# QUARTERLY ACCESS

Special issue on refugees, migration and the Asia Pacific:

The passions and complexities of discourse and debate in our region

REAL AUSTRALIANS SAY WELCOME

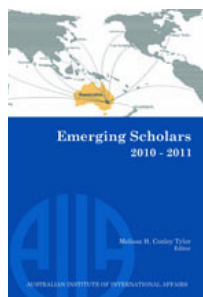# Publications by the Australian Institute of International Affairs

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# QUARTERLY ACCESS

## YOUR KEY TO INTERNATIONAL AFFAIRS IN AUSTRALIA & THE PACIFIC

Quarterly Access (QA) is the national quarterly publication of the young professionals' networks of the Australian Institute of International Affairs (AIIA).

All the views expressed in this publication are solely those of the individual writers. While providing a forum for discussion and debate on international issues, the AIIA does not formulate its own institutional views, and eschews political bias.

Launched by ACCESS, the AIIA's Network for Students and Young Professionals, Quarterly Access is an entirely volunteer-based publication providing a forum for students and young professionals with an interest in international affairs to contribute to the exchange of ideas.

The Editorial Committee comprises a group of students and young professionals.

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# CONTENTS

## From the Editor-in-Chief

Welcome readers, to the latest issue of Quarterly Access Volume 10.

It is with great pleasure that I announce a big change in our editorial team. We have welcomed three new editors: Bernadette Anvia, Kelly Rogan, and Finian Cullity, and our new Social Media Officer, Jeremy Rees.

Be prepared to see a lot more coming out of QA headquarters!

Which brings me to our special issue today on refugees, migration, and the Asia Pacific. This issue was inspired by a conversation I had with some colleagues, where we landed on the realisation that the intensity of the EU crisis meant that we had all been distracted from paying attention to what is happening in our region.

While the EU crisis is not even close to its end, the same is true for the ongoing refugee and migration issues in the Asia Pacific

This edition captures an array of discussion from various different angles. It's not all crises, with equal emphasis on positive discussions and explorations of research.

In 'Looking Into', Jasmine Dawson writes on Australia's treatment of LGBTQI refugees and asylum seekers, and understanding protection struggles. This is a topic that doesn't get much coverage on its own, and is a fascinating read.

Newly joined editor, Bernadette Anvia interviewed Eri Ishikawa of the Japan Association for Refugees (JAR). Japan is such a curious country to consider in terms of refugee policy. Its funding is vast, but its intake is miniscule.

Vivian Rivera, who is a Global Voices delegate, has written an article on flaws of social inclusion approaches in Australia, and how Community Capacity Building can dramatically impact the integration of newly arrived migrants and refugees in Australian societies.

Elisa Solomon, a past contributor to QA, has tackled the problems of migrant smuggling and irregular immigration to Malaysia and its neigbours. She discusses the policy challenges in resolving these complex issues.

Lastly, we have a book review of Daniel Bell's *The China Model: Political Meritocracy and the Limits of Democracy* by Caitlin Kelly. This is a great read on the value and failings of China's meritocracy.

Happy reading,

**Nina Roxburgh, Editor-in-Chief**

# Looking Into:
# Australia's Approach to LGBTIQ Asylum Seekers and Refugees

*Article by* **Jasmine Dawson**

*Jasmine Dawson is Secretary of the Kaleidoscope Human Rights Foundation and a PhD fellow at the University of Melbourne. You can follow her on twitter @jazdawson_*

The treatment of lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) asylum seekers and refugees who seek asylum in Australia is often discriminatory and persecutory. With 75 countries still criminalising same-sex acts, people fleeing persecution because they are LGBTIQ come from all corners of the globe. They attempt to arrive to Australia by perilous journey at sea, or regularly arrive on tourist, student, or working visas. LGBTIQ refugees seek safety in Australia, yet our policies and practices represent a hypocritical attitude toward LGBTIQ rights.

While those in Australia with citizenship can enjoy the protection of world class anti-discrimination legislation, we actively send LGBTIQ asylum seekers to places where they are likely to be persecuted, as well as routinely violate the rights of those who make claims on-shore.[1]

## Offshore Detention

On 18 October 2016, the head of Immigration Mike Pezzullo stated in a Senate estimates hearing that it was 'no concern' of Australia's that gay refugees were being detained in Papua New Guinea (PNG), where same-sex acts between men can lead to imprisonment of 14 years. Pezzullo stated that "We have enough on our plate" and that the Australian government wasn't obligated to investigate whether same-sex attracted refugees faced persecution in PNG. Such a nonchalant approach to the harm and fear faced by same-sex attracted refugees in PNG and Nauru is incredibly disappointing given that the Australian public has known of same-sex attracted refugees in PNG since at least 2013. In Amnesty International's report 'This is Breaking People', for example, it was reported that Renate Crocker, the most senior Australian immigration official on Manus at the time, had told refugees on Manus that instances of same-sex acts in the detention centre could be reported to the local police.

Similarly, while Nauru decriminalised same-sex acts between men in 2016, we know of at least one Iranian couple who have been attacked both in detention and in community because of their

sexuality. The couple, Nima and Ashkan, were told by Australian government representatives before their release in 2014 to hide their sexuality to ensure their own safety in Nauru. This is in direct contradiction with Australia's own guidance, as well as UN guidance, which provides that a refugee should never be required to be 'discreet' or hide their sexual orientation or gender identity in order to secure their own protection. This was confirmed in the influential United Kingdom 2010 case of HJ (Iran) and HT (Cameroon) where Lord Roger held,

> ...so far as the social group of gay people is concerned, the underlying rationale of the Convention is that they should be able to live freely and openly as gay men and lesbian women, without fearing that they may suggest harm of the requisite intensity or duration because they are gay or lesbian. The home state should protect them and so enable them to live that way.

Evidence is scarce on the experiences of LGBTIQ people in detention in Australia. Recently, the UK Lesbian and Gay Immigration Group (UKLGIG) released their report No Safe Refuge which found that

> LGBT asylum seekers are particularly vulnerable in immigration detention and face significant disadvantages and dangers. In detention they experience discrimination, harassment and violence from other detainees and from members of staff. The detention environment has serious long-term effects on their mental and physical well-being.

Whether staff in Australian detention centres are adequately trained on the increased vulnerabilities and harm faced by LGBTIQ people in detention is unknown, but also, unlikely.

## The Asylum Process

Mistreatment of LGBTIQ refugees is sadly not restricted to their experience in detention. There are numerous examples in recent years of sexually explicit and stereotypical lines of questioning in tribunal and courts to ascertain the credibility of non-heterosexual asylum applicants. For example, refugees have felt compelled to produce sexually explicit documentation and have been asked about their sexual practices.

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1   This piece primarily addressed the key issues facing people seeking asylum based on their sexual orientation and it is important to note, despite some shared experiences, the accounts of non-heterosexual refugees are not interchangeable with gender diverse, intersex, and other queer refugees.

Comparable jurisdictions, such as the EU, have disallowed such questioning. In a 2014 case, the Court Justice of the European Union found that an applicant's rights to privacy and human dignity would be violated where assessments of asylum claims included the use of stereotypes, questions about sexual practices, reviewing or accepting sexually explicit evidence, and discrediting an applicant because they did not self-identify as LGBT at the first instance.

And yet, these elements still appear in Australian decisions. Likely, this is due to the lack of training for decision makers and immigration officials, as well as limited guidance on sexual orientation, gender identity, and intersex based claims in the materials provided by Australian Administrative Appeals Tribunal (AAT).

It is stated briefly in the Migration and Refugee Division Guidelines on Gender that 'when conducting a hearing based on sexual orientation or gender identity, a Member (the Tribunal decision maker) should ask questions in relation to the applicant's realisation and experience of sexual orientation or gender identity rather than questions that focus on sexual acts'. However, in the Guidelines on the Assessment of Credibility no limitations on lines of question are provided, and instead the case of WAIH v MIMA [2003] is referenced, in which Federal Magistrate Raphael endorses the necessity of 'embarrassing' lines of questioning in sexual orientation based claims.

Raphael FM explains that:

> [a]ny investigation into a person's sexual orientation is an invasive and embarrassing affair. Sexual orientation is essentially a very subjective matter. It is not easily reconciled with the notion of objective proof. But where an applicant is claiming protection on the grounds of his membership of that social group constituted by homosexuals then his sexual orientation is a matter upon which the Minister is required to be satisfied.

This appears to endorse rather than restrict lines of questioning that in comparable jurisdictions may constitute fundamental human right violations. In order to protect the rights of LGBTIQ refugees during their processing, at the very least the government needs to invest in specific and detailed guidelines as the UK has begun to do so, for example.

There are many steps and policy shifts that need to be taken in order to protect the rights of LGBTIQ people seeking asylum in Australia, including training for immigration staff and decision makers, the cessation of offshore detention, and provision of services that meet the particular needs of LGBTIQ asylum seekers and refugees. Unfortunately, improvements are unlikely while Australia's broader border policies continue to tighten and ensure human rights violations in the process.

*Originally published in Asylum Insight*
*November 2016*

# Meeting Eri Ishikawa:
# On Asylum Seeker Policy in Japan

## Chair of the Board of the Japan Association for Refugees (JAR)

## *Article by Bernadette Anvia*

*Bernadette Anvia is an editor of Quarterly Access. She holds a Bachelor of International and Global Studies (Honours) and a Masters in Media Practice. You can follow her on twitter @BAnvia.*

The world is currently seeing a mass movement of refugees, asylum seekers and internally displaced persons on an unprecedented scale. According to the United Nations High Commissioner, the figure topped over 65 million people in 2016 and continues to grow at a rapid rate.[1]

However, the acceptance and resettlement of these refugees is a responsibility not shared equally amongst members of the international community.

The Asia Pacific remains a region of the world with one of the lowest refugee and asylum seeker intakes, despite being home to some of the world's most developed countries with the some of the largest economies.

This includes Japan, a country with the world's third largest economy. In a study published by international aid organisation Oxfam, in July of 2016, Japan is capable of accepting up to 48, 000 applications for refuge.[2]

But in 2016, Japan accepted only 28 of the 11, 000 applications for permanent refuge it received; among them seven Afghanis, four Ethiopians, and three Eritreans.[3] In that same year, it was the world's fourth largest contributor to the UN Refugee Agency, donating a total of US$164, 726, 114.[4]

For greater insight into Japan's approach to the global refugee crisis, *Quarterly Access* spoke to Eri Ishikawa, the Chair of the Board of the Japan Association for Refugees (JAR).

JAR is a registered not-for-profit organisation established in 1999 to assist new refugee and asylum seeker arrivals with their transition and integration into Japanese society.

As Ms Ishikawa explains, the main purpose of the organisation is to provide for the needs of the refugees and advocate on their behalf to the government.

"Our main focus is on asylum seekers in a destitute situation, because there is a real lack of [government] support," says Ms Ishikawa.

"Quite a few of our asylum seekers do not have any means to survive. They're not allowed to work [and are] denied social security assistance. But asylum seekers have to work in order to survive."

The limited funds available to JAR – a combination of funding from the government, the UN and money raised from civil society – are spent on food, clothing, shelter and interpreters for the country's refugees and asylum seekers.

According to Ms Ishikawa, foreign humanitarian refuge continues to remain a non-issue in Japan, both for politicians and civil society. As a result, the Japanese government continues to ignore the needs of asylum seekers both in terms of building necessary infrastructure and providing critical social security.

There is also a general lack of transparency surrounding the country's treatment of refugees held in Japan's five immigration detention centers. These centers are used to indefinitely imprison those who have over-stayed their visa or have entered the country illegally.

"We are worried about the medical conditions of these medical centers," says Ms Ishikawa.

"There is no independent body or review process to oversee the conditions of the detention centers."

Similarly, the government also provides little information regarding the deportation of refugees who have had their application rejected.

"We're not able to track deported asylum seekers," says Ms Ishikawa.

"But last year the government chartered a flight to return refugees from Vietnam, Sri Lanka and Thailand."

In 2009, JAR also became aware of the Japanese government deporting a member of an ethnic minority in Burma who sought asylum and protection from political persecution. At the time, JAR argued that his deportation was in blatant violation of Article 33 of the 1951 Convention Relating to the Status of Refugees, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on

1   United Nations High Commissioner for Refugees (2016) Global Forced Displacement Hits Record High, http://www.unhcr.org/en-au/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html, 14 June 2017.

2   Oxfam International (2016) A Poor Welcome From The World's Wealthy, https://www.oxfam.org/en/research/poor-welcome-worlds-wealthy, 15 June, 2017.

3   Miyazaki, Ami & Funakoshi, Minami, "Japan Took in Just 28 Refugees in 2016, Despite Record Applications" in Reuters, 14 June, 2017.

4   United Nations High Commissioner for Refugees (2016) Global Donors, http://www.unhcr.org/en-au/donors.html, 16 June, 2017.

Civil and Political Rights[5] – all of which Japan is a signatory of.

"We are concerned about the due process of these deportations," says Ms Ishikawa.

"Immigration control is prioritised over protecting refugees."

Not only is Japan known for its low refugee acceptance rates, but also its selectivity regarding refugees' country of origin. For many years Japan had accepted only a handful of asylum seekers from Syria. Ahead of last year's G7 summit, Prime Minister Abe announced a four-year program between 2017-2021 to accept 150 Syrian university students and their families on temporary student visas.[6]

However, Ms Ishikawa is adamant that her country can take hundreds more. She believes that the

compassion and generosity shown by her country's government in providing financial aid to the UN Refugee Agency must be "applied internally as well."

She acknowledges that the increased intake of asylum seekers or refugees is not only a fulfillment of Japan's moral obligation as a signatory of the UN 1951 Refugee Convention, but also a means of helping Japan deal with its low fertility rate, ageing population and labour shortages. Data released by the National Institute of Population and Social Security Research in Tokyo projects that Japan's population will decline to under 100 million by 2046, and that four out of 10 Japanese people will be over the age of 65 by 2060.[7]

For Ms Ishikawa, the answer to Japan's problems lies in the answer to the world's humanitarian problem: granting permanent refugee and asylum to more displaced persons.

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5    Asia Pacific Refugee Rights Network (2009) Statement Regarding Deportation of Asylum Seekers in Preparation For The Petition To Revoke The Decision To Reject Refugee Status, http://aprrn.info/statement-regarding-deportation-of-asylum-seekers-in-preparation-for-the-petition-to-revoke-the-decision-to-reject-refugee-status/, 13 June, 2017.

6    Taylor, Adam, "Japan Has Accepted Only Six Syrian Refugees. Meet One of Them" in Washington Post, 12 June, 2017.

7    National Institute of Population and Social Security Research (2017) Population Project, http://www.ipss.go.jp/pr-ad/e/eng/03.html, 11 June, 2017.

# A Path Toward Social Inclusion Through Community Capacity Building in Multicultural Australia

Article by **Vivian Rivera**

Vivian Rivera is a final year International Relations student at the University of South Australia. Vivian received a 2016 Global Voices Scholarship to attend the OECD Forum in Paris. She is currently undertaking an international development-related internship in Mexico focused on community capacity building.

With substantial population flows across and between national boundaries and societies, the issue of social inclusion is growing in complexity. Migration trends have posed challenges to states worldwide. States must deal with multidimensional transformations that not only involve demographic change but also change in economic and social structures, identities, behaviours, priorities and lifestyles.[1] As a result, there is an overriding need for states (especially immigrant-receiving countries) to ensure that their policies, practices and institutions, work harmoniously to guarantee equal rights, non-discrimination, participation in economic and political life, and social inclusion.[2]

While Australia has a longstanding (albeit contentious) history of dealing with the challenges of cultural diversity through an inclusive social policy framework, there is scope for better outcomes for groups, such as migrant and refugees[3]. There are some key actions, which could be taken to further their social inclusion; that is their access to appropriate education, health, housing, public services, and participation in community decision-making[4] and, ultimately, their ability to contribute to economic growth.[5]

Community Capacity Building (CCB) provides a useful framework in which to consider this issue and identify such actions. CCB has a number of important features. First, it fosters recognition of the strengths and abilities of a community to face opportunities and challenges, and to engage actively and collaboratively in social life. Second, CCB enables community members to mobilise their locally available assets and achieve positive social change. Third, CCB promotes greater self-determination, stimulating economic growth and expanding employment opportunities.

One important aspect of CCB is its economic focus. Indeed, workforce participation is the primary means by which individuals and communities can avoid social exclusion.[6] Unfortunately, both migrants and refugees remain under-represented in the Australian labour force. These groups face serious challenges in finding gainful employment.[7] This includes lack of local work experience; limited opportunities to create local networks; lack of understanding of the local workplace culture; minimal access to vocational training; and limited English language skills.[8]

A number of organisations in Australia are seeking to address this. The African Australian Inclusion Program (AAIP), for example, aims to create pathways to enhance African immigrants' employability skills and preparedness for Australian workplaces.[9] Drawing on AAIP's successful initiatives, this article discusses CCB key areas that have the potential to increase social and economic participation by migrant and refugee communities, and contribute to the construction of a more inclusive society. These include: the promotion of work placement programs, comprehensive networking frameworks, cultural training modules for newly arrived job seekers and local industries, and integrated vocational training. These signposts are some of the ways in which active participation by immigrants in the social, political and economic life of host countries can be fostered.

## 1. Promote work placement programs

For many migrants and refugees, particularly those who are newly arrived, the lack of Australian employment experience is a barrier to accessing job opportunities.[10] For employers, there are concerns with recently arrived refugee and immigrant candidates' local work experience. This seems to

1   Islam, Kamrul & Stephen Castles (2013) "The Age of Migration: International Population Movements in the Modern World" in Canadian Studies in Population, vol. 40, no. 1-2, pp. 105-106.

2   Valtonen, Kathleen (2009) Social Work and Migration Immigrant and Refugee Settlement and Integration. Ashgate: Farnham, England; Burlington, VT, pp. 68-70.

3   UNHCR (2016) UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?, http://www.unhcr.org/en-au/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html visited May 2017.

4   Scottish Community Development Centre for Learning Connections (2007) Building Community Capacity Resources for Community Learning & Development Practice, Scottish Government, http://www.scdc.org.uk/media/resources/what-we-do/building-comm-cap/building_community_capacity_resource_for_cld.pdf, visited May 2016.

5   Buckmaster, Luke & Matthew Thomas (2009) "Social Inclusion and Social Citizenship – Towards a truly inclusive society", Research paper no 08 2009-10. Australia: Department of Parliamentary Services. Parliament Library, http://www.aph.gov.au/library/pubs/rp/2009-10/10rp08.htm, visited April 2016.

6   AMES Victoria (2011) Inquiry into Multiculturalism in Australia, Submission to Joint Standing Committee Inquiry into Multiculturalism, http://www.ames.net.au/documents/policy-responses/inquiry-into-multiculturalism, visited May 2016.

7   AMES (2011) Words to Work: Settling in and Finding Work, The experiences of migrant people in the Adult Migrant English Program in Melbourne. Adult Multicultural Education Service, Research & Policy Unit: Melbourne.

8   Froy, Francesca & Lucy Pyne (2011) Ensuring Labour Market Success for Ethnic Minority and Immigrant Youth. Federal Reserve Bank of St Louis: St. Louis.

9   Jesuit Social Services (2016) African-Australian Inclusion Program, https://jss.org.au/what-we-do/education-training-and-employment/workplace-inclusion-programs/african-australian-inclusion-program/, visited June 2017.

10  Koutsogeorgopoulou, Vassiliki (2011) "Enhancing Labour Utilisation in a Socially Inclusive Society in Australia", OECD Economics Department Working Papers, No. 852. OECD Publishing: Paris.

play a more decisive role in the selection process than their higher educational achievements and formal credentials. Since newcomers' mentoring and training in the workplace demand the mobilisation of financial and human resources, most local enterprises are naturally reluctant to take on migrants and refugees with no local job experience, in some cases purely for productivity and cost-benefit reasons.[11]

Initiatives that remove barriers preventing migrant and refugee communities from becoming financially independent and productive participants in Australia's socio-cultural, political and economic life are necessary. The AAIP, for instance, provides direct support to African-Australians through flexible and intermediate labour market options; programs that offer paid employment for a temporary period in which participants can receive work-related training, personal development assistance and coaching to engage in the local labour market. The AAIP works collaboratively with the social and business sectors to overcome barriers to employment and create further opportunities for immigrants and refugees to develop their professional skills and careers.[12]

The implementation of comprehensive programs like AAIP with a long-term vision towards building community capacity is critical to achieve greater social inclusion. The promotion of employment opportunities for immigrant communities, especially those who are newly arrived, helps prevent the early onset of social tensions caused by financial uncertainty and economic dependence. It is therefore vital to encourage employers and enterprises to provide financial and instrumental support to programs that set out mechanisms for effective entry pathways and participation in the workforce, and give both migrant and refugee groups the possibility to access learning and experiences to build their job readiness.

## 2.  Comprehensive networking framework

Another factor that imposes a barrier to the full participation of newly arrived migrants and refugees in Australia's labour market is their lack

of meaningful networks.[13] Building networks is one of the most effective pathways to accessing and securing a first job in Australia. Social networks have a collective value associated with community co-operation, interconnectedness and mutual benefits and represent a way to gain access to resources such as financial assistance, housing, education and employment. Building social networks involves a reciprocal endeavour where more established communities, organisations, enterprises and governments promote opportunities for newcomers to interact and expand ties within broader society.

The Organisation for Economic Co-operation and Development (OECD) recommends the creation and maintenance of strong social networks as a key strategy for social inclusion.[14] Among others, the initial benefits of social networks range from labour market activation, creation of small and medium sized enterprises, access to financial capital, facilitation of labour supply, and increased economic growth.[15] Consequently, networks can bring about significant social and economic gains for both newly arrived immigrants and refugees as well as for long-established residents in the host society.

Networking is a key aspect of CCB. For immigrants and refugees, establishing new ties and linkages within the host society helps them increase their confidence in their interpersonal, political, and even leadership skills.[16] Networking helps them to create a sense of co-operation and to envisage themselves as drivers of positive change. Some migrant organisations in countries like Norway and Scotland have done a remarkable job in helping new arrivals access basic resources, connect them with social and financial institutions, and build both formal and informal networks.[17] Additionally, one of the elements of the AAIP's success is its commitment to engaging participants right from

11  AMES Victoria (2011) Inquiry into Multiculturalism in Australia, Submission to Joint Standing Committee Inquiry into Multiculturalism, http://www.ames.net.au/documents/policy-responses/inquiry-into-multiculturalism, visited May 2016.

12  Jesuit Social Services (2016) African-Australian Inclusion Program, https://jss.org.au/what-we-do/education-training-and-employment/workplace-inclusion-programs/african-australian-inclusion-program/, visited June 2017.

13  OECD (2012) Activating jobseekers: how Australia does it. OECD Publishing, Paris.

14  OECD (2007) Gaining from Migration Towards a New Mobility System. Organisation for Economic Co-operation and Development: Paris.

15  OECD (2007) Gaining from Migration Towards a New Mobility System. Organisation for Economic Co-operation and Development: Paris.

16  Abu-Laban, Yasmeen, Christina Gabriel & Simone Browne (2004) "Selling diversity: Immigration, Multiculturalism, Employment Equity and Globalization" in Resources for Feminist Research, vol. 31, no. 1/2, pp. 35-36.

17  OECD (2007) Gaining from Migration Towards a New Mobility System. Organisation for Economic Co-operation and Development: Paris.

the start of the program in social networks and community relationships. The program facilitates the involvement of the participants in social events organised by the company and stakeholders, alongside tailored networking programs designed to help them build networking skills and meet potential employers from a range of different industries.[18]

These initiatives should serve as a model for other formal migrant organisations to emulate. It is also important that these organisations enhance their support programs by allocating case managers and mentors that come from the relevant immigrant community. Mentors from the same or a similar background can liaise between the newly arrived immigrant population and their surrounding communities, as well as bridge cultural and linguistic gaps. Both case managers and mentors can act as facilitators to connect job seekers with employers and refer them to relevant service providers.[19]

It is clear that gaining employment is a cornerstone of successful social inclusion. For newly arrived immigrants including those from refugee background, it allows them to become productive members of society and gain financial independence from the start. This is underpinned by setting out a comprehensive networking framework to support immigrants' job search journey and maximise their opportunities for accessing the local job market. It also requires the promotion of formal and informal networking schemes such as: formal contact with employment agencies, career coaches, vocational training advisors, and informal networking through open days, sports events, and career fairs. This type of intervention demands the commitment of governments, enterprises, and local businesses to promote networking events and support more formal employment services.

## 3. Training modules to bridge cultural barriers in the workforce

A challenge for newly arrived immigrants trying to secure effective entry into the Australian labour market is the limited exposure to the local workplace culture. Immigrants trying to find their first job in Australia encounter two important barriers. The first is the lack of a realistic understanding of the local workplaces and the likelihood of being confronted with different employment practices and operations, compared to work practices in their countries of origin. The second is existing misconceptions that may create distrust towards newly arrived job seekers based on their ethnic or cultural background.[20]

Overcoming structural and symbolic barriers that prevent newly arrived immigrants from engaging in the local labour force is vital to maximise their potential to contribute to and benefit from the social and economic capital of the host society. A more comprehensive approach to break down those barriers needs to place strong emphasis on developing trust, connectedness, and cooperation through positive socialisation. The promotion of such values complements the process of CCB within workplaces. It fosters the understanding of the assets that immigrant communities bring to the workplace, such as culture, language, knowledge, and leadership. On the other hand, it allows newcomers to have a better understanding of the existing instrumental and human capital available in the host society. Gaining a more realistic understanding of the new workplace culture enables them to engage more effectively in conciliation, planning, and decision making to achieve reciprocal goals.

The AAIP has put in place sound strategies to break down symbolic barriers, which are particularly concerned with cultural sensitivities. The program has put forward efforts to develop a genuine understanding of the workplace culture in Australia, whilst simultaneously fostering an interest in, and understanding of, participants' culture within the workplace.

Strategies to support CCB in the workplace must ensure that immigrant and local groups engage in a fuller and more harmonious way. Interventions need to emphasise the recognition of common assets, qualities, and needs among newly arrived job seekers and the mainstream working population. The implementation of cross-cultural modules to bridge cultural barriers in the workplace is a valuable starting point to foster such dynamics in a culturally diverse work environment. It allows newcomers to gain a better understanding of the local workplace culture and mainstream employment practices, while providing local

18 Jesuit Social Services (2013) African Inclusion Program, http://www.jss.org.au/programs/all-programs/african-australianinclusion-program, visited April 2016.

19 OECD (2012) Activating jobseekers: how Australia does it. OECD Publishing: Paris.

20 AMES (2011) Inquiry into Multiculturalism in Australia, Submission to Joint Standing Committee Inquiry into Multiculturalism, http://www.ames.net.au/documents/policy-responses/inquiry-into-multiculturalism, visited May 2016.

employers and employees with a more nuanced understanding of newly arrived job seekers' cultural traits, and the barriers they face in finding gainful employment in the host country.

## 4. Integrated vocational training

Studies have shown that most refugees and immigrants who arrive in Australia strive to become productive and economically independent as early as possible.[21] However, for many of them, the lack of local work experience and limited English skills are considerable obstacles to finding employment. The recognition of these barriers has caused newly arrived immigrants to pursue further vocational training in Australia as an alternative pathway to gaining access to the job market.[22]

Vocational training in the intended area of work is important to prepare newly arrived immigrants for employment in Australia. It is particularly empowering when combined with civic education, as well as literacy and communication skills training.  To achieve this, more formal immigration programs for adults should be in place, and at low or no cost. These programmes should combine language instruction, cross-cultural training, guidance for social and economic integration and job preparedness. As language deficiencies are a considerable barrier to enter the labour market, it is extremely important that there are vocational programs tailored for newly arrived immigrants, which include bilingual support and involve community liaison officers who can bridge cultural and linguistic gaps.

The professional-training program, pioneered by the AAIP, has strategically promoted opportunities for participants' capacity building by enhancing their employability and career prospects.[23] The program provides participants with job-related training modules in the workplace and has delivered tailored English language instruction to develop the language skills and proficiency required in a professional environment.[24] This program could be used as a model for a wider rollout across Australia.

Those newly arrived who are ready for work need vocational programs that facilitate understanding of the mainstream labour market practices, foster self-reliance in their own skills and abilities to achieve broader career goals, and prepare them to respond positively and effectively to job opportunities.

## Conclusion

CCB, as a mechanism for social inclusion, is a way of supporting and working cooperatively with newly arrived immigrants and refugees to overcome the barriers to social and economic participation in the host country. CCB interventions aim to maximise newcomers' personal and professional skills, knowledge, and experiences in order to enable them to create (and sustain) positive changes in their personal lives, and as members of society.

Building a more inclusive society requires tailored measures that close the gaps that prevent immigrants from accessing opportunities and the resources required for a decent life such as: education, housing, social services, political and civic participation and employment.

Gaining fair and equal access to the local job market is a condition for the successful settlement and integration of newly arrived immigrants and their families into the broader community. Immigrants and refugees with jobs are not only financially independent, but also better placed to establish social bonds, connect with members of the broader community, access opportunities to learn the host country's language to a high level, and feel they can collaborate to achieve a stronger collective impact in the host society.

21   AMES (2011) Words to Work: Settling in and Finding Work, The experiences of migrant people in the Adult Migrant English Program in Melbourne. Adult Multicultural Education Service, Research & Policy Unit: Melbourne.

22   AMES Victoria (2011) Inquiry into Multiculturalism in Australia, Submission to Joint Standing Committee Inquiry into Multiculturalism, http://www.ames.net.au/documents/policy-responses/inquiry-into-multiculturalism, visited May 2016.

23   Jesuit Social Services (2012) Inquiry of the Joint Standing Committee on Migration: Contribution of Migration to Australian Society. http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees?url=mig/multiculturalism/subs/sub496.pdf, visited May 2016.

24   Jesuit Social Services (2013) African Inclusion Program, http://www.jss.org.au/programs/all-programs/african-australianinclusion-program, visited May 2016.

# Migrant Smuggling into Malaysia:
# Lessons from the Andaman Sea Crisis

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## The 2015 Humanitarian Crisis

In May 2015, the Andaman Sea and Bay of Bengal witnessed a major humanitarian crisis. It began with the discovery of mass graves of smuggled migrants on the border of Thailand and Malaysia. Thai police found more than 175 graves along commonly used smuggling routes, which prompted national and regional action to combat people smuggling and trafficking.[1] People smugglers subsequently began to divert their routes from on-land travel across Thailand to more dangerous transportation by boat directly to Malaysian shores.[2] As local authorities threatened to intercept these boats, smugglers opted to flee by abandoning the migrants at sea.[3] This inevitably led to the crisis where approximately 8,000 people were left abandoned in overcrowded boats without food or water.[4]

These people had faced extreme discrimination, poverty and unemployment in Bangladesh and Myanmar.[5] They turned to people smugglers to arrange their transport to countries such as Malaysia, Thailand and Indonesia in the hope of a better life.[6] However, many found themselves floating at sea with little means to survive. Nations struggled to reach a solution to the problem, initially pushing back the migrants but ultimately accepting them on a temporary basis. It is estimated that 370 people died as a result of poor conditions on board and mistreatment by smugglers.[7]

Smuggled migrants are but one category of irregular migrants. Others include trafficked persons as well as those who have entered the country on their own accord. These categories of irregular migrants often overlap, making it difficult to distinguish one from another. A further complication is the fact that Malaysia has not ratified the 1951 Convention relating to the Status of Refugees. As a result, refugees are generally considered to be irregular migrants and can fall within various sub-categories (including smuggled migrants). Between 2010 and 2012, the Ministry of Home Affairs identified 1,029 cases of migrant smuggling into Malaysia. However, the actual figures are likely to be at least triple this estimation.[8] In fact, it is suggested that there are currently between two million and five million irregular migrants in Malaysia today.[9] These migrants are often economic migrants, who leave their countries of origin in search of employment opportunities.

The case of the Andaman Sea crisis is indicative of a failure of states to adequately address and prevent migrant smuggling within Southeast Asia. In particular, Malaysia has had considerable difficulty in stemming the flow of smuggled and irregular migrants. As a major destination and transit country for smuggled migrants,[10] Malaysia's immigration policies significantly influence the flows of migrants in the region. In order to find a meaningful solution to this problem, Malaysia must improve domestic policies and regulation, as well as cooperate with its regional neighbours to address the root causes of irregular migration. This requires moving past the superficial, reflexive policies of securitisation and showing greater commitment to creating legitimate pathways into the country.

1   Lego, Jera Beah H, 'The Southeast Asian "Boat People Crisis" of 2015: Human (In)Security, Precarity, and the Need for an Ethic of Cohabitation' (Working Paper Series No 181, Southeast Asia Research Centre, July 2016) 8.

2   Benar News (2016), Malaysia Stays on US Trafficking Watch List <http://www.benarnews.org/english/news/malaysian/malaysia-tip-06302016154337.html>.

3    Lego, above n 1, 8-9.

4    Mcleod, Travers et al. (2016), The Andaman Sea refugee crisis a year on: what happened and how did the region respond? The Australian National University <http://regnet.anu.edu.au/news-events/news/6471/andaman-sea-refugee-crisis-year-what-happened-and-how-did-region-respond>.

5   Ibid; Hiebert, Murray (2015), Tackling Southeast Asia's Migrant Crisis, Center for Strategic and International Studies <https://www.csis.org/analysis/tackling-southeast-asia%E2%80%99s-migrant-crisis>.

6   UNHCR The UN Refugee Agency, Bay of Bengal and Andaman Sea: Proposals for action (May 2015) <http://www.unhcr.org/protection/migration/55682d3b6/action-plan-2015-bay-bengal-andaman-sea.html>.

7   Amnesty International (2015), Southeast Asia: Deadly journeys – the refugee trafficking crisis in Southeast Asia, Index number: ASA 21/2574/2015 <https://www.amnesty.org/en/documents/ASA21/2574/2015/en/>.

8   Rahim, Rohania Abdul et al (2015), 'Combatting Smuggling in Persons: A Malaysia Experience' in 18 EDP Sciences 01004, 01004-2, 4.

9   Human Development, Social Protection and Labour Unit, East Asia and Pacific Region, 'Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System' (Report, World Bank, 2013) 4; Kaur, Minderjeet (2016), Minister: Employers complicit in influx of illegal migrants, Free Malaysia Today <http://www.freemalaysiatoday.com/category/nation/2016/10/18/minister-employers-complicit-in-influx-of-illegal-migrants/>.

10  Kassim, Azizah & Ragayah Hg. Mat Zin (2011), 'Irregular Migrants and the Law' in 38 Philippine Journal of Development 85, 86.

## What groups do Malaysia's policy responses need to consider?

### Refugees and Asylum Seekers

In August 2016, the United Nations High Commissioner for Refugees (UNHCR) recorded 150,200 refugees and asylum-seekers in Malaysia.[11] The majority of these people originate from Myanmar and include the Rohingya Muslims who are one of the most marginalised minorities in the world.[12] They have been subject to considerable human rights violations since 1978.[13] Currently, it is estimated that up to 25,000 Rohingya refugees reside in Malaysia.[14] In addition, a substantial number of Tamil people from Sri Lanka and Middle Eastern refugees regularly arrive in Malaysia.[15] These figures illustrate Malaysia's role as a major destination country for refugees, who frequently turn to migrant smugglers to escape persecution. However, the unsatisfactory nature of Malaysia's refugee protection framework and the abuse experienced by refugees sometimes prompt these migrants to seek better protection in alternative countries. This problem of mistreatment appears to be prevalent – immigration officials, police officers, and paramilitary volunteer corps members are frequently accused of harassing migrants and refugees.[16] The possession of official UNHCR refugee cards has been said to provide little protection against abuse.

### Economic Migrants

The majority of economic migrants entering Malaysia originate from Indonesia and Bangladesh.[17] It has been reported that in the state of Sabah alone there are 569,000 Indonesian irregular migrants.[18] Indonesia experienced slow economic development in the 20th century compared to Malaysia, which is one of the wealthiest countries in the region.[19] This economic inequality resulted in a constant flow of labourers travelling to Malaysia. They tend to travel through irregular methods due to a lack of understanding about the process for migration, a lack of protection by the Indonesian government and the presence of unregistered recruitment agents in rural areas.[20] The flow of Indonesian migrants has largely been absorbed into low-paying, low-skilled sectors. Indonesians currently occupy a large number of positions in the construction, plantation, and domestic work sectors.[21] In parallel to this constant influx of labourers, there has been a constant demand for cheap, undocumented labour by employers. Employers continue to employ illegal migrants despite the fines, prison sentences, and physical punishments because of the need for labour in these sectors.[22]

Bangladeshi migrants are the second largest group of undocumented migrants in Malaysia.[23] They frequently depart Bangladesh to escape widespread poverty and unemployment. These factors push migrants towards smugglers who

11 UNHCR UN Refugee Agency (2016), Figures at a Glance <http://www.unhcr.org.my/about_us-@-figures_at_a_glance.aspx>.

12 Ibid; Parnina, Syeda (2013), 'The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh' in 33(2) Journal of Muslim Minority Affairs 281, 281.

13 UN News Centre (2016), Myanmar must address 'serious' human rights violations against minorities – UN rights chief <http://www.un.org/apps/news/story.asp?NewsID=54268#.WAWzaI-rhBc>.

14 Parnini, above n 15, 289.

15 Ibid.

16 Allard, Tom (2009), Malaysia's traffickers prey on refugees, The Sydney Morning Herald <http://www.smh.com.au/world/malaysias-traffickers-prey-on-refugees-20090703-d7tz.html>; Novelli, Porter (2011), Malaysian Public Information Campaign, Post-implementation report: May 2011, Australian Government Department of Immigration and Border Protection, FOI Document 12 <http://www.border.gov.au/AccessandAccountability/Documents/FOI/2012-018673_Document13_Released.pdf#search=people%20smuggling%20Malaysia>.

17 Human Development, Social Protection and Labour Unit, East Asia and Pacific Region, above n 13, 125.

18 Kassim, Azizah (2009), 'Filipino Refugees in Sabah: State Responses, Public Stereotypes and the Dilemma Over Their Future' in 47 Southeast Asian Studies 72, 72.

19 Hosen, Muhamad (2005), 'Governance of Indonesian Labour and Migration to Malaysia: An Overview' in 39(2) Review of Indonesian and Malaysian Affairs 31, 31, 34-5.

20 International Organization for Migration (2010), Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East, 17 <https://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf>.

21 Ibid.

22 Kaur, Amarjit (2006), 'Order (and Disorder) at the Border: Mobility, labour migration and border controls in Asia' in Kaur, Amarjit & Ian Metcalfe (eds), Mobility, Labour Migration and Border Controls in Asia. Palgrave Macmillan: New York, 23, 36.

23 Karim, Zehadul, et al (2015), 'Bangladeshi Migrant Workers in Malaysia: Their Socio-Cultural Background and Work-Adaptability' (Paper, International Islamic University Malaysia) 4-5.

are often brokers and unregistered agents.[24] Agents frequently target rural Bangladeshis and entice them with promises of a better life and higher incomes.[25] Many Bangladeshis agree to these irregular forms of migration, as formal structures and frameworks for legal migration are severely lacking in Bangladesh.[26] The movement of Bangladeshi migrants began in the mid-1980s, when Malaysia faced extreme labour shortages in many industries.[27] A bilateral labour export agreement was signed with Bangladesh to allow for the importation of foreign workers and thus address these labour demands. Despite the fact that the bilateral agreement was terminated four years after commencement, the number of Bangladeshi labourers entering the country has not diminished.[28] Migrants are still motivated to travel by offers of lucrative employment, and the continuing economic turmoil of the country. Lacking legitimate pathways into the country, desperate Bangladeshis had little alternative but to turn to people smugglers.

## A (Dis) Orderly System?:
## Weak Foreign Recruitment Policies and
## Workplace Protections

Malaysia has historically dealt with irregular migrants through a dual approach: regulation of foreign labour recruitment, and the securitisation of irregular migrants and increased border control. Following the 2015 crisis, Malaysia appears to have directed greater effort towards securing the border and curtailing further incursions by smuggled migrants. These measures seem to have been relatively successful in reducing the rate of migrant smuggling. However, it remains doubtful whether greater immigration enforcement alone will be sufficient to address the issue of migrant smuggling in the long-term. There must be a complementary effort to improve current foreign recruitment policies and ensure that migrants are able to access regular methods of migration.

Foreign recruitment policies operate to lower the demand for undocumented foreign labour and thus curtail the unauthorised entry of migrants facilitated by people smugglers. The difficulty with implementing these policies in Malaysia is that it is a highly industrialised country with a large demand for foreign labour. This is particularly so in the plantation sectors.[29] There are an estimated 13 million job openings in sectors including agriculture and manufacturing.[30] The government has promised that it will continue to prioritise the employment of local workers over foreign labourers.[31] However, given the exponential increase in employment opportunities and employers' desires to hire cheap low-skilled labour, it is likely that demand for irregular migrants will remain constant. Malaysia's attempts at containing this demand through labour policies and bilateral agreements have been problematic. Between 1980 and 1990, Malaysia entered into many bilateral agreements with neighbouring countries to allow for legalised foreign recruitment. However, many of these agreements were terminated shortly after their commencement. One notable example is the aforementioned agreement with Bangladesh. Both countries have since entered into another Memorandum of Understanding in February 2016, but commencement of the program is still pending.[32]

Even with these agreements in place, migrant labourers are not guaranteed protection during their employment. They face the same workplace concerns as all other foreign labourers, including smuggled migrants.[33] These include issues relating

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24   Ullah, Ahsan (2009), 'Theoretical Rhetoric About Migration Networks: A Case of a Journey of Bangladeshi Workers to Malaysia' in 51(3) Journal of International Migration 152.

25   Ibid.

26   Ibid.

27   Ibid 152; Pillai, Patrick (1999), 'The Malaysian State's Response to Migration' in 14(1) Sojourn: Journal of Social Issues in Southeast Asia 178, 180.

28   Ullah, above n 27, 152.

29   Augustin, Robin (2016), 'Prepare now to comply with high TPPA labour obligations', Free Malaysia Today <http://www.freemalaysiatoday.com/category/nation/2016/10/19/prepare-now-to-comply-with-high-tppa-labour-obligations/>.

30   Sipalan, Joseph (2014), Amend Employment Act to cover foreign workers, says Professors Council, Malay Mail Online <http://www.themalaymailonline.com/malaysia/article/amend-employment-act-to-cover-foreign-workers-says-professors-council>.

31   Kaur, Minderjeet (2016), Minister: Employers complicit in influx of illegal migrants, Free Malaysia Today <http://www.freemalaysiatoday.com/category/nation/2016/10/18/minister-employers-complicit-in-influx-of-illegal-migrants/>.

32   Sakhawat, Adil (2016), Malaysia to recruit workers in 3 sectors, Dhaka Tribune <http://www.dhakatribune.com/business/economy/2016/10/19/23182/>.

33   International Labour Organization (2016), Review of the government-to-governement mechanism for the employment of Bangladeshi workers in the Malaysian plantation sector, xv <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_459065.pdf>.

to employer seizure of passports, wage disputes and language barriers that again encourage people to rely on smugglers.[34] In a 2010 Amnesty International report, it was stated that, "[l]oose regulation of agents, abusive labour laws and policies, and the practice of allowing employers to confiscate their workers' passports allow trafficking to flourish."[35] A similar conclusion may be drawn in relation to migrant smuggling. These migrants often encounter abuse and harassment in the course of their journey to Malaysia and upon arrival. There have been reports of migrants being held for ransom in squalid accommodation until relatives make payments to smugglers in exchange for their release.[36] If the necessary funds cannot be produced, they may be sold into forced marriages or to employers in Malaysia.[37]

Ministry officials have recognised the involvement of international criminal syndicates, and have increased enforcement efforts to curb these illegal activities.[38] However, this is a difficult task with local businesses and recruitment agencies also colluding in the importation of undocumented migrants.[39] To reduce the reliance on smugglers, it is evident that there must be better frameworks for legitimate labour migration as well as improved awareness of formal immigration procedures.[40] Without these reforms, migrants will continue to be susceptible to abuse by smugglers, as witnessed during the Andaman Sea crisis. However, the Malaysian government continues to prioritise policies of securitisation and border controls.

## Regional Cooperation in Managing the Flow of Irregular Migrants

The growing visibility of irregular migrants between 1970 and 1980 prompted public concern that they were displacing locals from employment opportunities and access to public amenities. These fears eventually precipitated policies of securitisation, in which irregular and smuggled migrants were considered to be a threat to national security and the ethnic balance of the state. Greater emphasis was placed on border controls and the detection and removal of illegal migrants. These policies, in conjunction with the 2015 smuggling crackdowns, appear to have caused smuggling activities to subside in key routes.[41] There have also been no subsequent humanitarian crises of the magnitude experienced in 2015. However, migrants continue to be abandoned at borders by smugglers.[42] Such cases suggest that an immigration policy centring on securitisation and border enforcement is not sufficient and requires re-evaluation.

The Malaysian government initially responded to the negative public sentiment surrounding irregular migrants by implementing Operations Ops Nyah I and II. These operations were introduced in the 1990s and sought to prevent illegal entries and to arrest those found to have entered illegally.[43] Periodic crackdowns were also initiated, typically following an amnesty program that gave undocumented migrants an opportunity to depart the country without penalty.[44]

Despite these policies, the flow of irregular migrants into Malaysia remained unabated, particularly from Indonesia.[45] In the early 2000s, Indonesian labourers began demanding better working conditions and initiated riots across the country.[46]

34 Ibid.

35 Amnesty International (2010), 'Trapped: The Exploitation of Migrant Workers in Malaysia' (Report, Amnesty International) 6.

36 ector, Charles (2015), U.S.: Don't Let Trade Trump Human Rights <http://charleshector.blogspot.com.au/2015/07/us-dont-let-trade-trump-human-rights.html>.

37 Ibid.

38 Ibid.

39 Augustin, above n 32.

40 Human Development, Social Protection and Labour Unit, East Asia and Pacific Region, above n 13, 121.

41 Arulldas, S (2016), No human smuggling at border since January, says diplomat Malay Mail Online <http://www.themalaymailonline.com/malaysia/article/no-human-smuggling-at-border-since-january-says-diplomat>.

42 Cochrane, Liam (2016), Smugglers abandon group from Myanmar on Thai-Malaysia border, ABC News <http://www.abc.net.au/news/2016-08-03/people-smugglers-abandon-group-on-thai-malaysia-border/7686516>.

43 Kudo, Sasagu (2013), 'Securitization of Undocumented Migrants and the Politics of Insecurity in Malaysia' in 17 Procedia Environmental Sciences 948, 949.

44 Ibid.

45 Ibid.

46 Ibid.

The People's Volunteer Corps Malaysia (a volunteer-based paramilitary corps commonly referred to as RELA) was mobilised to address these issues and also to monitor the Thai-Malaysian border for incidences of people smuggling.[47] RELA continue to have an expansive role in Malaysian immigration control amidst criticisms of human rights abuses and violence towards refugees and undocumented workers.[48] Various other crackdowns have occurred throughout the last two decades that saw the detention and deportation of thousands of irregular migrants. After 1997, legislative and police action to combat irregular migration was strengthened and detention camps were established.[49]

One of the largest flaws of securitisation and border control policies is the fact that migrants often seek alternative routes to enter the country. Malaysia's porous borders and geographical position make it possible for smugglers to seek out different entry points should one be closed as in 2015. As a result of the crackdowns, smugglers used alternative over-sea routes to transport people directly into Malaysia. Julia Mayerhofer, interim executive director of the Asia Pacific Refugee Rights Network (APRRN), explained that even if one route is blocked, "people will find another way, and that might be more dangerous and more risky for the people."[50] This is because the push factors in source countries are still present, if not worsening.[51] In Myanmar, the persecution of Rohingya nationals has intensified and abuses of human rights occur frequently.[52] Thus, people who are desperate to leave the country may agree to alternative, increasingly dangerous smuggling routes. Another flaw is that Malaysia has struggled to prosecute smugglers and enforce its border control policies, which may show a lack of political

will to properly address this issue.[53] It has been suggested that in order to increase the prosecution rate, smuggled migrants should not be criminalised, and should feel free to report smugglers without fear of being detained and deported.[54] These problems exemplify the inadequacies of a policy response dominated by stringent border control. The need to regulate the entry of migrants must be counterbalanced by measures to address the cause of irregular migration and create legitimate migration pathways.

In the aftermath of the 2015 Andaman Sea crisis, regional governments acknowledged the collective failure of states to act. There have been subsequent meetings to create a regional mechanism to prevent future crises and to implement necessary improvements. These movements are promising, however, it is unclear how they will manifest in regional policy. Following the crisis, Malaysia has engaged in cooperative border control measures with its neighbouring countries. A joint border agreement has been signed with the Philippines to patrol the border between the southern Philippines and East Malaysia.[55] In addition, Thailand has agreed to increased intelligence sharing and the possibility of erecting a wall along the Malaysian state of Kedah to curb the flows of illegal workers across the Thai-Malaysian border.[56] While such agreements are likely to slow the influx of migrants into Malaysia, there must be greater cooperation to improve the economic and humanitarian conditions in source countries.

47  Ibid 952

48  Ibid 953.

49  Ibid 948.

50  Yi, Beh Lih (2016), Denied work, Rohingya trapped in limbo in Malaysia, Thomson Reuters Foundation <http://news.trust.org/item/20160830030159-sjx0j/>.

51  Hector, Charles, above n 39.

52  Thomson Reuters Foundation (2015), People smugglers exploring new routes to Malaysia after Thai crackdown: Aid groups, The Straits Times <http://www.straitstimes.com/asia/se-asia/people-smugglers-exploring-new-routes-to-malaysia-after-thai-crackdown-aid-groups>.

53  Jalil, Melati (2016), Malaysian NGOs Demand Government Action on Human Trafficking, BenarNews <http://www.benarnews.org/english/news/malaysian/human-trafficking-07262016174656.html>.

54  Whelan, Jennifer, et al (2016), 'Abused and Alone: Legal Redress for Migrant Domestic Workers in Malaysia' in Indonesia Law Review 11.

55  Caballero-Anthony, Mely (2005), Regional Security in Southeast Asia: Beyond the ASEAN Way, Institute of Southeast Asian Studies, 59.

56  McGahan, Kevin (2008), Managing Migration: The Politics of Immigration Enforcement and Border Controls in Malaysia, ProQuest, 176.

## Great Power Politics

Actors outside of the region shape Malaysian migration policy as well. The United States has been an influential player in Malaysia's approach to irregular migrants. The U.S. releases an annual Trafficking in Persons (TIP) Report that is commissioned by the U.S. government and provides an annual snapshot of the circumstances of each country in relation to human trafficking. Malaysia has frequently been placed in the (worst) Tier Three ranking, damaging its global reputation and adding pressure to improve its conditions. In 2009, Malaysia was declared 'one of the worst places for immigrants' by the United States Committee on Refugees and Immigrants (USCRI).[57] In 2014, Malaysia was again deemed to be a Tier Three country after failing to properly address issues of trafficking and smuggling of persons for two consecutive years.[58] This ranking was controversially reversed in 2015. Malaysia was raised to the Tier Two Watch List despite its handling of the Andaman Sea crisis and amidst allegations of prevalent migrant abuse and trafficking.[59] Human rights proponents suggest that the upgrade may have been a result of the Trans Pacific Partnership (TPP) negotiations, as the U.S. Trade Promotion Authority Act prevented agreements being entered into between countries on the Tier 3 ranking, such as Malaysia at the time. It is said that the new ranking is more a triumph of trade politics, while conviction rates of smugglers and efforts to combat smuggling remain questionable at best [60].

## Lessons from the Crisis

Migrant smuggling in Malaysia continues to be a complex and multidimensional issue. Following the 2015 Andaman Sea crisis, Malaysia's response to migrant smuggling has been heavily dependent on securitisation and enforcement of border controls. The government has also entered into regional agreements for cooperation and intelligence sharing for the primary purpose of closing smuggling routes. While these policies are important, they must be implemented in conjunction with proper mechanisms for labour exchange and foreign recruitment, particularly with Bangladesh. In addition, the plight of the Rohingya people in Myanmar must be acknowledged and addressed. Malaysia must draw on the lessons learned from the Andaman Sea crisis and look towards a holistic, long-term solution to smuggling in Southeast Asia. Without proper attention to the root causes of migrant smuggling, it is inevitable that another humanitarian crisis will occur in the near future.

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57  Kassim, Azizah & Zin, Ragayah (2011), 'Policy on Irregular Migrants in Malaysia: An Analysis of its Implementation and Effectiveness' in Discussion Paper Series No 2011-34, Philippine Institute for Development Studies, 18, 3.

58  Whiteman, Hilary (2015), Who's fighting human trafficking? U.S. releases rankings, CNN <http://edition.cnn.com/2015/07/27/world/us-trafficking-tip-report-2015/>.

59  Ibid.

60  Whiteman, above n 61.

# Book Review

# The China Model: Political Meritocracy and the Limits of Democracy, Daniel Bell (2015)

## *Is Chinese Meritocracy the New Black?*

*Article by* **Cait Kelly**

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## In the beginning, there was Deng

Since 1978, when Deng Xiaoping, China's Vice Premier and military leader began to modernise China by implementing reforms based on his political ideology, 'socialism with Chinese characteristics', the country has undergone significant economic and cultural change. Deng executed this new brand of socialism by freeing up markets and introducing material incentives while still granting the State full control over the country's economy. Deng's reforms lifted several million Chinese citizens out of poverty.  His legacy was the country opening itself up to rapid economic growth and, as a result, competing with the rest of the world.

In 2017, the international community watches China with intense scrutiny, as the country's unprecedented growth rate begins to slow and a 'new economic normal' begins to appear. In the last fifteen years, the country of 1.3 billion doubled its economic output, becoming the largest economy in the world. This is an unparalleled feat for a developing nation in the 21st century.[1] Over the last two decades, as the economy surged forward, the political structure that sits at the heart of China's economic prowess has become a key focus of international attention and controversy. This alternative governance model, known as meritocracy, needs to be closely examined if we are to understand China's rise to superpower.

## From Confucianism to meritocracy: a Chinese tale

The Communist Party of China (CCP) has transformed itself from the revolutionary party to the governing party, implementing both political and economic reform. In so doing, they have borrowed from an ancient Chinese political system known as meritocracy. Confucius (551–479 BCE), China's most influential philosopher, held the revolutionary idea that nobility of virtue should replace nobility of blood. The ideal traits of a virtuous and successful political leader are that they must be capable, upright, fair, benevolent and willing to work for the common good.[2]

Although in his lifetime Confucius did not see his ideas widely implemented, over time his ideas received official sanction and were developed into a system that became known as Confucianism.

A key element of Confucian ethics and political theory is the idea of merit as a prerequisite for political office. By the time of the Tang Dynasty (618-907 CE) Confucian ideas had been developed into an elaborate system of public examinations. Public officials were selected based on their success in these national examinations and then through evaluations of their performance at lower levels of government. Under Deng's leadership, this system was re-established. To successfully climb China's bureaucratic system, candidates had to demonstrate competency in three critical areas: intellectual ability, social skills and 'virtue', which in ancient Confucian terms was the upholding of righteousness, and the moral disposition to do good. [3]

## Meritocracy vs. liberal democracy

In his controversial book The China Model, Daniel Bell, an American Professor at Tsinghua University, presents a powerful argument in support of China's meritocracy. He defines meritocracy as the idea that a political system should be designed with a selection mechanism to choose leaders and that as a result they will hold above average abilities. He argues that while the system may still be evolving, the fundamental principles behind it are as good as liberal democracies and that in many cases China's meritocracy supersedes the democratic alternative. Bell's theory challenges notions held since the fall of the Soviet Union that all dictatorships eventually fall into decline or democratisation. He argues that instead of China's government devolving as other dictatorships have, it has in fact evolved into a meritocracy, a successful alternative to liberal democracy.[4]

Bell suggests that in its ideal, China's meritocracy would be a 'vertical democratic democracy'. At the lower levels of bureaucracy, a close connection with the people is particularly important so that comprehensive participatory democratic elections are held. At the higher levels more emphasis is

1   Sheppard, Wade (2016), 'How much is China's economy really slowing,' Forbes

2   Kou, Jianwen and Xiaowei Zang (2013),  Choosing China's Leaders. Routledge

3   Wang, Jing (1996), High Culture Fever: Politics, Aesthetics and Ideology in Deng's China, University of California Press

4   Bell, Daniel, (2015), The China Model: Political Meritocracy and the Limits of Democracy, Princeton University Press

placed on rationality, virtues such as concern for the people and a practical attitude, with experimentalism in the middle. Politburo members are expected to set a model of corruption-free rule.

Bell stresses he is not a defender of the CCP and is in fact concerned with the lack of transparency, freedom of speech and the way in which local elections are carried out. However, he argues the meritocratic system in China offers a successful alternative to liberal democracies. Bell's theory is an idolised version of the current system; a blueprint of an effective structure that would threaten the prominence of liberal democracy.

## Liberal democracy: forever flawed?

In his 2012 paper, Meritocracy is a Good Thing, Bell argues that the system implemented in the USA could be more accurately described as 'one dollar one vote' rather than one person, one vote. He states:

> *"Part of the problem is that voters are often selfishly concerned with their narrow material interest, and ignore the interests of future generations and people living outside national boundaries who are affected by the policies of the government."*

This argument highlights the position that in a democracy voters are fundamentally fickle. They are prone to being swayed by their own self-interests, manipulated by ambitious candidates and unable to make a decision based on merit.[5] To Bell, voters are also susceptible to apathy, rendering their vote ignorant and useless.[6] Such flaws ensure a democratic system cannot possibly guarantee that the most suitable candidates are always given the opportunity to govern. Bell's criticism isn't just directed at the agency of the individual voter. It is also placed on the surrounding collective culture democracy fosters. Democratic systems place an emphasis on the individual rather than the common good. 'One person one vote' emphasises individual choice, a notion that he argues is at odds with 'Asian values'. To emphasise this he highlights the contemporary state of Singapore where the collective emphasis is supposedly on the common

social good or community rather than individual wants.[7]

In his view, democracy isn't just fundamentally flawed but is also inconsistent with an Asian idea of what constitutes good government. Bell argues that if a referendum were held in China on whether the country should adopt democracy, it would fail. This idea is central to his overarching argument: if the meritocratic system is in fact preferred by the people, it therefore secures legitimacy and is immune from arguments suggesting it is authoritarian and oppressive.[8]

Bell gathers a list of additional flaws: short election cycles tend to ensure a turnover of talent; politicians are prone to making short-term decisions to secure political support and tenure; the influence and power of lobby groups circumnavigating the public interest and the increasing trend of government through market research and the simplification of complex issues through sloganeering. In democracies, Bell argues such things dominate political discourse rather than meaningful debate. It is important to highlight these complex institutional flaws that are inherent within every democratic system.

## The pot calling the kettle black?

As Timothy Garton, Professor of European Studies at Oxford University pointed out during a panel discussion run by the Asia Society at which Bell was present, while some debate China's meritocracy as currently evolving, the flaws found in many liberal democracies can also be found within the current Chinese model.[9] The China model in its current form is highly susceptible to corruption, and the selection criteria for public servants is also compromised by factional disputes and a monopolisation of power by political families. A comparison of both systems, based on these factors, would arguably render them equal on that level at least.

5   Moran, Micahel (2015), Democracy and Democratization, Routledge,

6   Elster Jon & Rune Slagstad, (1993), Constitutionalism and democracy, Cambridge University Press

7   Gilardi, Mauro (2017), Singapore: which Democracy? External Influence and Asian Values in the Formation Process of a Democratic Model, Babelcube Inc.

8   Berggruen, Nicholas & Nathan Gardels (2012), Intelligent Governance for the 21st Century: A Middle Way Between East and West, Polity

9   Bell, Daniel et. al., (2015) "Is There A China Model?," ChinaFile, http://www.chinafile.com/conversation/there-china-model, accessed 9 May 2016

est/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html, 14

If both systems share similar flaws, it cannot be argued on the practical level that meritocracy is a positive alternative to liberal democracy. If the sole key performance indicator of a successfully run state is strong economic accomplishments and stable governance, then it could easily be judged that the China model of meritocracy presents a viable alternative to liberal democracy. China's re-emergence can be attributed to the consolidation of power by the CCP and its ability to maintain public order whilst advancing the country economically. Are these factors alone enough to make it a positive alternative though? If China has proved that a country can flourish through an alternative governing system to liberal democracy should it be rendered automatically as a positive?

## Meritocracy with a side of red restrictions

Embedded within the Chinese Constitution is Article 35, which states the right to freedom of speech, freedom of press, of assembly, of association and of demonstration.[10] This is a common clause found in constitutions across the globe. The reality of restrictions placed around the Chinese people, however, is much more dire. While it would be easy to concentrate here on the internationally publicised Tiananmen Square incident in 1989, in which several hundred Chinese citizens lost their lives protesting against the Government's 'lack of democracy', the problem of restricting political dissent, freedom of information and media is not limited to this event.[11]

In 2016 Reporters without Boarders ranked China 176 in the World Press Freedom Index.[12] At the same time Xi Jinping's Presidency has been mired in media crackdowns and restrictions on independent journalism.[13] The CCP exercises total control on all domestic media outlets.[14] China's global antagonist, the USA, also has the freedom of speech and the freedom of the press enshrined in its constitution. Whilst the USA is only ranked

47 on the Index[15], state control over media is severely reduced in comparison to China and the censoring of information far less widespread.[16] A free press affords citizens access to truth and, at its best, works as a governmental watchdog.  In its ideal, it guides and informs the free distribution of information and as a result acts as a constraint on political power.[17] In the age of Trump, where news in the West is easily branded as fake, false facts are spread like wild fire over social media outlets and the traditional media faces fiscal pressures that threaten it's foundations,[18] a free and diverse press is fast becoming one of the major issues within Western governments. Yet, how slippery is the slope to state censorship?

The CCP restricts the flow of information within the public sphere, therefore securing their complete influence over the populace. [19]While the China model may frequently have the common good of the people embedded within domestic policies, it is also concerned with securing its own prosperity and longevity. As a consequence, it can restrict the civil freedoms of its people. It could be argued that the legacy of Tiananmen continues, not in the State-sanctioned murder of citizens, but in the repressive control placed on the majority of citizens that is not reported in the Chinese press. When civil liberties are taken into account, China's meritocracy takes on some uncomfortable similarities to authoritarian statehood.

As Stein Ringen, Emeritus Professor of Sociology and Social Policy at Harvard, stresses in his review of Bell's book: at the core of this debate is an argument of power[20]. Democracy's ability to prevent the monopolisation of power by one person or one party is in essence its biggest strength. Ringen argues that a case for

10  Zhang, Qianfan (2012), The Constitution of China: A contextual Analysis, Bloomsbury Publishing

11  Lusted, Marcia Amidon (2010), Tiananmen Square Protests, Abdo Publishing Company

12  Jargan Josh (2016), Current Affairs December, ebook http://www.jagranjosh.com/current-affairs/current-affairs-december-2016-ebook-1480583047-1

13  Lam, Willy Wo-Lap (2015), Chinese Politics in the Era of Xi Jingping, Routledge

14  Garrick, Bennett, (2016), China's Socialist Rule of Law Reforms Under Xi Jing Ping, Routledge

15  Reporters Without Boarders, (2016), World Press Freedom Index, https://rsf.org/en/ranking

16  MacKinnon, Rebecca (2008), "Flatter World and Thicker Walls? Blogs, Censorship and Civic Discourse in China," Public Choice, Vol. 134, No. 1-2, page 31-46

17  Xu, Beina & Eleanor Albert (2016), "Media Censorship In China,"  Council on Foreign Relations. https://www.cfr.org/backgrounder/media-censorship-china accessed 9 May 2016

18  Allcott, Hunt & Matthew Gentzkow (2017), Social Media and Fake news in the 2016 Election, The national Bureau of Economic Research, http://www.nber.org/papers/w23089

19  Qiang, Xiao (2011), "The battle for the Chinese Internet," Journal of Democracy, Vol. 22, No. 2, page 47-61

20  Ringen, Stein (2009), What Democracy is For: Freedom and Moral Government: On Freedom and Moral Government, Princeton University Press

democratic government is twofold: firstly, the fate of a democratically elected government has a symbiotic relationship with public opinion, therefore the State will be more likely to act against oppression and persecution of its citizens. Secondly, governments are given a mandate by virtue of winning elections, which incentivises them to be more effective.

Accountability is at the core of these two arguments for a level of responsiveness and effectiveness of democratic government. The government will be held to account for its actions by a free press, but perhaps more importantly, by a looming election year, thus it will strive to implement beneficial policies for the populace. By way of contrast, Xi Jingping attempts to further consolidate his power while at the same time not upsetting the general populace. As Ringen points out, this is an inherently more difficult political game to play.[21]

## Democracy as insurance

Democratic leaders face their own unique issues, and acknowledge that democracy is not perfect. Many proponents of liberal democracy will be quick to quote the now famous line of Churchill's:

*"…democracy is the worst form of government, except for all the others.''*

Less frequently mentioned however, is Churchill's argument for democracy as insurance. Insurance against "dangers from abroad, insurance against dangers scarcely less grave and much more near and constant which threaten us here at home."[22] Here Churchill articulates the great democratic dichotomy. It will never be a perfected system. It has faults at its very core, but it also grants the insurance to the populace, giving them the civil freedoms necessary to fight oppression.

Democracy is an imperfect search for human truth and universal freedoms. Meritocracy on the other hand, offers stability, and an economic efficiency, rendering it on many levels a viable alternative. A truly effective political structure, at the helm of a State that prospers, cannot be solely defined by economic strength; civil liberties must also be considered. The measure of a great and robust State is its ability to weather criticism from its populace and invite them to influence its future.

21   Ringen, Stein (2016), A Perfect Dictatorship: China in the 21st Century, Hong Kong University Press

22   Barber, Benjamin (2004), Strong Democracy: Participatory Politics for a New Age, University of California Press