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Managing the Returning Foreign Terrorist Fighters and Their Families: Malaysian Experience

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Abstract

The main objective of the article is to explore Malaysia's approach in managing the returning fighters and their families in the post-IS phase. In doing so, the article is divided into four parts. The first part provides the background to Malaysians involvement as foreign fighters starting from the 1990s until the IS case. Second part highlights the uniqueness of IS' foreign fighters and why Malaysia adopted repatriation policy towards its citizens who involved in IS struggle. The third part explores the process of repatriation of foreign fighters and their families namely the assessment, rehabilitation, prosecution and reintegration. The last part of the article provides an assessment on Malaysia's approach particularly from the perspective of human rights and rule of law, as well as its overall effectiveness.

Keywords: foreign terrorist fighters (FTFs), IS, repatriation, rehabilitation, reintegration, prosecution, security, international justice

Background

The issue of foreign terrorist fighters (FTF) has been the subject of global interest by various parties particularly policymakers and practitioners at least in the past ten years. It is worth noting that the FTF phenomenon – referring to “individuals who travel abroad to a State other than their States of residence or nationality to engage in, undertake, plan, prepare, carry out or otherwise support terrorist activity or to provide or receive training to do so” – has been reported on at least since the 1820s.¹ This issue also has been the subject of debate and discussion at the national and international level due to the importance and impact to the national security and international peace.² For this reason the United Nations (UN) passed two key resolutions related to FTFs and the rehabilitation of FTFs as outlined in UN Security Council Resolutions 2178 (2014) and 2396 (2017). They established and reinforced international obligation to border security and information, and strengthened judicial cooperation and implementation of appropriate prosecution as well as rehabilitation and reintegration strategies of FTFs and their accompanying family members. In addition, the 2015 Madrid Guiding Principles and its 2018 Addendum also provide additional guideline of the issue of FTFs.³

In the Malaysian context, the issue of FTFs is not a new phenomenon. Since 1990s, Malaysia has witnessed at least four waves in which some citizens left the country to join a conflict abroad and subsequently returned. The first wave was during the Afghanistan War in the 1990s, followed by the Bosnian conflict in 1992-1995;⁴ the conflict in Mindanao throughout 1990s to 2000s and the Maluku sectarian conflict in 1999-2002.⁵ In the first two cases, that is Afghanistan and Bosnian wars, some Malaysians did travel to these two countries to join the wars as fighters although their exact number are unknown. After the war, these so-called “Afghan veterans” returned to Malaysia and later created well-known group Jama’ah Islamiyyah (JI) in 1996 with the vision to establish an Islamic state in Malaysia and the region. In the Southern Philippines, there were also Malaysians joining local groups, such as Abu Sayyaf and Islamic State (IS)-affiliates, resulting in some individuals’ deaths, such as Zulkifli Hir⁶ and Mahmud Ahmad.⁷ Similarly, during the Maluku sectarian conflict, there were Malaysians involved in providing paramilitary training, and engaged in the operations, in addition to humanitarian works. After the war, some of them successfully returned to Malaysia and began a new life.⁸

The above four waves shared several common denominators. First, those who travelled to join the war were predominantly male, with little to no notable participation of women or families in this process.⁹ Second, returning fighters have a history of bringing back their expertise, ideology and networking to create a local group to start off recruitment drive, fundraising and planning

1 Arie Perliger and Daniel Milton, “Chapter 1: The Phenomenon of Foreign Fighters – Conceptualization and Review of Existing Explanation”, *Combating Terrorism Centre at West Point*, November 2016.

<https://www.jstor.org/stable/pdf/resrep05619.5.pdf>.

2 United Nations, “Foreign terrorist fighters”, <https://www.un.org/counterterrorism/foreign-terrorist-fighters>.

3 Ibid.

4 Interview with former veteran of Bosnian war, 12 January 2022, Kuala Lumpur, Malaysia.

5 Mohd Mizan Mohamad Aslam, “A Critical Study of Kumpulan Militant Malaysia, Its Wider Connections in the Region and Implications of Radical Islam for the Stability of Southeast Asia,” PhD diss., Victoria University of Wellington, 2009, 27.

6 Zulkifli Abdul Hir (born 5 January 1966/5 October 1966–25 January 2015) was a Malaysian who travelled to Mindanao, Southern Philippines to join a terrorist group in the region. He was a founding member of Kumpulan Mujahidin Malaysia and Jama’ah Islamiyah (JI). He was killed in a special operation conducted by the Philippines Special Action Force on 25 January 2015.

7 Dr. Mahamud bin Ahmad (25 September 1978 – 7 June 2017) was a former lecturer at the University of Malaya who travelled to the Southern Philippines to join a terrorist group, and was killed in the Battle of Marawi in 2017.

8 Interview with former leader of Jama’ah Islamiyyah, 13 January 2022, Kuala Lumpur, Malaysia.

9 Interview with counter-terrorism official, Special Branch, Counter-Terrorism Division, Royal Malaysia Police, 3 November 2014, Kuala Lumpur, Malaysia.

of attacks.¹⁰ The creation of JI in 1996 was the best case in point. This experience has actually shaped the thinking of Malaysian security agencies about the nature of security threat posed by the returning fighters. For them, there was four stages of participation: the departure to join a war in another country; the return to their home country after the war; the creation of a local cell; and, finally, the plan of attack in their homeland.¹¹

Thus, as the IS forces consolidated its control and some Malaysians are found to make their way to Raqqa and other IS-controlled cities, the Malaysian police thought that they are going to see similar pattern of event, that is the departure, the return, the creation of local cells, and the attack.¹² However, as the events unfold, it is proven that this hypothesis is wrong as they observe more people gradually leaving IS-controlled territories to return home, especially towards the end of IS downfall in 2019. There was also an attack conducted by the local cells in 2016 (not by returnees). This has led to a paradigm shift in the thinking of the intelligence community about the nature of threats posed by the returnees. There are several key factors that contribute to this:

- Fighters did not travel alone but often brought families: wives and children as part of migration to settle under the so-called ‘newly established caliphate’. This practice did not happen in the case of war in Afghanistan and Bosnia in the 1990s.
- The women are now seeking help from the Malaysian government to be repatriated, especially after their husbands died in battle. This also did not happen in the past.
- The creation of local militant groups as forecast to occur in the post-return period has not happened because all returnees or the returning fighters are quickly detained and charged under stringent terrorism laws. Under Penal Code 130J, a person can be imprisoned for up to 30 years for joining terrorist entity.
- Fourth, the 2016 attack was not conducted by the returning terrorist fighters, but by a local cell who never travelled to Syria.¹³

This changing scenario has significant impact to Malaysia’s approach and strategies in dealing with the post-IS cases, particularly when the interest and well-being of women and children are at stake. Like most countries, initially Malaysian authorities never considered the idea of repatriation given the security risk and public perception, as one counter-terrorism official said “let them be there, we never forced them to leave the country in the first place.”¹⁴ At this point, there was also a strong voice from the public against the idea of bringing FTFs back arguing they might pose security threat to the public. However, the initial position was later reversed considering a long-term implication both to Malaysia and the families, and most importantly the authorities’ capabilities of handling similar cases in the past.

Between 2011 and 2014, very few Malaysians travelled to this region individually, not in group or in a large number. However, this situation changed after the declaration of the Caliphate on June 2014, there was a growing number of Malaysians with families – women and children

10 Zachary Abuza, *Militant Islam in Southeast Asia: Crucible of Terror*. (Boulder, Colorado, USA: Lynne Rienner Publishers, 2003), also Solahudin, *The Root of Terrorism in Indonesia: From Darul Islam to Jema’ah Islamiyah*, translated by Dave McRae. (Singapore: Ridge Books, 2013).

11 Interview with Ayob Khan Mydin Pichay, former principal director, Special Branch, Counter-Terrorism Division, Royal Malaysia Police, 1 November 2014, Kuala Lumpur, Malaysia.

12 Ibid.

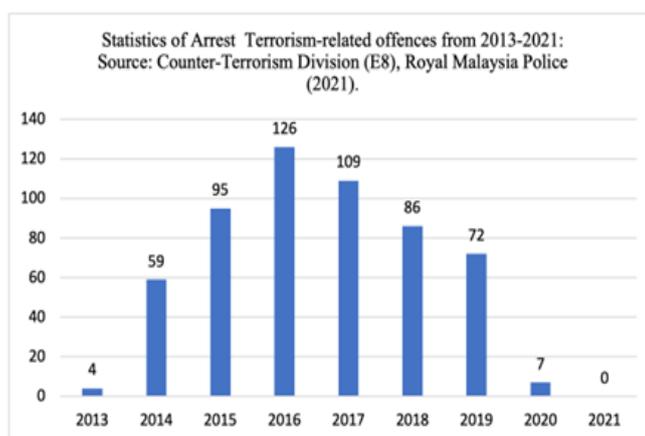
13 On 26 June 2016, local cell has thrown a hand grenade against local nightclub Movidia in Puching, Selangor. The cell was created by a Malaysian who is fighting in Syria through Telegram application known as Gagak Hitam (Black Crow).

14 Interview with official at the Counter-Terrorism Division, Royal Malaysia Police, 3 December 2021, Kuala Lumpur, Malaysia.

- travelled to Syria after heeding the call of Abu Bakar al-Baghdadi to migrate to the newly-established Caliphate under his leadership. In the speech, he made it clear that everyone with expertise is invited to participate in the IS “nation-building” project. The police estimated that approximately 122 Malaysians travelled to Syria and Iraq between 2011 to 2019,¹⁵ in addition to 600 from Indonesia, and several others from Singapore and the Philippines.¹⁶

In primary research interviews with returnees, many indicated that their departure to join IS was to answer the call of Abu Bakar al-Baghdadi to migrate to the caliphate and the desire to live under an Islamic State.¹⁷

On the domestic front, Malaysian police has stepped up their efforts to limit recruitment drive and prevent Malaysians from travelling. Between 2013 and 2020, 558 individuals were detained by the Special Branch, Counter-Terrorism Division (CTD) for terrorism-related offences. This initiative gave strong impact to recruitment drive and the migration pattern to the IS-controlled territories as indicated in the statistic below. The massive arrest and extensive public awareness campaign sent signal to the public that any form of affiliation with IS is a serious offence and prosecutable under Malaysian terrorism law.



¹⁵ Ibid.

¹⁶ Since the conflict in Syria started in 2011, several individuals from Malaysia have secretly travelled to Syria and Iraq through Turkish borders, while some are trying to get inside Syria via Lebanon such as Razif and Razin Sharhan. Their intention was to fight the Syrian regime who were, in their view, oppressing the Syrian people, especially the Sunnis. I had the opportunity to interview this earliest group particularly Lotfi Ariffin and Zulkarnain Ghaz, who were among the earliest to join the fight in Syria. At this point, they did not join IS, mostly joined Afnad al-Sham, a small faction fighting the Syrian regime alongside other factions such as Ahrar al-Sham, and Jabhah al-Nusrah, the al-Qaeda proxy in Syria.

¹⁷ For instance, Husain (not actual name), a PhD candidate from a public university, left Malaysia in 2014 with his wife with the intention of offering their services as educators to IS-caliphate. He said “I don’t come here to fight, I come here to teach because I have interest in education.” His wife who was also an educator wished to be a lecturer in the IS education institution. But their hope was unfulfilled because IS assigned them to menial jobs and the offer to be a fighter which he flatly refused. Realising that they cannot function meaningfully in the IS-caliphate, they decided to leave IS-territories. Now, both of them were repatriated to Malaysia and facing a prison time for joining a terrorist group. Another subject is Aiman (not actual name), who also travelled to Syria in late 2014 with his young wife and new born baby. After two years working as hospital attendant, he was forced to be a suicide bomber leaving his young wife and two children. According to his wife, IS refused her husband’s request to bid farewell to his family. Instead, he was asked to write a last letter to his wife advising her to raise the children well and remarry. The letter was delivered to her one week after his demise. Those who refused to execute the task would face imprisonment and torture, as recounted by Aini (not actual name) during my interview, about what happened to her husband who rejected the offer to become suicide bomber in 2015. Aini’s husband was later executed for repeatedly rejecting the suicide mission. These cases are common and happened to 122 Malaysians who risked their lives to join IS. The women, whose husbands died in the battle or suicide operation, will be offered to remarry with IS fighters. Having a husband is the only ticket for women to leave their houses. If they are unmarried, they will be locked indoors by IS caretakers and there is no way they are able to enjoy the freedom of movement.

The Repatriation Policy

As stated earlier, initially repatriation was never a priority for the Malaysian government in the post-IS phase, particularly considering the security risk, public interest and sensitivity of the matter. However, the government finally agreed on a repatriation operation involving interagency cooperation between bodies, such as Ministry of Home Affairs, Ministry of Foreign Affairs, and officials from the intelligence services. The decision for repatriation is adopted based on five justifications:

1. FTFs are evacuated on the basis of humanitarian basis, especially taking into account that many of these families consist of widows with small children, and they never engaged in violent activities. In fact, they are considered the victim of circumstance.
2. Legally, FTFs are still considered Malaysians. Therefore, the state has legal, humanitarian and moral obligation to provide any necessary assistance suitable for its citizens. Revoking citizenship has never been an option to prevent FTFs from joining terrorist activities in other countries. In facilitating the repatriation process, the returnees and their families are given consular assistance and proper documentation to leave the camp.
3. From security perspective, repatriation may prevent Malaysian citizens from travelling to another country to join terrorist organisations, and consequently creates problems for the host country. In addition, it prevents the returnees from returning to Malaysia illegally.
4. Retaining FTFs in camps and prisons would expose them to radicalisation and cause further complications in future. Some returnees reported radicalisation as occurring the camp, because IS operatives are still strong inside. IS elements try to influence the refugees not to leave the camp and convince them that IS will return in the near future.¹⁸
5. Malaysia has robust terrorism laws to deal with such cases and experience of conducting rehabilitation program for militant detainees and their families before.¹⁹ Thus, bringing them back home for rehabilitation is considered the best option.²⁰

Following the decision, on March 2019, Malaysian authorities announced that they are in the process of repatriating twenty-three out of fifty-one Malaysians detained in al-Hol camp and several prisons in Syria. This includes eleven adults and twelve children. The accurate numbers of Malaysians travelling to Syria has never been established. However, the police estimate is that that approximately 160 individuals travelled, which includes men, women, and children. Thus, according to the police's standing policy, all of them would be detained and investigated before the next process is decided, resulting either in charges for terrorism offences or requirement to go through rehabilitation program.²¹ The operation run in stages where women and children are given the priority for their safety and well-being. Even though the initial plan was to bring

¹⁸ Interview with Malaysian returnee 4, 24 February 2022, Kuala Lumpur, Malaysia.

¹⁹ Sabariah Hussin, "Lessons learnt from Indonesia and Malaysian approaches to terrorist rehabilitation." *East Asia Forum*, 10 May, 2019, <https://www.eastasiaforum.org/2019/05/10/lessons-learnt-from-indonesian-and-malaysian-approaches-to-terrorist-rehabilitation/>.

²⁰ Interview with official at the Ministry of Home Affairs, Malaysia, 25 February 2022. Putrajaya, Malaysia.

²¹ *Harian Metro*, Rakyat kita di tahan di Syria akan dibawa balik (23 of our citizens detained in Syria will be brought back). 16 March, 2019, <https://www.hmetro.com.my/mutakhir/2019/03/434371/23-rakyat-kita-ditahan-di-syria-akan-dibawa-balik>; see also: Siti Zubaidah Abu Bakar, Mohd Mizan Alsam and Kamaruzaman Yusoff. "Deradicalization strategy: The continuous effort of the government in countering radical groups in Malaysia," In *Terrorist Rehabilitation and Community Engagement in Malaysia and Southeast Asia*, edited by Mohd Mizan Aslam and Rohan Gunaratna. (London: Routledge, 2021); also Mohd Mizan bin Mohammad Aslam, Deradicalization Programs for SOSMA, POTA, and POCA Detainees in Malaysia, *Middle East Institute*, June 23 2020, <https://www.mei.edu/publications/deradicalization-programs-sosma-pota-and-poca-detainees-malaysia>.

back as many people as possible, Malaysian authorities successfully repatriated only sixteen individuals before the operation was abruptly suspended. At least five key factors contributed to the suspension of the operation.

First, some prospective returnees have reservations about their return home. It was reported that some Indonesians who are still committed to IS ideology have influenced them to change their minds promising that IS will return in Syria and they will be looked after.²² They also argue leaving the Daulah (IS-territory) is act of treason on the doctrine of loyalty and disavowal (*al-wala' wal bara*).²³ Another reason is they are afraid that they will be facing long imprisonment if they return despite assurance of the contrary from Malaysian authorities. Stories among former detainees recounting their frightening experience being detained under terrorism law also spread around and to some extent make them reconsider the possibility of returning to Malaysia.²⁴

Second, there was also report from Malaysian authorities that they have lost contact with the prospective returnees following the US withdrawal from northern Syria. Analysts predicted that this withdrawal would allow resurgence of IS in the area.²⁵ It was suspected that the subjects are under detention of faction operating in the area. Attempts to re-establish contacts with the prospective returnees was also unsuccessful.²⁶ It is estimated that there are forty Malaysians still unaccounted for in the post-US withdrawal.²⁷

Third, there was also concerns among officials at the Foreign Ministry regarding how to work with the non-state actor in charge of al-Hol and Roj camps, despite the fact that they are an effective power on the ground. Dealing with such forces, without consulting neighbouring countries such as Turkey, Iraq and even Syria may create issues with those countries. Malaysia does not have diplomatic relations with the local actors, and neither do the neighbouring countries recognise local actors in the camps as a sovereign authority. This problem slows down the negotiation and repatriation process.

Fourth, on domestic front, 2018-2019 was a critical period for Malaysia due to the change of government following the fall of the ruling party National Coalition (Barisan Nasional) that ruled Malaysia since independence in 1957. In 2019 there was a change of minister at the Ministry of Interior and all its top management, which affected the repatriation processes.

Fifth, the emergence of COVID-19 pandemic did put the operation at risk, especially the lockdown that Malaysia enforced from March to May 2020. The travel ban also halted repatriation operations. Despite all these challenges, Malaysian government is still committed to bringing its citizens back safely.²⁸

22 Interview with Malaysian returnee 1, 25 January 2022, Kuala Lumpur, Malaysia.

23 Ibid.

24 Ibid.

25 Julian E. Barnes and Eric Schmitt. "Trump orders withdrawal of U.S. troops from Northern Syria." *New York Times*, 13 October, 2019. <https://www.nytimes.com/2019/10/13/us/politics/mark-esper-syria-kurds-turkey.html>.

26 Interview with official of intelligence service, 24 December 2021, Kuala Lumpur, Malaysia.

27 *Today Online*. 40 Malaysian jihadist, their families lost in Syria, say anti-terror expert. 11 December, 2019. <https://www.todayonline.com/world/40-malaysian-jihadists-their-families-lost-syria-says-anti-terror-expert>.

28 Interview with official at the Ministry of Home Affairs, Malaysia, 25 February 2022. Putrajaya, Malaysia.

Post-Repatriation Phase

As stated earlier, the repatriation process is an interagency operation to extract the returnees out of the detention centre, preparing documentation and logistics to bring them home. It is very complicated and risky operation and extremely costly.²⁹ The moment the returnees entered Malaysian airspace, they are under the sole custody of the Special Branch, Counter-Terrorism Division (CTD), Royal Malaysia Police. The next sections will explore the processes that occur in the post-repatriation phase, namely, investigation, assessment, prosecution, rehabilitation and reintegration.

Investigation

Upon the arrival in Malaysia, the returnees (henceforth the subject) are immediately detained for investigation under the Security Offences (Special Measure) Act (SOSMA) 2012. The law allows the subject to be detained for twenty-eight days for investigation, which means extensive interrogation covering personal background, radicalisation pathway, the motive of migration, travelling process, and the nature of engagement when they are in Syria. It also allows the investigator to have unlimited access to all facilities belong the subject, including personal phone, email, social media account, bank account and so forth. The information extracted during investigation will be verified thoroughly with other domestic agencies and foreign intelligence agencies to determine its authenticity.³⁰ The twenty-eight days allocated by SOSMA is also used for preparing investigation paper (IP) in order to be submitted to the prosecutor's office for further action. It is also common practice for CTD to recommend next course of action regarding the case. There are only two options in the recommendation: to charge them for terrorism offences or to send them for rehabilitation program. The inputs for this recommendation are also drawn from three other assessments explained below.

It is also worth noting that SOSMA – which is procedural law – has advantages and drawbacks. For investigators, SOSMA provides twenty-eight days to investigate complex terrorism cases while the suspects remain in custody. Comparatively, the length of detention also has been reduced from sixty days under previous terrorism law (Internal Security Act 1960) to twenty-eight days under SOSMA. However, SOSMA also has been criticised by human right advocates and civil society organisations for long detention without bail. Meaning, individuals who are detained under SOSMA cannot be bailed out throughout investigation, during the trial, and during the appeal period. In addition, the period of trial also takes many years to complete. Lengthy detention prior to the actual sentencing generates grievances and may affect the effectiveness of rehabilitation programmes conducted after the trial is completed.

Assessment

Another key process in the post-repatriation phase is assessment, which focuses on three aspects: psychological, ideological and security risk assessment. These assessments are equally important determinant factor in deciding the next course of action, either to charge them for terrorism offence or recommending them to attend rehabilitation program.

²⁹ Ibid.

³⁰ Interview with counter-terrorism official, Special Branch, Counter-Terrorism Division, Royal Malaysia Police, 3 November 2014, Kuala Lumpur, Malaysia.

1. Psychological Assessment

Psychological assessment is conducted by a certified psychologist from the psychology unit under Royal Malaysia Police, who examine the state of psychology of the subject and their children. Based on the primary interviews with the psychologist, all returnees suffered certain degree of depression and post-traumatic stress disorder (PTSD), and it is suspected due to the long exposure to stressful life condition in the warzone. Constant bombing, sense of insecurity, fear of death, and the sight of dead bodies and destruction on regular basis is taking toll on psychological integrity. The psychological impact to mothers inadvertently affects the psychological well-being of the children as well. As an intervention, series of counselling session are given to the subject and their children in the post-assessment phase.

2. Ideological Assessment

Ideological assessment is an instrument used to assess the extent of ideological exposure and receptivity to IS ideology. It looks into the subject's ability to comprehend and articulate IS ideology and narratives, level of receptivity, certain theological formulation as *tauhid*, *taghut*, *kufur*, and etc, subject's perception towards their country's political system, idea of inclusivity, multiculturalism, diversity, and peaceful coexistence. The assessment also looks into the subject's understanding of jihad, the discourse of moderation (*wasatiyyah*), Islamic law, and Islamic political system. Another dimension of ideological assessment is to identify the "point of deviation" in their ideology, namely their wrong interpretation or misunderstanding of certain Islamic concepts such as jihad. The nature of the dialogue is conducted based on the subject's level of education, understanding and willingness to engage. Combination of psychological-ideological assessment would provide an accurate and holistic picture of radicalisation processes, radicalisation motive, grievances, and it gives an assessor the advantage to craft the most suitable approach for de-radicalisation programming later. Ideological assessment is conducted by academics who are appointed by the Ministry of Interior.

3. Security Risk Assessment

Security risk assessment is exclusively conducted by the Counter-Terrorism Division, to assess the extent of exposure to any kind of paramilitary training such as expertise in bomb-making, sharpshooting and so forth. The information given is corroborated with information obtained from other sources in order to establish its authenticity. In the age of Internet and social media, it is quite convenient for investigators to dig out information about person's past activities embedded in social media platforms. Such evidence is often being used to confront the subjects, especially if they were an active social media user in the battlefield. In addition, the risk assessment also includes the possibilities of the returnees to engage in establishing a local cell for recruitment, fundraising, and promotion of extremist narratives and ideology online and offline. In essence, these three levels of assessments seek to establish the level of threat the returnees might pose to national security and public order.³¹

Prosecution

As stated earlier, Security Offences (Special Measure) Act (SOSMA) 2012 is the legal instrument used to detain the returnees upon their arrival in Malaysia, which is applicable for both male and female returnees. This procedural law allows the police to detain the subject for twenty-eight days

³¹ There was case involving a male returnee who returned home and created a cell to recruit followers and planned to conduct terrorist attacks targeting senior ministers. See Zahratulhayat Mat Arif, "IGP confirms IS kidnap plot against Najib, Zahid and Hishamuddin." *New Straits Times*, 8 March, 2016. <https://www.nst.com.my/news/2016/03/131640/igp-confirms-kidnap-plot-against-najib-zahid-and-hishamuddin>.

for investigation purpose. However, after twenty-eight days detention, usually the investigator is able to conclude the case with a decision on whether to proceed with prosecution, or to send individuals to rehabilitation programmes jointly conducted by the prison department, the police and the external experts. Rehabilitation programmes are conducted inside prison facilities. In most cases, female returnees and their children are recommended for rehabilitation given the nature of their condition and level of engagement with militancy, unless there is evidence showing that the female subjects are active player in recruitment or driven by ideological motive. There are at least two cases of female returnees detained for two years under terrorism laws for active involvement in supporting Daesh in Syria. They were detained and charged under Prevention of Terrorism Law (POTA) 2015 upon arrival from Syria in 2019. Rigorous investigation processes are setup to verify all information extracted during the investigation. For male returnees, they are charged under terrorism law, particularly under Penal Code 130 for leaving the country to join terrorist organisation. Since 2013, at least six male returnees have been repatriated to Malaysia and charged under SOSMA and Penal Code 130.

Like other countries, Malaysia's investigators and prosecutors also faced similar challenge to collect evidence, establish the extent of involvement in militancy, and find key witnesses in prosecuting returnees who were brought back from Syria. However, these obstacles are surmountable by the existing terrorism laws such as POTA, SOSMA, Penal Code 130 and Special Measures Against Terrorism in Foreign Countries Act 2015 (SMATA). In essence, these laws provide broad powers for the police to detain and charge any individuals who travel to foreign countries in support of terrorist organisations. In this context, the act of leaving the country with the intention of joining any militant group in foreign countries by itself constitutes a violation of the abovementioned laws, and hence is liable for prosecution under those laws. The offender can be sentenced up to 30 years imprisonment.³²

Besides, Malaysian investigators also relied on the intelligence-sharing with friendly services in other countries to establish the case especially in ascertaining the travel pattern, transit point, and entry point to the conflicted areas. In this regard, the role of Turkish authorities is useful for Malaysian investigators to provide them with vital intelligence on the Malaysians who often makes use of Turkish border as an entry to Daesh-controlled territories.

Rehabilitation

Rehabilitation programming is part of Malaysia's counter-terrorism strategy.³³ The program was setup in early 2005 following the massive arrest of Jama'ah Islamiyyah members after 9/11 attacks in 2001.³⁴ The compulsory programme emphasises the soft approach, seeking to understand the

32 For instance, in 2017 Nur Afiqah Farhanah Che Samsudim, 26, was sentenced to eight years in prison by the Kuala Lumpur High Court after she pleaded guilty to a charge with attempting to travel to Syria last year for the commission of terrorist acts. Nur Afiqah Farhanah travelled from Malaysia to Singapore and then to Turkey on Aug 29, 2016. The charge, under Section 130JA of the Penal Code, provides an imprisonment for up to 30 years, and shall also be liable to fine, upon conviction. See Malay Mail. "Woman jailed for trying to travel to Syria to commit terrorism." 24 November, 2017. <https://www.malaymail.com/news/malaysia/2017/11/24/woman-jailed-for-trying-to-travel-to-syria-to-commit-terrorism/1517795->

33 Laili Ismail, "Police: Msia's deradicalisation programme has 95 per cent success rate." *New Straits Times*, January 26, 2016. <https://www.nst.com.my/news/2016/01/124116/police-msias-deradicalisation-programme-has-95-cent-success-rate>. See also: Ahmad Zahid Hamidi, "Malaysia's Policy on Counter Terrorism and Deradicalisation Strategy." *Journal of Public Security and Safety* 6, no. 2 (2016), <https://www.moha.gov.my/images/terkini/WORD.ARTIKEL-TPM-JURNAL-VOL.6-2016.pdf>. Mohd Mizan bin Mohammad Aslam, "Deradicalization Programs for SOSMA, POTA, and POCA Detainees in Malaysia." *Middle East Institute*, 23 June, 2020, <https://www.mei.edu/publications/deradicalization-programs-sosma-pota-and-poca-detainees-malaysia>; Laura Khor, "The Colonial foundations of Malaysia's terrorist rehabilitation program, *Malaysian Journal of International Relations*" 1, December 2013; <https://ejournal.um.edu.my/index.php/mjir/article/view/3026>.

34 Interview with counter-terrorism official, Special Branch, Counter-Terrorism Division, Royal Malaysia Police, 3

motive of subjects' gravitation to extremist narratives, radicalisation process, personal and family background, grievances and vulnerabilities, and ideological and psychological exploitation. During the rehabilitation programme, the subject is given an opportunity to tell "their side of the story". If the public dehumanises them for committing terrorism offences, the rehabilitation programme humanises the subject and gives them a voice to speak with the appointed panel. In the rehabilitation programme, they are advised to refrain from using the word "terrorist" or "foreign terrorist fighters" and any provocative words which are considered offensive, and which could affect the way the rehabilitators interact with them.

There are four components required for an effective rehabilitation programme, including rehabilitation for the FTFs; customised curriculum, a well-trained person to implement the module, suitable methodology to implement it, and the right support system. The module needs to be tailored according to the needs of the subjects, not one-fit-for-all module.³⁵ In Malaysia, the module is crafted based on the findings in the assessments mentioned earlier (psychological, ideological, and security assessment). In principle, it comprises of personal development, patriotism and nation-building, religious knowledge, critical-creative thinking, international affairs, and skill-based modules.

To implement such module, a well-trained and highly dedicated individual is required. Empathy, patience, mental endurance, emotional integrity, and the ability to handle aggressive subjects are among the skills needed in this profession. The rehabilitation programming also needs to ensure the gender factor is considered by including a female rehabilitation panel, and incorporating gender-sensitive components. Besides the module, and the implementer, the room setting, size of the classroom, even the seating arrangement may influence the effectiveness of the interaction. Supportive environments, inside detention centre and outside – in the post-detention phase – are also important to determine the effectiveness of rehabilitation programming.

Reintegration and Monitoring

Reintegration is one of the key components in managing radicalised individuals and the returnees. Reintegration process would mean making sure the former detainees return to their families safely, and most importantly receive moral and financial support from their families, the community in which they reside and the government agencies to continue their life as members of the community. At this point, the role of local community is equally important to provide healthy support system for the former detainee to resume life. Based on primary research, all former detainees cited the difficulty of facing society's stigma as "terrorist detainee" or "prisoner", and this stigma also often affects their family, especially children.³⁶ In some cases, children of former detainees experienced negative comments by their peers about their parents who were detained under terrorism-related charges. Similarly, some women also have difficulty to be integrated in the community for being perceived as former terrorists. However, male detainees were perceived more negatively compared to female detainees, because women are often perceived as victims rather than perpetrators.

To overcome the above-mentioned challenges, collaboration between government agencies such as Ministry of Interior, Welfare Department, including Prison Department and the police has been instrumental in reintegration process. Welfare Department usually provides financial support to the family, although the amount is small. Prison Department is involved through its

November 2014, Kuala Lumpur, Malaysia.

35 Ahmad El-Muhammady, "Radicalisation Model Learning from Malaysian Militant-Extremist" in *Terrorist Deradicalisation in a Global Context: Success, Failure and Continuity*, eds. Rohan Gunaratna and Sabariah Hussin (London: Routledge, 2020).

36 Interview with former detainee, 27 December 2020, Baling, Kedah, Malaysia.

community outreach programme, providing training and financial support to former detainees to start small-scale businesses. Despite the above, there are many aspect of reintegration processes that need improvements, such as the need for counselling services for women and children who used to live in a conflict zones and may have experienced PTSD. Continuous social and financial support systems to former detainees and their families are also needed.

As part of monitoring process, regular visits and engagement were also being conducted by the local authorities to ensure the safety and prevent recidivism. The local police officer were tasked by headquarters at the central level to establish effective regular contact with former detainees and update the current status of their wellbeing, condition and involvement in the community.

Balancing National Security and Human Rights

As stated earlier, there was a strong voice of protest against bringing back the returning fighters and their families, perceiving that their return would endanger national security and public order. Even from within the government, there was a voice of reservation to repatriate those who left to join IS citing the example of United Kingdom, Australia and Indonesia who firmly refused to repatriate their citizens in the post-IS downfall.

For Malaysia, national security and public order is undeniably the state's top priority. However, preserving human rights and well-being of its citizens is equally important, especially when it involves the welfare of children and women.

Therefore, in order to ensure their well-being is secured, the government provided all necessary logistics from temporary accommodation to medical services before their arrival in Malaysia. Besides the emphasis on the welfare and human rights, securing the integrity of national security is another vital component for Malaysia's counter-terrorism strategy. Striking the balance between these two components is the cornerstone of Malaysia's success to ensure violent extremism threats always at the manageable level. Here, the role of prosecution is vital based on the legal provisions available. As explained earlier, thorough investigation, verification of information based on the intelligence-sharing with foreign intelligence services holistic assessments are conducted to ensure the prosecution case follows the rule of law and due judicial processes. In addition, rehabilitation and reintegration programmes during the detention period and post-detention are organised as well to address the ideological component among the offenders.

However, it is also important to highlight some challenges faced by the investigators especially in prosecuting cases committed outside national borders. Theoretically, it is much more convenient for the investigators and prosecutors to conduct the investigation on the territory where the crime is committed. Despite this challenge, the terrorism law in Malaysia gives an advantage to the prosecution side because leaving the country to join group like the Islamic State alone constitutes an offence, regardless of subsequent activities they may have engaged in there. This provision is not applicable for women and who are considered victim in this case, unless there is indication that the women also actively participate in recruitment and support of IS ideology. An exception is given for individuals who travelled to provide humanitarian assistance. However, the Ministry of Interior has stipulated that the organisation and the persons who engaged in humanitarian mission must register themselves with the Ministry for security reasons.

Thus far, the above practice has been effective in managing returning foreign fighters and their families. Malaysia's effort to initiate the development of National Action Plan for Preventing and Countering Violent Extremism (NAPPCVE) is another major step to improve the country's counter-

terrorism strategy.³⁷ In March 2021, Malaysia's Ministry of Interior initiated the development of the NAPPCVE. This one-year project ended in March 2022, with a focus on developing the pillars, strategies and initiatives to prevent and counter the threat of radicalisation and violent extremism. The focus of rehabilitation in the context of NAPPCVE is to improve the existing practices in order to address some loopholes and shortcomings of the current rehabilitation programmes. This includes improving the quality of the module, improvement of facilities, capacity-building for rehabilitation panel, gender-sensitive components, allocation of budget, and the inclusion of civil society organisations in the post-release phase. The implementation of this plan would surely benefit the returnees and their families.

Conclusion and lessons learned

There are several conclusion and lesson that we can learn from the above discussion.

Speedy process of repatriation. Since the COVID-19 pandemic lockdown in 2019, the repatriation process has been deactivated by Malaysian authorities. There are at least two families consisting of nine individuals - two women and seven small children – who remain in Roj camp. The camp administrators have been appealing to the countries to repatriate their citizens due to possible exposure to security risks and IS recruitment. Malaysian authorities are still in the negotiation phase with various parties to get citizens back to Malaysia.

Holistic assessment on the FTFs and their accompanying families. Although assessments are conducted for the FTFs and their families, the psychological component of assessment need to be emphasised particularly for women and children who have been living in harsh condition of prison and war zones.

Emphasis on rehabilitation rather than punishment. It is important to note that the emphasis on rehabilitation - particularly psychological and ideological rehabilitation - is needed for the women and their children rather than putting them through punishment such as long incarceration.

Collaboration between government and CSOs in rehabilitation and reintegration. In Malaysia, rehabilitation and reintegration processes are still based on state-centric approach, which is understandable due to the nature of cases involving national security issues. However, CSOs need to be given broader opportunity to contribute meaningfully, especially to provide psychological support to the families. Having good support system beyond security agencies are important to put them at ease with the community around them.

Providing continuous education opportunities. Providing education opportunities for the former detainees, women and children helps to sustain reintegration processes in the long run. Education opportunities provide platforms for resocialisation and learning for the former detainees and their family to more effectively reintegrate within the community. Thus far, there is no such opportunity provided in Malaysia to cater this need and it is believed that it can be a novel approach to sustainable rehabilitation and reintegration.

37 Wan Ahmad Dahlan Abdul Aziz, Kamarulnizam Abdullah, Jamaliah Said, and Afzal Izzaz Zahari. "National Action Plan for Countering Violent Extremism: an Overview of the Context, Status and Way Forward" *Journal of Public Security and Safety* 11, no. 1 (2021), https://www.moha.gov.my/images/maklumat_bahagian/ipsom/jurnal/volume11/1_v11.pdf.

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Appendix

Primary Source Material

List of Interviews

1. Interview with former leader of Jama'ah Islamiyyah, 13 January 2022, Kuala Lumpur, Malaysia.
2. Interview with Ayob Khan Mydin Pichay, former principal director, Special Branch, Counter-Terrorism Division, Royal Malaysia Police, 1 November 2014, Kuala Lumpur, Malaysia.
3. Interview with official at the Counter-Terrorism Division, Royal Malaysia Police, 3 December 2021, Kuala Lumpur, Malaysia.
4. Interview with Malaysian returnee 1, 25 December 2021, Kuala Lumpur, Malaysia.
5. Interview with Malaysian returnee 2, 28 December 2021, Putrajaya, Malaysia.
6. Interview with Malaysian returnee 3, 24 October 2021, Kuala Lumpur, Malaysia.
7. Interview with Malaysian returnee 4, 24 February 2022, Kuala Lumpur, Malaysia.
8. Interview with official at the Ministry of Interior, Malaysia, 25 February 2022. Putrajaya, Malaysia.
9. Interview with counter-terrorism official, Special Branch, Counter-Terrorism Division, Royal Malaysia Police, 3 November 2014.
10. Interview with former detainee, 27 December 2020, Baling, Kedah, Malaysia.
11. Interview with former veteran of Bosnian war, 12 January 2022, Kuala Lumpur, Malaysia.
12. Interview with official of intelligence service, 24 December 2021, Kuala Lumpur, Malaysia.

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Dr. Ahmad El-Muhammady is an Assistant Professor at the International Institute of Islamic Thought and Civilisation (ISTAC), International Islamic University Malaysia. Currently, he is an Associate Fellow at the International Centre for Counter-Terrorism. He is also involved in an ongoing project to develop Malaysia's National Action Plan for Countering and Preventing Violent Extremism (NAPPCVE) initiated by the Institute of Public Security of Malaysia (IPSOM), under the Ministry of Home Affairs (MOHA). Since 2011, he works closely with the Special Branch's Counter-Terrorism Division, Royal Malaysia Police and Prison Department to implement the Rehabilitation and Deradicalisation programs for individuals detained under terrorism laws in Malaysia. Prior, he was a consultant to UNDP (2019), and co-authored a report with Ben Schonveld, senior consultant at the United Nations on the return of foreign terrorist fighters in Southeast Asia. Ahmad also served as think-tank member (2014-2019) and consultant (2018-2019) to the Institute for Youth Research Malaysia (IYRES), Ministry of Youth and Sports Malaysia to study youth radicalisation. Ahmad regularly appears in the media and has been interviewed by Al Jazeera, TRT World, Channel News Asia (CNA), South China Morning Post (SCMP), Arab News, News Straits Times, The Star, Berita Harian, and News Straits Times (NST) Malaysia.

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