

Human rights and irregular migration in Malaysia

Does Malaysia provide access, for persons seeking asylum, to effective procedures for assessing their need for protection?

Yes, Malaysia generally allows the UNHCR access to persons seeking asylum including to assess their need for protection. Malaysia itself is not a signatory to the Refugee Convention, and does not make such assessments on its own behalf. The UNHCR undertakes all activities related to the reception, registration, documentation and status determination of asylum seekers and refugees.¹ According to the US State Department, since April 2009, immigration detention centres in Malaysia have scheduled UNHCR visits to interview unregistered potential refugees, and in 2010 the UNHCR secured the release of 2,885 refugees through this process.²

Does Malaysia provide protection for persons seeking asylum, pending determination of their refugee status?

As a non-signatory to the Refugee Convention, Malaysia does not itself provide legal status to persons seeking asylum, but it does allow them to remain in Malaysia while the UNHCR undertakes all activities related to the reception, registration, documentation and status determination of asylum seekers and refugees. According to the UNHCR, “there were credible indications that forcible deportations of asylum seekers and refugees had ceased in mid-2009.”³

As at the end of February 2011, the UNHCR states that approximately 92,700 refugees and asylum-seekers have registered with it in Malaysia. The vast majority (92 per cent or approximately 85,300) are from Burma (comprising some 36,600 Chins, 20,100 Rohingyas, 9,000 Muslims, 3,900 Mon, 3,500 Kachins and other ethnicities). There are approximately 7,400 refugees and asylum-seekers from other countries, including around 4,000 Sri Lankans, 1,050 Somalis, 710 Iraqis and 510 Afghans⁴. Seventy per cent of refugees and asylum-seekers are men, while 30 per cent are women. There are some 18,700 children below the age of 18.

The number of refugees and asylum-seekers has doubled since the end of 2008 as a result of large-scale registration of asylum-seekers, many of whom had been in the country for years⁵. There is also a large number of persons of concern to UNHCR who remain unregistered. Refugee communities themselves estimate that the population of unregistered refugees and asylum-seekers to be some 10,000 persons⁶.

¹ Source: UNHCR <<http://www.unhcr.org.my/project/unhcr/theme/images/swf/refugeesinmsia.swf>> accessed 3 May 2011.

² US Department of State, ‘2010 Human Rights Report: Malaysia’.

³ UNHCR Global Report 2009, Malaysia, 1 June 2010, <www.unhcr.org/refworld/docid/4c57cc5b0.html>, accessed 3 May 2011.

⁴ Source: UNHCR <<http://www.unhcr.org.my/cms/basic-facts/statistics>> accessed 28 April 2011.

⁵ Source: UNHCR <<http://www.unhcr.org/pages/49e4884c6.html>> accessed 28 April 2011.

⁶ Source: UNHCR <<http://www.unhcr.org.my/cms/basic-facts/statistics>> accessed 28 April 2011.

Does Malaysia provide protection to persons who are given refugee status, pending their voluntary repatriation to their country of origin or resettlement in another country?

Not being a party to the Refugee Convention, Malaysia does not grant refugee status or asylum or have in place legal protections; however, Malaysian authorities generally cooperate with the UNHCR and, as noted above, according to the UNHCR, “there were credible indications that forcible deportations of asylum seekers and refugees had ceased in mid-2009.”⁷

Does Malaysia meet relevant human rights standards in providing that protection?

A number of fundamental liberties are enshrined in Malaysia’s Federal Constitution and Malaysia’s national human rights commission, SUHAKAM, is active in fulfilling its mandate with respect to these rights, including inquiring into complaints. Even so, some concerns have been expressed about Malaysia’s record on human rights on specific issues, both internationally and within Malaysia. One of these issues is the use of the Internal Security Act to allow for detention without trial.

Malaysia also retains the death penalty and caning as forms of judicial punishment. Illegal immigrants, for instance, are liable to imprisonment and/or a fine, and caning of not more than six strokes. Amnesty International quotes the Malaysian Government as indicating 29,759 foreigners were caned between 2005 and 2010 for immigration offences.⁸

The Malaysian Government provided access to health care for refugees with UNHCR cards at a discounted foreigner’s rate; however, the costs generally were beyond their means.⁹ A lack of official status has impeded access by refugees to sustainable livelihoods or formal education.¹⁰ NGOs and international organisations involved with migrant workers and refugees have made credible allegations regarding inadequate standards in immigration detention centres. The Malaysian Human Rights Commission (SUHAKAM) has recommended steps to improve health conditions in immigration detention centres.¹¹

Internationally, Malaysia is not a party to the two primary human rights instruments: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is a party to three international human rights treaties: the Convention on the Elimination of All Forms of

⁷ UNHCR Global Report 2009, Malaysia, 1 June 2010, <www.unhcr.org/refworld/docid/4c57cc5b0.html>, accessed 3 May 2011.

⁸ Amnesty International, <<http://www.amnesty.org.au/news/comments/25050>> accessed 28 April 2011.

⁹ US Department of State, ‘2010 Human Rights Report: Malaysia’.

¹⁰ UNHCR Global Report 2009, Malaysia, 1 June 2010, <www.unhcr.org/refworld/docid/4c57cc5b0.html>, accessed 3 May 2011.

¹¹ US Department of State, ‘2010 Human Rights Report: Malaysia’.

Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC).

