australia is cheaper and preferable when compared to trying to reach Europe or the United States. However, the issue of refugees in Southeast Asia has become increasingly complex and grabbed more of the attention from other Southeast Asian countries, especially when Australia on July 1, 2014 applied a “deterrence” or “turning back” policy for refugees.⁸ Asylum seekers who are registered with the UNHCR in Indonesia on or after 1 July 2014 will no longer be eligible for resettlement in Australia.⁹ Due to this policy, the IOM notes that “people are not coming here (Indonesia) to go to Australia anymore, they are coming here to be resettled”¹⁰ This is also what is widely called as the phenomenon of “secondary movement.”¹¹ The following figure (see Figure 3) summarizes the route of refugee in/out of Indonesia.¹²

Rohingya refugees have stated that coming to Indonesia was not part of their plans, adding that together with Bangladeshis they had instead planned to go Malaysia. Each has about MYR 3,000-7,000 (about US\$ 674-US\$ 1573) that they received from their family members that are already residing and working in Malaysia.¹³ Currently, these Rohingya refugees have a strong desire to go to Malaysia with whatever way possible, particularly after they realize that there will be no hope for the future of the Rohingyas in Indonesia, they start to find a way to escape to Malaysia, where their family awaiting for reunification and Australia. As highlighted by Missbach, “[most of refugees] in need of protection do not have Indonesia in mind as the ultimate country of final settlement. Rather, they view Indonesia as an intended way station and the final stepping stone on the journey to Australia”¹⁴ However, they are also prone to human right abuses.¹⁵ Most of them do not feel comfortable living in shelters mainly because they can not work and earn money within or around the shelters.¹⁶

7 Tri Wahyuni, *Komnas HAM: pemerintah belum siap tangani*. Retrieved from <http://www.cnnindonesia.com/nasional/20150728182928-20-68675/komnas-ham-pemerintah-belum-siap-tangani-pencari-suaka/>, on November 17, 2015. See also Sarah Whyte, Ombudsman slams government for long detention rates. Retrieved from <http://www.smh.com.au/federal-politics/political-news/ombudsman-slams-government-for-long-detention-rates-20150601-ghe3i9.html>, on November 20, 2015.

8 Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

9 See BBC News. More Australia Asylum Seeker Blocked from Resettlement. Retrieved from: <http://www.bbc.com/news/world-australia-30092421>, on January 23, 2016.

10 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

11 Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

12 Derived from diverse sources, especially from Interview with Puja Laksana, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016 and with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016. and Fabionesta.

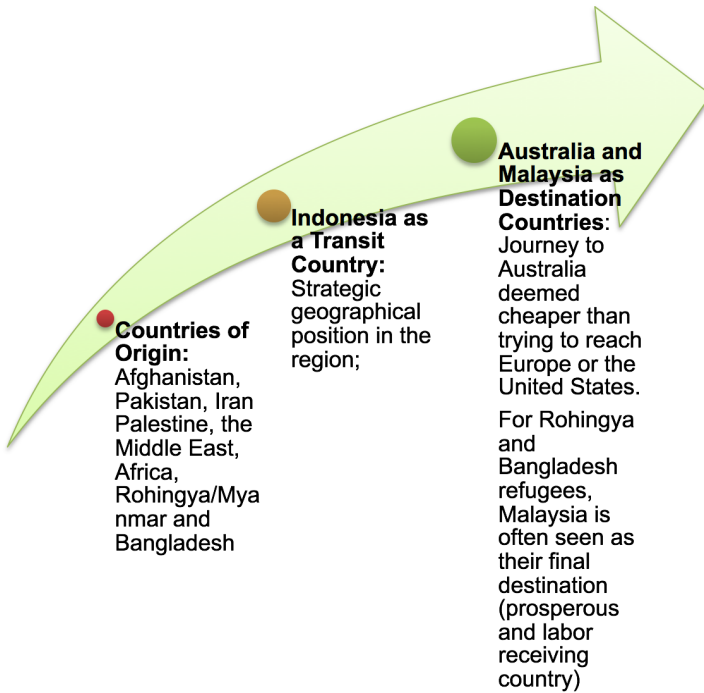
13 Interview with some Rohingya refugees at Shelter Blang Adoe, Aceh Utara, February 6, 2016.

14 Missbach, *Troubled transit: asylum seekers stuck in Indonesia*, 2015, p. 7.

15 Fabionesta, Is there any place for refugees for a safe haven? a paper presented at the Anniversary of the Habibie Center, Jakarta, November 19, 2016.

16 Interview with one of Rohingya refugees at Shelter Blang Adoe, Aceh Utara, February 6, 2016.

Figure 3: Indonesia as a transit country



Based on informations derived from local officials in Aceh and from Rohingya refugees themselves, there are certain strategies mostly taken by refugees to go to Malaysia. First, refugees use the services of people living in Medan, who mostly have networking with Rohingya refugees previously settled in Medan in 2011 and they pay them MYR 3,000 (US\$ 674). Often referred to as “agents”, they pick Rohingya refugees up around the shelters and bring them to Malaysia through some small and isolated roads or via Tanjung Bale. Second, they learn from their family members who have successfully reached Malaysia about the route and modes of transportation to Malaysia.¹⁷ They emphasized that they are very motivated to work in Malaysia in order to collect money and send the money back to their family members in Myanmar to repay them for the cost of traveling to Malaysia.¹⁸

According to the Coordinating Ministry of Politics, Legal and Security Affairs (*Kemenko-polhukam*), some irregular entrance and exit points mostly used by irregular migrants are identified as follows (Table 9):¹⁹

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Coordinating Ministry of Politics, Law and Human Right (*Polhukam*), The role of Management of People Smuggling, Refugee, and Asylum Seeker in Addressing Illegal Immigrant in Indonesia, Presentation, February 2016.

Table 9: Irregular entrance and exit of refugees in Indonesia

Irregular Entrance	Irregular Exit
Aceh (Lhokseumawe, Langsa, Aceh Timur, Aceh Utara, Aceh Tamiang)	Bengkulu (Muko-muko)
Sumatra Utara (Tj. Balai, Aasahan, Belawan, Deli Serdang)	Sumbar (Painan, Agam, and Pariaman)
Sumatra Barat (Padang, Painan, Agam, Pariaman)	Lampung (Lampung Selatan)
Kepulauan Riau (Batam, Tanjung Pinang)	Banten (Pandegelang)
Banten (Serang, Pandegelang)	Jabar (Cianjur, Sukabumi, Garut, Tasikmalaya)
Jawa Timur (Trenggalek, Tulungagung, Malang, Jember, Banyuwangi)	Jateng (Cilacap, Gunung Kidul, Parangtritis, Wonogiri)
Bali (Denpasar)	Jatim (Pacitan, Trenggalek, Tulung Agung, Malang, Jember, Banyuwangi)
Kalimantan Barat (Entiokong)	Bali (Denpasar)
Kalimantan Timur (Tarakan, Nunukan)	Nusa Tenggara Timur (Kupang, Rote Ndao)
Sulawesi Barat (Makassar, Maros, Pangkep, Janeponto, Bulukumba, Majene)	

B. LEGAL FRAMEWORK

Despite the massive influx of refugees and asylum seekers, Indonesia is widely regarded as lacking not only legal instruments but also the resource capacity to deal with the issue. Since Indonesia is not a signatory to the 1951 Refugee Convention or the 1967 Protocol, Indonesia cannot directly determine the status of refugees. Refugees and asylum seekers entering Indonesia are mostly considered as illegal immigrants, therefore violating Law No. 6/2011 on immigration.

It is widely known that Indonesia has not possessed an operational legal framework on refugees. Furthermore, Law No. 37/1999 on Foreign Affairs clearly states that asylum seekers and refugees will be further regulated by a Presidential Regulation, which is currently being drafted by the Ministry of Foreign Affairs and Ministry of Justice.

While the Law on Foreign Affairs states that the issue of refugee is under the authority of the President, the detailed points on this matter are to be further made in other regulations. It is also widely stated that the handling of the refugee crisis remains at the level of the Directorate-General. It certainly brings about an important implication that the issue will be not be able to be channelled to any other higher regulations, such as governmental regulations (*Permen*).²⁰ Additionally, although Indonesia has not ratified 1951 Refugee

²⁰ Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

Convention, it should be noted that it has indeed ratified the 1948 Human Rights Convention. Therefore, in essence, Indonesia's efforts of handling refugees are mostly based on the international conventional human rights, especially on the principle of *non-refoulement*,²¹ which is accommodated in a 2010 Immigration Directive.

In the context of the massive influx of Rohingyas in Aceh, the absence of an operational legal framework has made local officials in Aceh nervous and confused about the way to deal with the unexpected coming of Rohingya. As the Head of North Aceh District admitted:

Our strong commitment on helping refugees is occasionally hindered by the absence of central government's policy on addressing refugee. The North Aceh local government is often get ready for receiving and providing temporary shelters for refugees although the refugees have been here for more than one year. That is, it is beyond the expectation of central government that they are expected to be here for only one year.²²

The situation facing the Head of North Aceh District is not uncommon. An official handling of the refugee desk at the Coordinating Ministry of Politics, Legal and Security Affairs (*Kemenko-polhukam*), for instance, also emphasized that the absence of an operational legal framework often creates a certain degree of confusion amongst local governments and officials in dealing with the refugees, particularly related to budgeting issues. The only legal reference is a Presidential Decree (*Perpres*).

After a long process and an increasingly emerging doubt over the draft of Presidential Decree (*Keputusan Presiden/Keppres*) on efforts of dealing with refugees, it is until early this year that the Government of Indonesia finally issues it. This Presidential Decree, No. 125,/2016, that adopts certain points of the 1951 Refugee Convention will mainly serve as a national legal framework or strategic instrument for dealing with refugees. That is, refugees coming to this country will be no longer administered under the Immigration Act of 2011. As a consequence of the decree issuance, the Government of Indonesia is also supposed to provide a specific budget for managing refugees in the country.²³

It is important especially to prevent officials from acting against the law. The refugee desk in *Kemenko-polhukam* has the primary responsibility of

21 Interview with Puja Laksana, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016, and also see Coordinating Ministry of Politic, Law and Human Right (*Polhukam*), The role of Management of People Smuggling, Refugee, and Asylum Seeker in Addressing Illegal Immigrant in Indonesia, Presentation, February 2016.

22 Interview with Amir, Local Government Officer of Aceh Utara District, Aceh, February 6, 2016.

23 Kementerian Sekretariat Negara Republik Indonesia (2016), *Produk Perundang-undangan Republik Indonesia*. Retrieved from http://www.setneg.go.id/index.php?option=com_perundangan&id=405425&task=detail&catid=6&Itemid=42&tahun=2016, on January 23, 2017.

coordinating with other relevant ministries in handling refugees, although, in many cases, the ministries oftentimes are unenthusiastic about handling refugee on account of the problems regarding the absence of an operational legal framework and budgeting. Officials only started to become more responsive once they became aware that the refugee issue was related to Indonesia's international image. The concrete example related to the absence of operational legal framework is the issue of schools for refugees. Since there is no clear and concrete regulation on this, local officials are confused particularly about whether refugees will be merged with local children at the same public schools or if they should attend separate schools.²⁴

C. POLICIES AND PRACTICES

There is no denying the fact the number of refugee in Indonesia is much less compared to the ones found in Malaysia and Thailand. The refugees in Indonesia are fairly well managed and organized. That is, the refugee management system has been working relatively well. Although the number of refugee coming to Indonesia tends to be increasing lately, Indonesia is arguably not facing a flood of refugees. As was stated by an IOM representative in Indonesia:

Refugee issue in Indonesia is more of a problem in people's mind than an actual problem. I mean look at the size of Indonesia, the population of refugee in Malaysia and Thailand. It is very manageable. I always try to remind the Indonesians that they should be proud. They have set up a system when we are going through the greatest displacements in our lifetime. And the numbers are only marginally going up. There is no flood of people coming to Indonesia, there could be but there is not. There are worries about the system not working. Obviously it is working because they are not getting floods of people.²⁵

Indonesia's treatment and management of refugees is often seen as being much better than other countries in the region. The fact has also attracted the attention of the refugee desk at the Coordinating Ministry of Politics, Legal and Security Affairs. As was observed by one of the desk officers:

Since Australia has ratified the [1951] Convention, they get more firm and strict in managing refugees. If refugees come illegally to Australia, they will not tolerate and will kick them out. However, since we have not ratified the Convention yet, we cannot do that. Otherwise, we will be considered as having violated *non-refoulement* principle. Having not ratified the Convention makes us more or less tolerant and soft in receiving refugees.

²⁴ Interview with Nugroho, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

²⁵ Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

IOM people often said that the refugee management system here is good since they know refugees are humanely treated in Indonesia.²⁶

One of the important indicators of good refugee management in Indonesia is the absence of deportation of refugees. The last factor is related to the fact that there are a large number of refugees and asylum seekers living out of detention centers instead residing among the local community.²⁷

One of Indonesia's assets for handling refugees is the establishment of the Management of People Smuggling, Refugees, and Asylum Seekers Desk at the Coordinating Ministry for Politics, Legal and Security Affairs (*Desk Penanganan Penyelundupan Manusia, Pengungsi dan Pencari Suaka/P2MP2S*). Some factors are behind the establishment of the desk, including the complexity of irregular migrant issues that needs a strategic and comprehensive response involving relevant ministries and other governmental institutions, the impact of refugee influx on security issues, to the fact that handling refugees requires international and/or regional cooperation. Some of its main tasks and responsibilities include: coordinating with relevant ministries and other governmental institutions; cooperating with countries of origin and transit, resettlement countries and international organizations; conducting performance monitoring and evaluation of relevant ministries; and providing some recommendations related to refugee handling to relevant ministries and governmental institutions.²⁸

Given it is still a non-signatory to the 1951 Refugee Convention, Indonesia's establishment of the desk is widely appreciated as not only an asset, but also a strategic step. As stated by an IOM representative in Indonesia:

The Indonesian government does incredible amount of work for non-signatory countries. If you look at the structure they have in place through Kemenkopolkukam, for non-signatory country, they have that many government representatives attending meeting on refugees and asylum seekers. It's unheard of that they dedicated so many internal resources to coordination. They are more prepared on paper and in structure than most signatory countries. So, they don't do a bad job, the Indonesian government, they do quite a good job...As a non-signatory country, Indonesia is doing a fantastic job hosting the refugees. I mean they are under no obligation to even cooperate yet they develop a structure where Kemenkopolkukam is calling meetings every months; they are the one coordinating with foreign

26 Interview with Puja Laksana, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

27 Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

28 Coordinating Ministry of Politics, Law and Human Rights (*Polhukam*), The role of Management of People Smuggling, Refugee, and Asylum Seeker in Addressing Illegal Immigrant in Indonesia, Presentation, February 2016.

affairs, with the police, with the military, (as they are) looking after--not only hosting--but also looking after the overall issue of people smuggling and the movements. These are all internal government mechanisms. This is another step that other countries would not have taken but Indonesia has taken naturally. It does solve a lot of problems.²⁹

In the condition of the absence of operational legal framework, the establishment of the desk would help make refugee handling in Indonesia more coordinated, proactive and systematic. Because of this, the refugee handling in Indonesia is often considered as being much better than that found in other non-signatory countries. While there are issues of budgeting and unclear policy line owing to lack of legal framework, this can be one of the best practices of handling refugee that can be shared to other countries, particularly ASEAN ones.

One of the biggest challenges of providing protection for refugees in Indonesia is mostly related to providing them with work permits since no legal framework or guiding regulation on the issue is in place. If the Central Government allows them to legally work, the local officials in Aceh and other provinces are ready to provide them with jobs.³⁰ In addition, the Rohingya refugees in Aceh also received a range of training, including sewing and English language.³¹

Indeed, the Acehnese is another example of best practice of handling refugee issue is mostly tied to the initiatives of the local government in Aceh and the people of Aceh in general. It is widely known that the Acehnese people helped save Rohingya refugees stranded out at sea. Their sympathetic initiative grabbed the attention of world leaders and the international media. What they did was extensively described as a brave and humanistically-inspiring action while people from other countries would have mostly rejected and even turned refugees back to sea.³² More than that, local officials and the people were strongly committed to welcoming refugees and to provide temporary shelters for them. This becomes interesting since, as one expert commented, "It was rare for local officials to allocate shelter and apply friendly policy to refugees, but some Aceh municipalities and regencies did it. They at least provided five locations to shelter them. They are so open to collaboration with CSOs too".³³

The warm hospitality and welcome by the local Acehnese people and officials that was afforded to the Rohingya community has often raised a ques-

29 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016

30 Ibid.

31 Ibid.

32 Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

33 Fabionesta, Is there any place for refugees for a safe haven?, a paper presented at the Anniversary of the Habibie Center, Jakarta, November 19, 2016.

tion.³⁴ The question is why the Acehnese people were very motivated to rescue the Rohingya refugees and strongly willing to help them, at a time when other countries were turning them back to the sea. The Acehnese people generally held on to their religious belief and took the stance that the Rohingya people coming to their province should be considered as guests, rather than illegal migrants. As was concisely described by Lies Marcoes (2016):

[The Acehnese people] have a respected local wisdom of “*Pemulia Jamee*” (respecting guests). It is a traditional custom of Acehnese that has been deeply imprinted in their hearts and minds, and it is also involves their self-destiny and religious belief. Culturally, Acehnese fishermen are trained not to deny people stranded in the sea.³⁵

For this reason, the Acehnese regarded the Rohingya refugees as deserving to be respected and properly treated as honorable guests.³⁶ The Acehnese people’s spirit of rescuing and helping the Rohingya was widely stated by one IOM representative in Indonesia that “every district wanted to build refugee housing in the three to four hundred capacity range. They just want to triple the number of beds needed. For what? No districts will allow any Rohingya to move to another district. They are keeping their Rohingya. Why? It doesn’t make sense.”³⁷

Moreover, Indonesia has a strategic experience of handling Indochinese refugees through a regional framework called the “Comprehensive Plan of Action (CPA). After the establishment of communist governments in Vietnam and Cambodia, about 3 millions refugees fled the two countries, looking for asylum between 1975 and 1995. More than 2.5 million of them were resettled, mostly in North America and Europe, while 500,000 were repatriated, either voluntarily or involuntarily. Under this agreement, Southeast Asian countries agreed to provide temporary asylum. The US, Australia and several European countries provided resettlement for these refugees. Up to 1995, 1.3 million asylum seekers in Southeast Asian countries were resettled while the remainder were repatriated.

In the case of Indonesia, the country worked together with the UNHCR to set up a refugee camp on Galang Island, which is located just south of Batam and Rempang which themselves are just south of Singapore and Johor (Malaysia). What follows is the map (Picture 7) showing where Galang Island is exactly located:³⁸

³⁴ Ibid.

³⁵ Lies Marcos, *Berlayar tanpa berlabuh: perempuan dan pengungsi Rohingya di Makasaar dan Aceh, Indonesia*. Yayasan Rumah Kita Bersama and The Oslo Coalition at the Norwegian Center for Human Rights, University of Oslo, January 1, 2016.

³⁶ Interview with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016 and with Amir, Local Government Officer of Aceh Utara District, Aceh, February 6, 2016.

³⁷ Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

³⁸ The map is derived from <http://www.sbs.com.au/news/article/2014/09/24/photos-show-risky->

Picture 7: UNHCR setting up a refugee camp on Galang Island for Indo-Chinese Refugees



The camp covered almost 20% of the Island, and was well equipped, with a camp administration office, the PMI (*Palang Merah Indonesia* -Indonesian Red Cross) Hospital, a school, a Catholic church, Buddhist temple, a cemetery, and a youth center. The camp accommodated about 250,000 boat people from Cambodia, Laos and Vietnam from 1975 to 1996.³⁹ What follows is one of the pictures of refugee camp on Galang Island (Picture 8):⁴⁰

Picture 8: One of buildings in refugee camp of Galang Island



journey-saigon-1983, on March 23, 2016.

³⁹ Derived from diverse sources, including <https://theconversation.com/refugee-crisis-meeting-should-learn-from-indochinese-solution-42426>, and <http://www.dw.com/en/what-can-europe-learn-from-the-indochina-refugee-crisis/a-18731341>,

⁴⁰ The picture was derived from <http://www.panoramio.com/photo/28617851>

Summing up, the case of handing refugees in Aceh has provided some important lessons and points that should be shared to other ASEAN countries as some of the best practices. The first best practice relates to the willingness of Acehnese civilians, in particular fishermen in rescuing Rohingya refugees stranded out at sea and their warm hospitality. The second one is related to the extensive participation and support of national and international stakeholders, as well as the local government of Aceh, in the establishment of shelters specifically designed for refugee protection. Moreover, while there is no operational legal framework and/or concrete guidance, the local government of Aceh and NGOs in the province made a nice effort of producing a Standard Operating Procedure (SOP) and Ethic Code for handling refugees in their area. Finally, the local government together with national NGOs provided skill training, working opportunities around shelters and broader opportunities of interaction with the local people.

However, there is a challenge to ensure that refugee rights in Indonesia continues to be protected during their stay in the country. While it was previously mentioned that Indonesia has a good example in regard of how the Aceh government welcomed Rohingya refugees, research has shown that Indonesia in general still has homework to do. For example, the lack of legal framework on refugees has put refugees in Indonesia in the same category with illegal migrants and they are often put in ‘immigration detention center’ which is characterized to be overcrowded, lacking in adequate meals, as well as physical and psychological ‘mistreatment’.⁴¹

D. CSO PARTICIPATION

Indonesian NGOs are oftentimes considered as being more actively engaged in helping refugees than those found in other ASEAN countries. The establishment of a number of specifically designed shelters for refugees in Aceh broadly involved national NGOs in Indonesia as well as some international ones. The shelters, which are freely visited by anybody, have attracted a lot of attention from some relevant stakeholders of neighboring countries to visit, especially since similar shelters in Malaysia and Thailand are relatively inaccessible to NGOs and other visitors.⁴²

The influx of Rohingya refugees in Aceh in May 2015 and the way they were handled is worth being taken as one of the best practices of handling refugee in Indonesia, and being shared to other ASEAN countries. It is widely recognized and even internationally publicized through diverse media coverage that about 1,807 refugees were rescued by Acehnese fishermen from stranded boats and were temporarily placed in four areas of Aceh: Lhok-

41 Antje Missbach, *Troubled transit: asylum seekers stuck in Indonesia*, 2015, p. 61-85

42 Interview with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016.

seumawe (North Aceh), Bayeun-Bireun (East Aceh), Lhok bani dan Kuala Langsa (Langsa City), and Aceh Tamiang-Medan.⁴³

One of the examples of a CSOengaging itself in the handling of Rohingya refugees in Aceh was the establishment of the *Komite Nasional Solidaritas Rohingya* (KNSR- National Committee for Rohingya Solidarity). The Committee successfully mobilized the wider participation and support of national and international communities.⁴⁴ Other ASEAN countries, such as the Philippines and Cambodia, even openly declared their commitment for burden sharing with other ASEAN countries.⁴⁵ The concrete participation of the diverse stakeholders mostly takes the form of building a specifically designed shelter in Blang Adoe of North Aceh District, which is called ICS (Integrated Community Shelter). According to Suhelmaidi Syukur, the Director of *Aksi Cepat Tanggap* (ACT- Quick Response Action), an NGO that played a leading role in the establishment of Integrated Community Shelter (ICS), the shelter is not only designed for physical recovery, but also importantly psychological and social ones, including trauma healing, basic education, language and other skill trainings, and economic recovery involving farming, gardening, cow raising, etc. However, although the Vice Governor of Aceh provided 10 hectares of land around the shelter for farming, it is still difficult to realize in the absence of guiding procedures and laws.⁴⁶

Physically, the establishment of the shelter (ICS) from June 8-July 7, 2015 cost around IDR 6 billions or approximately US\$ 461,538 and built on land that was provided by the local government of Aceh Utara. It has 120 units, divided into 15 blocks, equipped with 42 toilets and bathrooms, some public kitchens, a children learning area, a health clinic, a mosque, a children playground, etc. The shelter was officially opened by the Vice Governor of Aceh, Muzakkir Manaf, on December 8, 2015. After that, 322 Rohingya refugees were directly moved from Gedung Balai Latihan Kerja (BLK) Aceh Utara to the Shelter.⁴⁷ What follows is the picture of Integrated Community Shelter (Picture 9):⁴⁸

43 Derived from diverse sources, including various newspapers and interview with Amir, Local Government Officer of Aceh Utara District, Aceh, February 6, 2016 and with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016, and many others.

44 Interview with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016.

45 AndyalaWaluyo (2015). Pemerintah Indonesia siapkan lokasi baru pengungsi Rohingya dan Bangladesh. Dalam Voice of America. Retrieved from <http://www.voaindonesia.com/content/pemerintah-indonesia-siapkan-lokasi-baru-pengungsi-rohingya-dan-bangladesh/2808703.html>, on March 14, 2016.

46 Interview with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016.

47 Ibid.

48 The picture was taken from <http://act.id/id/whats-happening/view/1834/sehabis-lebaran-shelter-blang-adoe-segera-ditempati>, on March 28, 2016.

Picture 9: Integrated Community Shelter in Aceh



Furthermore, the IOM is involved in the operation and management of the shelter, especially related to the accommodation of the refugees. As was remarked by an IOM representative in Indonesia, “IOM helps everything. IOM provides with food, accommodation, with medical care. We are paying for most things for these people. We give them clothings. All of their basic needs are met through IOM”.⁴⁹

In addition, the handling of refugees in Langsa District of Aceh also provides a similarly important lesson that is worth being shared to other ASEAN countries. The Timbang Langsa temporary shelter was built for Rohingya refugees stranded in this district. In doing this, the local government provided 8 hectares of land and diverse national and international CSOs participated in the establishment of the shelter. This shelter is generally equipped with other required facilities, such as toilets, a health clinic, a mosque, a playground, clean water, a large meeting room, etc. Until now, only 71 refugees remain and thousands were repatriated, especially from Bangladesh. The rest escaped from the camp to Malaysia.⁵⁰ It would seem that Indonesia is not on the radar for the Rohingya refugees. The large number of Rohingya population in Malaysia might also contribute to prompting the refugees to travel to Malaysia. While they were stranded in Aceh, they tried hard to find whatever way to go to Malaysia. What follows is one of the pictures of Timbang Langsa Shelter (Picture 10):⁵¹

49 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016

50 Derived from diverse newspapers, including <http://www.restlessbeings.org/projects/rohingya/langsa-rohingya-refugee-camp-visits-by-restless-beings-directors>, www.nbcnews.com/.../stranded-migrants-find-solace-indonesia-n361786, <http://www.goaceh.co/berita/baca/2016/03/20/imigran-rohingya-tempati-shelter-baru-di-timbang-langsa>,

51 The picture was taken from <http://www.goaceh.co/berita/baca/2016/03/20/imigran-rohingya-tempati-shelter-baru-di-timbang-langsa#sthash.d0m5bOIg.dpbs>, on March 25, 2016.

Picture 10: Timbang Langsa Temporary Shelter



The case of refugee handling in Langsa City specifically portrays the intensive and active involvement of the local government that even supported the efforts of Langsa fishermen in rescuing Rohingya refugee. More than that, the local government then established a taskforce for coordinating 13 sub-local governmental offices and relevant CSOs in managing Rohingya refugees.

Chapter V:

ASEAN and the Refugee Crisis in the Region

A. ASEAN, REGIONAL FRAMEWORK AND THE DYNAMIC OF ADDRESSING THE REFUGEE CRISIS IN THE REGION

Asia is currently home to a large population of refugees, asylum seekers and internally displaced people (IDP). Under the mandate of the UNHCR, Asia is in the same jurisdiction as the Pacific—alongside receiving countries such as Australia—and is home to 3.8 million refugees, 2.9 million IDPs, and 1.5 million stateless people by the end of 2015. The majority of them come from Afghanistan and Myanmar.¹ Unfortunately, most of the Asian countries are non-signatories to the 1951 Convention relating to the status of refugees and its 1967 Protocol. Indeed, Asia is the region with the fewest signatories to the 1951 Convention.²

In the context of Southeast Asian countries, only the Philippines, Cambodia and Timor Leste are signatories; while most of the countries hosting the largest number of refugees in the region are non-signatories. The absence of an operational regional framework in ASEAN means that the region is poorly equipped to effectively respond to and address the refugee crisis in the region.

The reluctance of Southeast Asian countries to sign up to the international refugee protection regime follows the pattern that exists in wider Asia, which presumably is the result of the “Eurocentric focus of the Convention at its time of creation.” It is widely known that almost all Asian states were absent during the drafting process of the Convention, that took place over a series of conferences in 1949 and 1950. Instead of ratifying the Convention, Asian states prefer formal bilateral or multilateral agreements.³

Asian states mostly hold that the Convention is poorly equipped with any concrete strategies for dealing with and resolving a refugee crisis; however,

1 UNHCR, 2016, “Asia and the Pacific”, retrieved from <http://www.unhcr.org/publications/fundraising/574ed7934/unhcr-global-report-2015-asia-pacific-regional-summary.html> on September 20, 2016; it should be noted that the majority of this population resides at the Asia region.

2 Amy Nethery, Asia’s refugee policy vacuum, in *thediplomat.com*, August 25, 2015. Retrieved from <http://thediplomat.com/2015/08/asias-refugee-policy-vacuum/>, on May 23 2016.

3 *Ibid.*

they tend to be more worried about the undue burden placed on them. One more reason assumed to be behind the reluctance of Asian states is the fact that “displacement in Asia was most often the result of the social and political change triggered by decolonization. In other words, these forced migrants did not fit the definition of refugee status agreed upon in Geneva”. As a result, it created ambivalent behaviors among Asian states towards refugees.

This situation also allows for differential treatment of refugees. For instance, in responding to the Rohingya crisis, China received ethnic Chinese refugees, but restricted access by the UNHCR, and further stayed away from “more ‘politically costly’ Rohingyas”. India also has hosted a large number of refugees, including the Rohingyas, but has been very cautious about political issues. Meanwhile, Japan may be the world’s fourth largest donor to the UNHCR, but only resettled 11 refugees in 2014 or only 28 refugees last year from 10,901 refugees that applied⁴ and generally would not offer resettlement for refugees (although it did pledge US\$3.5 millions in responding to Rohingya crisis).⁵

In the context of Southeast Asian region, ASEAN as a regional entity has been widely criticized for the absence of any regional plan and framework which renders refugees, especially Rohingya refugees, vulnerable to “the challenges of a perilous sea voyage, and further strands those Rohingya who have lived in Malaysia and other regional nations for up to three generations without legal rights or protection”.⁶ Most Rohingya refugees are currently stranded in Malaysia, followed by Thailand and Indonesia.

Despite this, recently Malaysia, Indonesia, Bangladesh, Thailand, and Myanmar held a ministerial meeting on May 29, 2015. Unfortunately, no individual and/or regional plans were made to address the issue.⁷ Instead the meeting highlighted the need to jointly promote protection of ‘people stranded at sea’, prevent people smuggling and human trafficking, as well as addressing root causes and improving the livelihood of ‘at risk communities’. The meeting made no reference about addressing the Rohingyas as refugees.⁸

4 See Luke Henriques Gomes, Why Japan accepts a staggeringly low number of refugees. In *thenewdaily.com*, February 17, 2017. Retrieved from <http://thenewdaily.com.au/news/world/2017/02/16/japan-refugees-australia/>, on March 2, 2017.

5 *Ibid.*

6 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015. Retrieved from: <http://www.refugeesinternational.org/reports/2015/11/17/malaysia-rohingya-refugees-hope-for-little-and-receive-less>, on May 23, 2015.

7 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015. Retrieved from: <http://www.refugeesinternational.org/reports/2015/11/17/malaysia-rohingya-refugees-hope-for-little-and-receive-less>, on May 23, 2015.

8 Royal Thai Government. 2015. “Summary: Special Meeting on Irregular Migration in the Indian Ocean, 29 May 2015”, retrieved from <http://www.thaigov.go.th/index.php/en/issues/item/92152-92152.html> September 10, 2016

The special meeting hosted by Thailand was attended by officials from 17 countries, including 10 ASEAN countries, the United States, Japan and others, who sent observers, along with officials from the UNHCR, the UN Office on Drugs and Crime and the International Organization for Migration. Myanmar itself that previously intended to boycott the meeting finally decided to participate in the meeting with the condition that they will not use the term “Rohingya”, and that there will be no blaming and finger pointing. One point that was discussed during the special meeting was the agreement by Indonesia and Malaysia to provide humanitarian aids for 7,000 Rohingya refugees and offer them temporary shelters until the international community could resettle them within one year.⁹ This meeting also shows that ASEAN can serve as a regional space for discussing the plight of Rohingya and other refugees and exploring a strategic solution to the refugee crisis in the region.

However, responding to the Rohingya refugee crisis cannot merely rely on the convening of an adhoc Special or Ministerial Meeting. While the meeting can be seen as a first or stepping stone, ultimately resolving the crisis should go beyond the meeting with greater focus on developing a concrete regional and even international plan and framework. As was emphasized by Sylvia di Gaetano (2015),

Certain norms and conventions should be signed by regional governments and ASEAN should come up with a regional legal framework to deal with its refugee and statelessness problems. The events of this past year demonstrate that there is a way forward. The missing piece is political will.¹⁰

A Special Meeting will arguably just end up providing temporary solution and ad-hoc protection. Nevertheless, addressing stateless refugee crisis also has to deal with how the documentation of refugees, like the Rohingyas for example, can be processed or how citizenship can be granted to them as well as other ways forward. In the meantime, strategically resolving the Rohingya crisis means the involvement of Myanmar as the country of origin of the Rohingyas.

It is right that regional meetings, to a certain extent, have produced some improvements in the region related to irregular migration, smuggling, and trafficking by particularly establishing the importance of the rule of law. However, it cannot be denied that most regional efforts stop at this point. Almost no ASEAN countries have put forth any individual or regional plan

⁹ Sylvia di Gaetano, How to solve Southeast Asia's refugee crisis, in *thediplomat.com*, September 28, 2015, Retrieved from: <http://thediplomat.com/2015/08/how-to-solve-southeast-asias-refugee-crisis>, on May 13, 2016.

¹⁰ Sylvia di Gaetano, How to solve Southeast Asia's refugee crisis, in *thediplomat.com*, September 28, 2015, Retrieved from: <http://thediplomat.com/2015/08/how-to-solve-southeast-asias-refugee-crisis>, on May 13, 2016.

to address the ongoing humanitarian needs of the Rohingya. Meanwhile, it is almost certain that the situation of the Rohingyas in Myanmar continues to deteriorate. As was reported by International Refugee (2015):

Consistent with the May 29 Regional Conference's resulting agreement, governments in the region, including Bangladesh, Indonesia, Malaysia, Myanmar, and Thailand, should compose a Task Force focused on generating political will and strengthening regional cooperation to protect and facilitate the ability of individuals and families to flee situations of persecution, while also combatting trafficking and smuggling. The crackdown on smugglers and traffickers continues, and the ongoing persecution of the Rohingya keeps demand for smugglers' services high and lucrative. Without a regional plan to address the root causes of the Rohingya flight or places of safe harbor, the Rohingya people must rely on the mercy of smugglers to survive. Regional nations must jointly develop a system of safe disembarkation, and commit to providing affordable, accessible, and safe avenues for migration for those fleeing persecution."¹¹

A durable regional solution to the Rohingya refugee crisis should ideally cover multiple regional plans and actions: combatting trafficking and smuggling, protecting and facilitating the ability of individuals and families to flee situations of persecution, as well as addressing root causes of the crisis as a preventive measure. A strategic regional solution has to go beyond preventive and immediate ad-hoc measures, but also provide refugees with their basic human rights and proper documentation. Any regional effort that only partially focuses on either of them will end up producing only a partial solution to this crisis. As emphasized by Antje Misbach (2015), if they "are serious in wanting to protect people's lives and not just their territorial borders, then it is about time to guarantee asylum seekers proper rights of protection and not just offer charity".¹²

The following part of this chapter will particularly discuss the extent to which ASEAN has played its role in addressing refugee crisis in the region.

As was mentioned above, ASEAN and most of its member states do not adopt the 1951 refugee convention and its 1967 protocol. However, some of its member states have adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and/or the International Covenant on Civil and Political Rights (ICCPR).¹³ CAT and ICCPR,

11 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015. Retrieved from: <http://www.refugeesinternational.org/reports/2015/11/17/malaysia-rohingya-refugees-hope-for-little-and-receive-less>, on May 23, 2015.

12 Antje Missbach, Towards a real solution to Southeast Asia's refugee crisis, in *thediplomat.com*, August 19, 2015. Retrieved from: <http://thediplomat.com/2015/08/towards-a-real-solution-to-southeast-asias-refugee-crisis/>, on March 23, 2016.

13 Savitri Taylor. 2016. "Refugee protection in the Asia Pacific region". Retrieved from <http://>

while not binding countries to any specific commitments toward refugees, provide a framework for “universally applicable duty of *non-refoulement* owed to refugees by all states (see Table 10).”¹⁴ At the same time, all ASEAN member states have ratified Convention on the Rights of Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of Persons with Disabilities (CPRD). These are all important human rights conventions that ensure protection to a wide range of population regardless of their citizenship status.

Table 10: Southeast Asian countries and adopted treaties (as of 2016)

Country	1951 Convention and 1967 Protocol	CAT	ICCPR
Brunei	No	No	No
Cambodia	Yes	Yes	Yes
East Timor (ASEAN observer)	Yes	Yes	Yes
Indonesia	No	Yes	Yes
Laos	No	Yes	Yes
Malaysia	No	No	No
Myanmar	No	No	No
Philippines	Yes	Yes	Yes
Singapore	No	No	No
Thailand	No	Yes	Yes
Viet Nam	No	Yes	Yes

On a policy level, it is often more complicated for ASEAN to directly address the issue of Rohingya refugees. Firstly, Myanmar as the country of origin of Rohingya refugees, are unwilling to even use the term ‘Rohingya’ and avoids any discussion which addresses the issue. Secondly, most ASEAN countries seem to be unwilling to publicly and directly pressure Myanmar on the issue. In this sense, it is reasonable to argue that the problem of the absence of regional plan and framework is much more related to the lack of political will among ASEAN countries that operate within the context of non-interference norms and good neighbourliness, which often translates into avoiding a direct approach.

Moreover, it is useful to note that ASEAN countries have major investments in Myanmar. As noted by a respondent in Malaysia:

There’s a special connection between the Malaysian government and the Myanmar government, because the Malaysian government was the one who promoted or suggested the inclusion of Myanmar in ASEAN meetings. So we are considered as the brother of Myanmar, in a sense, in terms

www.refugeelegalaidinformation.org/refugee-protection-asia-pacific-region on September 29, 2016
 14 James Hathaway. 2005. *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005) p. 365

of business partnerships, one of the biggest Malaysian embassies that we have in the world is actually in Myanmar, there's actually a huge complex for the Malaysian embassy there.

Myanmar is emerging as a promising marketplace for ASEAN countries. Regional power house companies such as Petronas have begun to invest in offshore oil drilling in the country. Therefore, on top of ASEAN countries traditional approach towards Myanmar where there is a preference to avoid upsetting Naypyidaw, while at the same time to continue to promote the agenda of reform, there is now more incentive for ASEAN countries to not push Myanmar too hard.

The above assumption that the economic interest mainly plays a certain part in Rohingya prosecution is generally confirmed by the study of Saskia Sassen (2017), generally arguing that the Rohingya prosecution is more likely to be triggered by business interests rather than ethnicity and religion that might be only part of what explain the prosecution. He further highlighted,

The world's coverage of these events has focused entirely on the religious/ethnic aspect, characterizing them as religious persecution. Human Rights Watch described the anti-Rohingya violence as amounting to "crimes against humanity... Expelling Rohingya from their land might well be good for future business. In fact, quite recently the government allocated 1,268,077 hectares (3,100,000 acres) in the Rohingya's area of Myanmar for corporate rural development; this is quite a jump compared to the first such formal allocation which was in 2012, for just 7,000 hectares (17,000 acres).

Moreover, burning Rohingya's homes serves as a method of freeing up land and water and, at the same time, the prosecution is intentionally framed as religious differences for mobilizing and gaining support from other anti-Muslim Rohingyas. Land grabbing by the Myanmar military from smallholders since the 1990s without compensation has predominantly marked the economic interests-related cases. The law of land governance was changed in 2012 particularly to favour large corporate acquisitions.

In addition, ASEAN's use of the term of "irregular migrants" when referring to the Rohingya people has been widely criticized. For instance, as Susan Kneebone (2015) asserted, *the labeling of Rohingya with irregular migrant, rather than refugee or asylum seeker, is intentionally constructed by ASEAN as an institutional power in the region to lump them into* "trafficking and transnational crime, which began in the 1990s. Under the term "irregular migration" the crisis' of the Rohingya people is reduced to one of human trafficking and smuggling, rather than one of systematic persecution within Myanmar". The ambiguous labeling of refugees by ASEAN derives from the experience and lesson of the Comprehensive Plan of Action for Indo-Chinese Refugees

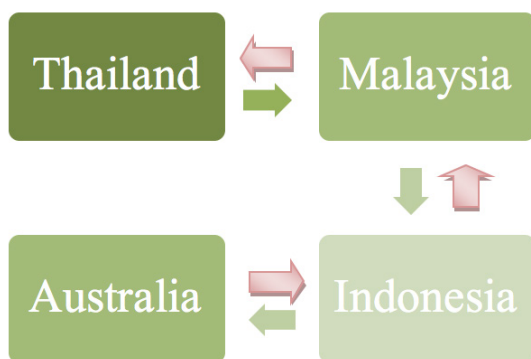
(CPA) in the 1980s and 1990s. During the regime of CPA, refugees were vaguely described as “illegal immigrants/displaced persons (refugees) from Indochina.” In doing so, ASEAN countries sought to avoid their full obligations to refugees. In other words, avoiding the term of refugee when referring to the displaced Rohingyas was intentionally done to frame the crisis as part of national security instead of international human security.

This has been reflected in the regional efforts to address the issue. The trend in the region is to avoid addressing the refugee issue directly and shift the focus to illegal and irregular migration, border control, and economic migration. Southeast Asia has the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (2002), the Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific region and ASEAN Declarations on Trafficking in Persons (2004), and the Protection and Promotion of Rights of Migrant Workers (2007). It also holds regular Senior Official Meeting (SOM) among Director General of Immigration and Heads of Consular Affairs to share updates and best practices around immigration issues and border management

ASEAN alongside other stakeholders in the region is also trying to highlight the issue of protection as an important issue in the discourse of migration in the region, such as through the recent publication of the Regional Review on Laws, Policies and Practices within ASEAN related to the identification, management and treatment of victims of trafficking especially women and children. In the wider Asian region, there is also the Bangkok Principles on the Status and Treatment of Refugees (1966) which was drafted by the Asian African Legal Consultative Committee, of which five ASEAN member states are parties. However, it is only declaratory and non-binding and as such has little effects toward policy making. All of these initiatives show that ASEAN member states acknowledge that they have issue with irregular migration, but explicitly only on those which might jeopardize their security or the safety of their citizens.

One more criticism that is often directed towards the ASEAN way of dealing with the refugee issue is playing “a dangerous game of human ping-pong” in the region. In this sense, the Government of Thailand pushing boats of Rohingya refugees back out to sea towards Malaysia. The Government of Thailand would then use army helicopters to drop foods and waters to the refugees. In turn, Malaysia authorities would push the boats away from their waters towards Indonesia, suggesting to the Rohingyas to stay and seek asylum in Indonesia. The Government of Indonesia also stopped the refugees from entering its territory and further pushed them back out again. It is often the case that the refugees are finally heading to Australia. Fortunately, international pressure has at least temporarily brought an end to this “game” (see Figure 4).

Figure 4: Dangerous game of human ping-pong in Southeast Asia



Indeed, at the core of this deadly “game” is the way in which ASEAN countries are running away from their obligations, citing the burdens they would need to bear and other potential domestic threats if they allow refugees to enter their territories. Within the circle of this risky game is also a lucrative human trafficking business. In this regard, it is reasonable to argue that the game is mainly enabled by the absence of any regional policy vacuum that does not acknowledge the existence of refugees and can be attributed to the deficiency of political will among ASEAN countries.

ASEAN’s founding principle of “non-interference” thus far is seen as a barrier to regionally addressing the Rohingyas in the region. The principle that has been central to ASEAN’s mode of operating “manifest as a reluctance on the part of ASEAN members to involve themselves in what it regards as the internal sovereign matters of member states”.¹⁵ That is, the Government of Myanmar always makes this principle as its reason of being reluctant to discuss the Rohingyas. Indeed, when regional meetings come to the discuss the plight of Rohingyas, they decide to walk out of such meetings.¹⁶

In this sense, one of the frequently asked questions is why ASEAN does not adopt and/or imitate the model of the European Union to address the refugee crisis and other-related issues in the region. In fact, the European Union has done away with internal borders, thus allowing citizens of the member countries to cross their borders relatively freely. It is not clear whether this policy is suitable for the ASEAN context. ASEAN countries tend to be more diverse in terms of their population size, levels of economic development and

15 Amy Nethery, Asia’s refugee policy vacuum, in *thediplomat.com*, August 25, 2015. Retrieved from <http://thediplomat.com/2015/08/asias-refugee-policy-vacuum/>, on May 23 2016, and see also Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015.

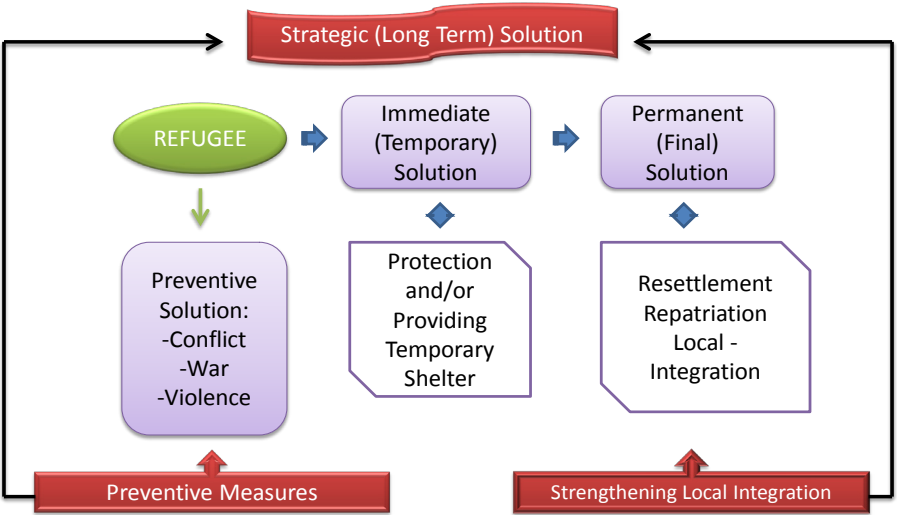
16 Sarnata Reynolds & Ann Hollingsworth, Malaysia: Rohingya Refugee Hope for Little and Receive Less, at *Refugee International Report*, November 17, 2015. Retrieved from: <http://www.refugeesinternational.org/reports/2015/11/17/malaysia-rohingya-refugees-hope-for-little-and-receive-less>, on May 23, 2015.

political orientation and system when compared to to the member countries of the European Union. Smaller ASEAN countries, like Malaysia and Singapore, might be strongly reluctant to the suspension of immigration controls as it will attract a massive flow of people from neighbouring countries with larger population but sluggish economies, and thereby potentially creating political and social instability domestically.¹⁷

B. THE ROLE OF ASEAN IN ADDRESSING REFUGEE CRISIS
IN THE REGION: PRACTICES AND CHALLENGES

A key question is to what extent does ASEAN play a role in addressing refugees. It can be generally assumed that ASEAN, since the end of the Indo-chinese refugee crisis, has simply been focusing on immediate and temporary solutions, instead of more preventive and durable ones. The following graphic portrays the overall attempts generally made by ASEAN to resolve the refugee crisis and the stage where ASEAN puts its focus (see Figure 5):

Figure 5: ASEAN and refugee crisis: between problem and solution
Analytical Framework of Refugee Crisis in ASEAN: Problem and Solution



ASEAN has been widely recognized as not having touched the preventive and permanent aspects of refugee solution. Even in the context of the Rohingya refugee crisis, ASEAN tends to keep a distance with Myanmar as the country of origin. Regarding this, Robert (1998) clearly emphasized that the prevention of population movements corresponds essentially to the

17 Azizah Kassim, Cross border movement of foreign workers in Malaysia: a comparative analysis, in *Master Builders*, Third Quarter 2015. Retrieved from [http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER\(78-91\).pdf](http://www.mbam.org.my/mbam/images/MBJ3Q05pdf/@CROSSBORDER(78-91).pdf), on June 12, 2016.

prevention of armed conflict and the prevention of abuses during armed conflict.¹⁸ Taking the case of migration, for instance, Thorburn (1996) added that prevention should be prioritized in an effective comprehensive strategy that can be carried out on two levels, before and after refugees have fled to other countries.¹⁹ It became obvious during the ASEAN Ministerial Meeting on Transnational Crime to discuss the refugee crisis that was held in Kuala Lumpur in July 2015,²⁰ that most ASEAN countries heavily avoid discussing the internal problem of Myanmar including the Rohingya issue. This was also underlined by an IOM representative for Indonesia:

People are being protected here. And that is the goal, not resettlement. People are saying that the UNHCR not resettling people fast enough. But UNHCR is not a resettling agency, they are a protection agency. It is not an ideal situation that they have to wait, but they are safe here in Indonesia. So, there is a pool created here that is not too large, but it is working. People are being taken care of for the most parts. It is not a bad model.²¹

Since the ending of the Indochinese refugee crisis in the middle of the 1990s that largely involved ASEAN and resulted in a regional arrangement and cooperation in the form of the Comprehensive Plan of Action (CPA), no similar regional framework or collective instrument can be found although a wide variety of stakeholders have strongly urged that the current refugee crisis in Southeast Asia should be regionally handled under the framework of ASEAN.²² Similarly, an IOM representative in Jakarta critically stated that it is not only about the absence of an ASEAN collective way in Southeast Asia for addressing refugee crisis that is an issue, but also the minimal attempts that ASEAN has made for handling the refugee crisis:

ASEAN is always going to be a challenge with the ASEAN way. ASEAN is engaged but you can also see that all ASEAN countries are engaged in the Bali process. Maybe it's good form to do something like that, because there is no ASEAN Way, no expectation in the Bali Process of what you

18 Adam Roberts, "More Refugees, Less Asylum: A Regime in Transformation," *Journal of Refugee Studies* 11, no. 4 (1998): 375–95.

19 Joanne Thorburn, "Root Cause Approaches to Forced Migration: Part of a Comprehensive Strategy? A European Perspective," *Journal of Refugee Studies* 9, no. 2 (1996): 119–35.

20 See Todayonline.com, ASEAN to set up aid fund for stranded Rohingya Muslims. Retrieved from www.todayonline.com/world/asia/asean-set-aid-fund-stranded-rohingya-muslims, on February 23, 2016.

21 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

22 See Topsfield, J. (2015). Refugees in Indonesia go on hunger strike to protest delays in resettlement. Retrieved from <http://www.smh.com.au/world/refugees-in-indonesia-go-on-hunger-strike-to-protest-delays-in-resettlement-20151015-gka7bs.html>, on March 23, 2016.

say and don't say. But I wouldn't hold a lot of hope on ASEAN to get things done because it involves pointing fingers at neighbors.²³

A similar criticism was also expressed by Makarim Wibisono, former Permanent Representative of the Republic of Indonesia to the United Nations, who stated that ASEAN looks very weak in addressing the Rohingya refugee crisis. He also underlined that there is almost no significant response made either by ASEAN countries or the ASEAN Secretariat until now.²⁴ In a similar vein, Tantowi Yahya, a member of Indonesia's House of Representative, remarked that ASEAN has no specific instrument for addressing the Rohingya refugee crisis, which should not be treated as a problem of a single country alone.²⁵

There is also pessimism among stakeholders in ASEAN about the performance and response of ASEAN to the Rohingya refugee crisis. Interestingly, regardless of this passive response, ASEAN has inspired a number of CSOs to provide a couple of regional responses and global initiatives. For instance, one of Indonesia's national NGO, *Aksi Cepat Tanggap* (ACT/Quick Response Action), established the ICRS (International Committee for Rohingya Solidarity) to mobilize global humanitarian aid for Rohingya.²⁶ Additionally, there is also efforts to mainstream the Rohingya issue regionally through discussions and advocacy such as through the Southeast Asia Humanitarian Committee, a transnational network of Southeast Asian humanitarian organizations. In 2016, this network held the Southeast Asia Conference on Rohingya, inviting panellist from Indonesia, Malaysia, and Thailand.²⁷

It is important to emphasize that ASEAN countries should set up a long term strategic regional solution that goes beyond simply providing humanitarian funds since the crisis seems to be increasing, rather than decreasing. As long as refugees and asylum seekers choose Southeast Asia as a destination, the burden will mostly and generally remain in ASEAN countries. In this regard, Indonesian Foreign Minister Retno Marsudi said that, "shared responsibility, shared burden is very important."²⁸ More than that, ASEAN countries have to be increasingly aware that the issue of refugee is a regional issue, rather than an issue of a single country alone. Therefore, a collective effort, with

23 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

24 See Amanda Puspita Sari, (2015). *ASEAN tak punya instrument untuk atas isu pengungsi*. Retrieved from: cnnindonesia.com/international/20150616183808-106-60405/asean-tak-punya-instrumen-untuk-atas-isu-pengungsi/ on January 16, 2016.

25 Ibid.

26 Interview with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016.

27 Seahum. 2016. Southeast Asia Conference on Rohingya. Retrieved from <http://www.seahum.com/rohingyaconference/> on October 1, 2016

28 Jewel Topsfield, *Refugees in Indonesia go on hunger strike to protest delays in resettlement*. Retrieved from <http://www.smh.com.au/world/refugees-in-indonesia-go-on-hunger-strike-to-protest-delays-in-resettlement-20151015-gka7bs.html>, on November 15, 2015.

similar vision, and common awareness on the issue among ASEAN countries is needed to effectively and efficiently address the problem.

Another challenge facing ASEAN is not only related to the fact that there are only two ASEAN countries signed up to the 1951 Refugee Convention, the Philippines, and Cambodia, but also the absence of a national legal framework in each non-signatory country to the Convention in Southeast Asia. This is also true for Indonesia, Thailand and Malaysia where a large number of refugees are concentrated. Unfortunately, the two ASEAN countries that have signed the 1951 Refugee Convention are not places where many refugees go. The situation often makes refugees in the region fragile and the way of addressing them unpredictable. As was emphasized by the UNHCR Southeast Asia:

Asylum seekers and stateless people in the region are fragile and unpredictable, due to a lack of national legal frameworks in most Southeast Asian countries. Furthermore, some states have introduced increasingly restrictive policies - such as denying safe disembarkation or access at the airport, and narrowing protection space and access to asylum. There is also an increase in maritime “push backs” and instances of *refoulement*... The lack of asylum laws and diversity of national legal frameworks, as well as government practices and protection environments in the region’s countries, make achieving regional harmonization challenging.²⁹

ASEAN can only realize the promise of a people-centered ASEAN by addressing the lack of a legal framework for protecting refugees in ASEAN.³⁰ Moreover, ASEAN Leaders can also take notes from the practices of other regional organization such as the establishment Common European Asylum System. It is widely recognized that since 1999 the European Union has been working to create a framework which standardizes the management of refugees, via the Common European Asylum System, and improve the current legislative framework.³¹

In addition, ASEAN countries, especially Indonesia, Thailand and Malaysia, tend to act and respond in their own ways and systems. As was stated by an IOM representative for Indonesia:

No one has similar system like Indonesia. Everyone has different way in doing things. Some has less coordination but provide more support. The

29 See UNHCR Southeast Asia. 2015 UNHCR sub-regional operations profile - South-East Asia. Retrieved from <http://www.unhcr.org/pages/4b17be9b6.html>, on January 23, 2016.

30 Silvia di Gaetano, (2015). How to solve Southeast Asia refugee crisis. Retrieved from <http://thedi diplomat.com/2015/09/how-to-solve-southeast-asias-refugee-crisis/>, on March 23, 2016.

31 Dimas Kuncoro Jati (2015). ASEAN can learn from Europe refugee crisis. In New Mandala. Retrieved from: <http://asiapacific.anu.edu.au/newmandala/2015/09/24/asean-can-learn-from-europes-refugee-crisis/>, on March 23, 2016.

Thais, probably, provide more support than the Indonesians, but they are probably not as advanced in the coordinating mechanisms. Malaysia can also put some of the work too. You have different dynamics here.³²

Nowadays, most ASEAN countries assume that once refugees arrived in a certain country, they become the responsibilities of that country. A regional humanitarian aid should be initiated by ASEAN since it is almost impossible that one ASEAN country will ask another ASEAN country to move a certain number of refugees to the country.³³ Overall, the challenges facing ASEAN described above are summarized as follows (Figure 6):

Figure 7: ASEAN and regional challenges in dealing with refugee crisis

Challenges				
Handling refugees on their own ways	No long term strategic solution beyond simply providing humanitarian aid	The absence of collective cooperation and responsibility	The absence of regional legal framework	Only 2 ASEAN countries signed the 1951 refugee convention: the Philippines, and Cambodia

In conclusion, after the end of the Indochinese refugee issue in the 1990s, it is can be argued that ASEAN lacks a regional framework or instrument for addressing refugees. ASEAN countries tend to act and response in their own ways and systems. The increasing trend of refugee in Southeast Asia, that is caused either by diverse pull factors, including workforce availability and improving living standard, or push factor, such as the ongoing Middle East war, statelessness issue of the Rohingyas, the rejection of a couple of European countries towards the Syrian refugees and many others, means that ASEAN should start thinking of a new paradigm of addressing refugees, exploring the best collective practices and regional policies, and going beyond conventional models of dealing with refugees. If not, the refugee burden will always be concentrated in such countries as Indonesia, Malaysia and Thailand.

ASEAN at least has possessed some important capitals, ranging from the establishment of the CPA to burden sharing commitment among ASEAN countries, including those that have minimal or none of refugees, such as Singapore, the Philippines and Cambodia. Moreover, the three countries, Indonesia, Malaysia and Thailand, that have the largest number of refugees in the region, firmly stated that they reject local integration. At the same time,

32 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.
33 Interview with Nugroho, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

it is almost impossible to repatriate these refugees as most of the countries of origin are either still under ongoing war and prosecution or deny citizenship status to the refugees. The condition becomes complicated when resettlement programs becomes a less viable option as more developed countries start to restrict places. An innovative and strategic solution that could be advanced by ASEAN is by putting refugees in the market labor force and/or turning them into legal migrant workers since ASEAN has some labor receiving countries. It is right that ASEAN not only has some strategic assets, but also faces some challenges. However, more attention has to be paid to strengthen and develop the assets and find a way to resolve the challenges.

C. ASEAN AND ADDRESSING THE REFUGEE CRISIS IN THE REGION: OPPORTUNITIES AND ASSETS

One of ASEAN's strategic assets for addressing refugees is its past experience about burden sharing that is related to the Comprehensive Plan of Action (CPA). As a result of war and the establishment of communist regimes in Vietnam and Cambodia, some 1.4 million refugees fled Cambodia and Vietnam, seeking asylum in neighbouring countries. Under the CPA, Southeast Asian countries agreed to provide temporary asylum. The experience serves as a proof that, when it comes to burden sharing, member countries have already shown that they can work together on the issue.³⁴ The experience and lesson from this regional commitment and cooperation can be one of the important models of effectively addressing refugee in the region.

Underlying the importance of burden sharing, for instance, Suhrke (1998) highlighted that a burden-sharing scheme based on collective action might lead to better and more enduring resolution of the refugee crisis than unilateral measures by individual states. However, as he added, a burden-sharing scheme on the matter of refugees and asylum seekers is difficult because, unlike defence cooperation, states have the capacity to ward off refugee "threats" with unilateral action and, unlike international environmental regimes which typically address the cause of a problem, refugees and/or asylums regimes address only the symptoms. These factors serve as disincentives for states to cooperate.³⁵

The burden sharing commitment among ASEAN countries is extensively appreciated by global leaders. In the context of Indonesia, for instance, while the military initially refused the coming of Rohingya boat people ashore off Aceh, the Minister of Foreign Affairs was open to and applied the policy of

34 Dimas Kuncoro Jati (2015). ASEAN can learn from Europe refugee crisis. In New Mandala. Retrieved from: <http://asiapacific.anu.edu.au/newmandala/2015/09/24/asean-can-learn-from-europes-refugee-crisis/>, on March 23, 2016.

35 Utpala Rahman, "The Rohingya Refugee: A Security Dilemma for Bangladesh," *Journal of Immigrant & Refugee Studies* 8, no. 2 (2010): 233–39.

burden sharing.³⁶ In responding to the Rohingya crisis, ASEAN countries announced that they would establish a humanitarian fund to help displaced Rohingya Muslims, with Singapore pledging US\$200,000 (SGD270,000) to the relief effort. The Singaporean Second Minister for Home Affairs and Foreign Affairs, Mr Masagos Zulkifli, who attended the ASEAN Ministerial Meeting on Transnational Crime to discuss the refugee crisis in Kuala Lumpur in July 2015, which itself was a follow-up to an emergency conference on the issue in Bangkok in May 2015, said that, “such a trust fund would demonstrate that ASEAN is responding to the challenges posed by the irregular movement of people in the region in a multifaceted way.”³⁷

Still related to the issue of burden sharing among ASEAN countries, it was also proposed during the meeting that each Southeast Asian nation should contribute US\$100,000 to the fund, adding that Myanmar had pledged to work with neighbouring countries to tackle human trafficking syndicates. Additionally, the trust fund would be administered by the ASEAN Secretariat based in Jakarta.³⁸ Shurke (1998) stated that burden-sharing schemes based on collective action might lead to better and more enduring resolution of refugee crises than unilateral measures by individual nation states.³⁹

Unfortunately, the treatment of the Rohingya Muslims in Myanmar was not much discussed at the meeting, despite being the root cause of the recent influx of Rohingya refugees to other ASEAN countries. Given the magnitude of the crisis, Southeast Asian leaders have to start rethinking the principle of non-interference⁴⁰ and go beyond the principle in order to maintain peace and stability in the region.

In order to deal with preventive measures in relation to addressing the refugee crisis, ASEAN has to start directly addressing the issue together with Myanmar, as the country of origin, and observing the best option of collectively addressing the Rohingya refugee crisis. Economic pressure is not always an option in this case. However, the success of pressure particularly depends on the extent to which Myanmar depends on ASEAN.⁴¹

Those concerned about the Rohingya issue mostly expected that the victory of the National League for Democracy (NLD) led by Aung San Suu Kyi would

36 Fabionesta, Fact Sheet: Indonesia, a paper presented at the anniversary of the Habibie Center, Jakarta, November 19, 2015.

37 Silvia di Gaetano, (2015). How to solve Southeast Asia refugee crisis. Retrieved from <http://thediplomat.com/2015/09/how-to-solve-southeast-asias-refugee-crisis/>, on March 23, 2016.

38 Ibid.

39 Astri Suhrke, “Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action,” *Journal of Refugee Studies* 11, no. 4 (1998): 396–415.

40 Silvia di Gaetano (2015). How to Solve Southeast Asia’s Refugee Crisis: Steps can and should be taken to alleviate the plight of the Rohingya. Retrieved from <http://thediplomat.com/2015/09/how-to-solve-southeast-asias-refugee-crisis/> on January 23, 2016.

41 Interview with Nugroho, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

change the complicated conditions of the Rohingyas in Myanmar, especially in terms of their citizenship status. The most strategic and effective solution to the Rohingya issue would be by granting them legal citizenship status and providing them with equal rights and treatment. Indonesia, as a country that possesses a close relationship with Myanmar, especially between the Indonesian Armed Forces with Myanmar Armed Forces, should to be more active in persuading the country to grant citizenship status to Rohingya people.⁴²

It is widely known that a durable solution for refugees has traditionally consisted of resettlement, repatriation, or local integration. ASEAN countries, especially Indonesia,⁴³ Malaysia and Thailand,⁴⁴ as noted earlier, have openly declared that they local integration is not an option. In addition, repatriation is almost impossible given that conflict and persecutions still continue. Otherwise, a government would be deemed to have violate the international customary law of *non-refoulement*. Therefore, addressing refugees in Southeast Asia should go beyond providing immediate solutions or temporary protection. One way would be putting refugees in market labor force and/or making them as legal migrant workers in labor receiving countries in Southeast Asia, such as Malaysia, Thailand and Singapore or probably distributing refugees based on the GDP of the countries. Regarding this, one of the IOM representatives in Indonesia stated:

The countries need to talk about how we are going to solve this. And maybe it should be mandated that every single countries accept a certain number of people based on GDP or based on if you are labor receiving country at a certain GDP. Signing or not signing the convention, what does it matter? You still need to make a domestic legislation. I think ASEAN should come up with its own agreement.⁴⁵

When it comes to local integration, Thailand, Malaysia, and Indonesia have all made it clear that they will not naturalize refugees. That means the most realistic option for refugees who will not be resettled and who cannot return home is to join the migrant labor force. This has already been an ad hoc solution for many years in countries like Thailand and Malaysia. However, the lack of recognition of their rights leave recognized refugees in a kind of limbo, where admission to a tightly bounded asylum space goes together with proscriptions against legal employment.⁴⁶

42 Interview with Syuhelmaidi Syukur, Senior Vice Director of ACT, Jakarta, January 21, 2016.

43 Interview with Nugroho, The Coordinating Ministry of Politics, Law and Human Rights, Jakarta, March 8, 2016.

44 Astri Suhrke, "Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action," *Journal of Refugee Studies* 11, no. 4 (1998): 396–415.

45 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

46 Adam Saltsman (2015). *A real durable solution for Southeast Asia's refugees*. Retrieved from

Moreover, it is also important to note that a number of ASEAN countries are labor receiving countries. Indeed, some member states such as Malaysia require a high supply of labor to sustain their economic development. In many cases these laborers are refugees and as was explained previously, the arrangement for refugees to work is still informal and is often hindered by lack of legal protection. However, it is possible to make the arrangement formal and under the protection of the law. One expert believes that, “more pressure should be put on Singapore and Malaysia, who need the labor. That is, the countries are supposed to just take some of these refugees, who are workforce, and put them to work.”⁴⁷ In the case of Malaysia, they are even even trying to increase the number of legal migration spaces for Bangladeshis to decrease the need for boat movements.⁴⁸

Connected to this, ASEAN has a number of important modalities, ranging from the establishment of the CPA to burden sharing commitment among ASEAN countries, including those that have minimal or no refugees, such as Singapore, the Philippines and Cambodia. The following graphic portrays the potential assets (Figure 6):

Figure 6: Assets of ASEAN in handling refugees in the region

Assets				
Regional issue and shared burden commitment	Support from diverse stakeholders	Some labor receiving countries	Experience of regional cooperation (e.g. CPA)	Modalities to address irregular migration and human trafficking

To sum up, the pressure is currently on ASEAN to quickly establish a regional arrangement and cooperation. While resettlement is an increasingly slim option for Southeast Asia’s refugees, most of ASEAN countries have rejected local integration. It is also almost certain that, as stated before, it is impossible to repatriate refugee. Therefore, ASEAN has to go beyond traditional and standard solution and start thinking of new paradigm and alternative. This should be done as soon as possible since it is commonly predicted that in the future ASEAN will face similar problems such as that seen in Europe. On the one hand, ASEAN countries are viewed as becoming more and more prosperous and well-developed. This condition will, more or less, attract more refugees to come to the region. On the other hand, a number of

<http://thediplomat.com/2015/12/a-real-durable-solution-for-southeast-asias-refugees/>, on March 23, 2016.

47 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

48 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

European countries currently and openly reject the coming of refugees.⁴⁹ As it is highlighted by one of the IOM representatives in Indonesia:

ASEAN will have some of the problems the West has eventually. Because it is becoming more and more prosperous. And it's becoming more and more attractive place to work. And these people are coming from nothing so any jobs that they can find are worthwhile. People are coming to this region because there are works. This trend has happened in Malaysia and Thailand.⁵⁰

Finally, if the handling of the refugee crisis in the region still puts much focus on conventional ways, especially providing temporary protection, ASEAN, as a regional body, it is almost certain that the problem will not go anywhere.

49 Interview with Fabionesta, the Chair of Suaka, Jakarta, January 8, 2016.

50 Interview with Stave Hamilton, IOM Representative in Indonesia, Jakarta, February 22, 2016.

Conclusion and Recommendation

A. CONCLUSION

To examine refugees in the Southeast Asia region in a way that looks at the various dimensions of policies, practices, challenges, solutions, and many others, clearly requires two different levels or units of analyses. The first one refers to the regional level by exploring the role of ASEAN as a regional body and examining the extent to which ASEAN has established a regional framework and collaboration to strategically address the refugee crisis in the region. This level of analysis is mainly founded on the fact that the refugee issue is a global one, connecting one country to many others. It is indeed not a single and isolated crisis. The second one refers to individual countries, in this case the member states of ASEAN. This level of analysis primarily relies on looking at the reasons and ways that ASEAN countries directly and closely address the crisis, especially since the real crisis actually exists within the countries themselves. Therefore, a rigorous account for the refugee crisis in the region should deal with and bridge the contrasting levels of micro and macro analyses of refugees. The policies and practices, especially the best ones, can be raw materials to be furthered and taken up as best practices and policies of ASEAN to address the refugee crisis in the region.

The experiences of ASEAN countries in dealing with the refugee issue started with the Indochinese refugees in the 1970s. However, relative to this past group of refugees that were largely homogenous (i.e. Indochinese), the recent influx of refugees into the region tend to be larger in term of its number, more heterogenous in term of its origins and also where they are being housed. That is, rather than being solely concentrated in camps, a large number of refugees in ASEAN are urban refugees, livings in housing, flats or apartments. In addition, although Malaysia hosts the largest proportion of refugees in the region - almost one third of the total number of refugees in the region - the composition of refugee in the country tends to be more homogenous, when compared to those found in Thailand and Indonesia. Indeed almost 90% of refugees in Malaysia are from Myanmar. While almost 60% of refugees in the region are hosted by Malaysia, Thailand and Indonesia, these three coun-

tries are not signatories to the 1951 Refugee Convention, despite increasing national and international pressures for them to ratify it. There are almost no operational legal frameworks established by the countries to deal with refugees in the region, other than immigration acts, lumping refugees under the same category as illegal migrants. As a result, these ASEAN countries tend to develop their own specific policies and practices in dealing with the refugee crisis. These policies and practices are mostly marked by their changeable, ad-hoc, and optional characteristics. Since these countries are not signatories to the 1951 Refugee Convention, any policies and practices that do emerge are not necessarily obligatory and compliance is not guaranteed. Instead they tend to only endorse the state's national interests, particularly in terms of domestic security and development, rather than to prioritize the interest and destiny of refugees.

For example, when it comes to policy making, refugees are mostly treated as non-priority issues. Only in cases where refugees are seen as benefitting a country, such as to fill a country's shortage of labor to development industries and infrastructure, as is the case in Thailand and Malaysia, can a more nuanced national policy consideration be found. Malaysia and Thailand generally adopts, to certain extent, a semi-open policy, often loosely letting refugee enter their territories. Having said that, Thailand has recently launched a strong crackdown on people smugglers. In the case of Indonesia, which is a surplus labor country, the establishment of the Management of People Smuggling, Refugee, and Asylum Seeker Desk at the Coordinating Ministry for Politics, Legal, and Security Affairs (*Kemenko-polhukam*) tends to be a half-hearted policy as its budgeting and executing process is not much clear.

Basically, the majority of refugees are not allowed to access the three basic rights that they are entitled to: education, health service and work permits. However, each country often modifies and develops some specific policies related to these issues, but only if these policies and practices do not disturb their national interest. For instance, in terms of health service for refugees, Malaysia applies a practice of allowing the UNHCR to produce a card for documented refugees and has policy whereby UNHCR cardholders are able to have a 50% discount on the normal foreigner rate for health services. Meanwhile, Thailand does not prohibit refugees from receiving health service as long as they can pay prices set up by health service providers. In Indonesia, since the number of refugees is relatively small, the health issue of refugee is mostly handled by the UNHCR and the Government. Moreover, in Malaysia one issue that arises is the differential treatment given to different groups of refugees. For example, Rohingya refugees and other group of refugees, especially Syrian, Bosnian, Pilipino in Sabah, and Acehnese refugees, are provided

with special housing, access to health service and work permit, thereby creating an elite class of refugees.

The most pressing issue is currently finding a creative and innovative solution to the refugee crisis in the region. The condition is particularly exacerbated by the detachment of economic dimensions from the refugees within the regime of 1951 Refugee Convention. It is right that the Convention has resolved the general problem of refugees, by ensuring special rights to cross borders and claim asylum (admission) and/or secure protection from persecution. Although it is widely argued that the Convention, in principle, strongly discourages the treatment of refugees on the basis of charity, the reality broadly indicates that refugees in the region are treated in the circle of a charity game.

More than that, the political controversies surrounding the refugee crisis has come to dominate discussions as opposed to finding ways of resolving it. By not ignoring the conventional solutions to refugee crisis, efforts to resolve refugee crisis in the region should be broadened and go beyond these conventional ones, such as putting them in high labor demand countries with special conditions, measures and procedures in the way that will not disadvantage the countries' national interests. Other non conventional solutions should include providing refugees with microcredit, access to education, and naturalization of refugees that have been living in the countries for decades, providing proper documents, and many other specific measures and conditions. A new paradigm is unquestionably needed to address the refugee crisis in the region.

This year has been generally begun with some promising and prospective improvements related to policy and practice of addressing refugee issue in the region, which can be deemed as a part of this new paradigm. After taking relatively long time and stalled talks on putting refugees on labor demand and/or reapplication of IM13 for refugees, the Government of Malaysia finally launched the pilot program of providing refugees with work permit and planned to begin it early this year. That is, the Government of Malaysia will grant 300 Rohingya legal work-permits to work in the plantation and manufacturing sectors for a three-year period. If the pilot program satisfies all the stakeholders, particularly the Government and refugees, it will be extended to involve more refugees or all UNHCR card holders and engage diverse sectors.

Likewise, in Indonesia, after a long process and an increasingly emerging doubt over the draft of Presidential Decree (*Keputusan Presiden/Keppres*) on refugees, it is until early this year that the Government of Indonesia finally issues it. This Presidential Decree, No. No. 125./2016, will mainly serve as a national legal framework or strategic instrument for dealing with refugees. As a result, refugees coming to this country will be no longer administered under any other Immigration Act. Moreover, Thai Government has recently

approved a framework to enhance the identification and protection of refugees although the detailed draft is still finalized by the Immigration Bureau of the Royal Thai Police, working with a newly-created inter-ministerial committee chaired by the Prime Minister or his deputy and the Council of State to be presented to the Cabinet. The legal framework will comprehensively serve as a screening mechanism for undocumented immigrants and refugees, rather than the Immigration Act that generally categorizes refugees as illegal aliens.

The relatively absent role of states in the region has paved the way for CSOs to play a dominant role together with the UNHCR to address the refugee crisis. It is probably safe to say that the refugee issue in the region has become a sort of charity game among CSOs. The role of CSOs should be honestly seen as part of the policy game of ASEAN states. This policy game refers to the fact that states lack the political willingness to make refugee as their formal policies. They are mostly afraid that by having a formal policy that is accommodating for refugees this would only create a pull factor that creates a greater influx. Instead, they encourage directly and indirectly CSOs to assist refugees to do most of the work. For instance, in many cases, the Government of Malaysia formally invites national CSOs and asks them to provide assistance to refugees based on their concerned sectors. More than that, government officials have even given financial support behind the scenes, channeling them through these CSOs.

Almost no ASEAN countries have put forth any individual or regional plan to address the ongoing humanitarian needs of the Rohingyas. Since the ending of the Indochinese refugee crisis, almost none of the regional framework or collective instrument that had been used then can be found now for the Rohingyas, although a wide variety of stakeholders have strongly urged that the current refugee crisis in Southeast Asia should be regionally handled under the framework of ASEAN. In most of the cases, ASEAN has only focused on providing immediate and temporary solutions, instead of preventive, durable and innovative ones. ASEAN has been widely recognized as not having addressed the preventive and permanent aspects of refugee solution. If one of ASEAN's main visions is "One Community", ASEAN should realize this by addressing the lack of a legal framework for protecting refugees in ASEAN. ASEAN should start thinking of a new paradigm of addressing refugees, exploring the best collective practices and regional policies, and going beyond conventional models of dealing with refugee. If not, the refugee crisis will continue to affect the region with no end in sight.

The absence of an operational regional framework in ASEAN mainly means that the region is poorly equipped to effectively respond to and address the refugee crisis in the region. ASEAN's efforts have so far been simply limited to calling Special or Ministerial Meeting in responding to the

Rohingya refugee crisis. Yet such meetings are only a first or stepping stone and can only provide temporary solutions and ad-hoc protections. In the meantime, strategically resolving Rohingya crisis should require the involvement of Myanmar as the country of origin of the Rohingyas. It is more likely that most of ASEAN countries seem incapable enough or unwilling to give pressure to Myanmar. The question often becomes why ASEAN states do not have the political will to put strong pressure on Myanmar.

B. RECOMMENDATIONS

The following recommendations are made based on the two different levels or units of analyses - one at the regional level that refers to ASEAN as a regional body and one at the individual level of ASEAN countries.

While almost 60% of refugees in the region are hosted by Malaysia, Thailand and Indonesia, these three countries are not signatories to the 1951 Refugee Convention, despite increasing national and international pressures for them to ratify it.

Host Countries:

1. On policy making, refugees in the region are mostly treated as non-priority issues. Only when the influx of refugees is seen as benefitting the countries, such as filling the host countries' shortage or needs for cheaper labor, would a Government facilitate them into its policy consideration. Host countries currently should change this paradigm in addressing refugees. They should treat refugees as the primary concern and priority. With this paradigm shift, policies and practices produced by host countries for addressing refugees should focus strategic and durable approaches, rather than changeable, ad-hoc, and optional ones.
2. It is widely known that the majority of ASEAN countries are not signatories to the 1951 Refugee Convention, despite increasing national and international pressures for them to ratify it. However, each country often modifies and develops some specific policies related to this issue as long as these policies and practices is in line with their national interests. Host countries should concretely establish a legal instrument or framework that specifically deals with the refugee issue, including administration, documentation, protection, solution, etc. It should be underlined that most of ASEAN countries are already signatories to a number of international covenants that grants rights to everyone including refugees, and as such ASEAN countries should not shy away from their responsibilities.
3. War and persecution have disrupted the education of young refugees, threatening to leave a generation of uneducated people. While, some

do have access to schools or trainings in their host countries, these are mostly run by NGOs outside of a government's national education system. Host countries should provide refugee children with education up to the level of university degrees or at the very least grant full access to primary education. Regarding this, proper measures are needed to ensure that the policy will not, to some extent, undermine the general interests of host countries. In addition, the design and implementation of this sort of policy should be assisted and/or be under the close cooperation with donors and resettlement countries. This policy and practice will certainly help prepare refugees for either resettlement or repatriation.

4. Still related to the issue of education for refugee is the absence of acknowledgment or certification of their completed education. Host countries should provide formal acknowledgment and certification for their completed education. This policy and practice will help them to either continue their education or pursue jobs.
5. It is true that a number of refugees have been working in informal sectors; however, most of them merely rely on charity. Host countries should provide refugees with more economic opportunities followed by standard/proper employment protection. This policy and practice will not only halt refugee exploitation, but also make them self-reliant. With a number of labor receiving countries in the region, the policy can be done by putting refugees into industries where there is high demand for labor. Refugees can then be seen as benefitting host countries, filling in the countries' shortage of national labor or need for cheaper labor for industry and infrastructural developments, especially in places like Thailand and Malaysia.
6. More than simply putting refugees in industry to fill shortage of labor demand, host countries should provide them with micro-credit. This should be done with the cooperation of NGOs and the UNHCR.
7. One of the big concerns related to refugee protection is inadequate access to health service. Host countries should provide refugees with appropriate health service according to local standards. It is a fact that the prices set up by health service providers are relatively not affordable for the majority of refugees, especially for Rohingya refugees.
8. Another extensive issue found during the process of addressing refugee is corruption and bribery among various stakeholders/agencies, including government officials. Host countries must combat practices of corruption and bribery in all aspects and stages related to refugees. They should also strongly fight human trafficking that often becomes the source of the influx of refugees and eliminate arbitrary raiding and

detaining refugees as well as avoiding the use of torture in dealing with refugees.

9. A large number of refugees are concentrated in many camps and detention centers where there are reports of widespread abuse by prison guards who act with impunity, overcrowded conditions, and irregular and insufficient food. Host countries should develop, as alternatives to detention centers and/or camps, some sort of integrated community shelters. Host countries can cooperate with NGOs and other international organizations to realize this program and project.
10. Host countries should provide equal treatment among refugees, regardless of their countries of origin. This treatment includes practices of documentation and administration, providing access to primary education, economic opportunities and health service.
11. Host countries have extensively relied on NGOs in handling refugees and even made it as a policy to avoid being seen as encouraging more refugees to come. Host countries should play a more active role than NGOs in handling refugee; and thereby not make it as a sort of charity game for NGOs.

ASEAN:

1. Since the end of the Indochinese refugee crisis, almost none of the previous regional framework or collective instrument can be found in the current effort to address the recent refugee crisis in the region. At the same time, a wide variety of stakeholders have strongly urged that the refugee crisis in the region should be handled under a regional framework or instrument. ASEAN should establish a strategic regional instrument or framework for effectively addressing refugee issue and combating human trafficking in the region.
2. ASEAN should put more focus on preventive, durable and innovative solutions to the refugee crisis, instead of immediate and temporary ones that mostly takes the form of burden sharing.
3. ASEAN should actively cooperate with countries of origin, to address root causes and facilitate voluntary repatriation in a safe and dignified way for refugees, and strengthen dialogue among ASEAN countries to address the refugee issue.
4. ASEAN should more actively endorse or advocate humanitarian norms and ethics among ASEAN countries to properly address the refugee issue.
5. ASEAN should actively reinforce cooperation with the UNHCR and IOM for refugee protection and strengthen collaboration between NGO and ASEAN and among NGOs in addressing refugee issue.

6. ASEAN should support and facilitate cooperation among ASEAN countries for combating human trafficking in the region.
7. ASEAN should strengthen cooperation with resettlement countries to extend resettlement opportunity for refugees in the region.

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ASEAN countries tend to develop their own specific policies and practices in dealing with the refugee crisis. These policies and practices are mostly marked by their changeable, ad-hoc, and optional characteristics. Since these countries are not signatories to the 1951 Refugee Convention, any policies and practices that do emerge are not necessarily obligatory and compliance is not guaranteed. Instead they tend to only endorse the state's national interests, particularly in terms of domestic security and development, rather than to prioritize the interest and destiny of refugees. By not ignoring the conventional solutions to refugee crisis, efforts to resolve refugee crisis in the region should be broadened and go beyond these conventional ones. A new paradigm is unquestionably needed to address the refugee crisis in the region. The most pressing issue is currently finding a creative, innovative and strategic solution to the refugee crisis in the region.

Almost no ASEAN countries have put forth any individual or regional plan to address the ongoing humanitarian needs of the Rohingya. Since the ending of the Indochinese refugee crisis, almost none of the regional framework or collective instrument that had been used then can be found now for the Rohingyas. In most of the cases, ASEAN has only focused on providing immediate and temporary solutions, instead of preventive, durable and innovative ones. ASEAN should realize this by addressing the lack of a legal framework for protecting refugees in ASEAN. If not, the refugee crisis will continue to affect the region with no end in sight. The absence of an operational regional framework in ASEAN mainly means that the region is poorly equipped to effectively respond to and address the refugee crisis in the region. ASEAN's efforts have so far been simply limited to calling Special or Ministerial Meeting in responding to the Rohingya refugee crisis.