

# MANAGING THE CHALLENGES OF REFUGEES AND THEIR RIGHTS IN MALAYSIA<sup>1</sup>

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## Abstract

*More than 1 million among 3 million immigrants in Malaysia are illegal. There are reported that most of the current refugees are from Burma. There are also sizable “stateless persons” groups who came from the conflict areas of Southern Philippines. These refugees and stateless persons are often leaving in a limbo, not only because they do not possess proper credentials and identifications, but also because Malaysia is not sign the UN Conventions and Protocols on refugees. They are then not recognized by the Malaysian government and do not possess any rights under Malaysian laws. However, the recent years the government has relented and provided some of them with a temporary residential paper – IMM13, which allows them to stay but not work or partake in public education in the country. This presents a difficult dilemma, they are allowed to stay but not given any means to survive. This paper will look at the situation of these refugees in light of the current laws in Malaysia. It hopes to discuss ways of addressing these challenges and actors that need to be engaged to improve the lives of these refugees and protect their rights.*

**Keywords:** *refugees, Malaysian government, human rights, Malaysian laws and policies, IMM13, non-governmental actors.*

## Abstraksi

*Lebih dari 1 juta antara 3 juta imigran di Malaysia adalah illegal. Dilaporkan bahwa saat ini sebagian besar pengungsi berasal dari Burma. Ada juga cukup besar kelompok-kelompok orang tak punya negara yang berbeda kategori, kebanyakan berasal dari area konflik Philipina Selatan. Pengungsi-pengungsi dan mereka yang tak punya negara ini sebagian besar ditinggalkan di “limbo”, tidak hanya karena mereka tak punya kelayakan tanda pengenal, tetapi juga karena Malaysia bukan negara yang menandatangani Konvensi dan Protokol PBB tentang pengungsi. Para pengungsi ini kemudian tidak dikenali pemerintah Malaysia dan tidak mempunyai hak-hak apapun dibawah hukum Malaysia. Namun, sejak beberapa tahun ini, pemerintah telah memberi mereka kertas hunian sementara (IMM13), yang mengizinkan mereka untuk tinggal tetapi tidak untuk kerja atau ikut serta dalam pendidikan publik. Hal ini menimbulkan dilemma sulit, disini lain mereka diijinkan tinggal namun tidak diberikan kesempatan untuk melangsungkan hidupnya. Makalah ini akan melihat situasi para pengungsi ini dalam perspektif hukum yang ada di Malaysia. Makalah ini harapannya dapat memunculkan cara-cara melalui diskusi untuk mengatasi permasalahan ini serta aktor-aktor yang perlu dilibatkan untuk memperbaiki kehidupan para pengungsi dan melindungi hak-hak mereka.*

**Kata-kata Kunci:** *pengungsi, pemerintah Malaysia, hak asasi manusia, hukum dan kebijakan Malaysia, IMM13, aktor-aktor bukan negara.*

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## Introduction

The refugee issue is as old as the issue of conflict itself. Many victims of conflicts have resorted to moving away from the affected areas for their own security, and for the wellbeing of their families. Sometimes this move is permanent. Sometimes it is only for a short while, until the fighting has ceased and it is safer for them to move back home. Sometimes it is more permanent for a number of reasons, including the continuation of fighting at the original location, or a continued situation of insecurity that prevents them from living a normal life there. Sometimes it can also be because they have found a better life somewhere else and it does not make any sense to live in misery in their old place. In many cases, the move involves moving to another safer location within the same area. These refugees are normally called “internally displaced persons” or IDPs. Some communities have a special term for these people. For example, the IDPs in Mindanao, in Southern Philippines, are called “*Bakwits*” or “*evacuees*”. This has to do with the fact that the never-ending conflict in Mindanao has resulted in the regular and frequent movements of these IDPs to more or less semi-permanent evacuation centers. The Malay word for refugees is “*Pelarian*”, from the core word “*lari*” meaning to run. It denotes running away from a situation that endangers a person’s life. This is the focus of this paper. It focuses on people (and individuals) who have had to escape or run or evacuate from their original place of abode to a new safer and secure place. This paper will not focus on evacuees as such but instead focus on the refugees who have had to move to and settled in another country, Malaysia. It will argue that life as a refugee in Malaysia is not easy and that their rights are not adequately protected. This paper also argues that the management of these refugees by the Malaysian authorities leaves a lot to be desired and efforts must be made to improve the way these refugees are being treated.

## Refugees in Malaysia

A person becomes a refugee because of problems in her/his country. It can be because of a conflict, war, or even natural disaster. Moving away gives them the possibility of starting a new life.<sup>3</sup> Unfortunately, this is not the case in many situations. A safe haven might not be what a seemed and life continues to be difficult and full of sufferings.<sup>4</sup>

The United Nations High Commission for Refugees (UNHCR)<sup>5</sup> sees refugees as peoples who had to leave the country, whether they like it or not. This is due to circumstances such as poverty and hardships as a result of violations of human rights, conflict with the government and civil war within their country. UNHCR only recognizes these hardships that have given them a refugee status resulting in them being eligible to be covered as refugees as compared to those immigrants who have relocated for merely economic reasons.<sup>6</sup>

Article 1 of the Refugee Convention of 1951 and amended by the 1967 Protocol provides the definition of a refugee as “a person who owing to a 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

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<sup>3</sup> <http://www.nst.com.my/nst/articles/24hum/Article/> Date access 4/8/10

<sup>4</sup> Howard Adelman, *From Refugees to Forced Migration: The UNHCR and Human Security*. Centre for Migration Studies of New York, York University, 2001.

<sup>5</sup> United Nation High Commission for Refugees was constituted on 14th of December 1950 during United Nations General Assembly. It mandated to aid and coordinates action of the international in protecting and resolve refugee problem. It also uses mandate from The Refugees Convention in Geneva in year 1951 would be to ensure refugee worldwide get defense rightly.

<sup>6</sup> UNHCR, *The 1951 Refugees Convention: Question and answers*, Geneva: UNHCR Media Relations and Public Information Service, 2003.

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.”<sup>7</sup>

Bahrin and Rachangan look at refugees as a political issue, as this involves moving across political borders, sometimes across more than one country. This movement also involves them moving in “crowds”.<sup>8</sup> Shoemith described refugees as “people who are involuntary and fairly abruptly obliged to quit their homes and seek asylum from economic and environmental as well as political calamities”.<sup>9</sup> The factors that forced this move can thus be economic and environmental as well. But the major root cause is always from the conflict situation itself.<sup>10</sup>

Malaysia has been a popular Southeast Asian destination for all kinds of refugees. Since gaining independence in 1957 and forming Malaysia in 1963, the country has had to entertain various groups of peoples moving into the new nation for various reasons. In terms of (political) refugees, Malaysia has been both a recipient as well as a transit country since the early 1970’s. The civil war and the martial law in Mindanao in Southern Philippines have resulted in hundreds of thousands of Moro refugees crossing the Sulu Sea into the northern Borneo state of Sabah in Malaysia. Most of these refugees crossed into Malaysia because they believe they will get a safe haven given that they share Islam as their common religion with the Malaysians.<sup>11</sup> The war between the government forces and the Moro National Liberation Front (MNLF) was at its height during that time and Sabah provided them with a safe and familiar shelter because of the proximity of Sabah to Southern Philippines.<sup>12</sup> During this time another group of refugees from Vietnam came over to seek refuge in Malaysia, mostly using Malaysia as a transit point to third countries. The fall of the American-supported South Vietnam to North Vietnam in 1975 resulted in a massive exodus of South Vietnamese to countries around the region. Malaysia is no exception. The first landing in Malaysia was in May 1975 when a group of Vietnamese refugees landed on Perhentian Island, near Besut, Terengganu on the eastern coast of Peninsular Malaysia. Several other landings followed, and the number increased to about 1,400 refugees in 1977. In August 1978, the Terengganu state government declared Bidung Island as a Vietnamese refugee settlement centre. Local fishermen were not allowed to use the island's territorial waters and to keep a distance from the island, to the point that it became known as the Prohibition Island to the locals. By the time the island was closed as a refugee settlement center in 1991, about 250,000 Vietnamese refugees have passed through this island en route to third countries such the US, Canada, Australia and France.

The problems with incoming refugees from Southern Philippines, however, have persisted over the years. This despite the signing of the peace agreement between the MNLF and the Philippines government in 1996. The flow of refugees has persisted because the conflict has not abated despite the agreement. Another group, the Moro Islamic Liberation Front (MILF) continued the conflict with the government, resulting in IDPs and refugees relocating from the conflict affected areas.

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<sup>7</sup> [http://www.unhcr.se/SE/Protect\\_refugees/pdf/magazine.pdf](http://www.unhcr.se/SE/Protect_refugees/pdf/magazine.pdf). Date access 27/8/10

<sup>8</sup> Azizah and Ubong Imang, *Orang Pelarian di Sabah: Status dan Prospek @ Refugees in Sabah: Status and Prospect*, Proceedings of Seminar on: State Responses to the Presence and Employment of Foreign Workers in Sabah, Universiti Malaysia Sabah, 2005.

<sup>9</sup> Dennis Shoemith, *Refugees and Regional Politics: The Dynamics of Refugees Flows in Mainland Southeast Asia*, 2005, <http://www.ntu.edu.au/faculties/lba/schools/Law?apl/Retreating/shoemith.htm>

<sup>10</sup> UNHCR, *The 1951 Refugee Convention...*

<sup>11</sup> Abdurasad, *Moros Not Filipinos*, Manila, AIP Printshop, 1978.

<sup>12</sup> Kamarulzaman Askandar, Ayesah Abubakar (ed.) *The Mindanao Conflict*, Southeast Asia Conflict Study Network (SEACSN), Penang, 2005.

Malaysia has always been a popular destination for refugees in the Southeast Asia region because of a number of 'pull and push' factors. The push factor includes the conflict situations in the original countries, civil wars, government suppression, ethnic cleansing, and natural disaster. The conflict situation is the reason why the Acehnese have sought refuge in Malaysia in waves from the 1950's to about 2004. For the same reason the refugees from Burma have come to Malaysia to escape persecution from the Burmese government. For example, the Rohingyas were denied citizenship rights by the junta (military) government of Burma and had to find new lives in nearby countries around the region.<sup>13</sup> The pull factor is the relative peace, political stability, and economic prosperity of Malaysia. Malaysia presents to them an opportunity to start anew and the chance to pit their daily struggle in a new environment.<sup>14</sup> Unfortunately, the reality is not the same as the dreams that they might have before coming. As refugees and stateless persons, they are in a constant limbo and have to continue their struggle, sometimes with the same result as at home. However, from the numbers of those that have been registered in Malaysia, the trend of using Malaysia as a safe haven continues.

Presently, the refugees in Malaysia have settled mostly around Sabah on Borneo Island and some parts of Peninsular Malaysia, especially the areas around Kuala Lumpur and Penang.<sup>15</sup> According to the statistics from the Malaysian office of the UNHCR, as of June 2010, there are about 88,900 refugees and asylum-seekers registered with UNHCR in Malaysia. The UNHCR reported that most of the current refugees are from Burma, making up almost 90% of the registered refugee population in the country. From the 82,200 refugees from Burma, there are about 38,700 Chins, 10,000 Rohingyas, 7,000 Myanmar Muslims, 3,800 Mons, 3,600 Kachins, as well as a small number of other ethnic minorities from Burma. Besides, there are some 6,800 refugees and asylum-seekers from other countries, comprising some 3,600 Sri Lankans, 960 Somalis, 600 Iraqis and 520 Afghans. Among the registered ones, 70% of the refugees and asylum-seekers are men, while 30% are women. In addition there are some 19,100 children below the age of 18. There are also a large number of undocumented refugees and asylum seekers consisting about 10,000 persons or more from various countries around the region like Aceh, Cambodia and Southern Thailand.<sup>16</sup> Together they present a huge challenge for a small country like Malaysia. The next section will look at how Malaysia has managed this challenge.

### **Refugees and their Rights in Malaysia**

The government has always been careful with the refugees issue because there is a general assumption that if Malaysia opens the floodgate the result will be an overwhelming number of refugees pouring into the country and it will be difficult for the door to be closed again. At the same time, as an active member of ASEAN, Malaysia has always been an active proponent of the ASEAN policy of non-interference. It is thus felt that by declaring and accepting refugees from fellow ASEAN countries, one would be placing a value judgment on its neighbours and violating the basic principle of non-interference. The general policy is however very clear as shown in the statement below, made by a senior Cabinet Minister in 2007, *Syed Hamid Albar*: "We don't recognize refugees" (New Strait Times 9 March, 2007). This statement made by the previous Minister

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<sup>13</sup> Azizah Kassim, *Refugees Muslim in Malaysia: An Analysis of the Status of Rohingyas from Myanmar*, Working paper that presented during ISEA Workshop about Islamic Society in South-East Asia located in Tokyo, 23rd of January 2010.

<sup>14</sup> Guido Dorigo, Waldo Tobler, *Push-Pull Migration Laws*, Annals of the Association of American Journal Geographers, 2005.

<sup>15</sup> The current refugees found in the Peninsular are mostly from Aceh, Burma, South Asia and the Middle East.

<sup>16</sup> <http://www.unhcr.org.my/cms/basic-facts/statistics>. Date access 28/8/10

of Home Affairs in 2007 summed up Malaysia's stand on the refugees in the country. The government has not ratified the Geneva Convention on Refugees 1951 as well as the New York Protocol of 1967 leading to serious complications in handling the refugee issue and major implications to the life of refugees in Malaysia. Uncertain and ad hoc policies have been used on the refugees, and even these keep changing based on which group is being managed and what is the political climate of the country. This has also given rise to the problem of enforcing the laws regarding refugees.

The issue of human rights for refugees is difficult to address because of a lack of proper standard or guideline to settle this problem. For example, the refugees in Malaysia are considered as 'illegal immigrants' who have entered Malaysia through unauthorized points of entry and in doing so have violated the immigration laws of the country. The implication is that if charged and found guilty, the refugees, like any other illegal immigrants, can be jailed, caned, fined, or given all three sentences. After having served their sentences, they will be deported.

As the refugees are not recognized by the government, they also technically do not possess any rights under Malaysian laws. The Malaysian Immigration Act does not differentiate between the refugees and illegal immigrants. As such, they would always be in fear of being arrested by the authorities.<sup>17</sup>

The Malaysian authorities have however over the years given out temporary residential permits known as IMM13 to several groups of refugees on a case by case status. These include the Moro refugees in Sabah, the Acehese refugees (after the tsunami disaster of 2004), and more recently the Rohingya refugees from Burma. These have been done purely for humanitarian purposes and for limited periods only. It has to be said that this permit is very limited in nature and just allow the holders a limited number of rights. This only includes the right to stay without employment and educational rights. In a study of Moro refugees in Sabah, Azizah noticed that many refugees do not even bother to register for the IMM13 identification card for fear that they would be documented and that the authorities will know their backgrounds and whereabouts.<sup>18</sup> Some also never bothered to renew when the card expired and seemed to lack an understanding of the importance of this card. However, since the recent revocation of the card and with it the (temporary) refugee's status, the situation has become even more confusing. Are they now illegal immigrants, or are they still refugees? The following sections will look at specific issues affecting the lives of refugees in Malaysia.

### *Education*

Education is a part of the challenge of being a refugee in Malaysia. Refugee children have only limited access to it. If they want to study in the local government schools they would have to pay higher for fees compared to the locals. For example, before 2002, Moro refugee children was allowed to study in government schools in Sabah at a cost of RM120 (USD 31.50) per year for primary school and RM240 (USD 63.10) per year for secondary school, which is double what the locals have to pay. For those who do not have the proper papers or awaiting documentation of their papers, they can still study in government schools as long they pay the tuition fees. Unfortunately, this facility has been terminated in 2002 and their only option now is to send their children to private schools at a much higher cost. This resulted in many of them having to drop out and for some of them to not continue because they do not have proper documents. There are also not many private schools in Sabah and even if they do have the money and the papers,

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<sup>17</sup> *Ibid.*,

<sup>18</sup> Azizah Kassim dan Ubong Imang, *Orang Pelarian di Sabah...*

they might still not be able to find a school to take them. This situation is the same in the peninsular.

An elderly Rohingya refugee interviewed by Azizah (2007) in the state of Selangor in the peninsular lamented that, "I am a cow, my children are cows and now my grand children too are cows. We are fit only to do dirty work."<sup>19</sup> Rohingya refugee children, like those of illegal immigrants and other foreign workers are not permitted to attend state schools. However, some of them do study in private Islamic schools paying high tuition fees. The children, however, have had to stop school when they are old enough to work in order to help the family earn a living. Many of these private schools have only started to accept refugee children after 2000. Those who grew up in the previous decades, especially women, lost out on education. But, in spite of their lack of education and limited interactions with the locals, many of the Rohingyas are surprisingly quite fluent in Malay. This is due to the fact that as Muslims it has been relatively easy for them to interact and integrate with the Malay Muslim community in the country.

### *Economy*

Many refugees in Malaysia have had to face economic hardships. Many of them have come over bringing little with them. Whatever little that they have will soon run out and they would have to quickly find means to support themselves. Even though Malaysia is a country with a lot of economic opportunities, it is difficult for the refugees to get any employment because of their uncertain status and the government policy of Malaysia. Even if they possess the temporary residential paper – IMM13, life is still difficult because the paper allows them to stay but not work or partake in public services in the country. They still have to renew the IMM13 each year at a cost of RM 90.00 though. This makes life very depressing for the refugees as the amount is expensive for them and at the same time they still have to struggle to survive and feed their families.<sup>20</sup>

In Sabah, many refugee children have not been able to finish their studies because of financial problems and not only for lack of proper documents. As such, they will not have the qualification to apply for better jobs in order to change their lives. Most of them work in the informal sectors doing menial jobs and many ended up as fisherman, cleaners, shop assistants, dish washers and helpers in shops and restaurants. With low salaries, it is difficult for them to change their lives. There are however cases where some of them through hard work and support from the locals have been able to improve their lives and become entrepreneurs and businessmen and women.<sup>21</sup>

Refugees in the peninsular also face the same problem. For example, many Rohingya refugees who have yet to get UNHCR refugee status find it difficult to get employment because the majority of employers do not want to take them as worker for fear of being fined by enforcement agencies for taking in staff with no legal documents. Therefore, they had to accept whatever work that was offered at whatever salary that was given. They also do not get any other benefits such as medical, housing, transport, or insurance. Some of them have also resorted to begging. It is a common sight to see a Rohingya woman sitting with a baby on her lap holding an enamel mug seeking donations on the streets, at graveyards, or at Muslim religious festivals in some areas, especially in the more affluent cities. They are often accompanied by young boys and girls selling religious text to passersby.<sup>22</sup> The locals tolerate these beggars out of sympathy but the authorities have always clamped hard on them, making life miserable and difficult for them.

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<sup>19</sup> Azizah Kassim, *Refugees Muslim in Malaysia...*

<sup>20</sup> Azizah Kassim and Ubong Imang, *Orang Pelarian di Sabah...*

<sup>21</sup> *Ibid.*

<sup>22</sup> Azizah Kassim, "Muslim Refugees in Malaysia..."

### *Media*

The refugees also face the problem of irresponsible reporting, even bad propaganda by the local media and the ensuing negative public opinion of the community. This is especially when there are criminal cases involving “foreigners”. The media has always been quick to blame foreigners as a source of insecurity in the country. Since there is no distinction made between refugees and other types of migrants including illegal immigrants, they tend to be viewed with the same suspicion and remorse by the local communities. Because of the unbalanced reporting, it is then often thought that migrants (including refugees) are parasites, and desperate people who are involved in criminal activities including theft, smuggling, drugs, even murders. This negative image of them has affected public opinion in Malaysia and ultimately government policies regarding migrants, be they legal, illegal or refugees. This has not helped improved relations between the local communities and the refugees, even if many of them have stayed in the country for many years. This has also made formulating any laws to accept them or even protect their rights difficult.

### *Accommodation*

Many refugees do not have the luxury of living in a nice house with the proper amenities. They also have to resort to sharing their accommodation with others. It is normal for a few families to be living under the same roof. Numbers aside, many of them stay in unsanitary and uncomfortable conditions. They either stay where they work, in shop houses, construction sites, or farms, or somewhere near where they work. There have also been cases where they have stayed in jungle areas at the outskirts of the cities or villages. They also tend to stick together with other refugees from the same areas. Because of the unsanitary conditions and lack of amenities, their general healths have been affected. It is not uncommon to see refugees coming down with mosquito related diseases such as malaria or dengue fever.

Like other people, the refugees have basic needs and wants that have to be fulfilled. A proper place to stay, food, security, education, and healthcare are among the basic needs of every living person, including refugees. If these basic needs are not fulfilled, they cannot live as normal human beings and their dignity as a human will break down. Have the refugees that come to Malaysia to seek a new peaceful life found what they were looking for are they getting more or less the same?<sup>23</sup> For some of the refugees, Malaysia presents a difficult dilemma because on one hand they are allowed to stay, but on the other hand without employment opportunities, life is difficult and there seems to be no way out of this difficult situation for many of them. The next section will look at how the government is managing them, before going into a discussion about the rights of the refugees.

### *Government Policies*

On the Malaysian government side, despite not recognizing the refugees as such, since the early seventies the Malaysian government has given consideration to the humanitarian factor and also respects the principle of ‘*non-refoulement*’ in the Refugees Convention. This is a universally accepted principle of customary international law that prohibits returning asylum seekers or refugees to any country where their lives or freedom would be threatened or where they would be at risk of persecution. As such, they have allowed asylum seekers and refugees to temporarily stay in the country. If they are sent home, Malaysia will put their lives at risk at the hands of authorities who will be waiting for

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<sup>23</sup> “Lack of rights awareness causes poor treatment of refugees, says lawyer” <http://www.malaysiakini.com/news/11806> access 17/8/10

them for questioning and possible detention. This however, runs contrary to the government policy of not recognizing refugees and has proved problematic from time to time. As such a better and proper mechanism to handle the issues of refugees need to be found to solve this issue.<sup>24</sup>

To make things worse, the Malaysian Immigration Act was further amended in 1997 and 2002, leading to the introduction of harsher penalties for immigration violation. The act does not differentiate between refugees and illegal immigrants and allows for their indefinite detention pending deportation<sup>25</sup>. In terms of enforcement of this act, it allows for the personnel from the Immigration Department to be accompanied by the police and members of RELA (People's Voluntary Corps). This has caused numerous problems as the RELA members are relatively ill-trained and been prone to abusing their power – for example being abusive towards the refugees, entering living quarters without authorization, and making arrests without search or arrest warrants.<sup>26</sup> There have also been cases where RELA members have ambushed the refugee settlements, and capturing and incarcerating them in detention camps after whipping them.<sup>27</sup> As such there need to be a better way of managing these refugees and protecting their rights. There have been calls for the government to establish a royal commission and look into this issue, and to eventually sign the conventions on refugees. There have also been calls for the government to collaborate with the universities to find better policy, enforcement and solution to the problem.<sup>28</sup> The government should also engage non-governmental organizations working on this issue and provide support to these NGOs to improve and enhance their work.

### **Human Rights and the Refugees**

The previous discussion makes it clear that many refugees in Malaysia do not have an easy time. Because of the policy of non-recognition of refugees, many of their rights are not taken care of. They do not share the same rights as citizens of the country and live in constant fear of uncertainty. It can be argued that the Malaysian government should extend the same rights to the refugees to make life more bearable for them. The following discussion points to some of the rights that should be given to the refugees in the country.

The Universal Declaration of Human Rights (UDHR) defines human rights as rights inherent to *all human* beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. *We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.*<sup>29</sup> (italic added). Human rights include **rights** and **freedoms**

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<sup>24</sup> Azizah Kassim, "Filipino Refugees in Sabah: State Responses, Public Stereotypes and the Dilemma Over Their Future", *Southeast Asia Studies*, Vol. 47, No. 1 June 2009.

<sup>25</sup> Amarjit Kaur, *Refugees and Refugee Policy in Malaysia*, UNEAC Asia Papers, No. 18, 2007.

<sup>26</sup> <http://www.hrw.org/en/news/2010/01/20/malaysia-more-rhetoric-reality-human-rights>. Date access 28/9/10

<sup>27</sup> Medecins Sans Frontieres (MSF), "We Are Worth Nothing", Refugees and Asylum Seekers in Malaysia. A briefing paper, 2007, <http://www.msf.org/msfinternational/invoke.cfm?objectid=E5ED7E8F-15C5-F00A>

<sup>28</sup> Kamarulzaman Askandar, "Safe Haven or More of the Same?: Refugees in Malaysia", paper presented at the Asean People's Assembly, Organized by the ASEAN-ISIS and ISDS Philippines, Manila, 2005.

<sup>29</sup> The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights

to which *all humans* are entitled to. Proponents of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being **human**.<sup>30</sup>

The following Articles of the UDHR are especially important for refugees in Malaysia. They include Articles 1, 2, 3, 5, 9, 14, and 26.<sup>31</sup> The details are as follow:

*Article 1* : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 2* : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Article 3* : Everyone has the right to life, liberty and security of person.

*Article 5* : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 9* :No one shall be subjected to arbitrary arrest, detention or exile.

*Article 14* :Everyone has the right to seek and to enjoy in other countries asylum from persecution, (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 26* : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit, (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace, (3) Parents have a prior right to choose the kind of education that shall be given to their children.

As argued earlier, the extension of these rights to refugees in Malaysia is the right and humane thing to do. They have not come voluntarily but have been forced to flee the troubles back home. Declining them the basic rights to live as any normal human beings in their adopted country (even if they are here only temporarily) would be inhumane and smack of prejudice.

### **Non-governmental Actors and the Refugees in Malaysia**

Lastly, there are a number of non-governmental actors working to help the refugees in Malaysia. The main actor is the Malaysian office of the United Nations High Commission on Refugees (UNHCR). This office was established in 1975 to provide support for the Vietnamese refugees coming to the shores of Malaysia. This remained the main priority of this office until the influx of refugees from other countries, after which it also began to concentrate on refugees of other nationalities.<sup>32</sup> It is tasked with providing

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to be universally protected. <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx> . Date access 2/10/10

<sup>30</sup> Feldman, David, *Civil Liberties & Human Rights in England and Wales*, Oxford University Press, 2007, p. 5.1

<sup>31</sup> <http://www.un.org/en/documents/udhr/>, Date access 3/10/10.

<sup>32</sup> <http://www.unhcr.org.my/home>, Date access 21/8/10

general support for the refugees, documenting them and verifying their status, providing them with some measure of security through the issuance of the refugee identification card, educating them on their rights, and where possible locating third countries for them to go to. As Malaysia is not a signatory to the 1951 Convention Relating to neither the Status of Refugees nor its 1967 Protocol, UNHCR is the main actor of protection and assistance for asylum-seekers and refugees in Malaysia. UNHCR conducts all activities related to the reception, registration, documentation and status determination of asylum-seekers and refugees.<sup>33</sup>

One of the efforts of the UNHCR in Malaysia is to provide basic education to children of refugees. For example, since 2000 the UNHCR has collaborated with some non-governmental organizations to provide access to basic education to the Rohingya children. These NGOs include the Taiwan Tsu-Chi Foundation, PERKIM (an association of Muslim converts), the Soroptimist International Club, an Islamic NGO, Future Global Network (FGN) and the Saint Barnabas Church. The facilities are basic and at times resemble a village environment, where the children have to sit on the floor in rows, with their legs crossed, and facing a long and low wooden table on which they read and write. Nevertheless, responses have been very good and enthusiasm of the children has been high, even if the environment is basic.

The main Office of the UNHCR in Malaysia is located in Jalan Bukit Petaling near *Istana Negara* (National Palace) where it continues its cooperation with Malaysia to safeguard the rights and well-being of refugees. It is supported by some 100 staff, all based in Kuala Lumpur. There are also other local NGOs working directly to help the plight of these refugees. These include the *Suara Rakyat Malaysia* (SUARAM) (Voice of the Malaysian People) and *Angkatan Belia Islam Malaysia* (ABIM) (Malaysian Islamic Youth Movement).<sup>34</sup> SUARAM has been active in voicing out the plight of the refugees, especially pressuring the government to protect their rights, while ABIM has helped provide humanitarian assistance and general support to the refugees. In terms of providing protection from human rights abuses, observers have mentioned the Human Rights Commission or *Suhakam* as a potential body to look into this.<sup>35</sup> Suhakam is an independent human rights commission, established by the Malaysian Parliament under the Human Rights Commission of Malaysia Act 1999, Act 597 with its inaugural meeting held in April 2000. As an independent commission Suhakam can be used to help the refugees in Malaysia when faced with human rights issues. The refugees can organize themselves and get help from concerned local NGOs to present their case to the commission. This way, they are putting forward their own interests and protecting their rights.<sup>36</sup>

## Conclusion

The problem of refugees in Malaysia is affected by many factors. It is affected by conditions in the home country which has caused the people to leave their homes and moved to another country despite the many uncertainties connected with this move.

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<sup>33</sup> *Ibid.*,

<sup>34</sup> SUARAM which stands for *Suara Rakyat Malaysia*, "Voice of the Malaysian People" is a human rights organization in Malaysia created in 1987. SUARAM main task is to fight into other areas human right likes refugees issue in Malaysia. Angkatan Belia Islam Malaysia (ABIM) or the Malaysian Islamic Youth Movement was founded in 1972 and is considered the most organized force in Islamic revivalism in Malaysia. Many ABIM activists have occupied key leadership positions in religious, social, educational, and political arenas, giving it access to affect policy directions and the intensification of the Islamic ethos in the country. ABIM also involve in Rohingya refugees issue in Malaysia.

<sup>35</sup> Amarjit Kaur, *Refugees and Refugee Policy in Malaysia...*

<sup>36</sup> *Ibid.*

Conditions at home need to be improved to provide incentives for them to stay on. However, this has not been the case and things have been made worse when the government itself embarked on policies to suppress these people. Because they are not recognized as citizens and because staying behind would mean being stuck in the middle of a never-ending cycle of conflict, these people have resorted to moving to another country. The relative political stability and economic prosperity of Malaysia coupled with close proximity have also proven to be a strong pulling factor for the refugees in the region. Promises of a good life and possibility of moving on to a third country that will be willing to give them asylum have persuaded many of them to come to Malaysia. These promises, however, have proven to be unsubstantiated. Life in this new country proves to be difficult, even if to some it is still not as difficult as life at home. They have to contend with the fact that they are not differentiated from the many thousands of illegal immigrants who have come from neighbouring countries purely for economic reasons. Their best bet would be to register with the UNHCR with the hope of moving on to a third country, or to obtain a temporary residential permit that allows them to stay but not to work. They also have to contend with the harassment from enforcement agencies and the negative and prejudiced views of the locals, heightened by the biased and sensational reporting of some of the local media. As refugees, they basically do not possess the same rights as enjoyed by the local citizens. They are at the whims and fancies of the authorities who can either follow strictly the formal laws and procedures or give them leniency purely on humanitarian grounds. This further adds to the uncertainties of their lives. It is about time the Malaysian authorities do either of these two. They should ratify the UN Conventions and Protocols on refugee and accept that refugees will keep on coming with the uncertain conditions of conflict situations around the region. By ratifying the accepted Conventions, they will have a clearer policy on dealing with refugees. Secondly, even if it is too difficult to ratify the Conventions, a mechanism to protect and provide the basic human rights of the refugees should be introduced. Refugees should have the basic rights of security, employment, health, and education. They do not want to live on handouts from the state, but want to be given the right to live peacefully without harassment and to have the opportunity to improve their conditions. Even if some of them think that they are “cows”, they should have the rights to ensure that their children do not share that same fate.

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