

## RESEARCH NOTE / *NOTA PENYELIDIKAN*

### AMPLIFIED INEQUALITIES AMONG MIGRANTS AND REFUGEES: A CLOSER LOOK AT MALAYSIA DURING THE COVID-19 PANDEMIC<sup>© Σ</sup>

*PENINGKATAN KETIDAKSAMARATAAN DI KALANGAN MIGRAN DAN PELARIAN: PEMERHATIAN TERHADAP MALAYSIA SEWAKTU PANDEMIK COVID-19*

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#### Introduction

Incidents of human slavery have greatly increased in the wake of the COVID-19 pandemic according to the Trafficking in Persons (TIP) report published on 2 July 2021 by the U.S State Department (U.S. Department of State 2021). While Thailand was demoted to Tier 2, Malaysia plunged to Tier 3 for not fully meeting the minimum anti-trafficking standards or making significant efforts to do so. The country was placed on Tier 2 Watch List for the three years previously (Strangio 2021). Evidence of forced labour and other abusive labour practices resulted in blocked imports by the U.S. Customs and Border Protection agency (US CBP) against the world's largest medical glove manufacturer based in Malaysia and its subsidiary. The major and most active cluster during the third wave of COVID-19 was sparked by the manufacturer's workers' dormitories that recorded 4,093 cases of infection. Up to 24 workers occupied a single room in the hostels that function as workers' accommodation, in breach of the requirements of the Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446) (Idris 2021). Aside from the cramped living conditions, other indicators of forced labour include debt bondage, excessive overtime with low pay and deductions, and retention of identity documents (Miller 2020).

Further, at the height of the coronavirus pandemic in July 2020, the U.S. CBP issued a Withhold Release Order against one of Malaysia's biggest palm oil producers, following evidence of forced labour practices involving abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime (U.S. CBP

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Σ **Article Info:** Submission date: 6 August 2021; Acceptance date: 1 February 2022; Publication Date: 1 July 2022.

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2020).

Malaysia's Ministry of Human Resources further announced in April 2020 that cuts and lay-offs should first target foreign employees (Government of Malaysia 2020a). When millions of workers have been left without an income, savings or social protection, an already undermined labour system and governance could only amplify the fragility of those falling victim to debt bondage and other forms of forced labour (ADB 2021). Despite risks to their lives, most will tend to accept informal jobs in exploitative conditions without the necessary health and labour protections (Sharma 2020).

### **Xenophobia, Exclusion and Protection Challenges**

The economic and social stress is aggravated by a new wave of xenophobia and stigma that deepens long-term discrimination against migrants and refugees, accused of spreading the virus (Guadagno 2020; UNSDG 2020). Since the beginning of the outbreak, the Malaysian Government had decided to provide free testing and treatment for any foreigners with COVID-19 symptoms (Tayeb & Hong 2020). The Government also reassured that undocumented foreigner who come forward for testing and treatment would not face arrest for immigration offences (UNHCR Malaysia 2020). Despite this initial assurance, arrests and raids of migrants were conducted in certain Enhanced Movement Control Order areas. Asylum seekers who were going for registration by UNHCR and UNHCR cardholders whose registration had expired and could not be renewed due to the lockdown were also arrested (Verghis *et al.* 2021).

Healthcare inequities depicted by inequitable access to COVID-19 vaccines and health treatments indeed are rooted in broader structural inequalities experienced by certain quarters such as migrants and refugees (Commissioners of and collaborators with the International AIDS Society-Lancet Commission on Health and Human Rights 2021). While the government announced it will vaccinate everyone living in the country in February 2021, a hard-line approach on undocumented migrants and refugees, including Rohingya was reported following increased crackdown on undocumented migrants and a formal announcement that those detained will be placed in immigration detention centres.

Oscillating between inclusion and exclusion, the government recently announced in July 2021 that guidelines for undocumented immigrants and refugees to receive COVID-19 vaccine shots were already approved by the COVID-19 Immunisation Task Force (Government of Malaysia 2020b). The mixed and inconsistent messages inevitably heighten pre-existing fears, worries and distrust among migrants and refugees, undermining the effectiveness of the public health response plans and country's route to recovery from the pandemic due to escalated risks to contracting and spreading the virus (Llewellyn 2021).

Border closures for non-nationals as a containment measure discount protection needs for those seeking international protection. Individual assessment and relevant

procedures including trafficking screenings are not in place, including for those taking maritime routes, who are either pushed back if intercepted or detained if found to be close to shore or onshore (Daniel & Yasmin 2020).

### Future Perspectives

Despite the onslaught of the pandemic, countries like Malaysia remain a major host of migrant workers, refugees, and asylum seekers in this subregion. Hosting countries must not lose sight of the sheer scale and complexity of the crisis that demand equitable, inclusive, and whole-of-society response plan (Saltsman 2015).

Labour standards must be strengthened in the wake of financial struggles and travel restrictions that induce retrenchment of workers who in turn, accept informal jobs (Makovsky 2019). Irregularity and informality will create an environment conducive to trafficking and forced labour to take root, including increasing new demand for child labour. Although Malaysia ratified the ILO Convention on Forced Labour 1930 in 1957 and enacted the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM), at the time of writing, the term “forced labour” is narrowly addressed as a form of exploitation in section 2 of ATIPSOM. Prosecuting forced labour through the offence of trafficking has been extremely challenging as the means of coercion was to be proved through evidence of physical force or compulsion, thereby excluding cases such as unilateral retention of passport, long hours of work and deferment of salaries and cramped accommodations (*PP v Boon Fui Yan [2015] MLJU 999*; *PP v Mong Soon Tat [2019] 1 LNS 726*; *PP v Caryn Lim Bak Hiang [2020] MLJU 995*). If the law fails to keep up with the realities of trafficking and forced labour, such cases would not be able to be prosecuted under a separate offence of forced labour (Bon *et al.* 2021). In addition, debt bondage and other acts for purposes of forced labour may be just treated as immigration offences or industrial disputes between employers and employees (Domicelj and Gottardo 2019).

The government should issue and stand by clear and consistent assurances to all groups that there will be no legal repercussions for testing, seeking medical treatment and getting the COVID-19 vaccination (UNESCWA 2020). Therefore, a firewall between health and immigration services needs to be strictly enforced so that persons at risk of immigration arrests can come forward without fearing that their information will be divulged.

Clear, consistent, accessible, and bespoke information campaigns without language and other barriers should be developed and grassroots community health workers, civil society actors and local government should be adequately trained, mobilised, and empowered to reach out to marginalised populations, including undocumented migrants and refugees both in urban and rural settings (Lee 2020). Indonesia’s provinces of Aceh and Pekanbaru for instance, have been commended for conducting their vaccination programmes in collaboration with the local government authorities (ASEAN Secretariat 2019). In Aceh, all 81 refugees including children had received vaccination within 5 days of their arrival on a remote island off the coast of Aceh after being at sea for more

than 100 days (Llewellyn 2021).

Potential impacts of social and economic inclusion of migrant and refugees should take centre stage in policy thinking, investigating opportunities for increased productivity and better welfare for both the host country and migrant and refugee populations (Bismonte 2020; *Malaysia Now* 2021). Responsibility sharing and a multi-actor partnership approach which place refugees and migrants at the centre both on the level of policy and implementation are key elements of the common frameworks and principles that make up the Global Compact on Refugees and the Global Compact for Migration (Domicelj and Gottardo 2019). Among the key objectives of the Global Compact on Refugees are to ease pressures on host countries and enhance refugees' self-reliance (UNHCR 2020). While the pandemic has decreased the motivation of states to support the inclusion of refugees, response to a public health crisis can only be effective if everyone is safe, regardless of their status (Dempster *et al.* 2020; Harper 2020).

As commented by Mr. Philip Alston, Special Rapporteur on extreme poverty and human rights, the human rights community has barely engaged with the resulting phenomenon of deep economic insecurity (UNCHR 2020). The long-term vision of economic inclusion of migrant and refugees proven to benefit the host society in other countries must additionally be promoted for a more durable solution, especially in countries with protracted situations of refugees. Other than inclusion in the countries' health response plans, support, and investment in durable solutions through socio-economic recovery plans will be vital over the longer term (ILO 2020). The socio-economic impacts of COVID-19 can be met with targeted programmes that include the vulnerable groups, backed by funding modalities of development partners that support governments' planning processes and delivery of the targeted programmes, such as through Global Humanitarian Response Plan (UNHCR Malaysia 2020).

Recognising the damaging effects of widening inequalities and vulnerabilities to certain social groups such as migrants and refugees, it is hoped that the pandemic will prime comprehensive evaluations and necessary remediations by the government, guided by a whole-of-society and burden-sharing approach contextualised to local needs, involving inter alia, federal, and local governments, donors, international organisations, civil societies, academia and individual members of society.

### **Acknowledgement and Declaration**

The author would like to show their gratitude to SINERGI's anonymous reviewers and their constructive feedback in improving the quality of the manuscript. Rodziana is also immensely grateful for their comments on earlier versions of the draft. No potential conflict of interest was reported. This work was supported by the funding for a consultation project by Centre for Human Rights Research and Advocacy (CENTHRA) (Registration Code: PLiMJ/PR266/2/82)

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