

2g4: Refugees & Asylum Seekers

Preamble

Malaysia has no legal or administrative framework for the recognition and protection of refugees, and has yet to ratify both the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol Relating to the Status of Refugees. Without such a framework, refugees are denied legal protection and are treated as “illegal immigrants”, subjected to arbitrary arrest and detention, and various rights violations. Without access to legal status, refugees cannot access safety or longer-term stability. Many live in poverty and are denied basic rights such as access to justice, healthcare, education and work. Refugee women and children face a heightened risk of violence and exploitation. The impact of living in an unsafe discriminatory environment without opportunity indefinitely is profound.

Refugees have fled life-threatening violence and persecution in their home countries to seek safety from harm. Regardless of their mode of arrival, they should be afforded conducive conditions of protection as a basic human right to seek asylum from persecution. Malaysia has international human rights obligations towards refugees which should be incorporated into the domestic legal framework to ensure that they are afforded protection and that their rights are upheld. Besides this, refugees and asylum seekers should be given opportunities to be self-sufficient and enjoy a dignified standard of living. Ensuring equitable access to healthcare, improving labour and social protections, and implementing a formal legal framework will enable refugees to make a living, contribute to the economy legitimately and prevent them from being abused and exploited.

I: Immigration Detention

Refugees and asylum seekers registered by United Nations High Commissioner for Refugees (UNHCR) hold a form of de facto status that allows some degree of protection. Nonetheless, arrests and detention still occur during the process of document verification, or when the refugee is prosecuted for working without a permit and transferred to an immigration detention centre after serving time in

prison for working illegally. As refugees cannot be deported, the timeframe for immigration detention is indefinite. Until August 2019, the Government had allowed UNHCR access to detention centres to conduct registration and assessment. Although refugees could still spend months in detention waiting to be processed, this move by the authorities at least helped shorten the timeframe by allowing for screening and release to take place.

1. Immediately grant UNHCR access into immigration detention centres to conduct screening and verification of detained refugees and asylum seekers.

(Tham Hui Ying, Asylum Access Malaysia, Proposal 2G4-1)

2. Improve conditions in immigration detention centres.

(Tham Hui Ying, Asylum Access Malaysia, Proposal 2G4-1)

The Ministry of Home Affairs (MOHA), MWFC, MOH and the Immigration Department must work together to improve conditions in immigration detention centres, including, but not limited to, improving the quality of food and water, latrine facilities, as well as provision of hygiene items for all detainees, and prompt and adequate access to healthcare.

3. Develop a formal policy in partnership with UNHCR Malaysia and civil society organisations to put a stop to immigration detention of refugees and asylum seekers.

(Tham Hui Ying, Asylum Access Malaysia, Proposal 2G4-1)

4. Develop screening and referral mechanisms for refugees and asylum seekers.

Refer them to more appropriate reception facilities instead of immigration detention.

(Tham Hui Ying, Asylum Access Malaysia, Proposal 2G4-1)

5. Develop a formal policy to end immigration detention of all children.

This should be done by the MOHA and MWFCDC. As a first step, immediately implement the pilot programme on alternatives to detention in collaboration with civil society organisations, and release unaccompanied children into alternative care arrangements that are not lock-down shelters.

(Tham Hui Ying, *Asylum Access Malaysia*, Proposal 2G4-1)

6. Regularly publish data on the numbers of refugees, asylum seekers and children in immigration detention.

The data should be disaggregated by age, group, gender, nationality, and those registered with UNHCR.

(Tham Hui Ying, *Asylum Access Malaysia*, Proposal 2G4-1)

II: Comprehensive Legal & Policy Framework for Refugees

The lack of a consistent domestic policy on refugees has enabled the Government to violate international human rights obligations including the principle of *non-refoulement*.

7. Develop a comprehensive legal and policy framework for the management and protection of all refugees and asylum seekers in Malaysia.

This includes the right to seek asylum, legal status, and the right to stay. Also enact or amend relevant national laws to incorporate these provisions.

(Tham Hui Ying, *Asylum Access Malaysia*, Proposal 2G4-2; ROL Cluster, CSO Platform for Reform, Proposal 2G4-3)

8. Create an inter-agency committee on governance and protection of refugees.

(Tham Hui Ying, *Asylum Access Malaysia*, Proposal 2G4-2)

This committee, consisting of both government and key civil society representatives, should make recommendations related to legal and policy reform on refugee protection. They should be accountable and report directly to the Cabinet, who will have the mandate and power to approve any

recommendations. Multi-stakeholder technical working groups should then be constituted to address the mechanics of implementation. This requires increased cooperation and meaningful engagement with civil society organisations.

9. Exempt all UNHCR-registered refugees and asylum seekers from prosecution.

Refugees who are already registered with UNHCR should be released from detention and granted temporary legal status. Those who are unregistered and currently in detention should be given the right to seek asylum with the UNHCR.

(Tham Hui Ying, *Asylum Access Malaysia, Proposal 2G4-2*)

10. Ensure accessibility to basic rights.

In particular, the right to education and healthcare, right to work, livelihood, housing and access to justice.

(Tham Hui Ying, *Asylum Access Malaysia, Proposal 2G4-2*)

III: Access to Healthcare

Because they lack legal status, refugees and asylum seekers face arrest and detention for immigration offences when accessing healthcare. Although those documented are given a 50% discount off foreign citizen rates, this rate was doubled in 2016, essentially rendering healthcare services inaccessible for them. For undocumented women, besides the financial cost burden and fear of arrest and detention, they face additional barriers accessing pre- and post-natal care, particularly in places of detention. The same factors of cost and security affect children as well, who face challenges in accessing immunisation; they also miss primary age immunisation, as they do not have access to national schools.

11. Repeal the MOH Circular No 10/2001, and any other subsequent circulars that contain orders for healthcare providers to identify and report undocumented patients seeking treatment to law enforcement authorities.

(Tham Hui Ying, *Asylum Access Malaysia, Proposal 2G4-4; ROL Cluster, CSO for Platform Reform, Proposal 2G4-3*)

12. Introduce a firewall between healthcare providers and immigration and security enforcement.

Take necessary steps to ensure that these firewalls are respected.

(Tham Hui Ying, *Asylum Access Malaysia, Proposal 2G4-4*)

13. Initiate a sustainable and comprehensive health-financing scheme within the public health system for refugees and asylum-seekers.

The aim is to reduce the cost barrier, promote self-reliance and improve universal health coverage.

(Tham Hui Ying, *Asylum Access Malaysia, Proposal 2G4-4*)

14. Implement a public health response that is inclusive to all, regardless of legal status.

Particularly within the COVID-19 response, ensure safe access to vaccinations, testing and treatment for refugees and asylum seekers without reprisal.

15. Increase healthcare providers' capacity to provide translation and interpretation services, and health education to increase health literacy.

In collaboration with civil society and refugee-led organisations, enhance healthcare providers' understanding of the vulnerabilities, challenges, and needs of refugees and asylum seekers.

16. Strengthen implementation of health policies and guidelines in all places of detention.

Ensure that persons detained have adequate and prompt access to medical care at the point of need.

17. Amend the Fees (Medical) Order 1982 to ensure that non-Malaysian children have access to free vaccinations.

(Tham Hui Ying, *Asylum Access Malaysia, Proposal 2G4-4*)

IV: Labour Protection

In the absence of a formal legal framework, refugees and asylum seekers are denied formal rights to work and to earn a dignified livelihood in Malaysia. To survive, refugees often find themselves in extreme poverty, working under exploitative conditions and resorting to informal work that is dangerous and demeaning. Refugees and asylum seekers do not receive regular livelihood aid or support for their basic needs from the Government or UNHCR. Many are thus forced to take on informal work, despite the risks and fear of being arrested, detained and subject to police harassment. Refugees are unable to access employment protections and do not have proper avenues for seeking redress from unscrupulous employers.

18. Enforce labour protections for refugees and asylum-seeking workers, in line with the Employment Act 1955 and Industrial Relations Act (IRA) 1967.

Ensure that they are able to seek redress for labour violations, with clear policies, guidelines and training across departments on filing and handling of labour dispute cases.

(Tham Hui Ying, *Asylum Access Malaysia*, Proposal 2G4-5)

19. Enact or amend relevant laws and policies that will provide refugees and asylum seekers a right to stay and reasonable access to work opportunities.

This includes access to formal labour across all industries and geographical locations, access to social security benefits and insurance.

(Tham Hui Ying, *Asylum Access Malaysia*, Proposal 2G4-5; ROL Cluster, CSO for Platform Reform, Proposal 2G4-3)

20. Form a technical committee between government ministries, UNHCR and civil society to institutionalise coordination of work rights.

A phased approach can be adopted, with members of the technical committee providing feedback throughout the design, implementation and review phases. The technical committee should also consult widely with representatives from the refugee communities as well as potential employers.

(Tham Hui Ying, Asylum Access Malaysia, Proposal 2G4-5)

21. Ensure a comprehensive recruitment and monitoring system.

This must be put in place under the Ministry of Human Resources to protect refugees and asylum seekers' labour rights, and to ensure that these people are not exploited or trafficked.

(Tham Hui Ying, Asylum Access Malaysia, Proposal 2G4-5)