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THE PLIGHT OF REFUGEES IN MALAYSIA: MALAYSIA AS A TRANSIT COUNTRY IN PROTECTING REFUGEES' RIGHTS

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ABSTRACT

The role of UNHCR and respective transit countries is to help refugees find lasting solutions that will allow them to rebuild their lives in dignity and peace, via local integration, voluntary repatriation or resettlement in a third country. Awaiting resettlement, the refugees are always mistakenly believed to be economic migrants or illegal immigrants. Due to the absence of legal or administrative regulations governing refugees, they are exposed to detention with the possibility of refoulement. These refugees are not legally permitted to work, which leads them to work discreetly and are willing to perform low-paying jobs in order to earn a living. Children are denied proper education and healthcare, which are considered as luxuries they could not afford. All these are common and enduring plights that still haunt refugees in Malaysia. This article reviews the plight of refugees in Malaysia during the transitional period before resettlement, discusses the roles of Malaysia as a transit country, and proposes lasting solutions for refugees in Malaysia. It is hoped that this article will provide a better understanding of the roles of transit countries particularly Malaysia for protection of refugees' rights especially on their resettlement. In addition, assistance from UNHCR and other NGOs are also important to solve this problem.

Keywords: Malaysia, refugee, resettlement, transit country, UNHCR.

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1.0 INTRODUCTION

For the past four decades, Malaysia has become a place for refugees to seek protection either temporarily or permanently. As at the end of April 2015, 152,830 refugees and asylum seekers are registered with the United Nations High Commission for Refugees (UNHCR) in Malaysia, 141,920 of whom come from Myanmar, consisting of 49,600 Chins, 45,910 Rohingyas, 12,320 Myanmar Muslims, 7,280 Rakhines & Arakanese, and other Myanmar ethnic groups. There are 10,910 refugees and asylum seekers from other countries, including 3,890 from Sri Lanka, 1,210 from Pakistan, 1,090 from Somalia, 950 from Syria, 830 from Iraq, 540 from Iran, 430 from Palestine and the remaining from other nations (UNHCR, 2015).

The ultimate goal, according to UNHCR, is to help refugees find permanent solutions that will allow them to rebuild their lives in dignity and peace through local integration, voluntary repatriation or resettlement to a third country (UNHCR). The process of relocation to a third country would take years and the chances are slim due to numerous screenings, refugee selectivity and a limited number of countries involved in relocation such as the USA, Canada, Australia, Sweden and Norway. While awaiting resettlement, the refugees are always mistakenly believed to be economic migrants or illegal immigrants. A migrant may leave his or her country in comparison with refugees for many reasons not related to persecution, for example for jobs, family reunification or study purposes. While abroad, a migrant still enjoys the security of his or her own government (Amnesty International, 2010). Due to the absence of legal or administrative regulations governing refugees, they are exposed to detention with the possibility of refoulement. These refugees are not legally permitted to work, which leads them to work discreetly and are willing to perform low-paying jobs in order to earn a living (Lokman, 2016). Children are denied proper education and healthcare which are considered as luxuries they could not afford. All these are common and enduring plights that still haunt refugees in Malaysia.

This article reviews the plight of refugees in Malaysia during this transitional period before resettlement, discusses the roles of Malaysia as a transit country, and proposes lasting solutions for refugees in Malaysia.

2.0 REFUGEES' RIGHTS AND PLIGHT IN MALAYSIA

Incursions by refugees into Malaysia are not new. In the 1980s and 1990s, Malaysia had accommodated a large number of Indochina refugees. The refugee crisis in Indochina involved people from Indochina's former French colonies, including the countries of Vietnam, Cambodia, and Laos, following the creation of the Communist governments in 1975. Over the next 25 years, more than 3 million people fled on the dangerous journey to become refugees in other Southeast Asian countries or China (known as the boat people). Hundreds of thousands of refugees died in their attempt to flee (UNHCR, 2000).

1,220 boat people left Vietnam in September 1978 on an old ship which landed in Indonesia. That was the start of an influx of refugees arriving in Malaysia, Thailand, Indonesia, Hong Kong and other countries on boats. Most sailors left Vietnam in overcrowded boats. They encountered storms, water and food shortages, and uncertainty about what their future holds. The influx of more boat people hastened a political crisis with the countries of Southeast Asia that refused to allow additional refugees to land on their shores unless the countries of resettlement agreed to resettle them (UNHCR, 2000).

Malaysia's role towards the Indochinese boat people ended with the introduction of the Comprehensive Plan of Action (CPA) by Steering Committee of the International Conference on Indo-Chinese Refugees. CPA was established to deter and to stop the continuing influx of Indochinese boat people and to cope with an increasing reluctance by third countries to maintain resettlement opportunities for the exiles. The introduction of CPA had seen Western countries such as United States of America, Australia, Canada, and the Nordic countries agreeing to accept around 260,000 refugees per year for resettlement and further contributed additional funds to the first asylum countries as part of refugee assistance. Those resettlement countries accepted around 623,800 Indochinese refugees for resettlement in just four years from 1979 to 1982, most of whom were the boat people. In 1996, Malaysia became the first country in the region to end its involvement with the refugee situation in Indochina with the closure of the Sungai Besi camp. Within the framework of national security and immigration control such as detention under the Immigration Act, refugee issues in Malaysia have been largely addressed since the closure of the Indochina Program.

One important element of asylum seekers and refugee migration is the role of a transit country. Although migration is typically seen as a direct movement from an origin to a destination, it can stretch movement routes over long periods of time and a number of transit locations before reaching a final destination. Several Asian countries play increasingly important transit roles and Malaysia, together with Indonesia and Thailand, are transit points

for the majority of asylum seekers and refugees seeking to land on Australia's northern shores. Other than by sea, many asylum seekers initially flew as tourists to Malaysia because Malaysia offers visas to nationals of more than 60 countries, particularly those with Islamic populations, to facilitate tourism.

Malaysia, in many ways, is an ideal transit country for refugees due to a few defining factors. These include its geographical intermediate position between the Middle East, Africa, Asia and Australia. Malaysia's archipelago geography, comprising many islands presents virtually unlimited opportunities to enter Malaysia by boat without detection. For example, in May 2015, they were 1,051 people comprising Bangladeshis and ethnic Rohingya who landed on Langkawi Island after an excruciating journey by boat from western Myanmar and eastern Bangladesh (Cochrane, 2015). Malaysia was seen as an ideal transit country because of its strong historical connections whereby Malaysia have been involved with the resettlement of many groups seeking to enter Australia and seeking asylum for more than two decades.

Another factor contributing to Malaysia's significant role as a transit country is because of the easy access through Malaysian borders. There is an international smuggling network, which involves not only the perpetrators who are the smugglers but also their Malaysian accomplices. For example, the incident in Wang Kelian whereby massive graves of smuggled migrants of Rohingya and Bangladeshis were found. It was reported by the media about the involvement of dishonest or bribed Malaysian authorities' officers who allowed the smuggling of migrants through the Malaysia – Thailand border. These officers were allegedly involved with human trafficking agents who were responsible for buying Rohingya and Bangladeshi from a union in southern Thailand at a fixed price and briefly holding them in Wang Kelian transit camps before selling them to other parties ("Rohingya Stranded at Sea", 2015).

The 1951 Convention on the Status of Refugees (Refugee Convention) contains a number of rights and also underlines refugees' obligations towards their host country. The cornerstone of the Refugee Convention is the non-refoulement principle provided for in Article 33. The right to non-refoulement extends to all refugees. A refugee becomes entitled to other rights which are based on the recognition that the longer they remain as refugees, the more rights that need to be granted to them. Other basic rights granted to refugees are:

- i. Right not to be expelled (Article 32)
- ii. Right not to be punished for illegal entry into the territory (Article 31)
- iii. Right to work (Article 17-19)
- iv. Right to housing (Article 21)
- v. Right to education (Article 22)
- vi. Right to public relief and assistance (Article 23)
- vii. Right to freedom of religion (Article 4)
- viii. Right to access the courts (Article 16)
- ix. Right to freedom of movement within the territory (Article 26)
- x. Right to be issued identity and travel documents (Article 27 and 28)

The 1967 Protocol on Refugees broadens the Convention's applicability. It removes the geographical and time limits that were part of the Convention.

Refugees in Malaysia are at risk of arrest, security extortion, detention in immigration detention centers and corporal punishment. Malaysia is said to use extreme means to enforce its immigration laws and policies. Regular immigration raids and arrests are carried out by government officials and, more controversially, by the police force of voluntary citizens, the People's Volunteer Corps (Ikatan Relawan Rakyat or RELA). Such arrests have a layer of legality, in that the statute authorizes police and RELA officers to inspect the identification documents of people and investigate their immigration status. Such arrests also result in conviction, imprisonment and other penalties for immigration crimes (Amnesty International, 2010).

There is also fear amongst the refugees that they would be arrested during the UNHCR registration process (UNHCR). The registration process for these refugees is a lengthy one and it takes more than one appointment with the UNHCR officer for the registration process to be completed. Every day at the UNHCR office in Kuala Lumpur, many refugees and asylum seekers gather to be registered, to have their asylum claim checked, to be assessed for resettlement or to request special assistance. More often than not, refugees and asylum seekers seeking UNHCR are obliged to come back for an appointment on another day. This journey from their home to the UNHCR requires them to spend money on transportation and poses problems as they have very limited resources at their disposal, and they are struggling to make ends meet. In addition, these repeated trips also increase the risk of arrest and detention, especially for those who have not received their UNHCR card.

UNHCR in Malaysia calls for an identity card with advanced biometric security features to be issued to all refugees so that the government can keep tabs on them in order to avoid trafficking and crime incidents. Currently, all refugees registered under the agency are given a standard identity card by UNHCR which has high commercial value but no legal value in Malaysia. It is of high commercial value because the card has helped thousands of refugees get jobs in the informal sectors. It has no legal value, however, although it is accepted by law enforcement agencies and reduces the chances of arrest or incarceration of UNHCR cardholders.

The Home Affairs Minister announced plans to grant IDs to refugees recognised by UNHCR (Lokman, 2016) in July 2013. The ID cards will allow the holder to stay temporarily in the country, but not to undertake formal work. The promised ID cards are left undelivered at the time of writing, and the status remains unknown. While the plan for an ID card is a positive step, delays in its implementation weaken the spirit of the initiative. When introducing the ID cards, all levels of the State must respect what they stand for. That means the cardholders should not be arrested, imprisoned or deported for purposes of immigration. Throughout their stay in Malaysia, the refugees will be able to secure proper jobs and become self-sufficient, without having to resort to criminal activities (Lokman, 2016).

With regards to refugees' rights to education, despite the requirement of the Convention on the Rights of Children 1989 (CRC) Article 28 on State Party to ensure education for all children and access to public primary school, is not adhered to. This is because many children of the refugees do not have access to State schools in Malaysia. The children of refugees who have access to education in Malaysia either attend education projects administered by UNHCR in collaboration with Non-Governmental Organizations (NGOs) or classes in community-based education (UNHCR). Community-based schools are classes of education run by the refugee families themselves with the assistance of non-refugee organizations such as religious groups. Such community-based schools are situated near the refugee population, wherever there are refugee communities with a significant number of school-age children.

These classes' scope and reach are largely limited by a lack of resources including qualified teachers. Classes are usually held in rented flats or shops, where the rooms are largely overcrowded and lack basic teaching facilities. The school has different levels of need for assistance, but the needs of these schools generally revolve around funding; wages for refugee teachers, transportation for refugee children, payment of utilities and rent of school premises, school meals, paperwork and teaching equipment. There have also been identified other issues whereby community-based schools operate without a syllabus or teach a very narrow range of

subjects. Many of the teachers are also refugees with inadequate training and there is a constant need for new teachers, as the salaries of the teachers are considerably low (UNHCR, 2015).

Children who are refugees are denied entry into the mainstream national school system because they have no legal status. They are grouped into the same group as illegal immigrants because Malaysian laws do not distinguish between internationally protected refugees and economic migrants. Even with UNHCR's effort to support a whole parallel system of education for the refugee children, another problem beyond primary and secondary education is that the children are left without proper accreditation. Without proper accreditation, they have no future (Rajaendram, 2015).

As regards to health, the Refugee Convention specifies that refugees should have access to health facilities equal to those of the host population, while everyone has the right to the highest standards of physical and mental health under international law. The Malaysian authorities have shown a degree of flexibility with regard to the issue of refugee healthcare and since 2006 have allowed refugees registered with UNHCR to benefit from a 50% discount on the fees usually paid to foreign nationals. There is also access to public maternal and child health services for registered refugees. Although refugees can access public and private healthcare facilities, this is often hampered by a variety of factors, including treatment costs, fear of public movement to access such services, and language barriers (UNHCR, 2015).

Common health problems among refugees are not very different from the average Malaysian. There are a variety of mental health related refugees or have developed unhealthy coping mechanisms, such as drug and alcohol abuse. This is due to the anxieties associated with the risk of arrest and detention, the lack of legal status of refugees and the confusion about when and if they will be resettled. Associated with poverty, malnutrition is one of the common health problems occurring amongst refugees. Nonetheless, according to a study (IOM), refugee malnutrition is confined to a relatively small group of people, particularly the very young and very old. In general, their wellbeing is not substantially worse than that of the poorer Malaysians, perhaps a result of their resilience before they leave their own country.

Especially since interaction between refugees and the local population is generally limited, Malaysians seem to be unaware of the existence of the refugees. Communication occurs mainly when refugees seek to find accommodation or look for employment. However, due to the publication of the plight of the Rohingyas' boat people and the discovery of mass graves in Wang Kelian in May 2015, Malaysians have become more aware of their presence and plights.

One of the main concerns of refugees registered with UNHCR is that they are not legally allowed to work in Malaysia although the Refugee Convention Article 17 specified for such right. Thus, refugee employment only exists in low-visibility locations such as construction sites and plantations, instead of the services sector. The refugees are subjected to deception by the employers and are only paid a low salary or even half of what they deserve to be paid. These employers mainly use the illegality of employment as a reason for not preparing a contract of employment because they know that the refugees will not have any legal recourse (Kaur, 2007). At the same time, employers are concerned about hiring them due to their illegitimate status. Their illegal status forces them to take irregular day-labor jobs and prohibits them from receiving benefits, so they cannot claim compensation if they are injured at work (Workmen Compensation Act 1952).

2.1 Rohingya: Their Plights and Stories

Rohingya is a distinct, Muslim ethnic group that lives mainly in Myanmar. They are believed to have descended from the Muslim traders who settled there over 1,000 years ago. Myanmar denies Rohingya, whose population is estimated at 1.3 million people in Rakhine State. The government says they are all Bengali, suggesting that they are illegal Bangladeshi immigrants (Al-Adawy, 2013). In Myanmar, the Rohingyas are denied citizenship and face State-sanctioned discrimination including restricted access to education, medical care, and other basic services. They also face forced labour, have no land rights, and are severely restricted in movement.

The Rohingyas claim to be descendants of Arab traders who have spent centuries in the region (Jilani, 1999; Htut, 2003), but this claim has been denied by the Myanmar government. Since the 1970s, successive governments in Myanmar have been implementing policies to repress the Rohingyas, and since the reforms implemented by President Thein Sein in 2011, the repression of the Rohingyas has slowly escalated. Following a Buddhist woman's gang rape, massive attacks on Rohingyas in the Rakhine State took place in June and October 2012. However, the government of Myanmar had revoked temporary certificates of registration given to hundreds of thousands of Rohingyas, meaning that they could no longer vote (Rohingya Stranded at Sea, 2015). The Ministry of Foreign Affairs of Myanmar denied that the migrants from Myanmar fled because of discrimination or persecution, but because they are migrants in other countries looking for better jobs. Myanmar also maintains that all those who have fled by boat in recent months were citizens of Bangladesh and not of Myanmar.

Cambodia's killing field refers to various sites of mass graves discovered on Cambodian soil due to the massacre that occurred during the era of Pol Pot's regime of the Communist Khmer Rouge that had seen almost 1,386,000 people executed. Malaysians regard that incident as only part of another country's history but when 139 graves and 28 transit campsites were uncovered at Malaysia's northern border of Kampung Wai up to Padang Besar in Perlis, this caused a blow to Malaysia because it could not be comprehended that this kind of massacre had happened without the knowledge of the Malaysian government (Abdul Razak, 2015) It has also been confirmed that the female migrants of Rohingyas who were detained at a transit camp in Padang Besar by a human trafficking union were treated like sex slaves and subjected to gang rape by the camp guards ("Rohingya Women as Sex Slave", 2015). Human trafficking of Rohingyas is not something new for smugglers had been known to take them to camps in southern Thailand and effectively held them for ransom. Starting from early 2015, the Thailand government began to crack down on human traffickers within their borders. Because of the crackdown, smugglers abandoned the Rohingya migrants at sea and left them to die (Sydney, 2015).

The Rohingya issue is not just a legal issue but also a humanitarian concern. A humanitarian approach needs to be adopted to ensure that lives are not lost, temporary solutions in each of the affected first asylum countries must be reviewed. ASEAN member countries have to deal with this issue because it is no longer a Myanmar issue alone, but it has become a regional issue. ASEAN has to put pressure on Myanmar in order to force changes for the people in Rakhine State. The Rohingya exodus can only be stopped if the international community puts pressure on Myanmar because ultimately only Myanmar can resolve the problem. Besides that, the ASEAN non-interference policy has to stop, and every country must act on this issue.

3.0 THE ROLE OF MALAYSIA AS A TRANSIT COUNTRY

Malaysia has consistently failed to ratify international treaties protecting and promoting the rights of asylum seekers and refugees. It is neither State Party to the Refugee Protocol nor the Refugee Convention, which are important international instruments regulating the security of refugees. Similarly, Malaysia is not a State Party to the International Covenant on Civil and Political Rights 1966 (ICCPR), UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment 1984 (CAT), International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD), International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990.

However, Malaysia has obligations under the treaties it has ratified, including being a State Party to the 1989 United Nations Convention on the Rights of the Child (CRC), which formally compels it to take care of refugee children. The Government should proactively provide assistance and protection to children of asylum seekers and refugees under Article 22 of the CRC.

Given Malaysia's position as a non-State Party to the Refugee Convention, Malaysia is obligated to uphold the non-refoulement principle, which is the foundation of refugee security. The non-refoulement principle forbids the return of refugees to their country of origin is considered a customary rule of international law and is binding on all States. As such, all States are binding, regardless of whether they have acceded to the Refugee Convention or the Protocol on Refugees (Juss, 2013). Malaysia is therefore obliged not to return the refugees to their countries of origin, where they are being persecuted. Non-refoulement means refugees cannot be returned to a country where they face persecution or other serious violations of human rights nor can they be rejected at the border of the country. This concept is used in cases of forced return where someone is returned to a country against their will, as well as indirect actions, including situations where people are sent to another country which do not guarantee refugee security.

Amnesty International urges the Malaysian government to ratify and integrate the treaties relating to refugees and asylum seekers into national law and to enforce them in policy and practice. As for now, there are no domestic laws that govern refugees' situation in Malaysia. The only law available which relates to refugees is the 1963 Immigration Act. Article 6 of the Act provides that anyone entering Malaysia without relevant paperwork will be penalised. The problem with this clause is that the Immigration Act of 1963 does not differentiate between refugees and illegal migrants, and refugees are constantly exposed to the risk of arrest, detention and expulsion without a secure legal status ("On Refugees", 2009). It is important for Malaysia to distinguish between refugees and illegal immigrants through a legal framework and Section 6 of the Immigration Act is by no means considered helpful.

The Minister in the Prime Minister's Office was quoted as saying that Malaysia is not a signatory of the Refugee Convention and the Refugee Protocol and that refugees staying in Malaysia are focused on human compassion and duty. It is important to note that Malaysia as a first asylum country is bound by the customary international law of non-refoulement. Hence, Malaysia is not merely morally responsible for not sending refugees back to their country of origin but is legally responsible.

Malaysia's action of turning away the boat people caused an uproar among humanitarian groups and the international community. In response to international pressure to save asylum seekers, an agreement was reached with the foreign ministers of Indonesia, Malaysia and Thailand agreeing to provide humanitarian aid to 7,000 asylum seekers still at sea. They also agreed to provide temporary shelter to asylum seekers, if the international community could complete the process of resettlement and repatriation in one year (Cochrane, 2015). This dialogue and cooperation of the countries should be applauded but the underlying problems still remains with the asylum seekers' home countries, Bangladesh and Myanmar, which did not participate in the talks.

3.1 The Role of UNHCR in Malaysia

In Malaysia, UNHCR works with government agencies and civil society to protect refugees while seeking temporary asylum in Malaysia, and to assist in their welfare needs. UNHCR has begun operations in Malaysia since boat people arrived in 1975. Given that there are currently no legislative or administrative provisions in place to address the situation of asylum seekers or refugees in the country, UNHCR performs all activities relating to the reception, registration, documentation and status of asylum seekers and refugees. UNHCR cooperates with various partners including government agencies, NGOs and volunteers in its humanitarian aid program for refugees. Among the programmes are:

- i) Provide assistance to refugees in a variety of areas including healthcare, education, and financial support for vulnerable individuals, shelter, counselling and other welfare needs.
- ii) Provide support to refugee communities for outreach and community development.
- iii) Carry out detention monitoring and intervention.
- iv) Provide legal representation in court for offences under the Immigration Act.
- v) Implement advocacy, capacity-building, refugee training, government, media and partners in civil society.
- vi) Mobilise capital including private and public funding and support permanent refugee solutions including resettlement to countries including the United States, Australia, Canada, Denmark, New Zealand, Sweden and the Czech Republic.

At present, asylum seekers approaching UNHCR in Malaysia are individually screened and interviewed under the refugee status determination process (RSD). UNHCR participates in all

activities relating to the registration, documentation and determination of the status of asylum seekers and refugees. Registration is the first step to be taken by refugees to seek international protection at UNHCR. Registration includes the documentation of personal biodata of the refugees, the route of travel, the reason for seeking asylum and the collection of photographs and fingerprints for identification purposes. With respect to UNHCR's registration of refugees and asylum seekers in Malaysia, there are two distinct identification processes for applicants from outside Myanmar and Myanmar. Registration would be made by appointment for non-Myanmar applicants, whereby applicants would come to the UNHCR office on their own. For Myanmar applicants, any new registration will be discussed and closely coordinated with the refugee communities due to the high number of applicants in the queue who were previously scheduled by the UNHCR office for registration (UNHCR).

During registration, the applicants for refugee status must bring in all documents relevant to his case, including passports, identity papers, marriage certificates, birth certificates, family census or national identification, and also a detailed written statement in the language of his choice as to how and why he left his country of origin. Once they are registered with the UNHCR, an asylum seeker certificate will be issued that expires on the day of their next interview.

After a refugee applicant is registered with UNHCR, they will be scheduled for an RSD interview. The interview with RSD will determine their eligibility for refugee status. Refugee applicants are required to submit all relevant records and evidence regarding their applications during the RSD phase. The applicants for refugee status also have the right to be interviewed in a language with which they can interact and also be accompanied by a lawyer or legal representative who identifies as such under the established procedures of UNHCR. The process would normally take up to one year and the applicants for refugee status will be notified of their decision.

If the refugee applicants fail in its RSD decision after notification, they shall have the right to lodge an appeal within 30 days. Their appeal file will be checked by an officer other than the one who decided on the RSD procedure in the first place. The appeal officer may overturn the decision of the first instance and grant refugee status to the applicant but if the decision of the first instance is confirmed, the file of the applicant for refugee will be closed.

Those determined to be refugees are given at least temporary protection until a lasting solution can be found. Once recognized as a refugee, they will receive a refugee cards to replace their asylum seeker certificates and UNHCR will attempt to identify a lasting solution. UNHCR

supports three permanent refugee solutions: voluntary repatriation, local integration and resettlement.

Voluntary repatriation is when refugees can choose to return to his country of origin safely and willingly. If they choose to return home, UNHCR may be able to help them. Repatriation must be voluntary, but this may not suit displaced refugees like the Rohingya refugees.

Another lasting solution recognized by UNHCR is by way of local integration. Local integration is when the country of asylum allows a refugee to reside legally within their country and is able to enjoy most of a citizen's rights equally and is under the protection of the country of asylum. The Government does not accept local integration for refugees in Malaysia. That is because, as stated earlier, the Malaysian Government is not a party to international conventions accepting and protecting refugees. This means that refugees are not recognized as legal resident in Malaysia.

The most awaited and anticipated lasting solution by refugees is through resettlement. Resettlement is when refugees leave the asylum country and resides legally in another country that has agreed to accept them as refugees and grant them permanent status in their country. Resettlement would take years, and many refugees still await resettlement. Only a country of resettlement may determine who resettles within their own country. Resettlement places are small and resettlement countries, rather than UNHCR, decide the size and composition of their resettlement programs. During the resettlement process, UNHCR and representatives of the resettlement country must interview the refugees several times. Most resettlement countries require the representatives of the resettlement country to interview refugees before a decision can be made. A decision could be made immediately after the interview of the resettlement country, or it could take several months or longer. Most resettlement countries ask for medical screening during resettlement. Medical screening is conducted by the International Organization of Migration (IOM).

4.0 DURABLE SOLUTIONS FOR REFUGEES

Although refugees are not allowed to work legally in Malaysia, in practice they do unskilled, low-paid jobs that Malaysian citizens do not want to do. Implementing a residence and work permit scheme for refugees is in the interests of Malaysia's government. Malaysian employers are looking for migrant workers from abroad but there is already a source of refugee workers in the country. Establishing residence and work permit schemes that include a route to

permanent residence for refugees will address many of Malaysia's labor needs and allow the government to benefit from tax and money transfer fees economically.

Children of refugees should be allowed to go to public schools. They are currently only allowed to attend refugee community schools that have a lower educational standard that does not equip them for a successful future, whether in Malaysia or elsewhere. Under the rules of the CRC, Malaysia is required to provide all children with primary education including refugee children. All refugees should also have access to medical care in public health facilities equal to the local Malaysians.

Malaysian government has to gradually improve the condition of all detention centers and reconsider the common practice of detaining refugees for immigration offences. Legal help and representation for refugees would help reduce or prevent imprisonment and avoid the deportation of trafficking victims as well. While the new practice of recognizing UNHCR refugee cards by the government is improving, there are still many refugees held in immigration detention centres in Malaysia. This is where authorities' personnel need to be educated to differentiate between immigrants and refugees. Just by this simple awareness practice by the authorities' personnel, Malaysia's bad image of overcrowding in immigration detention centres can be reduced. The primary reason for the inhumane conditions is overcrowding, and it can be overcome if the government stops detaining refugees for immigration offenses.

It is also important for Malaysia to adopt international standards on refugee protection. The question is would it make a difference if Malaysia accedes and becomes a party to the Refugee Convention and the Refugee Protocol. The answer would be in affirmative. As a State Party, Malaysia would be bound by the legal obligations and principle under the Convention and Protocol and thereby must protect the rights of refugees as provided therein. The first step for Malaysia in honouring the international standards of the Convention is to legislate a domestic law that recognises refugees' legal status. Only by recognising their status, other issues associated with it can be dealt with. Legal status for refugees can help them in many ways. They can enter into a legally binding contract with employers, work, get an education, have access to medical care, and most importantly, they are recognised as human beings and not just as refugees.

The last solution worth considering is for Malaysia to become the Resettlement Country. Malaysia as one of the top choices as a transit country for refugees in Asia, had seen the number of refugees seeking refuge growing immensely in the past decades. The problem of the increase of refugees in Malaysia is added to the small number of refugees to be resettled

to third countries because the resettlement countries are shrinking internationally. In the 1970s and 1980s, when the Indo-Chinese boat people migrated to Malaysia, there was a high level of commitment on the part of the international community to find solutions through resettlement for the refugees, but that has changed in recent years. The focus of UNHCR's priorities has moved to other areas such as the Middle East, Sub-Saharan Region and Africa where humanitarian crises are rising.

One option that can be considered is for Malaysia to resettle the refugees not temporarily but permanently. Only a limited number of States are currently participating in the UNHCR resettlement programmes. The United States is the top resettlement country in the world, with Australia, Canada and the Nordic countries also providing multiple places each year. As the size keeps getting smaller, the number of refugees in Malaysia who needed to be resettled becomes substantial. Malaysia can impose certain criteria of resettlement similar to other resettlement countries. One of them is during the RSD interview whereby Malaysian representatives can filter the application of the refugee applicants. Maybe this suggestion is a far cry from reality mostly because of Malaysia's status as a developing country compared to other modern resettlement countries. Other than that, other factors such as financial capability, the capability to provide sufficient work and environment to the refugees also have to be taken into account.

5.0 CONCLUSION

Refugees suffer the most profound form of tragedy. Having to leave their home because of the fear of being persecuted, they risk their life through excruciating journeys to find a secure place to reside. A home that can give them security, living life without fear and dreaming of the best that the future can give them. In reality, refugees live day by day remembering their stormy past and uncertain future. Some may be lucky to be resettled in resettlement countries and try to build their life in a new country. Unfortunately, many refugees are still in limbo as to what their future holds for them. Their stories of how they became refugees may be different, but their plights are common plights of many refugees in this world. A transit country is the first place of hope for these refugees. However, living in a transit country is not a bed of roses. Their plights and stories were at times unheard. Assistance from UNHCR and other NGOs is an important method of resolving this problem. The role of the transit country is also fundamental. Transit countries have a significant role in protecting these refugees; not just because it is their legal obligations under international law and as a member of the international community but also due to humanitarian reasons.

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