



**ABUSED AND
ABANDONED**
REFUGEES DENIED RIGHTS
IN MALAYSIA

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INTERNATIONAL**





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Q: ‘And what if somebody... arrives at the airport and says, “I am a refugee”?’
A: ‘He will be refused entry. We have not signed the Refugee Protocol.’

Amnesty International interview with Datuk Mahmood Bin Adam, Secretary General, Ministry of Home Affairs, 22 July 2009

INTRODUCTION

Malaysia is “home” to between 90,000 and 170,000 refugees and asylum-seekers, most of whom end up living in its urban centres. They come to Malaysia seeking safety, having fled situations of torture, persecution or death threats. But once they arrive, they are abused, exploited, arrested and locked up – in effect, treated like criminals.

Malaysia does not officially recognize refugee status, placing itself at odds with its international obligations and creating serious risks to the human rights of refugees and asylum-seekers. Refugees and asylum-seekers are still considered “illegal” migrants in Malaysia. They have no formal legal status or right to work. Despite recent government promises, they face the daily prospect of being arrested, detained in squalid conditions, and tortured and otherwise ill-treated, including by caning. They face the constant fear of being forced to return to a country where they may be stripped of their rights or even killed.

Malaysia has not formally adopted international refugee and human rights standards, but this does not absolve it of its obligations towards refugees and asylum-seekers. In particular, Malaysia must ensure that it does not return people to a country where they are at risk of persecution.

With the Malaysian authorities failing to provide the necessary protection and assistance, the UN High Commissioner for Refugees (UNHCR) has stepped in. However, limited funding and a difficult operating environment mean that the needs of the refugee

population currently outweigh the capacity of UNHCR to respond adequately. Given that the authorities do not formally recognize refugees, UNHCR’s role in registering them and providing ongoing support is vital. While there have been some recent positive developments, challenges still exist in identifying and registering refugees.

Even if refugees are registered, their status is not respected by the authorities. Furthermore, gaining UNHCR access to detainees and securing the release of refugees continue to be problematic. Urgent attention needs to be paid to achieving durable solutions that ensure refugees are protected. This should include increasing the number of resettlement places available in third countries, the only viable solution for the vast majority of refugees in Malaysia at the present time.

This report focuses on the human rights violations experienced by refugees and asylum-seekers in Malaysia.¹ These rights must be respected in line with international standards. A coherent migration policy reflecting these standards should be implemented across government ministries, local authorities, and law enforcement services. Only then can refugees and asylum-seekers be protected from detention, exploitation, abuse and forcible return to countries where they may lose their rights – even their lives.

METHODOLOGY

The following report draws on research carried out during visits to Malaysia in July 2009 and March 2010. During these two visits, Amnesty International met and interviewed refugees, asylum-seekers, migrants, state officials, employers, lawyers, and staff at NGOs and community organizations. In July 2009, Amnesty International was given unprecedented and unfettered access to three immigration detention facilities in and around the capital, Kuala Lumpur. Amnesty International observed hearings before a special court at one of these facilities and reviewed records of the ongoing and completed administrative hearings handled by the Labour Department and the Industrial Relations Department. Amnesty International thanks all those who gave their time to speak with the organization.

left: A Rohingya refugee from Myanmar walks to her home in the capital, Kuala Lumpur, January 2009.



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A Rohingya refugee from Myanmar reads in his bedroom at his house in Kuala Lumpur, January 2009. Most of the 90,000 to 170,000 refugees and asylum-seekers who flee to Malaysia end up living in its cities. Many are forced to live in crowded and unsanitary conditions.

REFUGEE POPULATIONS

Malaysia is both a destination and transit country for a significant number of refugees and asylum-seekers. The exact size of this population is not known, due to an absence of publicly available statistics. Estimates, however, vary from 90,000 to over 170,000. According to UNHCR data, the vast majority come from Myanmar (see box).

By the end of February 2010, UNHCR said it had registered some 82,400 asylum-seekers and refugees, 18,500 of whom were children. However, UNHCR has acknowledged that a large number of people of concern to it remain unregistered.

Those registered as refugee and asylum-seekers account for just a small fraction of the total population of non-Malaysian nationals in the country. There are an estimated 2.2 million regular migrant workers in Malaysia, with a further estimated 2.2 million irregular migrant workers. What is unknown is the percentage of the migrant worker population who are actually refugees but have not been registered or have not attempted to claim asylum.

REFUGEES AND ASYLUM-SEEKERS

Refugees are people who are unable to return to their country of origin due to a fear of being persecuted for their race, religion, nationality, political opinion or membership of a particular social group. Under international law, refugee status is declaratory. That is, the rights of refugees are invoked before their status is formally recognized. The term “asylum-seeker” refers to those who are seeking recognition as a refugee in another country and have not yet had a decision made on their refugee status. The state, or UNHCR if the state is failing in its responsibilities, should provide for registration, status determination and durable solutions for asylum-seekers and refugees.

SIGNIFICANT REFUGEE AND ASYLUM-SEEKER POPULATIONS IN MALAYSIA

Source country	Number
Myanmar	76,200 ²
Sri Lanka	3,100
Somalia	840
Iraq	550
Afghanistan	540
Other	1,170

Source: UNHCR March 2010

UNHCR puts the total population of refugees and asylum-seekers in the country at 90,000. NGO estimates are much higher. 2008 figures from the US Committee for Refugees and Immigrants placed the total refugee and asylum-seeker population at 171,500.

Of the total registered refugee and asylum-seeker population, 70 per cent are men and 30 per cent are women.

FAILURE TO ADOPT INTERNATIONAL STANDARDS

Malaysia has consistently failed to ratify international standards that protect and promote the rights of refugees and asylum-seekers. It is not a state party to the 1951 UN Convention relating to the Status of Refugees or its 1967 Protocol, the major international instruments governing refugee protection. Similarly, it is not a state party to the:

- International Covenant on Civil and Political Rights (ICCPR);
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Despite this, Malaysia is still bound by customary international law. As such, it is obliged to respect the principle of *non-refoulement* – the cornerstone of protection for refugees. *Non-refoulement* means that people cannot be returned to a country where they face persecution or other serious human rights violations, nor can they be rejected at the frontier. This principle is invoked in cases of forcible return (where someone is returned to a country against their will), as well as indirect acts, including situations where people

are sent to another country that does not guarantee protection for refugees. Similarly, the prohibition of torture is widely recognized as a rule of customary international law.

Malaysia also has relevant obligations under treaties which it has ratified. It is a state party to the UN Convention on the Rights of the Child (CRC), which formally obliges it to care for refugee children. According to Article 22 of the CRC, the government should proactively provide assistance and protection to children of asylum-seekers and refugees.

Since the Vietnamese refugee crisis of 1975, Malaysia has co-operated with UNHCR on humanitarian grounds, allowing it to be the primary responsible agency for refugees and asylum-seekers. Within its limited capacity, UNHCR provides for all activities related to registering, documenting and determining the status of asylum-seekers and refugees. It also pursues long-term solutions and provides humanitarian support through some limited programmes with its NGO partners.

Amnesty International urges the government to ratify the treaties pertaining to refugees and asylum-seekers, incorporate them into domestic law, and implement them in policy and in practice.

right: Immigration and RELA agents conduct a round-up in central Kuala Lumpur, Malaysia, July 2009. The government established the *Ikatan Relawan Rakyat*, or RELA, in 1972 to “help maintain security in the country and the well-being of its people”.

‘REFUGEES DO NOT EXIST’

Malaysia effectively maintains that refugees and asylum-seekers do not exist in the country. There is currently no legislative or administrative framework for dealing with refugees, and Malaysian law makes no distinction between refugees, asylum-seekers and irregular migrants. Refugees and asylum-seekers have no legal right to work in the country. They do not

receive any assistance from the government, and some resort to working without authorization just to survive.

State officials have explicitly refused to recognize refugee rights. Malaysia actively penalizes those who are deemed in breach of its immigration laws. Refugees and asylum-seekers are subject to criminal penalties, harassment, ill-treatment, extortion, unnecessary and prolonged detention, and are placed at risk of *refoulement*.

PENALTIES AND THE RIGHT TO SEEK ASYLUM

As noted above, under customary international law, the principle of *non-refoulement* obliges Malaysia to permit entry to those seeking asylum. However, Malaysia treats asylum-seekers, refugees and irregular migrants in the same way. All are considered to be illegal and are subject to the same penalties. Entering and staying in Malaysia without a permit (illegal entry) is punishable with a fine of up to 10,000 ringgit (US\$2,915), imprisonment of up to



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five years and, since 2002, “whipping of not more than six strokes”. The same punishment, including caning, applies to those who unlawfully re-enter or reside in Malaysia after they have been deported.

Overstaying a visa is punishable by a fine and imprisonment on the same terms as illegal entry – up to 10,000 ringgit and five years – but does not include caning. The same punishment applies to those who enter or leave Malaysia other than at an authorized immigration control post.

The Malaysian Constitution provides that those who are arrested must be brought before a magistrate within 24 hours or released. However, non-citizens who are arrested for immigration violations may be held for up to 14 days before being brought before a magistrate. They are then transferred to immigration detention facilities, where they can remain for extended or even indefinite periods.

this page: Ethnic Chin refugees from Myanmar await their fate after being rounded up by RELA during a pre-dawn immigration raid, Kuala Lumpur, June 2007. RELA has the power to stop and arrest anyone it suspects of being an “illegal migrant”. A number of civil society organizations have described RELA as a vigilante group, criticizing it for abusing its powers and violating the rights of migrants. **opposite page:** Detainees held at the KLIA Immigration Depot, July 2009. As Malaysia does not recognize refugee status, many refugees and asylum-seekers end up in detention.

ROBBED AND ABUSED BY IMMIGRATION ENFORCEMENT AGENTS

“The police have stopped me very often, and have robbed me also. Sometimes the police will stop us and ask for our passports. We can’t show passports, so then they will say that we are going to be taken to prison. But if we can pay them money, they will let us go. Sometimes they check all our pockets. What we have, they take. If you have a phone, and if it is quite good, they will take it. This has happened to me several times.”

A Catholic Chin refugee from Myanmar, July 2009

Malaysia enforces its immigration laws and policies through extreme means. Regular immigration raids and arrests are carried out by state agents, and, more controversially, by a volunteer citizens’ police force, the People’s Volunteer Corps (Ikatan Relawan Rakyat or RELA). These arrests have a veneer of legitimacy, in that police and RELA agents are authorized by law to examine people’s identification documents and investigate their immigration status. These raids also lead to arrest, detention and other penalties for immigration offences. For some this can lead to *refoulement*.





Raids can occur in any location and at any time. Refugees and asylum-seekers live with a perpetual fear of such raids and the consequences that flow from them. Amnesty International interviewed people arrested in raids at their homes, at the airport, at their workplaces, on the street and other locations. NGOs also raised cases of people being arrested even when they were trying to report mistreatment by employers and agents to the authorities.

Aside from routine raids, every couple of years the government announces large immigration crackdowns. In late February 2010, a crackdown was publicly announced and an increase in arrests was seen, according to news reports. In late March, Amnesty International reported on some 140 migrant workers arrested in immigration sweeps, including refugees holding UNHCR cards.³

During these raids and immigration checks, questionable tactics are used and harassment, extortion and violence are commonplace. RELA's approach is particularly problematic, consisting of crude profiling based on apparent race or ethnicity, and a general attitude of "arrest now, investigate later". These largely untrained RELA agents frequently subject the people they arrest to humiliation, physical abuse, theft and extortion. Amnesty International heard many accounts that reinforced the conclusion that RELA

agents are often more interested in illicit personal gain, through any means available to them, than in carrying out a legitimate immigration enforcement role.

Immigration authorities told Amnesty International that RELA's immigration enforcement role would end in August 2009. "We are no longer giving that power to RELA," the Director General of Immigration told Amnesty International in July 2009. At the time of writing, however, RELA continues to operate in this capacity.

RELA involvement in immigration checks and raids was in fact witnessed first-hand by Amnesty International in July 2009 and March 2010. In July 2009, RELA agents were observed making arrests as part of a large-scale immigration round-up in central Kuala Lumpur. In March 2010, an Amnesty International representative observed about 40 RELA agents checking immigration documents near Kuala Lumpur's central market.

According to information received from local sources, RELA continues to operate and carry out regular immigration raids, often on weekends. On 20 March 2010, staff at local NGO Tenaganita witnessed the arrest of about 20 people by RELA during a raid around the corner from their office. That same month, UNHCR confirmed that RELA was still arresting people.

UNHCR INTERVENTION

Until recently, UNHCR's efforts to prevent registered refugees from being taken into custody were often unsuccessful.

In March 2010, however, UNHCR reported an improvement in its ability to intervene when people were arrested by the police. Typically, the police contact UNHCR either by phone or in person. A "hotline" is available for contacting UNHCR out of office hours. If only a few people have been arrested, their registration status usually can be confirmed immediately and the individual released. If numbers are larger, those detained are taken to a police lock-up. In this case, the verification process takes longer and people must remain in detention until it is complete.

Where individuals are not yet registered, they are taken into custody. Those arrested are held in pre-trial detention for up to 14 days before they are brought before a magistrate at a special immigration court and charged for immigration offences. These hearings often fail to meet requirements for a fair and public hearing; refugees and asylum-seekers are usually unrepresented and are often not informed of their right of appeal. Many are sentenced to caning, in violation of the right to freedom from torture and other ill-treatment. Following this process, they are taken to immigration detention. If unregistered refugees are sentenced to a prison term it is only when they reach immigration detention, having served their sentence, that UNHCR can access them for registration.

It is much more complicated for UNHCR to intervene in situations where RELA or immigration officials undertake raids or large-scale round-ups. Once refugees are arrested by RELA or immigration officials, they are taken to one of the 13 immigration detention

centres in the country. Detention centre officials then send a letter to UNHCR, listing those whose registration status needs to be checked. UNHCR confirms by letter which individuals are registered and is able to secure their release. Significant delays in this process can result in unnecessary and prolonged detention.

Local NGOs and refugees continue to report serious concerns about the ability of UNHCR to intervene promptly, effectively and consistently during the arrest process. For example, in March 2010 a group of 23 recognized refugees from Myanmar were arrested in their workplace. According to the group's lawyers, the police said that if UNHCR verified their status they would be released, however if this did not occur by Monday they would be handed over to Immigration. Despite attempts to contact UNHCR, the refugees were transferred elsewhere and lawyers were unable to track them. As is common, raids on "illegal" migration often occur during the weekend, when capacity for intervention is limited.

In late March 2010, the Malaysian human rights organization Suara Rakyat Malaysia (SUARAM) issued a public appeal following the arrest of 45 Sri Lankans, 21 of whom had been recognized as refugees by UNHCR. Despite holding UNHCR documents, they were arrested on 23 March at Ipoh and then taken to Langkap Immigration Detention Centre.

LACK OF RESPECT FOR REFUGEE DOCUMENTATION IN ENFORCEMENT

"When you go outside, the police catch you. They ask for money – 100R or 200R. I pay them when I am caught. I have been caught three times. The last time was in May 2009. When they caught me, I showed them my UN card. They say that's no use, this card is no use. So they asked for money, 100R only. The police called me over to the car and asked me for money only – they didn't ask for something else. The other two times they caught me, they also just took money from me."

Refugee man from Myanmar, July 2009

Since it does not recognize refugee status, the state does not give refugees and asylum-seekers any form of documentation that proves their legal right to remain. Although UNHCR is mandated to issue this documentation, Amnesty International has found many cases in which such papers have been ignored and

access to UNHCR was denied. Recently, government officials suggested that police and immigration agents would not arrest those with UNHCR cards. However, this sentiment has not translated into reality on the ground.

Refugees reported that when they showed state officials or RELA personnel their UNHCR card, they were told it meant nothing. Some reported that the authorities threw away their UNHCR documents before arresting them. Others who were still awaiting an actual card, showed their UNHCR appointment letter instead, but were told it would not protect them from arrest or detention. Still others said that they could avoid arrest or detention by paying a bribe.

OUTREACH AND IDENTIFICATION

For UNHCR, the complex refugee environment they are operating in means that outreach and identification of all those in need of international protection are a challenge. Many individuals told Amnesty International that they were unaware of UNHCR, or feared leaving their homes, even to visit UNHCR. While recent temporary measures have increased UNHCR's capacity to identify refugees, the international community needs to support this process so that measures like mobile registration clinics, outreach programmes and adequate documentation can continue. A proactive approach to outreach is needed and efforts such as involving the refugee community in such activities are positive moves.

However, although Amnesty International supports a community-based approach, it urges caution in using a single method of registration. The drawbacks to the latter are clear to see in the following case.

In March 2010, Amnesty International learned that UNHCR requires refugees from Myanmar to register through an ethnic community organization rather than approach UNHCR directly. The community groups give a list of people to UNHCR which then organizes for a mobile team to come to a location nearby (such as a community hall or school). This allows UNHCR to significantly increase the number of individuals that it can register. However, favouritism and corruption are widely alleged and these can result in some people simply falling between the cracks, as they have no way of directly contacting UNHCR if they need to. Further, as Rohingya asylum-seekers from Myanmar are not represented by an organization recognized by UNHCR,



A refugee man receives medication at a UNHCR mobile clinic, Kuala Lumpur.

they have to wait until UNHCR initiates special days for them to come to the office. At present, this means that no Rohingya, except those found in detention, will be registered until early next year.

DELAYS IN DETERMINING REFUGEE STATUS

Once registered with UNHCR, asylum-seekers receive an appointment letter. They do not receive a UNHCR card until they have been through a refugee status determination process. In July 2009, a backlog of approximately six months between registration and the refugee status determination interview was reported. Such delays leave individuals in limbo, without adequate protection.



UNHCR is aware of these issues and has included the following in its policy on refugee protection and solutions in urban areas (September 2009):

“UNHCR recognizes that the establishment of partnerships with other actors in no way limits the responsibility of the Office to interact regularly and directly with refugees in urban areas. UNHCR is thus fully committed to the establishment of mechanisms that enable the organization to reach out to urban refugees in their communities and to ensure that they are aware of their rights and obligations, as well as the opportunities and services available to them”.

UNHCR Urban Refugee Policy, paragraph 41

GOVERNMENT ISSUED IDENTITY CARDS

“In this context, the provision of documents to persons of concern to UNHCR, attesting to their identity and status, can play an important role in the prevention and resolution of protection problems. It is the primary responsibility of the state to provide these documents, but in situations where the authorities are unable to do so, UNHCR will issue its own documents to refugees”.

UNHCR Urban Refugee Policy, paragraph 63

Women, some with young children, held in the Semenyih Immigration Depot.

In February 2010, Datuk Mahmood Bin Adam, Secretary General for the Ministry of Home Affairs, announced plans to issue identification cards to refugees recognized by UNHCR. The ID cards would entitle the holder to temporarily remain in the country, but not to take on formal work. As the Secretary General stated, refugees “cannot work here, but they can do odd jobs.”

Precisely when the proposed ID cards will be introduced is not known. The government has provided no timeline for the process, and at the time of writing, the promised ID cards remain undelivered. While the ID card proposal is a positive step, delays in implementing it undermine the spirit of the initiative.

If the ID cards are introduced, all levels of the state must respect what they stand for. This means that holders should not be arrested, detained or deported for immigration reasons. Moreover, the difficulties that refugees have in registering with UNHCR will have a knock-on effect on their ability to obtain the ID cards. In such circumstances, state officials should always refer to UNHCR any individuals without ID cards who wish to get one.

DETENTION

“My son went out one day and didn’t return. Two days later I found out he was in detention. He is only 15 but they’ve taken him to Machang a long way away. He has been in detention for over a year. I have managed to save enough money to see him three times but it is very expensive. UNHCR can’t get him out.”

Rohingya woman refugee from Myanmar, March 2010

Following arrest, asylum-seekers and refugees, including some with UNHCR documents, are held in filthy and overcrowded conditions in detention centres across Malaysia.⁴ Many are held for months without access to lawyers and with no way of appealing against their detention. Some are detained indefinitely. Once in the centres, detainees lack proper health care, sufficient food and clean drinking water. Children under 18 are held with adults and abuse by detention staff is rife. Poor detention conditions have led to serious illness and in some instances, death. There are 13 immigration detention centres, or depots. These have a combined capacity of 13,000, although according to the Ministry of Home Affairs, they often house many more.

According to UNHCR, in 2009 there were 6,800 registered asylum-seekers in detention. Of these, 4,600 were released that year. This is a significant improvement from 2008, when UNHCR was only able to secure the release of 500 people.

For many years, access to detainees in Malaysia has been a challenge for UNHCR, NGOs, journalists and others. Detainees rarely receive visits of any kind, despite claims to the contrary by detention officials. This breaches international standards requiring that detainees have contact with the outside world. Although there have been improvements in recent years, access is not always guaranteed. The open and unprecedented access granted to Amnesty

International in 2009 was a positive step towards transparency and reform. UNHCR also reports that they now have regular access to the centres. In 2009, they were able to carry out 406 detention visits. UNHCR officials reported that they regularly visit and see up to 200 people over a two- to four-day period.

NGO access to detainees, however, is inconsistent and more restricted. Amnesty International received reports that visits were often only allowed when accompanying family or friends, and only if they did not identify themselves as belonging to an NGO. In one case of particular concern, the NGO Tenaganita attempted to see a pregnant refugee from Myanmar whose situation and detention had been made public in news reports. On arrival, and accompanied by a nurse, they were told that only family members were allowed to visit detainees.

“I was in detention four times. The last time [in] 2007, I spent five months in detention even though I had a UNHCR card. I was beaten by RELA in the KLIA Depot in front of the others. UNHCR advised I accept return. On the border I was sold [to] smugglers. I was able to borrow [money] and was returned.”

Rohingya man, refugee from Myanmar, March 2010

Despite official assurances that detainees registered with UNHCR would be released, and evidence that this has improved greatly in the past year, Amnesty International has found that refugees with UNHCR cards continue to be held in detention. Amnesty International raised this issue with the Malaysian government in 2009. In response, the Secretary General for the Ministry of Home Affairs explained, “There is a problem with forgery of the refugee cards. We need to refer those cases to UNHCR here. While we refer those cases, they have to come to the detention centre.” While Amnesty International supports efforts to tackle fraudulent activity, this should not prejudice detainees’ access to UNHCR and their release.

“If the UN issues the refugee card, our department always sends them back to the office. We just release them.”

Detention official at Semenyih Immigration Depot, July 2009



DIFFICULTIES ACCESSING UNHCR IN DETENTION

Detained refugees and asylum-seekers reported they are still not always able to access UNHCR. Delays occur on both sides, with detention centres taking too long to contact UNHCR and UNHCR taking too long to intervene. These delays remain serious issues. Local NGOs report that due to limited UNHCR capacity, release from detention, even for the most vulnerable, is not always possible.

Some detainees reported that they had been able to register with UNHCR while in detention. In June 2009, Myo from Myanmar told Amnesty International that he was registered by UNHCR that month. This was after seven months in detention at the KLIA Immigration Depot. Even in those cases, detainees are not necessarily released immediately. Asked why he was still in detention, Myo replied that he was still waiting for his card.

In March 2010, UNHCR told Amnesty International that a telephone hotline had been set up to facilitate access, including for detainees. Refugees and local NGOs have reported, however, that detainees frequently have to bribe staff to use the telephone, or pay guards to use their mobile phones. While the hotline is a welcome move, the limitations on using the telephone due to cost mean that more needs to be done to facilitate contact.

Under international law, recognized refugees should never be detained for migration-related purposes. Asylum-seekers should only ever be detained as a measure of last resort, for a purpose recognized as consistent with international law. Reporting requirements, directed housing and other alternatives to detention should

always be considered first to see if they are appropriate. Detention should only be used where it is necessary and proportionate, and should be limited in time.

DEPORTATION AND *REFOULEMENT*

A further risk faced by refugees and asylum-seekers in Malaysia is *refoulement*. Prior to July 2009, for many refugees in Malaysia the risk of forcible return to Thailand was very high. According to UNHCR, in the six months before July 2009, 141 Burmese were deported to Thailand. No further deportations to Thailand are known to have taken place since then. Thailand has subjected refugees from other countries, such as Laos, to *refoulement*. This raises concerns that refugees forcibly returned to Thailand from Malaysia could face a similar fate.

Local NGOs report that individuals with UNHCR cards are unlikely to be returned. However, concern exists for asylum-seekers with UNHCR appointment letters who have not yet been awarded refugee status. In January 2010, 19 asylum-seekers from Sri Lanka who were registered with UNHCR were due to be forcibly returned, in breach of the principle of *non-refoulement*. Their deportation was stayed only after a public and urgent appeal supported by SUARAM, the Asian Human Rights Commission, and others. For those detainees facing *refoulement* who are unable to contact NGOs or UNHCR for support, their plight remains unknown and their cases remain undocumented.



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TORTURE AND OTHER ILL-TREATMENT

“They beat me badly in detention. It was the police. I am a diabetic but when I asked for medicine they beat me badly. My children approached UNHCR to get me out but no response.”

Rohingya woman refugee from Myanmar, March 2010

Refugees and asylum-seekers are at risk of forms of torture and other ill-treatment that are sanctioned under Malaysian law, such as caning. They are also subject to ill-treatment which is officially illegal yet practised widely, such as beatings by the police, employers and RELA.

Illegal entry and re-entry to Malaysia after deportation are punishable by caning. Refugees and asylum-seekers, as well as documented migrant workers whose passports are withheld by their employers, are at risk of caning.⁵

Those who unlawfully bring a person to Malaysia, harbour a person who has violated the immigration laws, forge identity documents, and in some cases employ a person without a valid work permit are also subject to caning, which is mandatory in some circumstances.

Caning is not only used in Malaysia for immigration offences; it is a supplementary punishment for approximately 40 other crimes.

Those who are convicted of illegal entry are normally caned up to three times, although the law allows for them to be caned up to six times. The cane cuts through the skin and leaves scars that are visible months later. When Amnesty International spoke with

Detainees at the KLIA Immigration Depot, July 2009. Following arrest, asylum-seekers and refugees, including some with UNHCR documents, are held in filthy conditions in detention centres across Malaysia.

immigration detainees who had been caned, several said that they had not received treatment after the sentence was carried out.

The imposition of caning contravenes the prohibition of torture and other cruel, inhuman or degrading punishment, in violation of Malaysia’s obligations under international law, and as such, its practice should immediately cease.

In addition to state-sponsored violations, refugees and asylum-seekers are exposed to serious forms of ill-treatment which, although not officially sanctioned, are nevertheless tolerated. Refugees and asylum-seekers are vulnerable to abuse and violence in their homes, in public and at their places of work. During immigration raids, police and RELA employ violent tactics to extort money from them, or to intimidate and harass them.

Women refugees and asylum-seekers are often the targets of violence, including sexual or gender-based violence. They have little protection against such violence, with minimal access to lawyers, medical treatment, safe houses and other necessary support.

“My daughter is only 12. Local men have tried to take her twice already,” one woman, a Rohingya refugee from Myanmar, told Amnesty International. “I went to the police but they’ve done nothing. How can I protect my daughter? At night they come to our house and demand money or a girl. We move but it keeps happening. We don’t know what to do.”

SURVIVAL, SELF-RELIANCE AND THE RIGHT TO WORK

"I worked as a rubber tapper in a small rubber estate. If it rained, I would not be paid any wages because there was no tapping on rainy days. There would be deductions if a person were absent from work. I worked there for about a year until I became seriously ill with malaria. My friends then brought me to Kuala Lumpur for treatment."

Male Mon refugee from Myanmar, July 2009

Refugees and asylum-seekers in Malaysia have no legal right to work. While some may work legally as migrant workers, that legal permission does not stem from their status as a refugee or asylum-seeker. As the Malaysian government provides them with no assistance and UNHCR is limited in what it can do, many refugees have no option but to work in the informal sector. Working illegally exposes them to abuse and exploitation. Amnesty International spoke to many refugees who were working for meagre wages, experienced ill-treatment at the hands of their employers, had wages withheld arbitrarily or worked in conditions that were dirty, degrading and dangerous.

One of the most difficult questions confronting UNHCR in urban contexts is whether to promote refugee livelihoods and self-reliance in countries where they are denied the right to gain an income under national law and practice. The Office will in the first instance explore every opportunity to encourage the authorities to be more flexible in their legislation and practice so as to facilitate the economic activities of urban refugees.

UNHCR Urban Refugee Policy, paragraph 104

Legal access to work and the self-reliance that flows from this are important protection tools. Not only do they protect a person from exploitation in the informal sector, but they also ensure access to basic necessities. Access to work and self-reliance ensure that refugees and asylum-seekers are not pushed into other choices, like "voluntarily" returning to situations of persecution.

Malaysia relies heavily on its foreign workforce. Space exists to include refugees and asylum-seekers in this workforce, as well as help protect this vulnerable population. The Ministry of Home Affairs has indicated that Malaysia is considering allowing some refugees to work. Amnesty International strongly encourages Malaysia to proceed with such proposals and formalize the right to work for refugees and asylum-seekers.

In the absence of a legal right to work, ongoing and comprehensive assistance is needed to ensure that refugees and asylum-seekers have access to adequate food, water, housing and health care, as well as education for their children, and that they do not suffer violations of their economic, social and cultural rights. Malaysia should demonstrate its commitment to this ideal by ratifying the ICESCR. In the interim, UNHCR requires significantly higher levels of support from the international community if it is to meet current needs effectively.

RESETTLEMENT

"I don't know why I'm still here. It is not safe for women, no education and harder for women to get jobs. USA are looking at my case but it has been over a year and I don't know what is happening."

Mon woman refugee from Myanmar, March 2010

At present, long-term protection options in Malaysia are limited. Of the three durable solutions – local integration, voluntary repatriation and resettlement – the last option is often the most viable for many refugees in Malaysia.

Resettlement to a third country, the process by which states accept refugees at the request of UNHCR or private sponsors, can and should play a key part in the international community's response to the needs of refugees. Resettlement serves a number of crucial purposes in any refugee situation: it protects by removing vulnerable people from environments where they are

at risk; it offers a durable solution for the individuals concerned; and it represents an important expression of international responsibility sharing.

The relevance of resettlement to urban refugee populations should not be underestimated or misunderstood. Urban environments are often seen as providing more opportunities for self-reliance, and therefore, better local integration opportunities. However, in a country like Malaysia, where there is no formal right to work, no formal legal status, no state assistance and ever present risks of arrest and detention, local integration is currently not an option for the vast majority of refugees. Similarly, voluntary repatriation is not an option for a large number of refugees due to the ongoing risks in their countries of origin.

Resettlement highlights the shared obligation that other states in the international community have to protect refugees. But even by the most conservative of UNHCR estimates, a large gap exists between what states offer to do and what actually needs doing. UNHCR currently estimates a global resettlement need of 747,000 in 2010. However, UNHCR's limited capacity and what states are offering – just under 100,000 places worldwide – fall well below this level. Some states also appear to discriminate against or in favour of certain groups.

Malaysia's resettlement needs far outweigh capacity. It sends the fifth largest number of refugees for resettlement globally.⁶ In 2008, 8,983 refugees were submitted for resettlement from Malaysia and 5,865 departed. In 2009, 7,509 people – 98 per cent of whom were Christian Chins from Myanmar – were resettled, 22 per cent more than in 2008.⁷ However, UNHCR has estimated that a total of 15,000 refugees in Malaysia need to be resettled in 2010.⁸ To meet this projected need, more resettlement places must be made available, and UNHCR given more support to ensure that it has adequate capacity to refer all those in urgent need of resettlement.

The USA has taken the vast majority of all resettlement cases from Malaysia with significant increases being seen in its intake over recent years. Apart from the USA, Australia, Canada, Denmark, Norway and Sweden have all also traditionally accepted refugees from Malaysia. These states have been recently joined by other countries, like Romania and the Czech Republic. But more can and should be done to increase resettlement from Malaysia.



A Somali refugee, granted the right to resettle in the UK, packs her suitcase with the help of a UNHCR staff member in preparation for her flight from Malaysia to London, June 2008.

Amnesty International encourages states to implement programmes for resettlement where they do not already exist. Where resettlement programmes do exist, Amnesty International urges states to increase their intake from Malaysia, and to broaden the scope of such programmes so that they meet the needs of the most vulnerable, whatever their nationality, religion or ethnicity. The difficulties for urban refugees in Malaysia, including the risks attached, should also be given proper consideration.

CONCLUSION

For those refugees and asylum-seekers who are forced to flee their homelands in search of protection, Malaysia is an unwelcoming and dangerous place. The failure of the Malaysian authorities to formally acknowledge their existence has tangible consequences which compromise their safety and are in direct contravention of international human rights standards. Risk of arrest and prolonged detention, ill-treatment, *refoulement*, and a lack of durable solutions are not just fears but realities for refugees in Malaysia.

While there have been recent positive developments, especially in relation to access to detention and increased registration, overall, protection for refugees and asylum-seekers remains wholly inadequate. The urban operating environment also compounds the challenges presented by the actions and policies of the Malaysian authorities. There is, however, a way out of the current situation, and with support from UNHCR and the international community, Malaysia can and must meet its responsibilities towards refugees and asylum-seekers.

One of the first and most crucial steps it must take is to provide refugees and asylum-seekers with a formal legal status and establish a system of registration whereby they are issued with identity documents. These should ensure access to relevant entitlements and respect for fundamental rights, including the right not to be subjected to arbitrary arrest or detention, and should be fully recognized by all arms of the state or others acting in their place. In the interim, the authorities should work with UNHCR to ensure that existing registration processes provide necessary protection.

Secondly, refugees and asylum-seekers should be given the formal right to work. It is also crucial that asylum-seekers and refugees are protected from abuse and extortion, and in particular, that RELA immediately cease all immigration related functions. Immediate reform is necessary to exempt asylum-seekers and refugees from criminal penalties in relation to migration offences.

At the same time, the international community can support these efforts by providing increased resettlement opportunities for refugees in Malaysia, and by offering financial assistance to UNHCR to facilitate its ability to register, process and assist refugees.

ENDNOTES

1. Migrant workers are similarly vulnerable. See Amnesty International's report, *Trapped: The exploitation of migrant workers in Malaysia* (Index: ASA 28/002/2010).
2. Figure includes: 37,600 Chins, 18,200 Rohingyas, 5,100 other Myanmar Muslims, 3,500 Mon, 3,200 Kachins. UNHCR, *Refugees in Malaysia: UNHCR Factsheet*, March 2010.
3. Amnesty International, "Malaysia arrests migrants as crackdown continues," 29 March 2010 www.amnesty.org/en/news-and-updates/malaysia-arrests-migrants-crackdown-continues-2010-03-29
4. See also Amnesty International, *There is a way out: Stop abuse of migrants detained in Malaysia* (Index: ASA 28/003/2010).
5. See Amnesty International, *Malaysia: End caning as punishment against immigrants* (Index: ASA 28/004/2009).
6. The largest number of refugees resettled with UNHCR assistance departed from Thailand (16,807), followed by Nepal (8,165), Syria (7,153), Jordan (6,704) and Malaysia (5,865). UNHCR, *Frequently Asked Questions about Resettlement*, September 2009, <http://www.unhcr.org/4ac0873d6.html> (accessed 29th March 2010).
7. 193 individuals were not from Myanmar (Afghans, Iraqis, Sri Lankans and Somalis). Amnesty International meeting with UNHCR Geneva, March 2010.
8. Myanmar: 14,000; other nationalities: 1,000; total: 15,000. UNHCR, *Projected Global Resettlement Needs 2010*.

RECOMMENDATIONS

TO THE MALAYSIAN GOVERNMENT:

- Grant access to the territory for any person within the state's jurisdiction who expresses a need for international protection and ensure that he or she has prompt access to UNHCR.
- Ensure that no individual is forced to return in any manner whatsoever to a country where they are at risk of persecution.
- Ensure UNHCR documents are respected by all levels of immigration enforcement.
- Introduce a government ID card system which provides for the legal right to remain in the country during the asylum determination process and for as long as is needed by asylum-seekers and refugees, and which affords entitlement to relevant rights and services. Ensure that identity cards are respected by all levels of immigration enforcement, and holders are not arrested, detained or deported.
- End criminal penalties for refugees and asylum-seekers, including in relation to irregular entry.
- Take steps to protect asylum-seekers and refugees from all forms of violence and other human rights abuses, and in particular to protect women and children from gender-based violence.
- Immediately remove all immigration-related functions and powers from RELA, including the power to arrest and detain.
- Ensure that refugees, unaccompanied children, the elderly, trauma victims and pregnant women are never detained for migration-related reasons.
- Ensure that asylum-seekers are detained only as a measure of last resort after full examination of all alternatives, that any detention is necessary and proportionate to the objective to be achieved and in line with international standards.
- Ensure that asylum-seekers and refugees who are detained are provided with prompt and unimpeded access to UNHCR.
- Ensure that immigration enforcement is conducted with respect to the individual's dignity and in compliance with international standards on the use of force.
- Provide the legal right to work for asylum-seekers and refugees in Malaysia, and documentation to ensure that this right is understood and respected by employers.
- On the basis of the above recommendations, provide policy guidance instructions and training, including on gender sensitivity, to all state officials mandated to conduct immigration-related functions.
- Ratify the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, and bring domestic law, policy and practice in line with these instruments.
- Ratify the ICCPR, the CAT and the ICESCR, and integrate them into domestic law, policy and practice.

(continued overleaf)

RECOMMENDATIONS *(continued)*

TO THE INTERNATIONAL COMMUNITY, IN PARTICULAR USA, CANADA, EUROPEAN UNION STATES, AUSTRALIA AND NEW ZEALAND:

- Provide financial and technical assistance to Malaysia and UNHCR to facilitate the protection and assistance of refugees in the country.
- Increase resettlement quotas from Malaysia, prioritizing the most vulnerable.
- Encourage Malaysia to ratify international standards relevant to the protection of refugees, asylum-seekers and others in need of international protection.

TO UNHCR:

- Continue efforts to work with the Malaysian authorities to ensure that identification documents are respected by all levels of the state involved in migration control.
- Establish a sensitization and advocacy campaign, targeted at both refugees and representatives of the host state, to ensure that there is a mutual understanding of the rights and responsibilities of refugees.
- Continue efforts to ensure that individuals who are arrested for irregular presence in Malaysia are given prompt access to UNHCR should they wish it.

- Evaluate the use of community organizations as an entry point for registration, and take steps to ensure that all those in need of protection have prompt and fair access to registration regardless of nationality or ethnicity.

- Prioritize securing additional resources for its office in order to improve its capacity to promptly determine refugee status following the increased number of refugees recently registered in Malaysia, including to increase capacity for the registration and processing of non-Burmese nationals.

- Increase efforts to protect refugees and asylum-seekers from violence and other human rights abuses. In particular, improve the protection of women and children from all forms of gender-based violence, including through targeting resources to increase access to medical assistance and legal representation as well as the establishment of safe houses.

- Continue to improve the reception facilities for those waiting both outside and inside the UNHCR compound, in keeping with the UNHCR Urban Refugee Policy.

- Continue to work with resettlement countries to ensure that all vulnerable refugees who need it are referred for resettlement in a timely manner.

cover image: Detainees at Lenggeng Immigration Depot, Malaysia, July 2009. © Amnesty International

**AMNESTY
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Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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