

April 19, 2011

Contacts:
Lynn Yoshikawa & Melanie Teff

MALAYSIA: INVEST IN SOLUTIONS FOR REFUGEES

Malaysia has taken significant steps forward in improving refugee rights. In the past year, there have been no reported attempts to deport Burmese refugees to the border with Thailand and a decrease in immigration raids and arrests of registered refugees. But these advances have not yet been codified into written government policy, leaving refugees considered “illegal migrants” and subject to arrest and detention. The Government of Malaysia should build on this progress by setting up a system of residence and work permits for refugees. The international community should mobilize additional funds for the UN Refugee Agency (UNHCR) and non-governmental agencies to leverage this opportunity to improve refugee rights.

GRANT REFUGEES RESIDENCE AND WORK PERMITS

Malaysia is host to over two million migrant workers, out of a total population of 28 million. The number of registered refugees in the country is over 80,000 and the Government has not yet set up a legal or administrative framework for the refugees to distinguish them from other migrants in the country. They do not recognize the fact that unlike other migrants, these refugees are not able to return to their countries of origin. Over ninety percent of the refugees in Malaysia come from Burma where ethnic minorities, such as the Chin, Rohingya and Karen, are subject to systematic human rights abuses.

Although refugees are not legally permitted to work in Malaysia, in practice they are doing unskilled, low-paid jobs that Malaysian citizens do not want to do. Refugees International (RI) interviewed many Rohingya refugees, a Muslim Burmese minority group which is also stateless, who spoke of their frustrations at being unable to get better jobs and earn more for their families. Employers are worried about hiring them because of their illegal status or employers exploit them because they know that they will not

POLICY RECOMMENDATIONS

- The U.S., Australia and other key donor governments should urge the Government of Malaysia:
 - to work with UNHCR to provide refugees with the legal right to residence and employment in Malaysia,
 - to allow refugee and asylum-seeker children access to government schools,
 - to allow refugees and asylum-seekers to pay the same fees as citizens for health care, and
 - to improve the conditions in immigration detention centers and allow UNHCR and non-governmental organizations (NGOs) full access to detainees.
- UNHCR headquarters should allocate increased funding to its Malaysia operation.
- The U.S. and other key donor governments should increase funding to UNHCR and to local NGOs to enable them to increase support for refugees, including legal assistance, medical care and gender-based violence programs.

have recourse to justice. Their illegal status forces them into taking irregular day laboring jobs, and does not permit them to get insurance, so they cannot claim compensation if they are injured at work.

Despite a significant reduction in immigration raids and detention over the past year and an increase in respect by police for UNHCR refugee cards, RI interviewed many registered refugees who had still been stopped by police and forced to pay bribes to avoid being arrested. As one Rohingya man said: “The only document we have is a UNHCR refugee card, but it does not cover working here. I have to support nine family members, but I can’t work permanently in one place. Without documents we can’t do good jobs.” A Rohingya woman told RI that UNHCR offered her micro-credit to set up a small sewing business but she turned the money down. She said: “If we are not legally allowed to move freely and to sell our products, how can we repay a loan? We would have to risk being arrested to pay it back.” These types of dilemmas face all refugees in Malaysia currently.

It is in the interests of the Government of Malaysia to implement a residence and work permit scheme for refugees. Malaysian employers seek migrant workers from abroad, but there is already a source of workers from the refugee community in the country. Setting up residence and work permit schemes that include a path to permanent residence for refugees would solve many of Malaysia’s labor needs and would allow for the government to benefit economically from taxation and money transfer fees. The current situation encourages corruption by officials and exploitation by employers, but a new system would reduce people-trafficking and smuggling, enhance Malaysia’s security, enable the government to know who is on its territory, and improve Malaysia’s image with the international community.

There have been previous residence and work permit schemes for specific foreign groups in Malaysia, such as Indonesians and Filipinos, and in 2006 there was an attempt to set up such a system for Rohingya refugees. The Government of Malaysia has recently commissioned a study to consider setting up a residence and work permit scheme for Rohingya refugees, which should be established promptly and extended beyond just the Rohingya refugee community. The Government of Malaysia should seek the technical assistance of UNHCR to avoid difficulties that have beset some previous attempts.

INCREASE UNHCR FUNDING TO INVEST IN SOLUTIONS FOR REFUGEES

Over the past two years UNHCR has registered 35,000 more refugees in Malaysia, increasing the total number from 45,000 to over 80,000. Further, they have registered more than 11,000 asylum-seekers. Yet, despite doubling their beneficiary caseload, UNHCR has had no increase in funding. UNHCR’s operating budget remains at US\$7.5 million, despite its Global Needs Assessment showing a requirement of US\$16 million. At a time when the Malaysian government is progressive in its approach towards refugees, the lack of adequate financial support to UNHCR represents a serious missed opportunity. Investment at this time is a cost-effective way of finding actual solutions to refugee protection problems.

Australian funding permitted a mobile registration campaign for a large group of refugees in a relatively short period. Those resources have now been exhausted. UNHCR plans to conduct 18,000 registration interviews for Burmese cases in 2011 but lacks funding for more. RI met with refugees who had recently arrived in Malaysia, but UNHCR could not interview and register them until 2012 due to the growing backlog. Only family reunification and particularly urgent cases are being fast-tracked for registration. Possession of UNHCR registration cards is the only protection that refugees have against arrest and detention, and lack of staffing to carry out faster registration interviews due to funding shortages needs to be addressed.

Asylum seekers told RI that it was very difficult to reach UNHCR staff and that guards and junior staff at the gate of the UNHCR compound did not allow them in. One vulnerable asylum seeker living outside of Kuala Lumpur told RI that he had tried to set up an appointment three times but had not succeeded. During RI’s visit, it was clear that UNHCR staff was overwhelmed with hundreds of visitors on a daily basis and there was a need for well-trained staff and translators.

UNHCR in Malaysia only has an office in Kuala Lumpur and their staff rarely travel to visit refugees living outside the capital. UNHCR proposed setting up an office in Penang, where many refugees and asylum seekers are living, but they have not had the funding to achieve this.

UNHCR staff also intervene when refugees are detained for immigration offenses. Given the government’s recent policy of recognizing UNHCR refugee cards and not detaining registered refugees, UNHCR is usually successful in obtaining refugees’ release. They also interview asylum-seekers held in detention. But lack of staffing and

the need to cover eleven immigration detention centers around the country means that it usually takes around two months before they secure the refugee's release. Increased UNHCR staffing or a legal aid program in the detention center would reduce the amount of suffering by detainees and their families, and also reduce overcrowding and unnecessary costs to the Malaysian detention system.

Since refugees have not been permitted to access most government services, UNHCR has had to provide assistance to the most vulnerable. In the past few years, they have supported refugee community schools, assisted families with chronic or serious medical needs, and helped survivors of sexual and gender-based violence. Beneficiary numbers have now doubled, and this means that previously inadequate funding now has to be stretched even further.

Refugees in Malaysia do not live in camps, but instead in urban and rural settings, which make it more challenging for UNHCR to reach out to the most vulnerable. Nonetheless, UNHCR has increased its outreach through refugee community committees to communicate with refugees. This innovative practice could be replicated in other urban refugee settings to advance UNHCR's work globally under its new urban refugee policy. For example, in 2010 they set up the Social Protection Fund (SPF), which provides small grants for refugee community-led projects, such as skills training, language classes and income-generation projects. Unfortunately, the lack of funding has meant that, despite its many successes, the SPF has had to be cut in half in its second year. Projects like these empower refugee communities and are much more cost-effective than those run through NGOs, yet funding cuts will reduce their impact this year.

ALLOW EQUAL ACCESS TO GOVERNMENT SCHOOLS AND HEALTH FACILITIES

Refugee children should be allowed to attend government schools. Currently they are only allowed to attend refugee community schools, which have a much poorer standard of education and which do not equip them for successful futures, whether in Malaysia or in another country. Many Rohingya refugee children told RI that in their schools they are only studying religion and English. There are some NGO-run schools for refugee children that cover more subjects, but these lack resources and qualified teachers.

Many of the refugee community schools are a significant distance from where the refugees live, and this creates problems with transport, particularly in a situation where people are afraid they could be stopped by the police. There

is a problem with retention of Rohingya children in the refugee community schools. Many Rohingya families do not allow their daughters to attend school after they reach puberty. Their fear for their daughters' safety and reputation is exacerbated by the need to travel long distances. Many boys have to drop out of school to make money, particularly since children are less likely to be arrested than their parents. UNHCR is hoping to launch a youth education program, but funding is currently lacking.

Given the precarious legal and economic situation of refugees in Malaysia, most cannot afford access to the medical system. The government has provided refugees with discounted fees for medical care recently, but foreigners, including asylum seekers, still have to pay a much higher rate in government facilities than Malaysians. The US Bureau of Population Refugees and Migration (PRM) funds an NGO-run clinic that assists refugees, including those who are not yet registered, which is a vital service that needs continued funding.

UNHCR used to "fast-track" cases of pregnant refugee women to get them registered quickly, so that they would be able to access medical care using the refugees' discounted rate. UNHCR has stopped this practice because their statistics suggested that desperation to get registered quickly was leading women to seek getting pregnant for this purpose. This change in UNHCR policy has resulted in difficulties for some pregnant women to access medical care, which again underscores the urgency for refugees to gain access to Malaysian health facilities.

SUPPORT PROJECTS THAT ADDRESS REFUGEE WOMEN'S NEEDS

Most refugee community organizations are male-dominated, making it difficult for refugee women to gain access to female translators and staff of NGOs or UNHCR. There is a need to increase female staff in these roles, and to ensure that all staff are trained to be aware of sexual and gender-based violence (SGBV). A refugee woman told RI that she had only been able to seek help to escape serious violence by her husband because "a UNHCR officer was approachable and asked me the right question at the right time in the right way." She urged UNHCR staff to find a way to ask refugee women separately from their husbands if there is anything happening in their family life that is putting them at risk.

UNHCR responds to cases of SGBV that come to its attention, but they are limited in their ability to conduct outreach and need greater capacity for providing shelter and

community reporting mechanisms. PRM is funding a NGO to provide a community outreach program for refugee women on SGBV, a relatively new approach in urban refugee settings, which needs to be developed further. Refugee women often have limited freedom of movement, due to fears of arrest, and many Rohingya women have to seek their husband's permission to leave the home at all. Further, they cannot access the police and legal assistance because of their own illegal status in the country, making community outreach even more important. There is also a need to involve men in SGBV programs and to seek out community and religious leaders who would be willing to raise awareness with men of the negative impacts of SGBV on communities.

There is a common perception that the Rohingya community in Malaysia is almost exclusively male. In fact, the demographics of the Rohingya community in Malaysia have been changing, and there are increasing numbers of Rohingya women arriving in Malaysia to join their husbands or to be married. The Rohingya have tended to be a very traditional Muslim community. RI interviewed many Rohingya women, who said they wished to have access to skills and language trainings with a view to take on income-generating activities within the home. Some also said they would like to participate in a Rohingya women's group, and that they hoped that UNHCR could give the impetus for such a group to start.

Many Burmese refugee women have suffered sexual violence in their country of origin as the Burmese government has used this as a tactic against ethnic minority communities. Refugees in Malaysia, both male and female, have also suffered many other horrific human rights abuses, creating a need for mental health support. PRM is funding an NGO to provide mental health services to refugees, and this type of funding needs to continue.

UNHCR cannot cover all of the services that are needed by the refugee community, and there is a need for more funding for NGOs to carry out these types of essential services for refugees, particularly for refugee women.

IMPROVE IMMIGRATION DETENTION CONDITIONS

Refugees who had been held in both immigration detention and in jail told RI that conditions in immigration detention centers are significantly worse than conditions in jail. Previously detained refugees told RI that food and water are inadequate and unhygienic in the centers. Last year eight people died at KLIA center after a bacterial outbreak due to

rats' urine in the water supply. Former detainees told RI that guards beat or kicked them. They also complained of extreme heat during the day, cold at night without appropriate clothing, and no mosquito netting. This resulted in many sicknesses, as well as skin diseases such as scabies. One former detainee told RI of a little girl dying in the room she was held in due to the heat. Guards reportedly choose at whim which detainees receive help when doctors are visiting and often, the sickest detainees are not brought forward.

Conditions must be improved, and the practice of detaining refugees for immigration offenses and of sentencing refugees to caning must be stopped. Legal assistance and representation for refugees would help reduce or avoid imprisonment and caning of refugees and avoid deportation of trafficking victims.

Government recognition of UNHCR refugee cards is improving, but there are still many refugees held in immigration detention centers in Malaysia. Access by UNHCR and by NGOs to the immigration detention centers is limited. NGOs are only permitted to visit two of the detention centers. If refugees have no family or friends to inform UNHCR of their detention, they are unlikely to receive support due to the limited access by UNHCR and NGOs. One refugee committee reported that in some cases detainees must pay a bribe for officials to notify UNHCR of their presence.

Malaysia's image as a modern country is severely damaged by the state of its immigration detention centers. Overcrowding is the primary reason for the inhuman conditions. Yet, this would be reduced if the government stopped detaining refugees for immigration offenses.

Melanie Teff and Lynn Yoshikawa assessed the plight of Burmese refugees in Malaysia in March 2011.