

Submission by the United Nations High Commissioner for Refugees

**For the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

MALAYSIA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Refugee Population:

Malaysia is not a State party to the 1951 Refugee Convention and its 1967 Protocol. It does not have a legal or administrative framework for managing refugees and has not set up mechanisms to process asylum seekers and refugees when they arrive in the territory.

The absence of a legal framework for managing the refugee issue in Malaysia is complicated by the migration context in Malaysia in which there are some 4 million migrants, 1.9 million of whom are undocumented and in an irregular situation. This creates great unpredictability in refugees' lives, as Malaysian law does not distinguish between refugees/asylum-seekers and undocumented migrants. The former thus become vulnerable to arrest for immigration offences and may be subject to detention, prosecution, whipping, and deportation, including refoulement.

The refugee and asylum-seeker population in Malaysia at the end of 2012 totaled 101,081 individuals. The whole refugee and asylum-seeker population is urban, often living in or around major cities. The vast majority, 95,561, originate from Myanmar, with 35% being of Chin sub-ethnicity, followed by 27% who are Muslims from Northern Rakhine State. The latter are also stateless. A number of other ethnic minorities from Myanmar are also registered with UNHCR. UNHCR estimates that there are still about 49,000 unregistered asylum-seekers from Myanmar in Malaysia.

In addition to refugees in Peninsular Malaysia, there are also over 80,000 Filipino refugees in Sabah, many of whom arrived in the 1970s and 80s. UNHCR has not directly engaged with this population since it closed its sub-office in Sabah in 1987 following the Government's decision to issue residency visas to this population. UNHCR has, through regular monitoring, noted the continued deterioration in their situation over the last 25 years. Much of the population has not fully integrated into mainstream Malaysian society. UNHCR's assessment, while not comprehensive, indicates that not all of the Filipino Muslim refugees who would have been eligible were granted residence permits. Some of those who were granted the permits were not able to renew them. As a result, many of their children have remained undocumented, and thus do not have access to basic education and health services. It must also be noted that possession of the residence permit is an essential requirement to apply for naturalization.

Stateless Population:

Malaysia is not a State party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. The Malaysian Federal Constitution provides key protections which provide a basis to prevent and reduce statelessness in Malaysia. Most importantly, the Federal Constitution provides that a child born in Malaysia “who is not born as citizen of another country” and cannot acquire citizenship of another country by registration within 1 year of birth is a citizen of Malaysia by operation of law. In addition, the Constitution prevents deprivation of citizenship, if it will result in statelessness and provides for citizenship to be acquired by naturalization. However, a number of gaps in the nationality law remain. For example, foundlings born in Malaysia do not acquire nationality as a right, and there is no provision that prevents the renunciation of nationality, if it results in statelessness. Finally, children born to Malaysian mothers abroad will only acquire Malaysian nationality by descent, if the father is also Malaysian.

There is evidence that Malaysia’s nationality law can be applied inconsistently, which can result in the failure to treat individuals as nationals who are entitled to nationality under the law. This includes some 40,000 persons of Tamil and other ethnic groups originally from India who remain undocumented (although there are media reports that this size of this group may be significantly larger). While the Government has made efforts to address this issue, alongside a number of NGOs, challenges remain in ensuring that the births of all children are registered according to the law and that identity documentation is appropriately issued to members of minority groups. These challenges include increasing the understanding and knowledge of the law and procedures relating to birth registration among those living in plantations and in remote parts of the country. The failure to treat individuals as nationals, despite their entitlement to nationality under the law, can result in marginalization and the risk of arrest and detention and can limit their access to employment, education and health care.

II. ACHIEVEMENTS AND BEST PRACTICES

Humanitarian commitment:

Malaysia has a long-standing tradition of humanitarian commitment and generously providing temporary asylum on humanitarian grounds to groups of asylum-seekers and refugees. In the past, this has included Filipino refugees from Mindanao arriving during the late 1970s and early 1980s, Cambodian and Vietnamese refugees and asylum-seekers during the 1980s and 1990s, a small number of Bosnian refugees in the early 1990s, and Indonesians from the Province of Aceh in the early 2000s. Malaysia has ensured protection and assistance to these groups, even though it is not a party to the *1951 Convention* or its *1967 Protocol*. It continues to ensure some level of protection and assistance to the current refugee population, comprised largely of Myanmar nationals, although not at the levels provided to the groups mentioned above. For example, Malaysia allows refugees to access public health services and provides a 50% discount off the foreigner’s rate for medical fees incurred by refugees recognized under UNHCR mandate. It also issues birth certificates to children of refugees who are born in Malaysia.

Malaysia's decision to accept 40 Rohingya asylum-seekers rescued at sea from Bay of Bengal in December 2012 following the sinking of their boat is also a commendable humanitarian gesture.

Working relationship with UNHCR:

Malaysia does not also have a specific Government agency or body tasked to coordinate with UNHCR on refugee issues. UNHCR has been present in Malaysia since 1975 and cooperates with the Ministry of Foreign Affairs, Ministry of Home Affairs and the Immigration Department to respond to refugee issues. While UNHCR's relationship with the Government has steadily improved, the absence of a specific Government agency or body tasked to coordinate with UNHCR on refugee issues constrains all efforts related to asylum in Malaysia. UNHCR maintains a constructive dialogue with the Government, in the context of which UNHCR has continued to encourage the Government to become a party to the 1951 Refugee Convention and its 1967 Protocol, as well as to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness. However, the Government of Malaysia has indicated that it is not yet ready to accede to these international instruments.

Moreover, UNHCR has raised a number of specific proposals with the Government, including the development of a legal and administrative framework to manage asylum, allowing refugees the right to work, and improving refugee access to education and health. To date, the Government has not officially responded to these proposals.

On the other hand, the Malaysian Government has put in place ad hoc administrative arrangements to facilitate the work of UNHCR in providing assistance and protection to refugees and asylum-seekers, among which are the recognition by the Government of UNHCR-issued identity documents to asylum-seekers and refugees, which has resulted in a significant decrease in the arrest and detention of individuals who possess them. UNHCR has also generally been given continued access to asylum-seekers and refugees who are detained.

As the Malaysian Government has devolved the protection and assistance responsibility to UNHCR, UNHCR monitors detention facilities and works to secure the release of refugees while supporting health, education, and community self-reliance programmes and promoting durable solutions for refugees and asylum-seekers. As the Malaysian Government has not set up mechanisms to process asylum-seekers and refugees when they arrive in the territory, UNHCR continues to undertake these registration and refugee status determination responsibilities on its own.

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Issue 1: Accession to the 1951 Refugee Convention

Accession greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country. UNHCR believes that it is necessary to broaden the base of State support for these refugee instruments, ensuring

that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied. Accession to the *1951 Convention* and establishment of a national legal framework would provide a clearer basis for the Government of Malaysia to provide refugees with international protection and a mechanism that enables the appropriate engagement of relevant international organizations like UNHCR.

UNHCR welcomes the recommendations by the Committee on the Rights of the Child and the UN Working Group on Arbitrary Detention to accede to the 1951 Refugee Convention and its 1967 Protocol.¹

Recommendation:

- UNHCR recommends that the Government of Malaysia accede to the *1951 Convention* and its *1967 Protocol*, and ensure that the country is in full compliance with international refugee protection standards.

Issue 2: Development and implementation of domestic legislative and administrative framework for refugee protection

The Malaysian Government stated in the UPR Addendum that “the Government has instituted administrative arrangements to provide assistance and protection to persons claiming refugee status and/or asylum-seekers in possession of identification documents issued by UNHCR, based on humanitarian grounds on a case-by-case basis.”² It also stated that “Malaysia is improving its legislative framework to establish an appropriate mechanism for the treatment of such persons.” However, no legislative framework has been established to date, and arrangements to provide assistance and protection to persons claiming refugee status or asylum-seekers have been limited.

The Malaysian Government further stated in the Addendum that “the Government is engaged with UNHCR in developing a legislative framework to coordinate policy and enforcement measures towards irregular migrants claiming refugee status.”³ However, all such arrangements with UNHCR have remained ad hoc, based on verbal arrangements, and unsupported by any legislative or administrative framework.

In this context, UNHCR welcomes the recommendation of the UN Working Group on Arbitrary Detention, which recommended that stated that the Government “*put in place a*

¹ See Concluding Observations of the Committee on the Rights of the Child, CRC/C/MYS/CO/1, 44th Session, 25 June 2007, paragraphs 82 and 83 b, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/426/43/PDF/G0742643.pdf?OpenElement>; and UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: addendum: mission to Malaysia*, 8 February 2011, A/HRC/16/47/Add.2, paragraph 118, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.2_en.pdf,

² A/HRC/11/30/Add. 1, para. 2, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/137/38/PDF/G0913738.pdf?OpenElement>

³ A/HRC/11/30/Add. 1, para. 18.

national legal and administrative framework for dealing with asylum-seekers and refugees that meets international standards.”⁴

Recommendation:

- The Malaysian Government should enact a legislative and administrative framework for the treatment and protection of refugees and asylum-seekers, as well as establish appropriate mechanisms to receive, register and process asylum-seekers and refugees. It should task a specific Government agency to coordinate with UNHCR to address issues relating to refugees and asylum-seekers.

Issue 3: Ensure effective protection against refoulement

As a general rule, the Malaysian Government respects the international principle of *non-refoulement*. However, in August 2011 the Malaysian Government deported 11 Chinese nationals of Uighur ethnicity, despite UNHCR’s request to meet these individuals and determine whether they were in need of international protection. On 31 December 2012, the Malaysian Government deported a further six ethnic Uighur asylum-seekers registered with UNHCR Malaysia to China, thus disregarding the international customary law principle to prevent the *refoulement* of persons in need of international protection.

Recommendation:

- The Malaysian Government should fully respect the principle of *non-refoulement* in accordance with customary international law.

Issue 4: Arrest, detention and prosecution of asylum-seekers

UNHCR Malaysia has noted through its work that there has been a significant decrease in the arrest and detention of asylum-seekers and refugees holding UNHCR documents by Malaysian Government enforcement agencies. Despite this, Malaysian law still does not have any provisions, which distinguish between persons in need of international protection and undocumented migrants. As a consequence, asylum-seekers and refugees, in particular those who are not registered by UNHCR, remain vulnerable to arrest for immigration offences and may be subject to detention, prosecution, whipping, and deportation. UNHCR would like to highlight the 2011 recommendation of the Working Group on Arbitrary Detention that “*the Government should also rule out detention of asylum-seekers and refugees as well as vulnerable groups of migrants.*”⁵

⁴ UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: addendum: mission to Malaysia*, 8 February 2011, A/HRC/16/47/Add.2, paragraph 118, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.2_en.pdf.

⁵ UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: addendum: mission to Malaysia*, 8 February 2011, A/HRC/16/47/Add.2, paragraph 119, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.2_en.pdf

Asylum-seekers who are arrested and charged in court on immigration offences prior to registering with UNHCR are not provided with any opportunity to present an application for consideration of their international protection needs, as no Government entity has been mandated to undertake this task. They may also be subjected to caning when their cases are heard in court, despite mitigation pleas by Counsel that they are asylum-seekers.

The Government of Malaysia needs to make a distinction, in law, policy and administrative practice, between asylum-seekers and refugees on the one hand and undocumented migrants on the other. The detention of asylum-seekers and refugees should only be used as a last resort, where necessary and justified. If detained, asylum-seekers should be entitled to minimum procedural guarantees, including the possibility to contact and be contacted by UNHCR.

UNHCR's 2012 Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers highlight that *"the position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic experiences, need to be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence."*⁶

Recommendation

- The Government should ensure that refugees and asylum-seekers are not penalized for illegal entry and stay in the country, that the detention of asylum-seekers is only used as a last resort, and where necessary, for as short a period as possible and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention.

Issue 5: Access of refugees to fundamental human rights

Asylum-seekers and refugees are not issued any documents by the Malaysian authorities, which would allow them to be properly identified as having a special protected status different from other groups of migrants present in the country. There are virtually no opportunities for refugees in Malaysia to formally regularize their situation and stay in Malaysia.

Lack of formal access to employment:

Refugees recognized by UNHCR do not have any formal access to the labour market and are therefore compelled to work in the informal sector, often in exploitative situations or in jobs presenting special hazards and risks. Furthermore, employers who hire refugees

⁶ See the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), Guideline 1 entitled "The right to seek asylum must be respected" at: <http://www.unhcr.org/refworld/docid/503489533b8.html>.

may be subjected to prosecution for hiring and harbouring irregular migrants under the Immigration Act. This effectively deters potential employers from providing work opportunities to refugees and asylum-seekers.

Lack of access to public services:

Refugees recognized by UNHCR cannot easily access public services, as they do not hold any government-issued documentation attesting to their status.

Lack of access to education:

Refugee children of school age are unable to attend school in Malaysia. Furthermore, NGOs and others who provide informal education to refugee children are unable to have these activities licensed by the Government. UNHCR would like to highlight the recommendation in 2009 by the Special Rapporteur on the Right to Education that Malaysia “[r]evise the Education Act 1996 so that children who do not have a birth certificate may enroll in educational institutions, thereby guaranteeing the right of education for all children in the territory of Malaysia, as prescribed by international standards on the subject, regardless of whether they are refugees, asylum-seekers, stateless children, children of legal or illegal migrant workers or street children.”⁷

Recommendation:

- The Malaysian Government should ensure proper documentation of persons in need of international protection and grant them access to legal work, public services and education.

Issue 6: Access to birth registration and issuance of birth certificates

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. The parents of children of asylum-seekers and refugees, who are not born in the hospital, often face difficulties in obtaining a birth certificate for their children, as they will normally not be able to submit proof that they were born in Malaysia. For Filipino Muslim refugees in Sabah, hospitals can refuse to issue a proof of birth or hospital admission cards, if parents cannot pay the hospital fees. The proof of birth or hospital admission cards needs to be submitted when applying for a birth certificate. The lack of hospital documentation may therefore also result in the non-issuance of the birth certificate.

UNHCR supports the recommendation made by the Committee on the Rights of the Child in its concluding observations on Malaysia at its 44th session: “(...) notes with concern that non-Malaysian children born in Malaysia, such as asylum-seeking and refugee children as well as children of undocumented migrant workers, children of single mothers and children born in remote areas of the country, are at risk of not being registered at birth. In the light of article 7 of the Convention, the Committee recommends

⁷ UN Human Rights Council, *Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia*, 20 March 2009, A/HRC/11/8/Add.2, paragraph 87, available at: <http://www.unhcr.org/refworld/docid/49f06efd2.html>

that the State party continue to implement an efficient and at all stages free-of-charge birth registration system, which covers its territory fully, and undertake awareness-raising campaigns to reach the most remote areas of its territory. The Committee recommends that the State party improve the birth registration system of non-Malaysian children born in Malaysia, children of single mothers and children born in remote areas of the country. Meanwhile, children without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered.”⁸

Recommendation:

- The Government should be encouraged to ensure the registration of all births in the country to prevent statelessness, in line with Article 7 of the Convention on the Rights of the Child.

Issue 7: Statelessness

Malaysian nationality law contains important provisions that can prevent and reduce statelessness in Malaysia. The primary challenge that the Government faces in this regard is the implementation of the current Constitutional provisions. However, there are a number of gaps in the nationality law that should be filled to further strengthen the domestic legal framework to prevent and reduce statelessness, as identified above.

To address issues relating to implementation, the Government of Malaysia could increase its efforts to ensure that all minority groups, including Tamils and other persons of Indian origin, are provided with birth certificates under the law with the accurate identification of whether they are Malaysian nationals by birth. This will ensure that all those who are entitled to national identity cards, which prove nationality, receive them. The Government of Malaysia should consider good practices in birth registration which exist in other ASEAN Members States, as discussed at the ASEAN Intergovernmental Commission on Human Rights/UNHCR joint workshop held on 7 December 2012 in Bangkok before the UNESCAP High-Level Meeting on the Improvement of Civil Registration and Vital Statistics (CRVS) in the Asia-Pacific.

In addition, given the lack of consistent and reliable data on the size and profile of the population of stateless persons in Malaysia, measures to register and provide birth certificates to those without any documentation on the territory would be an important step.

UNHCR welcomes the recommendations made by the Committee on the Rights of the Child to the Government of Malaysia to consider acceding to the 1954 Convention

⁸See Concluding Observations of the Committee on the Rights of the Child, CRC/C/MYS/CO/1, 44th Session, 25 June 2007, paragraphs 44 and 45, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/426/43/PDF/G0742643.pdf?OpenElement>

relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.⁹

Accession by Malaysia to the two international Statelessness Conventions would complement the existing framework that exists to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance. Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life.

These treaties are therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

Recommendations:

- UNHCR recommends Malaysia to accede to the *1954 Convention* and *1961 Convention*.
- UNHCR recommends that Malaysia strengthen its national legal framework to prevent and reduce statelessness, through closing gaps that exist in nationality law that can cause statelessness.
- The Malaysian Government should increase its efforts to ensure that Malaysian nationality is granted to all of those entitled to it under the Constitution, including minority groups, such as, Tamils and other persons of Indian origin. In particular, the Malaysian Government should consider good practices in other ASEAN Member States and take steps to help ensure that the births of all children are registered.
- The Malaysian Government should regularise the status of the Filipino Muslim refugees, many of whom have remained undocumented and whose children, in particular, are at risk of becoming stateless. In particular and in line with the Malaysian Government's decision in 1987, Filipino Muslim refugees and their children, should be issued with a residence permit to enable them to apply for naturalization.
- In light of the lack of available data on the stateless population in its territory, the Malaysian Government should undertake a data collection exercise as well as a

⁹ See Concluding Observations of the Committee on the Rights of the Child, CRC/C/MYS/CO/1, 44th Session, 25 June 2007, paragraph 82 and 83 b, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/426/43/PDF/G0742643.pdf?OpenElement>

birth registration campaign for this population with the assistance of NGOs, UNHCR, and UNICEF for the purposes of preventing and reducing statelessness.

Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures Reports

- Universal Periodic Review:

Malaysia

We would like to bring to your attention the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Malaysia, as well as to extracts from the reports of the missions of the Working Group on Arbitrary Detention and of the Special Rapporteur on the right to education to Malaysia.

1. Treaty Body Reports

Committee on the Rights of the Child

CRC/C/MYS/CO/1, 44th Session

25 June 2007

Dissemination of the Convention, and training activities

27. The Committee welcomes the State party's efforts to promote awareness of the rights of the child, including the awareness-raising workshops organized by the Department of Social Welfare, as well as efforts to disseminate the Convention, in close collaboration with the United Nations Children's Fund (UNICEF), SUHAKAM and non-governmental organizations (NGOs). Nevertheless, the Committee considers that education for children and the public at large and training activities for professional groups on children's rights need ongoing attention.

28. The Committee recommends that the State party strengthen its efforts to disseminate the Convention to children, their parents and the broader public, including appropriate material specifically for children translated into the different languages spoken in Malaysia, including those spoken by migrant children, asylum-seeking and refugee children and indigenous children. In addition, it recommends that the State party undertake systematic education and training programmes on the provisions of the Convention for all professional groups working for and with children, such as civil servants, teachers, social workers, health personnel (including psychologists), judges, lawyers and law-enforcement officials.

Non-discrimination

31. While noting with appreciation the principle of non-discrimination in article 8 of the Federal Constitution, as well as in the preamble of the Child Act 2001 (Act 611) and the special measures taken to advance and protect the status and existence of indigenous peoples, the Committee is concerned that many children belonging to vulnerable groups are likely to experience de facto discrimination in everyday life. These include the Orang

Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children (for example, the unregistered children of Filipino refugees holding IMM13 refugee passes), children born out of wedlock and children of migrant workers. Acknowledging the State party's challenges in providing quality services in remote areas of the country, the Committee is concerned that many children are still suffering from disparities in the field of access to social and health services and education. Concern is expressed at the insufficient efforts made to address discrimination based on sexual orientation.

32. In the light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups. These include the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children (for example, the unregistered children of Filipino refugees holding IMM13 refugee passes), children born out of wedlock and children of migrant workers.

Birth registration

44. While commending the State party on its efficient birth registration system, including the use of mobile birth registration units, the Committee notes with concern that delays in birth registrations are subject to additional fees. It also notes with concern that non-Malaysian children born in Malaysia, such as asylum-seeking and refugee children as well as children of undocumented migrant workers, children of single mothers and children born in remote areas of the country, are at risk of not being registered at birth.

45. In the light of article 7 of the Convention, the Committee recommends that the State party continue to implement an efficient and at all stages free-of-charge birth registration system, which covers its territory fully, and undertake awareness-raising campaigns to reach the most remote areas of its territory. The Committee recommends that the State party improve the birth registration system of non-Malaysian children born in Malaysia, children of single mothers and children born in remote areas of the country. Meanwhile, children without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered.

Asylum-seeking and refugee children

81. The Committee notes with appreciation efforts taken by the State party to improve the situation of asylum-seeking and refugee children and their families, particularly the increased cooperation the State party has extended to the United Nations High Commissioner for Refugees (UNHCR) in Malaysia. It notes with appreciation, for example: the issuance of written instructions in 2005 by the Attorney-General not to prosecute immigration-related offences committed by asylum-seekers and refugees holding valid UNHCR documentation; the issuance of written instructions by the Ministry of Health to reduce medical fees for asylum-seekers, refugees, and their children to 50 per cent of the foreigners' rate; and the statement made during the dialogue with the

Committee that UNHCR shall be provided with access to refugee or asylum-seeker detainees, including in immigration detention centres.

82. Despite these positive steps taken, the Committee expresses concern at the absence of a legal framework in Malaysia for the protection of refugee and asylum-seeking children. In particular, the Committee regrets that the State party has not acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol, nor to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness. The Committee is particularly concerned that the implementation of the current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining asylum-seeking and refugee children and their families at immigration detention centres, prosecuting them for immigration-related offences, and subsequently imprisoning and/or deporting them.

83. In the light of articles 3 and 22 and other relevant provisions of the Convention, the Committee recommends that the State party, taking into account the Committee's General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6):

- (a) Take urgent measures not to detain children in connection with immigration proceedings unless it is necessary to protect their best interests - and then for the shortest time possible, and establish a screening process to ensure that groups with special needs, such as refugees and asylum-seekers, including their children, are rapidly identified;**
- (b) Accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol as well as to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness;**
- (c) Develop a legislative framework for the protection of asylum-seeking and refugee children, particularly unaccompanied children, in line with international standards;**
- (d) In the absence of a national law on refugees, amend the Immigration Act 1959/63 (Act 155), or at least make use of the exception foreseen under Section 55 of the Immigration Act, with a view to legalizing the status of asylum-seekers and refugees in Malaysia;**
- (e) If detention is necessary in a particular, exceptional case, take all measures necessary to make this as short as possible and provide for special protection and assistance measures for refugee and asylum-seeking children and their families while in detention, in line with relevant international standards.**

84. The Committee notes with concern that many asylum-seeking and refugee children, among them the Muslim children from Myanmar, including the Rohingya refugee children who have lived in Malaysia since 1990s, lack access to formal education.

85. With reference to articles 2, 22 and 28 of the Convention, the Committee recommends that the State party take urgent measures to ensure that asylum-seeking and refugee children have access to free and formal primary, secondary and other forms of education, and that in particular refugee and asylum-seeking children who are engaged in informal education have access to official examinations.

Committee on the Elimination of Discrimination Against Women

CEDAW/C/MYS/CO/2, 35th Session

31 May 2006

27. The Committee is concerned that the State party has not enacted any laws or regulations concerning the status of asylum-seekers and refugees. In particular, the Committee is concerned that asylum-seekers and refugees, including women, are prosecuted for immigration-related offences and may be indefinitely detained at immigration detention centres or deported.

28. The Committee recommends that the State party adopt laws and regulations relating to the status of asylum-seekers and refugees in Malaysia, in line with international standards, in order to ensure protection for asylum seekers and refugee women and their children. The Committee further recommends that the State party fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, in close cooperation with appropriate international agencies in the field of refugee protection, in particular the Office of the High Commissioner for Refugees.

2. Special Procedures Reports

Report of the Working Group on Arbitrary Detention

Addendum: Mission to Malaysia

A/HRC/16/47/Add.2

8 February 2011

V. Conclusion

100. The regime applied to migrants in an irregular situation, refugees and asylum-seekers is not seen to be in line with international human rights law. Immigrants in an irregular situation arriving in the country are subjected to mandatory detention without genuine recourse to a court of law. The conditions of detention at most of the immigration detention centres visited adversely affect the ability of detainees to challenge the lawfulness of their detention. The Working Group received complaints of detainee abuse, inadequate food, water and medical care, and poor sanitation in the immigration detention centres.

VI. Recommendations

A. General recommendations

106. The Government should become a party to the main international instruments on human rights, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness and the Rome Statute of the International Criminal Court.

C. Concerning detention under immigration powers

117. Regardless of immigration status, nobody should be subjected to arbitrary detention or appalling detention conditions. The Government is reminded that it is its responsibility to guarantee the right to physical and psychological integrity and the right to security in immigration detention centres.

118. The Government should ratify the Convention relating to the Status of Refugees and the Protocol thereto, and put in place a national legal and administrative framework for dealing with asylum-seekers and refugees that meets international standards.

119. The Government should also rule out detention of asylum-seekers and refugees as well as vulnerable groups of migrants, including unaccompanied minors, families with minor children, pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, people with serious and/or chronic physical or mental health problems.

120. The Government should, in all cases, provide for automatic periodic review by a court of law on the necessity and legality of detention.

121. The Government should also provide for an effective remedy for detainees to challenge the necessity and legality of detention at any time of the detention period and ex post facto, and define the circumstances.

122. As long as there is a regime of mandatory administrative detention for migrants in an irregular situation, the Government should legally define its maximum period rather than basing it on Government regulations or policy.

123. The Government should also provide for a system of legal aid for immigration detainees.

124. The Government should assume the responsibility of improving the conditions in immigration detention centres as a matter of urgency.

125. RELA, as a volunteer force, should not be used for law enforcement nor for guarding immigration detention centres.

Report of the Special Rapporteur on the right to education, Vernor Muñoz Villalobos

Addendum: Mission to Malaysia

Human Rights Council, 11th Session

A/HRC/11/8/Add.2

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IV. Conclusions and Recommendations

85. There is also another type of difficulty preventing full exercise of the right to education for all inhabitants of the country. The Special Rapporteur considers that one of the most serious problems is the requirement of a birth certificate as an essential precondition for enrolment in recognized educational institutions, particularly if account is taken of the extremely strict conditions for obtaining such a certificate, which exclude a large part of the population.

87. The Special Rapporteur recommends the following action by the Government of Malaysia:

...

- **Guarantee the principle of cost-free education, irrespective of membership of an ethnic group or citizenship, at least in the case of primary education, with gradual extension to the secondary level;**

...