



Refugee Council
of Australia

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MALAYSIA'S APPALLING RIGHTS RECORD IGNORED IN REFUGEE TRANSFER DEAL

Australia has ignored Malaysia's appalling record of mistreatment of asylum seekers and refugees in its rush to seal an asylum seeker transfer deal, the Refugee Council of Australia (RCOA) says.

The transfer deal, announced by the Australian and Malaysian Governments yesterday, will see 800 asylum seekers who enter Australia by boat sent to Malaysia in return for Australia resettling 4000 additional refugees from Malaysia over the next four years.

"If this were an agreement between two countries which had ratified the Refugee Convention and provided fair treatment to asylum seekers and refugees, we could support a reasonable proposal to share responsibility," RCOA chief executive officer Paul Power said. "However, Malaysia has not signed the Refugee Convention and has a long record of abuse and mistreatment of people seeking protection.

"Malaysia's policies, which include arbitrary arrest, detention and caning of asylum seekers, have contributed to people moving on to Australia and elsewhere to seek protection. Refugees who manage to avoid detention are generally left with no legal status and no right to work, risking arrest as a result of their efforts to support themselves.

"The Refugee Council of Australia has strongly advocated for the development of a more effective regional framework to better address the protection needs of refugee and we have applauded the Australian Government's efforts to advance this through the Bali Process. But rather than working patiently to build policies which ensure the protection of the vulnerable, Australia has rushed for domestic political reasons into a bilateral agreement which will see it linked to some of the most inhumane refugee policies in Asia.

"As it works to conclude its MOU with Malaysia, the Australian Government will have to face some serious questions about the protection of the asylum seekers it transfers. How will Australia ensure that asylum seekers transferred to Malaysia will be protected from ill-treatment? Will they be forced into detention and, if so, under what conditions? If not, will they have any legal status or will they be at constant risk of arrest? What legal and other assistance will they receive in putting their claims for asylum? Will they have any appeal rights? If they are found to need refugee protection, what will happen to them? Will they have the right to work? Will they be left without health care or access to education?

"One positive aspect of yesterday's announcement is the increase in the Refugee and Humanitarian Program of 1,000 places per year for the next four years. This will make a great difference to the 4,000 refugees who will be able to begin a new life in Australia free from fear and uncertainty in Malaysia. However, it is deeply disappointing to hear the Prime Minister frame this announcement with rhetoric about 'queues' when she knows full well that the vast majority of the world's refugees have no access to any queue for refugee resettlement."

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The Refugee Council of Australia represents
non-government organisations and
individuals working with and for refugees
in Australia and around the world

HOW UNHCR DESCRIBES CONDITIONS FOR REFUGEES IN MALAYSIA

Malaysia is not party to the 1951 Refugee Convention or its Protocol. There is currently no legislative or administrative framework for dealing with refugees. This challenging protection environment makes it difficult for UNHCR to fulfil its mandate in the country, which has some 3 million migrants, 1.5 million of whom are considered undocumented migrants.

By law, refugees are not differentiated from undocumented migrants. They are therefore vulnerable to arrest for immigration offences and may be subject to detention, prosecution, whipping and deportation. In the absence of a national administrative framework, UNHCR conducts all activities related to the reception, registration, documentation and status determination of asylum-seekers and refugees. Since refugees and asylum-seekers have no access to sustainable livelihoods or formal education, UNHCR runs a limited number of humanitarian support programmes for them, in cooperation with NGO partners.

From "2011 UNHCR country operations profile – Malaysia" -
<http://www.unhcr.org/pages/49e4884c6.html>

AMNESTY INTERNATIONAL'S DESCRIPTION

Malaysia does not officially recognize refugee status, placing itself at odds with its international obligations and creating serious risks to the human rights of refugees and asylum-seekers. Refugees and asylum-seekers are still considered "illegal" migrants in Malaysia. They have no formal legal status or right to work. Despite recent government promises, they face the daily prospect of being arrested, detained in squalid conditions, and tortured and otherwise ill-treated, including by caning. They face the constant fear of being forced to return to a country where they may be stripped of their rights or even killed.

From "Abused and Abandoned: Refugees Denied Rights in Malaysia" -
<http://www.amnesty.org/en/library/asset/ASA28/010/2010/en/2791c659-7e4d-4922-87e0-940faf54b92c/asa280102010en.pdf>