



PENANG STOP HUMAN TRAFFICKING C A M P A I G N

A POLICY FRAMEWORK for REFUGEES in MALAYSIA:

SPEEDY IMPLEMENTATION OF PROMISE 35 and working towards fulfilment of PROMISE 59

OVERVIEW

A number of us over the years have been busy lobbying the government and associated agencies with various documents/suggestions relating to a policy framework for refugees in Malaysia. Following the change of government in May, this has continued albeit perhaps with a change in focus. And many of us were at the recent Bar Council roundtable, the subject of which was the updating of the 2008 Bar Council Comprehensive Framework for Refugees document. We look onward to the final version of that. It would be fantastic if somehow there was a coming-together of all of us involved in advocacy, not least refugee leaders themselves, to chart a possible coherent, systematic lobby strategy. But we should wait for the Bar Council update and perhaps take it from there. In the meantime, this is something like an interim summary of where we might be up to and what could happen next.

BACKGROUND

There are plenty of descriptions of how refugees have ended up with absolutely no rights in Malaysia, the role which the United Nations High Commissioner for Refugees (UNHCR) has been playing, and the various situations faced by refugee women, men, children and babies in Malaysia today. We do not need to re-invent this wheel: examples are to be found in the Bar Council's 2009 document, the chapter on refugees found every year in the annual Suaram Human Rights report (see for example the 2016 Report), and many other documents from national, regional and international organisations and institutions.

All recount the appalling consequences of 'no rights' on the refugee women, men and children in Malaysia, as individuals and as families. Living in a limbo land, with no rights and therefore no protection, and with a wholly uncertain future, refugees in Malaysia face daily harassment, extortion, exploitation, abuses of various sorts, and of course are subject to detention. Children have little access to education (the majority have no access at all), and difficult access to other government services or protection. Access to healthcare is a major challenge, with refugees unable to pay the high charges and many fearing arrest and detention if they present themselves at health facilities. Generally, having no rights means their futures are precarious, to say the least. Resettlement, for long seen as 'the solution', has not provided and is not providing anything like enough places (numbers) to make this 'solution' realistic. The vast majority of refugees will be in Malaysia for the long-term. Allowing refugees to exist in this limbo land is also, amongst other things, an encouragement to modern day slavery and human trafficking, regarding both of which refugee communities in Malaysia have huge experience.

Under the BN government, with its distinct lack of any enthusiasm or even interest in giving refugees any rights, past policy suggestions might possibly have raised the idea of signing the UN 1951 Convention on Refugees, but were more likely to concentrate on specific areas, such as specific

rights relating to employment, arrest and detention, education, and health. This may or may not have been accompanied by the suggestion of 'pilot projects' and small initiatives, addressing single issues and trying to alleviate particular challenges (for example, the awful impact and conditions of detention camps; or the issues around refugee access to healthcare). More recently, especially over the last year (up to May 2018), some people started advocating for interventions from the government specifically for Rohingya, on the basis that the BN government had made a number of public pronouncements on the global as well as national stage apparently supporting the Rohingya cause, and that it was therefore more likely to respond to requests for help for just the Rohingya than for all refugees. (This was never an argument that PSHTC agreed with).

CHANGED SITUATION: PROMISES 35 and 59

Now the situation has dramatically changed, and we can dispense with any 'sectoral' or 'special for Rohingya' approach. We can dispense with any obsession with pilot work schemes, for example. This is because, for the first time ever, the Malaysian government has committed to giving rights and protection to all refugees through its **Manifesto Promises 35 and 59**. In other words, there is now official written commitment to changing the status of all refugees and providing an appropriate legal and administrative framework. We don't have to expend any further energy on this anymore.

What we do need to do is to concentrate our efforts **to make sure these promises are actually implemented**, through identifying and promoting the fastest mechanism by which they can be realised.

PROMISE 35: EMPLOYMENT RIGHTS for REFUGEES

For employment rights, Manifesto Promise 35, the mechanism is already indicated. The wording of the promise itself states that the UNHCR Refugee Card can provide a ready-made and verifiable avenue by which a refugee's employment rights can be recognised and protected. This would seem to us to be sensible and very workable, and we hope discussions are in progress as we write, and hopefully are close to a conclusion.

If this Promise is effected as soon as possible, the impact on the lives of refugee women, men and children will be transformational. From a situation where they are completely without protection or 'legal' ability to earn a livelihood, refugees would now be able to work 'legally'. **Such a right will immediately protect refugees against harassment, extortion, arrest and detention**, huge issues about which many of us have spent considerable time lobbying. For Malaysia, the implementation of **Promise 35 will help attack the institutional corruption and malpractices** which have had such a serious consequence on our public and private lives and have shaken to the core the effectiveness of our governance. It will also help remove from Malaysia the **pervasive existence of human trafficking and modern day slavery**, crimes which flourish where people remain unprotected and marginalised. Further, with a security of income, refugees can for the first time begin to plan properly for their families and future, something that again will be to the benefit of us all.

In other words, implementing Promise 35 is a win-win situation, good for Malaysia and good for refugees, and one that can be implemented speedily.

REGISTRATION OF REFUGEES: THE ROLE OF UNHCR

If Promise 35 is implemented as soon as possible, the associated task is to make sure that all refugees in Malaysia are properly registered and verified. At the moment, there are several thousand waiting for their applications to be processed. This group of people are especially

vulnerable. We should encourage the Malaysian government to give every support and encouragement to UNHCR to speed up registration for all refugees in Malaysia (many of them have been waiting for verification for years). And we should encourage UNHCR to do whatever is necessary to expedite this process, so that every refugee in Malaysia is covered by Promise 35.

SIGNING THE UN 1951 CONVENTION ON REFUGEES

Meanwhile discussions about signing the UN 1951 Convention can continue. This will involve looking at the various implications of signing this Convention, and identifying any necessary legal and administrative changes that may need to be made.

Indeed, all the 'sectoral' suggestions that previously have been made to the BN Government relating to documentation, education, health, livelihoods, social protection and so on can now be adapted to be part of the on-going discussions with the Pakatan Government in preparing for the signing of the UN 1951 Convention on Refugees. A number of initiatives have already been undertaken by various parties, and good practices and ways forward can be identified and adopted.

EDUCATION: These include extending Malaysia's commitments under the UN Convention on the Rights of the Child, to allow every child in Malaysia access to education. This would include children of refugees, of whom the majority at the moment have no access to education at all. Opening up the doors of national schools to refugee children would transform their and our futures. It is to be noted that discussions are already on-going with regard to the sort of transition initiatives which are needed to prepare refugee children for mainstream education; this is very do-able. And ahgain is a win-win situation for everyone.

HEALTH: Initiatives also include the recent announcement of the reduction in healthcare costs for UNHCR cardholders, although many still argue that the costs are still too high for most refugees to afford. It is also strongly suggested that **healthcare facilities are made 'safe spaces'** where anyone presenting themselves for healthcare is free from any worry that they have been reported to the authorities and may be subject to arrest and detention. At the moment this is a major issue and needs addressing.

Discussions on these and other areas need to proceed, of course. But the first thing is to help the Pakatan Government realise its Promise 35 and give rights of employment to refugees. If this is done quickly, as it can be, it will already make a huge, huge difference to the lives of refugees here.

REFUGEE ADVOCACY

And we might add, that for those of us engaged in advocacy, meetings, conferences, and other initiatives focussing on refugee issues, it is way overdue that attention is given to how refugees themselves are either included or excluded from such discussions. It is increasingly recognised that to talk about refugees and 'their needs and aspirations' is no longer acceptable if concrete steps are not being taken to make sure that refugee representation is part of any advocacy efforts. Our common goal should be to support refugees themselves in fully controlling the content and direction of such advocacy. This is fundamental.