

## Recent Trends in Transnational Population Inflows into Malaysia: Policy, Issues and Challenges

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**Abstract:** Malaysia's foreign population increased rapidly in the last three decades. In 1980, of a population of over 13 million, 0.49 per cent were non-citizens. In 2010, the number of non-citizens increased to 2.3 million, making up 8.3 per cent of a total population of 28.4 million. The majority is low skill workers, both legal and irregular. There are also other groups comprising expatriates, international students, participants of the 'Malaysia My Second Home' programme, and asylum seekers/refugees whose numbers are relatively small. The inflows which contribute significantly to economic development have their attendant problems. This paper takes a comprehensive view of all the major inflows, taking a cue from state policy towards them. The inflows are divided into two categories: welcome and problematic inflows. It then outlines how each inflow emerged and expanded, state responses towards them and discusses related issues and challenges. All categories of migrants have both positive and negative impacts, but the low skill workers (including asylum seekers and refugees) are the most challenging especially in relation to the economy, border security, and internal order. The paper concludes with a discussion on the urgent need to review the foreign worker policy including Malaysia's stand on asylum seekers/refugees to address the problems related to migrants.

Key words: Asylum seekers and refugees, expatriates, foreign workers, international students, irregular migrants

JEL classification: F22, F24, J15, J23, J38

### 1. Introduction

Malaysia witnessed a rapid increase in its foreign population in the last three decades. In 1980, there were only 63,700 non-citizens making up 0.49 per cent of a total population of about 13 million (Department of Statistics, 1983). By 2010, the foreign population escalated to over 2.3 million, making up 8.3 per cent of a total population of 28.4 million (Department of Statistics, 2011). The rapid increase is mainly due to transnational population inflows in response to labour shortages in some sectors of the economy. This paper attempts to identify the various streams of population inflows into the country, and examine public perceptions and responses towards them and how such perceptions impacted state policy regarding the new migrants. It will focus mainly on the low skill foreign workers who form over 93 per cent of foreigners in Malaysia. This will be followed by a discussion on the foreign worker policy, strategies and challenges in implementation.

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As the majority of the low skill foreign workers are in the urban areas, the paper will also explore how their presence and employment impacted development and urbanisation in the country.

This paper draws on secondary data and official statistics as well as findings from the writer's fieldwork on migrant workers, illegal immigrants, and refugees carried out intermittently in Peninsular Malaysia and Sabah between 2000 and 2013. Reports in the print and electronic media are also used to gauge public response to the immigrant populations. By adopting a macro view of the migration trends in Malaysia, this paper departs from previous studies on migration which tend to investigate the inflows and migrants in a fragmented manner, based on their nationalities, job sectors, gender and legal status.

## 2. Transnational Migration

With regard to transnational migration, Malaysia plays a dual role as a labour receiving and sending country, and it is the former role which is dominant. While there are no comprehensive official records on emigration, it is estimated that about 900,000 Malaysians are abroad, as students, workers and their dependents. The diaspora is widespread globally, especially in developed countries such as the United States of America, the European Union, Australia, New Zealand, Japan, and elsewhere such as in the Middle East, Africa, Taiwan, Korea, Singapore and Brunei. There are also thousands of Malaysians who commute to work to Singapore on a daily basis.

The 2010 population census shows that there are over 2.3 million foreigners in the country, but this figure is a gross underestimate. There are a large number of irregular migrants, or illegal immigrants (or *pendatang asing tanpa izin* or *PATI* in Bahasa Malaysia), as they are officially referred to in Malaysia.<sup>1</sup> Many of these illegal migrants have not been enumerated, as they refused enumeration for fear of being arrested, and hence the actual number is difficult to determine. Certainly, the number of non-citizens in the country is much higher than indicated in the decennial population censuses.

Apart from the temporary inflow of tourists that rose to 25 million in 2012, there are other identifiable population inflows consisting of low and high skill foreign workers, students, asylum seekers, and participants of the 'Malaysia My Second Home' (MM2H) Programme. Foreign workers, especially the expatriates have played a major role in Malaysia's economic development in the pre-independence era, and continue to do so after independence in 1957, albeit at a reduced rate. In the early years of independence, the services of high skill foreigners were sought to guide socio-economic development planning and steer its implementations both in the private and public sectors. The low skill foreign workers began to move in from the early 1970s, and their number escalated exponentially within a decade in response to acute labour shortage in some sectors of the economy particularly in agriculture in the countryside, and construction industry in the urban areas. The early seventies also saw the entry of asylum seekers from the neighbouring countries, starting with those from Mindanao in southern Philippines into Sabah; and from war torn Vietnam and Cambodia into Peninsular Malaysia. Since the 1990s, asylum seekers have also been arriving in substantial numbers from other regions

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<sup>1</sup> The term 'illegal immigrants' will be used interchangeably with 'irregular migrants' in this paper.

such as Bosnia in Eastern Europe, Sri Lanka, Afghanistan, Iran, Iraq, South Thailand, Indonesian Aceh, and Myanmar; with a sprinkling from a few African countries facing political instability or environmental disaster.

The entry of foreign students and foreign residents began in the late 1990s. The Private Education Act 1996 facilitated the establishment of private higher education institutions (HEIs) to provide more places for the growing demand for higher education which could be met by the existing public institutions. It was also intended to attract international students in an attempt to commoditise education as a new source of state revenue (Tham 2013: 1-17; Azizah Kassim 2013: 41-65). This has led to the continuous inflow of foreign students.

At the end of 1990s, the Department of Immigration introduced a scheme to lure older rich foreigners to live in Malaysia, under its Silver Hair Programme. The programme was reviewed in 2002 and repackaged as the 'Malaysia My Second Home' (MM2H) Programme. In 2006, it was placed under the purview of the Ministry of Tourism (MoT), where a One Stop Centre was established to administer the programme. Several changes were made to the terms and conditions of participation, of which the most significant is allowing foreigners below 50 years to apply and application procedures were made simpler by allowing personal application as an alternative to sponsored entry. The MM2H programme is now actively pursued by the Ministry of Tourism and many housing developers target their high end products to cater to the needs of this group of foreigners.

### 3. Inflow Patterns and State Response

State response to the different groups of foreigners in the country vary as reflected in the different rules and regulations that govern their entry (Liow 2006). The entry of foreign workers, be they legal, low skilled or high skilled, is managed by separate divisions in the Department of Immigration. The low skill legal foreign workers (LSFW) or *pekerja asing* are administered by the Foreign Workers Division (*Bahagian Pekerja Asing*); the high skill foreign workers by the Expatriate Service Division (*Bahagian Penggajian Pegawai Dagang*); and illegal workers and migrants (IM) by the Enforcement Division (*Bahagian Penguatkuasaan*). The MM2H participants are under the purview of the Ministry of Tourism, foreign students under the Ministry of Education; while the asylum seekers and refugees (ASR) come under the National Security Council (*Majlis Keselamatan Negara*) in the Prime Minister's Department. In general, the different streams of population inflows can be divided into two categories depending on state response towards them: first, the welcome inflows, comprising the expatriates, MM2H participants, and foreign students; second, the problematic inflows, consisting of low skill foreign workers, illegal immigrants and asylum seekers and refugees. The status of the different inflows and state response towards them will be discussed next.

#### 3.1 Welcome Inflows: The Expatriates, MM2H Participants and Foreign Students

##### 3.1.1 Expatriates

They are high skill foreign workers in the managerial, executive and technical capacity who are engaged in both the private and public sectors. In the latter, they are in education, medicine, agriculture, tourism and related industries; in the former, many are working in

multi-national corporations/industries owned and run by their respective native countries. They are the elites among foreign workers with a minimum monthly salary of RM5,000 and minimum job contract of two years. As Malaysia aspires to be a developed nation by 2020, more expatriates are needed in both the private and public sectors. The government is going all out to lure them to work in Malaysia. Among the initiatives taken to achieve this objective is the establishment of the Expatriate Service Division in 2011 and strategies adopted to attract them include making their recruitment procedure relatively short and giving long term visa - the Residence Pass-Talent (RP-T)- that allows top foreign talent in eleven selected industries to live and work in Malaysia for ten years.<sup>2</sup> Expatriates are allowed to bring along family members, buy properties, and invest. Besides the high salary, the expatriates also enjoy other perks attached to their jobs such as medical insurance for themselves and family members, accommodation, education fees for their children, and paid home leave. As such, they are not considered a burden to the Malaysian economy. In 2012, there were 44,140 expatriates in Malaysia, making up 2.7 per cent of foreign workers in the country. They were mainly from India (20%), China (10%), Indonesia (7%), the Philippines (7%), Japan (6%), United Kingdom (5%), Republic of Korea and Pakistan (4% each), Singapore and Australia (3% each), Iran (2%) and the remaining 29 per cent from other parts of the world. In terms of job sectors, the majority are in services (50%), followed by manufacturing (18%), information technology (10%), education and construction (7% each), and petroleum (5%).

### 3.1.2 Malaysia My Second Home Programme (MM2H)

This is a residence scheme that enables 'rich' foreigners to stay in Malaysia for a relatively long period, that is, on a ten-year visa which is renewable on expiry. It is open to all foreigners from countries recognised by Malaysia, subject to various terms and conditions which include opening a fixed deposit account amounting to RM300,000 in an international bank operating in Malaysia for applicants below 50 years of age; and RM150,000 for those above 50 years, in addition to proof of an off-shore monthly income of RM10,000. Applicants must also undergo and pass a medical check-up (except for those already suffering from some form of illness), and have no criminal records. Among the perks given to MM2H participants are permission to take along close family members (spouse, parents and unmarried children below 21 years), exempt from taxes on the purchase of cars, interest on fixed deposits and import of household goods. They can also buy properties, invest in the local stock exchange, and undertake business ventures. Participants of MM2H below 50 years are not allowed to take up employment, but those above fifty years are allowed to take up part time jobs.

Within a decade, the programme gained a measure of success with the number of participants increasing from 818 in 2002 to 22,230 in 2012. The majority are from Asia with the Republic of China (19%) taking the lead, followed by Japan (13%), Bangladesh (12%), Great Britain and Northern Ireland (9%), Iran (6%), Singapore, Taiwan and Pakistan

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<sup>2</sup> The selected industries include oil, gas and energy; palm oil; financial services; tourism; business services; communications and infrastructure; electronics and electrical; wholesale and retail; education; healthcare and agriculture which form part of the National Key Economic Areas (NKEA) as outlined in the Economic Transformation Programme (ETP) of the government of Malaysia.

(4% each) and Korea and India (3% each). (Source: <http://www.mm2h.gov.my/statistics> [accessed on 18 October, 2013]). Participants are attracted to live in Malaysia due to the relatively low cost of living compared to their home countries, political and economic stability, cultural diversity, and the use of the English language in official circles and among the public. The warm climate provides a chance for those from temperate countries to escape the cold weather.<sup>3</sup>

### 3.1.3 Foreign Students

Malaysia's initiative towards internationalisation of higher education began in earnest in the second half of the 1990s, when the Private Higher Education Act was passed in 1996 to relegate part of the task of providing higher education to the private sector (Government of Malaysia, 2009). It is also designed to provide a mechanism to regulate and monitor the expansion of the private sector education to ensure quality. By 2011, higher education was positioned as a strategic export service, with Malaysia as a regional hub. The internationalisation policy for higher education which affects both the public and private higher education institutions (HEIs) has six core aspects<sup>4</sup>, one of which is student mobility into and out of the country. In 2003, there were about 32,000 foreign students and the figure rose to 86,923 in 2011 (Table 1). Malaysia plans to accelerate the enrolment of foreign students to 150,000 in 2015 and 200,000 in 2020 (Ministry of Higher Education 2011). With the rise in numbers of foreign students, Malaysia hopes that some of the best foreign talents will remain and work in the country on completion of their education to overcome the shortage of high skill professionals and technicians that are required to propel Malaysia into a developed country by 2020. Those who return

**Table 1.** Number of foreign students enrolled in institutions of higher learning, 2003-2011

	Public Institutions	Private Institutions	Total
2003	5,239	25,158	30,397
2004	5,732	25,932	31,664
2005	6,622	33,903	40,525
2006	7,941	36,449	44,390
2007	14,324	33,604	47,928
2008	18,485	50,679	69,164
2009	22,456	58,294	80,750
2010	24,214	62,705	86,919
2011	-	-	86,923
Total	105,013	326,724	518,660

Source: Department of Higher Education, Ministry of Higher Education

<sup>3</sup> Discussions with foreigners living in upper middle class housing areas, Villamas and Sierramas in the district of Sungai Buloh, Selangor in June 2013 and December 2012.

<sup>4</sup> The others are staff mobility, academic programmes, research and development, governance and autonomy and social integration and cultural engagements.

home will hopefully provide the necessary network that can facilitate future business ventures between Malaysia and their home country.

Statistics from the Department of Higher Education (2011) show that there are 501 private higher education institutions (HEIs) in Malaysia which include branch campuses of foreign universities; of this number, only 58 have been conferred the status of University and University College. In addition, there are twenty public HEIs that are supporting the internationalisation policy. The majority of the international students are in the private HEIs, as the public HEIs cater mainly for local students.

According to enrolment records, there were 86,923 foreign students from over 250 countries worldwide, mostly from Asia, the Middle East and Africa. A substantial number are from Iran (14%), China (12%), Indonesia (11%); Nigeria and Yemen (7% each), Libya (4%), Sudan and Saudi Arabia (3% each) and the remaining 39 per cent from other countries. The annual income from foreign students comes up to over RM2.346 billion a year (Department of Higher Education 2011).

Apart from the HEIs, Malaysia also has a substantial number of foreign students attending primary and secondary schools at the 113 international and expatriate schools located in all states in Malaysia except for Perlis and the Federal Territory of Putrajaya. The majority of the students are children of expatriates.

### *3.2 Problematic Inflows*

While Malaysia actively encourages the entry of expatriates, MM2H participants and foreign students, its response to other types of inflows is less enthusiastic. Low skill foreign workers are welcomed as long as they are recruited and employed legally in accordance with the guidelines provided by the Ministry of Human Resources and the Ministry of Home Affairs. Undocumented migrants/workers, and those who arrive legally but violate the immigration and labour laws will be penalised. Asylum seekers and refugees are tolerated on humanitarian grounds and to avert condemnation from the international community. These are problematic inflows and an insight into the status of such flows and how the state deals with them will now be examined.

#### *3.2.1 Legal Low Skill Foreign Workers (LSFW)*

As mentioned earlier, foreign workers from the neighbouring countries began entering Malaysia surreptitiously in the 1970s. These undocumented migrant workers were initially employed in the agricultural sector, especially in state land development schemes and private plantations, with a few engaged in the construction sector for building physical infrastructure in the urban areas. By the early 1980s, with increased influx, more began to move into other sectors in the urban areas such as services, manufacturing and domestic services. For over a decade their presence was tolerated as Malaysia was facing an acute labour shortage in some sectors of the economy. However, as their number rose and their entry into the urban areas made them more visible, public resentment towards them started to emerge especially because of the competition they posed to the local urban poor for the limited supply of low cost housing, public and social amenities and petty trading opportunities. A few were also involved in criminal activities (Azizah Kassim 1987). The negative impact of their presence and employment soon became issues for public debate which found its way into Malaysia's national

political agenda. They began to be seen as a threat to border security and internal order. Several measures were taken to regularise their inflow, and this led to the formulation of the Foreign Worker Policy (*Dasar Pengambilan Pekerja Asing*) which was implemented in early 1992. The policy has two pronged objectives: first, to encourage legal recruitment and employment of foreign workers; and second, to curb and eventually stop the entry of illegal migrant workers. Measures to be taken under this policy are entrusted to the Cabinet Committee for Foreign Workers (that later saw a name change to the Cabinet Committee for Foreign Workers and Illegal Immigrants), chaired by the Deputy Prime Minister. The implementation of this policy paved the way for the legal recruitment and employment of low skill foreign workers subject to strict regulatory terms and conditions, which tended to deny the workers of their basic rights as residents and workers in Malaysia. Unlike the expatriates, they cannot bring along family members, cannot marry while in service, and have to pay an annual levy for their work permit.

In 1993, a year after the implementation of the foreign worker policy, official statistics on the number of legal low skill foreign workers (LSFW) became available. The number of LSFW increased from slightly over half a million in 1993 to more than 1.4 million in 1997 before declining sharply to over 769,000 in 2001 following the 1997 Asian financial crises. Thenceforth it rose again, peaking at over 2 million in 2007, in spite of the government's attempt to reduce the nation's dependency on migrant workers starting in 2006 (Government of Malaysia 2006). The economic slowdown in the subsequent years saw their number declining again to about 1.571 million in 2012 (Table 2). In August 2013, the number of LSFW had risen again to 2.1 million due to the regularisation exercise under the 6P Programme which shall be explained later.

**Table 2.** Inflow of foreign workers to Malaysia, 1993-2012

1993	532,723
1995	726,689
1996	745,239
1997	1,471,645
1998	1,127,652
1999	879,705
2000	819,684
2001	769,566
2002	1,057,156
2003	1,412,697
2004	1,474,686
2005	1,821,750
2006	1,871,038
2007	2,044,805
2008	1,935,975
2009	1,918,146
2010	1,817,871
2011	1,573,061
2012	1,571,679

Source: Azizah Kassim (2012:47)

In the 1990s, workers arrived mainly from neighbouring countries such as Indonesia, the Philippines and Thailand, with a small number from Bangladesh. In early 2002, following a riot at a factory in Nilai Negeri Sembilan where Indonesian workers clashed with the Malaysian police force, the then Prime Minister Mahathir Mohamed reduced the intake of Indonesians and opened Malaysia's door to workers from other source countries within the Association of Southeast Asian Nations (ASEAN), South Asia and others, thereby increasing the number of source countries to fourteen (Department of Labour 2011).

Based on 2012 official statistics on issuance of work permits (the *Pass Lawatan Kerja Sementara*) there were over 1.571 million legal foreign workers in Malaysia. Almost half were from Indonesia (47.4%), followed by Nepal (19.3%), Bangladesh and Myanmar (about 8% each), and the rest from South and East Asia, other member countries of ASEAN and elsewhere (Table 3). In terms of job distribution, the highest percentage was manufacturing (39%), followed by plantations (20%), construction (14%), and agriculture, services and domestic maids at 9 per cent each.

The distribution of LSFW by country of origin and job sectors differs between Peninsular Malaysia and the two eastern states of Sabah and Sarawak. In Peninsular Malaysia, the workers are from all the designated source countries, while in Sabah the two designated sending countries are Indonesia and the Philippines. In Sarawak, Indonesia is the only designated country. However, workers from other countries are also allowed to work in cases where the designated countries have no workers with the expertise for particular jobs required by the three regions.

**Table 3.** Documented and undocumented foreign workers in Malaysia by country of origin, 2011/2012

Country of origin	Documented (2012)*		Registered undocumented under the 6P Programme (2011)#	
	Number	Percent	Number	Percent
Indonesia	746,063	47.466	640,609	49.16
Nepal	304,713	19.387	33,437	2.57
Bangladesh	132,350	8.420	267,803	20.55
Myanmar	129,506	8.240	144,098	11.06
India	93,761	5.965	52,478	4.03
Vietnam	48,348	3.076	13,515	1.04
Philippines	45,009	2.864	47,589	3.65
Pakistan	31,249	1.988	22,121	1.70
Cambodia	20,105	1.279	24,780	1.90
Thailand	7,251	0.461	9,455	0.73
China	8,508	0.541	3,327	0.26
Sri Lanka	4,538	0.289	5,601	0.43
Laos	76	0.005	0	0.00
Others	292	0.019	38,313	2.94
	1,571,769	100.000	1,303,126	100.00

Source: #Enforcement Division, Department of Immigration and \*Foreign Workers Division, Department of Labour, Ministry of Human Resources, Malaysia (unpublished)



The distribution of migrant workers reflects the state of economic development in the three regions. In Peninsular Malaysia, where industrialisation and manufacturing have been expanding rapidly, the majority of LSFW are in manufacturing, while in Sabah and Sarawak where the economy is still largely dependent on agriculture, LSFW are mostly found in agriculture and plantations. In fact the two sectors utilise 75 per cent of all LSFW in Sabah and 65 per cent of those in Sarawak. Legal low skill foreign workers will become illegal if they fail to conform to the rules and regulations of the foreign worker policy, such as by running away from designated employers or not renewing their work permit annually. Such violations occur frequently, thus adding to the number of irregular migrants in the country.

### 3.2.2 Irregular Economic Migrants and Workers

The implementation of the foreign worker policy succeeded in raising the number of legal foreign workers (LSFW) but failed to curb the increase in irregular migrants and their dependents. In fact, the number of illegal migrants (IM) escalated, along with that of LSFW in spite of the many measures taken to restrict their entry.

Under the Malaysian Immigration Act 1959/63, IM who violate the immigration law can be arrested, send to a detention centre previously known as the 'immigration depot' and since 2010, as Ministry of Home Affairs Depot or MOHA Depot (*Depot Kementerian Dalam Negeri*). They can be charged in court for violating immigration law, sentenced and deported after serving the sentence. IM have no basic rights and no recourse to justice. But there are avenues for them to escape being charged, sentenced and deported through regularisation and amnesty exercises carried out periodically since the mid-1980s. Through regularisation, IM can work legally, and by participating in an amnesty exercise, they are not charged under the Immigration Act. Instead, they can go home voluntarily and not be deported. Apart from regularisation and amnesty, other measures taken to curb the expansion of IM are the on-going border control operations under the *Ops Nyah 1* and the *Ops Nyah 2* that began in 1992. The former is to stop further entry of foreigners into Malaysia through unauthorised entry points (*jalan tikus* or rat trails). The latter is to root out IM who fail or refuse to participate in the regularisation and amnesty exercises.

In 1998, the Immigration Act was amended to introduce caning as a penalty for violating immigration law and to increase the fines and jail sentences. In 2002, the Act was amended again to introduce sanctions against transporting IM, employing and harbouring them and forging official documents. Subsequently in order to facilitate quick disposal of cases involving illegal immigrants, in 2006 a special court to deal with illegal immigrants (*Mahkamah PATI*) was introduced and these courts are located at the MOHA depot or in its vicinity.

Illegal entry is closely related to human smuggling and trafficking. To complement the existing measures to curb the expansion of IM, the Anti-trafficking in Persons Act (ATIP) was introduced in 2007. In 2010, ATIP was amended to include human smuggling, thus changing its name to the Anti-trafficking in Persons and Anti-smuggling of Migrants Act (ATIPSOM). Under this Act, victims of human trafficking or smuggling are no longer subjected to the same immigration law as the people who victimised them, that is, the

perpetrators. They are 'rescued' and sent to safe houses until they are repatriated, while the perpetrators are 'arrested' under the immigration law, detained and charged in court. In 2010, the government introduced the biometric identification system as a means of verifying a person's identity, in an attempt to clamp down on the use of fake passports and other documents by foreigners that facilitate the expansion of irregular migrants into the country.

In spite of all these measures, the number of IM remained high. This prompted the government to introduce yet another measure to control their expansion by introducing a 'comprehensive' programme called the 6P which involved registration (*pendaftaran*), regularisation (*pemutihan*), amnesty (*pengampunan*), monitoring (*pemantauan*), enforcement (*penguatkuasaan*) and deportation (*pengusiran*), all of which are to be carried out in stages beginning July 2011. It was expected to be completed within a year. Under the operation of the 6P Programme, over 1.3 million IM registered, of which over 600,000 chose to be regularised and continue to work in Malaysia, while others chose to go home under the amnesty exercise. Among those who registered, almost half were Indonesians, followed by citizens of Bangladesh (11%) and Myanmar (11%).

The implementation of the 6P Programme was hindered by many factors. These include the role of both unregistered and formal agents in the registration and regularisation of IM. Many of the agents who promised identification papers and passports to employers and undocumented workers or to renew their expired passports, pay their levies and get their work permits, absconded with their money leaving thousands of IM without work permits, thus making them illegal immigrants again.<sup>5</sup> The large number of IM who registered also could not get their travel documents processed by their respective embassies within the one year period.

In Sabah where the number of IM is relatively high and their management acutely problematic, a Royal Commission of Inquiry (RCI) was set up in 2012 to find ways to resolve the problem. The RCI wrapped up its findings in December 2013.

As stated earlier, in 2011 over 1.3 million IM registered under the 6P Programme but the actual number is much higher. Many are still reluctant to register and hence their number is difficult to estimate. In addition, there are 44,189 IM in the MOHA depot waiting for trial or deportation. The largest number of IM is from Indonesia (37%), followed by Myanmar (21%), Bangladesh (7%), Thailand and Vietnam (6% each), Pakistan (3%) (*Source*: Ministry of Home Affairs). However, official sources put the number of IM now between 1.3 million and 3 million. If this is correct, then, for every one LSW there are two illegal ones. With the large number of IM, it is evident that measures taken have failed to reduce the inflow. Implementation of these measures was impeded by several factors - geographical, socio-cultural, historical and administrative in nature. The long sea and land borders make surveillance and border control acutely difficult. Historical baggage too plays a role: kinship links between border communities of different nationalities facilitate and abet illegal crossings and visa abuse. The lack of enforcement personnel and inadequate space in the detention depot also obstruct effective

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<sup>5</sup> Letter from the Director of Enforcement, Dept of Immigration, Malaysia to the writer dated July 2012 and interviews with some of the cheated illegal immigrants in Sungai Buloh, December 2011 and April 2012.

implementation of these measures. While there are millions of IM at large, as shown in the registration under the 6P Programme in 2011, the detention depot can only accommodate about 11,400<sup>6</sup> detainees at any one time, thus slowing down the rooting out operations. Moreover, there is also the problem of systemic corruption among a few errant enforcement officials, some of whom have been charged, found guilty and sentenced. Effective policy implementation is also subverted by inconsiderate and greedy employers and recruiting agencies.

#### 4. Asylum Seekers and Refugees (ASR)

Asylum seekers and refugees (ASR) started arriving in Malaysia in the early 1970s from the Philippines, Vietnam and Cambodia and in the following decades more arrived from a host of other countries in the Middle East, Eastern Europe, South Asia, and Africa, and from ASEAN member countries: Indonesian Aceh, South Thailand and Myanmar. They are found in Peninsular Malaysia and Sabah, while Sarawak is spared the entry of ASR due to its geographical location.

Although Malaysia is not a signatory to the Geneva Convention on the Status of Refugees 1952, ASRs are allowed to stay temporarily on humanitarian grounds. They are permitted to stay until the United Nations High Commissioner for Refugees (UNHCR) finds one of the three durable solutions for them: repatriate them once their country of origin attains peace and accepts them, send them to a third country for resettlement, or integrate them into the host country, if possible. For most ASRs, the wait for a durable solution takes decades. The case of the Vietnamese and Filipinos who arrived in the seventies are two good examples. Some of the Vietnamese refugees were resettled in stages, while those who were refused resettlement by third countries were finally sent home after two decades, in the mid-1990s. The Filipino refugees in Sabah are allowed to stay temporarily on the IMM13 visa which is renewed every year on payment of an annual fee of RM90 per person (Azizah Kassim 2009). The Filipino refugees are luckier than most ASRs in Peninsular Malaysia; the presence of many of the ethnic groups from Myanmar like the Chins and Rohingyas as refugees is not officially acknowledged by the state and are living in a legal limbo. Although there is a government directive to all enforcement agencies not to arrest ASR when they carry out operations to root out illegal immigrants,<sup>7</sup> many ASR are arrested and taken to the MOHA depot where they are detained. They can be only released with the intervention of the UNHCR office in Kuala Lumpur.

According to figures provided by the Federal Special Task Force (FSTF for Sabah and Labuan), there were 69,317 Filipino refugees in Sabah in 2012.<sup>8</sup> Of these, 35 per cent were in Sandakan, 33 per cent in Kota Kinabalu, 25 per cent in Tawau and 7 per cent in

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<sup>6</sup> Capacity status for 2011. No later figures are available. The present capacity is deemed to be the same.

<sup>7</sup> Information provided by UNHCR officials in 2011 and later confirmed by officials of the National Security Council in the Prime Minister's Department, and the Director of the MOHA Depot, Putrajaya in February 2013.

<sup>8</sup> Letter from the director of the Federal Special Task Force to the writer dated June 2013 and interview with one of its officers on 30<sup>th</sup> October 2013.

Labuan. With the IMM13 visa, they do not require a work permit to be employed. The majority are urban based and are engaged in construction and services sectors, with some in self-employment, particularly in petty trading, and fishing if they are living close to the sea. However, if they fail to renew the IMM13 pass annually, their status will change to that of an illegal immigrant making them vulnerable to arrest by enforcement officers and deportation. Those deported to the Mindanao region usually make their way back to Sabah swiftly as they have no relatives in the Philippines, property or job to induce them to stay. Most of the Filipino refugee population have been born in Sabah. They are second or third generation refugees who know little of the land of their ancestors and are not fluent in their mother tongue.

In Peninsular Malaysia, the number of ASRs has fluctuated over the years. When some are resettled or repatriated, their number declines, but with growing political instability in some countries within the region as experienced by Myanmar since June 2012, the inflow of ASRs has mounted again. Ethnic conflicts between the dominant Burmese Buddhists and the minority Muslim Rohingyas in the Arakan region in Myanmar drove out thousands of Rohingyas, some of whom arrived in Malaysia seeking asylum. Statistics from the UNHCR office in Kuala Lumpur shows that in 2012 there were 101,081 ASRs registered with the UN agency and of the total, over 92 per cent were from Myanmar, followed by Sri Lanka, a very distant second (4%). The largest number was ethnic Chins, followed by the Rohingyas who were stripped of their citizenship by the Myanmar government in 1982. This figure does not include 9,000 ASRs who were detained in 14 MOHA depots in Peninsular Malaysia. Of these about 2,384 are new arrivals, comprising mostly adult males (83%) and children (11%). The actual number of ASR could be much higher as our study on the Rohingyas reveals that a substantial number who have been in Malaysia for many years are not registered with UNHCR due to various reasons such as difficulty in getting to the UNHCR office in Kuala Lumpur and/or ignorance of the need to do so.<sup>9</sup> In addition, it is officially estimated that over 3,000 Rohingyas entered Malaysia between June 2012 and June 2013 due to ethnic and religious conflicts in Myanmar.

There is no ruling on whether ASRs can work in Peninsular Malaysia. However, most of the able bodied adult ASR and some of their children are economically active as they are engaged as employees in informal sector activities especially in services and construction to support themselves. Due to their anomalous status, many employers are afraid to engage them for fear of being arrested for employing and harbouring IM under the Immigration Act 1959/63. Those who hire them tend to exploit them knowing that ASRs have no recourse to justice in the case of non-payment of wages by employers; or in the event of employer-employee disputes. A few ASRs are self-employed, working as petty traders, gardeners, collecting discarded goods for sale, or as small time sub-contractors in the building industry. At their workplace, or on their way to work, many ASRs are also arrested by enforcement officers who mistake them for illegal economic migrants (see among others, SUARAM Annual Reports, 2002–2010).

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<sup>9</sup> The writer headed a research team for a project on the Rohingyas in Malaysia between 2009-2011. It was commissioned by the National Security Council, in the Prime Minister's Department, Putrajaya.

## 5. Major Issues and Challenges

There are now at least six types of population inflows into Malaysia, in addition to the continuous inflow of tourists which reached 25 million in 2012, thus accentuating the cultural diversity of the population. Malaysia's main concern is the large number of foreign workers (both legal and illegal), and the ASRs who are also in the labour force. Many authors have written on the positive impacts of labour inflow into the country, on how their presence overcomes labour shortage and keeps the economy going. A recent World Bank Report (The World Bank, 2013:1-28) on immigrants in Malaysia, among others, stated that immigrant workers, "... generate jobs for Malaysians by reducing costs of production making Malaysian firms cheaper and more competitive in the global market, allowing them to expand and consequently increasing their demand for Malaysian workers.". (p.11). According to the report, the large number of low skill immigrant workers are at the bottom of the Malaysian job hierarchy. The small number of expatriates are at the top, and do not displace Malaysian workers. The employment of expatriates has minimal impact on wages and employment of citizens. The millions of workers are also consumers and their presence in large numbers create a big demand for consumer goods, especially food and housing, as well as services such as medical, banking and transportation.

However, there is a flip side to all these. Many of the attendant problems in the economic, socio-cultural, political and security dimensions have been raised frequently and discussed. Economically there are concerns that the reliance on foreign workers can delay up-grading of technical skills, mechanisation and automation, thus sustaining labour intensive industries. Many claim their employment also leads to a decline in productivity in some sectors of the economy, depresses local wages and drains the economy due to remittances sent to the source countries, besides the high cost of monitoring, control, detention and deportation of illegal immigrants (Tham and Liew 2004; Pillai 1999). Those who focused on the electoral process highlighted the intrusion of foreign nationals into the state electoral roll which upsets the balance of power between the various ethnic-based political parties in the state (Sadiq 2005; Mutalib 1999). Others are worried about the impacts of illegal entry on border and internal security and diplomatic relations (Azizah Kassim 1997& 2005; Ramli Dollah *et al.* 2003; Nor Azizan Idris 2005). It is this last issue that is of great concern to the authorities, especially because of the continuous presence and expansion of irregular migrants, the tendency among low skill foreign workers to violate Malaysian laws especially immigration and labour laws and their involvement in serious crimes such as armed gang robberies, murder, smuggling of prohibited commodities especially drugs, manufacture of forged documents, and commercial crimes.<sup>10</sup> Statistics from the prison department show that in 2011, about two-thirds of all prison space was taken by foreigners for all kinds of offences. Illegal immigrants are officially viewed as public enemy number two, next to that of drug abuse (Mohd Zamberi Abdul Aziz 2011).

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<sup>10</sup> Under the *Ops Cantas*, an on-going operation launched in mid 2013, many foreigners were found to have links with secret societies, and involved in drug smuggling, forgery and murder. These crimes are widely reported in the national print and electronic media throughout the year.

Among the common immigration violations are illegal entry that is closely related to human smuggling activities where Malaysia is used as a transit point for people smuggling from Pakistan, Afghanistan, Iran and Myanmar by international syndicates who then take them to Australia. For those who arrive legally, pass abuse,<sup>11</sup> overstaying and working illegally in Malaysia, non-payment of levies, running away from designated employers/jobs are rather common. Hence illegal immigrants as a category are heterogeneous (Azizah Kassim and Ragayah Haji Mat Zin 2011).

Most of the immigrant population in Malaysia is concentrated in the urban areas. The MM2H participants, expatriate workers and international students are urban based; so are the low skill foreign workers, asylum seekers and refugees, as urban centres provide ample employment opportunities for them. The large presence, especially of the low income group, has a significant negative impact on urbanisation in Malaysia. Most of the low skill workers are engaged as domestic maids and in the construction, manufacturing and service sectors which are urban based. Their concentration in the urban areas such as the Klang Valley has led to contestation for urban space and economic opportunities. They compete with the local urban poor for low cost accommodation in urban housing estates and in the squatter areas. This often leads to a rise in rental, and abuse of state subsidised low cost homes meant for poor Malaysians when unscrupulous Malaysian house owners rent out rooms or their housing units to foreigners who are willing to pay more.<sup>12</sup> Many low skill foreign workers live in crowded rooms and houses to reduce the cost of living.

Some low skill foreign workers, in particular Indonesians, solve their housing problems by jointly buying land in Malay reserve areas which cannot be sold to non-Malays, let alone to foreigners. They circumvent this sale prohibition by using Malaysians of Indonesian origin from their own ethnic groups (Baweanese or Minangkabau, for example) who are now categorised as 'Malays' as the proxy owner in the sale transaction. The *de facto* buyers, usually a group belonging to a kinship or ethnic group built terrace or semi-detached houses on the land, enabling them to establish their own ethnic enclaves in such areas as Gombak and Sungai Buluh in Selangor; and Sungai Pencala in the Federal Territory of Kuala Lumpur. Very often, these houses are built without urban planning permission, creating problems for urban authorities and much resentment from the law abiding local population (Azizah Kassim 2011). Their crowded living conditions particularly at their rented houses and in the make-shift living quarters or *kongsi* at the construction sites have been cited as contributing to the spread of communicable diseases. Some of them, especially those who arrived illegally, have been found since the 1990s to suffer from contagious diseases which were once under control in Malaysia, such as malaria, tuberculosis and hepatitis B. Their presence is perceived as a danger to public health even today as announced recently by the Minister of Health at a conference of medical practitioners in Kuala Lumpur. Quoting figures from FOMEMA

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<sup>11</sup> Many foreigners arrive in Malaysia on tourist passes to seek employment. In 2010, the VISA-on Arrival (VOA) procedure to facilitate tourist arrivals for some selected countries has been widely abused. Over 40,000 Indian tourists were reported 'lost' in Malaysia as they never returned to India.

<sup>12</sup> Our study reveals that some two rooms state-subsidized low cost housing are rented to foreigners between RM700 –RM800 a month, when those rented to locals are for RM400-RM500.

(Foreign Workers Medical Examination and Monitoring Agency), the agency responsible for doing medical check-ups on foreign workers, the Minister reported that 48,734, or 3.6 per cent of the illegal immigrants who registered in the 6P exercise in 2011 were found to suffer from contagious diseases such as tuberculosis, hepatitis B, syphilis and HIV/AIDS (New Straits Times 2013e; 2013f; Utusan Malaysia 2013b; Wong, 2013). Such disclosure prompted a national daily to caption its lead article on the foreign workers the next day as “*More than health issues: Illegal foreign workers endanger the people and the economy*” (New Straits Times, 2013g). Given this background, the presence of a large number of low skill foreign workers in the urban areas places a heavy stress on state medical facilities as well other social services and public amenities.

There are also social problems arising out of their presence. According to statistics from the Council for Anti-trafficking in Persons and Anti-trafficking of Migrants, over 90 per cent of all female victims rescued under the Act from 2007–mid-2013 are foreigners involved in sex related industries as masseuse and prostitutes. They are mainly from Indonesia, Vietnam, Thailand, Philippines and Cambodia, with a few from Africa. In addition, there is also a substantial number of foreign beggars comprising mainly women and children in the urban areas, and their presence is most noticeable on Fridays when Muslims perform their obligatory weekly communal prayer; and prior to and during religious celebrations such the Muslim Aidil Adha (or *hari raya Haji*) and Aidil Fitri, (*hari raya puasa* at the end of the Muslim fasting month of *Ramadan*);<sup>13</sup> Christmas, Chinese New Year, Hindu Deepavali and Thaipusam.

In the urban areas, foreign nationals openly participate in trading activities which are prohibited to them. They are visible in places like the Chow Kit market in Kuala Lumpur, and in night markets all over the Klang Valley and their presence is crowding out the local traders. Some are also opening small businesses in the neighbourhood, where they sell basic goods such as foodstuffs, or operate workshops for motorcycles targeting their countrymen as customers. Many are trading without licenses from the urban authorities while others do so by using trading licenses “bought” or “rented” from local traders who are unable to compete with the immigrant petty traders.<sup>14</sup>

Much of the negative aspects of foreign workers are reported in the national print and electronic media (including social media), evoking resentment among the general public, especially those whose lives are negatively affected by their presence. There are numerous reports on complaints made by the local urban poor of their fear of ‘invasion’ of their neighbourhood by foreigners with alien culture and strange ways: loud voices and drunkenness, permissive life styles and most importantly of their habit to litter their environment, and the tendency of a few to commit crimes. A most recent one is a report on residents in Pandan Jaya, Pandan Indah, Pandan Cahaya and Ampang in

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<sup>13</sup> The writer found many foreign women and children begging at the Kiara Muslim cemetery in Kuala Lumpur during three successive *hari raya* in 2011, 2012 and 2013. They came from Pahang, Perak and Johor the day before the *hari raya* and spent the night at some mosques in Kuala Lumpur or Selangor. From there they made their way to the cemetery by taxi. Our enquiries reveal that at other Muslim cemeteries too, such begging activities by foreigners took place.

<sup>14</sup> Discussions with Kuala Lumpur City Hall enforcement officers during our research on migrants, urbanization and development (2008-2009) and in March 2013 with an officer in charge of petty traders in the same urban authority.

Selangor who are very worried about the high number foreigners among them, and whose presence is perceived as an interference into their daily lives as some started petty trading activities and food outlets to cater for their people. They are also viewed as a danger to public order, as a few are suspected of break-ins in the area (Utusan Malaysia 2013b).

Not all Malaysians are opposed to the immigrants. Some who benefited from their presence such as employers, traders and landlords welcome them. However, it is the sense of resentment from the lower income group that frequently gets to the national media most of which are politicised by interest groups such as political party leaders and non-government organizations (NGOs) that influence policy decisions on foreign workers, illegal immigrants and ASR; as well as foreign perceptions of Malaysia's treatment of its immigrant population. Hence many unpopular measures are taken against the LFW, IM and ASR as mentioned earlier. The canning of migrants who violated the immigration law and sending them to jails and deportation has been highly criticised by many, including NGOs and human rights groups (see among others SUARAM Annual Reports, 2002-2010; Fernandez 2008, Amnesty International 2010). Such reports contribute significantly to Malaysia's poor rating in the annual Trafficking in Persons Report (TIP Report) issued by the State Department of the United States of America (US). In 2009, Malaysia was placed on Tier 3, on the same rank with countries with horrendous human rights records. In the following year, the rating improved to Tier 2 (Watch list), a placing that runs for four years in a row until 2013. Malaysia still has a poor rating on human rights, notwithstanding its concerted efforts to up-grade its services in spite of several constraints faced as a new player in implementing the ATIPSOM, such as insufficient finance, lack of trained enforcement officers and legal personnel, inadequate up-to-date equipment and low public awareness on the scourge of human trafficking and smuggling.<sup>15</sup>

It must be stressed that the inflows of expatriates, MM2H participants and international students sought after by the state are not without their challenges, albeit on a small scale and which are less visible to the public. For example, in recent years there is evidence that many foreigners abuse student passes to enter Malaysia in search of employment. This is well illustrated in the case of 21 young foreign women from an African country believed to be involved in prostitution and who were rescued from an apartment in Mentari Court, in Petaling Jaya in 2012.<sup>16</sup> All of them were on student visas registered at a local non-existent college to study English. A few foreigners who arrived on student visas are also found to be involved in commercial crimes and drug trafficking.

The expatriates and MM2H participants, on the other hand, are unlikely to be involved in unlawful activities. However, their presence as well as speculative residential property investment by some of them has been blamed for the sharp increase in the price of

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<sup>15</sup> See minutes of the Malaysian Council for Anti-trafficking and Anti smuggling of Migrants (MAPO) monthly meetings from 2008-2012.

<sup>16</sup> As a member of MAPO the writer (and three others) was asked by the MAPO secretariat to interview these African "students" at a safe house for human trafficking victims in Kuala Lumpur in early 2012.



houses in the urban areas in recent years (New Straits Times 2013a; 2013b). The state response to this is found in the newly introduced 2014 Malaysian Budget announced by the Malaysian Prime Minister in Parliament on 25 October 2013 (Government of Malaysia, 2013: 101 & 132; The Star 2013). Effective from 2014, foreigners will only be allowed to buy houses with a price tag of not less than one million ringgit each, and the real property gains tax (RPGT) has been amended to make foreigners pay more than local vendors if they sell their property within three or five years (New Straits Times 2013c, 2013d). In Johor, where there is widespread investment on properties by foreigners in the Iskandar Development Project, the state administration is considering the introduction of a two tier assessment tax on properties, with foreign owners paying a higher tax than the locals (New Sunday Times 2014). In addition, the Minister of Tourism is also considering raising the deposits for MM2H participants to one million Ringgit from RM300,000 (Utusan Malaysia 2013a). The challenges imposed by the expatriates, MM2H participants and international students are manageable, and their presence and employment is not viewed with concern.

## 6. The Way Forward

The inflows of foreigners contribute significantly to Malaysia's economic development; however, its many attendant problems, if not attended to urgently, may cost the country more than what it gains. The main problem in respect of the inflows is the heavy reliance on foreign labour and the persistent expansion of irregular migrants in the work force. This has been attributed to the failure of the foreign worker policy which has been criticised by many including NGOs, trade union leaders, employers associations and academics as 'flip-flop' ; 'ad hoc'; 'knee-jerk reactions'; 'inconsistent' and 'criminalising migration' (Pillai 1999; Fernandez 2008; Neeko 2008; Amnesty International 2010; National Union of Plantation Workers (NUPW)<sup>17</sup> and Malaysian Employers Federation (MEF)<sup>18</sup>. Nonetheless, a few regard the policy as an appropriate strategy to deal with the fluctuating economic trends in the world market (Abd Rashid *et al.* 1999; the World Bank 2013). Many critics blame the failure of the policy to its poor implementation. However, this writer believes that the root cause of the problem is the in-built weaknesses of the policy that makes it counter-productive, resulting in increasing instead of reducing the number of irregular migrants and workers (Azizah Kassim 2012). Measures taken to curb the spread of illegal immigrants also need urgent revision. Rather than a 'one size fits all' solution that failed to take into account the heterogeneous nature of the illegal migrant population (Azizah Kassim and Ragayah Hj. Mat Zin 2011), there is a need to come up with a specific solution to each type of illegal migrants. These measures must be accompanied by others aimed at reducing dependency on foreign workers such as accelerating automaton, and moving away from labour intensive enterprises; establishing more day care centers for children and homes for the elderly, and allowing more people to work from home, some of which are already in place in Malaysia.

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<sup>17</sup> Interview with, Mr. A. Navamukundan, National Executive Secretary of the National Union of Plantation Workers (NUPW) on 1 November 2013.

<sup>18</sup> Discussions with the Executive Secretary of Malaysian Employers Federation (MEF) on 5 May 2011.

Finally, it must be emphasised that population inflows especially of low skill labour will continue even after Malaysia achieves developed nation status in 2020. As seen now in developed countries in the West and in Japan, industrialisation is usually accompanied by a decline in fertility and an increase in the ageing population. This, together with the continued availability of several types of work that cannot be mechanised or automated necessitates the hiring of foreign labour. Malaysia's relatively better economic performance and political stability compared to some of its neighbours within the Association of Southeast Asian Nations (ASEAN), and the protracted political instability in Myanmar, South Thailand and the Mindanao region in the Philippines and elsewhere, will also push more migrant workers, asylum seekers and refugees into Malaysia. The biggest challenge for Malaysia is to find the right formula to minimise the negative impacts of labour inflows and maximise their benefits. This should include taking a positive stand on the issue of asylum seekers and refugees by establishing a legal mechanism to administer them that allows them to stay and work legally which is in line with the inclusive development that Malaysia is pursuing.

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