

## **UNHCR RESPONSE TO RCOA QUESTION ABOUT MALAYSIA DEAL**

*Response by UN High Commissioner for Refugees, Antonio Guterres, to a question from Paul Power, CEO of Refugee Council of Australia, at the 2011 UNHCR NGO Consultations, Geneva, 28 June 2011*

### **Question asked by Paul Power:**

High Commissioner, as you would be well aware civil society organisations in Australia and Malaysia have expressed concern about an agreement presently being negotiated by the Australian and Malaysian governments which will see 800 asylum seekers who arrive to Australia by boat being sent to Malaysia for refugee status determination by UNHCR in return for resettlement by Australia of 4,000 recognised refugees currently living in Malaysia.

Not only would UNHCR support for the deal appear to legitimise Malaysia's current treatment of refugees and asylum seekers, it would arguably undermine the achievement of key UNHCR goals such as upholding the right to seek asylum, preventing the separation of families, finding durable solutions for *all* refugees and promoting a principled approach to resettlement. On the basis of available information the deal would also appear to contravene articles 3 and 31(1) of the Refugee Convention.

These concerns have been articulated in multiple statements in both Australia and Malaysia and I can present you with one which was developed at a conference in Sydney just a week and a half ago to celebrate the 60<sup>th</sup> anniversary of the Refugee Convention.

So my questions are these: What advice have you received from your office about the impact of this agreement on UNHCR's core mandate? Further, could you please explain UNHCR's role and objectives in the negotiations surrounding the arrangement?

In particular, will UNHCR be insisting as a condition of support that the text of the agreement be placed in the public domain so that the two governments, UNHCR, IOM and other relevant actors can be held to account for its content and its implementation?

### **Response from High Commissioner Guterres:**

Thank you for your frank approach. This is one of the situations that I refer when I say we as an organisation face many times dilemmas in trying to see what is the best way forward in the situations that are, I would say, not entirely clear in the pros and cons of whatever approach.

First, the proof that our action is good for something is that that agreement that should have been signed, I don't know how many weeks ago, is not yet signed. And the only reason it why it has not yet been signed is because UNHCR has been intransigent in relation to a certain number of very clear protection principles. And that policy will be maintained.

I don't know if there will be an agreement or not, because we have established a certain number of clear bottom lines in relation to the protection of the people involved, but also to the protection environment in Malaysia. And that is what, to a certain extent, was the interesting part of the agreement; is that the agreement *might* create a situation in which the protection environment in Malaysia could substantially improve, and that of course would have a very important impact for the people concerned, because in Malaysia we have a large number of refugees and a large number of refugees without any established rights, even if many of them live in rather an acceptable way from the point of view of their survival, taking profit of the illegal labour market that exists in the country, but of course without any proper recognition of legal rights. So indeed it is one of these complex areas of analysis.

I believe our people is doing what was agreed, that they should be intransigent in relation to a certain number of core principles of protection, that this would be seen also as an opportunity in

some aspects and so that we could not refuse to be engaged, because that would seem to move in other directions that would be in our opinion totally negative, but we should be very careful.

And I've been following the positions of the civil society very carefully for several reasons: first because I read them in the press; and second because I receive hundreds of emails in my iPhone, that I have been answering, as I'm sure you know, one by one. So we are following that with a lot of interest.

These things are never clear-cut, as I said. But the proof that we have been acting with a lot of commitment to the protection concerns that we have, is that those agreements that have been announced several times, that they don't happen. They don't happen because the conditions that we consider absolutely essential have not yet (and I don't know what's going to happen) been met. And we will keep that tough approach. Should we have completely refused to analyse whatever? To be honest I think it would probably be worse.

So, again, the role of the civil society is very important, because it is the fact that you are doing what you are doing that also balances the pressure from those that are totally against this agreement from the point of view of other political forces in Australia, because what they want is the reestablishment of the old Nauru model. So again it's a challenging, complex situation, I'm very grateful for your militant activities and I will try to ensure that we do things in accordance with a principle-minded approach.