

Recognition and Protection of Refugees in Malaysia

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Abstract: Malaysia possesses a great reputation for allowing refugees to live in the country until they repatriate or resettle in a third country. People - who came to Malaysia due to wars, armed conflicts, political conflicts, and persecution in their country of origin - need to approach the United Nations High Commission for Refugees (UNHCR) for the formal recognition as refugees. They can be recognised as refugees by the UNHCR after undergoing through a lengthy interview process to determine whether they are genuine refugees. However, they are not legally recognised in Malaysia due to the fact that Malaysia is not a party to the 1951 Convention Relating to the Status of Refugees (1951 Convention) and also the 1967 Protocol Relating to the Status of Refugees (1967 Protocol). Besides, there is no specific domestic law dealing with the protection and rights of refugees. Accordingly, refugees are exposed to various kinds of exploitations while waiting for the repatriation to their own country or resettle in a third country. Sometimes, the waiting period may well be over a decade due to numerous reasons. Therefore, this papers aims at identifying existing legal frameworks that can be applicable for the protection of refugees in Malaysia. In addition, authors also explore whether it is time for Malaysia to become a party to the 1951 Convention. Alternatively, this issue can also be addressed by enacting a local statute for protecting refugees in Malaysia without becoming a member to the 1951 Convention.

Keywords: Refugee, Stateless Person, 1951 Convention Relating to the Status of Refugees, United Nations High Commission for Refugees (UNHCR).

INTRODUCTION

International refugee law and humanitarian law are both part of human rights law. The rationale behind these laws is to safeguard people in particular situations (such as circumstances like armed conflicts and oppression). Later on, human rights laws were further developed, however, it is far crucial to regard refugee law and refugee protection as a part of the human rights context. It is also essential to note that there are some States that are still not signatories of the 1951 Convention. The overall standards of law apply universally and even the few States that have not yet signed the 1951 Convention are hosts to a large number of refugees and are respectful to the principles of international refugee law, particularly the code of non-refoulement [1].

THE NATURE OF INTERNATIONAL REFUGEE LAW

Constantly, millions of people around the world seek safety under the international refugee law, which has made it to be one of the most applicable international human rights methods. This led the 1951 Convention and the 1967 Protocol to be the only legal norms applying in particular to refugees at the international level. More than 150 States (excluding few countries such as Gulf States and India) are signatories to the 1951 Convention and its protocol [2].

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International refugee law denotes to “a collection of rules” whose objectives are to safeguard, first, persons looking for asylum from oppression, and secondly those people recognised as refugees. Initially, refugee law had been developed to offer safety for people with a properly-founded fear of persecution, as long as it was based on race, nationality, religion, their political opinion and their membership of a specific social group. At some point in the 1950s, due to the reason that regimes had been set, there was a strong feeling that the refugee issue would be an ongoing issue for an unknown period, or that could be the justification as to why the application of refugees enlarged considerably. That may also give an explanation as to why the drafters concentrated on the aforesaid category, and the necessity to create a connection among those that are protected category as well as the well-founded fear of oppression category. To put it differently, one has to fulfill the criteria in order to obtain refugee status. What can be deduced from this is that the notion of refugee is constricted under international law [3].

The law for refugees is created as a standby source to extend safety to endangered people. Its motive is not to replace the primary option to seek assistance from their State of origin, but as a protective measure in the instances where their States fail to provide protection and fulfill its basic protective duties. As noted by Canadian Supreme Court, “the intention as a secondary option of international community was to provide assistance for the oppressed, in the instances where the states fail to extend their assistance for their own citizens” [4].

The 1951 Convention

The 1951 Convention’s ground work occurred from 1947 to 1950, based on the suggestion of the UN Human Rights Commission whose early thought focused toward the people who were not protected by their own states. This had taken place at the same time as the International Refugee Organization (IRO) followed its actions, and at the same time that the East-West tension elevated, escorted by a continuous arrival of refugees [1].

The results of the 1951 Convention are as follows: “(a) it states an overall meaning of the term refugee (Article 1); (b) it explains the “non-refoulement” principle (Article 33: no person shall be deported to a stated where there is a fear of persecution); (c) it establishes the minimum standard of treatment for refugees, that basic rights have to be rendered to refugees and the responsibilities of refugees to the country where they sought refuge; (d) it concerns on wellbeing, legal status, and the employment of refugees; (e) it mentions about the documents for travelling, procedures and the naturalisation; (f) it expects the countries to assist and to co-operate with the UNHCR in the exercise of its functions, and to facilitate the overseeing process of putting the 1951 Convention to use” [5].

The 1967 Protocol

The 1967 Protocol was presented as a result of continuous refugee outbursts right after the introduction of the original 1951 Convention. It transpires, each of which as a lee way to the 1951 Convention and a treaty by itself. The ratification of the 1967 Protocol means that States are obligated to accept the 1951 Convention unconditionally without its limitations. The 1967 Protocol allows all the people who could be qualified as a refugee from instances which happened at any period earlier or after 1951. The geographical limitation to Europe is only applicable to those States that are signatories only to 1951 Convention, and until now the only State that maintained this limitation is Turkey.

What responsibilities does the 1967 Protocol render on states upon its incorporation? What rights can a refugee invoke? The most important norm is that refugees cannot be deported to a place where they feel that they will be persecuted, which is also called the principle of non-refoulement. The mere exemptions to this principle are refugees who are considered a threat to the host country or who have been charged of a severe crime.

Moreover, States are banned from punishing refugees for illegally coming into and staying in their land, on the condition that they report their arrival to the state authorities with no delay. This indicates an asylum seeker’s request for refugee repute ought to no longer be adversely affected because of their unlawful arrival to the host State. Additionally, refugees are permitted a reasonable period to attain entry into a different State, would their request be declined in the host State. Regarding the occupation of the refugees, who are legally staying in the country, it is to be taken into account favourably like other foreigners who are not seeking asylum (professionals) in regards to jobs, salary, and the occupation. Similarly, they would enjoy the rights to a home, governmental support, and movement without any restrictions (at minimal) as identical as other foreigners. The 1951 Convention’s textual content also offers equal opportunities as those of nationals on a specific range of matters. It assures the equivalent admissions to the school, public welfare and social security subject to the fulfillment of requirements [6].

'Third Parties' Are Not Bound by the 1951 Convention and the 1967 Protocol

Although the Non-states Parties are not obligated to safeguard and make sure the rights of the refugees are being protected, circuitously, they are legally obligated to uphold the rights, in the event where they are signatories to the human rights treaties, especially the rights that are enlisted in 1951 Convention as well as the 1967 Protocol and the non-refoulement principle. There are specific Articles in both the 1951 Convention and the 1967 Protocol which have the customary law standing, or "erga omnes" which means that countries which are neither signatory to the 1951 Convention nor the 1967 Protocol ought to uphold those Articles.

The refugees have rights to access to courts, nondiscrimination on the basis of race or religion, freedom to perform their own religion (and freedom with regards to the religious schooling has emerged as "erga omnes"). It is the responsibilities of all nations, regardless of being party to the 1951 Convention, to respect these. Likewise, it is extensively acknowledged that the ban of refoulement is a component of customary international law. All states have a responsibility to adhere to this norm and if it is dishonored or threatened, then the UNHCR, through the appropriate authorities, will interfere and if it considers it vital, will disclose it to all. In few conditions, individuals dealing with refoulement may have resort to the applicable human rights mechanisms, like the Committee against Torture [7].

THREE PILLARS OF INTERNATIONAL LAW FOR THE PROTECTION OF REFUGEES

The international humanitarian law, international human rights and international refugee law are paired forms of rules with objectives to provide for the safety of lives, health and dignity of people. They shape a complicated circle of balancing defenses and it is vital that we apprehend on how they have interactions among one another [8]. Below are the objectives of international humanitarian law:

- (1) "Differentiation among the army and civilians;
- (2) Prevention of assaults against people of hors de combat;
- (3) Prevention of the insertion of excessive distress
- (4) Code of the quality of corresponding in size of punishment
- (5) Conception of inevitability; and
- (6) Code of human kind" [9].

The universal human rights efforts became reinforced whilst the UN General Assembly meeting followed the "Universal Declaration of Human Rights (UDHR)" dated on 10 December 1948. This was enlisted as a communal standard of fulfillment for all persons and countries, for the first time in the history of mankind. The declaration laid down the initial mental principles that all people should enjoy rights such as civil, economic, political rights as well as the cultural rights. By becoming the signatory to the international human rights law, States are obligated to follow its instructions, in respecting and protecting human rights. This means States must not interfere with above rights, in fact, they must protect people from any form of human rights abuse [10].

International refugee law discusses fixed guidelines and tactics that intends to safeguard, firstly, people who are searching for asylum from oppression, and secondly, to protect those who are already considered refugees. The refugee law is intended to provide secondary source of protection to the people who are at risk. Its purpose is not to replace the main rule that people must seek protection from their own States but, in fact, to offer a secured alternative in the circumstances where States fail to fulfill their duties [3].

Definition of the Refugee under International Law: Who Are Refugees?

First of all, it is important to decide who is being considered as a refugee. The term refugee is being used for persons who left their place of stay for a variety of reasons, such as violence and conflict. Sometimes the term refugee is used to refer to people who have been displaced from their home due to natural disaster. However, under international law, it has more precise meaning [11].

According to a well-known definition of refugee, based on the 1951 Convention, it is described in its Article 1(A) (2) that the term refugee has the following characteristics: "is the consequence of an occasions that occurred earlier than 01 January 1951 and; has the justifiable fear of oppression on basis of, faith, nationality, race, affiliation to specific communal organization or political view; is out of his home country and he is unable to return to his home country or fears his return would result to oppression and due to such worry, it is not possible to invoke the protection from his home country; or who is stateless, which is impossible for him to return back to his country" [12].

The above definition has roots back in history, and after the Second World War, it has been considered restricted due to non-recognition of mass displacement in the instances of general violence and war.

However, what could be deduced from this definition is that people who are affected as a result of violence and conflict often would fall under the definition of refugee. Another criticism which was rendered towards the 1951 Convention is because it restricts the condition on which people might be oppressed which is also known as the 1951 Convention's grounds [11].

The 1951 Convention had been drafted after the Second World War, which only applies to the people who had become refugees as a consequence of occurrences earlier than 01 January 1951. These temporal and geographical constraints have been set aside by the 1967 Protocol [13].

According to Article 1A (1) of the 1951 Convention, the term refugee refers to any individual which recognised under previous international agreement. Accordingly, Article 1A (2) shall be read along with the 1967 protocol which excludes geographical or time limits. The most important quality of refugee is that, the refugee is out of his home country and he is unable to return to his home country and moved to another country. On the other hand, it is not compulsory that he left his home country because of fear of oppression, or even being oppressed. This can be a futuristic issue, which could happen during the absence of one from his home country due to his involvement into politics [14].

More extensive definitions expanded throughout the time about refugees due to its vague definition under the 1951 Convention, such as Cartagena Declaration which states that refugees refer to one who had left their home country due to their safety, violence, the violation of human rights, their freedom have been compromised, internal conflict, all of which caused disorder in public [11]. Even the Organization of African Unity expanded the definition of 1951 Convention by over ruling Specific Aspects of Refugee Problems in Africa "to any person due to the reason of external violence, foreign attack, external factors, which causes the public disorder, partly or the whole country of one's origin affected which leads him to leave his home country and look for the sanctuary elsewhere out of his country" [15].

Distinction between the Refugee, Asylum Seeker and Economic Migrant

Each year, millions of people seek the safety of global refugee law, making it among the most important global human rights means. In the 1951 Convention, Article 1A (1) uses the title "refugee", first, for any individual looked at as a refugee in the previous global settlements. Then, Article 1A (2), now read along with the 1967 Protocol and with exemption of time-based and location restriction, gives a broad meaning of the word "refugee" as including any individual who is not on the borders of their nation of origin and incapable or reluctant to go back or to put themselves under its defense, due to logical fear of harassment because of race, faith, citizenship, affiliation with a certain societal group (an extra reason lacking in the UNHCR Statute), or political view. Stateless individuals could possibly be refugees in this logic, where "country of origin" (nationality) is considered as "country of previous habitual residence".

Refugees have to be "outside" their nations of origin, and crossing international borders is an inherent part of the eminence of refugees, as perceived in the global lawful logic. Nonetheless, it is neither mandatory to have escaped by cause of fear of harassment nor by practical harassment itself. The terror of persecution assumes the impending, and could come up while a person is not in their home State, for instance, due to ongoing political change [14].

A refugee and an asylum seeker are different. In accordance with the UNHCR: "An asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated". At times of mass refugee activities (often because of war), the justifications for escape are obvious and so there is no ability to perform individual examinations. Groups like this are usually acknowledged as *prima facie* refugees [2].

There are several motives that cause individuals to opt for escape in varying situations, therefore, immigrants cannot be clustered under the same type of class. Immigrants can be classified in a minimum two specific sets: "refugee immigrants" - who are persons escaping torment in their own nation - and "economic immigrants" - persons looking for more favourable employment and economic stability. The main characteristic that differentiates these two types of immigrants is the capability to go back to their home State. Refugees are unable or disinclined to go back to their countries due to the risk of torture, are forced to start over in the State that provides them with security. Economic migrants, however, are not under such restrictions and can go back to their countries at any time they please. As a matter of fact, in regards to numerous economic migrants, the aim of their stay is just to acquire enough monetary funds and then go back to their countries to purchase land, build a house, sustain immediate and extended family and retire in their homeland. Another clear difference between economic immigrants and refugees is that refugees are more prone to have less social interactions with their home State via constant visits. On the contrary, economic immigrants have the ability to go on safe trips to visit their relative, family and friends that they parted with [16].

An economic migrant is not a legitimate term, but a cover for a huge number of people that migrate from one State to another to further their monetary and professional visions [17]. The UNHCR provides an extensive explanation as to who exactly a refugee is. Refugees are people escaping armed conflict, war or torture. The refugee must be "outside" his or her country of origin, and having crossed an international frontier is an intrinsic part of the quality of refugee, understood in the international legal sense. However, it is not necessary to have fled by reason of fear of persecution, or even actually to have been persecuted. The fear of persecution looks to the future, and can emerge during an individual's absence from their home country, for example, as a result of intervening political change. They can have access to the UNHCR, States and other organisation. The denial of these people's asylum application can have dangerous consequences [18].

Asylum Seeker

Asylum seeker is an individual that his application for refuge yet to be processed. The asylum system is properly arranged to identify whether someone is eligible to be a refugee. However, in a situation where there is an armed conflict or violence, it will not be possible to interview every asylum seeker and they would be declared *prima facie* refugee without going an individual assessment of their claims [19].

In the past, seeking safety falls way before the international organisation for the protection of refugees (which started during the 20th Century in the midst of wars) and the global system for human rights protection (started in the era of the UN). Refuge is the protection that a nation gives to a person in its sovereign land (territorial refuge) or elsewhere within the grasp of some of its structures (areas of diplomacy or warships). Therefore, refuge is one of the ways in which a state demonstrates its autonomy.

Grahl-Madsen states that, "where in the instances, asylum seekers' request for protection is accepted, they would be automatically considered as refugees. Refugees are eligible for international assistance and protection. Once they leave their country because of an obvious fear of oppression, according to the refugee convention, they would be considered as refugees. What it means is that a person can be a refugee and asylum seeker at the same time" [13].

Persons do not simply become refugees when their rights for security are granted. They already were refugees and the evaluation procedure just acknowledged the position that was already in place. People come to be refugees (and have a right to global safety and aid) starting from the time they escape their home because of a justifiable worry of persecution as required under the 1951 Convention. Therefore, someone is able to be a refugee and an asylum seeker at the same time. Nonetheless, a number of refugees do not officially look for security as asylum seekers. In the time of mass entry conditions, people may be affirmed as "*prima facie*" refugees minus the individual examination of their statements, because assessments in such situations are basically unrealistic (because of the many people involved) and uncalled for (because the justifications of fleeing are obvious).

In different situations, refugees may not be capable of gaining access to official status determination procedure or they may not even know that they have a right to seek security as a refugee. Even though numerous refugees are, or have been, asylum seekers, not every asylum seeker is a refugee. Some may have acceptable statements for security that warrant them to global safety and aid. The rest will not be determined neither as refugees nor needing any other type of international security, therefore, are anticipated to go back to their home country [20].

IDPs and Refugees

To apply the explanation of "refugee" as stated in the 1951 Convention, internally displaced persons, or IDPs, do not count as refugees. Same as refugees, IDPs have escaped from their homes due to forceful situations (like armed conflict or war, widespread violence and disregard of human rights) but dissimilar to refugees, IDPs have not gone across international borders to get security but stayed inside their home states. It is approximated that towards the end of 2014, the world had roughly 38.2 million IDPs. As of date, Syria is the nation with the most IDPs with approximately 7.6 million, the State with the second largest number of IDPs is Columbia with 6 million and then Iraq with 3.6 million [21].

UN MANDATE FOR THE PROTECTION OF REFUGEES

The UNHCR, a branch of the UN whose primary function is to provide security and aid to refugees around the world, is the one taking care of the refugees. The organisation was established on 14 December 1950 with its base in Geneva, Switzerland. It was established by the UN General Assembly and started responsibilities in 1951, first helping over 1 million refugees from Europe after the Second World War. However, in the years that followed, with the growth of displaced individuals world-wide, its directive was extended after a period of every 5 years. In December 2003, the UN General Assembly

decided to abolish the time constriction on the order of the UNHCR till the time comes when the crisis of refugees is resolved. Since its establishment, the organisation managed to support more than 50 million refugees to successfully have a start over in their lives, in the process being awarded two Nobel Peace Prizes – in 1954 and in 1981 respectively. Presently, the UNHCR is among the most important humanitarian organisations, with a staff of 6,500 employees assisting 20.8 million people in more than 100 States.

Apart from refugees, they also assist similar groups like asylum seekers, refugees going back to their homelands and a number of the individuals who are displaced in their own homelands, like IDPs. The UNHCR's responsibility is to offer aid and security to refugees and the job scopes allocated to it are centred on the decree of the Statute of the Office of the UNHCR are as follows: "encouraging governments to work together with the United Nations High Commissioner for Refugees in carrying out his duties pertaining refugees under the competence of his Office, especially by:

- (a) Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps of implementation under such conventions;
- (b) Entering into special agreements with the High Commissioner for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;
- (c) Admitting refugees to their territories, not excluding those in the most destitute categories;
- (d) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;
- (e) Promoting the assimilation of refugees, especially by facilitating their naturalization;
- (f) Providing refugees with travel and other documents such as would normally be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement;
- (g) Permitting refugees to transfer their assets and especially those necessary for their resettlement;
- (h) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them" [22].

FUNDAMENTAL PRINCIPLES OF INTERNATIONAL REFUGEE LAW

In the refugee status of sanctuary, the utmost important element is security against deportation to a home country in which an individual has reason to dread oppression. This security is articulated in the code of non-refoulement which, to be demonstrated, is widely embraced by the States [23].

Legal Basis of Non-Refoulement

The code of non-refoulement has been explained in numerous global tools pertaining to refugees, at the global standard as well as the regional level. Globally, it has to be made of the 1951 Convention that relates to the status of refugees, stated in Article 33(1) that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

This setting makes up one of the fundamental Articles of the 1951 Convention, where no objections are allowed. At the same time, it is mandatory under the 1967 decorum as a feature of Article 1 (1) of that instrument. Contrast to other requirements in the Convention, its use is not dependent on the legal dwelling of a refugee in the land of a Contracting State. The expression "where his life or freedom would be threatened" has been put under debate. It is evident from the travaux préparatoires that they had not envisioned to establish a firmer requirement apart from the words "well-founded fear of persecution" reckoning in the explanation of the word "refugee" found in article 1A (2). The altered phrasing was formulated for a different cause, that is to clarify that the code non-refoulement is applicable both pertaining to the original country and elsewhere where the individual has cause to fear oppression [23].

Exceptions to the Principle of Non-Refoulement

Despite the fact that the code of non-refoulement is simple, it is acknowledged that there could be some legal exclusion to the code. Article 33 (2) of the 1951 Convention arranges that the assistance from the principle of the non-refoulement cannot be requested by a refugee "whom there are reasonable grounds for regarding as a danger to the security of the country ... or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country". In principle, this signifies that refugee can, in special circumstances, be deported in two circumstances: (1) if they pose a danger to the host country; and (2) when their confirmed felonious character and documentation causes a threat to the public. The different features of such life-threatening and incomparable circumstances require, nevertheless, to be interpreted.

Pertaining the “national security” exemption (possessing valid reasons for terming the person a threat to the safety of the nation) whereas the examination of the threat stays inside the sphere of the national authorities. The word evidently suggests a different type of danger from that of “public order” or “the community”. In the year 1997, the European Court of Justice gave a ruling obligating a candid and adequate solemn danger to the necessities of public policy disturbing a core concern of the society (Reg. v. Bouchereau, 2 CMLR 800). It tails from State practice and the 1951 Convention’s travaux provisions that felonious crimes with no specific effects on national safety are designated as non-threats to the safety of the country, and that exceptions of State safety to non-refoulement are inappropriate in regional or singular dangers to law and order [24].

Minimum Standards of Treatment

The 1951 Convention, conscripted because of an endorsement by the newly established United Nations Commission on Human Rights, was a corner stone in establishing principles of how refugees should be treated. In the Article 1, a broad explanation of the word “refugee” is provided. The word fits any individual who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling, to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” [25].

General minimum principles have been put in place in the 1951 Convention regarding the treatment of refugees, with no bias to countries providing better treatment. These privileges encompass unhindered entry to the courts of law, to primary education, to work and the facilitation of documentation, which include a passport. Most countries provide the travel document, which has largely been recognised as the old “Nansen passport”, an identification document for refugees created by the founding Commissioner for Refugees, Fridtjof Nansen, in 1922 (Introductory Note, the 1951 Convention).

In the 1951 Convention, it is prohibited to expel or forcibly return people possessing the status of refugee. Article 33 specifies that: “No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. Article 34 explains the naturalisation and assimilation of refugees. Further provisions are concerned with rights such as right of entry to courts, education, social security, shelter and liberty of movement [25].

TREATMENTS OF REFUGEES IN MALAYSIA

In Malaysia, the procedure in place towards refugees dates back to its involvement with Indochinese refugees in 1970s and the decade after. Following the decline of the government of South Vietnam in 1975, a huge amount of the citizens began to leave the State. Majority escaped through sea to different Southeast Asian countries and, for a while, Malaysia was most people’s main first halt. These refugees were sheltered in campsites under the support of boat persons. In the period of these 20 years, as part of a global load sharing trial, the UNHCR relocated over 240,000 Vietnamese to States such as Australia, Canada, Denmark, Finland, France, New Zealand, Norway, Sweden, and the US. At the same time, over 9,000 people went back to Vietnam with the backing of the UNHCR.

In the 1970s and 1980s, the UNHCR helped the government of Malaysia to take in and locally settle more than 50,000 Muslims from Philippines, Mindanao, who escaped to Sabah. The UNHCR also helped the government of Malaysia to locally shelter thousands of Cham Muslims from Cambodia during the 1980s, plus hundreds of Bosnians in the 1990s. In the last 10 years, the UNHCR based in Malaysia resettled over 100,000 refugees [21].

As of date, Malaysia homes one of the biggest numbers of refugees in East Asia. At the end of January 2018, the number of refugees and asylum seekers recorded by the UNHCR in Malaysia is an astounding 153,480. Around 133,880 are from Myanmar which comprise of 67,300 Rohingyas, 33,720 Chin Christians, 9,820 Myanmar Muslims, 4,030 Rakhine Buddhists, and other ethnicities from Myanmar. Around 19,590 refugees and asylum-seekers are from other countries, including some 5,570 Pakistanis, 2,610 Yemenis, 2,500 Syrians, 2,300 Somalis, 2,040 Sri Lankans, 1,460 Iraqis, 1,240 Afghans, 730 Palestinians, and others from other countries. An estimated 66% of refugees and asylum-seekers are male, whereas 34% are women. There are around 40,240 children under the age of 18 [26].

The 1951 Convention further specifies that refugees are entitles to rights such as work, accommodation and education. Furthermore, the degree of the rights of a refugee should increase with the time that the refugee is forced to stay in the host country, laying out both an incentive to ultimate

relocation somewhere else and a protection of assimilation into the culture of the host country (on condition that settlement somewhere else be unattainable) [21].

Malaysian Laws Relating to Refugees

Due to the fact that the government of Malaysia has not signed yet the 1951 Convention and the 1967 Protocol, refugees and asylum seekers are consequently “lumped together” as unlawful immigrants as stated in the Immigration Law of 1959/1963. Accordingly, majority of refugees in Malaysia find themselves in a grey area between lawfulness and unlawfulness.

Modifications made to the law in 1997 and 2002 warranted tougher punishments for immigration crimes, including as equal as a five-year prison verdict, a MYR 10,000 fine and lashing not exceeding 6 lashes. The amendments also provided both the police and immigration officers with more authority to arrest and detain indeterminately awaiting deportation of any unregistered individual irrespective of whether they were refugees or unlawful migrants. The amended law also made helping, or hosting, any illegal individuals a felony that can be disciplined through fines, jail term and court beating [26].

Regardless of the lack of official acknowledgment and security, those individuals who acquired recognition from the UNHCR may be capable of getting a simple de facto status at the global level. The acknowledgement offers them a status in international law, and some restricted exemption from the application of the Malaysian immigration laws. Nevertheless, there is still a huge amount of vagueness in the behavior of the officers in regards to refugees and asylum seekers, especially after the amendments of the Immigration Act in 2002 [27].

In Malaysia, illegal immigrants and refugees are not differentiated and thus the risks of being deported or apprehended are perceptible. Besides, they have no access to lawful occupation and official education. Hence, they work in risky or life-threatening jobs the other citizens turn down (what is now known as “3D” jobs: dirty, dangerous and difficult). Refugee laborers are usually exploited by the people who hire them due to their circumstances, often paying them little to absolutely no wages [28].

Refugees, at the same time, also face a huge risk of being trafficked across or within countries. Refugee children are also deprived the right to the official education scheme. A number of children, however, get access to community-run schools and those established by the UNHCR and Non-Governmental Organizations [21]. The major problem with the aforesaid schooling system is that the qualifications and certificates are being officially recognised for refugee children to be gainfully employed or practice a profession in the future.

Essentially, people in possession of UNHCR documents are usually under protection from detention and trial. This privilege, though unofficial, originates from documented orders given by the Attorney General back in 2005 affirming that it would avoid trying those in possession of UNHCR documents. The Immigration Department and other law enforcement officers have been vague in their method, but broad comments have been given, inferring that there would be abstinence arresting persons who hold UNHCR documents and that in cases where it does happen, there would be co-ordination with the UNHCR [27].

Recommendations

Malaysian government is neither signatory to the 1951 Convention nor the 1967 Protocol. Therefore, refugees and asylum seekers are considered as illegal immigrants under the Immigration Act 1959/1963. To begin with, Malaysian government may provide basic rights to the refugees by granting immunity from penalties under the Immigration Act and as well extend them protection from refolement. Malaysian government may consider the legal acknowledgment to the refugees by its own initiative under immigration department if it has difficulty to accept whose sale recognition of the UNHCR.

Alternatively, Malaysian government may apply the power that has been bestowed upon Minister of Home Affairs under section 55 of Immigration Act to solve the problems of refugees and legalise their presence in the country. Section 55 states that: “the Minister may by order exempt any person or class of persons, either absolutely or conditionally, from all or any of the provisions of this Act and may in any such order provide for any presumptions necessary in order to give effect thereto”. Many problems of refugees such as employment, education, and healthcare could be solved temporarily, if section 55 of Immigration Act is invoked.

As the arrival of refugees to Malaysia could be continuous, as it can never be an ending issue, Malaysian government may also consider either to ratify the 1951 Convention and the 1967 Protocol or enact a law with proper sets of rules and system to provide assistance, protection and social rights to the

refugees while they are staying in Malaysia until their repatriation to their countries of origin or resettlement to the third country by the UNHCR.

CONCLUSION

Although Malaysia is not signatory to the 1951 Convention and 1967 Protocol, but it possesses a great reputation for allowing refugees to live in the country until they repatriate to their country of origin or resettle in a third country. On temporary basis, the power that has been bestowed upon minister of home under section 55 of Immigration Act can be invoked in order to solve the various problems that the refugees face and legalise their presence in the country. However, in the long term, Malaysian government may either ratify the 1951 Convention and the 1967 Protocol or enact a new law that governs refugee matters as the issues of refugees can be continuous in nature.

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