

COUNTRY FACTSHEET: MALAYSIA

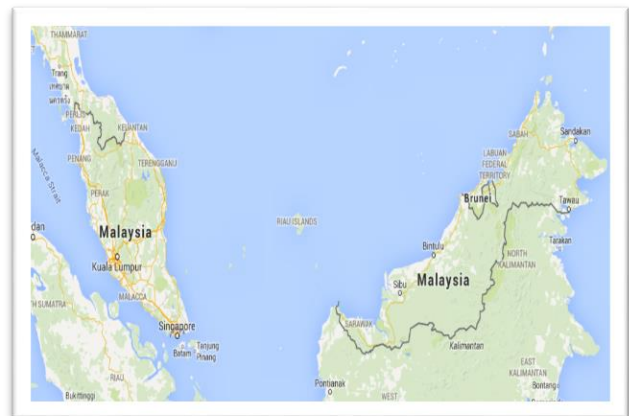
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OVERVIEW

Malaysia has not ratified the 1951 UN Convention Relating to the status of Refugees nor its 1967 Protocol, and lacks an effective domestic legislative and administrative framework to protect refugees within its territory. The available protection space for asylum-seekers, refugees and stateless people in Malaysia is fragile and unpredictable, further compounded by the introduction of increasingly restrictive policies that continue to narrow access to asylum.

The restrictive legal and policy framework has created a situation of extreme difficulty for asylum seekers, refugees and stateless people. Although the Malaysian Government does grant recognised refugees who hold UNHCR-issued documents some freedom of movement in Malaysia, but cardholders are often subject to random document checks and arbitrary arrest and detention. Lacking legal status in Malaysia, refugees and asylum seekers are also prevented from access to the labour market and basic services, including affordable healthcare and education.

In Malaysia there are no refugee camps. Refugees live in towns and cities across the country in low-cost housing amongst Malaysian citizens, often in small over-crowded flats. It is not uncommon for several families, or dozens of individuals to share the same living space for cost-saving and security reasons.



FIGURES AT A GLANCE¹

- As of end of July 2018, a total of **159,980** refugees and asylum seekers were registered as 'Persons of Concern' with UNHCR Malaysia.
- The vast majority are from Myanmar, with a total of **138,650** people, constituting an **87%** of the displaced population in the country, with **75,520** Rohingya people. **21,320** people originates from other countries, including Afghanistan, Iran, Iraq, Palestine, Pakistan, Somalia, Sri Lanka, Syria and Yemen. Palestinians and Rohingya have additional protection concerns as stateless refugees.

¹ UNHCR Malaysia (2018), Figures at a Glance in Malaysia

- **66%** of refugees and asylum seekers are men, while **34%** are women, and **27%** i.e. **42,400** are children below the age of 18.

RECENT PROGRESS IN MALAYSIA

- In February 2018, Malaysian Senior Immigration officials participated in a two-day workshop, organised by the Malaysian Human Rights Commission (SUHAKAM), with the support of UNHCR to engage in dialogues and activities surrounding garnering a greater understanding on issues relating to human rights, in particular to refugees and asylum seekers as well as strengthen the relationship between the three stakeholders. With the Memorandum of Understanding signed between UNHCR and SUHAKAM in August 2018 and in line with UNHCR's national action plan on alternatives to detention both will undertake a range of advanced awareness-raising sessions on human rights and refugee protection with the Immigration Department in 2018, including with staff working in the Immigration Detention Centres.²
- In March 2017, the former ruling coalition government introduced a pilot scheme to allow 300 UNHCR mandate refugees the right to work in two selected sectors i.e. manufacturing and plantation. However, access to work is limited to only Rohingya refugees and particularly male members of the community³. The working conditions and locations are also less ideal compared to the informal work they are engaged in i.e. further distance from their families, minimal in wage, long working hours.
- Following a Cabinet decision by the former ruling coalition government in early 2017, a registration system was developed to monitor and track refugees, better known as the 'Tracking Refugees Information System' (TRIS). The registration scheme involves the collection of the refugees' biometric data, as well as a lengthy interview process, whereby applicant would be issued a MYRC identification card. According to individuals who have registered under this programme, questions asked during the interviews include details of entry into Malaysia and current employment such as the identity of their employers and workplace location. These information could be potentially be detrimental to refugee's security as they are not permitted to find employment by law.

TRIS has been developed within an atmosphere of national security, law and order, leading to concerns which may lead to increased risks of arrests, detention and *refoulement* of those not holding the MyRC.⁴ In addition, it has not been verified by the current government as to whether the card serves as an official form of documentation for refugees.

- In May 2018, Malaysia had its 14th General Election and a new coalition government came to power

² Relief Web, 'SUHAKAM-UNHCR Human Rights Workshop for Malaysia Immigration Officials', (1 March 2018), accessed from <https://reliefweb.int/report/malaysia/suhakam-unhcr-human-rights-workshop-malaysian-immigration-officials>

³ Asia Thinkers, 'Interview with Glorene A Das, Executive Director of Tenaganita Women Force' (4 September 2018), accessed from <https://www.asiathinkers.com/tenaganita-protecting-promoting-rights-of-women-migrants-refugees-in-malaysia-interview-with-glorene-a-das-executive-director-tenaganita-womens-force/>

⁴ Asylum Access Malaysia, 'Summary of TRIS for APRRN', 4 January 2017

for the first time, ending the 60-year reign of the ruling Barisan Nasional.⁵ The new coalition government has committed to ratifying the 1951 Convention Relating to the Status of Refugees in their manifesto and legitimising the status of refugees and asylum seekers by providing them UNHCR cards. This in effect would provide the access to work to all refugees and asylum seekers.

- Malaysia is due for the third cycle of Universal Periodic Review (UPR) and it will be the first for the newly formed coalition government.

AREAS OF CONCERN

Refugee Status Determination (RSD)

- Refugees and asylum seekers are treated by authorities in Malaysia as ‘illegal’ migrants who entered the country without authorisation or proper documentation. Malaysia has no legal framework in place to regulate the status and protection of refugees, asylum seekers and stateless people, and UNHCR conducts refugee status determination (RSD) procedures on behalf of the Malaysian government.
- There is a general lack of transparency about the changes to the UNHCR registration and RSD procedures in Malaysia.
- Although UNHCR-issued ‘Persons of Concern’ cards are not yet officially recognised by the Malaysian government, these cards provide a limited degree of protection from arrest and harassment by the authorities. In most public and some few private medical institutions, individuals with the UNHCR card receives easier access and 50% discount for health care.
- In the past 2 years, UNHCR has introduced significant changes to its RSD procedures, resulting in restriction to access for registration. While all non-Burmese and non-Rohingya asylum seekers are permitted to register directly with UNHCR, Burmese, including the Rohingyas are not. The exception to the case is that they need to have been released from the Immigration Detention Centres, referred by an NGO or are already included in the UNHCR database. Given that UNHCR is currently having a considerable backlog in the cases to be processed, waiting times for some are considerably long. There have been cases of people waiting for more than 2 years for an interview. As a result, access to registration mechanisms for recent arrivals is especially difficult given the enormous backlog of pending cases.

REVOCAION OF UNHCR CARDS AND CESSATION OF CHIN STATUS

- Since 1 March 2017, the renewal and issuance of asylum seeker cards by UNHCR Malaysia has noticeably reduced. A significant number of asylum seekers from Myanmar ethnic communities, who

⁵ Pakatan Harapan Manifesto, ‘*Rebuilding Our Nation, Fulfilling Our Hopes*’, (N.D.), accessed from http://kempen.s3.amazonaws.com/manifesto/Manifesto_text/Manifesto_PH_EN.pdf

sought to renew their cards has had their cards revoked, and replaced with Under Consideration (UC) letters. These UC letters are not recognised by local enforcement authorities and have caused members to risk being arrested. The letter also holds no weight in healthcare institutions. Affected individuals are thus, not eligible for the 50% discounted rate in healthcare fees and charges. The revocation and replacement of the UNHCR cards have continued in the first half of 2018, affecting individuals, especially the ones from the Chin community.

- On the 13 June 2018, UNHCR began implementing a policy to end refugee status of Chin refugees from Myanmar, which would affect some 30,000 registered Chin individuals. The reason provided in a memo by UNHCR was that “while the situation in Myanmar is still fluid and unstable in parts of the country, the situation in Chin State is now stable and secure from a refugee protection perspective. Based on this, UNHCR presumes that ethnic Chin refugees are safely able to avail themselves to the protection of the Myanmar Government and hence are no longer in need of international protection from UNHCR”.
- The cessation process is scheduled to complete by 31 December 2019. From 1 August 2018 onwards, Chin refugees who approach UNHCR for the renewal of cards will be provided with individual counselling for options to extend their card until the scheduled completion date or appeal for an RSD reconsideration, which was explicitly said to likely lead to rejection.
- Chin community members in Malaysia, comprising primarily of women and children, organised a peaceful demonstration in June 2018, requesting UNHCR for a reconsideration.

Detention

- Community-based organisations have noted a significant increase in 2018 with the highest number of arrests and detention taking place in June 2018 due to the frequent immigration raids and crackdowns. The number of releases recorded by the community-based organisations are almost half the figures from 2 years ago.
- For asylum seekers without the UNHCR card and those holding the UC letters who have been arrested, final charges by the court would more often than not involve deportation.
- The overall state of Malaysia’s detention infrastructure is gravely substandard; overcrowding, insufficient access to water, meagre provision of food (especially for children), poor sanitation and inadequate medical care and even deaths in detention have been widely reported and documented.⁶ Moreover, detainees with medical conditions such as diabetes do not have access to appropriate food.⁷
- It has been reported by the community members that despite having the legal right to a phone call, individuals in detention centres have been made to pay RM50 for a single five-minute phone call.

⁶ Fortify Rights and Burmese Rohingya Organization UK (2016), *Everywhere is Trouble: An Update on the Situation of Rohingya Refugees in Thailand, Malaysia and Indonesia*, p. 14. See also: Refugees International (2015), *Rohingya refugees hope for little and receive less*, < <http://www.refugeesinternational.org/reports/2015/11/17/malaysia-rohingya-refugees-hope-for-little-and-receive-less> >

⁷ SUHAKAM (2014), *Human Rights Commission of Malaysia Annual report 2013*, Kuala Lumpur: SUHAKAM

- Children, including those unaccompanied and separated from family, are detained together with adults to whom they are not related exposing them to the risk of abuse.
- Access to Malaysia's detention facilities is strictly controlled, with national and international NGOs, being denied access to the majority of the country's IDCs. Detainees have reported that medical screening is lacking, and skin diseases, tuberculosis and dengue are common.⁸
- While UNHCR is generally able to secure the release of refugees and asylum seekers registered with the agency, this process can take several months or even years.
- The Malaysian government has established a working group to study and make recommendations on alternative to detention (ATD) models for children. Members of the working group include SUHAKAM, as well as various national and regional NGOs. The working group has agreed to initiate an ATD pilot project for unaccompanied children.⁹

Access to Health Care

- Healthcare services remain inaccessible for many refugees and asylum seekers. Language barriers, cost of treatment and fear of arrest all compound the problem. Regarded by authorities as 'foreigners', refugees and asylum seekers are charged substantially higher rates than Malaysian citizens for treatment and medicines in public hospitals.¹⁰
- The deposit fees and medical charges of healthcare services at local public hospitals are still placed at exorbitant rates for non-citizens. The increase in rates were first introduced in 2015, surging up 70% of its initial rates that year. In the first quarter of 2017, newer rates were introduced with further medical subsidies being cut for non-citizens, increasing to 130% and 230% for ward and surgery admissions respectively.¹¹
- Recognised refugees holding UNHCR-issued cards qualify for a 50% subsidy on foreigners' rates, while asylum seekers and other non-Malaysians receive no subsidies and must pay full foreigners' rates. However, given the high fees and prohibition of refugees and asylum seekers from engaging in formal work and hence instability of income, healthcare is often unaffordable even if available. This led to refugees self-medicating or going without medical treatment, even if urgent, including those with communicable diseases.¹²
- The Immigration Department of Malaysia has a presence in the Kuala Lumpur General Hospital, and irregular migrants, including asylum seekers, are at risk of arrest when seeking treatment.¹³ Arrest and

⁸ SUHAKAM (2015), Annual report 2014. Human Rights Commission of Malaysia. Kuala Lumpur: SUHAKAM. paras 34 and 35

⁹ SUHAKAM (2015), Annual Report 2014, Kuala Lumpur: SUHAKAM

¹⁰ Balasundaram, S. 2011. Health and displacement: Urban refugees in Malaysia. Kuala Lumpur: UNHCR.

¹¹ The Malay Mail, 'Health Ministry hikes up hospital fees for foreigners up to 230pc', (8 April 2017), accessed by <https://www.malaymail.com/s/1351929/health-ministry-hikes-up-hospital-fees-for-foreigners-up-to-230pc>

¹² Ministry of Health Malaysia (2013), *Government Hospitals' Treatment Charges for Foreigners*, <<http://www.moh.gov.my/english.php/pages/view/153>>

¹³ Hospital Kuala Lumpur (2014), *Minit mesyuarat interaksi membincangkan isu-isu pesakit warga asing di hospital Kuala Lumpur*

detention of asylum seekers at other government hospitals has also been reported.

- In June 2017, UNHCR communicated to communities that the Refugee Medical Insurance (REMEDI), a collaborative programme initiated by UNHCR with RHB Bank coming to a halt from 16 June 2018 onwards as the partnering bank had been incurring significant amount of losses due to the high rate of pay outs and low rate of enrolments since its introduction. As such, new enrolments for REMEDI would cease, while those currently holding valid policies would be able to benefit from the programme until the end of their policy date

Access to Education

- There are currently large numbers of refugee and asylum-seeking children registered with UNHCR Malaysia, yet due to Malaysia's reservation to Article 28(1)(a) on free and compulsory education at primary level of the UN Convention on the Rights of the Child (CRC), the state does not take responsibility for the education of non-Malaysian children including refugees, asylum seekers and stateless children. These children are therefore ineligible to attend government primary schools. For some, access to education is provided through informal 'alternative learning centres' run by NGOs, faith-based organisations or refugee communities. However, these centres are constrained by the lack of resources and qualified teachers.

Access to Employment

- Refugees in Malaysia are prohibited from legally engaging in employment, although some are able to find work in the informal sector in jobs - regarded as undesirable by the local population. Without the right to work, refugees lack access to the formal employment sector and associated labour rights and protections. As such, refugees are highly vulnerable to exploitation and abuse, including unpaid wages, poor or dangerous working conditions, and the absence of recourse to justice due to their 'irregular' status in the country.
- In March 2017, the Malaysian Government introduced a pilot scheme to allow 300 UNHCR mandate Rohingya refugees the right to work. The pilot program has initially been limited to the plantation and manufacturing sectors. A full-scale evaluation has not yet been conducted but a number of concerns have been raised by civil society including the lack of consultation that took place before the pilot was initiated and the fact that it may represent another form of labour exploitation in Malaysia.¹⁴ Enrolment for the scheme has been relatively low, due to the less than ideal working conditions.

bersama wakil/agensi & pihak HKL pada 30 Mei 2014, Kuala Lumpur: Unit Perhubungan Awam. Pejabat Pengarah, Hospital Kuala Lumpur

¹⁴ Lowy Institute, 'Labour Migration as Complimentary Pathways for Refugees in the Asia-Pacific' Report (April 2018)