



Brief: Australia's refugee deal with Malaysia

Background

On 7 May 2011, the Australian Government announced a bilateral agreement with the Malaysian Government to transfer 800 asylum seekers who arrive in Australia by boat ('irregular maritime arrivals') to Malaysia for refugee status determination. In return, Australia will resettle 4,000 refugees currently residing in Malaysia. Australia will fully fund the arrangement.

Issues

The agreement with Malaysia is problematic for a number of reasons:

- **Malaysia is not a signatory to the United Nations (UN) Refugee Convention or Protocol.** Neither is it party to many other human rights treaties, including the Convention Against Torture. Despite assurances from the Malaysian Government, there is no legal framework in Malaysia guaranteeing the protection of those transferred.
- **Malaysia has a record of human rights abuse.** Amnesty International reports recent human rights abuses in Malaysia, including arbitrary arrests and detentions, deaths in custody, highly restricted freedom of expression and executions under the death penalty¹.
- **Malaysian law does not distinguish between illegal migrant workers and asylum seekers/refugees.** There are approximately 92,000 refugees and asylum seekers currently living in Malaysia. Despite this, there is no legislative framework for dealing with refugees. They are often forced to join the 1 million undocumented migrant workers in the country working in dangerous and dirty jobs, subject to exploitation, and risking arrest by police and immigration officials.

Refugees and asylum seekers are not given any form of documentation that proves their legal right to remain in the country. The UN Refugee Agency (UNHCR) is mandated to issue refugee cards, however Amnesty International has found many cases where access to UNHCR has been problematic for asylum seekers and also where even those with papers have been ignored by immigration officials. In 2010, government officials suggested that police and immigration agents would not arrest those with UNHCR cards, however despite these improvements refugees are still continuously arrested,

- **Those transferred will be at risk of detention or arrest.** The Australian Government has said that those transferred will live in the community in Malaysia and effectively join the end of the 'queue' to be processed, which could take many years. Refugees and asylum seekers in Malaysia do not have access to adequate health care, schooling or employment opportunities. In order to support themselves, those transferred may have no option but to work illegally, risking arrest by immigration officials or state-sanctioned vigilante groups. People in breach of Malaysia's immigration laws are detained in overcrowded centres then sentenced to jail and often canned. If they are unable to pay fines they are returned to detention or deported.
- **Regular immigration raids and arrests** are carried out by state agents, and, controversially, by a volunteer citizens' police force, the People's Volunteer Corps (Ikatan Relawan Rakyat or RELA). These arrests have a veneer of legitimacy, as police and RELA agents are authorised to examine people's identification documents and investigate their immigration status. Amnesty International has found that during the immigration raids, police and RELA employ violent tactics to extort money or to intimidate and harass asylum seekers and refugees. These raids often lead to arrest, detention and other penalties for immigration offences.
- **Refugees and asylum-seekers in Malaysia are vulnerable to abuse** and violence in their homes, in public and at their places of work.

¹ Amnesty International, State of the World's Human Rights Report 2010, pp. 217-219, available online at <http://thereport.amnesty.org/>.



- **Those transferred may face ill-treatment in Malaysian detention centres or jails.** Amnesty International's investigations into asylum seekers and refugees in Malaysia found that conditions inside detention centres in Malaysia were overcrowded, dirty and violent.² Reports of insufficient food, poor nutrition, poor sanitation and physical abuse persist.
- **Malaysian authorities practice caning.** In 2002, the Malaysian Government passed a law endorsing caning as a form of punishment for immigration violations. With no option but to violate impractical immigration laws (such as not being able to work), Amnesty International is concerned those transferred will be at risk of caning, which is considered 'cruel, inhuman and degrading punishment' by the United Nations. This agreement puts Australia at serious risk of breaching the fundamental principle of non-refoulement which dictates that people cannot be sent to back to countries where they are at risk of persecution or torture.
- **The agreement effectively undermines the right to seek asylum in Australia.** Under international law, all asylum seekers who arrive in Australia, *regardless of mode of arrival*, must have their claims for protection assessed and if found to be genuine refugees, offered protection. The deal essentially means it is acceptable to arrive in Malaysia and seek asylum, but seeking asylum in Australia is subject to political vagueries based on the mode of arrival.
- **The concept of a 'queue' is misrepresented.** For 99% of people who need protection, seeking asylum in another country is their only choice. Resettlement through the UNHCR in no way resembles a queue and, in any case, is only available for a very small group. The resettlement program exists to support the asylum system, not to replace or distort it.
- **Vulnerable people may be put at risk if transferred to Malaysia.** The Australian Government has not ruled out transferring children, pregnant women, sick or other vulnerable people to Malaysia, where it is unlikely they would receive appropriate care. Women and children are also detained in horrendous detention centres.

Further information

- It is not illegal to seek asylum, regardless of method of arrival.
- The deal with Malaysia effectively undermines the fundamental human right to seek asylum.
- The UNHCR reports that Australia receives only 2 per cent of the industrialised world's asylum claims. This relatively small proportion of refugees arriving does not justify subverting the right to seek asylum.
- Trading asylum seekers and refugees sets a dangerous precedent in the Asia-Pacific region.
- Amnesty International supports the increased intake of 4,000 refugees from Malaysia to be resettled in Australia, however, does not agree that this should come at the expense of the right to seek asylum in Australia. While increasing resettlement numbers directly from Malaysia is a welcome move, there is no need for Australia to link this increase with the expulsion of a small number of asylum seekers who have arrived here by boat.

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² Amnesty International, *Abused and Abandoned: Refugees Denied Rights in Malaysia* (June 2010), available online at <http://www.amnesty.org/en/library/asset/ASA28/010/2010/en/2791c659-7e4d-4922-87e0-940faf54b92c/asa280102010en.pdf>. *A Blow to Humanity: Torture by Judicial Caning in Malaysia* (December 2010) available online at http://www.amnesty.org.uk/uploads/documents/doc_21090.pdf.