

# **Refugee issues in Malaysia: The need for a proactive, human rights based solution**

**Mohd Hamdan Adnan**

Public Relations Department  
Faculty of Communication and Media Studies  
Universiti Teknologi MARA  
40450 Shah Alam, Selangor  
Malaysia  
Email: hamdanani@hotmail.com

Much has been written by international organizations and NGOs about refugees in Malaysia. In reality, Malaysia has provided a certain level of discretionary protection to some categories of displaced persons, including persons fleeing the ravages of war in Vietnam in the 1970s and Bosnians escaping from ethnic cleansing during the Balkan wars in the 1990s. For several decades, Malaysia has also allowed large communities of Filipinos from the Mindanao region to settle in the State of Sabah in Borneo, to the extent that in certain areas of Sabah, Filipino refugees currently outnumber the population of native Sabahans. The United Nations High Commissioner for Refugees (UNHCR) estimates that up to 60,000 Filipinos from Mindanao are currently living in Sabah, largely without excessive interference from the Sabah state authorities.

In Peninsula Malaysia, the UNHCR also estimates that some 10,000 Rohingyas from the Arakan region in Myanmar have been living in Malaysia. From the second half of 2004, the UNHCR has noted greater government engagement in refugee protection and increased public awareness and visibility of refugee issues.

Positively, Malaysia has endorsed the Universal Declaration of Human Rights 1948 (UDHR), and on many occasions, including during the UN World Conference on Human Rights in Vienna 1993, reaffirmed its commitment to the Declaration. Section 4(4) of the Human Rights Commission of Malaysia Act (Act 597), allows regard to be had of the UDHR, to the extent that the Declaration does not conflict with the Federal Constitution. The main significance for the plight of refugees lies in Article 14 of the UDHR, which enshrines the right "to seek and to enjoy in other countries asylum from persecution."

In the course of its work thus far, the Malaysian Human Rights Commission (SUHAKAM), has adopted an expansive interpretation of this Declaration, to ensure that refugees are also included within the ambit of the Commission's protective mandate. I will elaborate further on the work that the Malaysian Human Rights Commission has done with regards to the protection of refugees later on in this paper. Before this, I will focus my comments on some of the more important issues relating to refugees in Malaysia.

Notwithstanding the positive comments I have made thus far, it has to be acknowledged that the situation of refugees in Malaysia is clearly far from desirable. By year-end of 2006, the UNHCR estimates the number of refugees and stateless persons in Malaysia will amount to some 130,000 people. This figure constitutes the second highest refugee population in South East Asia after Thailand.

Despite the large presence of refugees, Malaysia is not a Party to international conventions which provide protection for the rights of refugees, including the Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination 1965 and the International

Covenant on Civil and Political Rights. In particular, Malaysia is not a Party to the 1951 Convention Relating to the Status of Refugees and therefore does not formally recognize or grant any form of refugee status.

As most of us know, the generally accepted international definition of a refugee is stipulated within Article 1 of the 1951 Convention Relating to the Status of Refugees, as amended by its 1967 Protocol. According to the 1951 Convention, a refugee is someone who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside of their country of nationality or country of habitual residence and is either unable or unwilling to avail him/herself to the protection of that country due to such fear. Since Malaysia is not a Party to this Convention, there is legally under Malaysian law no distinction between refugees and other categories of undocumented persons.

Malaysian immigration laws make no distinction between undocumented immigrants and refugees, thereby leaving refugees vulnerable to the same penal sanctions that undocumented migrants are subjected to, including detention, corporal punishment upon conviction, and eventual deportation. All undocumented persons in Malaysia are legally considered as “illegal immigrants”. The Immigration Act 1959/63 provides the police and immigration authorities with widespread powers to arrest, detain and eventually deport those considered as illegal immigrants. Persons arrested can be detained in detention camps for such periods as deemed necessary by the authorities to arrange for their removal and deportation. As of August 2005, an estimated 973 refugees were detained in prison and immigration detention centers in Malaysia, with 222 of them were being prosecuted for immigration violations.

One of the most crucial effects stemming from non-accession to the 1951 Refugee Convention is that in principle, Malaysia is of the view that it is not legally bound to adhere to the principle of *non-refoulement*. In this regard, the authorities largely do not subscribe to the view that *non-refoulement* is a norm of international customary law. NGOs and international observers have commented on instances where refugees were deported back to frontiers where clear risks of persecution exist, in contravention to the norm of *non-refoulement*.

For instance, the US Committee for Refugees estimates that in 2005, Malaysia may have *refouled* several hundred refugees. However, there have also been other instances where the authorities have shown respect for *non-refoulement*. For instance, in May 2005, Malaysian authorities released over 500 refugees who were arrested and detained under Malaysian immigration laws, at the request of the UNHCR. Therefore, the lack of accession to the Convention has created a situation where some refugees have been protected under *non-refoulement*, whereas others have not. It would appear that responses are dependant on the discretion of the authorities at any given point in time.

In March 2005, the Malaysian government began the expulsion of some 1.2 million undocumented migrant workers, some of whom would be considered as refugees for the purposes of the 1951 Refugee Convention. Preceding this was a four-month amnesty during which 400,000 undocumented migrants were able to return home without being penalized under Malaysian immigration law. It has to be said that the exodus of undocumented migrants was not without negative effects for Malaysia. The loss of a large migrant labour force sorely affected Malaysia’s economy by creating acute labor shortages in the agricultural, construction and manufacturing sectors. These labour shortages eventually compelled the Malaysian Government to enter into labour agreements with countries such as Pakistan, Nepal and Sri Lanka to overcome this problem. Due to the length of time needed to finalise such agreements, in May 2005 the government allowed formerly illegal workers from Indonesia and other countries who had left under the amnesty to return and seek work through proper legal channels.

However, undocumented refugees would not be able to benefit from such measures, since lack of documentation often thwarts the ability of refugees to obtain work permits to enable them to work legally. Thus, refugees remaining illegally in Malaysia are still unable to gain access to legitimate

employment, thereby increasing the overall precariousness of their situation. Work is scarce for refugees as most employers are reluctant to employ them due to their undocumented status. When they are able to obtain work, it is normally on an ad-hoc basis, leaving refugees vulnerable to exploitation from unscrupulous employers.

Refugees remaining in Malaysia are also vulnerable to other sorts of ill-treatment. Some domestic NGOs have reported and documented instances of human rights violations against refugees, including reports of assault, sexual abuse, and lack of access to basic needs including medical treatment and education. Access to such basic needs is often restricted for undocumented persons and their family members, due to inconsistent policies amongst various government Ministries, when dealing with refugees. For instance, the Ministry of Health reportedly announced that it would grant access to refugees and all other persons registered by UNHCR to health care at local rates. However, this policy does not appear to have filtered to the enforcement agencies and local hospitals – we in the Malaysian Human Rights Commission continue to receive reports of refugees being denied access to adequate and affordable treatment at government medical facilities.

Another notable example of such inconsistencies relates to the Government's statements regarding Rohingyas in Malaysia. In 2004, the Government announced that it would consider regularizing the status of existing stateless Rohingyas in Malaysia, to enable them to legally work and leave without fear of arrest from the enforcement agencies. However, to date, this policy does not appear to have been implemented.

Issues also arise with regards to the status of the children of refugees and stateless persons who are born in Malaysia. Since their parents are undocumented, such children are more often than not, hindered in obtaining birth certificates and other identification documents which would facilitate their access to basic needs including medical care and education.

In my capacity as Chairperson of the Complaints and Inquiries Working Group, I have personally come across many tragic cases of refugees and stateless persons who have been living illegally in Malaysia for over 20 years without any status, particularly the stateless Rohingyas from Burma and the Moros from the Philippines. These refugees have only distant memories of their homelands. They have in turn raised children who were born in Malaysia. They know no homeland other than Malaysia, since Malaysia is the land of their birth. Many of these children also come into contact only with Malaysian children, and only speak Bahasa Malaysia – the national language of Malaysia. For all practical purposes, these children are Malaysian, and yet they are not recognized as such by the authorities. It is difficult not to feel for their plight.

Thus far, the Malaysian Human Rights Commission has been more successful with assisting undocumented children than other categories of refugees and undocumented persons. In 2002, the Commission was able to intervene to halt the deportation of two Rohingya boys, aged 8 and 10, who were arrested by the police. The Commission was able to move the Malaysian Welfare authorities to obtain a Court Order to halt their deportation, remove the boys from the immigration detention depot, and subsequently have the boys placed in the care of a welfare home, until their next of kin could be located. Their parents were eventually located by the welfare authorities, and the boys were eventually released into the care of their parents.

During routine visits to an immigration detention facility in the state of Sabah, representatives of the Malaysian Human Rights Commission discovered the presence of 43 foreign children of uncertain status and national origin. They were detained together with adults, almost none of whom were their relatives or guardians. The children had been removed from the streets, where they had been seeking means of survival without the comfort and protection to which most Malaysian children have grown accustomed. These children, ranging in age from 4 to 15 years, were separated from the adult detainees, following swift intervention of the Chief Minister, whose attention was drawn to the case by our Commission's urgent appeals to the Minister. Eventually many of the children were reunited with their parents.

In such instances, the Malaysian Human Rights Commission reminds the relevant government authorities of Malaysia's obligations under the Convention on the Rights of the Child (CRC). As a State Party to the CRC, Malaysia is required under Article 2(1) to ensure the rights of all children within its jurisdiction without discrimination of any kind. Furthermore, under Article 22, Malaysia is required to provide child asylum seekers with all the additional protection guaranteed to them under international refugee law, at least until proper procedures have been instituted to verify and determine their status.

It should be noted that it is not only refugees seeking to remain in Malaysia who are faced with problems. Refugees seeking to leave Malaysia have also been plagued with different sets of problems, largely due to the reluctance of receiving third countries to accept them. While Malaysian immigration authorities have provided representatives of the UN High Commissioner for Refugees (UNHCR) in Kuala Lumpur with access to interview detained refugees to process them for resettlement, problems remain due to the fact that many traditional resettlement countries in Europe and North America have reduced their intake of unskilled refugees, even if such refugees are in danger of persecution upon their return to their home frontiers. Thus, the problem is not merely from the Malaysian side – other countries with the capacity to absorb refugees are now increasingly reluctant to do so for a litany of reasons. Such reasons include tightening of immigration regulations after September 11, and the increasing reluctance of developed countries to accept refugees without any skills or clear benefits to offer to their new host countries.

The UNHCR appears to have particularly critical problems in relocating certain groups of refugees and stateless persons, particularly Muslim Rohingyas from Burma. The plight of the Rohingya community has received much attention from the Malaysian Human Rights Commission, in view of their *de facto* stateless-like condition. Although originating from Arakan region in Burma, their nationality is not accepted by the Burmese government. As stateless persons, their chances of gaining acceptance as asylum seekers by Third Countries in Europe, North America and Australia/New Zealand are further diminished, particularly since many of the Rohingyas lack education and skills to make them attractive to receiving countries.

The length of time taken to resettle refugees has led some refugees in detention to resort to various measures to increase attention to their plight. For instance, in 2004, refugees in one of the local immigration detention depots launched a hunger strike to protest against their conditions of detention. These refugees were also protesting against the length of time taken by the UNHCR and receiving third countries to process their resettlement.

It must be said however, that while we have experienced some successes with individual cases, we in the Malaysian Commission have yet to make a significant impact on the policy and structural deficiencies which continue to thwart refugees from obtaining proper protection. In recognition of this fact, in December 2004, we organized a closed-door discussion with officials from the Prime Minister's Department, the Ministries of Home Affairs, Ministry of Foreign Affairs, and the Police, Prisons, Immigration, Labour, National Registration and Education Departments.

The sentiments expressed by these officials indicated their recognition of problems resulting from the absence of a common definition of a refugee in Malaysia. The government officials expressed willingness to consider the establishment of a mechanism akin to the National Security Council (which responded during the 1970s and 1980s to the arrival of 'boat people' from Vietnam), to process and determine the status of asylum seekers and to identify *bona fide* refugees. However, enforcement personnel admitted that they currently lack adequate training to institute proper refugee status determination procedures. The government officials, on their part, welcomed any measure that would assist them to differentiate asylum seekers from illegal or economic immigrants. Very few personnel from the Immigration Department have received training in refugee status determination techniques to date. Among Malaysian enforcement agencies, there remains the perception that the international community is not doing enough to persuade Third Countries to accept refugees. Large

numbers of refugees were also seen by certain officials as a destabilizing threat to national security and public order.

The Malaysian Human Rights Commission has also organized dialogues with representatives of the (UNHCR), domestic NGOs representing the interests of refugees in Malaysia, and other individuals representing asylum seekers from the Rohingya and Chin communities of Myanmar, Moro of southern Philippines and displaced persons from Aceh, Indonesia. During one of these dialogues, the government officials expressed their commitment to recognize UNHCR-issued refugee cards and papers indicating their status as 'refugees', as well as the rights of refugees to health care, employment and education as provided under the 1951 Refugees Convention. However, the government officials also called on the international community to assist Malaysia by facilitating rather than blocking or delaying resettlement to third countries. On a more positive note, there was a general view among the government officials that *bona fide* refugees deserve due and proper consideration from the government.

Thus, there is still room for optimism notwithstanding the current plight of refugees in Malaysia. As long as the authorities accept deficiencies in the current status quo and are willing to engage in dialogue to redress the situation, there is still room for hope. For our part, we will continue to work to increase awareness of refugee rights, and to encourage the government to adopt comprehensive and long-term refugee protection policies, beginning with accession to the 1951 Refugee Convention and amendment to relevant immigration laws and other policies affecting refugees in Malaysia. For the time-being, we will also continue to encourage the government to adopt interim measures to alleviate at least some of the problems faced by refugees, for instance, by encouraging the government to grant registered refugees with the right to seek and obtain employment lawfully, and to have access to basic needs such as shelter, food, healthcare and education. Additionally, we will also continue to react proactively to cases of violations of refugee rights, and do whatever we can within the ambit of our powers, to protect this vulnerable group of persons.

I also hope that my partners in other agencies involved in the protection of refugees in Malaysia will continue to make life more bearable for refugees, at least until major legislative and policy reform are instituted. In its 2006 plan of action for Malaysia, the UNHCR has committed to the disbursement of direct financial assistance for vulnerable refugee cases, including financial assistance for shelter, food, transport, basic health care, education/ training for children, psychosocial/counseling services, as well as assistance for critical medical treatment. This will go a long way to providing protection, at least to refugees who have been registered with the UN agency.

Finally, it must be reiterated that only through the combined efforts of all actors on the domestic and international stage can a lasting solution to the problems of refugees be found. The plight of refugees is a trans-border concern that affects us all. More can be done by the international community to examine and address the root causes of refugee flows, so that people facing persecution will not have to leave their homelands in the first place to search for safety and solace. I believe, that if given the choice, most refugees would not want to leave their homelands – more often than not, they are driven to do so by circumstances beyond their control. When refugees have no choice but to seek asylum elsewhere, the international community and developed nations can also do more to alleviate the plight of refugees by increasing their resettlement quotas.